

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

**Petition No.24 of 2016
Date of order: 04.06.2018**

Present : Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member
Ms. Anjuli Chandra, Member

In the matter of: Petition under Section 86(1)(f) of the Electricity Act, 2003 read with Regulations 10, 69, 71 and 73 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 and Regulation 85 of 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 suo-motu Petition No. 35 of 2012) read with Article 19.1.0 of the Power Purchase Agreement dated 31.03.2015 and Article 10 of the Implementation Agreement dated 28.03.2015 and section 94 of the Electricity Act, 2003, for seeking Project Specific extension of period of commissioning of the project upto 31.05.2016 with applicable tariff of Rs.7.59 per kWh.

And

In the matter of: Azure Renewable Energy Pvt. Ltd. (SPV Company of Azure Power India Pvt. Ltd.) Regd. Office: 8, Local Shopping Complex, Pushp Vihar Madangir, New Delhi through its authorized signatory Shri Sanjay Chalana.

.. Petitioner

Versus

1. Punjab State Power Corporation Limited (PSPCL) through its Managing Director, The Mall, Patiala.

2. Punjab Energy Development Agency (PEDA) through its Director, Solar Passive Complex, Plot No.1 & 2, Sector 33-D, Chandigarh.

.. Respondents

ORDER

The petitioner filed this petition seeking project specific extension of period of commissioning of the Solar Project having allocated capacity of 10 MW up to 31.05.2016 with applicable tariff of Rs 7.59 per kWh along with an application under section 94 (2) of the Electricity Act, 2003, for grant of interim stay restraining PEDA from invoking the Performance Bank Guarantee given by the petitioner. The Commission admitted the petition vide order dated 28.03.2016 and directed PEDA not to invoke the Performance Bank Guarantee amounting to Rs. 4 crore given by the petitioner in terms of Article 6.2 (iv) of the Implementation Agreement (IA) till the next date of hearing. PSPCL and PEDA were directed to file reply by 26.04.2016. PSPCL vide memo no. 5489 dated 28.04.2016 submitted reply to the petition. PEDA vide letter No. 727 dated 16.05.2016 requested for grant of two weeks further time to file reply and submitted reply vide letter no. 1162-64 dated 31.05.2016. The petitioner submitted rejoinder dated 23.05.2016 to the reply filed by PSPCL and submitted rejoinder to the reply filed by PEDA on 21.06.2016 during hearing. PSPCL vide memo. no. 5471 dated 21.07.2016 submitted final written submissions / status report. The petitioner requested during hearing on 30.08.2016 that no amount may be deducted by PSPCL on account of liquidated damages for delay in commissioning of the project and vide order dated 31.08.2016

PSPCL was directed not to deduct any amount as liquidated damages till the final disposal of the matter.

2. The petitioner filed an Interlocutory Application on 19.09.2016 for amendment in petition no. 24 of 2016 due to the changed circumstances, occurred during the pendency of the petition along with the amended petition. PSPCL vide memo. no. 6132 dated 12.10.2016, submitted final written submission to the application filed for amendment and PEDDA submitted its reply vide letter no. 4056-58 dated 14.10.2016. After hearing the arguments on the Interlocutory Application for amendment of the main petition, the Commission vide order dated 24.10.2016 allowed the application for the amendment and the amended petition was taken on record. PSPCL and PEDDA were directed to file reply to the amended petition by 27.10.2016. PSPCL vide memo. no. 6312 dated 25.10.2016, submitted final written submissions to the amended petition and PEDDA vide letter 4412-14 dated 03.11.2016 submitted reply to the amended petition.

3. ★ PEDDA filed IA No. 08 of 2017 seeking adjudication of the issue with respect to undue influence of the counsel representing the petitioner before the Commission as the counsel representing the petitioner has been representing the Commission before other Court(s)/ Forum (s)/ Tribunal(s). The petitioner submitted reply dated 18.04.2017 to the IA No. 08 of 2017. Since the facts and the relief claimed in IA No. 08 of 2017 were similar to the facts and the relief claimed in IA No. 07 of 2017 in petition no. 22 of 2016 which was decided by the Commission vide order dated 18.05.2017, hence, vide order dated 22.05.2017 the IA No. 08 of 2017 was disposed of in terms of the order dated 18.05.2017 passed in IA

No. 07 of 2017. PEDA filed IA No. 24 of 2017 for rectification / modification of the order dated 11.05.2017 and the same was held to be infructuous and redundant vide order dated 23.05.2017. Vide order dated 06.06.2017, parties were directed to file written submissions, if any. PSPCL vide memo. no. 6502 dated 14.07.2017 submitted that it had already filed final written submissions / status reports vide memo no. 5471-73 dated 21.07.2016, 6132-34 dated 12.10.2016 and 6312-14 dated 25.10.2016. The petitioner submitted the list of dates and events connected with the petition during hearing on 13.12.2017. The Commission vide order dated 06.02.2018 directed the petitioner to submit the data indicating the dates on which grid feasibility and route approval for the project was applied pertaining to all nine sites and the dates on which the same was granted by PSPCL along with the copies of the Judgments relied upon while addressing the arguments. After hearing the parties, order was reserved vide order dated 06.02.2018. PSPCL vide memo no. 6506 dated 06.03.2018 and memo no. 6471 dated 26.02.2018 submitted the information and the petitioner vide email dated 15.03.2018 submitted the details of feasibility, grid approval etc and the judgements relied upon by the petitioner titled as Rithwik Energy Generation Private Limited vs. Karnataka Power Transmission Corpn. Limited & Ors, wherein Hon'ble APTEL held that in view of Section 86(b) of the Electricity Act, 2003, the distribution licensee has to obtain the consent of the State Commission and the PPA will come into effect only after obtaining the consent of the State Commission. In another case titled as Tamil Nadu Generation and Distribution Corporation Ltd v. M/s Penna Electricity Ltd & another, Hon'ble APTEL held that in the

absence of approval of PPA by the State Commission the PPA will not become binding contract & as per the case titled Special Deputy Collector, Land Acquisition CMDA vs. J. Sivaprakasan & Ors wherein it was held that there can be implied & constructive notices also.

4. The submissions of the petitioner are summarized as under:
 - i) The petitioner is a generating company within the meaning of section 2 (28) of the Electricity Act, 2003 and is a well known solar power developer in the Country having expertise and experience in the solar energy sector. PEDDA invited the private developers/ companies to set up Solar Photovoltaic power projects for sale of power to PSPCL in the State of Punjab and initiated competitive bidding process for inviting solar power developers for establishment of an aggregate 250 MW capacity solar projects under phase- II in the State of Punjab. This capacity was divided between 3 categories; Category –I Projects: 1-4 MW (Aggregate Capacity 50 MW), Category–II Projects: 5-24 MW (Aggregate Capacity 100 MW) and Category–III Projects : 25-50 MW (Aggregate Capacity 100 MW).
 - ii) The proposals / bids against Request for Proposal (RfP) dated 24.12.2014 were invited by PEDDA through e-bidding system for the selection of bidders. The selection of bidders was based on net availed tariff after providing discount on generic tariff notified by the Commission for solar PV power projects for FY 2014-15, irrespective of availing normal rate of depreciation / accelerated rate of depreciation. It was mentioned in the RfP that PEDDA will shortlist the bidders

based on the net tariff arrived in Rs. per kWh after reduction of discount offered by the bidder.

- iii) Central Electricity Regulatory Commission (CERC) vide notification no. L-1/94/CERC/2011 dated 20.03.2014 amended CERC (Terms and Conditions for Tariff Determination from renewable Energy Sources) (First Amendment) Regulations, 2014. The Commission determined generic levelised generation tariff for renewable energy power projects for FY 2014-15, wherein the generic tariff for solar power projects was fixed at Rs. 7.72 per kWh. The said generic tariff was applicable for both roof top solar power projects and for ground mounted solar power projects and the same is applicable to such solar power projects for which the PPAs were signed in FY 2014-15.
- iv) The petitioner was declared a successful bidder for a capacity of 10 MW solar PV power project under category-II bidder(s) to establish a power plant and supply power to PSPCL for a period of 25 years as per the provisions of the RfP at a net tariff of Rs. 7.59 per kWh after providing a discount on generic tariff of Rs. 7.72 per kWh (as adopted & notified by PSERC in its RE Tariff Order for Solar PV power projected for FY 2014-15). PEDDA issued a Letter of Award (LoA) dated 25.03.2015 and as per this letter of award the petitioner was required to submit performance security by way of irrevocable Bank Guarantee at the rate of Rs. 40 lakh per MW aggregating to Rs. 4 crore and to sign the IA with PEDDA within 5 days of the date of the issue of LoA and further to sign the Power Purchase Agreement (PPA) with PSPCL. The petitioner was also required to report tie up of

financial arrangements for the project in a time bound manner. The petitioner executed IA with PEDDA on 28.03.2015 and submitted the required performance guarantee aggregating to Rs. 4 crore (at the rate of Rs. 40 lakh per MW) with PEDDA in terms of Article 6.2(iv) of the IA. As per the IA, the solar power PV project was to be commissioned within 10 months from the date of signing of PPA.

- v) Pursuant to the IA, the petitioner and PSPCL executed PPA dated 31.03.2015. As per clause 10.1.0 of the PPA, the Generating Company was under obligation to commission the generating facility (which shall be scheduled Date of Commercial Operation) and synchronize with the PSPCL's Grid within 10 months from the effective date i.e. the date of signing of PPA, which is 31.03.2015. Therefore, as per this PPA, the scheduled date of commissioning for the project was 30.01.2016. The time allowed by PEDDA for implementation of these projects without any damages and penalties was 10 months as against 13 months for the projects allotted under phase-I and 12 months for the project allotted under phase-III. This is the shortest time allowed by any authority for implementing large scale grid connected solar projects in India. The projects under phase-III were also allowed 12 months to complete as it was realized that 10 months time line is extremely difficult to achieve. The developers took up this challenging time line based on the exceptional support provided by PEDDA and Govt. of Punjab during the execution of phase-I projects.

- vi) PSPCL invited the Solar Developers, including the petitioner, to sign the PPA only on 31.03.2015. The petitioner was shocked and surprised to see that PSPCL has inserted a new clause bearing no. 35 in the PPA, which was not the part of PPA provided in the RfP documents. The aforesaid new clause 35 as inserted in the PPA is as under:

“PPA shall be effective & binding on the parties only upon approval of the PPA by the Hon’ble PSERC & the PPA shall be subject to such conditions as may be stipulated by the Hon’ble PSERC while granting such approval.”

The petitioner and other Solar Developers objected to the same as PSPCL should have got the PPA approved from the Commission before its date of execution and it was now uncertain as to how much additional time will be required by PSPCL in obtaining the approval of the Commission. The petitioner was assured by the respondents that approval from the Commission shall be obtained in 5-7 days time. The petitioner was made aware of the fact that the PPA has to be signed in the current form as the approval of the PPA from the Commission is yet to be obtained. Petitioner was left with no option but to sign the PPA. The insertion of clause 35 in the PPA rendered it practically ineffective and non-bankable, until it is approved by the Commission. PSPCL filed Petition No. 23 of 2015 before the Commission seeking its approval to procure electricity and also to approve the PPA. The Commission allowed the petition and approved the PPA vide order dated 11.05.2015 and during this period of nearly one and a half month, the project and financial closure activities could not be progressed due to uncertainty / non –

bankability of PPA i.e. for reasons beyond the control of the petitioner.

- vii) As per the PPA, the petitioner was under an obligation to supply power in terms of Article 10. Article 10.1.0 of the PPA, reads as under:

“10.1.0 The Generating Company shall commission the Generating Facility (which shall be Scheduled Date of Commercial Operation) and synchronize with the PSPCL / PSTCL /s Grid within 10 months from the Effective Date i.e. date of signing of this PPA which is 31.03.2015. Therefore, the scheduled date of commissioning for this project is 30.01.2016”.

- viii) In order to comply with the obligations of commencing power supply from the COD, the petitioner commenced the project construction activity in time. However, due to occurrence of certain force majeure events etc. and fault of PSPCL the commissioning of the power project has been delayed and it would be commissioned up to 31.05.2016. Article 10 of the IA and Article 19 of the PPA are relevant which are reproduced as under:

“Article 10: FORCE MAJEURE

10.1 Force Majeure Event

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

- i. Is beyond the reasonable control of and not arising out of the fault of the affected party.*
- ii. The affected party has been unable to prevent by the exercise of due diligence and reasonable efforts, skill and*

care, including through expenditure of reasonable sum of money and

iii. Has a materially adverse effect on the project.

10.2 Non –political force majeure events

For the purpose of 10.1 non-political force majeure events shall mean one or more of the following acts or events;

- i. Acts of God or events beyond the reasonable control of the affected party which could not reasonably have been expected to occur such as extreme adverse weather or environment conditions, lightning, heavy rains, cyclones, tempest, whirlwind, landslides, storms, floods, volcanic, eruptions or fire (to the extent originating from the source external to the site or not designed for in construction works.);*
- ii. Radioactive contamination or ionizing radiation;*
- iii. An act of war (whether declared or undeclared) invasion, armed conflict or act of foreign enemy, unexpected call up of armed forces, embargo, blockade, rebellion, riot religious strike, bombs or civil commotion, sabotage terrorism.*
- iv. Strikes or boycotts interrupting operations of the project continuing for at least 7 days;*
- v. Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Company in any proceedings for the reason other than failure of the Company to comply with any applicable law or clearance or on account of breach thereof, or of any contract or enforcement of this Agreement of exercise of any of its rights under this Agreement by PEDA; or*
- vi. Any other event or circumstances of nature analogues to the foregoing.*

10.3 Political Force Majeure Event

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

- i. Change in Law.*

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

10.4 Notification Obligations

If a party is affected by any force Majeure event, the affected party shall give the other parties written notice describing the particulars of the Force Majeure event as soon as reasonably practicable after its occurrence but not later than five days after the date on which such party knew of the commencement of the Force Majeure event or of its effect on such party.

