

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 58/MP/2023 along with IA No.21/2023**

- Subject : Petition under Section 79(1)(b) read with Section 79(1)(t) of the Electricity Act, 2003 and applicable laws and provisions inter alia seeking payment of compensation for breach of provisions of the Power Purchase Agreement dated 21.7.2017 executed by and between Wind Five Renergy Private Limited and PTC India Limited.
- Date of Hearing : 13.4.2023
- Coram : Shri Jishnu Barua, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioner : Wind Five Renergy Limited (WFRL)
- Respondents : PTC India Limited (PTCIL) & 3 Ors.
- Parties Present : Shri Sanjay Sen, Sr. Advocate, WFRL  
Shri Aniket Prasoon, Advocate, WFRL  
Shri Md. Aman Sheikh, Advocate, WFRL  
Ms. Dalima Gupta, Advocate, WFRL  
Shri Ravi Sinha, WFRL  
Shri Ravi Kishore, Advocate, PTCIL  
Shri Keshav Singh, Advocate, PTCIL  
Shri Dhruv Tripathi, PTCIL  
Ms. Rohini Prasad, Advocate, Bihar Discoms  
Shri Gajendra Sinh, NLDC

**Record of Proceedings**

Learned senior counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, seeking direction to the Respondents to make payment of compensation equivalent to an amount of Rs. 82.84 crore along with interest, being the loss suffered by the Petitioner due to breach of the Power Purchase Agreement dated 21.7.2017 (PPA) executed by and between Inox Wind Infrastructure Services Limited (Inox), which was subsequently replaced by the Petitioner vide Amendment No.1 dated 20.12.2017 to the PPA and the Respondent No. 1, PTCIL. Learned senior counsel mainly submitted as under:

- (a) Pursuant to Inox being selected as successful bidder in a competitive bidding process conducted by Respondent No.2 - SECI, Inox and PTCIL had entered into the PPA for development of 50 MW Wind Power Project ('the Project') in Kutch, in the State of Gujarat and supply of electricity generated therefrom @ Rs. 3.46/kWh. Subsequently, by way of Amendment No.1 dated 20.12.2017 to the PPA, the Petitioner, namely, Wind Five Renergy Limited, replaced Inox as

generator under the PPA. Further, PTCIL had also entered into Power Supply Agreement (PSA) dated 27.6.2017 with Respondent Nos. 3 & 4, Bihar Discoms for onwards sale of electricity generated from the Petitioner's Project.

(b) As per the PPA, the Petitioner was required to commission the Project by 4.10.2018, which was later revised by SECI to 13.6.2019. However, the Petitioner successfully commissioned the Project only on 4.7.2019 i.e. after delay of 21 days for which appropriate liquidated damages had been recovered by SECI in terms of the PPA.

(c) It was only after a site visit and verification of the Project by the commissioning committee (SECI, GEDA and the Petitioner) on 4.7.2019 in terms of the commissioning procedure, SECI issued commissioning-cum-COD certificate dated 6.8.2019 recording that the Petitioner successfully commissioned the Project on 4.7.2019 and COD of the Project is to be considered from 7.8.2019.

(d) Though the Project was commissioned on 4.7.2019, the scheduling of power from the Project could commenced only from 26.3.2020 for reasons beyond the control of the Petitioner. Right from the initiation of scheduling of power from the Project w.e.f 26.3.2020 onwards, the Petitioner had been duly raising monthly invoices upon PTCIL @ Rs. 3.46/kWh and PTCIL having accepted the commissioning of the Project, had also been releasing payment to the Petitioner at the same rate till February, 2021.

(e) However, after a lapse of 10 months, PTCIL, at the instance of Bihar Discoms, in complete breach of the provisions of the PPA, unilaterally and arbitrarily reduced the tariff to Rs. 2.025/kWh by alleging a delay of 287 days in commissioning of the Project instead of previously admitted delay of just 21 days. This was done on the presumption that 26.3.2020 i.e., date of commencement of scheduling of power is the date of commissioning of the Project. On that basis, PTC/Bihar Discoms alleged that the Project was commissioned after a delay of 287 days and started paying at reduced tariff and also adjusted the amount already paid at Rs. 3.46/- per unit.

(f) Being aggrieved by the above, the Petitioner had earlier filed Petition No.134/MP/2022, *inter alia*, challenging the unilateral & arbitrary reduction of tariff by PTCIL and reinstatement of tariff of Rs. 3.46/kWh along with consequential reliefs in relation thereto.

