

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 59/AT/2024
along with IA No.15/2024**

**Coram:
Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of Order: 2nd March, 2024

In the matter of

Petition under Section 63 of the Electricity Act, 2003 for adoption of tariff for Solar PV Power Projects (Tranche-IX) 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,
6th Floor, Plate-B, NBCC Office Block Tower-2,
East Kidwai Nagar,
New Delhi-110023

.....Petitioner

Vs

1. Solarpack Corporacion Tecnologica SA,
Avenida de Algorta 16, 3,
48992 Getxo-Vizcaya,
Espana, Spain

2. Punjab State Power Corporation Limited,
PSEB Head Office,
The Mall, Baradari,
Patiala- 147001, Punjab

3. Gorbea Solar Private Limited,
Level 1, Southern Park Building,
D-2 District Centre Saket,
New Delhi- 110017

.....Respondents

Parties Present:

Ms. Mandakini Ghosh, Advocate, SECI
Shri Rahul Ranjan, Advocate, SECI



Ms. Poorva Saigal, Advocate, PSPCL
Ms. Anumeha Smiti, Advocate, PSPCL
Shri Vishal Binod, Advocate, SCTS & GSPL
Shri Priyal Modi, Advocate, SCTS & GSPL

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 300 MW solar power projects (Tranche-IX) connected to 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 Solar PV Power Projects" (hereinafter referred to as 'the Guidelines') dated 3.8.2017 issued by the 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 capacity of remaining 300 MW (under Tranche-IX) from Solar Power Project on the terms and conditions contained in the Power Purchase Agreement signed with M/s Gorbea Solar Private Limited read with the Power Sale Agreement signed with Punjab State Power Corporation Limited in the present Petition after hearing of the parties [Table 10 @ para 10(xxvii)];*
- b. Approve Trading Margin of Rs.0.07/kWh as agreed to by Punjab State Power Corporation Limited in the signed PSA in terms of Regulation 8 (1) (d) of the Trading License Regulations, 2020;*
- c. Recognize that the impact of Change in Law in terms of Article 12.2.6 of the PPA and Article 8.2.6 of the PSA, on account of notifications/orders issued for change in BCD, GST & installation of bird diverters till the date of signing of Power Purchase Agreement (PPA) i.e. 15.01.2024, shall only be considered on actuals but limited to maximum of INR 0.29/kWh, subject to the fulfilment of the conditions, contained in the PPA and PSA;*
- d. Pass any other or further order which this Hon'ble Commission may deem fit and proper in the facts and circumstances of this case."*



Submission of the Petitioner

2. The Petitioner, SECI has submitted that in the capacity of intermediary agency, it issued the Request for Selection (“RfS”) along with the draft Power Purchase Agreement (“PPA”) and the draft Power Supply Agreement (“PSA”) for selection of the 2000 MW ISTS connected Solar Power Projects (Tranche-IX) as per the Guidelines and floated the same on the 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 meet the technical criteria fully. 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 the Letters of Awards. It is submitted that SECI had earlier filed Petition Nos. 211/AT/2021 and 245/AT/2022 under Section 63 of the Act before the Commission for the adoption of above 2000 MW Solar Power Projects. In the said matter, the Commission vide orders dated 8.3.2022 and 8.3.2023 held that the selection of the bidders and the tariff had 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 and 1400 MW for which the PPAs were signed with the Solar Power Developers for supply of the identified distribution licensees under the PSAs, and the Commission further granted liberty to SECI to approach the Commission for the adoption of tariff in respect of the balance capacity (300 MW) after such capacity is tied up under the PPAs and PSAs.

3. SECI has submitted that subsequent to the orders dated 8.3.2022 and 8.3.2023 in Petition Nos. 211/AT/2021 and 245/AT/2022 respectively, SECI has signed the PPA for the remaining balance capacity of 300 MW Tranche IX with the successful bidder, Respondent No.1, Solarpack Corporacion Tecnologica SA through its Project Company i.e. Respondent No. 3, Gorbea Solar Power Private Limited on 15.1.2024 following the PSA signed between SECI and the distribution licensee i.e. Punjab State Power Corporation Limited on 30.12.2023. SECI has submitted that the Project to be established by the Solar Power Developer is scheduled to be commissioned in the Financial Year (FY) 2024-25.

