

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 116 of 2020

Petition of M/s Atnu Solar Private Limited (Jalna) for approval of “Change in Law” and mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law events on account of imposition of safeguard duty on solar cells/modules.

M/s Atnu Solar Private Limited (Jalna) : Petitioner
Maharashtra State Electricity Distribution Company Ltd. : Respondent

Case No. 117 of 2020

Petition of M/s Atnu Solar Private Limited (Jamkhed) for approval of “Change in Law” and mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law events on account of imposition of safeguard duty on solar cells/modules.

M/s Atnu Solar Private Limited (Jamkhed) : Petitioner
Maharashtra State Electricity Distribution Company Ltd. : Respondent

Case No. 118 of 2020

Petition of M/s Atnu Solar Private Limited (Mohol) for approval of “Change in Law” and mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law events on account of imposition of safeguard duty on solar cells/modules

M/s Atnu Solar Private Limited (Mohol) : Petitioner
Maharashtra State Electricity Distribution Company Ltd. : Respondent

Case No. 119 of 2020

Petition of M/s Atnu Solar Private Limited (Kinwat) for approval of “Change in Law” and mechanism for grant of an appropriate adjustment/ compensation to offset financial/

commercial impact of change in law events on account of imposition of safeguard duty on solar cells/modules

M/s Atnu Solar Private Limited (Kinwat) : Petitioner

Maharashtra State Electricity Distribution Company Ltd. : Respondent

Case No. 120 of 2020

Petition of M/s Atnu Solar Private Limited (Parner) for approval of “Change in Law” and mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law events on account of imposition of safeguard duty on solar cells/modules

M/s Atnu Solar Private Limited (Parner) : Petitioner

Maharashtra State Electricity Distribution Company Ltd. : Respondent

Case No. 121 of 2020

Petition of M/s Atnu Solar Private Limited (Wadwani) for approval of “Change in Law” and mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law events on account of imposition of safeguard duty on solar cells/modules

M/s Atnu Solar Private Limited (Wadwani) : Petitioner

Maharashtra State Electricity Distribution Company Ltd. : Respondent

Case No. 122 of 2020

Petition of M/s Atnu Solar Private Limited (Kannad) for approval of “Change in Law” and mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law events on account of imposition of safeguard duty on solar cells/modules

M/s Atnu Solar Private Limited (Kannad) : Petitioner

Maharashtra State Electricity Distribution Company Ltd. : Respondent

Case No. 123 of 2020

Petition of M/s Aurinko Energy Private Limited for approval of “Change in Law” and mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law events on account of imposition of safeguard duty on solar cells/modules

M/s Aurinko Energy Private Limited

: Petitioner

Maharashtra State Electricity Distribution Company Ltd.

: Respondent

Appearance:

For all the Petitioners

: Shri. Sujit Ghosh (Adv.)

Maharashtra State Electricity Distribution Company Ltd.

: Shri. Shashwant Kumar (Adv.)

Coram

I.M. Bohari, Member

Mukesh Khullar, Member

COMMON ORDER

Date: 6 November, 2020

1. The Petitioners, M/s Atnu Solar Private Limited (Jalna) (**ASPLJ**), M/s Atnu Solar Private Limited (Jamkhed) (**ASPLJK**), M/s Atnu Solar Private Limited (Mohol) (**ASPLM**), M/s Atnu Solar Private Limited (Kinwat) (**ASPLK**), M/s Atnu Solar Private Limited (Parner) (**ASPLP**), M/s Atnu Solar Private Limited (Wadwani) (**ASPLW**), M/s Atnu Solar Private Limited (Kannad) (**ASPLKN**) and M/s Aurinko Energy Private Limited (**AEPL**) have filed their Petitions on 11 June 2020 under Section 86 of the Electricity Act 2003 (**EA**) before the Commission for approval of 'Change in Law' and mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law events on account of imposition of Safeguard Duty (**SGD**) on solar cells/modules in terms of Article 9 of the Power Purchase Agreement (**PPA**) dated 27 December , 2018 between the Petitioners and Maharashtra State Electricity Distribution Co. Ltd. (**MSEDCL**)
2. As all Petitions have been filed on the same subject with more or less similar prayers, these are being dealt with in a Common Order. In this order, **ASPLJ**, **ASPLJK**, **ASPLM**, **ASPLK**, **ASPLP**, **ASPLW**, **ASPLKN** and **AEPL** have been jointly termed as the Petitioners.
3. As the submissions made by the Petitioners are similar, therefore for the sake of brevity, they are not repeated.
4. **Petitioner's main prayers are as follows:**

a) Declare the imposition of safeguard duty via Safeguard Duty Notification as Change in Law in terms of the PPA, which has a direct effect on the Project;

b) Evolve a suitable mechanism to compensate the Petitioner for the adverse financial loss incurred by the Petitioner on account of Change in Law through a lumpsum payment or an incremental tariff for the period of the PPA;

c) Grant carrying cost from the date of incurring of the cost by the Petitioner till the date of disbursement of the compensation considering that increase in cost has been financed by both debt and equity

5. Petitioners in their Cases have stated as follows:

5.1. MSEDCL issued a Request for Selection (RfS) of Solar Power Developers (SPDs) for the development of 1000 MW (AC) Solar Projects through competitive bidding process vide RFS dated 27 April 2018. Last date for bid submission was 5 June 2018.

