

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

**Petition No. 20 of 2018
Date of Order: 31.10.2018**

Present: Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member
Ms. Anjali Chandra, Member

In the matter of: Petition seeking compliance of clause 10.1.5 of Power Purchase Agreement under applicable provisions of the Electricity Act, 2003 read with Regulation 69 (Saving of inherent power of the Commission), 71 (Power to remove difficulties) and 73 (Extension or abridgement of time allowed) of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005.

AND

In the matter of: Canal Solar Energy Private Limited, Registered Office: Faridkot Road, Guruharsahai, Distt. Ferozepur, Punjab 152022.

... Petitioner

Versus

1. Punjab State Power Corporation Limited (PSPCL), The Mall, Patiala-147001.

2. Punjab Energy Development Agency (PEDA), Plot no. 1 & 2 , Sector-33 D, Chandigarh.

... Respondents

ORDER

Canal Solar Energy Private Limited (CSEPL) filed this petition seeking compliance of clause 10.1.5 of Power Purchase Agreement (PPA) under applicable provisions of the Electricity Act,

2003 read with Regulation 69 (Saving of inherent power of the Commission), 71 (Power to remove difficulties) and 73 (Extension or abridgement of time allowed) of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005.

2. Submissions made by CSEPL are summarized hereunder:

- i) CSEPL is a special purpose vehicle set up by Universal Infra Pvt. Ltd. and Sukhbir Agro Energy Ltd. as a private limited company and the Registrar of Company granted certificate of incorporation on 02.01.2017. The registered office is situated at Faridkot Road, Guruharsahai, Distt. Ferozepur, Punjab and the corporate office is located at A-4, 2nd Floor, Green Park Main, New Delhi-110016.
- ii) The bid for the project was earlier submitted by Universal Infra Pvt. Ltd. as a consortium member along with Sukhbir Agro Energy Ltd. and after the issuance of Letter of Award (LoA) and in compliance with clause 3.6.C of the RfP document, the SPV was set up for construction, development and commissioning of the project. PEDDA approved the said SPV vide its letter dated 13.01.2017.
- iii) PEDDA invited bids for setting up of 7.5 MW Grid Connected Solar PV Power Plant on Canal Top on Built, Operate and Own (BOO) Basis under NRSE Policy, 2012 on Ghaggar Link Canal Jalkheri Headworks to Rohti Bridge, Distt. Fatehgarh Sahib RD 0 to 14652 ft. in August, 2016.
- iv) After submission of the bid by the petitioner for the project, the petitioner was awarded Letter of Award (LoA) dated 29.11.2016 by PEDDA.
- v) In compliance with the conditions of RfP and LoA, the petitioner submitted the Detailed Project Report (DPR) for the project and the said DPR was approved by PEDDA.

Thereafter, PEDA and the petitioner signed the Implementation Agreement (IA) dated 13.01.2017.

vi) PSPCL and CSEPL signed the PPA on 13.02.2017. Clauses 5.1.1, 10.1.0 and 10.1.5 of the PPA are as under:

“5.1.1. The Generating Company shall apply for Grid Feasibility Clearance to PSPCL as soon as possible after signing of PPA, maximum upto 30 days to CE/Planning, PSPCL or other concerned office of PSPCL and fulfilling all formalities required for feasibility clearance like technical details of grid substation of PSPCL/ PSTCL to be connected with, transmission lines etc. After receipt of all requisite documents, PSPCL shall grant feasibility clearance within a period of 60 days after registration of the application of the feasibility Clearance to the satisfaction of concerned authority/ office of PSPCL. If the Generating Company changes the sight of the Project, name of the company/ capacity of the project or any such conditions on the part of the company requiring fresh look in grant of grid feasibility, the delay in Feasibility Clearance beyond above time frame shall be given with a condition only after getting undertaking from the Generating Company that it will not claim any extension in Scheduled Commissioning date. Moreover the delay in case of revised feasibility clearance shall be the responsibility of the firm. If there is a change in the site of Project/ Sub-Station/ name of the company/ capacity of the project or any such conditions on the part of the company requiring fresh look in grant of grid feasibility, a fee of Rs. 1,00,000/- will be charged for grant of revised grid feasibility for projects.....

