

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**Appeal No. 199 of 2023 &
IA No. 1182 of 2022**

Dated: 6th July, 2023

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

IN THE MATTER OF:

Solar Energy Corporation of India Limited
Through its Managing Director
6th Floor, Plate-B, NBCC Office Block Tower-2
East Kidwai Nagar,
New Delhi – 110023

...Appellant(s)

Versus

1. Uttar Pradesh Electricity Regulatory Commission
Through its Secretary
Vidyut Niyamak Bhawan
Vibhuti Khand, Gomti Nagar
Lucknow- 226010.

2. Uttar Pradesh Power Corporation Limited
Through its Managing Director
14-Ashok Marg,
Shakti Bhawan,
Lucknow-226001.

... Respondent(s)

Counsel for the Appellant(s) : Mr. M.G. Ramachandran, Sr. Adv.
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Ms. Tanya Sareen
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Mr. Aneesh Bajaj

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Mr. C. K. Rai
Mr. Sumit Panwar
Mr. Ankit Bhandari for R-1
Mr. Aditya K. Singh
Ms. Anukriti Jain
Ms. Pratiksha Chaturvedi
Mr. Vineet Kumar for R-2

J U D G M E N T

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. The Appellant being M/s. Solar Energy Corporation of India Limited (hereinafter referred as "Appellant" or "SECI") has filed the present appeal assailing the Order dated 19.03.2021 (hereinafter referred as "Impugned Order") passed by the Uttar Pradesh Electricity Regulatory Commission (hereinafter referred as the "State Commission" or "UPERC"), in Petition No. 1593 of 2020, being aggrieved the decision of the State Commission giving approval for procurement of power subject to protection of pooled tariff by making adjustment in the trading margin of SECI.

Parties

2. The Appellant, SECI is a Government of India Enterprise and a company incorporated under the provisions of the Companies Act, and, is designated as the nodal agency for implementation of the schemes of the Government of India for developing grid connected renewable power capacity in the country including

schemes for setting up of Inter-State Transmission System (ISTS) connected Solar/Wind/Wind-Solar Hybrid Power Projects etc.

3. The 1st Respondent, UPERC is the State Electricity Regulatory Commission, a Statutory Authority, inter-alia, vested with the powers to regulate the conduct and affairs of the electricity utilities falling within the scope of Section 86 of the Electricity Act 2003 (in short “Act”) in the State of Uttar Pradesh (in short “UP”).

4. The 2nd Respondent, Uttar Pradesh Power Corporation Limited (in short “UPPCL”) is a Government Company entrusted with the functions of Bulk Supply, Distribution and retail supply of electricity in the State of UP.

5. The Central Electricity Regulatory Commission (in short “Central Commission” or “CERC”) is a statutory authority, established under the Act with powers and functions as defined under section 79 of the Act and has granted Inter-State Trading Licence to SECI under the Electricity Act 2003.

6. It is necessary to note here that the Appropriate Commission, as defined in the Act, is the Central Commission in respect of matters which fall within the scope of Section 79 of the Electricity Act 2003 inter-alia having jurisdiction for determining the tariff of generating stations having composite schemes and also granting trading licenses for interstate trading of electricity.

7. The factual matrix of the instant case, hereinafter, is noted in brief.

8. The Central Government mandated SECI to procure electricity from the Renewable Power Developers under the Power Purchase Agreement(s) (in short

“PPA”) for the purpose of further sale to the buying utilities/ distribution licensees under the Power Sale Agreement(s) (in short “PSA”) through back-to-back arrangements.

9. On 08.12.17, the Government of India, under section 63 of the Act, notified the Guidelines for tariff based competitive bidding process for procurement of power from Grid Connected Wind Power Projects (hereinafter referred to as “Guidelines”), the relevant extract of these guidelines are reproduced as under:

“3. APPLICABILITY OF GUIDELINES

...

Explanation:

....

c) Intermediary Procurer

*(i) In some cases, an intermediary, between the distribution licensee(s) and the Wind Power Generator(s) (WPG) may be required either to aggregate the wind power to be purchased from different generators and sell it to the distribution licensee(s) or to enhance the credit profile. **In such cases, the 'Intermediary Procurer' is essentially a trader, buying power from the WPG(s) and selling the same to one or more distribution licensees and shall carry out the bidding as per provisions of these Guidelines.***

(ii) The Intermediary Procurer shall enter into a Power Purchase Agreement (PPA) with the WPG(s) and also enter into a Power Sale Agreement (PSA) with the distribution licensee(s). The PSA shall contain the relevant provisions of the PPA on a back to back

basis. The Intermediary Procurer may charge trading margin as notified by the Appropriate Commission or in the absence of such notification as mutually agreed with distribution licensee(s)."

