

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 251/MP/2019

Coram:

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

Date of Order: 20.10.2022

In the matter of:

Petition under Section 79 (1) (f) along with Section 79 (1) (k) of the Electricity Act, 2003 read with Regulations 32 and 33A of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term and Medium Term Open Access in Inter State Transmission and related matters) Regulations, 2009 seeking permission for extension of the period for submitting proof of release of 10% fund through equity towards execution of 25 MW Solar Power Project located at Jodhpur, Rajasthan for further period of five months i.e. from 25.8.2019 to 25.1.2020.

And

In the matter of:

Clean Solar Power (Jodhpur) Private Limited,
201, First Floor,
Okhla Industrial Estate
Phase III, New Delhi- 110020

Hero Solar Energy Private Limited,
201, First Floor,
Okhla Industrial Estate
Phase III, New Delhi- 110020

VERSUS

Central Transmission Utility of India Limited,
Chief General Manager – CTU (Planning)
Saudamini, Plot No. 2,
Sector 29, Near IFFCO Chowk,
Gurgaon (Haryana)- 122001

...Respondent No. 1

Solar Energy Corporation of India Limited,
General Manager – (C&P),
1ST floor, A- Wing, Prius Platinum Building,
D-3, District Centre, Saket,
New Delhi- 110017

...Respondent No. 2

Parties Present

Shri Buddy Ranganadhan, Advocate, CSPJPL
Shri Aveejeet Lala, Advocate, CSPJPL

Ms. Nameeta Singh, Advocate, CSPJPL
Ms. Suparna Srivastava, Advocate, CTUIL
Ms. Somya Singh, Advocate, CTUIL
Shri Tushar Mathur, Advocate, CTUIL
Shri Kashish Bhambhani, CTUIL
Shri Yatin Sharma, CTUIL
Shri Siddharth Sharma, CTUIL
Ms. Muskan Agarwal, CTUIL
Shri Swapnil Verma, CTUIL

ORDER

The Petitioners Clean Solar Power (Jodhpur) Private Limited (Petitioner No. 1) and Hero Solar Energy Private Limited (Petitioner No. 2) (hereinafter to be refereed as ‘ the Petitioners’) have approached this Commission seeking permission for extension of period for submitting the proof of release of 10% fund through equity as laid down under paragraph 9.3.1 (iii) of the Detailed Procedure for grant of Connectivity to Projects based on Renewable Energy Sources to Inter-State Transmission System dated 15.5.2018 towards execution of its 250 MW Solar Power Project in Jodhpur, Rajasthan (‘the Project’) for the period of five months i.e. from 25.8.2019 to 25.1.2020.

2. The Petitioners have made the following prayers :

- a) Allow the Petitioners the extension of five months i.e. from 25.08.2019 to 25.01.2020 for submission of documents towards releasing and infusing equity funds of 10% of the Project cost in compliance with Para 9.3.1 (iii) of the Detailed Procedure;
- b) Restrain the Respondent No. 1 from taking any coercive action against the Petitioners w.r.t. the Stage- II Connectivity granted on 14.09.2018 as revised on 22.05.2019 and 04.07.2019;
- c) Grant ad interim ex-parte order in term of prayer (b) above; and
- d) Pass such other and further order or orders as this Hon’ble Commission may deem appropriate.

Submissions of the Petitioner

3. In support of its prayers, the Petitioner has made the following submissions :
- a) In response to Request for Selection (RFS) dated 30.1.2018, issued by the Respondent No.2, the Petitioner No. 2 submitted its bid for developing 250 MW project at Jodhpur with applicable tariff of Rs 2.53/kWh and the same was accepted by the Respondent No.2. Subsequently, the Respondent No. 2 also issued letter of award dated 27.7.2018. Petitioner No. 2 incorporated Petitioner No. 1 as its wholly owned subsidiary within the provisions of the RfS for development of the Project as well as generation and sale of solar power.
 - b) Petitioners have always been dedicated towards the Project and hence, Petitioner No. 2 vide application dated 11.7.2018 and 27.7.2018 applied for grant of Stage- I & II Connectivity, respectively and the same was granted by the respondent No. 1 vide its letters dated 5.9.2018 and 14.09.2018. The Petitioner No. 2 entered into a Transmission Agreement for Connectivity dated 09.10.2018 with the Respondent No. 1
 - c) Petitioner No. 1 entered into a Power Purchase Agreement dated 15.11.2018 (**PPA**) with Respondent No. 2 to set up the Solar Power Project based on Photo Voltaic technology of 250 MW capacity in the state of Rajasthan and to consequently sell 250 MW of solar power to Respondent No. 2 acting as an Intermediary Procurer. As per Article 2.1 of the PPA the Effective Date was 25.10.2018 and the Scheduled Commissioning Date was 25.10.2020.
 - d) Petitioner No. 2 also entered into an Long Term Access Agreement with System Strengthening with the Respondent No. 1 on 14.02.2019, vide which Long Term Access was granted from 02.09.2020 or commissioning of ISTS for LTA (whichever is later), to 30.11.2045. In this regard, Petitioner No. 2 also entered into a Transmission Service Agreement with the Respondent No. 1. The Petitioner No. 2 and the Respondent No. 1 also executed a Consultancy Service Agreement dated 6.2.2019, wherein the Petitioner No. 2 paid a sum of approximately Rs. 1.74 Crore for availing the services of the Respondent No. 1.

