

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 210/AT/2021

Coram:

Shri P. K. Pujari, Chairperson

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 21st December, 2021

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff discovered through Competitive Bidding Process for procurement of power from 190 MW Grid-Connected Solar PV Power Project at Nokh Solar Park (Under Open Category) in Rajasthan as per the Standard Bidding Guidelines of Ministry of Power, Government of India dated 3.8.2017 and its amendments thereof.

And

In the matter of

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

...Petitioner

Vs

1. Rising Sun Energy (K) Private Limited,
PHD, UGF, 4/2, August Kranti Marg,
Siri Institutional Area,
New Delhi, Delhi – 110 016.

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

...Respondents

The following were present

Shri Venkatesh, Advocate, NTPC

Shri Suhael Buttan, Advocate, NTPC

Shri Jatin Ghuliani, Advocate, NTPC
Shri Anant Singh Ubeja, Advocate, NTPC
Shri Rishub Kapoor, Advocate, NTPC
Shri Ishpaul Uppal, NTPC
Shri V. V. Sivakumar, NTPC
Shri Arvind Banerjee, CSPDCL

ORDER

The Petitioner, NTPC Limited (in short, '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 190 MW grid connected solar power projects at Nokh Solar Park in the State of Rajasthan 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 along with subsequent amendments issued by Ministry of Power, Government of India. The Petitioner has made the following prayers:

"(a) Admit the present petition;

(b) Adopt the Tariff Rate of Rs.2.25 per kWh for procurement of Power from 190 MW Solar PV Power Project, discovered through competitive bidding carried out by the Petitioner; and

(c) Pass such other further order(s) as may be deemed fit and proper in the facts and circumstances of the present case."

Submission of the Petitioner

2. The Petitioner, NTPC has submitted that on 12.1.2021, it issued Request for Selection (RfS) along with draft Power Purchase Agreement (PPA) and draft Power Sale Agreement (PSA) documents for selection of Solar Power Developers for setting up 190 MW grid-connected solar power projects at Nokh Solar Park in the State of Rajasthan to be developed through Rajasthan Solar Park Development

Company Limited, a Solar Power Park Developer as per the Guidelines and floated the same on ISN Electronic Tender System (ETS) e-bidding portal (i.e. bharat-electronictender.com). It has been submitted by the Petitioner that in pursuance to the above, amongst the other bidders, Respondent No.1, Rising Sun Energy (K) Private Limited ('RSEPL') submitted its bid on 11.2.2021. Thereafter, e-reverse auction for selection of Solar Power Developers was held on the ISN ETS portal on 19.2.2021 and after conclusion of e-reverse auction, the Respondent No.1 was declared as the successful bidder for setting up of 190 MW solar power project at the tariff of Rs.2.25/kWh. The Petitioner issued the Letter of Award in the favour of the Respondent No. 1 on 2.3.2021 and consequent thereto, PPA was entered into between the Petitioner and the Respondent No. 1 on 30.3.2021. The Petitioner has also entered into PSA with Respondent No. 2, Chhattisgarh State Power Distribution Company Limited ('CSPDCL') on 1.9.2021 for onward sale of power generated from the project to be set-up by the Respondent No.1 in the State of Rajasthan. In terms of the said PSA, the Petitioner shall be intermediary procurer and it shall be entitled to a trading margin of Rs.0.07/kWh to be paid by the Respondent No.2.

Hearing dated 16.11.2021

3. The matter was called out for virtual hearing on 12.10.2021. During the course of hearing, the learned counsel for the Petitioner reiterated the submissions made in the Petition and mainly submitted the following:

- (a) On 12.1.2021, the Petitioner issued an RfS for the purpose of selection of Solar Power Developers for setting-up of a 190 MW grid connected solar

PV power project in Nokh Solar Park in the State of Rajasthan being developed by Rajasthan Solar Park Development Company Limited.

(b) After conclusion of bid process conducted as per the Guidelines, Respondent No.1, Rising Sun Energy (K) Private Limited was declared as the successful bidder and was issued a Letter of Award dated 2.3.2021 for setting up of a 190 MW solar PV project at tariff of Rs.2.25/kWh.

