

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

Petition No. 17 of 2015
Date of Order: 12.06.2015

Present: Smt. Romila Dubey, Chairperson
Shri Gurinder Jit Singh, Member

In the matter of: Petition for seeking Project specific Extension of
Period of Commissioning in the PPA for
applicability of the tariff of ₹ 8.41/unit.

And

In the matter of: Atma Powers Private Limited, # 44, New Grain
Market, Muktsar-152026, Punjab. Phone: 01633-
260654, 98140-12227,
email: mitsinghbrar@gmail.com

.....Petitioner

Versus

1.Punjab State Power Corporation Limited O/o
SE/Investment Promotion Cell, T-8, Thermal
Design Complex, PSPCL, Patiala-147001,
Phone: 0175-2220784, Tele-Fax: 0175-
2220784

2.Punjab Energy Development Agency, Plot No.
1-2, Sector 33 D, Chandigarh-160034, Phone:
0172-2663328, Fax: 0172-2662865

.....Respondents

Order

1. Atma Powers Private Limited (APPL), a company registered
under the Companies Act, 1956 filed this petition under Section 94

of The Electricity Act, 2003 (Act) read with Regulation 69 (Saving of inherent power of the Commission), 71 (Power to remove difficulties) and 73 (Extension or abridgment of time allowed) of the PSERC (Conduct of Business) Regulations, 2005 and Regulation 85 (Power to Relax) of CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 (as adopted by the Commission in its Order dated 19.07.2012 in Suo-Motu Petition No. 35 of 2012). The petitioner is seeking project specific extension of the period of commissioning for applicability of tariff of ₹8.41 per kWh from 31.03.2015 to 15.07.2015 due to reasons beyond the control of the petitioner in commissioning of its 2 MW Solar PV Power Project.

2. The Petitioner submitted as hereunder:
 - i) Punjab Energy Development Agency (PEDA) invited e-tender (RfP) for allocation of a total capacity of 300 MW of Solar PV Power Projects. After completion of the process, PEDA issued Letter of Award (LoA) for development of 2 MW Solar PV Power Project (project) to the petitioner. Subsequent to LoA, an Implementation Agreement (IA) was signed with PEDA on 20.11.2013 and the Power Purchase Agreement (PPA) was signed with Punjab State Power Corporation Limited (PSPCL) on 31.12.2013.
 - ii) The RfP, besides providing for setting up the project on private land also provided an option to set up the project on Panchayat land and provided a list of available lands in different Panchayat areas. The petitioner could not

procure Panchayat land due to absence of Punjab Gram Panchayat Lands Lease Policy and stay of Hon'ble High Court of Punjab and Haryana on lease of public land. While vacating the stay on 30.01.2014, Hon'ble High Court directed amendment in Rules to be done and to grant corresponding extension to all affected solar developers. The relevant extract of the Judgment dated 30.01.2014 in CWP-16421-2008 (O&M) and batch is reproduced below:

*“We clarify that in so far as such persons are concerned, there is no impediment now standing in their way and the parties are free to proceed in pursuance to the prior arrangements with a caveat that the **government authorities should extend their time periods by the period for which the interim orders were in operation.**”*

.....
“CONCLUSION:

*The result of the aforesaid discussion is that all the three petitions stand dismissed and all interim orders stand vacated. **The State Government to take steps to amend the Rules as per the assurance given to the Court.**”*

On the notification of the said policy on 09.05.2014, the petitioner identified a Panchayat land and executed sub-lease deed with PEDDA on 22.10.2014. The location of the project is in Village Lakhewali, District Sri Muktsar Sahib-152026, Punjab. The uncertainty delayed the land procurement by 9 months.

