CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 354/AT/2022

Coram:
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member

Date of order: 6th April, 2023

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 1200 MW Wind-Solar Hybrid Power Projects (Tranche-IV) connected to the Inter-State Transmission System (ISTS) and selected through competitive bidding process as per the guidelines 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**

Vs

1. **Project Ten Renewable Power Private Limited**
   S 2904, 29th Floor, World Trade Centre,
   Brigade Gateway Campus, #26/1, Dr. Rajkumar Road,
   Malleswaram-Rajajinagar
   Bangalore – 560 055.

2. **Azure Power India Private Limited**
   5th Floor, Southern Park, D II,
   Saket Place, Saket, New Delhi-110 017.

3. **NTPC Limited**
   Engineering Office Complex, Plot no A-8A
   Sec-24, Noida, Uttar Pradesh-201 301.

4. **NLC India Limited**

Block-01, Neyveli,
Tamil Nadu- 607 801.

5. **NTPC Renewable Energy Limited**,
NTPC Bhawan, Scope Complex, 7, Institutional Area,
Lodhi Road, South Delhi – 110 003.

6. **Kotuma Wind Parks Private Limited**,
P.No.1202,1215 A.D No. 8-2-293/82/A/1202,
S.L. Jubilee, Road No. 61, Jubilee Hills,
Hyderabad, Telangana – 500 033.

7. **Chhattisgarh State Power Distribution Company Limited,**
Vidyut Seva Bhavan, Dangania,
Raipur (CG), Chhattisgarh – 492013.

8. **Haryana Power Purchase Centre**,
Shakti Bhawan, Sector 6, Panchkula,
Haryana – 134 109.

… **Respondents**

The following were present:

1) Shri M.G. Ramachandran, Senior Advocate, SECI
2) Ms. Tanya Sareen, Advocate, SECI
3) Ms. Neha Singh, SECI
4) Shri Atulya Kumar Naik, SECI
5) Shri Shibasish Das, SECI
6) Shri Mudit Jani, 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 1200 MW Wind-Solar Hybrid Power Projects (Tranche-IV) 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 Wind-Solar Hybrid Projects' issued by the Ministry of New and Renewable Energy, Government of India dated 14.10.2020 (hereinafter referred to as “Hybrid Guidelines”). The Petitioner has made the following prayers:

> *“(a) Adopt the tariff discovered in the tariff based competitive bid process for the aggregate 1200 MW capacity from Wind-Solar Hybrid power projects on the terms and conditions contained in the Power Purchase Agreements signed with the Wind-Solar Hybrid Power Developers read with the Power Sale Agreements signed with the Buying Entities/Distribution Licensees;*
>
> *(b) Approve the 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…..”*

<u>Submissions of the Petitioner</u>

2. The Petitioner, SECI has submitted that on 15.4.2021, it issued Request for Selection (“RfS”) bearing RfS No. SECI/C&P/HPD/T4/1200MW/RfS/042021 along with draft Power Purchase Agreement (“PPA”) and draft Power Sale Agreement (“PSA”) documents on ISN Electronic Tender System (ETS) e-bidding portal for Selection of Project Developers for setting up of 1200 MW ISTS-connected Wind Solar Hybrid Power Projects (Tranche-IV). The Petitioner has submitted that in response to the above RfS, nineteen bids were received offering an aggregate capacity of 6280 MW and all of them were found to meet the technical criteria. On 20.8.2021, the financial bids of technically qualified bidders were opened on the ISN ETS e-bidding portal in the presence of Bid Evaluation Committee (BEC). The eighteen bidders for the capacity aggregating 5980 MW were shortlisted for e-reverse auction. E-reverse auction of the qualified bidders was conducted on 23.8.2021 on ISN ETS e-bidding portal basis which the final tariff was arrived at. It is also stated that pursuant to issuance of Letter of Award to the successful bidders, namely, NTPC Limited (450 MW), NLC India Limited (150 MW), Project Ten Renewable Power Private Limited (450 MW) and Azure Power India

Pvt. Ltd. (150 MW) on 8.11.2021, the Petitioner has entered into PPAs with these successful bidders/their Project Companies. The Petitioner has submitted that Hybrid Power Projects are scheduled to be commissioned within 18 months from the effective date of the PPAs. Moreover, the Petitioner has also signed the PSAs for the entire 1200 MW with the distribution licensees, namely, Haryana Power Purchase Centre (HPPC) and Chhattisgarh State Power Distribution Company Limited (CSPDCL). The Petitioner has submitted that as per PSA`s, the Petitioner shall be entitled for a tariff (inclusive of mutually agreed trading margin of Rs. 0.07/kWh) to be paid to the distribution licensees. In view of the above, the Petitioner has prayed for adoption of tariff for procurement of 1200 MW Wind Solar Hybrid Projects discovered through competitive bidding process carried out by SECI.