5.2. The Petitioners through their Parent Company Shapoorji Pallonji Infrastructure Capital Company Private Limited (SPICCPCL) were selected as the successful bidder pursuant to Letter of Selection dated 5 October 2018 and Letter of Execution of PPA dated 30 November 2018 for development of eight Solar Power Project of 10 MW each capacity at different locations in Maharashtra.

5.3. Subsequently, vide Notification No. 1/2018 (SG) dated 30 July 2018 the Central Government imposed SGD as per the following rates on the import of ‘Solar Cells whether or not assembled in modules or panels’ (solar cells and modules):

- a. 25% ad valorem, minus anti dumping duty, if any, when imported during the period from 30 July 2018 to 29 July 2019;
- b. 20% ad valorem, minus anti dumping duty, if any, when imported during the period from 30 July 2019 to 29 January 2020;
- c. 15% ad valorem, minus anti dumping duty, if any, when imported during the period from 30 January 2020 to 29 July 2020

5.4. Details of projects and project wise payment of safeguard duty are summarised in table below:

S No.	Case No.	Petitioner	Project Capacity (MW)	Initial Project Location (Taluk/District)	PPA Sign Date	PPA Amendment Date	New Location	CUF Declared	DC Capacity Installed (MW)	Import date of Modules	SGD Paid as per Petitioner (Rs. Crores)
1	116 of 2020	ASPLJ	10	Village Pangari, Taluka Mantha Dist: Jalna	27-Dec-18	23 August 2019	Village Dahifal & Khandare, Taluka Mantha,	26%	14.05	23-Sep-19	6.2

S No.	Case No.	Petitioner	Project Capacity (MW)	Initial Project Location (Taluk/District)	PPA Sign Date	PPA Amendment Date	New Location	CUF Declared	DC Capacity Installed (MW)	Import date of Modules	SGD Paid as per Petitioner (Rs. Crores)
							Dist. Jalna				
2	117 of 2020	ASPLJK	10	Village Rajuri, Taluka Jamkhed District Ahmednagar	27-Dec-18	23 August 2019	Village Jawala, Taluka Jamkhed, Dist. Ahmednagar	26%	14.05	10-Oct-19	6.2
3	118 of 2020	ASPLM	10	Village Manegaon, Taluka Madha District Solapur	27-Dec-18	17 September 2019	Village Bopale & Degaon, Taluka Mohol, Dist. Solapur	26%	14.05	08-Oct-19	6.2
4	119 of 2020	ASPLK	10	Lingi, Taluka Kinwat, District Nanded	27-Dec-18	24 January 2020	Village Pimpaphodi, Taluka Kinwat, Dist. Nanded	26%	14.05	27-Nov-19	6.2
5	120 of 2020	ASPLP	10	Village Dhawalpuri, Taluka Partner District Ahmednagar	27-Dec-18	17 September 2019	Village Palshi, Taluka Parner, Dist. Ahmednagar	26%	14.05	11-Nov-19	6.2
6	121 of 2020	ASPLW	10	Village Asaldoh, Taluka Dharur Dist. Beed	27-Dec-18	17 September 2019	Village Kuppa, Taluka Wadwani, Dist. Beed	26%	14.05	04-Nov-19	6.2
7	122 of 2020	ASPLKN	10	Village Dilandari Taluka Kannad District Aurangabad	27-Dec-18	23 August 2019	Village Lonza, Taluka Kannad, Dist. Aurangabad	26%	14.05	31 August 2019 - 9 Sept. 2019	6.2
8	123 of 2020	AEPL	10	Village Hannur, Taluka Akkalkot, Dist. Solapur	27-Dec-18	17 September 2019	Village Dombar Jawalge, Taluka Akkalkot, Dist. Solapur	26%	14.05	17 August 2019 - 23 August 2019	6.2

5.5. As per the provision of Change in Law under the PPAs:

- a. A change in law event is any of the events enumerated therein. Enactment of a new law and any change in rate of taxes which have a direct effect on the Solar Power Project are listed as events under change in law;

