

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 334/AT/2023

**Coram:
Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of Order: 14th March, 2024

In the matter of

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

**And
In the matter of**

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

.....Petitioner

Vs.

1. NTPC Renewable Energy Limited,
NTPC Bhawan, Institutional Area,
Lodhi Road,
New Delhi – 110003

2. Halvad Renewables Private Limited,
507-508, Ashoka Estate,
24, Barakhamba Road, New Delhi -110001

3. JSW Neo Energy Limited,
JSW Centre, Bandra Kurla Complex,
Bandra (East), Mumbai – 400051

4. Torrent Power Limited,
Samanvay, "600", Tapovan,
Ambawadi, Ahmedabad – 380015

5. JSW Renew Energy Three Limited,
[Project Company of JSW Neo Energy Limited]
JSW Centre, Bandra Kurla Complex,
Bandra (East), Mumbai – 400051



6. Torrent Saurya Urja 2 Private Limited,
[Project Company of Torrent Power Limited]
Samanvay, "600", Tapovan,
Ambawadi, Ahmedabad – 380015

7. GRIDCO Limited,
Janpath, Bhubaneshwar,
Khurda, Odisha-751002

8. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan, 14 Ashok Marg,
Lucknow – 226001,UP

.....Respondents

Parties Present:

Ms. Mandakini Ghosh, Advocate, SECI
Shri Rahul Ranjan, Advocate, SECI
Shri Mudit Jain, SECI
Shri Sanjay Sen, Sr. Advocate, JSWRETL
Shri Aman Anand, Advocate, JSWRETL
Shri Aman Dixit, Advocate, JSWRETL
Ms. Natasha, Advocate, JSWRETL
Ms. Ruth Elwin, Advocate, JSWRETL
Shri Rakesh Rathore, JSWRETL

ORDER

The Petitioner, Solar Energy Corporation of India Limited ('SECI'), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') for the adoption of tariff for the 800 MW Wind Power Projects (Tranche Xii) connected to Inter-State Transmission System ('ISTS') and selected through competitive bidding process as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects" (hereinafter referred to as 'the Guidelines') dated 8.12.2017 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 aggregate capacity from Wind Power Project on the terms and conditions contained in the Power Purchase Agreements signed with Wind Power Developers read with the Power Sale Agreements signed with Buying



Entities/ Distribution Licensees as on the date of reserving the decision in the present Petition after hearing of the parties;

b. Approve Trading Margin of Rs.0.07/kWh as agreed to by the Distribution Companies in the signed PSAs in terms of Regulation 8 (1) (d) of the Trading License Regulations, 2020;

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

Submission of the Petitioner

2. The Petitioner, SECI has submitted that in the capacity of intermediary agency, it issued the Request for Selection (“RfS”) along with the draft Power Purchase Agreement (“the PPA”) and the draft Power Supply Agreement (“the PSA”) for selection of the 1200 MW ISTS connected Wind Power Projects (Tranche XII) as per the Guidelines and floated the same on the ISN Electronic Tender System (ETS) e-bidding portal on 22.10.2021. In response, fifteen bids were received offering an aggregate capacity of 3330 MW and all of them were found to fully meet the technical criteria. As per the eligibility criteria mentioned in the RfS, fourteen bidders were shortlisted for participating in the e-reverse auction. The e-reverse auction was conducted on 24.5.2022 on the ISN ETS e-bidding portal, and pursuant thereto, four bidders offering an aggregate capacity of 1100 MW were selected and issued the Letters of Awards on 12.7.2022. As on date of filing of the Petition, the Petitioner has entered into a PSA dated 2.2.2023 with GRIDCO Limited for 390 MW and a PSA dated 14.3.2023 with Uttar Pradesh Power Corporation Limited (UPPCL) for 710 MW. The Petitioner has also entered into PPA dated 6.6.2023 with NTPC Renewable Energy Limited for 200 MW @ Rs. 2.89/kWh, PPA dated 4.5.2023 with JSW Renew Energy Three Limited [Project Company of Successful Bidder – JSW Neo Energy Limited] for 300 MW @ Rs.2.94/kWh and PPA dated 4.5.2023 with Torrent Saurya Urja 2 Private Limited [Project Company of Successful Bidder – Torrent Power



