

Rajasthan Electricity Regulatory Commission

**Petition No. RERC/1926/21, 1934-1935/21,
1944-1947/21, 1950-1951/21, 1957/2021**

Petition filed under Section 86 (1) (f) of the Act in the matter of Non-Payment of Principal and LPS Amount.

Coram:

Dr.B.N. Sharma,	Chairman
Sh. S. C. Dinkar,	Member
Sh. Prithvi Raj,	Member

M/s Sun and Sand Mumbai (1926/21)	Petitioners
M/s Giriraj Enterprises (1934/21)	
M/s Yamuna Power and Infrastructure Ltd. (1935/21)	
M/s D. J. Malpani (1944-1946/21)	
M/s Giriraj Enterprises (1947/21)	
Realwax Industries (1950/21)	
Jivraj Tea Ltd.(1951/21)	
Neccon Power and Infra Private Ltd. (1957/21)	

Rajasthan Urja Vikas Nigam Ltd.	Respondents
Ajmer Vidyut Vitran Nigam Ltd.	
Jodhpur Vidyut Vitran Nigam Ltd.	
Jaipur Vidyut Vitran Nigam Ltd.	

Date of hearings : 01.12.2021

Present : Sh. V. N. Bohra, Advocate for Petitioner (1926/21)

Sh. Ravi Chiraniya, Advocate for Petitioners (1934/21,
1944-47/21, 1950-51/21 & 1957/21)

Sh. Vipin Agarwal, Advocate for Petitioner (1935/21)

Sh. R. N. Birda, ExEn RA, RUVNL

Order Date:

22.12.2021

ORDER

1. The Petitioners referred to in the cause title are generating companies which have filed petitions for adjudication of dispute under section 86(1)(f) of the Electricity Act, 2003 regarding non-payment of principal amount and LPS by the Discoms.
2. Notices were issued to the Respondents through online portal to file reply on the petitions. Respondents filed their reply on 29.11.2021 in petitions bearing nos. 1926/21, 1934-1935/21, 1944-1947/21 and 1950-1951/21.
3. As the issue that arises in all the petitions for consideration and decision of the Commission is similar, all the petitions referred to in cause title are clubbed and are being disposed of by this common order.
4. Matter was heard on 01.12.2021, Sh. Ravi Chirania, Advocate, Sh. V.N. Bohra, Advocate and Sh. Vipin Aggarwal, Advocate appeared on behalf of Petitioners, Sh. R.N. Birda, Authorised Representative appeared for RUVNL.
5. Petitioners in their petitions and during hearing mainly submitted that
 - 5.1 They have entered into Power Purchase Agreements (PPAs) with the respective Discoms and are supplying electricity as per the terms of the said PPAs.

- 5.2 The PPAs have clear provisions for payment of Late Payment Surcharge (LPS) in case there is a delay in payment of the bills raised for the electricity supplied. The LPS clause defined in the PPAs has binding force in law and it is a contractual binding on Discoms to pay the LPS. The Discoms are regularly overlooking and ignoring said agreed term of PPA.
- 5.3 The Respondent Discoms are neither honouring the time line provided for payment of bills nor are they paying LPS in case of delayed payments. Through the instant petitions, Petitioners have claimed principal amount due and LPS as per respective PPAs for delayed payment.
- 5.4 Petitioners submitted that Respondent Discoms are taking unfair advantage of their position and intentionally not releasing admitted dues so as to forcefully make the Petitioners, which are in urgent need of cash inflow, to agree to the arbitrary and onerous terms. The Conduct of Discoms amounts to unjust enrichment as they are admittedly recovering due amount from their consumers as part of retail supply tariff, on the other hand they are not paying due amount to the Petitioners against power supply.
- 5.5 The Commission in its earlier orders dt. 23.07.2014, 11.11.2014, 29.10.2015, 07.12.2020 and others has held that the terms of PPA impose an obligation on Respondent Discoms to make payment of bills within due date and in case of delay, to pay LPS as per the terms of respective PPAs.
- 5.6 Petitioners have referred to the Hon'ble APTEL judgement dated 17.04.2012 in Appeal No. 11 of 2012 in the matter of TNEB & Anr. Vs. Indian Wind Power Association and Ors.
- 5.7 In view of above, Petitioners have prayed for payment of principal amount as well as LPS due to the respective Discoms in terms of PPAs.

6. Respondents during hearing and in reply mainly submitted that:
- 6.1 The Commission vide Record of Proceeding dt. 28.05.2020 directed Discoms to ensure that in future payment to Solar and Wind Generators shall be made on the first come first serve basis.
- 6.2 On 07.12.2020, the Commission passed an order regarding payment of interest on delayed payment by Discoms, wherein the Commission held as below:
- "Accordingly, we direct Respondent Discoms to verify each of the claims made by wind/solar generators of the State, subject to the claims being within limitation period in accordance with law and the terms of PPA and pay the LPS amount of wind and solar generators of the State by the end of this FY, i.e., 31.03.2021 which is due up to March 20 irrespective of the fact that they have filed a petition or not."*
- 6.3 In compliance to this order, RUVNL has released the payment towards LPS which is due upto March, 20 to all the generators irrespective of the fact that they have filed a petition or not.
- 6.4 Discoms have no intention to shun from their contractual obligations under the PPAs entered into with the Petitioners. However, due to huge financial crisis being faced by the Discoms, payment to the extent of about Rs. 21155.16 Cr. are due to various generation and transmission companies.
- 6.5 There are huge outstanding amounts to be paid to the State Generating Company, State Transmission Company and Wind Generators including the Petitioners. The three Distribution Licensees are maintaining supply of electricity in the State. To ensure uninterrupted power supply, it is essential to make payments on priority to the conventional power generators who are supplying about 92% of the total energy being supplied by the

Discoms, which meets base load requirements. The Discoms will not be able to maintain the power supply to the consumers if the conventional power plants which are base load stations are not operated.

