

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 340/AT/2019

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

Date of Order: 3rd December, 2019

In the matter of:

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for the Scheme for setting up of 1000 MW Inter-State Transmission System (ISTS) connected Wind Power selected through competitive bidding process as per the Guidelines issued by Ministry of New and Renewable Energy on 14.6.2016 and 22.10.2016.

And

In the matter of

PTC India Limited
2nd Floor, NBCC Tower,
15, Bhikaji Cama Place,
New Delhi – 110 066

.....**Petitioner**

Vs.

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

2. Green Infra Wind Energy Limited
Door No. 515 & 514, Tolstoy House,
Tolstoy Marg, New Delhi – 110 001.

3. Inox Wind Infrastructure Services Limited
Inox Towers, Plot No. 17, Sector – 16A, Noida,
Uttar Pradesh – 201 301.

4. Ostro Kutch Wind Private Limited
138, Ansal Chamber – II, Bhikaji Cama Place,
New Delhi – 110 066.

5. Mytrah Energy (India) Private Limited
8th Floor, Q City, Survey No. 109,
Gachibowli Nanakramguda Village,

Serilingampally Mandal,
Hyderabad, Telangana – 500 032.

6. Adani Green Energy MP Limited
Adani House, Nr. Mithakhali Six Roads,
Navrangpura, Ahmedabad, Gujarat – 380 015.

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

8. South Bihar Power Distribution Company Limited
3rd Floor and 2nd Floor, Vidyut Bhawan,
Bailey Road, Patna – 800 001.

9. North Bihar Power Distribution Company Limited
3rd Floor and 2nd Floor, Vidyut Bhawan,
Bailey Road, Patna – 800 001.

10. BSES Radjhani Power Limited
BSES Bhawan, Nehru Place,
New Delhi – 110 019.

11. GRIDCO Limited
Janpath, Bhubaneshwar,
Odisha – 751 022.

12. Assam Power Distribution Company Limited
4th Floor, Bijulee Bhawan, Paltan Bazar,
Guwahati, Assam – 781 001.

13. Noida Power Company Limited
Commercial Complex, H- Block,
Alpha – II, Greater Noida,
Uttar Pradesh – 201 308.

14. Jharkhand Bijli Vitran Nigam Limited
Engineer's Building, Dhurwa,
Ranchi – 834 004.

.....**Respondents**

The following were present:

Shri Basava Prabhu Patil, Sr. Advocate, PTC
Shri Ravi Kishore, Advocate, PTC
Ms. Rajshree Chaudhary, Advocate, PTC
Shri Geet Ahuja, Advocate, PTC
Shri Sunil, PTC
Shri M. G. Ramachandran, Sr. Advocate, SECI

Shri Shubham Arya, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Shri Tarun Mukhija, SECI
Shri Sitesh Mukherjee, Advocate, UPPCL
Shri Abhishek Kumar, Advocate, UPPCL
Ms. Somya, Advocate, NPCL
Ms. Molshree Bhatnagar, Advocate, Mytrah Energy

ORDER

The Petitioner, PTC India Limited (hereinafter referred to as “PTC”), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as the 'Act') for adoption of tariff for the Scheme for setting up of 1000 MW Wind Projects (Project) connected to the inter-State Transmission System (ISTS) and selected through competitive bidding process as per the Guidelines issued by Ministry of New and Renewable Energy, Government of India on 14.6.2016 and 22.10.2016. The Petitioner has made the following prayers:

“(a) Admit the present Petition; and

(b) Adopt the tariff discovered through the competitive bid process for the individual power projects as stated above plus the trading margin of PTC (25% of which will be shared with SECI).”

Submissions of the Petitioner

2. The Petitioner has submitted that Ministry of New and Renewable Energy, Government of India, (hereinafter referred to as “MNRE”) on 14.6.2016 sanctioned a “Scheme for setting up of 1000 MW Inter-State Transmission System connected Wind Power Project” (hereinafter referred to as ‘the Scheme’). In terms of the Scheme, the Respondent No. 1, Solar Energy Corporation of India Limited (SECI) was designated as the Implementing Agency and was, inter-alia, required to select a suitable Trading Company who would sign Power Purchase Agreements (PPAs) with Wind Power

Developers (WPDs) for sale, purchase and resale of wind power at tariff discovered through transparent competitive bidding process and also sign back-to-back Power Sale Agreements (PSAs) with Buying Entities/ Distribution Companies(Discoms)/ State Utilities/ Bulk Consumers. SECI issued tender document for 'Selection of Power Trading Company for Purchase and Sale of Wind Power' on 24.6.2016 and the Petitioner was selected as successful bidder therein and was issued the Letter of Award on 26.8.2016.

