

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

**Petition No. 69 of 2012
Date of Order: 28-02-2013**

In the matter of : Petition under Section 61 and 86 of the Electricity Act, 2003 and under provisions of National Electricity Policy, Tariff Policy and the NRSE Policy of GoP for determination of preferential tariff for the Petitioner's project and directing the Respondent No.1 i.e. PSPCL for purchase of surplus power upto 24 MW from Petitioner's 2x15.75 MW Rice Husk based Co-Generation Power Plant at Khamanon, District Fatehgarh Sahib at Generic Tariff as per CERC RE Regulations duly adopted by Hon'ble PSERC.

AND

In the matter of Lakshmi Energy and Foods Limited (LEAF) having its Registered Office at SCO No.18-19, 1st Floor, Sector 9-D, Madhya Marg, Chandigarh through Shri Janak Raj Singh Uppal, Joint Managing Director

Versus

1. Punjab State Power Corporation Limited (PSPCL) through its Chairman cum Managing Director, The Mall, Patiala.
2. Punjab Energy Development Agency (PEDA) through its Director, Plot No.1&2, Sector 33-D, Chandigarh.

Present: Smt.Romila Dubey, Chairperson
Shri Virinder Singh, Member
Shri Gurinderjit Singh, Member

ORDER

This petition has been filed by Lakshmi Energy and Foods Limited (LEAF) under Section 61 and 86 of the Electricity Act, 2003 (Act) and under provisions of National Electricity Policy, Tariff Policy and the NRSE Policy of Government of Punjab (GoP) for determination of preferential tariff for the Petitioner's project and directing the PSPCL for purchase of surplus power upto 24 MW from 2x15.75 MW Rice Husk based Co-generation Plant at Khamanon, District Fatehgarh Sahib at Generic Tariff as per CERC RE

Regulations adopted by this Commission. The petitioner has submitted that it is a Public Limited Company under the Companies Act, 1956, engaged in the business of Food Processing and Power Generation at Khamanon, District Fatehgarh Sahib in the State of Punjab. It has set up Power Project comprising of two Units of 15.75 MW capacity each, which was commissioned in FY 2008-09 and has been running the same on Captive cum Merchant Power Plant basis and selling surplus power on short term basis through traders / bilaterally in open market / power exchange / PSPCL. Out of the 31.5 MW power generated at full capacity of the turbine generator sets, 3.5 MW approximately is used as Auxiliary consumption and about 4.0 MW is used as captive consumption. Surplus power available for firm sale is upto 24 MW. The petitioner has presently signed a short term Power Purchase Agreement (PPA) with PSPCL valid till 31.03.2013. The Plant is connected to 66 kV Sub-Station of PSPCL at Khamanon. The Plant mainly uses rice-husk as fuel but is also capable of using other fuels such as wheat straw, rice straw and other bio-mass fuels in small quantities by mixing with rice-husk. The Plant is feeding electricity to the rural grid of PSPCL and is helping in reducing the line losses of PSPCL as well as improving the voltage level of the grid in the surrounding areas. The power sold to PSPCL is counted towards Renewable Purchase Obligation (RPO) of PSPCL resulting in corresponding reduction of purchase of Renewable Energy Certificates (RECs).

2. The petitioner has further submitted that the open access charges as on date for wheeling of power are 143 paise per unit. Further with revision of UI rates by CERC/PSEERC, UI rates have also become very punitive. The rate of rice husk has also increased considerably in the recent past due to grant of generic tariff to NRSE Projects set up / coming up in the State. With all these factors, merchant NRSE plants have to compete in the market with coal and hydel projects, resultantly sale in the open market even with revenue from RECs has become unviable.

