

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 213/AT/2023**

**Coram:**

**Shri Jishnu Barua, Chairperson**

**Shri I.S. Jha, Member**

**Shri Arun Goyal, Member**

**Shri P.K. Singh, Member**

**Date of order: 13<sup>th</sup> September, 2023**

**In the matter of**

Petition under Section 63 of the Electricity Act, 2003 for the adoption of tariff for 1170MW Wind-Solar Hybrid Power Projects (Tranche-V) connected to the Inter-State Transmission System (ISTS) and selected through competitive bidding process as per the guidelines of the Government of India.

**And**

**In the matter of**

**Solar Energy Corporation of India Limited,**  
6<sup>th</sup> Floor, Plate-B, NBCC Office Block Tower-2,  
East Kidwai Nagar,  
New Delhi – 110 023

.....Petitioner

**Vs**

**1. TP Saurya Limited,**  
Corporate Centre, A block  
34, Sant Tukaram Road,  
Carnac Bunder,  
Mumbai – 400 009

**2. AMP Energy Green Private Limited,**  
309, 3<sup>rd</sup> Floor, Rectangle One,  
Behind Sheraton Hotel, Saket,  
New Delhi – 110 017

**3. NTPC Renewable Energy Limited,**  
NTPC Bhawan, Scope Complex, 7,  
Institutional Area, Lodhi Road,  
South Delhi-110 003

**4. AMP Energy Green Ten Private Limited,**



309, 3<sup>rd</sup> Floor, Rectangle One,  
Behind Sheraton Hotel, Saket,  
New Delhi - 110 017,

**5. MPSEZ Utilities Limited,**  
Adani Corporate House, Shantigram  
Near Vaishno Devi Circle,  
S.G. Highway, Khodiyar,  
Ahmedabad – 842 421.

**6. CESC Limited,**  
CESC House, Chowringhee Lane,  
Kolkata 700 001.

.....Respondents

**The following were present:**

Ms. Anushree Bardhan, Advocate, SECI  
Ms. Tanya Sareen, Advocate, SECI  
Ms. Surbhi Kapoor, Advocate, SECI  
Ms. Jyotsna Khatri, AMP Energy  
Shri Ranjan Kumar, MUL

**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 the adoption of tariff for 1170 MW Wind-Solar Hybrid Power Projects (Tranche-V) connected with Inter-State Transmission System (ISTS) and selected through a competitive bidding process as per the ‘Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind-Solar Hybrid Projects’ issued by the Ministry of New and Renewable Energy, Government of India dated 14.10.2020 (hereinafter referred to as “ the Hybrid Guidelines”). The Petitioner has made the following prayers:

*“(a) Adopt the tariff discovered in the tariff based competitive bid process for the aggregate 1170 MW capacity from Wind-Solar Hybrid power projects on the terms and conditions contained in the Power Purchase Agreements signed with the Wind-Solar Hybrid Power Developers read with the Power Sale Agreements signed with the Buying Entities/Distribution Licensees;*



*(b) Approve the 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) of the Trading License Regulations, 2020.....”*

### **Submissions of the Petitioner**

2. The Petitioner, SECI, has submitted that on 22.10.2021, it issued a Request for Selection (“RfS”) bearing RfS No. SECI/C&P/IPP/13/0003/21-22 dated 22.10.2021, along with the draft Power Purchase Agreement (“PPA”) and the draft Power Sale Agreement (“PSA”) documents on an ISN Electronic Tender System (ETS) e-bidding portal for the Selection of the Project Developers for setting up of 1200 MW ISTS-connected Wind Solar Hybrid Power Projects (Tranche-V). The Petitioner has submitted that in response to the above RfS, thirteen bids were received offering an aggregate capacity of 4370 MW and all of them were found to meet the technical criteria. On 26.4.2022, the financial bids of technically qualified bidders were opened on the ISN ETS e-bidding portal in the presence of the Bid Evaluation Committee (BEC). Twelve bidders for the capacity aggregating of 4220 MW were shortlisted for e-reverse auction. E-reverse auction of the qualified bidders was conducted on 5.5.2022 on the ISN ETS e-bidding portal, on the basis of which the final tariff was arrived at. It has been further stated that pursuant to the issuance of the Letter of Award to the successful bidders, namely, TP Saurya Limited (600 MW), AMP Energy Green Private Limited (120 MW), and NTPC Renewable Energy Limited (450 MW) on 12.7.2022, the Petitioner has entered into PPAs with these successful bidders/their Project Companies. The Petitioner has submitted that Hybrid Power Projects are scheduled to be commissioned within 24 months from the effective date of the PPAs. Moreover, the Petitioner has also signed the PSAs for the entire 1170 MW with the distribution licensees, namely, MPSEZ



Utilities Limited (MUL) and CESC Limited (CESC). The Petitioner has submitted that as per PSAs, the Petitioner shall be entitled to a tariff (inclusive of a trading margin of Rs. 0.07/kWh) to be paid to the distribution licensees. In view of the above, the Petitioner has prayed for the adoption of a tariff for the procurement of 1170 MW Wind Solar Hybrid Projects discovered through a competitive bidding process carried out by SECI.

### **Hearing dated 10.8.2023**

3. The matter was heard on 10.8.2023. During the course of the hearing, learned counsel for the Petitioner, *inter-alia*, submitted that the tariff for 1170 MW Wind- Solar Hybrid Power Projects has been discovered through a tariff-based competitive bidding process conducted as per the Hybrid Guidelines and the Commission may adopt the same. Learned counsel further submitted that for the entire 1170 MW capacity, the PPAs and PSAs have been signed with the successful bidders and the distribution licensees, respectively. Learned counsel submitted that SECI has also furnished a Conformity Certificate to the effect that no deviations were made in regard to the Bidding Guidelines and that the Bid Evaluation Committee has conducted the bid evaluation in conformity with the provisions of the RfS.

4. After hearing the learned counsel for the Petitioner, the Respondents were directed to file their respective replies. However, no reply has been received from them. During the course of the hearing, the Commission enquired about the Capacity Utilization Factor (CUF), and in response, the learned counsel for the SECI confirmed that in line with the provisions of the Hybrid Guidelines & the RfS/PPAs, the Wind-Solar Hybrid Generators are required to have the rated power capacity of one resource (wind/solar) at least 33% of the contracted capacity. Learned counsel further submitted

that, as per the provisions of the Hybrid Guidelines and the PPAs, the declared annual Capacity Utilization Factor (CUF) or revised annual CUF by such generators will, in no case, be less than 30%. The Commission reserved the matter for order after giving an opportunity to the Respondents to file their respective replies to the Petition.

5. Pursuant to the liberty granted by the Commission in terms of the Record of Proceedings for the hearing dated 10.8.2023, Respondent No. 1, TP Saurya Limited (in short 'TPSL'), Respondent Nos. 2 & 4, AMP Energy Green Private Limited & AMP Energy Green Ten Private Limited (hereinafter referred to as 'AMP Energy') and Respondent No. 3, NTPC Renewable Energy Limited (NTPC) have filed their written submissions dated 21.8.2023, 21.8.2023 & 18.8.2023 respectively. In response, on 25.8.2023, the Petitioner SECI has filed its rejoinders to the replies filed by the above Respondents.

### **Reply & Rejoinders of parties**

6. Respondent 1, TPSL, in its reply dated 21.8.2023, has placed on record certain Change in Law events that have occurred after the date of submission of the bid i.e., 4.1.2022 and has mainly submitted as under:

#### **Project Import Regulation (PIR) Amendments, 2022 and 2023**

(a) On the date of submission of the bid by TPSL, the BCD OM imposing BCD on import of Solar PV Cells did not have any impact on the cost of Project as TPSL was entitled to register its Projects under the PIR 1986 Regime and to import Solar PV Cells along with other components at a concessional duty of 5% which was prevailing for import of goods required for setting up of any Solar Power Project as on proposed due date.

