

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 26/MP/2024
along with IA No. 65/ IA/2024**

Coram:

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

Date of Order: 28.11.2025

In the matter of:

Petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 seeking a declaration of change in law and entitlement of compensation for the change in law under the Power Purchase Agreement and for appropriate directions

And

In the matter of:

Scatec India Renewables One Private Limited
Atelier Airport Office Suites, Suite II-Level I,
Lower ground floor, Worldmark 2, Asset 8,
Aerocity, NH 8, New Delhi-110037

..... **Petitioner**

Versus

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

No.1

..... **Respondent**

2. GRIDCO Limited.
Janpath, Bhubaneshwar,
Odisha – 751002

No.2

..... **Respondent**

3. Ministry of New and Renewable Energy
Atal Akshaya Urja Bhawan,
Pragati Vihar, New Delhi – 110003

..... **Respondent No.3**

Parties Present:

Shri Dinesh Pardasani, Advocate, SIROPL
Shri Bibin Kurian, Advocate, SIROPL
Shri Kaustubh Shrinarain, Advocate, SIROPL
Ms. Shikha Ohri, Advocate, SECI
Ms. Ritika Singh, Advocate, SECI
Shri Kartik Sharma, Advocate, SECI



ORDER

Scatec India Renewables One Private Limited (SIROPL), wind power developer, has filed the instant petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 (hereinafter referred to as the “Act”) seeking declaration of Change in Law (hereinafter referred to as “CIL”) and entitlement of compensation for the CIL under the Power Purchase Agreement (hereinafter referred to as “PPA”) and for appropriate directions.

2. The Petitioner has prayed (i) to declare that the Ministry of Power's order dated 9.6.2023 is a CIL event under the PPA and the Petitioner will be entitled to compensation if the Project completion is delayed beyond the ISTS charges waiver period, and (ii) in the alternative, to allow the Petitioner to withdraw from the Project without any cost, claim or penalty of any nature and also award compensation for the cost already incurred by the Petitioner. The Petitioner has also prayed for interim relief(s) to stay the tariff adoption petition or to decide the present petition along with the tariff adoption petition and to extend the date of achieving the Financial Closure (FC) without any cost or claim on the Petitioner. The prayers made by the Petitioner are as follows:

Interim Relief(s)

- “i. Pending the final adjudication of the present Petition, stay the Tariff Adoption Petition numbered 337/AT/2023; or
Decide this Petition along with the Tariff Adoption Petition numbered 337/AT/2023, and*
- ii. extend the date of FC (beyond the extension already available to the Petitioner due to the delay in tariff adoption) until:*
 - a. The issue of applicability of ISTS charges is determined by this Hon’ble Commission; and*
 - b. There is certainty on timelines for the GSS availability;**without any cost or claim of any nature whatsoever on the Applicant.*
- iii. Pass any other order/direction as this Hon’ble Commission may deem fit and proper in the interest of justice”*

Main Prayers



- A. *Declare the MoP's order dated 09.06.2023 is a 'Change in law' under the PPA and that the Petitioner will be entitled to compensation if the Project completion is delayed beyond the ISTS charges waiver period;*
- B. *In the alternative, if this Hon'ble Commission is not willing to grant Prayer A, then considering that there is a change in the fundamental position from the time of submission of the bid and there is complete uncertainty on the ISTS charges, Petitioner may be allowed to withdraw from the Project without any cost, claim or penalty of any nature whatsoever including the release of bank guarantees issued in relation to the Project and also award compensation for the cost already incurred by the Petitioner;*
- C. *Pass any other order/direction as this Hon'ble Commission may deem fit and proper in the interest of justice."*
3. The Petitioner has also filed IA No. 65/2024 on 31.7.2024 to amend and add prayers to the petition. The additional prayers made in the said IA are as follows:
- D. *Considering that Respondent No. 1 and Respondent No. 2 are seeking to absolve themselves from the liability of ISTS charges, this Hon'ble Commission must clarify that the ISTS charges will not be borne by the Petitioner in case the Project timeline is extended beyond the ISTS waiver period for no fault of the Petitioner and also declare as to who will bear such ISTS charges if in case applied to the Project;*
- E. *Direct Respondent No. 2 to approach OERC to seek an amendment of the OERC order dated 03.06.2023 in light of the fundamentally changed circumstances, and to ensure the necessary modifications are recorded in the revised order in view of the MoP order dated 09.06.2023; and*
- F. *Pass any other order/direction as this Hon'ble Commission may deem fit and proper in the interest of justice."*
4. The Commission vide order dated 27.3.2024 has rejected the interim relief(s) sought by the Petitioner in the petition. The relevant extract of the order dated 27.3.2024 in Petition No. 26/MP/2024 is as follows:

"Analysis and Decision

13. We now proceed to consider the prayers of the Petitioner as regards the interlocutory prayers including the plea of tagging of the instant Petition with Petition No. 337/AT/2023 as made in the Petition. We have heard the learned counsels for the Petitioner and Respondents and have carefully perused the records. The following issues arise for our consideration:

Issue No. 1: Whether the proceedings in Petition No. 337/AT/2023 need to be stayed or decided along with the present case?

Issue No. 2: Whether any directions are required to be issued, for extension of the date of FC?

These issues have been dealt with ad seriatim in the succeeding paragraphs of this order.

Issue No. 1: Whether the proceedings in Petition No. 337/AT/2023 need to be stayed or decided along with the present case?

.....

21.....Besides, the Petitioner having already prayed for such relief(s) under main prayers, they will be dealt with while dealing the matter on merits and as already noted above, both the grounds of possible delays/extensions of SCD of the Project as cited by the Petitioner, as on date, do not breach the buffer of one year provided under the MoP's Order dated 9.6.2023 for waiver of ISTS charges and as a result, no prejudice would be caused to the Petitioner if the Commission proceeds with the tariff adoption proceedings, without tagging it with adjudication of issues raised by the Petitioner in the present proceedings. Accordingly, the present Petition (Petition No. 26/MP/2024) would be heard independently.

Issue No. 2: Whether any directions are required to be issued, at this stage, for extension of the date of FC?

.....

25.....Hence, on this count also, we are not inclined to accept the plea of the Petitioner for an extension in the timeline for achieving the Financial Closure as prayed for.

.....”

5. The Petitioner filed Appeal No. 259 of 2024 along with IA No. 813 of 2024 and Appeal No. 258 of 2024 along with IA No. 819 of 2024 before APTEL against the Commission's interim order dated 27.3.2024 in the instant petition and order dated 31.3.2024 in Petition No. 337/AT/2023 adopting the tariff of the instant Project, respectively. APTEL, by a combined order dated 2.7.2024, disposed of the said Appeals with a direction to the Commission to dispose of the instant petition expeditiously.

6. In the meantime, the Petitioner filed an Interlocutory Application, I.A No.65/2024, to add prayers seeking clarification regarding the liability over the ISTS charges and to direct GRIDCO to approach OERC for modification of the OERC's order dated 3.6.2023 approving the PSA, in the light of the changed circumstances. SECI has submitted that the Petitioner's IA would delay the proceedings in the matter and requested not to entertain the same, especially in view of the APTEL's direction to dispose of the instant petition expeditiously. The Commission has already taken cognisance of the IA filed by the Petitioner in the Record of Proceedings dated 9.9.2024. The prayers made by the Petitioner in the IA are closely related to those in the main petition. Therefore, we will deal with the prayers made by the Petitioner in the IA also in the instant order.

7. Since the *interim relief(s)* sought by the Petitioner have already been rejected by the Commission, we will deal with the *main prayers* made in the petition and the additional prayers made in IA No.65/2024 in the instant order.

8. The Petitioner has further filed Petition No.781/MP/2025 seeking a declaration that the PPA dated 28.6.2023 stands frustrated and is rendered impossible to perform within the meaning of Section 56 of the Indian Contract Act, 1872 due to revocation of connectivity by the Respondent No. 2, prolonged regulatory inactions and inordinate delays in the commencement of the Project, and no clarity on the CIL issue till date, among others, and accordingly, to direct that the Petitioner stands discharged from its obligations under the PPA without any financial implications or legal consequences.

The Petitioner has made the following prayers in Petition No.781/MP/2025.

“INTERIM RELIEF(S)

For the reasons stated above and, in the circumstances, hereinabove, it is most humbly prayed that this Hon'ble Commission may be pleased to grant the following relief(s) in the interim:

A. Stay the adjudication/decision in the CIL Petition (26/MP/2024) pending the final adjudication of the prayers raised in the present petition;

B. Restrain and injunct Respondent Nos. 1 and 2 from taking any coercive action against the Petitioner, including, invocation or encashment of bank guarantees, and/or;

C. Pass such other or further order(s) or direction(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

PRAYER

In the above-given facts and circumstances, it is most humbly prayed that this Hon'ble Commission may graciously be pleased to grant the following relief(s):

A. Declare that the PPA dated 28.06.2023 stands frustrated and rendered impossible to perform within the meaning of section 56 of the Indian Contract Act, 1872 due to revocation of connectivity by the Respondent no. 2, prolonged regulatory inactions and inordinate delays in the commencement of the Project, and no clarity on the CIL issue till date, among others, and accordingly direct that the Petitioner stands discharged from its obligations under the PPA without any financial implications or legal consequences;

B. Direct Respondent No. 1 to release the performance bank guarantees amounting to INR 59.67 crores submitted under the PPA, and direct Respondent No. 2 to release the connectivity bank guarantees amounting to INR 9.5 crores, and/or;

Pass such other or further order(s) or direction(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case and in the interest of justice.”

