

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 222/AT/2023

**Coram:
Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of Order: 5th March, 2024

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for the adoption of tariff discovered through Competitive Bidding Process for selection of solar power developers for setting up of 500 MW ISTS-connected Solar PV Power projects in India under tariff-based competitive bidding under Scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage Power.

And

In the matter of

Damodar Valley Corporation (DVC),
Through Deputy Chief Engineer (Commercial),
DVC Towers, VIP Road,
Kolkata-700054.

.....Petitioner

Vs

- 1. ReNew Solar Power Private Limited,**
ReNew Hub, Commercial Block-1,
Zone 6, Golf Course Road,
DLF City Phase-V,
Gurugram-122009, Haryana
- 2. Avaada Energy Private Limited,**
C-11, Sector-65, Noida-201307,
Uttar Pradesh
- 3. REC Power Development and Consultancy Limited,**
Core-4, SCOPE Complex 7,
Lodhi Road, New Delhi-110003
- 4. BSES Yamuna Power Limited,**
2nd Floor, B-Block,
Shakti Kiran Building,
Karkardooma, New Delhi-110032
- 5. BSES Rajdhani Power Limited,**

Power Management Group,
PMG Office, 2nd Floor, B-Block, BSES Bhawan,
Nehru Place, New Delhi-110019

6. Tata Power Delhi Distribution Limited,
NDPL House, Hudson Lines,
Kingsway Camp, Delhi-110009

7. Punjab State Power Corporation Limited,
Office of Engineer-in-Charge/PP&R/Inter State Billing,
Shakti Vihar, T-1-A,
Patiala-147001, Punjab

8. Haryana Power Purchase Centre,
IP-3&4, Sector-14,
Panchkula-134113, Haryana

9. Tata Steel Limited,
P.O. Bistupur, Jamshedpur- 831001,
Jharkhand

10. West Bengal State Electricity Distribution Company Limited,
7th Floor, Block-B, Vidyut Bhawan,
D-J Block, Sector-II, Salt Lake,
Bidhan Nagar, Kolkata-700091

11. Bangalore Electricity Supply Company Limited,
2nd Floor, Corporate Office, Ambedkar Veedhi,
K.R. Circle, Bengaluru-560001, Karnataka

12. Hubli Electricity Company Limited,
P.B. Road, Hubli, Hubli-580025, Karnataka-

13. Gulbarga Electricity Supply Company Limited,
Corporate Office, Station Road,
Kalaburagi, Gulbarga-585102, Karnataka

14. Mangalore Electricity Supply Company Limited,
4th Floor, Paradigm Plaza, A.B. Shetty Circle,
Mangaluru-575001, Karnataka

15. Chamundeswari Electricity Supply Corporation Limited,
No.29, Vijay Nagar, 2nd Stage,
Hinkal, Mysuru-570017, Karnataka

16. Kerala State Electricity Board Limited,
8th Floor, Vaidyuthi Bhavanam, Pattom,
Thiruvananthapuram-695004, Kerala

17. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Vidyut Nagar,

Jabalpur-482008, Rajasthan

18. Jharkhand Bijli Vitran Nigam Limited,
Engineering Building, HEC, Dhurwa,
Ranchi-832004, Jharkhand

19. India Power Corporation Limited,
Plot X1-2 & 3, Block-EP, Sector-V,
Salt Lake City, Kolkata-700091

20. Northern Railway-UP,
DRM Office, Hazratganj, Behind ICICI Bank,
Lucknow-226001, Uttar Pradesh

21. North Central Railway-Allahabad,
DRM Office, Nawab Yusuf Road,
North Central Railway,
Prayagraj-211001, Uttar Pradesh

22. Western Railway-Gujarat,
PCEE Office, 5th Floor,
Western Railway, Churchgate New Station Building,
Mumbai-400020, Maharashtra

23. North Western Railway-Rajasthan,
Headquarters Office, Near Jawahar,
Circle, Jagatpura, Jaipur-302017,
Rajasthan

.....Respondents

Parties Present:

Shri Venkatesh, Advocate, DVC
Shri Bharath Gangadharan, Advocate, DVC
Shri Kartikey Trivedi, Advocate, DVC
Shri Sakya Singha Chaudhuri, Advocate, WBSEDCL
Shri Shubham Hasija, Advocate, WBSEDCL
Shri Shubhranshu Padhi, Advocate, Karnataka Discoms
Shri N. Sukirthy, Advocate, Karnataka Discoms
Shri Ritam Biswas, RECPDCL
Shri Ravi Nair, Advocate, PSPCL

ORDER

The Petitioner, Damodar Valley Corporation (DVC), 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 500 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 '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 Rate of Rs. 2.69 per Unit under Section 63 of the Act for procurement of RE Power from 200 MW Solar PV Power Project of M/s. ReNew Solar Power Private Limited, discovered through competitive bidding carried out by REC Power Development & Consultancy Ltd; and

(c) Adopt the Tariff Rate of Rs. 2.70 per Unit under Section 63 of the Act for procurement of RE Power from 300 MW Solar PV Power Project of M/s. Avaada Energy Private Limited, discovered through competitive bidding carried out by REC Power Development & Consultancy Ltd; and

(d) Direct all the beneficiaries of the respective stations coming under this replacement scheme to schedule the solar power on pro-rata basis under the same existing PPAs from the Petitioner; and

(e) To allow recovery of fee for filing the present petition from Beneficiaries in proportion to their allocation or in the alternative to waive off the fee paid by the Petitioner for filing the present Petition; and

(f) Pass such other order(s) as may be deemed fit and proper in the facts and circumstances of the present case.”

