

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 277/AT/2021

Coram:

**Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of Order: 11th April, 2022

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 450 MW grid connected solar PV power projects 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 (Resolution No.23/27/2017-R&R) issued by the Ministry of Power, Government of India on 3.8.2017 as amended from time to time.

And

In the matter of

1. Rewa Ultra Mega Solar Limited,
Urja Bhawan Link Road No. 2,
Shivaji Nagar,
Bhopal-462 016, Madhya Pradesh

2. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Rampur,
Jabalpur- 482008, Madhya Pradesh

3. West Central Railway,
General Manager's Office,
3rd Floor, Indira Market,
Jabalpur- 482 001, Madhya Pradesh

.... Petitioners

Versus

1. Ministry of New and Renewable Energy,
(Through Secretary)
Bock-14, CGO Complex, Lodhi Road,
New Delhi 110 003

2. NTPC Renewable Energy Limited,
NTPC Bhawan, Scope Complex 7,
Institutional Area, Lodhi Road,
New Delhi – 110 003.

3. Talettutayi Solar Projects Nine Private Limited,
1004, 10th Floor, BPTP Park Centra,
Sector 30, NH-8, Gurugram,
Haryana -122001

.... Respondents

The following were present:

Shri Jafar Alam, Advocate, RUMSL
Shri Saahil Kaul, Advocate, RUMSL
Ms. Parichita Chowdhury, Advocate, RUMSL
Shri Venkatesh, Advocate, NTPC REL
Shri Siddharth Joshi, Advocate, NTPC REL
Shri Vineet Kumar, NTPC REL
Shri Sunit Kumar, NTPC REL
Shri A.S.Pandey, NTPC REL

ORDER

The Petitioners, Rewa Ultra Mega Solar Limited ('RUMSL'), Madhya Pradesh Power Management Company Limited ('MPPMCL') and West Central Railways ('WCR'), have jointly filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') for adoption of tariff discovered under the transparent competitive bid process for development of 450 MW grid-connected ground mounted solar photovoltaic projects ('PV Projects') in Shajapur Solar Park at Shajapur district in the State of Madhya Pradesh. The PV Projects are to be connected to inter-State transmission system ('ISTS') 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" dated 3.8.2017 (hereinafter

referred to as ‘the Guidelines’) issued by Ministry of Power, Government of India. The Petitioners have made the following prayers:

‘(a) Admit the present petition and list the same for an early hearing;

(b) Adopt the tariffs set out in Table – VIII of this petition for the 450 MW grid-connected ground mounted solar photo voltaic projects discovered through transparent competitive bidding based on the Solar Bidding Guidelines pursuant to RfP No; RUMSL/2019-20/819/336 in accordance with section 63 of the Electricity Act, 2003.”

Submissions of the Petitioners

2. RUMSL has been incorporated as a 50:50 joint venture company between Solar Energy Corporation of India (‘SECI’) and Madhya Pradesh Urja Vikas Nigam Limited (‘MPUVNL’). The objectives of RUMSL are to develop and facilitate large-scale solar power projects in the State of Madhya Pradesh, including the Shajapur Solar Park. The Petitioners have submitted that the Government of MP (‘GoMP’) has been earnestly exploring different sources of clean energy to meet its increasing energy requirements, diversify sources of energy, and address climate change. The State of MP has fairly good potential for solar power generation with about 300 (three hundred) clear days of sunshine in a year and an average solar radiation of about 4.5 to 5.5 kWh/sq.m/day. Further, based on the Renewable Purchase Obligations trajectory, the GoMP is planning several projects to meet its overall solar purchase obligations.

3. The Petitioners have submitted that with a view to provide a boost to renewable energy development in MP and in line with the Government of India’s (‘Gol’) target of installing 100 GW of ground mounted solar power projects in India by the year 2022, the

GoMP and the Government of India have decided to set up various solar parks in different parts of MP, including, Shajapur Solar Park. In pursuance of the aforesaid objective, RUMSL was notified as the solar park project developer for the State of MP by the Ministry of New and Renewable Energy ('MNRE'), including in relation to the Shajapur Solar Park. The Petitioners have submitted that RUMSL has been entrusted with the responsibility to carry out the bid process to select suitable solar power generators to develop, operate and maintain the three units ('SPDs'). The Petitioners have submitted that 450 MW in the Shajapur Solar Park is split into 3 (three) units of ground mounted grid-connected solar photovoltaic power plants, to be developed on a pre-identified land parcel inside the Shajapur Solar Park, with the unit capacity of 105 MW (Unit 1), 220 MW (Unit 2) and 125 MW (Unit 3) respectively.

