

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 260/AT/2021

Coram:

Shri I.S.Jha, Member

Shri Arun Goyal, Member

Shri P.K.Singh, Member

Date of Order: 11th April, 2022

In the matter of:

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 1200 MW Wind Power Projects (Tranche-X) connected to the Inter-State Transmission System and selected through competitive bidding process as per the Guidelines dated 8.12.2017 of the Ministry of Power, 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

Versus

1. Adani Renewable Energy Holding Fifteen Limited,
[Successful Bidder]
“Adani Corporate House”, 4th Floor-South Wing,
Shantigram, Near Vaishno Devi Circle, S. G. Highway,
Khodiyar- 382421, Ahmedabad

2. Ayana Renewable Power Six Private Limited,
[Successful Bidder]
S 2904, 29th Floor, World Trade Centre,
Brigade Gateway Campus, 26/1, Dr. Rajkumar Road,
Malleshwaram, Rajajinagar,
Bangalore- 560055

3. Evergreen Power Mauritius Private Limited,
[Successful Bidder]
Tri-Pro Administrators Ltd, Level 5,
Maeva Tower, Bank Street, Cybercity, Elbene,
Republic of Mauritius

4. JSW Future Energy Limited,
[Successful Bidder]
JSW Centre, Banda Kurla Complex, Bandra (East),
Mumbai-400051
5. Adani Renewable Energy Seven Limited,
[Project Company of Adani Renewable Energy Holding Fifteen Limited]
“Adani Corporate House”,
Shantigram, Near Vaishno Devi Circle, S. G. Highway, Khodiyar-382421,
Ahmedabad
6. Viento Renewables Private Limited,
[Project Company of Evergreen Power Mauritius Private Limited]
306, Town Centre II, Andheri-Kurla Road,
Marol, Andheri East,
Mumbai-400059
7. JSW Renew Energy Two Limited,
[Project Company of JSW Future Energy Limited]
JSW Centre, Banda Kurla Complex, Bandra (East),
Mumbai-400051
8. Jaipur Vidyut Vitaran Nigam Limited,
Vidyut Bhawan, Janpath, Jyoti Nagar
Jaipur–302005, Rajasthan
9. Ajmer Vidyut Vitaran Nigam Limited,
Vidyut Bhawan, Panchsheel Nagar, Makarwali Road
Ajmer-305 004, Rajasthan
10. Jodhpur Vidyut Vitaran Nigam Limited,
New Power House, Industrial Area,
Jodhpur, Rajasthan – 342003
11. Rajasthan Urja Vikas Nigam Limited,
Vidyut Bhawan, Janpath, Jyoti Nagar
Jaipur- 302005

....Respondents

The following were present:

Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Srishti Khindaria, Advocate, SECI
Shri Anand K. Ganesan, Advocate, Rajasthan Discoms
Shri Ashwin Ramanathan, Advocate, Rajasthan Discoms
Ms. Neha Singh, SECI
Shri Atulya Kumar Naik, SECI
Shri Shibasish Das, SECI

Shri Mudit jain, SECI
Shri Abhay Yagnik, JSW
Ms. Kamini Mangal, JSW

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 adoption of tariff for 1200 MW wind power projects (Tranche-X) 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 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 individual power projects as stated in Table-1 at Paragraph 7 (iv) above on the terms and conditions contained in the Power Purchase Agreements entered with the Respondent Nos.2, 5, 6, 7 read with the Power Sale Agreement executed with Respondent Nos.8 to 11;

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

(c) Recognize, in terms of Article 12.1.3 of the PPAs and Recital XII of the PSA, that the change in rates of Safeguard Duty, GST and Basic Customs Duty after 19.02.2021, if any, will be considered as Change in Law subject to the fulfilment of the conditions contained therein; and

