

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 160/AT/2019 and
IA No. 81/2019**

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

Date of Order: 1st March, 2021

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 20 MW Solar Power from Solar Energy Corporation of India Limited which has been discovered through a transparent process by way of a 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 Ltd
(TPDDL), NPDL House, Hudson Lines,
Kingsway Camp, Delhi - 110 009.

2. Solar Energy Corporation of India Limited
1st Floor, D3, A Wing,
Prius Platinum Building,
District Centre, Saket,
New Delhi - 110 017.

.....Petitioners

Vs

1. Suryaoday Solaire Prakash Private Limited
C-192, Sarvodaya Enclave,
New Delhi-11 0017

2. Northern Solaire Prakash Private Limited
C-192, Sarvodaya Enclave,
New Delhi-11 0017

3. Gujarat State Electricity Corporation Limited
GSECL, pap Department,
Vidyut Bhawan, Race Course,

Vadodara-390007

4. IL&FS Energy Development Company Limited
A-268, First Floor,
Bhisma Pitama Marg, Defence Colony
New Delhi-11 0024

5. Palimarwar Solar Project Pvt. Limited
LNB Group of Companies,
7, Munshi Premchand Sarani, Hasstings,
Kolkata-700022

6.Green Energy Development Corporation of Odisha Limited
Odisha Hydro Power Corporation Ltd.,
OSPH & WC Building, Vanivihar Chowk, Janpath,
Bhubaneswar-751022

7. Backbone Enterprises Limited
M-43, Gujarat housing Board,
Kalawad Road, Rajkot, Gujarat-360001

8. Enersan Power Private Limited
C-606, Imperial Heights,
Opp. ISCON Mall, 150 Ft. Ring Road,
Rajkot, Gujarat-360005

9. Sunilhitech Solar (Dhule) Private Limited
A-268, First Floor,
Bhisma Pitama Marg, Defence Colony
New Delhi-11 0024

10.Swelect Energy Systems Ltd. Limited
6th Floor, Trade Centre, BandraKurla Complex,
Bandra (East), Mumbai-400054

11. Acme Gurgaon Power Private Ltd.
Plot No. 152, Sector 44,
Gurgaon, Haryana-122002.

12. Acme Mumbai Power Pvt. Ltd.
Plot No. 152, Sector 44,
Gurgaon, Haryana-122002

13. Acme Rajdhani Power Pvt. Ltd.
Plot No. 152, Sector 44,
Gurgaon, Haryana-122002

14. Medha Energy Pvt. Ltd.
Plot No. 152, Sector 44,
Gurgaon, Haryana-122002
15. Ranji Solar Energy Pvt. Ltd.
104 MunishPlaza, 20 Ansari Road
Darya Ganj, New Delhi-11 0002
16. Finnsurya Energy Pvt. Ltd.
Ground Floor 8-12, World Trade Centre,
Babar Road, Connaught Place,
New Delhi-11 0001
17. Sharda Construction & Corporation Pvt. Ltd.
Sharda Towers, Ashok Nagar
Nanded, Maharashtra-435601
18. Today Green Energy Private Limited
Statesman House, 8th Floor,
Barakhambha Road, New Delhi-110001
19. Gujarat Power Corporation Ltd.
Gujarat Power Corporation Limited,
Block No.6 & 8, Sixth Floor,
Udhyog Bhavan, Sector-11,
Gandhinagar-382011
20. Karnataka Power Corporation Ltd.
Shakthi Bhavan, No. 82,
Race Course Road,
Bangalore-506001
21. SEI L'Volta Pvt. Ltd.
Menon Eternity, 10th Floor,
New-165, Old-110, St. Mary's Road,
Alwarpet, Chennai-600018
22. SEI Sitara Pvt. Ltd.
Menon Eternity, 10th Floor,
New-165, Old-110, St. Mary's Road,
Alwarpet, Chennai-600018
23. SEI Suryalabh Pvt. Ltd.
Menon Eternity, 10th Floor,
New-165, Old-110, St. Mary's Road,
Alwarpet, Chennai-600018

24. Waandeep Solar Private Limited
602, Western Edge-I, Western Express Highway,
Barivali (E), Mumbai-400066

25. Clean Solar Power (Dhar) Pvt. Ltd.
Unit No. 80/1101A, Hemkunt Chambers,
Nehru Place, New Delhi-11 0019

26. Vishwaj Energy Private Ltd.
Singhbad, Opp. BMC College, Agarkar Road,
Shivaji Nagar, Pune-411004

27. Azure Sunshine Pvt. Ltd.
No.8, Local Shopping Complex,
Madangir, Pushp Vihar,
New Delhi-11 0062

28. Azure Green Tech Pvt. Ltd.
No.8, Local Shopping Complex,
Madangir, Pushp Vihar,
New Delhi-11 0062

29. Azure Clean Energy Pvt. Ltd.
No.8, Local Shopping Complex,
Madangir, Pushp Vihar,
New Delhi-11 0062

30. Focal Photo Voltaic India Private Limited
403-404, 4th Floor,
Southern Park, D-2, Saket,
New Delhi-11 0017

31. Focal Renewable Energy Two India Private Limited
403-404, 4th Floor,
Southern Park, D-2, Saket,
New Delhi-11 0017

32. Focal Energy Solar One India Private Limited
403-404, 4th Floor,
Southern Park, D-2, Saket,
New Delhi -110017

33. Sunrise Energy Generation Pvt. Ltd.
311, Acme Plaza,
Andheri-Kurla Road,
Andheri East, Mumbai-400059

34. RDA Energy Pvt. Ltd.
Avani Signature, 6th Floor,
91/ A/1 Park Street,
Kolkata-700016

35. Welspun Solar UP Private Ltd.
Welspun House, 7th Floor,
Kamala City, Senapati Bapat Marg,
Lower Parel (W), Mumbai-400013

