



**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017.**

No. F.11(1851)/DERC/2020-21/7035

**Petition No. 20/2021**

**In the matter of :** Petition under Section 86(1)(b) read with Section 63 of the Electricity Act, 2003 seeking approval of the Power Sale Agreement dated 16<sup>th</sup> January 2019, in terms of DERC (Renewable Purchase Obligations and Renewable Energy Certificate Framework Implementation) Regulations, 2012 read with DERC Comprehensive Conduct of Business Regulations, 2001.

**BSES Yamuna Power Limited**

....Petitioner

**Vs.**

**1. Solar Energy Corporation of India**

**2. Sitackabini Renewables Private Limited**

...Respondents

**Coram:**

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

**Appearance:**

1. Mr. Buddy A Ranganadhan, Adv. BYPL
2. Mr. Dushyant Manocha, Adv. BYPL
3. Ms. Anushree Bardhan, Adv. SECI

**ORDER**

(Date of Order: 17.11.2023)

1. The instant Petition has been filed by BSES Yamuna Power Ltd. (BYPL) seeking approval of the Power Sale Agreement (PSA) dated 16<sup>th</sup> January 2019, in terms of DERC (Renewable Purchase Obligations and Renewable Energy Certificate Framework Implementation) Regulations, 2012 read with DERC Comprehensive Conduct of Business Regulations, 2001:
  - a. To approve the PSA dated 16<sup>th</sup> January 2019 executed between the petitioner and SECI.
2. The petitioner has submitted that:
  - i. The Commission has notified the DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation)

**WEAR FACE MASK**

**WASH HANDS REGULARLY**

**MAINTAIN SOCIAL DISTANCING**

Regulations, 2012 (RPO Regulations) in terms of which, the petitioner is mandated to procure electricity from renewable sources in order to fulfill its defined Renewable Purchase Obligation (RPO). The RPO Regulations, further provide that an obligated entity (like the Petitioner) may meet its RPO obligations by way of its own generation or by way of purchase from other sources or by way of purchase of Renewable Energy Certificates (RECs) or by way of a combination of any of the above methods. The RPO Regulations also provide that any long-term power purchase agreement (s) shall be made only with the approval of this Commission. In this regard, Regulation 4(2) of the RPO Regulations provides as under:

*“4(2) Every obligated entity shall meet its RPO target by way of its own generation or by way of purchase from other licensee (s) /sources(s) or by way of purchase of Renewable Energy Certificate(s) or by way of combination of any of the above options. Any Long Term Power Purchase Agreements shall be made only with the prior approval of the Commission.”*

- ii. In addition to the RPO Regulations, this Commission has also notified the DERC Business Plan Regulations, 2017 (hereinafter “Business Plan Regulations”) which *inter alia* define the minimum percentage of renewable power to be procured by the petitioner as a percentage of total sale of power to its retail consumer in its area of supply excluding procurement of hydro power.
- iii. On 8<sup>th</sup> December 2017, the Ministry of Power (MoP) had issued the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects (“MoP Guidelines”). The MoP Guidelines were formulated for procurement of Wind power through a transparent bidding process under Section 63 of the Electricity Act, 2003 for long-term procurement of electricity through competitive bidding process.
- iv. On 30<sup>th</sup> June 2018, in compliance with the MOP Guidelines, SECI floated its Request for Selection document for setting up of 1200 MW ISTS-Connected Wind Power Projects (Tranche-V) (hereinafter “RfS”).
- v. On 7 August 2018, the Petitioner issued a letter to SECI expressing its interest to purchase *inter alia* 100MW of wind power in SECI's next reverse auction.

