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NEW DELHI

याचिका संख्या./ Petition No.: 91/MP/2020  
631/MP/2020  
672/MP/2020

श्री पी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson  
श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member  
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member  
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 25th of April, 2021

**IN THE MATTER OF:**

Petition under Clause 18 of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects (Resolution number 23/27/2017-R&R.) issued by the Ministry of Power, Government of India on 03.08.2017 under section 63 of the Electricity Act, 2003, seeking certain deviations from the Guidelines.

**AND IN THE MATTER OF:**

1. Rewa Ultra Mega Solar Limited  
Urja Bhawan Link Road No. 2  
Shivaji Nagar, Bhopal  
Madhya Pradesh – 462 016
2. Madhya Pradesh Power Management Company Limited  
Shakti Bhawan, Rampur, Jabalpur  
Madhya Pradesh - 482008
3. West Central Railway  
General Manager's Office  
3rd Floor, Indira Market  
Jabalpur, Madhya Pradesh – 482 001

... Petitioners

**Parties Present:** Shri Jafar Alam, Advocate, RUMSL, MPPMCL, WCR  
Ms. Samykya Mukku, Advocate, RUMSL, MPPMCL, WCR  
Shri Saahil Kaul, Advocate, RUMSL, MPPMCL, WCR  
Shri Amar Narula, Advocate, RUMSL, MPPMCL, WCR  
Shri Ankur Arora, Advocate, RUMSL, MPPMCL, WCR  
Shri Vishal Binod, Advocate, RUMSL, MPPMCL, WCR  
Shri Deep Rao, Advocate, RUMSL, MPPMCL, WCR  
Ms. Atyotma Gupta, Advocate, RUMSL, MPPMCL, WCR  
Shri Deepak Saxena, Advocate, RUMSL, MPPMCL, WCR  
Shri Avaneesh Shukla, RUMSL

### **आदेश/ ORDER**

Rewa Ultra Mega Solar Limited (RUMSL), Madhya Pradesh Power Management Company Limited (MPPMCL) and West Central Railway (WCR), the Petitioners herein, have filed the instant Petitions, inter alia, seeking certain deviations from the provisions of the “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects” (in short, “the Solar Bidding Guidelines”) issued by the Ministry of Power, Government of India (in short, “the MoP”) under Section 63 of the Electricity Act, 2003 (in short, “the Act”) in respect of the bid process initiated for the development of (i) 500 MW grid-connected ground mounted solar photo voltaic (PV) projects in Neemuch Solar Park, Madhya Pradesh; (ii) 450 MW grid-connected ground mounted solar photo voltaic (PV) projects in Shajapur Solar Park, Madhya Pradesh; and (iii) 550 MW grid-connected ground mounted solar photo voltaic (PV) projects in Agar Solar Park, Madhya Pradesh (collectively referred to as ‘the Projects’).

2. The Petitioner No.1, RUMSL has been incorporated as a 50:50 joint venture company between Solar Energy Corporation of India (SECI) and Madhya Pradesh Urja Vikas Nigam Limited (MPUVNL). RUMSL's objectives are to develop and facilitate large-scale solar power projects in the State of Madhya Pradesh. RUMSL, being the Solar Power Park

Developer (SPPD), has been designated as the authorised representative of the procurers under the Solar Bidding Guidelines and is responsible for fulfilling all the obligations imposed on the procurers during the bidding.

3. The Petitioner No. 2, MPPMCL is the holding company of all the 3 (three) distribution licensees in the State of MP. To procure power on behalf of the State distribution licensees and to fulfill their Renewable Power Obligation (RPO), MPPMCL has proposed to procure power from the Projects.
4. The Petitioner No. 3, West Central Railway (WCR) is an entity under the Ministry of Railways, Government of India (in short, “the Indian Railways”). Recently, the Indian Railways, a ‘deemed licensee’ under the Act, has started to procure power directly from the power generators. To meet its RPO (renewable purchase obligation) and to maximize the usage of clean energy for its rail operations, the Indian Railways has proposed to procure electricity from the Projects. The Railways Energy Management Company Limited (REMCL), which is a joint venture company of the Indian Railways and Rail India Technical and Economic Service Limited (RITES), is responsible for facilitating procurement of power for the Indian Railways from the Projects.
5. The Petitioners have made the following prayers:

**In Petition No. 91/MP/2020:**

- a) *Grant approval to the to the afore-mentioned deviations from the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects proposed to be included in the draft RfP and draft PPAs as discussed in Part I-XV of the instant petition for the bid process initiated for development of 500 MW grid-connected ground mounted solar photo voltaic (PV) projects in Neemuch solar park at Neemuch, MP; and*
- b) *Pass such further orders as this Commission may deem fit.*

**In IA No. 70 of 2020 and IA No. 6 of 2021**

- a) *Permit the Petitioners to suitably amend the Petition number 91/MP/2020 and grant approval to the additional deviations from the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects (Resolution number 23/27/2017-R&R.-1.PREAMBLE) as discussed in paragraph 6 of the instant Application and take the amended Petition as annexed at ANNEXURE A-1 on the record;*
- b) *Any errors/ omissions (especially those attributable to COVID-19 outbreak) may kindly be condoned, and opportunity be kindly given to rectify the same and also submit additional pleadings at a suitable later date, if required; and*
- c) *Pass such further orders/directions as this Commission may deem fit and proper in the present facts and circumstances.*

**In Petition No. 631/MP/2020:**

- a) *Grant approval to the afore-mentioned deviations from the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects proposed to be included in the draft RfP and draft PPAs as discussed in Part I-XV of the instant petition for the bid process initiated for development of 450 MW grid-connected ground mounted solar photo voltaic (PV) projects in Shajapur solar park at Shajapur, MP;*
- b) *Any errors/ omissions (especially those attributable to COVID-19 outbreak) may kindly be condoned, and opportunity be kindly given to rectify the same and also submit additional pleadings at a suitable later date, if required; and*
- c) *pass such further order(s) or direction(s) as this Commission may deem fit and proper in the facts and circumstances of the case.*

**In IA No. 7 of 2021**

- a) *Permit the Petitioners to suitably amend the Petition number 631/MP/2020 and grant approval to the additional deviations from the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects (Resolution number 23/27/2017-R&R.-1.PREAMBLE) as*

*discussed in paragraph 6 of the instant Application and take the amended Petition as annexed at ANNEXURE A-1 on the record;*

- b) Any errors/ omissions (especially those attributable to COVID-19 outbreak) may kindly be condoned, and opportunity be kindly given to rectify the same and also submit additional pleadings at a suitable later date, if required; and*
- c) Pass such further orders/directions as this Commission may deem fit and proper in the present facts and circumstances.*

**In Petition No. 672/MP/2020:**

- a) Grant approval to the afore-mentioned deviations from the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects proposed to be included in the draft RfP and draft PPAs as discussed in Part I-XV of the instant petition for the bid process initiated for development of 550 MW grid-connected ground mounted solar photo voltaic (PV) projects in Agar solar park at Agar, MP;*
- b) Any errors/ omissions (especially those attributable to COVID-19 outbreak) may kindly be condoned, and opportunity be kindly given to rectify the same and also submit additional pleadings at a suitable later date, if required;*
- c) pass such further order(s) or direction(s) as this Commission may deem fit and proper in the facts and circumstances of the case;*

**In IA No. 8 of 2021**

- a) Permit the Petitioners to suitably amend the Petition number 672/MP/2020 and grant approval to the additional deviations from the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects (Resolution number 23/27/2017-R&R.-1.PREAMBLE) as discussed in paragraph 6 of the instant Application and take the amended Petition as annexed at ANNEXURE A-1 on the record;*
- b) Any errors/ omissions (especially those attributable to COVID-19 outbreak) may kindly be condoned, and opportunity be kindly given to rectify the same and also submit additional pleadings at a suitable later date, if required; and*
- c) Pass such further orders/directions as this Commission may deem fit and proper in the present facts and circumstances.*

6. In Petition No. 91/MP/2020, the Petitioners have submitted that the 500 MW capacity at Neemuch Solar Park will be split into 3 (three) units of ground-mounted grid-connected solar photovoltaic power plants, to be developed on a pre-identified land parcel inside the Neemuch Solar Park, with unit-1 having capacity of 160 MW, unit-2 having capacity of 170 MW and unit-3 having capacity of 170 MW.
7. In Petition No. 631/MP/2020, the Petitioners have submitted that the 450 MW capacity at Shajapur Solar Park will be split into 3 (three) units of ground-mounted grid-connected solar photovoltaic power plants, to be developed on a pre-identified land parcel inside the Shajapur Solar Park, with unit-1 having capacity of 105 MW, unit-2 having capacity of 220 MW and unit-3 having capacity of 125 MW.
8. In Petition No. 672/MP/2020, the Petitioners have submitted that the 550 MW capacity at Agar Solar Park will be split into 2 (two) units of ground-mounted grid-connected solar photovoltaic power plants, to be developed on a pre-identified land parcel inside the Agar Solar Park, with unit-1 having capacity of 200 MW and unit-2 having capacity of 350 MW.
9. For all the three Solar Parks, the respective unit capacity in MW will be the maximum power output from the unit that can be scheduled at the delivery point during any time block of the day. Further, RUMSL has also been entrusted with the responsibility to carry out the bid process to select suitable solar power developers to develop, operate and maintain the units.
10. The Petitioners have submitted that RUMSL is not a procurer for the Projects to be set up in Neemuch Solar Park, Shajapur Solar Park and Agar Solar Park, as the SPDs for the units will be required to sign separate power purchase agreement(s) (“PPAs”) with the procurers, namely, MPPMCL and Indian Railways, acting through WCR (collectively, “the Procurers”).

11. The Petitioners have submitted that RUMSL, being the solar power park developer, would also be a signatory to the PPAs to ensure timely completion of the ancillary infrastructure for Neemuch Solar Park, Shajapur Solar Park and Agar Solar Park which is expected to translate into discovery of attractive tariffs under the bid process.
12. The Petitioners have submitted that the following agreements will be required to be executed by the SPDs for development of the Projects:
  - a) separate 'Power Purchase Agreements' (PPA) with each of the Procurers along with the solar power park developer, to implement the units and for sale by the SPDs and purchase by the Procurers of a part of solar energy generated from the units;
  - b) an 'Implementation Support Agreement' (ISA) between the SPDs and solar power park developer i.e. RUMSL, setting out the terms and conditions of use of the internal evacuation infrastructure to be constructed and commissioned by RUMSL for evacuation of power from the unit up to the delivery point and associated facilities in the Solar Parks to be provided by RUMSL to the SPDs;
  - c) a 'Land Use Permission Agreement' (LUPA) with the New and Renewable Energy Department, MP, and solar power park developer i.e. RUMSL granting SPDs the right to use the land for the construction, operation, and maintenance of the units at the Solar Parks to be provided by RUMSL to the SPDs;
  - d) a 'Coordination Agreement' with the SPDs of the units in the Solar Parks, RUMSL, and the Procurers, about, amongst others, scheduling of power between the Procurers and for effective construction and operation of the Solar Parks to be provided by RUMSL to the SPDs.
13. The Petitioners have submitted that the Government of India is yet to notify the Solar Bidding Documents (SBDs). Accordingly, in terms of Guideline 3.1.1 of the Solar Bidding Guidelines, RUMSL will be preparing the bidding documents and the project agreements for

the bid process, namely, the request for proposal (RFP), PPAs, LUPAs, ISAs and Coordination Agreements, as per the provisions of the Solar Bidding Guidelines, to the extent applicable to the project-specific characteristics of the bid process. However, to make the Projects more bankable, financially viable and to obtain competitive tariffs from the bidders participating in the bid process, certain project-specific deviations are required to be made from the Solar Bidding Guidelines.

14. The Petitioners have submitted that as stipulated in Guideline 3.1.1 of the Solar Bidding Guidelines, Procurers may deviate from the Solar Bidding Guidelines in terms of the provisions of Clause 18 of the Solar Bidding Guidelines.
15. The Clause 18 of the Solar Bidding Guidelines is excerpted as below:

***“18. DEVIATION FROM PROCESS DEFINED IN THE GUIDELINES***

*In case there is any deviation from these Guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 90 (ninety) days.”*

16. The Petitioners have confirmed that all the relevant stakeholders in the Projects (especially RUMSL and the Procurers) have engaged in constant discussions and deliberations about the proposed deviations set out in the instant petitions along with IAs and formulated a suitable contract structure for the Projects. Therefore, approval of the Commission for the proposed deviations are being sought after discussion with relevant stakeholders, including officials of the New and Renewable Energy Department, GoMP.

