

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 337/AT/2023

Coram:

Shri Jishnu Barua, Chairperson

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 31st March, 2024

In the matter of:

Petition under Section 63 of the Electricity Act, 2003 for the adoption of tariff for 600 MW Wind Power Projects (Tranche-XIII) connected to the Inter-State Transmission System and selected through competitive bidding process as per the Guidelines dated 8.12.2017 of the Ministry of Power, Government of India.

And

In the matter of

Solar Energy Corporation of India Limited,

6th Floor, Plate-B, NBCC Office Block Tower-2,

East Kidwai Nagar,

New Delhi-110023.

....Petitioner

Versus

1. GRIDCO Limited,

Janpath, Bhubaneshwar- 751002,

Odisha.

2. SJVN Limited,

Corporate Head Quarter, Shakti Sadan,

Shanan, Shimla – 171006,

Himachal Pradesh

3. Teq Green Power XI Private Limited,

2nd Floor, Square One Mall,

Saket Business District, Court Chowk

Pushp Vihar, New Delhi-110017

4. SJVN Green Energy Limited,

SJVN Corporate Headquarters,

Shakti Sadan, Shanan,
Shimla-171006.Himachal Pradesh

5. Scatee India Renewable One Private Limited,
Atelier Airport Office Suites,
Suite 4-Level 2,
Worldmark 2, Asset 8,
Aerocity, NH 8, New Delhi-110037

...Respondents

The following were present:

Ms. Shikha Ohri, Advocate, SECI
Shri Karthik Sharma, Advocate, SECI
Shri Dinesh Pardasani, Advocate, SIROPL
Shri Bibin Kurian, Advocate, SIROPL
Shri Kaustubh Shrinarain, Advocate, SIROPL
Shri Hemant Sahai, Advocate, TGPPL
Ms. Shubhi Sharma, Advocate, TGPPL
Shri Adarsh Kumar Bhardwaj, Advocate, TGPPL
Ms. Samprati Sing, Advocate, TGPPL

ORDER

The Petitioner, Solar Energy Corporation of India Limited (SECI), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as the 'Act') for the adoption of tariff for the 600 MW wind power projects (Tranche-XIII) connected to the Inter-State Transmission System (ISTS) and selected through a competitive bidding process as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Wind Power Projects" (hereinafter referred to as "the Guidelines") dated 8.12.2017 and its subsequent amendments thereof issued by the Ministry of Power, Government of India. The Petitioner has made the following prayers:

"(a) Adopt the tariff discovered in the tariff based competitive bid process for the power projects as stated in Paragraph 20 above on the terms and conditions contained in the Power Purchase Agreements dated 30.06.2023 signed with Respondent No. 3, Power Purchase Agreement dated 17.07.2023 signed with Respondent No. 4 and Power Purchase Agreement dated 28.06.2023 signed with Respondent No.5 read with the Power Sale Agreement dated 09.06.2023 signed with the Respondent No. 1.

(b) Approve the trading margin of Rs. 0.07/kWh as agreed to by the Procurer/Respondent No. 1 in the duly executed PSA, in terms of Regulation 8 (1) (d) of the CERC (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2020.

(c) Pass any other or further orders which this Commission may deem fit and proper in the facts and circumstances of the case.”

Submissions of the Petitioner

2. The Petitioner, SECI, has submitted that on 12.01.2022, it issued a Request for Selection (RfS) document along with the draft Power Purchase Agreement (PPA) and the draft Power Sale Agreement (PSA) documents for setting up the 1200 MW ISTS connected wind power projects (Tranche-XIII) as per the Guidelines and floated the same on the ISN Electronic Tender System (ISN ETS) e-bidding portal. In pursuance of the above, fourteen bids were received offering an aggregate capacity of 3010 MW and all of them were found to meet the technical criteria. On 22.12.2022, the financial bids of technically qualified bidders were opened on the ISN ETS e-bidding portal and out of fourteen bidders, thirteen bidders for capacity aggregating 2710 MW were shortlisted for e-reverse auction. It was submitted that the e-reverse auction of thirteen technically qualified bidders was conducted on 22.12.2022 on the ISN ETS e-bidding portal, and the final tariff was arrived. It highlighted that the wind power projects would help the distribution licensees to meet their Renewable Purchase Obligations (RPOs) requirements apart from providing power at very economical rates. It pointed out that it has agreed to sell the entire 600 MW of wind power to the distribution licensees, namely, Respondent No. 1 under the PSA executed with it at the rate of Rs.2.90/kWh [100 MW] and Rs. 2.95/kWh [500 MW] plus a trading margin of Rs.0.07/kWh upon commissioning of the above

capacity. It claimed that the price discovered is competitive and beneficial to the Buying Utilities/Distribution Companies as well as the consumers of the Buying Utilities/Distribution Companies.

Hearing dated 13.12.2023:

3. The matter was heard on 13.12.2023. During the course of the hearing, the learned counsel for the Petitioner submitted that the present Petition has been filed for the adoption of tariff of 600 MW Wind Power Projects (Tranche XIII) connected to the Inter-State Transmission System and selected through a competitive bidding process as per the “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects” dated 8.12.2017 as issued by the Ministry of Power, Government of India as amended from time to time and interpreted & modified by the Central Government vide subsequent communications/ notifications.

4. After hearing the learned counsel for the Petitioner, the matter was admitted and notice was issued to the Respondents to file their reply, if any.

Hearing dated 6.2.2024:

5. During the course of the hearing on 6.2.2024, learned counsel for the Petitioner submitted inter-alia that SECI has tied up this entire 600 MW capacity under the PSA dated 9.6.2023 with GRIDCO Limited and the PPAs dated 30.6.2023 with Teq Green Power XI Pvt. Ltd., dated 17.7.2023 with SJVN Green Energy Limited and dated 28.6.2023 with Scatee India Renewables One Pvt. Ltd. She further submitted that SECI

has placed on record all the requisite details including the Conformity Certificates and accordingly, requested the Commission to adopt the tariff in respect of the 600 MW Wind Power Projects as discovered pursuant to the competitive bidding process.

6. Learned counsel for Respondent No.5, Scatec India Renewables One Private Limited, submitted that Respondent has already filed its reply in the matter and further pointed out that after the conclusion of the bid process and issuance of the Letter of Awards, the Ministry of Power by its order dated 9.6.2023 has modified and limited the benefits of waiver of the ISTS charges. Learned counsel further submitted that by the said Order, the Ministry of Power has introduced a new condition, namely, that waiver will be applicable only if an extension in the Scheduled Commissioning Date (SCD) is granted for six (6) months at a time and not more than two (2) times and as a result of this if the SCD of Respondent's Project gets extended beyond 30.6.2026, it will not be eligible to avail the waiver of ISTS charges. Learned counsel further submitted that the Project of Respondent is already facing various uncertainties relating to the availability/readiness of the Koppal II sub-station, delays in the adoption of proceedings and other ancillary issues, as pointed out, which are likely to impact the implementation of the Project. Learned counsel further submitted that Respondent has already filed a separate Petition, Petition No. 26/MP/2024, *inter-alia* seeking a declaration of the Ministry of Power's order dated 9.6.2023 as Change in Law event and by reiterating the submissions made therein, urged to take up the said matter before or along with the present tariff proceedings.

7. Learned counsel for Respondent No.3, Teq Green Power XI Private Limited, submitted that it is merely seeking a declaration that its Project will be exempted from the

levy of ISTS charges for the period beyond 30.6.2025 (being the ISTS waiver deadline) on account of the valid and legitimate extension of SCD of the Project and/or that, in any event, it will not be liable in any manner for payment of the ISTS charges due to extension of SCD beyond 30.6.2025 as per the express provisions of Ministry of Power's orders dated 23.11.2021, 30.11.2021 and 9.6.2023 read with Articles 2.1.3, 2.14 and 4.2.6 of the PPA.

8. In response, learned counsel for the Petitioner, SECI, strongly opposed the request of Respondent No. 5 to tag the present tariff adoption proceedings with Petition No. 26/MP/2024. Learned counsel further sought liberty to file rejoinder(s) in the matter and prayed that the matter may be reserved for order.

9. After hearing the learned counsel for the parties, the Commission permitted the Petitioner to file rejoinder(s) in the matter within a week. The Commission also deemed it appropriate to list the matter for another oral hearing thereafter.

