

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

Petition No. 20 of 2015  
Date of Order: 22.06.2015

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

In the matter of: Petition under Rule 10, 69, 71 and 73 of the PSERC (Conduct of Business) Regulations, 2005 and clause 85 of CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 (adopted by the Commission in its Order dated 19.07.2012 in Suo-Motu Petition No. 35 of 2012) read with Section 94 of The Electricity Act, 2003, for seeking Project Specific extension of period of commissioning of the project by two months with applicable tariff of ₹ 8.70 per kWh.

And

In the matter of: Earth Solar Private Limited, 1018, Sector 36, Chandigarh through its Director Gagan Lakhmna.  
.....Petitioner

Versus

- 1.Punjab Energy Development Agency, through its Chief Executive, Plot No. 1 & 2, Sector 33, Chandigarh.
- 2.Punjab State Power Corporation Limited through its Chairman-cum-Managing Director, The Mall, Patiala.

.....Respondents

Order

1. Earth Solar Private Limited (ESPL), a limited company duly registered under the Companies Act, 1956 filed this petition under

Rule 10, 69, 71 and 73 of the PSERC (Conduct of Business) Regulations, 2005 and clause 85 of CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 (RE Regulations, 2012) adopted by the Commission in its Order dated 19.07.2012 in Petition No. 35 of 2012 (Suo-Motu) read with Section 94 of The Electricity Act, 2003 (Act), for seeking project specific extension of period of commissioning of the project by two months with the applicable tariff of ₹ 8.70 per kWh.

2. The petitioner has submitted as hereunder:

- i) Punjab Energy Development Agency (PEDA) is the nodal agency responsible for promotion and development of non-conventional and renewable sources of energy (NRSE) in the State of Punjab, including solar, mini hydro, biomass/agro-waste based power projects. PEDA invited proposals/bids against Request for Proposal (RfP) through e-bidding system for selection of bidders for setting up solar photovoltaic power projects for sale of power to PSPCL in the State of Punjab. The bidders were required to submit their bids based on net availed tariff after providing discount on generic tariff of ₹ 8.75 per kWh notified by Central Electricity Regulatory Commission (CERC) for Solar PV Power Projects for FY 2013-14, adopted by the Commission. The selection by PEDA was based on the net tariff arrived in ₹ per kWh after reduction of discount offered by the bidders.
- ii) In response to the RfP, the petitioner submitted its bid for development of 4 MW Solar PV Power Project (project).

PEDA selected the petitioner for setting up the project at the net tariff of ₹ 8.70 per kWh. PEDA accordingly issued a Letter of Award (LoA) on 22.07.2013. As per the LoA, the petitioner was required to submit a detailed project report and performance security by way of irrevocable bank guarantee at the rate of ₹ 40 lac per MW. The petitioner was required to sign Implementation Agreement (IA) with PEDA within 30 days from the date of issue of LoA and further sign the Power Purchase Agreement (PPA) with PSPCL. The petitioner was also required to submit tie up of financing arrangements for the project.

iii) IA was executed between the petitioner and PEDA on 17.09.2013. As per article 5 of the IA, Govt. of Punjab was to provide fiscal and technical assistance to the petitioner as per NRSE Policy, 2012. Certain obligations were also cast upon PEDA and the petitioner as per article 6 of the IA. The project was required to be commissioned within 13 months from the date of signing the PPA. Consequences of delay in commissioning the project by the petitioner were mentioned in article 7 of the IA.

iv) Pursuant to IA, the petitioner and PSPCL executed the PPA on 27.12.2013. As per clause 10.1.0 of the PPA, the petitioner's solar plant was to be synchronized with PSPCL's grid within 13 months from the effective date i.e. date of signing the PPA. Accordingly, the scheduled date of commissioning (SCOD) for the project was 26.01.2015. However, PEDA vide its letter dated 18.12.2014 extended the SCOD upto 15.03.2015.

