

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
New Delhi**

**Petition No. 103/MP/2021 along with IA No. 71/2021**

**Subject** : Petition under Section 79 of the Electricity Act, 2003 along with statutory framework and the Tripartite Transmission Agreement dated 28.10.2018 executed between Power Grid Corporation of India Limited, ACME Solar Holdings Pvt Ltd and Fatehgarh-Bhadla Transmission Ltd., the Transmission Service Agreement dated 28.1.2019 executed between ACME Solar Holdings Pvt Ltd. and Power Grid Corporation of India Ltd. and the Long-Term Access Agreement dated 3.6.2019 executed between Power Grid Corporation of India Ltd. and ACME Solar Holdings Pvt Ltd. seeking directions to PGCIL to extend start date of LTA/commencement of LTA for ACME Deoghar Solar Power Pvt. Ltd., ACME Dhaulpur Powertech Pvt. Ltd. and align the same with the SCOD of the Projects, as extended by SECI.

**Petitioner** : ACME Deoghar Solar Power Pvt. Ltd. & Ors.

**Respondents** : Power Grid Corporation of India Ltd. (PGCIL) & Ors.

**Petition No. 104/MP/2021 along with IA No. 72/2021**

**Subject** : Petition under Section 79 of the Electricity Act, 2003 along with statutory framework and the Tripartite Transmission Agreement dated 25.09.2018 executed between Power Grid Corporation of India Limited, ACME Solar Holdings Pvt Ltd and Fatehgarh-Bhadla Transmission Ltd., the Transmission Service Agreement dated 28.1.2019 executed between ACME Solar Holdings Pvt Ltd. and Power Grid Corporation of India Ltd. and the Long-Term Access Agreement dated 16.5.2019 executed b Power Grid Corporation of India Ltd. and ACME Solar Holdings Pvt Ltd. seeking directions to PGCIL to extend start date of LTA/commencement of LTA for ACME Phalodi Solar Energy Pvt. Ltd., ACME Raisar Solar Energy Pvt. Ltd. and align the same



with the SCOD of the Projects, as extended by SECI.

**Petitioner** : ACME Phalodi Solar Energy Pvt. Ltd. & Ors.

**Respondents** : Power Grid Corporation of India Ltd. (PGCIL) & Ors.

**Petition No. 36/MP/2022**

**Subject** : Petition under Section 79 of the Electricity Act, 2003 and the Power Purchase Agreement dated 07.12.2018 executed between ACME Deoghar Solar Power Pvt. Ltd. and Solar Energy Corporation of India Ltd., the Power Purchase Agreement dated 07.12.2018 executed between ACME Dhaulpur Powertech Pvt. Ltd. and Solar Energy Corporation of India Ltd., the Tripartite Transmission Agreement dated 28.10.2018 executed between Power Grid Corporation of India Limited, ACME Solar Holdings Ltd and Fatehgarh Bhadla Transmission Ltd., the Transmission Service Agreement dated 28.01.2019 executed between ACME Solar Holdings Ltd. and Power Grid Corporation of India Ltd. and the Long-Term Access Agreement dated 03.06.2019 executed between Power Grid Corporation of India Ltd. and ACME Solar Holdings Ltd. seeking extension of Scheduled Commissioning Date of the Projects and seeking directions to PGCIL to extend start date of LTA/commencement of LTA for ACME Deoghar Solar Power Pvt. Ltd., ACME Dhaulpur Powertech Pvt. Ltd. and align the same with the SCOD of the Projects

**Petitioner** : ACME Deoghar Solar Power Pvt. Ltd. & Ors.

**Respondents** : Solar Energy Corporation of India Ltd. & Anr.

**Petition No. 35/MP/2022**

**Subject** : Petition under Section 79 of the Electricity Act, 2003 and the Power Purchase Agreement dated 6.12.2018 executed between ACME Phalodi Solar Energy Pvt. and Solar Energy Corporation of India Ltd., the Power Purchase Agreement dated 6.12.2018 executed between ACME ACME Raisal



Solar Energy Pvt. Ltd. and Solar Energy Corporation of India Ltd., the Tripartite Transmission Agreement dated 25.9.2018 executed between Power Grid Corporation of India Limited, ACME Solar Holdings Ltd and Fatehgarh-Bhadla Transmission Ltd., the Transmission Service Agreement dated 28.1.2019 executed between ACME Solar Holdings Ltd. and Power Grid Corporation of India Ltd. and the Long-Term Access Agreement dated 16.05.2019 executed between Power Grid Corporation of India Ltd. and ACME Solar Holdings Ltd. seeking extension of Scheduled Commissioning Date of the Projects and seeking directions to PGCIL to extend start date of LTA/commencement of LTA for ACME Phalodi Solar Energy Pvt. Ltd. and ACME Raisal Solar Energy Pvt. Ltd. and align the same with the SCOD of the Projects.

