



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

No. F.11(1893)/DERC/2021-22/7154

**Petition No. 41/2021**

**In the matter of:**      **Petition under section 86(1)(b) read with Section 63 of the Electricity Act, 2003 seeking for the approval of the Power Sale Agreement dated 20.07.2021 in terms of the DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012 read with DERC Comprehensive (Conduct of Business) Regulations, 2001.**

**BSES Rajdhani Power Limited**

**....Petitioner**

**Vs.**

**1. Solar Energy Corporation of India**

**2. Avikiran Surya India Pvt. Ltd.**

**...Respondents**

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

**Appearance:**

Mr. Buddy A Ranganadhan, Advocate, BRPL  
Ms. Anushree Bardhan, Advocate, SECI

**ORDER**

(Date of Order: 08.01.2024)

1. The instant Petition has been filed by BSES Rajdhani Power Ltd. (BRPL) under Section 86(1)(b) and Section 63 of the Electricity Act, 2003, read with Regulations 27(iii) and 45(iii) of the DERC Comprehensive (Conduct of the Business) Regulations, 2001 (Business Regulations) and in compliance with directions contained in Communication dated 19.07.2021 issued by the Commission, seeking:
  - a. Approval of the Power Sale Agreement (PSA) dated 20.07.2021 executed between the Petitioner and the Solar Energy Corporation of India (SECI) for procurement of 210 MW power from SECI's 2000 MW Solar PV Power Projects (ISTS IX) ("ISTS-IX Project")
  - b. Adoption of Tariff of Rs. 2.37/kWh discovered in the e-Reverse Auction ('e-RA') process and Trading Margin of Rs. 0.07/kWh to be charged by SECI for SECI for the ISTS-IX Project.

**Submissions by the Petitioner**

2. The petitioner has submitted that:
- i. The Commission issued the *DERC (Renewable Purchase Obligations and Renewable Energy Certificate Framework Implementation) Regulations, 2012* ("RPO Regulations") for specifying the manner of procurement of Renewable Energy ("RE") power by a distribution licensee, for minimum Renewable Purchase Obligation ("RPO") to be fulfilled by a distribution licensee, RE pricing, procurement of Renewable Energy Certificates ("REC's"), etc. The Regulation 4(2) of the RPO Regulations *inter- alia* provides that RPO targets to be met by either (i) by own generation (ii) purchase from other sources; or (iii) purchase of Renewable Energy Certificates (hereinafter "RECs") or by way of a combination of any of the above methods. However, any long-term Power Purchase Agreement ("PPA") in order to meet the RPO requirements shall be made only with the approval of the Commission.
  - ii. On 03.08.2017, the Ministry of Power ("MOP") issued the Guidelines for Tariff Based Competitive Bidding Process for procurement of power generated from the Grid connected Solar PV Power Project" ("MOP Guidelines"). The said MOP Guidelines relate to the procurement of Solar power through a transparent bidding process under Section 63 of the Electricity Act, 2003 for long-term procurement of electricity, having size of 5 MW and above, through a transparent method of competitive bidding process.
  - iii. On 31.08.2017, the Commission issued the *DERC Business Plan Regulations, 2017* ("Business Plan Regulations, 2017") which inter-alia under Regulation 27 provided for RPO targets for the Petitioner for Control Period- FY 2017-18 to FY 2019-20, as under:

*Table 16: Targets for Renewable Purchase Obligation*

S.No.	Distribution Licensee	2017-18	2018-19	2019-20
1	Solar Target (Minimum)	2.75%	4.75%	6.75%
2	Total	11.50%	14.25%	17.00%

- iv. On 27.12.2019, the Commission issued the *DERC Business Plan Regulations, 2019* ("Business Plan Regulations, 2019"), which inter-alia under Regulation 27 provided for RPO targets for the Petitioner for Control Period FY 2020-21 to FY 2022-23, as under:

Table 16: Targets for Renewable Purchase Obligation

Sr. No.	Distribution License	2020-21	2021-22	2022-23
1	Non Solar target	10.25%	10.25%	10.50%
2	Solar target	7.25%	8.75%	10.50%
3	Total	17.50%	19.00%	21.00%

