

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION  
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

**Case No. HERC/PRO-3 of 2021**

**Date of Hearing : 07.07.2021  
Date of Order : 08.07.2021**

**IN THE MATTER OF:**

**Application seeking intervention of the Commission under Section 86(1)(c), 86(1)(e) & 86(1)(f), Section 42 of the Electricity Act, 2003 and Regulation 64 And 65 of Conduct of Business Regulations, 2019 to give directions to HPPC/UHBVNL to pay HPGCL the cost of generation loss In 1x10 MW, Solar Plant, due to frequent tripping of 33 KV evacuation line owned by UHBVNL**

**Petitioner**

Haryana Power Generation Corporation Ltd. (HPGCL)

**Respondent**

Haryana Power Purchase Centre, Panchkula (HPPC)

**Present On behalf of the Petitioner, through Video Conferencing**

Mr. Umesh Kumar Agarwal, Chief Engineer

**Present On behalf of the Respondent, through Video Conferencing**

Mr. Samir Malik, Advocate

Ms. Himangini Mehta, Advocate

**Quorum**

**Shri R.K. Pachnanda**

**Chairman**

**Shri Pravindra Singh Chauhan**

**Member**

**Shri Naresh Sardana**

**Member**

**ORDER**

1. The Petition has been filed by M/s. Haryana Power Generation Corporation Ltd., to direct the HPPC/UHBVNL to pay to the Petitioner herein, the cost of generation loss in its 10 MW Solar Plant due to non-availability / frequent tripping of 33 KV evacuation line owned by UHBVNL. The compensation has been sought w.e.f. 01.04.2017 i.e. from date of COD of the project, as per Clause no. 4.2 & 10.1 of the PPA, at the tariff approved by the Commission along with the interest for the delayed period.
2. Brief submissions of the Petitioner are as under:-
  - i) That, HPGCL has set up a 10 MW Solar Power Project in Panipat. The said project was commissioned in November 2016 and the commercial operation started from 01.04.2017. Tariff was determined by this Commission @

Rs.4.88/kWh, for 25 years vide Order dated 22.11.2016 in case no. HERC/PRO-20 of 2016.

- ii) That the Commission approved the PPA vide its Order dated 24.11.2016, with the following condition:-

*“v) Article 5.3 – the words ‘minimum CUF of 16% per annum shall be replaced by the following:-*

*“The minimum CUF shall be the annual derated CUF less 5% subject to Force Majeure conditions”*

*The following proviso shall be added below Article 5.3 of the PPA:-*

*“The Solar Power Plant shall be operated as “Must Run” station”*

*“Provided for any backing down on account of non-availability of evacuation lines / system beyond 87.6 Hours in a year shall be treated as deemed generation and shall be paid for at the tariff determined by the Commission”.*

- iii) It has been submitted that the matter was discussed in the 40th Steering Committee for Power Planning (SCPP) meeting held on 22.02.2017. In the said meeting, it was decided to remove the clause pertaining to deemed generation from the PPA. Thereafter, the PPA was signed between HPGCL and HPPC on 12.10.2017 and ex-post facto approval to the amendments made by HPPC from the draft PPA, earlier approved by the Commission on 24.11.2016, was obtained by HPPC. The Commission, vide its Order dated 30.10.2018, approved the same.

- iv) That, the salient definitions/ features of Power Purchase Agreement (PPA) signed between the Buyer i.e. Haryana Discoms and HPGCL (Generator), are reproduced here under:-

***“1. Definitions and Interpretations***

- *Buyer's System shall mean the Interconnection Facilities or the Bulk Power Network controlled or used by the Buyer for the purpose of transmitting or distributing electricity to the Buyer's customers.*
- *Generating Unit shall mean the combination of Modules and inverters' set and all of its associated equipment, which together represents a single electricity generating unit.*
- *Capacity Notice shall mean a periodic declaration by the Generator specifying the net generating capacity of a Solar Power Plants measured in MW, being the Declared Capacity at the Interconnection Point.*
- *Delivery Point shall mean the Interconnection Point, at which Electric Energy is transferred to and from the Buyer's Grid System, and the Electric Energy supplied is measured for billing.*

