BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Review Petition No: 110 of 2026
Instituted on: 26.02.2026
Heard on: 02.06.2026
Decided on: 30.06.2026

CORAM:

YASHWANT SINGH CHOGAL
MEMBER (Law)-cum-Chairman.

SHASHI KANT JOSHI
MEMBER .

In the matter of:-

The HP State Electricity Board Limited.
through Chief Engineer (System Operation),
Vidyut Bhawan, Shimla-171004. **……. Petitioner**

Versus

The Solar Energy Corporation of India (SECI).
6th Floor, Plate-B, NBCC Office, Block Tower-2,
East Kidwai Nagar, New Delhi-110023.

..….. Respondent

Review Petition under Regulation 70 of the HPERC (Conduct of Business) Regulations, 2024 read with Section 94 (1) (f) of the Electricity Act, 2003 for review of order dated 17.12.2024 passed in Petition No. 150 of 2024.

Present:-

Sh. Kamlesh Saklani, Authorised Representative for the Petitioner.
Sh. Atulya Kumar Naik, Executive Director and Sh. Tarun Mukhija, Senior Manager (EM) for the Respondent.

ORDER

This Review Petition has been filed under Section 94 (1)(f) of the Electricity Act, 2003 read with Regulation 70 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024, seeking review of order dated 17.12.2024 passed in Petition No. 150 of 2024.

2. The Himachal Pradesh State Electricity Board Limited (HPSEBL for short) is aggrieved of the unilateral amendments carried out by Solar Energy Corporation of India (SECI/ Respondent for short) in the Power Purchase Agreement (PPA for short) executed by the SECI on 13.01.2025, 15.01.2025 and 27.01.2025 with Green Infra Renewable Projects Limited (450 MW), Juniper Green Beta Private Limited (150 MW) and NTPC Renewable Energy Limited (300 MW) Hybrid Power Developers (HPDs for short) respectively, post signing the Power Sale Agreement (PSA for short) with the HPSEBL, in the Article 2.1, "Effective Date" and Article 1.1, Definitions, "Scheduled Commencement of Power Supply" (SCSD for short) Date thereby changing and extending the SCSD from 20.06.2026 to 09.01.2027. As a result, the applicable ISTS charges waiver to HPSEBL has been reduced from 75% to 50%.

3. According to the HPSEBL, the said amendments in effective dates of SCSD of the above said three Projects are in violation of Clause 15.2 of Guidelines dated 21.8.2023, issued by the Ministry of Power for Tariff Based Competitive Bidding (TBCB for short) for procurement of Power from Grid connected Wind-Solar Hybrid projects.

4. As per the Petitioner, the Commission, based on the inputs supplied by the SECI, was pleased to accord the approval for PSA subject to conditions that *"In the event of failure on the part of developer to commission the project and supplying the power from scheduled date of commercial operation, the transmission charges over and above the present waiver of 50% on ISTS charges shall be borne by the developer."* vide order dated 17.12.2024 in the Petition No. 150 of 2024. The copy of the order dated 17.12.2024 in Petition No. 150 of 2024 has been annexed as Annexure P-1.

5. According to the HPSEBL, the MoP Guidelines dated 21.08.2023 for Tariff Based Competitive Bidding (TBCB) for procurement of Power from Grid connected Wind-Solar Hybrid projects, inter alia, stipulate that *"ISTS charges and losses on transmission of power, including waiver for wind power, shall be as per extant rules and regulations."*

6. It is averred that the SECI has signed PPAs with HPDs i.e. Green Infra Renewable Projects Limited (450 MW), Juniper Green Beta Private Limited (150 MW) and NTPC Renewable Energy Limited (300 MW) respectively on 27.06.2024, 20.06.2024 and 21.06.2024 respectively wherein the "Scheduled Commencement of Power Supply Date" or SCSD has been defined in Article 1 as 20.06.2026 and the

Effective date of the agreement in Article 2.1, is also mentioned as 20.06.2024.

7. It is averred that the SCSD was in line with the Clause15.2 of Guidelines of the Ministry of Power dated 21.08.2023 for Tariff Based Competitive Bidding (TBCB) Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects, whereby the developer/ HPDs shall commence power supply within a period of 24 months from the date of execution of PPA.

8. It is averred that the extension to the generators can only be granted as per Clause 12.5 of the above Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects which has been reproduced as under:-

> *"12.5 Subsequent to the distribution licensee or Intermediary Procurer, as the case may be, approaching the Appropriate Commission for adoption of tariffs under Section 63 of the Act. In case, the Appropriate Commission does not decide upon the same within sixty days of such submission or within 120 (one hundred and twenty days from the date of Power Sale Agreement (PSA), whichever is more, the Procurer(s) shall grant appropriate extension of time in SCSD to the generators, corresponding to the delay /beyond 60 (sixty) days of submission or 120 (one hundred and twenty) days of PSA whichever is more in adoption/ approval by the Appropriate Commission till the date of adoption/ approval by the Appropriate Commission."*

9. According to the Petition, the tariff in the instant case has been adopted by Central Electricity Regulatory Commission (CERC for short)

vide order dated 11.11.2024 and the PSA between the HPSEBL and SECI has been signed on 09.01.2025. Therefore, the extension granted to the generators does not qualify on this account.

10. Further, the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020, amended upto date, inter alia, provide that the RHGS shall be eligible for grant of 75% waiver of drawl schedule if the period of COD falls between 01.07.2025 to 30.06.2026. However, with the above extension in SCSD, the 75% of drawl schedule has been reduced to 50% in case the period of COD falls between 01.07.2026 to 30.06.2027 which would in turn cause huge financial loss of 25% waiver of applicable ISTS charges to the Petitioner.

11. According to the HPSEBL, Article 20 of Request for Selection (RfS for short), inter alia, provides as under:-

> *"20.5 SECI will be obliged to buy the entire power as per generation schedule, to be provided by the HDs subject to limitations as per the PPA, required under grid regulations.*
> *However, the HPDs are required to achieve energy supply within the minimum and maximum CUP limits as stipulated in clause 8.1.*
> *20.6 Back-to-back Power Sale Agreements (PSAs) in respect of all rights and obligation under the PPA between the HPD and SECI, will be executed by SEC with the Buying Entities for sale of power to Buying Entities, with the Buying Entities assuming all the obligations of SECI under the PPA. SECI's obligation to HPD under the PPA shall also be on the back to back basis as provided in the PPA and the corresponding PSA. Various provisions provided in the SECI- HPD PPA shall mutatis mutandi apply to PSA between SEC and Buying Entity, however, PSA*

signed with Buying Entities could be in elaborated form or in short form as per consultation done with Buying Entities.
20.8 In addition to the above, subsequent to signing of PPA, the HPD shall be required to submit monthly Project status on 5th day of every calendar month as per Annexure-C of the RfS.
20.9 In case, the Project is ready for part/full commencement of supply of power but the PPA has not been signed, No-objection Certificate (NoC may be issued to HPD (if sought by HPD) for third Party sale of power from the Project until signing of PPA.
The NOC so granted shall be withdrawn by SECI once the readiness of off-take of the power as per PPA is intimated by SECI with a notice period of 7 calendar days."