4. The Petitioners have submitted that as per clause 1.4 of RfS, 'for the purpose of the Bid Process and the Shajapur Solar Park, RUMSL will be the solar power park developer developing the Shajapur Solar Park and the 'Authorized Representative' for carrying out the Bid Process in accordance with Section 63 of the Act'. Accordingly, on 26.1.2020, RUMSL, in its capacity as the Authorized Representative of the Procurers, namely, MPPMCL and Indian Railways acting through WCR, issued the Request for Proposal ('RfP') along with standard drafts of the project agreements including the draft Power Purchase Agreement ('PPA') for development of 450 MW grid-connected ground mounted solar photo voltaic projects at Shajapur Solar Park as per the Guidelines as amended from time to time on ISN Electronic Tender System (ETS) on e-bidding portal. In Response to RfP, fifteen bids were received. All the fifteen bids were found to fully meet the technical criteria and qualified for opening of the financial bids. As per the

eligibility criteria mentioned in the RfP, thirteen bids out of fifteen, were shortlisted for participating in the e-reverse auction. Pursuant to the opening and evaluation of the financial proposals, three lowest quoted for each unit were identified in accordance with the provisions of the RfP. On 19.7.2021, e-reverse auction was conducted on ISN ETC-e-bidding portal and pursuant thereto two bidders, namely, NTPC Renewable Energy Limited was allocated 105 MW (Unit 1) at tariff of Rs. 2.35/kWh, 220 MW (Unit 2) at tariff of Rs. 2.33/kwh and Taletuttayi Solar Projects Nine Private Limited was allocated 125 MW (Unit 3) at tariff of Rs. 2.339/kWh. The Petitioners have submitted that before initiating the bid, the Petitioners through the Petition No. 631/MP/2020, had approached the Commission for approval of deviations from the provisions of the Guidelines. The Commission in its order dated 25.4.2021 approved the certain deviations taken from the Guidelines.

5. The Petitioners have submitted that since the bid process contemplates a combined procurement of power wherein Indian Railways, in its capacity of deemed distribution licensee, is procuring power for its consumption in the States of Jharkhand, Gujarat, Bihar, Maharashtra and area of Damodar Valley Corporation and MPPMCL is procuring the power on behalf of three distribution companies of the State of MP, this Commission is the Appropriate Commission as per the provisions of the Act and the Guidelines. The Petitioners have further submitted that adoption of tariff will be consistent with the Guidelines and provisions of the Act as provided in the preamble, Section 63 and Section 79 of the Act, National Electricity Policy and National Tariff Policy framed by the Central Government under Section 3 of the Act.

Hearing dated 15.2.2022

6. The matter was admitted on 15.2.2022 and notices were issued to the Respondents to file their reply. Reply to the Petition has been filed by the Respondent No. 2, NTPC Renewable Energy Limited. The Petitioners have not filed rejoinder thereof.

7. The Commission vide Record of Proceedings for the hearing dated 15.2.2022 directed the Petitioners to submit the executed project agreements including the Power Purchase Agreements. Accordingly, the Petitioners vide the affidavit dated 28.2.2022 have placed on record the copy of the Power Purchase Agreements executed between the Petitioners and the selected bidders for sale of power from the projects, Implementation and Support Agreement, Land Use Permission Agreements and Coordination Agreement, etc.

Reply filed by Respondent No. 2, NTPC Renewable Energy Limited

8. The Respondent No. 2, NTPC Renewable Energy Limited ('NTPC REL') vide its reply dated 21.3.2022 has mainly submitted as under:

(a) On 26.1.2020, RUMSL issued the RfP. Upon conclusion of the bidding process, NTPC REL was declared a successful bidder for development of Shajapur Solar Park and allocated capacity of 105 MW and 220 MW at an applicable tariff of Rs. 2.35/- and 2.33/- respectively and accordingly, Letter of Awards dated 1.9.2021 were issued in favour of NTPC REL to develop, operate and maintain Unit 1 (105 MW) and Unit 2 (220 MW) of Shajapur Solar Park in accordance with the requirements of Project Agreements.

(b) In accordance with Clause 21.1 of the RfP, on 10.9.2021, NTPC REL accepted the LoA. Subsequently, on 25.11.2021, NTPC REL and RUMSL entered into PPAs for a period of 25 years from the date of Scheduled Commissioning Date.

(c) As per PPA, Change in Law means occurrence of events in India, subsequent to Proposal Due Date (as defined in RfP) and which have direct impact on the Unit or any of the rights and/or obligations of the Parties under the Project. Article 4.1 provides that NTPC REL shall commence the construction of the Unit on or after the date on which RUMSL fulfils its conditions set out in Article 2.1(b)(i) of the PPA. Further, Article 17.1(a) provides that if a Change in Law event occurs or is shortly to occur, then a party shall notify the other party expressing its opinion on its likely effect and giving details of its opinion with respect to changes required in scope of work, terms of agreement, relief from compliance with any obligations and any increase or decrease in cost, taxes or delay likely to result on account of Change in Law event.

