

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 53/AT/2024

Coram:

**Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member**

Date of Order: 25th April, 2024

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff of 690 MW Wind Power Projects (Tranche-XIV) connected to the Inter-State Transmission System (ISTS) and selected through Competitive Bidding Process as per the Guidelines dated 08.12.2017 of the Ministry of Power, Government of India as amended from time to time and interpreted and modified by the central government vide subsequent communications/ notifications.

And

In the matter of:

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

..... **Petitioner**

VERSUS

- 1. U.P. Power Corporation Limited,**
14th Floor, Shakti Bhawan Extension,
14 Ashok Marg, Lucknow-226001
Uttar Pradesh
- 2. Apraava Energy Private Limited,**
7th Floor, Fulcrum, Sahar Road, Andheri (East)
Mumbai- 400099, Maharashtra
- 3. SJVN Green Energy Limited,**
SJVN Corporate Headquarters,
Shakti Sadan, Shanan,
Shimla-171006, Himachal Pradesh
- 4. Green Prairie Energy Private Limited,**
508, Town Centre II, Andheri-Kurla Road,
Marol, Andheri East,
Mumbai-400059



Parties present:

Ms. Shikha Ohri, Advocate, SECI
Shri Kartik Sharma, Advocate, SECI

ORDER

The Petitioner, Solar Energy Corporation of India Limited ('SECI'), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') for the adoption of tariff for the 690 MW Wind Power Projects (Tranche-XIV) connected to the inter-State Transmission System (ISTS) and selected through the competitive bidding process as per the "*Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Wind Power Projects*" (hereinafter referred to as 'the Guidelines') dated 8.12.2017 issued by the Ministry of Power, Government of India. The Petitioner has made the following prayers:

- "a) Adopt the tariff discovered in the tariff based competitive bid process for the power projects as stated above on the terms and conditions contained in the Power Purchase Agreements dated 20.11.2023 signed with Respondent No. 2, Power Purchase Agreement dated 27.10.2023 signed with Respondent No. 3, LoA dated 23.06.2023 & subsequent addendum dated 02.08.2023 issued to M/s Green Prairie Energy Private Limited read with the Power Sale Agreement dated 19.10.2023 signed with the Respondent No. 1; and*
- b) Approve the trading margin of Rs. 0.07/kWh as agreed to by the Procurer/Respondent No. 1 in the duly executed PSA, in terms of Regulation 8 (1) (d) of the CERC (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2020; and*
- c) Pass any other or further orders which this Commission may deem fit and proper in the facts and circumstances of the case."*

Submissions of the Petitioner

2. The Petitioner, SECI, has submitted that on 20.2.2023, it issued a Request for Selection (RfS) along with draft Power Purchase Agreement (PPA) and draft Power Sale Agreement (PSA) documents for setting up of the 1200 MW ISTS connected

wind power projects (Tranche-XIV) on a “Build Own Operate” basis as per the Guidelines and floated the same on the ISN Electronic Tender System (ISN ETS) e-bidding portal. The Petitioner has submitted that in pursuance to the above, seven bids were received offering an aggregate capacity of 1540 MW, and all of them were found to meet the technical criteria. On 12.6.2023, the financial bids of technically qualified bidders were opened on the ISN ETS e-bidding portal, and out of seven bidders, six bidders for capacity aggregating 1240 MW were shortlisted for e-reverse auction. The Petitioner has submitted that the e-reverse auction of six technically qualified bidders was conducted on 12.6.2023 on the ISN ETS e-bidding portal, and the final tariff was arrived. The Petitioner has submitted that these projects would help the distribution licensees to meet their Renewable Purchase Obligations (RPOs) requirements apart from providing power at very economical rates. Pursuant to the issuance of a Letter of Award to the successful bidders, namely, Green Prairie Energy Private Limited (190 MW), Apraava Energy Private Limited (300 MW), and SJVN Green Energy Limited (200 MW) on 23.6.2023, the Petitioner has agreed to sell wind power to the distribution licensee, namely, U.P. Power Corporation Limited (UPPCL) under the PSA dated 19.10.2023 executed with it and the Distribution licensee has duly agreed to a trading margin of Rs.0.07/kWh in the PSA signed with SECI, which is in consonance with Regulation 8(1)(d) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2020 (Trading Licence Regulations, 2020). SECI has further submitted that Power Purchase Agreements have also been signed with Apraava Energy Private Limited on 20.11.2023 and with SJVN Green Energy Limited on 27.10.2023. In view of the above, the Petitioner has prayed for the adoption of the tariff as discovered through the competitive bidding process carried out by the Petitioner.