**Hearing on 05.03.2021**

17. Relevant excerpt of the record of proceedings (RoP) of hearing held on 05.03.2021 is as under:

*“3. After hearing the learned counsels for the Petitioner, RUMSL, the Commission admitted the Petition Nos.631/MP/2020 and 672/MP/2020. The Commission also*



*allowed the IAs filed in all the three Petitions seeking amendments to the Petitions for incorporating the additional deviations and directed to take on record the amended Petitions. Accordingly, the IAs were disposed of. The Petitioner was also permitted to rectify the inadvertent error in the prayer clause (a) of amended Petition No. 91/MP/2020.*

*4. The Commission further directed the Petitioners to submit the affidavit in all the three Petitions on or before 19.3.2021 after complying the following:*

*(a) Confirmation that the Clauses of the Guidelines in respect of which the deviations have been proposed are with respect to latest amended guidelines.*

*(b) Deviations proposed in all the three Petitions are identical;*

*(c) SBDs already issued/being issued by the Petitioner will incorporate the deviations proposed; and*

*(d) Detailed justification regarding deviations pertaining to Payment Security Mechanism, Affiliates/Control.*

*6. Subject to above, the Commission reserved the Petitions for order.”*

18. The Petitioners vide affidavit dated 18.03.2021 have submitted that deviations proposed through the instant Petitions are from the guidelines, which are the latest version of the ‘Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects’ (Resolution number 23/27/2017-R&R.) issued by the Ministry of Power, Government of India on 03.08.2017 under Section 63 of the Electricity Act, 2003, including all the amendments till date.
19. The Petitioners have further submitted that the deviation concerning ‘Time period for holding minimum paid-up share capital’ is no longer required since the Solar Bidding Guidelines, as amended on 25.09.2020, have reduced the lock-in period from 3 years to 1 year.
20. The Petitioners have submitted that the deviations sought under the instant Petitions are identical in all respects except for project-specific factual details regarding the power evacuation scheme, location, capacity, and other details about the solar parks and timeline prescribed for the achievement of a condition subsequent that relate to erection of transmission towers and slinging of internal transmission lines by RUMSL. The final bid

documents to be issued by the Petitioners before the bid submission date will reflect all deviations sought in the captioned Petition and shall incorporate the directions of this Commission in the instant Petitions.

### **Analysis & Decision**

21. We have heard the learned counsels for the Petitioner and have perused the records.
22. The brief facts as contained in the Petitions are that in furtherance of the mandate of Section 63 of the Electricity Act, 2003 and the Tariff Policy, the Ministry of Power, has issued the Solar Bidding Guidelines on 03.08.2017, which have been further amended vide notifications issued by the Ministry of Power dated 14.06.2018, 03.01.2019, 09.07.2019, 22.10.2019 and 25.09.2020. The Solar Bidding Guidelines apply to long-term procurement of electricity by Procurers from grid-connected Solar PV power projects having a size of 5 MW and above.
23. Section 63 of the Act stipulates as under:

*“Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through a transparent process of bidding by the guidelines issued by the Central Government.”*
24. Section 10 of the Electricity Act, 2003 provides that a generating company may supply electricity to any licensee under the Act and rules and regulations made thereunder and may, subject to the regulations made under sub-section (2) of Section 42 of the Act, supply electricity to any consumer.
25. The National Tariff Policy, 2016 has specific guidance on the purchase of power generated from renewable energy sources. Clause 6.4(2) of the Tariff Policy, 2016 provides as under:

*“States shall endeavor to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from the waste to energy plants. Procurement of power by Distribution Licensee from renewable energy sources, from Solar PV Power Projects above the notified capacity, shall be done through competitive bidding process, from the date to be notified by the Central Government.”*

*However, till such notification, any such procurement of power from renewable energy sources projects, may be done under Section 62 of the Electricity Act, 2003.”*

26. Clause 2.2 of the Solar Bidding Guidelines stipulates as under:

*“2.2. Appropriate Commission:*

*2.2.1. Subject to the provisions of the Act:*

*a) In case of a single distribution licensee being the Procurer, the Appropriate Commission, for the purpose of these bidding Guidelines, shall be the State Electricity Regulatory Commission of the concerned State where the distribution license is located.*

*b) In case of combined procurement where the distribution licensees are located in more than one State, the Appropriate Commission for the purpose of these bidding Guidelines, shall be the Central Electricity Regulatory Commission.*

*c) For cases involving sale of power from Central Generating Stations, the Appropriate Commission shall be the Central Electricity Regulatory Commission.”*

27. Clause 3.1.1 of the Solar Bidding Guidelines, inter alia, mandated that:

*i) the bidding documents (including the RfS and the draft PPA), shall be prepared by the procurer in consonance with:*

- a. the Solar Bidding Guidelines and*
- b. the standard bidding documents (“SBDs”).*

*ii) the procurer is required to seek an approval from the appropriate commission for any deviation in the draft RfS, draft PPA, draft PSA (if applicable) prepared for the bid process.*

*a) Such approval is to be obtained in accordance with the process described in Guideline 18 of the Solar Bidding Guidelines.*

28. Clause 18 of the Solar Bidding Guidelines is excerpted as below:

**“18. DEVIATION FROM PROCESS DEFINED IN THE GUIDELINES**

*In case there is any deviation from these Guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 90 (ninety) days.”*

29. We observe that the Petitioners have sought approval of the Commission to fifteen (15) deviations from the Solar Bidding Guidelines viz. Payment Security Mechanism, Notification of force majeure event, Offtake Constraints, Grid Unavailability, Events of default and

termination consequences, Event of default on account of SPD's failure to supply energy as per PPA, Applicability of bid responsiveness conditions to affiliates of the bidder, Bidder's Affiliate, Definition of 'control, Time period for holding minimum paid up share capital, Controlling shareholding of a listed company, Extension of commissioning timelines, RUMSL's Additional Conditions Subsequent, Inclusion of "Epidemic, Pandemic, Quarantine, Lockdown or similar action ordered by any government authority" as Force Majeure Events, Termination due to a Non-Natural Force Majeure Event, Quantum and Mechanism for Change in Law Relief, to be included in the draft RFP and draft PPAs. However, as on the date of filing of the present Petitions, the Government of India is yet to notify the Solar Bidding Documents under the Solar Bidding Guidelines.

30. The itemized detailed deviations the Petitioners have sought for approval of the Commission in the instant Petitions are set out hereunder:

(i) **Payment Security Mechanism**

31. The Petitioners have submitted that as per the Solar Bidding Guidelines, MPPMCL is required to provide the following payment security measures:

- a) a revolving letter of credit of an amount not less than 1 (one) month's average billing from the project under consideration; and
- b) a payment security fund which shall be suitable to support payments for at least 3 (three) months' billing of all units tied up with such fund.

32. The Petitioners have proposed that the payment security fund will be arranged by RUMSL in the form of an overdraft/ working capital facility. Furthermore, GoMP may, subject to necessary approvals, also decide to provide a State Government guarantee on behalf of MPPMCL and directly in favour of the SPDs and RUMSL to ensure payment of energy charges and termination compensation, if any. This additional layer of payment security is

expected to further improve the bankability of the Project and help to lower the tariffs, thereby reducing the power bills of the Procurers and finally benefit the general public.

33. In case of Indian Railways, it has been proposed to provide as payment security a 'letter of mandate' issued by the Indian Railways to the Reserve Bank of India (RBI), authorizing RBI to unconditionally debit the Indian Railways' account maintained with RBI (even in the event there exists a negative balance in such account) for an amount equivalent to energy charges for four (4) months' average billing from the Projects upon receipt of a debit claim from the SPDs, instead of 'revolving Letter of Credit' and 'payment security fund'. RBI in turn will issue a forwarding letter of mandate to SPDs expressly acknowledging the letter of mandate issued by the Indian Railways to RBI. The forwarding letter of mandate shall include a form of the debit claim to be made by SPDs in the event the Indian Railways fails to make any payment otherwise due under the PPA or any other project agreements.
34. The Petitioners have submitted that the proposed arrangement instead of tier I (letter of credit) and tier-II (payment security fund) of the payment security mechanism as required by the Solar Bidding Guidelines, covering 4 (four) months of average billing from the Project will give significant comfort and assurance to the SPDs and its lenders, and will help improve the bankability of the Projects as a whole.
35. The Petitioners have submitted that the Ministry of Power, vide its letter to Indian Railways dated 06.08.2019, has approved the 'letter of mandate' issued by RBI in favour of Indian Railways as a valid payment security mechanism instead of a letter of credit required for scheduling power to distribution licensees.
36. The Commission observes that Clause 5.3 of the Solar Bidding Guidelines stipulates as under:

*“5.3 Payment Security: The Procurer shall provide adequate payment security measures, as specified below.*

**5.3.1. Scenario 1: Direct Procurement by Procurer from Solar Power Generator:**

*The Procurer shall provide payment security to the Solar Power Generator through:*

*a) **Revolving Letter of Credit (LC)** of an amount not less than 1 (one) months’ average billing from the Project under consideration;*

**AND,**

*b) **Payment Security Fund**, which shall be suitable to support payment for at least 3 (three) months’ billing of all the Projects tied up with such fund;*

*c) In addition to a) & b) above, the Procurer may also choose to provide **State Government Guarantee**, in a legally enforceable form, ensuring that there is adequate security to the Solar Power Generator, both in terms of payment of energy charges and termination compensation if any.”*

37. From the above, it is observed that the Solar Bidding Guidelines stipulates a payment security mechanism to be provided by the Procurers to SPDs, which includes: (i) letter of credit of an amount not less than 1 month’s average billing; (ii) payment security fund suitable to support payment of at least 3 months’ billing; and (iii) State Government guarantee (optional). It is apparent that three-tier-payment security mechanism is meant to instil confidence in SPDs about the security of payments.

38. We observe that MPPMCL will comply with the requirements under the Solar Bidding Guidelines whereas a deviation is sought only concerning Indian Railways. Indian Railways has submitted that as a usual practice, the Indian Railways submits ‘letter of mandate’ to the Reserve Bank of India (RBI) as a payment security mechanism under the contracts which are executed by Indian Railways. Similarly, the Petitioners have proposed that for the Solar Parks, through the letter of mandate, the Indian Railways will authorize RBI to unconditionally debit the Indian Railways account maintained with RBI upon receipt of a debit claim from SPDs. The letter of mandate will cover claims for an amount equivalent to the energy charges for 4 months’ average billing from the Projects and would replace the

requirement for a letter of credit and payment security fund. RBI shall be bound to clear the claims made by the developers even if its balance in the RBI account is negative.

39. The Commission observes that the 'letter of mandate' issued directly to RBI, would provide the desired security of payment and serve as an adequate substitute for a letter of credit or a payment security fund to be maintained with a scheduled bank. The Commission further notes that the Ministry of Power has also recognized RBI's letter of the mandate as valid payment security measure instead of the letter of credit for allowing schedule of power to Indian Railways.

40. Hence, this deviation is allowed.

(ii) **Notification of force majeure event**

41. The Petitioners have submitted that as per Clause 5.4.4 of the Solar Bidding Guidelines if the performance of any of the parties under the project agreements is affected due to a force majeure event, the affected party shall notify the other party of such an event, as soon as reasonably practicable, but not later than seven (7) days after the affected party knew or ought to have reasonably known of the occurrence of the force majeure event. The Petitioners have submitted that the affected party should be provided with a maximum period of fifteen (15) days in place of seven (7) days to notify the other party of the occurrence of force majeure event as seven (7) days may not be adequate for the affected party to notify all the effects of force majeure event.

42. The Commission observes that Clause 5.4.4 of the Solar Bidding Guidelines stipulates as under:

***"5.4.4. Notification of Force Majeure Event***

5.4.4.1. *The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.*

5.4.4.2. *Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under the PPA. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than weekly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.*

5.4.4.3. *The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under the PPA, as soon as practicable after becoming aware of each of these cessations”.*

43. As per the aforesaid provision of the Solar Bidding Guidelines, the Affected Party shall give notice to the other Party, of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. The Commission notes that the Petitioners intend to give more time i.e., fifteen (15) days for giving notice on occurrence of force majeure event. As the intent of the deviation being sought is to give sufficient time to notify all the effects of force majeure effect, this deviation is allowed.