(Emphasis Supplied)

10. In accordance with the aforesaid Guidelines, SECI has initiated a Competitive Bid Process for the selection of the Wind Power Developers (in short "WPDs") to establish Wind Power Projects, and in turn, purchase the electricity generated for supplying the same to the buying utilities/ distribution licensees.

11. On 22.02.2019, SECI issued the Request for Selection (in short "RfS") Document for selection of Inter-State Transmission System (ISTS) connected WPDs for the development of Wind Power Projects (in short "WPPs") with a cumulative capacity of 1200 MW, termed as (Tranche-VII), the relevant extract of the RfS Document is reproduced as under:

"Section 2

Definitions

"TRADING MARGIN" means the trading margin as mutually agreed between Buying Entities and the SECI or as decided by CERC for long-term power purchase, whichever is less;"

12. On 14.05.2019, the selection of bidders for developing WPPs through competitive bidding (e-Reverse Auction) was conducted and completed with the result as quoted below:

S.N.	Bidder	Tariff (INR / kWh)	Allotted (Capacity MW)
1.	Betam Wind Energy Private Limited	2.79	200
2.	Ostro Energy Private Limited	2.81	50
3.	Sprng Vaayu Urja Private Limited	2.82	100
4.	Adani Renewable Energy Park Gujarat Private Limited	2.83	130
Total			480

13. Pursuant to above, SECI, on 19.06.2019, issued Letters of Award (in short “LOAs”) to the above selected bidders.

14. Subsequently, on 01.10.2019, SECI and UPPCL entered into the PSA for resale of 380 MW wind power, out of 480 MW of the bid capacity, to UPPCL by SECI, the relevant provisions of the PSA are as under:

“2.3 Early Termination

2.3.1 This Agreement shall terminate before the Expiry Date:

II. if any SECI-WPD PPA gets terminated, the capacity under this agreement shall automatically be reduced but only to the extent of that particular SECI-WPD PPA capacity.

ARTICLE 5: APPLICABLE TARIFF

5.1.1 From SCD and subject to the provisions of the Article 6.7, the Buying Entity shall pay the Maximum possible fixed tariff of Rs. 2.83/kWh plus trading margin of Rs. 0.07/kWh fixed up to commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI under the RfS.

5.1.2 *Until the commissioning of the cumulative awarded capacity/cumulative capacity commissioned as accepted by SECI under the RfS, the applicable tariff payable by Buying Entity shall be the Tariff as per Article 5.1.1. Plus the trading margin of Rs. 0.07 kWh. Subsequently, the applicable tariff payable by Buying Entity shall be the pooled tariff arrived as per Schedule of this Agreement of the commissioned Project Capacity of all the Projects accepted by SECI, till the end of the Term of the Agreement. The Buying Entity shall make the Tariff Payments to Buyer as per the provisions of this Agreement Trading margin of Rs. 0.07 kWh will be applicable over and above discovered pooled tariff.*

.....

5.1.6 *SECI shall submit the monthly invoice to the Buying Utility based on the Tariff of individual project commissioned, and the weighted average tariff shall be applicable upon commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI under the RfS.*

SCHEDULED 1: LIST OF LOAs ISSUED TO WPDS

SL No.	WPD Name	Project Capacity (MW)	Applicable tariff as per SECI-SPD PPA(Rs/kWh)
1.	Betam Wind Energy Pvt Ltd	200	2.79
2.	Ostro Energy (P) Ltd	50	2.81
3.	Spring Vayu (P) Ltd	100	2.82
4.	Adani Renewable Energy park (Gujarat) Ltd	130	2.83
Weighted Average Tariff (kWh)			2.8091*

*[*Note: **The Pooled tariff is liable to changes depending on actual commissioning achieved by the respective projects, leading to changes in applicable tariffs. Example-Formula: = Capacity ((MW Individual (Sl no 1+2+-----4)*Tariff (Individual))/(Total Commissioned Capacity). It is clarified that in case last accepted capacity (MW) is coming within a month then pooled tariff shall be applicable from subsequent month).***

(Emphasis Supplied)

15. Additionally, on 25.10.2019 and 19.11.2019, SECI entered into Power Purchase Agreements (in short “PPAs”) with M/s Ostro Energy Private Limited (in short “Ostro”) for procurement of 50 MW Wind Power at a tariff of Rs 2.81/kWh and 130 MW Wind Power at a tariff of Rs 2.83/kWh from the Wind Power Projects to be established by Ostro and Adani, respectively, in the State of Gujarat.