(d) 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 21.12.2020, it issued Request for Selection (RfS) along with draft Power Purchase Agreement (PPA) and draft Power Sale Agreement (PSA) documents for setting up of 1200 MW ISTS connected wind power

projects (Tranche-X) as per the Guidelines and floated the same on ISN Electronic Tender System (ISN ETS) e-bidding portal. The Petitioner has submitted that in pursuance to the above, twelve bids were received offering an aggregate capacity of 3200 MW and all of them were found to meet the technical criteria. On 12.3.2021, the financial bids of technically qualified bidders were opened on ISN ETS e-bidding portal and out of twelve bidders, eleven bidders for capacity aggregating 3150 MW were shortlisted for e-reverse auction. The Petitioner has submitted that e-reverse auction of eleven technically qualified bidders was conducted on 15.3.2021 on ISN ETS e-bidding portal and the final tariff was arrived. The Petitioner has submitted that the wind power projects are scheduled to be commissioned in the year 2022-23 and these projects would help the distribution licensees to meet their Renewable Purchase Obligations (RPOs) requirements apart from providing power at very economical rates. The Petitioner has submitted that it has agreed to sell entire 1200 MW of wind power to the distribution licensees, namely, Respondents No. 8 to 11 under the PSA executed with them at the rate of Rs.2.77/kWh [300 MW] and Rs. 2.78/kWh [900 MW] plus trading margin of Rs.0.07/kWh upon commissioning of the above capacity. According to the Petitioner, since the tariff discovered through competitive bid process is even lesser than the procurement cost of conventional power, procurement of such power would be beneficial for the distribution licensees and the consumers at large.

Hearing dated 21.1.2022.

3. The matter was heard on 21.1.2022 and notice was issued to the Respondents. However, none of the Respondents filed a reply pursuant to the notice.

4. The Petitioner vide Record of Proceedings for the hearing dated 21.1.2022 was directed to file comparative statement indicating the steps and processes followed by the

Petitioner in the bidding/ tender, mapping the same to the corresponding enabling provisions of the Guidelines issued by the Central Government, which has been filed by the Petitioner vide affidavit dated 16.2.2022.

Hearing dated 24.3.2022:

5. During the course of hearing on 24.3.2022, learned senior counsel for the Petitioner submitted that SECI has already executed the PPAs with the successful bidders/their project companies and the PSA with the distribution licensees of Rajasthan for entire capacity of 1200 MW. He further submitted that SECI has placed on record all the requisite details including the Conformity Certificate dated 4.10.2021. The bid documents are in line with the provisions of the Guidelines read with the certain deviations approved by the Ministry of New and Renewable Energy, Government of India vide letter dated 1.3.2021. Learned senior counsel also clarified that no changes have been made in the bid documents after the bid deadline.

6. Learned counsel for the Respondent No.8, Respondent No.9, Respondent No.10 and Respondent No.11, Rajasthan Distribution Companies sought liberty to file reply to the Petition and to place on record certain factual aspects such as the Respondents having filed a Petition before the State Electricity Regulatory for approval of power procurement, which is currently pending. Learned counsel, however, added that the Respondents are not opposing prayers of the Petitioner.

7. The Respondents, Rajasthan Distribution Companies, vide affidavit dated 22.3.2022 have filed reply and have mainly submitted as under:

(a) RUVNL in its Board meeting held on 28.2.2019 had, in view of its Renewable Purchase Obligations, decided to procure 1426 MW wind power. In its

Board meeting dated 23.12.2019, RUVNL had decided to go for bidding through SECI. Accordingly, vide letter dated 16.6.2020, RUVNL conveyed its consent to SECI. Vide letter dated 5.2.2021, SECI confirmed for 1200 MW ISTS connected wind Tranche-X bidding.

(b) On 26.10.2021, RUVNL has filed Petition No. 1953 of 2021 before the Rajasthan Electricity Regulatory Commission seeking approval for procurement of 1200 MW wind power under the PSA dated 26.8.2021 at the tariff discovered through the bidding process issued by SECI plus a trading margin of Rs. 0.07/kWh under Section 86(1)(b) of the Act.

(c) The Respondents support the prayer for adoption of tariff discovered in the tariff based competitive bidding process. However, adoption of tariff by this Commission in the present Petition can be subject to approval by the State Commission for such procurement by the Respondents.

