

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade,
Mumbai 400005 Tel. 022 22163964/65/69
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Case No. 33 of 2023

Petition of M/s. Adani Electricity Mumbai Limited- Distribution (AEML-D) in compliance of the directions issued by the Commission in its Order dated 28 October 2022 in Case No. 04 of 2022, for submission of requisite information qua extension of Schedule Commissioning Date (SCOD) of 700 MW Renewable Energy Hybrid Project on account of occurrence of Force Majeure Events.

Adani Electricity Mumbai Ltd – Distribution (AEML-D) ...	Petitioner
Adani Hybrid Energy Jaisalmer Four Ltd. (AHEJ4L) ...	Respondent
Maharashtra State Electricity Transmission Corporation Ltd. (MSETCL)...	Impleaded Respondent

Coram

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

Appearance:

For the Petitioner :	Mr. Ankit Bafna (Adv.)
For the Respondents :	Ms. Sakshi Kapoor (Adv.) for AHEJFL Mr. Piyush Sharma (Rep.) for MSETCL

ORDER

Date: 22 May 2024

1. M/s. Adani Electricity Mumbai Limited (AEML-D) has filed present Petition on 7 February 2023 under Section 86 (1) (b) & (e) of the Electricity Act, 2003 and in compliance of the directions issued by the Commission in its Order dated 28 October 2022 in Case No. 04 of 2022 (Impugned Order).
2. **AEML-D's Prayers are as follows:**

“

- (a) *Allow the Petitioner to bring on record the information/ documents submitted vide the present petition in relation to extension of SCOD of the 700 MW Hybrid RE Project being developed by AHEJ4L and consider the said information / documents so submitted to grant appropriate relief to AEML-D in relation to fulfilment of past shortfall in RPO as well as future RPO targets by FY 2024-25; and*
- (b) *Declare that the Petitioner is entitled to a consequential carrying forward of the RPO Targets, in view of the extension of SCOD, due to events narrated above which prevented the Respondent, AHEJ4L from commissioning the Project as scheduled, as prescribed under the PPA, for reasons beyond the control of the Respondent and for the reasons not attributable to the Respondent, including on account of force majeure under Article 11 of the PPA;*
- (c) *Issue appropriate order(s) / direction(s) thereby holding that the Petitioner is entitled to be granted an extension in achieving the fulfilment of RPO Targets, as an Obligated Entity, for the respective years and shall be allowed to carry forward the same to the subsequent years till F.Y. 2024-2025 as prayed for herein, in view of the exceptional circumstances arising from the pandemic, judicial pronouncements / orders of the Hon'ble High Court, Rajasthan and the Hon'ble Supreme Court including force majeure events narrated hereinabove;*
- (d) *condone any inadvertent shortcoming or error or lacuna or omission in the petition; and*
- (e) *Pass such other orders as this Hon'ble Commission may deem fit and appropriate.”*

3. AEML-D in its Case stated as follows:

- 3.1. The Commission in its impugned Order recognized that 700 MW Hybrid RE Project is the main source to fulfil such RPO target. With regards to progress of 700 MW Hybrid RE Project, the Commission noted following:
 - AEML-D has granted extension of Scheduled Commercial Operation Date (SCOD) on account of 1st and 2nd wave of Covid-19, Hon'ble Supreme Court's ruling related to Great Indian Bustard (GIB), stay on project land by High Court of Rajasthan and delay in operationalization of Long-Term Open Access (LTOA).
 - AEML-D has not submitted all the documents/ correspondence/ communications between parties, based on which such extension in SCOD has been granted.
 - The Commission directed AEML-D to file a separate Petition within a month providing details of SCOD extensions granted by it to 700 MW RE Hybrid projects and how provisions of the PPA have been complied with while granting such extensions.
- 3.2. AEML-D being a Distribution Licensee is also an 'Obligated Entity' and thereby complying with the RPO percentage as prescribed under the applicable RPO Regulations from time to time. The cumulative shortfall till FY 2019-20 is 505.48 MU in Solar RPO, 2,679.43 MU in Non-Solar RPO and 8.00 MU in Mini/Micro hydro RPO.

- 3.3. AEML-D floated the tender dated 18 July 2019 for wind-solar hybrid power so as to meet its solar as well as non-solar RPO targets. The competitive bidding process was consistent with the Standard Bidding Guidelines issued by the Central Government, National Wind-Solar Policy dated 14 May 2018 and various Orders passed by the Commission. Hybrid combination of wind and solar power was beneficial in terms of optimal and efficient utilization of transmission infrastructure and better grid stability by reducing the variability in daily and seasonal renewable power generation.
- 3.4. Pursuant to the conclusion of the competitive bidding process, Rosepetal Solar Energy Private Limited (RSEPL) was declared as L1 bidder whose 700 MW (350 MW+ 350 MW under Green Shoe Option) Hybrid Project was to be installed in the solar park being developed by Adani Renewable Energy Park Rajasthan Ltd. (AREPRL) which is located at Nedan, Sandhuwa, Arang-Village, Pokhran Taluka of Jaisalmer District in Rajasthan.
- 3.5. Accordingly, AEML-D issued Letter of Award dated 06 September 2019 to RSEPL for 700 MW for 25 years at Rs 3.35/unit which was accepted by RSEPL as per terms and conditions of tender document.
- 3.6. Meanwhile, AEML-D approached the Commission in Case No. 281 of 2019 for adoption of tariff for procurement of 350 MW grid connected Wind-Solar Hybrid Power capacity with green shoe option of additional 350 MW.
- 3.7. The Commission in its Order dated 8 January 2020 in Case No. 281 of 2019 allowed AEML-D to procure 700 MW hybrid RE power from hybrid source with a view to meet previous shortfall in RPO along with compliance with future RPO as well. The Commission also suggested renegotiating tariff with bidder by changing the hybrid mix or by procuring Hybrid Power at lower CUF or separately sourcing Solar and Wind power to meet its RPO.
- 3.8. Pursuant to the approval granted by the Commission for procuring power from 700 MW Hybrid RE Project of RSEPL, AEML-D executed (4) separate Power Purchase Agreements (PPAs) dated 11 February 2020 with RSEPL and its subsidiaries.
- 3.9. In view of the operational difficulties posed by the Covid-19 pandemic and consequent lockdown/restriction in transportation and mobility of equipment and labour, RSEPL vide letter dated 17 June 2020 communicated its intention to AEML-D to implement the 700 MW Project at one location where transmission system was available, through its one subsidiary i.e., AHEJ4L.
- 3.10. Consequently, AEML-D consolidated the aforementioned (4) PPAs into single PPA and executed a consolidated PPA dated 07 July 2020 with AHEJ4L, while retaining the terms and conditions of the original PPAs dated 11 February 2020. It may be noted that the Effective Date of consolidated PPA, was agreed to be the date of original PPA i.e., 11 February 2020.
- 3.11. **Extension of SCOD of the Project from 10 August 2021 to 10 January 2022 as per MNRE Office Memorandum dated 13 August 2020 and Article 11 read with 4.5 of PPA:**
- 3.11.1 Article 1.1 of the PPA contemplated the SCOD as 10 August 2021. However, the complete nationwide lockdown due to COVID-19 which was first declared with effect

