

CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI
Petition No. 373/MP/2019

Subject : Petition under Section 79(1)(f) of the Electricity Act 2003 for (i) approval of "Change in Law" and (ii) seeking an appropriate mechanism for grant of an appropriate adjustment/ compensation to offset financial/ commercial impact of change in law events on account of imposition of safeguard duty on solar cells/ modules in terms of Article 12 read with Article 16.3.1 of the Power Purchase Agreement dated 27.4.2018 between SB Energy Four Private Limited and Solar Energy Corporation of India Limited

Date of Hearing : 11.1.2022

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : SB Energy Four Private Limited (SBEFPL)

Respondents : Solar Energy Corporation of India Limited (SECI) and Ors.

Parties Present : Shri Sujit Ghosh, Advocate, SBEFPL
Ms. Mannat Waraich, Advocate, SBEFPL
Ms. Pratiksha Chaturvedi, Advocate, SBEFPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Poorva Saigal, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Shri Ravi Nair, Advocate, SECI
Ms. Neha Singh, SECI

Record of Proceedings

Order was reserved in the matter. However, consequent upon issuance of Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('the Change in Law Rules') by the Ministry of Power, Government of India providing for a procedure dealing with the Change in Law cases, the matter is re-listed.

2. During the course of hearing, the learned counsel for the Petitioner submitted that the Change in Law claims of the Petitioner arising out of the imposition of safeguard duty on solar cells/ modules have already been reconciled between the Petitioner and SECI and that SECI has already started making payment of such reconciled amounts. Accordingly, the Commission may pass an appropriate order in the matter as the present case is covered by the decision of the Commission dated 20.8.2021 in Petition No. 536/MP/2020. The learned counsel further submitted that directing the Petitioner to follow the procedure described in the Change in Law Rules at this stage will only delay the matter.

3. The learned senior counsel for the Respondent, SECI also confirmed that SECI has reconciled the claims of the Petitioner and started making payments to the Petitioner in terms of the direction of the Appellate Tribunal for Electricity vide order dated 23.11.2020 in OP No. 12/2020. However, the distribution licensee, Uttar Pradesh Power Corporation Limited is yet to reconcile the said amounts. The learned senior counsel further submitted that the reconciled amount between the Petitioner and SECI is subject to the reconciliation with the distribution licensee, UPPCL.

4. In rebuttal, the learned counsel for the Petitioner submitted that despite being party to the Petition, UPPCL has failed to appear or even to file its reply and such conduct of UPPCL ought not to be the basis for delaying the matter. The learned counsel further submitted that in terms of the Change in Law Rules, the affected party i.e. the Petitioner is required to raise the claims only on the other party to the agreement i.e. SECI under the PPA and not the buying utility, UPPCL. In response, the learned senior counsel for SECI submitted that SECI cannot be left in lurch with no consequent direction to UPPCL for making payment to SECI as the entire arrangement is on back-to-back basis and for supply of power to distribution licensee. The learned senior counsel submitted that the agreement defined in the Change in Law Rules includes the entire gamut of purchase and resale therein.

5. After hearing the learned counsel for the Petitioner and the learned senior counsel for the Respondent, SECI, the Commission reserved the matter for order.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**