- b. Such change in law event must have occurred after the last date of bid submission;
 - c. Where the change in law event causes any adverse financial loss or gain to the power producer, then the producer shall be compensated in order to place him in the same financial position as it would have been if change in law event has not occurred, and
 - d. The quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Commission.
- 5.6. Further, if the change in law results in the Petitioner's costs being increased by 1% or more, of the estimated revenue for the contract period for which such adjustment becomes applicable, then the tariff payment shall be appropriately increased with due approval of the Commission. However, this condition is applicable during the Operation Period, and thereby would not be relevant for the present petition.
- 5.7. Further, it is also relevant to determine the 'last date of bid submission' as any of the aforementioned events would qualify as 'Change in Law' only if it occurs after the last date of bid submission. The last date that was set for submission of bids was 5 June 2018.
- 5.8. The imposition of SGD would be in the nature of a tax imposed on the import of solar cells and modules. Thus, with effect from 30 July 2018, the import of solar cells and modules into India would be leviable to a safeguard duty (in the nature of a tax/duty) at the rate of 25% ad valorem for the first year of imports, whereafter, the safeguard duty will be progressively liberalized.
- 5.9. The Commission in its Order dated 13 November 2019 in the case of Azure Power Thirty-Four Private Limited, Case No. 259 of 2019 has declared the imposition of safeguard duty as an event of change in law and has directed MSEDCL to complete the verification of the documents within a fixed period of 45 days from the date of the Order. The ratio of this decision that the imposition of SGD is covered as an enactment of a new law as well as change in rate of tax, would also be applicable to the present case and accordingly the present petition deserves to be allowed.
- 5.10. Further, prior to imposition of SGD, the import of solar modules was subjected to only Integrated Goods and Service Tax at 5% in as much as basic customs duty (BCD) was free. However, with effect from 30.07.2018, the import of solar cells and modules required for the setting up of solar power project as per the PPA would be leviable to 25% safeguard duty (which would be progressively liberalised) along with an additional IGST of 5% on the value of safeguard duty.
- 5.11. As per the SGD Notification, such imports made by the Petitioners, would be leviable to 20% safeguard duty along with an additional IGST of 5% on the value of safeguard duty.

- 5.12. The Petitioners have placed various purchase orders on its suppliers for the supply of solar PV modules and imported the modules vide Bills of Entries. The entire shipping details, i.e. the Module Supplier's Name, Capacity in MWp, Module wattage, invoice number, invoice date, bills of entry number, bill of entry date, invoice amount, SGD, GST (5% with SGD included), challan numbers, challan date, date of payment etc. evidencing payment of duty have been submitted.
- 5.13. Article 9.2.1 of the PPA provides that where a change in law event results in any adverse financial loss to the power producer, the power producer must be placed in the same financial position as if change in law event did not occur. Thus, the PPA itself recognizes that in such a scenario, the solar power developer is to be placed in the same financial position, which is essentially the principle of restitution.
- 5.14. The increase in costs due to aforementioned change in law event have a direct bearing on debt and equity required for setting up of the Projects. These components are integral to the all-inclusive tariff bid. At the time of the submissions of bid, the Petitioners have factored in certain debt requirement, equity requirement, 'interest on debt' and 'return on equity' based on the costs estimated at the time of bid. With the increase in the costs due to the change in law events explained above, the debt and equity requirement, have also increased as compared to requirements ascertained at the time of bid. This additional requirement is met by the Petitioner themselves, till the Change in Law stands approved by the Commission and even thereafter, till the entire payment is disbursed to the Petitioners.
- 5.15. Thus, in accordance with the terms of the PPA, specifically Article 9.2.1 of the PPA, in order to be put in the same economic position as it was prior to the occurrence of the Change in Law, the Petitioners are entitled to carrying costs (incorporating the cost of both debt and equity) so as to be proportionately compensated for the incremental capital expenditure incurred by the Petitioner.
- 5.16. The Commission in the Order dated 13 November 2019 has already held that the Petitioner would be entitled to carrying costs as per the principle of restitution provided under the Change in Law provisions of the PPA, from the date the payment was made to the Government Authorities till the date of the payment by MSEDCL.
- 5.17. As the provisions of the present PPA are identical to the PPA considered by this Commission in the aforementioned order, the Petitioners would also be entitled to carrying costs from the date of payment of SGD till the date of the reimbursement of SGD by MSEDCL.