Hearing dated 19.1.2023

3. The matter was heard on 19.1.2023. During the course of hearing, learned senior counsel for the Petitioner, *inter-alia,* submitted that the tariff for 1200 MW Wind-Solar Hybrid Power Projects has been discovered through a tariff based competitive bidding process conducted as per the Hybrid Guidelines and the Commission may adopt the same. Learned senior counsel further submitted that for the entire 1200 MW capacities, the PPAs and PSAs have been signed with the successful bidders and distribution licensees respectively. Learned senior counsel submitted that SECI has also furnished Conformity Certificate to the effect that no deviations were made in regard to Bidding Guidelines and that the Bid Evaluation Committee has conducted the bid evaluation in conformity with the provisions of RfS.

4. After hearing the learned senior counsel for the Petitioner, the matter was admitted and notice was issued to the Respondents to file their reply, if any. However, none of the Respondents have filed any reply.

5. During the course of hearing, the Commission observed that while the Clause 8.5 of the Hybrid Guidelines provided for a formula for compensating the financial impact due to increase/decrease in the costs on account of occurrence of Change in Law event, the Petitioner in Article 12.2.3 of the PPA & 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. 0.0049/kWh. Accordingly, Petitioner was directed to clarify on affidavit the rationale for incorporating the pre-determined Change in Law relief of Rs. 0.0049/kWh for increase/decrease of Rs. 1 lakh per MW in the project cost rather than following the mechanism specified in the Guidelines.

6. The Petitioner vide its affidavit dated 23.3.2023 has furnished its response to the above wherein it has, *inter-alia*, stated that in view of the Clause 25 of the Hybrid Guidelines which empowers the MNRE to issue clarification and modification thereto, SECI vide its letter dated 26.11.2020 had requested to ratify the modification of Change in Law provision under the Wind-Solar Hybrid Tranche III Scheme and the MNRE vide letter dated 18.12.2020 had conveyed the *ex-post facto* approval to the modification in Change in Law provision for Wind-Solar Hybrid Tranche III Scheme. The Petitioner has stated that subsequent to Wind-Solar Hybrid Tranche III Scheme, SECI had initiated Wind – Solar Hybrid Tranche IV Scheme (as relevant for the present case) and the

Change in Law provision under the Tranche IV Scheme was incorporated in line with the provisions as approved by MNRE vide letter dated 18.12.2020. The Petitioner has submitted that in pursuance of information sought for by the Commission vide Record of Proceedings for the hearing dated 19.1.2023, SECI wrote a letter dated 20.1.2023 to MNRE. Vide letter dated 16.3.2023, MNRE has conveyed the *ex-post facto* approval for extension of scope of MNRE's letter dated 18.12.2020 to Tranche IV Scheme as well and thus, the incorporation of the pre-determined Change in Law relief in the PPAs and PSAs is in terms of approval given by MNRE vide letter dated 18.12.2020 read with its letter dated 16.3.2023.

Analysis and Decision

7. In the present case, the Petitioner issued RfS documents based on the Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind Solar Hybrid Projects ('Hybrid Guidelines') notified by MNRE on 14.10.2020. 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 Wind Solar Hybrid Power Projects discovered pursuant to the competitive bid process carried out in terms of the above Guidelines issued by the Government of India.

8. 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."*

9. 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.

10. Ministry of New and Renewable Energy, Government of India has issued the Hybrid Guidelines under Section 63 of the Act vide F.No.238/78/2017-Wind on 14.10.2020. The salient features of the 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, liquidly, 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 with 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.

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

12. The Petitioner, has been designated as the nodal agency for implementation of MNRE Schemes for setting up of inter-State Transmission System connected/ State specific wind/ solar power/ wind-solar hybrid power projects, invite biding under tariff based competitive bidding process, enter into PPAs with developers at the tariff discovered in the competitive bid process, and enter into PSAs with the distribution licensees to enable them to fulfil their Renewable Purchase Obligations under Section 86(1)(e) of the Act. SECI acts as an intermediary agency in purchase and sale of power under the PPAs and PSAs on back-to-back basis.

13. The Hybrid Guidelines provide framework for long-term procurement of wind-solar hybrid power at a tariff to be determined through transparent process of bidding by the procurer(s), from ISTS wind-solar hybrid power projects having minimum size at one site of 50 MW. As per the Hybrid Guidelines, SECI, in its capacity of intermediary procurer, invited the proposal for setting-up of ISTS Wind-Solar Power Projects on pan India basis, on “Build, Own and Operate” basis for an aggregate capacity of 1200 MW and for procurement of Wind-Solar Hybrid power from the Projects being set-up in relation thereto. As per the arrangement, SECI is to procure the power by entering into PPAs with the successful bidder with back-to-back PSAs for sale of power to the distribution licensees.

