

and

$$Y = \frac{P \times Mr \{ (1 + Mr)^n \}}{[(1 + Mr)^n - 1]}$$

Where,

$n$  = no. of months over which the financial impact has to be paid; and

$Mr$  = monthly rate of interest =; where  $R$  = annual rate of interest on loan component (in %) as considered by Central Electricity Regulatory Commission (CERC) in its Order for Tariff determination from Renewable Energy Sources for the year in which the project is commissioned. In absence of relevant CERC Orders for the concerned year, the interest rate shall be average interest rate plus 200 basis points above the average State Bank of India Marginal Cost of Funds based leading rate (MCLR of one year tenor) prevalent during the last available six months for such period.

Further, the  $M T$ . shall be trued up annually based on actual generation of the year so as to ensure that the payment to the Generator is capped at the yearly annuity amount.

(b) The pass through according to the formula stipulated above shall be calculated and shall come into effect automatically after 30 days of the Change in Law event.

(c) Within 30 days of the pass through coming into effect the Generator/ Intermediary procurer/ Procurer shall submit the relevant documents/calculation sheets to the Appropriate Commission for truing up the rate of pass through per unit.

(d) The Appropriate Commission shall verify the calculation and do the truing up within 60 days of the pass through coming into effect after which the rates of pass through shall be adjusted if necessary according to the truing up.

8.5.2. In case change in Law / Regulations results in delay in commissioning, where cause and effect between these two can be clearly established, the Intermediary Procurer may provide suitable extension to commissioning of the project.

8.5.3. In these Guidelines, the term 'Change in Law' shall refer to the occurrence of the following events, after the last date of the bid submission, (i) the enactment of any new Law; or (ii) an amendment, modification or repeal of an existing Law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining a consent, permit or license, not owing to any default of the Generator; or (v) any change in the rates of any taxes which have a direct effect on the Project.

However, Change in Law shall not include any change in taxes on corporate income or any change in any withholding tax on income or dividends."

It is submitted that the above Change in Law clauses of the Guidelines are likely to result into frequent litigations / petitions by generators seeking relief by using this provision as an instrument for tariff revision /



redetermination of tariff. Further, the above provisions create uncertainty in tariff to DISCOMs and ultimately to end consumers as scope of Change in Law is too wide making it ambiguous to figure out the implications thereof. Moreover, the Change in Law provisions are proposed to be kept uniform for all three combinations so as to provide similar dispensation.

In view of above, instead of the above Clauses stipulated in the Guidelines, the petitioner proposes the following Change in Law clause under Article 12 of the draft PPA which would be uniform for all three sources.

## **“ARTICLE 12: CHANGE IN LAW**

### *11.1 Definition*

*11.1.1 "Change in Law" shall refer to the occurrence of any of the following events notified after the Bid Deadline.*

- a) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulations, notice, circular, code, rule or direction by Governmental Instrumentality or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties charges, levies etc. that results in any change with respect to any tax or surcharge or cess levied or similar charges by the Competent Government on the generation of electricity (leviable on the final output in the form of energy) or sale of electricity.*
- b) Introduction / modification / changes in rates of safeguard duty and/or anti-dumping duty and/or custom duty and or Goods and Services Tax including surcharge thereon which have direct effect on the Project cost.*

### *11.2 Relief for Change in Law*

*11.2.1 In case Change in Law on account of 9.1.1 (a) above results in the HPD's costs directly attributable to the Project being decreased or increased by one percent (1%), of the estimated revenue from the Electricity for the Contract Year for which such adjustment becomes applicable or more, during Operation Period, the Tariff Payment to the HPD shall be appropriately increased or decreased with due approval of GERC.*

*11.2.2 In case of Change in Law on account of 9.1.1 (b) above, the HPD shall be allowed an increase / decrease in tariff of 1 paise / unit for every increase / decrease of Rs. 2 Lakh per MW in the Project Cost incurred up to the Scheduled Commercial Operation Date upon submission of proof of payment made by the HPD towards safeguard duty and/or anti-dumping duty and/or custom duty and or Goods and Services Tax to the concerned Authority and with due approval of GERC. The increase / decrease in tariff due to*



change in cost of solar PV modules shall be limited to actual DC capacity or 150% (One hundred & fifty percent) of contracted AC capacity, whichever is lower.

11.2.3 The HPD / GUVNL or the HPD, as the case may be, shall provide the other Party with a certificate stating that the adjustment in the Tariff Payment is directly as a result of the Change in Law and shall provide supporting documents to substantiate the same and such certificate shall correctly reflect the increase or decrease in costs.

11.2.4 The revised tariff shall be effective from the date of such Change in Law as approved by GERC.”

### **18.3 Force Majeure**

The guidelines issued by Central Government for procurement of power from Wind, Solar and Wind-Solar Hybrid sources provide different Force Majeure provisions as detailed below.