Submissions of Petitioner

9. The gist of the submissions made by the Petitioner in support of the claims made in the petition is as follows:



- a) The Petitioner entered into a PPA with SECI for supplying wind power to GRIDCO. GRIDCO entered into a Power Sale Agreement (PSA) on 9.6.2023 with SECI entirely on a back-to-back basis for the purchase of power.
- b) The Government of India, empowered by Section 3(3) of the Act, revised the Tariff Policy and published the same in the Gazette of India on 28.1.2016. Subsequently, the MoP issued an order dated 30.9.2016, exempting solar and wind projects from payment of ISTS charges and losses for the transmission of electricity through inter-State transmission systems (ISTS). Thereafter, the MoP issued an order dated 23.11.2021, wherein the waiver of ISTS losses was limited to projects that had completed the bidding process before 15.1.2021 and had been commissioned by 30.6.2025.
- c) The MoP issued another order on 30.11.2021 in continuation of the MoP's order dated 23.11.2021. According to the said order, an entity that is eligible for a waiver of the ISTS charges and granted an extension in the Scheduled Date of Commercial Operation (SCD) by the competent authority due to *force majeure*, transmission delays caused by the transmission provider, or any other delay attributed to a government agency, then the period of SCD shall be extended and accordingly even the period of waiver of ISTS charges shall also be deemed to be extended.
- d) SECI on 12.1.2022 issued a Request for Selection (RfS) for setting up of 1200 MW ISTS-connected wind power projects (Tranche - XIII) for the Procurement of power from grid-connected wind power projects (Guidelines). Scatec India II B.V. participated in the bidding process and submitted its bid along with an Earnest Money Deposit (EMD) of ₹39,78,00,000 and was selected as the Wind Power Developer (WPD) for developing a 300 MW wind power project (Project) out of the total awarded capacity of 600 MW. As per the terms of RfS, the Petitioner was incorporated as an SPV on 18.1.2023 for the specific purpose of entering into the PPA with SECI. SECI initially issued a LoA on 19.1.2023 to Scatec India II B.V.
- e) In terms of the LoA and RfS, a success fee of around ₹3.54 crore was paid, and a PBG dated 30.3.2023 of ₹59,67,00,000 was submitted to SECI. Pursuant to the award of the Project, the Petitioner secured a Government Order from the Government of Karnataka and spent approximately ₹50 crore to acquire the land, along with a commitment to spend up to ₹108 crore.
- f) The Petitioner, on 17.2.2023, applied for Stage-I connectivity of the Project for Koppal-II GSS to CTUIL. SECI issued an amended LoA on 27. 2.2023 in the name

of Scatec India II B.V. and specifically recorded that the Petitioner is eligible to utilise the said LoA to set up a 300 MW wind project, including seeking ISTS connectivity from the CTUIL. The Petitioner subsequently applied for the ISTS connectivity from CTUIL. However, CTUIL pointed out that the LoA issued by SECI is in the name of Scatec India II B.V., not in the name of the Petitioner and closed the Petitioner's Stage-II connectivity application. These issues were brought to SECI's notice through letters dated 24.2.2023 and 22.3.2023. Ultimately, SECI issued a revised LoA was issued on 4.5.2023 in the name of the Petitioner, following which connectivity under the GNA Regulations was sought in the name of the Petitioner. The CTUIL granted in-principle approval for connectivity at the Koppal-II GSS to the Petitioner on 20.10.23. Pursuant to the same, a bank guarantee of ₹9,50,00,000 (Rupees Nine Crores Fifty Lakh) was submitted to CTUIL by the Petitioner on 17.11.2023. However, issuance of final connectivity is pending approval from CTUIL.

g) The Petitioner had considered the GSS at Kallam, Maharashtra, at the time of bidding, but considering the time taken for the finalisation of the tender process, including reverse auction, the capacity of Kallam GSS was exhausted. Consequently, the Petitioner had to apply for connectivity at Koppal-II GSS. This site change had an adverse impact, among other things, on the land acquisition cost.

h) GRIDCO filed a Petition No. 38/2023 under Section 86(1)(b) and (e) of the Act before the Orissa Electricity Regulatory Commission (OERC) for prior approval of the PSA claiming that the timelines of the Project are being adhered to and that the Project will be completed within the third quarter of 2024-25, i.e., between October 2024 and December 2024 and accordingly the benefit of waiver of ISTS charges will be available. Accordingly, OERC approved the PSA vide order dated 3.6.2023.

i) After issuance of the LoA, the MoP vide order dated 9.6.2023 added a new condition, that waiver of ISTS charges will be applicable only if an extension in the SCD is granted for six (6) months at a time and not more than two (2) times. This restriction on the availability of ISTS charges waiver by MoP has changed the basis of the RfS for this Project and provided a condition contrary to the PPA.

j) Based on the LoA and RfS, the Petitioner and SECI executed a PPA dated 28.6.2023 for 25 years. The effective date for the PPA was set as 26.6.2023. According to the PPA, the SCD must be achieved within 24 months of the effective

date, which is 26.6.2025, and the tariff should have been adopted within 120 days after the effective date, which is 24.10.2023. A notice of at least 60 days must be given before the SCD for integration with the GSS. In terms of the PPA, the developer has to bear the ISTS charges and losses up to the delivery point. Beyond the delivery point, all charges and losses are to be borne by the buying entity. In view of the MoP's order dated 23.11.2021 and the terms of the PPA, the buying entity will have to bear any ISTS losses, if applicable.

k) SECI filed Petition No. 337/AT/2023 before this Commission under Section 63 of the Act on 29.9.2023 for the adoption of a tariff.

l) PFF Consulting Ltd. incorporated Koppal II Gadag II Transmission Limited, a SPV, to initiate action for execution of the Koppal-II GSS. PGCIL emerged as the successful bidder for the development of Koppal-II GSS, and the Letter of Intent (LoI) was issued to PGCIL on 5.12.2023. PGCIL acquired Koppal II Gadag II Transmission Limited on 26.12.2023, and on the same day, the Transmission Service Agreement (TSA) was executed between CTUIL and Koppal II Gadag II Transmission Limited. Post the award of the Project, Koppal II Gadag II Transmission Limited filed two applications dated 28.12.2023 before this Commission for the adoption of transmission charges under Section 63 of the Act and the other for the grant of a transmission license under Sections 14 and 15 of the Act.

m) As per the RfP for Koppal-II GSS, the scheduled completion date is 24 months from the SPV transfer date, subject to the adoption of transmission charges within six (6) months from the execution of the TSA. At present, the petitions for the adoption of transmission charges and the issuance of the transmission license are pending before this Commission. If the adoption petition is decided by this Commission by June 2024 and if the GSS is completed beyond April 2026, the completion date of the Petitioner's Project will also be extended beyond 26.6.2026, and no ISTS waiver will be available.

n) The Petitioner vide letters dated 24.8.2023, 28.8.2023 and 23.11.2023 raised these issues of delay in the overall Project execution, including delays in tariff adoption, issues related to change in GSS site resulting in uncertainty of GSS availability and other ancillary issues. The Petitioner specifically sought clarification on the waiver of the ISTS charges. However, SECI failed to respond to any of these letters.

o) The Petitioner again sent a letter to SECI on 16.1.2024 highlighting the major issues faced by the Petitioner including the impact of the MoP's order dated 9.6.2023, uncertainty in the GSS readiness and delay in tariff adoption etc. and inter alia requested SECI to confirm/ ensure that the ISTS charges will not apply to the Project even if the Project gets completed beyond 26.6.2026 or to treat the MoP's order dated 9.6.2023 as a change in the law in terms of the PPA.

p) The new restrictions on the availability of ISTS charges waiver and uncertainty on the availability of the GSS have resulted in the change of bidding conditions. In this background, the relevant timelines under the PPA are as follows:

| Event | Timelines as per PPA | Projected/actual timelines | Delay Period |
|------------------------------------|---|--|-----------------|
| Effective Date | 26.6.2023 | - | - |
| Tariff Adoption | 24.10.2023 (120 days from the Effective Date as per the PPA) | February 2024 (Subject to the tariff adoption on the next date of hearing, i.e., on 7.2.2024 or any subsequent date in February 2024) | Almost 4 months |
| Financial Closure (FC) | 26.1.2024 (7 months from the Effective Date) | 26.5.2024 (Getting extended due to delay in tariff adoption) | Almost 4 months |
| SCD | 26.6.2025 | February 2026 (Assuming that GSS is available by 26.12.2025 and keeping in view the obligation of the Petitioner in giving 60 days' notice before integration with the GSS, the projected/ actual SCD will be February 2026.) | Almost 4 months |
| Difference between FC and SCD date | 17 months | 21 months | - |

q) As per the PPA, if the Project is completed before 30.6.2025, there will be no ISTS charges on the Project. In case the SCD is extended due to force majeure, delay on the part of the transmission provider in providing the transmission and delay on account of any Government Agency and the Project is completed within the extended timeline, the benefit of the ISTS charges will be available, provided that the original SCD was within the applicable date of ISTS waiver, i.e. 30.6.2025. However, the MoP vide order dated 9.6.2023 has modified and limited the benefit of the waiver of ISTS charges by adding a new condition: the waiver will be applicable only if an extension of the SCD is granted for a period of six months at a time, and not more than twice.

r) If the SCD gets extended beyond 26.6.2026, SECI and GRIDCO will have no power to waive the ISTS charges in terms of the MoP's order dated 9.6.2023. Therefore, the Petitioner will be left remediless as there is no relief under the PPA or under government regulations to get the ISTS charges waived. This makes it impossible for the Petitioner to continue to perform its obligations under the PPA in the present circumstances.

s) During the bidding process, there was no restriction on the extension of the SCD of the Project and the applicability of the waiver of ISTS charges. However, with this amendment through the MoP's order dated 9.6.2023, the bidding condition has been altered significantly. As a result, there is currently a great deal of uncertainty regarding the Project's completion and feasibility.

t) In terms of Clause 12.1.1 of the PPA, the term CIL refers to the occurrence of any enactment, amendment or repeal of any law. Clause 12.2 of the PPA provides relief for CIL events and states that if a CIL event occurs, the affected party will be entitled to compensation.

u) The Petitioner has incurred expenses, including approximately ₹3.54 crore for the success fee, ₹59.67 crore for the PBG, and about ₹50 crore for land acquisition as per the RfS, with a commitment to spend up to ₹108 crore. Additionally, the Petitioner has invested approximately ₹9.5 crore in a bank guarantee to CTUIL to fulfil the connectivity requirement. Given delays in the Project timeline and the uncertainty surrounding GSS readiness/availability, there is concern that the already incurred expenses may not be recoverable. Further, there is a risk of additional costs being incurred by the Petitioner, leading to a substantial financial burden, jeopardising the Project, and causing irreparable loss and hardship to the Petitioner.

