

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 178/AT/2021

Coram:

Shri P. K. Pujari, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 22nd December, 2021

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 970 MW Wind Power Projects (Tranche-IX) [with option of blending solar power] connected through inter-State Transmission System and selected through Competitive Bidding Process as per the Guidelines dated 25.6.2020 of Ministry of New and Renewable Energy, Government of India.

And

In the matter of

Solar Energy Corporation of India Limited,
6th Floor, Plate-B, NBCC Office Block Tower-2,
East Kidwai Nagar,
New Delhi –110023.

....Petitioner

Vs

1. Vena Energy Vidyuth Private Limited,
2/1, First Floor, No. 21, Embassy Icon Annexe,
Infantry Road, Bangalore,
Karnataka – 560 001.

2. JSW Future Energy Limited,
(formerly JSW Solar Limited)
JSW Centre, Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051.

3. JSW Renew Energy Limited,
[Project Company of JSW Future Energy Limited]
JSW Centre, Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051.

4. Madhya Pradesh Power Management Company Limited,
Block No.11, Shakti Bhawan,
Jabalpur – 482 008, Madhya Pradesh.

5. West Bengal State Electricity Distribution Company Limited,
Vidyut Bhawan, 8th Floor, Block DJ,
Sector-II, Salt Lake, Kolkata,
West Bengal – 700 091.

6. Chhattisgarh State Power Distribution Company Limited,
4th Floor, Vidyut Seva Bhawan,
Danganiya, Sunder Nagar,
Raipur, Chhattisgarh–492013.

...Respondents

The following were present:

Shri M. G. Ramachandran, Senior, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Shri Shubham Arya, Advocate, SECI
Shri Atulya Kumar Naik, Advocate, SECI
Shri Shibasish Das, SECI
Shri Mudit Jain, SECI

ORDER

The Petitioner, Solar Energy Corporation of India Limited ('SECI'), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') for adoption of tariff for 970 MW wind power projects (Tranche-IX) [with option of blending solar power] connected to inter-State transmission system ('ISTS') and selected through competitive bidding process as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from 2500 MW ISTS Connected Blended Wind Power Projects" (hereinafter referred to as 'the Guidelines') dated 25.6.2020 issued by Ministry of Power, Government of India. The Petitioner has made the following prayers:

“(a) Admit the present Petition;

(b) Adopt the tariff discovered in the tariff based competitive bid process for the individual power projects as stated in Table-2 at para 11 above on the terms and conditions contained in the Power Purchase Agreements entered into with the Respondent Nos.1 and 3 read with the Power Sale Agreements executed with Respondent Nos. 4, 5, 6;

(c) Approve Trading Margin of Rs.0.07/kWh as agreed to by the Distribution Companies in the signed PSAs in terms of Regulation 8 (1) (d) of the Trading License Regulations, 2020; and

(d) Recognize, in terms of Article 12.2 of the PPAs and Article 8.2 of the PSAs, that the change in rates of Safeguard Duty, GST and Basic Customs Duty after 28.07.2020, if any, will be considered as Change in Law subject to the fulfillment of the conditions contained therein.”

Submission of the Petitioner

2. The Petitioner, SECI has submitted that it issued Request for Selection ('RfS') along with draft Power Purchase Agreement ('PPA') and draft Power Supply Agreement ('PSA') for selection of 2000 MW ISTS connected wind power projects (Tranche-IX) as per "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects" dated 8.12.2017 and floated the same on ISN Electronic Tender System (ETS) e-bidding portal on 20.3.2020. However, subsequently, on 25.6.2020, the Ministry of New and Renewable Energy ('MNRE'), Government of India notified the Guidelines dated 25.6.2020 and, therefore, the RfS documents, draft PPA and PSA were amended vide Amendment No. 2 dated 8.7.2020 to bring them in line with the Guidelines including increase in the capacity under RfS documents to 2500 MW. It has been submitted that in pursuance of the above, three bids were received offering an aggregate capacity of 1210 MW and were found to fully meet the technical criteria. All the three bidders were shortlisted for participating in the e-reverse auction. The e-reverse auction was conducted on 14.8.2020 on ISN ETS e-bidding portal and

