

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005**  
**Tel. 022 22163964/65/69 Fax 22163976**  
**Email: mercindia@merc.gov.in**  
**Website: www.merc.gov.in**

**Case No. 61 of 2020**

Case of M/s. Juniper Green Energy Private Limited seeking approval and determination of quantum and mechanism of compensation along with interest, if any, on account of the Change in Law event of imposition of safeguard duty on the import of solar cells.

M/s. Juniper Green Energy Private Limited .....Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd.. ....Respondent

**Case No. 62 of 2020**

Case of M/s. Nisagra Renewable Energy Private Limited seeking approval and determination of quantum and mechanism of compensation along with interest, if any, on account of the Change in Law event of imposition of safeguard duty on the import of solar cells.

M/s. Nisagra Renewable Energy Private Limited .....Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd. ....Respondent

**Appearance in both the Cases**

For the Petitioner

M/s. Juniper Green Energy Private Limited

:Shri Sanjay Sen

M/s. Nisagra Renewable Energy Private Limited

:Shri Sakya Chaudhari

For the Respondent

:Shri Ashish Singh

**Coram**

**I.M. Bohari, Member**  
**Mukesh Khullar, Member**

**COMMON ORDER**

1. M/s. Juniper Green Energy Private Limited (**JGEPL**) and M/s. Nisagra Renewable Energy Private Limited (**NREPL**) have filed these Cases dated 3 March, 2020 against Maharashtra State Electricity Distribution Company Ltd. (**MSEDCL**) seeking approval and determination of quantum and mechanism of compensation along with interest, if any, on account of the Change in Law event due to imposition of Safeguard Duty (**SGD**) on the import of solar cells vide Notification No. 1/2018-Customs (SG) dated 30 July 2018 of the Ministry of Finance (Government of India).
2. JGEPL was originally incorporated as M/s AT Capital Advisory India Private Limited (**AT Capital**) on 5 December 2011 under the Companies Act, 1956 as a private limited company. The name of AT Capital was changed to JGEPL vide a fresh certificate of incorporation dated 8 December 2018.
3. AT Capital was selected as a successful bidder by MSEDCL to execute Solar Power Projects located at different Talukas for cumulative capacity of 100 MW under 'Mukhyamantri Saur Krishi Vahini Yojana'.
4. NREPL is a 100% subsidiary/Special Purpose Vehicle of JGEPL incorporated on 22 March 2018 under the Companies Act, 2013 as a company limited by shares. It has the main objective of executing Power Purchase Agreements (**PPA**) for 7X10 (70 MW) Project Capacity under the present Project. While the remaining 3X10 (30 MW) project has been executed through JGEPL.
5. In view of the above, the Commission is deciding these two cases through this Common Order. JGEPL and NREPL together have been termed as Petitioners.
6. **Main Prayers of the Petitioners are as follows:**

Common Prayers

- a) *Specify the mechanism for deciding the quantum of relief that the Petitioner is entitled to on account of the Change in Law Event of imposition of safeguard duty by the Ministry of Finance vide its Notification dated 30.07.2018 under Article 9.2 of the PPA;*
- b) *Direct the Respondent to pay interest from date of incurrance of safeguard duty and GST thereon till date of payment;*
- c) *Direct the Respondent to reimburse the legal and administrative costs incurred by the Petitioner in pursuing the instant petition.*

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- d) *Direct the Respondent to pay the quantum of compensation amounting to Rs. 14,73,84,043/- to the Petitioner on account of the Change in Law Event subsequent to specifying the mechanism under Article 9.2 of the PPA, whereby the Project wise compensation is as follows:*

S. No.	Location of Project	Claim Amount
1.	Taluka- Nandgaon, District- Nashik, Circle- Malegaon	Rs. 4,96,41,462/-
2.	Taluka- Yeola, District- Nashik, Circle- Malegaon	Rs. 4,87,85,451/-
3.	Taluka- Deola, District- Nashik, Circle- Malegaon	Rs. 4,89,57,130/-
<b>Total</b>		<b>Rs. 14,73,84,043/-</b>

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- e) Direct the Respondent to pay the quantum of compensation amounting to Rs. 34,49,14,006/- to the Petitioner on account of the Change in Law Event subsequent to specifying the mechanism under Article 9.2 of the PPA, whereby the Project wise compensation is as follows;

S. No.	Location of Project	Claim Amount
4.	Taluka- Baglan (Satana), District- Nashik, Circle- Malegaon	Rs. 4,91,15,035/-
5.	Taluka- Malegaon, District- Nashik, Circle- Malegaon	Rs. 4,91,21,339/-
6.	Taluka- Sindkheda, District- Dhule, Circle- Dhule	Rs. 4,88,54,097/-
7.	Taluka- Shirpur, District- Dhule, Circle- Dhule	Rs. 4,96,77,770/-
5.	Taluka- Parola, District- Jalgaon, Circle- Jalgaon	Rs. 4,87,75,929/-
6.	Taluka- Sakri, District- Dhule, Circle- Dhule	Rs. 4,93,56,460/-
7.	Taluka- Dhule, District- Dhule, Circle- Dhule	Rs. 5,00,13,376/-
<b>Total</b>		<b>Rs. 34,49,14,006/-</b>

**7. Petitioners in their Petition have stated as under:**

- 7.1 MSEDCL had issued Request for Selection (RfS) dated 27 April 2018 inviting bids for development of solar PV ground mount power plants in the State of Maharashtra. Subsequent to the issuance of RfS, four addenda dated 19 May 2018 and 21 May 2018 were also issued with the last date for bid submission being 21 June 2018.
- 7.2 In response to MSEDCL's RfS, JGEPL submitted its bid on 21 June 2018. MSEDCL vide its letter dated 5 October 2018, declared JGEPL as one of the selected bidders for 100 MW capacity with 10 MW of capacity awarded for each of 10 Project locations at a tariff of Rs. 3.15 per unit. The details of the projects are as per the following table:

S. No.	Location of Project	Capacity (MW)
1.	Taluka- Baglan (Satana), District- Nashik, Circle- Malegaon	10
2.	Taluka- Malegaon, District- Nashik, Circle- Malegaon	10
3.	Taluka- Deola, District- Nashik, Circle- Malegaon	10
4.	Taluka- Nandgaon, District- Nashik, Circle- Malegaon	10
5.	Taluka- Yeola, District- Nashik, Circle- Malegaon	10
6.	Taluka- Sindkheda, District- Dhule, Circle- Dhule	10
7.	Taluka- Shirpur, District- Dhule, Circle- Dhule	10
8.	Taluka- Parola, District- Jalgaon, Circle- Jalgaon	10

9.	Taluka- Sakri, District- Dhule, Circle- Dhule	10
10.	Taluka- Dhule, District- Dhule, Circle- Dhule	10
<b>Total</b>		<b>100</b>

7.3 The Commission accorded its approval vide its Order dated 27 November 2018 in Case No. 277 of 2018, for procurement of solar power from parties including JGEL at rates discovered through competitive bidding and for signing of PPAs with the said parties to this effect.

7.4 MSEDCL and Petitioners entered into ten PPAs dated 27 December 2018 for development of 10 MW solar power projects at the following Project locations:

Sr. No.	Location of Project	Entity	Capacity (MW)
1.	Taluka- Nandgaon, District- Nashik	JGEPL	10
2.	Taluka- Yeola, District- Nashik		10
3.	Taluka- Deola, District- Nashik		10
4.	Taluka- Baglan (Satana), District- Nashik	NREPL	10
5.	Taluka- Malegaon, District- Nashik		10
6.	Taluka- Sindkheda, District- Dhule		10
7.	Taluka- Shirpur, District- Dhule		10
8.	Taluka- Parola, District- Jalgaon		10
9.	Taluka- Sakri, District- Dhule		10
10.	Taluka- Dhule, District- Dhule		10
<b>Total</b>			<b>100</b>

7.5 After the expiry of the last date of bid submission i.e. 21 June 2018, the Ministry of Finance imposed SGD vide Notification dated 30 July 2018. The Petitioners vide their letters dated 6 September 2018, 7 September 2018 and 14 December 2018 had informed MSEDCL that any SGD, if applicable, would be over and above the tariff under the PPA and would have to be passed through as per the provisions of RfS.

7.6 Subsequently, JGEPL and NREPL approached the Commission in Case Nos. 123 of 2020 and 124 of 2019 respectively, seeking declaration from the Commission for imposition of SGD as Change in Law event and for seeking approval and determination of quantum and mechanism of compensation along with interest, if any on account of the said Change in Law Event.

7.7 The Commission vide its Common Order dated 18 July 2019, declared that the imposition of SGD on the import of solar cells vide Notification of the Ministry of Finance qualifies as an event of Change in Law in accordance with Article 9.1 of the PPAs. In the same Order, the Commission held that additional expenditure and other consequential impact arising out of the Change in Law Event shall be considered on actual basis for reimbursement under Change in Law subject to prudent check after the Petitioners approaches the Commission afresh with all the details in accordance with the provisions of PPA.

7.8 It is in light of the said Common Order of the Commission and as per the provisions of Article 9.2 of the PPA, the Petitioners are requesting the Commission to approve and determine the mechanism and the quantum of compensation and interest thereon.

Relief for Change in Law Event

7.9 Notification dated 30 July 2018 has had a direct impact on the purchase price of the solar panels and consequentially has led to an increase in the capital cost of the Project substantially as the modules for usage of the Project have been imported from outside of India. Such import has attracted the SGD in the manner described in the said Notification.

7.10 Apart from the amount paid towards SGD, the Petitioners are also liable to pay additional GST of 5% on the value of the modules as well as the SGD amount. Thus, effectively the additional non-recurring expenditure incurred by the Petitioners equals the amount paid towards SGD as well as additional 5% GST on such SGD.

7.11 The Clause 9.2.1 of the PPA clearly stipulates that the power producer is to be placed in the same financial position as it would have been, had there been no such occurrence of Change in Law. Therefore, the Petitioners requests the Commission to take into consideration the calculations and documents annexed along with this Petition and restitute Petitioners by determining and approving the mechanism as well as the quantum of compensation.