**(iii) Off-take Constraints**

44. The Petitioners have submitted that the respective Solar Parks have been granted connectivity for evacuation of power through the inter-State transmission system of Central Transmission Utility (CTU) and for this, the internal evacuation infrastructure of the Projects will connect to the bay at the 220/400 kV ISTS connected sub-station of PGCIL. The internal evacuation infrastructure will be developed by RUMSL.



45. The internal evacuation infrastructure to be developed by RUMSL (reference Petition No. 91/MP/2020) will comprise of: (i) a 33/220 kV outdoor sub-station associated with and dedicated for each unit, located within the Neemuch Solar Park (each such sub-station a “Unit Sub-station”); and (ii) single circuit 220 kV transmission line connecting the Unit Sub-station for unit 1 to Unit Sub-station for unit 2; and (iii) dedicated 2 (two) separate single circuit 220 kV transmission lines connecting the 3 (three) Unit Sub-stations for unit 2 and unit 3 to the PGCIL Sub-station.
46. The internal evacuation infrastructure to be developed by RUMSL (reference Petition No. 631/MP/2020) will comprise of: (i) a 33/220 kV outdoor sub-station dedicated for each unit, located within the Shajapur Solar Park (each such sub-station a “Unit Sub-station”); and (ii) a single circuit 220 kV transmission line connecting the Unit Sub-station for unit 6 to Unit Sub-station for unit 7; (iii) a single circuit 220 kV transmission line originating from the Unit Sub-stations for unit 7 and connecting to the PGCIL Sub-station (the line will be a single circuit line for first 15.30 km and will run on a double circuit for another 1.23 km). The double circuit portion of the transmission line will be shared with another solar PV plant to be set up in Agar Solar Park; and (iv) a dedicated single circuit (SC) 220 kV transmission lines connecting the Unit Sub-stations for unit 8 to the PGCIL Sub-station.
47. The internal evacuation infrastructure developed by RUMSL (reference Petition No. 672/MP/2020) will comprise of: (i) a 33/220 kV outdoor sub-station dedicated for each unit, located within the Agar Solar Park (each such sub-station a “Unit Sub-station”); and (ii) a dedicated single circuit 220 kV transmission lines connecting the originating from the Unit Sub-stations for unit 4 and connecting to the PGCIL Sub-station (the line will be a single circuit line for first 1.23 km and will run on a double circuit for another 1.23 km). The double circuit portion of the transmission line will be shared with another solar PV plant to be set up

in Shajapur Solar Park; and (iii) a dedicated single circuit 220 kV transmission line connecting the Unit Sub-station for unit 5 to the PGCIL Sub-station.

48. The Petitioners have submitted that RUMSL is in the process of appointing PGCIL as the project management consultant for the construction of the internal evacuation infrastructure and to ensure completion of the internal evacuation infrastructure within the specified timelines. Moreover, to keep the bidders well informed, RUMSL will set up a virtual data room for the bidders and will update it on a fortnightly basis so that bidders are aware of the progress made in the construction of internal evacuation infrastructure. Additionally, to facilitate SPDs to timely synchronize the unit with the internal evacuation infrastructure and to ensure that the construction of such infrastructure is undertaken promptly, a committee will be constituted consisting of the representatives of SPDs, Procurers, RUMSL, and PGCIL. This committee will regularly monitor the progress in the development of the internal evacuation infrastructure and, in case of an inordinate delay in completion of the internal evacuation infrastructure, the committee would be empowered to take necessary steps to expedite the construction works, without affecting the rights and obligations of the parties under the PPA and the ISA.
49. In addition to the above, the Petitioners have submitted that despite all these steps, in case there is a delay in readiness of transmission/ power evacuation infrastructure beyond the scheduled commissioning date of a unit, then the SPDs will be provided with a day to day extension to scheduled commissioning date. While the Solar Bidding Guidelines do not provide for such a day to day extension of the scheduled commissioning date, such a provision would ensure that the PPA term remains unchanged given that the SPDs' unit was ready to generate power, but the necessary transmission/ power evacuation infrastructure was not ready for reasons not attributable to SPDs.

50. In addition to the day to day extension, SPDs will be compensated by the Procurers for the generation loss suffered by SPDs on account of delay in readiness of transmission/ power evacuation infrastructure by procuring excess generation beyond the guaranteed energy offtake, equivalent to such generation loss during the term of the PPAs.
51. The Petitioners have submitted that while the Solar Bidding Guidelines provide that such excess generation is to be procured by the Procurer in the succeeding three (3) years, there may be a scenario wherein the SPD does not have enough excess generation beyond the guaranteed energy offtake in the succeeding three (3) years to fully compensate the generation loss due to lack of readiness of the evacuation infrastructure, especially since with time solar panels undergo performance degradation, and therefore, may not produce enough excess electricity to compensate the generation loss.
52. The Petitioners have submitted that the obligation of the Procurers to offtake such excess generation should not be limited to the succeeding three (3) years and the Procurers must be obligated to procure any excess generation beyond the guaranteed energy offtake in the remaining term of the PPA until it fully compensates for the generation loss. The SPDs will be entitled to claim compensation for its generation loss through excess generation in addition to the day-to-day extension to the scheduled commissioning date.
53. The Petitioners have submitted that the above provisions would ensure that in case of delay in readiness of transmission/ power evacuation infrastructure the only loss to the SPDs would be the net present value of the generation loss.
54. The Petitioners have submitted that the Indian Railways, in a given contract year, will be obligated to offtake only the excess generation up to ten percent (10%) of its guaranteed energy offtake quantum. However, if SPDs' generation loss is not fully compensated by

Indian Railways, then Indian Railways may, at its discretion, choose to offtake energy beyond ten percent (10%) of its guaranteed energy offtake quantum from the excess generation, failing which MPPMCL will procure such excess generation for the remaining generation loss.

55. The Petitioners have also submitted that a long stop date is proposed to be set out in the PPAs, post which, if the transmission/ power evacuation infrastructure is not ready, the SPDs will have a right to terminate the PPA and other project agreements on account of RUMSL's failure to make available the transmission/ power evacuation infrastructure by the long stop date.
56. The Petitioners have submitted that in case the SPDs terminate the PPAs and other project agreements, solely on account of lack of readiness of the internal transmission/ power evacuation infrastructure to be developed by RUMSL, then RUMSL shall be liable to refund all charges received from SPD under the ISA till the aforesaid termination, including the project development fee (if already paid by the SPD).
57. The Petitioners have submitted that the provision for day to day extension to scheduled commissioning date in case of transmission/ power evacuation unavailability and compensation through excess generation beyond the guaranteed energy offtake over the remaining term of the PPA would result in lowering the bid tariffs received for the Projects, as otherwise, bidders would build in a risk premium for this offtake constraint risk, especially considering that this is a risk that cannot be anticipated or assessed.
58. The Commission observes that clause 5.5.1 (a) of the Guidelines stipulate as under:

***“5.5.1. Offtake constraints due to Transmission Infrastructure / Grid Unavailability:***

- a) **Generation Compensation in offtake constraint due to Transmission Infrastructure not complete/ ready (Transmission constraint):** After the scheduled commissioning date, if the plant is ready but the necessary power evacuation/ transmission infrastructure is not ready, for reasons not attributable to the Solar Power Generator, leading to off-take constraint, the provision for generation compensation is as follows:

<b>Transmission Constraint</b>	<b>Provision for Generation Compensation</b>
<i>If the plant is ready but the necessary power evacuation/ transmission infrastructure is not ready, leading to off take constraint</i>	<p>a) The normative CUF of 19% (nineteen per cent) or committed CUF, whichever is lower, and in cases where the contract is in energy terms, proportionate value of CEQ, for the period of grid unavailability, shall be taken for the purpose of calculation of generation loss. Corresponding to this generation loss, the excess generation by the SPD in the succeeding 3 (three) Contract Years, shall be procured by the Procurer at the PPA tariff so as to offset this loss.</p> <p>b) If the transmission delay is directly attributable to the organization building the transmission network and some penalty is imposed on him, then a part of that penalty may be utilized for compensating the generation loss.</p> <p>The mechanism for compensating the developers will be spelt out in the tender documents Contract Year, shall be as defined in PPA.</p>

*However, it is clarified that if the plant is ready before SCD, but the off-take is constrained because of inadequate/ incomplete power evacuation infrastructure, no compensation shall be permissible.”*

59. From the above, it is observed that RUMSL will appoint PGCIL as the project management consultant for the construction of the internal evacuation infrastructure and will ensure the completion of the internal evacuation infrastructure within the specified timelines. However, in case there is delay in readiness of transmission/power evacuation infrastructure beyond the scheduled commissioning date of a unit, then the Petitioners/ procurers will compensate SPDs in the following way:

- (a) Firstly, the SPDs will be compensated by providing a day-to-day extension to the scheduled commissioning date;
- (b) Secondly, the SPDs will be compensated by the Procurers for the generation loss suffered;
- (c) Thirdly, the SPDs will be compensated by off-take of excess generation beyond the guaranteed energy offtake in the remaining term of the PPAs by the procurers until it is fully compensated for the generation loss. However, in case of Indian Railways, in a given contract year, it will be obligated to offtake only the excess generation up to ten percent (10%) of its guaranteed energy offtake quantum. However, if SPD's generation loss is not fully compensated by Indian Railways, then Indian Railways may choose to offtake energy beyond ten percent (10%) of its guaranteed energy offtake quantum from the excess generation, failing which MPPMCL will procure such excess generation for compensating the SPD's generation loss;
- (d) Fourthly, if the transmission/power evacuation infrastructure is not ready even after the long stop date (proposed to be set out in the PPAs), then the SPDs will have a right to terminate the PPAs and other project agreements on account of RUMSL's failure to make available the transmission/ power evacuation infrastructure by the long stop date and RUMSL shall be liable to refund all charges received from SPDs under the ISA till the termination, including the project development fee (if already paid by the SPDs).

60. The Commission observes that the intent of the proposed changes in connection with generation compensation in the event of transmission infrastructure constraint is to provide greater certainty to investors. The Petitioners feel that the certainty and comfort as sought to be provided through this deviation are likely to yield more efficient price discovery and would be in the interest of the consumers. The Commission acknowledges the intent and allows the deviation sought in this context.

(iv) **Grid Unavailability**

61. The Petitioners have submitted that grid unavailability is a key risk for bidders and if the bidders are unable to assess and mitigate the magnitude of this risk, it would lead to a

situation where the bidders build in a risk premium resulting in higher tariffs. Accordingly, the Petitioners have submitted that compensating the project developer for the generation loss merely through excess generation, as prescribed in the Solar Bidding Guidelines, may not be sufficient.

62. The Petitioners have submitted that with time, solar panels undergo performance degradation and, therefore, may not produce enough excess electricity to compensate for the generation loss especially if the grid unavailability is towards the end of the term of the PPA. The Petitioners have also stated that the solar project developer would lose out on the net present value of the tariff for the generation loss which it would have otherwise been entitled to and it might not be possible for the Procurers to necessarily off-take the excess generation beyond its guaranteed energy offtake in the following years for reasons such as unavailability of grid access for the enhanced capacity or their other contractual obligations.
  
63. The Petitioners have submitted that SPDs will be compensated for generation loss on account of grid unavailability and/or backdowns orders issued under the Grid Code due to grid security or safety of any equipment or personnel or other such conditions, for a period exceeding fifty (50) generation hours in a contract year by the Procurers by procuring excess generation, i.e. energy beyond guaranteed energy off-take, to the extent of the generation loss at 110% (one hundred and ten percent) of the PPA tariff in the following contract year. However, if the SPD does not produce enough excess electricity, i.e., energy beyond guaranteed energy offtake, in the following contract year so that it can be compensated for the entire generation loss suffered on account of the aforesaid reasons, then the SPDs would be compensated by the Procurers for the balance generation loss at PPA tariff at the end of such contract year. Such a provision would cover the SPD's risks beyond fifty (50) generation hours.

