

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 56/AT/2020

Coram:

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

Date of Order: 28th of February, 2020

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 840 MW Wind- Solar Hybrid Power Projects (Tranche-I) connected to the Inter-State Transmission System and selected through competitive bidding process as per the Guidelines issued by Ministry of New and Renewable Energy dated 25.5.2018.

And

In the matter of

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

.....**Petitioner**

Vs.

1. Ministry of New and Renewable Energy
Block – 14, CGO Complex,
Lodhi Road, New Delhi – 110 003.
2. SBE Renewable Ten (P) Limited
1st Floor, Worldmark-2, Asset Area-8,
Hospitality District, Aerocity, NH-8,
Delhi – 110 037.
3. Adani Green Energy Eighteen Limited
Adani House, 56, Shrimali Society,
Navrangpura, Ahmedabad – 380 009.
4. Chhattisgarh State Power Distribution Company Limited
P.O. Sundernagar, Dangani,
Raipur – 492 013.
5. Haryana Power Purchase Centre
Shakti Bhawan, Sector – 6,
Panchkula, Haryana – 134 109.

.....**Respondents**

The following were present:

Shri M. G. Ramachandran, Sr. Advocate, SECI
Shri Shubham Arya, Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Shri Atulya Kumar, SECI
Shri Anil Yadav, SECI
Ms. Mazag Andrabi, Advocate, SBE Renewable

ORDER

The Petitioner, Solar Energy Corporation of India Limited (hereinafter referred to as “SECI”), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as the 'Act') for adoption of tariff for 840 MW Wind-Solar Hybrid Power Projects (Tranche-I) connected to inter-State Transmission System (ISTS) and selected through competitive bidding process as per the “Guidelines for transparent bidding process for Implementation of Scheme for Setting up of 2500 MW ISTS-connected Wind-Solar Hybrid Power Projects” (hereinafter referred to as ‘the Guidelines’) dated 25.5.2018 issued by Ministry of New and Renewable Energy, 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 individual power projects as stated in Table 1 at paragraph 7 (iv) on the terms and conditions contained in the letter of award/ Power Purchase Agreement with the Wind-Solar Hybrid Power Developers being Respondent Nos. 2 and 3. In addition, there will be the trading margin of Rs. 0.07/kWh (as mutually agreed between the parties) to be recovered from the Buying Utilities/Distribution Licensees in terms of the PSAs with the Buying Utilities/Distribution licensees being Respondent Nos. 4 and 5 herein.”

Submissions of the Petitioner

2. The Petitioner has submitted that SECI issued Request for Selection (RfS) along with draft Power Purchase Agreement (PPA) and Power Sale Agreement (PSA) documents for setting up of 2500 MW ISTS connected Wind-Solar Hybrid Power Projects (Tranche-I) as per the Guidelines and floated the same on 22.6.2018 on the portal of

Telecommunication Consultant India Limited (TCIL). Subsequently, the capacity under the RfS was revised to 1200 MW. The Petitioner has submitted that on 5.12.2018, e-Reverse auction of two technically qualified bidders was conducted on TCIL's portal and the final tariff was arrived. The Petitioner has submitted that the Wind-Solar Hybrid Power Projects are scheduled to be commissioned in the year 2021-22 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 submitted that SECI has agreed to sell entire 840 MW (i.e. cumulative awarded capacity/ accepted cumulative capacity) of wind-solar hybrid power to the Buying Utilities/ Distribution Licensees at the rate of Rs. 2.6792/kWh (i.e. weighted average pooled rate of two bids) as provided in the Guidelines plus trading margin of Rs.0.07/kWh upon commissioning of these wind solar project and in case of early commissioning or part commissioning of individual projects, the Buying Utilities/ Distribution Licensees will pay the tariff at a higher rate as applicable not exceeding Rs.2.69/kWh plus the trading margin of Rs.0.07/kWh. According to the Petitioner, since the tariff of Rs.2.69/kWh i.e. maximum tariff payable, with trading margin of Rs.0.07/kWh 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 10.1.2020 after notice to the Respondents. No reply has been filed by the Respondents. During the course of hearing, learned senior counsel for the Petitioner prayed to adopt the tariff keeping in view the provisions of the PPA and PSAs. Learned counsel for the Respondent, SBE Energy Ten (P) Limited, requested the Commission to adopt the tariff as expeditiously as possible.

