

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
AT GANDHINAGAR**

PETITION NO. 2200 OF 2023

In the matter of:

Petition under Section 86(1) (f) of the Electricity Act, 2003 read with Regulation 23 of GERC (Conduct of Business) Regulations, 2004 and Article 9 of the Power Purchase Agreement (PPA) dated 23.04.2021 seeking 'In Principle' declaration of issuance of Notifications dated 19.10.2022 and 01.02.2023 as a Change in Law Event..

Petitioner : Tata Power Saurya Limited

Represented by : Ld. Adv. Mr. Suhael Buttan along with
Adv. Mr. Vedant Chaudhary

V/s.

Respondent : Gujarat Urja Vikas Nigam Limited

Represented by : Ld. Adv. Mr. Utkarsh Singh along with Mr. K.T. Shah

CORAM:

Shri Mehul M Gandhi, Member

Shri S.R. Pandey, Member

Date: 10/09/2025

DAILY ORDER

1. The matter was kept for hearing on 25.08.2025.
2. The present Petition is filed by the Petitioner, Tata Power Saurya Limited, under Section 86 (1) (f) of the Electricity Act, 2003 read with Article 9 of the Power Purchase Agreement (PPA) dated 23.04.2021 executed between the parties seeking in principle declaration of the Project Imports (Amendment) Regulations, 2022 introduced vide Notification bearing reference No.

54/2022 Customs dated 19.10.2022 and the Project Imports (Amendment) Regulations, 2023 introduced vide Notification bearing reference No. 07/2023 – Customs Notification dated 01.02.2023 by the Central Board Indirect Taxes and Customs (CBIC) and published by the Ministry of Finance (MoF), Govt. of India as Change in Law event. The Petitioner is also seeking the compensation and relief qua the aforementioned “Change in Law” event, in terms of the mechanism envisaged under Article 9.2.2 of the PPA.

3. Ld. Adv. Mr. Suhael Buttan, on behalf of the Petitioner, Tata Power Saurya Limited, submitted that the matter has been heard in length during the previous hearing, and the Petitioner has submitted their written submissions in the present matter.
- 3.1. Referring to the Order dated 20.08.2024 in Case No. 75 of 2023 issued by Maharashtra Electricity Regulatory Commission (MERC), he submitted that the subject matter of the said Order issued by MERC is similar to that of the Petitioner in the present matter.
- 3.2. He submitted that the developer in the MERC Order was seeking and in-principle approval of the PIR Notifications of 2022 and 2023, as an in-principle approval seeking it to be a change in law event. The Petitioner argued that it is having two routes available to it, one under Chapter 85 and other under Chapter 98. He submitted that the said argument was dealt with by MERC in its said Order.
- 3.3. The relevant paras of MERC Order referred by the Petitioner are reproduced as below:

“14.3. While rebutting the above contentions of MSEDCL, TPSL stated that there were two options available under Custom Tariff Act. Option one being Chapter 85 under Heading 8541 and Subheadings 8541 40 11 and 8541 40 12 of the PIR 1986, for import of Solar Cells and

Modules by paying applicable Custom Duty and option two being Chapter 98 under heading 9801 which prescribed that concessional duty is applicable for import of products used for setting up/substantial expansion of a power projects including Solar Power project. TPSL contended that its claim for Change in law is related to second option under Chapter 98.

14.4. In this regard, the Commission notes that MSEDCL has relied upon MNRE OM dated 9 March 2021 which stipulated following:

.....

As can be seen from above table, above OM is related to Basic Custom Duty under Chapter 85 whereas TPSL is claiming Change in Law in respect of Chapter 98. The Commission notes that both these routes were available as on date of bid submission. Therefore, although MSEDCL has clarified about MNRE OM dated 9 March 2021 in RfS, successful bidder had option to quote tariff after considering such increased BCD from 1 April 2022 under Chapter 85 or consider concessional custom duty under Chapter 98.

.....