4. The Petitioner has also filed IA No. 15/2024, praying for an urgent listing of the matter. In the said application, the Petitioner has mainly indicated that the Scheduled Commissioning Date of the Project as defined under the PPA is 30.6.2025, and as per the extant regulatory framework, if the Solar Power Project declares the commercial operation on or before 30.6.2025, they are eligible for a waiver of ISTS charges for a period of 25 years starting from their commercial operation. Accordingly, in order to avoid the imposition of ISTS charges upon the parties on account of any delay in the adoption of tariff by this Commission, the Petitioner has requested for urgent listing of the Petition so that it may be heard and decided at the earliest.

Hearing dated 31.1.2024

5. The matter was heard on 31.1.2024; during the course of the hearing, learned counsel for the Petitioner submitted in addition to the adoption tariff, the Petitioner has also prayed for the recognition of the notifications/orders issued for the change in Basic Customs Duty, Goods and Service Tax and installation of Bird diverters till

the date of signing of the PPA, i.e. 15.1.2024 as Change in Law events and their impact will be considered on actual but limited to a maximum of Rs.0.29/kWh subject to the fulfilment of conditions contained in the PPA and PSA. Learned counsel submitted that the Commission, in its order dated 8.3.2023, has already recognized these Change in Law events, and insofar as limiting their impact up to a maximum of Rs. 0.29/kWh is concerned, the same has been agreed to by all the parties, including the Solar Project Developer and PSPCL, and clauses to this extent have also been incorporated in the PPA and PSA.

6. In response to the specific query of the Commission as to whether the cap of Rs. 0.29/kWh was incorporated in the PPAs and PSAs covered under Petition No. 245/AT/2023 and considered by the Commission in its order dated 8.3.2023, the learned counsel replied in negative. Learned counsel, however, added that the above incorporation has been agreed to among all the parties, and Respondent No.3, Solar Power Developer, has also filed an affidavit to this extent. Learned counsel also submitted that, as indicated, the PPA and PSA, as executed by the parties, also incorporate the clauses to this effect.

7. Learned counsel for Respondent, PSPCL, submitted that PSPCL supports the prayers made by the Petitioner. Learned counsel further submitted that the State Commission has also approved the procurement of 300 MW power under PSA dated 30.12.2023 with SECI. Learned counsel sought liberty to file a brief reply to the Petition.

8. Considering the submissions made by the learned counsel for the parties, the Commission reserved the matter for order while granting liberty to the parties to file their respective reply/ rejoinder, if any.

Reply & Rejoinders of parties:

9. The Respondent No. 3, Gorbea Solar Private Limited (GSPL), vide its affidavit dated 30.1.2024, has indicated its 'No Objection' towards the adoption of the tariff in the present case and mainly submitted that GSPL has no objection in relation to prayers (a)&(b) as sought by SECI in the present Petition. However, for prayer (c), it is clarified that in terms of Article 12.2.6 of the PPA, the impact of Change in Law up to Rs. 0.29/kWh is applicable only on account of the notifications/orders issued for change in Basic Customs Duty (BCD), Goods and Services Tax (GST) and additional cost relating to transmission line to be laid overhead with installation of bird diverters till the date of signing of the PPA i.e., on or before January 15, 2024, and not applicable to Change in Law events that may occur in the future. Further, as per Article 12.2.6 of the PPA, if undergrounding of transmission lines become applicable, then it would be treated as Change in Law over and above the cap of Rs. 0.29/kWh. With the said clarification, GSPL has no objection in relation to prayer (c) of the Petition.

