

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 258/AT/2021

Coram:

Shri I.S.Jha, Member

Shri Arun Goyal, Member

Shri P.K.Singh, Member

Date of Order: 8th April, 2022

In the matter of:

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 400 MW Renewable Energy Projects connected to the inter-State Transmission System and selected through Competitive Bidding Process as per the Guidelines dated 3.8.2017 (solar), 8.12.2017 (wind), 11.10.2019 (draft)/ 14.10.2020 (notified) [wind-solar hybrid] of the 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**

Versus

1. M/s. ReNew Solar Power Private Limited,
[Successful Bidder]
ReNew Hub, Commercial Block-1, Zone-6,
Golf Course Road, DLF City Phase V,
Gurugram-122009, Haryana
2. Renew Surya Roshni Private Limited,
[Project Company of ReNew Solar Power Private Limited]
138, Ansal Chamber-II, Bikaji Cama Place,
New Delhi-110016
3. West Bengal State Electricity Distribution Company Limited,
Vidyut Bhawan, 8th Floor, Block DJ,
Sector-II, Salt Lake, Kolkata-700091,
West Bengal
4. India Power Corporation Limited,
Plot No. XI-2 & 3, Block- EP,

Sector V, Salt Lake City,
Kolkata-700091

5. Uttarakhand Power Corporation Limited,
Victoria Cross Vijeyta Gabar Singh Urja Bhawan
Kanwali Road, Balliwala Chowk,
Dehradun-248001, Uttarakhand

.... Respondents

The following were present:

Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Srishti Khindaria, Advocate, SECI
Ms. Neha Singh, SECI
Shri Atulya Kumar Naik, SECI
Shri Shibasish Das, SECI
Shri Mudit jain, SECI
Ms. Shikha Ohri, Advocate, RSPPL
Ms. Surabhi Pandey, Advocate, RSPPL
Shri Ishan Nagpal, RSPPL

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 400 MW Renewable Energy Projects 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 Grid Connected Solar Power Projects' dated 3.8.2017 (hereinafter referred to as 'the Solar Guidelines') issued by Ministry of Power, Government of India, 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Wind Power Projects' dated 8.12.2017 (hereinafter referred to as 'Wind Guidelines') issued by Ministry of Power, Government of India and the draft 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of power from Grid Connected Wind-Solar Hybrid Projects' dated 11.10.2019 issued by Ministry of New & Renewable Energy, Government of India, which

thereafter came to be notified on 14.10.2020 (hereinafter referred to as 'Wind-Solar Hybrid Guidelines'). The Petitioner has made the following prayers:

“(a) Adopt the tariff discovered in the tariff based competitive bid process for the power project as stated in Paragraph 13 above on the terms and conditions contained in the Power Purchase Agreement dated 06.08.2021 signed with Respondent No.2 read with the Power Sale Agreements signed with Respondent No. 3 to 5, Power Sale Agreements to be signed with other distribution companies or buying entities; and

(b) Approve Trading Margin of Rs.0.07/kWh as agreed to by the Buying Entities/ Distribution Licensees in the signed PSAs in terms of Regulation 8 (1) (d) of the Trading License Regulations, 2020.”

Submissions of the Petitioner

2. The Petitioner, SECI has submitted that on 18.10.2019, it issued Request for Selection ('RfS') along with draft Power Purchase Agreement ('PPA') and draft Power Sale Agreement ('PSA') documents for setting up of 400 MW ISTS connected Renewable Energy Power Projects (RTC-I) as per the Solar Guidelines, Wind Guidelines and draft/notified Wind-Solar Hybrid Guidelines and floated the same on ISN Electronic Tender System (ISN ETS) e-bidding portal. The Petitioner has submitted that in pursuance to the above, four bids were received offering an aggregate capacity of 950 MW and all of them were found to meet the technical criteria. On 27.4.2020, the financial bids of technically qualified bidders were opened on ISN ETS e-bidding portal in the presence of Bid evaluation Committee and out of 4 bidders, 3 bidders for aggregating 900 MW were shortlisted for e-reverse auction. The Petitioner has submitted that e-reverse auction of the qualified bidders was conducted on 8.5.2020 on ISN ETS e-bidding portal and the final tariff arrived at was Rs.2.90/kWh (first year tariff). Pursuant to the issuance of Letter of Award to the successful bidder, ReNew Solar Power Private Limited on 4.6.2020, the Petitioner has entered into PPA with its Project Company-ReNew Surya Roshni Private Limited on 6.8.2021. The Petitioner has submitted that RE power projects are scheduled

to be commissioned within in 24 months from the effective date of the PPA. The Petitioner has submitted that so far it has signed the PSAs for total 300 MW RE power with the Distribution licensees, namely, West Bengal Electricity Distribution Company Limited ('WBSEDCL), India Power Corporation Limited ('IPCL') and Uttarakhand Power Corporation Limited ('UPCL') at the rate of Rs.2.90/kWh (first year tariff) plus trading margin of Rs.0.07/kWh. According to the Petitioner, tariff discovered for procurement of power form RE power developer under the present bidding process is competitive and beneficial to the distribution licensees and the consumers.

