

# **RAJASTHAN ELECTRICITY REGULATORY COMMISSION JAIPUR**

**Petition No. RERC/2051/2022**

**In the matter of Petition under Section 86(1) (b) of the Electricity Act, 2003 read with Regulation 10 of the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 for approval of power procurement from renewable sources.**

## **Coram:**

**Dr. B.N. Sharma, Chairman**

**Shri Hemant Kumar Jain, Member**

**Dr. Rajesh Sharma, Member**

Rajasthan Urja Vikas Nigam Limited.

**Petitioner**

## **Versus**

1. NTC Logistic India (P) Limited
2. Barkat Hiring Company Private Limited.
3. Kataria Cargo Mover.
4. Kataria Transport and Company.

**.....Respondents**

**Date(s) of hearing: 01.11.2022, 13.12.2022, 10.01.2023, 04.04.2023, 04.07.2023, 12.07.2023 and 17.07.2023**

Present : Sh. Shashwat Purohit, Advocate for Petitioner.

Sh. Sandeep Taneja, Advocate for Respondent Nos. 3 (Kataria Cargo Mover) and Respondent No. 4 (Kataria Transport and Company)

**Date of order**

**08.08.2023**

## **Order**

1. Petitioner, Rajasthan Urja Vikas Nigam Limited (hereinafter referred to as the 'Petitioner') has filed the present petition under Section 86(1)(b) of the Electricity Act, 2003 read with Regulation 10 of the Rajasthan Electricity

Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 for approval of power procurement from renewable sources.

2. Notices were issued online to Respondents to file their replies in the petition.

3. The matter was heard on 04.07.2023, 12.07.2023 and finally heard on 17.07.2023. Advocate Sh. Shashwat Purohit appeared for the Petitioner, Advocate Sh. Sandeep Taneja appeared on behalf of Respondents.

4. Petitioner in its petition submitted as under:

4.1. On 14.01.2010, the CERC issued the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 ("REC Regulations 2010"). CERC further issued the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2022 whereby repealed the incumbent REC Regulations 2010 on 09.05.2022.

4.2. On 23.12.2010, the Commission issued the RERC (Renewable Energy Certificate and Renewable Purchase Obligations Compliance Framework) Regulations, 2010.

4.3. Respondents have set up wind based renewable electricity generation power plants under the Regulations issued by the Commission on 23.12.2010 and for the purpose Power Purchase Agreements ("PPAs") were executed with respect to the Respondents.

4.4. The PPAs under the REC Mechanism for Solar and Wind Projects have been executed for the period up to 31.03.2019 by the Discoms at APPC rate determined by RERC and RECs have been issued to the developers by the NLDC, which are traded on the power exchange.

4.5. On 05.03.2019, the Commission while making Third Amendment to the RERC (Renewable Energy Certificate and Renewable Purchase Obligations Compliance Framework) Regulations, 2010 amended the regulation 10(2) and 10(4) as under:

*"10. ....*

*(2) The effective electricity component price applicable w.e.f. 01.04.2019 to the projects commissioned upto 31.03.2019 and covered under REC mechanism shall be as under:*

*For distribution licensee(s), shall be equal to the Pooled Cost of Power purchase for JdVVNL for 2011-12 to 2016-17. This rate shall remain applicable for its remaining useful life, for which PPA may be executed accordingly.*

*Provided that such projects may also use such electricity of self-consumption or sell electricity at mutually agreed price to other entities."*

*.....*

*(4) Purchase of electricity component form the Renewable Energy having been issued REC would not be counted in fulfilment of RPO."*

4.6. Aggrieved by the above Amendment, many RE developers had approached the Hon'ble Rajasthan High Court requesting for PPAs to be extended beyond the March 2019 at the existing rates under PPA.

4.7. However, the Respondents in this matter have neither approached any court of competent jurisdiction challenging the amendments, nor the Respondents are aggrieved by any actions of the Petitioner in any manner whatsoever.

4.8. The Commission in its order dated 26.08.2019 in Petition No. 1518/19, 1519/19 and 1520/19, had clarified that it is not mandatory for the Appellant/Discoms, to extend the validity of the PPAs, and it was the discretion of the Discoms to extend the PPAs beyond 31.03.2019.

4.9. In the meanwhile, the Coordination Committee of power companies in its meeting held on 8.11.2019 decided not to extend PPA under REC mechanism and same was communicated to the Respondents.

4.10. In these circumstances, there is no justification for procuring power even at the capped tariff of Rs. 3.14/kWh, that too without the renewable component for fulfilment of RPO compliance. In terms of the above, the Respondents being the wind power developers have approached the Petitioner for entering into PPAs at the rate of Rs 2.44/kWh with the proposal that they will not claim RECs ('Renewable Energy Certificates') for the power supplied from their plants.

