

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 224/AT/2023

**Coram:
Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of Order: 5th November, 2023

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 334 MW Solar Power Plants connected to the Interstate Transmission System linked with Setting-up of Solar Manufacturing Plant, selected through Competitive Bidding Process as per the Guidelines dated 3.8.2017 of the Central Government as amended from time to time and interpreted and modified by the Central Government vide subsequent communications.

**And
In the matter of**

Solar Energy Corporation of India Limited,
6th Floor, Plate-B, NBCC Office Block Tower-2,
East Kidwai Nagar,
New Delhi-110023

.....Petitioner

Vs

1. Azure Power India Private Limited,
3rd Floor, Asset 301-304 & 307
World Mark 3, Aerocity
New Delhi - 110037
2. Azure Power Fifty One Private Limited,
5th Floor, Southern Park, D II
Saket Place, New Delhi-17
3. Adani Green Energy Four Limited,
4th Floor- South Wing
Shantigram, SG Highway
Ahmedabad, Gujarat- 382421
4. Adani Green Energy Twenty-Six A Limited,
4th Floor- South Wing
Shantigram, SG Highway
Ahmedabad, Gujarat- 382421

5. Brihanmumbai Electric Supply and Transport Undertaking,
1st Floor, BEST Bhavan,
BEST Marg, Colaba,
Mumbai- 400001

6. Tripura State Electricity Corporation Limited,
Bidyut Bhaban, Banamalipur,
Agartala, Tripura

.....Respondents

Parties Present:

Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Anushree Bardhan, Advocate, SECI
Ms. Srishti Khindaria, Advocate, SECI
Shri Hemant Singh, Advocate, AGETSAL
Shri Lakshyajit Singh, Advocate, AGETSAL
Shri Harshit Singh, Advocate, AGETSAL
Ms. Lavanya Panwar, Advocate, AGETSAL
Shri Shaurya Kumar, Advocate, AGETSAL
Shri Chetan Garg, Advocate, AGETSAL
Ms. Nikita Choukse, Advocate, BEST
Shri Akash Lamba, Advocate, BEST
Shri Ravi Sinha, AGETSAL

ORDER

The Petitioner, Solar Energy Corporation of India Limited ('SECI'), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') for adoption of tariff for the 334 MW Solar Power Plants connected with inter-State Transmission System ('ISTS') linked with setting-up of a Solar Manufacturing Plant, selected through the competitive bidding process as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power Grid Connected Solar PV Power Projects" (hereinafter referred to as 'the Guidelines') dated 3.8.2017 issued by the Ministry of Power, Government of India (MOP) as amended from time to time and interpreted and modified by the Central Government vide subsequent communications. The Petitioner has made the following prayers:

“(a) Adopt the tariff of Rs 2.54/kWh in respect of 334 MW under Package-I i.e. 284 (234 plus 50) MW of Adani Green Energy Twenty Six A Limited and 50 MW of Azure Power Fifty One Private Limited in respect of Package-I on the terms and conditions contained in the Power Purchase Agreements as per Table 3 at Para 18 of the Petitioner read with the Power Sale Agreements as per Table 4 at Para 19;

(b) Approve Trading Margin of Rs 0.07/kWh as agreed to by the Distribution Companies in the signed PSAs in terms of Regulation 8(1) (d) of the Trading License Regulations, 2020;

(c) Exempt SECI from filing hard copies of the RfS Document and the signed PPAs and PSAs on account of the voluminous record. SECI undertakes to file the hard copies of the same, if so directed by this Commission.

(d) Pass any other or further order which this Commission may deem fit and proper in the facts and circumstances of this case.”

Submission of the Petitioner

2. The Petitioner has submitted that on 25.6.2019, it issued a Request for Selection (RfS) along with Standard Power Purchase Agreement (PPA) and Power Sale Agreement (PSA) documents for the ‘Selection of Solar Power Developers for Setting up of 7 GW ISTS Connected Solar PV Power Plants linked with Setting up of 2 GW (Per Annum) Solar Manufacturing Plant under Global Competitive Bidding’ as per the Guidelines dated 3.8.2017 on the ISN Electronic Tender System (ETS) e-bidding portal. As per the Petitioner, the entire tender was split into two Bidding Packages (1) Package A: For setting up the Solar Manufacturing Plants related to Cell (500 MW) and Modules (500 MW); and (2) Package B: For setting up the Solar Manufacturing Plants related to Ingots (500 MW) and Wafers (500 MW). Two Blocks were to be allocated under each of the above two packages. The successful bidder was assured of the PPA up to 2000 MW against 500 MW of a Solar Manufacturing Plant under Bidding Package A and up to 1500 MW against 500 MW of manufacturing capacity under Package B. Thus, the aggregated Solar PV Power Plant capacity stipulated under the above arrangement was a maximum of 7000 MW

for the aggregated manufacturing capacity of 2000 MW (1000 MW under Package A and 1000 MW under Package B). In response to RfS, three bids were received offering an aggregate capacity of 8000 MW under Package A. However, no response was received under Package B. All three bids under Package A were found to fully meet the technical criteria and qualified for the opening of the financial bid. As per the eligibility criteria mentioned in the RfS, all three bidders were shortlisted for participating in the e-reverse auction under Package A. The e-reverse auction was conducted on 22.11.2019 on the ISN ETS e-bidding portal, and pursuant thereto, two bidders, namely, Azure Power Private India (in short "Azure Power") and Adani Green Energy Four Limited (in short "Adani Green") were allocated 2000 MW each at a tariff of Rs.2.92/kWh.