(b) For the purpose of the same, TPSL moved an appropriate application for

registration of the Project under the PIR regime on 3.8.2022 in order to ensure that the Recommendation Letter is issued in favour of TPSSL. While the application was pending consideration before the Customs Department, on 19.10.2022, PIR Amendment 2022 was notified, which, in effect, disentitled TPSL from taking the benefit of concessional duty for the purpose of importing Solar PV Cells and other components, including cables and trackers required for development of Project.

(c) On 5.11.2022, the Government of Karnataka (GoK) issued the Recommendation Letter to TPREL for availing concessional rate of Customs Duty benefit under the PIR 1986 Regime. In furtherance to the PIR Amendment, 2022, on 1.2.2023, the Central Board of Indirect Taxes and Customs (CBIC), in the exercise of its powers conferred under Section 157 of the Customs Act, notified the PIR Amendment, 2023, excluding Solar Power Projects from 'Sr. No. 4 in column 2' of the table appended to the PIR, 1986.

(d) As a result of such exclusion, TPSL would be unable to import solar cells at a concessional rate of custom duty and instead would be constrained to pay BCD of 25% (plus applicable Cess and GST) on solar cells in terms of the Office Memorandum dated 9.3.2021 issued by MNRE.

(e) In terms of the definition of Change in Law as per the PPA, the PIR Amendments 2022 and 2023 have been issued by 'Indian Governmental Instrumentality' as required by the PPA. As a consequential impact of the amendment, TPSL was restrained from registering its Project under the PIR Regime and the BCD as notified by the way of BCD OM, became applicable upon the Project of TPSL. The said event of Change in Law occurred subsequent to the date of submission of the bid, i.e., 4.1.2022. The PIR Amendments, 2022 and 2023, are events amending the existing PIR, 1986, which enabled all Power Projects to register themselves and import equipment such as Solar PV Cells and other components at a concessional duty of 5%. The occurrence of such an event resulted in the generator incurring recurring or non-recurring additional expenditures. Therefore, TPSL is eligible for tariff adjustment payment on account of such a Change in Law event under Article 12.2 of the PPA.

(f) It is a trite position of law that a change in the rate of tax/duty is considered a 'Change in Law' event. In this regard, the Petitioner has placed reliance on the Commission's order dated 19.9.2018 passed in Petition Nos. 50/MP/2018 and 52/MP/2018 (Prayatna Developers vs. NTPC & Ors.), and order dated 16.6.2021 passed in Petition No. 453/MP/2019 (Sipat Transmission Ltd. vs. MSEDCL & Ors.).

### **Working Group Report (WGR) 2022**

(g) On 21.2.2007, the MoP notified the CEA Regulations, 2007, wherein no specific ambient temperature was prescribed. Similarly, as per the law in vogue at the time, i.e., the CEA Regulations 2010, an ambient temperature of 50 degrees was required to be considered for the electrical equipment as per Regulation 10 of the said Regulations. While the regulations did not specifically capture Solar Projects, however, the same benchmark has been used over the years.

(h) Subsequently, on 15.10.2013, the MoP amended the CEA Regulations, 2007 called the CEA Regulations, 2013. The said Regulation divided the Connectivity Standards into two parts., (i) Connectivity Standards applicable to the generating stations other than wind and generating stations using inverters, and (ii) Connectivity Standards applicable to the wind generating stations and generating stations using inverters. As per the present facts provided, TPSL falls under the second part of the Connectivity Standards. From a bare perusal of the aforesaid amendment, it is evident that in the case of non-RE projects, the word rated output is used for the requirement of reactive power while the same has not been in the case of RE power generators. In the present case, TPSL falls under the second part of the Connectivity Standards.

(i) Thereafter, on 6.2.2019, the CEA Regulations 2007 were again amended and titled as the CEA Regulations, 2019. However, in the said Regulations, no amendments were made in Regulation B2(1) of the CEA Regulations, 2013.

(j) In July 2022, CEA issued a Working Group Report, 2022 (WGR 2022), wherein the CEA amended the existing CEA Regulations. The WGR 2022 requires that the generating station must deliver rated output at a designed temperature in so far as

reactive power is concerned. This effectively means the generating station should be able to provide reactive power requirements connecting to the Point of Interconnection with dynamically varying response at the design temperature. This is in contrast with the CEA Regulations, 2013 which provided that the generating station has to be capable of supplying dynamically varying reactive power support.

(k) WGR 2022 issued by the CEA falls under Article 12.1.1 of the PPA as the said Report has amended the existing law and was notified after the last date of the submission of the bid i.e., 4.1.2022 in as much as it has changed the interpretation of the existing CEA Regulations, 2013 by inserting a new requirement under Regulation B2(1) of the CEA Regulations, 2013 that the generating station should be able to deliver rated output at a specified designed temperature in so far as reactive power is concerned.

(l) The WGR 2022 has been issued by the CEA, which qualifies as an Indian Governmental Instrumentality in terms of the definition as envisaged under the PPA. Apart from it being qualified as an Indian Governmental Instrumentality in terms of the PPA, Part IX of the Act has constituted CEA to exercise such functions and perform such duties as assigned to it under Section 73 of the Act such as (i) to specify the technical standards for constructions of electrical plants, electrical lines and connectivity to the grid [Section 73(b)] and (ii) specify the safety requirements for constructions, operation and maintenance of electrical plants and electrical lines [Section 73(c)]. Since the WGR 2022 has been issued by the CEA in terms of Section 73 of the Act, TPSL is left with no other option but to comply with the requirements introduced under the WGR, 2022.

(m) The occurrence of such an event resulted in the generator incurring recurring or non-recurring additional expenditure. Therefore, TPSL is eligible for tariff adjustment payment on account of such a Change in Law event under Article 12.2 of the PPA.

**Delay in the adoption of tariff**

(n) In terms of Clause 4.5.2 of the PPA, any delay in the adoption of tariff by the Appropriate Commission, beyond 120 days after the effective date of the PPA, there shall be a corresponding extension in Scheduled Commissioning Date (“SCOD”). In



the present case, although the PPA has been signed on 31.3.2023, the effective date under the PPA is 11.1.2023. Therefore, SECI was obligated to get the tariff adopted by this Commission within 120 days, i.e. by 11.5.2023. However, admittedly, the present Petition has only been filed on 7.6.2023 and to date, the tariff is yet to be adopted. Hence, TPSL shall be granted an extension from 12.5.2023 onwards till the time the tariff is adopted by this Commission especially since the SCOD as per Article 9.2 of the PPA is 18 months from the effective date and not the date of signing of the PPA.

7. The Petitioner, vide its rejoinder dated 25.8.2023, has mainly submitted as under:

**PIR Amendments 2022 & 2023**

(a) Clause 37.5 of the Request for Selection ('RfS') Document dated 22.10.2021 provides that the imposition of taxes/duties as laid out in the Office Memorandum No.283/3/2018-GRID SOLAR ('OM') dated 9.3.2021 of the Ministry of New and Renewable Energy ('MNRE'), will not be considered under "Change in Law" under the PPA.

(b) The said OM dated 9.3.2021 imposes BCD of a maximum of 25% on solar cells and 40% on modules (without grandfathering of bid-out projects), which has been agreed to by the Ministry of Finance. In the said OM, it has been further clarified to all RE implementing agencies and other stakeholders to take note of the above trajectory and to include provisions in their bid documents so that bidders take the trajectory into account while quoting tariffs in all bids where the last date of submission of bid is subsequent to this OM. In all such bids, the imposition of BCD as per the above trajectory shall not be considered a Change in Law.

(c) In terms of the above-mentioned OM of MNRE, the renewable implementing agencies (SECI in the present case) were required to take note of the trajectory (increase in rate of BCD from 0% to 40% with respect to solar modules and from 0% to 25% with respect to Solar cells) as per said OM and include provisions in the bid documents so that bidders take the said trajectory into account while quoting

tariff in all the bids where last date of submission of the bid is subsequent to the Office Memorandum. MNRE clearly stated in the said Office Memorandum that all the bids where the last date of submission of the bid is subsequent to the Office Memorandum, the imposition of BCD as per the above trajectory i.e. increase in the rate of BCD from 0% to 40% with respect to solar modules and from 0% to 25% with respect to Solar cells shall not be considered as change in law.