pursuant thereto, two bidders, namely, Vena Energy Vidyuth Private Limited (for 160 MW @ Rs.2.99/kWh) and JSW Solar Limited (for 1000 MW @ Rs.3.00/kWh) were selected and issued the Letters of Award. The Petitioner has entered into PPAs with the aforesaid successful bidder(s)/ their Project Companies and PSAs with Distribution Companies, Respondents No. 4 to Respondent No. 6, based on their requisitions. The Petitioner has submitted that the selected wind power projects are scheduled to be commissioned during the financial years 2022-23 & 2023-24 and will enable the Distribution Companies in meeting their Renewable Purchase Obligations apart from providing power at very economical rates. It has been further submitted that in addition to the tariff, there will be the trading margin of Rs. 0.07/kWh to be recovered from the Distribution Companies, which have been duly agreed to by the Distribution Companies in the PSAs. The Petitioner has submitted that Article 12.1.3 of the PPAs entered into between SECI and Wind Power Developers and Article 8.1.3 of the PSAs entered into by SECI with Distribution Companies provide that change in rates of Safeguard Duty, GST and Basic Custom Duty after 28.7.2020, if any, will be considered as Change in Law subject to the provision that the Appropriate Commission recognizes such provisions at the time of adoption of tariff and, accordingly, the Petitioner has prayed for recognition of the above provisions.

3. The matter was heard on 12.10.2021 and notices were issued to the Respondents to file their reply. During the course of hearing, the learned senior counsel for the Petitioner submitted that the 'Change in Law' provision incorporated in the bid documents are pursuant to the approval of the Central Government and, thus, departure from the provisions specified in the Guidelines does not amount to deviation in the bid

documents. The learned senior counsel sought liberty to place on record the letters of Central Government in this regard by way of an additional affidavit. Pursuant to the liberty granted by the Commission, SECI filed its additional affidavit dated 20.10.2021. However, none of the Respondents have filed any reply to the Petition.

4. The Petitioner vide its affidavit dated 20.10.2021 has placed on record letter dated 26.11.2020 and e-mail dated 13.1.2021 sent by SECI to Ministry of New and Renewable Energy requesting to modify certain provisions of the Guidelines and allowing SECI to make changes with respect to certain provisions in the Scheme documents to accommodate the concern of the various stakeholders, to enable SECI to enter into PSAs and PPAs. The Petitioner has also placed on record the letter dated 1.3.2021 and letter dated 18.12.2020 issued by MNRE granting ex-post facto approval for changes in respect of certain provisions vis-à-vis the Guidelines in respect of (i) bids that have been issued but not closed, and (ii) bids that have been issued and closed by SECI, etc.

5. The matter was thereafter called out for virtual hearing on 23.11.2021 and during the course of hearing, the learned senior counsel for the Petitioner submitted that certain Change in Law items, namely change in rate of Safeguard Duty, GST and Basic Custom Duty after 28.7.2020 have been incorporated in Article 12.1.3 of the PPA which are required to be recognized by the Commission at the time of adoption of tariff as all the parties of the PPAs and PSAs have agreed for the same. The learned counsel further submitted that while the Petitioner has taken certain deviations in the PPA and PSA from the provisions of the Guidelines with regard to 'Change in Law' provisions, such deviations have been approved by MNRE. Therefore, the departure from the

provisions specified in the Guidelines may not amount to deviation in the bid documents and, accordingly, the Petitioner has furnished the conformity certificate to the effect that no deviations have been taken in the bid documents from the Guidelines. The learned senior counsel for the Petitioner further pointed out that under Article 12.2.3 of the PPA, a pre-determined Change in Law relief has been specified whereby for every net increase/ decrease of Rs. 1 lakh/MW in the project cost, there shall be corresponding increase/ decrease of an amount equal to Rs.0.0045/kWh.

Analysis and Decision

6. We now proceed to consider the prayer of the Petitioner as regards adoption of tariff in respect of wind power 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 Government of India under Section 63 of the Act, has been followed in determination of such tariff.