7.12 In accordance with the Commission's Common Order dated 18 July 2019, Petitioners have calculated the additional expenditure incurred on account of the Change in Law Event on actual basis wherein SGD (including additional GST on account of SGD) amounting to Rs. 14,73,84,043 and Rs. 34,49,14,006 for JGEPL and NREPL respectively, have been paid by the Petitioners. The Project wise additional expenditure incurred on account of the Change in Law Event is as under:

JGEPL's Claim:

S. No.	Location of Project	Claim Amount
1.	Taluka- Nandgaon, District- Nashik	Rs. 4,96,41,462/-
2.	Taluka- Yeola, District- Nashik	Rs. 4,87,85,451/-
3.	Taluka- Deola, District- Nashik	Rs. 4,89,57,130/-
<b>Total</b>		<b>Rs. 14,73,84,043/-</b>

NREPL's Claim

S. No.	Location of Project	Claim Amount
4.	Taluka- Baglan (Satana), District- Nashik	Rs. 4,91,15,035/-
5.	Taluka- Malegaon, District- Nashik	Rs. 4,91,21,339/-
6.	Taluka- Sindkheda, District- Dhule	Rs. 4,88,54,097/-
7.	Taluka- Shirpur, District- Dhule	Rs. 4,96,77,770/-
8.	Taluka- Parola, District- Jalgaon	Rs. 4,87,75,929/-

S. No.	Location of Project	Claim Amount
9.	Taluka- Sakri, District- Dhule	Rs. 4,93,56,460/-
10.	Taluka- Dhule, District- Dhule	Rs. 5,00,13,376/-
<b>Total</b>		<b>Rs. 34,49,14,006/-</b>

- 7.13 The Petitioners entered into Sale and Purchase Agreement with Trina Solar Energy Development PTE Ltd. on 10 July 2019 for purchase of PV Modules. The details of SGD and the GST thereon paid project wise on the total capital cost of the solar modules have been annexed with the Petition. A copy of the invoices pertaining to purchase of solar modules along with certificate of origin, material dispatch clearance certificate and bill of lading, bill of entry and custom duty payment challan have been annexed with the Petition.
- 7.14 The Petitioners further submits that they are entitled to and pray for interest from date of incurrance of SGD and GST thereon till date of payment.
- 7.15 Petitioners have already made huge investment in the Project. The Project is financed from foreign investment by investors from Singapore and from loan taken from financial institutions in India. The Petitioners seeks restitution to the same position with reference to the Change in Law Event.
- 7.16 In accordance with the Commission's Common Order dated 18 July 2019, the Petitioners have annexed the relevant and necessary documents, information and calculations based on actuals, required to aid the Commission in determination and approval of quantum and mechanism of compensation on account of the Change in Law Event. The Petitioners request that the Commission may consider the information submitted by them for determining the compensation for impact of SGD.
- 8. MSEDCL in its reply dated 1 May 2020 has stated that:**
- 8.1 The imposition of SGD on solar cells/modules as a Change in Law event including the manner in which the impact of such Change in Law has to be passed on to the Developer has already been decided by the Commission in the similar matters.
- 8.2 MSEDCL would like to rely upon its contentions and findings of the Commission as recorded by the Commission in its Order dated 13 November 2019 in Case No. 259 of 2019.
- 8.3 Documents related to the purchase of solar modules and payment of SGD have been verified and MSEDCL may request any additional documents/information/data for confirmation of the SGD impact on project capital cost.
- 8.4 The Petitioners have adopted the lumpsum amount methodology for the reimbursement/compensation to be paid. The Commission has already mentioned that MSEDCL has to decide whether it opts to pay the compensation on lumpsum basis or per unit basis over the PPA period. The reimbursement/compensation towards SGD if any has to be provided through adjustment in tariff only. The Commission has already finalized the mechanism and modalities for the same in recent Orders. The same shall be made applicable to Petitioners, if found eligible.

8.4.1 MSEDCL has adopted the methodology suggested by the Commission in Case No. 259 of 2019 to calculate the DC Capacity for compensation of SGD using declared CUF of solar power project. The installed DC capacity by JGEPL and NREPL and declared DC capacity calculated as per the methodology suggested by the Commission is as under:

JGEPL:

S. No.	Project Location	Project Capacity	Declared CUF	Installed DC Capacity*	Declared DC Capacity#
1.	Nandgaon	10 MW	25.16%	14.59 MW	13.24 MW
2.	Yeola	10 MW	24.92%	14.54 MW	13.12 MW
3.	Deola	10 MW	25.29%	14.59 MW	13.31 MW

NREPL:

Sr. No.	Project Location	Project Capacity	Declared CUF	Installed DC Capacity*	Declared DC Capacity#
1.	Baglaon	10 MW	25.40%	14.54 MW	13.37 MW
2.	Malegaon	10 MW	25.00%	14.54 MW	13.16 MW
3.	Sindkheda	10 MW	25.66%	14.54 MW	13.51 MW
4.	Shirpur	10 MW	25.37%	14.49 MW	13.35 MW
5.	Parola	10 MW	25.15%	14.54 MW	13.24 MW
6.	Sakri	10 MW	25.69%	14.54 MW	13.52 MW
7.	Dhule	10 MW	25.05%	14.60 MW	13.18 MW

\*Capacity calculated based on the verification of invoices pertaining to purchase of solar modules

#Capacity calculated based on the methodology suggested by the Commission

8.4.2 Thus, Petitioners have installed more DC capacity and claimed the SGD compensation for the same capacity. Following are the claim amounts submitted by the Petitioners and the proportionate claim amounts to be paid by the MSEDCL:

JGEPL:

S. No.	Location of the Project (Taluka)	Amount Claimed by the petitioner	Proportionate claim calculated by the MSEDCL
1.	Nandgaon	Rs. 4,96,41,462/-	Rs. 4,53,78,686/-
2.	Yeola	Rs. 4,87,85,451/-	Rs. 4,40,05,056/-
3.	Deola	Rs. 4,89,57,130/-	Rs. 4,46,48,751/-
<b>Total</b>		<b>Rs. 14,73,84,043/-</b>	<b>Rs. 13,40,32,493/-</b>

NREPL:



Sr. No.	Location of the Project (Taluka)	Amount Claimed by the petitioner	Proportionate claim calculated by the MSEDCL
1.	Baglan (Satana)	Rs. 4,91,15,035/-	Rs. 4,51,55,680/-
2.	Malegaon	Rs. 4,91,21,339/-	Rs. 4,44,50,272/-
3.	Sindkheda	Rs. 4,88,54,097/-	Rs. 4,53,75,546/-
4.	Shirpur	Rs. 4,96,77,770/-	Rs. 4,57,90,911/-
5.	Parola	Rs. 4,87,75,929/-	Rs. 4,44,02,535/-
6.	Sakri	Rs. 4,93,56,460/-	Rs. 4,58,95,735/-
7.	Dhule	Rs. 5,00,13,376/-	Rs. 4,51,78,492/-
<b>Total</b>		<b>Rs. 34,49,14,006/-</b>	<b>Rs. 31,62,49,170/-</b>

8.4.3 The Commission in its recent SGD Orders has categorically mentioned that the compensation towards SGD, if any has to be after prudence check. In previous such matters, it was ruled by the Commission for submission of undertaking by the claimant regarding import of such solar modules from the countries attracting SGD and sample verification of the RFID tags.

8.4.4 The modality, manner and formula for calculation of impact of Change in Law and carrying cost thereof have already been decided by the Commission in its recent SGD matters. The dispensation given is squarely applicable in the present matter and a similar dispensation needs to be provided by the Commission to maintain parity and equality, subject to submission of all necessary documents/ data /information/ undertaking/ Supplementary agreement as may be required.

**9. The Petitioners in their rejoinder dated 19 June 2020 have made following submission:**

9.1 MSEDCL in its reply has admitted JGEPL's and NREPL's claim for compensation to the extent of Rs. 13,40,32,493 and Rs. 31,62,49,170, respectively. However, two principal issues of dispute that arise from denial of the Petitioners for the remaining claim for compensation are: a) the calculation of DC Capacity in proportion of declared CUF, and (b) the calculation of carrying cost.

Calculation of DC Capacity in proportion of declared CUF for the Petitioners projects

9.2 Azure case as well as in other similar cases of Adani and Tata, the Commission has had the occasion to visit the issue of necessity and propriety of setting up higher DC capacity. The Commission has accepted that additional cost is needed to provide higher DC capacity because such higher DC capacity helps in optimizing the performance of the plant. Although the Commission has noticed and acknowledged the principles underlying a Solar PV power plant and the necessity of DC overloading, the approach adopted by the Commission in Azure, Adani and Tata cases is *ipso facto* not applicable in the present cases, and cannot be applied in toto to the Petitioners' case for the following reasons:

- (a) Actual additional cost incurred by the Petitioners should be reimbursed as per the Change in Law clause of the PPA. Proportionality methodology adopted is not in accordance with restitution principles applicable under the PPA. The Petitioners have already incurred capital cost for a specified DC capacity of 1.45 times, the benefit of



which will only go to MSEDCL, but for SGD claim, DC capacity cannot be considered lower than actually installed. This would give undue benefit to MSEDCL.

- (b) Tariff is quoted (in Rs/kWh) by a generating company based on certain assumptions, most important amongst them is the quantum of electricity which can be produced by the Project. The bidder takes the risk of generation over the life of the project and is financially adversely affected in case the generation as assumed for bidding is not achieved. Therefore, in order to reduce its financial risk, provide for low tariff and also cover the degradation factor, evacuation loss factor till the 25<sup>th</sup> year, JGEPL has set up the DC capacity of 14.59 MW x 3 with the CUF of 25.16%, 24.92% and 25.29% respectively. NREPL has set up the DC capacity of 15.54 MW x 7 with the CUF of 25.40%, 25.00%, 25.66%, 25.37%, 25.15%, 25.69% and 25.05% respectively, which was never objected to by MSEDCL.
- (c) Projects were built/ designed keeping declared CUF in mind in a cost optimal manner knowing the fact that a maximum of 10 MW AC capacity in each Taluka is to be contracted with MSEDCL.
- (d) The basis of 19% for any calculation itself is wrong and cannot be applied. The criteria of 19% was only for minimum declarable CUF in RfS. It also provides that minimum CUF can be lower by -10%. This comes to again 17.1%. The criteria of minimum CUF as base is wrong. It depends on CUF at AC capacity for each project, which differ from project to project and same standard base cannot be appropriate for all projects.
- (e) In Petitioners' case, as per NIWE's data the maximum CUF that can be achieved for a project of 10 MW size in the talukas wherein the Petitioners projects are installed is 17.1%. As per the Commission's Order also, CUF ranges from 17% to 19%. As per report attached with Petition even to achieve CUF of 19%, DC overloading is a must in Maharashtra. The AC capacity would be lower than DC capacity due to losses between solar array and the output to the grid (conversion loss, transmission loss, grid non-availability loss, degradation loss, etc.), therefore the DC to AC ratio cannot be unity (1:1) and therefore there has to be DC overloading. In the Petitioners' case the RfS does not put any embargo/cap on DC overloading.
- (f) The formula for determining higher DC capacity adopted by the Commission does not take into account critical factors, namely, the location of the project and transmission losses as well as grid unavailability. While in prior cases, projects were in Rajasthan where Global Horizontal Irradiance (**GHI**), CUF is higher than in Maharashtra and those projects were on EHV connection where transmission losses are lower and grid availability is higher than that of 11kV system at which the Petitioners' projects are connected. The Petitioners' project suffers from lower GHI / CUF, higher transmission losses and lower grid availability. To this extent, facts of the Petitioners' projects are clearly distinguishable, and the Azure Case formula should not be applied, as it is and if at all can be applied to the Petitioners' projects only upon factoring in the adjustments arising from the aforesaid variables.

