

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 21/AT/2024 along with IA No. 9/2024

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

Date of Order: 12th February, 2024

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for Solar PV Power Projects (Tranche – XI) connected to the Inter-State Transmission System (ISTS) and selected through competitive bidding process as per the Guidelines dated 3.8.2017 issued by the Government of India read with subsequent amendment/clarification thereof.

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. SAEL Industries Limited,
H. No. 44, Model Town,
Guruharsahai, Firozpur- 152022, Punjab

2. SAEL SOLAR MHP1 Private Limited,
[SPV formed by M/s SAEL Industries Limited]
H. No. 44, Model Town,
Guruharsahai, Firozpur- 152022, Punjab

3. SAEL SOLAR MHP2 Private Limited,
[SPV formed by M/s SAEL Industries Limited]
H. No. 44, Model Town,
Guruharsahai, Firozpur- 152022, Punjab

4. Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhavan,
Race Course, Vadodra - 390007

.....Respondents

Parties Present:

Ms. Anusha Nagarajan, Advocate, SECI



Shri Rahul Ranjan, Advocate, SECI
Shri Mudit Jain, SECI
Shri Pankaj Sharma, Advocate, SAELIL
Ms. Vaishali Dalal, GUVNL

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 the adoption of tariff for the 600 MW solar power projects (Tranche-XI) connected to the Inter-State Transmission System ('ISTS') and selected through competitive bidding process as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects" (hereinafter referred to as 'the Guidelines') dated 3.8.2017 issued by the Ministry of Power, Government of India. The Petitioner has made the following prayers:

- "a. Adopt the tariff discovered in the tariff based competitive bid process for the aggregate capacity from Solar Power Projects on the terms and conditions contained in the Power Purchase Agreements signed with the Solar Power Developers read with the Power Sale Agreements signed with the Buying Entities/Distribution Licensees as on the date of reserving the decision in the present Petition after hearing of the parties;*
- 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. 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, SECI, has submitted that it issued the Request for Selection ('RfS') along with the draft Power Purchase Agreement ('PPA') and draft Power Supply Agreement ('PSA') for the selection of 2000 MW ISTS-connected Solar Power Projects (Tranche-XI) as per the Guidelines and floated the same on the ISN



Electronic Tender System (ETS) e-bidding portal on 31.3.2023. In response, fourteen (14) bids were received offering an aggregate capacity of 5050 MW and all were found to fully meet the technical criteria. As per the eligibility criteria mentioned in the RfS, ten (10) bidders were shortlisted for participating in the e-reverse auction. The e-reverse auction was conducted on 21.7.2023 on the ISN ETS e-bidding portal, and pursuant thereto, six bidders offering an aggregate capacity of 2000 MW were selected and issued Letters of Award on 28.7.2023. As on date of filing of the Petition, the Petitioner has entered into two separate PPAs dated 11.1.2024 with Respondents No.2, SAEL SOLAR MHP1 Private Limited and Respondent No.3, SAEL SOLAR MHP2 Private Limited [i.e. Project Companies of the Successful Bidder – Respondent No.1, SAEL Industries Limited (SIL)] for 600 MW capacity @ Rs 2.60/kWh and the Power Supply Agreement (PSA) dated 30.12.2023 with Respondent No.4, Gujarat Urja Vikas Nigam Limited for 600 MW. The Petitioner has submitted that the selected solar power projects are scheduled to be commissioned during 2024-25, and the price discovered is competitive and beneficial to the Buying Utilities/Distribution Companies as well as the consumers of the Buying Utilities/Distribution Companies. 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. The Petitioner has craved leave to approach the Commission for the adoption of tariff for the balance capacity after such capacity is tied up and PPAs along with PSAs are executed.