(c) The Petitioner has entered into a Power Purchase Agreement with the Respondent No.1 on 30.3.2021 and on that basis a Power Supply Agreement has been entered into with the Respondent No.2, CSPDCL for onward sale of power generated from the solar PV project to be set-up in the Nokh Solar Park.

(d) The Petitioner, in its capacity of Intermediary Procurer, has approached this Commission as per Clause 10.4 of the Guidelines for adoption of tariff under Section 63 of the Act.

(e) While Clause 2.1.1(a) of the Guidelines states that in case of a single distribution licensee being the Procurer, the Appropriate Commission will be the State Commission of the concerned State where the distribution licensee is located, the said clause does not apply in the present case as in the present case, there is an involvement of Intermediary Procurer and the generation and supply is in more than one State i.e. solar power generated from the solar PV projects located in Nokh Solar Park in the State of Rajasthan is being supplied to CSPDCL in the State of Chhattisgarh.

(f) Pertinently, RfS document was not issued at behest of any particular end-Procurer and thus, the end-Procurer was not identified at the time of issuance of RfS. Also, the Appropriate Commission is the Central Commission in the present case as per the decision of the Hon'ble Supreme Court in the case of Energy Watchdog v. Central Electricity Regulatory Commission and Ors. [(2017) 14 SCC 80], whereby it has been held that the moment

generation and supply takes place in more than one State, the Central Commission becomes the Appropriate Commission under the Act.

(g) The Petitioner has furnished all relevant details along with the Petition and the Commission may adopt the tariff in respect of 190 MW solar PV project as discovered through the competitive bid process.

(h) CSPDCL has also approached the State Commission for seeking approval of the PSA and the trading margin, which is pending for consideration before the State Commission.

4. The representative of the Respondent No.2, CSPDCL objecting to the jurisdiction of the Commission submitted that in the present case, this Commission does not have the jurisdiction to adopt the tariff. He added that though clause (III) of the PPA provides that after signing of the PPA, NTPC will approach the Central Commission for adoption of tariff, at Article 6.7 (Compliance with Law), it has been provided that the provisions of the agreement shall be deemed to be amended to the extent required to bring it into compliance with the provisions of the Act, or any rules and regulations made thereunder. Accordingly, the Appropriate Commission in the present case would be the State Commission.

5. *In rebuttal*, the learned counsel for the Petitioner submitted that as already settled by the Hon'ble Supreme Court in the case of Energy Watchdog case, the jurisdiction of the State Commission applies only in case where both the generation and supply is intra-State. The present case is of inter-State generation and supply, and the Appropriate Commission under the Act is the Central Commission. The learned counsel further submitted that the provisions of the PPA are not in deviation

with the provisions of the Act and is an admitted document which provides for approaching the Central Commission for adoption of tariff.

6. In response to the specific query of the Commission whether any deviations have been taken by the Petitioner in the bid documents (RfS, PPA and PSA) from the provisions of the Guidelines, the learned counsel for the Petitioner replied in negative. Accordingly, the Petitioner was directed to file an undertaking, within a week, on affidavit to the effect that no deviations have been taken from the provisions of the Guidelines in the bid documents (RfS, PPA and PSA). The Petitioner has filed an undertaking to the above effect vide its affidavit dated 26.11.2021.

Analysis and Decision

7. Since the Respondent No. 2, CSPDCL has objected to the jurisdiction of this Commission in the matter of adoption of tariff under Section 63 of the Act, we now proceed to examine the instant Petition on the issue of jurisdiction of the Commission.

8. 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.”

9. 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.