Hearing dated 15.3.2024

3. The matter was heard on 15.3.2024. Learned counsel for the Petitioner reiterated the submissions made in the Petition and prayed to the Commission for the adoption of a tariff. In response to the Commission's specific query whether the PPAs for the entire 690 MW capacity have been signed/ tied-up, the learned counsel for the Petitioner submitted that while SECI has already signed the PSA for the entire 690 MW, PPAs have been signed for 500 MW. It was submitted that SECI is in the process of executing the PPA for the remaining 190 MW Green Prairie Energy Private Limited.

4. After admitting the matter, notice was issued to the Respondents, and the Respondents were given liberty to file their reply (s) in the matter. However, despite being given this opportunity, none of the Respondents have filed a reply .

Hearing dated 10.4.2024

5. The matter was finally heard on 10.4.2024. Learned counsel for the Petitioner submitted that no reply had been filed by any of the Respondents. Learned counsel further reiterated that while the PSA has been signed for the entire 690 MW with Respondent No.1, UPPCL, PPAs have been signed only for 500 MW so far, and the Petitioner is still in the process of signing the PPA for remaining 190 MW with Green Prairie Energy Pvt. Ltd. and as per the latest correspondence exchange with the said developer, it is expected to be executed within the month of April 2024 itself. Learned counsel, however, added that the Commission may consider adopting the tariff for 500 MW in the present case for which the PPAs have already been signed while granting the liberty to approach for the remaining capacity once signed.

6. Considering the submissions made by the learned counsel for the Petitioner, the Commission deemed it appropriate to grant a week's time to the Petitioner to place on record the PPA for the remaining 190 MW, if executed and subject to this, the Commission reserved the matter for order. However, the Petitioner did not furnish any PPA executed with Green Prairie Energy Pvt. Ltd. or its SPV for the remaining capacity of 190 MW during the given period.

Analysis and Decision

7. 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 individual wind power projects as discovered pursuant to the competitive bid process carried out in terms of the 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 determining such tariff.

10. The Ministry of Power, Government of India has notified the Guidelines under Section 63 of the Act vide Resolution No.23/54/2017-R&R on 8.12.2017. The said Guidelines have been subsequently amended vide Resolution dated 16.7.2019. The salient features of the Guidelines are as under:

- (a) Guidelines are applicable for procurement of power by the procurers from grid-connected wind power projects having (a) individual size of 5 MW and above

at one site with minimum bid capacity of 25 MW for intra-State projects and (b) individual size of 50 MW and above at one site with minimum bid capacity of 50 MW for inter-State projects through tariff based competitive bidding to be conducted by the procurers which include the distribution licensee, or the authorized representative(s), or intermediary procurers.

(b) The procurer shall prepare the bid documents in accordance with the Guidelines and 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 the 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, the minimum bid shall be 25 MW with at least 5 MW project at one site, and for inter-State projects, the minimum bid shall be 50 MW at one site. The procurer may choose to specify the maximum capacity that can be allotted to a single bidder, including its affiliates.

(d) The procurer has the 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 a 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. The PPA period shall not be less than 25 years from the date of the Scheduled Commissioning Date.

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

(g) The procurer and intermediary procurer shall provide payment security to the Wind Power Developer through revolving Letter of Credit in an amount not less than one-month average billing and Payment Security Fund for at least three

months billing of all the projects. In addition, the procurer and intermediary procurer may also choose to provide the State Government Guarantee.