Limited] for 300 MW @ Rs. 2.94/kWh. The Petitioner has submitted that the selected wind power projects are scheduled to be commissioned during 2024-25, and the price discovered is competitive and beneficial to the Buying Utilities/Distribution Companies and the consumers of the Buying Utilities/Distribution Companies. It has been further submitted that in addition to the tariff, there will be a trading margin of Rs. 0.07/kWh to be recovered from the distribution companies, which has been duly agreed to by the distribution companies in the PSAs.

Hearing dated 13.12.2023

3. The matter was heard on 13.12.2023. During the course of the hearing, the learned counsel for the Petitioner reiterated the submissions made in the Petition and urged the Commission to adopt the tariff as prayed for in the Petition. Whereas, learned counsel appearing on behalf of Respondent No.5, JSW ReNew Energy Three Limited sought liberty to file a reply in the matter.

4. Considering the submissions made by the learned counsel for the parties, the Commission issued the notice in the matter and permitted Respondents to file their respective replies, if any, within two weeks and the Petitioner to file its rejoinder(s), if any, within two weeks thereafter. The Petitioner was also directed to indicate the status of execution of the PPA with Respondent No.2, Halwad Renewables Private Limited for 300 MW.

5. The Petitioner by its additional affidavit dated 20.1.2024, apprised the Commission that subsequent to filing of the present tariff adoption petition, SECI by its letter dated 27.12.2023, cancelled the Letter of Award of 300 MW issued in favour of Halwad Renewables Private Limited on being informed vide letter dated 3.8.2023 that it would not be in a position to sign the PPA due to reasons beyond its control.

The Petitioner has submitted that in view of the aforesaid cancellation of the Letter of Award issued to Halvad Renewables Private Limited, the PSA capacity will be reduced to the extent of capacity mapped to Halvad Renewables Private Limited on a pro-rata basis as per Article 3.4 of the PSAs. Thus, the contracted capacity under the PSA with UPPCL will be reduced to 516 MW from 710 MW and the PSA with GRIDCO Limited will be reduced to 284 MW from 390 MW.

Hearing dated 12.2.2024

6. During the course of the hearing on 12.2.2024, the learned senior counsel appearing on behalf of Respondent No. 5, JSW ReNew Energy Three Limited, raised certain objections towards the adoption of tariff in the present proceedings and urged that such objections need to be heard prior to the adoption of tariff. Learned counsel for the Petitioner, however, pointed out that no reply/pleading has been filed by Respondent No.5 to the above effect and Respondent No.5, having raised such objections for the very first time during the course of the hearing itself, it may be directed to file its submissions on an affidavit and liberty may be granted to the Petitioner to file its rejoinder thereof. Accordingly, the Commission directed Respondent No.5 to file its submissions/objections and also permitted the Petitioner to file its rejoinder thereof. Pursuant to the liberty granted by the Commission, Respondent No.5 filed its objections vide affidavit dated 12.2.2024, and the Petitioner filed its rejoinder by an affidavit dated 20.2.2024.

Hearing dated 21.2.2024

7. During the course of the hearing, learned counsel for Respondent No.5, at the outset, submitted that the Respondent is no longer pressing its objections filed by affidavit dated 12.2.2024 and is seeking the liberty to raise them separately at an

appropriate stage. Pursuant to the direction of the Commission, Respondent No.5 filed an affidavit dated 21.2.2024 stating that Respondent is not pressing the said objection in the present tariff proceedings, while reserving its right to raise the contentions at an appropriate time, in an appropriate proceeding if the need so arises. Accordingly, the Respondent No.5 may be permitted to withdraw its objections.

8. Keeping in view that Respondent No.5 is no longer pressing its objections filed by affidavit dated 12.2.2024 in the present proceedings, albeit while reserving its right to raise them at the appropriate time in an appropriate proceeding if the need so arises, such objections and the rejoinder of the Petitioner thereof, have not been captured or addressed in the present order.

