

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 224/AT/2024

Coram:

Shri Jishnu Barua, Chairperson

Shri Ramesh Babu V., Member

Shri Harish Dudani, Member

Date of Order: 3rd October, 2024

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for the adoption of the tariff of 1175 MW Wind Power projects (Tranche-XVI) connected to the Inter-State Transmission System (ISTS) and selected through a competitive bidding process as per the Guidelines dated 26.7.2023 of the Ministry of Power, Government of India as amended from time to time.

And

In the Matter of:

Solar Energy Corporation of India Limited (SECI)

6th Floor, Plate-B, NBCC Office Block Tower-2,
East Kidwai Nagar
New Delhi-110023

..... **Petitioner**

VERSUS

- 1. JSW Neo Energy Limited,**
Janpath, Bandra Kurla Complex,
Bandra (East), Mumbai– 400051,
Maharashtra
- 2. Powerica Limited,**
9th Floor, Bakhtawar, Nariman Point
Mumbai– 400021, Maharashtra
- 3. Torrent Power Limited,**
'Samanvay', 600, Tapovan, Ambawadi
Ahmedabad-380015, Gujarat
- 4. Uttar Pradesh Power Corporation Limited,**
14th Floor, Shakti Bhawan Extension,
14 Ashok Marg,
Lucknow-226001, Uttar Pradesh



5. **JSW Renew Energy Four Limited JSW Centre,**
Bandra Kurla Complex, Bandra (East),
Mumbai-400051
6. **JSW Renew Energy Eight Ltd JSW Centre,**
Bandra Kurla Complex, Bandra (East),
Mumbai-400051
7. **Torrent Solar Power Pvt Limited,**
'Samanvay', 600, Tapovan,
Ambawadi Ahmedabad-380015, Gujarat.

...Respondents

Parties present:

Ms. Shikha Ohri, Advocate, SECI
Shri Kartik Sharma, Advocate, SECI
Ms. Ritika Singh, Advocate, SECI
Shri Divyanshu Bhatt, Advocate, UPPCL
Shri Shashwat Singh, Advocate, UPPCL

ORDER

The Petitioner, Solar Energy Corporation of India Limited (hereinafter referred to as 'SECI') 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 1175 MW for Wind Power Projects (Tranche XVI) connected with the inter-State Transmission System (ISTS) and selected through competitive bidding process as per *the "Guidelines for Tariff Based Competitive Bidding Process for Procurement Power from Grid Connected Wind Power Projects"* dated 26.7.2023 (hereinafter referred to as 'the Wind Guidelines') issued by the Ministry of Power, Government of India. The Petitioner has made the following prayers:

- a) *Adopt the tariff discovered in the tariff based competitive bid process for the 1175 MW wind power projects as stated in para 16 above on the terms and conditions contained in the LoAs dated 09.02.2024 and 15.03.2024 and 08.05.2024 read with PSA dated 30.05.2024; and*
- b) *Approve the trading margin of Rs. 0.07/kWh as agreed to by UPPCL in the signed PSA in terms of Regulation 8(1)(d) of the Trading License Regulations, 2020;*



c) *Pass any other or further orders which this Commission may deem fit and proper in the facts and circumstances of the case.*”

Submissions of the Petitioner

2. The Petitioner, SECI, has submitted that on 30.11.2023, it issued a Request for Selection (RfS) along with the draft Power Purchase Agreement (PPA) and the Power Sale Agreement (PSA) documents for setting up the 1350 MW ISTS connected Wind Power Project(s) (Tranche XVI) on a “Build Own Operate” basis as per the Wind Guidelines and floated the same on the ISN Electronic Tender System (ISN ETS) e-bidding portal. In response, five bids were received offering an aggregate capacity of 500 MW in the State of Gujarat, 350 MW in the State of Karnataka, and 160 MW in the State of Rajasthan, and all of them were found to meet the technical criteria. On 1.2.2024, the financial bids of technically qualified bidders were opened on the ISN ETS e-bidding portal. As per Clause 41.6 of the RfS, the ranking of the bidders was done State-wise based on the tariff quoted by them in that State. Further, Clause 42.1 of the RfS stipulated that *“For each State, the bidders who fall within the range of (and including) the lowest tariff (L1 tariff) + 4% of the L1 tariff will be declared as Successful Bidders under the RfS.”* Based on the eligibility criteria outlined in the RfS, the following emerged as the successful bidders:

S.No.	Bidder Name	Bid Capacity (MW)	Tariff (Rs./kWh)	Allotted Capacity (MW)
Gujarat				
1.	JSW Neo Energy Limited	350	3.61	350
2.	Powerica Limited	50	3.70	50
Total awarded Capacity		400		
Karnataka				
1.	Torrent Power Limited	100	3.60	100

2.	JSW Neo Energy Limited	250	3.68	150
Total awarded Capacity		250		
Rajasthan				
1.	Datta Power Infra Private Limited	60	3.98	60
Total awarded capacity		60		

3. The Letter of Award ('LoA') to the successful bidders, i.e., JSW Neo Energy Limited, Torrent Power Limited, and Powerica Limited for the States of Gujarat and Karnataka, was issued on 9.2.2024. However, the LoA to the successful bidder in Rajasthan, that is, Datta Power Infra Private Limited (Datta), was not issued as the tariff quoted by it was higher than the tariff discovered in SECI's Wind Tranche XV tender, in which case the decision to award was referred to the Ministry of New Renewable Energy (MNRE). Subsequently, MNRE, vide letter dated 16.2.2024, directed SECI to cancel the Wind Tranche XV tender. Meanwhile, prior to receipt of the MNRE's letter for Wind Tranche XV, Datta preferred a Writ Petition No. 2789 of 2024 before the Hon'ble High Court of Delhi seeking issuance of the LoA in its favour on an erroneous understanding that SECI Tranche XVI is for the supply of power on a back-to-back basis to various DISCOMs situated across India, at a pooled tariff. Subsequently, the Hon'ble High Court of Delhi, vide its judgment dated 3.7.2024, dismissed the said Writ Petition.

