

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

On Remand by the Hon'ble APTEL
Vide Order dated 17.07.2023
in Appeal Nos. 143 of 2016 and 144 of 2016

Petition No. 17 of 2015
Date of Order: 15.01.2025

Petition for seeking project specific Extension of Period of Commissioning in the PPA for applicability of the tariff of Rs. 8.41/unit.

AND

In the matter of: Atma Powers Private Limited, # 44, New Grain Market, Muktsar-152026, Punjab.

.....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

Alongwith Petition No. 29 of 2015

Petition for seeking project specific Extension of Period of Commissioning in the PPA for applicability of tariff of Rs.8.59/unit.

AND

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

.....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

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

ORDER

1. The Petition Nos. 17 of 2015 and 29 of 2015 have been revived, to examine whether or not the PSPCL is justified in seeking reduction in the tariffs on the ground that the Petitioners had not achieved COD by 15.03.2015, in compliance of Hon'ble APTEL's common Order dated 17.07.2023 passed in Appeals filed by PSPCL against the Commission's Orders dated 12.06.2015 in Petition No. 17 of 2015 and 26.06.2015 in Petition No. 29 of 2015 reproduced below:

"...we are satisfied that the Commission could not have extended the COD beyond 15.03.2015. Extension of COD granted by the Respondent Commission till 15.04.2015 or till 21.04.2015, as the case may be, is illegal and invalid. The order under appeal must therefore be and is accordingly, set aside.

The next submission, urged by Sri Buddy A. Ranganathan, Learned Counsel for the 1st Respondent, is that, even if the Commission was not justified in extending the COD beyond 15.03.2015, it ought to have examined whether or not the lower tariff, which the Appellant seeks to impose on them, accords with the stipulated conditions based on which bids were invited, and the Power Purchase Agreements were entered into; and, while the bid conditions and the PPA enable imposition of Liquidated Damages for delay in commissioning the project, there is no provision therein for reduction of tariff lower than what was adopted by the Commission earlier, or had been agreed to in the PPA.

Mr. Anand K Ganesan, Learned Counsel for the Appellant, would contend to the contrary, and submit that the Appellant is justified in seeking reduction in tariff below that prescribed in the PPA, for the failure of the 1st Respondent to achieve COD on or before 15.03.2015; and neither the bid conditions nor the PPA prohibit such reduction.

As this issue has not even been considered by the Commission, in the orders impugned in these appeals, we see no reason to undertake an examination in this regard for the first time in these appellate proceedings.

On the limited question, as to whether or not the Appellant was justified in seeking reduction in the tariff from Rs. 8.41 per kWh as stipulated in the PPA, to a tariff of around Rs. 7.29 per kWh, on the ground that the 1st Respondent (the Petitioner before the Commission) had not achieved COD by 15.03.2015, the matter is remanded to the Commission for its consideration. The Commission shall consider this issue, in the light of the aforesaid observations that extension of the COD beyond 15.03.2015 is illegal and invalid, hear both the parties and pass order afresh in accordance with law.”

2. Accordingly, a notice was issued to the parties to file their respective submissions with a copy to each other. In Petition No. 17 of 2015, PSPCL, PEDDA and M/s Atma Powers Private Ltd. filed their written submissions on 20.03.2024, 15.06.2024 and 22.07.2024 respectively. In Petition No. 29 of 2015, PSPCL, PEDDA and M/s Mokia Green Energy Pvt. Ltd. filed their written submissions on 20.03.2024, 15.06.2024 and 15.07.2024 respectively. Submissions made by the parties on the issue under consideration are summarized in the following paragraphs.

3. Submissions of PSPCL

- 3.1 A competitive bidding process for procurement of electricity from solar generating projects was undertaken and completed by PEDDA in the year 2013. Pursuant to completion of the same and identification of the successful bidders, the Commission adopted the said tariffs and approved the power procurement there from vide Order dated 14.11.2013 by holding that these tariffs would be applicable only upto 31.03.2015, with the condition that the power

purchase agreements 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. The said Order was not challenged by any party and has become final and binding on all concerned. The Orders passed by the Commission from time to time for such projects specifically mandate the applicability of tariff as well commissioning during the corresponding control period.