16. Separately, SECI, on 04.10.2019, filed a Petition being No.382/AT/2019 before the Central Commission under Section 63 of the Electricity Act, 2003 for the adoption of tariff for 480 MW Wind Power Projects including the subject 380 MW of capacity discovered in the Competitive Bidding process under the ISTS Tranche-VII Wind Scheme.

17. Meanwhile, on 02.01.2020, the Central Commission notified the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other regulated matters), Regulations, 2020 (hereinafter referred as “Trading Licence Regulations”), wherein Chapter IV titled as Trading Margin deals with trading margin, the relevant extract is as under:

“7. Applicability of Trading Margin:

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

.....

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

.....

(d) Transactions under Back to Back contracts, irrespective of duration of the contract;

8. Trading Margin:

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

.....

(d) For transactions under long term contracts, the trading margin shall be decided mutually between the Trading Licensee and the seller: “

18. On 28.02.2020, the Central Commission disposed of the Petition No.382/AT/2019 filed by SECI, adopting the tariff of each aforementioned WPP selected and the Trading Margin as applicable to SECI, the relevant extract of the Order is quoted as under:

“22. The Petitioner has prayed to adopt the tariff discovered in the competitive bid process for the individual power Projects. In the light of the above discussion, in terms of Section 63 of the Act, the Commission adopts the following tariff for the Projects as agreed to

by the successful bidders subject to signing of the PPAs with WPDs, which shall remain valid throughout the period covered in the PSAs and PPAs:-

Sr	Bidder	Tariff (INR/ kWh)	Project Capacity (MW)
1.	Betam Wind Energy Private Limited	2.79	200
2.	Ostro Energy Private Limited	2.81	50
3.	SprngVaayuUrja Private Limited	2.82	100
4.	Adani Renewable Energy Park (Gujarat) Limited	2.83	130
Total			480

27. SECI has prayed to adopt the trading margin of Rs. 0.07/kWh. Regulation 8(1)(d) of the Trading Licence Regulations provides as under:

“8(1)(d) For the transactions under long-term contracts, the trading margin shall be as mutually decided between the Trading licensee and the seller.”

28. The above provision gives choice to the contracting parties to mutually agree on Trading Margin for long-term transaction. **Accordingly, the Commission cannot adopt any Trading Margin. The Petitioner shall be governed by the above provisions of the Trading Licence Regulations. In view of the above, the prayer of SECI to adopt the Trading Margin is decided accordingly.”**

19. On 22.06.2020, UPPCL filed a Petition being No.1593 of 2020 before the State Commission, inter-alia, praying as under:

“In consideration of the facts and circumstances stated from Para 1 to 19, Hon’ble Commission is humbly prayed to please to:-

- i) Admit the Petition;*
- ii) Approve Power Sale Agreement dt.01-10-2019;*
- iii) Pass such order that may be deemed for and proper in the facts and circumstances of the case. “*

20. However, SECI vide its letter dated 18.08.2020 requested UPPCL for amendment of the PSA in accordance with the order passed by the Central Commission for the consideration of the tariff for the individual power projects mapped to UPPCL. The relevant extract of the letter is as under:

“The PSAs signed under these schemes have the provision of billing at the rate of Weighted Average Tariff plus SECI’s trading Margin, which are commercial mechanism of SECI to provide power to all the DISCOMS at uniform price under a particular Tranche. After signing of PPA & PSA, SECI filed a Petition to adopt the tariff by Hon’ble CERC under Section 63 of the Electricity Act, 2003. However, in the recent order, Hon’ble CERC has adopted individual tariffs discovered through transparent bidding process (CERC order enclosed).

In line with CERC order, it is proposed to amend the Article 5.1.2 (i.e. applicable tariff) of the PSA based on the mapping approved by

CTU (POWERGRID) and supplying power to UPPCL in the scheme, as per attached draft supplemental Power Sale Agreement.

It is requested to give your consent to amend the Power Sale Agreement (PSA) suitably at the earliest.

21. Consequently, on 11.11.2020, UPPCL responded to the letter dated 18.08.2020 of SECI and also filed an application in Petition No.1593 of 2020 for submission of additional information and documents including the Note on Jurisdiction before the State Commission.

