

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 233/AT/2023

Coram:

Shri Jishnu Barua, Chairperson

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 17th March, 2024

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for the adoption of tariff for procurement of 1250 MW power from ISTS-connected Solar PV Power Projects in India for utilization under scheme for flexibility in Generation and Scheduling of Thermal/Hydro Power Stations through bundling with Renewable Energy and Storage Power as per the Guidelines for Tariff Based Competitive Bidding Process notified by the Ministry of Power, Government of India vide its Gazette Notification dated 27.8.2022.

And

In the Matter of:

NTPC Limited,

NTPC Bhawan, Scope Complex,

7, Industrial Area, Lodhi Road,

New Delhi-110 003

..... **Petitioner**

VERSUS

1. Solairedirect Energy India Private Limited

Unit No.3, 4 & 5, Sixth Floor,

Fountainhead-Tower 2, Viman Nagar, Pune,

Pune-411041, Maharashtra

2. ReNew Solar Power Private Limited,

ReNew Hub, Commercial Block-1, Zone 6,

Golf Course Road, DLF City Phase-V,

Gurugram-122 009, Haryana

3. NTPC Renewable Energy Limited,

Engineering Office Complex,

Plot No. A-8A, Sector-24, Noida-201301,

Uttar Pradesh



4. REC Power Development and Consultancy Limited

Core-4, SCOPE Complex,
7, Lodhi Road, New Delhi-110003

5. Uttar Pradesh Power Corporation Limited,

Shakti Bhawan, 14, Ashok Marg,
Lucknow- 226001

6. Uttarakhand Power Corporation Limited,

V.C.V. Gabar Singh Urja Bhawan, Kanwali Road,
Dehradun, Uttarakhand,

7. Jaipur Vidyut Vitran Nigam Limited

Vidyut Bhawan, Jaipu-302005r, Rajasthan

8. Ajmer Vidyut Vitran Nigam Limited

Vidyut Bhawan, Panchsheel Nagar, Makarwali Road,
Ajmer-305004, Rajasthan

9. Jodhpur Vidyut Vitran Nigam Limited

New Power House, Industrial Area,
Jodhpur-342003, Rajasthan

10. Rajasthan Urja Vikas Nigam Limited (RUVNL),

(on behalf of DISCOMs of Rajasthan),
Vidyut Bhawan, Janpath,
Jaipur-302 005

11. BSES Rajdhani Power Limited,

2nd Floor, B-Block, BSES Bhavan,
Nehru Place, New Delhi-110019

12. BSES Yamuna Power Limited,

Shakti Kiran Building,
Karkardooma, Delhi-110032

13. Tata Power Delhi Distribution Limited

NDPL House, Hudson Lines, Kingsway Camp
Delhi-110009

14. Punjab State Power Corporation Limited

Dy. CE/ISB, Shed T-1A, Shakti Vihar,
PSPCL, Patiala– 147001, Punjab

15. Haryana Power Purchase Centre,

IP 3& 4, 4th floor, Sector 14,
Panchkula– 134113, Haryana

16. Himachal Pradesh State Electricity Board Limited

Vidyut Bhawan, Shimla-171004,



Himachal Pradesh

17. Power Development Department, J&K

(Govt. of Jammu & Kashmir),
Room No. 1/27, Mini Block, Civil Secretariat
Srinager-190 009 (Jammu & Kashmir)

18. Electricity Department, UT of Chandigarh,

Electy Op Divn No 2, Industrail Area,
Ph-1 BBMB Complex, Chandigarh-160002, Punjab

19. Madhya Pradesh Power Management Company Ltd

Shakti Bhawan, Vidyut Nagar,
Jabalpur 482008

20. Chhattisgarh State Power Distribution Company Ltd.

Office of Executive Director (Commercial)
CSPDCL, 4th Floor, Vidyut Sewa Bhawan,
Danganiya, Raipur-492013, Chhattisgarh

21. Maharashtra State Electricity Distribution Co. Ltd.

Prakashgad, Plot No. G-9, Anant Kanekar Marg,
Bandra (E), Mumbai-400051, Maharashtra

22. Gujarat Urja Vikas Nigam Limited,

2nd Floor Sardar Patel Vidyut Bhawan,
Race course, Vadodara -390007

23. Electricity Department, Government of Goa

3rd floor, Vidhyut Bhavan,
Electricity Department, Government of Goa,
Panaji-403001, Goa

24. Electricity Department, UT of Daman & Diu

220 KV Magarwada Substation,
Magarwada– 396220, Moti Daman

25. Dadra & Nagar Haveli Power Distribution Corporation Ltd.

1st & 2nd Floor, Vidyut Bhavan,
Silvassa, Dadra & Nagar Haveli – 396230

26. Southern Power Distribution Company of A.P. Limited,

APPCC, Vidyut Soudha, Gunadala,
Vijayawada, Vijayawada– 520004, Andhra Pradesh

27. Andhra Pradesh Eastern Power Distribution Company Limited,

50-27-5/1, TPT Colony, Seethammadhara,
Visakhapatnam-530013, Andhra Pradesh

28. Chamundeshwari Electricity Supply Corporation Limited,



No.29, Corporate Office, CESC Mysore,
Vijayanagar 2nd Stage, Hinkal,
Mysore-570017, Karnataka

29. Gulbarga Electricity Supply Company Limited,
Corporate Office, RA Section, Station Main Road,
Opp. Parivar Hotel, GESCOM, Kalaburagi,
Gulbarga-585102, Karnataka

30. Bangalore Electricity Supply Company Limited,
Corporate Office BESCOM, K.R. Circle,
Bangalore-560001, Karnataka

31. Mangalore Electricity Supply Company Limited,
Corporate Office, Mescom, Mescom Bhavana,
Kavoor Cross Road, Bejai,
Mangalor-575004e, Karnataka

32. Hubli Electricity Supply Company Limited,
Corporate Office PB ROAD,
Navanagar Hubballi, Hubli-580025, Karnataka

33. Tamil Nadu Generation & Distribution Corporation Limited,
NPKRR Maaligai, 144 Anna Salai, Chennai– 600002,
Tamil Nadu

34. Kerala State Electricity Board Limited,
Tariff Regulatory and Affairs Cell, Vidyuthi Bhavan,
Thiruvananthapuram-695004, Kerala

35. Telangana Southern Power Distribution Company Limited,
Corporate Office 6-1-50, Mint Compound,
Hyderabad-500063, Telangana

36. Telangana Northern Power Distribution Company Limited,
H.No: 2-5-31/2, Corporate Office, Vidyut Bhavan,
Nakkalahgutta, Hanamkonda, Warangal-506001
Telangana

37. Electricity Department, UT of Puducherry,
137, Netaji Subash Chandra Bose Salai, Puducherry,
Puducherry-605001

38. West Bengal State Electricity Distribution Company Limited,
Vidyut Bhavan, Block-DJ, Sector-II, Salt Lake,
Kolkata-700091, West Bengal-70009

39. Bihar State Power Holding Company Limited,
Vidyut Bhawan, Bailey Road,
Patna – 800 001



40. Jharkhand Bijli Vitran Nigam Limited,
Engineering Building, HEC, Dhurwa,
Ranchi– 834004, Jharkhand

41. Grid Corporation of Orissa Limited,
Vidyut Bhawan, Janpath,
Bhubaneswar – 751007

42. Sikkim Power Development Corporation Limited,
National Highway-10, Near UD & HD Deptt.,
Gangtok, East Sikkim-737101

43. Assam Power Distribution Company Limited,
Bijulee Bhawan, 5th Floor,
Paltanbazaar, Guwahati-781001, Assam

44. Meghalaya Energy Distribution Corporation Limited,
Lumjingshai, Short Round Road,
Shillong-793001, Meghalaya

45. Tripura State Electricity Corporation Limited,
Bidyut Bhawan, North Banamalipur,
B.K. Road, Agartala-799001, Tripura

46. Department of Power, Nagaland,
O/o The Chief Engineer (T&G),
Electricity House, Below A.G Office,
Kohima, Nagaland-797001

47. Department of Power, Arunachal Pradesh,
Office of the Superintending Engineer (E)
System operation & Power System Communication,
SLDC Itanagar, Itanagar-791111, Arunachal Pradesh

48. Power & Electricity Department, Government of Mizoram,
Kawlphetha Bld., New Secretariat Complex,
Khatla, Aizawl-796001, Mizoram

49. Manipur State Power Distribution Company Limited,
Electricity Complex, Patta No. 1293 Under 87(2),
Khwai Bazar, Keishampat, Imphal-795001, Manipur

...Respondents

Parties present:

Shri Venkatesh, Advocate, NTPC
Shri Anant Singh, Advocate, NTPC
Ms. Nehal Jain, Advocate, NTPC
Shri Vishal Saxena, NTPC



ORDER

The Petitioner, NTPC Limited ('NTPC'), 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 1250 MW ISTS-connected Solar PV Power projects under the Scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage Power dated 12.4.2022 (hereinafter referred to as 'the Flexibility Scheme') and selected through the competitive bidding process as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected RE Power Projects for utilisation under the scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage power" (hereinafter referred to as 'the Flexibility Guidelines') dated 27.8.2022 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 of Rs. 2.55 per kWh, Rs. 2.55 per kWh, & Rs. 2.56 per kWh, from the Respondent No. 1, Respondent No. 2, and Respondent No. 3, respectively for procurement of 1250 MW Power for the Project, discovered through the Bidding Guidelines carried out by RECPDCL on behalf of the Petitioner;

(c) Pass any such other order/orders, as this Commission may deemed fit and proper in the facts and circumstances of the case."

Submission of the Petitioner

2. The Petitioner, a generating company within the meaning of Section 2(28) of the Act, has submitted that NTPC, through the Bid Process Coordinator (BPC), namely, REC Power Development and Consultancy Limited (RECPDCL), issued a

Request for Selection ('RfS') dated 2.12.2022 along with the draft Power Purchase Agreement ('PPA') for the purpose of selection of the Solar Power Developers (SPDs) for setting up of the 1250 MW ISTS-Connected Solar PV Power Projects in India under the Flexibility Scheme and as per the Flexibility Guidelines dated 27.8.2022. In response, nine bids were received, and eight out of nine bidders were found qualified in terms of the qualification requirement of the RfS. Thereafter, the techno-commercial bid was opened on 3.4.2023, and as per the eligibility criteria mentioned in the RfS, six bidders were shortlisted for participating in the e-reverse auction. The e-reverse auction was conducted on 5.4.2023, and pursuant thereto, three bidders, namely Solairedirect Energy India Private Limited for 300 MW, ReNew Solar Power Private Limited for 400 MW and NTPC Renewable Energy Limited for 550 MW, were selected, and RECPDCL issued Letters of Award (LoAs) on 28.7.2023 after obtaining the approval from the NTPC.

3. As per Clause 15.1 of the RfS read with Clause 10.5 of the Flexibility Guidelines to the Flexibility Scheme, a PPA can be signed by the parties only after the adoption of the tariff (discovered through TBCB conducted by the Bid Process Coordinator (BPC) nominated by the Ministry of Power) by the Appropriate Commission. Therefore, the Petitioner can enter into a PPA with the above successful bidders, i.e. Solairedirect Energy India Private Limited (or its SPV), ReNew Solar Power Private Limited (or its SPV) and NTPC Renewable Energy Limited (or its SPV) only after the adoption of tariff by this Commission. Further, the Scheduled Commissioning Date for commissioning of the full capacity of the Project shall be 18 months from the effective date i.e., the date of signing of the PPA.

