Rajasthan Electricity Regulatory Commission, Jaipur

Petition No. RERC/2217/2024

Petition filed under Section 86(1) (f) of the Electricity Act, 2003 for inaction of the Respondents in releasing the payment for the electricity injected by the Petitioner from 01.04.2019 to 31.05.2023

Coram:

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

Petitioner: BG Wind Power Limited

Respondents : 1. Rajasthan Urja Vikas & IT Services Ltd.
2. Rajasthan Renewable Energy Corporation Limited
3. Jodhpur Vidhyut Vitran Nigam Ltd

Date of hearing : 03.04.2024, 14.05.2024

Present : Sh. Ravi Chirania, Advocate for Petitioner.
Sh. Shashwat Purohit, Advocate for Respondents RUVITL
Sh. Suresh Jewaliya, Representative for RRECL.

Order Date: 20.06.2024

Order

1. M/s BG Wind Power Limited (hereinafter also referred as "Petitioner"), a company registered under the Companies Act, 2013 having registered

office at Bhilwara Bhawan, 40-41, Community Centre, New Delhi-110025.

2. Rajasthan Urja Vikas & IT Services Ltd. (hereinafter also referred as "Respondent no. 1" or "RUVITL") is a Company created by the Govt. of Rajasthan to carry out power trading business of the State power Distribution Companies and has executed Power Purchase Agreement with the petitioner on behalf of Jodhpur Vidyut Vitran Nigam Limited.

3. Rajasthan Renewable Energy Corporation Limited (hereinafter also referred as "Respondent no.2" or "RRECL") is registered under Companies Act 1956 and working as a State Nodal Agency for promoting & developing Non-conventional Energy Sources in the Rajasthan.

4. Jodhpur Vidyut Vitran Nigam Limited (hereinafter also referred as "Respondent No. 3" or "JdVVNL") is the distribution licensee having its area of supply extending to the place of installation of wind power plants.

5. **Petitioner in its petition and during hearing(s) mainly made following submissions:**

5.1 The Petitioner has submitted that he has set up wind energy based power project of 76 MW (38 no. of WTG each of 2 MW capacity) in Rajasthan to generate power under Wind Power Policy, 2012.

5.2 The Petitioner has submitted that the Respondent no. 2 vide its letter No. RREC/Wind /Inox /(72/2004)/2016-17/D.2761 dated 02.09.2016 and followed by letter RREC/ Wind/Inox/(72/2004)/2016-17/D.4492 dated 08.12.2016 permitted to set up the wind energy based project under Wind Power Policy. The Petitioner having relied upon the said policy and also having legitimate expectation that the power so generated shall be purchased by the Discoms for entire useful life of the plant in terms of the

State Regulations, desired to acquire the new wind based power plant under the said sanction for an installed capacity of 20 MW (10 nos. of WTG each of 2 MW capacity) at Village Khodiyasar, Tehsil Fatehgarh, District Jaisalmer, Rajasthan.

5.3 The Petitioner further submitted that he exercised the option of REC Mechanism under the CERC (Terms & Conditions of Recognition and Issuance of Renewable Energy Generation) Regulation, 2010 and RERC (Renewable Energy Certificate and Renewable Purchase Obligation Compliance framework) Regulations. 2010. Consequently, a Power Purchase Agreement ("PPA") dated 18.01.2017 was executed between the petitioner developer and the respondent No.3. The initial term of said PPA was up to 31.03.2019.

5.4 The petitioner also submitted that RUVITL even before the completion of the term of the PPA vide letter dated 17.09.2018 informed the petitioner that reconstituted Co-ordination Committee of Rajasthan State Power Sector Companies had recommended not to renew/extend validity of PPAs signed with Rajasthan Discoms for procurement of solar and wind power under the Renewable Energy Certificate Mechanism. It was further informed that after the expiry of validity of agreement i.e. after 31.03.2019, JdVVNL would not be under obligation to procure energy under terms and conditions of PPA.