12. As per the Petitioner, the Power Purchase Agreements (PPAs) signed between SECI and HPDs provide as under:-

> *"E. Green Infra Renewable Projects Limited (450 MW)/Juniper Green Beta Private Limited (150 MW/ NTPC Renewable Energy Limited (300 MW) has been selected in the Competitive Bidding Process (hereinafter referred to as HPD' for development, generation and supply of electricity from the 450MW/ 150 MW/300 MW Hybrid Power Project to be established by HPD anywhere in India and for supply of such electricity by SECI as an Intermediary Agency to the Buying Utility(ies) (as defined) under a Power Sale Agreement to be entered into between SECI and such Buying Utility(ies).*
> *G. SECI has agreed to purchase such power from the HPD as an Intermediary Procurer and sell it to Buying Utility on back-to-back basis as per the provisions of the RfS. Accordingly, SECI has agreed to sign/has signed a Power Sale Agreement with the Buying Utility to sell such power as per the provisions of the above said scheme."*

13. According to the HPSEBL, the Article 1.1, "Definitions" of PPA provides that:-

> *1.1 "Buying Entity" or "Buying Utility" shall mean an End Procurer as defined in the Guidelines who has agreed to purchase the RE Power from SECI and has signed/will sign the Power Sale Agreement with SECI. It is clarified that all obligations of SECI under this Agreement shall be deemed to be the obligations of Buying Entities with which SECI has signed/will sign Power Sale Agreement.*

"Scheduled Commencement of Power Supply Date" or "SCSD" shall mean 20.06.2026.

However, Article 2.1 provides the "Effective Date" as 20.06.2024.

14. Not only this, the Article 14.5 of the PPA provides as under:-

SECI's Liability

"14.5. Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and accept that the SECI is an Intermediary Company to purchase and resell the electricity to the Buying Utility(ies) to enable them to fulfill 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. It is however, specifically agreed that the payment of money becoming due from the SECI to the HPD under this Agreement for supply of Power to the extent of the Contracted Capacity shall not be on a back to back basis and will be as per the recourse under the Payment Security Mechanism provided in the PPA and PSA. SECI shall discharge the tariff payment obligation in terms of the provisions of this Agreement.

14.5.2 The parties agree that in respect of the obligations other than the tariff payment obligation specifically mentioned herein above, in the event the HPD has any claim against the SECI in regard to the performance of any obligation of the SECI under this Agreement or enforcement of any right of the HPD against the SECI under this Agreement, the same shall be subject to the ability of the SECI to enforce the corresponding obligations assumed by the Buying Utility(ies) under the Power Sale Agreement to be entered into between the SECI and the Buying Utility(ies) on resale on mutatis mutandis basis and not otherwise."

15. It is averred that the SECI has carried out amendments, unilaterally, in the already executed/ signed PPAs with HPDs, post signing the PSA thereby extending their Scheduled Commencement of Supply Date (SCSD) from 20.06.2026 to 09.01.2027 which is in violation of MoP Guidelines. The articles referred to above make it clear the Power Sale Agreement (PSA) can also be signed after signing the

Power Purchase Agreement (PPA) with the HPDs and that the SCSD shall be in line with Clause 15.2 of the Ministry of Power guidelines, wherein the developer/ HPDs is bound to commence power supply within period of 24 months from the date of execution of Power Purchase Agreement (PPA).

16. It is averred that the Commission has erred while approving the condition that the developers shall bear the transmission charges over and above 50% instead of 75% as per pre-amended PPA signed between HPDs and SECI. Thus, the present Review Petition has been filed seeking limited review to the extent of modifying the condition that "In the event of failure on the part of developer to commission the project and supplying the power from scheduled date of commercial operation, the transmission charges over and above the present waiver of 75% on ISTS charges shall be borne by the developer."

REPLY OF RESPONDENT

17. The Petition has been resisted by the Respondent that the SECI is a Company under the Companies Act, 2013 and a Government of India enterprise under the administrative control of the Ministry of New and Renewable Energy (MNRE). The SECI has been designated as the implementing agency for implementation of the MNRE schemes for setting up of Inter-State Transmission System (ISTS) connected/State

Specific Solar Power/ Wind/Wind-Solar Hybrid Projects. The SECI invites bids under a Tariff based Competitive bidding process, enters into Power Purchase Agreements at the tariff discovered in a competitive bid process and also enters into Power Sale Agreements with the Distribution licensees/Buying Utilities, inter alia, to enable them to fulfill the Renewable Purchase Obligations (RPO) under Section 86 (1) (e) of the Electricity Act 2003 and acts as an intermediary agency in procuring wind and solar power from the Wind Solar Hybrid Power Developers and supplying such power to the Distribution Companies on back to back basis.

18. The averments raised by the HPSEBL in its Review Petition have been denied being wrong as explained here in below.

19. As per the Respondent, the SECI offered 900 MW Wind - Solar Hybrid Power to the HPSEBL under ISTS Hybrid Tranche – VII scheme vide letter dated 18.01.2024 (**Annexure A)** and on 30.10.2024, the SECI received in-principle approval of the HPSEBL for procurement of 900 MW Wind - Solar Hybrid Power under ISTS Hybrid Tranche – VII Scheme vide letter dated 31.10.2024 (**Annexure B).**

20. As per the Respondent, the HPSEBL on 28.11.2024 filed the Petition No. 150 of 2024 before the Commission under the provisions of the Section 86(1)(b) and (e) of the Electricity Act, 2003 and Regulations

56 and 57 of the HPERC (Conduct of Business) Regulations, 2024 for the approval of Procurement of 900 MW Wind-Solar Hybrid power from SECI for a period of 25 years, under ISTS Hybrid Tranche- VII scheme. During the hearing before the Commission in the Petition No. 150 of 2024, SECI had submitted that the SCSD of the projects shall be 24 months from the Effective Date of PPA as provided in SECI's offer letter dated 18.01.2024.

21. Considering the submissions of parties, the Commission passed the order in Petition No. 150 of 2024 on 17.12.2024 (Annexure-C) and accorded approval of the Power Sale Agreement for 900 MW Wind-Solar Hybrid Power for 25 years.

22. Accordingly, the Power Sale Agreement was executed between SECI and HPSEBL for 900 MW Wind-Solar Hybrid Power on 09.01.2025. As per Clause 20.1 of the RfS issued by SECI, the PPA(s) with HPD(s) are signed after signing of PSA(s) with Buying Entity. The Clause 20 of the RfS dated 23.10.2023 and Recital (E) of the PSA dated 09.01.2025 provide as under:-

> ***RfS***
> *"20 Power Purchase Agreement (PPA)*
> *20.1 SECI shall enter into Power Purchase Agreement (PPA) with Bidders selected based on this RfS. A copy of standard PPA to be executed between SECI and the selected HPD is available on ISNETS Portal and also in SECI website. The PPA may be signed within 90 days from the date of issue of Letter of Award (LoA) or any*

other date as decided by SECI from time to time. PPA(s) will be executed between SECI and selected bidder or its SPV separately for each Project(s).