(d) In pursuance to the above, SECI incorporated Clause 37.5 in the RfS Document dated 22.10.2021 providing that the bidders are required to take cognizance of Office Memorandum dated 9.3.2021 of MNRE; the imposition of taxes/duties as laid out in the said Office Memorandum and its associated orders issued by the Ministry of Finance i.e. increase in rate of BCD till 40% with respect to solar modules and till 25% with respect to Solar cells, will not be considered as “Change in Law” under the PPA. This is consistent with the explicit terms of the Office Memorandum dated 9.3.2021 of MNRE. The Bidder (TP Saurya Limited), by submitting its bid, gave unconditional acceptance to the RfS.

(e) The Notification of the Project Import (Amendment) Regulations 2022 on 19.10.2022, the Project Import (Amendment) Regulations 2023 on 1.2.2023, and the Finance Act 2023 on 31.3.2023 as referred to by TP Saurya has not affected in any manner the rate of BCD (effective from 1.4.2022) of 40% with respect to solar modules and 25% with respect to solar cells which has already been excluded from being considered as Change in Law under the PPA in terms of Clause 37.5 of the RfS.

(f) SECI, vide its email dated 17.4.2023, responded to the letter dated 28.3.2023 of TP Saurya dealing with intimation of Change in Law event due to increase in the rate of BCD till 40% with respect to solar modules and till 25% with respect to Solar cells on account of the introduction of Notification No.54/2022-Customs, Notification No.07/2023-Customs, and Finance Act 2023.

(g) The reliance placed by TP Saurya on Order dated 19.9.2018 in Petition No.50/MP/2018 and Petition No.52/MP/2018, order dated 16.6.2021 in Petition No.453/MP/2019, order of Rajasthan Commission in Petition No.1394 of 2018 is

misplaced as it is distinguishable on the facts and circumstances. None of the above cases referred to by TP Saurya dealt with the MNRE Office Memorandum dated 9.3.2021 and the Project Import Regulations.

(h) Thus, the Project developers were clearly informed that an increase in the rate of BCD on Modules to 40% and Solar Cells to 25% is being intended by the Government of India and that they should factor such rate i.e. 40% for Solar Modules and 25% for Solar Cells in their bids. It is then not open to the project developers to claim that they submitted the bid on the basis of the Project Import Regulations allowing a lower rate of BCD and subsequent taking away of such lower BCD constitute a Change in Law.

(i) As per Notification No.02/2022 issued by the Ministry of Finance on 1.2.2022 making amendments in Notification No.50/2017, for availing the benefit of the concessional rate of BCD in terms of Notification No.50/2017, the goods required for the initial setting up of a power project (falling under the heading 9801) should have been imported against contracts registered on or before 30.9.2022 with the appropriate Custom House in compliance with the Project Imports Regulations, 1986.

(j) However, in the present case, it appears that the contract was not registered on or before 30.9.2022 with the appropriate Custom House in compliance with the Project Imports Regulations, 1986. As per regulation 5 of Project Import Regulations, the importer shall apply for registration of the contract only after receiving clearance from the Sponsoring Authority. In this regard, TP Saurya had applied to the sponsoring authority (Government of Karnataka) only on 3.8.2022 and revised the application on 5.9.2022 despite knowing about the above position i.e. goods should have been imported against contracts registered on or before 30.9.2022. Accordingly, TP Saurya is not eligible to claim a concessional rate of BCD as per the Project Import Regulations.

#### **Working Group Report (WGR) 2022**

(k) The CEA Regulations, which have been in existence at the time of submission of the bid, itself required due compliance by the RE Generators, including by installing

the necessary equipment. The installation of additional equipment dealt with in the report dated July 2022 of the Working Group is on account of difficulties expressed by the RE Generators with respect to the process of complying with the CEA technical standards for connectivity to the grid. This cannot mean that any new condition or a different requirement is being insisted upon for compliance with the CEA Regulations. The obligations of RE generators to comply with the CEA Regulations existed as before, and the report of the working group is only to facilitate all stakeholders in regard to process, procedure and methodology of compliance with the CEA technical standards for connectivity to the grid.

(l) The term 'or interpretation of any of them by an Indian Governmental Instrumentality and having force of law' as existing in the definition of the term law in Article 1 of the PPA brings within its scope any change in interpretation of the CEA Regulations in a different manner than what was interpreted earlier. If the CEA Regulations are not as such being interpreted differently than what was being interpreted at the time of submission of the bid, the detailed procedure, processes and manner of compliances issued at a later date cannot be termed as a change in interpretation. Further, anything and everything done by an Indian Government Instrumentality would not amount to Change in Law unless it has an independent force of law. The working group clarifying certain positions in regard to existing CEA Regulations or evolving processes and procedures cannot be construed as an interpretation of the CEA regulations to effect a Change in Law within the scope of Article 12. The change in interpretation of law applies only if the law has been interpreted in a particular manner before and is being interpreted subsequently in a different manner with a different effect. The Petitioner placed reliance on the judgment of the Hon'ble Supreme Court in the case of Haryana Power Purchase Centre –v- Sasan Power Limited and Others [2023 SCC OnLine SC 577] in this regard.

(m) The bare perusal of the Report of Working Group clearly shows the nature of the report and that the scope of the report is only to deal with data submission procedure and methodology for verification of compliance with the CEA Regulations. The first page of the report states "Report of the Working Group in

respect of the Data Submission Procedure and Verification of Compliance to CEA Regulations on Technical Standards for Connectivity to the Grid”. There has been no amendment or change to the existing CEA Regulations on technical standards for connectivity to the grid or otherwise any change in the mandate of law provided under the said existing CEA Regulations. The Report dealing with the implementation of the CEA Regulations on technical standards for connectivity to the grid, assessment of compliance and other processes and procedures cannot be considered as constituting ‘Change in Law’ within the scope of Article 12 of PPA. The stand taken by TP Saurya, to the contrary, is misplaced and has no validity.

(n) The event claimed by TP Saurya, namely, the issuance of the Report dated July 2022 of the Working Group in respect of the Data Submission Procedure and Verification of Compliance to CEA Regulations on Technical Standards for Connectivity to the Grid by the RE Generators do not constitute Change in Law in terms of Article 12.1 of the PPA since the above report does not fall within the scope of the term ‘law’ as defined in Article 12.1.2 read with the definition of the term ‘law’ in Article 1 of the PPA, does not constitute any enactment or amendment or repeal of any law and also does not fall within the scope of sub-clauses (i), (ii), (iii) of Article 12.1 of the PPA.

(o) The Standard PPA circulated along with the RfS Document dated 22.10.2021 clearly provided that the Hybrid Power Developer (TP Saurya in the present case) is responsible at its own cost and risk for getting connectivity with the transmission system up to the interconnection point, transmission of power up to the point of interconnection, and maintenance of transmission system up to the point of interconnection, etc. All charges and losses related to the transmission of power from the project up to the Delivery Point including but not limited to reactive power charges, etc. as notified by the competent authority/regulator shall be borne by the Hybrid Power Developer (TP Saurya in present case). The interconnection point/delivery point is a defined term in Article 1 of the Standard PPA.

(p) Article 4.1 of the Standard PPA, *inter-alia*, provides that TP Saurya is responsible at its own cost and risk for designing, and construction of the power

project in accordance with the applicable law and that the project shall be implemented as per the CEA Regulations 2007, and subsequent amendments and clarifications thereof. As per sub-regulation (3) in the Schedule, Part-I of the CEA Regulations, 2007 dealing with Standards for connectivity to the Grid, "The effects of wind, storms, floods, lightening, elevation, temperature extremes, icing, contamination, pollution and earthquakes must be considered in the design and operation of the connected facilities".

(q) As per sub-regulation (1) of Regulation 3 of the CEA Regulations, 2010, dealing with General Requirements, "The Electrical Plants and Electric Lines shall be suitable for a full range of ambient and other environmental conditions as prevailing at site. It is wrong and denied that the CEA Regulations 2010 provided for ambient temperature as 50 degree in respect of Solar/Wind Power Project as alleged or otherwise. Instead, the CEA Regulations, 2010 provides for consideration of an ambient temperature of 50-degrees celsius for the purpose of design of electrical equipments and systems in Regulation 10 occurring under Part-B dealing with Coal or Lignite Based Thermal Generating Station of Chapter-II.