9. The Ministry of New and Renewable Energy, Government of India has issued the Guidelines under Section 63 of the Act vide F. No. 238/1/2017-Wind Part (I) on 25.6.2020. The salient features of the Guidelines are as under:

a) The Guidelines are aimed at providing a framework for procurement of electricity from 2500 MW Grid Connected Wind Power Projects with up to 20% blending of Solar PV Power ('Blended Wind Power Project') through a transparent process of bidding and for defining of roles and responsibilities of various stakeholders.

b) The Guidelines are issued for long-term procurement of electricity through competitive bidding process by procurer(s) from Blended Wind Power Projects. Minimum size of the project at one site will be 50 MW and minimum bid capacity by one bidder will also be 50 MW. However, the rated power capacity of any wind power project shall be at least 80% of the total contracted capacity.

c) Intermediary procurer shall prepare the bid documents in accordance with the Guidelines. 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 to the Appropriate Commission.

d) The procurer may also choose to specify the maximum capacity that can be allotted to a single bidder including its Affiliates. The maximum capacity for single bidder or company or group of companies may be fixed by the intermediary procurer keeping in mind factors such as economies of scale, land availability, expected competition and need for development of the market. For procurement of power, the tariff quoted by the bidder shall be the bidding parameter.

e) The draft PPA proposed to be entered into with the successful bidder and draft PSA shall be issued along with the RfS. Standard provisions to be incorporated as part of the PPA shall include *inter alia* PPA period, Capacity Utilization Factor, Repowering, Payment Security, Change in Law, Force Majeure,

Generation Compensation for off-take constraints, event of default and consequences thereof, etc.

f) Intermediary procurer shall provide payment security to 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 tied up with such fund.

g) Distribution licensees shall provide payment security to the intermediary procurer through revolving Letter of Credit of an amount not less than one month`s average billing from the project(s) under consideration and State Government Guarantee. The distribution licensee may also choose to provide Payment Security Fund for at least three months' billing of all the projects tied up with such fund.

h) SECI shall call the bids adopting a single stage bidding process to be conducted through electronic mode (e-bidding). SECI will conduct e-reverse auction for final selection of bidders for which e-procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used.

i) The bidding documents including RfS, draft PPA shall be prepared by SECI in consonance with these Guidelines. RfS notice shall be well publicized including on SECI's website. Standard provisions to be provided in the RfS stage shall include bid responsiveness, technical criteria, financial criteria, net worth, liquidity, quantum of earnest money deposit and compliance of laws by foreign bidders.

j) SECI shall constitute committee for evaluation of the bids (Evaluation Committee), with at least three members, including at least one member with expertise in financial matters/ bid evaluation. The price bid shall be rejected if it contains any deviation from the bid conditions.

k) Bidder shall submit non-refundable processing fee as specified in the RfS, separate technical and price 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.

l) The comparison of bids shall be on the basis of the bidding criteria as specified in the RfS, i.e. the fixed tariff or the first year tariff. Ranking of the bidders will start from the bidder quoting the 'lowest tariff (L1)'. The selection of all successful bidders would be on bucket filling approach starting with L1 till entire capacity of 2500 MW is full.

m) PPA shall be signed with the successful bidder/ project company or an SPV formed by the successful bidder. After execution of PPA, SECI shall disclose the name(s) of the successful bidder(s) and the tariff quoted by them together with breakup into components, if any.

n) Subject to the provisions of the Act, SECI shall approach the Appropriate Commission for adoption of tariff in terms of Section 63 of the Act within one month of signing of PPA.

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. The Petitioner, has been designated as the nodal agency for implementation of MNRE Schemes for setting up of inter-State Transmission System connected/ State specific wind/ solar power/ wind-solar hybrid power projects; invite bidding under tariff based competitive bidding process; enter into PPAs with developers at the tariff discovered in the competitive bid process; and enter into PSAs with the distribution

licensees 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 framework for long-term procurement of electricity from 2500 MW grid connected wind power projects with up to 20% blending with solar PV power projects through a transparent process of bidding by the procurer(s). The Guidelines provide for minimum size of project at one site as 50 MW. As per the Guidelines, SECI, in the capacity of intermediary procurer, invited proposals for selection of wind power projects for setting up 2500 MW ISTS connected blended wind power projects in India (Tranche- IX). As per the arrangements, SECI is to procure the power by entering into PPAs with the successful bidder with back-to-back PSAs for sale of power to the distribution licensees.