10.1.0 The Generating Company shall commission the Generating Facility (which shall be Scheduled Date of Commercial Operation) and synchronise with the PSPCL/ PSTCL's Grid within 410 days (13.5 months) from the Effective Date i.e. date of signing of this PPA which is 13

February 2017. Therefore, the scheduled date of commissions of this project is 29th March 2018.

In case of delay after the scheduled date of commissioning within grace period of further two months i.e. 15.5 months from the date of signing of PPA, with forfeiture of performance BG by PEDAs, the commissioning date for the project shall be 28th May, 2018.

In case of further delay in commissioning beyond 15.5 months but within 18.5 months from the date of signing of PPA, the applicable liquidated damages payable to PSPCL as per Clause 10.1.1, the revised commissioning date of the project shall be 28th August, 2018.

.....
10.1.5 The tariff payable to the developer for the project(s) commissioned after 31st March 2018, shall be as decided by the Hon'ble Punjab State Electricity Regulatory Commission for which the developer shall have to file a petition for the same."

- vii) Pursuant to the PPA, PEDAs signed Tripartite Agreement (TPA) on 06.06.2017 with Punjab Irrigation Deptt. (PID) and the petitioner.
- viii) The petitioner after the execution of TPA filed an application for grid feasibility clearance with PSPCL on 26.06.2017. PSPCL did not respond to the application. Further, the petitioner vide letters dated 11.10.2017 and 28.11.2017 requested PSPCL to grant grid feasibility clearance.
- ix) The petitioner also approached PEDAs, the nodal agency and intimated it about the inaction on part of PSPCL. PEDAs also requested PSPCL to grant the grid feasibility clearance vide letters dated 12.10.2017 and 08.12.2017. However, PSPCL failed to grant the said clearance within reasonable time.

- x) The grid feasibility clearance was granted by PSPCL on 16.01.2018 i.e. after six months. The project was to be commissioned within 13.5 months from the date of PPA i.e. by 29.03.2018 (mentioned wrongly as 28.03.2018 by the petitioner). After feasibility clearance the setting up of switch yard, transmission lines, substation bay and procurement of equipments were started. The said works could not be completed within the remaining time period between the date of grant of grid feasibility approval and the last date of commissioning of the project.
- xi) After the grant of grid feasibility clearance dated 16.01.2018, PSPCL published an advertisement on 20.02.2018 in Hindustan Times seeking objections from general public against the laying of the transmission line as per the approved survey report of PSPCL for connecting the project with the sub-station. The objections were to be filed within 2 months from the date of the advertisement i.e. latest by 20.04.2018. During the pendency of the proceedings, some objectors filed a writ petition no. 7782 of 2018 before Hon'ble High Court of Punjab and Haryana challenging the actions of PSPCL. Hon'ble High Court of Punjab and Haryana vide its Order dated 06.04.2018 directed PSPCL to dispose of the objections. In compliance to the said Order PSPCL heard the objectors and filed a speaking order dated 11.04.2018 whereby PSPCL dismissed the objections of the objectors.
- xii) The petitioner sought extension of time from PEDDA vide letters dated 29.12.2017, 12.03.2018 and 27.03.2018. PEDDA vide letter dated 23.04.2018 granted extension of three (3) months from 29.03.2018. PEDDA also directed the petitioner to file a petition as per clause 10.1.5 of the PPA before the Commission.

