CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 174/AT/2021

Coram:
Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Date of Order: 13th December, 2021

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of usage charges for 1,692 MW Solar Photovoltaic (PV) Power Station (Tranche-I & II) connected to the Inter-State Transmission System and selected through competitive bidding process under Central Power Sector Undertaking (CPSU) Scheme Phase-II dated 5.3.2019 as per the Standard Bidding Guidelines of Ministry of Power dated 3.8.2017.

And
In the matter of

NTPC Limited,
Institutional Area, Lodhi Road,
New Delhi – 110 003 …**Petitioner**

Vs

1. Solar Energy Corporation of India Limited,
1st Floor, Prius Platinum,
D-3 District Centre, Saket,
New Delhi – 110 017

2. Southern Power Distribution Company of Telangana Limited,
6-1-50, Mint Compound,
Hyderabad, Telangana – 500 063.

3. Northern Power Distribution Company of Telangana Limited,
Vidyuth Bhavan, Nakkalagutta,
Hanamkonda, Warangal,
Telangana – 506 001. …**Respondents**

The following were present

Shri Venkatesh, Advocate, NTPC
Shri Suhael Buttan, Advocate, NTPC
Shri Jatin Ghuliani, Advocate, NTPC
Shri Anant Singh Ubeja, Advocate, NTPC
Shri Rishub Kapoor, Advocate, NTPC
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Shri Ishpaul Uppal, NTPC
Shri V V Sivakumar, NTPC
Ms. Neha Singh, SECI
Shri M. Karukkuvel, SECI

ORDER

The Petitioner, NTPC Limited ('NTPC'), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') for adoption of usage charges for 1692 MW solar photovoltaic power projects (Tranche-I & II) connected to inter-State Transmission System ('ISTS') and selected through competitive bidding process under the 'Central Public Sector Undertaking Scheme Phase-II (Government Producer Scheme) for setting up 12,000 MW grid-connected Solar Photovoltaic (PV) Power Projects by the Government Producers with Viability Gap Funding (VGF) support for self-use or use by Government/Government entities, either directly or through Distribution Companies' dated 5.3.2019 (hereinafter referred to as 'the CPSU Scheme Phase-II') as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects" (hereinafter referred to as 'the Standard Bidding Guidelines') dated 3.8.2017 issued by Ministry of Power, Government of India. The Petitioner has made the following prayers:

"(a) Admit the present petition;

(b) Adopt the Usage Charges for 1692 MW Solar Power Projects discovered through competitive bidding carried out by the Respondent No.1 in terms of CPSU Scheme;

(c) Pass such other further order/orders, as may be deemed fit and proper in the facts and circumstances of the case."

<u>Submission of the Petitioner</u>

2. The Petitioner, NTPC has submitted that on 5.3.2019, Ministry of New and Renewable Energy ('MNRE'), Government of India notified the CPSU Scheme Phase-II for setting-up 12,000 MW grid-connected solar PV power projects by the Government Producers with Viability Gap Funding ('VGF') for self-use or use by Government/ Government entities, either directly or through Distribution Companies ('Discoms'). The said scheme was issued under the provisions of Section 63 of the Act for long term procurement of electricity by the 'Procurers' from grid-connected solar PV power projects through competitive bidding. Under the CPSU Scheme Phase-II, the Respondent No.1, Solar Energy Corporation of India Limited ('SECI') issued Request for Selection ('RfS-1') for setting up of 2000 MW grid connected solar PV projects in India (Tranche-I) on 15.3.2019. Thereafter, SECI also issued Request for Selection ('RfS-2') for selection of Solar Power Developers for setting-up of 1500 MW grid connected solar PV project anywhere in India (Tranche-II) under the CPSU Scheme Phase-II. The result of the bidding process under Tranche-I was declared on 20.8.2019 and pursuant thereto, NTPC was allocated 769 MW out of 2000 MW and was issued the Letter of Award ('LoA') dated 28.9.2019 for the aforesaid capacity. The result of the bidding process under Tranche-II was declared on 8.11.2019 and pursuant thereto, NTPC was allocated 923 MW out of 1500 MW and was issued the LoA dated 25.11.2019 for the aforesaid capacity. Thus, the Petitioner, NTPC is required to set-up solar PV power projects having aggregate capacity of 1,692 MW

from both the tranches of bidding i.e. 769 MW from Tranche-I and 923 MW from Tranche-II. Pursuant to this, NTPC has entered into several Power Usage Agreements ('PUAs') with Telangana Discoms for supply of solar power to be generated by it through its solar PV power projects.

