

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 596/AT/2020

Coram:

Shri P. K. Pujari, Chairperson

Shri I.S.Jha, Member

Shri Arun Goyal, Member

Date of Order: 1st February, 2021

In the matter of:

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 440.8 MW Wind Power Projects (Tranche-VIII) connected to the Inter-State Transmission System and selected through competitive bidding process as per the Guidelines dated 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. CLP India Private Limited
6th Floor Chanakya Building, Off. Ashram Road,
Ahmedabad, Gujarat - 380 009.
2. Avikiran Energy India Private Limited
14th Floor, Tower B, Vatika Towers,
DLF Golf Course Road, Suncity,
Sector - 54, Gurugram, Haryana - 122 003.
3. Chhattisgarh State Power Distribution Company Limited
4th Floor, Vidyut Seva Bhawan,
Danganiya, Sunder Nagar,
Raipur, Chhattisgarh - 492 013.
4. Government of Puducherry
Chief Secretariat, Goubert Avenue,
Puducherry - 605 001.
5. Ministry of New and Renewable Energy
Block – 14, CGO Complex,
Lodhi Road, New Delhi – 110 003.

.....**Respondents**

The following were present:

Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Shri Manoj Mathur, SECI
Shri Ajay Sinha, SECI
Shri Abhinav Kumar, SECI
Shri Atulya Kumar Naik, SECI
Shri Debasish Das, 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 440.80 MW wind power projects (Tranche-VIII) 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 Wind Power Projects' (hereinafter referred to as 'the Guidelines') dated 8.12.2017 issued by the 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 competitive bid process for the individual power projects as stated in Table 2 at paragraph 8 above on the terms and conditions contained in the letter of award dated 28.09.2019 issued to Respondent Nos. 1 and 2, Power Purchase Agreements to be entered into with the said Respondents read with the Power Sale Agreements dated 19.05.2020 executed with Respondent No.3 and dated 21.05.2020 executed with Respondent No.4."

Submissions 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 Sale Agreement (PSA) documents for setting up of 1800 MW ISTS connected wind power projects (Tranche- VIII)

as per the Guidelines and floated the same on 26.6.2019 on ISN Electronic Tender System (ISN ETS) e-bidding portal. The Petitioner has submitted that in pursuance to the above, two bids were received offering an aggregate capacity of 550.8 MW and both of them were found to meet the technical criteria. The Petitioner has submitted that e-Reverse auction of the two technically qualified bidders was conducted on 30.8.2019 on ISN ETS e-bidding portal and the final tariff was arrived. The Petitioner has submitted that the wind power projects are scheduled to be commissioned in the year 2021-22 and these projects would help the Distribution Licensees to meet their Renewable Purchase Obligations (RPOs) requirements apart from providing power at very economical rates. The Petitioner has submitted that it has agreed to sell entire 440.64 MW of wind power to the Distribution Licensees under the two PSAs executed with them at the rate of Rs. 2.83/kWh (250.8 MW) and Rs. 2.84/kWh (190 MW) plus trading margin of Rs.0.07/kWh upon commissioning of the above capacity. According to the Petitioner, since the tariff discovered through competitive bid process is even lesser than the procurement cost of conventional power, procurement of such power would be beneficial for the Distribution Licensees and the consumers 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 27.8.2020 after notice was issued to the Respondents. No reply has been filed by the Respondents. During the course of hearing, learned senior counsel for the Petitioner prayed to adopt the tariff keeping in view the provisions of the PPAs and PSAs.

Analysis and Decision

4. We now proceed to consider the request of the Petitioner as regards adoption of tariff in respect of the solar 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.

5. 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.”

6. 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 Central Government under Section 63 of the Act, has been followed in determination of such tariff.

7. Ministry of Power, Government of India has notified the Guidelines under Section 63 of the Act vide Resolution No.23/54/2017-R&R on 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 developer 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 three years 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 atleast three months billing of all the projects tied up with such fund.

(i) 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) 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. The distribution licensee or the intermediary procurer, as the case may, shall approach the Appropriate Commission for adoption of tariff in terms of Section 63 of the Act.

8. 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.

9. 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 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 to enable them to fulfil their Renewable Purchase Obligations under Section 86(1)(e) of the Act.

10. 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 1800 MW 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 Distribution Licensees.

