



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 64/MP/2022

कोरम/ Coram:

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
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: 02nd of January , 2024

IN THE MATTER OF:

Petition under Section 79(1)(b) of the Electricity Act, 2003 seeking reduction in tariff under the Power Purchase Agreement dated 29.12.2017 executed between Respondent Nos.1 and 2 read with Power Sale Agreement dated 24.11.2017 executed between the Petitioner and Respondent No.2 for purchase of 50 MW of wind power.

AND IN THE MATTER OF:

Punjab State Power Corporation Ltd.,
The Mall, Baradari, Patiala,
Punjab 147001

.....Petitioner

Versus

- 1. Adani Green Energy (MP) Ltd.,**
Adani House, Nr Mithakhali Roads,
Six Navrangpura, Ahemedabad-380009 (Gujarat).
- 2. Solar Energy Corporation of India,**
1st Floor, A-Wing, D-3,
District Centre, Saket,
New Delhi-110017.

....Respondents

Parties Present:

Ms. Suparna Srivastava, Advocate, PSPCL
Shri Tushar Mathur, Advocate, PSPCL
Ms. Soumya Singh, Advocate, PSPCL
Shri M. G. Ramachandran, Sr. Advocate, SECI
Ms. Sikha Sood, Advocate, SECI
Ms. Tanya Sareen, Advocate, SECI
Ms. Nisha Singh, SECI
Shri Atulya Kumar Naik, SECI
Shri Shibasis Das, SECI
Shri Mudit Jain, SECI

आदेश/ ORDER

The Petitioner, i.e. Punjab State Power Corporation Ltd. (PSPCL) is a distribution licensee in the State of Punjab. PSPCL is seeking a reduction in tariff by Rs.0.50 paisa/kWh per day for a delayed period in terms of the PPA dated 29.12.2017 for the purchase of 50 MW wind power from the project of Respondent No.1, i.e. Adani Green Energy (MP) Limited.

2. Respondent No. 1, Adani Green Energy (MP) Limited (AGEMPL) is in the business of generation and sale of renewable energy in the country. AGEMPL had participated in the bidding process and was awarded the bid for a 50 MW Wind Project to be set up at Village Dayapar, District Kutch, Gujarat (Project) at a tariff of Rs. 2.65/kWh for a period of 25 years vide Letter of Award (LoA) dated 03.11.2017. AGEMPL had entered into a Power Purchase Agreement, with Solar Energy Corporation of India Limited, for setting up a 50 MW Wind Project, and the sale of power.
3. Respondent No. 2, Solar Energy Corporation of India Limited (SECI), has been set up under the administrative control of the Ministry of New and Renewable Energy (MNRE) and has been designated as the nodal agency for the implementation of MNRE schemes in India.
4. The Petitioner has made the following prayers:
 - a) *Allow the reduction of tariff by Rs.0.50/kWh per day of delay for the purchase of 50 MW wind power under the Power Purchase Agreement dated 27.12.2017 entered into between Respondent Nos.1 and 2 read with Power Sale Agreement dated 24.11.2017*

entered into between the Petitioner and Respondent No.2 for the period of delay in commissioning the wind power project of Respondent No.1 (i.e. from 4.1.2020 to 7.3.2020); and

b) Pass such further and other Order(s) as this Hon'ble Commission may deem fit in the facts and circumstances of the present case.

Factual Matrix:

5. The brief facts of the case are as under:

Location	Village District Gujarat.	Dayapar, Kutch,
Nodal agency	SECI	
Tariff	Rs.2.65/kWh	
RfS issued on	31.05.2017	
LoA issued on	03.11.2017	
Capacity (MW)	50 MW	
Power	Wind	
Power Sale Agreement (PSA) executed on	24.11.2017	
Power Purchase Agreement (PPA) executed on	29.12.2017	
SCOD of the project	03.05.2019	
Extended SCOD	03.01.2020	
COD of the project	05.03.2020/07.03.2020	

6. The present petition was filed on 18.01.2022 and was listed for hearing on 28.06.2022. The Commission, after hearing the submission of the Petitioner admitted the Petition and issued notice to the respondents. The petition was further listed for hearing on 10.08.2023, wherein the Commission, after hearing the submissions of the parties, reserved the matters for orders and directed the parties to file their respective submissions.

