

Rajasthan Electricity Regulatory Commission

Petition No. RERC-1559/19

Petition filed under Section 86(1)(f) of Electricity Act, 2003 for adjudication of disputes regarding extension of Power Purchase Agreement.

Coram:

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

Petitioner : Rajasthan Renewable Energy Corporation Ltd.

Respondent : Rajasthan Urja Vikas Nigam Ltd.

Date of hearings : 16.01.2020, 18.02.2020, 17.06.2020, 16.07.2020, 20.08.2020
10.09.2020, 27.10.2020 and 24.12.2020

Present : 1. Sh. Sudesh Kumar Saini, Advocate for Petitioner
2. Sh. Shashwat Purohit, Advocate for Respondent

Order Date:

18.01.2021

ORDER

1. Petitioner, Rajasthan Renewable Energy Corporation Ltd. (hereinafter referred as RREC) has filed this petition on 26.09.2019 under Section 86(1)(f) of Electricity Act, 2003 for adjudication of disputes regarding extension of Power Purchase Agreement (PPA).
2. Notice was issued to Respondent on 30.09.2019 for filing reply to the petition. Accordingly Respondent, Rajasthan Urja Vikas Nigam Ltd. (hereinafter referred as RUVNL) has filed its reply on 14.02.2020. Petitioner

filed rejoinder on 19.08.2020 and Respondent further filed reply to rejoinder on 16.09.2020.

3. The matter was finally heard on 24.12.2020. Sh. Sudesh Kumar Saini, Advocate appeared for Petitioner. Sh. Shashwat Purohit, Advocate appeared for Respondent.
4. Petitioner in its petition, rejoinder and during the hearings has submitted as under:-
 - 4.1 Petitioner in pursuance of the GoR Policy, 2000 had set up a Wind power plant at Phalodi in Jodhpur having capacity of 2.10 MW and executed the PPA with the Respondent on 10.11.2000 for purchasing power initially for 15 years and further would be extended after expiry of 15 years. The said PPA was extended from 09.03.2016 to 31.03.2019 by supplementary PPA dated 26.09.2016. Now, beyond 31.03.2019 the extension of aforesaid PPA has been declined by the Respondent on the determined tariff by Commission.
 - 4.2 Respondent vide its letter dated 20.02.2019 communicated that in its Board Meeting dated 08.02.2019 it was decided that the PPA dated 10.11.2000 would be extended after 31.03.2019 till the remaining useful life of wind power plant on the condition if the tariff will be the lowest tariff as discovered through competitive bidding to be conducted for procurement of wind power and interim tariff will be Rs. 2.67/kWh, as prescribed in draft RERC (Renewable Certificate and Renewable Purchase Obligation Compliance Framework)(Third Amendment) Regulations, 2019 subject to adjustment as per lowest tariff discovered through competitive bidding.
 - 4.3 Petitioner in response vide its letter dated 25.03.2019 replied that the Commission vide Regulation 33 of the RERC (Terms and Conditions for Determination of Tariff for RE Sources Wind and Solar Energy), 2014 determined the tariff for existing plant under GoR Policy of 2000, for the

year 2019-20 as Rs. 5.7135/kWh. Petitioner requested to extend the duration of PPA for further next 7 years with the above tariff of Rs. 5.7135/kWh for the year 2019-20 and after this period, the tariff will be as decided by the Commission.