3. Thereafter, in terms of Amendment-VI to RfS, the under-subscribed capacity under Bidding Package-B i.e. up to 4000 MW of the Solar PV Power Plant linked with 1000 MW of the Solar Manufacturing Plant was transferred to Bidding Package-A. The ratio of the Solar Manufacturing Plant and the Solar Power Plant was kept at 1:4 in terms of the provisions of RfS. Post transfer of capacity, the total tendered capacity under Bidding Package-A became 8000 MW of the Solar PV Power Plant linked with 2000 MW of Solar Manufacturing Plant. This additional capacity of 4000 MW of Solar PV Power Plant linked with 1000 MW of the Solar Manufacturing Plant was offered to all three bidders seeking their consent for acceptance of the additional transferred capacity along with their bidding capacity in terms of the RfS. Out of the three bidders, only Adani Green accepted the offer of the transferred capacity from unsubscribed Package B to the extent of the entire 4000 MW at a tariff of Rs.2.92/kWh. Accordingly, the entire transferred capacity of 4000 MW under Package B was allocated to Adani Green at a tariff of Rs.2.92/kWh. In terms of

Clause 6.2 of the RfS document, the Bid Evaluation Committee recommended the offering of the Green Shoe Option to the two successful bidders, namely, Azure Power and Adani Green, equivalent to their allocated capacities in addition to their existing capacities. Since both bidders won a 2000 MW Solar PV Power Plant linked with a 500 MW Solar Manufacturing Plant, an additional 2000 MW was recommended for both the successful bidders at Rs.2.92/kWh. Accordingly, SECI issued the Letter of Awards (LoAs) on 10.12.2019 to both the successful bidders, *inter-alia*, offering additional capacity under the Green Shoe Option. By letters dated 16.12.2019, both bidders accepted the capacities offered under the Green Shoe Option. On 8.6.2020 and 23.7.2020, SECI issued an addendum to the Letters of Awards dated 10.12.2019 given to the selected bidders, namely, Adani Green and Azure Power, respectively. In the addendum, SECI provided the final awarded capacity of 4000 MW to Azure Power and 8000 MW to Adani Green at a tariff of Rs 2.92/kWh.

4. It was stipulated in the bid that the PPAs shall be signed for four packages (Package I to IV; each package being 1/4th of the awarded Solar PV Project capacity) under Bidding Package A. Considering the total capacity of 12000 MW awarded under Package A, each Package comprised 3000 MW. On 15.7.2021, Adani Green and Azure Power furnished an undertaking with respect to a suo-motu reduction in the quoted tariff from Rs.2.92/kWh to Rs.2.54/kWh for Package-I (3000 MW) of the Manufacturing Scheme. Accordingly, the Petitioner entered into the PPAs with Adani Green and Azure Power at the said tariff and the PSAs for the total capacity of 1800 MW with the procuring entities, namely, GRIDCO Limited for 500 MW, Chhattisgarh State Power Distribution Company Limited for 300 MW, and Tamil Nadu Generation and Distribution Corporation Limited for 1000 MW under Package

I. Similarly, both Adani Green and Azure Power, vide their undertakings dated 3.11.2021, reduced the quoted tariff to Rs.2.42/kWh in respect of the remaining packages i.e. Package II, Package III, and Package IV. The Petitioner entered into PPAs with both the generators at a tariff of Rs.2.42/kWh and PSAs with the distribution utilities of Andhra Pradesh for 7000 MW.

5. Subsequently, SECI filed a Petition No. 286/AT/2021 for, *inter-alia*, adoption of the tariff of Rs 2.54/kWh in respect of the 1800 MW under Package-I i.e. 1200 MW of Adani Green Energy Four Limited and 600 MW of Azure Power India Private Limited, and the adoption of the tariff of Rs 2.42/kWh in respect of the 7000 MW under Package-II, Package-III, and Package-IV, i.e. 4667 MW of Adani Green Energy Four Limited and 2333 MW of Azure Power India Private Limited. On 22.3.2022, SECI amended the prayer in Petition No. 286/AT/2021 to incorporate an additional 100 MW of tied-up capacity for the adoption of the tariff. Thus, at the time of adjudication of Petition No. 286/AT/2021, the total capacity for which the PPAs and PSAs were signed by the parties, i.e. SECI and distribution licensees, was 8900 MW out of the total 12000 MW in Packages I, II, III, IV.

6. The Commission, vide order dated 2.4.2022, adopted the tariff for the 8900 MW of solar capacity tied up under various PPAs and PSAs. The relevant portions of the said order dated 2.4.2022 are extracted as under:

70. It emerges that selection of the successful bidders has been done and the tariff of solar power projects has been discovered by the Petitioner, SECI through a transparent process of competitive bidding in accordance with Guidelines dated 3.8.2017 issued by Ministry of Power and suitably modified vide communications dated 20.4.2018, 14.8.2019, 9.10.2019 and 22.5.2020. It is also noted that, in accordance with Clause 20 of the Guidelines dated 3.8.2017, all the modification letters were issued by Ministry of New & Renewable Energy with the approval of Minister of State (I/C) for Power & MNRE. Admittedly, the Petitioner has been able to enter into PPA for a total

capacity of 8900 MW i.e. 1900 MW under Package-I and 7000 MW under Package-II to Package-IV. Since the Petitioner is still in the process of identifying and finalizing the PSAs for balance capacity of 3100 MW, we deem it appropriate to restrict adoption of tariff, as prayed for by the Petitioner, only with respect to the quantum for which PPA has been executed with solar power developers for supply of power to the identified distribution licensees through PSA with the Petitioner. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariffs for the solar power projects, as agreed to by the successful bidder(s), and for which PPA has been entered into by SECI on the basis of the PSAs with the distribution licensees, which shall remain valid throughout the period covered in the PPA and PSAs

7. Subsequent to the passing of the said order dated 2.4.2022 by the Commission in Petition No. 286/AT/2021, SECI has signed the following PPAs for an additional capacity of 334 MW of Solar power under Package-I with the successful bidders/ designated companies formed by successful bidders:

S.No.	Name of the Successful Bidder	Project Company formed by the successful bidder for executing the PPA	Date of PPA signing	Capacity of the Project (MW)	Applicable Tariff (Rs/kWh)
1	Adani Renewable Energy Holding Four Limited (Earlier known as Adani Green Energy Four Limited)	Adani Green Energy Twenty Six A Limited	02.05.2023	234	2.54
2	Adani Renewable Energy Holding Four Limited (Earlier known as Adani Green Energy Four Limited)	Adani Green Energy Twenty Six A Limited	06.01.2023	50	2.54
3	Azure Power India Private Limited	Azure Power Fifty One Private Limited	09.01.2023	50	2.54
				334 MW	

8. Further, the Petitioner has entered into PSAs with Brihanmumbai Electric Supply and Transport (BEST) for 234 MW and with Tripura State Electricity Corporation (TSECL) for 100 MW. The Petitioner has submitted that the projects are scheduled to be commissioned in the financial year 2024-25. The Petitioner has submitted that the selected solar power projects will enable the distribution companies to meet their Renewable Purchase Obligations (RPOs) apart from providing power at very economical rates. It has been further submitted that in addition to the tariff, there will be a trading margin of Rs.0.07/kWh to be recovered from the distribution companies, which has been duly agreed to by the distribution companies in the PSAs.

9. The Petitioner has filed the present Petition for the adoption of a tariff for the aggregate additional capacity of 334 MW under Package I in terms of the liberty granted by the Commission in the order dated 2.4.2022 in Petition No. 286/AT/2021.

Hearing dated 15.9.2023 and 18.10.2023

10. The Petition was admitted on 15.9.2023, and notices were issued to the Respondents to file their replies. Respondent No. 4, namely, Adani Green Energy Twenty-Six A Limited (AGE26AL), has filed its reply vide affidavit dated 12.10.2023. The matter was again heard on 18.10.2023. During the course of the hearing, the learned counsels for the parties present reiterated the submissions made in their reply and rejoinder.

Reply by Respondent No 4 (AGE26AL)

11. AGE26AL, an SPV of Adani Renewable Energy Four Limited, vide its reply dated 12.10.2023 has submitted as under

(a) AGE26AL is not disputing/challenging the tariff adoption Petition filed by the Petitioner.

(b) However, AGE26AL is seeking the indulgence of the Commission to recognize the change in GST rates notified by the Ministry of Finance [Notification No. 08/2021- Central Tax (Rate and Notification No. 08/2021 – Integrated Tax (Rate) dated 30.9.2021] and the imposition of Basic Custom Duty (BCD) on Inverters and Trackers by the Ministry of Finance [Notification No. 07/2021 dated 1.2.2021] as Change in Law events which took place after the bid submission date under Article 12 of the Power Purchase Agreement and shall result in additional cost upon the solar power generators.

(c) Clause 5.7 (Change in Law) of the Bidding Guidelines, unequivocally states that it shall include any of the events that occur after the last date of the submission of the bid.

(d) AGE26AL issued Change in Law notices dated 17.2.2023 and 24.5.2023 in respect of the change in GST rates and separate Change in Law notices dated 24.5.2023 against the two projects comprising 50 MW and 234 MW, highlighting the adverse impact of the imposition of the BCD. In this regard, reliance has been placed on the order dated 8.3.2023 in Petition No. 245/AT/2022, wherein the Commission has recognised the said GST and BCD notifications as Change in Law events at the time of the tariff adoption process itself.

(e) The Commission has the power to grant in-principle approval for an event as a Change in Law under the PPA at the first available instance. The APTEL has also recognised the provision pertaining to the Change in Law

events at the stage of tariff adoption itself, vide judgment dated 12.10.2021 in Appeal No. 251 of 2021.

(f) In the case of *Green Infra Renewable Energy Limited vs. Rajasthan Electricity Regulatory Commission* (Appeal No 344 of 2021), the APTEL has also held that the adoption proceedings are incomplete and inchoate, if any, Change in Law claims has been ignored by the Appropriate Commission.

(g) The reliance placed by the Commission in the order dated 13.9.2023 in Petition No. 213/AT/2023 (*Solar Energy Corporation of India Limited vs. TP Saurya Limited & Ors*) on the APTEL's judgment dated 31.7.2023 in Appeal No. 625 of 2023 & IA No. 1677 of 2023 to deny adjudication of Change in Law may not be correct.

(h) Appeal No. 625 of 2023 culminated in the proceedings of Petition No. 192/MP/2021 which involved a dispute between parties in terms of Section 79(1)(f) of the Electricity Act, 2003. Thus, the above case involved the 'adjudicatory' functions of the Commission. However, the present matter is on a different footing altogether, as the same involves a scenario where the Commission invokes its 'regulatory' powers qua tariff adoption/determination conferred upon it under the provisions of the Act.

(i) The Hon'ble Supreme Court, in the case of *Energy Watchdog vs. CERC* [reported in (2017) 14 SCC 80], has held that a Regulatory Commission is not a mere 'post office' while exercising its powers under Section 63, and it has the power to 'regulate' tariffs during the said proceedings.

(j) Thus, in terms of the law led down by the Hon'ble Supreme Court, it is clear that when this Commission exercises its powers and functions of adopting the tariff under Section 63 of the Act, it can surely delve into the tariff structure where the bidding guidelines are silent, by means of its extant 'regulatory' powers provided under the Act. In the present case, the bidding guidelines are silent on the aspect of change in tariff structure, which takes place after the submission of the bid and before tariff adoption by way of the Change in Law.

(k) In Petition No. 245/AT/2022 (*SECI vs AMP Energy Green Private Limited & Ors*) under which an order dated 8.3.2023 was passed, the Commission proceeded to recognise the GIB order of the Hon'ble Supreme Court as a Change in Law event even during the tariff adoption stage when there was no specific prayer of SECI for recognition of the aforesaid event as a Change in Law.

