

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 369/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 1000 MW (Tranche-II) Wind Power Projects 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 on 4.5.2017.

And

In the matter of

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

..... **Petitioner**

Vs.

1. Ministry of New and Renewable Energy
Block 14, CGO Complex,
Lodhi Road
New Delhi-110 003
2. Adani Green Energy MP Limited
Adani House, Nr Mithakhali Six Roads,
Navrangpura, Ahmedabad
Gujarat-38001
3. Green Infra Wind Energy Limited
Door No. 515 & 514, Tolstoy House,
Tolstoy Marg, New Delhi-110001
4. Wind Infrastructure Services Limited
Inox Towers, Plot No. 17
Sector 16A, Noida -201301

5. Orange Sironj Wind Power Private Limited
301 B, 3rd Floor, D-21 Corporate Park
Near Dwarka Sector-8, Metro Station,
Sector-21, Dwarka, New Delhi-110017
6. ReNew Power Ventures Private Limited
10th Floor, DLF Square, M Block
Jacaranda Marg, DLF City, Phase 2,
Sector 25, Gurgaon, Haryana-122002
7. Assam Power Distribution Company Limited
4th Floor, Bijulee Bhawan Paltan Bazar
Guwahati-781001
8. South Bihar Power Distribution Company Limited
3rd Floor and 2nd Floor Vidyut Bhawan,
Bailey Road, Patna-800001
9. North Bihar Power Distribution Company Limited
3rd Floor and 2nd Floor, Vidyut Bhawan
Bailey Road, Patna-80000
10. Electricity Department, Government of Goa
3rd Floor, Vidyut Bhavan
Panaji, Goa-403001
11. GRIDCO Limited
Janpath, Bhubaneshwar
Odisha -751022
12. Haryana Power Purchase Centre
Shakti Bhawan, Sector-6
Panchkula, Haryana-134109
13. Jharkhand Bijli Vitran Nigam Limited
Engineer's Building, Dhurwa
Ranchi -834004
14. Punjab State Power Corporation Limited,
The Mall, PSEB Head Office, Baradari Patiala, Punjab-147001
15. Uttar Pradesh Power Corporation Limited
Shakti Bhawan, 14 Ashok Marg
Lucknow-226001

....Respondents

The following were present

Shri M. G. Ramachandran, Sr. Advocate, SECI
Shri Shubham Arya, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Shri Harneet Kaur, Advocate, UPPCL
Shri Abhisekh Kumar, Advocate, UPPCL
Shri Aryaman Saxsena, Advocate, UPPCL
Shri R. B. Sharma, Advocate, NBPDC and SBPDCL

ORDER

The Petitioner, Solar Energy Corporation of India Limited (hereinafter referred to as "SECI"), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') for adoption of tariff for 1000 MW Wind Power Projects (Tranche-II) connected to the Inter-State Transmission System (hereinafter referred to as 'ISTS') and selected through competitive bidding process as per the Standard Bidding Guidelines dated 4.5.2017. The Petitioner has made the following Prayers:

"(a) Admit the present Petition; and

(b) Adopt the tariff discovered in the competitive bid process for the individual power projects as stated in Table 1 at Paragraph 6 (iv) above plus the trading margin of Rs.0.07 /kWh to be recovered from the Buying Utilities/Distribution Licensees on the terms and conditions contained in the PPAs with the Wind Power Developers being Respondent Nos. 2 to 6 and the PSAs with the Buying Utilities/Distribution licensees being Respondent Nos. 7 to 15 herein;"

Submission of the Petitioner

2. The Petitioner has submitted that SECI issued Request for Selection (RfS) document, along with draft PPA and PSA documents for setting up of 1000 MW ISTS connected Wind power projects (Tranche II) as per "Guidelines for transparent bidding process for Implementation of Scheme for setting up of 1000 MW ISTS-connected Wind