10. Respondent No.2, Punjab State Power Corporation Limited (PSPCL), vide its affidavit dated 6.2.2024, has mainly submitted as under:

(a) On 11.12.2023, PSPCL filed a Petition bearing No. 68 of 2023 before the Punjab State Electricity Regulatory Commission ('State Commission') seeking approval of the power procurement of the 300 MW ISTS connected solar power from SECI at the tariff of Rs. 2.72/kWh (Rs. 2.36/kWh plus maximum impact of Change in Law – Rs. 0.29/kWh, on account of the Basic

Custom Duty and Goods & Services Tax, and SECI's trading margin of Rs. 0.07/kWh) for a period of 25 years. All impact on account of the Basic Custom Duty and GST over and above Rs. 0.29/kWh shall be borne by the Solar Project Developer ('SPD')- Respondent No. 3, herein, and all other Change in Law events shall be governed by the terms and conditions of the PPA and the PSA. Subsequently, during the proceedings, SECI submitted that, in addition to the waiver given on account of the Basic Customs Duty and GST, a waiver on the implications of the Change in Law on account of the installation of the Bird Diverters, up to a ceiling of Rs. 0.29/kWh has also been granted.

(b) On 27.12.2023, the State Commission passed the Order in Petition No. 68 of 2023 *inter-alia* holding as under:

"In view of the above, PSPCL's impugned proposal for procurement of 300 MW Solar Power from SECI for a period of 25 years at the discovered tariff of Rs. 2.36/KWh plus SECI's trading margin of Rs. 0.07/KWh is considered reasonable. The Commission notes that the impact of Change in Law on account of imposition/change in BCD & GST rates and the Hon'ble Supreme Court's GIB Order as already approved by CERC in case of projects under the same scheme, limited to a maximum of Rs. 0.29/KWh, can be considered reasonable in the prevailing market conditions and is hence allowed by the Commission, provided that:

- (i) No 'ISTS losses' shall be borne by PSPCL in view of the Respondent's submission that the same are not applicable in this scheme.*
- (ii) No 'ISTS Charge' shall be borne by PSPCL as the project is committed to be commissioned before 30.06.2025 i.e. i.e. the date up to which benefit of waiver of 'ISTS Charges' has been allowed by the Ministry of Power, GoI.*
- (iii) The trading margin of Rs.0.07/kWh agreed by the parties shall be allowable in terms of the CERC Trading Licence Regulations. In case SECI does not provide the escrow arrangement or irrevocable, unconditional and revolving letter of credit to the solar generators, the trading margin shall be limited to Rs. 0.02/kWh in term of Regulation 8(1)(d) & (f) of the *ibid* Regulations.*
- (iv) The impact of Change in Law on account of imposition/ change in BCD & GST rates and the Hon'ble Supreme Court's GIB Order, limited to a maximum of 0.29/KWh as agreed by the parties, shall be subject to the confirmation by PSPCL that the waiver for the same has not been given at any stage by the*

SPD/SECI in light of the CERC's observation reproduced in Para 1.5 above.

The Commission also wishes to point out that it does not approve the detailed terms and conditions of the 'PSAs/PPAs', which are to be decided by the contracting parties with mutual consent."

(c) In view of the above order and after incorporation of the relevant provision, on 30.12.2023, PSPCL executed a PSA with SECI for the purchase of 300 MW under Tranche IX at a trading margin of Rs. 0.07/kWh, which is in consonance with Regulation 8(1)(d) of the Central Electricity Regulatory Commission (Procedure, terms and conditions for grant of trading license and other related matters) Regulations, 2020. Thereafter, on 15.1.2024, SECI executed a PPA with Respondent No. 3.

(d) The tariff of Rs 2.36/kWh as discovered plus SECI's trading margin of Rs. 0.07/kWh and impact towards Change in Law on account of the BCD, GST & installation of Bird Diverters at actuals to be approved by this Commission upto a maximum of Rs. 0.29/kWh may be adopted by this Commission, and the terms of the PPA and PSA be approved accordingly.

11. No response/rejoinder has been filed by the Petitioner to the above reply/affidavit by Respondent Nos. 2 & 3.

Analysis and Decision

12. We now proceed to consider the prayers of the Petitioner as regards the adoption of tariff in respect of the solar power project(s) 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.

