



Petition No. 154/AT/2024

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member**

Date of Order 4th September, 2024

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for the adoption of usage charges for 1000 MW Solar Photovoltaic (PV) Power Stations connected to the Inter-State Transmission System and selected through competitive bidding process under Central Public Sector Undertaking (CPSU) Scheme Phase-II (Tranche-III) dated 05.03.2019 as per the Standard Bidding Guidelines of Ministry of Power dated 03.08.2017.

And

In the matter of

NHPC Limited,
(A Govt. of India Enterprise)
NHPC Office Complex, Sector-33,
Faridabad (Haryana) - 121003.

...Petitioner

Versus

- 1. Indian Renewable Energy Development Agency Limited,**
3rd Floor, August Kranti Bhawan,
Bhikaji Cama Place,
New Delhi-110066
- 2. Punjab State Power Corporation Limited,**
The Mall, Patiala-147001,
Punjab.
- 3. West Bengal State Electricity Distribution Company Limited,**
Vidyut Bhavan, Sector-II, Block- DJ
Bidhannagar, Kolkata-700091,
West Bengal

4. **Southern Power Distribution Company of Telangana Limited,**
6-1-50, Mint Compound, Hyderabad– 500063,
Telangana.
5. **Northern Power Distribution Company of Telangana Limited,**
Vidyuth Bhavan, Nakkalagutta,
Hanamkonda, Warangal– 506 001,
Telangana.
6. **Ministry of New and Renewable Energy,**
Block-14, CGO Complex,
Lodhi Road, New Delhi - 110003

Respondents

Parties present:

Shri Ravi Shankar Dvivedi, Advocate, NHPC
Shri Sushant Sarkar, Advocate, NHPC
Shri Rajesh Joshi, NHPC

ORDER

The Petitioner, NHPC Ltd. ('NHPC'), has filed the present Petition under Section 63 of the Electricity Act, 2003 ('the Act') for the adoption of the usage charges for the 1000 MW Solar Photovoltaic (PV) Power Station (Tranche III) connected with the Inter-State Transmission System ('ISTS') selected through a competitive bidding process under the 'Central Power Sector Undertaking Scheme Phase II (Government Producer Scheme) for setting up 12,000 MW grid-connected Solar Photovoltaic (PV) Power Projects by the Government Producers with Viability Gap Funding (VGF) support for self-use or use by the Government/Government entities, either directly or through the Distribution Companies' dated 5.3.2019 ('CPSU Scheme Phase II') as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power Grid Connected Solar PV Power Projects" ('the Solar Guidelines') dated 3.8.2017 issued by the Ministry of Power, Government of India. The Petitioner has made the following prayers:

“(a) Admit the present Petition;



(b) Adopt the Usage Charges of Rs 2.45/kWh mutually agreed between NHPC and procurers with maximum quoted VGF of Rs 44,90,000/- per MW by NHPC Limited in competitive bidding process of IREDA in terms of Section 63 of the Electricity Act 2003 for procurement of 1000 MW Solar Power MNRE CPSU Scheme phase-II (Tranche-III).

(c) Pass such other and further order / orders as are deemed fit and proper in the facts and circumstances of the case.”

Submission of the Petitioner

2. The Petitioner, NHPC has submitted that on 5.3.2019, the Ministry of New and Renewable Energy ('MNRE'), Government of India notified the CPSU Scheme Phase II for setting up the 12,000 MW grid-connected solar PV power projects by the Government Producers with Viability Gap Funding ('VGF') for self-use or use by the Government/ Government entities, either directly or through Distribution Companies ('Discoms'). Further, MNRE, vide its Notification dated 3.7.2019 issued the Scheme Modalities and Role of Distribution Companies in MNRE's CPSU Scheme Phase-II/government Produce Scheme for the 12000 MW Solar PV Power Projects.

3. Under the CPSU Scheme, Solar Energy Corporation of India ('SECI') was initially, declared as the implementing agency to handle the scheme on behalf of the MNRE. Thereafter, vide OM dated 13.4.2020, MNRE modified the ceiling of the usage charges not more than from Rs 3.50/kWh to Rs 2.80/kWh and declared Indian Renewable Energy Development Agency Limited ('IREDA/ Respondent No.1') as the implementing agency instead of SECI to carried out the bidding process on the basis of VGF for selection of the Government producers.

4. IREDA issued the Request for Selection ('RfS') for setting up of 5000 MW grid connected solar PV projects in India (Tranche-III) on 29.1.2021. As per the RfS,

power generated from government power producers shall be solely for self-use or use by Government/ Government entities, either directly or through the Distribution Licensees on payment of mutually agreed usage charges of not more than Rs. 2.20/kWh, which shall be exclusive of any other third-party charges like wheeling and transmission charges and losses, point of connection charges and losses, cross-subsidy surcharges, and SLDC/RLDC Charges, etc. In a pre-bid meeting held on 23.2.2021, it was indicated by IREDA that that usage charges of Rs. 2.20/kWh were capped as per the MNRE OM No. 302/4/2017-GRID SOLAR dated 23.12.2020. Further, various extensions were also granted by IREDA on the last date for the bid submission vide addendums dated 3.3.2021, 23.3.2021, and 30.4.2021.

