



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

No. F.11(1849)/DERC/2020-21/7033

**Petition No. 18/2021**

**In the matter of :** Petition under Section 86(1)(b) read with Section 63 of the Electricity Act, 2003 seeking approval of the Power Sale Agreement dated 17<sup>th</sup> June, 2019 in terms of DERC (Renewable Purchase Obligations and Renewable Energy Certificate Framework Implementation) Regulations, 2012 read with DERC Comprehensive Conduct of Business Regulations, 2001.

**BSES Yamuna Power Limited**

**....Petitioner**

**Vs.**

**1. Solar Energy Corporation of India**

**2. Eden Renewable Cite Private Limited**

**...Respondents**

**Coram:**

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

**Appearance:**

1. Mr. Buddy A Ranganadhan, Adv. BYPL
2. Mr. Dushyant Manocha, Adv. BYPL
3. Ms. Anushree Bardhan, Adv. SECI

**ORDER**

(Date of Order: 17.11.2023)

1. The instant Petition has been filed by BYPL seeking approval of the Power Sale Agreement (PSA) dated 17<sup>th</sup> June, 2019 in terms of DERC (Renewable Purchase Obligations and Renewable Energy Certificate Framework Implementation) Regulations, 2012 read with DERC Comprehensive Conduct of Business Regulations, 2001:

- a. To approve the PSA dated 17<sup>th</sup> June, 2019 executed between the Petitioner and SECI.

**Petitioner Submissions**

2. The petitioner has submitted that:
  - i. The Commission has notified the DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation)

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**WEAR FACE MASK**

**WASH HANDS REGULARLY**

**MAINTAIN SOCIAL DISTANCING**

Regulations, 2012 (RPO Regulations) in terms of which, the petitioner is mandated to procure electricity from renewable sources in order to fulfill its defined Renewable Purchase Obligation (RPO). The RPO obligation further provides that an obligated entity (like the Petitioner) may meet its RPO obligation by way of its own generation or by way of purchase from other sources or by way of purchase of Renewable Energy Certificates (RECs) or by way of a combination of any of the above methods. The RPO Regulations also provide that any long-term power purchase agreement(s) shall be made only with the approval of this Commission. In this regard, Regulation 4(2) of the RPO Regulations provides as under:

*"4(2) Every obligated entity shall meet its RPO target by way of its own generation or by way of purchase from other licensee (s) /sources(s) or by way of purchase of Renewable Energy Certificate(s) or by way of combination of any of the above options. Any Long Term Power Purchase Agreements shall be made only with the prior approval of the Commission."*

- ii. In addition to the RPO Regulations, this Commission has also notified the DERC Business Plan Regulations, 2017 (hereinafter "Business Plan Regulations") which *inter alia* define the minimum percentage of renewable power to be procured by the petitioner as a percentage of total sale of power to its retail consumer in its area of supply excluding procurement of hydro power.
- iii. On 3<sup>rd</sup> August 2017, the Ministry of Power (MoP) had issued the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Projects ("MoP Guidelines"). The MoP Guidelines were formulated for procurement of Solar power through a transparent bidding process under Section 63 of the Electricity Act, 2003 for the long-term procurement of electricity through competitive bidding process.
- iv. On 10<sup>th</sup> January 2019, in compliance with the MOP Guidelines Solar Energy Corporation of India (hereinafter called "SECI") floated its Request for Selection document for setting up of 1200 MW ISTS-Connected Solar Power Projects (Tranche-III) (RfS).
- v. On 2<sup>nd</sup> March, 2019 SECI informed the Petitioner of its ability to provide to the Petitioner an amount of 150 MW of Solar power (50 MW of Solar power from M/s Eden Renewable Cite Limited). On 8<sup>th</sup> March, 2019 Petitioner confirmed to SECI for procurement of 150 MW of Solar power (50 MW of Solar power from M/s Eden Renewable Cite Limited) under 1200MW ISTS Scheme (Tranche-III).

