

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 188/AT/2020

**Coram:
Shri P. K. Pujari, Chairperson
Shri I.S.Jha, Member**

Date of Order: 18th March, 2020

In the matter of:

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 550 MW Wind Power Projects connected to the Inter-State Transmission System and selected through competitive bidding process as per the Standard Bidding Guidelines issued by Ministry of Power dated 8.12.2017.

**And
In the matter of**

NTPC Limited
Scope Complex,
Core-7, Institutional Area, Lodhi Road,
New Delhi –110 003.

.....Petitioner

Vs.

1. Ministry of New and Renewable Energy
Block – 14, CGO Complex,
Lodhi Road, New Delhi – 110 003.
2. Sprng Vayu Vidyut Private Limited
Unit No. FF-48 A, First Floor Omaxe Square,
Plot No. 14, Jasola District Centre,
New Delhi – 110 025.
3. Clean Wind Power (Jaisalmer) Private Limited
201, Third Floor, Okhla Industrial Estate,
Phase-3, New Delhi – 110 020.
4. Kutch Wind Farm Development Private Limited
102, E1 Tara Building Orchid,
Avenue Road, Hiranandani Gardens,
Powai, Mumbai.
5. Punjab State Power Corporation Limited
The Mall, PSEB Head Office, Baraddri Patiala,
Punjab – 147 001.

6. Uttar Pradesh Power Corporation Limited
Shakti Bhawan, 14 Ashok Marg,
Lucknow – 226 001.

.....Respondents

Parties present

Shri M.G.Ramachandran, Senior Advocate, NTPC
Ms. Poorva Sehgal, Advocate, NTPC
Shri Shubham Arya, Advocate, NTPC
Ms. Tanya Sareen, Advocate, NTPC
Shri Sumant Nayak, Advocate, SESPL
Ms. Kritika Angirish, Advocate, KWFDPL
Shri Kulkarni, SESPL
Ms. Shital Kumar, SESPL

ORDER

The Petitioner, NTPC Limited (hereinafter referred to as “NTPC”), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as the 'Act') for adoption of tariff for 250 MW Wind Power Projects connected to inter-State Transmission System (ISTS) and selected through competitive bidding process as per the “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects” (hereinafter referred to as “ the Guidelines”) dated 8.12.2017 issued by the Ministry of Power, Government of India. The Petitioner has made the following prayers:

“(a) Admit the present Petition;

(b) Adopt the tariff discovered in the competitive bid process for the 250 MW Wind power project to be established by Wind Power Developers M/s. Sprng Vayu Vidyut Private Limited (200 MW) and M/s. Srijan Energy Systems Private Limited (50 MW) as stated in Table at Paragraph 19 above on the terms and conditions contained in the PPA; and

(c) Grant NTPC an exemption from complying with the provisions of the Clause 5.1.1(b) of the Guidelines as regards the intimation of the initiation of Bidding for the reasons mentioned in Paragraphs 23-25 hereinabove.”

Submission of the Petitioner

2. The Petitioner, NTPC submitted that it issued Request for Selection (RfS) along with draft Power Purchase Agreement (PPA) and Power Sale Agreement (PSA)

documents for setting up of 2000 MW ISTS connected Wind Power Projects as per the Guidelines and floated the same on 13.3.2018 on the portal of Telecommunication Consultant India Limited (TCIL). Subsequently, the capacity under the tender was revised to 1200 MW. The Petitioner has submitted that e-Reverse auction of seven technically qualified bidders was carried out on 21.8.2018 on TCIL's portal and the final tariff was arrived after completion of the same. The Petitioner has submitted that the capacity allotted after the completion of bidding process was 1150 MW. However, certain successful bidders have terminated the PPAs on account of failure of Buying Utilities/Distribution Licensees to obtain requisite approvals from the respective State Electricity Regulatory Commission within a stipulated time in terms of PPA and PSA. Accordingly, the Petitioner is seeking adoption of tariff in respect to 250 MW Wind Power Projects. The Petitioner has submitted that these Wind Power Projects are scheduled to be commissioned during April to May, 2021 and the Projects would help the Buying Utilities/Distribution Licensees in meeting their Renewable Purchase Obligations (RPOs) requirements apart from providing power at very economical rates. The Petitioner has agreed to sell entire 250 MW of wind power to the Buying Utilities/Distribution Licensees at the rate of Rs. 2.776/kWh (i.e. weighted average/pooled tariff) plus trading margin of Rs.0.07/kWh upon the commissioning of the above capacity. According to the Petitioner, since the pooled tariff covered through competitive bid process is less than the procurement cost of conventional power, it would be beneficial for the Buying Utilities/Distribution Licensees and the consumers at large. The Petitioner has submitted that there will be no preferential tariff sought within Section 86(1) (e) of the Act.