10.5 Obligations on the parties in case of Force Majeure Event

- i. *The parties shall cooperate and negotiate in good faith and will develop implementation plan of remedial and reasonable alternative of measures to remove/ remedy Force Majeure event to enable the performance of the affected party provided however, that no party shall be required under this provision to settle strike or other labour dispute.*
- ii. *Upon the occurrence and during the subsistence of any Force Majeure event, none of the parties shall be relieved of their liabilities / obligations including liability for payment as per the Agreement.*

- iii. In case a Non-political force majeure event necessitates extension of time for the Project implementation both the parties will duly accept it.*
- iv. The extra cost for completion of project due to a non-political force majeure event including intern alia, additional or extra work required to be done, interest due during the extended period of project completion and escalation shall be duly considered in the project completion cost for all purposes of the agreement.*
- v. In case of Force Majeure events after completion of the project the parties shall take action as per sub clause (i) above and the additional cost required for remedial and alternative measures to remove / remedy the force majeure shall be added to the project completion cost for all purpose of the agreement.*
- vi. In case of any party not willing to implement the plan of remedial and reasonable alternative measures to remove/ remedy the force majeure event it shall be construed as a default of such party and then relevant provisions of Article 10 shall apply.*
- vii. The suspension of performance shall be within the effected scope and duration as required by force majeure.*
- viii. When the non performing parties liable to resume performance of its obligation under this agreement that party shall give the other parties written notice to that affected so as soon as practicable.*
- 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 then the tariff payable shall be as determined by the PSERC.”*

Clause 19 of PPA

“19.0.0 FORCE MAJEURE

19.1.0 If any party hereto shall be or wholly or partially prevented from performing any of its obligations under this Agreement by reason of or on account of lightning earthquake, fire, floods, invasion, insurrection, rebellion, mutiny, civil, unrest, riot, epidemics, explosion, the order of any court, judge or civil authority, changes in applicable law, war, any act of God or public enemy or any other similar cause or reason reasonably beyond its control and not attributable to any negligent or intentional act, error, or omission, then such party shall be excused of its obligations/liabilities under this Agreement and shall not be liable for any damage, sanction or loss resulting there from to the other party.

19.2.0 The party invoking this clause shall satisfy the other party of its existence of any Force Majeure event and give written notice within seven (7) days of the occurrence of Force Majeure event to the other party and also take all reasonable and possible steps to eliminate, mitigate or overcome the effect and consequences of any such Force Majeure event.

19.3.0 In the event of a Force Majeure event or conditions, any payment due under this Agreement shall be made as provided herein and shall not be withheld.

19.4.0 This clause as provided in this PPA will be operative after the project achieves COD. For force majeure events occurring during the commissioning period of the project, provisions of IA will be applicable”.

- ix) In terms of article 19.4.0 of the PPA the relevant provisions of the IA with regard to Force Majeure events occurring during the commissioning period of the project will be applicable. The recital of the PPA clearly stipulates that all the clauses and regulatory norms applicable to the IA dated

28.03.2015 shall be unequivocally applicable to the PPA in its true letter and spirit. Therefore, IA is to be read as part and parcel of the PPA.

- x) There occurred many force majeure events and events due to the fault of PSPCL which necessitated the delay in commissioning of the project. There is delay in synchronization / commissioning of the plant due to the occurrence of Force Majeure events i.e. delay in approval of PPA from the Commission, amendment in IA and PPA, delay in Grid Connectivity and Jat agitation.
- xi) As per the PPA, the petitioner is under an obligation to supply power in terms of article 10 and the date of commencement of supply is called as, the Scheduled Commercial Operation Date (SCOD) which is 10 months from the effective date. As per article 10 of PPA, the Generating Company shall have to commission the generating facility and synchronize with the PSPCL / PSTCL's Grid within 10 months from the effective date i.e. date of signing of the PPA. At the time of signing the PPA it was found that a new clause 35 was inserted to the PPA and as per this clause, the PPA was made effective and binding on the parties only upon approval of PPA by the Commission and the PPA was made subject to such conditions as may be stipulated by the Commission while granting such approval. This clause was not the part of PPA provided in the RfP documents. The petitioner objected to this as this could potentially delay the implementation period which was already under the tight time lines of 10 months but since, it was the last date for signing of PPA, the petitioner was left

with no other option but to sign the same on the assurance of PSPCL that it would get the PPA approved from the Commission within a week. PSPCL filed petition no. 23 of 2015 before the Commission seeking its approval to procure the electricity and also to approve the PPAs executed with the Solar Energy Generators. The Commission vide its order dated 11.05.2015, allowed the petition and approved the PPA.

- xii) The petitioner could not start any work upto 11.05.2015 because the PPA was yet to be approved by the Commission and the same was practically ineffective and non bankable. In fact, PSPCL was required to get the draft PPA approved before it is executed by the parties, but PSPCL filed petition after the PPAs were executed. So, out of total 10 months implementation period, the petitioner could not do any work for more than one month and 11 days and the effective implementation period left with the developers was thus reduced from 10 months to nearly 8 and a half months.
- xiii) It is well settled maxim "Actual Curiae Naminem Gravabit" meaning thereby an act of court shall prejudice no man. So, the petitioner is entitled to get benefit of extension of control period by the period this matter of approval of PPAs was pending before the Commission, without revision in its tariff.
- xiv) The respondents cannot be allowed to take benefit of their own mistakes/ wrong doing. The various solar developers sent joint letter dated 06.01.2016 informing the respondents about the force majeure event faced by them but PEDDA issued a letter dated 18.01.2016 informing that there will be

no extension in the scheduled commissioning date of the project and that the clause 3.23 of the RfP shall prevail for any delay beyond scheduled commissioning date thereby abusing its dominant position.

- xv) As per clause no. 4.1 (vii) of the IA, the developers were required to submit the complete locations/ details of the roof top of the building shed on which the proposed Grid connected Solar PV Plant is to be set up. The petitioner identified the roofs for entire 10 MW and submitted the same to PEDDA vide letter dated 26.08.2015. The petitioner also sent a letter dated 04.09.2015 to the SE / Planning-2, PSPCL, Patiala seeking feasibility clearance. The petitioner also sent letter dated 07.09.2015 to Director, PEDDA giving details of the site identified and requested for giving concurrence to these sites and for issuance of a letter to the PSPCL for giving feasibility clearance. The petitioner again sent a letter dated 12.10.2015, to the Director, PEDDA and requested for giving concurrence to the locations for 10 MW rooftop solar plants, identified by the petitioner, specifically mentioning that lease agreements with private roofs and work order placed on PSAMB in the support of the same were submitted to PEDDA on 30.09.2015.
- xvi) PEDDA vide letter no. 3796 dated 14.10.2015 gave concurrence to set up the SPV power plants on the sites identified by the petitioner. The petitioner informed the sites identified to PEDDA vide letter dated 26.08.2015 and PEDDA gave its consent after one and half month. The petitioner immediately again sent a letter dated 15.10.2015 to the SE / Planning -2, PSPCL, Patiala and requested for feasibility /

connectivity approval for evacuation of the entire 10 MW in distributed capacities of roof top solar PV plant at PSPCL's 11 KV GSS at various locations.

- xvii) PSPCL sent a letter dated 21.10.2015 to director PEDDA with a copy to the petitioner mentioning that IA and PPA are signed for 10 MW project as a whole and as such a clarification was sought from PEDDA. PEDDA sent a letter dated 26.10.2015 to Dy. Chief Engineer / IPC, PSPCL, mentioning therein that at the time of signing of IA, the company had informed that they have not identified any location to set up the plants and now the company has identified the roof top areas and as such supplementary PPA for 10 MW rooftop solar plant has to be signed.
- xviii) The petitioner requested SE / IPC, PSPCL vide letter dated 28.10.2015 to execute supplementary PPA for the identified sites in reference to letter dated 26.10.2015 sent by PEDDA to PSPCL. Instead of executing supplementary PPA SE / IPC, PSPCL, Patiala sent a letter dated 04.11.2015 to Director / PEDDA, requesting to first carry out amendment in IA enabling PSPCL to make requisite amendment in PPA.
- xix) The petitioner also sent a letter dated 04.11.2015 to director/ PEDDA, requesting to amend the IA enabling PSPCL to amend the PPA. PEDDA executed amendment no. 1 to IA on 10.11.2015 and included 9 sites, as identified by the petitioner. Thereafter, PEDDA sent a letter no. 4218 dated 13.11.2015 to the Dy. Chief Engineer, IPC and informed that the IA was amended requested made to carry out the necessary amendments in PPA. The petitioner also sent a letter dated 13.11.2015 to the Dy. Chief Engineer / IPC, to

carry out the necessary amendments in PPA. PEDDA again sent letter dated 20.11.2015 to the Dy. Chief Engineer / IPC, mentioning therein that the amendment in IA after taking the approval has been signed and requested for amendment in PPA.

- xx) SE/ IPC, PSPCL sent a letter no. 2031 dated 24.11.2015 to Director / PEDDA, requesting to relook into the matter. PEDDA again sent a letter dated 26.11.2015 to Dy. Chief Engineer / IPC, PSPCL, Patiala stating therein that it is extremely difficult to get such a large single rooftop area of 1,00,000/-sq. mtr. at a single location in the state and request was made to execute the amendment in PPA.

The petitioner again sent a letter dated 27.11.2015 to PEDDA, requesting to help in expediting the process with PSPCL as amendment in PPA was required urgently followed by the grid feasibility approval to execute the project. PSPCL thereafter, carried out the necessary amendment in the PPA on 02.12.2015 and mentioned the names of the identified sites in the PPA.

- xxi) After the PPA was signed, PSPCL gave technical concurrence vide letters dated 07.12.2015 for the various sites. The petitioner again sent a letter dated 17.12.2015 to SE/ Planning-2, PSPCL, Patiala, requesting to expedite the grant of grid connectivity urgently as this has required to start the process of execution. The Petitioner again sent a letter dated 28.12.2015 to PEDDA requesting that necessary amendment was carried out in the PPA on 02.12.2015, but the grid feasibility has still not been given by PSPCL and the construction can be started only after the grid feasibility is

given by PSPCL. PSPCL gave grid feasibility for two sites on 28.12.2015 and for 7 sites on 31.12.2015. It is clear from the above factual position that list of identified sites was given by the petitioner on 26.08.2015, PEDDA gave concurrence on 14.10.2015. Amendment in IA was made on 10.11.2015. Amendment in PPA was made on 02.12.2015. Technical concurrence was given on 07.12.2015 and grid feasibility was given for two sites on 28.12.2015 and for seven sites on 31.12.2015. Thus, a delay of 127 days occurred due to the fault of PEDDA or PSCPL.

- xxii) There was a Jat agitation started in mid February and turned violent by 20.02.2016. The protestors blocked highways and railway lines. It was only around 24.02.2016 that the Jat agitation came to an end. Due to the said agitation, the entry and exit points of the State were put on curfew, thereby restraining the petitioner from receiving the material for structure and balance of system to reach the site of the power plant. Since the material to be supplied to the petitioner got stuck at border of the State and supply of labour was severely affected. As such, there was a delay of 10 days with respect to the Jat agitation.
- xxiii) On 24.02.2016, PEDDA issued a letter asking to intimate that what capacity has been commissioned and sought to impose penalty for non commissioning / short fall in commissioning of allocated capacity as per clause 3.23 of RfP. PEDDA abused its dominant position by issuing the letter dated 24.02.2016, after being fully aware of the reasons which attributed to the occurrence of the force majeure events. PEDDA cannot be permitted to benefit out of the events

occurred under the force majeure situation which were beyond the control of the petitioner. The letters dated 18.01.2016 and 24.02.2016 denying the extension of scheduled commissioning date and the direction by the respondents to calculate the liquidated damages is wrongful and arbitrary.

- xxiv) The PPA dated 31.03.2015 is for a period of 25 years meaning thereby that the power plant of the petitioner is committed to supply 10 MW of power to PSPCL for the entire life of the said plant. As such, special equities have accrued in favor of the petitioner and PEDDA is ought to be restrained from invoking any bank guarantee.
- xxv) As per section 72 of the Indian Contract Act, 1872 irrespective of a clause in a contract / PPA for quantifying the liquidated damages, an aggrieved party can only claim actual damages sustained by it as a result of any default by the other party in fulfilling its obligations under the contract. The LD/ Penalty amount is only an upper limit to the said actual damages. Hence, without adducing evidence and demonstrating the actual damages suffered, party cannot unilaterally proceed to invoke the LD/ penalty amount by way of invocation of the Performance Bank Guarantees.
- xxvi) The petitioner and the respondents are strictly governed by the terms of the IA / PPA and a party cannot act in a manner de-hors the same. Despite the delays in approvals of grid feasibility and route clearance from PSPCL, the petitioner has progressed the work and the status of the same as on 25.03.2016 is that all roofs of 10 MW are identified, funding of entire 10 MW has been secured, expenditure of Rs. 50

crore has already been incurred, all material for the solar plants has been procured and is delivered at site, more than 80 % of the work on the solar plant has been completed and transmission line work is pending on all sites.

- xxvii) Whether or not the other party to a contract committed breach cannot be decided by the party alleging breach. The same can be decided by an adjudicatory legal forum.
- xxviii) Regarding one site, PSAMB Ludhiana, the petitioner was advised by Xen (Operation) West Division, PSPCL, Ludhiana to get the revised feasibility because for putting transmission line as per earlier feasibility national highway was required to be crossed. The petitioner accordingly sent a letter dated 07.04.2016 in this regard to Chief Engineer (Planning) PSPCL, Patiala. Chief Engineer, PSPCL, Ludhiana also sent a letter dated 20.04.2016 in this regard to Chief Engineer/ Planning, PSPCL, Patiala. The Chief Engineer/ Planning, PSPCL, Patiala vide its letter dated 26.04.2016 provided revised grid feasibility to the petitioner and allowed the petitioner to evacuate through 66 kV Sub-station, Nurewal (Ludhiana) of PSPCL instead of 66 kV Sub-station, Amaltas, Ludhiana. Thereafter the plant was completed and it was synchronized and commissioned on 08.06.2016.
- xxix) As on 04.05.2016 out of the total 9 locations, PSPCL failed to arrange breakers at four sites / GSS and as such the petitioner sent a letter dated 04.05.2016 to the SE-IPC, PSPCL, Patiala. The petitioner has completed the plants at all nine locations. Out of the total nine sites the petitioner has commissioned eight sites. Only one site at Morinda was pending and at this site the protection team inspected the

plant / equipments on 26.05.2016. Then on 27.05.2016 the protection team inspected the VCB. The permission to synchronization was given to the petitioner on 06.06.2016. But due to falling of trees on the transmission line due to heavy storm in the evening of 07.06.2016 the plant could not be synchronized. The petitioner has also written a letter dated 15.06.2016 in this regard to PEDDA. Thereafter the petitioner got the line / poles repaired and plant was commissioned / synchronized on 22.06.2016. So from the said facts it is clear that the delay occurred in synchronization of the plants was not due to any fault on the part of the petitioner. It was due to the reasons / force majeure which were beyond the control of the petitioner.

xxx) As per Regulation 85 of the CERC (Terms & Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2012, the Commission may pass necessary orders and relax any of the provisions of the said regulations. The Commission has inherent powers to make such orders as may be necessary for meeting the ends of the justice, power to remove difficulties, power to dispense with the requirement of the regulations as per regulation 69, 71 and 72 of the PSERC (Conduct of Business) Regulations, 2005.

