

CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi

Petition No. 192/MP/2021 along with IA No. 52/2022 & 62/2022

- Subject** : Petition under Sections 79(1)(c), 79(1)(f) and 79(1)(k) of the Electricity Act, 2003, read with Article 4.5(a) of the Power Purchase Agreement (PPA) dated 20.8.2019 executed between the Petitioner and Solar Energy Corporation of India Limited (SECI), read with the back-to-back Power Sale Agreements (PSAs) dated 17.06.2019 and 26.6.2019 executed between SECI and BSES Yamuna Power Limited (BYPL) and Tata Power Delhi Distribution Limited (TPDDL), respectively, seeking extension of Scheduled Commercial Operation Date (SCOD) and based on the extension of SCOD sought in the instant petition, seeking consequent deferment of operationalization of Long-Term Access (LTA) granted by the Central Transmission Utility (CTU) to the Petitioner.
- Date of Hearing** : 12.12.2022
- Coram** : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner** : SBSR Power Cleantech Eleven Private Limited (SBSRPCEPL)
- Respondents** : Solar Energy Corporation of India Limited (SECIL) and 2 Ors.
- Parties Present** : Shri Sanjay Sen, Senior Advocate, SBSRPCEPL
Shri Hemant Singh, Advocate, SBSRPCEPL
Shri. Lakshyajit Singh Bagdwa, Advocate, SBSRPCEPL
Ms. Lavarya Panwar, Advocate, SBSRPCEPL
Ms. Roberta Ruth Elwin, Advocate, SBSRPCEPL
Ms. Anushree Bardhan, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI
Shri Buddy Ranganadhan, Advocate, BYPL
Shri Hasan Murtaza, Advocate, BYPL
Shri Sameer Sharma, Advocate, BYPL
Shri Venkatesh, Advocate, TPDDL
Shri Jatin Ghuliani, Advocate, TPDDL
Shri Mohit Manshranami, Advocate, TPDDL



Record of Proceedings

Learned senior counsel for the Petitioner made detailed submissions during the course of hearing. The gist of his submissions is as follows:

- a) The Petitioner has moved an application by way of I.A No. 62/2022 under Order VI Rule 17 of the Code of Civil Procedure, 1908 for amendment of the petition including revision of prayers. The amendment is necessary as there has been substantial change in circumstances in terms of the rights and obligations of parties under the PPA and Power Supply Agreements (PSA).
- b) TPDDL's PSA was approved by the State Commission (DERC) on 31.12.2020. However, the said approval was stayed by APTEL vide interim order dated 23.2.2021 in an Appeal filed by SECI. Subsequently, vide judgment dated 2.7.2021 APTEL approved the PSA and BYPL's PSA is yet to be approved by the DERC.
- c) SECI issued a letter dated 30.6.2022 intimating that it is not considering the request for extension of SCOD beyond 20.11.2021 for its remaining 150 MW Project out of 300 MW. Therefore, the Petitioner vide letter dated 23.8.2022 requested SECI to grant NOC for 62.5 MW for third party sale till the matter is adjudicated by the Commission. As the SECI refused to accept the commissioning of 62.5 MW, the Petitioner filed I.A No. 52/2022 seeking direction to SECI to accept the commissioning certificate for 62.5 MW or to issue NOC for 62.5 MW for third party sale in open market/ power exchange.
- d) I.A No. 52/2022 was taken up for hearing on 22.8.2022 and the Commission allowed the Petitioner to commission 62.5 MW capacity during the pendency of the present petition, without prejudice to the rights of the Respondents, SECI and distribution companies in the present case.
- e) As per the joint meeting held on 26.8.2022, between SECI, TPDDL, BYPL and the Petitioner, SECI denied the extension of SCOD beyond 20.11.2021 for the remaining 150 MW. On the issue of procurement of 62.5 MW power, TPDDL and BYPL expressed their willingness to off-take the said power from 62.5 MW on the same terms and conditions of PPA and PSAs through SECI only, however without any additional financial implication on them.. The SPD in the meeting had stated that there are additional financial implications. As a result, the parties failed to mutually resolve the issues.
- f) On 31.8.2022, SECI wrote letter to the Petitioner, with copy to BYPL and TPDDL, wherein SECI allowed Petitioner to self-commission the 62.5 MW capacity and sale to third party.
- g) Thus, as on date only 150 MW is being supplied to SECI by the Petitioner since the contracted capacity now stands at 150 MW due to denial of extension of SCOD for balance 150 MW by SECI and failure on the party of BYPL to secure approval of their PSA. The 62.5 MW of balance 150 MW for which extension of SCOD not granted by SECI is self commissioned and being supplied to third party/ open market.
- h) Therefore, to bring on record the above developments as there has been material change in the circumstances, the Petitioner has filed I.A No. 62/2022 seeking amendment of the petition.
- i) The question for determination is the extent of the ability of SECI to take penal actions including invocation of bank guarantee for delaying supply of power beyond the SCOD.



