



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

कोरम/ Coram:

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

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

In the matter of:

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

And

In the matter of:

- 1. NTPC Limited,**
NTPC Bhawan, Scope Complex,
7, Industrial Area, Lodhi Road,
New Delhi- 110003
 - 2. NTPC Renewable Energy Limited.**
A-8A, EOC, NTPC, Sector 24, Noida,
Gautam Budh Nagar– 201301, Uttar Pradesh
- ...Petitioners**

Versus

- 1. Indian Renewable Energy Development Agency Limited,**
Corporate office at 3rd Floor, August Kranti Bhawan,
Bhikaji Cama Place, New Delhi – 110066
- 2. Southern Power Distribution Company of Telangana Limited,**
Corporate Office 6-1-50, Mint Compound,
Hyderabad, Telangana – 500063
- 3. Northern Power Distribution Company of Telangana Limited,**

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

4. **Damodar Valley Corporation,**
DVC Towers, 1st Floor, VIP Road,
Kolkata, West Bengal-700054
5. **Military Engineer Services,**
Engineer-in-Chief Branch
Integrated HQ of MOD (Army)
Kashmir House, Rajaji Marg,
New Delhi-110011
6. **Madhya Pradesh Power Management Company Limited,**
Block No. 11, 1st Floor, Shakti Bhawan, Rampur,
Jabalpur, Madhya Pradesh – 482008
7. **Jammu and Kashmir Power Corporation Limited,**
Registered office at SLDC Building, Gladni Grid Complex,
Narwal, Jammu-180006

...Respondents

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

आदेश/ ORDER

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



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

“(a)Admit the present Petition;

(b)Adopt the Usage Charges for 1990 MW Solar Power Projects discovered through competitive bidding carried out by the Respondent No.1 in terms of the CPSU Scheme;and

(c)Pass such other order/orders, as may be deemed fit and proper in the facts and circumstances of the case.”

Submissions of the Petitioners

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

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

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

Hearing dated 10.04.2024

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

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

Hearing dated 22.05.2024

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

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

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

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

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

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



- (a) On 29.01.2021, IREDA issued the Request for Selection (RFS) for setting up the 5000 MW grid-connected to SPVP in India (Tranche-III) under the CPSU Scheme. The RFS was in terms of the Government of India's target to achieve a cumulative capacity of 100 GW Solar PV installation by the year 2022 and the invitation proposal on a Build Own Operate basis for an aggregate capacity of 5,000 MW under Phase-II (Tranche-III). One of the salient features of the said RFS was that the power generated from the successful Projects shall be solely for self-use or use by the Government/Government entities, either directly or through Discoms on payment of mutually agreed usage charges of not more than Rs. 2.20/kWh.
- (b) On 14.05.2021, the Petitioners issued a corrigendum to the RFS, as per which the usage charges were revised to 2.45 Kwh, and the maximum permissible limit for the VGF was reduced from Rs. 0.70 crore/MW to Rs.0.55 crore/MW for the Projects.
- (c) On 23.9.2021, NTPC submitted its bid along with other project developers with their respective bid quantities. On 23.9.2021, pursuant to the e-reverse auction process, the following are the details of the successful bidders [along with the quoted VGF] with the allocated capacity as under:

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

- (d) Pursuant to the above, IREDA issued the Letter of Award (LOA) to all the aforesaid 5 successful bidders, including NTPC, on 04.10.2021 for the total allocated capacity of 5000 MW.
- (e) On 01.12.2021, NTPC intimidated IREDA that the execution of the Project shall be carried out in two tranches, 735 MW by NTPC and 1255 MW by NTPC Renewable Energy Limited. To this, on 02.12.2021, IREDA

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

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

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

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

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

Hearing dated 08.08.2024

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

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

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

Analysis and Decision

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

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

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

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

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

- (a) The CPSU Scheme Phase-II has been envisaged to provide the necessary policy framework and mechanism for the selection and implementation of 12,000 MW or more grid-connected solar PV power projects with VGF by various Government Producers. 12,000 MW grid-connected solar PV power projects are proposed to be set up through the Government Producers with a budgetary support of Rs.8580 crores as VGF.
- (b) The scheme will mandate the use of both solar photovoltaic cells and modules manufactured domestically as per the specifications and testing requirements fixed by the MNRE.
- (c) Power produced by the Government Producer can be used for self-use or use by Government/ Government entities, either directly or through Discoms on payment of mutually agreed usage charges of not more than Rs.3.5/unit, which shall be exclusive of any other third party charges like wheeling and transmission charges and losses, point of connection charges and losses, cross-subsidy surcharge and State Load Despatch Centre (SLDC)/Regional Load Despatch Center (RLDC) charges etc. as may be applicable.
- (d) The solar PV power project capacity under the Government Producer Scheme would be allocated to the Government Producers by way of bidding, who, in turn, will secure an arrangement for the usage of power for self-use or use by Government/ Government entities, either directly or through Discoms.
- (e) With the objective of covering the cost difference between the domestically produced solar cells and modules and imported solar cells and modules, VGF shall be provided under the scheme. While the maximum permissible VGF has been kept at Rs.0.70 crore/MW, the actual VGF to be given to a Government Producer under the scheme would be decided through bidding using the VGF amount as a bid parameter to select project proponent.