- 4.4 Respondent in arbitrary manner declined the request and vide its letter dated 08.04.2019 informed that the matter has already been decided in the meeting of the BoD of RUVNL to extend the PPA after 31.03.2019 till the remaining life of the plant with an interim tariff 2.67/kWh. The final tariff will be the lowest tariff discovered through competitive bidding to be conducted for procurement of wind power and the interim tariff is subject to adjustment as per lowest tariff discovered through competitive bidding .
- 4.5 Petitioner being aggrieved by the letter dated 08.04.2019 as well as decision dated 08.02.2019, has left with no other option to approach the Commission.
- 4.6 Tariff determination is exclusive function of the Commission as per Section 86 of the Electricity Act, 2003 and no authority can, directly or indirectly, usurp that function. Neither the Electricity Act nor the Regulations notified by the Commission recognized any committee by this name or others. Therefore, the decision taken by the Respondent's 27th Board Meeting is totally against the settled provision.
- 4.7 In Regulation 82 (1) of RERC Tariff Regulations, 2009 it is clearly laid down that in case the generator does not exercise the option of terminating the PPA after 10 years then the electricity is continued to be sold to the distribution license and the tariff for corresponding year of policy shall be continue. Hence, the Commission can only formally specify the year wise tariff already laid down in Regulation 82(1)(a) in the above Regulations.

- 4.8 In the proviso of Regulation 81 (1) (c), tariff has been prescribed for the corresponding year of the GoR Policy. Therefore, if tariff is to be specified by the Commission as per Regulation 82(1)(a) even than it will have to be declared to be the tariff for the corresponding year of the Policy as laid down in Regulation 82(1)(a).
- 4.9 The PPA between the distribution licensees and generation companies are in conformity with the RERC (Terms and Conditions for Determination of Tariff for RE Sources Wind and Solar Energy) Regulations, 2014 and 2019. Therefore, Respondent has no right to determine the tariff and ceiling by open bidding as taken by its Board decision.
- 4.10 As per terms of PPA, the total life of wind power plant was decided 25 years initially term of the agreement shall be fifteen years from Commercial Operation Date (COD). On the expiry of fifteen years, this agreement may be extended for further ten years with mutual consent between RVPN and RSPCL (Now RREC). It can be terminated earlier also by either party by giving a notice of three months.
- 4.11 Respondent did not give any notice to the Petitioner before termination of condition of PPA dated 10.11.2000, therefore, the decision of Respondent dated 08.02.2019 should be declared encroachment of jurisdiction of Commission and provisions of PPA.
- 4.12 As per PPA, the tariff is applicable for first ten years i.e. upto 15.02.2012. After this period, it was envisaged that the tariff would be mutually decided between the parties. But with the enactment of the Electricity Act, 2003 the tariff of generators is to be determined by the Commission. Commission, therefore, the decision of the Respondent is not as per law and not sustainable.

4.13 The plea taken by the Respondent in support of tariff to be discovered through competitive bidding system is as per Section 63 Electricity Act, 2003 whereas the present case is related to Section 62 of the Act, 2003 and as per the guideline dated 08.12.2017 issued by the MoP, Gol.

4.14 Thereafter, Gol further issued order dated 13.04.2018 wherein it is mentioned that under Section 62 of the Electricity Act, 2003, the State Electricity Regulatory Commissions have statutory powers to determine tariff for procuring power from solar and wind projects not covered under competitive guidelines. In order to accelerate deployment of solar and wind energy and facilitate investment in these sectors from small and medium entrepreneurs, State can consider procuring power from solar and wind projects of less than the defined threshold prescribed in the competitive bidding guidelines through F I T, to be determined by the SERC of State. Therefore the case of the Petitioner is squarely covered under the prescribed law and guideline issued by the Gol which deserves to be allowed.

4.15 Respondent is legally bound by the Section 37 of Indian Contract Act, 1872 to perform the contract which has come into the existence by PPA dated 10.11.2000 and 26.09.2016. The PPA dated 10.11.2000 was extended through supplementary PPA on the tariff 5.7135/kWh for three years i.e. till 31.03.2019 and the same is also extended for further remaining life of the plant with an interim tariff @2.67/kWh as per Tariff Regulations, 2019. Therefore, the pleading of the Respondent that the PPA is changeable by contract or by law is totally against the settled law.

4.16 In view of above Petitioner prayed to:-

- i) direct Respondent to extend the PPA dated 10.11.2000 till the useful life of the wind power plant as per tariff to be determined by the

Commission according to Electricity Act, 2003, GoR Policy 1999 & 2000 and Regulations dated 23.01.2009, 24.02.2019 & 05.03.2019.