3.2 Accordingly, PSPCL entered into PPAs dated 31.12.2013 and 30.12.2013 with the Petitioners M/s Atma and M/s Mokia at the tariff of Rs. 8.41/Kwh and Rs. 8.59/Kwh respectively. In term of the PPAs, the projects were to be commissioned by the Petitioners within a period of thirteen (13) months, i.e. by 30.01.2015 and 29.01.2015 respectively. Subsequently, considering the period of delay on account of interim stay by the Hon'ble High Court, PEDDA granted an extension in the date of commissioning up to 15.03.2015. However, the Petitioners could not complete the projects even by 15.03.2015 and therefore filed the present petitions seeking to extend the date of commissioning of the Petitioner's projects beyond 31.03.2015 for applicability of tariff given in the Commission's Orders.

3.3 That the issue whether a concluded PPA can be reopened or not is no longer *res integra*. The Hon'ble Supreme Court, in its various judgments has held that the PPA binds both the parties and it cannot be varied at the behest of one of the party. Hence, the PPAs entered into between the Petitioners and PSPCL cannot be reopened to extend the applicability of the tariff provided for in the PPAs. PSPCL also referred to the judgments passed by the

Hon'ble Supreme Court, in case of Gujarat Urja Vikas Nigam Limited v. Solar Semiconductor Power Company (India) Limited, ((2017) 16 SCC 498), to contend that even the Commission cannot extend the tariff control period to the detriment of the consumers.

3.4 That the impugned PPAs capture the tariffs approved by the Commission which was applicable to the Petitioner in case the SCOD was achieved on or before 31.03.2015. Since, the projects of the Petitioners achieved SCOD on 14.04.2015 and 21.04.2015 respectively, which were beyond the applicable control period ending 31.03.2015, they are therefore not entitled to the tariff applicable for the control period ending 31.03.2015.

3.5 That in a similar case of Earth Solar Private Limited the Commission has already held, *vide its* Order dated 22.06.2015 passed in Petition No. 20 of 2015, that the projects which are commissioned in the next financial year would be entitled to the lowest tariff in the bidding process approved for that financial year. The said decision of the Commission has also been upheld by the Hon'ble Tribunal *vide its* judgment dated 11.01.2019 passed in Appeal No. 169 of 2015 – Earth Solar Private Limited v. PSERC & Ors. Therefore, the Petitioners can also be granted the tariff of Rs. 7.29/Kwh i.e., the lowest bided tariff allowed to similar projects commissioned in FY 2015-16 and the differential tariff between the tariff paid by PSPCL and the applicable tariff is required to be refunded by the Petitioner to PSPCL together with interest as per Article 3.5.0 of the PPA.

4. Submissions of PEDDA

4.1 The Petitioners were awarded 2 MW and 4 MW Solar Power Projects subject to the condition that PPAs are signed on or before 31.03.2014 and the entire capacity is commissioned on or before 31.03.2015. Further, the tariff stated in the PPAs was Rs. 8.41/kWh and 8.59/kWh respectively in conjunction with the Commission's Order dated 14.11.2013 which was for the projects commissioned on or before 31.03.2015.

4.2 However, these projects were commissioned on 14.04.2015 and 21.04.2015 i.e., beyond the said tariff control period in terms of the Commission's Order dated 14.11.2013. Hon'ble APTEL vide Order dated 17.07.2023 has conclusively held that no extension could be granted to the generators beyond 15.03.2015. Accordingly, it is the stated case of PSPCL that the tariff for the Petitioners' projects should be reduced to Rs. 7.29/kWh i.e., the lowest tariff discovered for similar projects to be commissioned in the subsequent year.

4.3 PEDDA refers to the directions rendered by this Commission with respect to the applicable tariff applicable in its Order dated 14.11.2013, as follows:

"Further the tariffs approved above would be applicable upto 31.03.2015 provided that (i) The PPA's are signed on or before 31.03.2014 and the entire capacity covered in each PPA is commissioned on or before 31.03.2015, in line with regulation 8 of the said regulations"

In view of the above, since these projects were commissioned on 14.04.2015 and 21.04.2015 i.e., beyond the expiry of the control

period (ending on 31.03.2015), they are entitled to the lowest tariff discovered in the bidding process for the projects that have been commissioned/established from 01.04.2015 to 31.03.2016. Hence, PSPCL is justified in seeking the tariff of Rs 7.29/kWh to the Petitioners.