Reply of Respondent No. 5:

10. Pursuant to the liberty granted by the Commission, Respondent No. 5, Scatec India Renewable One Pvt. Ltd. (SIROPL) vide its reply dated 29.01.2024, has mainly submitted as under:

- (a) The Ministry of Power (the MoP) issued an order dated 23.11.2021, wherein the waiver of ISTS losses was limited to projects that had completed their bidding process before 15.1.2021. Further, the waiver of ISTS charges was applicable for

projects commissioned up to 30.6.2025. Subsequently, on 30.11.2021, the MoP issued another order in continuation to the MoP's order dated 23.11.2021 and stated that where an entity is eligible for a waiver of the ISTS charges and is granted an extension in Scheduled Commissioning Date (SCD) by the competent authority due to force majeure, transmission delays caused by the transmission provider, or any other delay attributed to a government agency, then the period of the SCD shall be extended and accordingly even the period for waiver of ISTS charges shall be deemed to be extended.

(b) Pursuant to the issuance of the RfS by the SECI, Scatec India II B.V. participated in the bidding process and was selected as the wind power developer (WPD) for developing a 300 MW wind power project ('Project'). As per the terms of RfS, Respondent No. 5, SIROL, as a Special Purpose Vehicle (SPV), was incorporated on 18.1.2023 by Scatec India II B. V. for the specific purpose of entering into the Power Purchase Agreement (PPA) with the Petitioner. At the conclusion of the bidding process, the Petitioner initially issued a Letter of Award (LoA) dated 19.1.2023 to Scatec India II B. V. The LoA specifically stated that the LoA is being issued based on the Guidelines, subsequent amendments, and clarification thereto until the last date of bid submission of the RfS. Further, in the LoA, two main pre-conditions were stipulated, namely, (i) pay the Petitioner success charges of INR 1.00 Lakh/MW plus 18% GST within 30 days of issuance of LoA or the date at least 07 days before the date of signing of PPA, whichever is earlier; and (ii) furnish the Performance Bank Guarantee (PBG) for a value of Rs. 19.89 Lakh/MW/Project

before signing of the PPA.

(c) Accordingly, in terms of the LoA and RfS, a success fee of around Rs. 3.54 crore was paid to the Petitioner, and a PBG dated 30.3.2023 of Rs. 59.67 crore was submitted to the Petitioner. Pursuant to the award of the Project, SIROPL secured a government order from the Government of Karnataka and spent approximately Rs.50 crore for acquiring the land along with a commitment to spend up to Rs. 108 crore.

(d) Pursuant to the LoA dated 19.1.2023, on 17.2.2023, SIROPL applied for Stage-I connectivity of the Project for Koppal-II Grid Sub-Station (GSS) to the Central Transmission Utility of India Limited (CTUIL). SIROPL had considered the GSS at Kallam, Maharashtra, at the time of submission of the bid, but considering the time taken for the finalization of the tender process, including reverse auction, the capacity of Kallam GSS was exhausted. Consequently, SIROPL had to apply for connectivity at an alternate site, namely, Koppal-II GSS. This site change had an adverse impact, among others, on the land acquisition cost. Subsequently, the Petitioner issued an amended LoA on 27.2.2023 in the name of Scatec India II B.V. and specifically recorded that SIROPL is eligible to utilize the said LoA to set up a 300 MW wind project, including seeking ISTS connectivity from the CTUIL. SIROPL subsequently applied for the ISTS connectivity from CTUIL. However, CTUIL pointed out that the LoA issued by the Petitioner is in the name of Scalec India II B.V. and not in the name of SIROPL and closed the Stage-II connectivity application for SIROPL. These issues were brought to the notice of the Petitioner through letters dated 24.2.2023 and 22.3.2023. Ultimately, a revised LoA was issued by the Petitioner on 4.5.2023 in the

name of SIROPL, following which connectivity under the Grid Network Access (GNA) was sought in the name of SIROPL. Subsequently, CTUIL granted in-principal approval for connectivity at the Koppal-II GSS on 20.10.2023 to SIROPL. Pursuant to the same, a bank guarantee of Rs.9.50 crore was submitted to CTUIL by the SIROPL on 17.11.2023. However, the issuance of final connectivity is pending approval from CTUIL.

(e) SIROPL had considered the GSS at Kallam, Maharashtra, at the time of bidding but considering the time taken for the finalisation of the tender process, including reverse auction, the capacity of Kallam GSS was exhausted. Consequently, SIROPL had to apply for connectivity at an alternate site, namely, Koppal-II GSS. This site change had an adverse impact, among others, on the land acquisition cost.

(f) In the meanwhile, Respondent No. 1, GRIDCO Limited (GRIDCO) filed a Petition bearing Case No. 38/2023 under Section 86 (1) (b) and (e) of the Act before the Orissa Electricity Regulatory Commission ('OERC') for prior approval of the Power Sales Agreement ('PSA') claiming that the timelines of the Project are being adhered to and that the Project will be completed within the third quarter of FY 2024-25, i.e., between October 2024 and December 2024 and that accordingly the benefit of waiver of ISTS charges will be available. Under this pretext, the OERC passed the order dated 3.6.2023, wherein the draft PSA was approved.

(g) After issuance of the LoA, the MoP vide order dated 9.6.2023 modified and limited the benefit of waiver of ISTS charges. Under the said order, the MoP added a

new condition, namely, that waiver will be applicable only if an extension in the SCD is granted for six (6) months at a time and not more than two (2) times. This restriction on the availability of ISTS charges waiver by MoP has changed the basis of RfS of this Project and provided a condition that is contrary to the PPA.

(h) Thereafter, based on the LoA and RfS, the Petitioner and SIROPL executed a PPA dated 28.6.2023 for 25 years. The effective date for the PPA was set as 26.6.2023. According to the PPA, the SCD must be achieved within 24 months of the effective date, which is 26.6.2025. Additionally, the tariff should have been adopted within 120 days after the effective date, which is 24.10.2023. Furthermore, a notice of at least 60 days must be given before the SCD for integration with the GSS. Furthermore, in terms of the PPA, only until the delivery point, the ISTS charges and losses are to be borne by the developer and beyond the delivery point, all charges and losses are to be borne by the buying entity. Thus, in view of the MoP's order dated 23.11.2021 and the terms of the PPA, the buying entity will have to bear any ISTS losses, if applicable.

(i) Meanwhile, on 29.9.2023, the Petitioner filed a tariff adoption Petition No. 337/AT/2023 under Section 63 of the Act before this Commission even though, as per the timeline under the PPA, the tariff adoption date was 24.10.2023.

Status of Koppal-II GSS

(j) On 11.5.2023, PFC Consulting Ltd. (PFCCL), the bid-process coordinator for the selection of a bidder for the development of Koppal-II GSS, released the tender. In the meantime, on 21.7.2023, an SPV, namely, Koppal II Gadag II Transmission

Limited, was incorporated by PFCCL to initiate the execution of the activities. Pursuant to the tender process, Power Grid Corporation of India Limited (PGCIL) emerged as a successful bidder, and the Letter of Intent (LoI) was issued to PGCIL on 5.12.2023. On 26.12.2023, PGCIL acquired the Koppal II Gadag II Transmission Limited, this date of acquisition is referred to as the 'SPV transfer date' and on the same day, the Transmission Service Agreement (TSA) was executed between CTUIL and Koppal II Gadag II Transmission Limited. Post the award of the project, Koppal II Gadag II Transmission Limited filed two applications dated 28.12.2023 before this Commission for the adoption of transmission charges and for the grant of a transmission licence.

(k) As per the RfP for Koppal-II GSS, the scheduled completion date is 24 months from the SPV transfer date. At present, the Petitions for the adoption of transmission charges and the issuance of the transmission licence are pending before this Commission. Considering if the adoption Petition is decided by this Commission by June 2024 and if the GSS is completed beyond April/May 2026, the completion date of the Project for SIROPL will also get extended beyond 26.6.2026 and no ISTS waiver will be available. SIROPL vide letters dated 24.8.2023 and 23.11.2023 raised the issue of delay in the overall execution of the Project along with other pending issues. However, the Petitioner has failed to respond to any of these letters.