- 5.18. In the Order dated 13 November 2019, the Commission has allowed carrying costs on the basis of the late payment surcharge as provided under clause 6.3 of the PPA i.e. at 9.30% (1.25% excess of 1 year MCLR of State Bank of India). However, the carrying cost has been arrived at by the Commission considering the same as a delayed payment by the Respondent. In this regard, it is submitted that the carrying costs cannot be treated at par with delayed payments made by the Respondents under the PPA, in as much as the edifice of granting carrying costs is a principle of restitution which is to place the Petitioners in the same economic position had the change in law not occurred, thereby meaning that the Petitioners would be granted carrying costs to the extent of the actual costs (interest cost or return on equity) incurred by them so that the Petitioners can be restored to the same economic position.
- 5.19. The actual interest costs as incurred by the Petitioners is based on the fact that the entire SGD is treated as a part of the Project Cost and thereby funded in the same manner as the other costs i.e. in the proportion of 75:25. Vide letter dated 24 July 2019, Indian Renewable Energy Development Agency Limited (IREDA) has been specified that in case the Safeguard duty is not repaid to IREDA within two years, then the Petitioner would be liable to arrange the additional funds on his own account without recourse on Project Assets.
- 5.20. Thus, presently, the SGD has been financed through the term loan issued by IREDA in the proportion of Debt Equity being 75:25. Thus, 25% of the safeguard duty has been borne by the Petitioners. Accordingly, till the amount is reimbursed, the Petitioners are incurring interest to the extent of 75% of the SGD financed by IREDA and are also eligible to a return on equity for the 25% funded by the Petitioners themselves. However, in case the payment is not made within a period of 2 years from the Sanction Letter dated 24 July 2019, the Petitioners will be liable to fund the entire SGD and accordingly be entitled to a return on equity as carrying costs till the amount is disbursed to them.
- 5.21. If the compensation payable to the Petitioners is paid, along with carrying costs, then the carrying costs as payable would be required to be computed in two parts:
- a. Where the entire amount of safeguard duty is paid as a lumpsum payment within two years and the carrying cost on safeguard duty funded is calculated in the normative debt equity ratio of 75:25

On the basis of the RE Tariff Order as passed by the Commission for FY 2019-20, on the basis of normative debt equity ratio, the interest rate in relation to debt is

11.31% and in relation to equity the rate is 20.39% pre-tax return at 16% (adjusted to MAT and corporate tax) for first 10 years and 22.57% for subsequent years.

- b. Where the entire amount of SGD is paid over the entire tenure of the PPA along with carrying costs

Where the Safeguard duty is disbursed over the entire tenure of the PPA, then for the first two years, the Petitioners are entitled to carrying costs in the manner described at (a) above. Thereafter for the remaining period when the SGD is funded through equity, the Petitioners would also be liable to return on equity equivalent to 20.39% (pre-tax) which is equivalent to 16% (post tax) for first ten years and 22.57% for subsequent years, which has been considered by the Commission in the RE Tariff Order.

5.22. The Petitioners have declared CUF of 26%. As per the Clause 5.5.1 of the PPA, the minimum CUF shall in no case be less than 19% over a year. Thus, in order to achieve greater efficiency and greater optimization of the power plant, the Petitioners have installed higher capacity of DC Modules. Accordingly, the Petitioners are entitled to the entire reimbursement of SGD and additional IGST incurred for the entire higher capacity.

5.23. The Petitioners also places reliance on the Commission's Order dated 13 November 2019 whereby, on due appreciation of the necessity to install higher capacity of DC Modules to achieve greater efficiency has allowed reimbursement of SGD for the capacity of modules which are proportionate to the CUF declared by the Generator.

5.24. In the Order dated 13 November 2019, the Commission has sought to peg the per unit cost payable to the Petitioner (for payment of SGD along with the amount payable as carrying costs) to the CUF of 26% as declared by the Petitioner for the said petition. Further, it has also observed that the Respondent shall undertake a reconciliation at the end of the financial year and any under-recovery or over-recovery shall be reconciled as follows:

- a. In case of any over-recovery by the Petitioner- the same will be adjusted in the payment for the month of March
- b. In case of any under-recovery on account of lower generation- the same shall be carried forward to the next year and shall be payable without any additional carrying cost and only from the excess generation above the CUF declared.

The per-unit rate of compensation payable has been linked to the CUF that has been declared by the Petitioner for the said petition.