Analysis and Decision

9. We now proceed to consider the prayers of the Petitioner as regards the adoption of tariff in respect of the wind power project(s) discovered pursuant to the competitive bid process carried out in terms of the Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act.

10. 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.”

11. Therefore, we have to examine whether such a tariff has been determined through a transparent process of bidding in accordance with the Guidelines issued by the Central Government. The following facts have been brought before us.

12. The Ministry of Power, Government of India, has notified the Guidelines under Section 63 of the Act vide Resolution No.23/54/2017-R&R on 8.12.2017. The Guidelines have been subsequently amended by the resolutions dated 16.7.2019.

The salient features of the Guidelines are as under:

(a) Guidelines are applicable for the procurement of power by the procurers from grid connected wind power projects having, (a) individual size of 5 MW and above at one site with minimum bid capacity of 25 MW for intra-State projects; and (b) individual size of 50 MW and above at one site with minimum bid capacity of 50 MW for inter-State projects through tariff based competitive bidding to be conducted by the procurers which includes distribution licensee, or the authorized representative(s), or intermediary procurers.

(b) The Procurer shall prepare the bid documents in accordance with the Guidelines and the Standard Bid Documents notified by the Ministry of Power, Govt. of India. If any deviation is proposed to be made in the Guidelines and Standard Bid Documents, approval of the Appropriate Commission would be necessary. Intimation about initiation of the bid process shall be sent by the procurers to the Appropriate Commission.

(c) Bids shall be designed in terms of total wind power capacity to be procured in MW. For intra-State projects, minimum bid shall be 25 MW with at least 5 MW project at one site and for inter-State projects, minimum bid shall be 50 MW at one site. The Procurer may choose to specify the maximum capacity that can be allotted to a single bidder including its affiliates.

(d) The Procurer has option to choose from two kinds of tariff based bidding, namely, (i) fixed tariff in Rs./kWh for 25 years or more, or (b) escalating tariff in Rs./kWh with pre-defined quantum of annual escalations fixed in Rs./kWh and number of years from which such fixed escalation will be provided.

(e) The draft PPA proposed to be entered into with the successful bidder and draft PSA, if applicable, shall be issued along with the RfS. PPA period shall not be less than 25 years from the date of Scheduled Commissioning Date.

(f) The Guidelines are applicable for the procurement of transmission services for transmission of electricity through tariff based competitive bidding for selection of Transmission Service Provider (TSP) for new transmission system on a Build, Own, Operate and Transfer basis.

(g) Wind power developer will declare the annual CUF of its Project at the time of signing of the PPA and will be allowed to revise the same once within first three years of COD. The declared annual CUF shall in no case be less than 22%.

(g) The Procurer and intermediary procurer shall provide payment security to the wind power developer through revolving Letter of Credit of an amount not less than one-month average billing and Payment Security Fund for at least three months billing of all the projects. In addition, the procurer and intermediary procurer may also choose to provide the State Government Guarantee.

(h) the end procurer shall provide the payment security to the intermediary procurer through revolving LC of an amount not less than one month's average billing from the project under consideration and State Government Guarantee. In addition, the end procurer may also choose to provide the Payment Security Fund with atleast three months billing of all the projects tied up with such fund.

(i) The procurer shall call the bids adopting a single stage bidding process to be conducted through electronic mode (e-bidding). The procurers may adopt e-reverse auction, if it so desires. For this purpose, e-procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used.

(j) The RfS notice shall be issued in at least two national newspapers and on websites of the procurer to provide wide publicity. Standard documentation to be provided in the RfS stage shall include technical criteria, financial criteria, quantum of earnest money deposit, and lock-in-requirements for the lead members of the consortium.

(k) The procurer shall constitute committee for evaluation of the bids, with at least three members, including at least one member with expertise in financial matters/bid evaluation.