4. Further, in accordance with the provisions of the RfS, the successful bidders in the States of Gujarat and Karnataka were also offered capacity under the Greenshoe Option vide the Letter of Award (LoA) dated 9.2.2024. Based on the eligibility criteria outlined in the RfS, the Bid Evaluation Committee, in its Report dated 11.3.2024, recommended issuing the LoAs to JSW Neo Energy Limited for 350 MW at a tariff of Rs 3.61/kWh and 150 MW capacity at a tariff of Rs 3.60/kWh in

the States of Gujarat and Karnataka respectively under the Greenshoe Option. Accordingly, on 15.3.2024, SECI also issued the LoAs to JSW Neo Energy Limited under the Greenshoe Option in the States of Gujarat and Karnataka. Further, vide Committee Report dated 23.4.2024, JSW Neo Energy Limited was also allocated an additional capacity of 25 MW under Greenshoe capacity in the State of Karnataka. Consequently, on 8.5.2024, in consideration of the request by JSW Neo Energy Limited, SECI issued an addendum to the LoA dated 15.3.2024 to JSW Neo Energy Limited, awarding an additional capacity of 25 MW under the Greenshoe Option in the Karnataka State. In total, SECI has issued the Letter of Awards for 1175 MW capacity under two States, namely, Gujarat and Karnataka.

5. Pursuant to the issuance of the Letter of Award to the successful bidders, namely, JSW Neo Energy Limited, Torrent Power Limited, and Powerica Limited, the Petitioner has agreed to sell the entire wind power i.e., 1175 MW to the distribution licensee, namely, U.P. Power Corporation Limited ('UPPCL') under the PSA dated 30.5.2024 executed with it and the distribution licensee has duly agreed to a trading margin of Rs.0.07/kWh in the PSA signed with SECI, which is in consonance with Regulation 8(1)(d) of the Trading Licence Regulations, 2020.

6. The Petitioner, SECI vide affidavit dated 11.7.2024, has submitted that subsequent to the filing of the present Petition, SECI has executed (i) PPA dated 13.6.2024 with Powerica Limited for the procurement of 50 MW wind power, (ii) PPA dated 26.6.2024 with JSW Renew Energy Four Ltd. (an SPV of JSW Neo Energy Limited) for procurement of the 175 MW wind power, (iii) PPA dated 26.6.2024 with JSW Renew Energy Four Ltd. (an SPV of JSW Neo Energy Limited) for procurement of 150 MW wind power, (iv) PPA dated 26.6.2024 with JSW Renew Energy Eight Ltd. (a SPV of JSW Neo Energy Limited) for procurement of 700 MW wind power,

and (v) PPA dated 4.7.2024 with Torrent Solar Power Pvt Ltd. (a SPV of Torrent Power Limited) for procurement of the 100 MW wind power. Thus, the entire 1175 MW capacity stood tied up under the PPAs and PSA.

Hearing dated 25.7.2024

7. The matter was heard on 25.7.2024. Learned counsel for the Petitioner, SECI reiterated the submissions made in the pleadings and requested the Commission for the adoption of the tariff of the 1175 MW Wind Power Projects (Tranche XVI) connected with the Inter-State Transmission System and selected through the competitive bidding process as per the Wind Guidelines. Learned counsel also reiterated that pursuant to the signing of the PSA with UPPCL for 1175 MW capacity, SECI has entered into the PPAs with the successful bidders/project companies formed by the successful bidders for this entire 1175 MW capacity and the copies of the signed PPA along with the amended memo of parties have been placed on record by the SECI vide its affidavit dated 11.7.2024.

8. After admitting the matter, notice was issued to the Respondents and Respondents were given liberty to file their respective reply (s) in the matter. However, despite giving the opportunity, no reply was filed by any of the Respondents.

9. Vide Record of Proceedings for the hearing dated 25.7.2024, the Petitioner was directed to furnish the reasons for the delay in approaching the Commission as per Clause 11.4 of the Wind Guidelines. In response, the Petitioner, vide affidavit dated 29.8.2024, has submitted that on previous occasions, this Commission had directed the Petitioner to only seek adoption of tariff once capacity is tied up and PPAs and PSAs for that capacity have been executed. In this regard, the Petitioner

placed reliance on the order of the Commission dated 8.3.2022 passed in Petition No. 211/AT/2021. However, the Commission vide order dated 1.6.2024 in Petition No. 68/AT/2024 has clarified that unlike the earlier Guidelines issued by the Ministry of Power in regard to the adoption of tariff, the new Guidelines now include a specific timeline for the distribution licensees or intermediary procurers to seek tariff adoption from the Appropriate Commission. When the Petitioner was apprised of the latest position, as was made clear by the above order, the Petitioner filed the present Petition on 5.6.2024 without waiting for the execution of the PPAs. Moreover, this Commission vide order dated 24.7.2024 in Petition No. 71/AT/2024 filed by NTPC Limited for the adoption of the tariff of Hybrid Power Projects under the RfS concluded based on newly issued Guidelines dated 21.8.2023 adopted the tariff based on the e-RA result without waiting to tie up of the awarded capacity under the PPAs and PSAs. In the instant case, the Petitioner has already executed the PSA and corresponding PPAs for the entire capacity eligible for award. However, considering the order dated 24.7.2024 passed by this Commission, the Petitioner further undertakes to file the Petition within the prescribed timeline in the future without waiting for the execution of the PSAs and PPAs.