5.5 The Petitioner further submitted that subsequently Commission vide notification dated 05.03.2019 framed the Rajasthan Electricity Regulatory Commission (Renewable Energy Certificate and Renewable Purchase Obligation Compliance framework) (Third Amendment) Regulations, 2019 whereby amendments in Regulation 10 and 12 of the Principle Regulations were made. Vide the said amendments, Tariff was capped at Rs. 3.14 per unit and further discretion was conferred on the respondents with regard to execution of PPA.

5.6 The Petitioner also submitted that the Petitioner being aggrieved by the said third amendments, filed D.B. Civil Writ Petition No. 16698/2019 before the Hon'ble Rajasthan High Court, Jaipur. Similar petitions were also filed by various others RE Developers.

5.7 The Petitioner further submitted that in the aforesaid writ petition and petitions of other RE Generators, the Hon'ble Rajasthan High Court, Jaipur Bench passed an interim order dated 18.02.2020 whereby the Hon'ble Court directed the respondents to maintain status quo vis- a- vis threat of disconnection from injection of power , thereby directed the respondent No. 1 and 3 to allow the injection of energy in the State Grid, generated in the RE Projects during the pendency of the petitions.

5.8 The Petitioner also submitted that during the pendency of the aforesaid writ petition, a Co- ordination Committee of respondent No 1 in its 29th Meeting held on 30.12.2021 gave an offer to the power producers for supply of power to Discoms on the following conditions:

i. Power Producer who has availed REC will not be eligible to get this offer.
ii. The tariff shall be fixed at R.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.

5.9 The Petitioner also submitted that, in terms of relevant policies, he decided to change the mode of supply/ use of electricity from REC Mechanism to captive use. For that purpose the petitioner addresses letters dated 05.12.2022 and 28.12.2022 to respondent No.2 requesting to accept proposal for change in mode of supply from REC Mechanism to captive use. The request of the petitioner was accepted by State Level Screening Committee (SLSC) Meeting held on 17.02.2023 subject to fulfillment of following conditions:

i. M/s BG Wind Power Limited will submit all requisite documents of acquisition process between BG Wind and RSWM in RREC.

ii. All necessary agreements and approvals to be taken by the firm form concerned departments (Discoms/RVPN) at their own level and submission of document to RREC.

iii. The change of mode of project from REC Mechanism to Captive use for 20 MW capacity has been allowed as per provisions of RERC Notification March 2019 RERC(Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework)(Third Amendment) Regulations, 2019.

iv. The adjustment of power injected after expiry of PPA and till the date of change of mode will be adjusted by RUVNL Discoms as per the decision taken in the 29th Coordination Committee held on dated 30.12.2021.

5.10 The Petitioner further submitted that from a bare perusal of the conditions mentioned above, it is apparent that one of the condition subject to which the request for change of mode was accepted was that the power injected by the petitioner after expiry of PPA till the date of change of Mode was required to be adjusted by respondents No.1 and 3 as per decision taken in 29th Coordination Committee meeting held on 30.12.2021. This, inter-alia, means that the energy injected during the period shall be paid by the Respondent No 1 at Rs 2.44 per Kwh being the rate decided by the Co-ordination committee.

5.11 The Petitioner also submitted that in the meantime, the proposal given by the Co-ordination Committee was accepted by some of RE Developers. Since the said proposal was subject to approval by Hon'ble Commission, the said RE Developers sought permission of the Hon'ble High Court to withdraw their respective writ petitions. The Hon'ble High Court by order dated 31.05.2023 passed in D.B. Civil Writ Petition No. 15139/2019 and other connect matters, permitted the said petitioners to withdraw the writ petition and also issued directions to this Hon'ble Commission to exercise power for approval of PPAs within a period of 30 days from the date of filing of the application form by respondent No.1.