(r) The Sub-paragraph (1) of the Paragraph B.2 in Part II of the Schedule to the CEA Regulations, 2007, as amended vide the CEA Regulations 2013, provides that "The generating station shall be capable of supplying dynamically varying reactive power support so as to maintain power factor within the limits of 0.95 lagging to 0.95 leading". The clause (17) in Regulation 2 of the CEA Regulations, 2007, as amended vide the CEA Regulations 2013, provides that "Interconnection point" means a point on the grid, including a sub-station or a switchyard, where the interconnection is established between the facility of the requester and the grid and where electricity injected into or drawn from the grid can be measured unambiguously for the requester".

(s) It is wrong and denied that the Report dated July 2022 was issued by the CEA. Instead, the report was issued by the Working Group with members from CTUIL, POSOCO, CEA and SECI. The Working Group was constituted to discuss the issues related to compliance with the CEA Regulations, 2007 and the amendments

thereof by RE Generators. The report issued by the Working Group in July 2022 only provides for the procedure in regard to the demonstration of compliance with the CEA Regulations, 2007 and the amendments thereof. It does not constitute an amendment or modification to the CEA Regulations 2007 and the amendments thereof.

(t) SECI, vide its email dated 8.6.2023, responded to the letter dated 18.5.2023 [Pages 1428-1431] of TP Saurya dealing with an intimation of Change in Law event on account of Report of the Working Group dated July 2022 and stated that the report of the working group issued in July 2022 does not constitute a Change in Law.

#### **Delay in the adoption of Tariff**

(u) Article 2.1.3 of the PPA provides for the adoption of tariff by this Commission within 120 days of the effective date (Effective Date is 11.1.2023 as per Article 2.1.1 of the PPA). 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 an equal number of days for which the Commission's order has been delayed beyond the period specified in Article 2.1.3. All allegations to the contrary are wrong and are denied.

8. The Respondents 2 & 4, AMP Energy Green Private Limited and AMP Energy Green Ten Private Limited (hereinafter 'AMP Energy'), vide their joint reply dated 21.8.2023, have placed on record certain Change in Law events, namely, the Project Import Regulation (PIR) Amendments, 2022 & 2023 and issuance of Working Group Report (WGR) 2022 occurred after the submission of the bid. The contents of the reply are already covered in the reply filed by Respondent No.1, TP Surya and are not repeated here for the sake of brevity. Respondent No.3, NTPC Renewable Energy Ltd., vide its reply dated 18.8.223, has also stated regarding the Change in Law event,





namely, the issuance of Working Group Report (WGR) 2022. The contents of the reply are already covered in the reply filed by Respondent No.1, TP Surya and are not repeated here for the sake of brevity.

9. The Petitioner, vide its rejoinders dated 25.8.2023 to the replies filed by the Respondents, AMP Energy and NTPC Renewable Energy Ltd., has reiterated its submissions already covered in the rejoinder filed for the Respondent, TP Saurya Limited & Ors.. Hence, the same is not repeated here for the sake of brevity.

**Analysis and Decision:**

10. In the present case, the Petitioner issued RfS documents based on the Hybrid Guidelines notified by the MNRE on 14.10.2020. We now proceed to consider the prayer of the Petitioner as regards the adoption of tariff under Section 63 of the Act in respect of the Wind Solar Hybrid Power Projects discovered pursuant to the competitive bid process carried out in terms of the above Guidelines issued by the Government of India.

11. 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.”***

12. 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 has been followed in the determination of such tariff.



13. The Ministry of New and Renewable Energy, Government of India has issued the Hybrid Guidelines under Section 63 of the Act on 14.10.2020, which were further amended by OM dated 23.7.2021. The salient features of the Hybrid Guidelines are as under:

(a) The Guidelines are applicable for the procurement of power from the Hybrid Power Projects having individual size of 50 MW and above at one site with minimum bid capacity of 50 MW through a tariff based competitive bidding to be conducted by the procurers which includes distribution licensees or intermediary procurers. The rated power capacity of one resource (wind or solar) shall be at least 33% of the total contracted capacity.

(b) The solar and wind power projects may be located at same or different nearby locations. The minimum capacity to be injected at each injection point shall be 50 MW. Storage may be added to the hybrid power project.

(c) The Procurer shall prepare the bid documents in accordance with the Guidelines and any deviations from the Guidelines need to be approved by the Appropriate Commission.

(d) Bids shall be for a minimum 50 MW project at one site. The procurer may also choose to specify the maximum capacity that can be allotted to a single bidder including its affiliates. The maximum capacity for a single bidder or company or group of companies may be fixed by the procurer keeping in mind factors such as the economies of scale, land availability, expected competition and need for development of the market.

(e) For procurement of wind-solar hybrid power, the tariff quoted by the bidder shall be the bidding parameter. The procurer may select either of the following kinds of tariff-based bidding: (a) fixed tariff in Rs./kWh for 25 years or more, or (b) escalating tariff in Rs./kWh with the pre-defined quantum of annual escalations fixed in Rs./kWh and number of years from which such fixed escalation will be provided.

(f) 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 a part of the PPA shall include, *inter-alia*, the PPA period, Capacity Utilization Factor, Repowering, Payment Security, Payment Security by intermediary procurer to the hybrid power generator, revolving Letter of Credit and State Government guarantee, Change in Law, Force Majeure, Off-take constraints due to Back down, Event of Default and consequences thereof.

(g) Intermediary procurer shall provide payment security to hybrid power generator through revolving Letter of Credit of an amount not less than one month average billing and Payment Security Fund for at least three month's billing of all the projects tied up with such fund. For the purpose of this Payment Security Fund, the intermediary procurer may collect Rs.5 lakh/MW from the hybrid power generator(s).

(h) Discoms 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(s) under consideration and the State Government Guarantee or the Tri-Partite Agreement.

(i) Procurer shall call the bids adopting a single stage bidding process to be conducted through the electronic mode (e-bidding). The Procurer may adopt e-reverse auction. For this purpose, e-procurement platforms with a successful track record and with adequate safety, security, and confidentiality features will be used.

(j) The bidding documents including the RfS and draft PPA shall be prepared by the Procurer in consonance with these Guidelines. RfS notice shall be published on the Central Public Procurement Portal website and SECI's website to accord wide publicity. Standard documentation to be provided in the RfS stage shall include technical criteria, financial criteria, net worth, liquidity, quantum of earnest money deposit, and compliance of laws by foreign bidders.

(k) The Procurer shall constitute a 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. The price bid shall be rejected, if it contains any deviation from the bid conditions.

(l) Bidder shall submit a non-refundable processing fee as specified in the RfS, separate technical & 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.

(m) The comparison of bids shall be on the basis of the bidding criteria as specified in the RfS, i.e. the fixed tariff or the first-year tariff. Ranking of the bidders will start from the bidder quoting the "lowest tariff (L1). The selection of all successful bidders would be on bucket filling approach starting with L1 till entire capacity for which the bid has been called for is full or the capacity corresponding to the upper limit for the band for the L1 tariff is reached, whichever is earlier.

(n) After conclusion of the bidding process, the Evaluation Committee constituted for evaluation of RfS bids shall critically evaluate the bids and certify that the bidding process and the evaluation has been conducted in conformity with the provisions of the RfS.

(o) The PPA shall be signed with the successful bidder/ project company or an SPV formed by the successful bidder. After execution of the PPA, the Procurer shall disclose the name(s) of the successful bidder(s) and the tariff quoted by them together with breakup into components, if any.

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

15. The Petitioner has been designated as the nodal agency for the implementation of MNRE Schemes for setting up inter-state Transmission Systems connected/ State specific wind/ solar power/ wind-solar hybrid power projects, invite bidding under tariff-based competitive bidding process, entering into PPAs with developers at the tariff discovered in the competitive bid process, and enter into PSAs with the distribution

licensees to enable them to fulfil their Renewable Purchase Obligations under Section 86(1)(e) of the Act. SECI acts as an intermediary agency in the purchase and sale of power under the PPAs and PSAs on a back-to-back basis.

