



याचिका संख्या/Petition No.118/AT/2024

कोरम/ Coram:

श्री जिशु बरुआ, अध्यक्ष / Shri Jishnu Barua, Chairperson

श्री अरुणगोयल, सदस्य/ Shri Arun Goyal, Member

आदेश दिनांक/ Date of Order 1st of August, 2024

In the matter of:

Petition under Section 63 of the Electricity Act, 2003 for the adoption of tariff for procurement of 1200 MW power from ISTS-Connected Solar PV Power Projects in India under Scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage Power notified by the Ministry of Power, Government of India vide its Gazette Notification dated 26.8.2022.

And

In the matter of:

NTPC Limited,
NTPC Bhawan, Scope Complex,
7 Institutional Area, Lodhi Road, New Delhi-110003

...Petitioner

Versus

1. NTPC Renewable Energy Limited,
Through its Authorized Representative
E-3, Main Market Road, Ecotech-II,
Udyog Vihar, Greater Noida,
Uttar Pradesh-201306
2. ACME Cleantech Solutions Private Limited,
Through its Authorized Representative,
Plot No.152, Sector-44,
Gurugram, Haryana-122002
3. PFC Consulting Limited,
Through its Authorized Representative,

- First Floor, "Urjanidhi",
1, Barakhamba Lane, Connaught Place,
New Delhi-110001
4. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan, 14, Ashok Marg,
Lucknow- 226001
 5. Uttarakhand Power Corporation Limited,
V.C.V. Gabar Singh Urja Bhawan, Kanwali Road,
Dehradun, Uttarakhand,
 6. Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Jaipur, Rajasthan-302005
 7. Ajmer Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Panchsheel Nagar, Makarwali Road,
Ajmer, Rajasthan-305004
 8. Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Area,
Jodhpur, Rajasthan-342003
 9. Rajasthan Urja Vikas Nigam Limited (RUVNL),
(on behalf of DISCOMs of Rajasthan),
Vidyut Bhawan, Janpath,
Jaipur 302 005
 10. BSES Rajdhani Power Limited,
2nd Floor, B-Block, BSES Bhavan,
Nehru Place, New Delhi-110019
 11. BSES Yamuna Power Limited,
Shakti Kiran Building,
Karkardooma, Delhi-110032
 12. Tata Power Delhi Distribution Limited,
NDPL House, Hudson Lines, Kingsway Camp
Delhi-110009
 13. Punjab State Power Corporation Limited,
Dy. CE/ISB, Shed T-1A, Shakti Vihar,
PSPCL, Patiala, Punjab – 147001
 14. Haryana Power Purchase Centre,
IP 3& 4, 4th floor, Sector 14,
Panchkula, Haryana - 134113
 15. Himachal Pradesh State Electricity Board Limited,

Vidyut Bhawan, Shimla,
Himachal Pradesh-171004

16. Power Development Department,
J&K (Govt. of Jammu & Kashmir),
Room No. 1/27, Mini Block, Civil Secretariat
Srinager-190 009 (Jammu & Kashmir)
17. Electricity Department, UT of Chandigarh,
Electy Op Divn No 2, Industrail Area,
Ph-1 BBMB Complex, Chandigarh, Punjab-160002
18. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Vidyut Nagar,
Jabalpur 482008
19. Chhattisgarh State Power Distribution Company Limited,
Office of Executive Director (Commercial)
CSPDCL, 4th Floor, Vidyut Sewa Bhawan,
Daganiya, Raipur, Chhattisgarh-492013
20. Maharashtra State Electricity Distribution Company Limited,
Prakashgad, Plot No. G-9, Anant Kanekar Marg,
Bandra (E), Mumbai, Maharashtra-400051
21. Gujarat Urja Vikas Nigam Limited,
2nd Floor Sardar Patel Vidyut Bhawan,
Race course, Vadodara -390007
22. Electricity Department, Government of Goa,
3rd floor, Vidhyut Bhavan,
Electricity Department, Government of Goa,
Panaji, Goa-403001
23. Electricity Department, UT of Daman & Diu
220 KV Magarwada Substation,
Magarwada, Moti Daman – 396220
24. Dadra & Nagar Haveli Power Distribution Corporation Limited,
1st & 2nd Floor, Vidyut Bhavan,
Silvassa-396230, Dadra & Nagar Haveli
25. Southern Power Distribution Company of A.P. Limited
APPCC, Vidyut Soudha, Gunadala,
Vijayawada, Vijayawada– 520004, Andhra Pradesh
26. Andhra Pradesh Eastern Power Distribution Company Limited,
C/o 50-27-5/1, TPT Colony,
Seethammadhara, Visakhapatnam-530013,

Andhra Pradesh

27. Chamundeshwari Electricity Supply Corporation Limited,
No.29, Corporate Office, CESC Mysore,
Vijayanagar 2nd Stage, Hinkal,
Mysore-570017, Karnataka
28. Gulbarga Electricity Supply Company Limited,
Corporate Office, RA Section, Station Main Road,
Opp. Parivar Hotel, GESCOM, Kalaburagi,
Gulbarga-585102, Karnataka
29. Bangalore Electricity Supply Company Limited,
Corporate Office BESCO, K.R. Circle,
Bangalore-560001, Karnataka
30. Mangalore Electricity Supply Company Limited,
Corporate Office, Mescom, Mescom Bhavana,
Kavoor Cross Road, Bejai,
Mangalore-575004, Karnataka
31. Hubli Electricity Supply Company Limited,
Corporate Office PB ROAD,
Navanagar Hubballi, Hubli-580025, Karnataka
32. Tamil Nadu Generation & Distribution Corporation Limited,
NPKRR Maaligai, 144 Anna Salai,
Chennai- 600002, Tamil Nadu
33. Kerala State Electricity Board Limited,
Tariff Regulatory and Affairs Cell,
Vydyuthi Bhavan, KSEB Ltd.,
Thiruvananthapuram-695004, Kerala
34. Telangana Southern Power Distribution Company Limited,
Corporate Office 6-1-50, Mint Compound,
Hyderabad, Telangana-500063
35. Telangana Northern Power Distribution Company Limited,
H.No: 2-5-31/2, Corporate Office, Vidyut Bhavan,
Nakkalahgutta, Hanamkonda, Warangal
Telangana-506001
36. Electricity Department, UT of Puducherry
137, Netaji Subash Chandra Bose Salai, Puducherry,
Puducherry-605001
37. West Bengal State Electricity Distribution Company Limited,
Vidyut Bhavan, Block-DJ, Sector-II, Salt Lake,

Kolkata-700091, West Bengal

38. Bihar State Power Holding Company Limited,
Vidyut Bhawan, Bailey Road,
Patna – 800 001
39. Jharkhand Bijli Vitran Nigam Limited,
Engineering Building, HEC, Dhurwa,
Ranchi- 834004, Jharkhand
40. Grid Corporation of Orissa Limited,
Vidyut Bhawan, Janpath,
Bhubaneswar- 751007
41. Sikkim Power Development Corporation Limited,
National Highway-10, Near UD & HD Deptt. ,
Gangtok737101, East Sikkim-
42. Assam Power Distribution Company Limited,
Bijulee Bhawan, 5th Floor,
Paltanbazaar, Guwahati-781001, Assam
43. Meghalaya Energy Distribution Corporation Limited,
Lumjingshai, Short Round Road,
Shillong-793001, Meghalaya
44. Tripura State Electricity Corporation Limited,
Bidyut Bhawan, North Banamalipur,
B.K. Road, Agartala-799001, Tripura
45. Department of Power,
O/o The Chief Engineer (T&G),
Electricity House, Below A.G Office,
Kohima-797001, Nagaland
46. Department of Power,
Office of the Superintending Engineer (E),
System operation & Power System Communication,
SLDC Itanagar, Itanagar-791111, Arunachal Pradesh-
47. Power & Electricity Department, Government of Mizoram,
Kawlphetha Bld., New Secretariat Complex,
Khatla, Aizawl-796001, Mizoram
48. Manipur State Power Distribution Company Limited,
Electricity Complex, Patta No. 1293 Under 87(2),
Khwai Bazar, Keishampat,
Imphal-795001, Manipur

...Respondents



Parties Present:

1. Shri Venkatesh, Advocate, NTPC
2. Shri Suhael Buttan, Advocate, NTPC
3. Shri Nikunj Bhatnagar, Advocate, NTPC
4. Shri S. Vallinayagam, Advocate, TANGEDCO
5. Ms. Priyadarshini, Advocate, PFCCL
6. Shri R. Alamelu, TANGEDCO
7. Shri R. Kathiravan, TANGEDCO
8. Ms. Masoom Bajaj, PFCCL

ORDER

NTPC Limited (“the **Petitioner**”) has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as ‘the Act’) for the adoption of tariff for 1200 MW ISTS-connected Solar PV Power projects under the Scheme for Flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage Power dated 12.4.2022 (hereinafter referred to as ‘the Flexibility Scheme’) and selected through the competitive bidding process as per the “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected RE Power Projects for utilisation under the scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage power” (hereinafter referred to as ‘Flexibility Guidelines’) dated 27.8.2022 issued by the Ministry of Power, Government of India. The Petitioner has made the following prayers:

“(a) Admit the present Petition;

(b) Adopt the Tariff of Rs. 2.53 per unit for the procurement of power from Respondent Nos. 1 and 2, discovered in terms of the TBCB Guidelines through the bidding carried out by PFCCL on behalf of the Petitioner; and/or

(c) Pass any such other order/orders, as this Commission deem fit and proper in the facts and circumstances of the present case.”