……….…

The PPA(s) will be signed after signing of PSA(s) for the respective Project(s).

20.4 Successful Bidders will have to submit the required documents for PPA signing to SECI within 70 days from the issue of LoA. In case of delay in submission of documents beyond the period as mentioned above, SECI shall not be liable for delay in verification of documents and subsequent delay in signing of PPA. In case of signing of PPAs within 90 days of issuance of LoAs, Effective Date of the PPA shall be the date as on 90 days from the date of issue of LoA. Subsequent to expiry of the 90 day period after the issuance of LoA, in case SECI intimates to the Successful Bidder, a particular date as the date for signing of PPA, the specified date shall become the Effective Date of the PPA, irrespective of the date of signing of PPA.

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[Ref: Page 322 of the Petition]

PSA dated 09.01.2025

E. SECI will sign Power Purchase Agreements (PPAs) with the Hybrid Power Developers (HPD) selected under the RfS mentioned herein below (hereinafter referred to as "HPDs") for procurement of 2000 MW Hybrid Power or the total capacity of projects selected under the provisions of Request for Selection SECI/C&P/IPP/13/0008/23-24 Dated 23.10.2023 and subsequent amendment based on the above Guidelines, if it is less than 2000 MW, on long-term basis, as indicated at Schedule-B of PSA;

[Ref: Page 23 of the Petition]

23. It is averred that during signing of the PSA with HPSEBL, it was envisaged that the PPAs with HPDs will be signed after signing of the PSA. In the present case, the PPAs signed with HPDs earlier on 20.06.2024, 21.06.2024 and 27.06.2024 were with reference to the PSA signed with PSPCL which were not given effect to as the condition precedent as provided in Article 2.1.2 of the PPAs was not fulfilled due

to non approval of the PSA by Hon'ble PSERC. The Article 2.1.2 and 2.1.3 of the PPAs provide as under:-

> *"2.1.2 The Parties agree that decisions pertaining to adoption of the Tariff and approval of the same, for procurement of Contracted Capacity, shall be binding on all Parties concerned, as contained in the Electricity Act, 2003 and any amendments thereof.*
>
> *2.1.3 Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under this Agreement shall be that, within 60 days of submission of application/petition for tariff adoption in Appropriate Commission or within 120 days from the signing of Power Sale Agreement (PSA, whichever is more, SECI/Buying Entity (ies) shall obtain adoption of tariff from CERC/SERC (as applicable), on the terms and conditions contained in this Agreement read with the terms and conditions contained in the Power Sale Agreement entered into between SECI and the Buying Entity(ies). The Parties agree that in the event, the order of adoption of tariff as mentioned above is not issued by the CERC/SERC (as applicable) within the time specified above, the provisions of Article 2.1.4 shall apply."*
>
> ***[Ref: Page 64 of the Petition]***

24. Subsequent to approval of this Commission and signing of PSA with HPSEBL, the amendment in Effective Date and SCSD as provided in the PPAs was necessitated to provide 24 months to HPDs for supply of power to HPSEBL as submitted before the HPERC. Further, on 21.11.2024 **(Annexure D to the reply)**, the SECI received request from M/s Green Infra Renewable Projects Limited for amendment in PPA with revised Effective Date and SCSD on account of uncertainty over the end use procurer. Accordingly, SECI signed amendments to the PPAs with respective Project Developers, with the Effective Date being 09.01.2025 the date of PSA signing with HPSEBL and the SCSD as

09.01.2027 (24 months from the Effective Date). On 22.04.2025, the SECI provided copy of PPAs along with amendments to HPSEBL.

25. It is averred that the HPSEBL's contention that extension of SCSD can only be granted under Clause 12.5 of the MoP Guidelines (i.e., on account of delay in adoption of tariff by the Appropriate Commission) is wholly misconceived and contrary to the express provisions of the RfS and PPAs. Further, as per Article 10.1 of the RfS and Article 4.5.2 of the PPA, extension in SCSD can be granted in case there is a delay in readiness of transmission infrastructure by the CTU and/or there is a delay in readiness of the ISTS substation at the Delivery Point. The relevant Article of RfS and PPA is mentioned below:-

> ***<u>RfS</u>***
> *10 Delay in Commencement of power supply on account of Delay in GNA Operationalization*
> *10.1 The responsibility of obtaining General Network Access (GNA) shall be of the Buying Entity prior to commencement of supply of power from the Project. For sale of power to SECI from SCSD, the GNA is required to be obtained by the Buying Entity. Subsequent to grant of connectivity, in case there is a delay in grant/ operationalization of GNA by the CTU and/or there is a delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network until SCSD of the Project, and it is established that:*
> *i. The HPD has complied with the complete application formalities as per Clause 7.5 above and as per the Detailed Procedure as issued by the CTU,*
> *ii. The HPD has adhered to the applicable regulations/procedures in this regard as notified by the CERC/CEA, and*

iii. The delay in grant of connectivity/GNA by the CTU and/or delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network, is a factor attributable to the CTU/transmission licensee and is beyond the control of the HPD;

<u>The above shall be treated as delays beyond the control of the HPD and SCSD for such Projects shall be revised as the date as on 60days subsequent to the readiness of the Delivery Point and power evacuation infrastructure and/or grant/operationalization of GNA. Decision on requisite extension on account of the above factor shall be taken by SECI.</u>

<u>In case of delay in commencement of power supply from the Project due to reasons beyond the reasonable control of the HPD, SECI may extend the SCSD after examining the issue on a case-to-case basis.</u>

[Ref: Page 312-313 of the Petition]

<u>PPA</u>

4.5 Extensions of Time

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4.5.2 Subsequent to grant of connectivity, in case there is a delay in operationalization of GNA by the CTU and/or there is a delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network until SCSD of the Project, and it is established that:

(i) The HPD has complied with the complete application formalities as per RfS,

(ii) The HPD has adhered to the applicable Procedure in this regard as notified by the CERC/CTU, and

(iii) The delay in operationalization of GNA and/or delay in readiness of the ISTS substation at the Delivery Point, including readiness of power evacuation and transmission infrastructure of the ISTS network, is a solely attributable to the CTU/transmission licensee and is beyond the control of the HPD;

> ***<u>The above shall be treated as delays beyond the control of the HPD and SCSD for such Projects shall be revised as the date as on 60days subsequent to the readiness of the Delivery Point and power evacuation infrastructure and/or grant/operationalization of GNA. Decision on requisite extension on account of the above factor shall be taken by SECI.</u>***
>
> ***[Ref: Page 75 of the Petition]***

26. It is further averred that on 05.08.2025 **(Annexure E)**, the SECI received a request from M/s Green Infra Renewable Projects Limited **("M/s Green Infra")** for extension of SCSD from 09.01.2027 to 02.06.2027 to align with the connectivity start date at the ISTS substation at the Delivery Point.