64. The Petitioners have submitted that they have relied on the historical statistics of the CTU (available as part of its annual reports and also at the CTU’s website) and submitted that the CTU’s transmission network has not been unavailable for more than fifty (50) hours during any year in the past five (5) years. Further, the unavailability of CTU’s transmission network has been in the range of approximately seven (7) hours to twenty-five (25) hours in the last five (5) years. Therefore, it is highly unlikely that the CTU network for the Project will be unavailable for more than fifty (50) generation hours and, therefore, the interests of the Procurers are protected.

65. The Commission observes that Clause 5.5.1(b) of the Solar Bidding Guidelines stipulate as under:

***“5.5.1. Offtake constraints due to Transmission Infrastructure / Grid Unavailability:***

***b) Generation Compensation in off take constraints due to Grid Unavailability:*** *During the operation of the plant, there can be some periods where the plant can generate power but due to temporary transmission unavailability the power is not evacuated, for reasons not attributable to the Solar Power Generator. In such cases the generation compensation shall be addressed by the Procurer in following manner:*

<b><i>Duration of Grid unavailability</i></b>	<b><i>Provision for Generation Compensation</i></b>
<i>Grid unavailability in a contract year as defined in the PPA: (only period from 8 am to 6 pm to be counted):</i>	<p><b><i>Generation Loss = [(Average Generation per hour during the contract year) × (number of hours of grid unavailability during the contract year)]</i></b></p> <p><i>Where, Average Generation per hour during the contract year (kWh) = Total generation in the contract year (kWh) ÷ Total hours of generation in the contract years.</i></p> <p><i>The excess generation by the SPD equal to this generation loss shall be procured by the Procurer at the PPA tariff so as to offset this loss in the succeeding 3 (three) Contract Years, Contract Year, shall be as defined in PPA.</i></p>

*ded that a Provided that as an alternative to the mechanism provided above in Clause 5.5.1, the Procurer may choose to provide Generation Compensation, in*



*terms of PPA tariff, for the Generation loss as defined in Clause 5.5.1, and for Grid unavailability beyond 50 hours in a Contract Year as defined in the PPA”.*

66. From the above, we observe that the Solar Bidding Guidelines stipulate that excess generation by the SPDs equal to the generation loss shall be procured by the Procurers at the PPA tariff so as to offset this loss in the succeeding 3 (three) Contract Years, where Contract Year shall be as defined in the PPA. In the instant petitions, the Petitioners have proposed that SPDs will be compensated for generation losses on account of grid unavailability and/or back-down orders issued under the Grid Code due to grid security or safety of any equipment or personnel or other such conditions as under:

- (a) for a period exceeding fifty (50) generation hours in a contract year by the Procurers by procuring excess generation, i.e. energy beyond guaranteed energy off-take;
- (b) procuring such excess generation, i.e. energy beyond guaranteed energy off-take to the extent of the generation loss at 110% (one hundred and ten percent) of the PPA tariff in the following contract year;
- (c) in case the SPDs do not produce enough excess electricity, i.e., energy beyond guaranteed energy offtake, in the following contract year so that it can be compensated for the entire generation loss suffered on account of the aforesaid conditions, then the SPDs would be compensated by the Procurers for the balance generation loss at PPA tariff at the end of such contract year;
- (d) risks of SPDs beyond fifty (50) generation hours are covered.

67. The Commission observes that the intent of the proposed changes in connection with generation compensation in off-take constraints due to Grid Unavailability is to provide greater certainty to investors. The Petitioners have stated, based on the past data on availability of CTU system, that there are highly unlikely chances of generation loss beyond 50 hours in a contract year due to CTU system unavailability. However, the certainty and comfort as sought to be provided through this deviation are likely to yield more efficient price discovery and would be in the interest of the consumers. The Commission acknowledges the intent and allows the deviation sought in this context.

(v) **Events of default and termination consequences**

68. The Petitioners have submitted that proposed changes in the provisions relating to the termination consequences under the Solar Bidding Guidelines, are necessary to implement the two-procurer structure proposed for the Projects and accordingly, takes into account the risk profile and the offtake requirements of all relevant stakeholders.

**Termination consequences for SPDs default**

69. The Petitioners have submitted that in case the SPDs default and fail to cure it within the prescribed period, including SPDs' failure to commission the unit by the long stop date after the expiry of scheduled commissioning date upon payment of liquidated damages (except on account of a change in law, force majeure event, procurer event of default or RUMSL's breach of its material obligations under the ISA), Procurers will have the right to terminate the PPAs under which the SPDs shall be liable to pay to the relevant Procurers damages as per Guideline 5.6.1 of the Solar Bidding Guidelines.

70. The Petitioners have submitted that MPPMCL shall have the right to pay to the SPDs termination compensation equal to ninety percent (90%) of debt due, upon payment of which, the SPDs will transfer the unit to MPPMCL/its nominee, and MPPMCL/its nominee shall continue to supply power to Indian Railways by the terms of the PPAs of Indian Railways. However, if MPPMCL chooses not to exercise this right, then Indian Railways/ its nominee will have the right to acquire the unit by paying the same termination compensation as payable by MPPMCL, and Indian Railways/ its nominee shall continue to supply power to MPPMCL by the terms of the PPAs. However, if neither MPPMCL nor Indian Railways choose to exercise their rights, then RUMSL/ its nominee will have the right to pay the same termination compensation as payable by MPPMCL or Indian Railways to acquire the unit,

and RUMSL/ its nominee shall continue to supply power to MPPMCL and Indian Railways as per terms of the respective PPAs.

71. The Petitioners have submitted that if MPPMCL, Indian Railways, and RUMSL choose not to exercise their rights to acquire the unit and RUMSL has to bear any charges payable on account of relinquishment of long-term access rights as per Regulation 18 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009, as a result of the termination of the PPAs, then such charges will be to the SPDs' account.
72. The Petitioners have submitted that in a scenario wherein MPPMCL, Indian Railways, and RUMSL choose not to exercise their rights to acquire the unit, SPD will have the right to retain the unit and sell the entire capacity under the PPA to a third party. However, in this case, the Procurers, under the PPAs where no SPD event of default subsists, will have the first option to purchase the contracted electricity from SPDs at the tariff as agreed under the terminated PPAs.

#### **Termination Consequences for MPPMCL's default under MPPMCL PPA**

73. The Petitioners have submitted that in case MPPMCL defaults and fails to cure it within the prescribed cure period (as shall be stipulated in the MPPMCL PPA), the following procedure will be followed:
  - a) Subject to SPD's acceptance, Indian Railways will have the first option to get the MPPMCL PPAs novated in its favour.
  - b) If Indian Railways refuses to exercise its option or if novation of Indian Railways (in place of MPPMCL) is not acceptable to the SPDs, then MPPMCL as well as RUMSL, shall have the option to arrange for an alternate buyer acceptable to the SPDs which is ready to offtake the entire contracted electricity.

- c) In both the above cases, LTA Relinquishment Charges to be borne by RUMSL as a result of the termination of the MPPMCL PPA will need to be borne by the MPPMCL.
- d) If Indian Railways refuses to exercise its novation right or if such novation is not acceptable to the SPDs and MPPMCL and RUMSL fail to exercise their option to provide for an alternate buyer or if the alternate buyer(s) proposed by MPPMCL and/or RUMSL is/are not acceptable to the SPDs, then the SPD may choose to:
- i. require MPPMCL to pay termination compensation equivalent to one hundred percent (100%) of the debt due and one hundred and ten percent (110%) of the adjusted equity less insurance cover, upon which payment the SPD will transfer the unit to MPPMCL/ its nominee and MPPMCL/its nominee shall continue to supply power to Indian Railways by the terms of the Indian Railways PPA.

OR

- ii. retain the unit and elect not to receive termination compensation. MPPMCL would be liable to pay to the SPDs damages, computed at a rate of applicable tariff for the energy quantum equivalent to the minimum supply obligation for six (6) months, or balance PPA period, whichever is less.
- iii. Upon receipt of the damages, the MPPMCL PPAs will terminate, and SPDs will be permitted to sell electricity to any third party.
- iv. Also, any LTA Relinquishment Charges to be borne by RUMSL as a result of the termination of the MPPMCL PPAs will also need to be borne by MPPMCL.

## **Termination Consequences for an Indian Railways event of default under Indian Railways PPAs**

74. The Petitioners have submitted that in case Indian Railways defaults and fails to cure it within the prescribed cure period (as shall be stipulated in the Indian Railways PPA), the following procedure will be followed:

- a) Subject to SPD's acceptance, MPPMCL will have the first option to get the Indian Railways PPAs novated in its favor.
- b) If MPPMCL refuses to exercise its novation right or if such novation of MPPMCL (in place of Indian Railways) is not acceptable to the SPD, then Indian Railways as well as RUMSL, shall have an option to arrange for an alternate buyer, acceptable to the SPD, which is ready to offtake the entire contracted electricity.
- c) In both the above cases, LTA Relinquishment Charges to be borne by RUMSL as a result of the termination of the Indian Railways PPA will need to be borne by the Indian Railways.
- d) If MPPMCL refuses to exercise its novation right or if such novation is not acceptable to the SPDs and Indian Railways and RUMSL fail to exercise their option to provide for an alternate buyer or the alternate buyer(s) proposed by Indian Railways and/or RUMSL are/are not acceptable to the SPD, then the SPD may choose to:
  - i. require Indian Railways to pay termination compensation equivalent to one hundred percent (100%) of the debt due and one hundred and ten percent (110%) of the adjusted equity less insurance cover, upon which payment the SPDs will transfer the unit to Indian Railways/ its nominee and Indian Railways/ its nominee shall continue to supply power to MPPMCL by the terms of the MPPMCL PPA.

OR

- ii. retain the unit and elect not to receive termination compensation. Indian Railways would be liable to pay the SPD damages, computed at a rate of applicable tariff for the energy quantum equivalent to the minimum supply obligation for six (6) months, or balance PPA period, whichever is less.

- iii. Upon receipt of the damages, the Indian Railways PPAs will terminate, SPDs will be permitted to sell electricity to any third party.

75. The Commission observes that Clause 5.6 of the Solar Bidding Guidelines stipulates as under:

*“5.6. EVENT OF DEFAULT AND THE CONSEQUENCES THEREOF*

*While detailed provisions about the event of default of the concerned parties and its resulting consequences shall be detailed in the SBDs, this clause lays down the broad principles of contractually dealing with the default of the Solar Power Generator and the Procurers (excluding the Intermediary Procurer).*

*5.6.1. Generator Event of Default and the consequences thereof:*

*a) In the event the Solar Power Generator is unable to commission the plant within the stipulated period, or fails to supply power in terms of the PPA, or assigns or novates any of its rights or obligations contrary to the terms of the PPA, or repudiates the PPA, or effectuates a change in control or shareholding of its promoters in breach of the provisions of the PPA, or commits any other acts or omissions as laid down in the PPA and is also unable to cure any of the aforesaid within the cure period, as may be provided in the PPA, the Solar Power Generator shall be construed to be in default.*

*b) Upon being in default, the Solar Power Generator shall be liable to pay to the Procurer, damages, as provided in these Guidelines in Clause 14.3 for failure to commission within stipulated time and Clause 5.2.1(a) for failure to supply power in terms of the PPA. For other cases, pay to the Procurer, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity. The Procurer shall have the right to recover the said damages by way of forfeiture of bank guarantee, if any, without prejudice to resorting to any other legal course or remedy.*

*c) In addition to the levy of damages as aforesaid, in the event of a default by the Solar Power Generator, the lenders shall be entitled to exercise their rights of substitution, by the substitution agreement provided in the PPA and concurrence with the Procurers. However, in the event the lenders are unable to substitute the defaulting Solar Power Generator within the stipulated period, the Procurer may terminate the PPA and acquire the Project assets for an amount equivalent to 90% of the debt due, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.*

*5.6.2. Procurer Event of Default and the consequences thereof:*

*a) If the Procurer is in default on account of reasons including inter alia failure to pay the monthly and/or supplementary bills within the stipulated period or repudiation of the PPA, the defaulting Procurer shall, subject to the prior consent of the Solar Power Generator, novate its part of the PPA to any third party, including its Affiliates within the stipulated period.*

b) In the event the aforesaid novation is not acceptable to the Solar Power Generator, or if no offer of novation is made by the defaulting Procurer within the stipulated period, then the Solar Power Generator may terminate the PPA and at its discretion, require the defaulting Procurer to either (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 110% (one hundred and ten per cent) of the adjusted equity as defined below, less Insurance Cover, if any, or, (ii) pay to the Solar Power Generator, damages, equivalent to 6 (six) months, or balance PPA period, whichever is less, of charges for its contracted capacity, with the Project assets being retained by the Solar Power Generator.

