CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

<u>Petition No. 235/AT/2024</u>

Coram:
Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member

Date of order: 11th November, 2024

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for the adoption of the tariff of Wind Solar Hybrid Power Projects (Tranche-VII) connected with the Inter-State Transmission System (ISTS) and selected through competitive bidding process as per the Guidelines of the Government of India.

Solar Energy Corporation of India Limited
6th Floor, Plate-B, NBCC Office Block Tower-2,
East Kidwai Nagar
New Delhi-110023

……**Petitioner**

Vs

1. **NTPC Renewable Energy Limited,**
   E-3, Main Market Road, Ecotech -II,
   Udyog Vihar, Greater Noida
   Uttar Pradesh – 201306

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

3. **Green Infra Wind Energy Limited,**
   5th Floor, Tower-C,
   Building No. 8,
   DLF Cybercity,
   Gurugram Haryana – 122002

4. **Juniper Green Beta Private Limited,**
   Plot No. 18, 1st Floor, Institutional Area,
   Sector 32, Gurugram, Haryana- 122001

5. **Green Infra Renewable Projects Limited,**
(Currently known as Sembcorp Green Infra Private Limited)
Budling 7A, Level 5,
DLF Cyber City,
Gurugram – 122002, Haryana

6. **Punjab State Power Corporation Limited (PSPCL),**
T-2, Thermal Design Shed,
Patiala, Punjab- 147001

...**Respondents**

Present Parties:
Ms. Mandakini Ghosh, Advocate, SECI
Shri Shubham Arya, Advocate, PSPCL
Ms. Pallavi Saigal, Advocate, PSPCL
Shri Akshat Jain, Advocate, Green Infra
Shri Abhimanyu Maheshwari, Advocate, Green Infra

ORDER

The Petitioner, Solar Energy Corporation of India Limited (hereinafter referred to as 'the SECI'), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') for the adoption of the tariff of the 900 MW Wind Solar Hybrid Power Projects (Tranche VII) connected with the Inter-State Transmission System (ISTS) and selected through the competitive bidding process as per the "*Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects"* dated 21.8.2023 ('the Hybrid Guidelines') issued by the Ministry of Power, Government of India, as amended from time to time and interpreted and modified by the Central Government vide subsequent communications/notifications. The Petitioner has made the following prayers:

"*a. Adopt the tariff discovered in the tariff based competitive bid process for 900 MW Wind Solar Hybrid Power Projects based on e-Reverse Auction (e-RA);*

b. Approve Trading Margin of Rs.0.07/kWh to be paid by the Distribution

Companies/Buying Entity(ies) as specified in the Guidelines;

c. Pass any other or further order which this Commission may deem fit and proper in the facts and circumstances of this case."

Submissions of the Petitioner

2. The Petitioner, SECI, has submitted that on 23.10.2023, it issued a Request for Selection (RfS) along with the Standard Power Purchase Agreement (PPA) and the Power Sale Agreement (PSA) documents for the selection of Hybrid Power Generators (HPGs) for setting up of the 2000 MW ISTS-connected Wind Solar Hybrid Power Projects (Tranche VII) anywhere in India, under Competitive Bidding as per the Hybrid Guidelines dated 21.8.2023, on the ISN Electronic Tender System (ETS) e-bidding portal. In response, five bids were received, offering an aggregate capacity of 1265 MW, and all were found to fully meet the techno-commercial criteria. On 9.1.2024, as per the prescribed procedure in the RfS, the financial bids of all five technically qualified bidders were opened on the ISN ETS e-bidding portal in the presence of the Bid Evaluation Committee. As per the eligibility criteria mentioned in the RfS, all five bidders were shortlisted for participating in the e-reverse auction. The e-reverse auction was conducted on 9.1.2024 on the ISN ETS e-bidding portal, on the basis of which the final tariff was arrived at. Pursuant thereto, SECI, on 16.1.2024, issued a Letter of Award to the successful bidders, namely, NTPC Renewable Energy Limited (300 MW), Juniper Green Energy Private Limited (150 MW), and Green Infra Wind Energy Limited (450 MW). In view of the above, the Petitioner has prayed for the adoption of a tariff for the 900 MW Wind Solar Hybrid Power Projects (Tranche VII) discovered through a competitive bidding process carried out by SECI. The Petitioner has further prayed to approve the trading margin of Rs.0.07/kWh to be paid by the Distribution Companies/Buying Entity(ies) as specified in the Guidelines.

3. The Petitioner, vide its affidavit dated 6.7.2024, has submitted that subsequent to the filing of the present Petition, SECI has executed a PSA dated 12.6.2024 with Respondent No. 6, Punjab State Power Corporation Limited ('PSPCL') for the entire 900 MW awarded capacity and correspondingly, (i) PPA dated 21.06.2024 with NTPC Renewable Energy Limited for 300 MW, (ii) PPA dated 20.06.2024 with Juniper Green Beta Private Limited, (a SPV of Juniper Green Energy Private Limited) for the 150 MW, and (iii) PPA dated 27.06.2024 with Green Infra Renewable Projects Limited, (a SPV of Green Infra Wind Energy Limited) for 450 MW. Thus, the entire 900 MW capacity selected under the said bidding process has been tied up.

<u>Hearing dated 22.7.2024</u>

4. During the course of the hearing on 22.7.2024, the 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 900 MW Wind Solar Hybrid Projects (Tranche VII) connected with the Inter-State Transmission System and selected through the competitive bidding process as per the Hybrid Guidelines. Whereas, learned counsel for Respondent No.6, PSPCL, sought liberty to file a reply in the matter.

5. Considering the submissions made by the learned counsel for the Parties, notice was issued in the matter permitting the Respondents to file their respective replies, if any. The Commission also directed the Petitioner to furnish the details/ information as to (a) the certificate issued by the Bid Evaluation Committee to the effect that the price of the selected offer is reasonable and consistent with the requirement as per Clause 12.2 of the Hybrid Guidelines, and (b) reasons for the delay in approaching the Commission as per

Clause 12.4 of the Hybrid Guidelines.

