

Ref:PPAamd/TGERC/FY25/001

Date: 04 Feb 2025

To  
Commission Secretary  
Telangana Electricity Regulatory Commission,  
Vidyut Nyantran Bhavan, GTS colony  
Kalyan Nagar  
Hyderabad-500045

Sub: Submission of our comments and objections regarding Telangana Discoms proposal for Amendment to solar PPAs in OP No.33 of 2024 before the Hon'ble Telangana Commission

Ref: Telangana Electricity Regulatory Commission Notice in OP No.33 of 2024 dated 31.12.2024 ("Notice")

Dear Sir,

This is in reference to above Notice (cited at Ref.) of the Hon'ble Commission inviting comments, objections, suggestions regarding proposal of Southern Power Distribution Company of Telangana Limited and Northern Power Distribution Company of Telangana Limited (**'Telangana Discoms'**) seeking amendment to the existing solar PPAs for billing of imported energy from the grid by the solar power developers.

Vena Energy Solar India Power Resources Pvt. Ltd. (**'Vena Energy'**) (formerly known as Energon Soleq India Power Resources Private Limited) has entered into two PPAs dated 03.02.2016 (**"PPA"**) with Southern Power Distribution Company of Telangana Limited (**'TGSPDCL'**) for supply of power from solar power projects of 50 MW each at Minpur and Sadasivpet, Telangana and has been supplying power since 2017. The PPAs were executed in pursuance of competitive bidding process.

Our comments and objections to the proposed amendment of existing solar PPAs as sought for by Telangana Discoms are as below:

1. The PPAs entered between Vena Energy and TGSPDCL are based on model PPA approved by the Hon'ble Commission on 08.06.2015. The Hon'ble Telangana Commission vide Order dated 15.02.2016 in OP No.3 of 2016, has adopted the tariff under Section 63 of the Electricity Act 2003, discovered for procurement of 2000 MW solar power by TGSPDCL (including tariff of Vena Energy).
2. The Telangana Discoms are attempting to amend the clause in the PPA in respect of the imported energy by the solar power developers to maintain their auxiliaries during non-generation period. The PPA allows SPD/Vena Energy to draw energy from TGSPDCL for essential loads. It is submitted that Vena Energy is utilizing import consumption for meeting essential operational, technical and regulatory requirements in respect of the projects, as detailed below:

- a) Power Import for Essential Systems and Force Majeure Events



- i. Imported power is used solely for essential purposes, such as lighting and maintaining auxiliary and communication systems with the SLDC during nighttime. This also includes scenarios of plant shutdown caused by unavoidable grid faults, grid-induced breakdowns, and force majeure events.
  - ii. Essential Operational Systems:
    - I. Main Control Room: Mandatory for real-time monitoring, safety protocols, and system stability.
    - II. LIL0 Sub Station: Required for basic grid connectivity and voltage regulation, even during no load periods.
  - iii. Redundancy in Inverter Rooms: Inverter Rooms exhibit varying consumption due to design redundancy. Some rooms operate at higher loads to ensure seamless failover during emergencies. Deactivating them would compromise system reliability.
  - iv. Technical Minimums for Equipment: Inverters and battery systems require baseline power to maintain circuitry integrity and prevent damage (e.g., Battery Charger at 5 kWh). Reducing this could shorten equipment lifespan or cause malfunctions.
  - v. Regulatory Compliance: Safety systems (e.g., fire suppression, ventilation) and environmental controls demand continuous power, as mandated by regulations notified by the Commission. These cannot be curtailed without violating compliance standards.
- b) Maintaining round the clock communication with SLDC for Forecasting and Scheduling: Real-time data exchange with the State Load Dispatch Centre (SLDC) ensures grid stability, compliance with scheduling mandates, and dynamic load balancing. Day-ahead, intraday generation forecasting (using weather data, irradiance sensors) and scheduling are mandated by grid code to avoid penalties. This necessitates power supply for maintaining such communication with SLDC.
- c) Grid-Induced Power Factor Variations and Reactive Power Issues: Fluctuations in power factor and reactive power are caused by grid-related issues. These are outside the control of the power developer.
- d) Auxiliary Power Requirements During Night time: Auxiliary power is imported at night to ensure the continuous operation of essential plant systems, such as SLDC communication, SCADA systems, and plant protection mechanisms.
3. Additionally, by way of the proposal, Telangana Discoms are attempting to re-open and renegotiate the concluded PPAs which is not permissible. Any amendment or modification of the agreement cannot happen in a unilateral manner as being proposed by Telangana Discoms without consent of the solar power developers. It is settled legal position that Appellate Tribunal/electricity regulatory