3. The Petitioner has also filed IA No. 9/2024, praying for an urgent listing of the matter. In the said application, the Petitioner has mainly indicated that the Scheduled Commissioning Date of the Project as defined under the Power Purchase

Agreements is 30.6.2025 and as per the extant regulatory framework, if the solar power projects declare the commercial operation on or before 30.6.2025, they are eligible for a waiver of ISTS charges for a period of 25 years starting from their commercial operation. Accordingly, in order to avoid the imposition of ISTS charges upon the parties on account of any delay in the adoption of tariff by this Commission, the Petitioner requested for urgent listing of the Petition so that it may be heard and decided at the earliest.

Hearing dated 29.1.2024

4. The matter was heard on 29.1.2024 wherein the representative of Respondent No.4, GUVNL, submitted that GUVNL has no objection towards the adoption of the tariff as prayed by the Petitioner and Respondent has also filed an affidavit dated 25.1.2024 to the above extent. Learned counsel for Respondent No.1, SAEL Industries Limited (SIL), submitted that the SIL also supports the present Petition filed by SECI and has no objection towards the adoption of tariff by the Commission as prayed. In response to the specific query of the Commission, whether Respondent No.1, SIL, has indicated its “No objection” by a reply/an affidavit, the learned counsel for Respondent replied in negative and sought liberty to file an affidavit to the above extent.

5. Considering the submissions of the learned counsel for the parties and with the consent of the parties, the Commission reserved the matter for order while permitting Respondent No.1, SIL to file an affidavit indicating its “No Objection” towards the adoption of tariff by the Commission.

6. Pursuant to the direction of the Commission, Respondent No.1, SIL, vide its affidavit dated 29.1.2024, has submitted its “No Objection” towards the adoption of the tariff by the Commission.

Analysis and Decision

7. We now proceed to consider the prayers of the Petitioner as regards the adoption of tariff in respect of the 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.

8. Section 63 of the Act provides as under:

“Section 63. Determination of tariff by bidding process: Notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

9. Therefore, we have to examine whether such tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government. The following facts have been brought before us.

10. The Ministry of Power, Government of India, has notified the Guidelines under Section 63 of the Act vide Resolution No.23/27/2017-R&R on 3.8.2017. The Guidelines have been subsequently amended by the resolutions dated 14.6.2018, 3.1.2019, 9.7.2019, 22.10.2019 and 25.9.2020. The salient features of the Guidelines are as under:

(a) The Guidelines are applicable for the procurement of power from the grid connected solar PV power projects having a size of 5 MW and above through tariff based competitive bidding to be conducted by the procurers, which include distribution licensees, or the Authorized Representative(s), or Intermediary procurers.

(b) The procurer shall prepare the bid documents in accordance with the Guidelines and the Standard Bid Documents notified by the Ministry of Power, Government of India. If any deviation is proposed to be made in the Guidelines and Standard Bid Documents, approval of the Appropriate Commission would be necessary. Intimation about initiation of the bid process shall be sent by the procurer to the Appropriate Commission.

(c) Bids shall be designed in terms of a package. The minimum size of a package should be 50 MW in order to have economies of scale. The bidders shall quote for the entire package.

(d) The procurer has the option to choose to invite the two bids, namely, (i) power capacity (MW) terms, or (ii) energy quantity (kWh or million units, i.e. MUs) terms. For procurement of power, the procurer may opt for either tariff or viability gap funding as a bidding parameter.

(e) The draft PPA proposed to be entered into with the successful bidder, and the draft PSA, if applicable, shall be issued along with the RfS. Standard provisions to be incorporated as part of the PPA shall include inter-alia, the PPA period, quantum of power/ energy to be procured, payment security, generation compensation of off-take constraint, event of default and consequences thereof, and Change in Law and shall be provided for, on back-to-back basis, in the PSA.

(f) Procurer and Intermediary procurer shall provide payment security to the solar power developer through a revolving Letter of Credit of an amount not less than one month average billing and the Payment Security Fund for at least three months" billing of all the projects tied up with such fund. In addition, the procurer may also choose to provide the State Government Guarantee.