**Petitioner** : ACME Phalodi Solar Energy Pvt. Ltd. & Ors. .

**Respondents** : Solar Energy Corporation of India Ltd. & Anr

**Date of Hearing** : 12.4.2022 & 13.4.2022

**Coram** : Shri P. K. Pujari, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member

**Parties Present** : Shri Sajjan Poovayya, Senior Advocate, ACME (12.4.2022)  
Shri Sanjay Sen, Senior Advocate, ACME (13.4.2022)  
Shri M.G Ramachandran, Senior Advocate, SECI  
Shri Vishrov Mukerjee, Advocate, ACME  
Shri Girik Bhalla, Advocate, ACME  
Ms. Priyanka Vyas, Advocate, ASHIL  
Ms. Mandakini Ghosh, Advocate, ASHIL  
Ms. Suparna Srivastava, Advocate, PGCIL  
Ms. Soumya Singh, Advocate, PGCIL  
Shri Tushar Mathur, Advocate, PGCIL  
Ms. Tanya Sareen, Advocate, SECI  
Shri Hemant Singh, Advocate, FBTL  
Shri Lakshyjit Singh Bagdwal, Advocate, FBTL  
Shri Chetan Garg, Advocate, FBTL  
Shri Buddy A Ranganadhan, Advocate, BYPL  
Shri Hasan Murtaza, Advocate, BYPL  
Ms. Neha Singh, SECI  
Shri Manas Ranjan Mishra, SECI



Shri Piyush Gupta, SECI  
Shri Kashish Bhambhani, CTUIL  
Shri Yatin Sharma, CTUIL  
Shri Swapnil Verma, CTUIL  
Shri Siddharth Sharma, CTUIL  
Shri Rajneet Singh Rajput, CTUIL

### **Record of Proceedings**

Cases were called out for virtual hearing on 12.4.2022.

2. Petition No. 103/MP/2021 pertaining to ACME Deoghar and ACME Dhaulpur and Petition No. 104/MP/2021 pertaining to ACME Phalodi and ACME Raisar are filed seeking declaration that the Petitioners are not liable to pay the transmission charges for the period of mismatch between the date of LTA operationalisation and the extended SCOD of the Petitioners' projects by SECI due to *force majeure* events. The Petitioner filed Petition No. 36/MP/2022 (related to ACME Deoghar and ACME Dhaulpur covered in the Petition No. 103/MP/2021) and Petition No. 35/MP/2022 (related to ACME Phalodi and ACME Raisar covered in the Petition No. 104/MP/2021) seeking directions to SECI to extend SCOD of the Petitioner's projects up to 18.7.2023 and directions to PGCIL to align the date of commencement of LTA with SCOD of their projects as extended by SECI.
3. Learned senior counsel appearing on behalf of SECI submitted that reply on behalf of SECI has been filed in Petition No. 35/MP/2022 and Petition No. 36/MP/2022 and sought permission to upload the same on the e-filing portal of the Commission.
4. Learned counsel appearing on behalf of BYPL and BRPL submitted that they have been recently impleaded in the matter by the Petitioner and sought permission to file its Vakalatnama and to file their reply.
5. Learned senior counsel appearing on behalf of the Petitioner sought time to file its rejoinder to the reply filed by the Respondents in Petition No. 35/MP/2022 and Petition 36/MP/2022. The Projects of the Petitioner fall within the potential habitat of Great Indian Bustard (GIB) and there are certain difficulties in implementation of the Projects in terms of Hon'ble Supreme Court order dated 19.4.2021 in I.A No. 85618 of 2020 in WP.838 of 2019. Hon'ble Supreme Court observed that laying of high voltage underground power lines would require technical evaluation and expertise to assess the feasibility and accordingly constituted a committee for assessing the feasibility of laying such underground power lines.
6. Learned senior counsel for the Petitioner submitted that Interlocutory Applications (IAs) seeking modification of the order dated 19.4.2021 were filed by Union of India through MNRE, State of Rajasthan, Solar Power and Renewable developers. The Hon'ble Supreme Court vide its order dated 31.3.2022 in the IAs has directed State of Rajasthan to file its compliance affidavit along with the status report regarding various aspects of implementation of its order dated 19.4.2021 within 3 weeks. The Court has also directed the committee constituted in accordance with the order dated 19.4.2021 to file a report on the progress made with respect to



undergrounding of power lines. There is a likelihood that order dated 19.4.2021 may be modified by the Hon'ble Supreme Court and the same has a direct bearing on the instant petitions. Therefore, he requested the Commission to keep the instant petitions in abeyance till directions are issued in IAs by the Hon'ble Supreme Court.

