

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 134 of 2021**

**Joint Petition filed by Maharashtra State Power Generation Company Limited & Maharashtra State Electricity Distribution Company Ltd. seeking approval for adoption of Tariff for long term procurement of power from 250 MW Solar Power project at Dondaicha Solar Park.**

M/s Maharashtra State Power Generation Company Limited (MSPGCL)	}	..... Petitioner
M/s Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)		
M/s T P Saurya Limited (TPSL)	}	.... Respondent
Maharashtra Energy Development Agency (MEDA)		

**Coram**

**Sanjay Kumar, Chairperson**  
**I.M. Bohari, Member**  
**Mukesh Khullar, Member**

**Appearance:**

For the MSPGCL	: Shri. Prasanna Kotecha
MSEDCL	: Smt. Kavita Kiran Gharat
TPSL	: Shri. Rakesh Singh
MEDA	: Shri. Anand Raidurg

**ORDER**

**Date: 17 December 2021**

1. Maharashtra State Power Generation Company Ltd. (MSPGCL) and Maharashtra State

Electricity Distribution Company Ltd. (MSEDCL) (hereafter referred as Petitioners) have jointly filed the present Case on 28 September 2021 seeking approval for adoption of Tariff for long term procurement of power from 250 MW solar power projects at Dondaicha solar park to meet MSEDCL's Solar Renewable Purchase Obligations.

2. Further, they have also requested approval for deviation in draft PSA & PPA, with respect to the Standard Bidding Guidelines (hereafter referred as Guidelines), issued by Ministry of Power for procurement of Power from Grid connected Solar PV Power Projects.

3. **MSPGCL & MSEDCL's prayers of the Petitioner are as follows:**

“

2. *To approve the process of back-to-back PSA between MSGPCL & MSEDCL for power procurement;*

3. *To approve the adoption of tariff rate of Rs. 2.51/kWh for the 250MW solar power project discovered through competitive bidding process undertaken by MSPGCL under section 63 of Electricity Act, 2003.*

4. *To decide on the mechanism on the trading margin of Rs. 0.07 per unit or passing MSPGCL expenses through ARR Mechanism”*

5. *To approve the deviations in the draft PSA & PPA with respect to the Standard Bidding Guidelines, issued by Ministry of Power, for procurement of power through competitive bidding process as per directions in MERC order dated 19.10.2018 in Case No. 172 of 2017*

6. *Approve the draft PPA and PSA documents;*  
.....”

4. **Petitioners in their Case have stated as follows:**

4.1. The Compliance status of MSEDCL's existing Solar Renewable Purchase Obligation (RPO) is as under:

Period	Shortfall in MU
FY 2016-17	671
FY 2017-18	1476
FY 2018-19	1,321
FY 2019-20	852
<b>Total</b>	<b>4,320</b>

- 4.2. As per MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2019, the Solar RPO for MSEDCL is going to increase from 4.50% in FY 2020-21 to 13.50% in FY 2024-25. The year wise Solar RPO trajectory is provided in table below:

<b>Year</b>	<b>Solar RPO Targets for MSEDCL</b>
FY 2020-21	4.50%
FY 2021-22	6.00%
FY 2022-23	8.00%
FY 2023-24	10.50%
FY 2024-25	13.50%

Considering the future RPO trajectory, MSEDCL needs to procure additional Renewable Energy (RE) for fulfillment of RPO targets so as to accommodate the actual power in the system rather than relying on REC.

- 4.3. MNRE vide its letter (Ref No. 30/108/2015-16/NSM) dated 17 December 2015 accorded its in-principle approval for development of 500 MW Solar Park at Dondaicha, Dhule. Subsequently, MSPGCL's Board on 27 January 2016 resolved to consider installation of 500 MW Solar Park at Dondaicha instead of planning (660X5) MW coal based thermal power project.
- 4.4. MSETCL vide Letter dated 04 January 2017 issued in-principle grid connectivity for 500 MW Solar Park proposed at Dondaicha at 220kV level of MSETCL's proposed 400/220 kV Balsane Substation.
- 4.5. Due to non-availability of entire land and power evacuation constraints, MSPGCL has decided to execute 500 MW Dondaicha Solar Park in Two (2) Phases: -
- Phase I- 250 MW
  - Phase II - 250 MW after commissioning of MSETCL's 400/220 kV Balsane Substation by the year 2021-22.
- 4.6. MSPGCL accordingly informed Solar Energy Corporation of India (SECI) and MNRE regarding phase wise execution of 500 MW Dondaicha Solar Park and submitted the final Detailed Project Report (DPR) for Phase-I of 250 MW on 13 June 2018. As per scheme modalities, Central Financial Assistance (CFA) of Rs. 6.00 Crores has been received for acquisition of 50% land for Phase – I of 250 MW.
- 4.7. MSPGCL vide Board Resolution dated 18 July 2017 decided to carry out selection of Solar Power Developer (SPD) for phase-I of 250 MW (5x50 MW) capacity through SECI. Hence, SECI published tender for 250 MW capacity on 17 August 2018. Final bidding followed

with Reverse Auction was conducted by SECI on 14 May 2019 with following results.

