

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

Petition No. 36 of 2020
Date of Order: 25.03.2021

Petition under Section 86 (1) (b) and (e) of the Electricity Act, 2003 read with Punjab State Electricity Regulatory Commission (Power Purchase and Procurement Process of Licensees) Regulations, 2012, Regulation 46 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005; and Punjab State Electricity Regulatory Commission (Renewable purchase obligation and its compliance) Regulations, 2011 and other applicable Regulations.

AND

In the matter of: Punjab State Power Corporation Limited, The Mall,
Patiala.

....Petitioner

Present: Ms. Kusumjit Sidhu, Chairperson
Ms. Anjali Chandra, Member
Sh. Paramjeet Singh, Member

ORDER

1. Punjab State Power Corporation Limited (PSPCL) has filed the present petition for approval of the solar power procurement with a cumulative contracted capacity of 141MW, on long term basis, from various generating companies/farmers (61 Nos.) at a tariff of Rs.3.20/kWh under the Farmers Solar Power Scheme 2015 of Punjab Energy Development Agency (PEDA). The submissions made in the petition are summarized as follows:

1.1 The said scheme was notified by PEDDA in the year 2015 to promote solar energy projects by land owning farmers with a minimum capacity of 1 MW to maximum capacity to 2.5 MW. However, the said scheme was withdrawn in March 2016 by PEDDA on account of reduction in RPO targets and high tariff offered by the bidders. Aggrieved by the action of PEDDA, the farmers approached the Hon'ble High Court of Punjab and Haryana in CWP No.5885 of 2016, 7504 of 2016, 11155 of 2016 and 19440 of 2018. The Hon'ble High Court of Punjab and Haryana in its Order dated 15.10.2019 held as under:

“...the petitioners are permitted to approach the authorities concerned for further negotiation for arriving at mutually agreeable tariff.

For this purpose, the parties shall assemble in the office of the Principal Secretary, Department of Renewable Energy, Punjab Civil Secretariat at 11.00 A.M. on 31.10.2019.

Thereafter the parties shall approach the Punjab State Electricity Regulatory Commission within a period of three weeks for fixing of tariff and all other ancillary matters being an expert body. The decision of the Punjab State Electricity Regulatory Commission qua tariff shall be binding on all the parties as agreed.”

1.2 The Minutes of the Meeting dated 31.10.2019 held under the Chairmanship of Principal Secretary, Department of New and renewable energy sources, Govt. of Punjab and attended by PSPCL, PEDDA and representatives of the farmers, state as follows:

“The Petitioners requested for a tariff of Rs 4.75/kWh being the small farmers and stated that they will have to

take the loan from the Banks for execution of the projects. Then, the PSPCL officers were asked to give their tariff. PSPCL told the Chair and the petitioners that they can offer a tariff of Rs. 3.20/kWh as the same has been offered to PEDDA for small solar power plants. The Petitioners were asked to give their final tariff offer in response to PSPCL tariff. The Petitioners after deliberations requested for a tariff of Rs.3.50/kWh, however, PSPCL, did not agree to any upward revision on their tariff of Rs. 3.20/kWh.

The Petitioners, after negotiations, finally agreed to the PSPCL offered tariff of Rs. 3.20/Kwh.

Accordingly, it was decided that as ordered by the Hon'ble High Court, now the parties shall approach the Punjab State Electricity Regulatory Commission (PSERC) within a period of three weeks for fixing of tariff and all other ancillary matters being an expert body. The decision of the PSERC qua tariff shall be binding on all the parties."

1.3 The Hon'ble High Court of Punjab and Haryana vide its Order dated 25.11.2019 decided as under:

"In sequel to the directions issued by this Court on 15.10.2019, the meeting was held in the office of the Principal Secretary, Department of Renewal Energy, Punjab Civil Secretariat, at 11.00 AM on 31.10.2019. The parties have mutually agreed for Rs.3.20/- as tariff. Thereafter the first step would be to enter into implementation agreement with Punjab Energy Development Agency (PEDDA) by the farmers. Second step would be to enter into power purchase agreement with the Punjab State Power Corporation Limited (PSPCL).