- *Interconnection Point shall mean the point at which the bus bar of the Solar Power Plants are connected with the Grid System and at which the Electric Energy is supplied by the Generator to the Grid of the Buyer. Meters shall be connected at these Interconnection Points for measuring the electric energy (a) exported from each of the Solar Power Plants to the Buyer's Grid System, and (b) imported from the Buyer's Grid System.*
- *Transmission Facilities shall mean all the facilities to be connected by or on behalf of the Buyer to connect the Switchyard to the rest of the Grid System and to enable the Buyer to receive and utilize Electric Energy in accordance with this Agreement.*

### **2.1 Delivery of Electric Energy**

*The Generator shall operate and maintain the Solar Power Plants and associated equipment, including the switchyard (if it is part of Power Station) so as to make the Electric Energy generated by the Solar Power Plants available for dispatch and deliver the same to the Buyer at the Interconnection Points.*

### **4.2 Accounting Methodology**

*(b) The Generator shall be responsible for any loss of Electric Energy up to the Metering Interface Points, while the Buyer shall be responsible for any loss of electric Energy beyond the Metering Interface Points.*

### **10.1 System and Transmission Facilities**

*The Buyer is the sole operator of the Transmission Facilities and Buyer assumes all responsibilities, liabilities and risk of loss with respect to the Transmission Facilities.*

- v) That, as per Clause no 4.2 of the PPA, the Petitioner is responsible for any loss of Electric Energy up to the Metering Interface Points, while the Haryana Discoms are responsible for any loss of Electric Energy beyond the Metering Interface Points. Further, as per Clause no 10.1, the Buyer (Haryana Discoms) is the sole operator of the Transmission Facilities and all responsibilities, liabilities and risk of loss with respect to the Transmission Facilities is that of the buyer.
- vi) That, the Petitioner i.e. HPGCL has suffered generation loss of 34,44,268 kWh (Till Feb., 2021) and resultant financial loss of about Rs.1.68 Crore (calculated @ Rs 4.88 per KWh) since April 2017 on this account. The details of the year wise outages and the loss in monetary terms since the commercial operation of the Solar Power Project i.e. 01.04.2017 is as under:-

YEAR	NET EXPORT (KWH)	TOTAL 33KV OUTAGE	OUTAGE HOURS	GENERATION LOSS DUE TO 33 KV OUTAGE	LOSS IN RS.@4.88 PER KWH
2017-18	16170462	306	241:11	834909	4074356
2018-19	16257888	342	245:53	723671	3531514
2019-20	15554964	457	365:03	1383157	6749806
2020-21 (Till Feb., 2021)	15238200	314	140:45	502531	2452351
<b>Total (Till Feb., 2021)</b>	<b>63221514</b>	<b>1419</b>	<b>992:52</b>	<b>3444268</b>	<b>16808027</b>

- vii) That the Commission in its Order dated 24.12.2010 (in the matter of Joint petition filed by selected Solar PV Power Developers under the RPSSGP scheme of MNRE / IREDA in Haryana seeking amendment to the Power Purchase Agreement, approved by the Commission) decided that any refusal beyond 87.6 hours in a year shall be treated as deemed generation and paid for at the tariff approved by the Commission.
- viii) That, the said Order was challenged by HPPC before the Hon'ble Appellate Tribunal for Electricity (APTEL) in Appeal no. 165 of 2011 which was dismissed vide order dated 10.04.2012.
- ix) That the Commission has the power to review and modify the provisions of concluded PPA as per clause no 18.4. The said clause is reproduced as under:-  
**“18.4 Amendment**  
*Any waiver, alteration, amendment or modification of this agreement or any part thereof shall not be valid unless it is in writing and signed by both the parties and approved by the commission.*  
*The commission shall have the right to review and modify the provisions of PPA.”*
- x) Following prayers have been made: -
- a) To direct HPPC/Discoms to pay to the Petitioner (HPGCL) monetary loss suffered on account of generation loss w.e.f. 01.04.2017 (i.e. from date of COD of the project) due to non-availability of evacuation lines / system, as per Clause no 4.2 & 10.1 of the PPA, at the tariff rate approved by the Commission along with interest for the delayed period.
  - b) To direct HPPC/Discoms to pay HPGCL on a monthly basis in future also on account of loss of generation due to non-availability of evacuation lines / system as per Clause no 4.2 & 10.1 of the PPA, at the tariff rate approved by the Commission.
  - c) Pass such further order or orders as this Commission may deem fit.
3. Ms. Himangini Mehta, Ld. Advocate, for HPPC, filed a detailed reply dated 02.07.2021, in which she has submitted that the Petitioner and the Respondent herein entered into discussions in the 40th Steering Committee for Power Purchase held on 22.02.2017, wherein it was mutually decided and agreed upon to exclude the clause pertaining to deemed generation from the Power Purchase Agreement. Subsequently, the Petitioner and the Respondent executed the power purchase agreement on 12.10.2017 (“PPA”), notably without any clause for deemed generation, as agreed to by both the parties. The ex-post facto

