



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No.133/MP/2021

कोरम/ Coram:

श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 29th July, 2022

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act, 2003 read with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and the relevant provisions of the PPA, inter alia seeking extension/ deferment of Scheduled Commissioning Date for 45.6 MW out of the total 250 MW wind power project on account of Force Majeure events which delayed the Petitioner in performing its obligations under the Power Purchase Agreement dated 02.01.2018 (“PPA”); declaration that the Petitioner’s Termination Notice dated 20.06.2021 claiming discharge by way of termination of the PPA with respect to the limited un-commissioned capacity of 19.9 MW out of the Project, in accordance with Article 4.5.3 read with Article 13.5 of the PPA is valid and binding; and consequential reliefs in relation thereto.

AND IN THE MATTER OF:

M/s ReNew Power Private Limited
138, Ansal Chambers II,
Bhikaji Cama Place,
New Delhi – 110066

...Petitioner

Versus

1. Solar Energy Corporation of India Limited,
1st Floor, A-Wing D-3,
District Centre Saket,
New Delhi – 110 017
2. Uttar Pradesh Power Corporation Limited,
10th Floor, Shakti Bhawan Extn.,
14 Ashok Marg,
Lucknow – 226 001
3. Punjab State Power Corporation Limited
The Mall, PSEB Head Office,
Baradari, Patiala,
Punjab – 147 001
4. The Electricity Department, Government of Goa,
Vidyut Bhavan, 3rd Floor,
Panaji, Goa – 403 001

... Respondents

Parties present: Shri Sajan Poovayya, Sr. Advocate, RPPL
Shri Aniket Prasoon, Advocate, RPPL
Ms. Raksha Agarwal, Advocate, RPPL
Ms. Shweta Vashist, Advocate, RPPL
Ms. Priya Dhankhar, Advocate, RPPL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Anushree Bardhan, Advocate, SECI
Ms. Srishti Khindaria, Advocate, SECI
Shri Ishan Nagpal, RPPL
Shri Vasav, RPPL
Ms. Neha Singh, SECI
Shri Shubham Mishra, SECI

आदेश/ ORDER

The Petitioner, M/s ReNew Power Private Limited (formerly known as ReNew Power Ventures Private Limited and ReNew Power Limited), is engaged in the business of generation of power and has set up a 250 MW Wind power project located in and around

Villages in Anjar, Mundra and Bhuj Taluka, Kutch District, Gujarat (Project). The Petitioner *inter alia* is seeking extension/ deferment of the Scheduled Commissioning Date (SCoD) for the part capacity of 45.6 MW out of the Petitioner's project on account of various prolonged Force Majeure events which delayed and/or prevented the Petitioner from performing its obligations under the Power Purchase Agreement (PPA) dated 02.01.2018. The Petitioner is also seeking declaration that the Petitioner's Termination Notice dated 20.06.2021 claiming discharge by way of termination of the PPA with respect to the limited un-commissioned capacity of 19.9 MW out of the Project, in accordance with Article 4.5.3 read with Article 13.5 of the PPA, is valid and binding; and consequential reliefs in relation thereto.

2. The Respondent No. 1, Solar Energy Corporation of India (SECI), is a central public sector undertaking under the administrative control of MNRE. SECI is a trading licensee under Section 14 of the Electricity Act, 2003 (the Act) and undertakes trading of power generated. The Petitioner has entered into a PPA with SECI for generation and supply of 250 MW wind power from the Project to SECI.
3. The Respondent No. 2, Uttar Pradesh Power Corporation Limited (UPPCL), is a wholly owned undertaking of the Government of Uttar Pradesh. UPPCL is a distribution licensee and undertakes bulk purchase and sale of electricity primarily on behalf of the State Utilities/Distribution Licensees in the State of Uttar Pradesh to maintain electricity distribution to the public at large.
4. The Respondent No. 3, Punjab State Power Corporation Limited (PSPCL), is a wholly owned undertaking of the Government of Punjab and is a distribution licensee in the State of Punjab.
5. The Respondent No. 4, the Electricity Department, Government of Goa (EDG) was created as a Government Department in the year 1963. EDG is the only licensee in the State of Goa for transmission and distribution of electrical energy.
6. The Petitioner has made the following prayers:
 - a. *Allow the Petition and declare that the unforeseen and uncontrollable events/factors detailed in paragraph 5 of the petition that have occurred on account of the events subsequent to the Initial SCOD, and constitute Force Majeure under Article 11 of the Power Purchase Agreement dated 02.01.2018;*