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

Sr.	Event	Date
1.	RfS issued by SECI	15.4.2021
2	Pre Bid meeting held	26.4.2021
3	Corrigendum & Amendment to the RfS document	25.5.2021 to 30.6.2021
4	Last date of bid submission	16.7.2021
5	Opening of Techno Commercial bids	22.7.2021
6	Opening of Financial bids	20.8.2021
7	e-Reverse auction conducted	23.8.2021
8	Issuance of Letters of Award (LoAs) to successful bidders	8.11.2021
9	Issuance of Addendum to LoAs to Successful bidders	14.12.2021
10	Issuance of Addendum – 2 to LoAs to successful bidders	2.2.2022

15. On 15.4.2021, SECI issued Request for Selection document, along with draft PPA and PSA documents for setting up of 1200 MW ISTS-connected Wind Solar Hybrid Power Projects (Tranche-IV). The proposal was to establish ISTS-connected Wind-Solar Hybrid Power projects on "Build Own Operate" basis for an aggregate capacity of 1200 MW.

16. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids under RfS-No. SECI/C&P/HPD/T4 /1200MW RfS/042021 dated 15.4.2021:

Tender	Dept.	Offline and Online Techno-Commercial and Financial Bid Opening	Techno-Commercial and Financial evolution and post-e-RA recommendation
1200 MW ISTS-connected Wind-Solar Hybrid Power Projects (Tranche-IV)	PS	Shri Ved Aseri, Dy, Manager/Jaya, Dy. Manager	Shri P. Venkatesan, Sr. Manager
	Contracts	Shri Jayansh Gaur, Sr. Engineer	Shri Pratik Prasun, Manager
	Finance	Shir Anuja, Manager	Shri Anuja, Manager

17. Last date of submission of bid was 16.7.2021 and the technical part of the bid was opened on 22.7.2021. Response to RfS was received from nineteen bidders and all of them fully met the technical criteria and consequently, were found to be qualified for opening of financial bid. On 20.8.2021, financial bids of nineteen technically qualified bidders were opened on the ISN ETS e-bidding portal in the presence of member of Bid Evaluation Committee. As per the eligibility criteria mentioned in the RfS document, only eighteen bidders for aggregating 5980 MW were shortlisted for e-reverse auction.

18. E-reverse auction was carried out on 23.8.2021 on ISN ETS e-bidding portal. After completion of e-reverse auction, the following were declared as successful bidders:

S. No.	Bidder	Bidder's Quantity (MW)	Tariff (INR / kWh)	Allotted Capacity (MW)
1.	NTPC Limited	450	2.34	450
2.	NLC India Limited	150	2.34	150
3.	Project Ten Renewable Power Private Limited	450	2.34	450
4.	Azure Power India Pvt. Ltd.	300	2.35	150
Total				**1200 MW**

19. After conclusion of e-reverse auction and the determination of the tariff, on 8.11.2021, SECI issued Letter of Awards to all four selected bidders as under:

i) Letter of Award issued to NTPC Limited:

Allotted project ID	Project Capacity (MW)	Project Location (s)	Inter Connection Point (s) Details	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
HPD-ISTS-T4-NTPCL-P1-450MW	450 (Solar PV 300 MW & Wind 150 MW)	Dist.Jaisalmer, Rajasthan (Component Solar: 300 MW)	Bhadla II Rajasthan PGCIL	2.34	Rupees Two and thirty-four paisa only
		Village Dayapar, Dist Kutch, Gujrat (Wind: 150MW)	Bhuj Gujrat PGCIL		

ii) Letter of Award issued to NLC India Limited.

Allotted project ID	Project Capacity (MW)	Project Location (s)	Inter Connection Point (s) Details	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
HPD-ISTS-T4-NLCIL-P1-150MW	150 (Solar PV 100 MW & Wind 50 MW)	Tuticorin TamilNadu	Tuticorin TamilNadu	2.34	Rupees Two and thirty four paisa only

iii) Letter of Award issued to Project Ten Renewable Power Private Limited.

Allotted project ID	Project Capacity (MW)	Project Location (s)	Inter Connection Point (s) Details	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
HPD-ISTS-T4-PTRPPL-P1-450MW	450 (Solar PV 350 MW & Wind 150 MW)	Village Jalodu & Vollur, District Pavagada,	220 kV Side Pavagada PGCIL Karnataka	2.34	Rupees Two and thirty-four paisa only

Allotted project ID	Project Capacity (MW)	Project Location (s)	Inter Connection Point (s) Details	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
		Karnataka (Component Solar: 350 MW)			
		Village Kuknur, Dist. Koppal, Karnataka t (Wind: 150MW)	220kV Side Koppal PGCIL Karnataka		

iv) Letter of Award issued to Azure Power India Pvt. Ltd.