5.12 The Petitioner also submitted that, the Commission, in pursuance of directions issued by the Hon'ble High Court, by order dated 27.07.2023 allowed the application filed by respondent No.1 and approved the PPAs to be executed between the said RE Developers and Discoms. The Commission in the said order also observed that incase the similarly situated RE Developers withdraw their petition from the High Court, there will be no need for the Discom to file separate petition seeking approval of the same.

5.13 The Petitioner also submitted that in the meantime pursuant to the acceptance of the request of petitioner by the SLSC which was communicated by the respondent No.2 vide its letter dated 01.03.2023, the mode of the 20 MW plant of the petitioner was changed from REC Mechanism to captive use w.e.f 01.06.2023. It is relevant to mention here that from the said date i.e. 01.06.2023, the electricity generated at the wind power plant of the petitioner is being used for captive consumption. However, electricity which was generated from 01.04.2019 till 31.05.2023 was injected in the grid i.e. supplied to the Discoms.

5.14 The Petitioner further submitted that in order to comply with the conditions of the SLSC , filed an application before the High Court seeking permission to withdraw the Writ Petition No. 16698/2019 in order to enable respondent no.1 and to release the amount for the energy injected before the change of mode. The Hon'ble High Court took note of the fact that petitioner had decided to change the mode from REC Mechanism to captive consumption which was accepted by the State Level Screening Committee in its meeting held on 17.02.2023. The Hon'ble High Court accordingly permitted the petitioner to withdraw the said writ petition by order dated 06.09.2023 by specifically recording that:

> "*Learned Counsel submitted that since now the Petitioner has decided to change the mode of REC mechanism to captive use, which has been accepted by SLSC in its meeting dated 17.02.2023. As such now the Petitioner wants to withdraw the writ petition.*
>
> *Learned Counsel for the Respondents, does not dispute the fact of*

<u>developments, which have taken place, as narrated in the application</u>."

5.15 The Petitioner also submitted that in the conditions subject to which SLSC granted approval for change in mode, it was unambiguously stated that the power injected by the petitioner after expiry of PPA till the date of change of Mode was required to be adjusted by respondents No 1 and 3 as per decision taken in 29th Coordination Committee held on 30.12.2021. As such the respondent No.1 and 3 were required to make payment of the electricity supplied by the petitioner at the rate of Rs.2.44 per unit as per decision taken by the Co-ordination Committee for the period starting from 01.04.2019 till 31.05.2023.

5.16 The Petitioner also submitted that moreover from a joint reading of the orders dated 31.05.2023 and 06.09.2023 passed by the Hon'ble High Court and the order dated 27.07.2023 passed by the Commission, it is apparent that the respondents are required to make payment of the electricity supplied by the petitioner of Rs.2.44 per unit as per decision taken by the Co-ordination Committee for the period starting from 01.04.2019 till 31.05.2023. Further the period of 90 days in this case ought to be calculated from the date of submission of claim by the petitioner.

5.17 The Petitioner further submitted that the petitioner vide its letter dated 15.09.2023 submitted its claim to release a sum of Rs. 12,83,54,005/-, towards energy injected during the aforesaid period i.e. from 01.04.2019 to 31.05.2023. The said letter was followed by the reminders dated 25.09.2023, 03.11.2023, 12.12.2023 and 29.01.2024.

5.18 The Petitioner also submitted that the respondents, however, did not pay any heed to the said letters of the petitioner which remained unresponded. The officials of the petitioner also held personal meetings with the official of the respondents No. 1 and apprised them with the status of the fulfillment of conditions subject to which SLSC in its meeting held on 17.02.2023 had permitted the change of mode from REC Mechanism to captive use. The officials of the petitioner also brought to their notice that in the case of the petitioner, pursuant to the approval for the change of mode to captive followed by the acceptance of the factual developments by the counsel of Respondent No. 1 and 3 during the hearing of the application for withdrawal of the writ, no further directions of this Commission would be required in view of the fact that the rates decided by the co-ordination committee and injection of energy during the period was pursuant to the directions of Hon'ble High Court of Rajasthan and as such PPA for the balance life of the project was not required. Further the Commission had already ordered that in the event other RE Developers withdraws their petitions, respondents are not required to approach the Commission by filing separate petition. Petitioner also offered to extend a PPA, for a limited period commencing from 01.04.2019 to 31.05.2023, if required. However, the Respondent No.1 vide its letter no RUVITL SE(PP) F/D/1333 dated 06.10 2024 rejected the claim of the Petitioner by stating that:

"In this respect it is informed that the agreement had expired on 31 March 2019, hence your request is not entertainable. "

5.19 The petitioner submitted that the permission to change the mode of supply/use of electricity has been granted by Respondent No.2 and the said decision is binding on the other respondents. The respondent did not raise any objection before the Hon'ble Rajasthan High Court while on the basis of the acceptance granted by SLSC/ Respondent No.2, the petitioner sought to withdraw the writ petition. It was duly recorded in the order dated 06.09.2023 passed by the Hon'ble Rajasthan High Court that the respondent did not dispute the fact of the development which were mentioned in the application for withdrawal of the petition. In light of the above, the inaction of the Respondent about release of payment to the petitioner is grossly erroneous and therefore requires interference by issuing appropriate directions to the respondents by this Commission.

5.20 The petitioner further submitted that the Commission in the similar matter of J K Lakshmi Cement Limited vs Rajasthan Urja Vikas Nigam Limited & Ors in Petition No RERC 2146/2023, has passed an order dated 03.01.2024 directing the respondent Discoms to make payment for the energy injected by directing that:

"22 In view of the discussion above, the commission orders as under:

a. The Respondents are directed to pay the Petitioner *against the Power injected from 01.04.2019 to 31.03.2022 at the rate 2.24/KWh without any Late Payment Surcharge or interest as decided by the Coordination Committee in its meeting dated 30.12.2021.*

b. *The amount due to the petitioner, calculated according to the para above shall be paid to the petitioner within 90 days from the date of this order.*

c. *The Petitioner shall not claim REC for the power injected the grid after expiry of PPA and power will be utilized for RPO fulfillment by the Discoms. "*

5.21 The petitioner submitted that in the above facts and circumstances, the petitioner is filing the instant petition seeking direction of the Commission to the respondents No1 and 3 to execute a short terms PPA for the period commencing from 01.04.2019 till 31.05.2023 and further direction to release the payment to the petitioner for the electricity injected during the aforesaid period with late payment surcharge after 90 days from 15.09.2023, the date on which the petitioner submitted its claim for payment of amount calculated @ Rs.2.44/unit for the electricity supplied to Respondent No.3 during 01.04.2019 to 31.05.2023.

5.22 In views of the submission made hereinabove, the Petitioner in its petition have prayed for:

a. Appropriate directions may kindly be issued to the respondents to execute a short terms Power Purchase Agreements (PPAs) from 01.04.2019 to 31.05.2023 with the petitioner.

b. Appropriate directions may kindly be issued to the respondents to make payment of Rs. 12,83,54,005/- towards the supply of electricity by the petitioner during the period 01.04.2019 to 31.05 2023.

c. Appropriate directions may kindly be issued to the respondent to make payment of late payment surcharge after 15.12.2023 (90 days from 15.09.2013).

d. Any other order which may deem appropriate may kindly be passed.

6. **The Respondents in their reply and during course of hearing(s) mainly submitted as under:**

6.1 The Respondents submitted that for payment towards supply of electricity can be done only in subsistence of a valid PPA. However, the Petitioner did not have any valid PPA in existence since 31.03.2019.

Thus, the Petitioner cannot be paid for such supply in absence of valid PPA.