- v. On 15.01.2020, the Ministry of Power, Government of India ("MoP") issued the Order for waiver of inter-state Transmission charges and losses on transmission of electricity generated from solar and wind sources of energy. By the said Order, MoP held that no inter-state transmission charges will be levied on transmission of the electricity generated from the power plants for a period of 25 years from the date of commissioning of the power plants which will meet the requirements as detailed in the said Order.
- vi. On 20.03.2020, SECI in accordance with the terms of the MoP Guidelines dated 03.08.2017 and the subsequent Amendments and clarifications in the said MoP Guidelines, floated the Request for Selection ("RFS") for inviting proposals for setting up of ISTS - IX Project i.e., of 2000 MW ISTS-Connected Solar PV Power under the Tariff-based Competitive Bidding process. The said RFS inter alia stated that:
  - (a) SECI shall enter into PPA with the Solar Power Developers ("SPDs/Generating Stations") from the date as per the provisions of PPA.
  - (b) The Scheduled Commissioning Date ("SCD") for commissioning of the full capacity of the Project shall be the date as on 18 months from the Effective Date of the PPA. (for e.g. if Effective Date of the PPA is 07.04.2020, then SCD shall be 07.10.2021).
  - (c) For each Project, the minimum Project capacity shall be 50 MW and the maximum capacity shall be 300 MW. Bidders shall submit their bid by offering a single tariff for all the Projects quoted for, which shall be applicable for the term of the PPA.
  - (d) SECI shall be an intermediary nodal agency for procurement of power generated by the SPD and sale of such power to the Buying Entities entirely on back-to-back basis based on due performance by the SPD

as well as the Buying entities.

(e) The Trading Margin charged by SECI shall be Rs. 0.07/kWh;

(f) As per the RFS document, the end date of the Bid Submission by the Bidders was 23.06.2020.

vii. On 09.03.2021, MNRE by its Office Memorandum bearing No. 283/3/2018-Grid Solar had:

(a) Imposed the Basic Customs Duty ("BCD") on solar cells and modules (without grandfathering of bid out projects) with effect from 01.04.2022. Rates of the BCD as mentioned by MNRE in the said Office Memorandum is as under:

Items	CTH	Upto 31.03.2022	From 01.04.2022
Solar Module	8541401	0%	40%
Solar Cell	8541401	0%	25%

(b) Directed all RE implementing agencies and stakeholder to factor the aforesaid BCD Imposition on solar modules and solar cell during the bidding process/documents wherein the last date of the bid submission is subsequent to the said Office Memorandum.

viii. On 14.05.2021, SECI by a Communication had:

(a) Offered the procurement of power from ISTS -IX Project to the Petitioner and conveyed that the effective tariff discovered through reverse auction (e-RA) (on 30.06.2020) for signing of the at the discovered tariff of Rs 2.37/kWh and Rs. 0.7/kWh for the trading margin for SECI.

(b) Provided the details of the Successful Bidders/HBDs which are listed as under:

Bidder's Name/HBDs	Quantity (MW)	Tariff Discovered (INR)
Avikiran Surya India Private Limited	300	2.37
AMP Energy Green Private Limited	100	2.37
Eden Renewable Bercy (P) Ltd	300	2.37
IB Vogt Singapore Pte Ltd	300	2.37

(i) Scheduled Commercial Date of the aforementioned Project is

Eighteen (18) months from the effective date of signing of the PPA. In case the Petitioner agreed to sign this Agreement by 31.05.2021, then commissioning can be scheduled before Feb. 2023.

- (ii) Change in Law: SECI has considered Petitioner's request to ensure that there is no impact on tariff on imposition of BCD on solar modules. However, HPDs will be required to accept the same under PPA.
  - (iii) The Petitioner has to take the Commission's approval before signing of PSA with SECI.
  - (iv) Sought the consent of the Petitioner for procurement of power from ISTS-IX Project and provided the Draft PSA& PPA.
- ix. On 08.06.2021, SECI communicated to the Petitioner that:
- (a) The impact of BCD was discussed with the generators and some of the developers have indicated that they would be able to absorb the impact of BCD provided the PPA and PSA are signed by end of June 2021.
  - (b) The Petitioner is required to provide its consent for procurement of power from ISTS -IX Project
- x. Meanwhile on 02.07.2021, the Hon'ble Tribunal by Judgment in Appeal No. 52 of 2021 titled "SECI v. TPDDL" and batch matters was pleased to:
- (a) Vacate the Order dated 31.12.2020 passed by the Commission in Petition No. 65 of 2019, to the extent that the trading margin of Rs. 0.07/ kWh as agreed by the parties was reduced.
  - (b) Hold that the agreed stipulation as to the trading margin shall bind the back-to-back contractual arrangement between the parties entered upon by the subject PPA/PSAs and that subject to this modification, the approval granted by the Commission in its Order dated 31.12.2020 under Section 86(1)(b) of Electricity Act shall prevail and regulate the conduct of the parties hereinafter, as under:

*"129. We allow the first captioned appeal (Appeal no. 52 of 2021) and set aside and vacate the order dated 31.12.2020 passed by DERC in Petition (no.65 of 2019) filed by second respondent ("TPDDL") to the extent thereby the trading margin of 7 paise/ kWh agreed by the parties was reduced. For removal of doubts, it is made clear that the said agreed stipulation as to the trading*

