

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 161/AT/2019 and  
IA No. 85/2019**

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

**Date of Order: 28<sup>th</sup> February, 2020**

**In the matter of:**

Petition for approval of tariff under Section 63 of the Electricity Act, 2003 along with Section 79(1)(k) of the Electricity Act, 2003 for adoption of tariff for purchase of 50 MW Wind Power from Solar Energy Corporation of India Limited which has been discovered through a transparent process by way of a competitive bidding conducted in terms of the competitive bidding guidelines issued by the Ministry of Power under Section 63 of the Electricity Act, 2003.

**And**

**In the matter of**

1. Tata Power Delhi Distribution Ltd  
(TPDDL), NPDL House, Hudson Lines,  
Kingsway Camp, Delhi - 110 009.
  
2. Solar Energy Corporation of India Limited  
1<sup>st</sup> Floor, D3, A Wing,  
Prius Platinum Building,  
District Centre , Saket,  
New Delhi - 110 017.

**.....Petitioners**

**Vs**

1. Adani Green Energy (MP) Limited  
Adani House, Nr. Mithakhali Six Roads,  
Navrangpura, Ahmedabad,  
Gujarat – 380 015.
  
2. Alfanar Energy Private Limited  
4th Floor, 419/424 JMD Megapolis, Sector -48,  
Sohana Road, Gurgaon – 122 002,
  
3. Betam Wind Energy Private Limited

15<sup>th</sup> Floor, Block B, Vatika Towers,  
Sector 54, Golf Course Road,  
Gurugram - 122 002.

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

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

6. ReNew Wind Energy (AP2) Private Limited  
138, Ansal Chambers-II, Bhikaji Kama Place,  
Delhi -110 066.

7. Torrent Power Private Limited  
Samanvay, 600 Tapovan,  
Ambawadi , Ahmedabad - 380 015

8. Gridco Limited  
Janpath, Bhubaneshwar - 751 022  
Odisha.

9. North Bihar Power Distribution Company Limited  
3<sup>rd</sup> Floor and 2<sup>nd</sup> Floor,  
Vidyut Bhawan, Bailey Road,  
Patna - 800 001.

10. South Bihar Power Distribution Company Limited  
3<sup>rd</sup> Floor and 2<sup>nd</sup> Floor,  
Vidyut Bhawan, Bailey Road,  
Patna - 800 001.

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

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

13. Chhattisgarh State Power Distribution Company Limited  
P.O. Sundernagar,

Dangani, Raipur – 492 013.

14. Electricity Department,  
Government of Goa  
VidyutBhavan, 3<sup>rd</sup> Floor  
Panaji, Goa.

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

16. Jharkhand Bijli Vitran Nigam Limited  
Engineer's Building, Dhurwa,  
Ranchi - 834 004.

17. Madhya Pradesh Power Corporation Limited  
Block No. 11, Shakti Bhawan,  
Jabalpur - 482 008.

18. Punjab State Power Corporation Limited  
The Mall, PSEB Head Office,  
Baradari Patiala,  
Punjab – 147 001.

.....Respondents

**The following were present:**

- 1) Ms. Molshree Bhatnagar, Advocate, TPDDL
- 2) Ms. Shefali Sobti, TPDDL
- 3) Shri M.G. Ramachandran, Sr. Advocate, SECI
- 4) Ms. Tanya Sareen, Advocate, SECI
- 5) Shri Atulya Kumar Naik, SECI
- 6) Shri Tarun Mukhija, SECI
- 7) Shri Kartikey Tripathi, SECI

**ORDER**

The Petitioner, Tata Power Delhi Distribution Limited (hereinafter referred to as “TPDDL”), has filed the present Petition under Section 63 of the Electricity Act, 2003 read with Section 79(1) (k) of the Electricity Act, 2003 (hereinafter referred to as “the Act”) for adoption of tariff for purchase of 50 MW wind power from the Petitioner, Solar Energy Corporation of India Limited (SECI) which has been discovered through a

transparent process by way of competitive bidding conducted in terms of the guidelines dated 8.12.2017 issued by Ministry of Power, Government of India under Section 63 of the Electricity Act, 2003. The Petitioner has made the following prayers:

*“(a) Admit and allow the present Petition; and*

*b) Adopt the tariff i.e. Rs. 2.52/ kWh (including trading margin of Rs. 0.07/kWh) in terms of Section 63 of the Electricity Act, 2003;”*

### **Submission of the Petitioner**

2. The Petitioner, TPDDL, has submitted that being a distribution licensee, it is obligated to purchase the electricity from renewable sources for fulfillment of Renewable Purchase Obligations (RPOs) as specified in Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012 and Delhi Electricity Regulatory Commission (Business Plan) Regulations, 2017. Accordingly, pursuant to the competitive bid process conducted by SECI for setting up of grid connected Wind Power Projects for an aggregate capacity of 2000 MW (Tranche III) on Build, Own and Operate basis, TPDDL requisitioned 50 MW wind power after in-principle approval of Delhi Electricity Regulatory Commission (“DERC”). On 28.3.2018, TPDDL signed the Power Supply Agreement (hereinafter referred to as “PSA”) with SECI for procurement of 50 MW wind power for fulfillment of its Renewable Purchase Obligation and filed Petition No. 38 of 2018 before DERC seeking, *inter-alia*, adoption of tariff discovered through the competitive bid process along with trading margin and approval of Power Supply Agreement executed with SECI. DERC in its order dated 13.3.2019 approved the Power Supply Agreement. However, with regard to adoption of tariff along with trading

margin, DERC observed that the jurisdiction in respect of adoption of tariff lies with CERC and directed TPDDL to approach CERC. Accordingly, TPDDL has filed the present Petition.

### **Submissions of SECI during hearing on 5.9.2019**

3. The Petition was admitted on 2.7.2019 and notice was issued to SECI to file its reply. During the course of hearing of the matter on 5.9.2019, learned senior counsel for SECI submitted that PSA with TPDDL has been signed on the basis of the Power Purchase Agreement (hereinafter referred to as "PPA") to be executed/executed by SECI with the Wind Power Developers selected pursuant to the competitive bid process conducted for an aggregate capacity of 2000 MW. Learned senior counsel submitted that beside TPDDL, there are other distribution licensees also which are purchasing power from SECI by executing the PSAs on the basis of PPAs executed by SECI with such Wind Power Developers. Learned senior counsel further submitted that the said competitive bid process was conducted on the basis of '*Guidelines for Tariff based Competitive Bidding process for procurement of power from the Grid Connected Wind Power Projects*' (hereinafter referred to as 'the Guidelines') dated 8.12.2017 issued by Ministry of Power. Accordingly, the Commission may adopt the tariff in a comprehensive manner in regard to all such PPAs and PSAs to avoid multiplicity of the proceedings. Learned senior counsel sought permission to file an application for its transposition as the Petitioner by impleading the Wind Power Developers and Distribution Licensees/Buying Utilities as Respondents to the Petition. Learned counsel for the Petitioner, TPDDL had no objection in this regard. Accordingly, learned senior counsel for SECI was permitted to file transposition application in the Petition.

4. Pursuant to the liberty granted by the Commission, SECI has filed the IA No. 85/2019 with the following prayers:

*“a) Allow the present application;*

*b) Transpose Solar Energy Corporation of India Limited (SECI) as the second Petitioner and implead the Wind Power Developers (WPDs) and the Buying Entities as per the Memo of parties filed herewith as ‘Appendix A’ as Respondents;*

*c) Adopt the tariff discovered in the tariff based competitive bid process for the individual power projects as stated in Table 1 at paragraph 4 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. 1 to 7 in the amended memo of parties and the PSAs with the Buying Utilities/Distribution licensees being Petitioner No 1 and Respondent Nos. 8 to 18 in the amended memo of parties; and*

*d) 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 Paras 18-20 hereinabove.”*

5. After considering the submissions of the learned senior counsel for SECI and considering that TPDDL had no objection towards the same, vide Record of Proceedings for the hearing dated 19.11.2019, IA No. 85/2019 was allowed. Accordingly, SECI was directed to implead the Wind Power Developers and Distribution Licensees/Utilities as party to the Petition and notices were issued to them to file their replies. However, no reply has been filed by them.

