

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 227/MP/2022 along with IA No. 55/2022

- Subject : Petition under Section 79 of the Electricity Act, 2003 seeking to set aside Transmission Charges bills raised by CTUIL and declaration that the Petitioners stands discharged from performance under, Transmission Service Agreement dated 29.1.2018, LTA Agreement dated 29.1.2018 (Tranche 1), Agreement for Long Term Access dated 6.9.2018 (Tranche 2) and Bipartite Connection Agreement dated 11.1.2019 executed between ReNew Power Pvt. Ltd. and Central Transmission Utility of India Ltd. (earlier Power Grid Corporation of India Ltd.) on account of Force Majeure and impossibility of performance under the Power Purchase Agreement dated 23.5.2022 executed with Solar Energy Corporation of India Ltd and consequential relief thereto.
- Petitioners : ReNew Wind Energy (AP2) Private Limited (RWEPL) and Anr.
- Respondents : Central Transmission Utility of India Limited (CTUIL) and 2 Ors.

Petition No. 56/MP/2022

- Subject : Petition under Section 63 and Section 79 of the Electricity Act, 2003 read with Competitive Bidding Guidelines and Articles 11 and 13 of the Power Purchase Agreement dated 23.5.2018 executed between ReNew Wind Energy (AP2) Private Limited and Solar Energy Corporation of India Limited.
- Petitioner : ReNew Wind Energy (AP2) Private Limited (RWEPL)
- Respondents : Solar Energy Corporation of India Limited (SECI) and 2 Ors.
- Date of Hearing : **24.1.2023**
- Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Parties Present : Shri Sajan Poovayya, Senior Advocate, RWEPL
Shri Vishrov Mukerjee, Advocate, RWEPL
Shri Girik Bhalla, Advocate, RWEPL
Ms. Priyanka Vyas, Advocate, RWEPL
Ms. Raksha Agarwal, Advocate, RWEPL
Shri Vasav, RWEPL
Ms. Anushree Bardhan, Advocate, SECI
Ms. Suparna Srivastava, Advocate, CTUIL
Shri Tushar Mathur, Advocate, CTUIL
Shri Swapnil Verma, CTUIL



Shri Siddharth Sharma, CTUIL
Shri Ranjeet Singh, CTUIL
Ms. Muskan Agarwal, CTUIL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI
Ms. Anushree Bardhan, Advocate, SECI
Ms. Neha Singh, SECI
Ms. Aditee Nitnavare, SECI
Ms. Poorva Saigal, Advocate, HPPC
Shri Shubham Arya, Advocate, HPPC
Shri Ravi Nair, Advocate, HPPC
Ms. Reeha Singh, Advocate, HPPC
Ms. Shikha Sood, Advocate, HPPC
Ms. Anumeha Smiti, Advocate, HPPC

Record of Proceedings

The cases were called out for virtual hearing

2. Learned senior counsel for the Petitioner in Petition No. 227/MP/2022 mainly submitted as under:

(a) The Petitioner has filed IA No. 55/2022 seeking stay on levy and recovery of the transmission charges raised by the Respondent No. 1, Central Transmission Utility of India Limited (CTUIL) and issuance of appropriate directions to CTUIL to not take any coercive steps against the Petitioners during the pendency of the present petition. The said IA is listed for hearing today after having been orally mentioned on 19.1.2023 apprehending initiation of coercive steps by CTUIL including regulation of power supply from the Petitioners' Projects under the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 ('LPS Rules').

(b) Levy of the transmission charges by CTUIL upon the Petitioner is erroneous as the underlying contract i.e. Power Purchase Agreement (PPA) dated 23.5.2018 for 100 MW stands terminated/ frustrated on account of various force majeure events and events beyond the control of the Petitioners. Transmission Agreements (TSA & LTAs) had been entered into for the sole purpose of the evacuation & supply of power from the Petitioner's 100 MW wind power project ('Project') to be set-up under the PPA dated 23.5.2018. Since inability to utilize the connectivity arrangement is on account of force majeure events, the Petitioners stand discharged from its obligations under the Transmission Agreements to the extent of such force majeure events and cannot be penalized with levy of transmission charges.

(c) Since issue of frustration of the PPA on account of force majeure events is already pending before the Commission in Petition No. 56/MP/2022, till the adjudication of the Petition No. 56/MP/2022 along with the present Petition No. 227/MP/2022 & IA No. 55/2022, CTUIL ought to be directed not to take any coercive steps against the Petitioner.



(d) The invoices on the Petitioner have been raised by CTUIL only after the filing of the present petition and without prejudice to the above-mentioned force majeure events which continued till 31.8.2021, for the period from November, 2019 to October, 2020, CTUIL has wrongly computed the transmission charges based on Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 ('Sharing Regulations 2010') as the transmission charges, if any, were to be levied/computed as per the Central Electricity Regulatory Commission (Sharing of Inter-state Transmission Charges and Losses) Regulations, 2020 ('Sharing Regulations 2020').

(e) In terms of Regulation 13(3) of the Sharing Regulations, 2020, a generating station is liable to pay transmission charges only if the COD of the generating station has been delayed and the Associate Transmission System has achieved COD. However, in the present case, there is no delay in attaining COD as the Project has been frustrated on account of force majeure events. Since it is beyond the control of the Petitioners, they cannot be penalised and be liable to pay transmission charges.

(f) Ministry of Power (MoP) directions dated 15.1.2021 issued under Section 107 of the Electricity Act, 2003 ('the Act') along with MoP Orders dated 15.1.2021, 23.11.2021 and 30.11.2021 provide that where COD of a Project has been extended by the Competent Authority, the commencement period of the LTA shall also get extended accordingly and it would be deemed that the period of ISTS waiver is extended.