27. As per the Respondent, the SECI vide multiple e-mails dated 11.08.2025, 19.08.2025, 21.08.2025, 29.09.2025, 16.12.2025 and 08.01.2026, shared the extension request of M/s Green Infra with HPSEBL and sought the HPSEBL's views. Copies of e-mails dated 11.08.2025, 19.08.2025, 21.08.2025, 29.09.2025, 16.12.2025 and 08.01.2026 from SECI to the HPSEBL have been annexed as **Annexure F.**

28. It is averred that the SECI vide letter dated 14.01.2026 **(Annexure G)** again intimated the HPSEBL that it has not received any response from HPSEBL on the extension request of M/s Green Infra and M/s Green Infra has been continuously following regarding grant of

extension in the matter. Further, the Respondent informed that in case of non-receipt of HPSEBL's views by 19.01.2026, it shall be construed that HPSEBL has no objection on M/s Green Infra's request and SECI will be constrained to process M/s Green Infra's request based on merits of the case and PPA/PSA terms.

29. In the circumstances, the SECI vide letter dated 03.02.2026 (**Annexure H colly)** revised the SCSD of M/s Green Infra as 02.06.2027 and the same was informed to HPSEBL vide letter dated 03.02.2026**.** Accordingly, the extension given to M/s Green Infra is in accordance with the provisions of Guidelines, RfS, PPA forming an integral part of PSA signed between SECI and the HPSEBL.

30. It is also averred that the status of SCSD of three Hybrid Power Projects is as under:-

Sl. No.	Name of the HPD	Project Capacity (MW)	Tariff (Rs./kWh)	SCSD
1.	NTPC Renewable Energy Limited	300	3.15	09.01.2027
2.	Juniper Green Beta Private Limited	150	3.21	09.01.2027
3.	Green Infra Renewables Projects Limited	450	3.21	02.06.2027

31. As per the Respondent, based on the above, it is evident that all the three projects are scheduled to be commissioned on or before 30.06.2027 thereby keeping the applicability of ISTS Charges waiver

under the same regime as provided in Commission's Order dated 17.12.2024 and under the extant CERC (Sharing of ISTS Charges and Losses) Regulations. The Condition (D) at para 15 in order dated 17.12.2024 of this Commission concerns the scenario of failure of HPD to commission the projects and supplying power from SCSD — a scenario that has not arisen so far. The SECI is monitoring the project progress and will take appropriate action in accordance with the PPAs terms if any developer fails to commission the project by the revised SCSD.

32. It is averred that the waiver of ISTS charges is governed by the extant CERC (Sharing of ISTS Charges and Losses) Regulations, 2020 and subsequent amendments as provided in Clause 22 of MoP's Guidelines dated 21.08.2023.

33. It is further averred that SECI has acted in good faith and in full conformity with the MoP Guidelines, the RfS, and the PPA/PSA terms. The amendments in the PPAs and extension granted to M/s Green Infra is within the four corners of the agreed contractual framework and cause no prejudice to the HPSEBL.

REJOINDER

34. In rejoinder, the contents of the reply have been denied and those of the Petition have been reaffirmed.

SUBMISSIONS OF THE PARTIES

35. We have heard Sh. Kamlesh Saklani, Authorised Representative for the Petitioner, Sh. Atulya Kumar Naik, Executive Director and Sh. Tarun Mukhija, Senior Manager (EM) for the Respondent.

36. Sh. Kamlesh Saklani, Authorised Representative for the Petitioner has submitted that despite entering the PSA with the Petitioner/HPSEBL on 09.01.2025, the Respondent/SECI has unilaterally amended the PPA signed by the Respondent with HPDs extending the date of SCSD from 20.06.2026 to 09.01.2027 and 02.06.2027 contrary to the PPAs, PSA and RfS document, as a result, the Petitioner's right of waiver of ISTS charges as per the CERC Sharing Regulations, 2020 have affected as the SCSD was scheduled for 20.06.2026 which was not extendable but has been extended to 9.1.2027. According to him, as per PPAs dated 27.06.2024, 20.06.2024 and 21.06.2024 and RfS document, the HPDs were bound to supply the power as per the committed agreements /PPAs dated 27.06.2024, 20.06.2024 and 21.06.2024 to the Buying Utility/ Petitioner through the SECI except on non-availability of the evacuation system/ ISTS for which adequate provisions were provided in PPAs and RfS document to compensate the HPDs for no fault of them. According to him, the CERC Sharing Regulations, 2020, as amended, provide that RHGS shall be

eligible for grant of 75% waiver of drawl schedule if the period of CoD falls between 01.07.2025 to 30.06.2026 and thus, by changing the date of SCSD from 20.06.2026 to 09.01.2027 and 02.06.2026, the 75% waiver of drawl schedule has been reduced to 50% causing net loss to the Petitioner. He has also submitted that the order under review suffers from errors apparent on the face of record in so far as Clause (D) of Para 15 of order dated 17.12.2024 in Petition No. 150 of 2024 is concerned which is required to be corrected.

37. Sh. Atulya Kumar Naik, Executive Director and Sh. Tarun Mukhija, Senior Manager (EM) for the Respondent have submitted that during signing of the PSA with HPSEBL on 09.01.2025, it was envisaged that the PPAs with HPDs will be signed after signing of the PSA and as the PPAs signed earlier with HPDs on 20.06.2024, 21.06.2024 and 27.06.2024 were with reference to the PSA signed with PSPCL which were not given effect due to non-performance of the condition precedent as provided in Article 2.1.2 of the PPAs due to non-approval of the PSA by Ld. PSERC. According to him, subsequent to approval of PSA by this Commission vide order dated 17.12.2024 in Petition No. 150/2024 and signing of PSA with the HPSEBL, the amendment in Effective Date and SCSD as provided in the PPAs was necessitated to provide a period of 24 months to HPDs for supply of

power to the SECI as submitted before this Commission during approval of PSA vide Order dated 17.12.2024. According to them, on 21.11.2024 on receipt of request by the Respondent from M/s Green Infra Renewable Projects Limited for amendment in PPA with revised Effective Date and SCSD on account of uncertainty over the end use procurer, the Respondent carried out the amendments in the PPAs with respective Project Developers keeping in view the Effective Date of PSA being 09.01.2025 and taking into consideration the time of 24 months as per the offer letter dated 18.01.2024 and consequently, the SCSD was changed to 09.01.2027. They have also submitted that the HPSEBL's contention that extension of SCSD can only be granted under Clause 12.5 of the MoP Guidelines (i.e., on account of delay in adoption of tariff by the Appropriate Commission) is wholly misconceived and contrary to the express provisions of the RfS and PPAs. Not only this, as per Article 10.1 of the RfS and Article 4.5.2 of the PPAs, extension in SCSD can be granted in case there is a delay in readiness of transmission infrastructure by the CTU and/or there is a delay in readiness of the ISTS Sub-station at the Delivery Point. It is further submitted that the SECI is monitoring the project progress and will take appropriate action in accordance with the PPAs, in case any developer fails to commission the project by the revised SCSD. It is also submitted that the waiver of ISTS charges is governed by the extant CERC (Sharing of ISTS Charges and Losses) Regulations, 2020 and subsequent amendments as provided in Clause 22 of MoP's Guidelines dated 21.08.2023.