36. Rishabh Renergy Private Limited
196 Ground Floor, Ram Vihar,
Delhi-110092

37. Laxmi Diamond Pvt. Ltd.
EW-2200, 2nd
Floor, Bharat Diamond House
Bandra Kurla Complex,
Bandra (East), Mumbai-400051

38. 4G Identity Solutions Pvt. Ltd.
Plot No. 241, Prashasan Nagar,
Road No. 92 Jubilee Hills,
Hyderabad-500034

39. Assam Power Distribution Company Limited
Bijulee Bhavan, Paltan Bazar,
Guwahati -781001

40. Eastern Power Distribution Company of A. P. Limited
P& T Colony, Seethammadhara,
Vishakhapatnam-530013

41. Bangalore Electricity Supply Company Limited
K. R. Circle, Bangalore,
Karnataka-560001

42. BSES Rajdhani Power Limited
BSES Bhawan, Nehru Place,
New Delhi-11 0019

43. North Bihar Power Distribution Company Limited
Vidyut Bhawan-I,
Jawaharlal Nehru Marg,
Patna-800001

44. South Bihar Power Distribution Company Limited
Vidyut Bhawan-I,
Jawaharlal Nehru Marg,
Patna-800001
45. BSES Yamuna Power Limited
Shakti Kiran Building, Karkardooma
Delhi-110032
46. Chhattisgarh State Power Distribution Co. Ltd.
Vidyut Sewa Bhawan, Dangania,
Raipur, Chhattisgarh-492013
47. Electricity Department,
Government of Goa Vidyut Bhavan,
3rd Floor Panaji, Goa
48. GRIDCO Ltd.
Janpath, Bhubaneshwar,
Khurda, Odisha-751022
49. Haryana Power Purchase Centre
Shakti Bhawan, Sector-6, Panchkula
50. Himachal Pradesh State Electricity Board Ltd.
Vidyut Bhawan, Shimla-171004
51. Jharkhand Urja Vikas Nigam Limited
Engineering Building, H.E.C. Dhurwa P.S.
Hatia, Ranchi, Jharkhand-834004
52. Kerala State Electricity Board
Vydyuthi Bhavanam Pattom,
Thiruvananthapuram, Kerala-695004
53. Mangalore Electricity Supply Company Limited
MESCOM Bhavana Bejai,
Kavoor Cross Road, Mangalore,
Karnataka-575004
54. MP Power Management Company Limited
Block No. 11, Shanti Bhawan,
Jabalpur-482008
55. Maharashtra State Electricity Distribution Company Limited

Prakashgad Plot No. G-9,
Anant Kanekar Marg, Bandra (E)
Mumbai-400051

56. Punjab State Power Corporation Ltd.
PSEB, Head Office, The Mall,
Patiala

57. Ajmer Vidyut Vitran Nigam Limited
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer,
Rajasthan-305004

58. Jaipur Vidyut Vitran Nigam Limited
Vidyut Bhawan, Janpath Jyoti Nagar,
Jaipur, Rajasthan-302005

59. Jodhpur Vidyut Vitran Nigam Limited
New Power House,
Jodhpur, Rajasthan-342003

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

.....Respondents

The following were present:

Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Ms. Molshree Bhatnagar, Advocate, TPDDL
Shri Samarth Kashyap, Advocate, TPDDL
Shri Manoj Mathur, SECI
Shri Ajay Sinha, SECI
Shri Abhinav Kumar, SECI
Shri Atulya Kumar Naik, SECI
Shri Shibasish Das, SECI
Shri Anurag Bansal, TPDDL
Ms. Sefali Sobti, TPDDL

ORDER

The Petitioner No. 1, Tata Power Delhi Distribution Limited (TPDDL), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as “the Act”) along with Section 79(1)(k) of the Act for adoption of tariff for purchase of 20 MW solar power from the Petitioner No. 2, Solar Energy Corporation of India Limited (SECI). The Petitioner has submitted that tariff has been discovered through a transparent process by way of competitive bidding conducted in terms of the ‘Jawaharlal Nehru National Solar Mission Guidelines for implementation of Scheme for setting up of 750 MW Grid connected Solar PV Projects under Batch-I Phase-II’ (hereinafter referred to as ‘the Guidelines’) dated 25.10.2013 issued by Ministry of New and Renewable Energy, Government of India.

2. The Petitioner TPDDL has made the following prayers:

“(a) Admit and allow the present Petition; and

(b) Adopt the tariff i.e. Rs. 5.50/ kWh (excluding trading margin of Rs. 0.05/kWh) in terms of Section 63 of the Electricity Act, 2003;”

Submission of the Petitioner TPDDL

3. The Petitioner No. 1, TPDDL has submitted that being a distribution licensee, it is obligated to purchase 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 SECI for setting up grid connected Solar Power Projects for an aggregate capacity of 750 MW (under Batch-I, Phase-II of Jawaharlal Nehru National

Solar Mission) on Build, Own and Operate basis, TPDDL requisitioned 20 MW solar power after in-principle approval of Delhi Electricity Regulatory Commission (DERC). On 16.10.2014, TPDDL signed the Power Supply Agreement (PSA) with SECI for procurement of 20 MW solar power for fulfillment of its Renewable Purchase Obligation and filed Petition No. 24 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 of SECI and IA 81/2019

4. The Petition was admitted on 2.7.2019 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 (PPA) to be executed/ already executed by SECI with the Solar Power Developers selected pursuant to the competitive bid process conducted for an aggregate capacity of 750 MW. Learned senior counsel further submitted that beside TPDDL, there are other distribution licensees which are purchasing power from SECI by executing 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 the Guidelines dated 25.10.2013 issued by Ministry of New and Renewable Energy, Government of India. Learned senior counsel

requested to adopt the tariff in a comprehensive manner in regard to all such PPAs and PSAs to avoid multiplicity of proceedings. Learned senior counsel sought permission to file an application for its transposition as the Petitioner by impleading Solar Power Developers and Distribution Licensees 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.