7. Learned senior counsel for the Petitioner submitted that CTUIL vide its letter dated 1.4.2021 intimated to the Petitioner that the LTA will be operationalized w.e.f 2.4.2022. Accordingly, Petitioner has filed IAs bearing Diary No. 139/2022 and 140/2022 in Petition No. 36/MP/2022 and Petition No. 35/MP/2022 respectively inter-alia seeking directions to restrain PGCIL/ CTUIL from taking any coercive steps against the Petitioners by operationalising the LTA and stay the opening of Payment Security Mechanism. Accordingly, requested the Commission for grant of interim protection.

8. The Commission observed that the issue of GIB and alignment of LTA on account of revised SCOD of the Project are independent and are required to be dealt separately. Accordingly, directed to list the petitions for consideration of the issue of alignment LTA with revised SCOD. The Commission directed the Petitioner to file its rejoinder to the reply filed by the Respondents and the learned senior counsel agreed to file the same by 13.4.2022.

9. The instant petitions were listed again on 13.4.2022.

10. During the hearing on 13.4.2022, the learned senior counsel for the Petitioners made the following submissions:

- a. The instant petitions pertain to extension of SCOD of the projects till 18.7.2023 and alignment of LTA to the revised SCOD of the projects.
- b. The SCOD of the Projects be extended up to 18.7.2023 on account of *force majeure* events namely (i) status quo orders by Hon'ble Rajasthan High Court and (ii) outbreak of Covid-19 and including time required for construction of 400 kV bay for connecting the Project to Fatehgarh Sub-station.
- c. PGCIL despite being aware of the status quo orders passed by the Hon'ble High Court of Rajasthan in respect of land meant for construction of the Fatehgarh Sub-station did not inform the Petitioner.
- d. While the bays were allocated to the Petitioner on 24.2.2020, physical access to the land for design and construction of the bays were granted to Petitioner only on 19.7.2021. Therefore, the period for completion of dedicated transmission line (DTL) and bays (24 months) ought to commence from 19.7.2021 and Petitioners should be granted time till 18.7.2023 for completion and commissioning of the Project.
- e. On 11.5.2018, the Hon'ble High Court of Rajasthan in W.P No. 5707 of 2018, passed orders to maintain status quo with respect to the land intended for construction of the Fatehgarh Sub-station. On 27.11.2019, the status quo orders passed by the Rajasthan High Court were vacated by the Hon'ble Single Judge after 327 days. However, Appeals were filed before the Division bench of the Rajasthan High Court, challenging the Judgment dated 27.11.2019.



- f. The Division bench of the Rajasthan High Court directed maintenance of status quo on entire land required for the Fatehgarh Sub-station. Thus, the said order again resulted in uncertainty over the location and adversely affected the Projects certainty. On 29.6.2021, the Division Bench of Hon'ble Rajasthan High Court vacated the earlier status quo orders. On 19.7.2021, FBTL granted access to the Petitioners to the land required for construction of the Fatehgarh Sub-station.
- g. The Project has also been adversely impacted by the order dated 19.4.2021 by Hon'ble Supreme Court of India in in WP (C) No. 838 of 2019 i.e M.K. Ranjitsinh & Ors. Vs. Union of India & Ors. (GIB Order), which has prohibited setting up of overhead transmission lines in Priority and Potential GIB habitat. Since the Project of the Petitioners is situated in the Potential GIB habitat, the Petitioners are impacted by the same.
- h. MNRE has issued office memorandum dated 3.2.2022 wherein it has stated that all renewable energy implementing agencies under MNRE (including SECI) are directed to extend SCOD of all renewable energy projects which are situated in GIB habitat to a date which is 30 days after the date of passing final order by Hon'ble SC in the application filed by Union of India for modification.
- i. On 12.4.2022, the Petitioner wrote letter to SECI requesting for extension of timelines under the PPA due to various reasons beyond the control of the Petitioner and there is a likelihood that the SCOD may be further extended by SECI. Placing reliance on Commission's order dated 9.3.2022 in RoP in Petition No.244/MP/2021, he prayed to the Commission to grant similar relief/ protection as granted by the Commission in the said order.

11. The learned senior counsel for the Petitioners requested the Commission to grant time to file its rejoinder in Petition No. 35/MP/2022 and Petition No. 36/MP/2022.

12. In response to a query of the Commission regarding the status of its projects of the Petitioner, the learned senior counsel for the Petitioner submitted that in view of the Hon'ble Supreme Court order dated 19.4.2021 in GIB area, it is not possible to construct an overhead transmission line in the GIB potential area. Further, the sub-station land was made available to the Petitioner after considerable delay.

13. After hearing the learned senior counsel for the Petitioner, the Commission observed that the issue of alignment of LTA with revised SCOD is a regulatory issue which is independent of the issue of extension of SCOD of the project due to *force majeure* events. Accordingly, the Commission directed the Petitioner to advance its submissions on the issue of alignment of LTA with revised SCOD.

