

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 296/MP/2019

Subject : Petition under Section 79(1)(b) and Section 79(1)(f) of the Electricity Act, 2003 for amendment of Power Purchase Agreements dated 27.1.2012 to align them with Regulation 15 of the Rajasthan Electricity Regulatory Commission (Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulations, 2017.

Date of Hearing : 6.8.2020

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member

Petitioner : 1. Lexicon Vanijya Private Limited (LVPL)
2. Symphony Vyapar Private Limited (SVPL)

Respondent : NTPC Vidyut Vyapar Nigam Limited (NVVNL)

Parties present : Shri Parinay Deep Shah, Advocate, LVPL and SVPL
Ms. Surbhi Pandey, Advocate, LVPL and SVPL
Shri M. G. Ramachandran, Sr. Advocate, NVVNL
Ms. Anushree Bardhan, Advocate, NVVNL
Shri Sunei Kapoor, LVPL and SVPL
Shri Ishan Nagpal, LVPL and SVPL
Shri Kulbhushan Kumar, LVPL and SVPL
Ms. Renu Sarin, NVVNL
Shri K. S. Bandyapdhyay, NVVNL
Shri Sujoy Das Verma, NVVNL

Record of Proceedings

The matter was heard through video conferencing.

2. Learned counsel for the Petitioners submitted that the instant Petition has been filed seeking directions to the Parties to amend the Power Purchase Agreements (PPAs) dated 27.1.2012 in order to align Article 10.2 of the PPAs with Regulation 15 of the Rajasthan Electricity Regulatory Commission (Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulations, 2017 (in short, 'the Forecasting Regulations, 2017'). Learned counsel further submitted as under:



(a) In terms of Recital E of the PPAs, solar power generated by the Petitioners' generating stations are being purchased by NTPC Vidyut Vyapar Nigam Limited (NJVNL) for onward sale to the Distribution Companies (Discoms) after bundling it with unallocated power procured from the central unallocated quota of coal based power projects of NTPC, Holding Company of NVVNL as per the provisions of National Solar Mission. Consequently, the electricity generated from the Petitioners' solar generating stations is being sold by NVVNL to both intra-State as well as inter-State beneficiaries in terms of Power Sale Agreements entered into by them.

(b) The Petitioners' generating station, being located in the State of Rajasthan and connected with the Rajasthan State grid, is subject to the Forecasting Regulations, 2017. Even as per Clause 2.3.3 of Statement of Reasons of the 'Framework on Forecasting, Scheduling and Imbalance Handling for Variable Renewable Energy Sources (Wind and Solar)' (in short 'the CERC Framework on Forecasting'), renewable energy generating station connected with State transmission network and supplying power outside the State, shall continue to operate within the control area of SLDC and is subject to the deviation settlement mechanism at the State level

(c) In terms of Regulation 15 of the Forecasting Regulations, 2017, billing and payment for the inter-State transactions are required to be done on scheduled basis and consequently, in terms of Regulation 18 of the Forecasting Regulations, 2017, deviation charges in respect of the inter-State transactions are also calculated on the basis of scheduled energy.

(d) However, as per Article 10.2 of the PPAs, billing and payment are carried out on the basis of energy metered for both intra-State and inter-State transactions. Thus, there is a conflict between the provisions of the PPAs and the Forecasting Regulations, 2017. While the Petitioners are being paid for inter-State transactions on the basis of actual energy supplied/metered energy, the Petitioners are required to pay the deviation charges for inter-State transactions on the basis of scheduled energy, leading to huge amount of penalty on the Petitioners.

(e) Vide Record of Proceedings dated 25.11.2019, the Commission issued notice on 'maintainability' of the Petition. However, as the Petitioners are supplying power to more than one State, the Commission has jurisdiction in the present case in light of the judgment of Hon'ble Supreme Court in the case of Energy Watchdog & Ors. v. CERC and Ors. Further, in terms of Article 16.3 of the PPAs, the Commission has jurisdiction to adjudicate upon any dispute under the PPAs. In this regard, reliance was placed on the Commission's order dated 11.10.2017 in Petition No. 304/MP/2013 &Ors.