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

S. No.	Milestone	Date
1	Issuance of RfS by SECI	26.6.2019
2	Last date of submission of bid	19.8.2019
3	Opening of techno-commercial bids	21.8.2019
4	Opening of financial bids	30.8.2019
5	e-reverse Auction	30.8.2019

S. No.	Milestone	Date
6	Issuance of Letter of Award to successful bidders	28.9.2019

12. On 26.6.2019, SECI issued Request for Selection document, along with draft PPA and PSA documents for setting up of 1800 MW ISTS-connected wind power projects (Tranche VIII). According to SECI, it 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, SECI published notification indicating that the tenders of SECI will henceforth be published in 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 26.6.2019:

Tender	Department	Offline and Online Techno-commercial and Financial Bid Opening	Techno-commercial and Financial evaluation and post-e-RA recommendation
1800MW ISTS-connected wind power projects (Tranche VIII)	Solar	Uday Pavan, Dy. Manager	Aalok Singh, Dy. Manager
	Contracts	Biblesh Meena, Dy. Manager	Pratik Prasun, Dy. Manager
	Finance	Ajit Sharma, Dy. Manager Nitin Thareja, Accountant	Ajit Sharma, Dy. Manager

14. Last date of bid submission was 19.8.2019 and the technical part of the bid was opened on 21.8.2019. Response to RfS was received from the following bidders:

Sr.	Name of Bidders
1	CLP India Private Limited
2	Avikiran Energy India Private Limited

15. Both the bidders were found eligible for e-Reverse auction. The e-Reverse Auction was carried out on 30.8.2019 in the presence of the members of BEC. After the completion of e-Reverse Auction, the following were declared as successful bidders:

Sl. No.	Bidder	Project Capacity (MW)	Applicable Tariff Rs./kWh	Awarded Capacity (MW)
1	CLP India Private Limited	250.8	2.83	250.8
2	Avikiran Energy India Private Limited	300	2.84	189.84

The awarded capacity in case of Avikiran Energy India Private Limited of 189.84 MW was rounded-off to 190 MW by SECI for the purpose of issuance of Letter of Award (LoA).

16. Accordingly, on 28.9.2019, SECI issued LoA to the selected bidders as under:

Sr.	Bidders	Tariff (INR/kWh)	Capacity (MW)
1	CLP India Private Limited	2.83	250.8
2	Avikiran Energy India Private Limited	2.84	190
Total			440.8

17. Relevant portion of Letter of Award issued to one of the SPV/project company (CLP India Private Limited) is extracted 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)	Project Location	Sub-station details for connectivity	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
WPD-ISTS-T8-CLPIPL-P1-250GJ	250.8	In the State of Gujarat	Jam Khambhaliya PS, Gujarat at 220 kV	Rs. 2.83	Rupees Two and Eighty-Three paise only

SECI shall purchase the power generated from the proposed ISTS-Connected Wind Power Project under the above scheme subject to the following terms and conditions as stated in various documents referred above and briefly brought out hereinafter.

1.0 The applicable tariff as mentioned above for power generated from the proposed Wind Power Project for the term of Power Purchase Agreement (PPA) to be entered into between Project Company or the Wind Power Developer (WPD) and M/s SECI, for the project, shall be firm for the entire term of the PPA.

1.1 The WPD will be free to avail fiscal incentives like Accelerated Depreciation, Concessional Customs, Excise Duties, Tax Holidays, etc. as available for such projects. No claims 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 awards of the above project is subject to the Guidelines including amendments/ clarifications issued by MoP/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 controlling 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 the COD of the Project, except with prior approval of SECI. However, in case the Project being set up by a listed Company, this condition will not be applicable.

1.4 In case of companies having multiple promoters (but not of the shareholders having more than 50% 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.

1.5 In case of companies having multiple promoters (but none of the shareholders having more than 50% 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 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 members 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.

1.7 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. 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.

1.8 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 to the cumulative capacity awarded to the bidder maybe 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.

1.9 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.
- 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.
- 5) Copy of Board Resolution from SPV for authorization of signing of PPA and subsequent relevant documents.

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

1.10 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 months 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 part of SECI in signing the PPAs, the Effective Date of the PPA shall then be the date of signing of PPA.

1.11 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 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 off its rights and objections, if any, in that respect.

1.12 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 Effective Date of the PPA.

1.13 The bidder shall identify 100% of the land for the project at the time of bid submission and the WPD shall demonstrate clear possession and right to use 100% of the land identified for the Project, on or before SCD of the Project. In this regard, the WPD shall be required to furnish documents/lease agreements to establish possession and right to use 100% of the required land in the name of the WPD for a period not less than the complete term of the PPA. The above data shall be submitted along with a sworn affidavit from the authorized signatory of the WPD listing the details of the land and certifying that total land required for the Project is under clear possession of the WPD, on or before the SCD. It is further to be noted that delay in demonstration of land possession shall be considered as delay in commissioning of the Project and shall be dealt under relevant provisions of the RfS and PPA.

