

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69
Email: mercindia@merc.gov.in
Website: www.merc.gov.in**

Case No. 14 of 2023

Petition of M/s Tata Power Green Energy Ltd. seeking extension of the Schedule Date of Commissioning of its 225 MW Wind-Solar Hybrid Power Project.

M/s. Tata Power Green Energy Ltd (TPGEL): -----Petitioner

M/s. Tata Power Company –D (TPC-D) -----Respondent

Coram

**Sanjay Kumar, Chairperson
Anand M. Limaye, Member
Surendra J. Biyani, Member**

Appearances:

For the Petitioner: Mr. Venkatesh (Adv)

For the Respondent: Ms. Hawwa Inamdar (Rep.)

ORDER

Date: 09 October 2023

1. Tata Power Green Energy Ltd. (TEPGCL) has filed this Case on 4 January 2023 under Section 86(1)(b), (e) & (f) read with read with Regulation 39 of the MERC (Transaction of Business & Fees & Charges) Regulations, 2022 seeking extension of the Scheduled Commercial Operation Date (SCOD) of its 225 MW Wind-Solar Hybrid Power Project at Village Noorsar, Taluka – Bikaner, District – Bikaner, Rajasthan and Wind (98.05 MW AC) in State of Maharashtra.
2. **Prayers of Petitioner are as follows:**
 - a) *“Declare that the event namely, stoppage of work by Gram Panchayat, Bikaner, unprecedented sandstorm on 23.05.2022, obtaining short term OA and Technical Specifications mandating installation of BFDs qualifies as a ‘Force Majeure’ event under Article 11 of the PPA.*

- b) *Grant extension of SCOD for 225 MW Wind-Solar Hybrid Power Project till 01.08.2022 on account of the above Force Majeure events.*
- c) *Direct the Respondent not to take any coercive steps against the Petitioner till the pendency of the Petition.*

3. Petitioner in its Petition have stated as follows:

- 3.1 TPGL was in the process of setting up a 225 MW Solar Hybrid Power Project to supply power to TPC-D at an adopted tariff of Rs.2.59/kWh discovered through competitive bidding process by TPC-D. The project has been approved by the Commission vide its Order dated 10 August 2020 in Case No. 152 of 2020.
- 3.2 As per the PPA, TPGL was required to achieve Financial Closure (FC) and Scheduled Date of Commissioning (SCOD) within 12 months, i.e., 21 October 2021 and 18 months, i.e., 21 April 2022 respectively from the effective date under the PPA, i.e. 22 October 2020.
- 3.3 In support of its claim the Petitioner has provided the chronology of events such as date of PPA, Financial Closure, Force measure events and notices thereof, correspondence with different agencies for timely commissioning of the Project. Date of SCOD has already been extended to 6 July, 2022 on account of Covid-19 pandemic in line with notifications of Ministry of New and Renewable Energy (MNRE), Govt. of India.
- 3.4 As per Petitioner, on account of the following Force Measure events SCOD was delayed:
- (a) Delay of 7 days on account of notice issued by Gram Panchayat directing TPGL to stop the construction of Transmission Line for the Project to verify the various Clearances.
 - (b) Delay of about 10 days on account of unprecedented sandstorm occurred on 23 May 2022 at the Project site;
 - (c) Delay of 14 days on account of Technical Specification dated 16 June 2022 issued by the Committee formed by the Hon'ble Supreme Court of India in consultation with Central Electricity Authority (CEA) for installation of Bird Flight Diverters (BFDs).
 - (d) Delay of 6 days in order to comply with the requirement of Short-Term Open Access (STOA) since LTA was not available at Delivery and Injection point.
- 3.5 In view of the above Force Measure events, the plant was commissioned on 2 August 2022 after a delay of 26 days from the date of extended SCOD of 6 July 2022. The summary of the FM Notices issued by the Petitioner and FM Events are tabulated below:

S. No	Particulars	FM Notice Issue Date	FM Notice Closer Date	Number of Days Extension	Date	Remark
-------	-------------	----------------------	-----------------------	--------------------------	------	--------