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

Sr. No.	Event/Milestone	Date
1	Issuance of RfS documents	20.3.2020
2	Amendments to RfS documents	29.5.2020 to 13.7.2020
3	Last date for submissions of online bid	28.7.2020
4	Opening of technical bid	29.7.2020
5	Opening of financial bid	13.8.2020
6	e-Reverse Auction	14.8.2020
7	Issuance of Letter of Award	25.9.2020

14. On 20.3.2020, SECI issued the RfS documents, along with draft PPA and PSA documents for setting up of 2000 MW ISTS-connected wind power projects (Tranche- IX). It is observed that initially the RfS documents were floated under “Guidelines for

Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects” dated 8.12.2017. Subsequently, the RfS documents along with draft PPA and PSA were amended on multiple occasions starting from 29.5.2020 to 13.7.2020 and by such amendments, the RfS documents including the draft PPA and PSA were brought in line with the Guidelines issued on 25.6.2020. As per Clause 9.4 of the Guidelines, RfS notice is required to be well publicized including on SECI’s website. In this regard, SECI has placed on record document demonstrating publication of RfS on the e-publishing system, Government of India. It is further submitted that 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 tenders of SECI would be published in its website and not in newspapers.

15. As per Clause 6.1(b) of the Guidelines, procurer is required to inform the Appropriate Commission about initiation of the bidding process. SECI vide its letter dated 5.5.2020 had informed the Commission that it has initiated the competitive bidding process for procurement of power from the grid connected wind power projects. Although the said intimation was in terms of Clause 5.1(b) of the ‘Guidelines for Tariff Based Competitive Bidding Process for Procurement of Wind Power from the Grid Connected Wind Power Projects’ dated 8.12.2017 and not the Guidelines dated 25.6.2020, we deem it appropriate to consider the same as the bid documents were brought under the Guidelines dated 25.6.2020 by way of amendments thereto and it was not an initiation of fresh bidding process under the Guidelines dated 25.6.2020.

16. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids for RfS dated 20.3.2020:

Tender	Department	Offline and Online Techno- commercial and Financial Bid Opening	Techno-commercial and Financial evaluation and post-e-RA recommendation
Setting up of 2500 MW STS Connected Blended Wind Power Projects in India under Tariff Based Competitive Bidding (Tranche-IX)	Power system	Sh. Debajyoti Bordoloi, Senior Manager (PS)	Sh. Shubham Mishra, Manager (PS)
	Contracts	Sh. Jayansh Gaur, Senior Manager (C & P)	Sh. Biblesh Meena, Dy.Manager
	Finance	Ms. Anuja Garg, Manager (Finance)	Ms. Anuja Garg, Manager (Finance)

17. Last date of submission of bid was 28.7.2020 and technical part of the bid was opened on 29.7.2020. Response to RfS was received from the following three bidders:

Sr. No.	Name of Bidders
1.	Vena Energy Vidyuth Private Limited
2.	JSW Solar Limited
3.	Inox Wind Infrastructure Services Limited

18. Pursuant to the opening and evaluation of technical and financial bids, all the three bidders were found eligible for participating in the e-reverse auction. E-reverse auction was carried out on 14.8.2020 in ISN ETS e-bidding portal. The final tariff and the selection of the bidders were arrived after completion of e-reverse auction. The result of e-reverse auction is as under:

Sr. No.	Bidders	Bidder`s Quantity (MW)	Tariff (Rs./kWh)	Allotted Capacity (MW)
1.	Vena Energy Vidyuth Private Limited	160	2.99	160
2.	JSW Solar Limited	1000	3.00	810
Total				970 MW

19. On 25.9.2020, SECI issued the Letter of Awards to the aforesaid successful bidders, namely, Vena Energy Vidyuth Private Limited and JSW Solar Energy Private Limited for 160 MW and 810 MW (for 500 MW and for 310 MW separately) respectively. Relevant extract of Letter of Award issued to one of the successful bidders, namely, Vena Energy Vidyuth Private Limited is as under:

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

Allotted Project ID	Project Capacity (MW)	Applicable Tariff (INR/kWh) in figure	Applicable Tariff (INR/kWh) in words
WPD-ISTS-T9-VEVPL-P1-160MW	160	2.99/-	Rupees Two and Ninety-nine Paise only

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

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

1.1 The Wind Power Project may be blended with Solar PV Power Projects, of rated capacity up to 20% of the Contracted Capacity as per the PPA.

1.2 The WPD will be free to avail fiscal incentives like Accelerated Depreciation, Concessional Customs 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.

