

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 31/RP/2020  
in  
Petition No. 187/AT/2019**

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

**Date of Order: 24<sup>th</sup> July, 2021**

**In the matter of:**

Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Order 47 Rule 1 of CPC and Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of the order dated 28.2.2020 passed by the Commission in Petition No. 187/AT/2019.

**And  
In the matter of**

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

**.....Review Petitioner**

**Vs.**

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

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

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

4. Hero Solar Energy Private Limited Plot No. 201,  
First Floor, Okhla Industrial Estate Phase – III,  
New Delhi – 110 020.

5. Mahindra Susten Private Limited,  
Mahindra Towers, Dr. G. M. Bhosale Marg,

P.K. Kurne Chowk, Worli, Mumbai, Maharashtra-400 018.

6. Azure Power India Private Limited,  
3<sup>rd</sup> Floor, Asset 301-304 & 307,  
Worldmark 3, Aerocity, New Delhi-110 037.

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

8. BSES Yamuna Power Limited,  
Shakti Kiran Building, Kakardooma, Delhi-110 092.

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

10. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector- 6, Panchkula.

11. Jharkhand Bijli Vitran Nigam Limited,  
Engineer's Building, Dhurwa, Ranchi-834 004.

12. GRIDCO Limited,  
Janpath, Bhubaneshwar, Khurda, Odisha-751 002.

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

.....Respondents

**Parties present:**

Ms. Molshree Bhatnagar, Advocate, TPDDL  
Ms. Parichita Chowdhury, Advocate, TPDDL  
Shri M. G. Ramachandran, Sr. Advocate, SECI  
Ms. Tanya Sareen, Advocate, SECI  
Ms. Neha Singh, SECI  
Shri Atulya Kumar Naik, SECI  
Shri Shibasish Das, SECI  
Shri Mudit Jain, SECI

**ORDER**

The Review Petitioner, Tata Power Delhi Distribution Limited ('TPDDL'), has filed the present petition under Section 94(1)(f) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') read with Order 47 Rules 1 of the Code of Civil

Procedure, 1908 seeking review of the Commission's order dated 28.2.2020 in Petition No. 187/AT/2020 (hereinafter referred to as 'the impugned order'). The Review Petitioner has prayed for as under:

*“(a) Allow the present Review Petition in terms of the grounds and submissions made hereinabove;*

*(b) Modify and /or correct the error on the face of record the original order dated 28.2.2020 in Petition No. 187/AT/2019 to the extent pleaded by the Review Petitioner in the present review petition and clarify that the trading margin of Rs. 0.07/kWh is excluding the tariff of Rs. 2.54/kWh; and/or*

*(c) Pass such other further order(s) as deem fit in the interest of justice and equity by this Commission”*

## **Background**

2. The Review Petitioner had filed Petition No.187/AT/2019 under Section 63 read with Section 79(1)(k) of the Act for adoption of tariff for purchase of 100 MW solar power from Solar Energy Corporation of India Limited (SECI). The tariff was discovered through competitive bidding process conducted by SECI in terms of 'Guidelines for Tariff based Competitive Bidding Process for procurement of power from Grid Connected Solar PV Projects' (hereinafter referred to as 'the Guidelines') issued by Ministry of Power, Government of India on 3.8.2017. In the said Petition, the Review Petitioner had prayed for as under:

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

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

3. The said Petition was admitted on 6.8.2019 and notice was issued to SECI. During the course of hearing, it was submitted by SECI that the Power Supply Agreement (PSA) with TPDDL had been signed on the basis of Power Purchase Agreement (PPA) executed by SECI with Solar Power Developers selected pursuant to the competitive bid process conducted for an aggregate capacity of 2000 MW in accordance with the Guidelines. Accordingly, SECI requested the Commission to adopt the tariff in a comprehensive manner in regard to all such PPAs and PSAs which had been executed pursuant to the above competitive bid process to avoid multiplicity of proceedings. SECI also sought permission to file an application for its transposition as the Petitioner and for impleading Solar Power Developers and distribution licensees as Respondents to the Petition. Accordingly, SECI filed IA No.86/2019 in Petition No.187/AT/2019 with the following prayers:

*“a) Allow the present application;*

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

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

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

4. The Commission vide Record of Proceedings for the hearing dated 19.11.2019, allowed SECI to be transposed as the Petitioner and for impleading Solar Power Developers and distribution licensees in Petition No. 187/AT/2019. The Petition No. 187/AT/2019 along with IA No. 86/2019 came to be decided vide order dated 28.2.2020, whereby the Commission proceeded with adoption of tariff in respect of individual Solar Power Projects as discovered through competitive bid process carried out by SECI in terms of the Guidelines.

5. Being aggrieved by the impugned order in as much as an inadvertent error in the prayer made by the Review Petitioner itself in the Petition No. 187/AT/2019 wherein the trading margin of Rs.0.07/kWh has been included in the levelized tariff of Rs. 2.54/kWh which has also crept in the impugned order passed by the Commission, the Review Petitioner has filed the present Review Petition.

