CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 193/AT/2024

Coram:
Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri Ramesh Babu V., Member

Date of Order: 1st August, 2024

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for the adoption of Tariff discovered through Competitive Bidding Process for selection of wind power developers for setting up of 100 MW ISTS-connected Wind 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 as per the Guidelines for Tariff Based Competitive Bidding Process notified by the Ministry of Power, Government of India vide its Gazette Notification dated 27.8.2022.

And
In the Matter of:

Damodar Valley Corporation (DVC),
DVC Headquarters, DVC Towers,
VIP Road, Kolkata-700054

…... Petitioner

VERSUS

1. **M/s. Juniper Green Energy Private Limited,**
   Plot No.18, 1st Floor,
   Institutional Area, Sector-32
   Gurugram-122001, Haryana

2. **M/s. Avaada Energy Private Limited,**
   C-11, Sector-65, Noida-201301,
   Uttar Pradesh.

3. **REC Power Development and Consultancy Limited,**
   D- Block, REC Corporate Headquarter,
   Plot No. I-4, Sector-29, Gurugram-122001, Haryana

4. **BSES Rajdhani Power Limited,**
   2nd Floor, B-Block, BSES Bhavan,
   Nehru Place, New Delhi-110019

5. **BSES Yamuna Power Limited,**
Shakti Kiran Building,
Karkardooma, Delhi-110032

6. **Bangalore Electricity Supply Company,**
Corporate Office BESCOM, K.R. Circle,
Bangalore-560001, Karnataka**,**

7. **Chamundeshwari Electricity Supply Corporation Limited,**
No.29, Corporate Office CESC Mysore, Vijayanagar 2nd Stage,
Hinkal, Mysore, Karnataka

8. **Gulbarga Electricity Supply Company Limited,**
Corporate Office, RA Section, Station Main Road, Opp. Parivar Hotel,
Kalaburagi, Gulbarga– 585102, Karnataka

9. **Hubli Electricity Supply Company Limited,**
Corporate office, PB ROAD, Navanagar Hubballi,
Hubli-580025, Karnataka

10. **Mangalore Electricity Supply Company Limited,**
Corporate Office MESCOM, Mescom Bhavana,
Kavoor Cross Road, BEJAI, Mangalore– 575004, Karnataka

11. **India Power Corporation Limited,**
Plot No. X1,2 & 3, Block - EP, Salt Lake,
Sector-V, Kolkata-700091, West Bengal

12. **Jharkhand Bijli Vitran Nigam Limited,**
Engineering Building, HEC, Dhurwa,
Ranchi-834004, Jharkhand

13. **Kerala State Electricity Board Limited,**
Tariff Regulatory and Affairs Cell,
Vydyuthi Bhavan, Thiruvananthapuram-695004, Kerala

14. **Haryana Power Purchase Centre,**
UHBVN, IP 3& 4, 4th Floor, Sector 14,
Panchkula-134113, Haryana

15. **M.P. Power Management Co. Ltd.,**
Block No. 11, 1st Floor, Shakti Bhawan,
Rampur, Jabalpur– 482008, Madhya Pradesh

16. **North Central Railway,**
DRM Office, Nawab Yusaf Road,
Prayagraj-211001, Uttar Pradesh

17. **Northern Railway,**
Northern Railway Head Quarter,
Baroda House, New Delhi-110001

18. **North Western Railway,**
    Headquarters Office, Near Jawahar Circle,
    Jagatpura-302017, Rajasthan

19. **Punjab State Power Corporation Limited,**
    Dy. CE/ISB, Shed T-1A, Shakti Vihar,
    PSPCL, Patiala– 147001, Punjab

20. **Tata Power Delhi Distribution Limited,**
    NDPL House, Hudson Lines,
    Kingsway Camp, Delhi-110 009,

21. **Tata Steel Limited**
    PGP Works, Gen. Office (W-175)
    Tata Steel Ltd., Jamshedpur-831013, Jharkhand

22. **West Bengal State Electricity Distribution Company Limited**
    Vidyut Bhavan, Block-DJ, Sector-II,
    Salt Lake, Kolkata-700091– 700091, West Bengal

23. **Western Railway,**
    PCEE Office, 5th Floor, Churchgate,
    New station Building, Churchgate,
    Mumbai-400020, Maharashtra …**Respondents**

Parties present:

Shri Venkatesh, Advocate, DVC
Shri Bharath Gangadharan, Advocate, DVC
Shri Kartikay Trivedi, Advocate, DVC
Shri Vishrov Mukherjee, Advocate, JGEPL
Shri Janmali Manikala, Advocate, JGEPL
Shri Raghav Malhotra, Advocate, JGEPL
Shri Eshjyot Walia, Advocate, RECPDCL
Shri Akul Singh, Advocate, RECPDCL
Shri Shashank Singh, RECPDCL
Shri Ritam Biswas, RECPDCL
Ms. Sahiba Soni, RECPDCL
Shri Mayur Girdhar, RECPDCL

ORDER

The Petitioner, Damodar Valley Corporation (‘DVC’) 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 the 100 MW ISTS-connected Wind 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*" (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; and*
>
> *(b) Adopt the Tariff Rate of Rs. 3.58 per Unit under Section 63 of the Act for procurement of RE Power from 50 MW Wind Power Project of M/s. Juniper Green Energy Private Limited, discovered through competitive bidding carried out by REC Power Development & Consultancy Ltd; and*
>
> *(c) Adopt the Tariff Rate of Rs. 3.59 per Unit under Section 63 of the Act for procurement of RE Power from 50 MW Wind Power Project of M/s. Avaada Energy Private Limited, discovered through competitive bidding carried out by REC Power Development & Consultancy Ltd; and*
>
> *(d) Direct all the beneficiaries of the respective stations coming under this replacement scheme to schedule the wind power on a pro-rata basis under the same existing PPAs from the Petitioner; and*
>
> *(e) Pass such other order (s) as may be deemed fit and proper in the facts and circumstances of the present case."*

<u>Submissions of the Petitioner</u>

2. The Petitioner, DVC, a generating company within the meaning of Section 2 (28) of the Act, has submitted that DVC, through its Bid Process Coordinator/ Authorized Representative, namely, REC Power Development and Consultancy Limited (RECPDCL), issued a Request for Selection ('RfS') dated 31.7.2023 along with the draft Power Purchase Agreement ('PPA') for the purpose of selection of the Wind Power Developers (WPDs) for setting up the 100 MW ISTS-Connected Wind Power Projects in India under the Flexibility Scheme and as per the Guidelines dated 27.8.2022. In response, three bids were received, and all three bidders were found

qualified in terms of the qualification requirement of the RfS. Thereafter, the techno-commercial bid was opened on 16.11.2023, and as per the eligibility criteria mentioned in the RfS, all three bidders were shortlisted for participating in the e-reverse auction. The e-reverse auction was conducted on 17.11.2023 and pursuant thereto, two bidders, namely, M/s Juniper Green Energy Private Limited for 50 MW capacity with tariff of Rs. 3.58 per kWh and M/s Avaada Energy Private Limited for 50 MW capacity with tariff of Rs. 3.59 per kWh were selected and RECPDCL issued the Letters of Award on 6.2.2024 after obtaining the approval from DVC.

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) nominated by the Ministry of Power) by the Appropriate Commission. Therefore, the Petitioner can enter into a PPA with the successful bidders, i.e., M/s Juniper Green Energy Private Limited (or its SPV) and M/s Avaada Energy Private Limited (or its SPV) only after the adoption of tariff by this Commission.

<u>Hearing dated 5.6.2024</u>

4. During the course of the hearing on 5.6.2024, the learned counsel for the Petitioner, DVC, reiterated the submissions made in the pleadings and requested the Commission for the adoption of the tariff of 100 MW Wind Power Projects connected with the Inter-State Transmission System and selected through the competitive bidding process.

5. After hearing the learned counsel for the Petitioner, notices were issued to Respondents to file their respective replies.