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

1.4 No change in the shareholding of the Bidding Company or Bidding Consortium shall be permitted from the date of submission of response to RfS till the execution of the PPA. However, in case the Project is being set up by a listed Company, this condition will not be

applicable. 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 the COD of the Project, except with the prior approval of SECI. However, in case the Project is being set up by a listed company, this condition will not be applicable.

1.5 In case of companies having multiple promoters (but none of the shareholders having not less than 51% of voting rights and paid up share capital), it shall be considered as a company under joint control. In such cases, the shareholding pattern in the company as submitted at the time of bidding, shall be maintained for a period of 01 (one) year after COD.

1.6 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 after the COD, except with the prior approval of SECI. In the event, the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the PPA, shall not fall below 51% at any time prior to 1 (one) year after COD, except with the prior approval of SECI. However, in case the Project is being set up by listed Company, this condition will not be applicable.

1.7 The WPD shall pay to SECI, Success Charges of Rs.1 lakh/MW/project +18% GST within 30 days of issuance of this Letter of Award (LOA), in line with Clause 3.12 of the RfS, towards administrative overheads, coordination with State Authorities, Discom/STU/CTU and others, pre-commissioning and commissioning expense. Performance Bank Guarantee(s)/Payment on Order Instrument (POI) for a value of @Rs.12 Lakh/MW per Project shall be submitted by the WPD at least 07 working days prior to signing of PPA (PPA signing date to be intimated by SECI) in line with Clause 3.11 of the RfS.

1.8 PPA will be executed between SECI and WPD as per the breakup of the cumulative Project capacity awarded to the Bidder. This LoA is being issued in line with the Project breakup of the cumulative capacity quoted in the Covering Letter as part of your response to RfS and amended subsequently, as applicable.

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

1.10. The WPD will have to submit the required documents as mentioned below to SECI within 70 days from the date of this LoA. 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 WPD.
- 2) The details of promoters and their shareholding in the WPD, duly certified by

the practicing Chartered Accountant/ Company Secretary in original at least 7 (seven) days prior to date of their document submission (certificate date should be after the date of LoA) along with latest documents filed with ROC).

- 3) Copy of the Memorandum of Association (MoA) of the WPD highlighting the object clause related to generation of Power/ Energy/ Renewable Energy/ Wind Power plant development.*
- 4) In case the project being executed by a Special Purpose Vehicle (SPV) incorporated by successful bidder, such SPV shall be at least 76% shareholding subsidiary, in line with provisions of the RfS. Further, the Successful Bidder shall submit a Board Resolution prior to signing of PPA with SECI, committing total equity infusion in the SPV as per the provisions of RfS.*

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

1.11 SECI shall have the right to verify original documents of the WPD for which copies have been submitted from the date of submission of response to RfS till date, if required. PPA as per the format given along with RfS has to be signed within 90 days from the date of issue of LoA, if not extended by SECI. In case of unavoidable delays on the part of the WPD 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 or PSAs, the Effective Date of the PPA shall then be the date as on 7 days from signing date of PSA for total capacity of respective project.

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

1.13 The WPD shall meet financial closure requirements for the Project in line with clause 3.16 of the RfS document, within 12 (twelve) months from the Effective Date of the PPA. Accordingly, the WPD shall furnish the documents pertaining to compliance of financial closure as per the above provisions.

1.14 The WPD/Project Company shall achieve commissioning of full capacity of the Project within 24 months from the Effective Date of the PPA, or from the Effective Date of

PSA, whichever is later, as per the conditions stipulated in Clause 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....'

20. Pursuant to issuance of Letter of Award and allocation of capacity, SECI has entered into PPA dated 3.5.2021 with Vena Energy Vidyuth Private Limited for 160 MW, PPAs dated 1.5.2021 and 27.7.2021 with JSW Renew Energy Limited (SPV of JSW Solar Limited) for 540 MW and 270 MW respectively. Further, pursuant to allocation of capacity, SECI has entered into back-to-back PSAs with distribution companies, namely, PSA dated 5.3.2021 with Madhya Pradesh Power Management Company Limited for procurement of 700 MW, PSA dated 30.6.2021 with West Bengal State Electricity Distribution Company Limited for procurement of 100 MW, and PSA dated 2.7.2021 with Chhattisgarh State Power Distribution Company Limited for procurement of 170 MW.