(f) The Respondent, NVVNL, in its reply has contended that it is not in disagreement with the submissions of the Petitioners. However, NVVNL has submitted that instead of amendment to the PPAs, the Petition can be disposed of with direction that the provisions of PPAs shall be read consistent with applicable Regulations.



(g) According to NVVNL, Rajasthan Discoms should be impleaded as party to the Petition. However, as the Petitioner's grievance is related to billing methodology for only inter-State transactions, they are not proper and necessary parties. In any case, in terms of Article 16.3, NVVNL is entitled to co-opt the Discoms as supporting party in proceedings before the Commission.

(h) Rajasthan Electricity Regulatory Commission (RERC), in its order dated 27.9.2019 in Petition No. 1495 of 2019 and Ors., has already clarified that NVVNL and such inter-State traders should make the payment to the generators in case of inter-State transactions as per the Forecasting Regulations, 2017.

3. Learned senior counsel for the Respondent, NVVNL submitted as under:

(a) As per the CERC Framework on Forecasting, the generating stations of the Petitioners being connected to Rajasthan State Transmission networks are subject to Rajasthan's Forecasting Regulations, 2017. However, as the ABT mechanism is yet to be fully implemented at State level, intra-State energy transactions in terms of the Forecasting Regulations, 2017 are settled on the basis of actual energy/metered energy.

(b) With regard to inter-State transactions from the Petitioners' generating stations through NVVNL, the State Load Despatch Centre (SLDC) is required to keep record and provide requisite data of the scheduled energy for inter-State transactions and actual energy for the intra-State transactions, which form the basis of the bills raised by the Petitioners on NVVNL. Therefore, the Petitioners ought to implead the SLDC as party to the proceedings.

(c) NVVNL is only an intermediary agency and is not a grid connected entity. Any issue relating to scheduling and despatch is required to be settled between the Petitioners and the Discoms as the generators and procuring entities respectively. Therefore, Rajasthan Discoms may also be impleaded as party to the present Petition as any order passed in the matter will have an implication on the PSA executed with Rajasthan Discoms.

(d) Once the SLDC provides bifurcated energy data for each solar generating station i.e. actual energy supplied for intra-State transaction and scheduled energy for inter-State transaction, the last part of Article 10.2 of the PPA which provides 'monthly bill amount shall be product of energy metered and applicable tariff' would be required to be interpreted for the energy metered to be scheduled for the inter-State transactions in accordance with the provisions of the Regulations notified by the Commission and for the intra-State transaction in terms of the intra-State Regulations notified by the RERC read with order dated 27.9.2019 in Petition No. 1495 of 2019.

4. After hearing the learned counsel for the Petitioners and the learned senior counsel for the Respondent, NVVNL, and on the Respondent agreeing to billing as per scheduled energy for inter-State transaction if the SLDC provides schedule of the generating station corresponding to inter-State transactions, the Commission admitted

the Petition limited to decision on this issue of accounting and billing of inter-State transaction in respect of the generating station of the Petitioners.

5. Further, in view of the fact that the issue involved relates to bifurcation and accounting of energy data for the Petitioners' generating station into actual energy supply for intra-State transaction and scheduled energy for inter-State transaction, the learned senior counsel and learned counsel for the parties agreed that only the SLDC, Rajasthan may be impleaded for its views/comments. Accordingly, the Commission directed the Petitioners to implead SLDC, Rajasthan as party to the Petition and to file revised memo of party, by 17.8.2020.

6. The Commission directed the Petitioners to serve copy of the Petition on the SLDC, Rajasthan immediately. SLDC, Rajasthan was directed to file its reply by 27.8.2020 with advance copy to the Petitioners who may file their rejoinder, if any, by 10.9.2020. The due date of filing of reply and rejoinder should be strictly complied with.

7. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

**Sd/-
(T.D. Pant)
Deputy Chief (Law)**