c) In the event of termination of PPA, any damages or charges payable to the STU/CTU, for the connectivity of the plant, shall be borne by the Procurer.

d) Adjusted Equity means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the "Reference Date"), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring between the first day of the month of Appointed Date (the date of achievement of Financial Closure) and the Reference Date;

i. On or before Commercial Operation Date (COD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and Reference Date;

ii. An amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the "Base Adjusted Equity");

iii. After COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.333% (zero point three three three percent) thereof at the commencement of each month following the COD [reduction of 1% (one percent) per quarter of an year] and the amount so arrived at shall be revised to the extent of variation in WPI occurring between the COD and the Reference Date; For the avoidance of doubt, the Adjusted Equity shall, in the event of termination, be computed as on the Reference Date immediately preceding the Transfer Date;

provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the PPA period is extended, but the revision on account of WPI shall continue to be made.

e) Debt Due means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date

i. The principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the 'Principal') but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;

*ii. All accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause 5.6.2(e)(i) above until the Transfer Date but excluding: (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Utility Default, and (iv) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost.*

*Provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed not to be Debt Due even if no such conversion has taken place and the principal thereof shall be dealt with as if such conversion had been undertaken.*

*Provided further that the Debt Due, on or after COD, shall in no case exceed 80% (eighty percent) of the Total Project Cost.”*

76. From the above, it is observed that the Solar Bidding Guidelines stipulate that on the occurrence of a SPD event of default, including failure to commission the unit, failure to supply power in terms of the PPAs, assignment or novation of any of its rights and obligations contrary to the terms of the PPAs, repudiation of the PPAs, or effectuating a change in control or shareholding of its promoters in breach of the provisions of the PPAs, and its failure to cure any of these events within the prescribed cure period, the SPDs will be liable to pay damages (as detailed out in Clause 14.3(i) or Clause 5.2.1(a) of the Guidelines, as the case may be) to the procurer equivalent to six (6) months, or balance PPA period, whichever is less, of charges for its contracted capacity. Further, the damages payable can be recovered by the procurer by way of forfeiture of the bank guarantee. Additionally, in the event the lenders are unable to substitute the defaulting SPD within the stipulated period, the Procurer may terminate the PPA and acquire the project assets for an amount equivalent to 90% of the debt due, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.



77. It is further observed that the Solar Bidding Guidelines stipulate that upon the occurrence of a procurer event of default, including non-payment of the monthly and/or supplementary bills within the stipulated period, or repudiation of the PPA, the defaulting procurer shall, subject to prior consent of the SPDs, novate its part of the power purchase agreement to any third party, including its affiliates within the stipulated period.
78. The Commission observes that the deviations sought on (i) Termination consequences for SPDs default; (ii) Termination Consequences for MPPMCL's default under MPPMCL PPAs; and (iii) Termination Consequences for an Indian Railways event of default under Indian Railways PPAs as detailed above are nothing but an attempt at further detailing of the consequences of default and termination, especially when two procurers are involved. As such, the Commission allows the deviation sought in this context.

(vi) **Event of default on account of SPD's failure to supply energy as per PPA**

79. The Petitioners have submitted that the Solar Bidding Guidelines do not provide the trigger event upon which a failure to supply power under the PPA would amount to an SPD event of default. Such trigger event could be an SPD's failure to comply with the minimum supply obligation for a certain number of consecutive contract years during the term of PPA or a certain number of contract years within the term of PPA. They have thus proposed that the bid documents for this Project shall have a provision that if the SPDs fail to supply energy up to its yearly minimum supply obligation (as set out in detail in the PPAs), then the SPDs shall be liable for payment of damages (as set out in detail in the PPAs).
80. The Petitioners have submitted that it is proposed that in the event the SPDs fail to supply energy up to its yearly minimum supply obligation for a continuous period of three (3) contract years, then the Procurers will have the option to (a) treat such failure of the SPDs as

an SPD event of default and terminate the PPAs; or (b) reduce the SPD's yearly minimum supply obligation as prescribed under the PPA (upon payment of lump-sum damages by the SPD as provided as per the terms of the PPAs). However, if the SPDs and the Procurers fail to agree on a reduced minimum supply obligation or if the SPD does not pay the lump sum damages, then the Procurers will also have the option to treat such failure as an SPD event of default.

81. The Petitioners have proposed to treat the SPD's inability to meet fifty percent (50%) of its minimum supply obligation in the first operational year (as set out in detail in the PPAs), for reasons solely attributable to the SPD, as an SPD event of default. The Petitioners have submitted that the aforementioned arrangement will give the parties an option to avoid termination of the PPA and continue with the Project which may be economically beneficial to the stakeholders involved with the Project. Also, termination of the PPA could have an adverse impact (at least for a short term period) on the RPO fulfilment of the Procurers.

82. Clause 5.6.1 of the Solar Bidding Guidelines stipulates as under:

*“5.6.1. Generator Event of Default and the consequences thereof:*

*a) In the event the Solar Power Generator is unable to commission the plant within the stipulated time period, or fails to supply power in terms of the PPA, or assigns or novates any of its rights or obligations contrary to the terms of the PPA, or repudiates the PPA, or effectuates a change in control or shareholding of its promoters in breach of the provisions of the PPA, or commits any other acts or omissions as laid down in the PPA and is also unable to cure any of the aforesaid within the cure period, as may be provided in the PPA, the Solar Power Generator shall be construed to be in default.*

*b) Upon being in default, the Solar Power Generator shall be liable to pay to the Procurer, damages, as provided in these Guidelines in Clause 14.3 for failure to commission within stipulated time and Clause 5.2.1(a) for failure to supply power in terms of the PPA. For other cases, pay to the Procurer, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity. The Procurer shall have the right*

*to recover the said damages by way of forfeiture of bank guarantee, if any, without prejudice to resorting to any other legal course or remedy.*

*c) In addition to the levy of damages as aforesaid, in the event of a default by the Solar Power Generator, the lenders shall be entitled to exercise their rights of substitution, in accordance with the substitution agreement provided in the PPA and in concurrence with the Procurers. However, in the event the lenders are unable to substitute the defaulting Solar Power Generator within the stipulated period, the Procurer may terminate the PPA and acquire the Project assets for an amount equivalent to 90% of the debt due, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets”.*

83. Clause 5.2.1(a) of the Solar Bidding Guidelines reads as under:

*“5.2.1. Procurement in Power Terms (MW):*

*In case of procurement in power (MW) terms, the range of Capacity Utilisation Factor (CUF) will be indicated in the bidding documents. Calculation of CUF will be on yearly basis. In case the project generates and supplies energy less than the energy corresponding to the minimum CUF, the Solar Power Generator will be liable to pay to the Procurer, penalty for the shortfall in availability below such contracted CUF level. The amount of such penalty will be in accordance with the terms of the PPA, which shall ensure that the Procurer is offset for all potential costs associated with low generation and supply of power under the PPA, subject to a minimum of 25% (twenty-five per cent) of the cost of this shortfall in energy terms, calculated at PPA tariff.”*

84. From the above, it is observed that the Solar Bidding Guidelines (as amended on 22.10.2019), provide that the SPD's failure to supply power as per the PPAs amounts to an SPD event of default and the SPD is also liable to pay damages to the procurer as stipulated in Clause 5.2.1(a). Clause 5.2.1(a) provides that if the SPD is unable to generate and supply energy equivalent of the contracted capacity then the SPDs shall pay a penalty for such shortfall as per the terms of the PPAs, subject to a minimum penalty of twenty-five percent (25%) of the cost of such shortfall at PPA tariff. However, the Petitioners have submitted that the Solar Bidding Guidelines do not provide the trigger event upon which a failure to supply power under the PPA would amount to an SPD event of default. Therefore, the Petitioners have

proposed to incorporate a provision that if the SPDs fail to supply energy up to their yearly minimum supply obligation, the SPDs shall be liable for payment of damages. Further, in the event the SPDs fail to supply energy up to their yearly minimum supply obligation for a continuous period of three (3) contract years, then the Procurers will have the option to:

- (a) treat such failure of the SPD as an SPD event of default and terminate the PPA;
- or
- (b) reduce the SPD's yearly minimum supply obligation upon payment of lump-sum damages.

85. In addition, the Petitioners have proposed to treat the SPD's inability to meet fifty percent (50%) of its minimum supply obligation in the first operational year, for reasons solely attributable to the SPD, as an SPD event of default.

86. The Commission observes that the intent of the proposed changes in connection with the termination consequences proposed by the Petitioners, is to give the parties an option to avoid termination of the PPAs and continue with the Project which may be economically beneficial to the stakeholders involved with the Project. Also, termination of the PPA might have an adverse impact (at least for a short term period) on the RPO fulfilment of the Procurers. The Commission acknowledges the intent and allows the deviation sought in this context.

***(vii) Applicability of bid responsiveness conditions to affiliates of the bidder***

87. The Petitioners have submitted that Clause 7.2.2(a)(ii) of the Solar Bidding Guidelines allows a bidder to rely upon the net worth of its affiliates to meet the financial qualification criteria, as prescribed in the RfP. If the bidder chooses to rely upon the net worth of its affiliate then such affiliate must undertake to contribute the required equity funding and submit the performance bank guarantees, as required under the RfP, in case the bidder fails to do so.

88. The Petitioners have submitted that Clause 7.1 of the Solar Bidding Guidelines sets out various conditions about bid responsiveness and that a plain reading of Clause 7.1 of the Solar Bidding Guidelines indicates that the conditions of responsiveness apply to all the affiliates of the bidder, including those whose net worth has not been considered towards meeting the financial qualification criteria by the bidder. The Petitioners have submitted that based on a holistic reading of Clause 7.1 and Clause 7.2.2(a)(ii) of the Solar Bidding Guidelines, these conditions should only apply to affiliates whose net worth is being relied upon by the bidder for financial qualification.
89. The Petitioners have submitted that strict reading of Clause 7.1 of the Solar Bidding Guidelines to include all affiliates of the bidder will lead to an anomalous situation where the bid of those bidders who are not relying on the affiliate's experience at all will be treated as non-responsive if any of their affiliates are in breach of the above-mentioned conditions. According to the Petitioners, the intention behind including these conditions in the Solar Bidding Guidelines is to ensure that the project developers are financially stable and are not parties to any major litigation which would compromise their ability to develop the project.
90. The Petitioners have submitted that the above intention would be fulfilled as long as the entities which will be directly involved in the project development, i.e., the qualified bidder (who has qualified the technical and financial criterion specified by the Procurers as per the terms of the RfPs and is eligible to participate in the reverse auction process) and its affiliate which has demonstrated its net worth for the Bid, are not in breach of the bid responsiveness conditions as prescribed in Clause 7.1 of the Solar Bidding Guidelines.

91. The Petitioners have submitted that adopting a stricter view could result in limiting the pool of bidders, who may be otherwise qualified and thereby adversely impact the overall competitiveness of the bid process itself.

92. The Petitioners have requested to allow the applicability of the above-stated bid responsiveness conditions to be limited to the bidders and only those affiliates of the bidders whose net worth has been relied upon by such bidders to meet the financial qualification criteria under the RFP.

