

RAJASTHAN ELECTRICITY REGULATORY COMMISSION, JAIPUR

Petition No. RERC/2205/2024

A petition filed under section 86 of the Electricity Act 2003 for adoption of the mechanism for appropriate adjustment/ compensation to offset financials commercial impact of change in law events in terms of Article 12 of the Power Purchase Agreement dated 10.06.2019 between M/s ACME Aklera Power technology Pvt. Ltd. and Solar Energy Corporation of India Limited along with carrying cost and interest on carrying cost.

Coram: Dr. Rajesh Sharma, Chairman
Shri Hemant Kumar Jain, Member

Petitioner : M /s ACME Aklera Power technology Private Limited

Respondents : Solar Energy Corporation of India Limited
Rajasthan Urja Vikas and IT Service Limited

Date of hearing : 21.03.2024, 16.05.2024, 02.07.2024, 05.11.2024,
10.03.2025, 30.04.2025, 22.07.2025, 19.08.2025

Present Sh. Sujit Ghosh, Advocate for Petitioner.
Sh. Kartik Sharma, Advocate of Respondent SECI.
Ms. Swapna Sheshadri, Advocate for Respondent RUVITL.

Date of order : 13.11.2025

Order

1. The M/s ACME Aklera Power technology Pvt. Ltd. (Hereinafter also referred as "Petitioner") is a SPV incorporated by ACME Solar Holdings Limited (ASHL) for developing and commissioning a 250 MW Solar Power Project located in

Rajasthan. The Petitioner is generating company as defined under Section 2(28) of the Electricity Act, 2003 and has been incorporated under the Companies Act, 2013.

2. Solar Energy Corporation of India (hereinafter also referred as "Respondent-1" or "SECI") is a Government of India enterprises under the administrative control of the Ministry of New and Renewable Energy ("MNRE"). And SECI has been designated as the nodal agency for implementation of MNRE scheme for developing grid connected Renewable Power Projects in India.
3. Rajasthan Urja Vikas and IT service Limited (hereinafter being referred to as "Respondent- 2" or "RUVITL") is a company formed by the State of Rajasthan and is an authorized representative of Rajasthan DISCOMS (Distribution Licensees), to carry out Power trading activities. In the present case, the power generated by the Petitioner is being sold by SECI to RUVITL.
4. **Petitioner in its Petition and during hearing mainly submitted as under:**
 - 4.1 The petitioner submitted that SECI issued a Request for selection of Solar Power Developers ('SPD') for procurement of 750 MW generated from the Grid connected Solar Power Project vide RFS No. SECI/C&P/SPD/RFS/RJ/082018 dated 03.08.018 ("RfS"). In furtherance to the RfS, ASHL submitted its bid on 19.02.2019 taking into consideration the prevailing taxes, duties and exemptions.
 - 4.2 The Petitioner submitted that pursuant to the aforementioned RfS, ASHL was selected by SECI as a Solar Power Developer for development of 250 MW Solar Power Project. The SECI issued a Letter of Intent bearing Ref. No. SECI/C&P/SPD/RJ750/Lol/ASHL/P1/29216 dated 02.03.2019 ("LOI"). To, this end, the Petitioner Company was incorporated by ASHL and entered into Power

Purchase Agreement dated 10.06.2019 ("PPA") with SECI for setting up of a solar power project of 250 MW ("Project"). Thereafter, as per the terms of the PPA, the Petitioner successfully commissioned the first part capacity of 200 MW on 20.07.2023 and remaining 50 MW on 06.01.2024, thereby achieving COD of full capacity of the project.

- 4.3 The Petitioner further submitted that, in the meanwhile, on account of events which qualify as Change in Law the Petitioner is also incurring additional expenditure in setting up of the Project. The details of such Change in Law events have been mentioned in the following paragraphs. Introduction of Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 which has increased the rate of GST from 5% to 12% on renewable energy devices and parts for their manufacture.
- 4.4 The Petitioner further submitted that the Central Government vide Notification No. 8/2021- Central Tax (Rate) and Notification No. 8/2021-Integrated Tax (Rate) dated 30.09.2021 (effective October 1, 2021) amended the rate of CGST/IGST for renewable energy devices and their parts. As per the said Notifications, Entry 234 and the entries related thereto (with effective CGST/IGST rate of 5%) were omitted from the Schedule I and Entry 201A has been inserted to Schedule II wherein the rate of CGST/IGST is 6% (effective 12%). Basis the said entry, renewable energy devices i.e., modules and solar power generators and their parts for manufacture will be leviable to CGST/IGST at 12%, instead of 5%, thereby leading to an incremental CGST and IGST of 7% and 13% respectively. The relevant extract of the Notification No. 8/2021 is culled out herein below for the ready reference of the Commission:

(b) In Schedule II - 6%, -

(iv) After S. No. 201 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

"201A	84,85 or 94	<i>Following renewable energy devices and parts for their manufacture:-</i> <i>(a) Bio-gas plant;</i> <i>(b) Solar power based devices;</i> <i>(c) Solar power generator;</i> <i>(d) Windmills, Wind Operated Electricity Generator (WOEG);</i> <i>(e) Waste to energy plants / devices;</i> <i>(f) Solar lantern / solar lamp;</i> <i>(g) Ocean waves/tidal waves energy devices/plants; (h) Photo voltaic cells.</i> <i>whether or not assembled in modules or made up into panels.</i> <i>Explanation:- If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 (G.S.R. 690(E)), the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent of the gross consideration charged for all such supplies. And the remaining thirty per cent of the gross consideration charged shall be deemed as value of the said taxable service."</i>
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4.5 The Petitioner submitted that the introduction of Notification No. 8/2021, which has increased the rate of GST from 5% to 12% on renewable energy devices and their parts, would constitute a change in law event in terms of the PPA, it

is relevant to understand the statutory framework in relation to the introduction of such rate change notification. Further, the power to levy Goods and Service Tax vests with the Central Government in terms of Section 9 of the Central Goods and Services Tax Act, 2017 ("CGST Act") which provides that there shall be levied a tax called the Central Goods and Services tax on all intra-State supplies of goods or services or both at such rates as may be notified by the Government, The relevant portion of Section 9 of the CGST Act, has been reproduced hereunder for ready reference:

"Section 9. Levy and collection. -

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person."

- 4.6 The Petitioner further submitted that in this context and in exercise of the powers conferred inter alia under Section 9 of the CGST Act, the Central Government issued Notification No. 8/2021 which has increased the rate of GST from 5% to 12% on renewable energy devices and parts for manufacture. Thus, with effect from 01.10.2021, supply of all renewable energy devices and parts for their manufacture, Including modules and solar power generators would be leviable to 12% GST vis-à-vis the earlier lower rate of 5% GST.
- 4.7 The Petitioner submitted that further, on 09.03.2021, MNRE issued an Office Memorandum stating that the proposal to levy BCD of 40% on Solar Modules and BCD of 25% on Solar Cells from 01.04.2022 has been accepted by the MoF as follows:

Items	CTH	Upto 31.03.2022	w.e.f. 01.04.2022
Solar Module	85414012	0%	40%
Solar cell	85414011	0%	25%

- 4.8 The Petitioner also submitted that it is pertinent to highlight that vide Notification bearing No. 24/2005 Customs dated 01.03.2005 ("Notification No. 24/2005"), the Central Government had inter alia exempted goods falling under CTH 8541 from the whole of duty of customs leviable under the First Schedule. However, Notification No. 15/2022 Customs dated 01.02.2022 ("Notification No. 15/2022") proceeded to amend Notification No. 24/2005 such that Entry 23 of the earlier notification excluded 85414200 and 85414300, with effect from 01.04.2022. Thus, the effect of such amendment was that solar cells and modules (under CTH 85414200 and 85414300) were no longer covered under the ambit of the Notification No. 24/2005 and thereby leviable to BCD along with cess, social welfare surcharge etc. at the rates specified in the Customs Tariff, with effect from 01.04.2022.
- 4.9 The Petitioner further submitted that at or about the same time, vide Finance Act, 2022, the tariff rate under the Customs Tariff was also increased for solar cells from 0% to 25% and for solar modules from 0% to 40%. Thus, the cumulative effect of Notification No. 15/2022 and amendment in the Customs Tariff was that import of solar cells and modules were now leviable to customs duty at 25% and 40% respectively.
- 4.10 The Petitioner further submitted that in light of the aforementioned changes in the law, i.e., increase in rate of GST on solar devices and parts for manufacture as well as imposition of BCD along with cess, social welfare surcharge etc. on solar cells and modules, the Petitioner filed a petition seeking an in-principle approval of such events being covered under the ambit of 'Change in Law' as

provided under Article 12 of the PPA before the Commission in October, 2022 bearing Petition No. 2053 of 2022. Vide the said petition, the Petitioner had prayed before the Commission to grant an in-principle approval for the following events as events of Change in Law in order to maintain regulatory certainty of its Project:

- a. Increase in expenditure on imports of inverters on account of recession of Notification No. 1/2011-Customs dated 06.01.2011 vide Notification No. 7/2021-Customs dated 01.02.2021;
- b. Increase in expenditure on account of increase in rate of GST from 5% to 12% vide Notification No. 8/2021-Central Tax (Rate) dated 30.09.2021 and Notification No. 8/2021-Integrated Tax (Rate) dated 30.09.2021; and
- c. Increase in expenditure on import of Solar Modules and PV Cells on account of amendment of Notification No. 24/2005-Customs dated 01.03.2005 vide Notification No. 15/2022-Customs dated 01.02.2022.

4.11 The petitioner submitted that thereafter, the Commission was pleased to allow the in-principle Change in Law claims of the Petitioner made in Petition No. 2053 of 2022 vide its order dated 27.03.2023. Further, the Commission granted liberty to the Petitioner to approach the Commission for deciding the quantum and methodology of compensation payable on account of the above change in law events, along with other claims if any, at an appropriate stage. The relevant extract of the order dated 27.03.2023 passed by the Commission in Petition No. 2053 of 2022 has been reproduced herein below:

"29. In light of the above, after considering all the submissions, the Commission deems it appropriate that in terms of Article 12 of the PPA, the following events are recognized as the 'change in law' events:

- i. Increase in rates of Basic Customs Duty on import of Solar Inverters pursuant to Ministry of Finance Notification No. 07/2021 Customs dated 01.02.2021*

whereby custom duty exemption notification no. 1/2011, dated 06.01.2011. has been rescinded.

- ii. Levy of Basic Customs Duty on import of Solar Modules and PV Cells subsequent increase in quantum of social welfare surcharge and IGST on account of rescission of Notification No. 15/2022-Customs dated 01.02.2022
- iii. (Levy of GST vide Notification dated 30.09.2021 of Ministry of Finance.

30. The Commission further hold that the stage for which the Petitioner is at liberty to approach the Commission in future." quantum and methodology of compensation payable on account of the above change in law events, along with other claims if any, shall be considered at the appropriate
(Emphasis Supplied)

4.12 The petitioner further submitted that presently, the Petitioner is approaching the Commission pursuant to the liberty granted by the Commission vide its order dated 27.03.2023 as the Petitioner has incurred additional expenditure on account of the above listed events of Change in Law which have been approved by the Commission. Further, the Petitioner is placing the following documents on record to establish that it has incurred additional expenditure on account of Change in Law events:

S. No.	Change in Law Event	Financial Impact (in INR)	Relevant documents
I.	Increase in expenditure on account of increase in rate of GST from 5% to 12% which has been recognized as an event of change in law	11, 26,92,518/-	Copy of table containing details of increased expenditure on account of increase in rate of GST from 5% to 12%
II.	Increase in on expenditure import of Solar Modules and PV Cells on account of levy of BCD which has already been	39,22,08,560/-	Copy of table containing details of increased expenditure on account of imposition of BCD on import of solar cells and modules

	recognized as an event of change in law		
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- 4.13 The Petitioner further submitted that the Petitioner craves leave of the Commission to furnish the documents co-relating to the above financial impact as and when necessary during the course of proceedings in the present petition or at the time of reconciliation with the Respondents as the same are voluminous documents and therefore, are not being annexed with the petition at the present moment. The Petitioner ought to be awarded carrying cost when it incurs the additional expenditure on account of events of Change in Law in accordance with Article 12 of the PPA and Hon'ble Appellate Tribunal for Electricity's Order dated 15.09.2022.
- 4.14 The Petitioner further submitted that since the Change in Law clause is based on the principles of restitution, relief of carrying cost on the additional cost incurred on account of Change in Law is explicit in the PPA. The term 'same financial position' which is sought to be restored in terms of the Change in Law clause does not limit itself to a simple correlation of increased expenditure and a corresponding compensation amount but ought to also include compensation in terms of carrying costs incurred with respect to the said Change in Law Events. Further, Article 12 of the PPA provides that the Petitioner ought to be placed in the 'same financial position' as it would have been had it not been for the occurrence of the Change in Law.
- 4.15 The Petitioner further submitted that the Hon'ble Tribunal vide its Order dated 15.09.2022 in 256 of 2019 titled as "Parampujya Solar Energy Pvt. Ltd & Anr. vs. CERC & Ors." while allowing the claim of the Appellants for carrying cost held that the claim in relation to carrying costs is founded on the contractual clause

that the affected party is entitled to approach the Commission which shall "provide relief" in relation to the impact of the change in law event if it has resulted in any additional recurring expenditure/ non-recurring expenditure. It was further held that the word 'provide relief' are open ended and not qualified in any manner so as to be given a restrictive meaning to justify denial of carrying cost burden. Finally, the claim of carrying cost was allowed in order to restore the Appellants to the same financial position. The relevant extract of order dated 15.09.2022 in 256 of 2019 passed by the Hon'ble Appellate Tribunal for Electricity is reproduced herein for the ready reference of the Commission:

"83. In the present cases, the claim for compensation of SPPDs is primarily founded not on principles of equity but on the contractual clause stating that the affected party is entitled to approach the Commission which shall "provide relief" in relation to the impact of the change in law event if it has resulted in "any additional recurring /non-recurring expenditure". The purpose of the change in law clause in the PPAs is to relieve the SPPDs of the additional burden. Since the impact of the new tax (GST or Safeguard Duty on Imports, as the case may be) would come from the date of enforcement of the new laws, the relief intended to be afforded under the contracts cannot be complete unless the said burden is allowed to be given a pass through from the date of imposition of the levy. Unlike the PPA in UHBVNL (supra) wherein the phraseology of change-in-law provision was exhaustive, the words "provide relief in present PPAs are open ended, not qualified in any manner so as to be given a restrictive meaning in order to treat the date of adjudication of the claim by the regulatory authority as the effective date or to justify denial of carrying cost burden for the period anterior thereto. In our reading, the expression "provide relief" is of widest amplitude and cannot be read to limit its scope the way the contesting respondents seek to propagate or the way the Central Commission has determined.

93. By extension, the stipulation that the SPPD would be entitled to be placed in the same financial position as it would have had it not been for the occurrence of change-in-law" stood incorporated in the PPA executed in its wake, the guidelines also having a binding effect [Energy Watchdog (supra)].

*94. For the foregoing reasons, **we cannot approve of the view taken by the Central Commission on the subject of carrying cost. We hold that the appellant SPPDs are entitled to grant of relief in the nature of carrying cost over and above the compensation already allowed by the Central Commission.***

[Emphasis Supplied]

- 4.16 The Petitioner submitted that the very purpose of a Change in Law clause is to restore the affected party to the same economic position as if Change in Law had not occurred i.e. based on the principles of restitution. The 'economic position' which is sought to be restored in terms of the Change in Law clause would be meaningless if the same is not awarded along with interest as the time value of the money has to be considered. Furthermore, reliance is also placed on the recent decision of the Hon'ble Supreme Court in Civil Appeal No. 7129 of 2021 titled as "Uttar Haryana Bijli Vitran Nigam Ltd. and Another vs. Adani Power (Mundra) Limited and Another" wherein the Hon'ble Apex Court was pleased to allow interest on carrying cost.
- 4.17 The Petitioner further submitted that Petitioner also wishes to place on record before the Commission that the Petitioner has availed the benefit of duty deferment in terms of the Manufacture and other Operations in Warehouse (no. 2) Regulations, 2019 ("MOOWR Scheme") issued under Notification No. 69/2019-Customs (NT) dated 01.10.2019 under which the Petitioner is permitted to import inputs and capital goods (which are used to manufacture finished goods) by deferring the payment of import duties in a private bonded warehouse under Section 58 read with Section 65 of the Customs Act, 1962 till the time such goods are moved out of the bonded warehouse. The Petitioner has been granted a license for private bonded warehouse under Section 58 of the Customs Act, 1962 along with the permission for undertaking manufacturing and other operations in the warehouse under Section 65 of the Customs Act, 1962.
- 4.18 The Petitioner submitted that pursuant to grant of license under MOOWR scheme by the Petitioner, the Central Board of Indirect Taxes and Customs issued Instruction No. 13/2022-Customs dated 09.07.2022 stating that the MOOWR scheme is not applicable for Solar Power Generating Units.

Subsequently, Petitioners were served Show cause notice by Customs Authorities for cancellation of MOOWR license in accordance with Instruction No. 13/2022-Customs dated 09.07.2022. Aggrieved by such instruction and show cause notice, the Petitioner has challenged it vide Writ petition (Civil) No. 10853/2022 before Hon'ble Delhi High Court and the said petition was reserved for orders on 25.01.2024. In this regard, the Petitioner reserves its right to claim the duty and GST on the modules as and when paid by the Petitioner.

4.19 The Petitioner submitted that on the basis of the aforementioned judicial precedents, the Petitioner humbly prays for an approval in relation to carrying costs along with interest thereof, in case of delay in payment of such carrying costs. Further, the Commission has the jurisdiction to entertain and decide the Instant petition in terms of Section 86 of the Electricity Act, 2003 read with provisions of the PPA which states that the "Appropriate Commission" shall be the Commission as mentioned in Clause 2.2 of the Guidelines dated 03.08.2017 notified by the Government of India for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects issued by the Ministry of Power.

4.20 The Petitioner further submitted that the said Clause 2.2 of the PPA states that the "Appropriate Commission" shall be as follows:

"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."

Therefore, in terms of the aforesaid, the Commission has the jurisdiction to entertain and decide the instant petition.

4.21 The Petitioner further submitted that unless the prayers made herein below are granted in favor of the Petitioner, the Petitioner shall suffer irreparable loss and harm to its business which also affects the viability and feasibility of its Project. The Petitioner has not filed any other application / petition before any other court, tribunal or commission in relation to the issues raised herein. The Petitioner reserves its right to amend, modify, add any pleadings if the situation so demands and subject to the permission of the Commission. The present petition is made bona fide and in the interest of justice.

4.22 The Petitioner in its petition has prayed to:

- a) Evolve a mechanism for reimbursement of additional expenditure incurred by the Petitioner due to the increased rate of CGST/IGST on renewable energy devices and parts for their manufacture imposed vide Notification No. 8/2021-Central Tax (Rate) and Notification No. 8/2021- Integrated Tax (Rate) dated September 30, 2021 (effective October 1, 2021 which is a Change in Law event;
- b) Evolve mechanism for reimbursement of additional expenditure incurred by the Petitioner due to the increased rate of Basic Customs Duty on Solar Modules and PV Cells along with increase in quantum of social welfare surcharge and IGST on account of amendment of Notification No. 24/2005- Customs dated 01.03.2005 vide Notification No. 15/2022-Customs dated 01.02.2022 and amendment in the Finance Act. 2022 which is a Change in Law event;
- c) Direct that the mechanism evolved would be applicable in relation to the reimbursement to be made, in the future, for expenditure incurred "by the Petitioner, on account of increased rate of CGST / IGST on

renewable energy devices and parts and increased rate of Basic Custom duty on Solar Modules and PV Cells, which has already been declared as a change in law,

- d) Grant interest/carrying cost along with interest on carrying cost which shall be paid from the date of incurring of the cost by the Petitioner till the date of payment, thereby restoring the Petitioner to the same economic position as before the occurrence of the Change in Law events;

5. RUVITL in their written submission dated 30.04.2024 and during hearing(s) have mainly submitted as under:

- 5.1 RUVITL submitted that the present Petition has been filed seeking adoption of mechanism for appropriate adjustment/ compensation to offset financial/commercial impact of change in law events in terms of Article 12 of the Power Purchase Agreement (PPA) dated 10.06.2019 between the Petitioner and Respondent No. 1 - Solar Energy Corporation of India Limited (hereinafter being referred to as "SECI") along with carrying cost and interest on carrying cost.
- 5.2 RUVITL submitted that for a better appreciation of the issue at hand, RUVITL craves leave to place the following facts:
 - I. On 03.08.2018, SECI had issued a Request for Selection of Solar Power Developers for the procurement of 750 MW power generated from the Grid connected to the Solar Power Project vide RFS No. SECI/C&P/SPD/RFS/RJ/082018. On dated 19.02.2019, the parent company of the Petitioner submitted its bid. The Petitioner was selected

by SECI as a Solar Power Developer for the development of 250 MW Solar Power Project.

- II. On 02.03.2019, SECI issued a Letter of Intent in favour of ASHL. Thereafter, the Petitioner was incorporated as an SPV by ASHL and entered into PPA dated 10.06.2019 with SECI for setting up of 250 MW solar power project.
- III. Thereafter, on 01.02.2021, vide Notification No. 7/2021- Customs, the earlier Notification No. 1/2011 was rescinded. Consequently, the exemption provided for by Notification No. 1/2011, which levied a basic customs duty of 5% ad valorem on import of solar inverters, was no longer in vogue and hence, the basic customs duty imposed on solar inverters stood revised to 20% ad valorem upon operation of Chapter 85 of the First Schedule to the Customs Tariff Act, 1975.
- IV. Further, on dated 30.09.2021, the Central Government issued Notification No. 8/2021- Central Tax (Rate) and Notification No. 8/2021-Intergrated Tax (Rate) which amended the rate of CGST/IGST for renewable energy devices and their parts. On dated 01.10.2021, the Notification No. 8/2021 Central Tax (Rate) and Notification No. 8/2021-Intergrated Tax (Rate) came into effect. Notification No.15/2022- Customs dated 01.02.2022 amended Notification No. 24/2005. Thus, the effect of such amendment was that solar cells and modules were now subject to levy of BCD at the rates specified in the Customs Tariff, with effect from 01.04.2022. At or about the same time, vide Finance Act, 2022, the tariff rate under the Customs Tariff for solar cells was revised.
- V. Accordingly, the Petitioner in October 2022 filed a Petition bearing No. 2053/2022 seeking an in-principle approval of the following events as Change in Law under Article 12 of the PPA dated 10.06.2019:
 - a. Increase in expenditure on imports of inverters on account of recession of Notification No. 1/2011-Customs dated

06.01.2011 vide Notification No. 7/2021-Customs dated 01.02.2021;

- b. Increase in expenditure on account of increase in rate of GST from 5% to 12% vide Notification No. 8/2021-Central Tax (Rate) dated 30.09.2021 and Notification No. 8/2021-Integrated Tax (Rate) dated 30.09.2021; and
- c. Increase in expenditure on import of Solar Modules and PV Cells on account of amendment of Notification No. 24/2005-Customs dated 01.03.2005 vide Notification No. 15/2022-Customs dated 01.02.2022.

VI. On dated 27.03.2023, the Commission passed an order in Petition No. 2053/2022 granting in-principle approval limited to claims of the Petitioner limited only to the claims as enumerated in the above paragraph. Further, the Commission had proceeded to grant liberty to the Petitioner to approach the Commission for deciding on the quantum and methodology for compensation.

VII. On dated 20.07.2023, the Petitioner commissioned part capacity of 200 MW and the remaining capacity was commissioned on dated 06.01.2024. On dated 06.02.2024, the Petitioner filed the present Petition.

RE: REQUIREMENT TO FURNISH RELEVANT DOCUMENTS AND THEREBY ESTABLISH ONE TO ONE CORRELATION

5.3 RUVITL submitted that in order to substantiate its claims the Petitioner has to establish one to one correlation between change in law events and their financial impact on the cost of solar modules and inverters by way of relevant documents. Further, upon a perusal of the Annexure P-7 and P-8 annexed to

the present Petition, RUVITL cannot establish a clear one to one correlation between the projects and the supply of goods or services. It is incumbent on the Petitioner to establish one to one correlation between the project, the supply of goods and/or services, the invoices, and other relevant documents, duly supported by the relevant invoices and Auditor's Certificate.

- 5.4 RUVITL further submitted that the documents attached in the present Petition are insufficient to arrive at the actual financial impact caused to the Petitioner. Since the custom duty on import of solar inverters is to be considered as a Change in Law, in order to receive the compensation, the Petitioner is required to furnish the relevant details in regard to the actual payment of custom duty in respect of solar inverters, date on which the importation of solar inverters was made, the contract under which the import of the solar inverters were undertaken, certification by the Statutory Auditor, and the correlation between the equipment imported and installed etc. Similarly, in case of change in the rate of GST, the Petitioner is required to furnish the complete details of the invoices, date of delivery of the equipment, date of payment, certification by the statutory auditors, and correlation between the equipment procured and installed etc. Further, the relevant notifications and circulars demonstrating the applicability of the duties at the relevant time are to be produced.

RE: CUT-OFF DATE FOR PAYMENT OF COMPENSATION ON ACCOUNT OF CHANGE IN LAW EVENTS AS CLAIMED BY THE PETITIONER

- 5.5 RUVITL also submitted that the invoices related to the supply of the goods can be raised only up to the Commercial Operation Date ("COD"), for all the equipment as per rated project capacity that has been installed and through which energy has flown into the grid will only be considered since the liability

of RUVITL for payment of the purchase of power from the Petitioner commences from the COD.

- 5.6 RUVITL further submitted that the commercial supply of power from the power project under the PPA is from the COD of the power plant. In such case, the extent to which the impact of change in law is to be considered is only on the equipment that is duly installed and commissioned by the COD. The equipment installed after the COD are not to be considered for the impact of Change in Law.
- 5.7 RUVITL submitted that there is a possibility of a few services related to goods procured up to COD, to be completed on the last date of COD. In this regard, it submitted that the philosophy behind the 'Point of taxation' and 'raising of invoice' is enshrined in Sections 12, 13, and 14 read with Section 31 of the Central Goods and Services Tax Act, 2017 (hereinafter being referred to as "CGST Act") and Rule 47 and 55 of Central Goods and Services Tax Rules, 2007 (hereinafter being referred to as "CGST Rules"). Relevant extracts of Sections 12, 13, 14 and Section 31 of CGST Act and Rule 47 and 55 of CGST Rules are mentioned as under:

"TIME AND VALUE OF SUPPLY

12. (1) the liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of goods shall be the earlier of the following dates, namely:-

(a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or

(b) The date on which the supplier receives the payment with respect to the supply:

Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

Explanation 1.--For the purposes of clauses (a) and (b), "Supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2.--For the purposes of clause (b), "the date on which the supplier receives the payment" shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:-

(a) the date of the receipt of goods; or

(b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(c) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier: Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

(4) In case of supply of vouchers by a supplier, the time of supply shall be- (a) the date of issue of voucher, if the supply is identifiable at that point; or (b) the date of redemption of voucher, in all other cases

(5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall-

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) In any other case, be the date on which the tax is paid.

(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value."

13. (1) the liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:-

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(c) The date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount. Explanation.--For the purposes of clauses (a) and (b)--i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment; (ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:-

-

(a) The date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) The date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

(4) In case of supply of vouchers by a supplier, the time of supply shall be--

(a) The date of issue of voucher, if the supply is identifiable at that point; or

(b) The date of redemption of voucher, in all other cases.

(5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall--

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) In any other case, be the date on which the tax is paid.