4.11. Accordingly, the agenda was placed before the Coordination Committee of the Rajasthan State Power Sector Companies in its 29th meeting held on 30.12.2021, and after discussions, the Committee agreed to make an offer to the RE developers for supply of power to Discoms on the following terms and conditions:

*"5.4 After discussions, the Committee agreed with the proposal to give offer to the power producers for supply of power to the Discoms/RUVNL in the prescribed power sharing ratio by GoR revised time to time on following conditions:*

- i. Power Producer who has availed REC will not be eligible to get this offer.*
- ii. The tariff shall be fixed at Rs 2.44/kWh for wind power projects and Rs. 2.24 / kWh for solar power projects for balance useful life of the projects, without any escalation/consideration of change in law.*
- iii. Power injected after expiry of original PPA and till the signing of new PPA will also be paid with same rates i.e. Rs 2.44/kWh for wind power and Rs.2.24/kWh for solar power without any LPS or interest.*
- iv. Power Producer shall withdraw court case before execution of PPA.*
- v. Power Producers will not claim REC for the power injected into the grid after expiry of PPA and power will be utilized for RPO fulfilment by the Discoms.*
- vi. The terms and conditions of offer shall be considered to be final only after approval of RERC."*

4.12. In view of the above, considering that the Distribution Licensees need renewable power to fulfil their RPO targets for both wind and solar power, the Petitioner has proposed to procure power from the RE developers (wind and solar) beyond 31.03.2019 under the RPO route at the rate of Rs. 2.44/kWh for wind and at the rate of Rs.2.24/kWh for solar, further protect the interest of the RE developers, whose PPAs under the REC route have expired on 31.03.2019.

4.13. For such projects, particularly in view of the fact that the power has been flowing into the grid even after expiry of the PPAs, i.e., beyond 31.03.2019, it would be in the best interest of all stakeholders to treat such power under the non-REC route and this would also help to resolve the issues of the generators, by placing them on the same pedestal as other generators, without any additional benefit or prejudice.

4.14. In the meanwhile Commission issued the RERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020. Regulation 10 of the Regulation of 2020 provides as follows :

**10 Procurement of Power from Renewable Energy Projects during Extended Period-**

10.1 *The Distribution Licensee(s) at their own discretion may procure power from Renewable Energy Projects during extended period considering the following aspects:*

a) *Overall Energy Requirement and Energy Availability from various sources;*

b) *To meet the RPO targets for the year;*

c) *Tariff for procurement of power from such projects (equivalent to the latest tariff discovered through competitive bidding for relevant technology):*

*Provided that for any renewable energy technology, if the latest tariff discovered through competitive bidding is not available, the Commission will determine the tariff on case to case basis, only if the Distribution Licensee(s) is willing to procure power from such project during extended period.*

10.2 *For procurement of power from such projects, the Distribution Licensees may enter into an agreement with Renewable Energy Project Developer during extended period at mutually agreed terms, to be approved by the Commission.*

4.15. The Petitioner has filed the present Petition under Section 86(1)(b) of the Electricity Act, 2003 read with Regulations for approval of power procurement from renewable sources beyond 31.03.2019 and prayed as under:

- (a) Approve procurement of RE Power under Regulation 10 of the Rajasthan Electricity Regulatory Commission (Terms and Conditions

for Tariff determination from Renewable Energy Sources) Regulations, 2020 read with Section 86(1)(b) of the Electricity Act, 2003.

- (b) Approve the PPA to be entered into with The Respondents power producers who opt for this offer.
- (c) Pass such other further orders as this Hon'ble Commission may deem just in the facts of the present case.

**Reply filed on behalf of Respondent No. 3 (Kataria Cargo Mover) and Respondent No. 4 (Kataria Transport and Company) (10.03.2023) (hereinafter referred to as 'Respondents') by Id. Counsel Sandeep Taneja:**

5. The Respondent No.3 has installed one number of wind power having rated capacity of 2 MW at Village Khodiasar Taluka Fatehpur District Jaisalmer Rajasthan. The said windmill was commissioned on 28.03.2018 and entered into a PPA with JdVVNL on 27.09.2017 under REC framework, which was initially for a period up to 31.03.2019.

6. The respondent No.4 has also installed 1 (one) number of windmill having rated capacity of 2MW at Village Khodiasar Taluka Fatehpur District Jaisalmer Rajasthan. This was also commissioned on 28.03.2018 and respondent No.4 also entered into PPA with JdVVNL dated 27.09.2017 under REC framework, which was initially operative up to 31.03.2019.