- A. M/s. Talettutayi Solar - 50 MW @ Rs. 2.87/kWh
- B. M/s. Tata Power - 100 MW @ Rs. 2.88/kWh
- C. M/s. NTPC Ltd. - 100 MW @ Rs. 2.91/kWh

- 4.8. However, due to delay in finalizing the Power Supply Agreement (PSA) conditions between SECI & MSEDCL, and refusal of bidders to extend the bid validity, SECI annulled the tender on dated 18 June 2020.
- 4.9. MSEDCL vide Letter dated 09 September 2020 has conveyed revised consent for procurement of 250 MW capacity solar power from Dondaicha Solar Park at a tariff below Rs. 2.90/ kWh, inclusive of all charges derived after competitive bidding process in line with Guidelines.
- 4.10. Accordingly, MSPGCL vide Board Resolution dated 14 December 2020 decided to carry out selection of SPD for 250 MW Dondaicha Solar Park on existing land available through tariff based competitive bidding process followed by e-reverse auction with ceiling tariff as Rs. 2.83/kWh and keeping Rs. 0.07/kWh as trading margin for MSPGCL, where in MSPGCL will act as intermediary power procurer between SPD & MSEDCL.
- 4.11. As an interim arrangement, MSETCL has also proposed to provide evacuation arrangement for 250 MW through 220kV LILO arrangement on 220kV Dondaicha – Dhule Single Circuit (S/C) and 220kV Dondaicha – Amalner – Dhule S/C by erecting Multi Circuit (M/C) towers from LILO point, in case of delay in commissioning of MSETCL's 400/220kV Balsane substation. Further, the validity of Grid Connectivity is granted in line with validity given by MNRE for completion of Solar Park.
- 4.12. MSPGCL published tender on 22 January 2021 for selection of SPD for 250MW Dondaicha Solar Park on existing land available with MSPGCL through tariff based competitive bidding process followed by e-reverse auction with the ceiling tariff of Rs. 2.83/kWh. Subsequently, e-reverse auction of the qualified bidder was conducted on 03 May 2021. The Tariff quoted by the bidder is as under:
- A. M/s TP Saurya Ltd. – Rs. 2.51/kWh (250 MW)
  - B. M/s Satluj Jal Vidyut Nigam Ltd. – Rs. 2.53/kWh (250 MW)
  - C. M/s NTPC Renewable Energy Ltd. – Rs. 2.82/kWh (250 MW)
- 4.13. MSPGCL's Board of Directors on 11 June 2021 accorded its approval for the tariff discovered through the Competitive Bidding as well as trading margin over and above the discovered tariff.

4.14. MSEDCL has also provided consent for procurement of 250 MW solar power from MSPGCL's Dondaicha Solar Park at a discovered tariff of Rs. 2.51 per unit. With regard to trading margin, MSEDCL stipulated that the Commission may decide the trading margin of Rs. 0.07 per unit or passing MSPGCL expenses through ARR mechanism.

4.15. The Trading margin claimed by MSPGCL is as per Clause No. 2.1.1(C), ii (b) of the Guidelines. Therefore, the Commission may decide on the methodology for trading margin.

4.16. Justification for Tariff:

- a. The tariff discovered through competitive bidding along with the trading margin is below the tariff approved under various schemes by the Commission. Following table provides for approved adopted tariff by Commission in recent times:

Sr. No.	MERC Order details.	Details	Approved tariff (Rs. /kWh)
1	Order in Case No. 80 of 2020 dated 16.05.2020	Procurement of 283 MW Power by MSEDCL under 'Mukhyamantri Saur Krishi Vaahini Yojana'	3.29
2	Order in Case No. 81 of 2020 dated 15.05.2020	MSEDCL's tender for Long Term Procurement of 350 MW Power from Intra-State Solar Power Projects under Section 63 of the Electricity Act 2003.	2.90
2	Order in Case No. 349 of 2019 dated 10.01.2020	500 MW tender floated by MSEDCL to procure solar power (Phase-IV) on long term basis from Intra-State projects	2.90
3	Order in Case No. 75 of 2019 dated 18.04.2019	For 50 MW Koudgaon Solar project of MSPGCL	2.92

- b. The effective tariff of Rs. 2.58/kWh (discovered tariff through Competitive Bidding Rs. 2.51/kWh + the trading margin of Rs. 0.07/kWh) for proposed Dondaicha Solar Park is well below the tariff approved by the Commission for the above mentioned projects.