Allotted project ID	Project Capacity (MW)	Project Location (s)	Inter Connection Point (s) Details	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
HPD-ISTS-T4-APIPL-P1-150MW	150 (Solar PV 100 MW & Wind 50 MW)	Solar 100MW Rajral, Barmer, Rajasthan	Solar: 400/220 kV CTU Fatehgarh-III S/S	2.35	Rupees Two and thirty-five paisa only
		Wind 50MW Koppal Gadag Karnataka	Wind: 400/220 kV CTU Gadag S/S		

20. Relevant portion of the Letter of Award issued to one of the successful bidders, namely, NTPC Limited is as under:

“Sub: Selection of Hybrid Power Projects under RFS for setting up of 1200 MW ISTS-connected Wind-Solar Hybrid Power Projects (Tranche-IV): Letter of Award for Hybrid Power project of 450 MW (Project ID HPD-ISTS-T4NTPCL-P1-450MW).

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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:

Alloted Project ID	***Project Capacity (MW)***	***Project location (s)***	***Inter Connection Point (s) Details***	***Applicable Tariff (INR/kwh) in figures***	***Applicable Tariff (INR/kwh) in words***
HPD-ISTS-T4-NTPCL-P1-450MW	*450(Solar PV 300 MW & Wind 150 MW)*	*Dist. Jaisalmer, Rajasthan (Component Solar 300 MW)*	*Bhadla II Rajasthan PGCIL*	*Rs. 2.34/-*	*Rupees Two and thirty-four Paisa only*
		Village Dayapar, Dist. Kutch, Gujrat (Wind 150MW)	*Bhuj Gujrat PGCIL*		

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

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

1.1 The HPD will be free to avail fiscal incentives like Accelerated Depreciation, concessional Custom Duties, Tax Holidays etc. as available for such projects as per prevailing conditions. No claim shall arise on SECI for any *liability if the HPD 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 submitted 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 HPD 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 not less than 51% of voting rights and paid up share capital). It shall be considered as a company under joint control. In such cases, the shareholding pattern in the company as submitted at the time of bidding, shall be maintained for a period of 01 (one) year after COD.

1.5 In case of projects being implemented through SPVs, the successful Bidder executing the project, 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 HPD shall pay to SECl, Success Charges of Rs. 1 lakh/MW/project + 18% GST within 30 days of issuance of this Letter of Award (LoA), in line with Clause 3.12 of the RfS, towards administrative overheads, coordination with State Authorities and others, DISCOM/ STU/ CTU, pre-commissioning and commissioning expense. Performance Bank Guarantee(s)/ Payment on Order Instrument (POI) for a value of @ Rs 10 Lakh/ MW per Project shall be submitted by the HPD at least 07 working days prior to signing of PPA (PPA signing date to be intimated by SECl), in line with Clause 3.11 of the RfS.

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

1.8 The project breakup for the cumulative capacity quoted in the Covering Letter, may be changed by the HPD subsequent to issuance of LOA up to the date as on 30 days from issuance of LOA. For an individual Project, any modification in the rated capacities of wind and solar components in the Project, shall be intimated to SECl within 30 days of issuance of LOA. Both the above parameters will remain unchanged, thereafter. The PPA will remain in force for a period of 25 years from the SCD.

1.9 The HPD will have to submit the required documents as mentioned below to SECl 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 Hybrid Power Developer.*
2) *The details of promoters and their shareholding in the HPD, 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 HPD 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 51% shareholding subsidiary, in line with provisions of the RFS. Further, the Successful Bidder shall submit a Board Resolution prior to singing of PPA with SECI, committing total equity infusion in the SPV as per the provisions of RFS.*
5) *Copy of Board Resolution 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/ Payment on Order Instrument of requisite value. In case SECI is not able to enter into a PSA to sell power from the awarded Projects to DISCOMs or bulk consumers within 6 months from issuance of LoAs, these Projects will be cancelled. Further, in case of signing of PSA for partial capacity until the deadline as mentioned before, the provisions as stated in Clause 4.4.6, Section 4, of the RfS shall be applicable.
1.10 SECI shall, have the right to verify original documents of the HPD 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 delays on the part of the HPD 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.

1.11 In case, the SECI offers to execute the PPA with the HPD and the selected Bidder refuses to execute the PPA within the stipulated time period, the selected Project(s) shall stand cancelled and the provisions of Clause 3.11 .(i) of the RfS shall be applicable, and the selected Bidder expressly waives off its rights and objections, if any, in that respect.

