

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 84/MP/2022

Coram:

**Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of Order: 16 .11.2022

In the matter of:

Petition under Section 79(1)(c) read with Section 79(1)(f) of the Electricity Act, 2003 for seeking a direction against Respondent No. 1 to extend the start date of LTA, as sought for by Petitioner No. 1 vide its letter dated 10.01.2022, and further restrain Respondent No. 1 from taking any coercive and precipitative measures, including but not limited to levying any penalty/ charges etc. for non-operationalisation of 150 MW out of the total 300 MW, on the premise of the start date of LTA being taken as 23.04.2022, till the final disposal of the present proceedings.

And in the matter of:

1. Avaada Energy Private Limited
304, Shoppers Plaza, Opp. Municipal Market
C.G. Road, Navarangpura
Ahmedabad, Gujarat – 380009

2. Avaada Sustainable RJ Project Private Limited
C-11, Sector 65,
Noida, Gautam Buddha Nagar,
Uttar Pradesh – 201301

...Petitioners

Versus

1. Central Transmission Utility of India Limited
Plot No. 2, Sector-29
Gurugram, Haryana – 122 001

2. Solar Energy Corporation of India Limited,
1st Floor, A-Wing, D-3,
District Centre, Saket, New Delhi – 110 017

...Respondents

For Petitioners : Shri Deepak Khurana, Advocate, AEPL
Shri Ashwini Kumar Tak, Advocate, AEPL

For Respondent : Shri Swapnil Verma, CTUIL
Shri Kashish Bhambhani, CTUIL
Shri Yatin Sharma, CTUIL



Shri Siddharth Sharma, CTUIL
Shri Ranjit Singh Rajput, CTUIL
Shri Bhanu Prakash Pandey, CTUIL

ORDER

Avaada Energy Private Limited (AEPL), Petitioner No.1 and Avaada Sustainable RJ Project Private Limited (ASRJPPPL), Petitioner No. 2 (hereinafter referred to as “the Petitioners”) have filed the present petition under Sections 79(1)(c) read with Section 79(1)(f) of the Electricity Act, 2003 seeking direction to the CTUIL, Respondent No.1, to extend the start date of Long Term Access granted to AEPL from 23.8.2021 to 12.5.2022.

2. AEPL has submitted that it has requested the CTUIL, vide its letter dated 10.1.2022, to extend the date of the LTA operationalization for the 300 MW capacity upto 12.5.2022, i.e. the extended SCOD of its solar power project in line with the Ministry of Power’s (MoP) directive dated 15.1.2021. The Petitioners have submitted that no reply has been received from CTUIL and therefore the present petition. The Petitioners have made the following prayers:

“a) Direct Respondent No. 1 to extend the start date of LTA, as sought for by Petitioner No. 1 vide its letter dated 10.01.2022;

b) Pass an interim order restraining Respondent No. 1 from taking any coercive and precipitative measures, including but not limited to levying any penalty/ charges etc. for non-operationalisation of 150 MW out of the total 300 MW, on the premise of the start date of LTA being taken as 23.04.2022, during the pendency and till the final disposal of the present proceedings; and

c) Pass any such other and further reliefs as this Hon’ble Commission deems just and proper in the nature and circumstances of the present case.”

Submissions of the Petitioners

3. The gist of the submissions made by the Petitioners are as follows:

a) AEPL was declared the successful bidder in the competitive bid process conducted by the SECI. Accordingly, AEPL has set-up a 300 MW solar power project (‘the Project’) at Bikaner, Rajasthan through its Special Purpose Vehicle, ASRJPPPL.



- b) AEPL was granted Stage-I & Stage-II Connectivity by CTUIL vide its letters dated 18.3.2020. Thereafter, AEPL applied for Long Term Access ('LTA') for 300 MW quantum of power from 23.8.2021 to 23.8.2046 and the CTUIL vide its letter dated 18.3.2020 intimated the grant of LTA for AEPL for 300 MW of quantum of power with the start date of LTA being 23. 8.2021.
- c) AEPL and CTUIL entered into a Transmission Agreement for Connectivity on 7. 7.2020 and Supplementary Agreement dated 12.2.2021.
- d) ASRJPPL and SECI entered into a Power Purchase Agreement on 8.6.2020 ('PPA') for supply of 300 MW, being the contracted capacity with the Scheduled Date of Completion ('SCOD') being 11.11.2021.
- e) Ministry of New and Renewable Energy (MNRE) vide its Office Memorandum dated 20.3.2020, recognised the outbreak of COVID-19 pandemic and consequent disruptions in the supply chain as '*force majeure*'. On account of the representations made by the 'Renewable Energy' ('RE') Developers, MNRE issued another Office Memorandum dated 13.8.2020, directing grant of extension of 5 months to RE Projects under implementation as on the date of the lockdown, i.e. 25.3.2020.
- f) On account of the second surge in the COVID-19 pandemic and consequent disruption in supply chain, SECI vide its letter dated 5.11.2020 extended the SCOD for completion of full 300 MW capacity till 25.2.2022.
- g) In pursuance to MoP's letter dated 27.7.2020 regarding extension of SCOD of various transmission projects for 5 months on account of COVID-19 and subsequent meeting dated 21.9.2020 between Central Electricity Authority (CEA), Transmission Service Providers, associated Long Term Transmission Customers, PGCIL and SECI, CTUIL vide its letter dated 16.12.2020 extended the start date of LTA from 23.8.2021 to 23.1.2022. Pursuant to the aforementioned extension in the start date of LTA, the LTA Agreement came to be supplemented vide Supplementary Agreement dated 30.3.2021 with the start date of the LTA as 23.1.2022.



