Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No.165 of 2011

Dated: 10th April, 2012

Present: **Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson,**
Hon'ble Mr.Rakesh Nath, Technical Member

In the Matter of:

1. **Uttar Haryana Bijli Vitran Nigam Ltd**
   Shakti Bhawan, Sector-6
   Panchkula-134 109

2. **Dakshin Haryana Bijli Vitran Nigam Limited**
   Vidyut Sadan, Vidyut Nagar,
   Hissar-125 005

……Appellant (s)

Versus

1. **Haryana Electricity Regulatory Commission**
   Bays No.33-36, Sector-4
   Panchkula,
   Haryana-134 112

2. **M/s. Chandraleela Power Energy (P) Ltd**
   G1-51, Sitapura Industrial Area,
   Jaipur-302022

3. **M/s. Tayal & Co.**
   D-85, Phase-7, Industrial Area
   Mohali,
   Punjab-160 055

4. **M/s.Zamil New Delhi Infra Structure (P) Ltd.,**
   P-61, Double Storey Building,
   Lajpat Nagar-4
   New Delhi-110024

5. **M/s. SDS Solar Pvt Ltd**
   C-2/388, Janakpuri,
   New Delhi-110 058

6. **M/s. Sukhbir Solar Energy Pvt Ltd**
   Sadiq Road, Guru Har Sahai,
   Distt-Ferozpur (PB)
   PIN-160017

7. **M/s. VKG Energy Pvt Ltd.**
   SCO 80-81 (3rd Floor),
   Sector 17-C,
   Chandigarh 160 017

8. **M/s. Reliable Manpower Solutions Ltd.,**
   10, L.S.C. Kalkaji,
   New Delhi-110 019

9. **M/S. H R Minerals & Alloys Pvt Ltd.,**
   M-15, N.D.S.E Part-II, New Delhi

10. **M/s. C&S Electric Ltd.**
    222, Okhla Industrial Estate
    Phase-III,
    New Delhi-110 020

11. **Government of Haryana**
    Department of Power and Renewable Sources
    Haryana Civil Secretariat,
    Chandigarh-160 001

12. Haryana Renewable Energy Development Agency
SCO No.48, Sector-26,
Chandigarh-160 019

…..Respondents

Counsel for the Appellant(s): **Mrs. Ruchi Gour Narula**
Ms. Shweta Mishra

Counsel for the Respondent(s): **Ms. Shikha Ohri for R-1**
Mr. K. Datta for R-3 & 11
Mr. Manish Srivastava for R-3 & 11
Mr. Atul Singh for R-3 & 11
Mr. Kapil Gupta for R-3 & 11
Mr. P Kishore for R-3,5 & 11

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON

1. Uttar Haryana Bijli Vitran Nigam Ltd & Anr are the Appellants.

2. The Respondents 2 to 10 are the Solar Power Developers under RPSSGP. The Appellants have filed this Appeal challenging the impugned order passed by the Haryana State Commission on 24.12.2010 making some amendments to the PPA as requested by the Solar Developers, the Respondents.

3. The short facts are as follows:

(a) The Appellants and the Respondents Solar Developers proposed to enter into Power Purchase Agreements (PPA) for the purchase of solar power generated from the plants of the Respondent Developers by the Appellants. Accordingly, the draft PPA was prepared and filed before the Haryana State Commission for approval.

(b) In pursuance of the same, the State Commission approved the draft Power Purchase Agreement by the order dated 13.8.2010.

(c) On the basis of this, the Respondents have set up and commissioned Solar Power Plants in Haryana. The Plant of the Respondent-2 Solar Developer was commissioned on 15.1.2012. The Plant of the Respondent 10 Solar Developer was commissioned on 28.6.2011 and the Plant of the R-4 Solar Developer was commissioned on 11.1.2012.

(d) According to Clause 4.1.2 of the PPA, the tariff for Solar Power generated from Rooftop PV and Small Solar Power Plants was to be Rs.17.91 per kWh and the base rate was to be Rs.5.50 for the Financial Year 2010-11.

(e) The tariff of Rs.17.91 per unit determined by the Central Commission was adopted by the Haryana State Commission through its order dated 16.4.2010 and the same was incorporated in the PPA dated 20.8.2010.