- xxxi) The petitioner has prayed for the following reliefs:
- a) set aside and / or quash the letters dated 18.01.2016 and 24.02.2016 of PEDDA;
 - b) hold and declare that the Commercial Operation Date of the project of the petitioner stands extended till 31.05.2016 in accordance with article 10 of the PPA read with Article 7.0 of

the IA on account of force majeure events and events which are beyond the control of the petitioner;

- c) and further hold and declare that the Commercial Operation Date of the two sites / plants i.e. PSAMB, Ludhiana and Canam Consultants, Morinda stands extended till 08.06.2016 and 02.06.2016 respectively in accordance with Article 10 of the PPA read with Article 7.0 of the IA on account of force majeure events and events which are beyond the control of the petitioner;
 - d) hold and declare that the petitioner is entitled to tariff of Rs. 7.59 per kWh (levellised tariff) in terms of the PPA dated 31.03.2015 during the extended COD period;
 - e) direct PEDDA not to invoke the performance Bank Guarantee, and not to take any coercive actions whatsoever against the petitioner; and
 - f) pass such or further order as the Commission may deem just and proper in the circumstances of the case.
5. Submissions of PSPCL, in reply to the petition, are summarized as under:
- i) As far as the extension of Commercial Operation Date is concerned, PSPCL is only a performa respondent and has no major role to play at this stage.
 - ii) The present matter pertains to PPA dated 31.03.2015. The grounds of delay in commercial operation are not only vague but are also non digestible, being technically incorrect, legally defected and are concocted one. All the grounds taken by the petitioner to cover itself in the umbrella of force majeure events (clause dealing with force majeure events)

do not fall under Article 19.1.0 of the PPA. Such Article whereby the petitioner is entitled to take shelter of force majeure events deals with the natural calamities or events like unrest, epidemics, any court order, change in law event or any act of God. The grounds taken in the petition *inter alia*, deals with the approvals, an incident happened in Faridkot, some agitation in another state and self-created alibi of non-availability of staff of Sub-Registrar. None of the pleas find any hold on ground and are thus liable to be dismissed and the petition is liable to be dismissed with exemplary costs.

- iii) The petition is filed only with intention to hide the incapability and incapacity of the petitioner in commissioning of the project on the fixed date.
- iv) The petition has been filed purblindly with the only intention to delay the commissioning of the project and by seeking an illegal and unrealistic order from the Commission by not disclosing the true facts and concealing the material facts which are relevant for the disposal of the petition. The Commission has set a target for purchase of renewable power and in compliance to the same, the tenders were called. If the petitioner delays the commissioning of the project that would defeat the purpose of tendering to comply with the Commission's Order regarding RPO of the year. PSPCL has to purchase expensive RECs to complete the target without any fault of theirs. Keeping into consideration, the compliance of RPO and delay in commissioning of the

project by the petitioner, either the respondent may be allowed to encash the Bank Guarantee or carry forward the RPO by saddling the petitioner with heavy cost to be paid to PSPCL. The petition deserves dismissal on this score also as this will burden PSPCL heavily.

- v) It is an admitted fact that PSPCL entered into a PPA with the petitioner. As per clause 10.1.0 of the PPA, the generating company was under an obligation to commission the project and synchronize with the PSPCL grid within 10 months from the effective date i.e. date of signing of PPA which is 31.03.2015. Therefore as per the PPA, the scheduled date of commissioning for the project was 30.01.2016. The time schedule for commissioning and synchronization of the project has already been mentioned to the petitioner company at the time of bid.
- vi) The issue with regard to approval of PPA by PSERC is not only a practice but is also legally binding on both the parties. The petitioner should have done the due diligence before entering into the PPA with PSPCL or before bidding for the project in State of Punjab as this is the practice prevalent here since long. The contention with regard to the petitioner being assured by PSPCL that approval of the PPA would be obtained in 5-7 days is totally false and concocted. At no point of time, any such assurance was given by PSPCL to the petitioner. If the petitioner was having problem with clause 35 in the PPA, the same should have been challenged or they should have objected to it or should not have signed. Moreover, the inclusion of the clause did not

bar the petitioner from starting other formalities related to the project.

- vii) The delay by the petitioner in commissioning of the project is a self-styled delay and PSPCL has no role in the same. The petitioner is taking the alibi of force majeure events therein due to certain unavoidable circumstances. By perusing Article 19.1.0 and grounds of force majeure events as mentioned by the petitioner has no relevance and does not fall under the category as mentioned under Article 19.1.0. Therefore, the events of force majeure do not hold. As far as, the entering into IA with PEDDA by the petitioner is concerned, PSPCL is not a party to it and hence what has transpired between them is not only unknown to PSPCL but is also not relevant.
- viii) No doubt, the approval of the Commission is required after signing of the PPA but there is no bar that the petitioner company cannot initiate other processes and formalities for the commissioning of the project. It was the free will of the petitioner to sign the PPA or not. The petitioner signed the same as per its own free will and after all due diligence of the project. If the petitioner was of the opinion that it would not be in a position to fulfill the terms and conditions of the PPA, it should have opted out from the bidding process.
- ix) The petitioner is trying to conceal material facts from the Commission. The letter dated 24.11.2015 clarifies that PSPCL has not simply asked PEDDA to re-look into the matter but has given a technical explanation to that PSPCL has clearly mentioned that for 10 MW project, the designated voltage level is 66 kV whereas with the amendment

permitted the project capacity at nine different locations, the evacuation of power will be at 11 kV. Thus, by this amendment, the additional equipments are to be installed at these nine locations against one location as per the bid document. As to the difficulty in getting a single rooftop of 1,00,000 sq. mt. is concerned, it shows the incapability and lack of technical competence on part of the petitioner as it could not foresee such an issue arising and as such should have bid for a capacity less than 10 MW as per availability of rooftop.

- x) There was no endeavour or intention to cause any delay for granting the grid feasibility on behalf of PSPCL. It is delay caused by the petitioner as it applied grid feasibility on 17.12.2015 whereas the amendment in PPA was allowed on 02.12.2015. The actual delay is in identifying the locations and subsequent delay in applying for grid feasibility and there was no delay on part of PSPCL as the firm has started the process in December 2015. PSPCL would be the last person on the earth to cause delay in the commissioning of these projects as the delay in the same would mean non-compliance of the RPO and PSPCL would be bound to purchase the expensive RECs.
- xi) Jat Agitation initiated in District Rohtak, Haryana whereas, the project is more than 334 kilometers away. The agitation was not so violent or loud that it has any effect in State of Punjab.
- xii) By granting the extension of COD, a huge loss would not only be caused to PSPCL but would be caused to public at large as the delay in commissioning of the project would

mean that the RPO compliance as directed by the Commission would not be complied and therefore, PSPCL would be bound to purchase the expensive RECs for the compliance of the same. The purchasing of expensive RECs would mean that the consumers throughout the state would be saddled with expensive electricity and therefore, extra amount would be fleeced out from their pocket without any of their fault. The delay in commissioning of the project is due to the direct action of the petitioner and PSPCL has no responsibility in the same. If the petitioner is allowed extension of COD then the tariff as imposed should be reduced so that due to their own fault, the department and the public at large should not suffer.

- xiii) The bank guarantee and the cheque submitted by the petitioner is against the non-compliance of the terms of IA and PPA. It is a self-attested document of the petitioner wherein it has agreed that if the petitioner would not be in a position to commission the project on time, PSPCL and PEDDA would be at liberty to encash the Bank Guarantee and the cheque.
- xiv) The petitioner did not submit any request for availing technical feasibility clearance. CE / planning, PSPCL requested the petitioner vide memo no. 2578/437/87 dated 25.05.2015 to submit the requisite documents for availing feasibility clearance and along with the copy to PEDDA to provide technical concurrence in respect of petitioner's rooftop building/location of project. The petitioner's on the instance of O/o CE Planning requested on date 03.09.2015 (received on 04.09.2015) to set up 6.5 MW out of 10 MW in

distributed capacities of rooftop solar PV Plant at 11kV GSS/PSPCL 4 nos. at 66 kV Sub-station, Chunni Kalan, 1 no. each at 66 kV Sub-station Nidampur, 66 kV Sub-station, Hasanpur, 66 kV Sub-station Sakralpura etc. The requisite documents for availing feasibility clearance, evacuation plan, authorized signatories of petitioner were also submitted. O/o CE Planning had again requested PEDDA vide memo dated 10.09.2015 to provide technical concurrence in respect of rooftop building/location of project and a copy of IA was also sought. Subsequently, the petitioner requested O/o CE Planning to set up 10 MW instead of 6.5 MW requested earlier in distributed capacities of rooftop solar PV plant at PSPCL's 11 kV GSS at 9 no. different locations in Punjab along with copy of PEDDA office letter dated 14.10.2015.

- xv) The sub projects mentioned were not in resonance with IA & PPA where only one project of 10 MW was mentioned, clarification was sought from PEDDA vide memo no 773 dated 21.10.2015. In response to this, PEDDA issued amendment no. 1 dated 10.11.2015 vide which the request of the firm of splitting up the project at nine different locations was accepted by PEDDA. After amendment no. 1 of IA by PEDDA, the SPV sub projects of the firm were found to be located under different zones i.e. South, West, Central and accordingly matter was taken with respective CE/DS on 17.11.2015 followed by reminder on 07.12.2015 to provide detailed report regarding grid connectivity, space availability for 11 kV VCBs at respective 66 kV Sub-station. In the meanwhile, new request dated 11.12.2015 of the petitioner was received for change of Sub-station due to Railway

Crossing between Canam Warehouse & 66 kV Sub-station, Kajouli. The firm selected another 66 kV Sub-station, Hargana. O/o CE Planning requested to CE/DS Central Zone Ludhiana to supply detailed report of 66 kV Sub-station, Hargana. In view of this development matter was again taken up on dated 18.12.2015 with CE/DS Central, South and West through D.O. letters from CE/Planning for providing relevant technical inputs for evacuation of Power as per Firm's proposal. On receipt of reply from field offices, the technical feasibility clearances were accorded for different projects as below:

- a) 1.597 MW capacity project located at Canam consultant Ltd., Morinda VII. Chalaki was accorded on 31.12.2015 after receipt of reply from Dy. CE/DS Ropar vide his memo no. 30779 dated 22.12.2015.
- b) On receipt of replies from Dy. CE/DS Circle, Sangrur, on 21.12.2015 and from Dy. CE/DS Ropar dated 22.12.2015, this office issued feasibility clearances for 1.26 MW project located at Skyross Enterprises, Sangrur and for 0.599 MW project located at CA vegetable Store on 28.12.2015.
- c) For 1.250 MW project located at Boss Computer Pvt. Ltd. Zirakpur and 2.048 MW located at PSAMB, New Fruit and Vegetable Market, SAS Nagar, Mohali, the reply from Dy. CE / HQ South Patiala was received on 30.12.2015 and grid feasibility clearances were accorded on 31.12.2015.
- d) Dy. CE/Ds Bathinda sent technical concurrence vide memo no. 25039/40 dated 30.12.2015 for 0.630 MW project located at PSAMB Grain market Mansa and this

office issued feasibility vide memo no. 986 dated 31.12.2015.

- e) For 1.304 MW, 0.550 MW and 0.762 MW projects, SE/HQ, Central Ludhiana sent technical concurrence to this office on 29.12.2015 and this office issue feasibility clearances to all these three projects on 31.12.2015.
- xvi) Subsequently, against the request of the petitioner dated 07.04.2016, clarifications were sought from them vide memo dated 11.04.2016 whose copy was also sent on 11.04.2016 to EIC / Central, Ludhiana for furnishing information relating to his office. The same was replied by the petitioner vide letter dated 25.04.2016, wherein it was requested to revise the grid feasibility clearance from 66kV Sub-station Amaltas to 66kV Sub-station Nurewal. On the basis of the report received from the Office of EIC/DS Central, Ludhiana vide memo no. 2636 dated 20.04.2016, revised feasibility clearance was issued vide memo no.511/15 dated 26.04.2016.
- xvii) O/o CE Planning / PSPCL intimated the petitioner vide memo no. 943 dated 24.12.2015 that their rent free period of 4 months has already lapsed. The technical feasibility clearances granted to the above developer was accorded promptly in each case by adhering to the procedures in vogue and without any undue delay as far as O/o Planning office is concerned. PSPCL is more flexible towards the petitioner than PEDDA in granting the technical concurrence as well as feasibility clearances. It is perhaps only the petitioner which is responsible for amending its requests

again and again and thus causing delays in issuing of the feasibility clearances.

- xviii) Vide letter dated 26.10.2015 it was intimated by PEDDA to the office of PPR that as per the petitioner decision to take Rooftops on lease at nine different locations, the same needs to be included by PSPCL in the PPA. This makes it very clear that till end of October, the petitioner was not clear about the location or capacity of its plants.
- xix) The feasibility clearance by any DISCOM is given on the basis of location, capacity, route of transmission line and the Sub-station identified. If any of the above mentioned points is not available or is not clear, it becomes impossible to give feasibility clearance and the clearance issuing authority has to look into it all over again. Since the petitioner identified nine different locations throughout Punjab instead of one location, issuance of feasibility clearance became more tedious.
- xx) The petitioner cited various events over the duration of past year and requested the Commission to extend their COD citing the same. Force Majeure events are dealt with by Article 19.0.0 of the PPA. Article 19.2.0 clearly states that:

“19.2.0 The party invoking this clause shall satisfy the other party of the existence of any Force Majeure event and give written notice within 7 days of the occurrence of such Force Majeure event to the other party and also take all reasonable and possible steps to eliminate, mitigate or overcome the effect and consequences of any such Force Majeure event.”