1.14 The WPD/Project Company shall achieve commissioning of full capacity of the Project within 18 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...."

18. Based on request of Distribution Licensees, the capacity was allocated as under:

Sr.	State/UT	Utility	Allocation (MW)
1	Chhattisgarh	Chhattisgarh State Power Distribution Company Limited	300
2	Puducherry	Government of Puducherry	140.64
		Total	440.64

19. SECI has further submitted that the Electricity Department, Puducherry is in process of obtaining approval from the Government of Puducherry for the purchase of wind capacity of 140.8 MW and has furnished an e-mail of Electricity Department, Puducherry in this regard.

20. Pursuant to Letters of Award and allocation of capacity, SECI entered into PSAs dated 21.5.2020 with Government of Puducherry and dated 19.5.2020 with Chhattisgarh State Power Distribution Co. Limited. SECI has entered into PPA with CLP India Private

Limited on 13.7.2020, whereas, SECI has submitted that PPA with Avikiran Energy India Private Limited is yet to be executed.

21. In the light of the discussions as above, it emerges that selection of the successful bidder and determination of 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. As per Clause 12.2 of the Guidelines, Bid Evaluation Committee is required to certify that the bidding process and the evaluation has been conducted in conformity with provisions of the RfS. SECI vide its letter dated 2.6.2020 has certified that the process has been carried out in conformity with the Guidelines issued by the Ministry of Power and no deviation was taken from the Guidelines in the RfS documents. It has also been certified that the bid evaluation has been conducted in conformity to the provisions of the RfS. Relevant portion of the said letter dated 2.6.2020 is extracted as under:

“With respect to the RfS no. SECI/C&P/WPD/ 1800MWT8/RfS/062019 dated 26.6.2019, it is hereby declared as follows:

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

22. The Petitioner has prayed to adopt the tariff discovered in the competitive bid process for the individual power projects. In the light of the above discussion, in terms of Section 63 of the Act, the Commission adopts the following tariff for the Projects as discovered through the competitive bidding process subject to the signing of the balance PPA with Avikiran Energy India Private Limited. This tariff shall remain valid throughout the period covered in the PPAs signed with the successful bidders as under:

Sr.	Bidders	Tariff (INR/kWh)	Capacity (MW)
1	CLP India Private Limited	2.83	250.8
2	Avikiran Energy India Private Limited	2.84	190
Total			440.8

23. Article 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 dispatch of the first Monthly Bill. Buyer shall also designate a bank account at New Delhi ("Buyer's Designated Account") for payments to be made by the WPD to Buyer, if any, and notify the WPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. Buyer and the WPD shall instruct their respective bankers to make all payments under this Agreement to the WPD's Designated Account or Buyer's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day."

24. 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 undisputed Monthly Bill or Supplementary Bill or a 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;”

25. 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 the “Trading Licence Regulations”) provides as under:

“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.”

26. The above provisions provide for payment security mechanism and the same is required 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.

27. The Petitioner has 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 Licensees in terms of the PSAs with the Distribution Licensees. In this regard, Regulation 8(1)(d) of the Trading Licence Regulations dealing with trading margin provides as under:

“for the transaction under long-term contracts, the trading margin shall be as mutually decided between the Trading licensee and the seller:”

The above provision of the Trading Licence Regulations provides for the contracting parties to mutually agree on trading margin for long-term transaction.

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

“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.”

29. 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.”

30. Thus, the Petitioner, SECI shall also be governed by the provisions of Regulation 8(1)(d), the proviso to Regulation 8(1)(d) and provisions of Regulation 8(1)(f) of the Trading Licence Regulations.

31. SECI has further sought exemption from complying with the provisions of the Clause 5.1.1(b) of the Guidelines. SECI has submitted that this provision was introduced for the first time w.e.f. 8.12.2017 and there was no such provision under the previous Guidelines notified by the Central Government. As per Clause 5.1.1(b) of the Guidelines, the procurer or intermediary procurer is required to inform the Appropriate Commission about the initiation of the bidding process. However, SECI did not inform the Commission regarding initiation of bidding. Since SECI has undertaken that it will intimate 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.

32. Petition No. 596/AT/2020 is disposed of in terms of the above.

Sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(P.K.Pujari)
Chairperson