16. The Hybrid Guidelines provide the framework for long-term procurement of wind-solar hybrid power at a tariff to be determined through a transparent process of bidding by the procurer(s) from ISTS wind-solar hybrid power projects having minimum size at one site of 50 MW. As per the Hybrid Guidelines, SECI, in its capacity of intermediary procurer, invited the proposal for setting up of the ISTS Wind-Solar Power Projects on pan India basis, on a “Build, Own and Operate” basis for an aggregate capacity of 1200 MW and for the procurement of Wind-Solar Hybrid power from the Projects being set-up in relation thereto. As per the arrangement, SECI is to procure the power by entering into the PPAs with the successful bidders with back-to-back PSAs for the sale of power to the distribution licensees.

17. The key milestones in the bidding process were as under:

<b>Sr. No.</b>	<b>Particular</b>	<b>Details</b>
1	Date of Publication of the Tender	22.10.2021
2	Date of Pre-Bid Meeting	01.11.2021
3	Document Sale Start Date	22.10.2021
4	Document Sale End Date	04.01.2022
5	Last date of Bid Submission	04.01.2022
6	Last date of submission of Bid (Hard Copy)	06.01.2022
7	Date of opening of Bid	07.01.2022
8	Opening of Financial Bid	26.04.2022
9	e-Reverse Auction Conducted	05.05.2022
10	Issuance of Letters of Award (LoAs) to successful bidders	12.07.2022

18. On 22.10.2021, SECI issued a Request for Selection document, along with the

draft PPA and the PSA documents for setting up 1200 MW ISTS-connected Wind Solar Hybrid Power Projects (Tranche-V). The proposal was to establish the ISTS-connected Wind-Solar Hybrid Power projects on a “Build Own Operate” basis for an aggregate capacity of 1200 MW.

19. As per Clause 9.4 of the Hybrid Guidelines, SECI/Procurer was required to publish the RfS notice on the Central Public Procurement Portal (CPPP) website and its own website to accord wide publicity. SECI, however, has indicated that it was unable to publish the RfS Document on the e-publishing system of the Government of India due to technical issues and has placed on record the correspondence exchanged with the technical help desk of the e-publishing system regarding the issues faced by SECI. We have perused the communications, and keeping in view the technical issues faced by SECI in publishing the RfS document on the CPPP website, we accept SECI’s contention that it was unable to meet the specific requirements under the provisions of the Hybrid Guidelines.

20. The Bid Evaluation Committee (BEC) comprising the following was constituted for opening and evaluation of bids on 22.10.2021:

<b>Tender</b>	<b>Dept.</b>	<b>Offline and Online Techno- Commercial and Financial Bid Opening</b>	<b>Techno-Commercial and Financial evolution and post-e-RA recommendation</b>
1200 MW ISTS-connected Wind-Solar Hybrid Power Projects (Tranche-V)	PS	Shri Alok Singh, Dy. Manager/Muneeba V, Sr. Engineer	Shri Alok Singh, Dy. Manager/P. Shri Venkatesan, Sr. Manager
	Contracts	Shri Jayansh Gaur, Sr. Engineer/ Swapnil Gandhi, Sr. Engineer	Shri Pratik Prasun, Manager

	Finance	Shri Janeet Pal Singh, Dy. Manager/ Mohit Singhal, Sr. Accounts Officer	Ms. Jyoti, Dy. Manager
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21. The last date of submission of the bid was 4.1.2022 and the technical part of the bid was opened on 7.1.2022. Response to RfS was received from the thirteen bidders and all of them met the technical criteria and consequently, were found to be qualified for opening of financial bid. On 26.4.2022, financial bids of thirteen technically qualified bidders were opened on the ISN ETS e-bidding portal in the presence of member of Bid Evaluation Committee. As per the eligibility criteria mentioned in the RfS document, twelve bidders for aggregating 4220 MW were shortlisted for e-reverse auction.

22. The E-reverse auction was carried out on 5.5.2022 on the ISN ETS e-bidding portal. After completion of an e-reverse auction, the following were declared as the successful bidders:

Sr. No	Bidder's Name	Bidder's Quantity (MW)	Tariff (INR/kWh)	Awarded capacity (MW)
1	TP Saurya Limited	600	2.53	600
2	AMP Energy Green Private Limited	120	2.53	120
3	NTPC Renewable Energy Limited	450	2.53	450
Total Awarded Capacity (MW)				1170

23. After the conclusion of the e-reverse auction and the determination of the tariff, on 12.7.2022, SECI issued a Letter of Award to three selected bidders as under:

- i) Letter of Award issued to TP Saurya Limited:

Allotted project ID	Project Capacity (MW)	Project Location (s)	Inter Connection Point (s) Details	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
HPD-ISTS-T5-TPSL-P1-600 MW	600 (Solar PV: 400 MW & Wind: 200 MW)	Solar: Amargatti & Bevinakatti, Gadag, Karnataka  Wind: Shalwadi, Gadag, Karnataka	Solar: Gadag 220/400 kV  Wind: Gadag 220/400 kV	2.53	Rupees Two and fifty-three paisa only

ii) Letter of Award issued to NTPC Renewable Energy Limited

Allotted project ID	Project Capacity (MW)	Project Location (s)	Inter Connection Point (s) Details	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
HPD-ISTS-T5-NTPCR-EL-P1-450 MW	450 (Solar PV: 300 MW & Wind: 150 MW)	Solar: Dist. Bikaner, Rajasthan  Wind: Dist. Kutch, Gujarat	Solar: ISTS Substation, Bikaner, Rajasthan at 220 kV  Wind: ISTS Bhuj Sub-Station, Kutch, Gujarat	2.53	Rupees Two and fifty-three paisa only

iii) Letter of Award issued to AMP Energy Green Private Limited

Allotted project ID	Project Capacity (MW)	Project Location (s)	Inter Connection Point (s) Details	Applicable Tariff (INR/kWh) in figures	Applicable Tariff (INR/kWh) in words
HPD-ISTS-T5-AMPEG-PL-P1-120 MW	120 (Solar PV: 110 MW & Wind: 39.9 MW)	Village-Balasar & Lakha Tehsil-Sheo, District-Barmer, State-Rajasthan	220 kV level at 400/220 kV ISTS Fatehgarh-IV GSS	2.53	Rupees Two and fifty-three paisa only

24. The relevant portion of the Letter of Award issued to one of the successful bidders, namely, TP Saurya Limited, is as under:

*“Sub: Selection of Hybrid Power Projects under RfS for setting up of 1200 MW ISTS-connected Wind-Solar Hybrid Power Projects (Tranche-V): Letter of Award for Hybrid Power Project of 600 MW (Project ID: HPD-ISTS-T5-TPSL-PI-600MW).*

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*Ref: This has reference to the following:*

- A. The "Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind Solar Hybrid Projects" vide Gazette Resolution dated 14.10.2020, including its subsequent amendments and clarifications, if any, issued by Ministry of New and Renewable Energy (MNRE) (herein referred to as "Guidelines");*
- B. The Request for Selection (RfS) document vide RfS no. SECI/C&P/IPP/13/0003/21-22 dated 22.10.2021 including draft Power Purchase Agreement (PPA), draft Power Sale Agreement (PSA) and subsequent amendments/ clarifications/ revisions/ notifications issued by Solar Energy Corporation of India Limited (SECI) and uploaded during the process of RfS on ETS portal (<https://www.bharat-electronictender.com>);*
- C. Your response to the RfS document uploaded on ETS portal vide Organization ID (ETS-IN- 2020-RS0000274) against RfS for Setting up of 1200 MW ISTS-connected Wind-Solar Hybrid Power Projects (Tranche-V);*
- D. Your Final tariff (INR/kWh) at the end of the e-Reverse Auction conducted on ISN-ETS portal on 05.05.2022 for the referred RfS for selection of 1200 MW ISTS-connected Wind- Solar Hybrid Power Projects (Tranche-V).*

*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:*

<i>Allotted project ID</i>	<i>Project Capacity (MW)</i>	<i>Project Location (s)</i>	<i>Inter-connection Point (s) Details</i>	<i>Applicable Tariff (INR/kWh) in figures</i>	<i>Applicable Tariff (INR/kWh) in words</i>
<i>HPD-ISTS-T5-TPSL-P1-600 MW</i>	<i>600 (Solar PV: 400 MW &amp; Wind: 200 MW)</i>	<i>Solar: Amargatti &amp; Bevinakatti, Gadag, Karnataka  Wind: Shalwadi, Gadag, Karnataka</i>	<i>Solar: Gadag 220/400 kV  Wind: Gadag 220/400 kV</i>	<i>2.53</i>	<i>Rupees Two and fifty-three paise only</i>



It is to be noted that as per the provisions of the RfS, the HPD 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 Wind-Solar Hybrid 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.

