Southern Power Distribution Company of Telangana Limited
#6-1-50, Corporate Office, Mint Compound, Hyderabad 500 063

From
Chief Engineer (IPC),
TGSPDCL, Corporate Office,
6-1-50, 1st Floor, Mint Compound,
Hyderabad – 500 063.

To
The Commission Secretary,
TGERC, Sy No. 145-P,
Vidyut Niyantran Bhavan,
Kalyan Nagar,G.T.S Colony,
Hyderabad 500 045.

Lr.No.CE/IPC/DE(IPC)/ADE-K/F.CPSU/D.No1897/24, Dt:27.03.2025

Sir,

TGERC HYDERABAD INWARD
27 MAR 2025
Sign
No.

Sub:- TGSPDCL - IPC – Petition filed for issuing of adoption tariff orders for procurement of 1045 MW Solar power from NTPC under CPSU Scheme Phase-II Tranche-III, 500 MW Solar power from NHPC under CPSU Scheme Phase-II Tranche-III and 1000 MW Solar power from SECI under ISTS Tranche-IX by TGDISCOMs – Requested - Reg.

Ref:- TGERC order dated 26.10.2022 in OP No. 69 of 2022

*****

In compliance to the directions issued by the Hon'ble TGERC vide ref cited above, the petition for adoption of tariff as per the adoption orders issued by CERC for procurement of i) 1045 MW Solar power from NTPC under CPSU Scheme Phase-II Tranche-III, ii) 500 MW Solar power from NHPC under CPSU Scheme Phase-II Tranche-III and iii) 1000 MW Solar power from SECI under ISTS Tranche-IX by TGDISCOMs is being filed in 6 sets for taking necessary action.

Encl: As above.

Yours faithfully,

V. P

Chief Engineer (IPC)
Mail:seipctsspdcl@gmail.com
Ph: 9490603671

Copy to
The Chief General Manager (IPC&RAC)/TGNPDCL/Warangal
Copy Submitted to:
The Executive Director (Commercial), TGPCC, Vidyut Soudha, Hyderabad.

BEFORE THE HON'BLE TELANGANA ELECTRICITY REGULATORY COMMISSION

AT VIDYUT NIYANTRAN BHAVAN, G.T.S COLONY, HYDERABAD

O.P No. of 2025

LIST OF DOCUMENT

Sl. No.	Annexure No.	Date of document	Description of document	Whether certified copy/copy	Page Nos.
1		27.03.2025	Petition filed under Section 63, 86(1)(b) of the Electricity Act, 2003 and u/s 21 (4) of Telangana Electricity Reforms Act, 1998	Original	1-8
2		27.03.2025	Affidavit	Original	9-10
			MATERIAL PAPERS/ ANNEXURE (S)		
3	I	16.09.2022	MNRE order on increase of maximum usage charges to Rs 2.57/Kwh	Copy	11
4	II	30.09.2021	Ministry of Finance's Notification No. 8/2021	Copy	12-17
5	III	07.10.2022	Mail regarding IREDA amended the maximum usage charges in the LoA issued from INR 2.45 to INR 2.57	Copy	18
6	IV	17.03.2023	Supplementary PUAs signed amending the Usage charges from Rs 2.45/Kwh to Rs 2.57/Kwh	Copy	19-34
7	V	22.01.2025	CERC allowed the Change in Law compensation, as communicated by MNRE, as interim relief to be charged by NTPC/NTPC REL on a provisional basis pending the final decision of the Commission	Copy	35-60
8	VI	04.09.2024	A copy of the CERC order	Copy	61-82

			adopting the usage charge of Rs.2.45/Kwh		
9	VII	08.03.2022	The 1000 MW capacity SPDs under Tranche IX are covered under these two CERC orders.	Copy	83-136
10	VIII	08.03.2023		Copy	137-199

DATE : 27.03.2025

PLACE: Hyderabad.

BEFORE THE HON'BLE TELANGANA ELECTRICITY REGULATORY COMMISSION
ERRAGADDA, HYDERABAD

O.P No. of 2025

IN THE MATTER OF

Seeking adoption of tariff u/s 63, 86(1)(b) of the Electricity Act, 2003 and u/s 21 (4) of Telangana Electricity Reforms Act, 1998 pertaining to procurement of 1045 MW Solar power from NTPC under CPSU Scheme Phase-II Tranche-III, 500 MW Solar power from NHPC under CPSU Scheme Phase-II Tranche-III and 1000 MW Solar power from SECI under ISTS Tranche-IX by TGDISCOMs.

IN THE MATTER OF

SOUTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED
Rep. by its Chairman & Managing Director,
TGSPDCL, Corporate Office, Mint Compound, Hyderabad.

NORTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED
Rep. by its Chairman & Managing Director,
TGNPDCL, Vidyut Bhavan, Nakkalagunta, Warangal.

..... Petitioners

The Petitioners respectfully submit as under : -

1. The present Petition is being filed by the Southern Power Distribution Company of Telangana Limited and Northern Power Distribution Company of Telangana Limited (collectively referred as TGDISCOMs) seeking adoption of tariff u/s 63 & 86(1)(b) of the Electricity Act, 2003 and u/s 21 (4) of Telangana

CHIEF ENGINEER
(IPC), TGSPDCL,
Corporate Office, 6-1-50,
Mint Compound, Hyd-500004.

Electricity Reforms Act, 1998 pertaining to procurement of 1045 MW Solar power from NTPC under CPSU Scheme Phase-II Tranche-III, 500 MW Solar power from NHPC under CPSU Scheme Phase-II Tranche-III and 1000 MW Solar power from SECI under ISTS Tranche-IX by TGDISCOMs.

2. This is to submit that keeping in view the energy requirements of the state of Telangana TGDISCOMs signed agreement(s) with the following Central Govt agencies as detailed below :

Sl. No.	Procurement capacity (MW)	Agency	Scheme	Date of Agreement
1	1045	NTPC/NTPC REL	CPSU Ph-II Tranche-III	PUA dtd:07.12.2021
2	1000	SECI	ISTS Tranche-IX	PSA dtd:17.02.2022
3	500	NHPC	CPSU Ph-II Tranche-III	PUA dtd:28.03.2023
	2545			

3. Thereafter, TGDISCOMs filed Petition OP No. 69 of 2022 before this Hon'ble Commission praying consent for procurement of –

i. 1045 MW Solar power from NTPC under CPSU Scheme Phase II Tranche III at a tariff of Rs 2.45 per Kwh;

ii. 500 MW Solar power from NHPC under CPSU Scheme Phase II Tranche III at a tariff of Rs 2.45 per Kwh;

iii. 1000 MW Solar power from SECI under ISTS Tranche-IX with a tariff of Rs 2.37/Kwh for 700 MW & Rs 2.38/Kwh for 300 MW (exclusive of trading margin of Rs 0.07 per Kwh);

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(IPC), TGSPDCL,
Corporate Office, 6-1-50,
Mint Compound, Hyd-500004.

4. TGERC issued order dated 26.10.2022 in OP No. 69 of 2022 wherein in-principle approval was accorded under Section 86 (1) (b) of the Electricity Act, 2003 for the said aggregated Solar power procurement of 2545 MW capacity.

5. It was further directed that the TGDISCOMs shall approach the Commission for adoption of tariff upon the same is approved by the CERC along with all relevant PSAs/PUAs.

6. Hence, the present petition.

7. <u>1045 MW through NTPC/NTPC REL under CPSU Scheme Ph-II Tranche-III</u>

a. The details are as submitted below:

Sl. No.	Location of the NTPC Solar PV plant	Capacity (MW)	Power Usage Agreement Date	Tariff (Rs./Kwh)	SCOD
1	Nokh-I, Nokh Solar Park, Pokran, Jaisalmer, Rajasthan	245	07.12.2021	2.45	As per PUA 01.11.2023; extended to 31.03.2025 by IREDA
2	Nokh-II, Nokh Solar Park, Pokran, Jaisalmer, Rajasthan	245	07.12.2021	2.45	As per PUA 01.11.2023; extended to 31.03.2025 by IREDA
3	Nokh-III, Nokh Solar Park, Pokran, Jaisalmer, Rajasthan	245	07.12.2021	2.45	As per PUA 01.11.2023; extended to 31.03.2025 by IREDA
4	NTPC REL Khavda Solar PV Station, Kutch, Gujarat	310	07.12.2021 amended on 13.05.2022	2.45	As per PUA 01.11.2023; extended to 31.03.2025 by IREDA
	Total	1045			

V. P[illegible]
CHIEF ENGINEER
(IPC), TGSPDCL,
Corporate Office, 6-1-50,
Mint Compound, Hyd-500004.

b. Subsequently, MNRE vide order dated 16.09.2022 **(Annexure-I)** increased the maximum usage charges to Rs 2.57/Kwh in view of the Ministry of Finance's Notification No. 8/2021 dated 30.09.2021 **(Annexure-II)** whereby the GST rates for specified renewable energy devices and parts were revised from 5% to 12%. Accordingly, IREDA amended the maximum usage charges in the LoA issued from INR 2.45 to INR 2.57 **(Annexure-III)**.

c. Consequently, supplementary PUAs were signed on 17.03.2023 amending the Usage charges from Rs 2.45/Kwh to Rs 2.57/Kwh **(Annexure-IV)**.

d. NTPC Limited & NTPC REL filed Petition No. 119/AT/2024 before CERC under section 63 of Electricity Act, 2003 seeking adoption of usage charges for 1990 MW Solar Photovoltaic Power Stations (Tranche III) selected through a competitive bidding process under CPSU Scheme Phase II dated 05.03.2019 as per Standard Bidding Guidelines of MoP dated 03.08.2017. The 1045 MW capacity signed with TGDISCOMs is part of this 1990 MW.

e. Vide order dated 22.01.2025, CERC adopted the usage charges of Rs 2.45/Kwh in respect of 1990 MW Solar PV power projects of NTPC & NTPC REL under Tranche III of the CPSU Scheme Phase II. As regards compensation due to Change in Law, it was opined that the PUAs require the Petitioners to approach the Commission for approval for relief for the Change in Law. Accordingly, liberty was granted to approach the Commission through a separate petition within a period of six weeks for seeking relief. However, in the interim, CERC allowed the Change in Law compensation, as communicated by MNRE, as interim relief to be charged by NTPC/NTPC REL on a provisional basis pending the final decision of the Commission **(Annexure-V)**.

V.

CHIEF ENGINEER
(IPC), TGSPDCL,
Corporate Office, 6-1-50,
Mint Compound, Hyd-500004.

8. <u>500 MW through NHPC under CPSU Scheme Phase-II Tranche-III</u>

a. Power Usage Agreement (PUA) was signed by TGDISCOMs with NHPC for procurement of 500 MW Solar power under CPSU Scheme Phase II Tranche III on 28.03.2023. The details of the plant are as below -

Sl. No.	Location of the NHPC Solar PV plant	Capacity (MW)	Power Usage Agreement Date	Tariff (Rs./Kwh)	SCOD
1	Village Khavda, Taluka-Bhuj, Kutch District, Gujarat	500	28.03.2023	2.45	As per PUA 04.04.2024 extended by IREDA till 02.03.2026

b. As per Article 5.3 of the PUA, any extension of SCOD shall be governed as per terms and conditions of CPSU Scheme/LOA of IREDA. IREDA, vide letter dated 06.12.2023 extended SCOD of the project till 30.09.2024. Subsequently, MNRE vide order dated 05.07.2024, extended the Scheduled Commissioning Date for projects awarded under Tranche III of CPSU Scheme Phase II from 30.09.2024 to 31.03.2025. It was further directed that the projects where likely start date of connectivity/completion of requisite power evacuation system is beyond the revised/extended Scheduled Commissioning Date, the SCOD shall be extended till 30 days after the likely start date of connectivity/completion of requisite power evacuation system. Subsequently, vide letter dated 23.09.2024, IREDA granted SCOD extension for Khavda, Gujarat project till 02.03.2026.

c. NHPC filed Petition 154/AT/2024 before CERC for the adoption of the usage charges for the 1000 MW Solar Photovoltaic (PV) Power Station (Tranche III) connected with the Inter-State Transmission System ('ISTS') selected through competitive bidding process under the 'Central Power Sector Undertaking Scheme Phase II (Government Producer Scheme) for

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Corporate Office, 6-1-50,
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setting up 12000 MW grid-connected Solar PV power projects by the Government Producers with Viability Gap Funding (VGF) support for self-use or use by the Government/Government entities, either directly or through the Distribution Companies' dated 05.03.2019 as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power Grid Connected Solar PV Power Projects" dated 03.08.2017 issued by the Ministry of Power, Govt of India.

d. Subsequently, vide order dated 04.09.2024, CERC adopted the usage charge of Rs.2.45/Kwh, under Section 63 of the Act in respect of the 1000 MW Solar PV Power Projects of the Petitioner under Tranche III of the CPSU Scheme. 500 MW PUA signed with TGDISCOMs is part of the said 1000 MW approved capacity. A copy of the CERC order is attached as **Annexure-VI**.

9. <u>1000 MW through Power Sale Agreement (PSA) with SECI under ISTS Tranche-IX</u>

a. The details of agreements signed are as submitted below:

Sl. No.	Name of the Solar Power Developer & location of plant	Capacity (MW)	Date of Power Sale Agreement & PPA	Tariff (Rs./Kwh)	SCOD
1	M/s Ayana Renewable Power Three Private Limited, Bikaner, Rajasthan	300	17.02.2022 19.04.2022	2.38 (plus 0.07 trading margin)	97.16 MW on 15.06.2024 97.16 MW on 10.08.2024 101.68 MW on 02.02.2025 4 MW on 08.02.2025
2	M/s Eden Renewable Bercy Private Limited, Pusar/Pushad, Tehsil Sheo, Barmer District, Rajasthan	300	17.02.2022 28.04.2022	2.37 (plus 0.07 trading margin)	As per PUA 11.10.2023 SCOD extended**

CHIEF ENGINEER
(IPC), TGSPDCL,
Corporate Office, 6-1-50,
Mint Compound, Hyd-500004.

3	M/s IB Vogt Solar Seven Priivate Limited, Neemba, Deora Villages, Fatehgarh, Jaisalmer, Rajasthan	300	17.02.2022 19.04.2022	2.37 (plus 0.07 trading margin)	As per PUA 11.10.2023 SCOD extended** expected by Sep 2025
4	M/s AMP Energy Green Five Private Limited, Badi Seed & Ranjeet Nagar Villages, Bap, Jodhpur, Rajasthan	100	17.02.2022 12.04.2022	2.37 (plus 0.07 trading margin)	Commissioned on 11.06.2024
	Total	1000			

** in view of delay in operationalization of connectivity approval granted by CTU, SECI granted extension of SCOD for a period of 60 days subsequent to the operationalization of LTA/Connectivity or actual date of commissioning, whichever is earlier

b. Earlier, SECI filed a Petition bearing No. 211/AT/2021 under Section 63 of the Act before the Commission for adoption of above 2000 MW Solar Power Projects under Tranche IX.

c. Thereafter, vide order dated 08.03.2022, CERC held that the selection of bidders and the tariff has been discovered through a transparent process of competitive bidding in accordance with the guidelines. However, Commission restricted the adoption of tariff only with respect to the quantum (300 MW) for which PPAs were signed with the SPDs and granted liberty to approach the Commission for adoption of tariff in respect of balance capacity 1700 MW after such capacity is tied up under the PPAs and PSAs.

d. Subsequently, SECI filed Petition No. 245/AT/2022 before CERC under section 63 of the Electricity Act 2003 for adoption of tariff for the Solar power projects (Tranche IX) for balance 1700 MW capacity connected to

CHIEF ENGINEER
(IPC), TGSPDCL,
Corporate Office, 6-1-50,
Mint Compound, Hyd-500004.

the ISTS and selected through competitive bidding process as per the guidelines of Govt of India.

e. Taking note of the PPAs & PSAs signed, CERC vide order dated 08.03.2023, adopted individual tariff for the Solar power projects to the tune of 1400 MW along with trading margin of Rs 0.07/Kwh.

f. The 1000 MW capacity SPDs under Tranche IX are covered under these two CERC orders dated 08.03.2022 & 08.03.2023. The copies of the CERC orders are placed as **Annexure-VII & VIII**.

10. In light of the adoption of tariff orders issued by CERC, this Hon'ble Commission is prayed for issuing adoption of tariff orders for procurement of 1045 MW Solar power from NTPC under CPSU Scheme Phase-II Tranche-III, 500 MW Solar power from NHPC under CPSU Scheme Phase-II Tranche-III and 1000 MW Solar power from SECI under ISTS Tranche-IX by TSDISCOMs.

Petitioner-1

CHIEF ENGINEER
(IPC), TGSPDCL,
Corporate Office, 6-1-50,
Mint Compound, Hyd-500004.

Petitioner-1

on behalf of Petitioner-2

CHIEF ENGINEER
(IPC), TGSPDCL,
Corporate Office, 6-1-50,
Mint Compound, Hyd-500004.

Place: Hyderabad
Date:

BEFORE THE HON'BLE TELANGANA ELECTRICITY REGULATORY COMMISSION
ERRAGADDA, HYDERABAD

O.P No. of 2025

IN THE MATTER OF

Seeking adoption of tariff u/s 63, 86(1)(b) of the Electricity Act, 2003 and u/s 21 (4) of Telangana Electricity Reforms Act, 1998 pertaining to procurement of 1045 MW Solar power from NTPC under CPSU Scheme Phase-II Tranche-III, 500 MW Solar power from NHPC under CPSU Scheme Phase-II Tranche-III and 1000 MW Solar power from SECI under ISTS Tranche-IX by TGDISCOMs

IN THE MATTER OF

SOUTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED
Rep. by its Chairman & Managing Director,
TGSPDCL, Corporate Office, Mint Compound, Hyderabad.

NORTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED
Rep. by its Chairman & Managing Director,
TGNPDCL, Vidyut Bhavan, Nakkalagunta, Warangal.

..... Petitioners

AFFIDAVIT OF APPLICANT VERIFYING THE ACCOMPANYING PETITION

I, V.Prabhakar, S/o. Narayanappa, aged about 58 Years, Occupation: Chief Engineer (IPC), TGSPDCL, Hyderabad, R/o. Hyderabad do solemnly affirm and say as follows:

1) I am Chief Engineer (IPC)/TGSPDCL, am competent and duly authorized by TGSPDCL to affirm, swear, execute and file this affidavit in the present proceedings.

CHIEF ENGINEER
(IPC), TGSPDCL,
Corporate Office, 6-1-50,
Mint Compound, Hyd-500004.

2) I have read and understood the contents of the accompanying application drafted pursuant to my instructions. The statements made in the paragraphs of accompanying application now shown to me are true to my knowledge derived from the official records made available to me and are based on information and advice received which I believe to be true and correct.

DEPONENT
CHIEF ENGINEER
(IPC), TGSPDCL,
Corporate Office, 6-1-50,
Mint Compound, Hyd-500004.

VERIFICATION

The above named Deponent solemnly affirm at Hyderabad on this _____day of _____, 2025 that the contents of the above Affidavit are true to my knowledge no part of it is false and nothing material has been concealed there from.

Solemnly affirmed and signed before me.

DIVISIONAL ENGINEER
(IPC) TGSPDCL,
Corporate Office, 6-1-50
Mint Compound

ATTESTED
CHIEF ENGINEER
(IPC), TGSPDCL,
Corporate Office, 6-1-50,
Mint Compound, Hyd-500004.

Annexure-I

No. 283/11/2017-GRID SOLAR

भारत सरकार / Government of India

नवीन और नवीकरणीय ऊर्जा मंत्रालय/ Ministry of New & Renewable Energy (MNRE)

ग्रिड सौर ऊर्जा प्रभाग / Grid Solar Power Division

Atal Akshay Urja Bhawan,
Lodhi Road, New Delhi – 110003
Date: 16th September, 2022

To

Chairman & Managing Director,
Indian Renewable Energy Development Agency Limited (IREDA)
India Habitat Centre, East Court, Core-4A, First Floor,
Lodhi Road, New Delhi-110003.

Sub: **Projects awarded under Tranche-III of Central Public Sector Undertaking (CPSU) Scheme Phase-II (Government Producer Scheme): Increase of maximum usage charges on account of increase in GST rates – reg.**

Sir,

By virtue of Notification No. 8/2021 dated 30.09.2021, the GST rate for specified renewable energy devices and parts for their manufacture have increased from 5% to 12%.

2. Representations were received in MNRE in respect of solar PV power projects awarded under CPSU Scheme Phase-II, stating that GST rate has increased from 8.9% to 13.8% of total solar project cost due to its revision for solar equipment from 5% to 12% and requesting MNRE to take necessary action to offset the impact of increased GST rate under 'Change-in-Law' on solar PV power projects awarded under Tranche-III of CPSU Scheme Phase-II.

3. The matter has been examined and considering change in GST rates as 'Change in Law', it has been decided that for Tranche-III of CPSU Scheme Phase-II being implemented through IREDA, the maximum usage charge, which was Rs. 2.45/kWh is hereby increased by 4.9% to 2.45 x 1.049 = 2.57 Rs./kWh.

4. This issues with approval of Hon'ble Minister (Power & NRE).

Yours faithfully,

(Sanjay G. Karndhar)
Scientist-D
Email: karndhar.sg@nic.in
Tel:011-20849047

Copy to:

Addl. Chief Secretaries / Pr. Secretaries / Secretaries of Power / Energy / Renewable Energy Departments of State Governments/ UT Govts./ Administrations (for information and necessary action)

Copy for Internal Circulation:

PS to Hon'ble Minister (Power & NRE)/ PSO to Secretary/ Sr. PPS to AS (VK)/ Sr. PPS to JS&FA/ DS (VD)

Annexure -II

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
Notification No. 8/2021-Central Tax (Rate)

New Delhi, the 30th September, 2021

G.S.R. .....(E).- In exercise of the powers conferred by sub-section (1) of section 9 and sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 673(E)., dated the 28th June, 2017, namely:-

In the said notification, -

(a) in Schedule I – 2.5%, -

(i) after S. No. 71 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

"71A	1209	Tamarind seeds meant for any use other than sowing";

(ii) S. Nos. 138 to 148 and the entries relating thereto shall be omitted;

(iii) after S. No. 186 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

"186A	3826	Bio-diesel supplied to Oil Marketing Companies for blending with High Speed Diesel";

(iv) S. No. 187A and the entries relating thereto shall be omitted;

(v) S. No. 234 and the entries relating thereto shall be omitted;

(vi) in List 1, after item number 231 and the entries relating thereto, the following shall be inserted, namely: -

"(232) Pembrolizumab (Keytruda)";

(vii) in List 3, after item number (B) (2) and the entries relating thereto, the following shall be inserted, namely: -

" (3) Retro fitment kits for vehicles used by the disabled";

(b) in Schedule II – 6%, -

(i) against S. No. 80A, in column (3), for the entry, the following entry shall be substituted, namely: -

"Bio-diesel (other than bio-diesel supplied to Oil Marketing Companies for blending with High Speed Diesel)";

(ii) S. No. 122 and the entries relating thereto shall be omitted;

(iii) S. Nos. 127 to 132 and the entries relating thereto shall be omitted;

(iv) after S. No. 201 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

"201A	84, 85 or 94	Following renewable energy devices and parts for their manufacture:- (a) Bio-gas plant; (b) Solar power based devices; (c) Solar power generator; (d) Wind mills, Wind Operated Electricity Generator (WOEG); (e) Waste to energy plants / devices; (f) Solar lantern / solar lamp; (g) Ocean waves/tidal waves energy devices/plants; (h) Photo voltaic cells, whether or not assembled in modules or made up into panels. Explanation:- If the goods specified in this entry are

		supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.”;

(v) S. Nos. 205A to 205H and the entries relating thereto shall be omitted;

(vi) S. No. 232 and the entries relating thereto shall be omitted;

(c) in Schedule III – 9%, -

(i) after S. No. 26B and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

“26C	2601	Iron ores and concentrates, including roasted iron pyrites.
26D	2602	Manganese ores and concentrates, including ferruginous manganese ores and concentrates with a manganese content of 20% or more, calculated on the dry weight.
26E	2603	Copper ores and concentrates.
26F	2604	Nickel ores and concentrates.
26G	2605	Cobalt ores and concentrates.
26H	2606	Aluminium ores and concentrates.
26I	2607	Lead ores and concentrates.
26J	2608	Zinc ores and concentrates.
26K	2609	Tin ores and concentrates.

26L	2610	Chromium ores and concentrates.”;

(ii) after S. No. 101 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

“101A	3915	Waste, Parings and Scrap, of Plastics.”;

(iii) for S. No. 153A and the entries relating thereto, the following S. No. and the entries shall be substituted, namely: -

“153A.	4819	Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like.”;

(iv) after S. No. 157 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

“157A.	4906 00 00	Plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, being originals drawn by hand; hand-written texts; photographic reproductions on sensitised paper and carbon copies of the foregoing.
157B.	4907	Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognised face value; stamp-impressed paper; banknotes; cheque forms; stock, share or bond certificates and similar documents of title (other than Duty Credit Scrips).
157C.	4908	Transfers (decalcomanias).
157D.	4909	Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.
157E.	4910	Calendars of any kind, printed, including calendar blocks.
157F.	4911	Other printed matter, including printed pictures and photographs; such as Trade advertising material, Commercial catalogues and the like, printed Posters, Commercial catalogues, Printed inlay

		cards, Pictures, designs and photographs, Plan and drawings for architectural engineering, industrial, commercial, topographical or similar purposes reproduced with the aid of computer or any other devices.”;

(v) after S. No. 398 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

“398A	8601	Rail locomotives powered from an external source of electricity or by electric accumulators.
398B	8602	Other rail locomotives; locomotive tenders; such as Diesel electric locomotives, Steam locomotives and tenders thereof.
398C	8603	Self-propelled railway or tramway coaches, vans and trucks, other than those of heading8604.
398D	8604	Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, track liners, testing coaches and track inspection vehicles).
398E	8605	Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604).
398F	8606	Railway or tramway goods vans and wagons, not self-propelled.
398G	8607	Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof.
398H	8608	Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing.”;

(vi) against S. No. 447, in column (3), for the entry, the entry “Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens; stylograph pens and

other pens; duplicating stylos; pen holders, pencil holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609.", shall be substituted;

(d) in Schedule IV – 14%, -

(i) after S. No. 12A and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

"12B	2202	Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice.";

2. This notification shall come into force on the 1st day of October, 2021.

[F.No.190354/206/2021-TRU]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: - The principal notification No.1/2017-Central Tax (Rate), dated the 28th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 673(E), dated the 28th June, 2017, and was last amended by notification No. 01/2021 – Central Tax (Rate), dated the 2nd June, 2021,published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 374(E), dated the 2nd June, 2021.

Annexure-III

459

FW: Increase of maximum usage charges on account of increase in GST rates - reg

From: CPSU Scheme <cpsuscheme@ireda.in>
Sent: Friday, October 7, 2022 11:09 AM
Cc: CMD <cmd@ireda.in>; Chintan Shah <cnshah@ireda.in>; Debjani Bhatia <debjani@ireda.in>
Subject: Increase of maximum usage charges on account of increase in GST rates - reg

CAUTION: This Email has been sent from outside the Organization. Unless you trust the sender, Don't click links or open attachments as it may be a Phishing email, which can steal your Information and compromise your Computer.

Dear Sir/Madam

By virtue of Notification No. 8 /2021 dated 30.09.2021, the GST rate for specified renewable energy devices and parts for their manufacture have increased from 5% to 12%. In this regard, representations were received by MNRE, the matter was examined and considering change in GST rate as "Change in Law", the maximum usage charge has been revised to the INR 2.57 by MNRE, for Tranche-III of the CPSU Scheme phase-II

Accordingly, the maximum usage charge, as mentioned in the clause I of the LoA released to your organisation is hereby amended form INR 2.45 to INR 2.57. All the other conditions, as mentioned originally, remain unchanged.

Regards

CPSU Team
IREDA

आज़ादी का
अमृत महोत्सव

Scanned with OKEN Scanner

Annexure-IV

SUPPLEMENTARY POWER USAGE AGREEMENT

(AMENDMENT NO. 1)

FOR

POWER USAGE AGREEMENT

BETWEEN

NTPC LIMITED

AND

Southern Power Distribution Company of Telangana Limited

&

Northern Power Distribution Company of Telangana Limited

For

Supply of 245 MW Solar Power

From

NTPC SOLAR PV STATION OF 245 MW

at Nokh Solar Park, Rajasthan

NTPC Limited
Secunderabad
Pin-500 080
A Govt. of India Enterprise

CHIEF GENERAL MANAGER
(IPC), TSSPDCL,
Corporate Office, 2nd Floor,
Mint Compound, Hyd-500 063

TSNPDCL
WARANGAL

भारतीय गैर-न्यायिक

एक सौ रुपये

Rs. 100

ONE HUNDRED RUPEES

रु. 100

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

16/03/2023

AT 381736

తెలంగాణ तेलंगाना TELANGANA

Sl.No. 2772 Dt:16-03-2023

Sold to: KALYANI KIMIDI

W/o. T.ANANTHA RAO

For Whom: NTPC LTD

K.SATISH KUMAR
LICENSED STAMP VENDOR
LIC No.16-05-059/2012,
R.No.16-05-029/2021
Plot No.227, Opp.Back Gate
of City Civil Court,
West Marredpally, Sec'bad.

This Supplemental Agreement to the Power Usage Agreement signed between NTPC Ltd and Southern Power Distribution Company of Telangana Limited & Northern Power Distribution Company of Telangana Limited having effective date of 07.12.2021 is signed on the Seventeenth day of March Two Thousand Twenty-Three (17.03.2023) at Hyderabad

Between

NTPC Limited, a Government of India Undertaking and a Company incorporated under the Companies Act, 1956 having its registered office at NTPC Bhawan, Core 7, SCOPE Complex, 7, Institutional Area, Lodhi Road, New Delhi –110003 (hereinafter referred to as '**NTPC**') which expression shall, unless repugnant to the context or meaning thereof include its successors and Permitted Assignees as party of the One Part;

NTPC Limited Secunderabad Pin-500 080 A Govt. of India Enterprise

CHIEF GENERAL MANAGER (IPC), TSSPDCL, Corporate Office, T-Hub, Hitech City Road, Gachibowli, Hyderabad-500 032

20

And

Southern Power Distribution Company of Telangana Limited & Northern Power Distribution Company of Telangana Limited Companies incorporated under the Companies Act, 1956 or Companies Act, 2013 as the case may be, having its Head Office at Hyderabad & Warangal and being a Licensee under the Electricity Act, 2003 (hereinafter referred to as 'Distribution Licensee') which expression shall unless repugnant to the context or meaning thereof include its successors and Permitted Assigns as party of the other part.

Each of the parties of the first and second above is individually referred to as a "Party" and collectively as the "Parties".

WHEREAS:

A. The Ministry of New & Renewable Energy ('MNRE') , on 5.03.2019, has issued the "Central Public Sector Undertaking (CPSU) Scheme Phase-II (Government Producer Scheme) for setting up 12,000 MW grid-connected Solar Photovoltaic (PV) Power Projects by the Government Producers with Viability Gap Funding (VGF) support for self-use or use by Government/Government entities, either directly or through Distribution Companies (DISCOMS)", as amended from time to time (hereinafter referred to as 'CPSU Scheme');

B. Ministry of New and Renewable Energy (MNRE), Government of India vide Office Memorandum dated 13.04.2020 has identified Indian Renewable Energy Development Agency Ltd., (IREDA) as the Nodal Agency for handling the CPSU Scheme on behalf of MNRE;

C. NTPC Limited has been declared as a successful bidder under the RfS No 23016/1/2020-IREDA/RfS/5000 MW/ 012021 dated 29.01.2021 issued by IREDA for development of 1990 MW Solar Photovoltaic Power Project.

D. In pursuance to the above, IREDA has issued the Letter of Award [LoA No 23016/1/2020-IREDA/RfS/5000 MW/012021/960] dated 04.10.2021 to NTPC for

NTPC Limited Secunderabad Pin-500 080 A Govt of India Enterprise

CHIEF GENERAL MANAGER (IPC), TSSPDCL Corporate Office, 6-3-540, Mint Compound, Hyd-500 063

development of a Solar PV Power Project of 1990 MW and to make available the quantum of electricity for the end use of the electrical energy by the Government/Government Entities through the Distribution Licensee;

E. NTPC is a Government Producer within the scope of the CPSU Scheme being a Generating Company within the meaning of Section 2(28) of the Electricity Act, 2003 and a Government of India Enterprise, with more than 50% of its shareholding being owned and controlled by the Central Government. Further as per the provisions of the Rfs 245 MW Solar Photovoltaic Power Project named as NTPC Nokh-1 Solar PV Station at Village Nokh, Tehsil Pokran, District Jaisalmer, Rajasthan (herein after referred to as 'Solar PV Station' and generally referred to as 'Station') is being executed by NTPC;

F. End User is also an entity owned and controlled by Government of Telangana and qualifies under CPSU Scheme.

G. AND WHEREAS NTPC has signed Power Usage Agreement with Southern Power Distribution Company of Telangana Limited & Northern Power Distribution Company of Telangana Limited on 07.12.2021 for supply of 245 MW power from NTPC SOLAR PV STATION OF 245 MW Nokh-1 Solar PV Station at Nokh, Jaisalmer, Rajasthan.

H. AND WHEREAS MoF vide notification No. 8/2021-Integrated Tax (Rate) dated 30.09.2021 has increased the GST for renewable energy devices and parts to 12% from earlier rate of 5% which shall qualify under change in law clause of the signed PUA.

I. AND WHEREAS MNRE vide its letter ref. No. 283/11/2017-GRID SOLAR dated 16.09.2022 has communicated to IREDA that considering change in GST rate as 'Change in Law' the maximum usage charges, which was Rs. 2.45/kWh is hereby increased to Rs. 2.57/kWh.

J. AND WHEREAS IREDA through e-mail dated 07.10.2022 has communicated to

NTPC Limited Secunderabad Pin-500 080 A Govt. of India Enterprise

CHIEF GENERAL MANAGER (IPC), TSSP... Corporate... Mint Compound, Hyd-500 063

TSNPDCL WARANGAL

NTPC that to give effect the MoF notification dated 30.09.2021 regarding the change in GST rate as "Change in Law", the maximum usage charge has been revised to the INR 2.57 for Tranche-III of the CPSU Scheme phase-II.

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES AND MUTUAL AGREEMENTS, COVENANTS AND CONDITIONS SET FORTH HEREIN; IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

Clause	Existing Provision	Revised provision
6.1	The Usage Charges for the power made available by NTPC from Solar PV Station shall be payable by Distribution Licensee@ **Rs 2.45 /kWh,** which shall be exclusive of any other third-party charges like wheeling and transmission charges and losses, point of connection charges and losses, cross-subsidy surcharges, SLDC/RLDC charges etc. as may be applicable. The Usage Charges for contracted capacity shall be payable from the date of commissioning of the project or the part capacity as the case may be. The parties acknowledge and accept that Usage Charges has been determined in accordance with CPSU Scheme of	The Usage Charges for the power made available by NTPC from Solar PV Station shall be payable by Distribution Licensee@ **Rs 2.57 /kWh,** which shall be exclusive of any other third-party charges like wheeling and transmission charges and losses, point of connection charges and losses, cross-subsidy surcharges, SLDC/RLDC charges etc. as may be applicable. The Usage Charges for contracted capacity shall be payable from the date of commissioning of the project or the part capacity as the case may be. The parties acknowledge and accept that Usage Charges has been determined in accordance with CPSU Scheme of the Government of India to assist the

NTPC Limited Secunderabad Pin-500 080 A Govt. of India Enterprise

CHIEF GENERAL MANAGER (IPC), TSPDCL, Corporate Office, Mint Compound, Hyderabad-500 063

TSNPDCL WARANGAL

	the Government of India to assist the development of solar projects and usage of the energy generated by the Government/Government Entities, with Government of India providing VGF support.	development of solar projects and usage of the energy generated by the Government/Government Entities, with Government of India providing VGF support.
10.1	"Change in Law" shall mean the occurrence of any of the following events after the last date of bid submission (i.e. 31.08.2021), resulting into any additional recurring/ non-recurring expenditure by the NTPC or any income to the NTPC: a. the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law; b. a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of	"Change in Law" shall mean the occurrence of any of the following events after the last date of bid submission (i.e. 31.08.2021), resulting into any additional recurring/ non-recurring expenditure by the NTPC or any income to the NTPC. **However, any additional recurring/ non-recurring expenditure by the NTPC or any income to the NTPC on account of MoF notification No. 8/2021-Integrated Tax (Rate) dated 30.09.2021 wherein GST for renewable energy devices and parts has raised to 12% from earlier rate of 5% shall not be considered as Change in Law.** a. the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-

NTPC Limited Secunderabad Pin-500 060 A Govt. of India Enterprise

CHIEF GENERAL MANAGER (IPC), TS-PLCs, Corporate Office, E-9, Mint Compound, Hyd-500 057

	Law; c. the imposition of a requirement for obtaining any Consents, Clearances, Permits and/or licenses which was not required earlier; d. a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the NTPC; e. any statutory change in tax structure or any change in the rates of any taxes or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power by the NTPC to the Distribution Licensee.	enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law; b. a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law; c. the imposition of a requirement for obtaining any Consents, Clearances, Permits and/or licenses which was not required earlier; d. a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the NTPC; e. any statutory change in tax structure or any change in the rates of any taxes or introduction of any new tax made applicable for setting up of

NTPC Limited Secunderabad Pin-500 080 A Govt. of India Enterprise

CHIEF GENERAL MANAGER (IPC)

		Solar Power Project and supply of power by the NTPC to the Distribution Licensee.

Except the aforesaid amendment, the Parties acknowledge and confirm that all other terms and conditions contained in the Power Usages Agreement dated 07.12.2021 shall continue to apply as before. IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of NTPC

रोहित छाबड़ा
ROHIT CHHABRA
महाप्रबंधक (वाणिज्यिक)
General Manager (Commercial)
एन टी पी सी लिमिटेड, द.क्षे.मु. कवाडीगुडा, सिकंदराबाद-८०
NTPC Limited SRHQ, Kavadiguda, Secunderabad - 80.

Name and Designation

For and on behalf of Distribution Licensee

CHIEF GENERAL MANAGER
(IPC), TSSPDCL,
Corporate Office, 1-8-31,
Mint Compound, Hyderabad-063

Name and Designation

T. Madhusudhan.,
Chief General Manager,
IPC & RAC, TSNPDCL,
Warangal

Witness

1. B.V. Shanthi Sarkar
ED/Comml, TSPCC

2. Kalyani
(Kalyani Kimidi)
DGM (Comml-), SRHQ
NTPC Ltd.

Annexure-IV

SUPPLEMENTARY POWER USAGE AGREEMENT

(AMENDMENT NO. 1)

FOR

POWER USAGE AGREEMENT

BETWEEN

NTPC LIMITED

AND

Southern Power Distribution Company of Telangana Limited

&

Northern Power Distribution Company of Telangana Limited

For

Supply of 245 MW Solar Power

From

NTPC SOLAR PV STATION OF 245 MW

at Nokh Solar Park, Rajasthan

NTPC Limited
Secunderabad
Pin-500 080
A Govt. of India Enterprise

CHIEF GENERAL MANAGER
(IPC), TSSPDCL,
Corporate Office, 6-1-50,
Mint Compound, Hyd-500 063

TSNPDCL
WARANGAL

भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

ONE HUNDRED RUPEES

रु. 100

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

16/03/2023

AT 381736

తెలంగాణ तेलंगाना TELANGANA

Sl.No. 2772 **Dt:16-03-2023**

Sold to: KALYANI KIMIDI

W/o. T.ANANTHA RAO

For Whom: NTPL LTD

K.SATISH KUMAR
LICENSED STAMP VENDOR
LIC No.16-05-059/2012,
R.No.16-05-029/2021
Plot No.227, Opp.Back Gate of City Civil Court,
West Marredpally, Sec'bad.

This Supplemental Agreement to the Power Usage Agreement signed between NTPC Ltd and Southern Power Distribution Company of Telangana Limited & Northern Power Distribution Company of Telangana Limited having effective date of 07.12.2021 is signed on the Seventeenth day of March Two Thousand Twenty-Three (17.03.2023) at Hyderabad

Between

NTPC Limited, a Government of India Undertaking and a Company incorporated under the Companies Act, 1956 having its registered office at NTPC Bhawan, Core 7, SCOPE Complex, 7, Institutional Area, Lodhi Road, New Delhi –110003 (hereinafter referred to as '**NTPC**') which expression shall, unless repugnant to the context or meaning thereof include its successors and Permitted Assignees as party of the One Part;

NTPC Limited Secunderabad Pin-500 080

CHIEF GENERAL MANAGER (IPC), TSSPDCL, Corporate Office, 6-1-50, Mint Compound, Hyd-500 063

TSNPDCL

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And

Southern Power Distribution Company of Telangana Limited & Northern Power Distribution Company of Telangana Limited Companies incorporated under the Companies Act, 1956 or Companies Act, 2013 as the case may be, having its Head Office at Hyderabad & Warangal and being a Licensee under the Electricity Act, 2003 (hereinafter referred to as 'Distribution Licensee') which expression shall unless repugnant to the context or meaning thereof include its successors and Permitted Assigns as party of the other part.

Each of the parties of the first and second above is individually referred to as a "Party" and collectively as the "Parties".

WHEREAS:

A. The Ministry of New & Renewable Energy ('MNRE') , on 5.03.2019, has issued the "Central Public Sector Undertaking (CPSU) Scheme Phase-II (Government Producer Scheme) for setting up 12,000 MW grid-connected Solar Photovoltaic (PV) Power Projects by the Government Producers with Viability Gap Funding (VGF) support for self-use or use by Government/Government entities, either directly or through Distribution Companies (DISCOMS)", as amended from time to time (hereinafter referred to as 'CPSU Scheme');

B. Ministry of New and Renewable Energy (MNRE), Government of India vide Office Memorandum dated 13.04.2020 has identified Indian Renewable Energy Development Agency Ltd., (IREDA) as the Nodal Agency for handling the CPSU Scheme on behalf of MNRE;

C. NTPC Limited has been declared as a successful bidder under the RfS No 23016/1/2020-IREDA/RfS/5000 MW/ 012021 dated 29.01.2021 issued by IREDA for development of 1990 MW Solar Photovoltaic Power Project.

