

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 112 of 2019**

Case of Maharashtra State Power Generation Co. Ltd. seeking deviations in the PPA and approved PSA for the 252 MW out of 302 MW Solar PV projects being installed under 'Mukhyamantri Saur Krishi Vahini Yojana'

**Coram**

**Anand B. Kulkarni, Chairperson**  
**I.M. Bohari, Member**  
**Mukesh Khullar, Member**

Maharashtra State Power Generation Co. Ltd.	:Petitioner
Maharashtra State Electricity Distribution Co. Ltd.	: Impleaded Respondents No. 1
M/s. Azure Power India Pvt. Ltd.	: Impleaded Respondent No. 2
M/s. Karnataka Resco Rooftop Solar Co.	: Impleaded Respondent No. 3
Sri. Shetkari Urja Nirmithi Co-op Soc.	: Impleaded Respondent No. 4

**Appearance**

For the Petitioner	: Shri. Vijay Rathod (Rep.)
For Impleaded Respondents	
Respondent No. 1	:Smt. Kavita Gharat (Rep.)
Respondent No. 2	:Shri. Dinesh Pardosani (Adv.)
Respondent No. 3	:Shri. Ankur Gupta (Adv.)
Respondent No. 4	:Shri S.V. Subramaniam

## ORDER

**Date: 11 September, 2019**

1. Maharashtra State Power Generation Co. Ltd. (**MSPGCL**) had initially filed this Petition on 10 May, 2019 seeking approval for deviations in the draft Power Purchase Agreement (**PPA**) /Power Supply Agreement (**PSA**) with respect to the Standard Bidding Guidelines (**SBG**) of Ministry of Power (**MoP**) for long term procurement of Solar Power dated 3 August, 2017 and its amendments thereof. Further, based on such deviation, MSPGCL had also sought approval for the following:
  - a. Draft PPA for 150 MW projects under competitive bidding
  - b. Draft PPA for 102 MW projects under Expression of Interest (**EOI**) process
  - c. Approval to the changes in the PSA approved by the Commission in its Order dated 29 November, 2018 under the Case No. 308 of 2018 filed by Maharashtra State Electricity Distribution Co. Ltd. (**MSEDCL**).
2. On 18 June, 2019, through additional submission, MSPGCL had requested for adoption of tariff of Rs. 3.18/unit for 50 MW Western Maharashtra-B block under the Phase-II competitive bidding process in addition to already approved 150 MW projects under Phase-II. However, said request of adopting tariff for 50 MW Western Maharashtra-B projects was withdrawn while filing amended Petition on 5 August, 2019.
3. **MSPGCL's main prayers as per amended Petition are as follows:**
  - a) *Approve the proposed modification in Article 8.1 "change in law" of approved PSA;*
  - b) *Consider the draft PPAs submitted as compliance to relevant directions in Order dated 16.10.2018 in case No. 172 of 2017;*
  - c) *Approve the deviation regarding "Scheduled COD" definition proposed for draft PPA for 150 MW projects under Phase –II competitive bidding process and also approve the modification of the relevant PSA to adopt the same ;*
  - d) *Approve the proposed deviation in the PPA clause for "Generation Compensation in off-*

*take constraint due to transmission/Distribution network” in case of the 150 MW projects under Phase- II competitive bidding process and 102 MW under EoI process and also allow MSPGCL and MSEDCL to incorporate the proposed change in relevant clause in the PSA ;*

- e) *Approve the deviation regarding inclusion of “Change in law” clauses in the draft PPA for 102 MW EoI process, as per proposed modification to approved draft PSA, when the same was not specifically provided in tender document for EoI;*

**4. MSPGCL in its Case has stated as follows:**

- 4.1. The Government of Maharashtra (GoM) has undertaken ‘Mukhyamantri Saur Krishi Vahini Yojana’ vide GR dated 14 June, 2017 and 17 March, 2018 for supplying power to the agriculture sector during day time, reduction in line losses and also reduction in subsidy burden for Government of Maharashtra. The scheme is to be implemented through Public Private Partnership (PPP) mode.
- 4.2. As per guidelines issued by GoM vide GR dated 17 March, 2018, for this scheme MSPGCL and MSEDCL were designated as ‘Implementation agencies’, which have to carry out the preliminary feasibility reports for the projects at different locations across Maharashtra and to carry out the Competitive Bidding for selection of solar projects and to enter into appropriate agreements including long term PPA.
- 4.3. As per the scheme/guidelines as stated above, MSPGCL had filed petition with the Commission in Case No. 172 of 2017 for removal of difficulties in the matter of implementation of ‘Mukhyamantri Saur Krishi Vahini Yojana’ and approval of PPA and PSA being executed by MSPGCL and MSEDCL for the implementation of the scheme.
- 4.4. The Commission issued final Order in Case No. 172 of 2017 on 16 October, 2018. The Commission approved the modalities proposed by MSPGCL for PPA and PSA for all the solar projects being installed under ‘Mukhyamantri Saur Krishi Vahini Yojana’ and also directed that MSPGCL and MSEDCL should approach the Commission jointly with deviations if any in the PPA and PSA.
- 4.5. Meanwhile, MSPGCL conducted the process for selection of Solar Power Developers for Phase- II (300 MW) and Phase – III (A) (50 MW) through tariff based competitive bidding

as per MoP guidelines and requested for consent of MSEDCL for tariff discovered for 300 MW under Phase-II and 50 MW under Phase-III (A) projects.

- 4.6. Apart from these, MSPGCL has also undertaken the development of solar projects by inviting EoI from interested Developers/Bidders/Land owners for setting up Solar Power Plants of capacity up to 100MW cumulative or at single location to cater to the electrical load of Agriculture Feeders (AG) in Vidarbha, Marathwada, Western and Northern regions of Maharashtra on pilot basis. MSPGCL has carried out E-Reverse Auction for selection of the bidder/s from a total of 48 bidders who responded to the EoI and finalized two bidders for total capacity of 102 MW and requested consent from MSEDCL.
- 4.7. Various issues related to tender conditions and tariff were discussed between MSPGCL & MSEDCL and it was decided that power evacuation arrangement should be at 11/22 kV bus bar level of MSEDCL's substations and the metering should also be at interconnection point i.e. 11/22 kV level in MSEDCL's substation in line with MSEDCL's proposed tenders.
- 4.8. Subsequently, MSEDCL had conveyed its consent along with draft PSA for procurement of 302 MW Power out of the 452 MW power projects proposed by MSPGCL, subject to the conditions that power evacuation shall be at 11 kV with metering at Sub-Station and adoption of the Tariff by the Commission. The details of 302 MW solar capacity are as under:

Sr No.	Tender	Phase details and Capacity envisaged by MSPGCL	Consent given by MSEDCL	Name Successful Bidder	Quoted tariff by successful bidder (Rs./kWh)
1	Phase II	<b>300 MW</b> (Vidarbha-A&B-100MW, Marathwada -50 MW, Western Maharashtra- A, B, C -150 MW)	Vidarbha-A : 50 MW Vidarbha- B : 50 MW Marathwada : 50 MW Total: <b>150 MW</b>	M/s. Azure Power Pvt. Ltd	Vidarbha-A : <b>3.08</b> Vidarbha- B: <b>3.00</b> Marathwada : <b>3.02</b>
2	Phase IIIA	North Maharashtra – 50 MW	North Maharashtra- <b>50 MW</b>	M/s. Waaneep Solar Power Pvt. Ltd.	<b>2.99</b>

Sr No.	Tender	Phase details and Capacity envisaged by MSPGCL	Consent given by MSEDCL	Name Successful Bidder	Quoted tariff by successful bidder (Rs./kWh)
3	EoI	Up to 100 W Cumulative or at single location in Vidarbha, Marathwada, Western and Northern regions of Maharashtra	102 MW	1.M/s. Sri Sri Shetkari Urja Nirmiti Co-Op. Soc. Ltd : <b>2 MW</b>	<b>2.93</b>
				2.M/s. Karnataka Resco Rooftop Solar Co. Pvt. Ltd.: <b>100 MW</b>	<b>3.10</b>

4.9. Thereafter, MSEDCL filed a Petition under Case No. 308 of 2019 before the Commission seeking approval for adoption of tariff and signing of PSA with MSPGCL for 302 MW Solar Power from the abovementioned solar Projects to be set up under ‘Mukhyamantri Saur Krishi Vahini Yojana’ to meet its Solar Renewable Purchase Obligations.