- 9.3 The Petitioners projects are different kind of projects, done at taluka level where power is to be fed into the grid at local level for local use. There are differential cost factors for a project in Maharashtra in comparison to other States. But the kind of localized generation and distribution is envisaged in the present RfS is of different kind altogether with objective to supply power to agriculture consumers. The project size is small, talukas are fixed, causing higher costs in terms of economies of scale, transmission losses, lower GHI, etc. thereby requiring careful planning and implementation. These projects are under Mukhyamantri Saur Krishi Yojna where power is provided at distributional level.
- 9.4 The Clause 1.1.4 when read with Clause 1.3.2 of the RfS clearly posits that the developer is free to design the project in a manner so that it is able to deliver the quoted capacity in MW AC. There is no ratio of DC to AC specified in the bidding document.
- 9.5 As per the provisions of the RfS, any SGD and related costs will be over and above tariff as per the bids and to be passed through as per the provisions of the PPA. In this case, even after reverse auction, MSEDCL renegotiated tariff by giving a ceiling of Rs. 3.15 per unit. Petitioners reduced the tariff even after reverse auction to meet requirements of MSEDCL. Any curtailment of the pass-through mechanism through formula not envisaged in the RfS is in violation of the RfS itself as well as judicial propriety. The RfS and PPA is not subject to any additional condition by way of interpretation. Prescribing a non-existent formula condition when the words of the RfS were clear is not the correct judicial approach. Post such re-negotiations, the Petitioners cannot take any further financial loss.
- 9.6 MNRE in its 'Advisory/Clarification w.r.t. D.C. Capacity of Solar PV Power Plants' dated 5 November 2019 has also acknowledged that it is globally accepted practice of installing additional DC capacity, over and above the nameplate / contracted AC capacity, with the objective of meeting the committed CUF in PPAs. It has accordingly advised that as long as the solar PV plant is in accordance with the contracted AC capacity and meets the range of energy supply based on CUF requirements, the design and installation of solar capacity on the DC side should be left to the generator.
- 9.7 Any reading to the contrary or to suggest that DC to AC ratio should be 1:1 so as to restrict / cap the DC overloading would be contrary to the fundamental principles on which the Petitioners have invested and set up the projects. It would also make no commercial sense because without a reasonable DC overloading, it is economically not possible or feasible for the Petitioners to supply the contracted quantum of power at the quoted tariff. Therefore, the present case is a fit case where the terms of the RfS/PPA have to be construed by applying the principle of business efficacy. The Petitioners relies on the judgment of Hon'ble Supreme Court (SC) in *Satya Jain v. Anis Ahmed Rushdie*, (2013) 8 SCC.
- 9.8 The aforesaid construction of RfS / PPA in a business-wise efficacious manner so as to imply a reasonable DC overloading is also supported by the recent bid documents issued by SECI and other procurers wherein the propriety and necessity of allowing DC overloading has been expressly acknowledged. In this regard, it is relevant to refer to the RfS issued by SECI for '*Selection of Solar Power Developers for Setting up of 1200 MW ISTS-Connected Solar PV Power projects in India under Tariff-based Competitive Bidding*

(ISTS-VIII)' dated 3 January 2020, wherein vide Amendment 2 to the RfS, the following was included:

*“In case of change in law on account of Anti-Dumping Duty and/or Safe-Guard Duty and/or Custom Duty etc. on Solar PV Modules, the Solar Power Developer shall be entitled for increase/decrease in tariff. This increase/decrease in tariff shall be for an amount equivalent to INR 0.005/KWh (0.5 Paisa/KWH) for every increase/decrease of INR 01 (One) lakh of impact on cost of Solar PV modules, which shall be effected based on the documentary evidence submitted to the concerned authority, which shall inter alia includes Bill of Lading (BL), Bill of Entry (BOE) at the Port of arrival, duty paid at the port of arrival, Lorry receipt (LR), Goods Receipt (GR), Insurance papers etc upto project site.*

*This increase/decrease in tariff due to this change in cost of PV modules shall be limited upto 150% (One hundred & fifty percent) of the solar project capacity allocated to the project developer.”*

- 9.9 The DC overloading upto 150% has generally been accepted as fair and reasonable. The Declared DC capacity for the Petitioners' projects in the present case should be calculated by allowing for DC overloading of 150% or actuals, whichever is lower. The tariff quoted by the Petitioners was based on its assessment of required DC capacity. Moreover, if there is variation of +/- 10% from the declared CUF, then there are penalties. The declared CUF, post 1 year from COD, cannot be changed over the term of the PPA, while module degradation over the term of the PPA is itself expected to be 17.5%-20%. This required careful assessment on the part of the Petitioners to decide the DC capacity while AC capacity is fixed at 10 MW per Taluka. At later stage, said assessment cannot be disputed to gain unfair advantage by MSEDCL.
- 9.10 The SC in the matter of R.C. Cooper vs. Union of India (AIR 1970 SC 540) wherein it was held that “*compensation means anything given to make things equal in value: anything given as equivalent, to make amends for loss or damage,*” further, the Hon'ble Supreme Court in case of Yadava Kumar vs. Divisional Manager, National Insurance Corporation Limited and Ors ( 2010 10 SCC 341) held that “*compensation is a comprehensive term and is aimed at restoring the party to same economic position as if no injury was caused.*”
- 9.11 The Petitioners have participated in the present tender and submitted its bid considering the DC to AC ratio of 1.45, in accordance with the industry practice and in consideration of the peculiarities of the project viz. its location, GHI, connectivity and loss level etc. and in order to achieve higher declared CUF. For this reason, the Petitioners were able to offer such a low tariff because if a lower DC capacity would have been considered, then the quoted tariff would have been higher. MSEDCL has, thus, benefitted from such low quoted tariff. Further, the Petitioners have already incurred full cost for setting up higher DC capacity, and it is only seeking reimbursement of additional expenditure on account of SGD and related costs. The Petitioners are not claiming cost of installing additional DC capacity but only the additional expenditure that has accrued on account of the Change in Law event. Full DC capacity has been installed and projects have already been commissioned as per PPA provisions to the satisfaction of MSEDCL. If there has been no imposition of SGD

after bidding, then the present claim would not have arisen and MSEDCL would have enjoyed full DC capacity generation. The Petitioners have given all proofs that the additional cost on account of levy of SGD has been incurred by it.

- 9.12 Even to achieve the minimum stipulated CUF of 19% provided in the RfS/PPA that, as aforesaid, when compared with the actual CUF of 17.1% that is achievable at the location of Petitioners projects, minimum overloading of DC of 1.11 times is required, which gives a multiplier of 1.11, which is required to be applied while determining the DC capacity at declared CUF for Petitioner's projects. ( $19 / 17.1 = 1.11$ )
- 9.13 Petitioners engaged an independent expert agency to prepare the Energy Yield Estimation and Assessment Report (**EYA Report**) using National Institute of Wind Energy (NIWE) Meteo Station data to assess the energy generation, performance ratio, CUF and specific energy production for its projects located in the State of Maharashtra. Upon adopting the NIWE meteo station data as a source of irradiation for the energy assessment, the expert agency has concluded that the maximum CUF that can be achieved for the Petitioners' projects located in Maharashtra is 17.1%. In Azure and other cases where the projects are located in Rajasthan, it is possible to achieve the minimum stipulated CUF of 19% because of higher GHI and lower evacuation losses. Hence, the Petitioners' case is not comparable to those of Azure and others on this count.
- 9.14 Even if the methodology devised by the Commission in Azure case has to be followed, as has been done by MSEDCL in its reply to the present Petition, then it needs to be calibrated to provide for the critical factors that were not considered by the Commission earlier, viz. the location of project, transmission losses and grid unavailability (since the Petitioners' projects suffer from lower GHI, higher transmission losses and lower grid availability due to location in Maharashtra and connectivity at 11kv line).
- 9.15 It is submitted that equal treatment of unequals tantamount to discriminatory action and it cannot be countenanced in law. The methodology for determining Declared DC capacity espoused by the Commission in Azure Case should be applied to the Petitioners after suitably calibrating it by giving due weightage for the difference in GHI, transmission loss and grid availability.
- 9.16 Hence, the formula followed by the Commission in Azure Case needs to be adjusted by a multiplier of 1.11 so as to be applicable to the Petitioners case as follows:

JGEPL's Projects

S. No.	Project Location	Project Capacity	Installed DC Capacity	Declared DC Capacity
1.	Nandgaon	10 MW	14.59 MW	14.69 MW
2.	Yeola	10 MW	14.54 MW	14.55 MW
3.	Deola	10 MW	14.59 MW	14.77 MW

NREPL's Projects

S. No.	Project Location	Project Capacity	Installed DC Capacity	Declared DC Capacity*
1.	Baglaon	10 MW	14.54 MW	14.84 MW
2.	Malegaon	10 MW	14.54 MW	14.60 MW
3.	Sindkheda	10 MW	14.54 MW	14.99 MW
4.	Shirpur	10 MW	14.49 MW	14.81 MW
5.	Parola	10 MW	14.54 MW	14.69 MW
6.	Sakri	10 MW	14.54 MW	15.00 MW
7.	Dhule	10 MW	14.60 MW	14.62 MW

*\*figures in NREPL's rejoinder is corrected as against its submission, NREPL had not factored in multiplier effect of 1.11*

In view of the aforesaid Declared CUF DC capacity, full reimbursement of additional costs on account of levy of SGD etc. for the installed DC capacity may be allowed.