D. In pursuance to the above, IREDA has issued the Letter of Award [LoA No 23016/1/2020-IREDA/RfS/5000 MW/012021/960] dated 04.10.2021 to NTPC for

NTPC Limited Secunderabad Pin-500 080 A Govt of India Enterprise

CHIEF GENERAL MANAGER (IPC), TSSPDCL Corporate Office, 6-3-750, Mint Compound, Hyderabad-500 063

development of a Solar PV Power Project of 1990 MW and to make available the quantum of electricity for the end use of the electrical energy by the Government/Government Entities through the Distribution Licensee;

E. NTPC is a Government Producer within the scope of the CPSU Scheme being a Generating Company within the meaning of Section 2(28) of the Electricity Act, 2003 and a Government of India Enterprise, with more than 50% of its shareholding being owned and controlled by the Central Government. Further as per the provisions of the Rfs 245 MW Solar Photovoltaic Power Project named as NTPC Nokh-1 Solar PV Station at Village Nokh, Tehsil Pokran, District Jaisalmer, Rajasthan (herein after referred to as 'Solar PV Station' and generally referred to as 'Station') is being executed by NTPC;

F. End User is also an entity owned and controlled by Government of Telangana and qualifies under CPSU Scheme.

G. AND WHEREAS NTPC has signed Power Usage Agreement with Southern Power Distribution Company of Telangana Limited & Northern Power Distribution Company of Telangana Limited on 07.12.2021 for supply of 245 MW power from NTPC SOLAR PV STATION OF 245 MW Nokh-1 Solar PV Station at Nokh, Jaisalmer, Rajasthan.

H. AND WHEREAS MoF vide notification No. 8/2021-Integrated Tax (Rate) dated 30.09.2021 has increased the GST for renewable energy devices and parts to 12% from earlier rate of 5% which shall qualify under change in law clause of the signed PUA.

I. AND WHEREAS MNRE vide its letter ref. No. 283/11/2017-GRID SOLAR dated 16.09.2022 has communicated to IREDA that considering change in GST rate as 'Change in Law' the maximum usage charges, which was Rs. 2.45/kWh is hereby increased to Rs. 2.57/kWh.

J. AND WHEREAS IREDA through e-mail dated 07.10.2022 has communicated to

IREDA Limited Secunderabad Pin-500 080 A Govt. of India Enterprise

CHIEF GENERAL MANAGER (IPC), TSSP Corporate Office, 6-3-668, Mint Compound, Hyderabad-500 063

TSNPDCL WARANGAL

NTPC that to give effect the MoF notification dated 30.09.2021 regarding the change in GST rate as "Change in Law", the maximum usage charge has been revised to the INR 2.57 for Tranche-III of the CPSU Scheme phase-II.

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES AND MUTUAL AGREEMENTS, COVENANTS AND CONDITIONS SET FORTH HEREIN; IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

Clause	Existing Provision	Revised provision
6.1	The Usage Charges for the power made available by NTPC from Solar PV Station shall be payable by Distribution Licensee@ **Rs 2.45 /kWh,** which shall be exclusive of any other third-party charges like wheeling and transmission charges and losses, point of connection charges and losses, cross-subsidy surcharges, SLDC/RLDC charges etc. as may be applicable. The Usage Charges for contracted capacity shall be payable from the date of commissioning of the project or the part capacity as the case may be. The parties acknowledge and accept that Usage Charges has been determined in accordance with CPSU Scheme of	The Usage Charges for the power made available by NTPC from Solar PV Station shall be payable by Distribution Licensee@ **Rs 2.57 /kWh,** which shall be exclusive of any other third-party charges like wheeling and transmission charges and losses, point of connection charges and losses, cross-subsidy surcharges, SLDC/RLDC charges etc. as may be applicable. The Usage Charges for contracted capacity shall be payable from the date of commissioning of the project or the part capacity as the case may be. The parties acknowledge and accept that Usage Charges has been determined in accordance with CPSU Scheme of the Government of India to assist the

NTPC Limited Secunderabad Pin-500 080 A Govt. of India Enterprise

CHIEF GENERAL MANAGER (IPC)

	the Government of India to assist the development of solar projects and usage of the energy generated by the Government/Government Entities, with Government of India providing VGF support.	development of solar projects and usage of the energy generated by the Government/Government Entities, with Government of India providing VGF support.
10.1	"Change in Law" shall mean the occurrence of any of the following events after the last date of bid submission (i.e. 31.08.2021), resulting into any additional recurring/ non-recurring expenditure by the NTPC or any income to the NTPC: a. the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law; b. a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of	"Change in Law" shall mean the occurrence of any of the following events after the last date of bid submission (i.e. 31.08.2021), resulting into any additional recurring/ non-recurring expenditure by the NTPC or any income to the NTPC. **However, any additional recurring/ non-recurring expenditure by the NTPC or any income to the NTPC on account of MoF notification No. 8/2021-Integrated Tax (Rate) dated 30.09.2021 wherein GST for renewable energy devices and parts has raised to 12% from earlier rate of 5% shall not be considered as Change in Law.** a. the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-

NTPC Limited Secunderabad Pin-500 080 A Govt. of India Enterprise

CHIEF GENERAL MANAGER (IPC), TS-IPCL, Corporate Office, E-9/3, Mint Compound, Hyderabad-500 063

	Law; c. the imposition of a requirement for obtaining any Consents, Clearances, Permits and/or licenses which was not required earlier; d. a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the NTPC; e. any statutory change in tax structure or any change in the rates of any taxes or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power by the NTPC to the Distribution Licensee.	enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law; b. a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law; c. the imposition of a requirement for obtaining any Consents, Clearances, Permits and/or licenses which was not required earlier; d. a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the NTPC; e. any statutory change in tax structure or any change in the rates of any taxes or introduction of any new tax made applicable for setting up of

NTPC Limited Secunderabad Pin-500 080 A Govt. of India Enterprise

CHIEF GENERAL MANAGER (IPC)

		Solar Power Project and supply of power by the NTPC to the Distribution Licensee.

Except the aforesaid amendment, the Parties acknowledge and confirm that all other terms and conditions contained in the Power Usages Agreement dated 07.12.2021 shall continue to apply as before. IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of NTPC

रोहित छाबड़ा
ROHIT CHHABRA
महाप्रबंधक (वाणिज्यिक)
General Manager (Commercial)
एन टी पी सी लिमिटेड, द.क्षे.मु. कवाडीगुडा, सिकंदराबाद-८०
NTPC Limited SRHQ, Kavadiguda, Secunderabad - 80.

Name and Designation

For and on behalf of Distribution Licensee

CHIEF GENERAL MANAGER
(IPC), TSSPDCL,
Corporate Office, 1-7-50,
Mint Compound, Hyd-500 063

Name and Designation

T. Madhusudhan.,
Chief General Manager,
IPC & RAC, TSNPDCL,
Warangal

Witness

1. B.V. Shanthi Sarma
ED/Comml, TSSCC

2. Kalyani
(Kalyani Kimidi)
DGM (Commtl-), SRHQ
NTPC Ltd.

SUPPLEMENTARY POWER USAGE AGREEMENT

(AMENDMENT NO. 2)

FOR

POWER USAGE AGREEMENT

BETWEEN

NTPC Renewable Energy LIMITED

AND

Southern Power Distribution Company of Telangana Limited

&

Northern Power Distribution Company of Telangana Limited

For

Supply of 310 MW Solar Power

From

NTPC Renewable Energy LIMITED SOLAR PV STATION OF 310 MW at Khavda, Kutch, Gujarat

Raju Kumar

NTPC Renewable Energy Limited ★ Greater Noida ★

CHIEF GENERAL MANAGER
(IPC), TSSP
Corporate Office
Mint Compound, Hyd-500 063

TSNPDCL WARANGAL

भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

ONE HUNDRED RUPEES

₹. 100

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

16/03/2023

AT 381743

తెలంగాణ तेलंगाना TELANGANA

Sl.No. 2779 Dt:16-03-2023

Sold to: RAJIV KUMAR

S/o.SHRI PRAKASH CHANDRA GUPTA

For Whom: NTPC RENEWABLE ENERGY LTD.

K.SATISH KUMAR
LICENSED STAMP VENDOR
LIC No.16-05-059/2012,
R.No.16-05-029/2021
Plot No.227, Opp.Back Gate of City Civil Court,
West Marredpally, Sec'bad.

This Supplemental Agreement to the Power Usage Agreement signed between NTPC REL and Southern Power Distribution Company of Telangana Limited & Northern Power Distribution Company of Telangana Limited having effective date of 07.12.2021 is signed on the Seventeenth day of March Two Thousand Twenty-Three (17.03.2023) at Hyderabad

Between

NTPC Renewable Energy Limited, a wholly owned subsidiary of NTPC Limited, a Government of India Undertaking and a Company incorporated under the Companies Act, 1956 having its registered office at NTPC Bhawan, Core 7, SCOPE Complex, 7, Institutional Area, Lodhi Road, New Delhi –110003 (hereinafter referred to as '**NTPC REL**')

Rajiv Kumar

NTPC Renewable Energy Limited Greater Noida

CHIEF GENERAL MANAGER
(IPC), TSSPDCL,
Corporate Office, 1-90,
Mint Compound, Hyd-500 063

TSNPDCL WARANGAL

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which expression shall, unless repugnant to the context or meaning thereof include its successors and Permitted Assignees as party of the One Part;

And

Southern Power Distribution Company of Telangana Limited & Northern Power Distribution Company of Telangana Limited Companies incorporated under the Companies Act, 1956 or Companies Act, 2013 as the case may be, having its Head Office at Hyderabad & Warangal and being a Licensee under the Electricity Act, 2003 (hereinafter referred to as 'Distribution Licensee') which expression shall unless repugnant to the context or meaning thereof include its successors and Permitted Assigns as party of the other part.

Each of the parties of the first and second above is individually referred to as a "Party" and collectively as the "Parties".

WHEREAS:

A. The Ministry of New & Renewable Energy ('MNRE') , on 05.03.2019, has issued the "Central Public Sector Undertaking (CPSU) Scheme Phase-II (Government Producer Scheme) for setting up 12,000 MW grid-connected Solar Photovoltaic (PV) Power Projects by the Government Producers with Viability Gap Funding (VGF) support for self-use or use by Government/Government entities, either directly or through Distribution Companies (DISCOMS)", as amended from time to time (hereinafter referred to as 'CPSU Scheme');

B. Ministry of New and Renewable Energy (MNRE), Government of India vide Office Memorandum dated 13.04.2020 has identified Indian Renewable Energy Development Agency Ltd., (IREDA) as the Nodal Agency for handling the CPSU Scheme on behalf of MNRE;

C. NTPC Limited has been declared as a successful bidder under the RfS No 23016/1/2020-IREDA/RfS/5000 MW/ 012021 dated 29.01.2021 issued by IREDA for development of 1990 MW Solar Photovoltaic Power Project.

NTPC Renewable Energy Limited * Greater Noida *

CHIEF GENERAL MANAGER (IPC), T... Corporate ... Mint Compound, ... 400 001

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D. In pursuance to the above, IREDA has issued the Letter of Award [LoA No 23016/1/2020-IREDA/RfS/5000 MW/012021/960] dated 04.10.2021 to NTPC for development of a Solar PV Power Project of 1990 MW and to make available the quantum of electricity for the end use of the electrical energy by the Government/Government Entities through the Distribution Licensee;

E. NTPC is a Government Producer within the scope of the CPSU Scheme being a Generating Company within the meaning of Section 2(28) of the Electricity Act, 2003 and a Government of India Enterprise, with more than 50% of its shareholding being owned and controlled by the Central Government. Further as per the provisions of the Rfs 310 MW Solar Photovoltaic Power Project named as NTPC REL Solar PV Station 310 MW at Khavda, District Kutch, Gujarat (herein after referred to as 'Solar PV Station' and generally referred to as 'Station') is being executed by NTPC REL;

F. End User is also an entity owned and controlled by Government of Telangana and qualifies under CPSU Scheme.

G. AND WHEREAS NTPC REL has signed Power Usage Agreement with Southern Power Distribution Company of Telangana Limited & Northern Power Distribution Company of Telangana Limited on 07.12.2021 read with supplementary Power Usage Agreement dated 13.05.2022 for supply of 310 MW power from NTPC REL SOLAR PV STATION OF 310 MW at Khavda, Kutch, Gujarat.

H. AND WHEREAS MoF vide notification No. 8/2021-Integrated Tax (Rate) dated 30.09.2021 has increased the GST for renewable energy devices and parts to 12% from earlier rate of 5% which shall qualify under change in law clause of the signed PUA.

I. AND WHEREAS MNRE vide its letter ref. No. 283/11/2017-GRID SOLAR dated 16.09.2022 has communicated to IREDA that considering change in GST rate as 'Change in Law' the maximum usage charges, which was Rs. 2.45/kWh is hereby increased to Rs. 2.57/kWh.

Rajiv Kumar

NTPC Renewable Energy Limited

CHIEF GEN... MANAGER
(IPC), ...
Corpo... ...,
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J. AND WHEREAS IREDA through e-mail dated 07.10.2022 has communicated to NTPC that to give effect the MoF notification dated 30.09.2021 regarding the change in GST rate as "Change in Law", the maximum usage charge has been revised to the INR 2.57 for Tranche-III of the CPSU Scheme phase-II.

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES AND MUTUAL AGREEMENTS, COVENANTS AND CONDITIONS SET FORTH HEREIN; IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

Clause	Existing Provision	Revised provision
6.1	The Usage Charges for the power made available by NTPC REL from Solar PV Station shall be payable by Distribution Licensee@ **Rs 2.45 /kWh**, which shall be exclusive of any other third-party charges like wheeling and transmission charges and losses, point of connection charges and losses, cross-subsidy surcharges, SLDC/RLDC charges etc. as may be applicable. The Usage Charges for contracted capacity shall be payable from the date of commissioning of the project or the part capacity as the case may be. The parties acknowledge and accept that Usage	The Usage Charges for the power made available by NTPC REL from Solar PV Station shall be payable by Distribution Licensee@ **Rs 2.57 /kWh**, which shall be exclusive of any other third-party charges like wheeling and transmission charges and losses, point of connection charges and losses, cross-subsidy surcharges, SLDC/RLDC charges etc. as may be applicable. The Usage Charges for contracted capacity shall be payable from the date of commissioning of the project or the part capacity as the case may be. The parties acknowledge and accept that Usage Charges has been determined

NTPC Renewable Energy Limited
Greater Noida

CHIEF GENERAL MANAGER
(IPC), TS
Corporate Office
Mint Compound, Mumbai

	Charges has been determined in accordance with CPSU Scheme of the Government of India to assist the development of solar projects and usage of the energy generated by the Government/Government Entities, with Government of India providing VGF support.	in accordance with CPSU Scheme of the Government of India to assist the development of solar projects and usage of the energy generated by the Government/Government Entities, with Government of India providing VGF support.
10.1	"Change in Law" shall mean the occurrence of any of the following events after the last date of bid submission (i.e. 31.08.2021), resulting into any additional recurring/ non-recurring expenditure by the NTPC REL or any income to the NTPC REL: a. the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law; b. a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal	"Change in Law" shall mean the occurrence of any of the following events after the last date of bid submission (i.e. 31.08.2021), resulting into any additional recurring/ non-recurring expenditure by the NTPC REL or any income to the NTPC REL. **However, any additional recurring/ non-recurring expenditure by the NTPC REL or any income to the NTPC REL on account of MoF notification No. 8/2021-Integrated Tax (Rate) dated 30.09.2021 wherein GST for renewable energy devices and parts has raised to 12% from earlier rate of 5% shall not be considered as Change in Law.** a. the enactment, coming into effect,

NTPC Renewable Energy Limited * Greater Noida *

CHIEF GENERAL MANAGER

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	power to interpret or apply such Law, or any Competent Court of Law; c. the imposition of a requirement for obtaining any Consents, Clearances, Permits and/or licenses which was not required earlier; d. a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the NTPC REL; e. any statutory change in tax structure or any change in the rates of any taxes or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power by the NTPC REL to the Distribution Licensee.	adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law; b. a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law; c. the imposition of a requirement for obtaining any Consents, Clearances, Permits and/or licenses which was not required earlier; d. a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the NTPC REL; e. any statutory change in tax structure or any change in the rates of

Rajiv Kumar

NTPC Renewable Energy Limited * Greater Noida *

CHIEF GENERAL MANAGER
(IPC), TSSP
Corporate Office
Mint Compound, Hyd-500 063

		any taxes or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power by the NTPC REL to the Distribution Licensee.

Except the aforesaid amendment, the Parties acknowledge and confirm that all other terms and conditions contained in the Power Usages Agreement dated 07.12.2021 and supplementary Power Usage Agreement dated 13.05.2022 shall continue to apply as before. IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

Rajiv Kumar

For and on behalf of NTPC REL

राजीव कुमार/RAJIV KUMAR
उप महाप्रबंधक (वाणिज्यिक)
Dy. General Manager (Commercial)
एन.टी.पी.सी. नवीकरणीय ऊर्जा लिमिटेड
NTPC Renewable Energy Limited
E-3, Ecotech-II, Udyog Vihar, Greater Noida-201306 (UP)

Name and Designation

For and on behalf of Distribution Licensee

CHIEF GENERAL MANAGER
(IPC), TSSPDCL,
Mint Compound, Hyd-500 063

Name and Designation

T. Madhusudhan.,
Chief General Manager,
IPC & RAC, TSNPDCL,
Warangal

Witness

1. B.V. Shanthi Sree
ED/Comml, TSSPCC

2. Kalyani
Kalyani Kimidi
DGM (Comml.) SR-HQ
NTPC Ltd.

Annexure - V

केन्द्रीय विद्युत विनियामक आयोग
CENTRAL ELECTRICITY REGULATORY COMMISSION

याचिका संख्या./ Petition No. 119/AT/2024

कोरम/ Coram:
श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
श्री रमेश बाबू वी., सदस्य/Shri Ramesh Babu V., Member
श्री हरीश दुदानी, सदस्य/Shri Harish Dudani, Member

आदेश दिनांक/ Date of Order: 22th January, 2025

In the matter of:

Petition under Section 63 of the Electricity Act, 2003 for the adoption of usage charges for 1990 MW Solar Photovoltaic (PV) Power Station (Tranche –III) connected to the Inter-State Transmission System and selected through a competitive bidding process under Central Power Sector Undertaking Scheme Phase-II dated 05.03.2019 as per the Standard Bidding Guidelines of MoP dated 03.08.2017.

And
In the matter of:

1. **NTPC Limited,**
NTPC Bhawan, Scope Complex,
7, Industrial Area, Lodhi Road,
New Delhi- 110003

2. **NTPC Renewable Energy Limited.**
A-8A, EOC, NTPC, Sector 24, Noida,
Gautam Budh Nagar– 201301, Uttar Pradesh **...Petitioners**

Versus

1. **Indian Renewable Energy Development Agency Limited,**
Corporate office at 3rd Floor, August Kranti Bhawan,
Bhikaji Cama Place, New Delhi – 110066

2. **Southern Power Distribution Company of Telangana Limited,**
Corporate Office 6-1-50, Mint Compound,
Hyderabad, Telangana – 500063

3. **Northern Power Distribution Company of Telangana Limited,**

H. No. 2-5-31/2, Corporate Office, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Warangal, Telangana 506001

4. **Damodar Valley Corporation,**
DVC Towers, 1st Floor, VIP Road,
Kolkata, West Bengal-700054

5. **Military Engineer Services,**
Engineer-in-Chief Branch
Integrated HQ of MOD (Army)
Kashmir House, Rajaji Marg,
New Delhi-110011

6. **Madhya Pradesh Power Management Company Limited,**
Block No. 11, 1st Floor, Shakti Bhawan, Rampur,
Jabalpur, Madhya Pradesh – 482008

7. **Jammu and Kashmir Power Corporation Limited,**
Registered office at SLDC Building, Gladni Grid Complex,
Narwal, Jammu-180006

...Respondents

Parties present: Shri Venkatesh, Advocate, NTPC
Shri Nihal Bhardwaj, Advocate, NTPC
Shri Kunal Chopra, Advocate, NTPC
Ms. Swapna Seshadri, Advocate, IREDA
Shri Utkarsh Singh, Advocate, IREDA
Ms. Sneha Singh, Advocate, IREDA

आदेश/ ORDER

The Petitioners, NTPC Limited (NTPC) and NTPC Renewable Energy Limited (NTPC REL) (hereinafter collectively referred to as the Petitioners) have filed the present Petition under Section 63 of the Electricity Act, 2003 (the Act) for adoption of usage charges for 1990 MW Solar Photovoltaic (PV) Power Station (SPVP) (Tranche -III) connected to the Inter-State Transmission System (ISTS) and selected through competitive bidding process under Central Power Sector Undertaking (CPSU) Scheme Phase-II dated 05.03.2019 as per the *Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid*

Connected Solar PV Power Projects (hereinafter referred to as the Standard Bidding Guidelines) dated 3.8.2017 issued by Ministry of Power, Government of India. The Petitioners have made the following prayers:

> *"(a)Admit the present Petition;*
>
> *(b)Adopt the Usage Charges for 1990 MW Solar Power Projects discovered through competitive bidding carried out by the Respondent No.1 in terms of the CPSU Scheme;and*
>
> *(c)Pass such other order/orders, as may be deemed fit and proper in the facts and circumstances of the case."*

Submissions of the Petitioners

2. NTPC is a generating company within the meaning of Section 2(28) of the Act, has submitted that on 05.03.2019, the Ministry of New and Renewable Energy (MNRE), Government of India notified the CPSU Scheme for setting up the 12,000 MW grid-connected Solar PV Power Projects by the Government Producers with Viability Gap Funding (VGF) for self-use or use by Government/ Government entities, either directly or through Distribution Companies (Discoms). The said scheme was issued under the provisions of Section 63 of the Act for long term procurement of electricity by the 'Procurers' from the grid-connected solar PV power projects through competitive bidding. Subsequently, the MNRE vide OM dated 13.04.2020 notified certain amendments wherein the Solar Energy Corporation of India Limited (SECI) was replaced with the IREDA as the authority in charge of the bidding. Under the said CPSU scheme Phase-II, Respondent No. 1, IREDA issued the Request for Selection (RfS) for setting up of the 5000 MW grid-connected SPVP in India (Tranche-III) on 29.01.2021. The result of the e-RA was declared on 23.09.2021, and pursuant thereto, Petitioner No.1 was allocated 1990 MW out of 5000 MW and was issued a Letter of Award (LoA) dated 04.10.2021 for the aforesaid capacity. Subsequently, the Petitioner No.1, vide its letter dated

01.12.2021, intimated to IREDA that the execution of the project qua 735MW should be carried out by the Petitioner No. 1 itself and the balance capacity of the project, i.e., 1255MW shall be carried out by the Petitioner No. 2, i.e., NTPC REL is a wholly owned subsidiary of NTPC. In view thereof, Petitioner No. 1 requested IREDA to issue the necessary approval/letter in favour of NTPC REL for allocating 1255MW capacity towards it. Subsequently, IREDA vide letter dated 02.12.2021 informed Petitioner No. 1 that as per Clause A.4 under Section IV of the RfS, Petitioner No. 1 is allowed to develop the project through a Special Purpose Vehicle (SPV), which is especially incorporated as a subsidiary company of the successful bidder for setting up the project. Notably, the successful bidder ought to hold at least 76% shareholding in the SPV. Pursuant to this, the Petitioners entered into Power Usage Agreements (**PUAs**) with Respondents arrayed as Respondents 2 to 7 for the supply of the solar power to be generated by it through its SPVP generating stations.

3. The Petitioners have submitted that the MNRE, vide its notification dated 16.09.2022 to IREDA, increased the maximum usage charges to Rs. 2.57kWh in view of the change in GST rates. Further, MNRE, vide its letter dated 27.12.2022, notified that IREDA may extend the Scheduled Commissioning Date and other associated intermediate milestones till 30.09.2024 of such solar PV power projects under Tranche-III of the Phase-II CPSU Scheme, whose Scheduled Commissioning Date is before 30.09.2024. In view of the above, the Petitioners have preferred the instant petition under Section 63 of the Act, read with the Preamble under Section III of the RfS dated 15.03.2019, for the adoption of usage charges.

Hearing dated 10.04.2024

4. During the course of the hearing on 10.04.2024, the learned counsel for the Petitioners reiterated the submissions made in the pleadings and requested the Commission for the adoption of the usage charges for the 1990 MW Solar Photovoltaic (PV) Power Station (Tranche-III) connected to the Inter-State Transmission System selected through competitive bidding process under the Central Power Sector Undertaking (CPSU) Scheme Phase-II dated 05.03.2019 as per the Standard Bidding Guidelines dated 03.08.2017.

5. Considering the submissions made by the learned counsel for the Petitioners, the Commission admitted the matter and permitted the Respondents to file their respective replies to the Petition. However, no reply has been filed by any of the Respondents.

Hearing dated 22.05.2024

6. The matter was again heard on 22.5.2024. Learned counsel for the Petitioners submitted that previously, the Commission had adopted the usage charges for the 1692 MW Solar PV Power Stations (Tranche I & II) selected through a competitive bidding process under CPSU Scheme Phase-II & Standard Bidding Guidelines by its order dated 13.12.2021 in Petition No. 174/AT/2021 (*NTPC Ltd. v. SECI and Ors.*). Learned counsel further submitted that in the present case, Power Usage Agreements have been signed with the Southern & Northern Power Distribution Co. of Telangana Ltd., Damodar Valley Corporation, Military Engineer Services, Madhya Pradesh Power Management Co. Ltd., and J&K Power Corporation Limited. Learned counsel also added that in the present case, the Petitioners herein are generating companies, who had participated in the bid

conducted by the IREDA on the basis of the Viability Gap Funding (VGF).

7. Considering the submissions made by the learned counsel for the Petitioners, the Commission observed that Respondent No.1, IREDA, who acted in the capacity of the Bid Process Coordinator for Tranche III Projects under the CPSU Scheme, is yet to file the relevant bid documents including the evaluation report(s) and certification to the effect that the bid was conducted as per the provisions of the CPSU Scheme and the Standard Bidding Guidelines dated 3.8.2017. Accordingly, the Commission directed Respondent IREDA to file its affidavit within a week, placing on record the relevant bid documents along with a certification that the bid process was conducted as per the provisions of applicable Guidelines and no deviations were taken from the provisions of the Guidelines in respect thereof. The Commission also directed the Petitioners to coordinate with Respondent No.1 on the above aspect in order to ensure timely compliance. The Commission permitted the Petitioners to upload its written submissions within a week.

8. Subject to the above, the Commission reserved the matter for order. However, the Commission observed that the Petition will be listed for further hearing if required.

9. Pursuant to the liberty granted by the Commission, the Petitioners, vide their common written submission dated 03.06.2024, have reiterated their submissions already made in their plaint. As such, the same is not being reproduced herewith for the sake of brevity.

10. Respondent, IREDA vide its affidavit dated 23.07.2024, has mainly submitted as under:

(a) On 29.01.2021, IREDA issued the Request for Selection (RFS) for setting up the 5000 MW grid-connected to SPVP in India (Tranche-III) under the CPSU Scheme. The RFS was in terms of the Government of India's target to achieve a cumulative capacity of 100 GW Solar PV installation by the year 2022 and the invitation proposal on a Build Own Operate basis for an aggregate capacity of 5,000 MW under Phase-II (Tranche-III). One of the salient features of the said RFS was that the power generated from the successful Projects shall be solely for self-use or use by the Government/Government entities, either directly or through Discoms on payment of mutually agreed usage charges of not more than Rs. 2.20/kWh.

(b) On 14.05.2021, the Petitioners issued a corrigendum to the RFS, as per which the usage charges were revised to 2.45 KwH, and the maximum permissible limit for the VGF was reduced from Rs. 0.70 crore/MW to Rs.0.55 crore/MW for the Projects.

(c) On 23.9.2021, NTPC submitted its bid along with other project developers with their respective bid quantities. On 23.9.2021, pursuant to the e-reverse auction process, the following are the details of the successful bidders [along with the quoted VGF] with the allocated capacity as under:

Sr. No.	Applicant Name	Quoted VGF (By bidder at end of e-RA)	Capacity Being Allocated (MW)
1.	SJVN Limited	INR 44,72,000/- Per MW	1000
2.	NLC India Limited	INR 44,74,990/- Per MW	510
3.	NHPC Limited	INR 44,90,000/- Per MW	1000
4.	IRCON International Limited	INR 44,94,000/- Per MW	500
5.	NTPC Limited	INR 44,95,000/- Per MW	1990
		Total	**5000**

(d) Pursuant to the above, IREDA issued the Letter of Award (LOA) to all the aforesaid 5 successful bidders, including NTPC, on 04.10.2021 for the total allocated capacity of 5000 MW.

(e) On 01.12.2021, NTPC intimidated IREDA that the execution of the Project shall be carried out in two tranches, 735 MW by NTPC and 1255 MW by NTPC Renewable Energy Limited. To this, on 02.12.2021, IREDA

informed NTPC that as per Clause A.4 under Section IV of the RFS, NTPC is allowed to develop the Project through SPVs, and the successful bidder needs to hold at least 76% shareholding in the said SPV. Considering the same, NTPC Renewable Energy Limited is eligible to carry out the Project with 1225 MW.

(f) On 16.09.2022, the MNRE vide its letter ref. no. 283/11/2017/2017-Grid Solar, dated 16.09.2022, has communicated to IREDA that considering the change in the GST rate as a 'Change in Law,' the maximum usage charges, which was Rs. 2.45/kWh was increased to Rs. 2.57/kWh.

(g) Pursuant to the above, the Petitioners entered into Several Power Usage Agreements (PUAs) with Respondent No. 2 to 7 for the supply of power through its SPV generating station.

(h) The IREDA, as the bid coordinator for Tranche III Projects, has complied with and adhered to all the provisions of the CPSU Schemes while conducting the bid process. The RFP issued was in terms of the CPSU Schemes and the bidding process has been done as per the said Scheme and under the principles of Section 63 of the Act.

(i) The Department of Standardisation, Testing and Quality Certification Directorate, the Ministry of Electronics and Information Technology, Government of India, has issued a Certificate of Approval certifying that the E-Procurement Portal of ISN-Electronic Tender Services Pvt Ltd (ISN-ETS) has been tested and audited by STQC and same is in compliance with the *Guidelines for compliance to Quality requirements of eProcurement Systems* dated 31.08.2011 from the STQC Directorate, the Ministry of Electronics & Information Technology, Government of India.

Hearing dated 08.08.2024

11. Since the order in the matter, which was reserved on 22.5.2024, could not be issued prior to the Member of the Commission, who formed part of Coram, demitting office, the matter has been re-listed for the hearing.

12. During the course of the hearing, learned counsel for the Petitioners submitted that the Petitioners had already made detailed submissions in the matter and the Respondent, IREDA, also, in accordance with the direction of the Commission, had filed an affidavit furnishing the details relating to the bid process and accordingly, the Commission might reserve the order in the matter. Learned counsel for Respondent No.1, IREDA, also confirmed that the Respondent had filed an affidavit furnishing the details of the bid process as per the Commission's direction.

13. Considering the submissions made by the learned counsels for the Petitioners and Respondent No.1, the Commission reserved the matter for order.

Analysis and Decision

14. We now proceed to consider the prayers of the Petitioners as regards the adoption of usage charges for the 1990 MW of Solar Photovoltaic (PV) Power Stations (Tranche-III) in terms of the CPSU Scheme Phase–II issued by the Ministry of New and Renewable Energy, Government of India under Section 63 of the Act.

15. Section 63 of the Act provides as under: -

> *"Section 63. Determination of tariff by bidding process: Notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government."*

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

17. In the present case, the bid process for Tranches-III was conducted under the CPSU Scheme Phase-II issued by the Ministry of New and Renewable Energy, Government of India on 5.3.2019. The salient features of the scheme are as under:

(a) The CPSU Scheme Phase-II has been envisaged to provide the necessary policy framework and mechanism for the selection and implementation of 12,000 MW or more grid-connected solar PV power projects with VGF by various Government Producers. 12,000 MW grid-connected solar PV power projects are proposed to be set up through the Government Producers with a budgetary support of Rs.8580 crores as VGF.

(b) The scheme will mandate the use of both solar photovoltaic cells and modules manufactured domestically as per the specifications and testing requirements fixed by the MNRE.

(c) Power produced by the Government Producer can be used for self-use or use by Government/ Government entities, either directly or through Discoms on payment of mutually agreed usage charges of not more than Rs.3.5/unit, which shall be exclusive of any other third party charges like wheeling and transmission charges and losses, point of connection charges and losses, cross-subsidy surcharge and State Load Despatch Centre (SLDC)/Regional Load Despatch Center (RLDC) charges etc. as may be applicable.

(d) The solar PV power project capacity under the Government Producer Scheme would be allocated to the Government Producers by way of bidding, who, in turn, will secure an arrangement for the usage of power for self-use or use by Government/ Government entities, either directly or through Discoms.

(e) With the objective of covering the cost difference between the domestically produced solar cells and modules and imported solar cells and modules, VGF shall be provided under the scheme. While the maximum permissible VGF has been kept at Rs.0.70 crore/MW, the actual VGF to be given to a Government Producer under the scheme would be decided through bidding using the VGF amount as a bid parameter to select project proponent.

(f) SECI will handle the scheme on behalf of the MNRE, including conducting bidding on a VGF basis amongst Government Producers\ for the selection of Government Producers for implementing this scheme. SECI will ensure that the proposed projects comply with the WTO provisions, and also the compliance by Government Producers on the mandatory requirement of domestic content under the scheme.

18. The MNRE vide Office Memorandum dated 13.4.2020 entrusted the task of conducting bidding to Indian Renewable Energy Development Agency Limited (IREDA) in place of SECI.

19. Accordingly, we proceed to examine whether the usage charge has been discovered in terms of the provisions of Section 63 of the Act and whether the selection of the successful bidder(s) has been made through a competitive bidding process as per the provisions of the CPSU Scheme Phase-II.

20. Accordingly, on 29.01.2021, based on the Bidding Guidelines, IREDA issued a Request for Selection for setting up of the 5000 MW grid-connected to SPVP in India (Tranche-III) under the CPSU Scheme Phase-II. Notably, IREDA issued RfS on behalf of MNRE.

21. The key dates of the event in the bidding process were as under:

Sr No	Milestone	Date
1	RfS issued by IREDA	29.01.2021
2	Pre-bid meeting held	18.02.2021
3	Extension of submission of bid date	14.05.2021,31.05.2021
4	Technical Bid Opening Date	23.06.2021
5	Date & time of opening of Financial bids	25.06.2021
6	Amendments/Clarification and Corrigendum to RfS	14.05.2021
7	e-Reverse Auction conducted	23.09.2021
8	Issuance of Letter of Awards	04.10.2021

22. On 29.01.2021, based on the Guidelines, IREDA issued a Request for Selection (RfS) for setting up a 5000 MW grid-connected to SPVP in India (Tranche-III) under the CPSU Scheme. Pursuant to the issuance of the OM dated 15.04.2021, by the MoP regarding review of usage charges for development of Solar Power Projects under CPSU Scheme, Phase-II, Tranche-III, on 14.05.2021, IREDA issued a Corrigendum to RfS as per which the Usage Charges were revised to 2.45kWh and the maximum permissible limit for VGF was reduced from Rs. 0.70 Crore/MW to Rs. 0.55 Crore/MW for projects. On 23.09.2021, NTPC submitted its bid along with other project developers with their respective bid quantities. On 23.09.2021, pursuant to the e-reverse auction process, the following are the details of the successful bidders [along with the quoted VGF] with the allocated capacity as under:

Sr. No.	Applicant Name	Quoted VGF (By bidder at end of e-RA)	Capacity Being Allocated (MW)
1.	SJVN Limited	INR 44,72,000/- Per MW	1000
2.	NLC India Limited	INR 44,74,990/- Per MW	510
3.	NHPC Limited	INR 44,90,000/- Per MW	1000
4.	IRCON International Limited	INR 44,94,000/- Per MW	500
5.	NTPC Limited	INR 44,95,000/- Per MW	1990
		Total	**5000**

23. Pursuant to its selection as the successful bidder under RfS, on 04.10.2021, IREDA issued a Letter of Award to the Petitioners, allocating 1990 MW out of 5000 MW under Tranche-III. The relevant portion of the said Letter of Award is extracted as under:

> ***"Sub: Selection of Solar Power Developers for Setting up of 5,000 MW Grid Connected Solar PV Power Projects in India (Tranche-III) under Central Public Sector Undertaking (CPSU) Scheme Phase-II (Government Producer Scheme): Letter of Award for allocated capacity of 1990 MW (Project ID: CPSU-Ph2-Tr3-SSPD-1990 MW)***

Ref: Central Public Sector Undertaking (CPSU) Scheme Phase-II (Government Producer Scheme) for setting up 12,000 MW grid-connected Solar Photovoltaic (PV) Power Projects by the Government Producers with Viability Gap Funding (VGF) support for self-use or use by Government/Government entities, either directly or through Distribution Companies (DISCOMS) issued by the Ministry of New & Renewable Energy vide No. 302/4/2017-GRID SOLAR dated 05.03.2019 including subsequent amendments and clarifications thereof (herein referred to as "Guidelines")

RfS No. 23016/1/2020-IREDA/RfS/5000 MW/ 012021 Dated: 29/01/2021 subsequent amendments/ clarifications/ revisions/ notifications issued by IREDA and uploaded during the process of RfS on ETS portal (htt s://www.bharat-electronictender.com

This has reference to the following:

(i) Your response to the RfS document submitted through ETS portal vide Organization ID (ETS- IN-2019-RS0000089) against RfS for Selection of Solar Power Developers for 5000 MW Grid-Connected Solar PV Power Projects in India (Tranche-III) under CPSU Ph-II Scheme (Government Producer Scheme).

(ii) Final VGF (INR/MVV) as quoted by you at the end of the e-Reverse Auction conducted on ETS portal on 23.09.2021 for the referred RfS for selection of Grid-connected Solar PV Power Projects.

In reference to above and subject to the provisions of RfS, we confirm that your final VGF price quoted by your organisation during the e-RA concluded on September 23, 2021, is accepted and issue this letter of award with the following details:

Allotted Project ID	Allocated Capacity (MW	Project Location	Maximum VGF Eligibility (INR/MW) in figures	Maximum VGF Total Eligible eligibility (INR/MW) In words	Total Eligible eligibility Maximum VGF (INR)
CPSU-Ph2-Tr3-SSPD-1990 MW	1990 MW	Anywhere in India	44,95,000/-	Forty-Four Lakhs Ninety-Five Thousand only	894,50,50,000.00

In alignment with the Guidelines of the scheme, the abovementioned project shall supply power solely for either self-use or use by Government/Government entities, either directly or through Discoms under the CPSU Ph-II scheme. Further such supply shall be subject to the following terms and conditions as stated in various documents referred above. The same terms and condition are also being briefly brought out hereinafter.

i. Power generated from above Project(s) shall be solely for self-use or use by Government/Government entities, either directly or through

Discoms on payment of mutually agreed usages charges of not more than Rs. 2.45/kWh, which shall be exclusive of any other third-party charges like wheeling and transmission charges and losses, point of connection charges and losses, cross-subsidy surcharges, State Load Dispatch Centre (SLDC)/ regional Load Dispatch Centre (RLDC) Charges, etc. as may be applicable. Waiver of ISTS charges and losses, for use of ISTS network, shall be available to Projects set-up under the CPSU Phase-II Scheme.

ii.As the selected Government Producer under the scheme, NTPC Limited can use the VGF provided under the Scheme as your equity in solar power project(s) being set up under this scheme.

iii. If the proposed solar PV power project(s) under CPSU Scheme Phase-II is being set up in an UMREPP/ Solar Park, then such projects will be eligible for both, the Central Financial Assistance (CFA) as per UMREPP/ Solar Park Scheme as well as VGF under the CPSU Scheme Phase-II.

iv. As the selected Government Producer/ Solar Project Developer (SPD), you would also be free to avail other fiscal incentives, if any, as per the extant rules. IREDA will not have any liability if the SPD is not able to avail fiscal incentives and this will not have any bearing on the maximum eligible VGF per MW.

v. The award of the above allotted capacity is subject to the Guidelines including amendments / clarifications issued by Government of India and terms and conditions of the RfS document including its clarifications/ amendments / elaborations / notifications issued by IREDA.

vi. A Bidder which has been selected as Successful Bidder under this RfS can also execute the Project(s) through a Special Purpose Vehicle (SPV) i.e. a Project Company especially incorporated as a subsidiary Company of the successful bidder for setting up of the Project(s), with at least 76% shareholding in the SPV which has to be registered under the Indian Companies Act, 2013, before signing of EPC agreement with EPC Contractor. Multiple SPVs may also be incorporated for executing more than one Project.

vii. The SPD shall pay to IREDA, Success Charges of Rs. 1 lakh/MW/project + 18% GST within 30 days from the date of this Letter of Award (LoA) towards administrative overheads, coordination with State Authorities and monitoring of Projects' compliance with WTO norms, in line with Clause 12, Section-III of the RfS. Performance Bank Guarantee(s) for an amount equal to 50% of total VGF sanctioned as per this Letter of Award shall be submitted by the SPD before disbursement of first tranche of VGF, in line with Clause 11.1, Section-III of the RfS. The validity of any such PBG being submitted to IREDA shall not be less than 39 months.

viii. The SPD shall confirm the configuration of the total allocated capacity at the time of disbursement of second tranche of VGF. The SPD, if he wishes so, may affix separate PPA tariffs for each Project, based on its own arrangements with the Procurer(s), if applicable.

ix. The Projects can be located anywhere in India. It is clarified that the projects may be implemented as ground mounted, or rooftop mounted or floating or canal top/canal bank etc., or a combination thereof, as per the requirements of the SPD.

x. It may be noted that while a single VGF shall be quoted by the bidder based on the cumulative Project capacity in the RfS, VGF will be released to the SPD separately for each Project as per the final Project configuration declared by the SPD. Accordingly, for each individual Project as per the above break-up, the second tranche of VGF will be disbursed to the SPD only upon successful commissioning of full capacity of that individual Project.

xi. Commercial re-sale of power by the Procurer or End Consumer is not allowed as per the RfS conditions. The SPD shall provide a power mapping (Format 7.10 of the RfS) for the proposed capacity being quoted for, clearly specifying the SPD, various intermediaries, if any, and the End Consumer. The same shall be submitted to IREDA after finalization of the mapping by the SPD, but necessarily prior to disbursement of second tranche of VGF.

xii. The SPD shall submit a self-certification to IREDA (Format 7.6 as amended), confirming that the Project has been set-up, as per the provisions of the Scheme Guidelines, and explanatory notes, if any, as published by MNRE from time to time. The above certifications will be submitted by the SPD after finalization of power mapping by the SPD, but no later than prior to disbursement of second tranche of VGF.

xiii. The RfS mandates use of both solar photovoltaic (SPV) cells and modules manufactured domestically as per specifications and testing requirements fixed by MNRE. For the Projects to be implemented under this RfS, both the solar cells and modules used in the Solar Power Projects must be made in India. In case of crystalline Silicon technology, all process steps and quality control measures involved in the manufacture of the Solar Cells and Modules starting from wafers till final assembly of the Solar Cells into Modules shall be performed at the works of PV manufacturers in India.

xiv. VGF will be released in two tranches as follows:

1. 50 % on award of Contract to the EPC Contractor (including in-house EPC Division) by the SPD. The SPD is required to sign the EPC agreement with EPC Contractor within twelve months from date of this LoA.
2. Balance 50 % on successful commissioning of the full capacity

of Project.

xv. The Commissioning of the Project shall be carried out by the SPD as per the procedure established by the SPD. The SPD shall submit the commissioning certificate of the Project to IREDA, based on which, the installed capacity shall be examined by IREDA in line with the DCR norms as per the RfS. After successful examination of the same, the second tranche of the VGF, amounting to 50% of the total VGF awarded for the Project, will be disbursed to the SPD.

xvi. Schedule Commissioning Date (SCD) for commissioning of the full capacity of the Project shall be the date as on 30 months from the date of issuance of LoA. The maximum time period allowed for commissioning of the full Project Capacity shall be limited to 36 months from the date of issuance of LoA.

