



**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017.**  
F.11(2060)/DERC/2022-23/7612

**Petition No. 77/2022**

**In the matter of: Petition u/S 86(1)(b) of the Electricity Act, 2003 and other enabling provisions for seeking approval of the Commission to the Supplementary Power Purchase Agreement to be executed between TPDDL vs SECI and Alfanar Company.**

**Tata Power Delhi Distribution Ltd. ...Petitioner**

**Versus**

**1. Solar Energy Corporation of India Limited  
2. Alfanar Company ...Respondents**

**Coram:  
Hon'ble Justice (Retd.) Jayant Nath, Chairperson**

**Appearance:  
Mr. Anand Srivastava, Advocate, TPDDL  
Ms. Anushree Bardhan, Advocate, SECI**

**ORDER**

(Date of Order: 17.01.2024)

1. The instant Petition has been filed by TPDDL seeking approval of the Commission to execute the Supplementary Power Purchase Agreement between Petitioner and Solar Energy Corporation of India Ltd. (SECI). The Petitioner has made the following prayer in its Petition:
  - a. To approve the Supplementary Power Sale Agreement (SPSA) to be executed by and between Tata Power Delhi Distribution Limited and Solar Energy Corporation of India Ltd.

**Submissions by the Petitioner**

2. The Petitioner has submitted that:
  - a. The Petitioner entered into a Power Sale Agreement dated 28.03.2018 ("Original PSA") with SECI for the sale of 50 MW of wind power on a long-term basis. As per the terms of the Original PSA, SECI was required to enter into power purchase agreements with selected Wind Power Developers ("WPDs") for procurement of 2000 MW wind power or the total capacity of projects selected under the provisions of Request for Selection, if it is less than 2000 MW, on a long-term basis.

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- b. That Article 13.1 of the Original PSA provides that Original PSA can be amended or supplemented by a written agreement between the parties. In view of Article 13.1 of the Original PSA, the Petitioner is filing the present Petition for seeking approval of the Supplementary Power Sale Agreement ("SPSA") which it shall execute with SECI. The Petitioner is seeking the above reliefs by invoking all the enabling powers in this regard including the inherent powers.
- c. On 12.01.2018, SECI issued RFS bearing no. SECI/C&P/ WPD/ 2000MWff3 /RfS/ 112017 ("RFS") for selection of WPDs for development of cumulative capacity of 2000 MW Wind Power. M/s Alfanar Company was declared as a successful bidder against the aforementioned RFS and was issued Letter of Award ("LOA") dated 23.02.2018. M/s Alfanar Company formed a project company, Alfanar Energy Private Limited ("AEPL"), within the provisions of the RFS for development of wind power project, generation and sale of wind power.
- d. On 21.02.2018, SECI wrote to Power Grid Corporation of India Limited ("PGCIL") vide letter dated 21.02.2018 stating that SECI has concluded the bidding process for the selection of 2000 MW ISTS-connected wind power projects and the proposed mapping of power from the selected projects vis-à-vis the States. It is imperative that the proposed mapping of power with respect to Alfanar Company for Delhi is 250MW. PGCIL vide its letter dated 15.03.2018 wrote to SECI wherein it stated that PGCIL has examined the mapping for the transfer of power from selected wind projects (Tranche-III) to different constituents in NR, ER and WR and found the same to be in order. SECI executed a Power Purchase Agreement dated 31.05.2018 ("Original PPA") with AEPL for the procurement of 300 MW Wind Power.
- e. Subsequently, as per the regulatory mandate the Petitioner filed Petition No. 38 of 2018 before the Commission for the approval of Original PSA and adoption of tariff of Rs. 2.45/kWh plus the trading margin of Rs. 0.07/kWh for the purchase of 50 MW wind power from SECI. The Commission vide its order dated 13.03.2019 ("Approval Order") approved the Original PSA between TPDDL and SECI.
- f. Further, with respect to adoption of tariff and trading margin, the Commission vide the Approval Order directed the Petitioner to approach the Hon'ble Central Electricity Regulatory Commission ("CERC") since the Commission does not have jurisdiction with respect to the adoption of tariff. Thereafter, the Petitioner, filed Petition No. 161/AT/2019 under Section 63 of the Act, along with Section 79(1)(k) of the Act, for the adoption of tariff for the purchase of 50 MW

