

**KERALA STATE ELECTRICITY REGULATORY COMMISSION**  
**THIRUVANANTHAPURAM**

**Present:** Shri. Preman Dinaraj, Chairman  
Adv. A.J Wilson, Member (Law)

**Date of Hearing:** 09.03.2021

**OP No 10/2021**

In the matter of : Petition seeking for approval of trading margin in Power Sale Agreement for 200MW wind power with Solar Energy Corporation of India Limited on long term basis in accordance with Section 86 (1) of Electricity Act,2003 section 63 and Regulation 76 of KSERC (Terms and conditions on determination of Tariff) Regulations, 2018 to meet the Renewable Purchase Obligation of KSEB Ltd as specified in KSERC (Renewable Energy and Net Metering) Regulations, 2020..

Petitioner : Kerala State Electricity Board Ltd.  
KSEB Ltd represented by : Smt Latha S.V, Asst Executive Engineer

Respondents : Solar Energy Corporation of India Ltd.  
SECI represented by : Mr. M G Ramachandran, Sr. Advocate  
Smt. Tanya Sareen, Advocate  
Mr Mudit Jain, Sr Engineer, SECI  
Smt. Subham Arya, Council of SECI

**Order dated 28.10.2021**

1. M/s KSEB Ltd filed a petition before the Commission on 02.02.2021, with the prayer to approve Rs 0.07/unit as trading margin in the Power Sale Agreement for 200MW wind power with Solar Energy Corporation of India on long term basis.'

2. The summary of petition filed by KSEB Ltd is given below:

(1) The Commission, vide Order dated 19.02.2020 in Petition OP No 53/2019 ordered as follows:

*(i) Approve the Power Supply Agreement dated 14.06.2019 and its amendment dated 12.12.2019, for a period of 25 years from the Scheduled Commissioning Date (SCD) or from the date of full commissioning of the projects, whichever is earlier, subject to the*

observations made in the preceding paragraphs, and at the tariff as below.

(a) @Rs 2.83/ kWh from the Scheduled Commissioning Date (SCD) until the commissioning of the cumulative awarded capacity/ cumulative capacity as accepted by the SECI under the RfS.

(b) At the pooled tariff arrived @Rs 2.8237/ kWh as per the Schedule-1 of the PSA dated 14th June 2019 from the commissioning of the cumulative awarded capacity/ cumulative capacity commissioned as accepted by the SECI under the RfS till the end of the Term of the Agreement.

(c) In addition to the above, the intermediary procurer can charge trading margin, which shall be fixed through mutual negotiation between SECI & KSEB Ltd and got approved by of this Commission. After arriving the trading margin through mutual negotiation, KSEB Ltd file a separate petition before the Commission for its approval.

(ii) The Power Supply Agreement dated 14.06.2019 shall be modified to incorporate changes approved in the Article 3.3.1 of the PSA, and also to modify Articles 5.1.1. and 5.1.2 of the PSA incorporating the trading margin arrived through negotiation and after getting approval of the Commission.

- (2) In compliance of the Order of the Commission dated 19.02.2020, KSEB Ltd held meetings with SECI on 28.02.2020, wherein KSEB Ltd requested SECI to reduce the trading margin from Rs 0.07/unit. However, SECI was not willing to reduce the trading margin, citing that similar PSAs have been executed by SECI for sale of solar and wind power with other States in India and the same trading margin @Rs 0.07/ unit is applicable in all those PSAs. Any reduction in the PSA with KSEB Ltd would adversely affect all PSAs executed by SECI among various States. Another round of meeting was held with SECI on 03.07.2020 and KSEB Ltd again requested to SECI to reduce the trading margin. However, SECI expressed their unwillingness to reduce the trading margin and pointed out that CERC has fixed the trading margin @ Rs 0.07/unit for short-term contracts and further reduction for long term contracts is not possible.
- (3) KSEB Ltd further submitted that, as requested by SECI, KSEB Ltd issued No Objection Certificate to obtaining LTA and waiver certificate for ISTS charges and loses, and also consent for scheduling 34.5 MW out of 75MW from M/s Adani Green Energy Three Ltd, subject to the approval of the Commission on trading margin.
- (4) KSEB Ltd also submitted that, MNRE vide resolution dated 22.10.2019 through the 'Amendments to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV projects' has fixed the trading margin @ Rs 0.07/unit.

- (5) Considering the above facts, KSEB Ltd requested before the Commission to approve the trading margin @Rs 0.07/unit in the PSA for 200MW Wind Power with SECI on long term basis.
3. Subsequently on 03.03.2021, KSEB Ltd submitted the following additional submission for the consideration of the Commission.

- (1) "The Commission vide Order dated 19.02.2020 in OP No. 53/2019, ordered to modify the clause 3.3.1 of the initialed PSA as follows.

*"As per notification of Ministry of Power dated 13.02.2018 & Hon'ble CERC notification dated 27.03.2019 and/or any amendment thereof, no interstate transmission charges and losses will be levied on transmission of electricity through the interstate transmission system for sale of power by such projects commissioned till 31st March 2022 for the entire term of the PSA."*

KSEB Ltd requested SECI to incorporate the above changes in Article 3.3.1 of the PSA. However, SECI did not accept the modifications and therefore the PSA amendment with respect to Article 3.3.1 could not be effected.

- (2) SECI vide letter dated 26.05.2020 intimated KSEB Ltd as follows.

"The PSA between SECI and KSEB Ltd has been signed based upon the Standard Bidding Guidelines (SBG) for competitive bidding by Government of India, wherein as per Article 7.5, it has been clearly mentioned as follows.

"In case SCD of wind project is before the date till above ISTS waiver is applicable, and if the commissioning of the wind project gets delayed beyond the applicable date of ISTS waiver due to force majeure event, the liability of transmission charges and losses would be shared between the WPG and procurer(s) in ratio of 50:50. However, in case the commissioning of the wind project gets delayed beyond the applicable date of ISTS waiver due to reasons attributable to the WPG the liability of transmission charges and losses would be of WPG".

However the modifications proposed by the Hon'ble KSERC is silent on the applicability of ISTS charges and losses on the delayed commissioning due to the Force Majeure event or in the event of delay on WPD's end. The SBG has been formed keeping in view of interest of both the DISCOM(s) as well as the WPD as there can be the case of Force Majeure while commissioning of the project due to unknown factors at that time. Being nodal agency for implementing the renewable energy schemes of Gol, SECI cannot go beyond the SBG for competitive bidding by Gol.

However SECI proposed for signing amendment keeping in view the interest of both the parties as follows.

