

Rajasthan Electricity Regulatory Commission, Jaipur

Petition No. RERC/2061/2022

Petition filed in the matter of adjudication of dispute under section 86(1)(f) of the Electricity Act, 2003.

Coram:

Dr. B.N. Sharma,	Chairman
Shri Hemant Kumar Jain,	Member
Dr. Rajesh Sharma,	Member

Petitioner : M/s Parsolar Pvt. Ltd.

Respondents : 1. Rajasthan Urja Vikas Nigam Ltd
2. Jaipur Vidyut Vitran nigam Ltd.
3. Ajmer Vidyut Vitran nigam Ltd.
4. Jodhpur Vidyut Vitran nigam Ltd.
5. Rajasthan Renewable Energy Corporation Ltd.

Date of hearing : 09.05.2023, 04.04.2023, 27.12.2022

Present : Mr. Ravi chirania, Advocate for Petitioner
Mr. Bipin Gupta, Advocate for Respondents

Order Date:

31.05.2023

Order

1. M/s PARSOLAR Pvt. Ltd is a company registered under the Companies Act 1956 (hereinafter referred to as "Petitioner"). It is a solar power generator with its registered office located at Mumbai.

2. Rajasthan Urja Vikas Nigam Limited (hereinafter referred to as "Respondent No. 1" or "RUVNL") is a company formed by the State of Rajasthan and is an authorized representative of Rajasthan DISCOMS (Distribution Licensees), to carry out Power trading activities.
3. Jaipur Vidyut Vitran Nigam Ltd. (hereinafter referred to as "Respondent No. 2" or "JVVNL") is a company incorporated under the Companies Act, 1956 and carrying on the business of distribution and supply of electricity in the area of supply mentioned in its license and having its registered office at 1st Floor, Vidhyut Bhawan, Janpath, Jyoti Nagar, Jaipur.
4. Ajmer Vidyut Vitran Nigam Ltd (hereinafter referred to as "Respondent No. 3" or "AVVNL") is a company incorporated under the Companies Act, 1956 and carrying on the business of distribution and supply of electricity in the area of supply mentioned in its license and having its registered office at Hathi Bhata Power Office, Jaipur Road , Ajmer.
5. Jodhpur Vidyut Vitran Nigam Ltd (hereinafter referred to as "Respondent No. 4" or "JdVVNL") is a company incorporated under the Companies Act, 1956 and carrying on the business of distribution and supply of electricity in the area of supply mentioned in its license and having its registered office at New Power House, Basni industrial area, Jodhpur.
6. Rajasthan Renewable Energy Corporation Ltd. (hereinafter referred to as "Respondent No. 5" or "RRECL") is a company incorporated under the Companies Act 1956 and it is working as a State Nodal Agency for promoting & developing Non-conventional Energy Sources in the Rajasthan.
7. Petitioner in its petition and during hearing(s) submitted as under:
 - 7.1 The petitioner under the Generation Based Incentive (GBI) scheme of Ministry of New and Renewable Energy (MNRE), Government of India

commissioned a Solar Power Plant of 3 MW at Village Gadhna, Tehsil Phalodi, District Jodhpur.

7.2 That under the GBI scheme the petitioner signed a Power Purchase Agreement dated 14.08.2008 with the respondents JVVNL, AVVNL & JdVVNL. The relevant clauses of the PPA as signed between the parties are quoted as under for ready reference of the Hon'ble Commission:-

" 3. Term of Agreement

3.1 Term of Agreement shall be twenty (20) years from the COD. Provided that at the end of the period of the PPA, new PPA can be executed at mutually agreed terms & conditions. Before 180 days of expiry of 20 years, both parties will mutually decide upon the terms & Conditions for renewal of agreement beyond 20 years."

3.2 The Power Plant will be commissioned by June 30th, 2009 unless extended by RREC. "

7.3 That the Article 5 of the PPA provides that:

" 5(b) Payment Procedure:

- (i) A monthly invoice containing detailed statement reflecting the quantity of electricity supplied to the Grid at the designated Delivery Point and price payable shall be submitted by Power Producer to Discom(s) at their designated offices. The Discom(s) shall make payment of the amounts due, calculated at the purchase price for that particular month within a period of 30 days without interest. The .Discom(s) will pay the agreed tariff together with any related GoR and local taxes and duties on electricity sold, by immediately available funds to such banking institution in Jaipur or elsewhere in Rajasthan, as Power Producer may designate by notice to Discom(s),*
- (ii) For late payment beyond a period of 30 days from the date amount becomes due, a Late Payment Surcharge (LPS) at the rate of 1.25% per month on daily basis shall be levied by the Power Producer."*

7.4 The PPA was signed in terms of the guidelines as issued by the MNRE. According to the guidelines the Power of Purchase price is to be determined

by this Hon'ble Commission under its regulatory power. The Hon'ble Court determined the tariff vide order dated 02.04.2008. By the said order this Hon'ble Commission clarified that though the PPA would be signed for 20 years but the tariff would be re-determined after first 10 year of PPA from the date of Commissioning.