from 25 March 2020 till 14 April 2020, was continued to be extended by the Central Government in phased manner, from time to time, which severely impacted the development of the projects in the country including the 700 MW Hybrid RE Project of AHEJ4L. Having regard to the extraordinary challenges witnessed by the project developers across the nation due to COVID-19, MNRE vide Office Memorandum dated 13 August 2020 acknowledged the event as Force Majeure by issuing direction that the RE projects which were in the process of implementation as on the date of lockdown i.e., 25 March 2020, shall be given time extension of 5 months from 25 March 2020 to 24 August 2020. MNRE categorically directed that the said blanket extension, if invoked by the developer, shall be granted without case-to-case examination and without seeking any documents/ evidence in this regard.

3.11.2 In view of the relaxation granted to RE projects by virtue of the MNRE Office Memorandum dated 13 August 2020, AHEJ4L vide letter dated 20 August 2020 issued to AEML-D, sought similar extension of 5 months on account of Force Majeure event, in achieving financial closure and commissioning of the 700 MW Hybrid RE Project. Accordingly, AEML-D in compliance of MNRE Office Memorandum, vide letter dated 29 August 2020, granted blanket extension of 5 months from the original SCOD of 10 August 2021 to AHEJ4L, without imposing any penalty/ damages which resulted in revised SCOD of 10 January 2022 for the Project of AHEJ4L.

3.12. **Interim injunction granted by the Hon'ble High Court of Rajasthan at Jodhpur qua the land allotted to AREPRL for development of solar park:**

3.12.1 When the project developer was recuperating from the difficulties of post lockdown restrictions, the 700 MW Hybrid RE Project was impacted due to the Order dated 08 September 2020 passed by the Hon'ble High Court of Rajasthan in Writ Petition (D.B Spl. App. Writ No. 51 of 2020 & Batch) whereby the Hon'ble Court directed AREPRL to maintain the status quo of the land allotted for development of the solar park. Consequently, the Project of AHEJ4L which was being developed in the aforesaid solar park of AREPRL, was also forced to suspend all construction activities which severely affected the prospect of commissioning the Project within the extended SCOD.

3.12.2 Meanwhile, in the month of December-2020, the Patwari's of the Government of Rajasthan's Revenue Department represented the Government on the matter regarding filling-up of vacant positions and increase in their salaries due to huge workload. Pending response from the Government on the demands, the Patwaris stopped/ boycotted all Revenue related work w.e.f. 15 January 2021. Consequently, the Patwaris staged several public protests and the boycott on revenue related work continues.

3.12.3 During this period, including the time period leading to the work-boycott called by the Patwaris in January-2021, the demarcation of land, acquired / being acquired for the Project, remained completely suspended. Despite best efforts being put by AHEJ4L to get the demarcation of land done, it was unable to do so because of the aforementioned circumstances, which were beyond the reasonable control of the project developer. The

said unforeseen and unavoidable circumstances arising out of the aforesaid force majeure event, were duly communicated by the Respondent to AEML-D.

- 3.12.4 Further, the Hon'ble Rajasthan High Court (Jodhpur bench) after a period of 9 months, passed the final judgment on 29 June 2021 in the aforementioned writ petitions, as a result of which, the interim order dated 08 September 2020 passed by the Hon'ble Court qua maintaining the status quo of the land of AREPRL, stood vacated.
- 3.12.5 In view of the above, it is evident that on account of the operation of the above-mentioned interim/ status-quo order and due to the pendency of the Writ Petitions, AHEJ4L lost substantial amount of time (from 08 September 2020 to 29 June 2021), causing an unavoidable delay of 295 days, in completing the project related activities.
- 3.12.6 As such, the construction and development related work which was suspended during 08 September 2020 to 29 June 2021 due to the interim order dated 08 September 2020, was clearly beyond the reasonable control of AHEJ4L hence the same was akin to an event of Force Majeure in terms of Article 11 of PPA. As such, AHEJ4L duly communicated the said force majeure event caused due to passage of interim/ status-quo order passed by the Hon'ble High Court of Rajasthan, to AEML-D.

3.13. **Impact of Order dated 19 April 2021 passed by the Hon'ble Supreme Court regarding undergrounding of transmission lines in the habitats of Great Indian Bustard (GIB) in Rajasthan and Gujarat:**

- 3.13.1 On 19 April 2021, the Hon'ble Supreme Court passed an Order in W.P. (C) No. 838 of 2019, regarding undergrounding of the transmission lines in the habitats of Great Indian Bustard (GIB) in Rajasthan and Gujarat.
- 3.13.2 Pursuant to the said directions, MNRE filed an Interlocutory Application (IA) being IA No. 85618 of 2020 in the above Writ Petition challenging the aforesaid Order dated 19 April 2021 (GIB Order). It was inter-alia prayed that the Hon'ble Supreme Court may allow high voltage and extra high voltage power lines in Priority GIB Habitat to be laid as overhead power lines with installation of appropriate mitigation measures and laying of overhead transmission lines in future outside the Priority area. Since, the aforesaid Application was not disposed off by the Hon'ble Supreme Court, this situation caused uncertainty among RE developers with regard to the action which were required to be taken regrading high voltage line passing through GIB habitats.
- 3.13.3 In view of the above uncertainty prevailing amongst the developers, MNRE issued an Office Memorandum dated 03 February 2022 and directed that for all under implementation RE projects in which the transmission infrastructure lay wholly or partly in the priority GIB area and the commissioning of the said projects were delayed due to non-completion of transmission infrastructure on account of the GIB Order, the SCOD of such projects, was extended to a date which was 30 days after the date of Judgement to be passed by the Hon'ble Supreme Court in the IA filed by MNRE. Said matter is still pending before the Hon'ble Supreme Court.