(d) As regard the prayer for approval of trading margin of Rs. 0.07/kWh, the Respondents have signed the PSA and have agreed to a trading margin of Rs.0.07/kWh which is subject to approval of the State Commission under Section 86(1)(b) of the Act. There may not be any requirement of this Commission to give specific approval to the trading margin of Rs.0.07/kWh which as per the Regulation 8(1)(d) of the Trading Licence Regulations is to be as per mutual agreement of parties.

(e) In terms of Article 12.1.3 of the PPAs, the Commission is to recognize the provision that the change in rates of Safeguard Duty, GST and Basic Custom Duty after 19.2.2021 would be treated as a Change in Law. On principle, these can be recognized as Change in Law. The impact, however, has to be seen on a case to case basis.

8. The Petitioner in its rejoinder dated 6.4.2022 has mainly submitted as under:

(a) The matter relating to trading margin is subject matter governed by the Central Commission under Section 79 of the Act. SECI is an inter-State trading licensee and the nature of the transactions involved in the present matter is of inter-State operations. The wind power developers are setting up the projects in the

States of Karnataka and Tamil Nadu for sale and consumption of power in the State of Rajasthan. Accordingly, the PPAs and PSAs would be governed by Section 79 (1) (b) of the Act, there being a composite scheme for generation and sale in more than one State conferring jurisdiction on Central Commission. In this regard, reliance has been placed on the judgment of Hon`ble Supreme Court in the case of Energy Watchdog vs. Central Electricity Regulatory Commission & others and judgment of APTEL dated 2.7.2021 in Appeal No. 52 of 2021 in the case of Solar Energy Corporation of India Limited Vs. Delhi Electricity Regulatory Commission.

(b) Rajasthan Discoms have duly agreed to trading margin of Rs. 0.07/kWh in the PSA dated 26.8.2021 executed with SECI.

Analysis and Decision

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

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

12. 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 said Guidelines have

been subsequently amended vide Resolution dated 16.7.2019. The salient features of the Guidelines are as under:

(a) Guidelines are applicable for 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 procurers which includes distribution licensee, or the authorized representative(s), or intermediary procurers.

(b) 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. 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) 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) Wind power developer will declare the annual CUF of its Project at the time of signing of 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) 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 State Government Guarantee.

(h) End procurer shall provide 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, end procurer may also choose to provide Payment Security Fund with atleast three months billing of all the projects tied up with such fund.

(i) 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) 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) 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) 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) PPA shall be signed with the successful bidder/ project company or an SPV formed by the successful bidder. After conclusion of 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 RfS. After execution of the PPA, 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, shall approach the Appropriate Commission for adoption of tariff in terms of Section 63 of the Act.

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

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

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

Sr. No.	Milestone	Date
1	RfS issued by SECI	21.12.2020
2	Amendments/ Clarification and Corrigendum to RfS	29.1.2021-11.2.2021

Sr. No.	Milestone	Date
3	Last date of bid submission	19.2.2021 (online) 23.2.2021 (offline)
4	Opening of techno-commercial bids	24.2.2021
5	Opening of financial bids	12.3.2021
6	e-Reverse Auction conducted	15.3.2021
7	Issuance of Letter of Awards	19.3.2021

16. On 21.12.2020, SECI issued Request for Selection document, along with draft PPA and PSA documents for setting up of 1200 MW ISTS-connected wind power projects (Tranche X). According to SECI, it did not publish the notices in the newspapers as per the advisory of Ministry of Information and Broadcasting, Government of India dated 17.5.2017 mandating e-publishing of advertisements in the relevant portal. Accordingly, on 3.7.2018, SECI published notification in the newspapers indicating that tenders of SECI will henceforth be published in its website and not in the newspapers.

17. As per Clause 5.1(b) of the Guidelines, procurer is required to inform the Appropriate Commission about initiation of the bidding process. In this regard, SECI vide its letter dated 19.1.2021 had informed the Commission that it has initiated the competitive bidding process for procurement of power from grid connected wind power projects under the RfS dated 21.12.2020.

18. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids under RfS-No. SECI/C&P/WPD/1200MW/T10/RfS/122020 dated 21.12.2020:

Tender	Department	Techno-commercial and financial evaluation and post-e-RA recommendation (Name & Designation)
1200 MW ISTS-	Power System	Aditee Nitnavare, Deputy Manager

wind Power Projects (Tranche – X)	Contracts & Procurement	Biblesh Meena, Dy Manager
	Finance	Ajit Sharma, Dy. Manager

19. Last date of submission of bid was 19.2.2021 (online) and 23.2.2021 (offline) and the technical part of the bid was opened on 24.2.2021. Response to RfS was received from twelve bidders and all of them fully met the technical criteria and consequently, were found to be qualified for opening of financial bid. On 12.3.2021, financial bids of twelve technically qualified bidders were opened on the ISN ETS e-bidding portal in the presence of member of Bid Evaluation Committee. As per the eligibility criteria mentioned in the RfS document, the following eleven bidders for aggregating 3150 MW were shortlisted for e-reverse auction:

Sr. No.	Bidder	Capacity Offered (MW)
1	Adani Renewable Energy Holding Fifteen Limited	300
2	Ayana Renewable Power Six Private Limited	300
3	Evergreen Power Mauritius Private Limited	150
4	JSW Future Energy Limited	600
5	Azure Power India Private Limited	300
6	O2 Power SG PTE. Ltd.	300
7	Shirdi Sai Electricals Limited	300
8	AMP Energy Green Private Limited	150
9	Tunga Renewable Energy Private Limited	150
10	ReNew Vyan Shakti Private Limited	300
11	Halvad Renewables Private Limited	300
	Total	3150

20. The e-reverse auction was carried out on 15.3.2021 in the presence of the members of BEC. After completion of e-reverse auction, the following were declared as successful bidders:

Sr. No.	Bidder	Bidder's Quantity (MW)	Tariff (INR/kWh)	Allotted Capacity (MW)
1.	Adani Renewable Energy Holding Fifteen Limited.	300	2.77	300
2.	Ayana Renewable Power Six Private Limited.	300	2.78	300
3.	Evergreen Power Mauritius Private Limited.	150	2.78	150
4.	JSW Future Energy Limited.	600	2.78	450
Total				1200

21. Accordingly, on 19.3.2021, SECI issued Letter of Awards (LoAs) to the selected bidders as under:

Sr. No.	Bidder	Tariff (INR/kWh)	Allotted Capacity (MW)
1.	Adani Renewable Energy Holding Fifteen Limited.	2.77	300
2.	Ayana Renewable Power Six Private Limited.	2.78	300
3.	Evergreen Power Mauritius Private Limited.	2.78	150
4.	JSW Future Energy Limited.	2.78	150
5.	JSW Future Energy Limited.	2.78	300
Total			1200

22. Relevant extract of Letter of Award issued to one of the successful bidders, namely Adani Renewable Energy Holding Fifteen 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)	Inter-connection points details	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
WPD-ISTS-T10-AREHFL-P1-300MW	300	400/220 kV Koppal Pooling Station	Rs.2.77/-	Rupees Two and seventy-seven paisa 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, Excise Duties, Tax Holidays, etc. as available for such projects. No claims shall arise on SECI for any liability if the WPD is not able to avail fiscal incentives and this will not have any bearing on the applicable tariff.

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

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

1.4 In case of the 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 on or before 01.04.2021, 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 remain 01.04.2021, or in case of delay of signing of PPA attributable to SECI, the actual date of signing of PPA, whichever is later.

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 18 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. Based on request of distribution licensees, entire 1200 MW capacity has been allocated to Respondent No.8, Respondent No.9, Respondent No.10 and Respondent No.11, namely Jaipur Vidyut Vitran Nigam Limited, Ajmer Vidyut Vitran Nigam Limited, Jodhpur Vidyut Vitran Nigam Limited and Rajasthan Urja Vikas Nigam Limited (collectively ‘Rajasthan Discoms’) and SECI has entered into with PSA with Rajasthan Discoms on 26.8.2021 in this regard.

24. Pursuant to the above, SECI has entered into PPA dated 16.9.2021 for 300 MW with Adani Renewable Energy Seven Limited (Project company of Adani Renewable Energy Holding Fifteen Ltd.), PPA dated 14.9.2021 for 300 MW with Ayana Renewable Power Six Private Limited, PPA dated 10.9.2021 for 150 MW with Viento Renewable Private Limited (Project company of Evergreen Power Mauritius Pvt. Ltd.) and PPAs dated 15.9.2021 for 150 MW and 300 MW with JSW Renew Energy Two Limited (Project company of JSW Future Energy Ltd.)

