THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 2183 of 2025

QUORUM

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Sanjay Kumar Singh, Member

IN THE MATTER OF

Petition under Section 63 and 86(1)(b) & (e) of the Electricity Act, 2003 for adoption of tariff and approval of PPA for Long-Term procurement of 300MW ISTS connected Wind-Solar Hybrid Power Project under Tariff Based Competitive Bidding for meeting Renewable Purchase Obligation (RPO) as per applicable regulations, which has been discovered through a transparent process in terms of the Guidelines for Tariff Based Competitive Bidding Process (TBCB) for procurement of power from Grid Connected Wind Solar hybrid Projects dated 21.08.2023 issued by Ministry of Power.

AND

IN THE MATTER OF

Noida Power Company Ltd. (NPCL),

Plot No. ESS, Knowledge Park – IV,

Greater Noida – 201310 Uttar Pradesh .... Petitioner

Versus

- **M/s. Purvah Green Power Pvt. Ltd. (PGPPL),**
  2A, Lord Sinha Road, First Floor, Kolkata-700071, West Bengal

- **Deshraj Solar Energy Pvt. Ltd. (DSEPL),**
  Plot No. 51-52, Phase-4, Udyog Vihar, Gurugram, Haryana

..........Respondent(s)

FOLLOWING WERE PRESENT

- Md. Farrukh Aamir, Head-Regulatory, PGPPL
- Sh. Parinay Deep Shah, Advocate, PGPPL

- Sh. Sanket Srivastava, Head (Power Purchase), NPCL
- Sh. Utkarsh Pandey, Sr. Executive, NPCL
- Sh. Buddy A. Ranganathan, Sr. Advocate, NPCL
- Ms. Divya Chaturvedi, Advocate, NPCL
- Ms. Srishti Rai, Advocate, NPCL
- Sh. Abhishek Anand, AM-Legal, NPCL
- Sh. Rama Shanker Awasthi, Consumer

ORDER

(DATE OF HEARING: 22.05.2025)

1. The Petitioner, Noida Power Company Ltd. (hereinafter referred to as NPCL) has filed this Petition seeking adoption of tariff and approval for PPA for long-term power procurement from 300MW grid connected Wind-Solar Hybrid Power Project discovered under TBCB process. The prayers of the Petitioner are as follows:
    a) Approve the procurement of 300MW Wind Solar Hybrid Power from ISTS-Connected Renewable Energy Power on long-term basis i.e., for 25 years.
    b) Adopt the tariff as mentioned in Table- 5 for procurement of 300 MW Power from M/s Purvah Green Power Private Limited in view of the Section 63 of the Electricity Act, 2003 read with Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects dated 21.08.2023 to supply reliable power to its consumers.
    c) Allow the Petitioner to file the signed PPA by way of Additional Submissions for the approval of the said PPA in terms of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects dated 21.08.2023.
    d) Grant Liberty to the Petitioner to add further Prayer(s) with the permission of this Commission; and
    e) Pass any other order(s) as this Commission may deem fit in the facts and circumstances of the case.

2. **Brief facts as stated in the Petition.**

The petitioner has mainly submitted the following:

a) NPCL currently has the following Long-Term/Medium-Term tie-ups for supply of power from FY 2026-27 onwards:

Long Term Arrangements

i. 171MW RTC power from DIL - approx. 158MW will be available at NPCL bus.

ii. 100MW FDRE power from SJVN Ltd.– approx. 70MW will be available at NPCL bus.

iii. 25MW Solar Power from Adani Solar Energy Chitrakoot One Ltd. – approx. 13-14MW will be available during day hours at NPCL bus.

iv. 25MW Solar Power from Tata Power Renewable Energy Ltd.- approx. 13-14MW will be available during day hours at NPCL bus.

v. 10MW Wind Power from PTC India Ltd.– approx. 6-7MW RTC will be available at NPCL bus.

Medium Term Arrangements

i. 95MW RTC power from JITPL– approx. 88MW will be available at NPCL bus.

ii. 25MW RTC power each from Maadurga Thermal Power Ltd. and Manikaran Power Ltd. - approx. 46MW RTC will be available at NPCL bus.

b) The Central Electricity Authority (hereinafter referred to as CEA) has conducted a long-term demand forecast for the licensed area of NPCL. As per the forecasted demands by CEA, there will be a telescopic increase in deficit from FY2026-27 onwards thus, long-term power will be required to ensure reliability of power supply in the Greater Noida area. The demand projection by CEA vis-à-vis the existing power tie-ups and the deficit arising out of the existing tie-ups is as below:

Table 1: Power Demand vis-à-vis the deficit in existing power quantum (in MW)

Year	Average Demand	Peak demand	Existing Contract	Average Deficit	Peak Deficit
	A	B	C	D=C-A	E=C-B
2026-27	595	973	349	-245	-624
2027-28	664	1093	349	-315	-744
2028-29	743	1228	349	-394	-879
2029-30	825	1371	261	-564	-1110
2030-31	909	1517	261	-648	-1256
2031-32	991	1663	261	-731	-1403
2032-33	1078	1817	261	-817	-1557
2033-34	1167	1978	261	-906	-1717

c) CEA has also prepared Resource Adequacy Requirement (RAR) for the licensed area of NPCL in terms of the Guidelines for Resource Adequacy Planning Framework, 2023. After consideration of the existing contracts (operational and upcoming) of NPCL, following is the year wise capacity addition suggested by CEA:

Table 2:

Year	COAL	WIND	RTC/FDRE*	SOLAR	BESSS (2 Hr)
2026/27	316	295	310	200	150
2027/28	366	390	380	250	250
2028/29	416	485	450	300	350
2029/30	371	580	500	350	450
2030/31	421	675	500	400	550
2031/32	471	770	500	450	650
2032/33	571	865	550	550	750
2033/34	671	960	600	650	850

Based on the capacity proposed by CEA vis-à-vis capacity already contracted by the NPCL, gap i.e., difference of capacities yet to be contracted is tabulated below:

Table:3

Year	COAL*	WIND	RTC/FDRE	SOLAR	BESSS (2 Hr)
2026/27	0	-285	-210	-150	-150
2027/28	-50	-380	-280	-200	-250
2028/29	-150	-475	-350	-250	-350
2029/30	-200	-570	-400	-300	-450
2030/31	-250	-665	-400	-350	-550
2031/32	-300	-760	-400	-400	-650
2032/33	-400	-855	-450	-500	-750

2033/34	-500	-950	-500	-600	-850

** Based on existing contract and 50 MW Petition No. 2170/2024 is pending.*

d) Considering the deficit, RAR suggested by CEA and the expected load curve as well as meeting RPO targets, NPCL decided to procure 300MW Wind-Solar hybrid power on long-term basis for 25 years in accordance with the Guidelines dated 21.08.2023 issued by Ministry of Power (MoP). The aforesaid capacity of the power would also ensure NPCL to meets its long-term power requirements and RPO as mandated inter-alia in the UPERC (Promotion of Green Energy through Renewable Purchase Obligation) Regulations, 2010 (as amended) and MoP Notification No. 9/13/2021-RCM dated 22.07.2022 as per which, the RPO trajectory for FY25 to FY30 will increase from 29.91% to 43.33%.

e) As per the Guidelines, NPCL, vide its letter dated 09.07.2024, sought approval of deviation from the Guidelines from the Government of Uttar Pradesh to enable itself awarding 100% of total bid capacity to the Successful Bidder, in the overall consumer interest. Accordingly, the Government of Uttar Pradesh granted its approval on the sought deviation vide its letter dated 22.08.2024.

f) In accordance with the MoP Guidelines and the deviations approved, NPCL floated the RfS No: NPCL/LT/Hybrid/24-25 on 08.11.2024 along with the draft PPA *(collectively referred to as 'Standard Bidding Documents')* for procurement of 300MW ISTS connected Wind-Solar Hybrid Power for a period of 25 years and issued tender on e-bidding portal www.bharat-electronictender.com. NPCL published tender notices inviting bids for procurement of 300MW ISTS connected Wind-Solar Hybrid Power on long term basis in "The Indian Express" and "The Financial Express" on 08.11.2024. The Tender/Bid Documents viz. RfS and Draft PPA were also published on Central Public Portal i.e., ISN-ETS e-bidding portal.

g) Prior to the last date for submissions of bid i.e. 30.11.2024, NPCL conducted a pre-bid meeting on 14.11.2024 and four (4) companies participated in the pre-bid meeting. In the said pre-bid meeting, several queries were raised by the bidders viz. Reduction of Annual CUF, Extension of Scheduled Commencement of Supply Date (SCSD) etc. NPCL issued responses to these queries and accordingly, RfS document was amended. On the last date of Bids submission, NPCL received three (3) bids. The details of the same are as follows:

Table:4

Sl. NO.	Name of the Bidder	Quoted Capacity (MW)
1	Torrent Power Ltd. (*part of Torrent Group)*	50
2	Purvah Green Power Pvt. Ltd. (*subsidiary of CESC Ltd.)*	300
3	Purshottam Profiles Pvt. Ltd. (*part of Purshottam Group)*	50

h) On 03.12.2024, NPCL constituted a Bid Evaluation Committee (hereinafter referred to as BEC) in accordance with clause 10.2 read with clause 12.2 of the Guidelines. While evaluating the bids, BEC found various deficiencies in all bids submitted by bidders. Accordingly, BEC directed NPCL to seek clarifications from the bidders. Pursuant thereto, NPCL vide its e-mail dated 07.12.2024 sought clarifications and the bidders duly responded with their clarifications, including revised formats within the stipulated timeline i.e. by 10.12.2024. Based on the evaluation, BEC directed NPCL to open the financial bids. The Financial bid opening date and the e-Reverse Auction dates were also informed to the bidders in terms of Clause 36(3) of RfS i.e. 19.12.2024 and 20.12.2024 respectively. Accordingly, financial bids were opened on 19.12.2024. Thereafter, e-Reverse Auction was carried out by M/s ISN-ETS at 13:00 Hrs. on 20.12.2024 and the results obtained therefrom are given below:

Table:5

Sl. No.	Bidder's Name	Quantum (MW)	Tariff (Rs. /kWh)
1	Purvah Green Power Private Ltd. (ETS-IN-2024-RS0000179)	300	3.84

