

interconnection where the metering is done for energy accounting shall be the responsibility of the SPD at his own cost. The maintenance of Transmission system up to the designated point as per the applicable terms and conditions shall be the responsibility of the SPD. All costs and charges including but not limited to the wheeling charges and losses up to and including at the interconnection Point associated with this arrangement will also be borne by the SPD.

4.2.4 In case of Pooling substation, losses in the transmission line shall be apportioned among the SPDs who share such a Pooling arrangement and duly signed by all SPDs, based on their monthly generation.

4.2.5 The arrangement of connectivity shall be made by the SPD through a dedicated transmission line. The entire cost of transmission including cost of construction of line, any other charges, losses etc. from the Project up to the Interconnection Point will be borne by the SPD. In case of non-availability of Grid and Transmission System during Term of this Agreement, for reasons not attributable to the SPD, provisions of Article 4. 10 shall be applicable."

20.6.4. Without prejudice to the above, the Petitioner has also not given Legal Notice regarding Change in Law as per Article 12.3 of the PPA. Article 12.3 of the PPA provides as under:

"12.3 Notification of Change in Law

12.3.1 If the SPD is affected by Change in Law in accordance with Article 12 and wishes to claim a Change in Law under this Article, it shall give notice to the SEC/ and Buying Utility(s) of such Change in Law as soon as reasonably practicable (but no later than 60 days from the date of occurrence of such Change in Law).

12.3.2 Any notice service pursuant to this Article 12.3.1 and 12.1.3, shall provide, amongst other things , precise details of the Change in Law and its effect on the Project Cost, supported by documentary evidences including Statutory Auditor Certificate to this effect so as to establish one to one correlation and its impact on the Project Cost".

20.7. Article 2.1.3 of the PPA provides for the Adoption of Tariff by the Commission within 120 days of the effective date 27.01.2021 as per

Article 2.1.1 of the PPA). Article 2.1.4 provides that if the tariff adoption order is issued by the Commission after 120 days specified in Article 2.1.3, there shall be a corresponding extension in Scheduled Financial Closure ('FC') and Scheduled Commissioning Date ('SCOD') for equal number of days for which the State Commission's Order has been delayed.

21. **M/s Green Infra during the hearing and in its written submissions has submitted as under:**

21.1. Pursuant to remand by the Hon'ble Tribunal, the issues for consideration before the Commission are limited to the following:

- A. Whether increase in rate of GST from 5% to 12% on renewable energy devices and parts for manufacture pursuant to GST Notification dated 30.09.2021 qualifies as Change in Law under the PPA? If so, then what relief is GIRPL entitled to claim in terms of the PPA?
- B. Whether this Hon'ble Commission in addition to recognizing Article 12.1.3 of the PPA, ought to grant in-principle approval of Change in Law on account of increase in BCD on import of Solar Cells and Modules/Panels pursuant to MoF Notification dated 01.02.2021 whereby Exemption Notification has been rescinded?
- C. Whether this Hon'ble Commission in addition to recognizing Article 12.1.3 of the PPA, ought to grant in-principle approval of Change in Law on account of levy of BCD pursuant to MNRE OM dated 09.03.2021?

A. Increase in rate of GST from 5% to 12% on renewable energy devices and parts for manufacture pursuant to Ministry of Finance Notification No. 8/2021- Integrated Tax (Rate) dated 30.09.2021 constituted as Change in Law in terms of the PPA:

21.2. It is submitted that as on the cut-off date i.e., 28.10.2020, GST on renewable energy devices and parts for their manufacture was 5%. However, the same was increased from 5% to 12% by the Ministry of Finance vide GST Notification dated 30.09.2021, which qualifies as Change in Law under the PPA as:

- (i) Vide GST Notification dated 30.09.2021, GST on renewable energy devices and parts for their manufacture has increased from 5% to 12%.
 - (ii) GST Notification dated 30.09.2021 was issued by the Ministry of Finance and falls within the definition of 'Law' under the PPA.
 - (iii) GST Notification dated 30.09.2021 was issued after 28.10.2020 which is the cutoff date for consideration of change in law.
 - (iv) GST Notification dated 30.09.2021 has been issued by the Ministry of Finance which qualifies as an Indian Governmental Instrumentality under the PPA.
 - (v) Increase of GST from 5% to 12% will have an impact on the Project cost.
- 21.3. Further, Article 12.1.3 of the PPA recognises any increase in GST after 28.10.2020 i.e., cut-off date, having impact on Project cost as a Change in Law event subject to this Hon'ble Commission recognising Article 12.1.3 of the PPA. It is the duty of this Hon'ble Commission to consider and allow the Change in Law pursuant to the provisions of the PPA and Judgments of the Hon'ble Tribunal dated 12.10.2021 in Appeal No. 251 of 2021 and Order dated 28.01.2022 in Appeal No. 344 of 2021.
- 21.4. On 16.11.2021, Green Infra issued Change in Law Notice under Article 12.3 of the PPA notifying SECI that the GST Notification dated 30.09.2021 qualifies as Change in Law in terms of Article 12.1.3 of the PPA. Further, SECI was informed that GIRPL is assessing the impact on the Project cost and will provide requisite documents in due course.
- 21.5. Pertinently, enactment and/or increase in GST has been recognized by the Hon'ble Tribunal and Hon'ble Central Electricity Regulatory Commission as a change in law event in terms of the following:
- 21.5.1. Judgment dated 03.10.2019 in Appeal No. 131 of 2019 titled *DNH Power Distribution Company Limited v. CERC & Ors.*
 - 21.5.2. Order dated 12.11.2021 in Petition No. 468/MP/2019 titled *Mahindra Renewable Private Limited v. MPPMCL & Ors.*