(l) Thereafter, SIROP on 16.1.2024, again sent a letter to the Petitioner, highlighting the major issues faced by SIROPL, including the impact of the MoP's

order dated 9.6.2023, uncertainty in the GSS readiness and delay in tariff adoption, etc and *inter alia* requested SECI to confirm/ensure that the ISTS charges will not be applicable to the Project even if the Project gets completed beyond 26.6.2026 or to treat the MoP's order dated 9.6.2023 as Change in Law in terms of the PPA.

(m) As per the PPA, if the Project is completed before 30.6.2025, there will be no ISTS charges on the Project. In case the SCD is extended due to any of the reasons, namely (a) Force Majeure, (b) Delay on the part of the transmission provider in providing the transmission, and (c) Delay on account of any Government Agency due to which the Project is completed within the extended timeline, the benefit of the ISTS charges will be available, provided that the original SCD was within the applicable date of ISTS waiver, i.e., 30.6.2025. However, the MoP vide order dated 9.6.2023 has modified and limited the benefit of waiver of ISTS charges by adding a new condition, namely, that waiver will be applicable only if an extension in the SCD is granted for six (6) months at a time and not more than two (2) times.

(n) For the GSS, the Petitions for the adoption of transmission charges and the issuance of transmission licence are still pending before this Commission. Under these circumstances, if the adoption petitions are decided after June 2024 or the readiness of GSS is extended beyond April 2026 and given the PPA's mandate of giving a 2-month prior notice to integrate with the GSS, the SCD for SIROPL, which is 2 years, will get extended beyond 26.6.2026 and no ISTS waiver will be available.

(o) In this scenario where SCD gets extended beyond 26.6.2026, the Petitioner and the Ministry of New and Renewable Energy (MNRE) will have no power to waive

the ISTS charges in terms of the MoP's order dated 9.6.2023. Therefore, SIROPL will be left remediless as there will be no relief under the PPA or under government regulations to get the ISTS charges waived. This makes it impossible for SIROPL to continue to perform its obligations under the PPA in the present circumstances.

Financial Closure

(p) Clauses 2.1.4 and 3.2.2 of the PPA provide for the extension of the FC date in case there is any delay in the adoption of the tariff by this Commission (beyond 120 days of the signing of the PPA) and in case of any force majeure event. The extension of the SCD and FC will be for an equal number of days for which the order of this Commission is delayed. While there is a provision for an extension of the SCD in case of a delay in the commissioning of the GSS, there is no such provision for an extension of the FC in the PPA but at the same time, there is no such bar under regulations.

(q) The calculation of the bid tariff was based on the understanding that the ISTS charges would be waived in terms of the MoP orders. However, uncertainty surrounding the GSS availability and waiver of ISTS charges has resulted in the Project being completely financially unviable for any lender to fund. The financial institutions are reluctant to provide the requisite financial arrangements under these fundamentally changed circumstances. It is, therefore, not possible for SIROPL to achieve FC within the timelines specified under the PPA until these issues are resolved

OERC Order dated 3.6.2023

(r) In the petition filed by Respondent No. 1, GRIDCO, for prior approval of the PSA before OERC, it was submitted by parties that the timelines of the Project are being adhered to and that the Project will be completed within the third quarter of FY 2024-25, i.e., between October 2024 and December 2024 and that accordingly, the benefit of waiver of ISTS charges will be available. Under this pretext, the State Commission passed the order dated 3.6.2023 wherein the draft PSA was approved. The basis of the draft PSA approval was incorrect. As explained in the table above, it is clear that the SCD for the Project has already been extended up to February 2026 with a possibility that the same may be extended beyond 26.6.2026 due to a delay in the availability of GSS.

(s) In view of the circumstances that have arisen post the submission of the bid and the issuance of the LoA, which were not within the contemplation of the parties, has resulted in a fundamentally different position than what was agreed upon in the PPA. These issues have been raised by SIROPL in a separate Petition filed under Section 79 of the Act vide Petition No. 26/MP/2024. Therefore, this Commission needs to consider the prayers sought in the Section 79 Petition before or along with the tariff adoption Petition.

(t) In the absence of Section 79 (Petition No. 26/MP/2024) being considered before or along with the tariff adoption, Petition would lead to complete uncertainty and confusion for SIROPL, which may jeopardize the Project. In the absence of a clear position on these issues, the tariff sought to be adopted would be unrealistic and unsustainable. In any case, such consideration of Section 79 Petition will not

prejudice the Petitioner or any other stakeholder in any manner.

(u) Further, the conjoint reading of Articles 2.1.3, 2.1.4 and Article 4.2.6 of the PPA shows that in case there is a change in circumstances before the adoption of the tariff, then the Commission will have to consider such changes before the tariff is adopted. Further, in terms of Article 12.1.1 of the PPA, the term 'Change in Law' refers to the occurrence of any enactment, amendment or repeal of any law. Article 12.2 of the PPA provides relief for 'Change in Law' and states that if a 'Change in law' event occurs, the affected party will be entitled to compensation. SIROPL has placed reliance upon the judgement passed by the APTEL in Green Infra Renewable Energy Limited v Rajasthan Electricity Regulatory Commission, Appeal No. 251 of 2021 & IA No. 1223 of 2021.

(v) To meet the condition precedent of the LoA and the PPA, SIROPL have already incurred expenses of around Rs. 3.54 crore for the success fee, Rs. 59.67 crore for the PBG, and Rs. 50 crore for land acquisition per the RfS with a commitment to spend up to Rs. 108 crore. Additionally, SIROPL has invested approximately Rs 9.5 crore towards the bank guarantee to CTUIL to fulfil the in-principle requirement for connectivity. Given the delays in the Project timeline and the uncertainty surrounding GSS readiness/availability, there is a concern that the already incurred expenses may not be recoverable. Further, there is a risk of additional costs being incurred by SIROPL, leading to a substantial financial burden, jeopardizing the Project, and causing irreparable loss and hardship to SIROPL.

(w) SIROPL has already expended over 120 crores on this Project. Given the delays in the Project timeline and the uncertainty surrounding the GSS readiness/availability, there is a risk that the incurred expenses may not be recovered. SIROPL faces the potential of incurring additional costs, imposing a substantial financial burden and further jeopardizing the project. These circumstances necessitate the immediate intervention of this Commission.

(x) This Commission may consider the relief sought under the Section 79 Petition filed vide Diary No. 67 of 2024 by the SIROPL before or along with the tariff adoption petition

Rejoinder of the Petitioner to the reply of Respondent No. 5:

11. The Petitioner, in its rejoinder dated 10.2.2024, has mainly submitted as under:

(a) This Commission, by an order dated 4.1.2024, passed in the case of Solar Energy Corporation of India Limited vs. SBE Renewables Fifteen Private Limited & Ors. (Petition No. 214/AT/2023), has clearly held that no relief can be sought by a Respondent in a tariff adoption Petition filed by the Petitioner.

(b) The responsibility of obtaining the connectivity rests solely with the WPD. It is denied that the MoP order dated 9.6.2023 has changed the basis of RfS of the Project and provided a condition that is contrary to the PPA. Respondent No. 5 proceeded to execute a Power Purchase Agreement (PPA) with the Petitioner on 28.6.2023 with complete knowledge of the Ministry of Power's (MOP) Order dated 9.6.2023, vide which MoP substituted para 3.1 (vii) of the order dated 30.11.2021 regarding the waiver of ISTS charges. The Ministry of Power, Government of India,

from time to time has been issuing orders on the aspect of applicability of waiver of Inter-State transmission (ISTS) charges and losses in order to encourage generation from renewable energy sources, and the Commission has framed/amended the regulations in relation thereto from time to time. The definition of Delivery Point in Article 1.1 of the PPA clearly provides that all charges and losses related to the transmission of power from the project up to Delivery Point shall be borne by the WPD, and beyond the Delivery Point, all charges and losses shall be borne by Buying Utilities as notified by the competent authority/regulator from time to time.

(c) Further, the PPA provides that any delay in commissioning of the Project beyond the applicable date of ISTS waiver/extended SCD, due to reasons attributable to the Wind Power Developer (WPD), the liability of transmission charges and losses would be to the account of the WPD. Further, Article 2.1.3 of the PPA provides for the adoption of tariff by the Commission within 120 days of the Effective Date (Effective Date of the PPA signed with SIROPL is 26.06.2023 as per Article 2.1.1 of the PPA). The Petitioner has filed a tariff adoption petition within the appropriate timeframe as per the PPA. Any extension in Scheduled Financial Closure or Scheduled Commissioning Date in case of issuance of requisite order after the timeline as per Article 2.1.3 will be governed by Article 2.1.4 of the PPA.