*margin shall bind the back- to-back contractual arrangement between the parties entered upon by the subject PPA/PSAs and that subject to this modification the approval granted by the State Commission by the impugned order under Section 86(1)(b) of Electricity Act shall prevail and regulate the conduct of the parties hereinafter."*

- xi. On 13.07.2021, SECI communicated to the Petitioner and inter alia stated that:
- (a) Effect of BCD has been discussed with developers and some developers have indicated that they will be able to absorb the effect of the BCD Notice dated 09.03.2021
  - (b) As per the Letter received by SECI, developers have mentioned that  
*"With a view to facilitate the prompt execution of the PPAs and PSAs by SECI/DISCOMs, Developers are willing to provide appropriate waiver to SECI/ DISCOMs viz. their respective rights to claim the compensation of the impact of the said BCD Notification on the project cost vide MNRE order No. 283/ 3/ 2018-GRID SOLAR dated 09.03.2021. In the event that post submission of this letter, if there is any revision / modification to the present BCD notification or any new notification on the same subject- matter, resulting in any further increase of BCD, Developers shall remain entitled to exercise rights for any claims under Change In Law of the PSAs, viz such revision/modification or any new notification".*
  - (c) PPAs will be signed after signing of PSA and accordingly requested the Petitioner to sign the PSA by 20.07.2021 to avail the benefits of BCD waive off offered by the Developers.
- xii. On 14.07.2021, the Petitioner by its Communication to the Commission sought the *in-principle* approval of the Commission for signing of PSA with SECI for procurement of 210 MW power from the said ISTS-IX Project.
- xiii. On 19.07.2021, the Commission was pleased to grant the "*in- principle*" approval for 210 MW to the Petitioner for procurement of power from ISTS -IX Project and inter-alia stated that:
- (a) the matter related to Trading Margin will be dealt as deemed fit by the Commission.
  - (b) Directed the Petitioner to (i) file a Petition for approval of PSA and (ii) submit the status of the *in-principle* approval within Fifteen (15) working days before the Commission, as under:

*“(2) After analyzing the matter and considering the demand-supply position, cost • benefit analysis, compliance of RPO targets etc., I am hereby directed to communicate that in order to obviate any delay on the account of grim situation of COVID-19, the Commission grants "In-Principle" approval for signing draft Power Sale Agreement for 210 MW Solar Power through SECI. The matter related to Trading Margin will be dealt as deemed fit by the Commission.*

*(3) Further, BRPL is directed to file a Petition for approval of PSA and submit the status of this in-principle approval within 15 working days.*

*(4) This issues with the approval of the Commission.”*

xiv. In view of above and as per the “in principle” approval given by the Commission, on 19.07.2021, the Petitioner and SECI executed the PSA on 20.07.2021 for procurement of 210 MW power from ISTS -IX Project.

xv. PPA (entered into between SECI and the Solar Power Developer) and the PSA (entered into between the Petitioner and SECI) are back-to-back arrangements/contracts and since the beneficiary of the same (i.e., the Petitioner) is within the jurisdiction of the Commission. In this regard, the Petitioner refers to and relies upon the decision of the Hon'ble Tribunal's Judgment dated 31.08.2016 passed in Appeal No. 168 of 2014 (and batch) PTC v. UERC & Ors. wherein the Hon'ble Tribunal was pleased to hold that:

*“16....This Tribunal has taken a view that so long as there is nexus between the first sale and the second sale, or they are back to back arrangements, the State Commission where the distribution licensee is located would have jurisdiction over the transactions.”*

xvi. The Petitioner submits that not only is there a clear and cogent co-relation between the PPA and the PSA, the same are in fact back-to-back arrangements and thus, the Commission has the jurisdiction since the distribution licensee (i.e., the Petitioner) is within the jurisdiction of the Commission.

xvii. Further, the Commission in its earlier Order dated 11.01.2019 passed in Petition No. 04/2019 has approved the Power Sale Agreement dated 21.07.2018 signed between the Petitioner and PTC India Limited for procurement of 100 MW Wind Power Energy at Rs. 3.46/kWh (which included the trading margin of Rs. 0.7 kWh for PTC India Limited). Accordingly, the Commission may please to approve the present PSA dated 20.07.2018, considering that the guidelines issued under the said MNRE Guidelines are strictly adhered to in the said PSA signed between the Petitioner and SECI.

