



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.
5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004**

O. P. No. 66 of 2018

Dated 18.12.2018

Present

Sri. Ismail Ali Khan, Chairman

Between:

M/s. Oberon Power Corporation Private Limited,
H.No.3-5-111, Plot No.860/1, 1st Floor,
Vivekananda nagar Colony, Kukatpally,
Hyderabad – 500 072.

... Petitioner.

AND

Northern Power Distribution Company of Telangana Limited,
H.No. 2-5-31-2, Corporate Office, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Warangal-506001.

...Respondent.

This petition came up for hearing on 06.10.2018, 03.11.2018, 17.11.2018 and 24.11.2018. Sri. P. Srinivasa Rao, Advocate for the petitioner and Sri. Y. Rama Rao, standing counsel for the respondent along with Ms. M. Pravallika appeared on 06.10.2018, 03.11.2018, 17.11.2018 and 24.11.2018. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

This petition is filed under Section 62, 63 r/w Section 86 (1) (b) of the Electricity Act, 2003 r/w TSERC (Conduct of Business) Regulation No. 2 of 2015 seeking adoption of tariff discovered under competitive bidding process for procurement of 5MW solar power with the following material allegations:

- (i) The petitioner participated in a tender floated by TSTRANSCO vide bid No. 1 / 2012-13 and was declared as a successful bidder. The TSTRANSCO

had issued Letter of Intent (LOI) and agreed to purchase 3MW by TSNPDCL (respondent) for 20 years. The Non-Conventional Energy Solar PPA No. 2 / 2013 was entered with the respondent for a period of 20 years with SCOD.

(ii) Under clause 2.1 of the PPA all the delivered energy as mentioned in schedules 1 to 4 at the interconnection point for sale to DISCOM will be purchased at the tariff provided in clause 2.2 from and limited to capacity of the project only after the date of COD of the project and title to delivered energy purchased shall pass from the petitioner to the respondent at the interconnection point.

(iii) As per the agreement, the respondent shall pay tariff @ Rs.6.49/unit up to 25% CUF calculated on annual basis. The tariff is firm per unit for a period of 20 years from the date of COD. Any energy delivered in excess of 25 % CUF during the year shall be purchased by DISCOMS at Rs.3/kWh. The said PPA was subsequently amended to contain certain clauses including the default of the developer and to continue the PPA by mutual discussion and it is deemed to have been amended in the event of conclusions reached by the parties.

(iv) The GOTS keeping in view the interest of SPDs and in tune with the solar power policy had extended the SCOD by an order dated 04.12.2015 and consequently an amended PPA was executed on 06.12.2016.

(v) The petitioner's plant has not commenced operations within the period of SCOD. The issue of commencement of SCOD is a subject matter of due deliberations and efforts were made seeking extension of time for SCOD by the solar power plants association. The matter went up to the Government and it was pleased to extend SCOD up to 30.06.2017 without any penalties.

This benefit has been declined in case of the petitioner alone which led to disputes and termination of PPA despite the GOTS letter dated 29.06.2017. The petitioner once again approached the GOTS with a detailed letter dated 07.04.2018 and after prolonged deep deliberations and negotiations with the respondent and about extension of SCOD granted on 29.06.2017 and the injustice and prejudice caused to the petitioner's project.

(vi) The petitioner has invested huge amounts for setting up the project by raising funds from various sources. The GOTS after careful consideration and after calling a report from the respondent was pleased to extend the SCOD for a period of 90 days on par with the projects of 2015-16 bidding by a communication Lr.No.1250 / PR.A-1 / 2017 dated 05.09.2018 with a condition that the tariff fixed at Rs.6.49ps / unit shall be reduced by the petitioner. The petitioner expressed its willingness and gave undertaking for reduction of tariff up to Rs.5.72 per unit which is below the ceiling limit fixed by the Commission as follows:

“Government after careful consideration of the grievance of solar developer and report of the TSNPDCL, hereby extended the SCOD to the two units (2x5MW) of M/s. Oberon Power Corporation Pvt. Ltd for 90 days for completion of their project with reduced PPA tariff of Rs.5.72 as per 2015-16 bidding as requested by the company as one time measure and last chance.”