e) The Petitioner No. 2 vide its letter dated 08.07.2019 informed the respondent No. 1 that in compliance with Para 9.3.1 of the Detailed Procedure, it shall duly submit details/ documents pertaining to possession of land for implementation of the Project by 25.10.2019 and shall also strive to submit proof of release of 10% equity funds and Auditor's Certificate by 25.08.2019. Further, vide letter dated 16.08.2019 Respondent No. 2 confirmed that the Conditions Subsequent for the Project have been complied with and duly fulfilled on 25.05.2019.

f) The Petitioner No.2 vide its email dated 21.08.2019 requested the respondent No .1 for relaxation in compliance of Para 9.3.1 (iii) of the Detailed Procedure. Vide the said email, the Petitioner No.2 also informed the Respondent No. 1 that the project execution activity has been commenced and the Petitioners are in the process of acquiring complete land for the Project. Further, Petitioners have also placed part order for the implementation of transmission line terminating to Bhadla PSS through multi-circuit transmission system. The Petitioners have also informed vide the email that they have complied with all the Conditions Subsequent as mentioned under the PPA. It is only with regard to the provision of equity infusion that the Petitioners have sought some time and have undertaken to comply with the same at least 9 months prior to the Scheduled Commissioning Date i.e. by 25.01.2020.

g) In response to the aforementioned email, the Respondent No. 1 vide its email dated 23.08.2019 refused to grant any relaxation to the timelines as provided under the Detailed Procedure.

h) The Petitioners participated in the RfS and executed PPA with the condition to achieve financial closure within 7 months from Effective Date of PPA. The Para 9.3.1.(iii) of the Detailed Procedure requires infusion of 10% funds as equity within 3 months from achievement of financial closure, hence the Petitioners have maximum 10 months from Effective Date of PPA to fulfil this condition.

4. The matter was listed for hearing on admission on 29.8.2019. During the hearing, the commission admitted the Petition and directed the parties to complete the pleadings.

The Commission also directed the Respondent No.1 not to take any coercive measure against the Petitioners with regard to the Stage-II connectivity till the next date of hearing.

Reply and Rejoinders

5. The Respondent No. 1 in its reply vide affidavit dated 3.10.2019 has submitted as under :

a) The Detailed Procedure, 2018 framed under the Connectivity Regulations has been notified to cure the then existing sub-optimal utilization of bays due to non-readiness of the generators and has provided for two-stage grant of connectivity with attendant compliances to ensure optimal planning and utilization of connectivity bays. The same, therefore, neither contemplates nor permits any relaxation of its provisions in so far as compliance of prescribed timelines qua connectivity grant to renewable projects is concerned.

b) The progress of entities that had been granted connectivity, was monitored regularly in the Joint Coordination Committee (JCC) Meetings held on a quarterly basis. In the 10th and 11th JCC Meetings for generation projects in the Northern Region held on 20.12.2018 and 25.6.2019 respectively, all the grantees of Stage-II connectivity under the Detailed Procedure, 2018 were reminded of their obligation to submit all documents required under clause 9.3.2 of the Detailed Procedure, failing which their connectivity was liable to be revoked. The Petitioners however did not attend the said 10th Meeting. The status of the Petitioners' project as recorded in the said Meetings clearly showed that substantial land acquisition for the project was yet to be done;

c) In view of failure on part of the Petitioners to submit the required documents within the prescribed mandatory timeline, the Stage-II connectivity granted to them is liable to be revoked in terms of clause 9.3.3 of the Detailed Procedure, 2018.

d) The answering Respondent is not empowered to decide upon the request of the Petitioners to allow time-extension for compliance of the conditions under Para 9.3.1 specifically in light of the clear stipulation under Para 9.3.3 of the Detailed Procedure, 2018 to revoke the Stage-II connectivity in case of failure of a grantee to achieve the stipulated milestones.

Petitioner's Additional Affidavits

6. Petitioner's vide their affidavit dated 22.1.2020 have submitted as under :

a) The Petitioners, vide their letter dated 17.12.2019, have submitted the requisite documents against release of 10% funds through equity towards execution of the Project in accordance with Para 9.3.1 (iii) of the Detailed Procedure. The present Petition has been filed seeking extension of the period for submitting proof of release of 10% funds through equity as laid down under Para 9.3.1 (iii) of the Detailed Procedure for further period of five months i.e. from 25.08.2019 to 25.01.2020. The Petitioners seek condonation of delay of 114 days in complying with the requirement under Para 9.3.1 (iii) of the Detailed Procedure.

b) The Petitioners have duly complied with all the requirements under Para 9.3.1 of the Detailed Procedure i.e. acquiring ownership or lease rights or land use rights of the land required, achievement of financial closure in terms with the PPA and submission of proof of release of at least 10% funds towards generation project execution.