Hearing dated 21.1.2022

3. The matter was heard on 21.1.2022 and notice was issued to the Respondents. Reply to the Petition has been filed by the Respondent No. 1, ReNew Power Private Limited.

4. Vide Record of Proceedings for the hearing dated 21.1.2022, the Petitioner was directed to submitted the following information/clarification:

(a) Comparative statement indicating the steps and processes followed by the Petitioner in the bidding/ tender, mapping the same to the corresponding enabling provisions of the Guidelines issued by the Central Government.

(b) Brief explanation as to how the said RfS/tender, under which the developers were free to set-up and supply the power from any Renewable Energy based Power Projects, would be covered by the Guidelines for Solar, Wind or Wind-Solar Hybrid Projects.

5. The Petitioner vide its affidavit dated 16.2.2022 has submitted the aforesaid information as called for.

Reply of Respondent

6. The Respondent No.1, ReNew Power Private Limited ('ReNew Power'), vide its reply dated 18.1.2022 has submitted that ReNew Power has been selected as successful bidder for 400 MW power at the tariff of Rs.2.90/kWh and through its SPV, ReNew Surya Roshni Private Limited has already executed PPA dated 6.8.2021 with SECI for sale of 400 MW hybrid power from the Project. Further, SECI has also executed PSA dated 30.6.2021 for 100 MW power with WBSEDCL, PSA dated 19.7.2021 for 100 MW with IPCL and PSA dated 12.10.2021 for 100 MW with Uttarakhand Power Corporation. It is submitted that the PPA/PSAs in the present case arise out of one of its kind tenders issued for Round-the-Clock supply of power from wind-solar hybrid projects. Reliance has also been placed on the Article 9 (Applicable Tariff) of PPA and Article 5 (Applicable Tariff) of the PSAs. Based on the above, the Respondent has submitted that the Commission may allow the present Petition and adopt the tariff discovered through the competitive bid process on expeditious basis.

Hearing dated 24.3.2022

7. During the course of hearing on 24.3.2022, learned senior counsel for the Petitioner submitted that SECI reiterated that SECI has entered into PPA with ReNew Surya Roshni Private Limited (Project Company of successful bidder - ReNew Solar Power Private Limited) for 400 MW @ Rs.2.90/kWh as the first year tariff, which shall have an escalation @ 3% per annum up to the end of 15 contract year and shall be fixed thereafter for remaining term of the PPA. The learned senior counsel also submitted that SECI has signed the PSAs with WBSEDCL (100 MW), IPCL (100 MW) and UPCL (100 MW) for an aggregate capacity of 300 MW and is at an advance stage of tying up the balance capacity (100 MW) with a distribution licensee. Learned senior counsel further submitted that SECI

has also placed on record all the requisite details including Conformity Certificate dated 24.8.2021.

Analysis and Decision

8. The Petitioner issued RfS documents based on the Solar Guidelines dated 3.8.2017, Wind Guidelines dated 8.12.2017 (Wind) and Wind-Solar Hybrid Guidelines dated 11.10.2019 (draft)/14.10.2020 (notified) issued by the Government of India read with clarifications/modifications issued by the Ministry of New and Renewable Energy vide letters dated 1.3.2021 and 18.12.2020. We now proceed to consider the prayer of the Petitioner as regards adoption of tariff under Section 63 of the Act in respect of the RE power projects as discovered pursuant to the competitive bid process carried out in terms of the above Guidelines issued by the Government of India.

9. 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.”

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

11. As to the Guidelines, Ministry of Power, Government of India has notified the Solar Guidelines under Section 63 of the Act vide Resolution No. 23/27/2017-R&R on 3.8.2017.

The said Guidelines have been subsequently amended by the Resolutions dated 14.6.2018, 3.1.2019, 9.7.2019, 22.10.2019 and 25.9.2020. The salient features of the Solar Guidelines are as under:

- (a) The Guidelines are applicable for procurement of power from grid connected solar PV power projects having size of 5 MW and above through tariff based competitive bidding to be conducted by procurers which includes distribution licensees, or the Authorized Representative(s), or Intermediary procurers.
- (b) The procurer shall prepare the bid documents in accordance with the Guidelines and the Standard Bid Documents notified by the Ministry of Power, Government 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 procurer to the Appropriate Commission.
- (c) Bids shall be designed in terms of a package. The minimum size of a package should be 50 MW in order to have economies of scale. Bidders shall quote for entire package.
- (d) The procurer has option to choose to invite the two bids, namely, (i) power capacity (MW) terms, or (ii) energy quantity (kWh or million units i.e. MU) terms. For procurement of power, the procurer may opt for either tariff or viability gap funding as bidding parameter.
- (e) Draft PPA proposed to be entered into with the successful bidder and draft PSA, if applicable, shall be issued along with the RfS. Standard provisions to be incorporated as part of the PPA shall include, *inter-alia*, PPA period, quantum of power/ energy to be procured, payment security, generation compensation of off-take constraint, event of default and consequences thereof and Change in Law and shall be provided for, on back-to-back basis, in the PSA.
- (f) Procurer and Intermediary procurer shall provide payment security to the solar 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 tied up with such fund. In addition, the procurer may also choose to provide State Government Guarantee.