- vi. On 20<sup>th</sup> March, 2019 SECI shared draft PSA to be signed between SECI and the Petitioner for procurement of 150MW Solar Power under 1200 MW ISTS Scheme (Tranche-III). On 10<sup>th</sup> April 2019 the Petitioner sent a letter to the Commission for approval of the PSA with SECI for procurement of 150 MW Solar Power (50 MW from M/s Eden Renewables Cite Limited).
- vii. On 17<sup>th</sup> June, 2019 the Petitioner signed a Power Sale Agreement with SECI, wherein the Petitioner, subject to approvals from the Commission, agreed to buy 150MW for Solar power from SECI. In terms of the PSA, the Petitioner agreed to purchase the power at a pooled tariff of Rs. 2.60 power kWh plus trading margin of Rs. 0.07 per kWh. On 17<sup>th</sup> July, 2019 the Commission granted *in-principle* approval for signing the PSA with SECI for procurement of 150 MW Solar Power.
- viii. On 25<sup>th</sup> June, 2019 SECI entered into a Power Purchase Agreement with a Solar Power Developer, namely, M/s Eden Renewable with a Solar Power Developer, namely M/s Eden Renewables Cite Pvt. Ltd. (hereinafter SPD) for purchase of 300 MW of Solar power from the SPD on the terms and conditions set out in the PPA.
- viii. The SECI has followed the MOP Guidelines is evident from the following tabular representation, which illustrates the manner in which the MOP Guidelines have been followed by SECI whilst conducting the bidding process:

MoP Guidelines	RfS floated by SECI
2.1.1 These Guidelines are being issued under the provisions of Section 63 of the Electricity Act, 2003 for long term procurement of electricity by the 'Procurers', from grid connected Solar PV Power Projects (Projects) having size of 5 MW and above, through competitive bidding.	<b>Clause 2.0</b> Ministry of Power (MoP) has issued "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects" vide Gazette Resolution dated 03.08.2017. These Guidelines have been issued under Section 63 of the Electricity Act, 2003 for long-term procurement of electricity by the 'Procurer(s)'. from grid-connected Solar PV Power Projects having size of 5MW and above, through competitive bidding. The RfS document has been prepared in line with the above guidelines issued by MoP dated 03.08.2017.
Clause 2(c)(ii): The Intermediary Procurer shall enter into a PPA with the Solar Power Generator and also enter into a Power Sale Agreement (PSA) with the End Procurer. The PSA shall contain the relevant provisions of the	14.1 SECI shall enter into Power Purchase Agreement (PPA) with bidders selected based on this RfS.  14.4 Back-to back Power Sale Agreements (PSAs) in respect of all

PPA on a back to back basis. The trading margin, as notified by the Appropriate Commission (or in the absence of such notification, as mutually decide between the Intermediary Procurer and the End Procurer), shall be payable by the End Procurer to the Intermediary procurer.	rights and obligation under PPA under the PPA between SPD and SECI will be executed by SECI with the Buying Entity for sale of power to buying entity.
<b>Clause 5.1 : PPA Period</b>  As the PPA period influences the tariff by determining the period over which the investment is returned to the investor/SPD, long PPA is favoured for lower tariffs. The PPA period should thus be not less than 25 (twenty-five) years from the date of the Scheduled Commissioning Date (SCD)	<b>Clause 14.1</b>  SECI shall enter into Power Purchase Agreement (PPA) with bidders selected based on this RfS..... The PPA's shall be valid for a period of 25 Years as per the provisions of the PPA....
<b>Clause 6 Bidding Process</b>  <b>6.1</b> The Procurer shall call for the bids adopting a single stage bidding process to be conducted through Electronic mode (e-bidding). The Procurers may adopt e-reverse auction if it so desires.	<b>Clause 19 Structuring of the Bid Selection process</b> 19.1 Single state, double envelope bidding followed by e-reverse auction has been envisaged under this RfS. Bidders have to submit both Techno-commercial bid and Financial bid together in response to this RfS online.
<b>Clause 7.2 Qualification requirements to be met by the Bidders.</b>  <b>Clause 7.2.1:</b> Technical Criteria  <b>Clause 7.2.2:</b> Financial Criteria	<b>Section IV Qualifying Requirements for Bidders</b>  <b>Clause B :</b> Technical Eligibility Criteria  <b>Clause C:</b> Financial Eligibility Criteria
<b>Clause 7.1: Bid Responsiveness:</b> The bid shall be evaluated only if it is responsive and satisfies conditions including inter alia: <ul style="list-style-type: none"> <li>• Bidder or any of its Affiliates is not a willful defaulter to any lender.</li> <li>• There is no major litigation pending or threatened against the bidder or any of its Affiliates which are of a nature that could cast a doubt on the ability or the suitability of the bidder to undertake the project.</li> </ul>	<b>Section 3 Clause A.8 :</b> The Bidder or any of its Affiliates should not be a willful defaulter to any lender, and that there is no major litigation pending or threatened against the Bidder or any of its Affiliates which are of a nature that could cast a doubt on the ability or the suitability of the Bidder to undertake the Project. The Bidder shall submit an undertaking to this effect.
<b>Clause 15:</b> Commercial Operation Date (COD) shall be the date on which the commissioning certificate is issued upon successful commissioning of the full capacity of the Project or the last part capacity of the Project as the case may be.	<b>Clause 17:</b> The Commercial Operation Date (COD) shall be the date of which the commissioning certificate is issued upon successful commissioning of the full capacity of the project.