Hearing dated 5.8.2022

7. During the final hearing dated 5.8.2022, the petitioner apprised the Commission that the Petitioner has now now already fulfilled the condition precedent prescribed in the Detailed Procedure and also achieved the commercial operation prior to the operationalization of Long-Term Access by Respondent No. 1 and Respondent No. 1 has also released the Connectivity Bank Guarantee. The submission of the Petitioner was also supported by the Respondent No.1 and further submitted that Commission may consider the request of the Petitioners to condone delay of 114 days in achieving requirement under paragraph 9.3.1(iii) of the Detailed Procedure as deemed fit. The relevant extracts of the RoP dated 5.8.2022 is as under :

"2. Learned counsel for the Petitioners submitted that the present Petition has been filed, inter alia, seeking permission for extension of period for submitting the proof of release of 10% fund through equity as laid down under paragraph 9.3.1 (iii) of the Detailed Procedure for grant of Connectivity to Projects based on Renewable Energy Sources to Inter-State

Transmission System dated 15.5.2018 ('Detailed Procedure') towards execution of its 250 MW Solar Power Project in Jodhpur, Rajasthan ('the Project') for the further period of five months i.e. from 25.8.2019 to 25.1.2020. Learned counsel further submitted that the Petitioners have, however, now already fulfilled the aforesaid condition precedent prescribed in the Detailed Procedure and the Project has also achieved the commercial operation prior to the operationalization of Long-Term Access by PGCIL/CTUIL and consequently, PGCIL/CTUIL has also released the Connectivity Bank Guarantee furnished by the Petitioner. Learned counsel further submitted that in order to put quietus to the litigation, the Commission may kindly condone delay of 114 days in achievement of requirement under paragraph 9.3.1(iii) of the Detailed Procedure, which would not cause any prejudice to the Respondents herein. Learned counsel sought liberty to file an additional affidavit to place on record the subsequent developments.

3. Learned counsel for the Respondent, PGCIL confirmed the submissions made by learned counsel for the Petitioners and added that taking into the account the peculiar facts and circumstances of the present case, especially the fact that Project of the Petitioners having already achieved the commissioning, the Commission may consider the request of the Petitioners to condone delay of 114 days in achieving requirement under paragraph 9.3.1(iii) of the Detailed Procedure as deemed fit. Learned counsel added that CTUIL does not have any power under the Detailed Procedure to condone such delays.

4. After hearing the learned counsel for the parties, the Commission permitted the Petitioner to file the additional affidavit within a week and CTUIL to file its response thereof within a week thereafter.

5. Subject to the above, the Commission reserved the matter for order.

8. In compliance of hearing dated 5.8.2022, the Petitioner vide its additional affidavit dated 8.8.2022 has placed on record the following documents as under :

- a) Letter dated 28.05.2020 vide which Respondent No.2 granted extension of scheduled commercial operation date of the Petitioners' Project to sixty (60) days subsequent to operationalization of Long Term Access ("**LTA**") or actual commercial operation date ("**COD**") of the Project.
- b) Letter dated 21.04.2022 issued by Respondent No.2 confirming the COD of the Petitioners' Project on 21.04.2022;
- c) Letter dated 09.05.2022, vide which Central Transmission Utility of India Ltd. returned the Connectivity Bank Guarantee of Rs. 5 crore submitted by Petitioner No.2 on 10.10.2018 in favour of Respondent No.1; and
- d) Letter dated 21.07.2022, vide which Respondent No.1 intimated the Petitioners that the anticipated charging / commissioning of its 1x1500 MVA, 765/400kV ICT (3rd ICT) along with associated bays at Bhadla-II substation is scheduled on 20.08.2022.

Analysis and Decision

9. We have considered the submissions of the parties and perused the documents available on the record. The Petitioner has approached this Commission seeking extension of time by 5 months for submission of documents towards releasing and infusing equity funds of 10% of the project cost as required under Detailed Procedure of Connectivity and to restrain PGCIL from taking any coercive action against the Petitioners with regard to Stage-II connectivity. During the first hearing dated 29.8.2019, the Commission directed the respondent No. 1 not to take any coercive measure against the Petitioners with regard to the Stage-II connectivity till the next date of hearing.

10. We observe that the Petitioner vide its additional affidavit dated 22.1.2020 has submitted that it has duly complied with all the requirements under Para 9.3.1 of the Detailed Procedure i.e. acquiring ownership or lease rights or land use rights of the land required, achievement of financial closure in terms with the PPA and submission of proof of release of at least 10% funds towards generation project execution.

11. We observe that the Petitioner vide its additional affidavit dated 8.8.2022 has placed on record that it has already achieved COD for its full capacity on 21.4.2022 and that CTU has already returned its Connectivity Bank Guarantee.

12. Considering that the Project has already achieved the COD and CTU has already returned the Connectivity Bank Guarantee, the we are of the view that prayers in this petition have become infructuous.

13. Petition No. 251/MP/2019 is disposed of, in terms of the above.

Sd/
(P. K. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(I. S. Jha)
Member