



याचिका संख्या/Petition No.366/AT/2024

कोरम/ Coram:

श्री जिशु बरुआ, अध्यक्ष / Shri Jishnu Barua, Chairperson

श्री रमेश बाबू व., सदस्य / Shri Ramesh Babu V., Member

श्री हरीश दुदानी, सदस्य / Shri Harish Dudani, Member

आदेश दिनांक/ Date of Order 20th March, 2025

IN THE MATTER OF:

Petition under, Section 63 of the Electricity Act, 2003 for the adoption of tariff for the ISTS Grid connected Solar Photo Voltaic projects of 3000 MW selected through Competitive Bidding Process as per the Guidelines issued by Ministry of Power, Govt. of India on 28.07.2023 and its amendments thereof.

AND

IN THE MATTER OF:

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

. . . Petitioner

VERSUS

- 1. UP Power Corporation Limited (UPPCL),**
Power Purchase Agreement Directorate,
14th Floor, Shakti Bhawan Extn.,
14-Ashok Marg, Lucknow, Uttar Pradesh -226001
- 2. Maharashtra State Electricity Distribution Company Ltd (MSEDCL),**
Prakashgad, 5th Floor, Station Road,
Bandra (East), Mumbai -400051 Maharashtra.
- 3. Khaba Renewable Energy Private Limited**
(Project SPV of Soliaredirect Energy India Private Ltd)
Unit no. 3, 4 & 5, Sixth Floor, Fountain head –Tower-2,
Viman Nagar,Pune-411014, Maharashtra.
- 4. AVAADA RJ Sustainable Private Limited**
(Project SPV of Avaada Energy Private Ltd)



C-11, Sector-65, Noida-201301, Uttar Pradesh.

5. Hazel Hybren Private Limited.

B-Block, 6th Floor, Embassy 247,
Vikhroli West, Mumbai-400083, Maharashtra

6. JGRJ Two Solar Private Limited

(Project SPV of Jakson Ltd.)
A-43, Hosiery Complex, Phase-II (Ext.),
Opp. NSEZ, Noida-201305, Uttar Pradesh

7. SPRNG Power Private Limited.

(Project SPV of Sprng Energy Private Limited)
Upper Ground, Office A-001, P-5, Pentagon Tower,
Magarpatta City, Hadapsar Pune, Maharashtra 411013.

8. Green Infra Clean Wind Technology Limited.

(Project SPV of Green infra Wind energy Limited)
Building 7A, Level 5, DLF Cybercity,
Gurugram-122002, Haryana.

9. Apraava Energy Private Limited

7th Floor, Fulcrum, Sahar Road,
Andheri (East), Mumbai, Maharashtra- 400099

10. HR Saraswati Energy Private Limited

(Project SPV of Hinduja renewable energy Private Limited)
Unit No 01, Ground Floor, Boston House, Suren Road, off,
Andheri –Kurla Road, Andheri East,
Mumbai-400093, Maharashtra.

. . . Respondents

Parties present:

1. Shri Rajiv Shankar Dvivedi, Advocate, NHPC
2. Shri Sushant Sarkar, Advocate, NHPC
3. Shri Rajesh Joshi, NHPC
4. Shri Nitish Gupta, Advocate, HHPL
5. Shri Deepak Thakur, Advocate, HHPL
6. Shri Hemant Singh, Advocate, GICWTL
7. Shri Chetan Garg, Advocate, GICWTL
8. Ms. Alchi Thapliyal, Advocate, GICWTL
9. Ms. Nishtha Goel, Advocate, MSEDCL

ORDER

The Petitioner, NHPC Limited (hereinafter referred to as '**NHPC**'), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as



the 'Act') for the adoption of tariff for 3000 MW Solar Photo Voltaic projects connected with the Inter-State Transmission System ('ISTS') and selected through the competitive bidding process as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Hybrid Power Projects" (hereinafter referred to as 'the Guidelines') dated 28.7.2023 issued by the Ministry of Power, Government of India and its amendments thereof. The Petitioner has made the following prayers:

- a) *Admit the present Petition.*
- b) *Condone the delay in approaching the Hon'ble Commission for Tariff Adoption.*
- c) *Adopt the Tariff discovered in the Competitive Bidding Process for individual Power Projects as listed in Table 1 at paragraph 9 above on terms and conditions contained in the PPAs with Solar Power Developers being Respondent Nos 3 to 10. A Trading Margin of Rs 0.07/kWh (as mutually agreed between the parties) in addition to above Tariff is to be recovered from buying Utilities /Distribution Licensee in terms of the PSA signed between NHPC & Utilities/ Distribution Licensee being respondent no 1 & 2 herein.*
- d) *Pass such other and further order / orders as are deemed fit and proper in the facts and circumstances of the case.*

Submission of the Petitioner:

2. The Petitioner has submitted that on 19.6.2023, it issued a Request for Selection ('RfS') with the standard Power Purchase Agreement (PPA) and the Power Sale Agreement (PSA) documents for setting up the 3000 MW ISTS connected Solar PV Power Project(s), under Competitive Bidding as per the Guidelines dated 28.7.2023, on the ISN Electronic Tender System (ETS) e-bidding portal. In response, sixteen bids were received, and all were found to fully meet the technical criteria. On 30.10.2023, as per the prescribed procedure in the RfS, the financial bids of the sixteen technically qualified bidders were opened on the ISN ETS e-bidding portal in the presence of the Bid Evaluation Committee. As per the eligibility criteria mentioned in the RfS, fifteen bidders were shortlisted for participating in the e-reverse auction. The e-reverse auction was conducted on 6.11.2023 on the ISN ETS e-bidding portal, on the basis of which the



final tariff was arrived at. Pursuant thereto, NHPC, on 7.12.2023, issued a Letter of Award to the successful bidders, namely, (i) Solairedirect Energy India Private Limited (250 MW), (ii) Avaada Energy Private Limited (1000 MW), (iii) Hazel Hybren Private limited (300 MW), (iv) Jakson Limited (400 MW), (v) Sprng Energy Private Limited (250 MW), (vi) Green Infra-Wind Energy Limited (300 MW), (vii) Apraava Energy Private Limited (250 MW) and (viii) Hinduja Renewables Energy Private Ltd (250 MW).

3. The Petitioner has further submitted that a request vide letter dated 25.5.2024 has been made to the MNRE, GOI to review the provision of Clause 10.4 of the Guidelines dated 23.07.2023 (requiring the procurer to file the tariff adoption Petition within 15 days after e-Reverse Auction). As solar power is in surplus, most of the DISCOMs/States and DISCOMs are reluctant to buy solar power. There was apprehension that NHPC would not be able to obtain consent from the DISCOMs for the purchase of the 3GW solar power. After vigorous follow-up and regular persuasion, NHPC was able to obtain consent from Uttar Pradesh and Maharashtra. As NHPC was not able to tie up power in the 3GW scheme within 15 days of E-RA PPA and PSA were among the parties signed in March-July, 2024. Accordingly, NHPC approached this Commission for the adoption of the Tariff after a considerable delay. The delay in filing the Petition is not intentional but due to the time taken in compliance with the procedure to have transparent, competitive bidding as per the guidelines dated 28.7.2023. In view of the above, the delay in submission of the Petition may please be condoned by the Commission.

4. In view of the above, the Petitioner has prayed for the adoption of a tariff for the procurement of the 3000 MW Solar PV Power Projects discovered through a competitive bidding process carried out by the NHPC. The Petitioner has further prayed to approve



a trading margin of Rs. 0.07/kWh to be recovered from the distribution companies as specified in the Guidelines.

Hearing dated: 06.11.2024

5. During the course of the hearing on 6.11.2024, the learned counsel for the Petitioner, NHPC, reiterated the submissions made in the pleadings and requested the Commission to adopt the tariff of the 3000 MW Solar PV Power Projects connected with the ISTS and selected through the competitive bidding process as per the Guidelines.