(d) As on date of submission of bid in terms of the various Notifications of Ministry of Finance, Government of India, the GST payable on the Supply and Service Contracts for setting up of Solar Power Plant was @ 8.9% [70% of 5% + 30% of 18%], which was considered by NTPC REL while submitting its bid. However, pursuant to above, on 30.9.2021, Ministry of Finance, Government of India vide Notification No. 8/2021 omitted the S. No. 234 from Scheduled 1 and inserted S. No. 201A in Schedule-II which attracts GST of 6% upon renewable

energy devices and parties for their manufacture. As a result of the aforesaid notification, GST at the rate of 12% became applicable upon the renewable energy devices and parts for their manufacture instead of 5% which was initially applicable upon solar power generator. The aforesaid notification has a direct impact upon the cost to be paid towards development of solar power project under:

	Goods (70% gross consideration)	Services (30% consideration)	Composite GST to be paid
GST Applicable Prior Amendment	5%	18%	8.9%
GST Applicable Post Amendment	12%	18%	13.8%
Additional GST to be paid by Solar Power Generators			4.9%

(e) Since, the aforesaid event has occurred after the cut-off date (*'Proposal due date'*) i.e. 28.6.2021, it fulfills all the ingredients of the Change in Law provisions.

(f) On 24.1.2022, NTPC REL also issued a Change in Law notice under Article 17.1 of the PPA thereby notifying the increase in levy of GST on Renewable Energy devices and parts for their manufacture including solar PV cells and modules from 5% to 12% thereby leading to further increase in project cost, which qualifies to be a Change in Law.

(g) It is a settled position of law that changes in taxes and duties which result in additional expenses must be allowed as Change in Law event. In this regard, the reliance has been placed on the judgment of Appellate Tribunal for Electricity

dated 19.4.2017 in Appeal No. 205 of 2015 in the matter of Sasan Power Ltd. v CERC and Ors.

(h) The Commission has power to grant in-principle approval for a Change in Law event under the PPA. In terms of the provisions of the PPA, NTPC REL is obligated to achieve financial closure and commissioning of the Project within the timelines envisaged. However, the Change in Law event under question would have direct bearing on the tariff as well as the timelines envisaged for achieving financial Closure and commissioning of the Project. Therefore, it is in the overall interest of the parties to the PPA that the in-principle approval is accorded by the Commission.

(i) Unless there is no regulatory certainty, the lenders will also be skeptical in disbursing/lending funds to renewable generators such as NTPC REL, the APTEL and the Commission in plethora of cases has granted in-principle approval to generators who were yet to incur expenditure to comply with the Change in Law event. Reliance has been placed on (i) judgment of APTEL dated 28.8.2020 in Appeal No. 21 of 2019 in the matter of Talwandi Sabo Power Ltd. v. PSERC and Anr., (ii) order dated 8.10.2018 of the Commission in Petition No. 133/MP/2016 in the matter of Sasan Power Ltd. v. MPPMCL and Ors. and (iii) order dated 23.4.2020 of the Commission in Petition No. 446/MP/2020 in the matter of Sasan Power Ltd. v. MPPMCL and Ors.

(j) APTEL in its order dated 12.10.2021 in Appeal No. 251 of 2022 in the matter of Green Infra Renewable Energy Limited v. RERC and Ors. ('Green Infra

Order') has, *inter alia*, observed that deferring of Change in law claim during adoption proceedings would create a lot of confusion for project developers, that it is a duty of the Regulatory Commission under Section 86(1)(b) of the Act to inquire into the Change in Law claim at the first opportune time and bring in suitable correction and that if the event duly qualifies as Change in Law event within four corners of the PPA, there is no reason to not recognize it as a Change in Law event at the stage of tariff adoption.

Hearing dated 24.3.2022

9. During the course of hearing, learned counsel for the Petitioners submitted that in compliance with the direction of the Commission vide Record Proceedings for the hearing dated 15.2.2022, the Petitioners have placed on record the Project Agreements executed by the Petitioners with the selected bidders, including the Power Purchase Agreements. Accordingly, learned counsel for the Petitioner prayed for adoption of tariff discovered through competitive bidding.