6.2 The Respondents further submitted that Petitioner cannot claim parity with any of other RE generators who withdrew their Writ Petitions from the Hon'ble High Court as such generators will be renewing their PPAs and will continue to supply electricity to Discom. Thus, the case of the Petitioner is different and no parity can be claimed. Also, the order dated 31.05.2023 passed by the Hon'ble High Court was for a particular category of RE generators. The category of the Petitioner is different. Thus, the Petitioner is not entitled to payments on the ground of parity.

6.3 The Respondents further submitted that RUVITL filed the Petition No. 2051/2023 before the Commission seeking approval of PPAs of those generators who are willing to supply electricity to the Discom for remaining useful life of the plant. The case of the Petitioner is different from those as the Petitioner withdrew its petition and opted for captive use.

6.4 The Respondents submitted that undertaking before the Hon'ble High Court to clear the arrears of those generators who will be executing supplementary PPAs. The Petitioner is not entitled to claim parity with the other generators who withdraw their petitions for entering into PPAs. The Petitioner had already converted its plant for captive use. Moreover, the RE generators are getting paid in terms of the decision taken in 29th meeting of Coordination Committee and the same is backed by the order dated 31.05.2023 passed by the Hon'ble High Court. It is submitted that the Petitioner is not backed by the order of any competent authority.

7. **The Petitioner, in response to the reply of the Respondents, filed rejoinder**

on 06.05.2024 and submitted as under :

7.1 The petitioner submitted that similarly situated RE Generators namely JK Lakshmi Cement Ltd. after approval of the change of mode from REC mechanism to captive use withdrew the petition pending before the Hon'ble High Court and after denial of the payment by RUVITL preferred the petition under section 86 (1)(f) before the Commission titled as JK Lakshmi Cement Ltd. vs. RUVITL & Anr. (Petition no. RERC/2146/2023; decided on 03.01.2024). The Commission allowed the petition and directed the respondent to pay the petitioner against the power injected at the rate of 2.24/MW without LPS as decided by the coordination committee in its meeting dated 30.12.2021. The contents of the entire reply filed by the respondent RUVITL clearly shows that they have no objection to the prayer made by the petitioner but they require formal orders from the Commission to release the payment against the power injected from 01.04.2019 to 31.05.2023.

7.2 The Petitioner further submitted that the petitioner is entitled to receive Late Payment Surcharge on the delayed payment from the date (ie. 27.07.2023) when the Commission approved the tariff as offered by the Coordination Committee in its meeting dated 30.12.2021. The Commission by order dated 27.07.2023 has specifically ordered that the Discom is not required to file a separate petition for approval of tariff to those RE generators who were not respondent in the petition no. 2139/2023. The relevant paras of the order dated 27.07.2023 passed by the Commission is quoted as under for ready reference of the Commission:-

> *"(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."

7.3 Even after the specific order passed by the Commission, the respondent RUVITL has not released the payment to the petitioner till now. Even when the Commission allowed the petition filed by the JK Lakshmi Cement Ltd. (supra) the respondent RUVITL did not release the payment to the petitioner and therefore, the petitioner is entitled to receive the LPS on the delayed payment by the respondent RUVITL calculating from the date of order passed by the Commission whereby the tariff as offered by the Coordination Committee dated 30.12.2021, was approved.

Commission's View

8. The Commission has considered the submissions made by the Petitioner/Respondents in petition, written submissions and oral arguments during hearing(s).

9. The Commission observes that the petitioner mainly prayed to get payment against the power injected from 01.04.2019 to 31.05.2023 along with the LPS calculating from 27.07.2023, the date on which the tariff offered by the coordination committee in its decision dated 30.12.2021 was approved by the Commission.

10. After going through the pleadings made by Petitioner, the Commission observes that the validity of PPA between Petitioner and Respondents had expired on 31.03.2019. The Petitioner continued to inject power into the grid in terms of interim order passed by the Hon'ble High Court whereby Hon'ble High Court directed the Respondents to maintain status

quo viv-a-vis threat of disconnection. Further, the plant of the Petitioner had been converted into Captive Mode with effect from 01.06.2023 . The Petitioner did not receive any payment for the power injected during the period between 01.04.2019 and 31.05.2023.