(f) The Solar Power Developers filed a representation before the State Commission on 15.10.2010 praying for the amendment pertaining to clause 2.1.15, clause 8.12, clause 12.1, clause 5.3 and clause 7.1.1 (f) of the Power Purchase Agreement.

(g) The State Commission after hearing the parties through the impugned order dated 24.12.2010, amended only with reference to the Clause 8.12 and Clause 12.1 of the Power Purchase Agreement.

(h) Aggrieved over this, the Appellants have filed this Appeal.

4. The Appellant has challenged the impugned order with reference to the findings rendered by the State Commission by amending the Clause 8.12 and Clause 12.1 of the Power Purchase Agreement to read any backing down of generation beyond 87.6 hrs in a year shall be treated as

deemed generation and paid for at the tariff approved by the Commission.

5. Though the jurisdiction was questioned in the Appeal, the Learned Counsel for the Appellant during the course of arguments conceded that the State Commission has got the powers to amend the PPA.

6. In this background, the only question that arises for consideration is "Whether the order of amendment with reference to Clause 8.12 and 12.1 of the PPA is valid or not?

7. On this question, we have heard the submissions made by the Learned Counsel for both the parties. We have also considered the written submissions filed by both of them.

8. Let us now see the contents of the representation dated 15.10.2010 made by the Respondent Developers before the State Commission seeking for the amendment to Clause 8.12 and 12.1 of the PPA which is as follows:

> *" DISCOM shall have to allow and accept dispatch of Solar PV Power from the Project Proponent for 99% of the maximum hours in a year i.e. for 8672.4 hours out of 8760 hours in a year. DISCOM/State Load Dispatch Centre can refuse permission to Project Proponent/Developer due to any technical reason for dispatch of Solar PV Power only upto 87.6 hours in a year. Any refusal beyond this limit of 87.6 hours a year for dispatch of Solar PV Power shall have to be*

reimbursed to the Project Proponent at the rate of Rs.17.91/KWh since it will be treated as deemed generation".

9. Clause 8.12 of the PPA and Clause 12.1 of the PPA would provide this:

"8.12 *For matters relating to grid operations and load dispatch, the directions of State Load Dispatch Centre/Control Room of UHBVN/DHBVN shall be strictly complied with, by the Company. Any dispute on this account shall be settled by the parties amicably. If the dispute is not settled during such discussion, then either party may refer the same to HERC.*

12.1 *The HPPC may require the company to temporarily curtail or interrupt delivery of energy when necessary in the following circumstances.*

12.1.1 *For repair, replacement and removal of the Nigam/Discoms equipment or any part of its system that is associated with the Company's facility.*

12.1.2 If the Nigam/DISCOM's SLDC determines that the continued operation of the facility may endanger the safety of the Nigam/DISCOM personnel or integrity of the Nigam/DISCOM electric system or have adverse effect of the electric service to the Nigam/DISCOM/ other customer(s) leading to back down of the generation.

12.1.3 Any force majeure conditions of the Nigam/ Discom which affects the generation of the plant.

12.1.4 Instructions for the disconnection of the generation facility from the Nigam/ Discom system shall be notified with the reasons and

approved by SLDC for the period/duration indicated by it. However, the Nigam/Discoms shall take all the reasonable steps to minimize the number and duration of such interruptions, curtailments or reductions.

10. While amending this clause, the State Commission has kept in mind the Government policies and the national objective to promote Solar Power Generation plant and to treat them as "MUST RUN" Stations, since they provide an alternative clean and renewable source of energy

