



Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017.

F.11(2059)/DERC/2022-23/7611

Petition No. 76/2022

In the matter of: **Petition u/S 86(1)(b) of the Electricity Act, 2003 and other enabling provisions for seeking approval of the Commission to the Supplementary Power Sale Agreement to be executed between Tata Power Delhi Distribution Ltd. vs Solar Energy Corporation of India Limited.**

Tata Power Delhi Distribution Ltd.

...Petitioner

Versus

Solar Energy Corporation of India Limited & others

...Respondents

Coram:
Hon'ble Justice (Retd.) Jayant Nath, Chairperson

Appearance:

- 1. Mr. Anand Srivastava, Advocate, TPDDL**
- 2. Mr. Ankit Bhandari, Advocate, TPDDL**
- 3. Ms. Anushree Bardhan, Advocate, SECI**
- 4. Ms. Surbhi Kapoor, Advocate, SECI**
- 5. Ms. Shirsa Saraswati, Advocate, SECI**
- 6. Ms. Abiha Zaidi, Advocate, ACME**
- 7. Ms. Suriti Chowdhary, Advocate, ACME**
- 8. Mr. Anuj Bhawe, Advocate, ACME**

ORDER

(Date of Order: 06.06.2024)

1. The instant Petition has been filed by Tata Power Delhi Distribution Ltd. (TPDDL/Petitioner) seeking approval of the Commission to the Supplementary Power Sale Agreement to be executed between TPDDL vs Solar Energy Corporation of India Ltd. (SECI/Respondent No. 1).

- a. To approve the Supplementary Power Sale Agreement (SPSA) to be executed by and between Tata Power Delhi Distribution Limited and Solar Energy Corporation of India Ltd.

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Petitioner's Submissions

2. The petitioner has submitted that:

- i. The Petitioner herein is a distribution licensee in terms of Section 14 of the Electricity Act, 2003 ("Act") read with the Delhi Electricity Reforms Act, 2000 ("DERA, 2000") and is operating in North, North West areas of Delhi in terms of the distribution license issued by the Commission.
- ii. The SECI is a company incorporated under the Companies Act, 1956. Respondent is a Central Public Sector Undertaking under the Administrative control of the Ministry of New and Renewable Energy (MNRE). SECI was set up on 20.09.2011 to facilitate the implementation of Jawaharlal Nehru National Solar Mission (NSM) for the development, promotion and commercialization of solar energy technologies in the country and to achieve targets set out in the NSM. SECI has also been instrumental in developing grid-connected solar power capacity in India and plays the role of Intermediary Procurer in line with the provisions of the Guidelines for Tariff Based Competitive Bidding Process of Procurement of Power from the Grid Connected Solar Power Projects, issued by the Ministry of Power, vide resolution dated 03.08.2017.
- iii. The Petitioner entered into a Power Sale Agreement dated 06.09.2018 ("Original PSA") with SECI for the sale of 100MW of solar power on a long-term basis. As per the terms of the Original PSA, SECI was required to enter into power purchase agreements with selected Solar Power Developers ("SPDs") for procurement of 2000 MW solar power or the total capacity of projects selected under the provisions of Request for Selection (RfS), if it is less than 2000 MW, on a long-term basis. That Article 13.1 of the Original PSA provides that Original PSA can be amended or supplemented by a written agreement between the parties.
- iv. In view of Article 13.1 of the Original PSA, the Petitioner is filing the present Petition seeking approval of the Supplementary Power Sale Agreement which it shall execute with SECI.
- v. On 30.01.2018 SECI issued RfS for Selection of SPDs for development of cumulative capacity of 2000 MW Solar Power. ACME Solar Holdings Limited ("ACME Solar"/Respondent No.2) was declared as a successful bidder against the aforementioned RfS and was issued Letter of Award ("LOA") dated 27.07.2018. ACME Solar formed a project company, M/s ACME Phalodi Solar

Energy Private Limited ("ACME Phalodi"), within the provisions of the RfS for development of solar power project, generation and sale of solar power.