- 3.13.4 The transmission system to be implemented for the 700 MW Hybrid RE Project of AHEJ4L, also passed through the priority GIB area and the same was delayed due to the GIB Order passed by the Hon'ble Supreme Court. Thus, the work was suspended by AREPRL, resulting in a delay in allocation of land.
- 3.13.5 From the above facts, it is evident that the delay in implementation of Project was caused due to GIB Order, which affected the commissioning schedule of the Project and the same was beyond the control of AHEJ4L.
- 3.14. **Extension of SCOD of the Project from 10 January 2022 till 27 March 2022 as per MNRE Office Memorandum dated 29 June 2021 and Article 11 read with 4.5.1 of PPA:**
- 3.14.1 Considering the onslaught of the pandemic, MNRE issued another Office Memorandum dated 29 June 2021 and thereby notified the period between 01 April 2021 to 15 June 2021 (76 days) as a period of disruption due to second wave of COVID-19 and therefore granted time extension of 76 days for achievement of intermediate milestones and SCOD of the RE projects. As such, AHEJ4L also vide letters dated 12 May 2021 and 28 August 2021 duly communicated the impact of 2nd wave of COVID-19 to AEML-D.
- 3.14.2 As a matter of fact, the project developers across the country were gravely affected by the resurgence of COVID-19 and the consequent operational challenges posed by the pandemic. The impact of the second wave of COVID-19 was so grave and unprecedented that no RE developer could have foreseen. Being aggrieved by the prevailing circumstances and practical difficulties, AHEJ4L vide letter dated 08 December 2021 sought extension of SCOD of the 700 MW Hybrid RE Project.
- 3.14.3 Pursuant to the receipt of the letter of AHEJ4L, AEML-D considered the unparalleled challenges posed by the second wave of COVID-19 as a Force Majeure event which was completely beyond the control of the project developer. Consequently, in view of the MNRE Office Memorandum dated 29 June 2021, AEML-D vide letter dated 10 December 2021 granted the extension of 76 days from earlier SCOD of 10 January 2022 and revised the SCOD of the Project as 27 March 2022, without imposing any damages/penalty.
- 3.14.4 As such, AEML-D was constrained to extend the SCOD in accordance with various Office Memorandums issued by MNRE. In addition, the project developer was entitled for such extension on account of uncontrollable event of COVID-19 which was in the nature of Force Majeure as defined under Article 11 read with Article 4.5.1 of PPA.
- 3.14.5 At this juncture, it is pertinent to highlight that the 700 MW RE power which was approved by the Commission for RPO compliance, was to be availed by AEML-D w.e.f. 10 August 2021, which was the original SCOD of the Project being developed by AHEJ4L. However, on account of the on-going Covid-19 pandemic, AHEJ4L could not supply power from the aforesaid date which further delayed not only the procurement of RE power for AEML-D but also compliance of past RPO shortfall and future targets for next control period (FY 2020-21 onwards).

3.15. **Extension of SCOD of the Project from 27 March 2022 till 10 May 2022 due to Force Majeure Events:**

3.19.1 AHEJ4L vide its letter dated 24 March 2022 again apprised AEML-D regarding the occurrence of following uncontrollable events and sought further extension of SCOD of the Project:

Sr. No.	Event	No. of Days
1	On account of injunction Order passed by the Hon'ble High Court of Rajasthan	295 days (from 08 September 2020 until 29 June 2021)
2	MNRE Office Memorandum dated 17 March 2022	3 months from SCOD
3	Hon'ble Supreme Court in Interlocutory Application (in GIB Order) filed by MNRE (IA is pending till date)	30 days after the judgment
4	operationalization of LTOA	60 days after the date of operationalization of LTOA

3.19.2 AHEJ4L categorically submitted that the operationalization date of LTOA was 01 April 2022, however, MSETCL issued conditional revised NOC on 25 November 2021 and informed AHEJ4L that there was delay in completion of following 3 elements to be developed by STU in transmission system of CTU:

- HTLS of 220 kV Boisar (PG) to Boisar (MSETCL);
- 220 kV DC/DC line from 220kV Solapur (PG)- Bale (40 ckt km);
- 220 kV DC line from 220 kV Deoli (PGCIL) upto LILO for 220kV Yavtmal S/s (balance portion of Deoli (PGCIL).

3.19.3 Elements of transmission system were being constructed by CTU/ STU/ MSETCL, and therefore, any delay in completion of the aforementioned elements of LTOA, was beyond the control of the project developer.

3.19.4 Pursuant to the above letter dated 24 March 2022 issued by AHEJ4L, AEML-D duly perused the elaborate submissions made by the project developer for seeking extension of SCOD of the Project. In response to the aforesaid request, AEML-D vide its letter dated 26 March 2022 made reference of Article 4.5.3 read with 4.5.7 of PPA which provided that any extension of SCOD arising due to any reason envisaged in the PPA, shall not be allowed beyond 27 months from the Effective Date of PPA (i.e., 11 February 2020). Accordingly, the Long Stop Date (LSD) as per the PPA came to be 10 May 2022. Consequently, AEML-D, acting within the contours of PPA, granted maximum permissible extension of SCOD of the Project up to 10 May 2022 as per the aforesaid provisions of PPA, without levying any penalty/ damages. It was also communicated that any delay in SCOD beyond 10 May 2022, shall be dealt with as per the terms of PPA.