- 1.0 The applicable tariff as mentioned above for power generated from the proposed Wind- Solar Hybrid Power Project for the term of Power Purchase Agreement (PPA) to be entered into between Project Company or the Hybrid Power Developer (HPD) and M/s SECI, for the Project, shall be firm for the entire term of the PPA.
- 1.1 The HPD will be free to avail fiscal incentives like Accelerated Depreciation, Concessional Customs and Excise Duties, Tax Holidays, etc. as available for such projects. No claim shall arise on SECI for any liability if the HPD 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 controlling 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 not less than 51% of the voting rights and paid-up share capital in the Company) of the Project Company of the HPD shall not change until 01 (one) year after the COD of the Project, except with 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 51% 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 01 (one) year after COD.
- 1.5 In case of Projects being implemented through SPVs, the successful Bidder executing the project, 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 01 (one) 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 1 (one) year after COD, 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.
- 1.6 The HPD shall pay to SECI, Success Charges of Rs. 1.00 lakh/ MW/ project +

18% GST within 30 days of issuance of this Letter of Award (LoA) or the date at least 07 days prior to the date of signing of PPA (PPA signing date to be intimated by SECI), whichever is earlier, in line with Clause 19.1 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 17.19 Lakh/ MW/ Project shall be submitted by the HPD on or before 70 days subsequent to issuance of LoA or 07 days prior to signing of PPA, whichever is earlier, in line with Clause 18.1 of the RfS.

- 1.7 PPA will be executed between SECI and the HPD 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 project breakup for the cumulative capacity quoted in the Covering Letter, may be changed by the HPD subsequent to issuance of LoA up to the date as on 30 days from issuance of LoA. For an individual Project, any modification in the rated capacities of wind and solar components in the Project, shall be intimated to SECI within 30 days of issuance of LoA. Both the above parameters will remain unchanged, thereafter. The PPA will remain in force for a period of 25 years from the Scheduled Commissioning Date (SCD).
- 1.9 The HPD will have to submit the required documents as mentioned below to SECI within 70 days from 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 Hybrid Power Developer.
  - 2) The details of promoters and their shareholding in the HPD, 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 HPD highlighting the object clause related to generation of Power/ Energy/ Renewable Energy/ Solar/ Wind 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 51% 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.
  - 5) Copy of Board Resolution for authorization of signing of PPA and subsequent relevant documents.

Further, the PPA shall be signed only upon receipt of the Success Charges and total Performance Guarantees/ Payment on Order Instrument of requisite value. In case SECI is not able to enter into a PSA to sell power from the awarded Projects to DISCOMs or bulk consumers within 6 months from issuance of LoAs, these Projects will be cancelled. Further, in case of signing of PSA for partial capacity until the deadline as mentioned before, the provisions as stated in

*Clause 44 of the RfS shall be applicable.*

- 1.10 *SECI shall have the right to verify original documents of the HPD 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 delays on the part of the HPD 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, the Effective Date of the PPA shall then be the date of signing of PPA.*
- 1.11 *In case, the SECI offers to execute the PPA with the HPD and the selected Bidder refuses to execute the PPA within the stipulated time period, then the Bank Guarantee equivalent to the amount of the EMD shall be encashed by SECI from the Bank Guarantee available with SECI (i.e. EMD or PBG) as liquidated damages not amounting to penalty, the selected Project shall stand cancelled and the selected Bidder expressly waives off its rights and objections, if any, in that respect.*
- 1.12 *The HPD shall meet financial closure requirements for the Project in line with clause 22 of the RfS document, within 12 (twelve) months from the Effective Date of the PPA. Accordingly, the HPD shall furnish the documents pertaining to compliance of financial closure as per the above provisions.*
- 1.13 *The HPD/Project Company shall achieve commissioning of full capacity of the Project within 24 months from the Effective Date of the PPA as per the conditions stipulated in Clause 9 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 HPD as per the above provisions.*
- 1.14 *You are requested to make it convenient for signing of Power Purchase Agreement (PPA) as per clause 21 of RfS, failing which, provisions as per Clause 17 and Clause 21 of the RfS shall be applicable.*
- 1.15 *All disputes arising out of and/ or in connection with the selection of Wind-Solar Hybrid Power Projects under the said RfS and execution of PPA 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 SECI within 07 days from date of this LoA.*

25. Based on the request of the distribution licensees/ buying utilities, 1070 MW was allocated to MPSEZ Utilities Limited, and 100 MW was allocated to CESC Limited. Accordingly, SECI has entered into the PSA dated 5.1.2023 with MPSEZ Utilities



Limited and the PSA dated 11.1.2023 with CESC Limited.

26. SECI has further indicated that it had undertaken two deviations in the Bid documents (RfS & PPAs) from the provisions of the Hybrid Guidelines. Firstly, in Clause 10.1 of the RfS (which corresponds to Article 4.5.2 of PPAs), which deals with the “*Delay in Commissioning on Account of Delay in LTA Operationalization*”, SECI did not include therein a specific provision as contained in Clause 17.4 of the Hybrid Guidelines (as incorporated by Amendment dated 23.7.2021) which provided that “*The ISTS/InSTS substation at the Delivery Point and the power evacuation and transmission infrastructure of the ISS/InSTS network, with which the generator applies for connectivity, should be scheduled for completion on or before the SCD of the concerned hybrid project so as to match the two timelines*”. The relevant clause of the Hybrid Guidelines and the RfS read as under:

Hybrid Guidelines:

*“17.4 Delay in Commissioning on account of delay in LTA Operationalization:*

*Long Term / Medium Term / Short Term Access shall be required to be submitted by the Generator prior to commissioning of the Project. However, for sale of power to procurer from SCD, the hybrid power generator shall have LTA. The ISTS/INSTS substation at the Delivery Point and the power evacuated and transmission infrastructure of the ISTS/InSTS network, with which the generator applies for connectivity, should be scheduled for completion on or before the SCD of the concerned hybrid project so as to match the two timelines. Subject to adherence to this, subsequent to grant of connectivity, in case there is a delay in grant/ operationalization of LTA by the CTU/ STU and/or there is a delay in readiness of the ISTS / InSTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS /InSTS network until SCD of the Project, and it is established that:*

*i. The Generator has complied with the complete application formalities as per the Connectivity Procedure and the ISTS/InSTS substation at the Delivery Point and the power evacuation and transmission infrastructure of the ISTS/InSTS network, with which the Generator had applied for Connectivity, was scheduled for completion on or before the SCD of the concerned hybrid project.*

*ii. The Generator has adhered to the applicable Procedure in this regard as notified by the CERC/SERC/JERC/CTU/STU, and*

*iii. The delay in grant of connectivity/ LTA by the CTU/ STU and/or delay in readiness of the ISTS/ InSTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS/ InSTS network, is a factor solely attributable to the STU/ CTU/ transmission licensee and is beyond the control of the Generator;*

*The above shall be treated as delays beyond the control of the Generator and such Projects shall be eligible for suitable time extension in their SCD."*

**RfS:**

*"10. Delay in Commissioning on Account of Delay in LTA Operationalization*

*10.1 Long Term Access (LTA) shall be required to be submitted by the HPD prior to commissioning of the Project. Subsequent to grant of connectivity, in case there is a delay in grant/ operationalization of LTA by the CTU and/or there is a delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network until SCD of the Project, and it is established that:*

*(i) The HPD has complied with the complete application formalities as per Clause 7.5 above,*

*(ii) The HPD has adhered to the applicable Procedure in this regard as notified by the CERC/CTU, and*

*(iii) The delay in grant of connectivity/LTA by the CTU and/or delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network, is a factor attributable to the CTU/ transmission licensee and is beyond the control of the HPD;*

*The above shall be treated as delays beyond the control of the HPD and SCD for such Projects shall be revised as the date as on 60 days subsequent to the readiness of the Delivery Point and power evacuation infrastructure and /or operationalization of LTA. Decision on requisite extension on account of the above factor shall be taken by SECI.*

*In case of delay in commissioning of Project due to reasons beyond the reasonable control of the HPD, SECI may extend the SCD after examining the issue on a case to-case basis...."*

A corresponding clause to clause 10.1 of the RfS in the PPAs appears in Article 4.5.2, which for the sake of brevity is not reproduced herein.