5. Pursuant to liberty granted by the Commission, SECI has filed the IA No. 81/2019 on 9.10.2019 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. 0.05/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 38 in the amended memo of parties and the PSAs with the Buying Utilities/Distribution licensees being Petitioner No 1 and Respondent Nos. 39 to 60 in the amended memo of parties;

d) Exempt SECI from filing the hard copies of the executed PPAs and PSAs.”

6. 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. 81/2019 was allowed. Accordingly, SECI was directed to implead Solar Power Developers and Distribution licensees as party to the Petition. Thereafter, notices were issued to impleaded Solar Power Developers and Distribution Licensees to file their replies. However, no reply has been filed by them.

7. We now proceed to consider the adoption of tariff under Section 63 of the Act in respect of the individual solar power projects as discovered pursuant to the competitive bid process carried out in terms of the Guidelines issued by the Ministry of New and Renewable Energy, Government of India.

Analysis and Decision

8. It is noted that Ministry of New and Renewable Energy issued Guidelines dated 25.10.2013 to implement the 'Scheme for setting up of 750 MW of Grid-connected Solar PV Power projects under Batch-I of Phase-II of Jawaharlal Nehru National Solar Mission with Viability Gap funding support from National Clean Energy Fund'. The bid process was concluded by SECI in the year 2014. However, the Petitioner No. 1 has filed the instant Petition for adoption of tariff on 13.4.2019 and only thereafter, SECI has filed the IA 81/2019 on 9.10.2019 with the prayers of transposing SECI as the second Petitioner and adoption of tariff.

9. Vide Record of Proceedings for the hearing dated 12.5.2020, SECI was directed to provide the reasons for delay in approaching the Commission for adoption of tariff, details of extension, if any, given to the solar power developers with respect to SCOD along with grounds for such extension and status of approval of PSA/Procurement Process by the respective SERCs (State Electricity Regulatory Commissions) along with status of scheduling and payment from such projects etc. SECI vide its affidavit dated 22.5.2020 has submitted the information called for.

10. During the course of hearing on 27.8.2020, learned senior counsel for Petitioner No. 2 submitted that in terms of Rule 8 of the Electricity Rules, 2005, while the tariff for

such Projects has to be adopted by this Commission, the Power Supply Agreement (PSA)/ procurement process for the Procurers/ Distribution licensees has to be approved by the concerned State Electricity Regulatory Commission (SERC) and there has been delay in obtaining the approval from the concerned SERCs. Learned counsel for the Petitioner No. 1, TPDDL submitted that the Petitioner had approached DERC for approval of power procurement quantum and for approval of Power Sale Agreement entered into with SECI in 2018. DERC in its order dated 1.3.2019 approved the same. However, the Project being 'composite' in nature i.e. generation and sale of power taking place in more than one State, DERC directed TPDDL to approach CERC for adoption of tariff. Learned counsel submitted that PSA entered into with SECI for 20 MW capacity is on the basis of PPA entered into by SECI with Solar Power Developer, namely, Medha Energy Private Limited and since the project has already been commissioned, TPDDL is procuring energy from this solar power developer.

11. We have heard learned senior counsel and learned counsel for the Parties and perused documents on record. SECI has submitted that there was certain ambiguity with respect to the jurisdiction of CERC vis-à-vis the respective SERCs. SECI has submitted that though it accepts that the jurisdiction for adoption of tariff under Section 63 of the Act in regard to the procurement of power is that of the Commission, but at the same time, the Distribution Licensees in the States are also required to take the approval of respective SERC in terms of Section 86(1)(b) of the Act read with Rule 8 of Electricity Rules, 2005. SECI has pleaded that bidding documents (including the PPA/PSA) did not prescribe/ define the Appropriate Commission from which approval was to be sought. In the circumstances, the Distribution Licensees approached the

respective SERCs and obtained the power procurement approval, either by way of specific orders or under the ARR orders passed by the SERCs. The process of obtaining such approvals for recognition of the power procurement in the tariff orders took time.

12. SECI has admitted that there has been delay in approaching the Commission as there was some confusion over adoption of tariff/ approval of procurement process for projects having 'composite scheme'. SECI has submitted that the position in regard to the sale to the buying utility in a State other than the one where the power project is situated became clear with the decision of the Hon'ble Supreme Court in Energy Watchdog case & Ors. Vs. CERC & Ors. [(2017) 14 SCC 80]. SECI has submitted that now it is clear that two independent approvals are required, namely, (a) adoption of tariff by the CERC, and (b) the approval of the concerned SERC for procurement of solar power, by the buying utilities in their States at the price discovered through the competitive bid process. SECI has admitted that there has been delay in filing the Petition seeking adoption of tariff in respect of the projects where competitive bidding has taken place in the year 2014.

13. Admittedly, there is a considerable delay in the approaching this Commission for adoption of tariff by the Petitioners under Section 63 of the Act and the Commission has taken a serious note of such delay on the part of the Petitioners, particularly SECI, being the intermediary agency who conducted the bid process, ought to have approached the Commission for adoption of tariff immediately. The Petitioner SECI has submitted that clarity as regards jurisdiction of the Commission vis-à-vis SERCs

emerged only after the aforesaid judgement of the Hon'ble Supreme Court. However, we note that there is also a considerable delay in filing this Petition even after the cited judgement of the Hon'ble Supreme Court that was delivered. The said judgement was delivered on 11.4.2017, while the Petition was filed on 9.10.2019, after a gap of more than two years. While justifying the delay, the Petitioner SECI has also submitted that the Guidelines as well as the bidding documents (including the PPA/PSA) did not prescribe/ define the Appropriate Commission from which approval was to be sought for. The Petitioner SECI, however, has not submitted what efforts were made by it to get the issue clarified. Any way, it only shows that during the entire period, the Petitioner SECI was fully aware of the fact that there was a need for adoption of tariff by an Appropriate Commission and that no such adoption has been done by any Commission.