Submission of the Petitioner

2. The Petitioner, a generating company within the meaning of Section 2 (28) of the Act, has submitted that the Petitioner, through its Bid Process Coordinator/ Authorized Representative, namely, PFC Consulting Limited ("**PFCCL**") issued a Request for Selection ("**RfS**") dated 20.9.2023 along with the draft Power Purchase Agreement ("**PPA**") for selection of the Solar Power Developers ("**SPDs**") for setting up of the 1200 MW ISTS-Connected Solar PV Power Projects in India under the Flexibility Scheme and as per the Flexibility Guidelines. In response, six bids were received. Thereafter, the techno-commercial bid was opened on 11.12.2023 and as per the eligibility criteria mentioned in the RfS, five bidders were shortlisted for participating in the e-reverse auction. The e-reverse auction was conducted on 21.12.2023 and pursuant thereto, three bidders, namely, NTPC Renewable Energy Limited ("**NTPC REL**"), ACME Cleantech Solutions Private Limited ("**ACME CSPL**") and Solarcraft Power India 12 Private Limited ("**Solarcraft**") were selected for the quantum of 900 MW, 300 MW and 50 MW respectively by quoting a tariff of Rs. 2.53 per unit and Rs. 2.54 per unit in so far as Solarcraft is concerned. However, Solarcraft withdrew its bid on 27.12.2023, and accordingly, NTPC issued a Letter of Awards ("**LoAs**") dated 6.2.2024 in favour of NTPC REL and ACME CSPL for their bid quantum.

3. As per Clause 15.1 of the RfS read with Clause 10.5 of the Flexibility Guidelines to the Flexibility Scheme, a PPA can be signed by the parties only after the adoption of the tariff (discovered through TBCB conducted by the Bid Process Coordinator ("**BPC**")) by the Appropriate Commission. Therefore, NTPC can enter into a PPA with the successful bidders, i.e., NTPC REL (or its SPV) and ACME

CSPL, only after the adoption of the tariff by this Commission. Further, the Scheduled Commissioning Date for commissioning the full capacity of the Project shall be 18 months from the effective date, i.e., the date of signing of the PPA.

Hearing dated 10.04.2024

4. The matter was heard on 10.4.2024, and notices were issued to the Respondents to file their respective replies. ACME CSPL and Tamil Nadu Generation and Distribution Corporation Limited (“**TANGEDCO**”) have filed their replies, and NTPC has submitted its rejoinder to the reply filed by TANGEDCO.

5. Vide the Record of Proceedings for the hearing dated 10.4.2024, NTPC was directed to implead all the beneficiaries/distribution licensees of its concerned thermal generating stations whose thermal generations are to be replaced and file a revised memo of parties and also to furnish a copy of consent taken from the beneficiaries in terms of Clause 10.5 of the Flexibility Guidelines, if any, on an affidavit. PFCCCL was directed to submit on an affidavit that the bid documents are in line with the provisions of the Flexibility Guidelines and no deviation has been taken from the Bidding Guidelines. In response, the Petitioner, vide its affidavit dated 3.5.2024, has submitted as under:

(a) The Ministry of Power, Gol (in short ‘the MoP’) vide its letter dated 28.9.2022, amended the Flexibility Scheme by deleting Paras 9.2 and 9.4.3, which made certain procedures laid down in the Flexibility Scheme redundant and delayed in its implementation.

(b) Para 9.2 of the Flexibility Scheme required annexation of the standard terms and conditions for the RE bundling in the existing PPAs, and Para 9.4.3

required submission of the proposed mix for the bundling to the PPA holder /beneficiaries and to finalize the same after taking their consent.

(c) The amendment dated 28.9.2022 was carried out by the MoP to emphasize that the obligation of the generator is to supply electricity to the procurer at a price equal to or less than that laid down in the PPA, and this obligation will need to be adhered to by the generator and the procurer sharing the gains as laid down in the Flexibility Scheme. Therefore, in order to fast track the implementation of the scheme and considering the importance of clean energy transition, the MoP decided to remove Para 9.2 and Para 9.4.3 of the said scheme related to consent from the beneficiary.

(d) The Commission, in its order dated 17.03.2024 in Petition No. 233/AT/2023 related to the adoption of tariff under the flexibility scheme, directed that the Petitioner is at liberty to take up with the MoP to make suitable amendments to the bidding 'guidelines' on the Flexibility Scheme in so far as the clause relating to the beneficiary consent is concerned. Accordingly, the Petitioner is taking up the matter with the MoP for suitable amendments relating to beneficiary consent in the bidding guidelines. In the meantime, other deliverables that are to be completed/submitted before signing of the PPAs, like documents for the SPV formation for execution of the Project, certificate of incorporation, Memorandum of Association, Articles of Association, shareholding certificate, and application for connectivity, etc. are being complied with by NTPC REL and ACME CSPL.

(e) There will not be any curtailment in the power that shall be supplied to the respective beneficiaries on account of the RE bundling being carried out by the Petitioner under the Flexibility Scheme and as such the sharing of the gains shall only be to the benefit of the beneficiaries.

(f) PFCCL, vide its affidavit dated 30.5.2024, has submitted that the bid documents are in line with the provisions of the Flexibility Guidelines, and no deviation has been made from the Flexibility Guidelines.

Reply of ACME CSPL

6. ACME CSPL, vide its reply dated 24.4.2024, has supported the Petition and has submitted that the PPA can only be executed between the Petitioner and ACME CSPL as well as between the Petitioner and NTPC REL after the approval tariff by this Commission. The Respondent has prayed to adopt the tariff.

Hearing dated 22.05.2024

7. The matter was listed on 22.5.2024. During the course of the hearing, the learned counsel for the TANGEDCO sought time to file its reply. He further submitted that one of the distribution licensees had challenged the Flexibility Guidelines before the Hon'ble High Court of Delhi. However, there is no stay on the operation of the Flexibility Guidelines.

Reply of the Respondents

8. The Respondent, TANGEDCO, vide its Reply dated 29.05.2024, has mainly submitted as under:

(a) As per Regulation B(2)(e) of the RE Regulations, 2020, "consent from the beneficiary for procurement of power from the renewable energy project at a tariff approved by this Commission, in the form of initialled PPA or MOU" shall accompany the Petition. In the present case, prior consent of the beneficiaries who have signed the PPA with the Petitioner for the purchase of power from the thermal power plant has not been obtained. The MoP, in its letter dated 5.4.2018, has stated that the discoms will have the flexibility to procure the RE power within their existing PPA to meet their RPO. It needs to be clarified whether the RE-rich States who have fulfilled their RPO obligations shall also have to avail of the RE power from this flexibility scheme. Even to meet the RPO, an amendment to the existing thermal PPA has to be made, without which the RE power from a different source cannot be purchased.

(b) The notification issued by the MoP has not been regularised by any Regulations for implementing the Flexibility Scheme. MoP, in the said letter dated 5.4.2018 under Para D (iii)(d), has clarified that the changes in Regulation, if any, required for the implementation of the above scheme shall be done by the appropriate Regulatory Commission.

(c) The fixed cost of the generators includes coal stock of 10 days for pit head stations and 20 days for non-pithead stations, as well as the cost of the secondary oil for two months of generation corresponding to the Normative plant availability factor in the calculation of Interest on Working Capital.

(d) The proposal is to replace the thermal power comprising fixed cost (including the fuel components as above) and variable cost (to be incurred on fuel exclusively) by RE power at a rate of Rs.2.53 per unit under this scheme. Hence, the thermal generator will continue to enjoy the benefit of getting the thermal power scheduled at the cost of FC+VC but will incur only the cost equivalent to RE power.