(d) The expected completion of the GSS beyond April/May 2026, the possibility of the completion date of SIROPL's project getting extended beyond 26.6.2026, or the possibility of no ISTS waiver being made available to the project of SIROPL cannot be a reason for delaying the present tariff adoption proceedings or clubbing it with Diary No. 67 of 2024. Article 4.5.2 of the PPA provides appropriate measures

such as for extension in the Scheduled Commissioning Date of the project subject to fulfilment of conditions contained therein in case of delay in readiness of the ISTS substation at the Delivery Point. The levy of transmission charges and losses for the ISTS is governed by the provisions of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020, as amended from time to time. Therefore, the present proceedings need not be prolonged for adjudication of issues extraneous to the tariff adoption process envisaged under Section 63 of the Electricity read with the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects issued by the Central Government.

(e) Respondent No. 5, as per Article 4.1.1 of the PPA, is solely responsible for making arrangements for Land & associated infrastructure for the development of the Project and for the connectivity with the CTUIL's system for confirming the evacuation of power by the SCD at its own cost and risk. Further, Respondent No. 5 is solely responsible for obtaining all consents, clearances and permits as required. SECI has no obligation with respect to the abovementioned activities, and any steps taken by SECI in regard to the grant of such consents and permits or any other approval to be taken by the WPD shall only be a voluntary endeavour with no intention of being bound by any legal or binding obligation.

(f) SECI, vide its letter dated 1.2.2024, informed all WPDs, including Respondent No. 5, that as and when this Commission will grant approval for tariff adoption, SECI, in line with Articles 2.1.3 and 2.1.4 of the PPA will revise the scheduled date for achievement of Financial Closure and SCD. Respondent No. 5

itself is trying to delay the present proceedings and claiming uncertainty surrounding the completion and feasibility of the project on its own. Any delay in commissioning of the Project beyond the applicable date of ISTS waiver/extended SCD due to reasons attributable to the Wind Power Developer (WPD), the liability of transmission charges and losses would be to the account of the WPD. Respondent No. 5 is raising extraneous issues which need not be gone into by this Commission in the present tariff adoption proceedings.

(g) SIROPL has pointed out that while there is a provision for an extension in SCD in case of delay in the commissioning of GSS, there is no such provision for an extension in the FC in the PPA. The extension in Scheduled Financial Closure or Scheduled Commissioning Date shall be dealt with as per the terms & conditions of the agreement. As per Article 3.2.1 (i) of the PPA, an extension, without any impact on SCD, for achieving financial closure may be considered on the sole request of Respondent No. 5, on payment of Rs. 1000/- per day per MW to SECI for the period of extension required. It is the responsibility of Respondent No. 5 to make the requisite financial arrangements, and SECI is not liable for any delay in making such arrangements. Reliance placed by Respondent No. 5 on any other power project tender is entirely misplaced.

(h) This Commission may proceed to decide the present Petition for adoption of tariff without delaying the present proceedings in any manner on account of the petition filed by Respondent No. 5, being Diary No. 67 of 2024. The issues raised by Respondent No. 5 therein are not relevant for the purposes of the present proceedings for the adoption of tariff. Reliance placed by Respondent No. 5 upon the

judgment passed by the Appellate Tribunal for Electricity (APTEL) in the case of Green Infra Renewable Energy Ltd. Vs. RERC & Ors. (Appeal No. 251 of 2021), is entirely misplaced. In order to qualify for any relief under Article 12 of the PPA dealing with Change in Law, the claims raised by SIROPL should fall within the scope and ambit of the said provision. Respondent No. 5 is required to demonstrate the impact on the project cost in order for this Commission to decide on the issue of Change in Law and "provide relief". This Commission may be pleased to decide in Diary No. 67 of 2024 whether the implications of the MOP order dated 9.6.2023 fall under the purview of Change in Law within the scope of Article 12 of PPA read with provisions of the PSA. Further, this Commission, in recent orders in Petition No. 214/AT/2023 and Petition No. 213/AT/2023, has dealt with this aspect.

Reply of Respondent No. 3:

12. Pursuant to the liberty granted by the Commission, Respondent No. 3, Teq Green Power XI Private Limited (TGPPL) vide its reply dated 3.2.2024 has mainly submitted as under:

(a) On 12.7.2023, TGPPL applied for a grant of a No Objection Certificate ("NOC") for 30 WTG locations in Beed District of Maharashtra, i.e., at the proposed location of the Project, in accordance with the Guidelines for the issue of NOC for constructions around Indian Air Force Aerodromes notified by the Ministry of Defence ("MoD") on 13.2.2014. Under these Guidelines, the eligibility criteria for seeking NOC is that the construction of the building and any other structure should be outside the

radius of 20 km from ARP of all aerodromes. At the time of TGPPL's application, all the locations identified by TGPPL were outside the 20 km radius.

(b) However, on 23.12.2023, certain maps were uploaded on the National Institute of Wind Energy website for wind potential areas designating certain areas with details for zones identified as "GO and NO-GO WTG zones" by MoD. These zones were identified and designated publicly for the first time, and there was no formal designation in any public records prior to this. Subsequently, on 04.01.2024, the said maps were further revised by the MoD and the NO-GO WTG zone was enhanced/changed substantially. In terms of these revised maps, most of the WTG installation locations for the Project are now falling in the NO-GO WTG zone. In fact, the Department of Defence, Government of India, by way of Office Memorandum dated 15.1.2024, has rejected 15 of the 30 locations for which NOC was sought by TGPPL. The aforesaid events have significantly impacted the development of the Project. Owing to this changed scenario, TGPPL has been constantly engaged in taking steps to mitigate the impact of these events that are unforeseen, beyond the reasonable control of TGPPL, not in any way attributable to TGPPL and in any case qualify as Force Majeure and/or facts akin to Force Majeure.

(c) At this stage, the impact of such events is unclear and while TGPPL is making best efforts towards taking steps to mitigate the impact of these events. Recent events/developments stated hereinabove will have a significant bearing on the implementation of the Project.

(d) In the exercise of the powers conferred under Section 3(3) of the Act, the Central Government notified the revised Tariff Policy on 28.1.2016. The Ministry of

Power, Government of India ('MoP') issued order dated 30.9.2016 exempting wind and solar power projects commissioned up till 31.3.2019 and 30.6.2017 respectively from levying ISTS Charges. The said order was subsequently amended on 14.6.2017, 13.2.2018, 6.11.2019, 5.8.2020, 15.1.2021 and 21.6.2021.

(e) On 23.11.2021, the MoP issued an order directing that solar or wind energy generation projects commissioned up to the ISTS Waiver Deadline will be eligible for a waiver of the ISTS Charges. The power generated from such solar or wind projects can be self-consumed or sold to any entity either through competitive bidding, power exchange or bilateral agreement. Further, the MoP order dated 23.11.2021, also provided the trajectory for the imposition of transmission charges subsequent to the expiry of the ISTS waiver deadline.

(f) The MoP order dated 23.11.2021 was subsequently amended by way of order dated 30.11.2021 whereby MoP directed that any solar and/or wind source project which is eligible for a waiver of ISTS Charges and its SCD is before the ISTS Waiver Deadline, and if such SCD is extended by MNRE on account of Force Majeure or delay on part of transmission provider in providing the transmission system even after having taken requisite steps in time or on account of delays on part of any Government Agency, and then the project is commissioned before the extended date, it will get the benefit of waiver of ISTS Charges as if the said project is commissioned on or before the ISTS waiver deadline.

(g) On 7.2.2023, this Commission issued an amendment to the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations 2020 i.e., the CERC (Sharing of Inter-State Transmission Charges and Losses) (First Amendment)

Regulations, 2023 ('Sharing Regulations'). In terms of Regulation 13 of the Sharing Regulations, the waiver from payment of ISTS Charges is applicable for a period of 25 years from COD of a project.