(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

14. Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely:--

(a) in case the goods or services or both have been supplied before the change in rate of tax,--

(i) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or

(ii) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or

(iii) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;

(b) in case the goods or services or both have been supplied after the change in rate of tax,

(i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or

(ii) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or

(iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice;

Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

Explanation--For the purposes of this section, "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier

CHAPTER VII TAX INVOICE, CREDIT AND DEBIT NOTES

31. (1) A registered person supplying taxable goods shall, before or at the time of,-

(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, Issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed: Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which--

(a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or

(b) tax invoice may not be issued

(3) Notwithstanding anything contained in sub-sections (1) and (2)--

(a) a registered person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him;

(b) a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

(c) a registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed: Provided that the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

(d) a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;

(e) where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment;

(f) a registered person who is liable to pay tax under sub-section (3) or subsection (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;

(g) a registered person who is liable to pay tax under sub-section (3) or subsection (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.

(4) In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

(5) Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,--

(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;

(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;

(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

(6) In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

(7) Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

Explanation.--For the purposes of this section, the expression "tax invoice" shall include any revised invoice issued by the supplier in respect of a supply made earlier."

As per Rule 47 of the CGST Rules, 2017, the invoices in respect of taxable supply of services have to be issued within 30 days: "47. Time limit for issuing tax invoice. The invoice referred to in rule 46, in the case of the taxable supply of services, shall be issued within a period of thirty days from the date of the supply of service:"

Rule 55 of the CGST Rules, 2017 stipulates as under:

"55. Transportation of goods without issue of invoice.-

(1) For the purposes of-

(a) supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known,

(b) transportation of goods for job work,

(c) Transportation of goods for reasons other than by way of supply

(d) Such other supplies as may be notified by the Board the consigner may issue a delivery challan, serially numbered not exceeding sixteen characters, in one or multiple series, in lieu of invoice at the time of removal of goods for transportation, containing the following details, namely.....

(3) Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared as specified in rule 138."

5.8 RUVITL submitted that Section 12 governs the determination of 'time of supply of goods, Section 13 governs the determination of 'time of supply of services' whereas Section 14 determines the 'time of supply for goods and services in case there is a change in the rate of tax. It is stated that Section 12 stipulates 'time of supply of goods' as the date of issue of invoice or the last date specified under Section 31 to issue the invoice, whichever is earlier. Therefore,

in the instant petition the date of invoice of goods cannot be after the date of delivery of goods.

5.9 RUVITL further submitted that Section 13 stipulates that 'time of supply of services' is the date of issuance of invoice which is to be issued within the period prescribed under Section 31 (2) or the date of receipt of payment, whichever is earlier. It is further stated that Section 14 of the CGST Act prescribes the time of supply in case there is a change in the rate of tax. In one supply transaction, the following dates assume relevance: (i) date of supply (ii) date of issue of invoice, and (iii) date of receipt of payment. Two scenarios that emerge are as follows: (a) supply is completed before the change in the rate of tax; and (b) supply is completed after the change in the rate of tax. Section 31 stipulates that a registered person supplying taxable goods shall issue a tax invoice before or at the time of delivery of goods. Further, as per Section 31 read with Rule 47 of the CGST Rules the invoices in respect of taxable supply of services have to be issued within 30 days and as per Rule 55 of the CGST Rules the delivery of a few goods is specifically allowed to be transported on a delivery challan in lieu of invoice at the time of removal of goods for transportation.

5.10 RUVITL further submitted that in the case of 'supply of goods, the date of issue of invoice cannot be after the date of supply of goods as per sections 12, 14, and 31 of the CGST Act whereas in the case of 'supply of services' related to the goods procured up to the COD, the date of issuance of the invoice can be 30 days after the supply of services as per sections 13, 14, and 31 of the CGST Act along with the Rule 47 of the CGST Rules. Accordingly, there cannot be any invoice under law, post supply of goods as the goods are not exempted under Rule 55 of the CGST Rules. Further, in case the invoices are not raised, the point of taxation for the supply of goods is deemed to be the date of delivery of goods.

5.11 RUVITL further submitted that hence, in the case of 'supply of services' related to goods procured up to COD, the invoices can be raised within 30 days after COD. Thus, in case of supply of services related to goods procured up to COD, the invoices are to be raised within 30 days of supply of such services, which cannot be later than 30 days of COD and the Petitioner is entitled to be compensated accordingly.

RE: METHODOLOGY FOR PAYMENT OF COMPENSATION ON ACCOUNT OF CHANGE IN LAW ON ANNUITY BASIS

5.12 RUVITL submitted that the Commission has decided vide order dated 27.03.2023, in Petition No. 2053/2022 that the claims of the Petitioner constitute change in law under Article 12 of the PPA dated 10.06.2019. It is submitted that RUVITL may not be in a position to agree to a lump-sum one-time payment as it will lead to a tariff shock. Therefore, the alternative is to be the annuity payment over the period of time considering the Change in Law Claims being an addition to the capital cost of the power project and not an operating and maintenance expense of a recurring nature to be incurred on year-on-year basis.

5.13 RUVITL further submitted that the increased costs have been claimed to have incurred for the purpose of supply of power, the costs should be recovered only if the Petitioner supplies the power. If the Petitioner does not supply the requisite power, the Petitioner should not be entitled to recover the cost proportionate to such non-supply, similar to any other capital cost. On the other hand, if the Petitioner is allowed to recover the same in lump-sum, then RUVITL would have paid for capital cost even without the actual supply of power. Further, if for any reason the Petitioner abandons the project and

discontinues the supply of power there is no methodology for adjustments of the lump sum payments already made. These implications will be contrary to the fundamental principle of recovery of capital cost through tariff.

- 5.14 RUVITL further submitted that if the Change in Law event had occurred prior to the cut-off date, the Petitioner would have factored the higher cost to be incurred by him in establishing the solar power project in the per unit tariff to be quoted. Accordingly, the treatment of the impact of Change in Law occurring after the cut-off date cannot be different. The same methodology should be adopted for servicing the impact of Change in Law as in the case of servicing of other capital expenditure incurred in establishing the project.
- 5.15 RUVITL further submitted that the additional expenditure alleged to have been incurred by the Petitioner, for the purposes of deciding compensation would be serviced by the Petitioner in the same manner as long-term loans taken towards capital cost. Therefore, the only debt service obligation criteria as applicable to the compensation to be awarded to the Petitioner would be the debt service obligations applicable on loans i.e., interest on loan component. The Petitioner cannot be heard to contend that the compensation should be bifurcated into the debt equity ratio.
- 5.16 RUVITL also submitted that the payment of the amount as one-time payment would result in substantial amount being paid to Petitioner upfront by RUVITL which will cause serious financial prejudice to RUVITL. On the other hand, payment of such amount on annuity basis is consistent with the principles governing the servicing of the capital cost over the duration of the PPA and, therefore, ought to be the principal basis for the settlement of the claims. This is also at par with the methodology followed by the Central Commission in numerous cases while deciding the methodology for compensation to be

developed for giving effect to the impact of change in law events. Accordingly, on the methodology for payment it is respectfully submitted that RUVITL proposes the methodology for making the payment on monthly basis (annuity) considering the following parameters:

- a) The Change in Law Claims have to be evaluated/limited up to the COD;
- b) The discounting factor is to be considered in accordance with the "Interest on Loan" fixed in the applicable RE Tariff Order as determined by the Central Commission from time to time. This would also be in line with the methodology adopted by the Central Commission while fixing the discounting factor towards annuity payment. In terms of the RE Tariff Order dated 07.11.2022 of the Central Commission, the rate of interest on loan is 9.12% for the control period upto FY 2023-24;
- c) The duration of annuity ought to be taken as 15 years from the date of COD. The same is consistent with Regulation 17.1 of the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020. Relevant extract of Regulation 17.1 of the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 is mentioned as under:

"17 Loan and Finance Charges

17.1 Loan Tenure

17.1.1 For the purpose of determination of generic tariff and project specific tariff, loan tenure of 15 years shall be considered."

5.17 RUVITL further submitted that, in fact, the discounting factor of 9% towards annuity payment along with the term of the loan repayment of 15 years has

been already considered by the Commission in order dated 30.12.2021 in Petition Nos. 1914/2021, 1922/2021, and 1941/2021 - Fortum Solar Plus Pvt. Ltd. v. SECI Ors. and Batch. The above methodology having not been challenged has attained finality and as such the very same principles ought to be adopted by the Commission even in the present case.

RE: SAFEGUARD DUTY

- 5.18 RUVITL submitted that since as on the last date of bid submission, SGD was applicable therefore, it is obvious that the Petitioner would have factored in the SGD while placing its composite bid. It is relevant to point out that presently levy of SGD has been withdrawn or in other words the Petitioner is not liable to bear any SGD.
- 5.19 RUVITL also submitted that as per RfS clause 6 of section II, petitioner was required to quote tariff inclusive of all taxes/duties/cess etc. applicable as on last date of bid submission. Relevant extract is reproduced as under:-

"Section 11, Clause 6

SECI shall enter into PPA with successful SPDs for a period of 25 years from the date as per the provisions of PPA. The maximum tariff payable to the Project Developer is fixed at INR 2.68/ kWh for 25 years. This shall be inclusive of all statutory taxes, duties, levies, cess applicable as on the last date of bid submission.

It is clarified that any change in the rates of any Taxes after the last day of submission of the bid, including any duties and cess or introduction of any new tax made applicable for setting up the solar power project and supply of power from the Solar Power project by the SPD which have a direct effect on the Project, shall only be considered as change in law. However, Change in Law shall not include (i) any change in taxes on corporate income; or (ii) any change in any withholding tax on income or dividends."

5.20 RUVITL further submitted that Petitioner ought to have included the taxes and duties prevailing as on bid submission date i.e. tariff inclusive of SGD at the prevailing rates (25% as on 19.02.2019). Relevant extract of SGD notification 01/2018-Customs (SG) dated 30.07.2018 is reproduced as under:-

"...hereby imposes on subject goods falling under heading 8541 or tariff item 8541 40 11 of the First Schedule to the Customs Tariff Act, when imported into India, a safeguard duty at the following rate, namely:-

(a) twenty five per cent. ad valorem minus anti-dumping duty payable, if any, when imported during the period from 30th July, 2018 to 29th July, 2019 (both days inclusive);

(b) twenty per cent. ad valorem minus anti-dumping duty payable, if any, when imported during the period from 30th July, 2019 to 29th January, 2020 (both days inclusive); and

(c) fifteen per cent. ad valorem minus anti-dumping duty payable, if any, when imported during the period from 30th January, 2020 to 29th July, 2020 (both days inclusive)."

5.21 RUVITL submitted that the COD of the project was achieved on 06.01.2024. Obviously, the incidence of SGD, if it had been applicable, would also have occurred accordingly. However, since at the time of the Petitioner importing the equipment, it would not have incurred the SGD, the same would have resulted in saving of cost. Such cost which would have otherwise been factored in by the Petitioner while placing its bid. In this view of the matter, the rescinding of SGD is clearly a change in law event under Article 12.1 (ii) of the PPA, namely "an amendment, modification or repeal of an existing law". As such the repeal of SGD amounts to a Change in Law event.

5.22 RUVITL further submitted that the change in law provision clearly envisages any financial loss/gain to the generator and also stipulates that in such an event, the procurer would have to entitle to compensation. Accordingly, the

Petitioner was required to include SGD duty applicable as on last date of bid submission (i.e., 25% SGD as per notification dated 30.07.2018) in quoted tariff. The payment/(recovery) amount for difference between 25% (SGD at time of bid submission) & actual BCD paid i.e., 40%/25%) by the petitioner as illustrated as under:

	Particulars	Illustrated Amount
BCD Scenario		
1	Assessable value as per BOE	100
2	Basic Custom duty payable @40% (1*40%)	40
3	Social Welfare Surcharge @10% on BCD (2*10%)	4
4	IGST @ 12% ((1+2+3)*12%)	17
A	Total duty (2+3+4)	61
SGD Scenario prevailing as on bid submission date		
1	Assessable value as per BOE	100
2	Safeguard duty @25% as per notification 01/2018-Customs (SG) dated 30.07.2018 (1*25%)	25
3	IGST @5% ((1+2)*5%)	6
B	Total duty (2+3)	31
Net financial impact on Discom due to BCD change in law (A-B)		30

In view thereof, RUVITL is entitled to adjustment on account of the said change in law event along with carrying cost.

RE: CARRYING COST ALONG WITH INTEREST

5.23 RUVITL submitted that the Appellate Tribunal by way of decision dated 15.09.2022 in Appeal No. 256 of 2019 and batch (hereinafter being referred to as the "Parampujya Decision"), inter alia, held as under:

"109. The other captioned appeals Appeal no. 256 of 2019 (Parampujya Solar Energy Pvt. Ltd & Anr. v. CERC & Ors.). Appeal no. 299 of 2019 (Parampujya

Solar Energy Pvt. Ltd. v. CERC & Ors.), Appeal no. 427 of 2019 (Mahoba Solar (UP) Private Limited v. CERC & Ors.), Appeal no. 23 of 2022 (Prayatna Developers Pvt. Ltd. v. CERC & Ors.) Appeal no. 131 of 2022 (Wardha Solar (Maharashtra) Private Ltd. & Anr. v. CERC & Ors.) and Appeal no. 275 of 2022 (Parampujya Solar Energy Pvt. Ltd. & Anr. v. CERC & Ors.) - deserve to be allowed. **We order accordingly directing the Central Electricity Regulatory Commission to take up the claim cases of the Solar Power Project Developers herein for further proceedings and for passing necessary orders consequent to the findings recorded by us in the preceding parts of this judgment, allowing Change in Law (CIL) compensation (on account of GST laws and Safeguard Duty on Imports, as the case may be) from the date(s) of enforcement of the new taxes for the entire period of its impact, including the period post Commercial Operation Date of the projects Appeal Nos. 256, 299 & 427, of 2019 Appeal Nos. 23, 35, 131 & 275 of 2022 Page 75 of 75 in question, as indeed towards Operation & Maintenance (O&M) expenses, along with carrying cost subject, however, to necessary prudence check.**

- 5.24 RUVITL further submitted that However, the Hon'ble Supreme Court by way of Order dated 12.12.2022 has stayed the operation of the Parampujya Decision, more specifically Para 109 of the Order dated 15.09.2022. The specific direction is that the parties are to compute the claims in terms of Para 109 of the Parampujya Decision however, the order of the Central Commission shall not be enforced or given effect to. Therefore, the Hon'ble Supreme Court has stayed enforcement of the Parampujya Decision. Relevant extract of the Order dated 12.12.2022 is as under:

"2 pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in paragraph 109 of the impugned order dated 15 September 2022 of the Appellate Tribunal for Electricity. However, the final order of the CERC shall not be enforced pending further orders."

- 5.25 RUVITL submitted that in terms of the clear direction of the Hon'ble Supreme Court, the enforceability of all three claims, namely 1) compensation towards GST and SGD post COD, 2) compensation towards GST on O&M in its entirety, and 3) carrying cost both post and pre COD has been stayed till the final decision by the Hon'ble Supreme Court. It is submitted that the entirety of the

finding forming part of Para 109 of the Parampujya Decision has been stayed by the Hon'ble Supreme Court.

5.26 RUVITL further submitted therefore, the claim of carrying cost insofar as the same leans on the Parampujya Decision cannot be considered by the Commission. In fact, claim of carrying cost even up to the COD cannot be granted to the Petitioner in terms of the stay imposed vide Order dated 12.12.2022 passed by the Hon'ble Supreme Court.

5.27 RUVITL further submitted that, in terms of the stay order dated 12.12.2022, any incidence of GST on account of having outsourced the O&M expenses also cannot be granted. Even otherwise independent of the stay granted by the Hon'ble Supreme Court no case for claim of carrying cost let alone interest on carrying cost has been made out by the Petitioner. Interest is a substantive right, it needs to be either recognised in the statutory provisions / Regulations or the Contractual provisions / PPA. Simply claiming interest without any supporting provisions cannot be considered.

5.28 RUVITL submitted that still, other factors such as delay in execution of the Project, delay in approaching the Commission seeking declaration of change in law events and other such delays have to be considered while quantifying the claim of carrying cost, if any. In view thereof, the claim of the Petitioner for carrying cost and interest thereof is misconceived and should be rejected by the Commission.

RE: BENEFIT OF DUTY DEFERMENT IN TERMS OF THE MANUFACTURE AND OTHER OPERATIONS IN WAREHOUSE REGULATIONS, 2019

5.29 RUVITL submitted that with respect to the claim of the Petitioner under the Manufacture and Other Operations in Warehouse Regulations, 2019

(hereinafter being referred to as the "MOOWR Scheme"), the same is misconceived and not be out rightly rejected. Further, the Commission vide order dated 27.03.2023 passed in Petition No. 2053/2022 has recognized only the following claims as Change in Law events:

a) Increase in rates of Basic Customs Duty on import of Solar Inverters pursuant to Ministry of Finance Notification No. 07 /2021- Customs dated 01.02.2021 whereby custom duty exemption notification no. 1/2011, dated 06.01.2011, has been rescinded.

b) Levy of Basic Customs Duty on import of Solar Modules and PV Cells subsequent increase in quantum of social welfare surcharge and IGST on account of rescission of Notification No. 15/2022-Customs dated 01.02.2022.

c) Levy of GST vide Notification dated 30.09.2021 of Ministry of Finance.

5.30 RUVITL further submitted that the in-principle approval granted to the Petitioner is confined only to the above three claims. Under the garb of any liberty it is not open to the Petitioner to seek declaration of residual claim as a change in law event. It is submitted that the Petitioner has nowhere mentioned anything about the MOOWR Scheme in Petition No. 2053/2022. More so, nothing is recorded in this regard in the order dated 27.03.2023. It is submitted that it is for the first time that the Petitioner is raising this issue before the Commission. It is relevant to note that the following events occurred prior to the date of the filing of Petition No. 2053/2022 in October 2022:

a. The Petitioner has availed the benefit of duty deferment in terms of the MOOWR Scheme issued under Notification No. 69/2019-Customs (NT)

dated 01.10.2019 wherein the Petitioner was permitted to import inputs and capital goods (which are used to manufacture finished goods) by deferring the payment of import duties in a private bonded warehouse under Section 58 read with Section 65 of the Customs Act, 1962 till the time such goods are moved out of the bonded warehouse.

b. The Petitioner was granted a license for the private bonded warehouse under Section 58 of the Customs Act, 1962 along with the permission for undertaking manufacturing and other operations in the warehouse under Section 65 of the Customs Act, 1962.

c. Pursuant to the grant of license under the MOOWR Scheme, the Central Board of Indirect Taxes and Customs issued Instruction No. 13/2022-Customs dated 09.07.2022 stating that the MOOWR Scheme was applicable for Solar Power Generating Units. The said notification was in vogue at the time of the Petitioner seeking declaration of the change in law events and as such ought to have made a claim therein.

d. Subsequently, Petitioner was served Show cause notice by Customs Authorities for cancellation of MOOWR license in accordance with Instruction No. 13/2022-Customs dated 09.07.2022.

e. Aggrieved by such instruction and show cause notice, the Petitioner has challenged it vide Writ petition (Civil) No. 10853/2022 before Hon'ble Delhi High Court, and the said petition was reserved for orders on 25.01.2024.

5.31 Hence, the Petitioner had ample amount of time to approach the Commission in respect to the MOOWR Scheme, its claim under MOOWR Scheme, and the ongoing proceeding in Writ petition (Civil) No. 10853/2022 before Hon'ble Delhi

High Court. However, the Petitioner failed to raise this issue at the time of filing of Petition No. 2053/2022. Therefore, the claim of the Petitioner towards MWOOR Scheme is also hit by the principles of constructive res-judicata.

- 5.32 RUVITL submitted that the Petitioner by way of the present petition is raising an additional claim for which the liberty was not even granted by the Commission. For any declaration of a change in law, the Petitioner has to approach the Commission by way of a substantive petition. Therefore, on this ground alone, the claim of the Petitioner ought to be dismissed. In view of the facts and circumstances mentioned above, the Commission may be pleased to consider the annuity methodology provided above in regard to the payment mechanism to be decided for the impact of the Change in Law Claims.

6. Reply on behalf of SECI dated 06.05.2024

- 6.1. SECI submitted that the present Petition has been filed by the Petitioner, M/s ACME Aklera Power Technology Pvt. Ltd. for seeking adoption of a mechanism for appropriate adjustment/compensation to offset financial/commercial impact of change in law events approved by the Commission by its order dated 27.03.2023 in Petition No. 2053 of 2022. By the said order, the Commission recognized the change in law events and directed the Petitioner to establishing one to one correlation and its Impact on the Project Cost, for seeking any compensation on account of Change in Law event. However, the Petitioner has failed to place on record any of the relevant details including the date of delivery of goods, invoices, date on which invoices were raised, bill of entry, payment challan, Statutory Auditor's Certificate etc, to substantiate the alleged impact of the change in law events. It is humbly

submitted that the petition in its present form is incomplete and no relief may be granted to the Petitioner in terms of the prayers sought herein.

- 6.2. SECI further submitted that, without prejudice to above, on submission of relevant documents and details being furnished by the Petitioner, a joint reconciliation exercise will have to be carried out amongst the parties to determine the amount (if any) payable to the Petitioner on account of Change in Law. It is incumbent on the Petitioner to establish the one-to-one correlation between the project(s), the supply of goods, the invoices raised supported with an auditor certificate. At the outset, the Respondent No. 1 denies and disputes all averments, contents and allegations raised by the Petitioner except for what has been specifically and expressly admitted to hereinafter in writing.
- 6.3. SECI further submitted that SECI issued a Request for Selection of Solar Power Developers ("SPD") for procurement of 750 MW power generated from the Grid connected Solar Power Project vide RFS No. SECI/C&P/SPD/R/S/RJ082018 dated 03.08.2018 ("RfS"). In furtherance to the RfS, ACME Solar Holdings Limited ("ASHL") submitted its bid on 19.02.2019. Pursuant to the issuance of the RfS, ASHL was selected as a SPD for development of 250 MW Solar Power Project. SECI issued a Letter of Intent bearing Ref. No. SECI/C&P/SPD/RJ750/Lol/ASHL/P1/29216 dated 02.03.2019 ("Lol"). The Petitioner Company was incorporated by ASHL and it entered into Power Purchase Agreement dated 10.06.2019 (PPA) with SECI for setting up of a solar power project of 250 MW ("Project"). The Petitioner commissioned the part capacity of 200 MW on 20.07.2023 and the remaining 50 MW on 06.01.2024.
- 6.4. SECI further submitted that Petitioner filed a petition, being Petition No. RERC/2053/2022, seeking, inter alia, the following prayers:

- a. Declare the imposition of increased rate of Basic Customs Duty and subsequent increase in quantum of social welfare surcharge and JGST on account of rescission of Notification No. 1/2011-Customs dated 06.01.2011 vide Notification No. 07/2021-Customs dated 01.02.2021 issued by Central Government as Change in Law in terms of the PPA.
- b. Declare the increased rate of CGST/IGST on renewable energy devices and parts for their manufacture imposed vide Notification No. 8/2021-Central Tax (Rate) and Notification No. 8/2021-Integrated Tax (Rate) dated September 30, 2021 (effective October 1, 2021) as Change in Law in terms of the PPA.
- c. Declare the imposition of increased rate of Basic Customs Duty on Solar Modules and PV Cells subsequent increase in quantum of social welfare surcharge and IGST on account of rescission of Notification No. 24/2005- Customs dated 01.03.2005 vide Notification No. 15/2022 Customs dated 01.02.2022 and amendment in the Finance Act, 2022 as Change in Law in terms of the PPA.
- d. Declare that interest/carrying cost along with interest on carrying cost shall be paid from the date of incurring of the cost by the Petitioner till the date of payment, thereby restoring the Petitioner to the same economic position as before the occurrence of the Change in Law events.
- e. Declare that above Change in law cost will be reimbursed to Petitioner in accordance with or adopting the mechanism as provided under the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 dated 22.10.2021.

6.5. SECI submitted that the Commission, after hearing the parties at length, recognised the GoI notifications as change in law events, however the

Commission held that it shall be the responsibility of the Petitioner to place documentary evidences to clearly demonstrate the net additional cash outflow including establishing one to one correlation and its impact on the Project Cost. The Petitioner has failed to do so. In this regard, SECI craves reference to the following Orders of the Ld. Central Electricity Regulatory Commission:

- a) Order dated 04.10.2019 passed by Ld. CERC in the Petition No. 14/MP/2019 and Connected Petitions in Renew Solar Power Private Limited-v-Solar Energy Corporation of India Limited & Others and connected matters, inter-alia, holding as under:

"74 In any case, the Respondents have to compensate the Petitioners only on the production of the actual documents of the expenditure incurred by them.

75. Now we deal with the issue of "the need to evolve a suitable mechanism for compensation". As per discussion above, the Commission has already held that the imposition of the "Safeguard Duty" is an event covered as Change in law" as contained under Article 12 of the PPAs. The Immediate question before the Commission is what should be the basis of the calculation of the compensation? The Commission observes that as per the Notification No.01/2018-Customs (SG) New Delhi dated 30.07.2018, Safeguard Duty is payable on Solar Cells whether or not assembled in modules or panels. The Petitioners have claimed increase of the project cost due to increase in cost of modules. However, the Commission observes that in the instant petitions, the tariff has been discovered under transparent e-bidding process in accordance with the NSM guidelines issued by the Central Government. In the Competitive Bidding Scenario, the SPDs quote the bid levelized tariff without disclosing the details of the calculations of the project cost including capital expenditure. The design of the bid levelled tariff is solely a decision of the SPDs. Therefore, the Commission cannot rely on the figures provided by the Petitioners in the Petitions. As such the actual amount of the "Safeguard Duty" imposed by the competent authority and paid by the Petitioners needs to be compensated."

[Emphasis Supplied]

- b) Order dated 25.01.2021 in Petition No.211/MP/2019 in the matter of Rattanindia Solar 2 Private Limited-v-Solar Energy Corporation of India Limited & Others and connected matters, inter-alia, holding as under:

"59. our decisions in this Order are summed up as under:

a. The introduction of the GST Laws w.e.f. 01.07.2017 is covered under Change in Law in terms of Article 12 of the PPA. The Commission directs the Petitioner to make available to the Respondents all relevant documents exhibiting clear and one to one correlation between the project and the supply of imported goods till the COD as per PPA or till the COD upon extension of SCOD in terms of PPA, duly supported by relevant invoices and Auditors Certificate. The Respondents are directed to reconcile the claims for Change in Law on receipt of the relevant documents and pay the amount so claimed to the Petitioner. The quantum of compensation on account of introduction of GST w.e.f. 01.07.2017 should be discharged by the Respondents within 60 days from the date of issue of this Order or from the date of submission of claims by the Petitioner, whichever is later, failing which it shall attract late payment surcharge at the rates provided for in the PPA. Alternatively, the Petitioner and the Respondents may mutually agree to a mechanism for the payment of such compensation on annuity basis spread over a period not exceeding the duration of the PPA as a percentage of the tariff agreed in the PPA.

b..... The PPA (between the Petitioner and SECI) and PSA (between SECI and UPPCL) being back to back in nature are interconnected implying thereby that UPPCL is liable to pay to SECI all that SECI has to pay to the Petitioner."

6.6. SECI further submitted that the Petitioner should provide Statutory Auditors Certificate for the Project certifying the following:

- a) That the Petitioner has not availed any input tax credit/any tax reversal against Bill of Entry/ Invoice as mentioned in the tables annexed at Annexure P7 and P8 to the present petition. In case, the Petitioner has availed any input the credit or any other reduction in the mixes, the same has to be passed on.
- b) That all the Good on which Change in Law impact is claimed as mentioned in the Statutory Auditors Certificate were utilised in the Project and have been capitalized in the Petitioner's books of account in the above Project till COD and no de-capitalization (except in the form of normal depreciation) has been done till date.

- c) That all the claim documents/details have been completely verified by the Auditor and that the Auditor certifies that the Petitioner has incurred additional cost on account of Change in Law.
- d) That the Petitioner has installed the equipment for which Change in Law is being claimed as the Petitioner needs to demonstrate that BCD and OST can only be claimed on the devices and modules actually installed.

6.7. Further, SECI submitted the issue-wise submissions as under:

A. Re: Introduction of Notification No. 8/2021-Central Tax (Rate) dated 30.09.2021 which has changed the rate of GST from 5% to 12% on renewable energy devices and parts for their manufacture.

