

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 56/MP/2022

- Subject : Petition under Section 63 and Section 79 of the Electricity Act, 2003 read with Competitive Bidding Guidelines and Articles 11 and 13 of the Power Purchase Agreement dated 23.5.2018 executed between ReNew Wind Energy (AP2) Private Limited and Solar Energy Corporation of India Limited.
- Petitioner : ReNew Wind Energy (AP 2) Private Limited (RWEPL)
- Respondents : Solar Energy Corporation of India Limited (SECI) and 2 Ors.

Petition No. 227/MP/2022 along with IA No.55/2022

- Subject : Petition under Section 79 of the Electricity Act, 2003 seeking to set aside Transmission Charges bills raised by CTUIL and declaration that the Petitioners stands discharged from performance under, Transmission Service Agreement dated 29.1.2018, LTA Agreement dated 29.1.2018 (Tranche 1), Agreement for Long Term Access dated 6.9.2018 (Tranche 2) and Bipartite Connection Agreement dated 11.1.2019 executed between ReNew Power Pvt. Ltd. and Central Transmission Utility of India Ltd. (earlier Power Grid Corporation of India Ltd.) on account of Force Majeure and impossibility of performance under the Power Purchase Agreement dated 23.5.2022 executed with Solar Energy Corporation of India Ltd and consequential relief thereto.
- Petitioner : ReNew Wind Energy (AP 2) Private Limited and Anr.
- Respondents : Central Transmission Utility of India Limited (CTUIL) and 2 Ors.
- Date of Hearing : **19.4.2024**
- Coram : Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Parties Present : Shri Vishrov Mukerjee, Advocate, RWEPL
Shri Girik Bhalla, Advocate, REWPL
Ms. Priyanka Vyas, Advocate, REWPL
Ms. Anushree Bardhan, Advocate, SECI
Ms. Surbhi Kapoor, Advocate, SECI
Ms. Shirsas Saraswati, Advocate, SECI
Ms. Poorva Saigal, Advocate, HPPC
Shri Ravi Nair, Advocate, HPPC
Ms. Reeha Singh, Advocate, HPPC
Ms. Suparna Srivastava, Advocate, CTUIL
Ms. Priyansi Jadiya, CTUIL

Record of Proceedings

At the outset, the learned counsel for the Petitioner submitted that insofar as the issues of mismatch in the commercial operation date of renewable energy generator and the operationalization of Long Term Access and the consequent liability of transmission charges on such renewable energy generator, the Commission, vide its order dated 8.6.2022 in Petition No.103/MP/2021 ('Acme Deoghar'), decided the issue against the renewable energy generator and being aggrieved by such decision, the Petitioner therein, Acme Deoghar had challenged the order before the Appellate Tribunal for Electricity (APTEL) in Appeal No. 261 of 2022, wherein the APTEL by its order dated 8.7.2022 stayed the operation of the Commission's order dated 8.6.2022. Subsequently, in view of the application moved by licensee Fatehgarh Bhadla Transmission Ltd. in the said appeal, the stay was vacated vide order dated 14.12.2023, and this order was challenged by the Acme Deoghar before the Hon'ble Supreme Court in Civil Appeal No. 3873 of 2024 wherein the Hon'ble Supreme Court vide its order dated 18.3.2024 set aside the APTEL's order dated 14.12.2023 and restored the ad-interim order dated 8.6.2022 till the pendency of appeal before the APTEL. Learned counsel submitted that as per the said order of the Hon'ble Supreme Court, the Appellants and the Respondents therein are also to jointly move the APTEL for an expeditious decision of the pending appeal, and since this aspect/ issue is also involved in the Petition No. 227/MP/2022, the Commission may if deemed fit, adjourn the matter(s) till the outcome of the said appeal before the APTEL. Learned counsel also clarified that if the Commission so directs, the Petitioner is ready to proceed with the matters.

2. In response, learned counsel for Respondent, CTUIL submitted that the issue involved in the Acme Deoghar and now pending before the APTEL does not concern the present case as the former pertained to the extension of the Scheduled Commercial Operation Date of the renewable energy generator under the PPA, whereas in the present case, the Petitioner has already terminated the PPA. Learned counsel further sought liberty to file a brief affidavit to put on record the stand of CTUIL that the issue involved in the appeal pending before APTEL does not cover or relate to the cases of termination of PPA, such as the present one.

3. In response, learned counsel for the Petitioner submitted that the issue pending consideration before the APTEL is the interpretation of Regulation 13(3) of the Sharing Regulations. As per the Petitioner, it would not make a difference as to whether the SCOD of a generator has been extended or the PPA has been terminated where the conditions specified in the said Regulation are not triggered or satisfied in a particular case.

4. Learned counsel for Respondent, SECI, in Petition No.56/MP/2022, submitted that the said Petition has no relevance to the Acme Deoghar order of this Commission or the issue pending for consideration before the APTEL and hence, the Commission may proceed to hear the said matter. Learned counsel also pointed out that as per the direction of the Commission, Respondent, SECI is also unable to proceed with the encashment of BG submitted by the Petitioner under the PPA. Learned counsel further submitted that the APTEL, while refusing the grant of any stay on encashment of BG, has already held that a BG is an independent and distinct contract between the bank and beneficiary and is not qualified by the underlying transaction between the person at whose instance the BG was given. The encashment of the amount specified in BG does not depend upon the result of the

decision in the dispute between the parties. Learned counsel submitted that SECI is, therefore, opposing any further stay on the invocation of BG furnished by the Petitioner under PPA.

5. In response, learned counsel for the Petitioner submitted that since the grounds involved in both cases are identical, the Commission, as per the Petitioner's request, has been taking up both cases together.

6. Considering the submissions made by the learned counsel for the parties and the request of the learned counsel for the Respondent, CTUIL, seeking a brief accommodation to file an affidavit as noted above, the Commission permitted the Respondent, CTUIL to file its affidavit within four days a with copy to the other side.

7. Further, keeping in view the concerns raised by the learned counsel for Respondent SECI in Petition No. 56/MP/2022, the Commission directed to list both the matters on **1.5.2024** and further indicated that the interim directions issued vide Record of Proceedings for the hearing dated 21.3.2022 and 24.1.2023 in these matters will be continued till the next date of hearing.

By order of the Commission

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