- v) As per the clause 1.3 of RfP, the developer was entitled to following fiscal assistance/benefits under the NRSE Policy 2012:
- a. Waiver of 100% electricity duty for power consumed from the State licensee during construction and testing of the project.
  - b. Exemption of octroi on NRSE fuels to be used for energy generation and NRSE devices / equipment / machinery for NRSE power projects. Similarly, octroi on self-consumption of power by captive power plants in the same premises or through wheeling by open access to same group companies shall also be exempted.
  - c. To promote usage/generation from NRSE, manufacturing & sale of NRSE devices/systems and equipments/machinery required for NRSE power projects to be exempted from Value Added Tax (VAT) and any cess there upon.
  - d. 100% exemption from entry tax in respect of all supplies (including capital goods, structure and raw materials) made for setting up and trial operations of the projects.
  - e. 100% exemption from payment of fee and stamp duty for registration/lease deed charges for the land required for the project.
  - f. Agricultural land to be allowed for setting up of renewable energy power projects in the state and no change of land use (CLU), external development charges (EDC)/or any other charges/fees for the same to be payable.
  - g. Solar PV Power Projects to be exempted from obtaining any NOC/consent under pollution control laws from the PPCB.
- vi) As per clause 4.3 of the NRSE Policy, 2012, setting up of NRSE projects involves sanctions/clearances from a number of Government agencies/departments and the

State Government was to provide the clearances in a time bound manner through a single window mechanism within a period of 60 days after the submission of complete application along with necessary enclosures, fees/charges and detailed project report. The detailed procedure for according approvals/clearances was annexed with the NRSC Policy. As per clause 3 of the detailed procedure reproduced hereunder, CLU was to be given in 60 days:

*“.....(3) All necessary and applicable clearances to be granted by State Govt. (viz. Change of land use, Pollution Control, water, use of NRSE resources, factories/labour clearances etc.) required for a project would be considered in a time bound manner (within a period of 60 days from the date of submissions of complete application along with requisite fee as per the requirement of clearance issuing bodies/departments).....”*

vii)The petitioner purchased land measuring 72 Kanal vide registered sale deed dated 19.08.2013 after the LoA was issued for setting the project. As per the RfP and NRSE Policy, the registration of sale deed for the purpose of solar projects was exempted from stamp duty and accordingly the petitioner had not paid any stamp duty. But after registration of sale deed, the same was impounded by Sub Registrar, Bhadson and it was sent to Collector Patiala under section 47-A of the Stamp Act.

viii)Although mentioned in the NRSE Policy, 2012 that no stamp duty is required to be paid on the registration of sale deed for the land required for solar projects, the notification in this regard was issued by Government of Punjab, Department of Revenue Rehabilitation and

Disaster Management (Stamp and Registered Branch) on 07.05.2014.

- ix) The Collector, Patiala vide order dated 21.05.2014 closed the proceedings under section 47-A of the Stamp Act and thereafter the original registry was received by the petitioner on the same day. The petitioner thereafter deposited the original sale deed with the bank for the mortgaging the same.
- x) The total project cost of the project was ₹ 36.65 crore and the petitioner approached State Bank of India for financing. The bank vide letter dated 21.06.2014 accorded in principle approval subject to sanction of the proposal by the competent authority and completion of all formalities including documentation and security creation in favour of the bank.
- xi) The petitioner applied for CLU vide letter dated 04.05.2014. As per clause 3 of detailed procedure attached with NRSE Policy, 2012, the CLU was required to be accorded within 60 days from the date of application. However, Department of Town and Country Planning allowed provisional CLU vide its letter dated 06.02.2015.

As per the NRSE Policy, 2012 and clause 1.3 of RfP, the agricultural land is allowed to be used for setting up of renewable energy power projects in the State and no CLU, EDC or any other charges/fees for the same is payable. However, notification in this regard was issued on 29.08.2014.

- xii) State Bank of India accorded in principle approval subject to documentation and creation of security. The CLU of land was also required before the loan could be sanctioned finally. On repeated requests, the bank issued conditional sanction letter dated 04.02.2015 for a loan amount of ₹ 19 crore and specifically mentioned therein that the funds would be disbursed only after the CLU of land at village Bhadson is obtained and equitable mortgage of land created in favour of the bank.
- xiii) The petitioner could not install the solar plant without CLU and bank was also not ready to release the funds. After issue of CLU on 06.02.2015, the petitioner started the work for setting the project and the bank also released the sanctioned amount. As on date, the petitioner has spent 90% of the total project cost. PEDDA was informed about the progress of work from time to time.
- xiv) The petitioner was unable to commission the project before SCOD i.e. 15.03.2015 due to reasons beyond its control as the benefits under NRSE Policy, 2012 and the CLU were not provided/accorded in time to the petitioner.
- xv) Article 10 of the IA defines Force Majeure and same is reproduced here under:

***“FORCE MAJEURE***

***10.1 Force Majeure Event:***

*In this Agreement, Force Majeure means an event occurrence in India of any or all of non-political events described in clause 10.2 and political events described in clause 10.3 respectively hereinafter which prevents the party claiming Force Majeure. (The affected party) from performing its obligations under this agreement and which act or event,*

- i. Is beyond the reasonable control of and not arising out of the fault of the affected party.*
- ii. The affected party has been unable to prevent by the exercise of due diligent and reasonable efforts, skill and care, including through expenditure of reasonable sum of money and*
- iii. Has a materially adverse effect on the project.*

*10.2 Non-political force majeure events:*

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*10.3 Political Force Majeure Event:*

*Political Events shall mean one or more of the following acts or events by or any account of PEDDA, GoP, Gol or any other Government Agency or Statutory Authority.*

- i. Change in law.*
- ii. Expropriation or compulsory confiscation by any Government Agency of any Project Assets or rights of the company.*
- iii. The unlawful or un-authorized or without jurisdiction revocation of or refusal to renew or grant without valid cause any consent or approval required by the Company to perform its obligations under the Agreement (other than a consent the obtaining of which is a condition precedent) provided that such delay, medication, denial, refusal or revocation did not result from the Company's inability or failure to comply with any condition relating to grant, maintenance or renewal of such consent or permits.....”*

xvi) There was political force majeure i) on account of impounding of the registered sale deed of the land purchased by the petitioner by the Sub Registrar, Bhadson and ii) due to delay in granting CLU to the petitioner by the Government of Punjab. The impounding of the sale deed was totally wrong and illegal and contrary to the promises made by PEDDA in RfP and Government of



Punjab in the NRSE Policy, 2012. As per NRSE Policy, 2012, single window clearances have to be provided to an NRSE project and CLU was required to be provided within 60 days. But in the present case more than 9 months were taken by the authorities for granting CLU to the petitioner. From the bare perusal of these facts, it is clear that such a huge delay in granting CLU did not result from petitioner's inability or failure to comply with any condition relating to grant of CLU.

xvii)PSPCL filed petition no. 52 of 2013 before the Commission seeking approval to procure electricity including the tariff from solar energy generators to be established in the State of Punjab. The Commission vide its Order dated 14.11.2013 approved the tariff for the various projects including that of the petitioner. The petitioner was allowed tariff of ₹ 8.70 per kWh. As per the said Order, a condition was imposed that PPAs shall be signed on or before 31.03.2014 and the entire capacity covered in each PPA shall be commissioned on or before 31.03.2015.

In the present case, the project could not be commissioned upto 31.03.2015 due to force majeure and requires two months extension i.e. upto 31.05.2015. For such situations, the Commission is empowered under CERC RE Regulations, 2012 to pass necessary orders and relax any of the provisions of the said regulation as provided in clause 85 of the above said regulations. Clause 85 of the CERC RE Regulations, 2012, is reproduced here under:

*“....85. Power to Relax:*

*The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person.....”*

xviii)The Commission has inherent powers to pass orders as may be necessary for meeting the ends of justice under Regulation 69 of Commission’s Conduct of Business Regulations, 2005 as well as Regulation 71 relating to power to remove difficulties, Regulation 72 relating to power to dispense with the requirement of the Regulations and Regulation 73 for extension or abridgment of time allowed.

xix)As per article 7 of the IA, in case of delay in commissioning of project, PEDDA can encash 30% of the performance guarantee if delay is upto one month and remaining 70% if delay is more than one month and upto two months. It is apprehended that PEDDA may encash the performance guarantee though petitioner is not at fault for delay in commissioning the project. CLU was granted on 06.02.2015 and the petitioner would commission the project within two months beyond 31.03.2015 i.e. by 31.05.2015. As there is no fault on the part of the petitioner in not completing the project within the time granted by PEDDA, PSPCL/PEDA has no right to encash the performance guarantee.

xx)The petitioner is seeking project specific extension of the period of commissioning by two months i.e. upto

31.05.2015 with the same tariff of ₹ 8.70 per kWh. It is prayed before the Commission that relaxation may be made in clause 8 of CERC RE Regulations, 2012, and the period of commissioning be extended by two months at the same tariff of ₹ 8.70 per kWh in the interest of justice. The petitioner further prayed that during the pendency of the present petition before the Commission, respondents may be restrained from invoking performance guarantee in the interest of justice.