- 5.25. However, the Advisory/Clarification issued by Government of India vide No. F.No.283/63/2019-GRID SOLAR dated 5 November 2019, allows the developer to install additional DC capacity in a solar PV power plant in excess of the value of the contracted AC capacity provided the contracting party is not obliged to buy any excess power above the contracted quantum. In this connection, all the modules imported for the above said project are eligible to be considered towards calculation of safeguard duty reimbursement as against the earlier order of this commission wherein the eligibility was linked to declared CUF.
- 5.26. In the present cases, the Petitioners have declared a CUF of 26%. Further, as per the provisions of clause 5.5.1 of the PPA, the Petitioners are allowed to maintain generation so as to achieve a CUF of +/- 10% of the declared CUF for the entire PPA duration of 25 years. Accordingly, in as much as the PPA allows a range and does not contemplate a fixed CUF over the entire tenure of the PPA, it would be just and equitable to consider the same range for pegging the per-unit compensation. The per-unit compensation payable to the Petitioners ought to be pegged to the range of CUF as determined in Clause 5.5.1 read with the CUF declared by the Petitioners instead of pegging to a single percentage CUF.
- 5.27. Further, as per the provisions of Clause 5.5.1 of the PPA, the Petitioners are allowed to revise the CUF within first year of COD. Per Unit compensation and CUF range should be calculated basis the revised CUF declared by Developers within first year of COD.
- 5.28. It is also a well-known fact that over the entire tenure of the PPA, the modules will suffer certain percentage of degradation and accordingly there would be a gradual reduction in the efficiency of the modules from the first year till the 25th year. This aspect is well accepted by the solar industry and accordingly, the same CUF has been pegged at a range of +/-10% rather than a fixed CUF.
- 5.29. Accordingly, the per unit compensation as payable to the Petitioners ought to be pegged to a range of CUF similar to that provided in the PPA, rather than a fixed number.

6. MSEDCL in its reply dated 3 September 2020 made the following submissions:

- 6.1. The Commission in similar matter has already held that 'imposition of SGD on solar module/panel' is a Change in Law event.
- 6.2. However, Solar power plants are not yet commissioned. Since setting up of the Projects is still underway and as such, it is premature to assess any impact of SGD absolute numbers

in absence of any substantiating documents. The actual impact of SGD can be ascertained only when the project achieves COD or the actual cost is incurred. Therefore, the impact of SGD on the project cost and impact of such on tariff should be determined at the time of COD of the project only, considering actual payment made against SGD presented with documentary evidence.

- 6.3. The Commission's Order dated 15 February 2019 in Case No. 276, 325 and 340 of 2020 clarifies that any reimbursement will be subject to prudent check after the Petitioners files their Petition with all details in accordance with the provisions of the PPA.
- 6.4. Data of the RFID tags is of utmost importance to determine as to whether the Solar Modules were imported or not, whether they have been utilized at the said site or not and only then can there be any determination of the actual payment required to be made against the said Modules.
- 6.5. The question of carrying cost does not arise until the actual financial impact due to imposition of SGD on the project cost is ascertained. Therefore, it will be premature to consider the impact of carrying cost at this point of time.

7. The Petitioners made following submissions in their rejoinder dated 16 October 2020:

- 7.1. The Petitioners rely upon the Commission's Order dated 22 June 2020 of Renew Solar Power Private Limited in Case No. 8 of 2020 wherein the Commission has declared the imposition of SGD as an event of change in law and has directed MSEDCL to complete the verification of the documents within a fixed period of 45 days from the date of the Order.
- 7.2. In the present cases, Article 9 i.e. the change in law Clause under the PPA is similar to the change in law Clause in the PPA which was discussed in the aforementioned Order of the Commission. On the basis of the above, the ratio of the aforementioned decision to the extent that the imposition of SGD is covered as an enactment of a new law as well as change in rate of tax, would also be applicable to the present cases and accordingly the present Petitions deserves to be allowed.
- 7.3. MSEDCL has sought to aver that it is premature to assess the impact of SGD in as much as the project is still underway. As the actual cost has already been incurred by the Petitioners and the same has duly been evidenced vide Invoices and Challans, the present Petitions cannot be regarded as premature and ought to be adjudicated upon by the Commission.

- 7.4. The Petitioners places reliance upon the decision of this the Commission dated 22 June 2020 in Case No. 8 of 2020 wherein the Commission has observed that the physical verification of RFID tags shall be completed within a period of 6 months using sampling techniques as per ISO sampling standards. The Petitioners undertakes to co-operate with the Respondent and submit the samples of RFID tags required for verification.
- 7.5. The Petitioners also undertakes that the entire expenditure in relation to SGD has already been incurred and accordingly there is no further expenditure that will be incurred by the Petitioners for which relief would be sought before the Commission. Accordingly, in relation to carrying cost, the Petitioners wishes to place reliance upon their submissions in the Petitions as also the Order of the Commission dated 22 June 2020 in Case No. 8 of 2020.
8. At the e-hearing through video conferencing held on 27 October 2020, the advocates of the Petitioners and MSEDCL reiterated their submission in the Petition. Further, the Petitioner's advocate apprised the Commission that, between the period from filing of Petitions to the date of Hearing, out of 8 projects listed in the instant Petitions, 6 projects of the following Petitioners have already been commissioned:
- a. Case No. 116 of 2020: ASPLJ
 - b. Case No. 117 of 2020: ASPLJK
 - c. Case No. 118 of 2020: ASPLM
 - d. Case No. 121 of 2020: ASPLW
 - e. Case No. 122 of 2020: ASPLKN
 - f. Case No. 123 of 2020: AEPL

Further, the remaining two projects by the Petitioner ASPLK in Case No. 119 of 2020 and by ASPLP in Case No. 120 of 2020 will be commissioned in the Month of November 2020.