3.16. **Extension of SCOD of the Project beyond Long Stop Date (i.e., 10 May 2022) till operationalization of LTOA or 10 August 2022 whichever was earlier, due to Force Majeure Events**

- 3.20.1 On 07 May 2022, AHEJ4L considering the recurring impact of non-operationalization of LTOA until May-2022 which correspondingly delayed the commissioning of Hybrid RE Project, intimated AEML-D to grant further extension of SCOD even beyond Long Stop Date of 10 May 2022 as provided under PPA.
- 3.20.2 It was also brought to the notice of AEML-D vide the aforementioned letter that since the transmission system was being developed by CTU, any delay caused in operationalization of LTOA and consequently the commissioning of the Project, was not attributable to AHEJ4L.
- 3.20.3 From a reading of the aforesaid letter, it was made clear that the above event of delay in operationalization of LTOA, being uncontrollable on the part of AHEJ4L, was required to be treated as Force Majeure and therefore adequate extension of time was required to be granted to AHEJ4L even beyond the maximum permissible extension of SCOD/ Long Stop Date of 10 May 2022.
- 3.20.4 In order to substantiate the aforesaid claim, AHEJ4L in the aforesaid letter dated 07 May 2022, also made reference of the following letters issued by Solar Energy Corporation of India Ltd. (SECI) in other Hybrid RE Projects of AHEJ4L wherein SECI allowed extension of SCOD of the project even beyond Long Stop Date and thereby nullified the operation of the concerned provision of PPA which restricted extension of SCOD beyond certain months:
- (i) Letters dated 03 February 2022 issued by SECI for Hybrid Project of 390 MW & 450 MW: Because of Force Majeure events, SECI vide its letter issued to M/s Adani Hybrid Energy Jaisalmer One Limited, allowed extension of time beyond Long Stop Date (i.e., 07 February 2022) and revised the SCOD as actual date of LTOA operationalization plus 9 months.
 - (ii) Letters dated 15 March 2021 issued by SECI for Wind Project of Adani Wind Energy Kutchh Five Ltd.: In Wind Project of SECI Tranche 5 & 7, SECI granted time extension on account of Force Majeure events, to the tune of 39 months and 30 months respectively, from Effective Date which was beyond the maximum time extension of 27 months allowed under the PPAs.
- 3.20.5 On same lines, AHEJ4L requested AEML-D to extend SCOD beyond Long Stop Date by declaring Article 4.5.7 of PPA which allowed maximum extension till 10 May 2022 as inoperative. Pursuant to the receipt of the aforementioned letter dated 07 May 2022 issued by AHEJ4L, AEML-D noticed that there was significant delay in operationalization of LTOA which was solely attributable to CTU/ STU i.e., MSETCL.

3.20.6 In view of the aforesaid Force Majeure event, the project developer who had no control in relation to operationalization of LTOA, cannot be held responsible and left remediless. In addition to this, AEML-D also considered the fact that SECI, the government nodal agency for Solar Projects in the country, had also taken note of the extra ordinary circumstances witnessed by the project developers by acknowledging the same as Force Majeure events and thereby granted relief in the terms of the principles of contract.

3.20.7 Therefore, having regard to the dispensation awarded by SECI to similarly positioned RE developer and also the remedies available under the provisions of PPA *qua* Force Majeure, AEML-D vide its letter dated 09 May 2022 granted extension of SCOD beyond Long Stop Date (i.e., 10 May 2022) till the date of operationalization of LTOA or 10 August 2022, whichever was earlier.

3.17. **Extension of SCOD of the Project from 10 August 2022 till 31 October 2022 due to Force Majeure Events**

3.21.1 AHEJ4L vide its letter dated 05 August 2022 highlighted the ongoing Force Majeure events in relation to the operationalization of LTOA and the applicability of the judicial pronouncements passed by the Court of law. It has been underscored that AHEJ4L has no control over such events. It further sought extension of SCOD.

3.21.2 Based on the extraordinary circumstances, AEML-D vide letter dated 09 August 2022 allowed extension of SCOD until 31 October 2022.

3.21.3 MNRE vide its Office Memorandum dated 25 January 2023 duly acknowledged the long-lasting impact of uncontrollable event of COVID-19 and the consequent supply chain disruption caused on account of the same. Accordingly, MNRE allowed extension in completion of the solar PV/ solar PV-wind hybrid power projects (for which bids were submitted before 09 March 2021) until March-2024.

3.18. **Present status of the commissioning of the 700 MW Hybrid Project**

3.22.1 AEML-D submitted that 700 MW Hybrid RE Project was commissioned on 02 October 2022. Solar component and Wind component of 700 MW Hybrid was fully commissioned by 07 June 2022 and 01 October 2022 respectively.

3.22.2 Date wise commissioning status is provided in the tables below:

Wind Capacity	
Date of commissioning Certificate	MW
08.12.2021	85.8
29.01.2022	41.8
19.02.2022	36.9
07.03.2022	46.2
22.07.2022	74.8
10.08.2022	80.7
30.08.2022	44.6

27.09.2022	46.90
01.10.2022	52.50
Total capacity Commissioned till date	510.20
Solar Capacity	
Date of commissioning Certificate	MW
26.11.2021	99.84
03.12.2021	50.08
20.12.2021	50.08
03.01.2022	50.08
24.01.2022	50.24
19.02.2022	43.68
02.03.2022	62.56
22.03.2022	56.16
12.04.2022	56.16
09.05.2022	55.68
07.06.2022	25.6
Total capacity Commissioned till date	600.16

3.22.3 AEML-D pointed out that the Commission in its Order in Case No.281 of 2019 dated 08 January 2020 directed it to renegotiate the tariff with bidder by changing the hybrid mix. AEML-D communicated the said directives to the project developer. The project developer carried out the studies and reconfigured the optimal Wind & Solar mix to supply 700 MW Hybrid power as 510 MW and 600 MW respectively. AHEJ4L communicated this configuration and agreed to supply 700 MW Hybrid Power @ Rs. 3.24 per unit vide its letters dated 15 January 2020 and 28 April 2020.