6.8. SECI submitted that the explanation contained in the table with reference to Serial No.201 A, Chapter 84, 85 or 94 in the Notification No.8/2021-Central Tax (Rate) provides as under:

Explanation. If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 (G.S.R. 690(E)), the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent of the gross consideration charged for all such supplies, and the remaining thirty per cent of the gross consideration charged shall be deemed as value of the said taxable service":

6.9. SECI submitted that as per the Notification No. 8/2021 Central Tax (Rate) dated 30.09.2021, the GST applicable on supply of goods is 12%. Further, the extent to which relief admissible to the Petitioner on account of Notification dated 30.09.2021 of GST (if any) is subject to Joint examination and verification of documents by the Petitioner, SECI and the Buying Entities to be submitted by the Petitioner. The Commission by its order dated 27.03.2023 passed in Petition No. RERC/2053/2022 categorically directed the Petitioner to place

documentary evidence to substantiate its claim for additional cost. However, the Petitioner in contravention of the said direction has failed to place on record the relevant details. The table allegedly containing details of the increased expenditure on account of increase in rate of GST from 5% to 12% does not constitute documentary evidence establishing one to one correlation of the additional expenditure incurred. The claim of the Petitioner ought to be dismissed on this ground alone.

B. Re: Increase in expenditure on import of Solar Modules and PV Cells due to increased rate of Basic Customs Duty along with increase in quantum of social welfare surcharge and IGST on account of amendment of Notification No. 24 of 2005- Customs dated 01.03.2005 vide Notification No. 15/2022-Customs dated 01.02.2022 and amendment in the Finance Act. 2022

- 6.10. SECI submitted that Section 12 of the Custom Act, 1962 deals with dutiable goods and provides that duties of customs shall be levied at such rate as specified under Custom Tariff Act, 1975 or any other law for the time being in force on goods imported into India or goods exported from India. Further, Section 110 of the Finance Act, 2018 deals with levy of Social Welfare Surcharge as a duty of Custom, for the goods (as specified in the first schedule of Custom Tariff Act, 1975) imported Into India. The Social Welfare Surcharge under Section 110 (3) of the Finance Act, 2018 is leviable at 10% on the aggregate duties, taxes, cess which are levied under Section 12 of the Customs Act, 1962 but not including Safeguard Duty, Countervailing Duty, Anti-Dumping Duty and Social Welfare Surcharge. Thus, Social Welfare Surcharge is leviable.
- 6.11. SECI submitted that as regards Integrated Goods and Services Tax Act ('IGST'), Section 5 of IGST Act provides for levy of IGST on goods and services. The

proviso to said Section 5 (2), specifies that levy shall be on the value determined under Section 3 of the Customs Tariff Act, 1975 and on the duties of Customs levied on the goods under Section 12 of the Customs Act, 1962. Without prejudice to above, it is submitted that the admissibility and extent of compensation admissible to the Petitioner on account of levy of Custom Duty as per Notification dated 01.02.2022 of Government of India on solar cells and modules (if any) is subject to examination and verification of documents by SECI (and RUVITL) to be furnished by the Petitioner. This was upheld by the Commission vide its order dated 27.03.2023. However, in contravention of the directives of the Commission in the said order, the Petitioner has failed to file the relevant details. The tables allegedly containing details of the increased expenditure on account of alleged imposition of BCD on import of solar cells and modules does not constitute documentary evidence establishing one to one correlation of the additional expenditure incurred. In light of this, no methodology can be devised to offset the alleged financial impact if any.

C. Re: Cut-off date for payment of reconciled claim amount on account of GST rate change and BCD on Solar PV Cells & Modules

- 6.12. SECI submitted that Ld. CERC in its decision dated 20.08.2021 passed in Petition No.536/MP/2020 in the matter of Solar Energy Corporation of India Limited -v- M/s Azure Power Venus Private Limited & Others has dealt with the Cut-Off Date for payment on account of GST Laws, inter-alia, as under:

81. We note that as per the PPAs (e.g. Article I read with Article 5 and Schedule 6 quoted above) the commissioning of the project implies that all the equipment as per rated project capacity has been installed and the energy has flown into the grid. The Commission also notes that the liability of the SECI/ Discoms for payment for purchase of power from the Respondent SPDs starts from the Commercial Operation Date (COD) as defined in Article 1 of the respective PPAs.

Cut-off date for GST Claims

84. Various Sections of CGST Act, 2017 stipulate as under:

"TIME AND VALUE OF SUPPLY

12. (1) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of goods shall be the earlier of the following dates, namely:-

(a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or

(b) the date on which the supplier receives the payment with respect to the supply:

Explanation 1. For the purposes of clauses (a) and (b), "supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2. For the purposes of clause (b), "the date on which the supplier receives the payment" shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier

13. (1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:-

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

CHAPTER VII

TAX INVOICE, CREDIT AND DEBIT NOTES

"31. (1) A registered person supplying taxable goods shall, before or at the time of-

(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b) delivery of goods or making available thereof to the recipient, in any other case,

issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which- (a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or (b) tax invoice may not be issued.

(5) Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,-

(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;

(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;

(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

Explanation. For the purposes of this section, the expression "tax invoice" shall include any revised invoice issued by the supplier in respect of a supply made earlier."

85. As per Rule 47 of the CGST Rules, 2017, the invoices in respect of table supply of services have to be issued within 30 days

47. Time limit for issuing tax invoice-The invoice referred to in rule 46, in the case of the taxable supply of services, shall be issued within a period of thirty days from the date of the supply of service:"

87. We observe that the philosophy behind the "Point of taxation and raising of invoice is enshrined in Sections 12, 13 & 14 read with Section 31 of the CGST Act, 2007 and Rule 47 and 55 of the CGST Act, 2007. It is observed that Section 12 governs the determination of time of supply of goods, Section 13 governs the determination of Time of supply of services whereas Section 14 determines the 'time of supply for goods and services in case there is a change in the rate.

88. Section 12 stipulates 'time of supply of goods' as the date of issue of invoice or the last date specified under section 31 (1) to issue the Invoice, whichever is earlier. Therefore, in the instant petition the date of invoice of goods cannot be after the date of delivery of goods.

89. Section 13 stipulates that time of supply of services' is the date of issue of invoice which is to be issued within the period prescribed under section 31 (2) or the date of receipt of payment, whichever is earlier.

91. Section 31 stipulates that a registered person supplying taxable goods shall issue a tax invoice before or at the time of delivery of goods. Further, as per Section 31 read with Rule 47 of the CGST Rules, 2017, the invoices in respect of taxable supply of services have to be issued within 30 days and as per Rule 55 of the CGST Rules, 2017, the delivery of a few goods is specifically allowed to be transported on a delivery challan in lieu of Invoice at the time of removal of goods for transportation.

92. Thus, in case of 'supply of goods, the date of issue of Invoice cannot be after the date of supply of goods on per sections 12, 14 und 31 of the CGST Act, 2017 whereas in case of 'supply of services related to the goods procured up to the COD, the date of issue of Invoice can be thirty days after the supply of services as per sections

13, 14 and 31 of the CGST Act, 2017 along with the Rule 47 of the COST Rules, 2017.

93. Accordingly, there cannot he any Invoice under law, post supply of goods as the goods are not exempted under Rule 55 of the CGST Rules, 2017. Further, in case the invoices are not raised, the point of taxation for supply of goods is deemed to be the date of delivery of goods.

94 Hence, the Commission has already held that the invoices related to supply of the goods can be raised only up to COD for all the equipment as per the rated project capacity that has been installed and through which energy has flown into the grid, since the liability of the SECI/Respondent Discom for payment of purchase

of the power from the Respondent SPDs starts from the Commercial Operation Date (COD).

95. The Commission has further held that there is a possibility of a few services related to goods procured up to COD to be completed on the last date of COD. Hence, in case of 'supply of services related to goods procured up to COD completed on the last day of COD, the invoices can be raised within 30 days after COD. Thus, in case of supply of services related to goods procured up to COD, the invoices are to be raised within 30 days of supply of such services, which cannot be later than 30 day of COD and the Petitioner is entitled to be compensated accordingly.

- 6.13. SECI further submitted that the PPA entered into between SECI and the Petitioner, inter-alia, provides as under:

ARTICLE 1: DEFINITION AND INTERPRETATION

"Commercial Operation (COD)	shall mean the date on which the commissioning certificate is issued upon (as per successful commissioning provisions of this Agreement) of the project or the last part capacity of the Project as the case may be:
"Scheduled Commissioning Date" or "SCD" of the Project	shall mean 2 nd Dec, 2020

- 6.14. SECI further submitted that the Schedule Commissioning Date of the Project was extended as under:

- a) The Schedule Commissioning date revised by SECI vide its letter dated 24.05.2021 till 31.12.2021 in accordance with the Commission order dated 24.03.2021

This has reference to your Letter Ref. No to inform that taking cognizance of your request, understanding and commitments therein, SECI has decided to accept the order of RERC dated 24.03.2021 for extension of time till 31.12.2021

to achieve the Commissioning of the Project, without any ACME/BUS/100421/3765 dated 19.04.2021 In this regard it is compensation.

Further, following the reasoning given by RERC while granting the extension of time in Commissioning of the Project, that is "Petitioners were having a time period of around Nine Months to complete the Project, if the situation of Force Majeure due to Covid-19 did not happen.... "the Scheduled Date of Financial Closure & Land acquisition are also extended till 30.06.2021.

- b) The Schedule Commissioning date was further revised by SECI, vide its letter dated 02.12.2021, till 17.03.2022 in accordance with MNRE OM Ref. F. No. 283/18/2020-GRID SOLAR dated 12.05.2021, 29.06.2021, 15.09.2021, and F. No. 283/56/2021 - GRID SOLAR dated 03.11.2021
- c) The Schedule Commissioning date was further revised by SECI, vide its letter dated 10.03.2022, till 30 days after the judgement of the Hon'ble Supreme Court in the IA filed by MNRE:

This has reference to the 250 MW Solar PV Power Project (Project ID: SPD-STU-RJ750-TI-ASHL-PI-250) awarded under Solar STU, Rajasthan-Tranche I under SBG. In this regard, it is to inform that, in line with MNRE OM dated 03.02.2022 (Ref. i). Schedule Commissioning Date for your aforementioned project is hereby extended to a date which is 30 days after the date of judgement by Hon'ble Supreme Court in the IA filed by MNRE subject to conditions given under the referred OM

- d) The Schedule Commissioning date was further revised by SECI, vide its letter dated 12.12.2023, till **31.03.2024** in accordance with MNRE' letter dated 25.01.2023: F. No. 283/26/2021-GRID SOLAT-Part(1)

This has reference to the 250 MW Solar PV Power Project (Project ID: SPD-STURJ750-TI-ASHL-P1-250) awarded under Solar STU, Rajasthan -Tranche I and your request Letters dated 21.11.2023 (Ref. i & viii) seeking extension of time in line with MNRE'S OM dated 25.01.2023 (Ref. iii). This is to inform you that, based on the submission made by you in support of your claim for extension of time, Schedule Commissioning Date (SCD) for 250 MW capacity has been extended till 31.03.2024 or the actual commissioning date of the full project capacity, whichever is earlier

- 6.15. SECI further submitted that the commercial supply of power from the power project under the PPAs is from the Commercial Operation Date of the power plant. In such case, the extent to which the impact of change in law is to be considered is only on the equipment that are duly installed and commissioned by the date of commercial operation of the power plant. The equipment installed after the commercial operation date of project are not to be considered for the impact of Change in Law. It is therefore submitted that the Commission may be pleased to clarify the cut-off date for considering change in law impact as the actual Commercial Operation Date of power project.

D. Re: Methodology for payment of reconciled claim amount (if any) on account of Change in Law

- 6.16. SECI submitted that the Commission may be pleased to take into consideration the following aspects for determining the methodology for making payment:
- 6.17. The reconciled claim is to be paid on Monthly Annuity basis unless the Distribution Licensees/Buying Entities specifically agrees to make lump sum payment and further duly make such payment in discharge of its obligation.
- 6.18. By communication dated 12.03.2020, MNRE, Government of India with regard to the aspect of Change in Law payment ordered by Ld. CERC on account of imposition of GST vide notification dated, 2017 and Safeguard Duty (imposed vide Notification dated 30.07.2018), inter-alia, stated that impact of GST/Safeguard Duty shall be recovered in annuity basis, the rates for this shall be worked out by SECI/NTPC and that the rates of recovery shall be as per the norms of the Commission.

- 6.19. SECI further submitted that there is a clear rationale for annuity payment methodology. The increased costs have been claimed to have been incurred for the purpose of supply of power, the costs should be recovered only if the Petitioner continue to maintain the supply of the power. If the Petitioner does not supply the requisite power, it should not be entitled to recover the cost proportionate to such non-supply, similar to any other capital cost. If the Petitioner is allowed to recover the Change in Law Impact in lump-sum, then SECI (and consequentially the Buying Entities) would have paid for capital cost even without their being actual supply of power in future. If for any reason the Petitioner abandons the project and discontinues the supply of power, there is no methodology for adjustments of the lump sum payments already made.
- 6.20. SECI further submitted that accordingly, for the present case, the following parameters for making payment on annuity basis may be considered by the Commission.
- a) The change in law claims upto the cut-off date (date of commercial operation/commencement of power supply) as may be decided by the Commission in its order will be evaluated jointly by the Petitioner, SECI and Buying Entity (ies);
 - b) The discounting factor may be considered as 9.12% which is the rate of interest for the loan component of the capital cost as provided in the Ld. CERC's.
 - c) Tariff order dated 08.09.2023 (Extension of Order dated 07.11.2022 in Petition No. 14/SM/2022) providing for determination of levelised generic tariff for the Financial Year 2023-24 read with Regulation 14(2)(b) of Renewable Tariff Regulations, 2020.
 - d) The period for payment of the claim amount on account of Change in Law on annuity basis may be considered as 15 years from the date of Commercial Operation Date. The same is consistent with Regulation 14

(1) of the RE Tariff Regulations 2020 providing that for the determination of generic tariff and project specific tariff, loan tenure of 15 years shall be considered.

- e) The change in law reconciled amount may be payable to the Petitioner with the monthly annuity rate for a period of 15 years.

6.21. SECI further submitted that the Commission may be pleased to consider the above aspects in regard to the payment mechanism to be decided for the impact of alleged Change in Law event in the present case. The Commission in Order dated 30.12.2020 passed in Petition No. 1914/2021, 1922/2021, 1941/2021 while approving the above methodology has stated in Para 54 that Commission after considering all the submissions and facts, deems it appropriate to allow the discount rate at 9% and annuity of 15 years.

6.22. SECI submitted that the Hon'ble Appellate Tribunal in decision dated 05.04.2022 in Original Petition No. 1 of 2022 and Batch in the matter of NRSS-XXIX Transmission Limited vs Central Electricity Regulatory Commission Batch while taking cognizance of the Clarification dated 21.02.2022 issued by MNRE in respect of Change in Law Rules, 2021, stated as under:

"63. As mentioned earlier, pertinent to note that the Central government which has framed and notified the CIL Rules itself has clarified, albeit subsequently, by a communication issued by MoP on 21.02.2022 that CIL Rules will apply to Change in Law events which occur on or after 22.10.2021, such events as had occurred prior to the notification of the these Rules to be dealt with in accordance with the prevalent dispensation or rule at the time of occurrence of the event."

6.23. SECI also submitted that as one of the claimed change in law event, i.e. increase in expenditure on import of Solar Modules and PV Cells on account of rescission of Notification No. 24 of 2005-Customs dated 01.03.2005 vide Notification No. 15/2022-Customs dated 01.02.2022 which increased the BCD on Solar Cells and Solar Modules, occurred post the notification of The

Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021. the adjustment in tariff on account of change in law, if any, may be in terms of the said Rules.

E. Re: Direction to buying entities to make payments to SECI towards the reconciled change in law claims

- 6.24. SECI further submitted that the Commission may be pleased to issue directions to Respondent Nos. 3 and 4 (i.e., the power procurers under the respective PSAs), to make payment to SECI towards all the evaluated change in law claims payable by SECI to Petitioner, as under the respective PSAs in a time bound manner. In regard to the above, in the decision dated 13.05.2021 passed by Ld. CERC in Petition No. 73/MP/2020 along with I.A. No. 21 of 2021 in the matter of SB Energy One Private Limited-v-Solar Energy Corporation of India Limited and another, the Hon'ble Central Electricity Regulatory Commission has held that PPA and PSA are interconnected and are of back to back nature implying that the distribution licensees is liable to pay to SECI all that SECI has to pay to the Power Developer on account of GST/Safeguard Duty. The relevant extract of the decision is as under:

"130. RUVNL has also raised the objection that reconciliation done between SECI and the Petitioner does not ipso facto bind the answering Respondent to make payments to SECI.

131. The Commission observes that as per Recitals in the PPAs executed between the Petitioner and SECI:

"E. the SPD has agreed to sign this Power Purchase Agreement with SECI to sell Solar Power to SECI as per the terms and conditions of this agreement.

F. SECI has agreed to purchase such Solar Power from SPD as an intermediary Seller and sell it to Buying Utilities back to back basis as per the provisions of the NSM."

132. Thus, the Commission is of the view that the provisions of the PPAs specifically deal with the back to back PSA between SECI and the RUVNL. SECI is not functioning as merchant trader but as an intermediary trader. There is as a clear link between the ultimate distribution company and the generator with trader acting as only an intermediary linking company.

133. Further, the Commission observes that APTEL in its Judgment dated 04.11.2011 in Appeal No. 15 of 2011 in the case of Lanco Power Limited v Haryana Electricity Regulatory Commission and Ors., has, inter alia, held as under:

134. From the above, the Commission is of the view that the PPA and PSA are interconnected and inextricably linked to each other and as such there is privity between the Petitioners which are the power generator and the RUVNL which are the Discoms and the ultimate beneficiary of the PPA as well as the party to the PSA. Therefore, the Petitioner is bound to raise the audited claims and the amount so determined is to be paid by SECI to the Petitioner and RUVNL is to pay the same to SECI in the instant Petition.

135.....In view of the above, the Commission holds that the Power Purchase Agreement and Power Sale Agreement being back to back in nature are interconnected implying thereby that the RUVNL is liable to pay to SECI all that SECI has to pay to the Petitioner. However, payment to the Petitioner by SECI is not conditional upon the payment to be made by the RUVNL to SECI. However, RUVNL has to expeditiously settle such back to back claims in term of the PSA"

[Emphasis Supplied]

A copy of the order dated 13.05.2021 passed by Ld. CERC in Petition No.73/MP/2020 along with I.A. No. 21 of 2021 in the matter of SB Energy One Private Limited-v-Solar Energy Corporation of India Limited and Another is annexed herewith for reference of the Commission.

- 6.25. SECI further submitted that the relevant provisions of the PPA and the PSAs, in the present case, demonstrating back-to-back nature are as under:

PPA

"14.5.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and accept that the SECI is an Intermediary Company to purchase and re-sell the electricity to the Buying Utility(ies) to enable them to fulfil the Renewable Purchase Obligations (RPO) and, therefore, the performance of the obligations of the SECI under this Agreement shall be subject to the ability of the SECI to enforce the corresponding obligations assumed by the Buying

Utility(ies) on re-sale under the Power Sale Agreement to be entered into by the Buying Utility(ies) with SECI..."

PSA

"VI. Buying Entity hereby acknowledge and accept that SECI is an Intermediary to facilitate the promotion of Solar Power Projects and to purchase and re-sell the electricity to the distribution licensees to enable them to fulfil the Renewable Purchase Obligation and, therefore, the sale of electricity by SECI to Buying Entity under this Agreement shall be entirely on a back to back basis to the purchase of electricity by SECI from the SPDs under the SECI-SPD PPA, with the intent that there shall be no residual liability on the SECI towards the SPD which will not be fulfilled by the Buying Entity.

VII. In accordance with the above and except as otherwise specifically provided in this agreement, the rights and obligations of Buying Entity under this agreement shall be available and enforceable entirely and effectively on a back to back basis to the rights and obligations of the SECI in the SECI-SPD PPA and in the event SECI is not in a position to enforce its rights against the SPD or is subject to any obligation to be performed towards SPD, Buying Entity shall be liable to perform such obligation or shall be entitled to such rights only on a mutatis mutandis basis, without additional or independent exposure whatsoever to SECI.

VIII. Except as otherwise specifically provided in this agreement, Buying Entity acknowledges and accepts that the terms and conditions of the SECI-SPD PPA shall mutatis mutandis apply to this Agreement between the parties. Buying Entity agrees to correspondingly fulfil, on back to back basis, all the obligations assumed by SECI towards SPD. Buying Entity further agree, acknowledge and accept that as an Intermediary, SECI is not assuming any obligation to Buying Entity over and above the obligation which the SPD shall duly performs under the SECI_SPD PPA..

XII. The parties agree that the various terms contained in the SECI-SPD PPA such as Scope of Project, Terms of the Agreement, Performance Guarantee, Conditions Subsequent, Obligations of the respective Parties, Construction of the Power Generation Capacity, Synchronization, Commissioning and Commercial Operation, Operation and Maintenance, Purchase and Sale of Solar Power, Measuring and Metering and Dispatch of Power, Billing and Power Accounting and payments, Liabilities, Force Majeure, Events of Defaults, Termination, Transfer, Change in Law, Indemnity, Insurance, Assignment and Changes, Financing and Bankability, Representations and Warranties, Governing Law, Notices and all other Miscellaneous Terms provide in the SECI-SPD PPA shall mutatis mutandis apply to this agreement between SECI and Buying Entity.

F. Re: Carrying Cost

- 6.26. SECI submitted that as per Article 12 of the PPA, the Change in Law event claimed by the Petitioner, the date from which it will be effective and the aspect of applicability of Carrying Cost has to be determined and approved by the Commission after hearing the parties hence, there cannot be any carrying cost for the period prior to the decision of the Commission in terms of agreed position as per Article 12 of the PPA.
- 6.27. SECI submitted that the Government of India's form of AD offered benefits to the Solar Developers to get back investment in initial years of project in form of Tax saving on new depreciation and additional depreciation. Impact of such amount adjusted in impact amount while calculating carrying savings on actual interest paid by developers may also be allowed from carrying cost claim. In this regard to furnish all necessary inputs/documents.
- 6.28. SECI submitted that even if the Commission were to find the SPD eligible for carrying cost, the period of carrying cost should be limited up to the period of the Petitioner's project achieving COD starting from the dates of payment of GST by the Petitioner to the Appropriate Authority.
- 6.29. SECI further submitted that in any event the Carrying Cost is to be restricted to the cost of financing of a prudent and efficient utility is the interest rate at which such utility can borrow money from the lenders and financial institutions after due and sincere efforts to minimize the interest cost. The Commission having fixed Annuity at rate of 9% in its Order dated 30.12.2021 in Petition Nos. 1914/2021 and Batch. Further, the Carrying Cost to be allowed for computation should be restricted to the actual rate paid by the Petitioner subject to the ceiling of 9%.

- 6.30. SECI also submitted that it is settled principle that in the matters of restitution, the courts should adopt pragmatic view and grant relief in a manner as may be reasonable fair and practicable. It has been held that the Court should not be oblivious of any unmerited hardship to be suffered by the party against whom action by way of restitution is taken. [Reference: Citibank N.A. Hiten P. Dalal Ors. (2016) 1 SCC 411 and Kerala State Electricity Board Through its Special Officer (Revenue) and another vs M.R.P Limited and Others. (1996) 1 SCC 597].
- 6.31. SECI also submitted that the Petitioner should be required to establish to the satisfaction of the Commission that it has made prudent and bona-fide effort to minimize the interest cost.

G. Re: Hon'ble Supreme Court and Hon'ble Appellate Tribunal's decision in Parampujya Case

- 6.32. SECI submitted that the Hon'ble Appellate Tribunal in decision dated 15.09.2022 passed in Appeal No.256 of 2019 and connected Appeals in the case of Parampujya Solar Energy Pvt. Ltd. v. Central Electricity Regulatory Commission ("Parampujya Case") has dealt with the aspects of Carrying Cost. In this regard, it is submitted as under:

a) The Hon'ble Supreme Court vide order dated 12.12.2022 in Civil Appeal No. 8880 of 2022 filed by Telangana Discoms challenging the above judgement dated 15.09.2022 of Hon'ble Tribunal in Parampujya Case, has inter-alia held as under:

2 Pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in paragraph 109 of the impugned order

dated 15 September 2022 of the Appellate Tribunal for Electricity. However, the final order of the CERC shall not be enforced pending further orders.

b) The said Judgment dated 15.09.2022 has also been challenged by SECI before the Hon'ble Supreme Court in Civil Appeal No.000505-000510 of 2023. The Hon'ble Supreme Court vide Order dated 23.01.2023 in Civil Appeal No.000505-000510 of 2023 has held as under:

Pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in paragraph 109 of the impugned order dated 15 September 2022 of the Appellate Tribunal for Electricity. However, the final order of the CERC shall not be enforced pending further orders.

The Civil Appeal of SECI is presently pending before the Hon'ble Supreme Court.

c) The Paragraph 109 of the Hon'ble Tribunal's decision dated 15.09.2022 in Parampujya Case reads as under:

109. The other captioned appeals Appeal no. 256 of 2019 (Parampujya Solar Energy Pvt. Ltd & Anr. v. CERC & Ors.), Appeal no. 299 of 2019 (Parampujya Solar Energy Pvt. Ltd. v. CERC & Ors.), Appeal no. 427 of 2019 (Mahoba Solar (UP) Private Limited V. CERC & Ors.), Appeal no. 23 of 2022 (Prayatna Developers Pvt. Ltd. v. CERC & Ors.) Appeal no. 131 of 2022 (Wardha Solar (Maharashtra) Private Ltd. & Anr. v. CERC & Ors.) and Appeal no 275 of 2022 (Parampujya Solar Energy Pvt. Ltd: & Anr. v. CERC & Ors.) - deserve to be allowed. We order accordingly directing the Central Electricity Regulatory Commission to take up the claim cases of the Solar Power Project Developers herein for further proceedings and for passing necessary orders consequent to the findings recorded by us in the preceding parts of this judgment, allowing Change in Law (CIL) compensation (on account of GST laws and Safeguard Duty on Imports, as the case may be) from the date(s) of enforcement of the new taxes for the entire period of its impact, including the period post Commercial Operation Date of the projects in question, as indeed towards Operation & Maintenance (O&M) expenses, along with carrying cost subject, however, to necessary prudence check

d) Thus, in terms of the Orders dated 12.12.2022 and 23.01.2023 of the Hon'ble Supreme Court, the enforceability of the Ld. CERC's order to be passed in pursuance of Hon'ble Tribunal's decision dated 15.09.2022 in Parampujya Case has been stayed with regard to the issues of carrying cost.

e) Considering the above decisions of the Hon'ble Supreme Court, the Hon'ble Tribunal vide order dated 19.01.2023 in another case being Appeal No.432 of 2022 in the matter of Adani Solar Energy Jodhpur Three Private Limited v. Central Electricity Regulatory Commission and others has held as under:

Ms. Gayatri Aryan, learned Counsel for the Appellant, submits that the subject matter of this Appeal is covered by the order passed by this Tribunal earlier in Appeal No. 256 of 2019 & Batch dated 15.09.2022; on an appeal being preferred against the said Order in Civil Appeal No. 8880 of 2022, the Supreme Court, by order dated 12.12.2022 while directing the CERC to comply with the directions issued in paragraph 109 of the order of this Tribunal, further directed that the final order of the CERC shall not be enforced until further orders. The directions issued by this Tribunal as noted in Para 109 of the above said Judgment, reads as under:

Suffice it, therefore, to dispose of this appeal in terms of the Order passed by this Tribunal in Appeal No. 256 of 2019 dated 15.09.2022, making it clear that, consequent on remand, it shall be open to the parties to the dispute to raise all such contentions as are available to them in law, and the same shall be considered by the CERC while passing an order afresh. Needless to state that, in terms of the Order of the Supreme Court, the order to be passed by the CERC shall not be enforced till the aforesaid Order is either varied or the appeal itself is disposed of by the Supreme Court. The instant Appeal is, accordingly, disposed of.

f) The Commission may be pleased to consider the above decisions of the Hon'ble Supreme Court and the Hon'ble Tribunal and maintain parity with the present case. The Commission may direct that enforcement of any order of the Commission passed on the aspects covered in Judgment dated 15.09.2022 of the Hon'ble Tribunal will take place after the decision of the Hon'ble Supreme Court to maintain such parity.

