

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 379/AT/2019

Coram:

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

Date of Order: 6th December, 2019

In the matter of:

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 1200 MW Wind Power Projects (Tranche-V) connected to the Inter-State Transmission System (ISTS) and selected through competitive bidding process as per the Guidelines issued by Ministry of Power on 8.12.2017.

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. Torrent Power Limited
Torrent House Ashram Road
Ahmedabad, Gujarat

3. Adani Green Energy Limited
Adani House, Nr. Mithakali Six Roads,
Navrangpura, Ahmedabad,
Gujarat-380 009.

4. Netra Wind Private Limited (Project Company of Alfanar Company)
B 504, Delphi Building, Orchard Avenue Sector No.3,
Hiranandani Business Park, Hiranandani Garden, Powai,
Mumbai, Maharashtra- 400 076.

5. Sitac Kabini Renewables Private Limited

507-508, Ashoka Estate,
24 Barakhambha Road,
New Delhi-110 001.

6. Ecoren Energy India Private Limited
Plot No. 481, 4th Floor,
36th Square Road No. 36, Jubilee Hills,
Hyderabad, Telengana-500 033.

7. BSES Rajdhani Power Limited
BSES Bhawan, Nehru Place
New Delhi-110 019.

8. BSES Yamuna Power Limited
Shakti Kiran Building,
Karkardooma, Delhi-110 092.

9. Haryana Power Purchase Centre
Shakti Bhawan, Sector-6,
Panchkula, Haryana

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

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

12. Government of Puducherry
Goubert Avenue,
Puducherry-605 001.

....**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

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 1200 MW (Tranche-V) Wind

Power Projects 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 8.12.2017. The Petitioner has made the following Prayers:

“(a) Admit the present Petition;

(b) Adopt the tariff discovered in the competitive bid process for the individual power projects as stated in Table 1 at paragraph 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 Respondents Nos 2 to 6 and the PSAs with the Buying Utilities/Distribution licensees being Respondent Nos. 7 to 11 herein;

(c) Grant SECI an exemption from complying with the provisions of the Clause 5.1.1 (b) of the Guidelines as regards the intimation of the initiation of Bidding for the reasons mentioned in Paragraphs 16-18 hereinabove.”

Submission of the Petitioner

2. The Petitioner has submitted that SECI issued Request for Selection (RfS) along with draft PPA and PSA documents for setting up of 1200 MW ISTS connected Wind Power Projects (Tranche V) as per “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from the Grid Connected Wind Power Projects” (hereinafter referred to as ‘the Guidelines’) and floated the same on 30.6.2018 on the portal of Telecommunication Consultant India Limited (TCIL). The Petitioner has submitted that e-Reverse auction of seven technically qualified bidders was conducted on 25.9.2017 on TCIL’s portal and the final tariff was arrived after completion of the same. The Petitioner has submitted that the Wind Power Projects are scheduled to be commissioned in the year 2020-21 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 1190 MW (i.e cumulative awarded capacity/ accepted cumulative capacity by SECI) of wind

power to the Buying Utilities/ Discoms at the rate of Rs. 2.77/kWh plus trading margin of Rs. 0.07/kWh upon the commissioning of the above capacity. The pooled tariff discovered through competitive bid process is even lesser than the procurement cost of conventional power and therefore would be beneficial for the Distribution Licensees/Buying Utilities 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.

3. The matter was heard on 19.11.2019 and notices were issued to the Respondents to file their replies. However, 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. Ministry of Power, Government of India has notified the Guidelines under Section 63 of the Act vide Resolution No. 23/54/2017-R&R dated 8.12.2017. The salient features of the Guidelines are as under:

(a) The 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 licensees, or the Authorised Representative(s), or Intermediary Procurers.

(b) Procurer shall prepare the bid documents in accordance with the Guidelines and obtain approval of the Appropriate Commission or alternatively, the Procurer can use the standard bid documents notified by the Ministry of Power. Approval of the Appropriate Commission would be necessary, if any deviation is proposed to be made in the Guidelines and standard bid documents. Intimation about the initiation of the bid process shall be sent by the Procurers to the Appropriate Commission.

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

(d) The Procurer has option to choose from two kinds of tariff based bidding (i) fixed tariff in Rs./kWh for 25 years or more, or (b) escalating tariff in Rs./kWh

with predefined quantum of annual escalations fixed in Rs./kWh and number of years from which such fixed escalation will be provided.