6. Pursuant to the above direction, the Petitioner, vide affidavit dated 10.8.2024, has mainly submitted that on the previous occasions, the Commission had directed the Petitioner to only seek the adoption of tariff once the capacity is tied up under the PPAs & PSAs. In the present case, the e-Reverse Auction was concluded on 9.1.2024, and by 24.1.2024 (i.e., the date on which the timeline of 15 days expired), the capacity had not been tied up as neither the PPAs with the successful bidders had been executed nor had the Petitioner received distribution licensees' consent for execution of the PSAs. Respondent No.6, PSPCL, consented to the offered capacity only on 5.4.2024, and the PSA for the entire capacity was thereafter executed on 12.6.2024. In the meantime, the Commission vide order dated 1.6.2024 in Petition No.68/AT/2024 *inter alia* clarified that unlike the earlier Guidelines issued by the Ministry of Power in regard to the adoption of tariff, the new guidelines now include specific timelines for the distribution licensee or intermediary procurers to seek the adoption of tariff from the Appropriate Commission and in view of the said findings, the Petitioner immediately proceeded to file the present Petition on 14.6.2024 without waiting for execution of the PPAs, which came to be executed subsequently and have been placed on record vide affidavit dated 6.7.2024. The Petitioner vide said affidavit has also furnished the requisite certification 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 (RfS) document.

7. Further, pursuant to the liberty granted by the Commission vide Record of the Proceedings for the hearing dated 22.7.2024, Respondent No.6, PSPCL, also filed its reply dated 7.8.2024. While pointing out the salient aspects of the RfS and PSA, PSPCL has also

submitted that it has no objection towards the adoption of tariff for the Wind Solar Hybrid Projects connected with the ISTS and selected through a competitive bidding process as per the Hybrid Guidelines. However, the procurement by PSPCL in terms of the PSA dated 12.6.2024 shall be subject to the final approval by the State Commission in Petition No. 34 of 2024 in terms of Section 86(1)(b) of the Act.

<u>Hearing dated 28.8.2024</u>

8. During the course of the hearing, learned counsel for the Petitioner submitted that vide Record of Proceedings for the hearing dated 22.7.2024, the Commission *inter alia* directed the Petitioner to clarify the reasons for the delay in approaching this Commission as per Clause 12.4 of the Hybrid Guidelines and the Petitioner has filed its additional affidavit dated 10.8.2024 on the above aspect. Learned counsel for Respondent No.6, PSPCL, also reiterated that that PSPCL, as such, has no objection to the adoption of tariff for the 900 MW Wind-Solar Hybrid Projects by the Commission as prayed for. However, the procurement by PSPCL in terms of the PSA dated 12.6.2024 will be subject to the final approval by the State Commission under Section 86(1)(b) of the Act.

9. Whereas Learned counsel for the Respondent Nos. 3 & 5 sought liberty to file a reply in the matter and requested to list the matter thereafter.

10. Considering the submissions made by the learned counsels for the parties, the Commission permitted the Respondent Nos. 3 & 5 and the Petitioner to file their respective reply and rejoinder.

<u>Reply of the Respondent No. 3 & 5</u>

11. Pursuant to the liberty granted by the Commission vide its Record of Proceeding for

the hearing dated 28.8.2024, Respondent No.3, Green Infra Wind Energy Limited (GIWEL) (now known as Sembcorp Green Infra Pvt. Ltd.) and Respondent No. 5, Green Infra Renewable Projects Limited (GIRPL) vide their common reply dated 2.9.2024 have mainly submitted as under:

(a) On 2.4.2024, upon conversion into a private company under Section 18 of the Companies Act, 2013, the name of GIWEL (Respondent No. 3) was changed to “Green Infra Wind Energy Private Limited” (GIWEPL). Subsequently, on 31.5.2024, the name of the company was changed from GIWEPL to “Sembcorp Green Infra Private Limited” (SGIPL).

(b) Clause 7.5 of the RfS mandated that at the time of submitting the bid, the bidders had to choose an ISTS sub-station for inter-connection of the Project with the grid, and in terms of the said clause, GIWEL premised its bid on the connectivity at Barmer-I ISTS substation in Rajasthan.

(c) On 16.1.2024, SECI issued a Letter of Award (LoA) in favour of GIWEL for supplying the 450 MW Hybrid Power Project (comprising 300 MW Solar and 150 MW Wind) as per the terms and conditions contained in the Hybrid Guidelines. Thereafter, on 12.2.2024, GIWEL sought an amendment in the LoA, in terms of Clause 6.3 (b) v and Clause 20.1 of the RfS to amend the Project Configuration to the 410 MW (from 300 MW) Solar and 152 MW (from 150 MW) Wind component. Accordingly, the SECI, on 13.2.2024, issued an Addendum to the LoA, accepting the request of GIWEL for change in the Project Configuration.

(d) On 12.6.2024, a PSA was executed between SECI and PSPCL for the sale of the 900 MW Wind-Solar Hybrid Power on a Long-Term Basis and consequently, SECI agreed to sign the PPAs with HPDs for procurement on a long-term basis, for a tenure co-extensive and co-terminus with the duration of the PPA. On 27.6.2024, GIWEL, through its subsidiary GIRPL, in furtherance of the LoA, entered into the PPA with SECI for 25 years for the Contracted Capacity of 450 MW of Hybrid Power at a fixed tariff of Rs. 3.21/kWh. The effective date of the PPA is 20.6.2024.

Connectivity

(e) Prior to the bidding process, on 28.6.2023 (re-applied on 11.07.2023), GIWEL had applied to the Central Transmission Utility of India Ltd. (CTUIL) for land-based connectivity for a quantum of 300 MW Solar capacity in Barmer, Rajasthan at the Fatehgarh IV ISTS sub-station through its subsidiary Green Infra Clean Solar Farms Limited ('GICSFL'). The date from which connectivity was sought in the application was 1.6.2025. However, since only a margin of 110 MW was available, the quantum of the 300 MW was subsequently requested to be reduced to the 110 MW vide letter dated 1.9.2023 by GIWEL (via GICSFL).

