

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 171/MP/2021

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of order: 23rd December, 2021

In the matter of

Petition under Section 79 of the Electricity Act 2003 for (i) approval of "Change in Law" and (ii) seeking an appropriate mechanism for grant of an appropriate adjustment/ compensation to offset financial/commercial impact of change in law events on account of imposition of safeguard duty on solar cells/modules and rescission of Notification No.1/2011-Customs dated 06.01.2011 vide Notification No. 7/2021-Customs dated 01.02.2021, which has resulted in increase in rate of basic customs duty on import of solar inverters, in terms of Article 12 of the Power Purchase Agreements dated 13.08.2019 between M/s ReNew Sun Waves Private Limited and Solar Energy Corporation of India Limited.

And

In the matter of

ReNew Sun Waves Private Limited (RSWPL),

138, Ansal Chambers II, Bhikaji Cama Place,

Delhi – 110066

.....Petitioner

Vs.

1. Solar Energy Corporation of India Limited,

6th Floor, Plate-B, NBCC Office Block Tower-2,

East Kidwai Nagar,

New Delhi – 110 023

2. Bihar State Power Holding Company Limited,

1st Floor, Vidyut Bhawan,

Jawahar Lal Nehru Marg,

Patna-800 01, Bihar

...Respondents

Parties present:

Shri Sujit Ghosh, Advocate, RSWPL

Ms. Mannat Waraich, Advocate, RSWPL

Shri Toshin Bishnoi, Advocate, RSWPL

Ms. Pratiksha Chaturvedi, Advocate, RSWPL



Ms. Poorva Saigal, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Neha Singh, SECI

ORDER

The present Petition has been filed by the Petitioner, ReNew Sun Wave Private Limited seeking approval of Change in Law events and seeking an appropriate mechanism for grant of adjustment/ compensation to offset financial/ commercial impact of Change in Law events on account of the imposition of safeguard duty on solar cells/ modules and rescission of Notification No. 1/2011-Customs dated 06.01.2011 vide Notification No. 07/2021-Customs dated 01.02.2021 which has resulted in increase in rate of basic custom duty on import of solar inverters. The Petitioner has made the following prayers:

“(a) Declare the imposition of safeguard duty via Safeguard Duty Notification dated 29.07.2020 as Change in Law in terms of the PPA which have led to an increase in the expenditure for the Project;

(b) Declare the imposition of increased rate of basic customs duty and subsequent increase in quantum of social welfare surcharge and IGST on account of rescission of Notification No. 1/2011-Customs dated 06.01.2011 vide Notification No. 07/2021-Customs dated 01.02.2021 issued by Central Government as Change in Law in terms of the PPA which have led to an increase in the expenditure for the Project;

(c) Evolve a suitable mechanism to compensate the Petitioner for the increase in expenditure incurred by the Petitioner on account of Change in Law;

(d) Direct Respondent to compensate the Petitioner towards Safeguard duty as one-time lump sum amount or mechanism devised by this commission in prayer (c)

(e) Direct Respondent to compensate the Petitioner towards Customs duty and consequent increase in social welfare surcharge and IGST as one-time lump sum amount or mechanism devised by this commission in prayer (c)

(f) Grant interest/carrying cost as mentioned in para 55 from the date of incurring of the cost by the Petitioner till the date of order by this Commission;



(g) *If the event this Hon'ble Commission is not inclined to grant the relief prayed at (f) then in the alternate it is prayed, that this Hon'ble Commission grants interest/ carrying cost from the date of the cost by the Petitioner till the date of order by this Commission restoring the Petitioner to the same economic position as before the occurrence of the Change in Law events;*

(h) *Allow legal and administrative costs incurred by the Petitioner in pursuing the instant petition."*

2. The case was called out through virtual hearing on 21.12.2021.

3. In response to the Commission's observation regarding Ministry of Power, Government of India having notified the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as 'the Change in Law Rules') and the Petitioner, therefore, being required to follow the process specified thereunder, the learned counsel for the Petitioner submitted that if the Commission disposes of the Petition in terms of Change in Law Rules, the filing fees paid in the Petition be adjusted against the Petition to be filed in future.

4. We have considered the submissions made by the learned counsel for the Petitioner. Relevant portion of Change in Law Rules notified by the Ministry of Power, Government of India, are extracted as under:

"2(c) "change in law", in relation to tariff, unless otherwise defined in the agreement, means any enactment or amendment or repeal of any law, made after the determination of tariff under section 62 or section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes —

(i) -----

(ii) -----

(iii) -----

3. Adjustment in tariff on change in law— (1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.

(2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

(3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.

(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.

(5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated -

(a) where the agreement lays down any formula, in accordance with such formula; or

(b) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;

(6) The recovery of the impacted amount, in case of the fixed amount shall be —

(a) in case of generation project, within a period of one-hundred eighty months; or

(b) in case of recurring impact, until the impact persists.

(7) The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.

(8) The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).

(9) After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.”

5. As per the above-quoted provisions, on occurrence of a Change in Law, the affected party, in the present case the Petitioner, and other parties, in the present case the Respondents, are to settle the Change in Law claims amongst themselves

and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.

6. Accordingly, the Petitioner may approach the Respondents for settlement of Change in Law claims among themselves in terms of the Change in Law Rules and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.

7. As prayed by the Petitioner, the filing fees paid in this Petition shall be adjusted against the Petition to be filed by the Petitioner in future.

8. Accordingly, the Petition No. 171MP/2021 is disposed of in terms of the above.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member

sd/-
(P.K. Pujari)
Chairperson