3. The petition was admitted by the Commission and the respondents were directed to file reply by 22.04.2015 with a copy to the petitioner and each other vide Commission's Order dated 07.04.2015. The next date of hearing was fixed as 28.04.2015. Neither PEDDA nor PSPCL filed the reply by the due date. Vide Order dated 30.04.2015, the Commission again directed both PSPCL and PEDDA to file the same by 08.05.2015. The next date of hearing was fixed as 12.05.2015.

4. PEDDA filed its reply on 08.05.2015 as under:

- i) The registered sale deed dated 19.08.2013 for land measuring 72 kanals was impounded by the Sub-Registrar, Bhadson as the petitioner did not pay stamp duty on the same on the pretext of claiming exemption over the same under the NRSE Policy, 2012. Although it was provided in the policy that there shall be an exemption on stamp duty for purchase of land for setting up projects under NRSE Policy, the same was not notified by Govt. of Punjab till 07.05.2014. After the notification,

the impounded documents were released to the petitioner. As regards creation of equitable mortgage with the bank qua the land under reference, it has no relation with PEDDA.

- ii) With regard to financing the project, the same is internal matter of the petitioner and has no relation with PEDDA.
- iii) Notification with regard to CLU benefits was issued on 29.08.2014. Provisional CLU was granted to the petitioner on 06.02.2015 with the condition that applicant shall not undertake any construction activity until it obtains final CLU from Ministry of Environment & Forest, Govt. of India (MoEF).
- iv) As per the land documents submitted by the petitioner, the land belongs to the promoters of the petitioner company. It was the petitioner's responsibility to arrange land for setting up the project and seek approval required, if any, for setting up the project. The reasons for delayed CLU are best known to the petitioner and PEDDA is not involved in obtaining the CLU.
- v) There is a specific clause in the IA specifying the performance security encashment due to delay in project commissioning. The delay in grant of CLU is not attributable to PEDDA.
- vi) The petitioner's project was not commissioned by the extended SCOD i.e 15.03.2015 and as informed by the petitioner, the same is likely to be commissioned by 15.05.2015.

The petitioner is seeking extension of time by a period of more than two months i.e. upto 31.05.2015 for

commissioning the project. The reasons mentioned in the petition are bonafide or not is a subject matter of adjudication before the Commission.

vii)The petitioner is seeking project specific extension for commissioning by two months upto 31.05.2015 with the same tariff of ₹ 8.70 per kWh. The extension for a period of 45 days from SCOD i.e. 31.01.2015 to 15.03.2015 was already granted to all the projects. The request of the petitioner can be considered by the Commission as it is within its purview only.

5. During hearing on 12.05.2015, PSPCL requested that a short time may be allowed for filing reply. PSPCL was directed to file reply by 18.05.2015 vide Order dated 13.05.2015 of the Commission. The next date for hearing was fixed as 19.05.2015.

6. PSPCL filed its reply on 15.05.2015 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. Power of review can be exercised only when there are errors apparent on the face of record or when there is new evidence which could not be produced during the passing of the main Order. The petitioner has not even claimed any of the grounds for review, while seeking the modifications of Commission's Order dated 14.11.2013 and 03.12.2013.

- ii) No other provision of the Act has been sought to be invoked by the petitioner, while only stating various regulations of the Commission. It is well settled principle that the power and jurisdiction flows from the provisions of the parent Act and not delegated legislation, which is only for implementing the provisions of the parent Act.

The petition is misconceived, not maintainable, meritless and liable to be dismissed.

- iii) The petitioner is seeking a project specific extension and modification of the generic Order passed by the Commission approving the projects of various project developers. 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 to be offered by the bidders on the CERC generic tariff for FY 2013-14 for Solar PV Power Projects. It is well settled principle of law that once a party participates in a bidding process accepting the terms and conditions of the tender, it is not open to the party to then claim exemption or variation of the tender terms and conditions or otherwise contend that the terms and conditions are not applicable, ought to be set aside, quashed etc.

- iv) The project developer was required to procure and produce the proof the acquisition of land within 90 days of signing of PPA. The project developer was given no assurance of acquisition of land by PEDDA or PSPCL, but facilitation role was assured by PEDDA in case the project developer decided to acquire land belonging to

Panchayat. There was no representation, assurance or promise that the land would be made available by the Government of Punjab or its agencies or that any delay in land acquisition by the project developers would be considered as reason sufficient for extension of time beyond the scheduled date of commissioning. It was the entire discretion and decision of the project developer where the project was to be located. 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 by the project developer to PEDDA. The petitioner had made a commercial decision to procure particular land which required change of land use and the consequences thereof cannot be passed on to others.