- iii) Considering delay in procurement of land due to stay by Hon'ble High Court, PEDDA re-scheduled the date of commissioning for few solar developers including the petitioner up to 15.03.2015. However, the same was not enough as the land procurement itself delayed the project by 9 months.
- iv) The petitioner received sanction for financing the project from Power Finance Corporation Green Energy Limited (PFCGEL) on 22.10.2014. The petitioner engaged Enerparc Energy Pvt. Limited as the EPC contractor on 17/18.11.2014. The petitioner approached the lender for relaxation in the condition with regard to mortgaging of lease rights and an alternative route was worked out wherein the petitioner was required to obtain permission from PSPCL for assignment of PPA in favour of PFCGEL. The same was granted by PSPCL on 02.02.2015. The sanction of loan was finally approved by PFCGEL on 10.02.2015.
- v) Although the stay was vacated on 30.01.2014 by Hon'ble High Court, the delay actually continued even after the notification of amended policy in May, 2014 till signing of sub-lease deed of land on 22.10.2014. The period of about 10 months from signing of the PPA on 31.12.2013 to 22.10.2014 falls under force majeure for procurement of land. Similarly, the period of 3½ months for delay in granting approvals/signing amended contracts till 02.02.2015 qualifies as force majeure being beyond the

control of the petitioner. The petitioner's performance has been adversely affected for a period of 13½ months.

- vi) Due to the aforementioned delay, absence of approvals/documents and short time available, the lender did not disburse funds and petitioner could not progress in execution of the project. PEDA was requested on 11.03.2015 to extend the scheduled date of commissioning (SCOD) for the project to 15.05.2015 i.e. by 3½ months beyond original SCOD of 30.01.2015, considering the above mentioned constraints being beyond the control of petitioner.
- vii) Post the decision of Hon'ble APTEL in Judgment dated 02.01.2013 in Appeal Nos. 96 and 130 of 2012, GERC, vide its Order dated 05.04.2014 in petition no. 1188 of 2012 extended the control period for applicability of tariff of ₹15 per kWh for Solar PV Power Project of Solar Semiconductor Power Company (India) Private Limited.
- viii) Petitioner is seeking a project specific relaxation/extension of the period of commissioning for 3½ months i.e from 31.03.2015 to 15.07.2015 in applicability of the approved tariff of ₹8.41 per kWh by the Commission in exercise of its inherent powers and in the interest of justice due to genuine difficulties faced by it which were beyond its control.
- ix) The Commission is vested with the inherent power under section 151 of Code of Civil Procedure and Regulation 69 of Commission's Conduct of Business Regulations, 2005 as well as Regulation 71 relating to power to remove

difficulty which appears to be necessary or expedient, Regulation 73 for extension or abridgment of time allowed and Regulation 85 of CERC (Terms & Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 for power to relax. Present petition has been filed under these provisions.

- x) Despite best efforts, the execution of the project has been delayed due to reasons beyond petitioner's control.
- xi) It is prayed to the Commission to extend the date of commissioning of the project from 31.03.2015 to 15.07.2015 for applicability of tariff approved by the Commission i.e ₹ 8.41 per kWh in its Orders dated 14.11.2013 and 03.12.2013 in petition no. 52 of 2013.

3. The petition was admitted by the Commission and the respondents were directed to file reply by 20.03.2015 with advance copy to the petitioner and each other vide Commission's Order dated 17.03.2015. The petitioner was directed to file detail of expenditure incurred, orders placed for EPC etc. with documentary proof by 20.03.2015. The next date of hearing was fixed as 24.03.2015.

The petitioner while furnishing additional information dated 20.03.2015 in response to the Commission's Order dated 17.03.2015 submitted that PFCGEL sanctioned a loan of ₹9.63 crore against the project cost of ₹15 crore as per the detailed project report. An expenditure of ₹12.45 crore has already been incurred. The petitioner vide letter dated 24.03.2015 also filed a

copy of the bankers certificate for payment of ₹7.08 crore to the EPC contractor for procurement of the equipment for the project.