21. The Petitioner has submitted that it has taken certain deviations in the bid documents from the provisions of the Guidelines with regard to the provisions of the Change in Law. However, such changes have been incorporated pursuant to the approval of Ministry of New and Renewable Energy vide letter dated 18.12.2020 and letter dated 1.3.2021, whereby MNRE in exercise of its powers to issue clarification/modification under the Guidelines, accorded *ex-post facto* approval for changes in respect of certain provisions vis-à-vis Guidelines in respect of (i) bid that have been issued but not closed; and (ii) bids that have been issued and closed by SECI and the aforesaid letters of MNRE have been placed on record by SECI vide its affidavit dated 20.10.2021.

22. We have considered the submissions made by the Petitioner. As regards deviations from the Guidelines, we observe that while the Guidelines provide for determination of quantum of compensation for off-setting the financial impact due to increase/ decrease in the costs on account of occurrence of Change in Law event by the Appropriate Commission, the Petitioner in PPA and PSA has provided for pre-determined quantum of compensation for Change in Law events, whereby for every net increase/ decrease of Rs.1 lakh per MW in the project cost, there shall be corresponding increase/ decrease of an amount equal to Rs.0.0045/kWh.

23. The Petitioner has submitted that such deviations have been approved by the Ministry of New and Renewable Energy, Government of India and vide affidavit dated 20.10.2021, it has placed on record the correspondence exchanged with MNRE in this regard. The Petitioner SECI has placed on record its letter dated 26.11.2020 and e-mail dated 13.1.2021 sent to MNRE requesting for certain modifications to the Guidelines to accommodate the concerns of various stakeholders, to allow SECI to incorporate changes in the Scheme documents and to enter into PSAs and PPAs, etc. The Petitioner has also placed on record letters dated 18.12.2020 and 1.3.2021 issued by MNRE to SECI, whereby MNRE in exercise of its powers to issue clarifications/ modifications under the Guidelines, granted ex-post facto approval for changes in respect of certain provisions vis-à-vis the Guidelines in respect of (i) bids that have been issued but not closed; and (ii) bids that have been issued and closed by SECI. The relevant extract of the letter of MNRE dated 1.3.2021 is as under:

*“ The Chairman & Managing Director
Solar Energy Corporation of India (SECI)*

Sub: SECI`s request for allowing Deviation from Standard Bidding Guidelines, in respect

of Bids by SECI for procurement of power-Reg

Sir,

This is in reference to the SECI's letter No. SECI/SD/Misc/40098 dated 26.11.2020 (Copy enclosed) and subsequent email dated 13.01.2021 (copy enclosed) on the subject issue:

2. *In this regard, the undersigned is directed to inform SECI that:*

.....

III. Meanwhile, SECI is allowed to make changes/deviations, as per SECI's proposal in aforesaid letter/email, on the points mentioned below, both in bids that have been issued but not closed and in bids that have been issued and closed. However, where the bids have been closed, SECI should be very carefully ensure that no additional benefit accrues to the successful bidder and there is no impact on the discovered tariff;

- a. Termination compensation on Account of Non-Natural Force Majeure Conditions;*
- b. Option of taking over of the Project assets by the Buying Entities in case of SPD's Event of Default.*
- c. Change in Law provisions*
- d. Additional Risk Premium of Rs.0.10/kWh.*

3. *This issues in line with the approval of Hon`ble Minister (NRE & Power)..."*

24. Thus, as per above letter of MNRE, SECI has been permitted to make changes/ deviations from the Guidelines, as per SECI's proposal vide its letter dated 26.11.2020 and e-mail dated 13.1.2021, which *inter-alia* included the changes/ deviations to the provisions of the Change in Law, both in (i) the bids that have been issued but not closed and (ii) the bids that have been issued and closed.

25. The bids covered under the present petition falls under the second set of bids (where bids have been issued and closed), as the last date of submission of bid was 28.7.2020 and even the Lol was issued on 25.9.2020, whereas the deviations were approved by MNRE vide its letter dated 1.3.2021. Further, in the said letter dated 1.3.2021, MNRE directed SECI as under:

"...However, where the bids have been closed, SECI should be very carefully ensure that no additional benefit accrues to the successful bidder and there is no impact on the

discovered tariff;...

26. Given the fact that the bidding in the present case was already closed at the time of issuance of the aforesaid approval of deviations by the MNRE, the question that arises before the Commission is whether such approval of deviations from the bidding guidelines after the closure of bids violates the sanctity of bidding process rendering the bidding vitiated.

