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**Petition No. 1019 and 1024 of 2015 & 1087 of 2016**

**BEFORE  
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION  
LUCKNOW**

**Date of Order: 05.04.2016**

**PRESENT:**

1. Hon'ble Sri Desh Deepak Verma, Chairman
2. Hon'ble Sri Indu Bhushan Pandey, Member
3. Hon'ble Sri S.K. Agarwal, Member

**IN THE MATTER OF:**

1. **Petition No.1019 of 2015:** Approval of supplementary PPA of Shri Saurya Powertech Pvt. Ltd. Dated 21.01.2015 for 20 MW Solar Power
2. **Petition No.1024 of 2015 :** Shri Colonizers & Developers seeking stay of operation of UPNEDA letters dated 06.05.2015 and 09.06.2015 issued to petitioners for failing to commission 20 MW Solar Plant by 27.04.2015 and other conditions of PPA
3. **Petition No.1087 of 2016 :** UPPCL seeking review of Commission's order dated 14.01.2016

**AND**

**1. Petition No.1019 of 2015**

U.P. Power Corporation Ltd.  
(Through its Chief Engineer PPA)  
14<sup>th</sup> Floor, Shakti Bhawan,  
14-Ashok Marg,  
Lucknow

----- **Petitioner**

**AND**

M/s Saurya Powertech Pvt. Ltd.  
A-49, Sector-63, Noida-201301

----- **Respondents**

**2. Petition No.1024 of 2015**

Shri Colonizers & Developers Pvt. Ltd.  
S-14, IInd Floor,  
Jai Hind Commercial Center,  
Lalbagh, Lucknow.

----- **Petitioner**

**AND**

Director  
Uttar Pradesh New and Renewable Energy Development Agency  
Vibhuti Khand, Gomti Nagar, Lucknow



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Chief Engineer,  
Power Purchase Agreement Directorate,  
U.P. Power Corporation Ltd.,  
Shakti Bhawan,  
Ashok Marg, Lucknow

Managing Director,  
U.P. Power Transmission Corporation Ltd.,  
Shakti Bhawan,  
Ashok Marg, Lucknow

----- Respondents

Following were presents:

1. Sri V.P. Srivastava, CE (PPA), UPPCL
2. Sri S.K. Sinha, SE (PPA), UPPCL
3. Sri K. Prasad, EE, UPPCL
4. Sri Rajeev Srivastava, Advocate, UPPCL
5. Sri Nishant Shukla, Advocate UPNEDA,
6. Sri Rishi Arora, Director, M/s Shri Colonizers & Developers
7. Sri Sharad Kesarwani, Director, M/s Shri Colonizers & Developers
8. Sri Shailendra Tewari, Consultant
9. Shri Dhruv Seth, Counsel

**ORDER**  
**(Date of Hearing 09.03.2016)**

1. **In the matter of Petition No.1019 of 2015:** M/s Shri Colonizers and Developers entered into in PPA for 20 MW solar power. Subsequently, Shri colonizers wanted to transfer this PPA to its wholly owned subsidiary, Shri Sauraya Powertech Pvt. Ltd. on same terms and conditions. The supplementary PPA has been signed on 21.03.2015 and the same is now put up before the Commission for its approval.
2. **In the matter of Petition No.1024 of 2015:** The PPA for 20 MW solar power. was signed by Shri colonizers on 28.03.2014 which has provision that plant shall be commissioned within 13 months from the date of signing of the PPA i.e. 27.04.2015.

Under the provision 4.8.1B(b) of the PPA UPNEDA, the Bid Process Coordinator (BPC) for the solar power, imposed penalty on Shri Colonizer vide letters dated 06.05.2015 and 09.06.2015 for non-commissioning of plant within stipulated time and failing to meet condition subsequent to signing of PPA. Further, it was also asserted by UPNEDA that if penalty is not paid within a week the Contract Performance Guarantee shall be invoked and



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PPA shall be cancelled. The Petitioner in this case has approached the Commission for stay of above orders citing various grounds and sought extension of 6 months' time to execute the project.

3. In last hearing, M/s Shri Colonizers & Developers submitted that they have made financial investment to the tune of approx.. Rs. 20 crore. Further, against the total requirement of land of 114.96 acres they have acquired 11 acres of land and sought further 3 months to complete the land acquisition. They have requested for Commission's sympathetic consideration in the matter. UPNEDA opposed any deviation from PPA on any account.
4. In last hearing, the Commission allowed one months' time to both sides to revisit the tariff and other modalities of the agreement keeping in mind the tariff benchmarked for similar projects coming up during the same period and then come up to the Commission with an agreed proposal.

Further, the Commission directed the developer to submit its roadmap for financial closure, land acquisition and connectivity agreement to vindicate its appeal for time extension to complete the project.

