



**NATIONAL SOLAR ENERGY FEDERATION OF INDIA**

Regd. No. 362 / IV of 8 May, 2013

**भारतीय सौर ऊर्जा महासंघ**

पंजीकरण नं 362 / IV - 8 मई, 2013

**Ref: NSEFI/ML&M/2020-21/0176**

**Date: 10.12.2021**

To,

**Shri Kiren Rijju**

**Hon'ble Law and Justice Minister**

**Ministry of Law & Justice**

3rd Floor, 'C' Wing, Lok Nayak Bhawan

Khan Market, New Delhi - 110003

**Subject: Need to Re-Examine the Punjab Renewable Energy Security, Reform, Termination and Re-Determination of Power Tariff Bill, 2021**

**Dear Sir,**

National Solar Energy Federation of India (NSEFI) is a non-profit organization with the objective of solar power development. It is an umbrella organization representing solar energy companies active along the whole photovoltaic value chain: project developers, manufacturers, engineering companies, financing institutions, and other stakeholders. NSEFI was founded in 2013 by solar energy industry leaders with the vision to promote solar energy, NSEFI is a public trust based in New Delhi.

We write to you on behalf of our members viz., solar power generating companies being aggrieved by the passing of the Punjab Renewable Energy Security, Reform, Termination and Re-Determination of Power Tariff Bill, 2021 (“**Bill**”) by the State Legislature of Punjab. The Bill was introduced and passed in the Punjab State Assembly on 11.11.2021. We understand that the Bill was received by the Honorable Governor and has been further referred to the Honorable President of India for his final assent. We, request your kind intervention in this regard since the promulgation of the Bill into law will be greatly determinantal to the interests of all solar power developers operating in the state of Punjab.

The Bill involves a lot of questions of constitutionality validity. If given final assent by the Honourable President and brought into force, will be extremely detrimental to the industry. This will make the current renewable projects completely unviable and will have huge ramifications across the entire renewable energy sector development, shadowing the sector with negative investment outlook. This will impact livelihood of hundreds of people associated with these projects.

Please find some of the provisions of the Bill are extracted below for ease of reference:

- “4. *Notwithstanding anything contained in any other law for the time being in force and any judgment, decree, order and decision of any Court, Tribunal or Authority, all the relevant clauses impacting tariff directly or indirectly in the Agreements shall stand terminated.*

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5. *Notwithstanding anything contained in any other law for the time being in force and any judgment, decree, order and decision of any Court, Tribunal or Authority, the Agreements of Power Generators with Punjab Corporation including the implementation agreements with the Punjab Energy Development Authority shall stand referred to the Punjab State Electricity Regulatory Commission for re-determination of tariff and all matters that impact tariff directly or indirectly in the Agreements, after considering all relevant cost parameters involved in generation of renewable power:*  
*Provided that to ensure continuity in the electricity supply and energy security of the State, the Punjab State Electricity Regulatory Commission shall also determine a temporary tariff rate to be made applicable in the Interregnum period till the tariff is finally re-determined by the said Commission."*

A copy of the Bill is enclosed herewith as **Annexure A**.

As per the highlighted provisions of the Bill, 1) All clauses in the Agreements executed between power generators and the electricity distribution company of Punjab, which impact tariff either directly or indirectly shall be terminated, 2) Further these agreements shall stand referred to Punjab State Electricity Regulatory Commission ( "PSERC") for re-determination of tariff and all matters that impact tariff directly or indirectly in such Agreements 3) PSERC shall determine a temporary tariff which shall be applicable till the final redetermination of tariff by PSERC and 4) that the Bill and all Rules made thereunder shall have an overriding effect over other State Laws.

Punjab has been a pioneer in attracting investment in Solar Projects and the state has around 900 MW of operating Solar Power Projects at an investment of close to Rs 7,000 Cr. The return for this investment is in the form of long-term power purchase agreements with a fixed tariff. The tariffs have been approved by the Punjab State Electricity Regulatory Commission. Now with this Bill which will allow redetermination of the already finalised tariff of current operational projects, is not only in contravention with the Electricity Act, 2003, the National Electricity Policy, 2005, and the National Tariff Policy, 2016 but will adversely impact the investor confidence at large. Further, given the share of RE in the energy mix of state of Punjab is relatively small, such termination of agreements and redetermination of tariff will have negligible impact on the cost of power purchased by the state. Elaborating few of the issues that the controversial Bill entail:

- 1. Ultra Vires to the Constitution of India, Conflict with the provisions of Electricity Act, 2003 as well as the Indian Contracts Act, 1872:** A bare perusal of the provisions of the Bill and the Electricity Act, 2003 makes it evident that the legislations cover the same subject matter i.e., dealing with the development and regulation of the electricity sector. Moreover, since the Electricity Act is a complete and exhaustive code for all the matters related to the electricity sector and it entirely covers the field, the Bill would be repugnant to the Electricity Act as it intends to introduce additional regulations in the electricity sector. The same will be in violation of the Constitution of India, as it is clearly provided therein that in case of any repugnancy between a law made by the State Legislature and an existing law made by the



Parliament on a subject covered under the Concurrent List shall be void to the extent of such repugnancy.