#### **Clause 7.5 of Wind Guidelines – Force Majeure**

**“Force Majeure:** The PPA shall contain provisions with regard to force majeure definitions, exclusions, applicability and available relief on account of force majeure as per the industry standards. The WPG shall intimate the Procurer about the occurrence of force majeure within 15 (fifteen) days of the start of the force majeure and the Procurer shall take a decision on his claim within 15 days of receipt of the intimation.

Government of India from time to time issues order for waiver of inter-state transmission system (ISTS) charges & losses on transmission of wind power till a certain date. In case the SCD of wind project is before the date till above ISTS waiver is applicable, and if the commissioning of the wind power gets delayed beyond applicable date of ISTS waiver due to force majeure event, the liability of transmission charges & losses would be shared between the WPG and procurers in ratio of 50:50. However, in case of commissioning of the wind project gets delayed beyond the applicable date of ISTS waiver due to reasons attributable to the WPG the liability of transmission charges and losses would be of WPG.”

#### **Clause 8.6 of Wind Solar Hybrid Guidelines – Force Majeure**

**“Force Majeure:** The PPA shall contain provisions with regard to force majeure definitions, exclusions, applicability and available relief on account of force majeure as per the industry standards. The HPG shall intimate the Procurer about the occurrence of force majeure within 15 (fifteen) days of the start of the force majeure and the Procurer shall take a decision on his claim within 15 days of receipt of the intimation.



## Clause 5.4 of the Solar Guidelines – Force Majeure

Clause 5.4 of the Guidelines issued by Central Government vide notification dated 03.08.2017 read with amendment dated 22.10.2019 provides detailed provisions regarding Force Majeure including definition of Force Majeure, Categorization of Force Majeure events into natural and non-natural Force Majeure events, Force Majeure exclusions, Notification of Force Majeure event, Performance & Liability related clauses and termination due to Force Majeure. The Hon'ble Commission vide order dated 13.01.2020 in Petition No. 1848 / 2019 has already approved deviations from the aforesaid provisions of Guidelines and therefore the clauses of Guidelines are not reproduced for the sake of brevity.

Instead of the above clauses of Force Majeure provided in the respective guidelines of procurement of power from Wind, Solar and Wind-Solar Hybrid sources issued by Central Government, Petitioner proposes the following clauses in relation to 'Force Majeure' to be kept uniform for all three combinations so as to provide similar dispensation.

### Force Majeure clause proposed by Petitioner

#### **"ARTICLE 11: FORCE MAJEURE**

##### **11.3 Force Majeure Events**

- a) *Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations to pay money due prior to occurrence of Force Majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a "Force Majeure Event") beyond the reasonable control of the Party experiencing such delay or failure, including the occurrence of any of the following:*
- i) *acts of God;*
  - ii) *typhoons, floods, lightning, cyclone, hurricane, drought, famine, epidemic, plague or other natural calamities;*
  - iii) *acts of war (whether declared or undeclared), invasion or civil unrest;*
  - iv) *any requirement, action or omission to act pursuant to any judgment or order of any court or judicial authority in India (provided such requirement, action or omission to act is not due to the breach by the Power Producer or GUVNL of any Law or any of their respective obligations under this Agreement);*
  - v) *inability despite complying with all legal requirements to obtain, renew or maintain required licenses or Legal Approvals;*
  - vi) *earthquakes, explosions, accidents, landslides; fire;*



- vii) expropriation and/or compulsory acquisition of the Project in whole or in part by Government Instrumentality;
- viii) chemical or radioactive contamination or ionizing radiation; or
- ix) damage to or breakdown of transmission facilities of GETCO/ DISCOMs;
- x) Exceptionally adverse weather condition which are in excess of the statistical measure of the last hundred (100) years.
- b) **Force Majeure Exclusions:** Force Majeure shall not include the following conditions, except to the extent that they are consequences of an event of Force Majeure:
1. Unavailability, Late Delivery or Change in cost of plants and machineries, equipment, materials, spares parts or consumables for the project;
  2. Delay in performance of any contractor / sub contractor or their agents;
  3. Non performance resulting from normal wear and tear experience in power generation materials and equipments;
  4. Strike or Labour Disturbances at the facilities of affected parties;
  5. Insufficiency of finances or funds or the agreement becoming onerous to perform, and
  6. Non performance caused by, or concerned with, the affected party's
    - I. Negligent and intentional acts, errors or omissions;
    - II. Failure to comply with Indian law or Indian Directive; or
    - III. Breach of, or default under this agreement or any Project agreement or Government agreement.
- c) The affected Party shall give notice to other party of any event of Force Majeure as soon as reasonably practicable, but not later than 7 days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If any event of Force Majeure results in a breakdown of communication rendering it not reasonable to give notice within the applicable time limit specified herein, then the party claiming Force Majeure shall give notice as soon as reasonably practicable after reinstatement of communication, but not later than one day after such reinstatement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed, and the Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other party may reasonably request about the situation.
- d) The affected Party shall give notice to the other Party of (1) cessation of relevant event of Force Majeure; and (2) cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this agreement, as soon as practicable after becoming aware of each of these cessations.
- e) To the extent not prevented by a Force Majeure event, the affected party shall continue to perform its obligations pursuant to this agreement. The affected party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.