10. CSPDCL has submitted that since in the present case a single distribution licensee i.e. CSPDCL is the Procurer, the 'Appropriate Commission', as per Clause 2.2.1(a) of the Guidelines, would be the State Electricity Regulatory Commission of the concerned State where the distribution licensee is located. CSPDCL has also submitted that since the entire power generated from the solar PV power projects would be supplied to only one State i.e. Chhattisgarh, there is no composite scheme as envisaged under Section 79(1)(b) of the Act and therefore, this Commission would not be 'Appropriate Commission' in respect of the adoption of tariff under Section 63 of the Act and consequently, would not have the jurisdiction to entertain the present Petition. CSPDCL has also submitted that though the clause (III) of the PPA provides that after signing of the PPA, NTPC will approach the Central Commission for adoption of tariff, at Article 6.7 (Compliance with Law), it has been provided that the provisions of the agreement shall be deemed to be amended to the extent required to bring it into compliance with the provisions of the Act, or any rules and regulations made thereunder.

11. In this regard, it may be relevant to extract the provisions of the Section 79(1) of the Act, which provides for function of the Central Commission and the Clause 2.2 of the Guidelines, which defines 'the Appropriate Commission':

"Section 79. Functions of Central Commission: - (1) The Central Commission shall discharge the following functions, namely: -

(a) to regulate the tariff of generating companies owned and controlled by the

Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

.....”

12. As per clause (a) of sub-section (1) of Section 79 of the Act, the Commission has been entrusted with the jurisdiction to regulate the tariff of the generating companies owned or controlled by the Central Government. Under clause (b) of sub-section (1) of Section 79 of the Act, the Commission has been entrusted with the jurisdiction to regulate the tariff of generating companies other than those owned or controlled by the Central Government if those companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State.

13. Further, the Clause 2.2 of the Guidelines provides as under:

“2.2 Appropriate Commission:

2.2.1 Subject to the provisions of the Act:

a) In case of a single distribution licensee being the Procurer, the Appropriate Commission, for the purpose of these bidding Guidelines, shall be the State Electricity Regulatory Commission of the concerned State where the distribution licensee is located.

b) In case of combined procurement where the distribution licensees are located in more than one State, the Appropriate Commission for the purpose of these bidding Guidelines, shall be the Central Electricity Regulatory Commission.

c) For cases involving sale of power from Central Generating Stations, the Appropriate Commission shall be the Central Electricity Regulatory Commission.”

14. As per the above, in case of a single distribution licensee being the Procurer, the Appropriate Commission for the purpose of these Guidelines will be the State Electricity Regulatory Commission of the concerned State where the distribution licensee is located, whereas in case of combined procurement where the distribution licensee are located in more than one State and for cases involving the sale of power from Central Generating Station, the Appropriate Commission will be the Central Commission. However, it is pertinent to note that while defining the Appropriate Commission in case of single distribution licensee being the Procurer, the Guidelines do not specifically provide for or consider the scenarios where the generator and the distribution licensee are located in the same State (constituting an intra-State transaction) and when the generator and the distribution licensee are located in different States (constituting an inter-state transaction). It is equally pertinent to note that Clause 2.2.1 of the Guidelines is subject to the provisions of the Act. It is settled principle of law that the expression 'subject to' conveys the idea of a provision yielding place to another provision or other provisions which it is made subject to. Thus, in the present case, the definition of 'Appropriate Commission' as provided in the Guidelines, being subject to the provisions of the Act, yields its place to the provision(s) of the Act providing for the 'Appropriate Commission' in any given case.

15. In the present case, while the power is procured by only single distribution licensee i.e. CSPDCL, the entire arrangement of generation and sale of electricity in inter-State in nature inasmuch as the power to be generated from the solar PV power projects located in the State of Rajasthan is to be supplied to CSPDCL in the State of Chhattisgarh and, thus, the generating station in question is having composite

scheme of generation and sale of electricity in more than one State as envisaged under Section 79(1)(b) of the Act.