In case of delay in commissioning of the Project beyond the SCD until the date as on 36 months from the issue date of the LoA/LoI, as part of the penalty for delay in commissioning the amount of VGF sanctioned to be the project shall be reduced by 0.15% (zero-point one five percent) of the sanctioned VGF, on per day basis, for the period of such delay, and proportionate to the capacity delayed or not commissioned.

xvii. All disputes arising out of and/ or in connection with the selection of Solar Power Projects under the said RfS and execution of project(s) thereto shall be governed by laws of India and shall be subject to the jurisdiction of Courts of New Delhi.

This LoA is being issued in duplicate and you are requested to kindly acknowledge receipt and acceptance of this LoA by sending the duly stamped and signed duplicate copy of LoA to IREDA within 07 days from date of this LoA."

24. Subsequently, on 01.12.2021, Petitioner No. 1 intimated IREDA that the execution of the project qua 735MW shall be carried out by Petitioner No. 1 itself, and the balance capacity of the project, i.e., 1255MW shall be carried out by the Petitioner No. 2, i.e., NTPC REL. In view thereof, Petitioner No. 1 requested IREDA to issue the necessary approval/letter in favour of the NTPC REL for allocating the1255 MW capacity towards it.

25. On 2.12.2021, IREDA, *vide* its letter to e Petitioner No. 1, informed that as per Clause A.4 under Section IV of the RfS, Petitioner No. 1 is allowed to develop the project through a Special Purpose Vehicle (SPV), which is especially incorporated as a subsidiary company of the successful bidder for setting up the project. Notably, the successful bidder ought to hold at least 76% shareholding in the SPV. Accordingly, Petitioner No. 2 is eligible to utilize the LoA dated 4.10.2021 and develop the balance capacity of the 1255MW under Phase-II of the CPSU Scheme:

> *"Sub: Development of Projects of 1255 MW capacity by NTPC Renewable Energy Limited under the1990 MW capacity allocated to NTPC-reg*
>
> *Ref: 1. RfS. No: 23016/1/2020-IREDA/RfS/SOOOMW/012021 dated 29.01 .2021*
> *2. LoA No: 23016/1/2020-IREDA/RfS/SOOOMW/012021/960 dated 04.10.2021*
> *3. NTPCs letter NTPC/RE/2020-21/IREDA/CPSU-III/03 dated 01.12.2021*
>
> *Sir*
>
> *This has reference to your above-mentioned letter to IREDA in continuation to the LoA issued to your organisation under the CPSU Scheme phase -11. In response to your request, it may please be noted that as per clause A.4 represented below:*
>
> ***"A Bidder, which has been selected as Successful Bidder based on this RfS, can also execute the Project through a Special Purpose Vehicle (SPV) i.e. a Project Company especially incorporated as a subsidiary Company of the successful bidder for setting up of the Project, with at least 76% shareholding in the SPV which has to be registered under the Indian Companies Act, 2013, before signing of EPC agreement with EPC Contractor. Multiple SPVs may also be incorporated for executing more than one Projects"***
>
> *As per the condition defined, you are allowed to develop the project through SPV i.e. a Project Company especially incorporated as a subsidiary Company of the successful bidder for setting up of the Project, with at least 76% shareholding in the SPV, registered under the Indian Companies Act, 2013.*
>
> *Accordingly, as mentioned in your letter, Mis NTPC Renewable Energy Limited, the wholly owned subsidiary of M/s NTPC Limited, can develop the said capacity of 1255 MW under CPSU Scheme Phase-II.*

Also, with regards to your request vis-a-vis your application for grid connectivity for the project(s) as per the CERC regulation, your SPV Mis NTPC Renewable Energy Limited is eligible to utilize the above mentioned LoA issued to M/s NTPC Limited, for setting up the 1255 MW capacity of solar power project under the scheme, including application for grid connectivity for the project(s) as per the CERC regulation.

This is issued without prejudice to the terms and conditions of the CPSU Scheme Phase-II and the RfS.

26. Thereafter, on 16.09.2022, the MNRE, *vide* its notification to IREDA, increased the maximum usage charges to Rs. 2.57/kWh from Rs. 2.45/kWh considering a change in GST rates as 'Change in Law'. The relevant extract of the letter is as under:

"Sub: Projects awarded under Tranche-III of Central Public Sector Undertaking (CPSU) Scheme Phase-II (Government Producer Scheme): Increase of maximum usage charges on account of increase in GST rates - reg.

Sir,

By virtue of Notification No. 8 /2021 dated 30.09.2021, the GST rate for specified renewable energy devices and parts for their manufacture have increased from 5% to 12%.

2. Representations were received in MNRE in respect of solar PV power projects awarded under CPSU Scheme Phase-II, stating that GST rate has increased from 8.9% to 13.8% of total solar project cost due to its revision for solar equipment from 5% to 12% and requesting MNRE to take necessary action to offset the impact of increased GST rate under 'Change-in-Law' on solar PV power projects awarded under Tranche-III of CPSU Scheme Phase-IL

3. The matter has been examined and considering change in GST rates as 'Change in Law', it has been decided that for Tranche-III of CPSU Scheme Phase-II being implemented through IREDA, the maximum usage charge, which was Rs. 2.45/kWh is hereby increased by 4.9% to 2.45x1.049 = 2.57 Rs. /kWh."

27. Pursuant to this, the Petitioners entered into several PUAs with the Respondent Nos. 2 to 7 for the supply of the solar power to be generated by it through its SPVP generating stations as tabulated below:

Parties	Project Location	Project Capacity (Mw)	Usage Charges (Rs./ kWh)	Scheme	Scheduled Commissioning Date As Per PUA	Date of PUA	Date of Supple-mental PUA
NTPC REL and TS DISCOMS	Khavda, Kutch, Gujarat	265	2.45	CPSU Scheme Phase-II Tranche-III	03.04.2024	07.12.2021	13.05.2022 **(Installed capacity increased to 310 MW)** and 17.03.2023 **(Usage Charges Revised to Rs. 2.57/kWh)**
NTPC REL and DVC	Khavda, Kutch, Gujarat	100	2.45	CPSU Scheme Phase-II Tranche-III	03.04.2024	01.02.2022	21.08.2023 **(Usage Charges Revised to Rs. 2.57/kWh)**
NTPC REL and MES	Khavda, Kutch, Gujarat	25	2.45	CPSU Scheme Phase-II Tranche-III	03.04.2024	08.09.2022	29.11.2023 **(Usage Charges Revised to Rs. 2.57/kWh)**
NTPC REL and MPPMCL	Khavda, Kutch, Gujarat	185	2.57/ kWh	CPSU Scheme Phase-II Tranche-III	30.09.2024	05.06.2023	
NTPC REL and MPPMCL	Khavda, Kutch, Gujarat	315	2.57	CPSU Scheme Phase-II Tranche-III	30.09.2024	05.06.2023	
NTPC REL and JKPCL	Khavda, Kutch, Gujarat	130	2.57	CPSU Scheme Phase-II Tranche-III	30.09.2024	01.09.2023	
NTPC REL and JKPCL	Khavda, Kutch, Gujarat	190	2.57	CPSU Scheme Phase-II Tranche-III	30.09.2024	01.09.2023	
NTPC and TSDISCOMS	Nokh-Solar Park, Rajastha n **(NOKH-1)**	245	2.45	CPSU Scheme Phase-II Tranche-III	01.11.2023	07.12.2021	17.03.2023 **(Usage Charges Revised to Rs. 2.57/kWh)**
NTPC and TSDISCOMS	Nokh-Solar Park, Rajastha n **(NOKH-2)**	245	2.45	CPSU Scheme Phase-II Tranche-III	01.11.2023	07.12.2021	
NTPC and TSDISCOMS	Nokh-Solar Park, Rajastha n **(NOKH-3)**	245	2.45	CPSU Scheme Phase-II Tranche-III	01.11.2023	07.12.2021	
	Total	**1990 MW**					

28. Vide Record of the Proceedings for the hearing dated 22.5.2024, the Petitioners were directed to file certification to the effect that the bid was conducted as per the provisions of the CPSU Scheme and the Standard Bidding Guidelines

dated 3.8.2017. Pursuant to the above direction, IREDA, vide affidavit dated 12.7.2024, has submitted that IREDA has complied with and adhered to all of the provisions of the CPSU Scheme while conducting the bid process. Vide said affidavit dated 12.7.2024, it has been further undertaken by the IREDA that there is no deviation to the CPSU Schemes while conducting the bid process and issuing the LOA to the successful Project developers.

29. Moreover, IREDA vide said affidavit dated 12.7.2024 has also submitted that the Department of Standardisation, Testing and Quality Certification Directorate, the Ministry of Electronics and Information Technology, Government of India has issued a Certificate of Approval certifying that the E-Procurement Portal of ISN-Electronic Tender Services Pvt Ltd (ISN-ETS) has been tested and audited by STQC and same is in compliance with the *Guidelines for compliance to Quality requirements of eProcurement Systems* dated 31.08.2011 from the STQC Directorate, Ministry of Electronics & Information Technology, Government of India.

30. In view of the above, we are of the view that the selection of the Petitioner, out of various Government Producers, has been done on the basis of a transparent, competitive bid process with VGF as the bid parameter and in accordance with the provisions of the CPSU Scheme Phase II.

31. Insofar as the adoption of usage charges under the PUAs is concerned, the said aspect also came up for consideration before this Commission in Petition No. 174/AT/2021 in the matter of *NTPC Limited v. Solar Energy Corporation of India Limited and Ors.*, wherein NTPC had prayed for the adoption of usage charges for the 1692 MW Solar PV Projects selected through the competitive bid process under

the CPSU Scheme Phase II Tranche I & II. The Commission, in its order dated 13.12.2021, *inter alia*, had observed as under:

> *"34. In support of allowing the prayer of the Petitioner for adoption of usage charges, the Petitioner and the Respondent, SECI have placed reliance on the provisions of the Standard Bidding Guidelines, which envisage bidding based on VGF as bid parameter and provide for adoption of pre-specified tariff and also on the order dated 1.3.2021 passed by the Commission in Petition No. 160/AT/2019 along with IA No.81/2019, wherein the bid process was also conducted on VGF as bid parameters and the Commission had adopted the pre-specified tariff. The relevant extract of the Standard Bidding Guidelines reads as under:*
>
> > *"4.3 Bidding Parameters: For procurement of electricity, the Procurer may opt for either 'Tariff as Bidding Parameter' or 'Viability Gap Funding (VGF) as Bidding Parameter'.*
> > *.....*
> >
> > *4.3.2 VGF as the Bidding Parameter: It involves a mechanism wherein a pre-determined tariff is offered to the Solar Power Generator along with a financial assistance, to enable the Solar Power Generator to supply power at this tariff. For VGF based Bidding, the Procurer shall specify the following before issuance of RfS: (a) Pre-determined tariff payable to the selected Solar Power Generator for the duration of the PPA and the Maximum amount of Viability Gap Funding (VGF) support required by them. The bidders who do not want to avail the VGF support, may offer in their bids, a discounted tariff, lower than the pre-determined tariff offered by the Procurer..."*
>
> *35. Indisputably, the Standard Bidding Guidelines provide for VGF as a bidding parameter for conducting competitive bid process under Section 63 of the Act. The mechanism involves pre-determined tariff payable to the selected solar power generator and the maximum amount of VGF support required by them. Further, in case the bidders do not want to avail of VGF, they may offer a discounted tariff than that of pre-determined tariff.*
>
> *36. However, we note that the bidding process on the basis of VGF as bid parameter under the CPSU Scheme Phase-II is not exactly as per the Standard Bidding Guidelines, since instead of pre-determined tariff (in terms of the Standard Bidding Guidelines), the CPSU Scheme Phase-II only provides for pre-determined ceiling usage charges. Further, the CPSU Scheme Phase-II recognizes that the usage charges may be mutually agreed between the parties (which is not the case in the Standard Bidding Guidelines) albeit subject to the ceiling as specified therein. Therefore, the lower usage charges as may be mutually agreed between the parties (the Petitioner and the Telangana Discoms in the instant case) cannot be equated with the discounted tariff (for bidders who quote nil VGF) under the VGF based bidding as per the Standard Bidding Guidelines since the Petitioner has not foregone the VGF entitlement in the present case.*

37. On the other hand, in the case of bid process involved in Petition No. 160/AT/2019, there was pre-determined tariff of Rs.5.45/kWh (Rs.4.75/kWh in case benefit of Accelerated Depreciation was availed) and the bidders were required to compete on the basis of VGF requirement per MW. Thus, the bidding process envisaged and conducted therein as per the provisions of 'Scheme for Setting up of 750 MW grid connected Solar PV Power Projects under Batch-I of Phase-II of Jawaharlal Nehru National Solar Mission with Viability Gap Funding support from National Clean Energy Fund' was similar to that specified in the Standard Bidding Guidelines and did not provide for any mutual agreement for lowering the predetermined tariff. Thus, the instant case is distinguishable from the matter involved in adoption of tariff in Petition No. 160/AT/2019.

38. In light of the above observations, we are of the view that the usage charges as mutually agreed between the Petitioner and the Telangana Discoms cannot be stated to have been discovered through a process of competitive bidding under Section 63 of the Act.

39. However, at the same time, we do recognise that in terms of the provisions of the CPSU Scheme Phase-II, the bid processes have been conducted with VGF as a bid parameter against the pre-determined ceiling usage charge of Rs.3.50/kWh, though the actual usage charge was subject to mutual agreement within the said ceiling. Therefore, in line with the bid process envisaged in the Standard Bidding Guidelines, the Commission deems it fit to adopt the ceiling usage charge of Rs.3.50/kWh under Section 63 of the Act in respect of 1692 MW capacity under Tranche-I and Tranche-II in respect of the Petitioner. ...."

32. The above observations of the Commission in the case of CPSU Scheme Phase II Tranche I & II squarely apply to the present case.

33. In the present case, the parties have submitted that the RfS dated 29.01.2021 was issued by IREDA under Section 63 of the Electricity Act, 2003, following the principles of standard bidding guidelines dated 03.08.2017 issued by the Ministry of Power and the CPSU Scheme for setting up 12,000 MW grid-connected Solar PV Power Projects by the Government Producers with VGF for self-use or use by Government/Government entities, either directly or through Distribution Companies, issued by the MNRE vide No. 302/4/201 7-GRID SOLAR dated 05.03.2019.

34. The relevant clauses of the CPSU Scheme dated 05.03.2019 stipulate as under:

"3. Proposal for setting up of 12,000 MW capacity under Government Producer Scheme

...

3.2.3 Usage Charges: Power produced by the Government Producers can be used for self-use or use by Government/Government entities, either directly or through DISCOMS on payment of mutually agreed usage charges of not more than Rs. 3.5/kWh which shall be exclusive of any other third party charges like wheeling and transmission charges and losses, point of connection charges and losses, cross-subsidy surcharge, State Load Despatch Centre (SLDC)/ Regional Load Despatch Centre (RLDC) charges, etc. as may be applicable.

4. Power to remove difficulties

If there is need for any amendment to the Government Producer Scheme for better implementation or any relaxation is required in the norms due to operational problems. MNRE will be competent to make such amendments with the approval of Minister-in-charge, without increasing the financial requirements and VGF limits."

35. The relevant Change in law Article of the PUAs is as under:

"10. CHANGEINLAW

10.1 "Change in Law" shall mean the occurrence of any of the following events after the last date of bid submission (i.e. 31.08.2021), resulting into any additional recurring/ non-recurring expenditure by the NTPC REL or any income to the NTPC REL:

a) the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;

b) a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;

c) the imposition of a requirement for obtaining any Consents, Clearances, Permits and/or licenses which was not required earlier;

d) a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the NTPC REL;

e) any statutory change in tax structure or any change in the rates of any taxes or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power by the NTPC REL to the Distribution Licensee.

10.2 Further, "Change in Law" shall also mean any statutory change in tax structure or introduction of any new tax made applicable for setting up of

Solar Power Project and generation of energy including change in any additional duties under Customs like Anti Dumping Duty, Countervailing duty on subsidised articles, Safeguard duty etc. and any other taxes including GST, levies, cess etc. applicable on such additional duties resulting into any additional recurring/on-recurring expenditure by the NTPC REL or any income to the NTPC REL

11.0 RELIEF FOR CHANGE IN LAW

11.1 NTPC REL shall be required to approach the Central Commission for seeking approval of Change in Law.

11.2 The decision of the Central Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on NTPC REL and the Distribution Licensee.

11.3 While determining the consequence of Change in Law under Article 11, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through Monthly Usage Charge payments, to the extent contemplated in this Article 11, the affected Party to the same economic position as if such Change in Law has not occurred"

36. We observe that the bids were submitted on 23.09.2021, and the LoA was issued by IREDA on 04.10.2021, taking into account the maximum usage charges as Rs 2.45/kWh. Subsequently, on 01.12.2021, Petitioner No. 1 intimated to IREDA that the execution of project qua 735MW would be carried out by the Petitioner No. 1 itself, and the balance capacity of the project, i.e., 1255MW will be carried out by the Petitioner No. 2, i.e., NTPC REL and the same was approved by the IREDA on 02.12.2021. We observe that in total of 10 Power Usage Agreements (PUAs) were executed by the parties on various dates. Out of these ten (10) PUAs, six (6) (PUAs) were executed between the parties on 07.12.2021, 01.02.2022, 08.09.2022, taking into account the maximum usage charges as Rs 2.45/kWh.

37. However, on 16.09.2022, MNRE increased the maximum usage charges to Rs. 2.57/kWh in view of the Ministry of Finance's Notification No. 8/2021 dated 30.9.2021 whereby the GST rates for specified renewable energy devices and parts

for their manufacture were revised.

38. Subsequently, four (4) supplementary PUAs were executed on 17.03.2023, 21.08.2023, 29.11.2023, taking into account the maximum usage charges as Rs 2.57/kWh and also the remaining four (4) PUAs were executed between parties on 05.06.2023 and 01.09.2023 taking into the account the maximum usage charges as Rs 2.57/kWh. Now, the instant Petition has been filed for the adoption of the usage charge.

39. The relevant Clauses of the RfS dated 29.01.2021 are as under:

*7.0 The maximum permissible limit for VGF is kept at **Rs. 0.70 Crore/MW** (INR 70 lakhs per MW) for projects; the actual VGF to be given to a Government Producer under the RfS would be decided **through e-reverse auction using VGF amount as a bid parameter to select the SPD.***

*8.0 **Bidders shall be required to submit their bids by offering VGF amount in INR per MW. Bidders who do not want to avail VGF, can submit their bid by offering '0' (Zero) VGF.***

40. The relevant Clauses of the CPSU Scheme dated 05.03.2019 is as under:

*"3.2.5 VGF: With the objective of covering the cost difference between the domestically produced solar cells and modules and imported solar cells and modules, VGF shall be provided under the Scheme. While the maximum permissible VGF has been kept at Rs.0.70 cr./MW, the actual VGF to be given to a Government Producer under the Scheme would be decided through bidding using VGF amount as a bid parameter to select project proponent. The Solar Energy Corporation of India (SECI) will be entrusted with the task of **conducting the bidding amongst Government Producers for allocation of solar power project capacity under the Scheme, with VGF amount as a bid parameter to select project proponent. The maximum permissible VGF amount will also be reviewed from time to time, by MNRE, and will be reduced by MNRE if the cost difference comes down.** VGF will be released in two tranches as follows:*

(i) 50% on Award of contract to the EPC contractor (including in-house EPC Division); and

(ii) balance 50% on successful commissioning of the full capacity of the project."

41. From the above, we observe that the bidding took place on 23.09.2021,

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considering the VGF amount as a parameter. As per the bidding documents, the maximum permissible limit for VGF @ Rs. 0.55 Crore/MW was to be considered, keeping in mind the Usage Charges @ 2.45kWh. We are of the view that these parameters as on the date of the bidding have to be taken as reference and cannot be altered post bidding, or else the whole process of bidding will get vitiated. Any change in the usage charge post-bidding can be allowed due to a change in law only in terms of the provisions of the PUAs. Hence, at this stage, we can take into consideration only the parameters as notified to the bidders as on the date of bidding, viz., the maximum permissible limit for VGF @ Rs. 0.55 Crore/MW and the Usage Charges @ 2.45kWh. Hence, we adopt the usage charges of Rs. 2.45/kWh in respect of the 1990 MW Solar PV Power Projects of the Petitioners under Tranche III of the CPSU Scheme Phase -II.

42. As regards the compensation due to the Change in Law, the PUAs require the Petitioners to approach the Commission for approval for relief for the Change in Law. Accordingly, we give liberty to the Petitioners to approach the Commission through a separate Petition within a period of six weeks from this order for seeking any relief as per Articles 10 & 11 of the PUAs/ Supplementary PUAs. However, in the interim, we allow the Change in Law compensation, as communicated by MNRE, as interim relief to be charged by the Petitioners on a provisional basis pending the final decision of the Commission on the Petition to be filed in this regard.

43. Petition No. 119/AT/2024 is disposed of in terms of the above.

Sd/-	sd/-	sd/-
(हरीश दुदानी)	(रमेश बाबू वी.)	(जिष्णु बरुआ)
सदस्य	सदस्य	अध्यक्ष

Annexure – VI

केन्द्रीय विद्युत विनियामक आयोग
CENTRAL ELECTRICITY REGULATORY COMMISSION

Petition No. 154/AT/2024

Coram:
Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member

Date of Order 4th September, 2024

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for the adoption of usage charges for 1000 MW Solar Photovoltaic (PV) Power Stations connected to the Inter-State Transmission System and selected through competitive bidding process under Central Public Sector Undertaking (CPSU) Scheme Phase-II (Tranche-III) dated 05.03.2019 as per the Standard Bidding Guidelines of Ministry of Power dated 03.08.2017.

And
In the matter of

NHPC Limited,
(A Govt. of India Enterprise)
NHPC Office Complex, Sector-33,
Faridabad (Haryana) - 121003.

...Petitioner

Versus

1. **Indian Renewable Energy Development Agency Limited,**
   3rd Floor, August Kranti Bhawan,
   Bhikaji Cama Place,
   New Delhi-110066

2. **Punjab State Power Corporation Limited,**
   The Mall, Patiala-147001,
   Punjab.

3. **West Bengal State Electricity Distribution Company Limited,**
   Vidyut Bhavan, Sector-II, Block- DJ
   Bidhannagar, Kolkata-700091,
   West Bengal

4. **Southern Power Distribution Company of Telangana Limited,**
6-1-50, Mint Compound, Hyderabad– 500063,
Telangana.

5. **Northern Power Distribution Company of Telangana Limited,**
Vidyuth Bhavan, Nakkalagutta,
Hanamkonda, Warangal– 506 001,
Telangana.

6. **Ministry of New and Renewable Energy,**
Block-14, CGO Complex,
Lodhi Road, New Delhi - 110003

Respondents

Parties present:

Shri Ravi Shankar Dvivedi, Advocate, NHPC
Shri Sushant Sarkar, Advocate, NHPC
Shri Rajesh Joshi, NHPC

ORDER

The Petitioner, NHPC Ltd. ('NHPC'), has filed the present Petition under Section 63 of the Electricity Act, 2003 ('the Act') for the adoption of the usage charges for the 1000 MW Solar Photovoltaic (PV) Power Station (Tranche III) connected with the Inter-State Transmission System ('ISTS') selected through a competitive bidding process under the 'Central Power Sector Undertaking Scheme Phase II (Government Producer Scheme) for setting up 12,000 MW grid-connected Solar Photovoltaic (PV) Power Projects by the Government Producers with Viability Gap Funding (VGF) support for self-use or use by the Government/Government entities, either directly or through the Distribution Companies' dated 5.3.2019 ('CPSU Scheme Phase II') as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power Grid Connected Solar PV Power Projects" ('the Solar Guidelines') dated 3.8.2017 issued by the Ministry of Power, Government of India. The Petitioner has made the following prayers:

"(a) Admit the present Petition;

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(b) Adopt the Usage Charges of Rs 2.45/kWh mutually agreed between NHPC and procurers with maximum quoted VGF of Rs 44,90,000/- per MW by NHPC Limited in competitive bidding process of IREDA in terms of Section 63 of the Electricity Act 2003 for procurement of 1000 MW Solar Power MNRE CPSU Scheme phase-II (Tranche-III).

(c) Pass such other and further order / orders as are deemed fit and proper in the facts and circumstances of the case."

Submission of the Petitioner

2. The Petitioner, NHPC has submitted that on 5.3.2019, the Ministry of New and Renewable Energy ('MNRE'), Government of India notified the CPSU Scheme Phase II for setting up the 12,000 MW grid-connected solar PV power projects by the Government Producers with Viability Gap Funding ('VGF') for self-use or use by the Government/ Government entities, either directly or through Distribution Companies ('Discoms'). Further, MNRE, vide its Notification dated 3.7.2019 issued the Scheme Modalities and Role of Distribution Companies in MNRE's CPSU Scheme Phase-II/government Produce Scheme for the 12000 MW Solar PV Power Projects.

3. Under the CPSU Scheme, Solar Energy Corporation of India ('SECI') was initially, declared as the implementing agency to handle the scheme on behalf of the MNRE. Thereafter, vide OM dated 13.4.2020, MNRE modified the ceiling of the usage charges not more than from Rs 3.50/kWh to Rs 2.80/kWh and declared Indian Renewable Energy Development Agency Limited ('IREDA/ Respondent No.1') as the implementing agency instead of SECI to carried out the bidding process on the basis of VGF for selection of the Government producers.

4. IREDA issued the Request for Selection ('RfS') for setting up of 5000 MW grid connected solar PV projects in India (Tranche-III) on 29.1.2021. As per the RfS,

power generated from government power producers shall be solely for self-use use by Government/ Government entities, either directly or through the Distribution Licensees on payment of mutually agreed usage charges of not more than Rs. 2.20/kWh, which shall be exclusive of any other third-party charges like wheeling and transmission charges and losses, point of connection charges and losses, cross-subsidy surcharges, and SLDC/RLDC Charges, etc. In a pre-bid meeting held on 23.2.2021, it was indicated by IREDA that that usage charges of Rs. 2.20/kWh were capped as per the MNRE OM No. 302/4/2017-GRID SOLAR dated 23.12.2020. Further, various extensions were also granted by IREDA on the last date for the bid submission vide addendums dated 3.3.2021, 23.3.2021, and 30.4.2021.

5. Subsequently, the MNRE *vide* its order dated 10.5.2021, amended Scheme guidelines dated 13.4.2020 and modified the ceiling of the usage charges to Rs 2.45/kWh, and revised the limit of maximum permissible VGF of Rs. 0.55 crore/MW from Rs. 0.70 crore/MW. The commissioning schedule of the project was also revised from 24 months to 30 months from the date of the Letter of Award. Consequent to the said MNRE order dated 10.5.2021, IREDA vide corrigendum dated 14.5.2021 modified the ceiling of the usage charges from Rs 2.20/ kWh to Rs. 2.45/kWh and further revised the limit of maximum permissible VGF of Rs. 0.55 crore/MW from Rs. 0.70 crore/MW in the RfS and extended the last date of the bid submission up to 31.5.2021. Further, the last date of the bid submission was revised to 30.6.2021 and 31.8.2021 vide addendum dated 14.6.2021 and 29.6.2021 respectively.

6. In response to the RfS, the Petitioner submitted its bid on 29.1.2021 and thereafter, through an e-reverse auction held on 23.9.2021, was declared as a successful bidder and the Petitioner was allocated 1000 MW and was issued the

Letter of Award ('LoA') on 4.10.2021 for the aforesaid capacity. Accordingly, the Petitioner, NHPC, was required to set-up the solar PV power projects having an aggregate capacity of 1,000 MW.

7. NHPC, vide its letter dated 18.5.2021, requested the various States/Discoms to procure Solar power under the CPSU Scheme Phase II, Tranche-III of the MNRE. In response, the Discoms of Telangana, *i.e.,* Telangana State Power Coordination Committee ('TSPCC'), West Bengal, *i.e.*, West Bengal State Electricity Distribution Company Limited ('WBSEDCL'), and Punjab, *i.e.,* Punjab State Power Corporation Limited ('PSPCL') conveyed their consent for procurement of solar power under the CPSU scheme on a long-term basis.

8. Pursuant thereto, the Petitioner entered into Power Usage Agreements ('PUAs') with the Discoms of the States of West Bengal, Telangana, and Punjab for the supply of solar power to be generated by the Petitioner through its solar PV power projects. The respective State Commissions of Telangana, West Bengal, and Punjab have also approved the procurement of Solar Power subject to the adoption of tariff by the Commission. The details of the PUAs are as under:

Sr.No.	Project	Quantity	Discom/States
1.	600 MW Solar Project, Khavda, District: Bhuj, Gujarat	600 MW	100 MW with PSPCL, Punjab, and 500 MW with DISCOMs of Telangana
2.	300 MW Solar Project, District: Bikaner, Rajasthan	300 MW	300 MW-PSPCL Punjab
3.	100 MW Solar Project District: Kunta, Andhra Pradesh	100 MW	100 MW-WBSEDCL, West Bengal

9. On 2.6.2023, NHPC requested IREDA, the Bid Process Coordinator, to approach the Commission for approval and adoption of the Usage Charges of Rs 2.45/kWh mutually agreed between NHPC and the procurers with maximum quoted

VGF of Rs 44,90,000/ per MW by NHPC in competitive bidding process of IREDA in terms of Section 63 of the Act for procurement of the 1000 MW Solar Power MNRE CPSU Scheme Phase II (Tranche III). However, IREDA vide letter dated 19.6.2023 denied the aforesaid request, citing Clause 10.4 of Solar Bidding Guidelines dated 3.8.2017, which *inter alia* required the distribution licensee or an intermediary procurer to approach the Appropriate Commission.

Hearings dated 8.5.2024 and 5.6.2024

10. The Petition was admitted on 8.5.2024, and notices were issued to the Respondents to file their respective replies. However, no reply has been received from the Respondents except Respondent No. 1, IREDA (BPC).

11. The matter was further heard on 5.6.2024, and Respondent No.1, IREDA, was directed to file all the relevant bid documents, including the evaluation report(s) and certification to the effect that the bid process was conducted as per the provisions of the CPSU Scheme and the Standard Bidding Guidelines dated 3.8.2017 - without taking any deviations from the provisions thereof. The Petitioner was directed to coordinate with Respondent No.1 on the above aspect in order to ensure timely compliance.

12. In compliance with the ROP dated 28.5.2024, Respondent No.1, IREDA, vide its affidavit dated 23.7.2024, has placed on record the details of the bidding process conducted by it in the capacity of the BPC at the behest of the Petitioner, NHPC. IREDA has further indicated that the bid documents were in line with the provisions of the CPSU Scheme and the bidding process has been done as per the said Scheme and under the principles of Section 63 of the Act. It has been further

submitted by the IREDA that there is no deviation from the CPSU Schemes while conducting the bid process and issuing the LoA to the successful Project developers.

13. IREDA, vide its affidavit dated 23.7.2024, has submitted the brief facts about the Petition as under:

(a) IREDA issued a Request for Selection (RfS) on 29.1.2021 for setting up the 5000 MW grid-connected SPVP in India (Tranche-III) under the CPSU Scheme. The RfS was in terms of the Government of India's target to achieve a cumulative capacity of 100 GW of solar PV installation by the year 2022 and the invitation proposal on a "Build, Own, Operate" basis for an aggregate capacity of 5,000 MW under Phase-II (Tranche-III). One of the salient features of the said RfS was that the power generated from the successful projects shall be solely for self-use or use by the Government or Government entities, either directly or through the Discoms, on payment of the mutually agreed usage charges of not more than Rs. 2.20/kWh.

(b) IREDA issued a corrigendum to the RfS on 14.5.2021, revising the usage charges to 2.45 kWh and reducing the maximum permissible limit for VGF from Rs. 0.70 crore/MW to Rs. 0.55 crore/MW for the projects. On January 29, 2021, NHPC submitted its bid, along with the other project developers, with their respective bid quantities.

(c) On 23.9.2021, pursuant to the e-reverse auction process, the following successful bidders [along with the quoted VGF] were allocated the capacity as under:

Sr. No.	Applicant Name	Quoted VGF (By bidder at end of e-RA)	Capacity Being Allocated (MW)
1.	SJVN Limited	INR 44,72,000/- Per MW	1000
2.	NLC India Limited	INR 44,74,990/- Per MW	510
3.	NHPC Limited	INR 44,90,000/- Per MW	1000
4.	IRCON International Limited	INR 44,94,000/- Per MW	500
5.	NTPC Limited	INR 44,95,000/- Per MW	1990
		Total	**5000**

(d) IREDA issued the Letter of Award (**"LOA"**) to all the aforesaid five successful bidders, including NTPC Limited on 4.10.2021 for the total allocated capacity of 5000 MW.

(e) On 16.9.2022, the MNRE vide their letter ref. no. 283/11/2017/2017-Grid Solar dated 16.9.2022, communicated to IREDA that considering the change in the GST rate as a 'Change in Law' the maximum usage charges, which was Rs. 2.45/kWh, was increased to Rs. 2.57/kWh.

(f) Pursuant to the above, the Petitioner entered into the Power Usage Agreements (**"PUAs"**) with Respondents 2 to 5 for the supply of power from the 600 MW Solar Project at Bhuj, Gujarat, from the 300 MW Solar Project at Bikaner.

(g) As the bid coordinator for Tranche-III Projects, IREDA has complied with and adhered to all the provisions of the CPSU Schemes while conducting the bid process. The RfP was issued in terms of the CPSU Schemes, and the bidding process has been conducted as per the said Scheme in terms of Section 63 of the Act. The relevant extract from the RfS substantiating that the same was under the CPSU Schemes is as under:

> ***"GUIDELINES FOR IMPLEMENTATION OF THE RfS***
>
> *16.0 This RfS document has been prepared* ***based on the Guidelines for "Central Public Sector Undertaking (CPSU) Scheme Phase-II (Government Producer Scheme)*** *for setting up 12,000 MW grid connected Solar Photovoltaic (PV) Power Projects by the Government Producers with Viability Gap Funding (VGF) support for self-use or use by Government/Government entities, either directly or through Distribution Companies (DISCOMS)" vide No. 302/4/2017- GRID SOLAR dated 05.03.2019" with subsequent amendments and clarifications thereof"*

(h) Further, the Department of Standardization, Testing and Quality Certification Directorate, the Ministry of Electronics and Information Technology, Government of India has issued a Certificate of Approval certifying that the E-Procurement Portal of ISN-Electronic Tender Services Pvt Ltd (1SN-ETS) has been tested and audited by STQC and same is in compliance with the "Guidelines for compliance to Quality requirements of e-

Procurement Systems" dated 31.8.2011 from the STQC Directorate, the Ministry of Electronics & Information Technology, Government of India.

Hearing dated 8.8.2024

14. Since the order in the matter (which was reserved on 5.6.2024) could not be issued prior to one Member of this Commission, who formed part of Coram, demitting office, the matter has been re-listed for the hearing on 8.8.2024. During the course of the hearing, the learned counsel for the Petitioner submitted that the Petitioner has already made detailed submissions in the matter and the Respondent, IREDA, also, in terms of the Commission`s direction, has filed an affidavit furnishing the details relating to the bid process and accordingly, the Commission may consider the adoption of usage charges as prayed for by the Petitioner. Considering the submission made by the learned counsel for the Petitioner, the Commission reserved the matter for order.

Analysis and Decision

15. We now proceed to consider the prayer as regards the adoption of usage charges for the 1000 MW of solar power projects in terms of the CPSU Scheme Phase-II issued by the Ministry of New and Renewable Energy, Government of India, under Section 63 of the Act.

16. Section 63 of the Act provides as under:

"Section 63: Determination of tariff by bidding process: Notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government."

Thus, in terms of Section 63 of the Act, the Commission is required to adopt the tariff on being satisfied that the transparent process of bidding in accordance

with the guidelines issued by the Central Government under Section 63 of the Act has been followed in determination of such tariff.

17. In the present case, the bid process for Tranche III was conducted under the CPSU Scheme Phase II issued by the MNRE, Government of India, on 5.3.2019. The salient features of the CPSU Scheme guidelines are as under:

(a) The CPSU Scheme Phase II has been envisaged to provide the necessary policy framework and mechanism for the selection and implementation of the 12,000 MW or more grid-connected solar PV power projects with VGF, by various Government Producers. 12,000 MW grid connected solar PV power projects are proposed to be set-up through the Government Producers with a budgetary support of Rs.8580 crore as VGF.

(b) The scheme will mandate the use of both solar photovoltaic cells and modules manufactured domestically as per the specifications and testing requirements fixed by the MNRE.

(c) Power produced by the Government Producer can be used for self-use or use by the Government/ Government entities, either directly or through Discoms on payment of mutually agreed usage charges of not more than Rs.3.5/unit, which shall be exclusive of any other third party charges like wheeling and transmission charges and losses, point of connection charges and losses, cross-subsidy surcharge, and State Load Despatch Centre (SLDC)/Regional Load Despatch Center (RLDC) charges, etc. as may be applicable.

(d) The solar PV power project capacity under the Government Producer Scheme would be allocated to the Government Producers by way of bidding, who, in turn, will secure an arrangement for the usage of power for self-use or use by Government/ Government entities, either directly or through Discoms.

(e) With the objective of covering the cost difference between the domestically produced solar cells and modules and imported solar cells and

modules, VGF shall be provided under the scheme. While the maximum permissible VGF has been kept at Rs.0.70 crore/MW, the actual VGF to be given to a Government Producer under the scheme would be decided through bidding using the VGF amount as a bid parameter to select project proponent.

(f) SECI will handle the scheme on behalf of the MNRE, including conducting bidding on a VGF basis, amongst Government Producers for selection of the Government Producers for implementing this scheme. SECI will ensure that the proposed projects comply with the WTO provisions, and also the compliance by the Government Producers on the mandatory requirement of domestic content under the scheme.

18. The aforesaid Scheme guidelines have been modified by the MNRE vide Office Memorandum dated 13.4.2020 whereby, *inter alia*, the ceiling of usage charges was revised from Rs 3.50/kWh to Rs.2.80/kWh, and the task of conducting bidding was entrusted to IREDA thereby replacing SECI. Thereafter, MNRE vide order dated 10.5.2021 further amended the Scheme guidelines by Order darted 10.5.2021 whereby the ceiling of the usage charges was further revised to Rs 2.45/kWh, and the limit of maximum permissible VGF was also revised to Rs. 0.55 crore/MW from Rs. 0.70 crore/MW. By said Order, the commissioning schedule of the project was also revised from 24 months to 30 months from the date of the Letter of Award.

19. Accordingly, we proceed to examine whether the usage charges have been discovered in terms of the provisions of Section 63 of the Act and whether the selection of the successful bidder(s) has been made through a competitive bidding process as per the provisions of the CPSU Scheme Phase-II.

20. As per the scheme guidelines, only the Government Producers were eligible for availing VGF under the CPSU Scheme Phase-II and the setting-up of the solar

PV power projects was solely for self-use or use by the Government/Governme... entities, either directly or through the Discoms. Further, the solar PV power project capacity allocated to the Government Procurers by way of the bidding, was required to secure an arrangement for the usage of power for self-use or use by the Government/ Government entities, either directly or through Discoms.

21. Before delving further, it is also pertinent to note that the Petitioner, after having successfully participated in the bidding process, has entered into the PUAs with the distribution licensees of Telangana, West Bengal, and Punjab at the usage charges of Rs.2.45/kWh and their respective State Commissions have also approved the procurement under Section 86(1)(b) of the Act subject to the adoption of tariff by this Commission. Keeping in view that as per the CPSU Scheme Phase II, the entire solar power project capacity allocated to the Government Producer, i.e., the Petitioner herein, has been arranged for use by the Government/Government entities (a class of consumers) through the distribution licensees under the PUAs, the aspect of determination of usage charge would fall under the regulatory domain of the Commission. It is also well settled that in a situation where the guidelines issued by the Central Government cover the situation, the Commission is bound by those guidelines and is required to exercise its regulatory function, albeit under Section 79(1), only in accordance with those guidelines. However, in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation, the Commission's general regulatory power under Section 79(1) can be used, and the general regulatory power of the Commission under Section 79(1) is the source of the power to regulate, which *inter alia* also includes the power to adopt the tariff. Keeping in view the above aspects, we decide to proceed to examine the issue of the adoption of the usage charges.

22. As per the provisions of the CPSU Scheme Phase-II, IREDA had issued RfS documents, namely, RfS for Selection of Solar Power Developers for setting-up of the 5000 MW grid connected solar PV power projects (Tranche III), in line with the CPSU Scheme Phase II.