Submission of the Petitioner

2. The Petitioner, a generating company within the meaning of Section 2 (28) of the Act has submitted that DVC through its Bid Process Coordinator/ Authorized Representative, namely, REC Power Development and Consultancy Limited

(RECPDCL), issued a Request for Selection ('RfS') dated 1.12.2022 along with the draft Power Purchase Agreement ('PPA') for the purpose of selection of the Solar Power Developers (SPDs) for setting up of the 500 MW ISTS-Connected Solar PV Power Projects in India under the Flexibility Scheme and as per the 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, 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 6.4.2023 and pursuant thereto, two bidders, namely ReNew Solar Power Private Limited for 200 MW capacity and Avaada Energy Private Limited for 300 MW capacity were selected and RECPDCL issued Letters of Award on 19.6.2023 after obtaining the approval from DVC.

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 successful bidders, i.e. ReNew Solar Power Pvt. Ltd. (or its SPV) and Avaada Energy Private 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 30.8.2023

4. The matter was heard on 30.8.2021, and notices were issued to the Respondents to file their reply. Respondent No.7, Punjab State Power Corporation

Limited (PSPCL), Respondent Nos. 11-15, Karnataka ESCOMs and Respondent No.10, West Bengal State Electricity Distribution Company Limited (WBSEDCL) have filed their replies and the Petitioner has submitted the rejoinders thereof.

5. Vide Record of Proceedings for the hearing dated 30.8.2023, 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 No.3, 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. In response to the clarification sought by the Commission vide Record of Proceedings for the hearing dated 30.8.2023, the Petitioner, vide its affidavit dated 21.9.2023, 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 power 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 has been 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 the thermal/ hydro power will not be feasible on account of the 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 the beneficiaries of the generating 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. 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. The Petitioner has duly issued letters dated 25.1.2023 to its beneficiaries, thereby intimating them regarding impending RE bundling by the Petitioner, in line with the Flexibility Scheme and its subsequent amendment (dated 28.9.2022) thereof. In the said letters, the Petitioner also indicated the tentative amount of solar power allocation to the respective beneficiaries towards the implementation of the Flexibility Scheme. However, no contrary opinion/response has been received by the Petitioner from any of its beneficiaries. It is reiterated 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 evidently raised no objections upon being informed of the implementation of the Flexibility Scheme.

(c) As per Clause 15.1 of the RfS read with Clause 10.5 of the TBCB Guidelines to the Flexibility Scheme, a PPA can be signed by the parties only after the 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). The Petitioner can enter into a PPA with the successful bidders i.e., ReNew Solar Power Pvt. Ltd. (or its SPV) and Avaada Energy Private Limited (or its SPV) only after the adoption of tariff by this Commission. Further, the Scheduled Commissioning Date for the 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 Proceedings for the hearing dated 30.8.2023, Respondent No.3, RECPDCL, vide its affidavit dated 27.9.2023 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 placed on record the minutes of the bid evaluation committee and the conformity certificate dated 18.4.2023.

Reply of the Respondents

8. Respondent No.7, Punjab State Power Corporation Limited (PSPCL) vide its reply dated 11.10.2023 has mainly submitted that the procurement of power through Power Purchase Agreement ('PPA') dated 7.11.2006 for the generation and supply of power by DVC to the Punjab State Electricity Board (PSEB) for the contracted capacity of 200 MW from BTPS-A, 200 MW from the Durgapur Steel TPS and 300 MW from the Raghunathpur TPS has been rejected by the Punjab State Electricity Regulatory Commission ('PSERC'), vide its orders dated 6.9.2021 and 1.2.2021. The said orders are the subject matters of challenge before the Appellate Tribunal in Electricity (APTEL) in Appeal No. 304 of 2021 filed by DVC. Further, vide interim order dated 2.11.2021, the APTEL has stayed the operation of the orders dated 6.9.2021 and 1.2.2021. In terms of the above, the PSPCL has prayed that the procurement of power by PSPCL from DVC under the Flexibility Scheme is without prejudice and subject to the outcome of Appeal No. 304 of 2021 pending before the APTEL. PSPCL has further prayed to consider certain aspects to decide while adopting the tariff in the present Petition, namely (i) consistent supply of power bundled under the Flexibility Scheme, (ii) no penalty levied on account of the deviation by the RE generators may be passed on to PSPCL/ beneficiaries, (iii) no cost shall be passed on to the discoms/beneficiaries regarding the impact on grid security and the rise in cost due to operation of thermal plants on technical minimum and cost involved in the start-up and shut down of thermal plant, (iv) exemption of part load operations of units of thermal generating stations for the beneficiary already having PPA with thermal plant with regard to the RE integration/bundling during scheduling of thermal generating stations, and (v) apart from intimation by the DVC for the implementation of scheme for flexibility in generation and scheduling of

thermal/hydro power stations and selection of successful bidders through the Bid Process Coordinators, no consent was sought from PSPCL.