- b. *Grant an extension in the Scheduled Commissioning Date of the Project (to the extent of the un-commissioned capacity of 45.6 MW) from 12.12.2019 till the date of actual commissioning, without any adverse consequences (including imposition of liquidated damages), on account of various extended and prolonged Force Majeure events detailed in paragraphs 5 above, under Article 11 of the Power Purchase Agreement dated 02.01.2018;*
- c. *Direct the Respondent No. 1 to return/refund to the Petitioner the amount of Rs. 10,98,40,00/- (Rupees Ten Crore Ninety Eight Lakhs Forty Thousand Only) paid by the Petitioner to the Respondent No. 1 on 12.05.2021 without prejudice to rights and remedies under law;*
- d. *Set aside and quash the Respondent No. 1's letter dated 05.05.2021 bearing No. SECI/Wind/T2/RPPL/ regarding encashment of the Petitioner's Performance Bank Guarantee and reduction of the tariff payable to the Petitioner;*
- e. *Set aside and quash the Respondent No. 1's letter dated 07.05.2021 bearing no. SECI/PT/ReNew/WIND T II/2021/WFH6, calling upon the Petitioner to refund alleged excess payment made to the Petitioner;*
- f. *Hold and declare that the Petitioner has been impacted by Force Majeure events detailed in paragraph 99 of the petition for more than 9 months;*
- g. *Consequently, hold and declare that the Petitioner's Termination Notice dated 20.06.2021 claiming discharge by way of termination of the Power Purchase Agreement dated 02.01.2018 with respect to the limited un-commissioned capacity of 19.9 MW out of 250 MW, on account of various prolonged as well continuing Force Majeure events, in accordance with Article 4.5.3 read with Article 13.5 of the Power Purchase Agreement is valid and binding;*
- h. *Restrain the Respondent No. 1, i.e., Solar Energy Corporation of India Limited, from taking any coercive action against the Petitioner in furtherance of such discharge by way of termination of the PPA with respect to the limited un-commissioned capacity of 19.9 MW out of 250 MW;*
- i. *Direct the Respondent No. 1 to return/release the Petitioner's Performance Bank Guarantee dated 06.11.2020 bearing number OGT0005170016380 for an amount of Rs. 13,10,00,000/- (Rupees Thirteen Crores Ten Lakhs Only) issued by IndusInd Bank;*
- j. *Pass such other or further order (s) as this Hon'ble Commission may deem just and equitable in favour of the Petitioner in the facts and circumstances of the present case.*

Submissions of the Petitioner and date of events:

7. The Petitioner has submitted as under:

- (i) On 31.05.2017, SECI issued Request for Selection (RfS) for selection of WPDs for setting up of Inter State Transmission System (ISTS) connected wind power projects in India, on “Build Own Operate” basis for an aggregate capacity of 1000 MW.
- (ii) On 04.10.2017, SECI conducted e-reverse auction and the Petitioner emerged as one of the successful bidders.
- (iii) On 03.11.2017, SECI issued Letter of Award to the Petitioner for development of 250 MW ISTS-connected Wind Power Project, generation and sale of wind power.
- (iv) On 24.11.2017, SECI entered into three separate PSAs with Respondents (UPPCL, PSPCL & EDG) for sale of 200 MW, 150 MW, and 50 MW of wind power respectively, at a tariff of INR 2.72/kWh. The Petitioner furnished a Performance Bank Guarantee (PBG) bearing number OGT0005170016380 for amount of Rs. 50,00,00,000/- (Rupees Fifty Crores) issued by IndusInd Bank in favour of SECI, which was to remain valid till 30.11.2019.
- (v) On 02.01.2018, the Petitioner and SECI entered into a PPA. As per the PPA, the capacity apportioned under each of the aforesaid PSAs is 100 MW, 100 MW and 50 MW to UPPCL, PSPCL and EDG, respectively.
- (vi) The date of SCoD as per PPA to develop and commission the project was 03.05.2019.
- (vii) On 26.02.2018, the Petitioner vide its letter to MNRE submitted its application for grant of the NOC from Ministry of Defence (MoD) since the Project was situated in the vicinity of the Bhuj Air force Base and as such there was a requirement to obtain a NOC for height clearance from MoD for construction of the Project.
- (viii) On 04.04.2018, the Petitioner’s application for grant of NOC was forwarded by MNRE to MoD.
- (ix) On 24.01.2019, NOC was provided by MoD.
- (x) On 07.03.2019 and 30.08.2019, the Petitioner sought extension of the initial SCoD by 12 months, on account of various Force Majeure events viz. law and order situation faced at the Project site on account of Right of Way issue created by local villagers; change in land allocation policy; and delay in issuance of NOC from MoD and requested SECI to approach MNRE for the same as per Section 3.17(B) of the RFS.

- (xi) On 17.05.2019, the Petitioner successfully commissioned 126 MW which is more than 50% (fifty percent) of the Project capacity.
- (xii) During July-November 2019, there were unprecedented rainfall, cyclone, and floods in the State of Gujarat.
- (xiii) On 24.06.2019, UPPCL filed a Petition No. 1480 of 2019 before the Uttar Pradesh Electricity Regulatory Commission (UPERC) seeking adoption of tariff of INR 2.72/kWh for procurement of 200 MW of wind power and approval of the PSA (after a lapse of around 19 months since the date of signing PSA on 24.11.2017).
- (xiv) UPPCL had filed another similar petition before UPERC, being Petition No. 1481 of 2019, seeking adoption of tariff and approval of power procurement cost in context of power being procured under the PSA with PTC India Ltd.
- (xv) On 26.09.2019, UPERC issued show cause notice to UPPCL and the State Load Dispatch Centre (SLDC) for scheduling power from the projects despite the power procurement from such projects not being approved.
- (xvi) On 01.10.2019, UPPCL vide its letter requested SLDC to stop scheduling of power generated from the Petitioner's Project for want of Adoption of Tariff. SECI vide its email of the same date directed the Petitioner to stop scheduling power to UPPCL.
- (xvii) On 25.10.2019, UPERC allowed UPPCL to procure power from the projects under Petition No. 1481 of 2019.
- (xviii) On 01.10.2019, the Petitioner successfully commissioned additional Project capacity of 58.50 MW, thereby increasing the total commissioned Project capacity from 126 MW to 184.50 MW. Accordingly, the value of the PBG was also reduced to Rs. 24,75,00,000/- (Rupees Twenty Four Crores Seventy Five Lakhs) and the validity of the same was extended till 31.05.2020.
- (xix) On 03.10.2019, SECI filed Petition No. 369/AT/2019 before this Commission *inter alia* seeking adoption of tariff discovered under the RfS.
- (xx) On 09.11.2019, the Petitioner informed SECI that since only 110.7 MW out of commissioned capacity of 184.5 MW was being scheduled (due to UPPCL's letter dated 01.10.2019 whereby scheduling of power to it was stopped); and the actual power generation being in the range of 160-165 MW; the Petitioner is suffering generation loss. Accordingly, SECI may facilitate scheduling at least 150 MW, i.e. the entire contracted capacity of PSPCL and EDG. SECI vide its email requested Power System Operation Corporation (POSOCO) to allow scheduling of power to PSPCL and EDG up to the entire contracted capacity of 150 MW.