- v) In case the petitioner failed to produce the necessary compliances, the allotment was liable to be cancelled and the bank guarantee forfeited. The petitioner is proceeding on the premise that the total time taken in actions and proceedings with Government departments/Government are fully force majeure events and time extension is to be given. The responsibility of procuring all clearances, licenses etc. is solely that of the petitioner, the consequences of such decision cannot be passed on as force majeure or otherwise seek extension of time while maintaining the same tariff.
- vi) The petitioner has merely claimed that there were delays in clearances etc. without mentioning when information

was provided and whether the same was complete or there were deficiencies etc.

vii) In terms of the bidding documents and article 6.2(vii) of IA, the project was to be commissioned within 13 months of date of signing of the PPA.

viii) The Commission vide Order dated 14.11.2013 approved the power procurement pursuant to the competitive bidding process. In the said Order, the Commission specifically laid down that the tariff approved would be applicable up to 31.03.2015, provided that the PPAs are signed on or before 31.03.2014 and the entire capacity covered in each of the PPAs is commissioned on or before 31.03.2015.

ix) The Order dated 14.11.2013 was pursuant to approval and confirmation of the competitive bidding process and the competitive bidding documents for development of solar projects in the State of Punjab. Any deviation from the competitive bidding process and documents were also subject to the express approval of the Commission. The Commission vide Order dated 03.12.2013 while approving some of the deviations had reiterated the above portion of the Order dated 14.11.2013 namely that the tariff would be applicable provided the projects are commissioned on or before 31.03.2015 for the entire capacity. The Order dated 03.12.2013 has attained finality. Being part of the competitive bidding process, it is not possible to create deviations or relaxations in favour of one person which is not available to the others. The prayer of the petitioner at this stage would amount to changing the rules of



competitive bidding process after the entire process is over and the project has been selected, which is impermissible and would vitiate the bidding process.

- x) The Commission, even in its generic tariff order, applied the tariff as is prevalent during the period when the project is commissioned. In this regard, the Commission in the Order dated 13.01.2011 passed in petition no. 29 of 2010 inter-alia held as under:

*“9. As regards redetermination of tariff for the petitioner it is seen that the petitioner has sought tariff as per the Commission’s Order dated 30.09.2010. However, keeping in mind the fact that none of the GPE’s units have achieved the commercial operation date (COD), the Commission is of the view that GEP will be entitled to generic tariff determined by the Commission for the year in which each of its generating unit achieves COD. The same will be payable to the petitioner for a period of 13 years as prescribed in RE Regulations from COD of the respective generating units.....”*

- xi) The contention raised by the petitioner that a special dispensation is to be given to the petitioner for delaying commissioning of the project and the higher tariff of ₹ 8.70 per kWh discovered in the competitive bidding process subject to the specific condition that the tariff is applicable only if the projects are commissioned prior to 31.03.2015 should be relaxed for the petitioner on the specific case basis is misconceived and liable to be rejected.
- xii) The date of investment, whether the petitioner has invested amounts etc. are irrelevant for consideration. The petitioner has been selected for the development of the project pursuant to a competitive bidding process, without

going into individual cost elements. For the petitioner to claim that the project cost should be considered and that higher cost are actually incurred are irrelevant. The tariff is not based on a cost plus tariff determination under Section 62 of the Act.

- xiii)The contention of the petitioner of there being force majeure conditions in the State with regard to land acquisition is misconceived. There are a number of projects which have come up in the State of Punjab, who were part of the same bidding process as the petitioner.
- xiv)The reliance by the petitioner on the Conduct of Business Regulations of the Commission to claim jurisdiction for changing the terms and conditions of the bidding documents is misconceived. These Regulations deals with the procedural aspects to be considered by the Commission and not to invalidate the powers of the State Commission as available otherwise. The power to remove difficulties and power to extend time is for the time provided under the Conduct of Business Regulations and not in the general context.
- xv)The petitioner sought to claim force majeure conditions in the implementation of the project and that the total time taken with the Government authorities for land use permission etc. should be excluded. This is misconceived. The time taken in obtaining approvals etc. cannot be considered a force majeure, particularly when there is no such specific provision in the PPA and the identification of land, nature of land which is permitted for use etc. are the

sole decision of the petitioner without any restriction in the PPA or the bidding documents.