10. SECI has filed its reply to the petition vide affidavit dated 6.7.2024. The gist of the submissions made by SECI is as follows:

a) SECI as an intermediary is not liable for payment of ISTS charges, and even if the same is paid by SECI on behalf of Buying Utilities/ WPD, the same shall be recovered from the Buying Utilities/ WPD.

b) The Commission, in an order dated 23.5.2022 in Petition No. 525/MP/2020, while deciding the applicability of MoP orders regarding the waiver of transmission charges, held that the same can be decided only after the COD of the generating station. The Petitioner in the present case cannot be permitted to wriggle out of its

obligations under the PPA dated 28.6.2023, on the basis of the MoP order dated 9.6.2023.

c) The ISTS charges and losses are governed by the provisions of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 (2020 Sharing Regulations) as amended from time to time. The reliance placed by the Petitioner upon the MoP's order dated 9.6.2023 is entirely misplaced. The PPA executed between the parties on 28.6.2023, clearly stipulates that all charges and losses related to transmission of power from the Project up to the Delivery Point shall be borne by the WPD, and beyond the Delivery Point, all charges and losses shall be borne by the Buying Utilities as notified by the competent authority/regulator from time to time. Further, it is clearly specified in the PPA that any delay in commissioning of the Project beyond the applicable date of the ISTS waiver/extended SCD due to reasons attributable to the WPD, the liability of transmission charges and losses would be to the account of the WPD.

d) The 2020 Sharing Regulations were amended on 7.2.2023, 20.10.2023 and 26.10.2023. The provisions of the MoP order are not incorporated in the aforesaid amendments. Therefore, the Commission may decide the admissibility of the MoP order as "Law" and as a "Change in Law", in terms of the PPA and the 2020 Sharing Regulations.

e) The Petitioner has contended that in case the tariff adoption petition is decided by the Commission in June 2024 and if the GSS is completed beyond April 2026, the completion date of the Project will also get extended beyond 26.6.2026, and no ISTS waiver will be applicable. The Petitioner has not made Koppal II Gadag II Transmission Ltd a party to the present proceedings. SECI is neither privy to the TSA nor a party in the tariff adoption or grant of transmission license proceedings. Hence, SECI is not in a position to confirm or deny the aforesaid facts.

f) As per Article 4.1.1, Article 4.2.5 and Article 4.5.2 of the PPA, the Petitioner is solely responsible for making arrangements for land and associated infrastructure for development of the Project and for connectivity with the CTU system for confirming the evacuation of power by the SCD and obtaining all consents, clearances and permits as required. SECI has no obligation with respect to the abovementioned activities, and any steps taken by SECI in regard to the grant of such consents and permits or any other approval to be taken by the WPD shall only be a voluntary endeavour with no intention of being bound by any legal or

binding obligation. Further, any delay in the adoption of the tariff by the Appropriate Commission, beyond 120 days of the Effective Date after the PPA, shall entail a corresponding extension of SCD by SECI.

g) The Petitioner has failed to mention the provision of the PPA which permits the Petitioner to wriggle out of the contract on the basis of delay, if any, in completion of the transmission system. Perusal of the minutes of the 27th consultation meeting of CTUIL for evolving transmission schemes in the Southern Region held on 30.1.2024, demonstrates that the expected date of completion of the Koppal II PS transmission scheme is December 2025. Thus, the Petitioner's contention that the GSS will be completed beyond April 2026 is entirely misplaced. According to the Monthly Progress Report of Transmission Projects awarded through Tariff Based Competitive Bidding (TBCB) Route dated 31.3.2024, the expected date of completion is December 2025.

h) SECI, vide its letter dated 1.2.2024 to all WPDs, including the Petitioner, informed that on adoption of tariff by the Commission, SECI, in line with Articles 2.1.3 and 2.1.4 of the PPA, will revise the scheduled date for achievement of Financial Closure and SCD. The tariff adoption order was passed by the Commission on 31.3.2024 in Petition No. 337/AT/2023. Accordingly, the scheduled date for financial closure and the SCD for the Project stands extended to 3.7.2024 and 2.12.2025, respectively.

i) Even as per the MoP order dated 9.6.2023, the Petitioner is eligible for another extension up to 180 days, whereby the revised SCD will be 31.5.2026. The expected date of completion of Koppal-II Sub-station is December 2025. Accordingly, even if the Petitioner is granted an extension on account of the delay in LTA, the SCD will be extended till February 2026. Therefore, there is no uncertainty with regard to GSS availability or the applicability of ISTS charges as on date.

j) It is a settled position of law that in case of a CIL event, only the actual additional cost incurred is to be compensated. The developer is required to establish the impact of the CIL event, with supporting documents and evidence, and establish a one-to-one correlation between the additional cost and the CIL event. However, the present case is premature as the Petitioner cannot possibly place on record any invoices or other relevant documents towards proof of the payment of the claimed amount on account of the alleged CIL event.

k) In case the events claimed by the Petitioner are considered as CIL and the impact is allowed to the Petitioner, the Commission may issue directions to GRIDCO to make payment towards the evaluated CIL claims payable by SECI to the Petitioner, on a back-to-back basis under the respective PSAs in a time-bound manner. The Commission, in an order dated 13.5.2021 in Petition No. 73/MP/2020. has held that the PPA and PSA are interconnected and are of a back-to-back nature, implying that the distribution licensees are liable to pay SECI all that SECI has to pay to the Power Developer on account of GST/Safeguard Duty.

11. In response, the Petitioner has filed its rejoinder to the reply filed by SECI vide affidavit dated 15.7.2024. The gist of the submissions made by the Petitioner in its rejoinder is as follows:

a) The APTEL issued the order dated 2.7.2024, noting that SECI has no objection for the present petition to be adjudicated by this Commission within a specified time frame of 2 months. However, SECI, in its reply, has contended that the applicability of the MoP order dated 9.6.2023 for the waiver of ISTS charges has to be decided after the commissioning date. This argument of SECI is not only contrary to the stand taken in APTEL but also an attempt by SECI to confuse the Commission and further delay the adjudication of the instant petition. Thus, SECI's reliance on some of this Commission's previous orders on the issue of adjudication of the ISTS waiver at the time of commissioning is misplaced and incorrect.

b) SECI has taken a contrary stand in the reply to what was argued and submitted before APTEL. SECI has submitted in the present petition that the Petitioner has to show that the claim falls within the scope of Article 12 of the PPA. However, SECI, in complete contravention to the stand taken before APTEL and to confuse the Commission, raised the following issues:

- i. The issue of ISTS charges waiver arises at the commissioning of the Project and thus must be considered at the commissioning stage of the Project.
 - ii. The actual impact of the CIL is required to be established by the power developer with supporting documents and evidence as a one-to-one correlation between the additional cost and the CIL event.
- c) The prayer in the present petition is in the form of a declaratory relief, consistent with the settled legal position. Since the actual impact has not yet arisen, the Petitioner is not seeking any compensation against the CIL event at

this stage. Instead, the Petitioner is merely seeking a declaration that the MoP order dated 9.6.2023 be declared as a CIL event and the Petitioner will be entitled to consequential compensation if the Project completion is delayed beyond the ISTS charges waiver period. This declaration is crucial to ensure regulatory and financial certainty in the project. Thus, the question of evidence of actual impact does not arise at this stage.

d) It is a settled legal position that it is not necessary to show the impact of a CIL event on the project for it to be adjudicated, provided it falls within the definition of CIL under the PPA. While deciding the issue of CIL, neither the impact has to be necessarily decided at the first instance nor is the Petitioner required to furnish evidence supporting the actual impact of the CIL event on the additional cost. Rather, an adjudication of a CIL issue can entail a declaration first, followed by adjudication of the computation/actual impact on the additional cost at a later stage.

e) It is a settled legal position that these MoP orders are issued under Section 3(3) of the Act and have the force of 'law' and hence are binding on all the stakeholders, including the Petitioner, SECI and GRIDCO. Any guideline or order issued by any authority under the Act, has the same standing, and this is also recognised by this Commission in the case of Koppal II Gadag II Transmission Limited v Central Transmission Utility of India Limited & Ors., Petition No. 52/TL/2024.

f) As per the PPA terms, the tariff was to be adopted within 120 days from the effective date (26.6.2023), i.e., by 26.10.2023. However, after a substantial delay of over five months, the tariff was adopted on 31.3.2024. Further, as per the PPA timeline, the Petitioner had 20 months to complete the Project. However, due to the delay in adjudication of the CIL issue and considering the APTEL's order dated 2.7.2024, the two months granted to this Commission for adjudication of the present petition have reduced the 20 months available to the Petitioner to 18 months to get the Project completed. Due to these events, the timeline is also substantially reduced. The Project timelines had reached March 2026, which was very close to the threshold set by the MoP order dated 9.6.2023. However, with these additional two months, the timeline will be exhausted for no fault of the Petitioner. This has further added to the uncertainty in the Project timeline and the risk of exceeding the ISTS waiver period, making the Project unviable and impossible for any stakeholder.

g) SECI filed the tariff adoption petition on 29.9.2023, at the fag end of the contractual timeline of 120 days. Interestingly, the petition was listed before this Commission for the first hearing on 13.12.2023; thus. it took more than 2.5 months for Respondent No. 1 to get the petition listed before this Commission. SECI has also significantly contributed towards delaying the adjudication of the CIL issue. SECI, on purpose, delayed the present proceedings by not filing the reply within the stipulated timeline of two months from the interim order dated 27.3.2024, passed by the Commission. Further, SECI attempted to delay adjudication of the CIL issue before APTEL as well. Thus, the Petitioner is entitled to compensation for delays solely attributable to SECI, due to which the timelines as per the MoP order dated 9.6.2023 have also been substantially reduced.

h) As per Clause 8.3 of the Guidelines, the bidding documents, including the RfS, draft PPA, and PSA, must be prepared by the procurer in accordance with these Guidelines and the standard bidding documents. However, in Clause 4.2.6 of the PPA, it is stated that in no case will SECI be liable to bear the ISTS charges. This stipulation in the PPA is a deviation from the Guidelines, and no approval for it has been obtained from this Commission as required under the Wind Guidelines.

i) The Wind Guidelines are issued by the MoP under Section 63 of the Act and have the force of 'law' and hence are binding on SECI. SECI could not have proceeded to issue the tender in conflict with such Wind Guidelines, and such deviations, being without the approval of this Commission, are illegal and liable to be cancelled. On this ground alone, the tariff should not have been adopted, and the Petitioner should have been allowed to exit from the bid. A similar issue of PPA issued in deviation from the Wind Guidelines is *non-est*, and on this ground itself, the developer should be allowed to exit from the Project, which is pending adjudication before APTEL in the Appeal Nos. 231/2024, 233/2024 and DFR No. 226/2024.

j) SECI's statement that it is not liable for ISTS charges if the Project is delayed is not covered in the Guidelines. GRIDCO has also contended that it will not bear any liability for the ISTS charges. Therefore, it becomes imperative to declare who will bear the ISTS charges, if applicable.

k) The Petitioner at the time of submission of bid believed that if the Project was delayed due to *force majeure* events, the Petitioner would be entitled to a waiver for transmission charges. The Petitioner submitted the bids on the basis of the MoP orders dated 23.11.2021 and 30.11.2021, which provided for waiver of

transmission charges if the Project was delayed due to *force majeure* events. However, as per the MoP order dated 9.6.2023, if the Project is extended beyond the ISTS waiver period. even due to force majeure events, the Petitioner is liable to bear 50% of the ISTS charges.

l) In view of the above, it is imperative for the Commission to declare that the MoP's order dated 9.6.2023 is a CIL event and to declare who will be liable to bear the ISTS charges due to the CIL event. As SECI and GRIDCO are not willing to bear the consequences of the CIL event, the Petitioner should be allowed to exit the Project. Further, if the Commission holds that the MoP order is not a CIL, then the Petitioner should be allowed to exit the Project, as the MoP order has fundamentally changed the bidding conditions, and the Petitioner cannot be asked to abide by the bid quote when it is not viable.