4.10. The Commission in its Order dated 29 November, 2018 in the Case No. 308 of 2018 accorded its approval for procurement of Solar Power through MSPGCL for 25 years at the rate discovered through the competitive bidding process for 150 MW projects and through EoI process for the 102 MW projects. The Commission has also accorded approval for signing the PSAs with MSPGCL as per the rates discovered for these 302 MW projects.

4.11. Draft PPAs between MSPGCL and Solar Power Developers were modified based on the consent from MSEDCL. As the same were not finalized during the proceedings in Case No. 308 of 2018, it could not be submitted at that time before the Commission. The same are now submitted in the instant Petition for approval of the Commission.

4.12. The selected bidder for North Maharashtra 50MW, M/s Wanpeep Solar Power Pvt Ltd has not consented for change in metering location and evacuation of power at 11 kV as requested by MSEDCL. Hence MSPGCL has cancelled this bid and is refloating the same with revised Request for Proposal (RfP).

4.13. MSPGCL is in the process of signing the PSAs with MSEDCL for 252 MW Solar Power from the above mentioned solar Projects to be set up under ‘Mukhyamantri Saur Krishi Vahini Yojana’. However, considering the practical issues observed in implementation of the scheme, there is need to modify the Article 8.1.1 of approved draft PSA so as to

modify the applicability date for “Change in law” provision. Also, there are some other deviations being sought with respect to the standard bidding guidelines.

- 4.14. ‘Change in law’ Clause in approved draft PSA are in deviation from RfP. There is need to bring parity in the related clauses in PSA and RfP. The ‘Change in law’ clause in RfP is in line with SBD dated 3 August, 2017. The Article 8.1.1 of approved draft PSA is reproduced below:

*“Article: 8.1.1 "Change in Law" means the occurrence of any of the following events after Effective Date resulting into any reduction or additional recurring/non-recurring expenditure by SELLER or any income to SELLER:”*

Whereas, in the draft PSA the “Effective Date” is defined as following

*“Article 2.1 Effective Date:  
This Agreement shall come into effect from the date of its execution by both the parties and such date shall be referred to as the Effective date.”*

- 4.15. There is a major deviation in the “Change in Law” stipulated in approved draft PSA and provided in the RfP, which was referred by the bidders while submitting their bids. Thus, from project implementation point of view, it will be more appropriate that the PSA Clause be made in sync with the Clause in MoP guidelines as well as the RfP clause.
- 4.16. MSPGCL proposes to substitute “Effective date” in Article 8.1.1 of the approved draft PSA with “the last date of the bid submission”. The modification proposed in approved draft PSA clause is as proposed below

*“8.1.1 "Change in Law" means the occurrence of any of the following events after the last date of bid submission resulting into any reduction or additional recurring/non-recurring expenditure by SELLER or any income to SELLER:”*

MSPGCL requests the Commission to approve the abovementioned modification to the earlier approved draft PSA.

- 4.17. The draft PPAs, to be signed by MSPGCL with the Solar Power Developers, were modified on the basis of the terms and conditions in the approved draft PSA between MSPGCL and MSEDCL and the proposed modification to approved draft PSA.
- 4.18. As already submitted in Case No. 308 of 2018, out of the 302 MW projects, MSPGCL had adopted EoI route for 102 MW projects and for the remaining 200 MW projects the selection of developer was through the tariff based competitive bidding as per MoP guidelines.
- 4.19. Therefore, apart from the terms and conditions under PSA, the PPAs also need to incorporate the different terms and conditions for the two different processes. Therefore, two different draft PPAs are prepared i.e. one for developers under EoI process and other for developers under tariff based competitive bidding process.
- 4.20. The deviations in the two draft PPAs with respect to the approved draft PSA/MoP guidelines/respective RfP documents are on following aspects:

a. Scheduled COD for 150 MW projects under competitive bidding process:

Difference in the “Scheduled COD” as mentioned in approved draft PSA and as mentioned in RfP document is tabulated below:

<b>Provision heading</b>	<b>Provision in approved PSA</b>	<b>Provision in draft PPA for 150 MW competitive bidding projects</b>
Scheduled COD	Article 1: 1.1 Definitions Shall mean date as on Thirteen (13) months from the effective date of the MSPGCL-SPD PPA.	Shall mean date as on <u>18 months from date of handing over of land as per RfP document</u>

RfP provided for 18 months period for COD from handing over of land. Therefore, MSPGCL is seeking deviation in approved PSA clause to make it consistent with RfP document. It is also requested to approve adoption of the same deviation in the related PSA.

b. Loss of generation due to any off -take constraint for 150 MW projects under competitive bidding and 102 MW under EoI:

In the RfP document for 150 MW projects as well as in the EoI document for 102 MW, the voltage level for power evacuation was not specifically mentioned and the bidders have envisaged evacuation at 33 kV.

The Standard Bidding Document provide for compensation to generator for the loss of generation due to any off -take constraint. The relevant Clause 5.5.1 (b) is reproduced below:

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

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

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



*Provided that as an alternative to the mechanism provided above in Clause 5.5.1, the Procurer may choose to provide Generation Compensation, in terms of PPA tariff, for the Generation loss as defined in Clause 5.5.1, and for Grid unavailability beyond 50 hours in a Contract Year as defined in the PPA.”*

However, as proposed projects are now to be connected at 11kV/22kV bus-bar level of MSEDCL, there are issues regarding grid - availability at this voltage level and the loss of generation on account of such non-availability of grid. Accordingly, following clause is provided in the Draft PPA as per request from the successful bidders.

***“Generation Compensation in off-take constraint due to transmission/Distribution network:***

*In any given year during the contract, if the availability of the distribution line/transmission line after inter-connection point for evacuation of power (during 8 am to 6 pm) falls below 98% i.e. the line unavailability is more than 2% i.e. 175.20 hours (2% x 365 days x 24 hours), and the power is not evacuated, for reasons not attributable to the Solar Power Generator, then the generation loss shall be compensated by MSPGCL at the 75% PPA tariff so as to offset this loss as given below:*

<b><i>Duration of Grid unavailability</i></b>	<b><i>Provision for Generation Compensation</i></b>
<i>Grid unavailability in a contract year as defined in the PPA: (only period from 8 am to 6 pm to be counted):</i>	<p><i>Generation Loss = [(Average Generation per hour during the contract year) × (number of hours of grid unavailability beyond 175.20 hours i.e. 2% during the contract year)]</i></p> <p><i>Where, Average Generation per hour during the contract year (kWh) = Total generation in the contract year (kWh) ÷ Total hours of generation in the contract year</i></p>

MSPGCL requests the Commission to approve the proposed deviation in the deemed generation compensation clause with respect to the Standard Bidding Guidelines and RfP and allow MSPGCL and MSEDCL to incorporate the proposed change in relevant clause in the PPA and PSA for all these projects as it is based on practical observations and is in favor of consumers.

c. Deviation in “Change in law” clause in approved draft PSA and in EoI document for 102 MW projects:

There was no specific “Change in Law” clause mentioned in the EoI tender document. However, as MSPGCL has followed all MoP guidelines including the Reverse Bidding process, MSPGCL has accepted to include the “Change in Law” provision as per MoP guidelines in the PPA.

Hence, there is need for modification in the “Change in law” provision in the approved draft PSA. Thus, in case of the PPA for EoI process, MSPGCL is proposing to adopt the “Change in law” clause as per proposed modification.