(vii) As mentioned in Article 1 of PPA, “Change in law shall mean any change in the provision of electricity law in force, regulations, directions, notifications issued by the competent authorities and GoI / GOAP, from time to time.” Further, Article 11 of PPA provides for Dispute Resolution in an equitable manner.

(viii) Regarding fixation of tariff, since the tariff has been fixed with the consent of the petitioner and generator, there is no necessity for determination of tariff time and again as per the terms of PPA. The tariff now proposed to be fixed shall be in force for the entire duration of PPA. The terms of the original PPA dated 31.01.2014 have to be amended in tune with order of the Govt. dated 05.09.2018 and extension of 90 days with reduction of tariff @ Rs.5.72ps, including the tenure of PPA as 25 years which may be sanctioned and enforced.

(ix) The original duration of PPA dated 31.01.2014 was 20 years and as per the government order dated 05.09.2018 it was extended to 25 years.

(x) The petitioner had under PPA dated 31.01.2014 made all efforts to comply with the terms of PPA. Due to the intervening factors and reasons like demonetisation and the resultant financial crunch, which are beyond its control, could not complete the project within time and the government had granted extension of 90 days as one time measure to the project.

(xi) under these circumstances, the petitioner prayed for approval of the tariff agreed and fixed by the government @ Rs.5.72 per unit to the project and direct the respondent to amend the PPA accordingly and purchase power by incorporating the changed tariff in the PPA, extend SCOD by 90 days and direct the respondent to amend the PPA in tune with the letter of GOTS dated 05.09.2018.

2. The respondent, through its Chief General Manager (IPC & RAC) TSNPDCL, Warangal, filed counter-affidavit with the following material allegations:

(i) The petitioner company had entered into PPA dated 07.09.2013 and amendment was issued on 31.01.2014 as per APERC communication dated

28.11.2013 to set up 5MW solar power project at Kakaravai village, Tirumalayapalem Mandal in Khammam District under competitive bidding 2012 with interconnection point at 33 / 11KV Kakaravai SS at 33 KV voltage level with tariff Rs.6.49 per unit for a period of 20 years with effective date of PPA being 31.01.2014.

(ii) As per clause 3.10.5 of amended PPA, the project should be commissioned within 12 months from the date of signing of PPA on or before 30.01.2015. But the petitioner has failed to achieve COD on 30.01.2015.

(iii) GOTS on 08.05.2015, has extended COD up to 31.12.2015 duly reducing the agreed price from Rs.6.49 per unit to Rs.6.45 per unit. This agreement was amended with extended SCOD and penalty clause. The petitioner again failed to achieve SCOD by 31.12.2015.

(iv) GOTS on 04.12.2015, has once again extended COD till 31. 03.2016 with the same tariff Rs.6.45 per unit and the agreement was amended accordingly. Still the petitioner failed to achieve COD by 31.03.2016.

(v) Subsequently performance bank guarantee was encashed (Rs.2 lakhs per MW) on 03.02.2015 and the balance PBGs Rs.3 lakhs / MW & Rs.5 lakhs / MW (Rs.50 lakhs) were encashed on 28.04.2016.

(vi) GOTS on 26.07.2016 has once again extended COD up to 31.12.2016 as a last chance at the same tariff of Rs.6.45 per unit and agreement was amended accordingly. Again, the petitioner failed to achieve COD by 31.12.2016.

(vii) On the request of the Telangana Solar Power Developers Association letter dated 04.01.2017, the Spl. CS, Energy Dept, GOTS by letter dated 27.02.2017 has requested the CMDs of DISCOMs to hold a meeting with

such developers on reducing the tariff from Rs.6.45 per unit to Rs.3.30 per unit. A meeting was held on 15.03.2017 with the petitioner who requested time till 20.03.2017 to give its revised representation. A letter dated 15.04.2017 was addressed to the petitioner reminding submission of its proposal on reduction of tariff from Rs.6.45 to Rs.3.30 per unit and the petitioner has not responded.

(viii) GOTS by letter dated 21.04.2017 has ordered extension of COD up to 30.06.2017 without any penalties (bidding 2015) and a letter dated 11.07.2017 was addressed to the Commission requesting consent in accordance with the decision of the government for the solar power projects who concluded PPAs with DISCOMs up to 30.06.2017.