12. GRIDCO has filed its reply to the petition vide affidavit dated 8.7.2024. The issues raised by GRIDCO in its reply are as follows:

- a) GRIDCO has executed a PSA with SECI on 9.6.2023 to procure 600 MW Wind Power for a period of 25 years under ISTS-Connected Wind Power Projects Scheme Tranche-XIII.
- b) SECI vide email dated 30.1.2023 has clarified that ISTS transmission charges shall not be applicable for the procurement of wind power as per the MoP order dated 23.11.2021 and 30.11.2021, subject to the Commission Regulations.
- c) As per the procedures mandated by OERC, GRIDCO requested the State Discoms to offer their views for the procurement of 600 MW Wind Power from SECI and on 2.5.2023, GRIDCO filed a petition before OERC for approval of the Draft PSA at the discovered Tariff towards procurement of the 600 MW Wind Power. OERC vide order dated 3.6.2023 in Case No. 38/2023 had accorded in-principle approval for procurement of 600 MW wind power by GRIDCO for a period of 25 years under ISTS – Connected Wind Power Projects Scheme Tranche – XIII at the following applicable tariff:

| Sl. No. | Developer | Allocated Capacity (MW) | Discovered Tariff (Rs./kWh) | Tariff including SECI Trading margin of Rs. 0.07/kWh (Rs./kWh) |
|---------|---------------------------------|-------------------------|-----------------------------|--|
| 1 | SJVN Ltd. | 100 | 2.90 | 2.97 |
| 2 | Scatec India II B.V. | 200 | 2.95 | 3.02 |
| 3 | Taq Green Power XI Private Ltd. | 200 | 2.95 | 3.02 |

| | | | |
|-------|-----|--|--|
| Total | 600 | | |
|-------|-----|--|--|

d) The said proposal for procurement of 600 MW Wind Power from SECI was approved by OERC for fulfilment of WPO, HPO and other RPO targets of the State.

e) The MoP vide letter dated 23.11.2021 and 30.11.2021 has allowed 100% waiver of ISTS charges for the wind projects commissioned on or before 30.6.2025 and a graded reduction in waiver of ISTS charges thereafter. Further, the developers under Wind Tranche-XIII have been allowed to commission the Project within 24 months from the date of signing of the PPA or PSA, whichever is later. GRIDCO had taken all possible steps to obtain the necessary approvals for the early execution of the PSA, so as to avail the waiver of ISTS Charges allowed by MoP. GRIDCO executed the PSA on 9.6.2023.

f) SECI executed the PPA with the Petitioner on 28.6.2023. As per the PPA, the effective date is 26.6.2023. Hence, the Project should be commissioned on or before 26.6.2025, for a 100% waiver of ISTS charges.

g) As per the PSA, SECI has to obtain adoption of tariff from the Commission within 120 days after the Effective Date of the PPA, i.e. on or before 24.10.2023. But SECI has filed the petition for tariff adoption on 29.9.2023, which is just before the expiry date. GRIDCO being the lone beneficiary, SECI could have saved much time for filing the petition so as to ensure the benefits of the waiver of ISTS charges. Seeking approval for tariff adoption from the Commission and for the availability of the transmission network for evacuation within the SCD are the sole responsibility of both SECI and WPD. Any financial liability arising out of such delay, default on the part of either WPD or SECI, should not be passed on to GRIDCO because GRIDCO has taken all necessary steps in time to avail such power from SECI within the due date and signed the PSA on 9.6.2023.

h) The MoP order dated 9.6.2023 permits only two extensions in cases of *force majeure*. However, obtaining a time extension is not an entitlement for benefiting from a default situation. If a genuine *force majeure* event exists, WPD and SECI should approach MoP to seek exclusion of this MoP order's applicability to the WPD.

i) If the Petitioner's request to withdraw from the Project without incurring any costs, claims, or penalties is allowed by the Commission, then the Commission should consider the opportunity lost by GRIDCO to procure such low-cost power

without transmission charges, and to direct SECI to recover the same from the Defaulting Entity and pass on the same to GRIDCO. Allowing the Petitioner to exit from the Project without substantial penalty will also create a precedent for other Developers to quit their projects in the event of a rise in project cost due to a delay in commissioning. This will not only result in heavy loss to the beneficiary(ies) but also derail their Energy Transition Plan and affect Resource Adequacy.

j) The contracted Wind Power of capacity 600 MW has been considered towards the future power requirements of GRIDCO. APTEL vide judgment dated 2.7.2024 in Appeal No.258 of 2024 & Appeal No. 259 of 2024 has declined to interfere with the Commission's order in Petition No. 337/AT/2023 as it may adversely affect the purchase of power from the remaining two Developers having a capacity of 300 MW.

k) In view of the above, the Commission may consider the following while passing any order in the instant case.

i. MoP's order dated 9.6.2023 may not be considered as a CIL event, and the WPD should not be allowed to withdraw from the obligations of PPA.

ii. If the Commission decides to allow any relief due to the applicability of MoP's order dated 9.6.2023, no financial liability should be passed on to GRIDCO.

iii. If the Commission considers granting permission to WPD to withdraw from the PPA, the Commission may consider the opportunity lost by GRIDCO towards procurement of such low-cost power without transmission charges and issue necessary directions to the Intermediary Buyer, SECI, to collect necessary compensation from the defaulting Entity and pass on the same to GRIDCO.

iv. The Commission may also consider creating precedent by levying an exemplary penalty on the erring Entity for derailing such projects, which has a *domino effect* on the entire power system.

13. The Petitioner filed a rejoinder to the reply filed by GRIDCO vide affidavit dated 15.7.2024. The gist of the submissions made by the Petitioner is as follows:

a) APTEL while adjudicating Appeal Nos. 258 and 259 of 2024 acknowledged that the MoP order dated 9.6.2023 has changed the bidding conditions, and hence, this CIL issue needs to be decided at the first opportune time. APTEL was inclined to stay the interim order of the Commission dated 27.3.2024 in the instant matter.

b) APTEL agreed and held that the Petitioner is justified in asserting that the MoP's order dated 9.6.2023 fundamentally changed the bidding conditions, as it was brought into force after the issuance of the LoA dated 19.1.2023 and 4.5.2023. Thus, GRIDCO is now precluded from objecting that the MoP order dated 9.6.2023 is not a CIL event in terms of the PPA.

c) The Petitioner participated in the bidding process in 2022 with the understanding that the MoP orders dated 23.11.2021, read with 30.11.2021, would be applicable and waiver of ISTS charges would apply to the Project without any limitation or restriction. However, the MoP's order dated 9.6.2023 has modified and limited the benefit of the waiver of ISTS charges by adding a new condition, namely, that the waiver will be applicable only if an extension of the SCD is granted for six months at a time and not more than two times. Therefore, the bidding condition has been altered significantly.

d) The bid was concluded on 4.7.2022, the e-reverse auction was concluded by 22.12.2022, and the tariff was adopted on 31.3.2024 in Petition No. 337/AT/2023, almost two years after the bid date, for reasons not attributable to the Petitioner. Further, the adopted tariff, discovered through the bidding process, is no longer aligned with prevailing market conditions due to changed circumstances arising from the MoP order dated 9.6.2023 and other multiple reasons. This is further supported by GRIDCO's reply to the present petition, wherein GRIDCO categorically notes that the low-cost power without transmission charges secured through the PSA has substantially increased at present. The ISTS charges constitute a substantial amount of the tariff quoted by the Petitioner. If the Petitioner had been aware of the applicability of such ISTS charges at the bidding stage, the Petitioner would have quoted a higher tariff or chosen not to participate in such a bidding process.

e) The delay in obtaining the regulatory clarity has already jeopardised the development of the Project and has put the developer in a difficult position, including additional costs and time and the timelines that will be extended due to the delays in the entire process of adjudication of CIL claims. The Petitioner cannot be held responsible for any delays in the Project, including delays in e-reverse auctioning, LoA issuance, tariff adoption, time taken before the APTEL and due to the liberty granted by APTEL to keep rights open for the Petitioner to seek extension of timelines once the instant petition is adjudicated. Therefore, if the Commission does not hold the MoP order dated 9.6.2023 to be a CIL event,

then, based on the fundamentally changed circumstances, the Petitioner should be allowed to exit from the Project without any liability.

f) MoP order dated 9.6.2023 amounts to a CIL event and falls within the four corners of the CIL definition under the PPA. Clause 12 of the PPA states that any event covered under the definition of CIL which occurs after 4.7.2022 would unambiguously constitute an amendment in law. Since the MoP order occurred after 4.7.2022, it should have been automatically declared as a CIL event.

g) GRIDCO never placed its submission before this Commission and remained silent under the pretext of being protected under the OERC order dated 3.6.2023. Such inaction by GRIDCO deferred adjudication of the CIL dispute, which could have been adjudicated prior to or alongside the tariff adoption, thereby providing sufficient time for the completion of the Project. Therefore, delays in tariff adoption, adjudication of the CIL petition, and the resulting consequences cannot be attributed to the Petitioner.

h) Considering the MoP order dated 9.6.2023 was passed pursuant to the OERC's order and considering that the Project timeline has been delayed substantially for no fault of the Petitioner, it was imperative for GRIDCO to approach OERC to get the order dated 3.6.2023 amended in line with the changed circumstances due to MoP order dated 9.6.2023 or to appear before this Commission in Petition No. 337/AT/2023 and Petition No. 26/MP/2024 and state its stand. This would have enabled this Commission to adjudicate the issue of CIL due to the MoP order dated 9.6.2023 at the first opportune time. Thus, GRIDCO's conduct has been lackadaisical, which has further contributed to the delay in adjudication of the instant petition, and they cannot now raise the issue of not bearing the ISTS charges if the project gets extended beyond the ISTS waiver period. Accordingly, if the Petitioner is granted an exit from the Project, it will be entitled to recover its opportunity cost, along with other costs and damages, from SECI and GRIDCO.

i) As per the definition of 'Delivery Point' in PPA, the ISTS charges beyond the delivery point shall be borne by the buying entities. It is pertinent to note that, in the instant case, no ISTS charges are applicable up to the delivery point, and the Petitioner should not be held responsible for any ISTS charges beyond the Delivery Point. It is GRIDCO that must bear the liability to pay the ISTS charges beyond the Delivery Point. It should have been GRIDCO's responsibility to approach OERC or this Commission to seek clarity on the ISTS charges waiver issue due to the MoP order dated 9.6.2023, which it failed to fulfil.

j) Clause 18 of the Wind Guidelines provides that all expenses, including the transmission charges and losses, if any, in relation to the transmission beyond the metering point shall be borne by the procurer. Clause 7.5 of the Wind Guidelines states that if the commissioning of the wind project gets delayed beyond the applicable date of ISTS waiver due to a *force majeure* event, the liability of transmission charges and losses would be shared between the developer and procurer(s) in a ratio of 50:50.

k) The ISTS charges will be borne by the procurer, except in two circumstances, first, when the delay beyond the ISTS charges waiver deadline is attributable to the developer, the entire ISTS charges will be borne by the developer, and second, when the delay beyond the ISTS charges waiver deadline is due to *force majeure*, the ISTS charges will be borne equally by the developer and procurer.