3. Subsequently, MNRE issued the Guidelines for implementation of "Scheme for Setting up of 1000 MW ISTS-connected Wind Power Projects" ("Guidelines") on 22.10.2016 under Section 63 of the Act to provide necessary framework and mechanism for transparent bidding process for implementation of the Scheme and to provide wind power at tariff discovered through e-reverse auction. SECI issued Request for Selection (RfS) along with draft PPA and PSA for setting up of 1000 MW ISTS connected Wind Power Projects as per the Guidelines and floated the same on 28.10.2016. The last date of bid submission was 9.1.2017. In response to RfS, 13 bids were received. Out of 13 bids, 12 bids qualified the technical criteria. The e-Reverse auction of 10 bidders was carried out on 23.2.2017 on TCIL's portal and the final tariff was arrived after completion of the same. The Petitioner has submitted that the some of the Projects have already been commissioned and supplying power to the beneficiary Discoms and remaining projects are being monitored by SECI. The Petitioner has further submitted that as Discoms and WPDs (Wind Power Developers) are spread over multiple States, the Discoms approached the respective State Electricity Regulatory Commissions (SERCs) for approval of procurement process and/or adoption of tariff due to lack of clarity. Except for the States of Assam and Uttar Pradesh, PSAs have been approved by the respective SERCs. In the State of Uttar Pradesh, the supply of power had commenced after Commercial Operation Date (COD) of

the Wind Power Projects. However, power could be not supplied in absence of the regulatory approval. Uttar Pradesh Electricity Regulatory Commission (UPERC), during the hearing on 10.10.2019, granted liberty to the Petitioner to file approach the CERC for adoption of tariff.

4. The Petitioner has submitted that PTC has agreed to sell entire 1049.90 MW wind power from the WPDs (Respondents 2 to 6) at the tariff discovered through transparent competitive bid process and to resell the said capacity to Buying Entities/ Discoms (Respondents 7 to 14) at Rs. 3.46/kWh which is weighted average pooled rate of the selected WPDs plus the trading margin of Rs. 0.07/kWh. The Petitioner has submitted that the tariff determined under the E-reverse auction process even with trading margin of Rs. 0.07/kWh is lesser than the procurement cost of conventional power and would be beneficial for the Buying Utilities/ Discoms and the consumer at large. The Petitioner has submitted that there will be no preferential tariff sought within Section 86(1)(e) of the Act.

5. The matter was heard on 17.10.2019 and notices were issued to the Respondents to file their replies. Reply to the Petition has been filed by Uttar Pradesh Power Corporation Limited and SECI.

6. In response to the query of the Commission as to whether the Petitioner and SECI have challenged the jurisdiction of the Commission before the Hon'ble High Court and APTEL, learned senior counsels for the Petitioner and SECI submitted they are not contesting the jurisdiction of the Commission and that in their view, the Commission has the jurisdiction in the instant matter. In this regard, SECI and PTC have placed their affidavits on record.

7. Respondent, SECI vide its affidavit dated 16.10.2019 has submitted that SECI has no objection in regard to the exercise of jurisdiction by this Commission under Section 79 of the Act in regard to purchase of electricity by SECI under the PPAs entered into with Renewable Energy Developers and resale of such electricity to Buying Utilities/ Discoms and that the jurisdiction of the SERCs is only in terms of Section 86(1)(b) read with Rule 8 of the Electricity Rules, 2005 for approval of power procurement. SECI has submitted that it has challenged the jurisdiction of this Commission in Appeal No. 402 of 2017 (SECI v. Welspun Energy Private Limited and Anr.) which is pending before Appellate Tribunal for Electricity (“APTEL”). SECI has submitted that the SECI will approach the APTEL for withdrawal of jurisdiction issue raised in the said Appeal. SECI has further submitted that the stand of SECI on the jurisdiction of this Commission has been set out more fully in IA No. 768 of 2019 in Appeal No. 210 of 2019 (Southern Power Distribution Company of Andhra Pradesh Limited and Anr. v. CERC and Ors.) wherein SECI has submitted that this Commission is the Appropriate Commission as per Section 79 of the Act.

8. The Petitioner, PTC vide its affidavit dated 16.10.2019 has submitted that as per the judgment of Hon'ble Supreme Court in the case of Energy Watchdog v. CERC and Ors. (2017) 14 SCC 80, in all the matters falling under the definition of 'Composite Scheme', CERC alone would have exclusive jurisdiction even in the matters where PTC is a Party and since the present case satisfies the requirement of 'Composite Scheme' in terms of the above judgment, this Commission alone has jurisdiction.

Reply of the Respondents

9. Respondent, SECI, vide its reply dated 25.10.2019, has submitted as under:

(a) SECI has been designated as the nodal agency and an Implementation Agency by MNRE for implementation of the Scheme of 1000 MW ISTS connected Wind Power Project issued by MNRE.

(b) In terms of above Scheme, PTC was selected as trader for purchase and sale of wind power generated from the Projects selected in pursuance of the transparent competitive bidding process undertaken by SECI. PTC was required to sign the PPAs with selected WPDs at bid tariff and back-to-back PSAs with Buying Entities at pooled price of total bids selected.