- xiii) The project could not be commissioned by 29.03.2018. The delay was beyond the control of the petitioner and was solely due to delay in grant of the grid feasibility approval and Hon'ble Punjab & Haryana High Court intervention and the subsequent events which caused delay in the working of the petitioner in completion of the project.
- xiv) The petitioner in order to ensure timely commissioning of the project rendered heavy expenditure towards completion of the project including installation of solar panels, inverter, transformer and other equipments. Chief Electrical Inspector inspected and approved the plant on 26.03.2018. The work relating to laying of transmission lines was pending due to the facts mentioned above. The said work was completed within the extension period granted by PEDDA.
- xv) Clause 10.1.5 of the PPA provides that in the event the project is not commissioned by 29.03.2018, the petitioner is mandated to file a petition with the PSERC for directions with respect to the tariff of the project. PSPCL also vide its letter dated 11.04.2018 directed the petitioner to file a petition with the PSERC.
- xvi) In view of clause 10.1.5 of PPA, the petitioner filed this petition for applicability of tariff of Rs. 4.82/- per kWh as per the PPA for the project since the commissioning could not be completed by 29.03.2018 and extension has been granted by PEDDA to complete the project within 3 months from 29.03.2018.
- xvii) The delay in completion and commissioning of the project is due to delay in grant of the grid feasibility clearance. The tariff as mentioned in the PPA be reinstated and made applicable to the petitioner. The petitioner completed all the activities within a period of 3 months after the grant of grid feasibility clearance.

xviii) The petitioner prayed that the petition be allowed in favour of it and the tariff for the electricity generated from 7.5 MW Canal Top Solar Project be determined @ Rs. 4.82 per kWh upto the commissioning of the project as provided by PEDDA vide letter dated 23.04.2018 while granting extension upto 29.06.2018.

3. The petition was admitted and the respondents directed to file reply by 04.07.2018 with a copy to the petitioner vide Commission's Order dated 18.06.2018. The petitioner was directed to file rejoinder, if any, to the replies filed by the respondents by 12.07.2018 with a copy to the respondents. The next date of hearing was fixed as 18.07.2018. The petitioner vide email dated 17.07.2018 requested to adjourn the petition for 25.07.2018 or 01.08.2018. Acceding to the request of petitioner, the Commission adjourned the hearing to 25.07.2018.

After hearing the parties on 25.07.2018, the Commission vide Order dated 27.07.2018 directed CSEPL to give the chronology of events alongwith written note of arguments and intimate the date of purchase order(s) issued by it for major equipment(s) including solar panels and the date when the equipment was actually received at site alongwith cost of the equipment by 08.08.2018 with copy to the respondents. PSPCL was directed to submit on affidavit the reasons and arguments for not agreeing to the tariff of Rs. 4.82 per kWh as provided in the PPA signed by it with CSEPL and further indicate the tariff at which CSEPL according to them should supply power under the said PPA and the basis for the same by 08.08.2018 with a copy to the petitioner and PEDDA. The petitioner and PEDDA were directed to file

their respective replies to the submissions of PSPCL by 14.08.2018.

On the request of the petitioner, the Commission directed PSPCL to make payment @ 80% of tariff of Rs. 4.82 per kWh provided in the PPA against the bills to be raised by CSEPL for supply of power to PSPCL as an interim measure till the issue is finally decided by the Commission. Next date of hearing was fixed as 22.08.2018 which was further adjourned to 26.09.2018.

After hearing the parties on 26.09.2018, the Order was reserved by the Commission vide Order dated 11.10.2018.