(ix) The petitioner by letter dated 25.07.2017, expressed its willingness to reduce the PPA price from Rs.6.45 to Rs.5.72 per unit for 25 years as against 20 years period under the PPA. The petitioner by letter dated 08.08.2017, sought extension of SCOD proposing to revise the tariff from Rs.5.72 per unit to Rs.5.52 per unit for 25 years as per tariff of group-I category of 2000 MW bidding, 2015. The Commission by order dated 18.08.2017 has accorded in-principle approval for extending SCOD up to 30.06.2017 for the 2000 MW projects bidding in the year 2015 on condition of filing proper petitioner for amending PPA in respect of penalties and refixation of tariff and to file consolidated petition in respect of the project of 2015 by making all those projects, which have commissioned or ready to be commissioned beyond the stipulated time period of the SCOD in the PPAs which have been entered by them. The Commission has not communicated consent with regard to extension of SCOD in respect of PPAs entered under solar bidding 2012 open

offer-2013 and solar bidding-2014 whereas the petitioner's PPA was entered into under 2012 bidding.

(x) In spite of several extensions were granted to reach SCOD by the Government i.e., 31.12.2015, 31.03.2016 and 31.12.2016 as a last chance and after expiry of two years eleven months also the petitioner failed to achieve SCOD. Therefore, the respondent issued termination notice on 23.03.2018 to the petitioner under acknowledgment dated 26.03.2018. On 20.04.2018, the petitioner sought two more weeks' time on the termination of PPA and even after the expiry of two months there was no response from the petitioner and the PPA was terminated on 27.06.2018.

(xi) The respondent stated that in respect of the tariff discovered in the 2000 MW solar competitive bidding-2015 was Rs.5.1729 (lowest) per kwh. Further, NTPC had offered solar power and enter into a PPA for the proposed 15 MW capacity plant at Ramagundam with levelized tariff of Rs.3.50/- per unit from the year 2018-19 and the in-principle approval of the Commission has been sought.

(xii) The PPAs (two) of the petitioner company were already terminated and further extension of SCOD may not be possible.

(xiii) The present prayer for reviving PPA with time extension with the same tariff which was abnormally high 3-4 years back would not only cause enormous financial burden on the DISCOMs, but would also lead to legal complications and prejudice to the public interest / consumers. Suitable orders may be passed.

(xiv) During the arguments the respondent filed a copy of letter dated 15.10.2018 addressed by Chairman / TSPCC & CMD / TSTRANSCO to the

Spl. CS to Govt., Energy Dept., GOTS stating inter alia that the petitioner had entered into PPA under 2012 bidding and even the extended SCOD to the SPDs under 2015 bidding (viz, 31.10.2017) has expired by now. The Commission directed the SPDs of 2015 bidding who have failed to achieve SCOD. Accordingly petitions have been filed and hearings are in the process in line with the reduced tariff prevailing now, so as to avoid financial burden on the DISCOMs.

(xv) Under these circumstances, allowing a SPD under 2012 bidding who failed to execute PPA in spite of several extensions with a tariff of Rs.5.72 per unit may create conflict in the already ongoing proceedings before the Commission and may ultimately result in huge financial burden to the DISCOMs.

(xvi) Granting of extension of SCOD to the terminated PPA may act as a precedent to other SPDs whose PPAs have also been terminated in view of failure to achieve SCOD.

(xvii) In the light of reduced solar tariff presently (about Rs.3.00 per unit), in case of extending SCOD of the PPA, which has been terminated otherwise, would force the respondent to bear additional financial burden to the tune of Rs.148 crores (calculated for the PPA period of 25 years for two projects). The decision extending SCOD to the petitioner with a tariff of Rs.5.72 per unit may kindly be re-examined.

3. Reply to the counter filed on behalf of the petitioner as follows:

(i) The agreed tariff price fixed as per the PPA dated 07.09.2013 and amended PPA dated 31.01.2014 is Rs.6.49 ps. per unit for a period of 20 years from the date of signing of amended PPA dated 31.01.2014. The

GOTS after extension of SCOD for a period of 90 days through its letter dated 05.09.2018 has changed the bidding process as 2015-16 from the competitive bidding process of 2012-13.