10. Learned counsel for the Respondent, NTPC REL submitted that subsequent to the Proposal Due Date (date of assessing Change in Law) i.e. 28.6.2021, the applicable rate of GST on the renewable energy devices and parts for their manufacture has been increased from 5% to 12% in term of the Notification dated 30.9.2021 issued by Ministry of Finance, Government of India. The aforesaid increase in the rate of GST has a direct impact on the cost to be paid towards development of the project and thus, the said Notification qualifies to be Change in Law event. The issue of consideration of claim of Change in Law compensation at the stage of adoption of tariff has been considered by

the APTEL in its Green Infra Order. Accordingly, the Commission may consider granting in-principle approval/ recognition of the Notification dated 30.9.2021 issued by the Ministry of Finance, Government of India as Change in Law event under the PPA.

Analysis and Decision

11. In view of the above, we now proceed to consider the prayers of the Petitioners as regards adoption of tariff in respect of grid connected ground mounted solar photo voltaic projects discovered pursuant to the competitive bid process carried out in terms of the Guidelines issued by Ministry of Power, Government of India under Section 63 of the Act.

12. 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.”

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 Government of India under Section 63 of the Act has been followed in determination of such tariff.

13. 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. MUs) 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 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.

14. 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(s).

15. 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. The Petitioner, RUMSL has been designated as the Authorised Representative of Petitioner Nos. 2 and 3 as provided in Clause 1.4 of the RfP and Recital (f) of the PPA(s), to select solar power developers to develop, operate and maintain grid connected solar photovoltaic power plants with an aggregate capacity of 450 MW to be set up as a part of Shajapur Solar Park, to invite bidding under tariff based competitive bidding process, and to enter into PPAs with developers at the tariff discovered in the competitive bid process. Accordingly, the Petitioner, RUMSL in the capacity of Authorised Representative, issued the RfP along with draft project agreements for development of 450 MW grid connected ground mounted solar PV Power projects on develop, operate and maintain basis at Shajapur Solar Park.

16. In terms of Clauses 3.1.1(a) and 3.1.1(c) of the Guidelines, the procurer (including intermediary procurer/authorized representative) is required to prepare the bid documents in accordance with the provisions of the Guidelines and in case of any deviation in the bid documents, it is required to seek approval of the Appropriate Commission in accordance with the process specified in Clause 18 of the Guidelines. The Petitioners vide its affidavit dated 29.3.2022 have submitted that before approaching the Commission for adoption of tariff, the Petitioners had filed the Petition in the Commission seeking approval of deviations from the provisions of the Guidelines prior to launch of the final bid documents (including the project agreements). The Commission by order dated 25.4.2021 in Petition No. 631/MP/2020 approved the certain deviations as sought for by the Petitioners. The Petitioners have submitted that the present bid documents have been prepared in terms of the deviations permitted by the Commission in the above order dated 25.4.2021 and there are no deviations in the bid documents other than those permitted by the Commission order dated 25.4.2021. In our view, the Petitioner has complied with the provisions of Clauses 3.1.1(a) and 3.1.1(c) of the Guidelines.

17. In terms of Clause 3.1.1(b) of the Guidelines, the procurer is also required to inform the Appropriate Commission about the initiation of the bidding process. In response to an query regarding compliance with the aforesaid requirement, the Petitioners have fairly submitted that while there was no separate intimation issued to the Commission about initiation of the bid process, the Petitioners as noted above, had approached the Commission vide Petition No. 631/MP/2020 seeking approval of

deviations from the provisions of the Guidelines prior to launch of the final bid documents, wherein the Petitioners had placed on record the relevant details of the bid process. The Petitioners have submitted that initiation of the bid process by the Petitioners had also been recorded by the Commission in the Record of Proceedings issued in the said matter. We have considered the submissions made by the Petitioners. Since the Petitioners had already approached the Commission seeking approval of the deviations in the bid documents from the provisions of the Guidelines prior to issuance of final bid documents and had also placed on the record the relevant details of the bidding during the said proceedings, we deemed it appropriate to consider the said proceedings as intimation about the initiation of the bid process as per Clause 3.1.1(b) of the Guidelines.

18. The key dates in the bidding process were as under:

S. No.	Event description	Timeline
1.	Date of issuance of RfP	26.1.2020
2.	Addenda and Clarifications to RfP	January, 2020 - June, 2021
3.	Last date of bid submission	28.6.2021
4.	Qualification Proposal Opening	29.6.2021
5.	Financial Proposal Opening	14.7.2021
6.	Reverse Auction Process	19.7.2021
7.	Issuance of Letter of Awards	1.9.2021

19. On 26.1.2020, RUMSL, issued RfP documents along with standard PPA and others project agreements on ISN Electronic Tender System (ETS) for selection of solar power generators for development of 450 MW grid connected ground mounted solar photovoltaic power plants at Shajapur Solar Park under competitive bidding.