4.17. Deviation with respect to procedure of Power Purchase:

- a. MSPGCL has carried out tariff based competitive bidding as per the Guidelines with the base tariff of Rs. 2.83/kWh. While all the major provisions/ guidelines were followed during the tariff based competitive process, there is a minor deviation sought.
- b. As per the Amendments dated 22 October 2019 to the Guidelines, following were provisions to be provided towards the Payment Security Mechanism by Intermediary

Procurer to Solar Power Generator and by End Procurer to Intermediary Procurer:

“

*5.3.2(a) Payment Security by Intermediary Procurer to the Solar Power Generator:*

*The Intermediary Procurer shall provide payment security to the Solar Power Generator through:*

*i. Revolving Letter of Credit (LC) of an amount not less than 1 (one) months' average billing for the Project under consideration;*

*AND*

*ii. Payment Security Fund, which shall be suitable to support payment of at least 3 (three) months' billing of all the Projects tied up with such fund. For the purpose of this Payment Security Fund, the Intermediary may collect Rs 5.0 Lacs/MW (Five Lacs per MW) from Solar Power Generator(s). Such charges shall be stipulated clearly in the RFS and shall go to the Payment Security Fund set up for such Intermediary Procurer.”*

“

*5.3.2(b) Payment Security by End Procurer to Intermediary Procurer:*

*The End Procurer shall provide payment security to the Intermediary Procurer through:*

*i. Revolving Letter of Credit (LC) of an amount not less than 1 (one) months' average billing for the Project(s) under consideration;*

*AND,*

*ii. State Government Guarantee, in a legally enforceable form, such that there is adequate security, both in terms of payment of energy charges and termination compensation if any. [ for the purpose of this clause, the Tri-Partite Agreement (TPA) signed between Reserve Bank of India, Central Government and State Government shall qualify as State Government Guarantee covering the security for payment of energy charges]. The Intermediary Procurer shall ensure that upon invoking this guarantee, it shall at once, pass on the same to the Solar Power Generator, to the extent the payments to the Solar Power Generator in terms of the PPA are due. Provided that in cases where the End procurer is neither covered by Tri-Partite Agreement (TPA) nor is able to provide the State Government Guarantee, the following, shall be adopted:*

*Provision for payment of additional risk premium of Rs 0.10/kWh, by End Procurer to the Intermediary Procurer, and to be credited to the payment security fund maintained by the Intermediary Procurer, to meet such exigencies.*

*iii. In addition to (i) &(ii) above, the End Procurer may also choose to provide Payment Security Fund, which shall be suitable to support payment of at least 3 (three) months' billing of all the Projects tied up with such fund.*

*It is hereby clarified that the State Government guarantee shall be invoked only after the Intermediary Procurer has been unable to recover its dues under the PPA by means of the Letter of Credit and the Payment Security Fund, if any.”*

- c. Presently, no State Government Guarantee is available from the GoM for any of such projects. Petitioners contended that the provision for Payment Security Fund has been waived for MSEDCL, as mutually agreed. Similarly, MSPGCL has decided to provide payment security to the SPD only through Revolving Letter of Credit (LC) and not through Payment Security Fund.
- 4.18. Accordingly, taking a deviation from Guideline, the provision for Payment Security Fund has not been stipulated in the RfS and is not included in the PPA /PSA documents also. As per the Petitioners, the above deviation would not have caused any adverse impact on the discovered tariff and hence it is requested to approve the above deviation.
- 4.19. MSEDCL's requests:
- a. The effective date of PSA shall be the same date on which the PPA is executed between SPD and MSPGCL in order to ensure timely commissioning of projects.
  - b. MSPGCL has considered compensation on off-take constraints due to Transmission Infrastructure in PPA (Refer Clause No 4.10.1) as well as PSA (Refer Clause No 6.10.1) which is in line with the Guidelines. However, MSEDCL has proposed that in case of delay in commissioning of projects due to incomplete evacuation infrastructure and/or transmission line beyond delivery point, no compensation shall be permissible to MSPGCL or SPD by MSEDCL. However, if plant is ready by the solar project developer but line is not ready then in that case MSEDCL will levy penalty to MSPGCL for non supply of energy in case the Commission levies penalty for RPO shortfall of MSEDCL.
  - c. Further, delay in commissioning of projects beyond SCOD, the SPD/MSPGCL would be liable for payment of compensation to MSEDCL for the energy not supplied from SCOD as per PSA Clause No.6.8.3.
5. For ascertaining prudence of power procurement, the Office of the Commission vide email dated 1 November 2021 raised data gaps and clarification with regards to power procurement and scheme of arrangement envisaged in the Petition.
6. MSPGCL vide additional submission dated 1 November 2021 submitted replies to the data gaps. Summary of Data-gap and Reply of MSPGCL is as below:
- 6.1. Milestones:
- a. The milestones for development of solar park are as follows:
    1. Date of issue of in-principle approval - Zero Date