POINTS FOR DETERMINATION

38. We have gone through the submissions advanced by the Authorised Representatives of the parties and perused the entire case file carefully including the written submissions made by the Authorised Representatives of the Respondent. On the basis of the pleadings, the following points arise for determination in the present Petition:-

Point No. 1: Whether the Order dated 17.12.2024 in Petition No. 150 of 2024 suffers from errors apparent on the face of record in so far as Clause (D) of Para 15 regarding the waiver of ISTS charges, as alleged?

Point No. 2: **Final Order**

39. For the reasons to be recorded hereinafter in writing, our point wise findings are as under:-

Point No. 1:. Yes.

Point No. 2:. Petition allowed per operative part of the order.
(Final Order)

REASONS FOR FINDINGS

Point No. 1

40. It is well settled that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced at the time when the order was made. It may also be exercised where some mistake or error apparent on the face of the record is found but may not be exercised on the ground that the decision was erroneous on merits which is the domain of a court of appeal. While exercising the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. In this regard, reliance may be placed in *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715 wherein it is held as under:-

> *"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".*

41. Similarly in *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170 it has been held by the Hon'ble Supreme Court that the review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. Para 8 of the aforesaid law is reproduced as under:-

> ***"8.*** *It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389 : AIR 1979 SC 1047] , speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)*
>
> *"It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909] , there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."*

42. A similar view has been taken by the Hon'ble Supreme Court in Ram Sahu v. Vinod Kumar Rawat, (2021) 13 SCC 1.

43. Before adverting to the merits of the Petition, it is relevant of the refer that an application for condonation of delay in filing the

Review Petition had also been filed. Notice of the said application was issued to the Respondent on 07.03.2026 to file reply to the same within two weeks but no reply to the said application has been filed. Rather, the reply to the Review Petition has been filed duly supported by affidavit. The said application for condonation of delay is duly supported by an affidavit. Since, no reply to the same has come on record, the said application is considered to be allowed.

44. At the very outset, the Respondent has mentioned in the reply to the Review Petition that all the three projects are scheduled to be commissioned on or before 30.06.2027 thereby keeping the applicability of ISTS Charges waiver under the same regime as provided in the Commission order dated 17.12.2024 under review and under the extant CERC (Sharing of ISTS Charges and Losses) Regulations, 2020, as amended, (CERC Regulations, 2020 for short) and that the Condition (D) at para 15 in order dated 17.12.2024 in Petition No. 150 of 2024 of this Commission is amply clear and takes care of the scenario of failure of HPDs to commission the project(s) and supplying power from SCSD which has so far not arisen.

45. It is, therefore, not disputed by the Respondent that the waiver of the ISTS charges is to be governed by the above said CERC Regulations, 2020.

46. This Commission vide order dated 17.12.2024 in Petition No. 150 of 2024 has held with respect to the waiver of ISTS charges in Clause (D) of Para 15 as under:-

> *"D. In the event of failure on the part of developer to commission the project and supplying the power from scheduled date of commercial operation, the transmission charges over & above the present waiver of 50% on ISTS charges shall be borne by the developer."*

47. A careful perusal of the record reveals that when the Petition seeking approval of the 900 MW Wind-Solar Hybrid Power from the aforesaid three HPDs was filed before the Commission by the HPSEBL, the PPAs with the HPDs had already been signed by the SECI/ Respondent on 27.06.2024, 20.06.2024 and 21.06.2024. However, said PPAs were not shared with the Petitioner by the Respondent for the reasons best known to the Respondent. Consequently, said PPAs were not made part of the Petition No.150 of 2024. Had said PPAs been part of the Petition No.150 of 2024, conditions (D) as mentioned aforesaid would have been worded differently.

48. The PSA between the HPSEBL and the SECI was signed on 09.01.2025 after this Commission accorded approval vide Order dated 17.12.2024 in Petition No.150 of 2024 for the purchase of the power from the aforesaid three HPDs pursuant to the acceptance of offer by the HPSEBL vide letter No. HPSEBL/CE(SO)IS-87A (Vol-V)/ 2024-

1255-60 dated 30.10.2024. However, as observed above, there is no mention in the PSA dated 09.01.2025 about the already existing PPAs with the HPDs. On the contrary, it is mentioned in the PSA dated 09.01.2025 at Clause (E) in Page 2, that the SECI will sign the PPAs with the HPDs for procurement of power of 2000 MW whereas, the PSA pertains to the supply of Power of 900 MW as approved by this Commission. In its reply, the SECI has projected that it had apprised this Commission during hearing of Petition No. 150 of 2024 about the amendment to be carried out in the Effective Date and SCSD as provided in the PPAs, which was necessitated to provide a period of 24 months to HPDs for supplying the power to the HPSEBL as per the Letter of Offer dated 18.01.2024 which clearly stipulate that the SCSD shall be 24 months from the effective date of PPA but said assertion is without any substance as neither any reply nor written submissions were filed nor any such letter was addressed to this Commission in this regard during pendency of Petition No. 150 of 2024.

49. Further, it is also the stand of the Respondent that on 21.11.2024 the SECI received a request from M/s Green Infra Renewable Projects Limited for amendment in the PPA for revision of Effective Date and SCSD on account of uncertainty over the end user procurer and accordingly, the SECI signed amendments to the PPAs with respective

HPDs changing the dates of SCSD to 09.01.2027 keeping in view the Effective Date being 09.01.2025 i.e. the date of signing of PSA with the HPSEBL and also taking into consideration a period of 24 months from the Effective Date as the earlier dates of SCSD in the PPAs were with respect to supplying of power to the PSPCL but once the prayer of the PSPCL was rejected by the Ld. PSERC, the HPDs had halted the construction of the Projects. This assertion of the Respondent is again without any substance as neither the HPSEBL/ Petitioner was taken into confidence before carrying out such amendments nor the RfS document and the PPAs were containing any clause regarding halting of construction by the HPDs nor any document has been produced on record regarding halting of construction with relevant provisions of RfS document and PPAs. Rather, once the PPAs were already signed, the HPDs were bound to supply the power to the SECI on or before SCSD i.e. 20.06.2026 except on account of some force majeure or non-availability of evacuation system and the SECI was bound to dispose off said power either by tying up with DISCOMs or selling in open market. Therefore, the contention of the Respondent is untenable.