23. The key dates of event in the bidding process are as under:

Sr No	Milestone	Date
1	RfS issued by IREDA	29.1.2021
2	Pre-bid meeting held	23.2.2021
3	Extension of submission of bid date	25.3.2021,30.4.2021 15.5.2021,31.5.2021, further extended 30.6.2021 and 31.8.2021
4	Amendments/Clarification and Corrigendum to RfS	3.3.2021,23.3.2021, 30.4.2021, 10.5.2021 and 14.5.2021, further extended 14.6.201 and 29.6.2021
5	e-Reverse Auction conducted	23.9.2021
6	Issuance of Letter of Awards	4.10.2021

24. As per the CPSU Scheme Phase II, IREDA issued the RfS document for the selection of the Solar Power Developers for setting-up of the 5000 MW grid connected solar PV project (Tranche III) on 29.1.2021. Also, as indicated, the notice regarding the publication of the RfS was issued on IREDA's website, i.e., www.ireda.in, and the ETS Portal, i.e. bharat-electronictender.com.

25. The last date of the bid submission was 25.3.2021, which was further extended by IREDA up to 31.8.2021 by way of various addendums/corrigendum to the RfS. Moreover, in line with the MNRE Order dated 10.5.2021, IREDA *vide* corrigendum to RfS dated 14.5.2021 also modified the ceiling of the usage charges

to Rs 2.45/kWh and further revised the limit of maximum permissible VGF to Rs 0.55 crore/MW from Rs. 0.70 crore/MW.

26. In response to the RfS, a total of seven bids were received from the various Government Producers. Details of the bidders are as follows:

Sr. No.	Bidder's Name	Quoted VGF Rs. per MW	Capacity Applied for (MW)
1	SJVN Limited	54,50,000	1000
2	NLC India Limited	55,00,000	510
3	NHPC Limited	54,00,000	1000
4	IRCON International Limited	55,00,000	500
5	NTPC Limited	55,00,000	2500
6	Solar Energy Corporation of India Limited	55,00,000	1200
7	Indian Oil Corporation Limited	55,00,000	250

27. All the above techno-commercial qualified bidders were shortlisted for e-Reverse Auction (e-RA). The e-RA was conducted on 23.9.2021 during which the VGF amount sought per MW was kept as a bid parameter to select the Government Producers as the Solar Power Developer. Pursuant to the conclusion of the e-RA, the following Government Producers were declared as the successful bidders, which also included the Petitioner herein which came to be allocated 1000 MW on the basis of its quoted VGF of Rs. 44,90,000/MW at the end of e-RA:

Sr. No.	Bidder's Name	Quoted VGF (By bidder at the end of e-RA)	Allotted Capacity (MW)
1	SJVN Limited	44,72,000/-	1000
2	NLC India Limited	44,74,990/-	510
3	NHPC Limited	44,90,000/-	1000
4	IRCON International Limited	44,94,000/-	500
5	NTPC Limited	44,95,000/-	1990
Total			**5000**

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28. Pursuant to its selection as the successful bidder under the RfS, IREDA issued the Letter of Award to the Petitioner, allocating 1000 MW on 4.10.2021. The relevant portions of the said Letter of Award are extracted as under:

> ***"Sub: Selection of Solar Power Developers for Setting up of 5,000 MW Grid Connected Solar PV Power Projects in India (Tranche-III) under Central Public Sector Undertaking (CPSU) Scheme Phase-II (Government Producer Scheme): Letter of Award for allocated capacity of 1000 MW (Project ID: CPSU-Ph2-Tr3-SSPD-1000 MW-II)***
>
> *Ref: "Central Public Sector Undertaking (CPSU) Scheme Phase-II (Government Producer Scheme) for setting up 12,000 MW grid-connected Solar Photovoltaic (PV) Power Projects by the Government Producers with Viability Gap Funding (VGF) support for self-use or use by Government entities, either directly or through Distribution Companies (DISCOMS)" issued by the Ministry of New & Renewable Energy vide No. 302/4/2017-GRID SOLAR dated 05.03.2019 including subsequent amendments and clarifications thereof (herein referred to as "Guidelines")*
>
> *RfS No. 23016/1/2020-IREDA/RfS/5000 MW/ 012021 Dated: 29/01/2021 subsequent amendments/clarifications/revisions/notifications issued by IREDA and uploaded during the process of RfS on ETS portal (https://www.bharat-electronicten.com)*
>
> *This has reference to the following:*
>
> A. *Your response to the RfS document submitted through ETS portal vide Organization ID ETS- IN-2019-RS0000153) against RfS for Selection of Solar Power Developers for 5000 MW Grid- Connected Solar PV Power Projects in India (Tranche-III) under CPSU Ph-II Scheme (Government Producer Scheme).*
>
> B. *Final VGF (INR/MW} as quoted by you at the end of the e-Reverse Auction conducted on ETS portal on 23.09.2021 for the referred RfS for selection of Grid-connected Solar PV Power Projects.*
>
> *In reference to above and subject to the provisions of RfS, we confirm that your final VGF price quoted by your organisation during the e-RA concluded on September 23, 2021, is accepted and issue this letter of award with the following details:*

Allotted Project ID	Allocated Capacity (MW)	Project Location	Maximum VGF Eligibility (INR/MW) in figures	Maximum VGF eligibility (INR/MW) in words	Total Eligible Maximum VGF (INR)
CPSU-Ph2-Tr3-SSPD- 1000 MW 1000 MW-II	1000 MW	Anywhere in India	44,90,000/-	Forty-Four Lakhs Ninety Thousand only	449,00,00,000.00

> *In alignment with the Guidelines of the scheme, the abovementioned project shall supply power solely for either self-use or use by Government/Government entities, either directly or through Discoms under the CPSU Ph-II scheme. Further such*

supply shall be subject fo the following terms and conditions as stated in various documents referred above. The same terms and condition are also being briefly brought out hereinafter.

I. *Power generated from above Project(s) shall be solely for self-use or use by Government/Government entities, either directly or through Discoms on payment of mutually agreed usages charges of not more than Rs. 2.45/kWh, which shall be exclusive of any other third-party charges like wheeling and transmission charges and losses, point of connection charges and losses, cross-subsidy surcharges, State Load Dispatch Centre (SLDC)/ regional Load Dispatch Centre (RLOC) Charges, etc. as may be applicable. Waiver of ISTS charges and losses, for use of ISTS network, shall be available to Projects set-up under the CPSU Phase-II Scheme.*

II. *As the selected Government Producer under the scheme, NHPC Limited can use the VGF provided under the Scheme as your equity in solar power project(s) being set up under this scheme.*

III. *If the proposed solar PV power project(s) under CPSU Scheme Phase-II is being set up in an UMREPP/ Solar Park, then such projects will be eligible for both, the Central Financial Assistance (CFA) as per UMREPP/ Solar Park Scheme as well as VGF under the CPSU Scheme Phase-II.*

IV. *As the selected Government Producer/ Solar Project Developer (SPO), you Would also be free to avail other fiscal incentives, if any, as per the extant rules. IREDA will not have any liability if the SPD is not able to avail fiscal incentives and this will not have any bearing on the maximum eligible VGF per MW.*

V. *The award of the above allotted capacity is subject to the Guidelines including amendments/clarifications issued by Government of India and terms and conditions of the RfS document including its clarifications/ amendments / elaborations / notifications issued by IREDA.*

VI. *A Bidder which has been selected as Successful Bidder under this RfS can also execute the Project(s) through a Special Purpose Vehicle (SPV) i.e. a Project Company especially incorporated as a subsidiary Company of the successful bidder for setting up of the Project(s), with at least 76%» shareholding in the SPV which has to be registered under the Indian Companies Act, 2013, before signing of EPC agreement with EPC Contractor. Multiple SPVs may also be incorporated for executing more than one Project.*

VII. *The SPD shall pay to IREDA, Success Charges of Rs. 1 lakh/MW/project + 18% GST within 30 days from the date of this Letter of Award (LoA) towards administrative overheads, coordination with State Authorities and monitoring of Projects' compliance with WTO norms, in line with Clause 12, Section-III of the RfS. Performance Bank Guarantee(s) for an amount equal to 50% of total VGF sanctioned as per this Letter of Award shall be submitted by the SPD before disbursement of first tranche of VGF, in line with Clause 11.1, Section-III of the RfS. The validity of any such PBG being submitted to IREDA shall not be less than 39 months.*

VIII. *The SPD shall confirm the configuration of the total allocated capacity at the time of disbursement of second tranche of VGF. The SPD, if he wishes so, may affix separate PPA tariffs for each Project, based on its own*

arrangements with the Procurer(s), if applicable.

IX. *The Projects can be located anywhere in India. It is clarified that the projects may be implemented as ground mounted, or rooftop mounted or floating or canal top/canal bank etc., or a combination thereof, as per the requirements of the SPD.*

X. *It may be noted that while a single VGF shall be quoted by the bidder based on the cumulative Project Capacity in the RfS, VGF will be released to the SPD separately for each Project as per the final Project configuration declared by the SPD. Accordingly, for each individual Project as per the above break-up, the second tranche of VGF will be disbursed to the SPD only upon successful commissioning of full capacity of that individual Project.*

XI. *Commercial re-sale of power by the Procurer or End Consumer is not allowed as per the RfS conditions. The SPD shall provide a power mapping (Format7.10 of the RfS) for the proposed capacity being quoted for, clearly specifying the SPD, various intermediaries, if any, and the End Consumer. The same shall be submitted to IREDA after finalization of the mapping by the SPD, but necessarily prior to disbursement of second tranche of VGF.*

XII. *The SPD shall submit a self-certification to IREDA (Format 7.6 as amended), confirming that the Project has been set-up, as per the provisions of the Scheme Guidelines, and explanatory notes, if any, as published by MNRE from time to time. The above certifications will be submitted by the SPD after finalization of power mapping by the SPD, but no later than prior to disbursement of second tranche of VGF.*

XIII. *The RfS mandates use of both solar photovoltaic (SPV} cells and modules manufactured domestically as per specifications and testing requirements fixed by MNRE. For the Projects to be implemented under this RfS, both the solar cells and modules used in the Solar Power Projects must be made in India. In case of crystalline Silicon technology, all process steps and quality control measures involved in the manufacture of the Solar Cells and Modules starting from wafers till final assembly of the Solar Cells into Modules shall be performed at the works of PV manufacturers in India.*

XIV. *VGF will be released in two tranches as follows:*

1. *50 % on award of Contract to the EPC Contractor (including in-house EPC Division) by the SPD. The SPD is required to sign the EPC agreement with EPC Contractor within twelve months from date of this LoA.*

2. *Balance 50% on successful commissioning of the full capacity of Project.*

XV. *The Commissioning of the Project shall be carried out by the SPD as per the procedure established by the SPD. The SPD shall submit the commissioning certificate of the Project to IREDA, based on which, the installed capacity shall be examined by IREDA in line with the DCR norms as per the RfS. After successful examination of the same, the second tranche of the VGF, amounting to 50% of the total VGF awarded for the Project, will be disbursed to the SPD.*

XVI. *Schedule Commissioning Date (SCD) for commissioning of the full capacity of the Project shall be the date as on 30 months from the date of issuance of LoA. The maximum time period allowed for commissioning*

of the full Project Capacity shall be limited to 36 months from the date of issuance of LoA.

XVII. In case of delay in commissioning of the Project beyond the SCD until the date as on 36 months from the issue date of the LoA/LoI, as part of the penalty for delay in commissioning the amount of VGF sanctioned to be the project shall be reduced by 0.15% (zero-point one five percent) of the sanctioned VGF, on per day basis, for the period of such delay, and proportionate to the capacity delayed or not commissioned.

XVIII. All disputes arising out of and/ or in connection with the selection of Solar Power Projects under the said RfS and execution of project(s) thereto shall be governed by laws of India and shall be subject to the jurisdiction of Courts of New Delhi."

29. Pursuant to the issuance of the LoA, the Petitioner has entered into PUAs with Punjab, West Bengal, and Telangana Discoms *i.e.*, Respondent No. 2, Respondent No. 3, and Respondent No. 4 for supply of solar power to be generated through its solar PV power projects set-up under the CPSU Scheme Phase-II. The Petitioner has submitted that under the various PUAs, power generated by the Petitioner from its solar PV projects, as Government Producer, is to be procured by the Respondents, Punjab, West Bengal, and Telangana Discoms solely for the end user, namely Government or Government entities, in compliance with WTO Regulations on mutually agreed terms and conditions as mentioned in the CPSU Scheme Phase-II. The details of the PUAs are as follows:

S.No	Project	Quantity	Discom/States	Details of PUAs
1	600 MW Solar Project, Khavda, District: Bhuj, Gujarat	600 MW	500 MW Telangana Discoms	PUA dated 28.3.2023 @ Rs. 2.45/kWh
			100 MW PSPCL Punjab	PUA dated 16.5.2023 @ Rs 2.45/kWh
2	300 MW Solar Project, District: Bikaner, Rajasthan	300 MW	300 MW PSPCL Punjab	PUA dated 16.5.2023 @ Rs 2.45/kWh
3	100 MW Solar Project District: Kunta, Andhra Pradesh	100 MW	100 MW WBSEDCL, West Bengal	PUA dated 23.11.2022 @ Rs. 2.45/kWh

30. The Petitioner has also submitted that the respective State Commissions have also approved the aforesaid procurement by the concerned distribution licensees under Section 86(1)(b) of the Act subject to the adoption of tariff by this Commission. Telangana State Electricity Regulatory Commission vide order dated 26.10.2022 has accorded the in-principle approval for the procurement of power by Telangana Discoms from 500 MW of solar power from the Petitioner under the CPSU Scheme Phase II Tranche III at a tariff of Rs. 2.45/kWh and has also directed to approach this Commission for the adoption of tariff. West Bengal Electricity Regulatory Commission vide order dated 12.6.2023 approved the PUA signed between the Petitioner and WBSEDCL for the purchase of 100 MW solar power subject to the adoption of tariff by this Commission. Similarly, Punjab State Electricity Regulatory Commission vide order dated 31.8.2023 has approved the PUA signed between the Petitioner and PSCPL for the purchase of 400 MW solar power from the Petitioner under CPSU Phase II Tranche III while directing the parties to approach this Commission for adoption.

31. Further, IREDA vide affidavit dated 23.7.2024 has also stated that the RfS was issued in terms of the CPSU Scheme Phase II, and the bidding process had been conducted as per the said Scheme guidelines and under the principles of Section 63 of the Act. IREDA has also indicated that no deviation from the CPSU Schemes was taken while conducting the bid process and issuing the LoAs to the successful bidders.

32. In view of the above, we are of the view that the selection of the Petitioner, out of various Government Producers, has been done on the basis of a transparent, competitive bid process with VGF as the bid parameter and in accordance with the provisions of the CPSU Scheme Phase II.

33. Insofar as the adoption of usage charges under the PUAs is concerned, the said aspect also came up for consideration before this Commission in Petition No. 174/AT/2021 in the matter of NTPC Limited v. Solar Energy Corporation of India Limited and Ors., wherein NTPC had prayed for the adoption of usage charges for 1692 MW Solar PV Projects selected through the competitive bid process under the CPSU Scheme Phase II Tranche I & II. The Commission, in its order dated 13.12.2021, *inter alia*, observed as under:

> *"34. In support of allowing the prayer of the Petitioner for adoption of usage charges, the Petitioner and the Respondent, SECI have placed reliance on the provisions of the Standard Bidding Guidelines, which envisage bidding based on VGF as bid parameter and provide for adoption of pre-specified tariff and also on the order dated 1.3.2021 passed by the Commission in Petition No. 160/AT/2019 along with IA No.81/2019, wherein the bid process was also conducted on VGF as bid parameters and the Commission had adopted the pre-specified tariff. The relevant extract of the Standard Bidding Guidelines reads as under:*
>
> > *"4.3 Bidding Parameters: For procurement of electricity, the Procurer may opt for either 'Tariff as Bidding Parameter' or 'Viability Gap Funding (VGF) as Bidding Parameter'.*
> > *...*
> > *4.3.2 VGF as the Bidding Parameter: It involves a mechanism wherein a pre-determined tariff is offered to the Solar Power Generator along with a financial assistance, to enable the Solar Power Generator to supply power at this tariff. For VGF based Bidding, the Procurer shall specify the following before issuance of RfS: (a) Pre-determined tariff payable to the selected Solar Power Generator for the duration of the PPA and the Maximum amount of Viability Gap Funding (VGF) support required by them. The bidders who do not want to avail the VGF support, may offer in their bids, a discounted tariff, lower than the pre-determined tariff offered by the Procurer..."*
>
> *35. Indisputably, the Standard Bidding Guidelines provide for VGF as a bidding parameter for conducting competitive bid process under Section 63 of the Act. The mechanism involves pre-determined tariff payable to the selected solar power generator and the maximum amount of VGF support required by them. Further, in case the bidders do not want to avail of VGF, they may offer a discounted tariff than that of pre-determined tariff.*
>
> *36. However, we note that the bidding process on the basis of VGF as bid parameter under the CPSU Scheme Phase-II is not exactly as per the Standard Bidding Guidelines, since instead of pre-determined tariff (in terms of the Standard Bidding Guidelines), the CPSU Scheme Phase-II only provides for pre-determined ceiling usage charges. Further, the CPSU Scheme Phase-II recognizes that the usage charges may be mutually agreed between the parties (which is not the case in the Standard Bidding Guidelines) albeit subject to the ceiling as specified therein.*

Therefore, the lower usage charges as may be mutually agreed between the parties (the Petitioner and the Telangana Discoms in the instant case) cannot be equated with the discounted tariff (for bidders who quote nil VGF) under the VGF based bidding as per the Standard Bidding Guidelines since the Petitioner has not foregone the VGF entitlement in the present case.

37. On the other hand, in the case of bid process involved in Petition No. 160/AT/2019, there was pre-determined tariff of Rs.5.45/kWh (Rs.4.75/kWh in case benefit of Accelerated Depreciation was availed) and the bidders were required to compete on the basis of VGF requirement per MW. Thus, the bidding process envisaged and conducted therein as per the provisions of 'Scheme for Setting up of 750 MW grid connected Solar PV Power Projects under Batch-I of Phase-II of Jawaharlal Nehru National Solar Mission with Viability Gap Funding support from National Clean Energy Fund' was similar to that specified in the Standard Bidding Guidelines and did not provide for any mutual agreement for lowering the predetermined tariff. Thus, the instant case is distinguishable from the matter involved in adoption of tariff in Petition No. 160/AT/2019.

38. In light of the above observations, we are of the view that the usage charges as mutually agreed between the Petitioner and the Telangana Discoms cannot be stated to have been discovered through a process of competitive bidding under Section 63 of the Act.

39. However, at the same time, we do recognise that in terms of the provisions of the CPSU Scheme Phase-II, the bid processes have been conducted with VGF as a bid parameter against the pre-determined ceiling usage charge of Rs.3.50/kWh, though the actual usage charge was subject to mutual agreement within the said ceiling. Therefore, in line with the bid process envisaged in the Standard Bidding Guidelines, the Commission deems it fit to adopt the ceiling usage charge of Rs.3.50/kWh under Section 63 of the Act in respect of 1692 MW capacity under Tranche-I and Tranche-II in respect of the Petitioner. ...."

34. The above observations of the Commission in the case of CPSU Scheme Phase II Tranche I & II squarely apply to the present case. However, in the case of Tranche I & II, the usage charge agreed upon between the parties under the PUAs on the mutually negotiated basis were lower than the prevailing ceiling usage charges of Rs.3.50/kWh and accordingly, the Commission after recognizing that the bid process had been conducted with VGF as a bid parameter against the pre-determined ceiling usage charge of Rs. 3.50/kWh, deemed it appropriate to adopt the ceiling usage charge of Rs. 3.50/kWh under Section 63 of the Act. Whereas, in the present case, the usage charges agreed upon between the parties under the PUAs, i.e., Rs 2.45/kWh, are the ceiling usage charges prevailing at the time of the conclusion of the bid process. It is also noticed that the MNRE had subsequently

increased this maximum usage charges to Rs. 2.57/kWh for the Projects awarded under Tranche III on account of an increase in GST rates vide Ministry of Finance's Notification No. 8/2021 dated 30.9.2021 whereby the GST rates for specified renewable energy devices and parts for their manufacture were revised. However, keeping in view that in this case, the Petitioner, NHPC, has not sought to rely upon the aforesaid MNRE OM or its implications and has prayed for the adoption of usage charges to the extent of Rs. 2.45/kWh – the ceiling usage charges prevailing at the time of bid process, the Commission deems it fit to adopt the usage charge of Rs. 2.45/kWh, under Section 63 of the Act in respect of the 1000 MW Solar PV Power Projects of the Petitioner under Tranche III of the CPSU Scheme.

35. The Petition No. 154/AT/2024 is disposed of in terms of the above.

Sd/-	**sd/-**	**sd/-**
(Harish Dudani)	**(Ramesh Babu V.)**	**(Jishnu Barua)**
Member	**Member**	**Chairperson**

Annexure-VII

CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 211/AT/2021

Coram:
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Date of Order: 8th March, 2022

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for 2000 MW Solar Power Projects (Tranche-IX) connected through inter-State Transmission System and selected through Competitive Bidding Process as per the Guidelines dated 3.8.2017 of Ministry of Power, Government of India.

And
In the matter of

Solar Energy Corporation of India Limited,
6th Floor, Plate-B, NBCC Office Block Tower-2,
East Kidwai Nagar,
New Delhi –110023. ....**Petitioner**

Vs

1. **Avikiran Surya India Private Limited**,
14th Floor, Tower B, Vatika Towers,
DLF Golf Course Road, Suncity, Sector 54,
Gurugram -122 003.

2. **Solarpack Corporacion Technologica SA**,
Avenida de Algorta 16, 3
48992 Getxo-Vizcaya,
Espana, Spain

3. **AMP Energy Green Private Limited**,
309, Rectangle One, Behind Sheraton Hotel,
Saket,
New Delhi - 110 017.

4. **Eden Renewable Bercy Private Limited**,
Unit No 236 B &C, 1st Floor,
DLF South Court, Saket,
New Delhi - 110 017,

5. **IB Vogt Singapore Pte Limited**,
80 Robinson Road, #02-00,
Singapore-068898.

6. **Ayana Renewable Power Private Limited**,
3d Floor, Sheraton Grand Hotel,
Brigade Gateway, 26/1,
Dr. Rajkumar Road Malleswaram (West),
Bangalore- 560 055, Karnataka

7. **ReNew Solar Power Private Limited**,
ReNew Hub, Commercial Block-1,
Zone 6, Golf Course Road, DLF City
Phase V, Gurugram- 122 009,
Haryana

8. **Thar Surya 1 Private Limited**,
14th Floor, Tower B, Vatika Towers,
DLF Golf Course Road, Suncity, Sector 54,
Gurugram - 122 003

9. **BSES Yamuna Power Limited**,
Shakti Kiran Building, Kakardooma,
Delhi - 110 092

10. **BSES Rajdhani Power Limited**,
BSES Bhawan, Nehru Place,
Delhi - 110 019.

11. **Uttarakhand Power Corporation Limited**,
Victoria Cross Vijeyta Gabar Singh Urja Bhawan,
Kanwali Road, Balliwala Chowk,
Dehradun, Uttarakhand - 248 001. ....**Respondents**

The following were present:
Shri M. G. Ramachandran, Senior, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Srishti Khindaria, Advocate, SECI
Shri Atulya Kumar Naik, SECI
Shri Shibasish Das, SECI

Shri Mudit Jain, SECI
Shri Hemant Sahai, Advocate, Eden Renewable
Shri Nitish Gupta, Advocate, Eden Renewable
Ms. Shefali Tripathi, Advocate, Eden Renewable
Ms. Rakshika Kaul, AMP Energy
Ms. Jyotsna Khatri, AMP Energy
Shri Shourya Choudhary, AMP Energy
Shri Abhilash Yadav, AMP Energy
Shri Kulbhusan Kumar, IB Vogt
Shri Jafar Alam, Advocate, Avikiran Surya and Thar Surya
Shri Saahil Kaul, Advocate, Avikiran Surya and Thar Surya
Ms. Shikha Ohri, Advocate, ReNew Power
Ms. Surabhi Pandey, Advocate, ReNew Power
Shri Ishan Nagpal, ReNew Power

ORDER

The Petitioner, Solar Energy Corporation of India Limited ('SECI'), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') for adoption of tariff for 2000 MW solar power projects (Tranche-IX) connected to inter-State transmission system ('ISTS') and selected through competitive bidding process as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects" (hereinafter referred to as 'the Guidelines') dated 3.8.2017 issued by Ministry of Power, Government of India. The Petitioner has made the following prayers:

"(a) Adopt the tariff discovered in the tariff based competitive bid process for the individual power projects as stated in Table-1 at Paragraph 8 (iv) above on the terms and conditions contained in the Power Purchase Agreements entered/ to be entered into with the Respondent Nos.2 and 8 read with the Power Sale Agreements executed with Respondent Nos. 9 and 10;

(b) Approve Trading Margin of Rs.0.07/kWh as agreed to by the Distribution Companies in the signed PSAs in terms of Regulation 8 (1) (d) of the Trading License Regulations, 2020; and

(c) Recognize, in terms of Article 12.2 of the PPAs and Article 8.2 of the PSAs, that the change in rates of Safeguard Duty, GST and Basic Customs Duty after 22.06.2020, if

any, will be considered as Change in Law subject to the fulfillment of the conditions contained therein."

Submission of the Petitioner

2. The Petitioner, SECI has submitted that it issued Request for Selection ('RfS') along with draft Power Purchase Agreement ('PPA') and draft Power Supply Agreement ('PSA') for selection of 2000 MW ISTS-connected solar power projects (Tranche-IX) as per the Guidelines and floated the same on ISN Electronic Tender System (ETS) e-bidding portal on 20.3.2020. In response, eleven bids were received offering an aggregate capacity of 5280 MW and were found to fully meet the technical criteria. As per the eligibility criteria mentioned in the RfS, nine bidders were shortlisted for participating in the e-reverse auction. The e-reverse auction was conducted on 30.6.2020 on ISN ETS e-bidding portal and pursuant thereto seven bidders offering aggregate capacity of 2000 MW were selected and issued Letters of Award. As on date of filing of Petition, the Petitioner has entered into PPA with Thar Surya 1 Private Limited (Project Company of successful bidder - Avikiran Surya India Private Limited) for 300 MW capacity @ Rs.2.37/kWh and PSAs with distribution companies, Respondents No. 9 - BSES Rajdhani Power Limited and Respondent No. 10 - BSES Yamuna Power Limited for 210 MW and 90 MW respectively. The Petitioner has submitted that the selected solar power projects are scheduled to be commissioned during 2022-23 and will enable the distribution companies in meeting their Renewable Purchase Obligations apart from providing power at very economical rates. It has been further submitted that in addition to tariff, there will be the trading margin of Rs. 0.07/kWh to be recovered from the distribution companies, which have been duly agreed to by the distribution

companies in the PSAs. The Petitioner has submitted that Article 12.1.3 of the PPAs entered into/ to be entered into between SECI and Solar Power Developers and Article 8.1.3 of the PSAs entered into by SECI with distribution companies provide that change in rates of Safeguard Duty, GST and Basic Custom Duty after 22.6.2020, if any, will be considered as Change in Law subject to the provision that the Appropriate Commission recognizes such provisions at the time of adoption of tariff and, accordingly, the Petitioner has prayed for recognition of the above provisions.

3. The Petitioner (SECI) vide its affidavit dated 10.11.2021 placed on record (a) its letter dated 26.11.2020 and e-mail dated 13.1.2021 to Ministry of New and Renewable Energy ('MNRE'), Government of India requesting to modify certain provisions of the Standard Bidding Guidelines and in meantime allowing SECI to make changes with respect to certain provisions in the scheme documents to accommodate concerns of various stakeholders, to enable SECI to enter into PSAs and PPAs, etc., (b) letters dated 1.3.2021 and 18.12.2020 of MNRE to SECI, in exercise of its powers to issue clarification/ modifications under the Guidelines, whereby MNRE gave *ex-post facto* approval for changes in respect of certain provisions vis-à-vis Standard Bidding Guidelines in respect of (i) bid that have been issued but not closed; and (ii) bid that have been issued and closed by SECI, and (c) copy of PSA dated 12.10.2021 signed between SECI and Uttarakhand Power Corporation Limited ('UPCL') for sale of 100 MW solar power. SECI also filed an amended memo of parties impleading UPCL as party to the present Petition.

Hearing dated 11.11.2021

4. The matter was heard on 11.11.2021 and notices were issued to the Respondents to file their reply. During the course of hearing, the Commission observed that there appeared to be inordinate delays in signing of PPAs and PSAs after conclusion of the bidding and issuance of LoAs to successful bidders on 15.7.2020. It was also observed that as on date, the Petitioner had only placed on record PPAs and PSAs for 300 MW out of 2000 MW. Accordingly, the Commission sought clarification from the Petitioner on the following:

(i) Status of LoAs issued in favour of the selected developers, including their validity period, if any;

(ii) Status of compliances of the various terms and conditions specified in the LoAs by the selected developers;

(iii) Status of execution of PPAs and PSAs with the developers and the buying entities;

(iv) Reason for inordinate delays in execution of the PPAs;

(v) Justification for seeking adoption of tariff for entire capacity of 2000 MW in absence of PPAs and PSAs beyond capacity of 300 MW.

5. Pursuant to the notice, reply to the Petition has been filed by Respondent No.1 & Respondent No.8, Respondent No. 4, Respondent No. 7 and Respondent No.3 which have been dealt with in succeeding paragraphs.

6. Respondent No.1, Avikiran Surya India Private Limited ('ASIPL') and its Project Company Respondent No.8, Thar Surya 1 Private Limited (in short, 'Thar Surya'), vide their combined reply, have mainly submitted as under:

(a) Pursuant to ASIPL having been declared as one of the successful bidders, Thar Surya has executed PPA dated 20.8.2021 with SECI for development of solar power project and sale of 300 MW power to SECI.

(b) The development of the aforesaid project by Thar Surya is at an advance stage and, therefore, adoption of tariff is a critical milestone to ensure continued and orderly disbursement of funds from its lenders and commissioning of the project in stipulated timelines. The details of various development activities undertaken by Thar Surya towards development of the project and the expenditure incurred so far have also been set out in the reply.

(c) The adoption of tariff for the project ought not to be delayed on account of SECI's inability to execute firm agreement for the entire bid capacity of 2000 MW. Any delay would severely prejudice the development of its project and subject Thar Surya to unwarranted risks and uncertainties.

(d) Additionally, in terms of Article 12.1.3 of the PPA, any change in the rate of Safeguard Duty, GST and Basic Custom Duty after the date of submission of bid i.e. 22.6.2020 that increases in Project cost is required to be recognized by the Commission at the stage of adoption of tariff. Accordingly, appropriate declaratory orders be passed in this regard as per Article 12.1.3 of the PPA.

7. Respondent No. 4, Eden Renewable Bercy Private Limited ('ERBPL') vide its reply dated 15.12.2021 has mainly submitted the following:

(a) ERBPL is, as such, not challenging the adoption of tariff being sought by the Petitioner. However, the present reply is being filed to the limited extent of bringing to the notice of the Commission, the deviations made by SECI in RfS and PPAs from the Guidelines.

(b) A conjoint reading of Clause 3.1 and Clause 18 of the Guidelines makes it clear that the bidding documents are mandatorily required to be prepared in conformity with the Guidelines and the deviation in the provisions in the bidding documents issued by the procurer from the Guidelines is required to be approved by the Appropriate Commission.

(c) The provisions as regards Change in Law envisaged in the Guidelines at Clause 5.7 are all-encompassing provisions and seek to cover all events that have a direct impact on capital and operational cost of the project. As per the Guidelines, any event occurring before and after the commissioning of the project and having a direct impact i.e. either financial loss or gain on the project, would qualify as Change in Law event. Consequently, on the occurrence of such event, solar power generator is liable to be compensated/ restituted in order to be brought to the same financial position as it would have been had it not been for the occurrence of the Change in Law.

(d) Under the RfS, which SECI had categorically stated to have been prepared on the basis of Guidelines, perusal of Clause 6 therein, makes it clear that it contemplated to include all such events which could have a direct effect on the Project either before or after the commissioning as Change in Law events.

(e) However, there are certain deviations in Article 12 (Change in Law) of the standard PPA and the provisions as envisaged in the Guidelines. The Change in Law clause envisaged in the PPA is in contradistinction to the Change in Law clause as provided in the Guidelines and seeks to impose restriction on the Change in Law clause of the Guidelines as it provides that:

> (i) In case of occurrence of any of events provided under Article 12.1.1 which results in any increase/ decrease in the Project Cost (*i.e., cost incurred by the developer towards supply and services only for the Project concerned, upto Scheduled Commissioning Date*), the Solar Power Developer would be entitled to compensation, as determined by the Appropriate Commission, which means that the Change in Law clause only covers the events resulting in increase/ decrease in the project cost upto the Scheduled Commissioning Date and any impact of events post the Scheduled Commissioning Date have not been covered thereunder;
>
> (ii) Change in rates of Safeguard duty, GST and basic customs duty after the last date submission of bid (i.e., 22.6.2020 in the present case) and resulting in change in project cost, would be treated as 'Change in Law'. This provision is subject to the approval of this Commission;
>
> (iii) The quantum of compensation payment on account of change in rates of

such duties would be provided to the affected party as per the pre-determined computation, i.e., every net increase/ decrease of Rs.1 lakh per MW in the project cost (i.e. cost incurred by the SPD for supply and services in the project concerned, up to Schedule Commissioning Date or extended Schedule Commissioning Date, for reasons other than those wherein such extension is on account of payment of liquidated damages, penalty or any other charges, as the case may be), would be liable for corresponding increase/ decrease of an amount equal to Rs 0.005/kWh. Even this provision is subject to the approval of this Commission at the time of adoption of tariff.

(f) SECI's letter dated 26.11.2020 and subsequent email dated 13.1.2021 have been issued in ignorance of the specific stipulation under the Guidelines, which require the Petitioner to seek approval for any deviation in the bidding documents from the Guidelines from the Appropriate Commission. Further, MNRE in clear defiance of the Guidelines has wrongly allowed the Petitioner to make changes/ deviations as proposed by SECI in the bids which have already been closed.

(g) Approval accorded by MNRE is of no consequence in law as the relevant authority/ power to grant such approval is with the Appropriate Commission. Further, the Guidelines were issued by MoP, whereas MNRE vide its letter dated 1.3.2021 has sought to amend the said Guidelines by according an ex post-facto approval, which is contrary to the settled principles of law. As per the express provision contained in Clause 18 of the Guidelines, as have been detailed hereinabove, only this Commission is vested with the powers to allow/ approve any changes/ deviations from the Guidelines in the bidding documents. Further, considering that MoP has not amended the Guidelines issued by it, by way of an appropriate notification, the *ex post-facto* approval granted by MNRE to the changes/ deviations made by SECI cannot be interpreted as an 'approval of deviations' contemplated under Clause 3.1.1 of the Guidelines issued by MoP.

(h) The definition of Change in Law provided under Clause 5.7 of the Guidelines is an inclusive definition, and has a wider scope of application to

events resulting in any adverse financial loss/ gain to the Solar Power Generator after the last date of submission of bid. Pertinently, the said provision also entails inclusion of any event which may have a direct effect on the project and which could have occurred before or after the commissioning of the project. However, on the contrary, Article 12 of the standard PPA restricts the inclusion only to the events occurring *"upto Scheduled Commissioning Date or extended Scheduled Commissioning Date"* of the project, which is in clear non-conformity of the Guidelines and is clearly a deviation.

(i) The Commission in its order dated 2.6.2021 in Petition No. 721/AT/2021 ("NHPC Ltd. v. MNRE & Ors.) directed the Petitioner therein to remove Article 12.1.1(g) of the PPA, which is similar to the provision under Article 12.2.3 of the standard PPA, in view of it being in non-conformity of the provisions of the Guidelines and also the fact that the prior approval of this Commission was not sought in this regard. Further, this Commission adopted the tariff for solar projects agreed to by the successful bidders, subject to removal of Article 12.1.1 (g) of the PPAs therein and the same was to be effective from the date of execution of the supplementary PPA to be executed between the parties for an appropriate Change in Law clause in conformity with the Guidelines.

(j) By restricting the scope of Change in Law clause (Article 12) of the PPA, the purpose of restitutive relief envisaged in the Guidelines stands defeated. The cornerstone of Change in Law relief is restitution i.e. relief to be granted in a manner so as to place an affected party in the same economic position as if such Change in Law had not occurred. If the present Change in Law clause is not corrected in the PPA, the same would have consequential impact of burdening the Respondent with various hidden costs that may become payable due to occurrence of Change in Law event, which are liable to be compensated in accordance with the Guidelines.

(k) Accordingly, the Commission may strike down Article 12 (Change in Law) of the standard Power Purchase Agreement issued by the Petitioner along

with RfS and SECI may be directed to sign PPA with the Respondent containing a Change in Law clause in conformity with the Guidelines.

8. Respondent No. 7, ReNew Solar Power Private Limited ('RSPPL') vide its reply dated 29.11.2021 has submitted that pursuant to the tariff based competitive bidding conducted by SECI, RSPPL emerged as successful bidder at a tariff of Rs.2.38/kWh with allotted capacity of 400 MW and was issued LoA on 15.7.2020. Thereafter, vide separate letters dated 15.9.2021 to SECI, RSPPL has undertaken to reduce the tariff offered from Rs.2.38/kWh to Rs.2.37/kWh. Accordingly, the Commission may consider the prayers made by SECI in the instant Petition and approve the tariff of its SPDs/ Project Companies i.e., ReNew Aayan Pvt. Ltd. and ReNew Vihaan Pvt. Ltd. for sale of 300 MW and 100 MW solar power respectively at the earliest.

9. Respondent No. 3, AMP Energy Green Private Limited ('AEGPL') vide its reply dated 21.12.2021 has mainly submitted the following:

(a) Pursuant to issuance of LoA on 15.7.2020, Respondent submitted all relevant documents as specified therein on 18.9.2020 and, hence, qualified for timely execution of the PPA i.e. within 90 days from the date of issuance of LoA. However, SECI has not executed the PPA as on date. The Respondent is willing to implement the project and has obtained the connectivity at Bhadla-2 sub-station.

(b) Subsequent to submission of bid i.e. on 22.6.2020, following events have occurred which has resulted in increased capital expenditure for the Respondent:

(i) On 1.2.2021, Ministry of Finance (Department of Revenue) issued Notification being No. 2/2021-Customs whereby the Government has increased the rates of Basic Customs Duty on import of Solar inverters

from 5% to 20%.

(ii) On 9.3.2021, MNRE issued Office Memorandum regarding imposition of Basic Customs Duty on solar cells and modules without grandfathering of bid out Projects) w.e.f. 1.4.2022. Basic Customs Duty on solar modules with HSN Code 85414012 and solar cells (85414011) is 40% and 25% respectively.

(iii) On 19.4.2021, Hon'ble Supreme Court in its order in Writ Petition (Civil) No. 838 of 2019 titled M.K. Ranjitsinh & Ors. V. Union of India & Ors. issuing directions/ measures to be adopted *inter alia* towards existing and future laying of over-head transmission lines in the Priority and Potential habitats of the Great Indian Bustard (GIB).

(iv) Ministry of Finance vide its Notification dated 30.9.2021 has levied 12% Goods & Services Tax (GST) on solar photo-voltaic (PV) module and other renewal energy equipment with effect from 1.10.2021.

(c) The higher rate of Basic Custom Duty (BCD) on solar inverters from 5% to 20%, modules from 0% to 40% and solar cells from 0% to 25% and GST on solar PV from 5% to 12 have substantially increased the capital cost of the project. Although the Petitioner has given waiver from claiming compensation towards BCD on modules and solar cells, if SECI fails to sign PPA by 31.12.2021, the Petitioner has liberty to claim Change in Law compensation for additional expenditure incurred in relation to BCD Notification dated 9.3.2021.

(d) The Respondent placed the bid considering the feasibility of installing overhead transmission line and, accordingly, determined the capital expenditure of the project. However, with the Hon`ble Supreme Court's directions dated 19.4.2021, the Respondent would be compelled to lay underground transmission cables which is commercially unviable at the present tariff as supply and service cost of underground cable is much higher than that of an equivalent voltage of overhead transmission cables. Such additional cost could not have been envisaged at the time of submission of bid for the project.

(e) Tariff rate of Rs.2.37/kWh was quoted by the Respondent considering the events and circumstances prevalent at the time of submission of bid. The aforesaid events have occurred subsequent to 7.12.2020 and the Respondent,

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at the time of submitting the bid, was in no position to foresee such additional capital expenditure. Accordingly, as per Article 12.2.1 of the PPA, the said events clearly qualify as Change in Law events.

(f) Appellate Tribunal for Electricity vide order dated 12.10.2021 passed in Appeal No. 251 of 2021 titled as *Green Infra Renewable Energy Limited v. Rajasthan Electricity Regulatory Commission and Ors.* ('Green Infra case') has held that if the event referred to actually constitutes Change in Law within the four corners of its definition under the PPA, there is no reason why it cannot be duly recognized as a Change in Law at the stage of tariff adoption.

(g) Article 12.2 of the PPA clearly specifies the methodology of compensation for claiming relief towards Change in Law event which has been overlooked by SECI in the instant Petition. Accordingly, the Commission may recognize the aforesaid methodology of claiming Change in Law compensation and record Article 12.2 of the PPA in the order and confirm that the compensation for Change in Law is to be paid as per the mechanism stipulated in Article 12.2.3 of the PPA. It is pertinent to recognize the provision of methodology for computation of compensation towards Change in Law in the order to avoid multiplicity of proceedings in future.

10. SECI vide its rejoinder to the reply filed by the Respondent No.4, ERBPL has submitted as under:

(a) The Respondent, ERBPL has wrongly claimed that Change in Law provision of PPA is in deviation with Change in Law provision in the Guidelines.

(b) There is no deviation when the PPA provides for details of provisions so long as the provisions are not inconsistent or in conflict with the provisions of the Guidelines. As per the settled principle, the test of repugnance needs to be considered on the basis that it is of conflicting nature so that one set of provisions contained in the PPA cannot be given effect without violating the command in the Guidelines.

(c) Clause 3.1.1(c)(ii) of the Guidelines itself provides that detailing of the provisions in the draft PPA will not be considered as deviation from the Guidelines.