5. Subsequently, the MNRE *vide* its order dated 10.5.2021, amended Scheme guidelines dated 13.4.2020 and modified the ceiling of the usage charges to Rs 2.45/kWh, and revised the limit of maximum permissible VGF of Rs. 0.55 crore/MW from Rs. 0.70 crore/MW. The commissioning schedule of the project was also revised from 24 months to 30 months from the date of the Letter of Award. Consequent to the said MNRE order dated 10.5.2021, IREDA *vide* corrigendum dated 14.5.2021 modified the ceiling of the usage charges from Rs 2.20/ kWh to Rs. 2.45/kWh and further revised the limit of maximum permissible VGF of Rs. 0.55 crore/MW from Rs. 0.70 crore/MW in the RfS and extended the last date of the bid submission up to 31.5.2021. Further, the last date of the bid submission was revised to 30.6.2021 and 31.8.2021 *vide* addendum dated 14.6.2021 and 29.6.2021 respectively.

6. In response to the RfS, the Petitioner submitted its bid on 29.1.2021 and thereafter, through an e-reverse auction held on 23.9.2021, was declared as a successful bidder and the Petitioner was allocated 1000 MW and was issued the

Letter of Award ('LoA') on 4.10.2021 for the aforesaid capacity. Accordingly, the Petitioner, NHPC, was required to set-up the solar PV power projects having an aggregate capacity of 1,000 MW.

7. NHPC, vide its letter dated 18.5.2021, requested the various States/Discoms to procure Solar power under the CPSU Scheme Phase II, Tranche-III of the MNRE. In response, the Discoms of Telangana, *i.e.*, Telangana State Power Coordination Committee ('TSPCC'), West Bengal, *i.e.*, West Bengal State Electricity Distribution Company Limited ('WBSEDCL'), and Punjab, *i.e.*, Punjab State Power Corporation Limited ('PSPCL') conveyed their consent for procurement of solar power under the CPSU scheme on a long-term basis.

8. Pursuant thereto, the Petitioner entered into Power Usage Agreements ('PUAs') with the Discoms of the States of West Bengal, Telangana, and Punjab for the supply of solar power to be generated by the Petitioner through its solar PV power projects. The respective State Commissions of Telangana, West Bengal, and Punjab have also approved the procurement of Solar Power subject to the adoption of tariff by the Commission. The details of the PUAs are as under:

Sr.No.	Project	Quantity	Discom/States
1.	600 MW Solar Project, Khavda, District: Bhuj, Gujarat	600 MW	100 MW with PSPCL, Punjab, and 500 MW with DISCOMs of Telangana
2.	300 MW Solar Project, District: Bikaner, Rajasthan	300 MW	300 MW-PSPCL Punjab
3.	100 MW Solar Project District: Kunta, Andhra Pradesh	100 MW	100MW-WBSEDCL, West Bengal

9. On 2.6.2023, NHPC requested IREDA, the Bid Process Coordinator, to approach the Commission for approval and adoption of the Usage Charges of Rs 2.45/kWh mutually agreed between NHPC and the procurers with maximum quoted

VGf of Rs 44,90,000/ per MW by NHPC in competitive bidding process of IREDA in terms of Section 63 of the Act for procurement of the 1000 MW Solar Power MNRE CPSU Scheme Phase II (Tranche III). However, IREDA vide letter dated 19.6.2023 denied the aforesaid request, citing Clause 10.4 of Solar Bidding Guidelines dated 3.8.2017, which *inter alia* required the distribution licensee or an intermediary procurer to approach the Appropriate Commission.

Hearings dated 8.5.2024 and 5.6.2024

10. The Petition was admitted on 8.5.2024, and notices were issued to the Respondents to file their respective replies. However, no reply has been received from the Respondents except Respondent No. 1, IREDA (BPC).

11. The matter was further heard on 5.6.2024, and Respondent No.1, IREDA, was directed to file all the relevant bid documents, including the evaluation report(s) and certification to the effect that the bid process was conducted as per the provisions of the CPSU Scheme and the Standard Bidding Guidelines dated 3.8.2017 - without taking any deviations from the provisions thereof. The Petitioner was directed to coordinate with Respondent No.1 on the above aspect in order to ensure timely compliance.

12. In compliance with the ROP dated 28.5.2024, Respondent No.1, IREDA, vide its affidavit dated 23.7.2024, has placed on record the details of the bidding process conducted by it in the capacity of the BPC at the behest of the Petitioner, NHPC. IREDA has further indicated that the bid documents were in line with the provisions of the CPSU Scheme and the bidding process has been done as per the said Scheme and under the principles of Section 63 of the Act. It has been further

submitted by the IREDA that there is no deviation from the CPSU Schemes while conducting the bid process and issuing the LoA to the successful Project developers.