25. In the light of the discussions as above, it emerges that selection of the successful bidder and determination of tariff of the Projects has been carried out by SECI through a transparent process of competitive bidding in accordance with Guidelines issued by Ministry of Power, Government of India under Section 63 of the Act. As per Clause 12.2 of

the Guidelines, Bid Evaluation Committee is required to certify that the bidding process and the evaluation has been conducted in conformity with provisions of the RfS. SECI vide its letter dated 4.10.2021 has certified that the process has been carried out in conformity with the Guidelines issued by Government of India and no deviation was taken from the Guidelines in the RfS documents. It has also been certified that the bid evaluation has been conducted in conformity to the provisions of the RfS. Relevant portion of the said letter dated 4.10.2021 is extracted as under:

“We respect to the RfS No. SECEI/C&P/WPD/1200MW/T10/RfS/122020 dated: 21.12.2020, 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.*
- 2. Applicable Guidelines and amendments/clarifications thereof, if any, issued by Government of India for the bidding process were followed in the above tender and no deviation was taken from the Guidelines in the RfS documents for the above tender.”*

26. The Petitioner has submitted that it has incorporated certain changes in the bid documents in deviation to the provisions of the Guidelines with regard to the provisions of Change in Law. However, such changes have been accorded *post facto* approval of Ministry of New and Renewable Energy, Government of India (MNRE) vide letters dated 18.12.2020 and 1.3.2021, whereby the MNRE in exercise of its powers to issue clarification/modification under the Guidelines, accorded the *ex-post facto* approval for changes in respect of certain provisions vis-à-vis Guidelines in respect of (i) bids that have been issued but not closed; and (ii) bids that have been issued and closed by SECI.

27. We have considered the submissions made by the Petitioner. It is observed that while the Guidelines provide for determination of quantum of compensation for off-setting

the financial impact due to increase/ decrease in the costs on account of occurrence of Change in Law event by the Appropriate Commission, the Petitioner in PPA and PSA has provided for pre-determined quantum of compensation for Change in Law events, whereby for every net increase/ decrease of Rs.1 lakh per MW in the project cost, there shall be corresponding increase/ decrease of an amount equal to Rs.0.0045/kWh.

28. The Petitioner has submitted that such changes have been approved by the Ministry of New and Renewable Energy, Government of India and has placed on record the correspondence exchanged with MNRE in this regard. The Petitioner, SECI has placed on record its letter dated 26.11.2020 and e-mail dated 13.1.2021 sent to MNRE requesting for certain modifications to the Guidelines to accommodate the concerns of various stakeholders, to allow SECI to incorporate changes in the scheme documents and to enter into PSAs and PPAs, etc. The Petitioner has also placed on record letter dated 1.3.2021 issued by MNRE to SECI, whereby MNRE in exercise of its powers to issue clarifications/ modifications under the Guidelines, granted ex-post facto approval for changes in respect of certain provisions including Change in Law provisions vis-à-vis the Guidelines in respect of (i) bids that have been issued but not closed; and (ii) bids that have been issued and closed by SECI. The relevant extract of the letter of MNRE dated 1.3.2021 is as under:

*“The Chairman & Managing Director
Solar Energy Corporation of India (SECI)*

Sub: SECI's request for allowing Deviation from Standard Bidding Guidelines, in respect of Bids by SECI for procurement of power-Reg

Sir,

This is in reference to the SECI's letter No. SECI/SD/Misc/40098 dated 26.11.2020 (Copy enclosed) and subsequent email dated 13.01.2021 (copy enclosed) on the subject issue:

2. In this regard, the undersigned is directed to inform SECI that:

.....