9. Respondent No.10, West Bengal State Electricity Distribution Company Limited (WBSEDCL), vide its reply dated 6.11.2023, has pointed out the following concerns regarding the application of the Scheme and the procurement of the RE Power under the present transaction:

(a) 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. Further, the RE energy procured by the Petitioner can be allowed to be bundled vis-a-vis Respondent No. 10 only after the consent of Respondent No. 10 having regard to the terms of bundling.

(b) Para 9.3 of the Flexibility Scheme provides that where it is not feasible for backing down the thermal plant on account of the technical minimum or other factors, the RE power would not be operating under the flexibility scheme of bundling, and therefore, there shall be no requirement of sharing gains/ losses through sale of such RE power in the power market by the Petitioner. 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 such a scheme. Further, any benefit derived from sale of RE power in the power market should be utilized towards reducing the tariff of the Petitioner after reducing “balancing cost” and the “tariff risk”. The Petitioner cannot be allowed to earn any profit from trading RE energy other than what is provided in law.

(c) The Petitioner, after discussion with Respondents No. 1 and 2, 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 and 2 for the purpose of bidding. The Petitioner

should be entitled to damages for the non-supply of a minimum quantity of RE energy.

(d) In view of the above, certain alternate options 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, 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 equally shared with the Discom for not taking the benefit of the RE power available with the Petitioner; 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.

(e) Para 7.2 of the Flexibility Scheme provides that net injection schedule from the thermal station and the RE generator would form 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 Discoms, 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 Discoms, without any additional financial burden on the Discoms, other than the tariff payable to the Petitioner.

(f) Para 6.7 of the Flexibility Scheme provides that the RE power shall be supplied to the Discoms at a tariff less than the energy charge rate of the generating station (thermal), which was originally scheduled. It further provides that such a tariff would include the “balancing cost” and the “tariff risk” to be taken by the generator. Thus, there is a likelihood that such a tariff may be different from the tariff adopted under this Petition under Section 63 of the Act. In short, there shall be two tariffs of the same power-one as adopted by the CERC under Section 63 of the Act (Respondent No. 1 will be supplying 200 MW @ ₹ 2.69/ unit, and Respondent No. 2 will be supplying 300 MW @ ₹ 2.70/ unit.), on the other hand, a tariff of the same power shall be calculated/ determined by DVC or some Agency based on the data furnished by DVC without Commission’s prudent check considering the “balancing cost”(not defined in Regulation as well as the Act) and the “tariff risk” (not defined in

Regulation as well as the Act) and shall be less than the energy charge rate of the generating station (thermal). In this regard, the following issues need to be addressed by the Commission:

(i) How the Petitioner or some Agency is empowered for the determining/calculating the tariff of the beneficiaries as per the Act? The Petitioner can only charge a tariff determined by the Commission under Section 62 of the Act. The scheme for 'flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage Power' to the extent it provides that RE power is to be supplied to the beneficiaries at a tariff which shall be less than the Energy Charge Rate (ECR) of the generating station (i.e. Energy charge of thermal generating station), is squarely contrary to the provisions of the Act and cannot be given effect to.

(ii) Further, the energy charge of the thermal power station is increasing due to increase of coal price, mixing of imported coal, and taxes, etc. and is expected to further increase in the near future. Hence, by linking the tariff charged from the beneficiaries of such RE power (which arrived through TBCB under Section 63 of the Act and remains fixed for the lifetime of the RE project) with the increasing energy charge of the thermal power station and giving a free hand to DVC for charging / billing tariff less than the ECR of the generating station beyond the Act, & Regulations, the scheme provides for profit to the Petitioner, not allowed in law.

(iii) The expressions "balancing cost" and "tariff risk" are not defined under the Tariff Regulations. It is not clear as to what is the nature of such cost or risk, and the element of cost related thereto. In the CERC Tariff Regulations, there is a provision of the compensation in fuel etc. for ramp up & ramp down of the generation. This 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. Hence, the balancing cost and tariff risk, which is undefined in this case, hardly has any meaning.

(iv) Adoption of the tariff under Section 63 of the Act is applicable for the beneficiaries and if the trader is involved then trading margin will be charged extra. In the present case, so far solar power is concerned, DVC cannot act as a trader as it is seeking to substitute its own generation from thermal plants with the RE power. It is not even clear as to in what capacity, the Petitioner will supply the power to the beneficiaries in the absence of the specific PPA for solar power.

(v) Above calculation of tariff by DVC or some Agency is against the spirit of the provision under Sections 61, 62(6) and 79(a) of the Act, whereas the tariff is adopted by the CERC as per prayer made in the Petition.

(g) The tariff for the Mejia thermal station is subject to the determination by this Commission under Section 62 of the Act. In case of bundling of power, the resultant energy charge rate, considering the weighted cost of ECR of the Petitioner's Mejia plant and the per unit tariff of the RE generator, has to be worked out by this Commission in the discharge of its statutory functions under Section 62 of the Act. It cannot be left to the Petitioner or some Agency to decide the resultant tariff, even if the same is less than the ECR chargeable based on thermal generation. The Petitioner cannot be allowed to make any profit/ additional revenue on account of the substituting part of its own generating with the RE power.