7.5 The Hon'ble Commission thereafter issued the Tariff order of 2009 whereby tariff for the period from 2009 to 2014 was determined. In the tariff order amendment was made in Clause 82(c) of the Tariff Regulation. By the said Regulation it was provided that the above tariff for Solar Power Project is for 10 years only but the PPA can be executed for 20 years or the life of the plant. The Tariff after 10 years shall be determined separately for the Tariff control period as per the prevailing regulations at that time. In terms of the above power plant was commissioned and accordantly the PPA was signed.

7.6 The Government of State of Rajasthan formed the new company namely Rajasthan Urja Vikas Nigam Ltd. and the newly formed company was authorized to sign power purchase agreement for the 3 distribution companies. Therefore, the Urja Vikas Nigam has also been made Respondent in the present petition.

7.7 The petitioner commissioned the plant of 3 MW on 30.03.2012 and completed its 10 years on 30.03.2022. The Hon'ble Commission was required to determine the tariff for GBI based power projects under the Central Scheme.

7.8 In terms of the section 62(1)(a) and 62(1)(h) of the electricity Act,2003 the Hon'ble Commission has the power authority to determine the tariff for supply of electricity by a generating company to the distribution licensees. Further under section 86 (1) (e) the Hon'ble Commission has to promote Co-generation and generation of Electricity from Renewable Sources of Energy

by providing suitable measures for connectivity with the grid and sale of electricity.

7.9 The Hon'ble Commission notified the RERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 . The regulations were notified on 02.11.2020 and published in the State Gazette on 04.12.2020. In Regulation 88.4 of the Regulation of 2020 the Hon'ble Commission has provided the Tariff after 10 years for the Solar Power Project commissioned under the Generation based incentive scheme of Government of India. In the Regulation it has been mentioned that upto 10 years the Tariff under the GBI scheme was Rs. 15.78 and after 10 years the Tariff shall be equivalent to the Tariff paid by the Distribution Licensees for procurement of power during 10th year of Operation from CoD of the project excluding GBI incentive which comes out to Rs. 4.81/Kwh for the remaining term of the PPA. The Regulation 88.4 of the Regulation of 2020 is quoted as under for ready reference of the Hon'ble Commission:-

"88.4 Solar Power Projects (For Projects commissioned under Generation based incentive scheme of Govt. of India)

The total tariff payable by Discoms to the solar power producer for projects commissioned under Generation Based Incentive of Government of India shall be as under:-

A. Tariff for first 10 years from COD

S.No.	Particulars	SPV Technology	CSP Technology
1	Solar power plants eligible for full GBI as per Gol scheme	Rs.15.78 /kWh	Rs.13.78 /kWh
2	Solar power plants eligible for reduced GBI as per Gol scheme	Rs.15.18 /kWh	Rs.13.18 /kWh

B. Tariff after 10 years from COD

The tariff after 10 years from COD shall be equivalent to the tariff paid by Distribution Licensee for procurement of power during 10th year of operation from COD of the project excluding GBI Incentive i.e.,Rs. 4.81/kWh(Rs. 4.03/kWh + Additional Rs.0.78/kWh) for the remaining tenure of PPA. In case the Solar Project Developer does not want to supply power to Distribution Licensees at this tariff, Solar Project Developer is free to sell power to any other entity."

7.10 A petition came to be filed by similarly situated generating company namely Reliance Industries which was registered as petition no. 1585/2020. By the said petition the prayer was made for determination of tariff for balance period of 10 years of PPA for the solar PV Plant commissioned under the GBI scheme of Central Government. The Hon'ble Commission after considering the pleadings and Regulation 88.4 of the Regulation of 2020 observed that it has provided in Regulation 88.4 that after 10 years from the date of Commission the Tariff @ Rs. 4.81/kWh shall be provided for the remaining tenure of the PPA. In view of Regulation 88.4 the petition was disposed off accordingly by the Hon'ble Commission by order dated 07.12.2020.

7.11 That the petitioner commissioned the plant on 30.03.2012 and completed its 10 years on 30.03.2022. In view of Regulation 88.4 of the Regulations of 2020 the petitioner is also entitled for the tariff as fixed by the Hon'ble Commission by the Regulations of 2020.

