

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2053 of 2022.

In the Matter of:

Petition under Section 86 (1) (b) of the Electricity Act, 2003 read with Article 9 of the Power Purchase Agreement dated 12.05.2021 executed between Torrent Power Limited (Distribution) and Adani Renewable Energy Eight Limited and Power Purchase Agreement dated 12.05.2021 executed between Torrent Power Limited (Distribution) and Torrent Saurya Urja 2 Private Limited for adjustment in tariff under the claim of Change in Law.

Petitioner : Torrent Power Limited - Distribution
Represented by : Ld. Advocates Ms. Deepa Chawan & Ms. Reshma Nathani
along with Mr. Chetan Bundela, Mr. Jignesh Langalia and Ms.
Luna Pal

V/s.

Respondent No. 1 : Adani Renewable Energy Eight Limited
Represented By : Mr. Dipak Kumar Panchal & Mr. Manish Kumar
Respondent No. 2 : Torrent Saurya Urja 2 Private Limited
Represented By : Mr. Nisarg Shah

CORAM:

**Anil Mukim, Chairman
Mehul M. Gandhi, Member
S. R. Pandey, Member**

Date: 18/10/2023.

DAILY ORDER

1. The matter was listed for hearing on 04.10.2023.

2. Ld. Adv. Ms. Deepa Chawan appearing on behalf of the Petitioner submitted that the present Petition is filed for adjustment in tariff under the claim of 'Change in Law' event under Section 86 (1) (b) of the Electricity Act, 2003 read with Article 9 of the Power Purchase Agreements (PPA) dated 12.05.2021 executed by the Petitioner with the Respondents (i) Adani Renewable Energy Eight Limited and (ii) Torrent Saurya Urja 2 Private Limited.
 - 2.1. It is submitted that pursuant to Competitive Bidding Process initiated by the Petitioner vide tender dated 23/24.12.2020 for procurement of 300 MW power from grid connected Solar Photovoltaic Power Project followed by e-reverse auction followed by addendum dated 08.01.2021 regarding 'Greenshoe Option' for additional 300 MW capacity, the Petitioner had entered into Power Purchase Agreement on 12.05.2021 with the Respondent No. 1 for 150 MW capacity at a tariff of Rs. 2.22 per unit. Moreover, the Petitioner also executed PPA with the Respondent No. 2 on 12.05.2022 for base capacity of 150 MW plus 'Greenshoe Capacity' of 150 MW totalling to 300 MW at tariff of Rs. 2.22 per unit. Subsequently, the Petitioner has also executed Supplemental PPAs with said Respondents.
 - 2.2. It is further submitted that the Petitioner has received notice regarding 'Change in Law' event from the Respondent No. 1 vide letter No. ARE8L/TPL-D/GST CIL/20211210 dated 10.12.2021 under the PPA on account of change in GST Rate on Renewable Energy Devices and parts as per Ministry of Finance (Revenue Department), Government of India Notification dated 30.09.2021. Similarly, Respondent No. 2 vide its Letter No. TPL/300 MW TPL-D-Solar/10/2021-02 dated 02.11.2021 has issued notice to the Petitioner regarding 'Change in Law' under the PPA on account of (i) increase in custom duty on solar invertors pursuant to Ministry of Finance Notification dated 01.02.2021 (ii) imposition of basic Customs Duty on solar modules and cells as per MNRE OM dated 09.03.2021 (iii) change in GST Rate on RE Equipment as per Ministry of Finance (Revenue Department), Government of India notification dated 30.09.2021.
 - 2.3. It is submitted that pursuant to above representations received by the Petitioner from the Respondents, the Petitioner has approached this Commission with a prayer to consider the claim of the Respondents in terms of "Change in Law" for declaration of same and to provide 'in-principle' dispensation thereon in terms of

the Statutory provisions. It is also submitted that this Commission had earlier approved the deviations sought by the Petitioner in bidding documents and thereafter, adopted the tariff discovered under competitive bidding process vide its Order dated 12.07.2021.