(g) The end procurer shall provide the payment security to the intermediary procurer through a revolving Letter of Credit of an amount not less than one month`s average billing from the project under consideration and the State Government Guarantee. In addition, the end procurer may also choose to provide the Payment Security Fund with at least three months" billing of all the projects tied up with such fund.

(h) The procurer shall call the bids adopting a single-stage bidding process to be conducted through electronic mode (e-bidding). The procurer may adopt e-reverse auction, if it so desires. For this purpose, e-procurement platforms with a successful track record and adequate safety, security and confidentiality features will be used. In the case of a solar park-specific project, the procurer shall provide intimation to the solar power park developer about the initiation of the bidding process and arrange the access of the bidders to the drafts of the Implementation Support Agreement and land-related agreement.

(i) RfS notice shall be issued in at least two national newspapers and on the websites of the procurer to provide wide publicity. The Standard documentation to be provided in the RfS stage shall include technical criteria, financial criteria, quantum of earnest money deposit, and lock-in requirements for the lead members of the consortium.

(j) The procurer shall constitute a committee for evaluation of the bids (Evaluation Committee), with at least three members, including at least one member with expertise in financial matters/ bid evaluation.

(k) The bidder shall submit non-refundable processing fee and/or project development fee as specified in the RfS, separate technical and price bids and a bid guarantee. To ensure competitiveness, the minimum number of qualified bidders shall be two. If the number of qualified bidders is less than two, even after three attempts of bidding, and the procurer still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.

(l) The PPA shall be signed with the successful bidder or an SPV formed by the successful bidder. After the conclusion of the bidding process, the Evaluation Committee shall critically evaluate the bids and certify that the bidding process and the evaluation have been conducted in conformity with the provisions of the RfS. After execution of the PPA, the procurers shall disclose the name(s) of the successful bidder(s) and the tariff quoted by them on its website. Accordingly, the distribution licensee or the intermediary procurer shall approach the Appropriate Commission for the adoption of tariff in terms of Section 63 of the Act.

11. In terms of the provisions of Section 63 of the Act, we have to examine whether the process as per provisions of the Guidelines has been followed in the present case for arriving at the lowest tariff and for selection of the successful bidder(s).

12. The Petitioner has been designated as the nodal agency for the implementation of the MNRE Schemes for setting up of the inter-State Transmission System connected/ State specific wind/ solar power/ wind-solar hybrid power projects to invite bidding under tariff based competitive bidding process to enter into PPAs with developers at the tariff discovered in the competitive bid process; and to enter into the PSAs with the distribution licensees to enable them to fulfil their Renewable Purchase Obligations under Section 86(1)(e) of the Act. SECI acts as an intermediary agency in the purchase and sale of power under the PPAs and PSAs on a back-to-back basis'.

13. The Guidelines provide for the procurement of solar power at a tariff to be determined through a transparent process of bidding by the procurer(s) from the grid connected solar power projects having a size of 5 MW and above. As per the Guidelines, SECI, in the capacity of intermediary procurer, invited proposals for the selection of Solar Power Developers for setting up 2000 MW ISTS connected solar power projects (Tranche - XI). As per the arrangements, SECI is to procure the power by entering into PPAs with the successful bidder with back-to-back PSAs for the sale of power to the distribution licensees.

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

Sr.	Event	Date
1.	RfS issued by SECI	31.3.2023

Sr.	Event	Date
2	Pre Bid meeting held	13.4.2023
3	Corrigendum-01 to the RFS document uploaded	09.5.2023
4	Corrigendum-02 to the RFS document uploaded	24.5.2023
5	Corrigendum-03 to the RFS documents uploaded	14.6.2023
6	Corrigendum-04 to the RFS documents uploaded	19.6.2023
7	Clarification-01 to the RFS documents uploaded	19.6.2023
8	Amendment-01 to the RFS documents uploaded	19.6.2023
9	Last date of bid submission	28.6.2023
10	Opening of Techno Commercial bids	03.07.2023
11	Opening of Financial bids	21.7.2023
12	e-Reverse Auction conducted	21.7.2023
13	Issuance of Letters of Award (LoAs) to successful bidders	28.7.2023