13. IREDA, vide its affidavit dated 23.7.2024, has submitted the brief facts about the Petition as under:

(a) IREDA issued a Request for Selection (RfS) on 29.1.2021 for setting up the 5000 MW grid-connected SPVP in India (Tranche-III) under the CPSU Scheme. The RfS was in terms of the Government of India's target to achieve a cumulative capacity of 100 GW of solar PV installation by the year 2022 and the invitation proposal on a "Build, Own, Operate" basis for an aggregate capacity of 5,000 MW under Phase-II (Tranche-III). One of the salient features of the said RfS was that the power generated from the successful projects shall be solely for self-use or use by the Government or Government entities, either directly or through the Discoms, on payment of the mutually agreed usage charges of not more than Rs. 2.20/kWh.

(b) IREDA issued a corrigendum to the RfS on 14.5.2021, revising the usage charges to 2.45 kWh and reducing the maximum permissible limit for VGF from Rs. 0.70 crore/MW to Rs. 0.55 crore/MW for the projects. On January 29, 2021, NHPC submitted its bid, along with the other project developers, with their respective bid quantities.

(c) On 23.9.2021, pursuant to the e-reverse auction process, the following successful bidders [along with the quoted VGF] were allocated the capacity as under:

Sr. No.	Applicant Name	Quoted VGF (By bidder at end of e-RA)	Capacity Being Allocated (MW)
1.	SJVN Limited	INR 44,72,000/- Per MW	1000
2.	NLC India Limited	INR 44,74,990/- Per MW	510
3.	NHPC Limited	INR 44,90,000/- Per MW	1000
4.	IRCON International Limited	INR 44,94,000/- Per MW	500
5.	NTPC Limited	INR 44,95,000/- Per MW	1990
		Total	5000

(d) IREDA issued the Letter of Award (“**LOA**”) to all the aforesaid five successful bidders, including NTPC Limited on 4.10.2021 for the total allocated capacity of 5000 MW.

(e) On 16.9.2022, the MNRE vide their letter ref. no. 283/11/2017/2017-Grid Solar dated 16.9.2022, communicated to IREDA that considering the change in the GST rate as a ‘Change in Law’ the maximum usage charges, which was Rs. 2.45/kWh, was increased to Rs. 2.57/kWh.

(f) Pursuant to the above, the Petitioner entered into the Power Usage Agreements (“**PUAs**”) with Respondents 2 to 5 for the supply of power from the 600 MW Solar Project at Bhuj, Gujarat, from the 300 MW Solar Project at Bikaner.

(g) As the bid coordinator for Tranche-III Projects, IREDA has complied with and adhered to all the provisions of the CPSU Schemes while conducting the bid process. The RfP was issued in terms of the CPSU Schemes, and the bidding process has been conducted as per the said Scheme in terms of Section 63 of the Act. The relevant extract from the RfS substantiating that the same was under the CPSU Schemes is as under:

“GUIDELINES FOR IMPLEMENTATION OF THE RfS

*16.0 This RfS document has been prepared **based on the Guidelines for “Central Public Sector Undertaking (CPSU) Scheme Phase-II (Government Producer Scheme)** for setting up 12,000 MW grid connected Solar Photovoltaic (PV) Power Projects by the Government Producers with Viability Gap Funding (VGF) support for self-use or use by Government/Government entities, either directly or through Distribution Companies (DISCOMS)” vide No. 302/4/2017- GRID SOLAR dated 05.03.2019” with subsequent amendments and clarifications thereof”*

(h) Further, the Department of Standardization, Testing and Quality Certification Directorate, the Ministry of Electronics and Information Technology, Government of India has issued a Certificate of Approval certifying that the E-Procurement Portal of ISN-Electronic Tender Services Pvt Ltd (1SN-ETS) has been tested and audited by STQC and same is in compliance with the "Guidelines for compliance to Quality requirements of e-

Procurement Systems" dated 31.8.2011 from the STQC Directorate, the Ministry of Electronics & Information Technology, Government of India.

Hearing dated 8.8.2024

14. Since the order in the matter (which was reserved on 5.6.2024) could not be issued prior to one Member of this Commission, who formed part of Coram, demitting office, the matter has been re-listed for the hearing on 8.8.2024. During the course of the hearing, the learned counsel for the Petitioner submitted that the Petitioner has already made detailed submissions in the matter and the Respondent, IREDA, also, in terms of the Commission`s direction, has filed an affidavit furnishing the details relating to the bid process and accordingly, the Commission may consider the adoption of usage charges as prayed for by the Petitioner. Considering the submission made by the learned counsel for the Petitioner, the Commission reserved the matter for order.

Analysis and Decision

15. We now proceed to consider the prayer as regards the adoption of usage charges for the 1000 MW of solar power projects in terms of the CPSU Scheme Phase-II issued by the Ministry of New and Renewable Energy, Government of India, under Section 63 of the Act.

16. 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 the transparent process of bidding in accordance

with the guidelines issued by the Central Government under Section 63 of the Act has been followed in determination of such tariff.

17. In the present case, the bid process for Tranche III was conducted under the CPSU Scheme Phase II issued by the MNRE, Government of India, on 5.3.2019.

The salient features of the CPSU Scheme guidelines are as under:

(a) The CPSU Scheme Phase II has been envisaged to provide the necessary policy framework and mechanism for the selection and implementation of the 12,000 MW or more grid-connected solar PV power projects with VGF, by various Government Producers. 12,000 MW grid connected solar PV power projects are proposed to be set-up through the Government Producers with a budgetary support of Rs.8580 crore as VGF.