- 21.5.3. Order dated 10.08.2021 in Petition No. 45/MP/2019 titled Talettutayi Solar Projects One Private Limited v. SECI & Ors.
- 21.5.4. Order dated 25.01.2021 in Petition No. 211/MP/2019 titled *RattanIndia Solar 2 Private Limited v. SECI & Anr.*
- 21.6. In view of the foregoing, the criteria set out under Article 12 of the PPA qua Change in Law stands satisfied, and GST Notification dated 30.09.2021 qualifies as a Change in Law event under the PPA. Accordingly, this Commission ought to recognize Article 12.1.3 of the PPA and grant in-principle approval for the increase in GST pursuant to GST Notification dated 30.09.2021 as a Change in Law event under the PPA.
- B. This Hon'ble Commission ought to grant in principle approval for levy and increase of BCD as change in Law Events under the PPA:**
- 21.7. Green Infra before the Hon'ble Tribunal in Appeal No. 251 of 2021 had sought in-principle approval of the following:
- (i) Levy of BCD on import of Solar Cells, Modules /Panels pursuant to MNRE Office Memorandum dated 09.03.2021.
 - (ii) Increase in rates of BCD on import of Solar Inverters pursuant to MoF Notification dated 01.02.2021 withdrawing the Exemption Notification which resulted in the increase of 15% in the BCD on Solar Inverters.
- 21.8. The Hon'ble Tribunal vide the remand Judgment, remanded the matter back to the Commission and held that:
- (i) The impact on Project cost due to Change in Law events that have occurred after the submission of the bid but before the adoption of the tariff, render the bid price unrealistic. In terms of Section 86(1)(b) of the Act, it is the duty of the State Commission to inquire into such claim at the first opportune time.
 - (ii) If the event constitutes change in law within the four corners of its definition under the PPA, the event should be duly recognized as a change in law at the stage of tariff adoption.
- 21.9. However, the Commission vide Order dated 13,12,2021 in Petition 1905 has held as under:

“31. It is noted that there is clear provision in the PPA that if there are changes in the rates of Basic Custom Duty(BCD)after 28.10.2020 and resulting in change in Project Cost, then such change will be treated as 'change in law' subject to the provision that Appropriate Commission recognizes such provisions.

32. Therefore it is clear that in terms of the above-cited Article 12.1.3, although it is agreed that these events are to be treated as change in law events, it is necessary for the same to be acknowledged and recognized by the appropriate Commission. The Commission, after considering all the submissions, deems it appropriate to recognise the clause 12.1.3 of the PPA which treats change in rates of basic customs duty after 28.10.2020 as 'change in law'.

[-]

38. It is further clarified that the nature and extent to which the events of levy of basic custom duty and increase in basic custom duty will have an impact will be considered separately by the procurer based on the factual details and circumstances.”

- 21.10. Commission has merely recognized Article 12.1.3 of the PPA and has failed to grant in-principle approval for Change in Law on account of the increase and levy of BCD pursuant to the MoF Notification dated 01.02.2021 and MNRE OM dated 09.03.2021, respectively. In this regard, it is submitted that in terms of the Remand Judgment, an express finding of in-principle approval ought to have been granted. However, by combining the issue of recognizing Article 12.1.3 of the PPA which treats change in rates of BCD after 28.10.2020 as 'change in law' and leaving the nature and extent of the issue open despite of the directions of the Hon'ble Tribunal.
- 21.11. It is submitted that the Order dated 13.12.2021 creates ambiguity in terms of the scope of the approval. Thus, an express finding of in-principle approval ought to have been granted by this Commission as directed by the Hon'ble Tribunal in Judgment dated 12.10.2021 in Appeal No. 251 of 2021.
- 21.12. The importance of in-principle approval was also highlighted by the Hon'ble Tribunal in Judgment dated 13.11.2020 in Appeal 101 of 2020 titled *Lalitpur Power Generation v. Uttar Pradesh Electricity Regulatory Commission* wherein the importance of granting in-principle approval for change in law events has been recognized. Further, the Hon'ble