14. Perusal of the details furnished by SECI reveals that projects in respect of which adoption of tariff has been sought for, have already been commissioned and supply of power under the PPAs/PSAs has commenced, as indicated in the Table below.

S. No	Name of Solar Power Developer	Project Capacity (MW)	Distribution Licensee/ Buying Utilities	PPA Date	Date of Commissioning	Power Supply Start Date
1.	RDA Energy Pvt Ltd	10	RUVNL	28.3.2014	30.3.2015	30.3.2015
2.	Rishabh Renergy Pvt. Ltd.	10	RUVNL	28.3.2014	25.3.2015	25.3.2015
3.	Palimarwar Solar Project Pvt Ltd.	10	RUVNL	28.3.2014	13.4.2015	13.4.2015
4.	SEI Suryalabh Pvt. Ltd.	30	RUVNL	28.3.2014	25.3.2015	25.3.2015
5.	Walwhan Solar RJ Limited (Welspun Solar UP Pvt. Ltd.)	5	RUVNL	28.3.2014	22.4.2015	22.4.2015
6.	Today Green Energy Pvt.	10	RUVNL	28.3.2014	04.10.2015	4.10.2015

	Ltd.(4RJ)					
7.	Azur Clean Energy Pvt. Ltd.	40	RUVNL	28.3.2014	28.4.2015	28.4.2015
8.	Azure Green Tech Pvt. Ltd.	40	HPPC	28.3.2014	5.5.2015	1.6.2015
9.	Azure Sunshine Pvt. Ltd.	20	HPPC	28.3.2014	5.5.2015	1.6.2015
10.	Northern Solaire Prakash Pvt. Ltd.	20	HPPC	28.3.2014	7.5.2015	1.6.2015
11.	EDEN Solar Rajdhani Pvt. Ltd.	20	HPSEBL	28.3.2014	20.5.2015	5.6.2015
12.	EDEN Solar Energy Gurgaon Pvt. Ltd.	20	BRPL	28.3.2014	18.5.2015	5.6.2015
13.	EDEN Mumbai solar Pvt. Ltd.	20	BYPL	28.3.2014	18.5.2015	5.6.2015
14.	EDEN Medha Energy Pvt. Ltd.	20	TPDDL	28.3.2014	20.5.2015	1.6.2015
15.	EDEN Renewable Ranji Pvt. Ltd.	20	APDCL	28.3.2014	18.5.2015	1.6.2015
16.	Suryaoday Solaire Prakash Pvt. Ltd.	10	GRIDCO	28.3.2014	18.4.2015	1.6.2015
17.	Gujarat Power Corporation Ltd.	10	GRIDCO	28.3.2014	20.3.2015	24.3.2015
18.	Gujarat State Electricity Corporation Ltd.	10	GRIDCO	28.3.2014	20.3.2015	24.3.2015
19.	Enersan Power Pvt. Ltd.	10	GRIDCO	28.3.2014	18.9.2015	18.9.2015
20.	Iron Triangle Limited	10	GRIDCO	28.3.2014	18.9.2015	18.9.2015
21.	Green Energy Development Corporation of Odisha Ltd.	20	GRIDCO	28.3.2014	6.6.2016	6.6.2016
22.	Today Green Energy Pvt. Ltd.(1RJ)	10	PSPCL	28.3.2014	4.10.2015	15.1.2016
23.	Today Green Energy Pvt. Ltd.(2RJ)	10	PSPCL	28.3.2014	4.10.2015	15.1.2016

24.	Today Green Energy Pvt. Ltd.(3RJ)	10	PSPCL	28.3.2014	12.5.2016	12.5.2016
25.	Today Green Energy Pvt. Ltd.(5RJ)	10	MSEDCL	28.3.2014	5.10.2015	17.10.2015
26.	Sharda Construction and Corporation Pvt. Ltd.	10	MSEDCL	28.3.2014	28.5.2015	28.5.2015
27.	Vishwaj Energy Pvt. Ltd.	10	MSEDCL	28.3.2014	28.4.2015	18.5.2015
28.	Sunil Hitech Solar (Dhule) Pvt. Ltd.	5	MSEDCL	28.3.2014	29.6.2015	29.6.2015
29.	Malwa solar Power Pvt Ltd. 2	20	MSEDCL (15MW)	28.3.2014	29.4.2015	8.11.2015
30.	Malwa solar Power Pvt Ltd. 1	20	GOA	28.3.2014	1.5.2015	8.11.2015
31.	Malwa solar Power Pvt Ltd. 2	20	GOA(5MW)	28.3.2014	29.4.2015	8.11.2015
32.	Laxmi Diamond Pvt. Ltd.	10	JUVNL	28.3.2014	29.9.2015	9.10.2015
33.	Fortum Finnsurya Energy Pvt. Ltd.	10	MPPMCL	28.3.2014	31.10.2014	31.12.2014
34.	SEI L'Volta Pvt. Ltd.	20	MPPMCL	28.3.2014	26.2.2015	26.2.2015
35.	SEI Sitara Pvt. Ltd.	30	MPPMCL	28.3.2014	26.2.2015	26.2.2015
36.	Clean Solar Power (Dhar) Pvt. Ltd.(A)	10	MPPMCL	28.3.2014	30.3.2015	30.3.2015
37.	Clean Solar Power (Dhar) Pvt. Ltd.(B)	10	MPPMCL	28.3.2014	30.3.2015	30.3.2015
38.	Clean Solar Power (Dhar) Pvt. Ltd.(C)	10	MPPMCL	28.3.2014	30.3.2015	30.3.2015
39.	Focal Photovoltaic India Pvt. Ltd.	10	MPPMCL	28.3.2014	1.6.2015	1.6.2015
40.	Focal Energy Solar One India Pvt. Ltd.	20	CSPDCL	28.3.2014	12.6.2015	22.11.2015
41.	Waaneep	50	CSPDCL	28.3.2014	15.6.2015	8.11.2015