3. Subsequently, NTPC vide its letter dated 12.1.2021 requested SECI, the Bid Process Coordinator, to approach the Commission for approval and adoption of bids carried out by it under the CPSU Scheme Phase-II and the Standard Bidding Guidelines in view of the clause 10.4 of the Standard Bidding Guidelines, which requires the distribution licensee or Intermediary Procurers as the case may be to approach the Appropriate Commission for adoption of tariff by the Appropriate Commission in terms of Section 63 of the Act. However, SECI vide its letter dated 1.3.2021 refused to undertake the aforesaid course of action. Accordingly, the Petitioner has preferred the present Petition under Section 63 of the Act read with Section III Clause 21.15 of the RfS dated 15.3.2019 and 1.8.2019. In the present case, the solar PV projects have been established in the States of Rajasthan, Tamil Nadu and Gujarat and are supplying power to the State of Telangana. Therefore, it is a composite scheme for generation and sale of electricity in terms of Section 79(1)(b) of the Act and this Commission is the 'Appropriate Commission'. The Commission also exercises general regulatory power under Section 79(1)(a) of the Act in so far as the operation of the Petitioner, which is a generating company owned/ controlled by the Central Government, is concerned even if the Guidelines are silent on a particular aspect as settled by the Hon'ble Supreme Court in Energy Watchdog v. CERC [(2017) 14 SCC 80]. Therefore, adoption of Usage Charges by the Commission will be

consistent with the Scheme and provisions of Section 63 and Section 79(1)(a) of the Act.

Hearing dated 12.10.2021

4. The matter was called out for virtual hearing on 12.10.2021. During the course of hearing, the learned counsel for the Petitioner while detailing the provisions of the CPSU Scheme Phase–II and the bid process conducted thereunder, mainly submitted the following:

(a) NTPC has filed the instant Petition in its capacity as generator pursuant to selection as a successful bidder for setting up of 1,692 MW solar PV power projects in the competitive bid process conducted by SECI under the CPSU Scheme Phase-II.

(b) The CPSU Scheme Phase-II has been notified by MNRE, Government of India under Section 63 of the Act for setting up 12,000 MW grid-connected solar PV power projects by the Government Producers with Viability Gap Funding (VGF) support for self-use or use by Government/ Government entities, either directly or through distribution companies.

(c) Government producer for the purpose of the CPSU Scheme Phase-II has been defined as an entity which is either directly controlled by the Central Government or State Government or is under the administrative control of Central Government or State Government or is a company in which Government is having more than 50% shareholding. A Government producer is eligible for assistance in setting-up solar PV power project. Thus, NTPC, being a Central PSU, qualified as the Government producer under the Scheme.

(d) Under the CPSU Scheme Phase-II, SECI was entrusted with the task of conducting the bidding amongst Government producers for allocation of solar PV power project capacity with VGF as a bid parameter to select the project proponent. While the maximum permissible VGF was kept at Rs. 0.70 crore/MW, the actual VGF to be given to Government producer was to be decided through a competitive bid process with VGF as a bid parameter, with the ceiling usage charge of Rs.3.5/kWh specified in the Scheme.

(e) Pursuant to being selected as a successful bidder, the Petitioner has entered into several Power Usage Agreements with the Telangana Discoms for supply of solar power generated through its solar power PV project at mutually agreed usage charges of Rs. 2.86/kWh for 1323 MW capacity and of Rs. 2.69/kWh for 369 MW capacity, which are within the ceiling specified in the CPSU Scheme Phase-II.

(f) NTPC vide letter dated 24.3.2021 requested Telangana Discoms to approach TSERC for approval of power procurement. In response, Telangana Discoms vide their letter dated 15.4.2021 intimated the Petitioner to approach CERC for adoption of tariff and to communicate the order of CERC to Telangana Discoms for seeking consent of TSERC. Accordingly, the present Petition has been filed by the Petitioner seeking adoption of the usage charges.

5. After hearing the learned counsel for the Petitioner, the Commission enquired as to whether the usage charges can be termed as tariff determined through transparent process of bidding as specified under Section 63 of the Act. In response, the learned counsel submitted that in the present case, the competitive bid process has been conducted with VGF as the bid parameter specified in the CPSU Scheme Phase-II whereas the usage charges, the term that has been specified in the Scheme itself, are charges that have been mutually agreed between the Petitioner and the Telangana Discoms within the ceiling of Rs. 3.5/kWh specified in the Scheme.

6. The learned counsel also placed reliance on the Standard Bidding Guidelines dated 3.8.2017 and submitted that apart from tariff as a bid parameter, the Standard Bidding Guidelines also recognizes VGF as a bid parameter, wherein a pre-determined

tariff payable to Solar Power Developer and the maximum amount of VGF available to the Solar Power Developer are pre-specified and the selection of the developer/ bidder is to be done on the basis of VGF support quoted by the bidder.

7. The Commission observed that compared to the pre-specified tariff in VGF-based bid process, the usage charges in the present case are mutually agreed rates between the parties, within the ceiling rate specified in the Scheme. The Commission further observed that the issue in the present case is which and what is the usage charge discovered through the process of competitive bidding which is to be adopted by the Commission under Section 63 of the Act. The Commission also observed that the bid conducted in the present case was also limited/ restricted to the Government producers only and was not an open tender/ bid process.

8. In the background of aforesaid primary observations on the 'maintainability' of the present Petition, the Commission directed the Petitioner and the Respondents to file their respective response on the aforesaid observations/ queries of the Commission. The Respondent, SECI was also directed to file its response along with all the details relating to bidding process conducted by it under the Scheme e.g. bid documents including amendments thereto, bid evaluation report, conformity certificate and key milestones, etc., on affidavit.