- xvi)The entire claim of the petitioner is belated and an afterthought. In terms of the IA, the obligation of notification of the force majeure is on the petitioner, which was to be done not later than 5 days after the commencement of the alleged force majeure event. In the absence of any such notice, the present claim is merely an after thought.
- xvii)The claims of the petitioner are self-contradictory. The petitioner on one hand has claimed that it could not do any work till February, 2015 when the change in land use permissions was accorded, while at the same time stated that 90% of the cost has already been incurred.
- xviii)The cost has substantially reduced in the year 2015 and the projects being set up now are at a substantially lower cost. The petitioner is seeking to rely on the earlier tariff though the project could not be taken up for construction till the year 2015.
- xix)The application of inherent power etc. does not arise when the Order of the Commission is clear and categorical. The petitioner cannot claim any project specific extension of a generic Order passed by the Commission. There were number of similarly placed projects which have already been commissioned in the State and no special dispensation can be granted to one project, especially when the projects have been established pursuant to the competitive bidding process.

xx)The petitioner is only claiming the power under Section 94 of the Act, which provides for review of the Order not being applicable in the present case, the present petition is not maintainable and is liable to be dismissed.

7. In the hearing on 19.05.2015, the petitioner submitted that the project is ready for commissioning but connectivity with the grid has not been arranged, which was denied by PSPCL. The petitioner was directed to submit documentary proof in respect of the same by 25.05.2015 along with the rejoinder. The next date of hearing was fixed as 03.06.2015.

8. In the hearing on 03.06.2015, the petitioner submitted that the plant had been synchronized with the PSPCL's grid. PSPCL while admitting the same submitted that there is no evidence yet of power having actually been received from the project. Petitioner and PSPCL submitted to confirm the same in a couple of days. After hearing the petitioner and PSPCL, the Commission directed the parties to file final submissions in the matter by way of rejoinder/Written Submissions/Note of arguments etc. by 09.06.2015 with a copy to each other. Next date of hearing was fixed as 15.06.2015.

9. On 15.06.2015, the petitioner as well as PSPCL confirmed that the project was commissioned on 28.05.2015 and 1.5 lac units were received by PSPCL till 10.06.2015. The petitioner filed rejoinder to the reply of PEDDA and Written Submissions during hearing in compliance with Order dated 04.06.2015 of the Commission. The hearing was closed and Order was reserved.

10. In the rejoinder to the reply of PEDDA and written arguments dated 15.06.2015, the petitioner while reiterating its earlier filings submitted that the petitioner had the option of procuring Panchayat or private land for setting up the project. However, petitioner could not opt for Panchayat land as the notification by Government of Punjab for allowing the lease for Panchayat land for the projects under NRSE Policy was done only on 09.05.2014. The petitioner opted for private land but the sale deed was impounded by the Collector. Petitioner submitted that a conditional CLU was granted, subject to the clearance from Ministry of Environment & Forest, though the land is not a forest. The petitioner further submitted that the project installations were inspected by the Chief Electrical Inspector, Punjab and approved for commissioning on 25.05.2015. PSPCL vide its letter dated 27.05.2015 accorded permission for synchronizing the project.

11. After going through the petition, replies of PEDDA & PSPCL, rejoinder, other submissions by the parties and respective Written Submissions/Note of arguments, the observations, findings and decision of the Commission are as under:

**Observations, Findings & Decision of the Commission:**

Observations:

- i) The petitioner has sought extension in applicability of tariff of ₹ 8.70 per kWh beyond 31.03.2015 upto 31.05.2015. The petitioner has contended non-completion of the project by the stipulated date due to impounding of the petitioner's registered sale deed of the land purchased, by the Sub

Registrar and delay in granting CLU by the Government of Punjab.

- ii) The petitioner purchased land for setting up the project on 19.08.2013 after the issue of LoA by PEDDA on 22.07.2013. As per the NRSE Policy, 2012 (policy), stamp duty was not required to be paid on the land procured for solar projects. However, notification in this regard was issued by the concerned department of the Punjab Govt. on 07.05.2014. The sale deed of the land, which had earlier been impounded by the Sub Registrar, was released on 21.05.2014.
- iii) The petitioner applied for CLU on 04.05.2014. The same was to be accorded within 60 days as per the said policy. Also, as per the policy, no CLU, EDC charges etc. were payable on the agricultural land allowed to be used for setting up renewable energy projects. Notification in this regard was issued on 29.08.2014. Provisional CLU was accorded to the petitioner by the authorities on 06.02.2015 subject to obtaining clearance from MoEF.
- iv) CLU was a pre-requisite for final sanction/release of funds by the bank which released the funds after an equitable mortgage on land was created in favour of the bank by the petitioner.
- v) The petitioner started the work for setting up the project on 06.02.2015 and expended 90% of the total project cost till date of filing the petition i.e 31.03.2015. The petitioner, contending the impounding of the registered sale deed of the land purchased by the petitioner by the Sub Registrar and delay in granting CLU by the Government of Punjab as force