2	Torrent Power Limited (ETS-IN-2020-RS0000192)	50	3.85
3	Purshottam Profile Private Ltd. (ETS-IN-2019-RS0000248)	50	3.90

i) BEC was informed that current tender was unique due to its wind-heavy nature, with an annual CUF of 48% and wind to solar ratio of 2:1 as compared to other Renewable Energy Implementing Agencies (REIA) bids that are solar heavy and having minimum CUF of 30%. This was designed to ensure higher generation during evening peak hours where demand of NPCL was high and solar generation was unavailable. BEC noted that this higher proportion of wind energy would complement the Petitioner's load pattern making it unique in nature and non-comparable with REIA tenders.

j) BEC was informed that Torrent Power Ltd. had issued a similar wind-solar hybrid tender in January 2024 for procurement of 300MW power with additional 150MW under Green Shoe option having CUF of 50% and wind-solar ratio of 2:1. The tariff discovered for the same was Rs. 3.65/kWh in March 2024. Further, it was noted that wind tariff has increased by approx. 10% (39 paisa) w.r.t tariff discovered in Torrent Power bid which was invited in January 2024 vis-à-vis tariff discovered in October 2024 when NPCL invited bids. If this increase in the wind tariff was applied to the discovered rates from Torrent Power Ltd. on a proportionate basis, revised tariff would come to Rs. 3.91/kWh. Calculations of the same are tabulated below:

Table:6

S No.	Particulars	Formula	Rates (Rs/kWh)	Remarks
A	**Base Tariff as discovered in Torrent tender**	a	**3.65**	*Torrent -Mar'24*
B	**Computation of current tariff after adjusting market factors**			
B.1	**Prevailing Wind tariff during Torrent e-RA**	b	3.42	*Discovered under GUVNL, 500 MW, Wind (Phase VI), Pan India Tender*
B.2	**Latest Wind Discovered Tariff (Oct-2024)**	c	3.81	*Discovered under SECI, 500 MW, ISTS Connected Wind (Tranche XVII)*

B.3	**Differential Tariff of Wind**	**d=c-b**	0.39	
B.4	**Factorization of Wind tariff increase in NPCL Tender (67%)**	**e=67%X d**	0.26	*NPCL tender having 67% share from Wind projects*
C	**Total**	**a+e**	**3.91**	*Post factorization*

k) Further, as far as other REIA tenders are concerned, tariff discovered in latest Wind-Solar Hybrid tenders from March-November 2024 has been given in the table below:

Table:7

S. No.	Agency	e-RA date	Quantum (MW)	Discovered rates (Max) (Rs/kWh)	Required Minimum CUF
1	SJVN	05.11.2024	1200	3.19	30%
2	NTPC	23.10.2024	1200	3.29	30%
3	SECI	04.10.2024	600	3.26	30%
4	MSEDCL	16.08.2024	3251	3.62	30%
5	NTPC T-VI	26.07.2024	1000	3.46	30%
6	MSEDCL	10.07.2024	500	3.69	30%
7	SECI	14.06.2024	1200	3.46	30%
8	SJVN	11.06.2024	1500	3.42	30%
9	GUVNL	06.06.2024	500	3.39	30%
10	NTPC	17.04.2024	1000	3.47	30%
11	Torrent	15.03.2024	450	3.65	50%
12	NTPC	13.03.2024	1500	3.32	30%
13	**Average Rate**			**3.44**	

BEC observed that the tariff of Rs 3.84/kWh as quoted by the Respondent herein for 300MW Hybrid power is competitive as compared to rates discovered in other hybrid tenders.

l) For cost-benefit analysis, if NPCL considers a situation that it would purchase power from REIAs which are providing 30% CUF at the rate of Rs. 3.44/kWh as mentioned above and balance 18% from GDAM market, it will incur an additional annual expenditure of Rs. 95 crores. The cost benefit analysis is tabulated below:

Table:8

Particulars	Formula	Values	Remarks
Committed Hybrid MUs @48% CUF	A	1280.02	As per profile Submitted by the L1 bidder
Energy (MUs) corresponding to 30% CUF as per REIA tenders	B	829.40	As per the typical profile of W-S Hybrid tenders of REIAs

Differential Energy (MUs)	C=A-B	450.61	MUs corresponding to 18% CUF
Discovered Tariff Rates in NPCL Tender (Rs/kWh)	D	3.84	Discovered through e-RA dated 20.12.2024
Discovered Tariff Rates in REIA Tender (Rs/kWh)	E	3.44	Average of Hybrid Tender rates discovered
G-DAM Rates for FY 2022-23 & FY 2023-24 (Rs/kWh)	F	6.67	Wt. Avg. G-DAM of 2 years rates for purchase of differential MUs of 18%
Power Purchases Amount considering 30% CUF	G=BXE	286 Crs.	
G-DAM Purchases Amount for energy corresponding to 18% CUF	H=CXF	301 Crs.	
Total cost incurred from 30% CUF from REIAs and 18% from G-DAM	I=G+H	**587 Crs.**	
Rates corresponding to purchase from 30% Hybrid Plus 18% from G-DAM (Rs/kWh)	J=I/A*10	**4.58**	**Weighted avg rates from REIA tender rates and G-DAM rates**
Power Purchases Amount considering 48% CUF @ Rs. 3.84/kWh	K=AXD	**492 Crs.**	**Purchase Rs 3.84/kWh**
Savings per annum	L=I-K	**95 Crs.**	
Per Unit Savings	M=J/A*10	**0.74**	

As evident from the above, NPCL would save around Rs. 0.74/kWh, if it purchases the power at the rate discovered in the current tender.

m) Therefore, BEC opined that tariff of Rs 3.84/kWh for 300MW Hybrid power was competitive as per the prevailing market trend and was beneficial for the consumers. BEC also noted that NPCL was an obligated entity in terms of the UPERC (Promotion of Green Energy through Renewable Purchase Obligation) Regulations, 2010, as amended from time to time, thus approved the rate discovered. BEC also certified that bidding process and the evaluation have been conducted in conformity to the provisions of the RfS and in terms of the MoP Guidelines. Accordingly, on 30.12.2024, NPCL issued Letter of Award (LoA) to Purvah Green Power Pvt. Ltd. (hereinafter referred to as PGPPL) subject to the approval of this Commission and the same was accepted by PGPPL on 31.12.2024.

n) Being bound by the provisions of Clause 12.4, NPCL has filed the present Petition within the prescribed timeline of 15 days. However, due to time constraints, it was in the process of signing PPA with the successful bidder at the time of filing the present petition hence, signed PPA could not be annexed with this Petition, however, a copy of the draft PPA had been annexed for reference of the Commission with liberty to submit the signed PPA at a later stage for approval.

3. On 04.02.2025, NPCL filed impleadment application requesting the Commission to implead Deshraj Solar Energy Pvt. Ltd. (hereinafter referred to as DSEPL) as a Respondent to the present Petition and mainly submitted the following:

   a) The Petitioner/Applicant is required to enter into a PPA with the bidder or its Special Purpose Vehicle (hereinafter referred to as SPV) as per Clause 18.1 and Clause 30(6) of the RfS. SPV is a project company especially incorporated/acquired as a subsidiary company of the successful bidder for setting up of the Project, with at least 51% shareholding in the SPV, which has to be registered under the Indian Companies Act, 2013, before signing of PPA.

   b) In terms of clause 12 of the MoP Guidelines as well as clause 18.1 & 30(6) of the RfS, PGPPL had constituted DSEPL as SPV for setting-up of the 300MW Solar-Wind hybrid power project at Bikaner, Rajasthan (150MW Solar component) and at Ananthapuram, Adhra Pradesh (300MW Wind component) for the generation and sale of electricity to the NPCL. Accordingly, on 31.01.2025, NPCL entered into a PPA with DSEPL for the supply of power from the aforesaid project at a tariff of Rs. 3.84/kWh, for a period of 25 years from the scheduled commencement of supply date.

   c) Therefore, DSEPL, being the SPV of successful bidder i.e., PGPPL, who has entered into PPA dated 31.01.2025 with NPCL, is a necessary and proper party for the adjudication of the present Petition.

Record of Proceedings:

4. During the hearing dated 25.02.2025, Counsel of NPCL submitted that the hybrid power under the bid would be sourced from Wind power project located in Andhra

Pradesh and Solar Power project located in Rajasthan. Further, it was submitted that in-principal approval of the long-term power procurement was granted to NPCL vide Commission's Order dated 06.03.2024 in Petition No. 1526/2019. On 22.08.2024, Govt. of Uttar Pradesh granted its approval on the deviation of 100% allocation of requisitioned quantum to a single bidder as sought by NPCL and thereafter NPCL floated its tender on 08.11.2024, wherein, three bidders participated and PGPPL, a sister concern of NPCL, has been selected as successful bidder. It was also affirmed that instant bidding was conducted as per Standard Bidding Documents and there was no other deviation apart from that approved by the Government of Uttar Pradesh vide its Order dated 22.08.2024. The Commission sought a complete copy of Bid Evaluation Committee report for which counsel of NPCL sought two weeks' time. On specific query of the Commission regarding reason for signing the PPA with DSEPL and not with PGPPL, the counsel responded that DSEPL, a Special Purpose Vehicle, was also a subsidiary company of PGPPL and thus NPCL has impleaded DSEPL in the matter.

5. Sh. Rama Shanker Awasthi filed an impleadment (intervening) application dated 25.02.2025. Regarding reasons for allowing intervening application, Sh. Awasthi responded that he was a consumer of electricity in Uttar Pradesh, and he had apprehension about transparency in the evaluation process under this competitive bidding tender as PGPPL was a sister concern company of NPCL and he could place few supporting details/facts on record of the Commission. Counsel of NPCL and PGPPL objected to the intervening application.

6. The Commission allowed NPCL and PGPPL to file their responses to the intervention application of Sh. Rama Shanker Awasthi. The Commission further allowed impleadment of DSEPL as a Respondent in the matter. The Commission also directed NPCL to furnish the following:
   a) Complete copy of the Bid Evaluation Committee report along with annexures and supporting documents, if any.
   b) Copy of Standard Bidding Documents used in the preparation of instant Bidding documents and justification for the deviations, if any.

c) Certificate of incorporation of Deshraj Solar Energy Pvt. Ltd. issued by Ministry of Corporate Affairs.
d) Details of acquisition of Deshraj Solar Energy Pvt. Ltd. by Purvah Green power Pvt. Ltd. along with supporting documents.
e) Detailed status of Wind Power Project and Solar Power Project of Deshraj Solar Energy Pvt. Ltd. located at Andhra Pradesh and Rajasthan respectively.
f) Justification for procuring Wind-Solar hybrid power instead of Firm and Dispatchable Renewable Energy (FDRE) or Round the Clock Power.

