

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.202/MP/2023

- Subject : Petition under Section 79(1)(b) & (f) of the Electricity Act, 2003 read with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Article 12 of Power Purchase Agreement dated 8.12.2021 seeking Working Group Report 2022 as Change in Law Event.
- Date of Hearing : **20.9.2023**
- Coram : Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : T.P. Saurya Limited (TPSL)
- Respondents : Kerala State Electricity Board Limited (KSEBL)
- Parties Present : Shri Venkatesh, Advocate, TPSL
Shri Abhishek Nangia, Advocate, TPSL
Shri Mohit Gupta, Advocate, TPSL
Shri Kunal Veer, Advocate, TPSL
Shri Prabhas Bajaj, Advocate, KSEBL
Shri Priyanshu Tyagi, Advocate, KSEBL

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed *inter-alia* seeking an in-principle declaration of the 'Report of the Working Group in respect of Data Submission Procedure and Verification of Compliance to the CEA Regulation on Technical Standards for Connectivity to the Grid by RE Generators' (Working Group Report, 2022) issued by the Central Electricity Authority (CEA) as a Change in Law event. Learned counsel mainly submitted as under:

- (a) Working Group Report, 2022, as issued by CEA, imposes certain additional requirements on the existing CEA Regulations, namely, (a) the requirement for designing the solar generating station at 51°C as against the existing design temperature of 50°C, which is a new requirement requiring a change in the configuration of the Project, and (b) the requirement of demonstrating 'Rated Output' while complying with Regulation B2(1) of the CEA Regulations, 2013.
- (b) Before the issuance of the Working Group Report, 2022, the Project of the Petitioner was envisioned and designed based on the prevailing CEA Regulations, wherein there were no such requirements for designing the solar generation station at 51°C and the power factor shall be maintained at 'Rated Output'.
- (c) Working Group Report, 2022, having been issued after the submission of the bid, i.e. 8.3.2021, qualifies as a Change in Law event under Article

12.1.1 of the PPA. Article 12.1.1(2) of the PPA provides that a change in the interpretation or application of any Indian law by any Indian Governmental Instrumentality having the legal power to interpret or apply such law, qualifies as a Change in Law. By Working Group Report, 2022, CEA has sought to interpret/apply its own Regulations in a completely changed manner and has proceeded to impose certain additional requirements under the CEA Regulations. CEA qualifies to be an Indian Governmental Instrumentality, that is capable of interpreting/applying its own regulations.

(d) The requirements stipulated by the Working Group Report, 2022, are also being strictly enforced by the CEA, CTUIL, and/or NLDC/SLDC and the First Time Charging Permission and/or grant of connectivity is subject to compliance with such requirements.

2. The Learned counsel for the Respondent, Kerala State Electricity Board Limited, accepted the notice and objected to the contention of the Petitioner to the effect that the Working Group Report, 2022, qualifies as a Change in Law. Learned counsel submitted that there has been no change in any of the CEA Regulations, pre & post-bid, submission dates and that the Working Group Report, 2022, cannot be considered as law/Change in Law under the PPA. Learned counsel submitted that in any case, if the Petitioner had any grievance with regard to the Working Group Report, 2022, laying down certain requirements, that were not as per the CEA Regulations, then the appropriate course of action for the Petitioner would have been to challenge such a Report rather than seeking Change in Law relief under the PPA, especially when there has been no change in the concerned CEA Regulations. Learned counsel objected to the maintainability of the Petition on the ground that the parties had agreed to the jurisdiction of the State Commission.

3. Considering the submissions made by the learned counsel for the parties, the Commission ordered as under:

(a) The Petitioner to implead CTUIL and NLDC as party to the Petition and file a revised memo of parties within a week.

(b) Issue notice on the maintainability and merits to the Respondent(s) including the impleaded Respondents.

(c) The Respondents may file their replies on maintainability as well as on merits, if any, within four weeks with a copy to the Petitioner, who may file its rejoinder within three weeks thereafter.

(d) CEA is requested to furnish its clarification on the following aspects within three weeks:

(i) Whether the Working Group Report has been issued officially as a part of the connectivity standards (the Report is not available on the website). A copy of the signed report may be submitted.

(ii) Whether requirements for the generators included in the Report are new ones or are just a clarification of the requirements mentioned in the Technical Standards of Connectivity to the Grid issued in 2013.

(e) The Petitioner is directed to submit, along with relevant documents on an affidavit, within three weeks the date when the Petitioner was directed to comply with the norms mandated in the Working Group Report, 2022, and whether it has complied.

(g) NLDC is directed to submit on an affidavit the clarification within three weeks whether RE developers who declared COD after 15.10.2013 were required to comply with reactive power capabilities at Rated Output at POI before the Working Group Report, 2022. if yes. a certified copy of the same and the status of their compliance.

4. The Petition will be listed for hearing on **22.12.2023**.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)