1	SCOD date as per the signed PPA with Tata Power-D				21.04.2022	
2	FM Notice Issued by the Petitioner based on MNRE Notification dated 12.5.2021	29.05.2021	XX	76		
3=1+2	Revised SCOD dated considering COVID-19 pandemic				06.07.2022	76 days from original SCOD as per PPA
4	Delay on account of work stoppage by Gram Panchayat, Bikaner	17.05.2022 to 25.5.2022	11.06.2022	7		
5.	Delay on account of Stand storm	25.05.2022	11.06.2022	10		Storm happened on 23 May 2022.
6	Delay on account of installation of BFD	24/06/2022	07/07/2022	14		CEA approval received on 7.7.2022.
7	Delay on account of obtaining Short-term OA for scheduling of power	27/07/2022	01/08/2022	6		
8=4 to 7	Total delay on account of notices issued by Petitioner with overlapping period.			37 calendars Days		
9	Actual SCOD			02/08/2022		
10	Actual delay sought under FM from 6.7.2022 to 1.8.2022 **			26 calendars Days		

** The Petitioner has clarified that though the delay was 37 days , it has completed the work within 26 days. Hence, it sought the extension of 26 days i.e. from 6 July 2022 to 1 August 2022.

3.6 The PPA signed with TPC-D was effective from 22 October 2020. Article 11 of the PPA defines Force Majeure as an event which wholly or partly prevents a party from performing its obligations under the PPA which is not within its reasonable control. Article 4.5 of the PPA provides that SCOD may be deferred if the developer is prevented from performing its obligations on account of Force Majeure events. The Petitioner has been issued force measure notices to TPC-D within specified time for each event. The events referred to above are the force measure events in terms of the PPA. Hence, the Petitioner is entitled for extension of SCOD. Accordingly, the Petition has been filed.

4. TPC-D in its reply dated 21 August 2023 stated as under:

4.1. Petitioner is claiming extension of SCOD on account of following 4 events:

- a) Notice issued by Gram Panchayat directing the Petitioner to stop the Construction of Transmission Line for the Project;
- b) Occurrence of unprecedented sandstorm at the Project site;
- c) Technical Specification dated 16 June 2022 issued by the Committee formed by the Hon'ble Supreme Court for installation of BFDs.
- d) Compliance with the requirement of STOA since LTA was not available at Delivery and Injection point.

4.2. The Petitioner has intimated aforementioned force majeure events to TPC-D as per the terms of the PPA. The Petitioner issued its first Force Majeure notice on 29 May 2021 on account of the outbreak of COVID-19 and the restrictions imposed by the Government of Rajasthan. TPC-D vide its letter dated 01 July 2021 recognized the resurgence of COVID-19 as a force majeure event and agreed/allowed the Petitioner's request seeking extension of SCOD (by 76 days) on account of the second wave of COVID-19 and the MNRE notifications.

4.3. Subsequently, the Petitioner informed TPC-D of certain force majeure events. However, the eventualities mentioned in the letter vis-à-vis completion of the project are as such not contemplated under the definition of "force majeure" as provided in the PPA. Hence, TPC-D informed the Petitioner that it was not in a position to accept the force majeure contentions for delay in achieving the SCOD of the project and requested the Petitioner to seek approval from the Commission.

4.4. Further, the delay on account of additional number of days required for obtaining STOA since LTA was not granted at both delivery and injection end, was not informed to TPC-D. However, the said delay was condoned by MNRE vide its notification dated 02 November 2022.

4.5. In view of the above, the events of force majeure claimed by the Petitioner are entirely attributable to the Petitioner. Accordingly, the Commission is requested to kindly consider and ensure that while passing its final order, TPC-D and its consumers are not made to suffer on account of the same.

5. At the e-hearing through video conferencing held on 29 August 2023:

5.1. The Petitioner & Respondent reiterated their submissions made in the Petition and reply respectively.

5.2. The Advocate of the Petitioner argued that MNRE notification dated 25 January 2023 has extended COD of all solar PV/solar PV-wind hybrid projects up to March 2024 for which the last date of bid submission was prior to 9 March 2021. In the present case RFS was

issued by TPC-D on 3 June 2020 and the last date of submission of the bid was 6 July 2020. Hence, MNRE notification dated 25 January 2023 is applicable to the Petitioner's case. He also requested the Commission to decide the matter exclusively based on this recent MNRE notification.