(h) In order to optimize the utilization of the RE power, this Commission may also consider allowing a 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 the thermal generation is dispatchable in nature, the facility of banking of the RE power will add greater depth and flexibility in terms of its usage against the thermal power.

(i) The mix of thermal and RE power should be done by the Petitioner or any Agency in a non-discriminatory manner for all the Discoms, including any such power utilized for the supply by the Petitioner in its area of supply. The activities of the Petitioner qua its generation and distribution activities, should be ringfenced to ensure the complete transparency and fairness of the approach.

Rejoinder of the Petitioner

10. The Petitioner, vide its rejoinder dated 3.11.2023 to the reply of PSPCL rejecting the contentions of Respondent No.7, PSPCL has submitted that the APTEL vide its Interim Order dated 2.11.2021 passed in Appeal No. 304 of 2021 has stayed the operations of the Orders dated 1.2.2021 and 6.9.2021 (which rejected the power procurement by PSPCL from the Petitioner) passed by the Punjab State Electricity Commission ('PSERC'). Therefore, the terms and conditions of the PPA are still binding on both parties and hence, the supply of power to PSPCL by the Petitioner will be governed by the PPA executed between the parties themselves. Moreover, the Petitioner in terms of Section 2(28) of the Act is duty bound to comply with the Flexibility Scheme, launched by the Ministry of Power, Government of India. PSPCL cannot direct or request the Petitioner to do or not to do anything which is already a part of the Flexibility Scheme and that too on the pretext of its conjectures and surmises.

11. The Petitioner, vide its rejoinder dated 21.11.2023 to the reply of WBSEDCL, has mainly submitted that 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 WBSEDCL, shall be bound by the same. The Petitioner will not be earning any additional profit other than provided in law as Clause 6.8 of 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 Ministry of Power, Government of India. Thus, the Petitioner is bound by the directives of the Flexibility Scheme and hence will be following the procedure and instructions given under the same. Further, if there shall be two different tariffs for which the power has to be supplied, this Commission, in its

all prudence, may decide on the same so that there is no ambiguity. The Petitioner will not be making any additional profit other than provided in law. It is reiterated 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 as per Clause 6.8 of the Flexibility Scheme. Moreover, this Commission may prescribe the appropriate steps and directions for the implementation of the Flexibility Scheme, while keeping in mind the interests of both the Petitioner and its beneficiaries

Hearing dated 29.11.2023

12. During the course of the hearing, the learned counsel for Respondent No. 10, West Bengal State Electricity Distribution Company Limited (WBSEDCL), also expressed concerns with regard to the provisions of the Flexibility Scheme and submitted that the Petitioner cannot override the provisions of the Act and/or Regulations notified by the Commission. Learned counsel submitted that under the Flexibility Scheme, the generator/the Petitioner would be acting as a trading licensee, which may not be permissible. Learned counsel also pointed out that under the Scheme, the generator/Petitioner is buying power from the RE Projects and, consequently, selling it to the beneficiaries with certain added costs (balancing costs and tariff risks), whereas the beneficiaries can themselves procure such RE power by directly approaching the RE generators.

13. Learned counsel for Respondent No.7, Punjab State Power Corporation Limited, submitted that PSPCL has no objection regarding the adoption of the tariff by the Commission. However, PSPCL, in its reply, has pointed out certain

operational aspects of the Flexibility Scheme, which may be considered by the Commission.

14. In rebuttal, the learned counsel for the Petitioner submitted that the apprehension of Respondent, WBSEDCL, that supply under this Flexibility Scheme hinders/restricts its right to purchase the RE power from the RE generator directly is misplaced as he is always at liberty to go for such procurement. Learned counsel submitted that it may not be correct to term the role of the generators/Petitioners herein as trading licensees as even under the extant PPAs/Guidelines, the generators are allowed to supply the power from the alternate /substitute sources. Learned counsel stated that certain operational/ implementation aspects of the Flexibility Scheme would require consideration of the Commission but they cannot be a basis for deferring the adoption process and they may be taken up separately by keeping the contentions of all the parties open in this regard.

15. Learned counsel for Respondents Nos. 11 to 15, Karnataka Discoms, sought liberty to file written submissions in the matter.

16. The Commission reserved the matter for order after granting liberty to the parties to file their respective written submissions, if any.

17. Pursuant to the liberty granted by the Commission, Respondent Nos. 11 to 15, Karnataka ESCOMs, vide their common reply and written submissions, have mainly submitted the following:

- a) DVC vide letter dated 25.1.2023 addressed to all five Karnataka ESCOMs regarding the implementation of the scheme for flexibility in generation and scheduling of Thermal / Hydro power stations and the selection of successful bidders through bid process coordinators. However, the Petitioner has not sought any consent from the Karnataka ESCOMs.

b) Respondent No. 3, i.e., RECPDCL, conducted the bidding process wherein the tariff was discovered in the bidding process as Rs.2.69/unit from 200 MW solar PV power project of Renew Solar Power Pvt. Ltd. and tariff of Rs.2.70/unit from the 300 MW solar PV power project of Avaada Energy Power Pvt. Ltd. which is on higher side as compared to the tender invited by SECI and other State utilities which is almost in line with the variable cost of the DVC power plants. Hence, this Commission may direct the Petitioner to negotiate the rates.