- ii) direct Discoms to comply with the Regulations notified by the Commission and allow the Petitioner the tariff as determined by the Commission.

5. Respondent RUVNL submitted in its replies and during the hearing as under:-

- 5.1. The Hon'ble Supreme Court of India in Transmission Corporation of Andhra Pradesh Ltd & Another V/s. Sai Renewable Power Pvt Ltd reported in (2011) 11 SCC 34 has held that the policies of the State Government are for encouraging the generators to generate energy for the benefit of the public at large and such policies are obviously subject to change in larger public interest. Further it was also held that even PPAs entered into between the parties are subject to changes which are contractually or statutorily permissible.
- 5.2. The State of Rajasthan is an electricity surplus state and does not require purchase of energy from the Petitioner and similarly situated RE generators. The total available energy with Respondent is around 14000 MW whereas maximum demand of the distribution licensees in the State of Rajasthan for the year 2018-19 was 13276 MW.
- 5.3. As a result of the surplus energy available with the distribution licensees on various occasions, the generation level of the electricity at the power plants of the Rajasthan Vidyut Utpadan Nigam Limited and other generators were required to be slashed down. The surplus energy is to be surrendered which results in payment of fixed charges which are substantial and runs in crores of rupees.

- 5.4. The cost of renewable energy has substantially reduced. Considering these trends, it makes no commercial sense for the Respondent to continue purchasing this power, that too at a cost higher than the prevailing prices. Therefore, it would only make sense to purchase if its price is lower than the lowest variable cost of generating station with which Discoms already have PPAs.
- 5.5. RUVNL has entered into Agreements dated 27.06.2019 and 12.09.2019 with the Solar Energy Corporation of India Limited for purchase of energy from Solar based power plant having capacity of 680MW and 750 MW on the tariff at Rs. 2.48/- per unit and Rs. 2.50/- per unit respectively excluding the trade margin of 7 Paisa per Unit.
- 5.6. Discoms are continuously incurring losses since their inception despite the fact that Rajasthan is an energy surplus State. If Discoms are compelled to purchase electricity from the Petitioner and similar situated RE generators on rates higher than the open market, it would shift the financial burden on the consumers and would be against the public policy.
- 5.7. After expiry of the PPA, there is no contractual obligation of the Respondent to extend the PPA. The term of the PPA never envisaged upto the lifetime of the plant. The Respondent has been honoring all the terms mentioned in the PPA and now as per the PPA, the term has expired. Further, tariff proposed by the Petitioner is too high to extend the PPA whereas the wind based energy is available at much cheaper rates and therefore, it would be insensible to purchase energy on much higher rates.
- 5.8. In the current tariff scenario the tariff Rs. 2.67/KWh proposed by the Respondent subject to lowest tariff discovered through competitive bidding, is viable enough to the Petitioner as well. The RUVNL has rightly

decided in its Board Meeting dated 08.04.2019 the tariff of Rs. 2.67/kWh for extension of the PPA. The decision taken in the Board Meeting is absolutely fair and in accordance with law and in line with the developments in the field of electricity sector.

- 5.9. The RUVNL is not interfering with the functions of the Commission in any manner whatsoever. In All PPA's Respondent enters into are subject to the final approval of the Commission wherein the Commission be exercising power contained under Section 86 of the Electricity Act, 2003 approves the tariff and the trading margins. The tariff for the PPA with the Petitioner is governed by the terms of the PPA whereby it has been specified that the tariff after the ten years of operation will be decided mutually and therefore, the Respondent is under no mandate to extend the PPA at Rs. 5.7135/kWh.
- 5.10. Petitioner has been supplying electricity to the Respondent on the terms agreed initially and on the tariff determined by the Commission in Regulation of 2009 and 2014 for 18 years. Now most of the obligation of the Petitioner has already been completed. Therefore, in such circumstances where the tariff is falling steeply, it would be highly unreasonable to procure energy on high rates as such transaction would directly affect the end consumers.
- 5.11. RUVNL vide its letter dated 08.04.2019 communicated the tariff on which the energy could be procured from the Petitioner due to changed scenario of the market.
- 5.12. The tariff proposed by the Respondent is in conformity with tariff of energy available in the competitive market by bidding process. The stipulation of the PPA is clear that the initial term of the PPA would be 15 years from the commercial operation date. Further, the term may be extended by

