



Petition No. 1537 of 2019
BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW

(Date of Order: 11.05.2023)

PRESENT:

Hon'ble Shri Raj Pratap Singh, Chairman
Hon'ble Shri Sanjay Kumar Singh, Member

IN THE MATTER OF: Seeking approval of Amended Power Purchase Agreement dated 05.10.2019 signed between M/s Ecogreen Energy Lucknow Pvt. Limited and UPPCL in terms of Regulation 5 of the UPERC CRE Regulations, 2019.

1. **U.P. Power Corporation Ltd. (UPPCL),**
(Through Superintending Engineer-PPA),
14th Floor, Shakti Bhawan Extension, 14 – Ashok Marg, Lucknow-226001.
2. **M/s Ecogreen Energy Lucknow Pvt. Ltd.**
219, IInd Floor, Vipul Trade Centre, Sector-48, Sohna Road, Gurgaon-122018.
..... **Petitioner (s)**

The following were present:

1. Shri Deepak Raizada, C.E(PPA), UPPCL
2. Shri Mahendra Singh, S.E (PPA), UPPCL
3. Shri Srijan Singh, A.E., UPPCL

ORDER
(Date of Hearing - 25.04.2023)

1. The Petitioner, UPPL has filed this Petition seeking approval of Amended PPA dated 05.10.2019 executed M/s Ecogreen Energy Lucknow Pvt. Limited and UPPCL.
2. The Prayers of the Petitioner are as follows:
 - a) Allow the Petition.
 - b) Accord approval to the amended PPA dated 05.10.2019, entered into between M/s Ecogreen Energy Lucknow Pvt. Ltd., and UPPCL.
 - c) Issue any other order or direction this Commission may deem fit in the facts and circumstances stated in the Petition.

Brief of the case:

3. The Petitioner(s) in the Petition have mainly submitted as under:



- a) A Power Purchase Agreement (PPA) was entered into between UPPCL (i.e., procurer) and M/s Ecogreen Energy Lucknow Pvt. Ltd., (i.e., Seller) on 27.09.2017 for purchase of 13.5MW power generated from municipal solid waste based generating plant of the seller having installed capacity of 15 MW as per tariff, terms and conditions mentioned in clause 2.1 of PPA. The schedule for commissioning (SCOD) of the said generating plant was March 2019.
- b) The Commission vide order dated 26.12.2017 in Petition no. 1241 of 2017 approved the PPA dated 27.09.2017. The generating company M/s Ecogreen Energy Lucknow Pvt. Ltd. could not complete various tasks for achieving SCOD of the plant by March 2019. M/s Ecogreen Energy Lucknow Pvt. Ltd., foreseeing its inability to achieve COD by 25.03.2019, wrote to UPPCL on 21.02.2019, to extend the COD of the plant by June 2020.
- c) Further, M/s Ecogreen Energy Lucknow Pvt. Ltd. vide letter dated 14.05.2019, sought yet other extension of COD till December 2020, on the twin grounds of delay in issuance of concessional custom duty certificate and the project site being dumped with waste beforehand.
- d) UPPCL, subject to the approval of the amended PPA by this Commission, acceded the request of the generating company for grant of extension of COD up to December 2020 on the following terms and conditions:
- i) The extension of commissioning of the plant from March 2019 to December 2020, shall be on the mutually agreed tariff at Rs. 7.19 per kWh for FY 2020-21, and tariff for subsequent years shall be as per terms and Conditions stipulated in CRE Regulations, 2019-24, corresponding to the commissioning year 2020-21.
 - ii) UPPCL/UPPTCL shall not bear any financial liability on extension of COD, and
 - iii) There shall be no further extension of commissioning date under any circumstance and that UPPCL shall be at liberty to terminate the PPA upon observing unsatisfactory progress in the works to be performed by the generating company for achieving COD by December 2020.
 - iv) The generating plant shall submit monthly progress reports during the construction of the plant.
 - v) M/s Ecogreen Energy Pvt. Ltd. Shiviri, Mohan Road Lucknow shall ensure installation of ABT meters and the submission of Declared Capacity on the regular basis through login UPSLDC Website (www.esss.upsldc.org).
 - vi) All other terms and conditions of PPA dated 27.09.2017, along with UPERC/UPPCL orders, shall remain applicable.

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- e) The amended PPA has been entered into between M/s Ecogreen Energy Lucknow Pvt. Ltd. and UPPCL for and on behalf of Madhyanchal Vidyut Vitaran Nigam Ltd. on 05.10.2019.

