



SOLAR POWER DEVELOPERS ASSOCIATION

910, 9th Floor, Surya Kiran Building, 19, Kasturba Gandhi Marg, New Delhi- 110001
Phone: +91-8750394442, Email: spda@solarpda.com
Website: www.solarpda.com

SPDA/PG/2021/271

February 17, 2021

To,
Shri Alok Kumar
Secretary
Ministry of Power
Govt of India
Shram Shakti Bhavan, New Delhi

Subject: Request for clarificatory order by MoP to include RE solar park regarding waiver of Inter-State Transmission charges and losses on transmission of electricity generated from Renewable Energy issued on 15th Jan 2021.

Ref: 1. MOP OM direction to CERC issued on 15th Jan 2021.
2. CERC order petition No. 331/MP/220 issued on 28th Jan 2021

Dear Sir,

Greetings from Solar Power Developers Association.

On behalf of the industry, SPDA expresses its gratefulness for granting waiver of Inter-State Transmission charges and losses for RE generators projects with extension in scheduled commissioning date on or before 30th June 2023 due to Force Majeure event or inaction/delays on part of intermediary procurer/ end procurer.

Background:

The Solar Power developers welcome the measures taken by the Ministry of Power vide notification dated 15th Jan 2021 issuing directions to CERC under Section 107 of Electricity Amendment Act 2003, with respect to sharing of transmission charges and losses under force majeure conditions. The said directions only recognizes socializing the cost of delay in connectivity and transmission between Solar Power Developers (SPDs) and intermediary/end procurer. Whereas, it is silent for Solar Park based projects in which Solar Power Park Developers (SPPD) are authorised as applicants for connectivity and long term open access for Inter State Transmission System with intermediary/end procurer.

We bring to your kind notice that the Hon'ble CERC vide order dated 28th Jan 2021, a petition was filed by SECI, Karnataka Solar Power Development Corporation Ltd (KSPDCL), Gujarat Power Corporation Ltd (GPCL) and Andhra Pradesh Solar Power Corporation Private Limited (APSPCL) v/s Powergrid Corporation of India Ltd (PGCIL) and Central Electricity Authority (CEA) for adjustment of transmission losses related to solar power projects setup in Solar parks with grid connectivity through the ISTS Network. The Hon'ble CERC has dismissed the petition saying that Solar Parks are not eligible for getting waiver of ISTS charges & losses penalty in case projects inside



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the parks are not commissioned and LTA is operationalized by CTU which has been reproduced for your reference (Also, find a separate attachment for your ready reference):

“21. In our view, the provisions of the 2009 Connectivity Regulations as well as that of the 2010 Sharing Regulations have clear provisions as regards liability of an entity that has been granted LTA. The purported mismatch in operationalization of LTA and commissioning of solar power projects has been on account of delays in bidding process. Similarly, it has been claimed that some SPDs are delayed on account of reasons not attributable to the SPPDs or the SPDs. The Petitioners have requested that they should not be made liable to pay transmission charges and losses on account of such delays and that these should be socialized. The Petitioners have not made out a case as to how the provisions of the 2010 Sharing Regulations have led to delay in bidding process or delay in commissioning of solar power projects. In such a situation, we do not consider it appropriate to use our ‘power to relax’ or ‘power to remove difficulty’ in terms of the 2010 Sharing Regulations.

22. The Petitioners have also sought to implead the Government of India as a party to the Petition vide their affidavits dated 7.9.2020. We observe that the Petitioner had not sought to implead the Government of India in its submissions and has raised it for the first time in the affidavit dated 7.9.2020. As, once the Order has been reserved in the petition, fresh cause of action cannot be raised by parties, the Petitioner is at liberty to file a separate petition for any issues with the Government of India.”

Aligning associated agreements for RE Solar park projects with Ministry’s directions:

As your kind office may be aware that any provisions under the Purchase Power Agreements (PPA) and/or Implementation and Support Agreement (ISA) signed between the SPDs and SPPD, transfers the risks related to Land, connectivity/LTA including delay charges on account of delay in operationalization of LTA for no fault of SPPDs will be ultimately be borne by SPDs. The ISA clause is reproduced as under for your reference:

“ As per Clause 4.13: The SPD agree to indemnify and hold the SPPD harmless from and against any and all damages, losses, liabilities, obligations, penalties, cause of action, claims of any kind (including, without limitation, reasonable attorney’s fees and expenses) (collectively, Losses), suffered, incurred or paid, directly, as a result of, in connection with or arising out of and relating to exercise of CTU’s actions pursuant to and in accordance with this agreement.

Clause 4.14: If the projects are not commissioned by the SPD up to due date and penalty is imposed by PGCIL for delay in commissioning of projects then the SPD shall be liable for bearing the penalty imposed by PGCIL.”

The delay in achieving the commercial operation date by the projects may be due to various reasons such as pending approvals for adoption of tariff under section 63,



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pending power procurement approval under section 86(1)(b) from the appropriate commission, land possession, impacts due to COVID-19, PSA signing etc. Transferring such risks through PPA and ISA on the SPDs for reasons not attributable to the SPDs thus significantly impacts project financing making them unviable due to policy uncertainty.

Request:

Thus, there is a requirement to bring uniformity across stakeholders to follow Policy guidelines in reducing discrepancy and bring consistencies in associated agreements across Purchase Power Agreements, Implementation and Support Agreement (ISA), transmission agreement (TA) etc to facilitate Ease of doing business and investors participation.

In view of the stated above, we request your kind office to issue a clarification order directing the concerned authorities to extend the said MOP's directions to CERC issued on 15th Jan 2021, to include Solar Park agency eligible for ISTS waiver for extension in transmission and connectivity on account of delay due to Force majeure event which is in contradiction with the said order. This is to avoid penalty to any stakeholders in bearing financial risk for reasons of delay not attributable to them or transfer of such risks by aligning all agreements to be made consistent by following the order by Ministry of Power which reduces any future deviation settlement cases that may arise due to ambiguity.

We look forward to your favorable consideration in the matter.

Thanking you.

Yours Sincerely

Praveen Golash
Joint Secretary, SPDA

CC:

- 1. Shri Mritunjay Kumar Narayan
Joint Secretary (Transmission)
Ministry of Power
Shram Shakti Bhawan, New Delhi**