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

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

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

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

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

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

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

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

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

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

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

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

This has reference to the following:

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of Project.

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

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

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

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

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

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

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

"Sub: Development of Projects of 1255 MW capacity by NTPC Renewable Energy Limited under the 1990 MW capacity allocated to NTPC-reg

Ref: 1. RfS. No: 23016/1/2020-IREDA/RfS/SOOOMW/012021 dated 29.01.2021

2. LoA No: 23016/1/2020-IREDA/RfS/SOOOMW/012021/960 dated 04.10.2021

3. NTPCs letter NTPC/RE/2020-21/IREDA/CPSU-III/03 dated 01.12.2021

Sir

This has reference to your above-mentioned letter to IREDA in continuation to the LoA issued to your organisation under the CPSU Scheme phase -11. In response to your request, it may please be noted that as per clause A.4 represented below:

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

As per the condition defined, you are allowed to develop the project through SPV i.e. a Project Company especially incorporated as a subsidiary Company of the successful bidder for setting up of the Project, with at least 76% shareholding in the SPV, registered under the Indian Companies Act, 2013.

Accordingly, as mentioned in your letter, Mis NTPC Renewable Energy Limited, the wholly owned subsidiary of M/s NTPC Limited, can develop the said capacity of 1255 MW under CPSU Scheme Phase-II.

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

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

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

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

Sir,

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

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

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

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

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

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

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

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

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

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

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

“34. In support of allowing the prayer of the Petitioner for adoption of usage charges, the Petitioner and the Respondent, SECI have placed reliance on the provisions of the Standard Bidding Guidelines, which envisage bidding based on VGF as bid parameter and provide for adoption of pre-specified tariff and also on the order dated 1.3.2021 passed by the Commission in Petition No. 160/AT/2019 along with IA No.81/2019, wherein the bid process was also conducted on VGF as bid parameters and the Commission had adopted the pre-specified tariff. The relevant extract of the Standard Bidding Guidelines reads as under:

“4.3 Bidding Parameters: For procurement of electricity, the Procurer may opt for either ‘Tariff as Bidding Parameter’ or ‘Viability Gap Funding (VGF) as Bidding Parameter’.

.....

4.3.2 VGF as the Bidding Parameter: It involves a mechanism wherein a pre-determined tariff is offered to the Solar Power Generator along with a financial assistance, to enable the Solar Power Generator to supply power at this tariff. For VGF based Bidding, the Procurer shall specify the following before issuance of RfS: (a) Pre-determined tariff payable to the selected Solar Power Generator for the duration of the PPA and the Maximum amount of Viability Gap Funding (VGF) support required by them. The bidders who do not want to avail the VGF support, may offer in their bids, a discounted tariff, lower than the pre-determined tariff offered by the Procurer...”

35. Indisputably, the Standard Bidding Guidelines provide for VGF as a bidding parameter for conducting competitive bid process under Section 63 of the Act. The mechanism involves pre-determined tariff payable to the selected solar power generator and the maximum amount of VGF support required by them. Further, in case the bidders do not want to avail of VGF, they may offer a discounted tariff than that of pre-determined tariff.

36. However, we note that the bidding process on the basis of VGF as bid parameter under the CPSU Scheme Phase-II is not exactly as per the Standard Bidding Guidelines, since instead of pre-determined tariff (in terms of the Standard Bidding Guidelines), the CPSU Scheme Phase-II only provides for pre-determined ceiling usage charges. Further, the CPSU Scheme Phase-II recognizes that the usage charges may be mutually agreed between the parties (which is not the case in the Standard Bidding Guidelines) albeit subject to the ceiling as specified therein. Therefore, the lower usage charges as may be mutually agreed between the parties (the Petitioner and the Telangana Discoms in the instant case) cannot be equated with the discounted tariff (for bidders who quote nil VGF) under the VGF based bidding as per the Standard Bidding Guidelines since the Petitioner has not foregone the VGF entitlement in the present case.

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

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

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

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

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

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

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

...

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

4. Power to remove difficulties

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

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

“10. CHANGEINLAW

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

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

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

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

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

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

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

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

11.0 RELIEF FOR CHANGE IN LAW

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

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

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

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

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

for their manufacture were revised.

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

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

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

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

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

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

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

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

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

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

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

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

Sd/-
(हरीश दुदानी)
सदस्य

sd/-
(रमेश बाबू वी.)
सदस्य

sd/-
(जिष्णु बरुआ)
अध्यक्ष