13. Under Section 63 of the Act, this Commission is required to examine whether the tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government. In the present

case, it is noted that in respect of the same bid process, i.e. bid process conducted by SECI for the selection of the 2000 MW ISTS connected Solar Power Projects under the RfS dated 20.3.2020 for Tranche IX, the Petitioner had earlier approached this Commission under Section 63 of the Act by way of Petition No. 211/AT/2021 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 already examined the aspect as to whether the tariff discovered under the RfS dated 20.3.2020 for Tranche IX had been through a transparent process of bidding in accordance with the provisions of the Guidelines and 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

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 bidder(s) ,and discovery of the tariff of the Solar Power Projects has been done by SECI under Tranche IX bid through a transparent

process of competitive bidding in accordance with Guidelines (read with ex-post facto approval of MNRE vide letter dated 1.3.2021) issued by the Ministry of Power, Government of India under Section 63 of the Act. However, keeping in view that at that point in time, SECI had executed the PPA only for 300 MW and the balance capacity was not tied up for want of identification of the distribution licensees/ buying utilities, the Commission restricted the adoption of tariff for such 300 MW only while granting liberty to SECI to approach the Commission for the 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.

14. Subsequent to the order dated 8.3.2022 of this Commission in Petition No.211/AT/2021, SECI executed the PPAs corresponding to the PSAs signed with the above Distribution Companies for an aggregate capacity of 1400 MW solar capacity out of balance of 1700 MW capacity under Tranche IX bid. On 25.7.2022, SECI filed a Petition No. 245/AT/2022 under Section 63 of the Act before this Commission for the adoption of the tariff of 1400 MW Solar Power Projects, which came to be decided by the Commission vide order dated 8.3.2023. In the said order, the Commission held as under:

“15

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 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 the 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
				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 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."

Thus, in the aforesaid order, the Commission restricted the adoption of tariff to the tune of 1400 MW for which the PPAs and PSAs have been entered into by SECI with the Solar Power Developers and the Distribution Licensees/Buying Utilities respectively. Since the capacity to the tune of 300 MW still remained untied under Tranche IX Bid, SECI was granted a liberty to approach the Commission for the adoption of such capacity as and when tied up under the PPAs and the PSAs.

15. Accordingly, SECI has now approached the Commission seeking the adoption of tariff for the individual power project(s) for the capacity of 300 MW (i.e. balance capacity under Tranche IX) upon SECI having tied up such capacity under the PPA with the successful bidder/its project company and the PSA with the Buying Utilities/ Distribution Licensees. The details of the PPA and the PSA as entered into by SECI subsequent to the Commission's order dated 8.3.2023 in Petition No. 245/AT/2022 are as under:

S. No.	Name of Successful Bidder	Project Company formed by the Successful bidder for execution of PPA	Date of PPA signing & Contracted Capacity (MW)	Applicable Tariff (INR/kWh)
1.	Solarpack Corporacion Technologica SA	Gorbea Solar Private Limited	15.01.2024 (300MW)	2.36

S. No.	Buying Entity	Date of PSA Signing	Capacity (MW)	Applicable Tariff to Buying Entity (Rs./kWh)
1.	Punjab State Power	30.12.2023	300 MW	Rs.2.36/kWh

	Corporation Limited (PSPCL)			[Tariff payable in respect of 300 MW of Solarpack] + Rs.0.07/kWh [Trading Margin]
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16. Keeping in view that the Commission in order dated 8.3.2022 in Petition No. 211/AT/2021 and order dated 8.3.2023 in Petition No. 245/AT/2022 has already observed that the selection of successful bidders and discovery of tariffs for the Solar Power Projects (under Tranche IX) have been through transparent process of competitive bidding in accordance with the Guidelines read with letter of MNRE dated 1.3.2021, we do not find any need again examine this aspect in the present case. It is further noted that neither Respondents during the course of the hearing nor vide their affidavits/replies have raised any objections with regard to the bid process as already examined by the Commission under the orders dated 8.3.2022 and 8.3.2023 and have, in fact supported the prayers of the Petitioner for the adoption of such tariff. Accordingly, we adopt the individual tariff for the Solar Power Project, as agreed to by the Successful Bidder and for which the PPA has been entered into by SECI on the basis of the PSA with the distribution licensee, which shall remain valid throughout the period covered in the PPA and PSA as under:

Successful Bidder	Project Company formed for execution of PPA	Date of PPA signing & Contracted Capacity (MW)	Applicable Tariff (INR/kWh)
Solarpack Corporacion Technologica SA	Gorbea Solar Private Limited	15.01.2024 (300MW)	2.36

17. Prayer (a) of the Petitioner is answered accordingly.

18. It is noticed that 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.”

19. 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;

20. 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.”