14. The learned senior counsel for the Petitioners made the following submissions:

- a. On 1.4.2022, CTUIL intimated that LTA granted to the Petitioner would be effective from 2.4.2022 and Petitioner shall be liable to bear all commercial and operational liabilities corresponding to the quantum of LTA from the



effective date. Further, the Petitioner will establish a payment security mechanism.

- b. MNRE by way of its office memorandum dated 4.4.2022 requested MoP to take up the issue of extension of operationalisation of Petitioner's LTA in light of MoP direction dated 15.1.2021 issued to the Commission under Section 107 of the Electricity Act, 2003.
- c. PGCIL/ CTUIL may not recover the transmission charges for the period of mismatch.

15. In response, the learned counsel for PGCIL made the following submissions:

- a. The issue of DTL now stands addressed by the Commission in terms of clause 11.2 (c) of Revised Procedure for Grant of Connectivity to Projects Based on Renewable Sources to Inter-State Transmission System, according to which the last date for completion of the DTL shall be the SCOD of the project or as extended by the Renewable Energy Implementing Agency.
- b. MoP notification dated 15.1.2021 granting extension of commencement and period of LTA in case COD of the generation project is extended by competent authority on the grounds of *force majeure*, is not in consonance with the Regulations and Detailed Procedure notified by the Commission.
- c. As regards the land for the Fatehgarh sub-station, the status quo orders was passed by Rajasthan on 11.5.2018 whereas the Petitioner applied for grant of connectivity to ISTS for the Projects on 19.7.2018 and 28.7.2018. The entire details of the project site, land, area etc. was provided in the bidding document and as an investor, the due diligence was required to be conducted by the Petitioner.
- d. The Petitioner raised the issue with regard to the location of sub-station and officially took note of status quo orders passed by the Rajasthan High Court. The Petitioner requested to change the location of the sub-station to Badla. A meeting took place under the chairmanship of Secretary, MNRE on 20.3.2019 wherein Fatehgarh-Bhadla Transmission Limited (FBTL), Respondent No.3, informed that the pooling station will be completed by March, 2020.
- e. In the 21<sup>st</sup> JCC meeting of Northern Region Constituents, the Petitioner withdrew the request for change in the location of sub-station and confirmed that the modification for LTA/ Connectivity was not required for its generation projects. The Petitioner even after being aware of the status quo order of High Court, took a conscious decision to not to change the location of sub-station.
- f. As the issues surrounding the projects were being resolved, the Petitioners began the process of acquiring lands for the projects. In the minutes of the 10<sup>th</sup> JCC Meeting of Northern Region Constituents held on 25.3.2019, it was recorded that entire land for the projects was to be acquired by 8.10.2019.

16. Learned senior counsel for the SECI submitted that SECI has already granted the extension of SCOD of the Project by 556 days at the request of Petitioners due to (i) Covid-19 Pandemic and (ii) land at Fatehgarh Sub-station being not available due stay order by Rajasthan High Court. The said extension is expiring on 4.5.2022. As regards GIB issue, MNRE has issued office memorandum dated 3.2.2022 wherein renewable energy implementing agencies (including SECI) are directed to



extend SCOD of all renewable projects which are situated in GIB habitat to a date which is 30 days after the date of passing final order by Supreme Court. Accordingly, SECI vide email dated 20.3.2022 has requested the Petitioners to submit an undertaking to substantiate their claim for extension of time in terms of Office Memorandum dated 3.2.2022. The Petitioners are yet to provide the requisite undertaking. He submitted that once the undertaking is given by the Petitioner, the Petitioner will be entitled to 30 days after the date of passing final order by Supreme Court. As regards the representation given by the Petitioner on 12.4.2022 to SECI for further extension of SCOD of the project, SECI will take a view on the same.

17. In response to contention of CTUIL, learned senior counsel for the Petitioner referring to its letter dated 22.2.2019, wherein request was made to change to Connectivity and LTA granted at Fatehgarh Sub-station to Badla Sub-station, submitted that Petitioner was informed that the Bank Guarantee submitted with PGCIL will be forfeited and for this reason the request for change in sub-station was withdrawn by the Petitioner.

18. The Commission directed the Respondents, including BRPL and BYPL, to file their reply by 29.4.2022 on affidavit with a copy to the Petitioners in all the petitions and the Petitioner to file rejoinder, if any, by 6.5.2022. The Commission also permitted the parties to file their written submissions by 6.5.2022. The Commission further directed the parties to comply with the above directions within the specified timeline and no extension of time shall be granted.

19. Subject to above, the Commission reserved the order in the petitions.

**By order of the Commission**

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(V. Sreenivas)  
Joint Chief (Law)