Reply of the Respondent, RECPDCL

6. Pursuant to the liberty given by the Commission, Respondent 3, REC Power Development and Consultancy Limited ('RECPDCL'), vide its affidavit dated 18.6.2024, has placed on record the details of the bidding process conducted by it in the capacity of BPC at the behest of the Petitioner, DVC. RECPDCL has further indicated that the bid documents were in line with the provisions of the Flexibility Guidelines as notified by the Ministry of Power, Government of India, and no deviation has been taken from the Bidding Guidelines. Additionally, RECPDCL also placed on record the copy of various documents relating to the bid process, namely (i) an intimation letter issued to the Commission dated 31.7.2023, (ii) the RfS document and its amendments thereof, (iii) Minutes of Meeting of Bid Evaluation Committee, (iv) Certificate of Bid Evaluation Committee dated 23.11.2023, and (v) Letter of Awards issued to successful bidders, etc.

Reply of the Respondent, JGEPL

7. The Respondent 1, M/s Juniper Green Energy Private Limited ('JGEPL') vide its reply dated 26.6.2024, has mainly submitted as under:

(a) The current Petition has become infructuous with respect to the approval of the tariff discovered for JGEPL. In terms of Clause 26 of the Request for Selection ('RfS') dated 31.7.2023. The validity of JGEPL's bid was originally up to 15.03.2024 i.e., 180 days from the last date of bid submission. Further, tariff adoption and execution of the Power Purchase Agreement ("PPA") must be within 60 days from 6.2.2024 (date of issuance of the Letter of Award ("LoA")) i.e., by 6.4.2024. Since there was a delay in the adoption of the tariff by this Commission, JGEPL, at the request of REC Power Development and Consultancy Limited ("Bid process co-ordinator" / "RECPDCL") had extended the validity of the bid up to 30.6.2024. Thereafter, on 14.6.2024, RECPDCL had asked for further extension of bid validity up to 30.9.2024, which JGEPL has not extended. Therefore, since bid validity expires on 30.6.2024, tariff adoption has not been done and the PPA has not been executed yet, the bid will lapse with effect from 1.7.2024. Consequently, JGEPL is also not extending the validity of the Bank Guarantee towards the Earnest Money Deposit, beyond 1.7.2024.

(b) In terms of the RfS dated 31.7.2023, JGEPL on 12.9.2023 submitted to RECPDCL its Bank Guarantee bearing No. OGT0005230085967 towards Earnest Money Deposit ("EMD") amounting to Rs.6,63,00,0000. The bank guarantee is valid until 1.7.2024. Pursuant to the reverse auction held on 17.11.2023, JGEPL was selected as the successful bidder, and on 6.2.2024, RECPDCL issued a Letter of Award ('LoA') to JGEPL for setting up of the 50 MW ISTS-Connected Wind Power Project. The said LoA was unconditionally accepted by JGEPL on the same day, i.e., 6.2.2024. It bears mention that 60 days from the date of issuance of the LoA expired on 6.4.2024.

(c) Thereafter, on 12.3.2024, RECPDCL wrote to JGEPL seeking an extension of the bid validity period of the Project. In response, JGEPL vide its email dated 12.3.2024 extended the bid validity period until 30.6.2024. Further, JGEPL vide email dated 21.3.2024 expressed its willingness to RECPDCL for executing the Power Purchase Agreement ('PPA') with respect to the 50 MW project awarded to JGEPL under the RfS.

(d) Post filing of the present petition, on 2.5.2024, JGEPL wrote to RECPDCL nominating its subsidiary, namely, M/s. Juniper Green Stellar Private Limited to execute the PPA and develop the Project. Subsequently, JGEPL on 5.6.2024, wrote to RECPDCL stating the following:

i) JGEPL had assumed certain capital expenditure with respect to the project development, including land acquisition, commodity pricing, availability of wind turbine manufacturing, availability of logistics like heavy cranes, movement trolleys, etc considering the reasonable period of bid validity and timelines for the PPA execution. Accordingly, JGEPL had placed necessary mitigations to ensure the implementation of the Project within budget. However, these assumptions were disrupted due to the delay in the execution of the PPA.

ii) JGEPL has further highlighted the challenges associated with an increase in commodity costs, and sourcing of wind turbine generators from the manufacturers (“OEM”). OEMs are no longer accepting orders since their supply schedules are completely aligned with their maximum capacity of manufacturing facilities for next 18 (eighteen) months.

iii) JGEPL has further conveyed its difficulties in confirming binding offers received from the suppliers, blocking manufacturing capacity, committing to implementation schedule, and how, consequently, offers are now being subject to withdrawal / cancellation by the respective wind turbine manufacturers, and other suppliers due to delay and lack of clarity with respect to the signing of the PPA.

iv) There will be issues relating to the impact of increased costs as a result of delay in execution of the PPA due to increase in commodity prices such as copper, steel etc., a sudden surge in the requirement of the supply of wind turbines in the Indian market, and land scarcity due to limited wind potential sites and many active competitors.

v) The execution of the Project is under strict scrutiny of JGEPL’s management. The delay in the execution of the PPA has resulted in additional exposure, uncertainties, risks, and costs. Resultantly, JGEPL will be at full liberty to walk out freely from the PPA execution if the PPA is not executed on or before 30.6.2024. JGEPL will be entitled to return of the Bank Guarantee towards EMD submitted under the RfS, in full, within 3 days from 30.6.2024.

vi) In view of the above, JGEPL has requested RECPDCL to expedite the process and execute the PPA on or before 30.6.2024.

(e) RECPDCL, vide its response dated 10.6.2024, stated that the tariff adoption petition had been filed and the tariff will be adopted soon. Thus, RECPDCL / DVC cannot expedite the process of adoption of tariff and the signing of the PPA before 30.6.2024. Hence, JGEPL was requested to ensure compliances regarding the observations in relation to SPV-related documents in order to demonstrate readiness for signing the PPA.

(f) In response, JGEPL on 12.6.2024 wrote to RECPDCL and reiterated the challenges that JGEPL faced due to the delay in execution of the PPA, which has resulted in additional exposure, uncertainties, risks, and costs to JGEPL. As communicated on 5.6.2024, JGEPL will be at full liberty to walk out freely from the PPA execution if the PPA is not executed on or before 30.6.2024.

Further, JGEPL will be entitled to return of the Bank Guarantee towards the EMD submitted under the RfS, in full, within 3 days from 30.6.2024.

(g) On 13.6.2024, RECPDCL *inter-alia* informed the JGEPL that the SPV-related documents submitted by JGEPL are under scrutiny and further observations, if any, will be submitted in due course. The process followed by this Commission for the adoption of tariffs is beyond RECPDCL's control. Further, in view of Clauses 11.7 and 15 of the RfS, JGEPL was aware that the PPA can only be executed after the adoption of a tariff by the Commission. This condition was also present in tender documents, which were concurred by JGEPL. Thus, JGEPL's claim with regard to not executing the PPA after 30.6.2024 and further, the return of Bank Guarantee towards EMD without deduction is untenable.

(h) On 14.6.2024, RECPDCL wrote to JGEPL in relation to the extension of validity of its bid and bank guarantee towards EMD. Pertinently, pursuant to this letter, JGEPL has not extended the validity of the bid or the period of the Bank Guarantee towards the EMD.

(i) The present Petition has become infructuous with respect to approval of tariff in respect of JGEPL since JGEPL has not extended and does not wish to extend the validity of its bid made pursuant the RfS dated 31.7.2023, beyond 30.6.2024. Thus, in absence of a bid, no tariff needs to be determined by this Commission. In terms of Clause 26 of the RfS, bids submitted under the RfS are valid for a period of 180 days from the last date of submission of response to the RfS. Thus, in terms of the RfS, since JGEPL had submitted its bid on 17.9.2023, its bid was originally valid only till 15.3.2024. Further, in terms of Clauses 11.7 and 15.1 of the RfS, DVC was required to sign a PPA with JGEPL within 60 days from the date of issuance of the LoA, after the adoption of tariff by this Commission. Accordingly, in terms of the RfS, the tariff ought to have been approved and consequently, the PPA with DVC ought to have been executed by 6.4.2024 i.e., 60 days from 6.2.2024.

(j) Despite JGEPL's requests on 5.6.2024 and 12.6.2024, RECPDCL has not taken any steps towards expediting the hearing for the present Petition. The present Petition, filed by DVC on 23.4.2024 was listed for the hearing 4.7.2024.