Hearing dated 5.9.2024

10. The matter was again heard on 5.9.2024. Learned counsel for Respondent No.4, Uttar Pradesh Power Corporation Limited (UPPCL), sought additional time to file a reply in the matter.

11. Considering the above, the Commission directed the Respondent, UPPCL, to file its response on or before 12.9.2024 with a copy to the Petitioner, who may file its rejoinder, if any, by 13.9.2024. However, despite the repeated opportunities, none of the Respondents filed any reply. The Commission also directed the Petitioner to

furnish the requisite document /certification indicating that the bid evaluation authority satisfied itself that the price of the selected offer is reasonable and consistent with the requirement as per Clause 11.2 of the Wind Guidelines on or before 12.9.2024. In response, the Petitioner, vide its affidavit dated 13.9.2024, has submitted the requisite details as called for by the Commission.

Hearing dated 17.9.2024

12. Learned counsel for the Petitioner submitted that the Petitioner had filed a compliance affidavit furnishing the additional detail/information as called for vide Record of Proceedings for the hearing dated 5.9.2024 and requested for the adoption of tariff for the 1175 MW Wind Power Project(s). Learned counsel for the Respondent, UPPCL, submitted that in view of the additional information/clarification placed on record by SECI, the Respondent does not wish to file any reply in the matter. Considering the submissions made by the learned counsel for the parties, the Commission reserved the matter for order.

Analysis and Decision

13. We now proceed to consider the prayer of the Petitioner as regards the adoption of tariff under Section 63 of the Act in respect of the individual wind power projects discovered pursuant to the competitive bid process carried out in terms of the Guidelines issued by the Government of India.

14. 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.”

15. 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 under Section 63 of the Act has been followed in the determination of such tariff.

16. The Ministry of Power, Government of India, has notified the Wind Guidelines under Section 63 of the Act vide Resolution No. 27/02/2023-RCM on 26.7.2023. 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 the procurement of electricity by the "Procurer(s)", from grid-connected Wind Power Projects (WPP) having, (a) bid capacity of 10 MW and above for projects connected to intra-State transmission system; and (b) bid capacity of 50 MW and above for projects connected with the inter-State transmission system.

(b) The Procurer shall prepare the bid documents in accordance with the Guidelines and seek approval of the Government for deviations, if any, in the draft RfS, draft PPA, draft PSA (if applicable) from these Guidelines and/ or Standard Bidding Documents (SBDs), in accordance with the process described in Clause 18 of these Guidelines

(c) For procurement of wind power, the tariff quoted by the bidder shall be the bidding parameter. The Procurer may specify a benchmark tariff and, in that case, the bidder has to quote tariff, not more than the benchmark tariff. The tariff quoted shall be a fixed tariff of Rs./kWh for the PPA period.

(d) The draft PPA proposed to be entered into with the successful bidder, and the draft PSA (if applicable) shall be issued along with the RfS. The PPA period shall generally be for a period of 20 (twenty) years from the date of the SCSD or from the rescheduled date of commencement of supply to the extent of extension given by the Procurer on the grounds which are beyond the control of the WPG. The PPA may, however, also be fixed for a longer period, such as 25 (twenty-five) years. The duration of the PPA must be mentioned upfront in the RfS document.

(e) In case of procurement in power (MW) terms, the range of Capacity Utilisation Factor (CUF) will be indicated in the bidding documents. Calculation of CUF will be on a yearly basis. In case the project generates and supplies energy less than the energy corresponding to the minimum CUF, the WPG will be liable to pay to the Procurer, penalty for the shortfall in availability below such contracted CUF level. The amount of such penalty will be calculated @ 50% (fifty per cent) of the PPA tariff for the shortfall in energy terms, in accordance with the terms of the PPA.

(f) Adequate payment security shall be provided as per the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, including amendments and clarification, if any, thereof, issued from time to time. In addition, the intermediary procurer may maintain a payment security fund. To be eligible for coverage from the fund, the developer will undertake to pay the PSM charges at the rate of 2 paise per unit.

(g) The Procurer/intermediate procurer shall call for the bids to adopt a single stage, two part (Technical Bid & Financial Bid), bidding process to be conducted through electronic mode (e-bidding). The technical bid shall be opened first. The financial bids of only those bidders who qualify in the technical bid shall be opened. The Procurer may also opt for an e-reverse auction for the final selection of bidders, in such a case, this will be specifically mentioned in the notice inviting bids and bid document. E-procurement platforms with a successful track record and adequate safety, security, and confidentiality features will be used.

(h) The Procurer shall publish the RfS notice in at least two national newspapers or its own website to accord wide publicity. The standard provisions to be provided by the Procurer in the RfS document shall include technical criteria, financial criteria, quantum of the earnest money deposit, and compliance with FDI Laws by foreign bidders.