4. PEDDA filed its reply on 31.03.2015 as under:

- i) The petitioner's project was to be completed within a period of 13 months from the date of signing of PPA i.e. by 31.01.2015. However, in the interest of the project, the date of completion of the project was extended up to 15.03.2015.
- ii) The petitioner was to arrange the land for the project. In case the petitioner wanted to set up the project on Panchayat land, PEDDA was only to facilitate the same. Petitioner opted for Panchayat land and lease deed for same was signed with village Panchayat on 22.10.2014 and thereafter, on the same day, sub-lease deed between PEDDA and petitioner was signed.
- iii) Funding arrangement was the sole responsibility of the petitioner and PEDDA had nothing to do with same.
- iv) Subject to verification, the petitioner incurred an expenditure of ₹12.45 crore till date against the project cost of ₹15 crore as per the detailed project report submitted by the petitioner, out of which an amount of ₹9.54 crore has been paid to EPC company.
- v) The petitioner is seeking to extend the date of commissioning to 15.07.2015 on the basis of land arrangement and funding which is to be adjudicated by the Commission. The reasons specified by the petitioner causing delay in setting up of the project, whether

bonafide or not, are to be determined by the Commission. It is the sole discretion of the Commission to exercise its inherent powers for granting extension in the scheduled date of commissioning to the petitioner and for approval of tariff.

5. On request of PSPCL in the hearing on 22.04.2015, the Commission vide its Order dated 23.04.2015, extended the time for filing reply by PSPCL upto 30.04.2015. The next date of hearing was fixed as 05.05.2015.

6. On 04.05.2015, the petitioner submitted that the project has been commissioned on 14.04.2015 and commercial generation commenced.

7. PSPCL failed to file reply as directed vide Commission's Order dated 17.03.2015, 24.03.2015, 23.04.2015 and 06.05.2015 even after seeking various extensions. Vide Commission's Order dated 13.05.2015, PSPCL was directed to file reply by 15.05.2015 as a last opportunity. During hearing on 19.05.2015, PSPCL again prayed for time of 7 days to file reply. The Commission directed PSPCL to file reply by 25.05.2015. Next date of hearing was fixed for 26.05.2015.

8. PSPCL finally filed reply vide letter dated 25.05.2015 received through e-mail on 26.05.2015. The same is as under:

- i) The petition has been filed under Section 94 of the Act read with Commission's Regulations. The petitioner has

only sought to invoke Section 94 of the Electricity Act, 2003 which deals with the power to review by the Commission. No other provision of the Act has been sought to be invoked by the petitioner, only referring various regulations of the Commission. The same being not applicable in the present case, the petition is not maintainable.

- ii) The project is being established by the petitioner pursuant to a competitive bidding process conducted by PEDDA. The bidding was on the basis of discount offered by the bidders on the CERC generic tariff for FY 2013-14 for Solar PV Power Projects. The petitioner is seeking a project specific extension and modification of the Order passed by the Commission approving the projects of various project developers. The bidders were required to provide the tariff after discount over the CERC generic tariff. In terms of the bidding documents and article 6.2(vii) of IA signed with PEDDA, the project was scheduled to be commissioned within 13 months of signing the PPA.
- iii) The project developer was required to procure and produce the proof of acquisition of land within 90 days of signing the PPA. The project developer was given no assurance of acquisition of land by PEDDA or PSPCL, but facilitation role by PEDDA in case the project developer decided to acquire land belonging to Panchayat. It was the entire discretion and decision of the project developer to set up the plant on private or Panchayat land. In terms of article 6.2(vi) of IA, the acquisition of land for the project

was the responsibility of the project developer and the requisite documentary evidence was required to be furnished to PEDDA.

iv) The petitioner has also relied on the funding arrangement, which was the sole responsibility of the petitioner and the same has nothing to do with PSPCL.

v) In terms of the Article 10.5 (ix) of the IA:

“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 PSERC.”

vi) The Commission vide Order dated 14.11.2013 approved the power procurement pursuant to the competitive bidding process without going into individual cost elements. For the petitioner to claim that the project cost should be considered and that higher costs have been actually incurred are irrelevant. Vide the said Order, the Commission specifically laid down that the tariff approved would be applicable upto 31.03.2015 provided that the PPAs are signed on or before 31.03.2014 and the entire capacity covered in each PPA is commissioned on or before 31.03.2015. It is essential that the sanctity of the bidding process is maintained.

