

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

Petition No. 29 of 2015
Date of Order: 26.06.2015

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 tariff of ₹ 8.59 per kWh.

And

In the matter of: Mokia Green Energy Private Limited, 12A/19,
W.E.A. Saraswati Marg, Karol Bagh, New Delhi-
110005.

.....Petitioner

Versus

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

2.Punjab Energy Development Agency, Plot No.
1-2, Sector 33-D, Chandigarh-160034

.....Respondents

Order

1. Mokia Green Energy Private Limited (MGEPL), a company registered under the Companies Act, 1956 incorporated with a strategy to undertake development of solar power projects filed this petition under Section 94 of The Electricity Act, 2003 (Act) read with Regulations 69 (Saving of inherent power of the

Commission), 71 (Power to remove difficulties) and 73 (Extension or abridgement 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 petition no. 35 of 2012 (Suo-Motu).

2. The petitioner has submitted as under:
 - i) The Commission has approved the applicability of tariff for purchase of power by Punjab State Power Corporation Limited (PSPCL) from petitioner's 4 MW Solar PV Power Project (project) vide its Order dated 14.11.2013 and 03.12.2013 in petition no. 52 of 2013, subject to the condition that the PPA is signed on or before 31.03.2014 and the entire capacity covered in the PPA is commissioned on or before 31.03.2015.
 - ii) The petitioner is seeking project specific extension of the period of commissioning for applicability of the tariff of ₹8.59 per kWh from 31.03.2015 to 25.04.2015 due to reasons beyond the control of the petitioner in commissioning of its project.
 - iii) 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 4 MW project to the petitioner. Subsequent to LoA, an Implementation Agreement (IA) was signed with PEDA on

20.09.2013 and the Power Purchase Agreement (PPA) was signed with PSPCL on 30.12.2013 with commissioning period of 13 months. The scheduled date of commissioning (SCOD) for the project was 29.01.2015 which was rescheduled to 15.03.2015 by PEDDA on 18.12.2014.

- iv) 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. Encouraged by an option to go for Panchayat land offered in RfP, the petitioner envisaged procurement of Panchayat land as cost of private land was very high. The Panchayat land could neither be purchased nor taken on lease due to stay Order of Hon'ble High Court of Punjab and Haryana. The stay was vacated on 30.01.2014 by Hon'ble High Court. However, clarification on land procurement (policy for leasing of land) was provided only in the Gram Panchayat Lands Lease Policy notified on 09.05.2014. In the absence of final location of the project, funding arrangements could not be concluded. Considering the delay in acquisition of Panchayat land for the project through lease, the petitioner decided to acquire land on lease from private land owners and accordingly identified & leased 22 acres of land in Village Boha, Tehsil Budhlada, District Mansa, Punjab. The lease deed for the said land was signed on 04.04.2014. On the basis of the land lease documents, PSPCL issued the letter for

feasibility clearance on 24.04.2014 mentioning the sub-station for power evacuation as PSPCL's 66 kV Boha substation. The feasibility clearance charges amounting to ₹ 2,22,200/- were deposited with PSPCL.

- v) After land acquisition, the process for financial closure was initiated with Indian Renewable Energy Development Agency (IREDA) on 15.07.2014 for a loan of ₹ 21.78 crore and Bosch Ltd. was engaged as EPC contractor on 22.08.2014. IREDA adopted dilatory practices in the financial closure process resulting in unnecessary delay in the execution of the project. The loan sanction letter was obtained from IREDA on 28.10.2014 after consistent follow up and initiated the process for securitization and other legal documentation immediately. However, the legal due diligence and securitization process, being slow in IREDA, could not be completed within expected time of two months. Considering the project deadline, the solar project components with long lead time were ordered. As the timelines for IREDA to complete this securitization process and signing of loan agreement was 1 year, it was decided to go for project execution using own funds. The Solar PV modules have long delivery schedule of 2.5 months and needs timely placement of order. The Solar PV modules reached project site between 27.12.2014 and 03.01.2015.
- vi) In order to complete the project on time, the procurement and site construction work were initiated, without waiting for the loan disbursement from IREDA and the project

activities were in full swing by the month of February, 2015. PSPCL was approached in mid February intimating the date of commissioning of project as 15.03.2015 and requested for availability of bay at PSPCL sub-station for evacuation of power from the project. The bay was not ready for connectivity with the project. Clause 6.2.0 of the PPA reads as follows:

“The Generating Company shall provide step up transformers, panels, kiosks, protection and metering equipment at the Generating Facility and fully equipped line bay(s) in its switchyard and interconnecting transmission line(s) up to the grid substation of the PSPCL. The panels, kiosks, protection and metering equipment etc. along with jumpers/cable from last tower/H-pole (of generating company’s transmission line) in the grid substation shall be provided by PSPCL.”