	Solar Pvt. Ltd.					
42.	Focal Renewable Energy Two India Pvt. Ltd.	10	BSPHCL	28.3.2014	1.6.2015	22.11.2015
43.	Swelect Energy System Limited	10	TANGEDCO	28.3.2014	6.7.2015	6.7.2015
44.	Karnataka Power Corporation Ltd.	10	BESCOM	28.3.2014	22.6.2015	22.6.2015

15. As indicated by SECI, SERCs have approved the PSAs/ power procurements in respect of concerned Distribution Licensees either through separate order or through their ARR under Section 86(1)(b) of the Act. In case of TPPDL, it had approached DERC vide Petition No.24 of 2019 seeking adoption of tariff and approval of power procurement arrangement between TPDDL and SECI. We observe that DERC in its order dated 1.3.2019, with regard to adoption of tariff, observed that the jurisdiction in respect of adoption of tariff lies with CERC and directed TPDDL to approach CERC. It is surprising that in spite of this order, SECI did not care to approach this Commission for adoption of tariff. It is only during the hearing of the instant Petition on 5.9.2019 that SECI prayed for transposing itself as the second Petitioner and pursuant to liberty granted by the Commission, SECI filed the IA No. 81/2019 on 9.10.2019.

16. SECI has submitted that it has now streamlined the process followed by it and has been approaching this Commission for adoption of tariff right after completion of the bid process irrespective of whether the Distribution licensees have obtained the approval of PSA/ procurement process from the concerned State Commission or not.

17. In our view, the above facts clearly bring out that the Petitioner SECI has displayed utter negligence and lack of diligence by procuring the power and making the related financial transactions over the years in spite of being fully aware of the fact that the tariff of such power has not been adopted as required under Section 63 of the Act.

18. We now proceed to consider the prayer of adoption of tariff in respect of the individual solar power projects as discovered pursuant to the competitive bid process carried out in terms of the Guidelines issued by the Government of India under Section 63 of the Act. The matter was heard after notice to the Solar Power Developers and Distribution Licensees. However, no response was received from them.

19. 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.”

20. 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 New and Renewable Energy, Government of India under Section 63 of the Act, has been followed in determination of such tariff.

21. On 15.10.2013, Ministry of New and Renewable Energy, Government of India has sanctioned the ‘Scheme for setting up of 750 MW of Grid-connected Solar PV Power projects under Batch-I of Phase-II of Jawaharlal Nehru National Solar Mission with Viability Gap funding support from National Clean Energy Fund’ (hereinafter

referred to as the “Scheme”). For implementation of the said Scheme, Ministry of New and Renewable Energy issued the Detailed Guidelines on 25.10.2013.

22. The salient features of the Guidelines dated 25.10.2013 are as under:

(a) Scope of the Guidelines is to provide the necessary policy framework and mechanism for selection and implementation of 750 MW Grid-connected Solar PV Power Projects with viability Gap Funding under Batch-I Phase-II of Jawaharlal Nehru National Solar Mission. The same will be implemented by SECI in close association with NTPC Vidyut Vyapar Nigam Limited (NVTN).

(b) Tariff to be paid to the Solar Power Developer (SPD) is fixed at Rs. 5.45/kWh. This tariff will remain for 25 years' project period. In case, benefit of accelerated depreciation is availed for a project, tariff will get reduced to Rs. 4.75/kWh. SPD will be provided a viability gap fund based on his bid. The upper limit for VGF is 30% of the project cost or Rs.2.5 crore/MW, whichever is lower.

(c) Total aggregate capacity of the grid connected Solar Power Projects to be set-up by SPDs on Build, Own and Operate basis under the Scheme will be 750 MW. Out of total capacity of 750 MW, capacity of 375 MW will be kept for bidding with Domestic Content Requirement (DCR). The project capacity shall be at least 10 MW and in multiples thereof and the maximum capacity of the Project shall be upto 50 MW.

(d) SECI shall invite SPDs to participate in the global bidding process against the Request for Selection (RfS) for development of Solar PV Power Projects under this Scheme.

(e) SECI shall issue the RfS inviting SPDs to submit their bids quoting their VGF requirement for setting up the Solar PV Projects at location of their choice, evaluate the bids received, issue Letter of Intents (LoI) to successful bidders and sign Power

Purchase Agreements with them for purchase of solar power, valid for a period of 25 years.

(f) SPDs may submit their bids for either DCR or Open or both the categories. The evaluation of bids and allocation of projects under these two categories will be done separately. Selection of bidder shall be on the basis of lowest per MW VGF required. In case, some capacity under any of the two categories is left out after allotment to successful bidders, such left out capacity will be shifted to the other capacity if eligible bidders are available in that capacity. If still some capacity is left out and total capacity of 750 MW does not get allotted, the left out capacity may be re-bid or added to Batch-II projects of JNNSM Phase-II.

(g) Solar power purchased by SECI shall be sold to State Utilities/ Discoms/ other Bulk consumers at a fixed tariff of Rs.5.50/kWh (Rs. 4.75/kWh in case of projects availing benefit of accelerated depreciation) for 25 years including Trading Margin of SECI @ Rs.0.05/kWh. SECI shall accordingly sign back-to-back Power Sale Agreements with interested State Utilities/Discoms for sale of solar power to them.