2. Submission of DPR - 4 Months from Zero Date
  3. Land Acquisition (not less than 50% land acquired) - 8 Months from Zero Date
  4. Financial Closure -11 Months from Zero Date.
  5. Award of Work for Pooling Substation- 14 Months from Zero Date
  6. Receipt of Material on Site for Pooling Substation -17 Months from Zero Date.
  7. Completion of construction of pooling station & Land Development - 24 Months from Zero Date.
- b. MNRE vide O.M dated 02 March 2020 has extended the scheme for solar park development up to 31 March 2024 and vide letter dated 10 June 2021 extended timeline for 250 MW Dondaicha Solar Park up to 31 December 2021, with condition that SPD needs to be identified and land needs to be transferred to SPD by 31 December 2021. Park will be further eligible for extension up to 15 Months i.e. till 31 March 2023 for completion of the park.
- c. MSPGCL has already identified the SPD viz. M/s TP Saurya Limited and land handover post placement of LoA will be carried-out after issues of tariff adoption order by the Commission, as entire land proposed for 250 MW Solar Park is in possession of MSPGCL.

6.2. Modalities of Solar Park development & CFA:

- a. As per MNRE's solar park scheme, 250 MW Dondaicha solar park is being developed under Mode 1, wherein the State designated nodal agency undertakes the development & management of the solar park.
- b. For Dondaicha Solar Park, MSPGCL shall receive CFA @ Rs. 12 Lakhs/MW for 250 MW i.e. Rs. 30.00 Crores for solar park infrastructure development including fund for power evacuation arrangement i.e. 220/33kV Solar Park Pooling Substation & LILO.

6.3. Recognizing the responsibility of development of evacuation system inside solar park and outside the park boundary:

- a. MSPGCL stated that it will be developing 220/33 kV Solar Park Pooling Substation & 220kV LILO arrangement as depository work through MSETCL for which tendering is completed and LoA will be placed shortly. This work of power evacuation will be completed within 15 Months from issue of LoA to the contractor.
- b. Connecting individual solar project to 220/33kV Pooling substation through 33kV Cables/lines will be the responsibility of SPD i.e. TP Saurya Ltd.



6.4. Rationale for Trading Margin:

- a. Being the Intermediary Procurer for the 250 MW Dondaicha Solar Park, MSPGCL is requesting for approval of trading margin of Rs. 0.07/kWh as per the MNRE guidelines. Being the Intermediary Procurer, MSPGCL has main responsibility towards payment of power purchased from SPD apart from the efforts taken for lands acquisition and initial infrastructure development. MSPGCL will have to provide Payment Security mechanism to the SPD as per the PPA provisions like providing Irrevocable Letter of Credit (IRLC), timely payment of energy bills etc. Though there is back-to-back PSA with MSEDCL, in the current scenario there are recovery related issues faced by all generators. Thus, there are risks related to non- receipts or delayed receipts of various dues from MSEDCL.
- b. In the present case of 250 MW Dondaicha Solar Park project, the additional Payment Security by way of State Government Guarantee is not available to MSPGCL. The alternate provision of additional risk premium of Rs 0.10/kWh, by MSEDCL to the Intermediary Procurer is also not available. Under such circumstances, MSPGCL is exposed to various risks such as payment defaults, late payment charges, breach of contract etc.
- c. In view of commonly observed recovery and payment security related problems faced by other SPPD like M/s SECI, MNRE has specifically provided for Rs. 0.07 /kWh trading margin to Intermediary Procurer.
- d. MSPGCL also referred to Judgements of Hon'ble Appellate Tribunal for Electricity (APTEL) in the matter of M/s SECI vs Punjab Electricity Regulatory Commission & others (Appeal No. 70 of 2021) and M/s SECI vs Delhi Electricity Regulatory Commission & others (Appeal No. 52 of 2021) dated 02 July 2021 wherein Hon'ble APTEL has set aside and vacated the Orders passed by the respective ERCs to the extent of the trading margin of 7 paise/ kWh agreed by the parties was reduced. In nutshell the trading margin of Rs. 0.07 /kWh is allowed to M/s SECI and similar SPPD.

6.5. Clarification with regards to compensation on off-take constraints due to Transmission Infrastructure clauses in PSA and PPA:

Since MSPGCL is developing transmission infrastructure i.e. 220/33kV Pooling Substation and 220 kV LILO for the Solar Park which is an essential activity to be carried out by SPPD i.e. MSPGCL as part of internal power evacuation. Hence, delay on account of development of said evacuation infrastructure will be attributable to MSPGCL and utmost care has been taken by MSPGCL to avoid such delay. Further, MSPGCL has considered compensation on off-take constraints due to Transmission Infrastructure in PPA as well as PSA in line with MNRE's Tariff Based Competitive Bidding Guidelines dated 03 August 2017.