16. The expression 'composite scheme' and the jurisdiction of the Central Commission in regulating the tariff of the project meeting the 'composite scheme' under the Act has been explained by the Hon'ble Supreme Court vide its judgment dated 11.4.2017 in Civil Appeals titled Energy Watchdog v. CERC & Ors. [(2017 (4) SCALE 580)] (in short, 'Energy Watchdog Judgment') as under:

*“22. The scheme that emerges from these Sections is that whenever there is inter-State generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in sub-sections (c), (d) and (e) speaks of inter-State transmission and inter-State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression “within the State” in sub-clauses (a), (b), and (d), and “intra-state” in sub-clause (c). **This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission’s jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act.** What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. **This being the case, we are constrained to observe that the expression “composite scheme” does not mean anything more than a scheme for generation and sale of electricity in more than one State.***

23. This also follows from the dictionary meaning [(Mc-Graw-Hill Dictionary of Scientific and Technical Terms (6th Edition), and P.Ramanatha Aiyar’s Advanced Law Lexicon (3rd Edition)] of the expression “composite”:

(a) 'Composite' – “A re-recording consisting of at least two elements. A material that results when two or more materials, each having its own, usually different characteristics, are combined, giving useful properties for specific applications. Also known as composite material.

(b) 'Composite character' – "A character that is produced by two or more characters one on top of the other."

(c) 'Composite unit' – "A unit made of diverse elements."

The aforesaid dictionary definitions lead to the conclusion that the expression "composite" only means "consisting of at least two elements". In the context of the present case, generation and sale being in more than one State, this could be referred to as "composite".

24. Even otherwise, the expression used in Section 79(1)(b) is that generating companies must enter into or otherwise have a "composite scheme". **This makes it clear that the expression "composite scheme" does not have some special meaning – it is enough that generating companies have, in any manner, a scheme for generation and sale of electricity which must be in more than one State.**

17. As per the above findings of the Hon'ble Supreme Court, the State Commission's jurisdiction is only where the generation and supply takes place within the State. The moment the generation and sale takes place in more than one State, the Central Commission becomes the Appropriate Commission under the Act. Hon'ble Supreme Court has also ruled that the expression 'composite scheme' does not mean anything more than a scheme for generation and sale of electricity in more than one State and that it is enough that generating companies have in any manner a scheme of generation and sale of electricity which must be in more than one State.

18. Therefore, Combined reading of Section 79(1) and Section 63 of the Act and the decision of Hon'ble Supreme Court in Energy Watchdog Judgment, the jurisdiction of the Central Commission can be invoked including in respect of the adoption of tariff under Section 63 of the Act, if the tariff in respect of which adoption is sought are of the generating companies owned or controlled by the Central Government or if such generating companies have a composite scheme for generation and sale of electricity in more than one State. In the present case, as

already noted above, the solar power PV projects have a composite scheme for generating and sale of electricity in more than one State as the power to be generated in the State of Rajasthan is to be supplied to CSPDCL in the State of Chhattisgarh and, therefore, as per the provisions of the Act, namely, Section 79(1) and Section 63, as elucidated by the Hon'ble Supreme Court in the Energy Watchdog case, this Commission is the 'Appropriate Commission' under the Act and consequently, has the necessary jurisdiction to proceed with the present case. Therefore, in view of the above, the submission of CSPDCL objecting to the jurisdiction of the Central Commission is not sustainable.

19. Now coming to the merits, 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 Guidelines have been subsequently amended by the resolutions dated 14.6.2018, 3.1.2019, 9.7.2019, 22.10.2019 and 25.9.2020. The salient features of the Guidelines are as under:

(a) The Guidelines are applicable for procurement of power 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) The procurer shall prepare the bid documents in accordance with the Guidelines and the Standard Bid Documents notified by the Ministry of Power, Government 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 two bids, namely, (i) power capacity (MW) terms, or (ii) energy quantity (kWh or million units i.e. MU) terms. For procurement of power, the procurer may opt for either tariff 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 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 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 price 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) The PPA shall be signed with the successful bidder or an SPV formed by the successful bidder. After conclusion of bidding process, Evaluation Committee shall critically 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.

20. 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 and for selection of the successful bidder.

21. The Petitioner has been designated as the nodal agency for implementation of scheme for setting up of ISTS connected/ State specific solar/ wind power projects under Tariff Based Competitive bid process; enter into PPAs at the tariff discovered in the competitive bid process; and enter into PSAs with the distribution licensees to enable them to fulfill 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.