Submission of PSPCL:

7. Briefly, PSPCL has submitted that:

- a) As per LoA dated 03.11.2017, AGEMPL was liable to commission the project by 03.05.2019 and, in any case, not later than 03.02.2020 (i.e. 27 months from the date of LoA in terms of clause 4.5.6 of PPA dated 29.12.2017).
- b) Vide letter dated 21.11.2019, SECI granted an extension of project SCoD in consideration of the delay in operationalization of long-term access by the Central

Transmission Utility (CTU). Accordingly, the project SCoD was revised to 03.01.2020 or the actual COD, whichever was earlier. AGEMPL ultimately commissioned the project on 07.03.2020 with a delay of about 10 months beyond the original SCoD of 03.05.2019, 2 months 4 days beyond the extended SCoD of 03.01.2020 and 1 month 4 days beyond the ceiling limit of 27 months i.e. 03.02.2020 from the date of issuance of LoA.

- c) In terms of the PPA, the SCOD of the project could be deferred (subject to a ceiling of 27 months from the date of issuance of LoA) in case of the occurrence of a force majeure event. For any delay beyond 27 months, the tariff discovered after e-reverse auction was to be reduced at the rate of 0.50 paise/ kWh per day of delay for the delay in such remaining capacity which is not commissioned. The PPA did not contemplate or permit any SCoD beyond 27 months, time being the essence of the contract where the project of AGEMPL was to be commissioned within the prescribed time.
- d) MNRE's letter dated 22.10.2019 clearly stated that any delay in commissioning beyond the SCoD has to be dealt with as per the provisions of RfS and PPA.
- e) Accordingly, the period between 03.01.2020 to 07.03.2020 was to be dealt with as per the provisions of RfS and PPA entailing the twin consequences of PBG encashment and reduction in tariff. Thus, the delay in commissioning of the project beyond six (6) months from the project SCoD (limited to 27 months from the date of issuance of LoA) was to result in twin consequences of encashment of PBG and reduction in fixed tariff.

Submissions of AGEMPL:

- 8. Briefly, AGEMPL has submitted as under:
 - a) The stand of the Petitioner seeking reduction of tariff is not tenable as the present PPA is only between AGEMPL and SECI. Article 4.6.2 of the PPA nowhere states that the Petitioner shall be entitled to a reduced tariff on account of delay in the Commissioning of the Project.
 - b) It is an undisputed position that the SCoD of the Project stood extended to 03.01.2020 in terms of the letter dated 21.11.2019 due to the non-operationalization of the LTA by the CTU.
 - c) The timeline for encashment of PBG/Reduction of Tariff stood extended as under:

Sr. No.	Event	Date
1.	Revised SCOD	03.01.2020
2.	Start Date of PBG Encashment Period	04.01.2020
3.	End Date of PBG Encashment Period	02.07.2020
4.	Start Date of Tariff Reduction Period	03.07.2020
5.	End Date of Tariff Reduction Period	01.10.2020