(f) On 8.11.2023, GIWEL (via GICSFL) received an in-principal grant of land-based connectivity for the 110 MW Solar Power Project of GICSFL at Fatehgarh IV ISTS substation from CTUIL, with an interim start date of connectivity being 28.2.2026. The COD of the Fatehgarh IV substation (as per the List of the Connectivity Margin in ISTS Substations available as on 30.6.2024, as published by the CTUIL on their website) at the time of filing this reply is July 2026, i.e., past the start date interim connectivity. Prior to the completion of the bid process and e-reverse auction, on 16.12.2023 (re-applied on 29.12.2023), GIRPL applied to the CTUIL for a quantum of 300 MW Wind connectivity at the Gadag-II ISTS sub-station at Karnataka. The date from which connectivity was sought in the application was 1.6.2027, and the COD of the Gadag-II substation as per the CTUIL at the time of filing this reply is December 2025. CTUIL intimated the in-principal grant of the connectivity on the basis of the above application to GIRPL on 1.3.2024, with the start date of connectivity being 1.6.2027.

(g) In terms of Clause 7.11 of the RfS, the Respondents (as the HPD) were required to apply for the connectivity at the identified substation within 30 days after the date of the tariff adoption by the Appropriate Commission. However, in anticipation of the scarcity of connectivity at the targeted Barmer-I substation, on 30.1.2024, GIWEL proactively applied for the 300 MW Solar connectivity at Barmer-I substation on the basis of the LoA, i.e., before the initiation of the tariff adoption proceedings by SECI before this Commission. On 14.5.2024, GIWEL also applied for the 300 MW Solar connectivity through the land BG route at the Nagaur Merta-II ISTS substation. The date from which connectivity was sought in the application was 31.5.2027, and the COD of the Nagaur Merta-II substation as per the CTUIL at the time of filing this reply is December 2026.

(h) On 27.6.2024, in the 31st Consultation Meeting for Evolving Transmission Schemes – Northern Region ('CMETS-NR'), GIWEL's application for connectivity for the 300 MW Solar connectivity at Barmer-I sub-station dated 30.1.2024 was taken up. Pursuant to the said meeting, GIWEL requested the withdrawal of the connectivity application due to the unavailability of spare margin & timely connectivity at the Barmer-I substation. On 5.8.2024, in the 33rd CMETS-NR meeting, CTUIL agreed to grant the 300 MW Solar interim connectivity to GIWEL at the Nagaur Merta-II ISTS substation from 31.5.2027 (considering the COD of the transmission system being 31.3.2027), in terms of the connectivity application dated 14.05.2024. The CTUIL intimated the in-principal grant of the connectivity on the basis of the above application to GIWEL on 30.8.2024, with the interim start date of connectivity being 31.5.2027.

(i) Clause 9.6 of the RfS and Article 2.1 of the PPA relate to the Scheduled Commencement of Power Supply Date ("SCSD"), and in terms of the above, the SCSD for the Project is 20.6.2026. There is no delay on the part of the Respondents to apply for the connectivity for the timely evacuation of the hybrid power. In fact, the Respondents have been proactive in applying for the connectivity to the grid. The CTUIL, in the 31st CMETS-NR meeting, had requested all connectivity applicants to note that details of the nearest ISTS pooling station are an "optional entry" in the application, which are based on land or land BG route, and in cases where multiple entries made in the application, CTUIL, based on the location of the Project, shall *suo-motu* identify the nearest pooling station for the grant of connectivity, regardless of connectivity availability at the substation. CTUIL further requested the connectivity applicants that such a practice of mentioning multiple pooling stations or PS in different complex names under the "nearest ISTS pooling station" field in the application should be avoided as the connectivity proposal will only be considered based on the location of the generation project mentioned in the application.

(j) In terms of the above, it is apparent that the location of the substation and the quantum of availability of connectivity is completely out of the control of the Respondents, and it is only the CTUIL that the likely delay in granting the connectivity to the substation for evacuation of hybrid power can be attributable, as the Respondents have taken all suitable measures to ensure timely connectivity to the grid be accorded to them. The substations at which connectivity has been granted to the Respondents for the Project have commissioning timelines are as follows:

Sr. No.	Components	ISTS Substation	Application Date	Application Status	Substation Commissioning as per CTU	Date of Connectivity granted	Project Location
1.	Solar – 110 MW	Fatehgarh-IV	11th July 2023	Granted on 08.11.2023	July 2026	28.02.2026 (interim)	Barmer, Rajasthan
2.	Solar – 300 MW	Nagaur Merta-II	14th May 2024	Granted on 30.08.2024	December 2026 (transmission system COD is 31.03.2027)	31.05.2027 (interim)	Nagaur, Rajasthan
3.	Wind – 152 MW	Gadag-II	29th December 2023	Granted on 01.03.2024	December 2025	01.06.2027	Gadag, Karnataka

(k) All the connectivity applications that are proposed to be used for the current project were applied using the land/land BG route prior to the completion of the bidding process / prior to the conclusion of the tariff adoption proceedings. Since the COD of the Fatehgarh-IV & Nagaur Merta-II substations to which connectivity has been granted to the Respondents, along with date from which connectivity is granted at the Gadag-II substation is after the SCSD of the Project, it will become an impossibility for the Respondents to evacuate the contracted quantum of power by the SCSD, and thus, the contracted capacity of the Respondents will be left stranded, due to no fault of theirs.

Re. Levy of Transmission Charges

(l) The MoP, in accordance with Para 6.4(6) of the Tariff Policy, 2016, issued Order No. 23/12/2016-R&R on 30.9.2016 (‘the Order’), whereby MoP had granted waiver of the inter-State transmission charges (‘ISTS Charges’) and losses on transmission of the electricity generated from the solar and wind sources of energy for sale by such projects commissioned till 31.3.2019 (for wind projects) and 30.6.2017 (for solar projects) to the distribution companies for compliance with the Renewable Purchase Obligation (‘RPO’). The Order was subsequently modified on various occasions by Orders dated 14.6.2017, 13.2.2018 and 6.11.2019. On 23.11.2021, a major change was made in the Order, whereby the scope of the waiver was expanded to sources other than wind and solar, and the time limit for such waiver was increased and made applicable for the projects commissioned till 30.6.2025. However, it was also notified that the waiver is allowed only for the inter-State transmission charges and not losses for projects whose bidding was completed post-15.1.2021. To ensure the long-term viability and certainty of renewable power generation, it was also provided that for projects whose COD is after 30.6.2025, concessional ISTS Charges will be applicable in a staggered manner. The table of the concessional transmission charges is reproduced hereunder for ready reference:

S.No.	Period of Commissioning	Inter-State Transmission Charges
1	01.07.2025 to 30.06.2026	25% of the applicable ISTS Charges
2	01.07.2026 to 30.06.2027	50% of the applicable ISTS Charges
3	01.07.2027 to 30.06.2028	75% of the applicable ISTS Charges
4	From 01.07.2028	100% of the applicable ISTS Charges

(m) On 30.11.2021, sub-clause (vii) was added after Para 3.1 (vi) of the Order date 23.11.2021, which provided for an extension for a time period to be eligible for the waiver on ISTS Charges on account of the Force Majeure or delay on the part of the transmission provider in providing transmission service even after having taken requisite steps or delay by the Government Agency. It was stated that if the power plant is commissioned before the extended date, it will get the benefit of the waiver of the ISTS Charges as if the said plant had been commissioned on or before 30.6.2025. On 1.12.2022, the Order was modified to include that for the hydro power projects whose COD is after 30.6.2025, Concessional ISTS Charges will be applicable in a staggered manner.