6.33. Further, SECI denied that the Petitioner is incurring any additional expenditure on account of the Change in Law events, as it has failed to comply with the categorical directives of the Commission's order dated 27.03.2023 and has failed to place on record any documentary evidence in support of its claim.

It is most respectfully submitted that the Petitioner was directed by the

Commission by its order dated 27.03.2023 , to establish the one to one correlation between the project, the supply of goods against which change in law is claimed, the invoices and other relevant documents for proof of the payment of claimed amount on account of change in law. The Petitioner was directed to furnish the relevant details including date of delivery of goods, invoices, date on which invoices were raised, Statutory Auditor's Certificate etc, to substantiate the impact of the change in rate of GST in terms of the Notification on the specified renewable energy devices and parts for their manufacture and increase in expenditure on import of Solar Modules and PV Cells on account of amendment of Notification No. 24 of 2005. However, the Petitioner has failed to do so. It is submitted that the Petitioner, by not complying with the directions of the Commission, has made unsubstantiated claims of impact of Change in Law.

- 6.34. Further, the Petitioner has failed to place on record any documentary evidence in support of its claim for additional expenditure. The tables provided by the Petitioner do not constitute documentary evidence establishing one to one correlation between and its impact on the project cost. Submissions are reiterated and anything to the contrary is denied. Further, the Petitioner has till date not paid duty and GST on modules, as it is seeking to reserve its right to claim such amount as and when it is paid by the Petitioner. In support of its contention the Petitioner has placed reliance upon Writ Petition (Civil) No. 10853/2022 filed before the Hon'ble High Court of Delhi. It is most respectfully submitted that the Petitioner was granted a liberty by the Commission by its order dated 27.03.2023 to approach the Commission for the quantum and methodology of applicable compensation for change in law events, along with the relevant: documentary evidence in support of such claim. The Petitioner on the one hand has failed to file an iota of evidence in support of its claim and on the other hand is now seeking a conditional approval of such

claim, subject to the outcome of a writ petition, to which none of the Respondents are parties. This is impermissible.

7. Rejoinder on behalf of the Petitioner dated 14.05.2024

RE: Requirement to furnish relevant documents to establish one to one co-relation

- 7.1. The petitioner submitted that he craves leave of the Commission to place on record the required documents for establishing one-to-one co-relation between the events of Change in Law and their financial impact on the Project Cost.
- 7.2. The Petitioner further submitted that he clarifies that vide the present Petition it has submitted that its Change in Law claim of GST on domestic procurement as has been shown in Annexure P-7 is Rs. 11, 26, 92,518. However, it is actually Rs. 11, 09, 74,087. The said mistake was due to a bona fide clerical error and the erstwhile calculation of the said claim may not be considered by the Commission.

RE: Cut-off date for payment of reconciled claim amount on account of increase in rate of GST and imposition of BCD on import of Solar Modules

- 7.3. The Petitioner submitted that it is the submission of RUVITL that the invoices related to the supply of the goods can be raised only up to the Commercial Operation Date for all the equipment as per rated project capacity that has been installed and through which energy has flown into the grid will only be considered since the liability of the Respondents for payment of the purchase of power from the Petitioner commences from the Commercial Operation Date. While the Petitioner will proceed to rebut the submissions as made by the Respondent, however, at the outset itself, the Petitioner submits that the additional expenditure as incurred by the Petitioner is solely towards those equipment which have been procured and installed prior to COD.

Accordingly, the submissions as made by the Respondent are wholly irrelevant to the facts of the present case.

- 7.4. The Petitioner further submitted that the submission of the Respondents that the date of invoice of goods cannot be after the date of delivery of goods is wholly erroneous and based on an erroneous understanding of the GST Laws. Further, there is no restriction whatsoever that the invoices cannot be raised after the delivery of goods. In fact, Rule 55(4) of the CGST Rules allows the supplier to issue an invoice(s) after delivery of goods in certain circumstances. Thus, the GST Laws clearly envisage a situation where invoice can be issued after the delivery of goods. Hence, the aforementioned assumption that invoices cannot be raised after delivery is wholly misconstrued.
- 7.5. The Petitioner further submitted that the date of delivery of goods is subject to contractual understanding between the Supplier and Recipient of the goods. Means, the Parties to a contract can contractually agree that the delivery of the goods would be at a future date i.e., a date much after the receipt of the goods or utilization of the goods for a specific purpose. Accordingly, in such cases, even the invoice can be issued at a later date, with no co-relation to the actual receipt of goods or payment of tax.
- 7.6. The Petitioner also submitted that even though the Respondent has not made any averment or contention, they have sought to make reference to section 14 of the CGST Act which prescribes the time of supply in case of change in rate of tax. According to Section 14, the time of supply of goods where the goods have been supplied before the change in rate of tax shall be determined as follows:

- i. Where the Invoice for the said supply has been issued and the payment has been received after the change in rate of tax-the time of supply shall be the date of issuance of invoice or receipt of payment whichever is earlier.
- ii. Where the invoice has been issued prior to change in rate but the payment is received after the change in rate- the time of supply shall be the date of issuance of invoice.
- iii. Where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate-the time of supply shall be the date of receipt of payment.

7.7. The Petitioner submitted that the submissions as attempted to be made by the Respondent in relation to time of supply, date of raising of invoices under GST Laws cannot be countenanced in law. That apart, at the cost of repetition, it is reiterated that in the present case, the entire set of equipment has been delivered and installed much prior to COD and hence the submissions of the Respondent are wholly irrelevant in the facts and circumstances of the present case.

7.8. The Petitioner further submitted that the Hon'ble Appellate tribunal vide its Order dated 15.09.2022 passed in Appeal No. 256 of 2019 has also held that the restriction of Change in law claims only upto to the Commercial Operation Date of the project is an extraneous condition since there is no such express restriction in the provisions of the PPA and therefore, there ought to be no differentiation between pre-CoD and post CoD claims relating to Change in Law. Furthermore, while the Order of the Hon'ble Tribunal has been carried by way of appeal to the Hon'ble Supreme Court of India. However there is no stay of the said Order. The only embargo that has been placed is with regarding

to the enforceability of the Order of CERC passed pursuant to the Order of the Hon'ble Tribunal.

RE: Methodology payment of compensation on account of Change in Law on annuity basis

- 7.9. The Petitioner submitted that RUVITL of its reply has submitted that Change in Law compensation being claimed by the Petitioner shall attract the discounting factor in accordance with "interest on loan" fixed in the applicable RE Tariff Order as determined by the Central Commission from time to time upon the payment to be made by the DISCOMs. The relevant extract of the Order dated 16.01.2024 passed in Petition No. 308/MP/2022 passed by the Hon'ble Commission has been reproduced herein below for ready reference:

*"33. Accordingly, the Commission hereby directs the contracting parties to carry out the reconciliation of additional expenditure along with carrying cost by exhibiting clear and one-to-one correlation with the projects and the invoices raised supported with an auditor certificate. **The Commission further directs that the responding Discoms are liable to pay SECI Order in Petition No. 308/MP/2022 Page 18 of 19 all the above-reconciled claims that SECI has to pay to ASRPL. However, payment to ASRPL by SECI is not conditional upon the payment to be made by the responding Discoms to SECI.**"*

(Emphasis Supplied)

- 7.10. The Respondent further submitted that in light of the Hon'ble Central Commission's Order dated 16.01.2024, it is submitted that even though the recovery of additional expenditure on account of the events of Change in Law may be effected on a back-to-back basis, the obligation of SECI to pay the additional expenditure incurred by the Petitioner on account of the events of Change in Law is not conditional upon the payment of the said amount to SECI by the Respondent DISCOMS.

RE: Carrying Cost

- 7.11. The Petitioner submitted that RUVITL contention regarding the carrying cost should be calculated from the date on which the Commission allows the compensation to the Petitioner on account of the events of Change in Law. The Petitioner vehemently denies the same as the very purpose of awarding carrying cost is to restore the Petitioner to the same financial position as it would have been had it not been for the occurrence of the events of Change in Law and therefore, the carrying cost ought to be calculated from the date on which the Petitioner incurred the additional expenditure upon the occurrence of the said Change in Law events. It is relevant to highlight that there is a gap between incurring the additional expenditure and the receipt of compensation for the same and the value of money keeps decreasing during this time gap. Further, the entire rationale for providing the carrying cost is that the Petitioner gets appropriately compensated for the diminished value of money. Thus, the averment that the calculation of carrying cost ought to start from the date on which the Commission passes its Order in the present Petition would be against the principles of restitution enshrined in Article 12 of the PPA, and would lead to Injustice.
- 7.12. The Petitioner submitted that RUVITL's suggestion regarding netting off carrying cost is completely irrational, baseless and misconceived. It is vehemently submitted that the utilization of carrying cost for any purpose is the Commercial Decision of the Petitioner which ought not to be questioned. In this regard reliance is placed on *Tata Power Renewable Energy Ltd v. MERC and Anr*, Appeal No. 215 of 2021 (Supra) and *KPTCL v. KERC and Ors*, 2007 ELR (APTEL) 223 (Supra). On this basis, the averments of Respondent No. 1 are specifically denied.
- 7.13. The Petitioner further submitted that RUVITL contention that the carrying cost awarded to the Petitioner ought to be limited up to the period of the

Petitioner's project achieving Commercial Operation. It is vehemently submitted that if the said averment of RUVITL is given effect to, it will go against the express provision of the restitution under the Change in Law clause of the PPA. Furthermore, it is submitted that the only limitation that can be fixed of the period of carrying cost is till the time the final amount of compensation is finally received by the Petitioner. If any other limitation is imposed, it would lead to a scenario where the Petitioner would suffer losses that too for no fault of its own.

7.14. The Petitioner also submitted that RUVITL suggestion that the discounting factor in accordance with "interest on loan" fixed in the applicable RE Tariff Order as determined by the Central Commission from time to time. The said determined discounting factor is currently the interest on loan is 9.12% for the control period upto 2023-24 and the duration of annuity may be taken as 15 years from the date of Commercial Operation. In this regard, it is submitted that the said formula which fails to restore the Petitioner to the same financial position as it would have been, had it not been for the occurrence of the event of Change in Law. The additional cost is in the nature of Capital Expenditure and is funded only to the extent of 70% by the lenders while the remaining 30% has to be infused by developers through its own equity. Therefore, it is incorrect to take interest rate only on loan part without factoring return on equity.

7.15. The Petitioner further submitted that, it is pertinent to reiterate herein that the Petitioner in a just, fair and equitable manner is proposing the interest rate in relation to the annuity payment to be calculated as weighted average rate on the basis of the normative debt equity ratio of 70:30, wherein, the average of the one-year MCLR as declared by the State Bank of India for the previous year plus 200 basis points, to be considered as the normative interest applicable in relation to the debt component and Return on Equity shall be computed at the base rate of 14%, to be grossed up as per the Minimum

Alternate Tax (MAT) rate applicable as on 1st April of the previous Financial Year. Such, adoption of the said formula as proposed by RUVITL is unfair, incorrect and an unjustifiable application of RE Tariff Regulations and basic financing principles in as much as the said adoption is contrary to the principles of restitution as laid down in Article 12 of the PPA.

- 7.16. The Petitioner further submitted that RUVITL in its Reply has put forth unreasonable preconditions for grant of carrying cost. Such as, determination by the Commission as to whether the Petitioner made "prudent and bonafide efforts to minimize the interest cost". This precondition is completely subjective and would result in absurd scenarios if given effect to. Additionally, such preconditions are not required to be followed under the law. Further, it is submitted that Carrying Cost is compensation towards time value of money for the time gaps between date on which affected party incurred additional expenses on account of Change in Law and the date when it received the compensation for the same, so, that the affected party may be restored in the same financial position as if the change in law event has not occurred in the first place.

RE: Hon'ble Supreme Court and Hon'ble Appellate Tribunal's decision in Parampujya Case

- 7.17. The Petitioner submitted that the Order dated 15.09.2022 is in relation to a PPA, which is materially different from the PPA of the Petitioner in as much as the PPA of the Petitioner contemplates restitution and hence the Petitioner was always entitled to its claim of change in law. In this regard, it is submitted that the Hon'ble Supreme Court vide its Order dated 12.12.2022 has only stayed the disbursement of money but has not imposed any stay on the principles as laid down by the Hon'ble Tribunal's Order dated 15.09.2022 which makes it clear that the Hon'ble Tribunal's Order dated 15.09.2022 is a good law till date.

- 7.18. The Petitioner further submitted that the principles of carrying cost have been enshrined in the Article 12 of the PPA which clearly lays down that "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 said principle makes the award of carrying cost mandatory in order to restore the Petitioner to the same financial position as it would have been in had the events of Change in Law not occurred.
- 7.19. The Petitioner also submitted that the Petitioner places its reliance on the Order of the Hon'ble Maharashtra Electricity Regulatory Commission's dated 17.02.2022 in Case No. 61 and 62 of 2020, in M/s. Nisagra Renewable Energy Private Limited (NREPL) v Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) and M/s. Juniper Green Energy Private Limited (JGEPL) v Maharashtra State Electricity Distribution Co. Ltd (MSEDCL) respectively (collectively referred to as "Order in Nisagra dated 17.02.2022"). Vide the said Order the Hon'ble Commission has held that carrying cost is compensation towards time value of money for the time gaps between dates on which affected party incurred such additional expenses. Further, in order to restore the affected party in the same economic position as if the change in law event has not occurred, the carrying cost has to be allowed at "actuals". For ready reference the relevant paragraphs are extracted hereinbelow:

10.6 In this regard, the Commission notes that carrying cost is compensation towards time value of money for the time gaps between date on which affected party incurred such additional expenses and the date on which the Commission allows the affected party to bill such compensation. Once, such amount (principal compensation + carrying cost for said period) is billed and paid, affected party gets restored to same position as if Change in Law event had not occurred. In case,

other party delays payment of such billed amount, LPS provisions in PPA would take care of compensation for such delayed payment.

10.7 APTEL in its remand judgment dated 16 November 2021 at para 44 (which is reproduced at para 1.6 above) has observed that carrying cost on Change in Law compensation should have been on actuals. To demonstrate actual carrying cost in present proceeding, JGEPL and NREPL has submitted loan agreements with IREDA. On perusal of such loan agreements, it is observed that these agreements are for loan against complete project and not limited to additional expenses on account of Change in Law compensation. Further loan agreement provides for interest reset clause. Therefore, submitting just loan agreement does not demonstrate actual carrying cost incurred by Petitioners on additional expenses on account of Change in Law compensation. In case, Petitioners wish to claim actual interest rate as a rate of carrying cost, they need to demonstrate to MSEDCL actual loan disbursement and its rate of interest which is used for paying increased expenses on account of Change in Law compensation.

10.9 Accordingly, carrying cost at the rate of actual interest rate (if JGEPL and NREPL are able to demonstrate the same to MSEDCL as ruled in para 10.7 above) or at the interest rate applicable for Working Capital Loan under MERC RE Tariff

Regulations 2019 shall be allowed for the period from the date they paid such amount of safeguard duty to Government Authorities till the date of this Order.

- 7.20. The petitioner submitted that in addition to the carrying cost, the Petitioner is also entitled to interest on delayed payment of carrying cost. In this regard, the Petitioner places it's on the recent decision of Hon'ble Supreme Court dated 24.08.2022 in Uttar Haryana Bijlivitran Nigam Ltd and Anr. v Adani Power (Mundra) Limited and Anr., Civil Appeal No. 7129 of 2021 whereby the Court held that, interest on carrying cost is nothing but time value for money and necessary for the restoration of the party in the same economic position. For ready reference the relevant paragraphs are extracted herein below:

17. In the instant case, the respondent No. 1 Adani Power had to incur expenses to purchase the FGD and install it in view of the terms and conditions of the Environment Clearance given by the Ministry of Environment and Forests. Union of India, in the year 2010. For this, it had to arrange finances by borrowing from banks. The interest rate framework followed by Scheduled Commercial banks and regulated by the Reserve Bank of India mandates that interest shall be

charged on all advances at monthly rests. In this view of the matter, the respondent No. 1 Adani Power is justified in stating that if the banks have charged it interest on monthly rest basis for giving loans to purchase the FGD, any will be incomplete, if it is not fully compensated for the interest paid by it to the banks on compounding basis. We are of the opinion that interest on carrying cost is nothing but time value for money and the only manner in which a party can be afforded the benefit of restitution in every which way. In the facts of the instant case, the Appellate Tribunal was justified in allowing interest on carrying cost in favour of the respondent No. 1 Adani Power for the period between the year 2014, when the FGD was installed, till the year 2021....

[Emphasis Supplied]

- 7.21. The Petitioner submitted that RUVITL in its Reply, has questioned the extent to which the outcome of W.P. No. 10853 of 2022 will affect the Petitioner's present claim. In this regard, it is submitted that vide the present petition the Petitioner has solely sought to claim the BCD that has already been incurred and discharged by the Petitioner, in relation to the part of the Project which is not covered under the MOOWR Scheme. The said writ petition has been finally decided by the Hon'ble Delhi High Court vide Order dated 06.05.2024 in favour of the Petitioner, however, the Petitioner would still be liable to discharge BCD even in relation to such license, once it clears the Solar Modules from its Warehouse as the same is a duty deferral scheme and not a duty exemption scheme. Accordingly, at the time of such disbursement (if any), the Petitioner reserves its right to raise a claim on account of the additional expenditure incurred due to an event of change in law i.e. imposition of BCD which has been duly recognised by the Commission vide its Order dated 27.03.2023. Further, in the event, the Order of the Hon'ble Delhi High Court is set aside by the Hon'ble Supreme Court, the Petitioner craves leave to raise the same.

8. Written Arguments on Behalf of RUVITL to the rejoinder of the petitioner

RE: requirement to furnish relevant documents and to establish one-to-one correlation

8.1. RUVITL submitted that for any claim to be given effect to, there has to be a joint reconciliation exercise between the parties because there are various documents that are required by RUVITL including but not limited to the following:

- a. Complete details of the invoices, date of delivery of the equipment, date of payment, certification by the statutory auditors, and correlation between the equipment procured and installed, etc;
- b. High Sea Sale Agreement since there is an additional burden of 1.22% of accessible value on RUVITL;
- c. Copies of Module supply and work contract services/EPC;
- d. Challan/valid document to verify payment of BCD and its GST;
- e. List of parts/materials procured from ACME Solar Holdings Pvt. Ltd;
- f. GSTR-1/3B of suppliers to Petitioner or GSTR-2A/2B of the Petitioner to verify payment of GST change in law;
- g. E-way Bills/Lorry Receipts to verify receipts of modules at plant location;
- h. Commercial invoices raised by overseas supplier; and
- i. Further, the relevant notifications and circulars demonstrating the applicability of the duties at the relevant time are to be produced. Merely providing a Chartered Account certificate is not going to resolve the issue.

RE: CUT-OFF DATE FOR PAYMENT OF COMPENSATION ON ACCOUNT OF CHANGE IN LAW EVENTS CLAIMED BY THE PETITIONER

8.2. RUVITL submitted that the Petitioner during the hearing has fairly conceded that it is not claiming the change in law compensation post COD. Therefore, any claim post COD cannot be admitted.

RE: METHODOLOGY TO BE FOLLOWED FOR PAYMENT OF COMPENSATION-ON ANNUITY BASIS

- 8.3. RUVITL submitted that the interest rate for the purposes of annuity ought to be in terms of the applicable regulations. The compensation for change in law cannot be a source for earning profit, and therefore, there cannot be any higher rate of return than the prevailing normative cost of debt. Further, if the Change in Law event had occurred prior to the cut-off date, the Petitioner would have factored the higher cost to be incurred by him in establishing the solar power project in the per unit tariff to be quoted. Accordingly, the treatment of the impact of Change in Law occurring after the cut-off date cannot be different. The same methodology should be adopted for servicing the impact of Change in Law as in the case of servicing of other capital expenditure incurred in establishing the project.
- 8.4. RUVITL submitted that the additional expenditure claimed to have been incurred by the Petitioner, for the purposes of deciding compensation, would be serviced by the Petitioner in the same manner as long-term loans taken towards capital cost. Therefore, the only debt service obligation criteria as applicable to the compensation to be awarded to the Petitioner would be the debt service obligations applicable on loans i.e., interest on loan component. The Petitioner cannot be heard to contend that the compensation should be bifurcated into the debt equity ratio.
- 8.5. RUVITL further submitted that the payment of the amount as a one-time payment would result in substantial amount being paid to Petitioner upfront by RUVITL which will cause serious financial prejudice to RUVITL. On the other hand, payment of such amount on annuity basis is consistent with the principles governing the servicing of the capital cost over the duration of the PPA and, therefore, ought to be the principal basis for the settlement of the

claims. This is also at par with the methodology followed by the Central Commission in numerous cases while deciding the methodology for compensation to be developed for giving effect to the impact of change in law events. Accordingly, RUVITL proposes the methodology for making the payment on monthly basis (annuity) considering the following parameters:

- a) The Change in Law Claims have to be evaluated/limited up to the COD;
- b) The discounting factor is to be considered in accordance with the "Interest on Loan" fixed in the applicable RE Tariff Order as determined by the Central Commission from time to time. This would also be in line with the methodology adopted by the Central Commission while fixing the discounting factor towards annuity payment. In terms of the RE Tariff Order dated 07.11.2022 of the Central Commission, the rate of interest on loan is 9.12% for the control period upto FY 2023-24;
- c) The duration of annuity ought to be taken as 15 years from the date of COD. The same is consistent with Regulation 17.1 of the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020.

8.6. RUVITL further submitted that, even the Central Commission recently vide order dated 03.05.2024 passed in Petition No. 197/MP/2023 and 206/MP/2023 titled as M/s Azure Power Maple Private Limited v. SECI & Ors. and M/s Azure Power Forty One Private Limited v. SECI & Ors., respectively has held the following:

*"31. The Commission has notified the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 and RE Tariff Order dated 07.11.2022. In the said regulations read with the RE tariff Order we have considered the interest rate of 9% for FY21-22 and 9.12% for FY-22-23 and the term of the Loan repayment as 15 years. Further, the Commission, vide order dated 08.09.2023 in 10/SM/2023, extended the applicability of the order dated 07.11.2022 in Petition No. 14/SM/2022 until further Orders. We note that the Petitioners in Petition No. 197/MP/2021 and 206/MP/2023 achieved commissioning on 31.03.2023 and 07.03.2022, respectively. **Therefore, applying the principle decided by this Commission in the Order dated 20.08.2021 in***

Petition No. 536/MP/2020, that the compensation for change in law cannot be a source for earning profit, and there cannot be any higher rate of return than the prevailing normative cost of debt, we hold that the discount rate of 9.12% and annuity period of 15 years (for Petition No. 197/MP/2023) and discount rate of 9% and 15 years (for Petition No. 206/MP/2023) shall be the appropriate methodology towards change in law compensation."

- 8.7. The petitioner also submitted that, in fact, the discounting factor of 9% towards annuity payment along with the term of the loan repayment of 15 years has been already considered by the Commission in order dated 30.12.2021 in Petition Nos. 1914/2021, 1922/2021, and 1941/2021 Fortum Solar Plus Pvt. Ltd. v. SECI Ors. and Batch. The above methodology having not been challenged and has attained finality and as such the very same principles ought to be adopted by the Commission even in the present case.

RE: SAFEGUARD DUTY

- 8.8. RUVITL submitted that the bid was placed on 19.02.2019. At that stage, the Petitioner had 18 months to establish the Project. Calculating 18 months from the bid date comes to September 2020. At that time the SGD was in existence till the end of July 2020. It is relevant to note that the bid documents specifically state that the tariff shall include all taxes and duties applicable on the last date of bid submission, i.e., 19.02.2019. The Safeguard Duty was applicable for import from China on 19.02.2019 @ 25%.
- 8.9. The tariff quoted was frozen as on 19.02.2019 and the Petitioner while quoting the tariff had to, in terms of Section II Clause 6 of the RfS assume all taxes and duties as it were on 19.02.2019. In terms of the bid documents namely the RfS, the "*taking into account of the taxes and duties*" has to be interpreted in a subjective manner rather than objective. It is stated that since as on the last date of bid submission, SGD was applicable therefore, it is obvious that the Petitioner would have factored in the SGD while placing its composite bid. It is

relevant to point out that presently levy of SGD has been withdrawn or in other words the Petitioner is not liable to bear any SGD.

- 8.10. RUVITL further submitted that the Commission had the occasion to interpret the clause "include all taxes and duties applicable on the last date of bid submission in Petition Nos. 1914/2021, 1922/2021, and 1941/2021 - Fortum Solar Plus Pvt. Ltd. v. SECI Ors. and Batch, where the subsequent SGD notification was claimed to be a change in law. The Commission has held that the bid documents obligate the generators to take into account the SGD as on the date of bidding and therefore there was no change in law.
- 8.11. RUVITL also submitted that the COD of the project was achieved on 06.01.2024. Obviously, the incidence of SGD, if it had been applicable, would also have occurred accordingly. However, since at the time of the Petitioner importing the equipment, it would not have incurred the SGD, the same would have resulted in saving of cost. Such cost which would have otherwise been factored in by the Petitioner while placing its bid. Therefore, the benefit has to be taken into account. The Petitioner cannot be allowed to profit from this.
- 8.12. RUVITL also submitted that even if we take the Petitioner' case that it had assumed that the Project would be commissioned by December 2020, therefore, it did not factor into the impact of SGD, in this regard it is stated that December 2020 was never in visibility as on the date of bidding. As per the bidding document the Project had to be commissioned within 18 months. Subsequently, because of Covid-19 and other factors, the COD was postponed to December 2020. It is stated that the non-payment of SGD benefit has to be given to RUVITL. Even the PPA specifically obligates the Petitioner to give this benefit to RUVITL.

RE: CARRYING COST ALONG WITH INTEREST

- 8.13. RUVITL submitted that the Petitioner's reliance on the decision dated 15.09.2022 in Appeal No. 256 of 2019 and batch (hereinafter being referred to as the "Parampujya Decision") is incorrect since the Hon'ble Supreme Court has stayed the operation of the Parampujya Decision, more specifically Para 109 of the Order dated 15.09.2022 vide order dated 12.12.2022. Even the Appellant Tribunal in subsequent cases has not granted the benefit that has been granted by Parampujya Decision because of the interim order dated 12.12.2022.
- 8.14. RUVITL further submitted that the change in law has already been established by the Commission. The present exercise was for the purpose of establishing the impact by producing documents but the Petitioner is also claiming the carrying cost for the entire period at this stage. It was the Petitioner's obligation to produce all the documents at the first instance. The delay in producing the documents is only profiting the Petitioner only. Therefore, even the delay in producing the documents has to be considered while quantifying the claim of carrying cost, if any.