11. Per contra the counsel on behalf of the Respondents submitted that the Petitioner is not entitled to receive the payments for the said period on the grounds of parity, as the other RE generators who withdrew their petitions are willing to continue with the supply of electricity and that in pursuance thereof, RUVITL filed the petition before the Commission seeking approval of PPAs of only those generators who are willing to supply electricity to the Discom for remaining useful life of the plant. The Respondents further submitted that the case of the Petitioner is different from other generators as the Petitioner has already opted for change of mode to captive use.

12. The Commission, going through the chronology of events, observes that Rajasthan Renewable Energy Corporation Ltd (RRECL) vide letter dated 01.03.2023 intimated the Petitioner that the request for converting the plant of Petitioner from REC Mechanism to Captive Mode has been allowed by the State Level Screening Committee(SLSC) in its meeting dated 17.02.2023 subject to fulfillment of certain conditions as under:

   I. *M/s BG Wind Power Limited will submit all requisite documents of acquisition process between BG Wind and RSWM in RREC.*
   II. *All necessary agreements and approvals to be taken by the firm from the concerned departments(Discoms/RVPN) at their own level and submission of documents to RREC.*
   III. *The change of mode of project from REC Mechanism to Captive use for 20MW capacity has been allowed as per provisions of RERC Notification March 2019 "RERC (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) (Third Amendment) Regulations 2019".*
   IV. *The adjustment of power injected after expiry of PPA and till the date of change of mode will be adjusted by RUVNL/Discoms as per the decision taken in the 29th Coordination Coordination Committee held on 30.12.2021*

13. The Commission further observes that the Coordination Committee in its

meeting dated 30.12.2021 fixed some preconditions to be fulfilled by the power producers to make them eligible for the offer. The conditions are given under Para No 5.4 of MoM of Coordination Committee which is reproduced hereunder:

> 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 changes in law.*
> III. *Power injected after the 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 projects without any LPS or interest.*
> IV. *Power Producers shall withdraw court case before execution of PPA.*
> V. *Power Producers will not claim REC for the power injected into grid after expiry of PPA and power will be utilized for RPO fulfillment by the Discoms.*
> VI. *The terms and conditions of the offer shall be considered to be final only after approval of RERC.*

14. The Commission observes that approval of SLSC dated 17.02.2023 clearly states that the adjustment of power injected after expiry of PPA and till the date of change of mode will be adjusted by RUVNL/Discoms as per the decision taken in the 29th Coordination Committee held on 30.12.2021. The commission further observes MoM of the Coordination Committee held on 30.12.2021, which has laid down certain pre-conditions to be fulfilled by the power producers to make them eligible for the offer i.e. '*Power injected after the 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 projects without any LPS or interest'*. By simple reading of the said MoM of the Co-ordination Committee, it can be concluded that 'signing of PPA with the Discoms for useful life of the plant' was not a pre-condition for making payment in respect of the energy injected after the expiry of the original PPA till the change of mode to Captive use. The Commission has taken similar view in its order dated 03.01.2024 in the matter of JK Lakshmi Cement.

15. The Commission further observes that vide para 5.4(i) of the MoM of Coordination Committee's meeting dated 30.12.2021, it was decided that power producers who have availed REC will not be eligible to get

this offer. This is a qualifying criteria fixed by the Committee. Apart from this, the Committee had imposed two preconditions vide para 5.4 (iv) & (v) that power producers shall withdraw court cases before execution of PPA and they shall not claim REC for the power injected after expiry of the PPA. In our considered view, in this particular case, as the plant is converted to Captive Mode, the meaning of 'execution of PPA' shall be the PPA to be executed for the period from 01.04.2019 to 31.03.2022 , which is necessary to regularize the payments for the energy injected after expiry of the PPA. The same is also cleared in para 5.4 (ii) & (iii) , as former para fixes the rates for those plants who intends to sign PPAs for rest of their useful life, with the condition that there will be no escalation in rates or consideration of change in law in future. Later para fixes rate for the energy injected after expiry of the PPA with the condition that there will be no Late Payment Surcharge or interest.