l) When the Petitioner submitted its bid, the Petitioner believed that if the Project was delayed due to *force majeure*, the Petitioner would still be entitled to a waiver of ISTS charges. The Petitioner assumed that it would never have to bear 50% of the ISTS charges due to *force majeure*. However, after the MoP order dated 9.6.2023, if the project is extended beyond the ISTS charges waiver period due to *force majeure*, the Petitioner will be required to bear 50% of the ISTS charges. This constitutes a CIL event under the Wind Guidelines.

m) The liability to bear the ISTS charges beyond the delivery point/metering point is that of the Respondents. Further, post the CIL event, due to the MoP order dated 9.6.2023, the Respondents have to bear the ISTS charges, but SECI has completely absolved itself from any liability, and GRIDCO is also not ready to bear the liability for ISTS charges. As SECI and GRIDCO are not ready to accept their liability for ISTS charges if applied, then this would lead to frustration of the contract and on this ground itself, the Petitioner should be entitled to exit the Project without any liability.

n) GRIDCO has contended that if Petitioner is allowed to exit, then this Commission should direct SECI to recover the opportunity cost for not procuring such low-cost power without transmission charges from the defaulting entity and pass on the same to GRIDCO. There is no point in entertaining any plea for an increase in cost raised by GRIDCO. The present petition seeks adjudication of the CIL issue. If GRIDCO believes it has any right to claim costs, it should have filed a separate petition. The Commission should not entertain such baseless, erroneous, and frivolous prayers in the instant petition.

o) The Petitioner has not sought an exit on account of an increase in the Project cost. In this case, a CIL event due to the MoP order dated 9.6.2023, which has significantly altered the bidding conditions. The Petitioner should not be held responsible for the ISTS charges, as there is a complete change in the bidding conditions.

p) Due to the delay of 5 months in tariff adoption, SECI had already extended the SCD for the Project until 2.12.2025. The delays are solely attributable to SECI. Further, given the history of delays and the reduced ISTS waiver period, the uncertainty in the Project timeline and the increased threat of crossing the ISTS waiver period have made the Project unviable and impossible for any stakeholder.

q) SECI vide email dated 30.1.2023 to GRIDCO clarified to GRIDCO that the ISTS charges are waived off for the Project for a period of 25 years from the commissioning date as per the MoP order dated 23.11.2021 and 30.11.2021. However, SECI failed to provide such comfort to the Petitioner. This appears to be an act of collusion between SECI and GRIDCO, to the detriment of the Petitioner's interest.

r) As per Clause 4.5.2 of the PPA, if there is a delay in the grant/operationalisation of the GNA or ISTS sub-station at the delivery point for reasons not attributable to the WPD, it will be treated as a delay beyond the WPD's control. In such a case, the clause provides for the extension of the time of SCD but does not state anything about the ISTS charges. However, the PPA does not mention the onus for ISTS charges in case of extension in the SCD beyond the ISTS charges waiver period due to *force majeure*, thereby resulting in uncertainties.

IA.No.65/2024

14. The Petitioner in IA No. 65/2024, while reiterating its earlier submissions, has made the following additional submissions:

a) The Petitioner has filed Appeal No. 259 of 2024 before APTEL against the Commission's interim order dated 27.3.2024 rejecting the Petitioner's interim prayers. APTEL, in its order dated 9.6.2023 in Appeal No. 259 of 2024, has acknowledged that the MoP order dated 9.6.2023 has changed the bidding conditions, and this CIL event issue has to be decided at the first opportune time.

b) This interlocutory application is filed to amend and add prayers made in the petition, and it does not alter the basis of the petition.

c) In view of the stand taken by SECI and GRIDCO in their respective replies, the prayer raised in the petition will become infructuous. This necessitates an amendment in the prayer. Even if the MoP order dated 9.6.2023 is declared as a CIL event, the issue of who will bear the ISTS charges will remain pending. Therefore, the Commission must decide as to who will bear the ISTS charges at this stage. Otherwise, adjudication of this issue will entail another round of litigation, which can be avoided by resolving this issue of the liability for ISTS charges due to the MoP order dated 9.6.2024.

d) If the Commission decides not to adjudicate on who will bear the ISTS charges, the existing uncertainties will exponentially multiply, frustrating the execution of the Petitioner's Project. Therefore, the Petitioner should be allowed to exit the Project without any liability.

15. The Commission in the Record of Proceedings (RoP) of the hearing dated 9.9.2024 directed the Petitioner to file the following.

*“(a) Status of implementation of its 300 MW Wind Power Project.
(b) Details of the steps taken and the investment made (head-wise), since grant of LOA to till date, towards the implementation of its 300 MW Wind Power Project.”*

16. In response, the Petitioner vide affidavit dated 16.9.2024 has submitted that the Petitioner has made continuous and genuine efforts to comply with the Project timeline. The Petitioner has also submitted that it r was actively engaged with multiple lenders to secure further financing for the Project. However, these lenders have expressed reluctance to provide funding without clarity on whether the MoP order dated 9.6.2023 qualifies as a CIL event and who will bear the liability for ISTS charges. The details submitted by the Petitioner are as follows:

Land Status:

- a) Government Order has been successfully secured for the Koppal-II, Karnataka Grid Sub-Station, which is a crucial component of the Project's infrastructure.
- b) For the 91 locations required for the wind turbine generators, the Petitioner has identified 130 locations, for buffer and any contingencies.
- c) Environmental and Social (E&S) assessments, as well as Energy Yield Assessment (EYA), have been re-verified for 54 of these locations to ensure compliance with regulatory standards and to optimise project performance.

- d) Agreements to Sell (ATS) have been executed for 35 of these identified locations, demonstrating the Petitioner's commitment to securing land for the Project.
- e) The Sale Deed for 1 location has been executed, and the other 3 are in the pipeline for execution.
- f) Aviation clearance has been obtained from the Airport Authority of India for 15 locations, categorised as cleared, and for 23 additional locations under restricted categories, addressing essential regulatory requirements for the installation of tall structures like wind turbines.
- g) A Bank Guarantee of ₹59,67,00,000 has been duly submitted to Respondent No. 1 as a performance bank guarantee under the PPA, and a back guarantee of ₹4,95,60,000 has been paid to Karnataka Renewable Energy Development Limited.

Connectivity Status:

- a) The Petitioner has successfully processed the connectivity application through the CTUIL, marking a significant milestone in connecting the wind power project to the national grid.
- b) An in-principle grant of connectivity has been secured from CTUIL, facilitating the next phases of grid integration.
- c) A Bank Guarantee of ₹9,50,00,000 has been duly submitted to CTUIL as part of the financial security requirements for grid connectivity.
- d) Approvals under Section 68 and Section 164 of the Electricity Act, 2003, necessary for the laying of transmission lines, have been obtained from CTUIL for the Project's transmission infrastructure.
- e) A comprehensive route survey for the Project has been completed.
- f) This Commission has also approved the adoption of the transmission charges vide order dated 9.7.2024 in Petition No.64/AT/2024 and has also granted a transmission license to POWERGRID Koppal Gadag Transmission Limited vide order dated 26. 7.2024 in Petition No.52/TL/2024, the designated transmission licensee for this Project, thus securing a critical element for the evacuation of generated power.

Investments:

| Cost Category | Actual till August 2024 (₹) | Committed (₹) | Total (₹) |
|--|------------------------------------|----------------------|------------------|
| Land development | 19,39,51,500 | 88,47,88,000 | 1,07,87,39,500 |
| Bank Guarantees (including Back guarantee charges) | 1,10,21,379 | 74,96,49,079 | 76,06,70,458 |

| | | | |
|-------------------------------------|---------------------|-----------------------|-----------------------|
| Mam-hour cost | 14,21,54,876 | 13,19,339 | 14,34,74,215 |
| Legal cost | 82,03,188 | 43,67,639 | 1,25,70,827 |
| Technical studies and related costs | 10,36,64,025 | 6,28,531 | 10,42,92,556 |
| Total costs | 45,89,94,968 | 1,64,07,52,588 | 2,09,97,47,556 |

17. The gist of the written submissions filed by the Petitioner on 18.9.2025 is as follows:

- a) The Petitioner participated in the bidding process relying on the MoP's order dated 30.11.2021 and the understanding that the waiver of ISTS charges would apply for the Project without any limitation or restriction. However, the MoP's order dated 9.6.2023 has changed the fundamental basis on which bids were placed, and the Project was to be carried out.
- b) The MoP's order has introduced uncertainties, particularly regarding waiver of transmission charges. The Respondents have taken a stand that they will not bear the transmission charges if applicable. These events have introduced multiple uncertainties, and the Petitioner is facing difficulties in fulfilling the obligations under the PPA.
- c) The MoP's order dated 9.6.2023 is a CIL event. APTEL in Petition No. 251 of 2021 held that if an event constitutes a CIL event under the PPA, then it should be recognised as a CIL event at the stage of adoption of the tariff.
- d) It is not necessary to decide the impact of the CIL event and to submit evidence supporting the actual impact of CIL while deciding whether the event is a CIL event. Thus, the SECI's contention that the Petitioner has to demonstrate the impact of CIL on the Project cost to claim CIL, along with supporting evidence, is meritless. Further, the argument that the ISTS waiver period is available until June 2026 is irrelevant, as the issue for consideration in the instant matter is whether the MoP order dated 9.6.2023 is a CIL event.
- e) The MoP order dated 9.6.2023 has introduced a new condition restricting the waiver of transmission charges to two six-month extensions, which has significantly altered the bidding conditions. If the SCD is extended beyond 26.6.2026, neither the Commission nor the Respondents have any authority to waive the transmission charges under the MoP order. This makes it impossible for the Petitioner to perform the obligations under the PPA.
- f) The transmission charges form a significant part of the quoted tariff, and if the Petitioner was aware that the transmission charges would be applied to the

project, it would have quoted a higher tariff or refrained from bidding. The MoP order dated 9.6.2023 has introduced regulatory uncertainty, jeopardising the project and incurring additional costs. Further, the delays in obtaining regulatory clarity have further complicated the situation, while the Petitioner is not responsible for the delays and faults.

- g) There is a significant delay in the finalisation of bids, issue of LoA and adoption of tariff. Further, the timelines specified in the Wind Guidelines have not been followed by SECI. The project has experienced unnecessary delays, pushing the project to frustration.
- h) The timelines for FC and SCD will only begin when the CIL issue is decided. Because of delays, not attributable to the Petitioner, the actual project timelines would begin after two years from the submission of the bids. As a result, the bidding conditions have changed, and the project cost has increased, making the project financially unviable for the Petitioner. Therefore, the timeline for executing the obligations under the PPA would effectively start when the CIL issue is decided. APTEL in Appeal Nos. 368-373 of 2019 held that the timelines for completion of the project under the PPA only start when the tariff is adopted, or procurement approval is secured, as it is the point when the PPA comes into play.
- i) The procurement process was vitiated by deviations from the Wind Guidelines, and there is no clarity on the ISTS charges. In such a situation, the Petitioner cannot be expected to proceed in an uncertain contractual environment. Till the uncertainties and the legal issues are resolved, the Petitioner cannot be asked to commit to the project and should be allowed to exit the project without the invocation of BG or any penalty.
- j) The Commission should declare that the MoP order dated 9.6.2023 is a CIL event and declare who will bear the transmission charges, or acknowledge that the project has become impossible for the Petitioner to execute. Accordingly, allow the Petitioner to exit the project without any liability.
- k) The MoP order dated 9.6.2023, the delays in the issue of LoA, tariff adoption and clarification on CIL event have delayed the project timeline beyond what was envisaged at the bidding stage. These events have fundamentally changed the bidding conditions, and on this ground, the Petitioner should be allowed to exit the project. A similar issue was dealt with by the Hon'ble Delhi High Court in *Monnet Power Company Limited & Ors. V UOI & Ors.*, wherein,

while acknowledging the changed circumstances, which were not contemplated earlier and were unknown to the bidder, held that the bidding process was impacted and therefore, the Petitioner was allowed to withdraw and seek a refund of the bid security without any penalties.