- 9.17 In case either: (a) actual reimbursement is not allowed without relying on formula in Azure Case, or (b) formula in Azure Case is adjusted to provide for multiplier of 1.11 to account for lower GHI / CUF in Maharashtra in the region where the Petitioners' projects are situated and higher transmission losses coupled with lower grid availability at 11kV connection, or (c) actual CUF applicable to the Petitioners at AC capacity of 17.1% is considered in the Azure Case formula; it shall lead to unjust and irrational outcome. Further, in the absence of acknowledging and appreciating that even to achieve minimum CUF of 19%, higher DC capacity of at least 1.11 times is required, the criteria of 19% minimum CUF being used as denominator in the formula is completely arbitrary, unreasonable and beyond the letter and spirit of the contract and judicial precedents.
- 9.18 Even in earlier orders of the Commission, due to higher GHI / CUF in Rajasthan and those projects being on EHV line, the projects which have installed DC capacity of 1.5 times, got SGD reimbursements for DC capacity of about 1.49 times. This is much higher than DC capacity of 1.45 times installed by the Petitioners. So, the same formula is leading to only reimbursement of SGD of only 1.3 times, while at overall level, DC ratio was anyway less in case of the Petitioners than those projects to begin with.
- 9.19 In the alternative, since the Petitioners are permitted to supply power within range of +10% of the declared CUF (which MSEDCL is bound to take), this +10% should be added to the declared CUF in the formula provided in the case of Azure. Unless the declared CUF + 10% is taken, the MSEDCL would enjoy higher generation but is not liable to compensate for additional DC capacity due to which higher generation is received. This is despite the fact that additional per unit cost would remain same to MSEDCL. On the contrary, if generation is in lower limit, then the Petitioners are reimbursed less on annuity basis and balance compensation is not being paid in year-end but carried forward to subsequent years for adjustment with higher generation later. There is under-recovery of the Petitioners on account of upfront limiting of DC Capacity and SGD reimbursement when Actual CUF is more than Declared CUF and MSEDCL is not paying for the higher DC capacity which is enabling the higher CUF.



## Carrying Cost

- 9.20 Article 9.2.1 of the PPAs in the present case mandates that a party affected by Change in Law event has to be restored to the same financial position by way of compensation as if event of Change in Law had not occurred. An order is passed by the Hon'ble Appellate Tribunal for Electricity in Appeal No. 210 of 2017, wherein, it held "*that carrying cost is in the nature of compensation for money denied at the appropriate time*". The principle of recovery of carrying cost/interest and time value of money is well settled. The Petitioners relies upon the decisions of Hon'ble Supreme Court in *Energy Watchdog v. CERC & Ors.*, (2017) SCC 14 and *South Eastern Coalfield Limited v. State of Madhya Pradesh*, (2003) 8 SCC 648.
- 9.21 The Petitioners in the instant case is entitled to be allowed carrying cost on the amount incurred by it towards SGD and GST thereon from the date such payment was made till the date of order by the Commission. The Petitioners are also entitled for additional carrying cost if the payment allowed by the Commission is delayed for a period beyond 30 days by the MSEDCL.
- 9.22 The Petitioners have incurred significant capital expenditure to set up the project, which is funded through long-term project debt taken by it. The carrying cost is to be allowed on the principle of restitution, the actual rate of interest payable by it for the additional capex endured due to the Change in Law event should be reimbursed to the Petitioners. Carrying cost at the LPC rate that is provided in the PPA or any other rate, including one based on working capital rate, does not conform to the restitution principle. Application of restitution principle so as to restore the affected party to the same economic position has to be given full effect irrespective of whether it is a project under Section 62 or Section 63 of the EA.
- 9.23 Working capital interest or LPS is a short-term rate for over dues. It cannot be used for long term deferral of payments. If MSEDCL has any issue with using actual debt rate of the Petitioners, then it must make payment in lumpsum and arrange its own funds for the same through debt. The Petitioners are not in business of funding MSEDCL at lower than market rate. LPS is not and cannot be treated as reference rate for all types of compensation under PPA since it is provided for specified purpose of short-term default of MSEDCL in making timely payments. The market rate of interest on working capital is higher than LPS rate. Thus, MSEDCL cannot make undue gains at the cost of undue loss of the Petitioners.
- 9.24 The rate of carrying cost that it has to be allowed has to be minimum equivalent to its cost of debt, which is 10.85% per annum. JGEPL and NREPL rely on the Sanction Letter dated 9 April 2019 and 24 July 2019, respectively, for the loan taken from IREDA for the project. MSEDCL has an absolute obligation in terms of the PPA to restore the Petitioners' pre-Change in Law financial position.
- 9.25 LPC does not cover actual cost of equity and cost of debt. SGD is funded through debt and equity. Even if RoE is not known on account of bidding, RoE surely cannot be below the debt cost. In preferential tariff order, MERC has taken Return on Equity of 16%. Further the Petitioners in the present case can be considered to have received funding for the SGD and other related costs at minimum of cost of its project debt and continues to incur carrying

cost as per its cost of project debt. As against this, if the Petitioners are only reimbursed at LPC rate, then this would result in financial loss to them while MSEDCL will get to make undue gains at the Petitioners' cost.

- 9.26 Furthermore, LPC is a varying rate that is linked to SBI MCLR. Since in the instant case the Petitioners have already incurred the higher project cost on account of SGD, the carrying cost over its reimbursement amount has to be fixed and it cannot be kept varying every year.
- 9.27 Any under recovery due to lower generation during the year cannot be carried forward at nil carrying cost. These are annuity payments. Either the under recovery must be compensated at the year-end or if it is to be carried forward, the carrying cost must be applied to such carry forward. MSEDCL cannot take benefit of lower generation in a particular year which would get set off by higher generation in subsequent year.
- 9.28 In case the compensation for change in law is reimbursed to the Petitioners over a longer period and not by way of one-time payment as prayed, then the applicable annuity rate / carrying cost has to be calculated in the manner submitted in paragraph above, i.e. at actual cost to the Petitioners over such period of time.
- 9.29 In the alternative, as suggested in main Petition, and in accordance with the orders of the CERC, full reimbursement may be allowed upfront to the Petitioners. Even CERC has not artificially reduced the DC capacity to reduce the compensation. As such the actual amount of the SGD imposed by the competent authority and paid by the Petitioners needs to be compensated.
- 9.30 The verification of RFID and other details pertaining to modules is not needed to re-verify if SGD is applicable or not on the modules and accordingly, verification of RFID details should not delay the compensation payout. Further, the projects are already commissioned with installation reports available with MSEDCL. Under the PPA, the Petitioners have the right to revise the declared CUF within one year from COD. In case declared CUF is so revised, the compensation mechanism as may be decided by the Commission shall be automatically re-worked by taking the revised CUF and the amount of reimbursement / additional tariff shall accordingly be revised.
- 9.31 The PPA executed between the parties stipulates the CUF declared by the Petitioners and accepted by MSEDCL without any objections or demur. The doctrine of promissory estoppel is also attracted in the instant case which estops MSEDCL from going back on its agreed position on CUF that formed the basis of the PPA executed with the Petitioners. CUF is one of the material terms of the PPA and all the Petitioners' obligations and liabilities (including the liability to pay damages) arise from the CUF declared by it at the time of PPA signing. MSEDCL not accepting and agreeing to the CUF declared by the Petitioners, it would not have signed the PPA and gone ahead with implementation of the Project at great cost and consequence to itself. Therefore, it is legally impermissible for MSEDCL to retract from and/or question the CUF agreed under the PPA or the consequences flowing out from such CUF, including reimbursement of additional capital expenditure incurred by the Petitioner under 'Change in Law' claims.



10. At the hearing held on 7 July 2020, the Advocates of both the Petitioners reiterated their submissions. Further, MSEDCL also restated its submission. The Commission sought clarification from MSEDCL on the issue of CUF for Solar projects located in Maharashtra and granted 3 days' time to file its submission.
11. The Petitioners in their Notes of Arguments dated 7 July 2020 have submitted summarized submissions contained in Petition and Rejoinder. All these arguments have already been captured in the submissions of Petitioners and are not repeated here.
12. **MSEDCL in its written submission dated 10 July 2020 has stated that:**
  - 12.1 The Commission in its recent SGD orders has categorically mentioned that the compensation towards SGD; if any, has to be after prudence check. In previous such matters, it was ruled by this Commission for submission of undertaking by the claimant regarding import of such solar modules from the countries attracting SGD and also sample verification of the RFID tags. The documents related to the purchase of solar modules and payment of SGD are under scrutiny and following additional documents/information/data are required to be submitted by the Petitioners for confirmation of the SGD impact on project capital cost.
    - a) Scanned copies of contract with supplier.
    - b) CA certificate, certifying payment of SGD and IGST.
    - c) Warranty certificate.
    - d) Purchase Order/ Agreement/LOA placed for the purchase of solar PV panel.
  - 12.2 The claim towards safeguard duty are required to be restricted in accordance with the formula provided by the Commission in earlier Orders.
  - 12.3 The declaration of CUF of more than 19% is a pure commercial call of the Petitioners and are required to comply with same without compromising on efficiency of solar module. The terms and conditions related to CUF and location of the plant were explicitly made clear in RfS. The Petitioners have agreed to them and accordingly the PPAs were executed. Hence arguments made on this ground are an afterthought and are not tenable. The PPA is a sacrosanct document which lays down the intention of the Parties. There is no provision in PPA which provides for Variation of CUF depending on location of project.
  - 12.4 The dispensation given in earlier matters is squarely applicable in the present case also, subject to submission of all necessary documents/ data /information/ undertaking/ Supplementary agreement as may be required.
13. **The Petitioners in their additional submission dated 13 July 2020 in reply to MSEDCL's Additional submission has stated that:**
  - 13.1 After accepting the CUF, it is not justified for MSEDCL to suggest that PPA provides for a minimum CUF of 19% and thereby question the CUF declared by the Petitioners. There is only one CUF value for all purposes under the PPA and that is the CUF declared by the Petitioners at the time of the signing of PPA. Clause 5.5.1 only clarifies that the CUF to be declared by the Petitioners should not be lesser than 19%. There is no relevance or

applicability of such figure of 19% once and after the Petitioners have declared its CUF and the same is accepted by MSEDCL.