3. The matter was heard on 12.2.2020 after notice to the Respondents. Learned senior counsel for the Petitioner also submitted that the Respondents were informed about the listing of the matter. However, none was present on behalf of the Respondents.

4. Subsequent to reserving order in the Petition on 12.2.2020, the Petitioner vide its affidavit dated 18.2.2020 has submitted that PPA dated 25.3.2019 entered into with one of the successful bidders, namely, Srijan Energy Systems Private Limited (through its Project Company-Kutch Windfarm Development Private Limited) was terminated by it on account of non-fulfilment of the condition precedent under the PPA/PSA by Uttar Pradesh Power Corporation Ltd. Therefore, the PPA dated 25.3.2019 entered into between NTPC and Wind Power Developer, namely, Kutch Windfarm Development Private Limited for sale and purchase of 50 MW of power stands terminated and cancelled. The Petitioner has prayed to adopt the tariff only in respect of the PPA dated 27.3.2019 entered into between Sprng Vayu Vidyut Private Limited and NTPC for generation and sale of 200 MW of power.

5. The Respondent, Kutch Windfarm Development Private Limited vide its affidavit dated 27.2.2020 has submitted that it has terminated the PPA dated 25.3.2019 entered into with the Petitioner, NTPC due to non-fulfilment of condition precedent as specified in Article 2.1.2 of the PPA. The Respondent has requested not to adopt the tariff in respect of its 50 MW wind Project since PPA has become *non-est* in law.

Analysis and Decision

6. We now proceed to consider the adoption of tariff in respect of Sprng Vayu Vidyut Private Limited as discovered pursuant to the competitive bid process carried out in terms

of the Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act.

7. 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.”

8. 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.

9. Ministry of Power, Government of India has notified the Guidelines under Section 63 of the Act vide Resolution No.23/54/2017-R&R on 8.12.2017. The salient features of the Guidelines are as under:

(a) Guidelines are applicable for procurement of power by the Procurers from grid connected Wind Power Projects having, (a) individual size of 5 MW and above at one site with minimum bid capacity of 25 MW for intra-State projects; and (b) individual size of 50 MW and above at one site with minimum bid capacity of 50 MW for inter-State projects through tariff based competitive bidding to be conducted by Procurers which includes distribution licensee, or the Authorized Representative(s), or Intermediary Procurers.

(b) Procurer shall prepare the bid documents in accordance with the Guidelines and the Standard Bid Documents notified by the Ministry of Power, Govt. of India. If any deviation is proposed to be made in the Guidelines and Standard Bid Documents, approval of the Appropriate Commission would be necessary. Intimation about initiation of the bid process shall be sent by the Procurers to the Appropriate Commission.

(c) Bids shall be designed in terms of total wind power capacity to be procured in MW. For intra-State projects, minimum bid shall be 25 MW with at least 5 MW project at one site and for inter-State projects, minimum bid shall be 50 MW at one site. Procurer may choose to specify the maximum capacity that can be allotted to a single bidder including its affiliates.

(d) The Procurer has option to choose from two kinds of tariff based bidding, namely, (i) fixed tariff in Rs./kWh for 25 years or more, or (b) escalating tariff in Rs./kWh with pre-defined quantum of annual escalations fixed in Rs./kWh and number of years from which such fixed escalation will be provided.

(e) Draft PPA proposed to be entered into with the successful bidder and draft PSA, if applicable, shall be issued along with the RfS. PPA period shall not be less than 25 years from the date of Scheduled Commissioning Date.

(f) Wind Power Developer will declare the annual CUF of its Project at the time of signing of PPA and will be allowed to revise the same once within first year of COD. The declared annual CUF shall in no case be less than 22%.

(g) Procurer and Intermediary Procurer shall provide payment security to the Wind Power Developer through revolving Letter of Credit of an amount not less than one month average billing and Payment Security Fund for at least three months billing of all the projects. In addition, the Procurer and Intermediary Procurer may also choose to provide State Government Guarantee.