7.12 The petitioner is continuously injecting the power under the terms of the PPA and the respective monthly invoices in terms of the PPA have also been submitted to the Superintending Engineer (Billing), Rajasthan Urja Vikas Nigam Ltd.

7.13 The petitioner is repeatedly requesting the Rajasthan Urja Vikas Nigam for processing the invoices and for payment against the invoices at the tariff as fixed by the Hon'ble Commission by Regulations of 2020 according to

which after 10 years from the date of commissioning the petitioner would be entitled for tariff @ Rs.4.81/kWh.

7.14 The respondent without any basis and justification and instead of acting in terms of the Regulation 88.4 of the Regulation of 2020 providing tariff @ 4.81 has issued the order dated 10.10.2022 whereby petitioner has been informed that invoices after 10 years will not be entertained till the order of the Commission for tariff after 10 years from the date of commissioning is submitted.

7.15 The Petitioner in its petition has prayed :

a. To process the invoices of the petitioner after completion of 10 years at the tariff of Rs. 4.81 kWh as per Regulation 88.4 of the RERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 from April, 2022 onwards.

b. To make the payment of complete due amount along with interest as per the Late Payment Surcharge as provided in the Regulations. The order dated 10.10.2022 as issued by the respondents be declared illegal and quashed and set aside.

c. Any other order which this Hon'ble Commission deem fit and proper in the facts and circumstances of the case may kindly be passed in favour of humble petitioner.

8. The counsel for the respondents, on behalf of Respondents No. 1 to 4 (RUVNL, JVVNL, AVVNL & JdVVNL), in its written submissions and during hearing(s) has submitted as below :

8.1 The present petition has been filed by concealing the correct facts. Petitioner had entered into a PPA dated 14.08.2008 which was for 5 MW solar

power plant and not the wind power plant. As per the terms of the PPA the tariff as provided in the PPA for 10 years was to be paid to the petitioner only in case if the petitioner's plant is commissioned upto December 2009. The petitioner could not complete the plant within the aforesaid period and therefore, a supplementary power purchase agreement dated 17.02.2012 was executed in which the tariff was differently provided and therefore, the petitioner's tariff is governed by the supplementary PPA dated 17.02.2012. In the 10th year, the tariff of the petitioner was 4.70 and not 4.81. It is further submitted that since in the amended PPA, clause 4.6 was not reproduced in the amended PPA and thus the petitioner after 10 years cannot force the discoms to purchase energy. At present the solar energy is available at 2.24 per unit and if the petitioner is willing to supply the energy at 2.24 then the Discoms may think of purchasing it after 10 years and if the petitioner is not willing then he may sell it in the open market.

8.2 It is submitted that the bills were not processed as the tariff was supposed to be got determined by the petitioner from the Commission. However the petitioner did not get the tariff determined from the Commission after 10 years from the CoD, therefore, the bills are not being paid.

Commission's View

9. The Commission considered the submissions made by the parties, all the documents submitted and arguments made during the course of hearings.

10. The Petitioner mainly prayed for :

- (a) Process the invoices of the petitioner after completion of 10 years at the tariff of Rs. 4.81 kWh as per Regulation 88.4 of the RERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 from April, 2022 onwards.

- (b) Make the payment of complete due amount along with interest as per the Late Payment Surcharge as provided in the Regulations. The order dated 10.10.2022 as issued by the respondents be declared illegal and quashed and set aside.
11. The Petitioner, in the petition and during the course of hearing, submitted that it has set up a 3 MW capacity Solar PV power generation plant in Rajasthan under Generation Based Incentive Scheme of MNRE, Government of India. The Petitioner, for sale of electricity, signed a PPA with Discoms on 14.08.2008 for 20 years from date of CoD. As per the PPA, SCOD of the plant was 30.06.2009.
12. The Petitioner further submitted that the Commission, under its regulatory powers, had determined the tariff for such type of projects vide order dated 02.04.2008 and it was also clarified that though the PPA would be signed for 20 years but the tariff would be re-determined after first 10 years of PPA from COD. Subsequently, tariff order for the control period 2009-2014 was issued and it was further reiterated that the tariff after 10 years shall be determined separately for the tariff control period as per the prevailing regulation at that time. The plant was commissioned on 30.03.2012 and it completed its 10 years on 30.03.2022.
13. The Petitioner also submitted that the Commission notified the RERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 on 02.11.2020 and same were published in the State Gazette on 04.12.2020. In Regulation 88.4, the Commission has provided the Tariff after 10 years for the Solar Power Project commissioned under the Generation based incentive scheme of Government of India. In the Regulations, it has been mentioned that up to 10 years the Tariff under the GBI scheme was Rs. 15.78 and after 10 years the Tariff shall be equivalent to the Tariff paid by the Distribution Licensees for procurement of power during

10th year of Operation from CoD of the project excluding GBI incentive which comes out to Rs. 4.81/Kwh for the remaining term of the PPA. Also, a similar petition was filed by Reliance Industries (petition no. 1585/2020) which was disposed of by the Commission vide order dated 07.12.2020 in view of regulation 88.4 of the regulation 2020.