5. Submissions of the Petitioners

5.1 M/s Atma Powers Private Ltd.:

- a) That the 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 for execution of the Project. And, on 31.12.2013, the Petitioner and PSPCL executed the PPA, wherein, the tariff was fixed at Rs. 8.41/unit for a term of 25 years.
- b) As per recital (d) of the PPA, the IA is also treated as an integral part of the PPA. That, on a combined reading of Article 10 of the PPA and Article 7 of the IA, it emerges that while the general rule is that the Project timelines are required to be mandatorily performed and non-performance of a material obligation i.e. completion of the Project as per the prescribed timelines (SCOD) attracts encashment of the PBG and/or imposition of Liquidated Damages. That while the PPA and the IA provide for encashment of PBG and/or imposition of Liquidated Damages for delay in commissioning the project, they do not provide for a

reduction/revision of the tariff even if there be a delay in commissioning the project.

- c) Therefore, the tariff as stated in the PPA cannot be reduced without reference to the terms of the PPA and the IA. The Petitioner commissioned its Project On 14.04.2015 i.e., after a delay of 30 days from 15.03.2015, due to various issues as elaborated in the main petition. Accordingly, the Petitioner filed Petition No. 17 of 2015 seeking an extension of time in achieving commissioning of the Project and applicability of tariff of Rs. 8.41/unit till the extended SCOD.
- d) As regards the submissions of PSPCL that lower tariff of Rs. 7.29/unit is to applied to the Petitioner, it is submitted that:
- (i) The Order dated 11.05.2015 (and tariff so determined) on its own cannot apply to the Petitioner since the tariff determined under the said Order is only applicable to projects/generators specified in the said Order. Evidently, the Petitioner did not participate in that bidding process and for the same reasons, the tariff so discovered in the Order dated 11.05.2015 will not apply to the Petitioner.
 - (ii) Reliance placed by PSPCL on the case of *M/s Earth Solar* is also misplaced as the facts of said case are at complete variance from the factual background of the present case. In *Earth Solar* case, the force majeure relief was denied and a lower tariff was made applicable to the generator. Whereas, in the present case, neither the Implementation Agreement

nor the PPA provide for reduction in tariff in case of delay in the commissioning of the Project.

- e) Further, PSPCL's reliance on Gujarat Urja Vikas Nigam Ltd. v. Solar Semiconductor Power Co. (India) (P) Ltd., (2017) 16 SCC 498 is also misplaced as:
- (i) Article 5.2 of the PPA in Solar Semiconductor provided that "*GUVNL shall pay the tariff as determined by the GERC for solar projects effective on the date of commissioning of solar power project or above mentioned tariff, **whichever is lower***". Whereas, in the present case there is no mention of any lower tariff or reduction in tariff on account of delay in commissioning.
 - (ii) In the aforesaid matter, the Supreme Court held that the Commission cannot extend the control period since the power to extend the control period of tariff is limited in the Regulations and there is no clause in the PPA providing for extension of the control period. In the present case also, neither the Regulations nor the PPA provide for reduction in tariff.
 - (iii) Also, the present case of the Petitioner is distinguishable from the Solar Semiconductor Judgment in as much as the Petitioner in the present case has a competitively bid Project and has prayed for relief with respect to the applicability of the tariff as stipulated under the IA read with the PPA, without there being any provision for lower or reduced tariff in either the IA or the PPA.