(h) On 9.6.2023, the MoP, in furtherance of the order dated 23.11.2021 and order dated 30.11.2021, issued another order whereby it directed that for any solar, wind project(s), which are eligible for a waiver from ISTS charges and have their scheduled date of commissioning on or before the ISTS Waiver Deadline and are granted extension of time from the commissioning by MNRE, on account of Force Majeure or for delay on the part of the transmission provider in providing the transmission system even after having taken the requisite steps in time; or on account of delays on the part of any Government Agency, and the project(s) are commissioned before the extended date; the same will get the benefit of waiver from payment of ISTS Charges as if commissioned on or before the ISTS Waiver Deadline.

(i) Subsequent to the award of LoA, TGPPL and SECI executed the Power Purchase Agreement dated 30.6.2023 for the sale of 200 MW AC capacity generated from the Project ("Contracted Capacity") and supplied to SECI at the Delivery Point ("PPA").

(j) On 1.2.2024, the Petitioner/SECI, by way of a letter bearing ref. no. SECI/PS/Wind/T-XI II/61783 intimated TGPPL that since 120 days from the effective date of PPA lapsed on 24.10.2023, the Project is eligible to get time extension in Scheduled Date to achieve Financial Closure and the SCD by equal number of days counting between 25.10.2023 to the actual date on which this Commission grants

approval for Tariff adoption. Thus, as and when this Commission grants approval for tariff adoption, SECI, in line with Articles 2.1.3 and 2.1.4 of the PPA will revise the scheduled date for achievement of Financial Closure and SCD of the Project and communicate the same to TGPPL.

(k) In light of the MoP order dated 9.6.2023 read with the order dated 23.11.2021 and order dated 30.11.2021, what emerges is that if a project having its SCD prior to the ISTS Waiver Deadline is delayed on account of any Force Majeure event, or for delay on the part of the transmission provider in providing the transmission even after having requisite steps in time, or on account of delays on the part of any Government Agency and is granted extension in SCD on account of such delay by MNRE, then, if the said project achieves commissioning prior to the extended SCD, it will be eligible for waiver from payment of ISTS Charges. Further, in terms of the Sharing Regulations such waiver from the burden of ISTS Charges is applicable for a period of 25 years from the SCD of a project, provided the SCD is achieved prior to 30.6.2025.

(l) While SECI has intimated that the SCD of the Project will be extended by an equal number of days counting between 25.10.2023 to the actual date on which this Commission grants approval for tariff adoption, it is imperative that this Commission holds and declares that the Project will be exempted from the levy of ISTS Charges beyond the ISTS Waiver Deadline on account of such legitimate extension of SCD of TGPPL's Project. This declaratory approval by this Commission in favour of TGPPL is essential at this stage since Regulation 13 of the Sharing Regulations is silent on a waiver from levy of ISTS Charges in case of a legitimate and valid extension of SCD

of a project beyond the ISTS Waiver Deadline. Such declaratory approval will further assure the lenders of TGPPL on the viability of the Project and provide regulatory certainty, considering that the parameters at the time of bidding did not envisage any delay in commissioning due to delay in issuance of necessary approvals, including delay in adoption of Tariff, in terms of the PPA and bid documents. Respondent No.3 has placed reliance on the decision of the APTEL dated 12.10.2021 passed in Appeal No. 251 of 2021 *titled Green Infra Renewable Energy Limited v RERC & Ors.*

(m) This Commission while relying on the above decision of APTEL, in its Order dated 8.3.2023 in Petition No. 245/AT/2022 titled SECI v AMP Energy Green Private Limited, has taken a conscious view of the delay in the adoption of tariff in terms of the express provisions of the PPA specifically Articles 2.1.3 and 2.1.4 (pari materia to Articles 2.1.3 and 2.1.4 of the PPA in the present matter) at the stage of adoption of tariff.

(n) Therefore, in the above facts and circumstances, the Commission may hold and declare that TGPPL's Project will be exempted from the levy of ISTS Charges for the period beyond 30.6.2025 i.e., the ISTS Waiver Deadline on account of the valid and legitimate extension of SCD of TGPPL's Project and/or that in any event Respondent No. 3/TGPPL will not be liable in any manner for payment of ISTS Charges due to extension of the SCD beyond 30.6.2025 as per the express provisions of the Order(s) dated 23.11.2021, 30.11.2021 and 906.2023 issued by the MoP read with the provisions of the PPA specifically Articles 2.1.3, 2.1.4, and 4.2.6 and the Sharing Regulations.

Rejoinder of the Petitioner to the reply of Respondent No. 3:

13. The Petitioner, in its rejoinder dated 10.2.2024, has mainly submitted as under:

(a) Respondent No. 3 cannot seek prayers of exemption from the levy of Inter-State Transmission Charges ("ISTS Charges") for the period beyond 30.6.2025 in the present tariff adoption proceedings. This Commission has in various cases held that adjudication of Change in Law claims sought by the Respondents vide their respective replies, cannot be permitted in a tariff adoption petition filed by SECI.

(b) It is denied that this Commission is required to decide the issue of exemption from ISTS charges beyond the ISTS waiver deadline on account of the extension of SCD of TGPPL's Project in the present tariff adoption proceedings. This Commission has already held in various cases that the Respondents cannot seek adjudication of their Change in Law claims in the tariff adoption petition filed by SECI. In order to qualify for any relief under Article 12 of the PPA dealing with Change in Law, the claims raised by Respondent No. 3 should fall within the scope and ambit of the said provision. Furthermore, Respondent No. 3 is required to demonstrate the impact on the project cost in order for this Commission to decide on the issue of Change in Law and "provide relief".

(c) The PPA provides that any delay in commissioning of the Project beyond the applicable date of ISTS waiver/extended SCD due to reasons attributable to the Wind Power Developer (WPD), the liability of transmission charges and losses would be to the account of the WPD. Respondent No. 3 proceeded to execute a Power Purchase Agreement (PPA) with the Petitioner on 30.6.2023 with complete knowledge of the Ministry of Power's (MoP) Order dated 9.6.2023. The Ministry of Power, Government

of India, from time to time, has been issuing orders on the aspect of applicability of waiver of Inter- State transmission (ISTS) charges and losses in order to encourage generation from renewable energy sources and the Commission has framed/amended the regulations in relation thereto from time to time. The definition of Delivery Point in Article 1.1 of the PPA clearly provides that all charges and losses related to transmission of power from the project up to Delivery Point shall be borne by the WPD, and beyond the Delivery Point, all charges and losses shall be borne by Buying Utilities as notified by the competent authority/regulator from time to time.

(d) Thus, the rights and liabilities of the parties to bear the ISTS charges & losses will be governed by the provisions of the PPA read with the PSA. Apart from the aforesaid, it is necessary to point out herein that the ISTS transmission charges and losses for use of ISTS is governed by the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 and subsequent amendments. Reliance placed by Respondent No. 3 on the judgment passed by the Appellate Tribunal for Electricity (APTEL) in the case of Green Infra Renewable Energy Ltd. Vs. RERC & Ors. (Appeal No. 251 of 2021) and the order dated 08.03.2023 passed by this Commission in Petition No. 245/AT/2022 is entirely misplaced. In the above matter, the PPA contained a specific stipulation, namely, Article 12.1.3 in the Change in Law provision in the PPA, providing for recognition of such provisions at the stage of tariff adoption. PPA in the present matter does not have a specific provision to recognize the Change in Law events at the time of tariff adoption proceedings as in the decisions on which Respondent No. 3 is seeking to place reliance on.

(e) It is denied that Respondent No. 3 can seek any relief/ prayer in the present petition for the adoption of tariff filed by the Petitioner. The present relief sought by Respondent No. 3 cannot be availed at the stage of tariff adoption and by making such a request, Respondent No.3 is further delaying the present proceedings.

Hearing dated 6.3.2024

14. During the course of the hearing on 6.3.2024, the learned counsel for the Petitioner submitted that the pleadings have already been completed in the matter, and the Commission may reserve the matter for order.

15. Learned counsel for Respondent No.3, Teq Green Power XI Private Limited (TGPPL), submitted that Respondent No. 3 is not opposing the adoption of tariff in the present Petition and mainly submitted as under:

(a) As per the PPA, the effective date is 26.6.2023 and the Scheduled Commissioning Date of the Project is 24 months from the effective date, i.e., 25.6.2025. The present Petition was filed on 13.9.2023, and the period of 120 days from the effective date expired on 24.10.2023. Therefore, the Project has become eligible for an extension of SCD in terms of the express provisions of the PPA.