18. SECI, in its written submissions dated 17.9.2024, has reiterated the submissions made earlier, besides the following additional submissions:

a) The Petitioner filed Appeal No. 258 of 2024 along with IA No. 819 of 2024 and Appeal No. 259 of 2024 along with IA No. 813 of 2024, before APTEL against the order dated 31.3.2024 in Petition No. 337/AT/2023 adopting the tariff of the instant project and the interim order dated 27.3.2024 in the instant petition, respectively. APTEL, by an order dated 2.7.2024, disposed of the said appeals, and perusal of the aforesaid order indicates as follows:

- i. The Commission's order dated 31.3.2024 in Petition No. 337/AT/2023 has been upheld by APTEL;
- ii. APTEL directed the parties to complete pleadings in the present petition (Petition No. 26/MP/2024) within a period of two weeks. This direction has been complied with by the parties.
- iii. APTEL further directed this Commission to ensure that none of the parties unduly delay the proceedings;
- iv. APTEL directed that Petition No. 26/MP/2024 be disposed of expeditiously.
- v. APTEL has not expressed any opinion on the merits and observed that the Commission shall adjudicate the instant petition in accordance with the law uninfluenced by any observations made in the order dated 2.7.2024;

b) SECI came to know of the interim application, I.A. No. 65/2024, filed by the Petitioner seeking an amendment to the prayers in the present petition. In light of the specific directions issued by APTEL in the remand order dated 2.7.2024, the Petitioner cannot, at this belated stage, seek to expand the scope of the present proceedings through an IA.

c) The primary grievance of the Petitioner in Appeal No. 259 of 2024 was that it was required to achieve financial closure on 3.7.2024, without its claim that the MoP order dated 9.6.2023 is a change in law event, being adjudicated by this Commission. Accordingly, APTEL directed that the present petition shall be disposed of in an expeditious manner and that none of the parties shall be entitled

to seek extension of time to complete their respective pleadings. Therefore, it is not permissible to alter/expand the scope of the present proceedings in the manner attempted by the Petitioner.

d) Nothing prevented the Petitioner from seeking the prayers now sought to be added by way of an amendment at the stage of filing the petition. The amended prayers are not consequential to any subsequent event and may not be entertained, at this belated stage, after completion of pleadings by the parties.

e) As per the PPA, the Petitioner is solely responsible for making arrangements for land and associated infrastructure for development of the Project and for connectivity with the CTU system for confirming the evacuation of power by the SCD. The Commission, by an order dated 2.7.2024 in Petition No. 52/TL/2024, has granted the transmission license for the said GSS and by an order dated 9.7.2024 in Petition No. 64/AT/2024, adopted the transmission charges for the said network. The Petitioner is also a party in the aforesaid petitions.

f) A perusal of the minutes of the 27th consultation meeting of CTUIL for evolving transmission schemes in the SR held on 30.1.2024 demonstrates that the expected date of completion of the Koppal II PS transmission scheme is December 2025. According to the Monthly Progress Report of Transmission Projects awarded through Tariff Based Competitive Bidding Route dated 31.3.2024, the expected date of completion is in December 2025. Thus, the Petitioner's contention that the GSS will be completed beyond April 2026 is entirely misplaced.

g) The Petitioner, as an alternate prayer in the present petition, has sought liberty to withdraw from the project without any cost, claim or penalty of any nature whatsoever. This prayer of the Petitioner is not maintainable, as the Petitioner executed the PPA with the SECI on 28.6.2023 with full and complete knowledge of the MoP order dated 9.6.2023, in which the MoP modified and limited the benefit of waiver of ISTS charges. Thus, the Petitioner cannot now be permitted to withdraw from the Project without any consequential cost/ penal liability.

h) The Commission, in an order dated 23.5.2022 in Petition No. 525/MP/2020, held that the provision for waiver of transmission charges in the orders issued by MoP is applicable only after the Commissioning Date ("COD") of the generating station. The aforesaid finding was also reiterated by the Commission by an order dated 8.6.2022 in Petition No. 103/MP/2021. Thus, the Petitioner can under no

circumstances be permitted to exit the PPA on the basis of the MoP order dated 9.6.2023.

i) During the hearing held on 9.9.2024, the Petitioner contended that the tariff adoption process has been delayed by SECI, resultantly delaying the project and altering the bid conditions. The Commission's order dated 31.3.2024 in Petition No. 337/AT/2023 has been upheld by APTEL by its order dated 2.7.2024 in Appeal No. 258 of 2024. Thus, all allegations raised by the Petitioner against the tariff adoption process are baseless. Furthermore, SECI has already extended the SCD for the project to 2.12.2025 (pursuant to Articles 2.1.3 and 2.1.4 of the PPA), well within the buffer period under the MoP order. The present remand is restricted to Petition No. 26/MP/2024; therefore, any/all claims against the tariff adoption order dated 31.3.2024 are entirely misplaced.

j) Even as per the MoP order dated 9.6.2023, the Petitioner is eligible for another extension up to 180 days, whereby the revised SCD will be 31.5.2026. The expected completion date for the transmission system is December 2025. Accordingly, even if the Petitioner is granted an extension on account of the delay in the LTA, the SCD will be extended till February 2026.

k) The present remand proceedings are restricted to Petition No. 26/MP/2024, and a decision on the change in law claim of the Petitioner. The Petitioner has raised extraneous issues and sought additional prayers in its rejoinder. This is not permissible. It is a settled principle of law that Petitioners are not entitled to enlarge the scope of the petition by adding additional grounds/prayers in the rejoinder. Reliance in this regard is placed on the decision of the High Court of Bombay in the case of Sambhaji Waghoji Asole v. State of Maharashtra, 2005 SCC Online Bom 785, wherein the Bombay High Court held as follows:

"11. The impugned order is also sought to be challenged on the ground of discrimination. There are no pleadings in that regard in the petition and the same is sought to be canvassed only in the rejoinder filed in the petition. It is well-settled law that rejoinder does not form part of the pleadings in the petition. Besides, whether there is discrimination or not is not a pure question of law and once such a point is raised, the opposite party is entitled to meet the said case by filing the necessary reply to the same. Once such a ground is taken for the first time in the rejoinder, there is no opportunity to the respondents to meet such case of the petitioners. In any case, the petitioners are not entitled to enlarge the scope of the petition by adding certain grounds in the rejoinder. Therefore, we are not inclined to allow the petitioners to raise such a ground on the basis of the submissions made in the rejoinder. We make it clear that we have not expressed any opinion on the said issue as the petitioners have not been allowed to raise the said issue in the present petition."

l) Therefore, the allegations raised by the Petitioner regarding failure of SECI to fulfil its obligations as a nodal agency, alleged collusion between SECI and GRIDCO, alleged deviation from the guidelines, etc., may not be entertained in the present proceedings.

m) The stipulation in Clause 4.2.6 of the PPA that SECI shall not be liable to bear the ISTS charges is not a deviation from the Wind Guidelines. Clause 7.5 of the said Guidelines states, *“Government of India from time to time issues order for waiver of inter-State transmission system (ISTS) charges and losses on transmission of wind power till a certain date. In case the SCD of wind project is before the date till above ISTS waiver is applicable, and if the commissioning of the wind project gets delayed beyond the applicable date of ISTS waiver due to force majeure event, the liability of transmission charges and losses would be shared between the WPG and procurer(s) in ratio of 50:50. However, in case the commissioning of the wind project gets delayed beyond the applicable date of ISTS waiver due to reasons attributable to the WPG the liability of transmission charges and losses would be of WPG”*. Thus, the liability to bear ISTS charges is limited to the WPG/Procurer(s), in terms of the said Guidelines. SECI, as an inter-state trading licensee, is not liable to bear ISTS charges.

Analysis and Decision

19. The main prayer of the Petitioner in the instant petition is to declare the MoP order dated 9.6.2023 as a CIL event and to hold that the Petitioner will be entitled for compensation if the Project is delayed beyond the ISTS charges waiver period or in the alternative allow the Petitioner to withdraw from the Project without any cost and to award compensation for the cost already incurred on the Project. In the interim, the Petitioner has prayed to stay the tariff adoption petition or to decide the present petition along with the tariff adoption petition and to extend the date of achieving the FC without any cost. The Commission, through an interim order dated 27.3.2024, has rejected the Petitioner's interim prayers. The Petitioner filed Appeal No. 259 of 2024 along with IA No. 813 of 2024 and Appeal No. 258 of 2024 along with IA No. 819 of 2024 before APTEL against the Commission's interim order dated 27.3.2024 in the instant petition

and order dated 31.3.2024 in Petition No. 337/AT/2023 adopting the tariff of the instant Project, respectively. APTEL, by a combined order dated 2.7.2024, disposed of the said Appeals with a direction to the Commission to dispose of the instant petition expeditiously.

20. In the meantime, the Petitioner filed an Interlocutory Application, I. A No.65/2024, to add prayers seeking clarification regarding the liability over the ISTS charges and to direct GRIDCO to approach OERC for modification of the OERC's order dated 3.6.2023 approving the PSA, in the light of the changed circumstances. SECI has submitted that the Petitioner's IA would delay the proceedings in the matter and requested not to entertain the same, especially in view of the APTEL's direction to dispose of the instant petition expeditiously. The Commission has already taken cognisance of the IA filed by the Petitioner in the RoP dated 9.9.2024. The prayers in the Petitioner's IA are closely related to those in the main petition. Therefore, we will deal with the prayers made by the Petitioner in the IA also in the instant order.

21. The Petitioner has also filed Petition No.781/MP/2025 on 27.8.2025 seeking exit from the PPA dated 28.6.2023 without any financial cost. The Petitioner has submitted in the said petition that the PPA is frustrated and it is rendered impossible to perform within the meaning of Section 56 of the Indian Contract Act, 1872, due to revocation of connectivity by CTU and various other reasons and has requested to discharge the Petitioner from its obligations under the PPA without financial implications and legal consequences. The Petitioner has also sought a stay of adjudication of the instant petition pending adjudication of the prayers made in Petition No.781/MP/2025. The Petition No.781/MP/2025 was admitted on 16.9.2025, and notices were issued to the Respondents, and now it is listed on 16.12.2025.