(g) If the contentions raised by Bihar Discoms regarding commissioning of the Projects were to be accepted, then the same would result in an automatic and inevitable termination of the PPA on expiry of the maximum time period allowed for commission of the Project, being 27 months from the date of Letter of Award (LoA) as per Article 4.6.2 of the PPA. Since, in the instant case LoA was issued on 5.4.2017, the maximum period allowed for commissioning was 4.7.2019. Accordingly, the Petitioner vide its letters dated 9.9.2022 & dated 16.9.2022, *inter alia*, called upon PTCIL to provide its confirmation regarding payment of tariff of Rs. 3.46/kWh along with arrears taking into account that the project has been commissioned on 4.7.2019, failing which the PPA shall be treated as terminated as per clause 4.6.2 of PPA.

(h) However, PTCIL refused to convey its response on the above and consequently, the Petitioner issued notice dated 10.11.2022 whereby it informed PTC regarding automatic termination of the PPA in terms of Article 4.6.2 of the

PPA. Subsequent thereto, as the prayer made in the Petition No. 134/MP/2020 had become infructuous, the same was withdrawn and the present Petition was filed afresh by the Petitioner.

(i) Keeping in view the automatic termination of the PPA on 4.7.2019, the power supplied by the Petitioner from the Project so far i.e. from 26.3.2020 till date ought to be treated as supply of power outside the PPA and therefore, the Petitioner is entitled to receive and PTCIL/Bihar Discoms are liable to pay the Petitioner compensation equivalent to the differential amount between the applicable IEX rate vis-à-vis amount actually received from PTCIL from energy supplied by the Petitioner from 26.3.2020 onwards, along with interest.

(j) The Petitioner has also filed IA No.23/2023, *inter alia*, seeking permission to supply power from its Project through alternate modes, including Short-Term Open Access and Power Exchanges. On 28.2.2023, the Petitioner submitted its application on National Open Access Registry (NOAR) for availing STOA for the Project and made the payment of the requisite fees also. However, no NOC/Approval has been granted so far. The Petitioner is urging for immediate direction seeking its registration on NOAR to prevent the idling of Project capacity. The Petitioner has also impleaded WRLDC as party by filing revised memo of parties by affidavit dated 17.3.2022 which may be taken on record.

2. Learned counsel for the Respondent, PTCIL accepted the notice and sought liberty to file reply in the matter. Learned counsel submitted that PTCIL had considered the commissioning date of the Petitioner's Project as 4.7.2019 as certified by SECI. However, the Bihar Discoms refused to consider the same. Learned counsel also pointed out that initially the Bihar Discoms has also proceeded to release the payment @ Rs. 3.46/kWh and only after a period of approximately one year, they raised the issue of delay in commissioning of the Project and proceeded to reduce the tariff under the PPA. Learned counsel, *inter alia*, also expressed his concerns with the manner in which the Petitioner proceeded to terminate the PPA.

3. Learned counsel for the Respondents, Bihar Discoms accepted the notice and sought liberty to file reply in the matter. Learned counsel further submitted that there cannot be an automatic termination of the PPA as contended by the Petitioner. He further added that the commissioning certificate by SECI was not issued in the context that the Petitioner would commence the scheduling only on 26.3.2020. Learned counsel also added that as on 4.7.2019, one of the power transformers was also not properly installed and connected with grid by the Petitioner at the pooling station.

4. In rebuttal, learned senior counsel for the Petitioner submitted that the Bihar Discoms cannot seek any relief qua termination of the PPA in the present Petition filed by the Petitioner. Learned senior counsel also rebutted the submissions of the Bihar Discoms regarding the commissioning date of the Project and referred to the Minutes of the Meeting of the Commissioning Committee dated 4.7.2019 and the Joint Meter Reading Report.

5. After hearing the learned senior counsel for the Petitioner and the learned counsel for the Respondents, PTCIL and Bihar Discoms, the Commission ordered as under:

(a) Admit. Issue notice to the Respondents.

(b) The Petitioner to serve copy of the Petition on the Respondents immediately, if not already served and the Respondents to file their reply, if any, within two weeks with copy to the Petitioner, who may file its rejoinder within two weeks thereafter.

(c) Insofar as the interim relief(s) prayed for by the Petitioner, the Commission deemed it appropriate to take into the account comments of the WRLDC prior to issuing any directions thereof and keeping in view urgency in matter, the Commission directed to list the IA No. 21/2023 separately.

(d) The Commission also permitted the parties including WRLDC to file their response to the IA, if any, on or before 28.4.2023.

(e) Parties to comply with the above directions within the specified timelines and no extension of time shall be granted.

6. IA No. 21/2023 shall be listed for hearing on 4.5.2023. The Petition shall be listed for hearing in due course.

**By order of the Commission**

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