9. Written Submission on behalf of the Petitioner dated 09.07.2024 in compliance of ROP dtd. 02.07.2024

- 9.1. The petitioner submitted that the Commission vide its ROP dated 02.07.2024 was pleased to direct that a "...joint reconciliation may be undertaken by the parties in the matter for which SECI will act as the Nodal Agency. The reconciliation process be completed within two weeks." Thereafter, the Petitioner vide its email dated 02.07.2024 requested SECI to share the checklist of documents for reconciliation so that the entire process can be completed within timelines provided by the Commission. On the same date, SECI shared the checklist of documents required for reconciliation of the Petitioner's

Change in Law claim. Thereafter, while the Petitioner was in the process of collating the documents required to be furnished as per SECI's checklist, the Petitioner informed SECI that it shall be sharing the requisite documents shortly and further requested SECI to expedite the process of reconciliation so that the same can be completed within the timelines laid down by the Commission vide its ROP dated 05.07.2024. The petitioner further submitted that adhering to the timelines set by the Commission, the Petitioner furnished the requisite documents to SECI vide its email dated 09.07.2024. Further, during the course of the hearing on 02.07.2024, the following issues were raised and argued before the Commission:

- i. Whether the Petitioners have failed to provide documents evincing the additional expenditure incurred on account of Change in Law vide the present Petition or not?;
- ii. Whether the Petitioner's claim of Change in Law can be limited up to the Commercial Operation Date or not?;
- iii. What methodology of payment ought to be adopted for reimbursement of additional cost incurred by the Petitioner along with carrying cost as well as interest on carrying cost?;
- iv. Whether the Petitioner should have computed the quantum of Safeguard Duty leviable to imports of Solar Modules as on the date of bid submission thereby making its claim of Basic Customs Duty the difference between the rate of Safeguard Duty leviable as on the date of bid submission and the rate of Basic Customs Duty leviable presently to the Import of Solar Modules?; and
- v. To what extent does the benefit of MOOWR License secured by the Petitioner effect the Petitioner's claim with regard to levy of Basic Customs Duty as an event of Change in Law?

Further, the aforementioned issues are being dealt with in detail by the Petitioner in the following paragraphs.

Statutory Auditor's Certificate along with supporting documents to establish one-to-one co-relation and undertakes to submit any additional documents during the reconciliation

- 9.2. The petitioner submitted that he has submitted a Statutory Auditor's Certificate vide its Rejoinders certifying its Change in Law claim of (i) Rs. 11,09,74,087/- (Rupees Eleven Crores Nine Lakhs Seventy-Four Thousand Eighty-Seven Only) pertaining to increase in rate of GST from 5% to 12%; and (ii) Rs. 36,50,83,654/- (Rupees Thirty-Six Crores Fifty Lakhs Eighty-Three Thousand Six Hundred and Fifty-Four Only). Further, during the course of hearing on 02.07.2024, the Respondents specifically requested for furnishing of some additional documents, in this regard, the Petitioner has shared the said documents vide its email dated 09.07.2024 as per the checklist shared by SECI for reconciliation.

Cut-off date for payment of reconciled claim amount on account of increase in rate of GST and Imposition of BCD on Import of Solar Modules

- 9.3. The Petitioner further submitted that it is the contention of the Respondents that the Petitioner's Change in Law claims ought to be limited up to the Commercial Operation Date of its Project. At the outset itself, the Petitioner submits that the additional expenditure as incurred by the Petitioner is solely towards that equipment which have been procured and installed prior to COD. Accordingly, the submissions as made by the Respondents are wholly irrelevant to the facts of the present case.
- 9.4. The Petitioner also submitted that the Hon'ble Appellate Tribunal vide its Order dated 15.09.2022 passed in Appeal No 256 of 2019 has also held that the restriction of Change in Law claims only upto to the Commercial Operation

Date of the project is an extraneous condition since there is no such express restriction in the provisions of the PPA and therefore, there ought to be no differentiation between pre-COD and post Cod claims relating to Change in Law.

Methodology of payment to be adopted for reimbursement of additional cost Incurred by the Petitioner along with carrying cost as well as interest on carrying cost

- 9.5. The Petitioner also submitted that it is incorrect to take interest rate only on loan part without factoring return on equity. At this juncture, it is pertinent to reiterate herein that the Petitioner in a just, fair and equitable manner is proposing the interest rate in relation to the annuity payment to be calculated as weighted average rate on the basis of the normative debt equity ratio of 70:30, wherein, the average of the one-year MCLR as declared by the State Bank of India for the previous year plus 200 basis points, to be considered as the normative interest applicable in relation to the debt component and Return on Equity shall be computed at the base rate of 14%, to be grossed up as per the Minimum Alternate Tax (MAT) rate applicable as on 1st April of the previous Financial Year (which comes to 18.71% pre-tax after grossing up with applicable corporate tax of 25.71%) making the correct annuity rate to 13.14% which ought to be adopted.
- 9.6. The Petitioner also submitted that, since the Petitioner's claim of Change in Law viz Basic Customs Duty is also covered by the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ("Change in Law Rules, 2021") notified by the Ministry of Power, in as much as the Basic Customs Duty on import of Solar Modules was imposed on 01.02.2022 which is after the date of notification of the Change in Law Rules, 2021 i.e.. 22.10.2021.

- 9.7. The Petitioner also submitted that as per schedule of said MoP Rules, rate of Interest has been mentioned as the average interest rate plus 200 basis points above the average State Bank of India Marginal Cost of Funds based leading rate, of one year tenor, prevalent during the last available six months for such period. The present SBI MCLR during the last six months is 8.75% and hence rate of interest comes to 10.75% (200 basis points above SBI MCLR). Therefore, Petitioner prays that the rate of interest shall be allowed as per interest rate mentioned in MoP Change in Law Rules.
- 9.8. The Petitioner submitted that at the time of hearing, humbly submitted that the formula as prescribed under the Rule 5(b) of the said Rules may be adopted. As per the formula to the Change in Law Rules, 2021 under Rule 5(b) of the Change in Law Rules, 2021, the annuity rate works out to 10.75%. Further, the Respondents have also relied on several Orders passed by the Commission as well as the Hon'ble Central Electricity Regulatory Commission wherein the annuity rate of 9.12% was adopted as per the RE Tariff Regulations. In this regard, the Petitioner submits that the said Orders and the RE Tariff Regulations cannot override the formula laid down by the Ministry of Power in exercise of its statutory powers.
- 9.9. The Petitioner further submitted that the Respondents have erroneously linked the claim of carrying cost and interest on carrying cost with the Hon'ble Tribunal's Order dated 15.09.2022 passed in Appeal No. 256 of 2019 which has now been allegedly stayed by the Hon'ble Supreme Court. However, the Petitioner's claim of carrying cost cannot be only based on the said decision as the Petitioner's PPA clause is not pari materia to the extent the Change in Law clause is concerned which was examined by the Hon'ble Tribunal in the said decision as the Petitioner's PPA expressly provides for restoration of the affected party to the "same financial position" as it would have been in had it not been for the occurrence of Change in Law. It is a settled proposition

upheld by Hon'ble SC that if PPA provides restitution principle then party is eligible for carrying cost. Furthermore, as submitted hereinabove, the Petitioner's Change in Law claim is also partially covered by the Change in Law Rules, 2021 which have an express provision for carrying cost. Therefore, the Petitioner's claim of carrying cost and interest on carrying cost cannot be linked to the adjudication of the appeal filed before the Hon'ble Supreme Court challenging the Ordre dated 15.09.2022 passed by the Hon'ble Tribunal in Appeal No. 256 of 2019.

Safeguard Duty

- 9.10. The Petitioner submitted that, the following table containing the chronology of events regarding safeguard duty maybe perused:

S.No.	Date	Event
1.	30.07.2018	Safeguard Duty was imposed vide Notification 01/2018-Customs (SG) applicable on the import of solar modules with a sunset clause which made the applicability of SGD limited only upto 29.07.2020.
2.	19.02.2019	Petitioner submitted its bid for securing the Solar Power Project.
3.	29.07.2020	End date of applicability of Safeguard Duty.
4.	September-October, 2020	Tentative date from which the Petitioner would have started Importing its Solar Modules as per standard industry practice.
5.	December, 2020	The Original SCOD of the Petitioner's Projects

- 9.11. From a perusal of the above table it is clear that as on the date of bid submission i.e., 19.02.2019, even though the Safeguard Duty imposed vide Notification 01/2018-Customs (SG) dated 30.07.2018 was applicable on the import of solar modules, the same had a sunset clause which made the applicability of SGD limited only upto 29.07.2020. However, much after the expiry of the first SGD notification, the Petitioner's original Scheduled Commercial Operation date was December, 2020, thereby meaning that the Petitioner would have only imported the solar modules about four months prior to December, 2020. The said imports would have only taken place sometime in September-October, 2020 leading to duty free imports as on the said date no Safeguard Duty or Basic Customs Duty would have been applicable. Therefore, it is the submission of the Petitioner that at the time of submitting its bid, prudently and mitigating the cost involved, the Petitioner knowing that the safeguard duty had an expiry date did not factor Safeguard Duty and hence the same cannot be taken into account for computing the expenditure incurred in relation to basic customs duty.
- 9.12. The Petitioner further submitted that the said non-factoring of the Safeguard Duty into its bid and planning the imports only after the expiration of the period of imposition of Safeguard Duty was in accordance with prudent Utility Practices aimed at ensuring the lowest possible tariff for the end consumer. Furthermore, it is submitted that neither the Petitioner nor any other Solar Power Developer could have anticipated that the Safeguard Duty will be re-notified once the period for which the Notification: 01/2018-Customs (SG) dated 30.07.2018 is applicable comes to an end. It is submitted that Safeguard Duty was once again imposed on import of Solar Modules vide Notification dated 29.07.2020. However, no stakeholder of the Solar Power industry could have prudently foreseen this re-notification and the said fact has been accepted by various Electricity Regulatory Commissions while holding the Notification

imposing second Safeguard Duty as an event of Change in Law. Further, the Hon'ble Central Commission vide its Order dated 02.06.2023 passed in Petition No. 168/MP/2021 has held the notification of second Safeguard Duty on 29.07.2020 is an event of Change in Law.

- 9.13. In light of the above submissions, the Petitioner is eligible to claim Basic Customs Duty at the rate of 40% along with 10% Social Welfare Surcharge and IGST at the rate of 12% on the import of solar modules as Change in Law compensation. Also, the Petitioner is entitled to increase GST of 7% (12%-5%) on the equipment procured domestically.

The effect of duty deferment availed by the Petitioner on its claim of Change in Law with respect to imposition of Basic Customs Duty

- 9.14. The Petitioner submitted that the Petitioner is neither claiming the declaration of the MOOWR Scheme nor is it claiming the issuance of the Instruction No. 13/2022-Customs dated 09.07.2022 as events of change in law. Further, the Petitioner vide the present petition has solely sought to claim the BCD that has already been incurred and discharged by the Petitioner, in relation to the part of the Project which is not covered under the MOOWR Scheme. It is submitted that the MOOWR scheme allows deferral of import duties and not taxes applicable in cases of domestic procurement. Therefore, Petitioner is claiming import duties applicable on non-MOOWR area and increased GST rate on MOOWR and non-MOOWR area. Further, the Petitioner submits that while the MOOWR Scheme and the consequent licenses as granted to the Petitioner have been upheld by the Hon'ble Delhi High Court vide Order dated 06.05.2024, however, the Petitioner would still be liable to discharge BCD even in relation to such licenses, once it clears the Solar Modules from its Warehouse as the same is a duty deferral scheme and not a duty exemption scheme. Accordingly, at the time of such disbursement (if any), the Petitioner reserves its

right to raise a claim on account of the additional expenditure incurred due to an event of change in law. Further, in the event, the Order of the Hon'ble Delhi High Court is set aside by the Hon'ble Supreme Court, the Petitioner craves leave to raise the claims after incurring the additional expenditure in relation to the same.

- 9.15. Further, the Petitioner would like to highlight that the Respondent No. 1 has erroneously contended that the recovery of additional expenditure on account of the events of Change in Law shall be effected by the Commission on "back-to-back" basis. In this regard, the Petitioner craves leave of the Commission to rely upon the Order dated 16.01.2024 passed in Petition No. 308/MP/2022 titled as "Avaada Sustainable RJ Project Private Limited v. SECI & Ors." by the Hon'ble Central Commission. Vide the Order dated 16.01.2024, the Hon'ble Central Commission while awarding the Change in Law claims of the petitioner therein also held that even though the DISCOMs are liable to pay Change in Law compensation to the intermediary procurer also held that the reimbursement of additional expenditure on account of Change in law to the power generators by an intermediary is not conditional upon the payment to be made by the DISCOMs.

10. Additional submission on the behalf of the Petitioner dated 16.07.2024

- 10.1. The petitioner submitted that the Petitioner has availed the benefit of duty deferment under the Manufacturing and Other Operations in a Warehouse (No. 2) Regulations, 2019 (MOOWR Scheme) for its project and the same has been duly disclosed vide the present petition. Thereafter, vide the Instruction No. 13/2022-Customs dated 09.07.2022, Solar Power Plants were excluded from availing the benefits as available under the MOOWR Scheme. The Petitioner had challenged the said Instruction dated 09.07.2022 vide W.P.No.

10853 of 2022 before the Hon'ble Delhi High Court and the said fact has been duly disclosed vide the present petition.

- 10.2. The petitioner further submitted that while the applicability of the MOOWR Scheme on the Petitioner's Solar Power Project and the consequent licenses as granted to the Petitioner have been upheld by the Hon'ble Delhi High Court vide its Judgment and Order dated 06.05.2024, however, the Petitioner would still be liable to discharge BCD even in relation to such licenses, once it clears the Solar Modules from its Warehouse as the same is a duty deferral scheme and not a duty exemption scheme. Accordingly, at the time of such disbursement (if any), the Petitioner reserves its right to raise a claim on account of the additional expenditure incurred due to an event of change in law. Further, in the event, the Order of the Hon'ble Delhi High Court is set aside by the Hon'ble Supreme Court, the Petitioner craves leave to raise the claims after incurring the additional expenditure in relation to the same.
- 10.3. Further, the Petitioner is filing the present affidavit to bring the Judgment and Order 06.05.2024 passed in W.P. No. 10853 of 2022 on record for completion of facts as the same was passed three months after the filing of the present petition. A copy of Judgment and Order dated 06.05.2024 passed by the Hon'ble Delhi High Court in W.P. No. 10853 of 2022 titled as ACME Aklera Power Technology Private Limited v. CBIC & Anr." is enclosed herewith.

11. Written submission on the behalf of the SECI in pursuance of the Commission RoP dated 02.07.2024. /Additional submission on behalf of SECI dated 14.08.2024

- 11.1. The SECI submitted that a joint reconciliation meeting was held on 19.07.2024 between the parties (Petitioner, SECI and RUVITL), wherein SECI sought the following details and clarifications from the Petitioner and RUVITL:
- a) Detailed Excel sheet for CIL claims with all formulas and linkages.

- b) Custom Duty Challan
- c) Note regarding the applicability of duty on Electricity.
- d) Relevant documents with respect to exemption/ benefit availed by the Petitioner under the MOOWR scheme.
- e) Brief note that High Sea Sales has decreased the burden on the beneficiary; prima facie, that it has an additional burden of 2% on the beneficiary.
- f) Details of items covered under SPGS as mentioned in the EPC Invoices.
- g) Commercial Invoices.
- h) As per the note shared on the MOOWR scheme, the entire capacity of 374.46 MW has been kept in an area of 985.68 Acres, which is eligible for benefit under the MOOWR Scheme. Therefore, the CIL Claim for 27.45 MW should also have been covered under the aforementioned Scheme. Please explain. Further, as per our records, the area is 1006.58 Acres, and the installed capacity is 374.01 MW. Please explain the discrepancy in land area and installed capacity.
- i) Audit Report along with Financial Statements for Three (3) Financial Years related to Project period.

Thereafter, the Petitioner has submitted additional details vide email dated 26.07.2024. SECI has forwarded the Petitioner's additional submission to M/s RUVITL and sought inputs/confirmation from Respondent No. 2, i.e. RUVITL with respect to the reconciliation as per the Commission's RoP dated 02.07.2024. M/s RUVITL has raised observations with regards to reconciliation and same comments have been forwarded to the Petitioner on 01.08.2024. The clarification are pending for submission from the Petitioner. Apart from the aforesaid, during the hearing on dated 02.07.2024, the following submissions were made by the parties:

RE: cut-off date for payment of reconciled amounting on amount of GST rate change and BCD on Solar PV cell & Modules.

a. The Respondents submitted that the cut-off date for payment of the reconciled claim amount on account of the increase in the rate of GST and imposition of BCD on the import of solar module is the Commercial Operation Date of the Project. Further, the relevant clauses of the PPA in the present case are as follows:

"ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

5.1 Synchronization, Commissioning and Commercial Operation

5.1.5 The SPD shall commission the Project as detailed in "Schedule 3: Commissioning Procedure" within Eighteen Months (18) of the Effective Date. Declaration of COD/UCOD shall only be done subject to the demonstration of the compliances as per Schedule-3 and subsequent upon the successful visit by the Commissioning Committee.

5.1.6 There can be part Commissioning of the project. Part Commissioning of the project shall mean that all equipment's corresponding to the part capacity have been installed and commissioned and corresponding energy has flown into the grid.

5.1.7 The Parties agree that for the purpose of commencement of the supply of electricity by SPD to SECI, liquidated damages for delay etc., the Scheduled Commissioning Date as defined in this Agreement shall be the relevant date.

"SCHEDULE 3: COMMISSIONING PROCEDURE:

***Capacity of Solar PV Projects:**

a. The Project configuration shall be allowed as per the following matrix:

S. No.	Solar Project Capacity	Minimum DC Arrays Capacity Bid to be installed	Minimum Rated Inverter Capacity	Maximum Capacity Limit Delivery Point
1.	50 MW	50 MW	50 MW	50 MW
2.	100 MW	100 MW	100 MW	100 MW
3.	150 MW	150 MW	150 MW	150 MW
4.	200 MW	200 MW	200 MW	200 MW

5.	250 MW	250 MW	250 MW	250 MW
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**In case the rated inverter capacity is mentioned in kVA the IEC test certificate declaring the power factor of the Inverter/PCU at rated power has to be submitted and the power factor shall be multiplied by the kVA rating to calculate the rated capacity of the inverter in kW.*

ii) The SPD shall be required to demonstrate compliances with the "Technical Requirements for Grid Connected Solar PV Power Plants" as mentioned in the RfS and Guidelines. iii) Higher DC capacity arrays can also be allowed, subject to the condition that the AC capacity limit as mentioned in (i) above for scheduling at the Delivery Point as per Article 4.4 "Right to Contracted Capacity & Energy" of the PPA is complied with.

iv) For commissioning of the Project, cumulative capacity of DC arrays and cumulative capacity of the inverters installed shall be considered. In case of part commissioning of the Project, it shall be required to have the DC Arrays Capacity, and inverters capacity be installed not less than the proposed part commissioning capacity.

v) If generation at any time exceeds the maximum permissible AC capacity at delivery point, the excess generation during that period may not be considered under PPA."

Therefore, in the case of the supply of goods, the date of issue of the invoice cannot be after the date of supply of goods as per Sections 12, 14 and 31 of CGST. Act 2017. In any event, the Petitioner clarified that the additional expenditure being claimed by the Petitioner is towards equipment that has been procured and installed by the Petitioner prior to COD only, and no claim has been made post-COD of the Project. Therefore, change in law is to be considered only on the equipment that is duly installed and commissioned by the date of commercial operation of the power plant. The equipment installed after the commercial operation date of the project is not to be considered for the impact of Change in Law. All allegations to the contrary raised by the Petitioner are wrong and denied.

- b. Furthermore, the reliance placed by the Petitioner on the judgment dated 15.09.2022 passed by the Hon'ble Appellate Tribunal for Electricity in Appeal No. 256 of 2019 Parampujya Solar Energy Pvt. Ltd. v. Central Electricity Regulatory Commission ("Parampujya Case") to contend that there is no distinction between pre-COD and post COD claims with respect to Change in Law is erroneous. Article 5 and Schedule 3 of the PPA, relevant extracts of which are reproduced above, clearly distinguish between Pre-COD and Post-COD and therefore the cost of installation of any equipment post COD may not be passed on to SECI.
- c. The Hon'ble Supreme Court vide orders dated 12.12.2022 and 23.01.2023 passed in Civil Appeal No. 8880 of 2022 has stayed the enforceability of the order to be passed by the Hon'ble CERC, pursuant to the Hon'ble Tribunal's decision dated 15.09.2021 in Parampujya Case with regard to the issues of carrying cost, compensation on account of the impact of Change in Law for the period post-Commercial Operation Date of the projects and towards O&M expenses. Thus, the reliance placed upon the judgment dated 15.09.2022 passed by the Hon'ble Tribunal is incorrect.

Re: Methodology for payment of reconciled claim amount (if any) on account of change in law

- d. The Commission may be pleased to take into consideration the following aspects for determining the methodology for making payment:
 - i. The change in law claims upto the cut-off date as may be decided by the Commission in its order will be evaluated jointly by the Petitioner, SECI and Buying Entity(ies);

- II. The discounting factor may be considered as 9.12% which is the rate of interest for the loan component of the capital cost as provided in the Ld. CERC's Renewable Tariff Regulations, 2020.
 - III. Tariff order dated 08.09.2023 (Extension of Order dated 07.11.2022 in Petition No. 14/SM/2022) providing for determination of levelised generic tariff for the Financial Year 2023-24 read with Regulation 14 (2) (b) of Renewable Tariff Regulations, 2020.
 - IV. The period for payment of the claim amount on account of Change in Law on annuity basis may be considered as 15 years from the date of Commercial Operation Date. The same is consistent with Regulation 14 (1) of the RE Tariff Regulations 2020 providing that "For the determination of generic tariff and project specific tariff, loan tenure of 15 years shall be considered";
 - V. The change in law reconciled amount may be payable to the Petitioner with the monthly annuity rate for a period of 15 years.
- e. It is submitted that, for the present case, the following parameters for making payment on an annuity basis may be considered by the Commission
- I. Change in law claims will be evaluated jointly by the Petitioner, SECI, and the Buying Entities up to the cut-off date as may be decided by Commission.
 - II. The discounting rate of 9.12% should be used, which is rate of the interest for the loan component of the capital cost, as per the CERC's Tariff Order dated 08.09.2023 and the order dated 19.05.2024 passed by the Hon'ble

CERC in the case of M/s Ostro Kannada Power Private Limited vs. SECI & Ors. (Petition No. 162/MP/2023) whereby the Hon'ble CERC held that the discount rate of 9.12% and annuity payment of 15 years is the appropriate methodology for change in law compensation.

III.The determination of levelised generic tariff for FY 2023-24, along with Regulation 14(2)(b) of the Renewable Tariff Regulations, 2020, should guide the tariff considerations.

IV.Payments for change in law claims on an annuity basis may be for a span of 15 years from the Commercial Operation Date, consistent with Regulation 14(1) of the RE Tariff Regulations 2020, which sets a 15-year loan tenure for tariff determination.

V.The reconciled amount for the change in law should be paid to the Petitioner through monthly annuity payments over the 15-year period.

f. It is submitted that the Commission may be pleased with the above aspect of the payment mechanism to decide the impact of the change in law events in the present case. In Petition No. 1914/2021,1922/2021,1941/2021 order dated 30.12.2020, the Commission stated that after considering all the submissions and facts, deems it appropriate to allow the discount rate at 9% and an annuity of 15 years.

g. Apart from the aforesaid, the Petitioner further argued that it is incorrect to take the interest rate only on the loan part without factoring in the return on equity. It is most respectfully submitted that the Hon'ble CERC, by an order dated 20.08.2021 passed in Petition No. 536/MP/2020 and now by an order dated 19.05.2024 passed in Petition No. 162/MP/2023, has clarified that in the case of competitive bidding projects, it is not possible to ascertain either the capital structuring (extent of debt and equity) of the projects or the actual rate of interest of the debt component or the expected rate of return

on equity. As the actual deployment of capital by way of debt or equity and their cost in terms of rate of interest or return, respectively, is unknown, the rate can be taken as the uniform rate of compensation for the entire expenditure incurred on account of Change in Law. The compensation for change in law cannot be a source for earning profit, and therefore, there cannot be any higher rate of return than the prevailing normative cost of debt. In light of the aforesaid, it is submitted that the formula as proposed by SECI is fair and equitable.

- h. One of the claimed changes in law events is the increased expenditure on importing Solar Modules and PV Cells due to the revocation of Notification No. 24 of 2005-Customs dated 01.03.2005, replaced by Notification No. 15/2022-Customs dated 01.02.2022, which raised the Basic Customs Duty (BCD) on these products. The Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 also provides for annuity rate of 9.12%. It is submitted that the Commission may provide whether the Change in Law Rules, 2021 are applicable for the Petitioner's claim or not. Relevant extract of the Rules has been reproduced hereunder for convenience

THE SCHEDULE

[See rule 5(b)]

FORMULA FOR DETERMINATION OF IMPACT IN TARIFF OR CHARGES DUE TO CHANGE IN LAW

Formula to calculate adjustment in the monthly tariff due to the impact of Change in Law, which is non-recurring in nature-

where R=annual rate of interest on loan component (in %) as considered by the Central Electricity Regulatory Commission in its Order for Tariff determination from Conventional or Renewable Energy Sources (whichever is applicable) for the year in which the project is commissioned. In absence of relevant Orders of the Central Electricity Regulatory Commission for the concerned year, the interest rate shall be average interest rate plus 200 basis points above the average State Bank of India Marginal Cost of Funds based

leading rate, of one year tenor, prevalent during the last available six months for such period.

Re: Direction to buying entities to make payments to SECI towards the reconciled change in law claims

- 11.2. SECI submitted that the Commission may be pleased to issue directions to Respondent Nos. 3 and 4 (i.e., the power procurers under the respective PSAs) to make a payment towards the evaluated change in law claims payable by SECI to Petitioner on a back-to-back basis under the respective PSAs in a time-bound manner. Reliance is placed on Order dated 13.05.2021 passed by the Commission in Petition No. 73/MP/2020 along with L.A. No. 21 of 2021 in the matter of SB Energy One Private Limited-v-Solar Energy Corporation of India Limited and Another annexed as (Annexure R-9) wherein the Commission held that PPA and PSA are interconnected and are of back to back nature implying that the distribution licensees is liable to pay to SECI all that SECI has to pay to the Power Developer on account of GST/Safeguard Duty.

Re: Carrying Cost

- 11.3. SECI submitted that, as per Article 12 of the Power Purchase Agreement (PPA) that any Change in Law event claimed by the Petitioner, occurring after its effective date, and the applicability of Carrying Cost has to be determined and approved by the Commission after hearing all parties. Therefore, no carrying cost can be considered for the period before the Commission's decision, as per Article 12 of the PPA. Further, the Government of India provided benefits to Solar Developers through accelerated depreciation and additional depreciation to recover their investments in the initial project years. The impact of these amounts should be adjusted when calculating carrying costs. Furthermore, tax savings on actual interest paid by developers should also be eligible for adjustment in the carrying cost claim. In this regard, the SPD would be required to furnish all necessary documents.

RE: Hon'ble Supreme Court and Hon'ble Appellate Tribunal's decision in Parampujya Case

- 11.4. SECI submitted that the Appellate Tribunal in the Parampujya Case has dealt with the aspect of the impact of Change in Law beyond the Commercial Operation Date of the project and Carrying Cost. The Judgment dated 15.09.2022 of the Hon'ble Tribunal in the Parampujya Case has also been challenged by SECI before the Hon'ble Supreme Court in Civil Appeal No.000505-000510 of 2023, wherein similar orders have been passed. Thus, in terms of the Orders dated 12.12.2022 and 23.01.2023 of the Hon'ble Supreme Court, the enforceability of Hon'ble CERC's order to be passed in pursuance of Hon'ble Tribunal's decision dated 15.09.2021 in Parampujya Case has been stayed with regard to the issues of carrying cost, compensation on account of impact of Change in Law for the period post Commercial Operation Date of the projects and towards O&M expenses.
- 11.5. SECI further submitted that on the issue of duty deferment under the MOOWR scheme, it is most respectfully submitted that, admittedly, the Petitioner has to date not paid duty and GST on modules, as it is seeking to reserve its right to claim such amount as and when it is paid by the Petitioner. It is most respectfully submitted that the Commission, by its order dated 27.03.2023, permitted the Petitioner to approach the Commission for the quantum and methodology of applicable compensation for change in law events, along with the relevant documentary evidence in support of such claim. Since no additional expenditure has been incurred to date by the Petitioner on this count, a conditional approval of a contingent claim, which may or may not arise in the future, cannot be sought at this stage. This is impermissible.

