

**JOINT ELECTRICITY REGULATORY COMMISSION FOR
THE STATE OF GOA AND UNION TERRITORIES
GURGAON**

Coram*
Sh. S.K.Chaturvedi, Chairman
Petition No. 39/2011
Date of Order 21.04.2014

In the matter of

Petition for determination of tariff for 1.0 MW Power from Roof top PV & Small Solar Power Generation Programme (RPSSGP) for supply to ED- UT Puducherry.

And in the matter of:

M/S Saheli Export Private Limited, Chennai.Petitioner

And

1.Electricity Department, Puducherry
2. Renewable Energy Agency Puducherry (REAP)Respondents

Argued by

For the Petitioner

1. Shri K. Narayanan, Representative, Saheli Export Pvt. Ltd.
2. Shri. Anand K. Ganeshan, Advocate, Saheli Export Pvt. Ltd.

For the Respondent No.1

1. Shri T. Chanemougan, Executive Engineer, ED- Puducherry.

ORDER

M/S Saheli Export Private Limited filed the present petition for determination of tariff for 1.0 MW Power from Rooftop PV & Small Solar Power Generation Programme for supply to Electricity Department of Puducherry.

1. The brief facts of the case are :-

1.1. Pursuant to the policy decision taken by the Government of India to promote solar based generating capacity in the country, the Ministry of New and Renewable Energy ("MNRE"), Government of India framed guidelines for the programme known as 'Rooftop PV & Small Solar Power Generation Programme', herein referred to as the 'Scheme', providing for selection of project proponents for development of solar power projects to be connected to the distribution Network at voltage level below 33 kV.

1.2. The Indian Renewal Energy Department Agency Ltd., hereinafter referred to as "IREDA", an agency of the Government of India was appointed as the National Programme Administrator for the implementation of the guidelines issued by the MNRE. In terms of the guidelines, after complying with pre-registration formalities, the project proponents were required to apply for registration.

1.3. The scheme, inter-alia provided for the applicants fulfilling four conditions, viz., issuance of tariff order from the concerned Electricity Regulatory Commission, agreement with the local distribution utility for purchase of power, pre-registration certificate from State Competent Authority and Commitment Guarantee of requisite account, to be eligible for registration.

1.4. The projects registered under the scheme would be eligible for the generation based incentive and substantial portion of the tariff determined by the concerned Electricity Regulatory

Commission would be paid to the distribution licensee by the Government of India and the remaining portion of the tariff would be borne by the distribution licensee and passed on to the consumers in the retail supply tariff.

- 1.5. The scheme has been made applicable by the Government of India for the projects to be commissioned till **31.03.2013**.
- 1.6. In pursuance of the above scheme, the Respondent no.2 which is the competent agency for issuance of pre-registration certificate in respect of Puducherry, issued an invitation for Expression of Interest (EOI) for pre-registration for setting up of 100 kW to 2 MW small solar power projects. The petitioner, accordingly, submitted its application for pre-registration on 07.07.2010 for setting up a 1 MW solar power project at Devanpuram village, Puducherry. The Respondent no. 2 on being satisfied about the eligibility of the petitioner issued a pre-registration certificate to the Petitioner on 14.07.2010.
- 1.7. The Petitioner also entered into a Memorandum of Understanding (“MOU”) dated 21.07.2010 with the Respondent no.1. Subsequently, the Petitioner submitted an application for registration with the IREDA. However, according to the Scheme, determination of tariff by the concerned Commission for duration of 25 years is a pre-requisite for registration.
- 1.8. Aggrieved by the guidelines of the Government of India, insisting upon the tariff determination as a pre-requisite for registration, the Petitioner challenged the said provision of the scheme by way of Writ Petition being WP no.16983 of 2010 before the Hon’ble Madras High Court. The Hon’ble High Court injuncted the Respondents in the Writ Petition from rejecting the Appellant’s application.
- 1.9. Another Writ Petition being no. WP 19943 of 2010 was filed by the Petitioner challenging the stipulation in the scheme regarding execution of Power Purchase Agreement (PPA) for being entitled for further participation in the selection process. By an interim order dated 31.08.2010, the Respondents in the Writ Petition were injuncted by the High Court from rejecting the application of the Petitioner on the ground of non-execution of the PPA.
- 1.10. The Petitioner also filed Writ Petition no.16984 of 2010 seeking directions of Madras High Court on the determination of tariff by this Joint Commission. The High Court by its order dated 12.04.2011 directed the Petitioner to file a tariff petition before this Joint Commission for purchase of energy from the solar power project by the Respondent no.1.
- 1.11. In pursuance of the order dated 12.04.2011, passed by the High Court, the Petitioner filed a petition before this Commission for determination of tariff for its 1 MW rooftop solar PV project. This Commission vide order dated 02.01.2012, dismissed the petition of the Petitioner on the ground that the Petitioner had not executed a binding PPA with the distribution licensee Respondent no. 1.
- 1.12. The petitioner filed Appeal No. 22 of 2012 titled **Saheli Export Private Limited Versus JERC and others** before Hon’ble APTEL against the Order dated 02.01.2012 of the JERC. Hon’ble APTEL vide judgment dated 29.03.2012 allowed the appeal while observing in Para No. 27 of the judgment as under:-