- vi. On 21.08.2018 SECI wrote a letter to Power Grid Corporation of India Limited ("PGCIL") stating that SECI has concluded the bidding process for the selection of 2000 MW ISTS-connected solar power projects (ISTS-I) and the proposed mapping of power from the selected projects vis-à-vis the States. It is imperative that the proposed mapping of power with respect to ACME Solar for Delhi is 600 MW, out of which TPDDL was allocated 100 MW. PGCIL vide its letter dated 05.10.2018 wrote to SECI wherein it stated that PGCIL has examined the mapping for the transfer of power from selected solar projects (ISTS-I) to different constituents in NR, ER and WR and found the same to be generally in order. SECI executed a Power Purchase Agreement dated 06.12.2018 ("Original PPA") with ACME Phalodi for the procurement of 300 MW Solar Power.
- vii. As per the regulatory mandate the Petitioner filed Petition No. 25 of 2019 before the Commission for the approval of Original PSA and adoption of tariff of Rs. 2.54/kWh plus the trading margin of Rs. 0.07/kWh for the purchase of 100 MW solar power from SECI. The Commission vide its order dated 01.03.2019 ("Approval Order") approved the Original PSA between TPDDL and SECI.
- viii. Further, with respect to adoption of tariff and trading margin, the Commission vide the Approval Order directed the Petitioner to approach the Hon'ble Central Electricity Regulatory Commission ("**CERC**") since the Commission does not have jurisdiction with respect to the adoption of tariff.
- ix. The Petitioner, filed Petition No. 187/AT/2019 under Section 63 of the Act, along with Section 79(1)(k) of the Act, for the adoption of tariff for the purchase of 100 MW solar power from SECI of Rs. 2.54/kWh plus the trading margin of Rs. 0.07/kWh before the Hon'ble CERC. The Hon'ble CERC vide its Order dated 28.02.2020 adopted the individual tariff of Rs. 2.44/kWh discovered through the transparent competitive bidding process. However, with respect to trading margin, the Hon'ble CERC held that in terms of Regulation 8(1)(d) of Central Electricity Regulatory Commission (Procedure Terms and Conditions for grant of trading license and other related matters) Regulations, 2020, the contracting parties have a choice to mutually agree on trading margin for the long-term transaction. Accordingly, Hon'ble CERC cannot adopt any trading margin.

- x. Thereafter, the Petitioner filed review petition being Petition No. 31/RP/2020 before Hon'ble CERC seeking clarification that tariff adopted by the Hon'ble CERC vide its order dated 28.02.2020 is excluding the trading margin of Rs 0.07/ kWh. The Hon'ble CERC vide its Order dated 24.07.2021 in Petition No. 31/RP/2020 reiterated its finding in Order dated 28.02.2020 in Petition No.187/AT/2019.
- xi. The Commission vide its Order dated 31.12.2020 in Petition No. 65 of 2019 while approving the PSA signed between TPDDL and SECI with respect to sale of 300 MW of power, fixed the trading margin to Rs. 0.02/ kWh. However, the Commission vide its order dated 31.12.2020 also re-visited its Approval Order and fixed the trading margin to Rs. 0.02/ kWh.
- xii. Respondent being aggrieved by the Order dated 31.12.2020 of the Commission filed appeal before Hon'ble Appellate Tribunal for Electricity ("APTEL") being *Solar Energy Corporation of India Limited v Delhi Electricity Regulatory Commission & Ors. Appeal No. 52 of 2021*. The Hon'ble APTEL vide its judgment dated 02.07.2021 set aside the order dated 31.12.2020 of the Commission to the extent wherein it has fixed the trading margin of Rs. 0.02/kWh and reinstated Rs.0.07/kWh as the trading margin.
- xiii. The Commission has filed a Civil Appeal No. 6310 of 2021 before the Hon'ble Supreme Court of India against the judgement dated 02.07.2021 of the Hon'ble APTEL. However, no stay has been granted by the Hon'ble Supreme Court and the same is pending adjudication.
- xiv. SECI vide its letter dated 18.08.2020 wrote to TPDDL wherein it stated that Hon'ble CERC has adopted individual tariff through transparent bidding process. In line with the Hon'ble CERC Order, SECI proposed to amend Article 5.1.2 of the Original PSA based on the mapping approved by PGCIL and supply power to TPDDL. Further, vide the said letter SECI also provided draft supplementary Power Sale Agreement. The adoption of tariff and trading margin with respect to Original PSA relates Hon'ble CERC Order dated 28.02.2020 in Petition No.187/AT/2019.
- xv. Pursuant to the mutual agreement on trading margin and amendment in the Original PPA, SECI wrote to TPDDL vide its letter dated 09.06.2022 wherein it shared a draft SPSA for the sale of solar power on long term basis from 100 MW

ACME Solar Project. The amendment sought in the Original SPSA vide draft SPSA is reproduced herein below:

S. No	Clause as Per Original PSA	Clause as Approved by DERC Vide Approval Order	Amended Sought Vide Supplementary Power Sale Agreement	Justification
1.	Article 5.1.1: From SCD and subject to the provision of the Article 6.7, the Buying Entity shall pay the Maximum Possible fixed tariff of Rs. 2.54/kWh plus trading margin of Rs. 0.07/ kWh fixed up to commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI under the RfS.	Article 5.1.1: From SCD and subject to the provisions of the Article 6.7, the Buying Entity shall pay Maximum possible fixed tariff as adopted by the concerned Regulatory Commission (CERC) plus trading margin of Rs.0.07/kWh fixed upto commissioning of the cumulative awarded capacity/ accepted cumulative capacity by SECI under RfS.	Article 5.1.1: From SCD and subject to the provision of Article 6.7, the Buying Entity namely TPDDL shall pay the individual tariff as specified in Schedule-I to this Supplemental Agreement of the project from where the supply of electricity is sold by SECI to TPDDL and in addition to the same a trading margin of Rs. 0.07 per kWh for the entire term of this agreement.	The amendment in the said clause is in line with the Hon'ble CERC's Order dated 28.02.2020, the Commission's Approval Order and to reflect the mutual agreement between the parties in terms of the Hon'ble CERC's Order dated 28.02.2020.
2.	Article 5.1.2: Weighted average tariff as per schedule-1 plus trading margin trading margin of Rs 0.07 per kWh (Rupees Seven Paise per kWh) shall be applicable upon Commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI under the RfS for balance term of this Agreement for the energy supplied as per provisions of this Agreement.	Article 5.1.2: Weighted average tariff as approved by CERC plus trading margin of Rs.0.07/kWh fixed shall be applicable upon commissioning of the cumulative awarded capacity/ accepted cumulative capacity by SECI under RfS for the balance term of this Agreement for the energy supplied as per provisions of this agreement.	Article 5.1.2: The Buying Entity namely TPDDL shall make the Tariff Payments to SECI as per Schedule-1 plus trading margin of Rs 0.07 per kWh (Rupees Seven Paise per kWh) upon Commissioning of the respective Projects for the term of this Agreement for the energy made available by SECI to TPDDL as per the provisions of this Agreement.	The amendment in the said clause is in line with the Hon'ble CERC's Order dated 28.02.2020, this the Commission's Approval Order and to reflect the mutual agreement between the parties in terms of the Hon'ble CERC's Order dated 28.02.2020.
3.	Article 6.8.3: Buying Utility, in any Contract Year, shall not be obliged to purchase any	-	Article 6.8.3: Buying Utility, in any Contract Year, shall not be obliged to purchase any additional energy	The above amendment is in line with Article 6.8.4 of Original PSA. The Petitioner

S. No	Clause as Per Original PSA	Clause as Approved by DERC Vide Approval Order	Amended Sought Vide Supplementary Power Sale Agreement	Justification
	additional energy from the SECI/SPDs beyond 274.08 Million kWh (MUs). If for any Contract Year, it is found that the SPDs have not been able to generate minimum energy of 211.79 Million kWh (MUs) till the end of 10 years from SCD and 199.33 Million kWh (MU) for the rest of the term of the Agreement, as per the PPA signed with SECI, on account of reasons solely attributable to the SPD, the noncompliance by the SPD shall make the SPD liable to pay the compensation and shall duly pay such compensation to the SECI to enable the SECI to remit the amount to the Buying Utility. The lower limit will, however be relaxable by SECI to the extent of grid non-availability for evacuation which is beyond the control of the SPD. (as certified by the SLDC/RLDC). The amount of such compensation shall be as determined by the Appropriate Commission/ Authority, and such		from the SECI/SPDs beyond 289.278 Million kWh (MUs). If for any Contract Year, it is found that the SPDs have not been able to generate minimum energy of 223.533 Million kWh (MUs) till the end of 10 years from SCD and 210.384 Million kWh (MU) for the rest of the term of the Agreement, as per the PPA signed with SECI, on account of reasons solely attributable to the SPD, the non-compliance by the SPD shall make the SPD liable to pay the compensation and shall duly pay such compensation to the SECI to enable the SECI to remit the amount to the Buying Utility. The lower limit will, however be relaxable by SECI to the extent of grid non availability for evacuation which is beyond the control of the SPD. (as certified by the SLDC/RLDC). The amount of such compensation shall be as determined by the Appropriate Commission/ Authority, and such compensation shall ensure that the Buying Utility is offset for all potential costs associated with low generation and supply of power under the PSA. However, the minimum compensation payable to SECI by	is getting the additional power on the same price. The increase in the additional energy will help in reducing the shortfall in RPO obligation by 15 kWh of the Petitioner.

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S. No	Clause as Per Original PSA	Clause as Approved by DERC Vide Approval Order	Amended Sought Vide Supplementary Power Sale Agreement	Justification
	compensation shall ensure that the Buying Utility is offset for all potential costs associated with low generation and supply of power under the PSA. However, the minimum compensation payable to SECI by the SPD shall be 25% (twenty five percent) of the cost of this shortfall in energy terms, calculated at the PPA tariff, which shall in turn, be remitted to the Buying Utility.		the SPD shall be 25% (twenty five percent) of the cost of this shortfall in energy terms, calculated at the PPA tariff, which shall in turn, be remitted to the Buying Utility upon the same being received from the SPD. The compensation shall not be applicable in the event of force majeure, identified under the respective PPAs between the SPDs and SECI affecting the supply of power by the SPDs.	