(n) On 6.12.2022, the definition of the inter-State transmission system was added in the Order, and it was notified that an intra-State transmission system which is used for the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission shall be included for sharing of the ISTS Charges, and any waiver applicable to such ISTS will be applicable to the intra-State transmission system as well. On 29.5.2023, Concessional ISTS Charges in a staggered manner were provided for the Offshore Wind Power Projects (commissioned on or before 31.12.2032) and Green Hydrogen /Ammonia plants (commissioned on or before 31.12.2030) in the Order. On 9.6.2023, sub-clause (vii) of para 3.1 was modified of the Order, and a proviso was added to sub-clause (vii), which stated that extension in COD of a project (after 30.6.2025) shall be granted for 6 months at a time and not more than two times, i.e., effectively till 30.6.2026.

(o) On 4.5.2020, this Commission, in exercise of the powers conferred under Section 178 of the Electricity Act, notified the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 (“Sharing Regulations”).

The Sharing Regulations in Chapter 3, provided for the treatment of transmission charges and losses in specific cases, including conditions waiver thereof.

(p) The Respondents will not be able to evacuate power by the SCSD, owing to reasons beyond their control, being (a) unavailability of timely connectivity at the nearest substations, for which the Respondents had, in fact, applied proactively and without any delays, (b) CTU's inability to grant the timely connectivity due to unavailability of spare margin at the substation selected pursuant to bid and the LOA (Barmer-I), (c) The COD of Fatehgarh-IV ISTS sub-station (July 2026) being beyond the interim date of the connectivity granted (28.2.2026), and (d) the date from which connectivity is granted to the Respondents at the selected ISTS substations (Nagaur Metra-II and Gadag-II) is beyond 20.6.2026, i.e., the SCSD of the Project.

(q) Perusal of the above makes it apparent that the Respondents will not be able to achieve the SCSD of 20.6.2026, as envisaged in the PPA, due to no fault of their own and for reasons beyond their control. Thus, in view of the current situation, where connectivity to the nearest substation will only be granted by July 2026, even after the Respondents proactively applying for connectivity (as enshrined in the table above), it is not envisaged that the power offtake can start from the SCSD, i.e., before grant of final connectivity for the complete contracted quantum, which will resultantly have an impact on the concessional transmission charges to be levied on the offtake of power. The Respondents will be ready to supply the hybrid power by the SCSD, and it is only due to the unavailability of timely connectivity that there will be a delay in the actual supply of power by the SCSD.

(r) In light of the above, the Commission may take into note the impact of such concessional transmission charges while undertaking its statutory duty in adopting the tariff discovered in the bid process and direct that no coercive action be taken against the Respondent in relation to delay in supplying power by the SCSD due to reasons beyond their control.

(s) In terms of Article 4.5.2 of the PPA, when there is a delay in operationalization of GNA by the CTUIL and/or there is a delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network until SCSD of the Project, the same shall be treated as delays beyond the control of the HPD and SCSD for such Projects shall be revised as the date as on 60 days subsequent to the readiness of the Delivery Point and power evacuation infrastructure and/or grant/operationalization of GNA. In terms of Article 4.5.2, the decision on requisite extension on account of the above factor shall be taken by SECI.

(t) In view of the above, the Commission is requested to (a) consider the impact of the payment of concessional transmission charges now applicable while adopting the tariff as discovered during the bid process and (b) direct that no coercive action be taken against the Respondents, in relation to delay in supplying power by the SCSD due to reasons beyond their control.

Hearing dated 9.9.2024

12. During the course of the hearing, learned counsel for the Petitioner sought liberty to file a rejoinder to the reply filed by Respondent Nos. 3 to 5. Considering the above request, the Commission permitted the Petitioner to file its rejoinder within a week.

13. The Petitioner, vide rejoinder dated 17.9.2024, has mainly submitted as under:

(a) The scope of the present proceedings is limited to the prayers for the adoption of tariff discovered in the tariff based competitive bid process for procurement of power from the Wind Solar Hybrid Power Projects (Tranche-VII) and recognizing the trading margin applicable.

(b) The objections raised by Respondent Nos. 3 and 5 concern their inability to meet the Scheduled Commencement of Power Supply Date (SCSD) of 20.6.2026 due to several issues related to connectivity and infrastructure. The major grievances of Respondent Nos. 3 and 5 concern the actions of the Central Transmission Utility of India Limited (CTUIL), which is not a party to the current proceedings before this Commission.

(c) The objections raised by Respondent Nos. 3 and 5 highlight challenges related to infrastructure and connectivity delays, which are impacting their ability to meet the SCSD as per their contractual obligations. Given these issues, it’s important to note that such disputes fall outside the scope of the present proceedings initiated under Section 63 of the Act, which primarily deals with the adoption of tariff rates.

(d) The Respondents are not entitled to raise extraneous and other aspects, excluding anything that directly relates to the prayers made, which is based on the competitive bidding held and culminated with the selection of the bidders and the due execution of the contractual documents, namely, PPAs and PSAs. The Respondents have raised unwarranted and baseless allegations which are not relevant to the adoption of the tariff provided in the Guidelines under Section 63 of the Act. The scope of the present proceedings is limited; the objections raised by Respondents are not to be considered in the present proceedings. If the Respondents have any bona-fide grievances about the actions of the CTUIL, they are at liberty to raise them through independent proceedings after the adoption of the tariff. 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 that are not in relation to the adoption of tariffs.