(l) In view of the above, it appears that the order dated 13.9.2023 in Petition No. 213/AT/2023 passed by the Commission is *per-incuriam*, and a fresh view may be taken.

Rejoinder of the Petitioner

12. The Petitioner, in its rejoinder dated 19.10.2023 to the reply of AGE26AL, has mainly submitted as under:

(a) The reliance placed by the AGE26AL on the decision dated 8.3.2023 passed in Petition No. 245/AT/2022 in the matter of SECI vs. AMP Green Energy Private Limited to contend that the Commission can deal with the aspect of GST and BCD as a Change in Law event at this stage is misplaced. In the above matter, the Power Purchase Agreement contained a specific stipulation, namely, Article

12.1.3 in the Change in Law provision in the Power Purchase Agreement provides that certain events will be treated as Change in Law subject to the recognition of the said provision by the Commission at the stage of tariff adoption. Placing reliance on the said provision of the PPA in Petition No. 245/AT/2022, the Commission proceeded to allow the GST and BCD claims in the said Petition. Similarly, even in the case of Petition No. 260/AT/2021 in the matter of SECI vs. Adani Renewable Energy Holding Fifteen Limited, there is a specific provision- Article 12.1.3 for recognition of Change in Law events at the time of the adoption of tariff. However, the above provision is not in the PPA signed with AGE26AL in the present case.

(b) A similar argument was made by certain developers in a recent Petition (Petition No. 213/AT/2023 in the matter of SECI vs. TP Saurya Limited and others) vis-a-vis certain events that could be recognised and allowed as Change in Law events (as in the present case), wherein this Commission, relying on the judgment of the APTEL dated 31.7.2023 in Appeal No. 625 of 2023 & IA No 1677 of 2023, vide its order dated 13.9.2023 granted the liberty to the Respondents to approach the Commission for adjudication of Change in Law claims through separate Petitions in accordance with the law.

(c) In view of the above decisions of the Commission, AGE26AL can file a separate Petition for the recognition of the events raised in the present reply as Change in Law events in terms of the applicable provisions of the PPA. Reliance placed by AGE26AL in Paras 28 and 29 of its reply to the decision of the APTEL dated 12.10.2021 in Appeal No. 251 of 2021 and order dated 11.4.2022 in

Appeal No. 344 of 2021 has been dealt with by this Commission in its order dated 13.9.2023 in Petition No. 213/AT/2023.

(d) As and when AGE26AL files a separate Petition for the said GST and the BCD claim and the relief thereof, after duly furnishing the relevant details, including invoices, Statutory Auditor's Certificate to substantiate the impact of the change in the rate of GST and BCD on the procurement of Solar Power Devices, Inverters, and trackers, the Commission may decide whether the implications of the Notification dated 30.9.2021 for GST, the notification dated 1.2.2021 and the office Memorandum dated 25.2.2022 for BCD fall under the purview of Change in Law within the scope of Article 12 of the PPA read with provisions of the PSA.

Analysis and Decision

13. In view of the above, we now proceed to consider the prayers of the Petitioner as regards the adoption of tariffs in respect of solar power projects 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.

14. 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.”

15. Thus, in terms of Section 63 of the Act, the Commission is required to adopt the tariff upon being satisfied that a 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 the determination of such a tariff.

16. However, in the present matter, the Commission has already examined the entire process of competitive bidding, including the communications of MNRE in Petition No. 286/AT/2021, in terms of Section 63 of the Act to hold that the tariff of the solar power projects has been discovered by the Petitioner through a transparent process of competitive bidding in accordance with the Guidelines dated 3.8.2017 issued by the Ministry of Power and suitably modified vide communications dated 20.4.2018, 14.8.2019, 9.10.2019 and 22.5.2020. The relevant extract of the order dated 2.4.2022 in Petition No. 286/AT/2021 is reproduced below:

18. *Further, in this case, in order to understand the scope of the bid process and linking of Solar Manufacturing Plants with setting-up of the Solar Power PV Projects, the aforesaid Guidelines have to be read with MNRE's communications dated 20.4.2017 (correct date is 20.4.2018), 14.8.2019, 9.10.2019 and 22.5.2020. On 20.4.2017, MNRE, Government of India, with the approval of Minister of State (I/C) for Power & NRE, directed SECI to invite bids for setting up of solar PV manufacturing plants linked with PPAs for Solar Power PV Plants, thereby stating the broad features for the said bid. However, it is observed that the said letter is inadvertently dated as 20.4.2017 in place of dated 20.4.2018 considering that (1) SECI's acknowledgment on the letter is dated April 2018, and (2) the letter itself refers to an earlier letter of MNRE dated 18.12.2017. Accordingly, the date of letter is considered as 20.4.2018 herein afterwards. As per the direction, SECI in the capacity of intermediary agency, invited proposals for setting up of ISTS-connected 7 GW Solar Power Plants linked with setting up of 2 GW Solar Manufacturing Plants, on all India basis, on "Build Own Operate" basis and procurement of Solar power from the projects being set up in relation thereto. As per the arrangement, SECI is to procure the solar power generated by the Solar Power Plants by entering into PPA(s) with the successful bidders and on back to back basis, PSA(s) resell the power to the distribution licensees/buying entities.*

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

Sr. No.	Event/Milestone	Date
1	<i>Issuance of RfS documents</i>	<i>26.6.2019</i>
2	<i>Amendments to RfS documents</i>	<i>11.10.2019 to 7.11.2019</i>
3	<i>Last date for submissions of online bid</i>	<i>13.11.2019</i>
4	<i>Opening of technical bid</i>	<i>14.11.2019</i>
5	<i>Opening of financial bid</i>	<i>21.11.2019</i>
6	<i>e-Reverse auction</i>	<i>22.11.2019</i>
7	<i>Issuance of Letter of Award</i>	<i>10.12.2019</i>

20. *On 25.6.2019 SECI issued the RfS documents, along with Standard PPA and PSA documents on ISN Electronic Tender System (ETS) e-bidding*

portal, for “Selection of Solar Power Developers for Setting up of 7 GW ISTS Connected Solar PV Power Plants linked with Setting up of 2 GW (Per Annum) Solar Manufacturing Plant under Global Competitive Bidding”. 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, SECI has placed on record documents demonstrating publication of RfS on the e-publishing system, Government of India. It has been further submitted that it did not publish the notices in the newspapers as per the advisory issued by Ministry of Information and Broadcasting, Government of India dated 17.5.2017 mandating e-publishing of advertisements in the relevant portal. Accordingly, on 3.7.2018, SECI published notification in the newspapers indicating that tenders of SECI would be published in its website and not in newspapers.