6. Considering the submissions made by the learned counsel for the Petitioner, the Commission admitted the matter and permitted the Respondents to file their replies to the Petition, if any. The Commission also directed the Petitioner to furnish the details/information viz. (i) Status of the PPAs and PSAs and the anticipated timeline for tying up the entire awarded capacity, (ii) Certificate issued by the Bid Evaluation Committee to the effect that the bidding process is carried out in a transparent manner in accordance with the guidelines issued by the government and the price of the selected bidder is reasonable and consistent with the requirement as per relevant Clauses of the RE Guidelines.

7. In compliance with the directions contained in the ROP, the Petitioner, vide its affidavit dated 19.11.2024, has submitted the above information.

Reply of the Respondent No. 5 (HHPL)

8. Pursuant to the liberty granted by the Commission, the Respondent, Hazel Hybren Private Limited ('HHPL'), vide its reply dated 22.11.2023, has mainly submitted as under:

(a) HHPL has no objection to the contents of the Petition, and the same may be considered by this Hon'ble Commission for allowing the same to the extent of adoption of tariff for 3000 MW capacity discovered through the Competitive Bidding Process by NHPC.

(b) NHPC has made a prayer to condone the delay of approx. 10 months in filing the captioned Petition on account of its failure to file the same within 15 days from the date of the e-reverse auction, i.e., by 21.11.2023. The delay in filing the captioned Petition is not so inadvertent or reasonable that it can be ignored by this Commission while adjudicating the captioned Petition because, on account of the same, the implementation of HHPL's Project is adversely affected. Notably, no lenders will agree to execute the financial arrangements and lend money until there is certainty on the execution of the Project and the tariff is adopted or PPA is approved by the Appropriate Commission. Thus, HHPL is entitled to a corresponding extension in the scheduled commissioning date of the Project on account of the approximately 10-month delay in filing the captioned Petition by NHPC.

(c) On 23.10.2023, HHPL applied for connectivity to the Central Transmission Utility ("CTU") at Bikaner-III Sub-Station, requesting for connectivity from 31.1.2026. The HHPL applied for the connectivity well before the timeline prescribed under Clause 3.9.2 (xi) of the RFS. In the 27th Consultation Meeting for Evolving Transmission Schemes in Northern Region ("27th Consultation Meeting") held on 10.1.2024, CTUIL observed that HHPL had applied for the connectivity for 300 MW at Bikaner – III PS. However, due to non availability of the margin for the grant of the connectivity at Bikaner-III PS, a proposal was made to HHPL by CTUIL to take connectivity at Bikaner IV. Further, in the said meeting, it was also observed that HHPL had requested for start date of connectivity from 31.1.2026. Accordingly, the connectivity was granted at Bikaner IV, and the new tentative commissioning date of the transmission system is 31.8.2026 and the start date of connectivity is 1.9.2026. On 15.02.2024, CTUIL intimated an in-principle grant of connectivity to HHPL for its Project at Bikaner - IV PS.

(d) NHPC on 7.3.2024, being an intermediary for the onward sale and supply of power, entered into Power Sale Agreements (“PSA”) on a back-to-back basis with the Uttar Pradesh Power Corporation Limited (‘UPPCL’) and Maharashtra State Electricity Distribution Co. Ltd (‘MSEDCL’). On 12.4.2024, NHPC, by way of its letter of the same date, requested HHPL to sign the PPA with NHPC on or before 19.4.2024 to avoid the risk of higher ISTS Charges for the DISCOMS. On 19.4.2024, HHPL issued a letter to NHPC and conveyed its willingness to execute the PPA and also stated that HHPL is committed to achieving the commissioning of the Project as per the PPA timelines. Further, by way of the same letter, HHPL also informed NHPC that HHPL had applied for the connectivity to ISTS for the 300 MW at Bikaner-III PS, having an expected commissioning schedule by 31.1.2026. However, for no fault of HHPL and due to various reasons, CTUIL, vide its meeting dated 10.1.2024, decided to shift HHPL’s connectivity from Bikaner-III PS to Bikaner-IV PS. Hence, due to this, the expected commissioning date of the transmission system has been revised to 31.8.2026, and the start date of connectivity has been revised to 1.9.2026. Accordingly, HHPL intimated to NHPC that no penalty/damages/charges should be payable by HHPL in case the commissioning of the Project is achieved after the SCOD of the Project, i.e., 1.5.2026. On 2.5.2024, HHPL executed a PPA with NHPC for the supply of 300 MW of solar power to NHPC at Rs. 2.53/kWh tariff from its Project.

(e) As per the Solar Guidelines, NHPC was required to file the tariff adoption Petition by 21.11.2023, i.e., within 15 days from the date of the e-reverse auction i.e., by 6.11.2023. However, NHPC has filed the captioned Petition only on 20.9.2024 i.e., approx. with a delay of 10 months. Due to the delay in filing the captioned Petition, the timelines stipulated under the RFS and the PPA for the compliance of the obligations on the part of HHPL have been adversely impacted and have led to uncertainty regarding financing arrangements to be made by HHPL towards the implementation of the Project. Pertinently, Clause 3.27 of the RFS provides that the Project shall achieve its financial closure within 12 months from the effective date of the PPA, i.e., 2.5.2024, and in view of the same, any adverse impact on achieving the financial closure in a timely manner will have a

ripple effect on other commissioning milestones provided under the RFS and the PPA.

Change in Law events
Basic Customs Duty (BCD)

(f) On 23.7.2024, the Central Board of Indirect Taxes and Customs, Ministry of Finance (Department of Revenue), Govt. of India (“Finance Ministry”) issued Finance (No.2) Bill, 2024 (“Finance Bill 2024”) and Notification No. 30/2024-Customs dated 23.07.2024 (“Custom Notification dated 23.07.2024”), whereby the Finance Ministry amended its erstwhile Notification dated 30.06.2017 having Notification No. 50/2017-Customs (“Custom Notification dated 30.06.2017”). By way of the Customs Notification dated 23.07.2024 the Basic Custom Duty (“BCD”) on Solar tempered glass or solar tempered (anti-reflective coated) glass for use in manufacturing of solar cells/panels/modules was increased from 0% to 10 % and BCD on flat copper wire for use in the manufacturing of photo voltaic ribbon for manufacture of solar photovoltaic cell or modules was increased from 0% to 5%, w.e.f. 1.10.2024.

(g) In light of the withdrawal of custom duty exemptions on the aforementioned items, the customs duty rates provided under the First Schedule to the Customs Tariff Act will now be applicable to the aforementioned items. It is submitted that on account of the increase in the BCD, HHPL is adversely impacted. Hence, these events should be declared as a change in law events by this Commission while adjudicating the present Petition since it has been issued after the last date of bid submission.

Anti-Dumping Duty (ADD)

(h) On 27.09.2024, the Ministry of Finance issued a Notification No. 16/2024-Customs (ADD), whereby Anti-Dumping Duty (“ADD”) on “Anodized Aluminium Frames for Solar Panels/Modules” was imposed and same was payable @577 USD/MT, w.e.f. from 27.09.2024 (“Custom Notification dated 27.09.2024”). The said anti-dumping duty has been imposed on the aforementioned frames from specified suppliers from China. Notably, the imposition of ADD was a fresh imposition after taking into consideration the final findings dated 29.06.2024

issued by the Directorate General of Trade Remedies, Department of Commerce, Ministry of Commerce & Industry, Govt. of India. Prior to this, no ADD was payable on Anodized Aluminium Frames for Solar Panels/Modules, and thus, the impact of ADD was not taken into consideration while submitting the bid by HHPL on account of the increase in the ADD, HHPL is adversely impacted. Therefore, these events should also be declared as a change in law events while adjudicating the present Petition since it has been issued after the last date of bid submission by HHPL.

