

## Before the Rajasthan Electricity Regulatory Commission

Petition No. RERC/1585/2020

Petition filed under Section 62 (1) (a) of the Electricity Act, 2003 and provisions of RERC (Terms and Conditions for Determination of Tariff for Renewable Energy Sources -Wind and Solar Energy) Regulations, 2014 for determination of tariff of balance period of 10 years of PPA for its Solar PV plant.

### Coram:

**Shri Shreemat Pandey, Chairman**  
**Shri S. C. Dinkar, Member**  
**Shri Prithvi Raj, Member**

Petitioner : M/s Reliance Industries Ltd.

Respondents :

1. Rajasthan Urja Vikas Nigam Ltd.
2. Jaipur Vidyut Vitaran Nigam Ltd.
3. Ajmer Vidyut Vitaran Nigam Ltd.
4. Jodhpur Vidyut Vitaran Nigam Ltd.
5. Rajasthan Renewable Energy Corporation Ltd.
6. Ministry of New and Renewable Energy, Gol

Date of hearing : 27.02.2020 and 10.09.2020

Present :

1. Ms. Deepa Chawan, Advocate for Petitioner
2. Sh. Bipin Gupta, Advocate for Discoms
3. Sh. D.C. Gupta, Authorised rep. for RREC

**Order Date: 07.12.2020**

### ORDER

1. Petitioner, M/s Reliance Industries Ltd. has filed this petition on 28.11.2019

under Section 62 (1) (a) of the Electricity Act, 2003 and provisions of RERC (Terms and Conditions for Determination of Tariff for Renewable Energy Sources -Wind and Solar Energy) Regulations, 2014 (RE Tariff Regulations, 2014) for determination of tariff of balance period of 10 years of PPA for its Solar PV plant

2. Notices were issued to Respondents on 05.10.2019 to file reply to the petition. Respondent Rajasthan Renewable Energy Corporation Ltd. (RREC) filed its reply on 26.12.2019 and Rajasthan Urja Vikas Nigam Ltd., Jaipur Vidyut Vitaran Nigam Ltd., Ajmer Vidyut Vitaran Nigam Ltd. and Jodhpur Vidyut Vitaran Nigam Ltd. (Collectively called 'Discoms') filed their common reply on 11.06.2020.
3. Matter was heard through video conferencing on 10.09.2020. Ms. Deepa Chawan, Advocate appeared for Petitioner. Sh. Bipin Gupta, Advocate appeared for Discoms and Sh. D.C. Gupta, Authorised rep. appeared for RREC.
4. Petitioner in its petition and during hearing submitted as under:
  - (i) Petitioner has set up a 5 MW capacity grid-interactive Solar PV Power generation plant at Village Khimsar, District Nagaur in Rajasthan. The project has been commissioned in July 2010. The project has been set up under prevailing Generation Based Incentive (GBI) Scheme of Ministry of New and Renewable Energy (MNRE), Government of India.
  - (ii) As per the MNRE GBI scheme guidelines and the subsequent tariff order issued by the Commission covering solar projects sanctioned under MNRE GBI scheme, Petitioner signed a Power Purchase Agreement (PPA) with the distribution licensee(s) of Rajasthan on 16.09.2008.
  - (iii) Commission vide its tariff order dated 02.04.2008 has fixed the tariff of

Rs.15.78 per kWh for Solar Power generation plants covered under MNRE, GBI scheme for the period of the first 10 years of the PPA from Commercial Operation Date (CoD) of the project for sale of electricity to the distribution licensee(s) of the State.

- (iv) The PPA signed with the distribution licensee(s) has tenure of 20 years from CoD. Under the RERC Tariff Regulations/order dated 02.04.2008, it has been made clear that the Commission shall determine tariff after ten years through a separate order as per Regulations in force. The first 10 years of PPA are to be expired on 18 July 2020, hence, Petitioner approached the Commission for determination of tariff for sale of electricity to the distribution licensees(s) in the State for the balance 10 years of the PPA period.
- (v) The RE Tariff Regulations, 2014 came into force on 24.02.2014. These Regulations were initially in force from 01.04.2014 to 31.03.2019. Further, on 05.03.2019, Commission while amending the RE Tariff Regulations, 2014 extended the period of applicability of the said Regulations from 31.03.2019 to 31.03.2020 and also provided that if new Regulations are not notified the tariff norms of the RE Tariff Regulations, 2014 will continue to apply. Commission also added a new Regulation 6 (A) which enables it to determine 'Project specific tariff for solar PV and thermal plants'.
- (vi) Petitioner had filed its petition in advance on 28.11.2019, when admittedly the RE Tariff Regulations, 2014 were in force. The petition was pending and sub-judice on 18.03.2020, when the RE Regulations, 2014 were in force.
- (vii) Commission while issuing amendment in Regulations, 2014 on 05.03.2019 has amended Regulation 5 by substituting the figure five (5) by with figure six (6). Now, new Regulation provides that control period under

these Regulations shall be of six (6) financial years starting from April 1, 2014. Therefore, it is clear that the RE Regulations, 2014 were in force on 18.03.2020.