c) There is abundant RE power available in the market at cheaper rate as discovered recently. 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. Further, the RE energy procured by the Petitioner can be allowed to be bundled vis-à-vis Respondents No. 11-15 only after seeking consent of the Respondents No. 11-15 having regard to the terms of the bundling.

d) Para 9.3 of the Flexibility Scheme provides that where it is not feasible to back down the thermal plant on account of technical minimum or other factors, the RE power would not be operating under the flexibility scheme of bundling, and, therefore, there shall be no requirement of sharing gains/losses through the sale of such RE power in the power market by the Petitioner. 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 in the power market. The Petitioner cannot be allowed to earn any profit from trading RE energy other than what is provided in law.

e) Para 7.2 of the Flexibility Scheme provides that net injection schedule from the thermal station and the RE generator would form 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, without any additional financial burden on the Discom, other than the tariff payable to the Petitioner.

f) In terms of the applicable Deviation Settlement Mechanism Regulations, the RE Generator is afforded an opportunity to revise its declared availability much more frequently than thermal/conventional generators without the levy of DSM. Any penalty levied on account of the Deviation by the RE Generators may not be passed on to Karnataka ESCOMs /beneficiaries.

g) The replacement of thermal energy under the Flexibility Scheme has been envisaged by operating thermal plants on a technical minimum. By replacing the balance 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 startup and shut down of thermal plant shall not be passed on to the discoms/beneficiaries.

h) The distribution licensee in the State of Karnataka overachieved the RPO obligation as set by the Commission in the State. The requirement of RE power under flexible generation may not be required.

i) ESCOMs of Karnataka had tied up power from the DVC thermal stations, keeping in view the consistent/reliable power available from thermal plants irrespective of season/time duration during the day. The continuous supply of power may not be hampered due to the infirm nature of renewable energy bundled under the flexible scheme. Further, adequate safeguards may be put into place in order to ensure consistent supply.

j) The replacement of thermal energy under the flexibility scheme has been envisaged by operating thermal plants on a technical minimum. By replacing the balance 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 the cost due to the operation of thermal plants on technical minimum and cost involved in the startup and shut down of thermal plant shall not be passed on to the discoms / beneficiaries.

k) RE integration/bundling during scheduling of 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 the thermal plant.

l) The sharing of savings proposed in the scheme between the generator and beneficiary is in the ratio of 50:50 basis, which is very high in the present energy charge rate.

m) Any penalty levied on account of the deviation by the RE generators may not be passed on to the ESCOMs of Karnataka.

n) Though RE generation is exempted for payment of the transmission charges, but sharing regulation allow only to an extent of the scheduled energy.

o) On 29.4.2016, this Commission, vide 4th Amendment to the Grid Code, introduced Regulation 6.3B, viz, "Technical Minimum Schedule for operation of CHS/ISGS", whose tariff is either determined or adopted by the Commission, wherein the Regional Power Committees (RPCs) were directed to work out a Compensation Mechanism for station heat rate and auxiliary energy consumption, for low unit loading. Subsequently, on the recommendation of RPCs, this Commission, vide its order dated 5.5.2017, issued the Compensation Mechanism for the part load operation of the generating station. Thus, the RE integration/bundling during scheduling of the thermal generating stations and accordingly, the same needs to be exempted for the beneficiary already having PPA with the thermal plant.

18. Respondent No. 10, West Bengal State Electricity Distribution Company Limited (WBSEDCL), vide its written submissions dated 3.1.2024, has reiterated its submissions made in its reply dated 6.11.2023 and additionally submitted as under:

a) 'Trading' 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'. 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.

b) DVC occupies a unique role in carrying out both the functions of generation and distribution of electricity. DVC has clearly stated in its Petition as well as at the time of the hearing, that, it is operating under the Scheme as a generating company and de hors its functions of distribution under the DVC Act. Even otherwise, if DVC were to argue that it is a deemed licensee, it would require this Commission to examine closely the costs that are added by DVC in its sell price of the RE power to ensure that the cost of distribution is not subsidized by including such costs in the sell price for RE power.

c) The Guidelines dated 26.8.2022 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 settled that a statutory authority has to act in accordance with the provisions of the statute. In this regard, WBSEDCL has placed reliance on the judgments passed by the Hon`ble Supreme Court in the matters of *Ram Nandan Singh & Ors vs AG Office Employees Cooperative House Construction Society Ltd [(2007) 14 SCC 102, ADM (Rev.)]*, *Delhi Admn. v/s. Siri Ram, [(2000) 5 SCC 451]*, *State of T.N. v. P. Krishnamurthy, [reported in (2006) 4 SCC 517]* and *Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Ltd., [(2015) 9 SCC 209]*.

d) Since the process of the adoption of tariff in the present proceedings, in terms of the Guidelines dated 26.8.2022 issued by the Central Government under Section 63, is intrinsically and inextricably linked with the implementation of the Scheme, it may be necessary to decide the issues raised by WBSEDCL before proceeding with the adoption of the tariff. However, in the event that the Commission decides to proceed with the adoption of the tariff, the same should be without prejudice to contentions raised herein and should not be treated in any manner as a step towards further implementation of the scheme or any part

thereof, and DVC should not be allowed to claim any such equities till these issues are finally decided.

Analysis and Decision

19. 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.

20. 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.”