(e) The generator will continue to recover the cost of thermal power firing coal lignite, which comprises a run of the mine cost, crushing and transportation charges within the mine and beyond washery, handling charges at the mine end, washing, and statutory charges, even while in the actual scenario may be supplying RE power under this scheme. Further, the beneficiaries will be deprived of the legitimate waiver of the transmission charges had they procured power directly from the ISTS-connected RE generators. The RE power procured under this scheme is only for the replacement of thermal power for which the LTA has already been signed by the beneficiaries, and transmission charges have to be paid irrespective of the quantum of RE power procured through this scheme.

(f) There is abundant RE power available in the market through SECI/ MNRE at the cheapest rates, as low as Rs. 2.45/- per unit. The RE scheme now conceived is not under the TBCB route. Hence, the beneficiaries will be

deprived of buying cheaper power based on their requirements but forced to buy costlier RE without any such provision in the PPA.

(g) Further, there will be huge implications for despatching the utilities in merit order. When the thermal generators are not despatched, it is impossible for Discoms to arrive at a realistic Merit Order despatch fleet.

(h) In the future, since large-scale RE power is on the anvil, swapping 100% thermal power with 100% RE power may become a reality. Therefore, the discoms will be forced to pay for costlier thermal power, though the dispatch will only be from the cheaper RE generator. In the long run, this will make the discoms incur huge financial repercussions.

(i) Further, the modifications/amendments are to be made in the Tariff Regulations, 2019, and other Regulations as applicable, without which, the present Petition cannot be processed.

(j) The terms of the PPA are sacrosanct and any alteration of the provisions of the contract arbitrarily is illegal. The PPA has been signed for the procurement of power from thermal stations only and clearly says that the energy charges are to be calculated as per the CERC Regulations from time to time which is only based on fuel cost., i.e., cost of coal/oil. There is no provision in the Tariff Regulations 2019 for procurement/supply of power from the RE source. If there is any change in the methodology of calculation of energy charges other than as agreed, the same has to be regulated by means of an amendment to the Tariff Regulations in consultation with the stakeholders.

(k) The proposed scheme intends to levy the beneficiaries the energy charges at the rate of thermal power, which includes the cost of coal and oil including transportation and other levies for the total scheduled quantum. However, the cost actually to be incurred by the generator for the power to be replaced by the RE power is only the cost incurred for the generation of RE Power, which is approved by this Commission and h comprises all expenses incurred by the RE generator, including the profit margin.

(l) Under such a scenario, if this arrangement of substituting thermal power for RE power is agreed mutually between the thermal generator and the Discoms, then a necessary amendment has to be made in the PPAs. Further, the tariff for power so supplied by mixing thermal and RE shall also be applicable based on the respective tariff of the source of power (thermal/RE) and approved by this Commission. Otherwise, the generator will continue to enjoy the cost of thermal power, which comprises the following components even for the RE power which is replacing the thermal power, namely Run of Mine (ROM) Cost, Additional Charges including crushing charges, transportation charge within the mine up to the washery end or coal handling plant associated with the integrated mine, as the case may be, handling charges at mine end, washing charges, transportation charges beyond the washery end or coal handling plant, as the case may be, and up to the loading point, and statutory charges, as applicable. The above proposal of recovering the thermal charges based on coal cost replaced by the RE power without actually incurring the expenses is illegitimate and unethical billing of end consumers. This is apart from the recovery of applicable fixed charges in full.

Rejoinder of the Petitioner

9. The Petitioner vide its rejoinder dated 28.3.2024 has mainly submitted as under:

(a) The entire bidding process has been meticulously conducted in strict adherence to the Flexibility Scheme. Additionally, it complies with the Flexibility Guidelines. Throughout the bidding process, no deviations from the established guidelines have been made, ensuring full compliance and transparency.

(b) The Commission, while adopting the tariff in Petition No. 233/AT/2023, vide its order dated 17.3.2024, rejected the contentions raised by TANGEDCO which are identical to the ones raised in the present Petition.

(c) As per Section III, Clause 15.1 of the RfS, read in conjunction with Clause 10.5 of the Flexibility Guidelines for the RE Flexibility Scheme, a

PPA can only be signed by the parties after adoption of tariff by the Commission.

(d) The Petitioner has duly provided a tentative list of stations in the RfS, which shall be used for the replacement of thermal power.

(e) With regard to obtaining consent from the beneficiaries for the procurement of power from the RE projects, the MoP, by its letter dated 28.9.2022, amended the Flexibility Scheme. This amendment involved the deletion of Paragraph 9.2, which mandated the annexation of standard terms and conditions for RE bundling in existing PPAs, and Paragraph 9.4.3, which mandated the submission of the proposed mix for bundling to the PPA holders/beneficiaries and finalizing it after obtaining their consent. The said amendment dated 28.9.2022 was carried out by the MoP to emphasize that the generator's obligation is to supply electricity to the procurer at a price equal to or less than that stipulated in the PPA, with the generator and the procurer sharing the gains as laid out in the Flexibility Scheme. Hence, it can be construed that consent from the beneficiaries is not required as long as the generator supplies electricity to the procurer /beneficiary at a price equal to or less than that specified in the existing PPA.

(f) Regarding TANGEDCO's assertion about the need for amendments in the existing PPAs, as per Clause 9.1 of the RE Flexibility Scheme, the distribution licensee has the flexibility to procure the RE power within the existing PPA without the need for signing an additional agreement. Moreover, the Flexibility Scheme does not make any distinction regarding RE-rich States, and the scheme applies to all distribution licensees.

(g) The Petitioner is bound by the directives of the Flexibility Scheme and will adhere to the procedures and instructions outlined therein. Additionally, the process of RE bundling and the adoption of the Flexibility Scheme is to be carried out by this Commission. The Petitioner along with its beneficiaries, including TANGEDCO, shall comply with the same.

(h) The Commission has the authority to perform the functions outlined under Section 79 of the Act, which does not encompass reviewing schemes implemented by the MoP. If TANGEDCO has any concerns or disputes related to the Flexibility Scheme, it is at liberty to address them before the appropriate forum. The objections raised by TANGEDCO fall outside the scope of the current proceedings.

(i) The prayers sought by TANEGDCO are beyond the scope of the present Petition filed under Section 63 of the Act as Regulation 48 (3) (e) of CERC (Indian Electricity Grid Code) Regulations, 2023 ("**IEGC 2023**") deals with the supply of power from an alternate source by the generating station, which shall be subject to sharing of net savings as per the Tariff Regulations 2024. The Commission can exercise its power to remove difficulty under Regulation 77 of the Tariff Regulations, 2019, and Regulation 103 of Tariff Regulations 2024, read with Regulation 57 of the IEGC 2023. As per Clause 6.7 of the RE Flexibility Scheme, the RE supplied to the beneficiaries shall be at a tariff that is less than the original tariff under the existing PPA. In fact, such a reduced tariff shall also include the balancing cost and the tariff risk for the replacement of thermal power with renewable generation. As per Clause 6.1 of the Flexibility Scheme, any gains through such replacement of thermal energy with renewable energy under the existing PPA shall be shared between the beneficiary and the generating station. The Petitioner will not be earning any additional profit other than provided in law as Clause 6.8 of the RE Flexibility Scheme stipulates that the net savings from the supply of renewable energy instead of thermal energy under the existing PPA shall be shared between the generator and the beneficiary in the ratio of 50:50 on a monthly basis and if required, truing up of the same shall be done by this Commission at the end of each year.

Analysis and Decision

10. We now proceed to consider the prayers of the Petitioner as regards the adoption of tariff(s) in respect of the Solar Power Projects discovered pursuant to

the competitive bid process carried out in terms of the Guidelines issued by MoP, GoI under Section 63 of the Act.

11. 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.”

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

13. On 12.4.2022, the Ministry of Power, Government of India, notified the Scheme for Flexibility in the Generation and Scheduling of Thermal/Hydro Power Stations through Bundling with Renewable Energy and Storage Power (Flexibility Scheme), and the salient features of the said Scheme are as under:

(a) All new and existing coal/lignite/gas-based thermal generating stations or hydropower stations for the purpose of the Scheme are referred to as a 'Generating Station', and any generating company having such generating station(s) may establish or procure renewable energy from a Renewable Energy (RE) power plant which is either co-located within the premises or at new locations. The generating companies shall be allowed to utilize such renewable energy for supplying power against their existing commitments/PPAs i.e., replacement of the thermal/hydro power to procurers anywhere in India. The RE in the mix shall count towards the RPO compliance of the distribution licensee. (Clauses 2.1, 2.2 & 2.3).

(b) In case of RE power plant co-located within the premises of a generating station under Section 62, the Appropriate Commission shall determine the tariff of RE supplied. Provided that such RE power plant shall be established through a competitive EPC tendering. A Central or State generating company may establish a RE power plant which is not co-located within the premises of its generating station through competitive EPC tendering mode, after taking authorization from the Appropriate Government. Also, a generating company under Section 62 or its subsidiary shall also be allowed to establish an RE power plant through tariff based competitive bidding process under Section 63 provided the bids are called by a Central Government approved third party (Clauses 3.1, 3.2 & 3.4).