*“As per notification of Ministry of Power dated 13.02.2018 & Hon’ble CERC notification dated 27.03.2019 and/or any amendment thereof, no interstate transmission charges and losses will be levied on transmission of electricity through the interstate transmission system for sale of power by such projects commissioned till 31<sup>st</sup> March 2022 for the entire term of the PSA. In case the SCD of wind project is before the date till above ISTS waiver is applicable, and if the commissioning of the wind project gets delayed beyond the applicable date of ISTS waiver **due to force majeure event**, the liability of transmission charges and losses would be shared between the WPD and DISCOM(s) in ratio of 50:50. However, in case the commissioning of the wind project gets delayed beyond the applicable date of ISTS waiver due to reasons attributable to the WPD the liability of transmission charges and losses would be of WPD”.*

Hence, SECI requested to KSEB Ltd to take up the matter with Hon’ble KSERC citing SECI’s inability to go beyond the Standard Bidding Guidelines for Competitive Bidding Process issued by Gol.

4. The Commission admitted the petition as OP10/2021. Hearing on the petition was conducted on 09.03.2021 through video conference. Smt Latha S.V, Asst: Executive Engineer, presented the matter on behalf of KSEB Ltd. Sri. M.G. Ramachandran, Senior Advocate presented the comments of the respondent SECI. Summary of the deliberations during the hearing is given below.

- (1) KSEB Ltd submitted that, the Commission vide Order dated 19.02.2020, granted approval for procuring 200 MW wind power through SECI for meeting the RPO. The Commission in the said Order, directed to fix the trading margin through mutual negotiation between SECI and KSEB Ltd. Though KSEB Ltd held two meetings with SECI at management level, SECI was not willing to reduce the trading margin from Rs 0.07/unit.

KSEB Ltd also submitted that, as requested by SECI, KSEB Ltd issued No Objection Certificate to SECI to obtain LTA and waiver certificate for ISTS charges and losses, and also consent for scheduling 34.5 MW out of 75MW from M/s Adani Green Energy Three Ltd, subject to the approval of the Commission on trading margin.

Though the Commission ordered to modify the Clause 3.3.1 of the PSA regarding the waiver of inter state transmission charges and losses, the SECI not accepted the modifications approved by the Commission.

- (2) Sri. M. G. Ramachandran, Senior Advocate, on behalf of the respondent SECI submitted the following during the hearing.
- (i) Regarding the modification of the Article 3.3.1 of the PSA in the matter of the waiver of inter State Transmission charges and losses, SECI willing to incorporate the latest Order of the MoP, Gol dated 15.01.2021, since the latest order provides for extension of waiver of inter State Transmission charges and

losses on account of delay in commissioning beyond June 2023 due to Force Majeure events.

- (ii) SECI expressed their inability to reduce the trading margin. SECI already entered into PSA with Odisha, UP and Chattisgarh for the sale of power from the same plants with the trading margin of Rs 0.07/unit.

5. Based on the deliberations during the hearing, the Commission issued the following directions to the petitioner KSEB Ltd and the respondent SECI to comply the following, latest by 25.03.2021.

- (1) SECI shall, submit a formal request through KSEB Ltd to modify the Article 3.3.1 of the initialed PSA as per the Order of the MoP, GOI dated 15.01.2021 regarding the 'Waiver of Inter-State Transmission Charges and Losses on transmission of electricity generated from solar and wind sources of energy.
- (2) SECI shall submit a detailed justification on claiming Rs 0.07/unit as trading margin for the project.

6. In compliance of the direction of the Commission, the respondent SECI submitted its comments vide its email dated 01.04.2021. The summary of the details submitted by SECI is given below.

- (1) M/s SECI has been designated as the nodal agency for implementation of scheme for setting up of Inter-State Transmission System (ISTS) connected Solar/ Wind projects with the mandate to call for bids under a Tariff Based Competitive Bidding process; enter into PPA and also enter into PSA with the Distribution Licensees.
- (2) In the present case SECI issued RfS document for setting up of 1200 MW ISTS connected Wind Power Projects (Tranche-VI) on 21.12.2018 in terms of the Guidelines for Tariff Based Competitive Bidding process for procurement of power from Grid Connected Wind Power Projects notified by Gol on 08.12.2017. In pursuance of the RfS, the bids were submitted, the successful bidders for establishing the projects were selected, LoA/PPA were issued to the following WPD for procurement of wind power for on onward sale on back to back basis to KSEB Ltd under the PSA dated 14.06.2019.
  - (a) PPAs (2) dated 25.10.2019 executed with M/s Adani Green Energy Three Limited for setting of power projects of 100MW and 150MW respectively in the State of Gujarat @Rs 2.82/kWh under ISTS Tranche-VI Wind Scheme. The capacity identified to KSEB Ltd is 75MW and,
  - (b) LoA dated 17.06.2019 issued to Zenataris Renewable Energy Private Limited for setting up of 125MW Wind Projects in the State of Karnataka @Rs 2.83/ kWh under ISTS Tranche-I Scheme. The capacity identified to supply to KSEB Ltd is 125MW.

- (3) SECI submitted that, it is entitled to trading margin of Rs 0.07/unit, as consideration, by buying utilities including KSEB Ltd in terms of the Guidelines, RfS and PSA.
- (4) In terms of the Order of the Commission dated 19.02.2020, a Meeting was held between KSEB Ltd and SECI on 28.02.2020. The Minutes of the meeting dated 28.02.2020, inter-alia, read as under:

"4. Trading Margin of SECI @ Rs 0.07 per unit

In the Petition filed by KSEBL with KSERC, seeking approval of Power Sale Agreement (PSA) for 200MW wind power with SECI (@ Rs 2.83/unit plus trading margin of SECI @ Rs 0.07 per unit) on long-term Basis, KSERC had ordered that the trading margin shall be fixed through mutual negotiation between SECI and KSEBL. After arriving at the trading margin through mutual negotiation, KSEBL shall file a separate petition before the Commission for its approval. Hence KSEBL requested SECI to reduce the trading margin from Rs 0.07 per unit as it is a long term PPA and trading margin at the ceiling price of Rs 0.07 per unit is on the higher side. SECI had intimated that similar PSAs have been executed by them for sale of solar and wind power with all other States in India and the same trading margin of Rs 0.07 per unit is applicable in all PSAs of SECI, order of respective State commission shall be forwarded to KSEB. Hence they expressed their inability to reduce the trading margin from Rs 0.07 per unit as it will have an adverse effect on all PSAs executed by SECI among various States. It was further intimated that recently the rate of Trading Margin was fixed by CERC @ Rs0.07/ unit or short term contract. CMD KSEBL intimated that the outcome of this discussion will be intimated to KSERC."