Hearing dated 20.9.2023

4. The matter was heard on 20.9.2023, and the Petitioner was directed to implead the beneficiaries of all such thermal generating stations, whose power is to be replaced by the above 1250 MW solar power, as well as REC Power Development and Consultancy Limited as parties to the Petition. Moreover, notices were issued to all the Respondents to file their reply.

5. Vide Record of Proceedings for the hearing dated 20.9.2023, the Petitioner was directed to furnish certain details/clarification, namely (i) Relevant tariff at which the Petitioner will be supplying the above solar generation (in replacement of its thermal generation) to its beneficiaries and the relevance of the adopted tariff in the context of the transaction between the Petitioner and its beneficiaries, (ii) A copy of the consent taken from the beneficiaries in terms of Clause 10.5 of the Flexibility Guidelines, and (iii) Status of the PPAs executed/to be executed with the successful bidders. The Respondent, REC Power Development and Consultancy Limited (RECPDCL) was further directed to submit the affidavit to the effect that the bid documents are in line with the provisions of the Flexibility Guidelines and no deviation has been taken from the Bidding Guidelines.

6. The Petitioner, vide its affidavit dated 16.10.2023, has impleaded beneficiaries of all such thermal generating stations, whose power is to be replaced by the above 1250 MW solar power, as well as REC Power Development and Consultancy Limited as parties to the Petition. Whereas in response to the clarifications sought by the Commission, the Petitioner vide its affidavit dated 27.10.2023 has submitted as under:

(a) The tariff for renewable power shall be lower as compared to the tariff for thermal power. Clause 6.7 of the Flexibility Scheme categorically provides that the RE power supplied to the beneficiaries by the Petitioner shall be at a tariff which is less than the original tariff under the existing PPA. In fact, such a reduced tariff shall also include the balancing cost and the tariff risk for the replacement of thermal power with renewable generation in terms of the Flexibility Scheme. As per Clause 6.8 of the Flexibility Scheme, the net savings from supply of RE instead of thermal energy under the existing PPA shall be shared between the generator and the beneficiary in the ratio of 50:50 on a monthly basis. It is further provided that, if required, truing up shall be done by the Appropriate Commission (being this Commission in the present case) at the end of each year. Clause 9.3 of the Flexibility Scheme provides for the Requirement of selling the RE power in power market when it is not feasible to replace the Thermal/ Hydro power. Also, during certain periods when the replacement of Thermal/ Hydro power will not be feasible on account of technical minimum schedule or forced/planned shutdown of a Generating Station then the Generating Station shall be allowed to sell such RE power to third parties/ Power exchange and no clearance is required from beneficiaries of the station. However, the right to schedule power from the Generating Stations shall first rest with the PPA holders and in case, they do not schedule the power, the Generating Station shall have the right to sell the unscheduled RE power in the market. In addition to the above, pertinently, Regulation 48 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023 ("IEGC 2023") issued by this Commission which has duly been notified to come into effect by 01.10.2023, provides the methodology for a generating station to schedule power from alternate sources, including Renewable Energy Generating Stations ("REGS"). As per Regulation 48(3)(e) of IEGC 2023, such supply of power from an alternate source by the generating station shall be subject to sharing of net savings as per the Tariff Regulations. Further, the proviso to the Regulation 48(3)(e) of IEGC 2023 also provides that until such a provision is made in the Tariff Regulations, the sharing of net savings shall be in accordance with a detailed procedure, which shall be prepared by National Load Despatch Centre ("NLDC") and approved by this Commission. The aforesaid Regulations itself provide for the prescription of a

methodology/ detailed procedure to be adopted in respect of the tariff under the Flexibility Scheme. Thus, considering that the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 do not, at present, provide for a methodology for the sharing of net savings in such cases, a methodology/ detailed procedure for the same has to be formulated by the NLDC after approval of this Commission. Pending such formulation, this Commission may consider the adoption of the tariff of Rs. 2.69 per unit for the procurement of RE power from the 200 MW Solar PV Power Project of ReNew Solar Power Private Limited and a tariff of Rs. 2.70 per unit for the procurement of RE Power from 300 MW Solar PV Power Project of Avaada Energy Private Limited, as discovered through the bidding guidelines.

(b) The Ministry of Power (MoP) vide its letter dated 28.9.2022 amended the Flexibility Scheme, by deleting the Paras 9.2 and 9.4.3 of the said Scheme and stating that certain procedures, as laid down in the Scheme are redundant and delaying the implementation of the Scheme. Para 9.2 of the Scheme, required annexation of the standard terms and conditions for RE bundling in the existing PPA's and Para 9.4.3 required submission of the proposed mix for the bundling to the PPA holder/beneficiaries and to finalize the same after taking their consent. Hence, it can be construed that consent from the beneficiaries is not required as long as the generator is able to supply electricity to the procurer/beneficiary at a price equal to or less than that laid down in the existing PPA. It is reiterated that there would be no curtailment in the power that shall be supplied to the respective beneficiaries on account of the RE bundling being carried out by the Petitioner under the Flexibility Scheme and as such the sharing of the gains shall only be to the benefit of the beneficiaries who have evidently raised no objections upon been informed of the implementation of the Flexibility Scheme.

(c) As per Clause 15.1 of the RfS read with Clause 10.5 of the Flexibility Guidelines to the Flexibility Scheme, a PPA can be signed by the parties only after adoption of tariff (discovered through TBCB conducted by bid process coordinator (BPC) nominated by MoP) by the Appropriate Commission (being this Commission in the present Case). Thus, the Petitioner can enter into a PPA with the successful bidders i.e., Solairedirect Energy India Private Limited, ReNew

Solar Power Private Limited, and NTPC Renewable Energy Limited only after the adoption of the tariff by this Commission. Further, the Scheduled Commissioning Date for commissioning of the full capacity of the Project shall be 18 months from the Effective Date, i.e., the date of signing of the PPA.

7. Pursuant to the direction given by the Commission vide its Record of Proceeding for the hearing dated 20.9.2023, Respondent No.4, RECPDCL, vide its affidavit dated 18.10.2023, has submitted that the bid documents are in line with the provisions of the Flexibility Guidelines and no deviation has been taken from the Bidding Guidelines. RECPDCL has, *inter alia*, also placed on record the minutes of the bid evaluation committee and the conformity certificate dated 19.4.2023.

Hearing dated 29.11.2023

8. During the course of the hearing, the learned counsel appearing on behalf of Respondent No. 33, Tamil Nadu Generation & Distribution Corporation Limited (TANGEDCO), pointed out that the Ministry of Power's Scheme for Pooling of Tariff of those Plants, whose PPAs have expired, has been stayed by the Hon'ble High Courts of Delhi and Madras and hence, the generation and supply of power in connection to such plants/stations would be in violation to the aforesaid stay orders. Learned counsel also questioned the rationale for sharing the benefits in the ratio of 50:50 with the Petitioner/NTPC. Learned counsel sought the liberty to file a reply in the matter and urged for another oral hearing in the matter thereafter. In rebuttal, learned counsel for the Petitioner submitted that the Scheme which has been stayed by the Hon'ble High Courts, as pointed out by TANGEDCO, is not the RE Bundling Scheme as in these cases. Considering the submissions made by the learned counsel for the parties, the Commission again permitted the Respondents, including

TANGEDCO, to file their reply, if any, with a copy to the Petitioner, who may file its rejoinder thereon.

Reply of the Respondent(s)

9. Pursuant to the liberty granted by the Commission, vide its Record of Proceeding for the hearing dated 29.11.2023, Respondent, TANGEDCO vide its affidavit dated 12.12.2023, has mainly submitted as under:

(a) There is no mentioning of the thermal/ hydro power stations whose power is proposed to be replaced with the RE power. Regulation 8(2) (e) of the RE Regulations, 2020 states that “consent from the beneficiary for procurement of power from renewable energy project at tariff approved by the Commission, in the form of initialled PPA or MOU” shall accompany the Petition. In the present case, prior consent of the beneficiaries, who have signed the PPA with the Petitioner for the purchase of power from the thermal power plant has not been obtained. The MoP in its letter dated 5.4.2018, has stated that the discoms will have flexibility to procure the RE power within their existing PPAs to meet their RPOs. It needs to be clarified whether the RE rich States who have fulfilled their RPO obligations shall also have to avail of the RE power from this flexibility scheme. Even to meet the RPO, an amendment to the existing PPA has to be made, without which the RE power from a different source cannot be purchased.

(b) The Flexibility Scheme issued by the Ministry of Power has not been regularised by any Regulations for implementing the scheme. The Ministry of Power in the said letter dated 5.4.2018 under Para D(iii)(d) has clarified that the changes in Regulation, if any, required for the implementation of the above scheme shall be done by the appropriate Regulatory Commission. Further, the fixed cost of generators includes coal stock of 10 days for pit head stations and 20 days for non-pithead stations, as well as cost of secondary oil for two months of generation corresponding to the Normative plant availability factor in the calculation of Interest on working Capital. The proposal is to replace the thermal power comprising of Fixed cost (including the fuel components as above) and variable cost (to be incurred on fuel exclusively) by RE power under such a

scheme. Hence, the thermal generator will continue to enjoy the benefit of getting the thermal power scheduled at the cost of Fixed Cost plus Variable Cost but will incur only the cost equivalent to the RE power.

(c) The generator will continue to recover the cost of thermal power firing coal/lignite, which comprises of a run of the mine cost, crushing and transportation charges within the mine and beyond washery, handling charges at the mine end, washing and statutory charges, even while in the actual scenario may be supplying RE power under this scheme. Further, the beneficiaries will be deprived of the legitimate waiver of the transmission charges had they procured power directly from the ISTS connected RE generators. The RE power procured under this scheme is only for the replacement of thermal power for which LTA has already been signed by the beneficiaries and transmission charges have to be paid irrespective of the quantum of RE power procured through this scheme.

(d) There is abundant RE power available in the market through SECI/ MNRE at the cheapest rates, as low as Rs. 2.45/- per unit. The RE scheme now conceived is not under the TBCB route. Hence, the beneficiaries will be deprived of buying cheaper power based on their requirement but forced to buy costlier RE without any such provision in the PPA. Further, there will be huge implications for despatching the utilities in merit order. When the thermal generators are not despatched, it is impossible to arrive at a realistic Merit Order despatch fleet by Discoms. In future, large scale RE power is on the anvil. Hence, swapping of 100% thermal power with 100% RE power may become a reality. Hence, Discoms will be forced to pay for the costlier thermal power, though the dispatch will only be from cheaper RE generators. In the long run, this will make the Discoms incur huge financial repercussions.

(e) The modifications/amendments are to be made in CERC (Terms and Conditions for determination of Tariff) Regulations, 2019, and other Regulations as applicable without which, the present Petition cannot be processed.

(f) The terms of the PPA are sacrosanct and any alteration of the provisions of the contract arbitrarily is illegal. The PPA has been signed for the procurement of power from thermal stations only and clearly says that the energy charges are to be calculated as per the Commission's Tariff Regulations from time to time which

is only based on fuel cost, i.e., cost of coal/oil. There is no provision in the Tariff Regulations, 2019 for procurement / supply of power from the RE source. If there is any change in the methodology of calculation of energy charges other than as agreed, the same has to be regulated by means of an amendment to the Tariff Regulations in consultation with the stakeholders.