20. As per Clause 6.4 of the Guidelines, RfS notice is required to be published in at least two national newspapers and its own website to accord wide publicity. In this regard, RUMSL has placed on record documents demonstrating publication of RfP notice in the leading Newspapers on 23.1.2020.

21. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids for RfP dated 26.1.2020:

Technical Evaluation Committee

Tender Description	Name of officer	Designation
Selection of Developers for Setting up of 450 MW grid connected solar PV projects in Shajapur district.	Shri Deepak Saxena	CEO, RUMSL
	Shri Avaneesh Shukla	Executive Engineer, RUMSL
	Shri Sanjay Verma	Executive Engineer, RUMSL
	Ms. Deepali Maheshwari,	Junior Finance Officer, RUMSL

Financial Proposal Evaluation Committee

Tender Description	Name of officer	Designation
Selection of Developers for Setting up of 450 MW grid connected solar PC projects in Shajapur district.	Shri Deepak Saxena	CEO, RUMSL
	Shri Avaneesh Shukla	Executive Engineer, RUMSL
	Shri Sanjay Verma	Executive Engineer, RUMSL
	Shri K.L. Gupta	CFO, RUMSL

22. Last date of submission of bid was 28.6.2021 and response to RfP was received from the following fifteen bidders:

Sr. No.	Name of Bidders
1.	ACME Solar Holdings Private Limited
2.	M/s Avaada Energy Private Limited
3.	Ayana Renewable Power Five Private Limited
4.	Azure Power India Private Limited
5.	Renew Solar Power Private Limited
6.	TP Saurya Limited

7.	Beempow Energy Private Limited
8.	Luceo Solar Private Limited
9.	Sprng Ojas Private Limited
10.	M/s. Aljomaih Energy & Water Co.
11.	Taletutayi Solar Projects Nine Private Limited
12.	Torrent Power Limited
13.	NTPC Renewable Energy Limited
14.	SJVN Limited
15.	NHDC Limited

23. The technical bids of all the above 15 bidders were found to be qualified for opening of financial proposals, which were opened on 14.7.2021. Pursuant to opening and evaluation of the financial proposals, the following thirteen bidders were found eligible for participating in the reverse auction process to discover the lowest tariff:

Sr. No.	Name of Bidders
1.	ACME Solar Holdings Private Limited
2.	M/s Avaada Energy Private Limited
3.	Ayana Renewable Power Five Private Limited
4.	Azure Power India Private Limited
5.	Renew Solar Power Private Limited
6.	TP Saurya Limited
7.	Beempow Energy Private Limited
8.	Sprng Ojas Private Limited
9.	M/s. Aljomaih Energy & Water Co.
10.	Taletutayi Solar Projects Nine Private Limited
11.	Torrent Power Limited
12.	NTPC Renewable Energy Limited
13.	SJVN Limited

24. Subsequent to opening and evaluation of the financial proposals, the following lowest quoted (Best Quotes) for each unit were identified in accordance with the provisions of the RfP:

Sr. No.	Unit	Bidder	Quoted Tariff (Rs. per kWh)
1.	Unit 1	ReNew Solar Power	2.78

	(105 MW)	Private Limited	
2.	Unit 2 (220 MW)	ReNew Solar Power Private Limited	2.71
3.	Unit 3 (125 MW)	TP Saurya Limited	2.70

25. After the identification of the Best Quotes, e-reverse auction was conducted on 19.7.2021. The e-reverse auction process was started from the Best Quotes for each unit and the qualified bidders were given opportunity to decrease tariff and quote a lower tariff than the Best Quotes. The final tariff and the selection of the bidders were arrived after completion of e-reverse auction as under:

Sr. No.	Selected Bidder	Allotted capacity (MW)	Lowest tariff discovered (Rs. per kWh)
1.	NTPC Renewable Energy Limited	105	2.35
2.	NTPC Renewable Energy Limited	220	2.33
3.	Talettutayi Solar Projects Nine Private Limited	125	2.339

26. On 1.9.2021, RUMSL issued Letter of Award (LoAs) to the selected bidders. Relevant portion of LoA issued to one of the bidders, namely, NTPC Renewable Energy Limited, is extracted as under:

Sub: Letter of Award for the development of Unit 1 (105 MW) at the Shajapur Solar Park, Madhya Pradesh

Reference: Request for Proposal No. RUMSL/2019-20-819/336 dated 26 January, 2020

Dear Sir,

We are pleased to inform you that pursuant to the evaluation of the Bids received, the Reverse Auction Process conducted on 19 July 2021 and your quoted Tariff of INR

2.35/kWh, you have been declared as the Selected Bidder for the development of Unit 1 (105 MW) at the Shajapur Solar Park in Madhya Pradesh. Therefore, we hereby award you the rights to develop, operate and maintain the Unit in accordance with the requirements of the Project Agreements and request you to satisfy the following conditions precedent for the execution of the Project Agreements:

1. In accordance with Clause 21.1 of the RFP, within 15 (fifteen) days of receipt of this LOA, sign and return as acknowledgment, a duplicate copy of this LOA to RUMSL. Also, in accordance with Clause 15.1 of the RFP, submit the original versions (in hard copy) of the documents submitted online as part of your Bid submission including the hard copies of the initialed/digitally signed copies of the Bid Documents and Project Agreements, along with your acknowledgment of the LOA.