4.21. In view of above, MSPGCL requested the Commission to approve the modification to the approved draft PSA clauses and approve the draft PPAs so that MSPGCL can sign the finalized PPAs with the selected SPDs and related PSAs with MSEDCL.

5. MSEDCL vide its submission dated 26 July, 2019 has stated that these 302 MW Solar projects are proposed under ‘Mukhyamantri Saur Krishi Vahini Yojana’ which is ambitious project initiated by GoM and are required to be commissioned as early as possible.

6. Azure Power India Pvt. Ltd. (APIPL) made following submissions dated 5 August, 2019:

6.1. MSPGCL on 8 December, 2017, issued six RfP Documents for setting up the solar Projects under the Comprehensive Policy for Grid connected Power Projects based on New and Renewable (Nonconventional) Energy Sources – 2015 (Renewable Energy Policy, 2015). The regions for which the RfP Documents were issued are as below:

- a) Marathwada Region
- b) Vidarbha Region (A)
- c) Vidarbha Region (B)

- d) Western Maharashtra (A)
- e) Western Maharashtra (B)
- f) Western Maharashtra (C)

6.2. Subsequently on 10 February, 2018, MSPGCL issued an amendment to the RfP Documents, wherein MSPGCL among other things:

- a) Deleted the Deemed Generation Clause and
- b) Made bidders responsible for the construction and O&M of the Power Transmission and Evacuation facilities.

6.3. Pursuant to the amendment to the RfP Documents, on 15 February, 2018, APIPL submitted the bids for all the six Projects. The Solar Guidelines were in place and applicable when the bidding process was conducted by MSPGCL.

6.4. After the reverse auction held as a part of the competitive bid, APIPL emerged as the successful bidder in five of the six bids i.e. except Western Maharashtra (C). Subsequently on 17 May 2018, MSPGCL issued the LOAs for four of the five Projects. The details of the LOAs' and the tariff quoted by APIPL for the Projects are as follows:

S. No.	PROJECT	DETAILS OF THE LOA	TARIFF QUOTED
1	Western Maharashtra (A) ('Project 1')	LOA NOT ISSUED	Rs. 3.28/kWh
2	Western Maharashtra (B) ('Project 2')	CE/SPGD/AG feeder/50 MW/ Western region (Ph-II-B)/05727	Rs. 3.18/kWh
3	Vidarbha Region (A) ('Project 3')	CE/SPGD/AG feeder/50 MW/ Vidarbha region (Ph-II-A)/05730	Rs. 3.08/kWh
4	Marathwada Region ('Project 4')	CE/SPGD/AG feeder/50 MW/ Marathwada region (Ph-II-B)/05728	Rs. 3.02/kWh
5	Vidarbha Region (B) ('Project 5')	CE/SPGD/AG feeder/50 MW/ Vidarbha region (Ph-	Rs. 3.00/kWh

		II-B)/05729	
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- 6.5. With regards to the Project 1, i.e. the Project to be setup in the Western Maharashtra (A) region, MSPGCL requested APIPL to reduce the tariff and match it with Rs. 3.18/unit, which APIPL had quoted for Project 2. APIPL was initially not willing to lower the competitively discovered Tariff for Project 1 but on keeping the economies of scale in mind and its willingness to execute the Projects and to finalise the execution of the Agreements soon, APIPL on 3 July, 2018 accepted the MSPGCL's offer to lower the tariff. Despite the acceptance to reduce the tariff for Project 1, the MSPGCL never issued the corresponding Letter of Award for Project 1.
- 6.6. The RfP Document mandates that the PPA were to be signed within one month of issuance of the LOAs, but till date the PPA has not been finalised consistent with the Solar Guidelines and RfP Documents. MSPGCL never provided a copy of the draft PPA along with the RfP Documents and that the draft PPA was provided to APIPL much after the issuance of the LOAs and with substantial deviations to the bidding terms. Draft PPA, which was provided after the issuance of LOAs, for the first time mentioned that the Projects are being developed under the Mukhyamantri Solar Agricultural Feeder Scheme and have been made subject to the conditions contained in the said Scheme without the same being given in the bid documents.
- 6.7. On 28 November, 2018, the Commission issued an Order in Petition No. 308 of 2018, filed by MSEDCL, seeking approval for adoption of Tariff of Long Term Procurement of 302 MW Solar Power through MSPGCL from the solar Projects to be set up under Agri Feeder Scheme to meet its Solar Renewable Purchase Obligations. In the said order, the Commission accorded approval to the tariff for three of the Azure Power's Projects i.e. Project 3, Project 4 and Project 5 and approved the corresponding PSA. For the first time, the condition for evacuation of power at the 11kV was imposed by MSEDCL. APIPL was never privy to the proceedings in Case no. 308 of 2018.
- 6.8. Subsequent to the conditions for evacuation at 11 kV being imposed by MSEDCL and after seven months of issuance of LOAs, MSPGCL issued the letter dated 1 December, 2018 unlawfully imposing two additional conditions under Project 3, Project 4 and Project 5 which were not a part of RfP Documents or LOAs. The two conditions were:

- a) Evacuation of all projects shall be on 11 kV bus and
- b) Location of the metering point shall be at the substation end.

6.9. MSPGCL separately issued the letter dated 6 December, 2018 imposing the same two conditions on Project 2 and further instructed APIPL to renegotiate the tariff for Project 2, otherwise it would be constrained to cancel the LOA for Project 2.

6.10. On 7 December, 2018, APIPL replied to MSPGCL's letter dated 1 December, 2018 and accepted the second condition relating to metering point imposed by MSPGCL. APIPL further requested to confirm and share certain information based on which APIPL would consider the first condition also. APIPL requested the following information/confirmation:

- a) Technical feasibility and assurance of getting Connectivity for individual projects ranging from 2 to 10 MW (depending on land availability and technical feasibility) to the 11kV bus of the respective substations within the aforesaid regions.
- b) Availability and Reliability of the 11kV system.

6.11. APIPL further requested to share the draft PPA after considering the comments and suggestions made by APIPL.

6.12. On 11 December, 2018 MSPGCL rejected the conditional approval provided by APIPL and requested that acceptance to both the conditions as mentioned in the its letter dated 1 December, 2018 be provided. Subsequently on 20 December, 2018, APIPL intimated the MSPGCL that there was no provision in the LOAs which would permit any renegotiation of tariff after the LOAs has been issued on the tariff discovered through the transparent bidding process. APIPL also stated that as per the LOA, the Petitioner has already accepted the tariff rate of Rs. 3.18/unit for Project 2.

6.13. On 5 February, 2019 MSPGCL replied to APIPL's letter dated 17 January, 2019 and intimated that if APIPL does not sign the PPA within seven days from the date of issue of the letter, MSPGCL would initiate action under terms of tender documents. MSPGCL had therefore sought for signing of the PPA with number of deviations from the bid terms and

conditions and APIPL was being asked to agree to the same when it had submitted the bids on a different premise.

6.14. On 12 February, 2019 APIPL informed MSPGCL that confirmation to the condition for evacuation at 11 kV as mentioned in MSPGCL's email dated 1 December, 2018 would require setting up of multi-circuit transmission lines for larger capacity projects, which would substantially increase the implementation cost. APIPL also emphasized that there was no such requirement provided in the RfP Documents, and accordingly the additional costs for the same could not have been included in tariffs for these Projects. APIPL also informed MSEDCL that 11 kV system is prone to unscheduled outages due to faults in rural feeders which generally leads to bus outages, connecting the Solar Power Plant at 11 kV poses a huge risk for the Solar Power Developers. Therefore, APIPL requested for an increase in tariff or reimbursement of the additional cost for acceptance of the condition. The enforcement of first additional condition results in the violation of legal rights of APIPL available to it under the RfP Documents. Similarly, there were other deviations which APIPL was being called upon to agree.