50. The SECI has also tried to justify the amendment for extending the SCSD to 02.06.2027 that on receipt of representation from M/s Green Infra Renewable Projects Limited for extension of SCSD from

09.01.2027 to 02.06.2027 in order to align with the connectivity of ISTS Sub-station at the delivery point, multiple e-mails dated 11.08.2025, 19.08.2025, 21.08.2025, 29.09.2025, 16.12.2025 and 08.01.2026 (Annexure F) were sent to the HPSEBL seeking their views but in vain and finally on 14.01.2026 the SECI informed the HPSEBL that in case no response is gathered from the HPSEBL, the SECI will be constrained to process the request of M/s Green Infra Renewable Projects Limited. Accordingly, the SECI vide letter dated 03.02.2026 revised the SCSD of M/s Green Infra Renewable Projects Limited and intimated the same to the HSPEBL vide letter dated 03.02.2026 (Annexure H). This contention of the SECI is also not tenable for the reasons mentioned hereinabove as also that for non-availability of evacuation system, the HPDs have to claim the wavier as per the above said CERC Regulations,2020 and MoP guidelines but the liability on such account cannot be shifted to the electricity consumers of the Petitioner and 75% waiver which is available to the Petitioner as per above CERC Regulations, 2020 cannot be curtailed.

51. The records shows that the SECI provided copy of PPAs alongwith amendments to the HPSEBL only on 22.04.2025. Therefore, keeping in view the aforesaid extension and amendment in the effective date of SCSD from 20.06.2026 to 09.01.2027, the HPSEBL has claimed

that the SECI has unilaterally carried out the amendments in the PPAs, dated 13.01.2025, 15.01.2025 and 27.01.2025. Sh. Kamlesh Saklani, Authorised Representative of the Petitioner has contended that once the PSA had been signed with the HPSEBL on 09.01.2025, the SECI could not have unilaterally carried out the amendment dated 13.01.2025, 15.01.2025 and 27.01.2025 in the PPAs by extending the SCSD from 20.06.2026 to 09.01.2027 without consulting the Petitioner which is in violation of the MoP guidelines dated 21.08.2023, PPAs dated 27.06.2024, 20.06.2024 and 21.06.2024 and RfS document (Annexure P-4) vide which the HPDs were bound to supply the power to the SECI on or before 20.06.2026 for further supply to the HPSEBL/ Petitioner.The HPSEBL has, thus, claimed that being the date of SCSD as 20.06.2026 as per the PPAs dated 27.06.2024, 20.06.2024 and 21.06.2024, the HSPEBL would have been entitled for waiver of 75% ISTS charges but with change of SCSD unilaterally and contrary to the RfS document, PPAs and PSA dated 09.01.2025, the HPSEBL has suffered a loss of 25% on waiver of ISTS charges.

52. A careful perusal of the record shows that the PPAs were not to be signed by the Distribution Company either with the HPDs or with the SECI. Rather, the SECI has been designated as the nodal agency for the implementation of the scheme for setting up of the ISTS connected/

State specific Solar/ Wind/ Wind-Solar Hybrid Power Projects with the mandate to invite bids under the Tariff Based Competitive Bidding process to enter into the PPAs at the tariff discovered in the competitive bid process and enter into the PSAs with the distribution licensees to enable them to fulfill their Renewable Purchase Obligations under Section 86(1)(e) of the Act. Thus, as per the record, the SECI is to procure the power by entering into the PPAs with the successful bidder with back-to-back PSAs for the sale of power to the distribution licensees.

53. Accordingly, the PSA had been signed by the SECI with the HPSEBL on 09.01.2025 being intermediary and power is to be procured by the SECI for the HPSEBL from the HPDs on payment of usual commission and the PPAs had been signed by the SECI for this purpose with the HPDs as mentioned above.

54. A careful perusal of the Clause (e) of the offer letter dated 18.01.2024 (Annexure A to the reply) shows that the SCSD shall be 24 months from the effective date of the PPA meaning thereby that the power to the HPSEBL had to be supplied within 24 months from the effective date of PPAs. This letter was part and parcel of Petition No. 150 of 2024. Significantly, the another letter dated 24.06.2024 which was also part of the Petition No. 150 of 2024 (at Page 12) issued by the

SECI to the HPSEBL further shows that SCSD shall be 24 months from effective date of PPA.

55. The tariff of the aforesaid Projects of the HPDs has been approved by the Ld. CERC vide order dated 11.11.2024 in Petition No. 235/AT/2024. Para 35 of the order is reproduced as under:-

> *"35. In light of the aforesaid discussion, it emerges that the selection of the successful bidders has been made, and the tariff of the Wind Solar Hybrid Power Projects (Tranche VII) has been discovered by the Petitioner, SECI, through a transparent process of the competitive bidding and in accordance with the Guidelines issued by the Ministry of Power, Government of India. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff for the Wind Solar Hybrid Power Projects (Tranche VII), as agreed to by the following successful bidder(s), and for which the PPAs have also been entered into by SECI on the basis of the PSA with the distribution licensee, which shall remain valid through the period covered in the PPAs and PSA as under:-*

S No.	*Name of Successful Bidder*	*Project Company formed by the successful bidder of execution of PPA*	*Date of PPA signing & Contracted Capacity (MW)*	*Application Tariff (Rs./kWh)*
1.	*NTPC Renewable Energy Limited*	*------*	*21.06.2024 (300MW)*	*3.15*
2.	*Juniper Green Energy Private Limited*	*Juniper Green Beta private Limited*	*20.06.2024 (150MW)*	*3.21*
3.	*Green Infra Wind Energy Limited*	*Green Infra Renewable Project Limited*	*27.06.2024 (450 MW)*	*3.21*
	Total		***900 MW***	

"

56. Though, the Respondent in its reply has not disclosed much but the Ld. CERC in its order dated 11.11.2024 in Petition No. 235/AT/2024 while approving the tariff of the aforesaid Projects of HPDs has dealt with the aspect of Letter of Award (LoA) to the successful bidders and

has reproduced relevant extract of the LoA of one of the successful bidders namely NTPC Renewable Energy Limited in para 30. Clauses 1.10 and 1.15 of the said Letter of Award (LoA) as quoted in para 30 by the Ld. CERC in its aforesaid order are reproduced as under:-

> *"1.10 The project breakup for the cumulative Contracted Capacity quoted in the Covering Letter, may be changed by the HPD subsequent to issuance of LoA up to the date as on 30 days from issuance of this LoA. For an individual Project, any modification in the rated capacities of wind and solar components in the Project, shall be intimated to SECI within 30 days of issuance of this LoA. Both the above parameters will remain unchanged, thereafter. The PPAs shall be valid for a period of 25 years from the Scheduled Commencement of Supply Date (SCSD).*
>
> *1.15 The HPD/Project Company shall achieve commissioning of full capacity of the Project within 24 months from the Effective Date of the PPA, as per the conditions stipulated in Clause 9 of the RfS and relevant articles of PPA. In case of failure to achieve this milestone, penalty for delay in commencement of supply shall be levied on the HPD as per the above provisions."*

57. Even Clause 9.6 (a) of the RfS document, which is part of record, provides that the SCSD shall be the date as on 24 months from the Effective date of the PPA. Clause 9.6 (a) of the RfS document is reproduced as under:-

> <u>9.6 Commencement of Supply schedule and Penalty for Delay in Commencement of Power Supply</u>
>
> *"a. The Scheduled Commencement of Supply Date (SCSD) for supplying power from the full Project capacity shall be the date as on 24 months from the Effective Date of the PPA (for e.g. if Effective Date of the PPA is 07.01.2024, then SCSD shall be 07.01.2026)."*

58. A careful perusal of the aforesaid clearly demonstrate that the PPAs shall be valid for a period of 25 years from the SCSD and the HPD/ Project Company shall achieve commissioning of full capacity of

the Project within 24 months from the Effective Date of the PPA, as per the conditions stipulated in Clause 9 of the RfS document, LoA and relevant articles of PPA. In case of failure to achieve this milestone, penalty for delay in commencement of supply shall be levied on the HPDs as per the above provisions. As observed above, there is nothing on record that the HPDs or the SECI could have halted or deferred the commissioning except on account of non-availability of evacuation system or force majeure.