### **Analysis and Decision**

6. We now proceed to consider the adoption of tariff in respect of the individual Wind Projects as discovered pursuant to the competitive bid process carried out in terms of the Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act.

7. 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.”*

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

9. The Ministry of Power, Government of India has notified the Guidelines under Section 63 of the Act vide Resolution No.23/54/2017- R & R dated 8.12.2017. The salient features of the Guidelines are as under:

(a) Guidelines are applicable for procurement of power by the Procurers from grid connected Wind Power Projects having, (a) individual size of 5 MW and above at one site with minimum bid capacity of 25 MW for intra-State projects; and (b) individual size of 50 MW and above at one site with minimum bid capacity of 50 MW for inter-State projects through tariff based competitive bidding to be conducted by Procurers which includes distribution licensee, or the Authorized Representative(s), or Intermediary Procurers.

(b) Procurer shall prepare the bid documents in accordance with the Guidelines and the Standard Bid Documents notified by the Ministry of Power, Govt. of India. If any deviation is proposed to be made in the Guidelines and Standard Bid Documents, approval of the Appropriate Commission would be necessary. Intimation about initiation of the bid process shall be sent by the Procurers to the Appropriate Commission.

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

(d) The Procurer has option to choose from two kinds of tariff based bidding, namely, (i) fixed tariff in Rs./kWh for 25 years or more, or (b) escalating tariff in Rs./kWh with pre-defined quantum of annual escalations fixed in Rs./kWh and number of years from which such fixed escalation will be provided.

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

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

(h) 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. For this purpose, e-procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used.

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

(k) The Procurer shall constitute 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.

10. In terms of the provisions of the Section 63 of the Act, we have to examine whether the process as per provisions of the Guidelines has been followed in the present case for arriving at the lowest tariff and for selection of the successful bidder(s).

11. 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 invite bids under Tariff Based Competitive Bidding process, enter into Power Purchase Agreements (PPAs) at the tariff discovered in the competitive bid process and enter into Power Sale Agreements (PSAs) with the Distribution licensees/Buying utilities to enable them to fulfill their Renewable Purchase Obligations under Section 86(1)(e) of the Act. SECI acts as an intermediary agency in purchase and sale of power under the PPAs and PSAs on back-to-back basis.

12. The Guidelines provide 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. As per the Guidelines, SECI in the capacity of intermediary agency, invited proposals for setting up of ISTS-connected Wind Power Projects on pan-India basis, on “Build, Own, and Operate” basis for an aggregate capacity of 2000 MW (Tranche III) and for 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/Distribution Licensees.

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

<b>Sr. No.</b>	<b>Milestone</b>	<b>Date</b>
1	Issuance of RfS by SECI	12.1.2018
2	Last date of submission of bid	2.2.2018
3	Opening of techno-commercial bids	2.2.2018
4	Opening of financial bids	13.2.2018
5	e-reverse Auction	13.2.2018
6	Issuance of Letter of Award to successful bidders	23.2.2018

14. On 12.1.2018, SECI issued Request for Selection document, along with draft PPA and PSA documents for setting up of 2000 MW ISTS-connected Wind Power Projects. According to SECI, it did not publish the notices in the newspapers as per the advisory issued by Ministry of Information and Broadcasting, Government of India dated 17.5.2017 mandating e-publishing of advertisements in the relevant portal. Accordingly, on 3.7.2018, SECI published notification indicating that the tenders of SECI would be published in its website and not in the newspapers.

15. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids for RfS dated 12.1.2018:

<b>Tender</b>	<b>Department</b>	<b>Offline and Online Techno-commercial and Financial Bid Opening</b>	<b>Techno-commercial and Financial evaluation and post-e-RA recommendation</b>
2000 MW ISTS-connected solar PV Projects	Solar/PS	Ms. Aditi Nitawre, Sr. Engineer	Sh. ISK Reddy, Dy. Manager
	Contracts	Sh. Kartik Ganesan, Sr. Engineer	Sh. Pratik Prasun, Dy. Manager
	Finance	Sh. Ajit Sharma, Senior Accounts Officer	Sh. Ajit Sharma, Senior Accounts Officer

16. Last date of submission of bid was 2.2.2018 and the technical part of the bid was opened on the same date. Response to RfS was received from the following bidders:

Sr.	Name of Bidders
1	Mytrah Energy (India) Private Limited
2	Orange Saundatti Wind Power Private Limited
3	ReNew Wind Energy AP2 Private Limited
4	Sprng Energy Private Limited
5	Torrent Power Limited
6	Inox Wind Infrastructure Services Limited
7	BLP Energy Private Limited
8	Adani Green Energy (MP) Limited
9	Hero Wind Energy Private Limited
10	Alfanar Company
11	Betam Wind Energy Private Limited
12	Green Infra Wind Energy Limited

17. The following were found eligible for e-Reverse auction:

Sr.	Bidders	Capacity (MW)	Tariff (INR/kWh)	Rank	Shortlisted Bidders (n=10 as per the formula)
1	Inox Wind Infrastructure Services Limited	200	2.47	L1	Inox Wind Infrastructure Services Limited
2	Torrent Power Limited	499.8	2.61	L2	Torrent Power Limited
3	Alfanar Company	300	2.62	L3	Alfanar Company
4	Green Infra Wind Energy Limited	300	2.67	L4	Green Infra Wind Energy Limited
5	Adani Green Energy (MP) Limited	250	2.68	L5	Adani Green Energy (MP) Limited
6	BLP Energy Private Limited	300	2.70	L6	BLP Energy Private Limited
7	ReNew Wind Energy AP2 Private Limited	400	2.71	L7	ReNew Wind Energy AP2 Private Limited

Sr.	Bidders	Capacity (MW)	Tariff (INR/kWh)	Rank	Shortlisted Bidders (n=10 as per the formula)
8	Betam Wind Energy Private Limited	250	2.71	L8	Betam Wind Energy Private Limited
9	Sprng Energy Private Limited	300	2.72	L9	Sprng Energy Private Limited
10	Orange Saundatti Wind Power Private Limited	100	2.75	L10	Orange Saundatti Wind Power Private Limited

18. The e-Reverse auction for 2000 MW capacity was carried out on 13.2.2018 in the presence of members of BEC. The following were declared as successful bidders:

Sl. No	Name of the Bidders	Bid Capacity (MW)	Final Tariff (INR/kWh)	Allotted Capacity (MW)
1	ReNew Wind Energy AP2 Private Limited	400	2.44	400
2	Green Infra Wind Energy Limited	300	2.44	300
3	Inox Wind Infrastructure Services Limited	200	2.44	200
4	Torrent Power Limited	499.80	2.44	499.80
5	Adani Green Energy (MP) Limited	250	2.45	250
6	Alfanar Company	300	2.45	300
7	Betam Wind Energy Private Limited	250	2.45	50.2
<b>Total</b>				<b>2000</b>

19. On 23.2.2018, SECI issued Letter of Intent to the above selected bidders.

20. Based on request of Buying Utilities/Distribution Licensees, the capacities were allocated as under:

S.No	State/UTs	Utility	Allocation (MW)
1.	Jharkhand	Jharkhand Bijli Vitran Nigam Limited	200

2	Punjab	Punjab State Power Corporation Limited	200
3	Delhi	BSES Rajdhani Power Limited	150
4	Delhi	BSES Yamuna Power Limited	50
5	Goa	Electricity Department, Government of Goa	50
6	Bihar	North Bihar Power Distribution and South Bihar Power Distribution Company Limited	300
7	Odhisa	GRIDCO Limited	50
8	Haryana	Haryana Power Purchase Centre	350
9	Madhya Pradesh	Madhya Pradesh Power Management Company Limited	450
10	Delhi	Tata Power Delhi Distribution Limited	50
11	Chhattisgarh	Chhattisgarh State Power Distribution Company Limited	150
<b>Total</b>			<b>2000</b>