22. 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 selection of Solar Power Developer for setting-up grid connected solar PV power projects of 190 MW capacity in Nokh Solar Park in the State of Rajasthan being developed through Rajasthan Solar Park Development Company Limited i.e. Solar Power Park Developer ('SPPD') on the identified land arranged by SPPD at village Nokh, Tehsil Pokran in District Jaisalmer of Rajasthan. As per the arrangements, NTPC is to procure power by entering into PPAs with the successful bidder with back-to-back PSA for sale of power to the distribution licensees and/or to utilize the said power for flexible operation of its Thermal Power Plants as per the Scheme of

'Flexibility in Generation and Scheduling of Thermal Power Stations to reduce emission' issued by Ministry of Power vide letter No. 23/7/2017-R&R dated 5.4.2018. However, ultimately, the Petitioner adopted the former option.

23. The key dates in the bidding process were as follows:

Sr. No.	Event/Milestone	Date
1	Issuance of RfS	12.1.2021
2	Last date for submission of bid	10.2.2021
3	Opening of technical bid	10.2.2021
4	Opening of financial bid	19.2.2021
5	e-Reverse Auction	19.2.2021
6	Issuance of Letter of Award	2.3.2021

24. As per clause 3.1.1(b) of the Guidelines, procurer is required to inform the Appropriate Commission about initiation of the bidding process. However, the Petitioner has neither placed any letter on the record indicating it had intimated the Appropriate Commission about the initiation of bid process nor has prayed for exemption from complying with the aforesaid requirement envisaged under Clause 3.1.1 (b) of the Guidelines. We do not appreciate such lackadaisical approach of the Petitioner. The contention of the Petitioner that it has complied with the provisions of Clause 3.1.1(b) of the Guidelines in our view is not correct. However, considering that the bid process has already been completed and PPA and PSA having been signed already, we condone the aforesaid shortcoming on the part of the Petitioner in pointing out its compliance with the requirement specified in the Guidelines. However, we direct the Petitioner in future to take into the account the requirements under the Guidelines and, accordingly, to file the Petition along with intimation to the Appropriate Commission about initiation of the bidding as per clause 3.1.1 (b) of the

Guidelines, if any, or to specifically pray for an exemption from complying with the requirement under Clause 3.1.1(b) of the Guidelines.

25. On 12.1.2021, NTPC issued the RfS document, along with draft PPA and PSA for selection of Solar Power Developers for setting up of a 190 MW grid-connected solar PV power project in Nokh Solar Park in the State of Rajasthan being developed through SPPD, Rajasthan Solar Park Development Company Ltd. on the identified land arranged by SPPD. As per Clause 6.4 of the Guidelines, RfS notice is required to be published in at least two national newspapers and on the website of the Procurer to provide wide publicity. The Petitioner has submitted that the notice for invitation for bid for aforesaid tender was published on its website. We observed that the aforesaid aspect of issuing the public notice in the website of the Petitioner company in lieu of national newspapers as provided in the Guidelines has already been considered by the Commission vide its order dated 8.9.2021 in Petition No. 126/AT/2021, whereby the Commission, after considering the explanation furnished by the Petitioner, observed as under:

“...16. On 10.8.2019, NTPC issued the RfS document, along with draft PPA and PSA documents for setting up of 1200 MW ISTS-connected solar PV power projects. As per Clause 6.4 of the Guidelines, RfS notice is required to be published in at least two national newspapers and on the websites of the procurer to provide wide publicity. As noted above, the Petitioner, vide Record of Proceedings for the hearing dated 23.7.2021 was directed to submit the details of the publication of notice in compliance with requirement of Clause 6.4 of the Guidelines. In response, the Petitioner vide its affidavit dated 3.8.2021 has submitted that as per its Internal Policy dated 5.6.2018, NTPC had decided to discontinue the publication of abridged IFB/NIT in the newspapers and the detailed IFB/NIT along with salient technical feature shall be published on the website of the Petitioner, CPPP and GeM portal of Government of India. Accordingly, the RfS notice for inviting the bids for selection of Solar Power Developers was published on its website.