15. On 31.3.2023, SECI issued the RfS documents, along with the draft PPA and PSA for the selection of the Solar Power Developers for setting up of 2000 MW ISTS connected solar power projects (Tranche-XI) under tariff-based 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 the documents demonstrating the 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 the Ministry of Information and Broadcasting, Government of India, dated 17.5.2017, mandating the e-publishing of advertisements in the relevant portal. Accordingly, on 3.7.2018, SECI published a notification indicating that tenders of SECI would be published on its website and not in the newspapers. Further, as per Clause 3.1.1(b) of the Guidelines, the procurer is required to inform the Appropriate Commission about the initiation of the bidding process. SECI, vide its letter dated 3.4.2023, had informed the Commission that it has initiated the competitive bidding process for procurement of power from the grid-connected solar power projects.

16. The Bid Evaluation Committee (BEC) comprising the following was constituted for opening and evaluation of the bids for RfS dated 9.1.2024:

Tender	Dept.	Offline and Online Techno- commercial and Financial Bid Opening	Techno-commercial and Financial evaluation and post-e-RA recommendation
2000 MW ISTS-connected Solar PV Power Projects (ISTS-XI)	Solar	Manish K K, Sr. Engineer	Vineet Kumar, Sr. Manager
	Contracts	Biblesh, Manager	Pratik Prasun, Sr. Manager
	Finance	Mohit Goel, Dy. Manager	Anuja, Sr. Manager

17. Last date of submission of the bid was 28.6.2023, and the technical part of the bid was opened on 3.7.2023. Response to RfS was received from the following fourteen bidders:

S.No.	Name of Bidders	Bid Capacity (MW)
1	Apraava Energy Private Limited	300
2	Avaada Energy Private Limited	500
3	Eden Renewables Cadet Private Limited	300
4	Hinduja Renewables Energy Private Limited	300
5	Jakson Limited	200
6	Juniper Green Energy Private Limited	150
7	Mahindra Susten Private Limited	300
8	RenNew Solar Power Private Limited	600
9	SAEL Industries Limited	600
10	Shiva Corporation India Limited	100
11	SJVN Green Energy Limited	500
12	Solitaire Power Private Limited	300
13	Solarcraft Power India 8 Private Limited	300
14	Tata Power Renewable Energy Limited	600
	Total	5050 MW

18. The financial bids of all fourteen technically qualified bidders were opened on 21.7.2023 on the ISN ETS e-bidding portal, and as per the criteria mentioned in the RfS documents, ten bidders for capacity aggregating 3350 MW were shortlisted for an e-reverse auction. The e-reverse auction was carried out on 21.7.2023 on the ISN

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

S. No.	Name of Successful Bidder	Bid Capacity (MW)	Tariff (INR/kWh)	Allotted Capacity (MW)
1.	Eden Renewables Cadet Private Limited	300	2.60	300
2.	SAEL Industries Limited	600	2.60	600
3.	Jakson Limited	200	2.60	200
4.	Shiva Corporation India Limited	100	2.60	100
5.	Renew Solar Power Private Limited	600	2.60	600
6.	Avaada Energy Private Limited	200	2.61	200
	Total			2000

19. On 28.7.2023, SECI issued the Letters of Award to the aforesaid successful bidders. The relevant extracts of the Letter of Award issued to one of the successful bidders, namely, SAEL INDUSTRIES LIMITED, are as under:

“Sub: Selection of Solar Power Projects under RfS for setting up of 2000 MW ISTS-connected Solar Power Projects (ISTS-XI): Letter of Award for Solar Power Project of 600 MW (Project ID: SPD-ISTS-T11-SAELIL-P1-600MW)

In reference to above and subject to the provisions of RfS, we confirm having accepted your final offer concluded as a result of e-RA and issue this letter of award as per the following details:

Allotted Project ID	Project Capacity (MW)	Interconnection Point Details	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
SPD-ISTS-T11-SAELIL-P1-600MW	600	220 KV Substation in Kumool-III PS Kumool NEW, Andhra Pradesh	₹ 2.60/-	Rupees Two and Sixty paise only

SECI shall purchase the power generated from the proposed ISTS-Connected Solar PV Power Project under the above scheme subject to the following terms and conditions as Stated in various documents referred above and briefly brought out hereinafter.

