

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.26/MP/2024

- Subject : Petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 seeking declaration of Change in Law and entitlement of compensation for the Change in Law under the Power Purchase Agreement and for appropriate directions.
- Date of Hearing : **5.3.2024**
- Coram : Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Scatec India Renewables One Private Limited (SIROPL).
- Respondents : Solar Energy Corporation of India Limited (SECI) and 2 Ors.
- Parties Present : Shri Dinesh Pardasani, Advocate, SIROPL
Shri Bibin Kurian, Advocate, SIROPL
Shri Kaustubh Shrinarain, Advocate, SIROPL
Ms. Shikha Ohri, Advocate, SECI
Shri Karthik Sharma, Advocate, SECI

Record of Proceedings

At the outset, learned counsel for the Petitioner submitted that in the present Petition, the Petitioner has sought the interim reliefs, viz(i) pending the final adjudication of the present Petition, stay the Petition No. 337/AT/2023 filed by the SECI for the adoption of tariff, (ii) decide present Petition along with the Petition No. 337/AT/2023, and, (iii) extend the date of FC (beyond the extension already available to the Petitioner due to the delay in tariff adoption) until the issue of applicability of ISTS charges is determined by this Commission. Learned counsel further recapitulated the background of the matter and mainly submitted as under:

(a) At the time of submission of the bid, there was a waiver of inter-State transmission charges and losses for the Renewable Projects to be commissioned by 30.6.2025 in terms of the Ministry of Power's orders dated 30.9.2016, 23.11.2021 and 30.11.2021. However, after the conclusion of the bid process and the issuance of a Letter of Award dated 19.1.2023, the Ministry of Power, by its order dated 9.6.2023, modified the condition for the benefit of waiver of the ISTS charges and *inter-alia*, added a new condition, namely, a waiver will be applicable only if an extension in Scheduled Commissioning date (SCD) is granted for six months at a time and not more than two times.

(b) The above restriction on the availability of the ISTS charges waiver by the Ministry of Power (i.e. for a maximum period of 1 year beyond 30.6.2025) has changed the basis of RfS and is not in accordance with the provisions of the PPA dated 28.6.2023, which does not provide for any restriction in

extension of SCD of the Project on stated grounds vis-à-vis the waiver of the ISTS charges.

(c) There has been a substantial change in the ground realities, and the tariff as sought to be adopted by this Commission under Section 63 proceeding (337/AT/2023) was submitted way back in the year 2022, is no longer aligned with the prevalent market conditions. During the bidding process, there was no restriction in the extension of the SCD of the Project and the applicability of waiver of ISTS charges. However, the MoP's order dated 9.6.2023 has modified and limited the benefit of waiver of ISTS charges by adding a new condition, namely, that waiver will be applicable only if an extension in the SCD is granted for six months at a time and not more than two times. Therefore, the bidding condition has been altered significantly. In this scenario, where SCD gets extended beyond 26.6.2026, Respondents will have no power to waive the ISTS charges in terms of the MoP's order dated 9.6.2023. Therefore, the Petitioner will be left remediless as there will be no relief under the PPA or under government regulations to get the ISTS charges waived.

(d) In the Petition seeking approval of PSA before the OERC, SECI represented that the ISTS transmission charges shall not be applicable for this project and that the project will be completed in the 3rd quarter of the financial year 2024-25. Based on the above representation of SECI, the OERC has approved the PSA for procurement of wind power.

(e) The SCD for the Project has already been extended up to February 2026 with a possibility that the same may be extended beyond 26.3.2026 due to a delay in the availability of GSS and other ancillary issues.

(f) The Petitioner is already facing the uncertainty surrounding Koppal-II sub-station availability/timelines and other ancillary issues, including delay in tariff adoption as narrated in the Petition, and these issues are likely to delay the overall Project execution. In such case, even if its SCD gets extended (beyond 30.6.2026), the Petitioner's Project will not be able to avail waiver of the ISTS charges as a result of the Ministry of Power's Order dated 9.6.2023 and any liability of the transmission charges & losses upon the Petitioner would render the Project completely unviable.

2. Learned counsel for Respondent No.1, SECI, opposed the interim relief sought by the Petitioner seeking to tag of the present Petition with Petition No337/AT/2023 filed by SECI for the adoption of tariff mainly on the following grounds:

(a) Petition No. 337/AT/2023 was filed by SECI on 29.9.2023. The Commission admitted the said Petition on 13.12.2023 and directed the Respondents therein (including the Petitioner in the present proceedings) to file their respective replies within a period of two weeks. However, the Petitioner chose to file its reply in the tariff adoption petition after a substantial delay only on 30.1.2024. Whereas the Petitioner has chosen to file the present Petition on 25.1.2024. Thus, the Petitioner may not be permitted to cause any further delay in the tariff adoption petition

(b) In terms of Articles 2.1.3 and 2.1.4 of the PPA, in case the order of adoption of tariff is delayed, there shall be a corresponding extension in the Scheduled Financial Closure and the Scheduled Commissioning Date, and neither party shall be liable for the payment of any compensation to the other party for any loss or damage on account of such delay. Therefore, the Petitioner may not be permitted to cause any further delay in the tariff adoption proceedings.

(c) OERC vide its order dated 3.6.2023, approved the PSA. Whereas the PPA was executed by the Petitioner on 28.6.2023, i.e. after the Ministry of Power's Order dated 9.6.2023. Therefore, no prejudice will be caused to the Petitioner if the Commission proceeds with the tariff adoption proceedings without tagging it with adjudication of issues raised by the Petitioner in the present proceedings.

(d) The Petitioner in the present case has to first demonstrate that the claims raised by it fall under Article 12 (Change in Law) of the PPA. The Petitioner has itself sought prayers in the alternate (a) declaration of the MoP order dated 9.6.2023 as a Change in Law under the PPA; or (b) in the alternative, in case the Commission is not willing to grant prayer (a), permit the Petitioner to withdraw from the Project without any liability. Pertinently, the PPA was executed by the Petitioner on 28.6.2023, after the MoP order dated 9.6.2023.

(e) The reliance placed by the Petitioner on cited judgments is based on the different factual matrix and can be distinguished, and, SECI may be granted the liberty to file a short reply for placing a copy of judgments being relied on by the SECI in this regard.

(f) The Petition No.337/AT/2023 has been filed under section 63 of the Electricity Act wherein the Commission has to examine whether the Guidelines issued by the Ministry of Power, Government of India were followed or not before finalisation of the tariff in a transparent manner.

3. Learned counsel for the Petitioner submitted that the PPA was executed by the Petitioner on 28.6.2023, i.e. after the Ministry of Power's Order dated 9.6.2023, which was based upon the response received from Respondent, SECI vide its email dated 22.6.2023 wherein SECI has assured that the provisions of the RfS and the PPA will be applicable and necessary action will be taken.

4. After hearing the parties, the Commission permitted the parties to file their respective written submissions on the interim relief, if any, within a week with a copy to the other side. The Commission reserved order on the interim relief.

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