

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

**Petition No. 23 of 2013
Date of Order: 16.08.2013**

In the matter of: Petition for revision of Tariff rate in respect of sale of surplus power to PSPCL under Section 86(1)(e) & 61 of Electricity Act, 2003.

And

In the matter of: Chadha Sugars & Industries Pvt. Ltd., Village Kiri Afgana, Tehsil Batala, District Gurdaspur (Punjab).

Versus

1. Punjab State Power Corporation Limited, The Mall, Patiala.
2. Punjab Energy Development Agency, Solar Passive Complex, Plot No.1-2, Sector 33-D, Chandigarh.

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

ORDER

Chadha Sugars & Industries Pvt. Ltd., Village Kiri Afgana, Tehsil Batala, District Gurdaspur (Punjab) has filed this petition for revision of tariff rate under Sections 86 (1) (e) and 61 of the Electricity Act, 2003 (Act) in respect of sale of surplus power to Punjab State Power Corporation Limited (PSPCL) from its 23 MW Co-generation plant at village Kiri Afgana, utilizing bagasse as fuel from its sugar mill. The petitioner has submitted that during off-season when bagasse stocks are exhausted, the plant is shut as other bio-fuels are not financially viable as the main fuel i.e. rice husk is available at ₹4500 per MT. The petitioner has stated that it has been selling surplus power to the tune of 16 to 20.5 MW to PSPCL since the commissioning of plant on short term basis upto March, 2012. The petitioner has entered into a long term agreement with PSPCL w.e.f. 10.09.2012 as per terms of the Order dated 30.09.2010 of this Commission. Accordingly, tariff for the year 2010-11 was fixed at ₹4.57 per unit (₹1.73 per unit as fixed tariff plus ₹2.84 per unit as variable tariff). The petitioner has further submitted that as per clause 2.1.1 (i) of the Power Purchase Agreement (PPA), the company is eligible for getting

applicable tariff for the project commissioning year as per tariff Orders notified by this Commission from time to time. The petitioner has cited case of Rithwik Energy Systems to plead that PPA can be reopened. The petitioner has stated that though it has been selling power to PSPCL at the rates as per the Commission's Order dated 30.09.2010, but it has found that these rates are becoming unviable as the prevailing market rates for bagasse is of the order of ₹2500 per MT and that of rice husk is ₹4500 per MT for running the plant during off season to improve upon plant load factor of the plant. Besides that, the cost of short term working capital loan has increased due to increase in the interest rates. The O&M charges have also risen due to high inflation and cost of labour. The variable cost works out to be over ₹5 per unit. As it is not found workable to generate power during off season, the fixed charges work out to be ₹3.50 per unit approximately.

The petitioner has further submitted that under Sections 61 and 86(1)(e) of the Act, the Commission while determining the tariff, is to be guided by the need to promote Co-generation and generation of electricity from renewable sources of energy and under para 6.4 of the Tariff Policy, preferential tariffs are to be determined by the Commission for renewable energy projects. National Electricity Policy under para 5.2.20 requires adoption of suitable promotional measure for encouraging higher generation from renewable energy sources. The National Action Plan on Climate Change (NAPCC) had set the target of purchase of 5% renewable energy for FY 2009-10 with 1% increase annually for next 10 years. The petitioner has prayed that:

- (a) Revised remunerative tariff be fixed keeping in view the prevailing rates of bagasse / rice husk so that we do not suffer losses by selling power at the existing rates while trying to optimize generation from our TG set.
- (b) Pass any other such order as may be deemed just and proper in facts and circumstances of the case.

2. The petition was admitted vide Order dated 09.05.2013 and Punjab State Power Corporation Limited (PSPCL) and Punjab Energy Development Agency (PEDA) were directed to file reply by 04.06.2013. PEDA filed reply vide No.1620-22 dated 04.06.2013. PEDA has submitted that market rate of rice husk is dependant on demand and supply. The rate is lower during the milling season and high during non-milling season. Further the project capacity, fuel usage, type of boiler etc. were decided by the petitioner after assessment of fuel availability during the project life. The petitioner was aware of the provisions of the New and Renewable Sources of

Energy (NRSE) Policy, 2006 and the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 which were adopted by the Commission with Punjab specific amendments (RE Regulations, 2009) and the tariff admissible to the project of the petitioner. The claim of the petitioner at this stage is, therefore, not maintainable. PEDDA has further submitted that it is evident from the Order that the petitioner was granted generic tariff on the basis of capital cost for Non-fossil fuel based Co-generation projects worked out for the year of commissioning of the project and other parameters on normative basis as per RE Regulations, 2009. The petitioner has signed the PPA and is fully aware of the Order of the Commission & its implications. Therefore, the petition is not maintainable as per terms and conditions of the PPA. PEDDA has further submitted that the petitioner is getting the same tariff as is being given to any other similarly placed generator in Punjab. The Order applicable in the case of the petitioner and PPA signed with PSPCL has no provision for revision of tariff except for variable cost for which annual escalation is already provided. The NRSE based Co-generation projects with Rankin Cycle technology are covered in the RE Regulations and tariff has been rightly determined by this Commission. Therefore the petitioner can not claim further relief with the re-opening of PPA signed on 10.09.2012 by insisting on project specific tariff determination by quoting the case of Rithwik Energy Systems. PEDDA has further submitted that other alternative fuels such as wheat straw, sunflower trash, mustard trash, wood waste etc. are also available and their use is required to be explored to achieve maximum generation.