**11.4 Available Relief for a Force Majeure Event:**

*No Party shall be in breach of its obligations pursuant to this agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure event. However, adjustment in tariff shall not be allowed on account of Force Majeure event.*

*For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party."*

The Petitioner hereby seeks approval of Hon'ble Commission for the deviation from the respective Force Majeure clauses provided in the Guidelines issued by Central Government and approve the clause proposed by Petitioner as detailed above. It is to mention that Hon'ble GERC vide order dated 15.03.2018 in Petition No. 1706 / 2018 has already approved the similar Force Majeure clauses in case of procurement of solar power.

**18.4 Delay in Commissioning on account of delay in LTA Operationalization:**

The guidelines issued by Central Government for procurement of power from Wind-Solar Hybrid sources provide following provisions in relation to *Delay in Commissioning on account of delay in LTA Operationalization*.

**"17.4. Delay in Commissioning on account of delay in LTA Operationalization:**

*Long Term/ Medium Term/Short Term Access shall be required to be submitted by the Generator prior to commissioning of the Project. However, for sale of power to procurer from SCD, the hybrid power generator shall have LTA. The ISTS/ InSTS substation at the Delivery Point and the power evacuation and transmission infrastructure of the ISTS/ InSTS network, with which the generator applies for connectivity, should be scheduled for completion on or before the SCD of the concerned hybrid project so as to match the two timelines. Subject to adherence to this, subsequent to grant of connectivity, in case there is a delay in grant/operationalisation of LTA by the CTU/STU and/or there is a delay in readiness of the ISTS/ InSTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS/ InSTS network until SCD of the Project, and it is established that:*

- i. The Generator has complied with the complete application formalities as per the Connectivity Procedure and the ISTS/ InSTS substation at the Delivery Point and the power evacuation and transmission infrastructure of the ISTS/ InSTS network, with which the Generator had applied for connectivity, was scheduled for completion on or before the SCD of the concerned hybrid project*
- ii. The Generator has adhered to the applicable Procedure in this regard as notified by the CERC/ SERC/JERC/CTU/STU, and*
- iii. The delay in grant of connectivity/ LTA by the CTU/STU and/or delay in readiness of the ISTS/INSTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the*



*ISTS INSTS network, is a factor solely attributable to the STU/ CTU/ transmission licensee and is beyond the control of the Generator;*

*The above shall be treated as delays beyond the control of the Generator and such Projects shall be eligible for suitable time extension in their SCD”.*

In the tendering process proposed by GUVNL, the projects can be connected with STU sub-stations or CTU sub-stations. However, the delivery point is proposed at GETCO Periphery and all transmission charges & losses upto delivery point are to be borne by the project developers. Further, the changes in transmission charges & losses are not covered under 'Change in Law' provisions and the bidders are required to take into consideration the transmission charges & losses upto delivery point while placing bids.

As per the provisions stipulated in the guidelines issued by Central Government as mentioned above for procurement of power from Wind-Solar Hybrid sources, in case the developer chooses an under construction sub-station and if there is a delay in commissioning of the sub-station, the corresponding extension shall be given to the developer in timeline for commissioning of the project. These provisions are likely to result into uncertainties regarding commissioning timelines of various RE projects and disputes regarding time period extension particularly in case of projects connected with ISTS Grid on which the State Government agencies have no control.

It is pertinent to mention that in case of projects connected to STU grid, GETCO is required to publish a list of already commissioned sub-stations and sub-stations which are in advanced stages having spare capacity of RE integration and bidders may choose their sub-station from such list published by GETCO. Since, the connectivity is granted in existing sub-stations / sub-stations in advanced stages, the issues of delay & consequent extension do not arise in case of STU connectivity. However, in case of CTU connectivity, it is proposed in the tender that the bidders are required to choose their sub-station considering physical progress of sub-station to avoid the issues of delay & extension and the delay in commissioning of the sub-station will not be a ground for extension in the project timelines.

In view of above and in order to avoid the delay in commissioning of projects which adversely affects all the stakeholders including project developer, procurer and consumers, Petitioner hereby proposes exemption from the



above clause 17.4 of the Wind-Solar Hybrid Guidelines. Instead of the same, the following clause is proposed to be incorporated in the bid documents.