(l) The bidder shall submit non-refundable processing fee and/or project development fee as specified in the RfS, separate technical and priced bids and bid guarantee. To ensure competitiveness, the minimum number of qualified bidders shall be two. If the number of qualified bidders is less than two, even after three attempts of bidding, and the procurer still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.

(m) The PPA shall be signed with the successful bidder/ project company or an SPV formed by the successful bidder. After conclusion of the bidding process, Evaluation Committee shall evaluate the bids and certify that the bidding process and the evaluation have been conducted in conformity with the provisions of the RfS. After execution of the PPA, the procurers shall disclose the name(s) of the successful bidder(s) and the tariff quoted by them in its website. The distribution licensee or the intermediary procurer, as the case may be, shall approach the Appropriate Commission for the adoption of tariff in terms of Section 63 of the Act.

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

14. The Petitioner has been designated as the nodal agency for the implementation of the MNRE Schemes for setting up the inter-State Transmission System connected/ State specific wind/ solar power/ wind-solar hybrid power projects to invite bidding under tariff based competitive bidding process to enter into PPAs with developers at the tariff discovered in the competitive bid process; and to

enter into the PSAs with the distribution licensees to enable them to fulfil their Renewable Purchase Obligations under Section 86(1)(e) of the Act. SECI acts as an intermediary agency in the purchase and sale of power under the PPAs and PSAs on a back-to-back basis.

15. The Guidelines provide for the procurement of solar power at a tariff to be determined through a transparent process of bidding by the procurer(s) from the grid connected wind power projects having a size of 5 MW and above (for intra-State projects) and 25 MW and above (for inter-State project). As per the Guidelines, SECI, in the capacity of intermediary procurer, invited proposals for the selection of Wind Power Developers for setting up the 1200 MW ISTS connected wind power projects (Tranche XII). 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.

16. The key dates in the bidding process were as under:

Sr. No.	Milestone	Date
1	RfS issued by SECI.	22.10.2021
2	Corrigendum -01 to the RfS documents	22.10.2021
3	Pre-Bid Meeting held.	01.11.2021
4	Amendment -01 to RfS documents	18.11.2021
5	Corrigendum -02 to the RfS documents	22.11.2021
6	Last date of Bid Submissions.	02.12.2021
7	Opening of Techno-Commercial Bids.	06.12.2021
8	Opening of Financial Bids.	17.05.2022
9	E-Reverse Auction Conducted	24.05.2022
10	Issuance of Letter of Award to the Successful Bidders	12.07.2022

17. On 22.10.2021, SECI issued the RfS documents, along with the draft PPA and the PSA for the selection of the Wind Power Developers for setting up of 1200 MW ISTS connected wind power projects (Tranche XII) under tariff-based competitive

bidding. As per Clause 8.4 of the Guidelines, RfS notice is required to be published in at least two national newspapers and its own website to accord wide publicity. In this regard, SECI has placed on record the documents demonstrating the publication of RfS on the e-publishing system, Government of India. It has been further submitted that it did not publish the notices in the newspapers as per the advisory issued by the Ministry of Information and Broadcasting, Government of India, dated 17.5.2017, mandating the e-publishing of advertisements in the relevant portal. Accordingly, on 3.7.2018, SECI published a notification indicating that tenders of SECI would be published on its website and not in the newspapers. Further, as per Clause 5.1(b) of the Guidelines, the procurer is required to inform the Appropriate Commission about the initiation of the bidding process. SECI, vide its letter dated 28.10.2021, had informed the Commission that it has initiated the competitive bidding process for procurement of power from the grid-connected wind power projects.