2. In accordance with Clause 22.1 (b) of the RFP and Article 3.1 of the MPPMCL PPA, within 15 (fifteen) days of receipt of this LOA, submit the Performance Bank Guarantee(s) for an amount equivalent to INR 64,680,000 (Indian Rupees Sixty Four Million Six Hundred and Eighty Thousand) in the format as set out in Annex 1 of the MPPMCL PPA.

3. In accordance with Clause 22.1(b) of the RFP and Article 3 of the Indian Railways PPA, within 15 (fifteen) days of receipt of this LOA, submit the Performance Bank Guarantee(s) for an amount equivalent to INR 19,320,000 (Indian Rupees Nineteen Million Three Hundred and Twenty Thousand) in the format as set out in Annex I of the Indian Railways PPA.

4. In accordance with Clause 8.1 and 22.1 (di) of the RFP, pay Project Development Fee equivalent to a sum of INR 2,807,490 (Indian Rupees Two Million Eight Hundred and Seven Thousand and Four Hundred and Ninety) and USD 13,651 (United States Dollars Thirteen Thousand and Six Hundred and Fifty One) to IFC, prior to or on the earlier of the date falling 30 (thirty) days of issuance of the LOA or date of signing of the project Agreements. Please note that the entire Project Development Fee is payable in USD and therefore, the INR component mentioned hereinabove shall be converted into USD at the exchange rate published by the Reserve Bank of India (reference rate mentioned at <https://tbil.org.in/>) on the date of issuance of LOA. IFC shall also intimate the exact amount of project Development Fee, to be paid in USD in accordance with the exchange rate as on the date of issuance of the LOA. Please note that the Project Development Fee shall be paid without any deductions whatsoever for taxes, duties, charges or other withholdings, into the bank account with the following details:

5. In accordance with Clause 22.1 (c) of the RFP, within 7 (seven) working days of receipt of this LOA, submit the relevant charter documents of the entity that will be executing the Project Agreements, including the memorandum of

association and articles of association highlighting the object clause relating to power/electricity generation or developing renewable energy. Further, in the event that the Bidder intends to execute the Project Agreements through its SPV, then submit a board resolution from your side undertaking to invest in the SPV 100% (one hundred percent) of the equity requirement for developing the Unit; and

6. In addition to the above, you, the Selected Bidder, shall comply with all other requirements as set out in the Bid Documents and the Project Agreements and for all purposes, the conditions of the Bid Documents may be read as a part of this LOA and in case of any contradiction, the terms set forth in the Bid Documents shall prevail.

Upon receipt of the documents evidencing the satisfaction of all conditions precedent mentioned above within the prescribed time, we will inform you of the date, time and venue for the signing of the Project Agreements.

In the event that you fail to satisfy any of the conditions or fulfill any of the obligations mentioned in this LOA, including return of a signed copy of this LOA to us within the prescribed time, without prejudice to any right that we may have under the Bid Documents or under Applicable Law, we reserve the right to invoke the Bid Security Declaration for, amongst others, RUMSL's time, cost and efforts, withdraw this LOA and consequently, cancel the award of the Unit to you.

If it is discovered, at any time before signing the Project Agreements or after their execution and while it is in force that the Financial Capacity requirement specified in the Bid Documents has not been met by you or you have misrepresented or have given any incorrect or false information, then this LOA shall be liable to be cancelled and, if the Project Agreements have been executed, then the Project Agreements shall be liable to be terminated forthwith. RUMSL will have the right to invoke the Bid Security, and, if after the execution of the Project Agreements, the relevant counterparty(ies) to the Project Agreements shall have the right to forfeit and appropriate the Performance Bank Guarantees, as a mutually agreed genuine pre-estimate of the loss suffered by RUMSL or the relevant counterparty(ies) to the Project Agreements, as the case may be, for, amongst others, RUMSL's or the relevant counterparty(ies) time, cost and efforts. Such forfeiture will be without prejudice to any other right or remedy that RUMSL may have under the Bid Documents and the relevant counterparty(ies) to the Project Agreements may have under the respective the Project Agreements or Applicable Law.

