

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION**  
**SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH**

Petition No. 31 of 2022

Date of Order: 27.10.2022

Petition under Section 62 of Electricity Act, 2003, Chapter VI of Conduct of Business Regulations read with other relevant provisions of the Electricity Act, 2003 as well as Regulations framed by this Commission from time to time for Determination of Project Specific Levellized Tariff for 200 kW Solar Power Projects set up by the Petitioner at Khatkar Kalan, Nawanshahar, Punjab for sale of Solar Power generated there from to the Respondent PSPCL i.e. the DISCOM in the State of Punjab, under a PPA, for a period of 25 years.

AND

In the matter of: Punjab Genco Limited, having office at Plot No. 1 and 2, Sector 33-D, Chandigarh, through its Director Sh. M.P. Singh.

.....Petitioner.

Versus

Punjab State Power Corporation Limited, through its Chairman cum Managing Director, having office at The Mall, Patiala, Punjab.

...Respondent

Commission: Sh. Viswajeet Khanna, Chairperson  
Sh. Paramjeet Singh, Member

Petitioner: Sh. Aditya Grover, Advocate

Sh. Rajesh Kohli, Consultant-Cum-Manager  
PSPCL: Ms. Poorva Saigal, Advocate  
Sh. Rupinderjit Randhawa, CE/ARR&TR

## **ORDER**

1. The Petitioner has filed the present petition seeking determination of project specific levellised Tariff for its 200KW SPV Power Plant with consequential directions to PSPCL to enter into a PPA for purchase of power generated thereof at the said tariff for a period of 25 years and to pay the energy charges at the rate as determined by the Commission for the power exported by the petitioner in the interim period. It has been submitted that:
  - a) For the sale of power from the said project, a PPA was signed with PSPCL on 31.01.2002, valid for 20 years from the date of execution of this agreement, which could be further extended for another 10 years on mutual agreement.
  - b) Due to the degradation of solar panels and other electrical equipment, the Petitioner decided to undertake R&M of the plant, incurring a total cost of Rs.91.98 lac including AMC for 5 years, and re-commissioned the same in the month of April, 2019. Since then, the plant is in regular operation and power is being fed to PSPCL Grid, continuously till date although the validity of the PPA stood till 31.01.2022. However, despite of the same, from 01.02.2022, the power generated is being fed into the grid without PPA.
  - c) As per clause no. 11 of the PPA, its term could be mutually extended for another period of 10 years. Thus, the Petitioner, vide communication dated 31.01.2022 requested PSPCL for extension of PPA for a further period of 10 years at the tariff of

Rs. 2.748/KWh. However, PSPCL offered the petitioner the tariff of Rs. 2.44/kWh only. The tariff, if calculated on the additional investment of Rs. 91.98 lac with ROE of 16.96%, works to be Rs. 3.521/kWh.

- d) It is pertinent to mention that the Commission has allowed the levellised tariff of Rs. 2.748/kWh under KUSUM Scheme (Component–A) for setting up of Grid Connected Solar Plants of individual capacity ranging between 500KW to 2MW for sale of power so generated to the DISCOM in the State. Also, PSPCL has agreed to purchase power @ Rs. 2.748/KWh from 4x4 MW capacity Solar PV Projects being setup by the petitioner for solarisation of agriculture feeders at different locations in the State.
- e) The Petitioner came to be in receipt of a communication dated 18.04.2022 from PSPCL, whereby the energy bill for the month of March 2022 submitted by the Petitioner for the power exported from the project in question was returned by PSPCL on account of the expiry of the PPA and in absence of no further extension or amendment there to.
- f) Thus, the Petitioner Company decided to file the instant petition. For convenience and consideration of the Commission the Petitioner has also worked out the levellised tariff, for a period of 25 years on the basis of actual cost of R&M as capital cost, which come out to be Rs. 3.521/KWh.
- g) In light of the facts and circumstances mentioned above, the commission may kindly be pleased to:

- i) *Determine project specific levellised tariff for the SPV Power project set up by the Petitioner at Khatkar Kalan, Nawanshar, Punjab, for sale of power generated thereof to the PSPSL i.e. DISCOM in the State of Punjab for a further period of 25 years;*
- ii) *Direct PSPCL to pay the energy charges at the rate/KWh as determined by this Hon'ble Commission for the power exported by the petitioner from its power plant for the interim period i.e. after the expiry of earlier PPA dated 31.01.2002 and till entering into of the new PPA valid for a period of 25 years.*
- iii) *Direct PSPCL to immediately enter into PPA with the Petitioner for sale of power generated thereof to the PSPSL i.e. DISCOM in the State of Punjab.*
- iv) *Pass any other order or grant any other relief in favor of the petitioner in the facts and circumstances of the instant case.*

2. PSPCL vide its reply filed on 04.08.2022 objected to the maintainability of the petition with the contention that the PPA dated 31.01.2002 has expired on 31.01.2022. The PPA provided that it can be extended only through mutual agreement and PSPCL has not agreed to any extension at a re-determined tariff. It is not open to the Petitioner to seek a relief contrary to the terms of the PPA. Further, there can be no mandatory directions compelling PSPCL to enter into a PPA with the Petitioner. It was further submitted that:
  - a) On 31.01.2002, the Petitioner entered into a PPA with Punjab State Electricity Board for sale of solar power for a duration of

20 (twenty) years. On 31.01.2022, the 20 years envisaged under the original PPA expired in terms of Article 11.0.0 of the PPA. On 30.03.2022, 18.04.2022, 31.05.2022, 20.06.2022 and 22.07.2022 PSPCL addressed communications to the Petitioner wherein it returned the energy bill for the month of February, March, 2022 etc. citing expiry of the PPA. It is relevant to mention that the power injected by the Petitioner after the expiry of the PPA is being treated as inadvertent flow and no tariff/energy charges are being paid by PSPCL.

- b) On 06.06.2022, PSPCL has offered to extend the PPA at a tariff of Rs 2.65/kWh (commensurate to the results of the latest tender issued by PSPCL for solar PV projects to be constructed in the State of Punjab) for a period of 10 years, as contemplated under the PPA. The Petitioner is yet to revert on the offer extended by PSPCL.
- c) The Petitioner has filed the present Petition seeking a project specific tariff of Rs 3.521/kwh and has sought to contend that the said tariff is payable even post the expiry of the PPA due to the cost incurred in R&M of the Plant to the tune of Rs. 91.98 Lakhs. Further, the Petitioner has contended that any tariff below Rs. 2.748, as determined by this Hon'ble Commission *vide* Order dated 09.10.2020 in Petition No. 8 of 2020, is unviable. It is submitted that the Commission has approved the tariff of Rs. 2.748/KWh considering the parameters such as return on equity, recovery of cost etc., which is not applicable to the present matter as the Petitioner has already recovered the capital cost of setting up the Solar Power Project (including the Return on Equity) for a period of 20 years.

d) Further, it was the sole obligation/responsibility of the Petitioner to maintain the Solar Power Station for the duration of the PPA including incurring any expenses on account of renovation and/or modernization. The only obligation of PSPCL was to pay the tariff as contemplated under the PPA. Any expense incurred as a part of R&M for continued operations during the period of the PPA is a part of contractual obligation of the Petitioner for which it can neither raise claim (dehors the tariff payable until 31.01.2022) nor can it become a relevant consideration in re-determination of tariff. It is relevant to mention that at no instance, was PSPCL consulted nor was there any consent sought from PSPCL in this respect. The said works were undertaken by the Petitioner at its own prerogative and it cannot seek to pass on the liability to PSPCL.

e) The relief claimed by the Petitioner is contrary to the settled law as well as the terms of the PPA. The PPA dated 31.01.2002 can be extended only through mutual agreement between the parties and such extension cannot be sought as a matter of right. Article 11.0.0 of the PPA states as under:

*"11.0.0 DURATION*

*Except where terminated by default, this agreement shall be for twenty (20) years from the date of execution of this agreement, which could be extended by another ten (10) years through mutual agreement"*

f) PSPCL has made an offer of Rs. 2.65/kWh to the Petitioner on 06.06.2022, which is yet to be accepted by the Petitioner. The same is in consonance with the settled law which provides that for a contract to bind legally there must be offer, acceptance, consideration and intention to create legal obligation.