NPCL Submissions on queries raised by the Commission.

7. On 25.03.2025, NPCL filed its submissions in compliance with the Commission's Order dated 03.03.2025 and has mainly submitted the following:
   a) NPCL has placed a complete copy of BEC Report, along with the Annexures thereto.
   b) The MoP Guidelines do not provide any Standard Bidding Documents (SBDs) but Clause 3.6 of the MoP Guidelines provides that the principles outlined in the said Guidelines may be suitably detailed in the SBDs.
   c) Since DSEPL is the SPV formed by PGPPL, PGPPL vide its letter dated 17.03.2024 has provided (a) Certificate of Incorporation (b) details of acquisition of DSEPL by PGPPL via a Share Purchase Agreement dated 14.10.2024, along with the supporting documents i.e., true copy of board resolution authorizing the purchase of 100% issued and paid-up share capital of DSEPL and the Demat Statement of DSEPL as on 15.10.2024; and (c) detailed status of the wind power project and solar power projects of DSEPL.
   d) Regarding the justification of procuring hybrid power over FDRE/ RTC power, NPCL stated as below:
      i. As per NPCL's load profile, it experiences peak demand between 00:00 hrs and 03:00 hrs and 18:00 hrs and 24:00 hrs. However, the current FDRE tenders executed by REIAs is based on a peak demand assured of 4 hours i.e., 2 hours between 05:00 hrs and 11:00 hrs and 2 hours between 17:00 hrs and 23:00 hrs. Further, the current FDRE tender rates

are slightly higher than expected, as compared to wind-solar hybrid tender. Considering the Petitioner's demand Profile for FY 2027-28 (when the hybrid power is expected to commence), if the Petitioner had planned to procure FDRE power, it would have led to surplus power to the Petitioner during morning hours i.e. from 0600 hrs to 1000hrs. Whereas, when the same was compared with the hybrid wind-solar power, the same was found well-suited with the Petitioner's demand profile.

ii. Therefore, the ratio of Wind-Solar hybrid as 2:1 was decided to ensure the higher generation during evening/night peak hours through the wind sources when the solar generation was not available. Based on the wind-solar hybrid profile, the wind component provides approximately 70% of the total power, ensuring reliable round-the-clock (RTC) power and higher generation during the night and evening peak periods.

NPCL Submissions on impleadment application of Sh. Awasthi

8. On 25.03.2025, NPCL filed its submissions with respect to impleading Sh. Rama Shankar Awasthi and has mainly submitted as under:

   a) For a party to be required to be joined to a proceeding (i) there must be some relief against such a party in relation to the questions involved in the proceedings; and (ii) the presence of such a party must be necessary for an effective adjudication of the matter. The guiding principle in such a scenario is whether the presence of such a party is essential for adjudication of the matter. When a party is not a necessary or proper party, Petitioner being the dominus litis has a right to not implead third parties. Further, the impleader, Sh. Awasthi, has failed to demonstrate his locus-standi to intervene in the instant Petition.

   b) Electricity Act read with the applicable Regulations does not envisage for public intervention/hearing prior to adoption of tariff and approval of PPA. Notably, in addition to the requirement of public consultation/hearing prior to determination of tariff under Section 62, the Electricity Act, 2003 envisions specific instances wherein publication and/or public consultation/hearing is required, for instance, Sections 3(4), 15(2)(i), 18(2)(d), 57(1), 59(2), 73(j), 177(3), 178(2), 182(2)(f), 178(2)(w), 178(2)(zd), 178(3), 181(2)(f), 181(2)(zn) and 181(3) of the Electricity Act, 2003.

c) This Commission, vide its Order dated 06.06.2024 in Petition No. 2084 of 2024, has itself in the past taken a view that allowing the impleadment application in similar cases pertaining to Section 63 of the Electricity Act will open floodgates for intervention and the satisfaction of this Commission may get marred by distant viewpoints and unstructured discussion.

PGPPL Submissions on impleadment application of Sh. Awasthi

9. On 26.03.2025, PGPPL filed its submissions with respect to impleading Sh. Rama Shankar Awasthi and has mainly submitted as under:
   a) There is no scope of public hearing in tariff adoption proceedings under Section 63 of the Electricity Act 2003.

   b) Hon'ble Tribunal in the case of Sh. Rama Shankar Awasthi Vs UPPCL & Ors. (Appeal No. 37/2018) while considering the objections of Generators regarding the participation of Sh. Awasthi in tariff adoption proceedings under Section 63 of the Act, clearly held that no public hearing is envisaged under Section 63 of the Act.

   c) The Applicant- Sh. Awasthi has no locus-standi in the present Petition. The Applicant, on one hand, claimed to be consumer of electricity with the state of Uttar Pradesh but on the other hand alleges that the present application has been filed in his capacity as consumer representative. The applicant has failed to place on record any such authorization by the consumers of Uttar Pradesh.

10. On the hearing dated 27.03.2025, the Commission adjourned the hearing at the request of Ms. Srishti Rai, Advocate of NPCL and allowed two weeks' time to Sh. Awasthi as requested to file its response to NPCL and PPGCL submissions on his IA.

Sh. Rama Shankar Awasthi's Reply

11.On 21.04.205, Sh. Rama Shankar Awasthi filed its response to the impleadment objections of NPCL and PGPPL and has mainly submitted the following:

a) The Applicant, contrary to the erroneous submissions of the Petitioner, is a resident of the State of Uttar Pradesh, and a Consumer of NPCL therefore, is liable to bear the cost of power purchase. NPCL has previously also raised this plea in the proceedings in Appeal No. 150/2017, which was categorically rejected by the Hon'ble APTEL. In fact, even during the tariff determination proceedings, the Commission has also permitted the Applicant to participate and submit its objections in Tariff.

b) The Petitioner has erroneously relied on judgment of the Hon'ble Supreme Court of India [Vidur Impex & Traders (P) Limited Vs. Tosh Apartments (P) Limited, (2012) 8 SCC 384, and others] to state that impleadment can only be sought by a party in terms of Order 1 Rule 10(2) of the C.P.C. 1908, to secure a right/interest in a property. The said judgment has no bearing on the subject matter of the disputes, such as the one in the captioned Petition.

c) The captioned Petition is filed under provisions of the Electricity Act, 2003, which is a complete code in itself. While the principles enshrined in the C.P.C. 1908, may be referred to for guidance but the provisions contained therein have no applicability in the captioned matter. Applicant seeks the impleadment in the captioned Petition, in order to ascertain whether NPCL has been gaining any undue benefits by procuring power from such generating companies that are part of the same group or are in any way related to the parent company of the Petitioner.

d) While there is no obligation on the Commission to conduct public participation in a proceeding under Section 63 of the Act, such as the instant Petition, the Commission does have a discretionary right to authorize any person, that it deems fit, to represent the interest of the Consumers in any proceedings before it, including the one under Section 63 of the Act.

e) The impleadment request is being made in light of some concerning facts that impact on the transparency of the bidding process carried out by the Petitioner pursuant to which PGPPL has been awarded the contract for supply of 300MW power. The Commission's attention is humbly requested to be drawn to the following facts:

   i. NPCL is a direct subsidiary of CESC Ltd.
   ii. Crescent Power Ltd. is also a direct subsidiary of CESC Ltd.
   iii. PGPPL is a wholly owned subsidiary of Crescent Ltd.
   iv. CESC Ltd. acquired 63.91% stake in PGPPL at the cost of 205 Crore from Crescent Power Ltd. in August 2024.
   v. PGPPL entered into a binding term sheet to acquire 100% stake in DSEPL in October 2024.
   vi. The RFS was published by NPCL for procurement of 300MW on 08.11.2024.
   vii. PGPPL was awarded LOA for 300MW by NPCL for supply of RTC power pursuant to the bidding process.
   viii. PGPPL meanwhile has also signed a PPA with CESC Ltd. for supply of 150MW solar power in September 2024.

f) The Applicant cannot draw out any further details regarding the transparency of the bidding process that has been undertaken in the absence of any access to the Petition and the accompanying documents. The information that has been stated above is only on the basis of publicly available data and facts.

12. On the hearing dated 22.04.2025, Sr. Advocate Sh. Buddy A. Ranganathan, Counsel of NPCL reiterated his arguments as mad e in its submissions. He further argued that there is no provision in the Electricity Act 2003 for the impleadment of parties and the closest provision is Order 1 Rule 10 of the CPC which provides for the same. On the analogy of the principle under Order 1 Rule 10, it was submitted that under CPC Order 1 Rule 10, for a party to be required to be joined to a proceeding (i) there must be some relief against such party in relation to the questions involved in the proceedings; and (ii) the presence of such party must be necessary for an effective adjudication of the matter.

13.Sh. Parinay Deep Shah, Advocate of PGPPL, while objecting to the impleadment application and referred to the Hon'ble Supreme Court Judgement in Aayana Case and argued that the scope of hearing or impleading Sh. Awasthi was quite narrow unless evidential documents or pleadings were produced before the Commission.

14.Sh. Rama Shanker Awasthi submitted that being a consumer of NPCL, he was a necessary and proper party as it would be impacted by the tariff discovered in the matter and barring impleadment application he had no other way to place his submissions before the Commission. Sh. Awasthi also added that NPCL could procure power from its group company, but the procurement process must be transparent, therefore, his examination of the procurement process by getting access to the Petition documents could lead to value addition in the matter. Sh. Awasthi sought two weeks' time for his submissions after inspecting Petition records.

15.The Commission stated that it had framed its (Conduct of Business) Regulations, 2019 (hereinafter referred to as CBR 2019), which needed to be referred to in the first place as it provides for a complete mechanism for conduct of proceedings before the Commission. Regulation 9(a) of the CBR 2019 clearly stipulates that *"the Commission may also permit any individual to participate in the proceedings provided the Commission finds that his/her participation will be a value addition to the proceedings."* Sh. Buddy A. Ranganathan responded that impleadment under consideration was on an application by the Applicant and not Suo-moto, therefore, the guiding principle in such a scenario was whether the hearing of such a party was essential for value addition in the matter. If at all recourse is to be had to this provision, the Commission would have to first satisfy itself that an individual's participation would be helpful to the Commission. Under the said provision an individual could not claim a right to impleadment or intervention in a petition as is contemplated under Order 1 Rule 10 of the CPC. It was also argued that there is no indication in Mr. Awasthi's Application as to how his participation in the proceedings would be a "value addition" to the proceedings. Regarding procurement of power from sister company, the Commission observed that procurement of power by a distribution utility from its group companies was not barred unless it was proved that the transparency in the bid process had been compromised.