14.7. In view of the above the Commission is inclined to accept submission of TPSL that it was genuinely intended to import the Solar Cells/ Modules and avail the benefit of concessional Custom Duty under Chapter 98."

- 3.4. Further, he referred to the Hon'ble Supreme Court Judgement in Nabha Power Ltd. V. Punjab State Power Corpn. Ltd., 2024 SCC OnLine SC 3128, where the issue was that whether a press release issued by the Government of India would amount to be a change in law event or not. The Hon'ble Supreme Court has held in the said matter that unless a notification is issued in the way it is prescribed under the Custom Tariff Act, until then, that release

or OM, will not amount to there being a law which would be binding to the parties.

3.5. He submitted that in the present case, the Petitioner applied in time, got the recommendation letter, but when it made the application for registration of PIR, it was rejected, due to change in law.

3.6. On a query of the Commission regarding status of the project, the Petitioner submitted that the Respondent has given it extended SCOD till 31.03.2024. The Petitioner has commissioned the project on 18.03.2024. He submitted that the Petitioner had filed Petition No. 2206 of 2023 before the Commission seeking extension of SCOD of the project on account of Force Majeure. The said Petition was subsequently withdrawn by the Petitioner as the Respondent, GUVNL, agreed to extend the SCOD of the Project and accordingly, SCOD of the project has been extended up to March, 2024. The Commission, vide Order dated 29.12.2023 has disposed of the said Petition.

4. Ld. Adv. Mr. Utkarsh Singh, on behalf of the Respondent, Gujarat Urja Vikas Nigam Limited (GUVNL), submitted that the facts of the case referred by the Petitioner as per MERC Order are different from the present case of the Petitioner.

4.1. He submitted that the reliance by the Petitioner on the Order dated 20.08.2024 of the MERC in Case No. 75 of 2023 is misplaced, as the PPA clause in the present case vis-à-vis the PPA clause in the MERC decision quoted at para 14.9, are different. There was no pre-bid clarification in the MERC case as in the present case. Further, the PPA in the MERC case did not limit relief to SCOD only, as in the case herein. The Respondent PPA's relief mechanism includes a precise tariff formula and SCOD limitation unlike the PPA in the MERC case, wherein there no specific formula. The issue of distinction between various chapters of the Customs Tariff Act also does not aid the case

of the Petitioner, as in the present case, there is a specific pre-bid clarification disentitling the Petitioner to claim change in law.

- 4.2. Regarding Hon'ble Supreme Court Judgement in Nabha Power Ltd. V. Punjab State Power Corpn. Ltd., he submitted that the Respondent would file its written submission in this regard.
- 4.3. He submitted that the SCOD of the project of the Petitioner is 23.10.2022 as per the PPA which was revised to 16.12.2022. The Petitioner had filed the Petition seeking extension (Petition No. 2206 of 2023) but withdrawn the same which was allowed vide Order dated 29.12.2023.
- 4.4. With regard to query raised by the Commission that on what ground and under which provision of PPA, the extension of SCOD was approved to bidder by the Respondent and whether the same type of extension is given to all other developers or not, he submitted that the Respondent would file its submission in this regard.
5. Heard the parties.
6. We note that the present Petition is filed by the Petitioner under Section 86 (1) (f) of the Electricity Act, 2003 read with Article 9 of the Power Purchase Agreement (PPA) dated 23.04.2021 seeking in-principle declaration of issuance of Notification dated 19.10.2022 and 01.02.2023 as an event of Change in Law. We also note that the Petitioner is seeking in-principle approval of its claim of Change in Law and the Respondent has raised objections to the said claim of the Petitioner.
7. The Petitioner has submitted that it has filed its written submissions in the present matter. The Respondent has submitted that it will file its written submissions in the matter.

8. The Respondent is directed to file its written submission within three weeks' time. The Respondent is also directed to file the details as stated in Para No. 4 above.
9. The matter will be reserved for Order, thereafter.
10. We order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Place: Gandhinagar
Date: 10/09/2025