(d) The Guidelines empower MNRE to issue clarifications and modifications to the Guidelines. In this regard, SECI vide its letter dated 26.11.2020 and e-mail dated 13.1.2021 requested MNRE to modify certain provisions of Standard Bidding Guidelines and in the meantime allow SECI to make changes with respect to certain provisions in the scheme documents to accommodate the concerns of the various stakeholders to enable SECI to enter into PSAs and PPAs, etc. MNRE vide notifications dated 1.3.2021 and 18.12.2020, in exercise of its powers to issue clarification/ modification under the Guidelines, gave ex-post facto approval for changes *inter alia* with regard to Change in Law provisions vis-à-vis Standard Bidding Guidelines in respect of (i) bids that have been issued but not closed and (ii) bids that have been issued and closed by SECI.

(e) On 4.6.2020 (prior to the date of submission bid i.e. 22.6.2020), SECI issued clarification to the queries of the developers on RfS documents including on the Change in Law provisions contained in the standard PPA.

(f) The Respondent, ERBPL was fully aware and duly accepted the above position without any reservation or condition when it submitted the bid. It is not open to the Respondent to claim that the proposed bid terms and not acceptable for signing of the PPA. Such a claim made by ERBPL constitutes a breach of the terms of the bid.

(g) Reliance placed by the Respondent on the Commission's decision dated 2.6.2021 in Petition No. 721/AT/2021 is misplaced. In the instant case, MNRE vide Notifications dated 1.3.2021 and 18.12.2020 in the exercise of its powers to issue clarification/ modification under the Guidelines gave ex-post facto approval for changes *inter alia* in regard to Change in Law provisions vis-à-vis Standard Bidding Guidelines.

11. SECI vide its rejoinder to the reply filed by the Respondent No.3, AGEPL has submitted as under:

(a) With regard to signing of PPA, SECI can extend the stipulated timeline (i.e. 90 days from LoA) in the event of delay in signing of PSA. Accordingly, SECI will sign PPA with the Respondent after signing of PSA with buying entity for corresponding quantum of power.

(b) The events of increase in BCD on import of solar inverters in terms of Ministry of Finance Notification No.2/2021-Customs dated 1.2.2021 and Notification of GST @12% on Solar PV modules and other renewable energy equipment in terms of Ministry of Finance Notification dated 30.9.2021 being statutory notifications, constitute Law. The order dated 19.4.2021 in Writ Petition (Civil) No. 838 of 2019 is a law laid down by the Hon'ble Supreme Court. Therefore, these events fall within the scope of Article 12 of the respective PPAs dealing with Change in Law. However, the recognition of Basic Custom Duty on solar modules and cells as a Change in Law event shall be subject to the issuance of appropriate notification by the Ministry of Finance, Government of India in exercise of powers under the Customs Tariff Act, 1975.

(c) The nature and extent to which the above events will have an impact is to be considered based on the factual details and circumstances having implications of the above laws on the implementation of the project by the developers. It is the obligation of the project developer to establish the same as being covered by the Change in Law at the appropriate stage to the satisfaction of the Commission.

(d) At this stage of consideration of adoption of tariff, in terms of Article 12.1.3 of the PPAs and decision dated 12.10.2021 of the APTEL in Appeal No. 251 of 2021, only the recognition of Change in Law events as mentioned above is required. The actual impact and the extent to which the relief is admissible and terms and conditions to be fulfilled and manner of implementation, etc. are all to be considered at the appropriate stage when the expenditure is incurred and the commencement of supply takes place.

(e) Article 12.2.3 of the PPA provides for a formula for determination of relief with reference to every net increase/ decrease of Rs. 1 lakh/MW in the project cost as a result of Change in Law events set out in Article 12.1.3 i.e. in the present case the Basic Custom Duty and GST. In regard to Change in Law events other than those identified and covered in Article 12.1.3 of the PPAs, namely, implication of the order dated 19.4.2021 passed by the Hon'ble Supreme Court relating to GIB, the same has to be considered as per Articles 12.1.1, 12.1.2, 12.2.1, 12.2.2, 12.2.3 and 12.3. Therefore, Article 12.2.3 of the PPAs, providing formula for determination of relief for Change in Law, applies to all Change in Law events i.e. those covered under Article 12.1.3 as well as events covered under Article 12.1.1 of the PPAs.

(f) At this stage, for application of formula provided in Article 12.2.3 of the PPAs for relief of Change in Law, the amount constituting the project cost cannot be considered on estimate basis. The project cost will be available only upon the capital expenditure being incurred.

(g) In the present case, the consideration is to be restricted to the aspect of the recognition of the above mentioned four events as Change in Law within the scope of Article 12 of the PPAs, while adopting the tariff discovered through competitive bidding. However, the recognition of Basic Custom Duty on Solar Modules and Cells as a Change in Law event shall be subject to issuance of appropriate notification by Ministry of Finance, Government of India. The power developers are not entitled to claim consideration of any other aspects. The actual impact and the extent of relief admissible for the above-mentioned Change in Law events is to be determined at the appropriate stage as decided by APTEL in its order dated 12.10.2021 in Appeal No. 251 of 2021.

(h) During the pendency of the above Petition, the Central Government, in exercise of powers under Section 176 of the Act, has on 22.10.2021 notified the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as 'the Change in Law Rules'). Rule 3 of the Change in Law Rules provides for the manner of dealing with the Change in Law and

consequential effect to be given. Further, the Commission in its order dated 21.12.2021 in Petition No. 179/AT/2021 has, *inter alia*, dealt with the Change in Law Rules and the aspect of recognition of the Change in Law events at the stage of adoption of tariff.

12. In response to the certain clarifications sought by the Commission vide Record of Proceedings for the hearing dated 11.11.2021, SECI vide affidavit dated 10.12.2021 has submitted as under:

(a) As to the status of LoAs issued and their validity, SECI has issued LoAs dated 15.7.2020 to all the seven successful bidders, which have been duly accepted by them and are also valid as on date.

(b) As regards status of compliance of various terms and conditions specified in the LoAs by the selected developers, the Evaluation Reports dated 24.2.2021 were issued by Evaluation Committee constituted by SECI for verification of the documents submitted by each selected developer in terms of LoA. As per Evaluation Reports, based on the evaluation of the submitted documents as per the RfS and LoA, the selected bidders have been found to be fulfilling the requirements prior to signing of PPA. Further, recommendation of Evaluation Committee for signing of PPA with developer is subject to signing of PSA with buying entity, which is consistent with Clause 14.3 of RfS and Clause 1.10 of the LoA.

(c) The Commission may take into consideration the reduction in tariff from Rs. 2.38/kWh to Rs. 2.37/kW as undertaken by ReNew Solar Power Pvt. Limited in respect of its SPVs, ReNew Surya Aayan Pvt. Limited and ReNew Surya Vihaan Pvt. Limited for 300 MW and 100 MW respectively.

(d) As regards status of execution of PPAs and PSAs, SECI has signed PSAs for aggregate quantum of 400 MW - PSA dated 20.7.2021 with BRPL for 210 MW, PSA dated 20.7.2021 with BYPL for 90 MW and PSA dated 12.10.2021 with Uttarakhand Power Corporation Limited for 100 MW. SECI has signed PPA dated 20.8.2021 for 300 MW with Thar Surya and PPA for 100 MW

quantum of power tied up with UPCL is under progress. Further, SECI is having discussions with various other buying utilities for signing of PSAs and PPAs with the successful bidders/ SPVs for remaining quantum of solar power (1600 MW).

(e) As regards reasons for inordinate delays in execution of the PPAs, the PPAs with SPDs are to be executed subsequent to the execution of PSAs with buying utilities and the same is consistent with the provisions of the RfS. SECI can extend the stipulated timeline (i.e. 90 days from LoA) for signing of PPA in terms of Clause 1.10 of the LoA, which enables SECI to extend the said time line and further provides that in extraordinary cases of unavoidable delays on part of SECI in signing PPAs or PSAs, the effective date of PPA shall be the date as on 7 days from signing date of PSA for total capacity of respective project. Successful bidders have provided necessary extensions of the validity of their respective bids as required. Bids of all the bidders, with whom the PPAs are yet to be signed, are valid till 30.6.2022 except for ReNew Solar Power Private Limited, whose bid is valid till 31.3.2022.

(f) Since tariff for entire offered capacity of 2000 MW solar power projects under ISTS Tranche IX has been discovered through tariff based competitive bidding process (e-reverse auction), SECI has sought adoption of tariff for the entire awarded capacity 2000 MW to avoid multiplicity of proceedings. This will enable SECI to offer power to the buying utilities and execute PSAs and PPAs in the course of time.

Hearing dated 21.1.2022

13. The matter was listed for hearing on 21.1.2022 through video conferencing. During the course of hearing, the learned senior counsel for the Petitioner and the learned counsel for the Respondents made detailed submissions. Pursuant to the liberty granted by the Commission, the parties have filed their respective written submissions.

14. The Respondent No. 7, RSPPL vide its written submissions dated 3.2.2022 has submitted that the Respondent, as stated at paragraph 10 of its reply, vide its letters dated 15.9.2021 to SECI, has undertaken to reduce the tariff offered from Rs.2.38/kWh to Rs.2.37/kWh. The Respondent has further submitted that it supports the Petition and requests the Commission to allow the prayers made by SECI.

15. The Respondent No.4, ERBPL vide its written submissions dated 4.2.2022 has additionally submitted as under:

(a) Considering that the Petitioner in the present case has made material deviation in the standard PPA from the principles envisaged in the Guidelines, the Commission may pass appropriate direction to the Petitioner to ensure that clause 5.7 of the Guidelines be included appropriately in Article 12 of the PPA.

(b) As to the reliance placed by SECI on the clarification to queries of the developers on RfS, *inter alia*, on the Change in Law provisions to state that the Respondent was fully aware of the above position regarding exclusion of the events after SCOD/COD as Change in Law, the Article 12 of the standard PPA itself provides for recognition of Change in Law clause by this Commission at the stage of adoption of tariff. Further, it is trite to state that it is the duty of this Commission to provide regulatory certainty at the first opportunity and also make suitable modifications. In this regard, reliance is placed on Judgment dated 12.10.2021 passed Hon'ble Appellate Tribunal in Appeal No. 251 of 2021 titled "*Green Infra Renewable Energy Limited v. Rajasthan Electricity Regulatory Commission & Ors.*", wherein, it has been observed that regulatory certainty is of utmost significance to the generation developers. Thus, it is essential that clarity as regards deviations highlighted by the Respondent in Article 12 be given at this stage of adoption of tariff itself.

(c) Therefore, it is important that this Commission may clarify at this stage itself that clause 5.7 of the Guidelines is to be included appropriately in Article

12 of the Standard PPA, either explicitly, or by reference such that Clause 5.7 of the Guidelines becomes an integral part of Article 12 of the Standard PPA, to give clarity to the proposed lenders of ERBPL as well as other solar power generators.

(d) Despite the Guidelines being crystal clear as regards the principles of restitution to be embodied in the Change in Law clause in the bidding documents, the Petitioner has failed to include the same in Article 12 of the standard PPA, thereby disentitling the solar power generator from the carrying cost along with the compensation for Change in Law event.

(e) APTEL vide its judgment dated 14.8.2018 in Appeal No. 119 of 2016 (Adani Power Rajasthan Limited v. Rajasthan Electricity Regulatory Commission & Ors.) has reiterated the position taken in its earlier judgments and elaborated on the necessity of an express provision in the PPA with respect to restitution, in order to make the affected party eligible for carrying cost for such allowed Change in Law event(s). Thus, in the absence of express language regarding restitutive relief in Article 12 of the standard PPA, the solar power generator shall be rendered remediless insofar as grant of carrying cost is concerned.

(f) While it has been admitted by the Petitioner that the Change in Law Rules provide for adjustment in tariff on occurrence of Change in Law and specifically entitle the affected party to be restored to the same economic position as if such Change in Law event had not occurred, the Respondent's entitlement for the carrying cost flows from Clause 5.7 of the Guidelines.

(g) The submission of SECI that since the Change in Law Rules provide for grant of carrying cost, therefore, there is no requirement of a specific clause in the PPA/ standard PPA to that effect, may not be legally tenable insofar as the definition of "Change in Law" in Rule 2(1)(c) of the Change in Law Rules specifically excludes cases where "Change in Law" is already defined in the PPA executed between the parties. A perusal of the said provision makes it clear that even if the Change in Law Rules are applicable on the Respondent

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generators, the definition of "*Change in Law*" may flow from the provisions of the PPA only. As such, it is imperative that the principle of restitution be enshrined in clear terms in Article 12 of the standard PPA. Further, considering that life of the PPA is 25 years, there may arise a situation where the Change in Law Rules are amended/ repealed and as such, it cannot be stated with certainty that the Change in Law Rules will remain applicable for the entire duration of the PPA.

(h) The letter dated 26.11.2020 and email dated 13.1.2021 issued by the Petitioner to MNRE vide which ex post-facto approval of deviation is being claimed by the Petitioner itself shows that MNRE's approval was sought for a Change in Law clause having restitution provision. However, the Change in Law clause as contained in the standard PPA does not contain the said provisions. Therefore, the principle of restitution has to be included in the Change in Law clause and to this extent, learned senior counsel for SECI also conceded during the course of oral arguments.

16. SECI also filed its written submission on 11.2.2022 whereby, in furtherance to the submissions already made in its reply, SECI has mainly submitted as under:

(a) All the participating bidders were required to give specific acceptance as part of covering letter while submitting their bids, which, *inter alia*, giving unconditional acceptance to RfS, standard PPA and PSA, unconditional and irrevocable acceptance to the decision made by SECI in respect of any matter regarding or arising out of RfS to be binding on the bidders and to waive and withdraw any deviations and all claims in respect of the process.

(b) ERBPL duly accepted the provisions of the Standard PPA before the bidding and submitted the bid on the said basis. Before the bid submission date i.e. 22.6.2020, it was fully aware about the provisions of Article 12 of the Standard PPA circulated along with the RfS documents. ERBPL duly accepted the above position without any reservation or condition when it participated in the bidding based on the above and submitted the bid. It is thereafter not open

to ERBPL to claim that the proposed bid terms are not acceptable for signing the PPA.

(c) It is well settled principle of law that having accepted the terms and conditions and having submitted the bid on the said basis, it is not open to the selected bidder to raise any issue after the Letter of Award has been issued or for signing the contract documents. In this regard, reliance has been placed on the decisions of the Hon'ble Supreme Court in the cases of (i) National High Speed Rail Corporation Limited v. Monte carlo Limited and Anr. [2022 SCC OnLine SC 111], (ii) Har Shanker v. Excise & Taxation Commr. [(1975) 1 SCC 737], (iii) Meerut Development Authority v. Assn. of Management Studies[(2009) 6 SCC 171].

(d) The Respondent No. 8, Thar Surya, which is one of the selected bidders has signed the PPA on 20.8.2021. The other selected bidders, namely, Respondents 2, 3, 5, 6 and 7 have not raised any such issues which have been raised by ERBPL.

(e) The claim of ERBPL for allowing the impact of Change in Law events resulting in increase/ decrease in project cost after the SCD/ extended SCD as provided for in Article 12 of the Standard PPA on the ground of alleged deviation from the Guidelines is patently erroneous and cannot be sustained.

(f) Even otherwise, the project cost relates to the establishment of the project. It has to have a certainty of the period up to SCD/ extended SCD. There is no provision envisaged for additional capitalization incurred after SCD/ extended SCD to be factored for the purpose of tariff. There cannot, therefore, be any consideration of the additional project cost to be allowed after SCD/ extended SCD.

(g) In the subject Standard PPA, SECI had specifically restricted the consideration of the project cost till Scheduled Commissioning Date or extended Scheduled Commissioning Date, which excludes the consideration of the project cost incurred during the period of delay on the part of the

developers. The developers including ERBPL are bound by the said provision limiting the consideration to Scheduled Commissioning Date/ extended Scheduled Commissioning Date, having accepted the standard terms of the bidding documents and submitted the bid.

(h) In the facts and circumstances of the case, the order dated 2.6.2021 in Petition No.721/AT/2020 in the matter of NHPC Limited v. Ministry of New and Renewable Energy and Ors. is distinguishable and not applicable to the present case in view of the approval granted to SECI by the MNRE.

(i) Reliance placed by ERBPL on the order dated 21.12.2021 in Petition No.179/AT/2021 in the matter of SECI v. ABC Renewable Energy Private Limited, does not support the case of ERBPL. In the said decision, this Commission has approved the ex post facto sanction given by MNRE, Central Government as in the present case. The observations contained in the said case in regard to SECI are for the future. In the present case, the bid submission date was on 22.6.2020.

(j) In regard to the issue of restitution/ carrying cost raised by ERBPL, Rule 3(1) of the Change in Law Rules notified by the Government of India will govern the issue particularly as the Scheduled Commissioning Date of the projects is after the notification of the Change in Law Rules.

17. In compliance with direction of the Commission, SECI vide affidavit dated 11.2.2022 has filed a comparative statement indicating the steps and processes followed by it in the bidding/ tender and mapping the same to the corresponding enabling provisions of the Guidelines issued by the Central Government.

Analysis and Decision

18. We now proceed to consider the prayers of the Petitioner as regards adoption of tariff in respect of solar power projects discovered pursuant to the competitive bid

process carried out in terms of the Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act.

19. Section 63 of the Act provides as under:

> *"Section 63. Determination of tariff by bidding process: Notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government."*

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

21. Ministry of Power, Government of India has notified the Guidelines under Section 63 of the Act vide Resolution No.23/27/2017-R&R on 3.8.2017. The Guidelines have been subsequently amended by the resolutions dated 14.6.2018, 3.1.2019, 9.7.2019, 22.10.2019 and 25.9.2020. The salient features of the Guidelines are as under:

(a) The Guidelines are applicable for procurement of power from grid connected solar PV power projects having size of 5 MW and above through tariff based competitive bidding to be conducted by procurers which includes distribution licensees, or the Authorized Representative(s), or Intermediary procurers.

(b) The procurer shall prepare the bid documents in accordance with the Guidelines and the Standard Bid Documents notified by the Ministry of Power, Government of India. If any deviation is proposed to be made in the Guidelines and Standard Bid Documents, approval of the Appropriate Commission would

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be necessary. Intimation about initiation of the bid process shall be sent by the procurer to the Appropriate Commission.

(c) Bids shall be designed in terms of a package. The minimum size of a package should be 50 MW in order to have economies of scale. Bidders shall quote for entire package.

(d) The procurer has option to choose to invite the two bids, namely, (i) power capacity (MW) terms, or (ii) energy quantity (kWh or million units i.e. MUs) terms. For procurement of power, the procurer may opt for either tariff or viability gap funding as bidding parameter.

(e) Draft PPA proposed to be entered into with the successful bidder and draft PSA, if applicable, shall be issued along with the RfS. Standard provisions to be incorporated as part of the PPA shall include, *inter-alia*, PPA period, quantum of power/ energy to be procured, payment security, generation compensation of off-take constraint, event of default and consequences thereof and Change in Law and shall be provided for, on back-to-back basis, in the PSA.

(f) Procurer and Intermediary procurer shall provide payment security to the solar power developer through revolving Letter of Credit of an amount not less than one month average billing and Payment Security Fund for at least three months' billing of all the projects tied up with such fund. In addition, the procurer may also choose to provide State Government Guarantee.

(g) End procurer shall provide payment security to the intermediary procurer through revolving Letter of Credit of an amount not less than one month`s average billing from the project under consideration and State Government Guarantee. In addition, end procurer may also choose to provide Payment Security Fund with at least three months' billing of all the projects tied up with such fund.

(h) The procurer shall call the bids adopting a single stage bidding process to be conducted through electronic mode (e-bidding). The procurers may adopt e-reverse auction, if it so desires. For this purpose, e-procurement platforms

with a successful track record and with adequate safety, security and confidentiality features will be used. In case of solar park specific project, procurer shall provide intimation to the solar power park developer about initiation of the bidding process and arrange the access of the bidders to the drafts of Implementation Support Agreement and land related agreement.

(i) RfS notice shall be issued in at least two national newspapers and on the websites of the procurer to provide wide publicity. Standard documentation to be provided in the RfS stage shall include technical criteria, financial criteria, quantum of earnest money deposit and lock-in requirements for the lead members of the consortium.

(j) The procurer 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.

(k) Bidder shall submit non-refundable processing fee and/or project development fee as specified in the RfS, separate technical and price bids and bid guarantee. To ensure competitiveness, the minimum number of qualified bidders shall be two. If the number of qualified bidders is less than two even after three attempts of bidding, and the procurer still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.

(l) The PPA shall be signed with the successful bidder or an SPV formed by the successful bidder. After conclusion of bidding process, Evaluation Committee shall critically evaluate the bids and certify that the bidding process and the evaluation have been conducted in conformity with the provisions of RfS. After execution of the PPA, procurers shall disclose the name(s) of the successful bidder(s) and the tariff quoted by them in its website. Accordingly, the distribution licensee or the intermediary procurer shall approach the Appropriate Commission for adoption of tariff in terms of Section 63 of the Act.

22. In terms of the provisions of the Section 63 of the Act, we have to examine whether the process as per provisions of the Guidelines has been followed in the present case for arriving at the lowest tariff and for selection of the successful bidder(s).

23. The Petitioner has been designated as the nodal agency for implementation of MNRE Schemes for setting up of inter-State Transmission System connected/ State specific wind/ solar power/ wind-solar hybrid power projects; to invite biding under tariff based competitive bidding process; to enter into PPAs with developers at the tariff discovered in the competitive bid process; and to enter into PSAs with the distribution licensees to enable them to fulfill their Renewable Purchase Obligations under Section 86(1)(e) of the Act. SECI acts as an intermediary agency in purchase and sale of power under PPAs and PSAs on back-to-back basis.

24. The Guidelines provide for procurement of solar power at a tariff to be determined through transparent process of bidding by the procurer(s) from grid-connected solar power projects having size of 5 MW and above. As per the Guidelines, SECI in the capacity of intermediary procurer, invited proposals for selection of solar power developers for setting up 2000 MW ISTS connected solar power projects (Tranche- IX). As per the arrangements, SECI is to procure the power by entering into PPAs with the successful bidder with back-to-back PSAs for sale of power to the distribution licensees.

25. The key dates in the bidding process were as under:

Sr. No.	Event/Milestone	Date

1	Issuance of RfS documents	20.3.2020
2	Amendments to RfS documents	4.6.2020-10.6.2020
3	Last date for submissions of online bid	22.6.2020
4	Opening of technical bid	22.6.2020
5	Opening of financial bid	29.6.2020
6	e-Reverse Auction	30.6.2020
7	Issuance of Letter of Award	15.7.2020

26. On 20.3.2020, SECI issued the RfS documents, along with draft PPA and PSA for selection of Solar Power Developers for setting up of 2000 MW ISTS-connected solar power projects (Tranche-IX) under tariff-base competitive bidding. As per Clause 6.4 of the Guidelines, RfS notice is required to be published in at least two national newspapers and its own website to accord wide publicity. In this regard, SECI has placed on record documents demonstrating publication of RfS on the e-publishing system, Government of India. It has been further submitted that it did not publish the notices in the newspapers as per the advisory issued by Ministry of Information and Broadcasting, Government of India dated 17.5.2017 mandating e-publishing of advertisements in the relevant portal. Accordingly, on 3.7.2018, SECI published notification indicating that tenders of SECI would be published in its website and not in newspapers.

27. As per Clause 3.1.1(b) of the Guidelines, procurer is required to inform the Appropriate Commission about initiation of the bidding process. SECI vide its letter dated 5.5.2020 had informed the Commission that it has initiated the competitive bidding process for procurement of power from grid-connected solar power projects.

28. The Bid Evaluation Committee (BEC) comprising of the following was constituted for opening and evaluation of bids for RfS dated 20.3.2020:

Tender	Department	Offline and Online Techno- commercial and Financial Bid Opening	Techno-commercial and Financial evaluation and post-e-RA recommendation
Selection of Solar Power Developers for setting up of 2000 MW ISTS-connected solar power projects in India under tariff-based competitive bidding (ISTS-IX)	Solar	Shri Sanjeev Singh, Manager (PS)	Shri Sanjeev Singh, Manager (PS)
	Contracts	Shri Pratik Prasun, Deputy Manager (C&P)	Shri Pratik Prasun, Manager (C&P)
	Finance	Shri Ajit Sharma, Deputy Manager (finance)	Shri Ajit Sharma, Deputy Manager (Finance)

29. Last date of submission of bid was 22.6.2020 and the technical part of the bid was opened on the same day. Response to RfS was received from the following eleven bidders:

Sr. No.	Name of Bidders
1.	Eden Renewable Bercy Private Limited
2.	Azure Power India Private Limited
3.	IB Vogt Singapore Pte. Limited
4.	ReNew Solar Power Private Limited
5.	Avikiran Surya India Private Limited
6.	NTPC Limited
7.	Solarpack Corporacion Technologica SA
8.	AMP Green Energy Private Limited
9.	O2 Power SG Pte. Limited
10.	Ayana Renewable Power Private Limited
11.	The Tata Power Company Limited

30. The financial bids of all eleven technically qualified bidders were opened on 29.6.2020 on ISN ETS e-bidding portal and as per the criteria mentioned in RfS documents, nine bidders for capacity aggregating 3800 MW were shortlisted for e-

reverse auction. E-reverse auction was carried out on 30.6.2020 on ISN ETS e-bidding portal. The final tariff and the selection of the bidders were arrived after completion of e-reverse auction. The result of e-reverse auction is as under:

Sr. No.	Bidders	Bidder`s Quantity (MW)	Tariff (Rs./kWh)	Allotted Capacity (MW)
1.	Solarpack Corporacion Technologica SA	300	2.36	300
2.	Avikiran Surya India Private Limited	300	2.37	300
3.	AMP Energy Green Private Limited	100	2.37	100
4.	Eden Renewable Bercy Private Limited	300	2.37	300
5.	IB Vogt Singapore Pte Limited	300	2.37	300
6.	Ayana Renewable Power Private Limited	300	2.38	300
7.	ReNew Solar Power Private Limited	1200	2.38	400
Total				**2000 MW**

31. On 15.7.2020, SECI issued Letters of Award to the aforesaid successful bidders. Relevant extract of Letter of Award issued to one of the successful bidders, namely, Avikiran Surya India Private Limited, is as under:

"In reference to above and subject to the provisions of RfS, we confirm having accepted your final offer concluded as a result of e-RA and issue this letter of award as per the following details:

Allotted Project ID	***Project Capacity (MW)***	***Applicable Tariff (INR/kWh) in figure***	***Applicable Tariff (INR/kWh) in words***
SPD-ISTS-T9-ASIPL-P1-300MW	*300*	*2.37*	*Rupees Two and Thirty-seven paise only*

It is to be noted that as per the provisions of the RfS, the SPD is allowed to change the project location and Delivery Point for the awarded Project subsequent to issuance of LoA.

SECI shall purchase the power generated from the proposed ISTS-connected Solar PV Power Project under the above scheme subject to the following terms and conditions as stated in various documents referred above and briefly brought out hereinafter:

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1.0 The applicable tariff as mentioned above for power generated from the proposed Solar PV Power Project for the term of Power Purchase Agreement (PPA) to be entered into between Project Company or the Solar Power Project (SPD) and M/s SECI, for the Project, shall be firm for the entire term of the PPA.

1.1 The SPD will be free to avail fiscal incentives like Accelerated Depreciation, Concessional Customs Duties, Tax Holidays, etc. as available for such projects. No claim shall arise on SECI for any liability if the SPD is not able to avail fiscal incentives and this will not have any bearing on the applicable tariff.

1.2 The award of the above Project is subject to the Guidelines including amendments/ clarifications issued by Government of India and terms and conditions of the RfS document including its clarifications/ amendments/ elaborations/ notifications issued by SECI.

1.3 No change in the shareholding of the Bidding Company or Bidding Consortium shall be permitted from the date of submission of response to RfS till the execution of the PPA. However, in case the Project is being set up by a listed Company, this condition will not be applicable. Controlling shareholding (holding more than 50% of the voting rights and paid up share capital in the Company) of the Project Company of the SPD shall not change until three year after the COD of the Project, except with the prior approval of SECI. However, in case the Project is being set up by a listed Company, this condition will not be applicable.

1.4 In case of companies having multiple promoters (but none of the shareholders having more than 50% of voting rights and paid up share capital), it shall be considered as a company under joint control. In such cases, the shareholding pattern in the company as submitted at the time of bidding, shall be maintained for a period of 03 (three) year after COD.

1.5 The successful Bidder, if being a single company, shall ensure that its shareholding in the SPV/ project company executing the Power Purchase Agreement (PPA), shall not fall below 51 % at any time prior to 3 (three) year after the COD, except with the prior approval of SECI. In the event, the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the PPA, shall not fall below 51% at any time prior to 3 (three) year after COD, except with the prior approval of SECI. However, in case the Project is being set up by listed Company, this condition will not be applicable.

1.6 The SPD shall pay to SECI, Success Charges of Rs.1 lakh/MW/project +18% GST within 30 days of issuance of this Letter of Award (LoA), in line with Clause 12, Section-III of the RfS, towards administrative overheads, coordination with State Authorities and others, DISCOM/ STU/ CTU, pre-commissioning and commissioning expense. Performance Bank Guarantee(s)/ Payment on Order Instrument (POI) for a value of @Rs.8 Lakh/MW per Project shall be submitted by the SPD at least 07 working days prior to signing of PPA (PPA signing date to be intimated by SECI) in line with Clause 11, Section-III of the RfS.

1.7 PPA will be executed between SECI and SPD as per the breakup of the cumulative Project capacity awarded to the Bidder. This LoA is being issued in line with the Project

breakup of the cumulative capacity quoted in the Covering Letter as part of your response to RfS and amended subsequently, as applicable.

1.8 The final project configuration, adding up to the cumulative capacity awarded to the bidder may be intimated to SECI at the time of signing of PPA, which shall then remain unchanged subsequent to signing of PPA. Delays in connectivity and/or LTA for the Project(s) on account of such changes in Project parameters, which differ from the details provided in the Covering letter, shall be at the risk and cost of the Successful Bidder. The PPAs shall be valid for a period of 25 years from the scheduled commissioning date of the projects.

1.9. The SPD will have to submit the required documents as mentioned below to SECI within 70 days from the date of this LoA. In case of delay in submission of documents beyond the timeline as mentioned above, SECI shall not be liable for delay in verification of documents and subsequent delay in signing of PPA:

1) Copy of the Certificate of Incorporation of the Solar Power Developer.

2) The details of promoters and their shareholding in the SPD, duly certified by the practicing Chartered Accountant/ Company Secretary in original at least 7 (seven) days prior to date of their document submission (certificate date should be after the date of LoA) along with latest documents filed with ROC).

3) Copy of the Memorandum of Association (MoA) of the SPD highlighting the object clause related to generation of Power/ Energy/ Renewable Energy/ Solar Power plant development.

4) In case the project being executed by a Special Purpose Vehicle (SPV) incorporated by successful bidder, such SPV shall be at least 76% shareholding subsidiary, in line with provisions of the RfS. Further, the Successful Bidder shall submit a Board Resolution prior to signing of PPA with SECI, committing total equity infusion in the SPV as per the provisions of RfS.

Further, the PPA shall be signed only upon receipt of the Success Charges and total Performance Guarantees/Payment on Order Instrument of requisite value. The EMD submitted shall be released only after receipt and successful verification of the total Performance Bank Guarantee/ Payment on Order Instrument in the acceptable form.

1.10 SECI shall have the right to verify original documents of the SPD for which copies have been submitted from the date of submission of response to RfS till date, if required. PPA as per the format given along with RfS has to be signed within 90 days from the date of issue of LoA, if not extended by SECI. In case of unavoidable delays on the part of the SPD in submission of requisite documents prior to signing of PPAs or otherwise, the Effective Date of the PPA shall remain the date as on 90th day from the issuance of LoA, irrespective of the date of signing of PPA. In extraordinary cases of unavoidable delays on the part of SECI in signing the PPAs or PSAs, the Effective Date of the PPA shall then be the date as on 7 days from signing date of PSA for total capacity of respective project.

1.11. In case, the SECI offers to execute the PPA with the SPD and the selected Bidder refuses to execute the PPA within the stipulated time period, the Bank

Guarantee equivalent to the amount of the EMD shall be encashed by SECI from the Bank Guarantee available with SECI (i.e. either EMD or PBG/POI) as liquidated damages not amounting to penalty, and the selected Project(s) shall stand cancelled and the selected Bidder expressly waives off its rights and objections, if any, in that respect.

1.12 The SPD shall meet financial closure requirements for the Project in line with clause 15, Section-III of the RfS document, within 12 (twelve) months from the Effective Date of the PPA. Accordingly, the SPD shall furnish the documents pertaining to compliance of financial closure as per the above provisions.

1.13 The SPD/Project Company shall achieve commissioning of full capacity of the Project within 18 months from the Effective Date of the PPA as per the conditions stipulated in Clause 16, Section-III of the RfS and relevant articles of PPA. In case of failure to achieve this milestone, liquidated damages not amounting to penalty shall be levied on the SPD as per the above provisions….'

32. It has been submitted by the Petitioner that the selection of the aforesaid bidders for supply of power and the quantum of capacity available for procurement from the selected bidders were communicated to the concerned distribution companies/ buying utilities and that PSAs have been signed as under:

Sr.	Buying Utilities	Date of PSA	Capacity of Project (MW)
1	BSES Rajdhani Power Limited (BRPL)	20.7.2021	210
2	BSES Yamuna Power Limited (BYPL)	20.7.2021	90
3	Uttarakhand Power Corporation Limited (UPCL)	12.10.2021	100
	Total		**400**

33. On the above basis, PPAs have been signed with the following successful bidder/ Project Company formed by the successful bidder:

Sr.	Name of Successful Bidder	Project Company formed for executing PPA	Date of signing of PPA	Capacity of Project (MW)	Applicable Tariff (Rs./kWh)
1	Avikiran Surya India Private Limited	Thar Surya 1 Private Limited	20.8.2021	300	2.37

34. Admittedly, the Petitioner has been able to enter into PPA for only 300 MW while for balance 1700 MW, PPAs have not been signed. While the Petitioner has submitted that it was in process of entering into PPA for 100 MW capacity corresponding to the PSA signed with Uttarakhand Power Corporation Limited (UPCL) on 12.10.2021, no detail has been placed on record regarding signing of PPA for this 100 MW capacity. The Petitioner has submitted that PPAs with the solar power developers are to be executed subsequent to the execution of PSAs with distribution licensees and the same is consistent with the provisions of the RfS. The Petitioner has submitted that it is entitled to extend the stipulated timeline (i.e. 90 days from the LoA) for signing of PPAs and that the successful bidders have also provided the necessary extensions of the validity of their respective bids as required. However, we note that even after considerable amount of time having elapsed from issuance of LoA to the successful bidders, the supply of electricity from the generating station(s) to the distribution licensee(s) has been tied up only with respect to 300 MW out of the total selected capacity of 2000 MW and the identification of distribution licensees (except for UPCL for 100 MW – for which PPA is yet to be executed) and consequently, execution of PPAs for the balance capacity are yet to take place. In such circumstances, we deem it appropriate to restrict adoption of the tariff only with respect to the quantum for which PPA has been executed with solar power developers for supply of power to the identified distribution licensees through PSA with the Petitioner.

35. The Petitioner has submitted that it has incorporated certain changes in the bid documents in deviation to the provisions of the Guidelines with regard to Change

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in Law. However, such changes have been incorporated pursuant to post facto approval of MNRE vide letters dated 18.12.2020 and 1.3.2021, whereby it has been claimed by the Petitioner that MNRE in exercise of its powers to issue clarification/ modification under the Guidelines, accorded *ex-post facto* approval for changes in respect of certain provisions vis-à-vis Guidelines in respect of (i) bids that have been issued but not closed; and (ii) bids that have been issued and closed by SECI. Aforesaid letters of MNRE have been placed on record by SECI vide its affidavit dated 10.11.2021.

36. We have considered the submissions made by the Petitioner. Article 12 of the standard PPA issued along with RfS documents reads as under:

> "***ARTICLE 12: CHANGE IN LAW***
> ***12.1 Definitions***
> *In this Article 12, the following terms shall have the following meanings:*
>
> *12.1.1 In this Article 12, the term Change in Law shall refer to the occurrence of any of the following events pertaining to this project only after [Insert last date of bid submission] including (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the Solar Power Developer; or (v) any change in the rates of any Taxes including any duties and cess or introduction of any new tax made applicable for setting up the solar power project and supply of power from the Solar Power project by the SPD which have a direct effect on the Project.*
>
> *However, Change in Law shall not include (i) any change in taxes on corporate income or (ii) any change in any withholding tax on income or dividends distributed to the shareholders of the SPD.*
>
> *12.1.2 In the event of occurrence of any of events as provided under Article 12.1.1 which results in any increase/ decrease in the Project Cost (i.e. cost incurred by the SPD towards supply and services only for the Project concerned, upto Scheduled Commissioning Date or extended Scheduled Commissioning Date, as the case may be), the SPD/ SECI / Buying Utility(ies) shall be entitled for compensation by the other party, as the case may be, subject to the condition that the such 'Change in Law' is recognized by the Appropriate Commission. Compensation payment on account of such 'Change in Law' shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.*

12.1.3 However, in case of change in rates of safeguard duty, GST and basic customs duty after [Insert last date of bid submission] and resulting in change in Project Cost, then such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties and shall be provided to the affected party by the other party as per Article 12.2.3, subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff by the Appropriate Commission and any decision in this regard shall be governing on SPD and Buying Entity.

12.2 Relief for Change in Law

12.2.1 Save and except as provided under Article 12.1.3, the aggrieved Party shall be required to approach the Hon'ble CERC for seeking approval of Change in Law.

12.2.2 The decision of the Hon'ble CERC to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on SPD and Buying Entity.

12.2.3 In case of Change in Law as approved by the Appropriate Commission pursuant to Article 12.2.1 or as provided under Article 12.1.3, the SPD/ SECI/ Buying Entities (as the case may be) shall be entitled for relief as follows:

Every net increase/decrease of Rs.1 lakh per MW in the Project Cost (i.e cost incurred by the SPD for the supply and services in the Project concerned, upto Schedule Commissioning Date or extended Schedule Commissioning Date, for reasons other than those wherein such extension is on account of payment of liquidated damages, penalty or any other charges, as the case may be), shall be liable for corresponding increase/decrease of an amount equal to Rs 0.005 /kWh.

Any such change, shall be considered upto three digits after the decimal point, and remaining digits, if any, shall be ignored.

For e.g. in case the change in tariff payable is calculated as Rs. 0.14678/kWh, it shall be modified as Rs. 0.146/kWh.

12.2.4 In case Change in Law results in delay in commissioning or supply of power, where cause and effect between these two can be clearly established, the SECI under intimation to the Buying Entities may provide suitable time extension in Scheduled Commissioning Date or Scheduled Date of Commencement of Supply of Power, as the case may be.

12.2.5 It the event of any decrease in the project cost by the SPD or any income to the SPD on account of any of the events as indicated above, SPD shall pass on the benefit of such reduction at a rate as provided in Article 12.2.3 to SECI which shall be further passed on to the Buying Entity. In the event of the SPD failing to comply with the above requirement, SECI shall make such deductions in the monthly tariff payments on immediate basis. Further, at the time of raising of 1st Monthly Tariff Payment 361 Bill, SPD shall be required to provide a statutory auditor certificate supported by Board Resolution in regard to implications (loss/ gain) arising out of Article 12.

37. It is observed that while the Guidelines provide for determination of quantum of compensation for off-setting the financial impact due to increase/ decrease in the costs on account of occurrence of Change in Law event by the Appropriate Commission, the Petitioner in PPA and PSA has provided for pre-determined quantum of compensation for Change in Law events, whereby for every net increase/ decrease of Rs.1 lakh per MW in the project cost, there shall be corresponding increase/ decrease of an amount equal to Rs.0.005/kWh.

38. The Petitioner has submitted that such changes have been approved by the Ministry of New and Renewable Energy, Government of India and vide affidavit dated 10.11.2021, it has placed on record the correspondence exchanged with MNRE in this regard. The Petitioner, SECI has placed on record its letter dated 26.11.2020 and e-mail dated 13.1.2021 sent to MNRE requesting for certain modifications to the Guidelines to accommodate the concerns of various stakeholders, to allow SECI to incorporate changes in the scheme documents and to enter into PSAs and PPAs, etc. The Petitioner has also placed on record letter dated 1.3.2021 issued by MNRE to SECI, whereby MNRE in exercise of its powers to issue clarifications/ modifications under the Guidelines, granted ex-post facto approval for changes in respect of certain provisions including Change in Law provisions vis-à-vis the Guidelines in respect of (i) bids that have been issued but not closed; and (ii) bids that have been issued and closed by SECI. The relevant extract of the letter of MNRE dated 1.3.2021 is as under:

"The Chairman & Managing Director
Solar Energy Corporation of India (SECI)

Sub: SECI`s request for allowing Deviation from Standard Bidding Guidelines, in respect of Bids by SECI for procurement of power-Reg

Sir,

This is in reference to the SECI`s letter No. SECI/SD/Misc/40098 dated 26.11.2020 (Copy enclosed) and subsequent email dated 13.01.2021 (copy enclosed) on the subject issue:

2. In this regard, the undersigned is directed to inform SECI that:

.....

III. Meanwhile, SECI is allowed to make changes/deviations, as per SECI`s proposal in aforesaid letter/email, on the points mentioned below, both in bids that have been issued but not closed and in bids that have been issued and closed. However, where the bids have been closed, SECI should be very carefully ensure that no additional benefit accrues to the successful bidder and there is no impact on the discovered tariff;

a. Termination compensation on Account of Non-Natural Force Majeure Conditions;

b. Option of taking over of the Project assets by the Buying Entities in case of SPD`s Event of Default.

c. Change in Law provisions

d. Additional Risk Premium of Rs.0.10/kWh.

3. This issues in line with the approval of Hon`ble Minister (NRE & Power)..."

39. Thus, as per above letter of MNRE, SECI has been permitted to make changes/ deviations from the Guidelines, as per SECI's proposal vide its letter dated 26.11.2020 and e-mail dated 13.1.2021, which *inter-alia* included the changes/ deviations to the provisions of the Change in Law, both in (i) the bids that have been issued but not closed and (ii) the bids that have been issued and closed.