Quote

*“To conclude, our findings are that the signing of a valid PPA between the generator and the distribution licensee is not a pre-condition for determination of tariff by the Joint Commission. **An MOU or initialed draft PPA would suffice.** Accordingly, the Joint Commission is directed to*

determine the tariff for sale of energy from the Solar Project of the Appellant to the Respondent no. 1 within 45 days from the date of this judgment.”

Unquote

2. The Commission in compliance of the judgment dated 29.03.2012 of the Hon'ble APTEL restored the petition No. 39 Of 2011 and vide order dated 02.07.2012 determined tariff of Rs. 10.58 / Kwh , considering a capital cost of Rs. 10.08 Crs for 1.0 MW Power from Rooftop PV & Small Solar Power Generation Programme for supply to Electricity Department of Puducherry.

Thereafter, M/S Saheli Export Private Limited-Petitioner filed a petition stating that ED- Puducherry- Respondent be directed to execute Power Purchase Agreement (PPA) as per the initialled draft PPA.

The Commission on 30.01.2013 passed following order:-

Quote

*“The parties submitted initialled PPA. The representative of the respondent explained salient features of the initialled PPA. The Commission also examined the PPA. The Commission after hearing and going through the petition as well as initialled PPA observed that **following clauses, terms and conditions are either not included or incomplete or vague in the PPA.***

1. *Tariff of the project and the conditions related thereto as contained in the Tariff Order dated 2.07.2012 issued by JERC in petition no. 39/2011.*

2. *The petitioner will neither sell power nor REC to any other party unless explicitly permitted by the licensee.*

3. *Payment of tariff including rebate, if any, will be as per practice of the utility. Clauses pertaining to GBI to be governed by MNRE Scheme of payment of GBI.*

4. *Provisions relating to share of CDM as contained in the Tariff Order referred to at Sr. No. 1 above.*

5. ***Specific Number and address of the project in the area of Devampuram.***

6. *Governance relating to point of interconnection, cost relating thereto, sharing of losses before the licensee's receipt, compliance of JERC (State Grid Code) Regulations, 2010, CERC Regulations on interconnection of Renewable Solar Power Photovoltaic power.*

The representative of the respondent prayed for Four weeks time for submitting amended initialled PPA for approval of the Commission. The Commission considered the request, acceded the same and directed to respondent to submit amended initialled PPA on or before 27.02.2013.”

Unquote

The Commission in the order dated 27.02.2013 observed as under:-

Quote

“The representative of the petitioner prayed for long time for inclusion of all clauses of the order dated 30.01.2013 including survey no. of the land where the project is to be installed. The Commission keeping in view that the petition is lingering on since long for want of specific details of the land where the project is to be installed and the petitioner is still unable to disclose specific survey no. of the land where the project is to be installed. Therefore, the petition is kept in abeyance till the initialled PPA is filed for approval of the Commission after compliance of all the directions issued by the Commission including five directions issued in the order dated 30.01.2013.”

Unquote

3. The petitioner- M/s Saheli Export Pvt. Ltd. filed petition no. 102/2013 for review of the order dated 27.02.2013 passed by the Commission in the present petition no. 39/2011. The petition no. 102/2013 was dismissed as withdrawn vide order dated 28.11.2013 and the Commission directed the petitioner to comply the order dated 27.02.2013 passed by the Commission in petition no. 39/2011 in totality on or before 20.12.2013 failing which the present petition no. 39/2011 shall stand dismissed.

The petition was scheduled for hearing on 27.12.2013. The Commission on 20.12.2013 received written request from Counsel for the petitioner stating that he is unable to attend hearing on 27.12.2013 due to personal difficulty and the petition was scheduled for hearing on 21.01.2014.

The petitioner in compliance of the order dated 27.02.2013 passed in present petition no. 39/2011 and order dated 28.11.2013 passed in petition no. 102/2013 filed affidavit dated 17.12.2013 with following averments:-

Quote

“That the petitioner has identified the survey number for the project site which is situated at No. 4, Devamapuram (Pathakudi village in Thirunallar Commune Panchayat, Karaikal District, Puducherry UT) vide new survey No(s) 6/2, 6/3, 6/4, 7/3, 7/6, 7/7, 7/8, 7/9, 8/2, 8/3 and 8/4. In the circumstances, the condition specified in the order dated 27.02.2013 having been satisfied, it is respectfully stated that the Hon’ble Commission may approve the draft of the power purchase agreement to be entered into with the respondent no. 1. All other clauses in the draft power purchase agreement had already been approved by the Hon’ble Commission and agreed to between the parties and the approval was deferred for the only reason of insertion of the survey number. The Hon’ble Commission may approve the draft power purchase agreement as filed before the Hon’ble Commission.”