(c) Selection of WPDs was also undertaken by SECI under the Scheme and the Guidelines through a transparent competitive bidding process followed by E-reverse auction for procurement of wind power.

(d) Tariff discovered for procurement of wind power under the competitive bidding process i.e. Rs. 3.46/kWh is beneficial to the Buying Entities/ Discoms as well as the consumers and the adoption of the said tariff plus the trading margin payable to PTC is consistent with terms, objection and provisions of the Scheme, Guidelines, Act and Policies notified by the Central Government under Section 3 of the Act.

10. Respondent No.7, Uttar Pradesh Power Corporation Limited (UPPCL) and Respondent No.13, Noida Power Company Limited (NPCL) who have entered into PSAs with PTC for 439.9 MW and 10 MW respectively for procurement of wind power from the Projects selected under the Scheme for fulfilment of their Non-Solar RPOs, vide their replies dated 23.10.2019 and 24.10.2019 respectively have mainly reiterated the submissions made in the Petition and have supported the instant Petition. NPCL has submitted that UPERC vide order and its corrigendum dated 5.1.2018 has approved the

PSA and also adopted the tariff of Rs. 3.53/kWh including the trading margin of Rs.0.07/kWh. However, UPERC did not adopt tariff as it falls within the jurisdiction of this Commission. Accordingly, UPPCL and NPCL have prayed for adoption of tariff of Rs. 3.53/kWh including the trading margin of Rs. 0.07/kWh as per the PSA entered into with PTC.

Analysis and Decision

11. We have considered the submissions made by the Petitioner and the Respondents. The Petitioner and the Respondents have not raised objections on the jurisdiction of this Commission. However, SECI vide its affidavit has submitted that it will withdraw the issue of jurisdiction in Appeal No.402 of 2017 filed before the APTEL. In view of the above, we now proceed to merits of the case.

12. 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.”

13. In contrast to tariff determination under Section 62 of the Act, role of the Commission in case of tariff discovery through the competitive bidding process undertaken under Section 63 of the Act is essentially confined to adoption of tariff, on being satisfied that transparent process of bidding in accordance with the guidelines have been followed in determination of such tariff.

14. On 14.6.2016, Government of India, Ministry of New and Renewable Energy has sanctioned the ‘Scheme for Setting up of 1000 MW CTU-connected Wind Power Projects’.

The salient features of the Scheme are as under:

(a) The Scheme envisages setting up of 1000 MW capacity of Central Transmission Utility-connected Wind Power Projects by Wind Power Developers on Build, Own and Operate basis. However, the capacity may be revised based on demand.

(b) The objectives of the Scheme, amongst others, are to facilitate supply of wind power to the non-windy States at a price discovered through transparent bidding process and to facilitate fulfilment of Non-Solar Renewable Purchase Obligations requirement of non-windy States.

(c) SECI shall be the nodal agency for implementation of the Scheme.

(d) Selection of Wind Power Projects under the Scheme will be through transparent e-bidding process followed by E-reverse auction for eligible bidders for procurement of wind power at tariff discovered through open competitive bidding process.

(e) Minimum and Maximum eligible project capacity for bidding by the bidder shall be 25 MW and 250 MW respectively.

(f) SECI may call for expression of interest/ bids for selection of trading company to sign PPA with selected developers at bid price and back-to-back PSA with Discoms of non-windy States at pooled price of the total bids selected. The selected trading company will be entitled to charge trading margin as mutually agreed between the parties or as decided by the CERC for long-term purchases. Trading Company will share at least 25% of Trading Margin with SECI without any liabilities to SECI.

(g) SECI shall issue RfS documents for development of Wind Power Projects within one month from the date of issue of the detailed Guidelines for implementation of the Scheme by MNRE.

(h) MNRE will issue Guidelines for transparent bidding process for implementation of the Scheme.

15. On 22.10.2016, MNRE issued the Guidelines for Implementation of ‘Scheme for Setting up of 1000 MW ISTS connected Wind Power Projects’ to provide the necessary framework and mechanism for transparent bidding process for implementation of the ‘Scheme’. The salient features of the Guidelines are as under:

(a) SECI will be the nodal agency for implementation of this Scheme. SECI will develop guidelines for e-bidding process followed by e-reverse auction for eligible bidders and will develop a suitable mechanism for monitoring the performance of the projects.

(b) The selection of Wind Power Projects under the Scheme will be through a transparent e-bidding process for procurement of wind power at tariff discovered through open competitive bidding process followed by e-Reverse Auction process.

(c) 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 auction, till the entire bid capacity is allotted.

(d) The Scheme is envisaged for bidding in 2016-17.

(e) Trading company selected by SECI shall sign PPA with developers at bid tariff and back-to-back PSAPSA with Buying Entities at pooled price of the total bids

selected. The selected trading company will be entitled to charge Trading Margin as mutually agreed with Buying Entity or as decided by the CERC for long-term sale of electricity. Trading Company shall share at least 25% of trading margin with SECI without any liability to SECI.

