

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 382/AT/2019

**Coram:
Shri P. K. Pujari, Chairperson
Shri I.S.Jha, Member**

Date of Order: 28th February, 2020

In the matter of:

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 480 MW Wind Power Projects (Tranche-VII) connected to the Inter-State Transmission System and selected through competitive bidding process as per the Standard Bidding Guidelines issued by Ministry of Power dated 8.12.2017.

**And
In the matter of**

Solar Energy Corporation of India Limited
D-3, 1st Floor, Wing-A, Prius Platinum Building,
District Centre, Saket,
New Delhi – 110 017.

.....**Petitioner**

Vs.

1. Ministry of New and Renewable Energy
Block – 14, CGO Complex,
Lodhi Road, New Delhi – 110 003.
2. Adani Renewable Energy Park (Gujarat) Limited
Adani House, Nr. Mithakhali Six Roads,
Navrangpura, Ahmedabad – 380 009.
3. Betam Wind Energy Private Limited
First Floor, Orchid Centre Sector 53,
Golf Course Road, Gurugram – 122 002.
4. Sprng Vaayu Urja Private Limited
Unit No. FF-48 A, First Floor Omaxe Square,
Plot No. 14, Jasola District Centre,
New Delhi – 110 025.
5. Uttar Pradesh Power Corporation Limited
Shakti Bhawan, 14 Ashok Marg,
Lucknow – 226 001.

6. Kerala State Electricity Board
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram – 695 004.

.....Respondents

The following were present:

Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Shri Atulya Kumar Naik, SECI
Shri Tarun Mukhija, SECI

ORDER

The Petitioner, Solar Energy Corporation of India Limited (hereinafter referred to as “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 480 MW (Tranche-VII) Wind Power Projects connected to inter-State Transmission System (ISTS) and selected through competitive bidding process as per the Standard Bidding Guidelines dated 8.12.2017 issued by the Ministry of Power, Government of India. The Petitioner has made the following prayers:

“(a) Admit the present Petition;

(b) Adopt the tariff discovered in the competitive bid process for the individual power projects as stated in Table 1 at paragraph 6 (iv) above plus the trading margin of Rs.0.07/kWh to be recovered from the Buying Utilities/ Distribution Licensees on the terms and conditions contained in the PPAs with the Wind Power Developers being Respondent No. 2 to 5 and the PSAs with the Buying Utilities/ Distribution licensees being Respondent Nos. 6 and 7 herein;

(c) Grant SECI an exemption from complying with the provisions of the Clause 5.1.1(b) of the Guidelines as regards the intimation of the initiation of Bidding for the reasons mentioned in Paragraphs 16-18 hereinabove.”

Submission of the Petitioner

2. The Petitioner, SECI has submitted that it issued Request for Selection (RfS) along with draft Power Purchase Agreement (PPA) and Power Sale Agreement (PSA) documents for setting up of 1200 MW ISTS connected Wind Power Projects (Tranche-VII) as per “Guidelines for Tariff Based Competitive Bidding Process for Procurement of

Power from Grid Connected Wind Power Projects” (hereinafter referred to as ‘the Guidelines’) and floated the same on 22.2.2019 on the portal of Telecommunication Consultant India Limited (TCIL). The Petitioner has submitted that e-Reverse auction of the four technically qualified bidders was conducted on 14.5.2019 on TCIL’s portal and the final tariff was arrived. The Petitioner has submitted that the Wind Power Projects are scheduled to be commissioned in the year 2020-21 and the Projects would help the Buying Utilities/Distribution Licensees in meeting their Renewable Purchase Obligations (RPOs) requirements apart from providing power at very economical rates. The Petitioner has further submitted that it has agreed to sell entire 480 MW (i.e. cumulative awarded capacity/accepted cumulative capacity) of wind power to the Buying Utilities/Distribution Licensees at the rate of Rs. 2.8091/kWh plus trading margin of Rs.0.07/kWh upon the commissioning of the above capacity. According to the Petitioner, since the pooled tariff discovered through competitive bid process is even lesser than the procurement cost of conventional power, it would be beneficial for the Buying Utilities/Distribution Licensees and the consumers at large. The Petitioner has submitted that there will be no preferential tariff sought within Section 86(1)(e) of the Act.