(b) In case the SCoD of the Project is before the ISTS Waiver Deadline, and if the Project is granted extension in the SCoD on account of Force Majeure or for delay on the part of the transmission provider in providing the transmission system even after having taken the requisite steps in time, or on account of delays on the part of any Government Agency, and the Project is commissioned before the

extended SCD; it will get benefit of waiver of ISTS Charges.

(c) In case of any extension in SCD beyond the ISTS waiver deadline, necessary approval will be granted by MNRE, in line with the OM issued by the Ministry of Power on 30.11.2021, and subsequent amendments/clarifications thereto, read in conjunction with this Commission's orders and regulations notified in this regard.

(d) The Petitioner, SECI, vide its letter dated 1.2.2024, has intimated that the SCD of the Project will be extended by an equal number of days, counting between 25.10.2023 and the actual date on which this Commission grants approval for the tariff adoption. It is imperative that this Commission holds and declares that the Project will be exempted from levy of the ISTS charges beyond the ISTS waiver deadline on account of such legitimate extension of SCD of TGPPL's Project. This declaratory approval by this Commission in favour of TGPPL is essential at this stage since Regulation 13 of the Sharing Regulations is silent on a waiver from levy of ISTS charges in case of a legitimate and valid extension of SCD of a project beyond the ISTS waiver deadline.

(e) Such declaratory approval will further assure the lenders of TGPPL of the Project's viability and provide regulatory certainty, considering that the parameters at the time of the bidding did not envisage any delay in commissioning due to delay in the issuance of the necessary approvals, including delay in adopting the tariff, in terms of the PPA and the bid documents.

(f) As CTUIL has no privity of contract with Respondent, TGPPL, which clearly means that there is no binding of any clause of the PPA on the Respondent, CTUIL.

Therefore, the declaration of this Commission at this stage that the Project will be exempted from levy of ISTS charges beyond the ISTS waiver deadline on account of such legitimate extension of SCD of TGPPL's Project gives a binding effect on Respondent, CTUIL and further helps the TGPPL in obtaining financial assistance for the project being implemented by Respondent, TGPPL.

(g) The extension of the SCD, which is beyond the control of Respondent, TGPPL fulfils the criteria of a force majeure event. Therefore, TGPPL has sought a declaration that for any delay beyond the ISTS waiver deadline, the project of TGPPL will be exempted from the levy of ISTS charges in order to ensure the consequential relief necessary for obtaining funding for the implementation of the project.

(h) The Commission, while relying on the decision of the APTEL dated 12.10.2021 passed in Appeal No. 251 of 2021 in the case of *Green Infra Renewable Energy Limited v RERC & Ors.*, in its Order dated 8.3.2023 in Petition No. 245/AT/2022 has taken a conscious view on the delay in the adoption of tariff in terms of the express provisions of the PPA specifically Articles 2.1.3 and 2.1.4 (pari materia to Articles 2.1.3 and 2.1.4 of the PPA in the present matter) at the stage of the adoption of tariff.

(i) The TGPPL's claims are solely based upon Article 11 (i.e. Force Majeure) of the PPA and must be dealt with by this Commission at this stage as both the notifications of the MOP dated 23.11.2021 and 30.11.2021 existed during the last date of submission of the bid.

16. Learned counsel for the Petitioner pointed out that previously, the reply of

Respondent No. 3, TGPPL, was based upon the presumption that TGPPL was seeking relief under a 'Change in Law' event, whereas the present submissions of Respondent No. 3, TGPPL is completely changed and are based upon 'Force Majeure' event. Learned counsel for the Petitioner further pointed out that the altered stand of Respondent No. 3, TGPPL, is not on the record.

17. During the course of the hearing, the earned counsel for Respondent No.3 further submitted that no Change in Law is being claimed on account of the MoP order dated 9.6.2023, and both the notifications of the MOP dated 23.11.2021 and 30.11.2021 were in existence during the last date of submission of the bid.

18. After hearing the learned counsels for the parties, the Commission directed Respondent No.3, TGPPL, to file its response on the issue of the Force Majeure claims. Subject to the above, the Commission reserved the matter for order.

19. Pursuant to the liberty granted by the Commission during the hearing dated 6.3.2024, Respondent No. 3, Teq Green Power XI Private Limited (TGPPL) vide its Written Submissions dated 23.3.2024 has urged the Commission to adopt the tariff and sought a declaration that TGPPL's Project will be exempted from the levy of ISTS Charges with effect from 30.06.2025, i.e., the ISTS Waiver Deadline on account of valid and legitimate extension of SCD of the Project and/or that Respondent No. 3/TGPPL will not be liable in any manner for payment of ISTS Charges due to extension of the SCD beyond 30.06.2025. Further, TGPPL has clarified that it is not seeking any relief on account of Change in Law at the present stage.

20. In response to the Submissions dated 23.3.2024 of TGPPL, the Petitioner, SECI, vide its Written Submissions dated 27.3.2024, has submitted that Respondent No. 3 is essentially seeking an amendment to the provisions of the Sharing Regulations and the proceedings for amendment of the Sharing Regulations may not be clubbed with the present tariff adoption proceedings. Further, SECI has submitted that the present proceedings are limited to the issue of adoption of tariff under Section 63 of the Act, and relief of Change in Law/Force Majeure/declaration of ISTS charges waiver cannot be sought in the present proceedings.

Analysis and Decision

21. We now proceed to consider the prayer of the Petitioner as regards the adoption of tariff under Section 63 of the Act in respect of the individual wind projects as discovered pursuant to the competitive bid process carried out in terms of the Guidelines issued by the Government of India.

22. 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.”

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

24. The 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 said Guidelines have been subsequently amended vide Resolution dated 16.7.2019. 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) The 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 the 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) The 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 the Scheduled Commissioning Date.

(f) The wind power developer will declare the annual CUF of its Project at the time of signing of the PPA and will be allowed to revise the same once within the first three years of the COD. The declared annual CUF shall, in no case, be less than 22%.

(g) The 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) The 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 at least three

months billing of all the projects tied up with such fund.

(i) 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 a committee for the 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 a 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 the conclusion of the bidding process, the 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 on its website. The distribution licensee or the intermediary procurer, as the case may be, shall approach the Appropriate Commission for the adoption of tariff in terms of Section 63 of the Act.

25. 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.

26. The Petitioner, SECI, has been designated as the implementing agency for implementation of the 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 to enable them to fulfil their Renewable Purchase Obligations under Section 86(1)(e) of the Act.

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

| Sr. No. | Milestone | Date |
|----------------|----------------------|-------------|
| 1 | RfS issued by SECI | 12.01.2022 |
| 2 | Pre-bid meeting held | 21.01.2022 |

| | | |
|---|---|---------------------|
| 3 | Amendments/Clarification and Corrigendum to RfS | 16.2.2022-27.6.2022 |
| 4 | Last date of bid submission | 04.07.2022 |
| 5 | Opening of techno-commercial bids | 08.07.2022 |
| 5 | Opening of financial bids | 22.12.2022 |
| 6 | e-Reverse Auction conducted | 22.12.2022 |
| 7 | Issuance of Letter of Awards | 19.01.2023 |

28. On 12.1.2022, SECI issued a Request for Selection document, along with draft PPA and PSA documents for setting up of 1200 MW ISTS-connected wind power projects (Tranche XIII). According to SECI, it did not publish the notices in the newspapers as per the advisory of the Ministry of Information and Broadcasting, Government of India, dated 17.5.2017, mandating the e-publishing of advertisements in the relevant portal. Accordingly, on 3.7.2018, SECI published a notification in the newspapers indicating that tenders of SECI will henceforth be published on its website and not in the newspapers.

29. As per Clause 5.1(b) of the Guidelines, the procurer is required to inform the Appropriate Commission about the initiation of the bidding process. In this regard, SECI, vide its letter dated 31.1.2022, had informed the Commission that it had initiated the competitive bidding process for procurement of power from grid connected wind power projects under the RfS dated 12.1.2022.

