

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

Coram  
Dr. V. K. Garg, Chairperson  
Shri R.K.Sharma, FIE, Member  
Petition No.....39/ 2011

**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 the Puducherry Utility.

**And in the matter of**

M/s Saheli Export Pvt. Limited

.... Petitioner

**And**

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

...Respondents

**Present**

For the Petitioner

1. Shri P. Ramesh, Manager Commercial Services
2. Shri Anand K Ganesan, Advocate Petitioner

For the Respondents

1. Shri T.Gopalkrishnan, Executive Engineer, EDP
2. Shri T.Chanemougam, Executive Engineer, EDP

**ORDER**

02.01.2012

In response to the order of the Commission dated 12.12.11, the petitioner filed an affidavit dated 22.12.11.

Matter was heard on 26.12.2011 and the order was kept reserved.

The afore said order of the Commission dated 12.12.11 is reproduced as below for ready reference:

*"A writ petition was filed with Hon'ble Madras High Court for a direction to direct the Commission to determine the tariff for small generating system for purchase of electricity by the distribution Utility in Puducherry in terms of Electricity Act 2003.*

*The Hon'ble High Court gave the following directions:*

*"Petitioner is permitted to make an appropriate application as per Sections 62 and 64 of the Electricity act 2003 within a period of two weeks from the date of receipt of a copy of this order. If*

*such an application is made, the Joint electricity Regulatory Commission, the 1<sup>st</sup> respondent herein, is directed to determine the tariff in the manner as provided under 64 of the Act, after giving an opportunity of hearing to the parties concerned and pass appropriate tariff order as expeditiously as possible, since the Act contemplates the time limit for passing such an award. It is made clear that the authority concerned shall decide the petitioner's application on its own merit without being influenced by any observation made in this order."*

*Pursuant to the above, on 24.05.2011 the petitioner had filed the petition before the Commission for determination of tariff for its power project. After removing the initial defects as pointed out by the registry of the Commission, the matter was listed for preliminary hearing on 24.08.2011. After hearing the Petitioner, the Commission had issued notices to the respondents and also issued a Public notice dated 14.09.2011 calling for representations from the public to the petition filed by the Petitioner for determination of tariff for the hearing held on 03.10.2011.*

*Section 62 of the Act provides determining of the tariff for supply of electricity by a generating company to a distribution licensee. That is; in the opinion of the Commission, for fixing tariff under section 62, there has to be a generator and a licensee willing to accept the electricity, exhibiting their commitment through a valid agreement. Further, whereas the Commission is the competent authority to fix the tariff under section 62, the Commission is also responsible to approve the agreement for the power which the licensee (respondent) has to purchase as per section 86(1) (b). Further in the absence of the agreement, in this particular case, after fixation of tariff, if the Utility, for some reason pulls out, the Commission no longer remains (respondent No.1 being the sole distribution licensee in Puducherry) the competent authority to determine the tariff, and the same would become in fruituous. That makes it essential that there has to be an agreement duly executed between the generator and the licensee.*

*Therefore Commission observes that for fixing of the tariff under section 62, an agreement has to be executed between the generator and the licensee and also that it has to be executed before the tariff is determined. Further the agreement is also required to be approved by the appropriate Commission as per section 86 (1) (b) .*

*The Commission noted that as per the existing practice also the tariff of various generating companies like NTPC, NHPC, THDC etc. the agreement is executed by a Utility before the tariff is determined by appropriate Commission under section 62.*

*In the hearing held on 03.10.2011, the Commission observed that the approval of the agreement by the Commission and execution of the same is necessary before the determination of tariff. The Commission called upon the respondent No.1 to file its draft agreement for approval before the issue of determination of tariff is considered by the Commission.*

*Respondent No.1 accordingly have submitted the draft agreement for approval of the Commission, received on 24.10.2011.*

*The petitioner filed an application on 24.10.2011 while requesting for expeditious disposal, submitted that they had proceeded on the basis of the order of the Commission dated 19.10.2010 wherein the Commission had refused to approve the PPA (Power Purchase Agreement) before the determination*

*of tariff which was a pre-requisite. The contention of the petitioner is not based on facts. As EDP (respondent No. 1) had brought out in their petition, then, that the petitioner had participated in the final registration process and secured the sixteenth rank even without the PPA, (the PPA being a pre-requisite for final registration), The Commission accordingly ruled (order dated 19.10.2010) that "... the PPA for approval at this stage does not serve the purpose for which it is intended." These facts were not brought in their main petition.*

