

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 202/MP/2024

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu, Member
Shri Harish Dudani, Member**

Date of Order: 17th April, 2025

In the matter of

Petition under Section 79(1)(b) read with Section 63 of the Electricity Act, 2003 to place on record subsequent developments after passing of the order dated 2.4.2022 by this Commission in Petition No. 286/AT/2021 for the adoption of tariff of solar power projects of 8900 MW connected to inter-State Transmission System linked with Setting-up of Solar Manufacturing Plant, selected through competitive bidding process as per the Guidelines dated 3.8.2017 of the Central Government as amended from time to time.

And

In the matter of

Solar Energy Corporation of India Limited,
6th Floor, Plate-B, NBCC Office Block Tower-2,
East Kidwai Nagar,
New Delhi-110023

.....Petitioner

Vs

Andhra Pradesh Southern Power Distribution Company Limited,
19-13-65/A
Srinivasapuram Tiruchanoor Road
Tirupathi – 517503
Tirupati District, Andhra Pradesh

2. Andhra Pradesh Eastern Power Distribution Company Limited,
P&T Colony, Seethammadhara,
Vishakhapatnam-530 020

3. Andhra Pradesh Central Power Distribution Company Limited,
Beside Polytechnic College
ITI Road, Vijayawada - 520 008
Krishna District, Andhra Pradesh

4. AP Rural Agriculture Power Supply Company Limited,
Tadepalle, Guntur– 522501,

Andhra Pradesh

5. Government of Andhra Pradesh,

Through Deputy Secretary, Energy Department
2nd Block Ap Secretariat Velagapudi-Guntur District,
Andhra Pradesh

**6. Adani Renewable Energy Holding Four Limited,
(Previously known as Adani Green Energy Four Limited)**

Adani Corporate House, Shantigram
Ahmedabad- 382421, Gujarat

7. Adani Renewable Energy Fifty-Five Limited,

Adani Corporate House, Shantigram
Ahmedabad- 382421, Gujarat

8. Adani Renewable Energy Fifty-Six Limited,

Adani Corporate House, Shantigram
Ahmedabad- 382421, Gujarat

9. Adani Renewable Energy Fifty-Seven Limited,

Adani Corporate House, Shantigram
Ahmedabad- 382421, Gujarat

10. Adani Renewable Energy Fifty-Eight Limited,

Adani Corporate House, Shantigram
Ahmedabad- 382421, Gujarat

11. Adani Renewable Energy Fifty-Nine Limited,

Adani Corporate House, Shantigram
Ahmedabad- 382421, Gujarat

Respondents

Parties Present:

Shri M.G. Ramachandran, Sr. Advocate, SECI
Ms. Anushree Bardhan, Advocate, SECI
Ms. Shirsas Saraswati, Advocate, SECI
Shri Aneesh Bajaj, Advocate, SECI

ORDER

The Petitioner, Solar Energy Corporation of India (SECI), has filed the present Petition under Section 79(1) (b) read with Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') to place on record the subsequent developments

after passing of the order dated 2.4.2022 in Petition No. 286/AT/2021 by the Commission.

2. Before considering the contentions of the present Petition, it would be apt to record the following background of the case:

- (a) The Petitioner awarded a capacity of 12000 MW through tariff based competitive bidding process for the *“Selection of Solar Power Developers for Setting up of 7 GW ISTS Connected Solar PV Power Plants linked with Setting up of 2 GW (Per Annum) Solar Manufacturing Plant under Global Competitive Bidding”* under the guidelines dated 3.8.2017 of the Central Government, as amended from time to time. Out of the awarded capacity of 12000 MW, the Petitioner entered into the Power Purchase Agreements (PPAs) and Power Supply Agreements (PSAs) for an aggregate capacity of 8900 MW.
- (b) It was stipulated in the bid that PPAs shall be signed for four packages (Packages I to IV, 3000 MW each). The PPAs and PSAs were signed for the 1900 MW under Package I and 7000 MW under Package II to Package IV.
- (c) The Petitioner executed the PSAs with the distribution utilities of Odisha (500 MW), Chhattisgarh (300 MW), Tamil Nadu (1000 MW), and J&K (100 MW) under Package I at the tariff of Rs 2.54/unit. The Petitioner entered into the PPAs for the 1250 MW with Adani Green Energy Four Limited and the PPAs for the 650 MW with Azure Power India Power Limited.
- (d) The Petitioner executed the PSAs with the distribution utilities of Andhra Pradesh for the 7000 MW under Packages II to IV at the tariff of Rs. 2.42/unit. The Petitioner entered into the PPAs dated 14.12.2021 for the 4667 MW with Adani Green Energy Four Limited's SPVs and PPAs dated 16.12.2021 for the 2333 MW with Azure Power India Power Limited's SPVs.
- (e) By the order dated 2.4.2022 in Petition No. 286/AT/2021, the Commission adopted a tariff for the aggregate of 8900 MW of Solar Power Projects,

observing that SECI was still in the process of identifying and finalizing the PSAs for balance capacity of 3100 MW subject to outcome of the decision of Hon`ble High Court of Andhra Pradesh in the Writ Petition filed by Shri K. Rama Krishna. The relevant portion of the order dated 2.4.2022 is extracted as under:

“70. It emerges that selection of the successful bidders has been done and the tariff of solar power projects has been discovered by the Petitioner, SECI through a transparent process of competitive bidding in accordance with Guidelines dated 3.8.2017 issued by Ministry of Power and suitably modified vide communications dated 20.4.2018, 14.8.2019, 9.10.2019 and 22.5.2020. It is also noted that, in accordance with Clause 20 of the Guidelines dated 3.8.2017, all the modification letters were issued by Ministry of New & Renewable Energy with the approval of Minister of State (I/C) for Power & MNRE. Admittedly, the Petitioner has been able to enter into PPA for a total capacity of 8900 MW i.e. 1900 MW under Package-I and 7000 MW under Package-II to Package-IV. Since the Petitioner is still in the process of identifying and finalizing the PSAs for balance capacity of 3100 MW, we deem it appropriate to restrict adoption of tariff, as prayed for by the Petitioner, only with respect to the quantum for which PPA has been executed with solar power developers for supply of power to the identified distribution licensees through PSA with the Petitioner. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariffs for the solar power projects, as agreed to by the successful bidder(s), and for which PPA has been entered into by SECI on the basis of the PSAs with the distribution licensees, which shall remain valid throughout the period covered in the PPA and PSAs

83. Shri K. Rama Krishna had submitted that he has approached the Hon`ble High Court of Andhra Pradesh by invoking the writ jurisdiction challenging the RfS and the power procurement by AP Discoms. Therefore, this order will be subject to the outcome of the decision of Hon`ble High Court of Andhra Pradesh in the Writ Petition filed by Shri K. Rama Krishna.”

- (f) Thereafter, on 30.6.2023, SECI filed Petition No. 224/AT/2023 for the adoption of tariff for the additional 334 MW under Package -I (50 MW PPA with Azure SPV and 284 MW PPA with Adani SPVs) for onward supply of 234 MW to the BEST under the PSA dated 9.12.2022 and 100 MW to Tripura Discom under the PSA dated 20.7.2022. Vide order dated 5.11.2023, the Commission adopted the tariff for the above quantum.
- (g) Thus, as on 5.11.2023, the Commission had adopted the tariff for a total quantum of 9234 MW (8900 MW as per Order dated 2.4.2022 in Petition No. 286/AT/2021 and 334 MW as per Order dated 5.11.2023 in Petition No. 224/AT/2023). Out of the above quantum of 9234 MW, 6201 MW is with Adani Green Energy Four Limited and its SPVs, and 3033 MW is with

Azure Power India Private Limited and its SPVs (which includes the 2333 MW, which is for onward supply to AP Discoms).

Background of the present Petition

3. As regards the background of the present Petition, SECI has made the following submissions

- (h) After the adoption of tariff for 9234 MW by the Commission, there has been a development in regard to the implementation of the PPAs dated 16.12.2021 under Packages II, III, and IV mentioned herein above entered into by Azure (Para 48 of the order dated 2.4.2022) and its SPVs who have purported to unilaterally terminate the PPAs vide letter dated 16.10.2023 in respect of 2333 MW, which is mapped to onward supply to the AP Discoms. Simultaneously, Azure has filed a Writ Petition No. 27320 of 2023 before the Hon'ble Andhra Pradesh High Court, and the same is pending.
- (i) AP Discoms were desirous of the supply of the 2333 MW capacity and, therefore, requested SECI to explore the alternative options in the event Azure/ its SPVs are not undertaking the supply of the above capacity. Adani was willing to supply the 2333 MW capacity, which was allocated to Azure on the same terms and conditions, subject to revision in the timeline for implementation. Adani agreed that such generation and supply of solar power, as well as the undertaking for the manufacturing of the solar cells and modules, etc., for the related capacity, will be on the same terms and conditions as contained in the PPAs executed between SECI and Azure including the tariff of Rs 2.42 per kWh, except that the scheduled commissioning date for such capacity will be revised. Accordingly, the AP Discoms were willing to procure the 2333 MW power, and Adani was willing to supply such a quantum of power to SECI for onward supply to AP Discoms.
- (j) In pursuance of the above, SECI has entered into the PPAs (11 in number) dated 26.12.2023 for the generation and supply of 1799 MW with Adani

(which was the capacity that remained unsold with Adani itself previously in terms of the letter of award dated 8.6.2020).

- (k) On 29.12.2023, SECI also entered into a supplemental PSA to the Tripartite PSA dated 1.12.2021 with the AP Discoms and Government of Andhra Pradesh, wherein 1799 MW earlier mapped from Azure (out of a total of 2333 MW) was substituted with Adani. Further, it has been recorded in the recital that AP Discoms gives its consent for procurement of the 2333 MW of power (in aggregate) pertaining to Azure from any other alternate source under the PSA without any deviation in clauses and terms & conditions.
- (l) On 23.2.2024, SECI issued an Addendum-2 to Adani to the LOA issued on 8.6.2020 for the addition of the 2333 MW, and the total cumulative awarded Solar PV Power Plant capacity linked with the Solar PV Manufacturing Plant was modified to 10333 MW.
- (m) Further, on 1.3.2024, SECI entered into a Supplemental PSA-2 with the AP Discoms and Government of Andhra Pradesh, whereby the balance of 534 MW (out of the 2333 MW) was also substituted with Adani. On 13.3.2024, SECI entered into the PPAs (3 in number) with Adani for the remaining capacity of the 534 MW for setting up the Solar Power Plants. SECI also entered into a Manufacturing Contract Agreement with Adani on 13.3.2024 for setting up an additional 583 MW of a Manufacturing Plant of Solar PV Modules and Cells.
- (n) On 18.3.2024, SECI wrote to Azure, stating that on account of the material breach on the part of Azure in the performance obligation assumed under the PPAs dated 16.12.2021, SECI is proceeding to terminate the PPAs dated 16.12.2021 for 2333 MW. Further, on the same date, SECI issued an Addendum-2 to the LOA dated 23.7.2020 to Azure for the reduction of the 2333 MW in cumulative solar power project capacity and corresponding manufacturing capacity awarded to Azure in light of the W.P. No. 27320 of 2023. The total cumulative solar power project capacity of Azure was reduced to 1667 MW.