30. The Bid Evaluation Committee (BEC) comprising the following was constituted for the opening and evaluation of bids under RfS No. SECI/C&P/IPP/12/0006/21-22 dated 12.1.2022:

| Tender | Dept. | Offline and Online Techno-Commercial and Financial Bid Opening | Techno-commercial and financial evaluation and post-e-RA recommendation |
|---|--------------|---|--|
| 1200 MW ISTS-Wind Power Projects (Tranche – XIII) | PS | Pallav Yadu, Dy. Manager | ISK Reddy, Manager |
| | Contracts | Biblesh Meena, Manager | Biblesh Meena, Manager |
| | Finance | Mohit Goel, Sr. Accounts Officer | Jasmine Nath, Manager |

31. The last date of submission of the bid was 4.7.2022, and the technical part of the bid was opened on 8.7.2022. Response to RfS was received from fourteen bidders, and all of them fully met the technical criteria and consequently, were found to be qualified for opening of financial bid. On 22.12.2022, financial bids of fourteen technically qualified bidders were opened on the ISN ETS e-bidding portal in the presence of a member of the Bid Evaluation Committee. As per the eligibility criteria mentioned in the RfS document, the following thirteen bidders for aggregating 2710 MW were shortlisted for e-reverse auction:

| Sr. No. | Bidder | Capacity Offered (MW) |
|----------------|--|------------------------------|
| 1 | SJVN Limited | 100 |
| 2 | Solarcraft Power India 7 Private Limited | 300 |
| 3 | Devpur Renewables Private Limited | 300 |
| 4 | Tunga Renewable Energy Private Limited | 60 |
| 5 | JSW Renew Energy Six Limited | 300 |
| 6 | Teq Green Power XI Private Limited | 200 |
| 7 | Scatee India II B.V. | 300 |
| 8 | Azure Power India Private Limited | 150 |
| 9 | Green Infra Wind Energy Limited | 300 |
| 10 | Amun Renewables Private Limited | 200 |

| | | |
|--------------|--|-------------|
| 11 | NHPC Limited | 50 |
| 12 | Ayana Renewable Power Four Private Limited | 300 |
| 13 | Torrent Power Limited | 150 |
| Total | | 2710 |

32. The e-reverse auction was carried out on 22.12.2022 in the presence of the members of BEC. After completion of the e-reverse auction, the following were declared as successful bidders:

| Sr. No. | Bidder | Bidder's Quantity (MW) | Tariff (INR/kWh) | Allotted Capacity (MW) |
|--------------|------------------------------------|------------------------|------------------|------------------------|
| 1. | SJVN Limited | 100 | 2.90 | 100 |
| 2. | Scatee India II B.V. | 300 | 2.95 | 300 |
| 3. | Teq Green Power XI Private Limited | 200 | 2.95 | 200 |
| Total | | | | 600 |

33. Accordingly, on 19.1.2023, SECI issued Letters of Award (LoAs) to the selected bidders as under:

| Sr. No. | Bidder | Tariff (INR/kWh) | Allotted Capacity (MW) |
|--------------|------------------------------------|------------------|------------------------|
| 1. | SJVN Limited | 2.90 | 100 |
| 2. | Scatee India II B.V. | 2.95 | 300 |
| 3. | Teq Green Power XI Private Limited | 2.95 | 200 |
| Total | | | 600 |

34. The relevant extract of the Letter of Award issued to one of the successful bidders, namely SJVN Limited, is as under:

“

Sub: Selection of Wind Power Projects under RfS for setting up of 1200 MW ISTS-connected Wind Power Projects (Tranche-XIII): Letter of Award for Wind Power Project of 100 MW (Project ID: WPD-ISTS-T13-SJVNL-P1-100MW)

.....

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

| Allotted Project ID | Project Capacity (MW) | Inter-connection points details | Applicable Tariff (INR/kWh) in figures | Applicable Tariff (INR/kWh) in words |
|-----------------------------|------------------------------|--|---|---|
| WPD-ISTS-T13-SJVNL-P1-100MW | 100 | 220 kV Torrent Power Swithcyard | Rs.2.90/- | Rupees Two and Ninety paisa only |

It is to be noted that the WPD is allowed to change the project location and inter-connection point for the awarded project subsequent to issuance of LoA, as per provisions of the RfS.

SECI shall purchase the power generated from the proposed ISTS-Connected Wind 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 Power Project for the term of Power Purchase Agreement (PPA) to be entered into between Project Company or the Wind Power Developer (WPD) and M/s SECI, for the Project, shall be firm for the entire term of the PPA.

1.1 The WPD 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 WPD is not able to avail fiscal incentives and this will not have any bearing on the applicable tariff.

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

1.3 No change in the controlling shareholding of the Bidding Company or Bidding Consortium 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.

1.4 In case of the selected Bidder itself executing the PPA, it shall ensure that its promoters shall not cede control (Control shall mean the ownership, directly or indirectly, of more than 50% of the voting shares of such company or right to appoint majority Directors) till 01 (one) year after the COD, except with the prior approval of SECI. However, in case the Project is being set up by a listed Company, this condition will not be applicable.

1.5 In case of companies having multiple promoters (but none of the shareholders having more than 51% of voting rights and paid up share capital), it shall be considered as a company under joint control. In such cases, the shareholding pattern in the company as

submitted at the time of bidding, shall be maintained for a period of 01 (one) year after COD.

1.6 In case of Project being executed through SPVs, the selected Bidder executing the project, 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 after COD, except with the prior approval of SECI. However, in case the Project is being set up by a listed company, this condition will not be applicable.

1.7 The WPD shall pay to SECI, Success Charges of Rs.1 Lakh/MW + 18% GST within 30 days of issuance of LoA or the date at least 07 days prior to the date of signing of PPA (PPA signing date to be intimated by SECI), whichever is earlier, in line with Clause 19.1 of the RfS, towards administrative overheads, coordination with State Authorities and others, Discom/STU/CTU, pre-commissioning and commissioning expense. Performance Bank Guarantee(s)/Payment on Order Instrument (POI) for a value of @ Rs. 19.89 Lakh/MW/Project shall be submitted by the WPD prior to signing of PPA, in line with Clause 18 of the RfS.

1.8 PPA will be executed between SECI and the WPD 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.

1.9 The final project configuration, adding up to the cumulative capacity awarded to the bidder may be intimated to SECI at the time of signing of PPA, which shall then remain unchanged subsequent to signing of PPA. Delays in connectivity and/or LTA/GNA for the Project(s) on account of such changes in Project parameters, which differ from the details provided in the Covering letter shall be at the risk and cost of the Successful Bidder. The PPAs shall be valid for a period of 25 years from the scheduled commissioning date or from the date of full commissioning of the projects, whichever is earlier.

1.10 The WPD will have to submit the required documents as mentioned below to SECI within 70 days from the issue of this LoA. In case of delay in submission of documents beyond the period 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 WPD.*
- 2) The details of promoters and their shareholding in the WPD, duly certified by the practicing Chartered Accountant/Company Secretary in original at least 7 (seven) 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 WPD highlighting the object clause related to generation of Power/Energy/Renewable Energy/Wind Power plant*

development.

4) *In case the project being executed by a Special Purpose Vehicle (SPV) incorporated by successful bidder, such SPV shall be at least 51% shareholding subsidiary, in line with provisions of the RfS. Further, the Successful Bidder shall submit a Board Resolution prior to signing of PPA with SECI, committing total equity infusion in the SPV as per the provisions of RfS.*

5) *Copy of Board Resolution for authorization of signing of PPA and subsequent relevant documents.*

Further, the PPA shall be signed with WPDs subsequent to the signing of Power Sale Agreements with the Buying Entities for the cumulative awarded capacity and upon submission of the Success Charges along with total Performance Guarantees/Payment on Order Instrument of requisite value. In addition to the above, the successful Bidder shall also submit a detailed L-2 Schedule for the Project Prior to the signing of the PPA. Broad details to be captured in the Schedule are the land procurement; order, supply and erection status of various Project components; financial arrangement/tie up etc. SECI shall provide the Standard L-2 Schedule template to the Successful Bidder after the issuance of LoA.