14. Per contra, the respondent Discoms, in their written reply and during hearing(s), submitted that as per the terms of the PPA dated 02.04.2008, the tariff as provided in the PPA was to be paid to the petitioner only in case if the petitioner's plant is commissioned up to the given timeline. The petitioner failed to stick the prescribed timeline and a supplementary PPA dated 17.02.2012 was executed and in which the tariff is differently provided. Also, for the 10th year, the tariff of the petitioner was Rs. 4.70 and not Rs 4.81.
15. The respondent further submitted that since in the amended PPA, clause 4.6 was not reproduced thus the petitioner after 10 years cannot force the Discoms to purchase energy as per regulation 88.4 of the regulation 2020. Further, the bills raised after completion of 10 years were not processed because the tariff after first 10 years was supposed to be got determined by the petitioner from the Commission.
16. The Commission observes that the Petitioner, for sale of electricity generated from its solar plant entered into PPA with Discoms on 14.08.2008 for the period of 20 years from the date of commercial operation. SCOD of the plant was fixed at 30.06.2009 as per the PPA dated 14.08.2008. It is undisputed that the plant was delayed and a supplementary PPA was executed between the parties dated 17.02.2012. In the Supplementary PPA, the SCOD was re-fixed at 31.03.2012 and subsequently the plant was commissioned on 30.03.2012. The first 10 years of PPA have been completed on 30.03.2022. The Petitioner has filed this petition under section 86(1)(f) of

Electricity Act 2003 for adjudication of dispute regarding determination of tariff for its solar plant for next 10 years under RE Tariff Regulation, 2020.

17. After careful perusal of the supplementary PPA, the Commission observes that the existing PPA dated 14.08.2008 was partly amended vide supplementary PPA dated 17.02.2012 and not fully replaced. Some of the clauses of PPA dated 14.08.2008 were replaced with amended clauses and it was clearly mentioned at the end of the supplementary PPA that all other terms and conditions of power purchase agreement dated 14.08.2008 between Discoms and Producer including the gross receivable by power producer shall remain unchanged and shall apply mutatis mutandis. The relevant clause of the supplementary PPA is reproduced hereunder :

“ 1.0 The power purchase agreement dated 14.08.2008 shall stand modified as under :

.....

.....

All other terms and conditions of power purchase agreement dated 14.08.2008 between Discoms and Producer including the gross receivable by power producer shall remain unchanged and shall apply mutatis mutandis.
“

18. The Commission observes that as per clause 3.1 of PPA dated 14.08.2008, term of the agreement shall be 20 years from COD. This clause 3.1 of the PPA dated 14.08.2008 was not amended vide supplementary PPA. The Commission, after conjoint reading of PPA dated 14.08.2008 and supplementary PPA 17.02.2012, is of the considered view that the validity of the PPA dated 14.08.2008 is for 20 years from the COD of the plant. In view of this, the arguments of the Discoms that the petitioner cannot force the Discoms to buy power generated from the plant after 10 years, is misplaced and hence rejected.

19. It is also observed that the Commission vide its order dated 02.04.2008 while determining the tariff for Solar power generation plants covered under Gol Policy has mentioned that the tariff shall be levelized for a period of ten

years thereafter the tariff shall be determined by the Commission as per the Regulations in force.