Analysis and Decision

4. We now proceed to consider the request of the Petitioner as regards adoption of tariff in respect of the wind-solar hybrid power projects as discovered pursuant to the competitive bid process carried out in terms of the Guidelines issued by the Ministry of New and Renewable Energy, Government of India under Section 63 of the Act.

5. 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.”

6. 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 Central Government under Section 63 of the Act, has been followed in determination of such tariff.

7. The Ministry of New and Renewable Energy, Government of India on 25.5.2018 has sanctioned the ‘Scheme for Setting-up of 2500 MW ISTS-connected Wind-Solar Hybrid Power Projects’ (‘Scheme’) along with detailed Guidelines for transparent bidding process for implementation of the said Scheme. The salient features of the Guidelines are as under:

(a) Guidelines are formulated to provide the necessary framework and mechanism for transparent bidding process as required under Section 63 of the Act for implementation of the Scheme for setting up of 2500 MW ISTS-connected Wind-Solar Hybrid Power Projects.

(b) The Scheme as well as the Guidelines envisage setting up 2500 MW capacity of ISTS-connected new Wind-Solar Hybrid Power Projects on Build, Own and Operate (BOO) basis through open and transparent competitive bidding to provide hybrid power at tariff discovered through reverse bidding process. Subsequently, the

capacity under the Scheme/ Guidelines was revised to 1200 MW by Ministry of New and Renewable Energy.

(c) SECI will be the nodal agency for implementation of Scheme and will prepare RfS document and invite bids for selection of wind-solar hybrid power projects under the Scheme through e-bidding process followed by e-reverse auction. The interested bidders shall register themselves on a web-based portal identified by SECI for e-bidding/ e-reverse auction.

(d) The selection of bids will be done by SECI based on the lowest tariff offered in the ascending order as quoted by the bidders during the e-reverse auction till the entire bid capacity is allotted.

(e) SECI shall sign Power Purchase Agreement with Hybrid Power Developer (HPDs) at bidded tariff and also enter into back-to-back Power Supply Agreement (PSA) with buyers at a pooled price of total capacity allotted. Duration of PPA and PSA would be 25 years from Commercial Operation Date of the Project. SECI will be entitled to charge trading margin as mutually agreed with buyer or as decided by Central Electricity Regulatory Commission for long-term power purchase, whichever is less.

(f) Under the Scheme, minimum bid capacity shall be 200 MW with at least 50 MW of project capacity at each Project site. Maximum bid capacity that can be allotted to one company including its Parent, Affiliate or Ultimate Parent or any Group Company will be 500 MW.

(g) Selection of Project shall be done through single stage two envelopes, e-bidding and e-reverse auction as detailed in the RfS documents to be issued by SECI. Based on the RfS notification issued by SECI, separate Technical and Financial bids will be submitted by the developer in its application. The financial bid will clearly indicate tariff offered (in India Rupees) against the total bid capacity for which bid is submitted.

(h) A copy of the Standard Power Purchase Agreement to be executed between SECI and the HPD shall be provided by SECI along with invitation for submission of response to RfS.

8. In terms of the provisions of Section 63 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.

9. The Petitioner, SECI has been designated as the nodal agency for implementation of scheme for setting up of ISTS connected/ State specific wind-solar hybrid 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 Renewable Purchase Obligations under Section 86(1)(e) of the Act. SECI acts as an intermediary agency in purchase and sale of power under the PPAs and PSAs on back-to-back basis.

10. As per the Guidelines, SECI in the capacity of nodal agency, invited proposals for setting up of ISTS-connected Solar Power Projects on pan-India basis, on “Build, Own, and Operate” basis for an aggregate capacity of 2500 MW, which was subsequently revised to 1200 MW and for procurement of wind-solar hybrid power from the projects being set up in relation thereto. As per the arrangements, SECI is required 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.