40. The bid covered under the present petition falls under the second set of bids (where bids have been issued and closed), as the last date of submission of bid was 22.6.2020 and even the LoI was issued on 15.7.2020, whereas the deviations were approved by MNRE vide its letter dated 1.3.2021. Further, in the said letter dated 1.3.2021, MNRE directed SECI as under:

"...However, where the bids have been closed, SECI should be very carefully ensure that no additional benefit accrues to the successful bidder and there is no impact on the discovered tariff;..."

41. Given the fact that the bidding in the present case was already closed at the time of issuance of the aforesaid approval of deviations by MNRE, the question that arises before the Commission is whether such approval of deviations from the bidding guidelines after the closure of bids violates the sanctity of bidding process and whether the Petitioner has complied with direction of the letter dated 1.3.2021 of MNRE requiring it to ensure that no additional benefit accrues to the successful bidder and that there is no impact on the discovered tariff.

42. We observe that the modified Change in Law provisions appear to have been already incorporated in the Bid documents at the time of issuance of the same. Therefore, it does not appear to be a case that such provisions have been introduced after the closure of the bid and thus, bidder(s) participating in the bid were made aware about the said provisions. At the same time, the fact remains that the said deviations were not approved by the competent authority at the time of their incorporation in the bid documents prior to closure of bids and the approval granted for the same was only on ex-post facto basis. We are of the view that the Petitioner should have waited for the approval of its proposal from MNRE before proceeding with the bidding process. The Commission views the approach of the Petitioner not only unprofessional but also non-adherence to laid down procedures, which is not expected from a Government of India Public Sector Undertaking like SECI. In fact, issues are being raised by some Respondents that the bid process is not as per the

Guidelines. We would like to advise SECI that it must invariably always comply with the procedural and legal requirements in letter and spirit.

43. As per the Guidelines, Evaluation Committee is required to certify that the bidding process and the evaluation have been conducted in conformity with the provisions of the RfS. We observe that the Petitioner has made submissions that the bid documents are in line with the provisions of the Guidelines and the approvals of MNRE vide letter dated 1.3.2021. This has been certified by the Petitioner through the conformity certificate dated 18.2.2021 as furnished by the Petitioner. The relevant extract of the said conformity certificate dated 18.2.2021 is re-produced as under:

> *"With respect to the RfS no. SECI/C&P/SPD/ISTS-IX/RfS/2000MW/03/2020 dated 20.3.2020, it is hereby declared as follows:*
>
> ....
>
> 2. *Applicable guidelines and amendments/clarifications thereof, if any, issued by Government of India for the bidding process were followed in the above tender and no deviation was taken from the Guidelines in the RfS documents for the above tender. ."*

44. We observe that MNRE, in exercise of its powers to issue clarifications/ modifications under the Guidelines, gave ex-post facto approval for changes in respect of certain provisions in the Guidelines only vide letter 1.3.2021. However, the conformity certificate furnished by the Petitioner is dated 18.2.2021, which is prior to 1.3.2021. This clearly implies that on the date the conformity certificate was issued, there was no approval from MNRE. Therefore, the conformity certificate submitted by SECI is false and misleading and SECI and concerned officials of SECI are liable for proceedings under appropriate provisions of the Code of Civil Procedure 1908 and the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for submitting false statement on affidavit.

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45. We further observe that the Petitioner vide the aforesaid conformity certificate dated 18.2.2021 has also stated that the Evaluation Committee constituted for evaluation of bids has conducted the techno-commercial and financial bid evaluation in conformity with the provisions of the RfS. The relevant extract of the aforesaid conformity certificate dated 18.2.2021 is extracted as under:

> *"1. After the conclusion of bid submission, the Evaluation Committee constituted for evaluation of bids has conducted the tech-commercial as well as financial bid evaluation in conformity to the provisions of the RfS....."*

46. The Respondent No. 4, ERBPL has submitted that there are two deviations made by the Petitioner in the standard PPA from the provisions of the Guidelines, namely, (a) as against the Clause 5.7 of the Guidelines, which covers the Change in Law events for the entire terms of the PPA, the Article 12 of the PPA only covers the Change in Law events resulting in increase/ decrease in Project cost up to SCD and impact of events post the SCD have not been covered thereunder; and (b) principle of restitution as envisaged in Change in Law clause in the Guidelines has not been enshrined in Article 12 of the PPA. *Per contra*, SECI has submitted that there are no deviations in the PPA from the provisions of the Guidelines read with the letter of MNRE dated 1.3.2021 as contended by ERBPL. SECI has further submitted that the Respondent, ERBPL was fully aware about the provisions of the PPA when it participated in the bid process and submitted its bid. Therefore, having accepted the terms and conditions and having submitted the bid on said basis, it is not open to the selected bidder to raise any issue on the same after the LoA has been issued or for signing the contract documents.

47. We have considered the submissions made by the Respondent, ERBPL and the Petitioner SECI on the above aspects. Taking up the second deviation first, the Respondent, ERBPL has contended that Article 12 of the PPA does not contain the provisions regarding restitution of the affected party to the same economic position as enshrined in the Clause 5.7 of the Guidelines. The Respondent, ERBPL has also submitted that the letter dated 26.11.2020 and e-mail dated 13.1.2021 issued by the Petitioner to MNRE vide which ex-post fact approval of deviations is being claimed by the Petitioner itself shows that the MNRE's approval was sought for a Change in Law clause having restitution provisions.

48. In this regard, the Petitioner, during the course of hearing on 21.1.2022 and vide its written submissions, has fairly submitted that the entitlement of affected party to the carrying cost is squarely covered under Rule 3(1) of the Change in Law Rules issued by the Ministry of Power, Government of India. We have perused the Rule 3(1) of the Change in Law Rules, which reads as under:

> *"3. Adjustment in tariff on change in law.- (1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred…."*

49. We note that the Petitioner, SECI has justified its actions on the Change in Law Rules that have been notified (in October 2021) much after LoA was issued to successful bidders by the Petitioner (in July 2020). Therefore, justification of the Petitioner for this deviation based on provisions of the Change in Law Rules does not hold ground. The Respondent ERBPL has contended that restitution provision not being in the PPA, it is likely that the Respondents may be adversely impacted if at

some point of time in future the Change in Law Rules gets amended and such provision as Rule 3(1) is deleted. The Respondent has referred to judgement of Hon'ble Supreme Court wherein it has been held that an affected party can be restituted through carrying cost only when there are such provisions in the PPA. The Respondent, ERBPL has also argued that the definition of 'Change in Law' in Rule 2(1)(c) of the Change in Law Rules specifically excludes cases where 'Change in Law' is already defined in the PPA executed between the parties and has requested that it is imperative that the principle of restitution be enshrined in clear terms in Article 12 of the PPA itself. Though apprehension of ERBPL that the Change in Law Rules may be amended cannot be a ground, we tend to agree with contention of the Respondent ERBPL that there is need for clear provisions in PPA for claim of carrying cost in view of judgement of the Hon'ble Supreme Court. For better clarity for the bidders such as the Respondent ERBPL, the Petitioner should have adhered to the provisions of the Guidelines and ensured that relevant provisions related to Change in Law are there in draft PPA floated by it with RfS.

50. We next consider the submission of the Respondent, ERBPL that Article 12 of the PPA i.e. Change in Law clause only covers the Change in Law events resulting in increase/ decrease in the project cost up to SCD and that any impact of events post SCD have not been covered thereunder. In our view, the Change in Law event can broadly be divided into two categories on basis of its occurrence: (i) Change in Law event during the construction period of the project, and (ii) Change in Law event during the operation period.

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51. For Change in Law events occurring during the construction period of the project which have an impact on the project cost, defining outer limit for consideration of the impact on the project cost till the SCD/ extended SCD of the project cannot be construed as deviation from the Guidelines. It is pertinent to note that such provision also finds place in the Petitioner's proposal to MNRE vide letter dated 26.11.2020 and e-mail dated 13.1.2021 whereby it had sought approval in respect of changes made to the certain provisions of the Guidelines including Change in Law provision.

52. Occurrence of Change in Law events which have an impact on the project post SCD or extended SCD appears to be an issue between the parties. We observe that the Article 12.1.1 of the PPA defines Change in Law as under:

> *"12.1.1 In this Article 12, the term Change in Law shall refer to the occurrence of any of the following events pertaining to this project only after [Insert last date of bid submission] including (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the Solar Power Developer; or (v) any change in the rates of any Taxes including any duties and cess or introduction of any new tax made applicable for setting up the solar power project and supply of power from the Solar Power project by the SPD which have a direct effect on the Project.*
>
> *However, Change in Law shall not include (i) any change in taxes on corporate income or (ii) any change in any withholding tax on income or dividends distributed to the shareholders of the SPD."*

53. Clause 5.7.2 of the Guidelines defines Change in Law as under:

> *"5.7.2 In these Guidelines, the term Change in Law shall refer to the occurrence of any of the following events after the last date of bid submission, including (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining a new consent, permit or license, not owing to any default of the Solar Power Generator; or (v) any change in the rates of any Taxes which have a direct effect on the Project. However, Change in Law shall not include any change in taxes on corporate income or any change in any withholding tax on income or dividends."*

54. Thus, it appears that the definition of Change in Law incorporated in the PPA is identical to the definition provided under Clause 5.7.2 of the Guidelines. The definition of the Change in Law as such does not distinguish between the Change in Law event prior to SCD/ extended SCD or post SCD/ extended SCD. Admittedly, according to the Respondent, ERBPL, the said deviation that Article 12 of the PPA restricts the impact of Change in Law events only up to SCD/ extended SCD of the project has crystalized/ arose in view of the certain subsequent sub-Articles of the PPA coupled with the specific submissions made by the Petitioner in its rejoinder and during the hearing. We have perused the provisions of Article 12 (supra) of the PPA and the submissions put forth by the parties. In our view, the aforesaid is more of an issue relating to examination of the scope of provisions contained in Article 12 of the PPA and we do not find any need to undertake the said exercise at this stage leaving the contentions of both the parties open. Admittedly, the generating projects are yet to achieve commercial operation and no such instance has been brought on record whereby the relief has been denied to the affected party by the other party to the agreement warranting intervention of this Commission.

55. However, the Respondent, ERBPL has vehemently argued that the Commission is required to provide such clarity at this stage itself and that the provisions of the PPA itself enable the generating companies to seek such clarity and reliance has also been placed on the decision of APTEL dated 12.10.2021 in Green Infra Case. However, we are not in agreement with the aforesaid contentions of the Respondent, ERBPL inasmuch as the provisions of the PPA only provide for recognition by the Commission, at the stage of adoption, that in case of Change in

rates of Safeguard Duty, GST and Basic Custom Duty after 22.6.2020 that results in change in project cost, then such change will be treated as Change in Law and that the quantum of compensation payment on account of change in rates of such duties shall be provided to the affected party as per Article 12.2.3 of the PPA. The said provisions do not require the Commission to examine the scope of Change in Law provisions in entirety or to adjudicate upon the correct interpretation/ scope of such provisions at the stage of adoption of tariff itself. In the Green Infra case also, the directions of the APTEL relate to the consideration of Change in Law claims that have occurred after the date of submission of bid and impact on the cost of the project development at the stage of tariff adoption with the actual impact and extent of relief admissible to be determined at the appropriate stage. However, as noted above, in the present case, no such instances of Change in Law which have an impact beyond the SCD/ extended SCD of the projects and for which the appropriate relief(s) have been denied to the affected party, have been brought on record.

56. In the earlier paragraph, we have pointed out several lapses in the approach of the Petitioner relating to deviations. We reiterate that the approach and action of the Petitioner was unprofessional, was non-adherence to laid down procedures and amounted to submitting false statement on affidavit. Taking a serious view of such conduct, we warn that the Commission would be constrained to initiate action for submitting false statement on affidavit if such lapse is found again.

57. However, as deviations in clauses of PPAs (for which *post facto* approval of MNRE was obtained) were part of the bid document, we accept the contentions of the Petitioner that the bidders were aware of them at the time of submission of bids.

58. In view of the aforesaid discussions, it emerges that the selection of the successful bidders has been done and the tariff of the solar power projects has been discovered by the Petitioner, SECI through a transparent process of competitive bidding in accordance with Guidelines (read with ex post facto approval vide letter dated 1.3.2021 of MNRE) issued by Ministry of Power, Government of India under Section 63 of the Act. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff for the solar power project, as agreed to by the successful bidder(s), and for which PPA has been entered into by SECI on the basis of the PSAs with the distribution licensees, which shall remain valid throughout the period covered in the PPA and PSAs as under:

Sr. No.	Name of the Successful Bidder	Project Company formed for executing PPA	Date of signing of PPA	Capacity of Project (MW)	Applicable Tariff (Rs./kWh)
1	Avikiran Surya India Private Limited	Thar Surya 1 Private Limited	20.8.2021	300	2.37

59. However, the Petitioner is granted liberty to approach the Commission for adoption of tariff in respect of the balance capacity once such capacity is tied up and PPAs and PSAs for such capacity are executed and the same shall be considered by the Commission in accordance with the law.

60. Prayer (a) of the Petitioner is answered in terms of paragraph 34, paragraph 58 and paragraph 59 above.

61. Article 10.3 of the PPA provides as under:

"10.3 Payment of Monthly Bills

10.3.1 SECI shall pay the amount payable under the Monthly Bill/Supplementary

Bill by the Due Date to such account of the SPD, as shall have been previously notified by the SPD as below.

10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:

(i) deductions required by the Law; and
(ii) amount claimed by SECI, if any, from the SPD, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, 1.25% surcharge will be applicable on day to day basis.

The SPD shall open a bank account (the "SPD`s Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by SECI to the SPD, and notify SECI of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. SECI shall also designate a bank account at New Delhi ("SECI Designated Account") for payments to be made by the SPD to SECI, if any, and notify the SPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. SECI and the SPD shall instruct their respective bankers to make all payments under this Agreement to the SPD`s Designated Account or SECI`s Designated Account, as the case may be, and shall notify either Party of such instructions on the same day."

62. Article 10.4 of the PPA provides as under:

"10.4 Payment Security Mechanism

Letter of Credit (LC):

10.4.1 SECI shall provide to the SPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained which may be drawn upon by the SPD in accordance with this Article.

10.4.2 Before the start of supply, SECI through a scheduled bank open a Letter of Credit in favour of the SPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

i) for the first Contract Year, equal to the estimated average monthly billing; ii) for each subsequent Contract Year, equal to the average of the monthly billing of the previous Contract Year.

10.4.3 Provided that the SPD shall not draw upon such Letter of Credit prior to 30 days beyond the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, SECI shall restore such shortfall before next drawl.
10.4.5 SECI shall cause the scheduled bank issuing the Letter of Credit to intimate the SPD, in writing regarding establishing of such irrevocable Letter of Credit.

10.4.6 SECI shall ensure that the Letter of Credit shall be renewed not later than its expiry.

10.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by SECI.

10.4.8 If SECI fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including date as on 30 days beyond the Due Date, then, subject to Article 10.4.6 & 10.5.2, the SPD may draw upon the Letter of Credit, and accordingly the bank shall pay, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

i) a copy of the Monthly Bill or Supplementary Bill (only for energy related bills) which has remained unpaid to SPD and;
ii) a certificate from the SPD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;"

63. Clause (10) of Regulation 9 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 (hereinafter referred to as "the Trading Licence Regulations") provides as under:

"9. (10) The Trading Licensee shall make payment of dues by the agreed due date to the seller for purchase of the agreed quantum of electricity through an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller. Such escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller shall be equivalent to:

(a) one point one (1.1) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts;

(b) one point zero five (1.05) times of contract value for short term contracts."

64. The above provisions provide for payment security mechanism to be complied with by the parties to the present Petition. Accordingly, the provisions of Article 10.3

and Article 10.4 of the PPAs and Clause (10) of Regulation 9 of the Trading Licence Regulations shall be abided by the concerned parties to the present Petition.

65. The Petitioner, SECI has also prayed to approve trading margin of Rs.0.07/kWh agreed to by the distribution companies in the signed PSAs in terms of Regulation 8(1)(d) of the Trading Licence Regulations. In this regard, Clause (1)(d) of Regulation 8 of the Trading Licence Regulations provides as under:

> *"For transaction under long term contracts, the trading margin shall be decided mutually between the Trading Licensee and the seller:"*

66. The above provision gives choice to the contracting parties to mutually agree on trading margin for long-term transaction.

67. However, proviso to Regulation 8(1)(d) of the Trading Licence Regulations provides as under:

> *"8(1) (d) * * * * **
>
> *Provided that in contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh."*

68. Regulation 8(1)(f) of the Trading Licence Regulations provides as under:

> *"For transactions under Back to Back contracts, where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh."*

69. The above two provisions are exceptions to the main provision as regards trading margin. Distribution licensees have agreed to a trading margin of Rs.0.07/kWh as agreed in the PSAs, which is in consonance with Regulation 8(1)(d) of the Trading Licence Regulations. However, in case of failure by SECI to provide

escrow arrangement or irrevocable, unconditional and revolving letter of credit to the solar generators, trading margin shall be limited to Rs.0.02/kWh specified in Regulation 8(1)(d) and Regulation 8(1)(f) of the Trading Licence Regulations.

70. Prayer (b) of the Petitioner is answered accordingly.

71. Additionally, the Petitioner has also prayed to recognize, in terms of Article 12.2 of the PPAs and Article 8.2 of the PSAs, that the changes in the rates of Safeguard Duty, GST and Basic Customs Duty after 22.6.2020, if any, will be considered as Change in Law subject to the fulfillment of the conditions contained therein. The Article 12.1.3 of the PPAs and Article 8.1.3 of the PSAs read as under:

PPAs:

ARTICLE 12: CHANGE IN LAW

.....

12.1.3 However, in case of change in rates of safeguard duty, GST and basic customs duty after 22.6.2020 and resulting in change in Project Cost, then such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties and shall be provided to the affected party by the other party as per Article 12.2.3, subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff by the Appropriate Commission and any decision in this regard shall be governing on WPD and Buying Entity.

PSAs:

ARTICLE 8: CHANGE IN LAW

.....

8.1.3 However, in case of change in rates of safeguard duty, GST and basic customs duty after 22.6.2020 (last date of bid submission) and resulting in change in Project Cost, then such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties and shall be provided to the affected party by the other party as per Article 8.2.3, subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff by the Appropriate Commission and any decision in this regard shall be governing on WPD and Buying Entity.

72. Perusal of the above Articles of the PPAs/PSAs reveals that the parties have agreed that in case of changes in rates of Safeguard Duty, GST and Basic Customs Duty after 22.6.2020 and resulting in Change in project cost, such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties shall be provided to the affected party as per Article 12.2.3 subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff and any decision in this regard shall be governing on SPD and buying entity.

73. The Respondent No.3, AEGPL has contended that after 22.6.2020, there have already been increases in the rate of Basic Custom Duty and GST, which have an effect of increase in project cost. The Respondent has placed on record (a) Ministry of Finance (Department of Revenue) Notification No. 2/2021 – Customs dated 1.2.2021, whereby rates of Basic Custom Duty on import of solar inverters has been increased to 20% from applicable rate of 5%, (b) Ministry of Finance Notification No.8/2021 – Central Tax dated 30.9.2021, whereby GST @ 12% (in place of applicable rate of 5%) on the solar PV modules and other renewable energy equipment have been notified w.e.f. 1.10.2021, and (c) Office Memorandum of MNRE dated 9.3.2021 regarding imposition of Basic Customs Duty on solar cells and modules at 25% and 40% respectively w.e.f. 1.4.2022. Accordingly, the Respondent has sought declaration that the aforesaid Notifications/ Office Memorandum, which led to the increase in the rates/ imposition of Basic Customs Duty and GST, constitute Change in Law events in terms of Article 12 of the PPA. The Respondent has also sought declaration that the order of the Hon'ble Supreme Court dated

19.4.2021 in the Writ Petition (Civil) No. 838 of 2019 in the matter of M. K. Ranjitsinh & Ors. v. Union of India and Ors. issuing directions/ measures to be adopted, *inter alia*, towards existing and future laying of over-head transmission lines in the priority and potential habitats of GIB constitutes a Change in Law event. In support of the above, the Respondent has relied upon the decision of APTEL dated 12.10.2021 in Appeal No. 251/2021 in Green Infra case.

74. However, with regard to prayer of the Petitioner to recognize the Change in Law provisions of the PPAs/ PSAs, we note that Ministry of Power, Government of India has notified the Change in Law Rules, which provide as under:

> *"2(c) "change in law", in relation to tariff, unless otherwise defined in the agreement, means any enactment or amendment or repeal of any law, made after the determination of tariff under section 62 or section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes —*
>
> *(i) -------*
>
> *(ii) -------*
>
> *(iii) ---------*
>
> *3. Adjustment in tariff on change in law— (1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.*
>
> *(2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.*
>
> *(3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.*
>
> *(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.*
>
> *(5) The amount of the impact of change in law to be adjusted and recovered, shall be*

calculated -

(a) where the agreement lays down any formula, in accordance with such formula; or

(b) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;

(6) The recovery of the impacted amount, in case of the fixed amount shall be —

(a) in case of generation project, within a period of one-hundred eighty months; or

(b) in case of recurring impact, until the impact persists.

(7) The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.

(8) The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).

(9) After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount."

75. The Change in Law Rules have been framed to facilitate timely recovery of costs due to Change in Law events and to provide a process and methodology to be followed. As per the provisions of the Change in Law Rules, on occurrence of a Change in Law, the affected party (generator) and other parties (procurers) are to settle the Change in Law claims among themselves and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.

76. Prayer (c) of the Petitioner is answered accordingly.

77. Petition No. 211/AT/2021 is disposed of in terms of the above.

Sd/	Sd/	Sd/
(P.K. Singh)	**(Arun Goyal)**	**(I.S.Jha)**
Member	**Member**	**Member**

Annexure – VIII

CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 245/AT/2022

Coram:
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member

Date of order: 8th March, 2023

In the matter of:

Petition under section 63 of the Electricity Act, 2003 for adoption of tariff for the Solar Power Projects (Tranche-IX) connected to the Inter-State Transmission System (ISTS) and selected through competitive bidding process as per the guidelines of Government of India.

And
In the matter of:

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

..... **Petitioner**

Vs

1) AMP Energy Green Private Limited
309, Rectangle One, Behind Sheraton Hotel,
Saket, New Delhi,
Delhi-110017

2) Eden Renewable Bercy Private Limited
Unit No 236 B & 236C, 1st Floor,
DLF South Court, Saket
New Delhi-110017

3) IB Vogt Singapore Pte Ltd
80 Robinson Road, #02-00
Singapore 068898

4) Ayana Renewable Power Private Limited
3rd Floor, Sheraton Grand Hotel,

Brigade Gateway, 26/1,
Dr. Rajkumar Road Malleswaram (West),
Bangalore, Karnataka- 560055

5) ReNew Solar Power Private Limited
ReNew Hub, Commercial Block-1,
Zone 6, Golf Course Road, DLF City
Phase V, Gurugram, Haryana- 122009

6) Solarpack Corporacion Technologica SA
Avenida de Algorta 16, 3
48992 Getxo-Vizcaya
Espana, Spain

7) AMP Energy Green Five Private Limited
[Project Company of AMP Energy Green Private Limited]
309, 3rd Floor, Rectangle One,
Behind Sheraton Hotel, Saket
Delhi-110017

8) IB Vogt Solar Seven Private Limited
[Project Company of IB Vogt Singapore Pte Ltd]
Unit No.225-229, 2nd Floor, JMD Empire
Golf Course Extension Road,
Sector-62, Gurugram
Haryana-122101

9) Ayana Renewable Power Three Private Limited
[Project Company of Ayana Renewable Power Private Limited]
S 2904, 29th Floor, World Trade Centre.
Brigade Gateway Campus, #26/1,
Dr. Rajkumar Road, Rajajinagar
Bangalore, Karnataka- 560055

10) Renew Surya Aayan Private Limited
[Project Company of ReNew Solar Power Private Limited]
138, Ansal Chambers-II, Bhikaji Cama Place,
Delhi-110066

11) Renew Surya Vihaan Private Limited
[Project Company of ReNew Solar Power Private Limited]
138, Ansal Chambers-II, Bhikaji Cama Place,
Delhi-110066

12) Kerala State Electricity Board
Vydyuthi Bhavanam, Pattom

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Thiruvananthapuram
Kerala- 695004

13) Southern Power Distribution Company of Telangana Limited
Corporate Office, Mint Compound, Hyderabad,
Telangana – 500 063

14) Northern Power Distribution Company of Telangana Limited
Opp. NIT Petrol Pump, Chaitanyapuri, Kazipet,
Warangal, Telangana-506004

15) Uttarakhand Power Corporation Limited
Victoria Cross Vijeyta Gabar Singh Urja Bhawan,
Kanwali Road, Balliwala Chowk,
Delhradun, Uttarakhand- 248001

16) Jammu Kashmir Power Corporation Limited
SLDC Building, Gladni Grid Complex, Narwal,
Jammu-180006

... **Respondents**

The following were present:

1) Shri M. G. Ramachandran, Sr. Advocate, SECI
2) Ms. Tanya Sareen, Advocate, SECI
3) Shri Aneesh Bajaj, Advocate, SECI
4) Ms. Mannat Waraich, Advocate, IB Vogt & ReNew
5) Shri Mohmd. Siddique, Advocate, IB Vogt & ReNew
6) Shri Gopal Jain, Sr. Advocate, Ayana Renewable
7) Ms. Priya Dhankher, Advocate, Ayana Renewable
8) Shri Nikhil Bhatia, Advocate, Ayana Renewable
9) Shri Aniket Prasoon, Advocate, Ayana Renewable
10) Shri Amit Kapur, Advocate, AMP Energy
11) Ms. Jyotsna Khatri, AMP Energy
12) Shri Ankur Sharma, AMP Energy
13) Shri Abhilash Yadav, AMP Energy

ORDER

The Petitioner, Solar Energy Corporation of India Limited (SECI), has filed the present Petition under section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') for adoption of tariff for the Solar Power Projects (Tranche IX) connected

to the Inter-State Transmission System (ISTS) and selected through competitive bidding process as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects" (hereinafter referred to as "the Guidelines") dated 3.8.2017 issued by Ministry of Power, Government of India. The Petitioner has made the following prayers:

> *"(a) Adopt the tariff for the individual power projects on the terms and conditions contained in the Power Purchase Agreements as per Table-3 read with the Power Sale Agreements executed with the Buying Entities/Distribution Licensees as per Table-4 as may be amended as on the date of reserving the decision in the present Petition after hearing the parties;*
>
> *(b) Approve Trading Margin of Rs.0.07/kWh as agreed to by the Buying Entities/ Distribution Licensees in the signed PSAs in terms of Regulation 8 (1) (d) of the Trading License Regulations, 2020; and*
>
> *(c) Recognize, in terms of Article 12.1.3 of the PPAs and Article 8.1.3 of the PSAs that the change in rates of Safeguard Duty, GST and Basic Customs Duty after 22.06.2020, if any, will be considered as Change in Law subject to the fulfilment of the conditions contained therein; and*
>
> *(d) Pass any other or further order which this Commission may deem fit and proper in the facts and circumstances of this case."*

Submissions of the Petitioner

2. The Petitioner, SECI has submitted that in the capacity of intermediary agency, it issued Request for Selection ("RfS") along with draft Power Purchase Agreement ("PPA") and draft Power Supply Agreement ("PSA") for selection of 2000 MW ISTS-connected Solar Power Projects (Tranche-IX) as per the Guidelines and floated the same on ISN Electronic Tender System (ETS) e-bidding portal on 20.3.2020. In response, eleven bids were received offering an aggregate capacity of 5280 MW and were found to fully meet the technical criteria. As per the eligibility criteria mentioned in the RfS, nine bidders were shortlisted for participating in the e-reverse auction. The e-reverse auction was conducted on 30.6.2020 on ISN ETS e-bidding portal and pursuant thereto seven bidders offering aggregate capacity of 2000 MW were

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selected and issued Letters of Awards. It is submitted that SECI had earlier filed a Petition bearing No. 211/AT/2021 under Section 63 of the Act before the Commission for adoption of above 2000 MW Solar Power Projects. In the said matter, the Commission vide order dated 8.3.2022 held that the selection of bidders and the tariff has been discovered through a transparent process of competitive bidding in the present scheme (i.e. Tranche IX) in accordance with the Guidelines. However, the Commission restricted the adoption of tariff only with respect to the quantum of 300 MW for which PPA was signed with the Solar Power Developers for supply of identified distribution licensees under the PSA and the Commission further granted liberty to SECI to approach the Commission for adoption of tariff in respect of balance capacity (1700 MW) after such capacity is tied up under the PPAs and PSAs.

3. SECI has submitted that subsequent to the order dated 8.3.2021 in Petition No. 211/AT/2021, as on date, SECI has signed the PPAs for the tune of 1400 MW (out of balance 1700 MW) capacity with the successful bidders/their project companies following the PSAs signed between the SECI and the Buying Utilities/Distribution licensees. It is submitted that with respect of balance 300 MW capacity awarded to one M/s Solarpack Corporacion Technologica SA, so far SECI has been able to identify and sign the PSA with Jammu & Kashmir Power Corporation Ltd. for 100 MW but the balance capacity for 200 MW has not been tied up with any Buying Utility/Distribution licensee and since the aforesaid bidder has not signed the PPA for the part-capacity corresponding to the PSA signed, SECI is in process of the identifying the Buying Utilities/Distribution licensees for balance 200 MW capacity. In view of the above, SECI has prayed for adoption of tariff for 1400 MW capacity while

craving leave of the Commission to place on record the remaining capacity for adoption of tariff upon finalisation of the PSAs and PPA.

Hearing dated 20.10.2022

4. The matter was heard on 20.10.2022 and notice was issued permitting the Respondents and the Petitioner to file their reply and rejoinder respectively. The Petitioner, vide Record of Proceedings for the hearing dated 20.10.2022, was directed to file a brief note explaining the methodology adopted and/or to be adopted in future cases to deal with/address the aspect of substantial delays in signing of PSAs & PPAs after issuance of Letter of Awards.

5. In response, SECI vide its affidavit dated 28.11.2022 has submitted as under:

(a) There is various process being followed before signing PSAs and PPAs which includes issuance of Request for Selection (RfS) document for selection of power developers for setting up the solar/wind/hybrid/RTC power projects, issuance of Letter of Award to the selected Bidders in pursuance of the Competitive Bidding Process, subsequent to the above, power is offered to prospective Buying Entities at the price discovered in the e-reverse auction with applicable trading margin. Based on the consent received from Buying Entities, the PSAs are signed with them. After signing of PSAs, the PPAs are signed with selected Power Developers. The endeavour of SECI is always to finalize the PSAs for entire capacity for which the letters of awards have been issued to selected bidders and thereafter sign the PPAs with the selected bidders and file the Petition before the Commission for adoption of tariff. The above process, may delay the execution of the PPAs and filing of Petition before the Commission.

(b) In the past, SECI was able to sign PSAs with Buying Entities for substantial capacity including for wind and hybrid tenders. Only in the recent concluded tenders for wind and hybrid schemes i.e. ISTS Hybrid Tranche V and ISTS Wind

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Tranche XII scheme (wherein the Letter of Awards were issued in July 2022), the PSA for the awarded capacity is under various stage of discussion with procurer/distribution licensees. In many cases, the distribution licensees are insisting on the prior approval of the State Commission based on the offer from SECI and draft PSA before formally entering into binding and enforceable PSA. This has resulted in SECI's inability to enter into PPAs with developer to whom letters of award has been issued. Similarly, though, SECI was able to sign the PSAs for substantial quantum in case of solar tenders, but still the PSAs for 5600 MW solar capacity is yet to be signed under various schemes due to lukewarm response received from Buying Entities. This balance capacity has been offered to various Buying Entities and significant quantum is under discussion with various Buying Entities.

(c) With reference to ISTS Solar Tranche IX Scheme (relevant for the present case), SECI has signed PSAs for 1800 MW capacity and PPAs for 1700 MW capacity (out of 2000 MW aggregate capacity under the scheme) till date. Out of remaining 200 MW, PSA capacity to be signed under the scheme, the capacity of 100 MW has been tied up with NDMC, New Delhi and remaining 100 MW is offered to other Buying Entities. SECI will proceed to finalize the remaining PPA capacity under the scheme after finalization of above PSA capacity.

6. Pursuant to the notice, replies to the Petition have been filed by Respondents. The Respondent No. 1, AMP Energy Green Private Limited and Respondent No. 7, AMP Energy Green Five Pvt. Ltd. (collectively, "AMP Energy") have filed their common reply to Petition. Moreover, Respondent No.10, ReNew Surya Aayan Pvt. Ltd., Respondent No.11, ReNew Surya Vihaan Pvt. Ltd. and Respondent No.8, IB Vogt Solar Seven Pvt. Ltd. have also filed similar replies to the Petition which have been dealt with in succeeding paragraphs. Respondent No.4, Ayana Renewable Power Private Limited and Respondent No. 9, Ayana Renewable Power Three Pvt.

Ltd. (Project Company of Respondent No.4) have also filed a common reply to the Petition. Subsequently, SECI has also filed its rejoinders to the above replies.

Reply & Rejoinders of parties:

7. The Respondents 1, AMP Energy Green Private Limited and Respondent No. 7, AMP Energy Green Five Pvt. Ltd. ("AMP Energy") vide their reply dated 22.11.2022 have mainly submitted as under:

(a) While AMP Energy is not challenging the adoption of tariff being sought by SECI, the present reply is being filed to the limited extent of bring to the notice of the Commission (i) events that have/will results in increase in the cost of 100 MW solar power project being developed by AMP Energy in the State of Rajasthan and qualify as Change in Law under Article 12 of the PPA dated 12.4.2022, and (ii) the methodology of compensation for claiming relief towards such Change in Law events under Article 12.2.3 of the PPA.

(b) Subsequent to submission of bid i.e. on 22.6.2020, following events have occurred which has resulted in increased additional capital expenditure for the Respondent:

i) On 1.2.2021, Ministry of Finance (Department of Revenue) issued Notification being No. 3/2021- Customs and Notification No. 7 of 2021-Customs dated 1.2.2021 pursuant to which the exemptions granted by MoF to the extent of 5% (ad valorem) by its earlier notification was reversed and the Basic Custom Duty (BCD) on import of solar inverters was increased from 5% to 20%.

ii) On 9.3.2021, MNRE issued Office Memorandum regarding imposition of Basic Customs Duty on solar cells and modules without grandfathering of bid out Projects) w.e.f. 1.4.2022. The Basic Customs Duty on solar modules with HSN Code 85414012 and solar cells (85414011) is 40% and 25% respectively.

iii) On 19.4.2021, the Hon'ble Supreme Court passed an order in Writ Petition (Civil) No. 838 of 2019 titled M.K. Ranjitsinh & Ors. V. Union of

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India & Ors. issuing directions / measures to be adopted *inter-alia* towards existing and future laying of over-head transmission lines in the Priority and Potential habitats of the Great Indian Bustard (GIB).

iv) On 30.9.2021, the Ministry of Finance has notified 12% rate of Goods & Services Tax (GST) on solar photo-voltaic (PV) module and other renewal energy equipment with effect from 1.10.2021

(c) Tariff rate of Rs. 2.37/kWh was quoted by AMP Energy considering the events and circumstances prevalent at the time of submission of the bid. The aforesaid events have occurred subsequent to 7.12.2020 and AMP Energy at the time of submitting the bid, was in no position to foresee such additional capital expenditure. Accordingly, as per Article 12.2.1 of the PPA, the said events qualify as Change in Law events.

(d) With regard the issuance of BCD Notification dated 9.3.2021, AMP Energy vide its letters dated 9.9.2021, 29.10.2021, 31.12.2021 and 31.3.2022 ('BCD Waiver letters') provided waiver to SECI in relation to claiming the compensation for the impact on the Project cost in pursuance to aforesaid BCD Notification subject to the PPA being executed within a prescribed timeline. As per the last communication, the said timeline for execution of the PPA was extended to 30.6.2022.

(e) MNRE has also acknowledged the financial burden that may be caused on the renewable energy developers on account of imposition of BCD and GST and therefore, on 27.9.2022, MNRE requested the Renewable Energy Implementing Agencies (SECI/NTPC/ NHPC) to consider hike in BCD and GST rates as Change in Law.

(f) The aforesaid undertaking was given by AMP Energy vide BCD Waiver letters considering that AMP Energy will avail the benefit of concessional rate of 5% of Custom Duty as permitted under Project Imports Regulations, 1986. Under Project Imports, goods imported for the purpose of setting up of power projects is subjected to single rate of duty instead of merit assessment of imported goods. Accordingly, as per the provisions of Custom Notification No.

50/2017 Cus. dated 30.6.2017 as amended from time to time, as per Custom Tariff Heading No. 9801, goods required for setting up of any solar power project are eligible for concessional rate of 5%.

(g) While AMP Energy was in the process of applying for the concessional rate benefit for its solar power project, Ministry of Finance, Department of Revenue issued Project Imports (Amendment) Regulations, 2022 dated 19.10.2022 amending the principal regulations whereby solar power plants/solar power projects were excluded from availing concessional custom duty rate. Therefore, AMP Energy is now constrained to bear BCD at the rate of 40% of solar modules and 25% of solar cells. Such steep increase in capex has changed the financial dynamics of the project which will have cascading effect on the servicing of debt leading to increase in cost and making the project financial unviable.

(h) It cannot be denied that the AMP Energy has furnished undertaking for waiver of BCD under Article 12.2.6 of the PPA, however, it is imperative to interpret the contractual provisions in a manner to give effect to the intent of the parties and not to frustrate it which is known as the purposive interpretation. The purpose of PPA is to develop project and supply electricity at a fixed tariff rate, a factor of capital cost. Since, the process of bidding is based on the known capital cost, while submitting the bid, developer takes risk to manage and mitigate capital cost as it is under control of the developer. However, if the capital cost increases for the reasons beyond the control of the developer such as an increase in the imposition of tax, then the developer cannot be held accountable to bear the risk as the same was not foreseeable at the time of computing the capital cost. It is only proper and justifiable that AMP Energy cannot be subjected to risks unknown/untaken and hence it is essential that while interpreting the PPA, a common sense and business efficacy test is applied.

(i) Despite imposing the pre-condition of submission of BCD Waiver letters for execution of PPA, SECI in the present Petition has itself prayed before this

Commission for recognition/approval that the change in rates of Safeguard Duty, GST and BCD after 22.6.2020, be considered as Change in Law events in terms of Article 12.1.3 of the PPA. In light of the same, imposition of BCD vide BCD Notification dated 9.3.2021 is an event of Change in Law under Article 12 of the PPA and it will result in additional expenditure which are beyond the control of the developer. Accordingly, AMP Energy is entitled to recover such additional expenditure in terms of the methodology provided under Article 12.2.3 of the PPA at the appropriate stage of execution of the Project.

(j) AMP Energy has established a 100 MW solar power project by deploying significant capital via debt and equity. Considering the significant amount invested by AMP Energy while developing the Project, in case the compensation to the Petitioner is denied on account of the aforementioned Change in Law event, it will have a cascading effect on the servicing of debt which can potentially lead to increase in the cost, making the project financially unviable. The principle of 'business efficacy' and 'officious bystander test' has been discussed in detail by the Hon'ble Supreme Court in Nabha Power Ltd. Vs. Punjab State Power Corporation Ltd. and Ors. [(2018)11SCC 508]. Business efficacy means that the courts are required to make the contract efficacious and practicable and Officious bystander test is applied by the courts to determine whether a term should be implied into a contract for it being so obvious, even though that term was not written into the contract expressly.

(k) The purpose of PPA is to develop project and supply electricity to the procurer at the tariff agreed upon in the PPA read with the terms and conditions of PPA. However, if the cost of generation of electricity increases for the reasons beyond the control of the developer such as an imposition of BCD, then the developer cannot be held accountable to bear the risk as the same was not foreseeable at the time of bid submission. It is in this regard only proper and justifiable to submit that AMP Energy cannot be subjected to risks unknown/untaken and hence it is only essential that while interpreting APP, a common sense and business efficacy test is applied. This broad principle is

captured in the judgment of the Hon'ble Supreme Court passed in Union of India v. D N Revri & Co. and Ors., [(1976) 4 SCC 147] which explains two concepts of the interpretation of contract i.e., business efficacy and adoption of common-sense approach. The Hon'ble Supreme Court observed that while interpreting the provisions of contract, it is important to apply law and economics as the same are intertwined and are integral part to apply in case of any contractual arrangement.

(l) Thus, AMP Energy cannot be made to absorb risk which is beyond its control. This is the basic economic principle of project development. Accordingly, the event of imposition of BCD vide Notification dated 9.3.2021 qualifies as an event of Change in Law in terms of PPA and applicable laws.

(m) Hon'ble Supreme Court vide its order dated 19.4.2021 in I.A. No. 85618 of 2020 in Writ Petition (Civil) No. 838 of 2019 ("GIB Order"), has issued certain directions/measures to be adopted *inter alia* towards existing and future laying of over-head transmission lines in the priority and potential habitats of the Great Indian Bustard ("GIB"). As per the said Order, the overhead transmission lines in the GIB area(s), shall be converted into underground powerlines. By virtue of the Order, the Hon'ble Supreme Court *inter alia* has held that in cases where the power generators are required to bear the additional amount adding to the cost of production, it would be open to regulate the manner in which the cost would be mitigated in accordance with contractual terms.

(n) MNRE vide its Office Memorandum dated 3.2.2022, acknowledged that the issuance of the GIB Order has caused uncertainty among renewable energy developers with regard to the action they are required to take for complying with the GIB Order. Accordingly, MNRE directed that for all the renewable energy projects under implementation for which the transmission infrastructure lies wholly or partly in the priority or potential area of GIB, the scheduled date of commissioning will be extended to a date which is 30 days

after the date of judgment passed by the Hon'ble Supreme Court in the IA filed by MNRE.

(o) The Project is being developed in the State of Rajasthan which forms a part of the potential habitats of GIB as demarcated and specified in the GIB Order. AMP Energy placed the bid considering the feasibility of installing overhead transmission lines and accordingly determined the capital expenditure of the Project. However, with the Hon`ble Supreme Court's directions dated 19.4.2021, AMP Energy would be compelled to lay underground transmission cables which is commercially unviable at the present tariff as supply and service cost of underground cables is much higher than that of an equivalent voltage of overhead transmission cables. Such additional cost could not have been envisaged at the time of submission of bid for the instant project. Any deviation in the Project infrastructure, approach, method arising out of extraneous circumstances being beyond the reasonable control and not being attributable to AMP Energy qualifies within the definition of Change in Law provisions as provided under Article 12 of the PPA.