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

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

21. Based on request of distribution licensees/ buying utilities, 800 MW was allocated to Haryana Power Purchase Centre and 400 MW was allocated to Chhattisgarh State Power Distribution Company Limited. Accordingly, SECI has entered into PSA dated 17.2.2022 with Haryana Power Purchase Centre and PSA dated 29.4.2022 with Chhattisgarh State Power Distribution Company Limited.

22. Pursuant to the above, SECI entered into PPA dated 15.7.2022 for 150 MW with Kotuma Wind Parks Private Limited (Project Company of successful bidder Azure Power India Pvt. Ltd.), PPA dated 30.6.2022 for 450 MW with NTPC Renewable Energy Limited (Project Company of successful bidder NTPC Limited), PPA dated 30.6.2022 for 450 MW with Project Ten Renewable Power Private Limited and PPA dated 13.10.2022 for 150 MW with NLC India Limited.

23. SECI has submitted a Conformity Certificate dated 19.7.2022 certifying that after conclusion of the bid submission, the BEC constituted for the bid evaluation, conducted the techno-commercial as well as financial bid evaluation in conformity with the provisions of RfS and that the applicable Guidelines and amendments/clarification thereof, if any issued by Govt. of India for the bidding process were following and no deviation was taken from the Guidelines in the RfS document. The relevant extract of the aforesaid Conformity Certificate is as under:

> *"With respect to the RfS No.SECI/C&P/HPD/T4/1200MW/RfS/042021 dated 15.4.2021, 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."*

24. However, it may be noted that Clause 8.5 of the Hybrid Guidelines, dealing with Change in Law, provides as under:

> *"**8.5. CHANGE IN LAW***
>
> *8.5.1. In the event a change in Law results in any increase or decrease in the cost of generation, the said increase / decrease in cost shall be passed on in tariff in the following manner:*
>
> *(a) For the purpose of ensuring that the pass through happens in an expeditious manner within 30 days of the Change in Law event, the following formula may be followed:-*
>
> *Let Financial Impact of Change in Law =P;*

Then, the modification in PPA tariff (M.T.) for compensating the financial impact is given by

M.T. = Y/X

Where, X = estimated monthly electricity generation (in kWh) = (1/12) [contracted capacity of the RE power plant as per PPA (in MW) x Annual CUF declared in PPA (in %) x 8760 hours x 10];
And,
$Y=[(P\times Mr)\{(1+Mr)^n\}]\div[\{(1+Mr)^n\}-1]$
where,

n = no. of months over which the financial impact has to be paid; and
Mr = monthly rate of interest ; where R = annual rate of interest on loan component (in %) as considered by Central Electricity Regulatory Commission (CERC) in its Order for Tariff determination from Renewable Energy Sources for the year in which the project is commissioned. In absence of relevant CERC Orders for the concerned year, the interest rate shall be average interest rate plus 200 basis points above the average State Bank of India Marginal Cost of Funds based leading rate (MCLR of one year tenor) prevalent during the last available six months for such period.

Further, the M T. shall be trued up annually based on actual generation of the year so as to ensure that the payment to the Generator is capped at the yearly annuity amount.

(b) The pass through according to the formula stipulated above shall be calculated and shall come into effect automatically after 30 days of the Change in Law event.

(c) Within 30 days of the pass through coming into effect the Generator/ Intermediary Procurer/ Procurer shall submit the relevant documents/calculation sheets to the Appropriate Commission for truing up the rate of pass through per unit.

(d) The Appropriate Commission shall verify the calculation and do the truing up within 60 days of the pass through coming into effect after which the rates of pass through shall be adjusted if necessary according to the truing up.

8.5.3. In these Guidelines, the term 'Change in Law' shall refer to the occurrence of the following events, after the last date of the bid submission, (i) the enactment of any new Law; or (ii) an amendment, modification or repeal of an existing Law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining a consent, permit *or license, not owing to any default of the Generator; or (v) any change in the rates of any taxes which have a direct effect on the Project.*

However, Change in Law shall not include any change in taxes on corporate income or any change in any withholding tax on income or dividends."

25. Whereas, Article 12.2.3 of the PPAs, dealing with the relief for Change in Law, provides as under:

"12.2 Relief for Change in Law

12.2.3 In case of Change in Law as approved by the Appropriate Commission pursuant to Article 12.2.1 or as provided under Article 12.1.3, the HPD/ SECI/ Buying Entities (as the case may be) shall be entitled for relief as follows:

Every net increase/decrease of Rs.1 lakh per MW in the Project Cost, for reasons other than those wherein such extension is on account of payment of liquidated damages, penalty or any other charges, as the case may be), shall be liable for corresponding increase/decrease of an amount equal to Rs 0.0049 /kWh.