- vi. On 8<sup>th</sup> November 2018, SECI informed the Petitioner of its ability to provide to the Petitioner an amount of 100MW of Wind power. On 11<sup>th</sup> December 2018, the Petitioner confirmed to SECI its intention to sign the PSA for purchase 100 MW of wind power, subject to obtaining to requisite regulatory approvals.
- vii. On 11<sup>th</sup> January, 2019, the Commission granted In-principle approval for signing the PSA with SECI for procurement of 100MW Wind Power. On 16<sup>th</sup> January 2019, the Petitioner signed a Power Sale Agreement with SECI, wherein the Petitioner, subject to approvals from the Commission, agreed to buy 100MW for Wind power from SECI. In terms of the PSA, the Petitioner agreed to purchase the power at a pooled tariff of Rs. 2.77/kWh plus trading margin of Rs. 0.07 kWh.
- viii. On 29<sup>th</sup> January 2019, SECI entered into a Power Purchase Agreement with a Wind Power Developer (WPD), namely, M/s Sitackabini Renewables Private Ltd. for purchase of 300MW of wind power from the WPD on the terms and conditions set out in the PPA.
- ix. On 6<sup>th</sup> December 2019, the CERC Petition No. 379/AT/2019 adopted the Tariff u/S 63 of the Act for the projects covered under the PSA and PPA signed by SECI for setting for 1200 MW Wind Power Projects (Tranche-V) connected to the Inter-State Transmission System (ISTS).
- x. That the SECI has followed the MOP Guidelines is evident from the following tabular representation, which illustrates the manner in which the MOP Guidelines have been followed by SECI whilst conducting the bidding process:

| MoP Guidelines   | RfS floated by SECI   |
|--|---|
| <b>Clause 1.6:</b> These Guidelines have been formulated for procurement of wind power through transparent process of bidding under Section 63 of the Act. | <b>Clause 1.1.4:</b> Ministry of Power (MoP) has issued "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects" vide Gazette Resolution dated 08.12.2017. These Guidelines have been formulated for procurement of wind power through transparent process of bidding under Section 63 of the Electricity Act, 2003. for long-term procurement of electricity through competitive bidding process, by the 'Procurer(s)', from grid- connected Wind Power Projects ('WPP'), having |

|   |  |
|---|--|
|   | <p>(a) individual size of 5 MW and above at one site with minimum bid capacity of 25 MW for intra-state projects; and</p> <p>(b) individual size of 50 MW and above at one site with minimum bid capacity of 50 MW for inter-state projects. This Request for Selection document (hereinafter called RfS) has been prepared in line with the guidelines issued by MoP dated 08.12.2017.</p>                        |
| <p><b>Clause 3.1(c)(ii):</b> The Intermediary Procurer shall enter into a Power Purchase Agreement (PPA) with the WPG(s) and also enter into a Power Sale Agreement (PSA) with the distribution licensee(s). the PSA shall contain the relevant provisions of the PPA on a back to back basis.</p>  | <p><b>Clause 1.3.4:</b> Buying Entities which require wind power to fulfil their non-solar RPO under respective RPO regulations will be eligible to buy wind power under this scheme. SECI shall sign PPAs with the WPDs at the respective tariffs discovered after e-reverse auction and back-to-back Power Sale Agreements (PSAs) with the Buying Entities at a pooled price of the total capacity allotted.</p> |
| <p><b>Clause 7.1: PPA Period:</b> As the PPA period influences the tariff by determining the period over which the investment is returned to the investor, longer PPA is favoured for lower tariffs. The PPA period should thus be not less than 25) years from the date of the SCD or from full commissioning of the projects, whichever is earlier.</p> | <p><b>Clause 1.3.2:</b> SECI shall enter into PPA with the WPDs for a period of 25 years from the date as per the provisions of PPA.</p>   |
| <p><b>Clause 8: Bidding Process</b></p> <p><b>8.1.</b> The Procurer shall call for the bids adopting a single stage two envelop bidding process to be conducted through Electronic mode (e-bidding). The Procurers may also opt for e-reverse auction.."</p>  | <p><b>Clause 3.21(i): Structure of the Bid selection process:</b></p> <p>Single stage, double envelope bidding followed by e-reverse auction has been envisaged under this RfS. Bidders have to submit both Techno-commercial bid and Financial bid together in response to this RfS online.</p>   |
| <p><b>Clause 9.2: Qualification requirements to be met by the Bidders.</b></p> <p><b>Clause 9.2.1:</b> Technical Criteria</p> <p><b>Clause 9.2.2:</b> Financial Criteria</p>  | <p><b>Qualifying Requirements for Bidders (Clause 3.5):</b></p> <p><b>Clause B:</b> Technical Eligibility Criteria</p> <p><b>Clause C:</b> Financial Eligibility Criteria</p>  |