22. Thereafter, on 25.11.2020, SECI provided the draft of Supplementary Power Sale Agreements as sought for by UPPCL vide its letter dated 11.11.2020.

23. On 27.01.2021, SECI filed its Reply in Petition No.1593 of 2020 before the State Commission inter-alia, stating as under:

“33.In terms of the above, it submitted this Hon’ble Commission may be pleased to approve the PSA dated 01.10.2019 (including subsequent amendment to be entered into between SECI and UPPCL) which has been duly executed between SECI and UPPCL under Section 86(1)(b) of the Electricity Act, 2003 read with Rule 8 of the Electricity Rules, 2005 at the price payable for such procurement of wind power namely individual tariff applicable of the relevant Wind Power Developer as adopted by the Central Commission and in addition thereto a trading margin of Rs.0.07/kWh payable to SECI.”

24. The State Commission vide its order dated 19.03.2021 disposed of the aforesaid petition inter-alia approving the procurement of 380 MW Wind Power as well as the PSA dated 01.10.2020 executed between SECI and UPPCL subject to certain conditions as under:

“23. The PPA which is to be signed by Betam Wind Energy Private Limited is stated to be similar in nature with other approved PPAs as being part of the same bidding process. However, in case, SECI is not able to sign the PPA with Betam Wind Energy private limited, the quantum of power under the PSA dated 01.10.2019 would stand reduced as 280 MW from earlier 380 MW and pooled tariff of Rs.2.8091 per unit as per Schedule I in the PSA may increase. The Commission directs UPPCL to place on record the modified PSA, if any.

The Commission is of the view that the pooled tariff as per Schedule-I to the PSA dated 01.10.2019 should be protected by making suitable adjustment to the trading margin by SECI.

24. Therefore, the PSA dated 01.10.2019 is approved for all the above PPAs subject to:

(a) SECI placing on record the conformity certificate for PPA dated 16.03.2020 for Sprng Vaayu Urja Private Limited within a month of this order and

(b) SECI signs PPA for Betam Wind Energy Private Limited is signed in terms of the PSA dated 01.10.2019 & bidding documents and

(c) Pooled tariff for UPPCL remains the same as per Schedule I to the PSA dated 01.10.2019 based on tariff adopted by the Central

Commission vide order dated 28.02.2020 in Petition No.382/AT/2019.”

25. Being aggrieved by the Impugned Order of the State Commission to the extent of the decision that *‘the pooled tariff as per Schedule-I to the PSA dated 01.10.2019 should be protected by making suitable adjustment to the trading margin by SECI’*, SECI filed a Review Petition being No.1734 of 2021 before the State Commission seeking review and recall of the Impugned Order, inter-alia, praying as under:

“17. It is most respectfully submitted that for the aforesaid reasons, the order dated 19.03.2021 passed by the Hon’ble Commission in Petition No.1593 of 2020 need to be reviewed and modified. There is an error apparent on the face of record which need to be rectified and there are otherwise sufficient cause for reviewing of the order dated 19.03.2021.

18. The Hon’ble Commission in exercise of powers of Section 86(1)(b) of the Electricity Act, 2003 read with Rule 8 of the Electricity Rules, 2005, may be pleased to approve procurement of power under the PSA dated 01.10.2019 at the individual tariff applicable under the PPAs entered into with the Wind Power Developers (identified for supply of power to UPPCL) as adopted by the Central Commission and in addition thereto a trading margin of Rs.0.07/kWh payable to SECI, without any adjustment in the trading margin on account of pooled tariff as decided in the order dated 19.03.2021.

22. In the facts stated and submissions made hereinabove, it is most

respectfully prayed that this Hon'ble Commission may be pleased to:

- a) Admit the Review Petition;*
- b) Call for the records of Petition No.1593 of 2020;*
- c) Allow the Review Petition and modify the order dated 19.03.2021 in Petition No.1593 of 2020 to the limited extent of decision on pooled tariff and adjustment in trading margin as contained in Paragraph 23 and 24 of the impugned order; and*
- d) Pass such further order or orders as this Hon'ble Commission may deem just and proper to give relief to the Review Petitioner*

26. On 22.12.2021, SECI, pursuant to the daily order dated 22.11.2021 in Review Petition being No.1734 of 2021, filed submissions in respect of the information sought for by the State Commission.