4. Submissions made by PSPCL in its reply dated 06.07.2018 are summarized hereunder:

- i) Both PPA and IA provides that in case the delay in commissioning of the project affects the date of commissioning and gets extended to the next financial year, then the tariff payable would be re-determined by the Commission.
- ii) The PPA was signed with the petitioner on 13.02.2017 and the Scheduled Date of Commissioning (SCOD) as per PPA was 29.03.2018 without any penalty and upto 28.05.2018 with forfeiture of Performance Bank Guarantee (PBG) by PEDDA and further upto 28.08.2018 with liquidated damages (LD) @ Rs. 20,000/- per MW per day payable to PSPCL. The tariff was fixed at Rs. 4.82 per kWh as per the prevailing rates.
- iii) The request for technical feasibility clearance was received in the office of CE/Planning on 26.06.2017. In pursuance thereto technical concurrence was sought from the office of CE/TS and after receiving the report from CE/TS, a meeting of the Feasibility Clearance Committee (FCC) was held on

04.10.2017 wherein case of the petitioner was taken up along with other developers. It was deliberated in the meeting that since the tariff rates from the plants of petitioner and other two developers were higher than purchase rates for conventional power therefore, concurrence of higher authorities was required before granting technical feasibility clearance.

- iv) After the approval of Competent Authority with regard to tariff rate, CE/Planning was informed on 19.12.2017 to grant technical feasibility clearance after completing the usual formalities. Thereafter, FCC in the meeting held on 10.01.2018 decided to grant technical feasibility clearance to the petitioner. The technical feasibility clearance was granted to the petitioner on 16.01.2018.
- v) After receiving the request of petitioner through the office of SE/DS, Khanna on 08.05.2018, the permission for synchronization of the project was granted on 09.05.2018 and the project was commissioned on 10.05.2018 after the SCOD i.e. 29.03.2018 and also beyond the control period of tariff i.e. 31.03.2018.
- vi) Clause 10.1.5 of the PPA reads as under:

“The tariff payable to the developer for the project(s) commissioned after 31st March 2018, shall be as decided by Hon’ble Punjab State Electricity Regulatory Commission for which the developer shall have to file a petition for the same.”

Similarly, Article 10.5(i) of the IA reads as under:

“In case the commissioning of the project is delayed due to force majeure conditions stated above and the same are accepted by the competent authority, the due dates for encashment of performance security and imposition of liquidated damages shall be extended accordingly. In

case the delay affects the COD of the project and it gets extended to the next financial year then the tariff payable shall be as determined by PSEERC.”

In view of clause 10.1.5 of the PPA read with Article 10.5 (i) of the IA, it is obligatory on the petitioner to get the tariff re-determined by filing a petition before the Commission. The intention at the time of incorporation of these clauses in the PPA/IA was to take care of the impact of tariff rates on the financial viability of PSPCL and the cost which the end consumers have to pay on account of the same.

- vii) It is a known fact that on account of continuous improvement in technology, the cost of production of solar energy is falling rapidly and such benefit has to be passed to the consumers. It was only for this reason that re-determination of tariff at prevalent rates is required to be determined by the Commission.
- viii) The internal approvals were being taken before the FCC meeting held on 04.10.2017. It was decided in the meeting that on account of higher tariff rates than the conventional power, feasibility clearance could only be granted after obtaining the decision of higher authorities.
- ix) A letter dated 12.10.2017 was received from PEDDA requesting early approval of grid connectivity. PSPCL informed PEDDA that the matter is still pending for approval of the Competent Authority after a decision taken by the FCC on 04.10.2017 to refer the matter to the higher authorities for approval.
- x) After the approval of Competent Authority on 19.12.2017, the FCC in its meeting held on 10.01.2018 decided to grant technical feasibility clearance to the petitioner and the same was granted on 16.01.2018.