<u>Response of SECI</u>

9. Respondent No.1, SECI vide its response dated 12.11.2021 has mainly submitted as under:

(a) Under the CPSU Scheme Phase-II, SECI in the capacity of nodal agency designated by Government of India conducted the competitive bidding process under Tranche-I and Tranche-II for selection of generating companies which should be 'Government Producer', the term which has been defined under the CPSU Scheme Phase-II so as to mean any entity which is either directly controlled by the Central Government or State Government or is under the administrative control of the Central Government or State Government or a company in which Government is having more than 50% shareholding.

(b) In terms of the CPSU Scheme Phase-II, the Government Producer will set up the solar PV power projects using domestically manufactured solar PV cells and modules for generating electricity for self-use or use by Government/ Government entities, either directly or through Discoms. Since domestically manufactured solar PV cells and modules will be used for power generation and solar PV power projects are to be set up and owned by Government Producers, the electricity produced is not meant for commercial sale, namely, to sell at the market driven prices to all and sundry. The CPSU Scheme Phase-II is, therefore, restricted both in terms of the production and use of electricity by the Government agencies, department and public sector entities, etc. and the same is not extended to others.

(c) Usage charges i.e. charges to be paid by the power user (Government entity/ CPSU/ State PSU) in respect of supply of electricity to them by the Government Producer is provided in the Scheme at Rs.3.50/kWh as the ceiling and subject to the same, the usage charges are to be mutually agreed between the two Government entities.

(d) The CPSU Scheme Phase-II is pursuant to the desire of the Central Government that the Government entities consuming power should be provided renewable power at an economical rate and for the purpose, Central Government decided to provide VGF to the Government Producers. In other words, the Government Producers will get VGF from the Central Government and consequentially the Government entity which is the ultimate beneficiary of usage of power will pay lesser usage charges (mutually agreed) subject to the ceiling of Rs. 3.50/kWh prescribed in the Standard Bidding Guidelines.

(e) The Scheme contemplates Usage Agreement between the Government Producer and the Power User either directly or through local Discom for making available the renewable power at the specified usage charges.

(f) Tariff based competitive bid process in terms of Section 63 of the Act was held for selection of the Government Producers based on bidding for VGF. The Government Producers were selected in the ascending order with the lowest quoted VGF till the total offered capacity was exhausted.

(g) The above constitute a tariff based competitive bid process within the scope of Section 63 of the Act, namely, based on the net cost of providing the usage of electricity from renewable sources to the power-user (government entity) i.e. the net usage charges payable to the Government Producer aggregating both usage charges mutually agreed between the Government Producer and the power user - Government entity (subject to ceiling prescribed in the Scheme) plus the VGF quoted.

(h) In terms of Section 63 of the Act, there is no condition that for a tariff based competitive bid process, the offer to provide electricity should be allowed to all producers of electricity and should not be restricted to certain class of producers. Similarly, there is also no provision that the end-user of the electricity cannot be restricted namely to the Government entities.

(i) For a competitive bid process what is essential is that the selection is based on the competitively quoted amount in respect of any of the criteria. It is valid to freeze all other parameters and competitive bid be held on one parameter such as the VGF support as in the present case.

(j) The essence of the competitive bid process is that the selection of the successful producer of power is made in pursuant to a competition and in a transparent manner. When all except one parameter is decided on common basis and the competition is on the specified parameter, the selection of the person based on the competitive bid given qua such parameter is nothing but a tariff based on a competitive bid.

(k) The usage charges as mentioned is only one part of the consideration as in the case of tariff fixed in VGF based bidding also. In the case of VGF Scheme under the Guidelines for implementation of Scheme for setting up of 750 MW grid connected Solar PV Projects under Batch-I Phase-II dated 25.10.2013, the tariff was fixed at Rs.5.15/kWh and the competitive bid was for VGF support. In the present case, the usage charges are to be mutually agreed subject to the fixed ceiling of Rs.3.5/kWh and competition is for VGF support. In effect both the Schemes are similar.

(l) Usage charges determined under Tranche-I and Tranche-II (subject to ceiling of Rs.3.5/kWh prescribed in the CPSU Scheme Phase-II) cannot be independently considered. It has to be considered with the VGF support. The usage charges plus VGF support is the aggregate amount of the charges incurred for the use of electricity by the Government entity. Thus, the total charges are based on a competitive bid process.

(m) SECI has placed on record the conformity certificate, document demonstrating the publication of RfS documents on its website, RfS documents along with amendments/ corrigendum, notification regarding constitution of Bid Evaluation Committee, copy of bid results after e-reverse auction, Bid Evaluation Reports, Key Milestones and LoA issued in relation to both Tranche-I and Tranche-II bid processes conducted under the CPSU Scheme Phase-II.

