

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 235/AT/2022

**Coram:
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of order: 8th January, 2023

In the matter of

Petition under section 63 of the Electricity Act, 2003 for adoption of tariff for renewable energy projects connected to inter-state transmission system (ISTS) with assured peak power supply in India 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) ReNew Solar Power Private Limited,
ReNew Hub, Commercial Block-1, Zone-6,
Golf Course Road, DLF City Phase V,
Gurugram, Haryana – 122009
- 2) Greenko Energies Private Limited,
Plot No: 1071, Road No. 44,
Jubilee Hills, Hyderabad,
Telangana – 500033
- 3) Greenko AP01 IREP Private Limited,
Plot No.13, SY. NO. 64 Part, Second Floor, Block D,
Hitech City Layout, Madhapur,
Hyderabad Rangareddi,
Telangana – 500081
- 4) Damodar Valley Corporation,
DVC Towers, VIP Road,

Kolkata – 700054

5) Jaipur Vidyut Vitaran Nigam Limited,
Vidyut Bhawan, Janpath, Jyoti Nagar,
Jaipur, Rajasthan – 302005

6) Jodhpur Vidyut Vitaran Nigam Limited,
New Power House, Industrial Area,
Jodhpur, Rajasthan – 342003

7) Rajasthan Urja Vikas Nigam Limited,
Vidyut Bhawan, Janpath, Jyoti Nagar,
Jaipur, Rajasthan – 302005

8) Ajmer Vidyut Vitaran Nigam Limited,
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer
Rajasthan-305004

9) North Bihar Power Distribution Company Limited,
Third Floor, Vidyut Bhawan, Bailey Road,
Patna – 800001

10) South Bihar Power Distribution Company Limited,
Third Floor, Vidyut Bhawan, Bailey Road,
Patna-800001

11) Bihar State Power Holding Company Limited,
First Floor, Vidyut Bhawan, Bailey Road,
Patna- 800001

12) Government of Goa,
Electricity Department,
3rd Floor, Vidyut Bhavan,
Panaji, Goa- 403001

13) Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6, Panchkula,
Haryana-134109.

14) Renew Surya Ojas Private Limited,
138, Ansal Chambers-II,
Bikaji Cama Place,
New Delhi-110066

... Respondents

The following were present:

Shri M. G. Ramachandran, Sr. Advocate, SECI

Ms. Tanya Sareen, Advocate, SECI
Ms. Srishti Khindaria, Advocate, SECI
Shri Agam Kumar, ReNew
Shri Abhishek, ReNew

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 renewable energy projects connected to inter-State transmission system (ISTS) with assured peak power supply in India and discovered through competitive bidding process as per the Guidelines issued by the Government of India viz. "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects" dated 3.8.2017 (hereinafter referred to as "Solar Guidelines") issued by Ministry of Power, Government of India, "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Wind Power Projects" dated 8.12.2017 (hereinafter referred to as "Wind Guidelines") issued by Ministry of Power, Government of India and the draft "Guidelines for Tariff Based Competitive Bidding Process for Procurement of power from Grid Connected Wind-Solar Hybrid Projects" dated 11.10.2019 issued by Ministry of New & Renewable Energy, Government of India, which thereafter came to be notified on 14.10.2020 (hereinafter referred to as "Wind-Solar Hybrid Guidelines"). The Petitioner has made the following prayers:

"(a) Adopt the tariff discovered in the tariff based competitive bid process for the aggregate capacity from renewable power projects on the terms and conditions contained in the Power Purchase Agreements signed with the Power Developers read with the Power Sale Agreements signed with the Buying Entities 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 Buying Entities/ Distribution Licensees in the signed PSAs in terms of Regulation 8 (1)(d) of the Trading License Regulations, 2020.”

Submissions of the Petitioner

2. The Petitioner, SECI has submitted that it had analyzed the demand profiles of the various Buying Entities/Distribution Companies and found that the major power requirement of the most of them is during the evening and morning peak hours, which is being met by them by buying expensive power either from open market or from the tied-up peaking power plants mainly gas based. Accordingly, on 1.8.2019, SECI issued Request for Selection (“RfS”) along with draft Power Purchase Agreement (“PPA”) and draft Power Sale Agreement (“PSA”) documents on ISN Electronic Tender System (ETS) e-bidding portal for Selection of Project Developers for setting up of 1200 MW ISTS-connected Renewable Energy Projects with assured Peak Power Supply in India (ISTS-VII). The Petitioner has submitted that in pursuance to the above, three bids were received offering an aggregate capacity of 1620 MW and all of them were found to meet the technical criteria. On 30.1.2020, the financial bids of technically qualified bidders were opened on the ISN ETS e-bidding portal in the presence of Bid evaluation Committee and all three bidders for aggregating 1620 MW were shortlisted for e-reverse auction. The Petitioner has submitted that e-reverse auction of the qualified bidders was conducted on 31.1.2020 on ISN ETS e-bidding portal and the final tariff was arrived. Pursuant to the issuance of Letter of Award to the successful bidders, on 26.2.2020, Greenko Energies Private Limited (900 MW) and Renew Solar Power Private Limited (300 MW), the Petitioner has entered into PPAs with their Project Companies. The Petitioner has submitted that RE Projects are scheduled to be commissioned within in 18 months from the effective date of the