27. Thereafter, on 10.06.2022, the State Commission dismissed the Review Petition No.1734 of 2021, stating as under:

“The Commission, finds no ground of reviewing its order dated 19.03.2021 passed by the Commission under the facts and circumstances of the case and dismisses the review Petition on the following grounds:

- a. Review Petition does not disclose recovery of any new and important matter or evidence which, after the exercise of due diligence, was not within its knowledge or could not be produced by it at the time when the Commission passed the order dated 19.03.2021,*

- b. Review Petitioner has failed to explain the error apparent on face of the record*
- c. Review Petitioner is seeking review/modification of the Commission's order for the only reason that another view should have been taken by this Commission.*

28. From the above, the only issue to be adjudicated is whether the State Commission has the jurisdiction to decide the tariff vis-à-vis the trading margin, while approving the procurement of power by UPPCL in the light of Rule 8 of the Electricity Rules, 2005 (in short "Rules 2005") and the procurement by a trading licensee for further sale of power qualifies as Composite Scheme within the scope of Section 79(1)(b) of the Act, undisputedly, conferring jurisdiction on the Central Commission.

29. The Central Commission adopted the tariff for each WPP individually as quoted by the respective WPD and therefore, the State Commission, in accordance with Rule 8 of Rules 2005 is ought to adopt the same without any change, Rule 8 is reproduced as under:

"8. Tariffs of generating companies under section 79.- The tariff determined by the Central Commission for generating companies under clause (a) or (b) of subsection (1) of section 79 of the Act shall not be subject to re-determination by the State Commission in exercise of functions under clauses (a) or (b) of sub-section (1) of section 86 of the Act and subject to the above the State Commission may determine whether a Distribution Licensee in the State should enter into Power Purchase Agreement or procurement process with

such generating companies based on the tariff determined by the Central Commission.”

30. The State Commission though accepted the aforesaid order passed by the Central Commission, however, directed that the pooled tariff should be protected by suitably adjusting the trading margin of SECI after observing that the contractual agreement between the SECI and the UPPCL is on the basis of pooled tariff, the decision which is challenged by the Appellant.

31. It cannot be disputed that the Central Commission is the Appropriate Commission for determining the trading margin for inter-state trading licensees and SECI in the present case is an inter-state trading licensee, thus, governed by the relevant regulations notified by the Central Commission, further, any dispute regarding the trading margin for SECI shall be resolved by the Central Commission.

32. The Guidelines notified by the Government of India under section 63 of the Act provides that *“The Intermediary Procurer may charge trading margin as notified by the Appropriate Commission or in the absence of such notification as mutually agreed with distribution licensee(s)”*, as noted in the preceding paragraphs.

33. The relevant regulations CERC (Procedure, Terms and Conditions for grant of trading licence and other regulated matters), Regulations, 2020 provides as under:

“8. Trading Margin:

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

.....

(d) For transactions under long term contracts, the trading margin shall be decided mutually between the Trading Licensee and the seller: “

34. Therefore, in accordance with the Guidelines and the CERC Regulations, the Appropriate Commission, the trading margin shall be as decided / agreed mutually by the SECI, the trading licensee and the WPPs and in turn by the distribution licensees.

35. The RfS document for the selection of the WPDs defines trading margin as the trading margin mutually agreed between Buying Entities and the SECI or as decided by CERC for long-term power purchase, whichever is less, whereas, the PSA signed between the SECI and the UPPCL, also approved by the State Commission mandates as under:

*“5.1.1 From SCD and subject to the provisions of the Article 6.7, the Buying Entity shall pay the Maximum possible fixed tariff of Rs. 2.83/kWh plus **trading margin of Rs. 0.07/kWh fixed up to commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI under the RfS.**”*

36. Therefore, the mutually agreed trading margin between SECI and UPPCL is Rs. 0.07/kWh and thus is the trading margin in accordance with the Guidelines

and the relevant Regulations notified by the Appropriate Commission being CERC in the present case.

37. The State Commission, however, ruled that *“the pooled tariff as per Schedule I to the PSA dated 01.10.2019 should be protected by making suitable adjustment to the trading margin by SECI”*, even to the fact that UPERC has no jurisdiction in reviewing or modifying the tariff adopted by the Central Commission and also having no jurisdiction over the trading margin, which is to be mutually decided by the SECI and UPPCL in accordance with the relevant CERC Regulations and the PSA signed between SECI and UPPCL has already agreed to Rs. 0.07/kWh.