22. In accordance with the MNRE communication dated 20.4.2018 and subsequent communications dated 14.8.2019, 9.10.2019 and 22.5.2020, the broad contours of the bid were as follows:

(a) The entire tender was split into two Bidding Packages as under:

(i) Bidding Package A: For setting up a Solar Manufacturing Plants related to cell and modules only. Two blocks to be awarded under this package. Each block having a minimum annual production capacity as under

Sr. No.	Description	Minimum annual production capacity
1	Cells	Corresponding to 500 MW modules of manufacturing facility
2	Modules	500 MW

(ii) Bidding Package B: For setting up of Solar Manufacturing Plants related to ingots and wafers only. Two blocks to be awarded under this Package. Each block, having a minimum annual production capacity as given below:

Sr. No.	Description	Minimum annual production capacity
1	Ingots	Corresponding to 500 MW modules of manufacturing facility
2	Wafers	Corresponding to 500 MW Modules of manufacturing facility

(b) A cumulative annual solar manufacturing capacity of 2GW (2000 MW) per year will be allowed. The successful bidder was assured PPA (i) up to 2000 MW against 500 MW of Solar Manufacturing Plant under Bidding Package-A and (ii) up to 1500 MW against 500 MW of Solar Manufacturing Plant under Bidding Package-B. Thus, the aggregate Solar PV Power Plant capacity would be a maximum of 7000 MW for

aggregate manufacturing capacity of 2000 MW (1000 MW under Package A and 1000 MW under Package B).

- (c) Under Bidding Package-A, any bidder could quote up to 2000 MW of Solar PV Projects Capacity linked to 500 MW of manufacturing capacity corresponding to 1 Block. Under Bidding Package-B, any bidder could quote up to 1500 MW of Solar PV Projects capacity linked to 500MW of manufacturing capacity corresponding to 1 block.
- (d) The maximum tariff payable to SPD is fixed at Rs.2.93/ kWh for 25 years. The successful bidder shall be selected through e-Reverse auction process.
- (e) SECI shall enter into a PPA with the successful bidders selected through e-reverse auction, for a period of 25 years from the date. The PPAs shall be signed for 4 Packages under bidding as follows:
 - (i) Package-I, comprising solar PV projects having a cumulative capacity of 1/4th (One Fourth) of the awarded solar PV project capacity;
 - (ii) Package-II, comprising solar PV projects having a cumulative capacity of 1/4th (One Fourth) of the awarded solar PV project capacity;
 - (iii) Package-III, comprising solar PV projects having a cumulative capacity of 1/4th (One Fourth) of the awarded solar PV project capacity; and
 - (iv) Package-IV, comprising solar PV projects having balance capacity of 1/4th (One Fourth) of the awarded solar PV project capacity.
- (f) As per RfS (Amendment-VI to RfS) document, in case of under bidding in any of the bidding Package (i.e. Package A or B), the under subscribed portion shall be transferred to other bidding Package which has been more than fully subscribed prior to e-reverse auction. However, this transferred capacity shall not be subject to e-reverse auction but shall be allocated on the lowest discovered tariff of the over subscribed Package.
- (g) The ratio of Solar Manufacturing Plant and Solar PV Power Plant for such transferred capacity shall be kept the same as that of the ratio for over-subscribed Package. This additional capacity so transferred will be offered to the bidders of the Package to which this additional capacity has been transferred in the order of preference of L1, L2, L3 and so on, till the total additional capacity is exhausted.
- (h) SECI shall also provide a "Green-Shoe Option" (Amendment-I to RfS) to the successful bidder's equivalent to the capacity (ies) won by such successful bidders/ developers. In order to avail the Green-Shoe Option, the successful bidders/ developers need to match the lowest discovered tariff of the respective bidding Packages (i.e. bidding Package-A and/ or bidding Package-B) of the tender (i.e. L1 tariff of the respective bidding

Packages) corresponding to the entire quantities (i.e. the original allocated quantity and the Green-Shoe quantity).

- (i) The "Green-Shoe Option" shall be indicated in the Letter of Award to be issued to the successful bidder's post completion of entire tendering activities. The successful bidders shall submit their acceptance for availing the "Green-Shoe Option" maximum within 7 (Seven) days from the date of issuance of LoA.

26. Last date of submission of bid was 13.11.2019 and techno-commercial part of bid was opened on 14.11.2019. Response to RfS was received from the following three bidders.

Sr. No.	Name of the Bidder	Bidding Package	Number of Blocks	Total Capacity quoted (in MW)
1.	Adani Green Energy Four Limited	A	2	4000 MW Solar PV Power Plant linked with 1000 MW Solar Manufacturing Plant (Cell and Module)
2.	Azure Power India Private Limited	A	1	2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module)
3.	Navayuga Engineering Company Limited	A	1	2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module)

27. All three bidders qualified the technical criteria and the financial bids were opened on 21.11.2019. All the three bidders quoted tariff within the maximum ceiling (i.e. Rs.2.93/kWh) limit provided in the RfS document and were shortlisted for e-reverse auction which was carried out on 22.11.2019 on ISN ETS e-bidding portal.