All other terms and conditions for the development, operations and maintenance of the Unit shall be as per the terms of the Project Agreement.”

27. Pursuant to issuance of Letters of Award, Indian Railways and RUMSL have entered into PPAs with the selected bidders, NTPC REL and Talettutayi Solar Projects Nine Private Limited dated 25.11.2021. Along with the executed PPAs, the Petitioners have placed on record the Implementation and Support Agreements executed between RUMSL and the successful bidders, Land Use Permission Agreements as entered into between Energy Department Madhya Pradesh, Petitioners and selected bidders, and Coordination Agreement executed between the selected bidders and the Petitioners.

28. 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 RfP. The Petitioners vide its conformity certificate 22.7.2021 has confirmed that bidding has been carried out in terms of the RfP documents and the Guidelines. Relevant portion of the conformity certificate dated 22.7.2021 is extracted as under:

“Sub: Confirmation Certificate for bid conducted pursuant to RfP No. RUMSL/2019-20/819/336 (450 MW Shajapur Solar Park)

This is with reference to the Single Stage Two Envelope bid process conducted pursuant to RfP No. RUMSL/2019-20-819/336 for selection of developers for Grid Connected Solar PV Project totaling 450 MW in Shajapur, district of Madhya Pradesh, India.

The Qualification (Technical) Proposals of Shajapur Solar Park were opened on 22nd June, 2021 and Financial Proposals on 06th July, 2021. After the due technical and financial evaluation of proposals submitted by all bidders, the Revenue Auction (RA) process for Shajapur Solar Park was conducted on 12th July, 2021. After the successful completion of RA process the lowest tariff received for the 2 units of Shajapur solar park are as follows:

Unit No.	Lowest quoted tariff (INR)	Company Name (winning bidders)
Unit 1 for 105 MW	2.35	NTPC Renewable

<i>Unit 2 for 220 MW</i>	<i>2.33</i>	<i>NTPC Renewable</i>
<i>Unit 3 for 125 MW</i>	<i>2.339</i>	<i>Talettutayi Solar Projects Nine Private Limited</i>

The bid evaluation committee hereby certifies that the bids of all the eligible bidders were critically evaluated and the bidding and evaluation process have been conducted in conformity to the provisions of the RFP and Solar Bidding Guidelines.”

29. The Petitioners have prayed to adopt the tariff discovered in the competitive bid process. As discussed above, it emerges that the selection of the successful bidders has been done and the tariff of the solar PV projects has been discovered by the Petitioners through a transparent process of competitive bidding in accordance with Guidelines issued by Ministry of Power, Government of India under Section 63 of the Act. Therefore, in terms of Section 63 of the Act, the Commission adopts the following individual tariff for the solar PV power projects as agreed to by the successful bidders, which shall remain valid throughout the period covered in the PPAs.

Sr. No.	Selected Bidder	Tariff (INR/kWh)	Allotted Capacity (in MW)
1.	NTPC Renewable Energy Limited	2.35	105
2.	NTPC Renewable Energy Limited	2.33	220
3.	Talettutayi Solar Energy Nine Private Limited	2.339	125

30. Article 10.4 of the PPA provides as under:

“10.4 Payment of Monthly Bills and Supplementary Bills

(a) Procurer shall pay the amount payable under the Monthly Bill/ Supplementary Bill by the Due Date.

(b) In the event that there are any undisputed amounts due and payable to the Procurer by the SPD under this Agreement, which are not paid within 30

(thirty) Days of receipt of an invoice by the SPD, then the Procurer shall have the right to set-off such amounts against the Tariff Payments.

(c) In the event that the SPD fails to pay, in full, any and all charges payable to RUMSL under the Implementation Support Agreement and/or under Unit LUPA and such charges remain unpaid for more than 30 (thirty) days from the relevant due date under the Implementation Support Agreement and/or under Unit LUPA, as the case may be, then the Parties agree and acknowledge that RUMSL shall have the right to recover such undisputed charges from the Tariff Payments due to the SPD under this Agreement. RUMSL shall issue a notice to the Procurer, with a copy to the SPD, requiring the Procurer to set off such undisputed charges from the Tariff Payments payable by the Procurer to the SPD. Upon receipt of such notice, the Procurer shall, within 60 (sixty) days of the date of the notice, set off such amount equivalent to the undisputed charges from the Tariff Payments and pay the unpaid amounts to RUMSL. Any Tariff Payment remaining after the set-off shall be paid to the SPD.