(i) On 8.10.2024, the Ministry of Finance issued Notification No. 09/2024-Central Tax (Rate) ("Notification dated 08.10.2024"), amending the erstwhile Notifications dated 28.06.2017 and 13.07.2024 and made renting of any property other than residential dwelling by unregistered person to a registered person under the Reverse Charges Mechanism chargeable at a GST of 18%. By way of the said amendment, if any property is taken from an unregistered person (which may include individuals, etc.), the service recipient would be required to pay the GST (at 18%) under the reverse charge. Hence, it would have a substantial impact on the Project, as the project land or any other property is taken on lease from individual landowners, most of them are Unregistered persons only, and any GST paid in this regard becomes a cost.

(j) The harmonious reading of the clauses/provisions of the Solar Guidelines, RfS, and the PPA it is discernible, and an analogy is drawn that HHPL is entitled to an extension in the SCSD of the Project on account of delay in filing of the captioned Petition by NHPC which has ultimately led to a delay in the adoption of tariff by this Commission. The delay in filing the captioned Petition by NHPC has delayed the process of adoption of tariff by this Commission and has indirectly affected the timeline to achieve the financial closure provided under Clause 3.27 of the RfS. Pertinently, this delay in filing the Petition has led to uncertainties towards the implementation of the Project since the financial arrangements are dependent on the adoption of the tariff by the Appropriate Commission, without there being certainty on the tariff, lending institutions are reluctant to provide debt financing to the project developers.

(k) The APTEL in the case of Green Infra Renewable Energy Limited v RERC & Ors. (Order dated 12.10.2021 passed in Appeal No. 251/2021) has also taken a view that the claims arising out of change in law events shall not be deferred to a later date since it creates a whole lot of confusion and regulatory uncertainty and consequent difficulties in attaining financial closure by the project developer. The APTEL also observed that it could not be ignored that the impact on the cost of the development of the project of such change in law events that have occurred after the submission of the bid and closure of the bid process but before the adoption of the bid discovered price renders the bid price unrealistic and in terms of Section 86 (1) (b) of the Act, it is the duty of the State Commission to inquire into such claim at the first opportune time and bring in suitable corrections, maybe first by declaration and followed up by detailed tariff orders.

(l) The adoption of tariff and approval of power procurement (by the State Commission) are mandatory prerequisites for lenders to approve and disburse loan proceeds, which constitute approximately 70-75% of the project cost. Pertinently, the delay in the adoption of tariff by this Commission, on account of the delay in filing the captioned Petition by NHPC and delay in approval of PSA, in the present case, has impacted HHPL's ability to Procure critical equipment, which is heavily reliant on loan proceeds and to maintain the Project schedule, as procurement timelines and construction activities are tied to the availability of funds.

(m) Mismatch between the SCSD of the Project and the start date of connectivity on account of CTUIL changing the sub-station from Bikaner III to Bikaner IV, leading to delay in operationalization of GNA by the CTUIL, thereby leading to occurrence of the Force Majeure Event.

(n) In view of the above circumstances, HHPL is (a) entitled to a corresponding extension of approximately 10 months in SCSD of the project on account of delay in filing of the subject tariff Petition by NHPC, (b) entitled to a corresponding extension in achieving financial closure of the project, (c) declare that the change in substation from Bikaner III to Bikaner IV and revision in the start date of connectivity of HHPL's Project by CTU is a Force Majeure Event,

thereby granting extension in the SCSD of the Project till the start date of the connectivity i.e., 01.09.2026.

Reply of the Respondent No. 8 (GICWTL)

9. Pursuant to the liberty granted by the Commission, the Respondent, Green Infra Clean Wind Technology Limited ('GICWTL') vide its reply dated 9.12.2024 mainly prayed for in principle Recognition of the certain change in law events in the Power Purchase Agreements/ Power Sale Agreements which took place after the last date of bid submission and shall result in additional cost upon the solar power generators including the GICWTL, which could not at all have been factored at the time of submission of the bid. The Change in Law events, i.e., the revision/fresh imposition/introduction of anti-dumping duty, BCD and GST on clearly amounts to a revision/fresh levy/ imposition of tax, which ought to be allowed as a Change in Law to the Respondent, GICWTL as otherwise the Respondent would be put to serious loss. In order to ensure timely commissioning of the 300 MW solar project under the PPA dated 24.4.2024, the GICWTL intends to leverage an existing 300 MW solar project connectivity secured by the said GICWTL on the basis of land possession at the Fatehgarh-IV ISTS sub-station in November, 2023 (i.e., prior to receipt of LOA dated 07.12.2023). This is because the GICWTL apprehends future potential delay due to connectivity challenges at the ISTS sub-station. The above connectivity is scheduled to commence from February 2026 (interim) aligning with the Project's Scheduled Commencement of Supply Date ("SCSD") under the PPA.

Hearing dated 10.12.2024

10. During the course of hearing, the learned counsel for the Petitioner submitted that pursuant to the liberty granted by the Commission, Respondent No.5, Hazel Hybren Pvt. Ltd. (HHPL), one of the successful bidders, has filed its reply wherein it has clearly

indicated that it has no objection to the contents of the Petition and the same may be considered by the Commission for the adoption of tariff as prayed for by NHPC. However, the Respondent has also raised various issues as to the extension in timelines for achieving financial closure & Scheduled Commencement Supply Date (SCSD), revision in the start date of connectivity of its Project, and declaration of Change in Law events, etc., and these issues are beyond the purview of the present tariff adoption Petition.

11. The learned counsel representing Respondent No.5, HHPL, submitted that the Respondent has duly filed a reply concerning the matter at hand. The learned counsel additionally contended that in accordance with Clause 10.4 of the Solar Guidelines, it was incumbent upon the Petitioner to seek the Commission's approval for the adoption of the tariff within a period of 15 days following the discovery of the tariff, whether through e-reverse auction or by other means, within the framework of the transparent and competitive bidding process established by the aforementioned Guidelines. In the matter at hand, it is evident that there exists a significant delay, approximately 10 months, attributable to the Petitioner in seeking the Commission's intervention for the adoption of the tariff. This delay has a direct bearing on the subsequent adoption and approval of the tariff by the Appropriate Commission, which, in turn, adversely affects the timelines established for the attainment of critical milestones, including financial closure and SCSD of the Project. Learned counsel further submitted that the Respondent has also prayed for declaration and recognition of certain events, as indicated in its reply, as Change in Law events and the APTEL, in its order dated 12.10.2021 in Appeal No. 251/2021 in the matter of Green Infra Renewable Energy Ltd. v. RERC and Ors. ("Green Infra Case") has taken the view that the claims arising out of Change in Law events ought not to be deferred to a later date since it creates a whole

lot of confusion & regulatory uncertainty and that if the events referred actually constitute Change in Law events as per the PPA, there is no reason why it cannot be duly recognized as Change in Law at the stage of tariff adoption, the actual impact and extent of the relief admissible to be determined at the appropriate stage. Learned counsel also added that in the event the Commission is not inclined to consider the issues/aspects raised by the Respondent in its reply at this stage, the Respondent may be permitted to approach the Commission by way of a separate Petition.

12. The learned counsel representing Respondent No.8, Green Infra Clean Wind Technology Limited (GICWTL), submitted that the Respondent has also filed its reply on 9.12.2024. Learned counsel submitted that in the said reply, the Respondent has prayed for an extension in timelines for achieving financial closure and SCSD and for consideration of certain Change in Law events. Learned counsel also placed the reliance on the order of the APTEL in the Green Infra Case.

13. The learned counsel representing Respondent No.2, MSEDCL, has submitted that MSEDCL has duly preferred Petition No.81/AP/2024 before the Maharashtra State Electricity Regulatory Commission (MERC) seeking approval for the adoption of tariff concerning the long-term procurement of 1475 MW solar power from NHPC, aimed at fulfilling its Renewable Purchase Obligation (RPO). Furthermore, the MERC, in its order dated 15.10.2024, has expressed the intention to await the decision of this Commission regarding the adoption of the tariff. The learned counsel submitted that there should be no additional impact on MSEDCL resulting from the delays attributed to NHPC. Learned counsel further sought liberty to file a reply in the matter.