27. SECI has, however, submitted that aforesaid deviation had been incorporated in the Bid Documents pursuant to the approval of the MNRE as per the Minutes of the Meeting dated 21.10.2021 of a meeting held on 1.10.2021. SECI has further stated that amendment to the above effect also came to be formally incorporated in the Hybrid



Guidelines by Amendment dated 2.11.2022 whereby Clause 17.4 of the Hybrid Guidelines was further modified and the above portion came to be removed. The relevant extract of the Minutes of Meeting dated 21.10.2021 reads as under:

“3....

*xii) If in case, the PSA is signed by REIA and the transmission bid is awarded later, then REIA to give extension to such extension to such RE projects in order to match the timeline with SCOD of the transmission system.*

*[Action: SECI/NTPC/NHPC]”*

28. Secondly, SECI has also taken a deviation from Clause 9.2.a of the RfS, as introduced by Amendment No.3 to the RfS, which deals with the timeline for achieving the Scheduled Commissioning Date for the full capacity of the Project. While the Hybrid Guidelines, at the relevant point of time, required the Projects to achieve the commissioning within 18 months from the date of execution of the PPA, the Bid documents (RfS & PPAs) required the Projects to achieve the commissioning of full capacity within 24 months from the effective date of the PPAs. The relevant extract of the clauses of the Hybrid Guidelines and RfS reads as under:

**Hybrid Guidelines:**

*“17.3 Commissioning Schedule:*

*(i) The projects shall be commissioned, within a period of 18 (eighteen) months from the date of execution of the PPA. ....”*

**RfS**

*“9.2 Commissioning Schedule and Liquidated Damages Not Amounting to Penalty for Delay in Commissioning*

*a. The Scheduled Commissioning Date (SCD) for commissioning of the full capacity of the Project shall be the date as on 24 months from the Effective Date of the PPA (for e.g. if Effective Date of the PPA is 07.01.2022 then SCD shall be 07.01.2024).”*

Correspondingly, the Scheduled Commissioning Date or SCD of the Projects in the PPAs, at Article 1.1 – Definitions, is computed as 24 months from the Effective Date.



29. SECI has, however, submitted that aforesaid deviation had been incorporated in the Bid Documents pursuant to the approval of the MNRE as per the Minutes of the Meeting dated 8.11.2021 which was held on 5.10.2021. SECI has further stated that amendment to the above effect also came to be formally incorporated in the Hybrid Guidelines by the Amendment dated 9.3.2022 whereby Clause 17.3 of the Hybrid Guidelines was amended and the timeline for achieving the commissioning of the Project was increased to 24 months from the date of execution of the PPA or the PSA, whichever is later. The relevant extract of the Minutes of Meeting dated 8.11.2021 reads as under:

*“4.2. Matching the Scheduled Commercial Operation Date of RE generations and Associated Transmission System*

*Secretary (Power) pointed out that with the introduction of General Network Access, network expansion would be carried out based on GNA requirement of drawal and injection without any LTA requirement. LTA/MTOA etc. will get converted to General Network Access. There is an inherent mismatch of 6-7 months between RE commissioning and ISTS commissioning. It was agreed that CEA and CTU while doing the transmission planning for RE generators, should also engage with MNRE, so that transmission system for RE generation are planned appropriately. In order to match the SCOD of RE generation with SCOD of Transmission System, the SCOD of RE generators should be 24 months instead of present 18 months.*

*[Action: SECI/MNRE]”*

30. SECI has submitted that both the above deviations from the provisions of the Hybrid Guidelines as incorporated in the Bid documents were as such approved by the MNRE, as indicated above, under its power to issue clarification and modification to the Guidelines under Clause 25 of the Hybrid Guidelines. We have considered the submissions made by SECI. Both the deviations undertaken by SECI from the provisions of the Hybrid Guidelines have been pursuant to the approval granted by MNRE in the Meetings held under the Chairmanship of Hon'ble Minister, MNRE on

1.10.2021 and 5.10.2021 and the minutes issued in relation thereto on 21.10.2021 and 8.11.2021 respectively. In the past, the Commission has considered the deviations undertaken by SECI pursuant to the approval by the Ministry of Power and/or Ministry of New & Renewable Energy under their power to issue the clarification and/or modification to the Guidelines. Besides, both the above deviations were incorporated in the RfS at the stage of the calling of the bids from the prospective bidders (while modified clause 10.1 was incorporated at the time of issuance of RfS itself and clause 9.2.a was modified by Amendment 3 to RfS dated 21.12.2021) and none of them were incorporated after the bid deadline. Therefore, the bidders had sufficient knowledge of such clauses and also had an opportunity to place/ premise their bids by factoring into such clauses.

31. As per the Hybrid Guidelines, the Evaluation Committee is required to certify that the bidding process and the evaluation have been conducted in conformity with the provisions of the RfS. Accordingly, SECI has submitted a Conformity Certificate certifying that after the conclusion of the submission of the bid, the BEC constituted for the bid evaluation, and conducted the techno-commercial as well as financial bid evaluation in conformity with the provisions of the RfS. Additionally, SECI has also furnished a Conformity Certificate to the effect that the applicable Guidelines and amendments /clarification thereof, if any, issued by the Government of India read with Minutes of Meeting dated 21.10.2021 and 8.10.2021 held on 1.10.2021 and 5.10.2021, respectively, under the Chairmanship of the Hon'ble Minister of Power & NRE, were followed for the bidding process in the above tender and no deviation was taken from the Guidelines read with aforementioned Minutes, in the RfS Documents for the above



tender. The relevant extract of the aforesaid Conformity Certificates reads as under:

Conformity Certificate-1

*“With respect to the RfS no. SECI/C&P/IPP/13/0003/21-22 dated 22.10.2021, it is hereby declared as follows:*

1. *Applicable Guidelines and amendments/clarifications thereof, if any, issued by Government of India, read with the Minutes of Meeting dated 21.10.2021 and 08.11.2021 held on 01.10.2021 and 05.10.2021, respectively, under the Chairmanship of Hon'ble Minister of Power & NRE, were followed for the bidding process in the above tender and no deviation was taken from the Guidelines, read with aforementioned Minutes, in the RfS documents for the above tender. The details of the provisions linked to the above referred Minutes are brought out as follows:*

- a. *With regard to the provision contained in Clause 10.1 of the RfS, the original provision in the Guidelines issued by the Ministry of New and Renewable Energy, Government of India ('MNRE') was amended as per the Minutes of the Meeting dated 21.10.2021 of the meeting held at MNRE on 01.10.2021. A copy of the Minutes is attached (Annexure-A). Subsequently, the same was formally notified by the MNRE vide amendment in the Guidelines dated 02.11.2022. The notification of amendment is attached (Annexure-B).*
- b. *With regard to the provision contained in Clause 9.2.a of the RfS as amended by S. No. 1 of Amendment-03, the original provision in the Guidelines issued by the Ministry of New and Renewable Energy, Government of India ('MNRE') was amended as per the Minutes of the Meeting dated 08.11.2021 of the meeting held at MNRE on 05.10.2021. A copy of the Minutes is attached (Annexure-C). Subsequently, the same was formally notified by the MNRE vide amendment in the Guidelines dated 09.03.2022. The notification of amendment is attached (Annexure-D).”*