3. The petitioner has further submitted that it had approached Punjab Energy Development Agency (PEDA) vide application dated 17.11.2011 for accreditation of its project under REC mechanism as per CERC RE

Regulations, so as to sell power at APPC rates to PSPCL and claim RECs for sale. PEDDA sought additional information vide letter dated 28.11.2011 and 12.12.2011 which was supplied by the petitioner vide letters dated 01.12.2011 and 12.12.2011. The petitioner also installed ABT meters and CT/PT panels at generator terminals. However PSPCL declined to purchase power at APPC as PSPCL was not able to meet its RPO targets. Subsequently it has been decided by the petitioner to sell power to PSPCL only at preferential tariff. PSPCL offered to sign long term PPA only after the petitioner signs Implementation Agreement (IA) with PEDDA under NRSE Policy. Accordingly the petitioner requested PEDDA to register its project under NRSE Policy, 2006 vide letter dated 07.08.2012 but the request of the petitioner is still pending with PEDDA. The petitioner had signed a short term PPA with PSPCL on 17.04.2012 to supply power at the last escalated tariff under NRSE Policy, 2006 i.e. 404 paise per unit. The clause 5.0 of the said short term PPA provides as under:

“LEAF will sign the IA with PEDDA. Thereafter on the basis of IA, PSPCL will sign long term PPA”.

4. The petitioner has submitted that the present tariff does not even cover the variable cost of generation of power which has been calculated as 531 paise per unit (detail annexed with the petition at Annexure-6). The petitioner is willing to sell power to PSPCL at generic / preferential tariff on long term basis as determined by this Commission for the project which was commissioned in the year 2008-09 and is also ready to sign Implementation Agreement with PEDDA under NRSE Policy. This will encourage the petitioner to run the project at full capacity, maximize usage of the RE fuels and also help PSPCL to meet its RPO targets. The petitioner has prayed as under:

- (a) Grant the tariff for petitioner’s project based on RE Regulations as project was commissioned in the year 2008-09 during the period NRSE Policy, 2006 was operative.
- (b) Pass the necessary directions to the respondent No.1 i.e. PSPCL to purchase power from the petitioner’s project at the tariff so granted by this Commission to encourage NRSE plants

to continue the generation as per GOI/GOP Policies stated above.

- (c) Pass any such order as may be deemed just and proper in facts and circumstances of the case.

5. The petition was admitted vide Order dated 27.12.2012 and the respondents were directed to file reply by 25.01.2013.

6. PSPCL filed reply vide C.E./ARR & TR memo No.5130 dated 24.01.2013. PSPCL has submitted that PSPCL purchased power from LEAF from their 2x15.75 MW TG Sets and the petitioner has also sold surplus power under Open Access through traders outside and within Punjab. The Project is connected to 66 kV Sub-station of PSPCL at Khamanon. PSPCL has further submitted that APPC / Pooled cost is the maximum rates fixed by this Commission which makes a generating company eligible for RECs. However the power purchased by distribution licensee at APPC, does not qualify for RPO targets and the distribution licensee has to purchase RECs from the market to comply with the RPO targets determined by this Commission. PSPCL can sign long term PPA only after the petitioner signs an Implementation Agreement with PEDDA under NRSE Policy. PSPCL is ready to purchase power from the petitioner on long term basis at the NRSE tariff decided by this Commission. PSPCL has submitted that these rates are applicable only from the date the long term PPA is signed and not for the earlier period. PSPCL has additionally submitted that an amount of Rs.1,80,19,739/- on account of Electricity Duty on Energy exported through Open Access has not been paid by the petitioner firm to PSPCL / GoP in spite of repeated reminders and balance payment of Rs.10.38 lac on account of interest accrued is due from the firm. PSPCL has prayed that the firm be directed to deposit the pending dues to PSPCL/ GoP or else, PSPCL may be allowed to deduct the same from the energy bills raised by the firm for supply of power against long term agreement to be signed between the parties. In view of above submissions, PSPCL has submitted that this Commission may pass appropriate order as per law.