- 13.2 Since both, the Petitioners as well as MSEDCL, have mutually agreed to the CUF, the consequences flowing from such CUF cannot be denied at this stage. MSEDCL is contractually obligated to reimburse such incremental capital cost to the Petitioners under Change in Law provisions of the PPA.
- 13.3 Further, neither the PPA nor MERC Tariff Regulation provides for 1:1 AC and DC ratio and even otherwise also same is impossible to achieve practically and theoretically. On the contrary, there is no restriction on DC capacity for achieving declared CUF.
- 13.4 The Commission has held that that Article 5.5.1 of the PPA mandates power producer to maintain generation so as to achieve CUF in the range of  $\pm 10\%$  of their declared value. Thus, PPA allows variation of  $\pm 10\%$  in declared CUF. Therefore, although the Commission has used single number of CUF in the above quoted per-unit compensation mechanism, the said CUF needs to be read with allowable variation in Article 5.5.1 of the PPA. For this purpose, although per unit charge at the start of each financial year needs to be decided based on declared CUF, year-end reconciliation at end of each financial year shall be undertaken as per actual CUF within range  $\pm 10\%$  of declared CUF.
- 13.5 In the alternative, since the Petitioners are permitted to supply power within a range of +10% of the declared CUF (which MSEDCL is bound to take), this +10% should be added to the declared CUF in the formula provided in the case of Azure. Unless the declared CUF + 10% is taken, the MSEDCL would enjoy higher generation but is not liable to compensate for additional DC capacity due to which higher generation is received. This is despite the fact that additional per unit cost would remain same to MSEDCL. On the contrary, if generation is in lower limit, then the Petitioners are reimbursed less on annuity basis and balance compensation is not being paid in year- end but carried forward to subsequent years for adjustment with higher generation later. There is under-recovery of the Petitioners on account of upfront limiting of DC Capacity and SGD reimbursement when Actual CUF is more than Declared CUF.
- 13.6 Similarly, if MERC Tariff Regulations are to be relied upon for one purpose, then it should also be relied upon for other purposes like carrying cost and interest. Long term debt rate should be applied as per the Tariff Regulations for deferral of payments over 25 years. Further, additional cost is funded through long term debt. The Tariff Regulations provides for higher equity returns as well to the extent of 30% of the additional cost.
- 13.7 Further, with respect to the inspection of RFID tags and documents mentioned in MSEDCL's Written Arguments, the Petitioners have already provided those documents. Further, the Petitioners shall provide the undertaking that all modules installed at respective project site for supplying power to MSEDCL have been imported from country/ies which are subjected to SGD. Thereafter MSEDCL should act upon such undertaking given by the Petitioners and ascertain the compensation amount under 'Change in Law'. The imposition of SGD is not in doubt in as much as the same has already been paid to the Government.

### **Commission's Analysis and Ruling:**

14. M/s AT Capital (earlier name of JGEPL) had participated in the bid invited by MSEDCL under 'Mukhyamantri Saur Krishi Vahini Yojana' for procurement of Solar Power. M/s AT Capital were declared as successful Bidders for 100 MW capacity. The Commission had accorded its approval vide its Order dated 27 November 2018 in Case No. 277 of 2018, for procurement of solar power from the M/s AT Capital through competitive bidding process. PPAs for 30 MW in the name of JGEPL (earlier M/s AT Capital) and 70 MW in the name of NREPL (subsidiary of JGEPL) were executed with MSEDCL on 27 December 2018.
15. Subsequently the Petitioners had approached the Commission in Case No. 123 and 124 of 2019 seeking the approval and determination of compensation on account of Change in Law for its Solar Project. The Commission in its combined Order dated 18 July 2019 provided the following dispensation:

*"13. The Commission observes that the instant Cases are similar to the Petitions filed under Case No. 276, 325 and 340 of 2018, which have been disposed by this Commission through Common Order dated 15 February, 2019. The Commission has already recognized the Ministry of Finance's Notification dated 30 July, 2018 imposing Safeguard Duty on import of Solar Cell /Modules as Change in Law event. Further, the Commission observed that any additional expenditure amounting from imposition of Safeguard Duty shall be considered on actual basis for reimbursement subject to prudent check after the petitioners file their petitions with all the details as per the PPA.*

*14. Further, MSEDCL, Respondent in this matter has referred above stated Order of the Commission and agreed that imposition of Safeguard Duty by MoF is an event of Change in Law and compensation for the same can be considered to only after the submission of actual impact of such event supported by documentary evidence. Thus, the Commission's Order dated 15 February, 2019 is squarely applicable in present matter, and present Petitioners shall have to approach afresh for determination of compensation under provision of PPA once actual impact of imposition of Safe Guard Duty is known.*

*15. Having ruled as above, the Commission would like to emphasise that its Order dated 15 February, 2019 has already declared imposition of Safe Guard Duty as a Change in Law event and has directed Solar Project Developers to approach Commission for determination of compensation only when actual impact of such Safe Guard Duty is known. Buyers of power under these PPAs have also agreed with this dispensation. Under such circumstances, it is expected that Solar project developers approach this Commission only with actual impact and not waste their time and resources including that of the Respondent and the Commission by seeking in-principle approval of Imposition of Safe Guard Duty as a Change in Law event, unless it has specific case or different relief is being sought.*

Thus, the Commission has already held that the imposition of SGD is an event of Change in Law.

16. The Petitioners, in the instant cases are seeking determination of the compensation under “Change in law” on account of the introduction of SGD for its 100 MW (10 MW Solar projects each at 10 different places) projects under ‘Mukhyamantri Saur Krishi Vahini Yojana’ having PPAs for sale of power to MSEDCL. Petitioners have contended that they have incurred an additional cost of Rs 49.13 Cr (Rs. 14.74 Cr. for JGEPL + Rs.34.49 Cr for NREPL) on account of SGD (including additional GST on account of safeguard duty) for import of Solar PV Modules of capacity of 145.51 MW( 43.72 MW for JGEPL + 101.79 MW for NREPL) and accordingly they are seeking compensation of this amount along with carrying cost from MSEDCL by relying on the restitution principle of the PPA.
17. The Commission notes that PPA has following provisions relating to compensation on account of event of Change in Law:

*“Article 9: Change in Law*

*Article 9.1 Definitions In this Article 9, the following terms shall have the following meanings:*

*“Change in Law” shall refer to the occurrence of any of the following events after the last date of the bid submission, including (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the Solar Power Generator; or (v) any change in the rates of any Taxes, Duties and Cess which have a direct effect on the Project. However, Change in Law shall not include any change in taxes on corporate income or any change in any withholding tax on income or dividends.”*

*“Article 9.2 Relief for Change in Law*

*9.2.1 In the event a Change in Law results in any adverse financial loss/ gain to the Power Producer then, in order to ensure that the Power Producer is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Power Producer/ Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the MERC.*

*9.2.2 If a Change in Law results in the Power Producer’s costs directly attributable to the Project being decreased or increased by one percent (1%), of the estimated revenue from the Electricity for the Contract Year for which such adjustment becomes applicable or more, during Operation Period, the Tariff Payment to the Power Producer shall be appropriately increased or decreased with due approval of MERC.*

9.2.3 *The Power Procurer / MSEDCL or the Power Producer, as the case may be, shall provide the other Party with a certificate stating that the adjustment in the Tariff Payment is directly as a result of the Change in Law and shall provide supporting documents to substantiate the same and such certificate shall correctly reflect the increase or decrease in costs.*

9.2.4 *The revised tariff shall be effective from the date of such Change in Law as approved by MERC, the Parties hereto have caused this Agreement to be executed by their fully authorized officers, and copies delivered to each Party, as of the day and year first above stated.”*

18. Thus, any event eligible under Article 9.1 that occurred after bid submission date qualifies as Change in Law event. As per clause 9.2.1 of the PPA, affected party has to be restored to the same financial position by way of compensation as if the event of Change in Law had not occurred. The quantum of compensation and mechanism of compensating affected party is to be decided by the Commission. Also, affected party has to provide all supporting documents to other party for ascertaining / substantiating impact of the Change in Law.
19. Accordingly, the Petitioners have claimed Rs. 49.13 Cr as quantum of compensation on account of Change in Law event (imposition of SGD) including GST and have also proposed in the Petition the mechanism of lump sum payment for providing compensation. The Petitioners have also stated that all supporting documents for substantiating quantum of compensation have been provided along with Petition. MSEDCL has contended that the documents related to the purchase of solar modules and payment of Safeguard Duty have been verified and it may request any additional documents/information/data for confirmation of the SGD impact on project capital cost.
20. MSEDCL has also stated that payment methodology approved by the Commission in recent Orders for other Solar Project Developer shall also be applicable in present matter to avoid discrimination. However, the Petitioners have disputed this contention of MSEDCL mainly on two issues: a) the calculation of DC Capacity in proportion of declared CUF, and (b) the calculation of rate of interest for allowing carrying cost. The Commission has addressed these issues as follows:
- a) **Calculation of DC capacity eligible for Change in Law Compensation:**
21. The Petitioners have contended that as per principle of restitution they should be compensated by reimbursing amount actually spent on account of imposition of SGD as a Change in Law event without excluding any actual installed DC capacity irrespective of formula stipulated in earlier orders of the Commission.
22. The Petitioners have contended that the methodology adopted by the Commission for determining DC capacity in Case of Azure and others (whose projects have the location advantage being located at Rajasthan and also the advantage of economy of scale) cannot be applied to their projects which are developed under ‘Mukhyamantri Saur Krishi Vahini Yojana’ at different places in Maharashtra and are connected at distribution level with a maximum capacity of 10 MW of each project at one place. Further as per the Energy Yield



Assessment Reports from TUV India Private Limited the expected CUF level is 17.1% for the projects located at Nashik. In order to achieve stipulated 19% CUF in RfS or PPA, minimum 1.11 times DC overloading capacity is required in Maharashtra. Hence the band of +10% given for the CUF declared by the developer in RfS/PPA shall be applied to stipulated CUF of 19% for calculating the DC Capacity. Hence the Petitioners have requested to allow the reimbursement based on the following alternatives:

- i) Based on the actual DC capacity installed at project sites, or;
  - ii) The formula adopted by the Commission in Azure and other cases shall be adjusted/calibrated with multiplier of 1.11 on account of lower GHI/CUF in Maharashtra, or;
  - iii) Considering the base CUF of 17.1 % at denominator and apply the formula adopted by the Commission in Azure and other Cases.
23. All above contentions of the Petitioners have been opposed by MSEDCL which has requested the Commission to adopt practice/ methodology approved in earlier orders dealing with SGD matters.
24. With regard to issue of compensation under the Change in Law, the Commission notes that as stated in para 18 above, intent of the PPA provisions is to restore the affected party to the same economic position as if Change in Law had not occurred. For this, the affected party has to be compensated for actual cost incurred on account of such Change in Law plus carrying cost on such amount as affected party has to arrange financing of such cost from date of incurring such cost till approval of the Commission. In the present case, impact of Change in Law has increased the expenses on account of imposition of SGD on solar panel. It is an admitted fact that the PPA does not stipulate DC capacity of modules / panels to be installed to deliver contracted AC capacity. Also, competitive bidding guidelines stipulated by the Government of India under Section 63 of the EA, 2003 do not provide any guidance on this issue. Hence, as per findings of the Hon'ble Supreme Court in *Energy Watchdog* judgment, the Commission has to use its general regulatory powers to decide this issue. As per provisions of the PPA, project developers have to adopt prudent utility practices while executing and operating its project. As admitted by the Petitioners itself, as per current industrial practice, projects are being commissioned by oversizing DC capacity upto 150% of required AC output. Hence, it is incorrect to state that Change in Law compensation shall be paid for actual installed capacity irrespective of scrutinising prudence of such oversizing.
25. In view of the above background and in absence of any clear provision in PPA or Guidelines, the Commission, by using its Regulatory Powers, has stipulated a formula for arriving at DC capacity which can be considered for compensation under Change in Law. However, the Petitioners in their submission have elaborated some distinctive factors such as locations of the projects, GHI, connectivity at LT level and CUF etc to contend that their case can not be directly compared with earlier cases of Azure and others as proposed by MSEDCL. They have requested that these factors shall be considered for finalizing the DC capacity of the modules for determining the compensation towards SGD. In this regard, the Commission notes that while distinguishing the distinctive factors as stated above,