18. The Bid Evaluation Committee (BEC) comprising the following was constituted for the opening and evaluation of the bids for RfS No. SECI/C&P/IPP/12/0002/21-22 dated 22.10.2021:

Tender	Department	Offline and Online Techo-commercial and Financial Bid Opening	Techno Commercial and Financial Evaluation and post e-RA recommendation
1200 MW ISTS-Connected Wind Power Projects (Tranche XII)	PS	Aditee Nitnavare, Dy. Manager	Pallav Yadu, Dy. Manager
	Contracts	Jayansh Gaur, Sr. Engineer	Biblesh Meena, Dy. Manager
	Finance	Ajit Kumar Sharma, Dy. Manager	Ajit Kumar Sharma, Dy. Manager

19. The last date of submission of the bid was 2.12.2021, and the technical part of the bid was opened on 6.12.2021. Response to RfS was received from the fifteen

bidders, and all of them fully met the technical criteria, and consequently, all of them were found to be qualified for the opening the financial bid. On 17.5.2022, financial bids of all fifteen 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 fourteen bidders for an aggregate capacity of 3010 MW were shortlisted for e-reverse auction:

Sr. No.	Bidder	Capacity Offered (MW)
1	NTPC Renewable Energy Limited	200
2	SJVN Limited	60
3	Halvad Renewables Private Limited	300
4	Green Infra Wind Energy Limited	120
5	Torrent Power Limited	300
6	Azure Power India Private Limited	200
7	JSW Neo Energy Limited	300
8	Blue Leaf Energy India Investment Pte. Ltd.	200
9	Teq Green Power XI Private Limited	200
10	Anupavan Renewables Private Limited	140
11	Tunga Renewable Energy Private Limited	160
12	AMP Energy Green Private Limited	180
13	Adani Renewable Energy One Limited	600
14	Power Mech Private Limited	50
	Total Capacity eligible for e-RA	3010

20. The e-reverse auction was carried out on 24.5.2022. After completion of the e-reverse auction, the following were declared as successful bidders:

Sr. No.	Bidder	Bidder's Quantity (MW)	Allotted Capacity (MW)	Tariff (INR/kWh)
1	NTPC Renewable Energy Limited	200	200	2.89
2	Halvad Renewables Private Limited	300	300	2.93
3	JSW Neo Energy Limited	300	300	2.94
4	Torrent Power Limited	300	300	2.94

21. Accordingly, on 12.7.2022, SECI issued the Letter of Awards (LoAs) to the selected bidders as under:

S. No.	Name of Successful Bidder	Allotted Capacity (MW)	Tariff (INR/kWh)
1	NTPC Renewable Energy Limited	200	2.89
2	Halvad Renewables Private Limited	300	2.93
3	JSW Neo Energy Limited	300	2.94
4	Torrent Power Limited	300	2.94
Total Awarded Capacity		1100	

22. The relevant extracts of the Letter of Award issued to one of the successful bidders, namely, NTPC Renewable Energy Limited, are 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)	Inter-connection points details	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
WPD-ISTS-T12-NTPCREL-P1-200 MW	200	ISTS-Bhuj, 200 kV	Rs. 2.89/-	Rupees Two and Eighty-Nine Paise only

It is to be noted that the WPD is allowed to change the project location and inter-connection point for the awarded project subsequent to issuance of LoA, as per provisions 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.

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) till 01 (one) year after the COD, except with the prior approval of SECI. However, in case the Project is being set up by a listed Company, this condition will not be applicable.

1.5 In case of companies having multiple promoters (but none of the shareholders having more than 51% of voting rights and paid up share capital), it shall be considered as a company under joint control. In such cases, the shareholding pattern in the company as submitted at the time of bidding, shall be maintained for a period of 01 (one) year after COD.

1.6 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 1 (one) year from the COD, except with the prior approval of SECI. In the event the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the PPA, shall not fall below 51% at any time prior to 1 (one) year after COD, except with the prior approval of SECI. However, in case the Project is being set up by a listed company, this condition will not be applicable.

1.7 The WPD shall pay to SECI, Success Charges of Rs.1 Lakh/MW + 18% GST by 31.03.2021 or the date at least 07 days prior to the date of signing of PPA (PPA signing date to be intimated by SECI), whichever is earlier, in line with Clause 19.1 of the RfS, towards administrative overheads, coordination with State Authorities and others, Discom/STU/CTU, pre-commissioning and commissioning expense. Performance Bank Guarantee(s)/Payment on Order Instrument (POI) for a value of @ Rs. 12 Lakh/MW/Project shall be submitted by the WPD at least 07 days prior to signing of PPA (PPA signing date to be intimated by SECI), in line with Clause 18 of the RfS.