(h) End Procurer shall provide payment security to the Intermediary Procurer through revolving LC of an amount not less than one month's average billing from the project under consideration and State Government Guarantee. In addition, end Procurer may also choose to provide Payment Security Fund with three months bills of all the projects tied up with such fund.

(i) The Procurer shall call the bids adopting a single stage bidding process to be conducted through electronic mode (e-bidding). The Procurers may adopt e-Reverse auction, if it so desires. For this purpose, e-procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used.

(j) RfS notice shall be issued in at least two national newspapers and on websites of the Procurer to provide wide publicity. Standard documentation to be provided in the RfS Stage shall include technical criteria, financial criteria, quantum of earnest money deposit and lock-in-requirements for the lead members of the consortium.

(k) The Procurer shall constitute committee for evaluation of the bids, with at least three members, including at least one member with expertise in financial matters/bid evaluation.

(l) Bidder shall submit non-refundable processing fee and/or project development fee as specified in the RfS, separate technical and priced bids and bid guarantee. To ensure competitiveness, the minimum number of qualified bidders shall be two. If the number of qualified bidders is less than two, even after three attempts of bidding, and the Procurer still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.

(m) PPA shall be signed with the successful bidder/ project company or an SPV formed by the successful bidder. After conclusion of bidding process, Evaluation Committee shall evaluate the bids and certify that the bidding process and the evaluation have been conducted in conformity with the provisions of RfS. After execution of the PPA, Procurers shall disclose the name(s) of the successful bidder(s) and the tariff quoted by them in its website. Accordingly, the distribution licensee or the intermediary Procurer shall approach the Appropriate Commission for adoption of tariff in terms of Section 63 of the Act.

10. Therefore, in terms of the provisions of the Act, we have to examine whether the process as per provisions of the Guidelines has been followed in the present case for arriving at the lowest tariff and for selection of the successful bidder.

11. The Petitioner, NTPC, has been designated as the nodal agency for implementation of scheme for setting up of ISTS connected/State specific solar/wind power projects with the mandate to invite bids under Tariff Based Competitive Bidding process, enter into Power Purchase Agreements (PPAs) at the tariff discovered in the competitive bid

process and enter into Power Sale Agreements (PSAs) with the Distribution Licensees/Buying Utilities to enable them to fulfil their RPOs under Section 86(1)(e) of the Act. NTPC acts as an intermediary agency in purchase and sale of power under the PPAs and PSAs on back-to-back basis.

12. Ministry of Power, Government of India, vide its Resolution dated 8.12.2017 issued the Guidelines under Section 63 of the Act for procurement of wind power at a tariff to be determined through transparent process of bidding by the Procurer(s), from grid connected wind power projects having (a) individual size of 5 MW and above at one site with minimum bid capacity of 25 MW for intra-State projects and (b) individual size of 50 MW and above at one site with minimum bid capacity of 50 MW for inter-State projects. As per the Guidelines, NTPC in the capacity of intermediary agency, invited proposals for setting up of ISTS-connected Wind Power Projects on pan-India basis, on “Build, Own, and Operate” basis for an aggregate capacity of 2000 MW (subsequently revised to 1200 MW) and for procurement of wind power from the projects being set up in relation thereto. As per the arrangements, NTPC is to procure the power by entering into PPAs with the successful bidders with back-to-back PSAs for sale of power to the Buying Utilities/Distribution Licensees.

13. The key milestones in the bidding process were as under:

Sr. No.	Milestone	Date
1	Issuance of RfS by NTPC	13.3.2018
2	Last date of submission of bid	6.8.2018
3	Opening of RfS (Non-financial) bids	7.8.2018
4	Opening of RfS (financial) bids	21.8.2018
5	e-reverse Auction	21.8.2018
6	Issuance of Letter of Award to successful bidders	18.10.2018

14. On 13.3.2018, NTPC issued Request for Selection document, along with draft PPA and PSA documents for setting up of 2000 MW ISTS-connected Wind Power Projects, which was later revised to 1200 MW. NTPC has published the notice on 13.3.2018 in the Hindustan Times and also published the same in its website.

15. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids for RfS dated 13.3.2018:

Sr.	Particulars
1)	Sh. Ishpaul Uppal, AGM (Corporate Commercial)
2)	Sh. Shailendra, AGM (RE-CS)
3)	Sh. B. Fernandez, DGM (Fin.)

16. Last date of submission of bid was 6.8.2018 and the RfS (Non-financial) bids were opened on 7.8.2018. Response to RfS was received from the following bidders:

Sr.	Name of Bidders
1	Sprng Vayu Vidyut Private Limited
2	Mytrah Energy (India) Private Limited
3	Hero Wind Energy Six Private Limited
4	ReNew Wind Energy (TN) Private Limited
5	Srijan Energy Systems Private Limited
6	Fasten Power Private Limited
7	Kilaj Solar (Maharashtra) Private Limited

17. The RfS (Non-financial) bids of all the seven bidders were declared as responsive for opening of RfS (financial) bids. The RfS (financial) bids were opened by BEC online on 21.8.2018 and all the seven bidders were qualified to participate in e-Reverse auction.

18. The e-Reverse auction for 1200 MW capacity was conducted on 21.8.2018 in the presence of members of BEC. The following bidders were declared as successful bidders:

Sr.	Bidders	Tariff (INR/kWh)	Allotted Capacity (MW)
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Sr.	Bidders	Tariff (INR/kWh)	Allotted Capacity (MW)
1	Sprng Vayu Vidyut Private Limited	2.77	200
2	Mytrah Energy (India) Private Limited	2.79	300
3	Srijan Energy Systems Private Limited	2.80	50
4	ReNew Wind Energy (TN) Private Limited	2.81	300
5	Hero Wind Energy Six Private Limited	2.82	300
6	Fasten Power Private Limited	2.83	50
Total			1200

19. NTPC has submitted that after completion of e-Reserve auction, the allotted capacity was 1200 MW. However, the last bidder, namely, Fasten Power Private Limited declined to accept the offer of 50 MW in terms of provision of RfS as the capacity offered to the bidder was less than 50% of the total quantity. Accordingly, the awarded capacity stood at 1150 MW.

20. On 18.10.2018, NTPC issued Letter of Intent to the above selected bidders. The relevant portion of the one of the Letter of Intent issued to the Project Developer, namely, Sprng Vayu Vidyut Private Limited is extracted as under:

“2.0 NTPC is pleased to confirm its intent of accepting your Response RfS mentioned at para 1.0 (C), (D) and (F) above for development of 200 MW of ISTS Connected Wind Power Project and Supply of Wind Power from this project to NTPC subject to the terms and conditions contained in RfS mentioned at para 1.0 above and briefly brought out hereunder.

3.0 In line with the terms and conditions of RfS, before signing of PPA, you have the option to form Special Purpose Vehicle (hereinafter called “Project Company”) under Indian Companies Act. The company (Bidding Company or Project Company) executing the project (hereinafter called “Wind Power Developer”) shall enter into Power Purchase Agreement (PPA) as per the format given along with RfS within 90 days of issue of this Letter of Intent (LOI). All the documents referred to at para 1.0 above shall form integral part of the Power Purchase Agreement to be entered into between Project Company/Wind Power Developer and NTPC so far these are not repugnant to the terms and conditions contained in the RfS referred to in para 1.0 above.

As specified in the RfS, the PPA shall come into effect after 90 days from issuance of LOI irrespective of the date of signing of the PPA or the effective date of PPA shall be the

actual date of signing of PPA if signed beyond 90 days of issuance of this LOI for delays solely attributable to NTPC.

4.0 As per clause 3.18 of RfS document, you shall ensure that your shareholding in the SPV/project company executing the PPA shall not fall below 51% (fifty one per cent) at any time prior to 1 (one) year from the Commercial Operation Date (COD), except with the prior approval of NTPC. In case you yourself are executing the PPA, then you shall ensure that your promoters shall not cede control till 1 (one) year from the COD except with the prior approval of NTPC. Any change in the shareholding after the expiry of 1 (one) year from the COD can be undertaken under intimation to NTPC.

5.0 The Tariff for electricity generated from the Wind Power Project to be developed by the Wind Power Developer for the entire period of twenty five (25) years of Power Purchase Agreement (PPA) to be entered into between the Wind Power Developer and NTPC for this project shall be Rs.2.77/kWh (Rupees Two and Seventy Seven paisa only per Kilowatt hour).