wind power from SECI of Rs. 2.45/kWh plus the trading margin of Rs. 0.07/kWh before the Hon'ble CERC. The Hon'ble CERC vide its Order dated 28.02.2020 adopted the individual tariff discovered through the transparent competitive bidding process. However, with respect to trading margin, the Hon'ble CERC held that in terms of Regulation 8(1)(d) of Central Electricity Regulatory Commission (Procedure Terms and Conditions for grant of trading license and other related matters) Regulations, 2020, the contracting parties have a choice to mutually agree on trading margin for the long-term transaction. Accordingly, Hon'ble CERC cannot adopt any trading margin.

- g. Thereafter, SECI vide its letter dated 18.08.2020 wrote to TPDDL wherein it stated that Hon'ble CERC vide its order dated 19.02.2020 has adopted individual tariff through transparent bidding process. In line with the Hon'ble CERC Order, SECI proposed to amend Article 5.1.2 of the Original PSA based on the mapping approved by PGCIL and supply power to TPDDL. Further, vide the said letter SECI also provided draft supplementary Power Sale Agreement.
- h. On 13.05.2022, SECI signed an amendment agreement with AEPL amending Article 4.4.1 of the Original PPA. The following amendment has been made vide the amendment agreement in the Original PPA:

<b>S.NO.</b>	<b>Existing Clause</b>	<b>Amended Clause</b>
1.	Article 4.4.1 The WPD will declare the CUF of the Project and will be allowed to revise the same once within first year of COD. Barring the first year of operation, Buyer, in any Contract Year, shall not be obliged to purchase any additional energy from the WPD beyond 1097.453 Million kWh (MU) from the Wind Project. Barring the first year of operation, if for any Contract Year, it is found that the WPD has not been able to generate minimum energy of 823.0896 Million kWh (MU) on account of reasons solely attributable to the WPD, the non-compliance by WPD shall make the WPD liable to pay the compensation provided in the respective PSA as payable to Buying Entity(ies) by Buyer to enable Buyer to remit the amount to Buying Entity(ies). The	Article 4.4.1 The WPD will declare the CUF of the Project and will be allowed to revise the same once within first year of COD. Barring the first year of operation, Buyer, in any Contract Year, shall not be obliged to purchase any additional energy from the WPD beyond 1070.060 Million kWh (MU) from the Wind Project. Barring the first year of operation, if for any Contract Year, it is found that the WPD has not been able to generate minimum energy of 802.565 Million kWh (MU) on account of reasons solely attributable to the WPD, the non-compliance by WPD shall make the WPD liable to pay the compensation provided in the respective PSA as payable to Buying Entity(ies) by Buyer to enable Buyer to remit the amount to Buying Entity(ies). The

	<p>lower limit will, however, be relaxable by Buyer to the extent of grid non availability for evacuation which is beyond the control of the developer. For the first year of operation of the project, the annual CUF shall be calculated for the complete year after COD of the Project. Subsequently, the annual CUF shall be calculated every year from 1st April of the year to 31st March next year. This compensation shall be applied to the amount of shortfall in generation during the Contract Year. The amount of such compensation shall be as determined by the Appropriate Commission/ Authority, and such compensation shall ensure that the Buying Entity(ies) is/are offset for all potential costs associated with low generation and supply of power under the PPA. However, the minimum compensation payable to SECI by the WPD shall be 75% (seventy-five percent) of the cost of this shortfall in energy terms, calculated at PPA tariff.</p>	<p>lower limit will, however, be relaxable by Buyer to the extent of grid non availability for evacuation which is beyond the control of the developer. For the first year of operation of the project, the annual CUF shall be calculated for the complete year after COD of the Project. Subsequently, the annual CUF shall be calculated every year from 1st April of the year to 31st March next year. This compensation shall be applied to the amount of shortfall in generation during the Contract Year. The amount of such compensation shall be as determined by the Appropriate Commission/ Authority, and such compensation shall ensure that the Buying Entity(ies) is/are offset for all potential costs associated with low generation and supply of power under the PPA. However, the minimum compensation payable to SECI by the WPD shall be 75% (seventy-five percent) of the cost of this shortfall in energy terms, calculated at PPA tariff.</p>
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- i. Pursuant to the mutual agreement on trading margin and amendment in the Original PPA, SECI wrote to TPDDL vide its letter dated 09.06.2022 wherein it stated that SECI has entered into an amendment agreement dated 13.05.2022 with APEL and also shared a draft SPSA for the sale of wind power on long term basis for 50 MW Alfancar Wind Power Project. The amendment sought in the Original SPSA vide draft SPSA is reproduced herein below:

S. No	Clause as Per Original PSA	Clause as Approved by DERC Vide Approval Order	Amendment Sought Vide Supplementary Power Sale Agreement	Justification
1.	<b>Article 5.1.1:</b> From SCD and subject to the provision of the Article 6.7, the Buying Entity shall pay the fixed tariff of Rs. 2.45/kWh plus trading margin of Rs.	<b>Article 5.1.1:</b> From SCD and subject to the provisions of the Article 6.7, the Buying Entity shall pay Maximum possible fixed tariff as adopted	<b>Article 5.1.1:</b> From SCD and subject to the provision of Article 6.7, the Buying Entity namely TPDDL shall pay the individual tariff as specified in	The amendment in the said clause is in line with the Hon'ble CERC's Order dated 28.02.2020,

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S. No	Clause as Per Original PSA	Clause as Approved by DERC Vide Approval Order	Amendment Sought Vide Supplementary Power Sale Agreement	Justification
	0.07/kWh fixed up to commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI under the RfS.	by the concerned Regulatory Commission (CERC) plus trading margin of Rs.0.07/kWh fixed upto commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI under RfS.	Schedule- 1 to this Supplemental Agreement of the project from where the supply of electricity is sold by SECI to TPDDL and in addition to the same a trading margin of Rs. 0.07 per kWh for the entire term of this agreement.	this Hon'ble Commission's Approval Order and to reflect the mutual agreement between the parties in terms of the Hon'ble CERC's Order dated 28.02.2020 in Petition No. 161/AT/2019 .
2.	<b>Article 5.1.2:</b> Weighted average tariff as per schedule-1 plus trading margin of Rs 0.07 per kWh (Rupees Seven Paisa per kWh) shall be applicable upon Commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI under the RfS for balance term of this Agreement for the energy supplied as per provisions of this Agreement.	<b>Article 5.1.2:</b> Weighted average tariff as approved by CERC plus trading margin of Rs.0.07/kWh fixed shall be applicable upon commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI under RfS for the balance term of this Agreement for the energy supplied as per provisions of this Agreement.	<b>Article 5.1.2:</b> The Buying Entity namely TPDDL shall make the Tariff Payments to SECI as per schedule-1 plus trading margin of Rs 0.07 per kWh (Rupees Seven Paisa per kWh) upon Commissioning of the respective Projects for the term of this Agreement for the energy made available by SECI to TPDDL as per the provisions of this Agreement.	The amendment in the said clause is in line with the Hon'ble CERC's Order dated 28.02.2020, this Hon'ble Commission's Approval Order and to reflect the mutual agreement between the parties in terms of the Hon'ble CERC's Order dated 28.02.2020 in Petition No. 161/AT/2019
3.	<b>Clause 6.8.3:</b> The WPD will declare the CUF of the Project and will be allowed to revise the same once within first year of COD. Buying Entity, in any Contract	-	<b>Clause 6.8.3:</b> The WPD will declare the CUF of the Project and will be allowed to revise the same once within first year of COD. Buying Entity, in any Contract	The proposed amendment is in line with clause 6.8.3 of the Original PSA which allowed WPD to