Petitioners have ignored comparison of the tariff between the projects of Azure and others with that of Petitioners' Projects developed in Maharashtra. The Commission by its Order dated 27 November 2018 in Case No 277 of 2018 had adopted tariff for 235 MW with weighted average tariff rate of Rs. 3.13 per unit in which tariff of Rs.3.15 per unit for the Petitioners' projects of 100 MW has been approved. While approving the tariff the Commission ruled as under:

*“9. The Commission notes that due process for procurement of solar power has been followed by MSEDCL. It further notes that the discovered tariff rates are within the vicinity of the rates earlier approved by Commission if one considers the transmission and distribution losses, plant size and the geographic spread. Rates were competitively obtained and were twice negotiated to lower those rates further. The Commission is satisfied that MSEDCL has made prudent efforts for seeking approval for adoption of the weighted average tariff rate of Rs. 3.13 per unit.*

Prior to adoption of the above tariff, the Commission by its Order dated 29 June 2018 in Case No 164 of 2018 had adopted tariff for 1000 MW (for Azure and others developers) at tariff rate of Rs. 2.71 to 2.72 per unit. Subsequently on the basis of this adopted tariff of Rs. 2.72 per unit, the Commission in its RE Tariff Order in Case No 204 of 2018 dated 18 August 2018 has considered same tariff applicable for Solar PV projects commissioned in FY 2018-19. While adopting the tariff for projects under 'Mukhyamantri Saur Krishi Vahini Yojana' the Commission has already taken into consideration the distinctive factors of the projects such as transmission and distribution losses, plant size and the geographic spread etc. and allowed higher tariff of about Rs. 0.43 per unit compared to large project developed at Rajasthan. Hence, in the opinion of the Commission, Petitioners at this stage cannot claim any extra benefit by showing some distinguishing factors. Similarly, at this belated stage post signing of PPA based on approval of the Commission and commissioning of the project, Petitioners now cannot contend or seek any relief by citing negotiation of discovered tariff post bidding process which was done at the request of MSEDCL.

26. The Commission also notes that Petitioners in their submissions have mixed up two different issues viz the DC capacity required to meet contractual obligations of AC capacity and achievement of declared CUF in the range  $\pm 10\%$ , and has accordingly requested to allow -10% variation in 19% minimum CUF while calculating allowable DC module capacity for Change in Law compensation. The Commission notes that flexibility band of  $\pm 10\%$  is provided for factoring uncertainty in solar radiations or environmental variations during the tenure of the PPA. It does not in any way suggest that project's installed capacity may vary between  $\pm 10\%$  of DC Module capacity required to achieve AC capacity with minimum CUF of 19%. If such interpretation is accepted, then project developer would only require to install PV modules/panel to achieve CUF of 17.10% (lower band of 19%) and then it would be difficult to always achieve CUF in the range of  $\pm 10\%$  of minimum required CUF of 19% i.e. between 17.10% to 20.9%. Hence, the Commission cannot accept Petitioners' request considering  $\pm 10\%$  band for arriving at DC module capacity which as per PPA is intended to accommodate variation in actual CUF over the tenure of PPA.



27. The Commission also notes that Petitioners have submitted Energy Yield Assessment Reports from TUV India Private Limited which state that expected CUF at P50 confidence level would be 17.12% for the projects located at Nashik. Therefore, Petitioners have contended that to achieve stipulated 19% CUF in RfS or PPA, minimum 1.11 times DC overloading capacity is required in Maharashtra and that 19% CUF is not achievable with DC:AC ratio of 1:1 which is possible for the project located at Rajasthan. Hence, Petitioners have requested that considering environmental conditions in Maharashtra, minimum CUF should be considered as 17.12% while computing allowable DC module capacity for Change in Law compensation. In this regard, the Commission notes that while projecting 17.12% achievable CUF, TUV India Pvt. Ltd. in its report has mentioned that 2% loss is on account of grid unavailability. However, as per following provisions of PPA, reduction in CUF on account of grid unavailability is to be relaxed:

*5.5.1 Criteria for generation:*

*The power producer will declare the CUF of their project at the time of PPA and will be allowed to revise the same once within first year of COD. The declared CUF shall in no case be less than 19% over a year. They shall maintain generation so as to achieve CUF in the range of  $\pm 10\%$  of their declared value during the entire PPA duration of 25 years from the Commercial Operation Date of proposed/ new solar power project. The lower limit will, however, be relaxed by MSEDCL to the extent of grid non-availability for evacuation which is beyond the control of the Power Producer.*

Thus, as per above provision, 2% loss considered on account of non-availability of grid can be considered in the CUF. Further, said study has considered solar module capacity of 330 Wp. The Commission notes that higher capacity and efficient modules are already available in market which will improve the CUF of the plant. Hence, if all these factors are considered collectively, then in the opinion of the Commission it is not correct to state that 19% CUF cannot be achieved in Maharashtra with DC:AC ratio of 1:1. Therefore, Petitioners' request of considering minimum CUF of 17.12% while computing allowable DC module capacity cannot be accepted.

28. In view of the above stated reasons, the Commission is not inclined to grant any deviation in the formula adopted in its earlier judgments for computing allowable DC capacity for compensation on account of Change in Law.

**b) Calculation of rate of interest for allowing carrying cost.**

29. Petitioners contend that Working capital interest or LPS is a short term rate for over dues. It cannot be used for long term deferral of payments. If MSEDCL has any issue with using actual debt rate of the Petitioners, then it must make payment in lumpsum and arrange its own funds for the same through debt. Petitioners have requested carrying cost at rate of 10.85% which is actual cost of debt borrowed from IREDA. SGD is funded through debt and equity. Even if RoE is not known on account of bidding, RoE surely cannot be below the debt cost. Furthermore, LPC is a varying rate that is linked to SBI MCLR. Since in the instant case the Petitioners have already incurred the higher project cost on account of SGD, the carrying cost over its reimbursement amount has to be fixed and it cannot be kept varying every year.

30. MSEDCL has opposed above contentions of the Petitioners and has requested the Commission to adopt practice/ methodology approved in its earlier orders dealing with SGD matters.

31. The Commission notes that issues raised by present Petitioners are similar to those that were raised during earlier Case No. 8 of 2020 by M/s ReNew Solar Power Private Limited (RSPPL). This Commission vide its Order dated 22 June 2020 has ruled on the issue of carrying cost in that matter as follows:

“  
15.3 *In this regard, the Commission notes that carrying cost is allowed as per restitution principle of the Change in Law stipulated under the PPA. Thus, carrying cost needs to reflect time value of money and cannot be used as a tool to earn additional compensation. Use of weighted average cost of capital or rate of Return on Equity would provide higher compensation than time value of money and hence is not appropriate for use as interest rate for carrying cost.*

15.4 *In normal course, for time gap between date of spending and realising the said amount, utility takes Working Capital loan and as per tariff principle such utility is allowed to claim interest on such Working Capital loan. Similarly, when higher expenses are incurred on account of Change in Law which is to be reimbursed at later date, entity may fund such expenses through Working Capital Loan or through other means available with it. However, under Section 63 bidding, Commission is not expected to go into all such financial details as bidder is not expected to disclose fundamental basis of the bid tariff. PPA does not stipulate rate of interest for carrying cost. Hence, as an alternative, rate of interest on working capital stipulated in RE Tariff Regulations is being referred as rate for carrying cost to work out the financing cost.*

15.5 *MREC RE Tariff Regulations, 2015 stipulates rate of interest on Working Capital as Base Rate (varies from 7.40% to 10% over the period) of the State Bank of India plus 350 basis point. However, at the same time it is important to note that late payment surcharge/delayed payment charges stipulated in the PPA is one year MCLR (varies from 7% to 9.20% over the period) of SBI plus 1.25% (125 basis point) which is lower than the rate of interest on Working Capital stipulated in Regulations. Delayed Payment charges is to cover cost of working capital which utility has to raise in view of non-availability of fund due to delayed payment plus some punitive charges so as to create deterrent and ensure payment by the due date. Therefore, delayed payment charges are always more than the interest rate for working capital. Same can be seen from MERC RE Tariff Regulations 2015 which stipulate interest on Working Capital as SBI Base Rate+350 basis point (effective max rate 13.50%) and delayed payment charges 15%. However, in case of RSPPL's PPA, if SBI Base Rate + 350 basis point stipulated in Regulations is adopted as interest rate for working capital, then financial principle of having delayed payment charges (SBI MCLR + 125 basis point) higher than interest on working capital would not be fulfilled. Thus only conclusion that could be drawn is that present PPA which has been signed after following due competitive bidding process under Section 63 of the EA, 2003, presumes interest rate*

*for working capital at much lower rate than that stipulated in MERC RE Tariff Regulations. However, as there is no other reference rate stipulated in Regulations, and in order to balance the interest of both parties, the Commission in its earlier Order dated 13 November 2019 has ruled that late payment surcharge/delayed payment charge stipulated in the PPA is to be used as a proxy for carrying cost. In view of factual situation explained above, in the opinion of the Commission it is the best option to continue with this dispensation.*

*15.6 Accordingly, the Commission rules that as in its earlier Order dated 13 November 2019 in Case No. 259 of 2019, in present matter also, carrying cost will be equal to 1.25% in excess of 1 year MCLR of State Bank of India. Further, as such rate is linked to 1 year MCLR of SBI, it is not a fixed rate, but will reflect cost of borrowing for different time span for which compensation is to be paid.”*

32. Above ruling is squarely applicable in the present matter and hence the carrying cost needs to be allowed at the rate of 1.25% in excess of 1 year MCLR of State Bank of India. As far as, Petitioners’ reference to actual barrowing from IREDA is concerned, under competitive bidding process, it is not expected to go into any thing beyond what was stipulated in the bid document and the scrutiny of compensation under Change in Law is to be limited to actual taxes paid to the Government Authority. If Petitioners’ request for considering actual cost of borrowing is to be accepted then other actual parameters such as decreasing cost of solar panel, changes in other bid assumption etc. vis-à-vis bid date would also need to be gone into to compute actual impact of Change in Law. However, this is not expected as per the settled principles of law.
33. Having decided two issues raised by the Petitioners as above, the Commission notes that methodology specified by it in other matters seeking Change in Law compensation on account of imposition of SGD would be squarely applicable to the present matter. The Commission notes that though MSEDCL and the Petitioners have referred to Azure and others orders (Case No 259 of 2019), the Commission in its latest Order dated 22 June 2020 in Case No 8 of 2020 (Case of M/s. ReNew Solar Power Private Limited ) has provided more clarity on various aspects of calculation of SGD compensation. The dispensations on the issue of carrying cost has already been referred in the foregoing paragraph. Ruling on other issues such as documents to be verified for Change in law claim, Capacity of Solar module eligible for compensation and Methodology for payment of compensation is also squarely applicable in the instant Cases. The relevant portion of the Order in Case No 8 of 2020 is reproduced as under:

The dispensation provided for documents to be verified for Change in law claim:

*13.3 The Commission notes that verification of Solar panel for its country of origin and one to one tagging of Safeguard Duty payment is an essential requirement for verification of Change in Law claim. Further, the same is also as per the provisions of the contract. However, RSPPL has submitted these documents to MSEDCL in January 2020 i.e. almost 5 months earlier. Till date MSEDCL has not completed verification process nor has it sought any additional information. Such delay in*

verification of claims would increase carrying cost liability and hence MSEDCL should complete verification process on priority.