- (o) SECI is placing on record the PPAs dated 26.12.2023 and 13.3.2024 signed with Adani for the 2333 MW (which was earlier signed with Azure for onward supply to Andhra Pradesh). As there has been a substitution of the power developer, namely from Azure to Adani on account of the surrender of 2333 MW by Azure, which has been recorded in the LOA dated 23.2.2024 issued to Adani, Supplementary PSA dated 29.12.2023 along with the Supplementary PSA-2 dated 1.3.2024, the Commission may take on record the PPAs dated 26.12.2023 and 13.3.2024 signed by SECI with Adani for 2333 MW.
- (p) The above substitution of the PPAs of 2333 MW signed with Azure with PPAs of 2333 MW with Adani dated 26.12.2023 and 13.3.2024 is due to a material breach on the part of Azure in the performance obligation assumed under the PPAs dated 16.12.2021 and the non-availability of power by reason of Azure seeking not to implement the project will result in irreparable loss and injury to the APDISCOMS and consumers in Andhra Pradesh.
- (q) SECI has placed on record the above aspects, which have materialized after this Commission has passed the adoption of tariff orders in Petition No. 286/AT/2021 vide order dated 2.4.2022 for a total quantum of 8900 MW and in Petition No. 224/AT/2023 vide its order dated 5.11.2023 for 334 MW.

4. In light of the above background, the Petitioner has made the following prayers in the Petition:

“In the facts and circumstances, it is respectfully prayed that this Hon’ble Commission may be pleased to take on record PPAs dated 26.12.2023 (11 in number) and PPAs dated 13.03.2024 (3 in number) executed between SECI and Adani for cumulative 2333 MW capacity and the Supplemental PSA dated 29.12.2023 and Supplemental PSA-2 dated 01.03.2024 executed between SECI and A P Discoms and Government of Andhra Pradesh.”

5. The Petitioner was admitted on 7.10.2024, and notices were issued to the respondents to file their respective replies. No reply has been filed by the Respondents.

6. Subsequently, the Petitioner filed an additional affidavit to bring on record the further development that, on 10.10.2024, SECI signed an amendment to the PPA dated 26.12.2023 executed with Adani Renewable Energy Fifty-Five Limited, which is one of the 14 agreements signed with Adani for the substituted quantum of 2333 MW earlier mapped to Azure, to amend the Project capacity from the 150 MW to 67 MW, thereby reducing the capacity of the Project by 83 MW. The relevant portion of the affidavit dated 25.10.2024 is extracted as under:

“2. I say that the above petition has been filed by SECI to place on record certain subsequent developments after the passing of the order dated 02.04.2022 by this Hon’ble Commission in Petition No. 286/AT/2021.

3. I say that by the order dated 02.04.2022, this Hon’ble Commission was pleased to adopt the tariff of the successful bidders in a tariff-based competitive bidding process initiated by SECI for “Selection of Solar Power Developers for Setting up of 7 GW ISTS Connected Solar PV Power Plants linked with Setting up of 2 GW (Per Annum) Solar Manufacturing Plant under Global Competitive Bidding” under the guidelines dated 03.08.2017 of the Central Government as amended from time to time.

4. I say that SECI craves reference to the averments and submissions contained in the Petition and the contents thereof are not being repeated for the sake of brevity and may be read as part of this present Affidavit.

5. I say that the present affidavit is being filed by SECI seeking leave of this Hon’ble Commission to place on record certain additional information relevant and necessary for proper consideration of the matter in issue.

6. I say that on 10.10.2024, SECI signed an amendment to the PPA dated 26.12.2023 executed with M/s. Adani Renewable Energy Fifty-Five Limited (Project ID: SPD-MANUFACTURING-ISTS-AGEFL-A4-2000:500-P5), which is one of the 14 agreements signed with Adani for the substituted quantum of 2333 MW earlier mapped to Azure, to amend the project capacity from 150 MW to 67 MW, thereby reducing the capacity of the Project by 83 MW. A copy of the amendment dated 10.10.2024 to the PPA dated 26.12.2023 executed between M/s. Adani Renewable Energy Fifty-Five Limited and SECI is attached herewith and marked as Annexure-A.

7. *I say that thereafter SECI entered into a Power Purchase Agreement dated 10.10.2024 with M/s. Adani Green Energy Twenty-Five B Limited for the generation and supply of 83 MW (which was earlier with M/s. Adani Renewable Energy Fifty-Five Limited). A copy of the PPA dated 10.10.2024 executed between SECI and M/s. Adani Green Energy Twenty-Five B Limited is attached herewith and marked as Annexure-B.*

8. *I say that the above documents are relevant for proper appreciation of the facts of the present Petition.*

9. *I say that the present Affidavit is being filed bona fide by SECI and in the interest of justice.*

10. *I say that the Commission may be pleased to:*

a) Admit the present affidavit and take the additional documents on record and permit SECI to refer to the said documents at the time of hearing; and

b) Pass such further order or orders as this Commission may deem just and proper in the circumstances of the case.”