The advocate of MSEDCL also confirmed that above listed projects have been commissioned and stated that their preliminary objection relating to commissioning of project no more exists and the Commission may decide these cases based on its recent orders.

Commission's Analysis and Rulings

9. The Commission notes that the Parent company of the Petitioners, i.e. SPICCP is one of the successful bidders of MSEDCL's 1000 MW bid for procurement of Solar power, tariff for which was adopted by Commission in its Order dated 27 November 2018 in Case No. 277 of 2018.

10. The Commission also notes that other successful bidders from same bid process such as Tpsol RESCO Three Pvt. Ltd., Kintech Synergy (P) Ltd., AT Capital Advisory India Pvt. Ltd., AT Capital Advisory India Pvt. Ltd., through its new name as Juniper Green Energy Private Limited (JGEPL) and Nisagra Renewable Energy Private Limited (NREPL), a 100% subsidiary of JGEPL, have already approached this Commission claiming imposition of SGD as Change in Law. As those bidders approached Commission prior to commissioning of their project, the Commission in its Order while declaring that imposition of SGD as a Change in Law event, directed Bidders to approach the Commission after commissioning of the project with details of actual incurred expenditures. Thereafter, post commissioning of their projects, some of project developers have approached for compensation on account of imposition of SGD under Change in Law provisions of the PPA. The Commission through respective Orders has allowed compensation on account of imposition of SGD. One such matter is Order dated 23 July 2020 in Case No. 61 of 2020 (M/s Juniper Green Energy Pvt. Ltd) and 62 of 2020 (M/s Nisagra Renewable Energy Pvt. Ltd), both of these projects are selected bidder from same bid process from which present Petitioners have been selected.
11. The Commission also notes that unlike other project developers mentioned in above paragraph, who have twice approached this Commission viz prior to CoD for declaration of imposition of SGD as Change in Law event and post CoD for compensation on account of Change in Law, the Petitioners in present Cases are seeking both these reliefs through same Petition. MSEDCL in its initial reply opposed the Petitions on the ground that projects were yet to be commissioned. However, during the hearing it has been clarified that out of 8 projects, 6 are already commissioned and balance 2 will be commissioned in November 2020. As projects are already commissioned or will be commissioned in a month, MSEDCL is not opposing the Petition now and has stated that compensation be allowed for commissioned projects based on recent judgments of the Commission. As 6 projects have already commissioned and 2 projects will be commissioned in this month only, and also after considering undertaking given by the Petitioner that no further claim of SGD will be made, to avoid multiplicity of proceedings, the Commission proceeding with this case as if balance 2 projects are also commissioned. However, relief granted in this order will be applicable only when project get commissioned.
12. The Petitioners have filed these Cases seeking approval and determination of the compensation under “Change in law” on account of the introduction of SGD on their Solar projects of 10 MW each at various locations in Maharashtra having PPA for sale of power to MSEDCL. As summarized in above Para 5.4, the Petitioners have contended that they have incurred an additional cost of ~Rs 6.2 Cr. per project on account of SGD (including IGST) for import of Solar PV Modules of capacity of 14.05 MW each and accordingly they

are seeking compensation of this amount and associated carrying cost from MSEDCL by relying on restitution principle of the PPA.

13. The Commission notes that the PPA between the Petitioners and MSEDCL has following provisions relating to Change in Law:

" Article 9: CHANGE IN LAW

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 Power Producer; 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.

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.”

Thus, any event eligible under Article 9.1, that occurred after bid submission date qualifies as Change in Law event. And 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 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.

14. Having heard the parties, the Commission frames following issues for its consideration in the present matter:
 - a. Whether imposition of Safeguard Duty is Change in Law under the PPA?
 - b. Whether required documents for scrutiny of Change in Law claim have been filed?
 - c. What is the Capacity of Solar Modules eligible for compensation under Change in Law?
 - d. What should be rate of interest for Carrying Cost?
 - e. What is the Methodology for awarding compensation?

The Commission has dealt with all above issues in the following paragraphs.

15. Issue A: Whether imposition of Safeguard Duty is Change in Law under the PPA?

- 15.1. The Petitioners have stated that last date of Bid Submission was 5 June 2018. Subsequent to that date, the Central Government vide its Notification No. 1/2018 (SG) dated 30 July, 2018, has imposed SGD on the import of Solar Cells/ modules. The Petitioners have contended that as the SGD Notification came into effect much after the last date of bid submission, such imposition of SGD would qualify as a change in law under Article 9.1 of the PPA. The Petitioners have relied upon Commission’s Order

dated 22 June 2020 in Case No. 8 of 2020 wherein for identical PPA of RSPPL, this Commission has held that imposition of SGD is Change in Law event.