Hearing dated 16.11.2021

10. The matter was called out for virtual hearing on 16.11.2021. During the course of hearing, the learned senior counsel for the Respondent No.1 SECI, while addressing the observations of the Commission as recorded vide Record of Proceedings for the hearing dated 12.10.2021 made detailed submissions by referring to its response, as has already been captured hereinabove. The learned senior counsel, *inter alia*, pointed

out that in the case of VGF Scheme under the Guidelines for implementation of the Scheme for setting up of 750 MW grid connected solar PV projects under Batch-I Phase-II dated 25.10.2013, the tariff was fixed at Rs.5.45/kWh and the competitive bid was for VGF support, which has been adopted by the Commission vide order dated 1.3.2021 in Petition No. 160/AT/2019. Similarly, in the present case, the usage charges are to be mutually agreed subject to fixed ceiling of Rs.3.5/kWh and competition is for VGF support.

11. In response to the specific query of the Commission as to whether the provisions of the scheme allow negotiation/ reduction of usage charge after conclusion of the bid process, the learned senior counsel for SECI replied in affirmative and submitted that the scheme permits mutually agreed usage charge between the Government producer and power users i.e. the Government/ Government entities, either directly or through distribution companies subject to the ceiling of Rs.3.5/kWh. In response to the Commission's further query regarding any specific provision in the scheme itself providing for adoption of tariff by the 'Appropriate Commission', the learned senior counsel replied in negative. However, the learned senior counsel submitted that this Commission can adopt the tariff under Section 63 of the Act read with decision dated 11.4.2017 of the Hon'ble Supreme Court in Energy Watchdog case. The learned senior counsel added that the Commission may also consider adopting the VGF based usage charge along with ceiling usage charge recognizing that the scheme permitted mutually agreed usage charges within the ceiling of Rs.3.5/kWh.

12. The learned counsel for the Petitioner adopting the submissions made by the learned senior counsel for SECI submitted that *de hors* Section 63 of the Act, NTPC being a generating company controlled by the Central Government is also subject to the regulatory jurisdiction of this Commission under Section 79(1)(a) of the Act. In addition, since it is a composite scheme of generation and supply of the electricity in more than one State, this Commission is the appropriate Commission under Section 79(1)(b) of the Act and consequently, has the jurisdiction to adopt the tariff. The learned counsel further submitted that in the open tender where the bidding is conducted on VGF basis, the tariff is pre-specified. However, in the present case, in departure from the above, the scheme permitted the Government producer to mutually agree to a usage charge, albeit within the pre-specified ceiling rate, after conclusion of VGF based bidding.

13. In response to the another query of the Commission regarding arrangement of supply, the learned counsel for the Petitioner submitted that under the Power Usage Agreements entered into between the Petitioner and the Telangana Discoms, the power produced by the Petitioner, as Government Producer, is to be supplied to the Telangana Discoms in compliance with WTO agreements and as per the terms and conditions specified in the CPSU Scheme Phase-II.

Analysis and Decision

14. We now proceed to consider the prayer of the Petitioner as regards the adoption of usage charges for 1692 MW of solar power projects in terms of the CPSU Scheme

Phase–II issued by the Ministry of New and Renewable Energy, Government of India under Section 63 of the Act.

15. Section 63 of the Act provides as under:

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

16. Thus, in terms of Section 63 of the Act, the Commission is required to adopt the tariff, on being satisfied that transparent process of bidding in accordance with the guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act, has been followed in determination of such tariff.

17. In the present case, bid process for both the Tranches (Tranche-I & Tranche-II) were conducted under the CPSU Scheme Phase-II issued by the Ministry of New and Renewable Energy, Government of India on 5.3.2019. The salient features of the scheme are as under:

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

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

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

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

(e) With the objective of covering the cost difference between the domestically produced solar cells and modules and imported solar cells and modules, VGF shall be provided under the scheme. While the maximum permissible VGF has been kept at Rs.0.70 crore/MW, the actual VGF to be given to a Government Producer under the scheme would be decided through bidding using VGF amount as a bid parameter to select project proponent.

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

18. The aforesaid scheme has been modified by MNRE vide Office Memorandum dated 13.4.2020 whereby, *inter alia,* the ceiling of usage charges has been revised to Rs.2.80/kWh (in place of earlier ceiling of Rs. 3.50/kWh) and the task of conducting bidding has been entrusted to Indian Renewable Energy Development Agency Limited (IREDA) in place of SECI. However, this modification is not relevant for the purpose of the present case, as the bid process under both the tranches/RfS as conducted by

SECI were already completed under the Scheme dated 5.3.2019 as it stood then prior to issuance of the above amendment.

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

20. As already observed above, only the Government Producers were eligible for availing VGF under the CPSU Scheme Phase-II and setting-up of solar PV power projects was solely for self-use or use by Government/ Government entities, either directly or through Discoms. Further, the solar PV power project capacity allocated to the Government Procurers by way of bidding, were required to secure an arrangement for usage of power for self-use or use by Government/ Government entities, either directly or through Discoms.

21. The learned counsel for the Petitioner, for invoking the jurisdiction of this Commission under Section 63 of the Act for adoption of usage charges, has submitted that the Petitioner, falling under the definition of Government Producer under the Scheme and having successfully participated in the bid process, has entered into Power Usage Agreements (PUAs) with Telangana Discoms, being the Power Users, solely for the end use of power from the solar PV projects set up by the Petitioner. The learned counsel for the Petitioner has submitted that since the Petitioner has entered into PUAs with Telangana Discoms, the entire transaction including the rates agreed under such PUAs comes within the purview of the Commission. In this regard, the

learned counsel for the Petitioner has placed reliance on the correspondence exchanged between the Petitioner and the Telangana Discoms, as already noted above. The learned counsel for the Petitioner has further submitted that the Petitioner is neither utilizing the power generated from such Projects for its own use nor selling directly to any entity through open access.