PPAs. Initially, SECI signed the PSAs for total 1050 MW RE power with the distribution licensees, namely, Damodar Valley Corporation (DVC), North Bihar Power Distribution Company Limited (NBPDC), Distribution Companies of Rajasthan (Rajasthan Urja Vikas Nigam Limited, Jaipur Vidyut Vitaran Nigam Limited, Ajmer Vidyut Vitaran Nigam Limited and Jodhpur Vidyut Vitaran Nigam Limited) and Electricity Department, Government of Goa, at the rate of Rs.2.88/kWh (Off Peak tariff) + Rs.6.12/kWh (Peak Hour tariff) or Rs.2.88/kWh (Off Peak tariff) + 6.85/kWh plus trading margin of Rs.0.07/kWh. However, after the filing of the Petition, SECI signed PPA dated 7.7.2022 with Greenko AP01 IREP Private Limited for 210 MW, PPA dated 31.8.2022 with Renew Surya Ojas Private Limited for 300 MW and PSA dated 26.7.2022 with Haryana Power Purchase Centre for 150 MW, the details of which have been furnished by an additional affidavit dated 19.9.2022. Thus, the entire 1200 MW under the Peak Power Scheme initiated by SECI has been tied up under the PPAs signed with Renewable Power Developers and PSAs signed with Buying Entities/Distribution licensees and accordingly, the Petitioner has prayed for adoption of tariff for entire 1200 MW capacity from RE Projects. According to the Petitioner, tariff discovered for procurement of power from RE Power Developer under the present bidding process is competitive and beneficial to the distribution licensees and the consumers.

Hearing dated 20.10.2022

3. The matter was heard on 20.10.2022 and notice was issued to the Respondents. The Petitioner was directed to file a brief note explaining as to how the

modalities/ conditions of RfS document for Assured Peak Power Supply Scheme fall within the various Guidelines of Government of India as referred to in the Petition.

4. The Petitioner vide its affidavit dated 17.11.2022 has submitted the aforesaid information as called for. None of the Respondents filed any reply to the Petition.

Hearing dated 13.12.2022

5. During the course of hearing on 13.12.2022, learned senior counsel for the Petitioner prayed for adoption of tariff for the RE Projects connected to Inter-State Transmission System (ISTS) with Assured Peak Power Supply ('Assured Peak Power Supply Scheme') selected through competitive bidding process as per the Guidelines of the Government of India. Learned senior counsel further submitted that RfS documents for the Assured Peak Power Supply Scheme are consistent with the provisions of the Solar Guidelines, Wind Guidelines, Wind-Solar Hybrid Policy and draft/final Wind-Solar Hybrid Guidelines and SECI has placed on record a conformity certificate dated 12.2.2021 to the above effect. Learned senior counsel also submitted that none of the Respondents had objected to the aforesaid Assured Peak Power Supply Scheme. Further, vide Record of Proceedings for the hearing dated 13.12.2022, the Petitioner was directed to file the details with regard to the approval of the PSAs by the respective State Commission, if any.

6. The Petitioner vide its written submission dated 21.12.2022 has submitted the aforesaid information as called for.

Analysis and Decision

7. The Petitioner has stated that in the present case, the RfS documents has been prepared based on the Solar Guidelines dated 3.8.2017, Wind Guidelines dated 8.12.2017, Wind-Solar Hybrid Policy dated 14.5.2018 and Wind-Solar Hybrid Guidelines dated 11.10.2019 (draft)/14.10.2020 (notified) issued by the Government of India read with subsequent clarifications/modifications thereto. We now proceed to consider the prayer of the Petitioner as regards the adoption of tariff under Section 63 of the Act in respect of the RE Power Projects discovered pursuant to the competitive bid process carried out in terms of the above Guidelines issued by the Government of India.

8. 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.”

9. 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.

10. As to the Guidelines, Ministry of Power, Government of India has notified the Solar Guidelines under Section 63 of the Act vide Resolution No. 23/27/2017-R&R on 3.8.2017. The said Guidelines have been subsequently amended by the Resolutions dated 14.6.2018, 3.1.2019, 9.7.2019, 22.10.2019 and 25.9.2020. The salient features of the Solar Guidelines are as under:

(a) The Guidelines are applicable for procurement of power from grid connected solar PV power projects having size of 5 MW and above through tariff based competitive bidding to be conducted by procurers which includes distribution licensees, 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, Government 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 procurer to the Appropriate Commission.

(c) Bids shall be designed in terms of a package. The minimum size of a package should be 50 MW in order to have economies of scale. Bidders shall quote for entire package.

(d) The procurer has option to choose to invite the two bids, namely, (i) power capacity (MW) terms, or (ii) energy quantity (kWh or million units i.e. MU) terms. For procurement of power, the procurer may opt for either tariff or viability gap funding as bidding parameter.

(e) Draft PPA proposed to be entered into with the successful bidder and draft PSA, if applicable, shall be issued along with the RfS. Standard provisions to be incorporated as part of the PPA shall include, *inter-alia*, PPA period, quantum of power/ energy to be procured, payment security, generation compensation of offtake constraint, event of default and consequences thereof and Change in Law and shall be provided for, on back-to-back basis, in the PSA.

(f) Procurer and Intermediary procurer shall provide payment security to the solar 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 tied up with such fund. In addition, the procurer may also choose to provide State Government Guarantee.

(g) End procurer shall provide payment security to the intermediary procurer through revolving Letter of Credit 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 at least three months' billing of all the projects tied up with such fund.

(h) 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. In case of solar park specific project, procurer shall provide intimation to the solar power park developer about the initiation of the bidding process and arrange the access of the bidders to the drafts of Implementation Support Agreement and land related agreement.

(i) RfS notice shall be issued in at least two national newspapers and on the 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.

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

(k) Bidder shall submit non-refundable processing fee and/or project development fee as specified in the RfS, separate technical and price 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.

(l) The PPA shall be signed with the successful bidder or an SPV formed by the successful bidder. After conclusion of bidding process, Evaluation Committee shall critically 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. Accordingly, the distribution licensee or the intermediary procurer shall approach the Appropriate Commission for adoption of tariff in terms of Section 63 of the Act.

11. Ministry of Power, Government of India has notified the Wind 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 Wind 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 at least 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.