14. In response to the submissions made by the learned counsel representing Respondent Nos. 5 and 8, the learned counsel for the Petitioner reiterated that the various issues raised by the said Respondents are beyond the purview of the present tariff adoption petition. Considering the submissions made by the learned counsels for the parties, the Commission permitted the Respondent, MSEDCL, to file its reply with a copy to the Petitioner, who may file its rejoinder, if any. Further, as requested by the learned counsel for the parties, the Commission also permitted the parties to file their respective written submissions, if any. Subject to the above, the matter was reserved for order.

Reply Of Respondent No.2 (MSEDCL)

15. Pursuant to the liberty granted by the Commission, the Respondent, – Maharashtra State Electricity Distribution Company Limited (MSEDCL), vide its reply dated 24.12.2024, has mainly that the Petitioner has filed the present Petition in reference to Petition No. 81/AP/2024 before the Maharashtra Electricity Regulatory Commission (the MERC) seeking approval of the adoption of tariff for the long term procurement of 1475 MW of Solar power from ISTS connected solar projects under Section 63 of the Act. The MERC, vide its order dated 15.10.2024 passed in the above said Petition No. 81/AP/2024, had directed both the parties to approach this Commission for the adoption of the tariff through the present Petition. Therefore, the submissions in the present Petition are limited to the extent that any extension to SCOD at the tariff as per the PSA, shall not result in any additional financial impact on MSEDCL, including but not limited to the transmission charges/transmission losses and/or any other regulatory charges, etc. The delay in the adoption of the present tariff may result in the commissioning of the projects being delayed beyond the SCOD, i.e., May 2026. Therefore, the applicability of transmission charges in light of the anticipated

delay shall be governed as per the extant regulations and orders of this Commission. If the commissioning of the present solar projects is delayed beyond June 2026, the applicable transmission charges will exceed the 25% threshold as per the Ministry of Power's (MoP) order dated 23.11.2021. In such circumstances, the financial burden of the increased transmission charges would unfairly fall upon MSEDCL, as the Petitioner has no liability with respect to the transmission charges and transmission losses, as per the provisions of the PPA. Therefore, MSEDCL shall not be liable for the payment of any compensation arising from the apprehended delay in the commissioning of the projects and/or the supply of energy by the Petitioner. Accordingly, if any extension to the SCOD at the tariff specified in the PSA is granted, such extension shall not result in any additional financial impact on MSEDCL, including, but not limited to, transmission charges, transmission losses, and/or any other regulatory charges.

Rejoinders of the Petitioners

16. The Petitioner, vide its rejoinders dated 6.1.2025, has mainly submitted as under:

(a) The submission made by the respondent beyond the scope of the present Petition. The relationship between parties is governed by the PPA. What amount is to be paid or is not to be paid shall be determined only by the terms and conditions prescribed in the PPA and not by a unilateral submission made by one of the parties in a proceeding that is totally alien to this issue. Therefore, these issues would be addressed as and when raised in a proper format as per the terms and conditions of the PPA and not otherwise.

(b) The time extension in SCSD is permissible as per provisions of the PPA, and applicability of ISTS Transmission Charges & Losses shall be as per CERC (Sharing of Inter-State Transmission Charges and Losses) and its amendments issued from time to time. The provisions are available in the Power Purchase Agreement (PPA) signed between Respondent and Petitioner for granting time extension in Scheduled Commissioning Supply Date (SCSD) (Refer Article 2.1.3,

2.14 and 4.5.2 of PPA) and declare the notification of Ministry of Finance, Government of India as “Change in Law.” Subsequent to grant of the connectivity, in case there is a delay in grant/operationalization of the GNA by the CTUIL and/or there is a delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network until SCSD of the Project, etc., sufficient provisions are available in the PPA signed between NHPC and Respondent which is applicable on PSA signed between NHPC and Respondent.

(c) The applicability of the transmission Charges & Losses and other Charges, etc., on granting time extension in SCSD and declaring “Change in Law” events shall be governed as per provisions of PSA and PPA signed among parties viz. NHPC, DISCOM(s), and Generators.

(d) That Present petition has been filed for the adoption of tariff by the Commission discovered through competitive bidding as per TBCB guidelines issued by GOI., and these aspects cannot be entertained in the present Petition having a limited scope under Section 63 of the Act.

Analysis and Decision:

17. We now proceed to consider the prayer of the Petitioner as regards the adoption of tariff under Section 63 of the Act in respect of the solar power projects discovered pursuant to the competitive bid process carried out in terms of the Guidelines issued by the Government of India.

18. Section 63 of the Act provides as under:

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

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

Guidelines issued by the Government of India under Section 63 of the Act has been followed in determination of such tariff.

20. The Ministry of Power, Government of India has notified the Solar Guidelines under Section 63 of the Act vide Resolution No.27/01/2023-RCM on 28.7.2023. The salient features of the Guidelines are as under:

(a) The Guidelines are applicable for the procurement of power from grid connected solar PV power projects, with or without Energy Storage, through tariff based competitive bidding to be conducted by 'the Procurer', which includes distribution licensees, or the Authorized Representative(s), or Intermediary procurers.

(b) The procurer shall prepare the bid documents in accordance with the Guidelines. The principles outlined in the Guidelines may be suitable expanded and made exhaustive in the Standard Bid Documents. In case of any deviation from the provisions of the Guidelines and/or Standard Bid Documents, approval of the Appropriate Government would be necessary prior to initiation of bid process.

(c) Bids shall be invited in Power Capacity (MW) terms specifying the total quantum to be contracted by the procurer. The minimum quantum of power that can be offered by the bidder should be 50 MW for projects connected with the inter-State transmission system. The bidder can quote for a part of the total quantum to be procured by the Procurer. A maximum of 50 percent of total capacity as specified in the RfS can be allocated to a single bidder. The bid evaluation parameter shall be the tariff per unit supply of solar power fixed for

the entire term of the PPA.

(d) The procurement of power - shall be in power (MW) terms. The range of Capacity Utilisation Factor (CUF) will be indicated in the bidding documents. Calculation of CUF will be on the yearly basis.

(e) The draft PPA proposed to be entered into with the successful bidder and draft PSA, if applicable, shall be issued along with the RfS. Standard provisions to be incorporated as part of the PPA shall include, *inter-alia*, PPA Period, Power Procurement, Payment Security Mechanism (PSM), Force Majeure, Generation Compensation for off-take Constraints, Event of default and consequences thereof and Change in Law and shall be provided for, on back-to-back basis, in the PSA.

(f) Adequate payment security shall be provided as per the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 including amendments and clarification, if any, thereof, issued from time to time. In addition, the Intermediary Procurer may maintain a payment security fund. To be eligible for the coverage from the fund, the developer will undertake to pay the PSM charges at the rate of 2 paise per unit.

(g) The Procurer/intermediate procurer shall call for the bids adopting a single stage, two part (Technical Bid & Financial Bid), bidding process to be conducted through electronic mode (e-bidding). The technical bid shall be opened first. The financial bids of only those bidders who qualify in the technical bid shall be opened. E-procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used.

(h) The RfS notice shall be issued in at least two national newspapers and on the websites of the procurer to provide the wide publicity. Standard provisions to be provided by the Procurer in the RfS document shall include Bid Responsiveness, Technical Criteria, Financial Criteria, Quantum of the Earnest Money Deposit (EMD), and Compliance of FDI Laws by foreign bidders, etc.

(i) The bidders shall be required to submit the separate technical and price bids. The bidders shall also be required to furnish the necessary bid-guarantee in the form of an Earnest Money Deposit (EMD) along with the bids. The technical bids shall be evaluated to ensure that the bids submitted meet the eligibility criteria set out in the RfS document on all evaluation parameters. Only the bids that meet the evaluation criteria set out in the RfS document shall be considered for further evaluation on the price bids. To ensure competitiveness, the minimum number of qualified bidders should be two. If the number of qualified bidders is less than two, even after three attempts of the bidding, and the Procurer still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.