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

| Sr. No. | Milestone | Date |
|----------------|---------------------------------------------------|-------------|
| 1 | Issuance of RfS by SECI | 22.6.2018 |
| 2 | Last date of submission of bid | 20.11.2018 |
| 3 | Opening of techno-commercial bids | 20.11.2018 |
| 4 | Opening of financial bids | 4.12.2018 |
| 5 | e-Reverse auction | 5.12.2018 |
| 6 | Issuance of Letter of Award to successful bidders | 25.1.2019 |

12. On 22.6.2018, the Petitioner, SECI issued Request for Selection document, along with draft PPA and PSA documents for setting up of 2500 MW ISTS-connected Wind-Solar Hybrid Power Projects (Tranche I). Subsequently, the capacity under the tender was revised to 1200 MW. According to SECI, it did not publish the notices in the newspapers as per the advisory issued by Ministry of Information and Broadcasting, Government of India dated 17.5.2017 mandating e-publishing of advertisements in the relevant portal. Accordingly, on 3.7.2018, SECI published notification indicating that the tenders of SECI would be published in its website and not in the newspapers.

13. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids for RfS dated 22.6.2018:

| Tender | Department | Offline and Online Techno-commercial and Financial Bid Opening | Techno-commercial and Financial evaluation and post-e-RA recommendation |
|---------------------------------------------------------------|-------------------|-----------------------------------------------------------------------|--------------------------------------------------------------------------------|
| 1200 MW ISTS-connected Wind-Solar Hybrid Projects (Tranche-I) | PS | ISK Reddy, Dy. Manager | ISK Reddy, Dy. Manager |
| | Contracts | Biblesh Meena, Sr. Engineer Sunil, Sr. Engineer | Biblesh Meena, Sr. Engineer Pratik Prasun, Dy. Manager |
| | Finance | Ajit Sharma, Senior Accounts Officer | Jasmine Nath, Senior Accounts Officer |

14. Last date of submission of bid was 20.11.2018 and the technical part of the bid was opened on the same date. Response to RfS was received from the following:

| Sr. | Name of Bidders |
|------------|------------------------------------|
| 1 | SBE Renewables Ten Private Limited |
| 2 | Mahoba Solar (UP) Private Limited |

15. The financial bids of above bidders were opened on 4.12.2018. As per the eligibility criteria mentioned in RfS, both the bidders were found eligible for e-Reverse auction. The e-Reverse auction was carried out on 5.12.2018 in the presence of members of BEC and declared successful bidders as under:

| Sr. | Bidders | Tariff (INR/kWh) | Capacity (MW) |
|--------------|-----------------------------------|------------------|---------------|
| 1 | SBE Renewable Ten Private Limited | 2.67 | 450 |
| 2 | Mahoba Solar (UP) Private Limited | 2.69 | 390 |
| Total | | | 840 |

16. On 25.1.2019, SECI issued Letters of Award to the selected bidders as under:

| Selected bidders | Allotted Project ID | Project Capacity (MW) | Project Location | Sub-station details for connectivity | Applicable Tariff (INR/kWh) in figures | Applicable Tariff (INR/kWh) in words |
|-----------------------------------|------------------------------|-----------------------------------------------|------------------------------------------------------------------------------------------------------|--------------------------------------|----------------------------------------|---------------------------------------|
| SBE Renewable Ten Private Limited | HPD-ISTS-T1-SBERTPL-P1-150KA | Hybrid : 150 MW [Wind-151.2 MW; Solar-50 MW] | Karnataka | To be intimated later | 2.67 | Rupees Two and Sixty Seven paise only |
| | HPD-ISTS-T1-SBERTPL-P2-300TN | Hybrid : 300 MW [Wind-201.6 MW; Solar-200 MW] | Village: Tholaiyanatham and Pillathurai, Tehsil: Musiri, District Tiruchirappalli, State: Tamil Nadu | 230 kV PGCIL Alundur | 2.67 | Rupees Two and Sixty Seven paise only |
| Mahoba Solar (UP) Private Limited | HPD-ISTS-T1-MSUPPL-P1-100GJ | Hybrid : 100 MW | Gujarat | To be intimated later | 2.69 | Rupees Two and Sixty Nine paise only |
| | HPD-ISTS-T1-MSUPPL-P2-100GJ | Hybrid : 100 MW | Gujarat | To be intimated later | 2.69 | Rupees Two and Sixty Nine paise only |
| | HPD-ISTS-T1-MSUPPL-P3-100GJ | Hybrid: 100 MW | Gujarat | To be intimated later | 2.69 | Rupees Two and Sixty Nine paise only |
| | HPD-ISTS-T1-MSUPPL-P4-90GJ | Hybrid: 90 MW | Gujarat | To be intimated later | 2.69 | Rupees Two and Sixty Nine paise only |