*In their application dated 24.10.2011 and 3.11.2011, the petitioner has contended that the PPA can be executed between the petitioner and Respondent No.1 after the determination of tariff by the Commission, giving reference to the RPSSGP scheme. This is not accepted by the Commission in view of the position explained in preceding paras, and that section 62 under which the tariff is to be determined is independent of any scheme.*

*REAP (Renewable Energy Agency Puducherry) has filed an application praying that the Commission may fix Generic preferential and non preferential tariff for all Solar Power Projects. The Commission has already issued regulations on Renewable Energy Purchase Obligation of the licensee and has started to keep provision for the same in the ARRs (Annual Revenue Requirement) while fixing the tariff of different licensees. The Commission is of the view that the onus to discharge this obligation now lies with the licensee. Licensee while doing so obviously has to keep in view his commercial considerations as the market rates of solar generation are showing continuous substantial down trend. In view of the same, presently, relevance of determining generic rate for solar power has reduced, as the same is not sensitive enough to changing market conditions. This does not contravene the provisions of section 86(1)(e) of the Act regarding promotion of non conventional energy. However in the present case, the tariff is being determined under section 62 in compliance of the directions of Hon'ble Madras High Court.*

*The contentions of the petitioner in their affidavit dated 5.12.11 are not considered relevant to the instant case and the circumstances under which it is being considered.*

*In response to interim order of the Commission dated 25.10.2011, respondent No 1 have filed their reply received by the Commission on 31.10.2011 regarding the matter of draft PPA, for approval.*

*The draft PPA was discussed and few changes were suggested and the respondent No.1 advised to examine and resubmit the same after incorporating them and further to be heard on 19.12.11.*

*The Counsel for the petitioner stated that they will not sign the agreement as approved by the Commission unless the tariff is determined first. The Commission directs the petitioner to file affidavit of the authorised representative by 22.12.11, to the above effect.*

*However in view of the request made by the petitioner and the respondent No.1, the date of next hearing is fixed for 26.12.11."*

*The petitioner vide their affidavit dated 22.12.11 as mentioned above in the opening para, have stated that they cannot agree to the stipulation contained in the order dated 12<sup>th</sup> December 2011 that the petitioner shall at all events be bound to supply power at the tariff to be determined by the Commission in future and the petitioner should now enter into a*

binding and concluded contract without the knowledge of the tariff which would be paid by the distribution licensee.

By stating above the petitioner has declined to accept the position as taken in the order of the Commission dated 12.12.11 reproduced as above.

The tariff is to be fixed by the Commission under section 62 and 64 of the Act on merits as per the Orders of Hon'ble Madras High Court. As per section 62 the responsibility of determining the tariff lies with the Commission. While determining the tariff, the Commission is guided by the provisions of section 61 of the Act, which is reproduced as below:

*“Section 61. Tariff regulation- The appropriate Commission shall, subject to the provision of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely,-*

- a. The principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;*
- b. The generation, transmission, distribution and supply of electricity are conducted on commercial principles;*
- c. The factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*
- d. Safeguarding of consumers interest and at the same time, recovery of the cost of electricity in a reasonable manner;*
- e. The principles rewarding efficiency in performance;*
- f. Multiyear tariff principles;*
- g. That the tariff progressively reflects the cost of supply of electricity, and also reduces and eliminates cross subsidies within the period to be specified by the Appropriate Commission;*
- h. The promotion of co-generation and generation of electricity from renewable sources of energy;*
- i. The National Electricity Policy and tariff policy”*

The Appropriate Commission ensures that the tariff determined under section 62 in view of the provisions of section 61, is reasonable. Even if an appropriate Commission has not specified any terms and conditions, still while determining the tariff under section 62 the Commission shall be guided by the provisions of section 61, thereby ensuring a reasonable tariff and that the tariff so determined by the Commission is binding. The apprehensions of the petitioner as mentioned in their affidavit dated 22.12.11 under para 10 and 13 are therefore unfounded and without any basis. In case the Generator is not satisfied with the tariff as fixed by the Commission, he has the option to make any appeal as per the Act for a remedy.

In view of above Commission observes as follows:

An agreement as approved by the Commission has essentially to be executed between generator and the licensee to whom electricity is to be supplied before tariff of generator is determined under section 62 of the act, as ruled by the Commission in their order dated 12.12.11. The responsibility of determining reasonable tariff lies with the Appropriate Commission, under section 62.

As the petitioner has not agreed to sign an agreement with the licensee (respondent No.1) as stipulated in Commission order dated 12.12.11.

The petition is hereby dismissed.

Sd/-

**(R. K. Sharma)**  
**Member**

Sd/-

**(Dr. V.K. Garg)**  
**Chairperson**