S. No	Clause as Per Original PSA	Clause as Approved by DERC Vide Approval Order	Amendment Sought Vide Supplementary Power Sale Agreement	Justification
	<p>Year barring the first year of operation of the Project, shall not be obliged to purchase any additional energy from the SECI/WPD beyond 198.81 Million kWh (MUs). If for any Contract Year, it is found that the WPD has not been able to generate minimum energy of 149.11 Million kWh (MUs) on account of reasons solely attributable to the WPD, the noncompliance by the WPD shall make the WPD liable to pay the compensation and shall duly pay such compensation to the SECI to enable the SECI to remit the amount to the Buying Entity. For the first year of operation of the Project, the annual CUF shall be calculated for the complete year after COD of the Project. Subsequently, the annual CUF shall be calculated every year from 1st April of the year to 31<sup>st</sup> March next year. The lower limit will, however, be</p>		<p>Year barring the first year of operation of the Project, shall not be obliged to purchase any additional energy from the SECI/WPD beyond 178.343 Million kWh (MUs). If for any Contract Year, it is found that the WPD has not been able to generate minimum energy of 133.761 Million kWh (MUs) on account of reasons solely attributable to the WPD, the noncompliance by the WPD shall make the WPD liable to pay the compensation and shall duly pay such compensation to the SECI to enable the SECI to remit the amount to the Buying Entity. For the first year of operation of the Project, the annual CUF shall be calculated for the complete year after COD of the Project. Subsequently, the annual CUF shall be calculated every year from 1st April of the year to 31<sup>st</sup> March next year. The lower limit will, however, be</p>	<p>revise the CUF from project once within the first year of COD. Based on this AEPL sought revision from SECI which was approved by SECI vide amended PPA dated 13.05.2022. Therefore, the same needs to be reflected in SPSA.</p>

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<b>S. No</b>	<b>Clause as Per Original PSA</b>	<b>Clause as Approved by DERC Vide Approval Order</b>	<b>Amendment Sought Vide Supplementary Power Sale Agreement</b>	<b>Justification</b>
	<p>relaxable by SECI to the extent of grid non-availability for evacuation which is beyond the control of the developer. The amount of such compensation shall be as determined by the Appropriate Commission/ Authority, and such compensation shall ensure the Buying Entity is offset for all potential costs associated with low generation and supply of power under the PSA. However, the minimum compensation payable to the SECI by the WPD shall be 75% (seventy-five percent) of the cost of this shortfall in energy terms, calculated at the PPA tariff, which shall in turn, be remitted to the Buying Entity. The declared CUF can be revised by WPD once within one year of commissioning.</p>		<p>relaxable by SECI to the extent of grid non-availability for evacuation which is beyond the control of the developer. The amount of such compensation shall be as determined by the Appropriate Commission/ Authority, and such compensation shall ensure the Buying Entity is offset for all potential costs associated with low generation and supply of power under the PSA. However, the minimum compensation payable to the SECI by the WPD shall be 75% (seventy-five percent) of the cost of this shortfall in energy terms, calculated at the PPA tariff, which shall in turn, be remitted to the Buying Entity. The declared CUF can be revised by WPD once within one year of commissioning.</p>	

- j. Further, the SPSA also stipulated amendment in Schedule-I of the Original PSA.

The proposed Schedule-I is reproduced below:

Sl. No.	Name of the Bidder	Project Capacity (MW)	Applicable tariff as per SECI-WPD PPA (Rs./kWh)	Quantum allocated to TPDDL for resale (MW)	Maximum Energy (Million kWh)	Minimum Energy (Million kWh)
1.	Alfanar Company	300	2.45	50	178.343	133.761
<b>Total</b>				<b>50</b>	<b>178.343</b>	<b>133.761</b>

3. The Petitioner has also filed an additional affidavit on 21.06.2023 wherein it prayed to place on record the following documents:
- i. Order dated 13.03.2019 passed by the Commission in Petition No. 38 of 2018 wherein the Commission approved the Power Sale Agreement dated 28.03.2018 (Original PSA) entered into between the Petitioner and the Respondent No. 1 and directed the Petitioner to approach the Hon'ble Central Electricity Regulatory Commission (CERC) for approval of trading margin.
  - ii. Order dated 28.02.2020 passed by the Hon'ble CERC in Petition No. 161/AT/2019 wherein the Hon'ble CERC adopted the individual tariff and held that contracting parties have a choice to mutually agree on trading margin.

#### **Submissions by the Respondent**

4. The Respondent No. 1, (SECI) vide Affidavit dated 27.07.2023, have submitted the following:
- i. On 28.03.2018, TPDDL executed the PSA along with Addendum to the PSA with SECI for procurement of 50 MW Wind Power.
  - ii. The tariff based competitive bidding was held for ISTS Tranche-III Wind Scheme for procurement of an aggregate capacity of 2000 MW, SECI had issued the Request for Selection Document (RfS) dated 12.01.2018 for selection of Wind Power Developers (WPD) under the said ISTS Tranche-III Wind Scheme inviting the Bid for the above capacity. The RfS Document has been issued as per the Guidelines notified by Government of India.