(b) The scheme will mandate the use of both solar photovoltaic cells and modules manufactured domestically as per the specifications and testing requirements fixed by the MNRE.

(c) Power produced by the Government Producer can be used for self-use or use by the Government/ Government entities, either directly or through Discoms on payment of mutually agreed usage charges of not more than Rs.3.5/unit, which shall be exclusive of any other third party charges like wheeling and transmission charges and losses, point of connection charges and losses, cross-subsidy surcharge, and State Load Despatch Centre (SLDC)/Regional Load Despatch Center (RLDC) charges, etc. as may be applicable.

(d) The solar PV power project capacity under the Government Producer Scheme would be allocated to the Government Producers by way of bidding, who, in turn, will secure an arrangement for the usage of power for self-use or use by Government/ Government entities, either directly or through Discoms.

(e) With the objective of covering the cost difference between the domestically produced solar cells and modules and imported solar cells and

modules, VGF shall be provided under the scheme. While the maximum permissible VGF has been kept at Rs.0.70 crore/MW, the actual VGF to be given to a Government Producer under the scheme would be decided through bidding using the VGF amount as a bid parameter to select project proponent.

(f) SECI will handle the scheme on behalf of the MNRE, including conducting bidding on a VGF basis, amongst Government Producers for selection of the Government Producers for implementing this scheme. SECI will ensure that the proposed projects comply with the WTO provisions, and also the compliance by the Government Producers on the mandatory requirement of domestic content under the scheme.

18. The aforesaid Scheme guidelines have been modified by the MNRE vide Office Memorandum dated 13.4.2020 whereby, *inter alia*, the ceiling of usage charges was revised from Rs 3.50/kWh to Rs.2.80/kWh, and the task of conducting bidding was entrusted to IREDA thereby replacing SECI. Thereafter, MNRE vide order dated 10.5.2021 further amended the Scheme guidelines by Order dated 10.5.2021 whereby the ceiling of the usage charges was further revised to Rs 2.45/kWh, and the limit of maximum permissible VGF was also revised to Rs. 0.55 crore/MW from Rs. 0.70 crore/MW. By said Order, the commissioning schedule of the project was also revised from 24 months to 30 months from the date of the Letter of Award.

19. Accordingly, we proceed to examine whether the usage charges have been discovered in terms of the provisions of Section 63 of the Act and whether the selection of the successful bidder(s) has been made through a competitive bidding process as per the provisions of the CPSU Scheme Phase-II.

20. As per the scheme guidelines, only the Government Producers were eligible for availing VGF under the CPSU Scheme Phase-II and the setting-up of the solar

PV power projects was solely for self-use or use by the Government/Government entities, either directly or through the Discoms. Further, the solar PV power project capacity allocated to the Government Procurers by way of the bidding, was required to secure an arrangement for the usage of power for self-use or use by the Government/ Government entities, either directly or through Discoms.

21. Before delving further, it is also pertinent to note that the Petitioner, after having successfully participated in the bidding process, has entered into the PUAs with the distribution licensees of Telangana, West Bengal, and Punjab at the usage charges of Rs.2.45/kWh and their respective State Commissions have also approved the procurement under Section 86(1)(b) of the Act subject to the adoption of tariff by this Commission. Keeping in view that as per the CPSU Scheme Phase II, the entire solar power project capacity allocated to the Government Producer, i.e., the Petitioner herein, has been arranged for use by the Government/Government entities (a class of consumers) through the distribution licensees under the PUAs, the aspect of determination of usage charge would fall under the regulatory domain of the Commission. It is also well settled that in a situation where the guidelines issued by the Central Government cover the situation, the Commission is bound by those guidelines and is required to exercise its regulatory function, albeit under Section 79(1), only in accordance with those guidelines. However, in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation, the Commission's general regulatory power under Section 79(1) can be used, and the general regulatory power of the Commission under Section 79(1) is the source of the power to regulate, which *inter alia* also includes the power to adopt the tariff. Keeping in view the above aspects, we decide to proceed to examine the issue of the adoption of the usage charges.

22. As per the provisions of the CPSU Scheme Phase-II, IREDA had issued RfS documents, namely, RfS for Selection of Solar Power Developers for setting-up of the 5000 MW grid connected solar PV power projects (Tranche III), in line with the CPSU Scheme Phase II.

23. The key dates of event in the bidding process are as under:

Sr No	Milestone	Date
1	RfS issued by IREDA	29.1.2021
2	Pre-bid meeting held	23.2.2021
3	Extension of submission of bid date	25.3.2021,30.4.2021 15.5.2021,31.5.2021, further extended 30.6.2021 and 31.8.2021
4	Amendments/Clarification and Corrigendum to RfS	3.3.2021,23.3.2021, 30.4.2021, 10.5.2021 and 14.5.2021, further extended 14.6.201 and 29.6.2021
5	e-Reverse Auction conducted	23.9.2021
6	Issuance of Letter of Awards	4.10.2021

24. As per the CPSU Scheme Phase II, IREDA issued the RfS document for the selection of the Solar Power Developers for setting-up of the 5000 MW grid connected solar PV project (Tranche III) on 29.1.2021. Also, as indicated, the notice regarding the publication of the RfS was issued on IREDA's website, i.e., www.ireda.in, and the ETS Portal, i.e. bharat-electronictender.com.