(j) The Procurer shall constitute a committee for evaluation of the bids (Evaluation Committee), with at least three members, including at least one member with expertise in financial matters / bid evaluation. After the conclusion of bidding process, the Evaluation Committee constituted for evaluation of RfS bids shall critically evaluate the bids and certify as appropriate that the bidding process and the evaluation has been conducted in conformity with the provisions of the RfS document.

(k) The PPA shall be signed with the successful bidder/ project company or an SPV formed by the successful bidder.

(l) After the execution of the PPA, publicly disclose the name(s) of the successful bidder(s) and the tariff quoted by them together with breakup into components, if any. The public disclosure shall be made by posting the requisite details on the website of the Procurer for at least 30 (thirty) days.

(m) The distribution licensee or the Intermediary Procurer, as the case may be, shall approach the Appropriate Commission for the adoption of tariff discovered, in terms of Section 63 of the Act, within fifteen days of the discovery of the tariffs through e-reverse auction or otherwise, in the transparent competitive bidding process conducted in accordance with these Guidelines. In case the Appropriate Commission does not decide upon the same within 60 (sixty) days of such submission or within 120 (one hundred and twenty) days from the date of PSA, whichever is more, the procurer shall grant the appropriate extension of time in Scheduled Commencement of Supply Date (SCSD) to the generators corresponding to the delay (beyond 60 days of submission or 120 days of PSA, whichever is more) in adoption/ approval by the Appropriate Commission till the date of the adoption/ approval by the Appropriate Commission.

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

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

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

Sr. No.	Milestone	Date
1	RfS issued by NHPC.	19.06.2023
2	Corrigendum -01 to the RfS documents	20.07.2023,28.07.2023,18.08.2023,08.09.2023
4	Pre-Bid Meeting held.	06.07.2023
5	Last date of Bid Submissions.	09.08.2023,12.09.2023
6	Opening of Techno-Commercial Bids.	12.09.2023
7	Opening of Financial Bids.	30.10.2023
8	E-Reverse Auction Conducted	06.11.2023
9	Issuance of Letter of Award (LoA) to the Successful Bidder.	07.12.2023

24. NHPC issued NIT for Tender ID: 2023_NHPC_756920_1 dated 19.06.2023. - Request for Selection (RfS) for selection of Solar Power Generators (SPGs) "For Setting up of 3000 MW (3GW) ISTS (Inter State Transmission System) Connected Solar Power Projects on anywhere in India basis". Initially, the RfS document was prepared based on the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects" issued by MOP, GOI vide Gazette Resolution dated 03.08.2017 and its amendments. However, due to the issuance of new guidelines by MNRE, GOI on 28.07.2023, the RfS was amended

as per MNRE guidelines dated 28.07.2023, and corrigendums were issued. Tenders for Tariff-Based Bidding (for 25 years) were invited on an International Competitive Bidding basis in a Single Stage - Two Envelope Bidding process followed by Reverse Auction among shortlisted Bidders.

25. As per Clause 7.5 of the Guidelines, RfS notice is required to be published in at least two national newspapers and its own website to accord wide publicity. In this regard, NHPC has indicated that the notice of issuance of RfS was published in 'Nation' (international edition) and various editions of 'Business Standard' dated 23.6.2023 to accord wide publicity. NIT & Tender Document was uploaded on the Central Public Procurement (CPP) e-procurement portal on 19.06.2023 with the last date of online submission as 09.08.2023. NIT was also uploaded on NHPC's website as per the extant policy guidelines of NHPC. The online bid submission and opening dates were extended from time to time and finally up to 04.09.2023 and 12.09.2023 respectively.

26. The Bid Evaluation Committee (BEC) comprising the following was constituted for the opening and evaluation of bids under RfS No. Tender ID: 2023_NHPC_756920_1 dated 19.06.2023

Tender	Dept.	Name and Post of Officer
<i>For Setting up of 3000 MW (3GW) ISTS (Inter State Transmission System) Connected Solar Power Projects</i>	CED	Sandip Batra, CGM
	Contract	Sanat Kumar Sharma, General Manager
	DEM	Anish Gouraha, General Manager
	RE & GH	Shiv Prakash Rathore, General Manager
	Finance	Mahesh Kumar Sharma, General Manger

27. The last date of submission of the bid was 12.9.2023, and the technical part of

the bid was opened on 12.9.2023. Response to the RfS was received from sixteen bidders, and all of them met the technical criteria and, consequently, were found to be qualified for the opening of the financial bid. On 30.10.2023, financial bids of sixteen technically qualified bidders were opened on the ISN ETS e-bidding portal in the presence of a member of the Bid Evaluation Committee. As per the eligibility criteria mentioned in the RfS document, out of sixteen, fifteen bidders were shortlisted for e-reverse auction.

28. The e-reverse auction was carried out on 6.11.2023 in the presence of the members of BEC. After completion of the e-reverse auction, the following were declared as successful bidders.

S.No	Name of Successful Bidder	Allocated Capacity (MW)	Tariff (Rs/kWh)
1	Solairedirect Energy India Private limited Ltd (Khaba Renewable Energy Pvt. Ltd.)	250	2.52
2	Avaada Energy Private Limited	1000	2.53
3	Hazel Hybren Private limited	300	2.53
4	Jakson Limited	400	2.53
5	Sprng Energy Private Limited	250	2.53
6	Green Infra–Wind Energy Limited	300	2.53
7	Apraava Energy Private Limited	250	2.53
8	Hinduja Renewables Energy Private Ltd	250	2.53
	Total awarded capacity	3000	

29. Accordingly, on 7.12.2023, NHPC issued the Letter of Award (LoAs) to the above successful bidders. The relevant portion of the letter of award issued to one of the successful bidders, namely M/s Solaire direct Energy India Private Limited Ltd (Khaba Renewable Energy Pvt. Ltd.), is as under:

“This has reference to the following:

A. *The “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects” vide Gazette Resolution dated 03.08.2017 & 23.08.2023 including its subsequent amendments and clarifications issued by Ministry of Power (MoP) (hereinafter referred to as “Guidelines”).*

B. The Request for Selection (RfS) document vide RfS no. NH/CCW/CC-III/CO-257/PR 16923/2 dated 08.06.2023. including draft Power Purchase Agreement (PPA), draft Power Sale Agreement (PSA) and subsequent amendments/clarifications/revisions/notifications issued by NHPC Limited and uploaded during the process of RfS on CPP Portal.

C. Your response to the RfS document submitted on CPP Portal vide Bid No. 2862097 against RfS for Setting up of 3000 MW ISTS Connected Solar Power Projects;

D. Your Bank Guarantee towards Earnest Money Deposit (EMD) submitted along with RfS vide BG No. LOBG401012307323 dated 11.08.2023 with validity upto 03.09.2024 issued by IDFC First Bank for an amount of Rs.10,00,00,000/-(Rs Ten Crore only).

E. Your Final tariff at the end of the e-Reverse Auction conducted on 06.11.2023 for the referred RfS for selection for ISTS Connected Solar Power Projects. With reference to above and subject to the provisions of RfS Document, we confirm having accepted your final offer concluded as a result of e-RA and issue this letter of award as per the following details:

Project Capacity (MW)'	Project Location	Declared Capacity Utilization Factor (CUF)	Applicable Tariff (Rs. per kWh) in figures and words
250	Jhanphli. Kalan, Thasil Sheo, Barmer, Rajasthan	Not less than 17%	Rs. 2.53 (Rupees Two and paise Fifty Three only)

NHPC shall purchase the power generated from the proposed ISTS-Connected Solar PV Power Project. under the above scheme subject to the terms and conditions as stated in various documents referred above and briefly, brought out hereinafter.

2.0 The applicable tariff as mentioned above for power generated from the proposed Solar PV Power Project for the term of Power Purchase Agreement (PPA) to be entered into between Solar Power Generator (SPG). / Project Company and NHPC Limited, for the project, shall be firmed for the entire term of the PPA.. The Capacity Utilization Factor (CUF) shall be governed in terms of Clause'3.1.Q &'Clause 11 (Annexure 1 - Technical Requirements) of RfS Document.