- d) AGEMPL cannot be subjected to a reduction in tariff if it commissions the Project merely after a month's delay, as on account of the extension of SCoD, the revised date for tariff reduction got extended to 03.07.2020.
- e) Articles 4.5 and 4.6. of the PPA apply, where due to AGEMPL's fault, the commissioning of the Project gets delayed. In the instant case, the extension of SCoD from 03.05.2019 to 03.01.2020 was on account of a force majeure event, i.e., a delay in the operationalization of LTA by CTU, for which no fault can be attributed to AGEMPL.
- f) Since the SCOD of the Project stood extended by a period of eight (8) months, consequentially, the time period for reduction of tariff stood extended for the same period in terms of Articles 4.5 and 4.6 read with Article 11.7(b) of the PPA.
- g) The project was commissioned on 05.03.2020, which is much before the cut-off date of 03.07.2020, for seeking a reduction in tariff.
- h) Hence, the Petitioner is not entitled to a reduction in tariff under the PPA. As the project was commissioned on 05.03.2020, the only penalty applicable was the liquidated damages, which were imposed by SECI for the delay of 62 days in commissioning.
- i) Petitioner has not made out the case that the SCOD should be on 3rd May 2019. If the Petitioner is correct that the dates should not be reckoned from the revised SCOD, then the date of PBG encashment should be 04.05.2019 and the date of reduction of tariff to be 03.11.2019. However, even the Petitioner has not claimed a reduction of tariff from 03.11.2019. The Petitioner cannot approbate and reprobate. It cannot accept the extension (and thereby accept that it is not entitled to tariff reduction from 03.11.2019), and then seek tariff reduction from 04.01.2020 instead. Once it accepts that the SCoD revised is the new SCoD, it must follow all consequences (LD as well as tariff reduction) which flow from the new SCoD (i.e. 04.01.2020).

Submissions of SECI:

9. Briefly, SECI has submitted that:

- a) The extension of time provided to AGEMPL is based on the decision of MNRE, Government of India, and the SCoD has been extended for the period as specified in the Office Memorandum (OM) dated 22.10.2019 of MNRE. The period of 27 months provided in Article 4.5.6 of PPA cannot be made applicable. Article 4.6 of the PPA cannot be read in isolation, and it needs to be read with the implications of other provisions governing the PPA and implications of extension of the SCoD validly given.
- b) It is fundamentally wrong on the part of PSPCL to claim that the project cannot be commissioned after 27 months from the date of issue of the letter of award without a reduction in tariff. There is an extension of the SCoD date till 03.01.2020, which is based on MNRE's OM and the extended SCoD is within 27 months from the Letter of Award.
- c) The period of 27 months from the Letter of Award expired on 03.02.2020. There has been no violation of Article 4.5.6 of the PPA.
- d) Article 4.6 of the PPA cannot be read in an absolute manner of imposing on the project developer the liquidated damages or reduction in tariff even when there is an extension of time granted. These include the extension of SCoD in terms of MNRE OM consistent with Article 4.5.6 of PPA.
- e) The claim of PSPCL on various timelines applicable is without any basis and is also inconsistent.
- f) The revised SCoD was 03.01.2020. The project was commissioned by AGEMPL on 05.03.2020 as against the revised SCoD of 03.01.2020 i.e. with a delay of 62 days. Accordingly, Article 4.6.2 of the PPA providing for a reduction in tariff in case of delay in commissioning will be applicable only after 6 months i.e. after 03.07.2020. Until then, the Liquidated Damages by encashment of Performance Bank Guarantee (PBG) without reduction in tariff is applicable.

Analysis and Decision:

10. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records and considered the submissions of the parties.
11. On the basis of the submissions of the contracting parties, the only issue which arises for adjudication is:

Whether the Petitioner is entitled to a reduction in tariff at the rate of 0.50 paise/kWh/day for the purchase of 50 MW wind power under the PPA dated 29.12.2017 read with PSA dated 24.11.2017 for the period of delay (if any) in commissioning the project by AGEMPL?

12. Now, we proceed to discuss the above issue.

13. Relevant provisions of the PPA dated 29.12.2017 stipulate as under:

“4.5 Extensions of Time

4.5.1 In the event that the WPD is prevented from performing its obligations under Article 4.1 by the Scheduled Commissioning Date due to:

- a) any Buyer Event of Default; or***
- b) Force Majeure Events affecting Buyer/ Buying Entity(ies), or***
- c) Force Majeure Events affecting the WPD,***

the Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to Article 4.5.6, for a reasonable period but not less than ‘day for day’ basis, to permit the WPD or SECI/ Buying Entity(ies) through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the WPD or SECI/Buying Entity(ies), or till such time such Event of Default is rectified by Buyer.

4.5.2. Void

4.5.3. In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of three (3) months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 13.5

4.5.4. If the Parties have not agreed, within thirty (30) days after the affected Party’s performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred, any Party may raise the Dispute to be resolved in accordance with Article 16.