17. Taking into the consideration submissions of the Petitioner and the similar dispensation already allowed by the Commission to the other CPSUs inviting the tenders in the capacity of intermediary procurer, we exempt the Petitioner from publishing the RfS notice in two national newspapers as per Clause 6.4 of the Guidelines in the present case...”

26. Accordingly, in line with the aforesaid decision of the Commission and further considering that the objecting of wider participation in the bid process having been met as the entire capacity under the RfS being stood allocated, we exempt the Petitioner from publishing the RfS notice in two national newspapers as per Clause 6.4 of the Guidelines in the present case.

27. Further, for opening and evaluation of bids, the Bid Evaluation Committee comprising of the following was constituted:

Sr. No.	Name and Designation of Member
1	Sh. Rajiv Gupta, GM (RE-CS)
2	Sh. V. N. Jain, GM (Fin)
3	Shri E. P. Rao, AGM (Commercial)

28. Last date of submission of bid was 10.2.2021 and technical part of the bid was opened on the same date. Pursuant to the opening and evaluation of technical and financial bids, 9 bidders were found eligible for participating in e-reverse auction. E-reverse auction was carried out on 19.2.2021. After completion of e-reverse auction, Rising Sun Energy (K) Private Limited was declared as successful bidder for 190 MW at tariff of Rs.2.25/kWh. The result of e-reverse auction furnished by the Petitioner is as under:

Sr. No.	Bidder's Name	Quoted Tariff (Rs./kWh)
1	Rising Sun Energy (K) Pvt. Ltd.	2.25
2	Sprng Natural Power Source Pvt. Ltd.	2.47
3	SBE Renewables Seventeen Projects Pvt. Ltd.	2.48

4	Solarpack Corporation Tecnologica SA	2.50
5	Avaada Energy Private Limited	2.56
6	TP Saurya Limited	2.61
7	Ayana Renewable Power Four Private Limited	2.62
8	Vector Green New Energies Private Limited	2.63
9	ReNew Solar Power Private Limited	2.75

29. On 2.3.2021, NTPC issued Letter of Award ('LoA') to the selected bidder. Relevant portion of the Letter of Award issued to the Project developer, namely, Rising Sun Energy (K) Pvt. Ltd. is extracted as under:

“2.0 NTPC is pleased to accept your Response to RfS mentioned at para 1.0 (C) and (F) above and intend to sign Power Purchase Agreement for development of 190 MW Grid Connected Solar Photo Voltaic Project at Nokh Solar Park in Rajasthan and Supply of Solar Power from this project to NTPC subject to the terms and conditions contained in RfS mentioned at para 1.0 above and briefly brought out hereunder.

3.0 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 30 days of issue of this Letter of Award (LOA). 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. The signing of PPA shall constitute the agreement for setting up of the project.

As specified in the RfS, irrespective of the date of signing of PPA, the Effective Date of PPA shall be 30 days from issuance of LOA or the actual date of signing of PPA if signed beyond 30 days of issuance of LOA for delays solely attributable to NTPC.

4.0 As per clause 3.26 of RfS document, you shall ensure that the Shareholding of Bidding Company M/s. Rising Sun Energy (K) Pvt. Ltd. in the SPV/ project company (if formed by your Company) executing the PPA shall not fall below 51 % (fifty one per cent) at any time prior to 01 (one) years from the Commercial Operation Date (COD), except with the prior approval of NTPC. Further, you shall also ensure that the promoters shall not cede control of M/s. Rising Sun Energy (K) Pvt. Ltd. till 01 (one) years from the COD except with the prior approval of NTPC. Any change in the shareholding after the expiry of 01 (one) years from the COD can be undertaken under intimation to NTPC.

5.0 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.2.25/kWh (Indian Rupees Two and Twenty Five paise only per Kilowatt hour).

6.0 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 LOA:

- 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 Resolutions 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 10) 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 Document is also to be submitted by Project Company.