3.0 The award of the above Project is subject to the Guidelines including amendments/clarifications issued by Government of India and terms and conditions of the RfS Document including its clarifications/amendments issued by NHPC.

4.0 In terms of Clause 3.26 of RfS Document, the shareholding in the Project Company/SPV executing the Power Purchase Agreement (PPA), shall not fall below 51% at any time prior to 1 (One) year from the SCSD, except with the prior approval of NHPC.,

5.0 Performance Bank Guarantee(PBG)/Payment on Order Instrument (POI) for a value of @Rs. 27.95 lakh/MW shall be submitted by the SPG before signing of PPA, in line with Clause- 3.24(ii), Section-3 of the RfS Document. For online confirmation of Bank Guarantee against Performance Security, the bank details of NHPC to be communicated to the issuing Bank is as under:

Name of the beneficiary : NHPC Ltd.
Account No : 10813608692
IFSC Code: SBIN00017313
Branch Code: 17313



*Address of the Bank: State Bank of India,
5th Floor, Red Fort Capital, Parsvnath Towers,
Bhai Veer Singh Marg, Gole Market, New Delhi - 110 001*

6.0 PPA will be executed between NHPC and the SPG/Project Company as per the breakup of the cumulative Project capacity awarded to the Bidder. The LoA is being issued in line with the Project capacity quoted in the Covering Letter (Format 6.1) as part of your response to RfS and subsequently, as applicable. However, the successful bidder shall have option to change the Project location before the Financial Closure as per Clause 3.27 of RfS Document. Any change in State location of the Project(s) awarded shall not be permitted subsequent to the above deadline.

7.0 The final project configuration, adding up to the cumulative capacity awarded to the bidder may be intimated to NHPC at the time of signing of PPA, which shall then remain unchanged subsequent to signing of PPA. Delays in connectivity and/or LTA for the Project(s) on account of such changes in Project locations, which differ from the details provided in the Covering letter, shall be at the risk and cost of the Successful Bidder. The PPA shall be executed within 90 (Ninety) days from the date of issue of Letter of Award, if not extended by NHPC and shall be valid for a period of 25 years from the scheduled commissioning date of the project(s). However, PPA with SPG shall be signed only after signing of PSA with Discoms. Further, the PPA shall be signed only upon receipt of Performance Bank Guarantee of requisite value. The EMD submitted shall be released only after receipt and successful verification of the total Performance Bank Guarantee in the acceptable form.

8.0 The SPG shall meet financial closure requirements for the Project in line with clause-3.27, Section-3 of the RfS document, within 18 (Eighteen) months from the Effective Date of the PPA. Accordingly, the SPG shall furnish the documents pertaining to compliance of financial closure as per the above provisions.

9.0 The SPG/Project Company shall achieve commissioning of full capacity of the Project within 24 months from the Effective Date of the PPA as per the conditions stipulated in Clause 3.28, Section-3 of the RfS and relevant articles of PPA. In case of failure to achieve the milestone, the SPG/Project Company shall pay the liquidated damage, which shall be levied on the SPG as per above provisions.

10.0 All disputes arising out of and/or in connection with the selection of Solar Power Projects under the said RfS and execution of PPA thereto shall be governed by laws of India and shall be subject to the jurisdiction of Courts of Faridabad.

11.0 PPA shall be signed only after signing of Power Sale Agreement (PSA) with the end procurer and NHPC shall not be liable on any account for any delay / inability in signing of PSA and PPA.

12.0 You are requested to report Executive Director (Renewable Energy & Green Hydrogen) Ahmedabad, NHPC Limited for further direction and action in the matter.

This Letter of Award (LOA) is being issued in duplicate and you are requested to kindly acknowledge receipt and acceptance of this LOA by sending the duly stamped and signed duplicate copy of LOA to NHPC within 07 day from the date of this LOA.”



30. As per Clause 10.2 of the Solar Guidelines, the Evaluation Committee is required to certify that the bidding process and the evaluation have been conducted in conformity with the provisions of the RfS document. Also, the Evaluation Authority should satisfy itself that the price of the selected offer is reasonable and consistent with the requirement. In compliance with the above, the Petitioner vide conformity certificate dated 10.6.2024 has submitted that no deviations were made in the bid documents from the provisions of the Guidelines. The relevant extract of the aforesaid conformity certificate is as under:

“CONTRACTS CIVIL DIVISION

Name of Work: Selection of Solar Power Developer for Setting up of 3000 MW (3 GW) ISTS (Inter State Transmission System) Connected Solar Power Projects on anywhere in India basis (Tender Id: 2023_NHPC_756920_1).

This is to certify that no deviations were made in the bid documents from the provisions of the Solar Guidelines issued by MOP, GOI dated 28.07.2023. ”

31. Pursuant to the direction of the Commission vide Record of the Proceedings for the hearing dated 6.11.2024, the Petitioner also filed two conformity certificates dated 13.11.2024 indicating that no deviations were made in the bid documents from the provisions of the Solar Guidelines and that the Bid Evaluation Authority/TEC satisfied itself that the price of the selected offer is reasonable and consistent with the requirement as per Clause 10.2 of the Solar Guidelines. The relevant extracts of the aforesaid conformity certificates are as under:

“CONTRACTS CIVIL DIVISION

Name of Work: Selection of Solar Power Developer for Setting up of 3000 MW (3 GW) ISTS (Inter State Transmission System) Connected Solar Power Projects on any where in India basis (Tender Id: 2023_NHPC_756920_1).

This is to certify that no deviations were made in the bid documents from the provisions of the Solar Guidelines issued by MOP, GOI dated 28.07.2023.”

“CONTRACTS CIVIL DIVISION

Name of Work: Selection of Solar Power Developer for Setting up of 3000 MW (3 GW) ISTS (Inter State Transmission System) Connected Solar Power Projects on anywhere in India basis (Tender Id: 2023_NHPC_756920_1).

This is to certify that Bid Evaluation Authority/TEC satisfied itself that the price of the selected offer is reasonable and consistent with the requirement as per Clause 10.2 of the Solar Guidelines issued by MOP, GOI dated 28.07.2023.”

32. Based on the request of the distribution licensees/buying utilities, 1525 MW was allocated to Uttar Pradesh Power Corporation Limited ('UPPCL') and 1475 MW was allocated to Maharashtra State Electricity Distribution Company Limited ('MSEDCL'). Accordingly, NHPC has entered into the PSAs dated 7.3.2024 & 29.7.2024 with UPPCL and the PSA dated 7.3.2024 with MSEDCL. Pursuant to Letters of Award and allocation of capacity, NHPC entered into PPAs with the successful bidders as under:

SPGs	Contracted Capacity (MW)	Tariff (Rs/ kWh)	PPA signed on	Discom & Allotted Quantum
Khaba Renewable Energy Private Limited (Project SPV of Solairedirect Energy India Private Limited)	250	2.52	18.04.2024	UPPCL-1525
AVAADA RJ Sustainable Private Limited (Project SPV of Avaada Energy Private Limited)	1000	2.53	01.05.2024	
Hazel Hybren Private Limited	275	2.53	02.05.2024	
Hazel Hybren Private Limited	25	2.53	02.05.2024	MSEDCL-1475 MW
JGRJ Two Solar Private Limited (Project SPV of Jakson Ltd)	400	2.53	01.05.2024	
SPRNG Power Private Limited (Project SPV of Sprng Energy Private Limited)	250	2.53	26.04.2024	
Green Infra Clean Wind Technology Limited-GICWTL (Project of SPV of Green Infra Wind Energy Limited)	300	2.53	24.04.2024	
Apraava Energy Private Limited	250	2.53	18.04.2024	
HR Saraswati Energy Private Limited.	250	2.53	30.04.2024	



(Project SPV of Hinduja Renewable Energy Private Limited)				
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33. Details of the Power Sale Agreement (PSA) signed with Discom (s) are as under:

State/UT	Contracted Capacity (MW)	Tariff (Rs/kWh) including Trading Margin of 07 paisa/kwh	PSA signed on
UPPCL, Uttar Pradesh	250	2.59	07.03.2024 & 29.07.2024
	1275	2.60	
MSDECL, Maharashtra	1475	2.60	07.03.2024

34. As per the RfS and the PPA signed with the Solar Power Generators (SPGs), the commissioning of Projects is likely to be done in 2026-27 (24 months from the date of signing of the PPA). All Projects are proposed to be developed in the State of Rajasthan.