Keeping this Article in mind, the petitioner was supposed to send specific notice to the respondents citing such events.

But sadly no such mandatory and specific notice was sent to the respondents. The petitioner kept sending vague letters to the respondents but nothing specific asserting the happening of such events. Moreover, no proof of any such events was ever given or how it had affected the project were provided. This is in stark contradiction of the claims of the petitioner. Therefore, PSPCL cannot be held liable where they have shown immense diligence and resolved the issue so fast.

- xxi) Erection of poles and infrastructure is the duty of the petitioner which is in accordance with the terms of the RfP under article 3D(iv) which clearly states that the generating company shall be responsible for connecting their power evacuation with the substation on their own cost. Moreover, the generation company has to take all relevant clearances which is clearly mentioned in article 6.2 (xii) of the RfP. The Definition of 'Site' under Article 1.0.0 of the PPA clearly states that relevant land is yet to be finalised which the developer is supposed to identify within timeframe for timely completion of the project.
- xxii) As per provision of the PPA, the IA forms an integral part of the PPA. Article 3C of the IA is as under:

"However, if the project COD crosses beyond 31st March 2016 then this tariff shall cease to exist and the developer will be bound to get the tariff re-determined from the PSERC"

The lowest tariff discovered in the bidding process for allocation of projects under Phase-III during FY 2015-16, which is Rs. 5.09 per kWh is required to be made applicable to the said projects as these projects achieved commissioning beyond 31.03.2016. The Commission may

re-determine the tariff to Rs. 5.09 per kWh as was decided in case of M/s Bhanuenergy in petition 15 & 16 of 2015.

6. The submissions of PEDDA are summarized as under:

- i) The petition is bad both in terms of de-jure and de-facto. The petition is based on conjectures and surmises and is not maintainable in the eyes of law.
- ii) In order to evade its bounden obligation, as stipulated in the RFP, LoA and IA of achieving the COD well within time, the petitioner has tried to set up a false and frivolous case. Moreover, the petition is not maintainable as there exists an arbitration clause in the document entered between the parties.
- iii) The IA is the main contractual document which provides that the petitioner was to set up the project and to achieve full capacity COD by 30.01.2016. However, the petitioner failed to achieve full capacity COD of the project as provided under the IA on scheduled date.
- iv) In line with the terms and conditions of the RfP, the petitioner deposited two unconditional performance Bank Guarantees amounting to Rs. 4.00 crore with PEDDA. The RfP / IA provide a specific time line with respect to the requisite performance of the project developer, as per which, the petitioner was required to sign the PPA with PSPCL on or before 31.03.2015. The petitioner was required to submit lease deed documents for the rooftops of buildings / sheds, grid feasibility letter from PSPCL, financial closure documents and copies of the work orders of equipments for the project and technology selection certificate from technology provider, within 120 days on the date of signing of PPA. The

petitioner was required to commission the project (s) within 10 months from the date of signing of PPA. As per RfP / IA, the developer was under a bounden obligation to commission the plant on or before 30.01.2016, failing which it has been categorically provided that the performance bank guarantee submitted by the developer shall be encashed / invoked to the tune of 30% of the performance bank guarantee for delay upto one month for the un-commissioned project capacity, on account of penalty and further delay of more than one month shall attract the encashment of remaining 70% of the performance bank guarantee on account of penalty. The petitioner entered into a PPA with PSPCL on 31.03.2015.

- v) The petitioner failed to submit the requisite documents i.e. lease deed documents for the rooftops of buildings / sheds, grid feasibility letters from PSPCL, financial closure documents and copies of the work orders of equipments of the project and technology selection certificate from technology provider within 120 days from the date of signing of PPA, as provided in the RFP / LOA / IA i.e. 31.07.2015.
- vi) The petitioner was to arrange for the rooftop for the project at its own level. The petitioner failed to source for the same, in the meanwhile, on 30.07.2015, the petitioner sought an extension of 90 days up to 30.10.2015 for submission of financial closure for the project. Acting in line with the RfP / LoA / IA, PEDDA issued 30 days notice of termination to the petitioner by way of communication dated 03.09.2015, requiring the petitioner to answer as to why the LoA, IA and PPA should not be terminated and consequently the

performance security be forfeited, as the petitioner had failed to adhere to the time line. The petitioner on 04.09.2015, by way of an email, wrongly intimated as to the submission of BR in support of financial adequacy on 17.08.2015, as vide letter dated 17.08.2015, the petitioner has sought a letter of comfort in favour of IREDA from PEDDA. The petitioner also informed as to the identification of 10 MW roof space and submission of Lols, for the same in this regard. In response to the notice dated 03.09.2015 the petitioner submitted a communication dated 29.09.2015 enclosing the signed lease documents for the roof tops qua the project in question and made an undertaking to complete the project within the time as per PPA. Further in line with the clause 4.1 (vii) of the IA, the petitioner on 12.10.2015 sought concurrence for the roof tops for the project. Thereafter, as part of the IA, the concurrence of PEDDA would further lead to grant of technical feasibility clearance by PSPCL. PEDDA after due diligence, acceded to the request of the petitioner and granted concurrence to the petitioner on 14.10.2015, while marking a copy of the same to PSPCL. Consequently, the petitioner vide communication dated 15.10.2015 approached PSPCL seeking grid connectivity. PSPCL vide communication dated 21.10.2015, sought clarification from PEDDA on the issuance of concurrence to set up the SPV power plants on different roof of sheds, as the petitioner has earlier signed IA and PPA for 10 MW project as a whole.

- vii) PEDDA in response to the communication dated 21.10.2015 of PSPCL, issued a communication dated 26.10.2015, clarifying that petitioner was allocated 10 MW roof top solar

PV power plant and as per clause 6.2 (vi) of IA, the petitioner is responsible for acquiring the rooftop area for the project. The petitioner identified the rooftop areas and taken the same on lease at nine different locations.

- viii) PEDDA requested PSPCL to sign supplementary PPA with the petitioner taking into consideration the nine different locations of the project, in line with the clause no. 3.5 of RfP and its amendments. PSPCL vide communication dated 04.11.2015 requested PEDDA to issue an amendment in the IA for inclusion of 9 different plant locations in order to enable PSPCL to make requisite amendments in the PPA. PEDDA issued an amendment to IA on 10.11.2015 without changing any of the terms & conditions mentioned in the IA, thereby, including the nine different rooftop locations for setting up the project(s).
- ix) PSPCL vide communication dated 18.11.2015 again sought clarification from PEDDA to the clause of RfP on the basis on which the amendment in IA has been carried out. PEDDA vide communication dated 20.11.2015 clarified PSPCL that as per the amendment in the bid document, the bidder was allowed to set up the plant with 0.501 MW minimum capacity or above on multiple rooftops and since the petitioner could not get multiple rooftop within the same premises, the plant capacity of 10 MW has been allowed to be set up at multiple roof tops in different locations and hence, as per the request made by the petitioner the amendment in IA was signed and ultimately, requested PSPCL to carry out amendment in PPA. PEDDA by way of communication dated 24.11.2015 informed PSPCL that amendment carried by PEDDA has been

duly approved and is final and requested PSPCL to carry out the amendment in PPA. PSPCL vide communication dated 24.11.2015 requested PEDDA to re-look into the matter as PSPCL has to put additional equipments for the project(s) at nine different locations. PEDDA vide communication dated 26.11.2015 clarified that as per clause 3.5 of RfP a single PPA for one project with a list of plants at different locations is allowed. PEDDA further clarified that even as per the PPA already signed, the generating facility means 10 MW Solar PV based Generation Station(s) located in Punjab. Also the definition of the project means 10 MW Solar Power Plants. Hence, the multiple locations are allowed in the PPA and therefore, requested PSPCL to sign amendment in PPA.

- x) The petitioner requested PEDDA vide letter dated 27.11.2015 to intervene with PSPCL for expediting the signing of PPA amendment. PSPCL signed amendment in PPA on 02.12.2015. The concurrence to the petitioner to set up the project(s) at nine different locations was included in the amendment to the PPA. The petitioner vide communication dated 28.12.2015 intimated that the PPA amendment has been signed on 02.12.2015, however, the grid feasibility is yet to be given by PSPCL. The petitioner gave an undertaking that they will complete the project as per the schedule given in the RfP after issue of PPA amendment i.e. 31.01.2016. PSPCL vide communication dated 28.12.2015 and 31.12.2015 issued feasibility clearances to the nine different rooftop solar PV projects of total capacity 10 MW. The petitioner along with the other project developers submitted joint representation vide communication dated

06.01.2016, requesting extension in COD up to 31.03.2016 and in response thereto PEDDA vide communication dated 18.01.2016 rejected the request of the petitioner and intimated that the projects be commissioned as per schedule by 31.01.2016 otherwise action as per RFP clause 3.23 shall be initiated for delay beyond scheduled commissioning date i.e. 31.01.2016.

- xi) As per the latest project status intimated by the petitioner, the company synchronized / commissioned one rooftop project of 2.048 MW at New Fruit and Vegetable Market, Sector 65, SAS Nagar on 01.04.2016 and two more rooftop projects of 0.630 MW at Grain Market, Mansa and 1.304 MW at Warehouse in District Fatehgarh Sahib on 18.05.2016 and 12.05.2016 respectively.
- xii) The Force Majeure clause provided under the IA, stipulates that the affected party shall give written notice to the other parties describing the particular of the force majeure event as soon as reasonably practicable after its occurrence but not later than 5 days after the date on which such party knew of the commencement of the force majeure event or of its effect on such party. Similarly, the PPA also provides issuance of notice as to the occurrence of Force Majeure event within a period of 7 days. However, in this matter the petitioner failed to issue any such notice invoking the aforesaid clause as to the occurrence of Force Majeure event(s), if any, in line with the terms and conditions of the IA. Hence, no reliance can be placed upon the plain assertions made by the petitioner.

- xiii) The delay is mainly on the part of petitioner, as the petitioner did not follow the time lines and submitted the rooftop lease documents at a belated stage on 29.09.2015. It was the petitioner's responsibility to arrange for the rooftops either single or multiple. The petitioner submitted a single bid for a 10MW project and did not disclose its intent to setup the project on 9 different locations. However, at the lateral stage in the month of September 2015, it submitted concrete documents and requested to setup the project at 9 different locations. Acceding to the request, PEDDA immediately signed the IA amendment. However, PSPCL while having different opinion, sought clarifications and took 22 days time to sign the amendment in PPA after the IA amendment. Hence, the primary cause of the delay is the delayed submission of rooftop documents i.e. lease deeds. The petitioner placed the orders with its suppliers for setting up the projects under the agreement dated 15.09.2015 which also shows the belated action of the petitioner. The joint representation submitted by the petitioner along with the other developers on 06.01.2016 did not hold any merit and their request for extension was rejected vide letter dated 18.01.2016. Further notice for levy of penalty as per RfP was issued by PEDDA on 24.02.2016. Hence, PEDDA after due deliberations decided to impose penalty on the petitioner.
- xiv) The petitioner submitted an un-conditional bank guarantee to PEDDA and as per the agreed terms and conditions, is liable to pay the penalty for delay in commissioning of the complete capacity of the project in question. Hence, PEDDA is entitled to encash the bank guarantee submitted by the Petitioner on

the aforesaid count for delay of 60 days uptill 31st March 2016 as the full capacity of the project was not commissioned even uptill 31.03.2016.

xv) Further the plain / false assertion of the Petitioner as to the purported occurrence of Force majeure events is belied from the fact that in the same phase of allocated rooftop solar PV projects, 1 rooftop solar power project with total 12 MW capacity has been successfully commissioned by similarly placed developer in the state of Punjab. Hence, no reliance can be placed upon the false and purported assertions made by the Petitioner.

xvi) The Commission in its order dated 25.04.2016 in Petition no.27 of 2016 in the matter of TSPL Versus PSPCL has held as under:-

“The Commission does not find favour with TSPL’s contentions that the correspondence and record of site visits by PSPCL officers constitute the notices in terms of Article 6.1.1 of the PPA. Also, only tentative dates of synchronization / commissioning were mentioned in these documents. No firm date of synchronization of the Third Unit was mentioned. The Commission is of the view that the notices fulfilling the requirements in terms of Article 6.1.1 of the PPA are mandatory and were required to be issued by TSPL. The same are not forthcoming in the submissions of TSPL. The office of Chief Engineer/Thermal Designs specifically requested TSPL for supplying copies of these notices issued under Article 6.1.1 of the PPA but TSPL failed to do so. The Commission finds that TSPL has not met with the requirements of Article 6.1.1 of the PPA. Hon’ble APTEL in its recent Judgment dated 07.04.2016 in Appeal No. 56 of 2013 and Appeal No. 84 of 2013 filed by TSPL against impugned Orders dated 24.12.2012 and 27.09.2012

passed by the Commission in Petitions No. 46 of 2012 and 11 of 2012, has set aside the said Orders. The Commission interprets that the underlying principle behind the said findings is that provisions of the PPA should be strictly followed in letter and spirit. Accordingly, the Commission holds that TSPL will comply with the requirements of Article 6.1.1 and Article 6.2.2 of the PPA meticulously for synchronization and commissioning of the Third Unit. In view of the above, the prayer(s) in the petition to direct PSPCL to witness/monitor the commissioning tests of the Third Unit (Unit No.1), quash PSPCL's letters dated 29.03.2016 and 30.03.2016 and direct PSPCL to pay capacity charges for the period the Third Unit is prevented from being commissioned due to default on the part of PSPCL, cannot be granted."

In view of the aforesaid, it is suffice to state that since the petitioner has failed to give notice to the answering respondent in line with the Force Majeure clauses of IA, hence, in light of the ibid orders passed by the Commission, no reliance can be placed upon the false and purported assertions made therein by the petitioner in the captioned petition as to delay in commissioning of the project in question due to the purported occurrence of the force majeure events. Hence the petition needs to be dismissed at the very outset with exemplary costs.