The clause clearly states that panels, kiosks, protection and metering equipment etc. along with jumpers/cables from last tower needs to be completed by PSPCL. But even till 19.04.2015, though bay was completed at PSPCL end, jumpering, tower shifting had to be arranged by the petitioner. Apart from the jumpering work, ABT meter installation, GI pipes and plumbing work at PSPCL side of substation at Boha grid was also executed by the petitioner in the absence of any action by PSPCL on time.

vii) Two 11 kV lines were passing through the centre of the land. In order to construct the project and install the solar panels, these lines had to be removed by PSPCL. An application was submitted through the landowner to reroute the 11 kV lines through the periphery of the land.

Subsequent to that, an estimate of ₹ 6,02,376/- was prepared by PSPCL. The amount was deposited on 19.12.2014. On repeated follow up with PSPCL, the 11 kV lines were finally removed on 24.03.2015. Still the cables and poles were not removed and were hindrance to module mounting structures and panels.

viii) Due to inclement weather conditions from 27.02.2015 to 08.03.2015, the switchyard foundation work and trenching work was badly affected. 10 days were lost due to heavy rains and almost 5 days in controlling the damage inflicted by these unseasonal rains. EPC contractor requested on 05.03.2015 for extension of 15 days to commission the project. The petitioner as per the PPA and IA, invoked the force majeure condition through its letter dated 10.03.2015 to PEDDA and requested for extension of 16 days for project completion and extending the SCOD to 31.03.2015.

ix) The formalities for commissioning of the project were completed well before 31.03.2015. The request for ABT meters was placed on 18.03.2015, estimate for the same was prepared by PSPCL on 27.03.2015, estimated amount was deposited on 30.03.2015 and ABT meters were obtained for installation on 31.03.2015. The request for protection clearance for 66 kV switchyard by PSPCL was made on 25.03.2015 and the estimated amount for the same was deposited on 30.03.2015.

x) Chief Electrical Inspector to Government of Punjab (CEI) issued clearance to the project & switchyard on

31.03.2015. However, the required infrastructure at PSPCL end i.e bay was not ready on 31.03.2015.

xi) Due to holidays from 02.04.2015 to 06.04.2015 and non-availability of PSPCL protection team, the project could get protection clearance and ABT meter sealing report on 11.04.2015. Permission for grid synchronization was applied on 13.04.2015 and received the same on 16.04.2015. Despite obtaining permission from PSPCL, the project could not be synchronized due to non-completion of work at PSPCL end till 21.04.2015. The petitioner at its own expenses arranged for completion of work for bay shifting, jumpering, ABT meter installation, GI pipes and plumbing work at PSPCL substation at Boha. The project was finally synchronized with 66kV PSPCL grid on 21.04.2015.

xii) In spite of best efforts, wherein own funds were committed to take up project activities in absence of bank loan, the project got delayed due to reasons beyond its control. It is, therefore, humbly requested to the Commission to extend the date of commissioning of the project to 25.04.2015 for applicability of tariff of ₹ 8.59 per kWh in the PPA.

xiii) 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.

xiv) 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.

xv) The facts mentioned in the petition show the petitioner's bonafide commitment to set up the project. Despite best efforts, the execution of the project has been delayed due to reasons beyond control which fall under force majeure. It is prayed to the Commission to grant extension of time from 31.03.2015 to 25.04.2015 for commissioning the project for applicability of tariff of ₹8.59 per kWh approved in the Commission's Orders dated 14.11.2013 and 03.12.2013 in petition no. 52 of 2013.

3. The petition was admitted by the Commission and respondents were directed to file reply by 03.06.2015 with a copy to the petitioner and each other vide Commission's Order dated 20.05.2015. The next date of hearing was fixed as 09.06.2015.

4. PEDDA filed its reply on 08.06.2015 as under:

i) The project was to be completed by the petitioner within a period of 13 months from the date of signing of PPA i.e.

by 29.01.2015, however, in the interest of the project the SCOD was extended upto 15.03.2015 by PEDDA.