22. We have noted the submissions made by the Petitioner. In our view, the aspect of determination of usage charge falls under the regulatory domain (be it Section 62 or Section 63 of the Act) of the Commission. Therefore, the Commission decides to proceed with the examination of the issue of adoption of usage charge.

23. As per provisions of the CPSU Scheme Phase-II, SECI had issued two tenders/RfS documents, namely, RfS-1 for Selection of Solar Power Developers for setting-up of 2000 MW grid connected solar PV power projects (Tranche-I) and RfS-2 (Tranche-II) for Selection of Solar Power Developers for setting-up of 1500 MW grid connected (including mini and micro grid) solar PV power projects, in line with the CPSU Scheme Phase–II.

24. The key dates of event in the bidding process were as under:

Sr. No.	**Milestone**	**Date**	
		RfS-1	**RfS-2**
1	RfS issued by SECI	15.3.2019	1.8.2019
2	Pre-bid meeting held	2.4.2019 & 10.4.2019	9.8.2019
3	Amendments/Clarification and Corrigendum to RfS	2.5.2019 – 23.7.2019	-
4	Opening of techno-commercial bids	25.7.2017	18.9.2019
5	Opening of financial bids	19.8.2019	7.11.2019
6	e-Reverse Auction conducted	20.8.2019	8.11.2019
7	Issuance of Letter of Awards	28.9.2019	25.11.2019

25. SECI issued RfS-1 documents for selection of Solar Power Developers for setting-up of 2000 MW grid connected solar PV project (Tranche–I) on 15.3.2019 and RfS-2 documents for selection of Solar Power Developers for setting-up of 1500 MW grid connected (including mini and micro grid) solar PV projects on 1.8.2019. SECI has submitted that notices regarding publication of the RfS-1 and RfS-2 were issued on its website. It has been submitted that SECI did not publish the notices in the newspapers as per the advisory dated 17.5.2017 issued by Ministry of Information and Broadcasting, Government of India mandating e-publishing of advertisements in the relevant portal and accordingly, on 3.7.2018, SECI had published notification indicating that the tenders of SECI would be published in its website and not in the newspapers.

26. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids under RfS-1 dated 15.3.2019 and RfS-2 dated 1.8.2019.

RfS-1

Tender	Department	Techno-commercial and financial evaluation and post-e-RA recommendation (Name & Designation)
Selection of Solar Power Developers for Setting up of 2000 MW Grid-Connected Solar PV Power Projects in India (Tranche-I) under CPSU Scheme (Government Producer Scheme) Phase-II (Tranche – I)	Solar	Aalok Singh, Deputy Manager
	Contract & Procurement	Biblesh Meena, Dy. Manager
	Finance	Ajit Sharma, Dy. Manager

RfS-2

Tender	Department	Techno-commercial and financial evaluation and post-e-RA recommendation (Name & Designation)
Selection of Solar Power Developers for Setting up of 1500 MW Grid-Connected Solar PV Power Projects in India under CPSU Scheme (Government Producer Scheme) Phase- II (Tranche – II)	Solar	Uday Pavan, Deputy Manager
	Contract & Procurement	Sunil Yadav, Dy. Manager
	Finance	Ajit Sharma, Dy. Manager

27. The last date for submission of bids in respect of RfS-1 was 24.7.2019. In response to the RfS-1, total six bids were received from various Government Producers for aggregate capacity of 1153 MW, all of which qualified the techno-commercial criteria and were found eligible for opening of financial bids and participating in the e-reverse auction ('e-RA'). The e-reverse auction was conducted on 20.8.2019 during which, VGF amount sought per MW was kept as a bid parameter to select Government Producers as the Solar Power Developer. Pursuant to conclusion of e-RA, solar PV power projects for 922.4 MW was awarded under RfS-1 to various Government Producers on the basis of VGF amount quoted during e-RA, including 769.4 MW to the Petitioner (L-6) herein. The result of e-Reverse Auction for RfS-1 is as under:

Sr. No.	**Techno Commercially qualified Bidder**	**Bid Capacity (MW)**	**Initial VGF sought in INR/MW (Before e-RA)**	**VGF (INR/MW) After e-RA**	**Allotted Capacity (MW)**
1	NHDC Ltd.	25	5500000	5500000	25
2	Singareni Collieries Company Limited	90	6000000	6000000	90
3	Assam Power Distribution Company Limited	30	6800000	6800000	30
4	Delhi Metro Rail Corporation Limited	3	7000000	6975000	3