#### **Submissions of the Review Petitioner**

6. In support of its plea for review, the Review Petitioner has mainly submitted as under:

(a) The occurrence of an inadvertent error in the prayer (b) of the Petition No. 187/AT/2019 filed by Review Petitioner, is clear from its letter dated 16.7.2019 to Delhi Electricity Regulatory Commission (DERC), wherein the Review Petitioner had apprised DERC regarding procurement of 100 MW solar power from SECI under 2000 MW ISTS solar projects indicating that the maximum solar tariff discovered for the said tender is Rs.2.54/kWh excluding the trading margin of Rs. 0.07/kWh. Thus, there had been an inadvertent error in the prayer made by Review Petitioner in Petition No.187/AT/2019 by seeking trading margin of Rs.0.07/kWh as being included in the levelised tariff of Rs. 2.54/kWh. Since the order dated 28.2.2020 has been passed by the

Commission in consideration of the prayers of the Review Petitioner, the said error while emerging from the Petition has also crept in the order, causing an error apparent on the face of record.

(b) Documents placed by the Review Petitioner on record amply clarifies that the prayer made by it seeking for adoption of tariff of Rs. 2.54/kWh is excluding the trading margin of Rs.0.07/kWh. The same has also been agreed upon between the Review Petitioner and SECI. Therefore, consideration of such inadvertent error will lead to violation of the agreed upon terms of the contract entered into between SECI and the Review Petitioner.

(c) In the impugned order dated 28.2.2020, the Commission has observed that as per the provisions of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 (in short, 'the Trading Licence Regulations'), the contracting parties have to mutually agree upon the trading margin and as such the Commission cannot determine such trading margin. The said inadvertent error is against the mutually agreed terms of trade between SECI and the Review Petitioner and, therefore, *de hors* the provisions of the Trading Licence Regulations.

(d) The said inadvertent error, if sustained would have an adverse impact on the Review Petitioner as due to said error, it will not be able to seek correct power procurement cost from DERC which may consequently cause unavoidable financial prejudice.

### **Hearing dated 20.7.2021**

7. Review Petition was called out for virtual hearing on 20.7.2021. During the course of hearing, learned counsel for the Review Petitioner submitted that the Review Petitioner is seeking rectification of an error that has crept in the impugned order owing to the inadvertent error made by the Review Petitioner in the prayer (b)

of the Petition No. 187/AT/2019 seeking adoption of fixed levelized tariff of Rs. 2.54/kW including the trading margin of Rs. 0.07/kWh. However, the trading margin of Rs.0.07/kWh is excluded from the aforesaid tariff.

8. Learned senior counsel for the Respondent No.1, SECI submitted that rectification as sought for by the Review Petitioner is irrelevant as in the impugned order, the Commission has adopted the tariff for individual Solar Power Projects as discovered pursuant to the competitive bid process carried out by SECI and not the tariff under the PSAs as prayed for by the Review Petitioner therein. In response, learned counsel for the Review Petitioner submitted that alternatively the Commission while disposing of the Review Petition may clarify that the tariff adopted by the Commission in respect of individual Solar Power Developers in the impugned order is excluding of the trading margin.

### **Analysis and Decision**

9. We have considered the submissions of the parties and perused the documents on record. As per the provisions of Order 47 Rule 1 of Code of Civil Procedure, 1908, an application of review would be maintainable on account of (i) discovery of a new and important piece of evidence, which after the exercise of due diligence was not within knowledge or could not be produced at the time when the order was passed, or (ii) there exists an error apparent on the face of record, or (iii) any other sufficient reason. The Review Petitioner has filed this review petition claiming that there is an apparent error on face of record. Accordingly, we proceed to examine as to whether the Review Petitioner, TPDDL has made out grounds for review.

10. The Review Petitioner has submitted that it had filed the Petition No. 187/AT/2019 with prayer to '*adopt the tariff i.e. a fixed levelized tariff i.e. Rs. 2.54/kWh (including trading margin of Rs. 0.07/kWh) till the cumulative awarded capacity by SECI under the RfS document has been commissioned...*'. However, it has submitted that the trading margin of Rs.0.07/kWh is in fact excluded from the said tariff. The Review Petitioner has submitted that since it had made an inadvertent error in the prayer (b) in Petition No. 187/AT/2019, resultantly the said inadvertent error has also been crept in the impugned order dated 28.2.2020.