(g) The proposed scheme intends to levy the beneficiaries the energy charges at the rate of thermal power, which includes the cost of coal and oil including transportation and other levies for the total scheduled quantum. However, the cost actually to be incurred by the generator for the power to be replaced by the RE power is only the cost incurred for the generation of RE Power, which is approved by the Commission, which comprises all expenses incurred by the RE generator, including the profit margin.

(h) If this arrangement of substituting the thermal power by RE power is agreed mutually between the thermal generator and the discoms, then necessary amendment has to be made in the PPAs. Further, the tariff for power so supplied by mixing thermal and RE shall also be applicable based on the respective tariff of the source of power (thermal/RE) and approved by the CERC. Otherwise, the generator will continue to enjoy the cost of thermal power, which comprises of the following components even for the RE power which is replacing the thermal power, namely, (i) Run of Mine (ROM) Cost, and (ii) Additional charges including crushing charges, transportation charge within the mine up to the washery end or coal handling plant associated with the integrated mine, as the case may be, handling charges at mine end, washing charges and transportation charges beyond the washery end or coal handling plant, as the case may be, and up to the loading point, and Statutory Charges, as applicable.

(i) The above proposal of recovering the thermal charges based on coal cost replaced by the RE power without actually incurring the expenses is illegitimate and unethical, and fraudulent billing of end consumers. This is apart from the recovery of applicable fixed charges in full.

(j) The Petitioner has not furnished the following details on whether the Flexibility Guidelines have been complied with. These activities would be required to be completed prior to the execution of the PPA(s):

- (i) Land: Identification of 100% (hundred per cent) land and provision of documents/ agreements to indicate in-principle availability of at least 25% (twenty-five per cent) of land at the initiation of bidding, and possession of 90% (ninety per cent) of land within 1 (one) months of the execution of the PPA and the balance 10% (ten per cent), within 2 (two) months thereafter.
- (ii) No Objection Certificate (NOC)/Environmental Clearance (if applicable) for the Project.
- (iii) Forest Clearance (if applicable) for the land for the Project.
- (iv) Approval for water from the concerned authority (if applicable) required for the Project.
- (v) A letter from the STU/CTU confirming technical feasibility of connectivity of plant to STU/CTU substation, except for the cases where the concerned STU/CTU has notified, sub-station-wise spare capacities for feasibility of connectivity.
- (vi) Considering all the above raised issues, the proposal may be considered after detailed deliberations to sort out certain issues, namely (i) Amendment shall have to be issued for all relevant Regulations, such as Tariff regulations, to accommodate the flexibility in generation scheme, as well as all other relevant Regulations, (ii) Billing methodology shall be discussed in detail while issuing the amendment. Billing for RE power shall be done at RE cost and at thermal cost for thermal power. There shall be no recovery of fixed charges while RE is being scheduled in lieu of thermal power, and (iii) Compliance of the Petitioner to the Flexibility Guidelines as indicated in para (j) above.

Rejoinder of the Petitioner

10. The Petitioner, vide its rejoinder dated 29.12.2023, has mainly submitted as under:

- (a) The Flexibility Scheme does not make any distinction qua the thermal/hydro power stations whose power is proposed to be replaced with the RE power.

Further, the Scheme does not mandate the Petitioner or any generator to disclose such information. The Petitioner has duly provided a tentative list of the stations in the RfS, which shall be used for replacement of the thermal power. Further, the Petitioner shall file any additional information in this regard as and when directed by this Commission.

(b) In so far as the issue qua the consent from the beneficiaries for procurement of power from the RE projects is concerned, it may be noted that the Ministry of Power vide its letter dated 28.09.2022, amended the RE Bundling Scheme, by deleting the Para 9.2 and Para 9.4.3 of the said Scheme and stating that certain procedures, as laid down in the Scheme are redundant and delaying the implementation of the Scheme. The amendment dated 28.9.2022 was carried out by the MoP to emphasize that the obligation of the generator is to supply electricity to the procurer at a price equal to or less than that laid down in the PPA, and this obligation will need to be adhered to by the generator and the procurer sharing the gains as laid down in the Flexibility Scheme. Hence, it can be construed that consent from the beneficiaries is not required as long as the generator is able to supply electricity to the procurer /beneficiary at a price equal to or less than that laid down in the existing PPA.

(c) In so far as the averment of TANGEDCO qua the requirement of amendment in the existing PPAs is concerned, it may be noted that as per Clause 9.1 of the Flexibility Scheme, the distribution licensee will have the flexibility to procure the RE power within the existing PPA and there shall not be any requirement of signing additional agreement. Further, the Flexibility Scheme has made no such distinction qua the RE rich States, as claimed by TANGEDCO, and the said Scheme is applicable towards all the distribution licensees.

(d) The process of RE bundling and the adoption of the Flexibility Scheme is to be carried out by this Commission and the Petitioner along with its beneficiaries, including TANGEDCO, shall be bound by the same. Moreover, this Commission may prescribe the appropriate steps and directions for implementation of the Flexibility Scheme, while keeping in mind the interests of both the Petitioner and its beneficiaries.

(e) With regard to the objections of the TANGEDCO for the flexibility scheme, the Petitioner is a generating company within the meaning of Section 2 (28) of the Act and is duty bound to comply with the Flexibility Scheme, launched by the MoP, Government of India. Thus, the Petitioner is bound by the directives of the Flexibility Scheme and the Flexibility Guidelines and, hence, will be following the procedure and instructions given under the same. Further, this Commission has the jurisdiction to discharge the functions provided under Section 79 of the Act, which does not include a review of the schemes implemented by the MoP. Thus, if at all TANGEDCO has any issue/dispute in respect of the RE Bundling Scheme, TANGEDCO is free to challenge the same before an appropriate forum. The objections raised by TANGEDCO are beyond the scope of the present proceedings.

(f) The Flexibility Guidelines have been duly complied with and no deviations were taken from the said guidelines. In this regard, the Bid Process Coordinator, i.e., RECPDCL has also filed an affidavit dated 18.10.2023 to this effect. The scope of the present Petition is only limited to the adoption of tariff by the Commission and the concerns of TANGEDCO qua the execution of the PPA do not fall under the ambit of the present Petition. Notably, as per Section III, Clause 15.1 of the RfS read with Clause 10.5 of the Flexibility Guidelines to the Flexibility Scheme, a PPA can be signed by the parties only after the adoption of tariff by this Commission.

(g) The suggestions made by TANGEDCO may be considered by this Commission and the Petitioner shall be bound by the directives of this Commission in terms of the flexibility scheme. Regulation 48(3)(e) of IEGC, 2023 deals with the supply of power from an alternate source by the generating station, which shall be subject to the sharing of net savings as per the Tariff Regulations. Notably, the proviso to Regulation 48(3)(e) of IEGC, 2023 also states that until such a provision is made in the Tariff Regulations, the sharing of net savings shall be in accordance with a detailed procedure, which shall be prepared by NLDC and approved by this Commission. Further, this Commission can exercise its power to remove difficulty under Regulation 77 of Tariff Regulations, 2019, read with Regulation 57 of IEGC, 2023.

(h) So far as billing methodology is concerned, Clause 6.7 of the Flexibility Scheme provides that the RE supplied to the beneficiaries shall be at a tariff which is less than the original tariff under the existing PPA. In fact, such a reduced tariff shall also include the balancing cost and the tariff risk for the replacement of thermal power with renewable generation. As per Clause 6.1 of the Flexibility Scheme, any gains through such replacement of thermal energy with renewable energy under the existing PPA shall be shared between the beneficiary and the generating station, i.e., the Petitioner herein. The Petitioner will not be earning any additional profit other than provided in law as Clause 6.8 of the Flexibility Scheme stipulates that the net savings from the supply of renewable energy instead of thermal energy under the existing PPA shall be shared between the generator and the beneficiary in the ratio of 50:50 on a monthly basis and if required, truing up of the same shall be done by this Commission at the end of each year.

Hearing dated 24.1.2024

11. The matter was finally heard on 24.1.2024; during the course of the hearing, the learned counsel for the Petitioner and Respondent, TANGEDCO, made their respective submissions and concluded their arguments in the matter. Considering the submissions of the learned counsel for the parties, the Commission reserved the matter for order while permitting the parties to file their respective written submissions, if any.

Written submissions

12. Pursuant to the liberty granted by the Commission vide Record of Proceeding for the hearing dated 24.1.2024, the Petitioner, NTPC, filed its written submissions dated 10.2.2024 and mainly reiterated the submissions made in the Petition and Rejoinder. However, referring to the specific contention of Respondent, TANGEDCO, that the Petitioner, NTPC, is a generating company as per Section 2 (28) of the Act and under the Flexibility Scheme, the Petitioner has assumed the responsibility of a

trader as per Section 2 (71) of the Act, which requires a licence as per Section 12 of the Act and that in the absence of any such licence, the Petitioner ought not to be allowed to act as a trader, the Petitioner has submitted such contentions of TANGEDCO are misplaced, and the Petitioner has also been duly granted a licence under Section 14 of the Act for trading. The Petitioner can, therefore, act as a generator and a trader under the Flexibility Scheme.

13. Although no specific reply has been filed by Respondent No.38, West Bengal State Electricity Distribution Company Limited, in terms of the liberty granted by the Commission vide Record of Proceeding for the hearing dated 24.1.2024, it filed written submissions dated 10.2.2024, raising similar concerns as raised in Petition No.222/AT/2023 filed by DVC Limited on the similar subject matter. The Respondent, WBSEDCL, in its written submissions, has mainly submitted as under:

(a) WBSEDCL has PPAs for the supply of power from the thermal generating stations of the Petitioner. The Flexibility Scheme envisages addition of certain costs by the Petitioner in addition to the tariff discovered through competitive bidding process for the supply of RE power to the beneficiaries. Such a transaction amounts to trading, which has been defined in Section 2(71) of the Act, to mean the purchase of electricity for resale thereof. The transaction envisaged under the Scheme is clearly one of purchase of electricity by a generating company for resale thereof to its beneficiaries and therefore, constitutes 'trading'. The initial MoP order through a letter dated 15.11.2021 also highlighted the trading concept and therefore sharing of net savings in 50:50 ratio between generator & beneficiary is subject to the cap of ₹0.07/kWh to the generator, which is like trading margin.

(b) Trading of electricity is prohibited under Section 12 of the Act unless such person is authorized to do so by a licence issued under Section 14 of the Act. A generating company cannot trade in electricity without obtaining a trading licence from the Appropriate Commission. The Scheme, to the extent it provides for

buying of RE power by a generating company for onward sale to its beneficiaries, is, ex-facie, in violation of the provisions of the Act.

(c) The Flexibility Guidelines issued by the Central Government under Section 63 of the Act, have to necessarily align with the provisions of the Act. In the present case, the Guidelines have been framed to give effect to the Scheme, which in itself is bad in law, being in violation of the provisions of the Act. To such extent, the scope and object of the Guidelines, being contrary to the Act, ought not to be given effect to by this Commission as an authority constituted under the Act. The law is also settled that any rules, regulations or guidelines framed under the statute have to necessarily be in consonance with the statute. WBSEDCL has placed reliance of the judgements of the Supreme Court in the matter of *Ram Nandan Singh & Ors vs AG Office Employees Cooperative House Construction Society Ltd (2007) 14 SCC 102* and *ADM (Rev.) Delhi Admn. v/s. Siri Ram, (2000) 5 SCC 451*.