(c) No transmission charges shall be levied for bundling of RE power with thermal/hydro power when the RE power plant is co-located within the premise of the generating station. Also, no transmission charges for use of ISTS shall be levied when RE power from RE power plant is being scheduled to the thermal/hydro generating stations as a replacement power; for supply to the procurers of another generating station located at a different location and owned by the same generating company (Clauses 4.1 & 4.2);

(d) Separate scheduling, metering, accounting and settlement shall be carried out for the RE generation and the thermal/ hydro generation whose power is being replaced. This shall facilitate RPO compliance for the beneficiaries and the sharing of gains between the beneficiary and the generating station. Declared Capacity (DC) shall be given by the generating station(s) as per the extant regulations. Once the schedule for the next day is received, the generating station(s) shall have the flexibility to use the thermal/ hydro power or RE Power from the plant set up for the bundling to meet its scheduled generation (Clauses 6.1 & 6.2).

(e) The declared capacity of the thermal/ hydro generating station shall be with respect to the terms of the Power Purchase Agreement (PPA) and the availability of primary fuel. The declared capacity of the thermal/hydro

generating station shall not be based on the availability of additional RE power. The RE power, wherever found feasible shall replace the thermal/hydro power of any of the generating station of the generating company (Clauses 6.3 & 6.4).

(f) The RE power (with or without an energy storage system) shall be supplied to the beneficiaries at a tariff which shall be less than the Energy Charge Rate (ECR) of the generating station which was originally scheduled. Such a tariff would include the balancing cost and the tariff risk to be taken by the generator (Clause 6.7).

(g) The net savings realized, if any, from the supply of RE power instead of thermal or hydro power under the existing PPA shall be passed on to the beneficiary by the generating company on a monthly basis. If required, at the end of each year, truing-up shall be done by the Appropriate Commission. The net savings shall be shared between the generator and the beneficiary in the ratio of 50:50 basis. (Clause 6.8)

(h) The net injection schedule for the thermal/hydro generating station and the RE Generator would form the reference for DSM calculation as per the extant Regulations (Clause 7.2)

(i) The renewable energy procured by the beneficiaries under these guidelines shall qualify towards meeting their Renewable Purchase Obligations (RPO) (Clause 8.1).

(j) The distribution licensee will have the flexibility to procure the RE power within the existing PPA to meet their RPO. There shall not be any requirement of signing the additional agreement in cases where the landed tariff of the RE power (with or without energy storage system) is less than the ECR of the generating station (Clause 9.1).

(k) During certain periods, the replacement of the thermal/hydropower may not be feasible on account of the technical minimum schedule or forced/planned shutdown of a generating station. To avoid stranding of RE

power, it is provided that the generating station shall be allowed to sell such RE power to third parties/ Power exchange and no clearance is required from the beneficiaries of the station. However, the right to schedule power from the generating stations shall first rest with the PPA holders and in case, they do not schedule the power, the generating station shall have the right to sell the unscheduled RE power in the market. As during such conditions an RE power plant would not be operating under the flexibility scheme, there shall not be any requirement of sharing gains/losses derived through sale of such RE power in the market. The concerned RLDC shall facilitate sale of such power in the power market by separate scheduling of RE power for both co-located and other RE stations from which energy has been procured (Clause 9.3)

(l) The generating company may take up procuring RE power in tranches. Accounts of the quantum of RE Power supplied to the beneficiaries under the scheme will be submitted to the Appropriate Commission on a quarterly basis. (Clause 9.4)

(m) The trajectory for the bundling of RE Power with the thermal/ hydro power will be worked out by the generation company so as to meet the objectives, namely (a) continuous supply of reliable power at least cost to the PPA holder, and (b) enabling the PPA holder/ obligated entity to meet its RPO obligations. The maximum quantity of the bundling will be determined by technical consideration. The proposed mix for the bundling shall be submitted to the PPA holder for comments; with copies to MNRE and MOP. The mix shall be finalised after considering the comments of the PPA holder (Clauses 9.4.1, 9.4.2 & 9.4.3).

(n) The Central Electricity Authority shall monitor the implementation and suggest changes, if required, in the scheme to the Central Government. In doing so, CEA may consult MNRE, POSOCO, CERC, Distribution Licensee, and other stakeholders. Changes, if any, required in the regulations for the implementation of the above scheme shall be done by the Appropriate Commission (Clauses 9.5 & 9.6).

14. Pursuant to the aforesaid Flexibility Scheme, the MoP notified the Guidelines under Section 63 of the Act vide notification dated 27.8.2022. The salient features of the aforesaid Guidelines are as under:

(a) These Guidelines are being issued under the provisions of Section 63 of the Act for long term procurement of electricity by the 'Procurers', from grid connected RE Power Projects ('Projects'), having individual size of 5 MW and above, through competitive bidding.

(b) The Procurer to decide on solar or wind power procurement and prepare the bid documents [consisting of Model RfS Document, Model Power PPA] in accordance with these Guidelines, except as provided in sub clause (c) below. As specified in the bidding documents to be issued by the Procurers, the Project may be set up either at the Project site specified by the Procurer, or at the Project site selected by the RE Power Generator.

(c) The bids will be designed in terms of a package. The minimum size of a package should be 50 MW in order to have economies of scale. The bidder has to quote for an entire package. The Procurer may also choose to specify the maximum capacity that can be allotted to a single bidder including its affiliates keeping in mind the factors such as economies of scale, land availability, expected competition and need for development of the market.

(d) The Procurer may choose to invite the bids in (a) Power Capacity (MW) terms or (b) Energy Quantity (kWh or million units, i.e. MU) terms. For procurement of electricity, 'Tariff as Bidding Parameter' shall be applicable.

(e) The draft PPA proposed to be entered into with the successful bidder shall be issued along with the RfS. Standard provisions to be incorporated as part of this PPA shall include inter alia, PPA Period, quantum of power/energy to be procured, payment security mechanism, force majeure, generation compensation for offtake constraints, event of default and the consequences thereof and Change in Law.

(f) The Procurer shall provide payment security to the RE Power Generator through revolving Letter of Credit (LC) of an amount not less than one month's average billing from the Project under consideration; or as prescribed in the Rules notified by the Central Government under the Act, if any.

(g) The Procurer or its authorised representatives shall call for the bids adopting a single stage bidding process to be conducted through Electronic mode (e-bidding). The Procurers may adopt e-reverse auctions if it so desires. E-procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used. In the case of a Solar Park specific Project, intimation about the initiation of the bidding process shall be given by the Procurer to the SPPD. The SPPD has to engage actively in the bidding process by providing all the necessary land and infrastructure related details and making the same available in centralized data rooms accessible to bidders.

(h) The Procurer or its authorised representatives shall publish the RfS notice in at least two national newspapers and its own website to accord wide publicity. Standard documentation to be provided in the RFS stage shall include technical criteria, financial criteria, quantum of the earnest money deposit (EMD) and compliance of FDI laws by the foreign bidders.

(i) The Procurer or its authorised representatives 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.

(j) The bidders may be required to submit a non-refundable processing fee and/or project development fee as specified in the RfS, separate technical and price bids and bid-guarantee.

(k) To ensure competitiveness, the minimum number of qualified bidders should be two. If the number of qualified bidders is less than two, even after three attempts of the bidding, and the Procurer or its authorised representatives 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/ project company or an SPV formed by the successful bidder.

(m) After the conclusion of bidding process, the Evaluation Committee 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. The Procurer or its authorised representatives shall, after the execution of the PPA, publicly disclose the name(s) of the successful bidder(s) and the tariff quoted by them, together with the breakup into components, if any. The public disclosure shall be made by posting the requisite details on the website of the Procurer for at least thirty days. Accordingly, the Procurer shall approach the Appropriate Commission for the adoption of tariffs by the Appropriate Commission in terms of Section 63 of the Act.

(n) LoA shall be issued to successful bidders after getting consent from the beneficiaries or in accordance with rules notified by the Central Government under the Act, and the PPA shall be signed by the Procurer with the successful bidders after the adoption of tariff by the Appropriate Commission.

(o) In case there is any deviation from these Guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 90 (ninety) days.

15. In terms of the provisions of Section 63 of the Act, we have to examine whether such tariff has been determined through a transparent bidding process in accordance with the guidelines issued by the Central Government.