- 3.19. It is evident that the term 'Force Majeure' means an event or circumstance or combination of events that wholly or partly prevents or unavoidably delays an affected party in performance of its obligations under the Agreement. As such, any event which is beyond the control of the parties, has to be termed as an event of Force Majeure, thereby relieving the said parties from the obligations contained in the agreement. It is consequential that the timelines for fulfilment of RPO targets also need to be revised.
4. During the e-hearing held on 5 September 2023, AEML-D narrated the chronology of events which affected the Project timeline and now, Project has been finally commissioned. Considering the delay in commissioning of the project, the Commission inquired about the financial impact of arranging power from alternative source during the period of such delay. The Advocate of AEML-D assured the Commission to file additional submission on this account. Advocate for the AEML-D also highlighted that although project is commissioned in October 2022, power is flowing under short term Open Access on account of transmission constraints at Maharashtra periphery. He requested the Commission to seek information from State Transmission Utility about plan for eliminating such transmission constraints. Advocate for AHEJ4L concurred with this suggestion. The Commission noted that the issue of transmission constraints at Maharashtra periphery is

affecting ability of the Distribution Licensees to bring cheaper power into Maharashtra. Use of short-term Open Access route has risk of curtailment in case of system requirement. Therefore, the Commission allowed impleadment of STU.

5. AEML-D in its additional submission dated 05 February 2024 stated as follows:

- 5.1. AEML-D reiterated most of the submission as made in the Petition. For sake of brevity, it is not repeated.
- 5.2. AHEJ4L submitted that it was unable to declare its COD in absence of LTA operationalization. AEML-D being cautious about its responsibility to supply reliable and uninterrupted power to its consumers, considering the said aspect AEML-D was not pressing for COD till operationalization of LTOA or Commissioning of few more MSETCL elements of transmission systems to ease the said power flow. However, to maximize the benefits to its customers, AEML-D is scheduling an entire 700 MW power from AHEJ4L under short term open access from the first part commissioning date up to 31 September 2023. The charges for scheduling of power under short term open access are paid out by Project Developer (AHEJ4L).
- 5.3. GNA Regulation 2022 has been made effective from 01 October 2023 repealing the previous LTA/MTOA regime Connectivity regulation 2009. M/s AHEJ4L has been granted deemed GNA under Regulation 37.6(2) of GNA Regulation 2022 by Central Transmission Utility of India Ltd (CTUIL) vide its letter dated 25 September 2023, which is effective from 01 October 2023.
- 5.4. In view of the implementation of GNA Regulation 2022 and request from M/s AHEJ4L for declaration of COD, AEML vide letter dated 29 September 2023 allowed extension of SCOD until 01 October 2023 and subsequently, AHEJ4L has declared COD of 700 MW project w.e.f. 01 October 2023.
- 5.5. AEML-D referred to the Office Memorandum dated 25 January 2023 whereby MNRE duly acknowledged the long-lasting impact of uncontrollable event of COVID-19 and the consequent supply chain disruption caused on account of the same. Accordingly, MNRE allowed extension in completion of the solar PV/ solar PV-wind hybrid power projects (for which bids were submitted before 09 March 2021) until March 2024. The Commission vide its Order in Case No. 14 of 2023 dated 09 October 2023, has allowed extension in SCOD of Renewable Project based on MNRE OM dated 25 January 2023 and 1 May 2023.
- 5.6. The last date of Bid submission for bidding process for which M/s AHEJ4L's project was under consideration was 19 August 2019 i.e. prior to 09 March 2021 as stipulated on MNRE OM. Hence, M/s AHEJ4L project is eligible for extension of SCOD up to 31 March 2024 as allowed in the MNRE OM. Further, it is also to be noted that while seeking extension in SCOD, M/s AHEJ4L has demonstrated that it has taken efforts and all possible measures for implementing the project and accordingly commissioned the Hybrid project.
- 5.7. SCOD extensions were purely based on the directions of MNRE Office Memorandum and Court Orders explained above. AEML-D had to take into cognizance the directives issued by MNRE, being a Government Ministry and could not have opposed the same. Thus, this said period of

extension in SCOD cannot be considered as being a delay and will not fall within the ambit of the delay period for which the impact is to be worked out.

- 5.8. In the MTR Petition in Case No. 231 of 2022, truing-up of FY 21-22 has been undertaken by the Commission. As part of the said exercise, AEML-D had submitted the actual power purchase for FY 21-22, including the power purchase quantum and cost for sourcing from the 700 MW Hybrid RE generators. The Commission in the said Order approved the quantum and cost of power from 700 MW Hybrid RE as it is as submitted by AEML-D.
- 5.9. As far as financial impact is concerned, AEML-D worked out the same considering landed IEX DAM rates for 6-18 hours (Solar generation hours) in view of higher solar capacity share in contracted capacity for the period from April-22 to September-22 and then comparing the same with the approved rate of Rs. 3.24 per unit. Details are as below:

Month	Contracted energy (MU)*	Actual energy supplied (MU)**	Shortfall (MU)	Landed W2 IEX Avg rate in (Rs/u) (6-18 hrs)***	Approved PPA rate	Estimated financial impact (Rs Crs.)
Apr-22	256	131	125	9.24	3.24	75
May -22	256	155	101	5.71	3.24	25
June-22	256	160	96	4.56	3.24	13
Jul-22	256	134	121	3.85	3.24	7
Aug-22	256	186	69	4.11	3.24	6
Sept-22	256	241	15	4.53	3.24	2
Total	1533	1007	526	5.67		128

* Contacted energy for each month is worked out by dividing equally the approved estimated annual quantum of 3,066 MU by the Commission in the MYT Order dated 30 March 2020

** The actual units supplied have been grossed up by ISTS loss of ~ 3.5% in view of scheduling under Short Term Open access.