(d) The Parliament has clearly entrusted the function of encouraging RE and ensuring its sale to distribution licensees to the State Regulatory Commissions. The Central Government or the State Governments cannot frame any Scheme or policy that is contrary to the express provisions of the Act. In this regard, it may be pointed out that even executive directives or orders issued under Article 73 of the Constitution of India have to be in consonance with the provisions of statutes passed by the Parliament.

(e) The purchase and resale of RE by the Petitioner under the Scheme is trading and does not amount to a case of substituted supply, which is already a prevalent practice under various agreements where the generators are allowed to supply electricity from alternate source, in case of delay in COD or any failure to supply power from the generating station. However, till date, NTPC has not provided a substitute supply, and also there is no provision in the NTPC agreement. The provision of substituted power in a PPA is to take care of contingencies where the generator is unable to supply power from its generating station for certain reasons. These are applicable for a limited period and generally up to six (6) months. Such contingent contracts cannot be equated with the present case, where the purchase and resale of RE is to be carried out for

the entire period of the PPA between the generating company and the beneficiary, even though the generating station is available and capable of generation. Further, the Scheme contemplates various financial additionalities and benefits for the generating company.

(f) In case of substituted supply, the Petitioner would be entitled only to the actual cost of supply from the alternate source and cannot unjustly enrich itself by including any other costs. The tariff to be charged by the Petitioner to its beneficiaries is determined in accordance with Section 62 of the Act. Since the capacity charges are payable in accordance with the regulations on the fixed costs, only the cost of RE can be recovered in place of energy charges. That apart, the Appellate Tribunal for Electricity in Appeal No. 136 of 2012 (Wardha Power Co. Ltd. v. MSEDCL and Others) has held that the generator is entitled only to the actual cost of alternate power, where the same is supplied to substitute generation.

(g) The tariff of the Petitioner has to be determined by this Commission under Section 62 of the Act. Nonetheless, Clause 6.7 of the Scheme provides that the tariff to be charged by the Petitioner for RE supplied by it would include “balancing cost” and “tariff risk” to be taken by the generator. These are vague and ambiguous terms and such element of tariff has been prescribed by this Commission under its Tariff Regulations or other regulations. No such cost can be allowed by this Commission to the Petitioner. To such extent, Clause 6.7 of the Scheme, to the extent it allows for ‘balancing cost’ and ‘tariff risk’ to be charged by the generator, is in violation of the provisions of the Act and the regulations framed thereunder. It is the Commission, which is the sole repository of tariff determination power under the Act and no costs or other elements of tariff can be allowed by the Central Government. The Commission is required to have due regard to such position before proceeding to facilitate the implementation of the Scheme through the adoption of the tariff process in the present proceedings.

(h) All costs related to backing down and Reserved Shut Down are already included in the provisions under in order No. L-1/219/2017-CERC (Approval of the detailed procedure for taking unit(s) under Reserve Shut Down and

Mechanism for Compensation for Degradation of Heat Rate, Aux Compensation and Secondary Fuel Consumption, due to Part Load Operation and Multiple Start/Stop of Units) of the Commission dated 5.5.2017. Based on which the generator is already raising bills. Impact of the integration of RE power on the thermal generator is already considered in this order. The RE integration with the thermal power generation leads to ramp up & ramp down of thermal generation for which compensation provision is already there in the regulations, which is claimed by the generator and paid by WBSEDCL. Hence, there is no scope for further including balancing cost and tariff risk.

(i) There cannot be two tariffs of the same power - one as adopted by the Commission under Section 63 of the Act, on the other hand, a tariff of the same power shall be calculated/ determined by the Petitioner considering the purported factors of “balancing cost” and “tariff risk”. Clause 6.7 of the Scheme is in violation of the provisions of the Trading Regulations, to the extent that it allows the generator to charge any amount other than what has been specifically provided under such regulations towards the trading margin. Even if it is assumed, without admitting, that the generator is entitled to carry out such trading of RE power under the Scheme, it can at best, be entitled to the trading margin that is provided under the Trading Regulations.

(j) The Scheme, once given effect to, has the effect of altering the existing PPA by providing certain unilateral benefits to the generator without any negotiation between the parties. The law is well settled that contracts can only be interfered by the legislative process. The Scheme of the Central Government cannot have the effect of overriding the existing PPA without the consent of the parties.

(k) Clause 9.3 of the Scheme, it is clear that the terms of supply of the RE power by the generator to its beneficiaries is in the nature of an energy contract, where the right of the beneficiaries extend only to the extent of RE power supplied/ offered to be supplied to it. The generating station has the right to sell unscheduled RE power in the market in the event the same is not scheduled by the beneficiaries, without any requirement of sharing gains/ losses derived through the sale of such RE power in the market. Moreover, it is the discretion of the generator to schedule RE power according to availability, without any

minimum committed supply annually or any damages for non-supply of minimum committed quantum of power. The Scheme is, thus, effectively dictating the terms of commercial transactions without any recourse or consent of the Petitioner as counter party.

(l) There are some concerns on the implementation of the whole process as submitted hereunder:

(i) It is not clear either from the Flexibility Scheme or from the bid documents or the Petition as to the process by which bundling is proposed to be carried out. The method of bundling should be clearly defined by this Commission for the purpose of complete transparency in the adoption of the Flexibility Scheme by the Petitioner and the beneficiary Discoms. No consent of WBSEDCL has been taken.

(ii) Since the Flexibility Scheme provides for the supply of RE power to the Discoms to be treated towards their RPO, there can be no uncertainty with regard to the availability of RE power under the Scheme. Further, any benefit derived from the sale of RE power in the power market should be utilized towards reducing the tariff of the Petitioner. The Petitioner cannot be allowed to earn profit from trading RE energy other than what is provided in law, since the Petitioner would be effectively trading RE by selling it to third party or Power Exchange. These practices are susceptible to gaming.

(iii) The Petitioner should indicate a minimum quantum of supply of RE power against every MW of exchanged generation, which shall be in line with the CUF assumed by the RE generators/ Respondents No. 1, 2 and 3 for the purpose of the bidding. WBSEDCL should be entitled to the damages payable by Respondents No. 1, 2 and 3 for non-supply of a minimum quantity of the RE energy.

(iv) The following options for the stranded power may be considered, namely, (i) the extent of RE power that would be stranded on account of the technical minimum of the thermal plant should be treated as having been supplied to the Discoms at the procurement cost, and the generation by the thermal plant against such units may be sold in the power market; or (ii) any benefit derived from the sale of RE power in the market should be adjusted against fixed charges payable by the Discom; or (iii) The Petitioner may be allowed to sell the power in the Power Exchange while retaining the renewable property/ REC to itself, which can then be distributed proportionately to the beneficiary Discoms; or (iv) in order to optimize the utilization of the RE power, the Commission may consider allowing banking facility to the Discoms for such RE power so that the same can be scheduled according to the requirement of the beneficiary Discoms. Since

thermal generation is dispatchable in nature, the facility of banking RE power will add greater depth and flexibility in terms of its usage against thermal power.

(v) Para 7.2 of the Flexibility Scheme provides that the net injection schedule from the thermal station and the RE generator would form a reference for DSM calculations as per extant regulations. In extension to this, the Commission may consider that in an unlikely situation where there is an over drawl scenario by the beneficiary Discom, the extent of the declared capacity of the thermal plant offset by the RE generator should be utilized towards minimizing the extent of withdrawal by the Discom, without any additional financial burden on the Discom, other than the tariff payable to the Petitioner.

(vi) Energy charge of the thermal power station is increasing from time to time due to the increase in coal price, mixing of imported coal, taxes, etc. and is expected to further increase in the near future. Hence by linking the tariff charged from the beneficiaries of RE power (which arrived through TBCB under Section 63 of the Act and remain fixed for life time of RE project) with the increasing energy charge of the thermal power station and giving a free hand to the Petitioner for charging / billing tariff less than the Energy Charge Rate (ECR) of the generating station (which is already higher than the discovered price in TBCB and going to increase in future), the Scheme provides for profit to the Petitioner, not allowed in law.

(m) In light of the above, the view of all the stakeholders should be considered before the implementation of the scheme for suggested changes.

Analysis and Decision

14. We now proceed to consider the prayers of the Petitioner as regards the adoption of tariff(s) in respect of the Solar Power Projects 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.

15. 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.”

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

17. On 12.4.2022, the Ministry of Power, Government of India, notified the Scheme for Flexibility in the Generation and Scheduling of Thermal/Hydro Power Stations through Bundling with Renewable Energy and Storage Power (Flexibility Scheme) and the salient features of the said Scheme are as under:

(a) All new and existing coal/lignite/gas based thermal generating stations or hydro power stations for the purpose of the Scheme are referred to as a 'Generating Station' and any generating company having such generating station(s) may establish or procure renewable energy from a Renewable Energy (RE) power plant which is either co-located within the premises or at new locations. The generating companies shall be allowed to utilize such renewable energy for supplying power against their existing commitments/ PPAs i.e., replacement of the thermal/hydro power to procurers anywhere in India. The RE in the mix shall count towards the RPO compliance of the distribution licensee. (Clauses 2.1, 2.2 & 2.3)

(b) In case of RE power plant co-located within the premises of a generating station under Section 62, the Appropriate Commission shall determine the tariff of RE supplied. Provided that such RE power plant shall be established through a competitive EPC tendering. A Central or State generating company may establish a RE power plant which is not co-located within the premises of its generating station through competitive EPC tendering mode, after taking authorization from the Appropriate Government. Also, a generating company under Section 62 or its subsidiary shall also be allowed to establish an RE power plant through tariff based competitive bidding process under Section 63 provided the bids are called by a Central Government approved third party (Clauses 3.1, 3.2 & 3.4).

(c) No transmission charges shall be levied for the bundling of RE power with thermal/hydro power when the RE power plant is co-located within the premise of the generating station. Also, no transmission charges for use of ISTS shall be levied when RE power from the RE power plant is being scheduled to the thermal/hydro generating stations as a replacement power; for supply to the procurers of another generating station located at a different location and owned by the same generating company (Clauses 4.1 & 4.2).

(d) Separate scheduling, metering, accounting and settlement shall be carried out for the RE generation and the thermal/ hydro generation whose power is being replaced. This shall facilitate RPO compliance for the beneficiaries and the sharing of gains between the beneficiary and the generating station. Declared Capacity (DC) shall be given by the generating station(s) as per the extant regulations. Once the schedule for the next day is received, the generating station(s) shall have the flexibility to use the thermal/ hydro power or RE Power from the plant set up for the bundling to meet its scheduled generation (Clauses 6.1 & 6.2).

(e) The declared capacity of the thermal/ hydro generating station shall be with respect to the terms of the Power Purchase Agreement (PPA) and the availability of primary fuel. The declared capacity of the thermal/hydro generating station shall not be based on the availability of the additional RE power. The RE power, wherever found feasible shall replace the thermal/ hydro power of any of the generating station of the generating company (Clauses 6.3 & 6.4).