- xi) The project was commissioned on 10.05.2018. Article 10.5(i) of the IA states that even if the project is delayed due to force majeure conditions and the same is accepted by the Competent Authority, re-determination of tariff has to take place if the delay has affected the COD of the project. Therefore, assuming that force majeure conditions delayed the commissioning of project even then the grant of additional three months period by PEDDA would not absolve the petitioner from the rigors of clause 10.1.5 of the PPA read with article 10.5 (i) of the IA and the tariff has to be re-determined by the Commission.
- xii) As per clause 5.1.1 of the PPA, the generating company shall apply for grid feasibility clearance after signing of the PPA to CE/Planning but the petitioner applied for the same on 26.06.2017. There was a delay of 3.5 months on the part of the petitioner which has resulted in overall delay of the project beyond the COD date.
- xiii) Article 10.5(i) of the IA has been specifically drafted to deal with cases of delay and force majeure and therefore, the petitioner cannot take the plea of delay and tariff to be kept same. Because once there is a breach of financial year deadline, then even delay or force majeure cannot stop application of article 10.5(i) of IA read with clause 10.1.5 of PPA.
- xiv) CEI inspected and approved the transmission line on 26.04.2018.
- xv) The tariff has to be re-determined by the Commission at the prevailing rates. Article 10.5(i) of the IA caters to such cases where delay has occurred due to force majeure conditions. Therefore, even if the plea of the petitioner is accepted that delay was for reasons beyond its control, even then the tariff has to be re-determined as per Article 10.5(i) of the IA.

xvi) The solar power is now available at much lower rates compared to Rs. 4.82 per kWh. As per the intention of the PPA and IA, benefit of lower rates must be passed on to the consumers and therefore, the abovesaid clauses were incorporated in the first place. Because of the precarious financial condition of PSPCL, it would not be in a position to sustain such high tariff rates. The same would have to be borne by the end customers.

xvii) The plea of the petitioner to keep the tariff rates unchanged is against the facts and the clauses of the PPA/IA. The intention of Article 10.5(i) of the IA is to keep the tariff rates commensurate with the prevailing rates so as not to make solar power unsustainable and cause unnecessary burden on the end consumers because the cost is continuously coming down with the improvements in technology. A developer cannot be allowed to make huge profits at the cost of the consumers and therefore the tariff has to be re-determined by the Commission.

xviii) The data/tariff rates collected from the websites of various Regulatory Commissions of other states are as under:

- a) MERC vide order dated 09.01.2018 passed in case no. 164 of 2017 decided the rate of Rs. 3.00 per kWh for EESL's 200 MW Solar power plant.
- b) RERC vide order dated 09.10.2017 decided the tariff for solar power plants and rooftop solar power plants to be commissioned by 31.03.2019 as Rs. 3.93/kWh (Accelerated Depreciation benefit not availed) and Rs. 3.66/kWh (AD benefit availed).
- c) TNERC vide order dated 28.03.2018 decided the tariff for solar power as Rs. 3.11/kWh (AD benefit not availed) and Rs. 3.05/kWh (AD benefit availed).

- d) Karnataka ERC vide discussion paper dated 06.02.2018 proposed the tariff for new solar power projects as Rs. 2.79/kWh.
- xix) Further, the solar tariff of other states are as follows:
- a) Rs. 2.44/kWh for SECI Bhadla 500 MW (ILFS Solar Park)
 - b) Rs. 2.47/kWh for Hero Solar 200 MW & Rs. 2.48/kWh for ACME 200 MW in UP.
 - c) Rs. 2.62/kWh for SECI Bhadla 250 MW (Adani Solar Park)
 - d) Rs. 2.65/kWh for 500 MW solar power in Gujarat Urja Vikas Nigam.
 - e) Rs. 2.97/kWh with 5 paisa escalation for 750 MW MP Rewa Solar Park.
 - f) Rs. 3.15/kWh for 250 MW NTPC Kadapa Solar Park.
- xx) The Commission is requested to re-determine just and proper tariff rates, keeping in view the prevalent rates of solar power, in the interests of justice, equity and fair play.