Power Projects” (hereinafter referred to as the “Guidelines”) and floated the same on 31.5.2017 on the portal of Telecommunication Consultant India Limited (TCIL). The Petitioner has submitted that e-Reverse auction of nine technically qualified bidders was conducted on 4.10.2017 and the final tariff was arrived after completion of the same. The Petitioner has submitted that certain projects have already commissioned and the remaining Projects are scheduled to be commissioned in the financial year 2019-20 and the Projects would help the Buying Utilities/Discoms in meeting their RPO requirements apart from providing power at very economical rates. The Petitioner has submitted that SECI has agreed to sell entire 1000 MW (i.e. cumulative awarded capacity/ accepted cumulative capacity by SECI) of wind power to the Buying Utilities/ Discoms at the pooled rate of Rs. 2.65/kWh plus trading margin of Rs. 0.07/kWh upon the commissioning of the above capacity. The Petitioner has submitted that the pooled tariff is derivative from the individual tariff discovered in the competitive bid process of each WPD with a view to sell the wind power to the Buying utilities at uniform price. The Petitioner has submitted that the tariff determined under the reverse auction process conducted by SECI as per the RfS document and even with the trading margin of Rs. 0.07/Kwh discovered in the above competitive bid process is even lesser than the procurement cost of conventional power and therefore, will be beneficial for the Discoms/Buying Utilities and the consumer at large. The Petitioner has submitted that there will be no preferential tariff sought under Section 86 (1) (e) of the Act.

3. The matter was heard on 5.9.2019 and notices were issued to the Respondents to file their replies. No reply has been filed by the Respondents.

Analysis and Decision

4. 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.”

5. 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.

6. 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. Additional 100 MW capacity can be allotted to Central Public Sector Enterprises willing to undertake development of ISTS connected wind power projects on Build, Own and Operate basis as per provisions of the Scheme without participation in the bidding process.

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

(c) 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 competitive bidding process.

(d) Minimum and Maximum eligible project capacity for bidding by the bidder shall be 50 MW and 250 MW respectively.

(e) Entities that requires wind power to fulfill their non-solar RPO under respective RPO Regulations and intend to buy at least 10 MW power will be eligible to buy wind power under the Scheme.

(f) The bidders cannot quote tariff of more than Rs. 4.00 per unit for supply of wind power.

(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) SECI shall sign PPA with selected bidders at discovered tariff and with selected CPSEs at lowest bid tariff discovered through e-reverse auction and also back-to-back PSA with buyers at a pooled price of the total capacity allotted.

(i) SECI shall be entitled to charge trading margin as mutually agreed with buyer or as decided by CERC for long-term power purchases, whichever is less.

7. On 4.5.2017, 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 prepare RfS document and invite bids for selection of wind power projects under the Scheme through 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. The bidders cannot quote tariff of more than Rs. 4.00 per unit for supply of wind power.
- (d) The project should be designed for interconnection with the ISTS.
- (e) 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.

- (f) 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.
- (g) 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.
- (h) 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.
- (i) Standard Power Purchase Agreement to be executed between SECI and Wind Power Project Developer shall be provided by SECI along with invitation for submission of response to RfS.
- (j) Within six months of the date of issue of Letter of Award (LoA), PPA between SECI 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.
- (k) All Wind Power Projects shall comply with the provisions of the Grid Code and Regulations made thereunder.

8. 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.

9. In terms of the above Scheme and Guidelines issued 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 that SECI will sign PPA with selected developers at the bidded tariff and back-to-back PSA with Buying Utilities/ Discoms. As per Guidelines issued by MNRE, 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.

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

Sr. No.	Events	Date
1.	RfS issued by SECI	31.5.2017
2.	Opening of techno-commercial bids	14.8.2017
3.	Opening of financial bids	14.9.2017
4.	e-Reverse Auction	4.10.2017
5.	Issuance of Letter of Award to the successful bidders	3.11.2017

11. On 31.5.2017, SECI issued RfS document along with draft PPA and PSA for setting up of 1000 MW ISTS connected Wind Power Projects as per the Guidelines dated 4.5.2017 and floated the same on 31.5.2017 on TCIL's portal. SECI published the notices in 'Times of India' (all Editions).

12. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids for RfS dated 31.5.2017:

Dept.	Offline and Online Techno-commercial Bid Opening and Financial Bid Opening	Techno-commercial evaluation Financial Bid Evaluation
Power System	ISK Reddy, Dy Manager (PS) Aditi Nitnaware, Sr. Engineer	ISK Reddy, Dy Manager (PS) Ms. Aditi Nitnaware, Sr. Engineer (PS)
Contracts	Shri Sunil Yadav, Senior engineer (C & P)	Shri Pratik Prasun, Dy. Manager (C& P)
Financial	Ms. Nidhi Jain (Dy. Manager)	Ms. Nidhi Jain (Dy. Manager), Shri Ajit Sharma, Sr. Account Officer

13. Last date of bid submission was 14.7.2017 and the technical part of the bid was opened on the same date. Response to RfS was received from the following bidders as per details given below:

S. No.	Bidders
1	Mytrah Energy India Private Limited
2	ReGen Powertech Private Limited
3	BLP Energy Private Limited
4	Green Infra Wind Energy Limited
5	ReNew Power Ventures Private Limited
6	Leap Green Energy Private Limited
7	Inox Wind Infrastructure Services Limited
8	Adani Green Energy MP Limited
9	Hero Wind Energy Private Limited
10	Spring Energy Private Limited
11	Srijan Energy Systems Private Limited
12	Orange Sironj Wind Power Private Limited

14. The financial bids of all twelve bidders were opened on the TCIL portal in the presence of BEC. Out of 12 bidders, nine were shortlisted for e-Reverse auction.

15. The e-Reverse Auction for 1000 MW capacity was carried out on 4.10.2017 in the presence of BEC. The following bidders were declared as successful bidders:

Bidders	Tariff	Awarded capacity
ReNew Power Ventures Private Limited	2.64	250
Orange Sironj Wind Power Private Limited	2.64	200
Inox Wind Infrastructure Services Limited	2.65	250

Green Infra Wind Energy Limited	2.65	250
Adani Energy (MP) Limited	2.65	50
Total		1000

16. 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/T2/RfS/052017 dated 31.5.2017, 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.”

17. On 3.11.2017, SECI issued Letter of Award (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
ReNew Power Ventures Private Limited	WPD-ISTS-T2-RPVPL-P1-250GJ	250	Village : Umarsar, Prampar, Gaduli, Paneli, Valka Mota, Nadanpar, Ambara Tehsil: Lakhpat and Nakhatrana Dist:Kutch	PGCIL Bhachau Sub-station Injection at 220 kV level	Rs. 2.64	Rupees Two and Sixty-four paisa only.
Orange Sironj Wind Power Private Limited	WPD-ISTS-T2-OSWPPL-P1-200 GJ	200	Village: Poorvani, Tehsil: Tuticorin, District: Tuticorin Tamil Nadu	PGCIL Tuticorin GIS New 230 k V 400 k V sub-station at North Vandanam Village: Tuticorin District: Tamil Nadu	Rs. 2.64	Rupees Two and Sixty-four paisa only
INOX Wind	WPD-ISTS-T2-	50	Village : Umarsar,	220 k V Bay of 765/400/220	Rs. 2.65	Rupees Two and Sixty-five paisa

Infrastructure Services Limited	IWISL-P1-50GJ		Prampar, Gaduli, Paneli, Valka Mota, Nandanpar, Ambara Tehsil: Lakhat and Nakhatrana Dist:Kutch	kV PGCIL Bhuj-Pool substation in Kutch district, Gujarat		only
Green Infra Wind Energy Limited	WPD-ISTS-T2-GIWEL-P1-250MP	250	Village: Bandedi, Kapassthal, Bandedi, Undeli, Baloda, Moregaon, Undeli, Kapaasthal, Moregaon, Osar, Pipliys, Ralayta, Ratanpura, Bhoinda, Bharatgarh, Gaajnod, etc. Tehsil: Sardarpur, Badnawar Dist: Dhar, Madhya Pradesh	400/220 k V Rajgarh Pooling sub-station	Rs. 2.65	Rupees Two and Sixty-five paisa only
Adani Green Energy (MP) Limited	WPD-ISTS-T2-AGEMPL-P1-50GJ	50	Village: Dayapar District: Kutch State: Gujarat	765/400/220 kV Bhuj GSS	Rs. 2.65	Rupees Two and Sixty-five paisa only

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

“In reference to above an 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-T2-AGEMPL-P1-50GJ	50	Village: Dayapur District: Kutch State: Gujarat	765/ 400/ 220kV Bhuj GSS	Rs. 2.65	Rupees Two Hundred and sixty five paisa only.