1.11 *SECI shall have the right to verify original documents of the WPD 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 90 days from the date of issue of this LoA, if not extended by SECI. In case of delay on the part of the WPD in submission of requisite documents prior to signing of PPAs or otherwise, then irrespective of the date of signing of PPA, the Effective Date of the PPA shall be the date as on 90 days from the date of issue of LoA. In extraordinary cases of unavoidable delay on the part of SECI in signing the PPAs, the effective date of PPA shall be the date of signing of PPA.*

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

1.13 *The WPD shall meet financial closure for the Project in line with clause 22 of the RfS document, within 07 (seven) months from the Effective Date of the PPA. Accordingly, the WPD shall furnish the documents pertaining to compliance of financial closure as per the above provisions.*

1.14 *The WPD/Project Company shall achieve commissioning of full capacity of the Project within 24 months from the Effective Date of the PPA or from the Effective Date of PSA, whichever is later, as per the conditions stipulated in Clause 9 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 WPD as per the above provisions....”*

35. Based on the request of distribution licensees, the entire 600 MW capacity has been allocated to Respondent No.1, namely GRIDCO, and SECI entered into a PSA with GRIDCO on 9.6.2023 in this regard.

36. Pursuant to the above, SECI has entered into the PPA dated 28.6.2023 for 300 MW with Scatec India Renewables One Private Limited (Project company of Scatee India II B.V.), PPA dated 30.6.2023 for 200 MW with Teq Green Power XI Private Limited and the PPA dated 17.7.2023 for 100 MW with SJVN Green Energy Limited (Project company of SJVN Limited).

37. As per Clause 12.2 of the Guidelines, the Bid Evaluation Committee is required to certify that the bidding process and the evaluation have been conducted in conformity with the provisions of the RfS. Accordingly, SECI has submitted a Conformity Certificate certifying that after the conclusion of the submission of the bid, the BEC constituted for the bid evaluation has conducted the techno-commercial as well as financial bid evaluation in conformity with the provisions of the RfS. Additionally, SECI has also furnished a Conformity Certificate to the effect that the applicable Guidelines and amendments /clarification thereof, if any, issued by the Government of India, were followed for the bidding process in the above tender and no deviation was taken from the Guidelines in the RfS Documents for the above tender. The relevant extract of the aforesaid Conformity Certificates reads as under:

Conformity Certificate-1

“With respect to the RfS no. SECI/C&P/IPP/12/0006/21-22 dated 12.01.2022, it is hereby declared as follows:

1. Applicable Guidelines and amendments/clarifications thereof, if any, issued by the Government of India were followed for the bidding process in the above

tender and no deviation was taken from the Guidelines in the RFS documents for the above tender.”

Conformity Certificate-2

“With respect to the RfS no. SECI/C&P/IPP/12/0006/21-22 dated 12.01.2022, 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.”

38. In view of the aforesaid discussions, it emerges that the selection of the successful bidders has been done, and the tariff of the wind power projects has been discovered by the Petitioner, SECI, through a transparent process of competitive bidding in accordance with Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff for the wind power project, as agreed to by the successful bidder, and for which the PPAs have been entered into by SECI on the basis of the PSA with the distribution licensee, which shall remain valid throughout the period covered in the PPAs and PSAs as under:

| Sr. No. | Name of the Successful Bidder | Project Company of Successful Bidder | Date of signing of PPA | Capacity of Project (MW) | Applicable Tariff (Rs./kWh) |
|--------------|------------------------------------|---|------------------------|--------------------------|-----------------------------|
| 1. | SJVN Limited | SJVN Green Energy Limited | 17.07.2023 | 100 | 2.90 |
| 2. | Scatee India II B.V. | Scatec India Renewables One Private Limited | 28.06.2023 | 300 | 2.95 |
| 3. | Teq Green Power XI Private Limited | - | 30.06.2023 | 200 | 2.95 |
| Total | | | | 600 | |

39. The Prayer (a) of the Petitioner is answered accordingly.

40. Article 10.4 of the PPA provides as under:

“10.4 Payment Security Mechanism

Letter of Credit (LC):

10.4.1 SECI shall provide 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”), opened and maintained which may be drawn upon by the WPD in accordance with this Article.

10.4.2 Before the Start of supply, SECI through a scheduled bank open 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 110% of the estimated average monthly billing;*
- ii) for each subsequent Contract Year, equal to 110% of the average of the monthly billing of the previous Contract Year.*

10.4.3 Provided that 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 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, SECI shall restore such shortfall before next drawl.

10.4.5 SECI 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 SECI 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 SECI.

10.4.8 If SECI fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including the Due Date, then, subject to Article 10.4.6 & 10.5.2, the WPD may draw upon the Letter of Credit, and accordingly the bank shall pay, an amount equal to such Monthly Bill or Supplementary 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 (only for energy related bills) 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;”

41. 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 the “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.”

42. The above provisions provide for payment security mechanisms to be complied with by the parties to the present Petition. Accordingly, as per the provisions of Articles 10.3 and 10.4 of the PPAs and Clause 10 of Regulation 9 of the Trading Licence Regulations all the concerned parties to the present Petition shall abide by the same.

43. The Petitioner has also prayed to approve the trading margin of Rs.0.07/kWh as agreed to by the GRIDCO in the signed PSA in terms of Regulation 8(1)(d) of the Trading Licence Regulations. In this regard, Regulation 8(1)(d) of the Trading Licence Regulations dealing with trading margin provides as under:

“For transactions under long term contracts, the trading margin shall be as mutually decided between the Trading licensee and the seller:...”

44. The above provision allows the contracting parties to mutually agree on a trading margin for a long-term transaction.

45. 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.”

46. Regulation 8(1)(f) of the Trading Licence Regulations provides as under:

“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.”

47. The above two provisions are exceptions to the main provision as regards trading margin. The Distribution licensees/End Procurer, namely, GRIDCO, has agreed to a trading margin of Rs. 0.07/kWh as agreed in the PSA, which is in consonance with Regulation 8(1)(d) of the Trading Licence Regulations. Therefore, in case of failure by SECI to provide escrow arrangement or irrevocable, unconditional and revolving letter of credit to the wind generators, the trading margin shall be limited to Rs.0.02/kWh as specified in the Regulation 8(1)(d) and Regulation 8(1)(f) of the Trading Licence Regulations.

48. Prayer (b) of the Petitioner is answered accordingly.

49. Additionally, Respondent No. 5 has submitted that it has filed a separate Petition No. 26/MP/2024 *inter-alia* seeking declaration of MoP's order dated 9.6.2023 as 'Change in Law' event under the PPA and compensation if the project completion is delayed beyond the ISTS charges waiver period. Respondent No. 5 in the present Petition has prayed that

this Commission may consider the relief sought under the Petition No. 26/MP/2024 filed by Respondent No. 5 before or along with the tariff adoption Petition. Further, Respondent No. 3 has sought a declaration from the Commission that TGPPL's Project will be exempted from the levy of ISTS Charges with effect from 30.6.2025, i.e., the ISTS Waiver Deadline on account of valid and legitimate extension of SCD of the Project and/or that Respondent No. 3/TGPPL will not be liable in any manner for payment of the ISTS charges due to extension of the SCD beyond 30.6.2025.

50. *Per contra*, SECI has submitted that the PPA clearly provides that all charges and losses related to the transmission of power from the project up to the delivery point shall be borne by the WPD, and beyond the delivery point, all charges and losses shall be borne by Buying Entities as notified by the Competent Authority/regulator from time to time. However, in case the commissioning of the Projects gets delayed beyond the applicable date of the ISTS waiver/extended SCD, due to reasons attributable to the WPD, the liability of the transmission charges and losses would be to the account of the WPD. The scope of the present proceedings is limited, the relief of Change in Law/Force Majeure/ Declaration of ISTS Charges waiver is not to be considered in the present proceedings. Further, SECI has submitted that this Commission may proceed with the present tariff adoption Petition without linking with Respondent No. 5's Petition and may take note of the delay caused by the Respondents in the present proceedings.

51. We have considered the submissions of the Petitioner and Respondents. The present Petition has been filed by SECI, praying for the adoption of tariffs discovered in the tariff-based competitive bid process of wind power projects and approval of trading

margins. In the above paragraphs, we have already decided that the tariff has been discovered as per the provisions of the bidding guidelines in a transparent manner. As regards other issues raised by the Respondents on the applicability of ISTS waiver, the Respondents are at liberty to approach the Commission for adjudication of these issues through separate Petitions. It is pertinent to mention that Respondent No. 5 has already filed Petition No. 26/MP/2024 in this regard, which shall be dealt with in accordance with law.

52. The Petition No.337/AT/2023 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(Jishnu Barua)
Chairperson