The Petitioner craves leave of the Commission to refer to and rely upon the MOP Guidelines and the RfS document issued by SECI to further substantiate this submission.

- ix. The Petitioner further submits that the PSA, which is the result of the competitive bidding process, is also aligned with the RfS issued by SECI and consequently, the MOP Guidelines. This is evident from the following:

Particulars	RfS	PSA
COD	The Commercial Operation Date (COD) shall be the date on which the commissioning certificate is issued upon successful commissioning of the Project or the last part capacity of the Project as the case may be.	COD shall mean the date on which the commission certificate is issued upon successful commissioning (As per provisions of this agreement) of the project or the last part capacity of the project as the case may be.
Delivery/Metering Point	Delivery Point means the point at 220 kV or above where the power from the Solar Power Projects is injected into the identified CTU substation (including the dedicated transmission line connecting the Solar Power Project with the substation system) as specified in the RfS document. Metering shall be done at this interconnection point where the power is injected into. For interconnection with grid and metering, the SPDs shall abide by the relevant CERC/SERC Regulations, Grid Code, and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from time to time.	Delivery Point shall mean the point at the voltage level of 132 kV or above of the CTU substation including the dedicated transmission line connecting the Solar Power Projects with the Substation system as specified in the RfS document. Metering shall be done at this interconnection point where the power is injected into. For interconnection with grid and metering, the SPD shall abide by the relevant and applicable Regulations, Grid Code, Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from time to time or orders passed thereunder.
Transmission Charges	The Buying Entity will be responsible for all transmission charges and losses and any other charges as applicable under the respective regulations beyond Delivery	As per the applicable Regulation(s) of appropriate Commission(s), all charges pertaining to Open Access, CTU charges, Scheduling charges if any..... shall be directly paid or reimbursed by

	Point and up to the Drawl Point.	the buying utility. Buying Entity shall be liable to bear all the transmission losses in respect of the power evacuated from the Delivery Points to its receiving substation(s)
Term	25 Years	25 Years

- x. The tariff at which the Petitioner will be able to procure power under the present PSA, i.e. Rs. 2.60/kWh (exclusive of the Rs. 0.07/kWh trading margin to be charged by SECI) is market aligned and is one of the most competitive in the renewable energy category. Therefore, it is not only in the Petitioner's interest but also in the interest of consumer at large that this Commission may be pleased to allow the present Petition in the terms prayed. The Commission has the jurisdiction in terms of Section 63 read with Section 86 of the EA 2003 to not only approve the PSA but also adopt the competitively discovered tariff. This is on account of the fact that the 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, it is the Commission which has jurisdiction over the matter. In this regard, the Petitioner craves leave of the Commission to refer to and rely upon the decision of the Hon'ble Appellate Tribunal for Electricity PTC vs. UERC & Ors., Appeal No. 168 of 2014 (and batch) wherein the Hon'ble Tribunal after referring to its earlier decision on this point *inter alia*, held as under;

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

**Respondent Submissions**

3. Respondent No. 1, (SECI) vide their reply dated 29.09.2021, had submitted the following:
  - I. The abovementioned Petition is filed by the Petitioner, BSES Yamuna Power Limited ('BYPL') for approval for procurement of 150 MW Solar Power from Solar Energy Corporation of India Limited ('SECI') under the Power Sale Agreement ('PSA') dated 17.06.2019 entered into between SECI and BYPL read with Addendum No. 1 dated 17.06.2019 to the PSA read with Supplementary PSA (Amendment No. 1) dated 10.09.2021.