22. With this background, we now consider the Petitioner's main plea for declaring the MoP's order dated 9.6.2023 as a CIL event.

23. The MoP issued an order on 30.9.2016, exempting ISTS charges and losses for wind energy projectors awarded through a competitive process commissioned till 31.3.2019 for a period of 25 years from the date of commissioning of such projects. Further, such a waiver was available only for projects with a PPA for the sale of electricity to Discoms for compliance with their renewable purchase obligation. Subsequently, MoP issued an order dated 23.11.2021 limiting the waiver of ISTS losses to projects that completed the bidding process before 15.1.2021, and the waiver of the ISTS charges was made applicable to projects commissioned up to 30.6.2025.

24. Later, the MoP issued another order dated 30.11.2021 stating that in case of the entities that are eligible for waiver of ISTS charges and granted extension of SCD by a competent authority due to *force majeure*, delays due to transmission service provider and delays due to government agency, the period of SCD shall be extended and the period of waiver of ISTS charges shall also be deemed to be extended. The relevant portion of the MoP order dated 30.11.2021 is as follows:

“In continuation to the Ministry of Power Order No. 23/12/2016-R&R dated 23.11.2021 and in supersession of order dated 26.11.2021 regarding the waiver of inter-state transmission charges on transmission of the electricity generated from solar and wind sources of energy, I am directed to convey that the following para will be added after para 3.1 (vi) of the Order dated 23.11.2021:

(vii) for any solar, wind and sources mentioned in para 3.1 (ii) and (iii) of the Order dated 23.11.2021, which is eligible for waiver of inter-state transmission charges and is having its scheduled date of commissioning on or before 30th June 2025 is granted extension of time from the commissioning by Ministry of New and Renewable Energy after careful consideration, on account of Force Majeure or for delay on the part of the transmission provider in providing the transmission even after having taken the requisite steps in time; or on account of delays on the part of any Government Agency, and the power plant is commissioned before the extended date; it will get benefit of waiver of inter-state transmission charges on the transmission of electricity generated by such power plant as if the said plant had been commissioned on or before 30th June 2025:

Provided also that where a Renewable Energy generation capacity which is eligible for ISTS waiver in terms of the extant orders, is granted extension in COD by the competent authority, the commencement and the period of the LTA shall also get extended accordingly, and it will be deemed that the period of ISTS waiver is extended by the said period.

.....”

25. As per the above order, the solar and wind sources mentioned in para 3.1 (ii) and (iii) of the order dated 23.11.2021, which are eligible for waiver of ISTS charges and commissioned on or before 30.6.2025 and whose SCD is extended by MNRE, on account of *force majeure* or due to delay on the part of the transmission or on account of delays on the part of any Government Agency, will be eligible for waiver of ISTS charges. As on the date of entering into the PPA on 28.6.2023, the MoP's order dated 30.11.2021 was prevailing.

26. The MoP issued the following order in continuation of the order dated 30.11.2021, which is applicable in case of the wind developers like the Petitioner:

"In continuation to the Ministry of Power Order Nos. 23/12/2016-R&R dated 23.11.2021, 30.11.2021, 01.12.2022, 06.12.2022 and Order No. 12/07/2023-RCM dated 29.05.2023 on the waiver of Inter-State Transmission (ISTS) Charges on transmission of the electricity generated from solar and wind sources of energy, the para 3.1 (vii) of the Order dated 30.11.2021 shall be substituted as under:

"(vii) for any solar, wind and sources mentioned in para 3.1 (i), (ii) and (iii) of the Order dated 23.11.2021, which is eligible for waiver of inter-state transmission charges and is having its scheduled date of commissioning on or before 30th June 2025 is granted extension of time from the commissioning by Ministry of New and Renewable Energy after careful consideration, on account of Force Majeure or for delay on the part of the transmission provider in providing the transmission even after having taken the requisite steps in time; or on account of delays on the part of any Government Agency, and the power plant is commissioned before the extended date; it will get benefit of waiver of inter-state transmission charges on the transmission of electricity generated by such power plant as if the said plant had been commissioned on or before 30th June 2025.

Provided that where a Renewable Energy generation capacity which is eligible for ISTS waiver in terms of the extant orders, is granted extension in COD by the competent authority, the commencement and the period of the LTA shall also get extended accordingly, and it will be deemed that the period of ISTS waiver is extended by the said period.

Provided also such extension in Date of Commissioning (CoD) of a project shall be granted for a period of six months at a time and not more than 2 times."

27. As per the above order, the wind power generators which are eligible for waiver of ISTS charges and have SCD on or before 30.6.2025 and are granted extension of SCD by MNRE on account of *force majeure* conditions and other delays will be eligible for waiver of ISTS charges as if the generator has achieved SCD on or before 30.6.2025. However, such an extension in the SCD is restricted to a period of one year (two extensions of six months each). As a result, the waiver of transmission charges is

available to wind power generators for reasons mentioned above, which are scheduled to be commissioned on or before 30.6.2025, for only one year (two extensions of six months each).

28. As per the PPA dated 28.6.2023 between the Petitioner SECI on 28.6.2023, the effective date was 26.6.2023, and the Project was scheduled to be commissioned within 24 months, i.e. the SCD of the Project was 26.6.2025. The Petitioner has submitted that it was not in a position to commission the Project before 26.6.2025, as the associated transmission system is delayed and is anticipated to be commissioned only in April 2026, and the Petitioner's Project will also get extended beyond 26.6.2026 and will not be eligible for waiver of ISTS charges as per MoP's latest order of 9.6.2023. The Petitioner has further alleged that SECI is also responsible for the delay in the Petitioner's Project, as SECI has not adhered to the timelines specified in the MoPs guidelines. The Petitioner has contended that the Petitioner participated in the bidding process in 2022, relying on the MoP's order dated 30.11.2021 and with the belief that the Petitioner would be eligible for waiver of ISTS without any restriction. However, the new condition introduced in the MoP's order dated 9.6.2023 has changed the fundamental basis on which the bids were placed, and the project was to be carried out. The Petitioner has contended that the MoP's order dated 9.6.2023 is a CIL event as per the PPA, and it should be declared as a CIL event. The Petitioner has also submitted that the Petitioner is entitled to compensation if the Project is commissioned beyond the ISTS charges waiver period.

29. Per contra, SECI has submitted that as per the 27th consultation meeting of CTUIL for evolving transmission schemes in SR held on 30.1.2024 and as per the Monthly Progress Report of Transmission Projects awarded through TBCB Route, the associated transmission system is anticipated to be commissioned in December 2025. Therefore, the Petitioner's contention that the associated transmission system will be commissioned only after April 2026 is misplaced. Further, the Petitioner is eligible for an

extension of 180 days beyond December 2025, even as per the MoPs order dated 9.6.2023, for completion of the Project. SECI has submitted that the Petitioner entered into a PPA on 28.6.2023 after the MoP's order dated 9.6.2023 and was aware of the restrictions placed by the MoP in its order dated 9.6.2023 before entering the PPA. SECI has further contended that the Petitioner is required to demonstrate the impact of the MoP order on the Project cost to decide the issue of CIL and to provide relief. SECI has also submitted that it has already extended the dates of FC and the SCD to 3.7.2024 and 2.12.2025, respectively, taking into consideration the delay in filing of the tariff adoption petition.

30. In response to SECI's contention that Petitioner has to demonstrate the effect of the MoP order on the Project cost, the Petitioner has submitted that the Petitioner is only seeking a declaratory relief since the actual impact has not arisen yet, and the Petitioner is not seeking any compensation against the CIL event for the present. In this regard, the Petitioner has relied on the APTEL's orders in Appeal No.251 of 2021 and Appeal No.344 of 2021 in Green Infra Renewable Energy Limited v RERC & Ors. and Green Infra I and Green Infra Renewable Energy Limited v RERC & Ors, respectively, wherein APTEL observed that if an event constitutes a CIL event within the four corners of its definition under the PPA, then there is no reason why it cannot be recognised as a CIL event at the stage of tariff adoption and the impact of the same may be decided at the appropriate stage. The Petitioner has further submitted that it will be entitled to consequent compensation if the project completion is delayed beyond the ISTS charges waiver period, as the MoP order dated 9.6.2023 is a CIL event.

31. We have considered the submissions of the Petitioner and SECI. As stated above, the basic plea of the Petitioner is to declare that the MoP order dated 9.6.2023 is a CIL event. Article 12 of the PPA between the Petitioner and SECI, dated 28.6.2023, provides as follows:

"ARTICLE 12: CHANGE IN LAW



12.1 Definitions

In these rules, unless the context otherwise requires, -

12.1.1 *In this Article 12, the term "Change in Law" shall refer to the occurrence of any of the following events pertaining to this project only after 04.07.2022 including any enactment or amendment or repeal of any law, leading to corresponding changes in the cost requiring change in tariff, and includes-*

- i. a change in interpretation of any law by a competent court or*
- ii. a change in any domestic tax, including duty, levy, cess, charge or surcharge by the Central Government, State Government or Union territory administration leading to corresponding changes in the cost,*
- iii. a change in any condition of an approval or license obtained or to be obtained for purchase, supply or transmission of electricity, unless specifically excluded in the agreement for the purchase, supply or transmission of electricity, which results in any change in the cost.*

but does not include

- A. Any change in any withholding tax on income or dividends distributed to the shareholders of the generating company or transmission licensee: or*
- B. change in respect of deviation settlement charges or frequency intervals by an Appropriate Commission.*

12.1.2 *The term " law" in this Article includes any Act, Ordinance. order. bye-law, rule. regulation. notification, for the time being in force, in the territory of India."*

32. As per Clause 12.1.1 of the PPA, an event to be held as a CIL event has to satisfy three conditions and they are (a) the incident should have occurred after 4.7.2022, (b) enactment or amendment or repeal of any Act, ordinance, order, bye-law, rule, regulation and notification and (c) which leads to any change in the Project cost requiring change in the tariff. For an event to be declared a CIL, it has to satisfy all the above three conditions specified in Clause 12.1.1 of the PPA. In the instant case, the MoP order dated 9.6.2023 was issued after 4.7.2022, and it satisfies the first condition. The MoP order dated 9.6.2023, which is applicable to the Petitioner, has restricted the period of waiver of ISTS charges, thereby altering the conditions laid down for waiver of ISTS charges in the MoP's order dated 30.11.2021. However, the MoP order dated 9.6.2023 has not resulted in any change in the Project cost requiring a change in the tariff, as on date. Any change in the Petitioner's Project cost and the consequent change in the tariff will be known only after the SCD of the Project. In the instant case, the Project has not achieved SCD as of this date. The Petitioner has submitted that the Project may not achieve SCD before 26.6.2026 and therefore it will not be entitled to a

waiver of ISTS charges. The Petitioner has further submitted that the Petitioner is only seeking declaratory relief and is not seeking any compensation at this stage. In this regard, the Petitioner has referred to APTEL's order in Appeal No.251 of 2021 and Appeal No.344 of 2021. We are aware of the APTEL's orders referred to by the Petitioner and are also conscious that the Petitioner is not seeking any compensation at this stage and is only seeking a declaratory order that the MoP order dated 9.6.2023 is a CIL event. The Petitioner's case is based on the surmise that the Petitioner's Project will not achieve SCD before 30.6.2026 to be entitled to a waiver of ISTS charges, and the same will have bearing on the tariff of the Project. In the instant case, the third condition laid in Clause 12.1.1 of the PPA in respect of Project cost has not been satisfied as on date. Therefore, the MoP's order dated 9.6.2023, though it has a restricted period of waiver of ISTS charges leading to a change in the conditions that were prevailing at the time of issue of LoA, cannot be declared as a CIL event at this stage. Further, neither the RfS nor the PPA provides for an in-principle declaration of CIL.