(f) The RE power (with or without an energy storage system) shall be supplied to the beneficiaries at a tariff which shall be less than the Energy Charge Rate (ECR) of the generating station which was originally scheduled. Such a tariff would include the balancing cost and the tariff risk to be taken by the generator (Clause 6.7)

(g) The net savings realized, if any, from the supply of RE power instead of thermal or hydro power under the existing PPA shall be passed on to the beneficiary by the generating company on a monthly basis. If required, at the end of each year, truing-up shall be done by the Appropriate Commission, The

net savings shall be shared between the generator and the beneficiary in the ratio of 50:50 basis. (Clause 6.8)

(h) The net injection schedule for the thermal/hydro generating station and the RE Generator would form the reference for DSM calculation as per the extant Regulations (Clause 7.2)

(i) The renewable energy procured by the beneficiaries under these guidelines shall qualify towards meeting their Renewable Purchase Obligations (RPOs) (Clause 8.1).

(j) The distribution licensee will have the flexibility to procure the RE power within the existing PPA to meet their RPOs. There shall not be any requirement of signing the additional agreement in cases where the landed tariff of the RE power (with or without energy storage system) is less than the ECR of the generating station (Clause 9.1).

(k) During certain periods, the replacement of the thermal/hydro power may not be feasible on account of the technical minimum schedule or forced/planned shutdown of a generating station. To avoid stranding of RE power, it is provided that the generating station shall be allowed to sell such RE power to third parties/ Power Exchange and no clearance is required from the beneficiaries of the station. However, the right to schedule power from the generating stations shall first rest with the PPA holders and in case, they do not schedule the power, the generating station shall have the right to sell the unscheduled RE power in the market. As during such conditions an RE power plant would not be operating under the flexibility scheme, there shall not be any requirement of sharing gains/losses derived through sale of such RE power in the market. The concerned RLDC shall facilitate sale of such power in the power market by separate scheduling of RE power for both co-located and other RE stations from which energy has been procured (Clause 9.3)

(l) The generating company may take up procuring RE power in tranches. Accounts of the quantum of RE Power supplied to the beneficiaries under the scheme will be submitted to the Appropriate Commission on a quarterly basis. (Clause 9.4)

(m) The trajectory for the bundling of RE Power with the thermal/ hydro power will be worked out by the generation company so as to meet the objectives, namely (a) continuous supply of the reliable power at least cost to the PPA holder, and (b) enabling the PPA holder/ obligated entity meet its RPO obligations. The maximum quantity of the bundling will be determined by technical consideration. The proposed mix for the bundling shall be submitted to the PPA holder for comments; with copies to MNRE and MoP. The mix shall be finalised after taking into account the comments of the PPA holder (Clauses 9.4.1, 9.4.2 & 9.4.3).

(n) The Central Electricity Authority shall monitor the implementation and suggest changes, if required, in the scheme to the Central Government. In doing so, CEA may consult MNRE, POSOCO, CERC, Distribution Licensee, and other stakeholders. Changes, if any, required in the regulations for the implementation of the above scheme shall be done by the Appropriate Commission (Clauses 9.5 & 9.6).

18. Pursuant to the aforesaid Flexibility Scheme, the Ministry of Power, Government of India notified the *Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected RE Power Projects for utilisation under Scheme for Flexibility in Generation and Scheduling of Thermal/Hydro Power Stations through bundling with Renewable Energy and Storage Power* under Section 63 of the Act vide Notification dated 27.8.2022. The salient features of the Guidelines are as under:

(a) These Guidelines are being issued under the provisions of Section 63 of the Act for long term procurement of electricity by the 'Procurers', from grid-connected RE Power Projects ('Projects'), having individual size of 5 MW and above, through competitive bidding.

(b) The Procurer to decide on solar or wind power procurement and prepare the bid documents [consisting of Model Request for Selection (RfS) Document, Model Power Purchase Agreement (PPA)] in accordance with these Guidelines,

except as provided in sub-clause (c) below. As specified in the bidding documents to be issued by the Procurers, the Project may be set up either at the Project site specified by the Procurer, or at the Project site selected by the RE Power Generator.

(c) The bids will be designed in terms of a package. The minimum size of a package should be 50 MW in order to have economies of scale. The bidder has to quote for an entire package. The Procurer may also choose to specify the maximum capacity that can be allotted to a single bidder including its affiliates keeping in mind the factors such as economies of scale, land availability, expected competition and need for development of the market.

(d) The Procurer may choose to invite the bids in (a) Power Capacity (MW) terms, or (b) Energy Quantity (kWh or million units i.e. MU) terms. For procurement of electricity, 'Tariff as Bidding Parameter' shall be applicable.

(e) The draft PPA proposed to be entered into with the successful bidder shall be issued along with the RfS. Standard provisions to be incorporated as part of this PPA shall include *inter alia*, PPA Period, quantum of power/ energy to be procured, payment security mechanism, force majeure, generation compensation for off-take constraints, event of default and the consequences thereof and Change in Law.

(f) The Procurer shall provide payment security to the RE Power Generator through revolving Letter of Credit (LC) of an amount not less than one month's average billing from the Project under consideration; or as prescribed in the Rules notified by the Central Government under the Act, if any.

(g) The Procurer or its authorised representatives shall call for 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. E-procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used. In the case of a Solar Park specific Project, intimation about the initiation of the bidding process shall be given by the Procurer to the SPPD. The SPPD has to engage actively in the

bidding process by providing all the necessary land and infrastructure related details and making the same available in centralized data rooms accessible to the bidders.

(h) The Procurer or its authorised representatives shall publish the RfS notice in at least two national newspapers and its own website to accord wide publicity. Standard documentation to be provided in the RfS stage shall include technical criteria, financial criteria, quantum of the earnest money deposit (EMD) and compliance of FDI laws by the foreign bidders.

(i) The Procurer or its authorised representatives shall constitute committee for evaluation of the bids (Evaluation Committee), with at least three members, including at least one member with expertise in financial matters/bid evaluation.

(j) The bidders may be required to submit a non-refundable processing fee and/or project development fee as specified in the RfS, separate technical & price bids and bid-guarantee.

(k) To ensure competitiveness, the minimum number of qualified bidders should be two. If the number of qualified bidders is less than two, even after three attempts of the bidding, and the Procurer or its authorised representatives still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.

(l) The PPA shall be signed with the successful bidder/ project company or an SPV formed by the successful bidder.

(m) After the conclusion of bidding process, the Evaluation Committee shall critically evaluate the bids and certify as appropriate that the bidding process and the evaluation has been conducted in conformity to the provisions of the RfS. The Procurer or its authorised representatives shall, after the execution of the PPA, publicly disclose the name(s) of the successful bidder(s) and the tariff quoted by them together with the breakup into components, if any. The public disclosure shall be made by posting the requisite details on the website of the Procurer for at least thirty days. Accordingly, the Procurer shall approach the

Appropriate Commission for the adoption of tariffs by the Appropriate Commission in terms of Section 63 of the Act.

(n) LoA shall be issued to the successful bidders after obtaining consent from the beneficiaries or in accordance with rules notified by the Central Government under the Act, and the PPA shall be signed by the Procurer with the successful bidders after the adoption of tariff by the Appropriate Commission.

(o) In case there is any deviation from these Guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 90 (ninety) days.

19. In terms of the provisions of the Section 63 of the Act, we have to examine whether such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.

20. The Ministry of Power, vide its letter dated 15.9.2022, released a list in respect of the Central, State and Private sector generating stations for the implementation of trajectory for replacement of the thermal energy with RE, wherein the Petitioner was assigned for the replacement of 6353 MUs (equivalent solar capacity of 3296 MW) progressively during the period from the financial year 2023-24 to the financial year 2025-26. Further, the MoP vide its OM No.09/11/2021-RCM Part(1) dated 17.6.2022 nominated three third party Bid Process Coordinators (BPC), namely, (i) NTPC Vidyut Vyapar Nigam Ltd., (ii) PFC Consulting Ltd. and (iii) REC Power Development and Consultancy Ltd. for the implementation of the scheme dated 12.4.2022. Pursuant to the MoP's letter dated 15.9.2022, the Petitioner issued a Letter of Award ('LoA') dated 29.11.2022 to Respondent No.4, RECPDCL, a wholly owned subsidiary of REC Limited, a Maharatna Company, under the MoP, for acting as the Bid Process Coordinator (BPC) for bundling of 1250

MW of RE Power with conventional power under the Scheme and to invite bidding under tariff based competitive bidding process.

21. The Guidelines provide for the procurement of RE power at a tariff to be determined through a transparent process of bidding by the Procurer(s) from the grid connected RE power projects having a size of 5 MW and above. As per the Guidelines, RECPDCL, in the capacity of BPC, invited proposals for selecting the Solar Power Developers (SPDs) for setting up 1250 MW ISTS connected Solar PV Power Projects under Tariff-based Competitive Bidding under the Scheme. As per the arrangements, NTPC shall enter into a Power Purchase Agreement (PPA) with the successful Bidder selected based on the RfS for the purchase of the solar power for a period of 25 years based on the terms, conditions and provisions of the RfS.

22. On 2.12.2022, RECPDCL issued the RfS documents, along with the draft PPA for the selection of the Solar Power Developers for setting up the 1250 MW ISTS connected solar power projects in terms of Tariff-based Competitive Bidding under the Scheme. As per Clause 6.4 of the Guidelines, RfS notice is required to be published in at least two national newspapers and its own website to accord wide publicity. In this regard, RECPDCL has indicated that the notice of issuance of RfS was published in various editions of 'Times of India' dated 2.12.2022 and 'Financial Times' dated 3.12.2022 to accord wide publicity. As per Clause 3.1.1(b) of the Guidelines, the procurer is required to inform the Appropriate Commission about the initiation of the bidding process. RECPDCL, vide its letter dated 2.12.2022, had informed the Commission that it has initiated the competitive bidding process for procurement of power from the grid-connected solar power projects.

23. The Bid Evaluation Committee (BEC) comprising of the following was constituted for the opening and evaluation of bids for the RfS dated 2.12.2022:

Tender	BEC Members for evaluation and recommendation
1250 MW ISTS-Connected Solar PV Power Projects in India under Tariff-based Competitive Bidding)	<p>(a) Sh. Umesh Kumar Madan, Head, SBI Capital Markets, 4th Floor. 25, Sood Towers. Barakhamba Lane New Delhi - 110 001 (Chairman of Bid Evaluation Committee)</p> <p>(b) Shri Rajesh Kumar, Director, Renewable Technology & Integration Division, Central Electricity Authority 2nd Floor, Sewa Bhawan R K Puram, New Delhi-11 0066 (Member of Bid Evaluation Committee)</p> <p>(c) Shri Kuldeep Ral, CGM (Tech) REC Limited Plot No 1-4, Sector 29, Gurugram-122001 (Member of Bid Evaluation Committee)</p> <p>(d) Shri S. C. Garg, CGM (Tech) REC Power Development and Consultancy Limited Plot No 1-4, Sector 29. Gurugram-122001 (Member of Bid Evaluation Committee)</p> <p>(e) Shri P S Hariharan, CGM (Tech) REC Power Development and Consultancy Limited Plot No 1-4, Sector 29, Gurugram-122001 (Convener – Member)</p>

24. The last date of the submission of bid was 6.2.2023, and the bid was opened on 10.2.2023. Response to the RfS was received from the following nine bidders:

S.No.	Name of the Bidders
1.	ACME Cleantech Solutions Private Limited
2.	Avaada Energy Private Limited
3.	Ayana Renewable Power Four Private Limited
4.	Eden Renewable Alesia Private Limited
5.	NTPC Renewable Energy Limited
6.	ReNew Solar Power Private Limited
7.	Solairedirect Energy India Private Limited
8.	Solarcraft Power India 11 Private Limited
9.	Tata Power Renewable Energy Limited