Further, the SPSA also stipulated amendment in Schedule-I of the Original PSA. The proposed Schedule-I is reproduced below:

Sl. No.	Name of the Bidder	Project Capacity (MW)	Applicable tariff as per SECI-SPD PPA (Rs./kWh)	Quantum allocated to TPDDL for resale (MW)	Maximum Energy (Million kWh)	Minimum Energy (Million kWh) till 10 Year from SCD	Minimum Energy (Million kWh) beyond 10 years from SCD
1.	ACME Solar Holdings Limited	600	2.44	100	289.278	223.533	210.384
Total				100	289.278	223.533	210.384

xvi. The Petitioner vide its letter dated 17.06.2022 wrote to this Commission requesting it to allow the Petitioner to execute the draft SPSA with SECI. The Commission vide its letter dated 28.10.2022 directed the Petitioner to file a Petition before this Commission for approval of SPSA as per DERC Comprehensive (Conduct of Business) Regulations, 2001, which mandates licensee to file Petition before this Commission for approval of any PPA/PSA.

- xvii. The Petitioner respectfully submits that upon approval of this Commission, the Petitioner shall be executing SPSA with the Respondent no.1 for procuring power as per its allocated quantum of procurement from the Project from time to time.
- xviii. The Petitioner had also filed an Affidavit dated 21.06.2023 to place on record the following documents which have inadvertently not been placed with the Petition:
- a) Order dated 01.03.2019 passed by this Commission in Petition no. 25 of 2019 wherein the commission approved the PSA dated 06.09.2018.
 - b) Order dated 28.02.2020 passed by Hon'ble CERC in Petition No. 187/AT/2019 wherein the Hon'ble CERC has adopted the individual tariff and held that contracting parties have a choice to mutually agreed on trading margin.
 - c) Order dated 31.12.2020 passed by the Commission in Petition No. 65/2019 wherein the Commission approved the Power Sale Agreement dated 26.06.2019 entered between the Petitioner and the Respondent No. 1 for sale of 200 MW of solar power.
 - d) Order dated 02.07.2021 passed by the Hon'ble Appellate Tribunal for Electricity (APTEL) in Appeal No. 52 of 2021 wherein the APTEL set aside the Order dated 31.12.2020 of the Commission in Petition No. 65/2019.
 - e) Order dated 24.07.2021 passed by Hon'ble CERC in Review Petition No. 31/RP/2020.
3. SECI (Respondent) has filed a Reply on 27.07.2023 wherein it has submitted the following:
- i. On 06.09.2018, TPDDL executed the PSA along with Addendum to the PSA with SECI for procurement of 100 MW Solar Power.
 - ii. The tariff based competitive bidding was held for ISTS Tranche-I Solar Scheme for procurement of an aggregate capacity of 2000MW. SECI had issued the RfS 30.01.2018 for selection of SPDs under the said ISTS Tranche-I Solar Scheme inviting the Bid for the above capacity. The RfS Document has been issued as per the Guidelines notified by Government of India.

- iii. In pursuance to the competitive bidding, the following Bidders were declared successful for the capacity and the tariff mentioned herein:

Sr.No.	Bidders	Allotted Capacity (MW)	Tariff (INR/kWh)
1.	ACME Solar holding Limited	600	2.44
2.	Shapporji Pallonji Infrastructure Capital Company Private Limited	250	2.52
3.	Hero Solar Energy Private Limited	250	2.53
4.	Mahindra Susten Private Limited	250	2.53
5.	Azure Power India Private Ltd.	600	2.53
6.	Mahoba Solar (UP) Private Limited	50	2.54
	Total	2000	

- iv. The Respondent No. 2- Acme Solar formed two project companies namely Acme Phalodi Solar Energy Private Limited (hereinafter 'Acme Phalodi') and Acme Raisar Solar Energy Private Ltd. (Hereinafter 'Acme Raisar') for implementation of 300MW Solar Power Project each (aggregating to 600MW).
- v. The following Solar Power Projects have been identified for supply of 100MW Solar Power to TPDDL:
- a. Power Project of Acme Phalodi being established in the State of Rajasthan under the PPA dated 06.12.2018 executed between SECI and Acme Phalodi; and
 - b. Power Project of Acme Raisar being established in the State of Rajasthan under the PPA dated 06.12.2018 executed between SECI and Acme Raisar.
- vi. The Scheduled Commissioning Date of the power projects of Acme Phalodi and Acme Raisar has been extended till "Date which is 30 days after the date of judgement by Hon'ble Supreme Court in the IA filed by MNRE in the Great Indian Bustard Case" in terms of Office Memorandum dated 03.02.2022 of Ministry of New and Renewable Energy (MNRE), Government of India. Till date, the Hon'ble Supreme Court has not passed the Judgement in the IA filed by MNRE in GIB case.