7. The matter was heard on 28.10.2024. During the hearing, in response to the specific query of the Commission as to whether the transaction of such nature was permissible under the tender document issued by SECI, learned senior counsel for SECI submitted that while the provisions of the Guidelines and the RfS documents as such did not restrict such transaction, the PPA as issued along with the RfS, at Article 15.1, permitted the Assignment of the PPAs. Learned senior counsel further sought liberty to file a brief note on the aspects as to how the above transaction is permissible under the Guidelines and Bid documents, and, in addition, is in the larger public interest. The Commission permitted the Petitioner to file its brief note and reserved the matter for order.

8. In compliance with the RoP for the hearing dated 28.10.2024, the Petitioner, vide its affidavit dated 7.12.2024, has submitted the brief note. The relevant portion of the brief note is extracted as under:

“2. The Petitioner, SECI respectfully submits that the increase in the contracted capacity of Solar PV generation and supply under the Power

Purchase Agreements (“PPAs”) dated 26.12.2023 and 13.03.2024 entered into with Adani Group Companies from 6201 MW to 8534 MW (increase by 2333 MW) is not contrary to the provisions of the Guidelines dated 03.08.2017 (Page Nos. 31-66 of Petition No. 286/AT/2021), Request For Selection document (“RfS”) (Page Nos. 91-538 of Petition No. 286/AT/2021) as amended from time to time. Such increase is consistent with the total capacity of 12000 MW for which the tariff-based competitive bid process was proceeded with and finalized with successful bidders and within the tariff adopted by the said process by this Hon’ble Commission in orders dated 02.04.2022 in Petition No. 286/AT/2021 and 05.11.2023 in Petition No. 224/AT/2023.

.....

9. *It is submitted that in so far as Azure is concerned, the PPA for 2333 MW has been repudiated by breach on the part of Azure and Azure specifically and categorically had denied its obligation to implement the PPA to the extent of 2333 MW. SECI has reserved its right to take appropriate proceedings in regard to such breach including the claim for damages in accordance with the terms of the PPA with Azure and Azure has filed Writ Petitions in the AP High Court being W.P. Nos. 27320 of 2023 and 15952 of 2024, which are pending. There is no possibility of expecting Azure to implement the PPA to establish the generation project and commence supply of power qua 2333 MW.*

10. *In view of the above, in public interest and in the interest of consumers in the State of Andhra Pradesh and considering the basic objective and scheme of initiating the competitive bid process to finalize an aggregate Solar PV projects of 12000 MW with corresponding indigenous manufacturing of solar modules etc, it became necessary to consider the salvaging of the capacity of 2333 MW repudiated by Azure and the corresponding 583 MW of solar manufacturing facilities. This was particularly when APDISCOMs and Government of Andhra Pradesh were keen on such 2333 MW being made available and Adani was willing to undertake the additional capacity on the same tariff terms and conditions except commissioning schedule of the Projects.*

11. *It is submitted that out of the total 2333 MW, the capacity of 1799 MW which remained available out of the 8000 MW allocated to Adani, in terms of the provisions of the Guidelines and RfS, SECI is entitled to allocate such capacity to Adani, if the AP Discoms and Adani had agreed to and sought for such implementation. As more fully setout herein, with reference to the clauses of the Guidelines and the RfS, there is no prohibition for implementing the said 1799 MW by entering into a PPA with Adani at a later stage as the tariff of Rs.2.42/kWh and associated terms and conditions except commissioning schedule are same as that of Azure PPA and is competitive and conducive to the interest of the consumer as decided by the Appropriate Commissions.*

12. *In addition to the above, it is submitted that there is no prohibition as set out in detail in the Guidelines or RfS for allocating additional capacity to Adani when Azure has conclusively repudiated the PPA and is not willing to implement the project, generate and supply electricity therefrom.*

.....

14. *It is submitted that the following aspects are relevant:*

i. The competitive bidding was finally accomplished for an aggregate 12000 MW of Solar PV Power and 3000 MW of solar manufacturing. There is no increase in the above aggregate 12000 MW Solar PV capacity even after considering the capacity of 2333 MW additional now allotted to Adani. The fact that 12000 MW of Solar PV Power Project was part of the competitive bid held pursuant to which Adani was selected for 8000 MW and Azure was selected for 4000 MW as aggregate, both offering the same tariff is clear from the below averments which are part of the Petition No. 286/AT/2021 and Petition No. 224/AT/2023 filed by SECI before this Commission for the adoption of tariff and approval of PPA based on the approval granted by the State Commissions vis-à-vis the PSA. It is also noteworthy that Adani had submitted bid for full capacity and were eligible to get it. However, Azure got LoA for 4000 MW because the their bid for early in timestamping.

.....

v. AP Discoms had concluded one single PSA dated 01.12.2021 with SECI for procurement of 7000 MW in aggregate though the sourcing of that power was from Adani (4667 MW) and Azure (2333 MW). As per the PSA, it will not matter to AP Discoms whether the capacity is given by Adani or Azure as the tariff terms and conditions of the entire 7000 MW will be the same.

vi. Insofar as the PSA dated 01.12.2021 is concerned, there is no dispute that the sale of energy to AP Discoms which is regulated under the Electricity Act, 2003 is for an aggregate capacity of 7000 MW. The procurement of such 7000 MW has been duly approved by Andhra Pradesh Electricity Regulatory Commission under Section 86(1)(b) read with Rule 8 of the Electricity Rules, 2005 vide its order dated 12.04.2024 in OP No. 3 of 2024. A copy of the order dated 12.04.2024 passed by the Andhra Pradesh Commission is attached hereto and annexed as Annexure 'C'.