4.5.5. As a result of such extension, the newly determined Scheduled Commissioning Date and newly determined Expiry Date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.

4.5.6 Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall not be allowed beyond 27 months from the date of issuance of LOA by SECI to WPD.

.....

4.6. Liquidated Damages not amounting to penalty for delay in Commissioning

4.6.1 The selected projects shall be commissioned within 18 months from date of issuance of Letter of Award. A duly constituted Committee will physically inspect and certify successful commissioning of the project. In case of failure to achieve this milestone, SECI shall encash the Performance Bank Guarantee (PBG) in the following manner:

Delay upto six (6) months – Buyer will encash total Performance Bank Guarantee on per day basis and proportionate to the balance Capacity not commissioned.

4.6.2 In case the commissioning of the project is delayed over Six (6) months, the tariff discovered after e-Reverse Auction shall be reduced at the rate of 0.50 paise/kWh per day of delay for the delay in such remaining capacity which is not commissioned.

The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee and reduction in the fixed tariff shall be limited to 27 months from the date of LoA. In case, the Commissioning of the Project is delayed beyond 27 months from the date of LoA, the PPA capacity shall stand reduced/amended to the Project Capacity Commissioned, provided that the commissioned capacity is not below 50 MW or 50% of the allocated Project Capacity, whichever is higher, and the PPA for the balance Capacity will stand terminated and shall be reduced from the selected Project Capacity.”

Article 9: Applicable Tariff

9.1 The WPD shall be entitled to receive the Tariff of Rs. 2.65/kWh for the power sold by the Buyer to the Buying Entity for the scheduled energy as reflected in the REA with effect from the COD subject to the Article 4.6.3 of this Agreement.

9.2 Provided further that in case the commissioning of the project is delayed over Six (6) months beyond the Scheduled Commissioning Date, subject to Article 4, the tariff discovered after e-Reverse Auction shall be reduced at the rate of 0.50 paise/kWh per day of delay for the delay in such remaining capacity which is not commissioned.

9.3 Further provided that in case of part commissioning, the final tariff of the entire Project after commissioning of the balance capacity will be weighted average of the tariff of the timely commissioned capacity of the Project discovered through Reverse Auction and reduced tariff of the balanced capacity as per Article 4.6.2 of this Agreement.

14. Clause 3.14 of the guidelines dated 04.05.2017 and clause 3.17 of the RfS dated 31.05.2017 stipulates as under:

The funds generated from encashment of the Bank Guarantees shall be deposited in a separate fund under the guidance of MNRE. In case of delays of project commissioning due to the reasons beyond the control of the WPD, SECI after being satisfied with documentary evidences produced by the WPD for the purpose and which SECI finds beyond doubt can extend the time for commissioning date by upto three months without any financial implications to the WPD. For any extension beyond the period of three months, SECI will approach MNRE and MNRE will decide on further extension with the approval of Minister-in-charge, MNRE.

15. Relevant excerpts of MNRE OM dated 22.10.2019 states as under:

“This has reference to SECI’s letter dated 30.8.2019, 25.4.2019 and 2.1.2019 regarding extension of milestones in wind power projects under SECI bids.

2.In this regard, it is stated that the issue has been examined in the Ministry and following course of action may be followed while considering grant of extension for wind power projects under tranches SECI I to V;

.....

- c. **Extension in scheduled commissioning of the project for a period equal to 60 days subsequent to operationalization of LTA (allowing additional time to be provided to the developer to complete the commissioning activities once the ISTS infrastructure is ready) may be considered.**
- e.
- f. **In cases where SCD of the projects are extended based on the reasons as above, FC milestone will be extended accordingly, considering that project commissioning is the ultimate target. Further, delay in commissioning beyond the extended SCD will be dealt as per the provisions of RfS and PPA.**