59. Further, as per the definitions contained in the PPAs the "Buying Entity" or "Buying Utility" shall mean an end procurer as defined in the guidelines which has agreed to purchase the RE Power from SECI and has signed/will sign the Power Sale Agreement with SECI and all obligations of SECI under the PPAs shall be deemed to be the obligations of "Buying Entities" with which SECI has signed/will sign Power Sale Agreement.

60. It is the contention of the SECI that on account of non-fulfillment of condition precedent as mentioned in Article 2.1.2 and 2.1.3 of the PPAs as the power purchase by the PSPCL was not approved by the Ld. PSERC and accordingly, no PSA was signed with PSPCL by the SECI and consequently, the fresh date of SCSD of 24 months is to be reckoned from the effective date of PSA dated 09.01.2025. However,

the contention of the Respondent is untenable as clause 2.1.3 covers a different scenario of adoption of tariff and does not advance the cause of Petitioners. The clause 2.1.3 of the PPAs is reproduced as under:-

> *"2.1.3 Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under this Agreement shall be that, within 60 days of submission of application/petition for tariff adoption in Appropriate Commission or within 120 days from the signing of Power Sale Agreement (PSA, whichever is more, SECI/Buying Entity (ies) shall obtain adoption of tariff from CERC/SERC (as applicable), on the terms and conditions contained in this Agreement read with the terms and conditions contained in the Power Sale Agreement entered into between SECI and the Buying Entity(ies). The Parties agree that in the event, the order of adoption of tariff as mentioned above is not issued by the CERC/SERC (as applicable) within the time specified above, the provisions of Article 2.1.4 shall apply."*

61. It is apparent from a fine reading of Clause 2.1.3 that the same is not attracted to the case in hand as the tariff has been adopted by the Ld. CERC within the stipulated time and in view of the clear stipulation in the LoA, as discussed above, RfS document, the HPDs and SECI are bound by the terms and conditions of the PPAs to commission the Project within 24 months and the SCSD was not required to be extended being not envisaged in the PSA dated 09.01.2025, RfS document, LoA dated 16.01.2024 and the PPAs.

62. In this context, it is also relevant to refer to Clause 20, 20.1, 20.5, 20.6 and 20.9 of the RfS document which are reproduced as under:-

> *"**<u>20 Power Purchase Agreement (PPA)</u>***
> *20.1 SECI shall enter into Power Purchase Agreement (PPA) with Bidders selected based on this RfS. A copy of standard PPA to be executed between SECI and the selected HPD is available on ISNETS Portal and*

also in SECI website. The PPA may be signed within 90 days from the date of issue of Letter of Award (LoA) or any other date as decided by SECI from time to time. PPA(s) will be executed between SECI and selected bidder or its SPV separately for each Project(s).

……………….…

20.5 SECI will be obliged to buy the entire power as per generation schedule, to be provided by the HDs subject to limitations as per the PPA, required under grid regulations.

However, the HPDs are required to achieve energy supply within the minimum and maximum CUP limits as stipulated in clause 8.1.

20.6 Back-to-back Power Sale Agreements (PSAs) in respect of all rights and obligation under the PPA between the HPD and SECI, will be executed by SEC with the Buying Entities for sale of power to Buying Entities, with the Buying Entities assuming all the obligations of SECI under the PPA. SECI's obligation to HPD under the PPA shall also be on the back to back basis as provided in the PPA and the corresponding PSA. Various provisions provided in the SECI-HPD PPA shall mutatis mutandi apply to PSA between SEC and Buying Entity, however, PSA signed with Buying Entities could be in elaborated form or in short form as per consultation done with Buying Entities.

20.9 In case, the Project is ready for part/full commencement of supply of power but the PPA has not been signed, No Objection Certificate (NoC) may be issued to HPD (if sought by HPD) for third Party sale of power from the Project until signing of PPA.

The NOC so granted shall be withdrawn by SECI once the readiness of off-take of the power as per PPA is intimated by SECI with a notice period of 7 calendar days."

63. It is evident from Clause 20.1 that the PPA was required to be signed within 90 days from the date of issue of LoA or any other date decided by the SECI and as per Clause 20.5, the SECI was under an obligation to buy the entire power as per the generation schedule. Not only this, Clause 20.6 provides that the various provisions of the PPA shall mutatis mutandi apply to the PSA between the SECI and the buying entity. The aforesaid clauses, thus, make it obligatory for SECI

to procure the power from the HPDs as per the PPAs and the same provisions apply mutatis mutandi to the PSA/Petitioner.

64. The extension of time is dealt under Clause 4.5 of the PPA. Clause 4.5.1 is reproduced as under:-

> ***4.5 Extensions of Time***
>
> *"4.5.1 In the event that the HPD is prevent from performing its obligations under Article 4.1 by the SCSD due to:*
>
> *a) Any SECI Event or Default; or*
>
> *b) Force Majeure Events affecting SECI/ Buying Entity(ies), or*
>
> *c) Force Majeure Events affecting the HPD,*
>
> *The SCSD and the Expiry Date shall be deferred, for a reasonable period but not less than 'day for day' basis, to permit the HPD or SECI/ Buying Entity(ies) through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the HPD or SECI/ Buying Entity(ies), or till such time such Event of Default is rectified by SECI."*

65. Therefore, the extension in the SCSD can only be on account on the default or force majeure on the part of SECI or Buying Entity(ies) or force majeure events affecting the HPDs and delay is to be considered on day to day and case to case basis. It is none of the case of the Respondent that the aforesaid events have occurred in any manner constraining the SECI to extend the SCSD. This clause also does not contemplate deferment of construction or commissioning on account of uncertainty and user as projected as it was obligatory and binding for the SECI to receive the Power and to further dispose of either by tying with some DISCOM or sell in the open market. Similarly, the HPDs too

were bound to adhere to the SCSD of 20.06.2026 to avoid penalty except for non availability of evacuation system or force majeure.

66. Not only this, Clause 4.6 of the PPAs deal with the delay in the commencement of power supply and Clause 4.6.1 clearly provide penalty for any delay in the commencement of supply. Thus, the HPDs are bound by the terms and conditions of the PPAs dated 27.06.2024, 20.06.2024 and 21.06.2024 failing which they are liable for the penalty as provided under the PPAs. Since, the Clauses of the PPAs apply mutatis mutandi to the PSA, it was not permissible for the SECI to amend the date of SCSD for the reasons mentioned by it.