7. PEDA filed reply vide No.6882-84 dated 08.02.2013. PEDA has submitted that the petitioner had applied to PEDA for accreditation of their Plant under REC mechanism with sale of power to PSPCL on APPC rate. However the request could not be processed as PSPCL was not agreeing to purchase power on APPC rate on the ground that the projects using resources of the State should sell power to PSPCL so as to meet the RPO of the State. PEDA has further submitted that LEAF signed MOU with PEDA on 19.04.2006 under NRSE Policy, 2001 for setting up 30 MW Co-generation Plant in their adjoining rice mill at Khamanon, District Fatehgarh Sahib. However, IA was not signed by the company at that time as the company wanted to sell power under Open Access. The petitioner had requested PEDA to register its project under NRSE Policy, 2006. The project could not be registered as the new NRSE Policy, 2012 was under finalization. The NRSE Policy, 2012 has now been notified by the GoP. As per sub-clause 5.3 of clause 5 of this policy the captive / co-generation projects set up and commissioned during the period of NRSE Policy, 2006 and having surplus power and not registered with PEDA so far or have not signed IA will be allowed to get themselves registered with PEDA and sign IA to facilitate power purchase by PSPCL / Licensee. PEDA will grant the registration and sign Agreement. PEDA has further submitted that the Commercial Operation Date (COD) of the 2x15.75 MW Rice Husk based Co-generation Power Plant of the petitioner is 16.08.2008 and the issue under contention is duly covered under NRSE Policy, 2012, therefore, the petitioner should withdraw this petition and approach PEDA under clause 5 of the Policy for agreement and thereafter for signing long term PPA with PSPCL on the last escalated tariff of NRSE Policy, 2006.

8. The petitioner filed replication dated 12.02.2013 to the reply filed by PSPCL and reply filed by PEDA. In its replication to the reply of PSPCL, after reiterating points raised in the petition, the petitioner has submitted that this Commission on the basis of the year of commencement of the project has already determined a generic tariff of 502 paise per unit to the similarly placed Power Plant of A.B. Grain Spirits Pvt. Ltd. which was also commissioned in the year 2008-09, wherein 160 paise as fixed charge and 342 paise as fuel

cost has been granted. This Commission has also determined 532 paise per unit as generic tariff (190 paise as fixed charge and 342 paise as fuel cost) for NRSE Co-generation projects commissioned during 2012-13. In the case of Rana Sugars Ltd., the Commission has granted 495 paise per unit as generic tariff (153 paise as fixed charge and 342 paise as fuel cost) for their project commissioned in 2007-08. Both Rana Sugars Limited and A.B. Sugars Ltd. had not signed IA with PEDDA or PPA with PSPCL. In reply to the additional submissions regarding outstanding dues on account of non-payment of ED on power exported by the petitioner, the petitioner has submitted in its replication that the averments are totally beyond the scope of the present petition. The prayer made by PSPCL for passing directions with respect to ED is barred by jurisdiction as the same can not be pleaded in response to the petition filed by the petitioner for grant of generic tariff. Since PSPCL is agreeing to sign a long term PPA, the necessary directions may be passed and generic tariff as per RE Regulations be granted with immediate effect as the NRSE tariff being paid to the petitioner for sale of power under short term PPA is totally unviable.

The petitioner has submitted in replication to the reply of PEDDA that it has been admitted by PEDDA that project is generating RE power and power sold to PSPCL is counted towards RPO of PSPCL and the project is a Co-generation plant designed to use rice-husk as RE fuel which is a by-product of the paddy processing facility being operated by the petitioner. The boiler can use a limited amount around 10% of other agro residuals. Regarding the averments made by PEDDA in the reply with respect to withdrawal of the present petition and thereafter approaching it for signing IA and thereafter long term PPA with PSPCL on last escalated tariff of NRSE Policy, 2006, the petitioner has submitted that the same are unjust and arbitrary in nature and against the settled canons of law, also violative of Article 14 of the Constitution of India and principles of natural justice, as similar placed projects have already been granted generic tariff by this Commission. The proposal of PEDDA with respect to withdrawal of the petition will put the wheel of justice in reverse direction as after withdrawal of the petition and signing IA with PEDDA and PPA with PSPCL, the petitioner will again have to approach the Commission for grant of generic tariff as the plant was set up during NRSE Policy, 2006 and the

Commission has already held that such generators can approach the Commission for grant of generic tariff and have granted such tariff. The petitioner has prayed that the petition be allowed.