The validity of JGEPL's bid expires on 30.6.2024. However, the timeline for executing the PPA with JGEPL, i.e., 60 days from the date of issuance of the LoA to JGEPL expired on 6.4.2024. There is no obligation upon JGEPL to extend the period of bid validity. Since the period of bid validity is expiring on 30.6.2024, the tariff adoption after 30.6.2024 would be of no use since there would be no valid bid in respect of JGEPL. RECPDCL has once again, on 14.6.2024, requested for extension of the validity of JGEPL's bid till 30.9.2024 and extension of bank guarantee towards EMD for another three months after 30.6.2024 by stating that the present Petition is pending adjudication before this Commission.

(k) The delay in execution of the PPA has resulted in additional exposure, uncertainties, risks, and costs upon JGEPL. JGEPL is under no obligation to extend the period of validity of its bid. Further, the period of validity of the bid cannot be extended without the consent of JGEPL. At the first instance, JGEPL had mutually agreed to extend the validity of bid deadline until 30.6.2024 upon RECPDCL's request. JGEPL was not under any obligation under the RfS or otherwise to extend the bid validity beyond 30.06.2024. JGEPL cannot be expected to extend the validity of the bid post 30.06.2024, to its detriment, after the lapse of approximately 10 months since the bid submission date.

(l) In these circumstances and given that the PPA cannot be executed by 30.6.2024 and since JGEPL's bid will expire on 30.6.2024, the present Petition in respect of the JGEPL has become infructuous with effect from 1.7.2024 to the extent of adopting tariff for JGEPL. Accordingly, JGEPL's Bank Guarantee bearing No. OGT0005230085967 may be refunded within 3 days of the expiry of JGEPL's bid without any deduction or adjustment. The Commission may give directions to the Petitioner to return the Bank Guarantee submitted towards EMD under the terms of RfS.

<u>Hearing dated 4.7.2024</u>

8. During the course of the hearing, learned counsel for Respondent 1, JGEPL, submitted that since the validity of the bid submitted by the Respondent in response to the RfS has already expired on 30.6.2024, the present Petition has become

infructuous to the extent of adoption of tariff qua Respondent 1 herein. Learned counsel submitted that in terms of Clause 26 of the RfS, the bid submitted thereunder was valid for a period of 180 days from the last date of submission of the response to RfS, and the Respondent having submitted its bid on 17.9.2023, the bid was originally valid till 15.3.2024. Subsequently, at the request of the RECPDCL - the Bid Process Coordinator, JGEPL, by its e-mail dated 12.3.2024, had extended the bid validity until 30.6.2024. However, keeping in view that the Petitioner has failed to execute the PPA within 60 days from the date of issuance of the LoA and the Respondent not being under any obligation to extend the bid validity beyond 30.6.2024, presently, there is no valid bid in respect of the Respondent, and accordingly, the Commission may not proceed to adopt the tariff qua Respondent 1 in respect of its 50 MW project.

9. Learned counsel for the Petitioner submitted that the rights & obligations of the parties under RfS are a separate issue, which the Commission may need not go into at this stage. Learned counsel further added that in any case, as per the Petitioner, the bid validity is relevant only up to the issuance of Letter of Award (LoA), and once having issued LoA, which has been duly accepted by Respondent 1 herein, the question of bid validity no longer arises. Also, in the present case, RfS specifically provided that the PPA will be executed only after the adoption of the tariff by the Commission. Learned counsel also pointed out that an identical issue was raised during the adoption proceedings in Petition No. 353/AT/2022 (SECI v. ReNew Naveen Urja Pvt. Ltd. And Ors.), wherein the Commission vide order dated 9.3.2024 while adopting the tariff, granted liberty to the Respondents therein to approach the Commission for adjudication of such issue(s) through a separate Petition. Learned counsel accordingly submitted that a similar approach may be adopted in the present case, and while proceeding with the adoption of tariff for entire 100 MW wind power

projects, Respondent 1 may be granted liberty to raise its grievance, if any, by way of a separate Petition.

10. Learned counsel for the Respondent, RECPDCL, submitted that Clause 11.7 of the RfS specifically provided that the selected bidder for the Project is required to sign the PPA with DVC within 60 days after the issuance of the LoA, subject to the adoption of tariff by the Commission. She further submitted that the relevant Guidelines also provide that the timeline for the bid process is indicative and if the procurer gives extended time for any of the events in the bid process, on account of the delay in achieving the activities required to be completed before the event, such extension of time shall not be in any way be deviation from these Guidelines. She further added that Respondent 1 was well aware of the stipulations under the RfS, including the requirement of adoption of tariff by the Commission prior to signing of the PPA. She also pointed out that Respondent 1 raised its concern regarding the signing of the PPA for the very first time only on 5.6.2024, i.e., the day on which the present Petition was admitted by the Commission, and as such Respondent 1 was, thereafter, fully aware of the status of the present tariff adoption proceedings before the Commission. Thus, the contention of Respondent 1 that the time was of the essence and it now cannot perform its obligations under LoA is not valid. She further pointed out that Respondent 1 has extended the Bank Guarantee submitted toward Earnest Money Deposit (EMD) under RfS till August 2024 and urged that Respondent 1 ought to be directed to extend the validity of EMD till the outcome of the matter.

11. Learned counsel for Respondent 1 submitted that the contention of the Petitioner that the bid validity was relevant only till the issuance of the LoA is not valid as RECPDCL has itself repeatedly asked the Respondent to extend the bid validity after the issuance of the LoA. Learned counsel requested that RECPDCL be asked to

place on record these letters issued by it requesting for extension of the bid validity after the issuance of LoA. Learned counsel also added that the issue involved in Petition No. 353/AT/2022 was different than that in the present case as in the said case, even after the expiry of bid validity, the PPA(s) had been signed whereas in the present case, the PPA has not been signed.

12. The representative of Respondent 2 sought liberty to file its reply in the matter.

13. Considering the submissions made by the learned counsels and representative of the parties, the Petitioner and RECPDCL were directed to file their respective written submissions, and Respondent 1 was given liberty to file its written submissions, if any, thereafter. The Commission further permitted Respondent 2 to file its reply. Accordingly, order in the Petition was reserved.

Written Submissions of DVC

14. The Petitioner, DVC, vide its written submission dated 15.7.2024 has mainly submitted as under:

(a) The bid validity as per Clause 26 of the RfS is only relevant until and unless the LoA is issued by the BPC. Once the LoA is issued by the BPC, the question of bid validity does not find its legs in so far as the adoption of tariff under Section 63 of the Act is concerned. In the present case, on 6.2.2024, the LoA was issued by RECPDCL to JGEPL, which was unconditionally accepted by JGEPL. Therefore, as per the terms and conditions of the RfS, the next step was to enter into a PPA *inter-se* parties.

(b) Notably, Clause 11.7 of the RfS states that the selected bidder is required to sign the PPA with the Petitioner within 60 days after the issuance of LoA. However, the same is subject to the adoption of tariff by the Commission. Thus, it is evident from the aforesaid that the PPA can only be entered into once the tariff has been adopted by the Commission. Even if we consider that the bid placed by JGEPL was valid till 30.6.2024 then also it would not be out of place to mention herein that the present Petition was filed before this Commission in April 2024 and the same was admitted by this Commission on 5.6.2024, i.e., before the expiry of the said bid validity period.

(c) The process and procedure adopted and followed by this Commission is beyond the control of the Petitioner or RECPDCL or any of the Respondents in the present Petition. Therefore, the ambiguous contention of JGEPL that the present bid is frustrated qua JGEPL, does not find force and hence, is liable to be rejected by the Commission.

(d) The Order dated 9.3.2024 passed by the Commission in Petition No. 353/AT/2022, wherein, this Commission while dealing with similar contentions of the Respondent therein was pleased to hold that to address the objections raised by the Respondents therein, on the delay in signing the PPA and the unviability of the tariff, the Respondents are at liberty to approach the Commission for adjudication of these issues through separate Petitions. Therefore, in view of the SECI Order it is abundantly clear that the contentions qua validity of the bid for executing the PPA cannot in any case be entertained in an adoption of tariff proceedings under Section 63 of the Act.

Written Submissions of JGEPL

15. Respondent, JGEPL vide its written submission dated 21.7.2024, has mainly submitted as under:

(a) The present Petition has become infructuous qua adoption of tariff submitted by JGEPL in response to the RfS dated 31.7.2023 since the bid submitted by JGEPL has expired on 30.6.2024. Therefore, there is no valid bid qua JGEPL as on date basis which the Commission may adopt the tariff in terms of Section 63 of the Act. Bids submitted under the RfS are valid for a period of 180 days from the last date of submission of response to the RfS. Thus, in terms of the RfS, since JGEPL submitted its bid on 17.9.2023 with validity only till 15.03.2024.