- (viii) Further, as per the proviso to Regulation 5, tariff norms as per these Regulations shall continue to remain applicable until notification of the revised Regulations. A proviso has to be treated in the nature of an exception to the provision to which it is a proviso. Therefore, the proviso clearly extends the RE Tariff Regulation, 2014 beyond the date 31.03.2020, as no revised Regulations have been notified. In this regard, reliance is made on judgment passed by Hon'ble Supreme Court in the case of S. Sundaram Pillai Versus V. R. Pattabiraman, 1985 (1) SCC 591.
- (ix) Presently, Commission has published fresh draft Regulations, there is no new or revised Regulations in force. The earlier Regulations therefore continue to operate.
- (x) As per new proviso of Regulation 5, the tariff norms of these Regulations shall continue to remain applicable until notification of the revised Regulations subject to adjustment as per revised Regulations, makes it evident that new Regulations were never intended to be applicable with a retrospective effect. This is without prejudice to the Petitioner's contention that such a conditionality of the "subject to" adjustments is itself legally untenable. In this regard reliance is made on following judgment of Hon'ble Supreme Court (i) Mahabir Vegetables Oils (P) Ltd vs State of Haryana & Ors – 2006 3 SCC 620 (ii) State of Rajasthan v. Basant Agrotech (India) Ltd., (2013) 15 SCC.
- (xi) Amended proviso to Regulation 5 cannot be read to include or be considered by addition of the words such as "the tariff norms will apply but the Regulations will not". Such addition of the words for interpreting the said proviso is impermissible in law. In this regard reliance is made on

following judgment of Hon'ble Supreme Court (i) Union of India v. Hansoli Devi, (2002) 7 SCC 273 (ii) Nasiruddin v. Sita Ram Agarwal, (2003) 2 SCC 577.

- (xii) In view of the Orders dated 02.04.2008 and 25.05.2010 passed by the Commission having attained finality and not in any manner being challenged by the Discoms for all these years, Discoms are estopped from claiming otherwise than what is being held in the said Orders and also agreed to by them in the PPA dated 16.09.2008. This aspect cannot be altered after ten long years. Petitioners have been continuously and consistently promised all exercise of tariff determination for the next ten years of the tariff period. In this regard, reliance is made on judgment passed by Hon'ble Supreme Court in the case of Monnet Ispat & Energy Ltd. v. Union of India, (2012) 11 SCC 1
- (xiii) Solar RE generator had set up capital intensive projects with an expectation of certain assured return on their investments. In view of this, the Discoms is now estopped from arbitrarily fixing the prices that do not adequately provide return on the capital infused by the generators. It is necessary to take into consideration the legitimate expectation of the Petitioner. The doctrine of promissory estoppel and legitimate expectations are applicable in this case to determine the reasonableness of the decision of the authority.
- (xiv) The Petitioner submits that one of the objectives of Electricity Act, 2003 is to promote renewable sources of Energy. It is in this context, Section 86 (1)(e) of the Electricity Act, 2003 obliges the State Commission to promote renewable sources of energy. Petitioners respectfully submits that it is duty of Electricity Regulatory Commission to promote generation of electricity from renewable source of energy particularly solar which is an emerging technology and needs to be promoted.

(xv) National Electricity Policy as well as the National Tariff Policy provides for ensuing financial viability of the sector by taking into consideration all the developers interest. The National Tariff Policy stipulates procurement of energy from non-conventional energy sources at preferential tariff determined by the State Commissions in order to ensure that non-conventional energy to compete with the conventional energy sources. It is, therefore, prayed that the Commission be pleased to hold that RERC RE Tariff Regulations, 2014 shall apply to the present petition and tariff would be determined in accordance with the same.

(xvi) In light of the aforementioned facts, it is prayed to:

(a) accept this petition for determination of tariff for supply of electricity from the Petitioner's 5 MW Solar PV plant to the Distribution licensees in Rajasthan as per the provisions under Section 62 (1) (a) and Section 86(1)(e) of the Electricity Act read with RE Tariff Regulations, 2014 and subsequent amendments to these regulations.

(b) approve the levelised tariff of Rs.17.13/kWh for sale of electricity generated from Petitioner's 5 MW Solar PV plant for the balance period of 10 years.