- ii) It was the prerogative of the petitioner to set up the project on Panchayat land or private land. PEDDA was to facilitate the petitioner for seeking Panchayat land in case so opted by the petitioner. However, the petitioner never approached PEDDA for seeking Panchayat land for the project. The petitioner, while exercising its discretion, opted for private land on lease basis in District Mansa, Punjab.
- iii) The funding arrangement for the project was the sole responsibility of the petitioner and PEDDA has nothing to do with it.
- iv) As per the submissions dated 10.03.2015, the petitioner sought extension of 15 days to commission the project.
- v) The decision of GERC referred in the petition by the petitioner is misconceived.
- vi) The petitioner is seeking extension of time from 31.03.2015 to 25.04.2015 by purportedly demonstrating the circumstances falling under force majeure. The circumstances demonstrated by the petitioner whether fall under the force majeure clause provided in the PPA and IA, is a subject matter of determination by the Commission. Further, it is also a subject matter of determination by the Commission whether the petitioner is entitled for the extension as sought for the commissioning of the project.

5. PSPCL vide letter dated 05.06.2015 prayed to grant an extension in time of two weeks to file reply. The Commission in its Order dated 09.06.2015 allowed PSPCL to file the same by 16.06.2015. The next date of hearing was fixed as 16.06.2015.

6. During hearing on 16.06.2015, PSPCL submitted that reply shall be filed by 17.06.2015 and a copy of the same shall be supplied to PEDDA and the petitioner. Next date of hearing was fixed as 23.06.2015.

7. PSPCL filed reply on 17.06.2015, which 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 Act 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, while only stating various regulations of the Commission. The petition is without any merit and not maintainable.
- ii) 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.
- iii) The project is being established by the petitioner pursuant to a competitive bidding process conducted by PEDDA without going into individual cost elements. The petitioner's claim that the project cost should be considered and that higher costs are actually incurred are

irrelevant. 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.

- iv) 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 was assured 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 as to the place where the project was to be located. In terms of article 6.2(vi) of the IA, the acquisition of land for the project was the responsibility of the project developer and requisite documentary evidence was required to be furnished by the project developer to PEDDA.
- v) In terms of the bidding documents and article 6.2(vii) of IA, the project was to be commissioned within 13 months of the date of signing the PPA.
- vi) Funding arrangement was the sole responsibility of the petitioner and has nothing to do with PSPCL.
- vii) With regard to delay in shifting of 11 KV lines, it is clarified that the estimate for shifting of 11 KV lines was intimated to the petitioner on 21.07.2014. However, the amount was paid on 19.12.2014 causing a delay of about 5 months for shifting the lines. The work of shifting the lines was completed on 10.03.2015. The lines needed to be shifted did not cause any hindrance to erection of sub-station and

the transmission lines as these were far away from the sub-station to be erected. The power transformer of the petitioner reached at site between 06.04.2015 and 10.04.2015. The delay in work of transmission line is on the part of the petitioner and not on PSPCL, due to late compliance of demand notice and late completion of 66 KV line and sub-station by the petitioner.

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 Commission in its Order dated 13.01.2011 in the case of Green Planet Energy Pvt. Ltd. has applied the tariff as is prevalent during the period when the project is commissioned.

x) The contention of the petitioner of there being force majeure condition in the State with regard to land acquisition etc. is misconceived. There are number of projects which have come up in the State of Punjab, which were part of the same bidding process as the petitioner. 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 determined by PSERC.”

xi) The decision of Hon'ble APTEL relied on by the petitioner does not deal with a bidding process. 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.

xii) The connectivity for the project has been given by PSPCL on 16.04.2015 subject to the present petition before the Commission. The project has been commissioned on 21.04.2015.

xiii) There is no merit in the petition. The Commission may take appropriate decision as deemed fit.

8. After hearing the petitioner and PSPCL on 23.06.2015, the Commission decided to close the hearing vide Order dated 24.06.2015. The Order was reserved.

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

The Commission has gone through the submissions made by the petitioner, PEDDA and PSPCL. The Commission observes that initially the petitioner envisaged to procure Panchayat land as cost of private land was very high. Due to stay Order of Hon'ble High Court of Punjab and Haryana, the Panchayat land could neither be purchased nor taken on lease. The stay was vacated on 30.01.2014. However, Gram Panchayat Lands Lease Policy was