(ii) The petitioner, in view of the changed circumstances and developments and the requirement of the approval of the Commission, filed the present petition seeking adaptation of tariff fixed by the government as well as to recognise the amended PPA as per 2015-16 bidding process.

(iii) Regarding comparison of lower tariff / price per unit agreed with NTPC which is a public limited company with large capacity of 53651 MW from (coal/ gas / solar / hydro / mini hydro / wind) from its generating plants across India, 15 MW SPV plant came up in Ramagundam adding to the upcoming TSTPP 1600 MW by the year 2020 and finance funding to this 15MW SPV by NTPC 100% funding from its own resources with the tariff fixed by the government to the present solar power project is totally untenable. So far 807MW SPV is operational across India. Having a levelised tariff, they have an advantage of bundling with thermal power with 2:1 basis (2MW solar with 1MW thermal). Considering these benefits of their SPV plant, the levelised tariff of Rs.3.50 per unit of NTPC should not be a benchmark for other developers like the petitioner.

(iv) Further, low price tariff discovered in 2015 bidding at Rs.5.1729 per unit (lowest) is for 132 / 33 KV and it has no relevance or any nexus with the petitioner's case since the petitioner company has interconnection point at 33 / 11 KV and therefore the price fixed for 132 / 33 KV cannot be made applicable to the plant with 33 / 11 KV. Thus, the tariff fixed by the GOTS as per the letter dated 05.09.2018 is quite reasonable and perfectly justified. The

tariff adopted under letter dated 05.09.2018 of GOTS @ Rs.5.72 per unit be adopted and direction to respondent be given to file amended PPA incorporating the tariff with extended SCOD for 90 days commencing from the date of signing of PPA by both parties.

4. On behalf of the respondent, a memo is filed with additional information as follows:

(i) On 08.08.2017, the petitioner addressed a letter requesting for extension of SCOD duly revising tariff from Rs.5.72 per unit to Rs.5.52 per unit for 25 years as against 20 years period. The impact of this difference is to a tune of Rs.5.475crores on the respondent for the entire period of PPA (in the case of 25 years as against the original 20 years). At present the solar power tariffs have decreased substantially / drastically.

(ii) The lowest tariff of 2000 MW competitive bidding 2015 for the period of 25 years is Rs.5.3497 per unit in TSNPDCL. If this is taken, the difference in tariff with the suggested tariff is Rs.0.3703 per unit and the impact is Rs.10.135 crores on the respondent for the suggested period of 25 years.

(iii) The lowest tariff of 2000 MW competitive bidding 2015 for the period of 25 years is Rs.5.1729 per unit in Telangana State is taken, the difference in tariff with the suggested tariff is Rs.0.5471 per unit and the impact is Rs.14.975 crores on the respondent for the suggested period of 25 years.

(iv) The tariff under PPA with NTPC for the proposed 15 MW capacity solar power plant at Ramagundam with levelised tariff of Rs.3.50 per unit from the year 2018-19 would make the price difference of Rs.2.22 per unit with the government approved tariff Rs.5.72 would impact only Rs. 60.77 crores on the respondent for the entire 25years period of PPA.

(v) There are other SPDs (total 14.5 MW capacity) who failed to achieve COD under the competitive bidding 2012, open offer-2013, competitive bidding 2014 who may approach the DISCOMs and the government for revival of PPAs with time extension which would cause not only enormous financial burden on the DISCOMs but would also lead to legal complications and cause prejudice to public interest consumers.

(vi) Once the PPAs are terminated, the extension of SCOD for the terminated PPAs may not be legally possible, in addition to the extension given to the petitioner being an exclusive one.

(vii) CMD / TSTRANSCO has also addressed letter dated 15.10.2018 to the Spl. CS, Energy Dept., GOTS to re-examine the decision of extending SCOD to the petitioner with tariff Rs.5.72 per unit.

(viii) TSPCC in a meeting held on 15.11.2018 has taken a decision and according to that respondent is willing to buy power from the petitioner if it agrees to supply power at the least discovered price under competitive bidding.