### **Submissions by the Respondent**

5. The Respondent No. 1, (SECI) vide Affidavit dated 26.07.2023, have submitted the following:

- a) The present Petition has been filed by the Petitioner for approval for procurement of 210 MW Solar Power from SECI under Power Sale Agreement dated 20.07.2021.
- b) Respondent No. 2 Avikiran Surya India Private Limited (hereinafter Avikiran) was selected for establishing 300 MW Solar Power Project and generation and supply of power therefrom in pursuance of Competitive Bidding Process undertaken by SECI. Avikiran designated Thar Surya 1 Private Limited (hereinafter 'Thar Surya') for implementation of the Solar Power project. On 20.08.2021, Thar Surya and SECI entered into the Power Purchase Agreement (PPA) dated 20.08.2021 for generation and sale of electricity from 300 MW Solar Power Project to be established by Thar Surya.
- c) The Power Project established by Thar Surya under the PPA has been identified for supply of 210 MW Solar Power to the Petitioner under the PSA.
- d) Unit Commercial Operation Date (UCOD)/Commercial Operation Date (COD) of 300 MW Power Project of Thar Surya is as under
  - (i) 23.03.2022 - 54 MW
  - (ii) 23.06.2022 - 54 MW
  - (iii) 10.08.2022 - 54 MW
  - (iv) 11.10.2022 - 74 MW
  - (v) 24.11.2022 - 64 MW
- e) SECI is procuring power from the power project of Thar Surya under the PPA for resale of the power to the petitioner under the PSA. In terms of the above, the power flow to the Petitioner has commenced and is continuing under the PSA.
- f) The Hon'ble Central Electricity Regulatory Commission vide its Order dated 08.03.2022 passed in petition No. 211/AT/2021 has adopted tariff of the individual project of each generator (bidder) including tariff of Avikiran selected in pursuance of the Competitive Bidding for ISTS Tranche-IX Solar Scheme.
- g) The fact and circumstances, the Commission may be pleased to approve the procurement of 210 MW Solar Power at tariff of Rs. 2.37/kWh plus Trading Margin of Rs. 0.07/kWh by the Petitioner from SECI under the PSA dated 20.07.2021.



### **Commission Analysis**

6. The Petitioner BRPL, in terms of DERC (Renewable Purchase Obligations and Renewable Energy Certificate Framework Implementation) Regulations, 2012 read with DERC Comprehensive Conduct of Business Regulations, 2001 has filed the instant Petition seeking approval of the PSA dated 20.07.2021 executed between BRPL and SECI for purchase of 210 MW Solar Power on long term basis by BRPL. As per the terms of PSA, the Petitioner shall pay the fixed tariff of Rs 2.37/kWh plus trading margin of Rs 0.07/kWh of the procurement of 210 MW Solar Power on long term basis. The Power Project established by Thar Surya under the PPA has been identified for supply of 210 MW Solar Power to the Petitioner under the PSA.
7. On 19<sup>th</sup> July, 2021, the Commission had granted an '*in-principle*' for signing of PSA with SECI for procurement of power from Respondent No. 1.
8. The PPA signed between SECI and Respondent No. 2 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 08.03.2022 in Petition No.211/AT/2021 has adopted the tariff of the individual project of each Generator (bidder) including tariff of Avikaran selected in pursuance of the Competitive Bidding for ISTS Tranche-IX Solar Scheme.
9. As per PSA dated 20.07.2021 the tariff payable by BRPL is as follows;

S. No.	Name of the Solar Power Developer	Quantum allocated to BRPL for resale (MW)	Applicable tariff as per SECI-SPD PPA (Rs. /kWh)	Trading Margin (Rs. /kWh)	Total Applicable Tariff payable under PSA to SECI (Rs. /kWh)
1.	Avikaran Surya India Pvt. Ltd.	210	2.37	0.07	2.44

10. 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 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."*

11. 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.

12. 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."*

13. Accordingly, the Commission listed the matter on 06.06.2023, 13.07.2023, and 29.11.2023 wherein, the Commission admitted the Petition, directed the parties to submit affidavits in support of their oral contentions that the power is currently flowing from the generators, file short written submissions and reserved the Order. The Petitioner has submitted the written submissions on 06.12.2023.

14. The Petitioner submitted that the terms and conditions of PSA dated 20.07.2021 between SECI and the Petitioner is intended to meet the Renewable Purchase Obligation of the applicant and the fact that tariff is discovered through competitive bidding and are composite in nature, therefore, the tariff as held in Petition No. 211/AT/2021 by the Hon'ble CERC would be applicable in the instant PSA also.
15. 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 PSA dated 20.07.2021 for the procurement of 210 MW Solar Power between Petitioner and the SECI is hereby approved at a total tariff of Rs.2.44/kWh viz. tariff of Rs. 2.37/kWh plus Rs. 0.07/kWh as trading margin as per Hon'ble APTEL Judgement dated 02.07.2021. 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.
16. Ordered Accordingly.

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