(f) SECI shall invite the bidders to participate in the open competitive bidding process against the RfS for development of Wind Power Projects under the Scheme.

(g) The minimum Bid capacity shall be 50 MW at one project site and the maximum capacity that can be allotted shall be 250 MW to one company including its Parents, Affiliate or Ultimate Parent or any Group Company.

(h) Selection of Projects shall be done through single stage two envelope, e-bidding and e-reverse auction as detailed in RfS documents to be issued by SECI. The procedure for conducting e-bidding and e-auctioning shall be framed by SECI.

(i) Based on RfS Notification issued by SECI, separate Technical and Financial bids will be submitted by the developer in the application. The financial bid will clearly indicate tariff offered in Indian Rupees against each project for which the bid is submitted.

(j) Standard Power Purchase Agreement to be executed between trading company and Wind Power Project Developer shall be provided by SECI along with invitation for submission of response to RfS.

(k) Within six months of the date of issue of Letter of Award (LoA), PPA between trading company and the Project Developer for purchase of power will be executed. PPA shall be for the period of 25 years from the date of COD.

16. Therefore, 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.

17. In terms of the above Scheme and Guidelines issued thereunder by MNRE, SECI was designated as the nodal agency for implementation of the 'Scheme for setting up of 1000 MW CTU-connected Wind Power Projects'. The Scheme further envisaged a selection of trading company by SECI who will sign PPA with selected developers at the bidded tariff and back-to-back PSA with Buying Utilities/ Discoms. In pursuance of tender documents issued by SECI on 24.6.2016, PTC has been selected as trading company. Subsequently, as per Guidelines issued by MNRE under the Scheme, SECI invited the proposal for setting up of CTU-connected Wind Power Projects on 'Build, Own and Operate' basis for an aggregate capacity of 1000 MW and procurement of wind power from the Projects being set-up in relation thereto. As per the arrangement, selected trading company, PTC is to procure the power by entering into PPAs with successful bidders with back-to-back PSAs for sale of power to the Buying Utilities/ Discoms.

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

S.No.	Events	Date
1.	RfS issued by SECI	28.10.2016
2.	Opening of techno-commercial bids	10.1.2017
3.	Opening of financial bids	22.2.2017
4.	e-Reverse Auction	23.2.2017
5.	Issuance of Letter of Award to the successful bidders	5.4.2017

19. On 28.10.2016, SECI issued (RfS document, along with draft PPA and PSA for setting up of 1000 MW ISTS connected Wind Power Projects *with a provision that the capacity may go higher upto 1500 MW, if there is a demand from Buying Entities*. SECI

published the notices on 28.10.2016 and 29.10.2016 in 'Times of India' (Lucknow, New Delhi and Kochi Editions) and published the same on its website.

20. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids for RfS dated 28.10.2016:

Dept.	Offline and Online Techno-commercial Bid Opening	Financial Bid Opening	Techno-commercial evaluation	Financial Bid Evaluation
Solar/Wind (Technical)	Ms. Aditee	Ms. Aditee	Shri Sandeep Reddy	Shri Sandeep Reddy
Contracts	Shri Biblesh	Shri Biblesh	Shri Pratik	Shri Pratik
Financial	Ms. Nidhi Jain	Ms. Nidhi Jain	Ms. Nidhi Jain	Ms. Nidhi Jain

21. Last date of bid submission was 9.1.2017 and the technical part of the bid was opened on 10.1.2017. In Response to RfS, 13 bids were received and the following 12 bidders qualified techno-commercial criteria:

S. No.	Bidders
1	Mytrah Energy India Private Limited
2	Surya Vidyut Limited
3	ReGen Powertech Private Limited
4	Green Infra Tamil Nadu, a consortium of Green Infra Wind Energy Limited and Suzlon Power Infrastructure Limited, with Green Infra Wind Energy Limited being the Lead Member
5	ReNew Power Ventures Private Limited
6	Ostro Kutch Wind Private Limited
7	Sitac Kabini Renewable Private Limited
8	Gamesa Renewable Private Limited
9	Leap Green Energy Private Limited
10	Inox Wind Infrastructure Services Limited
11	Adani Green Energy MP Limited
12	Hero Wind Energy Private Limited

22. In terms of the criteria provided in RfS for shortlisting of bidder for e-Reverse auction, out of the above 12 bidders, the following 10 bidders qualified for e-Reverse auction:

Sl. No.	Techno-commercially qualified Bidder	Capacity (MW)	Financial bid Tariff (INR/kWh)
1	Inox Wind Infrastructure Services Limited	250	4.00
2	Surya Vidyut Limited	50	4.10
3	ReNew Power Ventures Private Limited	250	4.24
4	Gamesa Renewable Private Limited	250	4.24
5	Adani Green Energy MP Limited	250	4.24
6	Ostro Kutch Wind Private Limited	250	4.29
7	Green Infra Wind Energy Limited	249.9	4.37
8	ReGen Powertech Pvt. Ltd.	144	4.41
9	Mytrah Energy India Private Limited	250	4.47
10	Leap Green Energy Private Limited	250	4.47

