

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.26/MP/2024

- Subject : Petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 seeking declaration of Change in Law and entitlement of compensation for the Change in Law under the Power Purchase Agreement and for appropriate directions.
- Petitioner : Scatec India Renewables One Private Limited (SIROPL)
- Respondents : Solar Energy Corporation of India Limited (SECI) and 2 Ors.
- Date of Hearing : **6.2.2024**
- Coram : Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Parties Present : Shri Adarsh Bhardwaj, Advocate, SIROPL
Shri Divyansh, Advocate, SIROPL
Ms. Shikha Ohri, Advocate, SECI
Shri Karthik Sharma, Advocate, SECI

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed seeking a declaration that the Ministry of Power's Order dated 9.6.2023, which constitutes a change in the fundamental condition of the bid after the bid submission date and issuance of the Letter of Award, is a Change in Law and resultantly, the Petitioner is entitled to the compensation for the said Change in Law under the Power Purchase Agreement. Learned counsel mainly submitted as under:

(a) At the time of submission of the bid, there was a waiver of inter-State transmission charges and losses for the Renewable Projects to be commissioned by 30.6.2025 in terms of the Ministry of Power's Orders dated 30.9.2016, 23.11.2021 and 30.11.2021.

(b) Moreover, as per the Order dated 30.11.2021, an entity/ developer who is eligible for a waiver of ISTS charges and is granted an extension in Scheduled Commissioning Date (SCD) by the competent authority due to force majeure, transmission delays caused by the transmission provider, or any other delay attributed to a government agency, then the period of SCD shall be extended and the period of ISTS charges shall be deemed to be extended.

(c) However, after the conclusion of the bid process and the issuance of a Letter of Award dated 19.1.2023, the Ministry of Power, by its Order dated 9.6.2023, modified the condition for the benefit of waiver of ISTS charges and *inter-alia*, added a new condition, namely, a waiver will be applicable only if an extension in SCD is granted for six months at a time and not more than two times.

(d) The above restriction on the availability of ISTS charges waiver by the Ministry of Power (i.e. for a maximum period of 1 year beyond 30.6.2025) has



changed the basis of RfS and is not in accordance with the provisions of the PPA dated 28.6.2023, which does not provide for any restriction in extension of SCD of the Project on stated grounds vis-à-vis the waiver of the ISTS charges.

(e) The Petitioner is already facing the uncertainty surrounding Koppal-II sub-station availability/timelines and other ancillary issues, including delay in tariff adoption as narrated in the Petition, and these issues are likely to delay the overall Project execution. In such case, even if its SCD gets extended (beyond 30.6.2026), the Petitioner's Project will not be able to avail waiver of the ISTS charges as a result of the Ministry of Power's Order dated 9.6.2023 and any liability of transmission charges & losses upon the Petitioner would render the Project completely unviable.

(f) Keeping in view the above circumstances, the Petitioner is urging that the present Petition be taken up before or along with the tariff adoption proceedings under Petition No.337/AT/2023 as without adjudication of the prayers of the Petitioner in the present case would lead to complete uncertainty for the Petitioner and may also jeopardize the Project. In the absence of a clear position on these issues, the tariff sought to be adopted would be unrealistic and unsustainable.

(g) Appellate Tribunal for Electricity (APTEL) has held that there is no inhibition or prohibition against consideration of claim of Change in Law compensation at the stage of adoption of tariff process under Section 63 of the Act and that deferring such claim for later date creates a whole lot of confusion and regulatory uncertainty, and consequent difficulties in attaining financial closure. In this regard, the reliance was placed on the Order of APTEL dated 12.10.2021 in Appeal No. 251 of 2021 (Green Infra Renewable Energy Ltd. v. RERC).

2. In response, the learned counsel for Respondent No.1, SECI, strongly opposed the request of the Petitioner to link the present Petition with the tariff adoption proceedings under Petition No. 337/AT/2023. Learned counsel submitted that the Commission, in its recent orders, has already taken the view that the tariff adoption proceedings need not be held back on the grounds of Change in Law claims. Learned counsel also pointed out that Petition No. 337/AT/2023 was filed way back in October, 2023, whereas the Petitioner has chosen to file the present Petition only at the end of January, 2024. Learned counsel pointed out that the PPA was executed by the Petitioner only on 28.6.2023, i.e. after the Ministry's Order dated 9.6.2023, and the alleged grounds relating to the viability of the Project cannot be a reason for delaying the adoption proceedings and therefore, the present Petition may not be tagged with Petition No. 337/AT/2023 as urged by the Petitioner. Learned counsel sought liberty to file its reply in the matter.

3. In response, the learned counsel for the Petitioner submitted that in the event the Petition No. 337/AT/2023 is decided prior to the present Petition, it may render the present Petition infructuous and, accordingly, urged to take up the present Petition along with Petition No.337/AT/2023.

4. After hearing the learned counsel for the parties, the Commission deemed it appropriate to take up the interlocutory prayer for tagging this instant petition with Petition No. 337/AT/2023 and accordingly, directed the Respondents to file their respective submissions on above limited aspect, if any, within a week.

5. The Petition will be listed for the hearing on the limited aspect as noted above on **27.2.2024**.

By order of the Commission

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