

Rajasthan Electricity Regulatory Commission

Petition No. RERC/1912/21

Petition filed under Section 86 (1) (f) of the Electricity Act, 2003 for adjudication of dispute on termination of PPA.

Coram:

**Dr. B.N. Sharma, Chairman
Sh. Prithvi Raj, Member**

Petitioner : M/s Maharaja Shree Umaid Mills Ltd.

Respondents : 1. Jodhpur Vidyut Vitran Nigam Ltd
2. Rajasthan Urja Vikas Nigam Ltd.

Date of hearing : 10.08.2021 and 09.09.2021

Present : 1. Sh. P. N. Bhandari, Advocate for Petitioner
2. Sh. Anand Ganesan , Advocate for Respondents

Order Date: 30.09.2021

ORDER

1. Petitioner, M/s Maharaja Shree Umaid Mills Ltd. has filed this petition on 17.05.2021 under Section 86 (1) (f) of the Electricity Act, 2003 for adjudication of dispute on termination of PPA.
2. Notices were issued to Respondents Jodhpur Vidyut Vitran Nigam Ltd. (JdVVNL) and Rajasthan Urja Vikas Nigam Ltd. (RUVNL) through e- filing portal for filing the reply to petition on 17.05.2021. Accordingly, Rajasthan Urja Vikas Nigam Ltd. submitted the reply on behalf of both the

Respondents on 27.08.2021. Petitioner submitted the rejoinder on the reply of RUVNL on 03.09.2021.

3. The matter was heard through video conferencing on 09.09.2021. Sh. P. N. Bhandari, Advocate appeared for Petitioner, Sh. Anand Ganesan, Advocate appeared for Respondents, RUVNL and JdVVNL.
4. Petitioner in its petition, rejoinder and during hearing submitted as under:
 - 4.1. The Petitioner is having two Wind generating Plants at Village Chord District Jaisalmer, which were commissioned on 30.03.2012 and executed Power Purchase Agreement (PPA) with Jodhpur Discom on 25.08.2014 to supply power on preferential tariff.
 - 4.2. Looking to Petitioner's additional power requirement, it was requested to Rajasthan Renewable Energy Corporation (RREC) on 01.02.2017 for allowing switching over of Wind Power Plants from PPA mode to Captive Mode, to use 100% power for its Textile Manufacturing Plant at Pali.
 - 4.3. RREC, in-turn forwarded its request to Respondent RUVNL vide their letter dated 13.02.2017 for necessary consideration. But RUVNL did not react to Petitioner's request for almost three years in spite of series of reminders & personal requests.
 - 4.4. Petitioner again requested RREC on 01.02.2019 for issuing necessary approval for switchover of the Wind Power Plant from Preferential Tariff to Captive mode. RREC once again forwarded Petitioner's request to RUVNL vide their letter dated 07.02.2019 with the recommendation to allow switching over from preferential tariff to Captive mode as per the Petitioner's request of 01.02.2017.
 - 4.5. RUVNL vide letter dated 11.12.2019 intimated to the Petitioner, for the termination of the PPA w.e.f. 01.01.2020. The Petitioner was surprised at

the termination of PPA before the switch over, but it was assured that simultaneously those orders for switch over are also being issued.

- 4.6. The Respondent RUVNL order dated 11.12.2019 was totally silent on the switch over to captive mode which was the sole request of the Petitioner in the application dated 01.02.2017. Even at the top of the termination order, the subject prominently refers switch over to captive mode but the order says nothing about it. Unless switch over was ordered to captive mode, Respondent Nigam had no authority to terminate the PPA in isolation.
- 4.7. Once switch over was allowed, the PPA would have automatically become irrelevant & its termination would have become a sheer formality. But a termination prior to switch over mode, has proved disastrous for the Petitioner.
- 4.8. Hence the termination order dated 11.12.2019 is void ab initio. It has no legal force. It cannot be treated as based on Petitioner's request for termination of PPA. If the order had permitted switch over to captive mode & consequential termination of PPA, then there would have been no legal infirmity in the order.
- 4.9. In the meantime, on 22.3.2020, the Government of India had imposed complete Lock down due to the Corona pandemic. Petitioner's manufacturing plant was also completely shut down due to Lockdown Orders from 22.3.2020 to 08.06.2020. Even after partial lifting of lockdown, a series of restrictions were imposed by Gol & GoR which adversely affected the manufacturing & commercial working of the Petitioner.
- 4.10. The power requirement of Petitioner's manufacturing plant, for which it had sought switching over to captive mode, was reduced drastically therefore the Petitioner was compelled to reduce its Contract Demand with Respondent JdVVNL from 14.0 MVA to 6.5 MVA.