12. As regards the wind-solar hybrid projects, initially the Ministry of New and Renewable Energy, Government of India issued the National Wind-Solar Hybrid Policy dated 14.5.2018 to provide the framework for promotion of large grid connected wind-solar hybrid system for optimal and efficient utilisation of transmission infrastructure and land, reducing the variability in renewable generation and achieving better grid stability. The said Policy, *inter-alia*, encouraged the implementation of new wind-solar hybrid projects for captive use, sale to third parties, sale to distribution

companies either at tariff determined by the State Commissions or at tariff discovered through transparent bidding process, etc. and it also envisaged addition of battery storage to the hybrid projects. Thereafter, in furtherance to the aforesaid Policy, MNRE issued the draft Wind-Solar Hybrid Guidelines on 11.11.2019 providing the framework for transparent bidding process under Section 63 of the Act and to enable the distribution licensees to procure electricity from wind-solar hybrid project at competitive rates in cost effective manner. The said draft Wind-Solar Hybrid Guidelines came to be finalised on 14.10.2020. Subsequently, the said Guidelines have been amended by Ministry of New and Renewable Energy on 23.7.2021, 9.3.2022 and finally on 2.11.2022. The salient aspects of the final Wind-Solar Hybrid Guidelines are as under:

(a) The Guidelines are applicable for procurement of power from hybrid power projects having individual size of 50 MW and above at one site with minimum bid capacity of 50 MW through tariff based competitive bidding to be conducted by procurers which includes distribution licensees or intermediary procurers. The rated power capacity of one resource (wind or solar) shall be at least 33% of the total contracted capacity.

(b) The solar and wind power projects may be located at same or different nearby locations. The minimum capacity to be injected at each injection point shall be 50 MW. Storage may be added to the hybrid power project.

(c) The intermediary procurer shall prepare the bid documents in accordance with the Guidelines and shall approach MNRE for deviations (if required) from these Guidelines.

(d) Bids shall be for a minimum 50 MW project at one site. The procurer may also choose to specify the maximum capacity that can be allotted to a single bidder including its affiliates. The maximum capacity for single bidder or company or

group of companies may be fixed by the procurer keeping in mind factors such as economies of scale, land availability, expected competition and need for development of market.

(e) For procurement of wind-solar hybrid power, the tariff quoted by the bidder shall be the bidding parameter. The procurer may select either of the following kinds of tariff based bidding: (a) 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.

(f) Draft PPA proposed to be entered into with the successful bidder and draft PSA, if applicable, shall be issued along with the RfS. Standard provisions to be incorporated as part of the PPA shall include, *inter-alia*, PPA period, Capacity Utilization Factor, Repowering, Payment Security, Payment Security by intermediary procurer to the hybrid power generator, revolving Letter of Credit and State Government guarantee, Change in Law, Force Majeure, Off-take constraints due to Back down, Event of Default and consequences thereof.

(g) Intermediary procurer shall provide payment security to hybrid power generator 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 tied up with such fund. For the purpose of this Payment Security Fund, the intermediary procurer may collect Rs.5 lakh/MW from hybrid power generator(s).

(h) Discoms shall provide payment security to the intermediary procurer through revolving Letter of Credit of an amount not less than one month's average billing from the project(s) under consideration and State Government Guarantee or Tri-Partite Agreement.

(i) Procurer/intermediary procurer shall call the bids adopting a single stage bidding process to be conducted through electronic mode (e-bidding). Procurer may adopt e-reverse auction. For this purpose, e-procurement platforms with a

successful track record and with adequate safety, security and confidentiality features will be used.

(j) The bidding documents including RfS, draft PPA shall be prepared by procurer in consonance with these Guidelines. RfS notice shall be published on the Central Public Procurement Portal website and Procurer`s website to accord wide publicity. Standard documentation to be provided in RfS stage shall include technical criteria, financial criteria, net worth, liquidity, quantum of earnest money deposit and compliance of laws by foreign bidders.

(k) The procurer shall constitute committee for evaluation of the bids (Evaluation Committee), with at least three members, including at least one member with expertise in financial matters/ bid evaluation. The price bid shall be rejected, if it contains any deviation from the bid conditions.

(l) Bidder shall submit non-refundable processing fee as specified in the RfS, separate technical and price 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.

(m) The comparison of bids shall be on the basis of the bidding criteria as specified in the RfS, i.e. the fixed tariff or the first year tariff. Ranking of the bidders will start from the bidder quoting the "lowest tariff (L1)". The selection of all successful bidders would be on bucket filling approach starting with L1 till entire capacity for which the bid has been called for is full or the capacity corresponding to the upper limit for the band for the L1 tariff is reached, whichever is earlier.

(n) After conclusion of bidding process, the Evaluation Committee constituted for evaluation of RfS bids shall critically evaluate the bids and certify as appropriate that the bidding process and the evaluation has been conducted in conformity to the provisions of the RfS.

(o) The PPA shall be signed with the successful bidder/ project company or an SPV formed by the successful bidder. After execution of the PPA, procurer shall

disclose the name(s) of the successful bidder(s) and the tariff quoted by them together with breakup into components, if any.

13. The Petitioner, SECI has submitted that the bid documents for Assured Peak Power Supply Scheme have been prepared based on the Solar Guidelines, Wind Guidelines and Wind-Solar Hybrid Policy dated 14.5.2018 along with draft Wind-Solar Hybrid Guideline dated 11.10.2019, which came to be finalised on 14.10.2020. Highlighting the key features of Assured Peak Power Supply Scheme as provided for in RfS document, SECI has submitted as under:

(a) Peak Power Scheme envisages in making available firm and dispatchable renewable power, meeting the demand pattern of distribution licensees during peak hours at competitive tariff.

(b) Single stage, Double Envelope bidding followed by e-reverse auction has been envisaged under this RfS. Bidders have to submit both Techno-Commercial Bid and Financial Bid (Tariff) together in response to the RfS.

(c) The Project shall comprise minimum two 'components' - one being the Energy Storage System (hereinafter 'ESS') component, and the other being the renewable energy generating component which can be either a solar PV system, or a wind power system, or a combination thereof. In case, the Project Developer chooses to install a combination of both wind and solar PV components in the Project, the Project shall be denoted as a Wind-Solar Hybrid Power Project under the National Wind-Solar Hybrid Policy.