6.0 You along with your Project Company (if formed by your Company) are required to submit the following documents along with originals for verification within 15 days of issuance of LOI:

i) Original Response to RfS referred to in para 1.0 (C) above.

ii) If Project Company is formed by your Company for this project, Board Resolution from your Company and your Parent and/or Affiliates duly certified by the Company Secretary or the Director, as applicable, regarding fulfilment of equity investment obligations of Project Company in the same manner as provided by you and your Affiliates in your favour at the time of submission of RfS.

iii) Copy of the Certificate of Incorporation along with Memorandum & Article of Association (MOA) of Wind Power Developer highlighting the relevant provision of Power/Energy/Renewable Energy/ Wind Power Plant development as per clause 3.15 (A 11) of RfS duly certified to be True copy by Company Secretary.

iv) Details of Promoters and current shareholding pattern of the Bidding Company and Project Company (if formed) developing the project, duly certified by the Company Secretary in original along with a copy of Return filed with Registrar of Companies (ROC) for registering the shareholding and its terms and conditions which became due for filing during this period.

v) If Project Company is formed by your company to execute the project, a fresh Integrity Pact between Project Company and NTPC has to be signed. Certificate for Compliance to all Provisions of RfS Documents is also to be submitted by Project Company.

7.0 In line with the provisions of Clause 3.12 of RfS document, the Wind Power Developer shall submit Performance Bank Guarantee of Rs.20 Lakh/MW to NTPC within 30 days from the date of issue of Letter of Intent and before signing of PPA as per the Performa available in RfS document from any bank listed in the RfS for this purpose. The total value of the Performance Bank Guarantee (PBG) for the project of 200 MW capacity shall be Rs.40 Crore. The Bank Guarantee shall be valid for a period of 30 months from the Effective Date of PPA. Moreover, in case of any extension is given to the project, the corresponding extension must be made in the validity of the Bank Guarantee. Further, the PPA shall be signed only upon receipt of the total Performance Bank Guarantee of requisite value.

As per provisions of RfS, the confirmation of PBG shall be through secure Structured Financial Messaging System (SFMS). In this regard, while issuing the physical BG, your

Bank shall also send electronic message to NTPC's Beneficiary Bank whose detailed are provided below:

Bank Details:

- (i) Bank Name : State Bank of India
- (ii) Branch: TFCPC-I Parliament Street, New Delhi
- (iii) IFSC Code : SBIN0005051

The Bank Guarantee towards Earned Money submitted by you along with your Response to RfS shall be released only after receipt & verification of the Performance Bank Guarantee.

8.0 The Wind Power Developer shall report financial closure within 7 months from the Effective date of Power Purchase Agreement and shall submit relevant documents to NTPC as per the terms and conditions of RfS.

9.0 All disputes arising out of and/or in connection with this "Selection of Developers for Setting up 1200 MW ISTS Connected Wind Power Projects" and Supply of Wind Power therefrom and execution of PPA thereto shall be governed by laws of India and Courts of Delhi shall have exclusive jurisdiction."

21. Based on request of Buying Utilities/Distribution Licensees, the capacity was allocated as under:

Sl.	State/UTs	Utility	Allocation (MW)	Date of PSA signing
1	Punjab	Punjab State Power Corporation Limited (PSPCL)	200	25.3.2019
2	Bihar	North Bihar Power Distribution Company Limited (NBPDCCL) & South Bihar Power Distribution Company Limited (SBPDCL)	300	18.3.2019
3	Uttar Pradesh	Uttar Pradesh Power Corporation Limited (UPPCL)	350	14.3.2019
4	Telangana	Telangana Distribution Companies	300	11.3.2019
Total			1150	

22. Pursuant to Letters of Intent and allocation of capacity, NTPC entered into PPAs with the SPVs formed by the successful bidders as under:

Sl.	Name of Successful Bidder	SPV with which PPA signed	Capacity (MW)	Date of PPA signing
1	Sprng Vayu Vidyut Pivate Limited	Sprng Vayu Vidyut Private Limited	200	27.3.2019