***IEX DAM rates during 6-18 hrs (Solar generation hours) are considered to access impact considering higher solar capacity share in contracted capacity

6. **STU in its reply dated 06 February 2024 stated as follows:**
- 6.1. STU issued conditional NOC for Inter-State LTOA for supply of Power for 700 MW ISTS connected Wind-Solar Hybrid Power project located in the state of Rajasthan to AEML-D subject to completion of following CTU-STU strengthening projects of MSETCL:
- (i) HTLS of 220 KV Boisar (PG) to Boisar (MSETCL)
 - (ii) 220kV DC/DC line from 220 KV Solapur (PG)- Bale (40 ckt km).
 - (iii) 220kV DC line from 220 KV Deoli (PGCIL) upto LILO for 220KV Yavatmal S/s (Balance portion of Deoli (PGCIL)- Ghatodi.
- 6.2. Although, (i) and (iii) out of the above scheme are commissioned but the effective enhancement

of ATC due to completion of these elements can be realized only after completion of element 'Upgradation of Existing 400 kV Parli (PG) to 400 kV Parli (Girawali) by HTLS Conductor' for which the work is under progress and is expected to be completed by the end of February 2024.

- 6.3. STU is continuously monitoring the project schemes being implemented for strengthening of CTU-STU network and also coordinates with concerned Transmission Licensees to ensure completion of the same on or before their scheduled COD.
- 6.4. Based on the conditional NOC granted by STU, CTU granted conditional LTA vide letter dated 21 December 2021 to M/s Adani Renewable Energy Park Rajasthan Ltd. for a period starting from 01 April 2022 or commissioning of MSETCL system (i.e. completion of above CTU-STU strengthening projects of MSETCL) whichever is later.
- 6.5. Due to non-completion of CTU-STU strengthening projects of MSETCL the LTA was not operationalized.
- 6.6. AEML-D procured 700 MW power in Short Term Open Access (STOA) from M/s Adani Renewable Energy Park Rajasthan Ltd with effect from 30 November 2021. Although LTOA was not operationalized, the flow of power was achieved through STOA without any curtailment.
- 6.7. Meanwhile, the Central Electricity Regulatory Commission (CERC) has published CERC (Connectivity and General Network Access to the inter-state Transmission system), Regulations, 2022 on 07 June 2022 and its amendment was published on 01 April 2023. The said original Regulations is effective from 1 October 2022 and its first amendment is effective from 05 April 2023.
- 6.8. CERC has granted deemed GNA of 8496 MW to Maharashtra state as per average recorded demand of FY 2018-19, FY 2019-20 and FY 2020-21 in CERC GNA Regulations, 2022. MSLDC has segregated the Deemed GNA allocation within the Maharashtra state for intra state entities including all Distribution Licensees and furnished the same to CTU as per directives of CERC in Regulation 18.1 (e) of the said Regulations.
- 6.9. STU also requested all Distribution Licensees to submit their additional GNA requirement in excess of deemed GNA granted by CERC for onward submission to CTU as per Regulation 19.1 of the said Regulation.
- 6.10. Further, all intra state entities (i.e. Distribution Licensees) have submitted their additional GNA requirement/non-requirement to STU which includes 700 MW additional GNA requirement from AEML-D for this project. STU has submitted the requirement of total 1088.78 MW of additional GNA to CTU on 26 September 2023.
- 6.11. Accordingly, CTU vide its letter dated 29 September 2023 has granted additional GNA of 1088.78 MW (Outside region: 1088.45MW and within region: 0.33MW) to Maharashtra State which includes additional GNA requirement of AEML-D of 700 MW.
- 6.12. The additional GNA in addition to the deemed GNA granted by CERC in CERC (Connectivity and General Network Access to the inter-state Transmission system), Regulations, 2022 has been made effective from 01 October 2023.

- 6.13. Despite LTOA not being granted due to system constrain, the power was procured through STOA earlier by AEML-D. After implementation of CERC (Connectivity and General Network Access to the inter-state Transmission system), Regulations, 2022, CTU has granted additional GNA as required by AEML-D and now the power procured through LTOA from 01 October 2023.
7. During the hearing held on 9 February 2024, Advocate of AEML-D and AHEJ4L made submissions as made out in the Petition. Representative of STU submitted that initially LTOA was not granted due to system constraints, but power has been scheduled under STOA without curtailment. Further, post notification of CERC (Connectivity and General Network Access to the inter-state Transmission system), Regulations, 2022; CTU has granted additional GNA as required by AEML-D. Now power is procured under LTOA from 1 October 2023.

Commission's Analysis and Rulings:

8. The Commission notes that AEML-D has filed the present Petition in compliance of the directions issued by the Commission in its Order dated 28 October 2022 in Case No. 4 of 2022. The observation and directives of the Commission in the Impugned Order read as under:

“

*18. Having ruled as above, the Commission notes that 700 MW R Hybrid project is main source of AEML-D for meeting its RPO. During this proceeding, AEML-D has submitted progress of said project. As per AEML D, solar capacity of 600 MW and Wind Capacity of 458 MW has been commissioned. **Further AEML-D has granted extension of SCOD on account of 1st & 2nd wave of Covid-19, ruling related to Great Indian Bustard (GIB) issued by National Green Tribunal (NGT) and Hon'ble Supreme Court, stay on project land by High Court of Rajasthan and delay in operationalization of LTOA.** In this regard, the Commission notes that in its tariff adoption Petition for 700 MW, AEML-D has stated that for injecting 700 MW RE Hybrid power, project developer would be setting up solar capacity of 650 MW and Wind Capacity of 650 MW. From the progress reported in the present Petition, it is observed that commissioning of Solar and Wind capacity is still below the envisaged level. Further, **AEML-D has not submitted all the documents/ correspondence/ communications between parties, based on which such extension in SCoD has been granted.** The Commission also notes that latest extension in SCoD is granted on account of non-operationalization of long term Open Access and at the same time AEML-D has stated that power from commissioned capacity is being availed through Short Term Open Access. Therefore, it is not understood as to the reason for non-operationalization and whether resorting to STOA can be considered as factor for extending SCoD. As per provisions of PPA, in case there is dispute between the parties then they can approach this Commission for adjudication. In present case, it seems that both parties have mutually agreed for extension of SCOD. But question raised above remains unanswered as AEML-D has not filed detailed submission on the issue. Extension or non-extension of SCoD has impact of recovery of liquidated damages from developer or reduction in tariff as stipulated in the PPA. Hence, even though there is no dispute between the parties for extension of SCoD, the Commission can scrutinize such decision so as to avoid any adverse impact on consumers. Although the Commission may seek such details during upcoming Tariff petition as part of*

scrutiny of power purchase expenses, in the opinion of the Commission, it would be better if said issue is decided separately based on Petition filed by AEML-D with all supporting details.

