



THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW
Petition No. 1993 of 2023

QUORUM

Hon'ble Shri Arvind Kumar, Chairman
Hon'ble Shri Vinod Kumar Srivastava, Member (Law)
Hon'ble Shri Sanjay Kumar Singh, Member

IN THE MATTER OF

Petition filed under Section 86(1)(k) along with Section 86(1)(c) and 86(1)(f) of the Electricity Act 2003 read with Regulation 18, 19, 20 and 21 of the UPERC (Grant of Connectivity to Intra-State Transmission System) Regulations, 2010 and read with Regulation 57 of the UPERC (Conduct of Business) Regulations, 2019.

AND

IN THE MATTER OF

Chitradurga Renewable Energy India Pvt. Limited
48/13, 40th Cross, 3rd Main Road, 8th Block, Jayanagar,
Bangalore-560082, Karnataka

..... Petitioner

VERSUS

1. Uttar Pradesh Power Transmission Corporation Limited, through its Managing Director, Shakti Bhawan, 14 Ashok Marg, Lucknow, Uttar Pradesh-226001
2. Uttar Pradesh New and Renewable Energy Development Agency through its Director, NEDA Bhawan, Vibhuti Khand, Gomti Nagar, Lucknow, Uttar Pradesh-226010

..... Respondents

THE FOLLOWING WERE PRESENT

1. Ms. Anukriti Jain, Advocate, Petitioner
2. Sh. Puneet Chandra, Advocate, UPPTCL

by.





ORDER
(DATE OF HEARING: 04.04.2024)

1. The instant Petition is filed under Section 86(1)(k) along with Section 86(1)(c) and 86(1)(f) of the Electricity Act 2003 ("the Act") read with Regulation 18, 19, 20 and 21 of UPERC (Grant of Connectivity to Intra-State Transmission System) Regulations, 2010 ("Connectivity Regulations") and read with Regulation 57 of UPERC (Conduct of Business) Regulations, 2019 to relax Regulation 6.4 of Connectivity Regulations and to issue direction to UPPTCL to relax Para 6.4 of the Procedure for Grant of Connectivity to Intra-State Transmission System ("Connectivity Procedure") as construction of 70 MW Solar PV Power Plant, Lalganj, Azamgarh Uttar Pradesh has become impossible due to occurrence of Force Majeure Events, without fault of the Petitioner and that the location of the connectivity can be changed due to occurrence of Force Majeure Events. The prayers of the Petition are as follows:
 - (a) Allow the Petitioner to transfer the investment and development of the 70 MW Solar PV Power Plant, Lalganj, Azamgarh Uttar Pradesh ("Project") in any other part of the State and further grant feasibility and connectivity at the new location under the same fee schedule and without forfeiting the Bank Guarantee dated 06.02.2021 as amended on 11.01.2023.
 - (b) Alternatively, allow termination of the Connection Agreement and direct UPPTCL to return Bank Guarantee bearing number LOBG401012100656 of an amount of INR 3.5 Cr.

Brief of the Petition

2. The Petitioner being the captive generating company for the purpose of evacuation of power from its Project is required to apply for connectivity to the grid and open access to the transmission lines.
3. The Petitioner signed a MoU with the State Government for development of a Solar Power Plant in the State. The Petitioner, in terms of the Connectivity Regulations read with the Connectivity Procedure, submitted an application to UPPTCL on 15.09.2020 for grant of connectivity for 70 MW Solar PV Power Plant, Lalganj, Azamgarh. The Petitioner was granted interconnection facilities (i.e. Bay) at 132 kV Substation Lalganj.

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4. On 05.11.2020, UPPTCL issued FORMAT CON-5 permitting the Petitioner for the connectivity to intra-State transmission system for the Project. Thereafter, Connection Agreement dated 17.12.2020 was executed between Petitioner and UPPTCL. As per the Connection Agreement, UPPTCL is required to construct interconnection facilities at the point of connectivity and the Petitioner is required to furnish the amount towards such construction.
5. As per Clause 11 of the Connectivity Procedure, the Petitioner has to furnish a requisite construction phase security in the form of BG calculated at Rs. 5 lacs per MW or such amount as decided by the Commission on the request of STU. BG dated 06.02.2021 amounting to Rs. 3.5 Crores was issued in favour of UPPTCL on behalf of the Petitioner. The Petitioner also has made a payment of supervision charges for the construction of transmission line amounting to more than Rs. 1 crore and has also made a payment towards bay construction charges amounting to Rs. 1 Crore. In this context, Force majeure clause as defined under connection agreement needs reproduction. Accordingly, Force Majeure Clauses is reproduced below:

"10. Force Majeure

Force Majeure herein is defined as any clause which is beyond the control of the party of the First part or CREIPL-LALGANJ, as the case may be, which could not be foreseen or with a reasonable amount of diligence could not have been foreseen and which substantially affects the performance of the agreement. Force Majeure events would include:

- (a) *Natural phenomenon including but not limited to floods, droughts, earthquake and epidemics;*
- (b) *War (whether declared or undeclared), invasion, armed conflict or act of foreign enemy in each case involving or directly affecting India, revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage in each case within India;*
- (c) *Nuclear explosion, radioactive or chemical contamination or ionizing radiation directly affecting the generation system, captive generating plant, distribution system of distribution licensee, intra-State transmission system of the party of the First part or intra-State transmission licensee other than the party of the First part, Industrial or commercial establishment of captive user or open access consumer, or any facility or system that is Integral to and substantial for the performance of this agreement.*
- (d) *Any event or circumstances of a nature analogous to any events set forth above within India. Provided either party shall, within fifteen (15) days*

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from the occurrence of such a Force Majeure event, notify the other in writing of such cause(s). Neither of the parties shall be liable for delays in performing obligations on account of any force majeure causes as referred to and/or defined above."

6. For construction of the Project, an area of 270-acre land was required and Petitioner had entered into Consent to Lease agreement with landowners for the acquisition of land. However, due to large numbers of landowners per plot agreements of all owners of that particular land or owners of continuous parcel of land could not be obtained.
7. Petitioner has made following progress in respect of the said Project:
 - (a) Petitioner has made an investment to the tune of Rs. 9.5 Cr towards developing the Project.
 - (b) Petitioner has also executed registered Lease Deeds for around 140 acres of Land. However, as per petitioner, its ability to perform its obligations towards construction of the Project has been severally impacted due to following reasons:
 - (i) landholding in the region is diversified and it required dealing with more than 2000 individuals. Under the influence of external forces, these individuals are refusing to execute any lease deed.
 - (ii) The land of the Petitioner wherein Petitioner has to develop the Project is dominated by bunch of criminals / gangsters and therefore, it was difficult to develop the Project in the said area since grievance with these people would lead to threat to the lives of the Petitioner.
8. Petitioner has tried its best to mitigate the risks arising from the problems occurred at the site. Petitioner undertook following activities:
 - (a) Petitioner requested UPNEDA for assistance in helping the Petitioner to overcome the obstacles it is facing at the Project's site.
 - (b) Petitioner also organized Gram Panchayat meetings to discuss the importance of renewable energy to convince the landowners to lease out the land to the Petitioner for development of a renewable energy power plant.
 - (c) During the outbreak of Covid-19, Petitioner had also made donations to support the villagers.

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