Any such change, shall be considered upto three digits after the decimal point, and remaining digits, if any, shall be ignored.

For e.g. in case the change in tariff payable is calculated as Rs. 0.14678/kWh, it shall be modified as Rs. 0.146/kWh"

26. Accordingly, the Petitioner was directed to clarify on affidavit the rationale for incorporating the pre-determined Change in Law relief of Rs. 0.0049/kWh for increase /decrease of Rs. 1 lakh per MW in the project cost rather than following the mechanism as specified in the Hybrid Guidelines. In response, the Petitioner has submitted that earlier in respect of Wind-Solar Hybrid Tranche III Scheme, it had vide its letter dated 26.11.2020 requested MNRE to ratify the modification of Change in Law provision under the said Scheme/tender and the MNRE vide its letter dated 18.12.2020, in exercise of its powers to issue clarification/modification under the Hybrid Guidelines

had conveyed the *ex-post facto* approval to the modification in Change in Law provision for the said Tranche III Scheme. The Petitioner has further submitted that the aforesaid Change in Law provision in the present Tranche IV Scheme/tender was incorporated in line with the provision as approved by MNRE vide its letter dated 18.12.2020 and on the basis of SECI's request dated 20.1.2023, MNRE vide its letter dated 16.3.2023 has conveyed the *ex-post facto* approval for extension of scope of MNRE's letter dated 18.12.2020 to the present Tranche IV Scheme/tender also. SECI has further clarified that the above Change in Law clause was incorporated in the standard PPA and PSA as circulated along with the RfS itself and has also been incorporated in the signed PPAs and PSAs.

27. We have considered the submissions of SECI in this regard. We note that the issue of modification of the Change in Law provision in the PPAs & PSAs from the provisions of the Hybrid Guidelines and the *ex-post facto* approval by MNRE vide its letter dated 18.12.2020 had already been considered by the Commission in detail vide order dated 21.12.2021 in Petition No. 179/AT/2021 (SECI v. ABC Renewable Energy Pvt. Ltd. and Ors.) filed by SECI seeking adoption of tariff for the Wind-Solar Hybrid Power Projects under Wind – Solar Hybrid Tranche III Scheme. The relevant extract of the said order dated 21.12.2021 reads as under:

> *"24. The Petitioner has submitted that it has taken certain deviations in the bid documents from the provisions of the Guidelines with regard to the Change in Law provisions. However, such changes have been incorporated pursuant to the approval of Ministry of New and Renewable Energy ("MNRE") vide letters dated 18.12.2020 and 1.3.2021, whereby MNRE in exercise of its powers to issue clarification/ modification under the Guidelines, gave 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 and the aforesaid letters of MNRE have been placed on record by SECI vide its affidavit dated 20.10.2021.

25. We have considered the submissions made by the Petitioner. As regards deviations from the Guidelines, we observe that while the Guidelines provide for formula for compensating the financial impact due to increase/ decrease in the costs on account of occurrence of Change in Law event, the Petitioner in the 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.0.0049/kWh. The Petitioner has submitted that such deviations have been approved by the Ministry of New and Renewable Energy, Government of India and vide affidavit dated 20.10.2021, it has placed on the record the correspondence exchanged with MNRE in this regard. It is also noted that SECI has placed on record its letter dated 26.11.2020 and e-mail dated 13.1.2021 to MNRE requesting for certain modifications to the Bidding 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 the letter dated 18.12.2020 and letter 1.3.2021 issued by MNRE to SECI, whereby MNRE, in exercise of its powers to issue clarifications/ modifications under the Guidelines, gave ex-post facto approval for changes in respect of certain provisions 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 extracts of the MNRE's letter dated 18.12.2020 and letter dated 1.3.2021 are as under:

<u>Letter dated 18.12.2020</u>

"…..Subject : Modification in 'Change in Law' provision of 'Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind Solar Hybrid Projects' issued by MNRE dated 14.10.2020-Reg.

Sir,

I am directed to refer 'Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind Solar Hybrid Projects' issued by MNRE dated 14.10.2020 and SECI's letter dated 26.11.2020 on the above cited subject.

2. In this regard, the ex-post facto approval of Hon'ble Minister is hereby conveyed for Tranche – III of Wind-Solar Hybrid bid issued under above *guidelines dated 14.10.2020 to the modification in 'Change in Law' clause. The modified clause is enclosed in annex…."*

<u>Letter dated 1.3.2021</u>

"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)…"

26. Thus, as per above letters of the 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, both in (i) bids that have been issued but not closed and (ii) bids that have been issued and closed.