|  |  |
|--|--|
| <p><b>Clause 9.1: Bid Responsiveness:</b> The bid shall be evaluated only if it is responsive and satisfies conditions including inter alia:</p> <ul style="list-style-type: none"> <li>• bidder or any of its Affiliates is not a wilful defaulter to any lender</li> <li>• there is no major litigation pending or threatened against the bidder or any of its Affiliates which are of a nature that could cast a doubt on the ability or the suitability of the bidder to undertake the project.</li> </ul> | <p><b>Clause 3.5.8:</b> The Bidder or any of its Affiliates should not be a wilful defaulter to any lender, and that there is no major litigation pending or threatened against the Bidder or any of its Affiliates which are of a nature that could cast a doubt on the ability or the suitability of the Bidder to undertake the Project. The Bidder shall submit an undertaking to this effect.</p> |
| <p><b>Clause 17:</b> The Commercial Operation Date (COD) shall be considered as the actual date of commissioning of the project as declared by the Commissioning Committee constituted by SNA. In case of part commissioning COD will be declared only for that part of the project capacity.</p>  | <p><b>Clause 3.18:</b> The Commercial Operation Date (COD) shall be considered as the actual date of commissioning of the project as declared by the SNA/Commissioning Committee. In case of part commissioning, COD will be declared only for that part of project capacity.</p>  |
| <p><b>Clause 19:</b> Procurers shall promote commercially established and operational technologies to minimize the technology risk and to achieve the commissioning of the Projects.</p>   | <p><b>Clause 3.5.9(B):</b> Under the provisions of this RfS, it is proposed to promote only commercially established and operational technologies to minimize the technology risk and to achieve timely commissioning of the Projects. The Bidder shall provide information about the wind turbines proposed to be installed in the project at the time of Financial Closure.</p>                      |

The Petitioner craves leave of the Commission to refer to and rely upon the MOP Guidelines and the RfS document issued by SECI to further substantiate this submission.

- xi. The Petitioner further submits that the PSA, which is the result of the competitive bidding process, is also aligned with the RfS issued by SECI and consequently, the MOP Guidelines. This is evident from the following:

| Particulars | RfS   | PSA   |
|-------------|---|---|
| COD         | The Commercial Operation Date (COD) shall be considered as the actual date of commissioning of the project as declared by the SNA/Commissioning | COD shall mean the actual date of commissioning of the project as declared by the Commissioning Committee constituted by the State Nodal Agency (SNA). In case of part commissioning, COD |

|                         |  |  |
|-------------------------|--|--|
|                         | Committee. In case of part commissioning, COD will be declared only for that part of project capacity  | will be declared only for that part of project capacity.   |
| Delivery/Metering Point | Delivery Point means the point at 220 kV or above where the power from the wind power project(s) will be injected into the ISTS (including the dedicated transmission line connecting the wind power Project with the substation system). Metering shall be done at this interconnection point where the power will be injected into. For interconnection with grid and metering, the WPDs shall abide by the relevant CERC Regulations, Grid Code, and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from time to time. | Delivery Point shall mean the point at 220 kV or above where the power from the wind power project(s) will be injected into the ISTS. Metering shall be done at this interconnection point where the power will be injected into the ISTS i.e., the Delivery point. For interconnection with grid and metering, the WPD shall abide by the relevant CERC Regulations, Grid Code, and Central Electricity Authority Regulations as amended from time to time. |
| Transmission charges    | The Buying Entity will be responsible for all transmission charges and losses and any other charges as applicable under the respective regulations beyond Delivery Point and up to the Drawl Point.  | Buying Entity shall be liable to bear all the transmission losses in respect of the power evacuated from the Delivery Points to its receiving substation(s).   |
| Term                    | 25 years   | 25 years   |

xii. The tariff at which the Petitioner will be able to procure power under the present PSA, i.e. Rs. 2.77/kWh (exclusive of the Rs. 0.07/kWh trading margin to be charged by SECI) is market aligned and is one of the most competitive in the renewable energy category. Therefore, it is not only in the Petitioner's interest but also in the interest of consumer at large that this Commission may be pleased to allow the present Petition in the terms prayed. The Commission has the jurisdiction in terms of Section 63 read with Section 86 of the EA 2003 to not only approve the PSA but also adopt the competitively discovered tariff. This is on account of the fact that the PPA (entered into between SECI and the Wind Power Developer) and the PSA (entered into between the Petitioner and SECI) are back-to-back

arrangements/contracts and since the beneficiary of the same (i.e. the Petitioner) is within the jurisdiction of the Commission, it is the Commission which has jurisdiction over the matter. In this regard, the Petitioner craves leave of the Commission to refer to and rely upon the decision of the Hon'ble Appellate Tribunal for Electricity PTC vs. UERC & Ors., Appeal No. 168 of 2014 (and batch) wherein the Hon'ble Tribunal after referring to its earlier decision on this point *inter alia* held as under:

*"16. .... This Tribunal has taken a view that so long as there is nexus between the first sale and second sale, or they are back to back arrangements, the State Commission where the distribution licensee is located would have jurisdiction over the transactions."*

### **Respondent Submissions**

3. Respondent No. 1, Solar Energy Corporation Ltd., (SECI) vide their reply dated 29.09.2021, had submitted the following:
  - i. The above-mentioned Petition is filed by the Petitioner, BSES Yamuna Power Limited ('BYPL') for approval for procurement of 100 MW Wind Power from Wind Energy Corporation of India Limited ('SECI') under the Power Sale Agreement ('PSA') dated 16.01.2019 entered into between SECI and BYPL read with Addendum No. 1 dated 16.01.2019 to the PSA read with Supplementary PSA (Amendment No. 1) dated 10.09.2021.
  - ii. The following Power Purchase Agreement ('PPA') with Wind Power Developers ('WPD') is identified for supply of wind power to BYPL under the PSA i.e. 100 MW Wind Power from 300 MW Power Project of Respondent No. 2, Sitac Kabini Renewables Private Ltd. (Sitac) being established in Kutch-Gujarat under the PPA dated 29.01.2019.
  - iii. The Central Electricity Regulatory Commission ('Central Commission') in the decision dated 06.12.2019 in Petition No.379/AT/2019 filed for the adoption of tariff of ISTS Tranche-V Wind Scheme, under which the power is being sold to the BYPL in terms of PSA, has adopted the tariff of each of the generators discovered in pursuance to the competitive bid process under Section 63 of the Electricity Act, 2003.

- iv. SECI submits that the following tariff will be payable by BYPL as provided for in Article 5 read with the Schedule-1 of the Supplementary PSA dated 10.09.2021:

| S. No. | Name of the Wind Power Developer     | Quantum allocated to BYPL for resale (MW) | Applicable tariff as per SECI-WPD PPA (Rs. /kWh) | Trading Margin (Rs. /kWh) | Total Applicable Tariff payable under PSA to SECI (Rs. /kWh) |
|--------|--------------------------------------|---|--|---------------------------|--|
| 1.     | Sitac Kabini Renewables Private Ltd. | 100                                       | 2.77   | 0.07                      | 2.84   |

- v. For facilitating purchase and re-sale of power from the WPD to the BYPL, SECI is entitled to trading margin of Rs. 0.07/kWh (Rupees Seven Paisa per kWh), as consideration, payable by BYPL in terms of the Guidelines, RfS and the PSA. In this regard, the relevant provisions of the Guidelines, RfS Document and the PSA are as under:
- Clause 3.1.c) ii of the Guidelines dated 08.12.2017 of the Government of India ('Guidelines').
  - Definition of Trading Margin as per Section – 2 of the Request for Selection Document dated 30.06.2018 for ISTS Wind Tranche-V Scheme notified by SECI; and
  - Article 5 of the Supplementary PSA dated 10.09.2021.
- vi. On 14.01.2010, the Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations 2010 (hereinafter "Trading Margin Regulations, 2010") were notified by the Central Electricity Regulatory Commission. The Trading Margin Regulations 2010, were applicable to the short term buy-short term sell contracts, namely contracts where duration of PPAs and PSA is less than 1 year, for the inter State trading in electricity undertaken by a licensee.
- vii. The Central Electricity Regulatory Commission has dealt with the aspect of Trading Margin in Paragraph 29 of the decision dated 06.12.2019 in Petition No. 379/AT/2019 as under:

*"29. The Petitioner has prayed to adopt the Trading Margin of Rs. 0.07/kWh. It is observed that Section 79(1)(j) of the Act requires the Commission "to fix the Trading Margin in the inter-State trading of electricity, if considered, necessary". Accordingly, the Commission, being of the opinion that it was necessary to fix Trading Margin for inter-State trading in electricity, exercised the powers conferred*



under Section 178 of the Act and conceived Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010 (hereinafter referred to as „Trading Margin Regulations“) applicable to the short-term-buy-short-term sell contracts for the inter-State trading in electricity undertaken by a licensee. Trading Margin Regulations provide for the ceiling of the Trading Margin in short-term-buy-short-term-sell contracts for the inter-State trading. Trading Margin Regulations do not provide for any Trading Margin for long term transactions and, therefore, it is upto the contracting parties to mutually agree on Trading Margin, if any, in such cases. In any case, the Commission does not fix Trading Margin on case to case basis. The spirit of the Act read with the Trading Margin Regulations gives freedom and choice to the contracting parties to mutually agree on Trading Margin for any kind of trading transaction, subject to the ceiling Trading Margin, whenever applicable. Accordingly, the Commission cannot fix or adopt any Trading Margin for long-term transactions under the provisions of the present Trading Margin Regulations. In view of the above, the prayer of the Petitioner to adopt the Trading Margin is decided accordingly. “

viii. On 02.01.2020, the Central Commission notified the Central Electricity Regulatory Commission (Producer, Terms and Conditions for grant of trading license and other related matters) Regulations, 2020 ('Trading License Regulations, 2020'), repealing the Trading Margin Regulations, 2010. It is submitted that the Trading License Regulations, 2020 will govern the procurement of power under the PPAs and PSA in the present petition. The Chapter-IV of the Trading License Regulations, 2020 deals with Trading Margin. The relevant provisions are as under:

**“Applicable of Trading Margin:**

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

.....

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

.....

**8. Trading Margin**

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

.....

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

- ix. In terms of the above, the Trading margin for the long-term PSA is to be mutually agreed to between the parties as per the opening part of Regulation 8 (1)(d) of the Trading License Regulations, 2020. BYPL has duly accepted the Trading Margin of Rs. 0.07/kWh in the PSA dated 16.01.2019 and Supplementary PSA dated 10.09.2021. Therefore, there has been a mutual agreement with regard to applicability of Trading Margin of Rs. 0.07/kWh in consonance with Regulation 8 (1)(d) of Trading License Regulations, 2020.
  - x. The Hon'ble Tribunal for Electricity has passed judgment dated 02.07.2021 in Appeal No. 52 of 2021 & Connected Appeal in the matter of Solar Energy Corporation of India Limited vs. Delhi Electricity Regulatory Commission & Another and Connected Appeal deciding on the aspect of Trading Margin applicable to SECI in similar matters.
  - xi. In terms of the above, it is prayed that this Commission may be pleased to allow procurement of 100 MW Wind Power under the PSA at the individual tariff of the WPDs identified for supply of Wind Power plus trading margin of Rs. 0.07/kWh payable to SECI, as has been mutually agreed to between the parties.
4. The Petitioner vide their Additional Affidavit dated 29.09.2021, had submitted the following:
- I. On 16<sup>th</sup> January 2019, the Petitioner signed a Power Sale Agreement with SECI, wherein the Petitioner, subject to approvals from this Commission, agreed to buy 100 MW of Wind Power from SECI (hereinafter "the PSA"). In terms of the PSA, the Petitioner agreed to purchase the power at a pooled tariff of Rs. 2.77/kWh plus a trading margin of Rs. 0.07kWh.
  - II. On 29<sup>th</sup> January 2019, SECI entered into a Power Purchase Agreement with a Wind Power Developer, namely M/s Sitac Kabini Renewables Private Limited (hereinafter "WPD") for purchase of 300 MW of Wind Power on the terms and conditions set out in the PPA.
  - III. The Central Electricity Regulatory Commission (CERC) in Petition No. 379/AT/2019 instead of adopting the pooled tariff on the basis of which the original PSA was executed was pleased to adopt the individual tariff for each generating station including that of Respondent No. 2.