- vii. The above identification of supply of 100MW solar power from the power projects of ACME Phalodi and ACME Raisar to TPDDL is consistent with the mapping of the power projects to the buying utilities (TPDDL and other DISCOMs) based on the Long-Term Open Access Availability to the inter-state transmission system from the place of generation to the State Periphery of the respective Buying Utility. The decision of such mapping and identification of SPDs vis a vis the Buying Utilities is decided in coordination with the PGCIL
- viii. The Hon'ble CERC in the decision dated 28.02.2020 passed in Petition No. 187/AT/2019 along with IA No. 86/2019 filed under Section 63 of the Electricity Act for adoption of tariff for ISTS Tranche-I Solar Scheme, under which the power is being sold to the TPDDL in terms of PSA, has adopted tariff of the individual projects of each generator (bidder) selected in pursuance of the Competitive Bidding of the above scheme. The Central Commission has not approved the pooled tariff/Weighted Average Tariff.
- ix. The aspects namely the applicable tariff and trading margin stands decided by the Central Commission in terms of (a) adoption of Tariff under Section 63 read with Section 79(1)(b) of the Electricity Act, 2003; and (b) the trading margin being also in terms of Regulations 8(1)(d) of Trading License Regulations, 2020 in exercise of Section 178 of Electricity Act, 2003.
- x. The nature of the transactions involved in the present matter is inter-state operations. The power will be supplied from Solar Power Projects in the State of Rajasthan for sale and consumption of Solar Power in the State of Delhi. Accordingly, the PPA and PSA will be governed by Section 79(1)(b) of the Electricity Act, there being a composite scheme for generation and sale in more than one State as settled by the decision of Hon'ble Supreme Court in Energy Watchdog case vs. Central Electricity Regulatory Commission & Ors. (2017) 14 SCC 80.
- xi. TPDDL had filed Petition No. 25 of 2019 before this Commission seeking approval of PSA dated 06.09.2018 executed between SECI and TPDDL.
- xii. TPDDL had filed Petition No. 65 of 2019 before this Commission seeking approval of PSA dated 26.06.2019 executed between SECI and TPDDL under ISTS Tranche-III Solar scheme. The Commission vide its Order dated 31.12.2020 had disposed of the Petition No. 65 of 2019 in the matter of TPDDL Vs. SECI with following direction. The relevant part of the order is extracted below:

“24. In view of the aforesaid discussions, a Trading Margin of 2 paise/kWh is allowed to SECI; and the PSA dated 26/06/2019 is approved subject to the condition that the applicable tariff shall be as approved by CERC with a trading margin of 2 paise/kWh. Consequently, the clauses of Article 1 of the PSA related to applicable Tariff shall be modified accordingly. It is also held that the Order dated 20/11/2019 of CERC has bearing in respect of Tariff for procurement of solar power for which the Petitioner TPDDL has entered into PSAs with SECI. Therefore, the tariff as approved by CERC with a trading margin of 2 paise/kWh shall be applicable also to the PSAs approved by this Commission vide Orders dated 01.03.2019 in Petitions No. 24 of 2019 and 25 of 2019.”

The Hon'ble Tribunal vide Judgement dated 02.07.2021 passed in Appeal No. 52/2021 has set aside the above Order dated 31.12.2020 of the Commission to the extent Trading Margin of Rs. 0.07/kWh agreed by the parties was reduced.

4. SECI and TPDDL have proposed to execute the Supplementary PSA, inter-alia, providing as under:

.....

AND WHEREAS based on the mapping of the Solar Power Developers with the respective Buying Entities for optimum utilization of the transmission resources was undertaken and confirmed between SECI and Powergrid Corporation of India Limited (Powergrid) as per letters dated 21.08.2018 and 05.10.2018 which are appended hereto this Supplemental Agreement and duly initialled between the parties.

AND WHEREAS in terms of the above, the Solar Power Projects identified for sale of electricity to SECI for onward sale of electricity to the Buying Utilities on back to back basis have been identified as under;

S.No.	Name of the SPD	Project Capacity (MW)	Project Location	Proposed interconnection point	Proposed mapping of the power (MW)
1.	ACME Solar Holding Limited	600	Dist: Jodhpur Rajasthan	400/220Kv Bhadla PGCIL (220 kV level)	Delhi -600 BRPL-400 TPDDL-100 BYPL-100
2.	Shapoorji Pallonji infrastructure Capital Company Pvt. Ltd.	250	Dist: Tuticorin, Tamil Nadu	400/230Kv (new)Vandanam Village S/S Tuticorin (230 kV level)	(Jharkhand 250) JBVNL-250