16. The MoP, GoI vide its OM No. 09/11/2021-RCM Part(1) dated 17.6.2022, nominated three third-party BPCs, namely, (i) NTPC Vidyut Vyapar Nigam Limited, (ii) PFC Consulting Limited, and (iii) REC Power Development and Consultancy Limited for the implementation of the scheme dated 12.4.2022. Pursuant to the MoP's letter dated 27.7.2022, the Petitioner issued a Letter to PFCCL for acting as BPC for bundling of 1250 MW solar power with conventional under the Flexibility Scheme as per the Flexibility Guidelines.

17. The Guidelines provide for the procurement of RE power at a tariff to be determined through a transparent process of bidding by the Procurer(s) from the grid-connected RE power projects having a size of 5 MW and above. As per the Guidelines, RECPDCL, in the capacity of BPC, invited proposals for the selection of the SPDs for setting up 1250 MW ISTS-connected Solar PV Power projects in India under the Flexibility Scheme as per the Flexibility Guidelines. As per the arrangements, the Petitioner shall enter into a PPA with the successful Bidder selected based on the RfS for the purchase of the solar power for a period of 25 years based on the terms, conditions, and provisions of the RfS.

18. On 1.12.2022, PFCCL issued the RfS documents, along with a draft PPA for the selection of Solar Power Developers for setting up of 1250 MW ISTS-connected Solar PV Power projects in India under the Flexibility Scheme as per the Flexibility Guidelines. As per Clause 6.4 of the Guidelines, RfS notice is required to be

published in at least two national newspapers and its own website to accord wide publicity. In this regard, PFCCCL has placed on record the copies of various editions of the 'Times of India', 'Navbharat Times', and 'Economic Times' dated 20.9.2023, wherein the notice of issuance of the RfS was published to accord wide publicity. As per Clause 3.1.1(b) of the Guidelines, the procurer is required to inform the Appropriate Commission about the initiation of the bidding process. PFCCCL, vide its letter dated 21.9.2023, had informed the Commission that it has initiated the competitive bidding process for procurement of power from grid-connected solar power projects.

19. The Bid Evaluation Committee (BEC) comprising the following was constituted for the opening and evaluation of bids for the RfS dated 10.08.2023:

“Sub: Constitution of Committees for Selection of Solar Power Developers for setting up of 1250 MW ISTS-Connected Solar PV Power Projects in India under Tariff-based Competitive Bidding and appointment of an e-bidding portal service provider.”

Competent Authority has accorded approval for constitution of committee comprising of following Executives for Selection of Solar Power Developers for setting up of 1250 MW ISTS-Connected Solar PV Power Projects in India under Tariff-based Competitive Bidding:

- i. Mr. Anupam Kashyap, CM*
- ii. Ms. Megha Bansal, DM*
- iii. Mr. Masoom Bajaj, AM*
- iv. Ms. H. K. Madhulika Murthy, AM*

The terms of reference (TOR) of the Committee will include the following:

- a) Preparation and issuance of Request for Selection (RIS) & Power Purchase Agreement (PPA), conducting the bid process.*
- b) Evaluation of bids received.*
- c) Recommendation and issuance of LoA(s) to the Successful Bidder(s).*
- d) Signing of PPA between NTPC and the Successful Bidder(s).*
- e) Any other work as may be required for successful completion of the assignment.....”*

20. The last date of the submission of the bid was 9.11.2023, and the bid was opened on 11.12.2023. Response to the RfS was received from the following six bidders:

- (a) Avaada Energy Private Limited (AEPL)
- (b) NTPC Renewable Energy Limited (NTPC REL)
- (c) Solarcraft Power India 12 Private Limited (SPIPL)
- (d) Furies Solren Pvt. Ltd. (FSPL)
- (e) ReNew Solar Power Private Limited (RSPPL)
- (f) ACME Cleantech Solutions Private Limited (ACSPL)

21. As per the BEC recommendations, the following five bidders met the qualification requirement of the RfS based on their submissions of response to the RfS:

- (a) Avaada Energy Private Limited (AEPL)
- (b) NTPC Renewable Energy Limited (NTPC REL)
- (c) Solarcraft Power India 12 Private Limited (SPIPL)
- (d) ReNew Solar Power Private Limited (RSPPL)
- (e) ACME Cleantech Solutions Private Limited (ACSPL)

22. The first-round tariff bid for the NTPC assignment was opened on 4.12.2023 for the above techno-commercially qualified bidders in the presence of the BEC member. Upon evaluation, only 3 bidders were found eligible to participate in the e-Reverse Auction process as per the provision of RfS. The e-reverse auction was carried out on 21.12.2023. The final tariff and the selection of the bidders arrived after the completion of the e-reverse auction. The result of the e-reverse auction is as under:

“The Committee examined the technical bids with respect to RfS It has been observed that all bidders are found to be technically qualified and the financial proposals were opened on 1 1. 12.2023.

The financial proposals were evaluated. and the following three bidders were invited for participation on r-reverse auction.

The e-reverse auction process was carried out on TCIL portal 21.12.2023 at 1:00 hrs and was closed at 13.00 hrs. After the conclusion of reverse auction the following have emerged as the successful bidders:

Sr No.	Bidder's Name	Quoted Value (In Rs/kWH)	Awarded Capacity (In MW)
1.	NTPC Renewable Energy Limited	2.53	900
2.	ACME Cleantech Solutions Private Limited	2.53	300
3.	Solarcraft Power India 12 Private Limited	2.54	50

...”

23. After the conclusion of the e-reverse auction on 21.12.2023. Three bidders emerged as successful:

- (a) NTPC Renewable Energy Limited (NTPC REL) – 900 MW @ Rs. 2.53 per kWH
- (b) ACME Cleantech Solutions Private Limited (ACSPL) - 300 MW @ Rs. 2.53 per kWH
- (c) Solarcraft Power India 12 Private Limited (SPIPL) - 50 MW @ Rs. 2.54 per kWH

24. Since SPIPL withdrew its bid on 27.12.2023, PFCCL, vide letter dated 22.12.2023 sought approval from the Procurer, i.e., the Petitioner, for the issuance of the LoAs to the successful bidders. Accordingly, the Petitioner, vide letter dated 1.2.2024, conveyed the approval for issuance of the LoAs by PFCCL to the successful SPDs. Subsequently, PFCCL, on behalf of the Petitioner, issued LoA to the successful bidders, i.e., ACME CSPL vide LoA No. 03/PFCCL/RE Bundling/23-24/002 dated 6.2.2024 for the capacity of 300 MW and NTPC REL vide LoA No. 03/PFCCL/RE Bundling/23-24/001 dated 6.2.2024 for the capacity of 900 MW. ACME CSPL and NTPC REL submitted their acknowledgment to the LoAs issued by PFCCL on 12.2.2024 and 13.2.2024, respectively. The relevant extract of the

Letter of Award issued to one of the successful bidders, namely, NTPC REL , is as under:

“Sub: Letter of Award (LoA) on behalf of NTPC Limited for emerging as Successful bidder for bid submitted against “RfS for Selection of Solar Power Developers for setting up of 1250 MW ISTS-Connected Solar PV Power Projects in India under Tariff- based Competitive Bidding under Scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage Power”- RfS No. PFCCL/REBundling/NTPC/2023-24/001: for 900 MW Capacity

Sir,
We refer to:

- 1) *The “Guidelines for Tariff based Competitive bidding process for Procurement of Power from Grid Connected RE Power Projects for utilization under scheme for flexibility in Generation and Scheduling of thermal/ hydro Power Stations through bundling with Renewable Energy and Storage power” vide Gazette Notification dated 27.08.2022 issued by Ministry of Power, Govt. of India. These Guidelines have been issued under the provisions of Section 63 of the Electricity Act, 2003 for long term procurement of electricity by the ‘Generators’, from grid-connected Solar PV Power Projects, through competitive bidding;*
- 2) *The Request for Selection (RfS) document with RfS No. PFCCL/REBundling/NTPC/2023-24/001 dated 20.09.2023 was uploaded on the TCIL portal under tender search code No. PFCCL-2023-TN000001 and was issued to NTPC Renewable Energy Limited as regards to participation in the Global Invitation for Selection of Solar Power Developers for setting up of 1250 MW ISTS-Connected Solar PV Power Projects in India under Scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage Power notified by Ministry of Power, Gol, and as amended till the Bid Deadline including all correspondence/clarifications/amendments /Errata/corrigendum issued by PFC Consulting Limited in regard thereto (hereinafter collectively referred to as the ‘Final RfS’.*
- 3) *The offer of NTPC Renewable Energy Limited by way of a Technical bid pursuant to (2) above submitted on 09.11.2023 in response to the Final RfS.*
- 4) *The offer of NTPC Renewable Energy Limited by way of an Initial offer (First round tariff bid) as submitted on 09.11.2023 in response to the Final RfS.*
- 5) *The offer of NTPC Renewable Energy Limited by way of Final offer (discovered during e-Reverse Auction) as submitted on 21.12.2023 in response to the Final RfS.*
- 6) *The Technical Bid as in (3) above, the Initial Offer as in (4) above and the Final Offer as in (5) above hereinafter collectively referred to as the ‘Bid’.*



- 7) *We are pleased to inform you that your proposal and offer received by way of the 'Bid' has been accepted and NTPC Renewable Energy Limited is hereby declared as Successful Bidder for the quoted capacity of 900 MW @ Rs. 2.53/unit as per clause 5.4 of the Final RfS for the above project and consequently, this Letter of Award (herein referred to as the 'LoA') is being issued in 2 copies. One original plus One copy.*

This LoA is based on the Final RfS and is further contingent upon you satisfying the following conditions:

- a) *Acknowledging its issuance and unconditionally accepting its contents and recording 'Accepted unconditionally' under the signature and stamp of your authorized signatory on each page of the duplicate copy of this letter attached herewith and returning the same to PFC Consulting Limited within 7 (Seven) days from the date of issuance of LoA.*
- b) *Completion of various activities as stipulated-in the RfS within the timelines as prescribed therein.*

It may be noted that PFC Consulting Limited/NTPC Limited has the rights available to them under the Final RfS upon your failure to comply with the aforementioned conditions.