These two steps be taken within a period of 4 weeks from today. Thereafter the matter shall be placed

before the Punjab State Electricity Regulatory Commission for ratification of the tariff, mutually agreed between the parties. The Punjab State Electricity Regulatory Commission shall ratify the same within a period of 4 weeks after the completion of initial two steps.

It is made clear that PSPCL shall place the matter before the Punjab State Electricity Regulatory Commission.”

2 The petition was admitted by the Commission vide Order dated 15.10.2020, with directions to issue notice to PEDDA to file its reply/comments by 22.10.2020 with a copy to PSPCL and date for hearing as 28.10.2020. During the hearing on 28.10.2020, the learned counsel appearing for PSPCL submitted that 61 PPAs have to be signed whereas only 05 PPAs have been signed and it is likely to take some more time to sign the PPAs and requested to adjourn the petition sine-die. Keeping in view the request of the learned counsel, the petition was adjourned sine-die, with directions that PSPCL shall inform the Commission immediately after the signing of the PPAs.

3. PSPCL filed the affidavit, vide memo No. 5393 dated 15.12.2020, submitting that PPAs with the farmers have been signed and the matter may be taken up accordingly. After hearing the learned counsel for PSPCL, a direction was given to PSPCL to submit the contact No. and address including e-mail, if any, of the concerned parties to the PPAs by 24.01.2021, so that the notice be issued to them for further adjudication of the matter. The petition was listed for hearing on 10.02.2021.

During the hearing on 10.02.2021, the representative appearing on behalf of the concerned parties argued the matter partly and requested an adjournment for arguments by their counsel. An application was filed by them submitting that the scope of adjudication of the present proceedings qua the tariff be strictly restricted only for ratification of the mutually agreed tariff of Rs. 3.20 per kWh and to comply with the orders dated 31.10.2019 passed by the Hon'ble High Court in CWP No. 5855, 7505 and 11155 of 2016. The applicants also referred and relied upon the judgments passed by the Hon'ble Supreme Court of India in case of State (Anti-Corruption Branch) Govt. of NCT, Delhi Vs DR. R.C Anand, 2004(4) SCC 615 and National Institute of Technology Vs Panna Lal Choudhury, 2005 (11) SCC 669, in support of their contentions. The Commission ordered that a copy of the application be supplied to PEDA and PSPCL, who may file its reply, if any, by 15.02.2021. The petition was ordered to be taken up for hearing on 17.02.2021. PSPCL filed its written note to the application filed by Akon Power Private Ltd. and a short reply was filed on behalf of Sh. Harman Preet Singh Brar and M/s Dharangwala Power Pvt. Ltd. to the additional affidavit dated 15.12.2020 filed by PSPCL. The learned counsels for PEDA as well as the generating companies requested to file reply and the Commission vide order dated 19.02.2021 allowed the same to be filed within one week and the petition was listed for hearing on 03.03.2021. PEDA filed its reply vide letter No. 1382-85 dated 25.02.2021 and M/s Akon Power Pvt. Ltd. filed written arguments on 26.02.2021.

4. During the hearing on 03.03.2021, one of the counsels for generating companies informed that a CM-19126 of 2019 in CWP-

5855 of 2016 was also filed before the Hon'ble High Court for extension in timelines for getting the terms and conditions of the scheme changed from PEDDA, however, the Hon'ble High Court declined to take cognizance of the notification dated 03.01.2019 and in the interest of justice, only extended the period for completing the first step i.e. entering into Implementation Agreement by 6 weeks from the date of Order. However, the learned counsel for PEDDA informed that the generators/farmers kept on insisting for change in parameters of the original scheme with reference to the technology, financial closure and commissioning of the project etc. and accordingly the last Implementation Agreement (IA) with changed conditions was signed on 31.08.2020. The learned counsel for PSPCL submitted that in terms of the Electricity Act, 2003, applicable Regulations and the decisions of the Hon'ble Courts, the power procurement including the price at which the power is to be procured has to be approved by the Commission. The same is also borne out from the contents of the Implementation Agreement signed between the developers and PEDDA and the Final PPA entered into between the developers and PSPCL in the instant case. However, the learned counsels representing the generating companies/farmers insisted that the scope of adjudication of the present proceedings qua the tariff, be strictly restricted only to ratification of the mutually agreed tariff of Rs. 3.20 per kWh. The Commission has no power to assess the tariff and was only to implement the order dated 25.11.2019 vide which the Hon'ble High Court has asked for the final stamping/approval of the tariff of Rs 3.20 per kWh agreed to between petitioners and PSPCL. He cited in his support the law laid down in case of state (Anti Corruption Branch) Govt. of NCT, Delhi Vs DR. R.C Anand, 2004 (4)