7.0 In line with the provisions of Clause 3.24 of RfS document, the Solar Power Developer shall submit Performance Bank Guarantee of Rs. 8 Lakh/MW to NTPC within 15 days from the date of issue of Letter of Award or before signing of PPA, whichever is earlier, as per the format 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 190 MW capacity shall be Rs. 15.20 Crore, The Bank Guarantees shall be valid for a period of 19 months from the Effective Date of PPA. Further, the PPA shall be signed only upon receipt of the total Performance Bank Guarantees of requisite value.

8.0 The Solar Power Developer shall report financial closure within 07 (seven) months from the Effective date of Power Purchase Agreement and shall submit relevant documents to NTPC as per the terms and conditions of RfS.

9.0 All disputes arising out of and/or in connection with this "Selection of Solar Power Developers for Setting up 190 MW Grid-Connected Solar PV Power Project at Nokh Solar Park in Rajasthan" 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.

10.0 This Letter of Award (LOA) is being issued to you in duplicate. You are kindly requested to return the duplicate copy of this LOA including all Annexure, duly signed on each page by your authorized signatory in token of your unequivocal acknowledgement of the same within 07 days from the date of this LOA."

30. Pursuant to the issuance of Letter of Award, NTPC entered into the PPA with Rising Sun Energy (K) Pvt. Ltd. on 31.3.2021 and on that basis also entered into PSA dated 1.9.2021 with CSPDCL for onward sale of power to be generated from the solar power PV projects to be set-up at Nokh Solar Park.

31. As per Clause 10.2 of the Guidelines, Evaluation Committee is required to certify that the bidding process and the evaluation has been conducted in conformity with the provisions of the RfS. NTPC has submitted a conformity certificate issued by the Bid Evaluation Committee certifying that bidding process as well as techno-commercial and financial bid evaluation conducted by the Petitioner were in conformity to the provisions of the RfS. Relevant portion of the said conformity certificate is extracted as under:

“Ref. No.: NTPC-RE-CS-0000-BOO-7

We do hereby solemnly certify and state as follows:

With respect to the RfS no. RE-CS-0000-BOO-7 dated 29.04.2015, it is hereby declared as follows:

After 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.

*Rajeev Gupta
CGM (RE)*

*E.P. Rao
AGM (Comml.)*

*V.N. Jain
CGM (Fin.)”*

32. Further, during the course of hearing, the learned counsel for the Petitioner was specifically asked as to whether any deviations have been taken by the Petitioner in the bid documents (RfS, PPA and PSA) from the provisions of the Guidelines. In response, the learned counsel replied in negative. Accordingly, the Petitioner was directed to file an undertaking, on affidavit, to the effect that no

deviations have been taken from the provisions of the Guidelines in the bid documents (RfS, PPA and PSA). The Petitioner vide its affidavit dated 26.11.2021 has submitted as under:

“...5. I say that bidding documents i.e. RfS, PPA and the PSA are in compliance with the provisions of the Bidding Guidelines. Furthermore, the provisions stipulated under the PPA are not in deviation with the provisions of the Act and/or the Bidding Guidelines and is an admitted document which recognises the jurisdiction of this Hon’ble Commission being the “Appropriate Commission” for the purpose of adoption of tariff under Section 63 of the Act...”

33. Accordingly, we take on record the aforesaid undertaking furnished by the Petitioner that Bidding documents (RfS, PPA and PSA) are in compliance with the provisions of the Guidelines and further the provisions under the PPA are not in deviation with the provisions of the Act and/or the Bidding Guidelines. It is clarified that in case of any deviation between the provisions the Guidelines and the PPA that might come/ brought to the notice at a later point of time, the provisions of the Guidelines will prevail over the provisions of the PPA in view of the aforesaid undertaking furnished by the Petitioner.