11. Let us quote the relevant finding which has been rendered by the State Commission:

"On the issue of dispatch and continuity of service the Petitioner vehemently argued that in order to make the project bankable the maximum hours of refusal to off take power by the Discoms in a year should be restricted to 1% i.e. 87.6 hours. Arguing to the contrary the power utilities submitted that as per CERC Regulations the capacity utilization factor for the solar power plants is 19% and the Solar PV Project proponents seems to have ignored the facts that during night/bad light there cannot be any generation and thus, the request of the project developer is not appropriate. After careful consideration of rival contentions the Commission is of the considered view that any perceived frivolous backing down needs to be discouraged. Thus the utilities shall make all efforts to evacuate the available solar power and treat them as ***"must run"*** *Station (a fact admitted by UHBVNL/HPPC Memo No.CH-14/GM/RA/N/F-102/Vol.III dated 8.12.2010). Further, Article 12 of the PPA provides for the conditions under*

which solar generation may be backed down by the system operator i.e. on consideration of Grid security or safety of any equipment or personnel. In order to meet such contingencies the Commission believes that provision for (at the most) 1% i.e. 87.6 hours of the maximum hours in a year i.e. 8760 hours of backing down should be sufficient to address the concerns of the power utilities. Hence, the Commission orders that Clause 8.12 & Clause 12.1 of the PPA shall be amended accordingly i.e. any refusal beyond 87.6 hours in a year shall be treated as deemed generation and paid for at the tariff approved by the Commission.

12. The above observation would indicate that the State Commission has put a cap on the number of hours in a year for which a solar plant can be backed-down for grid constraints. This capping is justifiable since a Solar Power Generation Plant only generates electricity during the day time hours when solar energy is actually available. Hence during the hours when solar energy is not available i.e. night hours, which is 12 to 14 hours depending on the season and time of the year in any event, the Grid is available with Appellant for carrying out every kind of repair, up-gradation and maintenance works.

13. Admittedly, the Appellant has not furnished the data before the State Commission to demonstrate that the time period of 87.6 hours allowed by the State Commission is inadequate.

14. Apart from 87.6 hrs, in so far as the Respondents are concerned, more than 3650 night hours are available to the Appellant for repair and replacement.

15. We feel that instead of contesting the limit of 87.6 hours fixed by the State Commission, the Appellants should take steps to plan maintenance of network in such a manner so as to avoid backing down of generation at the solar power plants which is available only during day light hours.

16. It cannot be disputed that the objective of the Government Policy is to encourage renewable source of energy i.e. Solar energy by promoting the RPSSGP units. Solar Power units are source of a clean and renewable energy. Such energy has to be transmitted by the Grid connected to such units immediately upon its generation since there is no method of storing the energy produced.

17. As pointed out by the State Commission all renewable energy power plants shall be recognised as **"must run"** plants and shall not be subject to merit order dispatch principle.

18. This is provided in Regulation 10 of the Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff from Renewable Energy Source,

Renewable Purchase Obligations and Renewable Energy Certificate) Regulations 2010.

19. Tariff of Rs.17.91 per unit has been determined by the Central Commission and the same was adopted by the State Commission by its order dated 16.4.2010. This is also incorporated in the PPA dated 20.8.2010 signed by the parties. It specifically provides that the same has to remain constant for 25 years duration for RPSSGP units in Haryana. Now the Appellant has claimed that the aforesaid tariff is too high. This cannot be the ground for impugning the order of the State Commission. Since the Appellant has signed the PPA incorporating the aforesaid tariff with RPSSGP units, the same cannot be questioned now.

20. Further, only on the basis of this tariff determination, huge investments have been made by the Developers of the Solar PV Power Plants commissioned in Haryana.

21. It is pointed out by the Respondent that the draft PPA was approved on 13.8.2010 and the same was executed and signed on 20.8.2010. The application was filed by the Developers on 15.10.2010. The order of the State Commission was passed on 24.12.2010 impugning the clause 8.12 and 12.1 of the PPA. The Appellant had not taken immediate steps for filing the Appeal. They only filed the Appeal on 31.5.2011 after a long delay.

22. It is pointed out by the Respondent developer that during this interregnum period by way of execution of the impugned order, the Respondent went ahead to make substantial investments and commissioned the plant.

23. Under those circumstances, it cannot be claimed by the Appellant that the grant of the deemed generation charges would be unjustified by questioning the tariff already determined by the Central Commission.

24. There is no merit in the Appeal as we do not find any infirmity in the impugned order. Consequently, Appeal is dismissed.

25. However, there is no order as to costs.

(Rakesh Nath) ***(Justice M. Karpaga Vinayagam)***
Technical Member ***Chairperson***

Dated: 10th April, 2012

√REPORTABLE/~~NON-REPORTABALE~~