Records of Proceedings:

4. During the hearing on 27.09.2027, the Commission directed UPPCL to file a comparative statement depicting financial impact on UPPCL due to Change in COD. On 12.03.2020, UPPCL filed its submission. On hearing dated 17.03.2020, due to no presence on behalf of M/s Ecogreen Energy Lucknow Pvt. Ltd., the Commission adjourned the hearing.
5. On hearing dated 21.05.2020, the representative of M/s Ecogreen Energy Lucknow Pvt. Ltd. submitted that COD timeline agreed in the amended PPA dated 05.10.2019 was prior to Covid-19 circumstances, which may not be adhered to under the Covid-19 circumstances. Accordingly, the Commission observed that since the terms of the amended PPA are yet not crystalized and therefore, directed both the parties to come up with firm agreement for the consideration of the Commission.
6. On hearing dated 21.07.2020, the Commission decided to list the matter after two months on the request of the parties and directed parties to submit the pending amended PPA in compliance to the Commission's directions vide order dated 25.05.2020. On hearing dated 08.10.2020, the Commission decided to keep the matter in abeyance till the project schedule and expected COD of the project was confirmed by the M/s Ecogreen Energy Lucknow Pvt. Ltd. to UPPCL. The Commission decided to take up the matter after the Petitioner approaches this Commission with firm Project Schedule & extension of COD/ approval of PPA.
7. The matter was listed for hearing on 25.04.2023, wherein, Sh. Deepak Raizada, on behalf of UPPCL, submitted that through various letters, UPPCL has enquired to M/s Ecogreen Energy Lucknow Pvt. Ltd. about the status of the project, however, no response had been received. Finally in July 2022, UPPCL issued termination notice to M/s Ecogreen Energy Lucknow Pvt. Ltd. which was not responded and therefore, the PPA stands terminated.
8. On specific query of the Commission, Sh. Raizada responded that the original PPA dated 27.09.2017 stands terminated and accordingly, UPPCL being Petitioner of the instant Petition would like to withdraw the Petition.

Commission's View

9. On 07.09.2022, UPPCL has filed an application for withdrawal of instant Petition wherein mainly the following has been submitted:

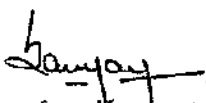
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- a) As per Article 16 of the PPA, SCOD of the project was 25.03.2019 and M/s Ecogreen Energy Lucknow Pvt. Ltd. was under obligation to supply power up to the contracted capacity within the stipulated time.
- b) In compliance to the Commission's direction dated 02.11.2020, UPPCL vide its Communications dated 07.11.2020, 18.12.2020, 05.02.2021, 28.05.2021, 08.09.2021, 26.11.2021, 24.02.2022, & 06.06.2022, repeatedly requested M/s Ecogreen Energy Lucknow Pvt. Ltd. to provide a firm project schedule and the monthly progress report of the project, however, no communication in this regard was received by UPPCL.
- c) M/s Ecogreen Energy Lucknow Pvt. Ltd. has failed to fulfil its obligations as per the agreed terms of the PPA. Further, since M/s Ecogreen Energy Lucknow Pvt. Ltd. failed to commence the supply of power therefore, in accordance with Clause 21.3 of the PPA, the right to terminate the PPA accrued in favour of UPPCL.
- d) UPPCL issued termination notice no. 1186/CE/PPA-R/Ecogreen, dated 30.07.2022 to M/s Ecogreen Energy Lucknow Pvt. Ltd. and therefore, the PPA dated 27.09.2017 stands terminated with effect from 01.09.2022.
- e) There is no reason that the Petitioner to pursue the Petition and the Petitioner wishes to withdraw the same.
10. **The Commission finds that M/s Ecogreen Energy Lucknow Pvt. Ltd. has not provided the any project schedule for over 3 years subsequent to the Commission's Order dated 25.05.2020. During the hearing proceedings on 25.04.2023, no representative of the project developer was present to appraise their position in the matter. Further, in view of the UPPCL's withdrawal application filed on 07.09.2022, the instant Petition has become infructuous and the Commission, thus, allows the request of the UPPCL to withdraw the instant Petition.**

This Petition stands dismissed as withdrawn.


(Sanjay Kumar Singh)
Member


(Raj Pratap Singh)
Chairman

Place: Lucknow
Dated: 11.05.2023