



## SOLAR POWER DEVELOPERS ASSOCIATION

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January 28, 2021

**Sub: Request your necessary clarification to the Hon'ble KERC reg. reimbursement of safeguard duty under Change in Law.**

*Dear Shri Sinha,*

Greetings from Solar Power Developers Association.

We are writing to you regarding the Hon'ble KERC vide order 31.12.2020, in the matter of Fortum vs BESCO & Ors. declaring the imposition of Safeguard duty as a Change in law, directing ESCOMs to make payment within 2 months from the date of order.

This is further to our discussion held on 25<sup>th</sup> January on the above mentioned subject. As intimated, while the Hon'ble KERC has acknowledged the imposition of Safeguard duty as a Change in law, however, the commission has not considered few crucial things to which Solar Power Developers would like to draw your kind attention towards as mentioned below:

**A) The Safeguard duty claims on higher DC capacity installed over and above PPA quantum rejected by KERC.**

The Hon'ble KERC while allowing Safeguard duty as Change in law has rejected the claims on higher DC capacity over and above PPA quantum on the premise that the developer has not informed or given prior notice to ESCOMs for procurement of such higher DC modules from China and installation thereafter which was required as per provisions of RfS.

The above findings are completely misplaced as

- i. The Request for Proposal ('RfP') itself allows the developer to install higher DC capacity. Further, ESCOMs have agreed to a higher capacity utilization factor ('CUF') as mentioned under PPA which is not possible without installing higher DC capacity.

*"As per clause 1.4 of RfP issued by Karnataka Renewable Energy Development Limited (KREDL) for the present project, the Solar Power Developers shall mention CUF at the time of signing of the PPA. The RfP also specifically states that there is no cap on the maximum CUF being stated by the Solar Power Developer."*

- ii. It is also relevant to highlight that as per the Order passed by this Hon'ble KERC for Determination of Tariff in respect of Solar Power Projects (including Solar Rooftop Photovoltaic Projects) for FY 2020, the Commission adopted a CUF of 19% for Solar Power Plants."

For maintaining a CUF higher than the normative of 19%, Solar Power Developers are required to provide additional DC capacity for optimization of the project against contracted AC capacity to take care of losses in inverter, evacuation infrastructure, and accounting degradation factor of Solar module. Thereby, as a prudent industry practice, installing high DC capacity enables the developer to quote a competitive and low tariff which is beneficial to all stakeholders.

- iii. Also, MNRE in its clarification dated 05.11.2019 has made it clear that design and layout of the project is developer's responsibility including installation of high DC capacity as per their design.
- iv. Besides, other commissions such as the MERC and CERC has given due appreciation and allowed reimbursement of Safeguard duty for a capacity of module proportionate to the CUF declared by a generator to achieve higher efficiency.

Therefore, we would like to draw your attention that the Hon'ble KERC present judgment is erroneous as additional DC capacity has been installed to meet energy obligations under the PPA.

**Request:**

In view of the stated above, the Solar power developers should be reimbursed for the levy of Safeguard duty on complete DC capacity installed towards the supply of solar power to ESCOMs. As per the said KERC order, the claim of approximately Rs 46 crores post SGD imposition, has now been denied and entirely borne by Fortum for the excess module import which is completely unfair & unjust which needs to be reversed.

**B) Carrying cost from the date of actual payment made by developers till such payment received from ESCOMs denied by the Hon'ble KERC.**

The RfS was floated by KREDL following the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid- Connected Solar PV Power Projects notified by Ministry of Power ("MoP") vide Notification dated 03.08.2017 wherein para 5.7.1 states that if any Change in Law event results in any adverse financial loss/gain to the Solar Power Generator, then the Solar Power Generator shall be entitled to be compensated by the other party, to ensure that the Solar Power Generator is placed in the same financial position as it would have been, had it not been for the occurrence of the Change in Law event.

Thus, as the present PPA was entered into on 20.04.2018, much after the Tariff Guidelines dated 03.08.2017, the present PPA is bound by the said guidelines issued under section 63 of the Electricity Act, and accordingly the change in law clause under the PPA is to be interpreted in a manner that the Developer is restored to the same financial position which it would have been, had it not been for the imposition of safeguard duty, thereby allowing carrying costs suffered by the Petitioner.

It is further submitted that, should the change in law clause under the present PPA be interpreted in a manner that does not provide for restoration to the same economic position, then such an interpretation would violate the Guidelines dated 03.08.2017 which has been issued under section 63 of the Electricity Act. It is a settled principle of law that such guidelines have a force of law and is reiterated by the Hon'ble Supreme Court of India in many matters.

Additionally, the verified Duty claim amount, being equity funded, from the date of the expense till the date of the passage of the order by the Hon'ble KERC should be reimbursed either upfront or grossed up at the rate of equity as specified by the Commission in its solar tariff order.

DATE: 12/01/2011

**Request:**

Therefore, developers are entitled to claim carrying cost on the ground of principles of 'restitution' from the date of actual payment made by them till such payment is received from ESCOMs.

Therefore, we request you to please issue necessary clarification in this matter and advise competent authorities to provide necessary relief by compensating the Solar Power Developer under the Change in Law.

We look forward to your kind support in the matter.

*With warm regards,*

To,  
**Shri Amitesh Kumar Sinha**  
**Joint Secretary**  
**Ministry of New & Renewable Energy**  
**CGO Complex, New Delhi**

Yours Sincerely



**Shekhar Dutt**