III. Meanwhile, SECI is allowed to make changes/deviations, as per SECI's proposal in aforesaid letter/email, on the points mentioned below, both in bids that have been issued but not closed and in bids that have been issued and closed. However, where the bids have been closed, SECI should be very carefully ensure that no additional benefit accrues to the successful bidder and there is no impact on the discovered tariff;

- a. Termination compensation on Account of Non-Natural Force Majeure Conditions;*
- b. Option of taking over of the Project assets by the Buying Entities in case of SPD's Event of Default.*
- c. Change in Law provisions*
- d. Additional Risk Premium of Rs.0.10/kWh.*

3. This issues in line with the approval of Hon`ble Minister (NRE & Power)..."

29. Thus, as per above letter of MNRE, SECI has been permitted to make changes/ deviations from the Guidelines, as per SECI's proposal vide its letter dated 26.11.2020 and e-mail dated 13.1.2021, which *inter-alia* included the changes/ deviations to the provisions of the Change in Law, both in (i) the bids that have been issued but not closed, and (ii) the bids that have been issued and closed.

30. Given the fact that the bidding in the present case was already closed at the time of issuance of the aforesaid approval of deviations by MNRE, the question that arises before the Commission is whether such approval of deviations from the bidding guidelines after the closure of bids violates the sanctity of bidding process and whether the Petitioner has complied with direction of the letter dated 1.3.2021 of MNRE requiring it to ensure that no additional benefit accrues to the successful bidder and that there is no impact on the discovered tariff.

31. We observe that the modified Change in Law provisions appear to have been already incorporated in the bid documents at the time of issuance of the same. During the course

of hearing, learned senior counsel clarified that no changes to bid documents have been made after the closure of bids. Therefore, it does not appear to be a case that such provisions have been introduced after the closure of the bid and thus, bidder(s) participating in the bid were made aware about the said provisions. At the same time, the fact remains that the said deviations were not approved by the competent authority at the time of their incorporation in the bid documents prior to closure of bids and the approval granted for the same was only on ex-post facto basis. We are of the view that the Petitioner should have waited for the approval of its proposal from MNRE before proceeding with the bidding process.

32. The bid covered under the present petition falls under the second set of bids (where bids have been issued and closed), as the last date of submission of bid was 19.2.2021 (online), whereas the deviations were approved by MNRE vide its letter dated 1.3.2021. Further, in the said letter dated 1.3.2021, MNRE directed SECI as under:

“...However, where the bids have been closed, SECI should be very carefully ensure that no additional benefit accrues to the successful bidder and there is no impact on the discovered tariff;...”

33. The Commission views the approach of the Petitioner not only unprofessional but also non-adherence to laid down procedures, which is not expected from a Government of India Public Sector Undertaking like SECI. We would like to advise SECI that it must invariably always comply with the procedural and legal requirements in letter and spirit.

34. 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 (read with *ex post facto* approval vide letter dated 1.3.2021 of MNRE) issued by 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 project, as agreed to by the successful bidder(s), and for which PPAs has been entered into by SECI on the basis of the PSA with the distribution licensees, which shall remain valid throughout the period covered in the PPA and PSAs as under:

Sr. No.	Successful Bidder(s)	Project Company formed for executing PPA	Tariff (Rs./kWh)	Capacity (MW)
1.	Adani Renewable Energy Holding Fifteen Limited	Adani Renewable Energy Seven Limited	2.77	300
2.	Ayana Renewable Power Six Private Limited	--	2.78	300
3.	Evergreen Power Mauritius Private Limited	Viento Renewables Private Limited	2.78	150
4.	JSW Future Energy Limited	JSW Renew Energy Two Limited	2.78	150
5.	JSW Future Energy Limited	JSW Renew Energy Two Limited	2.78	300
Total				1200

35. Article 10.3 of the PPA provides as under:

“10.3 Payment of Monthly Bills

10.3.1 Buyer 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 Buyer, 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."

36. Further, 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 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 the estimated average monthly billing;*
- ii) for each subsequent Contract Year, equal to 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 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 drawal.

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 Monthly Bill or Supplementary Bill or a part thereof within and including date as pm 30 days beyond 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 10.43.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

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

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

37. Regulation 9(10) 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.”

38. The above provisions provide for 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 all the concerned parties to the present Petition.