19. The Commission directs AEML-D to file separate Petition within a month providing details of SCoD extensions granted by it to 700 MW RE Hybrid projects and how provisions of the PPA has been complied with while granting such extensions. Project developer be made party to said Petition. In the said petition, AEML-D also needs to file the likely financial impact on its consumers.” [Emphasis supplied]

AEML-D in present Petition has submitted documents/ correspondence exchanged between AEML-D and AHEJ4L, details of Force Majeure events, status of project and details *qua* compliance of provisions of PPA dated 7 July 2020.

9. AEML-D contended that the commissioning of the project of AHEJ4L is delayed due to following:
- Nationwide lockdown due to Covid-19 pandemic. (1st wave)
 - Interim injunction granted by the Hon’ble High Court of Rajasthan at Jodhpur *qua* the land allocated to AREPRL.
 - Impact of Supreme Court Judgement in GIB matter.
 - Resurgence of Covid-19 Pandemic (2nd wave).
 - Post Covid-19 Supply Chain Disruption- Wind Projects related.
 - Non-operationalisation of LTOA.

AEML-D asserted that the above events were beyond the reasonable control of the project developers and are in nature of Force Majeure events under Article 11 of PPA.

10. Based on documents placed on record, following principal issues emerge in the instant matter for consideration:
- a. Whether AHEJ4L is affected by events of Force Majeure?
 - b. Whether AEML-D has correctly extended SCOD timeline and is it justifiable? If yes;
 - c. Whether AEML-D entitled to a consequential carry forward of the RPO targets?

The Commission is addressing above issues in the following paragraphs:

11. Issue A: Whether AHEJ4L is affected by events of Force Majeure?

- 11.1. The Commission notes that PPA has following provision related to Force Majeure:

“

11.3. Force Majeure

A 'Force Majeure' means any event or circumstance or combination of events those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the

Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

- a. **Act of God**, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado **if and only if it is declared / notified by the competent state/central authority/agency** (as applicable);
- b. any act of war (whether declared or undeclared), Invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action if and only if it is declared/notified by the competent state /central authority/agency (as applicable); or
- c. radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.

11.4. Force Majeure Exclusions

11.4.1. Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;
- b. Delay in the performance of any contractor, sub-contractor or their agents;
- c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d. Strikes at the facilities of the Affected Party;
- e. Insufficiency of finances or funds or the Agreement becoming onerous to perform; and
- f. Non-performance caused by, or, connected with the Affected Party's:
 - i. Negligent or intentional acts, errors or omissions,
 - ii. Failure to comply with an Indian Law; or
 - iii. Breach of, or default under this Agreement.

....”

- 11.2. Admittedly Covid-19 has been declared as epidemic/pandemic and hence Covid-19 and consequent lockdown correctly gets covered under definition of Force Majeure. MNRE through its various Office Memorandums has recognized Covid-19 and subsequent supply chain disruption as a Force Majeure event. These Office Memorandums have been issued based on

pandemic situation and provided relief to project developers in terms of timeline extensions to project milestones. In past, to provide regulatory certainty and to bring parity, the Commission has adopted the extended timeline stipulated in MNRE Office Memorandums for projects tied up by Distribution Licensees in Maharashtra.

- 11.3. It is pertinent to note that for Covid-19 related dispensation, AEML-D has mainly relied upon MNRE Office Memorandums dated 13 August 2020, 29 June 2021, 17 March 2022 and 25 January 2023. The Commission notes that Office Memorandums dated 25 January 2023 has wider reach. As per said notification, solar PV / solar PV - wind hybrid projects, for which bids were finalized before 9 March 2021 have been given time for completion of projects up to March-2024.

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.”

AEML-D categorically submitted that the last date of bid submission for project under consideration was 19 August 2019 i.e. prior to 09 March 2021. Accordingly, AHEJ4L’s project is eligible for extension of SCOD up to 31 March 2024.

- 11.4. The Commission notes that 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 said notification is not referred to by AEML-D. As per Notification, the time extensions shall be granted 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.**”

- 11.5. 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.
- 11.6. It is worth noting that in the present case, the project has been commissioned on 1 October 2022 and power flow has been established. This demonstrates that AHEJ4L has taken efforts and all possible measures for implementing the project and accordingly commissioned the project. As per the above MNRE OM, AHEJ4L is eligible (subject to PPA conditionalities) for extension of SCOD till March 2024, but project is already commissioned on 1 October 2022 with delay of 417 days.
- 11.7. MNRE OM dated 25 January 2023 and 1 May 2023 cover complete relief period sought by AHEJ4L. Hence, the Commission is not inclined to go into the merits of events on account of ruling of Hon'ble High Court of Rajasthan at Jodhpur *qua* the land allocated to AREPRL, impact

of Supreme Court Judgement in GIB matter and non-operationalization of LTOA.

12. **Issue B: Whether AEML-D has correctly extended SCOD timeline and is it justifiable?**