Sl.	Name of Successful Bidder	SPV with which PPA signed	Capacity (MW)	Date of PPA signing
2	Mytrah Energy (India) Private Limited	Mytrah Vayu (Brahmani) Private Limited	150	15.4.2019
3		Mytrah Vayu (Amrawati) Private Limited	150	15.4.2019
4	Hero Wind Energy Six Private Limited	Clean Wind Power (Jaisalmer) Private Limited	300	28.3.2019
5	ReNew Wind Energy (TN) Private Limited	ReNew Wind Energy (TN) Private Limited	300	4.4.2019
6	Srijan Energy Systems Private Limited	Kutch Windfarm Development Private Limited	50	25.3.2019
	Total		1150	

23. The Petitioner has submitted that out of 1150 MW capacity, 300 MW allocated to Telangana Distribution Companies had not materialized since Telangana Discoms did not obtain requisite approval from Telangana Electricity Regulatory Commission within the time stipulated in the PPA/PSA. Accordingly, ReNew Wind Energy (TN) Private Limited (300 MW) has terminated the PPA entered into in respect thereof on account of non-fulfilment of the Condition Precedent specified in the PPA and PSA. Similarly, in case of UPPCL, Mytrah Vayu (Brahmani) Private Limited (150 MW) and Mytrah Vayu (Amravati) Private Limited (150 MW) have also terminated the PPAs. Similarly, Clean Wind Power (Jaisalmer) Private Limited (300 MW) has terminated the PPA on the above ground. After reserving the order in the Petition, the Petitioner vide its affidavit dated 18.2.2020 has submitted that Kutch Windfarm Development Private Limited (50 MW) has terminated the PPA dated 25.3.2019. Accordingly, NTPC is seeking adoption of tariff only for 200 MW Wind Power Project to be established by Sprng Vayu Vidyut Private Limited and to be sold to Punjab State Power Corporation Limited. According to the Petitioner, Punjab State Power Corporation Limited has already filed an application before the State Commission seeking approval under Section 86(1)(b) of the Act.

24. Article 10.3 of the PPA provides as under:

“10.3 Payment of Monthly Bills

10.3.1 NTPC shall pay the amount payable under the Monthly Bill/Supplementary Bill by the thirtieth day from the date of presentation of bill (the Due Date) to such account of the WPD, as shall have been previously notified by the WPD in accordance with Article 10.3.2 below. In case the Monthly Bill or any other bill, including a Supplementary Bill is issued after the (fifteenth) 15th day of the next month, the Due Date for payment would be (fifth) 5th day of the next month to the succeeding Month.

10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:

- i) deductions required by the Law; and*
- ii) amount claimed by NTPC, if any, from the WPD, through an invoice to be payable by the WPD, and no disputed by the WPD within fifteen (15) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that NTPC shall be entitled to claim any set off or deduction under this Article, after expiry of the said fifteen (15) Days period.*
- iii) The WPD shall open a bank account at Delhi (the “WPD’s Designated Account”) for all Tariff Payments (including Supplementary Bills) to be made by NTPC to the WPD, and notify NTPC of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. NTPC shall also designate a bank account at Delhi (“NTPC’s Designated Account”) for payments to be made by the WPD to NTPC, if any, and notify the WPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. NTPC and the WPD shall instruct their respective bankers to make all payments under this Agreement to the WPD’s Designated Account or NTPC’s Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.*

25. Further, Article 10.4 of the PPA provides as under:

10.4 Payment Security Mechanism

Letter of Credit (LC):

10.4.1 Subject to opening and maintenance of Letter of Credit by the Discoms (as per terms of NTPC-Discom (PSA) in favour of NTPC, NTPC shall extend to the WPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit (“Letter of Credit”), which may be drawn upon by the WPD in accordance with this Article.

10.4.2 Subject to Article 10.4.1, not later than one (1) Month before the start of supply, NTPC through a scheduled bank shall extend a Letter of Credit in favour of the WPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- i) for the first Contract Year, equal to the estimated average monthly billing;*

ii) for each subsequent Contract Year, equal to the average of the monthly billing of the previous Contract Year.

10.4.3 The WPD shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

10.4.4 If at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, NTPC shall restore such shortfall within seven (7) days.

10.4.5 NTPC shall cause the scheduled bank issuing the Letter of Credit to intimate the WPD, in writing regarding establishing of such irrevocable Letter of Credit.

10.4.6 NTPC shall ensure that the Letter of Credit shall be renewed not later than ten (10) days prior to its expiry.

10.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by NTPC.