5. Submissions made by PEDA in its reply dated 06.07.2018 are summarized hereunder:

- i) PEDA vide letter dated 23.04.2018 granted extension for commissioning of the project up to 29.06.2018. Since the commissioning of the project could not be made within the control period of the applicable tariff i.e. 31.03.2018, thus in line with the clauses of the IA and PPA, the petitioner was requested to approach the Commission for the tariff determination.
- ii) PEDA vide letters dated 12.10.2017 and 08.12.2017 took up the matter with PSPCL for grant of grid feasibility clearance.
- iii) As per the provisions of the PPA, PSPCL was under an obligation to grant grid feasibility clearance within 2 months from the date of applying for the same. The petitioner

submitted application on 26.06.2017 with PSPCL. PSPCL was obligated to provide before 25.08.2017 to the petitioner, however, PSPCL provided grid feasibility clearance on 16.01.2018.

- iv) Grid feasibility clearance is an important milestone for setting up and commissioning of the project, which was delayed by PSPCL and led to grant of extension in time for commissioning of the project for a period of 3 months from SCOD i.e. 29.03.2018 up till 29.06.2018 as the delay in commissioning was beyond the control of the petitioner. PEDA vide letter dated 23.04.2018 granted extension upto 29.06.2018. The project was commissioned on 10.05.2018 with a delay of 42 days i.e. well before the extended date.
- v) The delay in commissioning of the project was due to delay in granting grid feasibility clearance of the project by PSPCL.
- vi) Since the commissioning of the project has crossed the control period as to the applicability of the allocated tariff i.e. till 31.03.2018, thus as per the clauses of the IA and PPA, petitioner is obligated upon to approach the Commission for tariff determination for sale of power to PSPCL.

6. PSPCL filed submissions dated 07.08.2018 in compliance to the Commission's Order dated 27.07.2018 reiterating its earlier submissions.

7. The petitioner vide letter dated 25.09.2018 submitted the list of dates & events and written submissions. The written submissions, in brief, are as under:

- i) As per the implementation schedule attached with the IA and clause 10.1.0 of the PPA, the project was to be commissioned within 410 days from the date of signing of the PPA i.e. 13.02.2017. The SCOD of project was 29.03.2018.

It was further provided that in case of delay in commissioning within the grace period of 2 months, with forfeiture of performance Bank guarantee by PEDDA, the commissioning date for the project shall be 28.05.2018.

- ii) Clause 10.1.5 of the PPA further provided that tariff payable to the developer for the project commissioned after 31.03.2018 shall be decided by the PSERC on the petition filed by the petitioner.
- iii) The Tripartite Agreement was signed with PEDDA and PID and the petitioner on 06.06.2017. The petitioner after the TPA, applied for grid connectivity approval to PSPCL vide its letter dated 26.06.2017. The time granted for according approval was 60 days from the date of application as per clause 5.1. of the PPA.
- iv) TPA was required to be signed by 03.04.2017 as per the implementation schedule but the same was signed on 06.06.2017. The grid connectivity approval was to be obtained within 30 days from signing of PPA i.e. 15.03.2017 but as the TPA got delayed the application of grid connectivity approval could be made on 26.06.2017 with a delay of about 103 days.
- v) PSPCL contended that there is a delay of 103 days on the part of the petitioner in applying the grid connectivity. However, PSPCL granted grid connectivity after a delay of 144 days. There is a net delay of about 41 days on the part of PSCPL which is the exact no. of days after which the project was connected to the grid.
- vi) Despite huge delay on the part of the PSPCL to grant grid connectivity approval, the project was ready for connection with the grid on 26.03.2018 as per CEI report. Thus the project was ready before the due date and the connectivity of the same with the grid was delayed on account of force

majeure circumstances not within the control of the petitioner.