16. *It is submitted that AP Discoms had been desirous of and keen to get the full quantum of 7000 MW of solar power under PSA dated 01.12.2021. It was represented by AP Discoms as well as the Government of Andhra Pradesh that the said solar power was entirely required for maintaining the supply of electricity to agricultural consumers in the State in respect of whom the Government of Andhra Pradesh took a policy decision that it would entirely bear the cost of procurement of such 7000 MW by AP Discoms from SECI. The relevant communications and documents in this regard are attached herewith and collectively on marked as Annexure 'E'.*

17. *In the circumstances mentioned above, AP Discoms and the Government of Andhra Pradesh considered it prudent to get the entire 7000 MW at the tariff of Rs. 2.42 /kWh plus trading margin and for SECI to supply such power in terms of the PSA dated 01.12.2021. Adani was willing to undertake such generation and supply of power of the 2333 MW (including the*

corresponding obligation of manufacturing solar modules) on the same tariff terms and conditions as applicable to the capacity allocated to Azure including the same tariff as Azure except for the time extension for implementing the Project.

18. It is submitted that out of the 2333 MW as mentioned above, 1799 MW could always be allotted to Adani out of the balance available capacity available with Adani Power out of the quantum of 8000 MW, and SECI could always sign the PPA for the said capacity and seek adoption of tariff from this Hon'ble Commission consistent with such purchase being competitive, economical and beneficial to public interest.

The additional 534 MW had also been approved by the Hon'ble Commission for Azure on the same terms and conditions in the order dated 02.04.2022 in Petition No. 286/AT/2021, and upon Azure repudiating the PPA the said capacity was also allocated to Adani.

19. The single bidder could have been awarded the entire 12000 MW of Solar PV Power Projects and 3000 MW of manufacturing, provided there was no other bidder. There is nothing in the Guidelines or the RfS, which prohibits that even a single bidder being finally entertained and allotted the entire capacity by SECI after following the process provided as set out in clause 9.2 of the RfS as under:

.....
20. The process to be adopted after the bids are received are inter alia provided in the RfS as under:

“2.b SECOND ENVELOPE (FINANCIAL BID) EVALUATION (STEP - 2)

.....
2.b.6 If the tariff quoted is same for two or more Bidders for a particular Project, then all the Bidders with same tariff shall be considered of equal rank/ standing in the order.

2.b.7 Total eligible capacity for e-Reverse Auction shall be calculated as provided in Clause No. 3.4 of this Section-V of RfS.

2.b.8 Ranking of Bidders after Financial Bid Evaluation: Following illustrates an example of ranking of bidders after financial bid opening and evaluation

Bidder	Submitted Financial Bid	Ranking
B1	₹ 2.10 (Tariff in ₹/ kWh)	L1
B2	₹ 2.20 (Tariff in ₹/ kWh)	L2
B3	₹ 2.30 (Tariff in ₹/ kWh)	L3
B4	₹ 2.30 (Tariff in ₹/ kWh)	L3
B5	₹ 2.43 (Tariff in ₹/ kWh)	L4
B6	₹ 2.60 (Tariff in ₹/ kWh)	L5
B7	₹ 2.70 (Tariff in ₹/ kWh)	L6
B8	₹ 2.72 (Tariff in ₹/ kWh)	L7
B9	₹ 2.75 (Average Tariff in ₹/ kWh)	L8

4. SELECTION OF SUCCESSFUL BIDDERS

4.1 The Bidders shall be selected in the ascending order with lowest quoted tariff (being L1) and so on till the total eligible Manufacturing capacity for each Bidding package is exhausted.

4.2 The successful bidder as selected based on Clause 4.1 above, will be allocated its qualified Manufacturing Capacity along with quoted Project Capacity linked with Manufacturing Capacity. Then, next successful bidder will be allocated its qualified Manufacturing Capacity along with quoted Project Capacity linked with Manufacturing Capacity and so on, till the total Manufacturing Capacity against any particular Bidding Package (i.e. 1000 MW) is exhausted.

The allocation of cumulative Manufacturing Capacity shall be closed at 1000 MW for Solar PV Manufacturing Plant linked with upto 4000MW/3000MW for Solar PV Power Plant.

In case partial Manufacturing Capacity offered to any of the Bidder after completion of the e-RA is less than or equal to the total quoted Manufacturing Capacity by such Bidder, it shall be mandatory for the Bidder to accept the partial Manufacturing Capacity offered against its quoted Project Capacity, subject to the total cumulative Manufacturing Capacity awarded after e-RA to the successful Bidders not exceeding 1000 MW per Bidding Package. In case any Bidder refuses to accept such partial capacity offered by SECI, the Bank Guarantee against EMD submitted by such Bidder shall be encashed by SECI.

The capacity for which e-Reverse Auction shall be carried out correspond to Solar PV Manufacturing Plant Capacity. Against each Bidding Package, a Capacity of 1000 MW (500MW x 2) towards setting up of Solar Manufacturing Plant linked with the Capacity upto 4000MW/3000 MW towards setting up of Solar PV Power Plant shall be allocated to the Successful Bidders/ SPDs in line with the provisions of RfS documents. Thus, the total Solar PV Power Plant capacity would be upto 7000 MW linked with Solar Manufacturing Capacity of 2000 MW for both the Bidding Packages.

4.3 In case of a tie among two or more Bidders (i.e. their last quoted tariff being the same at the end of the e-RA), they will be considered in the chronological order of their last bid with preference to that Bidder who has quoted his last bid earlier than others.

In the above case, if the time of quote also become exactly same among the Bidders at a tie, then the ranking among these Bidders shall be done as follows:

Step 1: Lowest rank will be given to the Bidder who has quoted the lowest in Financial Bid (Electronic Form) and so on. If there is also a tie among any of these bidders, then the following step (Step 2) will be followed.