majeure, has requested for extension in date of applicability of tariff from 31.03.2015 allowed by the Commission in its Order dated 14.11.2013 in petition no. 52 of 2013 to 31.05.2015. Though not brought out in the main petition, the petitioner in its submissions dated 15.06.2015 has submitted that it could not opt for Panchayat land, one of the options in the RfP besides private land, as the notification in this regard was issued by the Govt. of Punjab on 09.05.2014.

vi) PEDDA in its reply submitted that the SCOD was extended from 31.01.2015 to 15.03.2015 for all the projects. PEDDA submitted that it did not have any role to play with regard to either creating the equitable mortgage of the land or financing of the project. As the land procured for the project belonged to the promoters of the petitioner company, it was the responsibility of the petitioner to arrange for the approvals required. PEDDA has contended that it was not involved in obtaining the CLU and the reasons for delayed CLU are best known to the petitioner. PEDDA has requested the Commission to take appropriate decision in the petition.

vii) PSPCL in its reply submitted that the petition is misconceived, not maintainable and liable to be dismissed, on the following grounds:

a) The project was allotted to the petitioner as per the competitive bidding process undertaken by PEDDA. Many other projects allotted by PEDDA in the same bidding process under the same terms and conditions have already been commissioned by 31.03.2015. The petitioner can not claim exemption or variation in the terms and conditions which would vitiate the bidding process.

b) The petitioner was required to procure the land and submit the proof of acquisition 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 was assured in case the project developer decided to acquire land belonging to Panchayat. There was no representation, assurance or promise that the land would be made available by the Government of Punjab or its agencies or that any delay in land acquisition by the project developers would be considered as reason sufficient for extension of time beyond the scheduled date of commissioning.

c) It was the entire discretion and decision of the project developer where the project was to be located. It was the commercial decision of the petitioner to procure the particular land which required CLU, the consequences thereof can not be passed on to others.

d) The contention of the petitioner that time taken in actions and proceedings with the government departments are force majeure events can not be accepted. The responsibility for procuring all the clearances rested solely with the petitioner.

e) The project was required to be commissioned within 13 months from the date of signing the PPA i.e by 26.01.2015 as the PPA was signed on 27.12.2013. In case the petitioner failed to produce the necessary compliances, the allotment was liable to be cancelled and the bank guarantee forfeited.

f) The Commission vide Order dated 14.11.2013 in petition no.52 of 2013 approved the power procurement pursuant to the competitive bidding process. In the said Order, the Commission specifically laid down that the tariff approved



would be applicable up to 31.03.2015, provided that the PPAs are signed on or before 31.03.2014 and the entire capacity covered in each of the PPAs is commissioned on or before 31.03.2015.

g) The date of investment, whether the petitioner has invested amounts etc. are irrelevant. The petitioner has been selected for the development of the project 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 cost are actually incurred are irrelevant. The tariff is not based on a cost plus tariff determination under Section 62 of the Act.

h) The contention of the petitioner of there being force majeure conditions in the State with regard to land acquisition is misconceived. There are a number of projects which have come up in the State of Punjab, who were part of the same bidding process as the petitioner.

i) The time taken in obtaining approvals etc. cannot be considered a force majeure. The entire claim of the petitioner is an afterthought. In terms of the IA, the obligation of notification of the force majeure is on the petitioner, which was to be done not later than 5 days after the commencement of the alleged force majeure event. In the absence of any such notice, the present claim is merely an afterthought.

j) The cost of setting up similar project has substantially reduced in the year 2015. The petitioner is seeking to rely on the earlier tariff even though the construction of the project was started in the year 2015.

