



SOLAR POWER DEVELOPERS ASSOCIATION

910, 9th Floor, Surya Kiran Building, 19, Kasturba Gandhi Marg, New Delhi- 110001

Phone: +91-8750394442, Email: spda@solarpda.com

Website: www.solarpda.com

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January 19, 2021

To,
The Managing Director,
Solar Energy Corporation of India Ltd.
5th Floor, Prius Platinum ,D-3,
District Centre, Saket,
New Delhi-110017
Government of India.

Subject: Extension of the stipulated timelines for achieving Financial Closure and Commissioning of the Solar Projects awarded under ISTS Tranche IV.

Ref: 1. Power Purchase Agreement signed by and between SPDs and Solar Energy Corporation of India (SECI) for the Projects (PPAs);
2. Power Sale Agreement signed by and between SECI and Buying Entities for sale of 1150 MW solar power including from the Project on long term basis (PSAs).

Dear Sir,

Greetings from Solar Power Developers Association.

We write to you in the context of the PPAs awarded to Solar Power Developers under Tranche-IV [corresponding to the Request for Selection No. SECI/C&P/SPD/ISTS-IV/RfS/1200MW/032019 dated 13.03.2019 ("RFS")]

As you are aware, adoption of tariff by the appropriate commission is a necessary step for undertaking any steps towards the execution of the Project, including attaining the Financial Closure. This is critical as without having certainty on adoption of tariff, lenders are increasingly wary of financing the projects and investors are concerned about making significant financial investments. This is also clear from Recital II of the PSAs, which states:

"II. Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under the Agreement shall be that SECI shall duly obtain the order of the Central Electricity Regulatory Commission adopting the Tariff and the trading margin of 7 paisa/kWh to SECI and buying entity shall obtain necessary approval for procurement of the contracted capacity."

A perusal of the above also makes it clear that obtaining the order regarding tariff adoption from the Hon'ble Central Electricity Regulatory Commission ("CERC") is the obligation of SECI and that the said obligation is a condition precedent for the enforcement of the obligations by the parties. Further, sale of power under the



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arrangement of PPA and PSA is a composite transaction, and this has been duly acknowledged in Clause 17.12 of the PPA, which states as under:

“17.12 The duly executed Power Sale Agreement between SECI and Buying entity(s) as attached to this Agreement shall be read along with this Agreement as a composite back-to-back agreement for Generation and supply of electricity to the Buying entity(s), particularly, to fulfill the Renewable Purchase Obligations under the provisions of the Electricity Act, 2003 and the Regulations notified thereunder.”

Therefore, unless the obligation regarding tariff adoption is fulfilled by SECI, Financial Closure and in turn Commissioning of the Project cannot be achieved.

In this regard, it is relevant to mention that SECI has filed a petition bearing No. 579/AT/2020 before the Hon'ble CERC under Section 63 of the Electricity Act, 2003 for adoption of tariff for the 1150 MW solar PV Power projects (Tranche-IV) connected to the Inter-State Transmission system (ISTS) and selected through competitive bidding process as per the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects dated 03.08.2017 (“Guidelines”).

The Hon'ble CERC by way of its order dated 27.08.2020 has reserved its order in the said petition filed by SECI. However, as the Hon'ble CERC has been non-functional since 28.08.2020, the order remains reserved and has not been pronounced for last three and a half months.

As a result of this Force Majeure equivalent situation, SPDs are not able to achieve the Financial Closure for the Project(s). The lenders are not comfortable providing firm financial commitments in the absence of an order from the Hon'ble CERC adopting the tariff together with the PSA being approved.

Therefore, on this ground itself, it is incumbent that SECI grants extension of time under the PPAs for achieving Financial Closure and in turn Commissioning of the Project.

This also needs to be seen from yet another angle which is based on the legal premise that an act of a court shall not cause prejudice to any party and therefore, SPDs ought not to be penalized for the delay in the tariff adoption order, on account of the non-functioning of the Hon'ble CERC.

In addition to the above, the issue of tariff adoption order must also be viewed from the perspective of the Guidelines. In this regard, it is pertinent to note that MNRE has on 22.10.2019 issued the Amendment to the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects (“Amendment”) which inter alia stipulates that any delay in adoption of tariff by the commission beyond 60 (sixty) days shall entail a corresponding extension in financial closure. The relevant extract of the said amendment is reproduced below:

“12.0 (c). It is presumed that in terms of Clause 10.4 of these Guidelines, the tariff will be adopted by the Appropriate Commission within 60 days of such submission. However, notwithstanding anything contained in these Guidelines,



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any delay in adoption of tariff by the Appropriate Commission, beyond 60 (sixty) days, shall entail a corresponding extension in the financial closure.”

Further, it is relevant to state that the definition of the term “Guidelines” in the RFS clearly stipulates that the said definition includes subsequent amendments and clarifications. The said definition is reproduced herein below:

“1.19 “GUIDELINES” shall mean the “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Project” issued by the Ministry of Power vide Resolution dated 03.08.2017 including subsequent amendments and clarifications thereof.”

Therefore, it is clear that the Amendment to the Guidelines stipulating that any delay in adoption of tariff by CERC beyond 60 (sixty) days shall entail a corresponding extension in the Financial Closure, ought to apply to the Projects that are subject matter of this letter, and correspondingly, the timeline for achieving Financial Closure and Commissioning of the Project be extended by SECI under the PPA.

In addition to the above, Aptel on a similar issue on commencement of obligations in Appeal Nos. 368, 369, 370, 371, 372 & 373 OF 2019 has opined as under:

“The inter se obligations between the parties in terms of PPA including commissioning of the project could trigger only when finality of adoption of tariff is reached. Such opinion was expressed by this Tribunal on various occasions holding that the effective date would be the date on which the PPA becomes unconditionally applicable.”

We are also given to understand that several of the ultimate offtakers identified for this tranche till date have not even filed petitions for adoption of quantum under Sec 86(1) (f) of the Electricity Act in the respective SERCs.

Request:

In view of the above, we request you to kindly extend the timelines stipulated in the PPA for achieving the Financial Closure and the Commissioning of the Project, till such time that the tariff for the Project is adopted and the PSA is approved by the Hon’ble CERC and appropriate State Commission(s).

We further urge that the same be done on an expeditious basis from your end so that the status of the Project(s) can be appropriately construed by of investors and lenders.

We look forward to your favorable consideration in the matter.

Thanking you

Yours Sincerely

Praveen Golash
Joint Secretary, SPDA