6.15. On 16 May, 2019, MSPGCL again approached APIPL stating that in case APIPL does not sign the PPA for Project 3, Project 4 and Project 5 and does not revert on the renegotiation of tariff for Project 2, MSPGCL would take appropriate action under the terms and conditions of the RfP Documents. Under the said letter, MSPGCL duly admitted to the issues which would arise due to one of the deviations i.e. evacuation at 11 kV voltage level, the relevant extracts of the same are reproduced below for ease of reference:

*“A meeting was scheduled on 14.05.2019 with Director (Projects), Mahagenco. During the meeting, you mentioned that due to the non-reliability of Evacuation Arrangement you have requested the modification in the deemed Generation clause. In this regard, Mahagenco will coordinate with MSEDCL for problems associated with 11 kV line and to improve the reliability of the 11 kV line and ensure its availability in daytime.”*

6.16. On 6 June, 2019, APIPL declined to enter into renegotiation with MSPGCL for the downward revision of Tariff for Project 2. APIPL still showed its willingness to enter into the PPA for Project 3, Project 4 and Project 5 and acknowledged that MSPGCL would coordinate with MSEDCL to resolve the problems associated with the evacuation of power at 11 kV.

6.17. On 18 June, 2019, MSPGCL filed an additional affidavit in the instant Petition seeking the following:

- a) The approval of the Commission for the competitively bid out tariff of INR 3.18 kWh for the fourth 50 MW project of Azure Power i.e. Western Maharashtra-B;
- b) Approval of the deviation in the deemed generation clause as the voltage level for the evacuation of power was not specifically mentioned and that the bidders had envisaged evacuation of the power generated at 33 kV.

6.18. In the said affidavit, MSPGCL has again admitted that the RfP Documents did not specifically provide at which voltage level the evacuation of power would be conducted and that APIPL had envisaged evacuation at the 33 kV level. Further, the Additional Affidavit encloses a letter dated 11 June, 2019 by MSPGCL to MSEDCL which also acknowledges that the condition to evacuate power at 11kV/22 kV was mandated by MSEDCL after the bidding had already been conducted. Relevant paragraphs of the letter dated 11 June, 2019 have been reproduced below for ease of reference:

*“While bidding M/s Azure Power has envisages evacuation at 33 kV voltage level as RFP has not stated voltage level for power evacuation. After bidding MSEDCL directed that all the projects are to be connected at 11kV/22kV bus bar level. Considering issues regarding grid – availability at 11 kV voltage level and the loss of generation on account of such non-availability of grid, M/s Azure Power has requested to revision in the Deemed Generation Compensation clause need to be changed as follow... ”*

6.19. MSPGCL has however not dealt with the issues of other deviations from the RfP Documents. APIPL after reviewing the draft PPA, has raised concerns with MSPGCL vide its letter dated 16 July, 2019 and has suggested amendments to the draft PPAs. The draft PPAs being at variance from the terms of RfS Documents and the Solar Guidelines cannot be expected to be executed between the Parties.

6.20. The Clauses under the draft PPAs provided for approval in the instant Petition are contrary to important terms and conditions under the RfP Documents and such deviation from the RFP Documents are material and will cause hardship to APIPL. Terms and conditions of the draft PPA which are different from the understanding provided in the issuance of the

RfP Documents should not be allowed, as the same is against the fundamental understanding of the procurement process.

- 6.21. Change in the fundamental conditions like evacuation at 11 kV and the huge delay in signing the PPAs have adversely affected the Project. Further, changing the terms of the draft PPA in conflict with the RfS Document and the Solar Guidelines further makes the Project onerous.
- 6.22. Draft PPAs cannot be in conflict with the Solar Guidelines for procurement of power. Any deviation from the Solar Guidelines will render the procurement procedure illegal, since it will constitute violation of a mandatory provision of a statute. In the present case, the relationship of MSPGCL and APIPL is a contractual relationship. Therefore, neither party has the liberty to thrust upon the other party any new term on which consensus has not been arrived. This is beyond and against the legitimate expectation of the parties.
- 6.23. The Commission is requested to reject the deviation contained in the draft PPAs and enforce the terms and conditions mentioned in the RfP Documents in toto without any change.
7. The first hearing under the instant Case was held on 7 August, 2019. The representative of Azure power mentioned that they received the copy of amended Petition of MSPGCL in the morning and sought some time to file a reply to it. Accordingly, the Commission adjourned the hearing.
8. Karnataka Resco Rooftop Solar Co. (**KRRSPL**) made following submission dated 12 August, 2019:
  - 8.1. MSPGCL invited EoI dated January 2018 from interested developers/bidders/land owners for setting up Solar Power Plants of capacity up to 100 MW cumulative capacity or at single location to cater load of AG feeders in Vidharba, Marathwada, Western and Northern regions of Maharashtra.
  - 8.2. MSEDCL conveyed its concurrence along with the draft PSA for Procurement of Power from the projects proposed by MSPGCL subject to the conditions that power evacuations shall be at 11/22 kV bus bar level of MSEDCL's sub-stations and the metering should also



be at interconnection point i.e. 11/22KV level in MSEDCL's sub-station in line with its other MSEDCL proposed tenders.

- 8.3. MSPGCL vide its letter dated 29 June, 2018 informed that KRRSPL was one of the Techno-Commercially qualified bidders. Reverse Bidding process was carried out for the successful bidders by MSPGCL, wherein KRRSPL had quoted a rate of Rs.3.19/unit. The lowest tariff which was revised in Reverse Bidding Process was Rs.3.18/unit. MSPGCL called upon the KRRSPL to match up to the tariff rate of Rs.3.18/unit in order to get the allocation of the capacity.
- 8.4. KRRSPL vide its Letter dated 24 August, 2018 to MSPGCL agreed to revise its quote to Rs. 3.10/unit subject to the following conditions:-
- a) KRRSPL shall get the award for not less than 98 MW as quoted
  - b) In the event of any possibility of increasing the capacity under the said Scheme to the existing developers, then KRRSPL be considered as preferred Developer;
  - c) That the timelines for the Commissioning of the respective Projects would be provided with 18 months from the latter of the time of execution of PPA or approval of PPA by the Competent Authority; considering that size of each Project was revised from 1 project having capacity of 100 MW to 10 (ten) Projects having capacity of 10MW each.
  - d) In case of availability of capacity at any relevant sub-station for connectivity to agriculture land i.e. 33/11 kV or 132/33 kV or such other voltage levels where agricultural load connected/available, it should be allowed to connect respective Projects without any hassles;
  - e) The impact on account of any Safeguard Duty (**SGD**) on the projects would clarify/attract as "Change in Law" and corresponding relief would be provided to bring KRRSPL to the same economic position.
- 8.5. MSPGCL vide its letter dated 14 November, 2018 sought the consent of KRRSPL on the following conditions before placement of letter of allotment:

- a. The “Change in Law” shall not be applicable on account of the SGD as notified by Ministry of Finance notification dated 30 July, 2018;
  - b. The location of metering point shall be at the sub-station end;
  - c. The evacuations of all the projects shall be on 11 kV.
- 8.6. The KRRSPL vide its Letter dated 19 November, 2018 has replied as under:
- a. The notification of Ministry of Finance dated 30 July, 2018 in respect of SGD is an event subsequent to the Bid deadline and therefore qualifies for the “Change in Law” as per Para 2 of Section 21.2 of the Standard PPA provided by ‘MSPGCL’ in March 2018.
  - b. Metering point shall be retained at the plant boundary;
  - c. KRRSPL confirmed that the evacuation from the projects shall be on 11 kV bus and assumed that the request for 18 months for SCoD has been considered.
- 8.7. MSPGCL vide its letter dated 7 January, 2019 again asked for confirmation of the condition that “Change in Law” provisions would be applicable to imposition of SGD; and that location of the metering would be at sub station level.
- 8.8. KRRSPL vide its letter dated 17 January, 2019 agreed that metering shall be at the sub-station end in line with Order dated 29 November, 2018. However, in respect of “Change in Law” provision, KRRSPL reiterated that the impact of SGD should be covered under the provisions of “Change in Law”. It was requested that Scheduled Commercial Operation Date (SCoD) of the respective solar project to be made 18 months from the date of execution of the PPA.
- 8.9. KRRSPL also submitted that the Clause relating to Deemed Generation shall be as per the MoP’s Guidelines. KRRSPL shall be allowed to install Additional panels for making additional Generation of DC side while maintaining the AC load as per the PPA. The Bidder would be free to approach the Regulatory Authority seeking compensation towards generation loss if the same is unduly high and the MSPGCL would support KRRSPL in the said process.