(i) The Procurer shall constitute a committee for the 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 shall be required to submit separate technical and price bids. The bidders shall also be required to furnish the necessary bid-guarantee in the form of an EMD along with the bids. 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 bidding, and the Procurer still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.

(k) The PPA shall be signed with the successful Bidder/ Project Company or an SPV formed by the successful bidder. The Procurer shall constitute a committee for the evaluation of the RfS bids. After the conclusion of the bidding process, the Evaluation Committee constituted for the evaluation of the RfS bids shall critically evaluate the bids and certify as appropriate that the bidding process and the evaluation have been conducted in conformity with the provisions of the RfS document. The evaluation authority should satisfy itself that the price of the selected offer is reasonable and consistent with the requirement. The Evaluation Committee shall have the right to reject all price bids if the rates quoted are not aligned with the prevailing market prices. The distribution licensee shall approach the Appropriate Commission for the adoption of tariffs by the Appropriate Commission in terms of Section 63 of the Act within 15 (fifteen) days of the discovery of the tariffs in the transparent, competitive bidding process conducted in accordance with these Guidelines.

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

18. The Petitioner, SECI, has been designated as the nodal agency for the implementation of the scheme for setting up the ISTS connected/ State specific solar/ wind power projects with the mandate to invite bids under the Tariff Based Competitive Bidding process, and enter into Power Purchase Agreements at the tariff discovered in the competitive bid process and enter into Power Sale

Agreements with the distribution licensees to enable them to fulfil their Renewable Purchase Obligations under Section 86(1)(e) of the Act.

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

Sr.	Event	Date
1.	RfS issued by SECI	30.11.2023
2	Last date of bid submission	12.1.2024
3	Opening of techno-commercial bids	15.1.2024
4	Opening of financial bids	1.2.2024
5	Issuance of Letters of Award (LoAs) to successful bidders	9.2.2024

20. On 30.11.2023, SECI issued the Request for Selection document, along with draft PPA and PSA documents for setting up the 1350 MW ISTS-connected Wind Power Projects (Tranche XVI). The total capacity of 1350 MW was to be awarded for injection at ISTS sub-stations in three States, viz. Gujarat (1000 MW), Karnataka (250 MW) and Rajasthan (100 MW). The said tender was floated on the ISN Electronic Tender System. According to SECI, it did not publish the notices in the newspapers as per the advisory of the Ministry of Information and Broadcasting, Government of India, dated 17.5.2017, mandating the e-publishing of advertisements on the relevant portal. Accordingly, on 3.7.2018, SECI issued a notification in the newspapers indicating that tenders of SECI will henceforth be published on its website and the Government Portal but not in the newspapers.

21. The Bid Evaluation Committee (BEC) comprising the following was constituted for the opening and evaluation of bids under RfS No. SECI/C&P/IPP /12/0009/23-24 dated 30.11.2023:

Tender	Dept.	Offline and Online Techno-commercial and Financial Bid	Techno-commercial and Financial evaluation and post-e-RA recommendation
--------	-------	--	---

		Opening	
1350 MW ISTS- connected Wind Power Projects (SECI- Tranche- XVI)	PS	Ms. Anita Mohan Goel, DGM	Ms. Anita Mohan Goel, DGM
	Contracts	Sh. Jayansh Gaur, Dy. Manager	Sh. Jayansh Gaur, Dy. Manager
	Finance	Sh. Mohit Singhal, Dy. Manager	Sh. Mohit Singhal, Dy. Manager

22. The last date of submission of the bid was 12.1.2024, and the technical part of the bid was opened on 15.1.2024. Response to the RfS was received from five bidders and all of them fully met the technical criteria and, consequently, were found to be qualified for opening of the financial bid. On 1.2.2024, financial bids of all five technically qualified bidders were opened on the ISN ETS e-bidding portal in the presence of a member of the Bid Evaluation Committee. As per the eligibility criteria mentioned in the RfS document, the following were emerged as the successful bidders:

S.No.	Bidder Name	Bid Capacity (MW)	Tariff (INR/kWh)	Allotted Capacity (MW)
Gujarat				
1.	JSW Neo Energy Limited	350	3.61	350
2.	Powerica Limited	50	3.70	50
Total Awarded Capacity				400
Karnataka				
1.	Torrent Power Limited	100	3.60	100
2.	JSW Neo Energy Limited	250	3.68	150
Total Awarded Capacity				250
Rajasthan				
1.	Datta Power Infra Private Limited	60	3.98	60
Total Awarded Capacity				60

23. On. 9.2.2024, the LoA to the successful bidders, namely, JSW Neo Energy Limited, Torrent Power Limited, and Powerica Limited for the States of Gujarat and Karnataka were issued. However, as stated by SECI, the LoA to the successful bidder in the State of Rajasthan, that is, Datta Power Infra Private Limited (Datta),

was not issued as the tariff quoted by Datta was higher than the tariff discovered in SECI's Wind Tranche XV tender, in which case the decision to award was referred to the MNRE. Subsequently, the MNRE, vide letter dated 16.02.2024, directed SECI to cancel the Wind Tranche XV tender. Meanwhile, prior to receipt of MNRE's letter for Wind Tranche XV, Datta preferred Writ Petition No. 2789 of 2024 before the Hon'ble High Court of Delhi seeking issuance of the LoA in its favour on an erroneous understanding that SECI Tranche XVI is for the supply of power on a back-to-back basis to various Distribution Licensees situated across India, at a pooled tariff. Subsequently, the Hon'ble High Court of Delhi, vide judgment dated 3.7.2024 has dismissed the said Writ Petition.