(b) The RfS provisions do not cease to exist/ operate till conclusion of the bidding process. In the present case, signing of the PPA is the last stage in the bidding process, pursuant to adoption of tariff by this Commission. As a natural corollary, the bidding process does not stand concluded/ has not attained finality and a concluded contract has not come into existence. Therefore, the RfS conditions will prevail. In effect, DVC has contended that compliance with RfS conditions once the LoA has been issued is not mandatory. This is untenable in law.

(c) The LoA itself states that “all terms and conditions of this LoA shall be governed by solely on the basis of the final RfS, including the PPA and bid submitted.” Notably, there is no provision in the RfS or the Flexibility Scheme which contemplates/ mandates a potential bidder to extend validity of the bid beyond the prescribed period of 180 days. Despite above, on 12.3.2024, pursuant to RECPDCL’s request, JGEPL consented to extending validity of the bid upto 30.6.2024 with validity of is performance bank guarantee up to 1.7.2024. RECPDCL requested for a further extension of the validity of JGEPL’s bid till 30.9.2024 and extension of bank guarantee towards EMD for another three months after 30.06.2024 which JGEPL has denied to consider vide its reply dated 30.6.2024.

(d) In these circumstances, JGEPL extended the Bank Guarantee towards EMD for one month from 1.7.2024, i.e., until 1.8.2024 ‘without prejudice’ to its position that the bid submitted by it stands expired and its rights/ contentions in the present Petition. In terms of the foregoing, the bid submitted by JGEPL on 17.09.2023 stands expired as on 30.6.2024. Since, there is no valid bid on behalf JGEPL as on date, DVC’s prayer for adoption of JGEPL’s bid-discovered tariff has been rendered infructuous. It is a settled position of law that once the original bid submitted has expired, such bidder cannot be compelled to accept the award. Reliance has been placed on the judgement dated 6.9.2023 passed by the Jharkhand High Court in W.P.(C) No. 4763 of 2022 (Batch) titled *JK Exim Pvt. Ltd. v. Satet of Jharkhand* and Judgment dated 16.3.2023 passed by the Kerala High Court in WA No. 915 of 2022 titled *M/s Radiance Realty Developers India Ltd. v. State of Kerala.*

(e) The DVC’s reliance on the observations of this Commission in Order dated 9.3.2024 in Petition No. 353/AT/2022 is misplaced. It is submitted that said Order is not applicable and distinguishable on facts since in the said case, the plea that the PPAs executed between the parties were invalid as the agreements had been executed post the expiry of the bid validity.

(f) Without prejudice to the foregoing, in terms of Clause 9 of the Flexibility Scheme, an indicative timeline for the bid process has been provided at Annexure -1 of the said Scheme. As per these timelines, the PPA is to be signed with the successful bidders within 170 days from the issuance of the RfS. It is DVC and RECPDCL's understanding in terms of the LOA dated 21.11.2022 issued by DVC to RECPDCL that the timelines for conducting the bid process including signing the PPA is 170 days from the date of issuance of RfS. However, in the present case, there has been a delay of approximately 300 days, in completion of the bid process by RECPDCL and DVC.

(g) Even otherwise, inordinate delay on part of the DVC/ RECPDCL leading to unviability of JGEPL's Project/ bid-discovered tariff is contrary to the stated objectives of the Flexibility Scheme under Clause 1.2.1 (c) which provides that the said scheme is intended "to provide standardization and uniformity in processes and a risk-sharing framework between various stakeholders, involved in the RE power procurement under Flexibility scheme, thereby encouraging investments, enhanced bankability of the Projects and profitability for the investors."

(h) In view of these peculiar facts and circumstances, there is no occasion for this Commission to adopt JGEPL's bid as tariff as JGEPL's bid stands expired and no valid bid exists as on date. RECPDCL ought to be directed to return the bank guarantee towards EMD to JGEPL forthwith.

Hearing dated 22.7.2024

16. During the course of the hearing, the learned counsel for the Petitioner and the Respondents, JGEPL & RECPDCL, made their respective submissions and concluded their arguments in the matter.

17. After hearing the learned counsels for the parties, the Commission directed the Respondent, RECPDCL, to file its written submissions capturing the submissions/

arguments made by it during the course of the hearing and any judgments in support of its contentions within two days. The Commission also permitted the Respondent, JGEPL, to a compilation of judgments in support of its plea, within two days with a copy to the other side.

18. Subject to the above and with the consent of the parties, the Commission reserved the matter for order.

19. The Respondent 2, Avaada Energy Private Limited ('AEPL') vide its reply dated 18.7.2024 (albeit filed on 22.7.2024) has mainly submitted as under:

(a) Clause 11.7 of the RfS dated 31.7.2023 provides that the selected bidder will be required to sign the PPA with the Petitioner within a period of 60 days from the issuance of LoA, subject to the adoption of tariff by the Commission. In other words, it means that the PPA can only be entered into, once the tariff has been adopted by this Commission. Thereafter, the effective date will be established, which will also determine the Scheduled Commercial Date (SCD) of the Project. Further, in terms of the Clause 16.5 of the Bidding Guidelines, the responsibility for the applicability of transmission charges and losses beyond the interconnection point/delivery point shall remain with the procurer, i.e., the Petitioner (DVC).

(b) The terms of the PPA do not align with the Bidding Guidelines w.r.t. ISTS charges and its liability. Specifically, Clause 4.2.6 of the PPA which provides that in the event, if the commissioning of the Project gets delayed beyond the applicable date of ISTS waiver i.e. 30.06.2025, arising out of any reasons whatsoever, DVC shall bear no liability with respect to transmission charges and losses levied, if any. As per the clause 18 of the Bidding Guidelines, the deviations are subject to the approval of this Commission. Accordingly, Clause 4.2.6 of the PPA is in deviation and direct violation of Clause 18 of the Bidding Guidelines, for which neither prior approval has been obtained from this Commission nor a prayer has been made in the Petition for approval of these deviations.

(c) The obligation for payment of transmission charges including losses associated with the transmission of electricity up to the inter-connection point or delivery point lies with the Respondent 2. However, all subsequent charges or losses for the transmission of electricity beyond the inter-connection point ought to be borne by the procurer as per the Bidding Guidelines issued by the Ministry of Power. As per the terms of the RfS, the Respondent 2 was obligated to apply for the connectivity within the time period prescribed under the RfS i.e. 30 days from the date of issuance of LoAs. Accordingly, the Respondent 2 within 2 days from the issuance of the Letter of Award (LoA) applied for the connectivity i.e. on 8.2.2024 at Jam Khambaliya PS, Gujarat which was well within the stipulated time period. Subsequently, CTUIL vide letter dated 4.6.2024 had issued intimation for in-principle grant of connectivity with the timelines of 30.6.2026 subject to the availability of the Common Transmission System (CTS) augmentation at Jam Khambaliya PS which is currently under the bidding process for CTS.

(d) The aforesaid TBCB process for CTS augmentation in Jam Khambaliya PS is yet to be concluded, since the last date of submission of bids being 16.8.2024. The timeline for completion of the CTS augmentation for the successful bidder is 21 months from the handing over of the SPV from the bid implementing agency i.e., PFC Consulting Limited. It is explicitly clear that the timelines for completion of the CTS augmentation would be beyond the ISTS waiver date. Pursuant to Clause 4.2.6, all charges and losses related to the transmission of power from the Project up to Delivery Point (defined in Clause 1.1. of the PPA) (including but not limited to open access, transmission, wheeling, Unscheduled Interchange, Scheduling, Reactive power, and RLDC/SLDC charges etc.) as notified by the competent authority / regulator shall be borne by the WPD and beyond the Delivery Point all charges and losses as notified by the competent authority / regulator from time to time shall be borne by the DVC.

(e) In case, the deviation is not in conformity with the Bidding Guidelines and no approval has been sought from the appropriate Commission, such deviation would be against the settled principles of law. Any imposition of transmission charges and losses beyond the Delivery Point on Respondent 2 would tantamount to altering the very foundation of the bid premises under which the tariff was quoted and will therefore lead to additional cost/ burden on the Respondent 2, thereby making the Project commercially unviable.