(p) Appellate Tribunal for Electricity ("APTEL") vide its judgment dated 12.10.2021 passed in Appeal No. 251 of 2021 [Green Infra Renewable Energy Limited v. Rajasthan Electricity Regulatory Commission and Ors. ("Green Infra Case")] has held that if the event referred to actually constitutes Change in Law within the four corners of its definition under the PPA, there is no reason why it cannot be duly recognized as a Change in Law at the stage of tariff adoption. Notably, the APTEL acknowledged the imposition of Basic Custom Duty Notification dated 1.2.2021, 9.3.2021 and Hon'ble Supreme Court order dated 19.4.2021 as Change in Law events for the said events had occurred post the date of bid submission in the Green Infra Case.

(q) AMP Energy in the instant project has been similarly placed as that of Green Infra in the aforesaid case as Custom Notifications, BCD Notification dated 9.3.2021, GIB Order and GST Notification have been issued post 22.6.2020 and in terms of the Change in Law clause of the PPA, the said

events clearly qualify as Change in Law events. Since such steep increase in capex on account of the occurrence of said events can change the financial dynamics of the Project, it is pertinent to take into account the impact on the cost of the development of the Project of such Change in Law events so that suitable adjustment in tariff can be made at the stage of tariff adoption. Moreover, Article 12.1.3 of the PPA itself allows the parties to seek declaration of Change in Law events and quantum of compensation payment on account of change in rates and duties at the time of adoption of tariff by this Commission.

(r) Article 12.2 of the PPA clearly specifies the methodology of compensation for claiming relief towards Change in Law event which has been overlooked by SECI in the instant tariff adoption petition. Accordingly, AMP Energy seeks the Commission's indulgence to recognize the aforesaid methodology of claiming Change in Law compensation and record Article 12.2 of the PPA in the order to be passed in the present Petition and affirm that the compensation for Change in Law is to be paid as per the mechanism stipulated in Article 12.2 of the PPA. It is pertinent to recognize the provision of methodology for computation of compensation towards Change in Law in the Order to avoid multiplicity of proceedings in future.

8. SECI, vide its rejoinder to the reply filed by AMP Energy, has mainly submitted as under:

(a) The PPA provides in Article 12.1.3, three identified categories of law to be recognised by the Commission at the time of adoption of tariff, namely, any changes in rate of safeguard duty, GST and BCD after 22.6.2020. Thus, the events (i) (Custom Notification) & (iv) (GST Notification) being change in the rates of BCD and GST respectively have been provided in Article 12.1.3 of the PPA for recognition by the Commission at the time of adoption of tariff as Change in Law event and the Commission may pass appropriate orders as prayed by SECI in the Petition with regard to change in rates in BCD and GST

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Notification after 22.6.2020 holding that the same fall within the scope of Article 12 of the PPA. The actual impact to be allowed need to be considered at the appropriate stage.

(b) With regard to AMP Energy under (iii) (GIB Order), the same is law laid down by the Hon'ble Supreme Court but the developer is required to establish the actual impact of Change in Law on account of the above to the satisfaction of the Commission. MNRE vide its OM dated 3.2.2022 has dealt with the decision dated 19.4.2021 of the Hon'ble Supreme Court

(c) Accordingly, the Change in Law aspect of decision dated 19.4.2021 of the Hon'ble Supreme Court on the project to be established by the AMP Energy is to be considered as per the terms of the OM dated 3.2.2022 of MNRE and the outcome of decision of the Hon'ble Supreme Court on the IA as specified in the said OM by this Commission. The actual impact to be allowed need to be considered at the appropriate stage.

(d) As to the event of imposition of BCD imposed on solar PV cells and modules mentioned in (ii) above, the PPA executed between SECI and AMP is dated 12.4.2022 which was after 31.3.2022 when the BCD had become 40% on Solar Modules and 25% on Solar Cells. Article 12.2.6 of the PPA specifically provides that "If there is any further revision/modification to the said BCD notification or any new notification on the BCD matter, resulting in any further increase of BCD, developers shall remain entitled to exercise rights for any claim under Change in Law of the PPAs, viz, such revision/modification (any incremental impact over prescribed rates of BCD as above) or any new notification. Further, No Change in Law on account of BCD will be claimed by either party, as per the MNRE OM dated 9.3.2021."

(e) In terms of the above, AMP Energy with due reference to the increased BCD from 0% to 40% with respect to solar modules and from 0% to 25% with respect to solar cells and without any reservation or qualification, unconditionally and in the absolute manner committed that AMP duly waive the

claim for Custom Duty at the said rates of 40% and 25%. This waiver was with reference to OM dated 9.3.2021 of MNRE which clearly stipulated that if import of modules and cells is done beyond 31.3.2022, the BCD will not be 0% but 25% for solar cells and 40% for solar modules. AMP signed the PPA on 12.4.2022 after the above date of 31.3.2022 and when the applicable BCD had already become 40% and 25% and even then, had proceeded to accept that no Change in Law on account of BCD will be claimed as per MNRE OM dated 9.3.2021 (which provided for the rate of BCD vis-à-vis solar modules at 40% and for solar cells @ 25%). At the relevant time, AMP did not claim that the same will be subject to it availing the concession under the Project Import Regulations, 1986 or in any other manner.

(f) As per Article 12.2.6 of the PPA, the waiver on Change in Law claim of Basic Custom Duty as per Office Memorandum dated 9.3.2021 of MNRE on import of solar modules and cells by AMP was therefore not conditional upon the benefit of concessional rate of 5% of Custom Duty as per Project Import Regulations 1986 being available and in case the same is not available notwithstanding the waiver AMP will claim any Change in Law events. The waiver is specific and unequivocal, namely that AMP will not claim the benefit of Change in Law events qua BCD till 40% for solar modules and till 25% for solar cells. AMP is bound by the waiver subject to which the PPA was signed. The claim for BCD by AMP can be only for '*any further increase of BCD, ...any incremental impact over prescribed rates of BCD as above'*. Any increase in BCD upto 40% or 25% by reason of any other notification will not affect the waiver.

(g) Notification of Project Import (Amendment) Regulations, 2022 dated 19.10.2022 issued by Ministry of Finance as referred to by AMP in its reply has not affected in any manner the rate of BCD as per MNRE Office Memorandum dated 9.3.2021, namely the BCD vis-à-vis the solar modules continues to be 40% and Basic Custom Duty vis-à-vis the solar cells continues to be 25%. As there is no change in rate of the Basic Custom Duty vis-à-vis the solar modules

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(40%) and solar cells (25%) on account of the above notification dated 19.10.2022 in comparison to what AMP has already considered and given a waiver for in the PPA as quoted above, there is no impact of the same on AMP and therefore, AMP cannot claim any relief on account of the same. Both AMP and SECI have agreed to the stipulation that 'No Change in Law on account of BCD will be claimed by either party, as per the MNRE OM dated 9.3.2021' as incorporated in Article 12.2.6 of the PPA and the same is binding on parties.

(h) AMP after having given unconditional waiver on Change in Law claim of BCD as per OM dated 9.3.2021 of MNRE in the PPA executed between SECI and AMP (and based on the same, similar provision providing for the above waiver having been incorporated in the PSA signed with Telangana Discoms), is not entitled to raise the claim for Change in Law compensation on account of change in rate of Basic Custom Duty as per the OM dated 9.3.2021 of MNRE. AMP cannot today say that there is a change in rate from 5% to 40% or 25% on account of the notification dated 19.10.2022 and therefore is liable for relief.

(i) Reliance placed by AMP on letter dated 27.9.2022 of MNRE to claim that MNRE has requested to Renewable Implementing Agencies (including SECI) to consider the increase in BCD rate as Change in Law event is erroneous as the same is based on incomplete reading of the letter of MNRE. In the said letter, MNRE has subjected 'REIAs may consider imposition of BCD on import of solar PV cells and modules with effect from April 1, 2022 under Change in Law' with the qualification 'unless the same is disallowed by specific provisions in the tender documents/ contracts.' Article 12.2.6 of the PPA signed between AMP and SECI specifically provides for the waiver given by AMP on any Change in Law claim of Basic Custom Duty as per the Office Memorandum dated 9.3.2021 of MNRE.

(j) Claim of AMP that despite of specific provision in the PPA providing for waiver given by AMP on Change in Law claim of Basic Custom Duty as per OM dated 9.3.2021 of MNRE, AMP should be compensated for the said Change in Law event as per the principle of "business efficacy" is without any

merit. In this regard, reliance has been made by AMP on the judgment dated 5.10.2017 of the Hon'ble Supreme Court in Civil Appeal No. 179 of 2017 in the case of Nabha Power Limited -v- Punjab State Power Corporation Limited and Anr. The above decision is not applicable in view of the facts and circumstances of the present case.

(k) Similarly, reliance placed by AMP on decision in Union of India v DN Revri & Co., [1976 4 SCC 147] is misplaced as the same is distinguishable on facts of the case. The interpretation of a clause in the contract was in dispute and an efficacious interpretation was given to the clause to make it workable, however the entire clause was not rendered meaningless and the unequivocal terms were not re-written. Business efficacy principle cannot render the term of the contract ineffective. Further, in the present case, the waiver in Article 12.2.6 is clear and unambiguous.

(l) Article 12.2.3 of the PPA provides for a formula for determination of the relief with reference to every net increase/decrease of Rs.1 lakh per MW in the project cost (i.e. the cost incurred by the Project Developer towards supply and services of the project concerned, upto the Scheduled Commissioning Date or Extended Scheduled Commissioning Date as the case maybe as a result of Change in Law events set out in Article 12.1.3 of the PPA. For the application of the formula provided in Article 12.2.3 of the PPA for relief of Change in Law, the amount constituting the project cost cannot be considered on estimated basis. The project cost will be available only upon the capital expenditure being incurred.

(m) In regard to Change in Law events other than those identified and covered in Article 12.1.3 of the PPAs, namely, the implication of the Order dated 19.4.2021 passed by the Hon'ble Supreme Court relating to Great Indian Bustard, the same has to be considered as per Articles 12.1.1, 12.1.2, 12.2.1, 12.2.2, 12.2.3, 12.3 of the PPA. Therefore, Article 12.2.3 of the PPAs [providing formula for determination of relief for Change in Law] applies to all

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Change in Law events i.e. those events covered under Article 12.1.3 as well as events covered under Article 12.1.1 of the PPA.

9. The Respondent No.8, IB Vogt Solar Seven Pvt. Ltd., Respondent No.10, ReNew Surya Aayan Pvt. Ltd. and Respondent No.11, ReNew Surya Vihaan Pvt. Ltd. vide their reply dated 4.12.2022 have mainly submitted as under:

(a) The Respondents are not disputing/challenging the tariff adoption Petition filed by SECI. However, at this stage of tariff adoption, there are certain provisions in the PPA which essentially require the specific approvals/recognition of this Commission and henceforth the Respondents seeks to plead the same before this Commission and the indulgence of the Commission to approve and recognize the specific provisions as mandated by the terms of the PPA, as also the aspect of Change in Law.

(b) Ministry of Finance ("MoF") vide its Notification Nos 8/2021 – Integrated Tax (Rate) dated 30.9.2021 and Notification No. 8/2021 – Central Tax (Rate) ("2021 GST Notifications") has increased the rate of GST applicable on the Renewable Energy Devices from 5 % (at the time of bid submission) to 12%. The issuance of the 2021 GST Notifications, which result in an increase in the rate of GST, has already been declared as a Change in Law event under Article 12.1.3 of the PPA. PPAs executed between the Petitioner and the Respondents specifically treat change in rates of safeguard duty, GST and basic customs duty after 22.6.2020 as 'Change in Law' and provides for a relief of Rs. 0.005/ kWh for every increase/ decrease of Rs. 1,00,000/- per MW in the project cost.

(c) The Central Commission has the power to grant in-principle approval for an event as Change in Law under the PPA at the first available instance. In the present case, the GST on renewable energy devices and parts has increased from 5% (at the time of bid submission) to 12% vide Ministry of Finance ("MoF") Notification No. 8 of 2021 dated 30.9.2021. The present PPA is a case

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wherein, upon a bare reading of Article 12.1.3, it is unambiguously clear that the changes in the rates of the GST after 22.6.2020 are to be considered as a Change in Law event. The compensation to the affected party is payable as per the computation stated in Article 12.2.3. However, the pre-requisite for enforcement of such provision is that the Appropriate Commission i.e., this Commission recognized Article 12.1.3 and Article 12.2.3 at the stage of tariff adoption itself.

(d) The Commission has the powers to recognise the provisions dealing with the Change in Law events at the stage of tariff adoption itself. In this regard, the reliance has been placed on judgement dated 12.10.2021 passed by Hon'ble Appellate Tribunal for Electricity ("APTEL") passed in Appeal No. 251 of 2021 titled Green Infra Renewable Energy Limited v. Rajasthan Electricity Regulatory Commission and Ors. ("Green Infra case").

(e) In a similar case, Rajasthan Electricity Regulatory Commission, in its orders dated 31.8.2022 in Petition No. 1905 of 2021 and 27.9.2022 in Petition No. 2023 of 2022 has duly recognised the provisions of the PPA dealing with Change in Law events (and consequently increase in GST by 2021 GST Notification as Change in Law event) at the stage of adoption of tariff and the quantum of compensation payable on account of the above Change in Law event shall be provided to the affected party by the other party at the appropriate stage in terms of the formula provided in Article 12.2.2 of the respective PPAs. The provisions of the PPA as were considered by the Rajasthan Commission are *pari materia* to the provisions of the present PPA. As the increase in rate of GST for renewable energy devices and its parts falls under the four corners of the Change in Law provision which has already been declared as a Change in Law event under Article 12.1.3, this Commission is bound to approve and recognize Article 12.1.3 and Article 12.2.3 at the stage of tariff adoption itself.

(f) The PPAs executed between SECI and the Respondents appear to be in contravention of the principles laid down under the Bidding Guidelines dated

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3.8.2017. The PPAs contain a restrictive Change in Law clause where the ultimate impact may not lead to restitution to the same economic position whereas the Bidding Guidelines explicitly indicate that Change in Law clause under the PPA must lead to restitution of the developer to the same economic position.

(g) Change in Law clause prescribed under the Bidding Guidelines unequivocally states that it shall include any of the events that occur after the last date of submission of bid. Whereas, the Change in Law clause under the PPA, does not restore the Respondents to the same economic position as it would have been, had the Change in Law event not occurred. Also, introduction of cut-off date in order to restrict the compensation on account of Change in Law as also restriction of claims in cases of extension where LD is payable amounts to deviation from the Bidding Guidelines. Therefore, the same tantamount to being illegal and in the teeth of the Bidding Guidelines.

(h) Clause 2.1.2 of the Bidding Guidelines specifically states that in case of any deviation from the Bidding Guidelines, the procedure as stated in clause 18 shall be applicable. Clause 18 expressly states that in case of any deviation, the same shall be subject to the approval of the Appropriate Commission (this Commission in the present case). However, in the case at hand, no approval for deviation has been sought by the Petitioner and the Petitioner has instead proceeded to introduce a cut-of date for the Change in Law claim as also restricted the claims in cases where LDs are payable, which is in direct conflict with the Bidding Guidelines.

(i) The Bidding Guidelines are legally binding on the Petitioner and the Respondents. Clause 2.1.2 of the Bidding Guidelines explicitly states "Unless explicitly specified in these Guidelines, the provisions of these Guidelines shall be binding on the Procurer/ Intermediary Procurer/ End Procurer and the Authorised Representative of the Procurer." However, the Petitioner has proceeded to issue the tender in conflict with the Bidding Guidelines and as such this Commission cannot allow such illegality in the bid process and the

Respondents are entitled to be restored to the same financial position on account of occurrence of Change in Law Event. The Bidding Guidelines are issued by the Ministry of Power under Section 63 of the Act and have the force of 'law'. Thus, any deviation from the Bidding Guidelines without the approval of this Commission is unlawful and the provisions of the PPA to the extent being in deviation from the Bidding Guidelines are illegal.

(j) The entire purpose of having a Change in Law provision stands frustrated once the Change in Law provision fails to restitute the developer to the same economic position as it would have been, had the Change in Law event not occurred. In this regard, reliance has also been placed on the judgement dated 15.9.2022 passed by APTEL in Appeal No. 256 of 2019 titled "Parampujya Solar Energy Pvt. Ltd. & Ors. versus Central Electricity Regulatory Commission & Ors." dealing with the ambit and scope of the Change in Law provision.

(k) It is settled and no longer *res integra* that the Change in Law provision in the PPA is based upon the principle of restitution, a principle of equity which is generally invoked by the adjudicatory authorities – Courts and Tribunals – to render substantial justice. This Commission may consider the restrictive nature of the Change in Law provision under the PPA and hold the cut-off date as untenable and that Respondents are entitled to be restituted to the same financial position upon the occurrence of the Change in Law event.

(l) Article 12.1.3 of the PPA unequivocally states that the quantum of compensation payment on account of Change in Law shall be in accordance with Article 12.2.3 of the PPA, subject to the condition that this Commission recognizes such provisions at the time of adoption of tariff. The quantum of compensation as payable to the SPD shall be as per the mechanism stipulated under 12.2.3 of the PPA. However, for such compensation to be payable to the Respondents, the only precondition as stipulated under the PPA is that the provision i.e., Article 12.1.3 and Article 12.2.3 are recognized by this Commission at the time of adoption of tariff. Accordingly, the Commission may

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recognize the said Articles 12.1.3 & 12.2.3 at the stage of adoption of tariff itself and thereby, providing regulatory certainty to the power developers that the increase in rate of GST will be treated as a Change in Law.

(m) In terms of Article 2.1, the effective date of the PPA shall be 11.4.2022. Furthermore, the Petitioner or the Respondent Discoms were duty bound to obtain adoption of tariff from the Appropriate Commission within 120 days from the effective date. In terms of Article 2.1.3, the Petitioner was obligated to have the tariff adopted by this Commission by 9.8.2022. Since, the tariff adoption proceedings have been delayed for a considerable period, the Petitioner is entitled to consequential relief on account of delay in tariff adoption in terms of Article 2.1.3 and 2.1.4 of the PPA. This Commission may consider the delay in tariff adoption, and hold that the Respondents are entitled to corresponding extension of timeline to achieve financial closure and scheduled commissioning date equivalent to the delay from 26.8.2022 till the date of order.

(n) It is imperative from the forgoing that the principle of regulatory certainty is a statutorily recognized concept and has been reiterated by the APTEL from time to time. In view of the same, the Respondents urge that the Commission may recognize Article 12.1.3 and Article 12.2.3 of the PPA in order to ensure regulatory certainty for the Power Developers and other stakeholders.

10. SECI vide its rejoinders to the above replies has mainly submitted as under:

(a) The event claimed by the Respondents being change in rates of GST (on renewable energy equipment as specified in the Notification) has been provided in Article 12.1.3 of the PPA to be recognized by the Commission at the time of adoption of tariff as Change in Law events. The Commission may accordingly pass an appropriate order as prayed for by SECI in the Petition including with regard to the change in rates of GST after 22.6.2020 holding that the same fall within the scope of Article 12 of the PPA dealing with Change in Law. However, the actual impact and extent of relief admissible to be

determined to be allowed need to be considered at the appropriate stage. This is consistent with the judgment of APTEL in Green Infra Case.

(b) Article 12.2.3 of the PPA provides for a formula for determination of the relief with reference to every net increase/decrease of Rs.1 lakh per MW in the project cost {i.e. the cost incurred by the Project Developer towards supply and services of the project concerned, upto the Scheduled Commissioning Date or Extended Scheduled Commissioning Date, for reasons other than those wherein such extension is on account of payment of liquidated damages, penalty or any other charges as the case maybe} as a result of Change in Law events i.e. those events covered under Article 12.1.3 as well as events covered under Article 12.1.1 of the PPA.

(c) For the application of the formula provided in Article 12.2.3 of the PPA for relief of Change in Law, the amount constituting the project cost cannot be considered on an estimate basis. The project cost will be available only upon the capital expenditure being incurred and such capital cost has been subjected to appropriate prudent check by this Commission based on all relevant factors as is considered in prudent check for tariff determination.

(d) As to the contention that Article 12 of the PPA dealing with Change in Law does not contain restitution provision i.e. restoring the developer to the same economic position as it would have been had the Change in Law event not occurred whereas Guidelines provide for restitution, the Commission vide Order dated 8.3.2022 in Petition No.211/AT/2021 filed by SECI for adoption of tariff under Section 63 of the Act in respect of present scheme (ISTS Tranche-IX Solar Scheme) had considered the aspect of restitution.

(e) Further, pursuant to the Commission's order dated 8.3.2022, SECI vide its letter to the Procurer has, *inter-alia*, communicated that "In terms of the Guidelines, Rule 3 (1) of the Change in Law Rules, 2021 as well as in terms of order dated 8.3.2022 in Petition No.211/AT/2021 in regard to Change in Law impact, the restitution provision in regard to carrying cost as provided in the

Guidelines and/or in Rules shall be applicable to all the PPAs and PSAs executed under the ISTS Tranche-IX Solar Scheme."

(f) In view of the above, SECI has clarified the position that in terms of the Guidelines, Rule 3 (1) of the Change in Law Rules, 2021 as well as in terms of order dated 8.3.2022 of the Commission in Petition No.211/AT/2021, in regard to Change in Law impact, the restitution provision in regard to carrying cost as provided in the Guidelines and/or in Rules shall be applicable to all the PPAs and PSAs executed under the ISTS Tranche-IX Solar Scheme (present scheme).

(g) As to the cut-off date to restrict the compensation on account of the Change in Law, the said aspect has also been considered by the Commission in its order dated 8.3.2022 in Petition No. 211/AT/2021. In the Standard PPA, SECI had specifically restricted the consideration of the project cost till Scheduled Commissioning Date or extended Scheduled Commissioning Date, which excludes the consideration of the project cost incurred during the period of delay on the part of the developers. The developers are bound by the said provision limiting the consideration to Scheduled Commissioning Date/extended Scheduled Commissioning Date, having accepted the standard terms of the bidding documents and submitted the bid.

(h) Article 12 of the PPA signed between Respondents and SECI expressly provide that impact of Change in Law on the project cost is to be considered only for the cost incurred by the SPD towards supply of goods and services for the project concerned upto Schedule Commissioning Date or extended Schedule Commissioning Date, for reasons other than those wherein such extension is on account of payment of liquidated damages, penalty or any other charges, as the case may be.

(i) Article 2.1.3 of the PPA provides for adoption of tariff by the Commission within 120 days of the effective date. Article 2.1.4 of the PPA provides that if the tariff adoption order is issued by the Commission after the period specified in Article 2.1.3, there shall be a corresponding extension in

Scheduled Financial Closure and Scheduled Commissioning Date for equal number of days for which the Commission's order has been delayed beyond the period specified in Article 2.1.3.

11. The Respondent No. 4, Ayana Renewable Power Private Limited and Respondent No. 9, Ayana Renewable Power Three Private Limited vide their written submission dated 2.1.2023 have submitted as under:

(a) Change in Law claim qua increase in GST: Govt. of India had issued Notification No. 1/2017-Integrated Tax (Rate) dated 28.6.2017 ("2017 IGST Notification") of Section 5 of the Integrated Goods and Service Tax Act, 2017 ("IGST Act") whereby the Central Govt., notifies the rate of the integrated tax of 5% in respect of goods specified in schedule I. Hence the said notice stipulated that 5% IGST would be applicable on import of solar power-based devices, including solar PV modules. The Respondents have factored the same while submitting its bid. However, Department of Revenue, Ministry of Finance, Government of India issued the notification No. 08/2021-Integrated Tax (Rate) dated 30.9.2021 ("2021 IGST Notification") w.e.f. 1.10.2021, whereby the Central Government amended the 2017 IGST Notification and enhances the applicable rate of IGST on import of solar based power devices including solar PV modules from 5% to 12%.

(b) Meaning thereby, after the issuance of the 2021 IGST Notification, the Respondents are required to incur additional expenditure in the form of an increase of 7% in IGST (i.e., 12% - 5% = 7%) payable on import of solar power-based devices, including solar PV modules. From a bare perusal of Article 12.1.3 of the PPA, it is abundantly clear that change in rates of GST after 22.6.2020 resulting in change in project cost, will be treated as 'Change in Law'. However, the said provision also stipulates that the quantum of compensation payment on account of change in rates of such duties shall be provided to the affected party by the other party as per Article 12.2.3, subject to the provision that Appropriate Commission recognizes such provisions at

the time of adoption of tariff by the Appropriate Commission. Accordingly, the Commission may recognize Article 12.2.3 of the PPA in the present proceedings for adoption of tariff in order to enable the Respondents to claim compensation payment on account of change in rates of IGST. Further, as per Article 12.1(v) of the PPA, any change in the rates of any taxes pertaining to this project only after 22.6.2020 which has a direct effect on the Project is a Change in Law event.

(c) The Competitive Bidding Guidelines, which are statutory in nature and applicable to all projects the tariff for which is determined under Section 63 of the Act, also provides under Clause 5.7 thereof that any change in the rates of any taxes which have a direct effect on the Project shall be considered a Change in Law event. Accordingly, even in terms of the Competitive Bidding Guidelines, the 2021 IGST Notification is a Change in Law event.

(d) Change in Law claim qua increase in BCD on import of Solar Inverters: Department of Revenue, Ministry of Finance, Government of India in exercise of its powers under Section 25(1) of the Customs Act, 1962 issued Notification No. 1/2011-Customs dated 6.1.2011 ("2011 SGD Notification"), whereby all items of machinery, control gear, transmission equipment and auxiliary equipment and components required for the initial setting up of a solar power generation project or facility, when imported into India, were exempted from so much of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 as is in excess of 5% ad valorem, subject to certain conditions stipulated therein. However, the Department of Revenue, Ministry of Finance, Government of India on 01.02.2021 issued Notification No. 07/2021-Customs dated 1.2.2021 ("2021 BCD Notification") inter alia rescinding the 2011 BCD Notification. Meaning thereby, the exemption from payment of customs duty in excess of 5% as granted by the 2011 BCD Notification, was withdrawn by way of the 2021 BCD Notification. As such, the customs duty payable on import of inverters required for setting up solar projects into India was increased to 20%.

(e) As per Article 12.1.3 of the PPA, change in rates of BCD after 22.6.2020 resulting in change in Project cost, will be treated as 'Change in Law'. Further, a bare perusal of the 2011 BCD Notification (applicable on the last date of bid submission, i.e., 22.6.2020) and the 2021 BCD Notification, makes it abundantly clear that the BCD as applicable on the import of solar inverters increased from 5% to 20% vide rescinding of the 2011 BCD Notification by way of the 2021 BCD Notification. As such, the issuance of the 2021 BCD Notification imposing additional BCD to the tune of 15% on import of solar inverters qualifies as a Change in Law event as per Article 12 of the PPA. As per Article 12.1(v) of the PPA, any change in the rates of any taxes (including any duties and cess) pertaining to this project only after 22.6.2020 which has a direct effect on the Project is a Change in Law event.

(f) Change in Law claim qua increase in BCD on import of solar cells/ modules: Under the Project Imports Regulations, 1986, goods imported for the purpose of setting up of power projects were subjected to single rate of duty instead of merit assessment of imported goods. Accordingly, as per the provision of Custom Notification No. 50/2017 Cus. dated 30.6.2017 as per Custom Tariff Heading No. 9801, goods required for setting up of any solar power project were eligible for concessional rate of BCD at 5%. Accordingly, at the time of submission of the bid, concessional rate of BCD at 5% was prevailing for import of goods required for setting up of any solar power project.

(g) While the Respondents were in the process of applying for the concessional rate benefit for the instant Project, the Ministry of Finance, Department of Revenue issued Project Imports (Amendment) Regulations, 2022 dated 19.10.2022 amending the principal regulations, i.e., Project Import Regulations, 1986, whereby solar power plants/solar power projects were excluded from availing concessional custom duty rate. Meaning thereby, the exemption from payment of customs duty in excess of 5% as granted by the Notification dated 30.6.2017, was withdrawn by way of the Project Imports (Amendment) Regulations, 2022. As such, the customs duty payable on import

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of goods required for setting up of any solar power project, particularly solar PV modules, has been increased from 5% to 40%.

(h) As per Article 12.1.3 of the PPA, change in rates of BCD after 22.6.2020 resulting in change in Project cost, will be treated as 'Change in Law'. In this regard, it is pertinent to highlight that a bare perusal of Custom Notification No. 50/2017 Cus. dated 30.6.2017 (applicable on the last date of bid submission) and the Project Imports (Amendment) Regulations, 2022, makes it abundantly clear that the BCD as applicable on the import of solar PV modules increased from 5% to 40% vide amendment of the Project Imports Regulations, 1986. As such, the issuance of the Project Imports (Amendment) Regulations, 2022 imposing additional BCD to the tune of 35% on import of solar PV modules qualifies as a Change in Law event as per Article 12 of the PPA. As per Article 12.1.1 of the PPA, an amendment, modification or repeal of an existing law and any change in the rates of any taxes (including any duties and cess) pertaining to this project only after 22.6.2020 which has a direct effect on the Project is a Change in Law event.

(i) Project Imports (Amendment) Regulations, 2022 amends an existing law, i.e., the Project Imports Regulations, 1986 and this results in increase the rate of BCD payable on the import of solar PV modules from 5% to 40%. Further, the issuance of the Project Imports (Amendment) Regulations, 2022 results in change of the rate of Basic Customs Duty payable on the import of solar PV modules. It is a matter of record that the Project Imports (Amendment) Regulations, 2022 has been issued after 22.6.2020 and has a direct effect on the Project insofar as it results in the Respondent No. 9 incurring additional BCD to the extent of 35%. Accordingly, the Commission may be pleased to recognize the issuance of the Project Imports (Amendment) Regulations, 2022 as a Change in Law in terms of Article 12 of the PPA.

(j) The above Change in Law claims are not barred by Respondent No. 9's undertakings read with Article 12.2.6 of the PPA. The waiver granted by the Respondent No. 9 vide its letters dated 23.8.2021, 1.9.2021 and 9.2.2022 as

recorded in Article 12.1.6 of the PPA is only limited to the claim for Change in Law on account of issuance of MNRE's office memorandum dated 9.3.2021 and does not in any manner restrict the Respondent No. 9 from claiming compensation on account of occurrence of other Change in Law events detailed hereinabove, including specifically the issuance of Project Imports (Amendment) Regulations, 2022. It is pertinent to highlight that the aforesaid undertakings were issued by the Respondent No. 9 in light of the then existing laws which allowed the option to avail concessional rate of BCD at 5% for import of goods required for setting up the solar power projects under the Project Imports Regulations, 1986, which has now been removed by way of the amendment dated 19.10.2022.

(k) Respondents rely upon the principle of 'business efficacy' and 'officious bystander test' has been discussed in detail by the Hon'ble Supreme Court in the case of Nabha Power Ltd. Vs. Punjab State Power Corporation Ltd. and Ors., [reported as (2018) 11 SCC 508]. Business efficacy means that the courts are required to make the contract efficacious and practicable and officious bystander test is applied by the courts to determine whether a term should be implied into a contract for it being so obvious, even though that term was not written into the contract expressly. The purpose of PPA is to develop project and supply electricity to the procurer at the tariff agreed upon in the PPA read with the terms and conditions of PPA. However, if the cost of generation of electricity increases for the reasons beyond the control of the developer such as an imposition of BCD, then the developer cannot be held accountable to bear the risk as the same was not foreseeable at the time of submission of bid. Therefore, the Respondent No. 9 cannot be subjected to risks unknown/untaken and hence it is only essential that while interpreting the PPA, a common sense and business efficacy test is applied. This broad principle is captured in the judgment of the Hon'ble Supreme Court passed in Union of India v. D N Revri & Co. and Ors., [reported as (1976) 4 SCC 147] which explains two concepts of the interpretation of contract i.e., business efficacy and adoption of common-sense approach. The Hon'ble Supreme

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Court observed that while interpreting the provisions of contract, it is important to apply law and economics as the same are intertwined and are integral part to apply in case of any contractual arrangement. It is settled law that the courts ought not to imply terms into a contract, particularly when the language of such contract is unambiguous. The Respondent has placed reliance on the judgment of the Hon`ble Supreme Court in the case of *Nabha Power Limited v. Punjab State Power Corporation Limited and Anr.* and judgment of APTEL in the case of Coastal *Gujarat Power Limited v. Central Electricity Regulatory Commission & Ors. ("Coastal Gujarat Judgement'). Applying the aforesaid principles of law to the facts of the present case, and* considering the submissions made hereinabove, it is apparent that the Respondent No. 9 has a right to claim compensation for the Change in Law events detailed hereinabove, as the same fit squarely within the definition of Change in Law event in the unambiguous terms of the PPA.

(l) This Commission has the power to grant in-principle approval at the first instance for Change in Law claim(s) under the PPA: The Commission is unequivocally vested with the power to grant in-principle approval for a Change in Law event under the PPA at the first instance. In this regard, the Respondents have placed reliance on the APTEL's order dated 12.10.2021 in Appeal No. 251 of 2021 titled Green Infra Renewable Energy Limited vs. RERC & Ors. Thus, the issue in regard to the grant of in-principle approval to Change in Law claim(s) at the stage of adoption of tariff is no longer *res integra* as the same has been settled by the APTEL.

12. SECI, vide its rejoinder to the above common reply filed by the Respondent Nos. 4 and 9, has mainly submitted as under:

(a) With Regard to Change in Law: The Respondent, Ayana with due reference to the increased Basic Custom Duty from 0% to 40% with respect to solar modules and from 0% to 25% with respect to solar cells had without any reservation or qualification, unconditionally and in an absolute manner

committed that it will duly waive the claim for such increase in rate of Basic Custom Duty to 40% and 25%. The same has been duly incorporated in Article 12.2.6 of the PPA signed between SECI and Ayana. Accordingly, reference to communications written by Ayana prior to signing of PPA between parties cannot be read contrary to the final provision of the PPA (Article 12.2.6) subsequently executed between the parties. It is a well-settled principle that 'once PPA has been entered into between the parties pursuant to the competitive bidding, the rights and obligations of the parties are to be seen in terms of the agreed PPA. Hence, all allegations to the contrary are wrong and are denied.

(b) The event claimed by Ayana being change in rates of GST (on renewable energy equipment's as specified in the Notification) and Custom Duty on solar inverters has been provided in Article 12.1.3 of the PPA (quoted above) to be recognized by the Commission at the time of adoption of tariff as Change in Law event. This Commission may pass appropriate orders as prayed by SECI in the Petition including with regard to change in rates of GST, Custom Duty on solar inverters after 22.6.2020, holding that the same fall within the scope of Article 12 of the PPA dealing with Change in Law. However, the actual impact and extent of relief admissible to be determined to be allowed need to be considered at the appropriate stage. Further, Article 12.2.3 of the PPA provides for a formula for determination of the relief with reference to every net increase/decrease of Rs.1 lakh per MW in the project cost {i.e. the cost incurred by the Project Developer towards supply and services of the project concerned, upto the Scheduled Commissioning Date or Extended Scheduled Commissioning Date, for reasons other than those wherein such extension is on account of payment of liquidated damages, penalty or any other charges as the case maybe} as a result of Change in Law events i.e. those events covered under Article 12.1.3 as well as events covered under Article 12.1.1 of the PPA. For the application of the formula provided in Article 12.2.3 of the PPA for relief of Change in Law, the amount constituting the project cost cannot be considered on estimated basis. The project cost will

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be available only upon the capital expenditure being incurred and such capital cost has been subjected to appropriate prudent check by this Commission based on all relevant factors as is considered in prudent check for tariff determination. All allegations to the contrary are wrong and are denied.

(c) With Regard to imposition of Basic Custom Duty on Solar PV Cells and Modules, MNRE vide Office Memorandum dated 9.3.2021 imposed BCD on solar cells and modules. Ministry of Finance, Government of India is the competent authority to issue appropriate notification in exercise of powers under the Customs Tariff Act, 1975 and Customs Act 1962 in regard to levy of Basic Custom Duty on solar modules and cells. The Respondent, Ayana has not placed on record the appropriate notifications issued by Ministry of Finance as per the above proposal of MNRE in the Office Memorandum dated 9.3.2021. The PPA executed between SECI and Ayana dated 19.4.2022, was after 31.3.2022 when the BCD had become 40% on solar modules and 25% on solar cells. In terms of the above, Ayana with due reference to the increased Basic Custom Duty (BCD) from 0% to 40% with respect to solar modules and from 0% to 25% with respect to solar cells had without any reservation or qualification, unconditionally and in an absolute manner committed that it will duly waive the claim for such increase in rate of Basic Custom Duty to 40% and 25%. This waiver was with reference to increase in rates of BCD as provided in Office Memorandum dated 9.3.2021 of MNRE which clearly stipulated that if the import of modules and cells is done beyond 31.3.2022, the BCD will not be 0% but 25% for solar cells and 40% for solar modules.

(d) The Respondent, Ayana signed the PPA on 19.4.2022 after the above date of 31.3.2022 and when the applicable BCD had already become 40% and 25% and even then, had proceeded to accept that no Change in Law on account of BCD will be claimed as per MNRE Office Memorandum dated 9.3.2021 (which provided for the rate of BCD vis a vis Solar Modules at 40% and for Solar Cells at 25%). At the relevant time, Ayana did not claim that the same will be subject to it availing the concession (if any) under Project Import

Regulations, 1986 or in any other manner. As per Article 12.2.6 of the PPA, the waiver on Change in Law claim of BCD as per Office Memorandum dated 9.3.2021 of MNRE on import of solar modules and cells by Ayana was therefore not conditional upon the benefit of concessional rate of 5% of Custom Duty as per Project Import Regulations 1986 being available and in case the same is not available notwithstanding the waiver, Ayana will claim any Change in Law events. The waiver is specific and unequivocal, namely that Ayana will not claim the benefit of Change in Law events qua BCD till 40% for solar modules and till 25% for solar cells. Ayana is bound by the waiver subject to which the PPA was signed. The claim for BCD by Ayana can be only for '*any further increase of BCD, ... Any incremental impact over prescribed rates of BCD as above'*. It is, therefore, abundantly clear that any increase in BCD upto 40% or 25% by reason of any other notification will not affect the waiver. Notification of Project Import (Amendment) Regulations 2022 on 19.10.2022 by Ministry of Finance as referred to by Ayana in its reply has not affected in any manner the rate of BCD as per MNRE Office Memorandum dated 9.3.2021 namely the BCD vis a vis the solar modules continue to be 40% and Basic Custom Duty vis a vis the solar cells continues to be 25% with effect from 1.4.2022. As there is no change in rate of the BCD vis a vis the solar modules (40%) and solar cells (25%) on account of the above notification dated 19.10.2022 in comparison to what Ayana has already considered and given a waiver for in the PPA as quoted above, there is no impact of the same on Ayana. Therefore, Ayana cannot claim any relief on account of the same. In view of the above, Ayana cannot today say that there is a change in rate from 5% to 40% or 25% on account of the notification dated 19.10.2022 and therefore is liable for relief.

(e) Article 12.1.3 of the PPA is a general provision providing for certain events, namely change in rates of safeguard duty, GST and basic customs duty after 22.6.2020 and resulting in change in Project cost to be treated as Change in Law subject to recognition of Article 12.1.3 of the PPA by this Commission at the time of adoption of tariff. The same has to be read along

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with the specific provision in Article 12.2.6 of the PPA which provides for unconditional waiver given by Ayana on Change in Law claim of Basic Custom Duty on account of change in rate of Basic Custom Duty from 0 to 40%/25% with effect from 1.4.2022.

(f) Reliance placed by Ayana on the judgment dated 5.10.2017 of the Hon'ble Supreme Court in Civil Appeal No. 179 of 2017 in the case of Nabha Power Limited -v- Punjab State Power Corporation Limited and Anr is not applicable in view of the facts and circumstances of the present case. Similarly, the reliance placed by Ayana on decision in Union of India vs DN Revri & Co.,1976 4 SCC 147 is misplaced as the same is distinguishable on facts of the case.

Hearing dated 15.12.2022

13. During the course of hearing on 15.12.2022, learned senior counsel for the Petitioner and the learned counsel for the Respondents 1 & 7 – AMP Energy, Respondents 4 & 9 Ayana Renewable made their respective submissions. The Petitioner and the Respondents were also permitted to file their respective note of arguments, which they have mainly reiterating the submissions made in their respective pleadings and the same are not reproduced hereunder for the sake of brevity.

Analysis and Decision

14. Considering the submissions made by the parties, we now proceed to consider the prayers of the Petitioner as regards adoption of tariff in respect of Solar Power Projects discovered pursuant to the competitive bid process carried out in terms of

the Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act.

15. It is noted that in respect of the same bid process-RfS dated 20.3.2020 for Tranche IX, the Petitioner had earlier approached this Commission under Section 63 of the Act for adoption of tariff for the individual Solar Power Projects for the entire 2000 MW. In the said case, the Commission vide order dated 8.3.2022 has already examined as to whether the process as per the provisions of the Guidelines had been followed by SECI in respect of the said RfS/bid and the tariff has been determined through a transparent process. and accordingly, the order concluded as under:

"58. In view of the aforesaid discussions, it emerges that the selection of the successful bidders has been done and the tariff of the solar power projects has been discovered by the Petitioner, SECI through a transparent process of competitive bidding in accordance with Guidelines (read with ex post facto approval vide letter dated 1.3.2021 of MNRE) issued by Ministry of Power, Government of India under Section 63 of the Act. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff for the solar power project, as agreed to by the successful bidder(s), and for which PPA has been entered into by SECI on the basis of the PSAs with the distribution licensees, which shall remain valid throughout the period covered in the PPA and PSAs as under:

Sr. No.	Name of the Successful Bidder	Project Company formed for executing PPA	Date of signing of PPA	Capacity of Project (MW)	Applicable Tariff (Rs./kWh)
1	Avikiran Surya India Private Limited	Thar Surya 1 Private Limited	20.8.2021	300	2.37

59. However, the Petitioner is granted liberty to approach the Commission for adoption of tariff in respect of the balance capacity once such capacity is tied up and PPAs and PSAs for such capacity are executed and the same shall be considered by the Commission in accordance with the law."