(g) End procurer 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 under consideration and State Government Guarantee. In addition, end procurer may also choose to provide Payment Security Fund with at least three months` billing of all the projects tied up with such fund.

(h) 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. In case of solar park specific project, procurer shall provide intimation to the solar power park developer about the initiation of the bidding process and arrange the access of the bidders to the drafts of Implementation Support Agreement and land related agreement.

(i) RfS notice shall be issued in at least two national newspapers and on the 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.

(j) The procurer 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.

(k) Bidder shall submit non-refundable processing fee and/or project development 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 with the consent of the Appropriate Commission.

(l) The PPA shall be signed with the successful bidder or an SPV formed by the successful bidder. After conclusion of bidding process, Evaluation Committee shall

critically 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.

12. Ministry of Power, Government of India has notified the Wind Guidelines under Section 63 of the Act vide Resolution No. 23/54/2017-R&R on 8.12.2017. The said Guideline have been subsequently amended vide Resolution dated 16.7.2019. The salient features of the Wind 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 at least 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.

13. As regards the wind-solar hybrid projects, initially the Ministry of New and Renewable Energy, Government of India issued the National Wind-Solar Hybrid Policy dated 14.5.2018 to provide the framework for promotion of large grid connected wind-solar hybrid system for optimal and efficient utilisation of transmission infrastructure and land, reducing the variability in renewable generation and achieving better grid stability. The said Policy, *inter-alia*, encouraged the implementation of new wind-solar hybrid projects for captive use, sale to third parties, sale to distribution companies either at tariff determined by the State Commissions or at tariff discovered through transparent bidding process etc. and it also envisaged addition of battery storage to the hybrid projects. Thereafter, in furtherance to the aforesaid Policy, MNRE issued the draft Wind-Solar Hybrid Guidelines on 11.11.2019 providing the framework for transparent bidding process under Section 63

of the Act and to enable the distribution licensees to procure electricity from wind-solar hybrid project at competitive rates in cost effective manner. The said draft Wind-Solar Hybrid Guidelines came to be finalised on 14.10.2020. The salient aspects of the final Wind-Solar Hybrid Guidelines are as under:

(a) The Guidelines are applicable for procurement of power from hybrid power projects having individual size of 50 MW and above at one site with minimum bid capacity of 50 MW through tariff based competitive bidding to be conducted by procurers which includes distribution licensees or intermediary procurers. The rated power capacity of one resource (wind or solar) shall be at least 33% of the total contracted capacity.

(b) The solar and wind power projects may be located at same or different nearby locations. The minimum capacity to be injected at each injection point shall be 50 MW. Storage may be added to the hybrid power project.

(c) The intermediary procurer shall prepare the bid documents in accordance with the Guidelines and shall approach MNRE for deviations (if required) from these Guidelines.

(d) Bids shall be for a minimum 50 MW project at one site. 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 procurer keeping in mind factors such as economies of scale, land availability, expected competition and need for development of market.

(e) For procurement of wind-solar hybrid power, the tariff quoted by the bidder shall be the bidding parameter. The procurer may select either of the following kinds of tariff based bidding: (a) 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.

(f) Draft PPA proposed to be entered into with the successful bidder and draft PSA, if applicable, 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, Payment Security by intermediary procurer to the hybrid power generator, revolving Letter of Credit and State Government guarantee, Change in Law, Force Majeure, Off-take constraints due to Back down, Event of Default and consequences thereof.

(g) Intermediary procurer shall provide payment security to hybrid power generator through revolving Letter of Credit of an amount not less than one month average billing and Payment Security Fund for at least three months' billing of all the projects tied up with such fund. For the purpose of this Payment Security Fund, the intermediary procurer may collect Rs.5 lakh/MW from hybrid power generator(s).

(h) Discoms 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 or Tri-Partite Agreement.

(i) SECI shall call the bids adopting a single stage bidding process to be conducted through electronic mode (e-bidding). SECI may adopt e-reverse auction. For this purpose, e-procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used.

(j) The bidding documents including RfS, draft PPA shall be prepared by SECI in consonance with these Guidelines. RfS notice shall be published on the Central Public Procurement Portal website and SECI's website to accord wide publicity. Standard documentation to be provided in RfS stage shall include technical criteria, financial criteria, net worth, liquidity, quantum of earnest money deposit and compliance of laws by foreign bidders.

(k) The procurer 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.

(l) 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.