38. We find it unjust and unreasonable the observation of the Commission that the parties have agreed to weighted average tariff (pooled tariff) and not individual tariff and therefore, the pooled tariff agreed in the PSA should be protected by making suitable adjustment to the trading margin by SECI, as the tariff at which power is to be supplied by SECI to UPPCL under the back to back arrangement is the tariff determined/ adopted by the Central Commission, which has determined the tariff on individual WPP basis.

39. It is noted from the PSA that the Article 5 of the PSA provides that the Buying Entity shall pay the Maximum possible fixed tariff of Rs. 2.83/kWh plus trading margin of Rs. 0.07/kWh fixed up to commissioning of the cumulative awarded capacity /accepted cumulative capacity by SECI under the RfS and until the commissioning of the cumulative awarded capacity/ cumulative capacity commissioned as accepted by SECI under the RfS, the applicable tariff payable by Buying Entity shall be the Tariff as per Article 5.1.1. plus the trading margin of

Rs. 0.07 kWh, thereafter, the applicable tariff payable by Buying Entity shall be the pooled tariff arrived as per Schedule of this Agreement of the commissioned Project Capacity of all the Projects accepted by SECI, till the end of the Term of the Agreement, further, the Buying Entity shall make the Tariff Payments to Buyer as per the provisions of this Agreement and Trading margin of Rs. 0.07 kWh will be applicable over and above discovered pooled tariff, also SECI shall submit the monthly invoice to the Buying Utility based on the Tariff of individual project commissioned, and the weighted average tariff shall be applicable upon commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI under the RfS, it is further stated in the PSA that the Pooled tariff is liable to changes depending on actual commissioning achieved by the respective projects, leading to changes in applicable tariffs.

40. It is thus clear that the buying entity shall pay the tariff in accordance with the average tariff determined by considering the tariff of individual WPP commissioned and the cumulative capacity as awarded/ accepted by SECI, which is subject to change however, the maximum tariff which buyer is required to pay is capped at Rs. 2.83/ kWh and the trading margin shall remain constant at Rs. 0.07/kWh irrespective of the pooled tariff.

41. It is seen from para 20 of the Impugned Order that the State Commission even though approved the margin of Rs. 0.07/ kWh as agreed by the UPPCL and SECI, directed UPPCL that in future it should endeavor to economize on the trading margin through mutual agreement, contrary to it, under para 23 of the Impugned Order directed UPPCL to make suitable adjustment in the Trading margin, the relevant extract of para 20 is as under:

“Commission's View

*The Commission, therefore, decides that the Trading margin for long term transaction is open for mutual agreement between the contracting parties. In the present case, parties have mutually agreed through PSA dated 01.10.2019 for a Trading Margin of 7 paise per unit. **The Commission approves the trading margin of 7 paise per unit in the present case and directs UPPCL that in future it should endeavor to economize on the trading margin through mutual agreement and the same shall be allowed considering the efforts made by UPPCL.**”*

42. Further, the contention of the State Commission that the Central Commission has not acceded to the prayer of the SECI for trading margin of Rs. 0.07/ kWh and left to the parties to decide mutually, also therefore, the trading margin can be suitably adjusted for protecting the pooled tariff has no merit as the Central Commission in its order has categorically stated that as per the relevant Regulations, Trading margin is to be decided with mutual agreement by the Trading Licensee and the seller, whereas the Guidelines notified by Government of India prescribes that the Trading margin shall be as notified by the Appropriate Commission i.e. Central Commission in this case or in the absence of such notification as mutually agreed with distribution licensee(s), further, the RfS document issued by SECI and the PSA signed by SECI with UPPCL mandates Trading margin as Rs. 0.07/kWh.

43. We, therefore, find no merit in the contentions made by the State Commission, the Trading margin of Rs. 0.07/kWh as mutually agreed by SECI and UPPCL through the PSA, shall be final, the decision of the State Commission in

directing UPPCL to suitably adjusting the Trading margin cannot be agreed to, the Impugned Order is set aside to this limited extent.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the present Appeal filed by the SECI has merit, the Trading margin shall be Rs. 0.07/ kWh as mutually agreed between SECI and UPPCL under the PSA.

The Impugned Order dated 19.03.2021 is set aside to the limited extent of the direction issued to UPPCL for suitably adjusting the Trading margin.

PRONOUNCED IN THE OPEN COURT ON THIS 6th DAY OF JULY, 2023.

(Sandesh Kumar Sharma)
Technical Member

(Justice Ramesh Ranganathan)
Chairperson

pr/mkj