5.2 M/s Mokia Green Energy Private Ltd.:

While reiterating the submissions as made by M/s Atma Power, it was further submitted that:

- a) The petitioner was allocated a 4 MW Solar PV project by the Govt. of Punjab through its agency PEDDA. It is submitted that Implementation agreement (IA) with PEDDA was signed on 20.09.2013 and the Power Purchase Agreement (PPA) between the Petitioner and PSPCL was executed on 30.12.2013. The Petitioner had filed the present petition seeking applicability of tariff of Rs. 8.59/unit for its 4 MW Solar PV Project which was commissioned on 21.04.2015.
- b) The law is well settled that the PPA is sacrosanct, meaning thereby that the terms and conditions of the PPA once consented to and agreed between the parties and reduced in writing become binding on both the parties and cannot be intervened/ altered/ added/ modified etc. by any other entity including this Commission. The admitted stand of the Respondent PSPCL is also the same. The Petitioner requests this Commission to strictly implement the terms and conditions of the PPA and not to intervene/alter/add/modify etc. terms of PPA either explicitly or by implication as per the well settled law.
- c) The tariff for the Petitioner's project is specified in clause 2.1.1.(i) of the PPA, which reads as under:

“ Rs 8.59 per unit for Solar Photo Voltaic Power Project of 4.0 MW capacity as per competitive bidding done by the PEDDA. This tariff shall be

applicable for tariff period of 25 years from the Scheduled Date of Commercial Operation”

A perusal of the above show that the tariff is fixed and is not made dependent on the Scheduled Date of Commercial Operation (SCOD). Moreover, the SCOD is flexible within the parameters of clause 10.1.0 of PPA, where under the Petitioner is entitled to an extension of 2 months with the forfeiture of Bank Guarantee (BG) and a further period of 3 months with payment of liquidated damages. There is no mention of any lower tariff being made applicable in any eventuality.

- d) The Petition No. 52 of 2013 filed by PSPCL is a generic petition wherein the Order dated 14.11.2013 was passed by this Commission granting approval along with the conditions under which the tariff shall remain applicable. However, the Petitioner is not a party in the same and the order passed therein is not automatically applicable to the Petitioner unless it agrees to enter into PPA with PSPCL giving willful consent to such conditions which must then specifically and explicitly form part of the PPA. In the present case, though the parties have agreed to a tariff of Rs.8.59 per unit but the order dated 14.11.2013 and the conditions specified thereunder have not been made part of the PPA.
- e) The decision of the Hon'ble Apex Court in the case of “Gujarat Urja Vikas Nigam Limited vs Solar Semiconductor Power Company (India) Limited” - Civil Appeal no. 6399 of 2016 was

based on an earlier decision of the Hon'ble Apex Court in "Gujarat Urja Vikas Nigam Limited vs Emco Ltd. – Civil Appeal 1220 of 2015. It is submitted that in that case Power developer had completed his project beyond the control date of the 1st tariff order and had himself approached the Commission for grant of the tariff applicable in the subsequent control period which was more beneficial to him and in that case the GUVNL was resisting the grant of tariff of the subsequent control period contending that only the lowest of the tariffs could be granted as per the terms of the PPA. Therefore the above said judgment has completely distinct facts and is not applicable to the facts of the present case. In fact, the Hon'ble Apex Court has also held that rights and obligations of the parties flow from the PPA, as under:-

“17. In the case at hand, rights and obligations of the parties flow from the terms and conditions of the Power Purchase Agreement (PPA). PPA is a contract entered between the GUVNL and the first respondent with clear understanding of the terms of the contract. A contract, being a creation of both the parties, is to be interpreted by having due regard to the actual terms settled between the parties. As per the terms and conditions of the PPA, to have the benefit of the tariff rate at Rs.15/- per unit for twelve years, the first respondent should commission the Solar PV Power project before 31.12.2011. It is a complex fiscal decision consciously taken by the parties. In the contract involving rights of GUVNL and ultimately the rights of the consumers to whom the electricity is supplied, Commission cannot invoke its inherent jurisdiction

to substantially alter the terms of the contract between the parties so as to prejudice the interest of GUVNL and ultimately the consumers.

18. As pointed out earlier, the Appellate Tribunal has taken the view that the control period of the Tariff Order was fixed by the State Commission itself and hence the State Commission has inherent power to extend the control period of the Tariff Order. It may be that the tariff rate as per Tariff Order (2010) as determined by the Committee has been incorporated in clause 5.2 of the PPA. But that does not in any manner confer power upon the State Commission to exercise its inherent jurisdiction to extend the control period to the advantage of the project proponent-first respondent and to the disadvantage of GUVNL who are governed by the terms and conditions of the contract. It is not within the powers of the Commission to exercise its inherent jurisdiction to extend the control period to the advantage of any party and to the disadvantage of the other would amount to varying the terms of the contract between the parties.