(f) In a similar case decide by this Commission vide order dated 2.6.2021 in the matter of *NHPC Limited vs Ministry of New and Renewable Energy & Ors.* (Petition No. 721/AT/2020) wherein there was deviation in the change in law provision, this Commission held that the deviation, if any, from the Guidelines, would require approval from the Commission and accordingly, NHPC (the Petitioner therein) was directed to execute a supplementary PPA without any deviation with the developers restoring the original provisions as provided under the Guidelines.

(g) Regulatory certainty is crucial for the success of competitive bidding process and is also essential for promoting competition, attracting investment and generating investor confidence. In this regard, the APTEL vide order dated 12.10.2021 in Appeal No. 251 of 2021 has categorically held that the regulatory certainty needs to be addressed and that it is the duty of the State Commission to inquire into such claim at the first opportune time and bring in suitable corrections and it may be first by declaration and followed up by detailed tariff orders. Accordingly, the said deviation w.r.t. the liability of the ISTS transmission charges and losses ought to borne by the Petitioner in conformity with the Bidding Guidelines.

(h) In view of the above, the Commission may direct and issue the necessary orders/ directions to the Petitioner (a) to rectify the deviation so as to be in conformity with the Bidding Guidelines and declare that the Petitioner shall be liable for payment of the transmission charges and losses beyond the delivery point as provided under the Bidding Guidelines; (b) Subject to the grant of above prayer (a), approve the procurement of 50 MW of Wind Power by the Petitioner from Respondent 2 at the tariff of Rs.3.59/kWh, on the terms and conditions contained in the tender documents and the LoA signed between the Petitioner and Respondent 2.

20. Further, in terms of liberty granted by the Commission vide its Record of Proceedings for hearing dated 22.7.2024, Respondent 1, JGEPL also placed on record proposition wise index of judgments relied upon by the Respondent in support it its submissions. Moreover, the Respondent, RECPDCL also filed its written submissions in the matter.

Written Submissions of RECPDCL

21. Respondent, RECPDCL vide its written submission dated 24.7.2024 has mainly submitted as under:

(a) The timelines for conducting the bid process were specified as follows:

Event	Elapsed Time from Zero Date
Date of issue of RfS and project-specific PPA	Zero date
RfS Bid Submission	22 days
Evaluation of bids and issuance of LOI on receipt of consent from the procurer i.e. DVC	110 days
Signing of PPA by the procurer	170 days

(b) vide the LoA dated 21.11.2022, the BPC was permitted to give extended time for any of the events in the bidding process prior intimation to Petitioner, on account of delay in achieving such activities that were required to be completed before the event. Further, such extension of time was not to be in any way deviation from the bidding Guidelines.

(c) By virtue of Clause 11.7 of the RfS, JGEPL is already aware that the execution of the PPA would take place subsequent to adoption of tariff by the Commission, it is a matter of common knowledge and practice that once a petition is filed before the Commission, then there remains very little to no scope in the hands of any party to expedite any matter. Hence, once the Petitioner had filed the Petition before the Commission on 12.4.2024, neither the Petitioner nor Respondent 3 had any role to play in the same. Moreover, the condition that the PPA can only be signed after the adoption of the tariff by the Commission is in compliance with not only the provisions contained in the RfS but also the policy guidelines issued by the Ministry of Power, Government of India.

(d) In its reply dated 26.6.2024, JGEPL has been unable to point out to a single provision of the RfS, or any judicial precedent by virtue of which the JGEPL is entitled to terminate its obligations pursuant to acceptance of its bid and acceptance of the LoA by Respondent. Among the arguments advanced by JGEPL, its primary contention is that RECPDCL has sought extension for bid validity period even after issuance of the LoA and thus JGEPL has the right to reject the request and withdraw its bid.

(e) The CERC in the matter of *SECI vs ReNew Naveen Urja Pvt. Ltd. & Ors.* (2024) had dealt with similar facts, wherein it was submitted before the Commission that since there was no reply by the respondents to the petitioner's request seeking extension of bid validity, there was no mutual agreement between parties qua the extension of bid validity, and that the petitioner had no further right to insist upon the PPA execution but rather ought to have cancelled the bid. However, the CERC held that any such grievance with respect to delay in signing of the PPA and unviability of tariff cannot be raised in a Petition seeking the adoption of tariff, and observed that "the present proceedings for the adoption of tariffs at the culmination of the competitive bidding process envisaged in the Guidelines cannot be a platform to agitate issues on the terms of the duly executed PPAs or as an opportunity to claim unilateral termination of duly executed PPAs." Therefore, in the instant case, JGEPL's prayer to discharge its obligations, at a stage after acceptance of its bid and issuance of the LoA, is also not tenable at this stage of proceedings in a petition whose motive is to adopt the tariff. However, JGEPL is free to proceed to approach the Commission for adjudication of such issues by way of separate Petition.

<u>Analysis and Decision</u>

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

competitive bid process carried out in terms of the Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act.

23. 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."*

24. 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 the determination of such tariff.

25. 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 hydro power 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 the bundling of RE power with thermal/hydro power when the RE power plant is co-located within the premises 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/hydro power 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, a 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 taking into account 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)

26. Pursuant to the aforesaid Flexibility Scheme, the Ministry of Power, Government of India notified the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected RE Power Projects for utilisation under Scheme for Flexibility in Generation and Scheduling of Thermal/Hydro Power Stations through bundling with Renewable Energy and Storage Power under Section 63 of the Act vide notification dated 27.8.2022. The salient features of the 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 Request for Selection (RfS) Document, Model Power Purchase Agreement (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 tariff by the Appropriate Commission in terms of Section 63 of the Act.

(n) 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, 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.

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

28. The Ministry of Power, Government of India ('MoP'), through a series of directives/guidelines, launched the Flexibility Scheme to facilitate bundling of Renewable Energy by substituting a part of costlier thermal/hydro energy. Moreover, the trajectory of replacement of thermal energy with RE as set out by MoP includes Chandrapura TPS, Durgapur Steel TPS, Koderma TPS, Mejia TPS and Raghunathpur TPS of the Petitioner. Accordingly, all the beneficiaries from the respective stations were duly informed regarding the replacement of thermal energy with wind energy on pro-rata basis under the same PPA as per the stated scheme. Further, the MoP, vide

its OM No.09/11/2021-RCM Part(1) dated 17.6.2022, nominated three third-party Bid Process Coordinators (BPC), namely, (i) NTPC Vidyut Vyapar Nigam Ltd., (ii) PFC Consulting Ltd. and (iii) REC Power Development and Consultancy Ltd. for the implementation of the scheme dated 12.4.2022. In pursuant to the MoP's directives/guidelines, the Petitioner issued a Letter of Award dated 21.11.2022 to Respondent 3, RECPDCL, a wholly owned subsidiary of REC Limited, a Maharatna Company, under the MoP, for acting as Bid Process Coordinator (BPC) for bundling of the 600 MW (500 MW Solar and 100 MW Wind) of RE Power with conventional power under the Scheme and to invite bidding under tariff based competitive bidding process.

29. The Guidelines provide for the procurement of the 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 the BPC, invited proposals for the selection of the Wind Power Developers (WPDs) for setting up the 100 MW ISTS connected Wind Power Projects under Tariff-based Competitive Bidding under the Scheme. As per the arrangements, DVC shall enter into a Power Purchase Agreement (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.

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

S. No.	Particulars	Date
1.	Publication of RFS	31.7.2023
2	Online Technical & Price Bid Submission	15.9.2023
3	Technical Bid Opening	20.9.2023
4	Initial Price Opening (IPO)	16.11.2023
5	e-Reverse Auction	17.11.2023
6	Final Bid Evaluation Committee Meeting	23.11.2023

S. No.	Particulars	Date
7	Issuance of LoAs	6.2.2024

31. On 31.7.2023, RECPDCL issued the RfS documents, along with the draft PPA for the selection of Wind Power Developers for setting up of the 100 MW ISTS connected wind power projects in terms of the Tariff-based Competitive Bidding under the Scheme. 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 accordwide publicity. In this regard, RECPDCL has placed on record the copies of various editions of the 'Hindustan Times', 'Hindustan' and 'Mint' newspapers dated 31.7.2023 and 'Financial Times Global' dated 2.8.2023, wherein the notice of issuance of 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. RECPDCL, vide its letter dated 31.7.2023, had informed the Commission that it has initiated the competitive bidding process for procurement of power from the ISTS-connected Wind Power Project.