SCC 615 and National Institute of Technology Vs Panna Lal Choudhury, 2005 (11) SCC 669. After hearing the learned counsel for the parties, the Order was reserved.

5. Findings and Decision of the Commission

The Commission has examined the submissions made in the petition, information submitted and arguments made by the parties during the course of hearings.

5.1 The Commission observes that Hon'ble High Court vide Order dated 15.10.2019, Minutes of Meeting dated 31.10.2019 held in compliance of Order dated 15.10.2019 and Hon'ble High Court vide Order dated 25.11.2019, stated as under:

a) Hon'ble High Court vide Order dated 15.10.2019:

“.....Thereafter the parties shall approach the Punjab State Electricity Regulatory Commission within a period of three weeks for fixing of tariff and all other ancillary matters being an expert body. The decision of the Punjab State Electricity Regulatory Commission qua tariff shall be binding on all the parties as agreed.”

b) Minutes of Meeting dated 31.10.2019:

“Accordingly, it was decided that as ordered by the Hon'ble High Court, now the parties shall approach the Punjab State Electricity Regulatory Commission (PSERC) within a period of three weeks for fixing of tariff and all other ancillary matters being an expert body. The decision of the PSERC qua tariff shall be binding on all the parties.”

c) Hon'ble High Court vide Order dated 25.11.2019:

“Thereafter the matter shall be placed before the Punjab State Electricity Regulatory Commission for ratification of the tariff, mutually agreed between the parties. The

Punjab State Electricity Regulatory Commission shall ratify the same within a period of 4 weeks after the completion of initial two steps.

It is made clear that PSPCL shall place the matter before the Punjab State Electricity Regulatory Commission.”

The Commission is thus of the view that it is with this very objective that the Hon'ble High Court has directed the concerned parties to place the matter before the Commission for ratification. In each Order, the Hon'ble High Court has acknowledged/upheld the functions and responsibilities of the Commission as provided in the Electricity Act, 2003.

5.2 The Commission refers to the Electricity Act, 2003, which specifies as follows:

Section 86(1)(b) of the Electricity Act, 2003 -

“86. Functions of State Commission. -

(1) The State Commission shall discharge the following functions, namely:-

(a)

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

(c)

(d).....

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total

consumption of electricity in the area of a distribution licensee;

.....”

As per the above provision, while mandating to promote the generation of electricity from renewable sources of energy by providing suitable measures, the Commission is also mandated to regulate electricity purchase and procurement process of the distribution licensee including the price at which electricity shall be procured from the generating companies or from other sources through agreements for distribution and supply in the State. Accordingly, the Commission in addition to specifying the Renewable Purchase Obligations (RPO) also notified a comprehensive Regulation, the Punjab State Electricity Regulatory Commission (Power Purchase and Procurement Process of Licensee) Regulations 2012 to regulate the electricity purchase and procurement process of distribution licensees. The relevant provisions are as hereunder:

“10 Criterion for Power Purchases

(i).....

(ii) *While effecting power purchase, the Distribution Licensee(s) shall adhere to the principle of least cost plan (least financial cost to the Distribution Licensee), the ultimate objective being to make available secure and reliable power supply at economically viable tariffs to all consumers while satisfying power supply planning and security standards.*

.....

13. Power Purchase Arrangements or Agreements

Any new long term power purchase arrangement or agreement and amendments to existing PPA entered into by Distribution Licensee(s), shall be subject to prior

approval of the Commission under section 86 of the Act, in respect of:-

(i) Necessity;

(ii) Reasonability of cost;

(iii) Promoting efficiency, economy, equitability and competition;

.....”