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

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

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

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

(i) The Procurer shall call the bids adopting a single stage bidding process to be conducted through electronic mode (e-bidding). The Procurers may adopt e-Reverse auction, if it so desires, e-procurement platforms with a successful track

record and with adequate safety, security and confidentiality features will be used.

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

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

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

(m) PPA shall be signed with the successful bidder/ project company or an SPV formed by the successful bidder. After conclusion of bidding process, Evaluation Committee shall evaluate the bids and certify that the bidding process and the evaluation have been conducted in conformity with the provisions of RfS. After execution of the PPA, Procurers shall disclose the name(s) of the successful

bidder(s) and the tariff quoted by them in its website. Accordingly, the distribution licensee or the Intermediary Procurer shall approach the Appropriate Commission for adoption of tariff in terms of Section 63 of the Act.

7. 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.

8. The Petitioner, SECI has been designated as the nodal agency for implementation of scheme for setting up of ISTS connected/ State specific Solar/ Wind Power Projects with the mandate to call for bids under a Tariff Based Competitive Bidding process, enter into Power Purchase Agreements (PPAs) at the tariff discovered in the competitive bid process, enter into Power Sale Agreements (PSAs) with the Distribution Licensees/ Buying Utilities to enable them to fulfil the Renewable Purchase Obligations under Section 86(1)(e) of the Act and with SECI acting as an intermediary agency in purchase and sale of power under the PPAs and PSAs on a back-to-back basis.

9. Ministry of Power, Government of India, vide its Resolution dated 8.12.2017 issued "Guidelines" under Section 63 of the Act for procurement of wind power at a tariff to be determined through transparent process of bidding by the Procurer(s), from grid connected Wind Power Projects having (a) individual size of 5 MW and above at one site with minimum bid capacity of 25 MW for intra-State projects, and (b) individual size of 50 MW and above at one site with minimum bid capacity of 50 MW for inter-State projects.

10. As per the Guidelines, SECI, in the capacity of Intermediary Agency, invited proposals for setting up of ISTS-connected Wind Power Projects on a pan India basis, on “Build Own Operate” basis for an aggregate capacity of 1200 MW and procurement of wind power from the projects being set up in relation thereto. As per the arrangements, SECI is to procure the power by entering into PPAs with the successful bidders with back-to-back PSAs for sale of power to the Buying Utilities/ Discoms.

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

Sr. No.	Events	Date
1.	RfS issued by SECI	30.6.2018
2.	Opening of techno-commercial bids	29.8.2018
3.	Opening of financial bids	20.9.2018
4.	e-Reverse Auction	25.9.2018
5.	Issuance of Letter of Award to the successful bidders	24.10.2018

12. On 30.6.2018, SECI issued Request for Selection document, along with draft PPA and PSA documents for setting up of 1200 MW ISTS connected Wind Power Projects (Tranche VI). According to the Petitioner, SECI did not publish the notices in the newspapers as per the advisory of Ministry of Information and Broadcasting, Government of India dated 17.5.2017 mandating e-publishing of advertisements in the relevant portal. Accordingly, on 3.7.2018, the Petitioner published notification indicating that the tenders of SECI will henceforth be published on its website and not in the newspapers.

13. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids for RfS dated 30.6.2018:

Tender	Department	Offline and on-line techno-commercial and financial bids opening	Techno-commercial and financial evaluation and post-e-RA recommendation
1200 MW ISTS connected Wind Power Projects (Tranche-V)	PS	Shri ISK Reddy, Deputy Manager (PS)	Shri ISK Reddy, Deputy Manager (PS)
	Contracts	Shri Sunil Yadav, Sr. Engineer (C&P)	Shri Biblesh Meena, Sr. Engineer, (C&P)
	Finance	Shri Nidhi Jain, Dy Manager	Shri Jasmine Nath, Sr. Accounts Officer

14. Last date of bid submission was 29.8.2018 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:

Sr.	Bidders
1	Mytrah Energy (India) Private Limited
2	Adani Green Energy Limited
3	Alfanar Company
4	Ecoren Energy India Private Limited
5	Torrent Power Limited
6	Hero Wing Energy Private Limited
7	Srijan Energy Systems Private Limited
8	Sitac Kabini Renewables Private Limited
9	Renew Wind Energy (Karnataka Two) Private Limited