32. The Bid Evaluation Committee (BEC) comprising the following was constituted for the opening and evaluation of bids for the RfS dated 31.7.2023:

Tender	BEC Members for evaluation and recommendation
Selection of Wind Power Developers for Setting up of 100 MW ISTS-Connected Wind Power Projects in India under Tariff-based Competitive Bidding Bidding)	(a) Rajesh Kumar Singh, General Manager, CCGRO-II, SBI, (Chairman, BEC). (b) Saurabh Rastogi, CGM (BDM) REC Limited, (Member, BEC). (c) Alok Singh, GM (Tech) REC Limited, (Member, BEC). (d) Dr. Veepin Kumar, Dy. Director, Energy Storage, System Division, CEA, (Member, BEC). (e) P S Hariharan, CGM (Tech), RECPDCL, (Member, BEC).

33. Response to the RfS was received from the following three bidders:

S.No.	Name of the Bidders
1.	M/s Avaada Energy Private Limited
2.	M/s Juniper Green Energy Private Limited
3.	M/s Sprng Energy Private Limited

34. Subsequently, for evaluation of responses to the RfS, multiple meetings of the Bid Evaluation Committee were held as per the Guidelines. As per the BEC recommendations, all three bidders met the qualification requirement of the RfS based on their submissions of responses to the RfS.

35. The first-round tariff bid for the DVC assignment was opened on 16.11.2023 for the above three techno-commercially qualified bidders in the presence of the BEC member. Upon evaluation, all three 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 17.11.2023. 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:

Name of the Bidder	Quoted Capacity (MW)	Quoted tariff as per IPO (Rs.)	Final Quoted Tariff after eRA (Rs.)	% Difference with Rank-1 Bid Value	Final Ranking of bidder
Juniper Green Energy Private Limited	50	3.70	3.58	0%	L1
Avaada Energy Private Limited	100	3.59	3.59	0.28%	L2
Sprng Energy Private Limited	100	3.63	3.63	1.38%	L3

36. After the conclusion of the e-reverse auction on 17.11.2023 and detailed deliberations by the BEC members, the following recommendations were made by the BEC:

i) M/s Juniper Green Energy Private Limited with the lowest quoted tariff of Rs. 3.58 per kWh has emerged as first successful bidder with full quoted capacity of 50 MW after the conclusion of electronic reverse auction.

ii) M/s Avaada Energy Private Limited with the second lowest tariff Rs 3.59 per kWh (within the range) has emerged as the second successful bidder for the balance capacity of 50 MW after the conclusion of the electronic reverse auction.

iii) BEC also recommended RECPDCL for issuance of Letter of Awards to the successful bidder's subject to the approval from the procurer of the power i.e. Damodar Valley Corporation (DVC).

37. Thereupon, RECPDCL vide letter dated 28.11.2023 sought approval from the Procurer, i.e., DVC for issuance of LoAs to the successful bidders. Accordingly, DVC vide letter dated 27.1.2024 conveyed the approval for issuance of LoAs by RECPDCL to the successful WPDs. Subsequently, RECPDCL on behalf of DVC, issued the LoAs to the successful bidders, i.e., Juniper Green Energy Private Limited vide LoA No. RECPDCL/TBCB-RE/DVC/2023-24/4087 dated 6.2.2024 for the capacity of 50 MW and Avaada Energy Private Limited vide LoA No. RECPDCL/TBCB-RE/DVC/2023-24/4088 dated 6.2.2024 for the capacity of 50 MW. The relevant extract of the Letter of Award issued to one of the successful bidders, namely Juniper Green Energy Private Limited, is as under:

"Subject: Selection of Wind Power Developers for setting up of 100 MW ISTS-Connectecd Wind Power Projects in India under Tariff-based Competitive Bidding against RfS No. RECPDCL/Wind/DVC/2023-24/1132 dated: 31/07/2023 (Tender Code on ETS portal- RECPDCL-2023-TNOOOOOl): Letter of Award (LoA) for 50 MW capacity.

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We refer to

1. *The "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected RE Power Projects for utilisation 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 Wind Power Projects, through competitive bidding;*

2. *The Request for Selection (RfS) document vide Ref no against RfS No. RECPDCL/Wind/DVC/2023-24/1132 dated: 31/07/2023 Including draft Power Purchase Agreement and uploaded during the process of bidding against RfS on ISNETS portal (http://www.bharat-electronictender.com) under Tender search Code RECPDCL-2023- TNOOOOOl issued to M/s Juniper Green Energy Private Limited as regards participation in the Global Invitation for Selection of Wind Power Developers for setting up of 100 MW ISTS-Connected Wind 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 REC Power Development and Consultancy Limited in regard thereto (hereinafter collectively referred to as the 'Final RfS');*

3. *The offer of M/s Juniper Green Energy Private Limited by way of a Technical Bid pursuant to (2) above submitted on 15.09.2023 in response to the Final RIS.*

4. *The offer of M/s Juniper Green Energy Private Limited by way of an Initial Offer (First round Tariff Bid) as submitted on 15.09.2023 in response to the Final RfS.*

5. *The offer of M/s Juniper Green Energy Private Limited by the way of Final Offer (discovered during e-Reverse Auction) as submitted on 17.11.2023 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'*

We are pleased to inform you that your proposal and offer received by way of the 'Bid' has been accepted and M/s Juniper Green Energy Private Limited is here by declared as the Successful Bidder for their full quoted capacity (i.e. 50 MW) @ Rs. 3.58 /unit as per clause 5.4 of the Final RfS for the above project and consequently, this Letter of Award (hereinafter 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 REC Power Development and Consultancy 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 REC Power Development and Consultancy 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 Fina l 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."

38. However, Clause 10.5 of the Flexibly Guidelines requires that 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. In this regard, the Petitioner has indicated that the Petitioner vide letter dated 11.12.2023, i.e., prior to issuance of the LoA, duly informed the beneficiaries *qua* replacement of the thermal energy with wind energy on a pro-rata basis under the same PPA as per the Flexibility Scheme. In response, the Petitioner also received letters from West Bengal State Electricity Distribution Company Limited dated 20.12.2023 and Punjab State Power Corporation Limited dated 15.1.2024 seeking certain clarifications from the Petitioner and making certain observations regarding the Flexibility Scheme. It has also been submitted that the Petitioner by its letter dated 20.3.2024, duly responded to the aforesaid letters of WBSEDCL and PSPCL. No other beneficiaries appear to have responded to the Petitioner's letter dated 11.12.2023. Also, WBSEDCL and PSPCL in their response did not appear to have raised any specific objection towards issuance of the LoA by the Petitioner.

39. 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 RECPDCL, i.e., BPC, vide its affidavit dated 18.6.2024, has stated that the bid documents are in line with the provisions of the Flexibility Guidelines as notified by the Ministry of Power, Government of India, and

no deviation has been taken from the Bidding Guidelines. This has been certified through the conformity certificate dated 23.11.2023 placed on record by the RECPDCL. The relevant extracts of the certificates are reproduced as under:

"CERTIFICATE BY BID EVALUATION COMMITTEE"

> *Sub: Selection of Wind Power Developers for setting up of 100 MW ISTS-Connected Wind Power Projects in India through tariff based competitive bidding process.*
>
> *It is certified that:*
>
> *a. The entire bidding process for the subject Project has been carried out in accordance with the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected RE Power Projects for utilisation under "Scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage power" issued by Ministry of Power under the provisions of Section 63 of the Electricity Act, 2003 for long term procurement of electricity by the 'Generators'.*
>
> *b. M/s Juniper Green Energy Private Limited with the lowest quoted tariff of Rs. 3.58 per kWh has emerged as first successful bidder for full quoted capacity of 50 MW after the conclusion of electronic reverse auction (e-RA).*
>
> *c. M/s Avaada Energy Private Limited with the second lowest tariff Rs 3.59 per kWh (within the range) has emerged as second successful bidder for the balance capacity of 50 MW after the conclusion of e-RA.*
>
> *d. The tariff quoted by M/s Juniper Green Energy Private Limited for Rs 3.58 per kWh for the quoted capacity of 50 MW and tariff quoted by M/s Avaada Energy Private Limited for Rs 3.59 per kWh for the balance capacity of 50 MW discovered after e-RA is acceptable."*

40. 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 the PPAs with the successful bidders, i.e., Juniper Green Energy Private Limited (or its SPV) and Avaada Energy Private Limited (or its SPV), only after the adoption of tariff by this Commission.