(m) 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 for which the bid has been called for is full or the capacity corresponding to the upper limit for the band for the L1 tariff is reached, whichever is earlier.

(n) After conclusion of bidding process, the Evaluation Committee constituted for evaluation of RfS bids shall critically evaluate the bids and certify as appropriate that the bidding process and the evaluation has been conducted in conformity to the provisions of the RfS.

(o) The PPA shall be signed with the successful bidder/ project company or an SPV formed by the successful bidder. After execution of the 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.

14. The Petitioner, SECI has submitted that the bid documents have been prepared based on the Solar Guidelines, Wind Guidelines and Wind-Solar Hybrid Policy dated 14.5.2018 along with draft Wind-Solar Hybrid Guideline dated 11.10.2019, which came to be finalised on 14.10.2020. Highlighting the key features of RTC-I scheme as provided for in RfS document, SECI has submitted as under:

(a) RTC-I scheme envisages in making available 'Round-the-Clock' Energy Supply (daily availability of energy as scheduled by the RE Power Developer), firm and dispatchable RE power, meeting the demand pattern of Distribution licensees during peak hours at competitive tariff. The RE Power Projects with suitable storage

capacity can meet the Round-the-Clock base load without resorting to any external balancing need and/or strategy. It also provides generation flexibility to meet the peak loads of Distribution license which typically not only change with seasons but also undergo pattern shift over time.

(b) The bidders are to quote a single first year tariff under the RfS which subsequently, shall have an escalation @ 3% at the commencement of each Contract Year (rounded off to two decimal points), upto the end of the 15th Contract Year of the term of the PPA and shall subsequently be fixed thereafter, for the remaining terms of the PPA. In case the 1st Contract Year is not a full year, the escalation shall commence after the culmination of the 2nd Contract Year, subject to Clause 8.3 of the RfS document. In such case, the tariff escalation shall continue upto the 16th Contract Year.

(c) The RE Power Project shall mean a Project comprising of one or more 'components' – classified as a renewable energy generation sources by the MNRE along with energy storage system if any having single or multiple point(s) of injection into the grid at Interconnection/Delivery / Metering Point, or in case of sharing of transmission lines, by separate injection at Pooling Point and having separate control systems and metering. The sources of generation, may be co-located, or may be located at different locations, to be considered a single Project. However, Energy Storage System, if any, shall mandatorily be co-located with at least one of the sources of generation in the Project.

(d) Initially the power procured by SECI under the RfS document had been provisioned to be sold to NDMC, New Delhi (200 MW) and Daman & Diu and Dadra Nagar Haveli (200 MW). However, SECI reserved the right to sell such power to any other distribution licensees/buying utilities in special circumstances.

15. Taking note of the scheme of the RfS and the bid process, the Commission vide Record of Proceedings for hearing dated 21.1.2022 directed SECI to furnish a brief explanation as to how the said RfS/tender, under which the developers were free to set-up

and supply the power from any Renewable Energy based Power Projects, would be covered by the Guidelines for Solar, Wind or Wind-Solar Hybrid Projects. In response, the SECI vide its affidavit dated 16.2.2022 has submitted as under:

(a) The Round the Clock (RTC) supply of Renewable Power is within the scope of Section 61(h) read with Section 86(1)(e) as also the preamble of the Act and also the National Electricity Policy and National Tariff Policy for promotion of the renewable sources of energy. The promotional measures are not confined to promotion of individual renewable sources of energy independently but also considering such promotional measures of developing more than one source of energy in a combined manner. This is particularly so, when such combination would result in supply of electricity from renewable sources entirely or predominantly on RTC basis to procurers. The analysis of renewable sources namely solar and wind availability in India from different sources namely solar and wind availability in India from different regions this show that combination of solar and wind sources itself enables meeting of substantially higher quantum of RTC power to be supplied. Thus, the RTC scheme evolved enables the promotion of the solar and wind power, both of which are provided for in individual Guidelines namely Solar Guidelines and Wind Guidelines.

(b) The RfS and the bidding document can be supported by more than one Guidelines and it is not necessary that it should be confined in a water-tight manner only to one Guidelines.

(c) The RfS provides that the Power Project to be established by the Renewable Power Developer will comprise of Solar PV component and/or Wind Power component with an option to set-up Energy Storage System (ESS). In this regard, the reliance has been placed on the definition of "Power Project" and "Project" as contained in the draft PPA.

(d) Accordingly, RfS document has been prepared based on the Solar Guidelines, Wind Guidelines and draft Wind-Solar Hybrid Guidelines. The Wind Solar Hybrid Guidelines as finally issued on 14.10.2020 were stated to be enforceable for the hybrid projects.