8.10. KRRSPL vide its letter dated 18 February, 2019 to MSPGCL referred to the discussion held between the parties on the draft PSA and submitted changes required in the draft PPA. The said letter inter alia depicted the proposal for change of conditions concerning the Change of Law i.e. Article 21.12 to be from the Reverse Auction Date i.e. 11 June, 2018. Further, KRRSPL proposed that the Effective Date should be later of (i) PPA signing date or (ii) PSA signing date or (iii) Receipt of all approvals from the Commission.

8.11. Further, the Commission may consider the request for providing a period of 18 months from later of the PPA execution or PSA execution for achieving the SCOD of the respective project.

8.12. Apart from the aforementioned issues KRRSPL is seeking the relief from the Commission on the following issues:

S. No.	Modification required	Reference of Clause and Page Nos of PPA for proposed changes.	Remarks
1	Financial Closure: The seller shall obtain Financial Closure within 12 months from date of execution of the PPA. <i>(Instead of 7 months now)</i>	Article 1: Definitions and Interpretation/ Financial Closure/Page No. 8 Article 2/Clause No 2.2.iii /Obligations of the Seller/Page No. 14 Article 3/Clause No 3.2.2 Page No. 18	Time period for achieving the financial closure should be increased to 12 months, in as much as, instead of developing one single projects, the answering Respondent has to develop 10 separate projects of 10 MW each on account of the evacuation constraints. It may be noted that the evacuation of energy generated from the Project at 11kV voltage level would not be possible for evacuating energy more than 10 MW. Under the EoI, the power could have been injected at 33/11, 132/33 or such higher voltages, based on which aspect, KRRSPL had submitted its bid. Development of 10 separate projects would entail various additional challenges in the form of statutory consents, approvals, permissions, land acquisition etc and without achieving the same, the financial closure of the Project cannot be achieved.

S. No.	Modification required	Reference of Clause and Page Nos of PPA for proposed changes.	Remarks
2	Scheduled Commissioning Date (SCoD): 18 Months from signing of PPA. (instead of 13 months present)	<ul style="list-style-type: none"> <li>• Article 1: Definitions and Interpretation/ Scheduled Commissioning Date/Page No. 11</li> <li>• Article 2/Clause No. 2.2.i /Obligations of the Seller/Page No. 14</li> <li>• Article 2/Clause No. 2.4.1 Page No. 16</li> </ul>	The development of 10 separate projects of 10MW each would require lots of time for achieving the requisite statutory approvals and land acquisitions etc from separate government authorities and thus, the SCOD of the Project should be extended to a period of 18 months from the date of signing of the PPA or obtaining the approval from MERC, whichever is later.
3	Point to be added: MSPGCL shall keep its Trading License valid throughout the tenure of PPA.	<ul style="list-style-type: none"> <li>• Article 2/Clause No. 2.2.3 /Obligations of MSPGCL/Page No. 16</li> </ul>	The answering Respondent would not be able to sell the energy generated from the Project to a third party, in the event of the MSPGCL's Trading Licence is revoked or terminated for any reason whatsoever, which may also result in huge financial losses to KRRSPL.
4	Modification required: If the SELLER agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 5.6.2, the SELLER shall make appropriate adjustment in the next Monthly Bill.	<ul style="list-style-type: none"> <li>• Article 5/Clause No. 5.6.3/ Page No. 26</li> </ul>	The adjustment to the amount due under the monthly energy bills cannot be made at the sole behest of MSPGCL. Rather, in the event of any dispute qua the invoice raised, no adjustment in the monthly
5	Point to be added: Act of God, including, but not limited to lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, the Delivery Points; or	<ul style="list-style-type: none"> <li>• Article 7/Clause No. 7.3 (a)/ Page No. 32</li> </ul>	The delay in construction of the Project on account of Force Majeure events, should also be included in the Force Majeure clause.
6	Point to be added under Force Majeure: Delay in issuance of consents and approvals for reasons attributable to	<ul style="list-style-type: none"> <li>Article 7/Clause No. 7.3 (f)/ Page No. 32</li> </ul>	Delay on the part of the Govt. authorities in giving the requisite approvals, affecting the timely commissioning of the Project, should also be considered as a Force Majeure event.

S. No.	Modification required	Reference of Clause and Page Nos of PPA for proposed changes.	Remarks
	slab.		
7	Delete clause: If MSPGCL-MSEDCL PSA gets terminated.	Article 9/Clause No. 9.3 (ii)/ Page No. 36 And Clause 9.8/Page No. 8	If the PSA gets terminated mid-way then it shall be responsibility of MSPGCL to flip the power to a new off taker without any cost / implications. All of a sudden, it shall not be possible for the Seller to obtain consents, approvals and identify new / 3rd parties for shift of power and there lies the strength and responsibility of MSPGCL.
8	Delete Clause: Third Party Sales by SELLER	Article 5/Clause No. 5.5/ Page No. 25 & 26	
9	Delete Point: The SELLER shall have liability to make payment within 30 days from the date of termination notice towards compensation to MSEDCL equivalent to three years billing based on normative Capacity Utilization Factor of 19%.	Article 9/Clause No. 9.9.1/Page No. 39	This was not a clause in the PPA provided at the time of the EoI process and therefore should be deleted.
10	Performance Bank Guarantee (PBG)		PBG amount was mentioned to be Rs. 10,00,000/- per MW and the same needs to be confirmed
11	Schedule 6: PSA is not shared with us.		PSA is not shared.

9. At the second hearing held on 22 August, 2019 the representative of Petitioner and the Impleaded Respondents reiterated their submissions. Representative of APIPL impressed upon the fact that at the time of bidding, it had envisaged connectivity at 33 kV. However, post bidding it has been changed to 11 kV by MSPGCL. The Commission directed APIPL to submit an estimated financial impact for altering the connectivity from 33 kV to 11 kV,

within 7 days. Representative of Sri. Shetkari Urja Nirmiti Co-op Soc. (SSUNC) submitted that they are aligned with the deviations sought by MSPGCL.

10. MSPGCL filed a rejoinder dated 29 August, 2019. Through the rejoinder MSPGCL has replied to the submission made by the Impleaded Parties:

10.1. APIPL has requested to reject the deviation contained in the draft PPA and enforce the terms and conditions mentioned in the RfP Documents in toto without any change. In this regard, MSPGCL stated that while proposing the deviations as mentioned in the amended petition, it has taken a conscious view and instead of sticking only to the RfP documents, modified terms for ensuring smooth implementation of the projects under the “Mukhyamantri Saur Krishi Vaahini Yojana”. Request by APIPL for terms and conditions as per RfP is not tenable and may be rejected.

10.2. KRRSPL has broadly supported the prayers by MSPGCL. The only condition put forth by KRRSPL is regarding extension of 5 months to the time period for SCOD of the solar project i.e. the SCOD to be 18 months instead of 13 months as per draft PPA/PSA. KRRSPL has sought time period of 18 months from the date of signing of PPA citing the reason of increased number of locations due to reduction of maximum project size to 10 MW. MSPGCL submits that the difficulties stated by KRRSPL can be considered and thus the extension in SCOD for the 100 MW project may be allowed. Similarly on the request for additional time period for financial closure, it is to submit that the extension in financial closure period may be accepted as the same is within the time frame of 18 months for SCOD.