- vii)The contention of the petitioner, of there being force majeure condition in the State with regard to land acquisition etc., is misconceived. A number of projects have come up in the State of Punjab which were part of the same bidding process as the petitioner.
- viii)The decision of the Hon'ble APTEL relied on by the petitioner does not deal with a bidding process. In that case, Hon'ble Supreme Court had directed the State Commission to decide the issue(s) without being influenced by the decision of Hon'ble APTEL. The reliance by the petitioner is misplaced.
- ix)The connectivity for the project has been granted by PSPCL on 13.04.2015 subject to the present petition before the Commission. In light of the facts and submissions made, there is no merit in the petition and the Commission may take appropriate decision as deemed fit in the matter.

9. In the hearing on 09.06.2015, PEDDA submitted that it does not intend to file any additional submissions. Arguments on behalf of the petitioner and respondents were heard. The petitioner sought time to file written submissions, which was allowed by the Commission vide its Order of even date. The hearing was closed and Order reserved.

10. The petitioner filed written submissions on 09.06.2015 itself. The petitioner, while reiterating the submissions and prayer already made, furnished generation data of a few solar projects

and stated that though these projects were commissioned in February and March, 2015, the power injected into the grid by them was insignificant and yet these projects availed their respective tariffs due to commissioning prior to 31.03.2015. The petitioner also referred to petition no. 54 of 2012 filed by Everest Power Private Limited stating that the Commission dispensed with the capped tariff and proceeded with determination of tariff on a project specific basis in view of the impediments in the form of geographical surprises that had delayed the project, thereby increasing the tariff of the project.

11. Observations, Findings & Decision of the Commission:

On perusal of the submissions made by the petitioner, PEDDA and PSPCL, the Commission observes that the petitioner has contended non-completion of the project by the stipulated date mainly on account of delay in procurement of Panchayat land due to stay by Hon'ble High Court of Punjab & Haryana on leasing of Panchayat land & purported late notification of the Gram Panchayat Lands Lease Policy by Govt. of Punjab and alleged delay in granting final sanction of the loan by the funding agency due to non-fulfilment of the pre-condition with regard to mortgaging of the land/assignment of the PPA in its favour. The petitioner has attributed 10 months delay from 31.12.2013 (date of signing the PPA) to 22.10.2014 (date of signing sub-lease for land with PEDDA) on account of procurement of land and another 3½ months delay from 22.10.2014 to 10.02.2015 on account of assignment of PPA etc. In the prayer, the petitioner sought extension in the date of commissioning of its project from 31.03.2015 to 15.07.2015 for

applicability of tariff of ₹8.41 per kWh allowed by the Commission in its Order dated 14.11.2013 in petition no. 52 of 2013. **However, the petitioner in its filings dated 04.05.2015 submitted that the project has been commissioned on 14.04.2015 and commercial generation commenced.**

PEDA in its reply dated 31.03.2015 has submitted that the project was to be completed within a period of 13 months from the date of signing the PPA i.e. by 31.01.2015 which was extended by it upto 15.03.2015. The petitioner was to arrange land for the project and in case the petitioner wanted to set up the project on Panchayat land, PEDA was only to facilitate the same. The petitioner opted for Panchayat land for which the lease deed with village Panchayat and sub-lease deed with petitioner were signed on 22.10.2014. PEDA has further contended that the funding arrangement was the sole responsibility of the petitioner and PEDA has nothing to do with the same.