7. At the e-hearing through video conferencing held on 9 November 2021, the Representatives of the MSPGCL presented the background of the scheme for Dondaicha Solar Park and requested the Commission for adoption of tariff discovered through competitive bidding process. MSEDCL consented to the arguments forwarded by MSPGCL representative. Representative of TPSL submitted that conditionalities mentioned in RfP documents may be followed scrupulously.

### **Commission's Analysis and Rulings**

8. The Commission notes that MNRE vide its letter dated 12 December 2014 conveyed sanction for implementation of a Scheme for setting up at least 25 solar parks each with a capacity of 500 MW and above with a target of over 20,000 MW of Solar power installed capacity in a span of 5 years from FY 2014-15 to FY 2018-19. Through the said letter, MNRE has also stipulated modalities for development of Solar Park. Subsequently, MNRE from time to time through notifications has accorded its approval for extension of timelines, incorporation of new modes of development of Solar Park and enhanced the targeted capacity to 40,000 MW. Initially MSPGCL envisaged development of Dondaicha Solar Park with capacity of 500 MW. Due to non-availability of land and power evacuation constraints, MSPGCL decided to execute the project in two (2) phases with capacity of 250 MW each. MNRE vide its letter dated 19 August 2020, conveyed reduction in sanctioned capacity of Dondaicha Solar Park from 500 MW to 250 MW based on land acquired by MSPGCL.
9. MSPGCL is SPPD in the present case. As per MNRE classification, MSPGCL is developing Dondaicha Solar Park under Mode 1. Under Mode 1, the state designated nodal agency undertakes the development and management of the Solar Park. The Solar Park is a concentrated zone for development of Solar power generation projects and provides the developers an area that is well characterised, with proper infrastructure and access to amenities and where the risk of non-completion of the project can be minimised. Solar Park also facilitates the developers by reducing the number of required approvals. For identifying Solar Project Developer, MSPGCL opted for the route of competitive bidding for discovery of fair and market reflective tariff.
10. Present Petition has been filed jointly by MSPGCL and MSEDCL seeking adoption of tariff discovered through competitive bidding process, approval for deviation in PPA & PSA and for deciding trading margin payable to MSPGCL as intermediary in this transaction. Based on the pleadings and submission available, following principal issues emerge in the instant matter for consideration:

- a. Whether transparent process of bidding is followed and whether the discovered tariff be adopted under Section 63 of the EA, 2003?
- b. Whether request for deviation from Bidding Guidelines can be allowed?
- c. What should be trading margin in present transaction?

The Commission is addressing above issues in following paragraphs.

**11. Issue A: Whether transparent process of bidding is followed and whether the discovered tariff be adopted under Section 63 of the EA, 2003?**

11.1. 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.**”*

11.2. The role of the Commission in the process of tariff adoption under Section 63 of the Electricity Act, 2003 (EA) has been well laid down by the judgments of the Hon’ble Supreme Court and Appellate Tribunal for Electricity (APTEL). In its Judgement dated 16 December 2011 in Appeal No. 82 of 2011 (Essar Power Ltd. Vs UPERC and others), APTEL has categorically held that the Commission has to ensure that tariff discovered through competitive bidding process under Section 63 of the Electricity Act, 2003 is in accordance with market conditions. Relevant part of APTEL Judgment is reproduced below:

*“77. As indicated above, the bid process under Section 63 of the Act is entirely different from normal procurement of goods through competitive bidding process which is not governed by specific statutory scheme and guidelines. The bidding process under Section 63 is wholly based upon the objective of section 61 of the Act as well as the objectives of the Government of India guidelines. The Government of India guidelines have been framed to comply with the principles specified under Section 61 of the Act. The Government of India guidelines contained the mandate to safeguard the consumer’s interest as well as to encourage competition, efficiency and economical use of the resources. Let us quote Section 63 of the Act for better understanding.*

*“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.”*

**78. Thus the competitive bidding process as contemplated under Section 63 of the Act must meet the following mandatory statutory requirements:**

***(a) Competitive bidding process under Section 63 must be consistent with the Government of India guidelines and Request for Proposal (RFP) including the finalized PPA approved by the State Commission***

***(b) The process must discover competitive tariff in accordance with market conditions from the successful bid – consistent with the guiding principles under Section 61 of the Act as well as the Government of India guidelines which strike a balance between the transparency, fairness, consumer interest and viability.”***

11.3. The MoP, GoI has notified the Guidelines under Section 63 of the Act vide Resolution No.23/27/2017-R&R on 3 August 2017. The Guidelines have been subsequently amended by Resolutions dated 14 June 2018, 3 January 2019, 9 July 2019, 22 October 2019, and 25 September 2020.

11.4. The Commission notes that MSPGCL floated a Request for Proposal (RfP) on 22 January 2021 for selection of SPD for setting up of 250 MW Grid Connected Solar PV project at Dondaicha Solar Park.