- II. The following Power Purchase Agreement ('PPAs') with Solar Power Developers ('SPDs') are identified for supply of solar power to BYPL under the PSA as under:
- 50 MW Solar Power from 300 MW Solar Power Project of Respondent No. 2, Eden Renewable Cite Private Limited ('Eden') established in Rajasthan under the PPA dated 25.06.2019 signed between Eden and SECI; and
  - 100MW Solar from 300 MW Solar Power Project of SBSR Power Cleantech Eleven Private Limited (SBSR) being established in Rajasthan under the PPA dated 20.08.2019 signed between SBSR and SECI.
- III. The Central Electricity Regulatory Commission ('Central Commission') in the decision dated 20.11.2019 in Petition No.204/AT/2019 filed for the adoption of tariff of ISTS Tranche-III Solar Scheme, under which the power is being sold to the BYPL in terms of PSA, has adopted the tariff of each of the generators discovered in pursuance to the competitive bid process under Section 63 of the Electricity Act, 2003.
- IV. SECI submits that the following tariff will be payable by BYPL as provided for in Article 1 read with the Schedule-2 of the Supplementary PSA dated 10.09.2021:

S. No.	Name of the Solar Power Developer	Quantum allocated to BYPL 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.	Eden Renewable Cite Private Limited	50	2.60	0.07	2.67
2.	SBSR Power Cleantech Eleven Private Limited	100	2.61	0.07	2.68

- V. For facilitating purchase and re-sale of power from the SPDs to the BYPL, SECI is entitled to trading margin of Rs. 0.07/kWh (Rupees Seven Paise per kWh), as consideration, payable by BYPL in terms of the Guidelines, RfS and the PSA. In this regard, the relevant provisions of the Guidelines, RfS Document and the PSA are as under:

- a) Clause 2.1. c)ii of the Guidelines dated 03.08.2017 of the Government of India ('Guidelines'). Amended Clause 2.1.1 c)ii (b) as per the amendment dated 22.10.2019 to the Guidelines.
  - b) Definition of Trading Margin as per Clause 1.46, Section –I of the Request for Selection Document dated 10.01.2019 for ISTS Solar Tranche-III notified by SECI; and
  - c) Article 1 of the Supplementary PSA dated 10.09.2021.
- VI. On 14.01.2010, the Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations 2010 (hereinafter "Trading Margin Regulations, 2010") were notified by the Central Commission. The Trading Margin Regulations 2010, were applicable to the short term buy-short term sell contracts, namely contracts were duration of PPAs and PSA is less than 1 year, for the inter-State trading in electricity undertaken by a licensee.
- VII. The Central Commission has dealt with the aspect of Trading Margin in Paragraph 29 of the decision dated 20.11.2019 in Petition No. 204/AT/2019 as under:
- "29. The Petitioner has prayed to adopt the trading margin of Rs. 0.07/kWh. It is observed that Section 79(1)(j) of the Act requires the Commission "to fix the trading margin in the inter-State trading of electricity, if considered necessary". Accordingly, the Commission, being of the opinion that it was necessary to fix trading margin for inter-State trading in electricity, exercised the powers conferred under Section 178 of the Act and conceived Central Electricity Regulatory commission (Fixation of Trading Margin) Regulations, 2010 (hereinafter referred to as "Trading Margin Regulations"), applicable to the short-term sell contracts for the inter-State trading in electricity undertaken by a licensee. The Regulations provide for the Ceiling of the Trading margin in short-term-buy-short-term-sell contracts for the inter-State trading. Trading Margin Regulations do not provide for any trading margin for long term transactions and, therefore, it is upto the contracting parties to mutually agree on trading margin, if any, in such cases. In any case, the Commission does not fix trading margin on case to case basis. The spirit of the Act read with the Trading Margin Regulations gives freedom and choice to the contracting parties to mutually agree on Trading Margin for any kind of trading transaction, subject to the ceiling Trading Margin, whenever applicable. Accordingly, the Commission cannot fix or adopt any Trading Margin for long-term transactions under the provisions of the present trading Margin Regulations. In view of the above, the prayer of the Petitioner to adopt the Trading margin is decided accordingly."*



