

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 134/MP/2022

Coram:

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 24th November, 2022

In the matter of

Petition under Section 79(1)(f) of the Electricity Act, 2003 read with inter alia Articles 9 and 16 of the Power Purchase Agreement dated 21.07.2017 (PPA) and applicable laws seeking amongst others declaration that the unilateral reduction of tariff by the Respondent No. 1 is arbitrary, illegal, violative of the provisions of the PPA, and non-est and direction to the Respondent No. 1 to reinstate and make payment to the Petitioner at the tariff of Rs 3.46/- per unit, in terms of the PPA.

And

In the matter of

Wind Five Renergy Limited
Survey No. 1837 and 1834,
Moje Jetalpur, ABS Tower,
Second Floor, Old Padra Road,
Vadodara- 390 007, Gujarat

...Petitioner

Vs.

1. Chief Managing Director,
PTC India Limited
2nd Floor, NBCC Tower,
15, Bhikaji Cama Place,
New Delhi- 110 066

2. Managing Director,
Solar Energy Corporation of India Limited,
6th Floor, Plate-B, NBCC Office Block,
Tower-2, East Kidwai Nagar, New Delhi-110 023

3. Chairman-cum-Managing Director,
North Bihar Power Distribution Company Limited
Third Floor, Vidyut Bhawan,
Bailey Road, Patna - 800 001, Bihar

4. Chairman-cum-Managing Director,

ORDER

The Petitioner, Wind Five Renergy Limited, has filed the present Petition along with the following prayers:

“(i) Allow the present Petition;

(ii) Declare that the unilateral reduction of tariff by the Respondent No. 1 in terms of its email dated 15.04.2021 (issued pursuant to the Respondent No. 4's letter dated 05.03.2021) as well as its letters dated 22.03.2022 and 19.04.2022 and/or otherwise is arbitrary, illegal, violative of the provisions of the Power Purchase Agreement dated 21.07.2017, and non-est;

(iii) Direct Respondent No. 1 to make payment of an amount of Rs. 25,34,54,409/- (Rupees Twenty-Five Crores Thirty Four Lakhs Fifty Four Thousand Four Hundred Nine); which has been arbitrarily/illegally deducted/withheld by Respondent No. 1 from the invoices raised by the Petitioner till 20.04.2022, along with applicable LPS amounting to Rs. 1,62,02,772/- (Rupees One Crore Sixty-Two Lakhs Two Thousand Seven Hundred Seventy-Two), payable in terms of the Power Purchase Agreement dated 21.07.2017; and

(iv) Direct the Respondent No. 1 to reinstate and make payment to the Petitioner at the tariff of Rs. 3.46/- per unit, as stipulated in the Power Purchase Agreement dated 21.07.2017, for the entire term of the said Purchase Agreement dated 21.07.2017.

(v) Direct the Respondent No. 1 to provide letter of credit/payment security mechanism to the Petitioner, considering the PP A tariff of Rs. 3.46/- (instead of the unilaterally and arbitrarily reduced tariff), in terms of Article 10.4.2 of the PPA.

(vi) Grant appropriate ex-parte ad-interim reliefs in terms of prayers (ii) to (iv) above, pending disposal of the present Petition.

(vii) Grant ex-parte ad-interim relief restraining the Respondents from taking any coercive action against the Petitioner, pending disposal of the present Petition; and

(viii) Grant such order, further relief(s) in the facts and circumstances of the case as this Hon'ble Commission may deem just and equitable in favour of the Petitioner.

2. The matter was last heard on 14.6.2022 and was admitted and notice was ordered to be issued after hearing the parties.

3. Subsequently, the matter was mentioned by Shri Sanjay Sen, learned senior counsel for the Petitioner on 10.11.2022 and submitted that the Respondent Nos. 1, 3 & 4 has denied the commissioning of the project on 4.7.2019 as certified by Respondent No. 2 (SECI). The Respondent Nos. 1, 3 & 4 has taken a stand that the date of commissioning of the project to be treated as 26.3.2020 by when the scheduling of power has commenced. Learned senior counsel further submitted that the Power Purchase Agreement dated 21.7.2017 (PPA) stands cancelled automatically in terms of clause 4.6.2 of PPA as the alleged date is falling beyond the maximum timeline/cutoff date permitted for commissioning of the project. Accordingly, the Petitioner has issued a letter dated 10.11.2022 to the Respondents intimating consequential automatic termination of PPA. Learned senior counsel had sought permission to file an additional affidavit to bring on record further development including the PPA termination. Accordingly, the Petitioner was allowed the same. Learned senior counsel further informed that the Petitioner would be seeking permission to withdraw the present Petition with liberty to file a proper fresh Petition seeking appropriate relief(s).

4. Accordingly, the Petitioner has filed an additional affidavit dated 11.11.2022 vide which it has brought to the notice that it has intimated all the Respondents about

automatic termination of the PPA in terms of Article 4.6. of PPA. The Petitioner has further submitted that the tariff reduction provisions contained in the PPA can only be applied in entirety and not in isolation, as per the whims and fancies of PTC/Bihar Discoms. Meaning thereby, that once the tariff reduction provision i.e. Article 4.6.1 of the PPA is applied, then, as an inevitable and automatic consequence of the same, Article 4.6.2 of the PPA which stipulates automatic termination of the PPA gets triggered, and the same is an inevitable consequence of the Respondent's own (alleged) stand regarding alleged delay of more than 27 months in commissioning of the Project.

5. The Petitioner has further submitted that it has, accordingly, issued the notice dated 10.11.2022 intimating automatic termination of the PPA and has duly informed the Respondents that in terms of Article 4.6.2, the PPA is not valid and/or enforceable beyond 4.7.2019, in light of their own stand that the commissioning date is to be considered as 26.3.2022. Accordingly, the Petitioner informed the Respondents that it be discharged from its obligation to supply power under the PPA and consequently, the power supplied by the Petitioner so far to PTC/Bihar Discoms is to be necessarily considered as power supply outside the PPA and that the differential amount receivable by the Petitioner shall be intimated in due course.

6. The Petitioner vide affidavit dated 10.11.2022 and has sought permission to withdraw the instant Petition in light of the aforesaid subsequent development, whilst reserving its right to file a fresh petition seeking appropriate reliefs in relation to the power supplied by the Petitioner so far to PTC/Bihar Discoms.

7. The Petitioner further through its letter dated 11.11.2022, has sought permission to withdraw the Petition with liberty to approach the Commission for appropriate reliefs in relation to the power supplied by the Petitioner so far to PTC/Bihar Discoms.

8. Subsequently, on 15.11.2022, the learned counsel for the Respondent, PTC mentioned the matter and submitted that PTC has no objection if the Petitioner is withdrawing the instant Petition without seeking liberty to approach the Commission for appropriate reliefs. Since the Petitioner has sought permission to withdraw the Petition with liberty to approach the Commission in future, the matter should be listed for hearing.

9. The Petition is being decided by circulation.

10. In view of the submissions of the learned counsel for the Petitioner, vide its letter dated 11.11.2022 and learned counsel for PTC, the Petitioner is permitted to withdraw the present Petition. If the Petitioner files the Petition on the subject in future, it will be considered in accordance with law.

11. Accordingly, the Petition No. 134/MP/2022 is disposed of as withdrawn in terms of the above.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member