



ASSAM ELECTRICITY REGULATORY COMMISSION

ORDER SHEET

FILE NO. AERC 833/2022

PETITION NO: 09/2022

CORAM: HON'BLE SHRI K.S. KRISHNA, CHAIRPERSON
HON'BLE SHRI S.N. KALITA, MEMBER

In the matter of

Petition submitted by M/s Purshotam Northeast Pvt. Ltd & M/s Kilton Renewable Energy Pvt. Ltd seeking extension in the timelines of Financial Closure and Schedule Commissioning Date of the 20 MW (10 MW x 2) project, Direct MNRE and SECI to release VGF amount or declare EPC agreements have been frustrated, allow the Petitioners to terminate the project and direct APDCL to return the Bank Guarantee to the Petitioners

AND

In the matter of

M/s Purshotam Northeast Pvt. Ltd & M/s Kilton Renewable Energy Pvt.----- Petitioner
Assam Power Distribution Company Limited (APDCL) ----- Respondent-1
Solar Energy Corporation of India Limited (SEC) ----- Respondent-2
Ministry of New and Renewable Energy (MNRE) ----- Respondent-3

Present:

- 1) Mr Aditya Kumar Singh, Advocate, Petitioner
- 2) Mr. Santanu Bora, CGM NRE, APDCL
- 3) Mr. Pranab Kumar Bordoloi, GM, TRC, APDCL
- 4) Ms. Baishali Talukdar, AM, NRE, APDCL
- 5) Mr. Jitu Moni das, Individual consultant, NRE, APDCL

ORDER

11.10.2022

1. The Commission held a preliminary hearing on 11.10.2022 by M/s Purshotam Northeast Pvt. Ltd & M/s Kilton Renewable Energy Pvt filed on 11.07.2022 before the Commission seeking extension in the timelines of Financial Closure and Schedule Commissioning Date of the 20 MW (10 MW x 2) project, Direct MNRE and SECI to release VGF amount or declare EPC agreements have been frustrated, allow the Petitioners to terminate the project and direct APDCL to return the Bank Guarantee to the Petitioners.
2. The Commission adopted the tariff of Rs. 3.35 per unit on 02.07.2021 (8 months after signing of EPC) for region 1 (Lower Assam Zone), Assam for 10 MW and Region 3 (Cachar, Karimganj, Hailakandi), Assam for 10 MW.

SUBMISSION OF PETITIONER

3. The summary of the petition filed by petitioners is given below. The petitioner prayed before the Commission the following:
 - i. to Grant an extension of 12 months from the date of issuance of the order in the timeline of the Financial Closure (FC) on account of Force Majeure events;
 - ii. to Grant an extension in Schedule Date of Commissioning (SCD) for 18 months from the date of issuance of the order;
 - iii. Direct MNRE and SECI to release amount of Viability Gap Funding (VGF);

- iv. Restrain APDCL from invoking the Bank Guarantee submitted by the Petitioners at time of signing of EPC Agreements;
- v. Alternatively, declare that the Performance of EPC agreements dated 11.12.2020 and 21.12.2020 have been frustrated and are not capable of being performed and consequently, the Petitioners are not liable to any of the obligations under the said Agreements;
- vi. Alternatively, if the extension in the timelines of the FC and SCD is not granted, then the Hon'ble Commission may be pleased to allow the Petitioners to terminate the Project;
- vii. In case of termination of the Project, APDCL may be directed to return the Bank Guarantees to the Petitioners;

SUBMISSION OF RESPONDENT -1 (APDCL)

4. The respondent submitted before the Commission the following:
 - i. Solar Energy Corporation of India (SECI) is the implementing agency under the scheme "implementation of CPSU Scheme Phase-II for setting up 12,000 MW grid-connected Solar Photovoltaic (PV) Power Projects by CPSUs/ State PSUs/ Government Organizations, with Viability Gap Funding (VGF) support for self-use or use by Government/ Government entities, either directly or through Distribution Companies (DISCOMS)" notified by MNRE on 03.07.2019. As the project is a MNRE project, the extensions for the same are given by MNRE and then by SECI to APDCL. **APDCL itself cannot give extensions.**
 - ii. From the available records, it is evident that **there is a considerable delay and uncertainty happened due to non-receiving of response by APDCL from SECI on time.** This uncertainty regarding approval of project extension timeline happened due to default on the part of SECI not APDCL.
 - iii. As per the provision of EPC Agreements, the timeline for FC will be 12 (twelve) months or half of the SCD to be approved by SECI to APDCL.
 - iv. If the extension in the timelines of SCD is not granted by SECI to APDCL, then all terms and conditions of EPC will be applicable.
 - v. Despite elapse of more than 9 (nine) months from the date of VGF claim (October, 2021 to August, 2022) by APDCL and even after submission of Rs. 6.8 Crore along with all requisite supporting documents to SECI, the Respondent has not received first tranche of VGF from SECI.
 - vi. APDCL prayed to direct MNRE & SECI to grant suitable additional time to APDCL for SCD due to default on the part of SECI not APDCL. And to direct MNRE & SECI to release first tranche of VGF to the Respondent as the Respondent had already submitted on all requisite documents sought by SECI.

ANALYSIS AND DECISION OF THE COMMISSION

5. The Commission has examined in detail, the petition, as per the provisions of the Electricity Act, 2003, AERC Regulations, and other details presented before the Commission.
6. The Commission observed that, the developer signed a contract agreement with APDCL and enter into the project, which was backed by another agreement of APDCL with SECI. The Commission asked the respondent -APDCL to submit all documents signed with SECI in affidavit to the Commission.
7. Both the petitioner and respondent, prayed for presence of SECI in hearing as the matter of both Grant of extension in Schedule Date of Commissioning and release of first tranche of VGF is pending on SECIs behalf.
8. Considering the submissions made by the learned counsel for the Petitioner and the learned counsel for the Respondent, and Keeping in mind the importance of the matter, the Commission held that the Petition shall be listed for hearing in due course for which separate notice will be issued with presence of SECI as respondent.
9. The Commission admitted the petition as No. 09/2022.

Sd/-

(S. N. Kalita)
Member, AERC

Sd/-

(K. S. Krishna)
Chairperson, AERC