6.6 The Respondents have prioritized payments so as to reduce the financial burden of LPS and avail benefit of rebate. In the 17th meeting of BOD of RUVNL held on 14.12.2017, it was decided to release payments to the Power generators at the earliest in the following order of priority:

- (i) Principal dues to conventional power generators/ Transmission service providers with availing maximum rebate for prompt payment as per PPAs/ TSAs.
- (ii) Conventional Power Generators offering extra rebate over and above the PPAs subject to approval of the Board.
- (iii) Principal dues of non conventional sources with availing maximum rebate for prompt payment as per PPAs.
- (iv) Non conventional sources offering extra rebate over and above the PPAs.
- (v) Principal dues of the power generators, if any, to avoid incidence of LPS.
- (vi) Current energy dues of RVUN/RVPN.
- (vii) Principal due to RVUN/ RVPN.
- (viii) Payment of LPS at concessional rate.
- (ix) Payment of LPS as per prescribed rate in PPA.

6.7 In spite of severe financial crisis, the Respondents have taken all care to ensure timely payments and also taking efforts to release LPS at the earliest. The delay in releasing the LPS amount is due to the reasons beyond the control of Respondents.

- 6.8 Hon'ble High Court, vide order dated 05.02.2018 in S.B. Civil Writ Petition no. 281/2018 and connected matters has directed the Respondents herein to release 50% of the payment with a period of one month from the date of order and granted one year time thereafter for the payment of remaining 50% amount. Hon'ble High Court, while passing the order dated 05.02.2018 also orally expressed that the Discoms are at liberty to approach the Hon'ble Court seeking extension of time for payment, if the problem still persists.
- 6.9 The Present petitions are filed under Section 86(1)(f) of the Act and the Respondents therefore seek time for releasing the LPS due to the Petitioners as per the terms of PPAs. It is also submitted that PPAs do not specify about interest upon interest as alleged by the Petitioners. The Respondents are willing to make payments. However, they seek the permission of the Commission to make the payments as per the priority decided by the BOD of RUVNL.
- 6.10 In the PPAs between the Petitioners and the Respondents there is a provision of default, and notices can be issued by non defaulting party in case of default by the defaulting party and there is further provision of remedy in case dispute is not settled within notice period. However, no such notices have been issued by any wind generators. If the Petitioners are so aggrieved they are at liberty to exercise this option and the Discoms will take prompt steps to facilitate the same.
- 6.11 In view of above Respondents have prayed to allow them to follow the payment priority as decided in RUVNL BOD meeting held on 14.12.2017.

Commission's view

7. We have considered the submissions made on behalf of Petitioners and Respondents.

8. Petitioners in their respective petitions and during hearing mainly submitted that Respondents are neither paying principal amount of energy bills on time nor the late payment surcharge.
9. Respondents contended that they have no intention to shun from their contractual obligations under the PPAs. However, due to huge financial crisis being faced by the Discoms the payments to the extent of about Rs. 21155.16 Cr. are due to various generation and transmission companies. Further to ensure uninterrupted power supply, it is essential to make payments on priority to the conventional power generators who are supplying about 92% of the total energy supply. The Respondents therefore requested to allow them to make the payments as per the priority decided by the BOD of RUVNL.
10. It is observed that in all these petitions, the Petitioners which are RE generators have alleged that the Respondents are neither paying principal amount of energy bills on time nor the late payment surcharge.
11. We observe that there is evident delay in making principal payment as well as LPS amount to wind & solar generators. The Commission in earlier petitions on similar issue has held that in case of delay in payment beyond due date, the seller generating company is entitled to get late payment surcharge as per RE Tariff Regulations.
12. Commission observes that the Discoms should make payment to the generators in time bound manner without dragging them to legal recourse.
13. Commission would like to record that it is not appropriate on the part of Discoms to drive every generator to file petitions for making payment of principal and LPS. When commission has given clear directions in the earlier cases to pay interest against the delayed payments as per the

term of PPA they should follow the said directions scrupulously in all similar cases so that multiplicity of litigations can be avoided. Discoms which have signed the agreement consciously are bound by the agreements, otherwise their credibility will get a dent.

14. Accordingly, we direct Respondent Discoms to verify each of the claims made by wind/solar generators of the State, subject to the claims being within limitation period in accordance with law and the terms of PPA and pay the LPS amount of wind and solar generators of the State irrespective of the fact that they have filed a petition or not.
15. The Discoms are further directed to ensure that payments to Solar and Wind Generators shall be made on the first come first serve basis irrespective of the fact that they have filed a petition or not. Commission before parting with these cases desires that the Respondents should make regular arrangements to discharge their liability undertaken in contracts.
16. The petitions are disposed of accordingly.

(Prithvi Raj)
Member

(S. C. Dinkar)
Member

(Dr. B.N. Sharma)
Chairman