16. In the matter of JK Lakshmi Cement, the Commission vide order dtd. 03.01.2024 allowed the claim of Solar generator at the rate of Rs. 2.24/Kwh for the period from 01.04.2019 to till the switchover was completed, according to the decision of Coordination committee. The relevant paras of the said J K Lakshmi Cement order dtd. 03.01.2024 are reproduced hereunder:

> "*16 The Commission observes that throughout the communications exchanged between the petitioner, RRECL and RUVNL, it was acknowledged that requisite approval has been granted to the petitioner for converting its pant to Captive Mode. It was clear to RRECL and RUVNL that the petitioner is not going to supply power to Discoms in future i.e. it will not sign PPA with the Discoms for rest of the useful life of the plant. Despite the fact, RRECL and RUVNL sought undertaking from the petitioner regarding withdrawal of the Court Case and Claim of REC Certificate. Even after that, RRECL acknowledged undertakings given by the petitioner and forward them to RUVNL for further action regarding execution of agreement w.e.f 01.04.2019.*
>
> *17 By simple reading of the above letters exchanged between the Petitioner, RUVNL and RRECL, it can be understood that the Respondents were principally agree for the payment to the petitioner for power injected after expiry of the PPA at the rate decided in the meeting of Coordination*

Committee i.e. RS 2.24 /KWh. The petitioner were also in this impression and he expressed his expectation clearly in letter dated 06.02.2023*. Relevant extract of the letter dated 06.02.2023 is as under –*

"2. We accept the tariff rate of Rs 2.24 per unit for the power supplied to Discom during the period from 01.04.2019 to 31.03.2022 after expiry of PPA agreement"

RRECL vide its letter dated 20.02.2023 forwarded above undertaking as it is to RUVNL for further action. If RRECL or RUVNL were not agree with the above undertaking of the Petitioner, they should have raised objection at that time only.

18 The Commission observes that the Coordination Committee in its meeting dated 30.12.2021 fixed some preconditions to be fulfilled by the power producers to make them eligible for the offer. The decision taken by the Coordination Committee is quoted as under :

"5.4 After discussion, the Committee agreed with the proposal to give offer to the power producers for supply of power to the Discom/RUVNL in the prescribed power sharing ratio by GoR revised time to time as following conditions.

- *(i) Power Producers who have 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 escalations/consideration of change of law.*
- *(iii) Power injected after expiry of original PPA and till the signing of the 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 without any LPS or interest.*
- *(iv) Power producers shall withdraw court cases 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 fulfillment by the Discoms.*
- *(vi) The terms and conditions of offer shall be considered to be final only after approval from RERC."*

The counsel on behalf of the Petitioner, during the course of hearing, submitted that other similar plants have been allowed by the Commission subject to the above conditions and his plant may also be treated parity with other plants, to which the Respondents have objected. The Commission observes that other similar plants were allowed subject to the conditions fixed by the Coordination Committee and the petitioner has also agreed with those conditions.

19 The Commission further observes that vide para 5.4(i) of the MoM of

Coordination Committee's meeting dated 30.12.2021, it was decided that power producers who have availed REC will not be eligible to get this offer. This is a qualifying criteria fixed by the Committee. Apart from this, the Committee had imposed two preconditions vide para 5.4 (iv) & (v) that power producers shall withdraw court cases before execution of PPA and they shall not claim REC for the power injected after expiry of the PPA. In our considered view, in this particular case, as the plant is converted to Captive Mode, the meaning of 'execution of PPA' shall be the PPA to be executed for the period from 01.04.2019 to 31.03.2022 , which is necessary to regularize the payments for the energy injected after expiry of the PPA. The same is also cleared in para 5.4 (ii) & (iii) , as former para fixes the rates for those plants who intends to sign PPAs for rest of their useful life, with the condition that there will be no escalation in rates or consideration of change in law in future. Later para fixes rate for the energy injected after expiry of the PPA with the condition that there will be no Late Payment Surcharge or interest.