10.3. KRRSPL has also raised some minor aspects, like time period for financial closure, addition of reason of “delay on the part of the Govt. Authorities in giving required approvals” to the list of reasons for “force majeure events”, deletion of some of the clauses related to responsibilities of Seller in case of termination of contract etc. Regarding the suggested changes related to responsibilities of Seller in case of termination of contract, MSPGCL submitted that these clauses are as per the PPAs / PSAs adopted for all the other Solar Projects hence are of routine nature and specific omissions/exclusion as requested may not be accepted.

10.4. SSUNC through its oral submission during hearing dated 22 August, 2019 has broadly supported the prayers by MSPGCL regarding the changes/deviations proposed by MSPGCL.

11. APIPL, through its email dated 31 August, 2019 made the following additional submission:

11.1. Fundamental changes to the terms and conditions on which the Projects were to be executed has changed the parameters on which the APIPL had submitted its bids. It has been more than 18 months from the time the APIPL has submitted its price bids. With these changes and substantial delays, the viability of the Projects is adversely affected and will have serious consequences on the ability to achieve financial closure for the Projects. There is always a cascading effect on the financial, technical and other requirements of the Project. The Lenders as well as the Vendors are greatly perturbed about the delay and APIPL is therefore adversely impacted by these deviations proposed in the PPA. MSPGCL has admittedly deviated from the terms and conditions under the RfP Documents and modified the terms of the PPA on the ostensible plea that the modified terms are required for smooth implementation of the Project. However, this contention is legally erroneous and untenable.

11.2. The Hon'ble Supreme Court of India and this Commission on numerous occasion has held that the conditions cannot be changed after the submission of the bid by the bidders and therefore any such changes cannot be allowed under the present Petition.

11.3. Change in Evacuation level to 11 kV has resulted in the viability of the Projects due to the following reasons:

- a. The Change in evacuation conditions would result in generation loss on account of higher grid unavailability as the 11 kV system is more prone to outages and faults;
- b. The transmission losses at the 11 kV system are higher as compared to the 33 kV system.
- c. Evacuation at 11 kV would require construction of multiple bays and multiple circuit lines, which would be an additional financial burden and it increases difficulty in execution of the Project. Moreover, the uncertainty in the maximum

capacity that can be evacuated on a 11 kV single circuit line further increases the execution risk.

Even the deemed generation calculation is onerous to APIPL if it fails to envisage and protect the affected parties against the loss / change that has been caused from the RfP Documents.

11.4. Such a unilateral change cannot be made by any party post the submission of the bids and therefore such a unilateral modification of the tender conditions is illegal and cannot be forced upon the bidders and therefore cannot be allowed.

11.5. Therefore, the Commission should not accept the draft PPA submitted by the MSPGCL as conditions have been imposed over and above the conditions specified under the RfP Documents, thereby effectively changing the conditions relating to the bidding which was not envisaged under the RfP Documents.

### **Commission's Analysis and Rulings**

12. The Commission by its Order in Case No. 172 of 2017 dated 16 October, 2018 has approved the modalities proposed by MSPGCL for PPA (between MSPGCL and Solar Power Developers) and PSA (between MSPGCL and MSEDCL) for all the Solar projects being installed under '*Mukhyamantri Saur Krishi Vahini Yojana*' and directed that MSPGCL and MSEDCL should approach the Commission jointly with deviations if any in the PPA and PSA

13. MSPGCL conducted the process for selection of Solar Power Developers by adopting two different approaches as mentioned below:

a. Phase- II (300 MW) and Phase – III (A) (50 MW) through tariff based competitive bidding

b. Inviting EoI from interested Developers/Bidders/Land owners for capacity up to 100MW

14. Based on Petition filed by MSEDCL (being Distribution Licensee purchasing power from trader, MSPGCL) in Case No. 308 of 2019, vide its Order dated 29 November, 2018, the Commission accorded its approval for procurement of Solar Power through MSPGCL for 25



Years at the discovered rates from 302 MW Solar Power to be set up under ‘Mukhyamantri Saur Krishi Vahini Yojana’ as follows:

Sr No.	Tender	Phase details and Capacity envisaged by MSPGCL	Consent given by MSEDCL	Name Successful Bidder	Quoted tariff by successful bidder (Rs./kWh)
1	Phase II	<b>300 MW</b> (Vidarbha-A&B-100MW, Marathwada -50 MW, Western Maharashtra- A, B, C -150 MW)	Vidarbha-A : 50 MW Vidarbha- B : 50 MW Marathwada : 50 MW Total: <b>150 MW</b>	M/s. Azure Power Pvt. Ltd	Vidarbha-A : <b>3.08</b> Vidarbha- B: <b>3.00</b> Marathwada : <b>3.02</b>
2	Phase IIIA	North Maharashtra – 50 MW	North Maharashtra- <b>50 MW</b>	M/s. Waaneep Solar Power Pvt. Ltd.	<b>2.99</b>
3	EoI	Up to 100 W Cumulative or at single location in Vidarbha, Marathwada, Western and Northern regions of Maharashtra	<b>102 MW</b>	3.M/s. Sri Sri Shetkari Urja Nirmitti Co-Op. Soc. Ltd : <b>2 MW</b>	<b>2.93</b>
				4.M/s. Karnataka Resco Rooftop Solar Co. Pvt. Ltd.: <b>100 MW</b>	<b>3.10</b>

15. However, since the draft PPAs were not finalized during the proceedings of Case No. 308 of 2018, they were not submitted before the Commission at that time. MSPGCL, in the instant Petition, has submitted draft PPAs for 150 MW projects selected under Phase-II competitive bidding (out of 200 MW already adopted by the Commission) and 102 MW of projects selected through EoI, for approval of the Commission. Further, based on changes proposed in draft PPA, MSPGCL has sought corresponding deviations to the PSA which was approved by the Commission in its Order dated 29 November, 2018 in the Case No. 308 of 2018.

16. As process adopted for selection of successful bidder is different i.e. 150 MW Projects selected through Competitive Bidding and 102 MW of projects are selected through EoI mechanism, documents based on which bidders have quoted their rate are different and hence deviation sought in PPAs needs to be dealt with differently. In subsequent part of the Order, the Commission has dealt with the same.

### **17. 150 MW Projects selected through Competitive Bidding:**

- 17.1. As can be seen from the table in para 14 above, the Commission vide its Order dated 29 November, 2018 has adopted tariff discovered through competitive bidding for 200 MW of Solar Power. However, as submitted by MSPGCL in present Petition, the successful bidder for North Maharashtra 50MW, M/s Wanpeep Solar Power Pvt Ltd has not consented for change in metering location and evacuation of power at 11 kV as requested and hence MSPGCL has cancelled this bid and is refloating the same with revised Request for Proposal (RfP). Thus, in present Petition, MSPGCL has sought approval for draft PPA for balance 150 MW capacity. APIPL is the selected bidder for this balance 150 MW solar capacity.
- 17.2. MSPGCL in its Petition has proposed changes in approved PSA (between MSPGCL and MSEDCL) relating to 'Change in Law' and 'Scheduled CoD' clause for bringing it in conformity with the RfP. At the same time, MSPGCL has also proposed to change evacuation level to 11 kV from 33 kV supposed to be mentioned in RfP at the request of MSEDCL and for compensating such change in evacuation level proposed changes in Generation Compensation clause in approved PSA (between MSPGCL and MSEDCL) and in draft PPA (between MSPGCL and APIPL).
- 17.3. With regards to the changes in evacuation voltage level and Generation Compensation clause, APIPL has contended that while bidding it had envisaged the connectivity at 33 kV level and has submitted the rates accordingly. Post bidding the connectivity has been changed/modified to 11 kV. This has resulted in unviability of the project on account of higher grid unavailability, high losses and additional financial burden in construction of multiple bays and multiple circuit lines. It has also submitted that the change in the Deemed Generation Clause is a unilateral change and is not enough to compensate loss of APIPL on account of change in evacuation voltage level.
- 17.4. The Commission notes that both MSPGCL and APIPL contend that bidding document, based on which APIPL has submitted bids, presumes connectivity at 33 kV level. The Commission studied the RfP document and replies to the Pre-bid queries to ascertain this claim. The Commission notes that bidding documents for all these bids are identical. Hence, the Commission is reproducing below only provisions of one of the bid documents i.e. 'Vidharbha Region (Phase-II-B)' for arriving at any conclusion. The Commission notes that this Bid Document has following provisions which can be used to decide point of injection:

“

**1.2 .....**

**b. Power Transmission and Evacuation**

*MSEDCL will construct requisite infrastructure for transmission of power from each Solar Project to the nearest substation including the ABT meters and required Transmission Bay at both the ends (power plant switchyard & substation). All clearances related construction of infrastructure and transmission of power from proposed plant shall be the responsibility of the Mahagenco as per Clause 1.3 of Section II- “General Scope of Work”*

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**SECTION II:  
TECHNICAL SPECIFICATION FOR 50MWAC  
CUMULATIVE CAPACITY SOLAR POWER PROJECTS AT VARIOUS PLACES IN  
VIDARBHA REGION (PH-II-B) OF MAHARASHTRA**

**1. GENERAL SCOPE OF WORK**

**1.1 Objective**

*The main objective of this project to design, engineering, manufacture, supply, erection, testing and commissioning of 50MWAC cumulative capacity grid interactive solar PV power plants at various places to cater the AG feeder load of various substations at various places in Vidarbha regions of Maharashtra on PPP basis.*

*There will Exemption of all fees/charges/cess levied by any Govt. authority including the Local Govt. Bodies (Panchayat) for 25 years as per the Government Resolution (GR) published by GoM time to time.*

**1.2 Project site**

*50MW Cumulative capacity sites for Solar PV Projects are situated in the different places of Vidarbha region the size of each individual solar project is depend on the Agricultural load on the AG feeder which has to be cater through these Solar power projects.*

*The scope of work includes Design, Engineering, Manufacture, Supply, Erection, Testing And Commissioning of 50MWAC Cumulative Capacity Grid Interactive Solar PV Power Plant at various places to cater the AG feeder load of various substations at various places in Vidarbha Region (PH-IIB)s of Maharashtra including 25 years operation and maintenance of the same on PPP basis.*

.....

**1.4 MSEDCL Scope or work:**

a) MSEDCL will construct & erect complete evacuation line along with & ABT meters from the switchyard of solar power project to the nearest MSEDCL/MSETCL substation. Energy meter (ABT) will be located at Switchyard of the Solar Power Project.

b) Construction of bays and installation of all necessary associated equipment and protection and metering system at interconnection point at MSEDCL/MSETCL substation.

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## Annexure 20

### Project Site Locations

Vidarbha Region (PH-II-B) : Cumulative capacity = 50 MW<sub>AC</sub>

<b>Sr. No.</b>	<b>Name of Project Location</b>	<b>District</b>	<b>Name of the 33/11Kv Substation</b>	<b>Distance from Sub-station in KM (By Road)</b>	<b>Proposed Solar plant by considering 20% rise (M.W.)</b>
1	Chowa,Bhandara	Bhandara	Pahela Paoni	3.6	2
2	Kumbhi-Wagholi Tal. Achalpur	Amravati	Pathrot Tal.Achalpur	4.5	4
3	Dahegaon Tal.Ghatanji	Yavatmal	Shiroli Tal.Ghatanji	5.8	3
4	Pandharkavda Wardha	Wardha	Anji	7	6
5	Talani Taluka-Morshi	Amravati	(132KV)Morshi	7	4
6	Khairlanji,Mohadi	Bhandara	Jam	3.5	8
7	Sambhora Taluka-Chandur Bazar	Amravati	Chandur Bazar	8	6
8	Gavner-Talegaon Tal.Nandgaon Kh.	Amravati	Nandgaon Kh.	10	4
9	Rasulabad,Arvi	Wardha	Virur ,Arvi	4.4	2
10	Nibhora de.,Tiwasa	Amravati	Warkhed	2.9	3
11	Eklara banoda ,Sangrampur	Buldhana	Warwat	5.9	4

12	Pangarkhed, Mehakar	Buldhana	Dongaon	10	4
				<b>TOTAL</b>	<b>50</b>

17.5. As can be seen from above referred clauses of the bidding document (RfP), main purpose of procurement of Solar Power is for feeding Agricultural Load of MSEDCL. Accordingly, various locations where such projects are to be setup and tentative capacity of each of such location has been provided in Annexure 20 of the RfP. Cumulative capacity of such projects to be setup at these 12 different identified locations is 50 MW. Hence, it is very clear that as per RfP document 50 MW capacity is to be setup at different locations and never envisaged to be setup at a single location.

17.6. Further, in the same table name of nearest substation was also mentioned. In this list except one (132 kV Morshi) all identified substations are 33/11 kV substations of MSEDCL. Initially, it was responsibility of MSEDCL to setup evacuation infrastructure upto nearest MSEDCL/MSETCL substation. However, subsequent to pre-bid bidding, said clause has been changed through amendment to bid document and this responsibility is placed on project developer as is shown below:

Sr. No.	Present Clause	Revised Clause
1	<p>Section-I, Clause 1.2 b.</p> <p><b>Power Transmission and Evacuation</b></p> <p>MSEDCL will construct requisite infrastructure for transmission of power from each Solar Project to the nearest substation including the ABT meters and required Transmission Bay at both the ends (power plant switchyard &amp; substation). All clearances related construction of infrastructure and transmission of power from proposed plant shall be the responsibility of the Mahagenco as per Clause 1.3 of Section II- “General Scope of Work”</p>	<p><b>Power Transmission and Evacuation</b></p> <p>SPD will construct requisite infrastructure for transmission of power from each Solar Project to the nearest substation including the ABT meters and required Transmission Bay at both the ends (power plant switchyard &amp; substation). All clearances related construction of infrastructure and transmission of power from proposed plant shall be the responsibility of the Mahagenco as per Clause 1.3 of Section II- “General Scope of Work”</p>
2	<p>Section-I, clause 12.,</p> <p><b>CONNECTIVITY WITH THE GRID</b></p> <p>MSEDCL will provide the evacuation arrangement from the solar power plant to the nearest substation. O&amp;M of this evacuation system for 25 years will be responsibility of the MSEDCL.</p>	<p><b>CONNECTIVITY WITH THE GRID</b></p> <p>SPD will provide the evacuation arrangement from the solar power plant to the nearest substation. O&amp;M of this evacuation system for 25 years will be responsibility of the SPD.</p>

17.7. Thus, RfP document read with its amendment, requires project developer to connect its solar project to nearest MSEDCL/MSETCL substation. MSEDCL’s substation has 33 kV and 11 kV voltage levels. Nowhere in the bid it is specified that 33 kV is the voltage level for evacuation. It is stipulated that the solar plant should be connected to the specific substation mentioned in Annexure 20. Which could either be on 33 kV or 11 kV end as both the voltage level are available in MSEDCL substation.

17.8. Therefore, the Commission finds that bid document does not envisage any specific voltage level for evacuation of solar power. In fact, due to availability of two voltage levels at MSEDCL substation, bidder can envisage laying of 33 kV or 11 kV line for connecting MSEDCL substation. Considering the small capacity of project at each location i.e. 2 to 8 MW, it would be more convenient and easy to evacuate generate power using 11 kV lines, construction cost of which would obviously be much lower than 33 kV line. Also, due to

short distance of line, there would not be significant difference in line losses. Further, as connectivity with 33/11 kV MSEDCL substation is envisaged, any fault on lower end of network would be having same constraint on evacuation of solar power irrespective of its connection at 11 kV or 33 kV side of the substation. Hence, in the opinion of the Commission, asking APIPL to evacuate its power on 11 kV side of MSEDCL's 33/11 kV substation, which was one of the options envisaged in bid document, does not cause any disadvantage to the bidders. Contentions of APIPL in this regard is therefore rejected. Accordingly, in absence of specific condition for connection at 33 kV level and seeing other conditions of the RfP and minutes of pre bid consultations as analysed above, the Commission allows evacuation of solar power in these bids at 11 kV end of 33/11 kV sub station of MSEDCL.