16. We have considered the submissions made by the Petitioner and the documents made available along with the Petition. Perusal of the scheme covered under the RfS document that is selection of RE power developer for 'Round-the-Clock' supply of 400 MW renewable energy under Tariff based competitive bidding (RTC-I) reveals that it indeed was difficult to conform the said bid process under any single Guidelines at the time of issuance of the tender. As rightly clarified by SECI that at the time of issuance of the tender, it would not have been possible to anticipate the RE source (whether wind or solar or any other renewable source or combination thereof along with energy storage system) based on which the developer would be participating in the bid process and placing its bid. Accordingly, SECI has proceeded with preparing the RfS/bid documents based on the Solar Guidelines, Wind Guidelines and draft Wind-Solar Hybrid Guidelines dated 11.10.2019 issued under the aegis of Wind-Solar Hybrid Policy dated 14.5.2018, which came to be finalised only on 14.10.2020 (i.e. after the bid process). Ultimately, the configuration of the RE projects by the successful bidder ReNew Solar Power Private Limited came to be a combination of wind and solar projects, in other words, wind-solar hybrid project. Hence, in hindsight, it appears that the entire bid process and the bid documents could have been in conformity with the Wind-Solar Hybrid Guidelines. However, admittedly, at the time of issuance of the RfS/bid documents and conducting the bid process, the only available framework relating to wind-solar hybrid projects were the National Wind-Solar Hybrid Policy and the draft Wind-Solar Hybrid Guidelines, whereas the said draft guidelines came to be finalised and issued on 14.10.2020 after the bid process.

17. During the course of hearing on 24.3.2022, SECI was directed as to the bid documents being in conformation with all the Guidelines as relied upon by it, which was

confirmed by the SECI albeit read with the clarifications/modification issued by the Ministry of New and Renewable Energy vide letters dated 18.12.2020 and 1.3.2021. In addition, SECI has also furnished a conformity certificate dated 24.8.2021 to the above effect, which has been discussed in the subsequent paragraphs of this order. Taking into the account the aforesaid submissions of SECI and specific aspects of the present matter including the nature of tender/RfS, we are constrained to take a pragmatic view in the matter in favour of considering the RfS and bid process as per the provisions of the above Guidelines rather than taking a view which would defeat the entire purpose of the promotion of renewable energy and bid process already concluded. However, our aforesaid decision shall not be construed as permission to SECI to undertake the bid process under multiple guidelines and SECI would require to exercise abundant caution while framing such tenders/RfS as while the procedure for conducting the bidding might be similar across the various Guidelines, the project specific features under the each Guidelines might differ which need to be incorporated in the bid documents in order to make them in consonance with the respective Guidelines. In view of the above, we proceed to examine whether the process as per provisions of the various Guidelines has been followed in the present case for arriving at the lowest tariff and for selection of the successful bidder.

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

Sr. No.	Milestone	Date
1.	RfS issued by SECI	18.10.2019
2	Amendments to the RfS documents including various corrigendum	29.1.2020- 19.3.2020
3	Last date of bid submission	23.3.2020
4	Opening of techno-commercial bids	26.3.2020
5	Opening of financial bids	27.4.2020

Sr. No.	Milestone	Date
6	e-Reverse Auction conducted	8.5.2020
7	Issuance of Letters of Award to successful bidders	4.6.2020

19. On 18.10.2019, SECI issued Request for Selection document, along with draft PPA and PSA documents for setting up of 400 MW ISTS-connected Renewable Energy projects. 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, from 14.6.2018, SECI discontinued the publication of tender notice in the newspaper. On 3.7.2018, SECI published notification in the newspapers indicating that henceforth tenders of SECI would be published in the website and not in newspapers.

20. As per Clause 3.1.1(b) of the Solar Guidelines, Clause 5.1 (b) of the Wind Guidelines and Clause 6.1(b) of the draft Wind-Solar Hybrid Guidelines, the procurer is required to inform the Appropriate Commission about the initiation of the bidding process. SECI vide its letter dated 28.2.2020 had informed the Commission that it has initiated the competitive bid process for selection of RE power developer for Round-the-Clock energy supply from 400 MW RE Power Projects under tariff-based competitive bidding (RTC-I) on the basis of Solar Guidelines, Wind Guidelines and Wind-Solar Hybrid Guidelines.

21. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids under RfS-No. SECI/C&P/RPD/400MW/102019 dated 18.10.2019:

Tender	Department	Offline and Online Techno-commercial and	Techno-commercial and Financial
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		Financial Bid Opening	Evaluation and post-e-RA recommendation
Selection of RE Power Developer for 'Round-the-clock Energy Supply from 400 MW RE Power Projects to NDMC, New Delhi, and Daman & Diu and Dadra & Nagar Haveli under Tariff based Competitive Bidding (RTC-I)	Power system	Shri Arjun, Executive Trainee (PS)	Shri Ankit Agarwal, Manager (PS)
	Contracts	Sh. Jayansh Gaur, Executive Trainee (C & P)	Shri Pratik Prasun, Manager (C&P)
	Finance	Shri Ajit Sharma, Deputy Manager (Finance)	Ms. Anuja Garg, Manager (Finance)

22. Last date of submission was bid was 23.3.2020 and the technical part of the bid was opened on 26.3.2020. Response to RfS was received from 4 bidders offering an aggregate capacity of 950 MW and all of them were found to fully meet the technical criteria and consequently, qualified for the opening of financial bid. On 27.4.2020, financial bids of four technically qualified bidders were opened on the ISN ETS- e-bidding portal in the presence of member of Bid Evaluation Committee. Three bidders for aggregating 900 MW were shortlisted for e-reverse auction.