25. The last date of the bid submission was 25.3.2021, which was further extended by IREDA up to 31.8.2021 by way of various addendums/corrigendum to the RfS. Moreover, in line with the MNRE Order dated 10.5.2021, IREDA *vide* corrigendum to RfS dated 14.5.2021 also modified the ceiling of the usage charges

to Rs 2.45/kWh and further revised the limit of maximum permissible VGF to Rs. 0.55 crore/MW from Rs. 0.70 crore/MW.

26. In response to the RfS, a total of seven bids were received from the various Government Producers. Details of the bidders are as follows:

Sr. No.	Bidder's Name	Quoted VGF Rs. per MW	Capacity Applied for (MW)
1	SJVN Limited	54,50,000	1000
2	NLC India Limited	55,00,000	510
3	NHPC Limited	54,00,000	1000
4	IRCON International Limited	55,00,000	500
5	NTPC Limited	55,00,000	2500
6	Solar Energy Corporation of India Limited	55,00,000	1200
7	Indian Oil Corporation Limited	55,00,000	250

27. All the above techno-commercial qualified bidders were shortlisted for e-Reverse Auction (e-RA). The e-RA was conducted on 23.9.2021 during which the VGF amount sought per MW was kept as a bid parameter to select the Government Producers as the Solar Power Developer. Pursuant to the conclusion of the e-RA, the following Government Producers were declared as the successful bidders, which also included the Petitioner herein which came to be allocated 1000 MW on the basis of its quoted VGF of Rs. 44,90,000/MW at the end of e-RA:

Sr. No.	Bidder's Name	Quoted VGF (By bidder at the end of e-RA)	Allotted Capacity (MW)
1	SJVN Limited	44,72,000/-	1000
2	NLC India Limited	44,74,990/-	510
3	NHPC Limited	44,90,000/-	1000
4	IRCON International Limited	44,94,000/-	500
5	NTPC Limited	44,95,000/-	1990
Total			5000

28. Pursuant to its selection as the successful bidder under the RfS, IREDA issued the Letter of Award to the Petitioner, allocating 1000 MW on 4.10.2021. The relevant portions of the said Letter of Award are extracted as under:

“Sub: Selection of Solar Power Developers for Setting up of 5,000 MW Grid Connected Solar PV Power Projects in India (Tranche-III) under Central Public Sector Undertaking (CPSU) Scheme Phase-II (Government Producer Scheme): Letter of Award for allocated capacity of 1000 MW (Project ID: CPSU-Ph2-Tr3-SSPD-1000 MW-II)”

Ref: "Central Public Sector Undertaking (CPSU) Scheme Phase-II (Government Producer Scheme) for setting up 12,000 MW grid-connected Solar Photovoltaic (PV) Power Projects by the Government Producers with Viability Gap Funding (VGF) support for self-use or use by Government entities, either directly or through Distribution Companies (DISCOMS)" issued by the Ministry of New & Renewable Energy vide No. 302/4/2017-GRID SOLAR dated 05.03.2019 including subsequent amendments and clarifications thereof (herein referred to as "Guidelines")

RfS No. 23016/1/2020-IREDA/RfS/5000 MW/ 012021 Dated: 29/01/2021 subsequent amendments/clarifications/revisions/notifications issued by IREDA and uploaded during the process of RfS on ETS portal (<https://www.bharat-electronicen.com>)

This has reference to the following:

- A. Your response to the RfS document submitted through ETS portal vide Organization ID ETS- IN-2019-RS0000153) against RfS for Selection of Solar Power Developers for 5000 MW Grid- Connected Solar PV Power Projects in India (Tranche-III) under CPSU Ph-II Scheme (Government Producer Scheme).
- B. Final VGF (INR/MW) as quoted by you at the end of the e-Reverse Auction conducted on ETS portal on 23.09.2021 for the referred RfS for selection of Grid-connected Solar PV Power Projects.

In reference to above and subject to the provisions of RfS, we confirm that your final VGF price quoted by your organisation during the e-RA concluded on September 23, 2021, is accepted and issue this letter of award with the following details:

Allotted Project ID	Allocated Capacity (MW)	Project Location	Maximum VGF Eligibility (INR/MW) in figures	Maximum VGF eligibility (INR/MW) in words	Total Eligible Maximum VGF (INR)
CPSU-Ph2-Tr3-SSPD-1000 MW 1000 MW-II	1000 MW	Anywhere in India	44,90,000/-	Forty-Four Lakhs Ninety Thousand only	449,00,00,000.00

In alignment with the Guidelines of the scheme, the abovementioned project shall supply power solely for either self-use or use by Government/Government entities, either directly or through Discoms under the CPSU Ph-II scheme. Further such

supply shall be subject to the following terms and conditions as stated in various documents referred above. The same terms and condition are also being briefly brought out hereinafter.