5. Arguments on behalf of the petitioner and the respondent are heard.

6. Based on the material on record, the following issues arise for determination:

(i) Whether the petitioner is entitled to a direction to the respondent to purchase solar power from the petitioner at the price fixed @ Rs.5.72 per unit by incorporating the same in the PPA by way of amendment?

(ii) Whether the petitioner is entitled to extension of SCOD of 90 days from the date of signing of the amended PPA?

(iii) Whether the offer of the respondent that it is willing to buy power if the petitioner is willing to supply power at the least discovered price under

competitive bidding which is subject to condition that the project is ready in all respects?

Issue (i) to (iii)

7. The petitioner had PPA dated 07.09.2013 and amended PPA was signed on 31.01.2014 with the respondent for supply of 5MW solar power at Kakaravai village, Tirumalayapalem Mandal in Khammam District under competitive bidding 2012 with interconnection point at 33/11KV Kakaravai SS at 33 KV voltage level with tariff Rs.6.49 per unit for a period of 20 years from 31.01.2014. As per Article 3.10.5 of amended PPA, the petitioner shall commission the project within 12 months i.e., on or before 30.01.2015. The petitioner failed to achieve SCOD on 30.01.2015. In spite of extension of SCOD on 08.05.2015 by GOTS up to 31.12.2015 to complete the project duly reducing the agreed price from Rs.6.49 to Rs.6.45 per unit, the petitioner failed to achieve SCOD by 31.12.2015. Again, GOTS on 04.12.2015 extended SCOD till 31.03.2016 finally at Rs.6.45 per unit with the PPA amended with extended SCOD, the petitioner again finally to achieve SCOD by 31.03.2016.

8. In view of the continuous failure of the petitioner to achieve SCOD for the project, the respondent encashed PBG (Rs.2 lakhs / MW) on 03.02.2015 and the balance PBGs Rs.3 lakhs / MW & Rs.5 lakhs / MW (i.e., Rs.50 lakhs) on 28.04.2016.

9. GOTS again extended SCOD on 26.07.2016 up to 31.12.2016 as a last chance for SCOD at agreed price of Rs.6.45 per unit with PPA amended accordingly. Still the petitioner failed to achieve SCOD by 31.12.2016. This is the performance index of the petitioner.

10. This being the case, the Spl. CS, Energy Dept., GOTS, on the request of the Telangana solar power developers association through letter dated 04.01.2017 has requested the CMDs of DISCOMs vide letter dated 27.02.2017 to hold a meeting with such developers on reducing the tariff from Rs.6.45 per unit to Rs.3.30 per unit.

11. The petitioner company on 25.07.2017 gave a letter of willingness to reduce PPA price from Rs.6.45 per unit to Rs.5.72 per unit for 25 years as against 20 years period as per PPA. Further, on 08.08.2017, the petitioner company sought extension of SCOD by proposing to revise the tariff from Rs.5.72 per unit to Rs.5.52 per unit for 25 years as against the 20 years period as per the tariff of group-I category of 2000 MW bidding.

12. The respondent claimed that the Commission by order dated 18.08.2017 has accorded in-principle approval for extending SCOD up to 30.06.2017 for the projects for solar power of 2000 MW bidding in the year 2015 subject to compliance by DISCOMs with certain conditions like filing a proper petition for amending PPAs in respect of penalties and refixation of tariff, filing a consolidated petition in respect of projects of 2015 bidding which have commissioned or ready to be commissioned beyond the stipulated period of PPAs. Why this reference is given by the respondent in the reply is not clear since the present matter is of PPAs entered in connection with bidding 2012, open offer 2013 and solar bidding 2014.

13. The performance of the petitioner throughout under 2012 bidding has been non-existent / dismal in spite of granting extension of SCOD by 2 years 11 months. Based on the letter dated 15.11.2018 of the petitioner addressed to his counsel, a part of the project is incomplete. In view of breach of terms of PPA dated 31.01.2014, the respondent issued termination notices dated 15.03.2016 and

03.09.2016 and the petitioner having acknowledged the termination notice on 26.03.2018 sought on 20.04.2018 two weeks time for termination of PPA. Thereafter, nothing was heard from the petitioner after expiry of two months and the respondent terminated PPA on 27.06.2018.