25. Subsequently, for the evaluation of responses to the RfS, multiple meetings of the Bid Evaluation Committee were held as per the Guidelines. As per the BEC recommendations, the following eight bidders met the qualification requirement of the RfS based on their submissions of response to the RfS:

S.No.	Name of the Bidders
1.	ACME Cleantech Solutions Private Limited
2.	Avaada Energy Private Limited
3.	Ayana Renewable Power Four Private Limited
4.	Eden Renewable Alesia Private Limited
5.	NTPC Renewable Energy Limited
6.	ReNew Solar Power Private Limited
7.	Solairedirect Energy India Private Limited
8.	Solarcraft Power India 11 Private Limited

26. The first-round tariff bid for the NTPC assignment was opened on 3.4.2023 for the above techno-commercially qualified bidders in the presence of the BEC member. Upon evaluation, only six bidders were found eligible to participate in the e-Reverse Auction process as per the provision of RfS. E-reverse auction was carried out on 5.4.2023. The final tariff and the selection of the bidders were arrived after completion of e-reverse auction. The result of the e-reverse auction is as under:

S. No.	Name of the Bidder	Quoted Tariff per kWh (In INR Rs.)	Quoted Capacity (MW)	Ranking
1	Solairedirect Energy India Pvt. Limited	2.55	300	L1
2	ReNew Solar Power Private Limited	2.55	400	L1
3	NTPC Renewable Energy Limited	2.56	1250	L2
4	Avaada Energy Private Limited	2.57	500	L3
5	Ayana Renewable Power Four Pvt Ltd	2.72	300	L4
6	Eden Renewable Alesia Private Limited	2.82	500	L5

27. After the conclusion of the e-reverse auction on 5.4.2023 and detailed deliberations by the BEC members, the following recommendations were made by the BEC:

- (a) Solairedirect Energy India Private Limited with the lowest quoted tariff of Rs. 2.55 per kWh has emerged as first successful bidder with full quoted capacity of 300 MW after the conclusion of electronic reverse auction.
- (b) ReNew Solar Power Private Limited with the tariff Rs 2.55 per kWh (based on Time Stamp) has emerged as second successful with full quoted capacity of 400 MW after the conclusion of electronic reverse auction.
- (c) NTPC Renewable Energy Limited with the second lowest tariff Rs 2.56 per kWh (within the range) has emerged as third successful bidder for the balance capacity of 550 MW after the conclusion of electronic reverse auction.
- (d) BEC also recommended RECPDCL for issuance of Letter of Awards to the successful bidders subject to the approval from the procurer of the power, i.e. NTPC

28. Thereupon, RECPDCL vide letter dated 24.4.2023 sought approval from the Procurer, i.e. NTPC, for the issuance of the LoAs to the successful bidders. Accordingly, NTPC vide letter dated 7.7.2023 conveyed the approval for issuance of the LoAs by RECPDCL to the successful SPDs. Subsequently, RECPDCL, on behalf of NTPC ~~DVC~~, issued LoA to the successful bidders, i.e. Solairedirect Energy India Private Limited vide LOA No. RECPDCL/TBCB/NTPC/2023-24/1114 dated 28.07.2023 for the capacity of 300 MW, ReNew Solar Power Private Limited vide LOA No. RECPDCL/TBCB/NTPC/2023-24/1115 dated 28.07.2023 for the capacity of 400 MW and NTPC Renewable Energy Limited vide LOA No. RECPDCL/TBCB/NTPC/2023-24/1116 dated 28.7.2023 for the capacity of 550 MW. The relevant extracts of the Letter of Award issued to one of the successful bidders, namely Solairedirect Energy India Private Limited, are as under:

“Subject Selection of Solar Power Developers for setting up of 1250 MW ISTS-Connected Solar PV Power Projects in India under Tariff-based Competitive Bidding (Tranche-I) against RfS No. RECPDCL

/Solar/NTPC/2022-23/2374 dated: 02/12/2022 (Tender Code on ETS portal-RECPDCL-2022-TN000003): Letter of Award (LoA) for 300 MW capacity.

We refer to:

1. *The "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected RE Power Projects for utilisation under scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage power'¹ vide Gazette Notification dated 27.08.2022 issued by Ministry of Power, Govt, of India. These Guidelines have been issued under the provisions of Section 63 of the Electricity Act, 2003 for long term procurement of electricity by the 'Generators', from grid-connected Solar PV Power Projects, through competitive bidding;*
2. *The Request for Selection (RfS) document vide Ref no against RfS No. RECPDCL/Solar/NTPC/2022-23/2374 dated: 02/12/2022 and uploaded during the process of bidding against RfS on ISN-ETS portal(<http://www.bharat-electronictender.com>) under Tender search Code RECPDCL-2022-TN000003 issued to M/s Solairedirect Energy India Private Limited as regards participation in the Global Invitation for Selection of Solar Power Developers for setting up of 1250 MW ISTS-Connected Solar PV Power Projects (Tranche I) in India under Scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage Power notified by Ministry of Power, GoI, and as amended till the Bid Deadline including all correspondence/clarifications/amendments/Errata/corrigendum issued by REC Power Development and Consultancy Limited in regard thereto (hereinafter collectively referred to as the 'Final RfS');*
3. *The offer of M/s Solairedirect Energy India Private Limited by way of a Technical Bid pursuant to (2) above submitted on 06.02.2023 in response to the Final RfS.*
4. *The offer of M/s Solairedirect Energy India Private Limited by way of an Initial Offer (First round Tariff Bid) as submitted on 06.02.2022 in response to the Final RIB.*
5. *The offer of M/s Solairedirect Energy India Private Limited by the way of Final Offer (discovered during c-Reverse Auction) as submitted on 05.04.2023 in response to the Final RfS.*
6. *The Technical Bid as in (3) above, the Initial Offer as in (4) above and the Final Offer as in (5) above hereinafter collectively referred to as the 'Bid'.*

We are pleased to inform you that your proposal and offer received by way of the 'Bid' has been accepted and M/s Solairedirect Energy India Private Limited is hereby declared as the Successful Bidder for their full quoted capacity (i.e. 300 MW) @ Rs. 2.55 /unit as per clause 5.4 of the Final RfS for

the above project and consequently, this Letter of Award (hereinafter referred to as the 'LoA') is being issued in 2 copies. One original plus One copy.

This LoA is based on the Final RfS and is further contingent upon you satisfying the following conditions:

a) Acknowledging its issuance and unconditionally accepting its contents and recording 'Accepted unconditionally' under the signature and stamp of your authorized signatory on each page of the duplicate copy of this letter attached herewith and returning the same to REC Power Development and Consultancy Limited within 7 (Seven) days from the date of issuance of LoA:

b) Completion of various activities as stipulated-in the RfS within the timelines as prescribed therein.

It may be noted that REC Power Development and Consultancy Limited has the rights available to them under the Final RfS upon your failure to comply with the aforementioned conditions.

As you are aware, the issuance and contents of this LoA are based on the Bid submitted by you as per the Final RfS including the tariff and other details regarding the Scheduled COD as contained therein. The Quoted Tariff as submitted by you and the Scheduled COD of the project as agreed by you in your Bid and incorporated herein by way of reference.

Further, please note that all terms and conditions of this LoA shall be governed by solely on the basis of the final RfS, including PPA and bid submitted.

You are requested to unconditionally accept the LoA, and record on one copy of the LoA, 'Accepted unconditionally', under the signature of the authorized signatory of your Company and return such copy to us within 7 (Seven) days of issue of LoA."

29. 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 RECPDCL, i.e. BPC, vide its affidavit dated 18.10.2023, has made submissions that the bid documents are in line with the provisions of the Flexibility Guidelines as notified by the Ministry of Power, Government of India and no deviation has been made from the Bidding Guidelines. This has been certified through the conformity certificate dated 19.4.2023 placed on

record by the RECPDCL. The relevant extract of the certificates is re-produced as under:

“CERTIFICATE BY BID EVALUATION COMMITTEE

Subject: Selection of Solar Power Developers for setting up of 1250MW ISTS-Connected Solar PV Power Projects in India under Tariffbased Competitive Bidding (Tranche - I)“.

It is certified that:

- a. The entire bidding process for the subject Project has been carried out in accordance with the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected RE Power Projects for utilisation under scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage power issued by Ministry of Power under the provisions of Section 63 of the Electricity Act, 2003 for long term procurement of electricity by the 'Generators', from grid-connected Solar PV Power Projects, through competitive bidding and as amended from time to time.*
- b. M/s Solairedirect Energy India Private Limited with the lowest quoted tariff of Rs. 2.55 per kWh has emerged as first successful bidder with full quoted capacity of 300 MW after the conclusion of electronic reverse auction.*
- c. M/s ReNew Solar Power Private Limited with the tariff Rs 2.55 per kWh (based on Time Stamp) has emerged as second successful with full quoted capacity of 400 MW after the conclusion of electronic reverse auction.*
- d. M/s NTPC Renewable Energy Limited with the second lowest tariff Rs 2.56 per kWh (within the range) has emerged as third successful bidder for the balance capacity of 550 MW after the conclusion of electronic reverse auction.”*

30. Insofar as the execution of the PPAs is concerned, as per Clause 15.1 of the RfS read with Clause 10.5 of the Flexibility Guidelines, PPAs can be signed by the parties only after the adoption of the tariff by the Appropriate Commission. Hence, it has been stated that the Petitioner will be entering into PPAs with the successful bidders, i.e., Solairedirect Energy India Private Limited (or its SPV), ReNew Solar Power Private Limited (or its SPV) and NTPC Renewable Energy Limited (or its SPV) only after the adoption of tariff by this Commission.

31. Respondents have, however, raised certain objections/comments in their replies /written submissions relating to the procedural aspects, operational aspects and the overall nature of the Flexibility Scheme. Accordingly, we now proceed to deal with such objections/comments:

(a) Re - NTPC has not sought any consent from the Beneficiaries

32. Respondent, WBSEDCL has stated that, as such, the Petitioner has not obtained any consent from WBSEDCL regarding the implementation of Flexibility Scheme. Respondent, TANGEDCO has also stated that the Petitioner has not obtained any prior consent from the beneficiaries, who have signed the PPAs with the Petitioner for purchase of power from its thermal power plants.

33. Vide Record of Proceedings for the hearing dated 20.9.2023, the Petitioner was, *inter-alia*, directed to furnish a copy of the consent taken from the beneficiaries in terms of Clause 10.5 of the Bundling Guidelines. In response, the Petitioner vide affidavit dated 21.9.2023 has stated that the Ministry of Power, Government of India, by its letter dated 28.9.2022, amended the Flexibility Scheme by deleting the Paragraphs 9.2 and 9.4.3 of the Scheme, which required annexation of the standard terms and conditions for the RE bundling in the existing PPAs and submissions of the proposed mix for the bundling to the PPA holder/beneficiaries and finalizing the same after their consent respectively. The said amendment was carried out by the Ministry of Power to emphasize that the obligation of the generator is to supply the electricity to the procurer at a price equal to or less than that laid down in the PPA, and this obligation will need to be adhered to by the generator and the procurer sharing the gains as laid down in the Flexibility Scheme. Therefore, in order to fast

track the implementation of the Scheme and considering the importance of clean energy transition, the Ministry of Power has decided to remove paragraphs 9.2 and 9.4.3 of the said Scheme, and hence, it can be construed that consent from the beneficiaries is not required as long as the generator can supply electricity to the procurer/beneficiary at a price equal to or less than that laid down in the PPA.