- IV. In view of the fact that the CERC had adopted individual tariff for Respondent No. 2, the Petitioner and the Respondent No. 1 agreed to enter into a supplementary agreement in terms of the CERC adopted tariff to incorporate the tariff as adopted by the CERC.
- V. Accordingly, on 10.09.2021, the Petitioner and the Respondent No. 1 entered into a supplementary agreement.
- VI. In term of the Supplementary Agreement, the Schedule-I of the PSA stood substituted and the revised schedule in so far as Respondent No. 2 is concerned (with the tariff as adopted by the CERC) read as under:

| S. No. | Name of the Bidder                      | Project Capacity (MW) | Applicable Tariff as per SECI-WPD PPA (Rs./kWh) | Quantum allocated to BYPL for Resale (MW) | Maximum Energy (Million kWh) | Minimum Energy (Million kWh) |
|--------|---|-----------------------|---|---|------------------------------|------------------------------|
| 1      | Sitac Kabini Renewables Private Limited | 300                   | 2.77  | 100                                       | 336.613                      | 252.460                      |

- VII. The rest of the terms and conditions remain the same. Accordingly, the Petitioner is filing the present Affidavit to place on record the Supplementary Agreement entered in between the Petitioner and the Respondent No. 1.
5. The Respondent No. 1, (SECI) vide Affidavit dated 26.07.2023, have submitted the following:
- a) The present Petition has been filed by the Petitioner for approval for procurement of 100MW Wind Power from SECI under Power Sale Agreement dated 16.01.2019 read with Addendum dated 16.01.2019 to PSA read with Supplementary PSA dated 10.09.2021.
  - b) Wind Power Project of Respondent No. 2, Sitac Kabini Renewables Private Limited established under Power Purchase Agreement dated 31.05.2018 executed between Sitackabini and SECI has been identified for supply of 50 MW Wind Power to the Petitioner under the PSA.
  - c) The Commercial Operation date of 300 MW wind Power Project of Sitac Kabini is as under:

- i. 94.5MW- 11.08.2022
- ii. 21.6 MW- 19.08.2022
- iii. 18.9 MW- 24.08.2022
- iv. 13.5 MW- 25.08.2022
- v. 10.80 MW- 02.09.2022
- vi. 13.5 MW- 06.09.2022
- vii. 35.10 MW- 21.09.2022
- viii. 10.8 MW- 24.09.2022
- ix. 10.8 MW- 11.10.2022
- x. 13.5 MW- 22.11.2022
- xi. 13.5 MW- 06.12.2022
- xii. 29.7 MW-30.05.2023
- xiii. 13.8 MW-31.05.2023

- d) SECI is procuring power from the power project of Sitac Kabini under the PPA for resale of the power to the Petitioner under the PSA. In terms of the above, the power flow to the Petitioner has commenced and is continuing under the PSA.
- e) The Central Electricity Regulatory Commission vide its Order dated 06.12.2019 passed in Petition No. 379/AT/2019 has adopted tariff of the individual project of each generator (bidder) including tariff of Sitac Kabini selected in pursuance of the Competitive Bidding for ISTS Tranche-V Wind Scheme.
- f) The Commission may be pleased to approve the procurement of 100 MW Wind Power at tariff of Rs. 2.77/kWh plus trading margin of Rs. 0.07/kWh by the Petitioner from SECI under PSA dated 16.01.2019 read with Addendum dated 16.01.2019 to PSA read with Supplementary PSA dated 10.09.2021.

- 6. On 19.10.2023, the Commission reserved the order and directed the parties to file short written submissions. In compliance of the Order, the Petitioner submitted their Written Submissions on 27.10.2023 and generally reiterated the facts stated by them earlier.

#### **Commission Analysis**

- 7. The Petitioner BYPL in terms of DERC (Renewable Purchase Obligations and Renewable Energy Certificate Framework Implementation) Regulations, 2012 read with DERC Comprehensive Conduct of Business Regulations, 2001 has filed the instant Petition seeking approval of the PSA dated 16.01.2019 executed

between SECI and BYPL for purchase of 150 MW Wind Power on long term basis by BRPL. As per the terms of PSA from the SCD petitioner shall pay the fixed tariff of Rs 2.77/kWh plus trading margin of Rs 0.07/kWh of the procurement of 100 MW Wind Power on long term basis. The aforesaid wind power is to be supplied by Wind Power Developers (WPD) under the PSA as follows;

- (i) 100 MW Wind Power from Sitac Kabini Renewables Pvt. Ltd. under PPA dated 29.01.2019 between Sitac Kabini Renewables Pvt. Ltd. and SECI.