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

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

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

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

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

(m) The PPA shall be signed with the successful bidder/ project company or an SPV formed by the successful bidder. After conclusion of the bidding process, Evaluation Committee shall evaluate the bids and certify that the bidding process and the evaluation have been conducted in conformity with the provisions of RfS. After execution of the PPA, the procurers shall disclose the name(s) of the

successful bidder(s) and the tariff quoted by them in its website. The distribution licensee or the intermediary procurer, as the case may, shall approach the Appropriate Commission for the adoption of tariff in terms of Section 63 of the Act.

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

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

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

Sr.	Event	Date
1.	RfS issued by SECI	20.2.2023
2	Pre-bid meeting held	27.2.2023
3	Corrigendum-01 to the RfS documents uploaded	31.3.2023
4	Last date of bid submission	17.4.2023
5	Opening of techno-commercial bids	21.4.2023
6	Opening of financial bids	12.6.2023
7	e-Reverse Auction conducted	12.6.2023
8	Issuance of Letters of Award (LoAs) to successful bidders	23.6.2023

14. On 20.2.2023, SECI issued a Request for Selection document, along with the draft PPA and PSA documents for setting up the 1200 MW ISTS-connected wind power projects (Tranche XIV). According to SECI, it did not publish the notices in the newspapers as per the advisory of the Ministry of Information and Broadcasting, Government of India, dated 17.5.2017, mandating the e-publishing of advertisements

in the relevant portal. Accordingly, on 3.7.2018, SECI published a notification in the newspapers indicating that tenders of SECI will henceforth be published on its website and not in the newspapers.

15. As per Clause 5.1(b) of the Guidelines, the procurer is required to inform the Appropriate Commission about the initiation of the bidding process. In this regard, SECI vide its letter dated 22.2.2023, informed the Commission that it has initiated the competitive bidding process for procurement of power from the grid-connected wind power projects under the RfS dated 20.2.2023.

16. The Bid Evaluation Committee (BEC) comprising the following, was constituted for the opening and evaluation of the bids under RfS-No. SECI/C&P/IPP/12/ 0008/22-23 dated 20.2.2023:

Tender	Dept.	Offline and Online Techno- commercial and Financial Bid Opening	Techno-commercial and Financial evaluation and post-e-RA recommendation
1200 MW ISTS-connected Wind Power Projects (Tranche XIV)	PS	Aditee Nitnavare, Manager	Aditee Nitnavare, Manager
	Contracts	Abhisekh Srivastav, Manager	Abhisekh Srivastav, Manager
	Finance	Ajit Kumar Sharma, Manager	Ajit Kumar Sharma, Manager

17. Last date of submission of the bid was 17.4.2023, and the technical part of the bid was opened on 21.4.2023. Response to RfS was received from the seven bidders and all of them fully met the technical criteria and, consequently, were found to be qualified for opening of the financial bid. On 12.6.2023, financial bids of seven technically qualified bidders were opened on the ISN ETS e-bidding portal in the presence of a member of the Bid Evaluation Committee. As per the eligibility criteria mentioned in the RfS document, out of seven, six bidders for aggregating 1240 MW were shortlisted for e-reverse auction.

18. The e-reverse auction was carried out on 12.6.2023 in the presence of the members of BEC. After completion of the e-reverse auction, the following were declared as successful bidders:

S. No.	Name of the Successful Bidders	Bid Capacity (MW)	Final Tariff (INR/kWh)	Allotted Capacity (MW)
1.	Green Prairie Energy Private Limited	190	3.18	190
2.	Apraava Energy Private Limited	300	3.24	300
3.	SJVN Green Energy Limited	200	3.24	200
Total awarded capacity				690

19. Accordingly, on 23.6.2023, SECI issued a Letter of Awards (LoAs) to the above-selected bidders. The relevant extract of the Letter of Award issued to one of the successful bidders, namely, Apraava Energy Private Limited, is as under:

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

Allotted Project ID	Project Capacity (MW)	Interconnection Point Details	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
WPD-ISTS-T14-AEPL-P1-300MW	300	Vijayapura/ Bijapur GSS	₹3.24/-	Rupees Three and Twenty-four paise only

It is to be noted that the WPP is allowed to change the project location and interconnection point for the awarded project subsequent to issuance of LoA, as per the provisions of the RfS.