Step 2: Ranking will be done based on draw of lots

4.4 At the end of selection process, a Letter of Award (LoA) will be issued to the successful Bidders for each Project. In case of a Consortium being selected as the successful Bidder, the LoA shall be issued to the Lead Member of the Consortium.

In all cases, SECI's decision regarding selection of Bidder through e-Reverse Auction or other- wise based on tariff or annulment of tender process shall be final and binding on all participating bidders.

21. In this regard the Amendment VI to the RfS is also relevant which modified Clause 1 as under:

On deadline for submission of bids, if it is found that no bids/ only 01 (One) bid is received against any particular Package or the entire RfS, the deadline for submission of bids related to that particular Package or the entire RfS, as the case may be, will be extended for further period of 07 (Seven) days and 03 (Three) such attempts shall be made. Despite of all the 03 (Three) attempts, if it is still found that only 01 (One) bid is received against that particular Package or the entire RfS, the opening and further evaluation of the bid will be at the discretion of SECI. Thereafter, SECI will take appropriate action as deemed fit.

Further, in case of underbidding in any of the Bidding Package (i.e. either Bidding Package A or Bidding Package B), the undersubscribed portion shall be transferred to other Bidding Package which have been more than fully subscribed prior to e-Reverse Auction. However, this transferred capacity shall not be subject to e-Reverse Auction but shall be allocated on the lowest discovered tariff of the oversubscribed Package. Further, the ratio of Solar Manufacturing Plant and Solar PV Power Plant for such transferred capacity shall be kept the same as that of the ratio for oversubscribed Package. This additional capacity so transferred will be offered to the bidders of the Package to which this additional capacity has been transferred in the order of preference of L1, L2, L3 and so on...till the total additional capacity is exhausted.

Bid evaluation will be carried out considering the information furnished by Bidders as per provisions specified in Section-II, Instructions to Bidders (ITB) of this RfS. The detailed evaluation procedure and selection of bidders are described in subsequent clauses in this Section.

22. In the RfS clause 28 it has been provided as under:

28. RIGHT TO SECI TO REJECT A BID

SECI reserves the right to reject any or all of the responses to RfS or cancel the RfS or annul the bidding process for any project any stage without assigning any reasons whatsoever and without any liability.

In terms of the above SECI had retained the right to give the award of the contract to the bidders in such manner as it is conducive for the purpose for which the competitive bidding was initiated and held subject however to the approval of the Appropriate Commissions as required under the Electricity Act and the Rules.

23. *It is submitted that if such repudiation by Azure had taken place before the execution of the PPA with Azure, the entire power could have been allocated to Adani.*

24. *In the circumstances mentioned above, on the repudiation of the PPA on account of breach by Azure, the same process can be adopted for Adani, i.e. Adani is to be given the 2333 MW and also tariff should be on the same terms and conditions.*

25. *SECI is not bringing any third party who did participate or submit the bid or is not the lowest bidder. The above allocation of the capacity of 2333 MW is after the repudiation of the PPA by Azure and therefore there is no assignment as such by Azure.*

27. *The Guidelines, RfS do not provide for any specific clause dealing with any prohibition against the Commission exercising its regulatory powers to allow such additional capacity to be implemented by Adani.*

28. *At the time of the competitive bid process, what is material is the selection of the lowest bidder to supply the intended quantum at the most competitive rate. The rest are all implementation issues which do not affect the sanctity of the competitive bid process. After the selection of the bidder, to the extent there is a gap in the Guidelines or the RfS document, it is always permissible for the Commission to exercise its regulatory powers under Section 79 of the Electricity Act, 2003, and other applicable provisions of the Act.*

29. *In the absence of any such provision, in terms of Para 19 and 20 in Energy Watchdog case -v- Central Electricity Regulatory Commission & Ors. (2017) 14 SCC 80, the regulatory powers are available if the exercise of the same would serve the consumer interest. In the present case, there is consumer interest of AP Discoms getting 2333 MW at a competitive tariff of Rs. 2.42/kWh plus Trading Margin of Rs 0.07/kWh.*

30. *It is a settled principle of law that if a thing is not prohibited, there is nothing wrong with adopting the process if it is in public interest. The quotes suggested above are not inconsistent with the RfS, or any other statutory law. In this regard, the following judgments are relevant:*

a) *Rajendra Prasad Gupta v. Prakash Chandra Mishra (2011) 2 SCC 705*

*“4. We do not agree. Rules of procedure are handmaids of justice. Section 151 of the Code of Civil Procedure gives inherent powers to the court to do justice. **That provision has to be interpreted to mean that every procedure is permitted to the court for doing justice unless expressly prohibited, and not that every procedure is prohibited***

unless expressly permitted. There is no express bar in filing an application for withdrawal of the withdrawal application.

5. In *Narsingh Das v. Mangal Dubey* [ILR (1883) 5 All 163], Mahmood, J. the celebrated Judge of the Allahabad High Court, observed:

“Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle prohibition cannot be presumed.”

b) *State of A.P. v. Vallabhapuram Ravi*, (1984) 4 SCC 410

“[.....] This Court while construing such deeming provision has adopted and applied in a number of cases the rule of construction expounded by Lord Asquith in East End Dwellings Co. Ltd. v. Finsbury Borough Council [1952 AC 109, 132: (1951) 2 All ER 587: 115 JP 477: (1951) 2 TLR 486 (HL)] in the following words:

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so; also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs. It does not say that, having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”

c) *American Home Products Corpn. v. Mac Laboratories (P) Ltd.*, (1986) 1 SCC 465

“56. In a celebrated passage Lord Asquith of Bishopstone in East End Dwellings Co. Ltd. v. Finsbury Borough Council [1952 AC 109] said (at page 132):

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.”