17. Relevant portion of one of the Letters of Award issued to the successful bidder, namely, SBE Renewable Ten Private Limited is extracted as under:

"In reference to above and subject to the provisions of RfS, we confirm having accepted your final offer concluded as a result of e-RA and issue this letter of Award (LOA) as per the following details:

| Allotted Project ID | Project Capacity (MW) | Project Location | Sub-station details for connectivity | Applicable Tariff (INR/kWh) in figures | Applicable Tariff (INR/kWh) in words |
|------------------------------|---------------------------------------------|------------------|--------------------------------------|----------------------------------------|---------------------------------------|
| HPD-ISTS-T1-SBERTPL-P1-150KA | Hybrid: 150 MW [Wind-151.2 MW; Solar-50 MW] | Karnataka | To be intimated later | 2.67 | Rupees Two and Sixty Seven paise only |

SECI shall purchase the power generated from the proposed ISTS Connected Wind-Solar Hybrid Power Project under the above scheme subject to the following terms and conditions as stated in various documents referred above and briefly brought out hereinafter.

1.0 The applicable tariff as mentioned above for power generated from the proposed Wind-Solar Hybrid Power Project for the term of Power Purchase Agreement (PPA) to be entered into between Project Company or the Hybrid Power Developer (HPD) and M/s SECI, for the project, shall be firm for the entire term of the PPA.

1.1 The applicable tariff payable shall be fixed for 25 years from Scheduled Commissioning Date, as discovered through e-bidding and e-Reverse Auction. The HPD will be free to avail fiscal incentives like Accelerated Depreciation, Concessional Customs, Excise Duties, Tax Holidays, etc. as available for such projects. No claims shall arise on SECI for any liability if the HPD is not able to avail fiscal incentives and this will not have any bearing on the applicable tariff.

1.2 The awards of the above project is subject to the Guidelines including amendments/ clarifications issued by MNRE (Government of India) and terms and conditions of the RfS document including its clarifications/ amendments /elaborations/ notifications issued by SECI on its website and TCIL Portal.

1.3 No change in the controlling shareholding of the Bidding Company shall be permitted from the date of submission of response to RfS till the execution of the PPA. However, in case the Project is being set up by a listed Company, this condition will not be applicable. Controlling Shareholding (holding more than 50% of the voting rights and paid up share capital in the Company) of the Project Company of the HPD shall not change until One Year after the COD of the Project, except with prior approval of SECI. However, in case the Project being set up by a listed Company, this condition will not be applicable.

1.4 The successful Bidder, if being a single company, shall ensure that its shareholding in the SPV/project company executing the Power Purchase Agreement (PPA), shall not fall below 51% at any time prior to 1 (one) year from the COD, except with the prior approval of SECI. In the event the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the PPA, shall not fall below 51% at any time prior to 1 (one) year from COD, except with the prior approval of SECI.

1.5 The HPD shall pay to SECI, Success Charges of Rs.1.15 lakh/MW/project + 18% GST within 30 days of issuance of this Letter of Award (LoA), in line with Clause 3.12 of the RfS.

1.6 PPA will be executed between SECI and the HPD as per the breakup of the cumulative Project capacity awarded to the Bidder. This LoA is being issued in line with the Project breakup of the cumulative capacity quoted in the Covering Letter as part of your response to RfS and amended subsequently, as applicable. The PPA shall be valid for a period of 25 years from the COD.