3. SECI may examine each representation for grant of extension accordingly and provide relief thereof.

16. From the above, we observe that in the event where WPD is prevented from performing its obligations by the SCoD due to force majeure events, the SCoD and the Expiry Date of the PPA are deferred for a reasonable period on 'day for day' basis up to three (3) months without any financial implications. Any extension beyond the period of three months is allowed with approval from MNRE. Further, in case the project is not commissioned within 18 months from LoA, SECI is entitled to encash the PBG proportionally as Liquidated Damages for the delay in Commissioning up to six (6) months. In case the commissioning of the project is delayed over six (6) months, the tariff (2.65/kWh) will be reduced at the rate of 0.50 paise/kWh per day of delay. The maximum time period allowed for the commissioning of the full project capacity with encashment of PBG and reduction in the fixed tariff is limited to 27 months from the date of LoA. For any delay beyond 27 months, the PPA capacity stands reduced/amended to the Project Capacity Commissioned. MNRE vide O.M. dated 22.10.2019, gave a blanket extension in SCoD for a period equal to 60 days subsequent to the operationalization of LTA (allowing additional time to be provided to the developer to complete the commissioning activities once the ISTS infrastructure is ready).
17. Vide letter dated 20.09.2018, PGCIL informed AGEMPL about the delay in providing LTA as its transmission system was not ready and suggested AGEMPL explore other routes. The extract of the relevant letter is as under:

.....

This is with reference to your letter no. AGEMPL/PGCIL/Wind/180831 dated 31.08.2018 regarding tentative commissioning schedule of Bhuj PS and the planned augmentation of transformation capacity (6x500MVA, 400/220kV & 2x1500MVA, 765/400kV ICTs) at Bhuj PS which has been identified for grant of 100MW LTA to M/s AGEMPL.

In this regard, it is to mention that the Bhuj PS along with 2x1500MVA, 765/400kV & 2x500MVA, 400/220kV ICTs and Bhuj - Banaskantha - Chittorgarh 765kV D/c line corridor is targeted for completion by end of Dec'18. Further, the augmentation of transformation capacity at Bhuj PS by 6x500MVA, 400/220kV & 2x1500MVA, 765/400kV ICTs is under tendering stage and POWERGRID is making all efforts to install the ICTs as early as possible. However, you may also explore other modes of open access viz. MTOA & STOA to facilitate evacuation of power from your project. Hope the above clarifies your query.

18. Vide letter dated 21.11.2019, SECI informed AGEMPL as under:

...
Subject: Extension to Scheduled Commercial Operation Date (SCoD) for 50 MW ISTS- connected Wind Power Projects in Gujarat (under Tranche-II) in view of delay in LTA operationalization

.....
This has reference to your request for grant of time extension to Scheduled Commissioning Date for 50 MW ISTS connected Wind Power Project awarded to M/s Adani Green Energy (MP) Limited under SECI Wind Tranch-II (Project ID: WPD-ISTS-12-AGEMPL-P2-50GJ).

In this regard, it is to inform that on the account of delay in operationalization of Long Term Access (LTA) by the Central Transmission Utility (CTU), the Scheduled Commercial Operation Dale (SCOD) for the said Project has been revised to 03.01.2020 or actual Commercial Operation Date (COD), whichever is earlier.

19. From the above, we note that there was a delay in providing LTA as the transmission system was not ready, and SECI vide letter dated 21.11.2019, on account of the delay in the operationalization of Long-Term Access (LTA) by the Central Transmission Utility (CTU), revised the SCoD for the project to 03.01.2020 or COD, whichever is earlier. We also note that SECI has placed on record that PSPCL was also informed about the revised SCoD qua letter dated 26.11.2019.

20. PSPCL, vide letter dated 20.04.2020 addressed to SECI sought a reduction in tariff as the project was commissioned on 07.03.2020 with over 6 months delay from the date of original SCOD i.e. 18 months after issuance of LoA dated 03.11.2017. Relevant extracts of the aforesaid letter are as under:

.....
It is brought out that as per Article-1 of the above referred PPA between SECI and Adani Green Energy (MP) Ltd. (AGEMPL), the Scheduled Commissioning Date (SCD) is defined as 03/05/2019. Also as per Article- 4.6.1. the Project is to be commissioned within 18 months from the date issuance of LOA. As the date of issuance of LOA is 03/11/2017, 18 months comes to an end on 03/05/2019 i.e., in tandem with the

definition of SCD. Whereas actual SCD of the project is 07-03-2020 i.e. project has been commissioned by a delay of about 10 months beyond SCD.