57. In the State of Bombay v. Pandurang Vinayak Chaphalkar [(1953) 1 SCC 425: AIR 1953 SC 244 : 1953 SCR 773] this Court held (at page 778) while approving the above passage of Lord Asquith:

“When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what

persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion.”

d) Chandramohan v. Sarojbai Subhashchandra Agarwal [2005 SCC OnLine Bom 497]

“31. In view of the legal position discussed hereinabove we are of the view that the Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for but on the converse principles that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a general principle prohibition cannot be presumed and in the present case therefore, it rests upon the respondents to show that power and jurisdiction of the Rent Controller to set aside an order to proceed ex parte is prohibited by the Rules of procedure applicable to the Tribunal. In the absence of any prohibition for the exercise of said power by the Rent Controller in the Rent Control Order, the power shall be presumed to be vested in the Rent Controller, as incidental and ancillary power which is in furtherance of effective exercise of the substantive power i.e.to adjudicate lis between landlord and tenant.”

31. *In the facts and circumstances mentioned above the allocation of 1799 MW plus 534 MW (2333 MW) to Adani upon repudiation of the PPAs to the said extent by Azure is consistent with the Guidelines and RfS and as per the scheme of the Solar PV project capacity cum promotion of indigenous manufacturing facility decided as per the Policy decision by the Central Government and the same are in larger public interest.”*

Analysis and Decision

9. We have considered the submissions made by the Petitioner and the documents placed on record.

10. The Petitioner awarded a capacity of 12000 MW through tariff based competitive bidding process for “Selection of Solar Power Developers for Setting up of 7 GW ISTS Connected Solar PV Power Plants linked with Setting up of 2 GW (Per Annum) Solar Manufacturing Plant under Global Competitive Bidding” under the guidelines dated 3.8.2017 of the Central Government as amended from time to time. Adani Green Energy Four Limited and Azure Power India Power Limited were awarded the 8000 MW and 4000 MW at the discovered tariff of Rs 2.92/unit.

11. As per the bid documents, PPAs were required to be signed in four packages of 3000 MW each. Accordingly, the PPAs and PSAs were signed for the 1900 MW under Package I and the 7000 MW under Packages II to IV initially.

12. The Petitioner executed the PSAs with the distribution utilities of Odisha (500 MW), Chhattisgarh (300 MW), Tamil Nadu (1000 MW), and J&K (100 MW) under Package I at the reduced tariff of Rs 2.54/unit. The Petitioner entered into the PPAs for the 1250 MW with Adani Green Energy Four Limited and the PPAs for the 650 MW with Azure Power India Power Limited.

13. As regards the Packages from II to IV, the Petitioner executed the PSAs with the distribution utilities of Andhra Pradesh for the 7000 MW at the tariff of Rs 2.42/unit. The Petitioner entered into the PPAs dated 14.12.2001 for the 4667 MW with Adani Green Energy Four Limited SPVs and PPAs dated 16.12.2021 for the 2333 MW with Azure Power India Power Limited SPVs.

14. Vide order dated 2.4.2022 in Petition No 286/AT/2021, the Commission adopted a tariff for an aggregate of the aforementioned 8900 MW of Solar Power Projects, observing that SECI was still in the process of identifying and finalizing the PSAs for balance capacity of 3100 MW (Package- I: 1100 MW; Package-II to IV: 2000 MW).

15. Thereafter, SECI filed Petition No. 224/AT/2023 on 30.6.2023 for the adoption of tariff adoption for the additional 334 MW under Package - I (50 MW PPA with Azure SPV and 284 MW PPA with Adani SPVs) for onward supply of 234 MW to BEST under the PSA dated 9.12.2022 and 100 MW to Tripura Discom under the PSA dated 20.7.2022. Vide order dated 5.11.2023, the Commission adopted the tariff for the above quantum.

16. The present Petition concerns with subsequent termination of the 2333 MW PPAs dated 16.12.2021 by Azure under Packages II to IV to be supplied to the AP Discoms vide letter dated 16.10.2023. Simultaneously, Azure filed a Writ Petition No. 27320 of 2023 before the Andhra Pradesh High Court, pending adjudication. As per the Petitioner, the AP Discoms had conveyed their willingness to take the 2333 MW, thereby requesting SECI to explore alternative options in the event Azure/ its SPVs are not undertaking the supply of the above capacity. Subsequently, the other successful bidder, Adani, was willing to supply the 2333 MW capacity, which was allocated to Azure on the same terms and conditions, subject to revision in the timeline for implementation.

17. Accordingly, SECI has entered into the PPAs (11 in number) dated 26.12.2023 for the generation and supply of 1799 MW with Adani (a capacity that remained unsold with Adani itself previously in terms of the letter of award dated 8.6.2020). SECI also entered into a supplemental PSA dated 29.12.2023 to the Tripartite PSA dated 1.12.2021 with the AP Discoms and Government of Andhra Pradesh, wherein 1799 MW earlier mapped from Azure (out of a total of 2333 MW) was substituted with Adani. On 23.2.2024, SECI issued an Addendum-2 to Adani to the LOA issued on 8.6.2020 for the addition of 2333 MW, and the total cumulative awarded Solar PV Power Plant capacity linked with the Solar PV Manufacturing Plant was modified to 10333 MW.