Findings & Decision of the Commission:

a) The petitioner procured private land for setting up the project on 19.08.2013 immediately after receipt of LoA on 22.07.2013. The land belonged to the promoters of petitioner company. Though not pleaded at the time of filing the petition on 31.03.2015, the petitioner, later in its submissions dated 15.06.2015, submitted that it did not procure Panchayat land as the notification for allowing lease of Panchayat land for NRSE projects was issued by the Govt. of Punjab on 09.05.2014. The Commission is of the view that the petitioner never intended to procure Panchayat land since the private land, which belonged to the promoters of the petitioner company, had already been procured by the petitioner on 19.08.2013, even prior to signing of the PPA on 27.12.2013. The sale deed of the land for the project, stated to have been impounded by the authorities earlier, was released on 21.05.2014. As on that date, sufficient time was available with the petitioner for setting up the project, since the same has been commissioned on 28.05.2015 within a period of 4 months from the date of starting the construction on 06.02.2015. Accordingly, no delay in commissioning of the project can be attributed on this account.

b) Therefore, the main reason for alleged delay in commissioning of the project was in obtaining CLU by the petitioner. In this regard, the Commission notes that the petitioner applied for CLU on 04.05.2014 i.e. prior to release of sale deed by the authorities on 21.05.2014. It is clear from the letter dated 04.05.2014 addressed to the District Town Planner, Patiala for obtaining CLU that a copy of Registry

(sale deed) of land in the name of the company was submitted along with other documents. It implies, therefore, that impounding of sale deed by the Sub Registrar was not an impediment in submission of the documents for applying CLU. The reasons for not applying CLU earlier than 04.05.2014 are not forthcoming in the petition and hence are best known to the petitioner. Under the circumstances, the Commission is of the view that CLU could have been applied much earlier than 04.05.2014 by the petitioner.

c) The petitioner has contended the delay in obtaining/according CLU as force majeure event. The Commission notes that in terms of the IA, any party affected by force majeure is required to give written notices to other parties describing the particulars of the force majeure event as soon as reasonably practicable after its occurrence but not later than 5 days after the date on which such party knew of the commencement of the force majeure event or its effect on such party. The Commission notes that no evidence has been produced by the petitioner with regard to having issued any such notice(s) either to PEDDA or PSPCL. In case of non-agreement between the parties, a dispute can be raised. The Commission further notes that there is no mention in the petition with regard to the petitioner having undertaken the stipulated procedure. The petitioner has come to the Commission for seeking project specific extension of period of commissioning for applicability of tariff of ₹ 8.70 per kWh beyond 31.03.2015. The Commission tends to agree with the contention of PSPCL that delay in obtaining/according CLU is not covered under force majeure events described in the

IA. Under the circumstances, the Commission is not inclined to provide any relief to the petitioner due to alleged delay in grant of CLU by the authorities.

d) In fact, the Commission notes that out of 250 MW capacity approved by the Commission in its Order dated 14.11.2013 in petition no. 52 of 2013, 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.

**e) In view of sub-paras (a) to (d) above, the Commission finds no merit in the prayer of the petitioner to allow extension in the date of applicability of tariff for the petitioner's project from 31.03.2015 to 31.05.2015. Accordingly, the approved tariff for the petitioner's project i.e. ₹ 8.70 per kWh will remain applicable till 31.03.2015 only.**

f) The Commission notes that petitioner's project stands commissioned on 28.05.2015. Accordingly, in order to determine the tariff for the petitioner's project beyond 31.03.2015, the Commission relies upon the competitive bidding process undertaken by PEDDA for allotment of Solar PV Power Projects in the year FY 2014-15. The Commission has, in its Order dated 11.05.2015 in petition no. 21 of 2015 filed by PSPCL for approval of tariff determined through the said competitive bidding process carried out by PEDDA, approved tariffs for Solar PV Power Projects of various

capacities whose PPAs were required to be signed by 31.03.2015 and the projects are to be commissioned by 31.03.2016. The minimum tariff approved by the Commission for the 1-4 MW category projects is ₹ 7.29 per kWh in the said Order. The Commission notes that in its Order dated 14.11.2013 in petition no.52 of 2013, the petitioner's project was similarly covered under 1-4 MW category projects. **Accordingly, the Commission, in order to be just and fair to all, finds it appropriate to fix the tariff of the petitioner's project beyond 31.03.2015 as ₹ 7.29 per kWh for the contract period without in any way impinging upon the other contractual terms and conditions between the parties.**

The petition is disposed of in terms of the above.

Sd/-

**(Gurinder Jit Singh)**  
**Member**

Sd/-

**(Romila Dubey)**  
**Chairperson**

**Chandigarh**

**Dated: 22.06.2015**