3. The matter was heard on 10.1.2020 after notice to the Respondents. However, none was present on behalf of Respondents. No reply has been filed by the Respondents.

Analysis and Decision

4. We now proceed to consider the adoption of tariff in respect of the individual Wind Projects as discovered pursuant to the competitive bid process carried out in terms of the Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act.

5. 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.”

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

7. 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 salient features of the Guidelines are as under:

(a) Guidelines are applicable for procurement of power by the Procurers from grid connected Wind Power Projects having, (a) individual size of 5 MW and above at one site with minimum bid capacity of 25 MW for intra-State projects; and (b) individual size of 50 MW and above at one site with minimum bid capacity of 50 MW for inter-State projects through tariff based competitive bidding to be conducted by Procurers which includes distribution licensee, or the Authorized Representative(s), or Intermediary Procurers.

(b) Procurer shall prepare the bid documents in accordance with the Guidelines and the Standard Bid Documents notified by the Ministry of Power, Govt. of India. If any deviation is proposed to be made in the Guidelines and Standard Bid Documents, approval of the Appropriate Commission would be necessary, Intimation about initiation of the bid process shall be sent by the Procurers to the Appropriate Commission.

(c) Bids shall be designed in terms of total wind power capacity to be procured in MW. For intra-State projects, minimum bid shall be 25 MW with at least 5 MW project at one site and for inter-State projects, minimum bid shall be 50 MW at one

site. Procurer may choose to specify the maximum capacity that can be allotted to a single bidder including its affiliates.

(d) The Procurer has option to choose from two kinds of tariff based bidding, namely, (i) fixed tariff in Rs./kWh for 25 years or more, or (b) escalating tariff in Rs./kWh with pre-defined quantum of annual escalations fixed in Rs./kWh and number of years from which such fixed escalation will be provided.

(e) Draft PPA proposed to be entered into with the successful bidder and draft PSA, if applicable, shall be issued along with the RfS. PPA period shall not be less than 25 years from the date of Scheduled Commissioning Date.

(f) Wind Power Developers 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 year 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 three months bills 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 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) 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) 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. 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.

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

9. The Petitioner, SECI, has been designated as the nodal agency for implementation of scheme for setting up of ISTS connected/State specific solar/wind power projects with the mandate to invite bids under Tariff Based Competitive Bidding process, enter into Power Purchase Agreements (PPAs) at the tariff discovered in the competitive bid process and enter into Power Sale Agreements (PSAs) with the Distribution

Licensees/Buying Utilities to enable them to fulfil their Renewable Purchase Obligations under Section 86(1)(e) of the Act. SECI acts as an intermediary agency in purchase and sale of power under the PPAs and PSAs on back-to-back basis.

10. The Guidelines provide for procurement of wind power at a tariff to be determined through transparent process of bidding by the Procurer(s), 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. As per the Guidelines, SECI in the capacity of intermediary agency, invited proposals for setting up of ISTS-connected Wind Power Projects on pan-India basis, on “Build, Own, and Operate” basis for an aggregate capacity of 1200 MW (Tranche VII) and for procurement of wind power from the projects being set up in relation thereto. As per the arrangements, SECI is to procure the power by entering into PPAs with the successful bidders with back-to-back PSAs for sale of power to the Buying Utilities/Distribution Licensees.

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

Sr. No.	Milestone	Date
1	Issuance of RfS by SECI	22.2.2019
2	Last date of submission of bid	15.4.2019
3	Opening of techno-commercial bids	15.4.2019
4	Opening of financial bids	9.5.2019
5	e-reverse Auction	14.5.2019
6	Issuance of Letter of Award to successful bidders	19.6.2019

12. On 22.2.2019, SECI issued Request for Selection document, along with draft PPA and PSA documents for setting up of 1200 MW ISTS-connected Wind Power Projects. According to SECI, it did not publish the notices in the newspapers as per the advisory issued by Ministry of Information and Broadcasting, Government of India dated 17.5.2017

mandating e-publishing of advertisements in the relevant portal. Accordingly, on 3.7.2018, SECI published notification indicating that the tenders of SECI would be published in its website and not in the newspapers.

13. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids for RfS dated 22.2.2019:

Tender	Department	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 - VII)	Solar	Samir Mall, Dy. Manager	Aalok Singh, Dy. Manager
	Contracts	Biblesh Meena, Dy. Manager, Pratik Prasun, Manager	Pratik Prasun, Dy. Manager
	Finance	Arti, Accountant	Jasmine Nath, Dy. Manager

14. Last date of submission of bid was 15.4.2019 and the technical part of the bid was opened on the same date. Response to RfS was received from the following bidders:

Sr.	Name of Bidders
1	Betam Wind Energy Private Limited
2	Ostro Energy Private Limited
3	Sprng Vaayu Urja Private Limited
4	Adani Renewable Energy Park Gujarat Limited

15. All the above four bidders were found eligible for e-Reverse auction:

Sr.	Bidders	Capacity (MW)	Cumulative Capacity (MW)	Tariff (INR/kWh)	Shortlisted Bidders
1	Betam Wind Energy Private Limited	200	200	2.79	Betam Wind Energy Private Limited
2	Ostro Energy Private Limited	50	250	2.81	Ostro Energy Private Limited
3	Sprng Vaayu Urja Private Limited	100	350	2.82	Sprng Vaayu Urja Private Limited
4	Adani Renewable Energy Park Gujarat Limited	250	600	2.83	Adani Renewable Energy Park Gujarat Limited

16. The e-Reverse auction for 600 MW capacity was carried out on 14.5.2019 in the presence of members of BEC. The following were declared as successful bidders for 480 MW:

Sr.	Bidders	Tariff (INR/kWh)	Allotted Capacity (MW)
1	Betam Wind Energy Private Limited	2.79	200
2	Ostro Energy Private Limited	2.81	50
3	Sprng Vaayu Urja Private Limited	2.82	100
4	Adani Renewable Energy Park Gujarat Limited	2.83	130
Total			480

17. On 19.6.2019, SECI issued Letter of Awards to the above selected bidders as under:

Selected bidders	Allotted Project ID	Project Capacity (MW)	Project Location	Substation details for connectivity	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
Betam Wind Energy Private Limited	WPD-ISTS-T7-BWEPL-P1-200GJ	200	Taluka: Jamjodhpur Dist. Jamnagar, Gujarat	Proposed 400 kV/220 kV Jamkhambaliya, Gujarat	2.79	Rupees Two And Seventy-Nine Paise Only
Ostro Energy Private Limited	WPD-ISTS-T7-OEPL-P1-50GJ	50	Village Vandhay, Tehsil – Bhuj, District – Kutch, Gujarat	PGCIL 220 kV Bhachau Substation	2.80	Rupees Two And Eighty-One Paise Only
Sprng Vaayu Urja Private Limited	WPD-ISTS-T7-SPUPL-P1-100MP	100	Village: Kod, Tehsil: Badnawar, Sardarpur District: Dhar, Madhya Pradesh	400/220 kV, Rajgarh, Madhya Pradesh	2.82	Rupees Two And Eighty-Two Paise Only
Adani Renewable Energy Park (Gujarat)	WPD-ISTS-T7-AREPGL-P1-130GJ	130	Village: Dayapar, Dist: Kutch, State: Gujarat	765/400/220 kV, Bhuj GSS of PGCIL	2.83	Rupees Two And Eighty-Three Paise Only

Limited						
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18. Relevant portion of the one of the Letter of Award issued to the Project Developer, namely, Betam Wind Energy Private Limited is extracted 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)	Project Location	Sub-station details for connectivity	Applicable Tariff (INR/kWH) in figures	Applicable Tariff (INR/kWh) in words
WPD-ISTS-T7-BWEPL-P1-200GJ	200	Taluka: Jamjodhpur Dist. Jamnagar, Gujarat	Proposed 400 kV/220 kV Jamkhambaliya, Gujarat	2.79	Rupees Two And Seventy-Nine Paise Only