parties mutually. PPA provides the term “may be” as per Article 1 (ii) of the PPA which merely gives discretion on the Respondent whether to extend or not. It does not cast any mandate on the Respondent to extend the PPA.

5.13. As per Article 1 (iii) of the PPA, requirement of one month notice is there only when either party is willing to terminate the PPA during the initial term i.e. 15 years from the commercial operation date. The PPA had expired in 2016 and term of which mutually extended upto 31.03.2019 which has been ended now and there is no obligation on the Respondent to extend the PPA.

5.14. It is therefore, prayed that the petition deserves to be dismissed with heavy costs.

Commission's view

6. Commission has carefully considered the submissions made by Petitioner and the Respondent.
7. Petitioner submitted that it has set up a wind power plant in pursuance of GoR Policy, 2000 and executed PPA with the Respondent for sale of power initially valid upto 31.03.2016 which was further extended upto 31.03.2019.
8. Petitioner also submitted that as per terms of PPA, after the expiry of fifteen year of initial term, it may be extended for further ten year with the mutual consent of both the parties. Petitioner is desirous to extend the term of its PPA upto the remaining useful life of the plant i.e. next seven years at the tariff of Rs. 5.7135/kWh for the FY 2019-20 as prescribed in RERC (Terms and Conditions for Determination of Tariff for RE Sources Wind and Solar Energy)(Second Amendment) Regulations, 2019 and after this period, the tariff will be as decided by the Commission.

9. Per contra Respondent contended that State of Rajasthan is an electricity surplus State and it does not require purchase of energy from the Petitioner and the companies like the Petitioner with whom the PPAs have come to an end on 31.03.2019.
10. Respondent further contended that the term of the PPA was initially for fifteen years as per the PPA. After the expiry of the PPA, the term was mutually extended for three years till 31.03.2019 and after that there is no contractual obligation of the Respondent which could be extended.
11. According to Respondent cost of renewable energy has substantially reduced. Considering these trends, it makes no commercial sense to continue purchasing this costly power that is higher than the prevailing prices. This would shift the financial burden on the consumers and would be against the public policy.
12. Commission observes that PPA was executed between the Petitioner and Respondents initially for 15 years and it was further extended for next three years i.e. up to 31.03.2019 through a supplementary PPA. Now, the Petitioner is requesting for issuing a direction to RUVNL for extension of PPA for remaining life of the plant i.e. next seven years at the determined tariff by the Commission for such plants.
13. The Commission notes that presently there is no PPA between the Petitioner and Respondent and the agreements which were signed to purchase the energy from the Respondent have expired long back on 31.03.2019. It is between the seller and purchaser to sign a PPA. In the absence of an agreement Commission cannot issue any direction to sign a PPA. There is no provision under the Electricity Act, 2003 by which this Commission may compel any person to purchase electricity or sign a contract

14. Nobody can deliver the goods not needed by the other party and demand price for the same. Once there is specific refusal to purchase electricity, Petitioner could have sold the power in the market.
15. Admittedly in the present case, no agreement for power purchase between Petitioner and Discoms has been entered into, which could be regulated. On the contrary, the Discoms are not willing to enter into any power purchase agreement and when the Discoms are not willing to purchase the power as stated above, the Commission cannot issue any directions.
16. Accordingly, the petition is disposed of with no order as to cost.

(Prithvi Raj)
Member

(S.C. Dinkar)
Member

(Shreemat Pandey)
Chairman