12. Additional submission on behalf of the petitioner after Joint Reconciliation

12.1. The Petitioner submitted that pursuant to the direction of the Commission, a joint reconciliation of the Change in Law claims was undertaken by the Petitioner, SECI, and RUVITL with SECI acting as the nodal agency. In this regard, the total amount of Change in Law claims which were the subject matter of the aforementioned reconciliation are as follows:

- a. Rs. 38,10,10,475 towards Basic Customs Duty (BCD) on non-MOOWR modules; and
- b. Rs. 11,09,74,087 towards increased Goods and Services Tax (GST) on domestic procurement.

12.2. The petitioner further submitted that following the said reconciliation, the Respondents vide Letters dated 16.04.2025 (BCD) and 09.06.2025 (GST) have approved the following amounts:

- a. Rs. 30,97,66,156 towards Basic Customs Duty (BCD) on non-MOOWR modules; and
- b. Rs. 8,93,81,792 towards increased Goods and Services Tax (GST) on domestic procurement.

Re: Amounts disallowed towards Basic Customs Duty (BCD) on non-MOOWR modules

12.3. The Petitioner also submitted that SECI & RUVNL approved an amount of Rs. 30, 97, 66,156 towards the BCD claim. However, the following amounts were disallowed by SECI & RUVNL vide Letter dated 16.04.2025:

Deductions made by SECI & RUVNL	Reason for the said deductions
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Rs. 6,06,83,542	Disallowed on account of High Sea Sale (HSS) transactions between ACME Aklera & EPC Company.
Rs. 1,05,60,777	Disallowed on account of lack of one-to-one correlation.
Total amount of Rs. 7,12,44,319 is disallowed towards change in law claim of import duties paid by the Petitioner	

12.4. The Petitioner further submitted that the disallowance of Rs. 6, 06, 83,542 on account of HSS transactions between the Petitioner and EPC Company is not justified. The deduction made by SECI & RUVNL is based on the contention that modules meant for non-MOOWR areas could have been directly imported without routing through HSS, and thus SECI/RUVNL have considered only the value as per the original vendor invoice (Chinese supplier), for duty reimbursement, excluding the HSS transaction value.

12.5. The Petitioner also submitted that the Petitioner vide its Letter dated 01.07.2025 highlighted the following points in response to rejection of Rs. 6,06,83,542 on account of HSS transactions between the Petitioner and EPC Company:

- a. The Petitioner had awarded the EPC contract to ACME Cleantech Solutions Pvt. Ltd., which imported the modules and executed valid HSS agreements with the Petitioners.
- b. The said modules were subsequently cleared under the MOOWR and those meant for non-MOOWR areas were ex-bonded upon payment of the full applicable Basic Customs Duty along with IGST on the same.
- c. The said HSS agreement between the EPC contractor and the Petitioner was essential because the MOOWR license was issued in the name of the Petitioner and not the EPC contractor.

- d. To avail duty benefits, the EPC contractor executed the HSS agreement before filing the Bill of Entry, enabling the Petitioner to import modules under MOOWR Scheme.
- e. The aforementioned prudent structuring avoided import duties on 94% of the modules, saving hundreds of crores for RUVNL which would have ultimately led to increase in the cost of tariff.
- f. Without the HSS route, 100% of the modules would have attracted full import duties.

12.6. The Petitioner also submitted that while most of the project land procured by the Petitioner was covered under the MOOWR License, it is relevant to note that certain land of the Petitioner's Project was not granted MOOWR License due to which the modules installed in such land parcel were cleared by making payment of applicable import duties. Petitioners installed modules in its non-MOOWR land by ex-bonding the modules and making payment of applicable duty on the total assessable value which includes the HSS amount. Thus, the entire intention of the Petitioner was to import modules into the MOOWR area to reduce the impact of the formidably high customs duty as sought to be levied on the modules, which would have culminated in increase in the tariff.

12.7. The Petitioner further submitted that the Petitioner vide its Letter dated 01.07.2025 highlighted that the customs duty was paid to the Government of India on the total assessable value, which includes the value under the HSS agreements. All relevant documents such as the HSS agreements, invoices, bills of entry, and proof of payment, have already been submitted to SECI and RUVNL for verification. It is pertinent to note that there is no dispute over payment of total import duty which Petitioner is claiming as change in law,

however, some part of it is being rejected by Respondents on account of HSS transaction.

12.8. The Petitioner also submitted that the deduction made on account of the HSS structure is legally untenable. The Petitioner has paid full duty to the exchequer based on the assessable value declared in accordance with customs regulations. Also, it is also relevant to highlight herein that the High Sea Sale mechanism is a legitimate and widely accepted commercial practice under Indian laws and has no bearing on the quantum of duty paid. Disallowing the claim solely on the basis of routing through HSS undermines the principle of Change in Law compensation, which is meant to provide relief for actual duties paid, irrespective of the commercial route adopted.

12.9. The Petitioner further submitted that it certainly cannot be anyone's case that such HSS structuring would lead to any additional income or profits for the Petitioner, as the customs duty as incurred on the assessable value has been duly discharged by the importing entity. On the contrary, such structuring has indeed resulted in saving of hundreds of crores, which would not have been possible had the Petitioner not been prudent and proactive to apply and obtain a MOOWR License. However, certain modules installed in non-MOOWR area are cleared by making payment of applicable import duties on the total assessable value considering HSS amount. Thus, the HSS amount ought to be considered while reimbursing import duties towards change in law rather than considering the actual amount on which EPC vendor has imported the modules.

12.10. The Petitioner also submitted that the necessity of undertaking a HSS arrangement between the EPC Contractor and the Petitioner such that the modules are imported by the Petitioner i.e. the entity with the MOOWR License

was also on account of the existence of an EPC Contractor which had purchased the modules from the foreign supplier. Awarding a fixed-price EPC contract is an industry-standard practice that ensures procurement efficiency, cost certainty, and timely execution. The EPC contractor brings logistical capability, vendor relationships, and Risk absorption against price fluctuations which are not covered under Change in Law for the developer. EPC is also a lender requirement to ensure protection from cost overruns and enforceable commitments via bank guarantees. Hence, direct procurement by the project company was neither practical nor financially prudent.

- 12.11. The Petitioner further submitted that the Hon'ble CERC has, in multiple orders, such as Talettutayi Solar Projects Nine Pvt. Ltd. v. SECI & Anr. (Petition No. 207/MP/2020) and Ayana Renewable Power Four Pvt. Ltd. Vs. NTPC (Petition No. 21/MP/2021) has clearly held that commercial decisions like the choice of procurement model, supplier, or invoicing structure rest solely with the developer and cannot be a ground for reducing Change in Law compensation, so long as the cost has been genuinely incurred and statutory duties have been paid. Further, the Hon'ble APTEL vide Judgement dated 20.09.2021 in Appeal No. 215 of 2021 titled "Tata Power Renewable Energy Limited Vs. Maharashtra Electricity Regulatory Commission & Anr." has also ruled that relief for change in law cannot be denied if the same is otherwise properly made out, only because another business model commends itself as better to the regulator. The said position of law was also echoed by the Hon'ble Tribunal vide its Judgment dated 08.11.2021 in DFR No. 270 of 2021. It is therefore requested that the Commission allows the amount of Rs. 6.06, 83.542 under Change in Law compensation.

RE: Amounts disallowed towards Increased Goods and Services Tax (GST) on domestic procurement

12.12. The petitioner further submitted that SECI & RUVNL approved an amount of Rs. 8,93,81,792/-towards the GST claim. However, the following amounts were disallowed by SECI & RUVNL vide Letter dated 09.06.2025:

Deductions made by SECI & RUVNL	Reason for the said deductions
Rs. 1,58,88,125.62/-	Disallowed on account of un-identifiable margins included by the EPC in the invoices and vendor invoices raised prior to 30.09.2021 but EPC invoices were dated post 30.09.2021.
Rs. 17,18,430.42/-	Disallowed on account of credit note issued.
Rs. 0.40 crores	Disallowed on account of lack of one-to-one correlation
Total amount of Rs. 2,15,92,295/- is disallowed towards change in law claim of GST on domestic procurement paid by the Petitioner.	

12.13. The Petitioner also submitted that as per the reconciliation provided, an amount of Rs. 2, 15, 92, 295 has been disallowed from the total GST claim of Rs. 11, 09,74,087 submitted by us. This disallowed amount comprises of:

- a. Rs. 1,58,88,125,62 towards change in law claim- Invoices of Rs. 22.69.73.223.16 are disallowed on account of un-identifiable margins included by the EPC in the invoices and vendor invoices raised prior to 30.09.2021, though EPC invoices were dated post 30.09.2021.

Pertinently the address mentioned in e-way bill also matches with site address;

- b. Rs. 17,18,430.42 towards change in law claim- Credit note of Rs. 2,45,49,006 were not considered:
- c. Rs. 0.40 crores change in law - Disallowed on account of lack of one-to-one correlation.

12.14. The petitioner further submitted that, the disallowance of Rs. 1.76 crores (as discussed above in serial no. (i) and (ii), being on account of un-identifiable margins included by the EPC in the invoices and vendor invoices raised prior to 30.09.2021 though EPC invoices were dated post 30.09.2021, and the amount disallowed on account of the credit note issued, is not justified.

12.15. The petitioner also submitted that, the Petitioner vide its Letter dated 01.07.2025 highlighted the following points in response to the aforementioned erroneous rejection of its legitimate claims:

- a. As per the GST Laws, the rate of GST as applicable would be the date when the invoice was raised or payment received (whichever is earlier). In this case, in relation to the supplies made by the Petitioner, the relevant factor for the Petitioner is the date when the invoice is raised by the EPC contractor to Petitioner (Project Company) as SPGS and certainly not when the vendor raises the invoice on the EPC contractor.
- b. Since these EPC Invoices were issued to Petitioner (Project Company) post 30.09.2021, as per the GST laws, the revised GST rate was applicable and accordingly the same was duly deposited with the Government. As this liability was incurred and paid after the change in law trigger date, the corresponding amount is eligible for reimbursement.

- c. Further, it is also pertinent to note that as per the arrangement between the EPC Contractor and the vendor, the EPC Contractor procures various components and materials from different vendors. Thereafter, the EPC Contractor enters into a separate arrangement for supply of a Solar Power Generating System (SPGS) to the Petitioner.
- d. Accordingly, while such billings from the vendor to the EPC Contractor may take place on various dates depending upon the date of supplies of such individual components and materials, however, the billing in relation to the supply of SPGS being a complete system occurs only once such individual items have been billed as per provisions permitted under the GST law.
- e. Further, in relation to the margins as are added to the cost, both by the vendor as well as the EPC Contractor, it is pertinent to submit that addition of margin is a commercial decision of the entity undertaking the supply and such decision of the amount of margin proposed to be added by a party cannot be a ground for rejection of legitimate change in law claims of the Petitioner.
- f. In this regard, it is pertinent to note that as such the Petitioner would not be privy to the margins which would have been considered by the vendor in relation to the transaction undertaken by the vendor with the Petitioner.
- g. Furthermore, even in relation to the transaction between the EPC Contractor and the Petitioner, any addition of margin by the EPC contractor is a commercial decision of the EPC Contractor. Furthermore, it is the total price charged by the EPC Contractor which forms the base for determining the GST liability of the party and such price cannot be further broken down into components such as cost, margin etc. The GST is also charged on the total price charged as consideration by the EPC Contractor, and such GST has been duly

paid and deposited with the GST Authorities. It is undisputed that Petitioner has deposited the GST on total invoice amount raised by its EPC Company which includes the margin added by EPC Company.

- h. Further, the existence of a EPC Contractor or an arrangement of entering into a EPC Contract ought not to be questioned particularly in the light that fixed-price EPC contracts is a standard industry practice that ensure procurement efficiency, cost certainty, and timely execution. The EPC contractor assumes the Risk of price fluctuations (which are not covered under Change in Law), manages supply chain complexities, and delivers within agreed timelines, justifying the EPC margin as compensation for these responsibilities.
- i. Further, EPC contracts are a prerequisite for securing project financing as lenders require cost predictability and enforceable obligations through instruments like bank guarantees. Hence, direct procurement by the project company is neither viable nor aligned with financial and contractual norms.
- j. Furthermore, the Petitioner has duly submitted sufficient documentary evidence indicating that the entire GST amount has been duly paid as also deposited with the GST Authorities, and accordingly such claim ought to be considered by SECI and RUVNL.

12.16. The Petitioner further submitted that they have not claimed any GST change in law on the credit note issued as it was issued only to align with the revised contract value and not for any return or rejection of goods. Petitioner further requested that the Joint auditor certificate may be referred wherein the GST impact of credit notes are deducted and not claimed. Therefore, deducting the same amount again towards credit note would result in double deduction, which is not justified.

RE: Methodology of payment suggested by SECI

- 12.17. The Petitioner submitted that SECI vide its letters dated 16.04.2025 and 09.06.2024 has considered the methodology for payment of compensation on monthly annuity basis with discount rate of 9.12% for a period of 15 years. In this regard, it is submitted that the additional cost is the nature of Capital expenditure and is funded only to the extent of 75% by the tenders while the remaining 25% has to be infused by developers through its own equity. It is therefore proposed that the interest rate in relation to annuity payment be calculated as weighted average rate on the basis of the normative debt equity ratio of 75:25, wherein, the average of the one-year MCLR as declared by the State Bank of India for the previous year plus 200 basis points, to be considered as the normative interest applicable in relation to the debt component and Return on Equity shall be computed at the base rate of 14%, to be grossed up as per the Minimum Alternate Tax (MAT) rate applicable as on 1st April of the previous Financial Year (which comes to 18.71% pre-tax after grossing up with applicable corporate tax of 25.71%) making the correct annuity rate to 13.14% which ought to be adopted. This is imperative in light of the fact that the percentage proposed by SECI fails to restore the Petitioner to the same financial position as it would have been in had it not been for the occurrence of the event of Change in law. It is also requested that in addition to above mechanism, an option be given to Respondents to make payment towards change in law as one-time lump sum amount as it will save the carrying cost.
- 12.18. The Petitioner further submitted that the Commission be pleased to allow the following claims:
- a. Rs. 6.06 crores disallowed an account of HSS transactions; and

- b. Rs. 1.76 crores disallowed under the GST claim for the stated reasons.

13. SECI written submission dated 21.07.2025 in compliance of RoP dated 30.04.2025

- 13.1. The SECI submitted that the Commission in its Record of Processing for the hearing on 30.04.2025 directed as under:

"After hearing the counsels for the parties, Commission as a last opportunity grants three weeks' time to the parties to complete the reconciliation process. Further, it is also directed that during the reconciliation process, the reason for disallowance of claims may also be brought on the record."

- 13.2. SECI further submitted that SECI, vide its letter dated 16.04.2025 to the Petitioner, communicated the evaluation details of the BCD and GST Claims of the Petitioner on Solar Modules, after reconciliation between the parties with SECI acting as a Nodal Agency, as under:

"3. Further, in line with the submission of SECI before Hon'ble RERC in Petition No. RERC/2205/2024,

a. The claim for compensation on account of Change in rate of BCD & GST has been reconciled for provisional payment upto Commercial Operation Date.

b. The methodology for payment of compensation on account of Change in rate of BCD & GST shall be Monthly annuity basis and accordingly Monthly annuity calculation has been carried out with discount rate of 9.12% for a period of 15 years.

4. The details of the BCD and GST claims of the SPD and evaluation of BCD & GST claim by SECI are given hereinbelow;

S. No.	Description	Amount (in Rs.)	
		BCD	GST
1.	Total claim by SPD	33,36,21,113/-	4,73,89,363/-
2.	Eligible Amount	27,12,38,027/-	3,85,28,129/-

3.	Monthly Annuity	31,64,006/-
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- 13.3. The aforementioned reconciliation between the parties was done after taking into consideration the following submissions of the Buying Entity, i.e. Rajasthan Urja Vikas and IT Services Limited (RUVITL):

"M/s ACME Cleantech purchased all the modules from China after 9.07.2022. M/s ACME Aklera executed a High Sea Sale agreement with ACME Cleantech and supplied the modules in MOOWR area and also some in Non MOOWR area.

It is noted that M/s ACME Cleantech should import the modules (i.e. after installation of MOOWR modules) directly into a non-MOOWR area without engaging in a High Sea Sales (HSS) transaction. This approach was successfully implemented in BoEs 8191979 and 3266145.

RUVITL observes that M/s ACME Aklera entered into an HSS agreement for, the importation of modules in a non-MOOWR area, which resulted in an additional customs duty of Rs 6.07 Crores. RUVITL submits that there was no necessity for an HSS agreement under the given circumstances, as the CBIC instructions inapplicability of the Manufacture and Other Operations in Warehouse Regulations (MOOWR) for warehousing solar power generating units from 09.07.2022. The additional burden on Discoms due to the HSS agreement is therefore not justified under the current circumstances.

Additionally, M/s ACME Aklera is claiming the BCD and GST change in law for modules exceeding the quantity listed in the installation report. They are claiming excess BCD and GST change in law for 3,607 modules (450 watts each) and 72 modules (545 watts each), which surpass the number of modules recorded in installation report. Therefore Rs 1.056 Cr. may not be justifiable on account of CIL due to the discrepancy in the number of modules compared to those recorded in the installation report,"

- 13.4. SECI further vide its letter dated 09.06.2025 to the Petitioner, has communicated its evaluation details of the GST claim (on Balance of System) of the Petitioner as under:

"3. Further, in line with the submission of SECI before Hon'ble RERC in Petition No. RERC/2205/2024.

a. The claim for compensation on account of Change in rate of GST has been reconciled for provisional payment upto Commercial Operation Date.

b. The methodology for payment of compensation on account of Change in rate of GST is being considered on Monthly annuity basis and accordingly Monthly annuity calculation has been carried out with discount rate of 9.12% for a period of 15 years.

4. The details of the GST claim of the SPD and evaluation of GST claim by SECI are given hereinbelow;

S. No.	Description	Amount (Rs.)
1	Total claim by SPD	11,09,74,087/-
2	Eligible Amount	8,93,81,792
3	Ineligible Amount	2,15,92,295/-
4	Monthly Annuity	9,12,961/-

13.5. Further, SECI, by way of its email dated 16.06.2025, and conveyed a correction in SECI's earlier Letter dated 09.06.2025. It was clarified therein that the ineligible amount mentioned at Serial No. 3 of the table in Point 4 of the said letter may be read as ₹2,15,92,295/- in place of ₹1,15,92,295/-. The said correction was to be read in conjunction with the original letter dated 09.06.2025 and was communicated without prejudice to SECI's rights and remedies under the provisions of the RfS, PPA, Scheme Guidelines, and law.

13.6. SECI further submitted that due to inability of the Petitioner to establish a one-to-one correlation between OEM (Original Equipment Manufacturer) / vendor invoices and invoices issued by EPC (Engineering, Procurement, and Construction) and in the absence of identifiable margins included by the EPC in the invoices issued to Petitioner, the following methodology has been considered for determining the eligible GST claim for the Solar Power Generation Scheme (SPGS) claims:

- a. Only the EPC invoices and OEM invoices post the change in law date and upto the COD date have been considered for calculation purposes.
- b. The lower of taxable amounts between the OEM and EPC invoices have been considered for the GST claim.

13.7. SECI also submitted that Petitioner, by its letters dated 01.07.2025, responded to the reconciliation of BCD & GST Claims. And, SECI does not agree with the Petitioner's submission in its letters dated 01.07.2025 and relies on its Letters dated 16.04.2025, 09.06.2025 and 16.06.2025 for the reconciliation of the Petitioner's GST & BCD claim. Further, it is submitted that the Petitioner cannot claim carrying costs or any kind of Late Payment Surcharge for the Change in law events, for any delay and laches on the part of the Petitioner with regards to change in law claims. The Petitioner that delays in filing a Petition or providing information/submission may result in the denial of carrying costs has been established by the Hon'ble Appellate Tribunal for Electricity in several judgments, including:

- Judgment dated 19.09.2007 in Appeal No. 70 of 2007 (Maharashtra State Electricity Distribution Co. Ltd v. Maharashtra Electricity Regulatory Commission)
- Judgment dated 30.05.2014 in Appeal Nos. 147, 148, and 150 of 2013 jyoti Behurte (Torrent Power Ltd v. Gujarat Electricity Regulatory Commission).
- Judgment dated 04.12.2014 in Appeal No. 45 of 2014 (Paschim Gujarat Vij Company Ltd and Ors v. Gujarat Electricity Regulatory Commission).

13.8. SECI further submitted that the Hon'ble Central Electricity Regulatory Commission, in a series of judgments, has held that if there is a delay of more than six months between the occurrence of a Change in Law event affecting the Petitioner and the filing of the Petition in relation to all such events, the Petitioner shall be entitled to carrying costs on the additional expenditure incurred due to the Change in Law events, as permitted under this order, only from the date of filing the Petition until the date of the Order passed by the Hon'ble Central Commission.

14. RUVITL written submission dated 05.08.2025 after joint reconciliation

14.1. RUVITL submitted that pursuant to the directions of the Commission order dated 02.07.2024, and to set out the detailed reasons for disallowing the Change in Law claims before the Commission, the following amounts were disallowed pursuant to the reconciliation and the reasons for the said disallowance is as under:

- a) Rs. 7,12,44,319/- was disallowed towards the change in law claim of the import duties paid by the Petitioner; and
- b) Rs. 2,15,92,295/- was disallowed towards change in law claims of GST on domestic procurement paid by the Petitioner.

RE: DISALLOWANCES ON THE CLAIMS TOWARDS BCD

14.2. RUVITL submitted that the Petitioner executed a supply agreement dated 02.04.2021 with M/s ACME Cleantech Solutions Pvt. Ltd. for the procurement and supply of photovoltaic modules for the solar power plant, which was subsequently amended on 30.06.2021 and 03.12.2021. Further, the Government of India vide Notification No. 69/2019-Customs (N.T.) dated

01.10.2019 notified the Manufacture and Other Operations in Warehouse (No. 2) Regulations, 2019 ("MOOWR Regulations"), which permit deferred payment of import duties for capital goods, machinery, and inputs imported into a private bonded warehouses in terms of Section 58 read with Section 65 of the Customs Act, 1962.

- 14.3. RUVITL further submitted that the Petitioner obtained an MOOWR license in October and November of 2021 for a total land parcel of 985.68 acres. A request for adding another parcel of land to the MOOWR license was submitted on 09.06.2022. However, the request was rejected following CBIC Circular dated 09.07.2022, which excluded solar projects from the ambit of MOOWR Regulations. As a result, around 122 acres of the Petitioner' land became classified as non-MOOWR area. It is relevant to note that despite such classification, the Petitioner continued to import modules under the MOOWR Regulations even for non-MOOWR designated areas. This is impermissible and certainly any additional liability on account of the same cannot sought to be passed on to the consumers.
- 14.4. RUVITL also submitted that all modules were procured by M/s ACME Cleantech from China post 09.07.2022 and were supplied both to MOOWR and non-MOOWR areas. Then, to comply with MOOWR requirements, the Petitioner executed High Sea Sales ("HSS") agreements with M/s ACME Cleantech, since the importer and MOOWR licensee must be the same legal entity. Further, the execution of HSS agreements led to imposition of additional charges by Customs at 2% of the assessable value or the actual contract price (whichever was higher). Customs authorities calculated duties on the basis of assessable value plus HSS charge. It is relevant to note that M/s ACME Cleantech ought to have imported the modules (ie., after installation of the MOOWR modules)

directly into a non-MOOWR area, without engaging in an HSS transaction. The Petitioner cannot seek to benefit for its own wrongs. As such, it cannot be the contention of the Petitioner its modus operandi has resulted in cost saving, when it most evidently has not.

- 14.5. RUVITL further submitted that there was no necessity for HSS agreements for imports meant for non-MOOWR areas, especially in light of the CBIC clarification excluding solar projects from MOOWR from 09.07.2022. In fact, in two instances (BoE Nos. 8191979 and 3266145), M/s ACME Cleantech directly imported modules into non-MOOWR areas without engaging in HSS transactions. The deductions ought to be allowed on this ground alone. The additional customs duty burden of Rs. 6.07 Crores, which arose solely on account of the avoidable HSS agreements, was rightly disallowed in the reconciliation exercise. The execution of such agreements was neither necessary nor prudent, especially in light of the regulatory framework and CBIC's clarification excluding solar projects from the MOOWR scheme with effect from 09.07.2022. In view thereof, the additional financial burden resulting from the HSS arrangement cannot be passed on to the Discoms and then to consumers.
- 14.6. RUVITL also submitted that the Petitioner in its affidavit has put forth its submissions on the benefits of the MWOOR scheme and the routing of goods through the HSS route. However, it is stated that under the garb of the same, the Petitioner is also trying to pass off transactions which were not under the MWOOR scheme and which by statutory limitations ought not to have been routed through the HSS route.

RE: DISALLOWANCES ON THE CLAIMS TOWARDS INCREASED GST ON DOMESTIC PROCUREMENT

- 14.7. RUVITL submitted that claims of Rs. 1.58 Cr and Rs. 17 lakhs have been disallowed during the reconciliation exercise. Further Rs. 40 lakhs have been disallowed on account of lack of one-to-one correlation. The disallowances have been made on two counts namely on account of unidentifiable margins included in the invoices and that certain invoices were raised prior to the imposition of the GST laws.
- 14.8. RUVITL also submitted that no amounts are payable to the Petitioner incidence of which are on account of margin added by the EPC contractor and the vendor. Further, the Petitioner has itself admitted that the addition of margin is a commercial decision undertaken by the EPC contractor as well as the vendor. It needs no reiteration that any Risks of commercial decision cannot be simply passed on to the consumers.
- 14.9. RUVITL further submitted that it is immaterial whether the GST liability arises on the total amounts including the margin. No reason has been put forth as to what was the basis of such margins. It may very well be that the EPC contractor and the vendor have inter-se given margins on account of their commercial relationship or to bag contracts. Any margin and the resultant GST liability would have to be necessarily borne by the 'Petitioner. It is reiterated that such costs would have been refused at the threshold in a Section 62 exercise and that same principles would follow even in a Section 62 exercise. Further, for incidence of the GST liability what is relevant is the date of import or supply of the solar modules. It cannot be that the invoices would be raised by the EPC contractor after the cut-off date and that such liability would then be passed on to the consumers. Also, the Petitioner has been imprudent in avoiding the levy of GST for good delivered prior to the coming into force of the GST Laws.