16. The Commission allowed Sh. Awasthi to file its submissions on or before 06.05.2025, with a copy to the parties with specific observation that impleadment of Sh. Awasthi would solely depend on whether his submissions add value in determining that the bidding process failed on account of transparency or whether he could demonstrate that the bidding process had been carried out dehors or in departure from the guidelines issued by the Central Government for the purposes of Section 63 of EA,03..

17. On 07.05.2025, Sh. Awasthi filed its submission. On the hearing dated 08.05.2025, Sr. Advocate Sh. Buddy A. Ranganathan, Counsel of NPCL handed up a Note of submissions and pleaded the following in response to Sh. Rama Shankar Awasthi's objections. Mr. Ranganathan further argued that since the scope of the present proceeding is only to consider as to whether Mr. Awasthi's participation in the proceedings would be a value addition or not, he is not, at present, arguing on the maintainability of Mr. Awasthi's application for impledement/intervention. The gist of his submissions on the merits of Mr. Awasthi's contentions are:

a) <u>PPA execution with DSEPL:</u> With reference Mr. Awasthi's contention that the PPA was not signed by NPCL with Purvah which was the succesful bidder, it was argued that clause 12.1 of the MoP Guidelines dated 21.08.2023 and clause 18.1 read with clause 30.6 of the RfS, either the bidder or its SPV could sign the PPA. Thus, DSEPL an already acquired company by PGPPL was clearly an SPV which would implement the project as it already had connectivity and accordingly, PPA was signed NPCL and DSEPL.

b) <u>Approval of Board for Bid Evaluation Committee (BEC):</u> With reference to Mr. Awasthi's contention that there was no Board Resolution approving the constitution of the BEC, it was argued that there was no such requirement of a Board Resolution in clause 10.2 read with Clause 12.2 of the RfS, which provided for the constitution of a BEC.

c) <u>Undated BEC Report:</u> With reference to Mr. Awasthi's contention that the BEC report was undated, it was submitted that the BEC was constituted on 3-12-2024 and the Report was signed on 30-12-2024. It was also argued that there is no consequence of the Report being undated. During the hearing the Commission also enquired from Sh. Sanket Shrivastava, who was a member of the BEC and was also present in Court, who confirmed that the BEC Report was signed on 30.12.2024 prior to issuance of the LoA.

d) <u>BEC has considered unapproved bid rates of GUVNL & SECI:</u> With reference to Mr. Awasthi's contention that the BEC had considered the rates of other bids which had not been approved by the respective commissions, the Counsel submitted that there was no requirement in law that only approved bids must be used for comparison. It was also argued that there cannot be any such requirement in law since if every Commission had, in law, to wait for any other Commission to approve a bid rate, no Commission could ever approve any Bid for the first time. That is to say, if there were any such requirement in law, then there could never be a first approval at all. The counsel however submitted that out of 12 bid rates, 7 had already been approved by the respective appropriate Commissions the references of which have been indicated in the Note. It was also contended that given the timelines available to the Procurer under the Bidding Guidelines, it would be completely impractical for any procurer to await an approval by an appropriate Commission for every comparable Bid. It was also argued that Torrent's bid of Rs 3.65 per Unit, which provided for a CUF of 50%, was the most comparable bid and the same was approved by the GERC.

e) <u>BEC failed to reduce the trading margin in its analysis:</u> With reference to the argument of Mr. Awasthi that the BEC failed to reduce the Trading Margin from its analysis, it was contended that the argument was incorrect as all the discovered bid rates, including those by SECI were exclusive of trading margin. The counsel also contended that the Orders of some of the other Commissions approving some of the comparable bid rates will show that those bids were also without including any trading margin.

f) BEC's reliance upon GUVNL (Jan' 24) & SECI (Oct' 24) discovered tariff: Regarding contention of Mr. Awasthi that BEC had taken the difference of 3.42/Unit discovered by GUVNL and Rs 3.81/Unit in the SECI Bid by considering the maximum and minimum bids, it was argued by the counsel for NPCL that to compare the position of the bids received by NPCL, the comparable bids had to be considered. It was argued that for NPCL's hybrid tender, the comparison was made with the Torrent bid since the Solar to Wind Ratio for NPCL was to be 2:1. It was also mentioned that at the time of the Torrent bid, the standalone wind tariff discovered in the GUVNL bid (January 2024) was Rs 3.42/Unit. In comparison when NPCL's hybrid tender was concluded, the latest available standalone wind tariff was Rs. 3.81 per unit discovered by SECI in the bid of October 2024. It was explained that that the gap of 39 paise reflects the change in market conditions, specifically the increase in wind tariffs over that period. It was further submitted that Torrent's bid was the most comparable bid since Torrent's bid CUF was at 50% and NPCL's was at 48%.

g) BEC failed to consider GUVNL's bid tariff of Rs. 3.56/unit in its analysis: In response to Mr. Awasthi's contention that the BEC ought to have considered GUVNL's bid of Rs 3.65/Unit, it was submitted by the Counsel for NPCL that GUVNL's bid was not comparable because it was a Wind power-based tender with 22% CUF whereas the present bid was a mix of wind & solar based power with 48% CUF.

h) BEC failed to assess mutual supporting bid: With regard to contention of Mr. Awasthi that the L2 bid appeared to be a supporting bid having difference of only 1 paise from L1 (PGPPL, the successful bidder), the Counsel for NPCL submitted that as per clause 36(4)(ii) of the RfS, the price during Reverse Auction were to be quoted with a step difference of 1 paise, therefore, minimum tariff difference of 1 paise/unit resulted between L1 (PGPPL) & L2 (Torrent) bidder. It was thus argued that simply because the difference was Rs

1 paise/Unit, therefore, it could not be concluded that there was any so called mutuality in the bidders.

i) BEC's erroneous reliance on MSEDCL's interstate tenders: With reference to Mr. Awasthi's contention that the BEC has erroneously relied on certain Intra state tenders of MSEDCL whereas the NPCL tender is inter-state, the Counsel submitted that even after excluding those tenders, the estimated savings, would reduce to Rs. 90Cr. from the current projected saving of Rs. 95Cr. and the average rate would reduce to Rs. 3.39/unit from earlier Rs. 3.44/unit. Therefore, the consideration of the said intra state bids is not relevant at all.

j) PGPPL made DIL as its affiliate company without Board's resolution: With reference to Mr. Awasthi's contention that Purvah had submitted a bid without its parent Dhariwal's Board Resolution to that effect, it was submitted by the Counsel that the Board resolution dated 27.11.2024, of Dhariwal in this regard, was already enclosed with the bid and for ready reference a copy of the same was annexed to the Note handed up in the hearing.

18. Sh. Parinay Deep Shah, Counsel of PGPPL reiterated his objection to the impleadment application in terms of the Hon'ble Supreme Court ruling that the marginal bandwidth of Section 63 squeezes the scope of public hearing.

19. Sh. Rama Shankar Awasthi orally raised further objections that instant Petition was filed on 03.01.2025 and the PPA was signed on 31.01.2025 and the attached PGPPL's Board Resolution dated 23.09.2024 did not clarify when acquisition was completed. Further, he objected that since DSEPL was a subsidiary of PGPPL, it could be SPV under the Companies Act, therefore, acquisition details of DSEPL should be placed on record. Also, BEC report was silent as to how financial eligibility criteria in the bid document was fulfilled by PGPPL.

20. Further, Sh. Awasthi highlighted that "RSV & Co.", a Chartered Accountant firm, had provided audit certificate for Dhariwal Infrastructure Ltd. (affiliate of PGPPL) as well as for Purshotam Profiles Pvt. Ltd., (a Bidder in the case), however, "Kunal & Associates", another Chartered Accountant firm has done audit of Dhariwal

Infrastructure Ltd. for FY2023-24. Also, for PGPPL audit was done by "Batliboi, Purohit & Darbari" for FY2023-24. Sh. Awasthi also submitted that details of earnest money deposited by Bidders were not placed on record by NPCL. He further added that it was not clear from the record what was the process of formation of BEC and whether powers were delegated to any individual for formation of BEC by the Board of Directors.

21. In response to the Commission's query- why did DSEPL not participate in the bid directly? Sh. Buddy A. Ranganathan responded that PGPPL owned 100% stake of DSEPL and 100% stake of PGPPL were owned by CESC Ltd. PGPPL participated in the bid on the financial strength of its affiliate company. The Commission observed that the issuance of LOA before board approval was procedural lapse and created suspicion regarding conduct on the part of distribution licensee. On the specific query of the Commission regarding peak/off-peak demand, Sh. Buddy A. Ranganathan responded that bidding had been done for meeting base load requirement without detailing any specific hourly demand and Bid evaluation was done based on CUF and price only.

22. The Commission further enquired NPCL, why they didn't seek prior approval of the Commission in terms of Regulation 4 of the UPERC (Modalities of Tariff) Regulations, 2023? Sh. Buddy A. Ranganathan responded that MoP Guidelines came in August 2023 and in pursuance to that State Government approval was obtained for deviation in terms of those Guidelines. He requested the Commission to consider it for ex-post facto approval.

23. The Counsel for NPCL objected to the additional objections of Mr. Awasthi that these points had not been included in the Objections already filed by Mr. Awasthi and NPCL could not be expected to respond to oral objections on facts. It was made clear to Mr. Awasthi that whatever objections or submissions Mr. Awasthi had to make ought to be made part of the consolidated submissions so that NPCL would have an opportunity of responding to the same. After hearing parties, the Commission allowed Sh. Awasthi to file its consolidated submissions one final time within three days' time with a copy to the Petitioner and Respondents.

24. On 13.05.2025, Sh. Awasthi filed its consolidated submissions. On 14.05.2025, NPCL filed its collective response to Sh. Awasthi's submissions filed on 07.05.2025 & 13.05.2025. On hearing dated 15.05.2025, the Commission had to adjourn the hearing as NPCL's submission was filed on the previous day in the Registry and there was hardly any time for the Commission to go through the same.