Thereafter SECI vide letter dated 11.03.2020, wrote to KSEBL, with regard to trading margin, stating as under:

With reference to above, in the Petition filed by KSEBL with Hon'ble KSERC. seeking approval of PSA for 200 MW wind power with SECI @ Rs 2.83/kWh plus trading margin of SECI @Rs 0.07/kWh) on long term basis, Hon'ble KSERC had ordered vide its order of dated 19.02.2020, that the trading margin shall be fixed through mutual negotiation between SECI and KSEBL. After arriving at the trading margin through mutual negotiation, KSEBL shall file a separate petition before Commission for its approval. Hence KSEBL requested SECI to reduce the trading margin from Rs 0.07/kWh as it is a long term PSA and trading margin at the ceiling price of Rs 0.07/kWh is on the higher side.

SECI, had intimated that similar PSAs have been executed by them for sale of solar and wind power with all other states in India and the same trading margin of Rs 0.07/kWh is prevailing in all PSAs of SECI. Hence it expresses its inability to reduce the trading margin from 0.07/kWh as it will have an adverse effect on all PSAs executed by SECI with various State DISCOMS.

Earlier, in the trading margin regulations issued by Hon'ble CERC on 12th January, 2010 the trading margin was fixed at ceiling of Rs 0.04/kWh for short term transactions. Now, as per clause 8 (1) (c) of Hon'ble CERC Statement of Reasons in the matter of CERC (Procedure, Terms and Conditions for grant of trading license) Regulations, 2020, issued on 2<sup>nd</sup> January, 2020 the trading margin ceiling of Rs 0.07/kWh is fixed for transactions under short term contracts. SECI had charged

trading margin of Rs 0.07/kWh uniformly across all the Buying Entities. However, the risks such as the quantum of default risk, late payment risk, contract dishonour risk and inflationary risk are high in long term contracts compared to short term contracts, still SECI has kept trading margin at Rs 0.07/kWh i.e. ceiling fixed by Hon'ble CERC for short term contracts. After considering above mentioned risks, trading margin of Rs 0.07/kWh charged by SECI is not exorbitant at all for long term contracts.

Following are some of our approval of PSAs signed with different DISCOMS by respective SERCS

(1)RERC order of 8th January, 2020 regarding Petition No. RERC -1594/ 19, with reference to adoption of tariff for 680 MW solar power under Section 63 of Electricity Act, 2003. As per clause no. 10 of the said order, RERC approves trading margin of 7 Poise/kWh in view of MNRE guidelines and as agreed by the parties.

(2)APTEL order of 27h February, 2020 with reference to appeal no. 370 of 2019, 371 of 2019, 373 of 2019, clause no. 74, the tariff payable is at Rs. 2.72 /kWh along with trading margin of 7 Poise /kWh In these petitions

- (5) On 03.07.2020 another meeting was held between SECI and KSEB Ltd, the minutes of the meeting [Annexure 2 the Petition], inter-alia provide as under:

*"5. Trading Margin of SECI @ Rs 0.07 per unit*

*The Chair pointed out that the trading margin of SECI @ 7ps per unit is on the higher side and requested to reduce the same. In reply SECI expressed their inability to reduce the trading margin from 7 paise per unit. Recently the rate of trading margin fixed by CERC is Rs.0.07 per unit even for short term contracts and hence further negotiation to reduce trading margin for long term contracts from 7ps per unit is not possible. The Chair informed SECI that the matter shall be brought to the notice of the Board...."*

- (6) SECI further submitted that, it had clearly placed on record that, it is not possible for SECI to agree to reduce trading margin. SECI has been providing for such trading margin at Rs 0.07/kWh for all the Procurers and there cannot be any differential treatment of KSEB Ltd in this regard.
- (7) The CERC in its Order dated 20.11.2019 in Petition No. 215/AT/2020 in the matter of SECI vs MNRE & Others, while adopting the tariff discovered under Tranche-VI Wind Scheme in terms of Section 63 of the EA-2003 has dealt with the trading margin at Para 29 as under;

*"29. The Petitioner has prayed to adopt the Trading Margin of Rs. 0.07/kWh. It is observed that Section 79(1)(j) of the Act requires the Commission "to fix the Trading Margin in the inter-State trading of electricity, if considered, necessary". Accordingly, the Commission, being of the opinion that it was necessary to fix Trading Margin for inter State trading in electricity, exercised the powers conferred under Section 178 of the Act and conceived Central Electricity Regulatory Commission (Fixation of Trading Margin)Regulations, 2010*

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

- (8) The CERC (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations 2020 [Trading License Regulations, 2020] specified as follows.

*“8. Trading Margin:*

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

*.....*

*(c) For transactions under long term contracts, the trading margin shall be decided mutually between the Trading Licensee and the Seller”*

- (9) SECI further submitted that, in the present case, KSEB Ltd agreed to Trading Margin of Rs 0.07/kWh in terms of the Article 5.1.1 of the PSA dated 14.06.2019 executed with SECI. Therefore, the trading margin of Rs 0.07/unit is binding on the parties to the agreement in conformity with the Regulation 8(1)(d) of the Trading Licensee Regulations, 2020.
- (10) SECI by virtue of its operations, is exposed to various risks such as payment default, late payment, breach of contract, inflation etc. The trading margin of Rs 0.07/kWh is to mitigate the risk being borne by SECI. The WPD demand energy payment from SECI in respect of the generation and supply of electricity under the PPA regardless of SECI receiving the same from the Buying Entities. SECI has to explore the possibility of selling power to third party in case of default on the part of Buying Entity. SECI is constantly involved in the litigation on the one side by the Renewable Power Developers and on the other side by the Buying Entities.

Further because of the payment security mechanism provided by the SECI, the tariff discovered under SECI schemes are significantly lower than those under tenders done by distribution companies themselves and this benefit is passed on to the Buying Entities.



- (11) The reduction in trading margin of Rs 0.07/kWh will not be commensurate to the services and the activities undertaken by SECI. The impact of creditworthiness of SECI is an important aspect to be considered for the Trading Margin to be allowed to SECI.
  - (12) In view of the above reasons, SECI submitted to please allow the trading margin of Rs 0.07/kWh payable to SECI, as has been mutually agreed between the parties.
7. Regarding the modification suggested by the Commission in Article 3.3.1 of the PSA, the respondent SECI submitted as follows.
  - (1) The provision has been inserted in the PSA, with the corresponding provision being Article 4.2.5 of the PPA, and further providing for the implication of the Order of the MoP, GoI dated 13.02.2018 regarding the waiver of Inter-state Transmission charges and losses and CERC (Sharing of Inter-state transmission charges and losses) Regulations dated 27.03.2019.
  - (2) Recently on 15.01.2021, MoP has issued an Order regarding waiver of Inter-state transmission charges and losses superseding the earlier orders of the MoP dated 13.02.2018, 06.11.2019 and 05.08.2020.
  - (3) The substitution made by the MoP, GoI in the said Order is to be taken up by the CERC to amend the existing Regulations with regard to transmission charges and losses as was done earlier by CERC vide notification dated 27.03.2019. Upon issuance of such Regulations by CERC, it shall be binding on all the parties, the existing clause namely Article 3.3.1 of the PSA as well as corresponding provisions in the PPA will stand amended as stated in the existing clause namely Article 3.3.1 'However, as per the notification of Ministry of Power dated 13.02.2018 and Hon'ble CERC notification dated 27.03.2019 and/or any amendment thereof'.
8. The second hearing on the petition was conducted on 24.06.2021 through video conference. Sri. K.G.P. Nampoothiri, presented the matter on behalf of the petitioner and Sri. M.G.Ramachandran, Senior Advocate, presented the matter on behalf of the respondent SECI. Summary of the deliberations during the hearing is given below.
  - (1) Sri. M G Ramachandran, Senior Advocate, clarified that, the PPA signed by the SECI with the Wind Power Generator (WPG) and PSA signed by SECI with KSEB Ltd are basically back-to-back arrangements between the generator and distribution licensees. SECI is only the intermediary power procurer.
  - (2) Clause F of the PPA provides that the rights claimed by WPD against SECI shall be subject to corresponding rights on a back-to-back basis by SECI against Discoms. Sri. M G Ramachandran, Senior Advocate