7. The petitioner submitted rejoinder to the replies submitted by PSPCL and PEDDA denying the allegations made therein and reaffirming the averments made in the petition. The submissions of the petitioner in the rejoinders are summarized as under:

- i) It is totally denied that PSPCL is a performa respondent for the relief claimed in the petition. The delay in commissioning of the project occurred due to the faults of PSPCL which

were beyond the control of the petitioner and even force majeure occurred due to the default of PSPCL. In this context, reference of the judgment of Hon'ble APTEL in Uttar Haryana Bijli Vitaran Nigam Limited V/s CERC in Appeal No. 97 of 2014 and 151 of 2013 and connected matters dated 07.04.2016 on the interpretation of force majeure clause is relevant which clearly states that where reference is made to 'force majeure', the intention is to save the performing party from the consequences of anything over which he has no control.

- ii) It was clarified by PEDA in letter dated 26.11.2015 addressed to PSPCL that clause 3.5 of RfP allows that a single PPA for one project with a list of plants at different locations (min Cap 501 KW) shall be executed. Even in already signed PPA on page no. 4, it is clearly stated that the generating facility means the 10 MW Solar PV based generating station(s) located in Punjab. Further, in PPA on page no. 6, Project means 10 MW Solar Power Plant(s). Also the voltage levels are also specified in the RfP for interconnection with PSPCL (11 KV up to 2.5 MW Cap.). The multiple locations are, therefore, already allowed in the PPA. So the queries raised by PSPCL were totally baseless and against the RFP papers and signed IA and PPA. It clearly shows that the PSPCL wasted precious time without any reason.
- iii) All exercise of amending IA and PPA was started only after the petitioner asked for grid feasibility and there was no need to send any fresh request after amendment in PPA or technical concurrence issued by PSPCL. PSPCL again took

time and gave feasibility clearance of two sites on 28.12.2015 and remaining seven sites on 31.12.2015. The respondents in whole process caused a delay of 127 days in giving feasibility clearance. The sites were approved on 26.08.2015 and feasibility clearance given on 31.12.2015. This shows the genuineness of concern of the PSPCL regarding non compliance of RPOs.

- iv) With regard to Jat Agitation, it is submitted that the entire nation and the world witnessed the havoc that was wreaked due to the said agitation. The protesters blocked highways and railway lines. The government attempted to pacify the Jats by setting up a Committee to look into their demand and it was only around 24.02.2016 that the Jat agitation came to an end. Since the said agitation was taking place in the neighbouring State of Haryana which is in close proximity of the State of Punjab, the entry and exit points of the State were put on curfew, thereby restraining the petitioner from receiving the material for structure and balance of system equipments to reach the site of the power plant and the materials to be supplied to the petitioner got stuck at the boarder of the State. By 22nd of February 12 people had been killed and property worth more than Rs. 200 billion had been damaged. The army and paramilitary forces were deployed in large numbers to control the situation and therefore, the submission of the respondent that the said agitation was not so violent that it had any effect is not only false, but is also an act of disgrace on the part of PSPCL.
- v) The delay is on the part of the respondents and now PSPCL is trying to put the blame of their mistakes on the petitioner.

There is no issue of reducing tariff as there is no fault on the part of the petitioner in delay of the commissioning of the project and the delay occurred due to the fault of PSPCL and PEDDA. Despite the delays in approvals of Grid feasibility and route clearance from PSPCL, the petitioner has progressed the work and as on 22.05.2016 solar plant work has been completed at all nine sites. Transmission line work has been completed at seven sites, transmission line work at PSAMB Ludhiana was delayed as grid feasibility was changed from Amaltas to Nurewal by PSPCL on 24.04.2016. It is denied that the tariff has to be determined on the basis of lowest tariff discovered in the bidding process for allocation of projects under Phase-III in FY 2015-16 and the order passed in case of M/s Bhanu Energy in Petition No.15 and 16 of 2015 is applicable in the present case.

- vi) While PEDDA alleged that the petition is bad both in terms of de-jure and de-facto, it has failed to demonstrate or provide reasons to justify the said allegations. It is denied that the petition is not maintainable as there exists an arbitration clause in the documents executed between the parties. This issue has already been decided by Hon'ble Supreme Court of India vide its judgment dated 13.03.2008 in Appeal (Civil) 1940 of 2008 in Gujarat Urja Vikas Nigam Limited V/s Essar Power Limited. Clause 35 of the PPA provides that the PPA shall be subject to such conditions as may be stipulated by the Commission while granting the approval. PEDDA, which is a nodal agency, never informed the petitioner before signing of the PPA that it would be effective only after it is approved by the Commission.

- vii) The invocation of PBG is subject to other terms and conditions of the IA. The perusal of clause 10.5 (ix) is very much clear that clause 7 is not absolute and it is qualified by clause 10 of the IA. As such, once the matter is pending before the Commission, PEDDA has no right to invoke the PBG.
- viii) Once IA has been amended as desired by PSPCL, then there remained nothing for relooking into this issue. After the PPA was signed, PSPCL gave technical concurrence vide letters dated 07.12.2015 for various sites of the petitioner, but feasibility clearance was not given. The petitioner sought grid feasibility vide letter dated 04.09.2015 and thereafter many letters were sent in this regard to PSPCL and PEDDA. Again letter was sent on 17.12.2015 requesting PSPCL to expedite the process of giving grid connectivity approval. PSPCL again took time and gave feasibility clearance of two sites on 28.12.2015 and remaining seven sites on 31.12.2015 and thus the respondents, in whole process, caused a delay of 127 days in giving feasibility clearance.
- ix) The petitioner completed the plants at all the nine locations and out of the total nine sites, the petitioner has commissioned eight sites. Only one site at Morinda remains pending due to falling of trees on the transmission line due to heavy storm in the evening of 07.06.2017. The petitioner also written a letter dated 15.06.2016 in this regard to PEDDA. Regarding one site, PSAMB Ludhiana, the petitioner was advised by XEN/Operation, West Division, PSPCL, Ludhiana to get the revised feasibility because for putting transmission lines as per earlier feasibility, National Highway was required

to be crossed. The Chief Engineer/Planning, PSPCL, Patiala vide letter dated 26.04.2016 provided revised grid feasibility to the petitioner and allowed the petitioner to evacuate through 66 kV Sub-station Nurewal, Ludhiana of PSPCL instead of 66 kV Sub-station Amaltas, Ludhiana. Upto 04.05.2016 out of the total nine locations, PSPCL failed to arrange breakers at four sites / GSS.

- x) No form of notice has been prescribed in the IA or PPA. Therefore, the letters sent by the petitioner amount to notice as per the provisions of the IA and PPA. PEDDA participated in the causes of the petitioner and acted to get the permissions etc. and this effective participation amounts to constructive notice to the respondents.
- xi) The petitioner is seeking relief on account of time consumed by PEDDA and PSPCL only and not claiming any benefit of any alleged delay caused by the petitioner in submitting the leased documents etc.
- xii) PEDDA wrongly and illegally rejected the joint representation dated 06.01.2016 by sending the letter dated 18.01.2016 which is totally non-speaking and no reason has been assigned in the said letter.

Commission's Observations, Findings and Decision

8. The Commission has carefully gone through the petition, the applications by petitioner and PEDDA, replies thereto by PEDDA & PSPCL, replies to the applications of PEDDA, rejoinders to the replies by the petitioner and other submissions filed by the parties. In the petition, IA dated 19.09.2016 and the application for stay, the petitioner sought the following reliefs:

- a) set aside and / or quash the letters dated 18.01.2016 and 24.02.2016 of PEDA ;
- b) hold and declare that the Commercial Operation Date of the project of the petitioner stands extended till 31.05.2016 in accordance with clause 10 of the PPA read with Article 7.0 of the IA on account of force majeure events which are beyond the control of the petitioner ;

and

further hold and declare that the Commercial Operation Date of the two sites / plants of the petitioner i.e. PSAMB Ludhiana and Canam Consultants stands extended till 8th June, 2016 and 22nd June, 2016 respectively, in accordance with Article 10 of the PPA read with Article 7.0 of the Implementation Agreement on account of Force Majeure events and events which are beyond the control of the petitioner.

- c) hold and declare that the petitioner is entitled to tariff of Rs. 7.59 per kWh (levellised tariff) in terms of the PPA dated 31.03.2015 during the extended COD period ;
- d) direct PEDA not to invoke the Performance Bank Guarantee, and to not take any coercive actions whatsoever against the petitioner.

9. Considering the submissions of the parties as brought out in the foregoing paras, the findings and decision of the Commission on various issues raised in the petition are as follows:

Jurisdiction of the Commission to adjudicate upon disputes between PEDA and the petitioner

- a. PEDA submitted that the petitioner wrongly invoked the jurisdiction of the Commission under section 86(1)(f) of the Act, which empowers the Commission to adjudicate upon disputes between the generating company and the distribution licensee. The Act does not empower the

Commission to assume jurisdiction over the disputes between PEDDA and the project developer. The petition is not maintainable as there exists an arbitration clause in the contractual document (IA) signed between the parties.

In this regard, the Commission notes that in para 14 of its Order dated 11.05.2015 in petition no. 21 of 2015 while granting approval for purchase of power from the petitioner's project by PSPCL and other developers including tariff, the Commission expressed its view as under:

“.....Also, since IA is a part of the PPA as submitted by PSPCL during the hearing on 05.05.2015, the Commission is of the view that various clauses of IA and PPA are to be read together and are complimentary.”

In the recital on page-2 of the PPA under clause (d), it is clearly mentioned that IA signed by the petitioner with PEDDA shall be treated as an integral part of the PPA and all the clauses and regulatory norms applicable to the IA shall be unequivocally applicable to the PPA in letter and spirit. In view of the above, the Commission holds that the submissions made in this regard are devoid of merit and no cognizance of the same is required to be taken. PEDDA further submitted that the petition is not maintainable as there exists an arbitration clause in the contractual documents. The Commission notes that the said issue has already been decided by the Commission in its Order dated 12.04.2016 in IA no. 19 of 2016 in petition no. 21 of 2016 & IA no. 14 of 2016 wherein it was held that the same was devoid of any merit. The Commission holds the same view.

The submission of the petitioner that the time period of 10 months for completion of the projects from the date of signing the PPA is less, is not understandable as this was a part of the RfP and the petitioner and many others bid for the projects of their own free will. Furthermore, PEDDA has submitted that one rooftop solar power project with total 12 MW capacity has been successfully commissioned by similarly placed developer in time.

Approval of PPA by the Commission on 11.05.2015

b. The PPA was signed by the petitioner with PSPCL on 31.03.2015. The petitioner submitted that PSPCL added clause 35.0.0 in the PPA which was not part of the draft PPA annexed with the RfP. The petitioner and other solar developers at the time of signing the PPA objected to the same stating that the PPA including the said clause should have been got approved from the Commission by PSPCL before its date of execution. The petitioner further submitted that PSPCL assured that the approval from the Commission shall be obtained in 5 to 7 days. However, the PPA was approved by the Commission on 11.05.2015. The insertion of clause 35.0.0 in the PPA practically rendered it ineffective and non-bankable until approved by the Commission. PSPCL submitted that as per clause 10.1.0 of the PPA, the generating company was under an obligation to synchronize the project with the PSPCL grid and commission it within 10 months from the date of signing the PPA i.e. by 30.01.2016 as also mentioned in the bidding documents. Approval of PPA by the Commission is legally required. The petitioner

should have exercised due diligence at the time of bidding and before signing the PPA. PSPCL submitted that it did not assure the petitioner that the PPA would be approved by the Commission in 5 to 7 days. The petitioner should have objected and challenged the addition of clause 35.0.0 in the PPA or not signed the same. PEDDA submitted that the disclaimer clause in the RfP clearly states that the IA and PPA annexed with the RfP were indicative in nature and could be changed later. The petitioner failed to produce on record any letter written under article 10.4 of the IA and/or clause 19.2.0 of the PPA with regard to the occurrence of force majeure event due to delay in signing the PPA or that the PPA was conditional.

The Commission observes that the petitioner has failed to show on record the activities which it could not initiate / execute during the period 31.03.2015 to 11.05.2015 for execution of the project. This clearly shows that the preliminary / preparatory works for execution of the project were not hampered for want of approval / acceptance of the PPA by the Commission on 11.05.2015, as alleged by the petitioner. The Commission further notes that clause 10.1.0 and clause 35.0.0 are concurrent and co-exist in the PPA. Article 7 of the IA signed by the petitioner with PEDDA on 28.03.2015 stipulated the commissioning period of the project as 10 months from the date of signing the PPA. Further, as per para (d) on page-2 of the PPA, IA shall be treated as an integral part of the PPA. The Commission has carefully considered the matter. The Commission is of the opinion that

in the absence of documentary evidence to prove any loss / delay suffered by the petitioner due to the time elapsed between the submission of petition by PSPCL on 30.03.2015 and acceptance of the PPA by the Commission on 11.05.2015, no benefit on this account is admissible to the petitioner.

Jat agitation in Haryana

c. The petitioner submitted that Jat agitation in the State of Haryana turned violent around 20.02.2016, which ended around 24.02.2016. Most part of the State was put under curfew, which restrained materials from reaching the project and caused delay of 10 days. The petitioner sought the relief on account of the above claiming it to be a Force Majeure event.

PEDA submitted that Force Majeure clause provided in the IA stipulates that the affected party shall give written notice to other parties describing the particulars of the Force Majeure event as soon as reasonably practicable after its occurrence but not later than 5 days after the date on which such party knew of the commencement of the Force Majeure event or of its effect on such party. Similarly, the PPA also provides issuance of notice as to the occurrence of Force Majeure event within a period of 7 days. However, in the instant matter the petitioner has failed to issue any such notice invoking the aforesaid clause as to the occurrence of Force Majeure event(s) if any, in line with the terms and conditions of IA.

PSPCL submitted that Jat agitation initiated from District Rohtak in the State of Haryana and the project of the

petitioner is around 334 km away. The agitation was not so violent that it had any effect in the State of Punjab. PSPCL further submitted that the said event does not fall under clause 19.1.0 of the PPA. Such article whereby the petitioner is entitled to take shelter on force majeure events deals with the natural calamities majorly or events like unrest, epidemics, any court order, change in law event or any act of God. The submissions of the petitioner do not hold ground.

The petitioner contended that the submission of PSPCL that the said agitation was not so violent or loud that it had any effect on the project is false.