Xx xx xx xx xX

21. As pointed out earlier, the State Commission has determined tariff for solar power producers vide order dated 29.01.2010 and tariff for next control period vide order dated 27.01.2012. The order dated 29.01.2010 is applicable for projects commissioned from 29.01.2010 to 28.01.2012 and the order dated 27.01.2012 is applicable for projects commissioned from 29.01.2012 to 31.03.2015. As pointed out earlier, the tariff is determined by the State Commission under Section 62. The choice of entering into contract/PPA based on such tariff is with the Power Producer and the Distribution Licensee. As rightly contended by the learned Senior Counsel for the appellant, the State Commission in

exercise of its power under Section 62 of the Act, may conceivably re-determine the tariff, it cannot force either the generating company or the licensee to enter into a contract based on such tariff nor can it vary the terms of the contract invoking inherent jurisdiction.”

Herein, the Hon'ble Apex Court has finally decided the dispute by relying upon a clause which was there in the PPA and had clearly spelt out the course to be adopted if the date of commissioning is delayed.

- f) This reinforces the submission of the Petitioner as well as the PSPCL that PPA is sacrosanct and the Commission cannot go beyond the terms of the PPA for determining the tariff and its applicability. If that be the case then in the present PPA there is no provision for lowering or change of tariff with the change in the scheduled date of commissioning.
- g) It is therefore prayed that the request for reduction of tariff made by the PSPCL is liable to be rejected in view of the explicit terms of the PPA which preclude any such possibility being beyond the terms of the PPA, and the prayer of the Petitioner may be accepted.

6. As the issues involved in both the petitions are common, these were clubbed for hearing. In the hearing/arguments held on 11.12.2024, while the Ld. Counsel of the Petitioners reiterated that it is nowhere mentioned in the PPAs/IAs that the tariff would be changed or lowered in case there is a delay in the scheduled date of commissioning, the Ld. Counsel of PSPCL submitted that the IAs, which are integral part of the PPAs, do provide that in case the delay affects the COD of the project and it gets extended to the next financial year, the tariff would be as determined by

this Commission. PSPCL also referred to the prayers made in the main petitions to contend that the Petitioners were indeed aware that the applicability of the tariffs stated in the PPAs was only till 31.03.2015. After hearing the parties, the Order was reserved with the direction that a written note of the respective arguments may be filed by the parties within two weeks. While PSPCL filed its written note of arguments on 23.12.2024, the Petitioners do not opt for filing their written arguments.

7. Commission's Analysis and Decision:

The Commission notes that Hon'ble APTEL has remanded the issue to the Commission to examine whether or not PSPCL is justified in seeking a reduction/change in the tariffs, from the one stated in the PPA to a lower tariff of around Rs. 7.29 per kWh, on the ground that the Petitioners had not achieved COD by 15.03.2015 in the light of its findings that extension of the COD beyond 15.03.2015 is illegal and invalid. Accordingly, the Commission has examined the submissions and arguments made by the parties afresh. The Commission examines the same as under:

7.1 Provisions of the PPAs/IAs

The Commission observes that both the parties are on same page as far as the issue of sanctity of the PPAs is concerned. However, while the Petitioners' plea is that the PPAs/IAs do not provide for a change in the tariff in case of any delay in the commissioning of the projects, PSPCL's contention is that the IAs signed by the Petitioners do specify that in case the delay extends to the next financial year the tariff would be as determined by this Commission.

- a) The Commission refers to the PPAs signed between the Petitioners and PSPCL where the 'Recital' and relevant Article, of the PPA reads as under:

“WHEREAS

.....

- b) *The Company has signed Implementation Agreement with PEDDA ... for setting up the allocated project.*
- c) *This Power Purchase Agreement is being signed ..., pursuant to the signing of the Implementation Agreement by the Company with PEDDA.*
- d) *Implementation Agreement signed ... with PEDDA shall be treated as an integral part of the Power Purchase Agreement. All the clauses and Regulatory Norms applicable to the Implementation Agreement shall be unequivocally applicable to the Power Purchase Agreement in letter and spirit.*

.....