(c) extend the tenure of present PPA between the Petitioner and the Discoms/ RUVNL by further 5 years considering the useful life of solar PV technology as specified by the Commission in RERC RE Tariff Regulations, 2014.

5. Respondent Discoms in its reply, written submissions and during hearing submitted following submissions on the issue of maintainability:

(i) Contention of the Petitioner that RE Tariff Regulations, 2014 is applicable is not acceptable.

- (ii) Clause 4.6 of the PPA provides that the gross amount receivable by the power producer shall be levelized for a period of 10 years from the COD, after which the tariff shall be determined by the Commission for the remaining period or the next 10 years as per the regulation in force. The period of 10 years is expiring on 14.07.2020. On 14.07.2020, no RE Tariff Regulation is in force and RE Tariff Regulations, 2020 are under process.
- (iii) RE Tariff Regulations, 2014 are not applicable as these Regulations provide that they shall be applicable for determination of tariff in cases covered under these Regulations from FY 2014-15, i.e., April 1, 2014 and onwards up to FY 2018- 19, i.e., March 31, 2019.
- (iv) It is further provided that these Regulations unless reviewed earlier or extended by the Commission, shall remain in force for a period of 5 years from the date of commencement.
- (v) Regulation 5 of RE tariff Regulations, 2014 provides that the control period under these Regulations shall be of five (5) financial years starting from April 1, 2014. It is also provided that the tariff determined as per these Regulations for Wind and Solar energy plants commissioned during the Control Period, shall continue to be applicable for the entire duration of the Tariff Period as specified in Regulation 6.
- (vi) Therefore, as per above Regulations 5 years of control period expired on 31.03.2019.
- (vii) Further, Commission has amended the RE Tariff Regulations, 2014. As per the amended sub clause (3) of Regulations 1, these Regulations shall come into force on 01.04.2014 and unless reviewed earlier or extended by the Commission, shall remain in force for a period of 6 years from the date of commencement i.e. upto 31.03.2020.
- (viii) A new provisio was also added in Regulation 5 which provides that the

tariff norms as per these Regulations shall continue to remain applicable until notification of the revised Regulations subject to adjustment as per revised Regulations.

- (ix) Amended Regulation 1 (3) of the RE Tariff Regulations, 2014 gives a clear picture that Regulations are in force for six years and gets expired on 31.3.2020 and there is no further extension as required under Regulation 1 (3). Amendment of Regulation 5 will not over reach the provisions of Regulation 1 as amendment in Regulation 5 talks about only control period and it further provides that only tariff norms would continue to remain applicable until notification of the revised Regulations. There is no continuation of Regulations and therefore, these Regulations cannot be said to be continued after 31.3.2020 and therefore, on the date of cause of action i.e. 14.07.2020, no Regulations are in existence and draft RE Tariff Regulations, 2020 is under process and therefore contention of the Petitioner that RE Tariff Regulations, 2014 are still in existence is totally baseless.
- (x) Section 64 of the Electricity Act, 2003 does not provide any date by which petition has to be filed. It only provides that the Commission shall decide the petition and issue tariff order either accepting the application or rejecting the application within 120 days. Thus, it cannot be said that the date of filing the petition i.e. 18.03.2020 is a crucial date.
- (xi) As per PPA, Commission could determine the tariff for the remaining period of the next 10 years as per the Regulations in force. The first ten years of the PPA is completing on 14.07.2020. It is submitted that the RE Tariff Regulations, 2014 are not in existence after 31.03.2020 as there is no amendment in Regulation 1 (3) nor proviso has been added in Regulation 1. Addition of a proviso in Regulation 5 only extends the tariff norms and not the Regulations and that too with a caveat as subject to



adjustment as per revised Regulations.

- (xii) Further, addition of the proviso in Regulation 5 cannot be read as an exception or proviso under Regulation 1 and therefore all the judgments on which reliance has been placed does not provide that proviso to some other clause can be applied to proviso of another clause and therefore, those judgments are not applicable.
- (xiii) Until and unless RE Tariff Regulations, 2020 comes in force for the period beyond 01.04.2020, no RE tariff can be determined. There is no question of applicability of tariff or Regulations retrospectively as under the Electricity Act it is control period for which Regulations are framed and a control period of Regulations cannot be extended as has been held by the Hon'ble Apex Court in a case reported in SCC 2017 (16) page 498.
- (xiv) As per Section 61 (f) of the Electricity Act it is necessary for the Commission to lay down Tariff Regulations on the basis of multiyear tariff principle. As per the draft RE Tariff Regulations, 2020, the new Regulations would be applicable for the period for determining the tariff from the control year 01.04.2020 to 31.03.2023 and therefore there is no question of retrospectively as claimed and none of the judgments cited by the petitioner on this issue are applicable.

