

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 304/MP/2013

Subject : Petition for adjustment of generation tariff and other consequential reliefs.

Petitioner : Godavari Green Energy Limited.

Respondents : NTPC Vidyut Vyapar Nigam Ltd. and Union of India, Ministry of New and Renewable Energy .

Petition No. 312/MP/2013

Subject : Petition under Section 79 of the Electricity Act, 2003 for grant of compensatory tariff on account of depreciation in rupee.

Petitioner : Rajasthan Sun Technique Energy Private Limited.

Respondents : NTPC Vidyut Vyapar Nigam Ltd. and Union of India, Ministry of New and Renewable Energy .

Petition No. 313/MP/2013

Subject : Petition for adjustment of generation tariff and other consequential reliefs.

Petitioner : Rajasthan Sun Technique Energy Private Limited.

Respondents : NTPC Vidyut Vyapar Nigam Ltd. and Union of India, Ministry of New and Renewable Energy .

Petition No. 327/MP/2013

Subject : For adjustment of tariff, extension of time for execution of project and other consequential reliefs.

Petitioner : Diwakar Solar Limited, Hyderabad.

Respondents : NTPC Vidyut Vyapar Nigam Ltd. and Union of India, Ministry of New and Renewable Energy .

Petition No. 14/MP/2014

Subject : Petition for adjustment of tariff, extension of time for execution of project and other consequential relief.

Petitioner : KVK Energy Venture Private Limited.

Respondents : NTPC Vidyut Vyapar Nigam Ltd. and Union of India, Ministry of New and Renewable Energy .

Petition No. 16/MP/2014

Subject : Petition under Section 79 (1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 for adjustment of capacity utilization factor, extension of time for execution of project and other consequential relief.

Petitioner : MEIL Green Power Limited.

Respondents : NTPC Vidyut Vyapar Nigam Ltd. and Union of India, Ministry of New and Renewable Energy .

Petition No. 41/MP/2014

Subject : Petition for adjustment of generation tariff and other consequential reliefs.

Petitioner : Aurum Renewable Energy Limited.

Respondents : NTPC Vidyut Vyapar Nigam Ltd. and Union of India, Ministry of New and Renewable Energy .

Petition No. 42/MP/2014

Subject : Petition for adjustment of tariff, extension of time for execution of project and other consequential reliefs.

Petitioner : Corporate Ispat Alloys Limited.

Respondents : NTPC Vidyut Vyapar Nigam Ltd. and Union of India, Ministry of New and Renewable Energy .

Date of hearing : 8.8.2017

- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member
- Parties present : Shri Buddy A. Ranganadhan, Advocate, GGEL & RSTEPL
Shri Arun Poddar, Advocate, GGEL
Shri Raunak Jain, Advocate, GGEL
Shri Vinay Aggarwal, Advocate, GGEL
Shri Hasan Murtaza, Advocate, RSTEPL
Ms. Malvika Prasad, Advocate, RSTEPL
Shri Manoj Pongade , RSTEPL
Shri Suma Kant, RSTEPL
Shri Sakia Chowdhury, Advocate, AREL & MEIL
Ms. Molshree Bhatnagar, Advocate, AREL & MEIL
Ms. Anushree Bardhan, Advocate, NVVNL
Shri Dharmendra Singh, NVVNL
Shri R. Mishra, Advocate, MNRE
Shri Sanjiv Saxena, Advocate, MNRE
Ms. Swapna Seshadri, Advocate, PSPCL
Shri Soumyajit Pani, Advocate, WBESB
Shri Chitranjan Singh, Advocate, WBESB
Dr. Ravi P. Reddy, MEIL
Shri Parvesh, DSPL

Record of Proceedings

At the outset, learned counsel for Godavari Green Energy Limited (GGEL) and Rajasthan Sun Technique Energy Private Limited (RSTEPL) submitted that the present petitions have been filed seeking revision of applicable tariff under Article 9 of the PPA on account of variation in DNI levels and Foreign Exchange Rate and extension of the commissioning date of the project from the date of disposal of the present petition. Learned counsel for the petitioners further submitted as under:

a. The events relating to DNI are covered under Force Majeure events under the PPA. Since, the DNI and intensity of sun is beyond the control of the petitioner, any such event affecting the DNI ought to be appropriately covered under the definition of Force Majeure. It is not the case of the petitioner that DNI and events affecting DNI are within the reasonable control of any affected party.

b. The Commission determined the generic tariff of Rs. 15.31 in 2009 on the assumption that DNI would be in the range of 2074 kWh/m²/year. The Commission had specified a CUF of 23% under the CERC (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2009 (2009 RE Regulations).