Conformity Certificate-2

*“With respect to the RfS no. SECI/C&P/IPP/13/0003/21-22 dated 22.10.2021, it is hereby declared as follows:*

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

32. In view of the aforesaid discussions, it emerges that the selection of the successful bidders has been done and the tariff of the Wind-Solar Hybrid Power Projects has been discovered by the Petitioner, SECI through a transparent process of competitive bidding in accordance with the Guidelines issued by the Ministry of New

and Renewable Energy, Government of India under Section 63 of the Act read with the Minutes of Meeting dated 21.10.2021 and 8.11.2021 for the Meetings held on 1.10.2021 and 5.10.2021 respectively. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff for the Hybrid Power Project, as agreed to by the successful bidders, and for which PPAs have 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 PPAs and the PSAs as under:

<b>Sr. No</b>	<b>Name of the Successful Bidder</b>	<b>Project Company of Successful Bidder</b>	<b>Date of PPA signing &amp; Contracted Capacity (MW)</b>	<b>Applicable Tariff (Rs./kWh)</b>
1	TP Saurya Limited	-	31.03.2023 (600 MW)	2.53
2	AMP Energy Green Private Limited	AMP Energy Green Ten Private Limited	12.01.2023 (120 MW)	2.53
3	NTPC Renewable Energy Limited	-	02.02.2023 (450 MW)	2.53
<b>Total</b>			<b>1170 MW</b>	

33. Article 10.3 of the PPAs provides as under:

*“10.3 Payment of Monthly Bills*

*10.3.1 Subject to the provision of Article 10.3.4, SECI shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the HPD, as shall have been previously notified by the HPD 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 HPD, 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 HPD shall open a bank account (the "HPD's Designated Account") for all Tariff*

*Payments (including Supplementary Bills) to be made by SECI to the HPD, 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 HPD to SECI, if any, and notify the HPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. SECI and the HPD shall instruct their respective bankers to make all payments under this Agreement to the HPD'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."*

34. 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 HPD, 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 HPD in accordance with this Article.*

*10.4.2 Before the start of supply, SECI shall, through a scheduled bank open a Letter of Credit in favour of the HPD, 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 110% of the estimated average monthly billing;*
- ii) for each subsequent Contract Year, equal to 110% of the average of the monthly billing of the previous Contract Year.*

*10.4.3 Provided that the HPD shall not draw upon such Letter of Credit prior to 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 HPD, 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 Due Date, then, subject to Article 10.4.6 & 10.5.2, the HPD 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 HPD and;
- ii) a certificate from the HPD 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;

35. Regulation 9(10) 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:

*"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."*

36. The above provisions provide for the 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.

37. 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:..."*

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

39. 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."*

40. 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."*

41. The above two provisions are exceptions to the main provision as regards trading margin. The 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 HPD, 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.

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

43. Furthermore, Respondent Nos. 1, 3, 2 & 4, vide their reply, have sought to place on record certain Change in Law events, namely, the PIR Amendments, 2022 &

2023 (except Respondent No.3) and WGR, 2022, which have occurred after the cut-off date and have an adverse impact on tariff as proposed to be adopted in the present proceeding. The Respondents have submitted that in terms of the regulatory framework in place, there is no prohibition upon the Appropriate Commission to adjudicate on a claim of Change in Law, in tariff adoption proceeding under Section 63 of the Act and the Appellate Tribunal for Electricity (APTEL) in its judgment dated 12.10.2021 in Appeal No. 251 of 2021 (“Green Infra Renewable Energy Ltd. v Rajasthan Electricity Regulatory Commission and Ors.”) (“Green Infra Judgment”) has held that it is a statutory duty of the Appropriate Commission under Section 86(1)(b) of the Act to not to defer a Change in Law claim which has occurred after the submission of the bid and closure of the bid process but before the adoption of the bid discovered price in order to ensure regulatory certainty and the actual impact/ extent of the relief admissible of the Change in Law event can be determined at the appropriate stage. The said views of APTEL were again reiterated in Appeal Nos. 344 of 2021 and 9 of 2022 titled as “Green Infra Renewable Energy Ltd. v. Rajasthan Electricity Regulatory Commission & Ors.” and batch when the State Commission in that case, upon being directed by the APTEL to adjudicate on Change in Law claims restricted itself to only three claims that were before the APTEL and refrained from adjudicating upon the other Change in Law claims.

44. *Per contra*, SECI has submitted that reliance placed by the Respondents on the APTEL’s Green Infra Judgment is misplaced as the same is distinguishable on the facts of the case. In the said matter, the PPA contained a specific clause in the Change in Law provisions providing that certain events will be treated as Change in Law subject to

the recognition of the said provision by the Commission at the stage of adoption. However, there is no such provision in the PPAs executed with the Respondents herein.

45. We have considered the submissions of the Petitioner and the Respondents. It is pertinent to mention that the APTEL in its judgment dated 31.7.2023 in Appeal No 625 of 2023 & IA No 1677 of 2023 has observed that the Appellant, Tata Power Delhi Distribution Ltd ('TPDDL') in the capacity of a Respondent could not have filed an IA seeking relief in a Petition filed by the 2<sup>nd</sup> Respondent i.e. SBSR Power Cleantech Eleven Private Limited (in short "SBSR"). The Appeal was filed by the SBSR before the APTEL challenging the order of the Commission dated 5.6.2023 in IA No 3 of 2023 filed by the TPDDL as Respondent, in Petition No. 192/MP/2021. The APTEL allowed TPDDL to withdraw the IA No 3 of 2023 filed before this Commission with liberty to file an independent Petition seeking appropriate relief observing that such a relief could be sought only by filing an independent Petition and not by way of an I.A. The relevant portion of the judgment is extracted as under

*"It does appear that the order under appeal came to be passed by the CERC, at the behest of the Appellant, in an IA filed by them in a Petition filed by the 2<sup>nd</sup> Respondent. Such a relief could have been sought by the Appellant only by filing an independent Petition, and not by way of an I.A. in the Petition filed by the 2<sup>nd</sup> Respondent. The fact however remains that, as long as the order under appeal passed by the CERC, continues to remain in force, the Appellant would be disabled thereby from even filing an independent petition questioning the action of the 2<sup>nd</sup> Respondent in seeking to have the PPA, between them on the one hand and SECI on the other, truncated from the original capacity of 300 MW to 150 MW.*

*.....As we find force in the submission of Mr. Hemant Singh, learned Counsel for the 2<sup>nd</sup> Respondent, that the Appellant herein could not have sought the relief in an IA filed before the CERC, (in which the order under appeal was passed), in a Petition filed not by them but by the 2<sup>nd</sup> Respondent, the Appellant is permitted to withdraw the IA filed by them before the CERC, with liberty to file an independent petition before the CERC seeking appropriate relief.*

*The appeal is accordingly disposed of. "*



46. The present Petition has been filed by SECI praying for the adoption of tariff discovered in the tariff-based competitive bid process for the aggregate 1170 MW capacity from Wind-Solar Hybrid power projects and approval of trading margin. We have gone through the prayers made by the Petitioner, SECI in the present Petition. There is no prayer with regard to the adjudication of Change in Law claims by SECI. The adjudication of Change in Law claims has been sought by the Respondent Nos. 1, 2, 3 & 4, vide their respective replies. Therefore, in light of the APTEL judgment quoted above, the Respondent Nos. 1, 2, 3 & 4 cannot seek Change in Law relief in the Petition filed by SECI. Needless to say, the Respondents are at liberty to approach the Commission for adjudication of Change in Law claims through separate Petitions in accordance with law.

47. The Petition No. 213/AT/2023 is disposed of in terms of the above.

**Sd/-**  
**(P.K. Singh)**  
**Member**

**Sd/-**  
**(Arun Goyal)**  
**Member**

**Sd/-**  
**(I.S. Jha)**  
**Member**

**Sd/-**  
**(Jishnu Barua)**  
**Chairperson**