- iii. In pursuance to the competitive bidding, the following Bidders were declared successful for the capacity and the tariff mentioned herein:

S.No.	Bidders	Allotted Capacity (MW)	Tariff (INR/kWh)
1.	ReNew Wind Energy AP2 Private Limited	400	2.44
2.	Green Infra Wind Energy Limited	300	2.44
3.	Inox Wind Infrastructure Services Limited	200	2.44
4.	Torrent Power Limited	499.80	2.44
5.	Adani Green Energy (MP) Ltd.	250	2.45
6.	Alfanar Company	300	2.45
7.	Betam Wind Energy Private Ltd.	50.2	2.45
		2000	

- iv. The Respondent No. 2 Alfanar Company formed project company namely Alfanar Energy Private Limited (hereinafter 'Alfanar Energy') for implementation of 300MW Wind Power Project. On 31.05.2018, Alfanar Energy and SECI entered into the PPA for generation and sale of electricity from 300 MW Wind Power Project to be established by Alfanar Energy.
- v. The Commercial Operation Date of 300MW Wind Power Project of Alfanar Energy is under:
- a. 88 MW - 29.07.2020
  - b. 50.6 MW - 03.08.2020
  - c. 29.6MW - 05.09.2020
  - d. 15.4 MW - 12.09.2020
  - e. 15.4 MW - 02.10.2020
  - f. 15.4 MW - 21.10.2020
  - g. 20.2 MW - 19.11.2020
  - h. 15.6 MW - 30.12.2020
  - i. 11.4 MW - 23.02.2021
  - j. 11 MW - 05.03.2021
  - k. 15.40 MW - 26.03.2021
  - l. 12 MW - 01.04.2021

The Power Project has been established in the State of Gujarat.

- vi. SECI is procuring power from the power project of Alfanar Energy under the PPA for resale of the power to the Petitioner under the PSA. In terms of the above, the power flow to the Petitioner has commenced and is continuing under the PSA.
- vii. The Power Project of Alfanar Energy established under PPA dated 31.05.2018 has been identified for supply of 50 MW Wind Power to TPDDL under the PSA.
- viii. The above identification of supply 50 MW Wind Power from the power project of Alfanar Energy to TPDDL is consistent with the mapping of the power projects to the buying utilities (TPDDL and other DISCOMs) based on the Long-Term Open Access Availability to the inter-state transmission system from the place of generation to the State Periphery of the respective Buying Utility. The decision of such mapping and identification of WPDs vis a vis the Buying Utility is decided in coordination with the Powergrid Corporation of India Limited (hereinafter Powergrid).
- ix. The Central Electricity Regulatory Commission (CERC) in the decision dated 28.02.2020 passed in Petition No. 161/AT/2019 along with IA No. 85/2019 filed under Section 63 of the Electricity Act for the adoption of tariff for ISTS Tranche-III Wind Scheme, under which the power is being sold to the TPDDL in terms of PSA, has adopted tariff of the individual projects of each generator (bidder) selected in pursuance of the Competitive Bidding of the above scheme. The Central Commission has not approved the pooled tariff/Weighted Average Tariff. The relevant extract of the Order dated 28.02.2020 is as under:

*“23. Accordingly, in terms of Section 63 of the Act, the Commission adopts the following tariff for the Projects as agreed to by the successful bidders, which shall remain valid throughout the period covered in the PSAs and PPAs:*

Sl.No.	WPD	Project Capacity (MW)	Applicable Tariff (INR/kWh)
1.	Renew Wind Energy AP2 Private Limited	100	2.44
	Renew Wind Energy AP2 Private Limited	300	2.44
2.	Green Infra Wind Energy Limited	300	2.44
3.	Inox Wind Infrastructure Services Limited-1	50	2.44
	Inox Wind Infrastructure Services Limited-2	50	2.44
	Inox Wind Infrastructure Services Limited-3	50	2.44

	Inox Wind Infrastructure Services Limited-4	50	2.44
4.	Torrent Power Limited	300.3	2.44
	Torrent Power Limited	199.5	2.44
5.	Adani Green Energy (MP) Limited	250	2.45
6.	Alfanar Company	300	2.45
7.	Betam Wind Energy Private Limited	50.2	2.45
	<b>Total</b>	<b>2000</b>	

x. The aspects namely the applicable tariff and trading margin stand decided by the Central Commission in terms of (a) adoption of Tariff under Section 63 read with Section 79 (1)(b) of the Electricity Act, 2003; and (b) the trading margin being also in terms of Regulation 8(1)(d) of Trading License Regulations, 2020 in exercise of Section 178 of Electricity Act, 2003.

xi. SECI and TPDDL have proposed to execute the Supplementary PSA, inter-alia, providing as under:

.....