SECI shall purchase the power generated from the proposed ISTS-Connected Wind Power Project under the above scheme subject to the following terms and conditions as stated in various documents referred above and briefly brought out hereinafter.

1.0 The applicable tariff as mentioned above for power generated from the proposed Wind Power Project for the term of Power Purchase Agreement (PPA) to be entered into between Project Company or the Wind Power Developer (WPD) and M/s SECI, for the Project, shall be firm for the entire term of the PPA.

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

1.2 The award of the above Project is subject to the Guidelines including amendments/ clarifications issued by Government of India and terms and conditions

of the RfS document including its clarifications/ amendments/ elaborations/ notifications issued by SECI

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

1.4 In case of the selected Bidder itself executing the PPA, it shall ensure that its promoters shall not cede control (Control shall mean the ownership, directly or indirectly, of more than 50% of the voting shares of such Company or right to appoint majority Directors), till 01 (one) year after the COD, except with the prior approval of SECI. However, in case the Project is being set up by a listed Company, this condition will not be applicable.

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

1.6 In case of Project being executed through SPVs, the selected Bidder executing the project, if being a single company, shall ensure that its shareholding in the SPV/project company executing the Power Purchase Agreement (PPA), shall not fall below 51% at any time prior to 01 (one) year after the COD, except with the prior approval of SECI. In the event the selected 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 01 (one) year after COD, except with the prior approval of SECI. However, in case the Project is being set up by a listed Company, this condition will not be applicable.

1.7 The WPD shall pay to SECI, Success Charges of Rs. 1.00 Lakh/MW + 18% GST within 30 days of issuance of LoA or the date at least 07 days prior to the date of signing of PPA (PPA signing date to be intimated by SECI), whichever is earlier, in line with Clause 19.1 of the RfS, towards administrative overheads, coordination with State Authorities and others, DISCOM/ STU/ CTU, pre-commissioning and commissioning expense. Performance Bank Guarantee(s)/ Payment on Order Instrument (POI) for a value of @ Rs 20.79 Lakh/MW/Project shall be submitted by the WPD prior to signing of PPA, in line with Clause 18 of the RfS.

1.8 PPA will be executed between SECI and the WPD as per the breakup of the cumulative Project capacity awarded to the Bidder. This LoA is being issued in line with the Project breakup of the cumulative capacity quoted in the Covering Letter as part of your response to RfS and amended subsequently, as applicable.

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

1.10 The WPD will have to submit the required documents as mentioned below to SECI within 70 days from the issue of this LoA. In case of delay in submission of documents beyond the period as mentioned above, SECI shall not be liable for delay in verification of documents and subsequent delay in signing of PPA:

1) *In line with Clause 39.3 of the RfS, in the case of submission of letter from CEO/Managing Director of the respective Affiliate(s), undertaking to contribute the required equity funding and Performance Bank Guarantees/POI in case the Bidder fails to do so, at the time of bid submission, the requisite Board Resolution from the Affiliate(s) shall be required to be submitted prior to signing of PPA. [Aot required if requisite documents already submitted at the bidding stage}*

2) *Copy of the Certificate of Incorporation of the WPD.*

3) *The details of promoters and their shareholding in the WPD, duly certified by the practicing Chartered Accountant/ Company Secretary in original at least 7 (seven) days prior to date of their document submission (certificate date should be after the date of LoA) along with latest documents filed with ROC*

4) *Copy of the Memorandum of Association (MoA) of the WPD highlighting the object clause related to generation of Power/ Energy/ Renewable Energy/ Wind Power plant development.*

5) *In case the project being executed by a Special Purpose Vehicle (SPV) incorporated by successful bidder, such SPV shall be at least 51% shareholding subsidiary, in line with provisions of the RfS. Further, the Successful Bidder shall submit a Board Resolution prior to signing of PPA with SECI, committing total equity infusion in the SPV as per the provisions of RfS. Also, the SPV shall submit a Board Resolution for execution of the Project.*