PSPCL in its reply dated 25.05.2015 submitted that the project is being established by the petitioner pursuant to competitive bidding process conducted by PEDA on the basis of discount offered by bidders on the CERC generic tariff for FY 2013-14 for Solar PV Power Projects. The petitioner was required to procure and produce the proof of acquisition of land within 90 days from the date of signing the PPA. The petitioner was given no assurance of acquisition of land by PEDA or PSPCL except for facilitation role by PEDA in case the project developer decided to acquire Panchayat land. It was the entire discretion and decision of the project developer to procure private or Panchayat land for setting up the project. PSPCL submitted that the funding

arrangement was the sole responsibility of the petitioner and PSPCL has nothing to do with it. PSPCL further submitted that the contention of the petitioner, of there being force majeure condition in the State with regard to land acquisition is misconceived. A number of projects have come up by 31.03.2015 which were part of the same bidding process. **PSPCL submitted that the project was granted connectivity with the grid on 13.04.2015.**

The Commission notes that the petitioner envisaged procurement of Panchayat land for setting up of the project exercising one of the options available for land procurement in the RfP which provided a list of different Panchayat land areas. As stated by the petitioner, he could not procure Panchayat land due to absence of Punjab Gram Panchayat Lands Lease Policy and stay of Hon'ble High Court of Punjab and Haryana on lease of public land. The stay was vacated on 30.01.2014. The relevant extract of the Judgment of Hon'ble High Court of Punjab & Haryana dated 30.01.2014 in CWP-16421-2008 (O&M) and batch is reproduced below:

*"We clarify that in so far as such persons are concerned, there is no impediment now standing in their way and the parties are free to proceed in pursuance to the prior arrangements with a caveat that the **government authorities should extend their time periods by the period for which the interim orders were in operation.**"*

.....
"CONCLUSION:

*The result of the aforesaid discussion is that all the three petitions stand dismissed and all interim orders stand vacated. **The State Government to take steps to amend the Rules as per the assurance given to the Court.**"*

The Commission notes that the petitioner had the option of procuring Panchayat or private land for setting up the project. In case of any impediment in procuring Panchayat land, the option of procuring private land was always available to the petitioner. The petitioner was required to take appropriate decision/action for procurement of land for setting up the project in order to maintain the sanctity of the time lines for completion of the project, especially with regard to the applicability of tariff i.e 31.03.2015 allowed by the Commission in its Order dated 14.11.2013 in petition no. 52 of 2013. Similarly, funding arrangement was also required to be finalized by the petitioner in time. In fact, the Commission notes that out of 250 MW capacity approved by the Commission in the said Order, 171 MW capacity stands commissioned by various developers upto 31.03.2015 as informed by PEDDA in its report submitted separately to the Commission with regard to the solar capacity commissioned in the State during FY 2014-15. It is not out of place to mention that this capacity has come up under similar circumstances as alleged by the petitioner. **Accordingly, the Commission is not inclined to accede to the prayer of the petitioner to extend the applicability of tariff to 15.07.2015.**

However, considering that Hon'ble High Court of Punjab & Haryana vacated the stay on procurement of Panchayat land and in its Judgment dated 30.01.2014 in CWP-16421-2008 (O&M) and batch ruled that '*.....government authorities should extend their time periods by the period for which the interim orders were in operation....*', **the Commission is agreeable to allow the extension in the applicability of tariff upto maximum 31 days**

considering that the PPA was signed on 31.12.2013 and the stay was vacated by Hon'ble High Court of Punjab & Haryana on 30.01.2014. As the petitioner's project stands commissioned on 14.04.2015 i.e 14 days beyond 31.03.2015, allowed by the Commission in its Order dated 14.11.2013 in petition no. 52 of 2013, vis-a-vis maximum 31 days agreed to be allowed as above, the Commission allows extension in the applicability of approved tariff for the petitioner's project i.e. ₹ 8.41 per kWh till 14.04.2015 in place of 31.03.2015 allowed by the Commission earlier. Other terms & conditions of the PPA signed in this case shall remain unchanged.

The petition is disposed of in terms of the above.

Sd/-

**(Gurinder Jit Singh)
Member**

Sd/-

**(Romila Dubey)
Chairperson**

**Chandigarh
Dated: 12.06.2015**