33. The Article 4.2.6 of the PPA dated 28.6.2023 provides as follows:

"4.2.6 Government of India from time to time issues order for waiver of inter-state transmission system (ISTS) charges and losses on transmission of wind power till a certain date. In case the commissioning or the Project gets delayed beyond the applicable date of ISTS waiver, arising out of any reasons whatsoever, SECI shall bear no liability with respect to transmission charges and losses levied, if any. In case the SCD of the Project is before the date till above ISTS waiver is applicable, and if the Project is granted extension in the SCD on account of Force Majeure, or for delay on the part of the transmission provider in providing the transmission even after having taken the requisite steps in time; or on account of delays on the part of any Government Agency, and the Project is commissioned before the extended SCD; it will get benefit of waiver of inter-state transmission charges, in line with the OM issued by the MoP vide No. 23/12/2016-R&R dated 30.11.2021 and subsequent amendment/clarifications thereto. However, in case the commissioning of the Project gets delayed beyond the applicable date of ISTS waiver/extended SCD as above, due to reasons attributable to the WPD, the liability of transmission charges and losses would be to the account of the WPD.

In case of any extension in SCD beyond 30.06.2025, necessary approval will be granted by MNRE, in line with the OM issued by Ministry of Power vide No. 23/ 12/20 16- R&R dated 30.11.202, and subsequent amendments/clarifications thereto, read in conjunction with CERC's orders and regulations notified in this regard. The provisions of PPA and PSA in regard to liability of the Buying Entity to pay the ISTS charges and losses shall stand modified by such exemption/waiver provided as per the above Order/Office Memoranda and regulations issued by CERC, as applicable."

34. As per Clause 4.2.6 of the PPA, the Petitioner will be entitled to a waiver of ISTS charges, if the Project is granted extension in the SCD on account of *force majeure*, or for delay on the part of the transmission provider or on account of delays on the part of any Government Agency, and the Project is commissioned before the extended SCD, in line with the OM issued by the MoP vide No. 23/12/2016-R&R dated 30.11.2021 and subsequent amendment/clarifications thereto. It is clear that the Petitioner was aware at the time of entering into the PPA that the Petitioner was entitled to a waiver of ISTS charges on the basis of the MoP order dated 30.11.2021, and it is subject to modifications by any subsequent amendments and the Regulations issued by the Commission. Therefore, the Petitioner is precluded from taking the stand that it participated in the bidding process on the belief that it will be entitled to a waiver of ISTS charges for the entire life of the Project.

35. Further, the Commission in the interim order dated 27.3.2024 has already observed that the Petitioner's apprehension that the waiver of the ISTS charges will not be available to the Petitioner is based on conjectures and it is premature. The relevant portion of the order dated 27.3.2024 is as follows:

"20. We also find the apprehensions of the Petitioner that its Project will not be entitled to the waiver of ISTS charges in terms of the Ministry of Power's Order dated 9.6.2023 are entirely premature. The Petitioner's apprehensions are mainly premised upon two grounds, namely, (i) delay in the adoption proceedings and (ii) uncertainty around the availability of Koppal II S/s. However, as per the Petitioner's own submissions, the delay in the adoption tariff beyond June 2024 only will adversely affect the implementation schedule of the Project by the Petitioner inasmuch as its SCD will be extended beyond 26.6.2026 and, resultantly, will not be covered by the buffer period of 1 year provided under the MoP's Order dated 9.6.2023. The threshold limit of June 2024, as indicated by the Petitioner, is yet to be triggered and to ensure that the adoption proceedings are not delayed till such period, we are neither inclined to stay the adoption proceedings till the final adjudication of the present Petition nor tag the present Petition along with the adoption Petition. As already noted above, the scope of both proceedings is completely distinct, and even the Guidelines issued by the Ministry of Power, Govt. of India provide for time bound adoption of tariff by the Commission, failing which the developers are entitled to a corresponding extension in the SCD, which in the present case, will only add further uncertainty to the implementation schedule/SCD of the Projects. Similarly, we find that the apprehension of the Petitioner regarding the availability/readiness of the Koppal II S/s is premature. As per the Transmission Service Agreement as entered into between Koppal II Gagad II Transmission Limited (entity responsible for setting up Koppal II S/s) and CTUIL, the Scheduled Commercial Operation Date of the said S/s is 24 months from the transfer of the SPV, which works out to be 25.12.2025. Hence, even after the readiness of the said S/s, the Project of the Petitioner would have sufficient time to

achieve the completion of its Project and start evacuating the power as the buffer period available for waiver of ISTS charges as per the MOP's Order is up to 30.6.2026. The submissions of the Petitioner casting the aspersions on readiness / availability of Koppal II by its SCD and delays therein, at this stage, are merely conjectures and cannot be the ground for granting the interim reliefs as prayed for by the Petitioner."

36. Moreover, the Commission in order dated 27.3.2024 has also observed that even after the commissioning of the associated transmission system, the Petitioner would have sufficient time to complete the Project and start evacuating the power as the buffer period available for waiver of ISTS charges as per the MoP's order is up to 30.6.2026. Thus, ideally, the Petitioner should have started implementing the Project in the right earnest so that the Project could be commissioned within the specified period to avail of the waiver of the ISTS charges. However, the Petitioner, instead of implementing the project, has engaged in litigation to avoid its obligations under the PPA on the basis of premature assumptions. It is also observed from the Status Report filed by the Petitioner that there has been little progress in the implementation of the Project. From the Petitioner's conduct, it appears that it is not interested in implementing the project and is trying to escape its obligation under the PPA.

37. The Petitioner has further claimed that APTEL, in an order dated 2.7.2024, agreed and held that the Petitioner is justified in asserting that the MoP order dated 9.6.2023 has fundamentally changed the bidding conditions, as it was brought into force after the issuance of the LoA dated 19.1.2023 and 4.5.2023.

38. We have perused the APTEL's order dated 2.7.2024. APTEL has directed the Commission to adjudicate the Petition in accordance with the law uninfluenced by any observations made in its order. Therefore, the Petitioner's contention that APTEL has agreed with the Petitioner's submission that the MoP order dated 9.6.2023 has changed the bidding conditions has no merit. The relevant portion of the APTEL's order is as follows:

"It is made clear that we have not expressed any opinion on merits and the CERC shall adjudicate the Petition in accordance with law uninfluenced by any observations made in this order. Needless to state that, consequent on disposal of Petition No.

39. In view of the above discussion and in the absence of an actual assessment of the impact of the MoP's order dated 9.6.2023 on the project cost and the tariff of the Petitioner's project, we are not inclined to declare the MoP's order dated 9.6.2023 as a CIL event at this stage.

40. The Petitioner has prayed that if the Petitioner's plea for declaring the MoP's order dated 9.6.2023 as a change in law is disallowed, the Petitioner may be allowed to withdraw from the Project without any cost, claim or penalty of any nature, including the release of bank guarantees and may also be awarded compensation for the cost already incurred by the Petitioner. It is observed that the Petitioner has also filed Petition No.781/MP/2025 on 27.8.2025 seeking to exit from the PPA dated 28.6.2023 and to discharge the Petitioner from its obligations under the PPA without financial implications and legal consequences. This petition has already been admitted, and notices were issued to the Respondents, and it was listed for further hearing on 16.10.2025. We are of the view that it would be appropriate to deal with this prayer of the Petitioner to withdraw from the Project without cost and legal consequences in Petition No.781/MP/2025.

41. The Petitioner has further prayed in IA No.65/2024 to absolve the Petitioner from any liability towards ISTS charges and clarify that the Petitioner will not be liable to bear the ISTS charges if the Petitioner's Project timeline is extended beyond the ISTS waiver period, and who will bear the ISTS charges if it is applied to the Project.

42. SECI has submitted that in terms of the PPA, in case the commissioning of the Project is delayed beyond the applicable date of ISTS charges waiver, SECI shall not be liable for transmission charges and losses. SECI has further submitted that in case of any delay in commissioning of the Project beyond the applicable date of ISTS

waiver/extended SCD, due to reasons attributable to the WPD, the liability of transmission charges and losses would be to the account of the WPD.

43. We have considered the submission of the Petitioner and SECI. As per Clause 4.2.6 of the PPA (quoted in paragraph 31 above), if the commissioning of the Project gets delayed beyond the applicable date of ISTS waiver/ extended SCD due to reasons attributable to the Project developer, then the Project developer is liable to bear the ISTS charges and losses. In the instant case, the Project has not been commissioned. If the Project is commissioned within the ISTS waiver period, the Project will be entitled to the waiver of ISTS charges. If the Project is not commissioned within the ISTS waiver period, the liability for ISTS charges will be decided on the basis of the reasons for such delay. The Petitioner's prayer for clarification regarding the liability of ISTS charges assumes that the Project completion may be delayed beyond the ISTS waiver period. As the Project has not been commissioned, it is not possible for the Commission to ascertain, at this stage, the period of delay, if any, and the reasons for the same. Accordingly, we are of the view that the Petitioner's prayer for clarification regarding the liability of ISTS charges is premature and is rejected.

44. The Petitioner has further prayed in the IA No.64/2024 to give directions to GRIDCO to approach OERC for modification of the order dated 3.6.2023 approving the PSA, as the MoP order dated 9.6.2023 has fundamentally changed the PPA.

45. We have considered the submissions of the Petitioner. The Petitioner has not submitted the provisions under which the Commission could issue such a direction to GRIDCO. We are of the view that this particular prayer of the Petitioner is preposterous, as no such direction could be issued by the Commission, especially when we have concluded that the MoP's order dated 9.6.2023 cannot be considered as a CIL event at this stage. It is noticed that the Petitioner in Petition No.781/MP/2025 has also sought a stay of adjudication of the instant petition pending adjudication of the prayers made in

Petition No.781/MP/2025. We do not see any reason to keep this petition pending, especially when the Petitioner itself is seeking to exit the Project.

46. The Petition No. 26/MP/2024, along with IA.No.65/2024, is disposed of in terms of the above.

sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V.)
Member

sd/-
(Jishnu Barua)
Chairperson