5	Nalanda University	5	6995555	6995555	5
6	NTPC Limited	1000	7000000	7000000	769.4
	Total				**922.4**

28. The last date for submissions of bids in respect of RfS-2 was 17.9.2019. In response to RfS-2, total four bids were received from various Government Producers for aggregate capacity of 1481 MW, out of which three bidders with aggregate capacity of 1381 MW qualified the techno-commercial criteria and were found eligible for opening of financial bid and participating in e-RA. The e-reverse auction was conducted on 8.11.2019 during which, VGF amount sought per MW was kept as a bid parameter to select Government Producers as the Solar Power Developer. Pursuant to conclusion of e-RA, solar PV power projects for 1104.8 MW were awarded under RfS-2 to the various Government Producers on the basis of VGF amount quoted during e-RA, including 923.8 MW to the Petitioner (L-3) herein. The result of e-Reverse Auction for RfS-2 is as under:

Sr. No.	Techno Commercially qualified Bidder	Bid Capacity (MW)	Initial VGF sought in INR/MW (Before e-RA)	VGF (INR/MW) After e-RA	Allotted Capacity (MW)
1	Singareni Collieries Company Limited	81	6800000	6800000	81
2	Indore Municipal Corporation	100	6990000	6880000	100
3	NTPC Limited	1200	7000000	7000000	923.8
	Total				**1104.8**

29. Pursuant to its selection as the successful bidder under RfS-1, SECI issued Letter of Award to the Petitioner allocating 769 MW on 28.9.2019 . The relevant portion of the said Letter of Award is extracted as under:

"*Sub: Selection of Solar PV Power Projects under RfS for Selection of Solar Power Developers under RfS for Setting up of 2000 MW Grid-Connected Solar PV Power Projects in India*

(Tranche – I) under CPSU Phase – II Scheme (Government Producer Scheme): Letter of Award for allocated capacity of 769 MW (Project ID: SPD-CPSU-T1-NTPCL-769MW)
….
In reference to above and subject to the provisions of RfS, we confirm having accepted your final offer concluded as a result of e-RA and issue this letter of award as per the following details:

Allocated Project ID	*Allocated Capacity (MW)*	*Project Location*	*Maximum VGF Eligibility (INR/MW) in figures*	*Maximum VGF Eligibility (INR/MW) in words*	*Total Eligible Maximum VGF (INR)*
SPD-CPSU-T1-NTPCL-769MW	*769*	*Anywhere in India*	*Rs.70,00,000.00/-*	*Rupees Seventy lakh per MW only*	*5,38,30,00,000/-*

Power generated from above Project shall be solely for self-use or use by Government/Government entities, either directly or through Discoms under the CPSU Phase-II scheme subject to the following terms and conditions as stated in various documents referred above and briefly brought out hereinafter.

I. *Power generated from above Project(s) shall be solely for self-use or use by Government/Government entities, either directly or through Discoms on mutually agreed usage charges of not more than Rs.3.50/kWh, which shall be exclusive of any other third party charges like wheeling and transmission charges and losses, point of connection charges and losses, cross-subsidy surcharges, State Load Despatch Centre (SLDC)/regional Load Dispatch Centre (RLDC) Charges, etc. as may be applicable. Waiver of ISTS charges and losses, for use of ISTS network, shall be availed to Projects set-up under the CPSU Phase-II Scheme.*

II. *The Government Producer would be free to avail other fiscal incentives including Accelerated Depreciation, if any, as per the extant rules. No claim shall arise on SECI for any liability if the SPD is not able to avail fiscal incentives and this will not have any bearing on the maximum eligible VGF per MW.*

III. *The award of the above allotted capacity is subject to the Guidelines including amendments/ clarifications issued by the Government of India and terms and conditions of the RfS document including its clarifications/ amendments/ elaborations/ notifications issued by SECI.*

IV. *A Bidder which has been selected as Successful Bidder under this RfS can also execute the Project(s) through a Special Purpose Vehicle (SPV) i.e. a Project Company especially incorporated as a subsidiary Company of the successful bidder for setting up of the Project(s), with atleast 76% shareholding in the SPV which has to be registered under the Indian Companies Act, 2013, before signing of EPC agreement with EPC Contractor. Multiple SPVs may also be incorporated for executing more than one Project.*

V. *The SPD shall pay to SECI, Success Charges of Rs.1 lakh/MW/project + 18% GST within 30 days of issuance of this Letter of Award (LoA) towards administrative overheads, coordination with State Authorities and monitoring of Projects' compliance with WTO norms, in line with Clause 12, Section-III of the RfS. Performance Bank Guarantee(s) for an amount equal to 50% of total VGF sanction as per this Letter of Award shall be submitted by the SPD before disbursement of first tranche of VGF, in line with Clause 11.1, Section-III of the RfS.*

VI. *The SPD shall confirm the configuration of the total allocated capacity at the time of disbursement of second tranche of VGF. The SPD, if he wishes so, may affix separate PPA tariffs for each Project, based on its own arrangements with the Procurer(s), if applicable.*

VII. The Projects can be located anywhere in India. It is clarified that the projects may be implemented as ground mounted or rooftop mounted or floating or canal top/canal bank etc. or a combination thereof, as per the requirement of the SPD.

