

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 259/MP/2021

Coram:

**Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of Order : 17th August, 2022

In the matter of:

Petition under Section 79(1)(c), Section 79(1)(f) and Section 79(1)(k) of the Electricity Act, 2003, seeking deferment of operationalization of Long-Term Access (LTA) granted by the Central Transmission Utility of India Limited to the Petitioner.

And in the matter of:

SBSR Power Cleantech Eleven Private Limited,
First floor, Worldmark-02, Asset Area-8,
Hospitality District, Aerocity, NH-8
New Delhi-110037.

...Petitioner

Versus

1. Central Transmission Utility of India Limited,
CTU-Planning (1st Floor-A Wing)
Saudamini, Plot No. – 2, Sector- 29,
Near IFFCO Chowk Metro Station,
Gurugram – 122 001, Haryana

2. Powergrid Corporation of India Limited,
Saudamini, Plot No. 2, Sector- 29,
Gurugram- 492 001, Haryana.

3. Solar Energy Corporation of India Limited,
6th Floor, Plate-B, NBCC Office Block,
Tower-2, East Kidwai Nagar,
New Delhi-110023.

,,,,,Respondents

Parties Present

Shri Hemant Singh, Advocate, SPCEPL
Shri Lakshyajit Singh Bagdwal, Advocate, SPCEPL
Ms. Lavanya Panwar, Advocate, SPCEPL
Shri Rajeev Lochan, SPCEPL
Shri Ravi Shankar Sinha, SPCEPL
Shri Kashish Bhambhani, CTUIL
Shri Yatin Sharma, CTUIL
Shri Swapnil Verma, CTUIL

Shri Siddharth Sharma, CTUIL
Shri Ranjeet Singh Rajpur, CTUIL
Shri Akshayvat Kislay, CTUIL

ORDER

The Petitioner, SBSR Power Cleantech Eleven Private Limited, has filed the present Petition seeking direction for extension/ deferment of operationalization of Long-Term Access (LTA) granted by the Central Transmission Utility of India Limited (CTUIL), in terms of the Long Term Access (LTA) Agreement dated 26.11.2019. The Petitioner has made the following prayers:

“direct the Respondent Nos. 1 and 2 to extend/ defer the operationalization of the Long-Term Access (LTA) granted to the Petitioner vide the LTA Agreement dated 26.11.2019 and Supplementary LTA Agreement dated 21.09.2021, till the actual SCOD/ COD is achieved by the Petitioner, or till 02.07.2022, whichever is earlier;

a) in the interim, direct Respondent Nos. 2 and 3 not to operationalize the LTA of the Petitioner and levy any transmission charges, as stated in the present Petition, till the pendency of the same;

b) pass any other and further order or orders as this Hon'ble Commission may graciously deem fit and proper under the peculiar facts and circumstances of the present case and in the interest of justice.”

Submissions of the Petitioner

2. The gist of the submissions made by the Petitioner is as under :

(a) In response to Request for Selection (RfS) dated 10.01.2019 issued by Solar Power Corporation of India Limited (SECI) for procurement of 1200 MW of the power generated from the ISIS connected Solar Power Project, the Petitioner participated in the bid and was declared as the successful bidder for supply of 300 MW to be established by the Petitioner anywhere in India, and for supply of such electricity by SECI as an Intermediary Agency to the Buying Utility(ies) under a Power Sale Agreement to be entered into between SECI and such Buying Utility(ies). Thereafter, SECI issued a Letter of Award (LOA) dated 05.03.2019 in favour of the Petitioner for development and establishment of 300 MW Solar Power Project in the State of Rajasthan.

(b) SECI executed Power Sale Agreement (PSA) dated 17.06.2019 with BSES Yamuna Power Limited (BYPL) for supply of 150 MW (wherein 100 MW is to be procured from the Petitioner). In terms of the PSA, the Scheduled Commercial Operation Date (SCOD) of the power project was 18 months from the effective date of the PPA (which was to be executed between SECI and the solar project developer). Further, as per Article 4.9 of the PSA, the said agreement was to become enforceable from the date of approval granted by the Delhi Electricity Regulatory Commission (DERC).

(c) Further, SECI executed another Power Sale Agreement (PSA) dated 26.06.2019 with Tata Power Delhi Distribution Limited (TPDDL) for supply of 200 MW. As per the PSA, the SCOD of the project was 18 months from the effective date of the PPA. Further, as per Article II of the TPDDL-PSA, the said agreement was to become 'enforceable' within six (6) months of the above effective date, i.e. on 03.01.2020, or after due regulatory approval by DERC obtained by SECI (and TPDDL), whichever is earlier.

(d) Based on the aforesaid LOA and the PSAs, the Petitioner executed a back-to-back Power Purchase Agreement (PPA) dated 20.08.2019 with SECI for supply of 300 MW solar power, for a period of 25 years from SCOD. The said power was to be supplied to TPDDL and BYPL in terms of the PSAs as mentioned hereinabove. Article 2.1 of the said PPA provides the effective date as 03.07.2019. Further, the SCOD was mentioned as 03.01.2021.

(e) Accordingly, for the purpose of evacuating 300 MW solar power, the Petitioner applied to CTUIL for grant of LTA, which was granted by CTUIL vide its letter dated 29.10.2019. Subsequently, the Petitioner executed an LTA Agreement dated 26.11.2019 with CTUIL.

(f) During the months of February-March 2020, the outbreak of Covid-19 disrupted functioning of all the businesses, including the Petitioner. Subsequently, Government of India announced a nationwide lockdown w.e.f. 23.03.2020. The said lockdown continued for a substantial period of time. In fact, even when the lockdown was lifted by the Government of India, there still

existed various restrictions, which hampered the functioning of the business across the country.