- The Central Electricity Regulatory Commission (CERC) in the decision dated 06.12.2019 in Petition No. 379/AT/2019 adopted the tariff u/S 63 of the Act for the projects covered under the PSA and PPA signed by SECI for setting up of 1200 MW Wind Power Projects (Tranche-V), under which the power is being sold to the BYPL in terms of PSA.
- During the pendency of the Petition, the parties entered into a Supplementary Power Sale Agreement on 10.09.2021 incorporating certain terms and conditions agreed between them. As per Supplementary PSA dated 10.09.2021 the tariff payable by BYPL is as follows;

| S. No. | Name of the Wind Power Developer  | Quantum allocated to BRPL for resale (MW) | Applicable tariff as per SECI-WPD PPA (Rs. /kWh) | Trading Margin (Rs. /kWh) | Total Applicable Tariff payable under PSA to SECI (Rs. /kWh) |
|--------|-----------------------------------|---|--|---------------------------|--|
| 1.     | Sitac Kabini Renewables Pvt. Ltd. | 100                                       | 2.77   | 0.07                      | 2.84   |

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

*“24. In view of the aforesaid discussions, a Trading Margin of 2 paise/kWh is allowed to SECI; and the PSA dated 26/06/2019 is approved subject to the condition that the applicable tariff shall be as approved by CERC with a trading margin of 2 paise/kWh. Consequently, the clauses of Article 1 of the PSA related to applicable Tariff shall be modified accordingly. It is also held that the Order dated*

20/11/2019 of CERC has bearing in respect of Tariff for procurement of solar power for which the Petitioner TPDDL has entered into PSAs with SECI. Therefore, the Tariff as approved by CERC with a trading margin of 2 paise/kWh shall be applicable also to the PSAs approved by this Commission vide Orders dated 01/03/2019 in Petitions No. 24 of 2019 and 25 of 2019

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

11. Thereafter, Solar Energy Corporation of India Limited filed an Appeal No. 52 of 2021 before the Hon'ble APTEL against the Commission's order dated 31.12.2020 in Petition No. 65 of 2019 wherein the Commission has reduced the Trading Margin in respect of the Appellant from Rs. 0.07/unit to Rs. 0.02/unit. On 02.07.2021, Hon'ble APTEL has passed its judgement in the abovementioned appeal and has set-aside the order dated 31.12.2020 passed by this Commission with respect to lowering the Trading Margin and restored the trading margin to 7paise/kWh.
12. The Commission filed Civil Appeal bearing No. 6310 of 2021 against the Hon'ble APTEL's Judgement dated 02.07.2021 in Appeal No. 52 of 2021. The Respondent, SECI, had filed two IAs. bearing Nos. 102603/2022 and 77402/2023 before the Hon'ble Supreme Court of India for directions and early listing of the case. The same were listed before the Hon'ble Supreme Court of India on 04.05.2023 and the Court vide Order dated 04.05.2023 disposed of the IAs with the following directions:

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

13. Accordingly, the Commission listed the matter on 06.06.2023, 13.07.2023, and 19.10.2023 wherein, the Commission admitted the Petition, directed the parties to submit affidavits in support of their oral contentions that the power is currently flowing from the generators, file short written submissions and reserved the Order.

14. The Petitioner submitted that the terms and conditions of PSA dated 16.01.2019 and Supplementary PSA dated 10.09.2021 between SECI and the Petitioner is intended to meet the Renewable Purchase Obligation of the applicant and the fact that tariff is discovered through competitive bidding and are composite in nature, therefore, the tariff as held in Petition No. 379/AT/2019 by CERC would be applicable in the instant PSA.
15. In view of the foregoing discussion and also the fact that Hon'ble APTEL vide its Judgement dated 02.07.2021 in Appeal No. 52 of 2021 has set aside the Order of the Commission dated 31.12.2020 in IA No. 1 of 2020 in Petition No. 65 of 2019 wherein the Commission had reduced the trading margin from Rs. 0.07/kWh to Rs. 0.02/kWh, the PSA dated 16.01.2019 and the Supplementary PSA dated 10.09.2021 between Petitioner and the SECI is hereby approved at a total tariff of Rs. 2.84/kWh viz. tariff of Rs. 2.77/kWh, plus Rs. 0.07/kWh as trading margin as per Hon'ble APTEL's Judgement dated 02.07.2021. However, the trading margin of Rs. 0.07/kWh shall be subject to the final outcome in the Civil Appeal No. 6310 of 2021, as directed by the Hon'ble Supreme Court of India vide its Order dated 04.05.2023.
16. Ordered Accordingly.

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