The above provisions of the Electricity Act read with PSERC Regulations mandate that in order to achieve the objective of making available secure and reliable power supply at economically viable tariffs to the consumers, the long term power purchase arrangements of the distribution licensee need to meet the stated criteria of necessity, reasonability of cost, efficiency, economy, equitability and competitiveness in order to be approved by the Commission.

5.3 The Commission also relies on the following Judgments of the Hon'ble APTEL regarding powers of the State Electricity Regulatory Commissions:

- i) *Rithwik Energy Generation Pvt. Limited v Karnataka Power Transmission Corp. Limited and Ors., 2011 ELR (APTEL) 1651*

“10.5. In view of above, the distribution licensee has to obtain the consent of the State Commission for procurement of power against the PPA. Unless the State Commission gives its consent to the PPA, the distribution licensee can not procure power under the PPA. Thus, the PPA will come into effect only after obtaining the consent of the State Commission. If the consent is denied by the State Commission, the PPA shall become void as per Section 25(3) of the Karnataka Reform Act and Section 86(b) of the 2003 Act.”

ii) Hinduja National Power Corporation Limited v Andhra Pradesh Electricity Regulatory Commission and Ors. in Appeal No. 41 of 2018

“75. If the State Commission fails in discharging its duties by deciding the matter without proper reasoning and justification, it is nothing but failure of its duty. Since proceedings before the State Commission are not in the nature of a lis as in the case of a Civil Suit, it has to take within its fold the interest of various stakeholders concerned. Therefore, utmost duty of the State Commission while discharging its functions must be public interest and decide the matter on merits so far as adoption of capital cost and Continuation Agreement. The functions provided under Section 86(1)(b) of the Act is not merely a formality to approve the Power Purchase Agreement. In other words, it does not mean one of the parties to the petition can interdict the implementation of Power Purchase Agreement at its whims and fancies totally ignoring the fact that the Commission’s duty is to regulate electricity purchase and procurement process of a distribution licensee including the price at which electricity shall be procured from generating companies through agreements.

.....
80. As stated above, so far as the procurement of power is concerned, it must be in the interest of the consumer. The State Commission is the ultimate authority to decide procurement of power including the price, but unfortunately the Commission declined to decide the matter on merits.
.....”

iii) BSES Rajdhani Power Limited v Delhi Electricity Regulatory Commission and Ors. in Appeal No. 94 of 2012

“46. The role of the State Commission is only to decide whether the Power Purchase Agreement to be entered into between the NTPC and the Distribution Company for purchase of Electricity from NTPC Stations at the tariff determined by the Central Commission has to be approved or not from the point of view of deciding whether the power can be procured from other

sources at a cheaper or in a more economical manner to supply the same to the concerned State.”

5.4 The judgments passed by the Hon'ble Supreme Court of India in case of State (Anti-Corruption Branch) Govt. of NCT, Delhi Vs DR. R.C Anand, 2004(4) SCC 615 and National Institute of Technology Vs Panna Lal Choudhury, 2005 (11) SCC 669, relied upon by the learned counsel on behalf of the farmers are distinguishable and are not attracted to the facts of the present matter. The Commission does not subscribe to the interpretation of the word “ratification” by some of the generating companies as only to confirm. Ratification cannot be construed as an empty formality. The power to ratify includes within its fold the power not to ratify as well. Reliance in this regard is placed on the judgment of the Hon'ble High Court of Calcutta in the case of Kesoram Rayon Workman's Union vs Registrar of Trade Union and Others AIR 1967 Cal 507 –

“31. Rule 12 next provides:-

Every year there shall be held meeting of the general body of members of the union to be called the annual general meeting.

The quorum for this should be held of the delegates, elected from members of the union from every department Delegates will be elected one from each 10 members of the union. The meeting shall dispose of all matters affecting the general body of members including:

Appointment of the officers of the union for the following year.

The delegates session will be followed by the meeting of the general body of the members where the decisions of the general meeting will be ratified.