VIII. It may be noted that while a single VGF shall be quoted by the bidder based on the cumulative Project capacity in the RfS, VGF will be released to the SPDC separately for each Project as per the final Project configuration declared by the SPD. Accordingly, for each individual Project as per the above break-up, the second tranche of VGF will be disbursed to the SPD only upon successful commissioning of full capacity of that individual Project.

IX. Commercial re-sale of power by the Procurer or End Consumer is not allowed as per the RfS conditions. The SPDC shall provide a power mapping (Format 7.10 of the RfS) for the proposed capacity being quoted for, clearly specifying the SPD, various intermediaries, if any, and the End Consumer. The same shall be submitted to SECI after finalization of the mapping by the SPD, but not later than prior to disbursement of second tranche of VGF.

X. The SPD shall submit a self-certification to SECI (Format 7.6 as amended), confirming that the Project has been set-up, as per the provisions of the Scheme Guidelines, and explanatory notes, if any, as published by MNRE form time to time. The above certifications will be submitted by the SPD after finalization of power mapping by the SPD, but no later than prior to disbursement of second tranche of VGF.

XI. The RfS mandates use of both solar photovoltaic (SPV) cells and modules manufactured domestically as per specifications and testing requirements fixed by MNRE. For the Projects to be implemented under this RfS, both the solar cells and modules used in the Solar Power Project must be made in India. In case of crystalline Silicon technology, all process steps and quality control measures involved in the manufacture of Solar Cells and Modules starting from wafers till final assembly of the Solar Cells into Modules shall be performed at the works of PV manufacturers in India.

XII. VGF will be released in two tranches as follows:
1. 50% on award of Contract to the EPC Contractor (including in-house EPC Division) by the SPD. The SPD is required to sign the EPC agreement with EPC Contractor within six months from date of issue of LoA by SECI.
2. Balance 50% on successful commissioning of the fill capacity of Project.

XIII. The Commissioning of the Project shall be carried out by the SPD as per the procedure established by the SPD. The SPD shall submit the commissioning certificate of the Project to SECI, based on which, the installed capacity shall be examined by SECI in line with the DCR norms as per the RfS. Subsequent to the successful examination of the same, the second tranche of VGF, amounting to 50% of the total VGF awarded for the Project, will be disbursed to the SPD.

XIV. Schedule Commissioning Date (SCD) for commissioning of full capacity of the Project shall be the date as on 24 months from the date of issuance of LoA. The maximum time period allowed for commissioning of the full Project Capacity shall be limited to 30 months from the date of issuance of LoA.

In case of delay in commissioning of the Project beyond the SCD until the date as on 30 months from the issue date of the LoA/LoI, as part of the penalty for delay in commissioning the amount of VGF sanctioned to be the project shall be reduced by 0.15% (zero point one five percent) of the sanctioned VGF, on per day basis for the period of such delay, and proportionate to the capacity delayed or not commissioned.

XV. All disputes arising out of and/or in connection with the selection of Solar Power Projects under the said RfS and execution of project(s) thereto shall be governed by laws of India and shall be subject to the jurisdiction of Courts of New Delhi……"

30. Similar Letter of Award was issued by SECI to the Petitioner allocating 923 MW pursuant to its selection under RfS-2 on 25.11.2019, which is not reproduced herein for sake of brevity.

31. Further, SECI has furnished conformity certificates in respect of both the RfS documents certifying that the Bid Evaluation Committees constituted for evaluation of bids have conducted the techno-commercial as well as the financial bid evaluation in conformity to the provisions of RfS and that applicable guidelines and amendments/ clarification thereof, for the bidding process were followed and that no deviations were taken from the Guidelines. The relevant extract of both the Conformity Certificates as furnished by SECI is reproduced as under:

<u>RfS–1</u>

"….With respect to the RfS No. SECI/C&P/SPD/CPSUI/RfS/2000MW/032019 Dated : 15.03.2019, it is hereby declared as follows:

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

2. Applicable Guideline and amendments/clarification thereof, if any, issued by Government of India for the bidding process were followed in the above tender and no deviation was taken from the Guidelines in the RfS documents for the above tender.

Sd/-	*sd/-*	*sd/-*
(Biblesh Meena)	*(Aalok Singh)*	*(Ajit Sharma)*
Dy. Manager (C&P)	*Dy. Manager (Solar)*	*Dy. Manager (Finance) .. "*

<u>RfS–2</u>

"….With respect to the RfS No. SECI/C&P/SPD/CPSU-II/RfS/1500MW/082019 Dated : 01/08/2019, it is hereby declared as follows:

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

2. Applicable Guideline and amendments/clarification thereof, if any, issued by Government of India for the bidding process were followed in the above tender and no deviation was taken from the Guidelines in the RfS documents for the above tender.