(g) In the present case, Solar Energy Corporation of India Ltd. (SECI) had extended SCOD of the Project up to 31.8.2021. Therefore, in terms of the Sharing Regulations 2020 read with the Section 107 of the Act directions issued by MoP, no transmission charges can be levied for the period prior to 31.8.2021. Even if the transmission charges are payable, the same ought to be computed in terms of Regulation 13(7) of the Sharing Regulations 2020 i.e., at the rate of 10% of the transmission charges since LTA had been granted on existing margins.

(h) Further, in the set of similar circumstances vide order dated 8.7.2022 passed by APTEL in Appeal No. 260 and 261 of 2022 titled ACME Deoghar Solar Power Limited & Ors. v. CERC & Ors., the APTEL while directing for stay against recovery of transmission charges from a solar power producer, has formed a *prima facie* view that the PPA and the LTA are interlinked documents and observed that the Commission ought to have given effect to Ministry of Power's Orders dated 15.1.2021 and the Section 107 of the Act.

3. In response to the query of the Commission that in the order dated 23.5.2020 in Petition No. 525/MP/2020 and order dated 8.6.2022 in Petition Nos. 103/MP/2021 and Ors., the Commission has already taken the view that PPA and LTAA are not interlinked, the learned senior counsel placed the reliance on the Petitioner's letter dated 1.2.2019 to CTUIL and CTUIL's letters dated 8.3.2019 & 16.5.2019, wherein CTUIL was informed that 100 MW power from the Petitioners' Project was being firming against the beneficiaries of the power i.e., 50 MW in Eastern Region (for GRIDCO Ltd.) and 50 MW in Northern Region (for UHBVNL and DHBVNL).

4. Learned counsel for the Respondent No.1, CTUIL in Petition No. 227/MP/2022 mainly submitted as under:



(a) The Commission has already taken a view on the matters concerning the extension of start date of LTA in its earlier orders. While the legal issue involved in the matter is covered by the earlier orders, the Commission may consider the matter on its individual facts as the force majeure events pleaded in each case(s) are different. Reliance placed by Petitioners on APTEL's order dated 8.7.2022 is misplaced, since APTEL has only stayed recovery of transmission charges and *per se* the orders of the Commission have not been stayed. It is settled law that an interim stay order operates from the date of the grant of stay and it only *inter se* the parties.

(b) Petition No. 227/MP/2022 is a premature - dealing with the consequential issues. Until and unless the main issues raised by the Petitioners in Petition No. 56/MP/2022 are dealt with and decided by the Commission, the consequential issues should not be taken up independently. For proper adjudication of the matter, it is essential that both the Petition No. 227/MP/2022 along with I.A. 55/2022 and Petition No. 56/MP/2022 be heard together on 21.2.2023.

(c) Raising of invoices by CTUIL cannot be seen as a coercive step rather it is the statutory duty of CTUIL to raise the said invoices. As per the LPS Rules and the NLDC Procedure notified thereunder, CTUIL has an obligation to submit the details of outstanding dues to Power Finance Corporation/PRAAPTI Portal. RLDC is the administrative authority which undertakes the implementation of regulation of power supply under the LPS Rules and CTUIL has no discretion in the communication of outstanding billing to PRAAPTI Portal under the aforesaid Rules & Procedure. Thus, IA No. 55 of 2022 for grant of non-coercive action is not maintainable against the CTUIL. Further, presently only STOA is being curtailed whereas LTA curtailment (10% onwards) shall be applicable only from 20.2.2023. There is no LTA curtailment for which an interim protection may be required.

(d) Billing has been undertaken upon the Petitioners for approximately Rs. 92 crore under the two LTA grants of 300 MW and 50 MW respectively. While the LTA for 300 MW had been operationalized w.e.f 1.5.2019, the LTA for balance 50 MW had been operationalized w.e.f 23.11.2019.

(e) The Petitioner has so far only commissioned 230.1 MW of generation capacity and the rest of the capacity of about 119.9 MW is expected to be commissioned by 30.6.2023. Therefore, a further mismatch for the un-commissioned capacity is likely to take place in future. Further, since the commissioning of 18 MW (referred as Phase-IV of the generation project) on 6.2.2021, no further addition in the generation capacity has taken place over the last two years.

5. Learned senior counsel for the Petitioners further sought liberty to file an affidavit bringing on record all the details of the bills raised by CTUIL and clear the situation with respect to 50 MW of the 300 MW of the project. Learned counsel for CTUIL also sought permission to file the Minutes of the Joint Coordination Committee Meeting held on 27.9.2022 with the Minutes of the relevant Joint Co-ordination Committee Meetings of Western Region on affidavit.

6. Learned counsel for the Respondent, SECI, submitted that SECI has no objection for listing the both the Petitions i.e. Petition No. 227/MP/2022 and Petition No. 56/MP/2022 together on 21.2.2023.



7. After hearing the learned senior counsel and learned counsel for the parties, the Commission directed as under:

(a) The Petitioners to pay 10% of outstanding transmission charges to CTUIL within a week.

(b) The Petitioners and CTUIL to convene a meeting to clarify and confirm the details of the billing. Thereafter, the Petitioners shall file an affidavit within a week, giving the details of the minutes of meeting and the details of the bills raised.

(c) CTUIL shall not take any coercive measure till the next date of hearing i.e. 21.2.2023.

(d) CTUIL to file affidavit giving details of Tranche 1 (300 MW) and Tranche 2 (350 MW) ReNew Projects of total capacity 650 MW (SECI Tranche II & III) with SCOD, revised SCOD, dates of LTA Granted, dates of LTA effective and actual COD dates of the projects of each tranche along with relevant documents.

8. The Petitions shall be listed for hearing on 21.2.2023.

By order of the Commission

Sd/-

(T.D. Pant)

Joint Chief (Law)