The Commission notes that the claim of the petitioner with regard to alleged force majeure event i.e. Jat agitation in the State of Haryana has been strongly opposed by both PEDDA and PSPCL. The Commission feels that the petitioner has failed to show what material difference this event made to the implementation of the project. Neither did the petitioner bring these issues up before PEDDA / PSPCL at the relevant time nor submitted any documentary evidence to justify their claim that these events affected / delayed the execution of the project in terms of article 10 of the IA and clause 19.0.0 of the PPA. The claim for relief on these grounds is therefore rejected.

Delay in Grid connectivity and Amendment in IA & PPA

- d. (a) The Petitioner has submitted as under:
 - i. The petitioner submitted that PEDDA issued RfP dated 27.01.2015 for selection of bidders for setting up rooftop solar PV power plants. The petitioner submitted its bid for

setting up 10 MW rooftop solar PV power project at the net availed tariff of Rs. 7.59 per kWh. After evaluation of bids, PEDDA issued LoA on 25.03.2015 to the petitioner for setting up 10 MW rooftop solar PV power project and signed an IA on 28.03.2015. The PPA was signed between the petitioner and PSPCL on 31.03.2015. The scheduled date of commissioning for the project was 30.01.2016 as per the PPA. The petitioner submitted the PBG amounting to Rs. 4 crore to PEDDA in terms of article 6.2(iv) of the IA.

- ii. As per article 4.1(vii) of the IA, the petitioner was required to submit the complete location / details of the rooftop of the building shed on which the proposed grid connected solar PV power project was to be set up. The petitioner identified the roofs for 10 MW capacity and submitted the same to PEDDA vide letter dated 26.08.2015. The petitioner applied for grid technical feasibility clearance on 04.09.2015 to PSPCL. The petitioner submitted the details of the sites on 07.09.2015 to PEDDA and requested to give its concurrence followed by a request vide letter dated 12.10.2015. The petitioner, on 30.09.2015, submitted the lease agreement pertaining to private roofs and work order of PSAMB to PEDDA. PEDDA gave concurrence on 14.10.2015 to set up the solar PV power projects on the sites identified by the petitioner.
- iii. The petitioner approached PSPCL on 15.10.2015 for the grant of grid feasibility clearance at 11 kV grid sub-stations at various locations. PSPCL vide letter dated 21.10.2015 informed PEDDA and the petitioner that IA and

PPA are signed for 10 MW project as a whole and as such a clarification was sought from PEDDA. PEDDA vide letter dated 26.10.2015 informed PSPCL that at the time of signing of IA the petitioner informed that they have not identified any location to set up the plants and now it has identified the rooftop areas and as such supplementary PPAs for 10 MW rooftop solar plant were to be signed. The petitioner requested PSPCL on 28.10.2015 to execute the supplementary PPA for the identified sites. PSPCL vide letter dated 04.11.2015 requested PEDDA to first carry out amendment in IA enabling PSPCL to make amendment in the PPA. The petitioner vide letter dated 04.11.2015 requested PEDDA to amend the IA. Amendment No.1 to IA was executed on 10.11.2015 for 9 sites as identified by the petitioner.

- iv. The petitioner and PEDDA vide letters dated 13.11.2015 requested PSPCL to carry out necessary amendment in the PPAs. PEDDA again requested on 20.11.2015 to carry out the amendment in the PPA. PSPCL requested PEDDA on 24.11.2015 to relook into the matter. PEDDA vide letter dated 24.11.2015 informed PSPCL that amendment to the IA was duly approved by the competent authority and requested PSPCL to sign the amendment in the PPA. PEDDA vide letter dated 26.11.2015 to PSPCL informed that it is difficult to get such a large single rooftop area of 1,00,000 sq. mtr. at a single location and again requested to sign the amendment in the PPA. It was clarified in this letter that the clause 3.5 of RfP allows that a single PPA for one project with a list of plants at different location

(min. capacity 501 KW) shall be executed. Even on page No. 4 of the PPA, it is clearly stated that the Generating facility means the 10 MW Solar PV based generating station(s) located in Punjab. Further, on page No. 6 of the PPA, it is stated that Project means 10 MW solar power plant(s). Also the voltage level specified in the RfP for interconnection with the PSPCL is 11 kV upto 2.5 MW capacity. The multiple locations are therefore already allowed in the PPA. So, the queries raised by PSPCL were totally baseless and against the RfP, I.A. and PPA.

PSPCL carried out the amendment in the PPA on 02.12.2015 incorporating the names of the identified sites.

- v. PSPCL gave technical concurrence on 07.12.2015 and granted technical grid feasibility clearance on 28.12.2015 for 2 sites & 31.12.2015 for 7 sites. The petitioner identified the sites on 26.08.2015. PEDDA gave its concurrence on 14.10.2015. IA and PPA were amended on 10.11.2015 and 02.12.2015 respectively. PSPCL granted grid feasibility clearance on 31.12.2015. The delay of 127 days from 26.08.2015 to 31.12.2015 occurred due to the fault of PEDDA / PSPCL.
- vi. As on 4-5-2016, out of the total 9 locations, PSPCL failed to arrange breakers at four sites / GSS. The Petitioner vide letter dated 04.05.2016 informed PSPCL regarding the same. As on 22.05.2016, the Solar Plant work was completed at all 9 sites, Transmission line work was completed at 7 sites. The petitioner in rejoinder dated 20.06.2016 to PEDDA's reply submitted that regarding one site at PSAMB Ludhiana , the petitioner was advised by

Xen (Operation) West Division, PSPCL, Ludhiana to get the revised feasibility, as according to earlier feasibility, the National highway would be required to be crossed for erecting the transmission line. Accordingly, the petitioner requested PSPCL vide letter dated 07.04.2016 to revise the grid feasibility and PSPCL granted the same vide letter dated 26.04.2016 from 66 kV substation Nurewal instead of 66 kV substation Amaltas. The plant at this site was commissioned on 08.06.2016. The petitioner has commissioned the plants at 8 nos. sites. Only one site at Morinda remains pending due to falling of trees on the transmission line due to heavy storm on 07.06.2016.

- vii. The 9 nos. Solar PV Power Plants were commissioned as follows:

Sr. No.	Project Site	Capacity (MW)	Date of synchronization / Commissioning as per PEDAs letter no. 2910 dt. 19.08.2016
1.	PSAMB, SAS Nagar, (Mohali)	2.048	01.04.2016
2.	Bhagwant Singh & Others, (ITC/Chunni)	1.304	12.05.2016
3.	Boss Computers Pvt. Ltd. (Zirakpur)	1.250	12.05.2016
4.	PSAMB Grain Market Mansa	0.630	18.05.2016
5.	CA Vegefruit Stores (Kharar)	0.599	21.05.2016
6.	Skyross enterprises (Pepsi Warehouse/Channo)	1.260	25.05.2016
7.	Bhagwant Singh & Kulwinder Kaur, (Reliance Fresh)	0.550	27.05.2016
8.	PSAMB, New Vegetable Market, Ludhiana	0.762	08.06.2016
9.	CANAM Consultants, (Morinda)	1.597	22.06.2016

viii. It is wrong that the tariff has to be determined on the basis of lowest tariff discovered in the bidding process for allocation of projects under Phase-III in FY 2015-2016. The order passed in the case of M/s Bhanuenergy in Petition No. 15 & 16 of 2015 can not be made applicable in the present case.

(b) PSPCL has submitted as under:

- i. The grievance of the petitioner in respect of execution of supplementary IA and PPA deals with PEDDA and not PSPCL. IA being the primary and initial document has to be amended first before amending the PPA.
- ii. As to the difficulty in getting a single rooftop of 1,00,000 sq meter is concerned, it shows the incapability and lack of technical competence on the part of the petitioner. The petitioner should have bid for a capacity less than 10 MW as per availability of rooftop.
- iii. As in IA & PPA, only one project of 10 MW was mentioned, PSPCL vide letter dated 21.10.2015 sought clarification from PEDDA regarding concurrence given by it for setting up the project at 9 different locations. Thereafter, PEDDA issued amendment no.1 dated 10.11.2015 allowing the splitting up of the project at 9 different locations.
- iv. PSPCL carried out the necessary amendment in the PPA on 02.12.2015 after the completion of all technical formalities. PSPCL granted grid feasibility clearance for two sites on 28.12.2015 and for seven sites on 31.12.2015. The delay was caused by the petitioner as it applied for grid feasibility clearance on 17.12.2015

whereas the amendment in the PPA was signed on 02.12.2015. The actual delay is in identifying the locations and thereafter in applying for grid feasibility.

v. Article 3C of the IA provides that if the project COD crosses beyond 31.03.2016, then this tariff shall cease to exist and the developer will be bound to get the tariff redetermined from the PSERC. The lowest tariff of Rs.5.09 per kWh discovered in the bidding process for allocation of projects under Phase-III during FY 2015-16, is required to be made applicable to the said project as it has been commissioned after 31.03.2016.

vi. PSPCL requested the petitioner vide letter dated 25.05.2015 to submit the requisite documents for availing feasibility clearance and requested PEDDA to provide Technical Concurrence. However, the petitioner vide letter dated 04.09.2015, requested PSPCL for feasibility clearance of 6.5 MW out of 10 MW in 8 locations. PSPCL again requested PEDDA vide letter dated 10.09.2015 to provide Technical Concurrence in respect of firm's rooftop building / location of project and a copy of IA was also sought. Subsequently, the petitioner requested PSPCL vide letter dated 15.10.2015 to grant the grid feasibility clearance to set up 10 MW instead of 6.5 MW at 9 locations and also submitted the copy of PEDDA's letter dated 14.10.2015 vide which the concurrence to set up the SPV Power Plants on the said 9 locations was granted.

The petitioner vide letter dated 11.12.2015 requested PSPCL to grant the feasibility clearance of CANAM

Consultants, (Morinda) plant from 66 kV substation Hargana instead of 66 kV substation Kajouli due to Railway Crossing between CANAM Warehouse and 66 kV substation Kajouli. PSPCL granted grid feasibility clearance for two locations on 28.12.2015 and seven locations on 31.12.2015.

The petitioner vide letter dated 07.04.2016 requested PSPCL to revise the grid feasibility for its PSAMB, New Vegetable Market, Ludhiana plant from 66 kV substation Amaltas to 66 kV substation Nurewal due to crossing of National Highway. The same was granted by PSPCL vide letter dated 26.04.2016. The petitioner amended its requests for the grant of grid feasibility clearances time and again which caused delay in issuing of the same by PSPCL.

- vii. PEDDA vide letter dated 26.10.2015 requested PSPCL to include nine different locations of the petitioner's plants in the PPA. The petitioner was not clear till end of October, 2015 regarding location of plants. Furthermore, in the amendment to IA dated 10.11.2015, the petitioner had changed the capacity of their plants than that mentioned in PEDDA's aforesaid letter dated 26.10.2015. The feasibility clearance is given on the basis of location, capacity, route of transmission line and the Sub-station identified. If any of the above mentioned points is not available or is not clear, it becomes impossible to give feasibility clearance.

viii. As far as the delay alleged by the petitioner on grounds of non-availability of Breakers at 4 sites is concerned, there was no problem of availability of breakers.

The delay at Ludhiana location was due to non depositing of supervision charges by the petitioner upto 18.04.2016. Further, revised feasibility was applied by the petitioner vide letter dated 07.04.2016 which was granted by PSPCL on 26.04.2016.

The circuit breaker at 66 kV Sub-station, Nadampur under Sangrur circle was installed but ASE / Enforcement found out that the metering equipment and the meter at the consumer end were installed in the open and not in a room which is against the PSPCL requirements and had directed the company to install it in a room.

At the Khanna location, which was to be connected to Hargana Sub-station, only 375 poles out of 400 poles of 11 kV line were erected by the petitioner as on 12.05.2016 and the conductor stringing and sagging work was not yet initiated. The breakers were available with PSPCL but could not be installed unless the poles were erected.

The Zirakpur plant was already granted permission for commissioning on 10.05.2016.

The delay as alleged against PSPCL is actually caused by the petitioner itself.

ix. The petitioner is responsible for the erection of poles and infrastructure. Article 3D(iv) of the RfP states that the generation company shall be responsible for

connecting the power plant with the sub-station at its own cost. Moreover, the generation company has to take all relevant clearances which is clearly mentioned in the article 6.2(xii) of the RfP. Although, the Definition of 'Site' under Article 1.0.0 of the PPA states that relevant land is yet to be finalized, the developer is supposed to identify the site within timeframe for timely completion of the project.

- x. The petitioner didn't have the land required for the project. Due to this, it kept on changing the location of the project multiple times and has tried to put the onus of delay on PSPCL. The feasibility clearance can only be given after the identification of land.
- xi. Sagging of conductor at Bhakhra Main Line and SYL Canals was completed by the petitioner on 22.06.2016 after the approval of Forest Department on 21.06.2016. No pole was broken near village Dumchheri due to storm on 07.06.2016.
- xii. The petitioner has not approached the commission with clean hands and have tried to pass off their responsibility on to PSPCL and have tried to cover up their incapability by raising Non existing issues of Force Majeure events, for which no evidence has been provided and no specific notice given. The delay has been caused by the petitioner itself by not paying the supervision charges at various locations and not setting up the required infrastructure as per the norms.

(c) PEDDA has submitted as under:

- i) The petitioner was required to submit lease deed documents for the Roof Tops of buildings / Sheds, grid feasibility letter from PSPCL, Financial Closure documents, copies of the work orders of equipments for the project and technology selection certificate from technology provider, within 120 days from the date of signing of PPA. The petitioner failed to submit the said documents within 120 days. The petitioner was required to commission the project(s) by 30.01.2016 failing which the PBG submitted by the developer could be encashed / invoked to the tune of 30% for delay upto one month for the un-commissioned project capacity, on account of penalty. The further delay of more than one month shall attract the encashment of remaining 70% of the PBG on account of penalty. The petitioner vide letter dated 30.07.2015 sought extension of 90 days upto 30.10.2015 for submission of financial closure for the project.
- ii) As the petitioner had failed to adhere to the time lines as mentioned above, PEDDA vide letter dated 03.09.2015 issued 30 days Notice of termination to the petitioner.
- iii) The petitioner vide email dated 04.09.2015 informed PEDDA as to identification of 10 MW roof space. Further, in response to the ibid notice dated 03.09.2015, the petitioner vide letter dated 29.09.2015 submitted the signed lease document for the Roof Tops qua the projects in question and made an undertaking to complete the project within time as per PPA.

iv) As per clause 4.1(vii) of the IA, the petitioner on 12.10.2015 sought concurrence from PEDDA for the roof tops for the projects. PEDDA granted the same on 14.10.2015. Consequently, the petitioner vide letter dated 15.10.2015 requested PSPCL for the grant of technical feasibility clearance. PSPCL vide its letter dated 21.10.2015 sought clarification from PEDDA on the issuance of concurrence to set up the SPV power plants on different roof of sheds, as the petitioner had earlier signed IA and PPA for 10 MW project as a whole. PEDDA vide letter dated 26.10.2015 clarified that the petitioner was allocated 10 MW roof top solar PV power Plant and as per clause No.6.2 (vi) of IA the petitioner is responsible for acquiring the roof top area for the project. The petitioner has identified the roof top areas and taken the same on lease at nine different locations. The details of which were duly furnished by PEDDA to PSPCL vide letter dated 26.10.2015. PEDDA requested PSPCL to sign supplementary PPA with the petitioner taking in to consideration the nine different locations of the Project, in line with the clause no. 3.5 of the RfP and its amendments issued. PSPCL vide its communication dated 04.11.2015 requested PEDDA to issue an amendment in the IA for inclusion of 9 different plant locations in order to enable PSPCL to make requisite amendments in the PPA.