- (xxi) On 21.11.2019, SECI extended SCoD to 12.12.2019 from 03.05.2019 (initial SCoD) on account of delay in issuance of NOC by MoD.
- (xxii) On 03.12.2019, the Commission in Petition No. 369/AT/2019, *inter alia* adopted the tariff of Rs. 2.64 per unit for 250 MW quantity power to be generated from the Project.
- (xxiii) The Petitioner was delayed and/or prevented from commissioning the balance capacity of the Project by the extended SCoD, i.e., 12.12.2019, on account of the project execution works being hindered by the unprecedented rainfall, cyclone, and floods for a period of 5 months, i.e., from July to November 2019. This is despite the fact that the Petitioner took all reasonable steps to mitigate the effect of the aforesaid Force Majeure event, including deploying additional manpower and machinery to rectify the damaged roads and other waterlogged area for making it favourable for work.
- (xxiv) Therefore, it is the Petitioner's case that the extended SCoD of the Project ought to be further extended for a period of 5 months, i.e., up to May 2020, on account of Force Majeure event, namely unprecedented rainfall delaying and/or preventing the Petitioner's fulfilment of its obligations under the PPA qua commissioning the Project
- (xxv) On 20.12.2019, the Petitioner requested SECI for grant of NOC for selling the excess power to the extent of 34 MW (beyond the allocated power to the other beneficiaries) in the power exchange for the period up to 31.03.2020.
- (xxvi) On 30.12.2019, UPERC vide its order in Petition No. 1480 of 2019 approved the PSA dated 24.11.2017 executed between SECI and UPPCL.
- (xxvii) On 10.01.2020, UPPCL vide its letter to SLDC *inter alia* stated that the Petitioner may be allowed to inject power of 100 MW capacity into the grid with immediate effect. The Petitioner vide its email requested POSOCO to normalize the ratio of power scheduled to UPPCL, PSPCL and EDG in proportion to the contracted capacity, i.e., to schedule 73.8MW to UPPCL (out of 100 MW), 73.8 MW to PSPCL (out of 100 MW) and 36.9 MW to EDG (out of 50 MW).
- (xxviii) The scheduling of power from the Petitioner's Project was stopped by UPPCL in furtherance to the directions of UPERC (due to the delay in seeking tariff adoption and approval of the PSA) for a period of 3 months (i.e., from October 2019 to January 2020). During the aforesaid period, the Petitioner's investors and lenders were apprehensive about the future of the Project which also impacted the pace of

- Project execution works causing delay in commissioning the Project. This delay is not attributable to the Petitioner.
- (xxix) The delay on the part of UPPCL and SECI in filing appropriate petitions before the Appropriate Commission leading to the delay in adoption of tariff and approval of the PPA and PSA, had a huge impact on the commissioning of the Project, as the same created considerable uncertainty and anxiety amongst the Petitioner's lenders, thereby impacting Project execution activities.
- (xxx) The Petitioner's obligation to commission the Project within the stipulated timeline is reciprocal to SECI and/or UPPCL's obligation to obtain adoption of tariff and approval of the PSA. Therefore, in the absence of timely adoption of tariff and approval of the PSA by the Appropriate Commission, the Petitioner was prevented from fulfilling its reciprocal obligation of commissioning the Project within the stipulated timeline.
- (xxxi) Before the Petitioner could overcome the delay caused by unprecedented rainfall in commissioning the Project, an outbreak of COVID-19 was reported in China, to combat which China went into a state of lockdown in January 2020. In this regard, on 27.01.2020 and 29.01.2020, China issued two notifications *inter alia*, extending the lunar holidays till 09.02.2020 and announcing several measures taken by the Government to block the spread of COVID-19, including directing enterprises to submit a written application in advance to the municipal government in order to resume work.
- (xxxii) The Ministry of Finance, Government of India (MoF) *vide* its office memorandum dated 19.02.2020 bearing ref. no. F/18/4/2020-PPD, clarified that disruption of the supply chains due to the spread of COVID-19 in China or any other country should be considered as a case of natural calamity and Force Majeure clauses may be invoked.
- (xxxiii) MNRE *vide* its office memorandum dated 20.03.2020 bearing ref. no. 283/18/2020-GRID SOLAR issued directions to treat delay on account of disruption of the supply chains due to spread of COVID-19.
- (xxxiv) The Ministry of Home Affairs, Government of India (MHA) *vide* its order dated 25.03.2020 imposed country wide lockdown of 21 days from midnight of 25.03.2020, i.e., till 14.04.2020. The lockdown was extended from time to time albeit with some relaxations *vide* its orders dated 14.04.2020, 01.05.2020, 17.05.2020, 30.05.2020, and 29.06.2020.