21. 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.

22. The Petitioner has also prayed to approve the trading margin of Rs. 0.07/kWh as agreed to by the Distribution Licensee in terms of the PSA with the Distribution Licensee. 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:...”

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

24. 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.”

25. 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.”

26. The above two provisions are exceptions to the main provision as regards the trading margin. Distribution Licensee has 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 an escrow arrangement or irrevocable, unconditional and revolving letter of credit to the solar generator, 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.

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

28. The Petitioner has further prayed to recognize the impact of Change in Law in terms of Article 12.2.6 of the PPA and Article 8.2.6 of the PSA on account of the notifications/orders issued for change in BCD, GST & installation of bird diverters till the date of signing of the PPA, i.e. 15.1.2024, shall only be considered on actuals but limited to a maximum of Rs. 0.29/kWh, subject to the fulfilment of the conditions, contained in the PPA and the PSA.

29. In Petition No. 245/AT/2022 also, the Petitioner had prayed to the Commission to recognize, in terms of Articles 12.1.3 of the PPAs and Article 8.1.3 of the PSAs, that the changes in the rates of the Safeguard Duty, GST and Basic Custom Duty after 22.6.2020, if any, will be considered as Change in Law subject to the fulfilment of the conditions contained therein. Consequently, the Commission, in its order dated 8.3.2022, after noting the relevant provisions of the PPAs and PSAs, observed that the parties have agreed that in case of changes in rates of the Safeguard Duty, GST and Basic Customs Duty after 22.6.2020 and resulting in a change in project cost will be treated as Change in Law and the quantum to compensation payment on account of the 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 the adoption of tariff and any decision in this regard shall be governing on SPD and buying entity. The Commission also noted that the PPAs and PSAs also 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. Moreover,

subsequent to Respondents/Solar Power Developers having also brought on record changes to the above effect, the Commission, in the said order, also recognized (i) 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 – which led to increase in Basic Customs Duty on import of the Solar Inverters, (ii) Order of Hon'ble Supreme Court dated 19.4.2021 in Writ Petition (Civil) No. 838 of 2019 titled M. K. Ranjitsinh & Ors. v. Uol and Ors. issuing directions/measures to be adopted towards exiting and future laying of overhead transmission lines in priority and potential habitat of the Great Indian Bustard, and (iii) Notification No. 8 of 2021 – Integrated Tax (Rate) & Notification No. 8 of 2021-Central Tax (Rate) dated 30.9.2021 issued the Ministry of Finance, Government of India by which applicable Goods and Services Tax on Solar PV modules & cells and other renewable energy equipment was notified @ 12% w.e.f. 1.10.2021, as Change in Law events and the Solar Power Developers will be entitled to the applicable reliefs as per the provisions of the PPAs after they have incurred the additional expenditure on account of the aforesaid Change in Law events.

30. In the present case, the Petitioner, in furtherance to its prayer in Petition No. 245/AT/2022, has prayed to recognize the impact of Change in Law in terms of Article 12.2.6 of the PPA and Article 8.2.6 of the PSA, on account of the Notification/ Orders issued for change in the BCD, GST & installation of bird diverters till the date of signing of the PPA i.e. 15.1.2024 shall be considered only on actual but limited to maximum of Rs. 0.29/kWh subject to the fulfilment of conditions contained in the PPA and PSA. Thus, it appears that the parties in this case, particularly the Solar Power Developers, have, after completion of the bidding, agreed to limit of Change

in Law impact to the ceiling of Rs. 0.29/kWh on account of any Notifications/ Orders issued for changes in the BCD, GST and installation of bird diverters up to the date of signing the PPA i.e. 15.1.2024. The provisions to this extent have also been specifically incorporated in the PPA and the PSA, which read as under:

PPA

“12.2 Relief for Change in Law

Article 12.2.6

(i) The following proposal of MNRE to impose BCD on solar cells and modules (without grandfathering of bid out projects) has been notified through MNRE OM dated 09.03.2021

<i>Items</i>	<i>Upto 31.03.2022</i>	<i>w.e.f. 01.04.2022</i>
<i>Solar Module</i>	<i>0%</i>	<i>40%</i>
<i>Solar Cell</i>	<i>0%</i>	<i>25%</i>

(ii) GST Notification No. 8/2021 dated 30.09.2021 wherein the GST rate for specified renewable energy devices and parts for their manufacturer were increased from 5% to 12%.

(iii) Notification No.3 of 2021-Customs and Notification No.7 of 2021- Customs dated 01.02.2021 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% (advalorem) 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.

(iv) The additional cost relating to transmission line for the Solar Power Project to be laid overhead with installation of Bird Diverters, where the bird diverters:

a. meets the quality and standards of ‘Technical Specifications for Bird Flight Diverter’ issued by Supreme Court Committee in consultation with Central Electricity Authority dated 16.06.2022;

b. one of each five diverters (20%) being LED type;

c. installed as per the guideline recommended by this Committee in its report to the Hon’ble Supreme Court of India dated 19.07.2022;

d. are maintained throughout the life of the project Vide GIB Committee Approval dated 27.07.2023 & 24.12.2023

As per suo moto commitment submitted by SPD,



For the purpose of sale of power to distribution company, the impact at actuals upto INR 0.29/kWh towards Change in Law on account of notifications/orders issued for change in BCD, GST & installation of bird diverters till the date of signing of Power Purchase Agreement (PPA) i.e. on or before 15.01.2024, on Solar Cells, Modules, Inverters, bird diverters and other components, goods and services used in the project, including but not limited to office memorandum/notifications/orders listed at Sr. No. (i), (ii), (iii) & (iv) above, shall be borne by the Buying Entity.

Any aforementioned impact of Change in Law on account of notifications/orders issued for change in BCD, GST & installation of bird diverters till the date of signing of Power Purchase Agreement (PPA) i.e. on or before 15.01.2024, over and above of INR 0.29/kWh shall not be claimed by the SPD.

Any event under Change in Law over and above of aforesaid impact shall be governed by the terms & conditions of the PPA and PSA.

Further, it has been clarified however, that if undergrounding of transmissions line become applicable, then it would be treated as Change in Law over and above the cap of INR 0.29/ kWh.”

PSA

“8.2 Relief for Change in Law

8.2.6 1) The following proposal of MNRE to impose BCD on solar cells and modules (without grandfathering of bid out projects) has been notified through MNRE OM dated 09.03.2021

<i>Items</i>	<i>Upto 31.03.2022</i>	<i>w.e.f. 01.04.2022</i>
<i>Solar Module</i>	<i>0%</i>	<i>40%</i>
<i>Solar Cell</i>	<i>0%</i>	<i>25%</i>

2) GST Notification No. 8/2021 dated 30.09.2021 wherein the GST rate for specified renewable energy devices and parts for their manufacturer were increased from 5% to 12%.

3) Notification No. 3 of 2021-Customs and Notification No.7 of 2021-Customs dated 01.02.2021 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% (advalorem) 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.

4) The additional cost relating to transmission line for the Solar Power Project to be laid overhead with installation of Bird Diverters, where the bird diverters:

a. meets the quality and standards of 'Technical Specifications for Bird Flight Diverter' issued by Supreme Court Committee in consultation with Central Electricity Authority dated 16.06.2022;

b. one of each five diverters (20%) being LED type;

c. installed as per the guideline recommended by this Committee in its report to the Hon'ble Supreme Court of India dated 19.07.2022;

d. are maintained throughout the life of the project Vide GIB Committee Approval dated 27.07.2023 & 24.12.2023

As per suo moto commitment submitted by SPD,

For the purpose of sale of power to distribution company, the impact at actuals upto INR 0.29/kWh towards Change in Law on account of notifications/orders issued for change in BCD, GST & installation of bird diverters till the date of signing of Power Purchase Agreement (PPA) i.e. on or before 15.01.2024, on Solar Cells, Modules, Inverters, bird diverters and other components, goods and services used in the project, including but not limited to office memorandum/notifications/orders listed at Sr. No. 1, 2, 3 & 4 above, shall be borne by the Buying Entity.