1.7 The HPD will have to submit the required documents as mentioned below to SECI within 50 days from date of this LoA or before signing of PPA, whichever is earlier. In case of delay in submission of documents beyond the timeline as mentioned above, SECI shall not be liable for delay in verification of documents and subsequent delay in signing of PPA:

- 1) *Copy of the Certificate of Incorporation of the Hybrid Power Developer.*
- 2) *The details of promoters and their shareholding in the HPD, duly certified by the practicing Chartered Accountant/Company Secretary in original at least 7 days prior to date of their document submission (certificate date should be after the date of LoA) along with latest documents filed with ROC).*
- 3) *Copy of the Memorandum of Association (MoA) of the HPD highlighting the object clause related to generation of Power/Energy/Renewable Energy/Wind/Solar/Hybrid Power plant development.*

1.8 Performance Bank Guarantee(s) for a value of @ Rs. 20 Lakh/MW shall be submitted by the HPD within 30 days of issuance of Letter of award or before signing of PPA, whichever is earlier, in line with Clause 3.11 (ii) of the RfS. Further, the PPA shall be signed only upon receipt of the Success Charges and total Performance Guarantees of requisite values. The EMD submitted shall be released only after receipt, successful verification of the total Performance Bank Guarantee in acceptable form.

1.9 SECI shall have the right to verify original documents of the HPD for which copies have been submitted from the date of submission of response to RfS till date, if required. PPA as per the format given along with RfS has to be signed within 60 days from the date of issue of LoA, if not extended by SECI. In case of unavoidable delays on the part of the SPD in submission of requisite documents prior to signing of PPAs or otherwise, the Effective Date of the PPA shall remain the date as on 60th day from the issuance of LOA, irrespective of the date of signing of PPA. In extraordinary cases of unavoidable delays on part of SECI in signing the PPAs, the Effective Date of the PPA shall then be the date of signing of PPA.

1.10 In case, the SECI offers to execute the PPA with the HPD and the selected Bidder refuses to execute the PPA within the stipulated time period, the Bank Guarantee equivalent to the amount of the EMD shall be encashed by SECI from the Bank Guarantee available with SECI (i.e. either EMD or PBG) as liquidated damages not amounting to penalty, and the selected Project(s) shall stand cancelled and the selected Bidder expressly waives off its rights and objections, if any, in that respect.

1.11 The HPD shall meet financial closure in line with clause 3.16 of the RfS document, within 12 (twelve) months from the Effective Date of the PPA. Accordingly, the HPD shall furnish the documents pertaining to compliance of financial closure and land arrangement as per the above provisions within 12 months from the Effective Date of the PPA.

1.12 The HPD/Project Company shall achieve commissioning of full capacity of the Project within 18 months from the Effective Date of the PPA as per the conditions stipulated in Clause 3.17 of the RfS and relevant articles of PPA. In case of failure to achieve this milestone, liquidated damages not amounting to penalty shall be levied on the HPD as per the above provisions.”

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

| Sr. | State/UT | Utility | Allocation (MW) |
|--------------|-----------------|-------------------------------------------------------|------------------------|
| 1 | Chhattisgarh | Chhattisgarh State Power Distribution Company Limited | 400 |
| 2 | Haryana | Haryana Power Purchase Centre | 440 |
| Total | | | 840 |

19. Pursuant to Letters of Award and allocation of capacity, SECI entered into PSAs dated 11.7.2019 with Haryana Power Purchase Centre and dated 20.6.2019 with Chhattisgarh State Power Distribution Company Limited. On 28.11.2019, SECI entered into PPA with Adani Green Energy Eighteen Limited, Project Company of successful bidder, namely, Mahoba Solar (UP) Private Limited. According to the Petitioner, PPA with SBE Renewable Ten Private Limited is yet to be executed.