- (xxxv) On 25.03.2020, the Petitioner informed SECI about the occurrence of a Force Majeure event as per Article 11 of the PPA, namely the COVID-19 pandemic and consequent lockdown, the impact of the same on the Petitioner's ability to fulfill its obligations qua commissioning of the balance capacity of the Project, and accordingly requested SECI that all the obligations and the timelines stipulated under the PPA with respect to SCoD be suspended till the time such Force Majeure event continues and also, SCoD should be proportionally extended upon the cessation of the Force Majeure event.
- (xxxvi) During April-May, 2020, the Petitioner managed to achieve readiness of the part capacity of 27.6 MW of the Project. However, it could not commission the same in view of the requirement to commission minimum 50 MW capacity at a time. Further, it could not even achieve readiness of additional capacity to meet the threshold of 50 MW due to Force Majeure events related to the COVID-19 pandemic.
- (xxxvii) On 08.04.2020, SECI sought details from the Petitioner regarding total WTGs erected which can be offered for commissioning, the date wise capacity addition which can be offered, and details of site along with manpower required for arranging requisite permissions for working during the lockdown imposed by the MHA. The Petitioner informed that it was ready to commission an additional capacity of 27.6 MW.
- (xxxviii) MNRE *vide* its O.M. dated 17.04.2020 bearing F. No. 283/18/2020-GRID SOLAR stated that renewable implementing agencies may grant blanket extension of time for commissioning renewable energy projects equivalent to the period of lockdown and additional 30 (thirty) days for normalization after end of such lockdown, with no requirement of case to case examination.
- (xxxix) In view of the above, the Petitioner was entitled to extension of time for commissioning the balance Project capacity from 25.03.2020 to 30.06.2020.
- (xl) The Petitioner *vide* its letter dated 29.07.2020 to SECI sought further extension of the extended SCoD for commissioning the remaining Project capacity of 65.5 MW on account of the ongoing Force Majeure events, which were beyond the reasonable control of the Petitioner. The Petitioner also requested SECI to allow commissioning of additional 27.6 MW of the Project capacity out of the balance capacity and to declare an interim extension of the SCoD from 12.12.2019 to 30.11.2020.

- (xli) Since the Petitioner had achieved readiness of a further capacity of 27.6 MW of the Project capacity for commissioning, on 15.05.2020, the value of the PBG was reduced from Rs. 24,75,00,000/- (Rupees Twenty Four Crores Seventy Five Lakhs) to Rs. 13,10,00,000/- (Rupees Thirteen Crores Ten Lakhs) and the validity of the same was extended till 31.08.2020.
- (xlii) SECI vide its letter dated 14.08.2020 to the Petitioner, in response to the Petitioner's letter dated 29.07.2020, while denying the existence of any Force Majeure event and its delay in filing the Tariff Adoption Petition, refused to extend the Extended SCoD of the Project and stated that penalty for delay in commencement of supply of power would be calculated as per MNRE's office memorandum dated 13.08.2020.
- (xliii) SECI vide the said letter dated 14.08.2020 also refused to allow the part-commissioning of the Project to the capacity of 27.6 MW.
- (xliv) MNRE vide its letter dated 27.08.2020, after considering the extraordinary situation prevalent due to COVID-19 pandemic, temporarily allowed part commissioning of 10 MW or more capacity in case of wind power projects awarded under SECI Tranche-II to Tranche-VIII and the said dispensation was to be valid till 31.12.2020.
- (xlv) SECI vide its email dated 28.08.2020 permitted the Petitioner to commission 27.6 MW of the Project capacity, out of remaining capacity of 65.5 MW.
- (xlvi) The Petitioner successfully commissioned 27.6 MW of the Project capacity on 02.09.2020.
- (xlvii) On 08.09.2020, SECI in compliance of MNRE's O.M. dated 13.08.2020, conveyed that:
- (a) The penalty period had been extended up to 09.02.2021;
 - (b) No penalty shall be applicable for the period between 25.03.2020 to 24.08.2020; and
 - (c) The revised end date for the performance bank guarantee (PBG) encashment period shall be 10.11.2020 and for the tariff reduction period shall be 09.02.2021.
 - (d) The Petitioner to convey its acceptance to the said letter within 7 (seven) days.
- (xlviii) On 11.09.2020, the Petitioner refuted the position taken by SECI by way of its letter dated 14.08.2020 and once again requested SECI to grant extension of time for