27. We observe that the modified Change in Law provisions appear to have been already incorporated in the Bid documents at the time of issuance of the same. Therefore, it does not appear to be a case that such provisions have been introduced after the closure of the bid and thus, bidder(s) participating in the bid were made aware about the said provisions. At the same time, the fact remains that the said deviations were not approved by the competent authority at the time of their incorporation in the Bid documents prior to closure of bids and the approval granted for the same was only on ex-post facto basis. The Commission would like to advise the intermediary agencies including SECI that they must invariably always comply with all the procedural and legal requirements in letter and spirit and not have lapses as in the present case.

28. As per the Guidelines, Evaluation Committee is required to certify that the bidding process and the evaluation have been conducted in conformity with the provisions of the RfS. We observe that the Petitioner has made submissions that the bid documents are in line with the provisions of the Guidelines and the approvals of MNRE vide letter dated 1.3.2021. This has been certified by the Petitioner through the

conformity certificate dated 18.2.2021 as furnished by the Petitioner. The relevant extract of the said conformity certificate dated 18.2.2021 is re-produced as under:

“With respect to the RfS no. SECI/C&P/WPD/2500MW/T9/RfS/032020 dated 20.3.2020, it is hereby declared as follows:

....

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. .”

29. We observe that though MNRE, in exercise of its powers to issue clarifications/modifications under the Guidelines, gave ex-post facto approval for changes in respect of certain provisions in the Guidelines only vide letter 1.3.2021, the conformity certificate furnished by the Petitioner is dated 18.2.2021, which is prior to 1.3.2021. This clearly implies that on the date the conformity certificate was issued there was no approval from the MNRE. We consider this a serious lapse on the part of the Petitioner. Once again, the Commission would like to advise the intermediary agencies including SECI that they must invariably always comply with all the procedural and legal requirements in letter and spirit and not have lapses as in the present case.

30. We further observe that the Petitioner vide the aforesaid conformity certificate dated 18.2.2021 has also stated that the Evaluation Committee constituted for evaluation of bids has conducted the techno-commercial and financial bid evaluation in conformity with the provisions of the RfS. The relevant extract of the aforesaid conformity certificate dated 18.2.2021 is extracted as under:

“1. After the conclusion of bid submission, the Evaluation Committee constituted for evaluation of bids has conducted the tech-commercial as well as financial bid evaluation in conformity to the provisions of the RfS.....”

31. As discussed above, it emerges that the selection of the successful bidders has been done and the tariff of the blended wind power projects has been discovered by the Petitioner, SECI through a transparent process of competitive bidding in accordance with Guidelines issued by Ministry of New and Renewable Energy, Government of India under Section 63 of the Act. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff for the blended wind power project as agreed to by the successful bidders, which shall remain valid throughout the period covered in the PPA and PSAs:

Sr. No.	Bidder(s)	Tariff (INR /kWh)	Allotted Capacity (MW)
1.	Vena Energy Vidyuth Private Limited	2.99	160
2.	JSW Solar Limited	3.00	500
3.	JSW Solar Limited	3.00	310
	Total		970

32. Article 10.3 of the PPA provides as under:

“10.3 Payment of Monthly Bills

10.3.1 SECI 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 as 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 SECI, 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 (the “WPD’s Designated Account”) for all Tariff Payments (including Supplementary Bills) to be made by SECI to the WPD, and notify SECI of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. SECI shall also designate a bank account at New Delhi (“SECI Designated Account”) for payments to be made by the WPD to SECI, if any, and notify the WPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. SECI and the WPD shall instruct their respective bankers to make all payments under this Agreement to the WPD’s

Designated Account or SECI's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day."

33. Article 10.4 of the PPA provides as under:

"10.4 Payment Security Mechanism

Letter of Credit (LC):

10.4.1 SECI shall provide to the WPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained which may be drawn upon by the WPD in accordance with this Article. 1

10.4.2 Before the start of supply, SECI through a scheduled bank open a Letter of Credit in favour of the WPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

i) for the first Contract Year, equal to 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 30 days beyond the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, SECI shall restore such shortfall before next drawl.

10.4.5 SECI shall cause the scheduled bank issuing the Letter of Credit to intimate the WPD, in writing regarding establishing of such irrevocable Letter of Credit.