(e) Given that these objections pertain to operational delays and connectivity issues rather than the adoption of tariffs, they may need to be addressed through other regulatory or legal channels, and the resolution of disputes related to infrastructure and connectivity delays would typically require engagement with other regulatory or adjudicatory bodies. Thus, the dispute fundamentally requires adjudication in the presence of CTUIL, and therefore, it cannot be addressed within the scope of proceedings under Section 63 of the Act. The relief sought by the Respondents in the present Petition cannot be decided by the Commission within the scope of these proceedings.

(f) The entire bidding process has been meticulously conducted in strict adherence to the Hybrid Guidelines issued by the MoP, Govt. of India. The disputes raised by the Respondent Nos. 3 and 5 involved adjudicatory functions of the Commission; the present matter is on a different footing altogether, as the same involves a scenario where the Commission invokes its power *qua* tariff adoption conferred upon it under the provisions of the Act. Throughout the bidding process, no deviations from the established Guidelines have been made, ensuring full compliance and transparency. The Guidelines have been duly complied with, and no deviations have been made.

(g) The scope of the present Petition is limited to the adoption of the tariff by the Commission. The concerns raised by the Respondent Nos. 3 and 5 in their affidavit do not fall within the ambit of this Petition. Unlike Section 62, read with Sections 61 and 64 of the

Act, under Section 63 of the Act, the Appropriate Commission only "adopts" tariff and does not "determine" tariff. However, in cases under Section 63 of the Act, the Central Commission is bound by the Guidelines issued by the Ministry of Power, and it is required to exercise its regulatory functions, albeit under Section 79(1)(b) only in accordance with those Guidelines. Once the tariff is an outcome of the bidding process and the bidding process is transparent and held in accordance with the Bidding Guidelines, the Appropriate Commission is mandated to adopt such tariff and it does not have a discretion to go into the question as to whether it is impacted with any charges payable by the Developers/ Buying Entities under the regulations.

(h) Any increase/impact on tariff on account of any alleged delay cannot be a matter of adjudication under the proceedings initiated under Section 63 of the Act. The Petitioner has placed reliance on the order of the Commission dated 17.3.2024 in Petition No. 233/AT/2023 (*NTPC Limited Vs. Solairedirect Energy India Private Limited*) and judgement of the APTEL in Appeal No.44 of 2010 (*Madhya Pradesh Power Trading Company Ltd. v. Madhya Pradesh Electricity Regulatory Commission & Ors.*) in this regard.

(i) In the past, during the tariff adoption proceedings initiated by SECI, power developers raised concerns and requested adjudication of their Change in Law claims. However, this Commission did not consider these objections within the Section 63 proceedings

(j) Notwithstanding the limited jurisdiction of the commission under Section 63 of the Act, the Respondent Nos. 3 and 5 cannot claim the adjudication of the contractual obligations arising between the CTUIL and the Respondent Nos. 3 and 5 under the connectivity arrangement. The Respondent Nos. 3 and 5 may independently approach this Commission and avail its remedies under the connectivity arrangement or Power Purchase Agreement as the case may be, and the same may be considered by this Commission in accordance with law.

Hearing dated 30.9.2024

14. During the course of the hearing, learned counsel for the Petitioner submitted that the pleadings are already completed and the matter may be reserved for the order. However, learned counsel for Respondent Nos. 3 & 5 requested for the adjournment in the instant

Petition due to the non-availability of the arguing counsel.

15. Learned counsel for the Petitioner, however, opposed the aforesaid request of the adjournment and submitted that the Respondent Nos. 3 & 5 have already filed a reply pursuant to the liberty granted by the Commission vide Record of Proceedings for the hearing dated 9.9.2024. Learned counsel further submitted that the issues highlighted by the Respondents in their reply are outside the scope of the present proceedings relating to the adoption of tariff under Section 63 of the Act. In case the Respondents have any grievance about the actions of CTUIL, they may approach the Commission through independent proceedings after the adoption of the tariff.

16. In response, learned counsel for the Respondents Nos. 3 & 5 submitted that in the event the Commission is not inclined to consider the certain aspects raised by the Respondents in the instant case, liberty may be granted to the Respondents to approach the Commission by way of a separate Petition. Whereas, the learned counsel for Respondent No. 6, PSPCL, submitted that PSPCL has already filed its response in the matter.

17. Considering the submissions of the learned counsels for the parties, the matter was reserved for order.

Analysis and Decision:

18. 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 Wind Solar Hybrid Power Project(s) as discovered pursuant to the competitive bid process carried out in terms of the Guidelines issued by the Government of India.

19. 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."

20. 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 Government of India under Section 63 of the Act has been followed in the determination of such tariff.

21. The Ministry of Power, Government of India, has issued the Hybrid Guidelines under Section 63 of the Act on 21.8.2023; the salient features of the Hybrid Guidelines are as under:

(a) These Guidelines are applicable for the procurement of power from the Hybrid Power Projects having (a) a bid capacity of 10 MW and above for projects connected with the intra-State transmission system; and (b) a bid capacity of 50 MW and above for projects connected to the inter-State transmission system, subject to the condition that the rated power capacity of one resource (wind or solar) shall be at least 33% of the total contracted capacity.

(b) The solar and wind projects of the hybrid project may be located at the same or different locations. Storage may be added to the hybrid power project to reduce the variability of output power from wind solar hybrid project, for providing higher energy output for a given capacity (bid/ sanctioned capacity) at delivery point, by installing additional capacity of wind and solar power in a wind solar hybrid project and to ensure availability of firm power for a particular period.

(c) The Procurer shall prepare the bid documents in accordance with these Guidelines and any deviations from these Guidelines and/or Standard Bidding Documents (SBDs) in the draft RfS, draft PPA, draft PSA (if applicable) need to be approved by the Government in accordance with the process described in Clause 19 of these Guidelines.

(d) The Procurer will invite the bids in Power Capacity (MW) terms. A bidder is allowed to bid for a minimum bid capacity as per Clause 3.1 of the Guidelines. The Procurer may also choose to specify the maximum capacity that can be allotted to a single bidder, including its Affiliates 1.3. A maximum of 50 percent of total capacity, as specified in the RfS can be allocated to a single bidder.