25. During the next hearing dated 22.05.2025, the Counsel for NPCL commenced arguments in the matter and relied upon NPCL's submissions filed on 14-5-2025. On being queried by the Commission as to the approval of the deviations from the Bid Guidelines requiring to be approved by the Commission, Sr. Advocate Sh. Buddy A. Ranganathan submitted that deviation sought from (and allowed by) the Government was in the consumers' interest. If the deviation was not permitted, it would mean that out of the 300 MW procurement, a maximum of 150MW could be procured from the L-1 bidder. Even after allocating another 50% to the L1 & L2 bidder (which would exhaust their bid quantities) there would still be a shortage of 50MW. This would have to be procured from the power exchange etc. Based on past trends in Power exchanges the average tariff could increase to Rs. 4.15/unit. He further added that the contention of Sh. Awasthi that in Petition it was stated that NPCL would sign PPA with PGPPL was factually incorrect, rather the Petition stated that PPA would be signed with successful bidder/SPV. Regarding Sh. Awasthi's contention that PGPPL has nowhere disclosed DSEPL as its affiliate, Sh. Buddy A. Ranganathan submitted that the requirement for disclosure of affiliate was only for the purpose of meeting the financial eligibility criteria as per clause 32(1)(ii) of the RfS and for this purpose only Dhariwal Infrastructure Limited's financials were used. With respect to separate PPA for Solar & Wind projects as the project locations were different, Sh. Buddy A. Ranganathan stated that clause 3.2 of the Guidelines allowed project to be either co-located or located separately along with connectivity (as defined in Article 1.1 for 'Project' in the PPA).

26. Regarding Sh. Awasthi's contention that there was no document supporting that DIL was its affiliate for participating in the bid, Sh. Buddy A. Ranganathan submitted that a copy of DIL's Board approval dated 27.11.2024, which was also annexed with their response. Regarding Sh. Awasthi's contention that Torrent bid

was only for the solar project, Sh. Buddy A. Ranganathan submitted that it was factually incorrect since Torrent bid was for hybrid power i.e., 25MW solar & 50MW Wind, as submitted in Format 7.9. Regarding negotiation with Torrent, Sh. Buddy A. Ranganathan argued that bidding guidelines do not contemplate negotiation but with only L1 bidder in the e-RA process. With regard to details of PGPPL's shareholding, relevant documents were placed on record, however, the same has nothing to do with the analysis of transparency in the bidding process. The Performance Bank Guarantee was submitted by DSEPL, as annexed with the submissions filed on 14.05.2025, however that too was argued by Mr. Ranganathan as being irrelevant to the issue of transparency or fairness being maintained in the bidding.

27. Regarding the undated BEC report, he submitted that though it was a fact that the Report did not bear a date, however, there was no consequence at all for the same. Further, he added that guidelines did not require approval of the Board for issuance of LoA as the same had to be to the lowest bidder. DSEPL executed PPA with NPCL was indeed an evidence, which demonstrated it to be a SPV of PGPPL. The power procurement under the instant bid was indeed RTC power. Regarding Sh. Awasthi's contention that audited accounts for two bidders were signed by a common CA firm, Sh. Buddy A. Ranganathan submitted that CA certificates were nothing but a computation of net worth from the published Balance sheets of the respective companies. He thus submitted that there was no occasion of any conflict of interest.

28. Sh. Awasthi argued that NPCL had failed to take prior approval of the Commission in terms of Regulation 4 of the UPERC (Modalities of Tariff) Regulations, 2023. Further, the data as per Format 7.1 of RfS was not disclosed by NPCL in the matter. Clause 18(1) of the RfS clearly stipulated that PPA was to be executed between NPCL and successful bidder separately for each project. Sh. Awasthi further argued that no committee could be formed on its own in any organization and the constitution of BEC should have been authorized by appropriate authority of the NPCL. Towards the end of the arguments, after counsel for NPCL completed, Mr. Awasthi, orally sought to argue that CESC Ltd. issued RfS dated 08.11.2024 for

the same power procurement capacity for which PPA was executed on 25.04.2025 between PGPPL and the Petition for tariff adoption was filed before West Bengal Electricity Regulatory Commission. Mr. Ranganathan objected to the same on the grounds that Mr. Awasthi was given an opportunity of putting all his points forward in one consolidated submission and this point was not in that consolidated submission. As such it would not be correct for Mr. Awasthi to bring out a completely new argument based on new facts which were not part of the record.

29. In response to the Commission's query regarding Torrent's bid quantum, Sh. Buddy A. Ranganathan submitted that its offered/bid quantum was 50MW with installed capacity of 75MW (i.e., 50MW Wind & 25MW Solar). On specific query of the Commission regarding Scheduling procedure for such separately located project, Sh. Sanket Shrivastava on behalf of NPCL submitted that final injection scheduling would be done by DSEPL after aggregating data from Solar and Wind project in terms of Article 6 of the PPA. After hearing the parties, the Commission reserved Order in the matter.

Analysis & Decision

30. NPCL by way of instant Petition is seeking adoption of tariff and approval of PPA dated 31.01.2025 for procurement of 300MW Solar-Wind hybrid power at the discovered tariff of Rs. 3.84/unit, under Section 63 of the Electricity Act, 2003. NPCL floated the RfS No: NPCL/LT/Hybrid/24-25 on 08.11.2024 along with the draft PPA for procurement of 300MW ISTS connected Wind-Solar Hybrid Power for a period of 25 years and issued tender on e-bidding portal www.bharat-electronictender.com. The said RfS notices, inviting bids, were published in "The Indian Express and The Financial Express" on 08.11.2024 as well as on Central Public Portal i.e., ISN-ETS e-bidding portal.

31. The requirement of power has been established by the Petitioner. The Commission has examined the existing power arrangements pleaded by the Petitioner as also the projection of the demand forecast, and the Resource Adequacy Planning Report prepared for NPCL by the CEA. There is no dispute on any of these facts. The

Commission is of the view that the proposed procurement would be required to meet the demand projected in the license area.

32. It was prior to floating of RfS dated 08.11.2024 that NPCL, through its letter dated 09.07.2024, sought approval of deviation from the Government of Uttar Pradesh to enable itself to award 100% of total bid capacity to the single successful bidder. The relevant extract of the said NPCL's letter dated 09.07.2024 is as follows:

"Accordingly, to meet the RPO targets along with increasing demand of the consumers, the company is planning to float a tender based on the MoP's Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Project's dated 21.08.2023 and amendments thereof ("Bidding Guidelines"). As per Clause 19 of the above Bidding Guidelines, the procurer is required to approach the Appropriate Government for seeking approval on deviation(s) from the Bidding Guidelines. The relevant para is reproduced below:

"19. DEVIATION FROM PROCESS DEFINED IN THE GUIDELINES

In case it becomes imperative for the Procurer/intermediate procurer to deviate from these Guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Government before the initiation of bidding process itself. The Appropriate Government shall approve or require modification to the bid documents within a reasonable time not exceeding 60 (sixty) days."

Considering the same, the Company proposing to seek following deviation from the Bidding Guidelines:

Bidding Guidelines	***Deviation***	***Rationale***
6.2.4. *A maximum of* ***50 percent*** *of total capacity as specified in RfS can be allocated to a single bidder.*	***6.2.4*** *A maximum of* ***100~~50~~ percent*** *of total capacity as specified in RfS can be allocated to a single bidder.*	• *As NPCL is floating the tender for a small quantum of 300 MW, therefore, if we retain 50% allocation criteria, NPCL will have to allocate 150 MW each to two different bidders (L1 & L2) or 150 MW to one bidder (L1) and 75 MW each to two different bidders (L2 & L3) or any combination thereof.* *Such small- scale allocation to multiple bidders will not bring economies of scale for sellers and thereby may not fetch competitive rates.* • *Further, with the proposed deviation higher costs will result from awarding part capacity to L2, L3 and succeeding bidders can also be avoided.* *Accordingly, 100% allocation of the requisitioned quantum to a single bidder is proposed in the best interest of the consumers.*

		Further, the above deviation is proposed after careful consideration of the Bidding Guidelines and review of best practices adopted by various distribution licensees in different states.

....

We humbly request you to kindly consider the above submissions which are in the larger interest of consumers of the Company and accord approval to the deviation sought."

33. Accordingly, the Government of Uttar Pradesh granted its approval on the deviation vide its letter dated 22.08.2024. The extracts of the said letter dated 22.08.2024 is reproduced as under:

"प्रेषक,
सर्वेश कुमार सिंह,
संयुक्त सचिव,
उतण्तर प्रदेश शासन।

सेवा में,
प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी,
नोएडा पावर कम्पनी लि0,
ग्रेटर नोएडा, गौतमबुद्धनगर।

ऊर्जा अनुभाग–3 *लखनऊ: दिनांक 22.08.2024*

*विषय: दीर्घकालिक नवीकरणीय ऊर्जा की खरीद के लिये विद्युत मंत्रालय, भारत सरकार की हाईब्रिड बोली दिशा–निर्देशों के खण्ड–19 के तहत विचलन (**Deviation**) की अनुमति प्रदान करने के सम्बन्ध में।*

महोदय,

*उपर्युक्त विषयक अपने पत्र संख्या **NPCL/MD/2024/07/002** दिनांक 09.07.2024 का कृपया सन्दर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा दीर्घकालिक नवीकरणी ऊर्जा की खरीद के लिये विद्युत मंत्रालय, भारत सरकार की हाईब्रिड बोली दिशा–निर्देशों के खण्ड–19 के तहत विचलन (**Deviation**) की अनुमति प्रदान करने का अनुरोध किया गया है।*

2– इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि आपके उपरोक्त पत्र दिनांक 09.07.2024 में किय गये प्रस्ताव के क्रम में 300 मेगावाट पवन–सौर हाइब्रिड नवीकरणीय ऊर्जा की खरीद के लिये दीर्घकालिक निविदा में "ग्रिड कनेक्टेड पवन सौर हाइब्रिड परियोजनाओं से बिजली की खरीद के लिये टैरिफ आधारित प्रतिस्पर्धी बोली प्रक्रिया के लिय दिशानिर्देश" दिनांक 21.08.2023 के प्रस्तर–19 के अनुसार विचलन की अनुमति प्रदान की जाती है।"

34. The timeline for the bidding process as per the RfS were as follows:

S. No.	Event	Date
1.	Publication of Request for Selection (RfS)	08.11.2024
2.	Pre-Bid Meeting	14.11.2024
3.	Last date of submission of RfS Bids	30.11.2024

4.	Opening of Techno-Commercial Bids/ Tender Opening Event	02.12.2024
5.	Opening of Financial Bids	19.12.2024 at 12:00 Hrs.
6.	Start of E-Reverse Auction	20.12.2024 at 13:00 Hrs.
7.	Letter of Award issued	30.12.2024
8.	PPA Signed on	31.01.2025

35.The Commission has gone through the contents of the petition and the documents filed by the Petitioner such as the BEC Report, it's Annexures and the Additional Affidavit filed by the Petitioner responding to various queries by the Commission. The Commission has also perused the certification of the BEC that the Bid process was conducted in a fair, transparent and impartial manner. There is nothing in these documents, prima facie, to indicate that the bid process was in any way compromised or was not conducted in a fair and transparent manner. On the basis of the documents submitted by the Petitioner the Commission finds that the Bidding Guidelines were followed in the bid process. The e-RA was also conducted on the portal of the Central Public Portal. Therefore, there is no reason to doubt the validity of the same.