(g) On account of the outbreak of COVID-19, and consequently various restrictions imposed by Government of Rajasthan, such as imposition of Section 144, declaration of the Bikaner district as containment zone, the Petitioner vide its letter dated 27.04.2020 invoked force majeure notice to SECI and requested for extension in SCOD. In continuation to the aforesaid letter, the Petitioner vide its letter dated 07.05.2020 further requested SECI to grant overall time extension towards the commissioning of the project

(h) SECI vide its letter dated 11.09.2020 extended the SCOD of the project from 03.01.2021 to 05.06.2021. CTUIL vide its letter dated 16.12.2020 granted extension of 5 months towards operationalization of LTA, in view of the Ministry of Power, Government of India's letter dated 27.07.2020. Accordingly, based on the above extension, the revised date of operationalization of LTA was 03.06.2021 or the date of commissioning of the transmission system, whichever is later. The aforesaid extension/ deferment of operationalization of LTA was also in line with the statutory mandate of planning and coordination envisaged under Section 38(2)(c) of the Electricity Act, 2003 ('the Act').

(i) The Petitioner vide its letters dated 26.04.2021 and dated 20.05.2021 apprised SECI about difficulties faced by it on account of 2nd wave of the Covid-19 pandemic. The Petitioner also issued a letter dated 19.06.2021 to CTUIL/PGCIL demonstrating the difficulties faced by it on account of 2nd wave of Covid-19 pandemic, which was worsened by the outbreak of black fungus, the ongoing 'Patwari Strike' in the State of Rajasthan, imposition of Section 144 and weekend lockdowns, etc., thereby immensely impacting the progress of the Petitioner's solar project.

(j) TPDDL-PSA was initially approved by DERC on 31.12.2020 However, the said approval was stayed by the Appellate Tribunal for Electricity (APTEL) vide order dated 23.02.2021 in Appeal filed by SECI (Appeal No. Appeal No. 52 of 2021). As such, there was no 'enforceability' of the TPDDL-PSA in the eyes

of law, and that the Petitioner, which was closely monitoring the said developments, was unsure as to the status of the TPDDL-PSA. APTEL vide its judgment dated 02.07.2021 finally approved TPDDL-PSA.

(k) The aforesaid delay in 'enforceability' of the TPDDL-PSA was clearly on account of the contracting parties therein, i.e., SECI (and TPDDL), thereby attracting Article 4.5(a) of the PPA which means that the timelines of fulfillment of obligations by the Petitioner (solar power developer) are required to be extended till such event of default is rectified by SECI. Accordingly, the timeline of 12 months for fulfillment of obligation by the Petitioner to achieve commissioning (i.e., SCOD) of the solar power plant, starts from the date of the regulatory approval of TPDDL-PSA (i.e., 02.07.2021) and the same is supposed to end only on 02.07.2022.

(l) As regards BYPL-PSA, the same is yet to become enforceable as there is no regulatory approval granted by the DERC. The non-approval/ delayed approval of the TPDDL-PSA and BYPL-PSA has to necessarily be construed as a default on the part of SECI, in terms of Article 4.5(a) of the PPA, which automatically amounts to extension of timelines of the Petitioner qua fulfilment of obligation to achieve SCOD under the PPA.

(m) CTUIL vide its letter dated 10.08.2021, while allowing extension of operationalization of LTA, granted such extension only till 03.09.2021, or the date of commissioning of the transmission system, whichever is later. However, CTUIL/ PGCIL vide the said letter completely failed to appreciate the ground realities qua non-approval of PSAs and granted extension for a period which cannot at all be considered to be reasonable or feasible

(n) As per Clause 11.2 of the Detailed Connectivity Procedure issued by the Commission for renewable generating stations on 20.02.2021, a generator is permitted extension of timelines to lay down its dedicated transmission network till the pooling station of CTUIL, on account of extension of SCOD/ COD by competent authorities.

(o) From a reading of clause 11 of the Detailed Procedure dated 20.02.2021, it is clear that if a generator is permitted extension in timelines qua the COD of the project by the Commission, then the principle is that CTUIL will not start imposing transmission charges by deferring the operationalization of LTA. Similar material consideration needs to be made in the facts of the present case, under the ambit of “coordination” to be carried out by CTUIL in terms of Section 38 of the Act.

(p) Ministry of Power, Government of India vide its order dated 15.01.2021 had acknowledged that renewable power projects are eligible for waiver of inter-State transmission charges and losses, which have their scheduled commissioning date on or before the June 2023 and are granted extension on account of inaction/ delays on the part of Government Agency.

(q) Regulation 13(3) is silent on the aspect wherein there has been an extension of SCOD/ COD and the treatment to be done with respect to transmission charges.

(r) It is settled position of law rendered in *Energy Watchdog Judgment [(2017) 14 SCC 80]* by the Hon'ble Supreme Court, which mandates exercise of regulatory powers by the Commission where the regulations or statutory documents are silent qua a particular issue. Accordingly, the Commission has absolute powers to regulate the electricity industry, either through regulatory orders or through laying down regulations. In the present case, the Commission can pass an order for implementing the directions issued by the Central Government or providing for a protocol where the extant regulations are silent.

(s) It is a fit case for relaxing the provisions of Regulation 13(3) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020, so that the Petitioner is not imposed any transmission charges in the event of LTA operationalization despite extension of SCOD by the Commission.

(t) For the purposes of granting LTA, CTUIL is required to undertake planning and coordination relating to the development of the ISTS network. For