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

22. 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 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 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 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 (RPO) (Clause 8.1).

(j) The distribution licensee will have the flexibility to procure the RE power within the existing PPA to meet their RPO. 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 reliable power at least cost to the PPA holder, and (b) enabling the PPA holder/ obligated entity to 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)

23. 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 offtake 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 auctions 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 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 and 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 successful bidders after getting 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.

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

25. 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. In pursuant to the MoPs letter dated 15.9.2022, the Petitioner issued a Letter of Award ('LoA') dated 21.11.2022 to Respondent No.3, RECPDCL, a wholly owned subsidiary of REC Limited, a Maharatna Company, under the MoP, for acting as Bid Process Coordinator (BPC) for bundling of the 600 MW (500 MW Solar and 100 MW Wind) of RE Power with conventional power under the Scheme and to invite bidding under tariff based competitive bidding process.

26. The Guidelines provide for 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 size of 5 MW and above. As per the Guidelines, RECPDCL in the capacity of BPC, invited proposals for selection of the Solar Power Developers (SPDs) for setting up 500 MW ISTS connected Solar PV Power Projects under Tariff-based Competitive Bidding under the Scheme. As per the arrangements, DVC 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.

27. On 1.12.2022, RECPDCL issued the RfS documents, along with draft PPA for selection of Solar Power Developers for setting up of 500 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 placed on record the copies of various editions of the 'Hindustan' and 'Mint' newspapers dated 2.12.2022 wherein the notice of issuance of the RfS was published to accord a 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 grid-connected solar power projects.

28. The Bid Evaluation Committee (BEC) comprising of the following was constituted for the opening and evaluation of bids for the RfS dated 1.12.2022:

Tender	BEC Members for evaluation and recommendation
500 MW ISTS-Connected Solar PV Power Projects in India under Tariff-based Competitive Bidding)	(a) Umesh Kumar Madan, Regional Head Delhi, SBI Capital Markets, (Chairman, BEC) (b) Rajesh Kumar, Director, Renewable Technical & Integration Division, CEA, (Member, BEC) (c) Kuldeep Rai, CGM (Tech), REC Limited, (Member, BEC) (d) S. C. Garg, CGM (Tech), RECPDCL (Member, BEC) (e) P S Hariharan, CGM (Tech), RECPDCL, (Convener-Member, BEC)

29. Last date of the submission of bid was 3.2.2023 and the bid was opened on 3.2.2023. Response to the RfS was received from the following nine bidders:

S.No.	Name of the Bidders
1.	Renew Solar Power Private Limited
2.	Avaada Energy Private Limited
3.	Solalite Power Private Limited
4.	Apraava Energy Private Limited
5.	Eden Renewable Ternes Private Limited
6.	NTPC Renewable Energy Limited
7.	Refex Green Power Private Limited
8.	Solarcraft Power India 8 Pvt Ltd
9.	Tata Power Renewable Energy Limited

30. Subsequently, for 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.	Renew Solar Power Private Limited
2.	Avaada Energy Private Limited
3.	Solalite Power Private Limited
4.	Apraava Energy Private Limited
5.	Eden Renewable Ternes Private Limited
6.	NTPC Renewable Energy Limited
7.	Refex Green Power Private Limited
8.	Solarcraft Power India 8 Pvt Ltd

31. The first-round tariff bid for the DVC 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 6.4.2023. 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)	% Difference with Rank-1 Bid Value	Ranking
1	ReNew Solar Power Private Limited	2.69	200	0%	L1
2	Avaada Energy Private Limited	2.70	500	(0.37%)	L2
3	Apraava Energy Private Limited	2.78	100	(3.35%)	L3
4	Solalite Power Private Limited	2.79	100	(3.72%)	L4
5	Eden Renewable Ternes Private Limited	2.84	300	(5.58%)	L5
6	NTPC Renewable Energy Limited	2.93	500	(8.92%)	L6

32. After the conclusion of the e-reverse auction on 6.4.2023 and detailed deliberations by the BEC members, the following recommendations were made by the BEC:

- (a) ReNew Solar Power Private Limited with the lowest quoted tariff of Rs. 2.69 per kWh has emerged as first successful bidder with full quoted capacity of 200 MW after the conclusion of electronic reverse auction.

(b) Avaada Energy Private Limited with the second lowest tariff Rs 2.70 per kWh (within the range) has emerged as second successful bidder for the balance capacity of 300 MW after the conclusion of electronic reverse auction.

(c) 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. Damodar Valley Corporation (DVC)

33. Thereupon, RECPDCL, vide letter dated 24.4.2023 sought approval from the Procurer i.e. DVC for the issuance of the LoAs to the successful bidders. Accordingly, DVC, vide letter dated 23.5.2023, conveyed the approval for issuance of the LoAs by RECPDCL to the successful SPDs. Subsequently, RECPDCL, on behalf of DVC, issued LoA to the successful bidders i.e. ReNew Solar Power Private Limited vide LoA No. RECPDCL/TBCB/DVC/2022-23/661 dated 19.6.2023 for the capacity of 200 MW and Avaada Energy Private Limited vide LOA No. RECPDCL/TBCB/DVC/2023-24/662 dated 19.6.2023 for the capacity of 300 MW. The relevant extract of the Letter of Award issued to one of the successful bidders, namely, ReNew Solar Power Private Limited, is as under:

“Subject: Selection of Solar Power Developers for setting up of 500 MW ISTS-Connected Solar PV Power Projects in India under Tariff-based Competitive Bidding against RfS No. RECPDCL/Solar/DVC/2022-23/2360 dated: 01/12/2022 (Tender Code on ETS portal- RECPDCL-2022-TN000001): Letter of Award (LoA) for 200 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/DVC/2022-23/2360 dated: 01/12/2022 including draft Power Purchase Agreement and uploaded during the process of bidding against RfS on ISN-ETS portal (<http://www.bharat-electronictender.com>) under Tender search Code RECPDCL-2022- TN000001 issued to M/s ReNew Solar Power Private Limited as regards participation in the Global Invitation for Selection of Solar Power Developers for setting up of 500 MW ISTS-Connected Solar PV Power Projects 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, Gol, 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 ReNew Solar Power Private Limited by way of a Technical Bid pursuant to (2) above submitted on 03.02.2023 in response to the Final RfS.*

4. *The offer of M/s ReNew Solar Power Private Limited by way of an Initial Offer (First round Tariff Bid) as submitted on 03.02.2022 in response to the Final RfS.*

5. *The offer of M/s ReNew Solar Power Private Limited by the way of Final Offer (discovered during e-Reverse Auction) as submitted on 06.04.2023 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 ReNew Solar Power Private Limited is here by declared as the Successful Bidder for their full quoted capacity (i.e. 200 MW) @ Rs, 2.69 /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."

34. 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 27.9.2023 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 taken from the Bidding Guidelines. This has been certified through the conformity certificate dated 18.4.2023 placed on record by the RECPDCL. The relevant extracts of the certificates are re-produced as under:

“CERTIFICATE BY BID EVALUATION COMMITTEE

Subject: Selection of Solar Power Developers for setting up of 500 MW ISTS-Connected Solar PV Power Projects in India through tariff based competitive bidding process.

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 ReNew Solar Power Private Limited with the lowest quoted tariff of Rs. 2.69 per kWh has emerged as first successful bidder with full quoted capacity of 200 MW after the conclusion of electronic reverse auction.

c. M/s Avaada Energy Private Limited with the second lowest tariff Rs 2.70 per kWh (within the range) has emerged as second successful bidder for the balance capacity of 300 MW after the conclusion of electronic reverse auction.

d. The tariff quoted by M/s ReNew Solar Power Private Limited for Rs 2.69 per kWh for the quoted capacity of 200 MW and tariff quoted by M/s Avaada Energy Private Limited for Rs 2.70 per kWh for the balance capacity of 300 MW discovered after electronic reverse auction is acceptable."

35. 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, a PPA can be signed by the parties only after the adoption of tariff by the Appropriate Commission. Hence, it has been stated that the Petitioner will be entering into PPAs with the successful bidders i.e., ReNew Solar Power Pvt. Ltd. (or its SPV) and Avaada Energy Private Limited (or its SPV) only after adoption of tariff by this Commission.

36. 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- DVC has not sought any consent from Karnataka ESCOMs & PSPCL*

37. Respondents, Karnataka ESCOMs and PSPCL have submitted that the Petitioner vide its letter dated 25.1.2023 intimated the Respondents about the implementation of the Bundling Scheme for flexibility in generation and scheduling of

the thermal/hydro power stations and the selection of the successful bidders through bid process coordinators. However, the Petitioner has as such not sought any consent from the Karnataka ESCOMs and PSCPL.

38. Vide Record of Proceedings for the hearing dated 30.8.2023, 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 Flexibility 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 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 is able to supply electricity to the procurer/beneficiary at a price equal to or less than that laid down in the PPA.

39. The Petitioner has also stated that being a diligent entity, the Petitioner had issued the letters dated 25.1.2023 to its beneficiaries, thereby intimating them regarding impending RE Bundling by the Petitioner in line with the Flexibility Scheme and its subsequent amendment thereof. In the said letters, the Petitioner also

indicated the tentative amount of solar power allocation to the respective beneficiaries towards the implementation of the Flexibility Scheme. However, no contrary opinion/ response has been received by the Petitioner from any of its beneficiaries thus far. It is also 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.

40. We have considered the submissions of the Petitioner and the Karnataka ESCOMs & PSPCL on the aspect of prior consent of the beneficiaries. 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.”

As per the above provision, 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. Alternatively, the Petitioner has not indicated any rules notified by the Central Government basis which it proceeded to issue the LoA to the successful bidder. 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. Moreover, in the present case, the Petitioner vide its letter dated

25.1.2023 had intimated to the beneficiaries about the implementation of the Flexibility Scheme by the Petitioner and the tentative amount of the solar power allocation to the respective beneficiaries under the Flexibility Scheme. None of the beneficiaries appears to have raised any objections at that stage. Also, in the present case, none of the beneficiaries, except for Karnataka ESCOMs & PSPCL, have raised any objection/comment regarding the consent under Clause 10.5 of the Flexibility Guidelines. 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 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 thereof. The relevant excerpt is 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.*

(e)
.....”