commission/other courts cannot rewrite or alter terms of contract mutually executed between the parties even on the score that with passage of time and change in circumstances, it is found that the contract cannot be worked except at a loss. In this regard, Vena Energy crave reference to the following decisions of the Hon'ble Courts:

- a) **Hon'ble High Court of Andhra Pradesh decision dated 15.03.2022 in Ecoren Energy India Private Limited -v- State of Andhra Pradesh in W.A. No.383 of 2019 and Connected Writ Appeals, 2022 SCC OnLine AP 601**

*50. Power Purchase Agreement executed between the power developers and the DISCOM is a commercial contract, which is subject to the provisions of the 2003 Act and Regulation No.1 of 2015. Article 2.2 of the PPA binds the parties to the effect that the Wind Power Producer shall be paid tariff for energy delivered at the interconnection point for sale to DISCOM, which shall be firm at Rs.4.84 per unit without Accelerated Depreciation for a period of 25 years from the date of commercial operation. Article 7 speaks about Duration of Agreement, i.e. for 25 years. One of the special provisions contained in Article 11.2 provides that no oral or written modification of the agreement either before or after its execution shall be of any force or effect unless such modification is in writing and signed by the duly authorized representatives of the Wind Power Producer and the DISCOM, subject to the condition that any further modification of the agreement shall be done only with the prior approval of the Commission. Thus, any amendment or modification can happen with the consent of both the parties and not in a unilateral manner or under the guise of an order passed by the Commission in the O.P*

*54.....When the relations between the parties are governed by contractual obligations and rights arising out of consensus ad idem, any change in the same is equally permissible and acceptable in law through the same process of agreement between the parties.*

*63. In Gujarat Urja Vikas Nigam Limited v. Solar Semiconductor Power Company (India) Private Limited (supra), the Hon'ble Supreme Court has referred to the earlier judgments in Gujarat Urja Vikas Nigam Limited v. EMCO Limited and another (supra) and Tarini Infrastructure Limited and ors (supra), to hold thus in paragraphs 31, 60 and 66:*

*60. In the case at hand, rights and obligations of the parties flow from the terms and conditions of the Power Purchase Agreement (PPA). PPA is a contract entered between GUVNL and the first respondent with clear understanding of the terms of the contract. A contract, being a creation of both the parties, is to be interpreted by having due regard to the actual terms settled between the parties. As per the terms and conditions of the PPA, to have the benefit of the tariff rate at Rs 15 per unit for twelve years, the first respondent should commission the solar PV power project before 31-12-2011. It is a complex fiscal decision consciously taken by the parties. In the contract involving rights of GUVNL and ultimately the rights of the consumers to whom the electricity is supplied, the Commission cannot invoke its inherent jurisdiction to substantially alter the terms of the contract between the parties so as to prejudice the interest of GUVNL and ultimately the consumers.*

*"66. In Gujarat Urja Vikas Nigam Ltd. v. EMCO Ltd. [Gujarat Urja Vikas Nigam Ltd. v. EMCO Ltd., (2016) 11 SCC 182 : (2016) 4 SCC (Civ) 624] , facts were similar and the question of law raised was whether by passing the terms and conditions of PPA, the respondent can assail*





*the sanctity of PPA. This Court held that power producer cannot go against the terms of the PPA and that as per the terms of the PPA, in case, the first respondent is not able to commence the generation of electricity within the "control period" the first respondent will be entitled only for lower of the tariffs."*