(d) With respect to the ESS being used in the Project, the Bidder has the flexibility to choose the type and power rating of the energy storage system to be installed in addition to the Solar PV and/or wind power capacity. The ESS may include, but not be limited to, battery energy storage systems, pumped storage systems, mechanical and chemical systems, or combinations thereof.

(e) The power project can be located anywhere in India.

(f) For each Project, the minimum project capacity shall be 50 MW and the maximum capacity shall be 900 MW

(g) The Bidders shall submit their bid by offering a single Peak Tariff for all the Projects quoted for, which shall be applicable for 25 years as per the provisions of PPA.

(h) The Projects selected under the RfS shall be eligible for two-part tariffs. These shall be referred to as “Peak Tariff” and “Off-Peak Tariff” as defined in the RfS. Energy supplied during the Off-Peak Hours shall be eligible for a flat tariff payment at Rs. 2.88/kWh, i.e. the Off-Peak Tariff. Energy supplied during the Peak Hours shall be purchased at the tariff discovered through e-Reverse Auction as per this RfS, i.e. the Peak tariff. The applicable tariff under the PPA shall comprise both peak and off-peak tariffs, and shall be fixed for the entire term of the PPA

(i) The off-peak Hours and Peak Hours have been defined under the RfS as under:

1.32 “Off-Peak Hours” shall mean the energy scheduling hours between (& including) 09:00 hrs up to 18:00 hrs and the hours between (& including) 00:00 hrs up to 06:00 hrs of the subsequent day;

1.37 “Peak Hours” shall mean the energy scheduling hours between (& including) 06:00 hrs up to 09:00 hrs, and between (& including) 18:00 hrs to 24:00 hrs of the same day. For the purpose of scheduling, a ‘day’ shall commence from 00:00 hrs and end at 24:00 hrs’;

Further, a variation of ± 30 minutes in the deadlines of morning and evening peak hours is also allowed in making that choice by the distribution companies. The buying entities/distribution licensees shall mandatorily off-take peak power by choosing 4 hours from the evening peak hours and 2 hours from the morning peak hours.

(j) The discharge of mandated supply of energy during peak hours shall be governed by the demand pattern of the corresponding buying entity(ies), as per the buying entity’s day ahead schedule. The power supply from the Project will be

off-taken by the buying entity on a “must-run” basis, for the 24-hour period of the day.

14. Taking note of the scheme of the RfS and the bid process, the Commission vide Record of Proceedings for the hearing dated 20.10.2022 directed SECI to furnish a brief note explaining as to how the modalities/conditions of RfS document for Assured Peak Power Supply Scheme fall within the various Guidelines of Government of India as referred to in the Petition. In response, the SECI vide its affidavit dated 17.11.2022 has submitted as under:

(a) Each of the Guidelines, namely, Solar, Wind and draft/final Wind-Solar Hybrid Guidelines as notified by the Central Government is for promotion and procurement of renewable power. The Guidelines do not mandate that the renewable power should always be procured at uniform tariff on 24x7 basis. Even under the conventional competitive bidding process, it is allowed to the procurer to source power only for meeting the peak power or seasonal power. Any such procurement for part of the day or at differential pricing for peak hours & non-peak hours is within the scope of promotion of renewable power for which the Guidelines have been issued.

(b) Renewable Peak Power Scheme is within the scope of Section 61(h) read with Section 86(1)(e) and also the Preamble of the Act, National Electricity Policy and National Tariff Policy providing for promotion of renewable sources of energy. The Peak Power Scheme envisages in making available firm and dispatchable renewable power, meeting the demand pattern of distribution licensees during peak hours at competitive tariff. In fact, the renewable peak power scheme is an essential process which is more beneficial for procurement of power by the distribution licensees in the State to meet the RPO and therefore, definitely within the scope of the Guidelines notified by the Central Government.

(c) Clause 3.1.1(c) of the Solar Guidelines, Clause 5.1(c) of the Wind Guidelines and Clause 6.1(d) of the draft Wind-Solar Hybrid Guidelines provide that till the

time the Standard Bidding Documents (SBDs) are notified by the Central Government, for the purpose of clarity, if the Procurer while preparing the draft RfS, draft PPA and draft PSA and other Project agreements provides detailed provisions that are consistent with the Guidelines such detailing will not be considered as deviations from these Guidelines even though such details are not provided in the Guidelines.

(d) The scheme of Guidelines issued by the Central Government being on macro aspects whereas the RfS/Bidding documents/Standard PPA & PSA structure the terms and conditions of procurement of power - has been duly recognised by the Hon'ble Supreme Court in the case of Energy Watchdog v. Central Electricity Regulatory Commission and Ors. [(2017) 14 SCC 80]. In the said case, the Guidelines dealt with Change in Law and Force Majeure in a restricted manner leaving the terms to be more specifically dealt with in the PPA. This is consistent with the well-accepted principle that at the stage of the Guidelines it is not possible to envisage the detailing of the schemes and therefore, the same is left to be dealt under delegation of power.

(e) It is, therefore, open to the RfS/Bid documents to provide detailed provisions including in regard supply of renewable power during peak hours and off-peak hours. These provisions are consistent with the objective of the Guidelines namely, procurement of Solar/Wind/Wind-Solar Hybrid power at competitive rates in cost effective manner.

(f) SECI has furnished a comparative statement indicating the steps and process followed by SECI in the bidding/tender mapping the same to the corresponding enabling provisions of the Guidelines as amended/modified from time to time.