15. The following seven bidders were found eligible for e-Reverse auction:

Sr.	Bidders
1	Alfanar Company
2	Ecoren Energy India Private Limited
3	Adani Green Energy Limited
4	Sitac Kabini Renewables Private Limited
5	Renew Wind Energy (Karnataka Two) Private Limited
6	Torrent Power Limited
7	Srijan Energy Systems Private Limited

16. The e-Reverse auction for 1200 MW capacity was carried out on 25.9.2018 in the presence of members of BEC. The following bidders were declared as successful bidders:

Sr.	Bidders	Tariff (INR/kWh)	Awarded capacity (MW)
1	Torrent Power Limited	115	2.76
2	Adani Green Energy Limited	300	2.76
3	Alfanar Company	300	2.77
4	Sitac Kabini Renewables Private Limited	300	2.77
5	Ecoren Energy India Private Limited	175	2.77
	Total	1190	

17. Based on e-Reverse bidding, SECI vide its letter dated 4.10.2019 has certified as under:

“With respect to the RfS No. SECI/C&P/WPD/1200MW/T5/RfS/062018 dated 30.6.2018, 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.”

18. On 24.10.2018, 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
Adani Green Energy Limited	WPD-ISTS-T5-AGEL-P1-300GJ	300	Village: Dayapar, Dist: Kutch, State : Gujarat	765/400/220 kV, Bhuj GSS of PGCIL	Rs. 2.76	Rupees Two and Seventy Six paise only
Alfanar Company	WPD-ISTS-T5-AC-P1-300GJ	300	Laxmipar Netra, Nakhatrana Taluka, Kutch District, Gujarat State	PGCIL Bhuj Pool Sub-station, Nirona Gujarat	Rs. 2.77	Rupees Two and Seventy Seven paise

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
						only
Ecoren Energy India Private Limited	WPD-ISTS-T5-EEIPL-P1-175 KA	175	Nimbalagiri Suladahalli, Banavikailu Tehsil: Kudligi Distt: Bellary State: Karnataka	Hiriyur 220 k V	Rs. 2.77	Rupees Two and Seventy Seven paise only
Sitac Kabini Renewables Private Limited	WPD-ISTS-T5-SKRPL--P1-300GJ	300	Guneri, Umrasar, Akari, Sayara Bhaiyava, Malda, Mudhan and Khengarpar in Taluka Lakhpat, Dist: Kutch State: Gujarat	765/400/220 kV through 220 kV S/C Line, Bhuj GSS of PGCIL	Rs. 2.77	Rupees Two and Seventy Seven paise only
Torrent Power Limited	WPD-ISTS-T5-TPL-P1-115GJ	115	Fulra, Jamthada, Makda, Samatra, Vandhay, Vingadia Tehsil: Bhuj, Mandvi Dist: Kutch State : Gujarat	PGCIL Bhuj Pooling sub-station Nirona	Rs.2.76	Rupees Two and Seventy Six paise only

19. Relevant portion of the one of the Letter of Awards issued to the Project developer, namely, Torrent Power 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
Torrent Power Limited	WPD-ISTS-T5-TPL-P1-115GJ	115	Fulra, Jamthada, Makda, Samatra, Vandhay, Vingadia Tehsil: Bhuj, Mandvi Dist: Kutch State : Gujarat	PGCIL Bhuj Pooling sub-station Nirona	Rs.2.76

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 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 shall be permitted from the date of submission of response to RfS till the execution of the PPA. However, in case the project is being set up by a listed Company, this condition will not be applicable. Controlling Shareholding (holding more than 50% of the voting rights and paid up share capital in the Company) of the Project Company of the WPD shall not change until One Year after COD of the Project, except with prior approval of SECI. However, in case the Project is being set up by a listed Company, this condition will not be applicable.

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

1.5 The 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. Performance Bank Guarantee (s) for a value of @Rs. 20 lakh/MW shall be submitted by the WPD within 30 days of issuance of Letter of Award or before signing of PPA, whichever is earlier, in line with clause 3.11 (ii) of the RfS.

1.6 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. The final project configuration, adding up 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 for the Project (s) on account of such changes in Project

locations, which differ from the details provided in the Covering letter, shall be at the risk 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.

1.7 The WPD will have to submit the required documents as mentioned below to SECI within 70 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.

Further, the PPA shall be signed only upon receipt of the Success Charges and total Performance Guarantees of requisite value. The EMD submitted shall be released only after receipt, successful verification of the total Performance Bank Guarantee in the acceptable form.