Any aforementioned impact of Change in Law on account of notifications/orders issued for change in BCD, GST & installation of bird diverters till the date of signing of Power Purchase Agreement (PPA) i.e. on or before 15.01.2024, over and above of INR 0.29/kWh shall not be claimed by the SPD.

Any event under Change in Law over and above of aforesaid impact shall be governed by the terms & conditions of the PPA and PSA.

Further, it has been clarified however, that if undergrounding of transmissions line become applicable, then it would be treated as Change in Law over and above the cap of INR 0.29 kWh."

Thus, a perusal of the above provisions reveals that the parties have agreed that for the purpose of the sale of power to the distribution company, impact at actuals up to Rs. 0.29/kWh towards the Change in Law on account of the notifications/ orders issued for changes in BCD, GST and installation of bird diverters till the date of signing of the PPA, i.e. on or before 15.1.2024, on solar cells, modules, inverters, bird diverters and other components, goods and services used in

the Project including but not limited to office memorandum, notification and orders listed at Sr. (i), (ii), (iii) and (iv) therein shall be borne by the Buying Entity and impact of Change in Law on account of the notifications/orders issued for changes in BCD, GST and installation of bird diverters, over and above Rs. 0.29/kWh shall not be claimed by the Solar Power Developer. The said Articles at clauses (i) to (iv) also notes that the relevant notifications/ orders which have led to changes in the BCD (on solar cells, module, inverters) and GST (on renewable energy devices and parts) and requirement of installation of bird diverters.

31. Moreover, Respondent No. 3, GSPL by its affidavit dated 30.1.2024 has also indicated its 'No Objection' towards the prayer (c) made in the Petition. However, it has requested for clarification that in terms of Article 12.2.6 of the PPA, the impact of Change in Law up to Rs. 0.29/kWh is applicable only on account of notifications/ orders issued for changes in the BCD, GST and additional cost relating to the transmission lines to be laid overhead with installation of bird diverters till the date of signing of the PPA i.e. 15.1.2024 and is not applicable to Change in Law events that may occur in future. Further, as per Article 12.2.6 of the PPA, if undergrounding of the transmission lines become applicable then it would be treated as Change in Law over and above the cap of Rs. 0.29/kWh. As such, the Petitioner, SECI, has not filed any response to the affidavit of Respondent No.3 or its request for the above clarification. However, after having already perused the relevant Article 12.2.6 of the PPA in the foregoing paragraphs, we notice that the applicability of the said provisions in respect of the nature and the occurrence of Change in Law events is quite clear that is the said provisions apply in respect of the Change in Law events on account of Notification/Orders issued for changes in the BCD, GST and

installation of bird diverters till the date of signing of the PPA i.e. 15.1.2024. The said provisions as such do not appear to cover within its scope the requirement of laying of underground lines, if the need arises due to change in law post signing of the PPA, i.e. 15.1.2024 as well as the Notifications / Orders issued for changes in the BCD and GST, etc. post signing of the PPA, i.e. 15.1.2024. Thus, having noted the scope and extent of the provisions of Article 12.2.6 as above, Respondent No. 3's plea to provide clarification on the applicability of the said clauses does not survive.

32. In view of the above, we note that in terms of Article 12.2.6 of the PPA and Article 8.2.6 of the PSA, the parties in the present case have specifically and mutually agreed that the impact of Change in Law on account of the Notifications/ Orders issued for changes in the BCD, GST and installation of bird diverters till the date of signing of the PPA, i.e. 15.1.2024 shall only be considered on actuals but limited to maximum of Rs. 0.29/kWh, as noted above.

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

34. Petition No. 59/AT/2024 along with IA No.15/2024 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(Jishnu Barua)
Chairperson