Consequently, PEDDA issued an amendment to IA on 10.11.2015, without changing any of the terms and conditions mentioned in the IA, thereby, including the

nine different roof top locations for setting up the project(s).

- v) PEDDA vide letter dated 13.11.2015 requested PSPCL to sign the amendment in PPA. PSPCL vide its letter dated 18.11.2015, once again sought clarification from PEDDA as to the clause of RfP on the basis of which the amendment in IA has been carried out. PEDDA vide letter dated 20.11.2015 inter-alia clarified to PSPCL that as per the amendment in the bid document, the bidder was allowed to set up the plant with 0.501 MW minimum capacity or above on multiple roof tops. Since the petitioner could not get multiple roof tops within the same premises, the plant capacity of 10 MW has been allowed to be set up at 9 multiple roof tops in different locations and hence, as per the request made by the Petitioner the amendment in IA has been signed. PEDDA vide letter dated 24.11.2015 further informed PSPCL that the amendment in the IA has been duly approved by the competent authority and is final and requested PSPCL to carry out the amendment in PPA. PSPCL vide letter dated 24.11.2015 requested the PEDDA to re-look in to the matter as PSPCL has to put additional equipments for the project(s) in question at 9 different locations. PEDDA vide letter dated 26.11.2015 clarified that as per clause 3.5 of the RfP a single PPA for one project with a list of plants at different locations is allowed. PEDDA further clarified that even as per the already signed PPA, the Generating Facility means 10MW solar PV based Generating Station(s) located in

Punjab. Also the definition of the project means 10MW Solar Power plants. Hence, the multiple locations are allowed in the PPA.

PSPCL signed the amendment in the Power Purchase Agreement on 02.12.2015 vide which concurrence to the Petitioner to set up the project(s) at 9 different locations was included.

PSPCL vide letter dated 28.12.2015 and 31.12.2015 issued feasibility clearances to the 9 different rooftop Solar PV Projects of total capacity 10 MW.

vi) The delay is mainly on the part of petitioner, as it did not follow the time lines and submitted the rooftop lease documents at a belated stage vide letter dated 29.09.2015 (received on 30.09.2015). It was the petitioner's responsibility to arrange for the rooftops either single or multiple. The petitioner submitted a single bid for a 10MW project and did not disclose its intent to set up the project on 9 different locations. However, at the later stage in the month of September, 2015, it submitted lease documents and requested to set up the project at 9 different locations.

Further, the petitioner placed the orders with its suppliers for setting up the projects under the Agreement dated 15.09.2015, which also shows the belated action of the petitioner.

vii) The petitioner sought amendment in the petition seeking extension of commercial date of operation qua two sites i.e. PSAMB, Ludhiana as 08.06.2016 and Canam Consultants, Morinda till 22.06.2016. The grounds on

which the petitioner has sought further extension in scheduled date of commissioning qua the two ibid plants relates to PSPCL and warrants no reply by PEDDA. The amendment sought by the petitioner is not maintainable. The petitioner has tried to setup a false and frivolous case that it has been allocated 9 projects of total 10MW, wherein, petitioner is allowed to setup the 9 projects having different dates of commissioning. In fact, the petitioner has been allocated one single project of 10MW initially and was allowed to setup 10MW project at 9 different locations, on its request. The petitioner failed to setup the project by the scheduled date of commissioning and filed the petition on the basis of purported force majeure events. The petitioner in the ibid petition had earlier inter-alia prayed for rendering extension in the scheduled date of commissioning of the project till 31.05.2016. However, now the petitioner while taking an altogether different stand has sought different extensions in the scheduled date of commissioning of 9 plants installed by the petitioner at different locations, while purporting the same to be separate projects, which is totally illegal and impermissible as per the agreed terms and conditions between the parties. The delayed commissioning of the two projects on 08.06.2016 & 22.06.2016 is attributable to the petitioner. Hence the

amended prayer of the petitioner seeking extension in the scheduled date of commissioning qua different plants installed by the petitioner under the 10MW project allocated to the petitioner cannot be allowed.

- viii) The submissions of the petitioner (at page no.33 of the IA no.16) demonstrates that till the last week of February, 2016, the material for setting up of the project was not available with the petitioner at the project site. Hence, the petitioner is not at all entitled for the tariff i.e. Rs.7.59 kwh as the tariff qua the solar projects is determined solely upon fixed capital cost and once the petitioner had purchased the material i.e. the capital component after the SCOD of 30.01.2016, the petitioner deserves to be awarded reduced tariff. Further, the project has been commissioned much beyond 30.03.2016 and accordingly the petitioner is not at all entitled for the tariff allocated to the project.

Keeping the above in view, the Commission notes that the petitioner as well as PEDDA have submitted that it has been provided in Section 3.5 of RfP that a single PPA for one project with a list of plants at different location (minimum capacity 501 KW) shall be executed.

The Commission further notes that Section 3 (d) (iv) of the RfP provides as under:

“The arrangement of connectivity can be made by the SPD through a dedicated power evacuation line which the SPD may construct himself or get constructed by PSPCL / PSTCL or any other Agency on acceptable terms. The entire cost of

power evacuation including cost of construction of line from the project upto the nearest substation will be borne by the project developer and will not be reimbursed by PSPCL / PSTCL. PEDDA advised to the bidders to ensure that preferably there are no obstacles such as railway line, river etc., between the solar power plant and connecting substation. Such obstacles causing delay in commissioning the projects will be sole responsibility of the bidder.”

The Commission notes that It has been provided in Article 4.1 (vii) of the IA that the developers are required to submit the complete location / details of the rooftop of the building / shed on which the proposed Grid Connected Solar PV Plant is to be set up. It has been further provided therein that PEDDA shall examine and grant concurrence to the location / building / shed rooftops and only thereafter PSPCL shall issue the technical feasibility clearance.

It has been provided in the Article 6.2 (vi) of the IA that the Bidder / SPD shall acquire rooftop on ownership / leasehold basis for 30 years. The rooftop area approximately 100000 Sq. ft. per MW shall be in clear possession of the project developer. In this regard the project developer shall be required to furnish the documentary evidences i.e. Registered Sale Deed of building showing ownership / Registered Rooftop lease deed of building in the name of SPD to PEDDA within 120 days from issue of Letter of Award.

Further, Article 6.2 (xii) provides that the company shall follow and obtain all necessary clearances / approvals under all the relevant laws, including without limitation, all labour

laws, and shall also provide for safety provisions as per the Indian Electricity Act, 2003, Indian Electricity Rules, State Grid Code, Factories Act, 1948 and such other statutory provisions as applicable to the project.

The Commission notes that under the clause '1.0.0 DEFINITION' of the PPA, the 'project' means 10 MW Solar Power Plant(s) (Generating Facility) including all the land, civil structures, residential colony, electrical and mechanical plant and equipment, 11/66/132/220 kV switch yard including transformer, breaker, CT / PTs, wave traps, structures, isolators etc., dedicated telephone lines, telephone and wireless system, components, appurtenants, communications, access road off the village road, footpaths, carriage ways etc. located at approved and allocated area in the State of Punjab.

The Commission notes that the petitioner, on 30.09.2015, submitted the lease agreement pertaining to private roofs and work order of PSAMB to PEDA. PEDA gave concurrence on 14.10.2015 to set up the solar PV power plants on the nine sites identified by the petitioner and subsequently signed the amendment in IA on 10.11.2015. PEDA has taken 41 days from the submission of lease agreements by the petitioner on 30.09.2015 to amendment in the IA on 10.11.2015. Considering the two weeks time as reasonable for giving concurrence and thereafter three weeks time as reasonable for the amendment in the IA by PEDA, the Commission holds that the delay of 06 (41-14-21) days on this account is attributable to PEDA.

The Commission further notes that PSPCL amended the PPA on 02.12.2015 subsequent to the amendment in the IA on

10.11.2015 wherein the nine locations of solar PV power plants were finalized. PEDA vide letter dated 26.10.2015 requested PSPCL to include nine different locations of the petitioner's plants in the PPA. PSPCL has submitted that in the amendment to IA dated 10.11.2015, the petitioner had changed the capacity of their plants than that mentioned in PEDA's aforesaid letter dated 26.10.2015. PSPCL has further submitted that the feasibility clearance is given on the basis of location, capacity, route of transmission line & the Sub-station identified and if any of the above mentioned points is not available or is not clear, it becomes impossible to give feasibility clearance. The Commission notes that PSPCL granted feasibility clearance for the two plants at the sites CA Vegefruit Stores (Kharar) & Skyross enterprises (Pepsi Warehouse/Channo) on 28.12.2015 and for the remaining seven sites on 31.12.2015. The Commission further notes that PSPCL has taken 48 days (10.11.2015 to 28.12.2015) for the aforesaid two plants and 51 days (10.11.2015 to 31.12.2015) for the remaining seven plants for the grant of feasibility clearance.

The Commission also notes that the petitioner vide letter dated 07.04.2016 requested PSPCL to grant the feasibility clearance of PSAMB, New Vegetable Market, Ludhiana plant from 66 kV substation Nurewal instead of 66 kV substation Amaltas due to National Highway Crossing between PSAMB, New Vegetable Market and 66 kV substation Amaltas. The revised feasibility clearance as requested by the petitioner was granted by PSPCL on 26.04.2016. Considering the 19 days time taken by PSPCL for the same as reasonable, the

Commission holds that no delay on this account is attributable to PSPCL.

The petitioner vide letter dated 11.12.2015 requested PSPCL to grant the feasibility clearance of CANAM Consultants, (Morinda) plant from 66 kV substation Hargana instead of 66 kV substation Kajouli due to Railway Crossing between CANAM Warehouse and 66 kV substation Kajouli. The same was granted by PSPCL on 31.12.2015. Considering the 20 days time taken by PSPCL for the same as reasonable, the Commission holds that no delay on this account is attributable to PSPCL.

The Commission further notes that Section 3 (d) (iv) of the RfP provides for bidders to ensure that preferably there are no obstacles such as railway line, river etc., between the solar power plant and connecting substation. It has been further provided therein that such obstacles causing delay in commissioning the projects will be sole responsibility of the bidder. Therefore, the Commission is of the view that petitioner should have taken due care of the fact that National Highway crossing / Railway crossing was there, at the time of applying for the feasibility clearance initially. Accordingly, the Commission holds that PSPCL is not responsible for the delay caused on this account for the above two projects at Ludhiana and Morinda sites.

The Commission notes that PSPCL has taken 51 days for feasibility clearance of five sites and 48 days for two sites as detailed above. Considering the 28 days time as reasonable for the grant of feasibility clearance by PSPCL, the Commission holds that the delay of 23 (51-28) days in case of

five projects and the delay of 20 (48-28) days in case of two projects is attributable to PSPCL. The delay in feasibility clearance for the other two sites is attributable to the petitioner. Considering the 6 days delay by PEDDA as detailed above and the delays attributable to PSPCL in respect of grid feasibility clearance, the Commission holds that the delays attributable to PEDDA / PSPCL for the nine sites are as under:

Sr. No.	Rooftop Solar PV Power Plant Site	Delay by PEDDA (6 days) / PSPCL (Days)
1.	PSAMB, SAS Nagar, (Mohali)	29
2.	Bhagwant Singh & Others, (ITC/Chunni), Fatehgarh Sahib.	29
3.	Boss Computers Pvt. Ltd. (Zirakpur)	29
4.	PSAMB Grain Market Mansa	29
5.	CA Vegefruit Stores (Kharar)	26
6.	Skyross enterprises (Pepsi Warehouse/Channo), Sangrur.	26
7.	Bhagwant Singh & Kulwinder Kaur, (Reliance Fresh), Kotla Fazal, Teh. Bassi Pathana.	29
8.	PSAMB, New Vegetable Market, Ludhiana	06
9.	CANAM Consultants, (Morinda)	06

The Commission's findings and decisions regarding delay in commissioning of the rooftop solar PV power plants are as under:

(A) PSAMB, SAS Nagar, (Mohali), 2.048 MW

The feasibility clearance was granted by PSPCL on 31.12.2015. The Chief Electrical Inspector (CEI) granted the clearance for plant and the line on 30.03.2016. Accordingly, the plant including the line was completed on 30.03.2016. The

plant was commissioned on 01.04.2016 as per the commissioning certificate issued by PEDDA vide letter no. 2910 dated 19.08.2016. Accordingly, there is delay of 62 days (30.01.2016 to 01.04.2016) from the scheduled date of COD i.e. 30.01.2016. The delay attributable to PEDDA / PSPCL is 29 days as detailed above. Therefore, the Commission holds that the delay of 33 (62 - 29) days is attributable to the petitioner for this plant.