93. Clause 7.1 of the Guidelines provides as under:

*“7. RFS DOCUMENT*

*[...]*

*7.1. Bid Responsiveness*

*The bid shall be evaluated only if it is responsive and satisfies conditions including inter-alia ~*

*- bidder or any of its Affiliates is not a willful defaulter to any lender*

*- there is no major litigation pending or threatened against the bidder or any of its Affiliates which are of a nature that could cast a doubt on the ability or the suitability of the bidder to undertake the Project.”*

94. Clause 7.2.2 of the Guidelines provides as under:

*“7. RFS DOCUMENT*

*[...]*

*7.2. Qualification requirements to be met by the bidders:*

*[...]*

*7.2.2. Financial Criteria:*

*a) Net-worth:*

*i. The Procurer shall specify financial criteria in the form of net-worth as a part of the qualification requirement. The net-worth requirement should be at least 20% (twenty per cent) of the CERC Benchmark Capital Cost, if any, for solar PV power projects for the year in which bids are invited or the estimated project cost.*

*ii. The net worth to be considered for the above purpose will be the cumulative net-worth of the bidding company or consortium together with the net worth of those Affiliates of the bidder(s) that undertake to contribute the required equity funding and performance bank guarantees in case the bidder(s) fail to do so in accordance with the RfS.*

*iii. It is clarified that the net worth to be considered for this clause will be the total net worth as calculated in accordance with the Companies Act.”*

95. From the above, it is observed that Clause 7.2.2.(a)(ii) of the Solar bidding Guidelines stipulates that the net worth to be considered will be the cumulative net-worth of the bidding company or consortium together with the net worth of those Affiliates of the bidder(s) that undertake to contribute the required equity funding and performance bank guarantees in case the bidder(s) fail to do so. The Petitioners have proposed that in line with the spirit of Clause 7.2.2.(a)(ii) of the Solar Bidding Guidelines, the applicability of the bid responsiveness condition (vide Clause 7.1) should also be limited to the bidders and only those affiliates of the bidders whose net worth has been relied upon by such bidders to meet the financial qualification criteria under the RFP.
96. We observe that the Solar Bidding Guidelines stipulate that the bid shall be evaluated only if it is responsive and satisfies the conditions including inter-alia, that the bidder or any of its Affiliates is not a wilful defaulter to any lender and there is no major litigation pending or threatened against the bidder or any of its Affiliates which are of a nature that could cast a doubt on the ability or the suitability of the bidder to undertake the Project. The Petitioners have proposed that inclusion of all affiliates of the bidder will lead to an anomalous situation where the bid of those bidders who are not relying on the affiliate’s experience at all will be treated as non-responsive if any of their affiliates are in breach of the above-mentioned conditions.
97. The Commission is of the view that the objective behind Clause 7.1 of the Solar Bidding Guidelines seems to ensure that the bidders do not get into litigation because of any of their affiliates, thereby putting the sustainability of the projects into question. There could be cross-holdings between affiliates, corporate guarantees/ personal guarantees between ‘related

parties' and consequently the conduct of affiliates though not directly contributing to the networth of the bidder, might jeopardise the sustainability of the project because of such cross-holdings/ stakes etc. In the light of above, the Commission does not consider it appropriate to allow relaxation of Guideline 7.1 of the Solar Bidding Guidelines. Accordingly, the deviation sought in this context is not allowed.

(viii) **Bidder's Affiliate**

98. The Petitioners have submitted that as per Clause 7.2.2 of the Solar Bidding Guidelines, bidders are allowed to rely on the net-worth of their affiliate. However, as per Clause 10.1 of the Solar Bidding Guidelines, the power purchase agreement is to be executed with the successful bidder/ project company or a special purpose vehicle (SPV) formed by the successful bidder. In order to enhance competition and resultantly to facilitate RUMSL to discover an attractive tariff, the Petitioners have proposed that apart from the successful bidder/ project company or an SPV formed by the successful bidder, the successful bidder's affiliate(s), whose net worth has been relied upon for meeting the qualification criteria, as well as an SPV formed by such affiliate, should also be allowed to execute the PPA and other project contracts.

99. Clause 7.2.2 of the Solar Bidding Guidelines stipulates as under:

*"7. RFS DOCUMENT*

*[...]*

*7.2. Qualification requirements to be met by the bidders:*

*[...]*

*7.2.2. Financial Criteria:*

*a) Net-worth:*

*i. The Procurer shall specify financial criteria in the form of net-worth as a part of the qualification requirement. The net-worth requirement should be at least 20% (twenty per cent) of the CERC Benchmark Capital Cost, if any, for solar PV power projects for the year in which bids are invited or the estimated project cost.*



*ii. The net worth to be considered for the above purpose will be the cumulative net-worth of the bidding company or consortium together with the net worth of those Affiliates of the bidder(s) that undertake to contribute the required equity funding and performance bank guarantees in case the bidder(s) fail to do so in accordance with the RfS.*

*iii. It is clarified that the net worth to be considered for this clause will be the total net worth as calculated in accordance with the Companies Act.”*

100. Clause 10.1 of the Solar Bidding Guidelines stipulates as under:

*“10.1 The PPA shall be signed with the successful bidder/project company or an SPV formed by the successful bidder.”*

101. Clause 13 of the Solar Bidding Guidelines as amended on 25.09.2020 stipulates as under:

*“13 MINIMUM PAID UP SHARE CAPITAL TO BE HELD BY THE PROMOTER*

*13.1. The successful bidder, if being a single company, shall ensure that its shareholding in the SPV/project company executing the PPA shall not fall below 51% (fifty-one per cent) at any time prior to 1 (one) year from the COD (as defined in Clause 15), except with the prior approval of the Procurer. In the event the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the PPA, shall not fall below 51% at any time prior to 1 (one) year from the COD, except with the prior approval of the Procurer. However, in case the successful bidder shall be itself executing the PPA, then it shall ensure that its promoters shall not cede control till 1 (one) year from the COD, except with the prior approval of the Procurer. In this case it shall also be essential that the successful bidder shall provide the information about its promoters and their shareholding to the Procurer before signing of the PPA with Procurer.*

*13.2. Any change in the shareholding after the expiry of 1 (one) year from the COD can be undertaken under intimation to Procurer.*

*13.3. In the event the Solar Power Generator is in default to the lender(s), lenders shall be entitled to undertake “Substitution of Promoter” in concurrence with the Procurers.”*

102. From the harmonious reading of Clauses 7.2.2, 10.1 and 13 of the Solar Bidding Guidelines, it is observed that the bidders are allowed to leverage on the net worth of their affiliates, but in so far as PPA is concerned there is a mandatory requirement for the successful bidder/project company or an SPV formed by the successful bidder to sign the PPA. At the same time, there is an additional restriction in the form of the requirement for the bidders to ensure that the combined shareholding of the consortium members in the SPV/project company

executing the PPA does not fall below fifty-one per cent (51%) at any time prior to one (1) year from the COD, except with the prior approval of the Procurer(s).

103. The Commission is of the view that the objective behind the aforesaid clauses of the Solar Bidding Guidelines seems to ensure that the bidders with serious intentions alone should participate in the bidding process and commit to sustain the project for certain period of time. The Commission notes that the stipulations provided under the Solar Bidding Guidelines are adequate and there is neither necessity nor it is appropriate to dilute/relax the provisions. Accordingly, the deviation sought in this context is not allowed.

*(ix) **Definition of 'control:***

104. The Petitioners have submitted that Footnote 1 of the Solar Bidding Guidelines defines the term 'control' as 'the ownership, directly or indirectly, of more than fifty percent (50%) of the voting shares of such Company or the right to appoint majority directors'. However, this definition would need to be widened to account for entities other than companies. The Solar Bidding Guidelines allow a company bidding for a solar project to rely on the experience of its Affiliate.

105. The Petitioners have submitted that the current definition of 'control' as provided in the Solar Bidding Guidelines restricts the bidders to rely on only those Affiliates which are incorporated in the form of a company. As per their submission, it is proposed that in the current project structure, the bidders should be allowed to rely on their Affiliates which may be incorporated as any recognized business form such as trusts, limited liability partnerships, infrastructure investment trust, etc. Hence, the Petitioners have submitted that the term 'control' should also be defined in the context of a person which includes companies but is

not limited to it. Following the above, the Petitioners have submitted that the definition of ‘control’ to be incorporated in the PPA and RfP should be:

*“with respect to any Person means the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such Person or the right to appoint majority directors or the power to direct the management and policies of such Person by operation of law, contract or otherwise.”*

106. We observe that Footnotes 1 and 2 of the Solar Bidding Guidelines mention that:

*“Affiliate in relation to a Company shall mean a person who controls, is controlled by, or is under the common control with such Company. The expression ‘control’ shall mean the ownership, directly or indirectly, of more than 50% of the voting shares of such Company or right to appoint majority Directors.”*

*“The expression ‘control’ shall mean the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such Company or right to appoint majority Directors.”*

107. From the above, we observe that Solar bidding Guidelines stipulate that Affiliate of a Company shall mean a person who controls, is controlled by or is under the common control with such Company. The expression ‘control’ shall mean *the ownership, directly or indirectly, of more than 50% of the voting shares of such Company or right to appoint majority Directors*. The Petitioners have proposed to add the following to the definition of the Affiliates: *“or the power to direct the management and policies of such Person by operation of law, contract or otherwise.”* The Petitioners have submitted that in the current project structure, the bidders will be allowed to rely on their Affiliates which may be incorporated as any recognized business forms such as trusts, limited liability partnerships, infrastructure investment trust, etc.

108. We are of the view that proposal given by the Petitioners will dilute the definition of ‘Control’ as conceived in the Solar Bidding Guidelines. We see no strong justification to

dilute the basic structure of the Solar Bidding Guidelines and as such the deviation sought in this context is not allowed.

(x) **Time period for holding minimum paid up share capital**

109. We observe that the Petitioners vide affidavit dated 18.03.2021 have submitted that the deviation about 'Time period for holding minimum paid-up share capital' is no longer required. The Solar Bidding Guidelines, as amended on 25.09.2020 have reduced the lock-in period from three (3) years to one (1) year and the Petitioners undertake that they will comply with the latest provision under the Guideline 13 of the Solar Bidding Guidelines, as amended. Hence, the deviation is disposed of accordingly.

(xi) **Controlling shareholding of a listed company**

110. The Petitioners have submitted that Clause 13 of the Solar Bidding Guidelines mandates that the successful bidder should ensure that its promoters do not cede control of the successful bidder until the expiry of a period of one (1) year after the commissioning of the unit unless permitted otherwise by the procurer. Further, the Solar Bidding Guidelines do not contemplate the applicability of this provision to the listed companies. In a listed company, the shareholding is spread amongst different types of shareholders, such as promoters, financial institutions, and small and individual investors. Thus, the shares of a listed company are freely traded on market and it is not possible to restrict the sale and purchase of such shares, making it impractical for a listed company to ensure that its promoters/ shareholders do not cede control for a specified period.

111. The Petitioners have further clarified that in case the successful bidder, being a listed company, chooses to incorporate an SPV to execute the project agreements, then the

successful bidder (i.e., the listed company) will not be exempted from the requirement of maintaining its control in such SPV until the expiry of the lock-in period by Clause 13 of the Solar Bidding Guidelines.

112. The Petitioners have thus requested to permit a listed company to be exempted from requiring their shareholders/ promoters to maintain control for the lock-in period.

113. Clause 13 of the Solar Bidding Guidelines as amended vide notification dated 25.09.2020 stipulates as under:

*“13 MINIMUM PAID UP SHARE CAPITAL TO BE HELD BY THE PROMOTER*

*13.1. The successful bidder, if being a single company, shall ensure that its shareholding in the SPV/project company executing the PPA shall not fall below 51% (fifty-one per cent) at any time prior to 1 (one) year from the COD (as defined in Clause 15), except with the prior approval of the Procurer. In the event the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the PPA, shall not fall below 51% at any time prior to 1 (one) year from the COD, except with the prior approval of the Procurer. However, in case the successful bidder shall be itself executing the PPA, then it shall ensure that its promoters shall not cede control till 1 (one) year from the COD, except with the prior approval of the Procurer. In this case it shall also be essential that the successful bidder shall provide the information about its promoters and their shareholding to the Procurer before signing of the PPA with Procurer.*

*13.2. Any change in the shareholding after the expiry of 1 (one) year from the COD can be undertaken under intimation to Procurer.*

*13.3. In the event the Solar Power Generator is in default to the lender(s), lenders shall be entitled to undertake “Substitution of Promoter” in concurrence with the Procurers.”*

114. From the above, we observe that amendment dated 25.09.2020 to the Solar Bidding Guidelines, stipulates that the successful bidder has to ensure that its shareholding in the SPV/project company executing the PPA shall not fall below fifty-one per cent (51%) at any time prior to one (1) year from the COD, except with the prior approval of the procurer. However, in case the successful bidder itself executes the PPA, then it shall ensure that its promoters shall not cede control till 1 (one) year from the COD, except with the prior

approval of the Procurer. It is observed that in case of the successful bidder itself executing the PPA, the requirement is of ensuring promoters 'control' unlike the requirement of ensuring minimum 51% of shareholding in case of SPV/project company. Further, the Solar Bidding Guidelines contain an 'enabling' clause which empowers the Petitioners to allow the successful bidder to change the shareholding pattern prior to one year from the COD with the prior approval of the procurer. Therefore, we are of the view that flexibility already exists in the Solar Bidding Guidelines and as such the deviation sought in this context is not required.