Tribunal also gave importance to the commercial implication of change in law events on the power sector as a whole. Relevant paras are reproduced below:

“136. The Appellant has referred to the National Electricity Policy, 2005 and Tariff Policy, 2016 issued by MOP, under section 3 of the Electricity Act, 2003 which provides that steps should be taken to ensure regulatory certainty so as to minimise perception of regulatory risk, ensure financial viability of the sector and generate investor's confidence to attract investment.

137. The Commission has disposed of this Petition simply on the grounds that under the state tariff regulation 2019, there is no provision for granting in-principle approval and therefore the same cannot be granted by the Commission.

138. There is no discussion in the impugned Order regarding special circumstances as submitted by the Appellant requiring the in-principle approval/ regulatory certainty. The last sentence of the impugned Order which reads as- “It is the petitioner's obligation to comply with the prevalent laws and ensure that all the consent and approval is required for the project are obtained by it” gives an impression that the Commission has nothing to do with the issues raised by the appellant and it is for the appellant to sort them out at his level.

139. In view of the above we are of the opinion that the State Commission has shown complete insensitivity to an important issue of National Importance having commercial implications on the Appellant, the consumers and the power sector at large. We disapprove this type of lackluster approach of the State Commission in dealing with such an important issue of environmental compliance with commercial implications on the operation of the Appellant”.

[...]

“145. The State Electricity Regulatory Commission has been created under the Electricity Act, 2003 and have been conferred powers to Legislate, Adjudicate and Administer. It is a unique statutory body of its kind and have been assigned roles and responsibilities to oversee the operation and development of power sector in the State on commercial principals as per the provisions of law. The reading of the impugned Order dated 07.02.2020 passed by the State Commission gives an impression

that the State Commission declined the in-principle approval to the Appellant because it was constraint by the absence of the specific regulation in this regard. A statutory body like the State Electricity Regulatory Commission having all the powers under the law to adjudicate on matters of importance regarding the functioning of power sector cannot decline to consider a request like the one in question i.e. in-principle approval for additional capitalization on account of change in law sought by the Appellant in spite of the fact that there is abundant clarity on the subject of the regulatory powers conferred on the State Electricity Regulatory Commission under the Act. Inherent powers of the State Commission are saved to make such orders as may be necessary: (i) to secure the ends of justice; and (ii) to prevent abuse of process of the Commission.

146. We are of the opinion that the State Electricity Regulatory Commission has powers under the Act to fill up the gaps in supplementing the rules/regulations by issuing instructions if the same are silent on certain aspects provided that such instructions are consistent with the Act"

[...]

"181. It appears from the reading of the impugned Order that though the Commission preferred to deal with the issue of change in law to meet the ends of justice however the same spirit is not visible from the impugned Order. It is a very sketchy order and lacks sincerity and seriousness in dealing with such a sensitive issue of national importance having significant commercial implication on the plant and the power sector as a whole."

- 21.13. In view of the foregoing, it is submitted that the Commission ought to grant in-principle approval for levy of BCD on import of Solar Cells, Modules /Panels pursuant to MNRE Office Memorandum dated 09.03.2021 and increase the in rate of BCD on import of Solar Inverters pursuant to MoF Notification dated 01.02.2021 as Change in Law under the PPA.
- 21.14. It is further submitted that since the Project has been delayed due to delay in adoption of tariff, in terms of Articles 2.1.3 and 2.1.4 of the PPA, the SCD and other timelines under the PPA ought to be extended to account for the time spent in legal proceedings before the Hon'ble Tribunal and the Hon'ble Commission.

21.15. Green Infra prays for the following reliefs:

- (a) Hold and declare that GST Notification dated 30.09.2021 is a Change in Law Event under the PPA and that Green Infra is entitled to compensation on account of the same;
- (b) Grant in-principle approval for levy of BCD on import of Solar Cells (25%), Modules /Panels (40%) pursuant to MNRE Office Memorandum dated 09.03.2021 and increase in the rate of BCD on import of Solar Inverters pursuant to MoF Notification dated 01.02.2021 as Change in Law under the PPA and that Green Infra is entitled to compensation on account of the same.
- (c) Pass any such other and further reliefs as this Hon'ble Commission deems just and proper in nature and circumstances of the present case.