23. The e-Reverse Auction was carried out on 23.2.2017 in the presence of members of BEC. The following bidders were declared as successful bidders:

Sl. No.	Bidders	Bid Capacity (MW)	Applicable tariff (INR/kWh)	Allotted Capacity (MW)
1	Mytrah Energy India Private Limited	250	3.46	250
2	Green Infra Wind Energy Limited	249.9	3.46	249.9
3	Inox Wind Infrastructure Services Limited	250	3.46	250
4	Ostro Kutch Wind Private Limited	250	3.46	250
5	Adani Green Energy (MP) Limited	250	3.46	50

24. Based on e-Reverse bidding, SECI vide its letter dated 3.10.2019 has certified as under:

“With respect to the RfS No. SECI/C&P/WPD/1000MW/102016 dated 28.10.2016, it is hereby declared as follows:

1. After the conclusion of bid submission, the Evaluation Committee constituted for evacuation 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.”

25. On 5.4.2017, SECI issued Letter of Awards (LOAs) to the selected bidders as under:

Selected bidders	Allotted Project ID	Project Capacity (MW)	Project Location	Substation details for connectivity	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
Green Infra Wind Energy Limited	WPD-ISTS-T1-GIWEL-P1-249.9TN	249.90	Village Jambulingapuram, Kilumudiman, Melarasadi, Meltattaparai, Ottapidaram, Panjalankuruchi, Sillanatham, Umarikottai, Valasamudram, etc. Takuka-Ottapidaram & Tuticorin; Dist-Tuticorin; State-Tamil Nadu	400/230 kV Tirunelveli Pooling Substation of PGCIL	Rs. 3.46/-	Rupees Three and Forty-six paise only
Ostro Kutch Wind Private Limited	WPD-ISTS-T1-OKWPL-P1-250GJ	250	Taluk Bhuj and Anjar in Kutch District in Gujarat State	PGCIL Bhachau Substation Interconnection voltage: 220 kV	Rs. 3.46/-	Rupees Three and Forty-six paise only
Mytrah Energy India Private Limited	WPD-ISTS-T1-MEIPL-P1-250TN	250	Maniyachi Village, Ottapidaram Taluk, Thoothukkudi District, Tamil Nadu	230 kV Bus of 400 kV Thirunelveli PGCIL Pooling Station	Rs. 3.46/-	Rupees Three and Forty-six paise only
Inox Wind Infrastructure Services Limited	WPD-ISTS-T1-IWISL-P1-50GJ	50	Village: Dayapar, Haroda, Rajday, Nani Virani, Amiya, Khatiyu & Others Tehsil-Lakhpat & Nakhatrana District: Kutch State: Gujarat	220 kV Bay of 765 400 220 kV PGCIL Bhuj-Pool Substation in Kutch District, Gujarat	Rs. 3.46/-	Rupees Three and Forty-six paise only
	WPD-ISTS-T1-IWISL-P5-50GJ	50	Village – Dayapar, Haroda, Rajday, Nani Virani, Amiya, Khatiyu & Others Tehsil-Lakhpat & Nakhatrana District: Kutch State: Gujarat	220 kV Bay of 765 400 220 kV PGCIL Bhuj-Pool Substation in Kutch District, Gujarat	Rs. 3.46/-	Rupees Three and Forty-six paise only
	WPD-ISTS-T1-IWISL-P4-50GJ	50	Village – Dayapar, Haroda, Rajday, Nani Virani,	220 kV Bay of 765 400 220 kV PGCIL Bhuj-	Rs. 3.46/-	Rupees Three and Forty-six paise only

			Amiya, Khatiyu & Others Tehsil – Lakhat & Nakhatrana District: Kutch State: Gujarat	Pool Substation in Kutch District, Gujarat		
	WPD-ISTS-T1-IWISL-P3-50GJ	50	Village: Dayapar, Haroda, Rajday, Nani Virani, Amiya, Khatiyu & Others Tehsil- Lakhat & Nakhatrana District: Kutch State: Gujarat	220 kV Bay of 765 400 220 kV PGCIL Bhuj-Pool Substation in Kutch District, Gujarat	Rs. 3.46/-	Rupees Three and Forty-six paisa only
	WPD-ISTS-T1-IWISL-P2-50GJ	50	Village: Dayapar, Haroda, Rajday, Nani Virani, Amiya, Khatiyu & Others Tehsil: Lakhat & Nakhatrana District : Kutch State: Gujarat	220 kV Bay of 765 400 220 kV PGCIL Bhuj-Pool Substation in Kutch District, Gujarat	Rs. 3.46/-	Rupees Three and Forty-six paisa only
Adani Green Energy (MP) Limited	WPD-ISTS-T1-AGEMPL-P1-50GJ	50	Dayapar Village, Kutch District, Gujarat	765/400/220 kV Bhuj GSS of PGCIL	Rs. 3.46/-	Rupees Three and Forty-six paisa only