35. Further, as per Clause 10.4 of the Guidelines dated 23.07.2023, the distribution licensee or the Intermediary Procurer, as the case may be, shall approach the Appropriate Commission for the adoption of the tariff discovered, in terms of Section 63 of the Act, within fifteen days of the discovery of the tariffs through e-RA or otherwise, in the transparent, competitive bidding process conducted in accordance with the Guidelines. In the present case, the e-RA was concluded on 6.11.2023, and accordingly, the Petitioner was required to approach the Commission for the adoption of the tariff by 22.11.2023. However, the Petitioner, NHPC, filed the present Petition only on 23.9.2024 (e-filing portal), i.e., after a delay of approximately 10 months. In this regard, the Petitioner, vide its letter dated 25.5.2024, approached the MNRE GOI to review the provision of Clause 10.4 of the Guidelines dated 23.07.2023 (requiring the procurer to file the tariff adoption Petition within 15 days after e-Reverse Auction). NHPC has further submitted that as solar power is in surplus, most DISCOMs/States and DISCOMs are reluctant to buy solar power. There was apprehension that NHPC

would not be able to obtain consent from the DISCOMs for the purchase of 3 GW of solar power. After vigorous follow-up and regular persuasion, NHPC was able to obtain consent from Uttar Pradesh and Maharashtra. As NHPC was not able to tie up power in the 3GW scheme within 15 days of e-RA. PPA and PSA were signed among the parties in March-July 2024. Accordingly, NHPC approached this Commission for the adoption of tariff. The delay in filing the Petition is not intentional but due to the time taken in the compliance of procedure to have transparent competitive bidding as per the Guidelines dated 28.7.2023. Thus, the delay in submission of the Petition may be condoned.

36. We have considered the submissions made by NHPC for the delay in approaching the Commission for the adoption of the tariff as per the Guidelines. In the past, the Commission has been proceeding with the adoption of tariffs only to the extent of the awarded capacity having been tied-up under the PPAs and PSAs with the successful bidders/developers and the distribution licensees, respectively. However, keeping in view the overall emphasis of the new set of Solar Guidelines on the expeditious adoption of the tariff, the Commission started the proceeding with the adoption of the tariff, as determined through the transparent process of bidding in accordance with the Guidelines issued by the Central Government, without awaiting the tying up of the awarded capacity under the PPAs and PSAs. In this regard, the relevant observations of the Commission in its orders dated 1.6.2024 and 24.7.2024 passed in Petition Nos. 68/AT/2024 and 71/AT/2024 are as under:

Order Dated 1.6.2024 in Petition No. 68/AT/2024

“25. As per Clause 10.4 of the Solar Guidelines, the distribution licensee or the Intermediary Procurer, as the case may be, shall approach the Appropriate Commission for the adoption of tariffs discovered, in terms of Section 63 of the Act, within fifteen days of the discovery of the tariffs through e RA or otherwise, in the transparent, competitive bidding process conducted in accordance with the Guidelines.

We have considered the justification provided by SECI for delay in approaching the Commission for the adoption in tariff as per Clause 10.4 of the Solar Guidelines. Keeping in view that, unlike the previous Solar Guidelines of 2017, the Solar Guidelines of 2023 specifically provide a timeline for distribution licensee or intermediary procurers to approach the Appropriate Commission for the adoption of tariff, we expect the Petitioner to strictly adhere to the said timelines in future.”

Order Dated 24.7.2024 in Petition No. 71/AT/2024

“27. We have considered the submissions made by NTPC. In the past, the Commission has been proceeding with the adoption of tariff only to the extent of the awarded capacity having been tied-up under the PPAs and PSAs with the successful bidders/developers and the distribution licensees, respectively. However, keeping in view the overall emphasis of the Hybrid Guidelines on the expeditious adoption of the tariff, we consider it appropriate to proceed with the adoption of the tariff without waiting tying up of the awarded capacity under the PPAs and PSAs, albeit such adoption shall be subject to the Petitioner tying up the awarded capacity under the PPAs and PSAs.”

Thus, keeping in view that the Solar Guidelines now specifically provide a timeline for the distribution licensee or intermediary procurer to approach the Appropriate Commission for the adoption of tariff, we expect the Petitioner to strictly adhere to the said timelines in the future.

37. Citing the above delay of approximately 10 months, Respondent No. 5, Hazel Hybren Private Limited ('HHPL') has prayed for the corresponding extension in the SCSD of the Project. It has been further stated by the Respondent that as per Clause 10.4 of the Solar Guidelines, the present Petition had to be filed on 21.11.2023 (the 15th day from the e-RA auction on 6.11.2023). However, the present Petition was filed only on 20.9.2024, i.e., with a delay of approximately 10 months. Since such a delay is not attributable to HHPL, it is entitled to a corresponding extension in SCSD of the Project along with protection from the levy of penalty/damages/compensation.

38. We have considered the submissions made by Respondent HHPL. Insofar as the delay in deciding upon the adoption of the tariff is concerned, Clause 10.5 of the Solar Guidelines provides as under:

“10.5. Subsequent to the distribution licensee or Intermediary Procurer, as the case may be, approaching the Appropriate Commission for adoption of tariffs under Section 63 of the Act, in case, the Appropriate Commission does not decide upon the same within 60 (sixty) days of such submission or within 120 (one hundred and twenty) days from the date of Power Sale Agreement (PSA), whichever is more, the Procurer(s) shall grant appropriate extension of time in SCSD to the generators, corresponding to the delay [beyond 60 (sixty) days of submission or 120 (one hundred and twenty) days of PSA, whichever is more] in adoption/ approval by the Appropriate Commission, till the date of adoption/ approval by the Appropriate Commission.”

As per the above, in the event the Appropriate Commission does not decide upon the adoption of tariff within 60 days from the date of such submission by the distribution licensee or intermediary procurer or within 120 days from the date of PSA, whichever is more, the generator shall be entitled to extension of time in SCSD corresponding to the delay beyond 60 days of submission or 120 days of PSA, whichever is more, till the date of adoption/approval by the Appropriate Commission. Undisputedly, the aforesaid provision has already been incorporated in the respective PPAs in Article 2.1.4. In addition, the Respondent, HHPL, is also praying for the extension in SCSD of the Project on account of the delay on the part of NHPC in approaching the Commission for the adoption of the tariff in terms of the timeline specified in Clause 10.4 of the Solar Guidelines. However, in support of its above plea, the Respondent, HHPL, has not pointed out any specific provision in the Solar Guidelines. In fact, it appears that the Solar Guidelines do not contain any such provision for the extension in SCSD on account of the delay in approaching the Appropriate Commission for the adoption of the tariff. Thus, in the absence of any express provision in the Solar Guidelines to this effect, the plea of the HHPL cannot be entertained in the present adoption proceedings.