11.5. MSPGCL has conducted the e-bidding and e- reverse bidding as per Guidelines dated 3 August 2017 for 250 MW ISTS connected Solar PV Power Project and discovered tariff at Rs 2.51 per unit (excluding trading margin) by M/s TP Saurya Limited. MSEDCL vide its letter dated 27 August 2021 has given its consent for procurement of 250 MW Solar Power for meeting its Solar RPO targets.

11.6. Prior to the initiation of the bidding process by MSPGCL, SECI had carried out e-bidding and e-reverse auction process for selection of SPD in Dondaicha Sola Park. Final bidding followed with Reverse Auction was conducted on 14 May 2019 with following results.

M/s. Talettutayi Solar - 50 MW @ Rs. 2.87/kWh

M/s. Tata Power - 100 MW @ Rs. 2.88/kWh

M/s. NTPC Ltd. - 100 MW @ Rs. 2.91/kWh

However, SECI annulled above tender process on 18 June 2020 as there was a delay in signing of the PSA with MSEDCL.

11.7. The Commission notes that the rate of Rs 2.51 per unit discovered through the e-bidding

and e-reverse auction process carried out by MSPGCL is competitive and is reflective of current market scenario.

11.8. Considering the aforesaid, the Commission accords approval for adoption of tariff of Rs. 2.51 per units for 250 MW Solar Power Project by M/s TP Saurya Limited as discovered by MSPGCL under Section 63 of the Electricity Act, 2003. Ruling on trading margin is provided in para 13 below.

**12. Issue B: Whether the request for deviation from Bidding Guidelines can be allowed?**

12.1. Petitioners have stated that as State Government Guarantee is not available from the GoM for any of such projects and that the provision regarding providing Government Guarantee as additional payment security in Bidding Guideline is deleted from the PPA/PSA. Further, MSPGCL and MSEDCL have mutually agreed on waiving of the provision of the Payment Security Fund from the PSA. MSPGCL has also stated that they have decided to provide payment security to the SPD only through Revolving Letter of Credit (LC) and not through Payment Security Fund.

12.2. Further, MSEDCL categorically mentioned that MSPGCL has considered compensation on off-take constraints due to Transmission Infrastructure in PPA (Refer Clause No 4.10.1) as well as PSA (Refer Clause No 6.10.1) which is in line with Guidelines. However, MSEDCL has proposed that in case of delay in commissioning of projects due to incomplete evacuation infrastructure and/or transmission line beyond delivery point, no compensation shall be permissible to MSPGCL or SPD by MSEDCL. However, if plant is ready for commissioning by the solar project developer and in case there is a delay in completion of line (evacuation infrastructure) by MSPGCL then in such a situation, MSEDCL will levy penalty to MSPGCL for not supplying the energy. This action would be resorted to in case the Commission levies penalty for shortfall in meeting its RPO obligation by MSEDCL. Similarly, MSEDCL has also requested for compensation for delay in project beyond the SCoD for the energy that would not be supplied during such delayed period.

12.3. TPSL submitted that conditionalities mentioned in RfP documents may be followed scrupulously.

12.4. In this regard, the Commission notes that Guidelines notified by the Central Government mandates the bidder to take approval of the Commission for any deviations from the provisions of the Guidelines. Relevant clauses of the Guidelines are as under:

“

*3.1.1 Bid Documentation:*

- a) *Prepare the bid documents in accordance with these Guidelines and Standard Bidding Documents (SBDs) [consisting of Model Request for Selection (RfS) Document, Model Power Purchase Agreement and Model Power Sale Agreement], notified by the Central Government, except as provided in sub clause (c) below*
- b) **Inform the Appropriate Commission about the initiation of the bidding process.**
- c) **Seek approval of the Appropriate Commission for deviations, if any, in the draft RfS, draft PPA, draft PSA (if applicable) from these Guidelines and/or SBDs, in accordance with the process described in Clause 18 of these Guidelines.**

*18. Deviation from the process defined in the Guidelines In case there is any deviation from these Guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 90 (ninety) days....”*

In terms of clauses 3.1.1(a) and 3.1.1(c) of the Guidelines, the Procurer (including Intermediary Procurer such as MSPGCL herein) is required to prepare the bid documents in accordance with the Guidelines and in case of any deviation in the bid documents, it is required to seek approval of the Appropriate Commission in accordance with the process specified in clause 18 of the Guidelines.

12.5. Through the present Petition, after concluding the bidding process and at this stage of tariff adoption, Petitioners are seeking approval for deviation from Guidelines. In the opinion of the Commission, such approach is not permissible under the Guidelines and TPSL, successful bidder, has rightly stated that RFP documents based on which bidding process has been conducted needs to be followed scrupulously. Changing bidding/PSA/PPA conditions post completion of bidding process will vitiate sanctity of the bidding process.