15. We have noted the brief explanation furnished by SECI. A similar aspect of SECI having issued the RfS documents/tender for RTC supply from RE Projects with assured Peak Power Supply prepared based on the multiple Guidelines issued by Central Government has been considered by the Commission vide its order dated

8.4.2022 in Petition No. 258/AT/2021 (SECI v. ReNew Solar Power Private Ltd. and 4 Ors.). In the said order, the Commission, *inter-alia*, had observed as under:

“16. We have considered the submissions made by the Petitioner and the documents made available along with the Petition. Perusal of the scheme covered under the RfS document that is selection of RE power developer for “Round-the-Clock” supply of 400 MW ISTS-connected Renewal Energy project with assured Peak Power supply in India under Tariff based competitive bidding reveals that it indeed was difficult to conform the said bid process under any single Guidelines at the time of issuance of the tender. As rightly clarified by SECI that at the time of issuance of the tender, it would not have been possible to anticipate the RE source (whether wind or solar or any other renewable source or combination thereof along with energy storage system) based on which the developer would be participating in the bid process and placing its bid. Accordingly, SECI has proceeded with preparing the RfS/bid documents based on the Solar Guidelines, Wind Guidelines and draft Wind-Solar Hybrid Guidelines dated 11.10.2019 issued under the aegis of Wind-Solar Hybrid Policy dated 14.5.2018, which came to be finalised only on 14.10.2020 (i.e. after the bid process). Ultimately, the configuration of the RE projects by the successful bidders ReNew Solar Power Private Limited came to be a combination of wind and solar projects, in other words, wind-solar hybrid project. Hence, in hindsight, it appears that the entire bid process and the bid documents could have been in conformity with the Wind-Solar Hybrid Guidelines. However, admittedly, at the time of issuance of the RfS/bid documents and conducting the bid process, the only available framework relating to wind-solar hybrid projects were the National Wind-Solar Hybrid Policy and the draft Wind-Solar Hybrid Guidelines, whereas the said draft guidelines came to be finalised and issued on 14.10.2020 after the bid process.

17. During the course of hearing on 24.3.2022, SECI was directed as to the bid documents being in conformation with all the Guidelines as relied upon by it, which was confirmed by the SECI albeit read with the clarifications/modification issued by the Ministry of New and Renewable Energy vide letters dated 18.12.2020 and 1.3.2021. In addition, SECI has also furnished a conformity certificate dated 24.8.2021 to the above effect, which has been discussed in the subsequent paragraphs of this order. Taking into the account the aforesaid submissions of SECI and specific aspects of the present matter including the nature of tender/RfS, we are constrained to take a pragmatic view in the matter in favour of considering the RfS and bid process as per the provisions of the above Guidelines rather than taking a view which would defeat the entire purpose of the promotion of renewable energy and bid process already concluded. However, our aforesaid decision shall not be construed as permission to SECI to undertake the bid process under multiple guidelines and SECI would require to exercise abundant caution while framing such tenders/RfS as while the procedure for conducting the bidding might be

similar across the various Guidelines, the project specific features under the each Guidelines might differ which need to be incorporated in the bid documents in order to make them in consonance with the respective Guidelines. In view of the above, we proceed to examine whether the process as per provisions of the various Guidelines has been followed in the present case for arriving at the lowest tariff and for selection of the successful bidder....”

16. The above observations of the Commission squarely apply to the present case wherein SECI has proceeded with preparing the RfS/bid documents based on the Solar Guidelines dated 3.8.2017, Wind Guidelines dated 8.12.2017 and draft Wind-Solar Hybrid Guidelines dated 11.10.2019 as issued under the aegis of the Wind-Solar Hybrid Policy dated 14.5.2018, which came to be finalised only on 14.10.2020 (i.e. after the bid process). It is noticed that issuance of RfS/bid documents & conclusion of bid process in the present case had been prior in point of time than those involved in Petition No. 258/AT/2021. In the said order, the Commissions had advised SECI to exercise the abundant caution while framing such tenders/RfS as while the procedure for conducting the bidding might be similar across the various Guidelines, the project specific features under each Guidelines might differ which need to be incorporated in the bid documents in order to make them in consonance with the respective Guidelines. Moreover, certain common provisions also differ across the Guidelines. For instance, Solar Guidelines contain a detailed force majeure clause as against the other Guidelines. Similarly, the Change in Law clause in the Wind-Solar Hybrid Guidelines also differs from that in the other Guidelines. However, learned senior counsel for SECI during the course of hearing stated that the provisions of RfS/bid documents are in conformity with the above Guidelines read with the subsequent clarification/amendments thereto and SECI has also filed a conformity certificate to this effect. The learned senior counsel also pointed out that

none of the Respondents had objected to the Assured Peak Power Supply Scheme. Considering the above submissions of SECI and the specific aspects of the present case including the nature of tender/RfS, we are inclined to proceed to examine whether the process as per provisions of the various Guidelines have been followed in the present case for arriving at the lowest tariff and for selection of the successful bidder(s). However, SECI is advised that for issuance of RfS/bid documents with such elaborate additional features & seeking participation of all the RE Projects rather than any particular one, it would be more appropriate for SECI to approach the Ministry of Power/Ministry of New & Renewable Energy for issuance specific guidelines enabling SECI to issue such RfS/bid documents & conduct a bid process thereunder rather than combining all the Guidelines under one RfS/bid documents which, as we already noted above, have different project specific features/provisions and combining them all in a single RfS/bid documents might not always be prudent. In our view, the Petitioner should approach the Commission for adoption of tariff as per the clear-cut provisions of specific Guidelines framed by the Government of India in future.

17. The key milestones in the bidding process carried out by SECI were as under:

Sr.	Event	Date
1.	RfS issued by SECI	1.8.2019
2	1 st Set of Amendments to the RfS documents uploaded	28.10.2019
3	2 nd Set of Amendments to the RfS documents uploaded	28.11.2019
4	3 rd Set of Amendments to the RfS documents uploaded	6.1.2020
5	Last date of bid submission	15.1.2020
6	Opening of techno-commercial bids	21.1.2020
7	Opening of financial bids	30.1.2020
8	e-Reverse Auction conducted	31.1.2020
9	Issuance of Letters of Award to successful bidders	26.2.2020

18. On 1.8.2019, SECI issued Request for Selection document, along with draft PPA and PSA documents for setting up of 1200 MW ISTS-connected RE Projects along with assured Peak Power supply. 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, from 14.6.2018, SECI discontinued the publication of tender notice in the newspaper. On 3.7.2018, SECI published notification in the newspapers indicating that henceforth tenders of SECI would be published in the website and not in newspapers.