10.4.8 If NTPC fails to pay undisputed Monthly Bill or part thereof within and including the Due Date, then, subject to Article 10.4.6, the WPD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from NTPC, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.3.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

i) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid to WPD and;

ii) a certificate from the WPD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;”

26. Regulation 9(10) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 (hereinafter referred to as “Trading Licence Regulations”) provides as under:

9. (10) The Trading Licensee shall make payment of dues by the agreed due date to the seller for purchase of the agreed quantum of electricity through an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller. Such escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller shall be equivalent to:

(a) one point one (1.1) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts;

(b) one point zero five (1.05) times of contract value for short term contracts.”

27. The above provisions provide for payment security mechanism to be complied with by the parties to the present Petition. Accordingly, the provisions of Articles 10.3 and 10.4

of the PPA and Regulation 9(10) of the Trading Licence Regulations shall be abided by all the concerned parties to the present Petition.

28. In the light of above, it, thus, emerges that selection of the successful bidders and the tariff of the Projects has been carried out by the Petitioner, NTPC through the transparent process of competitive bidding in accordance with Guidelines. Bid Evaluation Committee vide its Certificate dated 4.12.2019 has certified that the bidding process as well as the techno-commercial and financial bid evaluation was conducted in conformity to the provisions of the RfS. Relevant portion of the said letter dated 4.12.2019 is extracted as under:

“We do hereby solemnly certify and state as follows:

With respect to the RfS no. RE-CS-0000-BOO(W)-1 dated 13.03.2018, it is hereby declared as follows:

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

29. The Petitioner has prayed to adopt the tariff discovered in the competitive bid process for 200 MW Wind Power Projects to be established by Wind Power Developer, namely, Sprng Vayu Vidyut Private Limited (200 MW). In the light of the above discussion, in terms of Section 63 of the Act, the Commission adopts the following tariff for the Project as agreed to by the successful bidder, which shall remain valid throughout the period covered in the PSA and PPA. This is subject to fulfilment of Condition Precedent i.e approval from the State Commission.

Bidder	Tariff (INR/kWh)	Project Capacity (MW)
Sprng Vayu Vidyut Private Limited	2.77	200
Total		200

30. The Petitioner has submitted that it has agreed to sell entire 200 MW of wind power to the Buying Utility/Distribution Licensee at the rate of Rs. 2.77/kWh plus trading margin of Rs.0.07/kWh upon the commissioning of the above capacity. Regulation 8 (1) (d) of the Trading Licence Regulations dealing with trading margin provides as under:

“8(1) (d) for the transaction under long-term contracts, the trading margin shall be as mutually decided between the Trading licensee and the seller.”

The above provision gives choice to the contracting parties to mutually agree on Trading Margin for long-term transaction. Accordingly, the Petitioner shall be governed by the above provisions of the Trading Licence Regulations.

31. However, Proviso under Regulation 8(1) (d) of the Trading Licence Regulations provides as under:

*“8.(1) (d) * * * * **

Provided that in contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.”

In addition, Regulation 8 (1) (f) of the Trading Licence Regulations provides as under:

“8(1)(f). For transactions under Back to Back contracts, where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.”

Thus, the Petitioner, NTPC, shall also be governed by the above provisions of the Trading Licence Regulations.

32. NTPC has also prayed to grant exemption from complying with the provisions of the Clause 5.1.1 (b) of the Guidelines. NTPC has submitted that the intimation to be given under Clause 5.1.1 (b) has to be read along with the approval of deviation, particularly, in

the context of Section 63 of the Act whereunder the process for determination of tariff as per the Guidelines is issued and not with a prior approval to be taken for procurement of wind power. Clause 5.1.1 (b) of the Guidelines clearly stipulates that Procurer is required to inform the Appropriate Commission about the initiation of the bidding process. However, NTPC did not inform the Commission regarding initiation of bidding. Since NTPC has undertaken that it will forward the intimation to the Commission henceforth before the initiation of the bidding process, we exempt NTPC from complying with the requirement specified in Clause 5.1.1 (b) of the Guidelines in the present case. However, NTPC is directed to comply with such requirement in future.

33. Petition No. 188/AT/2020 is disposed of in terms of the above.

Sd/-
(I.S.Jha)
Member

sd/-
(P.K. Pujari)
Chairperson