9. PSPCL filed additional submissions during hearing on 12.02.2013 stating therein that the petitioner has already signed a short term PPA which is valid upto 31.03.2013. The petitioner filed reply dated 19.02.2013 to the additional submissions filed by PSPCL and submitted that under Section 94 of the Act, all proceedings taking place before the Commission are judicial proceedings and the provisions of Civil Procedure Code are to be followed. That respondents after filing the reply are not entitled to file additional submissions as no such provision is provided under the Civil Procedure Code. Therefore the additional submissions may be dismissed. The petitioner has further reiterated its submissions in the reply to the additional submissions dated 12.02.2013 filed by PSPCL.

10. After hearing the petitioner, PEDDA and PSPCL at length on 19.02.2013 further hearing of the case was closed vide Order dated 21.02.2013. The Order was reserved.

11. **Observations of the Commission:**

Considering the submissions made in the petition, replies of the respondents, replication, additional submission(s) and reply thereto, the Commission observes as here under:

i) The petitioner has prayed for granting tariff for sale of surplus power upto 24 MW from its 2x15.75 MW co-generation power plant on long term basis to PSPCL at preferential tariff to be determined by the Commission. In the additional submissions, the petitioner has requested to grant generic /preferential tariff with immediate effect.

ii) The two co-generation units of 15.75 MW capacity each of the petitioner's power project, were commissioned on 16.08.2008 and 15.02.2009. In the past, the petitioner has supplied power to PSPCL from the said power plant in the years 2008-09 to 2010-11.

iii) Presently, the petitioner is supplying power from the said plant to PSPCL on short term basis under a Power Purchase Agreement (PPA) dated 17.04.2012 at the last escalated tariff under NRSE policy, 2006 i.e. 404 paise per kWh and PPA is currently valid upto 31.03.2013.

iv) Clause 5 of the said PPA dated 17.04.2012 provides that the petitioner will sign the Implementation Agreement with PEDDA and thereafter PSPCL will sign the PPA for supply of power on long term basis with the petitioner.

v) In support of its petition, the petitioner has brought out various provisions of the Electricity Act, 2003 [sections 61 and 86 (1) (e)], National Electricity Policy (para 5.2.20) and Tariff Policy (para 6.4).

vi) The petitioner has also submitted that the Commission has determined the tariff for other co-generation projects like Rana Sugars Ltd., A.B. Sugars Ltd., A.B. Grain Spirits Pvt. Ltd. and many other generating projects, which had been commissioned during the period of the NRSE Policy, 2006.

vii) PSPCL has expressed its readiness to purchase power from petitioner's said co-generation plant on long term basis at the NRSE (new and renewable sources of energy) tariff decided by the Commission. PSPCL has requested that these rates be made applicable from the date of execution of PPA. Prior to this, the petitioner is required to sign an Implementation Agreement (IA) with PEDDA. PSPCL has further requested that the existence of a PPA for supply of power on short term basis upto 31.03.2013 be kept in view.

viii) PSPCL has submitted that an amount of Rs.1.80 crore (approximately) and interest amounting to Rs.10.38 lac has not been paid by the petitioner to PSPCL/ Government of Punjab on account of Electricity Duty on energy exported through Open Access despite repeated reminders. PSPCL has requested to allow deduction of the same from the energy bills to be raised for supply of power under the PPA to be signed.

ix) PSPCL has also submitted the single line diagram depicting the interconnection of its distribution system with the generating units of the petitioner.

x) PEDDA has, while quoting clause 5.3 of the NRSE Policy, 2012 notified by the Government of Punjab, submitted that the issue under contention has been duly covered under the said Policy and therefore, the petitioner should withdraw the petition and approach PEDDA for Agreement and thereafter for signing long term PPA with PSPCL on the last escalated tariff of NRSE Policy, 2006, which was Rs. 4.04/- per kWh for such projects.

xi) As per clause 5.3 of the NRSE Policy, 2012, NRSE based captive/co-generation projects setup and commissioned during the period of NRSE Policy, 2006, having surplus power and not registered with PEDDA so far or not signed the IA, will be allowed to do so to facilitate power purchase by PSPCL/Licensee only on long term basis at the last escalated tariff of NRSE Policy, 2006 payable for FY 2011-12.