(h) Prior to issuance of RfS, MNRE/SECI shall obtain confirmation from the State Utilities/ Discoms/ other Bulk Consumers regarding their willingness to purchase the solar power under VGF scheme @ Rs. 5.50/kWh and to sign PSAs with SECI.

(i) Within 30 days of the date of issue of Lol, the PPAs between SECI and SPDs for purchase of power from their projects will be executed. During this period, back-to-back PSAs will also be executed by SECI with the interested State Utilities/Discoms/other Bulk Consumers for sale of power to them.

(j) SECI shall set up a payment security mechanism in order to ensure timely payment to the developers. This fund will have a corpus to cover 3 months

payment. The money received from encashment of Bank Guarantees, interest earned on this fund, incentives for early payment, extra money coming from 10% lower tariff to developers claiming AD and the grants from Government/NCEF will be used to build this fund. Ministry of New and Renewable Energy will frame Rules to operate this fund.

23. In terms of the provisions of the 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 (i.e. VGF requirement per MW) and for selection of the successful bidder(s).

24. 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 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.

25. As per the Guidelines, SECI in the capacity of nodal agency, invited proposals for setting up of 750 MW grid connected Solar PV Projects under JNNSM Phase-II, Batch-I. 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 Distribution Licensees.

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

Sr. No.	Milestone	Date
1	Issuance of RfS by SECI	28.10.2013
2	Last date of submission of bid	20.1.2014
3	Opening of techno-commercial bids	20.1.2014
4	Opening of financial bids	21.2.2014
5	Notification regarding selected Projects under the Scheme	25.2.2014
6	Issuance of Letter of Award to successful bidders	26.2.2014

27. On 28.10.2013, SECI issued Request for Selection (RfS) document, along with draft PPAs and PSAs documents for setting up of 750 MW grid connected Solar PV Projects under Batch-I. SECI issued the Public Notice in this regard on 4.10.2013 in the Newspapers and also uploaded the same on the websites of SECI and MNRE.

28. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids for RfS dated 28.10.2013:

“1) Techno-commercial Bid Evaluation Teams:

The evaluation teams shall carry out preliminary examinations of Techno-Commercial bids in line with the tender conditions. The six teams constituted for the same are as follows:

Team 01: Shri YBK Reddy, Sr. Manager (PV) and Sh. Ashok Kumar, Sr. A. O.

Team 02: Shri T. Ramraj, Sr. Engr (Contracts) and Shri Sandeep Reddy, Sr. Engr

Team 03: Sh. Vineet Kumar, Dy. Mgr (Solar Thermal) and Miss Nidhi Jain, Sr. A. O.

Team 04: Sh. Sanjay Mathur, Manager (Finance) and Sh. Ankit Agarwal, Dy. Mgr (Solar Thermal)

Team 05: Sh. Harendra Tomar, Manager (Env) and Sh. Abhishek Ambasta, Sr. Engr

Team 06: Sh. Prashant Kr. Upadyay, Sr. Engr. And Sh. Satyanarayan Bishoyi, Sr. Engr.

Reserve Members: Sh. Shibasis Das, Dy. Mgr. (PS), Smt. Anita Agarwal, Dy. Mgr. (PS), Sh. Abhinav Kumar, Sr. Engr. And Sh. Pratik Prasun, Sr. Engr.

2) Review team

Reports prepared by Bid Evaluation Committees shall be reviewed by a Review Committee consisting of the following members:

Shri Ramesh Kumar K, GM, Shri R. C Chaudhary, Sr. Consultant (Contracts & Commercial), Shri A. Chatterjee, Sr. Consultant (on his appointment/joining), Shri M.M. Bhatnagar, Consultant (Finance) AGM (Finance-On joining), Shri Robin Majumdar, Consultant MNRE and Shri Sanjay Karndhar, Scientist – B, MNRE

The Review Committee shall monitor the progress as well as consolidate the issues on daily basis and take necessary steps to sort out or refer the matter to Director Level Committee. The members of Director-Level committee for review and sorting out issues

Sh. Abhinav Kumar, Sr. Engr (Commercial) and Sh. Pratik Prasun (Sr. Engr-BD) will coordinate and assist all the teams as well as review Committee.

Approval of final evaluation report

The final evaluation report shall be consolidated by the Tender Committee Consisting of (1) Dr. Y B K Reddy, (2) Shri Sanjay Mathur and (3) Shri A. K. Naik after taking inputs from review consultant (NVVN).

Award recommendations shall be put up by the tender committee for the approval of board through GM, Director (Solar), Director (Finance) and MD.”

29. Last date of submission of bid was 20.1.2014 and the technical part of the bid was opened on the same date. Pursuant to the above, 58 bids were received offering an aggregate capacity of 2170 MW (700 MW under DCR category and 1470 MW under Open category) and all of them were found technically qualified. Out of the above, 49 bidders were qualified for financial bids and their bids were opened in the presence of Bid Evaluation Committee. After final evaluation, 26 bidders were found eligible for allocation of 47 projects for 750 MW capacity and were accordingly issued the Letters of Intent.