67. The delay in commencement of power supply on account of delay in GNA operationalization has been provided in Clause 10 of RfS document as also Clause 4.5.2 of the PPAs. Clause 10 of the RfS document and Clause 4.5.2 of the PPA reads as under:-

RfS

"*10 Delay in Commencement of power supply on account of Delay in GNA Operationalization*

10.1 The responsibility of obtaining General Network Access (GNA) shall be of the Buying Entity prior to commencement of supply of power from the Project. For sale of power to SECI from SCSD, the GNA is required to be obtained by the Buying Entity. Subsequent to grant of connectivity, in case there is a delay in grant/ operationalization of GNA by the CTU and/or there is a delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network until SCSD of the Project, and it is established that:

i. The HPD has complied with the complete application formalities as per Clause 7.5 above and as per the Detailed Procedure as issued by the CTU,

ii. The HPD has adhered to the applicable regulations/procedures in this regard as notified by the CERC/CEA, and

iii. The delay in grant of connectivity/GNA by the CTU and/or delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network, is a factor attributable to the CTU/transmission licensee and is beyond the control of the HPD;

The above shall be treated as delays beyond the control of the HPD and SCSD for such Projects shall be revised as the date as on 60days subsequent to the readiness of the Delivery Point and power evacuation infrastructure and/or grant/operationalization of GNA. Decision on requisite extension on account of the above factor shall be taken by SECI.

In case of delay in commencement of power supply from the Project due to reasons beyond the reasonable control of the HPD, SECI may extend the SCSD after examining the issue on a case-to-case basis.

………..”

PPA

“4.5.2 Subsequent to grant of connectivity, in case there is a delay in operationalization of GNA by the CTU and/or there is a delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network until SCSD of the Project, and it is established that:

(i) The HPD has complied with the complete application formalities as per RfS,

(ii) The HPD has adhered to the applicable Procedure in this regard as notified by the CERC/CTU, and

(iii) The delay in operationalization of GNA and/or delay in readiness of the ISTS substation at the Delivery Point, including readiness of power evacuation and transmission infrastructure of the ISTS network, is a solely attributable to the CTU/ transmission licensee and is beyond the control of the HPD;

The above shall be treated as delays beyond the control of the HPD and SCSD for such Projects shall be revised as the date as on 60days subsequent to the readiness of the Delivery Point and power

> *evacuation infrastructure and/or grant/operationalization of GNA. Decision on requisite extension on account of the above factor shall be taken by SECI. In case of change in Project location(s) by the HPD, extension requests under this Article shall be dealt by SECI on case-to-case basis. For avoidance of ambiguity, it is clarified that for decisions made under this Article, the phrase "change in Project location" or its similar connotations, shall refer solely to change in Delivery Point(s) of the Project."*

68. Therefore, the delay in the commencement of power supply on account of delay in operationalization of GNA or delay in readiness of the ISTS Sub-station at the Delivery Point including readiness of Power Evacuation System and Transmission Infrastructure of the ISTS network are to be treated as delays beyond the control of the HPDs and SCSD for the HPDs shall be revised as the date as on 60 days subsequent to the readiness of the delivery point and power evacuation infrastructure and/ or grant/ operationalization of GNA on decision to be taken by the SECI after examining the issue on case-to-case basis. However, as discussed hereinabove, there is no provision either in the PPAs, LoA, PSA, RfS document that the SCSD of 24 months was extendable as claimed by the SECI which has carried out the amendment in the effective date of SCSD to 09.01.2027 and 02.06.2027 in violation of the aforesaid documents and thus, the contention of the Respondent is not tenable.

69. Even otherwise, the SECI or the HPDs may approach the Ld. CERC for such extension in case there is delay in GNA operationalization or delay in readiness of the transmission system which obviously would be out of the control of the HPDs/ SECI and the SECI being a nodal agency will take decision on case-to-case basis.

70. As per the CERC Sharing Regulations, 2020, the waiver of 75% of the ISTS charges was available upto 30.06.2026. As per the PPAs, RfS document, and LoA, the HPDs were bound to supply the power to the SECI within 24 months from the effective date of PPAs i.e. 27.06.2024, 20.06.2024 and 21.06.2024 on or before 20.06.2026 and in turn to the HPSEBL by said date of 20.06.2026. Therefore, the Petitioner/ HPSEBL would have been entitled for the waiver of 75% of the ISTS charges but the Respondent without adhering to the mandatory provisions of the RfS document, Letter of Award, PPAs as also the PSA has unilaterally carried out the amendment in the SCSD which has resulted in the loss of waiver of 25% of the ISTS charges. Though, this Commission has clearly held in Clause (D) of para 15 of order dated 17.12.2024 in Petition No. 150 of 2024 that in the event of failure on the part of the developer to commission the project and supplying the power from the scheduled date of commercial operation, the transmission charges over and above the present waiver of 50% on

ISTS charges shall be borne by the developer as on the date of order dated 17.12.2024, the waiver was 50% but as per the aforesaid documents, the HPDs are bound to supply the power to the SECI, an intermediary on or before 20.06.2026 except on account of force majeure or non-availability of evacuation system which are to be dealt separately by the Appropriate Commission, as per the CERC Regulations, 2020 but the waiver which was available as on 20.06.2026 has to be passed on to the HPSEBL which in turn would be passed on to the consumers of electricity of the State.

71. Therefore, the Petitioner has established on record that the Order dated 17.12.2024 in Petition No. 150 of 2024 suffers from errors apparent on the face of record and it is required to be clarified that in the event of default to supply the power within a period of 24 months from the effective date of PPAs i.e. 27.06.2024, 21.06.2024 and 20.06.2024 on or before 20.06.2026, the Petitioner would be entitled to the waiver of 75% of the ISTS charges. Point No. 1 is accordingly decided in favour of the Petitioner.

FINAL ORDER

72. In view of the aforesaid discussions and findings, the Petition succeeds and allowed. It is ordered that the Petitioner shall be entitled for the waiver of 75% ISTS charges in the event of default by the SECI

to supply the power to it as per PSA dated 09.01.2025 within a period of 24 months from the effective date of PPAs i.e. 27.06.2024, 21.06.2024 and 20.06.2024 on or before 20.06.2026.

73. Review Petition be registered, if not already registered.

74. Let a copy of this order be placed immediately above the order dated 17.12.2024 in Petition No. 150 of 2024 for ready reference.

75. Let a copy of this order be supplied to the parties forthwith.

76. The Review Petition is disposed of accordingly. The pending applications are also deemed to have been also disposed of.

77. The Review Petition be tagged with Petition No. 150 of 2024 and consigned to records.

Announced
30.06.2026

sd/-	**sd/-**
(Shashi Kant Joshi)	(Yashwant Singh Chogal)
Member	**Member(Law)-cum-Chairman**