g) However, as on date, the parties have failed to reach a consensus and there is no mutual agreement. The Petitioner cannot seek a positive direction from the Commission to compel PSPCL to enter into a binding agreement; contrary to the terms of the PPA dated 31.01.2002. It is a settled law that a party cannot be forced to enter into a power purchase agreement under the provisions of the Electricity Act, 2003. Further, the same is also contrary to the settled principles of contract law inasmuch it threatens the autonomy of a distribution licensee to voluntarily enter into an agreement based on the joint intention of the parties.

h) There is no binding agreement between the Petitioner and PSPCL for sale or purchase of power or payment of energy charges. Thus, no charges are payable for the period when no agreement is in force.

3. The Petitioner filed rejoinder on 13.09.2022. While reiterating the submissions made earlier in the Petition, it was further pleaded that:

a) PSPCL never objected to extending the PPA; however it kept on offering unreasonable tariff for purchase of power without any cogent reasoning. The only objection/area of dispute is the tariff for the sale/ purchase of power amongst the parties, for which the Commission is the only authority under the Act to adjudicate upon. Even otherwise once after the expiry of the original term of the PPA the respondent accepted the power from the project of the petitioner without any objection, the same amount to a deemed extension in the period of the PPA and the respondent PSPCL is liable to pay the applicable tariff under the PPA of Rs. 3.49/ KWh.

b) It is an un-disputed fact that there is provision for an extension for the period of 10 years in the PPA with mutual consent. It is further undisputed that neither the petitioner nor the respondent has an issue with regard to inter-se sale/ purchase of power. The only area of concern due to which the mutual resolution is not being able to arrive at is the tariff at which the power is to be sold.

c) As per provisions of Electricity Act, 2003, the Commission is empowered to determine tariff for the sale of power by a generating company to distribution licensee. The commission is also empowered to adjudicate upon a dispute between the generating company and the distribution licensee. Thus, the Petitioner has preferred the present petition and is invoking the Jurisdiction of the Commission.

4. The petition was taken up for hearing on 12.10.2022 on admission/ maintainability. In the arguments, both parties reiterated their written submissions made earlier in the matter. However, the Ld. Counsel of the Petitioner also made a plea that in case its Petition is not maintainable for determination of tariff, the same can be dealt considering it as a dispute between the parties. The said plea was opposed by the Ld. Counsel of the respondent with the contention that same is not permissible in the absence of any contract/ agreement in force or a mutual consent of the parties. After hearing the parties the Commission reserved the Order.

#### **5. Findings and Decision of the Commission:**

The Commission has carefully gone through the petition, reply of the respondent and submissions/arguments made by the parties. The



PPA dated 31.01.2002 was signed between the parties, for sale of power from the Petitioner's 0.2 MW solar power plant. Both the parties are in agreement that the said PPA was valid till 31.01.2022 and has the provision that the same can be extended by another ten (10) years through mutual agreement. In reference to the tariff of Rs. 2.748/KWh sought by the Petitioner, PSPCL after initially offering a tariff of Rs. 2.44/kWh revised the same to Rs. 2.65/kWh (commensurate to the results of its latest tender issued for solar PV projects to be constructed in the State). However, the parties are yet to reach a consensus regarding the same. In the meanwhile, the Petitioner has filed this Petition seeking determination of project specific levelled Tariff for the said solar Plant with consequential directions to PSPCL to enter into a PPA at said tariff for a period of 25 years and for payment the energy charges at the rate as determined by the Commission for the power exported by the petitioner during the interim period. Whereas, PSPCL is objecting to the same with the contention that it is a settled law that a party cannot be forced to enter into a power purchase agreement and no charges are payable for the period when no agreement is in force. The findings and decision of the Commission on the same are as under:

- a) The Commission notes that the Petition has been preferred under Section 62 of Electricity Act, 2003, Chapter VI of Conduct of Business Regulations read with other relevant provisions of the Electricity Act, 2003 as well as Regulations framed by this Commission from time to time. The Commission refers to Section 62 of Electricity Act, 2003, which specify as under:

*“62. (1) The Appropriate Commission shall determine the tariff in accordance with provisions of this Act for –*