6) *Copy of Board Resolution of WPD for authorization of signing of PPA and subsequent relevant documents.*

Further, the PPA shall be signed with WPDs subsequent to the signing of Power Sale Agreements with the Buying Entities for the cumulative awarded capacity and upon submission of the Success Charges along with total Performance Guarantees/ Payment on Order Instrument of requisite value. In addition to the above, the Successful Bidder shall also submit a detailed L-2 Schedule for the Project prior to the signing of PPA. Broad details to be captured in the Schedule are the land procurement; order, supply and erection status of various Project components; financial arrangement/ tie up etc. SECI shall provide the standard L-2 Schedule template to the Successful Bidder after the issuance of LoA.

1.11 *SECI shall have the right to verify original documents of the WPD for which copies have been submitted from the date of submission of response to RfS till date, if required. PPA as per the format given along with RfS has to be signed within 90 days from the date of issue of this LoA, if not extended by SECI. Effective Date of the PPA shall be the date as on 90 days from the date of issue of LoA, or the date of signing of PPA, whichever is later. Subsequent to expiry of the 90-day period after the issuance of LoA, in case SECI intimates to the Successful Bidder, a particular date as the date for signing of PPA, the specified date shall become the Effective Date of the PPA, irrespective of the date of signing of PPA.*

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

1.13 *The WPD shall meet financial closure requirements for the Project in line with clause 22 of the RfS document, within 07 (seven) months from the Effective Date of the PPA.*

Accordingly, the WPD shall furnish the documents pertaining to compliance of financial closure as per the above provisions.

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

20. Based on their requisition, SECI has signed the PSA dated 19.10.2023 with the buying utility/distribution licensee. i.e., U.P. Power Corporation Limited (UPPCL) for the sale of the entire wind power of 690 MW on a long-term basis. In the said PSA, it is indicated that the tariff applicable for the sale of Wind Power by SECI to the Buying Entity shall be the tariff as applicable for payment by SECI to WPD under the terms of the Power Purchase Agreement between SECI and the WPD (Individual WPDs tariff as per schedule B) fixed for the entire term of the agreement at delivery point, or the tariff as determined under the Electricity (Amendment) Rules, 2022 issued by the Ministry of Power vide Gazette Resolution dated 29.12.2022, including applicable procedure/rules issued thereof, and in addition thereto a trading margin of Seven (7) paisa/kWh shall be payable by the Buying Entity to SECI which SECI shall be entitled to appropriate as its income.

21. On the above basis, as on date, the PPAs have been signed with the following successful bidder/ Project Company formed by the successful bidder:

Name of Wind Project Developer	PPA date	Quantum of Power (MW)	Tariff (Rs. /kWh)
Apraava Energy Private Limited.	20.11.2023	300	3.24
SJVN Green Energy Ltd.	27.10.2023	200	3.24
Total		500 MW	

22. Admittedly, the Petitioner has been able to enter into PPAs for only 500 MW while for balance 190 MW, PPA is yet to be signed. Further, keeping in view the submission of the Petitioner that it was already in process of signing the PPA for

remaining 190 MW with Green Prairie Energy Pvt. Ltd., the Commission while reserving the matter for order deemed it fit to permit a week's time to the Petitioner to furnish the executed/ signed PPA for this balance capacity. However, SECI could not place the copy of signed the PPA for this balance capacity on record within the given period. Accordingly, we deem it appropriate to adopt the tariff for the quantum of 500 MW for which PPAs have been signed.