19. The Petitioner has submitted that 36 organizations had participated in the pre-bid meeting held for the RfS for 1200 MW RE Projects with assured peak power supply.

20. As per Clause 3.1.1(b) of the Solar Guidelines, Clause 5.1 (b) of the Wind Guidelines and Clause 6.1(b) of the draft Wind-Solar Hybrid Guidelines, the procurer is required to inform the Appropriate Commission about the initiation of the bidding process. SECI vide its letter dated 23.9.2019 had informed the Commission that it has initiated the competitive bid process for selection of RE Power Developer for energy supply from 1200 MW RE Power Projects along with assured Peak Power supply under tariff-based competitive bidding on the basis of Solar Guidelines, Wind Guidelines and Wind-Solar Hybrid Guidelines.

21. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids under RfS-No. SECI/C&P/HPD/ISTS-VII/RFS/1200MW/082019 dated 1.8.2019:

Tender	Department	Offline and Online Techno-commercial and Financial Bid Opening	Techno-commercial and Financial evaluation and post-e-RA recommendation
Selection of project Developers for setting up 12000 MW ISTS-Connected RE Projects with assured Peak Power Supply in India (ISTS-VII) SECI/C&P/HPD//ISTS-VII/RFS/1200MW/082019 Dated	PS	Sh. ISK Reddy, Manager	Sh. ISK Reddy, Manager
	Contracts	Sh. Biblesh Meena, Deputy Manager (C&P)	Sh. Pratik Prasun, Manager (C&P)
	Finance	Sh. Ajit Sharma, Deputy manager (finance)	Sh. Ajit Sharma, Deputy Manager (Finance)

22. Last date of submission of bid was 15.1.2020 and the technical part of the bid was opened on 21.1.2020. Response to RfS was received from 3 bidders, namely Greenko Energies Private Limited, ReNew Solar Power Private Limited and HES Infra Private Limited, offering an aggregate capacity of 1620 MW and all of them were found to fully meet the technical criteria and consequently, qualified for opening of financial bid. On 30.1.2020, financial bids of three technically qualified bidders were opened on the ISN ETS- e-bidding portal in the presence of member of Bid Evaluation Committee. Three bidders for aggregating 1200 MW were shortlisted for e-reverse auction.

23. The e-reverse auction was carried out on 31.1.2020 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.	Greenko Energies Private Limited	900	6.12	900
2.	ReNew Solar Power Private Limited	600	6.85	300
Total				1200

24. Accordingly, on 26.2.2020, SECI issued Letter of Awards to the selected bidders as under:

S. No	Bidder	Project ID & location	Off Peak Power Tariff (INR/kWh)	Peak Power Tariff (INR/kWh)	Awarded Capacity (MW)
1.	Greenko Energies Private Limited	Village: Pinnapuram, Dist. Kurnool, Anhdra Pradesh	2.88	6.12	800
		Saundati Taluk, Dist. Belagavi, Karnataka			100
2.	ReNew Solar Power Private Limited	Tondihal Village, Yelburga Taluk, Dist. Koppal, Karnataka	2.88	6.85	300
Total					1200

25. Relevant portion of one of the Letter of Award issued to ReNew Solar Power Private Limited is extracted as under:

“Sub: Selection of Project Developers for Setting up of 1200MW ISTS-connected RE Projects with assured Peak Power supply in India (OSTS-VII): Letter of Award for RE Power Project of 300MW (Project ID: HPD-ISTS-VIIRSPPL-P-300KA)

In reference to above and subject to the provisions of RFS, we confirm having accepted your final offer concluded as a result of E-RA and issue this letter of award as per the following details:

Allotted Project ID	Project Capacity (MW)	Project location	Sub-station details for connectivity	Applicable Tariff (INR/kwh)		Applicable Tariff (INR/kwh) in words	
				Off-Peak Tariff	Peak Tariff	Off-Peak Tariff	Peak Tariff
HPD-ISTS-VII-RSPPL-P1-300KA	300	Tondihal Village, Yelburga Taruk, Koppal District, Karnataka	Koppal 220 kV CTU substation, Karnataka	Rs. 2.88/-	Rs. 6.85/-	Rupees Two and Eighty-Eight Paise only	Rupees Six and Eighty-Five Paise only

SECI shall purchase the power generated from the proposed ISTS-Connected RE 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 RE Project for the term of Power Purchase Agreement (PPA) to be entered into between project Company or the Hybrid Power Developer (HPD) and M/s SECI for the Project, shall be firm for the entire term of the PPA.

1.1 The minimum Energy Storage System (ESS) rated energy capacity installed shall be equal to 150Mwh for the above Project.

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

1.3 The award of the above Project is submitted 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.

1.4 No change in the controlling shareholding of the bidding Company 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. Controlling Shareholding (holding more than 50% of the voting rights and paid up share capital in the Company) of the Project Company of the HPD shall not change until one year after the COD of the Project, except with 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 50% of voting rights and paid up share capital). It shall be

considered as a company under joint control. In such cases, the shareholding pattern in the company as submitted at the time of bidding, shall be maintained for a period of 01 (one) year after COD.

1.6 The successful Bidder, is 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 after 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) years 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 HPD shall pay to SECI, Success Charges of Rs. 1 lakh/MW/project + 18% GST within 30 days of issuance of this Letter of Award (LoA), in line with Clause 12, Section-III of the RFS, towards administrative overheads, coordination with State Authorities and others, DISCOM/STU/CTU, pre-commissioning and commissioning expense. Performance Bank Guarantee (s) for s value of Rs 15 Lakh/MW shall be submitted by the HPD within 30 days of issuance of Letter of Award or before signing of PPA. Whichever is earlier, in line with Clause 11, Section-III of the RFS.