12. **Findings and Decision of the Commission:**

i) Considering the aforementioned observations, the Commission finds that the petitioner's offer for supply of upto 24 MW power under a PPA on long term basis from its said 2x15.75 MW non-fossil fuel based co-generation plant commissioned on 16.08.2008(Unit-1) and 15.02.2009(Unit-2) (FY2008-09), at tariff to be determined by the Commission, is acceptable to both the respondents (PSPCL and PEDDA) subject to observations. PSPCL has requested that the tariff rate be made applicable from the date of signing of the PPA with PSPCL with prior signing of Implementation Agreement with PEDDA. PSPCL has further requested that the existence of a PPA for supply of power on short term basis upto 31.03.2013 be kept in view. On its part, PEDDA while quoting para 5.3 of the NRSE Policy, 2012, has stated that the petitioner should withdraw its petition and approach PEDDA for signing of IA.

ii) In its Order of 13.12.2007, the Commission while accepting the tariff as proposed in the NRSE Policy, 2006 had observed that

"These rates will be considered the minimum rates that a NRSE developer can claim. It is entirely possible that NRSE projects adopting different technologies and/or fuels might need enhanced rates for their encouragement. Therefore, individual developers would be free to approach the Commission for determination of

such rates. The Commission will, at that stage, decide whether rates are to be approved individually in each case or generically for a category of cases.”

- iii) In its earlier Orders on similar petitions, the Commission has expressed that the Commission is mindful of several provisions in the Electricity Act, 2003 (Act), the Tariff Policy and the National Electricity Policy framed under Section 3 of the Act, which enjoins the Central Govt. to prepare the National Electricity Policy and the Tariff Policy with a view to developing the power system based on optimal utilization of resources such as coal, natural gas, nuclear substances, hydro and renewable sources of energy. Sections 61 and 86 (1) (e) of the Act further mandate that the Commission while determining tariffs would be guided by the need to promote co-generation and generation of electricity from renewable sources of energy. Furthermore, para 6.4 of the Tariff Policy provides for preferential tariffs to be determined by the Commission for renewable energy projects while para 5.2.20 of the National Electricity Policy requires adoption of suitable promotional measures for encouraging higher generation from renewable energy sources.
- iv) In this regard, the Commission reiterates its observations/findings in its earlier Orders as here under:

“..... The Commission also takes note of the observations of the Hon’ble Appellate Tribunal for Electricity in the case of Rithwik Energy Systems Ltd. and others versus Transmission Corporation of Andhra Pradesh Ltd. and others. In its judgment dated 28.9.2006, the Hon’ble Tribunal was pleased to observe that

‘A distinction, however, must be drawn in respect of a case, where the contract is re-opened for the purposes of encouraging and promoting renewable sources of energy projects pursuant to the mandate of section 86(1)(e) of the Act, which requires the State Commission to promote cogeneration and generation of electricity from renewable sources of energy.’

In para 35 of the order, the Hon’ble Tribunal further observed that it is bounden duty of the Commission to incentivize generation of electricity from renewable sources of energy and that PPAs can be reopened only for the purposes of giving thrust to non-conventional energy projects.”

In the light of the above, the Commission concludes that the PPA for supply of power on short term basis upto 31.03.2013 signed between the petitioner and PSPCL would not stand in the way of considering appropriate tariff for the said project for supply of power on long term basis.

v) In respect of the submission of PEDA that the petitioner should execute long term PPA at the last escalated tariff of NRSE Policy, 2006 payable for FY 2011-12 as per clause 5 of NRSE Policy, 2012, the Commission observes that such an anomalous provision will place the petitioner's project at an adverse pedestal as compared to several other projects implemented under the NRSE Policy, 2006 in the past, where the Commission has determined the tariff.