AND WHEREAS based on the mapping of the Wind Power Developers with the respective Buying Entities for optimum utilization of the transmission resources was undertaken and confirmed between SECI and Powergrid Corporation of India Limited (Powergrid) as per letters dated 21.02.2018 and 15.03.2018 which are appended hereto this Supplemental Agreement and duly initiated between the parties.

AND WHEREAS in terms of the above, the Wind Power Projects identified for sale of electricity to SECI for onward sale of electricity to the Buying Utilities on back to back basis have been identified as under;

S.No.	Name of the SPD	Project Capacity (MW)	Project Location	Proposed interconnection point	Proposed mapping of the power (MW)
1.	Renew Wind Energy AP2 Private Limited	400	Dist: Kutch Gujrat	PGCIL Bhachau Substation	Haryana (350MW) + Odisha (50MW)
2.	Green Infra Wind Energy Limited	300	Dist:- Bhuj Gujrat	765/400/200 Kv Bhuj GSS of PGCIL	Bihar (100 MW) + Punjab (200 MW)
3.	Inox Wind Infrastructure Services Limited	200	Dist.:- Kutuch, Gujrat	220 kV Bay of 765/400/200 Kv BHUJ POOLING SUBSTATION	Jharkhan (200MW)

4.	Torrent Power Limited	499.8	Dist.: Kutch, Gujrat	PGCIL Bhuj Pooling substation Nirona at 220 Kv	Mp (450mw)+ Bihar (49.8MW)
5.	Adani Green Energy (MP) Limited	250	Dist.: Kutch Gujrat	765/400/220 Kv Bhuj GSS of PGCIL	Goa (50 MW)+ Chattisgarh (150 MW) + Bihar (50 MW)
6.	Alfanar Company	300	Dist.: Kutch Gujrat	765/400/220 Bhuj GSS of PGCIL	Delhi (250 MW) + Bihar (50 MW)
7.	Betam Wind Energy Private Limited	50.2	Dist.: Tuticorin, Tamil Nadu	400/230 Kv Tuticorin GIS	Bihar (50.2 MW)

AND WHEREAS the Central Electricity Regulatory Commission by order dated 28.02.2020 in IA No. 85/2019 in Petition No. 161/AT/2019 has adopted the individual tariff discovered for the above identified Wind Developers through transparent Competitive Bidding Process under ISTS Connected Wind Tranche-II Scheme.

AND WHEREAS SECI by its letter No SECI/PT/TPDDL/ISTS Solar & Wind/Tariff/2020/38462 dated 18.08.2020 has communicated to TPDDL of the above individual tariff of Wind Power Developers plus the trading margin of Rs. 0.07/kWh applicable for sale to TPDDL.

AND WHEREAS the Parties are desirous of executing this Supplemental Agreement incorporating certain terms and conditions agreed to between the parties:

1.0 The Article 5 and 6 of the PSA dated 28.03.2018 shall stand substituted as under:

5. ARTICLE 5: APPLICABLE TARIFF

5.1.1 From SCD and subject to the provision of Article 6.7, the Buying Entity namely TPDD shall pay the individual tariff as specified in Schedule-1 to this Supplemental Agreement of the project from where the supply of electricity is sold by SECI to TPDDL and in addition to the same a trading margin of Rs. 0.07 per kWh for the entire term of this agreement.

5.1.2 The Buying Entity namely TPDDL shall make the Tariff payments to SECI as per Schedule-1 plus trading margin of Rs. 0.07 per kWh (Seven paisa per kWh) upon Commissioning of the respective projects for the term of this Agreement for the energy made available by SECI to TPDDL as per the provisions of this Agreement.