27. The bids covered under the present Petition falls under the second set of bids (where bids have been issued and closed), as the last date of submission of bid was 7.12.2020 (online) and 9.12.2020 (offline), whereas the deviations were approved by MNRE vide its letter dated 18.12.2020 and letter dated 1.3.2021. Further, in the 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;…"

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

29. We observe that the Change in Law provisions were incorporated to the Bid documents by amendment No.8 dated 28.11.2020, whereas the last date of submissions of bid was 7.12.2020 (online) and 9.12.2020 (offline). 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. ....."

28. In the present case which concerns with Wind Solar Hybrid Tranche IV Scheme/tender, the Petitioner has relied upon the MNRE's letter dated 16.3.2023 conveying the *ex-post facto* approval for extension of scope of MRNE's letter dated 18.12.2020 to Tranche IV of Wind Solar Hybrid bid issued by SECI under the Hybrid Guidelines and accordingly, it has been submitted that the incorporation of the pre-determined Change in Law relief in the PPAs & PSAs is in terms of the approval given by MNRE vide letter dated 18.12.2020 read with letter dated 16.3.2023. The relevant extract of the MNRE's letter dated 16.3.2023 reads as under:

"…Subject: Extension of scope of MNRE's letter dated 18.12.2020 regarding modification in "Change in Law" provisions of Guidelines for Wind Solar Hybrid Projects to Wind- Solar Hybrid Tender (Tranche - IV) - Reg.

I am directed to refer SECI's Letter dated 20.01.2023 on the above cited subject and convey the ex-post facto approval of Hon'ble Minister for extension of scope of MNRE's letter dated 18.12.2020 on "Modification in 'Change in Law' provision of 'Guidelines for Tariff Based Competitive Bidding Process for procurement of *power from Grid Connected Wind Solar Hybrid Projects' issued by MNRE dated 14.10.2020" to Tranche-IV of Wind-Solar Hybrid bid issued by SECI under above guidelines…"*

29. Thus, by the above letter, MNRE has *ex-post facto* approved the extension of scope of its earlier letter dated 18.12.2020 which permitted the modification of Change in Law provision for Wind-Solar Hybrid Tranche III bid/tender to Wind-Solar Hybrid Tranche IV bid/tender. The approval granted by MNRE by its letter dated 18.12.2020 to Wind-Solar Tranche III bid/tender has already been noted vide order dated 21.12.2021 in Petition No.179/AT/2021 and the relevant extracts thereof having already been quoted above. Thus, it appears that in terms of MNRE's letter dated 16.3.2023 read with letter dated 18.12.2020, the Petitioner has been permitted, albeit ex-post facto, to incorporate the modified Change in Law provision i.e. provision providing for pre-determined quantum of compensation for Change in Law event for Wind-Solar Hybrid Tranche IV bid/tender as well. Moreover, as clarified by the Petitioner, such provision had been incorporated in the standard PPA & PSA issued along with RfS itself. Thus, the bidder(s) participating in the bid were aware about such provisions at beginning itself thereby enabling them to quote the tariff appropriately and hence, incorporation of such modified Change in Law provision as such did not vitiate the bid process conducted by the Petitioner.

30. However, at the same time, the fact remains that the aforesaid approval of MNRE came only on *post facto* basis and at the time of issuance of RfS documents including PPA & PSA incorporating such modified Change in Law provision, the Petitioner did not have any prior approval with regard to such deviation. On this very

aspect, the Commission in its order dated 21.12.2021 in Petition No. 179/AT/2021 had observed as under:

> *"29........ <u>However, 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 the closure of bids and the approval granted for the same was only on ex-post facto basis. The Commission would like to advise the intermediary agencies including SECI that they must invariably always comply with all the procedural and legal requirements in letter and spirit and not have lapses as in the present case</u>.*
>
> *30. As per Clause 11.2 of the Guidelines, Evaluation Committee is required to certify that the bidding process and the evaluation have been conducted in conformity with the provisions of the RfS. We observe that the Petitioner has made submissions that the bid documents are in line with the provisions of the Guidelines and the approvals of MNRE vide letter dated 18.12.2020 and letter 1.3.2021. This has been certified by the Petitioner through the conformity certificate dated 18.2.2021 furnished by the Petitioner. The relevant extract of the said conformity certificate dated 18.2.2021 is re-produced as under:*
>
> *31. We observe that though MNRE, in exercise of its powers to issue clarifications/ modifications under the Guidelines, gave ex-post facto approval for changes in respect of certain provisions in the Guidelines only vide letter 1.3.2021, the conformity certificate furnished by the Petitioner is dated 18.2.2021, which is prior to 1.3.2021. <u>This clearly implies that on the date the conformity certificate was issued there was no approval from the MNRE. We consider this a serious lapse on the part of the Petitioner. Once again, the Commission would like to advise the intermediary agencies including SECI that they must invariably always comply with all the procedural and legal requirements in letter and spirit and not have lapses as in the present case.</u>*