39. In light of the aforesaid discussion, it emerges that the selection of the successful bidders has been done, and the tariff of the Solar Power Projects has been discovered

by the Petitioner, NHPC, through a transparent process of competitive bidding and in accordance with the Guidelines issued by the Ministry of Power, Government of India. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff for the solar power project, as agreed to by the successful bidders, and for which PPAs have been entered into by NHPC on the basis of the PSAs with the distribution licensees, which shall remain valid throughout the period covered in the PPA and PSAs as under:

SPGs	Contracted Capacity (MW)	Tariff (Rs/ kWh)	PPA signed on	Discom & Allotted Quantum
Khaba Renewable Energy Private Limited (Project SPV of Solairedirect Energy India Private Limited)	250	2.52	18.04.2024	UPPCL-1525
AVAADA RJ Sustainable Private Limited (Project SPV of Avaada Energy Private Limited)	1000	2.53	01.05.2024	
Hazel Hybren Private Limited	275	2.53	02.05.2024	
Hazel Hybren Private Limited	25	2.53	02.05.2024	MSEDCL-1475 MW
JGRJ Two Solar Private Limited (Project SPV of Jakson Ltd)	400	2.53	01.05.2024	
SPRNG Power Private Limited (Project SPV of Sprng Energy Private Limited)	250	2.53	26.04.2024	
Green Infra Clean Wind Technology Limited–GICWTL (Project of SPV of Green Infra Wind Energy Limited)	300	2.53	24.04.2024	
Apraava Energy Private Limited	250	2.53	18.04.2024	
HR Saraswati Energy Private Limited. (Project SPV of Hinduja Renewable Energy Private Limited)	250	2.53	30.04.2024	

40. Article 10.3 of the PPA provides as under:

“10.3 Payment of Monthly Bills

10.3.1 NHPC shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Forty Fifth (45) day (Due Date) from the date of presentation of bill to such account of the SPG, as shall have been previously notified by the SPG in accordance with Article 10.3.2 below. In case the Monthly Bill or any other bill, including a Supplementary Bill is issued after the (fifteenth) 15th day of the next month, the date of presentation would be (fifth) 5th day of the next succeeding month 'Due Date' means the date by which the bill is to be paid i.e. forty-five days from the date of presentation of the bill. Provided that if due date for payment of any bill, falls on a bank nonworking day, the next bank working day

shall be considered as due date for payment.

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

i) deductions required by the Law; and

ii) amount claimed by NHPC, if any, from the SPG, through an invoice to be payable by the SPG, and not disputed by the SPG within fifteen (15) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that NHPC shall be entitled to claim any set off or deduction under this Article, after expiry of the said fifteen (15) Days period.

iii) The SPG shall open a bank account at [Insert name of place] (the " SPG's Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by NHPC to the SPG, and notify NHPC of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill.

NHPC shall also designate a bank account at [Insert name of place] ("NHPC's Designated Account") for payments to be made by the SPG to NHPC, if any, and notify the SPG of the details of such account ninety (90) Days before the Scheduled Commencement of supply Date. NHPC and the SPG shall instruct their respective bankers to make all payments under this Agreement to the SPG' Designated Account or NHPC's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

41. Further, Article 10.4 of the PPA provides as under:

"Letter of Credit (LC):

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

10.4.2 Subject to Article 10.4.1, not later than one (1) Month before the start of supply, NHPC through a scheduled bank shall extend a Letter of Credit in favour of the SPG, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

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

10.4.5 NHPC shall cause the scheduled bank issuing the Letter of Credit to intimate the SPG, in writing regarding establishing of such irrevocable Letter of Credit.

10.4.6 NHPC shall ensure that the Letter of Credit shall be renewed not later than ten (10) days prior to its expiry.

10.4.7 All costs relating to opening and maintenance of the Letter of Credit shall be borne by NHPC

10.4.8 If NHPC fails to pay undisputed Monthly Bill or Supplementary Bill or part thereof within and after thirty days from Due Date, then, subject to Article 10.4.6, the SPG may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from NHPC, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, if applicable, in accordance with Article 10.3.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

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

10.4.9 Payment Security Mechanism (PSM) Charges:

NHPC shall maintain a Payment Security Fund. To be eligible for coverage from the fund, SPG shall pay PSM Charges at the rate of 2 paisa per unit to NHPC, by offering a commensurate discount in the monthly tariff payment being made by NHPC.”

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

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

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

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

43. The above provisions provide for the payment security mechanism to be complied with by the parties to the present Petition. Accordingly, the concerned parties to the present Petition shall abide by the provisions of Articles 10.3 and 10.4 of the PPAs and Clause (10) of Regulation 9 of the Trading Licence Regulations.

44. The Petitioner, NHPC, has also prayed to approve the trading margin of Rs.0.07/kWh to be charged to the End Procurer/Discoms or any other entity over & above the PPA tariff on the sale of power as specified depicted in the RfS document and specified in the Hybrid Guidelines.

45. In this regard, Clause (1)(d) of Regulation 8 of the Trading Licence Regulations provides as under:

“For transaction under long term contracts, the trading margin shall be decided mutually between the Trading Licensee and the seller.”

46. The above provision gives the choice to the contracting parties to mutually agree on trading margin for long term transactions. However, proviso to Regulation 8(1)(d) of the Trading Licence Regulations provides as under:

*“8(1) (d) * * * * **

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

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

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

48. The above two provisions are exceptions to the main provision as regards trading margin. In the present case, the distribution licensees have agreed to a trading margin of Rs.0.07/kWh, as agreed in the PSA, which is in consonance with Regulation 8(1)(d) of the Trading Licence Regulations. However, in case of failure by NHPC to provide an escrow arrangement or irrevocable, unconditional, and revolving letter of credit to the wind-solar hybrid power generators, the trading margin shall be limited to Rs.0.02/kWh specified in Regulation 8(1)(d) and Regulation 8(1)(f) of the Trading

Licence Regulations.

49. Furthermore, Respondents HHPL and GICWTL vide their replies dated 22.11.2024 and 9.12.2024 have submitted that the revision/fresh imposition/introduction of Anti-Dumping Duty (ADD), BCD, and GST clearly amounts to a revision/fresh levy/ imposition of tax, which ought to be allowed as a Change in Law to the Respondents as otherwise the Respondents would be put to serious loss. Further, Respondent, MSEDCL has sought to consider the impact of the withdrawal of concessional transmission charges now applicable while adopting the tariff as discovered during the bid process and direction that no coercive action be taken against the Respondents in relation to delay in supplying power by the Scheduled Commencement of Power Supply Date (SCSD) due to reasons beyond their control. The Respondent, MSEDCL, has submitted that even though it had proactively applied for the connectivity, it is unlikely that the power offtake can start from the SCSD of the Project under the PPA due to the unavailability of timely connectivity, and this will resultantly have an impact on the concessional transmission charges to be levied on the off-take of the power.

50. *Per contra*, NHPC has opposed the consideration of the above issues/reliefs in the present proceedings, whose scope is limited to the adoption of tariffs under Section 63 of the Act. NHPC has vehemently submitted that the issues highlighted by the Respondents in their replies are outside the scope of the present proceedings, and in case the Respondents have any grievance about the actions of CTUIL qua timely availability of the connectivity, they may approach the Commission through independent proceedings after the adoption of the tariff.

51. We have considered the submissions of the Petitioner and Respondents. The present Petition has been filed by NHPC, praying for the adoption of tariffs discovered in the tariff-based competitive bid process and approval of the trading margin. In the forgoing paragraphs, we have already decided that the tariff has been discovered as per the provisions of the bidding guidelines in a transparent manner. As regards the various issues raised by the Respondents relating to the extension in SCSD owing to delay in approaching the Commission for the adoption of tariff, non-availability of timely connectivity (i.e., connectivity start date being beyond SCSD), delay in supplying power by SCSD due to the reasons beyond their control, considering the impact of payment of concessional transmission charges, etc., these aspects are beyond the scope of the present proceedings as they neither relate to the transparency of bid process nor the compliance with the provisions of the Guidelines. Hence, as rightly pointed out by the Petitioner, NHPC, these aspects cannot be entertained in the present Petition having a limited scope under Section 63 of the Act. However, the Respondents are given the liberty to approach the Commission for adjudication of these issues through a separate Petition at an appropriate stage, which shall be dealt with in accordance with law.

52. Petition No. 366/AT/2024 is disposed of in terms of the above.

Sd/-
(श्री हरीश दुदानी)
सदस्य

sd/-
(श्री रमेश बाबू व.)
सदस्य

sd/-
(श्री जिशु बरुआ)
अध्यक्ष