41. Respondents have, however, raised certain objections/comments in their respective replies / written submissions to the primary prayers of the Petitioner for the adoption of the tariff as discovered through a competitive bidding process under

Section 63 of the Act. Keeping in view the limited scope of the present proceedings, we proceed to deal with such comments/objections to the extent they relate to the transparency of the bid process and the compliance with the provisions of the Guidelines.

42. Respondent 2, Avaada Energy Private Limited, by its affidavit dated 18.7.2024, which came to be filed on 24.7.2024, has *inter alia* prayed for necessary order /direction to the Petitioner to rectify the deviation in the PPA so as to be in conformity with the Flexibility Guidelines and declare that the Petitioner shall be liable for payment of the transmission charges and losses beyond the delivery point as provided in the Guidelines. The Respondent pointed out that as per Clause 16.5 of the Flexibility Guidelines, the responsibility for the applicable transmission charges and losses beyond the interconnection point/delivery point shall remain with the Procurer, i.e., the Petitioner. However, the said terms of the PPA do not align with the Flexibility Guidelines w.r.t. ISTS charges and its liability, specifically Article 4.2.6 of the PPA, which provides that in the event if the commissioning of the Project gets delayed beyond the applicable date of ISTS waiver, i.e., 30.6.2025, arising out of any reasons whatsoever, DVC shall bear no liability with respect to the transmission charges and losses levied, if any. It has been further submitted that as per Clause 18 of the Flexibility Guidelines, the deviations are subject to the approval of this Commission, and for this, Clause 4.2.6 of the PPA, which is in deviation and direct violation of Clause 18 of the Guidelines, neither a prior approval has been obtained, nor a prayer has been made in this Petition for approval of this deviation.

43. We have considered the submissions made by Respondent 2, Avaada Energy Private Limited. At the outset, we would like to note that despite having been given the opportunity to file its reply twice, Respondent 2 failed to file its reply within the

stipulated timelines vide Record of Proceedings for the hearing dated 5.6.2024 and 4.7.2024. Respondent 2 chose to file its reply only on 22.7.2024 i.e. the date on which the matter was heard finally, wherein the liberty to file their written submissions / supporting judgments was given only to the Respondents, JGEPL, and RECPDCL. Moreover, during any of the hearings, including the final hearing, Respondent 2 did not raise the aforesaid issue as raised in its reply filed on 22.7.2024 i.e. only at the fag end of the proceedings – thereby not affording any opportunity to the Petitioner and/or RECPDCL to effectively respond to such objections/comments. We express our strong displeasure to such conduct of the Respondent 2. However, since the objection/comment raised by the Respondent 2 pertains to compliance with the provisions of the Flexibility Guidelines, we are inclined to look at the said objection/comment.

44. Article 4.2.6 of the PPA, as referred to and claimed to be in deviation from the provisions of the Guidelines by Respondent 2, reads as under:

> "4.2.6 *ISTS charges and losses on transmission of power, including waiver for RE power, shall be applicable as per extant regulations. Government of India, from time to time, issues order for waiver of inter-state transmission system (ISTS) charges and losses on transmission of Wind power till a certain date. <u>In case the commissioning of the Project gets delayed beyond the applicable date of ISTS waiver, arising out of any reasons whatsoever, DVC shall bear no liability with respect to transmission charges and losses levied, if any.</u>*
>
> *In case the SCD of the Project is before the date till above ISTS waiver is applicable, and if the Project is granted extension in the SCD on account of Force Majeure, or for delay on the part of the transmission provider in providing the transmission even after having taken the requisite steps in time; or on account of delays on the part of any Government Agency, and the Project is commissioned before the extended SCD; it will get benefit of waiver of inter-state transmission charges in line with the OM issued by the MoP vide No. 23/12/2016- R&R dated 30.11.2021 and subsequent amendments/clarifications thereto. However, in case the commissioning of the Project gets delayed beyond the applicable date of ISTS waiver/extended SCD as above, due to reasons attributable to the WPD, the liability of transmission charges and losses would be to the account of the WPD. In case of any extension in SCD beyond 30.06.2025, decision on such extension requests will be taken by MNRE, in line with the OM issued by Ministry of Power vide No. 23/12/2016- R&R dated 30.11.2021, and*

subsequent amendments/clarifications thereto, read in conjunction with CERC's orders and regulations notified in this regard. The provisions of PPA in regard to liability of the entities to pay the ISTS charges and losses shall stand modified by such exemption/waiver provided as per the above Order/Office Memoranda and regulations issued by CERC, as applicable…."

45. The Respondent 2 has submitted that in terms of aforesaid clause, the liability of the transmission charges and losses levied beyond the ISTS waiver date, due to any reason whatsoever, the Petitioner shall bear no liability w.r.t. transmission charges and losses, if any, and this stipulation, is in deviation to the provisions of Clause 16.5 of the Flexibility Guidelines, for which no approval of this Commission has been sought under Clause 18 of the said Guidelines. Clauses 16.5 and 18 of the Flexibility Guidelines read as under:

*"**16. Transmission Connectivity***

***16.5.** The Metering Point, which is the point at which energy supplied to the Procurer shall be measured, shall be the low voltage bus bar of the STU / CTU substation. In case of solar parks, the metering point is the final evacuation STU / CTU substation with which the internal transmission from all the pooling substations is connected. <u>All expenses including wheeling charges and losses between the Project and the Metering Point shall be paid by the RE Power Generators without any reimbursement by the Procurer. All expenses including wheeling charges and losses in relation to the transmission and distribution beyond the Metering Point shall be borne by the Procurers.</u> Arrangements shall be put in place for either the CTU / STU to bill these expenses directly to the Projects in proportion to their capacity or the normative generation from Projects sharing common infrastructure or to bill the SPPD which may recover the same directly from the Procurer or from the RE Power Generator who may in turn seek reimbursement from the Procurer.*

18. Deviation From Process Defined in the Guidelines

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. …."

46. Clause 16.5 of the Flexibility Guidelines provides that all the expenses, including wheeling charges and losses between the Project and the Metering Point, shall be paid by the RE Power Generators without any reimbursement by the Procurer. Whereas, all the expenses, including wheeling charges and losses in relation to the

transmission and distribution beyond the Metering Point, shall be borne by the Procurers. We notice that a similar stipulation has already been incorporated in the PPA while defining the “Delivery Point / Inter-connection Point/ Metering Point,” which reads as under:

> *“Delivery Point/ Inter- Connection Point/ Metering Point” shall mean the point at the voltage level of 220 kV or above of the ISTS Sub-station including the dedicated transmission line connecting the Wind Power Projects with the substation system as specified in the RfS document. Metering shall be done at this interconnection point where the power is injected into. For interconnection with grid and metering, the WPD shall abide by the relevant and applicable regulations, Grid Code notified by the CERC or and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time, or orders passed thereunder by the appropriate commission or CEA.*
>
> *Pursuant to Article 4.2.6, all charges and losses related to Transmission of power from project up to Delivery Point (including but not limited to open access, transmission, wheeling, Unscheduled Interchange, Scheduling, Reactive power, RLDC/SLDC charges etc.) as notified by the competent authority / regulator shall be borne by the WPD and beyond the Delivery Point all charges and losses as notified by the competent authority / regulator from time to time shall be borne by the DVC.”*

47. Thus, the above provision, which lays down the liability of the various charges up to the delivery/metering point onto the Wind Power Developer(s) and beyond delivery/metering point onto the Procurer, appears to be in line with the stipulation of Clause 16.5 of the Flexibility Guidelines and hence, it cannot be construed that the provisions of the PPA are in deviation and/or violation of the Guidelines as alleged by the Respondent 2. If at all there is any ambiguity in the provisions of the PPA(s) or the clauses thereof give rise to the issues of their clear interpretation/meaning, the parties are at liberty to approach the Commission when the dispute arises.