- vii) A public notice was published in the newspapers on 20.02.2018 by PSPCL inviting objections from the public within 2 months for transmission works. A writ petition was filed by Sh. Teja Singh Laut and others before Hon'ble Punjab & Haryana High Court vide CWP No. 7782 of 2018. Hon'ble Punjab & Haryana High Court disposed of the said writ petition directing PSPCL to dispose of the objections within 3 days of receipt of certified copy of order dated 06.04.2018. Moreover as the contention was that the transmission work has been started by PSCPL without disposing of the objection, thus Hon'ble Punjab & Haryana High Court also directed that till such time the objections are not disposed of, no work shall be carried out. So there was a stay on the execution of transmission work. The connectivity with the grid could happen only after the transmission work was carried out after disposal of objections in compliance of the order of Hon'ble Punjab & Haryana High Court after 11.04.2018. The plant was connected with the grid on 10.05.2018.
- viii) The petitioner has incurred Rs. 66,78,49,000/- before 29.03.2018 and is entitled to the tariff of Rs. 4.82/- per kWh.
- ix) The tariff of Rs. 4.82 per kWh is already lower than the tariff approved by the Commission. PSPCL cannot contend that the tariff lower than Rs. 4.82 per kWh be fixed as it is a settled position in law that one cannot take benefit of its own wrong. If the tariff is reduced from Rs. 4.82 per kWh then PSPCL in all cases after entering into the PPA will make every possible effort to delay the commissioning of project to seek reduced tariff.
- x) The reduced tariff prevalent in different states as cited by

PSPCL is misplaced. The said tariffs are not for canal top solar project but for ground mounted solar PV power project. The nature of ground mounted project different from canal top as the plant load factor in ground mounted is 20% and in canal top is 17% on account of trees on both sides of the canal which obstruct sunlight. Moreover, the tariff of Rs. 4.82 kWh is without any GST. Now with implementation of GST the petitioner will have to bear an additional burden of 10% on the cost. The cost of construction and feasibility study of the project has been carried out keeping in mind Rs. 4.82 per kWh as tariff and if tariff is reduced from Rs. 4.82 per kWh it will render the project unviable.

Commission's Observations, Findings and Decision

The Commission has carefully gone through the petition, replies thereto and the written submissions. The petitioner has prayed to allow the tariff for supply of the electricity generated by the 7.5 MW Canal Solar Top Project as Rs. 4.82 per kWh as provided under the PPA.

The Commission notes that the procurement of power was approved by the Commission vide Order dated 09.08.2017 in petition no. 35 of 2017 filed by PSPCL for purchase of electricity from two Solar PV Power Projects on Canal Tops under Canal top Scheme in the State of Punjab including the 7.5 MW project of the petitioner. The tariff for the petitioner's project was Rs. 4.82 per kWh as determined in the competitive bidding process conducted by PEDDA on the basis of discount offered by the bidder(s) on the generic tariff for Solar PV Power Projects for FY 2016-17. The Commission in the aforesaid order held that since PPAs have been signed on

13.02.2017 i.e. before 31.03.2017, the tariffs would be applicable upto 31.03.2018 provided the entire capacity covered in each PPA is commissioned on or before 31.03.2018. It was further clarified that barring force majeure/change in law etc., the applicability of the said approved tariff beyond the aforementioned date i.e. 31.03.2018 will not be allowed even if punitive clauses in the respective PPAs are made applicable.

An Implementation Agreement was signed between the petitioner and PEDDA on 13.01.2017 for setting up 7.5 MW grid connected solar PV Plant on Canal Top on Built, Operate and Own (BOO) basis under NRSE policy, 2012. The PPA was signed on 13.02.2017 between the petitioner and PSPCL wherein under clause 10.1.5 it was provided that the tariff payable to the developer for the project commissioned after 31.03.2018 shall be as decided by the Commission and the developer shall file a petition for the same before the Commission. Thereafter, Tripartite Agreement was signed on 06.06.2017 between the petitioner, PID and PEDDA which was to be signed by 03.04.2017 as per the implementation schedule. After signing the TPA, the petitioner applied for grid feasibility clearance on 26.06.2017. As per Clause 5.1.1 of the PPA, the generating company was to apply for grid feasibility clearance to PSPCL within 30 days from the signing of the PPA. Thereafter, PSPCL was to grant feasibility clearance within a period of 60 days after registration of the application for feasibility clearance. PSPCL contended that there was a delay of 3.5 months on the part of the petitioner in