- I. Power generated from above Project(s) shall be solely for self-use or use by Government/Government entities, either directly or through Discoms on payment of mutually agreed usages charges of not more than Rs. 2.45/kWh, which shall be exclusive of any other third-party charges like wheeling and transmission charges and losses, point of connection charges and losses, cross-subsidy surcharges, State Load Dispatch Centre (SLDC)/ regional Load Dispatch Centre (RLOC) Charges, etc. as may be applicable. Waiver of ISTS charges and losses, for use of ISTS network, shall be available to Projects set-up under the CPSU Phase-II Scheme.
- II. As the selected Government Producer under the scheme, NHPC Limited can use the VGF provided under the Scheme as your equity in solar power project(s) being set up under this scheme.
- III. If the proposed solar PV power project(s) under CPSU Scheme Phase-II is being set up in an UMREPP/ Solar Park, then such projects will be eligible for both, the Central Financial Assistance (CFA) as per UMREPP/ Solar Park Scheme as well as VGF under the CPSU Scheme Phase-II.
- IV. As the selected Government Producer/ Solar Project Developer (SPO), you Would also be free to avail other fiscal incentives, if any, as per the extant rules. IREDA will not have any liability if the SPD is not able to avail fiscal incentives and this will not have any bearing on the maximum eligible VGF per MW.
- V. The award of the above allotted capacity is subject to the Guidelines including amendments/clarifications issued by Government of India and terms and conditions of the RfS document including its clarifications/ amendments / elaborations / notifications issued by IREDA.
- VI. A Bidder which has been selected as Successful Bidder under this RfS can also execute the Project(s) through a Special Purpose Vehicle (SPV) i.e. a Project Company especially incorporated as a subsidiary Company of the successful bidder for setting up of the Project(s), with at least 76%» shareholding in the SPV which has to be registered under the Indian Companies Act, 2013, before signing of EPC agreement with EPC Contractor. Multiple SPVs may also be incorporated for executing more than one Project.
- VII. The SPD shall pay to IREDA, Success Charges of Rs. 1 lakh/MW/project + 18% GST within 30 days from the date of this Letter of Award (LoA) towards administrative overheads, coordination with State Authorities and monitoring of Projects' compliance with WTO norms, in line with Clause 12, Section-III of the RfS. Performance Bank Guarantee(s) for an amount equal to 50% of total VGF sanctioned as per this Letter of Award shall be submitted by the SPD before disbursement of first tranche of VGF, in line with Clause 11.1, Section-III of the RfS. The validity of any such PBG being submitted to IREDA shall not be less than 39 months.
- VIII. The SPD shall confirm the configuration of the total allocated capacity at the time of disbursement of second tranche of VGF. The SPD, if he wishes so, may affix separate PPA tariffs for each Project, based on its own

arrangements with the Procurer(s), if applicable.

- IX. *The Projects can be located anywhere in India. It is clarified that the projects may be implemented as ground mounted, or rooftop mounted or floating or canal top/canal bank etc., or a combination thereof, as per the requirements of the SPD.*
- X. *It may be noted that while a single VGF shall be quoted by the bidder based on the cumulative Project Capacity in the RfS, VGF will be released to the SPD separately for each Project as per the final Project configuration declared by the SPD. Accordingly, for each individual Project as per the above break-up, the second tranche of VGF will be disbursed to the SPD only upon successful commissioning of full capacity of that individual Project.*
- XI. *Commercial re-sale of power by the Procurer or End Consumer is not allowed as per the RfS conditions. The SPD shall provide a power mapping (Format 7.10 of the RfS) for the proposed capacity being quoted for, clearly specifying the SPD, various intermediaries, if any, and the End Consumer. The same shall be submitted to IREDA after finalization of the mapping by the SPD, but necessarily prior to disbursement of second tranche of VGF.*
- XII. *The SPD shall submit a self-certification to IREDA (Format 7.6 as amended), confirming that the Project has been set-up, as per the provisions of the Scheme Guidelines, and explanatory notes, if any, as published by MNRE from time to time. The above certifications will be submitted by the SPD after finalization of power mapping by the SPD, but no later than prior to disbursement of second tranche of VGF.*
- XIII. *The RfS mandates use of both solar photovoltaic (SPV) cells and modules manufactured domestically as per specifications and testing requirements fixed by MNRE. For the Projects to be implemented under this RfS, both the solar cells and modules used in the Solar Power Projects must be made in India. In case of crystalline Silicon technology, all process steps and quality control measures involved in the manufacture of the Solar Cells and Modules starting from wafers till final assembly of the Solar Cells into Modules shall be performed at the works of PV manufacturers in India.*
- XIV. *VGF will be released in two tranches as follows:*
1. *50 % on award of Contract to the EPC Contractor (including in-house EPC Division) by the SPD. The SPD is required to sign the EPC agreement with EPC Contractor within twelve months from date of this LoA.*
 2. *Balance 50% on successful commissioning of the full capacity of Project.*
- XV. *The Commissioning of the Project shall be carried out by the SPD as per the procedure established by the SPD. The SPD shall submit the commissioning certificate of the Project to IREDA, based on which, the installed capacity shall be examined by IREDA in line with the DCR norms as per the RfS. After successful examination of the same, the second tranche of the VGF, amounting to 50% of the total VGF awarded for the Project, will be disbursed to the SPD.*
- XVI. *Schedule Commissioning Date (SCD) for commissioning of the full capacity of the Project shall be the date as on 30 months from the date of issuance of LoA. The maximum time period allowed for commissioning*

of the full Project Capacity shall be limited to 36 months from the date of issuance of LoA.