3.	Hero Solar Energy Pvt. Ltd.	250	Dist: Jodhpur Rajasthan	400/220Kv Bhadla PGCIL (220 kV level)	(Jharkhand 250) JBVNL-250
4.	Mahindra Susten Pvt. Ltd.	250	Dist: Jodhpur Rajasthan	765/400/220kV Bhadla PGCIL	(Chattisgarh-250) CSPDCL-250
5.	Azure Power India Pvt. Ltd.	600	Dist: Jodhpur/Bikaner Rajasthan	765/400/220kV Bhadla/Bikaner S/S	(Jharkhand-200) JBVNL-200 (Odisha-300) GRIDCO-300 (Haryana-100) HPPC-100
6.	Mahoba Solar (UP) Pvt. Ltd.	50	Rajasthan	765/400/220kV Rajasthan (220kV level)	(Delhi-50) BYPL -50

AND WHEREAS the Central Electricity Regulatory Commission by order dated 28.02.2020 in IA No. 86/2019 in Petition No. 187/AT/2019 has adopted the individual tariff discovered for the above identified Solar Developers through transparent Competitive Bidding Process under ISTS Connected Solar Tranche-I Scheme.

AND WHEREAS SECI by its letter No SECI/PT/TPDDL/ISTS Solar & Wind/Tariff/2020/38462 dated 18.08.2020 has communicated to TPDDL of the above individual tariff of Solar Power Developers plus the trading margin of Rs. 0.07/kWh applicable for sale to TPDDL.

AND WHEREAS the Parties are desirous of executing this Supplemental Agreement incorporating certain terms and conditions agreed to between the parties:

1.0 The Article 5 and 6 of the PSA dated 06.09.2018 shall stand substituted as under:

5. ARTICLE 5: APPLICABLE TARIFF

5.1.1 From SCD and subject to the provision of Article 6.7, the Buying Entity namely TPDDL shall pay the individual tariff as specified in Schedule-1 to this Supplemental Agreement of the project from where the supply of electricity is sold by SECI to TPDDL and in addition to the same a trading margin of Rs. 0.07 per kWh for the entire term of this agreement.

5.1.2 The Buying Entity namely TPDDL shall make the Tariff payments to SECI as per Schedule-1 plus trading margin of Rs. 0.07 per kWh (Seven paisa per kWh) upon Commissioning of the respective projects for the term of this Agreement for the energy made available by SECI to TPDDL as per the provisions of this Agreement.

ARTICLE 6 : BILLING AND PAYMENT

6.8 : Renewable Purchase Obligation

6.8.3 Buying Entity, in any Contract Year shall not be obliged to purchase any additional energy from the SECI/SPDs beyond 289.278 Million kWh (MUs). If for any Contract year, it is found that the SPDs have not been able to generate minimum energy of 223.533 Million kWh (MUs) till the end of 10 years from SCD and 210.384 Million kWh (MU) for the rest of the term of the Agreement, as per the PPA signed with SECI, on account of reasons solely attributable to the SPD. The non-compliance by the SPD shall make the SPD liable to pay the compensation and shall duly pay such compensation to the SECI to enable the SECI to remit the amount to the Buying Utility. The lower limit will however be relaxable by SECI to the extent of grid non-availability for evacuation which is beyond the control of the SPD (as certified by the SLDC/RLDC). The amount of such compensation shall be as determined by the Appropriate Commission/Authority, and such compensation shall ensure the Buying Entity is offset for all potential costs associated with low generation and supply of power under the PSA. However, the minimum compensation payable to the SECI by the SPD shall be 25% (Twenty-five percent) of the cost of this shortfall in energy terms, calculated at the PPA tariff, which shall in turn, be remitted to the Buying Utility upon the same being received from the SPD. The compensation shall not be applicable in the event of force majeure, identified under the respective PPAs between the SPDs and SECI affecting the supply of power by the SPDs.

2.0 The Schedule-1 of the PSA shall stand substituted as under:

14. SCHEDULE 1: SECI-SPD PPA(\$)

14.1 List of SECI – PSD PPAs

S.No .	Name of Bidder	Project Capacity (MW)	Applicable Tariff as per SECI SPD PPA (Rs./kWh)	Quantum allocated to TPDDL for Resale (MW)	Maximum Energy (Million kWh)	Minimum Energy (Million kWh) till 10 years from SCD	Minimum Energy (Million kWh) beyond 10 years from SCD
1.	ACME Solar Holdings Limited	600	2.44	100	289.278	223.533	210.384
			Total	100	289.278	223.533	210.384