24. The relevant extract of the Letter of Award issued to one of the successful bidders, namely, JSW Neo Energy Limited, is as under:

"In reference to above and subject to the provisions of RfS, we confirm having accepted your offer and issue this letter of award as per the following details:

<i>Allotted Project ID</i>	<i>Project Capacity (MW)</i>	<i>Project Location(s)</i>	<i>Interconnection Point Details</i>	<i>Applicable Tariff (INR/kWh) in figures</i>	<i>Applicable Tariff (INR/kWh) in words</i>
<i>WPD-ISTS-T16-KA-JNL-P1-150MW</i>	<i>150</i>	<i>Villages Sherewadi, Nandeshwar, Zare, Tehsil Humnabad, District Bidar</i>	<i>Bidar, Karnataka</i>	<i>₹3.68/-</i>	<i>Rupees Three and Sixty- Eight Paise Only</i>

It is to be noted that the WPP is allowed to change the project location and interconnection point (within the same State) for the awarded project subsequent to issuance of LoA, up to the deadline for Financial Closure as per Clause 22 of the RfS.

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

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

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

1.2 The award of the above Project is subject to the Guidelines including amendments/ clarifications issued by Government of India and terms and conditions of the RfS document including its clarifications/ amendments/ elaborations/ notifications issued by SECI.

1.3 No change in the controlling shareholding of the Bidding Company or Bidding Consortium shall be permitted from the date of submission of response to RfS till the execution of the PPA. However, in case the Project is being set up by a listed Company, this condition will not be applicable.

1.4 In case of the Successful Bidder itself executing the PPA, it shall ensure that its promoters shall not cede control (Control shall mean the ownership, directly or indirectly, of more than 50% of the voting shares of such Company or right to appoint majority Directors), of the Bidding Company/ Consortium until 01 (one) year after the SCSD, except with the prior approval of SECI.

1.5 In case of companies having multiple promoters (but none of the shareholders having more than 50% of voting rights and paid up share capital), it shall be considered as a company under joint control. In such cases, the shareholding pattern in the company as submitted at the time of bidding, shall be maintained for a period of 01 (one) year after SCSD.

1.6 In case of Project being executed through SPVs, the Selected Bidder executing the project, if being a single company, shall ensure that its shareholding in the SPV/Project Company executing the Power Purchase Agreement (PPA), shall not fall below 51% at any time prior to 01 (one) year after the SCSD, except with the prior approval of SECI. In the event the selected Bidder is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the PPA, shall not fall below 51% at any time prior to 01 (one) year after SCSD, except with the prior approval of SECI.

1.7 The Selected Bidder shall pay to SECI, Success Charges @Rs. 1.00 Lakh/MW + 18% GST, corresponding to the Project capacity awarded as per the LoA, towards administrative overheads, project monitoring activities, coordination with State Authorities and others including the DISCOM/STU/CTU, etc. 1st instalment of the Success Charges, i.e. 50% of the above amount shall be paid to SECI within 30 days after issuance of LoA, and remaining 50% amount (i.e. the 2nd installment of the Success Charges) shall be paid prior to signing of PPA (PPA signing date to be intimated by SECI), in line with Clause 19.1 and 19.2 of the RfS.

1.8 In line with Clause 4 and Clause 44 of the RfS, Greenshoe Capacity of up to 150 MW is being offered in Karnataka State at the tariff of Rs. 3.60/kWh under the 'Greenshoe Option'. For seeking additional capacity under the Greenshoe Option, you are required to submit requisite documents to demonstrate additional Net-worth and Liquidity criteria in line with Clause 39.1 and 39.2 of the RfS. for the additional capacity sought by you under Greenshoe Option. Further, you will be required to submit EMD pertaining to this additional capacity, along with the confirmation for consideration of additional capacity for Greenshoe Option and the Project location as well as the Interconnection Point details for the Greenshoe Capacity. The deadline for meeting the aforementioned requirements and confirmation for executing the PPA in Karnataka State with SECI at a tariff of Rs. 3.60/kWh under the Greenshoe Option

shall be the date as on 20 days from the date of issuance of this LoA. In case no response is received by the above deadline, it will be construed that the offer has been rejected by you. Subsequent to receipt of confirmation from the Successful Bidders, the capacities shall be allocated under Greenshoe Option in line with Clause 44 of the RfS.

1.9 Performance Bank Guarantee(s)/ Payment on Order Instrument (POI) for a value of @ Rs 31.60 Lakh/MW/Project shall be submitted by the WPD prior to signing of PPA, in line with Clause 18 of the RfS.

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

1.11 The final project configuration, adding up to the cumulative capacity awarded to the bidder, may be changed by the WPD subsequent to issuance of LoA up to the date as on 30 days from issuance of LoA. Delay in meeting the PPA timelines on account of such changes in Project parameters, which differ from the details provided in the Covering letter, shall be at the risk and cost of the Successful Bidder. The PPAs shall be valid for a period of 25 years from the Scheduled Commencement of Supply Date (SCSD).