12.1. The Commission notes that PPA dated 7 July 2020 recognizes SCOD as 10 August 2021.

12.2. AEML-D has granted SCOD timeline extension in following manner:

Sr.No.	Force Majeure Event	Reference document	Period of extension	
			By AHEJ4L	By AEML-D
1	Nationwide lockdown due to Covid-19 pandemic	MNRE Office Memorandum dated 13 August 2020	10.08.2021	From original SCOD of 10.08.2021 till 10.01.2022
2	Interim injunction granted by the Hon'ble High Court of Rajasthan at Jodhpur qua the land allocated to AREPRL	Judgement of Hon'ble High Court of Rajasthan dated 29 June 2021.	01.11.2022	-
3	Resurgence of Covid-19 Pandemic (2 nd wave)	MNRE Office Memorandum dated 29 June 2021.	Subsumed above in Sr.No.2	From 10.02.2022 till 27.03.2022
4	Post Covid-19 Supply Chain Disruption- Wind Projects related	MNRE Office Memorandum dated 17 March 2022.	19.01.2023	From 27.03.2022 till 10.05.2022 (Up to Long Stop Date i.e 27 months from effective date)
5	Impact of Supreme Court Judgement in GIB matter	Order of Hon'ble Supreme Court of India dated 30 November 2022 and MNRE Office Memorandum dated 03 February 2022.	On-going Force Majeure	-
6	Non-operationalisation of LTOA.	MNRE Office Memorandum dated 02 November 2022 and MNRE Office Memorandum dated 03 February 2022.	On-going Force Majeure	From 10.05.2022 till operationalisation of LTOA or 10.08.2022 whichever is earlier.
7	Non-operationalisation		On-going	From 10.08.2022

	of LTOA and applicability of Judicial pronouncements.		Force Majeure	till operationalisation of LTOA or 31.10.2022 whichever is earlier.
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Apart from above, AEML-D referred to Office Memorandum dated 25 January 2023 whereby MNRE duly acknowledged the long-lasting impact of uncontrollable event of Covid-19 and consequent supply chain disruptions.

- 12.3. In the above table from Sr.No.(1), (3) and (4), it is evident that AEML-D has correctly granted SCOD extension as per stipulations in MNRE Office Memorandums and as per PPA. For extension of time, PPA provides for following:

“

4.5. Extensions of Time

4.5.1. *In the event that the HPD is prevented from performing its obligations under Article 4.1 by the Scheduled Commercial Operation Date due to:*

- a. *any AEML Event of Default; or*
- b. *Force Majeure Events affecting AEML, or*
- c. ***Force Majeure Events affecting the HPD,***

The Scheduled Commercial Operation Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.6.2, for a reasonable period but not less than 'day for day basis, to permit the HPD or AEML through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the HPD or AEML, or till such time such Event of Default is rectified by AEML.

4.5.2. *Not used*

4.5.3. *In case of extension due to reasons specified in Article 4.5.1 (b) and (c), and if such Force Majeure Event continues even after a maximum period of nine (9) Months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 13.5.*

4.5.4. *If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commercial Operation Date or the Expiry Date should be deferred, any Party may raise the Dispute to be resolved in accordance with Article 16.*

4.5.5. *As a result of such extension, the Scheduled Commercial Operation Date and the Expiry Date newly determined shall be deemed to be the Scheduled Commercial Operation Date and the Expiry Date for the purposes of this Agreement.*

4.5.6. *Not Used.*

4.5.7. **Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commercial Operation Date arising due to any reason envisaged in this Agreement shall not be allowed beyond 27 months from the Effective date of PPA.**”

- 12.4. From Sr.No.(7) and (8) of table above, it is evident that AEML-D has granted the SCOD extension beyond the Long Stop Date i.e. 10 May 2022. For sufficing the extension AEML-D referred to SECI’s letter dated 03 February 2022 and 15 March 2021 whereby extension in SCOD is allowed beyond the stipulated Long Stop Date.
- 12.5. AEML-D highlighted that AHEJ4L has categorically sought for extension of SCOD beyond Long Stop Date by declaring Article 4.5.7 of PPA as inoperative. For supplementing the plea AHEJ4L has relied upon letters issued by SECI dated 03 February 2022 and 15 March 2021. Considering long lasting impact of Covid-19, Non-operationalisation of LTOA and applicability of Judicial pronouncements, AEML-D has granted SCOD timeline extension up to 31 October 2022.
- 12.6. The Commission notes that till 10 May 2022, out of 700 MW, AHEJ4L successfully commissioned following project capacity:

(In MW)

Date	Capacity
8 December 2021	117.77
29 January 2022	57.22
19 February 2022	50.80
07 March 2022	63.43
Total	289.22

Further, AHEJ4L is scheduling power under short term open access from the first part commissioning date. From above, it is evident that AHEJ4L has taken efforts to commission the project.

- 12.7. The Commission also notes that PPA do contain the provision related to waiver and reads as under:
“

17.3 Waiver

17.3.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorised representative of such Party:”

Nowhere in submission AEML-D has explicitly mentioned waiver. But by extending SCOD, AEML-D has categorically waived the provisions contained in Article 4.5.7 of the PPA.

12.8. Considering disruption caused by Covid-19 pandemic and efforts made by AHEJ4L to commission the project, the Commission find it appropriate to extend the SCOD of the project.

As noted in Para (10.6), MNRE vide its Office Memorandum dated 25 January 2023 and 1 May 2023 has allowed extension up to March 2024 for 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 AHEJ4L's project under consideration was selected is 19 August 2019. Hence, AHEJ4L's project is eligible for extension of SCOD up to March 2024. However, as the project has already been commissioned on 1 October 2022 which is prior to March 2024, the said date of commissioning needs to be considered as extended date of SCOD.

12.9. In view of the above, the Commission allows actual date of commissioning (1 October 2022) to be considered as extended SCOD.

13. **Issue C: Whether AEML-D is entitled to a consequential carry forward of the RPO targets?**

13.1. AEML-D in its prayer clause (b) requested a consequential carry forward of the RPO targets, in view of the extension of SCOD.

13.2. It is pertinent to note that the ambit of present proceeding is restricted only up to extension of SCOD of AHEJ4L's project. No data related to RE generation, gross energy consumption etc. is available on record to ascertain the level of RPO compliance for past years.

13.3. Hence, for RPO compliances; holistic considerations will be taken by the Commission in the upcoming MYT Petition.

Hence, the following Order.


ORDER

- 1. The Petition in Case No. 33 of 2023 is partly allowed.**
- 2. Date of SCOD of 700 MW Wind-Solar Hybrid Power Project of AHEJ4L is extended to date of actual commissioning of project i.e. 1 October 2022.**
- 3. AEML-D is directed to file relevant submission on RPO compliances in upcoming MYT Petition.**

Sd/-
(Surenra J. Biyani)
Member

Sd/-
(Anand M. Limaye)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Dr. Rajendra G. Ambekar)
Secretary