(B) Bhagwant Singh & Others, (ITC/Chunni), Fatehgarh Sahib, 1.304 MW

The feasibility clearance was granted by PSPCL on 31.12.2015. The CEI granted the clearance for plant and the line on 30.03.2016 and 11.04.2016 respectively. Accordingly, the plant including the line was completed on 11.04.2016. The petitioner was required to inform PSPCL the date of commencement of delivery of power 30 days in advance alongwith detailed procedure for synchronization etc. in terms of clause 5.5.0 and 8.2.0 of the PPA. The Commission notes that no such notice / information was given to PSPCL by the petitioner in terms of the relevant clauses of the PPA. The petitioner applied for the grant of synchronization permission to PSPCL on 10.05.2016. Thereafter, the plant was commissioned in a period of less than 30 days on 12.05.2016 as per the commissioning certificate issued by PEDDA vide letter no. 2910 dated 19.08.2016. Accordingly, there is delay of 103 days (30.01.2016 to 12.05.2016) from the scheduled date of COD i.e. 30.01.2016. The delay attributable to PEDDA / PSPCL is 29 days as detailed above. Therefore, the

Commission holds that the delay of 74 (103 - 29) days is attributable to the petitioner for this plant.

(C) Boss Computers Pvt. Ltd. (Zirakpur), 1.250 MW

The feasibility clearance was granted by PSPCL on 31.12.2015. The CEI granted the clearance for plant and the line on 30.03.2016 and 02.05.2016 respectively. Accordingly, the plant including the line was completed on 02.05.2016. The petitioner was required to inform PSPCL the date of commencement of delivery of power 30 days in advance alongwith detailed procedure for synchronization etc. in terms of clause 5.5.0 and 8.2.0 of the PPA. The Commission notes that no such notice / information was given to PSPCL by the petitioner in terms of the relevant clauses of the PPA. The petitioner applied for the grant of synchronization permission to PSPCL on 05.05.2016. Thereafter, the plant was commissioned in a period of less than 30 days on 12.05.2016 as per the commissioning certificate issued by PEDDA vide letter no. 2910 dated 19.08.2016. Accordingly, there is delay of 103 days (30.01.2016 to 12.05.2016) from the scheduled date of COD i.e. 30.01.2016. The delay attributable to PEDDA / PSPCL is 29 days as detailed above. Therefore, the Commission holds that the delay of 74 (103 - 29) days is attributable to the petitioner for this plant.

(D) PSAMB Grain Market Mansa, 0.630 MW

The feasibility clearance was granted by PSPCL on 31.12.2015. The CEI granted the clearance for plant and the line on 03.05.2016. Accordingly, the plant including the line was completed on 03.05.2016. The petitioner was required to inform PSPCL the date of commencement of delivery of power

30 days in advance alongwith detailed procedure for synchronization etc. in terms of clause 5.5.0 and 8.2.0 of the PPA. The Commission notes that no such notice / information was given to PSPCL by the petitioner in terms of the relevant clauses of the PPA. The petitioner applied for the grant of synchronization permission to PSPCL on 16.05.2016. Thereafter, the plant was commissioned in a period of less than 30 days on 18.05.2016 as per the commissioning certificate issued by PEDDA vide letter no. 2910 dated 19.08.2016. Accordingly, there is delay of 109 days (30.01.2016 to 18.05.2016) from the scheduled date of COD i.e. 30.01.2016. The delay attributable to PEDDA / PSPCL is 29 days as detailed above. Therefore, the Commission holds that the delay of 80 (109 - 29) days is attributable to the petitioner for this plant.

(E) CA Vegefruit Stores (Kharar), 0.599 MW

The feasibility clearance was granted by PSPCL on 28.12.2015. The CEI granted the clearance for plant and the line on 03.03.2016 and 05.04.2016 respectively. Accordingly, the plant including the line was completed on 05.04.2016. The petitioner was required to inform PSPCL the date of commencement of delivery of power 30 days in advance alongwith detailed procedure for synchronization etc. in terms of clause 5.5.0 and 8.2.0 of the PPA. The Commission notes that no such notice / information was given to PSPCL by the petitioner in terms of the relevant clauses of the PPA. The petitioner applied for the grant of synchronization permission to PSPCL on 02.05.2016. Thereafter, the plant was commissioned in a period of less than 30 days on 21.05.2016 as per the commissioning certificate issued by PEDDA vide

letter no. 2910 dated 19.08.2016. Accordingly, there is delay of 112 days (30.01.2016 to 21.05.2016) from the scheduled date of COD i.e. 30.01.2016. The delay attributable to PEDDA / PSPCL is 29 days as detailed above. Therefore, the Commission holds that the delay of 83 (112 - 29) days is attributable to the petitioner for this plant.

(F) Skyross enterprises (Pepsi Warehouse/Channo), Sangrur, 1.260 MW

The feasibility clearance was granted by PSPCL on 28.12.2015. The CEI granted the clearance for plant and the line on 19.05.2016 and 03.05.2016 respectively. Accordingly, the plant including the line was completed on 19.05.2016. The petitioner was required to inform PSPCL the date of commencement of delivery of power 30 days in advance alongwith detailed procedure for synchronization etc. in terms of clause 5.5.0 and 8.2.0 of the PPA. The Commission notes that no such notice / information was given to PSPCL by the petitioner in terms of the relevant clauses of the PPA. The petitioner applied for the grant of synchronization permission to PSPCL on 18.05.2016. Thereafter, the plant was commissioned in a period of less than 30 days on 25.05.2016 as per the commissioning certificate issued by PEDDA vide letter no. 2910 dated 19.08.2016. Accordingly, there is delay of 116 days (30.01.2016 to 25.05.2016) from the scheduled date of COD i.e. 30.01.2016. The delay attributable to PEDDA / PSPCL is 29 days as detailed above. Therefore, the Commission holds that the delay of 87 (116 - 29) days is attributable to the petitioner for this plant.

(G) Bhagwant Singh & Kulwinder Kaur, (Reliance Fresh), Kotla Fazal, Teh. Bassi Pathana, 0.550 MW

The feasibility clearance was granted by PSPCL on 31.12.2015. The CEI granted the clearance for plant and the line on 03.05.2016. Accordingly, the plant including the line was completed on 03.05.2016. The petitioner was required to inform PSPCL the date of commencement of delivery of power 30 days in advance alongwith detailed procedure for synchronization etc. in terms of clause 5.5.0 and 8.2.0 of the PPA. The Commission notes that no such notice / information was given to PSPCL by the petitioner in terms of the relevant clauses of the PPA. The petitioner applied for the grant of synchronization permission to PSPCL on 18.05.2016. Thereafter, the plant was commissioned in a period of less than 30 days on 27.05.2016 as per the commissioning certificate issued by PEDDA vide letter no. 2910 dated 19.08.2016. Accordingly, there is delay of 118 days (30.01.2016 to 27.05.2016) from the scheduled date of COD i.e. 30.01.2016. The delay attributable to PEDDA / PSPCL is 29 days as detailed above. Therefore, the Commission holds that the delay of 89 (118 - 29) days is attributable to the petitioner for this plant.

(H) PSAMB, New Vegetable Market, Ludhiana, 0.762 MW

The feasibility clearance for this plant was granted by PSPCL on 31.12.2015 from 66 kV substation Amaltas. Thereafter, revised feasibility clearance as per the request dated 07.04.2016 of the petitioner was granted by PSPCL on 26.04.2016 from 66 kV substation Nurewal. The petitioner sought the revised feasibility clearance from 66 kV substation Nurewal instead of 66 kV substation Amaltas due to National Highway Crossing between PSAMB, New Vegetable Market and 66 kV substation Amaltas. The Commission notes that

Section 3 (d) (iv) of the RfP provides that bidders should ensure that preferably there are no obstacles such as railway line, river etc., between the solar power plant and connecting substation. It has been further provided therein that such obstacles causing delay in commissioning the projects will be sole responsibility of the bidder. In view of the above, no delay is attributable to PSPCL in the matter of grid feasibility clearance.

The CEI granted the clearance for plant and the line on 06.06.2016 and 24.05.2016 respectively. Accordingly, the plant including the line was completed on 06.06.2016. The petitioner was required to inform PSPCL the date of commencement of delivery of power 30 days in advance alongwith detailed procedure for synchronization etc. in terms of clause 5.5.0 and 8.2.0 of the PPA. The Commission notes that no such notice / information was given to PSPCL by the petitioner in terms of the relevant clauses of the PPA. The petitioner applied for the grant of synchronization permission to PSPCL on 02.06.2016. Thereafter, the plant was commissioned in a period of less than 30 days on 08.06.2016 as per the commissioning certificate issued by PEDDA vide letter no. 2910 dated 19.08.2016. Accordingly, there is delay of 130 days (30.01.2016 to 08.06.2016) from the scheduled date of COD i.e. 30.01.2016. The delay attributable to PEDDA is 6 days as detailed above. Therefore, the Commission holds that the delay of 124 (130 - 06) days is attributable to the petitioner for this plant.

(I) CANAM Consultants, (Morinda), 1.597 MW

The feasibility clearance for this plant was initially applied from 66 kV substation Kajouli. Thereafter, the petitioner vide letter date 11.12.2015 requested PSPCL for grant of feasibility clearance from 66 kV substation Hargana instead of 66 kV substation Kajouli due to Railway crossing between the plant site and 66 kV substation Kajouli. The feasibility clearance was granted by PSPCL within 20 days on 31.12.2015. The Commission notes that Section 3 (d) (iv) of the RfP provides that bidders should ensure that preferably there are no obstacles such as railway line, river etc., between the solar power plant and connecting substation. It has been further provided therein that such obstacles causing delay in commissioning the projects will be sole responsibility of the bidder. In view of the above, no delay is attributable to PSPCL in the matter of grid feasibility clearance.

The CEI granted the clearance for plant and the line on 30.03.2016 and 23.06.2016 respectively. Accordingly, the plant including the line was completed on 23.06.2016. The petitioner was required to inform PSPCL the date of commencement of delivery of power 30 days in advance alongwith detailed procedure for synchronization etc. in terms of clause 5.5.0 and 8.2.0 of the PPA. The Commission notes that no such notice / information was given to PSPCL by the petitioner in terms of the relevant clauses of the PPA. The petitioner applied for the grant of synchronization permission to PSPCL on 06.06.2016 and the same was granted on 06.06.2016. Thereafter, the plant was commissioned in a period of less than 30 days on 22.06.2016 as per the commissioning

certificate issued by PEDA vide letter no. 2910 dated 19.08.2016. The Commission notes that petitioner submitted that the plant could not be synchronized due to falling of trees on the transmission line due to heavy storm on 07.06.2016. The petitioner further submitted that the line / poles were got repaired and the plant was commissioned / synchronized on 22.06.2016. The Commission notes that PSPCL has submitted that no pole was broken near village Dumchheri due to storm on 07.06.2016. Sagging of conductor at Bhakhra Main and SYL Canals was completed by the petitioner on 22.06.2016 after the approval of Forest Department on 21.06.2016. The Commission further notes that Article 6.2 (xii) of the IA provides that the company shall follow and obtain all necessary clearances / approvals under all the relevant laws. Considering the above, the Commission is of the view that the delay from 06.06.2016 to 22.06.2016 was caused due to the approval of forest department having been granted on 21.06.2016, which was the responsibility of the petitioner.

In view of the above there is delay of 144 days (30.01.2016 to 22.06.2016) from the scheduled date of COD i.e. 30.01.2016. The delay attributable to PEDA is 6 days as detailed above. Therefore, the Commission holds that the delay of 138 (144 - 06) days is attributable to the petitioner for this plant.

The tariff of the project was valid till 31.03.2016 in terms of the Order of the Commission dated 11.05.2015 in petition no. 23 of 2015 and the IA/PPA. Therefore, the entitlement of the petitioner to the tariff of Rs. 7.59 per kWh no longer remains valid in case of rooftop solar PV Power Plants as

detailed at (B) to (I) above and the Commission has determined the tariff for these plants in the following para.

The Commission notes that the tariff of Rs. 7.59 per kWh of the petitioner's project was determined through competitive bidding process undertaken by PEDDA on the basis of discount to be offered by the bidders on the generic tariff of Rs. 7.72 per kWh determined by the Commission for FY 2014-15 and the tariff was valid till 31.03.2016. For FY 2015-16 also, PEDDA conducted the competitive bidding process on the same basis of discount to be offered by the bidders on the generic tariff of Rs. 7.04 per kWh for FY 2015-16 determined by the Commission wherein the lowest tariff discovered was Rs. 5.09 per kWh and approved by the Commission in its Order dated 10.06.2016 in petition no. 31 of 2016 and the same was valid upto 31.03.2017. Under the circumstances brought out in the foregoing paras, the Commission considers the petitioner's project akin to such projects. PEDDA submitted that the developer benefitted due to the falling prices of solar PV modules and the tariff of the project was required to be determined afresh. PSPCL pleaded that the project should be allowed lowest tariff of Rs. 5.09 per kWh determined in the next bidding process carried out by PEDDA. Accordingly, the Commission finds it just and fair to fix the tariff for the rooftop solar PV Power Plants as detailed at (B) to (I) above, as Rs. 5.09 per kWh which shall be payable by PSPCL to the petitioner for purchase of electricity from these 8 nos. plants. However, the tariff for the plant at (A) above shall remain the same i.e. Rs. 7.59 / kWh.

The petitioner's rooftop solar PV Power Plants at 9 sites were commissioned with a delay in the range of 33 days to 138 days as detailed at (A) to (I) above. As such, encashment of performance bank guarantees is warranted in terms of IA/PPA. Accordingly, the stay on encashment of PBGs granted by the Commission earlier is hereby vacated. Accordingly, PEDA is directed to encash the PBG in respect of the delay as detailed at (A) to (I) above, attributable to the petitioner in terms of IA/PPA. The PBGs for the remaining amount be released to the petitioner within seven working days from the date of this Order.

In terms of IA/PPA, the scheduled date of commissioning of the entire project was 30.01.2016. As per the terms of IA / PPA the entire project could have been commissioned by the Developer within next two months with forfeiture of PBG by the Developer and encashment of PBGs by PEDA i.e. upto 30.03.2016. Further, the project could have been commissioned within the next 3 months i.e. 15 months from the date of signing the PPA with levy of liquidated damages by PSPCL in terms of IA/PPA i.e. upto 30.06.2016. As the rooftop Solar PV Power Plants at 8 locations out of the 9 locations were delayed in the range of 74 to 138 days as detailed at (B) to (I) above which is within period of 5 months from the SCOD, PSPCL is entitled to levy and claim liquidated damages for the said delays in terms of the IA / PPA.

-Sd/-

(Anjuli Chandra)
Member

-Sd/-

(S.S. Sarna)
Member

-Sd/-

(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated: 04.06.2018