applying for grid feasibility clearance. In reply to PSPCL's contention, the petitioner submitted that it applied for grid feasibility clearance on 26.06.2017 after signing of the Tripartite Agreement on 06.06.2017. PEDDA submitted that as per the provisions of the PPA, PSPCL was under an obligation to grant grid feasibility clearance within 2 months from the date of applying the same. As such, PSPCL was obligated to provide the grid feasibility clearance before 25.08.2017 i.e. within 2 months from 26.06.2017. However, PSPCL granted grid feasibility clearance on 16.01.2018. PEDDA granted an extension of 3 months i.e. from 29.03.2018 to 28.06.2018 for commissioning of the project considering the request of the petitioner. PEDDA submitted that the delay in commissioning of the project was due to delay in granting grid feasibility clearance by PSPCL.

PSPCL contended that after receiving the request for technical feasibility clearance on 26.06.2017, technical concurrence was sought from the office of CE/TS. After receiving the report from CE/TS, a meeting of the Feasibility Clearance Committee (FCC) was held on 04.10.2017 wherein case of the petitioner was taken up along with other developers. It was deliberated in the meeting that since the tariff rates from the plants of petitioner and other two developers were higher than purchase rates for conventional power therefore, concurrence of higher authorities is required before granting Technical Feasibility Clearance. After the approval of Competent Authority with regard to tariff rate, CE/Planning office was informed on 19.12.2017 to grant

technical feasibility clearance after completing the usual formalities. The FCC in the meeting held on 10.01.2018 decided to grant technical feasibility clearance for the project of the petitioner. Thereafter, the technical feasibility clearance was granted on 16.01.2018.

The work at the plant was completed and the Chief Electrical Inspector cleared the same on 26.03.2018. However, initiation of the transmission work was delayed as PSPCL delayed the grid feasibility clearance for the project. Furthermore, writ petition was filed before the Hon'ble Punjab & Haryana High Court by Sh. Teja Singh Laut S/o Sh. Bakhtaur Singh and others to stay the laying down of the 66 kV transmission line till disposal of the objections raised by the petitioners. The Hon'ble High Court directed PSPCL to clear the objections raised in the writ petition through a speaking order. PSPCL undertook before the Hon'ble High Court not to proceed with the work till the disposal of the objections. In compliance of the said Order, PSPCL issued speaking order on 11.04.2018 disposing of all the objections. Thereafter, the work of the transmission line was completed by PSPCL on 26.04.2018 and the project was commissioned on 10.05.2018.

As per the IA, the project was to be commissioned within 13.5 months from the date of signing of PPA. The PPA was signed on 13.02.2017. Accordingly, the scheduled date of commissioning of the project as per the PPA was 29.03.2018. The project was commissioned on 10.05.2018 with a delay of 42 days.

PSPCL granted grid feasibility clearance to the petitioner on 16.01.2018 which was applied by the petitioner on 26.06.2017 i.e. after 203 days as against 60 days allowed in the PPA. Accordingly, the Commission holds that the delay of 143 days (203-60) in respect of granting grid feasibility clearance to the petitioner is attributable to PSPCL. The plant was completed on 26.03.2018 i.e. before the SCOD of 29.03.2018. However, the same was commissioned on 10.05.2018 i.e. with a delay of 42 days on account of delay in completion of the transmission line due to the reasons brought out above. As the delay of 42 days in commissioning of the project by the petitioner is less than the period of 143 days delay attributed to PSPCL, the Commission allows the tariff of Rs. 4.82 per kWh for the project in terms of the PPA.

The petition is disposed of in terms of above.

-Sd/-

**(Anjuli Chandra)
Member**

-Sd/-

**(S.S. Sarna)
Member**

-Sd/-

**(Kusumjit Sidhu)
Chairperson**

Chandigarh
Dated: 31.10.2018