- VIII. On 02.01.2020, the Central Commission notified the Central Electricity Regulatory Commission (Producer, Terms and Conditions for grant of trading license and other related matters) Regulations, 2020 ('Trading License Regulations, 2020'), repealing the Trading Margin Regulations, 2010. It is submitted that the Trading License Regulations, 2020 will govern the procurement of power under the PPAs and PSA in the present petition. The Chapter-IV of the Trading License Regulations, 2020 deals with 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:"***

- IX. In terms of the above, the Trading margin for the long-term PSA is to be mutually agreed to between the parties as per the opening part of Regulation 8 (1)(d) of the Trading License Regulations, 2020. BYPL has duly accepted the Trading Margin of Rs. 0.07/kWh in the PSA dated 17.06.2019 and Supplementary PSA dated 10.09.2021. Therefore, there has been a mutual agreement with regard to applicability of Trading Margin of Rs. 0.07/kWh in consonance with Regulation 8 (1)(d) of Trading License Regulations, 2020.
- X. The Hon'ble Tribunal for Electricity has passed judgment dated 02.07.2021 in Appeal No. 52 of 2021 & Connected Appeal in the matter of Solar Energy Corporation of India Limited vs. Delhi Electricity Regulatory Commission & Another and Connected Appeal deciding on the aspect of Trading Margin applicable to SECI in similar matters.
- XI. In terms of the above, it is prayed that this Hon'ble Commission may be pleased to allow procurement of 150 MW Solar Power under the PSA at the individual tariff of the SPDs identified for supply of Solar Power plus trading margin of Rs. 0.07/kWh payable to SECI, as has been mutually agreed to between the parties.

4. The Petitioner, vide their Additional Affidavit dated 29.09.2021, had submitted the following:
- I. On 17<sup>th</sup> June 2019, the Petitioner signed a Power Sale Agreement with SECI, wherein the Petitioner, subject to approvals from this Commission, agreed to buy 150 MW (50 MW from EDEN Renewable Cite Pvt. Ltd.) of Solar power from SECI (hereinafter "the PSA"). In terms of the PSA, the Petitioner agreed to purchase the power at a pooled tariff of Rs. 2.60/kWh plus a trading margin of Rs. 0.07kWh.
  - II. On 25<sup>th</sup> June 2019, SECI entered into a Power Purchase Agreement with a Solar Power Developer, namely M/s Eden Renewable Cite Private Limited (hereinafter "SPD") for purchase of 300 MW of Solar power on the terms and conditions set out in the PPA.
  - III. It is submitted that the Central Electricity Regulatory Commission (CERC) in Petition No. 204/AT/2019 instead of adopting the pooled tariff on the basis of which the original PSA was executed was pleased to adopt the individual tariff for each generating station including that of Respondent No. 2.
  - IV. In view of the fact that the CERC had adopted individual tariff for Respondent No. 2, the Petitioner and the Respondent No. 1 agreed to enter into a supplementary agreement in terms of the CERC adopted tariff to incorporate the tariff as adopted by the CERC.
  - V. Accordingly, on 10.09.2021, the Petitioner and the Respondent No. 1 entered into a supplementary agreement.
  - VI. In term of the Supplementary Agreement, the Schedule-I of the PSA stood substituted and the revised Schedule in so far as Respondent No. 2 is concerned (with the tariff as adopted by the CERC) read as under:

S. N o.	Name of the Bidder	Project Capac ity (MW)	Applica ble Tariff as per SECI- SPD PPA (Rs./kWh )	Quant um allocat ed to BYPL for Resale (MW)	Maxim um Energy (Million kWh)	Minim um Energy (Million kWh) till 10 years from SCD	Minimum Energy (Million kWh)bey ond 10 years from SCD
1	Eden Renewa ble Cite Private Limited.	300	2.60	50	136.14	105.20	99.01