7. In view of the order dated 05.03.2019 passed by the Commission vide which third Amendment to the RERC (Renewable Energy Certificate and Renewable purchase Obligations Compliance Framework) Regulations, 2010 was made, the Discoms decided not to extend the PPAs under the REC framework.

8. Even from 01.04.2019, the electricity generated from the windmills are regularly flowing into the grid and the same is being utilized by the Discoms.

9. Some of RE Developers have challenged the legality and validity of the order dated 05.03.2019 passed by the Commission before the Hon'ble Rajasthan High Court, Bench at Jaipur by way of the Writ Petitions. However, the answering respondents have not challenged the same.

10. With a view to resolve the issue with amicable solution, the answering respondents held various meetings with the Discom authorities. Pursuant to discussions held with the Discom authorities, the aforesaid proposal in the form of decision of Coordination Committee dated 30.12.2021 has been made by the Discom authorities.

10.1. The said proposal is in principle, acceptable to the answering respondents. Since the same has already been communicated by the answering respondents to RREC way back vide separate letters dated 04.01.2022, the petitioner ought to have filed the petition for approval of the said proposal within a reasonable period. It is apparent that the delay in filing of the petition by the petitioner has caused huge financial loss to the answering respondents.

11. While the aforesaid proposal of the petitioner is in principle acceptable, the answering respondents have following the submissions for kind consideration of the Commission:-

- (i) Since the answering respondents have not filed any writ petition before the Hon'ble Rajasthan High Court, the condition to the effect that the power producer shall withdraw Court case before the Execution of PPA is not applicable to the answering respondents.
- (ii) The aforesaid proposal does not lay down any time limit for making payment of the electricity being injected after 01.04.2019. It is therefore, submitted that the Discom is required to make payment of the due amount calculated at the rate of Rs. 2.44 per unit for the units generated and injected from 01.04.2019 till the date of the order

within a period of 30-45 days from the date of the order approving the procurement of RE power by the petitioner from the answering respondents.

- (iii) In case Discom fails to make the payment within the period prescribed by the Commission, the Discom shall be liable to make payment of interest/LPS on the due/ arrear amount as per the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 framed by the Central Government.
- (iv) In future as well, the Discom shall make payment within the period of 30-45 days from the date of submission of invoice.

12. In view of the above submissions the answering respondents have no objection, if the approval to procure power from RE Developer, in terms of decision taken by the Coordination Committee is granted to the petitioner.

13. Apart from above, no replies have been received from Respondent No. 1 and 2.

**Commission's view/ Decision:**

14. We have considered the submissions made on behalf of Petitioner and the Respondents.

15. It is the submission of the Respondents that proposal of the Petitioner is in principle acceptable to them. They have also made several submissions for consideration of the Commission such as condition of withdrawal of the Petition is not applicable to them as they have not filed any Petition before the Hon'ble High court of the Rajasthan. According to the Respondents, the Discom is required to make payment of the due amount calculated at the rate of Rs. 2.44/ unit for units generated and injected after 01.04.2019 till date, however, the proposal of the Petitioner does not laydown any time limit for payment of the electricity being injected after 01.04.2019.

16. According to the Respondents, in case, Discoms fail to make the payment within time limit prescribed by the Commission, Discoms should be made liable to make payment of interest/ LPS on the due/arrear amount as per the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 framed by the Central Govt.

17. The respondents also submitted that they have no objection, if the approval to procure power from RE developers in terms of the decision taken by the Coordination Committee is accorded by the Commission.

18. During the hearing while referring to Hon'ble High Court's order 31.05.2023, the Counsel appearing for Respondents submitted that they are also agree with the condition of payment of arrear to the Respondents against the continuous supply of electricity within a period of 90 days from the date of approval of PPAs by the Commission.

19. It is further submitted by the Petitioner and also confirmed by the Respondent that Respondents have not filed any Writ Petition before the Hon'ble High court.

20. Commission observes that vide order dated 27.07.2023 it has already allowed the Discoms to procure RE power from the RE generators covered under REC mechanism and who have filed the Petitions before the Hon'ble High Court subject to the accept once of terms and conditions stipulated herein. The relevant paras of the aforesaid order are reproduced as under:

*"40. The Commission considering the direction of Hon'ble high court, position of Regulations, submissions made by the petitioner and undertakings given by the various Respondents, orders as under:*

- I. The Commission approves the power purchase from the Respondents u/s 86 (1)(b) of the Electricity Act, 2003.*
- II. The tariff to be paid for the above purchase shall be Rs. 2.24/unit for power supplied by the solar power plant and Rs. 2.44/unit for power supplied by the wind power plant.*
- III. The Discoms and the RE generators, who have withdrawn their cases from Hon'ble High Court, may enter into supplementary PPA on the agreed terms and conditions for the balance useful life of the RE power plants, w.e.f., 1.04.2019 in terms of this order.*