The above provision specified in the IEGC, 2023 stipulates the required regulatory framework for scheduling and dispatch of 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 generators inasmuch as it casts the responsibility upon the generators to incorporate such renewable energy within the firm schedules of beneficiaries/distribution licensees from the thermal generating stations and at the same time, the Scheme also extends the benefits of RPO compliance to such the distribution licensees.

41. 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 and Ors., (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, 2023. In fact, the Flexibility Scheme needs to be appreciated in the larger context of energy transition and energy security but the generation from such stations 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 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 adoption of tariff.

42. However, the Petitioner may take up with the Ministry of Power to make suitable amendment to the bidding 'guidelines' on Flexibility Scheme in so far as the clause relating to consent of the beneficiary is concerned.

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

43. 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 a 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 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 reliance on the various judgments of the Hon'ble Supreme Court, the 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.

44. *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 has any issue/dispute in respect of the flexibility Scheme, WBSEDCL is free to challenge the same before an appropriate forum.

45. 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 if such tariff has been determined through a transparent process of 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 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 tariff as discovered in the bid process carried out under the said Guidelines and Respondents/beneficiaries cannot be permitted, directly or indirectly, 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 the Respondent is aggrieved by any of the provisions of the Flexibility Scheme and/or Guidelines and the role of the Petitioner envisaged thereunder, the 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.

46. 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 is 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.

47. 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 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 RPO with the RE power supplied under the Flexibility Scheme which otherwise would not be available to the beneficiary. The Petitioner has also fairly stated that the insofar as

the implementation of the Flexibility Scheme is concerned, the Commission may prescribe appropriate steps and directions for the same.

48. 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 30.8.2023, whereby the Petitioner was asked to indicate the tariff at which it will be supplying the solar generation to its beneficiaries. But the Petitioner has not given any exact/indicative amount and has merely stated that tariff of the renewable energy shall be lower as compared to the tariff for thermal power. However, having said that, this in our view cannot be a ground for deferring the present adoption proceedings, the scope of which relates to the tariff discovered for Renewable Energy Projects for the procurement of such power by the Petitioner herein. In other words, the present adoption proceedings pertain to first leg of 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 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."

49. We also note that Respondents, Karnataka ESCOMs have pointed out that the tariff discovered pursuant to the bidding is on the higher side compared to the tender invited by SECI and other State Utilities, and the Commission may, therefore, direct the Petitioner to negotiate the rates. It is also stated that abundant RE power is available in the market at a cheaper rate, as discovered recently. We find the above contention of Respondents to be unsubstantiated. Apart from merely stating that the rate discovered are on a higher side, the Respondents have 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 such submission of the Karnataka ESCOMs. Moreover, the Respondents have 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 is quite different and includes promoting the bundling of cheaper renewable energy with costlier thermal generation, to promote energy transition, to reduce the 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 the 50% of the net saving accrued on account of 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 purchase of renewable energy directly

from the RE developers or from market as the beneficiaries are always at liberty to opt for the latter route.

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

50. Respondents have also made various submissions/comments on the operational aspects of the Flexibility Scheme, which can be indicated below:

(i) Neither from the Flexibility Scheme nor from the bid documents or the Petition the process by which bundling is proposed to be carried out is 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 over drawl scenario by the beneficiary Discom, the extent of declared capacity of the thermal plant offset by 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 startup 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 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 station 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 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 beneficiary Discoms.

51. In response, the Petitioner has fairly indicated that the 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.

52. 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 operation 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 Clause 9.5 of the Flexibility Scheme entrusts the CEA with monitoring implementation of the Scheme and suggesting changes, if required, in the Scheme to the Central Government and in doing so, the CEA may consult the MNRE, POSOCO, CERC, Distribution Licensees, and other stakeholders. Hence, in

view of this specific provisions, 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.

53. 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 Bidders	Tariff Rs./kWh	Capacity (MW)
1	ReNew Solar Power Private Limited	2.69	200
2	Avaada Energy Private Limited	2.70	300

54. Prayers (b) and (c) of the Petitioner are answered in terms of above paragraphs.

55. The Petitioner has also prayed for direction of this Commission to all the beneficiaries of the respective generating stations coming under this replacement scheme to schedule the solar power on pro-rata basis under the same existing PPAs from the Petitioner. In this regard, we note that the basic framework/mechanism for the RE bundling is already provided under the Flexibility Scheme. Moreover, in respect of the various operational aspects, we have, in the foregoing paragraphs, already issued the directions to the concerned parties to have a joint consultation on these aspects. Hence, at this stage, we do not find any need to issue any such

directions to Respondents/ beneficiaries as prayed for by the Petitioner under prayer (d).

56. Prayer (d) of the Petitioner is answered in terms of paragraph 0 above.

57. The Petitioner has also prayed for direction of this Commission to allow recovery of fee for filing the present Petition from the beneficiaries in proportion to their allocation or in the alternative to waive off the fee paid by the Petitioner for filing the present Petition. It is pertinent to note that present Petition has not been filed under Section 62 of the Act read with Tariff Regulations of this Commission which specifically provide for the reimbursement/recovery of application filing fees. Hence, such a prayer of the Petitioner in respect of the Petition filed under Section 63 of the Act cannot be entertained and is hereby rejected.

58. Prayer (e) of the Petitioner is answered in terms of paragraph 0 above.

59. Petition No. 222/AT/2023 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(Jishnu Barua)
Chairperson