15.2. MSEDCL has not opposed the contention of the Petitioners and has stated that this Commission has already held that imposition of SGD is a Change in Law event.

15.3. The Commission notes that in its Common Order dated 18 July 2019 in Case Nos. 123 and 124 of 2019, wherein JGEPL and NREPL were the Petitioners and which are also the successful bidders for MSEDCL's 1000 MW bid (under which present Petitioners have also been selected as successful bidder) has held that imposition of SGD is a Change in Law event. As PPAs of JGEPL, NREPL and the Petitioners in the instant cases have been signed per the same bid process, these are identical PPAs barring project specific differences. Hence, Commission's dispensation in Order dated 18 July 2019 is applicable in the present matter also. Relevant part of Commission's Order dated 18 July 2019 is reproduced below:

"12. The MoF notified the imposition of Safeguard Duty with effect from 30 July, 2018 vide Notification No.01/2018-Customs (SG) dated 30 July, 2018 under the powers conferred by Customs Tariff Act, 1975. This notification is subsequent to last date of Bid Submission. The Petitioners have contended that this imposition of Safeguard Duty is an event of Change in Law and accordingly they have requested for compensation for the same.

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."

15.4. Accordingly, the Commission rules that imposition of SGD by Central Government vide notification dated 30 July 2018 is a Change in Law event as per provisions of PPA and the Petitioners shall be eligible for compensation for the same.

16. Issue B: Whether required documents for scrutiny of Change in Law claim have been filed?

- 16.1. The Petitioners have stated that for claiming compensation under Change in Law provisions of PPA, entire shipping details, i.e. the Module Supplier's Name, Capacity in MWp, Module wattage, invoice number, invoice date, bills of entry number, bill of entry date, invoice amount, SGD, GST (5% with SGD included), challan numbers, challan date, date of payment etc. evidencing payment of duty have been submitted. Regarding RFID tags, the Petitioner have relied upon the Commission Order dated 22 June 2020 in case No. 8 of 2020 wherein the Commission has observed that the physical verification of RFID tags shall be completed within a period of 6 months using sampling techniques as per ISO sampling standards. Further, the Petitioners have submitted to cooperate with the MSEDCL and submit the samples of RFID tags required for verification.
- 16.2. MSEDCL in its reply has not raised any objection or deficiency in the documents submitted by the Petitioners and instead has only submitted that all the documents including RFID data need to be subjected to 'Prudence Check'
- 16.3. The Commission notes that verification of Solar panel for its country of origin and one to one tagging of SGD payment is an essential requirement for verification of Change in Law claim. Further, the same is also as per the provisions of the bidding documents. The Commission opines that the MSEDCL should complete the verification of the documents submitted by the Petitioners at the earliest so that there is no increase in carrying cost liability by any delay in settling the claims.
- 16.4. Further, on the details of RFID, as the Petitioner have relied upon the Commission Order dated 22 June 2020 in Case No. 8 of 2020 in the matter of RSPPL's Petition , the Commission is of the opinion that the similar dispensation is squarely applicable to the Petitioners in the instant cases also. The relevant section from the Order is reproduced below:

"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.”

- 16.5. Accordingly, the Commission directs Petitioners to 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 the process of ascertaining compensation amount within 15 days from the date of this Order. Such ascertainment 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.

17. Issue C : What is the Capacity of Solar Modules eligible for compensation under Change in Law?

- 17.1. 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. Further, the Petitioners have placed their reliance on Advisory/Clarification issued by Government of India vide No.

F.No.283/63/2019-GRID SOLAR dated 5 November 2019 on the practice of installing additional DC capacity over and above contracted AC capacity.

- 17.2. The Commission notes that 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 cases, 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. The Commission observes that 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
- 17.3. The Commission notes that Petitioners have relied upon MNRE's advisory dated 5 November 2019 for claiming change in law compensation on actual installed DC capacity. On perusal of said advisory, the Commission notes that it only states that generators are free to install DC capacity more than AC contracted capacity. Nowhere the said advisory has dealt with issue of DC capacity to be considered for Change in Law computation. In fact, as highlighted by the Petitioners, the Commission in its earlier Order dated 13 November 2019 in Case No. 259 of 2019 has already stated that DC installed capacity of the Solar module can be more than the contracted AC capacity. The relevant part of the said Order is reproduced below:

“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 ($28.34/19 \times 130$ MW) and not for 195 MW as claimed by APTFPL.”

