



Petition No. 1623 of 2020

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Date of Order: 02.09.2022

PRESENT:

Hon'ble Shri Raj Pratap Singh, Chairman
Hon'ble Shri Kaushal Kishore Sharma, Member

IN THE MATTER OF

Petition under Section 86 (1) (f) of the Electricity Act, 2003 read with Article 23 (d) of the Power Purchase Agreement dated 19.02.2018 seeking payment of invoices at the Average Power Purchase Cost at rate of 3.87/kWh in terms of Article 2.1 of the PPA and quashing of the Impugned email dated 28.08.2020 issued by UPPCL.

M/s DCM Shriram Limited,
Having their registered office at
2nd Floor, (West Wing), Worldmark 1,
Aerocity, New Delhi - 110 037

..... Petitioner

Uttar Pradesh Power Corporation Limited,
Through its Managing Director,
7th Floor, Shakti Bhawan, Ashok Marg, Lucknow.

..... Respondent

The following were present:

1. Shri Venkatesh, Counsel, DCM Sriram Ltd.
2. Shri Suhail Buttan, Counsel, DCM Sriram Ltd.
3. Shri. Deepak Raizada, CE(PPA), UPPCL
4. Shri Mohit Goyal, Consultant, UPPCL

ORDER

(Date of Hearing 10.02.2022)

1. The instant Petition has been filed by the Petitioner, i.e. M/s DCM Shriram Limited ("**DCM**") under Section 86 (1)(f) of the Electricity Act, 2003 read with Article 23 (d) of the Power Purchase Agreement ("**PPA**") dated 19.02.2018 seeking payment of invoices at the Average Power Purchase Cost ("**APPC**") at rate of Rs. 3.87/kWh in terms of Article 2.1 of the PPA. The Petitioner has stated that the APPC rate of Rs. 3.87/kWh was approved by the Commission for the year of 2017-2018 in batch of Petitions including Petition No. 1203 of 2017. However, Uttar Pradesh Power Corporation



Limited ("UPPCL") has arbitrarily and unilaterally made payments at much lower rate than the APPC determined/fixed by this Commission leading to massive under recovery for the Petitioner. Furthermore, on 28.08.2020, UPPCL *vide* its email ("**Impugned Email**") directed the Petitioner to raise the invoices at the arbitrary APPC rate of Rs. 3.51/Kwh from July 2019 onwards.

2. The Petitioner has made following prayers in the Petition:

I. PRAYERS

The Petitioner respectfully prays before the Hon'ble Commission to:

- (a) Admit the present Petition;
- (b) Quash the Impugned Email dated 28.08.2020;
- (c) Direct UPPCL to pay DCM at the APPC rate of Rs. 3.87/kWh as determined by the Hon'ble Commission for FY 2017-18;

AND/OR

- (d) Pass any such order(s) as deemed appropriate in the circumstance of this case.

II. INTERIM PRAYER

The Petitioner respectfully prays before the Hon'ble Commission to:

- (a) Direct UPPCL to pay at APPC rate of Rs. 3.51/kWh till the pendency of the Petition for the period from July 2019 till date

AND/OR

- (b) Pass any such order(s) as deemed appropriate in the circumstance of this case.

Brief Facts of the case

3. M/s DCM Shriram Ltd., Distillery Unit: Hariawan, a generating company registered under the Companies Act, 1956, executed a Power Purchase Agreement ("**PPA**") dated 19.02.2018 with UPPCL for sale of 3 MW power from Spent Wash+ Bagasse based plant on the APPC as determined by this Commission.

3.1 The Commission, *vide* order dated 30.11.2017, in the matter of Approval of Business Plan, Determination of Multi Year Aggregate Revenue Requirement ("**ARR**") and Tariff for the First Control Period (Financial year 2017-2018 to Financial Year 2019-2020) and True Up for FY 2014-2015 in batch of Petitions including Petition No. 1203 of 2017, determined the APPC rate of Rs. 3.87 kWh for FY 2017-18.

3.2 In terms of Article 2.1 of the PPA, it is unequivocally agreed between the parties that the supply of power will be at APPC rate fixed for the year 2017-18 for the whole tenure of the PPA, i.e. 10 years. Accordingly, the injection of power commenced from May 2018. UPPCL made payments @ APPC Rate determined by this Commission till March 2019. However, from March 2019



onwards UPPCL started making part payment and from July 2019 UPPCL completely stopped making payment to the Petitioner. On 28.08.2020, UPPCL issued the Impugned Email directing the Petitioner to revise its invoices to the arbitrary APPC rate of Rs. 3.51 kWh. UPPCL stopped processing the payment of bills of other existing PPAs of sugar plant at Hariawan, as bills of all PPAs wherein power is being evacuated through same transmission line are calculated on weighted average basis.

- 3.3 The Petitioner being a non-fossil fuel based RE Plant is entitled to Renewable Energy Certificate ("REC") while supplying power to UPPCL. In terms of the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, the tariff for supply of power is at the APPC, which is determined by the concerned State Commission, in the present matter, this Commission. For ease of reference, the said Regulation is reproduced hereunder:

"5. Eligibility and Registration for Certificates:

(1) A generating company engaged in generation of electricity from renewable energy sources shall be eligible to apply for registration for issuance of and dealing in Certificates if it fulfils the following conditions:

a. it has obtained accreditation from the State Agency;

[(b) it does not have any power purchase agreement for the capacity related to such generation to sell electricity, with the obligated entity for the purpose of meeting its renewable purchase obligation, at a tariff determined under section 62 or adopted under Section 63 of the Act by the Appropriate Commission:

Provided that in case of renewable energy sources based co-generation plants, the connected load capacity as assessed or sanctioned by the concerned distribution licensee, shall be considered as the capacity for captive consumption for the purpose of issue of certificates, irrespective of the capacity of such plants covered under the power purchase agreement.]

c. it sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, [at the pooled cost of power purchase of such distribution licensee as determined by the appropriate commission]3 (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.

Explanation. - for the purpose of these regulations 'Pooled Cost of Purchase' means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self-generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be.

- 3.4 The APPC rate as determined by the concerned State Commission would apply to such REC generators and this Commission in the present case has already determined the APPC rate at Rs. 3.87 kWh vide its tariff Order passed in the year 2017. The PPA has the following provision:

2. POWER PRUCHASE, SALE