As you are aware, the issuance and contents of this LoA are based on the Bid submitted by you as per the Final RfS including the tariff and other details regarding the Scheduled COD as contained therein. The Quoted Tariff as submitted by you and the Scheduled COD of the project as agreed by you in your Bid and incorporated herein by way of reference.

Further, please note that all terms and conditions of this LoA shall be governed by solely on the basis of the final RfS, including PPA and bid submitted.

You are requested to unconditionally accept the LoA, and record on one copy of the LoA, 'Accepted unconditionally', under the signature of the authorized signatory of your Company and return such copy to us within 7 (Seven) days of issue of LoA. ...”

25. As per the Guidelines, the 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 PFCCL, i.e., BPC, vide its affidavit dated 30.5.2024, has made submissions that the bid documents are in line with the provisions of the Flexibility Guidelines as notified by MoP, Gol and no deviation has

been taken from the Bidding Guidelines. The relevant portion of the affidavit dated 30.5.20214 is extracted as under:

“16. The entire bid process has been carried out in accordance with the Revised Scheme for flexibility in generation and scheduling of Thermal/Hydro Power Stations through bundling with Renewable Energy and Storage Power, 2022 and Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected RE Power Projects for utilization under scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage power and no deviation has been taken from the Guidelines.

26. Insofar as the execution of the PPAs is concerned, as per Clause 15.1 of the RfS read with Clause 10.5 of the Flexibility Guidelines, a PPA can be signed by the parties only after the adoption of tariff by the Appropriate Commission. Hence, it has been stated that the Petitioner will be entering into PPAs with the successful bidders i.e., ACME CSPL (or its SPV) and NTPC REL (or its SPV) only after the adoption of tariff by this Commission.

27. The Respondent, TANGEDCO, has, however, raised certain objections/comments in their replies /written submissions relating to the procedural aspects, operational aspects, and the overall nature of the Flexibility Scheme. It is noted that similar objections were raised by the Respondent, TANGEDCO, in Petition No. 233/AT/2023. The Commission, vide its order dated 17.3.2024, rejected the objections of the Respondent, TANGEDCO. The relevant portions of the order dated 17.3.2024 are extracted as under:

(a) Re - NTPC has not sought any consent from the Beneficiaries

2. Respondent, WBSEDCL has stated that, as such, the Petitioner has not obtained any consent from WBSEDCL regarding the implementation of Flexibility Scheme. Respondent, TANGEDCO has also stated that the Petitioner has not obtained any prior consent from the beneficiaries, who have signed the PPAs with the Petitioner for purchase of power from its thermal power plants.

3. *Vide Record of Proceedings for the hearing dated 20.9.2023, the Petitioner was, inter-alia, directed to furnish a copy of the consent taken from the beneficiaries in terms of Clause 10.5 of the Bundling Guidelines. In response, the Petitioner vide affidavit dated 21.9.2023 has stated that the Ministry of Power, Government of India, by its letter dated 28.9.2022, amended the Flexibility Scheme by deleting the Paragraphs 9.2 and 9.4.3 of the Scheme, which required annexation of the standard terms and conditions for the RE bundling in the existing PPAs and submissions of the proposed mix for the bundling to the PPA holder/beneficiaries and finalizing the same after their consent respectively. The said amendment was carried out by the Ministry of Power to emphasize that the obligation of the generator is to supply the electricity to the procurer at a price equal to or less than that laid down in the PPA, and this obligation will need to be adhered to by the generator and the procurer sharing the gains as laid down in the Flexibility Scheme. Therefore, in order to fast track the implementation of the Scheme and considering the importance of clean energy transition, the Ministry of Power has decided to remove paragraphs 9.2 and 9.4.3 of the said Scheme, and hence, it can be construed that consent from the beneficiaries is not required as long as the generator can supply electricity to the procurer/beneficiary at a price equal to or less than that laid down in the PPA.*

4. *The Petitioner has also stated that being a diligent entity, the Petitioner has sent a copy of the present Petition along with the Record of Proceedings issued by the Commission to its beneficiaries, thereby intimating them regarding the impending RE Bundling by the Petitioner in line with the Flexibility Scheme. The Petitioner has further stated that there would be no curtailment in the power to be supplied to the respective beneficiaries on account of the RE bundling being carried out by the Petitioner under the Flexibility Scheme, and as such, the sharing of the gains shall only be to the benefit of the beneficiaries who have raised no objections upon being informed of the implementation of the Flexibility Scheme.*

5. *We have considered the submissions of the Petitioner and the Respondents on the aspect of the prior consent of the beneficiaries. It may be noted that neither the Flexibility Scheme nor the Flexibility Guidelines envisage prior consent of the beneficiaries of a generating company for implementation of the Flexibility Scheme. However, Clause 10.5 of the Flexibility Guidelines provides as under:*

“10.5. LoA shall be issued to successful bidders after getting consent from beneficiaries or in accordance with rules notified by the Central Government under Electricity Act, 2003, and PPA shall be signed by the procurer with the successful bidders after the adoption of tariff by the Appropriate Commission.”

Thus, as per the above provisions, the LoA shall be issued to the successful bidders after getting consent from the beneficiaries or in accordance with the rules notified by the Central Government under the Act. In the present case, admittedly, there is no express consent from the beneficiaries to the Petitioner prior to issuing the Letter of Award to the successful bidder(s). Alternatively, the Petitioner has not indicated any rules notified by the Central Government basis which it proceeded to issue the LoA to the successful bidders. The Petitioner has contended that such a requirement is merely procedural in nature inasmuch as the beneficiaries are not in any way prejudicially affected by the implementation of the Flexibility Scheme by the generator/Petitioner as long as the power of the renewable energy to be supplied, in lieu of thermal generation, remains lower than the Energy Charge Rate of such thermal generation. Also, it may be noted that none of the beneficiaries, except for

WBSUEDCL & TANGEDCO, have, as such, have raised any objection/comment regarding the prior consent. It has also to be noted that, unlike the new/existing coal based thermal generating stations that may choose to establish or procure renewable energy from the renewable energy power plants (Clause 2.2 of the Flexibility Scheme), the Central Sector Generating Companies viz. NTPC, DVC and NLC, by letter of the Ministry of Power dated 15.9.2022, have been given a specific target for the replacement of their thermal generation with renewable generation under the Flexibility Scheme and, as such, have been required to implement the said Scheme within the specific timelines and submit the progress report to the Ministry of Power. Further, the Commission notes that the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023, have provided a specific regulatory framework for enabling such transactions in Regulation 48 of the IEGC, 2023. The relevant extracts are produced below for ready reference:

“48. SCHEDULING FROM ALTERNATE SOURCE OF POWER BY A GENERATING STATION

(1) A generating station may supply power from alternate source in case of (i) USD in terms of clause (1) of Regulation 47 of these regulations or (ii) forced outage of unit(s) or (iii) a generating station other than REGS replacing its scheduled generation by power supplied from REGS irrespective of whether such identified sources are located within or outside the premises of the generating station or at a different location.

(2) The methodology for scheduling of power from alternate sources covered under sub - clauses (i) and (ii) of clause (1) of this regulation shall be as per the following steps

.

(3) The methodology for scheduling of power from alternate sources covered under sub - clause (iii) of clause (1) of this regulation, shall be as per the following steps:

(a) The generating station shall enter into contract with REGS for supply of power from alternate sources.

(b) The generating station shall request RLDC to schedule power from such alternate source to its beneficiaries which shall become effective from 7th or 8th time blocks, as the case may be, in terms of clause (4) of Regulation 49 of these regulations.