clarified that, in contracts, the right of one party imposes obligation on the other party and vice versa.

- (3) KSEB Ltd clarified that, the contracted capacity as per the PSA signed with SECI is 200 MW only.
- (4) The Commission seek clarification from SECI whether they are entitled to get any profit other than the trading margin @Rs 0.07 per unit. As per clause 4.6.1 of WPD SECI PPA, liquidated damages can be claimed by SECI by encashment of the performance bank guarantee. Clause 5.1.3 of PSA provides that any damages recovered by SECI from WPD will be passed on to KSEB Ltd. Further, a payment security fund may be created as per the direction of MNRE.

Sri. M.G. Ramachandran, clarified that, the amount credited in payment security fund can be utilized only as per the guidelines issued by MNRE. The Senior Counsel, added that the Central Government has taken a policy decision that SECI cannot be exposed to unlimited financial liability. No agreement can be contrary to the policy decisions. The documents in this regard will be furnished to the Commission.

- (5) With respect to State Government Guarantee under clause 6.4 of the PSA, KSEB Ltd submitted that, already the State Government has signed a the Tripartite Agreement with the Reserve Bank of India and Central Government for providing State Government guarantee to KSEB Ltd and it is still inforce. The TPA was formed as part of settlement of accumulated dues of CPSUs by the State Public utilities.
- (6) The Commission pointed out that some mistake has crept in the Article 10.1 that liability arising out of a breach by the SECI/ WPD shall fall on the shoulder of the Buying Entity KSEB Ltd. Sri. M.G. Ramachandran, Senior Advocate accepted the error and agreed to correct the same.
- (7) Sri. M.G. Ramachandran, informed that, when PPA and PSA were signed, both the inter-state transmission charges and losses were exempted for transmitting the power from the RE sources by DISCOMs to meet their RPO. However, as per the latest orders dated 15<sup>th</sup> January 2021 and 21<sup>st</sup> June 2021, the waiver of inter-state transmission loss is withdrawn. These notifications are issued in superstition of the earlier notification.
- (8) The Commission noted that, the bidder was Adani Renewable Energy Park (Gujarat) Limited and PPA was signed with Adani M/s Adani Green Energy Three Ltd and then name has been changed to Adani Wind Energy Kutchh Three Ltd. Adv Ramachandran clarified that the action of the bidder is as permitted in the bidding guidelines and bidding documents.
- (9) SECI submitted that, based on the deliberations, they shall amend the Article 10.1.1 of the PSA signed with KSEB Ltd.

9. Based on the deliberations during the hearing, the Commission issued following directions to the petitioner KSEB Ltd and the Respondent SECI to comply the following:
- (i) SECI shall amend the PSA based on the deliberations during the hearing and submit the same to KSEB Ltd on or before 12.07.2021 with a copy to the Commission.
  - (ii) KSEB Ltd isto submit the initialed PSA on or before 23<sup>rd</sup> July 2021 before the Commission.
10. In compliance of the directions of the Commission, M/s SECI on 15.07.2021 submitted a copy of the Supplementary Agreement modifying the Article 10.1.1 and Article 10.4.1 as follows.

ARTICLE	Existing Article	Amended Article
10.1.1	<p>Buying Entity shall indemnify, defend and hold Buyer / WPD harmless against:</p> <p>a) Any and all third party claims against Buyer/WPD for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Buyer/WPD of any of its obligations under this Agreement; and</p> <p>b) Any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Buyer/WPD from third party claims arising by reasons of a breach by the Buyer/WPD of any of its obligations under this Agreement, (provided that this Article 10 shall not apply to such breaches by the Buyer/WPD, for which specific remedies have been provided for under this Agreement).</p>	<p>Buying Entity shall indemnify, defend and hold Buyer/WPD harmless against:</p> <p>a) Any and all third party claims against Buyer/WPD for any loss of or damage to property of such third party, or death or injury to such third party, arising out of breach by the Buying Entity of any of its obligations under this Agreement; and</p> <p>b) Any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Buyer/WPD from third party claims arising by reason of a breach by the Buying Entity of any of its obligations under this Agreement, (provided that this Article 10 shall not apply to such breaches by the Buying Entity, for which specific remedies have been provided for under this Agreement).</p>

2.0 The existing Article 10.4.1 of the PSA dated 14.06.2019 be amended as under:

ARTICLE	Existing Article	Amended Article
10.4.1	<p>Except as expressly provided in this Agreement, neither Buying Entity nor Buyer/WPD nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues,</p>	<p>Except as expressly provided in this Agreement, neither Buying Entity nor Buyer/WPD nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other party or its affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith.</p>

	<p>income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of Buying Entity(ies), the WPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.</p>	<p>The above shall include:  a) Claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement),  b) Any increased expense of, reduction in or loss of power generation or equipment used therefore.  Irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of Buying Entity(ies), the WPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.</p>
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11. KSEB Ltd, vide letter dated 18.08.2021 submitted that, the legal wing of KSEB Ltd suggested a slight modification in clause 10.4 of the PSA, for deleting the last proviso starting from ‘irrespective of such claims are...’. However, SECI has expressed their unwillingness to modify the clause.