....

The energy bill claimed by you for the energy supplied from the AGEMPL project for the period from 07-03-2020 to 31-03-2020 is at full tariff rate whereas **as per Article-9.2 (Applicable tariff) of PPA, in case the commissioning of the project got delayed over Six (6) months beyond SCD, the applicable payable tariff rate will get reduced.** Article; 4.5.6 of the PPA layB down In absolute terms that the SCD cannot be extended beyond 27 months from the date of the Issuance of LOA by SECI to WPD I.e. beyond 03-02-2020.

.....

As the project of AGEMPL has been commissioned on 07-03-2020 i.e. commissioning of the project got delayed over Six (6) months from the date of LOA, as such, the energy bill should have raised at reduced tariff as per Article-9.2 and Article- 4.6.2 of PPA instead of full tariff. So, it is requested to review the tariff claimed and raise the revised energy bill accordingly.

21. SECI, vide letter dated 15.05.2020 stated that the extension granted to AGEMPL was in pursuance to MNRE's directions dated 22.10.2019. Relevant extracts of the letter dated 15.05.2020 are as under:

....

With reference to above cited Memo In SL. No.4, it is being clarified Scheduled Commissioning Date (SCD) for a Wind Power Project is 18 months from the date of issuing of Letter of Award (LOA). Further, Article 3.2.5 of signed PPA between SECI and WPD slates as follows:

Provided that due to provisions of this Article 3.2.4, any increase in the time period for completion of conditions subsequent mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled Commissioning Date."

Aforesaid Memo from PSPCL mentioned the Article 4.6 stating the maximum timeline for commissioning of a project is 27 months from the date of LOA. If may be clarified that **SECI being the nodal agency of Ministry of New and Renewable Energy, Government of India works as per the terms and conditions of RfS issued under guidelines of Government of India. As WPDs could not setup their projects even after their best efforts, the matter was brought before MNRE and on dated 22.10.2019, MNRF vide OM No. 117/1/2019-Wind (Copy enclosed as Annexure-A) outlined certain procedures for SCD extension.**

In this case, due to delay in operationalization of Long-Term Agreement (LTA) by Central Transmission Utility (CTU), WPD requested SECI for time extension of its project. The matter was looked into by SECI and found the claim by WPD falls under Force Majeure event and qualifying the time extension OM by MNRE and with the approval of Competent Authority, the SCD of WPD has been extended to 03.01.2020 or actual COD, whichever is earlier as per the terms and conditions of RfS and PPA.

.....

22. From the discussions in the preceding paragraphs, we note that the undisputed timelines are as under:

Date	Events
03.11.2017	LoA issued to AGEMPL
29.12.2017	PPA executed between SECI and AGEMPL
03.05.2019	SCoD of the project
03.01.2020	Revised SCoD date of the project
04.01.2020	Start date of encashment of PBG
03.02.2020	27 months from the date of LoA
05.03.2020	COD with a delay of 62 days

23. We observe that there is no dispute between the parties on the issue of the levy of liquidated damages imposed by SECI on AGEMPL for the 62-day delay in commissioning the project, as AGEMPL has already admitted to the same in its submissions. However, the only issue that is pertinent to deciding is *whether the Petitioner is entitled to a reduction in tariff in terms of the PPA dated 29.12.2017*. PSPCL has claimed that the project cannot be commissioned after 27 months from the date of issuance of the LoA, and the project being commissioned on 05.03.2020 amounts to a violation of Article 4.5.6 of the PPA. *Per Contra*, the Respondents submitted that the 27-month deadline cannot be made applicable without considering the extended SCoD date. With the extended SCoD being 03.01.2020, the timeline for computing liquidated damages/reduction of tariff will start from there.