(c) The power scheduled from alternate source shall be reduced from the schedule of the generating station.

(d) The generating station shall not be required to pay the transmission charges and losses for such purchase and supply from alternate sources to the buyer.

.....”

The above provision specified in the IEGC 2023 stipulates the required regulatory framework for scheduling and dispatch of the transactions akin to the referred scheme. The Commission is of the view that the replacement of thermal power with renewable power by the generators would facilitate further RE capacity addition within the existing contracts without any additional financial burden on the

beneficiaries. Further, the Scheme also shifts the responsibility of providing balancing power for such RE sources from the distribution licensee to the generators inasmuch as it casts the responsibility upon the generators to incorporate such renewable energy within the firm schedules of the beneficiaries/distribution licensees from the thermal generating stations and at the same time, the Scheme also extends the benefits of the RPO compliance to such distribution licensee.

6. In view of the above provisions of the IEGC, 2023 and in the light of the principle enunciated by the Hon'ble Supreme Court in *PTC India Limited v. Central Electricity Regulatory Commission*, (2010) 4 SCC 603 that the Regulations framed under Section 178 of the Act, being subordinate legislation, can make inroads even into existing contracts/ PPAs, the Commission holds that any arrangement whereby a thermal generating station, which seeks to replace fossil fuel based generation with renewable energy can be scheduled in the manner as specified in the IEGC. In fact, the Flexibility Scheme needs to be appreciated in the larger context of energy transition and energy security whereby the thermal capacity is being preserved but the generation from such stations is being replaced with renewable energy to the extent possible. The Respondent Discoms also do not seem to have, in principle, opposition to the very idea of flexibilization but have raised issues mainly around the sharing of gains. The Commission is of the view that this aspect of sharing of gains is beyond the scope of the present Petition for the adoption of tariff.

7. However, the Petitioner is at liberty to take up with the Ministry of Power to make suitable amendments to the bidding 'guidelines' on the Flexibility Scheme insofar as the clause relating to the beneficiary consent is concerned.

(b) Re - There is no clarity on the "Balancing Cost" and "Tariff Risk" and that sharing of benefits in the ratio of 50:50 is quite high and that until the necessary amendments to the Regulations, the adoption proceedings ought to be deferred.

8. Respondent, WBSEDCL, has submitted that no such elements, viz. "Balancing Cost" and "Tariff Risk" have been prescribed by this Commission under its Tariff Regulations or the other Regulations and, as such, no such costs have been allowed by this Commission to the Petitioner. Therefore, to this extent Clause 6.7 of the Flexibility Scheme which allows for above charges to be charged by the Petitioner, is in violation of the provisions of the Act, and Regulations framed thereunder. It has been also submitted that although such elements are not defined anywhere in the Regulations, it is clear that all such costs are already included in the provisions under this Commission's Detailed Procedure for taking unit(s) under Reserve Shutdown and Mechanism for Compensation for Degradation of Heat Rate, Auxiliary Compensation and Secondary Fuel Consumption due to Part Load Operation and Multiple Start/Stop dated 5.5.2017. It is also stated that the said Clause of the Scheme is in violation of the Commission's Trading Licence Regulations to the extent it allows the generator to charge any amount other than what has been specifically provided under the said Regulations towards the trading margin. The Respondents have also pointed out that sharing of the benefit in the ratio of 50:50 is also on the higher side and that procurement of bundling power would lead to higher expenditure/cash flow when compared to the beneficiaries procuring the renewable power directly from the RE generators or the market. It has also been stated that the above Scheme has the

effect of altering the existing PPAs by providing certain unilateral benefits to the generator without any negotiation between the parties.

9. In response, the Petitioner has submitted that the Petitioner will not be earning any additional profit other than provided in the law as per Clause 6.8 of the Flexibility Scheme, which stipulates that the net savings from the supply of renewable energy instead of thermal energy under the existing PPA shall be shared between the generator and the beneficiary in the ratio of 50:50 on a monthly basis and if required, truing up of the same shall be done by the Commission at the end of each year. It is submitted that as per the Flexibility Scheme, apart from providing the power to the beneficiaries at a cheaper rate by virtue of supplying power at a rate lower than Station ECR, it also provides the added benefit of meeting the RPO with the RE power supplied under the Flexibility Scheme which otherwise would not be available to the beneficiary. The Petitioner has further stated that the insofar as the implementation of the Flexibility Scheme is concerned, the Commission may prescribe appropriate steps and directions for the same.

10. We have considered the submissions made by the parties. A specific query was posed to the Petitioner vide Record of Proceedings for the hearing dated 20.9.2023, whereby the Petitioner was asked to indicate the tariff at which it will supply the solar generation to its beneficiaries. But, the Petitioner has not given any exact/indicative amount and has merely stated that the tariff for renewable energy shall be lower as compared to the tariff for thermal power. However, having said this, in our view, cannot be a ground for deferring the present adoption proceedings, the scope of which relates to the tariff discovered for the Renewable Energy Projects for the procurement of such power by the Petitioner herein. In other words, the present adoption proceedings pertain to the first leg of the transaction between the Renewable Project Developers and the Petitioner herein. This does not mean that the clarity on the applicable tariff under the second leg, i.e. between the Petitioner and its beneficiaries, is of any less importance, but this, in our view, can be dealt with separately, particularly in view of the fact, whatever these charges may come be fixed/determined, it will not alter the fundamental premise of the Flexibility Scheme that is passing of net saving to the beneficiaries as the Scheme ensures that the rate at which the renewable energy will be supplied to the beneficiaries shall always be less than the ECR of the concerned thermal generating station whose thermal energy is being replaced. Hence, the beneficiaries, having been given this assurance by the Flexibility Scheme itself, we do not find it proper to defer/delay the tariff adoption proceeding for want of clarity on the elements "Balancing Cost" and "Tariff Risk".

11. We also note that Respondent TANGEDCO pointed out that there is abundant RE power available in the market through SECI at a cheaper rate, as low as Rs. 2.45/kWh, and the Scheme now conceived is not under the TBCB route, and, as a result, the beneficiaries will be deprived of buying cheaper power based on their requirement but forced to buy costlier RE power without any provision in their PPAs. We find the above contention of Respondent to be misconceived. Apart from merely stating that the RE power is available at cheaper rates in the market, the Respondent has, as such, failed to produce any material on record indicating the contemporaneous rates discovered under the bid process conducted by SECI and/or other utilities. Hence, in the absence thereof, we are not inclined to consider the contention of TANGEDCO casting aspersions on the competitiveness of rates discovered in the present case under the Flexibility Guidelines. Moreover, TANGEDCO has also stated /indicated that the sharing of benefits in the ratio of

50:50 is on the higher side, and the beneficiaries would be better off by purchasing the renewable energy power directly from the RE developers and market. We find the aspect of comparing the cost/saving by the beneficiaries in procuring the RE power directly from the RE developer vis-à-vis the Petitioner under the Flexibility Scheme entirely out of context. The Flexibility Scheme does not in any manner put a restriction on the beneficiaries to procure the RE power directly from the RE generators or from the market. The scope and intent of the Flexibility Scheme are quite different and include replacing the costlier thermal generation with cheaper renewable energy, promoting energy transition, reducing emissions, etc., while simultaneously enabling the beneficiaries to meet the RPO within the existing contracted capacity without facing any financial burden. In fact, as already noted above, under the Flexibility Scheme, they are entitled to receive 50% of the net savings accrued on account of the replacement of thermal generating station with renewable energy generation. Hence, it would not be fair to compare the costs/benefits of the Flexibility Scheme with the purchase of renewable energy directly from the RE developers or from the market as the beneficiaries are always at liberty to opt for the latter route.

12. TANGEDCO has submitted that upon implementing the Flexibility Scheme, the generator will continue to enjoy the benefit of getting the thermal power scheduled at the cost of fixed charge and variable charge but will incur only the cost equivalent to renewable energy. It has been further submitted that this will lead to a situation where the Distribution Licensees will be forced to pay for costlier thermal power even though the despatch will only be from cheaper renewable energy generators, which will have huge financial repercussions on them. We have considered the submissions made by TANGEDCO on the above aspect and find that while the liability of the fixed charges of thermal generating stations continues to be on the beneficiaries irrespective of whether they schedule the energy from such stations or not, the Flexibility Scheme specifically provides for sharing of net savings accrued on account of the difference between the ECR of thermal generating station and tariff of renewable energy generation in the ratio of 50:50 basis after the adjustment towards the Balancing Costs and Tariff Risks required to be undertaken by the thermal generating stations. Hence, it would be incorrect to say that the generating stations would continue to receive the energy charges despite despatching the renewable energy generation in lieu of thermal generation.