### **Analysis and Decision of the Commission**

12. The Commission has examined in detail the petition filed by KSEB Ltd dated 02.02.2021, additional submission dated 03.03.2021, the counter affidavit and other details submitted by the respondent SECI, the deliberations of the subject petition during the hearings as per the provisions of the Electricity Act, 2003, and other Rules, Regulations and guidelines in force, and decided as follows.
13. Based on the deliberations of the subject petitions, the following are the two issues which emerged before Commission for detailed examination.
- (1) Whether the SECI is eligible to claim trading margin @Rs 0.07/kWh in the initialed Power Sale Agreement (PSA) dated 14.06.2019, between KSEB Ltd and SECI for procurement 200MW Wind Power on long term basis?
  - (2) Whether the modification suggested by respondent SECI in Article 3.3.1 of the PSA regarding the waiver of Inter-State Transmission charges and Losses is in order?
  - (3) Whether the amendment proposed in Article 10.1.1 of the PSA be approved?
  - (4) Whether the amendment proposed in Article 10.4.1 of the PSA be approved?

The Commission examined the above issues in detail and decided as follows.

#### **Issue No.1**

14. The Commission vide Order dated 19.02.2020 in Petition OP No. 53/2019 ordered as follows regarding the trading margin.

“.....the intermediary procurer can charge trading margin, which shall be fixed through mutual negotiation between SECI & KSEB Ltd and get approved by

this Commission. After arriving a trading margin through mutual negotiation, KSEB Ltd file a separate petition before the Commission for its approval.”

Further, the Commission has discussed in detail the issue of trading margin under the paragraph-18 of the Order of the Commission dated 19.02.2020 in Petition OP No. 53/2019, which is extracted below for ready reference.

*“ 18. As per the signed PSA, the trading margin payable to the intermediary procurer SECI is Rs 0.07/unit. As detailed under paragraph-10 above, per the clause (c) of under paragraph-3 of the bidding guidelines dated 08.12.2017, the intermediary procurer is entitled to levy trading margin ‘as notified by the appropriate Commission or in the absence of such notification as mutually agreed with distribution licensee(s).*

*As discussed under paragraph 6 above, CERC vide the order dated 20.11.2019 in petition No. 215/AT/2019, has clarified that, ‘the Trading Margin Regulations do not provide for any Trading Margin for long term transactions and therefore, it is upto the contracting parties to mutually agree on Trading Margin, if any, in such cases’. The relevant paragraph of the CERC order is extracted below.*

*“29. The Petitioner has prayed to adopt the Trading Margin of Rs. 0.07/kWh. It is observed that Section 79(1)(j) of the Act requires the Commission “to fix the Trading Margin in the inter-State trading of electricity, if considered, necessary”. Accordingly, the Commission, being of the opinion that it was necessary to fix Trading Margin for inter State trading in electricity, exercised the powers conferred under Section 178 of the Act and conceived Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010 (hereinafter referred to as „Trading Margin Regulations”) applicable to the short-term-buy-short-term sell contracts for the inter-State trading in electricity undertaken by a licensee. Trading Margin Regulations provide for the ceiling of the Trading Margin in short-term-buy-short-term-sell contracts for the inter-State trading. Trading Margin Regulations do not provide for any Trading Margin for long term transactions and, therefore, it is upto the contracting parties to mutually agree on Trading Margin, if any, in such cases. In any case, the Commission does not fix Trading Margin on case to case basis. The spirit of the Act read with the Trading Margin Regulations gives freedom and choice to the contracting parties to mutually agree on Trading Margin for any kind of trading transaction, subject to the ceiling Trading Margin, whenever applicable. Accordingly, the Commission cannot fix or adopt any Trading Margin for long-term transactions under the provisions of the present Trading Margin Regulations. In view of the above, the prayer of the Petitioner to adopt the Trading Margin is decided accordingly.”*

*The present transactions, i.e., procuring 200MW power through SECI from the Wind Power Developers (WPD) from different part of the Country by KSEB Ltd is an interstate trading transactions. As per the Section 79(j) of the Electricity Act, 2003, CERC is empowered ‘to fix the trading margin in the inter-State trading of electricity, if considered necessary’. However, CERC vide the order dated 20.11.2019 has observed that, ‘Trading Margin Regulations do not provide for any Trading Margin for long term transactions and, therefore, it is*

upto the contracting parties to mutually agree on Trading Margin, if any, in such cases’.

*Further the bidding guidelines notified by the MoP, GoI dated 8th December 2017 also provides that, in the absence of the notification of the trading margin by the Appropriate Commission, the intermediary procurer can charge the trading margin mutually agreed with the distribution licensee(s).*

*As per the details submitted before the Commission, the intermediary Procurer, SECI offered the trading margin of Rs 0.07/unit. However, neither the petitioner KSEB Ltd nor the respondent SECI had submitted the details of the negotiation, if any, on trading margin done between them.*

*The Commission has also examined the provisions in the CERC (Procedure, Terms and Conditions for grant of trading licensee and other related matters) Regulations, 2020. As per the Regulation 8(1)(c) of the said Regulations, the upper ceiling on the trading margin for short term contract is fixed at Rs 0.07/unit. The relevant Regulation is extracted below for ready reference.*

*“8(1)(c) For transactions under short term contracts and contracts through power exchanges upto one year, the Trading Licensee shall charge a trading margin of not less than zero (0.0) paise/kWh and not exceeding seven (7.0) paise/kWh.”*

*As above, Rs 0.07/kWh (ps 7/kWh) is the maximum ceiling on trading margin for short term transaction. However in the present case, the PSA between the KSEB Ltd and SECI is long term contract for 25 years. The risks of scheduling and payment of long term contracts are generally less when compared to short-term contracts. Further, as per the Article 6.4 of the PSA between the SECI and KSEB Ltd, there is enough payment security mechanism including ‘Unconditional, revolving and irrevocable letter of credit, ‘State Government Guarantee’ and also ‘Payment security fund to support three months payments’. Accordingly, the payment risk of the present transaction is minimum. Considering these reasons, there is no rationale in claiming trading margin @Rs 0.07/kWh by the intermediary procurer M/s SECI, which is the upper ceiling on trading margin provided for short-term contracts. Hence the Commission hereby directs KSEBL to negotiate with M/s SECI for reduction of the trading margin and to get the approval of this Commission. The trading margin so arrived at and as approved by this Commission can be claimed over and above the fixed tariff as per the Article 5.1.1 and 5.1.2 of the PSA dated 14th June 2019.”*

15. As shown above, the Commission in the Order dated 19.02.2020 in OP No. 53/2019, directed KSEB Ltd and SECI to finalise the trading margin through mutual discussions. KSEB Ltd during the deliberations of the subject petition submitted that, in compliance of the direction of the Commission, it had conducted two meetings with SECI, first meeting on 28.02.2020 at CMD level, and the second meeting on 03.07.2020 at Director level. However, SECI not willing to reduce the trading margin citing that, as a trading licensee they have to get the trading margin @Rs 0.07/unit to carry out their responsibilities and obligations under the PSA with the distribution licensees and the back to back

PPA with Wind Power Generators. SECI further submitted that, they signed PSA with the distribution licensees in other States including Odisha, UP and Chattisgarh for the sale of power at the trading margin of Rs 0.07/unit. Hence it will not be correct to make any specific deviation in this regard for KSEB Ltd

SECI also submitted that, as per the initialed Power Sale Agreement dated 14<sup>th</sup> June 2019, KSEB Ltd also agreed to the trading margin of Rs 0.07/unit in terms of the Article 5.1.1 of the PSA.