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 to the Wind Power Developer (WPD) and M/s SECI, for the project, shall be firm for the entire term of the PPA.
- 1.1 The WPD will be free to avail fiscal incentives like Accelerated Depreciation, Concessional Customs, Excise Duties, Tax Holidays, etc. as available for such Projects. No claims shall arise on SECI for any liability if the WPD is not able to avail fiscal incentives and this will not have any bearing on the applicable tariff.
- 1.2 The awards of the above project is subject to the Guidelines including amendments/ clarifications issued by MNRE (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 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 or the WPD 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.
- 1.4 The successful bidder, if being a single company, shall ensure that its shareholding in the SPV/project company executing the Power Purchase Agreement (PPA), shall not fall below 51% at any time prior to 1 (one) year from the COD, except with the prior approval of SECI. In the event, the successful bidder is a consortium, then the

combined shareholding of the consortium members in the SPV/project company executing the PPA, shall not fall below 51% at any time prior to 1 (one) year from COD, except with the prior approval of SECI.

- 1.5 The WPD 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 3.12 of the RfS. Performance Bank Guarantee(s) for a value of @ Rs. 20 lakh/MW shall be submitted by the WPD within 30 days of issuance of Letter of award or before signing of PPA, whichever is earlier, in line with Clause 3.11 (ii) of the RfS.
- 1.6 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. 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. Delays in connectivity and/or LTA for the Project(s) on account of such changes in Project locations, which differ from the details provided in the Covering letter, shall be at the risk of the Successful Bidder. The PPAs shall be valid for a period of 25 years from the scheduled commissioning date or from the date of full commissioning of the projects, whichever is earlier.
- 1.7 The WPD 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 Wind Power Developer.
 - 2) The details of promoters and their shareholding in the WPD, duly certified by the practicing Chartered Accountant/Company Secretary in original at least 7 (seven) days prior to date of their document submission (certificate date should be after the date of LoA) along with latest documents filed with ROC).
 - 3) Copy of the Memorandum of Association (MoA) of the WPD highlighting the object clause related to generation of Power/Energy/Renewable Energy/Wind Power plant development.
 - 4) In case the Project being executed by a Special Purpose Vehicle (SPV) incorporated by successful bidder, such SPV shall be 100% subsidiary, Bidder shall infuse necessary equity to the requirements of RfS. Further Successful Bidder shall submit a Board Resolution prior to signing of PPA with SECI, coming 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 values. The EMD submitted shall be released only after receipt, successful verification of the total Performance Bank Guarantee in acceptable form.
- 1.8 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 03

months from the date of issue of LoA, if not extended by SECI. In case of unavoidable delays on the part of the WPD 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 part of SECI in signing the PPAs, the Effective Date of the PPA shall then be the date of signing of PPA.

- 1.9 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, 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.
- 1.10 The WPD shall meet financial closure in line with clause 3.16 of 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 within 07 months from the Effective Date of the PPA.
- 1.11 The WPD/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 3.17 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.”

19. Based on request of Buying Utilities/Distribution Licensees, the capacity was allocated as under:

Sr.	State/UT	Utility	Allocation (MW)
1	Kerala	Kerala State Electricity Board	100
2	Uttar Pradesh	Uttar Pradesh Power Corporation Limited	380
Total			480

20. Pursuant to Letters of Award and allocation of capacity, SECI entered into PSAs dated 6.9.2019 with Kerala State Electricity Board and dated 1.10.2019 with Uttar Pradesh Power Corporation Limited. SECI has submitted that the PPAs with the successful WPDs are yet to be executed.

21. In the light of above, it, thus, emerges that selection of the successful bidders and the tariff of the Projects has been carried out by SECI through a transparent process of competitive bidding in accordance with Guidelines. SECI, vide its letter dated 4.10.2019

has certified that the process is in conformity with the Guidelines and no deviation was taken from the Guidelines in the RfS documents. Relevant portion of the said letter dated 4.10.2019 is extracted as under:

“With respect to the RfS no. SECI/C&P/WPD/1200MW/T7/RfS/022019 dated 22.02.2019, 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 documents for the above tender.”