10.4.6 SECI shall ensure that the Letter of Credit shall be renewed not later than its expiry.

10.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by SECI.

10.4.8 If SECI fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including date as on 30 days beyond the Due Date, then, subject to Article 10.4.6 & 10.5.2, the WPD may draw upon the Letter of Credit, and accordingly the bank shall pay, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

i) a copy of the Monthly Bill or Supplementary Bill 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;”

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

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

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

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

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

36. The Petitioner, SECI has also prayed to approve trading margin of Rs.0.07/kWh as agreed to by the Distribution Companies in the signed PSAs in terms of Regulation 8(1)(d) of the Trading Licence Regulations. In this regard, Clause (1)(d) of Regulation 8 of the Trading Licence Regulations provides as under:

“For transaction under long term contracts, the trading margin shall be decided mutually between the Trading Licensee and the seller.”

37. The above provision gives choice to the contracting parties to mutually agree on trading margin for long-term transaction.

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

*“8(1) (d) * * * * **

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

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

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

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

41. In summary, in terms of Section 63 of the Act, the Commission adopts the tariff (as at paragraph 31 of this order) for the blended wind power projects as the same has been discovered through transparent competitive bidding process in terms of the Guidelines and shall remain valid throughout the period covered in the PSAs and PPA.

42. Additionally, the Petitioner has also prayed to recognize, in terms of Article 12.2 of the PPAs and Article 8.2 of the PSAs, that the changes in the rates of Safeguard Duty, GST and Basic Customs Duty after 28.7.2020, if any, will be considered as Change in Law subject to the fulfillment of the conditions contained therein. The Article 12.1.3 of the PPAs and Article 8.1.3 of the PSAs read as under:

PPAs:

ARTICLE 12: CHANGE IN LAW

.....
12.1.3 However, in case of change in rates of safeguard duty, GST and basic customs duty after 28.07.2020 and resulting in change in Project Cost, then such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties and shall be provided to the affected party by the other party as per Article 12.2.3, subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff by the Appropriate Commission and any decision in this regard shall be governing on WPD and Buying Entity.

PSAs:

ARTICLE 8: CHANGE IN LAW

.....
8.1.3 However, in case of change in rates of safeguard duty, GST and basic customs duty after 28.07.2020 (last date of bid submission) and resulting in change in Project Cost, then such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties and shall be provided to the affected party by the other party as per Article 8.2.3, subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff by the Appropriate Commission and any decision in this regard shall be governing on WPD and Buying Entity.

43. Perusal of the above Articles of the PPAs/PSAs reveals that the parties have agreed that in case of changes in rates of Safeguard Duty, GST and Basic Customs Duty after 28.7.2020 and resulting in Change in project cost, such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties shall be provided to the affected party as per Article 12.2.3 subject to the provision that Appropriate Commission recognizes such provisions

at the time of adoption of tariff and any decision in this regard shall be governing on WPD and buying entity.

44. With regard to prayer of the Petitioner to recognize the Change in Law provisions of the PPAs/ PSAs, we note that Ministry of Power, Government of India has notified the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as “the Change in Law Rules”). Relevant portion of Change in Law Rules notified by the Ministry of Power, Government of India, are extracted as under:

“2(c) “change in law”, in relation to tariff, unless otherwise defined in the agreement, means any enactment or amendment or repeal of any law, made after the determination of tariff under section 62 or section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes —

- (i) -----*
- (ii) -----*
- (iii) -----*

3. Adjustment in tariff on change in law— (1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.

(2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

(3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.

(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.

(5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated -

- (a) where the agreement lays down any formula, in accordance with such formula;*
or
- (b) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;*

(6) *The recovery of the impacted amount, in case of the fixed amount shall be —
(a) in case of generation project, within a period of one-hundred eighty months; or
(b) in case of recurring impact, until the impact persists.*

(7) *The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.*

(8) *The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).*

(9) *After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.”*

45. The Change in Law Rules have been framed to facilitate timely recovery of costs due to Change in Law events and to provide a process and methodology to be followed. As per the provisions of the Change in Law Rules, on occurrence of a Change in Law, the affected party (generator) and other parties (procurers) are to settle the Change in Law claims among themselves and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.

46. Petition No. 178/AT/2021 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member

sd/-
(P. K. Pujari)
Chairperson