36.The Commission has also considered the impleadment /intervention application filed by Mr. Awasthi. NPCL and Purvah have both objected to the same on various grounds. Mr. Ranganathan for NPCL and Mr. Deep Shaw for Purvah have both also cited several Judgments of the Hon'ble Supreme Court and the Hon'ble APTEL to oppose the same. However, Regulation 9(2) of the Commission's Conduct of Business Regulations 2019 specifically contemplates that "...*The Commission may also permit any individual to participate in the proceedings provided Commission finds that his/her participation will be a value addition to the proceeding...*". The said Regulation was not the subject matter of consideration of any of the Judgments cited either by Mr. Ranganathan for NPCL or Mr. Deep Shaw for Purvah. The said Regulation has not been challenged either by NPCL or any other party. The Commission is thus not inclined to enter into the controversy as to whether Mr. Awasthi's application for impleadment/intervention is maintainable or not. In terms of Regulation 9(1) of the CBR, the Commission is empowered to allow participation of individuals who can contribute to the proceedings. The mandate of

Section 86(3) of the EA 2003 is also to ensure transparency in the functioning of the Commission. Thus, the Commission would, in terms of Regulation 9(1), consider the points raised by Mr. Awasthi on their merits rather than being constrained by technicalities. The Commission felt that the points raised by Mr. Awasthi (whether ultimately found valid or not) were worthy of consideration and Mr. Awasthi participation would add value to the proceedings. Neither NPCL nor Purvah argued any prejudice being caused to them by allowing Mr. Awasthi to participate in the proceedings except for contending that the proceedings would be unduly delayed by Mr. Awasthi's objections. The Commission appreciates that delay ought to be avoided, yet it cannot shut its eyes and ears if certain points are raised which, if found to be correct, would compel the Commission to exercise its discretion in approving or disapproving the proposed procurement. The Commission has thus balanced the interests of both the Petitioner and Mr. Awasthi by ensuring that the shortest possible time was given to Mr. Awasthi to place his objections, not allow Mr. Awasthi to go beyond his pleaded objections and yet afford a reasonable opportunity to the Petitioner to respond to the same.

Commission's view:

The Commission allowed Mr. Awasthi to participate in the proceedings in terms of Regulation 9(1) of the CBR since the points raised by him could add value to the consideration of the Commission.

37.The Commission has examined the issues/ concern raised by Sh. Awasthi along with the respective response/justification submitted by NPCL and PPGCL. The major issues as highlighted by Sh. Awasthi and the Commission's analysis and views on these issues are as follows:

a) Non-approval of deviations from the Commission as per Regulation 4 of the UPERC (Modalities of Tariff Determination) Regulations, 2023:

i. Regulation 2.1(9) and 4 of the UPERC (Modalities of Tariff Determination) Regulations 2023 prescribe the following:

"***2. Definitions:***

(9) "Tariff Based Competitive Bidding" or "TBCB" means determination of tariff through transparent process of bidding in accordance with the guidelines issued by the Central Government under Section 63 of the Act;

4. Power Procurement under Section 63 of the Act:

Tariff for all power procurement under long term, medium term not covered in Regulation 3 and HP-DAM (High Price Day Ahead Market) shall be discovered through competitive bidding route with prior approval of the Commission for the requirement of such capacity to be bid in pursuance to Section 86 (1)(b) of the Act. Further, any deviation from TBCB guidelines shall require prior approval of the Commission."

From the reading of these Regulations, it is clear that the Commission itself required that the Guidelines for Tariff Based Competitive Bidding Process (TBCB) for procurement of power from Grid connected Wind Solar Hybrid Projects dated 21.08.2023 were to be followed and complied with for procurement of power. The extant Clause 19 of the MOP Guidelines dated 21.08.2023, issued by Ministry of Power (MoP), requires that any deviation is to be approved by the Appropriate Government. Accordingly, NPCL, vide its letter dated 09.07.2024, sought Govt. of Uttar Pradesh's approval on the deviation from the guidelines, which was granted to it on 22.08.2024.

ii. The Commission agrees with NPCL's contention that dual levels of approvals by Govt. of Uttar Pradesh and the Commission may conceivably render a bidding contrary to either the guidelines or can result in anomalous or paradoxical situations. In a given situation, if the State Government approves a particular deviation and the Commission, under the Regulations approves it in a different form, then the bidding which would take place would invariably be contrary to Section 63 of the Act or in violation of the Commission's approval under the Regulations. It is therefore reasonable to proceed on the basis that although both approvals are needed (since both the Guidelines and the Regulations need to be followed), however the approvals may operate in slightly different spheres and for different considerations. While the approval from the State Government may be largely in the field of observing consistency in the State or of not controverting any other law, the approval process under the Regulations may be read, not as a power to overrule the approval by the State Government but an approval to a deviation to ensure that the principles of Section 61 of the Electricity Act 2003 are maintained.

iii. As regards the "prior approval", the Commission can always exercise its power to remove difficulties under the Modalities Regulations and grant an ex-post facto approval, especially if the deviation has been considered by the appropriate Government in terms of the Guidelines. If the deviation which is sought is found to be in the consumers interest, there is no reason why the Commission would stand on formality and defeat the entire process by insisting upon prior approval. In the absence of allowing the deviation as sought for, then L1 could be offered only 150MW and L2 and L3 bidders (for a quantum of 50MW each) would have to be allotted to their maximum bid quantum. So, the upshot is firstly, total power requirement/quantum of 300MW would not be met and secondly, power procurement from the L2 and L3 bidders (at the quoted tariffs of Rs. 3.85/kWh and 3.90/kWh respectively) would lead to an average increase in tariff for meeting the requirement/quantum of 300MW. In this regard a table setting out the calculation is provided below by NPCL which is not denied or disputed by Mr. Awasthi:

Scenario 1: 100% Allocation to Single Bidder					
Successful Bidder	**Quoted Capacity (MW)**	**Allotted Capacity (MW)**	**Rate (Rs./kWh)**	**MU**	**Amt (in Cr.)**
Purvah	300	300	3.84	1261.44	484.39
Total Power Purchase Cost towards		**300**	**3.84**	**1261.44**	**484.39**

Scenario 2: 50% Allocation to Single Bidder					
Successful Bidder	**Quoted Capacity (MW)**	**Allotted Capacity (MW)**	**Rate (Rs./kWh)**	**MU**	**Amt (in Cr.)**
Purvah (L1)	300	150	3.84	630.72	242.20
Torrent (L2)	50	50	3.85	219.00	84.32
Purshotam (L3)	50	50	3.90	210.24	81.99
Total Power Purchase Cost towards		**250**	**3.85**	**1059.96**	**408.51**

Balance 50 MW to be procured from Power Exchanges	50	5.72#	201.48	115.30
Total Power Purchase Cost towards	**300**	**4.15**	**1261.44**	**523.81**
#*Rates are considered from last 3 years average G-DAM rates*				

Therefore, NPCL will have had to procure an additional 50MW of power from the Power Exchange, to meet its power requirement of 300MW of power, which will lead to a further increase in the cost of procurement since the recent trends demonstrate that there has been a significant increase in tariff from hybrid power projects. Further, splitting the bid quantum among multiple bidders (e.g., 150 MW each to L1 and L2 or 150 MW to L1 and 75 MW to L2 and L3) will most certainly dilute the advantages of economies of scale for sellers, potentially leading to higher tariffs, if the deviation as approved by the State Government were not effected. The Commission appreciates the fact that although the objection of not having taken the prior approval of the Commission was raised by Mr. Awasthi, when NPCL put forth this justification, Mr. Awasthi did not dispute the fact that the deviation was actually in the interest of the consumers of the licensed area.

Commission's view:

In view of above, the Commission finds that since the deviation was already approved by the Govt. of Uttar Pradesh, as per clause 19 of the MoP Guidelines dated 28.07.2023, which also helps in discovering the lower tariff. Accordingly, the Commission accepts the deviation as approved by the Govt. of Uttar Pradesh. However, it is observed that MoP vide its No. 48-19/2/2024-NRE dated 12.02.2025 (i.e. Amendment to the Guidelines dated 28.07.2023) in clause 19 provides for prior approval of the Appropriate Commission for any deviation from these Guidelines. The relevant extract of the Amendment Guidelines dated 12.02.2025 is reproduced as under:

"In case it becomes imperative for the Procurer/intermediate procurer to deviate from these Guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Commission before the initiation of bidding process itself. The Appropriate Commission shall approve or

require modification to the bid documents within a reasonable time not exceeding 60 (sixty) days."

Therefore, for future procurement of power by NPCL, it shall approach the Commission for the approval of deviations before initiating the bidding process.

b) <u>Contradictions in the submissions at Paras 36 and 37 in the Petition read with prayer(c) in the Petition:</u>

i. Mr. Awasthi has contended that NPCL has made false and contradictory statements in its Petition and its Additional Affidavit. Mr. Awasthi contended that NPCL had, in Paras 36-37 of the Petition, categorically submitted that "....(i)..it is in the process of executing the PPA with the successful bidder..."; and (ii) sought liberty to allow NPCL to submit the signed PPA at a later stage. Further, by way of prayer (c) to the Petition, NPCL has sought leave to file the signed PPA in terms of the Guidelines. Although Mr. Awasthi contends that the PPA was executed between NPCL and DSEPL on 31.01.2025 i.e., after having filed the Petition on 03.01.2025, thus, the same was placed on record vide Impleadment Application dated 04.02.2025.

ii. Mr. Ranganathan has contended that there is no contradiction between the two sets of statements since the Petition had only stated that the Petitioner was in the process of signing the PPA with the successful bidder. It is seen that the Guidelines and the RfS both permitted the PPA to be signed either with the successful bidder or with its SPV. Therefore, execution of the PPA with the SPV of the bidder is not only specifically permitted but is also a practice which is widely prevalent in the industry.

iii. Clause 12.1 of the Guidelines and Clause 18.1 read with Clause 30.6 of the RfS allows for execution of the PPA between NPCL and the SPV of the successful bidder. It is noted that PGPPL vide its letter dated 17.03.2024, has provided the (a) Certificate of Incorporation (b) details of acquisition of DSEPL by PGPPL via a Share Purchase Agreement dated 14.10.2024, along with the supporting documents i.e., true copy of board resolution authorizing the purchase of 100% issued and paid-up share capital of DSEPL and the Demat Statement of DSEPL as on 15.10.2024 and (c) detailed status of the wind power project and solar power projects of DSEPL. The SPV i.e., DSEPL had connectivity as well as the land, thus, the instant project is being executed by DSEPL. The Commission sees no great so-called contradiction between the statements in the Petition and the Impleadment Application. Even assuming for a moment that there is some ambiguity in the pleadings, the fact is that the PPA was signed by the SPV of the bidder. That being the case, there is hardly any need to dive deeper into this contention.