- h) Pursuant to MoP's Letter dated 12.6.2021 and meeting dated 2.7.2021 held under the chairmanship of the CEA, CTUIL vide its letter dated 10.8.2021 intimated about the amendment to the earlier intimation dated 23.1.2022 extending the start date of LTA by 3 months, with the new start date LTA being 23.4.2022.
- i) Pursuant to the aforesaid extension, the LTA came to be further supplemented vide Supplementary Agreement dated 28.9.2021 with the start of the LTA mentioned as 23.4.2022.
- j) MNRE vide Office Memorandum dated 12.5.2021 and 29.6.2021, decided that entire period of disruption on account of second surge of COVID-19 i.e. 1.4.2021 to 15.6.2021 (both dates inclusive), be allowed as time extension. Accordingly, SECI vide its letter dated 23. 8.2021 extended the date of commissioning of the Project till 12.5.2022.
- k) In view of the aforementioned extension in SCOD, AEPL, on the basis of the MoP's order dated 15.1.2021 requested, vide its letter dated 10. 1.2022, CTUIL also to extend the LTA operationalisation date up to 12.5.2022. However, no response has been received from CTUIL.
- l) Part commissioning of 100 MW capacity and injection therefrom was certified by SECI on 14.1.2022. Further, part commissioning of 50 MW capacity and injection therefrom was certified by SECI on 7.2.2022.
- m) The date of commencement of LTA was always in sync and line with the date of SCOD i.e. the date of commissioning and generation of power by the Petitioners. For reasons beyond the control of the generator, the SCOD gets postponed and deferred. As a necessary corollary, the LTA is extended/ deferred. The said rationale is also found in the recent directives issued by the MoP on 15.1.2021, whereby it has issued directions to the Commission to amend the regulations so as to include provisions for extension of the Commercial Operational Date of a generating station and the start date of the LTA due to *force majeure* reasons/ events..



n) In terms of Clause 11.2 of the Revised Detailed Procedure for “Grant of Connectivity to Projects based on Renewable Sources to Inter-State Transmission System” dated 20.2.2021, a Stage-II Connectivity grantee, is required to complete the dedicated transmission line and generator pooling sub-station ‘on or before scheduled date of commercial operation of the generating project or extended/ delayed commissioning permitted by the Renewable Energy Implementing Agency or the distribution licensee or the authorized agency on behalf of distribution licensee’.

o) The Petitioners are liable for grant of extension of part operationalization of LTA of 150 MW out of the total 300 MW capacity, as sought for vide letter dated 10.1.2022. As per Regulation 13(1)(c) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 (‘2020 Sharing Regulations), ‘Solar Power Projects’ awarded through competitive bidding process, having commercial operation declared during period 13.2.2018 to 31.12.2022, are not liable to pay transmission charges and losses.

p) Since CTUIL has not extended the start date of LTA, as requested for by the Petitioners, it appears that CTUIL intends to claim transmission charges/ losses from the Petitioners. Such liability cannot be fastened on the Petitioners since the SCOD of the Project (as presently existing, including the extension thereof as sought for) is within 31.12.2022, with 150 MW out of 300 MW already having been commissioned and also operationalised. Therefore, notwithstanding the date of commencement of LTA, as long as the Project achieve SCOD by 31.12.2022, the Petitioners would not be liable to pay any charges.

4. The matter was listed for hearing on admissibility on 28.6.2022. After hearing the Petitioners and CTUIL, the Commission reserved the order on admissibility of the petition.

Analysis and decision



5. We have considered that this petition may be disposed at the admission stage of the case in view of admitted facts. The Petitioners have submitted that as per the Power Purchase Agreement dated 8.6.2020 entered into between ASRJPPPL and SECI, the SCOD of the Project was 11.11.2021. However, owing to the outbreak of Covid-19 pandemic and consequent disruption in the supply chain, the SCOD of the Project was extended by SECI to 12.5.2022 in terms of the various Office Memorandums of MNRE.