29. Azure Power submitted its price at 13:08:57 hrs whereas Adani Green submitted their price at 13:22:10 hrs. Thus, Azure Power emerged as L-1 bidder in the chronological order of last bid received. Azure Power was eligible for 2000 MW of Solar PV Power Plant linked with 500 MW of Solar PV Manufacturing Plant i.e. same as that of their quoted capacity. Adani Green was eligible for 2000 MW of Solar PV Power Plant linked with 500 MW of Solar PV Manufacturing Plant against their quoted capacity of 4000 MW of Solar PV Power Plant linked with 1000 MW of Solar PV Manufacturing Plant based on bucket filling methodology.

30. The final tariff and the selection of the bidders were arrived after completion of e-reverse auction. The result of e-reverse auction is as under:

Sr.	Bidder	Bidding Capacity	Tariff	Allotted Capacity
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No.		(MW)	(INR / kWh)	(MW)
1	Azure Power India Private Limited	2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module)	Rs.2.92/kWh	2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module)
2	Adani Green Energy Four Limited	4000 MW Solar PV Power Plant linked with 1000 MW Solar Manufacturing Plant (Cell and Module)	Rs.2.92/kWh	2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module)
3	Navayuga Engineering Company Limited	2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module)	Rs.2.93/kWh	NIL

31. Bidding Package-A was over-subscribed by 4000 MW of solar plant capacity whereas bidding Package-B was under-subscribed as no response had been received for Package-B. In accordance with Amendment-VI of RfS, the under-subscribed capacity under bidding Package-B i.e. up to 3000 MW of Solar PV Power Plant linked with 1000 MW of Solar Manufacturing Plant was transferred to bidding Package-A. The ratio of Solar Manufacturing Plant and Solar Power Plant was kept as 1:4 in terms of the provisions of RfS. Accordingly, the total tendered capacity under bidding Package-A became 8000 MW of Solar PV Power Plant linked with 2000 MW of Solar Manufacturing Plant.

32. As per RfS, the transferred capacity was not to be subject to e-reverse auction and was to be allocated on lowest discovered tariff. Accordingly, on 22.11.2019, letters were sent by SECI to all the three bidders seeking their consent for acceptance of additional transferred capacity along with their bidding capacity in terms of RfS. The allocation was required to be done in the order of preference of L1, L2 and L3 till the total additional transferred capacity is exhausted.

33. In response, Azure Power declined the offer for the additional transferred capacity vide its letter dated 22.11.2019. However, Adani Green vide its letter dated 22.11.2019 accepted the offer for transferred capacity from the un-subscribed Package B.....

36. Further, in terms of Clause 6.2 of the RfS (Amendment-I to RfS), the Bid Evaluation Committee recommended that Green Shoe Option shall be offered to the two successful bidders equivalent to their capacities won in addition to their existing eligible capacities. Since both the bidders had won 2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant, the following capacities were recommended to be offered under Green Shoe Option subject to consent from the successful bidder:

Sr. No.	Name of the Bidder	Additional Capacity offer under Green Shoe Option	Tariff (Rs./kWh)
1.	Azure Power India Private Limited	2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module)	2.92
2.	Adani Green Energy Four Limited	2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module)	2.92

38. On 10.12.2019, SECI issued Letters of Award (LOAs) to the selected bidders wherein SECI, inter-alia, offered additional capacity of up to 2000 MW Solar PV Power Plant linked with 500 MW Solar Manufacturing Plant (Cell and Module) at tariff of Rs.2.92/kWh under Green Shoe Option.....

39. By separate letters dated 16.12.2019, both the selected bidders accepted the capacities offered under Green Shoe Option.....

40. On 8.6.2020 and 23.7.2020, SECI issued Addendum to the Letters of Award dated 10.12.2019 given to the selected bidders, namely Adani and Azure Power respectively. In the said Addendum to the Letters of Award, SECI provided for the final awarded capacity as under

Sr. No.	Name of the Successful Bidders	Awarded Capacity (MW)	Tariff (Rs./kWh)
1.	Azure Power India Private Limited	Solar PV Project Capacity - 4000 [out of the above, 2000 MW is under Green shoe Option] Solar PV manufacturing plant capacity- 1000 MW (per annum) [out of the above, 500 MW (per annum) is under Green shoe Option]	2.92
2.	Adani Green Energy Four Private Limited	Solar PV Project Capacity - 8000 [out of the above, 4000 MW is under Transferred Capacity and 2000 MW is under Green shoe Option] Solar PV manufacturing plant capacity- 2000 MW (per annum) [out of the above 1000 MW is under transferred Capacity; 500 MW (per annum) is under Green shoe Option]	2.92

41. Accordingly, total of 12000 MW of Solar PV Power Projects awarded through competitive bid is divided into four Packages of 3000 MW each in terms of the provisions of RfS documents for signing of the PPAs.

Package I (3000 MW)

42. On 15.7.2021, Adani Green and Azure Power furnished an undertaking offering reduction in quoted tariff from Rs.2.92/kWh to Rs.2.54/kWh for Package-I of Manufacturing Scheme. Till date, SECI has signed PSAs with the following buying utilities/distribution companies:

Package-II (3000 MW), Package-III (3000 MW) and Package-IV (3000 MW)

42. As regards Package-II, Package-III and Package-IV, Adani Green and Azure Power vide their respective undertakings dated 3.11.2021 reduced the quoted tariff to Rs.2.42/kWh for these packages. Till date, SECI has signed PSAs with the following buying utilities/distribution companies for Packages II to IV:

70. It emerges that selection of the successful bidders has been done and the tariff of solar power projects has been discovered by the Petitioner, SECI through a transparent process of competitive bidding in accordance with Guidelines dated 3.8.2017 issued by Ministry of Power and suitably modified vide communications dated 20.4.2018, 14.8.2019, 9.10.2019 and 22.5.2020. It is also noted that, in accordance with Clause 20 of the Guidelines dated 3.8.2017, all the modification letters were issued by Ministry of New & Renewable Energy with the approval of Minister of State (I/C) for Power & MNRE. Admittedly, the Petitioner has been able to enter into PPA for a total capacity of 8900 MW i.e. 1900 MW under Package-I and 7000 MW under Package-II to Package-IV. Since the Petitioner is still in the process of identifying and finalizing the PSAs for balance capacity of 3100 MW, we deem it appropriate to restrict adoption of tariff, as prayed for by the Petitioner, only with respect to the quantum for which PPA has been executed with solar power developers for supply of power to the identified distribution licensees through PSA with the Petitioner. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariffs for the solar power projects, as agreed to by the successful bidder(s), and for which PPA has been entered into by SECI on the basis of the PSAs with the distribution licensees, which shall remain valid throughout the period covered in the PPA and PSAs as under:

.....

71. The Petitioner is further granted liberty to approach the Commission for adoption of tariff in respect of the balance capacity once such capacity is tied up and PPAs and PSAs for such capacity are executed and the same shall be considered by the Commission in accordance with the law.”

17. The Commission had adopted a tariff for 8900 MW of the solar project capacity out of the total capacity of 12000 MW vide order dated 2.4.2022, in Petition No. 286/AT/2021, for which the PPAs and PSAs had been executed by the

Petitioner. In Para 77 of the order dated 2.4.2022, the Commission had granted liberty to the Petitioner to approach the Commission for the adoption of a tariff in respect of the balance capacity once such capacity is tied up and PPAs and PSAs for such capacity are executed.

18. Accordingly, the Petitioner has approached the Commission after signing the following PPAs at a tariff of Rs 2.54/kWh for an additional capacity of 334 MW of Solar power under Package-I with the successful bidders/ designated companies formed by successful bidders.

S.No.	Name of the Successful Bidder	Project Company formed by the successful bidder for executing the PPA	Date of PPA signing	Capacity of the Project (MW)	Applicable Tariff (Rs/kWh)
1	Adani Renewable Energy Holding Four Limited (Earlier known as Adani Green Energy Four Limited)	Adani Green Energy Twenty Six A Limited	02.05.2023	234	2.54
2	Adani Renewable Energy Holding Four Limited (Earlier known as Adani Green Energy Four Limited)	Adani Green Energy Twenty Six A Limited	06.01.2023	50	2.54
3	Azure Power India Private Limited	Azure Power Fifty One Private Limited	09.01.2023	50	2.54
				334 MW	

19. Further, the Petitioner has entered into PSAs with Brihanmumbai Electric Supply and Transport (BEST) for 234 MW and with Tripura State Electricity Corporation (TSECL) for 100 MW, as under:

Sr. No.	Buying Utilities	Date of PSA signing	Capacity under the PSA (MW)	Applicable Tariff to Buying Utility (Rs/kWh)
1	Brihanmumbai Electric Supply and Transport	09.12.2022	234	Rs 2.54/kWh (Tariff payable in respect of 234 MW project of Adani Green) + Rs 0.07/kWh (Trading Margin)
2	Tripura State Electricity Corporation	20.07.2022	100	Rs 2.54/kWh (Tariff payable in respect of 50 MW project of Azure and 50 MW project of Adani Green) + Rs 0.07/kWh (Trading Margin)
			334 MW	

20. The Maharashtra Electricity Regulatory Commission, vide its order dated 30.11.2022, in Petition No. 120 of 2022 filed by BEST, has accorded its approval to BEST for the signing of the PSA with SECI.

21. Tripura Electricity Regulatory Commission, vide order dated 3.3.2023 in Petition No 2. of 2023, approved the procurement of 100 MW of solar power by TSECL and approved the PSA dated 20.7.2022.

22. After going through the bid documents, including the communications of the MNRE, and other relevant documents placed on record, the Commission concluded in the order dated 2.4.2022 that the selection of the successful bidders has been done and the tariff of solar power projects has been discovered by the Petitioner through a transparent process of competitive bidding in accordance with the Guidelines dated 3.8.2017 issued by the Ministry of Power and suitably modified vide communications dated 20.4.2018, 14.8.2019, 9.10.2019, and 22.5.2020.

23. Since the present capacity is part of the same bid process conducted by the Petitioner, the Commission adopts the individual tariffs for the solar power projects

with an aggregate capacity of 334 MW, as agreed to by the successful bidder(s), and for which a PPA has been entered into by SECI on the basis of the PSAs with the distribution licensees, which shall remain valid throughout the period covered in the PPA and PSAs.

24. The Petitioner is further granted liberty to approach the Commission for the adoption of a tariff in respect of the remaining balance capacity once such capacity is tied up and PPAs and PSAs for such capacity are executed, and the same shall be considered by the Commission in accordance with the law.

25. The Petitioner, SECI, has prayed to approve the trading margin of Rs.0.07/kWh agreed to by the distribution companies in the signed PSAs in terms of Regulation 8(1)(d) of the Trading Licence Regulations. The Commission has allowed trading margins in order dated 2.4.2021 in the following manner:

“77. The Petitioner, SECI has prayed to approve trading margin of Rs.0.07/kWh agreed to by the distribution companies in the signed PSAs in terms of Regulation 8(1)(d) of the Trading Licence Regulations. 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.”

78. The above provision gives choice to the contracting parties to mutually agree on trading margin for long-term transaction.

79. 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.”

80. 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.”

81. *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 PSAs, which is in consonance with Regulation 8(1)(d) of the Trading Licence Regulations. However, in case of failure by SECI 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 specified in Regulation 8(1)(d) and Regulation 8(1)(f) of the Trading Licence Regulations.”*

26. In accordance with the above, we allow the trading margin of Rs.0.07/kWh as agreed in the PSAs by the distribution licensees, which is in consonance with Regulation 8(1)(d) of the Trading Licence Regulations. However, in case of failure by SECI to provide an escrow arrangement or irrevocable, unconditional, and revolving letter of credit to the solar generators, the 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.