16. The Commission noted that, KSEB Ltd and SECI have held two meetings. However, SECI has not agreed to negotiate this maximum trading margin of Rs 0.07/unit and insisted upon the same. The Regulation 8 of the CERC (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations 2020 provides that, the trading margin for long term transactions shall be decided mutually between the Trading Licensee and Seller. However, SECI has not agreed for any reduction of this trading margin of Rs 0.07/unit for the entire period of 25 years validity of the PSA.
17. ***Under such circumstances, the Commission is constrained to accept SECI's claim of Rs 0.07/unit as trading margin subject to the condition that KSEB Ltd shall not provide the "Payment Security Fund" suitable to support payment for at least 3 months" in addition to the Revolving Letter of Credit.***

#### **Issue No.2**

**Modification suggested by the Respondent SECI in Article 3.3.1 of the PSA regarding the waiver of 'Inter-State Transmission charges and losses.**

18. The Article 3.3.1 of the initialed PPA between M/s SECI and KSEB Ltd provide as under,  
  
*"Buying Entity shall be liable to bear all the transmission losses as determined by appropriate commission from time to time in respect of the power evacuated from the delivery points to its receiving substation(s)"*

As above, as per the Article 3.3.1 of the PSA, the buying entity KSEB shall liable to bear the transmission loss from the delivery point upto to the receiving substation of the buying entity. Further, as per the PSA, the "Delivery Point" shall mean the point at 220kV or above where the power from the wind power project(s) will be injected into the ISTS.

19. The Commission examined the issues in detail. As part of promoting electricity generation from Renewable Sources in the Country, the Central Government from time to time, through separate orders, has been waiving inter-state transmission charges and losses on transmission of electricity generated from solar and wind sources of energy procured by distribution licensees for meeting their RPO.

MoP, Gol vide the Order dated 13.02.2018 in File No. 23/12/2016-R&R in the matter of 'Waiver of inter-state transmission charges and losses on transmission of the electricity generated from solar and wind sources' had waived the interstate transmission charges and losses on transmission of the electricity generated from the solar and wind sources for those projects commissioned till 31<sup>st</sup> March 2022. The relevant portion of the order is extracted below.

*“For generation projects based on solar and wind sources, no interstate transmission charges and losses will be levied on transmission of the electricity through the inter-state transmission system for sale of power by such projects commissioned till 31<sup>st</sup> March 2022.*

*Provided that the above waiver will be available for a period of 25 years from the date of commissioning of such projects.*

*Provided further that the above waiver will be available for solar and wind projects entering into PPAs with all entities, including Distribution Companies for sale of power from solar and wind projects for compliance of their renewable purchase obligation.*

*Provided further that the above waiver will be allowed only to those solar and wind projects that are awarded through competitive bidding process in accordance with the guidelines issued by the Central Government.”*

Subsequently, Central Commission vide the CERC (Sharing of inter-State Transmission Charges and Losses) (Sixth Amendment) Regulations, 2019, specified as follows.

*“(aa) No transmission charges and losses for the use of ISTS network shall be payable for the generation based on solar and wind power resources for a period of 25 years from the date of commercial operation of such generation projects if they fulfill the following conditions:*

- (i) Such generation capacity has been awarded through competitive bidding process in accordance with the guidelines issued by the Central Government;*
- (ii) Such generation capacity has been declared under commercial operation between 13.2.2018 till 31.3.2022;*
- (iii) Power Purchase Agreement(s) have been executed for sale of such generation capacity to all entities including Distribution Companies for compliance of their renewable purchase obligations.”*

As above, as per the Order of the MoP, Gol dated 13.02.2018 and CERC Regulations dated 27.03.2018, inter-state transmission charges and losses are completely waived for generation from solar and wind power projects for a period of 25 years from the date of CoD for power procured by KSEB Ltd through SECI, provided the generation capacities tied by SECI achieves CoS between 13.02.2018 and 31.03.2022.



20. However, during the hearing of the subject petition on 24.06.2021 M/s SECI submitted that, MoP, Gol vide Order dated 15<sup>th</sup> January 2021, in supersession of the earlier orders ordered that, no-inter state transmission charges will be levied on transmission of electricity generated from Solar and Wind power plants commissioned upto 30<sup>th</sup> June 2023. However, there is no mention in the Order regarding the waiver of inter-state transmission losses. The relevant portion of the Order is extracted below.

*“ Government of India have decided that in supersession of Ministry of Power’s earlier Order No.23/12/2016-R&R dated 13.02.2018, Order No.23/12/2016-R&R dated 06<sup>th</sup> November, 2019 and 05<sup>th</sup> August 2020, no inter-state transmission charges will be levied on transmission of the electricity generated from following power plants for a period of 25 years from the date of commissioning of the power plants which meet the following criteria:*

- a) Power plants using solar and wind sources of energy, including solar-wind hybrid power plants with or without storage commissioned upto 30<sup>th</sup> June, 2023 for sale to distribution licensees, irrespective of whether this power is within RPO or not, provided that the power has been procured competitively under the guidelines issued by the Central Government. Power from such solar and wind plants may also be used for charging of storage including Hydro pumped storage plants:*

*Provided that where any renewable power project which is eligible for waiver of inter-state transmission charges and is having its scheduled date of commissioning on or before 30<sup>th</sup> June, 2023 is granted extension of time from the commissioning on account of Force Majeure or for delay on the part of the transmission provider in providing the transmission even after having taken the requisite steps in time; or on account of delays on the part of any Government Agency, and the power plant is commissioned before the extended date; it will get benefit of waiver of inter-state transmission charges on the transmission of electricity generated by the power plant as if the said plant had been commissioned on or before 30<sup>th</sup> June, 2023:*

*Provided also that where a Renewable Energy generation capacity which is eligible for ISTS waiver in terms of the extant orders, is granted extension in COD by the competent authority, the commencement and the period of the LTA shall also get extended accordingly, and it will be deemed that the period of ISTS waiver is extended by the said period.*

- b) Solar PV power plants commissioned under “MNRE’s Central Public Sector Undertaking (CPSU) Scheme Phase-II (Government Producer Scheme) dated 05.03.2019”, and*
- c) Solar PV plants commissioned under SECI Tender for manufacturing linked capacity scheme (RFS No.SECI/C&P/RfS/2GW Manufacturing/P-3/R1/062019 dated 25.06.2019) for sale to entities having RPO, irrespective of whether this power is within RPO or not.”*

The respondent SECI further submitted that, the MoP, Gol vide Order dated 21.06.2021, amended the earlier orders on waiver of inter-state transmission charges and ordered that, the waiver of Inter-State Transmission System (ISTS) charges is extended on transmission of electricity generated from wind

and solar projects to be commissioned up to 30<sup>th</sup> June 2025. However, it is specified in the said Order dated 21.06.2021 that, no waiver is allowed on inter-state transmission losses. The Commission however noted that Para 5.0 of the MoP Order clearly stated that “This Order shall be applicable prospectively i.e. from the date of issue of the Order”. Hence, the respondent SECI raised doubts and concern during the hearing on whether the inter-state transmission losses is applicable to the Wind Power Developers (WPDs) selected by SECI under Tranche-VI scheme is without appraising the Order in totality.