1.0 The applicable tariff as mentioned above for power generated from the proposed Solar PV Power Project for the term of Power Purchase Agreement (PPA) to be entered into between Project Company or the Solar Power Developer (SPD) and M/s SECI, for the Project, shall be firm for the entire term of the PPA.

1.1 The SPD will be free to avail fiscal incentives like Accelerated Depreciation, Concessional Customs, Excise Duties, Tax Holidays, etc. as available for such projects. No claim shall arise on SECI for any liability if the SPD is not able to avail fiscal incentives and this will not have any bearing on the applicable tariff.

1.2 The award of the above Project 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 SECI.

1.3 No change in the controlling shareholding of the Bidding Company or Bidding Consortium shall be permitted from the date of submission of response to RfS till the execution of the PPA. However, in case the Project is being set up by a listed Company, this condition will not be applicable.

1.4 In case of the selected Bidder itself executing the PPA, it shall ensure that its promoters shall not cede control (Control shall mean the ownership, directly or indirectly, of more than 50% of the voting shares of such Company or right to appoint majority Directors), till 01 (one) year after the COD, except with the prior approval of SECI. However, in case the Project is being set up a listed Company, this condition will not be applicable.

1.5 In case of companies having multiple promoters (but none of the shareholders having more than 51% of voting rights and paid up share capital), it shall be considered as a company under joint control. In such cases, the shareholding pattern in the company as submitted at the time of bidding, shall be maintained for a period of 01 (one) year after COD.

1.6 In case of Project being executed through SPVs, the Selected Bidder executing the project, if being a single company, shall ensure that its shareholding in the SPV/ Project Company executing the PPA, shall not fall below 51% at any time prior to 01 (one) year after the COD, except with the prior approval of SECI. In the event the selected Bidder is a consortium, then the combined shareholding of the consortium members in the SPV/ Project Company executing the PPA, shall not fall below 51% at any time prior to 01 (one) year after COD, except with the prior approval of SECI. However, in case the Project is being set up by a listed Company, this condition will not be applicable.

1.7 The SPD shall pay to SECI, Success Charges of Rs. 1.00 Lakh/MW + 18% GST within 30 days of issuance of LoA or the date at least 07 days prior to the date of signing of PPA (PPA signing date to be intimated by SECI), whichever is earlier, in line with Clause 18.1 of the RfS, towards administrative overheads, coordination with State Authorities and others, DISCOM/ STU/ CTU, pre-commissioning and commissioning expense,

Performance Bank Guarantee(s)/ Payment on Order Instrument (POI) for a value of @ Rs 17.37 Lakh/MW/Project shall be submitted by the SPD prior to signing of PPA, in line with Clause 17 of the RfS.

1.8 PPA will be executed between SECI and the SPD as per the breakup of the cumulative Project capacity awarded to the Bidder. This LoA is being issued in line with the Project breakup of the cumulative capacity quoted in the Covering Letter as part of your response to RfS and amended subsequently, as applicable.

1.9 The final project configuration, adding up to the cumulative capacity awarded to the bidder may be intimated to SECI at the time of signing of PPA, which shall then remain unchanged subsequent to signing of PPA. Delays in connectivity and/or LTA/GNA for the Project(s) on account of such changes in Project parameters, which differ from the details provided in the Covering letter, shall be at the risk and cost of the Successful Bidder. The PPAs shall be valid for a period of 25 years from the scheduled commissioning date or from the date of full commissioning of the projects, whichever is earlier.