26. Relevant portion of one of the Letter of Awards issued to the Project developer, namely, Green Infra Wind Energy Limited is extracted as under:

“In reference to above and subject to various 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)	Project Location	Substation details for connectivity	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
WPD-ISTS-T1-GIWEL-P1-249.9TN	249.90	Village Jambulingapuram, Kilumudiman, Melarasadi, Meltattaparai, Ottapidaram, Panjalankuruchi, Sillanatham, Umarikottai, Valasamudram, etc. Takuka-Ottapidaram & Tuticorin; Dist-Tuticorin; State-Tamil Nadu	400/230 kV Tirunelveli Pooling Sub-station of PGCIL	Rs. 3.46/-	Rupees Three and Forty-six paisa only

M/s PTC India Limited, the power trading company selected by SECI for sale and purchase of wind power under the Scheme, 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 PTC India Limited (the "Trader"), 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 Commercial Operation Date, as discovered through the e-bidding and e-Reverse Auction. 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 claim 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 MNRE (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 shareholding of the Bidding Company or Bidding Consortium developing the Project 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 not less than 51% of the voting rights and paid up share capital) shall not change from submission deadline of response to RfS up to One Year after the COD of the Project.

1.4 Any consortium, if selected as successful bidder for the purpose of Supply of power to the Trader, shall incorporate a Project Company with equity participation by the Members in line with consortium agreement (to be submitted along with the response to RfS) before signing of PPA with the Trader, i.e. the Project Company incorporated shall have the same shareholding pattern as given at the time of submission of response to RfS. This shall not change till the signing of PPA.

1.5 The WPD will have to submit the required documents as mentioned below to SECI within 30 days from date of this Letter of Award (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 Wind Power Developer.*
- 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) *The WPD shall submit the Performance Bank Guarantee for a value of @ Rs 20 Lakh/MW within 30 days of issuance of Letter of award or before signing of PPA, whichever is earlier. It may be noted that successful Bidders shall submit the Performance Guarantee according to the Format 6.3B of RfS, issued in favour of SECI, for a value @ Rs 20 Lakh/MW/Project with a validity period of 24 months from the date of issue of this LOA.*
 - 5) *Further, the PPA shall be signed only upon receipt of the total Performance Guarantee of requisite value.*
 - 6) *The EMD submitted shall be released only after receipt, successful verification of total Performance Bank Guarantee in the acceptable form.*
- 1.6 *If required, 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. Power Purchase Agreement (PPA as per the format given along with RfS) have to be signed within 06 months from the date of issue of LoA. Subsequent extension in this timeline shall be finalized as mutually agreed by SECI and the Trader.*
- 1.7 *In case, the Trader offers to execute the PPA with the WPD and if the WPD does not submit the requisite documents as per Clause 3.14 of RfS or does not meet eligibility criteria upon submission of documents or does not execute the PPA within the stipulated time period, then the Performance Bank Guarantee submitted to SECI shall be forfeited by SECI and the Awarded Project(s) shall stand cancelled.*
- 1.8 *The WPD shall meet financial closure in line with clause 3.16 of the RfS document within 09 (Nine) months from the date of issue of LoA. Accordingly, the WPD shall furnish the following details within Nine (09) months from the date of issue of LoA:*
1. *Evidence of achieving complete tie-up of the Project Cost through internal accruals or through a Financing Agency.*
 2. *Evidence of Connectivity with ISTS through Transmission Service Agreement.*
 3. *Evidence of clear possession of the required land for the Project along with following documentary evidences:-*
 - i) *Ownership or lease hold rights (as per Clause 3.16 of the RfS) in the name of the Wind Power Developer and possession of 100% of the area of land required for the Project.*
 - ii) *Certificate by the concerned and competent revenue/registration authority for the acquisition/ownership/right to use/vesting of the land in the name of the Wind Power Developer.*
 - iii) *Sworn affidavit from the Authorised person of the WPD listing the details of the land and certifying total land requirement for the Project under clear possession of the Power Developer.*
 - iv) *A certified English translation from an approved translator in case above land documents are in languages other than English and Hindi.*

Note: Failure or delay in achieving the above conditions shall constitute sufficient grounds for forfeiture of Performance Guarantee.