34. The Petitioner has also stated that being a diligent entity, the Petitioner has sent a copy of the present Petition along with the Record of Proceedings issued by the Commission to its beneficiaries, thereby intimating them regarding the impending RE Bundling by the Petitioner in line with the Flexibility Scheme. The Petitioner has further stated that there would be no curtailment in the power to be supplied to the respective beneficiaries on account of the RE bundling being carried out by the Petitioner under the Flexibility Scheme, and as such, the sharing of the gains shall only be to the benefit of the beneficiaries who have raised no objections upon being informed of the implementation of the Flexibility Scheme.

35. We have considered the submissions of the Petitioner and the Respondents on the aspect of the prior consent of the beneficiaries. It may be noted that neither the Flexibility Scheme nor the Flexibility Guidelines envisage prior consent of the beneficiaries of a generating company for implementation of the Flexibility Scheme. However, Clause 10.5 of the Flexibility Guidelines provides as under:

“10.5. LoA shall be issued to successful bidders after getting consent from beneficiaries or in accordance with rules notified by the Central Government under Electricity Act, 2003, and PPA shall be signed by the procurer with the successful bidders after the adoption of tariff by the Appropriate Commission.”

Thus, as per the above provisions, the LoA shall be issued to the successful bidders after getting consent from the beneficiaries or in accordance with the rules

notified by the Central Government under the Act. In the present case, admittedly, there is no express consent from the beneficiaries to the Petitioner prior to issuing the Letter of Award to the successful bidder(s). Alternatively, the Petitioner has not indicated any rules notified by the Central Government basis which it proceeded to issue the LoA to the successful bidders. The Petitioner has contended that such a requirement is merely procedural in nature inasmuch as the beneficiaries are not in any way prejudicially affected by the implementation of the Flexibility Scheme by the generator/Petitioner as long as the power of the renewable energy to be supplied, in lieu of thermal generation, remains lower than the Energy Charge Rate of such thermal generation. Also, it may be noted that none of the beneficiaries, except for WBSEDCL & TANGEDCO, have, as such, have raised any objection/comment regarding the prior consent. It has also to be noted that, unlike the new/existing coal based thermal generating stations that may choose to establish or procure renewable energy from the renewable energy power plants (Clause 2.2 of the Flexibility Scheme), the Central Sector Generating Companies viz. NTPC, DVC and NLC, by letter of the Ministry of Power dated 15.9.2022, have been given a specific target for the replacement of their thermal generation with renewable generation under the Flexibility Scheme and, as such, have been required to implement the said Scheme within the specific timelines and submit the progress report to the Ministry of Power. Further, the Commission notes that the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023, have provided a specific regulatory framework for enabling such transactions in Regulation 48 of the IEGC, 2023. The relevant extracts are produced below for ready reference:

“48. SCHEDULING FROM ALTERNATE SOURCE OF POWER BY A GENERATING STATION

(1) *A generating station may supply power from alternate source in case of (i) USD in terms of clause (1) of Regulation 47 of these regulations or (ii) forced outage of unit(s) or (iii) a generating station other than REGS replacing its scheduled generation by power supplied from REGS irrespective of whether such identified sources are located within or outside the premises of the generating station or at a different location.*

(2) *The methodology for scheduling of power from alternate sources covered under sub - clauses (i) and (ii) of clause (1) of this regulation shall be as per the following steps*

.....

(3) *The methodology for scheduling of power from alternate sources covered under sub - clause (iii) of clause (1) of this regulation, shall be as per the following steps:*

(a) *The generating station shall enter into contract with REGS for supply of power from alternate sources.*

(b) *The generating station shall request RLDC to schedule power from such alternate source to its beneficiaries which shall become effective from 7th or 8th time blocks, as the case may be, in terms of clause (4) of Regulation 49 of these regulations.*

(c) *The power scheduled from alternate source shall be reduced from the schedule of the generating station.*

(d) *The generating station shall not be required to pay the transmission charges and losses for such purchase and supply from alternate sources to the buyer.*

.....”

The above provision specified in the IEGC 2023 stipulates the required regulatory framework for scheduling and dispatch of the transactions akin to the referred scheme. The Commission is of the view that the replacement of thermal power with renewable power by the generators would facilitate further RE capacity addition within the existing contracts without any additional financial burden on the beneficiaries. Further, the Scheme also shifts the responsibility of providing balancing power for such RE sources from the distribution licensee to the generators inasmuch as it casts the responsibility upon the generators to incorporate such renewable energy within the firm schedules of the beneficiaries/distribution licensees

from the thermal generating stations and at the same time, the Scheme also extends the benefits of the RPO compliance to such distribution licensee.

36. In view of the above provisions of the IEGC, 2023 and in the light of the principle enunciated by the Hon'ble Supreme Court in PTC India Limited v. Central Electricity Regulatory Commission, (2010) 4 SCC 603 that the Regulations framed under Section 178 of the Act, being subordinate legislation, can make inroads even into existing contracts/ PPAs, the Commission holds that any arrangement whereby a thermal generating station, which seeks to replace fossil fuel based generation with renewable energy can be scheduled in the manner as specified in the IEGC. In fact, the Flexibility Scheme needs to be appreciated in the larger context of energy transition and energy security whereby the thermal capacity is being preserved but the generation from such stations is being replaced with renewable energy to the extent possible. The Respondent Discoms also do not seem to have, in principle, opposition to the very idea of flexibilization but have raised issues mainly around the sharing of gains. The Commission is of the view that this aspect of sharing of gains is beyond the scope of the present Petition for the adoption of tariff.

37. However, the Petitioner is at liberty to take up with the Ministry of Power to make suitable amendments to the bidding 'guidelines' on the Flexibility Scheme insofar as the clause relating to the beneficiary consent is concerned.

(b) Re - Transaction to be undertaken by the Petitioner under the Flexibility Scheme amounts to "Trading", which is impermissible under the Act.

38. Respondent, WBSEDCL has submitted that the Flexibility Scheme envisages the procurement of renewable power by the Petitioner as a generating company from third party RE developers through competitive bidding for onward supply of such

power to the beneficiaries and in the course of such supply, the Scheme envisages addition of certain costs by the Petitioner in addition to the tariff discovered through competitive bidding process for such supply to the beneficiaries. Respondent has submitted that such a transaction amounts to trading as defined in Section 2(71) of the Act and it is prohibited to trade in electricity under Section 12 of the Act unless such person is authorized to do so by a trading licence issued under Section 14 of the Act. It is, thus stated that the provisions of the Flexibility Scheme to the extent it provides for buying of the RE power by a generating company for onward sale to its beneficiaries is, ex-facie, in violation of the provisions of the Act, and, as such, the Guidelines, which have been framed to give effect to the Scheme, is also bad in law being in violation of the provisions of the Act. By placing the reliance on the various judgments of the Hon'ble Supreme Court, Respondent has submitted that as per the settled law, a statutory authority has to act in accordance with the provisions of the statute and to the extent, the scope and object of the Flexibility Guidelines is contrary to the Act, the Commission ought not to give effect to them.

39. *Per contra*, the Petitioner has submitted that the Petitioner is duty bound to comply with the provisions of the Flexibility Scheme and the procedure and instructions given by the Ministry of Power, Govt. of India under the same. The Petitioner has also submitted that if at all WBSEDCL and TANGEDCO have any issue/dispute in respect of the Flexibility Scheme, they are free to challenge the same before an appropriate forum.

40. We have considered the submissions made by the parties. Indisputably, the present Petition has been filed under Section 63 of the Act, under which the Commission is required to adopt the tariff in a narrow compass, "Whether such tariff

has been determined through a transparent process of the bidding and this transparent process of bidding is in accordance with the Guidelines issued by the Central Government". Moreover, it has also been held by the Hon'ble Supreme Court in the case of the Energy Watchdog that in a situation where Guidelines issued by the Central Government under Section 63 of the Act cover the situation, the Commission is bound by those Guidelines and must exercise even its regulatory function, under Section 79(1)(b) of the Act, only in accordance with the provisions of the Guidelines. The Flexibility Guidelines, as noted above, have been issued under Section 63 of the Act to enable the long-term procurement of electricity by thermal/hydro generating stations for utilisation under the Flexibility Scheme. Hence, the scope of the present Petition has to be limited to the adoption of the tariff as discovered in the bid process carried out under the said Guidelines, and Respondents/beneficiaries cannot be permitted, directly or indirectly, to challenge the vires of the Flexibility Guidelines and/or the Flexibility Scheme under the present case. We find that even under the provisions of Section 79 of the Act, the Commission is not vested with the powers to look into the validity of the Schemes and/or the Guidelines issued by the Ministry of Power, Government of India under the Act, let alone under the Section 63 of the Act under which the present Petition has been filed by the Petitioner. Hence, all such submissions of Respondent, which seek to challenge the validity of the provisions of the Flexibility Scheme and/or Guidelines and the role of the Petitioner thereunder, cannot be entertained in the present case. As rightly pointed out by the Petitioner, in the event Respondent is aggrieved by any of the provisions of the Flexibility Scheme and/or Guidelines and the role of the Petitioner envisaged thereunder, Respondent is free to challenge them before an appropriate forum.

(c) Re - There is no clarity on the “Balancing Cost” and “Tariff Risk” and that sharing of benefits in the ratio of 50:50 is quite high and that until the necessary amendments to the Regulations, the adoption proceedings ought to be deferred.

41. Respondent, WBSEDCL, has submitted that no such elements, viz. “Balancing Cost” and “Tariff Risk” have been prescribed by this Commission under its Tariff Regulations or the other Regulations and, as such, no such costs have been allowed by this Commission to the Petitioner. Therefore, to this extent Clause 6.7 of the Flexibility Scheme which allows for above charges to be charged by the Petitioner, is in violation of the provisions of the Act, and Regulations framed thereunder. It has been also submitted that although such elements are not defined anywhere in the Regulations, it is clear that all such costs are already included in the provisions under this Commission’s Detailed Procedure for taking unit(s) under Reserve Shutdown and Mechanism for Compensation for Degradation of Heat Rate, Auxiliary Compensation and Secondary Fuel Consumption due to Part Load Operation and Multiple Start/Stop dated 5.5.2017. It is also stated that the said Clause of the Scheme is in violation of the Commission’s Trading Licence Regulations to the extent it allows the generator to charge any amount other than what has been specifically provided under the said Regulations towards the trading margin. The Respondents have also pointed out that sharing of the benefit in the ratio of 50:50 is also on the higher side and that procurement of bundling power would lead to higher expenditure/cash flow when compared to the beneficiaries procuring the renewable power directly from the RE generators or the market. It has also been stated that the above Scheme has the effect of altering the existing PPAs by providing certain unilateral benefits to the generator without any negotiation between the parties.