approval of the Commission, on the PPA executed on 12.10.2017, was obtained on 30.10.2018. Further, the reliance placed by the Petitioner on Article 4.2(b) and Article 10.1 of the PPA, is misplaced. Article 4.2 is with regard to 'Electric Energy Accounting'. Contrary to the claims of Petitioner, Article 4.2(b) specifically deals with the electrical losses associated with conveyance of power prior / beyond the interconnection point. However, Article 4.2(b) in no way seeks to indemnify the Petitioner for any deemed generation charges on account of transmission lines not being available, more so as the PPA does not make any provision for deemed generation charges. Similarly, reliance placed on Article 10.1 of the PPA, by the Petitioner, is also misplaced and erroneous. A bare perusal of Article 10.1 makes it abundantly clear that the Buyer or the Respondent in this case assumes all responsibility, liability and risk of loss associated with Transmission Facilities. The said clause thus clearly refers to loss associated with the Transmission Facilities in themselves, and cannot be interpreted to include generation losses incurred by the Petitioner as a result of outages of a component of the Transmission Facilities. Generation losses caused due to outage of an evacuation line would not fall within the ambit of 'loss associated with Transmission Facilities'. It is a law settled in catena of judgments that the PPA is a statutory agreement between the parties and is a binding contract. The Petitioner cannot thus make claims that are not within the purview of the PPA, and more so have been excluded from the provisions of the PPA by mutual consent. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court dated 25.10.2017 in CA No. 6399 of 2016- *Gujarat Urja Vikas Nigam Limited Vs. Solar Semiconductor Power Company (India) Private Limited & Ors.*, which has held as under:

*"25. ... When the said tariff rate as determined by the Tariff Order (2010) is incorporated in the PPA between the parties, it is a matter of contract between the parties. In my view, respondent No.1 is bound by the terms and conditions of PPA entered into between respondent No.1 and the appellant by mutual consent and that the State Commission was not right in exercising its inherent jurisdiction by extending the first control period beyond its due date and thereby substituting its view in the PPA, which is essentially a matter of contract between the parties."*

Thus, PPA is a statutory and binding contract, and even the Regulatory Commission under its inherent/ regulatory powers cannot provide any such relief to a party to the contract, which relief is not provided under the said contract.

4. The case was taken up for hearing by the Commission on 07.07.2021, through Video Conferencing, in view of COVID-19 pandemic. At the onset, Shri Umesh Agarwal, Chief Engineer/HPGCL submitted that it has been decided by the Additional Chief Secretary (Power), Haryana Government that any inter-utility issue / dispute shall be put up to the Co-ordination Committee of MDs of Power Utilities. Hence, till the aforesaid process is completed and decision obtained, the present case may be adjourned sine die.
5. Upon hearing the Petitioner, the Commission prima-facie, is not convinced with its submissions seeking indefinite adjournment of the case; hence, the Commission has considered it appropriate to examine the relief sought by the Petitioner on merit. Accordingly, the Commission has examined the relevant clauses of the duly executed PPA dated 12.10.2017. The Commission observes that payment for deemed generation due to backing down on account of non-availability of evacuation lines / system beyond 87.6 Hours in a year, was allowed by the Commission in its Order dated 24.11.2016 (HERC/PRO-36 of 2016), by suitably amending Article 5.3 of the PPA. However, subsequently, the Petitioner as well as the Respondent herein, mutually consented to amend the said clause by removing the provision of deemed generation in the signed PPA dated 12.10.2017. HPPC also obtained ex-post facto approval of the Commission, on the changes made by the parties with mutual consent in the signed PPA dated 12.10.2017 vis-à-vis the terms approved by the Commission in the Order dated 24.11.2016, by filing a petition in the Commission (HERC/PRO-14 of 2018). In the ibid petition, HPPC submitted a table presenting '*the Commission's Order dated 24.11.2016 on Article 5.3 of the PPA*', '*amendment in the said clause by the parties herein*' and '*reason for taking such deviations*'. The same is reproduced here under:-