- 1.9 *The WPD/Project Company shall achieve commissioning of the Project within 18 months from the date of issue of LoA 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, SECI shall encase the Performance Bank Guarantee (PBG) in the following manner:

- i. Delay upto Six months – the total PBG on per day basis and proportionate to the balance Capacity not commissioned.
- ii. Delay of more than six months – In case the commissioning of the project is delayed over Six(6) months, the tariff discovered after e-Reverse Auction shall be reduced at the rate of 0.50 Paise/kWh per date of delay for the delay in such remaining capacity which is not commissioned. The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee and reduction in the fixed tariff shall be limited to 27 months from the date of issue of LoA. In case, the Commissioning of the Project is delayed beyond 27 months from the date of issue of LoA, the PPA capacity shall stand reduced/amended to the Project Capacity Commissioned, provided that the commissioned capacity is not below 50 MW or 50% of the allocated Project Capacity, whichever is higher, and the PPA for the balance Capacity will stand terminated and shall be reduced from the selected Project Capacity. If the WPD failed to commission project capacity of 50 MW or 50% of the allocated Project Capacity, whichever is higher within a period of 27 months from the date of issue of LoA, apart from imposition of penalties as listed above, he shall be blacklisted and will not be allowed to participate in any other scheme of MNRE/SECI for a period to be decided by them.

1.10 You are required to make it convenient for signing of Power Purchase Agreement (PPA) as per clause 3.14 of RfS, failing which provisions as per clause 3.11 of the RfS shall be applicable.”

27. Based on Buying Utilities’ (DISCOMs) requests, the capacities were allocated as under:

Sr.	State	Utility	Date of PSA	Capacity (MW)
1	Jharkhand	Jharkhand Bijli Vitran Nigam Limited	23.6.2017	200
2	Bihar	North Bihar Power Distribution Company Limited and South Bihar Power Distribution Company Limited	27.6.2017	200
3	Uttar Pradesh	Noida Power Company Limited	27.6.2017	10
4	Uttar Pradesh	Uttar Pradesh Power Corporation Limited	13.7.2017	439.9
5	Odisha	GRIDCO Limited	20.7.2017	50
6	Delhi	BSES Rajdhani Power Limited	21.7.2017	100
7	Assam	Assam Power Distribution Company Limited	1.8.2017	50
		Total		1049.90

28. Pursuant to Letter of Awards and allocation of capacity, PTC, as noted above, entered into PSAs dated 23.6.2017 with Jharkhand Bijli Vitran Nigam Limited (JBVNL);

dated 27.6.2017 with North Bihar Power Distribution Company Limited (NBPDC) and South Bihar Power Distribution Company Limited (SBPDCL); dated 27.6.2017 with Noida Power Company Limited (NPCL); dated 13.7.2017 with Uttar Pradesh Power Corporation Limited (UPPCL); dated 20.7.2017 with GRIDCO Limited; dated 21.7.2017 with BSES Rajdhani Power Limited (BRPL); and dated 1.8.2017 with Assam Power Distribution Company Limited (APDCL). Further, PTC executed PPAs dated 21.7.2017 with Wind Power Developers/ SPV formed by selected Wind Power Developers corresponding to the PSA capacities as under:

S. No.	Wind Power Developer	Project Capacity (MW)	PPA capacity (MW)	Discoms/ State	PSA capacity (MW)
1	Mytrah Vayu (Sabarmati) Pvt. Ltd. (SPV of Mytrah Energy India Pvt. Ltd.)	250	100	UPPCL	100
			50	Bihar	50
			50	JBVNL	50
			50	APDCL	50
2	Green Infra Renewable Energy Ltd. (SPV of Green Infra Wind Energy Ltd.)	249.9	99.9	UPPCL	99.9
			50	Bihar	50
			50	JBVNL	50
			50	BRPL	50
3	Wind One Renergy Pvt. Ltd. (SPV of Inox Wind Infrastructure Services Ltd)	50	50	UPPCL	50
	Wind Two Renergy Pvt. Ltd. (SPV of Inox Wind Infrastructure Services Ltd.)	50	50	UPPCL	50
	Wind Three Renergy Pvt. Ltd. (SPV of Inox Wind Infrastructure Services Ltd.)	50	50	JBVNL	50
	Wind Four Renergy Pvt. Ltd. (SPV of Inox Wind Infrastructure Services Ltd.)	50	50	BRPL	50
	Wind Five Renergy Pvt. Ltd. (SPV of Inox Wind Infrastructure Services Ltd.)	50	50	Bihar	50
4	Ostro Kutch Wind Pvt. Ltd.	250	100	UPPCL	100
			50	Bihar	50

S. No.	Wind Power Developer	Project Capacity (MW)	PPA capacity (MW)	Discoms/ State	PSA capacity (MW)
			50	JBVNL	50
			50	GRIDCO	50
5	Adani Green Energy (MP) Ltd.	50	40	UPPCL	40
			10	NPCL	10
	Total Capacity	1049.9	1049.9		1049.9

29. Articles 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 WPD, as shall have been previously notified by the WPD 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) amounts claimed by Buyer, if any, from the WPD, through an invoice to be payable by the WPD, and not disputed by the WPD within fifteen (15) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that Buyer shall be entitled to claim any set off or deduction under this Article, after expiry of the said fifteen (15) Days period.