12.6. It is also important to note that in compliance of clauses 3.1.1(b) of the Guidelines, MSPGCL vide its email dated 22 January 2021 had informed this Commission about initiation of bidding process. In the same email, MSPGCL categorically stated that it has not sought any deviation from the Guidelines. In contradiction of the said intimation, MSPGCL in the present Petition is now seeking deviation from Guidelines. This depicts extremely casual approach of MSPGCL. The Commission directs MSPGCL to be more

professional in its approach while complying with the provisions of the Guidelines.

12.7. Although, it is settled principle that once bidding process is concluded, no unilateral modification can be allowed in bid documents, but to settle the issues raised by the Petitioners in correct perspective, the Commission is addressing each of the deviation sought in following paragraphs.

12.8. The Commission notes that Petitioners i.e. MSPGCL and MSEDCL mention that with mutual consent they have sought deviation from the Guidelines on two counts firstly provision of Payment Security Fund and second one dealing with State Government Guarantee.

12.9. The Commission notes that amended Guidelines dated 22 October 2019 have following provisions related to payment security fund in respect of PPA and PSA:

In respect of PPA:

***“5.3.2(a) Payment Security by Intermediary Procurer to the Solar Power Generator:***  
*The Intermediary Procurer shall provide payment security to the Solar Power Generator through:*

.....

**AND**

- i. Payment Security Fund, which shall be suitable to support payment of at least 3 (three) months’ billing of all the Projects tied up with such fund. For the purpose of this Payment Security Fund, the Intermediary may collect Rs 5.0 Lacs/MW (Five Lacs per MW) from Solar Power Generator(s). Such charges shall be stipulated clearly in the RFS and shall go to the Payment Security Fund set up for such Intermediary Procurer.”*

In respect of PSA:

***5.3.2(b) Payment Security by End Procurer to Intermediary Procurer:***

*The End Procurer shall provide payment security to the Intermediary Procurer through:*

.....

- iii. In addition to (i) &(ii) above, the End Procurer may also choose to provide Payment Security Fund, which shall be suitable to support payment of at least 3 (three) months’ billing of all the Projects tied up with such fund.”*

As against above provisions of Payment Security Fund in the Guidelines, MSPGCL and MSEDCL have stated that they have mutually agreed to waive such provision of Payment Security Fund and MSPGCL has further stated that it will not provide such Payment Security Fund to the SPD. As against such changes sought by Petitioners, it is important to

know provisions published in RFP documents based on which bids were called by MSPGCL. The Commission notes that draft PPA and PSA attached to RFP documents have provisions related to Payment Security Fund as follows:

Provision in draft PPA:

*“10.4.9 Payment Security Fund:*

*Payment Security Fund, which shall be suitable to support payment of at least 3 (three) months’ billing of all the Projects tied up with such fund.”*

Provision in draft PSA:

*“6.4.10 Payment Security Fund:*

*In addition to provisions contained in Article 6.4 (A) above, the Buying Utility/MSEDCL may also choose to provide Payment Security Fund, which shall be suitable to support payment of at least 3 (three) months’ billing of all the Projects tied up with such fund.”*

As can be seen from above, there is clear provision of Payment Security Fund in draft PPA and PSA which was published along with RFP. Hence, post bidding process, now it cannot be deleted from the PPA and PSA to be signed. If MSPGCL and MSEDCL were conscious of need of deleting such provisions from PPA and PSA, they should have approached in advance before initiating such bidding process. In fact, similar deviation sought prior to initiating bidding process by other Distribution Licensee in the State has been considered on merits by this Commission. But in present case, same cannot be allowed as bidding process is already concluded based on documents which includes the said provisions.

12.10. Regarding State Government Guarantee, the Commission notes that Guidelines has following provisions in respect of PSA to be signed between end procurer and intermediary:

“

**5.3.2(b) Payment Security by End Procurer to Intermediary Procurer:**

*The End Procurer shall provide payment security to the Intermediary Procurer through:*

.....

*ii State Government Guarantee, in a legally enforceable form, such that there is adequate security, both in terms of payment of energy charges and termination compensation if any. [for the purpose of this clause, the Tri-Partite Agreement (TPA) signed between Reserve Bank of India, Central Government and State Government shall qualify as State Government Guarantee covering the security for payment of energy charges]. The Intermediary Procurer shall ensure that upon invoking this the*



*payments to the Solar Power Generator in terms of the PPA are due. Provided that in cases where the End procurer is neither covered by Tri-Partite Agreement (TPA) nor is able to provide the State Government Guarantee, the following, shall be adopted:*

*Provision for payment of additional risk premium of Rs.0.10/kWh, by End Procurer to the Intermediary Procurer, and to be credited to the payment security fund maintained by the Intermediary Procurer, to meet such exigencies.”*

The Commission notes that above provisions related to Government Guarantee was already deleted in draft PSA attached with RFP documents floated for calling bids. Hence, bids received is based on documents which do not have provisions of Government Guarantee as payment security. Strictly speaking, this is not permissible as such deviation has been incorporated without seeking prior approval of the Commission. However, considering the fact that transparent bidding process has been conducted and none of the bidders objected for the same, the Commission is allowing it as an exceptional case and would like to caution the petitioners against recurrence of this. Since such provision was already been deleted from draft PSA, no further change is required in the same.