1.0.0 DEFINITIONS

.....

“Control Period or Review Period” means the period during which the norms for determination of tariff specified in the CERC/PSERC regulations shall remain valid.

.....

“Scheduled date of Synchronization” means the date on which the project shall be synchronized with the Grid for the first time, which shall be as per clause 10.1.0 of this agreement as per the implementation agreement signed with the PEDDA or any extension allowed by PEDDA as the case may be.

“Tariff Period” means the period for which tariff as determined for the project by the PSERC on the basis of norms specified under RE Regulations

by CERC as amended from time to time and as adopted by PSERC will remain applicable which is 25 years for solar power projects.

.....

10.0.0. COMMISSIONING OF GENERATING FACILITY

10.1.0. *The Generating Company shall commission the generating facility (which shall be scheduled date of commercial operation) and synchronize with PSPCL's grid within 13 months from the effective date i.e. date of the signing of this PPA which is 31st/30th December 2013. Therefore the Scheduled Date of Commissioning is 30th/29th January 2015.*

In case of delay after the Scheduled date of commissioning within grace period of further 2 months i.e. 15 months from the date of signing of PPA with forfeiture of performance B.G by PEDDA, the commissioning date of the project shall be 30th/29th March 2015.

In case of further delay in commissioning beyond 15 months but within 18 months from the date of signing of the PPA, with applicable liquidated damages payable to the PSPCL as per clause 10.1.1, the revised commissioning date of the project shall be 30th/29th June 2015.

10.1.1. *In case there is delay in commissioning the project beyond 15 months from the effective date then the project developer shall pay to PSPCL liquidated damages @ Rs.20,000/- (Rupees Twenty Thousand only) per MW Per day for delay in such capacity which is not commissioned. The amount of liquidated damages worked out as above shall be recovered by the PSPCL from the payments due to the project developer on account of sale of solar power to PSPCL. The liquidated damages will be applicable without prejudice to any other penalty imposed for delay in commissioning. In case the commissioning of the project is delayed beyond 18 months from the date of signing of the*

PPA, the PPA capacity shall stand reduced/amended to the project capacity commissioned and the PPA for the balance capacity will stand terminated and shall be reduced from the selected project capacity. The LOA and IA shall also stand terminated for the balance un-commissioned capacity.

10.1.2. This PPA shall remain valid for the project capacity commissioned within 18 months from the effective date and the capacity for the purpose of this PPA will stand revised accordingly.”

As evident from the Recitals (b) to (d) of the PPAs, and also submitted by the Petitioner in its submissions, the Implementation Agreement (IA) signed by the Petitioners with PEDDA is to be treated as an integral part of the PPAs. Accordingly, the Commission further refers to the relevant provisions of the IAs executed by the Petitioners, which read as under:

“10.5 (ix) 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 than the tariff payable shall as determined by PSERC.”

From the above, it is evident that the contractual provisions, as agreed to by the parties in the PPAs read with IAs, while allowing for extension up to 5 months in the period of commissioning of the projects, do not allow the continuation of tariff beyond the relevant financial year and mandate redetermination/review of tariff by the Commission in case the

delay affects the COD of the project and it gets extended to the next financial year i.e., beyond 31st March 2015, as in the present cases, even if the delay is on account of force majeure event(s).

Thus, the pleas of the Petitioners that the tariff is fixed and is not made dependent on the commissioning date of the projects and that there is no provision in the PPAs/IAs for revision of the tariff even if there be a delay in commissioning the project is not sustained.

7.2 Applicability of the tariff(s) for the Petitioners' Projects

The Respondents' PSPCL and PEDAs contention is that since these projects were commissioned on 14.04.2015 and 21.04.2015 i.e., beyond the expiry of the control period ending on 31.03.2015, they are entitled to the lowest tariff of Rs 7.29/kWh as discovered in the bidding process for similar projects commissioned during the corresponding period of 01.04.2015 to 31.03.2016 i.e., FY 2015-16.

a) The Commission refers to its Order dated 14.11.2013 in Petition No. 52 of 2013 wherein the power procurement from the Petitioners' projects was approved, as under:

"10. The Commission notes that PEDAs initiated the competitive bidding process in a transparent manner and invited bids from solar PV power project developers for supply of electricity on the basis of discount offered by the bidders on the generic tariff determined by the Commission for Solar PV power projects in the said Order i.e. Rs. 8.75 per kWh.