- 3.0 *Subject to the above substitution, the parties agree that all the terms and conditions contained in the PSA dated 06.09.2018 shall continue to be effective and enforceable as before.*
- 4.0 *The terms of this Supplemental Agreement shall be read as a part of the PSA dated 06.09.2018 entered into between the parties for all intent and purposes.*
- xii. In the Order dated 28.02.2020 passed by the Central Commission in Petition No. 187/AT/2019 along with IA No. 86/2019 in respect of Tranche-I Solar Scheme (relevant for the present case), it has been held that Regulation 8 (1) (d) of the Central Regulatory Commission (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2020 notified by Central Commission gives choice to the contracting parties to mutually agree on Trading Margin. The relevant provisions are as under:
- “Applicable of Trading Margin:***
- Trading margin shall be applicable to the following transactions undertaken by the Trading Licensee:*
-
- (b) Transactions under long term contracts (where period of the contract of the Trading Licensee with either the seller or the buyer or both is more than one year);*
-
- 8. Trading Margin***
- (1) Trading Licensee shall comply with the trading margin as given below:*
-
- (d) For transaction under long term contracts, the trading margin shall be decided mutually between the Trading Licensee and the seller:”*
- xiii. Accordingly, the Trading Margin of Rs. 0.07/kWh as mutually agreed to between TPDDL and SECI in the PSA dated 06.09.2018 read with SPSA (to be executed) is consistent with Regulation 8(1)(d) of Trading License Regulations, 2020.
5. Further, the matter was listed for hearing on 05.04.2024 wherein the Commission granted liberty to the Petitioner to place on record the following subsequent developments that happened after filing of the instant Petition. The Petitioner filed an Additional Affidavit dated 26.04.2024 to place on record the following:
- i. On 12.04.2024 Petitioner, wrote to Respondent no. 1 wherein it stated that as per Article 6.8.3 of the Original PSA maximum energy for any contract year is provided as 274.08 Mus and minimum energy is provided as 211.79

Mus till the end of ten years from Scheduled Commissioning Date and 199.33 Mus for the rest of term of the Original PSA. Further, Article No. 5.1.5 of the Original PSA stipulates that any excess energy beyond the maximum MUs in any contract year is to be billed at 75% of the agreed tariff. However, through the SPSA, the maximum energy for any contract year is provided as 289.278 MUs, and the minimum energy is provided as 223.533 Mus till end of ten years from the Scheduled Commissioning Date and 210.384 Mus thereafter for the rest of the term of the Original PSA. In view of the same, Petitioner sought clarification on the amendment sought to be made in Article 6.8.3 of the Original PSA.

- ii. Respondent No. 1 wrote to the Petitioner on 15.04.2024 wherein it clarified that as per the Original PSA executed between the Petitioner and Respondent, upon commissioning of awarded capacity under the RfS, the applicable tariff was the weighted average tariff of all the developers plus the trading margin of Rs. 0.07/kWh. Similarly, the maximum and minimum energy were taken as the average of the Solar Power Developers (SPDs) awarded in the scheme. However, the Hon'ble CERC vide its order dated 28.08.2020 in Petition No. 187/AT/2019 adopted individual tariff discovered for the SPDs selected through a transparent bidding process under ISTS connected Solar Tranche-I Scheme. Thus, the applicable tariff will be the individual tariff of the SPD plus the trading margin of Rs. 0.07/kWh. Similarly, the individual maximum and minimum energies of the individual SPDs will be considered in Article 6.8.3 of PSA.
- iii. On 15.04.2024, Respondent No. 1 wrote to the Petitioner wherein it furnished details pertaining to M/s Acme Phalodi as well as M/s Acme Raisar, stating therein that 50MW from each project is mapped with the Petitioner despite the fact that only ACME Phalodi Plant was stated to have been mapped with the Petitioner for 100MW. This discrepancy was highlighted by the Petitioner on 16.04.2024. Pursuant to which, the Respondent furnished the revised energy calculation for the Petitioner. The details of the project and the petitioner's share are as under:

Sl. No.	Particulars	Capacity	MAX Mus	Min Mus (10 years)	MIN Mus (After 10 years)
1.	M/s Acme Phalodi	300	867.834	670.599	631.152
	Total	300	867.834	670.599	631.152
	TPDDL Share (100 MW from Phalodi)	100	289.278	223.533	210.384

Commission's Analysis:

6. The Petitioner TPDDL, u/s Section 86(1)(b) of Electricity Act, 2003 in terms of DERC Comprehensive (Conduct of Business) Regulations, 2001 has filed the instant Petition seeking approval of the Supplementary Power Sale Agreement (SPSA) to be executed with the Respondent No.1, SECI.
7. The PPA signed between SECI and ACME Solar and as also the PSA signed between the Petitioner and SECI are back to back arrangement/contracts. The Hon'ble CERC in the decision dated 28.02.2020 in Petition No. 187/AT/2019 along with IA No. 86/2019 filed under Section of the Electricity Act for the adoption of tariff for ISTS Tranche-I Solar Scheme, under which the power is being sold to the TPDDL in terms of PSA, has adopted the tariff of the individual project of each Generator (bidder).
8. The Commission vide its Order dated 31.12.2020 had disposed of IA No. 1 of 2020 in Petition No. 65 of 2019 in the matter of TPDDL Vs. SECI with the following directions. The relevant part of the order is extracted below:

"24. In view of the aforesaid discussions, a Trading Margin of 2 paise/kWh is allowed to SECI; and the PSA dated 26/06/2019 is approved subject to the condition that the applicable tariff shall be as approved by CERC with a trading margin of 2 paise/kWh. Consequently, the clauses of Article 1 of the PSA related to applicable Tariff shall be modified accordingly. It is also held that the Order dated 20/11/2019 of CERC has bearing in respect of Tariff for procurement of solar power for which the Petitioner TPDDL has entered into PSAs with SECI. Therefore, the Tariff as approved by CERC with a trading margin of 2 paise/kWh shall be applicable also to the PSAs approved by this Commission vide Orders dated 01/03/2019 in Petitions No. 24 of 2019 and 25 of 2019.

The Petition is disposed of accordingly with the direction to the Petitioner to submit duly signed copy of PSAs modified as indicated above to the Commission within a period of one month."
9. Thereafter, SECI filed an Appeal No. 52 of 2021 before the Hon'ble APTEL against the Commission's order dated 31.12.2020 in Petition No. 65 of 2019 whereby the Commission had reduced the Trading Margin in respect of the Appellant from Rs. 0.07/unit to Rs. 0.02/unit. On 02.07.2021, Hon'ble APTEL has passed its judgement in the abovementioned appeal and set-aside the order dated 31.12.2020 passed

by this Commission with respect to lowering the Trading Margin and restored the trading margin to 7paise/kWh.

10. The Commission filed Civil Appeal bearing No. 6310 of 2021 against the Hon'ble APTEL's Judgement dated 02.07.2021 in Appeal No. 52 of 2021 before the Hon'ble Supreme Court. The Respondent No 1 (SECI), filed two IAs bearing Nos. 102603/2022 and 77402/2023 praying that the Petitions on the subject pending before the Commission may be disposed of subject to the final outcome of the instant Civil Appeal filed by the Commission. The said IAs were disposed of on 04.05.2023 by the Hon'ble Supreme Court with the following directions:

"Having heard learned counsel for the respective parties and in the facts and circumstances of the case, we direct the appellant- Delhi Electricity Regulatory Commission to decide and dispose of the petitions filed before it for approval of procurement of renewable power in other schemes involving SECI, as stated in para 9 of the present Application, in accordance with law and on its own merits, however, subject to the ultimate outcome of the present proceedings. IAs stand disposed of."

11. Accordingly, the Commission listed the matter on 30.05.2023, 13.07.2023, 05.04.2024 and 20.05.2024 wherein, the order was reserved and also Respondent no. 2 stated that they do not wish to file a Reply to the Petition. Also, the Petitioner vide its Affidavit dated 26.04.2024 had placed certain subsequent developments which states that as per clause no. 5.1.5 of the original PSA, any excess energy beyond the maximum MUs in any contract year is to be billed at 75% of agreed tariff and the Petitioner sought certain clarifications from the Respondent No. 1 w.r.t the reason for increase of maximum and minimum energy of the plant. SECI vide email dated 15.04.2024 replied that CERC vide Order dated 28.02.2020 adopted tariff and maximum & Minimum energy for individual SPD instead of weighted average of all the developers awarded in the scheme. Thus, SECI marked tariff for each DISCOM with linked SPD plus the Trading Margin. Similarly, maximum and minimum energy of the individual SPD shall be considered in Article 6.8.3 of the PSA.
12. Further, it has been submitted by the Respondent No. 1, SECI, vide its Affidavit dated 27.07.2023, that the Scheduled Commissioning Date of the power project of Acme Phalodi has been extended till "Date which is 30 days after the date of judgement by Hon'ble Supreme Court in the IA filed by MNRE in the Great Indian Bustard Case" and Hon'ble Supreme Court is yet to pass any Order in the said case and hence the project is yet to be commissioned.

13. In view of the foregoing discussion and also the fact that Hon'ble APTEL vide its Judgement dated 02.07.2021 in Appeal No. 52 of 2021 has set aside the Order of the Commission dated 31.12.2020 in IA No. 1 of 2020 in Petition No. 65 of 2019 wherein the Commission had reduced the trading margin from Rs. 0.07/kWh to Rs. 0.02/kWh, the Commission grants approval to the Supplementary PSA to be executed between Petitioner and the SECI for 100 MW power from ACME Phalodi at a total tariff of Rs.2.51/kWh viz. tariff of Rs. 2.44/kWh plus Rs. 0.07/kWh as trading margin, subject to the commissioning of the above linked project. However, the trading margin of Rs. 0.07/kWh shall be subject to the final outcome in the Civil Appeal No. 6310 of 2021, as directed by the Hon'ble Supreme Court of India vide its Order dated 04.05.2023.
14. Ordered Accordingly.

Sd/-
(Justice (Retd.) Jayant Nath)
Chairperson