Unquote

The respondent in reply to the affidavit dated 17.12.2013 of the petitioner filed affidavit dated 17.01.2014 with averments:-

Quote

“That the EDP submits that the project proponent M/s Saheli Exports Pvt. Ltd., Chennai has furnished the survey number and other details of the land at which the Solar PV power plant is proposed to be setup under JNNSM- RPSSGP program. However, the firm has not furnished (any) documentary proof for having purchased or leased the land.

After inspecting the proposed land, it is ascertained that the land identified by the project proponent is suitable for providing connectivity at 11 KV grid for the purpose of evacuation of power generated from the proposed solar PV power plant.

As such the EDP has no objection to execute the power purchase agreement (PPA) with the project proponent M/s Saheli Exports Pvt. Ltd., Chennai, subject to approval of the draft PPA by the Hon'ble Commission.

Further, the EDP submits that the Hon'ble CERC having considered, the down trend exists on the cost of PV modules in the world market, having fixed the generic tariff for the year 2013-14 for the power generated from the solar PV power plants as Rs. 8.75 per Kwhr.

In this connection, it is submitted that as per the terms and conditions of the JNNSM scheme, GBI payable to distribution licensee shall be equal to the difference between the tariff determined by Central Electricity Regulatory Commission (CERC) during the year of commissioning of the plant and the rate of the respective year worked out from the Base Rate of Rs. 5.50 (notified by MNRE for the year 2010-11), escalated @ 3% per year. The GBI determined for the project (considering the base rate and the CERC rate for the respective year) shall remain constant for the entire duration of 25 years.

Considering the above mentioned conditions and that the plant is likely to be commissioned during the year 2013-14, the GBI benefit to the department would works out to Rs. 2.74 (Rs. 8.75-6.01) per unit. Thus the effective cost to the department for purchase of power from the proposed power plant after adjusting the GBI is worked out to be Rs. 7.84 (10.58-2.74) per unit which is higher than that of approved in the tariff order dated 02.07.2012. In view of this, the EDP humbly prays before the Commission to consider and review the tariff order dated 02.07.2012 as deem fit, so as to benefit the department cost effectively.

Unquote

4. The representative of the respondent further submitted that the petitioner is installing the plant under **Jawaharlal Nehru National Solar Mission (JNNSM)** programme of the **Ministry of New and Renewable Energy (MNRE)** and as per clause 1 of the JNNSM programme the projects should be designed for completion before 31.03.2013. The deadline has already expired, therefore, the petition has become infructuous and the same may be dismissed.

4.1. The Commission heard the representatives of the parties at length and has gone through the petition and accompanying documents carefully and thoroughly and directed the petitioner to submit detailed reply on the deadline of the programme and produce documents showing ownership of the survey numbers of the land where project is to be installed.

4.2. The representative of the petitioner prayed for 15 days time for submitting the information. The Commission considered the request, acceded the same and directed the petitioner to submit detailed reply on the deadline of the programme and produce documents showing ownership/ lease period of the survey numbers of the land where project is to be installed on or before 05.02.2014."