20. In the light of the discussions as above, it emerges that selection of the successful bidders and the tariff of the Projects has been carried out by SECI through a transparent process of competitive bidding in accordance with Guidelines issued by Ministry of New and Renewable Energy, Government of India under Section 63 of the Act. SECI vide its letter dated 11.11.2019 has certified that the Bid Evaluation Committee has conducted the bid evaluation in conformity with the provision of the RfS and there was no deviation from the Guidelines in the RfS documents. Relevant portion of the said letter dated 11.11.2019 is extracted as under:

“With respect to the tender including subsequent amendments and clarification, issued vide RfS no. SECI/C&P/HPD/1200MW/HYB/T1/RfS/062018 dated 22.06.2018, it is hereby declared as follows:

- 1. After the conclusion of bid submission, the Evaluation Committee constituted for evaluation of bids has conducted the techno-commercial as well as financial bid evaluation in conformity to the provisions of the RfS.*
- 2. Applicable Guidelines and amendments/clarifications thereof, if any, issued by Government of India for the bidding process were followed in the above tender and no deviation was taken from the Guidelines in the RfS documents for the above tender.”*

21. The Petitioner has prayed to adopt the tariff discovered in the competitive bid process for the individual power Projects. In the light of the above discussion, in terms of Section 63 of the Act, the Commission adopts the following tariff for the Projects as agreed to by the successful bidders, subject to signing of the PPA with SBE Renewable Ten Private Limited or its project company, which shall remain valid throughout the period covered in the PSAs and PPAs:-

| Sr. | Bidders | Tariff (INR/kWh) | Allotted Capacity (MW) |
|--------------|-----------------------------------|------------------|------------------------|
| 1 | SBE Renewable Ten Private Limited | 2.67 | 300 |
| 2 | Mahoba Solar (UP) Private Limited | 2.69 | 300 |
| Total | | | 840 |

22. Article 10.3 of the PPA provides as under:

“10.3 Payment of Monthly Bills

10.3.1 Buyer shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the HPD, as shall have been previously notified by the HPD in accordance with Article 10.3.2 (iii) below.

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 Buyer, if any, from the HPD, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, 1.25% surcharge will be applicable on day to day basis.

The HPD shall open a bank account for all Tariff Payments (including Supplementary Bills) to be made by Buyer to the HPD, and notify Buyer of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. Buyer shall also designate a bank account at Ahmedabad (“Buyer’s Designated Account”) for payments to be made by the HPD to Buyer, if any, and notify the HPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. Buyer and the HPD shall instruct their respective bankers to make all payments under this Agreement to the HPD’s Designated Account or Buyer’s Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.”

23. 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 Buying Entities (as per terms of Buyer-Buying Entity PSA) in favour of the Buyer, the Buyer shall provide to the HPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained which may be drawn upon by the HPD 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, Buyer through a scheduled bank open a Letter of Credit in favour of the HPD, 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 (post COD), 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 Provided that the HPD 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 Provided further that 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, buyer shall restore such shortfall within fifteen (15) days.

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

10.4.6 Buyer shall ensure that the Letter of Credit shall be renewed not later than its expiry.

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

10.4.8 If Buyer fails to pay undisputed Monthly Bill or a part thereof within and including the Due Date, then, subject to Article 10.4.6 & 10.5.2, the HPD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from Buyer, an amount equal to such Monthly Bill or part thereof, in accordance with Article 10.4.3 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 HPD and;

ii) a certificate from the HPD 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;"

24. 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.”

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

26. The Petitioner, in its prayer, has further submitted that in addition to the tariff, there will be the trading margin of Rs. 0.07/kWh (as mutually agreed between the parties) to be recovered from the Buying Utilities/ Distribution Licensees in terms of the PSAs with the Buying Utilities/ Distribution Licensees. In this regard, 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 Commission cannot adopt any trading margin. The Petitioner shall be governed by the above provisions of the Trading Licence Regulations. In view of the above, the prayer of SECI to adopt the trading margin is decided accordingly.

27. However, Proviso to 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, SECI shall also be governed by the above provisions of the Trading Licence Regulations.

28. Petition No. 56/AT/2020 is disposed of in terms of the above.

Sd/-
(I.S.Jha)
Member

sd/-
(P.K. Pujari)
Chairperson