***(xii) Extension of commissioning timelines***

115. The Petitioners have submitted that the required evacuation infrastructure for the Projects is not likely to be completed within fifteen (15) months. They anticipate that it would require at least nineteen (19) months' period from the date of execution of the PPAs to complete the evacuation facility. As such, the Petitioners have proposed that the prescribed commissioning timelines may be extended to nineteen (19) months to ensure that the synchronization of the unit with the evacuation infrastructure is completed along with the commissioning of the unit.
116. Clause 14.3 of the Solar Bidding Guidelines as amended in 4th Amendment dated 22.10.2019 provides as under:

*“(i). The projects shall be commissioned, within a period of 15 (fifteen) months from the date of execution of the PPA, for projects specified to be set up in Solar park, and within a period of 18 (eighteen) months from the date of execution of the PPA, for projects not specified to be set up in Solar park. However, if for some reason, the scheduled commissioning period needs to be kept smaller than that provided in these Guidelines, the Procurer can do the same. Subject to clause no. 5.4 of these Guidelines, delay in commissioning, beyond the Scheduled Commissioning Period shall involve penalties, on the Solar Power Generator, as detailed below:*

*a) For Delay in commissioning upto 6 (six) months from SCD, encashment of Performance Bank Guarantee (PBG) on per day basis and proportionate to the capacity not commissioned.*

*b) For Delay in commissioning beyond six months from SCD, Generator Event of Default, as per clause 5.6.1 of these Guidelines, shall be considered to have occurred and the contracted capacity shall stand reduced to the project capacity commissioned upto SCD + 6 (six) months. The PPA for the balance capacity not commissioned shall be terminated.*

*(ii). In case of site specified by the Procurer, any delay in handing over land to the Solar Power Generator in accordance with the given timelines, shall entail a corresponding extension in financial closure and scheduled commissioning date, provided that the maximum extension shall be limited to a period of 1 year commencing from the expiry of date of handing over of balance 10% of land in terms of Clause 3.2.1 (a).*

*(iii). It is presumed that in terms of Clause 10.4 of these Guidelines, the tariff will be adopted by the Appropriate Commission within 60 days of such submission. However, notwithstanding anything contained in these Guidelines, any delay in adoption of tariff by the Appropriate Commission, beyond 60 (sixty) days, shall entail a corresponding extension in scheduled commissioning date.”*

117. From the above, we observe that the Solar Bidding Guidelines, as amended on 22.10.2019, provide that projects which are being developed within a solar park must be commissioned within fifteen (15) months from the date of signing of the PPAs. However, the Petitioners have submitted that they anticipate that evacuation infrastructure for the Projects is not likely to be completed within fifteen (15) months. The SPPDs would require at least nineteen (19) months from the date of execution of the PPAs to complete the evacuation facility. The Petitioners have proposed that the prescribed commissioning timelines may be extended to nineteen (19) months to ensure that the synchronization of the unit with the evacuation infrastructure is completed along with the commissioning of the unit. As the request for time extension is based on the Petitioners' own assessment and is meant to avoid uncertainty in project execution, the Commission does not have any objection and the deviation is allowed.

*(xiii) RUMSL's Additional Conditions Subsequent*

118. The Petitioners have submitted that Clause 3.2.2 of the Solar Bidding Guidelines stipulates that in case the project site is located within a solar park, the solar power park developer must fulfill certain conditions, such as identification of land, obtaining environmental clearance, forest clearance, adoption of tariff discovered through the bid process, etc. within specified timelines. To increase bid response and competition and to achieve lower bid tariff, it is important to reduce the risk of unforeseen delays as may be perceived by bidders. While the Solar Bidding Guidelines specify the timelines for certain conditions, such as handing over of land, and allowing day to day extension in scheduled commissioning date for any delay in fulfilling the conditions subsequent, it is proposed to provide certain additional conditions linked to critical milestones in the development of the internal evacuation infrastructure to help reduce the perceived risk of delay in availability of transmission infrastructure for the Project.
119. The Petitioners have proposed that the following conditions subsequent to be achieved by RUMSL may be allowed to be incorporated in the PPAs, failing which the SPDs would be entitled to a day-to-day extension in the scheduled commissioning date:
- a) RUMSL will obtain Stage-2 Connectivity required for the Solar Parks in accordance with the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 within fifteen (15) days of signing of the PPAs;
  - b) RUMSL will obtain Long Term Access required for the Solar Parks in accordance with the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 within ninety (90) days of signing of the PPAs;



- c) RUMSL will obtain the requisite approval under Section 164 of the Act, and any other clearance such as the forest clearance required for setting up overhead transmission lines for evacuation of power from the Project, within ninety (90) days of signing of the PPAs;
- d) RUMSL will give the ‘notice to proceed’ to the contractor(s) constructing the internal evacuation infrastructure and release the initial mobilization amount to the contractor, to the extent such a payment is required to be released under the contract entered into by RUMSL for the construction of the internal evacuation infrastructure, within one hundred and five (105) days of the signing of the PPAs;
- e) RUMSL will ensure: (i) erection of at least fifty percent (50%) of the transmission towers required for laying the internal transmission lines, within eight (8) months of the signing of the PPAs; and (ii) commence slinging of the internal transmission lines within fourteen (14) months of the signing of the PPAs.

120. Clause 3.2.2 of the Solar Bidding Guidelines stipulates as under:

*“3.2.2. Project site specified by the Procurer in a Solar Park: The Procurer may choose to locate the Project in a concentrated zone characterized with proper infrastructure and access to amenities (‘Solar Park’) and the same may be specified by the Procurer in the bidding documents. The Solar Park shall be developed as per the “Guidelines for Development of Solar Parks” issued by MNRE as amended from time to time. Notwithstanding this, to ensure timely commencement of supply of electricity, the Procurer shall ensure that various Project preparatory activities as indicated above in clause 3.2.1. (a) to (e), have been initiated and completed by the concerned SPPD as per the timelines mentioned therein. In addition to above, the responsibilities of the Solar Power Park Developer shall flow from the “Guidelines for Development of Solar Parks”, developed by MNRE and Implementation Support Agreement, which defines the relationship between the Solar Power Park Developer and the Solar Power Generator.”*

121. We observe that the proposal of the Petitioners is in the nature of detailing of the timelines and is aimed at reducing the perceived risk of delay in availability of transmission infrastructure for the Project. Hence, the deviation sought in this context is allowed.

**(xiv) Inclusion of "Epidemic, Pandemic, Quarantine, Lockdown or similar action ordered by any government authority" as Force Majeure Events**

122. The Petitioners have submitted that the definition of force majeure under the Solar Bidding Guidelines does not specifically include any force majeure event about a widespread occurrence of a disease affecting the construction and/or operation of the solar project.
123. The Petitioners have submitted that “pandemic and epidemic” should be specifically added as one of the Natural Force Majeure Events and “lockdown, quarantine or similar action ordered by any government authority, (including under the occurrence of any force majeure event) if consequences thereof cannot be dealt with as a change in law under the project agreements” as one of the Non-Natural Force Majeure Events to safeguard the interests of the contracting parties to tackle with the adverse effects of the current situation and similar other situations that may arise in the future.
124. Clause 5.4.2.1 of the Solar Bidding Guidelines, as amended vide notification dated 22.10.2019, defines force majeure and categorizes it into “Natural Force Majeure Events” and “Non-Natural Force Majeure Events” as under:

*5.4.1 Definition of Force Majeure:*

*A 'Force Majeure' (FM) would mean one or more of the following acts, events or circumstances or a combination of acts, events or circumstances or the consequence(s) thereof, that wholly or partly prevents or unavoidably delays the performance by the Party (the Affected Party) of its obligations under the relevant Power Purchase Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices.*

*5.4.2. Categorisation of Force Majeure Events:*

*5.4.2.1. Natural Force Majeure Event*

*a) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado if it is declared / notified by the competent state / central authority / agency (as applicable), or verified to the satisfaction of Procurer;*

*b) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party;*

*c) the discovery of geological conditions, toxic contamination or archaeological remains on the Project land that could not reasonably have been expected to be discovered through an inspection of the Project land;*

*or d) any event or circumstances of a nature analogous to any of the foregoing.*

#### *5.4.2.2. Non-Natural Force Majeure Event*

*a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action;*

*b) nation/state-wide strike, lockout, boycotts or other industrial disputes which are not directly and solely attributable to the actions of the Affected Party, but does not include strike or labour unrest limited to the Affected Party or its contractors;*

*c) nationalisation or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the Generator, as a result of which the Generator or its shareholders are deprived (wholly or partly) of their rights or entitlements under the Power Purchase Agreement. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Procurer or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the Generator or the Generator related parties;*

*d) action of a Government Authority having Material Adverse Effect including but not limited to change in law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Clause 5.7 of these Guidelines; any unlawful or unauthorised or without jurisdiction revocation of, or delay in, or refusal, or failure to renew or grant without valid cause, any Permits of the Generator or any of the clearance, licence, authorization to be obtained by the Contractors to perform their respective obligations under the relevant PPA and/or the Project Documents; provided that such delay, modification, denial, refusal or revocation did not result from the Generator's or any Contractors inability or failure to comply with any condition relating to grant, maintenance or renewal of such Permits or clearance, licence, authorization, as the case may be.*

*Clarification: The phrase “Change in Law” would include changes brought out through change in Law, Rules, Regulations or orders of competent authorities.”*

125. From the above, we observe that the definition of force majeure under the Solar Bidding Guidelines does not specifically include any force majeure event involving widespread occurrence of a disease affecting the construction and/or operation of the solar project. The Petitioners have proposed that “pandemic and epidemic” and “lockdown, quarantine or similar action ordered by any government authority” should be recognised as Force Majeure Events under relevant headings so as to safeguard the interests of the contracting parties. We are of the view that the intention behind the identification of events as ‘Force Majeure’ is to factor in the circumstances that are not within the reasonable control of the Affected Party. We observe that COVID 19 outbreak led to a lockdown situation in the entire industry and, therefore, the same could be identified as ‘Force Majeure’. However, we are of the view that the expression ‘pandemic’ or ‘epidemic’ without a qualification defining inability of the project developer to execute the project would be too open a position and needs to be restricted to ‘pandemic resulting in lockdown or similar action ordered by any government authority’. Accordingly, this deviation is allowed with limited scope with modification, namely, ‘pandemic resulting in lockdown or similar action ordered by any government authority’.

(xv) **Termination due to a Non-Natural Force Majeure Event**

126. The Petitioners have submitted that Clause 5.4.8.2(a) of the Solar Bidding Guidelines, as amended vide notification dated 22.10.2019, stipulates that upon the occurrence of a Non-Natural Force Majeure Event, the solar power generator will be entitled to terminate the power purchase agreement after the expiry of one hundred and eighty (180) days from the date of issuance of the notice for such force majeure event. Further, Clause 5.4.8.2(b)(i) of

the Solar Bidding Guidelines provides that, as a consequence of the aforesaid termination, the procurer will be obligated to take-over the unit assets by paying to the solar power generator an amount equivalent to one hundred percent (100%) debt due and one hundred and ten percent (110%) adjusted equity. As mentioned above, in case of an extended Non-Natural Force Majeure Event, SPDs have the sole right to terminate the PPAs, and in such a scenario the procurers are obligated to take over the projects and pay termination compensation to the SPDs.