Commission's view:

It is observed that the Impleadment application for DSEPL was allowed by the Commission vide Order dated 03.03.2025 in the matter. Further, documents placed on record confirm that DSEPL is 100% acquired by PGPPL and has been made a SPV of PGPPL, the successful bidder. Therefore, on this count, there is no legal embargo on NPCL with respect to signing a PPA with DSEPL.

iv. Mr. Awasthi has contended that NPCL has executed the PPA with DSEPL which is a SPV of Purvah, however, nowhere in the bid has Purvah declared DSEPL as its "affiliate".

v. The Commission agrees with the argument of NPCL and finds that the requirement for disclosure of the 'Affiliate' is only for the purposes of meeting the financial eligibility criteria, as per Clause 32(1) of the RfS, and not for the purposes of execution of the project. Further, the Commission agrees with NPCL's contention that the Proviso to Regulation 15.1 of the CERC (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022, allows for the Connectivity granted to a parent company to be utilized by its subsidiary and vice versa. Therefore, the connectivity is inter-changeable between PGPPL and DSEPL.

Commission's views:

There was no need for Purvah to declare DSEPL as it's "affiliate" in terms of the Guidelines and/or the Bid Documents.

c) **<u>Signing of single PPA despite multiple projects i.e., Solar project in Rajasthan and Wind project in Andhra Pradesh</u>**

i. Mr. Awasthi has argued that as per the RfS, a separate PPA must be executed for each of the Solar and Wind components of the project separately since under the Bid Documents each of those components is a separate "project".

ii. The Commission finds that the argument of Mr. Awasthi ignores the very foundation of the entire hybrid bid. The power to be procured is hybrid power, i.e. a combination of more than one renewable source. The procurement is thus of cumulative power. If the procurement were to be made separately for wind and solar, it would cease to be a hybrid power procurement.

iii. The Commission agrees with the contention of Mr. Ranganathan that if separate PPAs are to be executed for solar and wind components then the project ceases to be a hybrid project. It is clear that Clause 3.2 of the Guidelines categorically provides that the solar and wind projects of the hybrid project may be located at same or different locations. Notice may also be taken of Clause 6(iii)(b)(iii) of the RfS which specifically contemplates that the wind and solar facilities can be in different States. Further, definition of 'Project' under Clause 39(41) must be read in conjunction with Clause 39(24) in Section 6 of the RfS, which defines 'Inter-connection Point/Delivery/Metering Point'. The said definition expressly contemplates multiple injection points.

iv. The situation of having multiple injection points is also captured in the definition of 'Project' under the draft PPA. Therefore, the factum of having different injection points does not make the two generation facilities separate projects. If this interpretation of Mr. Awasthi were accepted, the entire basis of hybrid procurement of power would be frustrated.

Commission's view:

The MoP Guidelines acknowledge hybrid project at different locations for a single successful bidder. Further, regarding scheduling, it has been clarified by the NPCL during the hearing that DSEPL would coordinate the final scheduling with the NPCL and the Grid Operator-RLDC/SLDC. Therefore, the Commission is of the view that execution of the single PPA is correct.

d) <u>Whether PBG has been submitted by Bidder for each of the projects?</u>

Mr. Awasthi has argued that DSEPL has not furnished the PBG and what has been placed on record is only the Standard Form of the PBG. NPCL has clarified that DSEPL has in fact submitted the PBG and has annexed a copy of the same along with its Response dated 14-5-2025.

Although the Commission has considered and addressed this point raised by Mr. Awasthi, yet the Commission fails to understand as to how the non-Provision of PBG post issuance of LoA is a matter that concerns consumer interest. The furnishing of the PBG is a contractual issue between NPCL and Purvah/DSEPL and has nothing to do with the bidding process undertaken by NPCL. In any case, a copy of the PBG has been submitted by DSEPL.

Commission's view:

It is observed that PBG No. PBG100702500077 (of RBL Bank) dated 28.01.2025 of amount Rs. 180 Cr. was submitted to NPCL by DSEPL. Therefore, the issue stands addressed.

e) Discrepancies as referred to in the "Transparency" of the bid process i.e., report furnished by the Bid Evaluation Committee is undated, no evidence for DSEPL being SPV of PGPPL and LoA issued without Board's approval:

i. Mr. Awasthi has pointed out that the BEC Report is undated. Mr. Awasthi has also argued that the documents referred to in Clause 21 of the RfS were to be submitted along with the bid.

ii. Mr. Ranganathan, has, of course, admitted that the BEC Report is undated but contends that although this might be unusual but there is no negative consequence of the Report not bearing a date. The Commission finds it odd that a report of such importance is undated but neither Mr. Awasthi has pointed out any negative consequence of the same nor is the Commission able to find any. The fact that it does not bear a date, although it is unusual, yet the Commission cannot find anything wrong with it beyond that. During the course of the hearing, one of the Members of the BEC was present in person and upon a pointed query from the Commission, Mr. Sanket Srivastava stated before the Commission that the BEC Report was, in fact, signed on 30th December 2024 prior to the LOA being issued to the successful bidder. The Commission does not have any material before it nor has any reason to doubt such a statement.

iii. Mr. Awasthi has argued that the full Bid evaluation Committee Report has not been filed along with its Annexures. A bare perusal of the BEC Report, with Annexures, as has been duly filed before the Commission makes it clear all the material annexures have been filed. The Commission is unable to discern any irregularity or any glaring evasion on the part of the Petitioner in this regard.

iv. Mr. Awasthi has argued that the issuance of the LoA to the successful bidder has been done without any Board Approval. The Commission agrees with the contention of NPCL that the Guidelines do not require approval of the Board for issuance of LoA. The issuance of the LoA has to necessarily to be to the lowest bidder. The Board of Directors has no discretion in this regard accordingly, there is no infirmity in this regard. NPCL has also clarified that the result of the Bid process was placed before the Board of Directors and the same was subsequently approved. The Commission sees no reason to disbelieve the same. In any case the contention of Sh. Awasthi has no relation to the bidding process undertaken by NPCL.

v. Mr. Awasthi has argued that there is no evidence to show that DSEPL is a SPV of Purvah. Regarding DSEPL being SPV, it is observed that clause 30 (6) of the RfS provides that shareholding of company (PGPPL) in its SPV (DSEPL) should be at least 51%, however, at present PGPPL owns 100% share of DSEPL. Therefore, DSEPL, as an SPV, is eligible to sign PPA with PGPPL.

Commission's view:

As acknowledged by NPCL that it was a mistake and unusual not to mention the 'date' on the BEC report though NPCL subsequently stated in the open court that it was signed on 30.12.2024. The Commission advises NPCL to make sure that in future such mistakes should be avoided however, such omission does not by itself vitiate the credibility of the process.

Further, clause 38 of RfS provides that LoA will be issued to the Successful bidder, which would be identified after due process followed as specified in clause 37 of the RfS. In the instant case, PGPPL has been identified as successful bidder in the tariff-based e-RA process. Regarding DSEPL being SPV, it is observed that clause 30 (6) of the RfS provides that the shareholding of company (PGPPL) in its SPV (DSEPL) shall be 51%, however, at present PGPPL owns 100% share of DSEPL. Therefore, DSEPL, as an SPV, is eligible to sign PPA with PGPPL.

f) BEC was formed without Board of Director's approval.

i. Mr. Awasthi has argued that the BEC was constituted without any approval of the Board of Directors.

ii. Mr. Ranganathan has argued that Clause 10.2 read with Clause 12.2 of the Guidelines has been followed for the constitution of the BEC. He further argues that there is no requirement for any Resolution of the Board of Directors for NPCL in order to constitute BEC under the Guidelines. NPCL has clarified that however the outcome of the bidding process was placed before the Board of Directors of NPCL and the same was approved. Hence, there is hardly any anomaly in the process on this count.

iii. The Commission finds that even though there was no requirement in law, the same stands approved by the Board of Directors of NPCL. NPCL has also clarified that the appointment of members of the BEC is well within the general powers of delegation of the Managing Director of NPCL, particularly the powers vested upon him by way of Recitals (h) and (r) of the Power of Attorney (PoA) dated 29.07.2022. NPCL has also with its response attached a copy of the Board Resolution approving the grant of such PoA in favour of the Managing Director. Therefore, it cannot be said that the appointment of the BEC by the MD of NPCL is ultra vires. Mr. Awasthi has not been able to point out any mandatory provision in law which would negate the above position.

iv. It is worthwhile noting that the function of the BEC is of an administrative nature and is fairly a routine part of power procurement. It is observed that BEC is required to be formed for complete analysis and justifications for the selection of successful bidder for the requisitioned power at discovered tariff, which is aligned with the market and that such power would help the procurer/NPCL in meeting the requirements. The relevant extract of the BEC report stating the names of the members and its expertise in terms of clause 10.2 of the MoP Guidelines are as follows:

> *"4. As per Para 10.2 of the "MoP's Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects", NPCL formed a Bid Evaluation Committee on 03.12.2024. The relevant para of MoP guidelines is reproduced below:*
>
> *"10.2 Procurer(s) 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."*
>
> *5. NPCL, formed a Bid Evaluation Committee comprising following members of NPCL:*
> - *Mr. Manoj Jain, CFO*
> - *Mr. Sanjeev Kumar Goel, Head (Regulatory Affairs)*
> - *Mr. Sanket Srivastava, Head (Power Management Services)*
> - *Mr. Shekhar Saklani, Manager (Power Management Services), Member Secretary."*

The Commission finds that the members of the BEC are part of the senior management of NPCL and are not just junior functionaries. One cannot expect any more senior officers to be a part of the BEC.