4.11. In view of the abnormal delay in the permission for switching over, coupled with extraordinary & unprecedented situation arising out of Corona pandemic, the Petitioner was compelled to withdraw the request for switch over to captive mode & consequently for restoration of the PPA. Vide letter dated 22.06.2020, request was made to RUVNL for restoration of the status quo.

4.12. It is well established in law that a party making any offer or commitment or request, can always withdraw it before it has been accepted. Since RUVNL had not acted upon Petitioner's request for switch over to captive mode even three years after its application, the Petitioner had exercised its right to withdraw the original application for switch over & consequently for continuing the PPA.

4.13. At the ground level, no change has taken place to the status of Power Plant, since its commissioning on 31.10.2014. It continues to inject the electricity in the state grid in the same manner as from the date of commissioning. The only difference is that the RUVNL has stopped making payment for the injected electricity from the date of the so-called termination of PPA.

4.14. In the Respondent's Board of Directors meeting dated 08.11.2019 the decision was only for switch over to CPP mode not even a word was mentioned about the termination of the PPA. Hence the letter dated 11.12.2019 was a concoction of officers but not a decision of Board.

4.15. The Respondent was repeatedly pressing the Petitioner for giving the undertaking as per their dictates. The termination letter dated 11.12.2019 confirms the blatant lies of the Respondent. It refers about 3 earlier letters from the Petitioner but the Respondent was avoiding any decision for approval. The Board meeting had taken place on 08.11.2019 but the Respondent was withholding the decision and pressing the Petitioner for

giving the undertaking. Letter of 11.12.2019 would show that the undertaking was given on 10.12.2019 and only after that, the Board's decision of switch over was conveyed on the very next date i.e. 11.12.2019. The facts are too glaring, which confirm that the Respondent had pressed the Petitioner for the undertaking.

4.16. In view of the above, it is prayed to:-

- (a) Quash the order dated 11.12.2019 & declare the order terminating the PPA to be void ab-initio.
- (b) Allow all consequential benefits, from the date of termination of PPA.
- (c) Allow interest as per Section 62 (6) of the Act, for wrongly withholding the payment of the electricity injected by the Petitioner in the State grid, as per the PPA, for the above period.
- (d) Heavy cost should be allowed to the Petitioner for undue harassment & mental torture.

5. Respondent RUVNL in its reply and during the hearing submitted as under:

5.1. Petitioner had entered into a PPA with the Respondent JdVVNL on 25.08.2014 for supply of 3MW power from its two generating plants (2 x 1.50 MW) at village Chord District Jaisalmer, for 25 years from the COD, at the preferential tariff of Rs. 4.46/kWh in term of wind policy, 2012.

5.2. In the meanwhile on 01.02.2017, the Petitioner had requested RRECL i.e. nodal agency for these projects, for permission to terminate the PPA and migrate to captive mode for the 3 MW PPA. This request was forwarded by RRECL to RUVNL on 13.02.2017.

5.3. The Petitioner has placed much emphasis on the fact that the request was initially made in the year 2017, and that RUVNL did not react to the

same for three years. However, RUVNL had not agreed in terminating the PPA of the Petitioner at that time.