1.12 The WPD will have to submit the required documents as mentioned below to SECI within 70 days from the issue of this LoA, In case of delay in submission of documents beyond the period as mentioned above, SECI shall not be liable for delay in verification of documents and subsequent delay in signing of PPA:

- a. In line with Clause 38.3 of the RfS, in the case of submission of letter from CEO/Managing Director of the respective Affiliate(s), undertaking to contribute the required equity funding and Performance Bank Guarantees/POI in case the Bidder fails to do so, at the time of bid submission, the requisite Board Resolution from the Affiliate(s) shall be required to be submitted prior to signing of PPA. [Not required if requisite documents already submitted at the bidding stage}.
- b. Copy of the Certificate of Incorporation of the WPD.
- c. The details of promoters and their shareholding in the WPD, duly certified by the practicing Chartered Accountant/ Company Secretary in original at least 7 (seven) days prior to date of their document submission (certificate date should be after the date of LoA) along with latest documents filed with ROC.
- d. Copy of the Memorandum of Association (MoA) of the WPD highlighting the object clause related to generation of Power/ Energy/ Renewable Energy/ Wind Power plant development.
- e. In case the project being executed by a Special Purpose Vehicle (SPV) incorporated by successful bidder, such SPV shall be at least 51% shareholding subsidiary, in line with provisions of the RfS. Further, the Successful Bidder shall submit a Board Resolution prior to signing of PPA with SECI, committing total equity infusion in the SPV as per the provisions of RfS. Also, the SPV shall submit a Board Resolution for execution of the Project.

- f. *Copy of Board Resolution of WPD for authorization of signing of PPA and subsequent relevant documents.*

Further, the PPA shall be signed with WPDs subsequent to the signing of Power Sale Agreements with the Buying Entities for the cumulative awarded capacity and upon submission of the Success Charges along with total Performance Guarantees/ Payment on Order Instrument of requisite value.

1.13 SECI shall have the right to verify original documents of the WPD for which copies have been submitted from the date of submission of response to RfS till date, if required. PPA, as per the format given along with RFS, may be signed within 90 days from the date of issue of Letter of Award (LoA) or any other date as decided by SECI from time to time. In case of signing of PPAs within 90 days of issuance of LoAs, Effective Date of the PPA shall be the date as on 90 days from the date of issue of LoA. Subsequent to expiry of the 90-day period after the issuance of LoA, in case SECI intimates to the Successful Bidder, a particular date as the date for signing of PPA, the specified date shall become the Effective Date of the PPA, irrespective of the date of signing of PPA.

1.14 In case, the SECI offers to execute the PPA with the WPD and the selected Bidder refuses to execute the PPA within the stipulated time period, then the Bank Guarantee equivalent to the amount of the EMD shall be encashed by SECI from the Bank Guarantee available with SECI (i.e. EMD or PBG) as penalty, the selected Project shall stand cancelled, and the selected Bidder expressly waives off its rights and objections, if any, in that respect.

1.15 The WPD shall meet financial closure requirements for the Project in line with clause 22 of the RfS document, by the date as on 6 months prior to the SCSD/ extended SCSD. Accordingly, the WPD shall furnish the documents pertaining to compliance of financial closure as per the above provisions.

1.16 The WPD/Project Company shall commence supply of power from full Project Capacity within 24 months from the Effective Date of the PPA, as per the conditions stipulated in Clause 9 of the RfS and relevant articles of PPA. In case of failure to achieve this milestone, penalty for delay in commencement of supply of power shall be levied on the WPD as per the Clause 9.2 of the RfS.

25. As the RfS document also provided for awarding the additional capacity under the Greenshoe Option to the successful bidders, SECI vide aforesaid LoAs also offered the additional capacity to the successful bidders in the States of Gujarat and Karnataka under the Greenshoe Option. Based on the evaluation criteria outlined in the RfS, additional capacity offered by the successful bidder(s) and the recommendations of the Committee in its reports dated 11.3.2024 and 23.4.2024, additional LoAs dated 15.3.2024 read with an addendum dated 8.5.2024 were issued to JSW Neo Energy Limited awarding 350 MW at tariff of Rs. 3.61/kWh in the

State of Gujarat and 175 MW at tariff of Rs.3.60/kWh in the State of Karnataka under the Greenshoe Option.

26. Thus, in total, SECI issued the LoAs for 1175 MW capacity under two States, namely, Gujarat and Karnataka, as per the following:

S.No.	Bidder Name	Tariff (INR/kWh)	Allotted Capacity (MW)
Gujarat			
1.	JSW Neo Energy Limited	3.61	350
2.	Powerica Limited	3.70	50
3.	JSW Neo Energy Limited (under Greenshoe)	3.61	350
Karnataka			
1.	Torrent Power Limited	3.60	100
2.	JSW Neo Energy Limited	3.68	150
3.	JSW Neo Energy Limited (under Greenshoe)	3.60	175
	Total Awarded capacity		1175 MW

27. Pursuant to the issuance of the LoA to the successful bidders, namely, JSW Neo Energy Limited, Torrent Power Limited, and Powerica Limited, the Petitioner has agreed to sell the entire wind power, i.e. 1175 MW to the distribution licensee, namely, U.P. Power Corporation Limited (UPPCL) under the PSA dated 30.5.2024 and the UPPCL has duly agreed to a trading margin of Rs.0.07/kWh in the PSA signed with SECI, which is in consonance with Regulation 8(1)(d) of the Trading Licence Regulations, 2020. In the said PSA dated 30.5.2024, it is indicated that the Tariff applicable for the sale of Wind Power by SECI to the Buying Entity shall be the Tariff as applicable for payment by SECI to WPD under the terms of the PPA between SECI and the WPD (Individual WPDs tariff as per schedule B) fixed for entire term of agreement at the delivery point and in addition thereto a trading margin

of Seven (7) paisa/kWh shall be payable by the Buying Entity to SECI which SECI shall be entitled to appropriate as its income.