(e) For procurement of wind solar hybrid power, the tariff quoted by the bidder shall be the bidding parameter. The tariff quoted shall be a fixed tariff of Rs./kWh for the PPA period. The capacity allocation shall be on the basis of Bucket filling, i.e., capacity quoted by the least quoted tariff bidder (called the L1 bidder) at the rates quoted (L1 rates) shall be allocated first, then the capacity quoted by the next lowest bidder (called the L2 bidder) at the rates quoted (called the L2 rates) may be allocated and so on.

(f) The draft PPA proposed to be entered into with the successful bidder and the draft PSA shall be issued along with the RfS. Standard provisions to be incorporated as part of the PPA shall include *inter alia* the PPA Period, Quantum of Power, Deviation Settlement Mechanism (DSM), Payment Security Mechanism (PSM), Change in Law, Force Majeure, Generation Compensation for Off-take Constraints, Event of Default and consequences thereof.

(g) Adequate payment security shall be provided as per the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, including amendments and clarifications, 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.

(h) The procurer/intermediary procurer shall call for the bids adopting a single stage two-part (Technical Bid & Financial Bid) bidding process to be conducted through electronic mode (e-bidding). 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 with adequate safety, security and confidentiality features will be used.

(i) The bidding documents including the RfS, draft PPA and draft PSA (if applicable) shall be prepared by the Procurer(s) in consonance with these Guidelines and the SBDs, if any. The Procurer(s) shall publish the RfS notice in at least two national newspapers or its own website, to accord the wide publicity. The standard provisions to be provided by the Procurer in the RfS shall include the Technical Criteria, Financial Criteria, Net Worth, Liquidity, Quantum of the Earnest Money Deposit (EMD), and Compliance of Laws by foreign bidders.

(j) The Procurer(s) 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. The price bid shall be rejected if it contains any deviation from the bid conditions.

(k) The bidders shall be required to submit separate technical and price bids. 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. The detailed procedure for the evaluation of the bid and selection of the bidder shall be provided in the RfS.

(l) After the conclusion of the bidding process, the Evaluation Committee constituted for 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.

(m) The PPA shall be signed with the successful Bidder/ Project Company or an SPV formed by the successful Bidder. After the execution of the PPA, the Procurer shall publicly disclose the name(s) of the successful Bidder(s) and the tariff quoted by them together with breakup into components, if any.

(n) The distribution licensee or the Intermediary Procurer, as the case may be, 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.

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

23. The Petitioner, SECI, has been designated as the nodal agency for the implementation of the scheme for setting up of the ISTS connected/ State specific Solar / Wind / Wind- Solar Hybrid Power Projects with the mandate to invite bids under the Tariff Based Competitive Bidding process to enter into the PPAs at the tariff discovered in the competitive bid process and enter the PSAs with the distribution licensees to enable them to fulfil their Renewable Purchase Obligations under Section 86(1)(e) of the Act.

24. The Hybrid Guidelines provide for the procurement of wind-solar hybrid power at a tariff to be determined through a transparent process of bidding by the Procurer(s) from the grid-connected wind-solar power projects with or without energy storage through the tariff based competitive bidding. As per the Guidelines, SECI, in the capacity of intermediary procurer, invited proposals for the selection of Hybrid Power Developers for setting up the 2000 MW ISTS-connected Hybrid Power Projects (Tranche VII). As per the arrangements, SECI is to procure the power by entering into the PPAs with the successful bidder with back-to-back PSAs for the sale of power to the distribution licensees. Moreover, the scheme of Hybrid Power Developers, spanned across multiple States, generating, and supplying power to the distribution licensee(s) itself envisages an inter-State transaction.

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

Sr. No.	Milestone	Date
1	RfS issued by SECI.	23.10.2023

2	Corrigendum -01 to the RfS documents	25.10.2023
3	Pre-Bid Meeting held.	31.10.2023
4	Amendment -01 to RfS documents	01.12.2023
5	Corrigendum -02 to RfS documents	02.12.2023
6	Last date of Bid Submissions.	08.12.2023
7	Opening of Techno-Commercial Bids.	14.12.2023
8	Opening of Financial Bids.	09.01.2024
9	E-Reverse Auction Conducted	09.01.2024
10	Issuance of Letter of Award (LoA) to the Successful Bidder.	16.01.2024

26. On 23.10.2023, SECI issued the RfS documents, along with the draft PPA and PSA, for the selection of the Hybrid Power Developers for setting up the 2000 MW ISTS- connected Wind-Solar Hybrid Power Projects (Tranche VII) under tariff based competitive bidding. The said tender/ RfS document was floated on the ISN Electronic Tender System (ISN ETS) e-Tender portal. As per Clause 8.5 of the Guidelines, RfS notice is required to be published in at least two national newspapers or the website of the Procurer to accord wide publicity. In this regard, SECI has placed on record the documents demonstrating the publication of the RfS on the e-publishing system, Government of India. 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 the SECI will henceforth be published on its website and the Government Portal but not in the newspapers.

27. The Bid Evaluation Committee (BEC) comprising the following was constituted for the opening and evaluation of bids under RfS No. SECI/C&P/IPP/13/0008/23-24 dated 23.10.2023

Tender	Dept.	Offline and Online Techno-commercial and Financial Bid Opening	Techno-commercial and Financial evaluation and post-e-RA recommendation
2000 MW I STS-connected Wind-Solar Hybrid Power Projects (SECI-Tranche- VII)	PS	Aalok Singh, Manager/ P. Venkatesan, DGM	P. Venkatesan, DGM
	Contracts	Abhisekh Srivastav, Manager	Pratik Prasun, Sr. Manager
	Finance	Janeet Pal Singh, Dy. Manager	Anuja, Sr. Manager

28. The last date of submission of the bid was 8.12.2023, and the techno-commercial part of the bid was opened on 14.12.2023. Response to the RfS was received from five bidders, and all of them met the technical criteria and, consequently, were found to be qualified for the opening of the financial bid. On 9.1.2024, financial bids of 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, all five bidders aggregating 1265 MW were shortlisted for e-reverse auction.