Such actions attempting to redetermine tariff for agreements which have been executed by the consent of both contracting parties and more particularly when the agreement is executed pursuant to a competitive bidding process, is not maintainable in the eyes of law and the provisions enshrined under the Electricity Act, as well as the notifications issued by MNRE and MoP from time to time.

Further, it is undisputed that tariff under the PPA, especially that being discovered under the competitive bid process and adopted under section 63 of the Electricity Act 2003, cannot be tinkered with. Any termination of PPAs or renegotiation of the tariff will violate the sanctity of contracts and adversely affect the developer's ability to repay loans to their lenders, which would lead to recall of loan facilities and widespread bank loan defaults. We must also emphasize that the projects were allotted vide a competitive bidding process that was completely transparent and governed by the guidelines of the State Govt.'s solar policy, its tender, and the appropriate Regulatory Commission.

By depriving renewable power generators of their vested rights under concluded power purchase agreements, the Bill impinges upon the rights guaranteed under the Constitution and also conflicts with the provisions of the Indian Contract Act, 1872.

- 2. Discriminatory treatment to private RE power Producers:** The Bill seeks to redetermine tariff under concluded Power Purchase Agreements (PPAs) for a total of 983.5 MW (Solar: 886 MW, Biomass: 97.5 MW) of renewable energy capacity. It is to be highlighted that from amongst the renewable energy projects, only certain specific projects (listed out at Schedule A of the Bill) have been covered. However, neither the Bill nor the objects thereof provide any basis or justification for such classification.
- 3. Detrimental to investors sentiments and drive away investments:** This will be a huge set back to the goodwill built so far and work done to develop a robust ease of doing business environment over the years to position India as an investment hub. In keeping with the PM's vision to achieve 500 GW of Renewable Energy by 2030, Renewable Energy (RE) development has been steady paced. With standalone cases like the attempt of Government of Andhra Pradesh to renegotiate tariff, investors are increasingly becoming weary of investing in renewable energy projects. Adding another such case will not just impact future investments in the state of Punjab but also engender fear of other states following suit, thereby having huge ramifications across the RE sector in India at large.
- 4. Will drive operating projects to Non-Performing Assets:** A move to re-negotiate tariffs for the already operating projects will affect viability of the projects and power producers will find it difficult to repay their loans, vendors, and staff, thereby leading to a default in their



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contractual obligations. RE projects have upfront Capex investments and high debt burdens. Further, since the projects are funded by banks and other financial institutions, the funding is primarily comprised of public money. Therefore, any reduction in tariff could foreseeably result in erosion of public money and be against public interest. Time and again the sanctity of contract as captured in power purchase agreements has been upheld in various courts across the country including very recently by PSERC (Punjab State Electricity Regulatory Commission).

- 5. Negligible impact on the Power Purchase Cost:** Total capacity of RE installed in the state is very small compared to the overall Power Producers in Punjab and hence, RE power purchase impact on the overall power cost to the state is negligible. The landed purchase cost of solar is ₹ ~6.5 per kWh against the overall total power purchase cost of ₹ 4.3 per kWh (Reference from Tariff order and ARR for FY 2021-22). Considering the capacity contribution of solar in the state, the overall energy generation from solar is only over 4% against the total power consumption, the purchase cost impact being approx. ₹ 0.06 per kWh. which is miniscule against the negative impact that breaching of sanctity of contracts would have on the overall sentiment of the investors across the state.

**Therefore, in light of the above, we request your urgent intervention in highlighting the above concerns on the nature of the Bill and its implications, to the Hon'ble President, whose assent to the Bill is presently pending.**

- **In light of the fact that the Bill is in contravention to and repugnant to the Constitution of India, the Electricity Act, 2003 and the Contract Act, 1872, the Bill should be examined by experts for its legal validity and we request that the assent be withhold.**
- **Given the wide ramifications and detrimental impact the Bill is likely to have on the renewable power generators, wider discussion should be held with stakeholders and their feedback should be taken into account**

We sincerely express our gratitude for Ministry of Law and Justice for their support to the sector and look forward to a favorable response on the matter.

**With Best Regards**



**Pranav R Mehta  
Chairman**

**National Solar Energy Federation of India**