I.A. of Green Infra

21.15.1. Green Infra has filed IA wherein it has submitted that the Issue of grid connectivity charges has been raised by AEW India which is pending for consideration before the Commission. It is further stated that Green Infra and AEW India have executed similar PPAs, any relief based on the claim ought to be granted to GIRPL as well.

21.15.2. On 28.01.2022, Hon'ble APTEL passed Order in Appeal No. 344 of 2021 remanding matter to this Commission. In terms of the findings of the Order dated 28.01.2022 read with recent Judgment, this Commission ought to consider all claims that have occurred after the Bid Deadline/ Cut-off Date and will impact tariff for the Project.

21.16. Green Infra has filed I.A. stating that RERC RE Tariff Regulations constitute as Change in Law in the PPA as :

- (i) Vide RERC RE Tariff Regulations, grid connectivity charges have been increased from Rs 2 Lakhs to Rs 2.5 Lakhs per MW.
- (ii) RERC RE Tariff Regulations fall within the definition of 'Law' under PPA.
- (iii) RERC RE Tariff Regulations were issued by this Commission which qualifies as an Indian Governmental Instrumentality under the PPA.

- (iv) RERC RE Tariff Regulations were issued after 28.10.2020 which is the cut-off date for consideration of Change in Law.
- (v) Increase in grid connectivity charges will have an impact on the Project cost.
- 21.17. On 12.08.2022, Green Infra has issued the Change in Law Notice under Article 12.3 of the PPA notifying SECI that increase in grid connectivity charges will have an impact on the Project cost and qualifies as Change in Law in terms of PPA.
- 21.18. In compliance with the RERC RE Tariff Regulation they have already paid an amount of Rs. 10 Crore to RVPNL on 31.03.2022 as grid connectivity charges for 400 MW Solar Power Plant.
- 21.19. Green Infra in their I.A. prayed as under:
- (i) Hold and Declare that RERC RE Tariff Regulations is a Change in Law Event under the PPA and Green Infra is entitled to compensation on account of the same.
- (ii) Grant in-principal approval for increase in grid connectivity charges from Rs. 2 Lakhs to Rs. 2.5 Lakhs per MW pursuant to RERC RE Tariff Regulations as Change in Law event under the PPA.
22. **M/s AEW during the hearing and in its written submissions has submitted as under:**
- 22.1. In light of the Order dated 12.10.2021 passed by Hon'ble APTEL in Appeal No.251 of 2021 this Commission passed the common Order disposing of Petition Nos. 1905 of 2021 (Tariff Petition) and 1933 of 2021 (filed by AEW India) on 13.12.2021. The relevant portion of the Order dated 13.12.2021 is reproduced as under:

" 23. It is noted that some of the generators have also claimed relief on other change of law events. In Commission's considered view and as rightly pointed out by RUVNL and SECI in their reply that at this stage, what is required to be done, in terms of the decision of the Hon'ble Tribunal, is only the recognition of the change in law events in respect of aforesaid three events, therefore Commission has looked into the prayers of the Generators strictly in terms of Hon'ble APTEL Order. The generators are not entitled to claim consideration of any other aspects.

.....

27. From the perusal of the aforesaid Article of the PPA, it is clear that as per Article 12.1.3 of the PPA any change in rates qua Safeguard Duty, GST and BCD after the last date of bid submission, i.e. 28.10.2020 which resulted in change in overall cost of the project, then in that case such change will be treated as change in law.

.....

31. It is noted that there is clear provision in the PPA that if there are changes in the rates of Basic Custom Duty (BCD) after 28.10.2020 and resulting in change in Project Cost, then such change will be treated as 'change in law' subject to the provision that Appropriate Commission recognizes such provisions.

32. Therefore it is clear that in terms of the above-cited Article 12.1.3, although it is agreed that these events are to be treated as change in law events, it is necessary for the same to be acknowledged and recognized by the appropriate Commission. The Commission, after considering all the submissions, deems it appropriate to recognise the clause 12.1.3 of the PPA which treats change in rates of basic customs duty after 28. 10.2020 as 'change in law'.

.....

39. In view of above, the Petitions bearing no. 1905/21 and 1933/21 are disposed of, accordingly."

22.2. Basis the aforementioned, the relevant findings of this Hon'ble Commission have been summarized hereunder:

- (i) As per Article 12.1.3 of the PPA any change in rates qua Safeguard Duty, GST and BCD after the last date of bid submission, i.e., 28.10.2020 which resulted in change in overall cost of the project, then in that case such change will be treated as change in law (Para 27 of Order).
- (ii) Commission recognizes clause 12.1.3 of the PPA which treats change in rates of basic customs duty after 28.10.2020 as 'change in law' (Para 32 of Order)

22.3. Being aggrieved by the Order dated 13.12.2021 passed by this Hon'ble Commission to the extent that this Hon'ble Commission had failed to