42. In response, the Petitioner has submitted that the Petitioner will not be earning any additional profit other than provided in the law as per Clause 6.8 of the Flexibility Scheme, which stipulates that the net savings from the supply of renewable energy instead of thermal energy under the existing PPA shall be shared between the generator and the beneficiary in the ratio of 50:50 on a monthly basis and if required, truing up of the same shall be done by the Commission at the end of each year. It is submitted that as per the Flexibility Scheme, apart from providing the power to the beneficiaries at a cheaper rate by virtue of supplying power at a rate lower than Station ECR, it also provides the added benefit of meeting the RPO with the RE power supplied under the Flexibility Scheme which otherwise would not be available to the beneficiary. The Petitioner has further stated that the insofar as the implementation of the Flexibility Scheme is concerned, the Commission may prescribe appropriate steps and directions for the same.

43. We have considered the submissions made by the parties. A specific query was posed to the Petitioner vide Record of Proceedings for the hearing dated 20.9.2023, whereby the Petitioner was asked to indicate the tariff at which it will supply the solar generation to its beneficiaries. But, the Petitioner has not given any exact/indicative amount and has merely stated that the tariff for renewable energy shall be lower as compared to the tariff for thermal power. However, having said this, in our view, cannot be a ground for deferring the present adoption proceedings, the scope of which relates to the tariff discovered for the Renewable Energy Projects for the procurement of such power by the Petitioner herein. In other words, the present adoption proceedings pertain to the first leg of the transaction between the Renewable Project Developers and the Petitioner herein. This does not mean that the clarity on the applicable tariff under the second leg, i.e. between the Petitioner

and its beneficiaries, is of any less importance, but this, in our view, can be dealt with separately, particularly in view of the fact, whatever these charges may come be fixed/determined, it will not alter the fundamental premise of the Flexibility Scheme that is passing of net saving to the beneficiaries as the Scheme ensures that the rate at which the renewable energy will be supplied to the beneficiaries shall always be less than the ECR of the concerned thermal generating station whose thermal energy is being replaced. Hence, the beneficiaries, having been given this assurance by the Flexibility Scheme itself, we do not find it proper to defer/delay the tariff adoption proceeding for want of clarity on the elements “Balancing Cost” and “Tariff Risk”.

44. We also note that Respondent TANGEDCO pointed out that there is abundant RE power available in the market through SECI at a cheaper rate, as low as Rs. 2.45/kWh, and the Scheme now conceived is not under the TBCB route, and, as a result, the beneficiaries will be deprived of buying cheaper power based on their requirement but forced to buy costlier RE power without any provision in their PPAs. We find the above contention of Respondent to be misconceived. Apart from merely stating that the RE power is available at cheaper rates in the market, the Respondent has, as such, failed to produce any material on record indicating the contemporaneous rates discovered under the bid process conducted by SECI and/or other utilities. Hence, in the absence thereof, we are not inclined to consider the contention of TANGEDCO casting aspersions on the competitiveness of rates discovered in the present case under the Flexibility Guidelines. Moreover, TANGEDCO has also stated /indicated that the sharing of benefits in the ratio of 50:50 is on the higher side, and the beneficiaries would be better off by purchasing the renewable energy power directly from the RE developers and market. We find

the aspect of comparing the cost/saving by the beneficiaries in procuring the RE power directly from the RE developer vis-à-vis the Petitioner under the Flexibility Scheme entirely out of context. The Flexibility Scheme does not in any manner put a restriction on the beneficiaries to procure the RE power directly from the RE generators or from the market. The scope and intent of the Flexibility Scheme are quite different and include replacing the costlier thermal generation with cheaper renewable energy, promoting energy transition, reducing emissions, etc., while simultaneously enabling the beneficiaries to meet the RPO within the existing contracted capacity without facing any financial burden. In fact, as already noted above, under the Flexibility Scheme, they are entitled to receive 50% of the net savings accrued on account of the replacement of thermal generating station with renewable energy generation. Hence, it would not be fair to compare the costs/benefits of the Flexibility Scheme with the purchase of renewable energy directly from the RE developers or from the market as the beneficiaries are always at liberty to opt for the latter route.

45. TANGEDCO has submitted that upon implementing the Flexibility Scheme, the generator will continue to enjoy the benefit of getting the thermal power scheduled at the cost of fixed charge and variable charge but will incur only the cost equivalent to renewable energy. It has been further submitted that this will lead to a situation where the Distribution Licensees will be forced to pay for costlier thermal power even though the despatch will only be from cheaper renewable energy generators, which will have huge financial repercussions on them. We have considered the submissions made by TANGEDCO on the above aspect and find that while the liability of the fixed charges of thermal generating stations continues to be on the beneficiaries irrespective of whether they schedule the energy from such

stations or not, the Flexibility Scheme specifically provides for sharing of net savings accrued on account of the difference between the ECR of thermal generating station and tariff of renewable energy generation in the ratio of 50:50 basis after the adjustment towards the Balancing Costs and Tariff Risks required to be undertaken by the thermal generating stations. Hence, it would be incorrect to say that the generating stations would continue to receive the energy charges despite despatching the renewable energy generation in lieu of thermal generation.

46. TANGEDCO has also submitted that without modifications/ amendments to the Tariff Regulations and other applicable Regulations, the present Petition cannot be processed. It has also been stated that there is no provision in the Tariff Regulations for procurement/supply of power from renewable energy, and if there is any change in the methodology for calculation of energy charges as specified, the same has to be regulated by means of an amendment to the Tariff Regulations in consultation with stakeholders. We have already noted that the provisions of the IEGC, 2023 provide for the required regulatory framework for scheduling and dispatch of transactions akin to the referred in the Flexibility Scheme. Moreover, IEGC, 2023 also envisages the incorporation of necessary provisions relating to the sharing of net savings in case of generating stations, whose tariff is determined by this Commission under Section 62 of the Act, supply power from alternate sources (renewable generating stations) and until such provisions are incorporated, NLDC to prepare a detailed procedure in this regard and seek the approval of the Commission thereof. We have already directed NLDC to prepare the detailed procedure for sharing of net saving as envisaged in Regulation 48(3)(e) of the IEGC, 2023, and while doing so, to also consider the provisions relating to sharing of net savings as

provided in the Flexibility Scheme. Thus, in view of the above, we are not in agreement with the submissions of TANGEDCO that pending amendments/modifications to the Tariff Regulations and other Regulations, the present tariff adoption proceedings ought to be deferred or cannot be processed.

(d) *Re-Non-furnishing of certain details as required under the Flexibility Guidelines.*

47. TANGEDCO has submitted that the Petitioner has not furnished details to ascertain the compliance with the provisions of the Flexibility Guidelines, and in this regard, TANGEDCO has referred to and placed reliance on the various activities such as identification of land, NOC/Environment Clearance, Forest Clearances, Approval for Water from the concern Authority, and letter from STU/CTUIL confirming technical feasibility, etc. as listed under clause 3.2.1 of the Flexibility Guidelines.

48. However, we notice that the various project preparatory activities required to be initiated by the Procurer (i.e. NTPC) before issuance of the RfS specified under clause 3.2.1, as referred to by TANGEDCO, are relevant only in the case where the Project site has been specified by the Procurer (i.e. NTPC) and not otherwise. In the present case, the RfS/Bid documents permitted the RE Power Developer to set-up the Project anywhere in India, and the Project site was to be selected by the RE Power Developer themselves. Hence, examining the status of various project preparatory activities specified under clause 3.2.1 of the Flexibility Guidelines is, as such, not relevant in the present case of tariff adoption.

(e) *Re - Submissions on the Operational Aspects of the Flexibility Scheme*

49. The Respondent has also made various submissions/comments on the operational aspects of the Flexibility Scheme, which can be indicated below:

(i) The process from which bundling is proposed to be carried out is not clear. Neither from the Flexibility Scheme nor from the bid documents or the Petition, is the process by which bundling is proposed to be carried out clear. The method of bundling ought to be clearly defined by the Commission.

(ii) The Flexibility Scheme provides that the net injection schedule from the thermal station and the RE generator form reference for DSM calculations as per the extant Regulations. The Commission may also consider that in an unlikely situation where there is an overdrawl scenario by the beneficiary Discom, the extent of the declared capacity of the thermal plant offset by the RE generator should be utilised towards minimizing the extent of withdrawal by the Discoms without any additional financial burden on the Discoms.

(iii) Any penalty levied on account of the deviation by RE generators ought not to be passed on to the beneficiaries.

(iv) By replacing the thermal capacity with the must run renewable energy, the whole plant becomes must run insofar as the Discoms/beneficiaries are concerned. The impact of this on grid security and the rise in cost involved in the start-up and shutdown of thermal plants ought not to be passed on to the beneficiaries/Discoms.

(v) The consistent/reliable power available from thermal plants, irrespective of season and time during the day, ought not to be hampered due to the infirm nature of renewable energy bundled under the Flexibility Scheme.

(vi) RE integration/bundling during scheduling of the thermal generating stations may result in part load operations of units of thermal generating stations and accordingly, the same needs to be exempted for the beneficiary already having PPA with thermal plant.

(vii) The Petitioner should indicate a minimum quantum of supply of RE power against every MW of exchanged generation, which shall be in line with CUF assumed by the RE generators for the purpose of bidding. The beneficiaries should be entitled to damages payable by the RE generators for non-supply of a minimum quantity of renewable energy.

(viii) In respect of stranded power, the following options may be considered :
(a) the extent of RE power that would be stranded on account of the technical minimum of the thermal plant should be treated as having been supplied to the Discoms and generation by thermal plant against such units may be sold in the power market, or (b) any benefit derived from the sale of RE power in the market should be equally shared with Discoms for not taking the benefit of RE power available with the Petitioner, or (iii) the Petitioner be allowed to sell in the power exchange while retaining the renewable property/ REC to itself, which can then be distributed proportionately to the beneficiary Discoms; or (iv) in order to optimize the utilisation of RE power, the Commission may also consider allowing banking facility to the Discoms for such RE power so that the same can be scheduled according to the requirement of the beneficiary Discoms.

50. In response, the Petitioner has fairly indicated that the Commission may prescribe the appropriate steps and directions for implementing the Flexibility Scheme while keeping in mind the interests of both the Petitioner and its beneficiaries.

51. We have considered the submissions made by the parties. Undoubtedly, the implementation of the Flexibility Scheme would require a clear framework relating to its various operational aspects. However, this aspect can be dealt with separately and in our view, need not be necessarily linked with the adoption of tariff proceedings. Moreover, we observe that as per Clause 9.5 of the Flexibility Scheme entrusts the CEA with the monitoring implementation of the Scheme and suggesting changes, if required, in the Scheme to the Central Government and in doing so, CEA may consult the MNRE, POSOCO, CERC, Distribution Licensees, and other stakeholders. Hence, in view of this specific provision, we find it appropriate to direct the parties, i.e. the Petitioner and its beneficiaries, POSOCO, CTUIL and other

necessary stakeholders, to undertake the joint consultation with the CEA in regard to the implementation of the Flexibility Scheme and various operational aspects associated with it.

52. In view of the aforesaid discussions, it emerges that the selection of the successful bidders has been done and the tariff of the solar power projects has been discovered by the BPC, RECPDCL through a transparent process of competitive bidding in accordance with the Flexibility Guidelines issued by the 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 solar power projects, as agreed to by the successful bidder(s) as under:

Sr.	Successful Bidder	Tariff Rs./kWh	Capacity MW
1	Solairedirect Energy India Private Limited	2.55	300
2	ReNew Solar Power Private Limited	2.55	400
3	NTPC Renewable Energy Limited	2.56	550
	Total		1250 MW

53. Petition No. 233/AT/2023 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(Jishnu Barua)
Chairperson