34. The Petitioner has prayed to adopt the tariff discovered in the competitive bid process for the Respondent No.1. As discussed above, it emerges that the selection of the successful bidder has been done and the tariff of the solar power project has been discovered by the Petitioner, NTPC through a transparent process of competitive bidding in accordance with the Guidelines issued by Ministry of Power, Government of India under Section 63 of the Act. Therefore, in terms of Section 63 of the Act, the Commission adopts the following tariff for the solar power project as agreed to by the successful bidder, which shall remain valid throughout the period covered in the PPA and PSA:

Bidder	Tariff (Rs./kWh)	Allotted Capacity (MW)
Rising Sun Energy (K) Private Limited	2.25	190

35. 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 by the 45th (Fort - fifth) day from the date of presentation of bill i.e. 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.

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 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 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 New Delhi (the “SPD’s Designated Account”) for all Tariff Payments 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 New 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 SCD. 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.”

36. Article 10.4 of the PPA provides as under:

*“10.4 Payment Security Mechanism
Letter of Credit (LC) and Payment Security Fund*

10.4.1 NTPC shall extend to the SPD, in respect of payment of its Monthly Bills, a monthly unconditional, revolving and irrevocable LC, 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 LC 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 LC 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 110% of the average monthly billing of the previous Contract Year.*

10.4.3 The SPD shall not draw upon such LC prior to the Due Date of the relevant Monthly Bill, and shall not make more than one drawal in a Month.

10.4.4 If at any time, such LC 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 LC.

10.4.6 NTPC shall ensure that the LC shall be renewed not later than ten (10) days prior to its expiry.

10.4.7 All costs relating to opening and 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 the SPD may draw upon the LC, and accordingly the bank shall pay without any reference or instructions from NTPC, an amount equal to such Monthly Bill or part thereof, by presenting to the scheduled bank issuing the LC, 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 Prior to declaration of commissioning of first part capacity of the Project, the SPD shall furnish a Payment Security Deposit (PSD) @ Rs. 5.00 lakh/MW/Project, to NTPC through DD/NEFT/ RTGS. This fund shall form part of the Payment Security Fund maintained by NTPC for the Projects. Modalities of operationalization of the Payment Security Deposit will be notified by MNRE at appropriate stage, through necessary guidelines/orders. The above amount shall be credited to NTPC pro-rata to the part capacity being commissioned at that stage. In case the SPD is unable to furnish the above amount prior to commissioning of the corresponding part-capacity, NTPC reserves the right to recover the same from the monthly energy payments made to the SPD, along with interest @ SBI 1-year MCLR to be levied from the date of commissioning of the said part-capacity to the date of recovery/due date of payment of invoices within one year of declaration of COD of the project..."

37. Clause (10) of Regulation 9 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 “the 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.”

38. The above provisions provide for payment security mechanism to be complied with by the parties to the present Petition. Accordingly, the provisions of Articles 10.3 and 10.4 of the PPAs and Clause (10) of Regulation 9 of the Trading Licence Regulations shall be abided by all the concerned parties to the present Petition.

39. The Petitioner, NTPC has submitted that in addition to tariff, there will be trading margin of Rs.0.07/kWh to be recovered from the distribution licensees in terms of PSA. In this regard, Clause (1)(d) of Regulation 8 of the Trading Licence Regulations provides as under:

“For transaction under long term contracts, the trading margin shall be decided mutually 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. However, Proviso to Regulation 8(1)(d) of the Trading Licence Regulations provides as under:

“8(1) (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.”

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. The above two provisions are exceptions to the main provision as regards trading margin. Distribution licensees have agreed to a trading margin of Rs.0.07/kWh as agreed in the PSA, which is in consonance with Regulation 8(1)(d) of the Trading Licence Regulations. Therefore, in case of failure by NTPC to provide escrow arrangement or irrevocable, unconditional and revolving letter of credit to the solar generators, trading margin shall be limited to Rs.0.02/kWh as specified in Regulation 8(1)(d) and Regulation 8(1)(f) of the Trading Licence Regulations.

43. In summary, in terms of Section 63 of the Act, the Commission adopts the tariff (as at paragraph 28 of this order) for the solar project as the same has been discovered through transparent competitive bidding process in terms of the Guidelines and shall remain valid throughout the period covered in the PSA and PPA.

44. Petition No. 210/AT/2021 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I. S. Jha)
Member

sd/-
(P. K. Pujari)
Chairperson