32. Mr. Roy lays stress upon the words ‘ratified’ in rule 12 and contends that instead of the appointment being made

by the General Meeting as required by rule 7, rule 12 gives only a power of ratification to the General Meeting, the decisions having been already made by the delegates. This contention does not appear to be sound inasmuch as the power to ratify includes the power to refuse to ratify. The General Meeting does not cease to be the deciding body simply because tentative conclusions have been arrived earlier at a smaller committee of the general body itself. This is the usual practice wherever the larger body is big enough for the purpose of initiation of concrete proposals. I do not find any conflict between rules 7 and 12.”

The Hon'ble Supreme Court in *Tata Power Co. Ltd. v. Reliance Energy Ltd.*, (2009) 16 SCC 659 has also observed as under:

“108. A generating company, if the liberalisation and privatisation policy is to be given effect to, must be held to be free to enter into an agreement and in particular long term agreement with the distribution agency; terms and conditions of such an agreement, however, are not unregulated. Such an agreement is subject to grant of approval by the Commission. The Commission has a duty to check if the allocation of power is reasonable. If the terms and conditions relating to quantity, price, mode of supply, the need of the distributing agency vis-à-vis the consumer, keeping in view its long-term need are not found to be reasonable, approval may not be granted.”

Thus ratification is not to be assumed to be a formal stamping of the terms agreed between the parties. It is sacrosanct duty of the Commission to analyse the reasonability of cost, economic equality and the prevalent cost competition and validity. The Hon'ble High Court was also conscious of the functions to be performed by the Commission while approving PPA and the Tariff

implications. This was reflected in the Order dated 15.10.2019 which read as under:

“...the petitioners are permitted to approach the authorities concerned for further negotiation for arriving at mutually agreeable tariff.

For this purpose, the parties shall assemble in the office of the Principal Secretary, Department of Renewable Energy, Punjab Civil Secretariat at 11.00 A.M. on 31.10.2019.

Thereafter the parties shall approach the Punjab State Electricity Regulatory Commission within a period of three weeks for fixing of tariff and all other ancillary matters being an expert body. The decision of the Punjab State Electricity Regulatory Commission qua tariff shall be binding on all the parties as agreed.”

Much stress has been laid by the counsel for the farmers that in the order dated 25.11.2019, the tariff of Rs. 3.20 per kWh was made final by the Hon'ble High Court and it was merely sent to the Commission for putting stamp upon it i.e. 'ratification'. The Order dated 25.11.2019 is referred as a sequel to order dated 15.10.2019. This means that the directions made in the Order dated 15.10.2019 are to be read in consonance with the directions given by the Hon'ble High Court in the Order dated 25.11.2019. As per the Electricity Act 2003, the Punjab State Electricity Regulatory Commission (Power Purchase and Procurement Process of Licensee) Regulations 2012 and the law laid down by the Hon'ble APTEL in case of Tata Power Co. Ltd. v. Reliance Energy Ltd., (2009) 16 SCC 659, Rithwik Energy Generation Pvt. Limited Vs Karnataka Power Transmission Corp. Limited and Ors., 2011 ELR (APTEL) 1651, Hinduja National Power Corporation Limited Vs Andhra Pradesh Electricity Regulatory Commission and Ors. in Appeal No. 41 of 2018 and

BSES Rajdhani Power Limited Vs Delhi Electricity Regulatory Commission and Ors. in Appeal No. 94 of 2012, the Commission is to analyse, probe and only then approve the procurement of power at the tariff agreed there upon in the PPA and not to blindly stamp it by ratifying the same. Ratification has to be seen with broader connotations.