13. TANGEDCO has also submitted that without modifications/ amendments to the Tariff Regulations and other applicable Regulations, the present Petition cannot be processed. It has also been stated that there is no provision in the Tariff Regulations for procurement/supply of power from renewable energy, and if there is any change in the methodology for calculation of energy charges as specified, the same has to be regulated by means of an amendment to the Tariff Regulations in consultation with stakeholders. We have already noted that the provisions of the IEGC, 2023 provide for the required regulatory framework for scheduling and dispatch of transactions akin to the referred in the Flexibility Scheme. Moreover, IEGC, 2023 also envisages the incorporation of necessary provisions relating to the sharing of net savings in case of generating stations, whose tariff is determined by this Commission under Section 62 of the Act, supply power from alternate sources (renewable generating stations) and until such provisions are incorporated, NLDC to prepare a detailed procedure in this regard and seek the approval of the Commission thereof. We have already directed NLDC to prepare the detailed procedure for sharing of net saving as envisaged in Regulation 48(3)(e) of the IEGC, 2023, and while doing so, to also consider the provisions relating to sharing of net savings as provided in the Flexibility Scheme. Thus, in

view of the above, we are not in agreement with the submissions of TANGEDCO that pending amendments/modifications to the Tariff Regulations and other Regulations, the present tariff adoption proceedings ought to be deferred or cannot be processed.

(c) Re-Non-furnishing of certain details as required under the Flexibility Guidelines.

14. TANGEDCO has submitted that the Petitioner has not furnished details to ascertain the compliance with the provisions of the Flexibility Guidelines, and in this regard, TANGEDCO has referred to and placed reliance on the various activities such as identification of land, NOC/Environment Clearance, Forest Clearances, Approval for Water from the concern Authority, and letter from STU/CTUIL confirming technical feasibility, etc. as listed under clause 3.2.1 of the Flexibility Guidelines.

15. However, we notice that the various project preparatory activities required to be initiated by the Procurer (i.e. NTPC) before issuance of the RfS specified under clause 3.2.1, as referred to by TANGEDCO, are relevant only in the case where the Project site has been specified by the Procurer (i.e. NTPC) and not otherwise. In the present case, the RfS/Bid documents permitted the RE Power Developer to set-up the Project anywhere in India, and the Project site was to be selected by the RE Power Developer themselves. Hence, examining the status of various project preparatory activities specified under clause 3.2.1 of the Flexibility Guidelines is, as such, not relevant in the present case of tariff adoption.

(d) Re - Submissions on the Operational Aspects of the Flexibility Scheme

16. The Respondent has also made various submissions/comments on the operational aspects of the Flexibility Scheme, which can be indicated below:

(i) The process from which bundling is proposed to be carried out is not clear. Neither from the Flexibility Scheme nor from the bid documents or the Petition, is the process by which bundling is proposed to be carried out clear. The method of bundling ought to be clearly defined by the Commission.

(ii) The Flexibility Scheme provides that the net injection schedule from the thermal station and the RE generator form reference for DSM calculations as per the extant Regulations. The Commission may also consider that in an unlikely situation where there is an over drawl scenario by the beneficiary Discom, the extent of the declared capacity of the thermal plant offset by the RE generator should be utilised towards minimizing the extent of withdrawal by the Discoms without any additional financial burden on the Discoms.

(iii) Any penalty levied on account of the deviation by RE generators ought not to be passed on to the beneficiaries.

(iv) By replacing the thermal capacity with the must run renewable energy, the whole plant becomes must run insofar as the Discoms/beneficiaries are concerned. The impact of this on grid security and the rise in cost involved in

the start-up and shutdown of thermal plants ought not to be passed on to the beneficiaries/Discoms.

(v) The consistent/reliable power available from thermal plants, irrespective of season and time during the day, ought not to be hampered due to the infirm nature of renewable energy bundled under the Flexibility Scheme.

(vi) RE integration/bundling during scheduling of the thermal generating stations may result in part load operations of units of thermal generating stations and accordingly, the same needs to be exempted for the beneficiary already having PPA with thermal plant.

(vii) The Petitioner should indicate a minimum quantum of supply of RE power against every MW of exchanged generation, which shall be in line with CUF assumed by the RE generators for the purpose of bidding. The beneficiaries should be entitled to damages payable by the RE generators for non-supply of a minimum quantity of renewable energy.

(viii) In respect of stranded power, the following options may be considered : (a) the extent of RE power that would be stranded on account of the technical minimum of the thermal plant should be treated as having been supplied to the Discoms and generation by thermal plant against such units may be sold in the power market, or (b) any benefit derived from the sale of RE power in the market should be equally shared with Discoms for not taking the benefit of RE power available with the Petitioner, or (iii) the Petitioner be allowed to sell in the power exchange while retaining the renewable property/ REC to itself, which can then be distributed proportionately to the beneficiary Discoms; or (iv) in order to optimize the utilisation of RE power, the Commission may also consider allowing banking facility to the Discoms for such RE power so that the same can be scheduled according to the requirement of the beneficiary Discoms.

17. In response, the Petitioner has fairly indicated that the Commission may prescribe the appropriate steps and directions for implementing the Flexibility Scheme while keeping in mind the interests of both the Petitioner and its beneficiaries.

18. We have considered the submissions made by the parties. Undoubtedly, the implementation of the Flexibility Scheme would require a clear framework relating to its various operational aspects. However, this aspect can be dealt with separately and in our view, need not be necessarily linked with the adoption of tariff proceedings. Moreover, we observe that as per Clause 9.5 of the Flexibility Scheme entrusts the CEA with the monitoring implementation of the Scheme and suggesting changes, if required, in the Scheme to the Central Government and in doing so, CEA may consult the MNRE, POSOCO, CERC, Distribution Licensees, and other stakeholders. Hence, in view of this specific provision, we find it appropriate to direct the parties, i.e. the Petitioner and its beneficiaries, POSOCO, CTUIL and other necessary stakeholders, to undertake the joint consultation with the CEA in regard to the implementation of the Flexibility Scheme and various operational aspects associated with it.

In view of the aforesaid discussions, it emerges that the selection of the successful bidders has been done and the tariff of the solar power projects has been discovered by the BPC, RECPDCL through a transparent process of competitive bidding in accordance with the Flexibility Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act.”

28. The present Petition has been filed under Section 63 of the Act, under which this Commission is required to adopt the tariff if such tariff has been determined through a transparent bidding process and this transparent process of bidding is in accordance with the Guidelines issued by the Central Government. Moreover, it has also been held by the Hon'ble Supreme Court in the case of Energy Watchdog that in a situation where Guidelines issued by the Central Government under Section 63 of the Act cover the situation, this Commission is bound by those Guidelines and must exercise even its regulatory function, under Section 79(1)(b) of the Act, only in accordance with the provisions of the Guidelines. The Flexibility Guidelines, as noted above, have been issued under Section 63 of the Act to enable the long-term procurement of electricity by thermal/hydro generating stations for utilisation under the Flexibility Scheme. Hence, the scope of the present Petition has to be limited to the adoption of the tariff as discovered in the bid process carried out under the said Guidelines, and Respondents/beneficiaries cannot be permitted, directly or indirectly, to challenge the vires of the Flexibility Guidelines and/or the Flexibility Scheme under the present case.

29. We find that even under the provisions of Section 79 of the Act, this Commission is not vested with the powers to look into the validity of the Schemes and/or the Guidelines issued by the MoP, GoI under the Act, let alone under the Section 63 of the Act under which the present Petition has been filed by the Petitioner.

30. Hence, all such submissions of TANGEDCO, which seek to challenge the validity of the provisions of the Flexibility Scheme and/or Guidelines and the role of the Petitioner thereunder, cannot be entertained in the present case. As rightly

pointed out by the Petitioner, in the event the Respondent is aggrieved by any of the provisions of the Flexibility Scheme and/or Guidelines and the role of the Petitioner envisaged thereunder, the Respondent is free to challenge them before an appropriate forum.

31. In view of the aforesaid discussions, it emerges that the selection of the successful bidders has been done, and the tariff of the solar power projects has been discovered by the BPC, PFCCCL through a transparent process of competitive bidding in accordance with the Flexibility Guidelines issued by the MoP, GoI under Section 63 of the Act. Therefore, in terms of Section 63 of the Act, this Commission adopts the individual tariff for the solar power projects, as agreed to by the successful bidder(s) as under:

S. No.	Successful Bidders	Tariff Rs./kWH	Capacity (MW)
1.	NTPC REL	2.53	900
2.	ACME CSPL	2.53	300

32. Accordingly, prayer (b) of the Petition is answered in terms of the above paragraphs.

33. Petition No. 118/AT/2024 is disposed of in terms of the above.

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(श्री अरुण गोयल)
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