1.10 The SPD will have to submit the required documents as mentioned below to SECI within 70 days from the issue of this LoA. In case of delay in submission of documents beyond the period as mentioned above, SECI shall not be liable for delay in verification of documents and subsequent delay in signing of PPA:

1) In line with Clause 37.3 of the RfS, in the case of submission of letter from CEO/Managing Director of the respective Affiliate(s), undertaking to contribute the required equity funding and Performance Bank Guarantees/POI in case the Bidder fails to do so, at the time of bid submission, the requisite Board Resolution from the Affiliate(s) shall be required to be submitted prior to signing of PPA. [jVo/ required if requisite documents already submitted at the bidding stage}

2) Copy of the Certificate of Incorporation of the SPD.

3) The details of promoters and their shareholding in the SPD, duly certified by the practicing Chartered Accountant/ Company Secretary in original at least 7 (seven) days prior to date of their document submission (certificate

date should be after the date of LoA) along with latest documents filed with ROC.

4) Copy of the Memorandum of Association (MoA) of the SPD highlighting the object clause related to generation of Power/ Energy/ Renewable Energy/ Solar Power plant development.

5) In case the project being executed by a Special Purpose Vehicle (SPV) incorporated by successful bidder, such SPV shall be at least 51% shareholding subsidiary, in line with provisions of the RfS. Further, the Successful Bidder shall submit a Board Resolution prior to signing of PPA with SECI, committing total equity infusion in the SPV as per the provisions of RfS. Also, the SPV shall submit a Board Resolution for execution of the Project.

6) Copy of Board Resolution of SPD for authorization of signing of PPA and subsequent relevant documents.

Further, the PPA shall be signed with SPDs subsequent to the signing of Power Sale Agreements with the Buying Entities for the cumulative awarded capacity and upon submission of the Success Charges along with total Performance Guarantees/ Payment on Order Instrument of requisite value.

1.11 SECI shall have the right to verify original documents of the SPD for which copies have been submitted from the date of submission of response to RfS till date, if required. PPA as per the format given along with RfS has to be signed within 90 days from the date of issue of this LoA, if not extended by SECI. Effective Date of the PPA shall be the date as on 90 days from the date of issue of LoA, or the date of signing of PPA, whichever is later. Subsequent to expiry of the 90-day period after the issuance of LoA, in case SECI intimates to the Successful Bidder, a particular date as the date for signing of PPA, the specified date shall become the Effective Date of the PPA, irrespective of the date of signing of PPA.

1.12 In case, the SECI offers to execute the PPA with the SPD and the selected Bidder refuses to execute the PPA within the stipulated time period, then the Bank Guarantee equivalent to the amount of the EMD shall be encashed by SECI from the Bank Guarantee available with SECI (i.e. EMD or PBG) as liquidated damages not amounting to penalty, the selected Project shall stand cancelled, and the selected Bidder expressly waives off its rights and objections, if any, in that respect.

1.13 The SPD shall meet financial closure requirements for the Project in line with clause 21 of the RfS document, within 12 (twelve) months from the Effective Date of the PPA. Accordingly, the SPD shall furnish the documents pertaining to compliance of financial closure as per the above provisions.

1.14 The SPD/Project Company shall achieve commissioning of full capacity of the Project within 18 months from the Effective Date of the PPA, as per the conditions stipulated in Clause 9 of the RfS and relevant articles of PPA. In case of failure to achieve this milestone, liquidated damages not amounting to penalty shall be levied on the SPD as per the above provisions.”