22. The Petitioner has prayed to adopt the tariff discovered in the competitive bid process for the individual power Projects. In the light of the above discussion, in terms of Section 63 of the Act, the Commission adopts the following tariff for the Projects as agreed to by the successful bidders subject to signing of the PPAs with WPDs, which shall remain valid throughout the period covered in the PSAs and PPAs:-

Sr.	Bidders	Tariff (INR/kWh)	Project Capacity (MW)
1	Betam Wind Energy Private Limited	2.79	200
2	Ostro Energy Private Limited	2.81	50
3	Sprng Vaayu Urja Private Limited	2.82	100
4	Adani Renewable Energy Park (Gujarat) Limited	2.83	130
Total			480

23. Article 10.3 of the draft Standard PPA provides as under:

“10.3 Payment of Monthly Bills

10.3.1 Buyer shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the WPD, as shall have been previously notified by the WPD in accordance with Article 10.3.2 (iii) 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 Buyer, if any, from the WPD, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, 1.5% surcharge will be applicable on day to day basis.

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

24. Further, Article 10.4 of the draft Standard PPA provides as under:

10.4 Payment Security Mechanism

Letter of Credit (LC):

10.4.1 Subject to opening and maintenance of Letter of Credit by the Buying Entities (as per terms of Buyer-Buying Entity PSA) in favour of the Buyer, the Buyer 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 Subject to Article 10.4.1, not later than one (1) Month before the start of supply, Buyer through a scheduled bank open a Letter of Credit in favour of the WPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

i) for the first Contract Year, equal to the estimated average monthly billing; ii) for each subsequent Contract Year, equal to the average of the monthly billing of the previous Contract Year.

10.4.3 Provided that the WPD shall not draw upon such Letter of Credit prior to 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, Buyer shall restore such shortfall within fifteen (15) days.

10.4.5 Buyer 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 Buyer 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 Buyer.

10.4.8 If Buyer fails to pay undisputed Monthly Bill or 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 without any reference or instructions from Buyer, 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 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;”

25. 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 “Trading Licence Regulations”) provides as under:

9. (10) The Trading Licensee shall make payment of dues by the agreed due date to the seller for purchase of the agreed quantum of electricity through an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller. Such escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller shall be equivalent to:

(a) one point one (1.1) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts;

(b) one point zero five (1.05) times of contract value for short term contracts.”

26. The above provisions provide for payment security mechanism to be complied with by the parties to the present Petition. Accordingly, the provisions of Articles 10.3 and 10.4 of the PPAs and Regulation 9(10) of the Trading Licence Regulations shall be abided by all the concerned parties to the present Petition.

27. SECI has prayed to adopt the trading margin of Rs. 0.07/kWh. Regulation 8(1)(d) of the Trading Licence Regulations provides as under:

“8(1)(d) For the transactions under long-term contracts, the trading margin shall be as mutually decided between the Trading licensee and the seller:”

28. The above provision gives choice to the contracting parties to mutually agree on Trading Margin for long-term transaction. Accordingly, the Commission cannot adopt any Trading Margin. The Petitioner shall be governed by the above provisions of the Trading Licence Regulations. In view of the above, the prayer of SECI to adopt the Trading Margin is decided accordingly.

29. 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.”

In addition, Regulation 8(1)(f) of the Trading Licence Regulations provides as under:

“8(1)(f). 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.”

Thus, the Petitioner, SECI, shall also be governed by the above provisions of the Trading Licence Regulations.

30. SECI has also prayed to grant exemption from complying with the provisions of the Clause 5.1.1 (b) of the Guidelines. SECI has submitted that this provision was introduced for the first time w.e.f. 8.12.2017 and there was no such provision under the previous Guidelines notified by the Central Government. As per Clause 5.1.1(b) of the Guidelines, Procurer is required to inform the Appropriate Commission about the initiation of the bidding process. However, SECI did not inform the Commission regarding initiation of bidding. Since SECI has undertaken that it will forward the intimation to the Commission henceforth before the initiation of the bidding process, we exempt SECI from complying

with the requirement specified in Clause 5.1.1 (b) of the Guidelines in the present case.
However, SECI is directed to comply with such requirement in future.

31. Petition No. 382/AT/2019 is disposed of in terms of the above.

Sd/-
(I.S.Jha)
Member

sd/-
(P.K. Pujari)
Chairperson