13.4 Further, as per provisions of PPA read with conditions stipulated in RFS documents, Solar Generator has to submit details of RFID tags to the Distribution Licensee for verifying technical compliance by the plant. Further, such RFID tags can also be used to ascertain that the panels at site are installed for PPA under consideration and imported from countries to which Safeguard Duty has been made applicable. RSPPL has contended that submission of RFID tags for all modules will take 2 years and hence requested submission of RFID tag on sample basis. In the opinion of the Commission such request of RSPPL cannot be granted in view of provisions of PPA. Therefore, RSPPL is directed to submit details of RFID tags for all modules on priority to MSEDCL. However, it is admitted fact that verification of such large numbers of RFID tags would take substantial time, hence in order to avoid further delay in payment of compensation and thereby accumulation of carrying cost, RSPPL shall provide undertaking that all modules installed at project site for supplying power to MSEDCL have been imported from the Country/ies which are subjected to SGD. Thereafter MSEDCL shall act upon such undertaking given by RSPPL and ascertain the compensation amount under Change in Law. MSEDCL shall complete this process within 15 days from date of this Order. Such ascertaining of compensation amount will be at risk and cost of the RSPPL. In Parallel, additional documents, if required, shall be sought and scrutiny of the documents should be completed within 45 days. Further, physical verification of RFID tags shall be completed within 6 months using sampling techniques as per ISO sampling standards. RSPPL shall cooperate with MSEDCL and provide all necessary documents for enabling MSEDCL to ascertain claim under the Change in Law event. Based on such scrutiny of documents and/or physical verification of RFID tag, compensation amount ascertained earlier shall be re-verified and in case of any deviation, same shall be adjusted with holding/carrying cost in future payments.

The dispensation provided for the Capacity of Solar Modules eligible for compensation:

14.1 Both parties in their final submission have not disputed capacity of Solar Panels which would be eligible for payment of compensation under Change in Law. They have relied upon Commission's recent Order dated 13 November 2019 in Case No. 259 of 2019 for this purpose. Relevant part of this Order is reproduced below:

“

17. With this background, the Commission is of the opinion that APTFPL's decision of installing 195 MW of DC solar module for providing AC output of 130 MW is with the intention to optimise performance of the plant by achieving higher CUF of 28.34% as against minimum threshold of 19% mentioned in the bidding document. Such optimisation has allowed APTFPL to offer rate of Rs. 2.72/kWh to MSEDCL. In case APTFPL had designed its plant for 19% CUF, then rate for sale of solar energy would have been different and most probably would have been more than existing rate of Rs. 2.72/kWh. Therefore, in the opinion of the Commission, APTFPL as well as MSEDCL is getting benefit of higher CUF which is being achieved by way of installing more DC solar modules. In case, if

*MSEDCL's argument is accepted that it does not require energy more than 19% CUF, then it would not only lose the opportunity of procuring such additional energy at a lower rate of Rs. 2.72/kWh, but would be required to undertake separate bidding process for procuring such additional energy as MSEDCL is still under shortfall in its Solar RPO. Further, due to reducing cost of solar panel, in recent past it is become industrial practice to install higher capacity of DC solar panel as compared to desired AC output for targeting best financial output. Such projects are being commissioned with DC to AC ratio between 1.2 to 1.6. Therefore, it is not in the interest of MSEDCL to refuse energy above 19% CUF beside it has agreed under PPA for higher CUF of 28.34%.*

*18. As MSEDCL is getting benefit of lower tariff on account of higher CUF on account of higher DC capacity of solar module, it cannot deny its obligation to compensate APTFPL for Change in Law event which affected cost of DC module installed in the project. At the same time, it cannot be open for APTFPL to install any amount of DC module in the project and claim compensation for the same from MSEDCL. The Commission notes that bidding document has stipulated minimum CUF of 19% which was to be maintained throughout the tenure of PPA. For maintaining such CUF, generator is required to provide additional DC capacity to take care of losses in inverter, evacuation infrastructure and also degradation factor of Solar module. Such higher capacity has to be provided by generator and no compensation on account of Change in Law can be allowed for the same. If we consider 19% CUF prescribed under bidding document as base then for 130 MW of AC output, APTFPL should have been compensated for 130 MW of DC module as higher capacity of Solar module for taking care of conversion, degradation & transmission loss has to be borne by APTFPL. Therefore, for 28.34% of CUF, APTFPL needs to be compensated for 194 MW  $(28.34/19 \times 130 \text{ MW})$  and not for 195 MW as claimed by APTFPL.*

*14.2 In view of the above ruling of the Commission, for fulfilling the contractual obligation of supplying 250 MW (AC) capacity to MSEDCL, RSPPL is entitled to Change in law for a maximum DC capacity of 368.42 MW DC  $[(28\%/19\%) \times 250 \text{ MW} = 368.42 \text{ MW}]$ . However, the installed DC capacity of RSPPL is 362.50 MW only which is within the maximum limit as specified by the Commission. The Commission also notes that the PPA also provides option to Generator to revise CUF within one year from date of commissioning of the project. RSPPL may exercise its choice to finalise its declared CUF and the DC installed capacity. No further claims of change in law would be admissible for any additional modules in case DC installed capacity is upwardly revised*

*14.3 In view of the above, based on present declared CUF of 28%, the Commission accepts DC capacity of 362.50 MW installed by RSPPL for compensation payable under Change in Law.*

The dispensation provided for the Methodology for payment of Compensation under Change in Law



16.1 RSPPL has proposed two options for payment of compensation on account of Change in Law viz. a) per unit rate and b) Lumpsum payment. RSPPL has contended that carrying cost needs to be allowed in these both options. Whereas MSEDCL has stated that principles approved by the Commission in recent Order dated 13 November 2019 should be adopted.

16.2 The Commission in its earlier Order dated 13 November 2019 has stipulated following methodology for ascertaining amount to be paid on account of Change in Law:

22. APTFPL has claimed that it incurred an additional cost of Rs 68.73 Crores on account of Safeguard Duty (including additional GST) on import of Solar PV Modules of capacity of 195 MW. As stated in para 15 above, MSEDCL needs to verify this claim of APTFPL. Subsequent to such verification, compensation to be paid to APTFPL on account of imposition of Safeguard Duty shall be computed as follows. For the purpose of illustration in the following paragraphs, the Commission has considered Rs. 68.64 crore as claim ascertained by MSEDCL. Such amount includes only Safeguard Duty (including additional GST).

23. As stated in para 20 above, APTFPL shall be eligible for compensation for 194 MW of solar panels/modules. Same shall be determined as Rs. 68.29 Crore (68.64 x 194/195). Further, as per principle of restitution provided under the Change in Law provisions of the PPA and as per settled Law, APTFPL shall be eligible for carrying cost from date it paid such amount to Government Authorities till date of this Order. As Late Payment surcharge in the PPA is linked to delayed payment, the Commission allows interest rate as per such provision of the PPA i.e. 1.25% in excess of 1 year MCLR of State Bank of India, which is 9.30%.

Above ruling is squarely applicable in the present matter. RSPPL has contended that it has incurred an additional cost of Rs 125.31 Cr. on account of SGD (including IGST) on import of Solar PV Modules of capacity of 362.50 MW. As ruled in para 14.3 above, all 362.50 MW of Solar PV Modules are to be considered for Change in Law computation. MSEDCL needs to verify RSPPL's claim of additional cost with documentary proof. Further, as per principle of restitution provided under the Change in Law provisions of the PPA and as per settled Law, RSPPL shall be eligible for carrying cost from the date it paid such amount to Government Authorities till the date of this Order. As stated in para 15.6 above, rate of interest for carrying cost will be equal to 1.25% in excess of 1 year MCLR of State Bank of India. Based on prevailing MCLR of SBI, rate of interest for carrying cost for each financial year would be different.

16.3 Amount of compensation to be paid ascertained as per above principle can be paid in lumpsum or in equal instalments. On the issue of lumpsum payment of compensation amount, the Commission in its earlier Order dated 13 November 2019 has already ruled as follows:

24. *Such amount determined as per methodology specified in above paragraph can be paid in lumpsum or can be converted into per unit rate over the tenure of the PPA. MSEDCL has opposed lumpsum payment as it will affect tariff of end consumers. However, the Commission is of the opinion that lumpsum payment would avoid further carrying cost which MSEDCL has to pay to APTFPL on account of deferred payment. Further, during the hearing, APTFPL has stated that it is willingly to offer some discount if payment is made in lumpsum. Considering all these aspects, MSEDCL has to decide whether it opts to pay the compensation on lumpsum basis or per unit basis over the PPA period. MSEDCL shall communicate its option of payment to APTFPL within a week from ascertaining amount of compensation to be paid as per para 18 above.*

*Above rulings are squarely applicable in present matter except for discount, which has not been offered by RSPPL in the present matter. Thus, MSEDCL has option to decide whether it has to pay the amount of compensation in lumpsum to avoid further carrying cost or make payment over the tenure of PPA with additional carrying cost. MSEDCL has to decide its option of making payment of compensation and accordingly communicate the same to RSPPL within a week from ascertaining amount of compensation to be paid.*

16.4 *Compensation amount can also be paid in equal monthly instalments instead of lumpsum payment. The Commission in recent Order dated 13 November 2019 has stipulated following methodology for payment of compensation over the PPA tenure:*