39. The Petitioner has also prayed to approve the trading margin of Rs.0.07/kWh as agreed to by the Rajasthan Distribution Companies in the signed PSA in terms of the PSAs with the distribution licensees. The Respondents, Rajasthan Discoms have contended that since trading margin of Rs.0.07/kWh, is subject to approval of the State Commission under Section 86(1)(b) of the Act, there may not be any requirement of this Commission to give specific approval to the trading margin of Rs.0.07/kWh. We have considered the submissions of the parties. The nature of the transactions involved in the present case being inter-State operation, and not intra-State or within the State operations, the Central Commission has jurisdiction to deal with the trading margin of the inter-State

trading licensee (SECI) acting in terms of such trading licence granted by this Commission under Section 79 (1) (e) of the Act read with Section 14 of the Act and under Trading Licence Regulations. The jurisdiction to deal with the applicable trading margin of SECI is of the Central Commission under Section 79 (1) (j) of the Act. Accordingly, the Commission has framed the Trading Licence Regulations which *inter-alia* provides for trading margin. In this regard, Regulation 8(1)(d) of the Trading Licence Regulations dealing with trading margin provides as under:

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

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

41. 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.”

42. 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.”

43. The above two provisions are exceptions to the main provision as regards trading margin. Distribution licensees have 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. Therefore, in case of failure by SECI to provide escrow arrangement or

irrevocable, unconditional and revolving letter of credit to the wind generators, the trading margin shall be limited to Rs.0.02/kWh as specified in the Regulation 8(1)(d) and Regulation 8(1)(f) of the Trading Licence Regulations.

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

45. Additionally, the Petitioner has also prayed to recognize, in terms of Article 12.1.3 of the PPAs and Recital XII of the PSA, that change in the rates of Safeguard Duty, GST and Basic Customs Duty after 19.2.2021, if any, will be considered as Change in Law subject to the fulfilment of the conditions contained therein. The Article 12.1.3 of the PPAs and Article XII of the PSA read as under:

PPAs:

“ARTICLE 12: CHANGE IN LAW

.....

12.1.3 However, in case of change in rates of safeguard duty, GST and basic customs duty after 19.02.2021 and resulting in change in Project Cost, then such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties and shall be provided to the affected party by the other party as per Article 12.2.3, subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff by the Appropriate Commission and any decision in this regard shall be governing on WPD and Buying Entity.”

PSA:

“XII. The parties agree that the various terms contained in SECI-WPD PPA such as Scope of Project, Terms of the Agreement, Performance Guarantee, Conditions Subsequent, Obligations of the respective Parties, Construction of the Power Generation Capacity, Synchronization, Commissioning and Commercial Operation, Operation and Maintenance, Purchase and Sale of Wind Power, Measuring and Metering and Dispatch of Power, Billing and Power Accounting and payments, Liabilities, Force Majeure, Event of Default, Termination, Transfer, Change in Law, Indemnity, Insurance, Assignment and Changes, Financing and Bankability, Representation and Warranties, Governing Law, Notices and all other Miscellaneous Terms provided in the SECI-WPD PPA shall mutatis mutandi apply to this agreement between SECI and Buying Entity.”

46. Perusal of the above Articles of the PPAs/PSA reveals that the parties have agreed that in case of changes in rates of Safeguard Duty, GST and Basic Customs Duty after 19.2.2021 and resulting in Change in project cost, such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties shall be provided to the affected party as per Article 12.2.3 subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff and any decision in this regard shall be governing on WPD and buying entity.

47. It is noted that the changes in rates of Safeguard Duty, GST and Basic Customs Duty are primarily affected by the notifications of Ministry of Finance, Government of India which qualifies to be an Indian Government Instrumentality under the PPAs/PSA. Further, changes in the rates of taxes and duties after the bid deadline have been treated as Change in Law events in catena of decisions of this Commission and the Appellate Tribunal for Electricity.

48. Since the parties have incorporated specific provisions for treating change in rates of Safeguard Duty, GST and Basic Customs Duty after 19.2.2021 resulting in change in project cost as Change in Law, we recognize the said events as Change in Law at the stage of adoption of tariff.

49. Prayer (c) of the Petitioner is allowed accordingly.

50. The Petition No.260/AT/2021 is disposed of in terms of the above.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member