- j) TPDDL and SECI have filed reply to the amended petition and rejoinder to the replies has also been filed. Accordingly, he prayed to the Commission to formally allow the amendment application.
- k) He further submitted that the Petitioner is only pressing the prayers in amended petition.

2. The learned counsel for the TPDDL submitted that it is not opposing the amendment application filed by the Petitioner but wanted to bring forth the following facts:

- a) Pursuant to PPA dated 20.8.2019 entered between the Petitioner and SECI for supplying 300 MW of power generated from its Project. SECI had executed back-to-back Power Supply Agreements (PSA) with TPDDL for 200 MW of solar power and BYPL for 100 MW of solar power.
- b) At the time of filing of the instant petition, the Petitioner had commissioned 150 MW out of 300 MW and the same was accepted by SECI. The Petitioner had sought revision of SCOD for its balance 150 MW.
- c) Subsequently, the Petitioner was ready with 62.5 MW. However, SECI refused to accept the commissioning of 62.5 MW and the balance which was under process. Accordingly, the Petitioner filed I.A No. 52/2022 inter-alia seeking direction to SECI to allow the commissioning of 62.5 MW or to issue NOC for 62.5 MW for sale to third party sale in open market.
- d) TPDDL during the course of hearing dated 22.8.2022 expressed its desire/ willingness to take the power from the Petitioner so as to fulfil its Renewable Purchase Obligation (RPO) .
- e) Referring to the Minutes of Meeting (MoM) dated 22.8.2022, he submitted that TPDDL and BYPL expressed their desire to off take power from 62.5 MW capacity on the same terms and conditions of PPA and PSA through only SECI, without any additional financial implications on them which was denied by the Petitioner.
- f) The Petitioner has not filed any petition for “Change in law” seeking Basic Custom Duty (BCD) and Safeguard Custom Duty which is regarded as additional financial implications. Therefore, as a buying discom, Respondent cannot agree to any other tariff except as determined in terms of PPA dated 20.8.2019.
- g) The mere fact that the commissioning of 62.5 MW has not been accepted by SECI, does not give right to the Petitioner to claim tariff from the discoms which is higher than the tariff as determined in terms of PPA dated 20.8.2019.
- h) The Petitioner in terms of the provisions of PPA cannot delete part capacity from the contracted capacity i.e. 300 MW. Relying on Article 4.6.2 and 13.3.5 and 13.3.6 of the PPA, he submitted that in case the SPD defaults in commissioning of Project beyond 24 months from the effective date, it shall be considered as an SPD event of default and the provisions of Article 13 shall apply.
- i) TPDDL is ready to honor its PPA obligations and is ready to take 62.5 MW capacity provided that the Petitioner makes out a case of “change in law”. Accordingly, prayed to direct the Petitioner to supply 62.5 MW power in proportionate to their respective share as per the PPA subject to the outcome of the instant petition.



3. In response, the learned senior counsel for the Petitioner submitted that the contention of the TPDDL that the Petitioner i.e. SPD is in event of default and has lost its ability to operate and continue with the Project is misplaced and incorrect. Referring to Article 13.5 of PPA, he submitted that in case there has been default by SPD, then a notice must be issued by SECI stating its intention to terminate the PPA, however no such notice was issued by SECI.

4. The learned counsel for SECI submitted that initially the petition was filed for extension of SCOD for commissioning of 62.5 MW and balance power. The Petitioner thereafter filed an I.A. seeking direction to SECI to accept and issue permission for commissioning for 62.5 MW or to issue NOC for 62.5 MW for third party sale in open market. On account of Covid-19 pandemic and various MNRE orders, the Petitioner was given multiple extensions of SCOD. Thereafter, out of balance 150 MW, 62.5 MW was ready on 20.6.2022 and the Petitioner vide letter dated 20.6.2022 had written to SECI seeking approval for commissioning of 62.5 MW. In light of extensions already granted by the SECI, SECI vide its letter dated 30.6.2022 had denied the request of extension of SCOD of the Project. She submitted that the Commission needs to first adjudicate the issue of whether there can be further extension of SCOD of project beyond 20.5.2022, only then the amendment application can be decided upon.

5. After hearing the parties, the Commission allowed the amendment to the petition. Accordingly, the Commission disposed of I.A No. 52/2022 and IA No.62/22022. The Commission further directed the parties to convene a meeting within 15 days to explore the possibility of an amicable solution to the issues involved in the petition and submit the minutes of the meeting before the next date of hearing.

6. The Commission further directed the parties to file their reply to the amended petition on affidavit by 30.12.2022 and rejoinder, if any, by 9.1.2023. The Commission further directed the parties to comply with the above directions within the timeline specified and observed that no extension of time shall be granted.

7. The Petition shall be listed for further hearing on 12.1.2023.

By order of the Commission

sd/-

(V. Sreenivas)
Joint Chief (Law)