5.5 The Commission is, therefore of the view that it shall be failing in its statutory duty, if it does not perform the function (to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured for distribution and supply within the State) assigned to it under the Electricity Act. Thus, the Commission is bound to consider the issue of the said proposal of solar power procurement on merit i.e. its qualification on the criteria of the necessity, reasonability of cost/economy and whether it fulfils the criteria of equitability:

- a) Since, the Commission has the mandate under the Act to promote generation of electricity from renewable sources; it is gradually increasing the RPO trajectory on yearly basis. Accordingly, PSPCL's proposal of procurement of solar power can be considered to fulfil the criteria of necessity.
- b) However, the Commission observes that the present petition has been filed in the month of October 2020 i.e. almost one year after the issue of Hon'ble High Courts Order dated 25.11.2019. Further, it was adjourned sine-die vide order dated 29.10.2020 on the request of PSPCL's counsel as it was incomplete and was likely to take some more

time to sign the PPAs. Thereafter, PSPCL filed the petition on 17.12.2020 stating that all the PPAs have been signed. It was observed that in its reply PEDDA had submitted that in the IA the parameters of the original scheme had been changed in respect of technology, financial closure period and timelines for commissioning of the project etc. by PEDDA on the request of various participating generating companies, thereby changing the scheme itself. The PPA was signed between PSPCL and the generating companies with the changed parameters.

- c) Further the IA signed between generators and PEDDA as well as PPA signed between generators and PSPCL specifies that the tariff will be subject the approval by PSERC.
- d) It is made clear that the applicants are not farmers but are companies who want to generate solar electricity for commercial purposes. The Commission is of the view that since FY 2019-20 much water has flown and in view of the continuously falling prices and increasing efficiency of solar panels, the solar power is now available at much more competitive prices. The Commission recently vide Order dated 09.10.2020 in petition no. 08 of 2020 has determined the levellised generic tariff of Rs. 2.748/kWh for solar PV projects under Pradhan Mantri Kisan Urja Suraksha Evam Utthaan Mahabhiyaan (PM-KUSUM) Scheme for setting up of grid connected solar projects of

individual capacity ranging between 500KW to 2MW in the State. Thereafter, the market rate of solar power has reduced further and as per the latest reports it is available at Rs. 2.00 per unit. Thus, even the price of Rs. 2.748/unit given in October 2020 is likely to get changed in the coming period.

- e) Also PEDDA has submitted that, on the request of various participating generating companies, it has changed various parameters of the original scheme with reference to the technology, financial closure and commissioning of the project etc. It needs to be noted that tariff depends upon certain parameters and some of these parameters have been changed while signing the IA and PPA.
- f) Therefore, the very nature of the scheme has been changed and the directions of the Hon'ble High Court which were based on the original scheme have been ignored by the parties while executing the IA and PPA with changed parameters.

In the given scenario, it would not be prudent for PSPCL to commit to procurement of solar power on long term basis at the given per unit price of Rs. 3.20, when abundant solar power is available in the market at much cheaper rates. The proposed quantum of 141 MW at a tariff higher by Rs. 0.452/kWh (Rs. 3.20/kWh–Rs. 2.748/kWh) shall have an adverse financial impact of about Rs. 12 crore per annum on PSPCL, which is going to increase every year with the solar power prices getting reduced progressively. The financial impact for

the contracted period of 25 years is going to be large. As such, PSPCL's proposal for procurement of solar power at the given rate would not be in the interest of the consumers of the State. Moreover, ratification of the given rate for the said sources will be discriminatory, as for other similarly placed sources the Commission has determined a tariff of Rs. 2.748 per kWh under the PM-KUSUM Scheme. Thus PSPCL's said proposal does not satisfy the criteria of reasonability of cost/ economy or the criteria of equitability.

The State Electricity Regulatory Commission as per the mandate given to it in Electricity Act can either adopt a tariff arrived at through competitive bidding or determine a project specific tariff or a generic tariff for similar projects in accordance with the Tariff Regulations framed by it. The SERC can adopt a mutually agreed tariff between a Generator and a Distribution utility if it is below the generic tariff determined by it for similar projects. The tariff mutually agreed between the Generators and the distribution utility is not below the generic tariff determined by it for similarly placed projects under PM Kusum scheme. Therefore, the Commission does not think it appropriate to ratify PSPCL's proposal of procurement of solar power from the said generating sources at the indicated rate of Rs. 3.20 per kWh.

The petition is disposed of accordingly.

Sd/-

(Paramjeet Singh)
Member
Chandigarh
Dated:25.03.2021

Sd/-

(Anjuli Chandra)
Member

Sd/-

(Kusumjit Sidhu)
Chairperson