21. The Commission examined the entire aspects in detail and noted the following.
- (1) SECI, issued the RfS document for setting up of 1200MW ISTS Connected Wind Power Projects 9Tranche-VI) on 21.12.2018, in terms of the Guidelines for Tariff Based Competitive Bidding process for procurement of power from Grid Connected Wind Power Projects notified by Ministry of Power, GoI on 13.02.201. As per these guidelines, *‘no interstate transmission charges and losses will be levied on transmission of the electricity through the inter-State transmission system for sale of power by such projects commissioned till 31<sup>st</sup> March 2022’.*
  - (2) One of the conditions in the bidding documents was to commission the selected Wind Projects in the year 2020-21.
  - (3) The Commission also notes that, the bidders quoting for the SECI RfS dated 21.12.2018 would definitely have built in the cost implication due to waiver of inter-state transmission losses since it was a condition in the RfS/tender. It is be noted that, the tendered condition cannot be subsequently changed and more so after the bids have been finalised and even power has started flowing to KSEB Ltd from one of the successful bidders i.e M/s Adani Green Energy Three Ltd.
  - (4) Further acceptance of any such post tendering and post CoD changes would have the effect of unjustly enriching up the successful bidders at the cost of the ordinary consumers.
  - (5) It is also be noted that the MoP Order dated 21.06.2021 in para 5.0 has clearly stated that, it shall be applicable prospectively i.e from the date of issue of the Order. Hence the Commission cannot agree to retrospectively apply the provision of Inter-state transmission losses to the account of the buying entity i.e. KSEB Ltd especially since these bids were finalised as far back as in December 2018 and even power is continuously being purchased from one of the bidders M/s Adani Green Energy Three Ltd.
  - (6) Any such deviation would tantamount in change in tendered condition, result in shifting of tendered goal posts and irregular and windfall enrichment of the successful bidders even when the MoP orders dated 21.06.2021 clearly stated that it shall have only prospective effect.
  - (7) SECI signed two PPAs on 25.10.2019 with M/s Adani Green Energy Three Ltd for setting of power projects of 100MW and 150MW respectively in the State of Gujarat @Rs 2.82/unit. The capacity identified for supply of power to KSEB Ltd is 75MW. SECI issued Lol

dated 17.06.2019 to M/s Zenataris Renewable Energy Private Limited for setting of 125 MW Wind Power Project in the State of Karnataka @Rs 2.83/unit under ISTS Tranche-VI wind scheme. The capacity identified for supply to KSEB Ltd 125MW.

22. The Commission further noted that SECI had, conducted the bidding process under Tranche-VI scheme and selected the WPG in the year 2019 itself. All the bidding process including the selection of the bidders, and also signed the PPA / issued Lol to the selected bidders in the year 2019 itself.
23. It is evident from the documents available before the Commission that, at the time of the bidding by SECI, and the selection of the bidders, the Order of the MoP, Gol dated 13.02.2018 regarding the “waiver of inter-state transmission charges and losses’ was in force. Further as mentioned above all the bidders participated in the bidding process of SECI under Tranche VI Scheme and quoted keeping the aspect of the complete waiver of inter-state transmission charges and losses in their bid price. The DISCOMS including KSEB Ltd also signed the PSA with the SECI in these circumstances and hence the Order issued by the MoP, Gol dated 15.01.2021 regarding the ‘inter-state transmission charges and losses’ cannot be enforced in bids conducted in the year 2019.
24. ***Considering all these aspects in detail, including the legal enforceability of the orders of the MoP, Gol dated 13.02.2018, and 15.01.2021, this Commission is of the considered view that, no inter-state transmission charges and losses shall be levied for the transmission of electricity generated from the wind projects selected by SECI under Tranche-VI scheme. Hence, the Commission vide the Order dated 19.02.2020 in Petition OP 53/2019, ordered to modify the Article 3.3.1 of the PSA as follows.***

Article	Existing Article	As per the Amendment dated 12.12.2019 submitted by KSEB L	Approved by the Commission
3.3.1	Buying entity shall be liable to bear all the transmission losses as determined by Appropriate Commission from time to time in respect of the power evacuated from the delivery points to its receiving substation(s).	Buying entity shall be liable to bear all the transmission losses as determined by Appropriate Commission from time to time in respect of the power evacuated from the delivery points to its receiving substation(s). However, as per notification of Ministry of Power dated 13.02.2018 & Hon'ble CERC notification dated 27.03.2019 and/or any amendment thereof, no interstate transmission charges and losses will be levied on transmission of electricity through the interstate transmission system for sale of power by such projects commissioned till 31st March 2022 for the entire term of the PSA	As per notification of Ministry of Power dated 13.02.2018 & Hon'ble CERC notification dated 27.03.2019 and/or any amendment thereof, no interstate transmission charges and losses will be levied on transmission of electricity through the interstate transmission system for sale of power by such projects commissioned till 31st March 2022 for the entire term of the PSA

However, the respondent SECI was reluctant to incorporate the modifications as proposed by the Commission.

25. The Commission examined the deliberations of the subject matter in detail. As mentioned earlier, this Commission is duty bound to protect the interest of the consumers of the State of Kerala, and to avoid any additional liability in the form of inter-State transmission charges and losses during the entire term of the PSA. Hence this Commission has expressed its reservation on sharing the liability of transmission charges and losses arising on account of the delay in commissioning of the WPG.

The Orders issued by the Central Government for waiver 'inter-State Transmission charges and Losses' from time to time as part of the promotion of the Renewable Energy Generation in the Country, especially for Solar and Wind generation is available to all WPG and Solar PV plants, commissioned under power procured by SECI through competitive bidding route for supplying the same to distribution licensees in the Country.

26. The Commission also like to clarify that, the present PSA between SECI and KSEB Ltd for procurement of 200MW Wind Power is a long term contract for 25 years from the CoD of the power plant. The draft PSA was initialed between the SECI and KSEB Ltd on 14<sup>th</sup> June 2019. As per the details submitted before the Commission, the back to back PPA was signed/LoI with WPG in the months of 17.06.2019 and 25.10.2019 respectively.