75. *The case of solar power generators vis-à-vis challenge to the APERC's petition vide O.P.No.67 of 2019 appears to be on a stronger footing for the reason that indisputably the tariff for this group of developers was discovered through competitive bidding under Section 63 of the 2003 Act. The said provision stipulates that notwithstanding anything contained in Section 62 of the 2003 Act, appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government. After the competitive bidding process is finalized, the DISCOM, after being satisfied that the tariff quoted by the solar power developers was aligned with the price at which it was willing to purchase solar power, accepted the bid and filed a petition before the Commission for adoption of tariff in accordance with Section 63 of the Act. The Commission after applying its mind and on being satisfied with the legitimacy of the transparent competitive process being followed, adopted the tariff under Section 63 of the 2003 Act vide its letter dated 21.02.2015. It is, therefore, not open for the parties and for the Commission as well to undo the tariff discovered through competitive bidding process under Section 63 of the 2003 Act. On this score, it would be profitable to refer to the law laid down by the Hon'ble Supreme Court in Har Shankar and Ors.....*

77.....By issuing public notice, the Commission is now trying to undo the tariff discovered under the process envisaged under Section 63 of the 2003 Act by adopting the procedure prescribed under Section 62 of the 2003 Act, which is not at all permissible. Therefore, in respect of solar developers also, it is declared that the Commission cannot proceed with the hearing of O.P.No.67 of 2019 seeking reduction of the tariff in the PPAs entered with the solar developers.

{Emphasis Supplied}

**b) Hon'ble Supreme Court Decision in Haryana Power Purchase Centre -v- Sasan Power Ltd., (2024) 1 SCC 247**

103. We are of the view that the Tribunal cannot indeed make a new bargain for the parties. The Tribunal cannot rewrite a contract solemnly entered into. It cannot ink a new agreement. Such residuary powers to act which varies the written contract cannot be located in the power to regulate. The power cannot, at any rate, be exercised in the teeth of express provisions of the contract.

104. We notice this for the reason that the first respondent has a case that what is provided in Article 13.2(a) (since we are dealing with the case of alleged change in law during the construction period) does not do justice to the parties or that it is incapable of producing a fair result and therefore, the Tribunal would necessarily be clothed with power bearing in mind its regulatory nature. In a matter where the parties have entered into a contract with express provisions, we are unable to agree with the first respondent that the Tribunal would have power to disregard the express provisions of the contract on the score that as it turns out that with passage of time and even change in circumstances, it is found that the contract cannot be worked except at a loss for the contractor.

109. ....All that we are holding is that in a case where the matter is governed by express terms of the contract, it may not be open to the Commission even donning the garb of a regulatory body to go beyond the express terms of the contract.

{Emphasis Supplied}

4. The tariff of Rs.5.5949 per unit provided in the PPAs was discovered pursuant to competitive bidding and is fixed for the entire term of the PPAs. Article 2.6 as incorporated in the concluded PPAs duly provides for adjustment of energy drawl from TGSPDCL to maintain auxiliaries of the power plant from the delivered energy by the project at the interconnection point at the quoted tariff. The proposed amendment for payment for imported energy (over and above the auxiliary limit) based on HT-1 billing (measured in KVAh) would impose an additional financial burden on the power developer, as this cost was not accounted for in the fixed tariff provided in the existing PPAs.
5. Further, Vena Energy is a generator under section 2(28) of the Electricity Act, and therefore, it cannot be penalised and treated as HT-I category consumer.
6. The proposed amendment as sought for by the Telangana Discoms is an indirect attempt to unjustly gain from generators, by imposing billing on basis of tariff applicable for HT-1 Category consumers, and cause adverse financial implications to the power developers for meeting the auxiliary consumption requirements. Moreover, the proposed terms were not part of bid documents and model draft PPA (approved by the Hon'ble Commission) based on which competitive bidding was undertaken and PPAs were concluded.

In light of the above, the proposed amendment of existing solar PPAs as sought for by Telangana Discoms is liable to be rejected as legally untenable and should not be considered for the existing PPAs where the terms, conditions mutually agreed upon and the tariff quoted in pursuance of competitive bidding have been duly incorporated in such agreements.

This is without prejudice to the rights and remedies available to us under the PPA and/or law.

For and on behalf of  
Vena Energy Solar India Power Resources Pvt. Ltd.



Authorized signatory