*“19 ..... APTFPL has considered impact of Safeguard Duty as increased capital cost and has applied other financial parameters as per Generic tariff Order for computing per unit impact of Change in Law. Consideration of financial parameters of Generic Tariff Order which is different from APTFPL’s bid assumption would not restore it to the same financial position as if no Change in Law has occurred. Further, PPA does not provide any specific provisions which state that increase in expenses during construction period shall be treated as increase in capital cost and tariff shall be revised accordingly. PPA only provides for compensation of increased expenses. Such increased expenses have been ascertained in para 23 above. In case it is not paid in lumpsum and deferred over the period, then considering principle of restitution, APTFPL needs to get carrying cost on such deferred recovery. MSEDCL in its calculation has not considered such carrying cost on deferred recovery and hence it is not as per the restitution principle under Change in Law provisions of PPA.*

20. *In view of the above, for determination of per unit rate of compensation payable to APTFPL over the PPA period, following methodology needs to be adopted:*



- i. *Total amount of compensation to be paid in Rs. Crores ascertained as per para 15 and 23 above shall be the basis for computation of per unit rate. Such total amount shall be equally divided over each year of PPA tenure.*
- ii. *Carrying cost shall be computed on the deferred recovery part (average of opening and closing balance) of total compensation at the simple interest rate of 1.25% in excess of 1 year MCLR of State Bank of India, which is rate prescribed under the PPA for Late Payment.*
- iii. *Summation of installment of compensation computed at 'a' above and carrying cost on deferred recovery computed at 'b' above will be the amount which is to be paid to APTFPL during that particular year.*
- iv. *Per unit cost for a particular year shall be computed by dividing amount determined in 'c' above by energy to be supplied during that year from the project capacity of 130 MW at CUF of 28.34%. However, during the year of commissioning, availability of project only for the part of year shall be appropriately factored while computing energy to be supplied from the project.*
- v. *At the end of Financial Year, MSEDCL shall reconcile total amount paid through per unit charge as against total amount which is recoverable in that year as per 'c' above. Any over-recovery shall be adjusted in the payment for the month of March. Any under-recovery on account of lower generation shall be carried forward to next year and shall be payable without any additional carrying cost and only from the excess generation above 28.34%. Such unrecovered compensation, if any, at the end of PPA tenure shall be reconciled and paid in last month of PPA tenure at no additional carrying cost.*

*21. Above method of computing per unit impact of Change in Law compensation protects the interest of both parties as it provides time value of money (carrying cost) on deferred recoveries to APTFPL and also allows MSEDCL to smoothen the payment of compensation over the period of PPA. Also, it requires the generator to maintain the plant over the tenure of the PPA at agreed CUF of 28.34% to earn such compensation allocated for that year.”*

*Above methodology of payment of compensation amount over the PPA tenure is squarely applicable in present matter since the only difference in this case is that project capacity of 250 MW at CUF of 28%.*

*16.5 Although, RSPPL has agreed with the above mechanism, it has stated that PPA allows deviation of +/- 10% of the declared CUF for the entire PPA duration of 25 years and hence pegging a fixed CUF for per-unit compensation is not correct. MSEDCL has not made any specific suggestions in this regard.*

16.6 The Commission notes that Article 5.5.1 of the PPA mandates power producer to maintain generation so as to achieve CUF in the range of  $\pm 10\%$  of their declared value. Thus, PPA allows variation of  $\pm 10\%$  in declared CUF. Therefore, although the Commission has used single number of CUF in above quoted per-unit compensation mechanism, said CUF needs to be read with allowable variation in Article 5.5.1 of the PPA. For this purpose, although per unit charge at the start of each financial year needs to be decided based on declared CUF, year-end reconciliation at end of each financial year shall be undertaken as per actual CUF within range  $\pm 10\%$  of declared CUF. With this limited clarification, mechanism of per unit compensation stipulated at para 16.4 above shall be applicable.

34. The Commission rules that as agreed by the Petitioners, they shall provide undertaking that all modules installed at their project sites for supplying power to MSEDCL have been imported from the Country/ies which are subjected to SGD. Thereafter MSEDCL shall act upon such undertaking given by the Petitioners and complete this process within 15 days from date of this Order. Such ascertainment of compensation amount will be at the risk and cost of the Petitioners. In Parallel, additional documents, if required, shall be sought and scrutiny should be completed within 45 days. Further, physical verification of RFID tags shall be completed within 6 months using sampling techniques as per ISO sampling standards. The Petitioners shall cooperate with MSEDCL and provide all necessary documents for ascertaining the claims under the Change in Law event. Based on such scrutiny of documents and/or physical verification of RFID tag, compensation amount ascertained earlier shall be re-verified and in case of any deviation, same shall be adjusted with holding/carrying cost in future payments.
35. The Commission in preceding para 28 of this Order has given the justification for not considering various options proposed by the Petitioners for determining eligible DC capacity for payment of SGD compensation. In view of the above ruling of the Commission, for fulfilling the contractual obligation of supplying total 100 MW (AC) capacity from 10 projects to MSEDCL, the Petitioners are entitled to compensation under Change in law for maximum DC capacity of 133 MW. Project wise maximum DC capacity entitled for compensation under change in law is as under:

For JGEPL's projects:

S. No.	Project Location	Project AC Capacity (MW)	Installed DC Capacity (MW)	Declared CUF (%)	Maximum DC Capacity entitled for change in law (MW)
1.	Nandgaon	10	14.59	25.16	$(25.16/19 \times 10) = 13.24$
2.	Yeola	10	14.54	24.92	$(24.92/19 \times 10) = 13.12$
3.	Deola	10	14.59	25.29	$(25.29/19 \times 10) = 13.31$

For NREPL's projects:

Sr. No.	Project Location	Project AC Capacity (MW)	Installed DC Capacity (MW)	Declared CUF (%)	Maximum DC Capacity entitled for change in law (MW)
1.	Baglaon	10	14.54	25.40	$(25.40/19 \times 10) = 13.37$
2.	Malegaon	10	14.54	25.00	$(25.00/19 \times 10) = 13.16$
3.	Sindkheda	10	14.54	25.66	$(25.66/19 \times 10) = 13.51$
4.	Shirpur	10	14.49	25.37	$(25.37/19 \times 10) = 13.35$
5.	Parola	10	14.54	25.15	$(25.15/19 \times 10) = 13.24$
6.	Sakri	10	14.54	25.69	$(25.69/19 \times 10) = 13.52$
7.	Dhule	10	14.60	25.05	$(25.05/19 \times 10) = 13.18$

The Commission also notes that the PPAs also provides option to Generator to revise CUF within one year from date of commissioning of the project. Petitioners may exercise its choice to finalise its declared CUF and the DC installed capacity. No further claims of change in law would be admissible for any additional modules in case DC installed capacity is upwardly revised

36. Petitioners have contended that it has incurred an additional cost of Rs 49.13 Cr on account of SGD (including IGST) on import of Solar PV Modules of capacity of 145.51 MW. As ruled in para 35 above, only 133 MW of Solar PV Modules are to be considered for Change in Law computation. MSEDCL needs to verify Petitioner's claim of additional cost with documentary proof. Further, as per principle of restitution provided under the Change in Law provisions of the PPA and as per settled Law, Petitioners shall be eligible for carrying cost from the date it paid such amount to Government Authorities till the date of this Order. As stated in para 32 above, rate of interest for carrying cost will be equal to 1.25% in excess of 1 year MCLR of State Bank of India. Based on prevailing MCLR of SBI, rate of interest for carrying cost for each financial year would be different.
37. MSEDCL has option to decide whether it has to pay the amount of compensation in lumpsum to avoid further carrying cost or make payment over the tenure of PPA with additional carrying cost. MSEDCL has to decide its option of making payment of compensation and accordingly communicate the same to RSPPL within a week from ascertaining amount of compensation to be paid.
38. In case of option of making payment over the tenure of PPA is selected then following methodology should be adopted for payment of Change in Law compensation:
- Total amount of compensation to be paid in Rs. Crores ascertained as per para 36 above shall be the basis for computation of per unit rate. Such total amount shall be equally divided over each year of PPA tenure.
  - Carrying cost shall be computed on the deferred recovery part (average of opening and closing balance) of total compensation at the simple interest rate of 1.25% in excess of 1 year MCLR of State Bank of India.

- c. Summation of installment of compensation computed at 'a' above and carrying cost on deferred recovery computed at 'b' above will be the amount which is to be paid during that particular year.
- d. Per unit cost for a particular year shall be computed by dividing amount determined in 'c' above by energy to be supplied during that year from the contracted capacity at declared CUF. However, during the year of commissioning, availability of project only for the part of year shall be appropriately factored while computing energy to be supplied from the project.
- e. At the end of Financial Year, MSEDCL shall reconcile total amount paid through per unit charge as against total amount which is recoverable in that year as per 'c' above. Any over-recovery shall be adjusted in the payment for the month of March. Any under-recovery on account of lower generation shall be carried forward to the next year and shall be payable without any additional carrying cost and only from the excess generation above declared CUF. Such unrecovered compensation, if any, at the end of PPA tenure shall be reconciled and paid in last month of PPA tenure at no additional carrying cost.
- f. Although per unit charge at the start of each financial year needs to be decided based on declared CUF, year-end reconciliation at end of each financial year shall be undertaken as per actual CUF within range  $\pm 10\%$  of declared CUF
39. Above method of computing per unit impact of Change in Law compensation protects the interest of both parties as it provides time value of money (carrying cost) on deferred recoveries to Petitioners and also allows MSEDCL to smoothen the payment of compensation over the period of PPA. Also, it requires the generator to adopt prudent utility practices and maintain the plant over the tenure of the PPA at the declared CUF to earn such compensation allocated for that year.
40. Hence, the following Order:

### **COMMON ORDER**

- 1. The Cases bearing No. 61 of 2020 and 62 of 2020 are partly allowed.**
- 2. The Petitioners are eligible for claiming compensation on account of imposition of Safeguard Duty (including additional GST) under Change in Law provisions of PPA for the total capacity of 133 MW of Solar module/panel installed at various project locations. They shall provide undertaking that all modules installed at all project sites for supplying power to MSEDCL have been imported from the Country/ies which are subjected to Safeguard Duty.**
- 3. Maharashtra State Electricity Distribution Co. Ltd. shall act upon such undertaking given by the Petitioners and ascertain the compensation amount under Change in Law. Such ascertainment of compensation amount will be at risk and cost of the**

**Petitioners. MSEDCL shall complete this process within 15 days from the date of this Order. Based on the scrutiny of documents (to be completed within 45 days) and/or physical verification of RFID tag (to be completed within 6 months), compensation amount ascertained earlier shall be re-verified and in case of any deviation, same shall be adjusted with holding/carrying cost in future payments.**

- 4. Compensation for Change in Law event shall be computed and paid as per methodology prescribed under Paras No. 35 to 40 above.**

**Sd/-  
(Mukesh Khullar)  
Member**

**Sd/-  
(I. M. Bohari)  
Member**