- 4.3. The Commission scheduled hearing on 12.02.2014. The Commission on 10.02.2014 decided to hold hearing on 20.02.2014. The Commission on 19.02.2014 on request of ED-Puducherry Respondent no. 1 scheduled hearing on 11.04.2014.
- 4.4. The petitioner as per order dated 21.01.2014 submitted information with averments that the petitioner has already identified survey numbers and confirmed setting up of generating station on the land prior to approval of the PPA. The petitioner is producing encumbrance certificate as documentary proof of the land as directed by the Commission. The question to review the tariff order dated 02.07.2012 does not arise in the present proceedings as the present proceedings are for approval of the PPA to entered into between the petitioner and respondent no. 1. The tariff order dated 02.07.2012 passed by the Commission has merged with the order passed by the APTEL. However, the question of entitlement of GBI benefit and expiry deadline for the project implementation as per JNNSM program of MNRE is that the program guideline is generic in nature but the guideline regarding completion of the project before 31.03.2013 does not apply in the present case in view of orders dated 30.07.2010 & 07.10.2010 of the Hon'ble High Court of Madras in Writ Petition No. 16983 of 2010 as the Hon'ble High Court vide orders dated 30.07.2010 & 7.10.2010 reserved 1 MW under the RPSSGP scheme of JNNSM in favour of petitioner which was also confirmed by IREDA vide letter dated 05.10.2010 and once again prayed for approval of the PPA.
- 4.5. The respondent no. 1 in reply dated 17.02.2014 to the contention of the petitioner submitted that this Commission determined the project specific tariff for the Solar PV power project proposed by the project proponent on 02.07.2012 considering that the project is likely to be commissioned in the year 2012-13 and based on the normative/ benchmark cost of such projects prevailed during that period. But in pursuant to the growing demand for PV modules due to announcement of various incentive scheme by the Govt. worldwide and continuous technological advancement and process improvement in manufacturing of PV modules has drastically reduced the cost of PV modules in the market which in turn reduces the project cost of PV Solar project. Therefore, CERC has notified suggestive tariff rate of Rs. 6.99/- per unit for the Solar PV Power Projects setup during the control period 2014-15 considering the normative Capital Cost Rs. 6.12 Crs. per MW. The proposed project is likely to be setup either during 2014-15 or thereafter, therefore, the tariff rate of Rs. 10.58/- per unit fixed for this project considering Capital Cost of Rs. 10.08 Crs. per MW as project specific cost which is in line with the benchmark cost prevailed during the year 2012-13 shall not be made applicable now, as the project proponent has not yet commenced the installation/ commissioned the power project and prayed for review for tariff order dated 02.07.2012 and re-determine the project specific tariff rates based on the benchmark and normative cost as proposed by CERC for control period for 2014-15.

5. The Commission held hearing on 11.04.2014. The Commission heard the representatives of the parties at length and has gone through the petition/reply and documents produced by the parties carefully and thoroughly.

- 5.1. The petitioner to show its ownership/ lease period /arrangement of the survey numbers of the land has produced encumbrance certificate only and a perusal of the same shows that there is no encumbrance on the land but the certificate does not show ownership/lease period of the survey numbers of land in favour of the petitioner. Therefore, the petitioner has failed to produce any document showing ownership/lease arrangement of the survey numbers of land where project is to be installed. The petitioner in such projects under JNNSM program of MNRE is required to show

ownership/lease period of the survey numbers of land in favour of the petitioner before signing and approval of PPA. Therefore, the Commission directs the petitioner to produce document of ownership/lease period of the survey numbers of land where project is to be installed before signing and approval of final PPA.

5.2. Admittedly, this Commission determined the project specific tariff for the Solar PV power project proposed by the project proponent on 02.07.2012 considering that the project is likely to be commissioned in the year 2012-13 and based on the normative/ benchmark cost of such projects prevailed during that period. But in pursuant to the growing demand for PV modules due to announcement of various incentive scheme by the Govt. worldwide and continuous technological advancement and process improvement in manufacturing of PV modules has drastically reduced the cost of PV modules in the market which in turn reduces the project cost of PV Solar project. Therefore, CERC has notified a suggestive tariff rate of Rs. 6.99/- per unit for the Solar PV Power Projects setup during the control period 2014-15 considering the normative Capital Cost Rs. 6.12 Crs. per MW. The proposed project is likely to be setup either during 2014-15 or thereafter, therefore, the tariff rate of Rs. 10.58/- per unit fixed for this project considering Capital Cost of Rs. 10.08 Crs. per MW as project specific cost which is in line with the benchmark cost prevailed during the year 2012-13 shall not be made applicable now, as the project proponent has not yet commenced the installation/ commissioned the power project.

5.3. The matter is subjudice and pending before the Hon'ble High Court of Madras in Writ Petition no. 16983 of 2010. It is likely to take time in disposal of the Writ Petition. Therefore, the question of review of the tariff order dated 02.07.2012 is kept open and any of the party is at liberty to file a review petition of the order dated 02.07.2012 for determination of tariff after final conclusion of the Writ Petition no. 16983 of 2010.

In the light of above discussion and observation and findings the draft initialled PPA is approved.

-sd-

(S.K.Chaturvedi)

Chairperson

* As per Regulation 9 (II) of JERC (Conduct of Business) Regulations, 2009 "Coram is two". Whereas as per proviso of Regulation 9 (II) of JERC (Conduct of Business) Regulations, 2009 if Chairperson or the Member is prevented from attending hearing of which he has been given notice the Member or the Chairman as the case may be attending the meeting shall validly constitute the Coram. Post of the Member is vacant. According to provisions of Section 93 of the Electricity Act, 2003 no act or proceedings of the appropriate Commission shall be questioned or invalidated merely on the ground of existence of any vacancy or defect in the Constitution of the appropriate Commission. So the Chairperson only constitutes a valid Coram.

Certified Copy

Sd/-

(Rajeev Amit)

Secretary