Commission's view:

The Commission observes that usually there is an approved SOP to constitute a Bid Evaluation Committee, however, in the instant case, no such details have been placed before the Commission. However, absence of SOP does not render the constitution of BEC as defective therefore, the Commission recognizes the recommendation of BEC in the instant case. However, for future procurement NPCL is advised to form Bid Evaluation Committee with the approval of Managing Director/ Secretary of NPCL in terms of the Company SOP and appropriate guidelines for power procurement.

g) No assessment done with respect to power procurement for solar and wind separately.

i. Mr. Awasthi has argued that NPCL ought to have assessed as to whether they should procure power from hybrid or wind and solar separately.

ii. We agree with Mr. Ranganathan's submission that the said submission does not relate or concern either the bid process or the BEC's assessment process or the process post issuance of bidding documents i.e., RfS. The Commission finds that whether to procure power in hybrid mode or solar or wind is purely commercial decision of NPCL and cannot be questioned by Mr. Awasthi at this stage unless it is shown that such procurement is not in consumer interest. There is no such contention that has been made by Mr. Awasthi.

iii. NPCL has argued that in any event, the present tender was issued for procurement of 300MW wind-solar hybrid power with a specified 2:1 wind-to-solar ratio and a CUF requirement of 48%. To meet this requirement, the bidder is installing 300MW of Wind power plant and 150MW of Solar power plant (total 450MW is being installed). However, bidder would only be supplying a maximum of 300MW in any time block irrespective of the fact that it has installed 450 MW capacity. In contrast, if 300MW Wind and 150MW Solar has been procured separately, total contracted capacity would have been 450MW for NPCL leading to huge surpluses in multiple hours. Mr. Awasthi has not negated this contention of NPCL.

iv. Mr. Awasthi has relied upon an Order of the Punjab State Electricity Commission wherein hybrid power procurement has been rejected. The Commission finds that simply because another Commission has rejected hybrid power procurement, it is not reasonable for this Commission to also follow suit without proper scrutiny. Unless it is shown that Hybrid power is not in the interests of the consumers, there is no reason for the Commission to disapprove procurement from hybrid power at this stage. The Order of the PSERC dated 04.11.2024 in Petition No. 34/2024 relies upon various considerations that are very different from the case presently before us. For example, one of the considerations which weighed with the Punjab Commission was that the Wind-Solar ratio was 1:2. Whereas in the case before us the Wind-Solar ratio is 2:1. This sole factor itself is enough to hold that the Punjab Commission's analysis is not applicable to the present case.

Commission's view:

It is evident that CUF of 48% cannot be achieved by project installation of 200MW Wind and 100MW Solar for procurement of 300MW hybrid power. Higher CUF indicates more energy during the year, which will be required to meet the NPCL load. It is also evident that NPCL envisages 67% of total energy from wind based which would help to cater round the clock energy requirement. Regarding the PSERC Order dated 04.11.2024, the Commission opines that considerations which weighed with the Punjab Commission are not applicable to the present case.

h) <u>Same CA firm has submitted the verification of financial credentials of two competing bidders-</u>

i. Mr. Awasthi has argued that the Net worth certificates of two of the bidders have been issued by the same CA Firm. Accordingly, Mr. Awasthi asserts that there is serious irregularity in the bid process.

ii. The Commission cannot agree with Mr. Awasthi on this. Although it seems to be a fairly rare coincidence, the task of CA firms in the context of the financial bids is to only certify the bidders' financial strength/capacity based on their accounts. It is only an arithmetical exercise without any discretion or any judgment call and in any event, NPCL as a procurer has no control over this. Such net-worth CA certificates are prepared based on the published balance sheets of a company and as such, any accountant can easily do such a job. Mr. Awasthi's submission in this regard, although appears attractive at first blush, but does not hold any water when one considers the nature of the certificate.

Commission's view:

The Commission observes that based on the Balance Sheet data, any accountant with a calculator can work out the net worth.

Unless and until any misdeclaration or forgery in the stated financials is brought on record before the Commission, as has not been done in the present case, the Commission does not find any fault with the situation in which same CA firm is certifying the net worth of two separate bidders participating in the bid.

i) <u>Assessment of Tariff can be made based on only those rates which have been approved by the Appropriate Commission.</u>

i. Mr. Awasthi has argued that the rates used by BEC to assess the reasonableness of the bids have not been approved by any other Commission and as such are unapproved numbers.

ii. Mr. Ranganathan has argued before us and the Commission would tend to agree that there is no requirement in law that the present bids must only be compared with other bids, which have been approved by the respective Commissions. If every Commission were to wait for the other Commission to approve their respective bids, no Commission could ever be the first to approve a bid. It also cannot be lost sight-off that the adoption and approval process can take time. By the time a particular Commission approves the bids of utilities under its jurisdiction, it is possible that much time would have elapsed and the bids, which were made at an earlier point of time, are no longer relevant for comparison.

iii. However, NPCL has provided details of about 7 out of the 12 comparable bids that have been approved by their respective Commissions. Further the most comparable of all is the Torrent bid which has a CUF of 50%. This has also been approved by the GERC and this has not been disputed by Mr. Awasthi. As such the argument of Mr. Awasthi does not need to be considered beyond this. Clause 12 of the Guidelines empowers the BEC to ensure compliance with the RfS document during bid evaluation, to ascertain the reasonableness of the selected offer's price, and to reject all bids if quoted rates deviate from prevailing market prices.

iv. The Commission has noted that (i) wind tariff has increased by approx. 10% (39 paisa) w.r.t. tariff discovered in March 2024; and (ii) the UPERC has itself vide Order dated 09.01.2025 in Petition No. 2136/2024: UPPCL vs. SECI, observed that wind tariffs have been continuously increasing over the past year showing a rise of approx. 34%. Further, the present bid is comparable with the Torrent hybrid bid having CUF of 50%, wherein the discovered tariff was Rs. 3.65/kWh in March 2024 (also adopted by the GERC). A table setting out the comparison and the difference with the CUF of 50% vis-à-vis 48% in the present case is provided below:

Torrent W-S Hybrid Tender					
Case-1	**Capacity (MW)**	**CUF %**	**Tariff (in Rs./kWh)**	**Energy (in MU)**	**Amount (in Cr.)**
	300	50%	**3.65**	1314	479.61
Case-2	**Capacity (MW)**	**CUF %**	**Tariff (in Rs./kWh)**	**Energy (in MU)**	**Amount (in Cr.)**
	300	48%	**3.80**	1261	479.61

NPCL W-S Hybrid Tender					
Case-1	**Capacity (MW)**	**CUF %**	**Tariff (in Rs./kWh)**	**Energy (in MU)**	**Amount (in Cr.)**
	300	48%	**3.84**	1261	484.39
Case-2	**Capacity (MW)**	**CUF %**	**Tariff (in Rs./kWh)**	**Energy (in MU)**	**Amount (in Cr.)**
	300	50%	**3.69**	1314	484.39

Commission's view:

There is no requirement in law for evaluation of bids to await adoption of comparative tariff(s) by the Appropriate Commission. Therefore, Sh. Awasthi's contention is unsustainable. Even on facts, the tariff discovered in the present matter is very much comparable to the latest discovered tariff taking into account the CUF for hybrid power and recently discovered wind tariffs.

j) **<u>Mutually supportive bids have not been assessed by the Bid Evaluation Committee.</u>**

i. Mr. Awasthi has argued that the difference in the L-1 and L-2 bidders in the current process is Rs 0.1 paise per Unit. Whereas in the Torrent Bid also, the same bidders had a difference of Rs 0.1 paise per unit.

ii. NPCL has clarified that under the terms of the e-reverse auction bids have to be made in steps of Rs 0.1 paise per unit. Hence there is a difference of 1 paise in the tariff quotes by the lowest and the second lowest bidder. The e-RA is in steps of 1 paise. Clause 36(4)(ii) of the RfS specifies that during the Reverse Auction (Step-3), the minimum tariff decrement shall be ₹0.01/kWh, and any revised bid must be at least one paisa lower than the bidder's current tariff.

Commission's view:

The mere fact that the difference in the bids of the current bidders being Rs 0.01/Unit and the difference in Torrent's bid also being Rs 0.01 per unit is not a relevant consideration since in the e-RA all bids are to be in steps of Rs 0.01 per Unit only. Therefore, it would be difficult to justify that there were mutual supportive bids between the bidders only on the basis of surmise or conjecture, in absence of any substantiating document.

k) BEC in its cost saving analysis has erroneously relied on those bids which are intra-state in nature and not inter-state.

Mr. Awasthi has argued that the BEC has wrongly compared the intra state bids with inter-state bids for the purpose of comparison. NPCL has clarified that all the comparable bids are net of transmission charges. Hence whether they are inter-state or intra state makes no difference to the evaluation.

The Commission has noted that the submission of NPCL that even if NPCL excludes the two bids indicated by Sh. Awasthi, the estimated saving will marginally come down to Rs. 90 crores from Rs. 95 crores. Therefore, even if Mr. Awasthi's submission in this regard is accepted, the impact is not of any significance at all.

Commission's view:

The Commission finds that NPCL's response is self-explanatory to the contention of Sh. Awasthi. Accordingly, no further deliberation is needed on this issue.

38.**In view of the above discussion, the Commission adopts the discovered tariff of Rs. 3.84/kWh for procurement of 300MW Wind Solar Hybrid power at 48% CUF and approves the PPA dated 31.01.2025 signed between NPCL and DSEPL. NPCL is directed to be more careful in future about execution of important documents such as the BEC Report and ensure that proper administrative procedures such as dating the report are followed. Further, for any future power procurement under long-term or medium-term, NPCL shall take prior approval of the Commission in terms of Regulation 4 of the UPERC (Modalities of Tariff Determination) Regulations, 2023 along with justifications for the type of source, quantum, and its suitability for optimizing the overall power purchase cost. In the interest of the consumers, DSEPL shall ensure that its power projects get commissioned as per the schedule provided in the PPA.**

39.The Petition stands disposed of in terms of the above.

Sanjay

(Sanjay Kumar Singh)
Member

(Arvind Kumar)
Chairman

Place: Lucknow
Dated: 08.07.2025