RE: METHODOLOGY OF PAYMENT AND CARRYING COST

- 14.10. RUVITL submitted that the compensation payable cannot be bifurcated into a debt: equity ratio. Further, change in law compensation cannot be turned into a profit making instrument for the Petitioner. This is for the reason that the Central Commission in numerous decisions has deprecated this practice and has strictly ordered that the additional expenditure would have to be serviced through 100% debt component.
- 14.11. RUVITL further submitted that the Petitioner is not entitled to any carrying costs or late payment surcharge. It is absurd on the part of the Petitioner to claim carrying cost after itself having delayed approaching the court. Further, in terms of the recent decision of the Appellate Tribunal dated 16.04.2025 in Appeal No. 842 of 2023 titled as Essar Power Gujarat Limited (EPGL) v. GERC and Anr., interest payable would correspond to the actual rate of interest availed by the Petitioner.
- 14.12. RUVITL further submitted that the Petitioner has claimed BCD and GST Change in Law compensation for modules exceeding the quantities recorded in the installation report. Further, excess claims were made for 3,607 modules of 450 watts and 72 modules of 545 watts capacity, which are over and above the installed quantities as per the installation report. Accordingly, Rs. 1.056 Crore out of the GST claims is not justifiable on account of Change in Law, due to the mismatch between claimed and installed modules. In view thereof, the BCD and GST change in law claim raised and verified are as under:

Sr. No.	Particulars	In MW	Amount in Cr. (Rs.)
1	BCD and GST on modules change in law claim raised by SPD	30.57	38.10
2	Deduction of HSS (High Sea sale) transaction of Non MOOWR modules		(6.07)

3	Deduction due to excess modules claimed as compare to installation report	1.67	(1.06)
4	Reconciled amount by RUVITL	28.9	30.98

14.13. RUVITL further submitted that the provisional reconciliation amount of SECI as under:

Sr. No.	Particulars	Amount in Cr. (Rs.)
1.	1. GST change in law claim on BOS (Balance of supply)	11.09
2.	Reconciled amount by RUVITL in line with SECI Reco.	8.94
3.	Disallowed under SECI Reco.	2.15

14.14. RUVITL submitted that the rescinding of SGD is clearly a change in law event under Article 12.1 (ii) of the PPA, namely "an amendment, modification or repeal of an existing law". As such the repeal of SGD amounts to a Change in Law event. Accordingly, the Petitioner was required to include SGD duty applicable as on last date of bid submission (i.e., 25% SGD as per 30.07.2018) in quoted tariff. The payment/(recovery) amount for difference between 25% (SGD at time of bid submission) & actual BCD paid i.e., 40%/25%) by the Petitioner as illustrated as under:

	Particulars	Illustrated Amount
BCD Scenario		
1	Assessable value as per BOE	100
2	Basic Custom duty payable @40% (1*40%)	40
3	Social Welfare Surcharge @10% on BCD (2*10%)	4
4	IGST @ 12% ((1+2+3)*12%)	17
A	Total duty (2+3+4)	61

SGD Scenario prevailing as on bid submission date		
1	Assessable value as per BOE	100
2	Safeguard duty @25% as per notification 01/2018-Customs (SG) dated 30.07.2018 (1*25%)	25

3	IGST @5% ((1+2)*5%)	6
B	Total duty (2+3)	31
Net financial impact on Discom due to BCD change in law (A-B)		30

15. Written Submission on behalf of the Petitioner dated 26.08.2025 as per the liberty granted by the Commission vide ROP dated 19.08.2025

15.1. The Petitioner submitted that following the said reconciliation, the Respondents vide Letters dated 16.04.2025 (BCD) and 09.06.2025 (GST) have approved the following amounts:

- a. Rs. 30.97,66,156 towards Basic Customs Duty (BCD) on non-MOOWR modules: and
- b. Rs. 8.93.81,792 towards increased Goods and Services Tax (GST) on domestic procurement.

Details of the BCD and GST claims as sought to be disallowed by SECI and RUVNL

15.2. The Petitioner submitted that SECI & RUVNL approved an amount of Rs. 30,97,66,156 towards the BCD claim vide Letter dated 16.04.2025. However, the following amounts were disallowed by SECI & RUVNL:

Deductions made by SECI & RUVNL	Reason for the said deductions
Rs. 6.06.83.542/-	Disallowed on account of High Sea Sale (HSS) transactions between ACME Aklera & EPC Company

Rs. 1,05,60,777/-	Disallowed on account of lack of one-to-one correlation.
Total amount of Rs. 7,12,44,319 is disallowed towards change in law claim of import duties paid by the Petitioner.	

15.3. The Petitioner submitted that the deduction made by SECI & RUVNL is based on the contention that modules meant for non-MOOWR areas could have been imported without undertaking a HSS transaction, and accordingly SECI/RUVNL have proceeded to consider the value as per the original vendor invoice (Chinese supplier) for duty reimbursement, excluding the HSS transaction value despite the fact that the duty is paid on the HSS amount, while the Petitioner is disputing the aforementioned amount, the remaining disallowed amount of 1,05,60,777/- is not being disputed by the Petitioner.

15.4. The Petitioner further submitted that SECI & RUVNL approved an amount of Rs. 8,93,81,792/- towards the GST claim vide Letter dated 09.06.2025. However, the following amounts were disallowed by SECI & RUVNL:

Deductions made by SECI & RUVNL	Reason deductions for the said
Rs. 1,58,88,125.62/-	Disallowed on account of un-identifiable margins included by the EPC in the invoices and vendor Invoices raised prior to 30.09.2021 but EPC invoices were dated post 30.09.2021
Rs. 17,18,430.42/	Disallowed on account of credit note Issued.

Rs. 40,00,000/-	Disallowed on account of lack of one-to-one correlation.
Total amount of Rs. 2,15,92,295/- is disallowed towards change in law claim of GST on domestic procurement paid by the Petitioner.	

15.5. The Petitioner submitted that as per the reconciliation provided, an amount of Rs. 2, 15.92.295 has been disallowed from the total GST claim of Rs. 11,09,74,087 submitted by the Petitioner. This disallowed amount comprises of:

- a. Rs. 1,58,88,125.62 towards change in law claim- Invoices of Rs. 22,69,73,223.16 are disallowed on account of un-identifiable margins included by the EPC Contractor in the invoices and on account of vendor invoices raised prior to 30.09.2021 even though EPC invoices were raised post 30.09.2021. Pertinently, the address mentioned in e-way bills also matches with the project site address.
- b. Rs. 17,18,430.42 towards change in law claim- Credit notes of Rs. 2,45,49,006 were not considered;
- c. Rs. 40.00.000/- towards change in law claim - Disallowed on account of lack of one-to-one correlation.

15.6. The Petitioner submitted that the disallowance of Rs. 1,76,06,556.04 (as discussed above in serial no. (a) and (b), being on account of margins included by the EPC Contractor; vendor invoices raised prior to 30.09.2021 though EPC Contractor invoices were dated post 30.09.2021 and issuance of credit notes is being disputed by the Petitioner. Further, the Petitioner is not disputing the disallowance of Rs. 40,00,000/-.

15.7. The Petitioner submitted that both the aforesaid rejections arise from a common premise, namely, that the Petitioner had entered into an EPC contract for

execution of its project. Such EPC Contractor was responsible for setting up of the Project and consequently for entering into necessary contracts with vendors for procurement of all goods and services including modules which were procured from outside India. It is this contracting arrangement which is regularly followed as an Industry wide practice across the renewable energy sector, which was sought to be questioned by the Respondents only at the stage of change in law which consequently led to rejection of the claims of the Petitioner as the Respondents sought to disregard the value at which the EPC Contractor sold the modules on high seas to the Petitioner i.e. the HSS transaction value as also the value indicated by EPC Contractor in relation to procurement of other goods and services. Similarly, when the EPC contractor of Petitioner sold the other equipment after adding its EPC margin, the GST was paid by Petitioner on the invoice value raised by its EPC contractor which is inclusive of its margin. However, Respondents have again denied the change in law claim i.e. increased GST rate on the EPC margin.

15.8. The Petitioner further submitted that accordingly, the existence of an EPC Contractor, cannot be questioned or treated as a basis for disallowing legitimate Change in Law claims. Consequently, where the presence of an EPC Contractor becomes a standard industry practice, the margin as sought to be charged by the EPC Contractor is nothing but a regular commercial arrangement which cannot be disallowed. EPC arrangements are a legal, commercial, and financial necessity for successful execution of solar power projects and are integral to ensuring consumer interest in terms of tariff efficiency and reliability of supply.

15.9. The petitioner submitted that Petitioner's Project is spread over 1107.68 acres, out of which 985.68 acres was successfully covered under its MOOWR License

which was in Petitioner's name and the balance land was not granted MOOWR license owing to subsequent policy change by the Government of India. The MOOWR license permitted import of solar modules with the deferment of BCD. Accordingly, Petitioner started importing modules under MOOWR license which is granted to project company. Later, certain modules i.e. 5.82% (30.57 MWp capacity) of the total capacity of modules could not be accommodated in the MOOWR Area and were shifted to the non-MOOWR land. The Petitioner installed modules in its non-MOOWR land area by ex-bonding the modules and making payment of applicable duty on the total assessable value which includes the HSS amount. Consequently, BCD became payable only on the modules installed in the non-MOOWR area (where the import duties have fully been paid), while the remaining 94% of modules were successfully installed in the MOOWR area. Due to the said MOOWR License, the Petitioner was able to defer duty of nearly Rs. 494 Crores which constitute 94% of solar modules procured, and would have culminated in becoming a cost that would have otherwise been a part of the Petitioner's claim in the present petition.

15.10. The petitioner further submitted that further necessary to address the submissions of RUVNL regarding Instruction No. 13/2022-Cus dated 09.07.2022 issued by CBIC. In this regard, at the outset, it is pertinent to highlight that such instruction as vehemently relied upon by the Respondent was challenged by the Petitioner before the Hon'ble Delhi High Court in W.P. No. 10853 of 2022 titled ACME Aklera Power Technology Pvt. Ltd. v. CBIC & Anr. The Hon'ble Delhi High Court, by its final Judgment and Order dated 06.05.2024 in W.P. No. 10853 of 2022, quashed the aforesaid Instruction and upheld the eligibility of solar power projects to avail benefits under the MOOWR Scheme. While the Customs Authorities have filed an SLP against the said judgment before the Hon'ble Supreme Court, it is significant that no stay has been granted, and the SLP was merely admitted on 17.12.2024. Further, it is also pertinent to submit that all

imports made by the Petitioner under its MOOWR License were made after 09.07.2022 i.e. after the date of issuance of the said Instruction. As discussed above, such imports led to a duty deferral of nearly Rs. 494 Crores which otherwise would be a part of the Petitioner's claim. The Petitioner's consistent intention was to import modules into the MOOWR Area with a view to minimize the adverse financial impact of the formidably high customs duty on solar modules, which would otherwise have resulted in a substantially higher tariff burden. Thus, the Instruction dated 09.07.2022 which was in any case quashed by the Hon'ble Delhi High Court, did not in any manner create any legal impediment in relation to the import of modules.

15.11. The petitioner submitted that the Respondents have raised objections premised on the dates of invoices, vendor billing, EPC margins and credit notes, to disallow legitimate GST-related Change in Law claims of the Petitioner. These objections are untenable in law and on facts. The submissions on the said three issues raised by the Respondents with regard to the Petitioner's GST claims have been summarized in the following paragraphs.

15.12. The Petitioner submitted that margins as included by the EPC Contractor form part of the legitimate commercial structure of a fixed-price EPC contract. Such margins compensate the EPC contractor for assuming Risks of price fluctuations (which are not covered under Change in Law), exchange rate variations, supply chain management, and timely execution. These elements are integral to the EPC contractor's obligations and justify the consideration as charged by the EPC Contractor.

15.13. The petitioner further submitted that the insistence of RUVNL on disclosure of vendor pricing on account of existence of EPC margins is wholly misconceived. The prices as indicated by the vendor is confidential data and such information would only be available with the parties to the contract i.e. the vendor and the

EPC Contractor. They have no bearing on the Petitioner's Change in Law claim, which is strictly confined to the GST levied, paid and duly deposited by the Petitioner. Disclosure of such confidential vendor-level pricing is neither mandated nor relevant for adjudicating the present claim. GST is charged on the total price as consideration by the EPC Contractor and such GST has been duly paid and deposited with the GST Authorities. It is undisputed that the Petitioner has deposited the GST on total invoice amount raised by its' EPC contractor which includes the margin added by the EPC Contractor.

Vendor invoices raised prior to 30.09.2021 but EPC invoices dated post 30.09.2021

15.14. The Petitioner submitted that the Respondents have also disallowed invoices on the ground that the invoices were raised by the vendor on the EPC Contractor prior to 30.09.2021 (at the rate of 5%), whereas the EPC contractor raised invoices on the Petitioner post 30.09.2021 (at the revised rate of 12%), Accordingly, such claim has sought to be disallowed on the ground that such invoices also ought to have been raised prior to 30.09.2021. In this regard it is submitted that the invoicing structure adopted was strictly in line with the Petitioner's ordinary business practices and contractual framework with its EPC contractor. The Petitioner could not have foreseen that a Change in Law event would subsequently occur, nor could it have moulded its mode of invoicing in anticipation of such change. The Issuance of EPC invoices post 30.09.2021 was a natural outcome of the contractual and commercial arrangement between the parties, and the resultant GST liability, having been duly incurred and discharged, cannot be denied solely on the ground that vendor invoices were raised on a date prior to 30.09.2021.

15.15. The petitioner further submitted that thus, while the vendor invoices could have been raised prior to 30.09.2021, basis the time when the individual goods were

supplied by the vendor. Such aspect cannot in any way be determinative of the time when the EPC Contractor would raise Invoices on the Petitioner, which would be determined through the contractual and commercial considerations as existing between the Petitioner and the EPC Contractor. Further, as per the GST laws, the rate of GST as applicable would be the date when the invoice was raised or payment received (whichever is earlier). In the present case, in relation to the supplies made on the Petitioner, the relevant factor for the Petitioner is the date when the invoice is raised by the EPC Contractor to the Petitioner as SPGS and certainly not when the vendor raised the invoices on the EPC Contractor. Since, these EPC invoices were issued to the Petitioner post 30.09.2021, as per the GST laws, the revised GST rate was applicable and accordingly the same was duly deposited with the Government. As this liability was incurred and paid after the change in law trigger date, the corresponding amount is eligible for reimbursement. Furthermore, the Petitioner has duly submitted sufficient documentary evidence indicating that the entire GST amount has been duly paid as also deposited with the GST Authorities and accordingly, such claim ought to be considered in the GST change in law claim of the Petitioner.

Disallowance on account of issuance of Credit Notes

15.16. The petitioner submitted that the Respondents have disallowed an amount of Rs. 17,18,430.42 on account of credit notes amounting to Rs. 2,45,49,006. It is pertinent to highlight herein that the Petitioner has not sought any benefit of GST Change in Law on account of credit notes. The credit notes were issued merely to align the contract value, not for return or rejection of goods. The Joint Auditor's certificate submitted by the Petitioner clearly demonstrates that the GST impact of credit notes has already been deducted and excluded from the GST change in law claim. In this regard, the Petitioner relies on the CA Certificate of its Additional Affidavit dated 18.07.2025 specifically on Entries 18-

25 which demonstrate that the amount for which the credit notes were issued and the GST in relation to the same stands duly deducted from the total GST claim of the Petitioner at the initial stage itself when Petitioner submitted its claim to Respondents. In this regard, reference is made to the column with caption "change in law GST claim" wherein the GST amounts stands duly deducted corresponding to the credit notes as issued. Therefore, while the amount stands duly deducted, the Respondents have once again sought to deny the amount by deducting it from the total GST claim, which is nothing but a double deduction, and is unjustified and impermissible in law.

15.17. It is most humbly submitted that Change in Law Clauses as envisaged under the PPA Imposes three conditions, specifically: (i) the occurrence of an event of change in law (ii) such event must have occurred after the effective date (i.e., the last date of bid submission), and (iii) that such an event leads to additional expenditure. Further, SECI and RUVNL have erroneously questioned the Petitioner's decision of entering into EPC and HSS Agreements. In this regard, reference is made to the decision of the Hon'ble Supreme Court in the case of Haryana Power Purchase Centre v. Sasan Power, (2024) 1 SCC 247 (Paras 90 and 91). wherein the Hon'ble Court specifically held that it is not open to the Commission even donning the garb of a regulatory body to go beyond the express terms of the contract. The aforementioned rejections on the basis of business decisions of the Petitioner are untenable in as much as the Hon'ble APTEL vide Judgement dated 20.09.2021 in Appeal No. 215 of 2021 titled "Tata Power Renewable Energy Limited Vs. Maharashtra Electricity Regulatory Commission & Anr. (Para 15 and 16) has also ruled that relief for change in law cannot be denied if the same is otherwise properly made out, only because another business model commends itself as better to the regulator.

15.18. The Petitioner further submitted that during the course of the hearing dated 19.08.2025, RUVNL fallaciously averred that the Petitioner has attempted to profiteer through the present arrangement and accordingly the claims stand disallowed. Such an allegation reflects a fundamental misunderstanding of the very term "profiteering". Profiteering presupposes the retention of an undue or unfair financial gain at the expense of the consumer or the government exchequer. For instance, where a supplier unlawfully retains tax benefit by not passing it on to the buyer. However, in the present case, there has been no transactions wherein the EPC Contractor has sought to retain any form of tax collected by them from the Petitioner without depositing the same with the exchequer.

15.19. Further, at the outset, profiteering presupposes an undue enrichment where the supplier retains an unlawful gain at the expense of the consumer or the exchequer. For instance, where a supplier collects Rs. 12 as tax from the consumer but deposits only Rs. 10 with the Authorities, retaining Rs. 2 as his own profit. In such cases, it is said that the supplier has undertaken to profiteer at the cost of the customer or government exchequer. It is further submitted that BCD as well as GST have been paid to the Government of India on the full assessable value, inclusive of HSS value and EPC/vendor margins. This position was categorically conveyed in the Petitioner's Letter dated 01.07.2025, and all supporting documents (HSS agreements, invoices, bills of entry, GST challans, and proof of payment) have already been placed on record.

15.20. The petitioner further submitted that in regard to safeguard duty contention of RUVNL in its additional affidavit, submitted that at the time of bid submission (19.02.2019), while SGD was in force, it had a definitive sunset clause ending 29.07.2020. Given the Petitioner's SCOD of December 2020, module imports were reasonably planned around September-October 2020, a period when SGD had already lapsed. Hence, factoring SGD into bid assumptions would

have been imprudent. inflating tariff unnecessarily. In adherence to prudent utility practices and to protect consumer interest, the Petitioner rightly did not include SGD. In this regard, it is pertinent to note that the Hon'ble Tribunal has already dealt with an identical issue in the context of safeguard duty. In its landmark Judgment dated 14.08.2024 in Fortum Solar Plus Private Limited v. RERC & Ors. (Appeal No. 26 of 2022), the Hon'ble Tribunal categorically held that bidders, while submitting bids during the subsistence of SGD Notification 2018, could not be expected to assume its continuation beyond the sunset date of 29.07.2020, the relevant portion of Judgment dated 14.08.2024 has been reproduced herein below for ready reference of this Hon'ble Commission:

"110. (...) In the present case, though SGD Notification 2018 was in existence on the date of bid submission, but safeguard duty as per the said Notification had applicability for import of goods up to 29.07.2020, and no safeguard duty was leviable post 29.07.2020.

Thus, we find merit in the submissions of the Appellants in Rajasthan batch of appeals and Respondents in BRPL Appeal that they were not mandated to assume that safeguard duty would be imposed for Import of material post 29.07.2020 on SGD notification 2020 being imposed. In our view, it is difficult to hold/assume that bidders while submitting the competitive bids would have assumed safeguard duty as per SGD Notification 2018. In all likelihood, the bidders, with a view to ensure their selection in the competitive bid process, would have quoted a lower tariff, by planning to import the material subsequent to 29.07.2020, when SGD Notification 2018 came to an end, and their liability to pay safeguard duty would be nil."

(Emphasis Supplied)

- 15.21. The Petitioner further submitted that It is also apposite to highlight that SECI vide its Letters dated 16.04.2025 and 09.06.2024 has considered the methodology for payment of compensation on monthly annuity basis with discount rate of 9.12% for a period of 15 years. In this regard, it is submitted that as per CERC Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2024 and Order in Petition No. 5/SM/2024 dated 02.08.2024, interest on loan is 10.65% i.e. 200 BPS plus SBI MCLR of last six months which may be considered by the Commission being the latest Order. it is also

to bring to your kind attention that the Change in Law Clause enshrined in the PPA executed between the Petitioner and SECI provides that the Petitioner ought to be placed in the 'same financial position' as it would have been had it not been for the occurrence of the Change in Law. Accordingly, the Petitioner is eligible for carrying cost on the Change in Law claim related to the GST paid on domestic procurement such that it can be restored to the same financial position as it would have been in had the rate of applicable GST not increased and BCD not imposed.

- 15.22. The petitioner further submitted that the Petitioner had earlier calculated the eligible amount of carrying cost as Rs. 2,55,59,385/- (corresponding to the claim of GST approved by the Respondents at present) and Rs. 4,45,58,438/- (corresponding to the claim of BCD approved by the Respondents at present) up to 30.06.2025 vide its Letter dated 01.07.2025 (Please refer Pg 29 and 33 of Petitioner's Affidavit dated 01.07.2025). Further, the Petitioner while applying the same methodology has calculated the eligible amount of carrying cost as Rs. 2,19,79,939/- (corresponding to the claim of BCD approved by the Respondents at present) and 4,93,57,183/- (corresponding to the claim of BCD approved by the Respondents at present) up to 31.08.2025.
- 15.23. The Petitioner further submitted that the final applicable amount of carrying cost will be subject to computation till the date of order passed by the Commission or as per its directions. The Petitioner undertakes to provide detailed calculations as well as documentary evidence in support of its carrying cost claim as per the Commission's directions. It is also apposite to highlight herein that since the aforementioned calculations pertain to the approved amount of change in law claim only, the carrying cost amount shall be subject to revision also in case the Commission grants the disallowed claim of change in law as well. Further, it is respectfully submitted that the Petitioner

had first approached the Commission in 2022, when its project was still at its nascent stage, by way of Petition No. 2053 of 2022 seeking an in-principle declaration of certain events as Change in Law events. The said Petition was decided in the Petitioner's favour by Order dated 27.03.2023. Wherein the Commission directed the Petitioner to re-approach once it had actually incurred additional expenditure on account of the Change in Law events declared vide Order dated 29.03.2023. Subsequently, upon commissioning of the project in January 2024, the Petitioner duly filed the present Petition on 06.02.2024. Therefore, it is humbly submitted that there has been no delay in filing the present Petition, and SECI's contention regarding the Petitioner's ineligibility for carrying cost on account of alleged delay is without merit.

15.24. In light of the foregoing, the Petitioner most respectfully prays that the Commission may be pleased to allow the following legitimate change in law claims of the Petitioner.

a. Rs. 6.06.83.542/- disallowed on account of HSS transactions between the Petitioner and the EPC Contractor; and Safeguard Duty imposed was vide Notification 01/2018-Customs (SG) applicable on the import of solar modules with a sunset clause which made the applicability of SGD limited only upto 29.07.2020.

16. Written Submission on behalf of RUVITL dated 27.08.2025 as per the liberty granted by the Commission vide ROP dated 19.08.2025

16.1. RUVITL submitted that upon completion of the reconciliation process, the present status is under:

Sr.No	Particulars	BCD on non-MOOWR Modules(Rs.)	GST on domestic procurement(Rs)
1.	Claim Accepted	30,97,66,156/-	8, 93,81,792/-

2.	Claim Disallowed	7,12,44,319/- (towards duties paid)	2,15,92,295/-
3.	Claim given Up (out of the Disallowed Amount)	1,05,60,777/-	40,00,000/-
4.	Contested Claim	6,06,83,542/-	1,76,06,556/-

16.2. RUVITL submitted that it is pertinent to note that SECI has supported the case of RUVITL on the disallowed claims pursuant to reconciliation. Further, the reading of Article 12 of the PPA, as sought to be projected by the Petitioner, is erroneous and does not reflect its true import. The scheme of Article 12 mandates the satisfaction of the Commission that (i) a Change in Law event has in fact occurred, and (ii) such event has materially impacted the economics of the Project Proponent. Further, the effect of such Change in Law can operate only from the date and in the manner as determined by the Commission. By way of illustration, even if a Project Proponent were to issue a Change in Law notice to the Licensee and both parties were to agree thereon, such agreement by itself does not bind the Commission. It is for the Commission to determine whether the event qualifies as a Change in Law under the PPA, and, if so, to adjudicate the appropriate measure and quantum of compensation payable to the Developer. This is the only construction of Article 12 of the PPA borne out by the plain reading of the same.

16.3. RUVITL submitted that the interpretation sought to be advanced by the Petitioner, namely that any and every cost incurred by the Developer, once claimed under Change in Law, must automatically be allowed without any scrutiny, is wholly misconceived. According to the Petitioner, the Commission has no discretion to disallow or even examine the quantification of such claims, even if objections are raised by the Respondents. However, if such an

interpretation is accepted, it would render the Commission as a mere post office which is not the intention of Section 63. (Ref: Para 19 of Energy Watchdog v. Central Electricity Regulatory Commission & Ors. [(2017) 14 SCC 80])

- 16.4. RUVITL submitted that the plain language of Article 12 of the PPA makes it evident that only such Change in Law events which impact the economic position of the Developer, either by increasing or reducing its costs and expenses, warrant consideration. This has been the consistent interpretation of the change in law clause by the Commission, the Appellate Tribunal, as well as the Hon'ble Supreme Court on various occasions. Crucially, there must be an independent application of mind by the Commission, both with regard to the occurrence of the Change in Law event and the appropriate measure of compensation to be awarded. This is precisely the rationale for vesting jurisdiction in the regulator; otherwise, the parties themselves could have given effect to such claims without recourse to this adjudicatory forum.
- 16.5. RUVITL submitted that even if an event qualifies as a Change in Law, it cannot be contended that every cost incurred by the Developer must automatically be passed through to the Respondents. Where the Respondents are able to prima facie demonstrate that such expenditure is imprudent, the same cannot be foisted upon them, much less along with carrying cost as is being claimed by the Petitioner in the present case. Further, the Petitioner's argument of its claims being an automatic pass through under Article 12 is also inconsistent with the fact that the Petitioner has itself given up some claims both under BCD & GST. If the amount incurred by the Petitioner once declared to be a change in law is an automatic pass through, there should be no logic in the Petitioner giving up its claim, albeit a small portion of it.

- 16.6. RUVITL submitted that the petitioner contention that the Developer chooses to proceed through an EPC contractor or an aggregator is entirely its own commercial decision, and RUVITL has neither sought to interfere with nor comment upon such choices, as rightly noted by the Petitioner. However, it is equally open to RUVITL to point out that such structuring of affairs has, in effect, resulted in the Petitioner seeking to profiteer under the Change in Law clause, which forms the basis of RUVITL's objection.
- 16.7. RUVITL further submitted that the Petitioner obtained an MOOWR license in October and November of 2021 for a total land parcel of 985.68 acres. A request for adding another parcel of land i.e., 122 acres to the MOOWR license was submitted on 09.06.2022. However, this request was rejected following CBIC Circular dated 09.07.2022, which excluded solar projects from the ambit of MOOWR Regulations. As a result, around 122 acres of the Petitioner land became classified as non-MOOWR area. It is relevant to note that, notwithstanding the classification under the MOOWR Regulations, the Petitioner continued to import modules under the said Regulations even for non-MOOWR designated areas. Such conduct is impermissible, and any additional liability arising therefrom cannot be permitted to be passed on to the consumers.
- 16.8. RUVITL further submitted that the execution of HSS agreements led to imposition of additional charges by Customs at 2% of the assessable value or the actual contract price (whichever was higher). Customs authorities calculated duties on the basis of assessable value plus HSS charge. It is relevant to note that M/s ACME Cleantech ought to have imported the modules (i.e., after installation of the MOOWR modules) directly into a non-MOOWR area, without engaging in an HSS transaction. The Petitioner cannot

seek to benefit from its own wrongs. There was no necessity for HSS agreements for imports meant for non-MOOWR areas, especially in light of the CBIC clarification excluding solar projects from MOOWR from 09.07.2022. In fact, in two instances (BoE Nos. 8191979 and 3266145), M/s ACME Cleantech directly imported modules into non-MOOWR areas without engaging in HSS transactions. The deductions ought to be allowed on this ground alone.

- 16.9. RUVITL further submitted that despite being fully aware, the Petitioner persisted in importing for non-MOOWR areas as well, thereby voluntarily incurring such liability. There is no justification for burdening the consumers with this avoidable expenditure by entering into HSS Agreements under the garb of Change in Law. In rejoinder, the Petitioner contended that for the HSS Agreements, it would have ended up paying higher customs duty for the entire import, however, by entering into the HSS Agreements, 94% of the goods were imported without any duty which has led to savings for the project. This is not an answer to why the Petitioner imported MOOWR goods into a non-MOOWR area, which is the specific objection of RUVITL.
- 16.10. RUVITL further submitted that, it is the Petitioner's own contention that it is free to arrange its commercial affairs, if so, the Petitioner cannot seek to take advantage of the so-called savings' caused by such commercial decisions. RUVITL only objects that the change in law compensation ought not to be granted for the import of goods without the MOOWR Guidelines and by executing HSS Agreements for such equipment. The additional customs duty burden of Rs. 6.07 Crores, which arose solely on account of the avoidable HSS agreements, was rightly disallowed in the reconciliation exercise. The execution of such agreement merits was neither necessary nor prudent, especially in light of the regulatory framework and CBIC's clarification excluding solar projects from the MOOWR scheme with effect from 09.07.2022.

