

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.282/MP/2023**

**Subject** : Petition under Section 79 of the Electricity Act, 2003, and the Power Purchase Agreement dated 6.12.2018 executed between ACME Phalodi Solar Energy Pvt. Ltd. and Solar Energy Corporation of India Ltd., the Power Purchase Agreement dated 6.12.2018 executed between ACME Raisar Solar Energy Pvt. Ltd. and Solar Energy Corporation of India Ltd. and the Power Purchase Agreement dated 7.12.2018 executed between ACME Deoghar Solar Power Pvt. Ltd. and Solar Energy Corporation of India Ltd., the Power Purchase Agreement dated 7.12.2018 executed between ACME Dhaulpur Powertech Pvt. Ltd. and Solar Energy Corporation of India Ltd. seeking declaration that the condition of undergrounding of internal 33kV transmission lines pursuant to Order dated 19.4.2021 passed by the Hon'ble Supreme Court in WP(c) No. 838 of 2019 is a Change in Law event and directions to SECI to compensate the Petitioners towards the additional cost incurred due to such Change in Law event.

**Date of Hearing** : **5.3.2024**

**Coram** : Shri Jishnu Barua, Chairperson  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member

**Petitioner** : ACME Deoghar Solar Power Private Limited and 4 Ors..

**Respondents** : Solar Energy Corporation of India Limited (SECI) and 7 Ors.

**Parties Present** : Shri Vishrov Mukerjee, Advocate, ACME  
Shri Girik Bhalla, Advocate, ACME  
Ms. Shreya Sundaraman, Advocate, ACME  
Shri Shivam Sinha, Advocate, TPDDL  
Ms. Poorva Saigal, Advocate, HPPC  
Shri Ravi Nair, Advocate, HPPC  
Shri Devyanshu Sharma, Advocate, HPPC  
Shri Manish Choudhary, Advocate, BSPHCL  
Shri Himanshu Thakur, Advocate, BSPHCL  
Ms. Anusha Nagarajan, Advocate, SECI  
Ms. Aakanksha Bhola, Advocate, SECI  
Ms. Kirti Dhoke, Advocate, SECI

**Record of Proceedings**

During the course of the hearing, the learned counsel for the Petitioners and Respondents i.e. TPDDL and SECI, made detailed submissions in the matter. Learned counsel for the Petitioners recapitulated the background of the Petition and mainly submitted as under:

(a) The Petitioners have filed the present Petition *inter alia* seeking (i) declaration that undergrounding of low voltage internal lines (which include 33kV lines) passing through the Potential and Priority GIB habitat is a Change in Law event under the PPA and (ii) directions to Respondent SECI to compensate the Petitioners for the additional cost incurred towards the said Change in Law event.

(b) The undergrounding of power lines is pursuant to the mandate in terms of the Order dated 19.4.2021 passed by the Hon'ble Supreme Court in WP(C) No. 838 of 2019 ('GIB Order'). The undergrounding of low voltage internal lines, including 33 kV lines, qualifies as Change in Law under Article 12 of the PPA and Rule 3 of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('Change in Law Rules, 2021') since the requirement of undergrounding transmission lines was not mandatory as on the last date of submission of the bid i.e., 26.6.2018 (in respect of ACME Deoghar and ACME Dhaulpur) and 15.6.2018 (in respect of ACME Phalodi and ACME Raisar). The requirement of undergrounding the transmission lines has been introduced through the GIB Order dated 19.4.2021 and the MoP Order dated 1.8.2022, which is after the last date of submission of the bid (26.08.2018 and 15.06.2018).

(c) The GIB Order dated 19.4.2021 passed by the Hon'ble Supreme Court is a 'Law' under the PPAs. The Ministry of Power is also an Indian Government Instrumentality under the PPAs, and the directions issued by the Ministry of Power vide Order dated 1.8.2022 will qualify as 'Law' under the PPAs.

(d) Initiating undergrounding would entail an additional recurring/non-recurring expenditure since it was not envisaged at the time of the bid submission. Pursuant to the aforesaid Change in Law events, the Petitioners commenced the process of laying underground cables for internal power lines of 33kV and have placed orders for the purchase of a significant quantity of underground cables and their accessories.

(e) The Projects of the Petitioners are substantially ready but are yet to achieve commercial operation due to certain issue(s) relating to the charging of lines from the Pooling Station to the nearest ISTS sub-station. On 16.2.2023, the Petitioners had also made an application to the Committee constituted by the Hon'ble Supreme Court vide its order dated 19.4.2021 ('GIB Committee') seeking exemption from undergrounding extra high voltage dedicated transmission line of 400 kV owing to non-feasibility which is presently pending consideration before the GIB Committee.

(f) At the time of submission of the bid, the Petitioners could not have factored in the additional cost over and above Rs. 13.31 crore (estimated cost envisaged for overhead lines) incurred towards undergrounding of the Projects' internal power lines, which became mandatory after the Hon'ble Supreme Court's Order dated 19.4.2021. Hence, the Petitioners ought to be compensated for the additional recurring/non-recurring expenditure on account of this Change in Law event.

(g) As on the date of filing of the Petition, the Petitioners have incurred approximately Rs. 30 crore for undergrounding low voltage internal lines.

3. Learned counsel for Respondent, TPDDL, while questioning the maintainability of the Petition *inter-alia*, submitted that the GIB Order merely stipulates undergrounding of low voltage powerlines. However, the GIB Order at no place provides as to what constitutes a 'low voltage line', and hence 33kV lines can be considered as either high or medium voltage lines and cannot be considered as low voltage lines, which are required to be laid underground as per the GIB Order. Learned counsel further submitted that the Ministry of Power (MoP), Ministry of Environment, Forest and Climate Change (MoEF&CC) and Ministry of New and Renewable Energy (MNRE) have jointly filed an IA seeking modification/ clarification of the GIB Order dated 19.4.2021 in respect of its implementation in cases related to undergrounding of 33kV power lines. Since the IA filed before the Hon'ble Supreme Court is *sub-judice*, the present Petition cannot be decided to determine the applicability of the GIB Order on 33kV lines.

4. Learned counsel for Respondent, SECI mainly submitted that the Petitioners have not demonstrated that they have incurred any amount towards the activities of procurement and installations of equipment for undergrounding of the transmission line as the claims of the Petitioner (as on date of filing of Petition) are solely based on the Purchase Orders. The Petitioners have also not made any payment for the procurement of the requisite equipment to lay underground wiring of the power lines in GIB areas. She further submitted that the cause of action arises only when the Petitioners actually incur additional costs on account of procurement of the equipment for underground wiring of power lines in the GIB area, over and above that envisaged in their respective bids. The Petitioners may be directed to furnish the relevant details of differential expenditure for laying underground transmission as against an overhead transmission line, including details of measurement of the underground wiring along with Statutory Auditor's Certificate, to substantiate the impact of the GIB Order on the procurement and installation of underground transmission lines as required for the power project(s).

5. Matter remains part-heard. After hearing the learned counsel for the parties, the Commission directed the Petitioner and discoms to file their respective details regarding the normal per km cost of laying overhead as well as underground 33 kV lines on an affidavit within three weeks with a copy to the other side and the parties may file their respective responses thereof within three weeks thereafter.

6. The Petition will be listed for hearing on **6.6.2024**.

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