23. The e-reverse auction was carried out on 8.5.2020 in the presence of the members of BEC. After the completion of e-reverse Auction, the following was declared as successful bidder:

Sr. No.	Bidder	Bidder's Quantity (MW)	Tariff (INR / kWh)	Allotted Capacity (MW)
1.	ReNew Solar Power Private Limited	400	2.90	400
Total				400

24. Accordingly, on 4.6.2020, SECI issued Letter of Awards (for 200 MW each) to the selected bidder as under:

Sr. No.	Bidder	Applicable First Year Tariff * (INR / kWh)	Awarded Capacity (MW)	Energy Storage System (including minimum storage hours committed)	Project Component Break-up	
					Component Type	Capacity (MW)
1.	ReNew Solar Power Private Limited	2.90*	200	20 MWh	Solar Component	225
					Wind Component 1	225
					Wind Component 2	225
2.	ReNew Solar Power Private Limited	2.90*	200	20 MWh	Solar Component	225
					Wind Component 1	225
					Wind Component 2	225
TOTAL			400 MW			

[* First year tariff is escalable as mentioned below (extract from LoA):

“1.0 The applicable First Year tariff as mentioned above for energy supplied from the proposed RE Power Project for the term of Power Purchase Agreement (PPA) to be entered into between Project Company or the RE Power Developer (RPD) and M/s SECI, for the Project, shall have an escalation @3% per annum (rounded off to two decimal points), up to the end of the 15 Contract Year of the term of the PPA and shall subsequently be fixed at the tariff thereafter, for the remaining term of the PPA. In case the 1% Contract Year is not a full year the escalation shall commence after the culmination of the 2nd Contract Year, subject to Clause 8.3 Section-III of the RfS. In such cases the tariff escalation shall continue upto the 16th Contract Year.”]

25. Relevant portion of one of the Letter of Award issued to ReNew Solar Power Private Limited is extracted as under:

“Sub: Selection of RE Projects under RfS for Selection of Re Power Developer for “Round-the-Clock” Energy Supply from 400 MW RE Power Projects to NDMC, New Delhi, and Daman & Diu and Dadra & Nagar haveli: Letter of Award for RE Project of 200 MW (Project ID: RPD-RTC-I-RSPPL-P1-200MW)

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 Break-up Component		ESS Rating (including minimum storage hours committed)	Project Location	Inter-connection Point Details	Applicable Ist Year Tariff (INR/kWh) in figures	Applicable Ist Year Tariff (INR/kWh) in words
		Component Type	Capacity (MW)					
RPD-RTC-I-RSPPL-P1-200 MW	200	Solar Component	225	20 MWh	Solar Component (225 MW) & ESS (20MWh) In Village Mandhopura Tehsil: Fathehgarh District: Jaisalmer State: Rajasthan	Fatehgarh II PGCIL 400 kV or 220 kV Substation, Dist. Jaisalmer, Rajasthan	₹ 2.90/-	Rupees Two and Ninety paise only

		Wind Component 1	225		Wind Component 1 (225 MW) in Daskhed Village, Patoda Taluka, Beed District	Kallam 220 kV, CTU substation, Maharashtra		
		Wind Component 2	225		Wind Component 2 (225 MW) in Kanaginahal Village, Gadag Taluka, Gadag District	Koppal, 220 kV, CTU substation, Karnataka		

SECI shall purchase the power generated from the proposed RE 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 First Year tariff as mentioned above for energy supplied from the proposed RE Power Project for the term of Power Purchase Agreement (PPA) to be entered into between Project Company or the RE Power Developer (RPD) and M/s SECI, for the Project, shall have an escalation @3% per annum (rounded off to two decimal points), up to the end of the 15th Contract Year of the term of the PPA, and shall subsequently be fixed at the tariff thereafter, for the remaining term of the PPA. In case the 1st Contract Year is not a full year, subject to Clause 8.3, Section-III of the RfS. In such cases, the tariff escalation shall continue upto the 16th Contract Year.

1.1 The RPD will be free to avail fiscal incentives like Accelerated Depreciation, Concessional Customs, Excise Duties, Tax Holidays, etc. as available for such projects. No claim shall arise on SECI for any liability if the RPD is not able to avail fiscal incentives and this will not have any bearing on the applicable tariff.

1.2 The award of the above Project is subject to the Guidelines including amendments/clarifications issued by 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 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 RPD shall not change until one year after the COD of the Project, except with prior approval of SECI. However, in case the Project is being set up by a listed Company, this condition will not be applicable.