This particular additional financial burden resulting from the HSS arrangement for import of goods into the Non-MOOWR area cannot be passed on to the Discoms and then to consumers.

- 16.11. RUVITL submitted that, as per prevalent industry practice, developers arrange their affairs in such a manner that imports are routed through aggregators. In the present case, the Petitioner has failed to disclose what its sister concern actually paid to the vendor for procurement. Instead, when the sister concern raised invoices upon the Petitioner, an additional margin was embedded therein, over and above the vendor's billing. Consequently, the Petitioner has sought to pass on the GST impact on such inflated invoices, which is wholly unjustified.
- 16.12. RUVITL also submitted that it is immaterial whether the GST liability arises on the total amounts including the margin. No reason has been put forth as to what was the basis of such margins. It may very well be that the EPC contractor and the vendor have inter-se given margins on account of their commercial relationship or to bag contracts. Any margin and the resultant GST liability would have to be necessarily borne by the Petitioner. It is reiterated that such costs would have been refused at the threshold in a Section 62 exercise and that the same principles would follow even in a Section 63 exercise.
- 16.13. RUVITL submitted that the Petitioner is not entitled to any carrying costs or late payment surcharge. It is absurd on the part of the Petitioner to claim carrying cost after itself having delayed approaching the court. Without prejudice to the above, it is stated that in terms of the recent decision of the Appellate Tribunal dated 16.04.2025 in Appeal No. 842 of 2023 titled as Essar Power Gujarat Limited (EPGL) v. Gujarat Electricity Regulatory Commission and Ant. interest payable would correspond to the actual rate of interest availed by

the Petitioner. Relevant extract of the judgment is as under (@Internal Pg. 91-93 and 96 of the Judgment):

XI. SHOULD CARRYING COST BE CALCULATED ON COMPOUND INTEREST AND BE PAID FROM THE DATE OF OCCURRENCE OF THE CHANGE IN LAW EVENT?

.....

D. ANALYSIS:

It is no doubt true that, since GERC had granted the Appellant the benefit of change in law from the date of occurrence of change in law event, by its order in Petition No. 1680 of 2017 dated 23.12.2019, the Appellant could have, in appropriate legal proceedings, sought payment of interest, for belated payment of change in law compensation, from that date. The fact however remains that the Appellant had, in the Additional Affidavit dated 17.09.2021, explicitly sought payment of interest only for the period from April, 2019 to March, 2021. As shall be elaborated later in this order, it is clear there from that the Appellant has waived its claim for interest for the period anterior to April, 2019. Having waived its claim for interest for the period prior to April 2019, the Appellant cannot be permitted to turn around and claim interest even for the earlier period in the Appeal preferred against the order of the GERC.

With regards the Appellant's claim for compound interest, it is necessary to note that the Appellant had, in the Additional Affidavit dated 17.09.2021 filed by them before the GERC, sought payment of appropriate interest from the GERC. The Appellant's entitlement) entitlement for interest, in view of Article 13.2(b) of the PPA, is as a measure of restitution, and in order to put them back in the same position they were in, but for the change in law event. Article 13.2 of the PPA does not prescribe the manner in which a party should be restituted or the nature of interest (whether simple or compound) or the rate of interest they are entitled to as a measure of restitution. The interest they are entitled to should, therefore, be such as to put them back in the same position they would have been in, but for the occurrence of the change in law event.

Consequently, the Appellant would be entitled not only to the principal amounts which they incurred as a result of the change in law, but also for interest thereon till the date on which they were compensated for the change in law event, on payment of the principal sum. What Article 13.2 requires is for the Appellant to be compensated for the loss and not to permit the Appellant to unduly enrich itself in the process. The obligation of the Court/ Tribunal is to ensure equity, fairness and justice for both the parties. It should not only adopt a realistic and verifiable approach, but also take into consideration the actual loss suffered by the party entitled to restitution, while at the same time ensuring that the said party is not unduly enriched in the process. [Citybank vs.Hiten P. Dalal (2016) 1 SCC 411].

In Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power (Mundra) Ltd., (2023) 2 SCC 624, the Supreme Court, alluding to Reserve Bank of India Circulars dated

14-8-2003 and 3-3-2016 that provided for a borrower to pay interest to the lender on compound interest basis, noted the submission urged on behalf of Respondent 1 Adani Power, that, having borrowed money from banks to install the FGD unit and having paid compound interest on the borrowed sum, it was only seeking restitution for the interest incurred by it and paid to the banks at the same rate; and this was not a case of unjust enrichment.

The extent of loss they have suffered, as a result of belated payment of compensation for change in law to them by the 2nd Respondent, is a question of fact which necessitates consideration on the basis of the documentary evidence adduced in this regard. The onus is on the Appellant to produce documentary proof to show that they had paid compound interest for borrowing money to pay GST, and they are therefore entitled to be paid the same rate of compound interest to compensate them for the loss they suffered on account of belated payment of change in law compensation. We may not be understood to have held that the quantum of loss suffered by the Appellant must be determined with absolute precision or with mathematical exactitude. All that we have held is that the Appellant must adduce documentary evidence to reasonably establish the quantum of loss suffered by them."

16.14. RUVITL further submitted that in the present case, the Petitioner has placed nothing on record to demonstrate the basis of its claim towards carrying cost neither the rate at which such carrying cost is being claimed nor the justification for seeking the same. Therefore, in the absence of any supporting material, no such claim can be sustained.

16.15. RUVITL submitted that the Petitioner has relied on the judgment in Tata Power Renewable Energy Limited v. Maharashtra Electricity Regulatory Commission & Anr. [(2021 SCC OnLine APTEL, 58)], specifically paras 15 and 16, to contend that an extra condition of prudent utility practice could not have been read into the change in law clause in the PPA entered into between a generator and a licensee. It is important to note Para 14 of the said judgment, which itself notes the difference between "prudence check" and "prudent utility practice." The judgment notes that a prudence check is not put out of the way and can be conducted to determine the computation of compensation under change in law. Of course, at Para 16, the Appellate Tribunal notes that the

Commission in that case did not conduct any scrutiny, or certainly observed, as to how the consideration for the supplies or services would have been lower or higher in case of the contract being split into two instead of a composite contract. In this light, the Appellate Tribunal observed that the Commissions cannot micro-manage the affairs and contracts of the regulated entities. Contrary to the principle laid down in this judgment, neither RUVITL nor the Commission is micro-managing the contracts entered into by the Petitioner. RUVITL has pointed out a specific imprudence on the part of the Petitioner in continuing to import goods under the MOOWR guidelines, even for non-MOOWR goods, and the GST paid on the additional margins by the Petitioner. It is these limited aspects of the claims that are requested to be disallowed under the change in law regime. The Petitioner has not answered either of these imperfections on the merits and has simply taken the position that this amounts to micro-management of its affairs and contracts.

- 16.16. The Petitioner also relied on *Haryana Power Purchase Centre v. Sasan Power Limited & Ors.* [(2023 SCC OnLine SC 577)]. The ratio of this judgment is that, while adjudicating a change in law claim, the Commission cannot discover a change in law that the parties have themselves not contracted or contemplated while entering into the PPA. The Commission or the Appellate Tribunal cannot make a fresh contract or bargain for the parties. However, the submissions of RUVITL are not in conflict with the principles laid down in this judgment. RUVITL is only requesting the Commission to disallow such claims which, prima facie, seem imprudent and do not arise out of the change in law clause, i.e., Article 12 of the PPA. In view of the foregoing submissions, it is respectfully submitted that the claims of the Petitioner have been rightly disallowed, and the Petitioner is not entitled to any compensation and carrying cost on the account of CIL to that extent.

Commission View's

17. The commission has heard the extensive oral arguments made by learn counsel for the parties and have carefully perused the lengthy written submission and document placed on record by the parties as well as has given thoughtful consideration to the facts of the case. The Commission has considered the Petition strictly in accordance with the prayers made by the Petitioner. Any other issues raised during the course of hearing, being beyond the scope of the prayers, have not been dealt with in this Order.
18. The instant petition has been preferred under section 86 of the Electricity Act for seeking to adopt a mechanism for appropriate adjustment/compensation to offset financial/commercial impact of change in law events approved by the Commission by its order dated 27.03.2023 in Petition No. 2053 of 2022. The Commission, vide said order, held that in terms of Article 12 of the PPA, the following events are to be recognized as "Change in Law" events: (i) increase in the rates of Basic Customs Duty on import of Solar Inverters pursuant to Ministry of Finance Notification No. 07/2021-Customs dated 01.02.2021 whereby the exemption under Notification No. 1/2011-Customs dated 06.01.2011 stood rescinded; (ii) levy of Basic Customs Duty on import of Solar Modules and PV Cells, along with subsequent increase in Social Welfare Surcharge and IGST consequent upon rescission of Notification No. 15/2022-Customs dated 01.02.2022; and (iii) levy of GST pursuant to Ministry of Finance Notification dated 30.09.2021.
19. The Commission further clarified that the Petitioner is at liberty to approach the Commission at an appropriate stage in future, wherein the quantum and methodology of compensation payable on account of the above Change in Law events, along with any other admissible claims, shall be duly considered. Hence the instant petition.

Factual Matrix of the Case

20. The Petitioner was selected as a Solar Power Developer pursuant to SECI's RfS dated 03.08.2018 for procurement of 750 MW Solar Power. ASHL was awarded 250 MW capacity and a Letter of Intent was issued on 02.03.2019. Thereafter, the Petitioner Company was incorporated and executed the Power Purchase Agreement (PPA) with SECI on 10.06.2019. In terms of the PPA, the Project was commissioned in two parts 200 MW on 20.07.2023 and the balance 50 MW on 06.01.2024, thereby achieving COD of the full 250 MW.
21. During the course of project implementation, the Petitioner was impacted by various statutory changes which materially increased the cost of setting up the Project. Specifically, the Central Government issued Notification No. 8/2021-Central Tax (Rate) and 8/2021-Integrated Tax (Rate) dated 30.09.2021, increasing the applicable GST on renewable energy devices and parts from 5% to 12%. Further, vide MNRE Office Memorandum dated 09.03.2021 and Notification No. 15/2022-Customs dated 01.02.2022 read with amendments under Finance Act, 2022, Basic Customs Duty (BCD) was imposed at 40% on solar modules and 25% on solar cells with effect from 01.04.2022. Additionally, Notification No. 07/2021-Customs dated 01.02.2021 rescinded earlier exemptions, resulting in levy of customs duty on import of solar inverters.
22. Aggrieved by these statutory changes, the Petitioner approached the Commission in Petition No. 2053 of 2022 seeking recognition of these events as "Change in Law" under Article 12 of the PPA. After due consideration, the Commission, vide its Order dated 27.03.2023, recognized the levy of increased customs duty on inverters, imposition of BCD on solar modules and cells, and increase in GST rates as Change in Law events. At the same time, the

Commission granted liberty to the Petitioner to approach at an appropriate stage for determination of quantum and methodology of compensation.

23. Pursuant to the liberty so granted, the present Petition has been filed. The Petitioner has submitted that it has incurred substantial additional expenditure on account of the recognized Change in Law events and placed supporting documents on record. The financial impact has been quantified at ₹11,26,92,518/- towards increase in GST rate and ₹39,22,08,560/- towards levy of BCD on solar modules and cells.
24. Accordingly, the Petitioner has prayed that the Commission may now be pleased to determine the quantum and methodology of compensation payable in respect of the above Change in Law events, in accordance with Article 12 of the PPA, so as to restore the Petitioner to the same economic position as if such Change in Law had not occurred.

Reconciliation between the parties

25. During the course of hearing held on 02.07.2024, the Commission directed that a joint reconciliation exercise be undertaken by the parties, with SECI acting as the nodal agency. The said direction was reiterated by the Commission in subsequent hearings held on 05.11.2024, 10.03.2025 and 30.04.2025, wherein the parties were further directed to expeditiously complete the reconciliation process.
26. Subsequently, on 22.07.2025, the parties informed the Commission that the joint reconciliation had been completed and that affidavits to this effect had been placed on record. The matter was finally heard on 19.08.2025 and, after hearing

all parties, orders were reserved by the Commission with liberty granted to the parties to file their written submissions, if any, within one week.

27. Pursuant to the liberty granted by the Commission, the Petitioner filed its written submissions dated 26.08.2025 placing on record the reconciled Change in Law claims and final disputed disallowances. The Petitioner submitted that the total amount of claims which were subject matter for the reconciliation, was ₹38,10,10,475/- towards Basic Customs Duty (BCD) on non-MOOWR modules and ₹11,09,74,087/- towards increased GST on domestic procurement. SECI and RUVITL, vide Letters dated 16.04.2025 (BCD) and 09.06.2025 (GST), approved an amount of ₹30,97,66,156/- towards BCD and ₹8,93,81,792/- towards GST.
28. In respect of BCD, deductions aggregating to ₹7,12,44,319/- were made by SECI and RUVITL, comprising ₹6,06,83,542/- disallowed on account of High Sea Sale (HSS) transactions and ₹1,05,60,777/- disallowed on account of lack of one-to-one correlation. While disputing the disallowance of ₹6,06,83,542/- on the ground that duty was paid on the HSS value and should be reimbursed accordingly, the Petitioner has not disputed the disallowance of ₹1,05,60,777/-.
29. In respect of GST, deductions aggregating to ₹2,15,92,295/- were made, comprising ₹1,58,88,125.62/- disallowed on account of unidentifiable margins in EPC invoices and vendor invoices dated prior to 30.09.2021, ₹17,18,430.42/- disallowed on account of credit notes issued, and ₹40,00,000/- disallowed for lack of one-to-one correlation. The Petitioner has disputed the disallowance of ₹1,76,06,556.04/- (i.e., the first two items) while not contesting the disallowance of ₹40,00,000/-.
30. In view of the reconciliation undertaken and the written submissions placed on record, the position that emerges is that the disputed amount between the parties aggregates to ₹6,06,83,542/- towards Basic Customs Duty (BCD), being

the portion disallowed on account of High Sea Sale (HSS) transactions, and ₹1,76,06,556.04/- towards Goods and Services Tax (GST), being the portion disallowed on account of margins included in EPC invoices, vendor invoices dated prior to 30.09.2021 and credit notes issued. Thus, the total disputed claim of the Petitioner stands at ₹7,82,90,098.04/-, which remains to be adjudicated upon by the Commission under the ambit of Change in Law.

31. At the same time, the undisputed amount, i.e., that which stands reconciled and agreed by SECI and RUVNL, comprises ₹30,97,66,156/- towards BCD and ₹8,93,81,792/- towards GST, aggregating to ₹39,91,47,948/-. This undisputed portion, being not contested by the Respondents, can, subject to prudence check, be granted to the Petitioner towards Change in Law compensation. The Commission is thus required to adjudicate only on the disputed component of ₹7.82 crore, while the undisputed reconciled amount of ₹39.91 crore stands payable after prudence check.

Change in Law claim agreed by the parties – Rs 39,91,47,948/- towards BCD and GST

32. It is observed that the Commission, vide its Order dated 27.03.2023, had already recognized the levy of enhanced BCD and increase in GST rates as Change in Law events, with liberty to the Petitioner to approach the Commission for determination of quantum and methodology of compensation after commissioning of the Project, subject to establishing one-to-one correlation of documents. Pursuant thereto, reconciliation was carried out under the supervision of SECI as the nodal agency, during which certain discrepancies such as High Sea Sale transactions and excess quantity were noted, leading to partial disallowance of the claims.

33. Based on the reconciliation, SECI and RUVNL have approved a sum of ₹39,91,47,948/- (₹30,97,66,156/- towards BCD and ₹8,93,81,792/- towards GST) as Change in Law compensation. This reconciled amount, being undisputed and found prudent upon verification of one-to-one correlation by the parties, is payable to the Petitioner in accordance with Article 12 of the PPA, the methodology envisaged therein, and the Commission's earlier directions.

The balance disputed claims are being adjudicated hereunder:

Change in Law claim disputed by the respondents – Rs 6,06,83,542/- towards BCD (High Sea Sales Transactions)

34. The Commission observes that the core dispute pertains to whether the additional duty impact arising out of High Sea Sale ("HSS") transactions between the Petitioner and its EPC contractor in respect of modules installed in non-MOOWR areas is to be passed through under the Change in Law provisions. The Petitioner has submitted that the HSS arrangement was a commercial necessity, as the MOOWR licence was issued in its name and not in the name of the EPC contractor. The Petitioner has further argued that all applicable customs duties were paid on the total assessable value, which included the HSS component, and that the arrangement resulted in substantial savings of duties for the project as a whole.
35. The Respondents, on the other hand, have submitted that there was no necessity for routing imports meant for non-MOOWR areas through the HSS mechanism, particularly in light of the CBIC clarification dated 09.07.2022 excluding solar projects from the MOOWR scheme. It has been contended that the HSS route, while permissible, imposed additional duty burden that could have been avoided had the EPC contractor directly imported such modules into non-MOOWR areas. The Respondents have therefore argued that such

additional liability, being commercially imprudent, cannot be passed on to the consumers under the garb of Change in Law compensation.

36. The Commission is of the view that while it is indeed the commercial prerogative of the Petitioner to structure its procurement arrangements, including appointment of an EPC contractor and execution of HSS transactions, such structuring cannot automatically entitle the Petitioner to claim all resultant expenditure as Change in Law compensation. The principle of Change in Law is to provide restitution for additional statutory levies or duties actually imposed, but the same must be tested against the touchstone of prudence, especially since the financial burden is to be ultimately borne by electricity consumers.
37. In the present case, the Commission finds merit in the Respondents' contention that the incremental liability of approximately Rs. 6.07 Crores arose solely on account of the HSS route adopted for modules installed in non-MOOWR areas, and that such extra expenditure was avoidable. While the Petitioner's contention that the HSS route yielded overall duty savings in respect of MOOWR imports may hold true, the specific issue under consideration relates only to modules deployed in non-MOOWR areas, where the HSS mechanism was not essential and in fact resulted in unnecessary higher duty outgo.
38. The Commission notes that tariff-based competitive bidding projects are premised on developers taking commercial decisions to reduce their expenses and thereby maximize their profits. Such decisions, however, carry with them corresponding risks. If developers are allowed to pass through all adverse financial outcomes of their commercial choices under Change in Law while retaining the upside gains, it would amount to splitting risks and rewards between different parties, where consumers are saddled with risks but deprived of benefits. Regulatory prudence dictates that the balance of risk and reward

must remain with the developer, hence, only justifiable and prudent costs can be allowed for pass-through. Accordingly, the Commission concludes that the additional expenditure of Rs 6,06,83,542/- attributable to HSS transactions in respect of non-MOOWR areas does not qualify for pass-through under Change in Law.

Change in Law claim disputed by the respondents – Rs 1,76,06,556/- towards GST (margins included by the EPC, vendor invoices raised prior to 30.09.2021, issuance of credit notes)

39. The Commission has carefully considered the rival submissions with respect to the disallowance of ₹1,76,06,556/- arising on account of margins included in EPC invoices, vendor invoices raised prior to 30.09.2021, and the issuance of credit notes. The Petitioner has urged that such costs represent legitimate GST liabilities incurred and duly deposited with the authorities, and therefore ought to be reimbursed as Change in Law. The Respondents, however, have contended that these amounts flow from the commercial structuring of transactions and margins, as well as imprudent timing of invoicing, and hence are not admissible for pass-through to the consumers.

40. The Commission notes that Change in Law compensation is intended to restore the affected party to the same economic position as if the Change in Law had not occurred. However, such restitution cannot extend to every commercial arrangement or invoicing practice that inflates the effective liability, particularly where the additional burden is not an inevitable consequence of the statutory levy, but arises due to the developer's contractual structuring. Margins added by vendors or EPC contractors are purely commercial in nature, and any GST incidence on such margins forms part of the Petitioner's business risk. Allowing reimbursement of GST on margins would amount to allowing commercial profits of contractors at the cost of consumers, which is neither justifiable nor prudent.

41. On the issue of vendor invoices dated prior to 30.09.2021 but EPC invoices raised thereafter, the Commission is of the view that such liability arose solely on account of the commercial structuring and invoicing practices of the Petitioner and its EPC contractor. Any attempt to shift the burden to consumers merely because EPC invoices were issued post 30.09.2021 is imprudent. Such practices are purely the outcome of commercial decisions and cannot be foisted on the consumers under the garb of Change in Law relief.
42. With regard to the credit notes, the Commission observes that issuance of credit notes is again a matter of commercial adjustment between contracting parties. Once such credit notes were issued, the net GST incidence stood reduced. Any insistence by the Petitioner to seek reimbursement on the higher pre-credit value would amount to claiming compensation for costs that have already been adjusted, which is neither prudent nor justified.
43. It is further relevant to highlight that under both Section 62 and Section 63 frameworks, prudence check is an in-built requirement. In a tariff-based competitive bidding framework, while the developer is free to appoint EPC contractors and structure margins, such commercial choices cannot bind consumers to bear resultant imprudent costs. The Commission reiterates that risk and reward cannot be split between two sets of parties, developers cannot retain profits of their commercial decisions while shifting associated risks to consumers through Change in Law claims.
44. Accordingly, in view of the foregoing analysis, the Commission finds merit in the contentions of the Respondents and holds that the disallowance of ₹1,76,06,556/- on account of (i) unidentifiable margins in EPC invoices, (ii) vendor invoices raised prior to 30.09.2021 though EPC invoices were dated post

30.09.2021, and (iii) credit notes issued, is justified. The claim of the Petitioner to this extent is rejected.

Carrying Cost

45. The Petitioner submits that Article 12 of the PPA, read with the principle of restitution, entitles it to carrying cost so as to be restored to the “same financial position” it would have occupied but for the Change in Law; carrying cost, it is contended, must therefore be awarded from the date the additional expenditure was actually incurred and should reflect the time-value of money until receipt of relief. The Petitioner further states that it has not unduly delayed in pursuing its claim.

46. The Respondents (RUVITL/SECI) counter that the Petitioner has not discharged the evidentiary burden prescribed by the Commission, notably, strict one-to-one correlation, statutory/auditor certificates, invoices, dates of supply and payment and that any carrying cost award must be subject to a stringent prudence check. The Respondents submit that delays in producing documents, imprudent commercial choices, benefits under government schemes, credit notes or other contractual adjustments must be netted off; further, the period of carrying cost and the applicable rate should be limited unless the Petitioner satisfactorily demonstrates higher prudently incurred financing costs.

47. The Commission recognises that carrying cost is a restitutionary remedy intended to compensate for the time-value of money, but it is not an automatic entitlement divorced from prudence and evidentiary support. Having examined the record, the Commission is satisfied that the Petitioner has made a prima facie case for carrying cost in respect of additional expenditure actually incurred on account of the Change in Law events. Accordingly, the

Petitioners shall be eligible for carrying cost starting from the date when the actual payments were made qua procurement till the date of issuance of this Order, at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or the rate of interest on working capital as per applicable RERC Tariff Regulations or the late payment surcharge rate as per the PPA, whichever is the lowest.

48. Once a supplementary bill is raised by the Petitioners in terms of this order, the provision of Late Payment Surcharge in the PPA would kick in if the payment is not made by the Respondents within the due date.

Methodology of payment

49. The Commission notes its earlier decision in Petition No. 1914/2021 (Fortum Solar Plus Pvt. Ltd. v. SECI) where; after considering the relevant submissions and the RE Tariff framework, the Commission adopted a uniform discount rate of 9% and an annuity tenor of 15 years for quantifying Change-in-Law compensation. The reasoning underlying that decision , that actual debt/equity deployment and their precise costs are not ascertainable in each case and that Change-in-Law compensation is not to become a source of profit , is found to be persuasive and applicable to the present matter.
50. Applying the same principles, the Commission deems it appropriate to adopt a discount rate of 9% for the purpose of converting the admitted Change-in-Law impact into annuity payments. The tenure of annuity payments shall be 15 years or the remaining period of the respective PPA, whichever is less. The use of the normative discount rate and limited annuity period strikes a fair balance between restitution to the affected developer and protection of consumer interest by preventing windfall gains.

51. The liability of SECI/RUVNL to make the Monthly Annuity Payments shall commence from the 60th (sixtieth) day from the date of this Order or from the date of submission of the Petitioner's claims in accordance with the directions contained herein, whichever is later. In the event SECI/RUVNL fail to make any Monthly Annuity Payment within the aforesaid timeline, the Late Payment Surcharge provision under the respective PPAs/PSAs shall apply for the period of delay corresponding to each such delayed Monthly Annuity Payment(s).

Interest on Carrying Cost

52. The Commission also observes that the petitioner has raised the issue of interest on carrying cost. On this aspect we would like to note that Hon'ble Aptel in its recent judgment in the matter of GUVNL Vs Essar Power Limited dated 21.03.2025 has held that courts cannot grant compound interest on delayed payments if it is not specifically provided for in the contract. Relevant paras of the Judgment are reproduced hereunder:

"73. The Supreme court in the judgement "D. Khosla & Co. v Union of India (2024) 9 SCC 476, made reference to few other supreme court judgments like "State of Haryana v. S.L. Arora & Co." (2010) 3 SCC 690; "Hyder Consulting (UK) Ltd. v. State of Orissa", (2015) 2 SCC 189; "UHL Power Co. Ltd. v. State of H.P.", (2022) 4 SCC 116 and held that that courts cannot grant compound interest on delayed payments if it is not specifically provided for in the contract. The relevant extract of D.Khosla (supra) is as under:

"24. In the light of the above legal provisions and the case law on the subject, it is evident that ordinarily courts are not supposed to grant interest on interest except where it has been specifically provided under the statute or where there is specific stipulation to that effect under the terms and conditions of the contract. There is no dispute as to the power of the courts to award interest on interest or compound interest in a given case subject to the power conferred under the statutes or under the terms and conditions of the contract but where no such power is conferred ordinarily, the courts do not award interest on interest."

In view of the above deliberation, we are unable to concede to the contention of GUVNL that DPC at compound interest should be given."

53. Since the petitioner has failed to show any provision of the PPA or Regulations which allows interest on carrying cost, hence the prayer of the petitioner cannot be accepted on this count.

54. The summary of our findings are as follows:

- (a) The Petitioner is entitled for the reconciled sum of ₹39,91,47,948/- (₹30,97,66,156/- towards BCD and ₹8,93,81,792/- towards GST) as Change-in-Law compensation in accordance with Article 12 of the PPA as agreed by the parties.
- (b) The Petitioner's claim of ₹6,06,83,542/- on account of HSS transactions in respect of non-MOOWR areas is disallowed and shall not be passed through under Change-in-Law by the respondents.
- (c) The Petitioner's claim of ₹1,76,06,556/- on account of margins in EPC invoices, vendor invoices raised prior to 30.09.2021 and credit notes issued, is disallowed and shall not be passed through under Change in Law by the respondents.
- (d) The Petitioner is eligible for carrying cost from the date on which actual payments were made in respect of procurement/expenditure attributable to the admitted Change-in-Law impact up to the date of this Order.
- (e) The rate of carrying cost shall be the actual interest rate paid by the Petitioner for arranging funds (supported by Auditor's Certificate) or rate of interest on working capital as per the applicable RERC Tariff Regulations for the relevant control period or the Late Payment Surcharge rate specified under the PPA, whichever is lowest.

- (f) The discount rate for converting admitted Change-in-Law impact into annuity payments is fixed at 9%, and the annuity tenure shall be 15 years or the remaining period of the respective PPA, whichever is less.
- (g) The liability of Respondents to commence Monthly Annuity Payments shall arise from the 60th day from the date of this Order or the date of submission of the Petitioner's claims in accordance with these directions, whichever is later. In case of delay beyond the 60th day, Late Payment Surcharge under the respective PPA/PSA shall apply for each delay.
- (h) The Petitioner is not entitled for interest on carrying cost.

55. We order accordingly. No order as to cost.

(Hemant Kumar Jain)
Member

(Dr Rajesh Sharma)
Chairman