(iii) The WPD shall open a bank account at(the “WPD’s Designated Account”) for all Tariff Payments (including Supplementary Bills) to be made by Buyer to the WPD, 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 New Delhi (“Buyer’s Designated Account”) for payments to be made by the WPD to Buyer, if any, and notify the WPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. Buyer and the WPD shall instruct their respective bankers to make all payments under this Agreement to the WPD’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.”

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

“10.4 Payment Security Mechanism

Letter of Credit (LC) :

10.4.1 Buyer 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 Not later than one (1) Month before the start of supply, Buyer through a scheduled bank at New Delhi 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 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 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, Buyer shall restore such shortfall within seven (7) days.

10.4.5 Buyer 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 Buyer shall ensure that the Letter of Credit shall be renewed not later than thirty (30) days prior to 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 a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 10.4.3 & 10.5.2, the WPD 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, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

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

31. The above provisions provide for payment security mechanism to be complied with by the parties to the present Petition. During the course of hearing, learned senior counsel for the Petitioner submitted that the Petitioner would abide by the provisions of payment security mechanism as provided under Article 10.3 and 10.4 of the PPAs. Therefore, we direct that the provisions of Article 10.3 and 10.4 of the PPAs shall be abided by all the

concerned parties to the present Petition. More specifically, the Petitioner, PTC shall open the LC as per the provisions of Article 10.4.1.

32. Regulation 7(h) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009 (hereinafter referred to as "Trading Licence Regulations") provides as under:

"(h) The licensee shall carry out trading in accordance with the agreed terms and conditions, and may take such safeguards as he may consider necessary with regard to payment security mechanism from the buyers, but shall always ensure timely payment of dues to the seller for purchase of the agreed quantum of electricity either through a letter of credit or any other appropriate instrument or as may be mutually agreed between the seller and the licensee."

33. As per the above provision, the trading licensee is required to always ensure payment to the seller for the purchase of agreed quantum of electricity either through letter of credit or any other appropriate instrument or as may be mutually agreed between the seller and the licensee. Therefore, the Petitioner shall ensure compliance of the provisions contained under Regulation 7(h) of the Trading Licence Regulations during the tenure of the PPAs and PSAs. During the hearing, learned senior counsel for the Petitioner submitted that payment security mechanism provided in the Trading Licence Regulations shall prevail over the PPAs and PSAs. Learned senior counsel for SECI submitted that PPA conditions are aligned with the Trading Licence Regulations.

34. In the light of the discussions as above, it emerges that selection of the successful bidders and the tariff of the Project has been carried out by the Nodal Agency through a transparent process of competitive bidding in accordance with Guidelines issued by Ministry of New and Renewable Energy, Government of India. The Petitioner has also produced on record the Conformity Certificate of SECI dated 3.10.2019 certifying that the process is in conformity with the Ministry of New and Renewable Energy Guidelines and

no deviation was taken from the Guidelines in the RfS documents. Accordingly, in terms of Section 63 of the Act, the Commission adopts the following tariff for the Projects as agreed to by the successful bidders, which shall remain valid throughout the period covered in the PSAs and PPAs:

Successful Bidders	Allotted Capacity MW	Tariff (INR/kWh)
Mytrah Energy India Private Limited	250	3.46
Green Infra Wind Energy Limited	249.9	3.46
Inox Wind Infrastructure Services Limited	250	3.46
Ostro Kutch Wind Private Limited	250	3.46
Adani Green Energy (MP) Limited	50	3.46

35. The Petitioner has prayed to adopt the trading margin of Rs. 0.07/kWh (25% of which will be shared with SECI). It is observed that Section 79(1)(j) of the Act requires the Commission “to fix the Trading Margin in the inter-State trading of electricity, if considered, necessary”. Accordingly, the Commission, being of the opinion that it was necessary to fix Trading Margin for inter-State trading in electricity, exercised the powers conferred under Section 178 of the Act and conceived Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010 (hereinafter referred to as “Trading Margin Regulations”) applicable to the short-term-buy-short-term sell contracts for the inter-State trading in electricity undertaken by a licensee. Trading Margin Regulations provide for the ceiling of the Trading Margin in short-term-buy-short-term-sell contracts for the inter-State trading. Trading Margin Regulations do not provide for any ceiling of Trading Margin for long term transactions and, therefore, it is up to the contracting parties to mutually agree on Trading Margin, if any, in such cases. In any case, the Commission does not fix Trading Margin on case to case basis. The spirit of the Act read with the Trading Margin Regulations gives freedom and choice to the contracting parties to mutually agree on

Trading Margin for any kind of trading transaction, subject to the ceiling Trading Margin, whenever applicable. Accordingly, the Commission cannot fix or adopt any Trading Margin for long-term transactions under the provisions of the present Trading Margin Regulations. In view of the above, the prayer of the Petitioner to adopt the Trading Margin is decided accordingly.

36. The Petition No. 340/AT/2019 is disposed of in terms of the above.

**Sd/-
(I. S. Jha)
Member**

**sd/-
(Dr. M.K.Iyer)
Member**

**sd/-
(P.K. Pujari)
Chairperson**