20 The decision of the Coordination Committee was clear and specific that solar plants are eligible for rate at Rs 2.24 /KWh without LPS/interest for the energy injected after expiry of the original PPA and till signing of new PPA subject to the two conditions i.e. 'withdrawal of court case' and 'claim of REC' . The petitioner has already withdrawn the court case vide order of the Hon'ble High Court dated 18.07.2023 in the matter of DB Civil Writ Petition No. 16152/2019 and also submitted an undertaking vide letter dated 06.02.2023 that he will not claim REC certificate on power supplied to Discom during the period from 01.04.2019 to 31.03.2022. Hence, in view of above, the petitioner has full-filled all the preconditions prescribed by the Coordination Committee and he is eligible for the rate specified at para 5.4(iii) of the MoM of the Coordination Committee's meeting i.e. Rs 2.24 /KWh without any LPS/Interest.

……
22 In view of the discussion above, the commission orders as under –
a. The Respondents are directed to pay the Petitioner against the Power injected from 01.04.2019 to 31.03.2022 at the rate of Rs 2.24 /KWh without any Late Payment Surcharge or interest, as decided by the Coordination Committee in its meeting dated 30.12.2021.
b. The amount due to the petitioner, calculated according to the para above shall be paid to the petitioner within 90 days from the date of this order.
c.The Petitioner shall not claim REC for the power injected into the grid after expiry of PPA and power will be utilized for RPO fulfillment by the Discoms."

The Commission observes that instant matter is similar to the matter of JK Lakshmi and the respondents also did not dispute this.

17. Further, the decision of the Coordination Committee expressly mention

that wind power plants will be eligible for rate at Rs. 2.44/kWh without LPS/interest for the energy injected after the expiry of the original PPA and till the signing of the new PPA, subject to the condition of 'withdrawal of court case'. The Petitioner has already withdrawn the writ petition pending before the Hon'ble High Court. The Petitioner has not availed REC for the power injected into grid after expiry of PPA and has already submitted an undertaking to this effect. Hence, in view of the above, the Petitioner has fulfilled all the preconditions prescribed by the Coordination Committee and he is eligible for the rate specified at para 5.4(iii) of the MoM of the Coordination Committee Meeting i.e Rs. 2.44/kWh without any LPS/Interest.

18. Before parting the Commission would like to note that the issue of treatment of the energy injected after expiry of PPA with respect to the RE generators who were earlier covered under the REC mechanism and have approached the Hon'ble High Court and later withdraw their petitions from Hon'ble High Court and agree on the conditions laid down by the Coordination Committee, has been finally settled after the orders of the Commission dated 27.07.2023 and 03.01.2024. Thus, it is not correct on the part of the Discom to force RE generators to file petitions in the Commission for sake of obtaining a formal order while the position is already settled. This approach of the Discom will not be in favor of the RE generators and for the sector at large.

19. In view of the discussion above, the commission orders as under-
    a. The Respondents are directed to pay the Petitioner against the Power injected from 01.04.2019 to 31.05.2023 at the rate of Rs. 2.44/kWh without any Late Payment Surcharge or interest, as decided by the Coordination Committee in its meeting dated 30.12.2021.
    b. The amount due to the Petitioner, calculated according to the para above shall be paid to the petitioner within 90 days from the date of this order.

c. The Petitioner shall not claim REC for power injected into the grid from 01.04.2019 to 31.05.2023 and power will be utilized for RPO fulfillment by the Discoms.

20. The matter is disposed in above terms with no order as to cost.

(Dr. Rajesh Sharma)	(Hemant Kumar Jain)	(Dr. B.N. Sharma)
Member	Member	Chairman