c. At the time of bidding, the DNI data worked out by the Ministry of New and Renewable energy (MNRE) and published on its website was the most reliable source of data for the bidders to work out their bid competition. Therefore, the petitioners had proceeded on the basis of DNI data published by MNRE and on the basis of MNRE data, the DNI levels for the petitioner's project site was estimated at 2168 Kwh/m²/year. Accordingly, the petitioner quoted a tariff of Rs. 12.20/Kwh after offering a discount of Rs. 3.11/Kwh on the tariff approved by the Commission for financial year 2009 - 10 vide order dated 26.4.2010 based on available DNI data at the time of bidding.

d. Subsequently, on 10.1.2011, the petitioner entered into a PPA with NVNNL for procurement of 50 MW solar power. The PPA required the petitioner to set up necessary equipments for recording of ground measurement of DNI at the project site. Accordingly, the petitioner set up the necessary equipment and conducted ground measurements from September 2011 to August 2012 for DNI measurements and discovered the DNI to be 1763 Kwh/m²/year which is substantially less than 2168 Kwh/m²/year as estimated at the time of submission of bid. The significantly lower ground measurements in the Nokh site despite high DNI indicated on the basis of satellite based DNI readings is further confirmed by DNI measurement subsequently conducted by Suntrace and certified by MNRE for Bodana village which has been estimated to be 1676 Kwh/m²/year. Bodana Village is just 12 kms away from the project site of the petitioner. The DNI data at the time of the bidding was not ground data and had to be revised downwards for areas near the project site in Rajasthan. The variation in DNI readings may be caused due to atmospheric conditions at the site.

e. The lower DNI of 1763 Kwh/m²/year has substantial bearing on the CUF of the project. In fact, the lower levels of DNI have translated into significantly lower levels of generation from what had been contracted by the petitioner under the PPA. The CUF has reduced to about 16% during the first four months of operation.

f. The Commission has fixed the CUF norm of 23% for solar thermal power plants without storage, based on DNI data collected from Solar Energy Centre, MNRE and further on the recommendation of MNRE. At the relevant time, there was no other reliable data for estimation of DNI besides the Surface Meteorology and Solar Energy Data maintained by NASA and data maintained by Solar Energy Centre, MNRE for some cities. There was no possibility of further due diligence by the solar power generators on their own.

g. Subsequently, the petitioner along with other Solar Power Developers submitted joint representation to the MNRE dated 21.5.2012 highlighting the difficulties attributable to DNI variance affecting the engineering and procurement activities. Accordingly, the Solar Power Developers requested the MNRE for extending the respective commissioning dates for the projects. The MNRE vide its order dated 28.5.2012 constituted an Expert Committee to review the progress of implementation of solar thermal projects. The Expert Committee submitted its report to the MNRE on 31.8.2012 highlighting the issue of low DNI at the project sites.

h. The Review Committee of MNRE approved the effect of low DNI to be treated as Force Majeure. Subsequently, the MNRE amended the definition of “CERC Approved Tariff” and para 3.12 relating to “Commissioning” under the Jawahar Lal Nehru National Solar Mission (JNNSM). The scheduled date for commissioning of the projects was further extended from 28 months to 38 months. Such amendment by MNRE to the JNNSM could only be possible after recognizing low DNI as “Force Majeure” event.

i. Having recognized low DNI as a Force Majeure event in the past and having given accommodation to the Solar Developers in extension for commissioning on this account, MNRE now cannot plead that low DNI is not a Force Majeure event for the purpose of revisiting the CUF and consequently the tariff of Rs. 15.31 determined by the Commission in the year 2009 based on CUF of 23%. The MNRE is estopped in law from changing its stand.

j. Since, the guidelines for Selection of New Grid Connected Solar Power Projects of July, 2010 have not been issued by the MNRE under Section 63 of the Electricity Act, 2003, the Commission has the necessary regulatory powers under Section 79(1)(b) of the Act to re-open the tariff.

k. Article 11.3.1 of the PPA provides for force majeure. The case of the petitioner falls under Article 11.3.1 of the PPA as the change in DNI at the project site was neither within the control of the petitioner nor the petitioner could have foreseen it after adopting prudent utility practices.

2. Learned counsel for Diwakar Solar Projects Limited (DSPL), KVK Energy Venture Private Limited (KVKEVPL), MEIL Green Power Limited (MEILGPL) and Aurum Renewable Energy Limited (AREL) requested for time to file rejoinders to the reply filed by MNRE. Request was allowed by the Commission.

3. After hearing the learned counsels for the petitioners and the Respondents, the Commission directed KVKEVPL, DSPL, MEILGPL and AREL to file their rejoinders by 14.8.2017 to the reply filed by the MNRE with an advance copy to the respondents. The Commission directed that due date of filing rejoinders should be strictly complied with. No extension shall be granted on that account.

4. The Commission directed to list the petitions for hearing on 17.8.2017 at 0930 hrs.

By order of the Commission
Sd/-
(T. Rout)
Chief (Legal)