5.3. In reply to the query of the Commission, representative of TPC-D stated that it agrees with the argument of the Petitioner and accepts the MNRE notification extending SCOD.

6. The Petitioner in its rejoinder dated 6 September 2023 reiterated its submission as made out in the Petition with following additional points:

6.1. In light of the extension granted by MNRE vide OM dated 25 January 2023 for Hybrid Projects, Gujarat Urja Vikas Nigam Limited and other Government implementing Agencies have granted extension of SCOD till 31 March 2024 to various projects being implemented in the State of Gujarat.

6.2. The Project of the Petitioner already stands commissioned on 2 August 2023 and by way of the instant Petition, the Petitioner is seeking an extension of 26 days which has occurred on account of reasons beyond the control of the Petitioner. The Petitioner had put bonafide efforts into developing the Project and the same is also evident from the minuscule delay of 26 days.

6.3. Therefore, in light of the OM issued by MNRE, the Project of the Petitioner is also eligible for SCOD extension. TPC-D also agreed to grant appropriate extension in light of the OM issued by the MNRE.

Commission's Analysis and Ruling:

7. The Commission notes that TPGL has filed the present Petition seeking 26 days (from 6 July 2022 to 1 August 2022) extension in SCOD for its 255 MW Solar project on account of Force Majeure events such as delay on account of work stoppage by Gram Panchayat Bikaner, delay on account of unprecedented sandstorm, Technical Guidelines issued by the Committee formed by the Hon'ble SC of India for installation of BFD and additional days required for obtaining STOA. However, during the hearing held in the matter, TPGL has requested the Commission to rely on MNRE OM dated 25 January 2023 for allowing its request for extension of SCOD.

8. The Commission notes that original SCOD as per PPA was 21 April 2022. However, on account of Covid-19, TPC-D has extended SCOD by 76 days as per MNRE OM dated 12 May 2021 and 29 June 2021. The Commission notes that through its various Orders, it has granted similar extension based on MNRE OM related to Covid-19 to various Renewable Energy projects. 76 days extension granted by TPC-D is inline with those Orders. According revised SCOD is 6 July 2022. But Project is commissioned on 2 August 2022 with delay of 26 days.

9. The Commission notes that MNRE Notification dated 25 January 2023 on which TPGL has relied upon during the hearing was not part of the Petition as the Petition was filed on 4

January 2023, before the date of notification. Further, the Petitioner at the hearing has requested to decide the case based on the provisions of MNRE OM to which TPC-D agreed. The provisions of MNRE Notification dated 25 January 2023 regarding extension of SCOD are as follows:

“ It was announced on 9th March, 2021 that from April, 2022 any import of solar PV modules would attract Basic Customs Duty (BCD) of 40% and import of solar PV cells would attract BCD of 25%. There are several projects for which bids were finalized by agencies of the Government (SECI/ NTPC / NHPC) before the said announcement. Normally, these projects would have been completed before the imposition of customs duty; however, because of COVID and the resultant supply chain disruption, these projects could not be completed before the customs duty took effect. While a decision on bids which were finalized before the announcement of customs duty is pending, in the meantime, the extended completion dates of many projects have expired.

It has therefore been decided that solar PV / solar PV - wind hybrid projects, for which bids were finalized before 9th March, 2021 (i.e. the last date bid submission was prior to 9th March, 2021), may be given time for completion of projects up to March, 2024.”

10. Further, the MNRE has issued another notification dated 1 May 2023 stating that the extension mentioned in the MNRE’s OM dated 25 January 2023 are not general blanket extensions. The time extensions shall be grant in only such cases where the developer has diligently taken steps to complete the project, but has not been able to complete the project for reasons beyond his control. Where the developer has taken no steps to implement the project shall not qualify for extension. The relevant provisions of the said notifications are as follows:

“ Subject: Time-extension to Solar PV/ Solar PV-wind hybrid power projects bid out on or after 10.04.2021 and under-implementation solar PV/ solar PV-wind hybrid power projects, wherein last date of bid submission was prior to 09.03.2021 - reg.-----