1.8 PPA will be executed between SECI and the WPD 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.

1.9 The final project configuration, adding up to the cumulative capacity awarded to the bidder may be intimated to SECI at the time of signing of PPA, which shall then remain unchanged subsequent to signing of PPA. Delays in connectivity and/or LTA for the Project(s) on account of such changes in Project parameters, which differ from the details provided in the Covering letter shall be at the risk of the Successful Bidder. The PPAs shall be valid for a period of 25 years from the scheduled commissioning date or from the date of full commissioning of the projects, whichever is earlier.

1.10 The WPD will have to submit the required documents as mentioned below to SECI by the date at least 07 days prior to the date of signing of PPA (PPA signing

date to be intimated by SECI). In case of delay in submission of documents beyond the timeline as mentioned above, SECI shall not be liable for delay in verification of documents and subsequent delay in signing of PPA:

- 1) Copy of the Certificate of Incorporation of the WPD.
- 2) 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).
- 3) 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.
- 4) 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.
- 5) Copy of Board Resolution from SPV 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. In addition to the above, the successful Bidder shall also submit a detailed L-2 Schedule for the Project Prior to the signing of the PPA. Board details to be captured in the Schedule are the land procurement; order, supply and erection status of various Project components; financial arrangement/tie up etc. SECI shall provide the Standard L-2 Schedule template to the Successful Bidder after the issuance of LoA.

1.11 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 has to be signed within 90 days from the date of issue of this LoA, if not extended by SECI. In case of delay on the part of the WPD in submission of requisite documents prior to signing of PPAs or otherwise, then irrespective of the date of signing of PPA, the Effective Date of the PPA shall be the date as on 90 days from the date of issue of LoA. In extraordinary cases of unavoidable delay on the part of SECI in signing the PPAs, the effective date of PPA shall be the date of signing of PPA.

1.12 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 selected Project shall stand cancelled, and provisions of Clause 17 of the RfS will be applicable, and the selected Bidder expressly waives off its rights and objections, if any, in that respect.

1.13 The WPD shall meet financial closure for the Project in line with clause 22 of the RfS document, within 07 (seven) months from the Effective Date of the PPA. Accordingly, the WPD shall furnish the documents pertaining to compliance of financial closure as per the above provisions.

1.14 The WPD/Project Company shall achieve commissioning of full capacity of the Project within 24 months from the Effective Date of the PPA or from the Effective Date of PSA, whichever is later as per the conditions stipulated in Clause 9 of the RfS and relevant articles of PPA. In case of failure to achieve this milestone, liquidated damages not amounting to penalty shall be levied on the WPD as per the above provisions....”

23. It has been submitted by the Petitioner that the selection of the aforesaid bidders for the supply of power and the quantum of capacity available for the procurement from the selected bidders were communicated to the concerned Distribution Licensee/Buying utilities and that the PSAs have been signed as under:

S. No.	Buying Utilities	Date of PSA signing	PSA Capacity (MW)	Applicable Tariff to Buying Utility (INR/kWh)
1.	GRIDCO Limited	2.2.2023	390	As per Article 1.1 read with Schedule B of the PSA: Applicable Tariff payable to Wind Power Developer under PPA Plus INR 0.07/kWh (Trading Margin)
2.	Uttar Pradesh Power Corporation Limited	14.3.2023	710	As per Article 1.1 read with Schedule B of the PSA: Applicable Tariff payable to Wind Power Developer under PPA Plus INR 0.07/kWh (Trading Margin)

24. Pursuant to the above, the Petitioner has also entered into the PPAs for 800 MW capacity with the Successful Bidders/their Project Companies as under:

S. No.	Name of Successful Bidder	Project Company formed by the Successful bidder for execution of PPA	Date of PPA signing & Contracted Capacity (MW)	Applicable Tariff (INR/kWh)
1	NTPC Renewable Energy Limited	-	6.6.2023 (200 MW)	2.89
2	JSW Neo Energy Limited	JSW Renew Energy Three Limited	4.5.2023 (300 MW)	2.94
3	Torrent Power Limited	Torrent Saurya Urja 2 Private Limited	4.5.2023 (300 MW)	2.94

	Total		800	
--	--------------	--	------------	--

25. In response to the specific query of the Commission with regard to the status of the execution of the PPA with a successful bidder, namely, Halvad Renewables Private Limited, the Petitioner, by its additional affidavit dated 20.1.2024 has submitted that subsequent to filing of the present Petition, SECI by its letter dated 27.12.2023 has cancelled the LoA of 300 MW issued in favour of the Halvad Renewables Private Limited on being informed vide letter dated 3.8.2023 that it would not be in a position to sign the PPA due to reasons beyond its control. The Petitioner has indicated that in view of the aforesaid cancellation of the LoA issued to Halvad Renewables Private Limited, the PSA capacity will get reduced to the extent of capacity mapped to Halvad Renewables Private Limited on a pro-rata basis as per Article 3.4 of the PSAs. Accordingly, the contracted capacity under the PSA with UPPCL will be reduced to 516 MW from 710 MW, and the PSA with GRIDCO Limited will be reduced to 284 MW from 390 MW. The above submissions of the Petitioner, including the revision in the capacity under the PSAs, are taken note of, and accordingly, the concerned capacity for the present tariff adoption proceedings (i.e. total tied-up capacity under the PPAs and PSAs) stood at 800 MW only.

26. As per Clause 12.2 of 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. Moreover, the Petitioner has also stated that the applicable Guidelines and amendments/clarifications thereof, if any, issued by the Govt. of India were followed for the bid process in the above tender and that no deviations were taken in them from the provisions of the Guidelines. This has been certified by the Petitioner through the two conformity certificates dated 3.4.2023

and 10.4.2023 furnished by the Petitioner. The relevant extracts of the certificates are reproduced as under:

“Conformity Certificate-1

With respect to the RfS no. SECI/C&P/IPP/12/0002/21-22 dated 22.10.2021, 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.

Conformity Certificate-2

With respect to the RfS no. SECI/C&P/IPP/12/0002/21-22 dated 22.10.2021, it is hereby declared as follows:

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

27. In view of the aforesaid discussions, it emerges that the selection of the successful bidders has been done, and the tariff of the wind power projects has been discovered by the Petitioner, SECI, through a transparent process of competitive bidding in accordance with Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff for the wind power projects, as agreed to by the successful bidders, and for which the PPAs have been entered into by SECI on the basis of the PSAs with the distribution licensees, which shall remain valid throughout the period covered in the PPAs and PSAs as under:

S. No.	Name of Successful Bidder	Project Company formed by the Successful bidder for execution of PPA	Date of PPA signing & Contracted Capacity (MW)	Applicable Tariff (INR/kWh)
1	NTPC Renewable Energy Limited	-	6.6.2023 (200 MW)	2.89
2	JSW Neo Energy Limited	JSW Renew Energy Three Limited	4.5.2023 (300 MW)	2.94
3	Torrent Power Limited	Torrent Saurya Urja 2	4.5.2023	2.94

		Private Limited	(300 MW)	
	Total		800	

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

29. It is noticed that Article 10.3 of the PPAs 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 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, 1.25% 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 Scheduled Commissioning Date 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.

30. Further, Article 10.4 of the PPAs provides as under:

“10.4 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 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 30 days beyond 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 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 expiry.

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.

31. Whereas 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.”

32. The above provisions provide for the 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.

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

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

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

35. 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.”

36. 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.”

37. The above two provisions are exceptions to the main provision as regards the trading margin. The distribution licensees/end procurers have agreed to a trading margin of Rs.0.07/kWh as agreed in the PSAs, 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, specified in Regulation 8(1)(d) and Regulation 8(1)(f) of the Trading Licence Regulations.

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

39. Petition No.334/AT/2023 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(Jishnu Barua)
Chairperson