commissioning the balance Project capacity on account of the various Force Majeure events due to which the Petitioner's performance of its obligations was delayed and/or prevented.

- (xlix) On 23.09.2020, the Petitioner submitted its acceptance to the said extension, while stating that it anticipated further delays on account of COVID-19 pandemic and related events, reserved its rights under the RFS, PPA and law in this regard.
- (l) On 09.10.2020, SECI informed the Petitioner that SECI does not agree with the claims made by the Petitioner vide letter dated 11.09.2020 regarding the occurrence of any Force Majeure event.
- (li) On 03.11.2020, the Petitioner was constrained to approach the DRC *inter alia* seeking extension of the SCoD till 30.11.2020 (which was further revised by the Petitioner till 20.12.2020 *vide* email dated 03.12.2020), due to continued and prolonged Force Majeure events.
- (lii) Despite the impacts of the Force Majeure event, the Petitioner was able to achieve readiness of a further capacity of 10 MW on 01.01.2021; however, the Petitioner could not commission the same due to the reason that the relaxation provided by MNRE *vide* its email dated 27.08.2020 allowing part commissioning of 10 MW or more capacity expired on 31.12.2020.
- (liii) MNRE *vide* its email dated 03.02.2021 extended its permission to commission projects in tranches of 10 MW or more till 31.05.2021.
- (liv) Accordingly, the Petitioner successfully commissioned further 18 MW of the Project capacity on 07.02.2021. Thus, till date, the Petitioner has successfully commissioned total 230.1 MW of the Project capacity, i.e., 92.04% of the Project capacity in the following manner:

| S. No. | Project Capacity | Commissioning Date |
|---------------|-------------------------|---------------------------|
| 1. | 126 MW | 18.05.2019 |
| 2. | 58.5 MW | 01.10.2019 |
| 3. | 27.6 MW | 02.09.2020 |
| 4. | 18 MW | 07.02.2021 |

- (lv) MNRE *vide* O.M. dated 09.02.2021 bearing F. No. 283/18/2020-GRID SOLAR issued instructions for a blanket extension of 5 months on account of COVID-19 without case-to-case examination and without asking for any documents/evidence *vide* its earlier office memorandums; however, extension beyond 5 months can be

granted by the implementing agencies in exceptional cases, after due diligence and careful consideration of the specific circumstances of the case, and if allowed in terms of the provisions of the relevant contract.