48. Respondent 1, JGEPL, on the other hand, has submitted that the present Petition has become infructuous w.e.f. 1.7.2024 to the extent of adoption of tariff for JGEPL and has further prayed for the necessary direction to the Petitioner to return the Bank Guarantee submitted towards Earned Money Deposit under the terms of

RfS. Respondent 1 has submitted that in terms of Clause 26 of the RfS, the bid submitted thereunder was valid for a period of 180 days from the last date of submission of the response to RfS, and JGEPL having submitted its bid on 17.9.2023, the bid was originally valid till 15.3.2024. Subsequently, at the request of the RECPDCL, JGEPL, by its e-mail dated 12.3.2024, had extended the bid validity until 30.6.2024. However, keeping in view that the Petitioner has failed to execute the PPA within 60 days from the date of issuance of the LoA and JGEPL not being under any obligation to extend the bid validity beyond 30.6.2024, presently, there is no valid bid in respect of the Respondent and accordingly, the Petitioner prayed to adopt the tariff *qua* Respondent, JGEPL in respect of its 50 MW project has been rendered infructuous. The Respondent has also sought to contend that as per the settled position of law, once the original bid submitted has expired, such bidder cannot be compelled to accept the award.

49. *Per Contra*, both the Petitioner as well the BPC, RECPDCL have opposed the above submissions of the Respondent 1. The Petitioner, DVC has submitted that the bid validity as per Clause 26 of the RfS is only relevant until and unless the LoA is issued by the BPC and once the LoA is issued by the BPC, the question of bid validity does not find its legs in so far as the adoption of tariff under Section 63 of the Act is concerned. It is pointed out that in the present case, the LoA was issued by RECPDCL to JGEPL on 6.2.2024, which was unconditionally accepted by JGEPL. Therefore, as per the terms and conditions of the RfS, the next step was to enter into a PPA *inter-se parties* and as per Clause 11.7 of the RfS, the selected bidder is required to sign the PPA with the Petitioner within 60 days after the issuance of the LoA subject to the adoption of tariff by this Commission. It has been further submitted that even if it were to consider that the bid placed by JGEPL was valid till 30.06.2024 then also it may be noted that the Petition was filed before this Commission in April 2024, which was

admitted by this Commission on 5.6.2024, i.e., before the expiry of the said bid validity period. The process and procedure adopted and followed by this Commission is beyond the control of the Petitioner or RECPDCL or any of the Respondents in the present Petition. Therefore, the ambiguous contention of JGEPL that the present bid is frustrated qua JGEPL, does not find force and hence, is liable to be rejected by this Commission. In any case, as already held by the Commission in its order dated 9.3.2024 in Petition No. 353/AT/2022 in the matter of SECI v. ReNew Naveen Urja Private Limited and Ors. while dealing with the similar contentions that such contentions *qua* validity of the bid for executing the PPA cannot in any case be entertained in an adoption of tariff proceeding under Section 63 of the Act.

50. Whereas, RECPDCL has submitted that the LoA dated 21.11.2022 allowed the Bid Process Coordinator (BPC) to extend time for events in the bidding process without prior intimation to the Petitioner. Further, such extension of time was not to be in any way deviation from the bidding Guidelines. By virtue of Clause 11.7 of the RfS, JGEPL is already aware that the execution of the PPA would take place subsequent to adoption of tariff by the Commission, it is a matter of common knowledge and practice that once a petition is filed before the Commission, then there remains very little to no scope in the hands of any party to expedite any matter. Hence, once Petitioner had filed the petition before the Commission on 12.4.2024, neither the Petitioner nor BPC, RECPDCL had any role to play in the same. Moreover, the condition that the PPA can only be signed after the adoption of the tariff by the Commission is in compliance with not only the provisions contained in the RfS but also the policy guidelines issued by the Ministry of Power, Government of India. Moreover, in its reply dated 26.6.2024 filed before this Commission, JGEPL has been unable to point out to a single provision of the RfS, or any judicial precedent by virtue of which

the JGEPL is entitled to terminate its obligations pursuant to acceptance of its bid and acceptance of the LoA by the Respondent.

51. We have considered the submissions of the Petitioner and Respondents, JGEPL & AEPL. As already noted above, as per the overall scheme of the Flexibility Guidelines, the PPAs with the successful bidders can only be entered into after the adoption of tariff by the Appropriate Commission. As a corollary, it follows that the relevant consideration for the adoption of tariff by the Commission would be the issuance of the LoA to the successful bidders and their acceptance by such bidders. In the present case, both the successful bidders have been issued the LoAs and they have also duly accepted the LoAs without any demur. Undoubtedly, the expiry of the bid validity and the rights accrued upon the bidder thereof are material aspect, the relevancy of the bid validity after the issuance of LoA is itself a disputed position between the parties. Furthermore, the dispute(s) that have emerged between the parties post the award of the LoA and during the pendency of the present petition, are, in our view, not germane to the scope of the present tariff adoption proceedings inasmuch as they cannot said to have any effect either on the transparency of the bid process or the compliance with the provisions of the Guidelines. We are also not convinced as to how the adoption of tariff *qua* Respondent No. 1 by the Commission would adversely prejudice or preclude it from exercising its rights under the RfS and/or LoA if any, which have accrued at a later stage. On the other hand, entertaining such disputes in the present tariff adoption proceedings would stretch the scope of the present proceedings beyond the prayers made in the present case and converting it into full fledge adjudicatory proceedings. Besides, it is well settled that a court cannot travel beyond the relief sought by the Petitioner before it and in this context, we may gainfully refer to the recent judgment of the APTEL dated 9.7.2024 in Appeal No. 261

of 2021 and Ors. (APML v. MERC and Ors.), wherein the APTEL has observed as under:

> *"71. The Commission was dealing with the petition of APML in which a specific prayer was made. It should have confined itself to the pleadings and submissions of the parties relevant to that prayer alone. It is a settled principle that a court cannot travel beyond the relief sought by the petitioner before it and any pleadings which are alien to the prayer sought in petition deserved to be discarded.*
>
> *72. In the instant case, the part of MSEDCL's reply in which clarifications were sought, was totally irrelevant to the contents of APML's petition and the relief sought therein. Hence, that part of reply ought to have been totally ignored. It was not permissible for the Commission to consider the pleadings of MSEDCL which were de hors and beyond the contents of APML's petition, and to issue directions against APML thereby clarifying the points identified by MSEDCL. Such a course adopted by the Commission is unknown to law and would, if approved by this Tribunal, set a very bad precedent.*
>
> *73. MSEDCL could have been well advised to file a separate petition to seek the clarifications in question."*

Accordingly, the Respondent is at liberty to approach the Commission for adjudication of the above indicated issue(s) through a separate Petition. However, as a measure of abundant caution, we are also inclined to clarify that the adoption of tariff by the Commission in respect of Respondent 1 shall be without prejudice to its rights & obligations under the RfS and/or LoA, etc., if any and this, in our view, ought to allay any apprehensions Respondent 1 may have with the adoption of tariff by the Commission.

52. In view of the aforesaid discussions, it emerges that the selection of the successful bidders has been done, and the tariff of the Wind 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. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff for the wind power projects, as agreed to by the successful bidder(s) as under:

S. No.	Name of the Bidder	Tariff Rs./kWh	Capacity (MW)
1.	Juniper Green Energy Private Limited	3.58	50
2.	Avaada Energy Private Limited	3.59	50

However, as noted above, the adoption of tariff *qua* Respondent No.1, JGEPL herein shall be without prejudice to its rights and obligations under the RfS and/or LoA, if any.

53. Prayer (b) and (c) of the Petitioner are answered accordingly.

54. The Petitioner has also prayed for direction of this Commission to all the beneficiaries of the respective generating stations coming under this replacement scheme to schedule the wind power on a pro-rata basis under the same existing PPAs from the Petitioner. In this regard, we note that the basic framework/mechanism for the RE bundling is already provided under the Flexibility Scheme. Hence, at this stage, we do not find any need to issue any such directions to Respondents/ beneficiaries as prayed for by the Petitioner under prayer (d).

55. Prayer (d) of the Petitioner is answered in terms of the paragraph above.

56. Accordingly, the Petition No. 193/AT/2024 is disposed of in terms of the above.

Sd/-	sd/-	sd/-
(Ramesh Babu V.)	**(Arun Goyal)**	**(Jishnu Barua)**
Member	**Member**	**Chairperson**