Thus after accepting the fact that DC installed capacity needs to be higher than AC contracted capacity, the Commission has noted that such higher DC capacity cannot be compensated through Change in Law as it is commercial decision of the project developer. And hence in order to restrict oversizing of DC capacity to prudent level for the purpose of compensating for Change in Law event, the Commission in its above order has used the formula i.e. AC Contracted Capacity x (Declared CUF/Minimum Guaranteed CUF). Same formula has been used for all solar projects and depending upon efficient designing, projects got compensation for actual installed DC capacity. However, there are some projects whose DC capacity had to be restricted slightly due to application of this formula. But this is necessary to restrict passing on impact of commercial decisions of developers on to end consumers.

- 17.4. In view of the above background and in absence of any clear provision in PPA or Guidelines, the Commission, by using its Regulatory Powers, in its recent Orders has stipulated a formula for arriving at DC capacity which can be considered for compensation under Change in Law. Using the same principles, the capacity allowed by the Commission for compensation under change in law for each project is as below:

S No.	Case No.	Petitioner	Project Capacity (MW)	CUF Declared	DC Capacity Installed by Petitioner (MW)	Maximum DC Capacity entitled for change in law (MW)
1	116 of 2020	ASPLJ	10	26%	14.05	$(26/19 \times 10)$ = 13.68
2	117 of 2020	ASPLJK	10	26%	14.05	$(26/19 \times 10)$ = 13.68
3	118 of 2020	ASPLM	10	26%	14.05	$(26/19 \times 10)$ = 13.68
4	119 of 2020	ASPLK	10	26%	14.05	$(26/19 \times 10)$ = 13.68
5	120 of 2020	ASPLP	10	26%	14.05	$(26/19 \times 10)$ = 13.68
6	121 of 2020	ASPLW	10	26%	14.05	$(26/19 \times 10)$ = 13.68
7	122 of 2020	ASPLKN	10	26%	14.05	$(26/19 \times 10)$ = 13.68
8	123 of 2020	AEPL	10	26%	14.05	$(26/19 \times 10)$ = 13.68

The Commission also notes that the PPAs also provide option to Generator to revise CUF within one year from the date of commissioning of the project. Petitioners may exercise its choice to finalize 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.

18. Issue D: What should be the rate of interest for Carrying Cost?

- 18.1. Petitioners have contended that carrying costs cannot be treated at par with delayed payments to be made by the MSEDCL under the PPA, in as much as the edifice of granting carrying costs is a principle of restitution which is to place the Petitioners in the same economic position had the change in law not occurred. MSEDCL has requested the Commission to adopt practice/ methodology approved in its earlier orders dealing with SGD matters.
- 18.2. The Commission notes that there is no dispute amongst the parties relating to allowing carrying cost as per the restitution principle of the PPA. The Petitioners have contended that the SGD is treated as a part of the Project Cost and thereby funded in the same manner as the other costs i.e. in the proportion of 75:25. Further, they have submitted letter from IREDA specifying that in case the SGD is not repaid to IREDA within two years, then the Petitioners would be liable to arrange the additional funds on their own account without recourse on Project Assets.
- 18.3. The Commission notes that issues raised by present Petitioners are similar to those that were raised during earlier Case No. 8 of 2020 by RSPPL. The 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.”

18.4. Above ruling is squarely applicable to 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 borrowing from IREDA is concerned, under competitive bidding process, Commission 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.

19. **Issue E: What is the Methodology for payment of Compensation under Change in Law?**

19.1. Having decided upon the above issues, 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 in its Order dated 22 June 2020 in Case No 8 of 2020 (Case of RSPPL) has provided more clarity on various aspects including compensation and Methodology for payment of compensation, which shall be squarely applicable in the instant Cases. The same has been relied upon by the Petitioners in the present cases. The relevant portion of the Order in Case No 8 of 2020 is reproduced as under:

“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.”

19.2. Further, above said methodology has been re-iterated in Commission’s Order dated 23 July 2020 in Case Nos. 61 and 62 of 2020 (wherein JGEPL and NREPL, which are selected bidder from same bid process, were the Petitioners). Said dispensation shall be squarely applicable in the present cases also. The relevant sections from the Order dated 23 July 2020 in Case Nos. 61 and 62 of 2020 is reproduced below:

“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:

- a. 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.
- b. 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. ”

19.3. Each Petitioner has contended that it has incurred an additional cost of Rs 6.2 Cr on account of SGD (including IGST) on import of Solar PV Modules of capacity of 14.05 MW. As ruled in para 17.4 above, only 13.68 MW of Solar PV Modules, for each project, 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 18.4 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. Methodology for computation of Change in Law compensation and payment of the same shall be as mentioned in para 19.2 above.

20. Hence, the following Order:

COMMON ORDER

1. Case Nos. 116, 117, 118, 119, 120, 121, 122 and 123 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 their individual total capacity of 13.68 MW of Solar module/panel post commissioning of the project. 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 Nos. 16 to 19 above.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member


(Abhijit Deshpande)
Secretary