20. The Commission observes that first 10 years of the plant were completed on 30.03.2022 and on that day RE Tariff Regulation 2020 was in force. The Commission vide regulation 88.4 of the RE Tariff Regulations 2020, had decided the tariff for Solar Power Projects commissioned under Generation based incentive scheme of Government of India .
21. The Commission further observes that as per table given in clause I(iii) of supplementary PPA dated 17.02.2012, provided by the Respondent as Annexure R/1 to their reply, power purchase rate for the 1st year of operation of the plant was fixed at Rs. 3.56 per KWh plus additional amount of Rs. 0.78 per KWh as was fixed by the Commission . Thus, the rate payable by the Discoms in first year of operation was fixed at Rs. 4.34 per KWh (Rs 3.56 + Rs 0.78) (excluding incentive from Gol). As per the table, the power purchase rate was to be increased by Rs. 0.04 per KWh per annum. The power purchase rate for the 10th year of operation was fixed at Rs. 3.92 per KWh. So, the rate payable by the Discoms for the 10th year of operation was fixed at Rs. 4.70 per KWh (Rs 3.92 + Rs. 0.78) (excluding incentive from Gol).
22. The Commission further observes that as per para 25 of the order of the Commission dated 02.04.2008 , the tariff shall be levelized (constant) for a period of ten years thereafter the tariff shall be determined by the Commission as per the regulations in force. The same is incorporated in PPA dated 14.08.2008 at clause 4.6. During the proceedings of the RE Tariff Regulations 2020 , the Commission considered the submissions of a similarly situated plant of M/s Reliance Industries Ltd which was also set up under GBI scheme and determined a tariff equivalent to the tariff paid by Distribution Licensee for procurement of power during 10th year of operation from COD of the project excluding GBI incentive i.e. Rs. 4.81/unit based on the agreement of M/S Reliance Industries. M/s Reliance also filed a

separate petition for determination of tariff which was disposed of by the Commission vide order dated 07.12.2020 in terms of the Regulation 88.4 of RE Tariff Regulation 2020.

23. The Commission further observes that M/s Reliance Industries, having similar type of plant, had approached the Commission through a separate petition as well as while making of RE Tariff Regulations, 2020. The Commission duly incorporated the provision for such type of plants at regulation 88.4 of the RE Tariff Regulations. The same is reproduced below:

“88.4 Solar Power Projects (For projects commissioned under Generation based incentive scheme of Govt of India)

The total tariff payable by Discoms to the solar power producer for projects commissioned under Generation Based Incentive of Govt of India shall be as under:

A. *Tariff for first 10 years from COD*

.....

B. *Tariff after 10 years from COD*

The tariff after 10 years from COD shall be equivalent to the tariff paid by Distribution Licensee for procurement of power during 10th year of operation from COD of the project excluding GBI Incentive i.e., Rs. 4.81/kWh (Rs. 4.03/kWh + Additional Rs. 0.78/kWh) for the remaining tenure of PPA. In case the Solar Project Developer does not want to supply power to Distribution Licensees at this tariff, Solar Project Developer is free to sell power to any other entity.”

24. It is the spirit of the regulation 88.4, that the tariff for remaining period of the PPA after first 10 years from COD will be equivalent to the tariff paid by the Discoms during 10th year of operation (excluding incentive from Gol).
25. In view of this, the Commission is of the considered view that as per regulation 88.4 of the regulation 2020, the tariff for the remaining period of the PPA (after first 10 years from COD) shall be equivalent to power purchase rate during 10th year of operation from COD plus additional Rs. 0.78/KWh. As elaborated in earlier paras, the power purchase rate during

10th year of operation was Rs. 3.92 per KWh, so the tariff comes out to be Rs. 4.70 per KWh (Rs. 3.92 + Rs. 0.78) for remaining period of the PPA after completion of first 10 years from COD. Thus, the petitioner is entitled to the tariff of Rs. 4.70 per KWh for remaining period of the PPA .

26. Further, the Commission is of the considered view that the petitioner herein was also duty bound to approach the Commission, with their peculiar facts, during public hearing conducted while making of RE Tariff Regulations, 2020, as the first 10 years of the plant of the petitioner was about to end in the control period of the proposed RE Tariff Regulation 2020. However, the petitioner neither approached the Commission while making of the Regulation, 2020 nor before the completion of first 10 years of the plant i.e. before 30.03.2022.

27. As rightly pointed out by the respondents, the petitioner, neither in petition nor during hearing(s), has put the correct facts that as per the supplementary PPA, the tariff payable by the Discoms during 10th year of operation is Rs. 4.70 per KWh and not Rs. 4.81 per KWh as submitted in the petition. Even the copy of the Supplementary agreement dated 17.02.2012 was not submitted with the petition.

28. In view of the above, the petitioner is not entitled for interest on due amount as the delay is attributable to the petitioner only.

29. The summary of our findings are as follows:

- (a) The PPA dated 14.08.2008 is valid for 20 years from the COD of the plant.
- (b) The tariff of the plant, after completion of first 10 years from COD, shall be determined as per regulation 88.4 of the RE Tariff Regulation 2020.
- (c) The tariff for the remaining period of the PPA (after completion of first 10 years) shall be Rs. 4.70 per KWh. The respondent is directed to pay the due

amount within a period of one month from the date of this order. No interest would be payable on the due amount.

30. We order accordingly. No order as to cost.

(Dr. Rajesh Sharma)
Member

(Hemant Kumar Jain)
Member

(Dr. B. N. Sharma)
Chairman