- XVII. *In case of delay in commissioning of the Project beyond the SCD until the date as on 36 months from the issue date of the LoA/LoI, as part of the penalty for delay in commissioning the amount of VGF sanctioned to be the project shall be reduced by 0.15% (zero-point one five percent) of the sanctioned VGF, on per day basis, for the period of such delay, and proportionate to the capacity delayed or not commissioned.*
- XVIII. *All disputes arising out of and/ or in connection with the selection of Solar Power Projects under the said RfS and execution of project(s) thereto shall be governed by laws of India and shall be subject to the jurisdiction of Courts of New Delhi.”*

29. Pursuant to the issuance of the LoA, the Petitioner has entered into PUAs with Punjab, West Bengal, and Telangana Discoms *i.e.*, Respondent No. 2, Respondent No. 3, and Respondent No. 4 for supply of solar power to be generated through its solar PV power projects set-up under the CPSU Scheme Phase-II. The Petitioner has submitted that under the various PUAs, power generated by the Petitioner from its solar PV projects, as Government Producer, is to be procured by the Respondents, Punjab, West Bengal, and Telangana Discoms solely for the end user, namely Government or Government entities, in compliance with WTO Regulations on mutually agreed terms and conditions as mentioned in the CPSU Scheme Phase-II. The details of the PUAs are as follows:

S.No	Project	Quantity	Discom/States	Details of PUAs
1	600 MW Solar Project, Khavda, District: Bhuj, Gujarat	600 MW	500 MW Telangana Discoms	PUA dated 28.3.2023 @ Rs. 2.45/kWh
			100 MW PSPCL Punjab	PUA dated 16.5.2023 @ Rs 2.45/kWh
2	300 MW Solar Project, District: Bikaner, Rajasthan	300 MW	300 MW PSPCL Punjab	PUA dated 16.5.2023 @ Rs 2.45/kWh
3	100 MW Solar Project District: Kunta, Andhra Pradesh	100 MW	100 MW WBSEDCL, West Bengal	PUA dated 23.11.2022 @ Rs. 2.45/kWh

30. The Petitioner has also submitted that the respective State Commissions have also approved the aforesaid procurement by the concerned distribution licensees under Section 86(1)(b) of the Act subject to the adoption of tariff by this Commission. Telangana State Electricity Regulatory Commission vide order dated 26.10.2022 has accorded the in-principle approval for the procurement of power by Telangana Discoms from 500 MW of solar power from the Petitioner under the CPSU Scheme Phase II Tranche III at a tariff of Rs. 2.45/kWh and has also directed to approach this Commission for the adoption of tariff. West Bengal Electricity Regulatory Commission vide order dated 12.6.2023 approved the PUA signed between the Petitioner and WBSEDCL for the purchase of 100 MW solar power subject to the adoption of tariff by this Commission. Similarly, Punjab State Electricity Regulatory Commission vide order dated 31.8.2023 has approved the PUA signed between the Petitioner and PSCPL for the purchase of 400 MW solar power from the Petitioner under CPSU Phase II Tranche III while directing the parties to approach this Commission for adoption.

31. Further, IREDA vide affidavit dated 23.7.2024 has also stated that the RfS was issued in terms of the CPSU Scheme Phase II, and the bidding process had been conducted as per the said Scheme guidelines and under the principles of Section 63 of the Act. IREDA has also indicated that no deviation from the CPSU Schemes was taken while conducting the bid process and issuing the LoAs to the successful bidders.

32. In view of the above, we are of the view that the selection of the Petitioner, out of various Government Producers, has been done on the basis of a transparent, competitive bid process with VGF as the bid parameter and in accordance with the provisions of the CPSU Scheme Phase II.

33. Insofar as the adoption of usage charges under the PUAs is concerned, the said aspect also came up for consideration before this Commission in Petition No. 174/AT/2021 in the matter of NTPC Limited v. Solar Energy Corporation of India Limited and Ors., wherein NTPC had prayed for the adoption of usage charges for 1692 MW Solar PV Projects selected through the competitive bid process under the CPSU Scheme Phase II Tranche I & II. The Commission, in its order dated 13.12.2021, *inter alia*, observed as under:

“34. In support of allowing the prayer of the Petitioner for adoption of usage charges, the Petitioner and the Respondent, SECI have placed reliance on the provisions of the Standard Bidding Guidelines, which envisage bidding based on VGF as bid parameter and provide for adoption of pre-specified tariff and also on the order dated 1.3.2021 passed by the Commission in Petition No. 160/AT/2019 along with IA No.81/2019, wherein the bid process was also conducted on VGF as bid parameters and the Commission had adopted the pre-specified tariff. The relevant extract of the Standard Bidding Guidelines reads as under:

“4.3 Bidding Parameters: For procurement of electricity, the Procurer may opt for either ‘Tariff as Bidding Parameter’ or ‘Viability Gap Funding (VGF) as Bidding Parameter’.