1.8 Prior to declaration of commissioning of first part capacity of the Project, the HPD shall furnish a Payment Security Deposit (PSD) @ Rs. 5lakh/MW/Project, to SECI through DD/NEFT/RTGS. This fund shall form part of the Payment Security Fund maintained by SECI for the Projects. Modalities of operationalisation of the Payment Security Deposit will be notified by MNRE at appropriate stage, though necessary guidelines/orders. The above amount shall be credited to SECI pro-rata to the part capacity being commissioned at that stage. In case the HPD is unable to furnish the above amount prior to commissioning of the corresponding part -capacity, SECI reserves the right to recover the same from the monthly energy payments made to the HPD, along with interest @ SBI 1-year MCLR to be levied from the date of commissioning of the date of recovery/due date of payment of invoices.

1.9 PPA will be executed between SECI and the HPD as per the breakup of the cumulative Project capacity awarded to the Bidder. The HPD shall provide the project breakup for the cumulative capacity quoted, in the Covering Letter (Format 6.1), which may be changed by the HPD subsequent to issuance of LOA upto the date as on 30 days from issuance of LOA. In case of Wind-Solar Hybrid Projects, for an individual Project, any modification in the rated capacities of wind and solar components in the Project, shall be intimated to SECI within 30 days of issuance of LOA. Both the above parameters will remain unchanged, thereafter. The PPA will remain in force for a period of 25 years from the SCD or from the date of full commissioning of the projects, whichever is earlier.

1.10 The HPD will have to submit the required documents as mentioned below to SECI within 70 days from date of this LOA or before signing of PPA, whichever is earlier. 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 Hybrid Power Developer.

- 2) *The details of promoters and their shareholding in the HPD, duly certified by the practicing Chartered Accountant/ Company Secretary in original at least 7 (seven) days prior to date of their document submission (certificate date should be after the date of LOA) along with latest documents filed with ROC).*
- 3) *Copy of the Memorandum of Association (MoA) of the HPD highlighting the object clause related to generation of power/ Energy/ Renewable Energy/ Solar Power plant development.*
- 4) *In case the project being executed by a Special Purpose Vehicle (SPV) incorporated by successful bidder, such SPV shall be atleast 76% 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.*

Further, the PPA shall be signed only upon receipt of the Success Charges and total performance Guarantees of requisite value. The EMD submitted shall be released only after receipt and successful verification of the total Performance Bank Guarantee in the acceptable form.

1.11 SECI shall, have the right to verify original documents of the HPD for which copies have been submitted from the date of submission of responses 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 LoA, if not extended by SECI. In case of unavoidable delays on the part of the HPD in submission of requisite documents prior to signing of PPAs or otherwise, the Effective Date of the PPA shall remain the date as on 90th day from the issuance of LOA, irrespective of the date of signing of PPA. In extraordinary cases of unavoidable delays on the part of signing of PPA. In extraordinary cases of unavoidable delays of the date of signing of PPA. In extraordinary cases of unavoidable delays on the part of SECI in signing the PPAs, the Effective Date of the PPA shall then be the date of signing of PPA.

1.12 In case, the SECI offers to execute the PPA with the HPD and the selected Bidder refuses to execute the PPA within the stipulated time period, the Bank Guarantee equivalent to the amount of the EMD shall be encashed by SECI from the Bank Guarantee available with SECI (i.e. either EMD or PBG) as liquidated damages not amounting to penalty, and the selected Project(s) shall stand cancelled and the selected Bidder expressly waives off its rights and objections, if any, in that respect.

1.13 The HPD shall meet financial closure for the Project in line with clause 15 Section -III of the RfS document, within 12 (Twelve) months from the Effective Date of the PPA. Accordingly, the HPD shall furnish the documents pertaining to compliance of financial closure as per the above provisions.

1.14 The HPD/Project Company shall achieve commissioning of full capacity of the Project within 18 months from the Effective Date of the PPA as per the conditions stipulated in Clause 16, Section-III 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 HPD as per the above provisions....”

26. Based on their requisition, SECI has signed the PSAs with buying utilities/ distribution licensees as under:

S. No.	Buying Utilities	Date of PSA signing	PSA Capacity (MW)	Applicable Tariff to Buying Utility (Rs./kWh)
1.	Damodar Valley Corporation	20.08.2021	200	ARTICLE 5: APPLICABLE TARIFF
2.	North Bihar Power Distribution Company Limited (NBPDC), South Bihar Power Distribution Company Limited (SBPDCL) and Bihar State Power Holding Company Limited (BSPHCL)	20.05.2022	210	The Applicable Tariff under this Agreement shall be paid in two parts, compressing Peak tariff and Off-Peak tariff. The buying entity shall be mandated to pay the Off-Peak tariff of Rs. 2.88/kWh plus SECI's Trading Margin of Rs. 0.07/kWh fixed for the entire Term of this Agreement, for the energy supplied by SECI during the off-peak hours.
3.	Rajasthan Urja Vikas Nigam Limited, Jaipur Vidyut Vitaran Nigam Limited, Ajmer Vidyut Vitaran Nigam Limited and Jodhpur Vidyut Vitaran Nigam Limited	25.01.2022	490	Additionally, from SCD and subject to the provision of the Article 6.7, the Buying Entity shall pay the Peak Tariff of Rs. 6.12/kWh plus SECI's trading margin of Rs. 0.07/kwh fixed for the entire term of this Agreement, for the energy supplied by SECI during the Peak Hours.
4.	Electricity Department, Government of Goa	22.12.2021	150	ARTICLE 5: APPLICABLE TARIFF
5.	Haryana Power Purchase Center	26.7.2022	150	The Applicable Tariff under this Agreement shall be paid in two parts, compressing Peak tariff and Off-Peak tariff. The buying entity shall be mandated to pay the Off-Peak tariff of Rs. 2.88/kWh plus SECI's Trading Margin of Rs. 0.07/kWh fixed for the entire Term of this Agreement, for the energy supplied by SECI during the off-peak hours. Additionally, from SCD and subject to the provision of the Article 6.7, the Buying Entity shall pay the

S. No.	Buying Utilities	Date of PSA signing	PSA Capacity (MW)	Applicable Tariff to Buying Utility (Rs./kWh)
				Peak Tariff of Rs. 6.85/kWh plus SECI's trading margin of Rs. 0.07/kwh fixed for the entire term of this Agreement, for the energy supplied by SECI during the Peak Hours.