29. The e-reverse auction was carried out on 9.1.2024 in the presence of the members of BEC. After completion of the e-reverse auction, the following were declared as successful bidders:

S. No.	Name of Successful Bidder	Bid Capacity (MW)	Tariff (INR/kWh)	Allotted Capacity (MW)
1.	NTPC Renewable Energy Limited	300	3.15	300
2.	Juniper Green Energy Private Limited	150	3.21	150
3.	Green Infra Wind Energy Limited	450	3.21	450
	Total			**900 MW**

30. Accordingly, on 16.1.2024, SECI issued the Letter of Award (LoA) to the above successful bidders. The relevant extract of the Letter of Award issued to one of the successful bidders, namely NTPC Renewable Energy Limited, is as under:

"In reference to above and subject to the provisions of RfS, we confirm having accepted your final offer

concluded as a result of e-RA and issue this letter of award as per the following details:

Allotted Project ID	***Project Capacity (MW)***	***Project Location(s)***	***Interconnect on Point(s) Details***	***Applicable Tariff (INR/kWh) in figures***	***Applicable Tariff (INR/kWh) in words***
HPD-ISTS-T7-NREL-P1-300MW	*300 (Solar-200 MW; Wind-100 MW)*	*Solar component: Bikaner, Rajasthan* *Wind component: Jamkhambaliya, Gujarat*	*Solar component: 220 kV/ 400 KV Bikaner 3 ISTS S/s*	*₹3.15/-*	*Rupees Three and Fifteen paisa only*

It is to be noted that the HPD is allowed to change the project location and interconnection point for the awarded project subsequent to issuance of LoA. up to the deadline for Financial Closure as per Clause 20-A of the RfS.

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

1.0 The applicable tariff as mentioned above for power generated from the proposed ISTS- connected Wind-Solar Hybrid Power Project for the term of Power Purchase Agreement (PPA) to be entered into between Project Company or the Hybrid Power Developer (HPD) and M/s SEC1, for the Project, shall be firm for the entire term of the PPA.

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

1.2 The award of the above Project is 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 selected 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. Further, the successful bidder shall ensure that its promoters shall not cede control of the bidding company till 1 (one) years from the SCSD, except with the prior approval of SECI.

1.7 The HPD shall pay to SECI, Success Charges @Rs. 1,00,000/MW (Indian Rupees One Lakh only/MW)+ 18% GST, corresponding to the Installed Capacity committed as per the PPA to be signed, to SECI towards administrative overheads, project monitoring activities, coordination with State Authorities and others including the DISCOM/STU/CTU, etc. 1st installment 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 18.1 of the RfS. For the second installment, the due date shall be the date as intimated by SECI, which shall be at most 7 days prior to signing of PPA. In case of modification in Installed Capacity prior to signing of PPA, the 2nd installment of Success Charges will be calculated based on the revised value of the total Success Charges calculated @Rs. 1,00,000/MW + 18% GST of the revised Installed Capacity.

1.8 Performance Bank Guarantee(s)/ Payment on Order Instrument (POI) for a value @[INR 23,20,000 x Rated Installed Capacity of Solar component (MW) + INR 31,60,000 x Rated Installed capacity of Wind component (MW)] shall be submitted by the HPD prior to signing of PPA, in line with Clause 17 of the RfS.

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

1.10 The project breakup for the cumulative Contracted Capacity quoted in the Covering Letter, may be changed by the HPD subsequent to issuance of LoA up to the date as on 30 days from issuance of this LoA. For an individual Project, any modification in the rated capacities of wind and solar components in the Project, shall be intimated to SECI within 30 days of issuance of this LoA. Both the above parameters will remain unchanged, thereafter. The PPAs shall be valid for a period of 25 years from the Scheduled Commencement of Supply Date (SCSD).

1.11 The HPD 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:

1) *In line with Clause 35.3 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]*

2) *Copy of the Certificate of Incorporation of the HPD.*

3) *The details of promoters and their shareholding in the HPD, duly certified by the practicing Chartered Accountant/ Company Secretary in original at least 7 (seven) days prior to date of their document submission (certificate date should be after the date of LoA) along with latest documents filed with ROC.*

4) *Copy of the Memorandum of Association (MoA) of the HPD highlighting the object clause related to Power/ Energy/ Renewable Energy/ Solar/ Wind/ Wind-Solar Hybrid power plant development.*

5) *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.

6) Copy of Board Resolution of HPD for authorization of signing of PPA and subsequent relevant documents.

Further, the PPA shall be signed with HPDs 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.

1.12 SECI shall have the right to verify original documents of the HPD for which copies have been submitted from the date of submission of response to RfS till date, if required. PPA as per the format given along with RfS has to be signed within 90 days from the date of issue of this LoA or any other date as decided by SECI from time to time. 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 of signing of PPA, the specified date shall become the Effective Date of the PPA, irrespective of the date of signing of PPA.

1.13 In case, the SECI offers to execute the PPA with the HPD and the selected Bidder refuses to execute the PPA within the stipulated time period, 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.

1.14 The HPD shall meet financial closure requirements for the Project in line with clause 20-A of the RfS document, by the date as on 6 months prior to the SCSD/ extended SCSD. Accordingly, the HPD shall furnish the documents pertaining to compliance of financial closure as per the above provisions.

1.15 The HPD/Project Company shall achieve commissioning of full capacity of the Project within 24 months from the Effective Date of the PPA, as per the conditions stipulated in Clause 9 of the RfS and relevant articles of PPA. In case of failure to achieve this milestone, penalty for delay in commencement of supply shall be levied on the HPD as per the above provisions.

31. As per Clause 12.2 of the Hybrid 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. In compliance with the above, the Petitioner has furnished the various conformity certificates on record. *Vide* conformity certificate 1 dated 17.1.2024, 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/13/0008/23-24 dated 23.10.2023, 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."

32. Moreover, *vide* conformity certificate-2, the Petitioner has stated that after the conclusion of bid submission, the Evaluation Committee constituted for evaluation of the 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 above conformity certificate is as under:

"CONFORMITY CERTIFICATE - 2

With respect to the RfS no. SECI/C&P/IPP/13/0008/23-24 dated 23.10.2023, 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."