- (lvi) On 05.05.2021, SECI conveyed DRC's decision rejecting Petitioner's claim for extension of time to the Petitioner and stated that SECI would encash the Petitioner's PBG for Rs. 10,98,40,000/- (Rupees Ten Crores Ninety-Eight Lakhs Forty Thousand) towards liquidated damages for alleged delay in commissioning the Project and also reduce the tariff for the Project from Rs. 2.64 per unit to Rs. 2.61 per unit. The said reduction of tariff is in the context of the portion of the Project capacity commissioned beyond 6 months from the Extended SCoD, i.e., 12.12.2019.
- (lvii) SECI in applying the said penalty has effectuated the same on a ***weighted average basis for the entire Project capacity***. Thus, effectively the reduction in tariff has been done for the entire commissioned capacity of the Project (i.e., tariff reduced from Rs. 2.64 per unit to Rs. 2.61 per unit for 230.1 MW commissioned capacity). In addition, SECI also sent a letter to IndusInd Bank on 06.05.2021 invoking the PBG.
- (lviii) The Petitioner informed that it is in the process of arranging funds for making payment of Rs. 10,98,40,000/- to SECI in place of encashment of the PBG and paid the same to SECI on 12.05.2021.
- (lix) On 07.05.2021, SECI requested the Petitioner to remit an amount of Rs 19,78,471/- (Rupees Nineteen Lakh Seventy-Eight Thousand Four Hundred and Seventy-One only) to SECI towards reduction of the tariff from 2.64 per unit to 2.61 per unit for the period 06.02.2021 to 31.03.2021 along with applicable surcharge @ 1.5% per month.
- (lx) Even after commissioning of the fourth tranche of 18 MW of the Project capacity on 07.02.2021, the Petitioner continued to be affected by Force Majeure events, viz. the COVID-19 pandemic (particularly the second wave), the continuing restrictions imposed by the Central and State Government (to control the spread of COVID-19) and the disruption in global and domestic supply chain, thereby preventing the Petitioner from fulfilling its obligations under the PPA qua commissioning the Project. Further, the Petitioner company's representatives involved in undertaking Project execution activities have also tested positive for COVID-19 further hindering the Petitioner's ability to commission the Project.
- (lxi) During the entire construction period of the Project, the Petitioner was prevented from undertaking its obligations under the PPA qua commissioning the Project by the

Initial SCOD on account of the following Force Majeure events:

- (i) Delay in obtaining NOC from MoD, affecting the Project from 26.04.2018 till 24.01.2019 (approximately 9 months);
 - (ii) Unprecedented rainfall, floods and cyclone, affecting the Project from July till November 2019 (approximately 5 months);
 - (iii) Extension of Lunar Holidays in China, affecting the Project from December 2019 till 09.02.2020 (approximately 2 months); and
 - (iv) COVID-19 pandemic, the consequent lockdown, and disruption in global and domestic supply chain, affecting the Project from February 2020 till date (approximately 15 months and continuing);
 - (v) Apprehensions arising out of non-scheduling of power from the Project by UPPCL (for approx. 3 months), in view of the directions of the Hon'ble UPERC, due to the inordinate delay in filing of the tariff adoption petition by SECI (for approx. 21 months) and approval of power procurement by UPPCL (for approx. 19 months).
- (lxii) Despite being adversely affected by several Force Majeure events mentioned hereinabove for a continued period of over 37 months, the Petitioner has taken mitigating steps, due to which the Petitioner could successfully commissioned 230.10 MW of the Project capacity i.e., 92.04% of the total Project capacity.
- (lxiii) However, in light of all the above reasons, beyond the control of the Petitioner, and specifically in view of the continuing Force Majeure events, which have caused cascading adverse implications for the Project, as a mitigating step, the Petitioner has decided to terminate the PPA to the extent of the limited un-commissioned capacity of 19.9 MW.
- (lxiv) On 20.06.2021, the Petitioner has issued a Termination Notice to SECI for the PPA to the extent of the limited un-commissioned capacity of 19.1 MW in accordance with Article 4.5.3 read with Article 13.5 of the PPA on account of prolonged and continuing force majeure events.
- (lxv) The Petitioner by way of the aforesaid Termination Notice has sought discharge from its obligations under the PPA only to the extent of the un-commissioned capacity which is less than 8% of the total Contracted Capacity under the PPA.
- (lxvi) The Petitioner has approached this Hon'ble Commission *inter alia* seeking extension/deferment of the SCOD for the part capacity of 45.6 MW out of the Petitioner's 250 MW Project on account of various prolonged Force Majeure events which delayed

and/or prevented the Petitioner from performing its obligations under the PPA; declaration that the Petitioner's Termination Notice dated 20.06.2021 claiming discharge by way of termination of the PPA with respect to the limited un-commissioned capacity of 19.9 MW out of the Project, in accordance with Article 4.5.3 read with Article 13.5 of the PPA, is valid and binding; and consequential reliefs in relation thereto.