28. The Petitioner, SECI vide affidavit dated 11.7.2024, has submitted that subsequent to the filing of the present Petition and on the basis of the PSA dated 30.5.2024, SECI has executed (i) PPA dated 13.6.2024 with Powerica Limited for the procurement of 50 MW wind power, (ii) PPA dated 26.6.2024 with JSW Renew Energy Four Ltd. (a SPV of JSW Neo Energy Limited) for procurement of 175 MW wind power, (iii) PPA dated 26.6.2024 with JSW Renew Energy Four Ltd. (an SPV of JSW Neo Energy Limited) for procurement of 150 MW wind power, (iv) PPA dated 26.6.2024 with JSW Renew Energy Eight Ltd. (an SPV of JSW Neo Energy Limited) for procurement of 700 MW wind power, and (v) PPA dated 4.7.2024 with Torrent Solar Power Pvt Ltd. (an SPV of Torrent Power Limited) for procurement of 100 MW wind power. Thus, the entire 1175 MW capacity has been tied up as under:

S. No.	Name of Wind Project Developer	PPA Date	Quantum of Power (MW)	Tariff (INR/kWh)
1.	Powerica Limited	13.6.2024	50	3.70
2.	JSW Renew Energy Four Ltd.	26.6.2024	175	3.60
3.	JSW Renew Energy Four Ltd.	26.6.2024	150	3.68
4.	JSW Renew Energy Eight Ltd.	26.6.2024	700	3.61
5.	Torrent Solar Power Pvt Ltd.	4.7.2024	100	3.60
	Total		1175	

29. 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 document. Also, the evaluation authority should satisfy itself that the price of the selected offer is reasonable and consistent with the requirement. Moreover, the evaluation committee shall have the right to reject all price bids if the rates quoted are not aligned with the prevailing market prices. In compliance with the

above, the Petitioner has furnished the various conformity certificates on record. Vide conformity certificate 1 dated 20.3.2024, the Petitioner has certified that applicable Guidelines and amendments/clarifications thereof, if any, issued by the Government of India were followed for the bidding process in the above tender, and no deviation was taken from the Guidelines in the RfS documents for the above tender. The relevant extract of the aforesaid conformity certificate is as under:

“CONFORMITY CERTIFICATE – 1

With respect to the RfS no. SECI/C&P/IPP/12/0009/23-24 dated 30.11.2023, it is hereby declared as follows:

1. Applicable Guidelines and amendments/clarifications thereof, if any, issued by Government of India were followed for the bidding process in the above tender and no deviation was taken from the Guidelines in the RfS documents for the above tender.”

30. Moreover, vide conformity certificate 2 dated 20.3.2024, the Petitioner has stated that after the conclusion of bid submission, the Evaluation Committee constituted for evaluation of bids has conducted the techno-commercial as well as financial bid evaluation in conformity to the provisions of the RfS. The relevant extract of the aforesaid conformity certificate is as under:

“CONFORMITY CERTIFICATE - 2

.....

With respect to the RfS no. SECI/C&P/IPP/12/0009/23-24 dated 30.11.2023, it is hereby declared as follows:

1. After the conclusion of bid submission, the Evaluation Committee constituted for evaluation of bids has conducted the techno-commercial as well as financial bid evaluation in conformity to the provisions of the RfS.”

31. Pursuant to the direction of the Commission vide Record of the Proceedings for the hearing dated 5.9.2024, the Petitioner also filed a conformity certificate 3 dated 11.9.2024 indicating that the prices discovered under the subject tender are reasonable, in line with the market trends, and consistent with the requirements specified in the Request for Selection document. The relevant extract of the said conformity certificate is as under:

“CONFORMITY CERTIFICATE - 3

With respect to the RfS no. SECI/C&P/IPP/12/0009/23-24 dated 30.11.2023, it is hereby declared as follows:

1. After the conclusion of bid submission, the Evaluation Committee constituted for evaluation and review of the bids has found that the prices discovered under the subject tender are reasonable, in line with the market trends, and consistent with the requirements specified in the Request for Selection (RfS) document.”

32. As per Clause 11.4 of the Wind Guidelines, the distribution licensee or the intermediary procurer, as the case may be, is required to approach the Appropriate Commission for the adoption of tariffs discovered, in terms of Section 63 of the Act, within 15 (fifteen) days of the discovery of the tariffs in the transparent, competitive bidding process conducted in accordance with the Guidelines. In the present case, the financial bids were opened on 1.2.2024, and the Bid Evaluation Committee submitted its report on the financial bids on 7.2.2024. Whereas, the present Petition, even on the e-filing portal of the Commission, was filed only on 5.6.2024 (Diary No. generation). In this regard, SECI has submitted that in the past, the Commission directed the Petitioner to only seek the adoption of a tariff once the capacity is tied up under the PPA and PSA. However, recently the Commission in its order dated 1.6.2024 passed in Petition No. 68/AT/2024, has clarified that unlike the earlier Guidelines issued by the Ministry of Power, the new Guidelines now issued include a specific timeline for distribution licensee or intermediary procurer to seek the adoption of tariff from the Appropriate Commission and as soon as the Petitioner was apprised of the aforesaid position as made clear by the Commission, it filed the present Petition on 5.6.2024 without waiting for the execution of the PPAs. The Petitioner undertakes to file the Petition within the prescribed timeline in the future without waiting for the execution of the PSAs and PPAs. Keeping in view that the Commission has already issued suitable directions to the Petitioner in its order dated

1.6.2024 in Petition No. 68/AT/2024 in regard to approaching the Appropriate Commission for the adoption of tariff within the timelines specified in the relevant Guidelines in future, we are not repeating such directions in the present case.