24. We note, that the Petitioner, in its prayers, has sought relief as under:

*(i.) allow the reduction of tariff by Rs.0.50/kWh per day of delay for the purchase of 50 MW wind power under the Power Purchase Agreement dated 27.12.2017 entered into between Respondent Nos.1 and 2 read with Power Sale Agreement dated 24.11.2017 entered into between the Petitioner and Respondent No.2 **for the period of delay in commissioning the wind power project of Respondent No.1 (i.e. from 4.1.2020 to 7.3.2020)** and; (ii.) pass such further Order(s) as this Hon'ble Commission may deem fit in the facts and circumstances of the present case.*

25. From the above, it is implied that the Petitioner has already accepted the period of computing damages/tariff reduction as 04.01.2020. However, in its submissions, the Petitioner has laid emphasis on the fact that *if the extension is beyond 03.11.2019, then it would result in the encashment of PBG as well as a reduction of the tariff by Rs. 0.50/kWh per day*. Further, the Petitioner has admitted to the revised SCoD as 03.01.2020.

26. We note that the proviso to Article 3.5 of the PPA stipulates as under:

Provided that due to provisions of this Article 3.2.4, any increase in the time period for completion of conditions subsequent mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled Commissioning Date.

27. From a harmonious reading of Articles 3.5, 4.5.5 and 4.5.6 of the PPA, we observe that the initial SCoD, if subsequently revised, the revised SCoD shall be deemed to be the new SCoD and such extended SCoD, in any case, should not be beyond the 27 months from the date of issuance of the LoA.

28. In the instant petition, the original SCoD was 03.05.2019, which was subsequently extended by SECI to 03.01.2020, and the project achieved actual commissioning on 05.03.2020. The deadline for 27 months period expired on 03.02.2020 (i.e. 27 months from the date of LoA in terms of clause 4.5.6 of PPA dated 29.12.2017), and the extended SCoD (which is deemed to be the new SCoD) falls within the bracket of 27 months period as enshrined in the PPA and is therefore permissible. Hence, we observe that there is no breach of Article 4.5.6 of the PPA.

29. Further, we note that Article 4.6 of the PPA deals with liquidated damages for delay in commissioning the project. The said provision cannot be read in isolation and has to be read in harmony with other provisions of the PPA and MNRE directions dated 22.10.2019. It includes the extension of SCoD in terms of MNRE's OM dated 22.10.2021, consistent with Article 4.5.6 of the PPA. The 27 months' time mentioned in Article 4.6.2 of the PPA for completing the project has to be read in consonance with Article 4.5.5 and Article 4.5.6 of the PPA. Article 4.6.1 of the PPA stipulates that in case of delay in the commissioning of the project up to six (6) months, SECI will encash the PBG on a per-day basis proportionate to the balance capacity not commissioned. SECI has rightly done so by encashing the PBG amounting to Rs. 3,44,44,444 for the 62 days delay in commissioning the project from 03.01.2020 to 05.03.2020 (Actual Commissioning), which was paid by AGEMPL. Article 4.6.2 of the PPA specifically provides for a reduction in tariff in case of delay in commissioning beyond six (6) months.

30. We are of the considered view that, the six (6) months period will be counted from the date of the revised SCoD date, i.e. 03.01.2020. Reduction in tariff can only be applied with effect from 03.07.2020. AGEMPL has already commissioned the project on 05.03.2020. SECI has already

levied a penalty for the delay and has issued Commissioning-cum-COD certificate and hence ratified the delay by AGEMPL. AGEMPL cannot be saddled with additional penalties as it has already paid liquidated damages to SECI in terms of the provisions of the PPA. Hence, PSPCL's claim for tariff reduction is devoid of merit in terms of the PPA.

31. The issue is accordingly decided against PSPCL.

32. Accordingly, Petition No. 64/MP/2022 is disposed of in terms of the above.

Sd/-
पी. के. सिंह
सदस्य

Sd/-
अरुण गोयल
सदस्य

Sd/-
आई. एस. झा
सदस्य

Sd/-
जिष्णु बरुआ
अध्यक्ष