ARTICLE 6 : BILLING AND PAYMENT

6.8 : Renewable Purchase Obligation

6.8.3 The WPD will declare the CUF of the Project and will be allowed to revise the same once within first year of COD. Buying Entity, in any Contract Year barring the first year of operation of the Project, shall not be obliged to purchase any additional energy from the SECI/WPD beyond 178.343 Million kWh (MUs). If for any Contract year, it is found that the WPD has not been able to generate minimum energy of 133.761 Million kWh (MUs) on account of reasons solely attributable to the WPD, the noncompliance by the WPD shall make the WPD liable to pay the compensation and shall duly pay such compensation to the SECI to enable the SECI to remit the amount to the Buying Entity. For the first year of operation of the Project, the annual CUF shall be calculated for the complete year after COD of the Project. Subsequently, the annual CUF shall be calculated every year from 1<sup>st</sup> April of the year to 31<sup>st</sup> March next year. The lower limit will, however be relaxable by SECI to the extent of grid non-availability for evacuation which is beyond the control of the developer. The amount of such compensation shall be as determined by the Appropriate Commission/Authority, and such compensation shall ensure the Buying Entity is offset for all potential costs associated with low generation and supply of power under the PSA. However, the minimum compensation payable to the SECI by the WPD shall be 75% (Seventy-five percent) of the cost of this shortfall in energy terms, calculated at the PPA tariff, which shall in turn, be remitted to the Buying Entity. The declared CUF can be revised by WPD once within one year of commissioning.

2.0 The Schedule-1 of the PSA shall stand substituted as under:

1. SCHEDULE 1:

S.No.	Name of Bidder	Project Capacity (MW)	Applicable Tariff as per SECI WPD PPA (Rs./kWh)	Quantum allocated to TPDDL for Resale (MW)	Maximum Energy (Million kWh)	Minimum Energy (Million kWh)
1.	Alfanar Company	300	2.45	50	178.343	133.761
			<b>Total</b>	<b>50</b>	<b>178.343</b>	<b>133.761</b>

3.0 Subject to the above substitution, the parties agree that all the terms and conditions contained in the PSA dated 28.03.2018 shall continue to be effective and enforceable as before.

4.0 The terms of this Supplemental Agreemental shall be read as a part of the PSA dated 28.03.2018 entered into between the parties for all intent and purposes.

xii. The above modification in Article 5 and Article 6 of the PSA is based on the mapping of the power projects to the buying utilities as approved by Powergrid for ISTS Tranche-III Wind Scheme and the Order dated 28.02.2020 passed by the Central Commission in Petition No. 161/AT/2019 along with IA No. 85/2019. Further, on 13.05.2022, SECI has signed Amendment-01 to PPA with Alfanar Energy amending Article 4.4.1 of the PPA. In view of mapping and identification of Power Project of Alfanar Energy for supply of 50 MW Wind Power to TPDDL, the PSA needs to be modified to the limited extent as proposed in the Supplementary PSA.

xiii. In the Order dated 28.02.2020 passed by the Central Commission in Petition No. 161/AT/2019 along with IA No. 85/2019 in respect of Tranche-III Wind Scheme, it has been held that Regulation 8 (1) (d) of the Central Regulatory Commission (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2020 notified by Central Commission gives choice to the contracting parties mutually agree on Trading Margin. The relevant provisions are as under:

**“Applicable of Trading Margin:**

*Trading margin shall be applicable to the following transactions undertaken by the Trading Licensee:*

.....

*(b) Transactions under long term contracts (where period of the contract of the Trading Licensee with either the seller or the buyer or both is more than one year);*

.....

**8. Trading Margin**

*(1) Trading Licensee shall comply with the trading margin as given below:*

.....

*(d) For transaction under long term contracts, the trading margin shall be decided mutually between the Trading Licensee and the seller:”*

xiv. Accordingly, the Trading Margin of Rs. 0.07/kWh as mutually agreed to between TPDDL and SECI in the PSA dated 28.03.2018 read with SPSA (to be executed) is consistent with Regulation 8(1)(d) of Trading License Regulations, 2020.

**Commission’s Analysis:**

6. The Petitioner TPDDL, u/s Section 86(1)(b) of Electricity Act,2003 in terms of DERC Comprehensive (Conduct of Business) Regulations, 2001 has filed the instant

Petition seeking approval of the Supplementary Power Sale Agreement (SPSA) to be executed with the Respondent No.1, SECI.