*(d) The SPD shall open a bank account at Kotak Mahindra Bank, Nariman Point, Mumbai (**SPD's Designated Account**) for all payments to be made by the Procurer to the SPD under this Agreement, including payments to be made under the Supplementary Bills, and notify the Procurer of the details of such account at least 90 (ninety) days before the dispatch of the 1st (first) Monthly Bill. The Procurer shall also designate a bank account at the South Civil Lines, Jabalpur main branch of the State Bank of India bearing account number 00000034404839671 and IFSC Code SBIN0000390 (**Procurer's Designated Account**) for payments to be made by the SPD to Procurer under this Agreement, and notify the SPD of the details of such account within 90 (ninety) days from the Execution Date. The Procurer and the SPD shall instruct their respective bankers to make all payments under this Agreement to the SPD's Designated Account or Procurer's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day."*

31. Article 10.6 of the PPA provides as under:

"10.6 Payment Security Mechanism

(a) Letter of Mandate

(i) No later than 30 (thirty) days prior to the date of issue of the first Commissioning Certificate or Confirmation Certificate, as the case maybe, for initial Part Capacity or Unit COD, the Procurer shall issue an unconditional letter to the Reserve Bank of India (RBI), substantially in the format as set out in Annex 2, authorizing the RBI to debit Procurer's account and credit the

account of SPD upto an amount equal to the Applicable Tariff for the energy quantum equivalent to Guaranteed Energy Offtake for 4 (four) months (Letter of Mandate), which may be drawn upon by the SPD by way of a debit claim in accordance with this Article.

Provided that the SPD shall not raise a debit claim on the Letter of Mandate prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawl in a Month.

Provided that if at any time, the Letter of Mandate amount falls short of the amount specified in Article 10.6 (a) the Procurer shall restore such shortfall within 15 (fifteen) days of occurrence of such shortfall.

(ii) Upon the issuance of the debit claim by the SPD, the RBI shall unconditionally debit the Procurer's account for an amount equivalent to the claim amount and credit it in the SPD's account, without requiring any other documentary proof from the SPD in relation to the commission of default by the Procurer.

(iii) The Letter of Mandate shall be operative, at all times, until the Expiry Date.

(iv) All costs relating to the issuance of the Letter of Mandate shall be borne by the Procurer.

(v) Not later than 15 (fifteen) days of the issuance of Letter of Mandate as set out in Article 10.6(a)(i) above the RBI shall issue a forwarding letter in favour of SPD, substantially in the format as set out in Annex 3, to acknowledge the receipt of the Letter of Mandate by the Procurer."

32. The above provisions provide for payment security mechanism to be complied with by the parties to the present Petition. Accordingly, the provisions of Articles 10.4 and 10.6 of the PPAs shall be abided by all the concerned parties to the present Petition.

33. Prayer (b) of the Petitioners is answered accordingly.

34. We next proceed to consider the submissions of the Respondent, NTPC REL praying for in-principle approval of Change in Law claim at the stage of adoption of tariff.

NTPC REL has submitted that as on the proposal due date i.e. 28.6.2021 as per the existing notifications of Ministry of Finance, Government of India, the applicable GST rate on supply and service contract was 8.9% which was considered by it while submitting its bid for development of the Project. However, subsequently in terms of the Notification No. 8/2021 dated 30.9.2021, the applicable GST rate on renewable energy devices and parts for their manufacture became 12% from earlier 5% and as a result, the applicable GST rate on supply and service contract became 13.8%. NTPC REL has submitted that aforesaid Notification, which imposes additional financial liability upon the Respondent towards setting up of solar power project, constitutes a Change in Law event as it fulfills all the ingredients of the Change in Law provisions of the PPAs. In support of its prayer for seeking in-principle approval of the Change in Law event at the stage of adoption of tariff, NTPC REL has placed reliance on the order of APTEL in Green Infra Case

35. The Respondent, NTPC REL, in support of its prayer for seeking in-principle approval of the Change in Law event at the stage of adoption of tariff, has relied on the judgment dated 12.10.2021 of the APTEL in Appeal No 251 of 2021 in the case of *Green Infra Renewable Energy Ltd vs RERC & Ors* (Green Infra case). It is observed that the PPAs under consideration in the present matter are not the same PPAs which were considered by APTEL in Green Infra case.

36. However, we observe that the Petitioners have neither made any prayer with regards to the aforesaid claim of Change in Law nor did they file any rejoinder supporting the claim of Change in Law made by the Respondent in the present matter.

Since the prayer of the Respondent is beyond the scope of the Petition, which has been filed only for limited purpose i.e. for adoption of tariff, the same cannot be entertained in the present Petition. However, the Respondent is granted liberty to approach the Commission separately on the said matter which will be dealt with in accordance with law.

37. In summary, in terms of Section 63 of the Act, the Commission adopts the tariff (as at paragraph 29 of this order) for the solar PV projects 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 PPAs.

38. Petition No. 277/AT/2021 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member