Thus, in the aforesaid order, the Commission has already observed that the selection of the successful bidders had been done and the tariff of the Solar Power Projects had been discovered by SECI (for Tranche IX) through a transparent process of competitive bidding in accordance with Guidelines (read with ex post facto

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approval vide letter dated 1.3.2021 of MNRE) issued by Ministry of Power, Government of India under Section 63 of the Act. However, keeping in view that at that point of time, SECI had executed the PPA only for 300 MW and the balance capacity were not tied-up for the want of identification of the distribution licensees/buying utilities, the Commission adopted the tariff for the above 300 MW with liberty to SECI to approach the Commission for adoption of tariff in respect of the balance capacity once such capacity is tied up and the PPAs and PSAs for such capacity having executed. Accordingly, SECI has now approached the Commission seeking adoption of tariff for the individual power projects for the capacity of 1400 MW (out of balance 1700 MW) upon SECI having executed the PPAs with the successful bidders/their project company and corresponding PSAs with the buying utilities/distribution licensees. The details of PPAs signed by SECI subsequent to order dated 8.3.2022 as submitted by SECI are as under:

S. No.	Name of Successful Bidder	Project Company formed by the successful bidder for executing the PPA	Date of PPA signing	Capacity of Project (MW)	Applicable Tariff (Rs./kWh)
1.	AMP Energy Green Private Limited	AMP Energy Green Five Private Limited	12.04.2022	100	2.37
2.	Eden Renewable Bercy Private Limited	N.A.	28.04.2022	300	2.37
3.	IB Vogt Singapore Pte Ltd	IB Vogt Solar Seven Private Limited	19.04.2022	300	2.37
4.	Ayana Renewable Power Private Limited	Ayana Renewable Power Three Private Limited	19.04.2022	300	2.38
5.	ReNew Solar Power Private Limited	Renew Surya Vihaan Private Limited	07.04.2022	100	2.37
6.	ReNew Solar Power Private Limited	Renew Surya Aayan Private Limited	14.06.2022	300	2.37
Total				**1400 MW**	

16. Similarly, the details of the PSAs signed by SECI subsequent to order dated 8.3.2022 are as under:

S. No.	Buying Utilities	Date of PSA signing	Capacity under the PSA (MW)	Applicable Tariff to Buying Utility (Rs./kWh) [Ref: Article 5 of PSA]
1.	Kerala State Electricity Board	21.04.2022	300	Rs.2.37/kWh [Tariff payable in respect of 300 MW of Renew] + Rs.0.07/kWh [Trading Margin]
2.	Southern Power Distribution Company of Telangana Limited And Northern Power Distribution Company of Telangana Limited	17.02.2022	1000	Rs.2.37/kWh [Tariff payable in respect of 100 MW of AMP Energy; 300 MW of Eden; 300 MW of IB Vogt] + Rs.0.07/kWh [Trading Margin]
				Rs.2.38/kWh [Tariff payable in respect of 300 MW of Ayana] + Rs.0.07/kWh [Trading Margin]
3.	Uttarakhand Power Corporation Limited	12.10.2021	100	Rs.2.37/kWh [Tariff payable in respect of 100 MW of ReNew] + Rs.0.07/kWh [Trading Margin]
Total			**1400**	

17. SECI has also requested the Commission to take into the notice that ReNew Surya Aayan Pvt. Ltd. and ReNew Surya Vihaan Pvt. Ltd. – SPVs of successful bidder – ReNew Solar Power Pvt. Ltd. had suo-motu reduced the tariff from Rs. 2.38/kWh (as discovered in the e-RA) to Rs. 2.37/kWh for 300 MW and 100 MW solar project capacities respectively by their undertakings dated 15.9.2021. Further, as regards the balance capacity of 300 MW awarded to one M/s Solarpack Corporacion Technologica SA, SECI has submitted that so far it has only been able to identify and

tie-up the 200 MW capacity with J & K Power Corporation Limited and NDMC, New Delhi and the balance 100 MW capacity, the distribution licensee/buying utility is yet to be identified and as a result, the PPA is yet to be executed for this balance capacity of 300 MW.

18. We have noted the above submissions of SECI. Keeping in view that the Commission in order dated 8.3.2022 has already observed that the selection of successful bidders and that tariffs for the Solar Power Projects (under Tranche IX) have been discovered through transparent process of competitive bidding in accordance with the Guidelines read with letter of MNRE dated 1.3.2021, there is no need to again examine this aspect in the present case. It is also noted that SECI craved leave of the Commission to place on record the PPA and PSAs for this remaining 300 MW upon their finalisation till the date of reserving of the decision in the present case as it was in the process of identifying the buying utility/distribution licensee for the balance capacity. However, till date, SECI has not placed the PPA and PSAs for this balance capacity of 300 MW and accordingly, we restrict the adoption of individual tariff for the Solar Power Projects to tune of 1400 MW, as prayed for by SECI, for which PPAs have been entered into by SECI on the basis of PSAs with the distribution licensees, which shall remain valid throughout the period covered in the PPAs and PSAs as noted in paragraph 16 above. In so far as the balance capacity of 300 MW is concerned, the Petitioner is granted liberty to approach the Commission for adoption of tariff once such capacity is tied up under PPA and PSAs and the same shall be considered by the Commission in accordance with the law.

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19. It is, however, noted that the Respondents 8, 10 & 11 have raised the certain objections with regard to the provisions of the PPAs, namely, Change in Law clause, being in deviation from the provisions of the Guidelines. The Respondents have submitted that the Change in Law clause incorporated in the PPAs as such does not restore the Solar Power Developers/Respondents to the same economic position as it would have been had the Change in Law event not occurred and introduce a cut-off date in order to restrict the compensation on account of Change in Law, which are not as per the provisions of the Guidelines. The Respondents have also submitted that as per the Guidelines, in case of any deviation from the Guidelines such deviations are subject to the approval of the Appropriate Commission and in the present case, SECI has not sought any approval of such deviations. In response, SECI has submitted that both the above aspects have already been considered by the Commission vide order dated 8.3.2022 in Petition No. 211/AT/2021. It is also submitted that SECI has already clarified the position that in regard to the Change in Law impact, the restitution provision in regard to the carrying cost as provided in the Guidelines and/or Change in Law Rules shall be applicable to all the PPAs and PSAs executed under Tranche IX scheme. However, insofar as introduction of cut-off for Change in Law compensation is concerned, SECI relies upon its submission made in Petition No. 211/AT/2021, which have also been considered by the Commission in order dated 8.3.2022. SECI has further submitted that in the standard PPA itself, SECI had specifically restricted the consideration of the Project cost till Scheduled Commissioning Date or extended Scheduled Commissioning Date, which excludes the consideration of the Project cost incurred during the period of delay on the part of

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the developer. The SPDs having submitted the bid accepting the terms and conditions of the bidding documents are bound by the said provisions.

20. We have considered the submissions made by the parties. Insofar as the concerns of the Respondents regarding the absence of restitution provision is concerned, SECI having already clarified its position that restitution provision in regard to carrying cost as provided in the Guidelines and/or Change in Law Rules shall be applicable to all the PPAs and PSAs executed under the Tranche IX Projects, we do not find any further need to delve into this aspect at this stage. As far as the aspect of the introduction of cut-off date for the Change in Law compensation is concerned, the Commission, as rightly pointed out by SECI, has already considered this aspect in its order dated 8.3.2022 in Petition No. 211/AT/2021. Relevant extract of the said order reads as under:

"50. We next consider the submission of the Respondent, ERBPL that Article 12 of the PPA i.e. Change in Law clause only covers the Change in Law events resulting in increase/ decrease in the project cost up to SCD and that any impact of events post SCD have not been covered thereunder. In our view, the Change in Law event can broadly be divided into two categories on basis of its occurrence: (i) Change in Law event during the construction period of the project, and (ii) Change in Law event during the operation period.

51. For Change in Law events occurring during the construction period of the project which have an impact on the project cost, defining outer limit for consideration of the impact on the project cost till the SCD/ extended SCD of the project cannot be construed as deviation from the Guidelines. It is pertinent to note that such provision also finds place in the Petitioner's proposal to MNRE vide letter dated 26.11.2020 and e-mail dated 13.1.2021 whereby it had sought approval in respect of changes made to the certain provisions of the Guidelines including Change in Law provision.

52. Occurrence of Change in Law events which have an impact on the project post SCD or extended SCD appears to be an issue between the parties. We observe that the Article 12.1.1 of the PPA defines Change in Law as under:

.....

53. Clause 5.7.2 of the Guidelines defines Change in Law as under:

.....

54. Thus, it appears that the definition of Change in Law incorporated in the PPA is identical to the definition provided under Clause 5.7.2 of the Guidelines. The definition of the Change in Law as such does not distinguish between the Change in Law event prior to SCD/ extended SCD or post SCD/ extended SCD. Admittedly, according to the Respondent, ERBPL, the said deviation that Article 12 of the PPA restricts the impact of Change in Law events only up to SCD/ extended SCD of the project has crystalized/ arose in view of the certain subsequent sub-Articles of the PPA coupled with the specific submissions made by the Petitioner in its rejoinder and during the hearing. We have perused the provisions of Article 12 (supra) of the PPA and the submissions put forth by the parties. In our view, the aforesaid is more of an issue relating to examination of the scope of provisions contained in Article 12 of the PPA and we do not find any need to undertake the said exercise at this stage leaving the contentions of both the parties open. Admittedly, the generating projects are yet to achieve commercial operation and no such instance has been brought on record whereby the relief has been denied to the affected party by the other party to the agreement warranting intervention of this Commission.

55. However, the Respondent, ERBPL has vehemently argued that the Commission is required to provide such clarity at this stage itself and that the provisions of the PPA itself enable the generating companies to seek such clarity and reliance has also been placed on the decision of APTEL dated 12.10.2021 in Green Infra Case. However, we are not in agreement with the aforesaid contentions of the Respondent, ERBPL inasmuch as the provisions of the PPA only provide for recognition by the Commission, at the stage of adoption, that in case of Change in rates of Safeguard Duty, GST and Basic Custom Duty after 22.6.2020 that results in change in project cost, then such change will be treated as Change in Law and that the quantum of compensation payment on account of change in rates of such duties shall be provided to the affected party as per Article 12.2.3 of the PPA. The said provisions do not require the Commission to examine the scope of Change in Law provisions in entirety or to adjudicate upon the correct interpretation/ scope of such provisions at the stage of adoption of tariff itself. In the Green Infra case also, the directions of the APTEL relate to the consideration of Change in Law claims that have occurred after the date of submission of bid and impact on the cost of the project development at the stage of tariff adoption with the actual impact and extent of relief admissible to be determined at the appropriate stage. However, as noted above, in the present case, no such instances of Change in Law which have an impact beyond the SCD/ extended SCD of the projects and for which the appropriate relief(s) have been denied to the affected party, have been brought on record.

57. However, as deviations in clauses of PPAs (for which post facto approval of MNRE was obtained) were part of the bid document, we accept the contentions of the Petitioner that the bidders were aware of them at the time of submission of bids."

21. In our view, the concern(s) raised by the Respondents 8, 10 & 11 with regard to the introduction of cut-off date have squarely been addressed by the Commission in the aforesaid order and which equally applies to the present case as the both the cases emanates from the same tender/bid process. Accordingly, we do not find any

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need to deliberate this aspect any further than what had already been considered by the Commission in the aforesaid order.

22. Prayer (a) of the Petitioner is answered in terms of paragraph 20 and paragraph 21 above.

23. It is noticed that the Article 10.3 of the PPAs provides as under:

"10.3 Payment of Monthly Bills
10.3.1 SECI shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the SPD, as shall have been previously notified by the SPD as below.

10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:

i) deductions required by the Law; and

ii) amount claimed by SECI, if any, from the SPD, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, 1.25% surcharge will be applicable on day to day basis.

The SPD shall open a bank account (the "SPD`s Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by SECI to the SPD, and notify SECI of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. SECI shall also designate a bank account at New Delhi ("SECI Designated Account") for payments to be made by the SPD to SECI, if any, and notify the SPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. SECI and the SPD shall instruct their respective bankers to make all payments under this Agreement to the SPD`s Designated Account or SECI`s Designated Account, as the case may be, and shall notify either Party of such instructions on the same day."

24. Further, Article 10.4 of the PPA provides as under:

"10.4 Payment Security Mechanism
Letter of Credit (LC):

10.4.1 SECI shall provide to the SPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained which may be drawn upon by the SPD in accordance with this Article.

10.4.2 Before the start of supply, SECI through a scheduled bank open a Letter of Credit in favour of the SPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

i) for the first Contract Year, equal to the estimated average monthly billing;

ii)for each subsequent Contract Year, equal to the average of the monthly billing of the previous Contract Year.

10.4.3 Provided that the SPD shall not draw upon such Letter of Credit prior to 30 days beyond the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, SECI shall restore such shortfall before next drawl.

10.4.5 SECI shall cause the scheduled bank issuing the Letter of Credit to intimate the SPD, in writing regarding establishing of such irrevocable Letter of Credit.

10.4.6 SECI shall ensure that the Letter of Credit shall be renewed not later than its expiry.

10.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by SECI.

10.4.8 If SECI fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including the date as on 30 days beyond the Due Date, then, subject to Article 10.4.6 & 10.5.2, the SPD may draw upon the Letter of Credit, and accordingly the bank shall pay, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

i) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid to SPD and;

ii) a certificate from the SPD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

25. Whereas, clause (10) of Regulation 9 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other

related matters) Regulations, 2020 (hereinafter referred to as the "Trading Licence Regulations") provides as under:

> *" 9.(10) The Trading Licensee shall make payment of dues by the agreed due date to the seller for purchase of the agreed quantum of electricity through an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller. Such escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller shall be equivalent to:*
>
> *(a) one point one (1.1) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts;*
>
> *(b) one point zero five (1.05) times of contract value for short term contracts."*

26. The above provisions provide for payment security mechanism and the same is required to be complied with by the parties to the present Petition. Accordingly, the provisions of Articles 10.3 and 10.4 of the PPAs and Clause 10 of Regulation 9 of the Trading Licence Regulations shall be abided by all the concerned parties to the present Petition.

27. The Petitioner has also prayed to approve the trading margin of Rs. 0.07/kWh as agreed to by the Distribution Licensees in terms of the PSAs with the Distribution Licensees. In this regard, Regulation 8(1)(d) of the Trading Licence Regulations dealing with trading margin provides as under:

> *"For 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.

29. However, proviso to Regulation 8(1)(d) of the Trading Licence Regulations provides as under:

> *"8(1)(d) **************
> *Provided that in contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh."*

30. Regulation 8(1)(f) of the Trading Licence Regulations provides as under:

> *"For transactions under Back to Back contracts, where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of Regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge trading margin exceeding two (2.0) paise/kWh."*

31. The above two provisions are exceptions to the main provision as regards trading margin. Distribution licensees have agreed to a trading margin of Rs. 0.07/kWh as agreed in the PSA, which is in consonance with Regulation 8(1)(d) of the Trading Licence Regulations. Therefore, in case of failure by SECI to provide escrow arrangement or irrevocable, unconditional and revolving letter of credit to the wind generators, the trading margin shall be limited to Rs. 0.02/kWh as specified in the Regulation 8(1)(d) and Regulation 8(1)(f) of the Trading Licence Regulations.

32. Prayer (b) of the Petitioner is answered accordingly.

33. Additionally, the Petitioner has also prayed to recognize, in terms of Article 12.1.3 of the PPAs and Article 8.1.3 of the PSAs, that the changes in the rates of Safeguard Duty, GST and Basic Customs Duty after 22.6.2020, if any, will be

considered as Change in Law subject to the fulfilment of the conditions contained therein. The Article 12.1.3 of the PPAs and Article 8.1.3 of the PSAs read as under:

PPAs:

"ARTICLE 12: CHANGE IN LAW

.....

12.1.3 However, in case of change in rates of safeguard duty, GST and basic customs duty after 22.6.2020 and resulting in change in Project Cost, then such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties and shall be provided to the affected party by the other party as per Article 12.2.3, subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff by the Appropriate Commission and any decision in this regard shall be governing on WPD and Buying Entity.

12.2 Relief for Change in Law

12.2.3 In case of Change in Law as approved by the Appropriate Commission pursuant to Article 12.2.1 or as provided under Article 12.1.3, the SPD/ SECI/ Buying Entities (as the case may be) shall be entitled for relief as follows:

Every net increase/decrease of Rs.1 lakh per MW in the Project Cost (i.e cost incurred by the SPD for the supply and services in the Project concerned, upto Schedule Commissioning Date or extended Schedule Commissioning Date, for reasons other than those wherein such extension is on account of payment of liquidated damages, penalty or any other charges, as the case may be), shall be liable for corresponding increase/decrease of an amount equal to Rs 0.005 /kWh.

Any such change, shall be considered upto three digits after the decimal point, and remaining digits, if any, shall be ignored.

For e.g. in case the change in tariff payable is calculated as Rs. 0.14678/kWh, it shall be modified as Rs. 0.146/kWh.

PSAs:

ARTICLE 8: CHANGE IN LAW

.....

8.1.3 However, in case of change in rates of safeguard duty, GST and basic customs duty after 22.6.2020 (last date of bid submission) and resulting in change in Project Cost, then such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties and shall be provided to the affected party by the other party as per Article 8.2.3, subject to the provision that Appropriate Commission recognizes such provisions at the time of

adoption of tariff by the Appropriate Commission and any decision in this regard shall be governing on WPD and Buying Entity…."

34. Perusal of the above Articles of the PPAs/PSAs reveals that the parties have agreed that in case of changes in rates of Safeguard Duty, GST and Basic Customs Duty after 22.6.2020 and resulting in Change in project cost, such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties shall be provided to the affected party as per Article 12.2.3 subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff and any decision in this regard shall be governing on SPD and buying entity. Further, the PPAs and PSAs also provide for pre-determined quantum of compensation for Change in Law events, whereby for every net increase/ decrease of Rs.1 lakh per MW in the Project cost, there shall be corresponding increase/ decrease of an amount equal to Rs.0.005/kWh.

35. On the basis of the above provisions of the PPA and relying upon the order of APTEL in Green Infra Case, the Respondents/Solar Power Developers have also sought the recognition of the following Change in Law events, which have occurred after 22.6.2020:

(a) Notification No. 3 of 2021-Customs and Notification No.7 of 2021-Customs dated 1.2.2021 issued by the Department of Revenue, Ministry of Finance, Government of India pursuant to which exemption as granted by Ministry of Finance to the extent of 5% (ad valorem) by its earlier Notification was reserved and the Basic Custom Duty (BCD) on import of solar inverters was increased from 5% to 20% as provided under First Scheduled to the Customs Tariff Act, 1975.

(b) The order of Hon'ble Supreme Court dated 19.4.2021 in Writ Petition (Civil) No. 838 of 2019 titled M. K. Ranjitsinh & Ors. v. UoI and Ors. issuing directions/measures to be adopted, *inter-alia*, towards existing and future laying of over-head transmission lines in the Priority and Potential habitat of Great Indian Bustard (GIB).

(c) Ministry of Finance's Notification dated 30.9.2021 by which the applicable Goods & Services Tax on the Solar PV Modules and other renewable energy equipment has been notified @ 12% w.e.f. 1.10.2021.

(d) Office Memorandum dated 9.3.2021 issued by Ministry of New and Renewable Energy regarding imposition of BCD on the solar cells and modules (without grandfathering of bid-out Projects) w.e.f 1.4.2022 whereby BCD on the solar modules and solar cells has been levied at the rate of 40% and 25% respectively.

(e) Issuance of Project Imports (Amendment) Regulations, 2022 dated 19.10.2022 resulting in increase in the rates of Basic Custom Duty on import of solar modules and cells.

36. Keeping in view that as held by the APTEL by judgment dated 5.4.2022 in OP No.1 of 2022 and Ors. that Change in Law Rules as notified by the Ministry of Power, Government of India shall only apply prospectively and barring the (e) above, all other Change in Law events for which the recognition have been sought by the Petitioner and the Respondents predate the notification of the Change in Law Rules on 22.10.2021, we proceed to examine the aforesaid Change in Law claims of the parties at this stage of adoption of tariff itself in view of the such provision of PPAs as

well the order of the APTEL in Green Infra Case wherein the APTEL observed as under:

> *"16. During the hearing, we pointedly asked but no regulation or contractual clause or, for that matter, any other provision was shown as could reflect an inhibition or prohibition against consideration of claim of change in law compensation at the stage of adoption of the tariff discovered by the bid process under Section 63 of the Electricity Act, 2003. We agree with the appellant that deferring such claim for later date creates a whole lot of confusion and, what is of utmost concern to the project developers, regulatory uncertainty and consequent difficulties in attaining financial closure. It cannot be ignored that the impact on the cost of the development of the project of such change in law events that have occurred after the submission of the bid and closure of the bid process but before the adoption of the bid discovered price renders the bid price unrealistic and in terms of Section 86 (1) (b) of the Electricity Act, it is the duty of the State Commission to inquire into such claim at the first opportune time and bring in suitable corrections, may be first by declaration and followed up by detailed tariff orders. If the event referred to actually constitutes change in law within the four corners of its definition under the PPA, there is no reason why it cannot be duly recognized as a change in law at the stage of tariff adoption, the actual impact and extent of the relief admissible to be determined at the appropriate stage."*

37. Insofar as the increase in the rate of Basic Custom Duty on the import of the solar inverter is concerned, the Respondents have submitted that at the time of bid submissions the Customs Duty on the import of Solar Inverter was at the rate of 5%. However, on 1.2.2021, the Ministry of Finance, Government of India vide Notification No.3 of 2021- Customs and Notification No. 7 of 2021- Customs reversed the earlier notification granting the exemptions to the extent of 5% (ad valorem) and by virtue of these notifications the BCD on the import of solar inverters increased to 20% from 5%. The Respondents have submitted the aforesaid increase in the applicable rate of BCD on the import of Solar Inverter by the Notifications of the Ministry of Finance, Government of India qualifies as Change in Law event and in terms of Article 12.1.3, the parties have also agreed that change in rates of Safeguard Duty, GST and BCD after 22.6.2020 resulting in change in project cost will be treated as Change in Law provided the Commission recognises as Change in Law event. SECI, in its response,

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has also not opposed the recognition of the above increase in the applicable rate of BCD on the import of Solar Inverter in terms of the Notifications of the Ministry of Finance as Change in Law event and has submitted that the Commission may pass an appropriate order as also prayed for by SECI recognizing the same as Change in Law event within the scope of Article 12 of the PPAs and the actual impact may be considered at the appropriate stage.

38. We have considered the submissions of the parties. It is beyond dispute that the increase in the applicable rate of BCD on import of the solar inverter has been by the Notifications bearing No. 3/2021 and 7/2021 dated 1.2.2021 as issued by the Department of Revenue, Ministry of Finance, Government of India – Indian Government Instrumentality as defined in the PPAs – and the parties, at Article 12.1.3 of the PPAs, have also agreed that change in the rates of BCD after 22.6.2020 resulting into the change in the Project cost will be treated as Change in Law event and accordingly, the Commission recognizes the said increase in the applicable rate of BCD on the import of solar inverter in terms of the Notifications of the Ministry of Finance, Government of India post 22.6.2020 as Change in Law event. The Solar Developers shall be entitled to the applicable reliefs on account of the Change in Law event as per the provisions of the PPAs after they having incurred the additional expenditure on account of the aforesaid Change in Law event.

39. The Respondents have further sought the recognition of the increase in the applicable GST rates on the solar modules and solar cell along with other solar power generator equipment from 5 % to 12% by virtue of the Notification No. 8 of 2021 – Integrated Tax (Rate) & Notification No.8 of 2021- Central Tax (Rate) dated

30.9.2021 (collectively, 'GST Notifications') issued by Ministry of Finance, Government of India. It is submitted that as on the date of submission bid, the applicable rate of GST on the solar modules, cells and other solar power generator equipment was 5% in terms of the Notification No.1 of 2017 - Integrated Tax dated 28.6.2017 and subsequently, vide Notification No. 8 of 2021 dated 30.9.2021, Ministry of Finance, Government of India amended the earlier Notification No.1of 2017 - Integrated Tax and thereby increased the applicable GST rate to 12% from earlier 5%. The Respondents have submitted that at Article 12.1.3 of the PPAs, the parties have also agreed that change in rates of GST after 22.6.2020 resulting in change in project cost will be treated as Change in Law provided the Commission recognises it as Change in Law event and thus, the Commission may recognize the increase in the applicable rate of GST on solar modules, cells and other equipment by virtue of GST Notifications issued by the Ministry of Finance, Government of India as Change in Law event at the stage of adoption of tariff itself. SECI, in its response, has again not opposed the recognition of the above increase in the applicable rate of GST on the solar modules, cells and other renewable energy equipment in terms of the Notifications of the Ministry of Finance as Change in Law event and has further submitted that the Commission may pass an appropriate order as prayed for by SECI recognizing the same as Change in Law event within the scope of Article 12 of the PPAs and the actual impact may be considered at the appropriate stage.

40. We have considered the submissions made by the parties. The increase in the applicable rate of GST on solar modules, cells and other solar power generation equipment from 5% to 12% has been as a result of the Notification No. 8/2021-

Intergrated Tax dated 30.9.2021 issued by the Department of Revenue, Ministry of Finance, Government of India – Indian Government Instrumentality as defined in the PPAs – and the parties, at Article 12.1.3 of the PPAs, have also agreed that change in the rates of GST after the 22.6.2020 resulting into the change in the project cost will be treated as Change in Law event and accordingly, the Commission recognizes the said increase in the rate of GST on the solar modules, cells and other solar power generation equipment in terms of the Notification of the Ministry of Finance, Government of India, post 22.6.2020, as Change in Law event. The solar developers shall be entitled to the applicable reliefs on the account of the Change in Law event as per the provisions of the PPAs after they having incurred the additional expenditure on account of the aforesaid Change in Law event.

41. The Respondents, in particular AMP Energy, have also prayed to recognize the order of the Hon'ble Supreme Court dated 19.4.2021 in IA No. 85618 of 2020 in Writ Petition No. 838 of 2019 titled M. K Ranjitsinh & Ors. v. Union of India & Ors., issuing directions/ measures to be adopted, *inter-alia*, towards existing and future laying of overhead transmission lines in the priority and potential habitat of GIB as Change in Law event. It has been submitted that as per the said order, the overhead transmission lines in GIB areas shall be converted into the underground power lines and the Hon'ble Supreme Court has, *inter-alia*, also held that in cases where the power generators are required to bear the additional amount to the cost of production, it would be open to regulate the manner in which the cost would be mitigated in accordance with the contractual terms. AMP Energy has submitted that the Project being developed by it is located in the State of Rajasthan which forms a part of the

potential habitat of GIB as demarcated and specified in the GIB order. It is also submitted that it had placed the bid considering the feasibility of installing overhead transmission lines. However, in terms of the aforesaid judgment, it would require to lay underground transmission cable which is commercially unviable at the tariff quoted as the cost of underground cable is much higher than that of overhead line of equivalent voltage. SECI, in its response, has submitted that while the order dated 19.4.2021 of the Hon'ble Supreme Court is a law laid down by the Hon'ble Supreme Court, the developer, however, is required to establish the actual impact of Change in Law on account of the above to the satisfaction of the Commission. SECI has placed reliance on the Office Memorandum of MNRE dated 3.2.2022 which dealt with the above order and has submitted that Change in Law aspect on account of the said order on the Project to be established by AMP Energy has to be considered as per the terms of MNRE's OM dated 3.2.2022 and the outcome of the decision of the Hon'ble Supreme Court on the IAs as specified in the said OM.

42. We have considered the submissions made by the parties. It is beyond dispute that the order of the Hon'ble Supreme Court dated 19.4.2021 in IA No. 85618 of 2020 in WP (Civil) No. 838 of 2019 requiring the additional actions/measures to be adopted by the developers located in the potential and priority habitat of GIB, after the cut-off date, would certainly qualify as the Change in Law under Article 12 of the PPAs. As on date of submission bid, the developers would not have been in position to anticipate or factor into the additional expenditure required to be incurred in the adopting the measures/actions in terms the Hon'ble Supreme Court's GIB Order which came to be issued subsequently. However, at the same time, it has to be noted

that for examining the claim of the Change in Law relief/compensation on account of the aforesaid GIB Order, the developer has to be satisfactory demonstrate that its bid/tariff was based upon the project being located in the GIB potential and/or priority habitat areas. Moreover, MNRE vide its Office Memorandum dated 3.2.2022 has also observed as under:

> *"Reference is invited to issues arising out of Hon'ble Supreme Court's Order dated 19.04.2021 (in I.A. No. 85618/2020 in W. P. No. 838 of 2019) regarding undergrounding of transmission lines in habitats of Great Indian Bustard (GIB) in Rajasthan and Gujarat, and the relief sought by Industry in this regard.*
>
> *2. This Ministry has filed an I.A. in the Hon'ble Supreme Court, jointly on behalf of MNRE, M/o Power and M/o Environment, Forest & Climate Change (MoEF&CC) on 17.11.2021 contesting the aforesaid order dated 19.04.2021. It has been inter-alia prayed that Hon'ble Supreme Court may allow high voltage and extra high voltage lines i.e. 66 kV and above power lines in Priority GIB Habitat to be laid as overhead power lines with installation of appropriate mitigation measures like bird diverters and laying of overhead transmission lines in future outside the Priority area with installation of appropriate bird diverters. The matter is yet to be decided by Hon'ble Supreme Court. This situation has caused uncertainty among RE developers with regard to the action they are required to take.*
>
> *3. In view of above, the undersigned is directed to inform MNRE's RE Implementing Agencies (REIAs), that for all under implementation RE projects where REIA is the intermediary procurer and for which the transmission infrastructure lies wholly or partly in the priority or potential area; the project land has been procured and the project commissioning is delayed due to non-completion of project transmission infrastructure on account 'of the aforesaid order of the Hon'ble Supreme Court, the Scheduled Date of Commissioning is hereby extended to a date which is 30 days after the date of judgment by Hon'ble Supreme Court in the IA filed by MNRE.*
>
> *4. The above relief is for facilitating RE project development and shall not be taken for any other purpose, including for claiming IDC or for termination of PPA. REIAs are requested to accord requisite extension of Scheduled Date of Commissioning keeping in view the above..."*

In view of the above, while the Commission recognizes the GIB Order of the Hon'ble Supreme Court, post the bid submission date, as to be covered under the

Change in Law event under Article 12 of the PPAs, the entitlement of the Developers to claim the Change in Law relief thereunder and the extent of the available reliefs has to be demonstrated on case to case basis based on the supporting documents in this regard, which shall be considered by the Commission at the appropriate stage.

43. The next events as sought to be recognized as Change in Law events by the Respondents/Developers are (i) MNRE's Notification dated 9.3.2021 regarding imposition of BCD on solar modules and cells (without grandfathering of bid-out Projects) at the rate of 40% and 25 % respectively w.e.f. 1.4.2022 ("BCD Notification"); and (ii) issuance of the Project Imports (Amendment) Regulations, 2022 dated 19.10.2022 resulting in increase in the rates of Basic Custom Duty on import of solar modules and cells. Since both these claims by the Respondents/Developers are closely related, we shall be dealing with them together.

44. The Respondents have submitted that while they have provided waiver to SECI in relation to the claiming of compensation for the impact on the project cost in pursuance to the BCD Notification, the said undertakings were given considering that the Respondents will avail the benefit of the concessional rate of 5% Customs Duty as permitted under the Project Import Regulations, 1986. It is submitted that under the Project Imports, goods imported for the purpose of setting up of power project is subjected to single rate of duty instead of merit assessment of imported goods and accordingly, as per the provisions of Custom Notification No. 50/2017-Custom dated 30.6.2017 as amended from time to time, as per the Custom Tariff Heading No. 9801, goods required for setting up of any solar power project are eligible for concessional rate of 5%, which was factored into by the developers. However, while they were in

process for applying the concessional rate benefit for the Project to be set-up, the Ministry of Finance, Department of Revenue, Government of India issued the Project Imports (Amendment) Regulations, 2022 dated 19.10.2022 amending the principal regulations whereby the solar power plants/projects were excluded from availing the concessional Custom Duty rate. As a result, the Developer is not constrained to bear the BCD at the rate of 40% for solar module and 25% for solar cells making the project financially unviable.

45. It has also been submitted by the Respondents that waiver given by the Respondents as recorded in the Article 12.1.6 of the PPAs is limited to the claim for Change in Law on account of issuance of MNRE's OM dated 9.3.2021 and does not in any manner restrict them from claiming compensation on account of occurrence of other Change in Law, specifically the issuance of Project Import (Amendment) Regulations, 2022. The Respondents have sought to rely upon the judgment of Hon'ble Supreme Court in the case of Nabha Power Ltd. v. PSPCL and Ors, [(2018) 11 SCC 508] for invoking the principle of 'business efficacy' and 'officious bystander test' in the present context. It has also been submitted that the Respondents cannot be subjected to risks unknown/ untaken and hence it is only essential that while interpreting the PPA, a common sense and business efficacy test is applied. In this regard, reliance has also been placed on the judgment of Hon'ble Supreme Court in the case of Union of India v. D. N Revri & Co and Ors., [(1976) 4 SCC 147]. In view of the above, the Respondents/Developers have prayed to recognize the MNRE's BCD Notification and the Project Imports (Amendment) Regulations, 2022 as Change in Law events under the PPAs.

46. In response, SECI has contended that the PPAs entered into with the Respondents/developers have been signed in April and June, 2022 which was after the 31.3.2022 when the BCD had become 40% on solar modules and 25% on solar cells. It is submitted that in terms of Article 12.2.6 of the PPAs, the developers with due reference to the increased BCD from 0 % to 40% on solar modules and from 0% to 25% on solar cells and without any reservation or qualification, unconditionally and in absolute manner committed that they duly waive the claims of Customs Duty on the said rates of 40% and 25%. The developers signed the PPAs in April and June, 2022 when the applicable BCD had already become 40% and 25% and even then they proceeded to accept that no Change in Law on account of BCD will be claimed as per the MNRE OM dated 9.3.2021. At the relevant time, the developers did not claim that the same will be subject to it availing the concession (if any) under the Project Import Regulations, 1986 or in any other manner. As per Article 12.2.6 of the PPAs, the waiver on Change in Law claim of BCD was not conditional upon the benefit of concessional rate of 5% of Custom Duty as per the Project Import Regulations, 1986 being available and in case the same is not available notwithstanding the waiver, they will claim any Change in Law event. The waiver given by the developers is specific and unequivocal that they will not claim the benefit of Change in Law events qua BCD till 40% for solar modules and till 25% for solar cell and they are bound by such waiver subject to which the PPA was signed. The claim of BCD by them can only for *"any further increase of BCD,..... any incremental impact over prescribed rates of BCD as above".*

47. SECI has further submitted that notification of Project Import (Amendment) Regulations, 2022 on 19.10.2022 by Ministry of Finance, Government of India has not affected in any manner the rate of BCD as per MNRE OM dated 9.3.2021, namely, BCD vis-à-vis solar modules continues to be 40% and BCD vis-à-vis solar cell continues to be 25%. The reliance placed by the Respondents on the judgments of Hon'ble Supreme Court in Nabha Power Ltd. v. PSPCL and Ors, [(2018) 11 SCC 508] and Union of India v. D. N Revri & Co and Ors., [(1976) 4 SCC 147] is misplaced. It is submitted that in the said decisions, the interpretation of a clause in the contract was in dispute and efficacious interpretation was given to clause to make it workable. However, the entire clause was not rendered meaningless and the unequivocal terms were not re-written. In the present case, the waiver in Article 12.2.6 is clear and unambiguous.

48. We have considered the submissions made by the parties. Since the controversy stems from the Article 12.2.6 of the PPAs, it is pertinent to refer to the said Article which reproduced hereunder:

"12.2 Relief for 'Change in Law

.....

12.2.6 The following proposal of MNRE to impose Basic Custom Duty (BCD) on Solar cells and modules (without grandfathering of bid out projects) has been agreed to by the Ministry of Finance:

Item	*CTH*	*Upto 31.03.2022*	*w.e.f. 01.04.2022*
Solar Module	*85414012*	*0%*	*40%*
Solar Cells	*85414011*	*0%*	*25%*

As per commitment from SPD, the SPD will provide the waiver on claim of Basic Custom Duty mentioned above in this PPA. If there is any further revision/modification

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to the said BCD notification or any new notification on the BCD matter, resulting in any further increase of BCD, Developers shall remain entitled to exercise rights for any claim under Change in Law of the PPAs, viz, such revision/modification (any incremental impact over prescribed rates of BCD as above) or any new notification. Further, No Change in Law on account of BCD will be claimed by either party, as per the MNRE OM dated 09.03.2021.

Perusal of the above article reveals that the developers had, despite being completely aware of levy of BCD on the solar modules and cells w.e.f. 1.4.2022, proceeded to give waiver on the claim of BCD as mentioned in the MNRE OM dated 9.3.2021. Hence, so far as the requests of the Respondents/developers to recognize and said MNRE OM dated 9.3.2021 as Change in Law event is concerned, it cannot be allowed in view of the above provision of the PPAs. However, this issue involves certain additional aspects as the developers have submitted that when the above waiver was given, they were entitled to avail the benefit of concessional rate of 5% Customs Duty as permitted under the Project Imports Regulations, 1986 and the said option came to be removed by virtue of Project Imports (Amendment) Regulations, 2022 dated 19.10.2022. As a result, the concessional rate benefit for the Project as available to the Respondents/ developers, basis which the aforesaid waiver was given by them, is no longer available to them and as a result, they are constrained to bear the BCD rate as notified in the MNRE OM dated 9.3.2021. It has also been contended that waiver as captured in the Article 12.2.6 of the PPAs is only with respect to the MNRE OM dated 9.3.2021 and not for the Project Imports (Amendment) Regulations, 2022.

49. We have considered the submissions made by the Respondents in this regard. Firstly, it would be pertinent to examine as to whether the waiver given under Article

12.2.6 of the PPAs is restricted to the MNRE's OM dated 9.3.2021 itself or operates to the extent of rates BCD as indicated therein. From the perusal of the said provision, it is clear that the SPD will provide the waiver on claim of BCD as mentioned above (rates as mentioned in MNRE OM) in the PPA. It has also been agreed upon by the parties that if there is any further revision/modification to the said BCD Notification or new notification on the BCD matter, *resulting into further increase of BCD,* the developer shall remain entitled to exercise its rights for Change in Law claim viz. such revision /modification (any incremental impact over prescribed rates of BCD as above) or any new notification. Thus, it is apparent that the developer has given the waiver on claim of BCD not only in the context of MNRE's OM dated 9.3.2021 but in terms of the BCD rates specified therein thereby waiving its right to claim the Change in Law event(s)/relief until *"any further increase of BCD"* than that prescribed in the said OM. It is equally pertinent to note that the above waiver neither speaks of the developer having the other avenues for importing the solar cells/modules nor it appears to be conditional upon the developer being able to avail such avenues.

50. Once having been held that in terms of Article 12.2.6 of the PPAs the developer having given the waiver on the claim of BCD on the solar cells and modules till the rates specified in the MNRE's OM dated 9.3.2021 i.e. 40% on the solar modules and 25% on the solar cells, the recognition of Project Imports (Amendment) Regulations, 2022 as Change in Law event under the PPAs loses its significance as by virtue of the said regulations, the applicable rates of BCD on the solar cells and modules do not affect or exceeds the rates as specified in the MNRE's

OM dated 9.3.2021. Hence, even assuming that the said amendment, which restricts the solar power projects/plants, from availing the concessional rate of duty, constitutes Change in Law event under Article 12 of the PPAs, the developers, in our view, cannot claim any relief on account of such event in view of the specific waiver given under Article 12.2.6 of the PPAs as the amendment, as rightly pointed out by SECI, does not affect the rates as specified in the MNRE's OM dated 9.3.2021. The reliance placed by the Respondents on the various authorities of the Hon'ble Supreme Court invoking the principles of Business efficacy and Officious Bystander cannot apply to the present case as the Article 12.2.6 of the PPAs is quite clear and unambiguous and the developers having given unequivocal waiver and by entering into the PPAs, cannot now resile from the said article citing the unfavourable circumstances or the commercial hardships. In view of the above, we hereby reject the request of the Respondents/developers to recognize the increase in the rate of BCD on the solar cells and modules in terms of MNRE's OM dated 9.3.2021 and Project Imports (Amendment) Regulations, 2022 as Change in Law events in terms of the specific provisions of the Article 12.2.6 of the PPAs as executed between the developers and SECI.

51. The Respondents 8, 10 & 11 have also requested the Commission to take into account the delay in tariff adoption and hold that the Respondents are entitled to corresponding extension of timelines to achieve the financial closure and scheduled commissioning date in terms of the Article 2.1.3 read with Article 2.1.4 of the PPAs. We have considered the said submissions of the Respondents. Article 2.1.3 and 2.1.4. provides as under:

"2.1.3 Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligation of wither party against the other under this Agreement shall be that, within 120 days after Effective Date of the PPA, SECI and/or the Buying Entity (ies) shall obtain adoption of tariff from its Sate Electricity Regulatory Commission and/or CERC (as applicable_, on the terms and conditions contained in this Agreement read with the terms and conditions contained in the Power Sale Agreement entered into between SECI and the Buying Entity(ies). The Parties agree that in the event, the order of adoption of tariff as mentioned above is not issued by the SERC and/or CERC (as applicable) within the time specified above, the provisions of Article 2.1.4 shall apply.

2.1.4. If Parties have mutually extended the time period as stipulated under Article 2.1.3 and the order from the SERC and/or CERC (as applicable) is issued within the timeline as per Article 2.1.3, no extension for Financial Closure or Scheduled Commissioning Date shall be given. However, if the requisite SERC and/or CERC (as applicable) order is issued after the timeline as per Article 2.1.3, this shall entail a corresponding extension in Scheduled Financial Closure and the Scheduled Commissioning Date for equal number of days for which the SERC and/or CERC order has been delayed beyond such period as specified in Article 2.1.3"

52. We observe that Article 2.1.3 read with Article 2.1.4 of the PPAs quoted above, in line with the provisions of the Guidelines, already provide for the extension in scheduled financial closure and scheduled commissioning date for equal number of days for which the order for adoption of tariff by the Appropriate Commission has been delayed beyond 120 days. Hence, we do not find any need to issue a separate direction on the subject matter as the contractual provisions already deal with and provide the course of action in such event(s).

53. Prayer (c) of the Petitioner is answered accordingly.

54. The Petition No. 245/AT/2022 is disposed of in terms of the above.

Sd/- **(P.K. Singh)** **Member**	**sd/-** **(Arun Goyal)** **Member**	**sd/-** **(I.S. Jha)** **Member**

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