5. M/s Shri Colonizers and Developers submitted that they have made unconditional offer to UPPCL to reduce the tariff by Rs. 0.47/unit and supply power at Rs. 7.54/unit for 12 years subject to the right of extension of PPA beyond 12 years upto 25 years at APPC of 11<sup>th</sup> year as per PPA dated 28.03.2014 with a commissioning period of 9 to 12 months from the date of signing of the supplementary PPA for tariff change post the order of the Commission for granting extension and approval of assignment.
6. The Petitioner has also submitted that CERC vide its order dated dated 31.03.2015 in petition no.SM/004/2015, has benchmarked a tariff of Rs. 7.04 per unit for solar PV projects for which PPAs were signed on or before 31-3-2016 and the project(s) commissioned by 31-3-2017. This tariff is the levelised tariff for 25 years and the PPA period and tariff period considered by Hon'ble CERC is 25 years. The petitioner has also submitted that they have worked out the proposed tariff of Rs. 7.54 by taking into account the tariff stream for 12 years with the levelisation formula of CERC.
7. UPNEDA stucked to the provisions of RFP/PPA in the mater.
8. UPPCL maintained that they do not have any stand on discovered tariff as they are subsidized by the Government. Rather, UPPCL has filed **petition no.1087/2016** wherein they have sought amendment in the Commission's order dated 14.01.2016 on the ground that UPPCL has no concern with discovery of solar tariff. They have further stated that UPPCL is supposed to pay for solar power at tariff equivalent to latest case-I tariff for conventional power. The gap between solar tariff discovered by UPNEDA and conventional power tariff discovered by UPPCL shall be provided by UPNEDA, which shall



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be additionally paid to developer by UPPCL on monthly basis for the duration of the PPA. However, the Commission did not appreciate UPPCL's argument and reasserted that UPPCL being a government undertaking cannot be apathetic on the quantum of solar tariff irrespective of the fact that they were not involved in tariff discovery or what tariff they are supposed to pay. Aforesaid petition no.1087 of 2016 is also clubbed with instant petition and both petitions are decided together, being on the same subject matter.

9. The Commission feels that in this particular case the rate discovered after bidding was recommended for adoption on the premise that the project would be commissioned latest by mid of FY 2015-16 but the project has been delayed considerably (rather none of the time lines envisaged in the PPA are adhered) and in the meantime due to technological advancements capital cost as well as operational cost of solar projects have gone down steeply which necessitates reduction in tariff, looking into the welfare of consumers at large and also the subsidy burden on the State Govt.
10. The Commission finds CERC benchmark as proposed by the developer is relevant but it finds no merit in the argument to keep the tariff for project at CERC norms for first 12 years only and thereafter switch to APPC for next 13 years.
11. In this particular case the matter before the Commission is not for adoption of tariff under Section 63 of the Electricity Act 2003. The petitioner has approached the Commission after failing in its obligation to bring the project as per the stipulated time schedule. There is no justification for rewarding the Petitioner with the original tariff or a tariff of his choice particularly in a situation when the cost of project has come down substantially. The Petitioner has offered a reduced tariff of Rs. 7.54 per unit for 12 years subject to admissibility of APPC for remaining 13 years. The Commission is well aware of the fact that at a tariff of Rs. 7.54 per unit the petitioner is able to pay back its loans and has no interest liability and 90% cost of the project is also recovered. The provision in the PPA which mandates procurement of power from this project at APPC after 12 years for another 13 years is also unilateral and against the principal of natural justice inasmuch as the procurer does not have the right of refusal.
12. Considering that the terms of RFP/PPA have not been adhered and even time extension of 6 months has also expired but again considering the fact that developer has put in some time and money in setting up the project and has also submitted bank guarantee as per the provisions of PPA, the Commission finds it appropriate to allow time extension for commissioning of the project till 31.03.2017. However this extension is subject to the condition that the tariff for first 12 years shall be Rs. 7.54/unit which is the levelised tariff for first 12 years under the provisions of CERC RE Tariff Regulations for the projects for which PPA has been signed in FY 2015-16 and which is to be



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commissioned within FY 2016-17. Considering the life of solar project is reckoned to be 25 years, developers will have to supply power from 13<sup>th</sup> year to 25<sup>th</sup> year at the tariff as will be decided by the Commission at the appropriate time taking into account the RoE, O&M expenses and the interest on working capital loan. Interest on loan and depreciation will not be admissible as the loans would have been paid off and 90% of the project cost would have been allowed in the first 12 years. The procurers or the sellers can approach the Commission before the end of Eleventh year for determination of tariff for remaining 13 years.

13. There shall be no further extension of commissioning date under any circumstances and UPPCL shall have liberty to terminate the PPA after observing the process.
14. The Commission, considering the fact that now tariff has been reduced considerably from the earlier level, directs UPNEDA not to invoke terms of PPA for levying penalty unless the project is delayed beyond 31.03.2017.
15. The Commission also approves Supplementary PPA dated 21.03.2015.
16. The petition 1019 of 2015, 1024 of 2015 and 1087 of 2016 are disposed of.

(S.K. Agarwal)  
Member

(Indu Bhushan Pandey)  
Member

(Desh Deepak Verma)  
Chairman

Place: Lucknow  
Dated: 05.04.2016