11. The relevant portion of the impugned order dated 28.2.2020 is reproduced as under:

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

*"a) Admit and allow the present Petition; and*

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

\*\*\*\*\*

*3. The Petition was admitted on 6.8.2019 and notice was issued to SECI to file its reply. During the course of hearing of the matter on 5.9.2019, learned senior counsel for SECI submitted that PSA with TPDDL has been signed on the basis of the Power Purchase Agreement (hereinafter referred to as "PPA") to be executed/executed by SECI with Solar Power Developers selected pursuant to the competitive bid process conducted for an aggregate capacity of 2000 MW. Learned senior counsel submitted*



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

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

- a) Allow the present application;
- b) Transpose Solar Energy Corporation of India Limited (SECI) as the second Petitioner and implead the Solar Power Developers (SPDs) and the Buying Entities as per the Memo of parties filed herewith as 'Appendix A' as Respondents;
- c) Adopt the tariff discovered in the tariff based competitive bid process for the individual power projects as stated in Table 1 at paragraph 4 above plus the trading margin of Rs. 0.07/kWh to be recovered from the Buying Utilities/Distribution Licensees on the terms and conditions contained in the PPAs with the Solar Power Developers being Respondent Nos. 1 to 6 in the amended memo of parties and the PSAs with the Buying Utilities/Distribution licensees being Petitioner No 1 and Respondent Nos. 7 to 12 in the amended memo of parties; and
- d) Grant SECI an exemption from complying with the provisions of the Clause 3.1.1(b) of the Guidelines as regards the intimation of the initiation of Bidding for the reasons mentioned in Paras 18-20 hereinabove."

5. After considering the submissions of the learned senior counsel for SECI and considering that TPDDL had no objection towards the same, vide Record of Proceedings for hearing dated 19.11.2019, IA No. 86/2019 was allowed. Accordingly, SECI was directed to implead Solar Power Developers and Distribution Licensees/Utilities as party to the Petition and notices were issued to them to file their replies. However, no reply has been filed by them.

6. We now proceed to consider the adoption of tariff in respect of the individual Solar Projects as discovered pursuant to the competitive bid process carried out in terms of the Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act.

\*\*\*\*\*

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

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

\*\*\*\*\*

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

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

*The above provision gives choice to the contracting parties to mutually agree on Trading Margin for long-term transaction. Accordingly, the Commission cannot adopt any Trading Margin. The Petitioner shall be governed by the above provisions of the Trading Licence Regulations. In view of the above, the prayer of SECI to adopt the Trading Margin is decided accordingly.*

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

*“8(d) \* \* \* \* \**

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

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

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

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

12. It is noted that in the aforesaid Petition, the Review Petitioner had prayed for adoption of levelized tariff of Rs. 2.54/kWh including trading margin of Rs. 0.07/kWh, which has been recorded in the first paragraph of the impugned order. Subsequently, in the matter, SECI requested for adoption of tariff in a comprehensive manner for entire bid process for aggregate capacity of 2000 MW, its transposition as Second Petitioner and impleadment of Solar Power Developers and distribution licensees as Respondents towards which the Review Petitioner did not raised any objections. Accordingly, SECI had filed IA No. 86/2019 *inter-alia* seeking adoption of tariff discovered in the tariff based competitive bid process for individual power projects. Considering the submissions of the Review Petitioner and SECI, the Commission vide the impugned order dated 28.2.2020 adopted the discovered tariff of the individual Solar Power Projects. The Commission in the impugned order also mentioned that the trading margin shall be applicable as per the provisions of the Trading Licence Regulations and SECI shall be governed by the provisions of the aforesaid Regulations.

13. The Review Petitioner is seeking review of impugned order on the ground that due to inadvertent error made by the Review Petitioner itself in the prayer and as consequently captured in the impugned order, it may not be able to seek correct power procurement cost from DERC which may consequently cause unavoidable financial prejudice. However, as already noted above, in the impugned order, the Commission has only adopted tariff of individual Solar Power Projects discovered pursuant to the competitive bid process conducted by SECI, including the Solar Power Project on basis of which supply (100 MW) has been allocated to Review

Petitioner. Therefore, in our view, the apprehension of the Review Petitioner regarding possible financial prejudice is unfounded.

14. The rectification of an inadvertent error that had crept in the prayer (b) of the Petition No. 187/AT/2019 filed by the Review Petitioner has no relevance to findings of the Commission in the impugned order. Further, admittedly, the error apparent on the face of record as contended by the Review Petitioner is in fact an error on its own part in drafting of prayer (b) of the Petition No.187/AT/2019, which in turn has been captured/ reflected in paragraph 1 of the impugned order. Therefore, we do not find any justified ground for review of the impugned order.

15. The Review Petitioner has also submitted that in lieu of rectification of the above-stated inadvertent error, the Commission may issue clarification to the effect that the tariff adopted by the Commission for the individual Solar Power Projects in the impugned order is excluding of the trading margin of Rs. 0.07/kWh. However, in our view, the findings of the Commission in the impugned order are clear and unambiguous and thus, do not call for any such clarification as sought for by the Review Petitioner.

16. In the light of the discussion hereinabove, we do not find any substance in the present Review Petition.

17. In terms of the above, the Review Petition No. 31/RP/2020 is disposed of.

Sd/-  
**(I.S. Jha)**  
**Member**

sd/-  
**(P.K. Pujari)**  
**Chairperson**