20. It has been submitted by the Petitioner that the selection of the aforesaid bidders for the supply of power and the quantum of capacity available for the procurement from the selected bidders were communicated to the concerned distribution companies/ buying utilities and that the PSAs have been signed as under:

S. No.	Buying Utilities	Date of PSA signing	PSA Capacity (MW)	Applicable Tariff to Buying Utility (INR/kWh)
1.	Uttar Pradesh Power Corporation Limited	28.12.2023	500	As per Article 1.1 read with Schedule B of the PSA: Applicable Tariff payable to Solar Power Developer under PPA Plus INR 0.07/kWh (Trading Margin)
2.	Gujarat Urja Vikas Nigam Limited	30.12.2023	600	As per Article 1.1 of the PSA: Rs 2.60/kWh Plus INR 0.07/kWh (Trading Margin)

21. On the above basis, PPAs have been signed with the following successful bidder/ Project Company formed by the successful bidder:

S. No.	Name of Successful Bidder	Project Company formed by the Successful bidder for execution of PPA	Date of PPA signing & Contracted Capacity (MW)	Applicable Tariff (INR/kWh)
1.	SAEL Industries Limited <i>(Entire capacity of 600 MW mapped to GUVNL)</i>	SAEL SOLAR MHP1 Private Limited	11.01.2024 (300 MW)	2.60
2.		SAEL SOLAR MHP2 Private Limited	11.01.2024 (300 MW)	2.60
	Total		600 MW	

22. As on date, the Petitioner has entered into a PPA only for 600 MW, corresponding to its PSA with the GUNVL, and the PPAs for the balance of 1400 MW are yet to be signed. Similarly, the PSA(s) for 900 MW are also yet to be signed. The Petitioner also stated that while SECI has already signed the PSA dated 28.12.2023 with Uttar Pradesh Power Corporation Limited for the 500 MW, the corresponding PPA with the Solar Power Project Developer(s) is yet to be signed, and the Petitioner is in the process of signing the same. However, by way of the present Petition, the Petitioner is only seeking the adoption of a tariff for the tied-up capacity of 600 MW, as indicated above. Accordingly, the adoption of tariff in the present Petition is limited to the quantum for which the PPAs and the PSA have been tied up, i.e. 600 MW, as also prayed for by the Petitioner, and for the balance capacity, the Petitioner may approach the Commission as and when such capacities are tied up under the PPA(s) and PSA(s).

23. As per the Guidelines, the Evaluation Committee is required to certify that the bidding process and the evaluation have been conducted in conformity with the provisions of the RfS. Moreover, the Petitioner has also stated that the bid documents were prepared in accordance with the provisions of the Guidelines read with subsequent amendments/clarifications and that no deviations were taken in them from the provisions of the Guidelines. This has been certified by the Petitioner through the two conformity certificates furnished by the Petitioner. The relevant extracts of the certificates are reproduced as under:

“Conformity Certificate-1

(To whomsoever it may concern)

I, Ajay Kumar Sinha, working as Additional General Manager (Contracts & Procurement), at Solar Energy Corporation of India Limited, 6th Floor, Plate-B, NBCC Office Block Tower-2, East Kidwai Nagar, New Delhi-110023, do hereby solemnly certify and state as follows:

With respect to the RfS no. SECI/C&P/IPP/11/0009/22-23 dated 31.3.2023, it is hereby declared as follows:

1. *Applicable Guidelines and amendments/clarifications thereof, if any, issued by the Government of India were followed for the bidding process in the above tender and no deviation was taken from the Guidelines in the RFS documents for the above tender.*”

“Conformity Certificate-2
(To whomsoever it may concern)

We undersigned Committee nominated at Solar Energy Corporation of India Limited, 6th Floor, Plate-B, NBCC Office Block Tower-2, East Kidwai Nagar, New Delhi-110023, do hereby solemnly certify and state as follows:

1. *After the conclusion of bid submission, the Evaluation Committee constituted for evaluation of bids has conducted the techno-commercial as well as financial bid evaluation in conformity to the provisions of the RFS.”*

24. In view of the aforesaid discussions, it emerges that the selection of the successful bidders has been done, and the tariff of the solar power projects has been discovered by the Petitioner, SECI, through a transparent process of competitive bidding in accordance with Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff for the solar power project, as agreed to by the successful bidder, and for which the PPAs have been entered into by SECI on the basis of the PSA with the distribution licensees, which shall remain valid throughout the period covered in the PPAs and PSA as under:

Name of Successful Bidder	Project Company formed for executing PPA	Date of signing of PPA	Capacity of Project (MW)	Applicable Tariff (Rs./kWh)
SAEL Industries Limited	SAEL SOLAR MHP1 Private Limited	11.1.2023	300	2.60
	SAEL SOLAR MHP2 Private Limited	11.1.2023	300	2.60
Total			600	

25. For the balance capacity, the Petitioner is granted the liberty to approach the Commission for the adoption of tariff once such capacity is tied up and the PPAs and the PSAs for such capacity are executed, which will be considered by the Commission in accordance with the law.
26. Prayer (a) of the Petitioner is answered in terms of paragraphs 21-25 above.
27. Article 10.3 of the PPA provides as under:

“10.3 Payment of Monthly Bills

10.3.1 Subject to the provisions of Article 10.3.4, SECI shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the SPD, as shall have been previously notified by the SPD as below.

10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for

(i) deductions required by the Law; and

(ii) amount claimed by SECI, if any, from the SPD, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, 1.25% surcharge will be applicable on day to day basis.

The SPD shall open a bank account (the “SPD’s Designated Account”) for all Tariff Payments (including Supplementary Bills) to be made by SECI to the SPD, and notify SECI of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. SECI shall also designate a bank account at New Delhi (“SECI Designated Account”) for payments to be made by the SPD to SECI, if any, and notify the SPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. SECI and the SPD shall instruct their respective bankers to make all payments under this Agreement to the SPD’s Designated Account or SECI’s Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.”

28. Article 10.4 of the PPA provides as under:

“10.4 Payment Security Mechanism

Letter of Credit (LC):

10.4.1 SECI shall provide to the SPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and

irrevocable letter of credit (“Letter of Credit”), opened and maintained which may be drawn upon by the SPD in accordance with this Article.

10.4.2 SECI shall, through a scheduled bank, open a Letter of Credit in favour of the SPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

i) for the first Contract Year, equal to 110% of the estimated average monthly billing;

ii) for each subsequent Contract Year, equal to 110% of the average of the monthly billing of the previous Contract Year.

10.4.3 Provided that the SPD shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawl in a Month.

10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, SECI shall restore such shortfall before next drawl.

10.4.5 SECI shall cause the scheduled bank issuing the Letter of Credit to intimate the SPD, in writing regarding establishing of such irrevocable Letter of Credit.

10.4.6 SECI shall ensure that the Letter of Credit shall be renewed not later than its expiry

10.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by SECI.

10.4.8 If SECI fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including the Due Date, then, subject to Article 10.4.6 & 10.5.2, the SPD may draw upon the Letter of Credit, and accordingly the bank shall pay, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

i) a copy of the Monthly Bill or Supplementary Bill (only for energy related bills) which has remained unpaid to SPD and;

ii) a certificate from the SPD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

29. Clause (10) of Regulation 9 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related

matters) Regulations, 2020 (hereinafter referred to as “the Trading Licence Regulations”) provides as under:

“9. (10) The Trading Licensee shall make payment of dues by the agreed due date to the seller for purchase of the agreed quantum of electricity through an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller. Such escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller shall be equivalent to:

(a) one point one (1.1) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts;

(b) one point zero five (1.05) times of contract value for short term contracts.”

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

31. The Petitioner, SECI, has also prayed to approve the trading margin of Rs.0.07/kWh agreed to by the distribution companies in the signed PSA 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:”

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

33. 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.”

34. 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.”

35. The above two provisions are exceptions to the main provision as regards trading margin. The distribution licensee/End Procurer has agreed to a trading margin of Rs.0.07/kWh as agreed in the PSA, which is in consonance with Regulation 8(1)(d) of the Trading Licence Regulations. 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, specified in Regulation 8(1)(d) and Regulation 8(1)(f) of the Trading Licence Regulations.

36. Prayer (b) of the Petitioner is answered accordingly.

37. Petition No. 21/AT/2024, along with IA No.9/2024, is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(Jishnu Barua)
Chairperson