21. Pursuant to Letters of Intent and allocation of capacity, SECI entered into PSAs dated 28.3.2018 with Jharkhand Bijli Vitran Nigam Limited, dated 23.3.2018 with Punjab State Power Corporation Limited, dated 28.3.2018 with BSES Rajdhani Power Limited, dated 3.4.2018 with BSES Yamuna Power Limited, dated 22.5.2018 with Electricity Department, Government of Goa, dated 6.4.2018 with North Bihar Power Distribution Company Limited & South Bihar Power Distribution Company Limited, dated 23.3.2018 with GRIDCO Limited, dated 2.4.2018 with Haryana Power Purchase Centre, dated 22.3.2018 with Madhya Pradesh Power Management Company Limited, dated 28.3.2018 with Tata Power Delhi Distribution Limited and dated 23.3.2018 with Chhattisgarh State Power Distribution Co. Limited. SECI entered into PPAs with the successful Wind Power Developers/their SPVs, namely, dated 23.5.2018 with ReNew Wind Energy (AP2) Private Limited, Green Infra Wind Energy Limited, Torrent Power Limited, dated 24.5.2018 with Inox Wind Infrastructure Services Limited, dated 28.6.2018 with Adani Green Energy (MP) Limited, dated 31.5.2018 with Alfancar Energy Private Limited and dated 13.7.2018 with Betam Wind Energy Private Limited.

22. 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. SECI vide its letter dated 19.9.2019 has certified that the process is in conformity with the Guidelines and no deviation was taken from the Guidelines in the RfS documents.

Relevant portion of the said letter dated 19.9.2019 is extracted as under:

*“With respect to the RfS No. SECI/C&P/WPD/2000MW/T3/RfS/112017 dated 12.1.2018, 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.”*

23. 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:

<b>Sl. No</b>	<b>WPD</b>	<b>Project Capacity (MW)</b>	<b>Applicable Tariff (INR/kWh)</b>
1	Renew Wind Energy AP2 Private Limited	100	2.44
	Renew Wind Energy AP2 Private Limited	300	2.44
2	Green Infra Wind Energy Limited	300	2.44
3	Inox Wind Infrastructure Services Limited-1	50	2.44
	Inox Wind Infrastructure Services Limited-2	50	2.44
	Inox Wind Infrastructure Services Limited-3	50	2.44
	Inox Wind Infrastructure Services Limited-4	50	2.44
4	Torrent Power Limited	300.3	2.44
	Torrent Power Limited	199.5	2.44
5	Adani Green Energy (MP) Limited	250	2.45
6	Alfanar Company	300	2.45
7	Betam Wind Energy Private Limited	50.2	2.45

Sl. No	WPD	Project Capacity (MW)	Applicable Tariff (INR/kWh)
	<b>Total</b>	<b>2000</b>	

24. 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.”*

25. 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.”

26. Regulation 9(10) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 (hereinafter referred to as “Trading Licence Regulations”) provides as under:

9. (10) *The Trading Licensee shall make payment of dues by the agreed due date to the seller for purchase of the agreed quantum of electricity through an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller. Such escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller shall be equivalent to:*

*(a) one point one (1.1) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts;*

*(b) one point zero five (1.05) times of contract value for short term contracts.”*

27. The above provisions provide for payment security mechanism to be complied with by the parties to the present Petition. Accordingly, the provisions of Articles 10.3 and 10.4 of the PPAs and Regulation 9(10) of the Trading Licence Regulations shall be abided by all the concerned parties to the present Petition.

28. SECI has prayed to adopt the trading margin of Rs. 0.07/kWh. Regulation 8(1)(d) of the Trading Licence Regulations provides as under:

*“8(1)(d) For the transactions under long-term contracts, the trading margin shall be as mutually decided between the Trading licensee and the seller:”*

The above provision gives choice to the contracting parties to mutually agree on Trading Margin for long-term transaction. Accordingly, the Commission cannot adopt any Trading Margin. The Petitioner shall be governed by the above provisions of the Trading Licence Regulations. In view of the above, the prayer of SECI to adopt the Trading Margin is decided accordingly.

29. However, Proviso under Regulation 8(1)(d) of the Trading Licence Regulations provides as under:

*“8(1)(d) \* \* \* \* \**

*Provided that in contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.”*

In addition, Regulation 8(1)(f) of the Trading Licence Regulations provides as under:

*“8 (1)(f). For transactions under Back to Back contracts, where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.”*

Thus, the Petitioner, SECI shall also be governed by the above provisions of the Trading Licence Regulations.

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

31. The Petition No. 161/AT/2019 along with IA No. 85/2019 is disposed of in terms of the above.

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

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