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 50MW Solar Power from SECI under Power Sale Agreement dated 17.06.2019 read with Addendum dated 17.06.2019 to PSA read with Supplementary PSA dated 10.09.2021.
  - b) Solar Power Project of Respondent No. 2, Eden Renewable Cite Private Limited. established under Power Purchase agreement dated 25.06.2019 executed between Eden Renewable Cite Private Limited. and SECI has been identified for supply of 50 MW Solar Power to the Petitioner under the PSA.
  - c) The Commercial Operation date of 300 MW Solar Power Project of Eden was on 31.08.2021.
  - d) SECI is procuring power from the power project of Eden 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.
  - e) The Central Commission vide its Order dated 20.11.2019 passed in Petition No. 204/AT/2019 and IA No. 85/2019 has adopted tariff of the individual project of each generator (bidder) including tariff of Eden selected in pursuance of the Competitive Bidding for ISTS Tranche-III Solar Scheme.
  - f) The Commission may be pleased to approve the procurement of 50 MW Solar Power at tariff of Rs. 2.60/kWh plus trading margin of Rs. 0.07/kWh by the Petitioner from SECI under PSA dated 17.06.2019 read with Addendum dated 17.06.2019 to PSA read with Supplementary PSA dated 10.09.2021.
6. On 19.10.2023, the Commission reserved the order and directed the parties to file short written submissions. In compliance of the Order, the Petitioner submitted their Written Submissions on 27.10.2023 wherein they generally reiterated the facts stated by them earlier.

### **Commission Analysis**

7. The Petitioner BYPL 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 17.06.2019 executed between SECI and BYPL for purchase of 50 MW Solar Power on long term basis by BYPL. As per the terms of PSA, the Petitioner shall pay the fixed tariff of Rs 2.60/Kwh plus trading margin of Rs 0.07/kWh of the procurement of 50 MW Solar

Power on long term basis. The aforesaid solar power is to be supplied by Solar Power Developer (SPD) under the PSA as follows;

- (i) 50 MW Solar Power from 300 MW Solar Power Project of Eden Renewable Cite Private Limited (Eden) established in Rajasthan under the PPA dated 25.06.2019 signed between Eden and SECI.
8. The Commission vide its Order dated 17.07.2019 granted an ‘in-principle’ for signing of PSA with SECI for procurement of power from Respondent No. 1.
9. The PPA signed between SECI and Respondent No. 2 and PSA signed between the Petitioner and SECI are back to back arrangement/contracts. The Central Electricity Regulatory Commission (CERC) in the decision dated 20.11.2019 in Petition No.204/AT/2019 filed for the adoption of tariff of ISTS Tranche-III Solar Scheme, under which the power is being sold to the BYPL in terms of PSA, has adopted the tariff of each of the generators discovered in pursuance to the competitive bid process under Section 63 of the Electricity Act, 2003.
10. During the pendency of the Petition, the parties entered into a Supplementary Power Sale Agreement on 10.09.2021 incorporating certain terms and conditions agreed between them. As per Supplementary PSA dated 10.09.2021 the tariff payable by BYPL is as follows;

S. No.	Name of the Solar Power Developer	Quantum allocated to BYPL 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.	Eden Renewable Cite Private Limited	50	2.60	0.07	2.67

11. 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."*

12. Thereafter, Solar Energy Corporation of India Limited 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 wherein the Commission has 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 has 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.
13. 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. The Respondent, SECI, had filed two IAs bearing Nos. 102603/2022 and 77402/2023 before the Hon'ble Supreme Court of India for directions, that the Petitions on the subject pending before the Commission be disposed of subject to the final outcome of the Civil Appeal No. 6310 of 2021. The said IAs were listed before the Hon'ble Supreme Court of India on 04.05.2023 and the Court vide Order dated 04.05.2023 disposed of the same 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."*

14. Accordingly, the Commission listed the matter on 06.06.2023, 13.07.2023, and 18.10.2023 & 19.10.2023 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.

15. The Petitioner submitted that the terms and conditions of PSA dated 17.06.2019 and Supplementary PSA dated 10.09.2021 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. 204/AT/19 by CERC would be applicable in the instant PSA.
16. 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 17.06.2019 and the Supplementary PSA dated 10.09.2021 between Petitioner and the SECI is hereby approved at a total tariff of Rs.2.67/kWh viz. tariff of Rs. 2.60/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.
17. Ordered Accordingly.

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