7. The PPA signed between SECI and Alfanar Energy and as also the PSA signed between the Petitioner and SECI are back to back arrangement/contracts. The Hon'ble CERC in the decision dated 28.02.2020 in Petition No. 161/AT/2019 along with IA No. 85/2019 filed under Section of the Electricity Act for the adoption of tariff for ISTS Tranche-III Wind Scheme, under which the power is being sold to the TPDDL in terms of PSA, has adopted the tariff of the individual project of each Generator (bidder).

8. The Commission vide its Order dated 31.12.2020 had disposed of the Petition No. 65 of 2019 in the matter of TPDDL Vs. SECI with following direction. The relevant part of the order is extracted below:

*"24. In view of the aforesaid discussions, a Trading Margin of 2 paise/kWh is allowed to SECI; and the PSA dated 26/06/2019 is approved subject to the condition that the applicable tariff shall be as approved by CERC with a trading margin of 2 paise/kWh. Consequently, the clauses of Article 1 of the PSA related to applicable Tariff shall be modified accordingly. It is also held that the Order dated 20/11/2019 of CERC has bearing in respect of Tariff for procurement of solar power for which the Petitioner TPDDL has entered into PSAs with SECI. Therefore, the Tariff as approved by CERC with a trading margin of 2 paise/kWh shall be applicable also to the PSAs approved by this Commission vide Orders dated 01/03/2019 in Petitions No. 24 of 2019 and 25 of 2019*

*The Petition is disposed of accordingly with the direction to the Petitioner to submit duly signed copy of PSAs modified as indicated above to the Commission within a period of one month."*

9. Thereafter, SECI filed an Appeal No. 52 of 2021 before the Hon'ble APTEL against the Commission's order dated 31.12.2020 in Petition No. 65 of 2019 whereby the Commission had reduced the Trading Margin in respect of the Appellant from Rs. 0.07/unit to Rs. 0.02/unit. On 02.07.2021, Hon'ble APTEL has passed its judgement in the abovementioned appeal and set-aside the order dated 31.12.2020 passed by this Commission with respect to lowering the Trading Margin and restored the trading margin to 7paise/kWh.

10. The Commission filed Civil Appeal bearing No. 6310 of 2021 against the Hon'ble APTEL's Judgement dated 02.07.2021 in Appeal No. 52 of 2021 before the Hon'ble Supreme Court. The Respondent No 1 (SECI), filed two IAs bearing Nos. 102603/2022 and 77402/2023 praying that the Petitions on the subject pending before the Commission may be disposed of subject to the final outcome of the instant Civil Appeal filed by the Commission. The said IAs were disposed of on 04.05.2023 by the Hon'ble Supreme Court with the following directions:

*"Having heard learned counsel for the respective parties and in the facts and circumstances of the case, we direct the appellant- Delhi Electricity Regulatory Commission to decide and dispose of the petitions filed before it for approval of procurement of renewable power in other schemes involving SECI, as stated in para 9 of the present Application, in accordance with law and on its own merits, however, subject to the ultimate outcome of the present proceedings. IAs stand disposed of."*

11. Accordingly, the Commission listed the matter on 30.05.2023, 13.07.2023, and 06.12.2023 wherein, the order was reserved.

12. In view of the foregoing discussion and also the fact that Hon'ble APTEL vide its Judgement dated 02.07.2021 in Appeal No. 52 of 2021 has set aside the Order of the Commission dated 31.12.2020 in IA No. 1 of 2020 in Petition No. 65 of 2019 wherein the Commission had reduced the trading margin from Rs. 0.07/kWh to Rs. 0.02/kWh, the Commission grants approval to the Supplementary PSA to be executed between Petitioner and the SECI for 50 MW power from Alfanar Energy at a total tariff of Rs.2.52/kWh viz. tariff of Rs. 2.45/kWh plus Rs. 0.07/kWh as trading margin as per Hon'ble APTEL Judgement dated 02.07.2021. However, the trading margin of Rs. 0.07/kWh shall be subject to the final outcome in the Civil Appeal No. 6310 of 2021, as directed by the Hon'ble Supreme Court of India vide its Order dated 04.05.2023.

13. Ordered Accordingly.

**Sd/-  
(Justice (Retd.) Jayant Nath)  
Chairperson**