27. In response to the specific query of the Commission regarding approval of the PSAs by the respective State Commission, if any, SECI has submitted that in respect of PSA with DVC, West Bengal Electricity Regulatory Commission vide order dated 30.5.2022 in Case No. PPA-116/21-22 has approved the PSA for purchase of 200 MW RE power to the extent to be utilized in the State of West Bengal subject to the adoption of tariff by this Commission. Whereas, for approval of procurement of power to the extent to be utilized in State of Jharkhand, Case No. 5 of 2022 filed by DVC before the Jharkhand Electricity Regulatory Commission is presently pending. With regard to PSA with Bihar Distribution licensees, Bihar Electricity Regulatory Commission vide order dated 28.4.2022 in Case No. 21 of 2021 has approved the proposal for procurement of 210 MW RE power subject to adoption of discovered tariff along with PPA and other relevant document by this Commission. As to the PSA with the Rajasthan Distribution licensees, Rajasthan Electricity Regularly Commission vide order dated 12.5.2022 in Petition No. RERC/ 2010/2022 filed by Rajasthan Urja Vikas Nigam Limited ('RUVNL') has directed that the appropriate Petition may be filed before this Commission for adoption of tariff and has accordingly, granted liberty to RUVNL to approach RERC thereafter. In respect of the PSA with Electricity Department, Government of Goa, Joint Electricity Regulatory Commission vide interim order dated 1.8.2022 in Petition No. 77/2022 has, *inter-alia*, held that the

matter will be listed for hearing after filing of the copy of order by which this Commission adopts the tariff under Section 63 of the Act. Whereas, in respect of PSA with HPPC, Haryana Electricity Regulatory Commission vide order dated 18.7.2022 in Case No. 28 of 2022 has approved the procurement of 150 MW RE power by HPPC.

28. As regards the PPAs, SECI has entered into PPA dated 2.2.2022 for 490 MW with Greenko AP01 IREP Private Limited (Project Company of successful bidder, Greenko Energies Private Limited), PPA dated 2.2.2022 for 200 MW with Greenko AP01 IREP Private Limited (Project Company of successful bidder, Greenko Energies Private Limited), PPA dated 7.7.2022 for 210 MW with Greenko AP01 IREP Private Limited (Project Company of successful bidder, Greenko Energies Private Limited) and PPA dated 31.8.2022 for 300 MW with Renew Surya Ojas Private Limited (Project Company of successful bidder, Renew Solar Power Private Limited).

29. As per Clause 10.2 of the Solar Guidelines, Clause 12.2 of the Wind Guidelines and Clause 13.2 of the draft/issued Wind-Solar Hybrid 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 18.2.2021 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 by SECI that the bid evaluation has been conducted in conformity to the provisions of the RfS. Relevant portion of the said conformity letter dated 18.2.2021 is extracted as under:

“With respect to the RfS No. SECI/C&P/HPD/ISTS-VII/RfS/ 1200MW/082019 dated 1.08.2019, 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 document for the above tender.”

30. In the light of the above discussions, it emerges that selection of the successful bidders and determination of tariff of the RE Projects have been carried out by SECI through a transparent process of competitive bidding in accordance with Guidelines issued by Ministry of Power and/or Ministry of New and Renewable Energy, Government of India under Section 63 of the Act. Therefore, in terms of Section 63 of the Act and based on the Petitioner’s letter dated 18.2.2021 to the effect that bidding has been carried out as per the provisions of bidding Guidelines and RfS, the Commission hereby adopts the individual tariff for the RE Power Projects, as agreed to by the successful bidders, and for which 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.	Bidder	Project Company	Off Peak Power Tariff (INR/kWh)	Peak Power Tariff (INR/kWh)	Awarded Capacity (MW)
1.	Greenko Energies Private Limited	Greenko AP01 IREP Private Limited	2.88	6.12	900
2.	ReNew Solar Power Private Limited	Renew Surya Ojas Private Limited	2.88	6.85	300
Total					1200

31. Article 10.3 of the PPA provides as under:

“10.3 Payment of Monthly Bills

10.3.1 SECI shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the BPD, as shall have been previously notified by the HPD in accordance with Article 10.3.2 below.

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

- i) deductions required by the Law; and
- ii) amount claimed by SECI, if any, from the HPD, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, 1.25% surcharge will be applicable on day to day basis.

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

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

10.4.2 Subject to Article 10.4.1, not later than one (1) Month before the start of supply, SECI through a scheduled bank open a Letter of Credit in favour of the HPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- i) for the first Contract Year, equal to 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 HPD 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 within fifteen (15) days.

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

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

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

10.4.8 If SECI fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including the date as on 30 days beyond the Due Date, then, subject to Article 10.4.6 & 10.5.2, the HPD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from SECI, 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 which has remained unpaid to HPD and;

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

33. 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:

“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.”

34. The above provisions provide for payment security mechanism and the same is required to be complied with by the parties to the present Petition. Accordingly, the

provisions of Article 10.3 and Article 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. Accordingly, the prayer (a) of the petition is allowed in terms of the above discussion.

35. 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 PSAs with the distribution licensees. In this regard, Regulation 8(1)(d) of the Trading Licence Regulations dealing with trading margin provides as under:

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

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

37. 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.”

38. 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.”

39. 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.

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

41. It is expected that the Petitioner has complied with the provisions of RfS and Guidelines. The Petitioner will comply with the provisions of bidding documents, PPA and PSA for commissioning of the Project within the SCOD.

42. The Petition No. 235/AT/2022 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member