3. It is submitted that Article 9 of both the PPAs incorporates provision related to change in law as under:

“ARTICLE 9: CHANGE IN LAW

9.1 Definition

9.1.1 “Change in Law” shall refer to the occurrence of any of the following events after the Bid Deadline:

- a. The enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulations, notice, circular, code, rule or direction by Government Instrumentality or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties charges, levies etc., that results in any change with respect to any tax or surcharge or cess levied or similar charges by the Competent Government on the generation of electricity (leviable on the final output in the form of energy) or sale of electricity.*

For avoidance of doubt, it is clarified that any change in taxes or surcharge or cess or similar charges on inputs like material, labour or any other input for setting up the Project will not be allowed under Change in Law except as specified in 9.1.1(b).

- b. Introduction / modification / changes in the rates of safeguard duty and / or antidumping duty and / or custom duty on import of solar power equipment or parts thereof which has direct effect on the Project cost.*

9.2 Relief for Change in Law

9.2.1 In case Change in Law on account of 9.1.1 (a) above results in decrease or increase by one percent (1%) in the estimated revenue from the Electricity for the Contract Year for which such adjustment becomes applicable or more, during Operation Period, the Tariff Payment to the Power Producer shall be appropriately increased or decreased with due approval of GERC.

9.2.2 In case of Change in Law resulting on account of 9.1.1 (b) above, the Power Producer shall be allowed an increase / decrease in tariff of 1 paise / unit for every increase / decrease of Rs. 2 Lakh per MW of project capacity (AC) in the Project Cost which shall be allowed upon submission of proof of payment made by the Power Producer towards any taxes / duties / cess / surcharge or similar charges on import of solar power equipment or parts thereof to the concerned Authority and with due approval of GERC. This increase / decrease in tariff due to this change in cost of PV modules shall be limited to actual DC capacity or 150% (One hundred & fifty percent) of contracted AC capacity, whichever is lower.

9.2.3 The Power Procurer or the Power Producer, as the case may be, shall provide the other Party with a certificate stating that the adjustment in the Tariff Payment is directly as a result of the Change in Law and shall provide supporting documents to substantiate the same and such certificate shall correctly reflect the increase or decrease in costs.

9.2.4 The revised tariff shall be effective from the date of such Change in Law as approved by GERC.”

4. It is submitted that the increase in GST rate, imposition of basic Custom Duty and increase in Custom Duty qualifies as ‘Change in Law’ event under the provisions of the PPAs, which requires adjustment in the tariff.
5. Mr. Dipak Kumar Panchal appearing on behalf of Respondent No. 1 has submitted that the Respondent No. 1 vide letter dated 10.12.2021 has issued notice under the Article 9 of the PPA notifying the Petitioner regarding occurrence of “Change in Law” events.
 - 5.1. In response to the query from the Commission regarding present status of the Project and quantification of impact on account of ‘Change in Law’, the Respondent No. 1 has submitted that the exact impact due to ‘Change in Law’ is not being assessed as the project is still under the implementation phase. Further, the Respondent No. 1 sought four weeks’ time for filing of reply in the Petition.
6. Ld. Adv. Ms. Deepa Chawan submitted that the exact implication on account of ‘Change in Law’ events will be known only once the projects get completed. At this stage, the Commission may grant “In Principle” approval of ‘Change in Law’ events

and the quantification of impact on account of 'Change in Law' events may approve on later stage once the projects get completed.

7. We have considered the submissions made by the parties. We note that the Respondents No. 1 has sought four weeks' time to file reply in the Petition. We also note that the Respondent No. 2 has yet not filed any reply to the Petition. Accordingly, we direct both the Respondents to file their reply, if any, within two weeks' time from the date of this Order with a copy to the Petitioner and also place on the record the details related to present status of projects etc. Further, the Petitioner is also at liberty to file its rejoinder reply, if any, within a week' time after the receipt of reply from the Respondents.
8. Next date of hearing will be intimated separately.
9. Order accordingly.

Sd/-
[S.R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Sd/-
[Anil Mukim]
Chairman

Place: Gandhinagar
Date: 18/10/2023.