11., ***the Commission approves the procurement of electricity by PSPCL from the solar energy generators at the tariff discovered in the competitive bidding process conducted by PEDDA as per details in the attached Annexure-1. The cost of power purchase from the projects enlisted in Annexure-1 would be considered as pass through in the ARR of PSPCL. The tariff period for the said projects would be twenty five (25) years as per Regulation 6(c) of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations 2012 adopted by the Commission in its Order dated 19.07.2012 in Petition No. 35 of 2012 (Suo-Motu) with State specific modifications. Further, the tariffs approved above would be applicable upto 31.03.2015 provided that (i) 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, in line with Regulation 8 of the said Regulations.***

[Emphasis Supplied]

As is evident, the Petitioners' projects were selected by PEDDA through a bidding process on the basis of discount to be offered by the bidders on the generic tariff determined by the Commission for Solar PV projects i.e., Rs. 8.75/kWh in the RE Generic RE Tariff Order for FY 2013-14. The said generic tariff was applicable for the Solar PV projects to be commissioned on or before 31.03.2015, in terms of the CERC RE Tariff Regulations 2012 (as adopted by the Commission) mandating as under:

“8(2) Notwithstanding anything contained in these regulations,

a) the generic tariff determined for Solar PV projects based on the capital cost and other norms applicable for any year of the control period shall also apply for such projects during the next year;

.....

Provided that (i) the Power Purchase Agreements in respect of the Solar PV projects ... are signed on or before last day of the year for which generic tariff is determined and (ii) the entire capacity covered by the Power Purchase Agreements is commissioned on or before 31st March of the next year in respect of Solar PV projects ...”

Accordingly, the Commission's approval to the procurement of electricity from the Petitioners' solar PV projects on the net tariffs based on discount offered by them on the generic tariff of Rs. 8.75/kWh (determined by the Commission for Solar PV power projects in the Generic RE Tariff Order for FY 2013-14), was also subject to the condition that the tariffs approved would be applicable provided that the entire capacity covered in each PPA is commissioned on or before 31.03.2015.

Since, the Petitioners' Projects couldn't be commissioned in the control period ending 31.03.2015, they no more remain entitled to the tariff approved for the said control period in light of the Commission's Order reproduced above.

b) The Commission also notes that the Petitioners' plea that the Commission's Order in Petition No. 52 of 2013 cannot be made applicable to them as they were not a party in the same nor have they consented to the provisions of the same while signing

the PPAs with PSPCL is misconceived. This is evidenced from their own prayers made in the main petitions seeking to extend the date of commissioning of the Petitioners' projects beyond 31.03.2015 for applicability of the tariff given in the Commission's Orders in Petition No. 52 of 2013, as reproduced below:

(i) Petition No. 17 of 2015

"To extend the date of commissioning of the Petitioner's project from 31.03.2015 to 15.07.2015 for applicability of tariff given in Hon'ble Commission's Orders dated 14.11.2013 and 03.12.2013 in Petition No. 52 of 2013 i.e., to allow the tariff of Rs. 8.41/unit till 15.07.2015 and accordingly amend/alter/modify the relevant clause of the PPA."

(ii) Petition No. 29 of 2015

"To extend the date of commissioning of the Petitioner's Solar project from 31.03.2015 to 25.04.2015 for applicability of tariff given in Hon'ble Commissioner Orders dated 14-11-2013 and 03-12-2013 in Petition No. 52 of 2013 i.e. allow the tariff of Rs. 8.59/unit till 25.04.2015 and accordingly amend/alter/modify the relevant clause of the PPA."

[Emphasis Supplied]

- c) Further, it is PSPCL's case that if the project gets commissioned in the subsequent financial year, this Commission has already decided the principle in the case of M/s Earth Solar Private Limited vide order dated 22.06.2015 in Petition No. 20 of 2015. The Commission has decided that the lowest tariff discovered in the bidding process for the subsequent year would be made applicable. Therefore, these Petitioners can also be granted the

tariff of Rs. 7.29/Kwh i.e., the lowest bided tariff allowed to similar projects commissioned in FY 2015-16.