30. SECI has submitted that pursuant to the aforesaid bidding process, it has entered into approximately 46 PPAs with SPDs and 20 PSAs with Distribution

Licensees. The details of successful SPDs and the Distribution Licensees furnished by

SECI are as under:

S.No	SPD	Project Capacity (MW)	Project location	PPA rate Rs./kWh	Distribution Licensees/ buying Utilities	PSA rate Rs./kWh
1	Today Green Energy Pvt. Ltd. (1RJ)	10	Rajasthan	5.45	Punjab State Power Corporation Ltd.	5.50
2	Today Green Energy Pvt. Ltd. (2RJ)	10			Punjab State Power Corporation Ltd.	
3	Today Green Energy Pvt. Ltd. (3RJ)	10			Punjab State Power Corporation Ltd.	
4	Today Green Energy Pvt. Ltd. (4RJ)	10			Rajasthan Urja Vikas Nigam Limited	
5	Today Green Energy Pvt. Ltd. (5RJ)	10			Maharashtra State Electricity Distribution Co. Ltd.	
6	SEI Suryalabh Pvt. Ltd.	30			Rajasthan Urja Vikas Nigam Limited	
7	Laxmi Diamond Pvt. Ltd.	10			Jharkhand Urja Vikas Nigam Ltd.	
8	RDA Energy Pvt. Ltd.	10			Rajasthan Urja Vikas Nigam Limited	
9	Palimarwar Solar Project Pvt. Ltd.	10			Rajasthan Urja Vikas Nigam Limited	
10	Northern Solaire Prakash Pvt. Ltd.	20			Haryana Power Purchase Centre	
11	Suryaoday Solaire Prakash Pvt. Ltd.	10			GRIDCO Ltd.	
12	Azure Green Tech Pvt. Ltd.	40			Haryana Power Purchase Centre	
13	Azure Sunshine Pvt. Ltd.	20			Haryana Power Purchase Centre	
14	Azure Clean Energy Pvt. Ltd.	40			Rajasthan Urja Vikas Nigam Limited	
15	EDEN Renewable Ranji Pvt. Ltd.	20			Assam Power Distribution Co. Ltd.	
16	EDEN Medha Energy Pvt. Ltd.	20			Tata Power Delhi Dist. Ltd.	
17	EDEN Mumbai Solar Pvt. Ltd.	20			BSES Yamuna Power Ltd.	
18	EDEN Solar Rajdhani Pvt. Ltd.	20			Himachal Pradesh State Elect. Board	
19	EDEN Solar Gurgaon Pvt. Ltd.	20			BSES Rajdhani Power Ltd.	
20	Walwhan Solar RJ Ltd.(Welspun Solar UP Pvt. Ltd.)	5			Rajasthan Urja Vikas Nigam Limited	

S.No	SPD	Project Capacity (MW)	Project location	PPA rate Rs./kWh	Distribution Licensees/ buying Utilities	PSA rate Rs./kWh
21	Rishabh Renergy Pvt. Ltd.	10	Madhya Pradesh		Rajasthan Urja Vikas Nigam Limited	
22	Clean Solar Power (Dhar) Pvt. Ltd.	10			Madhya Pradesh Power Management Co. Ltd.	
23	Clean Solar Power (Dhar) Pvt. Ltd.	10			Madhya Pradesh Power Management Co. Ltd.	
24	Clean Solar Power (Dhar) Pvt. Ltd.	10			Madhya Pradesh Power Management Co. Ltd.	
25	Malwa Solar Power Pvt. Ltd.	15			Maharashtra State Electricity Distribution Co. Ltd.	
26	Malwa Solar Power Pvt. Ltd.	25			Electricity Department, Goa	
27	Focal Photovoltaic India Pvt. Ltd.	10			Madhya Pradesh Power Management Co. Ltd.	
28	Focal Renewable Energy Two India Pvt. Ltd.	10			Bihar State Power (Holding) Co. Ltd. (BSPHCL)	
29	Focal Energy Solar One India Pvt. Ltd.	20			Chhattisgarh State Power Dist. Co. Ltd.	
30	Waaneep Solar Pvt. Ltd.	50			Chhattisgarh State Power Dist Co. Ltd.	
31	Fortum Finnsurya Energy Pvt. Ltd.	10			Madhya Pradesh Power Management Co. Ltd.	
32	SEI Sitara Pvt. Ltd.	30			Madhya Pradesh Power Management Co. Ltd.	
33	SEI L'Volta Pvt. Ltd.	20			Madhya Pradesh Power Management Co. Ltd.	
34	Gujarat State Electricity Corp. Ltd.	10			Gujarat	
35	Gujarat Power Corp. Ltd.	10				
36	Iron Triangle Ltd.	10				
37	Enersan Power Pvt. Ltd.	10				
38	Sharda Construction and Corp. Pvt. Ltd.	10	Maharashtra	Maharashtra State Electricity Distribution Co. Ltd.		
39	Vishwaj Energy Pvt. Ltd.	10				
40	Sunil Hitech Solar (Dhule) Pvt. Ltd.	5				
41	Swelect Energy Systems Ltd.	10	Tamil Nadu	Tamil Nadu Generation and Distribution Company Limited		
42	Karnataka Power Corporation Ltd.	10	Karnataka	Bangalore Electricity Supply Company Limited		
43	Green Energy Development Corporation of Odisha Ltd.	20	Odisha	5.45	GRIDCO Ltd.	

S.No	SPD	Project Capacity (MW)	Project location	PPA rate Rs./kWh	Distribution Licensees/ buying Utilities	PSA rate Rs./kWh
TOTAL		680				

31. It is noted that there is mismatch between the capacity awarded under the RfS (750 MW) and details furnished as above (680 MW) by SECI. In this regard, SECI has clarified that Letters of Intent were issued to SPDs for 750 MW. However, out of 750 MW, 70 MW could not materialize.