18. On 1.3.2024, SECI entered into a Supplemental PSA-2 with the AP Discoms and Government of Andhra Pradesh, whereby the balance of 534 MW (out of the 2333 MW) was also substituted with Adani. On 13.3.2024, SECI entered into PPAs (3 in number) with Adani for the remaining capacity of the 534 MW for setting up the Solar Power Plants. SECI also entered into a Manufacturing Contract Agreement with Adani

on 13.3.2024 for setting up an additional 583 MW of a Manufacturing Plant of Solar PV Modules and Cells.

19. SECI has filed the present Petition under Section 79 (1)(b) read with Section 63 of the Act with a prayer to take on record the PPAs dated 26.12.2023 (11 in number) and PPAs dated 13.3.2024 (3 in number) executed between SECI and Adani for cumulative 2333 MW capacity and the Supplemental PSA dated 29.12.2023 and Supplemental PSA-2 dated 1.3.2024 executed between SECI and A P Discoms and Government of Andhra Pradesh.

20. Section 79 (1) (b) and Section 63 of the Act provide as under:

“Section 79. (Functions of Central Commission): ---

(1) The Central Commission shall discharge the following functions, namely:-

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;”

“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.”

21. After careful consideration of the submissions made by the Petitioner, we observe that the Petitioner has not invoked the jurisdiction of the Commission with regard to the regulation of the tariff of the generating company under Section 79(1)(b). The only prayer made by the Petitioner is to take on record the substitution of one generator with another.

22. Further, Section 63 of the Act pertains to the determination of tariff, wherein the Commission is required to adopt the tariff if such tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government. In the present case, the Commission has already adopted the tariff for the 9234 MW capacity (including 7000 MW capacity mapped to AP Discoms) vide order dated 2.4.2022 in Petition No. 286/AT/2021 read with order dated 5.11.2023 in Petition No. 224/AT/2023 as had been prayed by SECI in these Petitions. Neither Section 63 nor Section 79(1)(b) requires the Commission to take on record the substitution of the generator.

23. In response to the specific query of the Commission regarding whether the transaction of the above nature was permissible under the tender document issued by SECI, the Petitioner, vide its affidavit dated 7.12.2024, has submitted that there is no prohibition in the Guidelines or RfS for allocating the additional capacity to Adani at the same tariff and terms and conditions except commissioning schedule when Azure has conclusively repudiated the PPA and is not willing to implement the project, generate, and supply electricity therefrom. SECI has further relied on various judgments of the Hon'ble Supreme Court to submit that it is a settled principle of law that if a thing is not prohibited, there is nothing wrong with adopting the process if it is in the public interest. As per SECI, the substitution under consideration is not inconsistent with the RfS or any other statutory law.

24. Relying on various provisions of the RfS, SECI, in its affidavit dated 7.12.2024, has further submitted as under:

“22.....In terms of the above, SECI had retained the right to give the award of the contract to the bidders in such manner as it is conducive for the purpose for which the competitive bidding was initiated and held subject however to the

approval of the Appropriate Commissions as required under the Electricity Act and the Rules.”

25. Admittedly, SECI had retained the right to give the award of the contract to the bidders in such a manner as it is conducive to the purpose for which the competitive bidding was initiated and held subject to the approval of the Commission as required in the Act and Rules. However, SECI has not indicated the provisions of the Act under which the Commission is mandated to consider such substitution. Moreover, SECI has not even made any such prayer in the Petition for approval of the Commission for the substitution of Azure with Adani on record, the only prayer being to take subsequent developments on record. As observed above, both Section 79 (1)(b) and Section 63 relate to regulation or determination of tariff and are silent on taking on record substitution of generators after the adoption of tariff.

26. Vide its affidavit dated 7.12.2024, the Petitioner has also submitted that in terms of Paras 19 and 20 in *Energy Watchdog case -v- Central Electricity Regulatory Commission & Ors. [(2017) 14 SCC 80]*, the regulatory powers are available for the Commission if exercising the same would serve the consumer interest. We hold that the reliance on Energy Watchdog judgment by the Petitioner is misplaced in the present Petition, considering that the exercise of regulatory power cannot go beyond the scope of Section 79(1)(b), which is limited to the regulation of tariffs. In the present case, the issue is only about the substitution of one generator with another after the tariff was adopted by the Commission.

27. As observed above, the Petitioner has invoked the jurisdiction of the Commission only to place on record the subsequent PPAs entered into between the SECI and Adani after the substitution of Azure Power (with which the original PPAs were executed after a transparent process of bidding). However, the Commission, vide order dated

2.4.2022 in Petition No. 286/AT/2021 read with order dated 5.11.2023 in Petition No. 224/AT/2023, has already adopted the tariff *qua* the Adani and Azure (i.e., successful bidders) as discovered pursuant to a transparent bidding process under Section 63 of the Act. The present matter does not involve any adoption of tariffs through a fresh, transparent process of bidding, which could entail passing an order under Section 63 of the Act. Further, as regards the general regulatory power, the jurisdiction under Section 79(1)(b), as already noted above, does not extend to consider such a prayer, much less for approval of the substitution of the generators, which, in any case, has not been prayed for by the Petitioner.

28. In view of the above, the Commission has not been called upon to exercise either its regulatory or adjudicatory function in the present matter, deserving any intervention in this case.

29. Petition No. 202/MP/2024 is disposed of in terms of the above.

Sd/-
(Harish Dudani)
Member

sd/-
(Ramesh V. Babu)
Member

sd/-
(Jishnu Barua)
Chairperson