

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 353/AT/2022

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

Date of Hearing : **7.2.2023**

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

Petitioner : Solar Energy Corporation of India Limited (SECI).

Respondents : ReNew Naveen Urja Private Limited & 10 Ors.

Parties Present : Shri M. G. Ramachandran, Sr. Advocate, SECI
Shri Aneesh Bajaj, Advocate, SECI
Ms. Srishti Khindaria, Advocate, SECI
Ms. Anushree Bardhan, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI

Record of Proceedings

Learned senior counsel for the Petitioner submitted that the present Petition has been filed for adoption of tariff for 1200 MW Wind Power Projects (Tranche XI) connected to inter-State Transmission System that has been selected through competitive bidding process as per the 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects' notified by Ministry of Power, Govt. of India on 8.12.2017 ('the Wind Guidelines'). Learned senior counsel further submitted the following:

- (a) Pursuant to the competitive bidding conducted by SECI in terms of the Guidelines, five developers for the capacity of 1200 MW Wind Power Projects (Tranche XI) have been selected. The Power Purchase Agreements ('PPAs') have been signed with the project developers and correspondingly, the Power Supply Agreements ('PSAs') have been signed for the entire awarded capacities with the various buying entities.
- (b) The bid process had been conducted in accordance with the provisions of the Guidelines and the Petitioner has furnished a conformity certificate to the above effect.
- (c) The tariff discovered pursuant to the bid process is Rs. 2.69/kWh for 1080 MW and Rs. 2.70/kWh for 120 MW. The Scheduled Commissioning Date of these Projects under the PPAs is 30.12.2023.

2. The Commission observed that while the Clause 7.8.1 of the Guidelines provides that the “*quantum & mechanism*” of the compensation payment due to Change in Law shall be determined by the Appropriate Commission, whereas the Article 12.2.3 of the PPAs provide 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. In response to the specific query of the Commission as to how it may not amount to a departure from the provisions of the Guidelines, learned senior counsel submitted that Article 12.2.3 only provides certainty on the applicable compensation for Change in Law events and factors into the principle of restitution. Learned senior counsel relied on the judgment of Hon’ble Supreme Court in the case of Energy Watchdog v. CERC and Ors. [(2017) 14 SCC 80], to submit that in the said judgment it has been held that the RfS/PPAs flashes out in detail what has been provided in the Guidelines and in the instant case, Clause 5.1(c)(i) of the Guidelines itself provides that mere detailing for purpose of clarity will not be considered as deviations from the Guidelines. Learned senior counsel submitted that if there is a deviation from Guidelines in terms of Clause 3.1.1 and Clause 18 of the Guidelines, the Petitioner will take appropriate approval in this regard.

3. After hearing the learned senior counsel for the Petitioner, the Commission directed as under:

(a) Admit.

(b) The Petitioner to serve copy of the Petitions on the Respondents immediately, if not already served and the Respondents to file their reply, if any, within two weeks after serving copy of the same to the Petitioner, who may file its rejoinder, if any, by within a week thereafter;

(c) The Petitioner to file its response on the following on an affidavit within two weeks:

(i) How the incorporation of the pre-determined Change in Law relief of Rs. 0.0045/kWh for increase/decrease of Rs. 1 lakh per MW in the Project Cost would not amount to a departure from the provisions of Clause 7.8.1 of the Wind Guidelines which provides that the ‘*quantum & mechanism*’ of the compensation payment due to Change in Law shall be determined by the Appropriate Commission; and

(ii) Whether there has been any approval of the Appropriate Commission or any other Competent Authority for incorporation of such clause; if yes, copy thereof.

(d) Parties to comply with above directions within the specified timeline and no extension of time shall be granted.

4. The Petition shall be listed for hearing on 11.4.2023.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**