2. Reference is further invited to MNRE's letter No 283/48/2020-GRID SOLAR/Pt dated 25.01.2023 interalia conveying that solar PV / solar PV - wind hybrid projects, for which bids were finalized before 9 March, 2021 (i.e. the last date of bid submission was prior to 9 March, 2021), may be given time for completion of projects up to March, 2024.
3. In reference to the above directions, it is made clear that the time-extensions mentioned in MNRE's letter No. 283/18/2020-GRID SOLAR/Pt dated 29.12.2022 and MNRE's letter No. 283/48/2020-GRID SOLAR/Pt dated 25.01.2023, are not general blanket extensions. The REIAs (SECI, NTPC & NHPC) shall diligently examine, on case to case-basis, the requests received by them for seeking extensions on the basis of MNRE's letter No. 283/18/2020-GRID SOLAR/Pt dated 29.12.2022 and MNRE's letter No. 283/48/2020-GRID SOLAR/Pt dated 25.01.2023, and shall grant time-extensions in only such cases where the developer has diligently taken steps to complete the project, but has not been able to complete the project for reasons beyond

*his control. Where the developer has taken no steps to implement the project but is merely sitting on the award, such projects shall not qualify for extension; and consequence of cancellation of project will follow. This policy will apply to all cases of request for grant of extension - the developer must demonstrate that he has taken all possible measures to implement the project - but has not been able to do so for reasons beyond his control. **The questions to be asked in such cases will be - Has the land been acquired? Have Order been placed for modules/ BoP/ BoS, etc.***

11. The joint reading of the MNRE OM dated 25 January 2023 and 1 May 2023 made it clear that the projects for which last date of bid submission was prior to 9 March 2021 are entitled for extensions of SCOD up to March 2024 subject to the following conditions:
 - a) Extension is based on case to case basis;
 - b) Developer has diligently taken steps to complete the project, but has not been able to complete the project for reasons beyond its control;
 - c) To demonstrate its efforts, Project Developer has to answer Whether the land been acquired by Developer ? Have Order been placed for modules/ BoP/ BoS, etc. as steps to complete the project.
12. It is worth noting that in the present case the project has been commissioned on 2 August 2022 and power flow has been established. This demonstrates that TPGL has taken efforts and all possible measure for implementing the project and accordingly commissioned the project. Although as per above MNRE OM, TPGL would be eligible for extension of SCOD till March 2024, as project is already commissioned on 2 August 2022 with delay of just 26 days, TPGL has requested to extend the SCOD by such actual delay of 26 days.
13. The Commission notes that although above quoted MNRE OM are applicable for Central Agencies implementing Renewable Energy projects, but for maintaining parity for the projects being implemented by State Discoms, this Commission has been adopting such OM for state specific projects also. MNRE vide its Office Memorandum dated 25 January 2023 and 1 May 2023 has duly acknowledged the long-lasting impact of uncontrollable event of COVID-19 and consequent supply chain disruption caused on account of the same. MNRE allowed extension up to March 2024 for completion of the solar PV/ solar PV-wind hybrid power projects wherein last date of bid submission was prior to 9 March 2021. The last date of Bid Submission for bidding process under which TPGL's project under consideration was selected is 6 July 2020 i.e. before 9 March 2021 as stipulated on MNRE OM. Hence, TPGL's project is eligible for extension of SCOD upto March 2024 as allowed in above mentioned MNRE OM. However, as the project has already been commissioned on 2 August 2022 which is prior to March 2024, said date of commissioning needs to be considered as extended date of SCOD by allowing delay of 26 days.
14. In view of the above, the Commission allows actual date of commissioning (2 August 2022) to be considered as extended SCOD. It is clarified that this ruling is based on MNRE OM dated 25 January 2023 and 1 May 2023 and the Commission has not gone into merits of alleged force measure events claimed in the Petition.

15. Hence, the following Order.


ORDER

1. Case No. 14 of 2023 is allowed.
2. Date of SCOD of 225 MW Wind-Solar Hybrid Power Project of Tata Power Green Energy Ltd. is extended to date of actual commissioning i.e. 2 August 2022.

Sd/-
(Surendra J. Biyani)
Member

Sd/-
(Anand M. Limaye)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Dr. Rajendra G. Ambekar)
Secretary