33. Pursuant to the direction of the Commission *vide* Record of the Proceedings for the hearing dated 22.7.2024, the Petitioner also filed a conformity certificate- 3 dated 31.7.2024 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/13/0008/23-24 dated 23.10.2023, 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."*

34. As per Clause 12.4 of the Hybrid Guidelines, the distribution licensee or the Intermediary Procurer, as the case may be, shall approach the Appropriate Commission for the adoption of the tariff discovered, in terms of Section 63 of the Act, within fifteen days of the discovery of the tariffs through e-RA or otherwise, in the transparent, competitive bidding process conducted in accordance with the Guidelines. In the present case, the financial bids were opened on 9.1.2024, and the Bid Evaluation Committee submitted its e-RA report on the same day, i.e., 9.1.2024. Whereas, the present Petition, even on the e-filing portal of the Commission, was filed only on 14.6.2024 (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 (SECI v. Avaada Energy Pvt. Ltd.), 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 14.6.2024 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.

35. In light of the aforesaid discussion, it emerges that the selection of the successful bidders has been made, and the tariff of the Wind Solar Hybrid Power Projects (Tranche VII) has been discovered by the Petitioner, SECI, through a transparent process of the competitive bidding and 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 Solar Hybrid Power Projects (Tranche VII), as agreed to by the following successful bidder(s), and for which the PPAs have also been entered into by SECI on the basis of the PSA with the distribution licensee, which shall remain valid through the period covered in the PPAs and PSA as under:

S. No	Name of Successful Bidder	Project Company formed by the successful bidder of execution of PPA	Date of PPA signing & Contracted Capacity (MW)	Applicable Tariff (Rs./kWh)
1.	NTPC Renewable Energy Limited	---	21.6.2024 (300 MW)	3.15
2.	Juniper Green Energy Private Limited	Juniper Green Beta Private Limited	20.6.2024 (150 MW)	3.21
3.	Green Infra Wind Energy Limited	Green Infra Renewable Projects Limited	27.6.2024 (450 MW)	3.21
	Total		**900 MW**	

36. Prayer (a) of the Petitioner is answered in terms of paragraph 36 above.

37. Article 10.3 of the PPA provides as under:

"10.3 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 HPD, as shall have been previously notified by the HPD as below.

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

i) deductions required by the Law; and

ii) amount claimed by SECI, if any, from the HPD, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, the interest applicable will be same as rate of Late Payment surcharge will be applicable on day to day basis.

The HPD shall open a bank account (the "HPD's Designated Account") for all Tariff Payments (including

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

38. Article 10.4 of the PPA provides as under:

"10.4 Payment Security Mechanism

Letter of Credit (LC):

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

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

i) for the first Contract Year, equal to 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 HPD shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

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

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

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

10.4.8 If SECI fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including the Due Date, then, subject to Article 10.4.6 & 10.5.2, the HPD may draw upon the Letter of Credit, and accordingly the bank shall pay, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

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

ii) a certificate from the HPD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

39. 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:

> *"9. (10) The Trading Licensee shall make payment of dues by the agreed due date to the seller for purchase of the agreed quantum of electricity through an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller. Such escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller shall be equivalent to:*
>
> > *(a) one point one (1.1) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts;*
> >
> > *(b) one point zero five (1.05) times of contract value for short term contracts."*

40. The above provisions provide for the payment security mechanism 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 the concerned parties to the present Petition.

41. The Petitioner, SECI, has also prayed to approve the trading margin of Rs.0.07/kWh to be charged to the End Procurer/Discoms or any other entity over & above the PPA tariff on the sale of power as specified depicted in the RfS document and specified in the Hybrid Guidelines.

42. In this regard, Clause (1)(d) of Regulation 8 of the Trading Licence Regulations provides as under:

> *"For transaction under long term contracts, the trading margin shall be decided mutually between the Trading Licensee and the seller:"*

43. The above provision gives the 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."*

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

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

45. The above two provisions are exceptions to the main provision as regards trading margin. In the present case, the distribution licensee, PSPCL, 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-solar hybrid power generators, the trading margin shall be limited to Rs.0.02/kWh specified in Regulation 8(1)(d) and Regulation 8(1)(f) of the Trading Licence Regulations.

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

47. Furthermore, vide their common reply dated 2.9.2024, Respondent No. 3, Green Infra Wind Energy Ltd. and Respondent No. 5, Green Infra Renewable Energy Projects Ltd. have sought to raise certain issue(s) and consequently, the reliefs, namely, (a) to consider the impact of the withdrawal of concessional transmission charges now applicable, while adopting the tariff as discovered during the bid process; and (b) direction that no coercive action be taken against the Respondents, in relation to delay in supplying power by the Scheduled Commencement of Power Supply Date (SCSD) due to reasons beyond their control. The Respondents have sought to bring out that even though the Respondents had proactively applied for the connectivity, it is unlikely that the power offtake can start from the SCSD of the

Project under the PPA due to the unavailability of timely connectivity, and this will resultantly have an impact on the concessional transmission charges to be levied on the off-take of the power.

48. *Per contra,* SECI has opposed the consideration of the above issues/reliefs in the present proceedings, whose scope is limited to the adoption of tariff under Section 63 of the Act. SECI has vehemently submitted that the issues highlighted by the Respondents in their reply are outside the scope of the present proceedings, and in case the Respondents have any grievance about the actions of CTUIL *qua* timely availability of connectivity, they may approach the Commission through independent proceedings after the adoption of the tariff.

49. We have considered the submissions of the Petitioner and Respondents. The present Petition has been filed by SECI, praying for the adoption of tariffs discovered in the tariff-based competitive bid process of Wind Solar Hybrid Power Projects (Tranche VII) and approval of the trading margin. In the forgoing paragraphs, we have already decided that the tariff has been discovered as per the provisions of the bidding guidelines in a transparent manner. As regards the various issues raised by the Respondents relating to the non-availability of timely connectivity (i.e. connectivity start date being beyond SCSD), delay in supplying power by SCSD due to the reasons beyond their control, considering the impact of payment of concessional transmission charges, etc., these aspects are beyond the scope of the present proceedings as they neither relate to the transparency of bid process nor the compliance with the provisions of the Guidelines. Hence, as rightly pointed out by the Petitioner, SECI, these aspects cannot be entertained in the present Petition having a limited scope under Section 63 of the Act. However, the Respondents are given the liberty to approach the Commission for adjudication of these issues through a separate Petition at an

appropriate stage, which shall be dealt with in accordance with law.

50. Petition No. 235/AT/2024 is disposed of in terms of the above.

Sd/- **(Harish Dudani)** **Member**	sd/- **(Ramesh Babu V.)** **Member**	sd/- **(Jishnu Barua)** **Chairperson**