vi) The Commission determines the tariff for the renewable energy projects in accordance with its Regulations. For the purpose, the Commission in its Order dated 19.07.2012 adopted the Central Electricity Regulatory Commission (Terms and Conditions for tariff determination from Renewable Energy Sources) Regulations, 2012 with State specific modifications in respect of non-fossil fuel based co-generation projects (RE Regulations, 2012). The Commission has already determined the generic tariff for various RE technologies for the year 2012-13 in its Order dated 19.07.2012 in accordance with the aforementioned RE Regulations. As per these Regulations, the tariff for renewable energy technologies/projects where biomass fuel mix is used, is to be determined in two part parts i.e. levellised fixed cost and variable cost.

vii) For working out the levellised fixed cost of the petitioner's project for the year of applicability of tariff i.e. FY 2012-13, the Commission intends to determine the capital cost of petitioner's co-generation project commissioned in FY 2008-09 for that year by applying the capital cost indexation mechanism as specified in the RE Regulations, 2012, on the normative capital cost of Rs. 420 lac per MW for non-fossil fuel based co-generation projects for the year 2012-13 and then depreciate it to the applicable year of tariff i.e. FY 2012-13. Accordingly, the normative capital cost for the petitioner's project for the year 2008-09 comes to Rs. 374.96 lac per MW which, after depreciation at the

standard book depreciation rate of 5.28% per annum upto FY 2012-13, works out to Rs. 301.82 lac per MW for the year 2012-13. With this capital cost and using normative parameters for FY 2012-13, the levellised fixed cost works out to Rs. 1.60 per kWh. The variable cost for FY 2012-13 for the petitioner's project would be the same as allowed to other such projects to be commissioned in the State in the year 2012-13 as per Commission's Order dated 19.07.2012 i.e. Rs. 3.42 per kWh.

viii) Accordingly, the tariff payable for the petitioner's project is depicted in the following table:

Tariff for the year 2012-13				
Levell-ised Fixed Cost	Variable Cost (FY 2012-13)	Applicable Tariff Rate	Benefit of Accelerated Depreciation, if availed	Net Applicable Tariff Rate upon adjusting for Accelerated Depreciation benefit (3 - 4)
(Rs/kWh)	(Rs/kWh)	(Rs/kWh)	(Rs/kWh)	(Rs/kWh)
1	2	3	4	5
1.60	3.42	5.02	0.09	4.93

ix) The above tariff shall be payable to the petitioner prospectively with effect from the date of issue of this Order but shall be paid after signing of the PPA for supply of power on long term basis with PSPCL. Both the parties are directed to sign the PPA afresh for supply of power on long term basis expeditiously. The levellised fixed component will remain the same during the tariff period. However, the variable component will change each year based on whether the petitioner opts for fuel price indexation or normative escalation factor of 5% as per RE Regulations 2012. The tariff period shall be for a minimum thirteen (13) years from the date of application of tariff determined in this Order.

x) Also, in order to comply with the procedural requirements, the Commission directs the petitioner and PEDDA to sign the IA forthwith, to facilitate signing of the long term PPA.

xi) Further, in accordance with Regulation 22 of the RE Regulations, 2012, any incentive or subsidy offered by the Central or State Governments if availed by the generating company for the renewable energy power plant(s), is to be deducted while determining tariff. Although per unit reduction on account of accelerated depreciation benefit has been quantified, reduction in tariff on account of other incentives and subsidies has not been specified. In the circumstances, the Commission directs that PSPCL will work out subsidy/incentive, if any, availed by the petitioner as per the scheme(s) of the Ministry of New and Renewable Energy, Govt. of India and reduce the tariff to that extent for the period of 12 years. Also tariff adjustment will be made on account of subsidy/grant/incentive of the Govt of Punjab, if any, availed by the petitioner. Further, sharing of CDM benefits will be as per the RE Regulations 2012.

xii) With regard to the submission of PSPCL in respect of petitioner's obligation for payment of pending Electricity Duty and interest etc. on sale of power under Open Access, the Commission holds that the same is not within the scope of the present petition, though it is expected that the parties are legally bound to honour their contractual obligations/commitments.

The petition is disposed of accordingly.

Sd/-
(Gurinderjit Singh)
Member

Sd/-
(Virinder Singh)
Member

Sd/-
(Romila Dubey)
Chairperson

Chandigarh
Dated: 28-02-2013