6. The start date of LTA was initially extended from 23.8.2021 to 23.1.2022 by the CTUIL, which was subsequently extended to 23.4.2022, as per MOP Orders. APEL, vide its letter dated 10.1.2022 had requested the CTUIL to extend the date of LTA operationalisation for the 300 MW capacity upto 12.5.2022 i.e. upto extended SCOD of the Project, citing MoP directions under Section 107 of the Act dated 15.1.2021. Petitioner has submitted that CTUIL did not respond to its letter.

7. We observe that Petitioner requested CTUIL to extend the date of operationalisation of LTA for entire 300 MW vide its letter dated 10.1.2022. However, it commissioned 100 MW capacity on 14.1.2022 and 50 MW capacity on 7.2.2022. Petitioner sought extension of date of operationalization of balance 150 MW under instant petition upto 12.5.2022. However, in the meanwhile during the pendency of the Petition, it commissioned 50 MW more before 23.4.2022 i.e. total 200 MW was commissioned before 23.4.2022. Hence Petitioner during proceedings of hearing sought extension for such 100 MW capacity which was not commissioned till 23.4.2022.

8. During the hearing dated 28.6.2022, the Petitioners submitted that they have achieved the commercial operation of the balance 100 MW of the Project on 11.5.2022. Thus, the concerned period for which the Petitioners are seeking



extension of start date of LTA and relief from the liability of transmission charges is only 18 days i.e. from 23.4.2022 to 11.5.2022. The Petitioners also apprised this Commission that the CTUIL has already raised the bills for transmission charges for the months of April, 2022 and May, 2022.

9. We have considered the submissions of Petitioners. The issue which arises for our consideration is whether the Petitioner is eligible for extension of date of operationalisation of LTA for capacity of 100 MW from 23.4.2022 to 11.5.2022. We deal with this issue in the subsequent paragraphs.

10. AEPL vide its letter dated 10.1.2022 requested CTUIL to extend the date of LTA operationalisation upto 12.5.2022 in view of the COVID Pandemic. AEPL's letter is extracted hereunder for ready reference:

"Dear Sir,

We wish to inform CTU that 100 MW part capacity out of 300 MW ISTS connected Solar Project in Bikaner, Rajasthan being implemented by M/s Avaada Sustainable RUProject Pvt Ltd. is planned for early part commissioning and part commercial operation (part-COD) with SECI and back-to-back buyers being Telangana (TSSPCC) and Tamil Nadu (TANGEDCO) around 15 January 2022.

Whereas the scheduled commissioning date (SCOD) for the project as extended by SECI on account of disruptions faced by the SPD in implementation of the project due to COVID, till 12 May 2022; however, CTU has granted LTA for 300 MW capacity for the project scheduled for operationalization w.e.f. 23 April 2022 onwards vide LTA Agreement signed between CTU and Avaada Energy Pvt Ltd on 07.07.2020 and its subsequent amendments signed.

We, therefore, wish to highlight before you that Ministry of Power (MOP), Govt of India has issued directives to CERC u/s 107 of the Electricity Act for alignment of LTA/extension of Open Access till extended SCOD for RE projects vide OM No. 23/12/2016 R&B R dated 15.01.2021

Hence, in the above context we hereby request CTU to kindly extend the LTA operationalisation date for the said 300 MW capacity upto 12th May 2022 in line with MoP directives."

11. The Petitioner has sought extension of the date of LTA operationalization on the ground that the Petitioner faced difficulties in implementation of the Project due to COVID. The Petitioner, AEPL, has further referred to the extension of SCOD



granted by SECI till 12.5.2022 and the MoP's direction under Section 107 of the Electricity Act, 2003 for alignment of LTA/extension of Open Access till extended SCOD for RE projects while seeking extension of the date of operationalization of the LTA.

12. As per the Power Purchase Agreement entered into between ASRJPL and SECI dated 8.6.2020, the SCOD of the Project was 11.11.2021. CTUIL, vide letter dated 18.3.2020, intimated the grant of LTA to the Petitioner according to which the start date of LTA was 23. 8.2021. It shows that there is gap of 79 days between the date of start of LTA (23.8.2021) sought and the SCOD of the Project (11.11.2021).

12. A bare perusal of the LTA intimation letter dated 18.3.2020, quoted hereinbelow, shows that the LTA has been granted with identified transmission system.