notified on 09.05.2014. Considering the delay in land acquisition for the project through Panchayat lease, the petitioner decided to acquire land on lease from private land owners and accordingly procured land for the project in village Boha, Tehsil Budhlada, District Mansa, Punjab on 04.04.2014. In the absence of sanction of loan by IREDA upto 28.10.2014, having applied for the same on 15.07.2014, the petitioner started execution of the project using its own funds as the timeline for IREDA to complete the securitization process and signing of loan agreement was one year. The petitioner has alleged delay on the part of PSPCL for shifting of 2 nos. 11 kV lines passing through the site stating that the estimated amount for the purpose was deposited on 19.12.2014 but the lines were shifted on 24.03.2015. The petitioner has further alleged 15 days delay on account of heavy rains in February/March 2015. Petitioner submitted that vide letter dated 10.03.2015, citing force majeure as per clause 10.2(i) of the IA, it requested PEDDA for extension of 16 days time for completion of the project from 15.03.2015 to 31.03.2015. Earlier, PEDDA had rescheduled the completion/commissioning of the project upto 15.03.2015 vide its letter dated 18.12.2014. The petitioner has further submitted that due to holidays in the first week of April 2015, the protection clearance from PSPCL was accorded on 11.04.2015 having applied for the same on 25.03.2015 and estimated amount deposited on 30.03.2015. The project was cleared by CEI on 31.03.2015. PSPCL granted grid connectivity on 16.04.2015 though the project could not be synchronized due to non-completion of work at its end by PSPCL till 21.04.2015. The project was, however, finally synchronized on the same day. Accordingly,

on account of alleged delays brought out above, the petitioner has sought extension in commissioning of its project upto 25.04.2015 for applicability of tariff of ₹8.59 per kWh approved by the Commission in its Order dated 14.11.2013 in petition no.52 of 2013.

PEDA in its reply dated 08.06.2015 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 29.01.2015 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 private land on lease basis in District Mansa, Punjab. PEDA has further contended that the funding arrangement was the sole responsibility of the petitioner. The circumstances demonstrated by the petitioner, whether these fall under the force majeure clause provided in the PPA and IA, is a subject matter of determination by the Commission.

PSPCL in its reply dated 16.06.2015 submitted that the project was 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 discretion and decision of the project developer to procure private or Panchayat land for setting

up the project. The funding arrangement was the sole responsibility of the petitioner and PSPCL has nothing to do with it.

PSPCL submitted that the estimated amount for shifting of 11 kV lines was intimated to the petitioner on 21.07.2014. However, the amount was deposited on 19.12.2014 i.e. after 5 months. Thus the delay in the shifting of the lines was on the part of the petitioner and not PSPCL. The work of shifting the lines was completed on 10.03.2015 (24.03.2015 as per petitioner). These lines did not cause any hindrance to erection of sub-station and the transmission line as these were far from the sub-station to be erected. The power transformer of the petitioner reached the project site between 06.04.2015 and 10.04.2015. Due to late compliance of demand notice and late completion of 66 kV line and sub-station by the petitioner, the delay was on the part of the petitioner and not on PSPCL.

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. The decision of Hon'ble APTEL relied on by the petitioner does not deal with a bidding process. 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. The project was granted connectivity on 16.04.2015 and synchronized with the grid on 21.04.2015.

The Commission notes that the petitioner was required to take appropriate decisions/actions for procurement of land and other activities 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. 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. The Commission is of the view that except for the stay by Hon'ble High Court of Punjab & Haryana in the matter of leasing of Panchayat land, which was vacated on 30.01.2014, none of the reasons/arguments put forth by the petitioner sustain considering the replies furnished by PSPCL/PEDDA. The purported delay in shifting of the 11 kV lines can not be attributed to PSPCL as the estimated amount for the purpose was deposited on 19.12.2014 after 5 months from the issue of demand notice by PSPCL on 21.07.2014. Further, though the protection clearance was granted by PSPCL on 11.04.2015, having applied for by the petitioner on 25.03.2015, the time taken can not be termed abnormal. PSPCL has contended that the power transformer of the petitioner's project was received between 06.04.2015 to 10.04.2015, though the Commission is of the view that it can not be pleaded as defence by PSPCL. The argument of the petitioner that the project execution was affected for a few days in February/March 2015 due to heavy rains also does not sustain since it is not attributable as force majeure.

However, considering that the stay on procurement of Panchayat land was vacated by Hon'ble High Court of Punjab & Haryana on 30.01.2014 i.e. 32 days after signing of PPA on 30.12.2013, the Commission is agreeable to allow the extension in the applicability of tariff upto maximum 32 days. As the petitioner's project stands commissioned on 21.04.2015 i.e. 21 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 32 days agreed to be allowed as above, **the Commission allows extension in the applicability of approved tariff for the petitioner's project i.e. ₹ 8.59 per kWh till 21.04.2015 in place of 31.03.2015 allowed by the Commission earlier. Other terms & conditions of the PPA signed shall remain unchanged.**

The petition is disposed of in terms of the above.

Sd/-
(Gurinder Jit Singh)
Member

Sd/-
(Romila Dubey)
Chairperson

Chandigarh
Dated: 26.06.2015