31. The above observations squarely apply to the present case as well. In the present case also, as such there was no approval to the deviation/modified Change in Law provision at its incorporation in the PPA and PSA and further, even prior to the MNRE's ex-post facto approval vide letter dated 16.3.2023, the Conformity Certificate dated 19.7.2022 furnished by the Petitioner states that no deviation has been taken in the bid/tender documents from the provisions of the Hybrid Guidelines. The

Commission had termed this as a serious lapse on the part of the Petitioner and had advised the intermediary agencies including SECI to invariably comply with all procedural and legal requirements in letter & spirit and not to have lapses as in that case. The present case again calls for reiteration of the above advice to SECI as circumstances in the present case are similar to those involved in Petition No. 179/AT/2021 or even worse if we may say so as the Petitioner in the present case had approached the MNRE seeking *post facto* approval only after query posed by the Commission vide Record of Proceeding for the hearing dated 19.1.2023. We are also concerned with casualness with which the Petitioner has been stating that no deviations are taken from the provisions of the Guidelines in its Conformity Certificate. In the present case, while furnishing such certificate dated 19.7.2022, the Petitioner already had benefit of the observations of the Commission as expressed in order dated 21.12.2021 in Petition No. 179/AT/2021 on the similar issues. However, the direction of the Commission couched under the 'advise' in the said order appears to have fallen upon deaf ears. We hereby caution the Petitioner to henceforth avoid such lapses completely and it must invariably comply with all procedural and legal requirements in letter & spirit.

32. In view of the aforesaid discussions, it emerges that the selection of the successful bidders has been done and the tariff of the Wind-Solar Hybrid Power Projects has been discovered by the Petitioner, SECI through a transparent process of competitive bidding in accordance with the Guidelines issued by Ministry of New and Renewable Energy, Government of India under Section 63 of the Act read with the letters of MNRE dated 18.12.2020 and 16.3.2023. Therefore, in terms of Section 63 of

the Act, the Commission adopts the individual tariff for the Hybrid Power Project, as agreed to by the successful bidders, and for which PPAs have 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 PPAs and PSAs as under:

S. No.	Name of the Successful Bidder	Project Company of Successful Bidder	Date of PPA signing & Contracted Capacity (MW)	Applicable Tariff (Rs./kWh)
1.	Azure Power India Pvt. Ltd.	Kotuma Wind Parks Private Limited	15.07.2022 (150 MW)	2.35
2.	NTPC Limited	NTPC Renewable Energy Limited	30.06.2022 (450 MW)	2.34
3.	Project Ten Renewable Power Private Limited	-	30.06.2022 (450 MW)	2.34
4.	NLC India Limited	-	13.10.2022 (150 MW)	2.34
Total			**1200 MW**	

33. Article 10.3 of the PPAs provides as under:

"10.3 Payment of Monthly Bills

10.3.1 Subject to the provision of Article 10.3.4, SECI shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the HPD, as shall have been previously notified by the HPD as below.

10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:
i) deductions required by the Law; and
ii) amount claimed by SECI, if any, from the HPD, 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 HPD shall open a bank account (the "HPD's Designated Account') for all Tariff Payments (including Supplementary Bills) to be made by SECI to the HPD, 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 HPD to SECI, if any, and notify the HPD of the details of such account ninety (90)

Days before the Scheduled Commissioning Date. SECI and the HPD shall instruct their respective bankers to make all payments under this Agreement to the HPD'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."

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

"10.4 Payment Security Mechanism

Letter of Credit (LC):

10.4.1 SECI shall provide to the HPD, 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 HPD in accordance with this Article.

10.4.2 Before the start of supply, SECI shall, through a scheduled bank open a Letter of Credit in favour of the HPD, 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 HPD 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, SECI shall restore such shortfall before next drawl.

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

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

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

10.4.8 If SECI 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 HPD may draw upon the Letter of Credit, and accordingly the bank shall pay, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

i) a copy of the Monthly Bill or Supplementary Bill (only for energy related bills) which has remained unpaid to HPD and;

ii) a certificate from the HPD 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;

35. 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."

36. 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 Article 10.3 and Article 10.4 of the PPAs and Clause 10 of Regulation 9 of the Trading Licence Regulations shall be abided by all the concerned parties to the present Petition.

37. 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:…"*

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

39. 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."*

40. 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."*

41. The above two provisions are exceptions to the main provision as regards trading margin. The 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.

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

43. The Petition No. 354/AT/2022 is disposed of in terms of the above.

Sd/-	**sd/-**	**sd/-**
(P.K. Singh)	**(Arun Goyal)**	**(I.S. Jha)**
Member	**Member**	**Member**