14. The above being the case, the Spl. CS, Energy Dept., GOTS by order dated 05.09.2018 on the representation of the petitioner for extension of SCOD by 90 days with reduced PPA tariff of Rs.5.72 as per 2015-16 bidding for 25 years, has extended the SCOD to the two units (2 x 5 MW) of the petitioner with 90 days for completion of their project with reduced tariff of Rs.5.72 per unit as per 2015-16 bidding as a onetime measure and last chance.

15. The petitioner is taking a stand that the PPA it had with the respondent of 2012 bidding is still alive even after termination on 27.06.2018. On this pretext, the petitioner obtained 90 days respite for completion of the project with SCOD 30.01.2015. The status of the project is still incomplete with no authenticated report. When once PPA is terminated, the petitioner has no other avenue left either to get the termination set aside or to get a fresh PPA.

16. The request of the petitioner for 90 days for completion of the project with reduced tariff as per bidding 2015 is strange. Further, 90 days time for completion of the project from the date of order of GOTS dated 05.09.2018 is almost over without there being any authorised record about the progress in the project.

17. The petitioner's contention is that since the GOTS order dated 05.09.2018 is effective, the prayer for approval of tariff at Rs.5.72 per unit and approval of 90 days period of extension have to be accepted by the Commission. Firstly, there is no PPA

and secondly, the petitioner itself on 08.08.2017 proposed revised tariff at Rs.5.52 per unit for 25 years as against 20 years period as per tariff of group-I category of 2000 MW and the present request is for fixation of Rs.5.72 per unit being the lowest in 2015 bidding. The petitioner is not a party to the 2015 bidding and in such a case he cannot pick and choose at the tariff from elsewhere. The petitioner pleaded for 25 years term for acceptance of tariff of Rs.5.52 per unit on 08.08.2017 while claiming Rs.5.72 per unit as per the GOTS letter dated 05.09.2018 as per 2015-16 bidding. Without there being any record of participation of the petitioner in 2015 bidding, fixing tariff at Rs.5.72 per unit and creating a PPA suitably is totally opposed by the DISCOM on justifiable grounds.

18. The only support the petitioner has is the GOTS letter of 05.09.2018. In the absence of any PPA in favour of the petitioner, the execution of the order would remain without any action. The opposition of the DISCOM to the proposed tariff at Rs.5.72 per unit is based on there being no PPA and the consistent failure of the petitioner to adhere to the deadline for SCOD for more than 2 years 11 months. Since GOTS observed this is one time measure as a last chance, the prayer of the petitioner has to be examined accordingly.

19. As far as the tariff is concerned, the petitioner in the first instance agreed for tariff of Rs.5.52 per unit, no doubt for 25 years as against 20 years period as per tariff group I category of 2000 MW bidding, the subsequent request for Rs.5.72 is extravagant and the DISCOM is vehemently opposing it. Leaving about the extended period of 25 years, the petitioner is bound to restrict the tariff at Rs.5.52 per unit and execute a fresh PPA with 90 days for achieving SCOD.

20. The contention of the DISCOM that NTPC offered tariff at Rs.3.50 per unit solar power 2018-19 and that the tariff is getting reduced gradually is refuted by the petitioner that the renewable energy capacities will add up to the capacity of NTPC by way of bundling with thermal power on 2:1 basis (2 MW solar with 1 MW thermal) with advantage of levelised tariff of Rs.3.50 per unit ought not be a bench mark for other developers like the petitioner. This argument is tenable since the petitioner is a small solar power generator with 5MW contract without the benefits of large scale capacities of entities like NTPC. The issues are answered accordingly.

21. In view of the discussion supra, the petitioner is found entitled to -

(a) a direction to the respondent to amend the PPA with 90 days for achieving SCOD from the date of signing the PPA with tariff fixed at Rs.5.52 per unit for a period of 25 years;

(b) a direction to amend the PPA within a period of 15 days from the date of this order.

Order accordingly.

This order is corrected and signed on this the 18th day of December, 2018.

**(ISMAIL ALI KHAN)
CHAIRMAN**