

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.337/AT/2023

- Subject : Petition under Section 63 of the Electricity Act, 2003 for the adoption of tariff of 600 MW Wind Power Projects (Tranche XIII) connected to the inter-State Transmission System (ISTS) and selected through Competitive Bidding Process as per the Guidelines dated 8.12.2017 of the Ministry of Power, Government of India as amended from time to time and interpreted and modified by the Central Government vide subsequent communications/notifications.
- Date of Hearing : **6.3.2024**
- Coram : Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Solar Energy Corporation of India Limited (SECI).
- Respondents : GRIDCO Limited and 4 Ors.
- Parties Present : Ms. Shikha Ohri, Advocate, SECI
Shri Karthik Sharma, Advocate, SECI
Shri Dinesh Pardasani, Advocate, SIROPL
Shri Bibin Kurian, Advocate, SIROPL
Shri Kaustubh Shrinarain, Advocate, SIROPL
Shri Hemant Sahai, Advocate, TGPPL
Ms. Shubhi Sharma, Advocate, TGPPL
Shri Adarsh Kumar Bhardwaj, Advocate, TGPPL
Ms. Samprati Sing, Advocate, TGPPL

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed seeking the adoption of tariff of the 600 MW Wind Power Projects (Tranche XIII) connected to the inter-State Transmission System and selected through a competitive bidding process as per the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects" dated 8.12.2017 ("Wind Guidelines") as issued by the Ministry of Power, Government of India under Section 63 of the Electricity Act, 2003 along with subsequent amendments made thereto. Learned counsel for the Petitioner further submitted that the pleadings have already been completed in the matter, and the Commission may reserve the matter for order.

2. Learned counsel for Respondent No.3, Teq Green Power XI Private Limited (TGPPL), submitted that Respondent No. 3 is not opposing the adoption of tariff in the present Petition and mainly submitted as under:

(a) As per the PPA, the effective date is 26.6.2023 and the Scheduled Commissioning Date) SCD of the Project is 24 months from the effective date, i.e., 25.6.2025. The present Petition was filed on 13.9.2023, and the period of 120 days from the effective date expired on 24.10.2023. Therefore, the Project has become eligible for an extension of SCD in terms of the express provisions of the PPA.

(b) In case the SCoD of the Project is before the ISTS Waiver Deadline, and if the Project is granted extension in the SCoD on account of Force Majeure or for delay on the part of the transmission provider in providing the transmission system even after having taken the requisite steps in time, or on account of delays on the part of any Government Agency, and the Project is commissioned before the extended SCD; it will get benefit of waiver of ISTS Charges.

(c) In case of any extension in SCD beyond the ISTS waiver deadline, necessary approval will be granted by MNRE, in line with the OM issued by Ministry of Power on 30.11.2021, and subsequent amendments/clarifications thereto, read in conjunction with this Commission's orders and regulations notified in this regard.

(d) The Petitioner, SECI, vide its letter dated 1.2.2024, has intimated that the SCD of the Project will be extended by an equal number of days counting between 25.10.2023 and the actual date on which this Commission grants approval for the tariff adoption. It is imperative that this Commission holds and declares that the Project will be exempted from levy of the ISTS charges beyond the ISTS waiver deadline on account of such legitimate extension of SCD of TGPPL's Project. This declaratory approval by this Commission in favour of TGPPL is essential at this stage since Regulation 13 of the Sharing Regulations is silent on a waiver from levy of ISTS charges in case of a legitimate and valid extension of SCD of a project beyond the ISTS waiver deadline.

(e) Such declaratory approval will further assure the lenders of TGPPL on the Project's viability and provide regulatory certainty, considering that the parameters at the time of the bidding did not envisage any delay in commissioning due to delay in the issuance of the necessary approvals, including delay in adoption of the tariff, in terms of the PPA and the bid documents.

(f) As CTUIL has no privity of contract with Respondent, TGPPL, which clearly means that there is no binding of any clause of the PPA on the Respondent, CTUIL. Therefore, the declaration of this Commission at this stage that the Project will be exempted from levy of ISTS charges beyond the ISTS waiver deadline on account of such legitimate extension of SCD of TGPPL's Project gives a binding effect on Respondent, CTUIL and further helps the TGPPL in obtaining financial assistance for the project being implemented by Respondent, TGPPL.

(g) The extension of the SCD, which is beyond the control of Respondent, TGPPL fulfils the criteria of a force majeure event. Therefore, TGPPL has sought declaration that for any delay beyond the ISTS waiver deadline, the

project of TGPPL will be exempted from levy of ISTS charges in order to ensure the consequential relief necessary for obtaining funding for the implementation of the project.

(h) The Commission, while relying on the decision of the APTEL dated 12.10.2021 passed in Appeal No. 251 of 2021 in the case of *Green Infra Renewable Energy Limited v RERC & Ors.*, in its Order dated 8.3.2023 in Petition No. 245/AT/2022 has taken a conscious view on the delay in the adoption of tariff in terms of the express provisions of the PPA specifically Articles 2.1.3 and 2.1.4 (*pari materia* to Articles 2.1.3 and 2.1.4 of the PPA in the present matter) at the stage of the adoption of tariff.

(i) The claims of the TGPPL are solely based upon Article 11 (i.e. Force Majeure) of the PPA and must be dealt with by this Commission at this stage as both the notifications of the MOP dated 23.11.2021 and 30.11.2021 existed during the last date of submission of the bid.

2. Learned counsel for the Petitioner pointed out that previously the reply of the Respondent, TGPPL was based upon the presumption that TGPPL was seeking relief under a 'Change in Law' event, whereas the present submissions of the Respondent, TGPPL is completely changed and are based upon 'Force Majeure' event. Learned counsel further pointed out that the altered stand of the Respondent, TGPPL, is not on the record.

3. Learned counsel for Respondent No.3 further submitted that no Change in Law is being claimed on account of the MoP order dated 9.6.2023, and both the notifications of the MOP dated 23.11.2021 and 30.11.2021 were in existence during the last date of submission of the bid.

4. After hearing the learned counsels for the parties, the Commission directed Respondent No.3, TGPPL, to file its response on the issue of the Force Majeure claims within 10 days with a copy to the Petitioner who may file its rejoinder, if any, thereon within 5 days thereafter.

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

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)