- 5.4. The termination of the PPA and the grant of permission to the Petitioner to supply power to other parties, including through captive mode, can only be by the consensus of the parties, the Respondent agreeing to permit the Petitioner from performing the PPA. The issue is only of the Petitioner withdrawing from the performance of the PPA, which can only be on the terms of the PPA or otherwise by consensus of the parties.
- 5.5. Petitioner once again requested in the year 2019 for termination of the PPA in order to enable the Petitioner to supply for its own captive purposes. RUVNL was of the considered view that it would be in public interest to accept the request, keeping in view the significant fall in wind power prices discovered through bidding processes. In the circumstances, RUVNL considered the request of the Petitioner and allowed it to terminate the 3MW PPA.
- 5.6. As a part of the procedure for termination of the PPA, the specific consent of the Petitioner for the same was required by the Respondent and this was provided by the Petitioner vide undertaking dated 10.12.2019 whereby the Petitioner confirmed and agreed for the termination of the PPA and a confirmation that all future liabilities shall be the sole responsibility of the Petitioner.
- 5.7. While the request for switchover was made on 11.10.2019, on 25.10.2019, RUVNL had responded to the Petitioner seeking details of the location of captive usage from its 3MW project and the details were provided on 31.10.2019. Thereafter, in the 34th BoD Meeting of RUVNL, the request of the Petitioner was considered and the Petitioner was allowed to switchover its wind power.
- 5.8. On 25.11.2019, RUVNL wrote to the Petitioner to arrange the documents

to be furnished /signed by authorized signatory regarding termination of existing Power Purchase Agreement in respect of 3MW Wind Power project. While the Petitioner never raised any dispute or even any apprehension regarding the termination, on 27.11.2019, the Petitioner in fact wrote back to RUVN with the details of the authorized representatives/signatories.

5.9. Thereafter, the Petitioner has even submitted an undertaking/affidavit dated 10.12.2019 to RUVNL agreeing to terminate the Power Purchase Agreement dated 25.08.2014. The undertaking reads as under:

M/S Maharaja Shree Umaid Mills Limited, a company registered under the Companies Act, 1956 with its office located at Jodhpur Road, Pali 306401 hereby undertake that we agree to terminate Power Purchase Agreement signed with JdVVNL on 25.08.2018 for sale of entire energy generated from 3.0(2X1.5) MW Wind power project located at Village Chord, District Jaisalmer w.e.f 01.01.2020.

5.10. On the contrary, on the basis of termination letter, the Petitioner wrote to the Jodhpur Discom on 12.12.2019 and 18.12.2019, wherein the Petitioner has acknowledged that the request for switch over had been approved by RUVNL vide letter dated 11.12.2019, and further requested the Jodhpur Discom to execute the required Wheeling and Banking Agreements and to carry out MRI on 01.01.2020 for the switchover to be completed.

5.11. The aforesaid letters assume importance, as it shows that even as per the Petitioner's understanding, while the PPA had been terminated w.e.f. 01.01.2020, in case the switch over documentation was not completed by then, the Petitioner would suffer loss on account of idling of its wind power plants. At no point of time, had the Petitioner objected to the termination letter being issued prior to completion of the other documentation for switchover.

5.12. On 22.06.2020, after more than six months of the termination of the PPA, the Petitioner wrote to RUVNL and highlighted that pursuant to the termination of the PPA, it has not been able to execute the documentation required for switchover to captive mode, on account of covid 19 pandemic and national lockdown. While doing so, the Petitioner has again acknowledged and accepted that the proposal of the Petitioner for switchover was approved by RUVNL and the PPA was thereafter terminated on 11.12.2019. Further, the Petitioner has submitted that on account of the lockdown, the power requirement would reduce. It is in this background, that the Petitioner requested RUVNL to re-instate the earlier PPA.