27. Prayers (a) and (b) are answered accordingly.

28. Furthermore, vide its reply, Respondent No 4. AGE26AL, has sought to place on record certain Change in Law events, namely, changes in GST rates and the imposition of Basic Custom Duty (BCD) on Inverters and Trackers by the Ministry of Finance that have occurred after the cut-off date and have an adverse impact on tariffs as proposed to be adopted in the present proceeding. AGE26AL has submitted that in terms of the regulatory framework in place, there is no prohibition upon the Appropriate Commission to adjudicate on a claim of Change in Law, in tariff adoption

proceeding under Section 63 of the Act and the APTEL in its judgment dated 12.10.2021 in Appeal No. 251 of 2021 (“Green Infra Renewable Energy Ltd. v Rajasthan Electricity Regulatory Commission and Ors.”) (“Green Infra Judgment”) has held that it is a statutory duty of the Appropriate Commission under Section 86(1)(b) of the Act to not to defer a Change in Law claim which has occurred after the submission of the bid and closure of the bid process but before the adoption of the bid discovered price in order to ensure regulatory certainty and the actual impact/ extent of the relief admissible of the Change in Law event can be determined at the appropriate stage. The said views of the APTEL were again reiterated in Appeal Nos. 344 of 2021 and 9 of 2022, titled “Green Infra Renewable Energy Ltd. v. Rajasthan Electricity Regulatory Commission & Ors.” and batch, wherein the APTEL further held that the adoption proceedings were incomplete and inchoate, if any Change in Law claims had been ignored by the Appropriate Commission.

29. AGE26AL has further contended that the reliance placed by the Commission in the order dated 13.9.2023 in Petition No 213/AT/2023 (Solar Energy Corporation of India Limited vs. TP Saurya Limited & Ors) on the APTEL’s judgment dated 31.7.2023 in Appeal 625 of 2023 & IA No 1677 of 2023 to deny adjudication of Change in Law may not be correct as the said Appeal culminated from the proceedings of Petition No. 192/MP/2021, which involved a dispute between parties in terms of Section 79(1)(f) of the Electricity Act, 2003. While Petition No. 192/MP/2021 involved adjudicatory functions of the Commission, the present matter is on a different footing altogether, as the same involves a scenario where the Commission invokes its ‘regulatory’ powers qua tariff adoption/determination conferred upon it under the provisions of the Act.

30. We have considered the above submissions from AGE26AL. The APTEL, in its judgment dated 31.7.2023 in Appeal No. 625 of 2023 & IA No. 1677 of 2023, has observed that the Appellant, Tata Power Delhi Distribution Limited ('TPDDL'), in the capacity of a Respondent, could not have filed an IA seeking relief in a Petition filed by the 2nd Respondent i.e. SBSR Power Cleantech Eleven Private Limited (in short, "SBSR"). The Appeal was filed by the SBSR before the APTEL challenging the order of the Commission dated 5.6.2023 in IA No. 3 of 2023 filed by the TPDDL as Respondent, in Petition No. 192/MP/2021. The APTEL allowed TPDDL to withdraw the IA No. 3 of 2023 filed before this Commission with the liberty to file an independent Petition seeking appropriate relief, observing that such a relief could be sought only by filing an independent Petition and not by way of an I.A. The relevant portion of the judgment is extracted as under:

"It does appear that the order under appeal came to be passed by the CERC, at the behest of the Appellant, in an IA filed by them in a Petition filed by the 2nd Respondent. Such a relief could have been sought by the Appellant only by filing an independent Petition, and not by way of an I.A. in the Petition filed by the 2nd Respondent. The fact however remains that, as long as the order under appeal passed by the CERC, continues to remain in force, the Appellant would be disabled thereby from even filing an independent petition questioning the action of the 2nd Respondent in seeking to have the PPA, between them on the one hand and SECI on the other, truncated from the original capacity of 300 MW to 150 MW.

.....As we find force in the submission of Mr. Hemant Singh, learned Counsel for the 2nd Respondent, that the Appellant herein could not have sought the relief in an IA filed before the CERC, (in which the order under appeal was passed), in a Petition filed not by them but by the 2nd Respondent, the Appellant is permitted to withdraw the IA filed by them before the CERC, with liberty to file an independent petition before the CERC seeking appropriate relief.

The appeal is accordingly disposed of."

31. The present Petition has been filed by SECI, praying for the adoption of the tariff discovered in the tariff-based competitive bid process for the aggregate 334

MW capacity of the Solar power projects and approval of the trading margin. We have gone through the prayers made by the Petitioner, SECI, in the present Petition. There is no prayer with regard to the adjudication of Change in Law claims by SECI. The adjudication of Change in Law claims has been sought by the AGE26AL in its reply. Therefore, in light of the APTEL`'s judgment quoted above, AGE26AL cannot seek Change in Law relief in the instant Petition filed by SECI.

32. As regards submissions made by Respondent No 4. AGE26AL, regarding the exercise of Regulatory Power in terms of the judgment of the Hon`ble Supreme Court in the case of Energy Watchdog to allow Change in Law in the Petition filed by SECI for the adoption of tariff, it is observed that even Article 12.2 requires the aggrieved party to approach the Commission for seeking approval of Change in Law. The relevant extract of Article 12.2 is reproduced as under

“12.2 Relief for Change in Law

12.2.1 The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law. “

33. Thus, the Petitioner ought to approach the Commission by filing a substantive Petition for Change in Law and not as a Respondent in a Petition filed by SECI. Needless to add the AGE26AL is at liberty to approach the Commission in a separate Petition seeking approval for Change in Law in terms of Article 12.2 of the PPA.

34. Petition No. 224/AT/2023 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(Jishnu Barua)
Chairperson