*(a) supply of electricity by a generating company to a distribution licensee.”*

Further, in order to determine the tariff for supply of electricity from RE Sources, the Commission vide Order dated 18.09.2020 in Suo-Motu Petition No. 26 of 2020, after following the due process and careful deliberations/consideration of objections/ suggestions of the stakeholders, adopted the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 with one State specific amendment i.e. CUF of 40% for SHPs. The Regulation 8(2) of these Regulations states as under:

*“8 (2) A petition for determination of project specific tariff shall be accompanied by such fee ....., and shall be accompanied by:*

*e) Consent from beneficiary for procurement of power from renewable energy project at tariff approved by the Commission, in the form of initialled Power Purchase Agreement or Memorandum of Understanding;”*

As is evident, any petition for determination of project specific tariff, along with the other documents, is required to be accompanied by a specific consent of beneficiary for procurement of power from the said project at tariff approved by the Commission, either in the form of initialled PPA or MoU. However, in the instant case such consent by the beneficiary is not available. Rather, PSPCL the

purported beneficiary has stated on record that it cannot be forced to enter into a power purchase agreement.

**Thus, the Commission is of the view that, in the absence of the consent by beneficiary for procurement of power from the impugned project as mandated under the Regulations; the Petitioner's prayer for determination of project specific levellised tariff for sale of power from its said Power project to PSPSL for a further period of 25 years is not admissible.**

**Accordingly, the Petitioner's prayer, for consequent directions to PSPCL, to enter into PPA with the Petitioner for sale of power generated thereof and to pay the energy charges at the rate as determined by the Commission for the power exported from its power plant for the interim period i.e. after the expiry of the PPA dated 31.01.2002 and till entering into of the new PPA, is also not maintainable.**

b) The Petitioner has also made a plea that in case its Petition is not maintainable for determination of tariff; the same can be dealt considering it as a dispute between the parties. It was pleaded that, the only objection/area of dispute is the tariff for the sale/purchase of power amongst the parties, for which the Commission is the only authority under the Act to adjudicate upon. Even otherwise once after the expiry of the original term of the PPA the respondent accepted the power from the project of the petitioner without any objection, the same amount to a deemed extension in the period of the PPA.

The said plea was opposed by the Ld. Counsel of the respondent with the contention that same is not permissible in the absence of

any contract/ agreement in force or a mutual consent of the parties. It was submitted that PSPCL has made an offer of Rs. 2.65/kWh ((commensurate to the results of the latest tender issued by PSPCL for solar PV projects to be constructed in the State) to the Petitioner in consonance with the settled law which provides that for a contract to bind legally there must be offer, acceptance, consideration and intention to create legal obligation. However, the same is yet to be accepted by the Petitioner. As such, the parties have yet to reach a mutual agreement. The Petitioner cannot seek a positive direction from the Commission to compel PSPCL to enter into a binding agreement. PSPCL also denied the Petitioner's plea that it is accepting its power without any objection, with the submission that after the expiry of the PPA on 31.01.2022, it had returned the Petitioner energy bills for the month of February 2022 and onwards citing expiry of its PPA vide communications dated 30.03.2022, 18.04.2022, 31.05.2022, 20.06.2022 and 22.07.2022.

**The Commission observes that both the parties are in agreement that the PPA between them, which was valid till 31.01.2022, contained a provision that it can be extended by another ten (10) years through mutual agreement. While the Respondent has made an offer to accept power @ Rs.2.65/kWh, the Petitioner has chosen not to respond to it or negotiate a mutually agreeable contract but has instead chosen to raise a dispute under Section 62 of the Electricity Act 2003 which is only for determination of tariff and not for adjudication of disputes between the Generators and distribution Licencees and is, thus, not applicable to the**

**present case. The petitioner does not have the right to seek an extension of the PPA unilaterally at a price demanded by it. Thus, the said plea of the Petitioner is not maintainable.**

Hence the petition is held to be not admissible/ maintainable and is dismissed in limine.

Sd/-  
(Paramjeet Singh)  
Member

Sd/-  
(Viswajeet Khanna)  
Chairperson

Chandigarh

Dated: 27.10.2022