...

4.3.2 VGF as the Bidding Parameter: It involves a mechanism wherein a pre-determined tariff is offered to the Solar Power Generator along with a financial assistance, to enable the Solar Power Generator to supply power at this tariff. For VGF based Bidding, the Procurer shall specify the following before issuance of RfS: (a) Pre-determined tariff payable to the selected Solar Power Generator for the duration of the PPA and the Maximum amount of Viability Gap Funding (VGF) support required by them. The bidders who do not want to avail the VGF support, may offer in their bids, a discounted tariff, lower than the pre-determined tariff offered by the Procurer...”

35. Indisputably, the Standard Bidding Guidelines provide for VGF as a bidding parameter for conducting competitive bid process under Section 63 of the Act. The mechanism involves pre-determined tariff payable to the selected solar power generator and the maximum amount of VGF support required by them. Further, in case the bidders do not want to avail of VGF, they may offer a discounted tariff than that of pre-determined tariff.

36. However, we note that the bidding process on the basis of VGF as bid parameter under the CPSU Scheme Phase-II is not exactly as per the Standard Bidding Guidelines, since instead of pre-determined tariff (in terms of the Standard Bidding Guidelines), the CPSU Scheme Phase-II only provides for pre-determined ceiling usage charges. Further, the CPSU Scheme Phase-II recognizes that the usage charges may be mutually agreed between the parties (which is not the case in the Standard Bidding Guidelines) albeit subject to the ceiling as specified therein.

Therefore, the lower usage charges as may be mutually agreed between the parties (the Petitioner and the Telangana Discoms in the instant case) cannot be equated with the discounted tariff (for bidders who quote nil VGF) under the VGF based bidding as per the Standard Bidding Guidelines since the Petitioner has not foregone the VGF entitlement in the present case.

37. On the other hand, in the case of bid process involved in Petition No. 160/AT/2019, there was pre-determined tariff of Rs.5.45/kWh (Rs.4.75/kWh in case benefit of Accelerated Depreciation was availed) and the bidders were required to compete on the basis of VGF requirement per MW. Thus, the bidding process envisaged and conducted therein as per the provisions of 'Scheme for Setting up of 750 MW grid connected Solar PV Power Projects under Batch-I of Phase-II of Jawaharlal Nehru National Solar Mission with Viability Gap Funding support from National Clean Energy Fund' was similar to that specified in the Standard Bidding Guidelines and did not provide for any mutual agreement for lowering the predetermined tariff. Thus, the instant case is distinguishable from the matter involved in adoption of tariff in Petition No. 160/AT/2019.

38. In light of the above observations, we are of the view that the usage charges as mutually agreed between the Petitioner and the Telangana Discoms cannot be stated to have been discovered through a process of competitive bidding under Section 63 of the Act.

39. However, at the same time, we do recognise that in terms of the provisions of the CPSU Scheme Phase-II, the bid processes have been conducted with VGF as a bid parameter against the pre-determined ceiling usage charge of Rs.3.50/kWh, though the actual usage charge was subject to mutual agreement within the said ceiling. Therefore, in line with the bid process envisaged in the Standard Bidding Guidelines, the Commission deems it fit to adopt the ceiling usage charge of Rs.3.50/kWh under Section 63 of the Act in respect of 1692 MW capacity under Tranche-I and Tranche-II in respect of the Petitioner.”

34. The above observations of the Commission in the case of CPSU Scheme Phase II Tranche I & II squarely apply to the present case. However, in the case of Tranche I & II, the usage charge agreed upon between the parties under the PUAs on the mutually negotiated basis were lower than the prevailing ceiling usage charges of Rs.3.50/kWh and accordingly, the Commission after recognizing that the bid process had been conducted with VGF as a bid parameter against the pre-determined ceiling usage charge of Rs. 3.50/kWh, deemed it appropriate to adopt the ceiling usage charge of Rs. 3.50/kWh under Section 63 of the Act. Whereas, in the present case, the usage charges agreed upon between the parties under the PUAs, i.e., Rs 2.45/kWh, are the ceiling usage charges prevailing at the time of the conclusion of the bid process. It is also noticed that the MNRE had subsequently

increased this maximum usage charges to Rs. 2.57/kWh for the Projects awarded under Tranche III on account of an increase in GST rates vide Ministry of Finance's Notification No. 8/2021 dated 30.9.2021 whereby the GST rates for specified renewable energy devices and parts for their manufacture were revised. However, keeping in view that in this case, the Petitioner, NHPC, has not sought to rely upon the aforesaid MNRE OM or its implications and has prayed for the adoption of usage charges to the extent of Rs. 2.45/kWh – the ceiling usage charges prevailing at the time of bid process, the Commission deems it fit to adopt the usage charge of Rs. 2.45/kWh, under Section 63 of the Act in respect of the 1000 MW Solar PV Power Projects of the Petitioner under Tranche III of the CPSU Scheme.

35. The Petition No. 154/AT/2024 is disposed of in terms of the above.

Sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V.)
Member

sd/-
(Jishnu Barua)
Chairperson