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 applicable tariff payable shall be fixed for 25 years from Scheduled Commissioning 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 26% of the voting rights and paid up share capital) shall not change from submission deadline of response to RfS upto One Year after the COD of the Project.

1.4 The WPD shall pay to SECI, Success Charges of Rs. 1.24 lakh/MW/project + 18% GST of issuance of this Letter of Award (LoA), in line with Clause 3.12 of the RfS.

1.5 The WPD will have to submit the required documents as mentioned below to SECI within 30 days from date of this LoA or before signing of PPA, whichever is earlier. In case of delay in submission of documents beyond the timeline as mentioned above, SECI shall not be liable for delay in verification of documents and subsequent delay in signing of PPA.

*1) Copy of the Certificate of Incorporation of the 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 favor 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 Guarantees of requisite value.

6) The EMO submitted shall be released only after receipt, successful verification of the 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 month from the date of issue of LoA. Subsequent extension in this timeline shall be finalized as agreed SECI.

1.7 In case, the SECI 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 encashed 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 grant of connectivity and LTA from the CTU.

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 Authorized person of the WPD listing the details of the land and certifying total land required 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 encash the Performance Bank Guarantee (PBG) in the following manner:

i. Delay up to 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 day 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 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 fails 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.

You are requested 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”.

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

Sl. No.	State/UTs	Utility	Allocation (MW) under scheme
1.	Goa	Electricity Department, Government of Goa	50
2.	Assam	Assam Power Distribution Company Limited	50
3.	Jharkhand	Jharkhand Bijli Vitran Nigam Limited	100
4.	Bihar	North Bihar Power Distribution Company Limited and South Bihar Power Distribution Company Limited	100
5.	Odisha	GRIDCO Limited	100
6.	Punjab	Punjab State Power Corporation Limited	150
7.	UP	Uttar Pradesh Power Corporation Limited	200
8.	Haryana	Haryana Power Purchase Centre	250
		Total	1000

20. Pursuant to Letter of Awards and allocation of capacity, SECI entered into PSAs dated 24.11.2017 with Electricity Department, Government of Goa, Assam Power

Distribution Company Limited, Jharkhand Bijli Vitran Nigam Limited, North Bihar Power Distribution Company Limited and South Bihar Power Distribution Company Limited, GRIDCO Limited, Punjab State Power Corporation Limited, Uttar Pradesh Power Corporation Limited and with 13.12.2017 with Haryana Power Purchase Centre. Subsequently, SECI entered into PPA dated 2.1.2018 with ReNew Power Ventures Private Limited, dated 19.12.2017 with Orange Sirnoj Wind Power Private Limited, dated 27.12.2017 with Inox Wind Infrastructure Services Limited, dated 2.1.2018 with Green Infra Wind Energy Limited and dated 29.12.2017 Adani Green Energy (MP) Limited.

21. 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 (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.”

22. 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 fifteen (15) 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 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.”

23. 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. The Petitioner shall open the LC as provided in Article 10.4.1 of the PPA.

24. 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.”

25. 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.

26. 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:

Bidders	Bidder`s quantity (MW)	Tariff (INR/kWh)
ReNew Power Ventures Private Limited	250	2.64
Orange Sironj Wind Power Private Limited	200	2.64
Inox Wind Infrastructure Services Limited	250	2.65
Green Infra Wind Energy Limited	250	2.65
Adani Energy (MP) Limited	50	2.65
Total	1000	

27. The Petitioner has prayed to adopt the trading margin of Rs. 0.07/kWh. 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 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.

28. The Petition No. 369/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