17.9. The Commission notes that documents / terms and conditions based on which bidders submitted their bids are basic premise of any competitive bidding process. Any unilateral change in terms and condition post bidding process is never envisaged in any bidding process, unless both parties agree for such changes and such a change is in overall interest of the consumers. APIPL has contended that unilaterally changing the Deemed Generation Clause will result in the financial loss to it. At the same time, MSPGCL has claimed that it is in the interest of the consumers and it had consulted the bidders before making the proposed change. It is settled principle that bidding conditions cannot be changed post completion of bidding process and successful bidder cannot be compelled to adhere to such changed conditions. At the same time, it is a fact that such changes in Deemed Generation Clause has been approved by the Commission for other projects being connected on 11 kV. Hence, in the opinion of the Commission, although APIPL cannot be forced to accept the changed Deemed Generation Clause which proposes compensation at 75% of PPA tariff for lost generation beyond 175 hours at the end of financial year, it can voluntarily opt for such clause instead of clause mentioned in RfP which stipulates that lost generation beyond 50 hours will be adjusted at PPA tariff from excess generation in next three years. Accordingly, the Commission directs MSPGCL to incorporate the Deemed Generation Clause in the PPA and the concurrent Clause in the PSA in consultation with APIPL.

17.10. With regard to the deviations sought in 'Change in Law' Clause and 'Scheduled COD' definition in the approved PSA, the Commission notes that these changes are proposed to make it consistent with RfP documents which was made available to bidders at the time of bidding. As bidders have quoted their rate based on RfP documents, the Commission

finds that PPA / PSA shall have clauses which are consistent with RfP document. Hence, the Commission allows deviations sought by MSPGCL with regard to 'Change in Law' Clause and 'Scheduled COD' definition in approved PSA.

17.11. In view of the above, the Commission directs MSPGCL to make appropriate changes in draft PPA and approved PSA to make it consistent with RfS documents which were used for bidding process. Based on such changes, parties shall sign PPA and PSA and submit to the Commission for record purpose.

**18. 102 MW of projects selected through EoI:**

18.1. The Commission notes that for the projects selected through EoI mechanism, no detailed Tender document / RfP was floated by MSPGCL. However, MSPGCL has followed transparent reverse bidding process for discovery of lowest rate i.e. Rs. 2.93/kWh for 2 MW and Rs. 3.10/kWh for 100 MW. Considering such duly discovered tariff rates through transparent process of bidding, the Commission has adopted these rates in its Order dated 29 November, 2018 in the Case No. 308 of 2018.

18.2. Now in the present Petition, MSPGCL has sought approval for draft PPA (to be signed between MSPGCL and Solar Developer). Admittedly, at the time of bidding, there was no specific reference document provided by MSPGCL that contained various clauses / provisions of the contract to be entered with successful bidder. Under such circumstances, it is expected that bidders participating in the process must have relied on policies / guidelines / orders relating to competitive bidding for similar type of solar projects. With these presumptions, the Commission is dealing with MSPGCL's proposal for approval of draft PPA.

18.3. With regard to the connectivity at 11 kV level and the Deemed Generation Clause, SSUNC has agreed to the changes/deviations proposed by MSPGCL. KRRSPL has also agreed to the connectivity at 11 kV, provided SCOD is considered for 18 months from the date of signing of PPA. Thus, all parties agree to the injection level at 11 kV and corresponding clause relating to generation compensation. The Commission also notes that it has already approved such clause of injection at 11 kV and Generation compensation as a deviation vide its Order dated 15 February, 2019 in Case No. 7 of 2019, as it was found in the interest of consumers. As all parties to the PPA/PSA are agreed to such clause, the Commission allows the same to be included in PPA/PSA.



- 18.4. With regard to the clause relating to ‘Change in Law’ and ‘Scheduled COD’, in para 16.5 above, the Commission has allowed MSPGCL to make changes relating to clauses in approved PSA (between MSPGCL and MSEDCL) for competitively bid projects. The Commission notes that in EoI based PPA, MSPGCL has proposed same changes in “Change in Law’ clause and KRRSPL has sought similar changes in respect of ‘Schedule CoD’ which is agreed by concerned parties. Also, KRRSPL has sought 12 months for Financial Closure from date of signing of the PPA. Same is agreed by MSPGCL as it is within SCoD of 18 months. Considering mutual agreements of all parties, the Commission allows these changes to be made in draft PPA and approved PSA for 102 MW EoI based Solar projects..
- 18.5. The Commission also notes that KRRSPL in its submission has also proposed changes in various clauses of proposed PPA. However, the Commission is not inclined to go into such details as it would lead to writing fresh terms and conditions subsequent to bidding process. In above para 17.2, the Commission has already held that in absence of any reference document of detailed terms and condition at the time of bidding process through EoI route, it needs to be presumed that bidders have considered all applicable terms and condition of policy, guideline, orders etc prevailing at that time. MSPGCL in its reply has stated that it has prepared these clauses based on prevalent practice and no changes need to be made. The Commission accepts this submission of MSPGCL and rules that the changes suggested by KRRSPL need not be incorporated in the PPA/PSA.
- 18.6. KRRSPL in its submission has sought in-principle approval for implementation of Safeguard Duty (SDG) as Change in Law. In this regard, the Commission notes that in its Orders in Case No. 276, 325 and 340 of 2018 and under Case No. 123 and 124 of 2019 it has already recognized the imposition of Safeguard Duty as change in law. The relevant excerpt from the Commission’s Common Order dated 18 July, 2019 under Case No. 123 and 124 are reproduced below:

*“15. Having ruled as above, the Commission would like to emphasise that its Order dated 15 February, 2019 has already declared imposition of Safe Guard Duty as a Change in Law event and has directed Solar Project Developers to approach Commission for determination of compensation only when actual impact of such Safe Guard Duty is known. Buyers of power under these PPAs have also agreed with this dispensation. Under such circumstances, it is expected that Solar project developers*

*approach this Commission only with actual impact and not waste their time and resources including that of the Respondent and the Commission by seeking in-principle approval of Imposition of Safe Guard Duty as a Change in Law event, unless it has specific case or different relief is being sought.”*

Above dispensation is squarely applicable in present matter.

18.7. In view of the above, the Commission directs MSPGCL to make appropriate changes in draft PPA and approved PSA for EoI based Solar Project. Based on such changes, parties shall sign PPA and PSA and submit to the Commission for record purpose.

18.8. Hence the following Order

### **ORDER**

- 1) **The Commission approves the proposed modification/deviation in ‘Change in Law’ and ‘Scheduled COD’ to the already approved Power Supply Agreement and the same shall be incorporated in the Power Supply Agreement and Power Purchase Agreement for both 150 MW projects selected through Competitive Bidding and for 102 MW projects selected through Expression of Interest route.**
- 2) **For Competitive Bidding based project of 150 MW, Solar power injection at 11 kV is allowed. However, conditions relating to Deemed Generation compensation Clause needs to be incorporated in consultation with project developer as stated in para 17.9 above.**
- 3) **For Expression of Interest based project of 102 MW, Solar power injection at 11 kV and corresponding clause relating to Generation compensation is allowed.**
- 4) **Concerned parties shall accordingly modify Power Supply Agreement and Power Purchase Agreements for 150 MW projects selected through Competitive Bidding and for 102 MW projects selected through Expression of Interest route and submit signed copies of these Agreements for records of the Commission.**

Sd/-  
**(Mukesh Khullar)**  
Member

Sd/-  
**(I.M.Bohari)**  
Member

Sd/-  
**(Anand B. Kulkarni)**  
Chairperson

  
**(Abhijit Deshpande)**  
Secretary

