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Ref No.: ACME/REG/210125/6448

Date: 21.01.2025

To,
Commission Secretary,
Telangana Electricity Regulatory Commission,
Vidyut Niyantaran Bhavan, G.T.S. Colony, Kalyan Nagar,
Hyderabad, 500045.

Subject: Comments on TGDISCOMs proposal before TGERC for amendment to the model solar PPA for billing of imported energy from the grid by solar power developers.

References:

1. Telangana Electricity Regulatory Commission Notice in O.P. No. 33 of 2024, Ref No. D.No.- 843.
2. TGERC document, Ref No. 2817322/2024/COMMISSION SECRETARY-TGERC.

Respected Sir,

This is in reference to the above stated notice issued by Telangana Electricity Regulatory Commission ("TGERC") inviting suggestions, objections, and comments regarding the proposals submitted by TGDISCOMs, specifically Southern Power Distribution Company of Telangana Limited (TGSPDCL) and Northern Power Distribution Company of Telangana Limited (TGNPDCL). These proposals are unilateral in nature and seek TGERC's consent to amend the clause in the model PPAs in respect of billing of imported energy from the grid by solar power developers to maintain their auxiliaries during the non-generation period.

It is hereby submitted that the comments/objections are being filed by ACME Solar Power Technology Private Limited ("ASPTPL"). ASPTPL entered into a PPA with TGNPDCL on 09.02.2016 for supply of 50 MW solar power ("PPA") and has been supplying solar power to TGNPDCL since July 2017. ASPTPL respectfully requests that this Hon'ble Commission condone the delay of one day in filing the present comments/objections, as ASPTPL did not receive any notice of the aforementioned petition.

ASPTPL would like to submit the following preliminary analysis in relation to the above:

1. The PPA (model PPA) was duly approved by this Hon'ble Commission, and the approval has never been challenged or disputed by any party. As a result, the approval and the PPA signed between the parties has attained finality.
2. As per Clause 2.6 and Schedule 1 of the PPA, the import of energy from the DISCOM shall be limited to the energy required for auxiliary consumption. This import will be netted off and is capped at a maximum of 0.1% of the installed capacity, as specified in the agreement.

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3. Once contracts have been concluded, approved by the Commission, and not challenged, they cannot be amended retrospectively. As per various judgments of the Hon'ble Supreme Court, it is stated that, the Commission is required to act within the four corners of the contract. Therefore, the amendments proposed by the TGDISCOMs cannot be made applicable to the PPAs which have been already signed and approved by this Hon'ble Commission. Some of the Hon'ble Supreme Court Judgments are as follows:

i. Ecoren Energy India (P) Ltd. v. State of A.P., [(2022) SCC Online AP 601], Hon'ble Supreme Court held that terms and provisions of the PPA executed between the parties cannot be re-written or amended by Court or the adjudicating authorities; the terms of PPAs cannot be altered either by the parties or by the Court; and financial difficulty of Government of DISCOM is no ground to permit avoiding the contract or reducing the tariff.

ii. Haryana Power Purchase Centre vs. Sasan Power Ltd & Ors. dated 06.04.2023 [(2024) 1 SCC], wherein the Hon'ble Supreme Court stated that Tribunal cannot change or create a new agreement between the parties and must respect the original contract, as it has no authority to alter its terms against what is clearly stated in the contract. Relevant excerpt from the judgment is reproduced below for your ready reference:

"We are of the view that the Tribunal cannot indeed make a new bargain for the parties. The Tribunal cannot rewrite a contract solemnly entered into. It cannot ink a new agreement. Such residuary powers to act which varies the written contract cannot be located in the power to regulate. The Power cannot, at any rate, be exercised in the teeth of express provisions of the contract."

iii. Nabha Power Ltd. vs. Punjab State Power Corporation Ltd. dated 05.10.2017 [(2018) 11 SCC 508], wherein the Hon'ble Supreme Court stated that the clear terms of a contract are the final authority on what both parties intend. Therefore, a contract with many clauses should be understood and explained in a way that one part of the contract doesn't contradict or go against another part. Relevant excerpt from the judgment is reproduced below for your ready reference:

"49. We now proceed to apply the aforesaid principles which have evolved for interpreting the terms of a commercial contract in question.....

.....Needless to say that the application of these principles would not be to substitute this Court's own view of the presumed understanding of commercial terms by the parties if the terms are explicit in their expression. The explicit terms of a contract are always the final word with regards to the intention of the parties. The multi-clause contract inter se the parties has, thus, to be

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understood and interpreted in a manner that any view, on a particular clause of the contract, should not do violence to another part of the contract.”

- iv. Gujarat Urja Vikas Nigam Ltd. and others vs. Renew Wind Energy (Rajkot) Pvt. Ltd. & others. dated 13.04.2023 [2023 SCC Online SC 411], wherein the Hon’ble Supreme Court stated that:

“In the present case, however, the PPAs were entered into in the exercise of equal bargaining power, after due negotiation by the parties, and within the framework of existing regulations: both central and state. Therefore, unless any later amendment expressly overrides existing contracts, the terms of such agreements bind the parties.”

- v. GMR Warora Energy Ltd. vs. CERC & Ors., dated 20.04.2023 [(2023) 10 SCC 401], wherein the Hon’ble Supreme Court stated that:

“This Court has emphasised that it cannot substitute its own view of the presumed understanding of the commercial terms by the parties, if the terms are explicitly expressed. It has been held that the explicit terms of a contract are always the final word with regard to the intention of the parties.”

4. The amendment sought by the TGDISCOMs would have a direct commercial impact on the projects, which was not anticipated at the time of bidding, as it was not included in the model PPA that was approved by this Hon'ble Commission. Therefore, if any changes are implemented at this stage, they will result in an adverse commercial impact on the existing projects.

In light of the above, it is submitted that, based on the preliminary analysis conducted by ASPTPL, the proposed amendment is not acceptable to us and is legally untenable. Accordingly, we request that it be rejected. However, should this Hon’ble Commission decide to proceed with this matter, we would require additional time to submit a detailed analysis of the proposal’s commercial impact along with the petition copy which has not been provided to us till date. Therefore, in the event that this proposal is not rejected, we reserve the right to submit further and more detailed submissions on this issue.

This is without prejudice to our rights under the PPA.

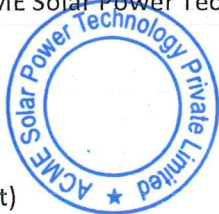
Thanking you.

Yours Sincerely,

For and on behalf of ACME Solar Power Technology Private Limited

Tushar Goyal

(Associate Vice President)



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