33. In view of the aforesaid discussions, it emerges that the selection of the successful bidders has been made, and the tariff of the Wind Power Projects has been discovered by the Petitioner, SECI, through a transparent process of competitive bidding in accordance with the Guidelines issued by the Ministry of Power, Government of India. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff for the Wind Power Projects of 1175 MW, as agreed to by the successful bidder(s), as under:

S. No.	Successful Bidder	Project Company formed by Successful Bidder for execution of PPA	PPA Date	Quantum (MW)	Tariff Rs/kWh)
1.	Powerica Limited	-	13.6.2024	50	3.70
2.	JSW Neo Energy Limited	JSW Renew Energy Four Ltd.	26.6.2024	175	3.60
3.	JSW Neo Energy Limited	JSW Renew Energy Four Ltd.	26.6.2024	150	3.68
4.	JSW Neo Energy Limited	JSW Renew Energy Eight Ltd.	26.6.2024	700	3.61
5.	Torrent Power Limited	Torrent Solar Power Pvt Ltd.	4.7.2024	100	3.60
		Total		1175[^]	

[[^] - Includes the capacity of 525 MW awarded under Greenshoe Option]

34. Prayer (a) of the Petitioner is answered accordingly.

35. Article 10.3 of the PPA provides as under:

“Payment of Monthly Bills

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

10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:

- i) deductions required by the Law; and*
- ii) amount claimed by SECI, if any, from the WPD, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, the*

interest applicable will be same as rate of Late Payment surcharge will be applicable on day to day basis.

The WPD shall open a bank account (the "WPD's Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by SECI to the WPD, and notify SECI of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. SECI shall also designate a bank account at New Delhi ("SECI Designated Account") for payments to be made by the WPD to SECI, if any, and notify the WPD of the details of such account ninety (90) Days before the SCSD. SECI and the WPD shall instruct their respective bankers to make all payments under this Agreement to the WPD's Designated Account or SECI's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day."

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

"Payment Security Mechanism

Letter of Credit (LC):

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

10.4.2 Before the start of supply, SECI shall, through a scheduled bank, open a Letter of Credit in favour of the WPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- i) for the first Contract Year, equal to 110% of the estimated average monthly billing;*
- ii) for each subsequent Contract Year, equal to 110% of the average of the monthly billing of the previous Contract Year.*

10.4.3 Provided that the WPD shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one draw in a Month.

10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, SECI shall restore such shortfall before next drawl.

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

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

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

10.4.8 If SECI fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including the Due Date, then, subject to Article 10.4.6 & 10.5.2, the WPD may draw upon the Letter of Credit, and accordingly the bank shall pay, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in

accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill or Supplementary Bill (only for energy related bills) which has remained unpaid to WPD and;
- ii) a certificate from the WPD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;”

37. Clause (10) of Regulation 9 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 (hereinafter referred to as the “Trading Licence Regulations”) provides as under:

“The Trading Licensee shall make payment of dues by the agreed due date to the seller for purchase of the agreed quantum of electricity through an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller. Such escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller shall be equivalent to:

(a) one point one (1.1) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts;

(b) one point zero five (1.05) times of contract value for short term contracts.”

38. The above provisions provide for a payment security mechanism, and the same is required to be complied with by the parties to the present Petition. Accordingly, the provisions of Articles 10.3 and 10.4 of the PPAs and Clause 10 of Regulation 9 of the Trading Licence Regulations shall be abided by all the concerned parties to the present Petition.

39. The Petitioner has also prayed to approve the trading margin of Rs. 0.07/kWh as agreed to by the Distribution Licensee in terms of the PSA with the Distribution Licensees. In this regard, Regulation 8(1)(d) of the Trading Licence Regulations dealing with trading margin provides as under:

“For transactions under long term contracts, the trading margin shall be as mutually decided between the Trading licensee and the seller:...”

40. The above provision gives a choice to the contracting parties to mutually agree on trading margin for long-term transactions. However, proviso to Regulation 8(1)(d) of the Trading Licence Regulations provides as under:

*“8(1)(d) ******

Provided that in contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.”

41. Regulation 8(1)(f) of the Trading Licence Regulations provides as under:

“For transactions under Back to Back contracts, where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh.”

42. The above two provisions are exceptions to the main provision as regards trading margin. In the present case, the distribution licensee, UPPCL, has agreed to a trading margin of Rs. 0.07/kWh as agreed in the PSA, which is in consonance with Regulation 8(1)(d) of the Trading Licence Regulations. However, in case of failure by SECI to provide an escrow arrangement or irrevocable, unconditional, and revolving letter of credit to the wind generators, the trading margin shall be limited to Rs. 0.02/kWh as specified in the Regulation 8(1)(d) and Regulation 8(1)(f) of the Trading Licence Regulations.

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

44. Accordingly, the Petition No. 224/AT/2024 is disposed of in terms of the above.

Sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V.)
Member

sd/-
(Jishnu Barua)
Chairperson