127. The Petitioners have submitted that a period of one hundred and eighty (180) days, as prescribed under the Solar Bidding Guidelines, may not be sufficient for the SPDs to revive the projects to the extent possible before exercising its right to terminate for prolonged non-natural force majeure event. Therefore, the Petitioners have proposed that upon the occurrence of a Non-Natural Force Majeure Event, the SPDs should be entitled to terminate the project agreements after the expiry of three hundred and sixty-five (365) days from the date of issuance of the notice for such force majeure event and not one hundred and eighty (180) days, as prescribed under the Solar Bidding Guidelines.
128. Clauses 5.4.8.1 and 5.4.8.2 of the Solar Bidding Guidelines as per amended notification dated 22.10.2019 stipulates as under:-

*“5.4.8.1. Termination due to Natural Force Majeure Event*

*a) If, prior to the completion of the 180 (one hundred and eighty) Day period (or any extended period) for a Natural Force Majeure Event commencing from the date of issuance of the Force Majeure Notice, the Parties are of the reasonable view that a Natural Force Majeure Event is likely to continue beyond such 180 (one hundred and eighty) Day period or any extended period agreed in pursuance of Article 5.4.5 (Performance Excused); or that it is uneconomic or impractical to restore the affected Unit, then the Parties may mutually decide to terminate the PPA, and the termination shall take effect from the date on which such decision is taken.*

*b) Without prejudice to the provisions of Article 5.4.8.1(a) above, the Affected Party shall, after the expiry of the period of 180 (one hundred and eighty) Days or any other mutually extended period, be entitled to forthwith terminate the PPA in its sole discretion by issuing a notice to that effect.*

*c) On termination of the PPA pursuant to Article 5.4.8.1(b): (i) no Termination Compensation shall be payable to the generator. (ii) the Generator shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event.*

*5.4.8.2. Termination due to Non-Natural Force Majeure Event*

*a) Upon occurrence of a Non-Natural Force Majeure Event, the Generator shall, at its discretion, have the right to terminate the PPA forthwith after the completion of the period of 180 (one hundred and eighty) Days from the date of the Force Majeure Notice.*

*b) Notwithstanding anything in Article 5.4.6, on termination of the PPA pursuant to Article 5.4.8.2 (a):*

*(i) the Procurer shall pay to the Generator, 'Force Majeure Termination Compensation' equivalent to the amount of the Debt Due and the 110% (one hundred and ten per cent) of the Adjusted Equity, as defined in these Guidelines, and takeover the Project assets.*

*(ii) the Generator shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event.]”*

129. From the above, we observe that as per amendment dated 22.10.2019 to the Solar Bidding Guidelines, upon occurrence of a Non-Natural Force Majeure Event, the SPDs will have the right to terminate the PPAs forthwith after the completion of the period of one hundred and eighty (180) Days from the date of the Force Majeure Notice. The Petitioners have proposed that the SPDs should be entitled to terminate the project agreements after the expiry of three hundred and sixty-five (365) days from the date of issuance of the notice for such force majeure event and not one hundred and eighty (180) days. The intent behind the proposal is that the period of one hundred and eighty (180) days may not be sufficient for the SPDs to revive the projects. The deviation sought in this context is allowed.

(xvi) **Quantum and Mechanism for Change in Law Relief**

130. The Petitioners have submitted that Clause 5.7 of the Solar Bidding Guidelines provides that in case of a change in law event resulting in any adverse financial gain/loss, the solar power generator has to be placed in the same financial position as it would have been, had it not been for the occurrence of such event. The Solar Bidding Guidelines further provide that the Appropriate Commission will determine the quantum and mechanism for payment of compensation to the affected party.
131. The Petitioners have submitted that in the past while dealing with change in law claims made by the SPDs, the Commission as well as the other State Commissions have provided compensation in the form of either a one-time lump sum payment or payment through PPA tariff revision. However, in the past 2-3 years, there have been multiple change in law claims made against the procurers across the country due to the recent applicability of GST laws on the solar projects and the introduction of Safeguard Duty on the import of solar panels. While some of these claims have already been decided, many of them are yet to be determined by the electricity regulatory commissions. In addition to this, recently, the Central Government has proposed an increase in the tariff rate for basic custom duty on solar cells from nil to twenty percent (20%). However, the same has not been made effective yet and may result in a fresh change in law claims against the procurers in the future. In light of the foregoing, if for all these ‘change in law’ claims the procurers are required to compensate the solar power generators through a one-time lump sum payment, then it would hamper the financial health of the procurers and may even affect the overall financial viability of these entities.
132. The Petitioners have submitted that for the Projects, the change in law clause incorporates a provision to the effect that any compensation payable to an affected party due to a change in

law event would be granted through a revision in the PPA tariff. The revised PPA tariff would be applicable for the remaining term of the PPA, wherein the quantum of tariff revision would compensate for: (i) the amount equivalent to the additional expenses incurred due to the change in law event; and (ii) and carrying cost on the deferred recovery of such additional expenditure at a rate equivalent to the late payment surcharge as set out in the PPAs.

133. Clause 5.7 of the Solar Bidding Guidelines stipulates as under:

*“5.7. CHANGE IN LAW*

*5.7.1. In the event a Change in Law results in any adverse financial loss/ gain to the Solar Power Generator then, in order to ensure that the Solar Power Generator 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 Solar Power Generator/ 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 Appropriate Commission.*

*5.7.2. In these Guidelines, the term 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 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.”*

134. Clauses 2 and 6 of the Solar Bidding Guidelines stipulate as under:

*“2. SCOPE OF THE GUIDELINES*

*2.1. Applicability of Guidelines: 2.1.1. These Guidelines are being issued under the provisions of Section 63 of the Electricity Act, 2003 for long term procurement of electricity by the ‘Procurers’, from grid-connected Solar PV Power Projects (‘Projects’), having size of 5 MW and above, through competitive bidding.”*

*“6. BIDDING PROCESS*

*6.1. The Procurer shall call for the bids adopting a single stage bidding process to be conducted through Electronic mode (e-bidding). The Procurers may adopt e-reverse*



*auction if it so desires. E-procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used. In case of a Solar Park specific Project, intimation about the initiation of the bidding process shall be given by the Procurer to the SPPD. The SPPD has to engage actively in the bidding process by providing all the necessary land and infrastructure related details and making the same available in centralized data rooms accessible to bidders.”*

135. From the above, we observe that the Solar Bidding Guidelines are issued under the provisions of Section 63 of the Electricity Act, 2003 for long term procurement of electricity by the ‘Procurers’, from grid-connected Solar PV Power Projects through competitive bidding. The Petitioners shall call for the bids adopting a single-stage e-reverse auction bidding process. As per Solar Bidding Guidelines, in the event of a ‘Change in Law’ resulting in any adverse financial loss/ gain to the contracting parties, the contracting parties are entitled to compensation by the other party, 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 Appropriate Commission.
136. The Petitioners have proposed that a provision to the effect that any compensation payable to an affected party due to a change in law event would be granted through a revision in the PPA tariff may be allowed.
137. We are of the view that the tariff once determined through competitive bidding under section 63 of the Electricity Act, 2003 and adopted by the Commission cannot be reopened/ revised. If tariff is allowed to be revised, then the bidding process itself gets vitiated. Further, the Clause 5.7.1 of the Solar Bidding Guidelines regarding ‘Change in law’ requires that firstly, the quantum and mechanism of compensation payment has to be determined, and secondly the date from which the quantum and mechanism of compensation payment shall be effective, has to be declared. Therefore, the quantum and mechanism of compensation payment has to be in the form of a separate/ additional component. It may be the case of

lumpsum compensation or compensation based on annuity distributed over a period of time or any other method but cannot be in the form of a revised tariff. As such the deviation in this context is not allowed.

138. **Summary**

- i. **Payment Security Mechanism:** The Commission observes that the ‘letter of mandate’ issued directly to RBI, would provide the desired security of payment and serve as an adequate substitute for a letter of credit or a payment security fund to be maintained with a scheduled bank. Hence, this deviation is allowed.
- ii. **Notification of force majeure event:** The Commission observes that the intent of the deviation being sought is to give sufficient time to notify all the effects of force majeure. Hence, this deviation is allowed.
- iii. **Off-take Constraints & Grid Unavailability:** The Commission observes that the intent of the proposed changes in connection with generation compensation in the event of transmission infrastructure constraint is to provide greater certainty to investors. Hence, this deviation is allowed.
- iv. **Events of default and termination consequences:** The Commission observes that the deviations are an attempt at further detailing of the consequences of default and termination, especially when two procurers are involved. Hence, this deviation is allowed.
- v. **Event of default on account of SPD’s failure to supply energy as per PPA:** The Commission observes that the intent of the proposed changes in connection with the termination consequences proposed by the Petitioners, is to give the parties an option to avoid termination of the PPAs and continue with the Project which may be economically beneficial to the stakeholders involved with the Project. Hence, this deviation is allowed.
- vi. **Applicability of bid responsiveness conditions to affiliates of the bidder:** The Commission is of the view that the objective behind Clause 7.1 of the Solar Bidding Guidelines seems to ensure that the bidders do not get into litigation because of any of their affiliates, thereby putting the sustainability of the projects into question. There could be cross-holdings between affiliates, corporate guarantees/ personal guarantees between ‘related parties’ and consequently the conduct of affiliates though not directly contributing to the networth of the bidder, might jeopardise the sustainability of the

project because of such cross-holdings/ stakes etc. In the light of above, the Commission does not consider it appropriate to allow relaxation of Guideline 7.1 of the Solar Bidding Guidelines. Accordingly, the deviation sought in this context is not allowed.

- vii. **Bidder's Affiliate:** The Commission observes that the stipulations provided under the Solar Bidding Guidelines are adequate and doesn't consider it appropriate to dilute/ relax the provisions. Accordingly, the deviation sought in this context is not allowed.
- viii. **Definition of 'control:** The Commission observe that there is no strong justification to dilute the basic structure of the Solar Bidding Guidelines. Accordingly, the deviation sought in this context is not allowed.
- ix. **Time period for holding minimum paid up share capital:** The Commission observes that the Solar Bidding Guidelines, as amended on 25.09.2020 have reduced the lock-in period from three (3) years to one (1) year and the Petitioners undertake that they will comply with the latest provision under the Guideline 13 of the Solar Bidding Guidelines, as amended. Hence, the deviation is disposed of accordingly.
- x. **Controlling shareholding of a listed company:** The Commission observes that in case of the successful bidder itself executing the PPA, the requirement is of ensuring promoters 'control' unlike the requirement of ensuring minimum 51% of shareholding in case of SPV/project company. Further, the Solar Bidding Guidelines contain an 'enabling' clause which empowers the Petitioners to allow the successful bidder to change the shareholding pattern prior to one year from the COD with the prior approval of the procurer. We are of the view that flexibility already exists in the Solar Bidding Guidelines. Accordingly, the deviation sought in this context is not allowed.
- xi. **Extension of commissioning timelines:** The Commission observes that as the time extension is based on the Petitioners' own assessment and is meant to avoid uncertainty in project execution, the Commission does not have any objection to agreeing to the same. Hence, this deviation is allowed.
- xii. **RUMSL's Additional Conditions Subsequent:** The Commission observes that the proposal of the Petitioners is in the nature of detailing of the timelines and is aimed at reducing the perceived risk of delay in availability of transmission infrastructure for the Project. Hence, this deviation is allowed.
- xiii. **Inclusion of "Epidemic, Pandemic, Quarantine, Lockdown or similar action ordered by any government authority" as Force Majeure Events:** The Commission observes that the expression 'pandemic' or 'epidemic' without a qualification defining inability of

the project developer to execute the project would be too open a position and needs to be restricted to 'pandemic resulting in lockdown or similar action ordered by any government authority'. Accordingly, this deviation is allowed with the modification, namely, 'pandemic resulting in lockdown or similar action ordered by any government authority'.

- xiv. **Termination due to a Non-Natural Force Majeure Event:** The Commission observes that the period of one hundred and eighty (180) days may not be sufficient for the SPDs to revive the projects. Hence, this deviation sought is allowed.
- xv. **Quantum and Mechanism for Change in Law Relief:** The Commission observes that the tariff once determined through competitive bidding under section 63 of the Electricity Act, 2003 and adopted by the Commission cannot be reopened/ revised. If tariff is allowed to be revised, then the bidding process itself gets vitiated. Further, the Clause 5.7.1 of the Solar Bidding Guidelines regarding 'Change in law' requires that firstly, the quantum and mechanism of compensation payment has to be determined, and secondly the date from which the quantum and mechanism of compensation payment shall be effective, has to be declared. Therefore, the quantum and mechanism of compensation payment has to be in the form of a separate/ additional component. It may be the case of lumpsum compensation or compensation based on annuity distributed over a period of time or any other method but cannot be in the form of a revised tariff. Accordingly, the deviation sought in this context is not allowed.

139. In view of above, Petition No. 91/MP/2020, Petition No. 631/MP/2020 and Petition No. 672/MP/2020 stand disposed of.

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