5.13. The Petitioner is placing reliance on its request for switchover dated 01.02.2017, to contend that it had never requested for termination of the PPA, and that the only request was for switch over to captive mode. The contention of the Petitioner is not only factually incorrect, but also illogical. As the Petitioner cannot utilize the power contracted under the PPA towards captive supply, unless the PPA is terminated

5.14. The termination of the PPA in the present case was done almost three months prior to the outbreak of COVID-19 in March 2020. The power requirement having reduced on account of the covid-19 pandemic, and lockdown, the Petitioner has now changed its mind and does not want to supply on captive mode. Therefore, by way of the present, the Petitioner is seeking go back to the earlier arrangement and reinstates the PPA. However, there is no legal basis for the Petitioners' claim.

5.15. In view of the aforesaid submissions, the prayers made by the Petitioner are stated to be wrong and are denied.

Commission's view

6. Commission has considered all the submissions made on behalf of the

Petitioner and Respondents.

7. Petitioner mainly submitted that it had only requested for migration of the PPA to CPP mode so the PPA termination cannot be treated on the request of the Petitioner and even also the decision of the Respondent's Board was restricted to allowing the plant from switch over to CPP mode.
8. In view of the abnormal delay in the permission for switching over Petitioner prayed for quashing the termination of PPA and to allow all consequential benefits.
9. Per contra Respondent RUVNL submitted that PPA was terminated on consensus and Petitioner has even submitted an affidavit dated 10.12.2019 to RUVNL agreeing to terminate the PPA dated 25.08.2014 taking responsibility of any liability arising in future. Petitioner vide letter dt. 12.12.2019 and 18.12.2019, has also acknowledged that the PPA for its wind Power plant is going to be terminated w.e.f. 01.01.2020. Thus, petitioner's claim is an afterthought and has no legal basis.
10. Commission observes that initially petitioner requested for changeover from PPA mode to captive supply in 2017, which was not agreed to by RUVNL. In 2019 petitioner again requested and RUVNL agreed for the same in its board meeting dt. 08.11.2019. For implementing the board's decision, RUVNL sought for petitioner's consent to terminate the PPA. Petitioner was also agreeing to the same and submitted the list of authorize persons. The contention of Respondent seems logical that for switchover first its PPA has to be terminated as power already contracted cannot be considered for wheeling to captive use. Therefore, Respondent rightly initiated the process of termination of PPA.
11. The petitioner on 10.12.2019 also submitted an undertaking vide which it confirmed and agreed for the termination of PPA and a confirmation that all future liabilities shall be the sole responsibility of the Petitioner. The

undertaking reads as under:

M/S Maharaja Shree Umaid Mills Limited, a company registered under the Companies Act, 1956 with its office located at Jodhpur Road, Pali 306401 hereby undertake that we agree to terminate Power Purchase Agreement signed with JdVVNL on 25.08.2014 for sale of entire energy generated from 3.0(2X1.5) MW Wind power project located at Village Chord, District Jaisalmer w.e.f 01.01.2020.

We also undertake that M/S Maharaja Shree Umaid Mills Limited shall sole responsible for any kind of liability arising in future in respect of this agreement.

12. Thus, the petitioner was agreeing for termination of its PPA dt. 25.08.2014. Commission also observed that Petitioner wrote to Respondent JdVVNL on 12.12.2019 and 18.12.2019, wherein the Petitioner has acknowledged that the PPA for its wind Power plant is going to be terminated w.e.f. 01.01.2020 and further requested the Jodhpur Discom to execute the required Wheeling and Banking Agreements for the switchover the Power Project from preferential Tariff to Captive Power plant at the earliest.
13. From the above undertaking and letters written thereafter to Jodhpur Discom it is clear that petitioner never disputed the termination of PPA till 22.06.2020. Thus, Petitioner was well aware of the termination and its consequence. It is petitioner's afterthought due to which it requested RUVNL to reinstate the earlier PPA. The PPA was already terminated on 01.01.2020, therefore, the request to reinstate the PPA on 22.06.2020 was not agreed to by Respondent.
14. In view of above, the prayers of petitioner cannot be granted. Accordingly, the petition is dismissed.

(Prithvi Raj)
Member

(Dr. B.N. Sharma)
Chairman