1.8 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 03 month from the date of issue of LoA, if not extended by SECI. In case of unavoidable delays on the part of SPD in submission of requisite documents prior to signing of PPAs or otherwise, the Effective Date of the PPA shall remain the date as on 90th day from the issuance of LOA, irrespective of the date of signing of PPA. In Extraordinary cases of unavoidable delays on the part of SECI in signing the PPAs.

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

1.10 The WPD shall meet financial closure in line with clause 3.16 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 within 07 months from the date of issue of LoA.

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

1.12 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”.

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

S. No.	State/UTs	Utility	Allocation (MW)
1.	Haryana	Haryana Power Purchase Centre	590
2.	Bihar	North Bihar Power Distribution Company Limited & South Bihar Power Distribution Company Limited	300
3.	Puducherry	Electricity Department, Puducherry	100
4.	Delhi	BSES Rajdhani Power Limited	100
5.	Delhi	BSES Yamuna Power Limited	100
		Total	1190

21. Pursuant to Letter of Awards and allocation of capacity, SECI entered into PSAs dated 21.1.2019 with Haryana Power Purchase Centre, dated 8.1.2019 with North Bihar Power Distribution Company Limited & South Bihar Power Distribution Company Limited, dated 5.2.2019 with Secretary (Power), Govt. of Puducherry, dated 20.12.2018 with BSES Rajdhani Power Ltd. and dated 16.1.2019 with BSES Yamuna Power Ltd. SECI entered into PPAs dated 28.2.2019 with Adani Wind Energy (GJ) Limited, dated 29.1.2019 with Sitac Kabini Renewables Private Limited, dated 5.4.2019 with Ecoren

Energy India Private Limited, dated 3.5.2019 with Torrent Power Limited and dated 21.5.2019 with Alfanar Company.

22. 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) amount claimed by Buyer, if any, from the WPD, will be adjusted from the monthly energy payment in case of any excess payment adjustment, 1.25% surcharge will be applicable on day to day basis.

The WPD shall open a bank 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 despatch 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.”

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

“10.4 Payment Security Mechanism

Letter of Credit (LC):

10.4.1 Subject to opening and maintenance of Letter of Credit by the Buying Entities (as per terms of Buyer-Buying Entity PSA) in favour of the Buyer, the Buyer shall provide to the 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 Subject to Article 10.4.1, not later than one (1) Month before the start of supply, Buyer through a scheduled bank open a Letter of Credit in favour of the 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 10.4.6 & 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, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

(i) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid to 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.”

24. 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, the provisions of Article 10.3 and 10.4 of the PPAs shall be abided by all the concerned parties to the present Petition.

25. 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.”

26. 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.

27. In the light of the discussions as above, it emerges that selection of the successful bidders and the tariff of the Projects has been carried out by SECI through a transparent process of competitive bidding in accordance with Guidelines issued by Ministry of Power, Government of India under Section 63 of the Act. The Petitioner vide its letter dated 4.10.2019 has certified that the process is in conformity with the Ministry of Power 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	Awarded Capacity (MW)	Tariff (INR/kWh)
Torrent Power Limited	115	2.76
Adani Green Energy Limited	300	2.76
Alfanar Company	300	2.77
Static Kabini Renewables Private Limited	300	2.77
Ecoren Energy India Private Limited	175	2.77
Total	1190	

28. The Petitioner has prayed to adopt the tariff discovered in the competitive bid process for the individual power projects as stated above and accordingly, we are adopting the tariff discovered through the tariff based competitive bid process for the individual power project as mentioned in para 27 above.

29. 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 upto 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.

30. The Petitioner has prayed to grant exemption from complying with the provisions of the Clause 5.1.1(b) of the Guidelines. The Petitioner has submitted that this provision in the Guidelines was introduced by Govt. of India for the first time w.e.f 8.12.2017 and there was no such provision under the previous Guidelines of wind power notified by the Central Government. As per Clause 5.1.1(b) of the Guidelines, Procurer is required to inform the Appropriate Commission about the initiation of the bidding process. However, the Petitioner did not inform the Commission regarding initiation of bidding. Since the Petitioner has undertaken that it will forward the intimation to the Commission henceforth before the initiation of the bidding process, we exempt the Petitioner to complying with the requirement specified in Clause 5.1.1(b) of the Guidelines in the present case. However, the Petitioner is directed to comply with such requirement in future.

31. The Petition No. 379/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