12.11. The Commission also notes that MSEDCL specifically has requested that in case of delay in commissioning of projects due to incomplete evacuation infrastructure and/or transmission line beyond delivery point, no compensation shall be permissible to MSPGCL or SPD by MSEDCL. However, if plant is ready by the solar project developer but line is not ready by MSPGCL then in such case MSEDCL will levy penalty to MSPGCL for not supply of energy in case the Commission levies penalty in RPO shortfall to MSEDCL. Further, MSEDCL has also requested that it should be compensated in case of delay in project commissioning beyond the SCoD for the energy not supplied during such delay period. The Commission notes that all such provisions are not included in the RFP and draft PPA/PSA attached with RFP floated for calling bids. Hence, such conditions cannot be allowed to be added post conclusion of bidding process.

12.12. In view of above, the Commission rejects all requests of MSPGCL and MSEDCL to modify / add provisions of PPA/PSA which was published with RFP for seeking bids. The Commission also expresses its deep anguish that MSPGCL / MSEDCL that are not new entities to the bidding process are making such request for modification of documents post conclusion of bidding process and thereby creating hurdles / delays in conclusion of bidding process and signing of PPA/PSA. Accordingly, the Commission directs MSPGCL/MSEDCL to sign PPA/PSA based on documents published in bidding process.

**13. Issue D: What should be trading margin in present transaction?**

13.1. MSPGCL stated that it has claimed Trading margin of Rs. 0.07 per unit as per Clause No. 2.1.1(C), ii (b) of the Guidelines. MSEDCL stated that the trading margin of Rs. 0.07 per unit or passing MSPGCL expenses through ARR mechanism may be decided by Commission.

13.2. In this regard, the Commission notes that the above said quoted provision of Guidelines reads as follows:

*“ii*

*(b) The trading margin, of Rs. 0.07/kWh, shall be payable by the End Procurer to the Intermediary Procurer.”*

Thus, Guideline notified by Ministry of Power clearly allows intermediary Procurer (in present case, MSPGCL) to levy trading margin of Rs. 0.07 per unit from end procurer (in present case, MSEDCL).

13.3. Further, draft PSA published along with Bidding document in present power procurement process has following provision related to trading margin:

*“5 ARTICLE 5: APPLICABLE TARIFF*

*5.1.1 From SCD and subject to the provision of the Article 6.7, the MSEDCL shall pay the fixed tariff as indicated in Schedule-I, plus trading margin of Rs. 0.07/ kWh fixed up to commissioning of the cumulative awarded capacity/accepted cumulative capacity by MAHAGENCO under the RfP.”*

Thus, draft PSA clearly stipulated that over and above tariff payable to Solar Project Developer, trading margin of Rs. 0.07 per unit is payable by MSEDCL to MSPGCL.

13.4. In view of above, as trading margin of Rs. 0.07 per unit is allowed by Guidelines notified by the MoP and also such trading margin was stipulated in draft bidding documents, the Commission allows MSPGCL to levy trading margin of Rs. 0.07 per unit to MSEDCL.

14. In view of above, the Commission adopts tariff of Rs. 2.51 per units discovered through competitive bidding process for setting-up of 250 MW Solar Project by TP Saurya Limited in Dondaicha Solar Park for 25 years and sale of such power to MSEDCL as end procurer through MSPGCL. MSPGCL as a intermediary procurer in this process is allowed to levy trading margin of Rs. 0.07 per unit on MSEDCL. Parties should sign PPA and PSA as per draft documents published during bidding process.

15. Hence, the following Order.


**ORDER**

1. The Case No. 134 of 2021 is partly allowed.
2. Maharashtra State Power Generation Company Ltd and Maharashtra State Electricity Distribution Company Ltd. are allowed to procure 250 MW Solar Power at the rate of Rs. 2.51/kWh discovered through Competitive bidding under Section 63 of the Electricity Act, 2003 from M/s T P Saurya Limited for 25 Years. Further, in line with provisions of Guidelines and as sought in Draft PSA, trading margin of Rs.0.07 per kWh is approved.
3. Parties shall sign the PPA and PSA based on documents published during bidding process. This signing shall be completed within 15 days from issuance of this order.
4. The Solar Power procured from these projects shall be eligible towards fulfilment of Maharashtra State Electricity Distribution Co. Ltd.'s Solar RPO for the respective periods.

Sd/-  
(Mukesh Khullar)  
Member

Sd/-  
(I.M. Bohari)  
Member

Sd/-  
(Sanjay Kumar)  
Chairperson

  
(Abhijit Deshpande)  
Secretary