32. Pursuant to Letters of Intent and allocation of capacity, SECI entered into PSAs dated 29.10.2014 with Assam Power Distribution Company Limited; dated 22.8.2014 with Bangalore Electricity Supply Company Limited; dated 9.3.2015 with BSES Rajdhani Power Limited; dated 4.1.2015 with North Bihar Power Distribution Company Limited and South Bihar Power Distribution Company Limited; dated 27.2.2015 with BSES Yamuna Power Limited; dated 30.7.2014 with Chhattisgarh State Power Distribution Company Ltd.; dated 5.3.2015 with Government of Goa; dated 12.8.2014 with GRIDCO Ltd., dated 22.8.2014 with Haryana Power Purchase Centre; dated 21.3.2015 with Himachal Pradesh State Electricity Board Ltd.; dated 15.9.2014 with Jharkhand Urja Vikas Nigam Limited; dated 15.10.2014 with Madhya Pradesh Power Management Co. Ltd.; dated 22.1.2016 (amended) with Madhya Pradesh Power Management Co. Ltd.; dated 15.12.2014 with Maharashtra State Electricity Distribution Company Limited; dated 31.3.2015 with Punjab State Power Corporation Ltd.; dated 18.3.2015 with Ajmer Vidyut Vitran Nigam Limited, Jaipur Vidyut Vitran Nigam Limited and Jodhpur Vidyut Vitran Nigam Limited; dated 6.7.2015 with Tamil Nadu Generation and Distribution Company Limited; and dated 16.10.2014 with Tata Power Delhi

Distribution Limited. SECI entered into PPAs with selected Solar Power Developers/ their SPVs on 27.3.2014, 28.3.2014 and 25.4.2014.

33. 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 SECI through a transparent process of competitive bidding in accordance with Guidelines issued by Ministry of New and Renewable Energy, Government of India. SECI vide its letter dated 18.9.2019 has certified that the process is in conformity with the Guidelines issued by Ministry of New and Renewable Energy 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/JNNSM/SPV/P-2/B-1/RfS/102013 dated 28th October, 2013, 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.”

34. The Petitioners SECI have prayed to adopt the tariff discovered in the competitive bid process for the power projects. In the light of the observations in paragraphs 13, 15 and 17 above and the above discussions, , in terms of Section 63 of the Act, the Commission adopts the tariff of Rs.5.45/kwh for the individual Projects as agreed to by the successful bidders as noted at paragraph 30 above, with effect from 13.4.2019, the date on which the instant Petition for adoption of tariff was filed. Thus,

this tariff shall remain valid, with effect from 13.4.2019 till the PPAs signed with the successful bidders remain valid.

35. Articles 10.3 of the PPAs 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) amounts claimed by SECI, if any, from the SPD, through an invoice to be payable by the SPD, and not 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 SECI 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 Pune (the “SPD’s Designated Account”) for all Tariff Payments (including Supplementary Bills) to be made by SECI to the SPD, and notify SECI of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. SECI shall also designate a bank account at New Delhi (“SECI’s Designated Account”) for payments to be made by the SPD to SECI, if any, and notify the SPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. SECI and the SPD shall instruct their respective bankers to make all payments under this Agreement to the SPD’ Designated Account or SECI’s Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.”

36. Further, Article 10.4 of the PPAs provides as under:

“10.4 Payment Security Mechanism

Letter of Credit (LC):

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

10.4.2 Not later than one (1) Month before the start of supply, SECI through a scheduled bank at New Delhi 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, SECI shall restore such shortfall within seven (7) 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 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 SECI.

10.4.8 If SECI fails to pay a Monthly Bill or Supplementary 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 SECI, 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 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.

10.4.9 Collateral Arrangement

As a further support for the SECI's obligations, not later than (1) month before start of supply, the SPD and SECI shall execute Default Escrow Agreement (referred to as "Default Escrow Agreement") for the establishment and operation of the Default Escrow Account in favour of SPD, through which the Incremental Receivables of the SECI shall be routed and used as per the terms of the Default Escrow Agreement.

The SPD and SECI shall contemporaneously with the execution of the Default Escrow Agreement enter into the Agreement to Hypothecate Cum Deed of Hypothecation, whereby the SECI shall agree to hypothecate, Incremental Receivables to the extent as required for the Letter of Credit as per Article 10.4.2. The Default Escrow Agreement and the Agreement to Hypothecate Cum Deed of Hypothecation are collectively referred to as the "Collateral Arrangement". Incremental Receivables is the money received by SECI on account of sale of Power under SECI-Buying Utilities PSA.

10.4.10 [Void]

10.4.11. *The Default Escrow would come into operation if.*

- a) The Letter of Credit is not recouped by the SECI to its required value by the 7th day of its operation;*
- b) SPD is unable to draw on the Letter of Credit on the Due Date, if the SECI fails to pay by the Due Date*
- c) [Void]"*

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

"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."

38. The above provisions provide for payment security mechanism and the same is 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.

39. SECI has prayed to adopt the trading margin of Rs. 0.05/kWh to be recovered from the buying utilities/Distribution Licensees on the terms and conditions contained in PPAs executed with Solar Power Developers and PSAs executed with buying utilities/Distribution Licensees. Regulation 8(1)(d) of the Trading Licence Regulations provides as under:

“for the transactions 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.

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

“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.”

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

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

42. Thus, the Petitioner, SECI shall also be governed by the above provisions of Regulation 8(1)(d), the proviso to Regulation 8(1)(d) and provisions of Regulation 8(1)(f) of the Trading Licence Regulations.

43. Summary of decisions are as follows:

(i) In terms of Section 63 of the Act, the Commission adopts the individual tariff for the power projects mentioned in paragraph 30 above as discovered through the competitive bidding process with effect from 13.4.2019, the date on which the instant Petition for adoption of tariff was filed.

(ii) The tariff shall remain valid with effect from 13.4.2019 till the PPAs signed with the successful bidders remain valid.

(iii) 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.

(iv) The Petitioner, SECI shall be governed by the provisions of Regulation 8(1)(d), the proviso to Regulation 8(1)(d) and Regulation 8(1)(f) of the Trading Licence Regulations.

44. Petition No. 160/AT/2019 along with IA No. 81/2019 is disposed of in terms of the above.

Sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member

sd/-
(P.K. Pujari)
Chairperson