1.4 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.

1.5 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 a listed Company, this condition will not be applicable.

1.6 The RPD 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 12, Section-III of the RfS, towards administrative overheads, coordination with State Authorities and others, DISCOM/ STU/ CTU, pre-commissioning and commissioning expense. Performance Bank Guarantee(s) for a value of @ Rs 20 Lakh/MW shall be submitted by the RPD within 70 days of issuance of Letter of Award or before signing of PPA, whichever is earlier, in line with Clause 11, Section-III of the RfS.

1.7 PPA will be executed between SECI and the RPD 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 project breakup may be changed by the RPD upto the date as on 30 days from the issuance of this LoA. For an individual Project, any modification in the rated capacities of Wind and Solar components in the Project, shall be intimated to SECI within 30 days of issuance of this LoA. Both the above parameters will remain unchanged, thereafter. It may be noted that the RPD shall be allowed to resize the ESS, if any, until 3 years after COD of the full Project capacity or finally accepted Project capacity, as applicable. Delays in connectivity and/or LTA for the Project(s) on account of location or Project configuration changes, shall be at the risk and cost of the Successful Bidder. The PPA shall be valid for a period of 25 years from the Scheduled Commissioning Date or from the date of full commissioning of the Project, whichever is earlier.

1.8 The RPD will have to submit the required documents as mentioned below to SECI within 70 days from 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 RE Power Developer.
- 2) The details of promoters and their shareholding in the RPD, 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 RPD highlighting the object clause related to generation of Power/ Energy/ Renewable Energy/ Solar Power plant development.
- 4) In case the project being executed by a Special Purpose Vehicle (SPV) incorporated by successful bidder, such SPV shall be atleast 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 only upon receipt of the Success Charges and total Performance Guarantees of requisite value. The EMD submitted shall be

released only after receipt and successful verification of the total Performance Bank Guarantee in the acceptable form.

1.9 SECI shall have the right to verify original documents of the RPD 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 RPD 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, the Effective Date of the PPA shall then be the date of signing of PPA.

1.10 In case, SECI offers to execute the PPA with the RPD and the RPD does not submit the requisite documents or does not meet eligibility criteria upon submission of documents or does not 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.

1.11 The RPD shall meet financial closure requirements for the Project in line with Clause 15, Section-III of the RfS document, within 12 (twelve) months from the Effective date of the PPA. Accordingly, the RPD shall furnish the documents pertaining to compliance of financial closure as per the above provisions.

1.12 The RPD/Project Company shall achieve commissioning of full capacity of the Project within 24 months from the Effective Date of the PPA as per the conditions stipulated in Clause 16, Section-III 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 RPD as per the above provisions.”

26. Based on request of distribution licensees/buying utilities, 100 MW allocated to West Bengal State Electricity Distribution Corporation Limited, 100 MW allocated to India Power Corporation Limited and 100 MW allocated to Uttarakhand Power Corporation Limited. Accordingly, SECI has entered into PSA dated 30.6.2021 with West Bengal State Electricity Distribution Corporation Limited, PSA dated 19.7.2021 with India Power Corporation Limited and PSA dated 12.10.2021 with Uttarakhand Power Corporation Limited. SECI has further submitted that it is at an advance stage of tying up the balance capacity (100 MW) and since there is only a single PPA with the successful bidder, the Commission may adopt the tariff for the entire 400 MW capacity.

27. Pursuant to Letters of Award and allocation of capacity, SECI entered into PPA dated 6.8.2021 for 400 MW with Renew Surya Roshni Private Limited (i.e. Project Company of successful bidder ReNew Solar Power Private Limited). The configuration of the RE Power Projects to be established by Renew Surya Roshni Private Limited for supply of 400 MW of renewable energy on RTC basis under the PPA is as follows:

COMPONENT	CAPACITY (MW)	LOCATION
Wind Component-1	300 MW	Maharashtra
Wind Component-2	300 MW	Karnataka
Wind Component-3	300 MW	Karnataka
Solar Component	400 MW	Rajasthan
Energy Storage System (OPTIONAL)*	—	—

28. 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/Ministry of New and Renewable Energy, Government of India under Section 63 of the Act. As per Clause 10.2 of the Solar Guidelines, Clause 12.2 of the Wind Guidelines and Clause 13.2 of the draft/issued Wind-Solar Hybrid 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 24.8.2021 has certified that the process has been carried out in conformity with the Guidelines issued by Government of India 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 24.8.2021 is extracted as under:

“With respect to the RfS No. SECI/C&P/RPD/RTC-I/RfS/400 MW.102019 dated: 18.10.2019, 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.*
- 3. Selection of successful bidders has been carried out through a competitive bidding process conducted under Section 63 of the Electricity Act, 2003 and amendment/clarifications thereof, if any.”*

29. The Petitioner has submitted that it has incorporated certain changes in the bid documents in deviation to the provisions of the Guidelines with regard to Change in Law. It is submitted that SECI, vide letter dated 26.11.2020 and email dated 13.1.2021 requested MNRE to allow it to incorporate the changes in the scheme documents, and enable SECI to enter into PSAs and PPAs. However, such changes have been incorporated pursuant to post facto approval of MNRE vide letters dated 18.12.2020 and 1.3.2021, whereby it has been claimed by the Petitioner that 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) bids that have been issued but not closed; and (ii) bids that have been issued and closed by SECI.