*“The HPD shall apply due diligence while identifying the STU / CTU substations and applying for connectivity, with reference to bay availability and/or timelines of commissioning of planned GETCO / CTU infrastructure as well as physical progress of the sub-station works. GUVNL does not assume any responsibility in this above mentioned process of ascertaining availability at the GETCO / CTU substations and grant of connectivity. The delay in commissioning of the sub-station will not be a ground for extension in the project timelines.”*

The Petitioner hereby seeks approval of Hon'ble Commission for the deviation from the clause 17.4 of the guidelines issued by Central Government for procurement of power from Wind-Solar Hybrid projects and approve the clause proposed by Petitioner as detailed above.

- 19) The Petitioner has filed the present petition for approval of deviations from the guidelines issued by Central Government for procurement of respective RE Source i.e. Wind along with co-located ESS, Solar along with co-located ESS and Wind-Solar Hybrid along with co-located ESS in accordance with the provisions of the respective guidelines and for approval of bidding documents.
- 20) It is humbly submitted that the Hon'ble Commission may accord approval to the Draft Bidding Documents along with the proposed deviations in order to enable the Petitioner to initiate the process of inviting tenders from time to time for procurement of power from RE sources with mandatory installation of ESS.

21) **PRAYER:**

The Petitioner most respectfully prays that this Hon'ble Commission may be pleased to:

- a) To admit the present Petition;
- b) To approve the deviations from the Solar Guidelines dated 03.08.2017, Wind Guidelines dated 08.12.2017 and the Wind-Solar Hybrid Guidelines dated 14.10.2020 issued by Central Government for procurement of power from Wind, Solar and Wind-Solar Hybrid including modifications, as proposed by Petitioner as per details stated at para 18 of the present petition;
- c) To approve the Draft Bidding Document (RFS and PPA) annexed with the Petition;





- d) To allow Petitioner to issue a fresh tender with the proposed deviations as an interim measure during pendency of the petition and the aforesaid tender may be concluded & opened only after final decision of Hon'ble Commission in the matter and in accordance with the directives of Hon'ble Commission;
- e) To condone any inadvertent omissions / errors /shortcomings and permit the petitioner to make addition / change /modification /alter this filing and make further submissions as may be required at a future date;
- f) To crave relief for filing any further submissions;
- g) Pass any other Order as the Hon'ble Commission may deem fit and appropriate under the circumstances of the case, to avoid further delay and in the interest of justice.

  
GUJARAT URJA VIKAS NIGAM LIMITED  
PETITIONER



**DATED: 26.05.2022**

**PLACE: VADODARA**

#### DECLARATION

Declaration that subject matter of the Petition has not been raised by the Petitioner before any other competent forum and that no other competent forum is currently seized of the matter or has passed any order in relation thereto.

  
GUJARAT URJA VIKAS NIGAM LIMITED  
PETITIONER



**DATED: 26.05.2022**

**PLACE: VADODARA**

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

Filing No:  
Case No:

**IN THE MATTER OF** Miscellaneous Petition under Section 86 read with Section 63 of the Electricity Act 2003 for approval of deviations from the Guidelines issued by Central Government for procurement of power through Tariff Based Competitive Bidding Process from Grid Connected Renewable Energy sources i.e Wind, Solar and Wind-Solar Hybrid projects and for approval of bid documents for carrying out bidding process for procurement of power from Hybrid Power Projects having RE generation with co-located Energy Storage Systems.

**PETITIONER**

Gujarat Urja Vikas Nigam Limited  
Sardar Patel Vidyut Bhavan,  
Race Course, Vadodara - 390 007

Sr. No. 11338  
Date: 26/5/2022



**AFFIDAVIT**

I, Parthik Joshi, son of Shri Pankajkumar Joshi, aged about 34years resident of Vadodara do hereby solemnly affirm and state as under:

1. I am Deputy Chief Accounts Officer working in Gujarat Urja Vikas Nigam Limited and am well conversant with the facts of the case and able to swear to the present Affidavit.
2. I, on behalf of the Petitioner, Gujarat Urja Vikas Nigam Limited have gone through the contents of the accompanying Petition and say that the contents stated therein are based on the records of Petitioner maintained in normal course of business and believed by me to be true.

  
26/5/22  
**DEPONENT**  


**VERIFICATION:**

I, the Petitioner above named do hereby verify that the contents of my above Affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.

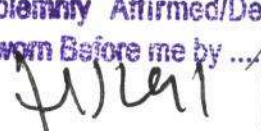
Identified before me.

**My Commission Expires  
on 04/07/2023**

  
26/5/22  
**DEPONENT**  


**DATED: 26.05.2022  
PLACE: VADODARA**



Solemnly Affirmed/Declared  
Sworn Before me by P.P. Joshi  
  
**H. J. ZALA**  
**NOTARY (Govt. of India)**