- IV. *The petitioner is directed to make full payment of accrued arrears of principle amount up to 30.06.2023 to the respondents within an outer limit of 90 days from the date of this order.*
- V. *It is also directed that if petitioner doesn't make payment of future energy charges within the stipulated time limit, then LPS as per the prevailing regulations from time to time will be applicable. A clause to this effect may also be inserted in the supplementary PPA.*
- VI. *In case other similarly situated RE generators who were earlier covered under the REC mechanism and have approached the Hon'ble High Court challenging the order of the Commission dated 05.03.2019 along with third Amendment in the RERC REC Regulations notified on 15.03.2019 but are not the Respondents in this case also withdraw their petitions from Hon'ble High court and agree on the same terms & conditions which the Respondents herein have agreed, there will be no need for the Discoms to file a separate petition for seeking approval of the same. The Discoms may enter into supplementary PPA with such RE generators on terms and conditions approved herein and thereafter shall intimate the Commission to this effect.*
- VII. *The energy purchased by Discoms as above w.e.f., 01.04.2019 in terms of this order shall be counted towards the RPO of the Discoms."*

21. The Commission further notes that Respondents hereinabove were also covered under the REC mechanism and they are ready to accept the same offer of Discoms. As such the Respondents hereinabove are also similarly placed, except the fact that they have not filed the petition before the Hon'ble High Court.

22. Further, looking to the present shortfall in meeting their RPO by Discoms and their RE power requirement to fulfill higher RPO targets in future, Commission deems it appropriate to allow power procurement to the Discoms at a tariff determined at Rs. 2.44/unit for wind based power plant as mutually agreed by the petitioner and respondents. Further, it is noticed that useful life of the Respondent's RE power plants is still remaining and RPO target shortfall has to be met by the Petitioner.

23. Regarding LPS the Respondents in their submissions have requested that Discoms should be made liable to payment of interest/LPS on the due/arrear amount as per the Electricity (Late Payment Surcharges and Related Matters) Rules, 2022 framed by the Central Government. In this respect, Commission in its order dated 10.01.2023, *RRVUNL and JSW Energy (Barmer) Ltd vs RUVNL &*

Ors. while referring to the catena of Supreme Court and APTEL Judgments has held that the Commission is bound by its Regulations and cannot act or go beyond the Regulations framed by it and thus, Commission cannot direct the Discoms to pay LPS at any other rate than the rate specified in the Regulations. Further, regarding the MoP, GOI, LPS Rules, 2021 and 2022, Commission also observed that an appropriate view will be taken regarding the amendment in Regulations as and when it deems appropriate after following the due procedure.

24. The Commission considering the position of Regulations, submissions made by the petitioner and the Respondents, orders as under:

- (i) The Commission approves the power purchase from the Respondents u/s 86 (1)(b) of the Electricity Act, 2003.
- (ii) The tariff to be paid for the above purchase shall be Rs. 2.24/unit for power supplied by the solar power plant and Rs. 2.44/unit for power supplied by the wind power plant.
- (iii) The Discoms and the Respondents, who were covered under REC Mechanism and have not filed any petition before the Hon'ble High Court, may also enter into supplementary PPA on the agreed terms and conditions for the balance useful life of the RE power plants, w.e.f., 1.04.2019 in terms of this order.
- (iv) The petitioner is directed to make full payment of accrued arrears of principle amount up to 30.06.2023 to the respondents within an outer limit of 90 days from the date of this order.
- (v) It is also directed that if petitioner doesn't make payment of future energy charges within the stipulated time limit, then LPS as per the prevailing regulations from time to time will be applicable. A clause to this effect may also be inserted in the supplementary PPA.

- (vi) In case other similarly situated RE generators who were earlier covered under the REC mechanism and have not approached the Hon'ble High Court challenging the order of the Commission dated 05.03.2019 along with the third Amendment in the RERC REC Regulations notified on 05.03.2019 but are not the Respondents in this case also agree on the same terms & conditions which the Respondents herein have agreed, there will be no need for the Discoms to file a separate petition for seeking approval of the same. The Discoms may enter into supplementary PPAs with such RE generators on terms and conditions approved hereinabove and thereafter shall intimate the Commission to this effect.
- (vii) The energy purchased by Discoms as above w.e.f., 01.04.2019 in terms of this order shall be counted towards the RPO of the Discoms.

25. The Petition is disposed of in the above terms.

(Dr. Rajesh Sharma)  
Member

(Hemant Kumar Jain)  
Member

(Dr. B.N. Sharma)  
Chairman