6	Details for Long Term Access (LTA)	
6a	Quantum (MW) for which LTA is granted	: 300 MW
7	Injection of Power (more than one only in case of single Drawl)	
	Entity-1	: Avaada Energy Private Limited
	State/Region	: Rajasthan / NR
	Quantum-1	: 300 MW
	Connectivity with the Grid	: 400kV switchyard of Bikaner (PG) S/s
8	Drawl of Power (more than one only in case of single Injection)	
	Entity-1	: Target
	State/Region	: SR
	Quantum-1	: 300 MW
	Connectivity with the Grid	: Interconnection of ISTS network with STU network
9	Transmission System for LTA	: As per Annexure-I
9a	Date from which LTA is granted	: 23/08/2021 or commissioning of ISTS for LTA as per Annexure-I , whichever is later
9b	Date upto which LTA is granted	: 23/08/2046
9c	Implementing Agency for transmission system required for LTA	: CTU(POWERGRID) / ISTS Licensee



- 9d Agencies between which agreement is to be signed for implementation of transmission system : Avaada Energy Private Limited and CTU(POWERGRID) / ISTS Licensee
- 9e Amount (in Rupees) for which Bank Guarantee is to be provided by the applicant : 15 Crore [@Rs. 5 lakh/MW]
- 10 Transmission Charges Applicable : Transmission charges as per CERC (Sharing of ISTS Charges & Losses) Regulations, 2010 & amended from time to time.

Annexure-I

Tr. System for LTA applications at Bikaner (PG)

- 1) Establishment of 765/400kV, 2x1500 MVA S/s at suitable location near Khetri
- 2) Bikaner(PG) – Khetri 765kV D/c line
- 3) Khetri – Jhatikara 765kV D/c line
- 4) Khetri – Sikar (PG) 400kV D/c line (Twin AL59)
- 5) Ajmer (PG) – Phagi 765kV D/c line
- 6) Augmentation with 765/400kV, 1x1000MVA transformer (3rd) at Bhiwani (PG)
- 7) Suitable bus splitting arrangement at 765/400/220 kV Moga S/s
- 8) Associated Reactive Power Compensation

13. We are of the view that an LTA Applicant has to seek LTA keeping in view the commercial implications of such grant. In the instant case, the start date of LTA has been solely based on Petitioner's assessment, requirement and as agreed by the Petitioner. There is no reference of PPA clauses either in the LTA intimation letter dated 18.3.2020 or LTA Agreement dated 7.7.2020 regarding extension of date of operationalization of LTA or alignment of the LTA to the extended SCOD of the Project. Further, as per the LTA intimation letter dated 18.3.2020 and LTA Agreement dated 7.7.2020, the date of operationalisation of LTA was 23.8.2021. However, as per the PPA dated 8.6.2020, the SCOD of the Project was 11.11.2021. Thus, as stated above there is a mismatch of 79 days between the date of operationalisation of LTA and SCOD of the Project from the beginning.



14. It is moreover observed that neither the LTA Agreement nor the 2009 Connectivity Regulations provide for extension of the start date of operationalization of LTA.

15. As regards the Petitioners contention that SECI has already extended the SCOD of the Project to 12.5.2022, we are of the view that extension of SCOD does not entail extension of the date of LTA operationalization. Moreover, as observed earlier, the Petitioners have themselves envisaged time gap (of 79 days) between the date of operationalization of LTA and the SCOD of the Project. Therefore, there is no ground for aligning the date of LTA operationalization with the extended SCOD of the Project.

16. We have noticed that the Petitioner in its letter dated 10.1.2022 has requested CTUIL to extend the date of operationalisation of LTA in light MoP's direction dated 15.1.2021 under Section 107 of the Electricity Act, 2003. The present Connectivity Regulations and other regulations notified by the Commission under Section 178 of the Electricity Act, 2003, do not provide for extension of the date of LTA operationalization. As such, we are not inclined to extend the date of operationalization of the LTA granted to the Petitioners.

17. We also reject the contention of the Petitioner that as per Regulation 13(1)(c) of the 2020 Sharing Regulations, 'Solar Power Projects' awarded through competitive bidding process, having commercial operation declared during period 13.2.2018 to 31.12.2022, are not liable to pay transmission charges and losses. The above regulations of the 2020 Sharing Regulations clearly provide that waiver of transmission charges is for generation of electricity which is after COD of the



generating station. The same cannot be read as providing relief from payment of transmission charges due to delay of the CoD of the generation project.

18. Accordingly, CTUIL is well within its right to raise bills upon the Petitioner for the period of mismatch between date of operationalization of LTA and the commissioning of the Project in accordance with law.

19. In view of foregoing discussions, we are of the view that the Petitioner is not having any cause of action for the relief sought and further not entitled for extension of date of operationalisation of LTA upto to the extended SCOD of the Project

20. Accordingly, Petition No. 84/MP/2022 is disposed of at the stage of admission.

Sd/
(P. K. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(I. S. Jha)
Member