6. Respondent RREC has not made any submissions of maintainability of the petition.

### **Commission's view**

7. Commission considered the submissions made by the parties, all the documents submitted and arguments made during the course of hearings.

8. Petitioner submitted that it has set up a 5 MW capacity grid-interactive

Solar PV power generation plant in Rajasthan under Generation Based Incentive Scheme of MNRE, Government of India. Petitioner, for sale of electricity, signed a PPA with Discoms on 16.09.2008 for 20 years from date of CoD.

9. As per RERC Tariff Regulations, 2008, Commission has to determine tariff after ten years through a separate order as per Regulations in force. The first 10 years of PPA has expired on 18.07.2020, hence, Petitioner approached the Commission for determination of tariff for the balance 10 years of the PPA period.
10. According to the Petitioner, Commission while amending the RE Tariff Regulations, 2014 extended the period of applicability of the said Regulations from 31.03.2019 to 31.03.2020 and also provided that if new Regulations are not notified the tariff norms of the RE Tariff Regulations, 2014 will continue to apply.
11. Amendment in RE Tariff Regulations, 2014 provides that the control period under these Regulations shall be of six (6) financial years starting from April 1, 2014. Petitioner had filed its petition on 28.11.2019, when admittedly the RE Tariff Regulations, 2014 were in force therefore, Petitioner is entitled to determine the project specific tariff for balance 10 years period of PPA as per RE Tariff Regulations, 2014.
12. Per Contra Respondent Discoms raised the preliminary objection on the maintainability of the petition on the ground that as per the PPA executed between Petitioner and Discoms, Commission shall determine tariff after ten years through a separate order as per Regulations in force. The first 10 years of PPA expired on 18.07.2020.
13. According to the Discoms on 18.07.2020, no RE Tariff Regulations are in

force as RE Tariff Regulations, 2014 were applicable only from 01.04.2014 to 31.03.2020 whereas Petitioner has filed this petition under RE Tariff Regulations, 2014. Until and unless new RE Tariff Regulations, 2020 comes in force for the period beyond 01.04.2020, no RE tariff can be determined. Therefore, petition is not maintainable.

14. It is observed that Commission vide its order dated 02.04.2008 while determining the tariff for Solar power generation plants covered under Gol Policy has mentioned that the tariff shall be levelized for a period of ten years thereafter the tariff shall be determined by the Commission as per the Regulations in force.
15. Commission observes that the Petitioner, for sale of electricity generated from its solar plant entered into PPA with Discoms on 16.09.2008 for the period of 20 years from the date of commercial operation. The plant was commissioned in July, 2010 and the first ten years of PPA has been completed in July, 2020. Petitioner, under RE Tariff Regulations, 2014 filed this petition for determination of tariff for its solar plant for next 10 years.
16. It is observed that RE Tariff Regulations, 2014 initially were applicable from 01.04.2014 to 31.03.2019. Further vide amendment dated 05.03.2019 applicability of these Regulations has been extended upto 31.03.2020.
17. It is further observed that during the pendency of the petition, Commission has notified the RE Tariff Regulations, 2020 and these Regulations shall be applicable from 01.04.2020 to 31.03.2024. RE Tariff Regulations, 2020 shall be applicable from 01.04.2020 for determination of tariff for renewable energy generators. Therefore in Commission's considered view, tariff for next 10 years of PPA shall be determined as per the provisions of RE Tariff Regulations, 2020.

18. Further, It is observed that in RE Tariff Regulations, 2020 Commission has decided the tariff for Solar Power Projects commissioned under Generation based incentive scheme of Government of India as under:

*88.4 Solar Power Projects (For projects commissioned under Generation based incentive scheme of Govt of India)*

*The total tariff payable by Discoms to the solar power producer for projects commissioned under Generation Based Incentive of Govt of India shall be as under:*

*A. Tariff for first 10 years from COD*

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*B. Tariff after 10 years from COD*

*The tariff after 10 years from COD shall be equivalent to the tariff paid by Distribution Licensee for procurement of power during 10th year of operation from COD of the project excluding GBI Incentive i.e., Rs. 4.81/kWh (Rs. 4.03/kWh + Additional Rs. 0.78/kWh) for the remaining tenure of PPA. In case the Solar Project Developer does not want to supply power to Distribution Licensees at this tariff, Solar Project Developer is free to sell power to any other entity.*

19. As per above provision, tariff allowed after 10 years from CoD of the project would be applicable for Petitioner's solar power plant w.e.f. 01.04.2020. In view of above, the petition does not survive.

20. Petition is disposed of accordingly.

(Prithvi Raj)  
Member

(S. C. Dinkar)  
Member

(Shreemat Pandey)  
Chairman