Clause No	HERC Order dt 24.11.16	Clause amended as	Clarifications / reasons
5.3	the words 'minimum CUF of 16% per annum shall be replaced by the following:- "The minimum CUF shall be the annual derated CUF less 5% subject to Force Majeure conditions".	HPGCL shall maintain generation so as to achieve a minimum CUF of 16% per year subject to the Force Majeure conditions. Failing which the HPGCL shall pay @ forbearance price of RECs actually procured by HPPC due to shortfall of minimum CUF of HPGCL for solar energy. Alternatively, HPGCL may supply RECs to HPPC for balance quantum of energy	Since HPGCL has taken guaranteed generation @21% CUF from contractor and HPGCL agreed to maintain generation, so as to achieve a minimum CUF of 16% per year subject to force majeure conditions. The said clause was discussed in length and it was mutually agreed as amended.

		from market by the end of financial year.	
	Provided for any backing down on account of non- availability of evacuation lines / system beyond 87.6 Hours in a year shall be treated as deemed generation and shall be paid for at the tariff determined by the Commission.	Provided for any non-generation on account of non- availability of evacuation lines / system, HPGCL shall not be penalized on account of minimum CUF. For calculating annual CUF, generation based on irradiance level shall also be worked out for the period of non-availability of evacuation line.	HPGCL shall not be penalized for non achievement of minimum CUF due to non-availability of evacuation lines /system. Finally, the said clause was discussed and it was mutually agreed between HPGCL & HPPC.

From a plain reading of the above, it is amply clear that HPGCL was required to pay penalty in case the prescribed CUF of 16% is not achieved, even due to non-availability of evacuation lines / system. In order to balance the equity on both sides, the Commission, in its Order dated 24.11.2016, had decided for making a provision for payment to HPGCL for deemed generation on account of non-availability of evacuation lines / system. It is observed that in the signed PPA dated 12.10.2017, the parties herein have agreed to the terms wherein 'penalty for non-achievement of CUF of 16% due to non-availability of evacuation lines / system' as well as 'payment to HGPCCL for deemed generation on account of non-availability of evacuation lines /system', has been deleted. The PPA signed between the parties is sacrosanct and an amendment in any clause of the same, at this stage, would reopen the entire contractual arrangement and would dilute the genesis of the contractual agreement/arrangement between the parties. Besides, it would amount to re-writing the fundamental terms of the agreed contract. The case law of Hon'ble Supreme Court, dated 25.10.2017 in CA No. 6399, cited by the Respondent is squarely applicable in the present case i.e. the contracting parties are bound by the terms and conditions of the PPA entered into by mutual consent. There is no valid ground furnished by the Petitioner as to why a mutually / voluntarily agreed term should be revisited at this stage notwithstanding the financial ramifications on the DISCOMs and the ultimate consumers of electricity. The Commission being a watchdog of the interest of the

consumers and also being the harbinger of justice will not in this case, bestow undue and unwarranted favour by exercising its residual powers provided under Article 18.4 of the signed PPA dated 12.10.2017 i.e. to review and modify the provisions of PPA. Reference made by the Petitioner to Article 4.2 of the PPA is out of context and has nothing to do with 'deemed generation'. It merely imparts clarity to the fact that any loss of energy between generator's bus and point of metering is to be borne by the generator and by the DISCOMs/buyer beyond the meter.

6. The petition is accordingly disposed of as devoid of merit as the terms of PPA dated 12.10.2017 approved by the Commission are crystal clear and need no interference from the Commission.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 08.07.2021.

Date: 08.07.2021 (Naresh Sardana) (Pravindra Singh Chauhan) (R.K. Pachnanda)  
Place: Panchkula Member Member Chairman