30. We have considered the submissions made by the Petitioner. It is observed that while all the Guidelines provide for determination of quantum of compensation for offsetting the financial impact due to increase/ decrease in the costs on account of occurrence of Change in Law event by the Appropriate Commission except for the Wind-Solar Hybrid Guidelines finally issued on 14.10.2020 which provided for a formula, 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.0.002/kWh.

31. The Petitioner has submitted that such changes have been approved by the Ministry of New and Renewable Energy, Government of India and 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 letter dated 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 including Change in Law 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)...”

32. 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.

33. 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 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 and whether the Petitioner has complied with direction of the letter dated 1.3.2021 of MNRE requiring it to ensure that no additional benefit accrues to the successful bidder and that there is no impact on the discovered tariff.

34. We observe that the modified Change in Law provisions appear to have been already incorporated in the Bid documents vide amendment No.2 dated 14.2.2020.

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. We are of the view that the Petitioner should have waited for the approval of its proposal from MNRE before proceeding with the bidding process. The bid 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 23.3.2020 and even the LoAs was issued on 4.6.2020, 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;...”

35. The Commission views the approach of the Petitioner not only unprofessional but also non-adherence to laid down procedures, which is not expected from a Government of India Public Sector Undertaking like SECI. In fact, issues are being raised by certain developers that the bid processes were not as per the Guidelines. We would like to advise SECI that it must invariably always comply with the procedural and legal requirements in letter and spirit.

36. In view of the aforesaid discussions, it emerges that the selection of the successful bidders has been done and the tariff of the RE power projects has been discovered by the Petitioner, SECI through a transparent process of competitive bidding in accordance with the Guidelines (read with ex post facto approval vide letter dated 1.3.2021 of MNRE)

issued by Ministry of Power, 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 RE power project, as agreed to by the successful bidder(s), and for which PPA has been entered into by SECI on the basis of the PSAs with the distribution licensees, which shall remain valid throughout the period covered in the PPA and PSAs as under:

Sr.	Bidder	Project Company	Applicable First Year Tariff (Rs./kWh)	Capacity (MW)
1	Renew Solar Power Private Limited	ReNew Surya Roshni Private Limited	2.90*	400
Total				400

*[*First Year tariff is escalable as per the provisions of the PPA/RfS]*

37. 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 RPD, as shall have been previously notified by the RPD 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 SECI, if any, from the RPD, 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 RPD shall open a bank account (the RPD`s Designated Account”) for all Tariff Payments (including Supplementary Bills) to be made by SECI to the RPD, 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 RPD to SECI, if any, and notify the RPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. SECI and the RPD shall instruct their respective bankers to make all payments under this Agreement to the RPD`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.”

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

“10.4 Payment Security Mechanism

Letter of Credit (LC)/Stand by Letter of Credit (SBLC):

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

10.4.2 Subject to the Article 10.4.1, not later than (1) Month before the start of supply, SECI through a scheduled bank open a Letter of Credit/Stand by Letter of Credit in favour of the RPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit/Standby 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 110% the estimated average monthly billing;*
- ii) for each subsequent Contract Year, equal to 110% the average of the monthly billing of the previous Contract Year.*

10.4.3 Provided that the RPD 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/Standby 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 within fifteen (15) days.

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

10.4.6 SECI shall ensure that the Letter of Credit/Standby 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/Standby Letter of Credit shall be borne by SECI/RPD.

10.4.8 If SECI fails to pay 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 RPD may draw upon the Letter of Credit/Standby Letter of Credit, and accordingly the bank shall pay without any reference or instructions from SECI, 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/ Standby Letter of Credit, the following documents:

- i) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid to RPD and;*
- ii) a certificate from the RPD 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;”*

39. 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.”

40. 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 Clause 10 of Regulation 9 of the Trading Licence Regulations shall be abided by all the concerned parties to the present Petition.

41. The Petitioner has also prayed to approve the trading margin of Rs. 0.07/kWh as agreed to by 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 transactions under long term contracts, the trading margin shall be as mutually decided between the Trading licensee and the seller:...”

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

43. 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.”

44. 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.”

45. 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 PSA, 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 wind generators, the trading margin shall be limited to Rs. 0.02/kWh as specified in the Regulation 8(1)(d) and Regulation 8(1)(f) of the Trading Licence Regulations.

46. Prayer (b) of the Petitioner is answered accordingly.

47. The Petition No. 258/AT/2021 is disposed of in terms of the above.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member