Hearing dated 06.08.2021

8. The Petitioner has filed I.A. 52 of 2021 along with the instant petition, which came for hearing before the Commission on 06.08.2021. As per Records of Proceedings dated 06.08.2021, *inter-alia* it was held as under:

“5. As regards the Petitioner's prayer for interim relief, the Commission observed that reduction in tariff has been claimed to have been arrived at by SECI in accordance with the provisions of the PPA. Accordingly, the Commission declined to grant any interim relief at this stage.”

Reply by Respondent No.1, SECI

9. SECI vide its reply dated 05.10.2021, has submitted as under:

Re: Unprecedented rainfall, floods, cyclone at the project site between July, 2019- Nov,2019

- (a) The Petitioner has not furnished the relevant documents in support of the claim that the alleged unprecedented rainfall, floods and cyclone were declared as a Force Majeure event by a competent authority. The documents from Revenue Department, Gandhi Nagar or Gujarat State Disaster Management Authority furnished by the Petitioner do not state that there was rainfall, cyclone, flood amounting to Force Majeure as alleged by the Petitioner.
- (b) From June 2019 to October 2019, 613 MW of Wind Projects located in Kutch District having agreements with SECI were declared commissioned by various developers including the part capacity of 58.5 MW of the Petitioner's project was also declared during the said period.
- (c) The Petitioner did not furnish any Notice in terms of the Article 11.5.2 of the PPA dealing with Notification of Force Majeure.
- (d) The Petitioner has raised the issue of alleged delay on account of unprecedented rainfall, cyclone, and floods, for the first time, only on 03.11.2020 i.e. in the Application filed for claiming time extension before Dispute Resolution Committee (DRC) constituted by MNRE. The DRC, in its recommendation dated 02.02.2021 regarding the issue of time

extension for 250 MW Wind Power Project of the Petitioner has not granted any extension for the alleged delay on account of unprecedented rainfall, cyclone, and floods.

Re: Apprehensions caused due to non-scheduling of power by UPPCL as a result of delay in Adoption of Tariff and approval of PSA

- (e) The reliance placed by the Petitioner on the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects notified by Government of India on 08.12.2017 is misplaced. The Applicable Guidelines for the present case are the Guidelines dated 04.05.2017.
- (f) Article 3 of the PPA provides for Financial Closure to be fulfilled by the Petitioner at its own risk and cost. The said provision does not provide for any condition to be performed by SECI, much less the adoption of tariff by the Hon'ble Commission or approval of PSA by the State Commission to enable the Petitioner to fulfill the Financial Closure.
- (g) The Commission has passed order on 03.12.2019 in Petition No. 369/AT/2019 filed by SECI under Section 63 of the Electricity Act for the adoption of tariff of the projects of Wind Power Developers including the Petitioner under Tranche-II 1000 MW ISTS Scheme. The Petitioner was a party in the proceedings before the Commission in the above Petition No.369/AT/2019. At no point of time, the Petitioner raised any issue in the said proceedings that there has been any impact on account of the alleged delay as claimed in the Petition filed.
- (h) The scheduled Financial Closure date was 03.08.2018 i.e.9 months from date of Letter of Award (03.11.2017) in terms of Article 3 of the PPA. The Petitioner achieved Financial Closure on 03.08.2018. Thereafter, the Petitioner achieved commissioning of part-capacity of 126 MW on 17.05.2019 and part-capacity of 58.5 MW on 29.09.2019 i.e. before the passing of the tariff adoption order by the Commission and approval of power procurement by UPERC.No issue of alleged delay in tariff adoption was raised at the stage of Financial Closure or part-commissioning of the 126 MW and 58.5 MW.
- (i) The Petitioner had raised the issue of delay in tariff adoption as one of the reasons for seeking extension of time to commission balance capacity 65.5 MW, for the first time, only by its letter dated 29.07.2020 i.e. after almost 30 months from the date of execution of the PPA dated 02.01.2018 and after the lapse of the Extended Scheduled Commissioning Date (12.12.2019) of the Project.
- (j) In regard to the above following events are relevant:
 - (i) On 26.06.2019, UPPCL, one of the buying entities had filed Petition being No.1480