As per the paragraph 16.3 of the bidding guidelines dated 08.12.2017, the Wind Projects has to be commissioned within a period of 18 (eighteen months from the date of signing of the PPA), i.e., even with the latest date of signing the PPA dated 25.10.2019, the WPGs supplying power under this PSA has be commissioned by April 2021. In any case, the Wind Power Projects under Tranche-VI scheme can be commissioned by 3<sup>rd</sup> March 2021. One of the WPD under Tranche VI Scheme, M/s Adani already commissioned and supplying power to KSEB Ltd since January 2021.

The Commission also like to clarify that, as the bidding agency and intermediary procurer, SECI is duty bound to ensure the timely implementation of the WPG as per the timelines specified in the tender documents and the PPA signed with the WPG. Any liability arising out of the delay in commissioning of the WPG shall not be passed on to the distribution licensee(s) and its consumers.

27. Considering all these aspects in detail, the Commission hereby orders to modify the Article 3.3.1 of the PSA as under;

***“As per notification of Ministry of Power, Government of India in File No. 23/12/2016-R&R dated 13.02.2018 and CERC notification dated 27.03.2019, the buying entity KSEB Ltd shall not be liable to bear interstate transmission charges and losses on transmission of electricity through the interstate transmission system for evacuating power from the delivery points of the WPG supplying power under the back to back PPA under this PSA upto the receiving substations of KSEB Ltd, during the entire term as per this PSA.”***

28. **Issue No.3. Amendment proposed under Article 10.1.1 of the PSA.**

The Commission also examined the amendment proposed by SECI in Article 10.1.1 of the PSA, incorporating the observations of the Commission during the second hearing held on 24.06.2021. The existing Article and its amendment proposed by SECI are given below.

ARTICLE	Existing Article	Amended Article proposed by SECI
10.1.1	<p>Buying Entity shall indemnify, defend and hold Buyer / WPD harmless against:</p> <p>a) Any and all third party claims against Buyer/WPD for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Buyer/WPD of any of its obligations under this Agreement; and</p> <p>b) Any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Buyer/WPD from third party claims arising by reasons of a breach by the Buyer/WPD of any of its obligations under this Agreement, (provided that this Article 10 shall not apply to such breaches by the Buyer/WPD, for which specific remedies have been provided for under this Agreement).</p>	<p>Buying Entity shall indemnify, defend and hold Buyer/WPD harmless against:</p> <p>a) Any and all third party claims against Buyer/WPD for any loss of or damage to property of such third party, or death or injury to such third party, arising out of breach by the Buying Entity of any of its obligations under this Agreement; and</p> <p>b) Any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Buyer/WPD from third party claims arising by reason of a breach by the Buying Entity of any of its obligations under this Agreement, (provided that this Article 10 shall not apply to such breaches by the Buying Entity, for which specific remedies have been provided for under this Agreement).</p>

KSEB Ltd also given consent and agreement to the amendment proposed by SECI under Article 10.1.1 of the PSA. Since both parties to the PSA given consent for the amendment under Article 10.1.1 of the PSA, the Commission hereby approve the same.

29. **Issue No.4. Amendment proposed under Article 10.4.1 of the PSA.**

M/s SECI proposed the following amendments under Article 10.4.1 of the PSA.

ARTICLE	Existing Article	Amended Article
10.4.1	<p>Except as expressly provided in this Agreement, neither Buying Entity nor Buyer/WPD nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its affiliates, officers, directors, agents, employees, successors or permitted</p>	<p>Except as expressly provided in this Agreement, neither Buying Entity nor Buyer/WPD nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other party or its affiliates, officers, directors, agents, employees, successors or permitted</p>

	<p>assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of Buying Entity(ies), the WPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.</p>	<p>assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith.</p> <p>The above shall include:</p> <p>a) Claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement),</p> <p>b) Any increased expense of, reduction in or loss of power generation or equipment used therefore.</p> <p>c) Irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of Buying Entity(ies), the WPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.</p>
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However, KSEB Ltd suggested to delete the last proviso incorporated by SECI in Article 10.4.1 of the PSA, which is read as follows "... Irrespective of whether such claims are based upon breach of warranty, tart (including negligence, whether of Buying Entity(ies), the WPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise". KSEB Ltd, further submitted that, SECI expressed their unwillingness to modify the clause.

The Commission after duly examining the amendment proposed by SECI under Article 10.4.1 of the PSA, has concluded that the proposal of the SECI is only a structural rearrangement of the existing Article 10.4.1 of the initialed PSA. Hence the Commission hereby approve the amendment proposed under Article 10.3.1 of the PSA as above.

### **Orders of the Commission**

30. The Commission, after examining in detail the petition filed by KSEB Ltd dated 02.02.2021, additional submission dated 03.03.2021, the counter affidavit and other details submitted by the respondent SECI, the deliberations of the subject petition during the hearings, as per the provisions of the Electricity Act, 2003, and other Rules, Regulations and guidelines in force, ordered the following.
- (1) Approve the trading margin of Rs 0.07/kWh in the Power Sale Agreement for 200MW wind power with Solar Energy Corporation of India Limited on long term basis, subject to the condition that, KSEB Ltd shall not provide "Performance Security Fund" suitable to support payment for atleast 3 months".
  - (2) As discussed in Paras 21 to 26 of this Order and as ordered in paragraph 27 of this Order, approve the modified Article 3.3.1 of the

Power Sale Agreement, as below for incorporation in the PSA between KSEB Ltd and SECI.

***“As per notification of Ministry of Power, Government of India in File No. 23/12/2016-R&R dated 13.02.2018 and CERC notification dated 27.03.2019, the buying entity KSEB Ltd shall not be liable to bear interstate transmission charges and losses on transmission of electricity through the interstate transmission system for evacuating power from the delivery points of the WPG supplying power under the back to back PPA under this PSA upto the receiving substations of KSEB Ltd, during the entire term as per this PSA.”***

- (3) Approve the modified Article 10.1.1 of the Power Sale Agreement as proposed by SECI and as consented by KSEB Ltd as per paragraph 28 of this Order.
- (4) Approve the SECI's proposal to amend the Article 10.4.1 of the Power Sale Agreement as discussed under paragraph-29 of this order.
- (5) KSEB Ltd shall submit a copy of the signed Power Sale Agreement for the procurement of 200MW Wind power with Solar Energy Corporation of India Limited on long term basis before the Commission for information and record within three months of the date of this Order.

The petition is disposed off.

**Sd/-  
Adv A J Wilson  
Member (Law)**

**Sd/-  
Preman Dinaraj  
Chairman**

Approved for issue

C R Satheeshchandran  
Secretary (i/c)