23. As per the Guidelines, the Evaluation Committee is required to certify that the bidding process and the evaluation have been conducted in conformity with the provisions of the RfS. We observe that the Petitioner has submitted that the applicable Guidelines and amendments/ clarifications thereof, if any, issued by the Government of India were followed for the bidding process in the above tender, and no deviation was taken from the Guidelines in the RfS documents for the above tender. The Petitioner has further submitted that after the conclusion of bid submission, the Evaluation Committee constituted for the evaluation of bids has conducted the techno-commercial as well as financial bid evaluation in conformity to the provisions of the RfS. This has been certified by the Petitioner through the conformity certificates i.e. *CONFORMITY CERTIFICATE – 1 & CONFORMITY CERTIFICATE – 2* both dated 1.12.2023. The relevant extract of the said conformity certificates -1 dated 1.12.2023 is reproduced as under:

“CONFORMITY CERTIFICATE – 1

.....

With respect to the RfS no. SECI/C&P/IPP/12/0008/22-23 dated 20,02.2023, it is hereby declared as follows:

1. Applicable Guidelines and amendments/clarifications thereof, if any, issued by Government of India were followed for the bidding process in the above tender and no deviation was taken from the Guidelines in the RfS documents for the above tender.”

24. We further observe that the Petitioner vide the aforesaid conformity certificate-2 dated 1.12.2023 has also stated that the Evaluation Committee constituted for the evaluation of bids has conducted the techno-commercial and financial bid evaluation in conformity with the provisions of the RfS. The relevant extract of the aforesaid conformity certificate - 2 dated 1.12.2023 is extracted as under:

“CONFORMITY CERTIFICATE - 2

.....

With respect to the RfS no. SECI/C&P/IPP/12/0008/22-23 dated 20.02.2023, 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.”

25. In view of the aforesaid discussions, it emerges that the selection of the successful bidders has been done, and the tariff of the wind power projects has been discovered by the Petitioner, SECI, through a transparent process of competitive bidding in accordance with Guidelines issued by Ministry of Power, Government of India under Section 63 of the Act. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff for the wind power projects to tune of 500 MW, as agreed to by the successful bidder(s), and for which PPAs have been entered into by SECI on the basis of the PSA with the distribution licensee, which shall remain valid throughout the period covered in the PPAs and PSA as under:

Name of Wind Project Developer	PPA date	Quantum of Power (MW)	Tariff (Rs. /kWh)
Apraava Energy Private Limited.	20.11.2023	300	3.24
SJVN Green Energy Ltd.	27.10.2023	200	3.24
Total		500 MW	

26. However, the Petitioner is granted the liberty to approach the Commission for the adoption of tariff in respect of the balance capacity of 190 MW once such capacity is tied up under the PPA and the same shall be considered by the Commission in accordance with the law.

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

28. Article 10.3 of the PPA provides as under:

“Payment of Monthly Bills

10.3.1 SECI shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the WPD, as shall have been previously notified by the WPD as below.

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

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

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

29. Further, Article 10.4 of the PPA provides as under:

“Payment Security Mechanism

Letter of Credit (LC):

10.4.1 SECI shall provide to the WPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit (“Letter of Credit”), opened and maintained which may be drawn upon by the WPD in accordance with this Article.

10.4.2 Before the start of supply, SECI through a scheduled bank open a Letter of Credit in favour of the WPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- i) for the first Contract Year, equal to 110% of the estimated average month! billing;*
- ii) for each subsequent Contract Year, equal to 110% of the average of the monthly billing of the previous Contract Year.*

10.4.3 Provided that the WPD shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, SECI shall restore such shortfall before next drawl.

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

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

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

10.4.8 If SECI fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including the Due Date, then, subject to Article 10.4.6 & 10.5.2, the WPD may draw upon the Letter of Credit, and accordingly the bank shall pay, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill or Supplementary Bill (only for energy related bills) which has remained unpaid to WPD and;
- ii) a certificate from the WPD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;”

30. 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.”

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

Accordingly, the provisions of Articles 10.3 and 10.4 of the PPAs and Clause 10 of Regulation 9 of the Trading Licence Regulations shall be abided by all the concerned parties to the present Petition.

32. 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:...”

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

34. 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.”

35. 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.”

36. 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.

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

38. Accordingly, the Petition No. 53/AT/2024 is disposed of in terms of the above.

Sd/-
(Arun Goyal)
Member

sd/-
(Jishnu Barua)
Chairperson