Sd/-	*sd/-*	*sd/-*
(Sunil Yadav)	*(Uday Pawan)*	*(Ajit Sharma)*
Dy. Manager (C&P)	*Dy. Manager (Solar)*	*Dy. Manager (Finance) …"*

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

33. Pursuant to the issuance of LoAs, the Petitioner has stated that it has entered into several Power Usage Agreements ('PUAs') with Telangana Discoms i.e. Respondent No. 2 and Respondent No. 3, for supply of solar power to be generated through its solar PV power projects set-up under the CPSU Scheme Phase-II. The Petitioner has submitted that under the various PUAs, power generated by the Petitioner from its solar PV projects, as Government Producer, is to be procured by the Respondents, Telangana Discoms solely for the end user, namely Government or Government entities, in compliance to WTO Regulations on mutually agreed terms and conditions as mentioned in the CPSU Scheme Phase-II. Details of various PUAs as entered into between the Petitioner and Telangana Discoms are as under:

Date of issue of LoI	Project location	Project capacity (in MW)	Usage charges (payable per unit)	Scheme	Scheduled commissioning date as per PPA	Date of PUA	Date of supplemental PUA
28.09.2019	Shambu ki burj	250	2.86	CPSU	28.09.2021	30.12.2019	30.12.2020

Date of issue of LoI	Project location	Project capacity (in MW)	Usage charges (payable per unit)	Scheme	Scheduled commissioning date as per PPA	Date of PUA	Date of supplemental PUA
	Solar PV Project, Bikaner in Rajasthan			Scheme Phase-II Tranche-I			
28.09.2019	Devikoot Solar PV project, Jaisalmer in Rajasthan	150	2.86	CPSU Scheme Phase-II Tranche-I	28.09.2021	30.12.2019	30.12.2020
28.09.2019	Navalakkapatti Solar PV Project, Ettayapuram Taluk, Tuticorin District in Tamil Nadu	230	2.69	CPSU Scheme Phase-II Tranche–I	28.09.2021	26.11.2020	30.12.2020
28.09.2019	Nokhra Solar PV project, Bikaner in Rajasthan (300MW)	139	2.86	CPSU Scheme Phase-II Tranche–I	28.09.2021	13.03.2020	30.12.2020
25.11.2019	Nokhra Solar PV project, Bikaner in Rajasthan (300MW)	161	2.86	CPSU Scheme Phase-II Tranche-II	25.11.2021	13.03.2020	30.12.2020
25.11.2019	Shambu ki burj Solar PV Project, Bikaner in Rajasthan	300	2.86	CPSU Scheme Phase-II Tranche–II	25.11.2021	13.03.2020	30.12.2020
25.11.2019	Devikoot Solar PV project, Jaisalmer in Rajasthan	27	2.86	CPSU Scheme Phase-II Tranche-II	25.11.2021	13.03.2020	30.12.2020
		63	2.69				
25.11.2019	Fatehgarh Solar PV project, Jaisalmer in Rajasthan	296	2.86	CPSU Scheme Phase-II Tranche-II	25.11.2021	13.03.2020	30.12.2020
25.11.2019	Gandhar Solar PV project in Gujarat	20	2.69	CPSU Scheme Phase-II Tranche-II	25.11.2021	26.11.2020	30.12.2020
25.11.2019	Kawas Solar PV project in Gujarat	56	2.69	CPSU Scheme Phase-II Tranche-II	25.11.2021	26.11.2020	30.12.2020
	Total	**1692 MW**					

34. In support of allowing the prayer of the Petitioner for adoption of usage charges, the Petitioner and the Respondent, SECI have placed reliance on the provisions of the Standard Bidding Guidelines, which envisage bidding based on VGF as bid parameter

and provide for adoption of pre-specified tariff and also on the order dated 1.3.2021 passed by the Commission in Petition No. 160/AT/2019 along with IA No.81/2019, wherein the bid process was also conducted on VGF as bid parameters and the Commission had adopted the pre-specified tariff. The relevant extract of the Standard Bidding Guidelines reads as under:

> *"4.3 Bidding Parameters: For procurement of electricity, the Procurer may opt for either 'Tariff as Bidding Parameter' or 'Viability Gap Funding (VGF) as Bidding Parameter'.*
> *…*
> *4.3.2 VGF as the Bidding Parameter: It involves a mechanism wherein a pre-determined tariff is offered to the Solar Power Generator along with a financial assistance, to enable the Solar Power Generator to supply power at this tariff. For VGF based Bidding, the Procurer shall specify the following before issuance of RfS: (a) Pre-determined tariff payable to the selected Solar Power Generator for the duration of the PPA and the Maximum amount of Viability Gap Funding (VGF) support required by them. The bidders who do not want to avail the VGF support, may offer in their bids, a discounted tariff, lower than the pre-determined tariff offered by the Procurer..."*

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

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

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

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

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

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

40. While noting that post bidding, the mutually agreed usage charges arrived at between the Petitioner and the Telangana Discoms under various PUAs are within the ceiling usage charge of Rs.3.50/kWh as specified in the CPSU Scheme Phase–II, this Commission presumes that the Central Vigilance Commission's guidelines circulated vide letter No.8(1)(h)/98(1) dated 18.11.19989 including subsequent amendments and clarifications relating to post tender negotiations have been strictly followed while arriving at the said mutually agreed usage charges.

41. The Petition No. 174/AT/2021 is disposed of in terms of the above.

Sd/-	sd/-	sd/-	sd/-
(P.K. Singh)	**(Arun Goyal)**	**(I. S. Jha)**	**(P. K. Pujari)**
Member	**Member**	**Member**	**Chairperson**