Whereas, the Petitioners' plea is that that the reliance placed by PSPCL on *the case of M/s Earth Solar* is misplaced as the force majeure relief was denied thereto and a lower tariff was made applicable to the generator. Also, that the bid tariff adopted vide Order dated 11.05.2015 cannot apply to the Petitioner since the Petitioner did not participate in that bidding process.

The Commission refers to its Order dated 22.06.2015 in Petition No. 20 of 2015 in the case of M/s Earth Solar Private Limited, which reads as under:

"2 The petitioner has submitted as hereunder:

- i)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 Rs. 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 Rs. 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 Rs. 8.70 per kWh.....*

.....

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, PEDAs vide its letter dated 18.12.2014 extended the SCOD upto 15.03.2015.

.....
(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.

.....
Findings & Decision of the Commission:
.....

e) ..., 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 Rs. 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 Rs. 7.29 per kWh for the contract period without in any way impinging upon the other contractual terms and conditions between the parties."

As is evident, similar to the Petitioners' case, the project of M/s Earth Solar was also selected in the same bidding process conducted by PEDDA based on net availed tariff after providing discount on the generic tariff of Rs. 8.75/kWh determined for Solar PV Power Projects for FY 2013-14. Further, approval to procure electricity including the tariff from its project was approved by the Commission vide the same Order dated 14.11.2013 in Petition No. 52 of 2013 along with the Petitioners'

projects with the same condition that the 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. Also, similar to the Petitioners' case, M/s Earth Solar could not commission its project upto 31.03.2015 and approached the Commission to allow extension in the date of applicability of tariff for the petitioner's project beyond 31.03.2015.

Also, in case of M/s Earth Solar the plea of force majeure was not accepted by the Commission, whereas the force majeure plea of the Petitioners accepted in part by the Commission has been set-aside by the Hon'ble APTEL. Hence, now they are on same footing even on the issue of non-acceptance of their plea of force majeure event.

Thus, the Petitioners' plea that reliance placed by PSPCL on case of M/s Earth Solar is misplaced as the facts of said case are at complete variance from the factual background of the present case is not sustained. The facts of all these cases are exactly similar. Further, there under the Commission has relied upon the bid tariffs adopted vide its Order dated 11.05.2015 for similar projects commissioned in the corresponding control period of 01.04.2015 to 31.03.2016.

Also, the Commission's above Order in M/s Earth Solar case has been upheld by Hon'ble APTEL vide its Order dated 11th January, 2019 in APPEAL NO. 169 of 2015 as under:

10.6 *We have carefully considered the submissions of the counsel appearing for both the parties and also gone through the findings of the State Commission in the impugned order. What thus emerges therefrom that in the order dated 14.11.2013, it had been clearly stipulated that the tariff so agreed would be applicable only when the projects are commissioned before 31.03.2015. It is not a dispute that the tariff for the subsequent control period of Rs.7.19 has been considered by the State Commission based on the prevailing tariff discovered through competitive bidding process. We are of the considered opinion that having regard to its own order dated 14.11.2013 and terms and conditions provided in the IA/PPA, the State Commission has passed the impugned order in accordance with law and considering all the aspects associated therein. We thus, do not find any error, much less material irregularity or any legal infirmity in the impugned order....”*

In view of the above analysis, in a similar vein as decided in the Commission’s Order in Earth Solar dated 22.06.2015 in Petition No. 20 of 2015 upheld by the Hon’ble APTEL, in its Order dated 11.01.2019 in Appeal No. 169 of 2015, the Commission holds that PSPCL is justified in seeking a redetermination of tariff to a lower tariff of Rs. 7.29 per kWh for the Petitioners’ Solar PV projects commissioned in FY 2015-16 (in place of Rs. 8.41/kWh and 8.59/kWh respectively allowed for these projects if they were commissioned in FY 2014-15).

The Commission thus redetermines and refixes the tariff for both these projects as Rs. 7.29 per kWh from the respective dates of their commissioning i.e. 14.04.2015 and 21.04.2015,

without in any way impinging upon the other contractual terms and conditions between the parties.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: 15.01.2025