PEDDA has further submitted that the petitioner has not brought out the efforts to collect and store rice straw which is available at cheaper rates. PEDDA has also submitted that the contention of the petitioner with regard to working capital is also not based on facts. The petitioner is running plant in season and is not storing any fuel but is getting the return on working capital for 4 months storage of fuel. The annual escalation in Operation and Maintenance cost is covered in fixed cost which has been levelled for the tariff fixation. The averments of the petitioner with regard to fixed and variable rates are without substance and need to be rejected. As regard the averment of the petitioner with regard to Section 61 of the Act and para 6.4 of the Tariff Policy, PEDDA has submitted that the Statement of Reasons issued along with RE Regulations clearly states that the same is in accordance with these provisions. This Commission has adopted these Regulations with Punjab specific amendments in exercise of powers under section 86 of the Act. PEDDA has submitted that petition is devoid of merits, without substance, lacks evidence and therefore needs to be rejected.

3. PSPCL vide reply dated 28.06.2013 has submitted inter-alia that the petitioner is getting the tariff as determined by the Commission for sale of power to PSPCL. All aspects / parameters for cost are considered while determining the same as per CERC Regulations as adopted by this Commission. Further the CERC Regulations and tariff order issued by the Commission do not provide for revision of tariff on any other account except for escalation in variable cost for which annual escalation has been allowed to take into account the increase in the cost of fuel. The tariff has been rightly determined by the Commission. The petitioner can not ask for re-opening of PPA signed on 10.09.2012. PSPCL has submitted that in view of the above facts, the petition is not maintainable and is liable to be dismissed. PSPCL has stated that the purchase of power from NRSE Projects on long term basis by PSPCL is as per the provisions of the Act, Tariff Policy, National Electricity Policy and NAPCC, which require the Commission and the licensees to encourage the Renewable Energy Projects.

4. The petitioner in its rejoinders dated 15.07.2013 to the replies of PSPCL and PEDDA has practically contested the averments of the respondents on the same grounds as were taken in its petition and has reiterated its prayer.

5. After hearing the petitioner, PSPCL and PEDDA on 23.07.2013 further hearing in the matter was closed vide Order dated 24.07.2013.

6. Considering the submissions made in the petition, replies of the respondents and rejoinders of the petitioner to the replies of the respondents, the observations and findings of the Commission are as under:

i) At the time of setting up the Non-fossil fuel based Co-generation project and its synchronization/ commissioning on 20.12.2010, the petitioner was aware of the provisions of the NRSE Policy, 2006 and the Regulations in vogue i.e. the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009, which were adopted by the Commission with State specific amendments in its Order dated 30.09.2010 [petition no. 32 of 2010 (Suo-Motu)] (RE Regulations, 2009).

ii) In the aforementioned Order dated 30.09.2010, the tariff for various RE technologies/projects including Co-generation to be commissioned in FY 2010-11, which is the year of commissioning of the petitioner's project, as per the said Regulations, was also determined.

iii) The tariff so determined by the Commission in the said Order for FY 2010-11 for Non-fossil fuel based Co-generation projects is ₹4.57 per kWh [₹1.73 per kWh (fixed) + ₹2.84 per kWh (variable)] with provision for annual escalation in variable tariff as per provisions in the Regulations. The tariff provided in the PPA is the same as mentioned above and the petitioner was aware of the same at the time of signing of PPA on 10.09.2012.

iv) As per PEDA, the project capacity, fuel usage, type of boiler etc. were decided by the petitioner after assessment of fuel availability during the project life. The petitioner was granted generic tariff worked out by the Commission on the basis of capital cost and other parameters on normative basis for Non-fossil fuel based Co-generation projects as per RE Regulations, 2009 including fuel cost, Operation & Maintenance (O&M) expenses and its annual escalation, Interest on Working Capital etc. As per the Regulations, biomass includes waste produced during agricultural and forestry operations and as a by-product of processing operations of agricultural produce etc. The petitioner signed the PPA with PSPCL and was fully aware of the Order of the Commission & its implications willingly and consciously. The PPA signed by the petitioner with PSPCL has no provision for revision of tariff except for variable cost for which annual escalation is already provided.

v) As regards the averments of the petitioner in respect of Section 61 of the Act and para 6.4 of the Tariff Policy, PEDA has submitted that the Statement of Reasons issued along with RE Regulations, 2009 adopted by the Commission clearly states that the same are in accordance with these provisions.

vi) PSPCL, besides, in general responding similarly to PEDA, has stated the petitioner cannot request for re-opening of PPA signed as recently as on 10.09.2012. The purchase of power from NRSE Projects on long term basis by PSPCL is as per the provisions of the Act, Tariff Policy, National Electricity Policy and NAPCC, which require the Commission and the licensees to encourage the RE Projects.

7. Considering the above observations of the Commission and submissions of PEDA and PSPCL in the petition, the Commission is inclined to agree with the request of both the respondents PEDA and PSPCL that the petition is devoid of merit and liable to be rejected. The Commission finds no justification in the petition for considering revision in tariff provided in the PPA, which is the same as the generic tariff determined by the Commission in its Order dated 30.09.2010 in petition no. 32

of 2010 (Suo-Motu) for various RE technologies including that of the petitioner i.e. Non-fossil fuel based Co-generation projects commissioned in FY 2010-11, which is also the year of commissioning of the petitioner's project, as per RE Regulations, 2009, wherein the normative parameters have been fixed and these adequately take care of various concerns expressed by the petitioner. Therefore, the contentions raised by the petitioner for revision of tariff considering high cost of rice husk, working capital, O&M expenses etc. are not sustainable.

Accordingly, the petition is dismissed without assigning cost to any party.

Sd/-
(Gurinder Jit Singh)
Member

Sd/-
(Virinder Singh)
Member

Sd/-
(Romila Dubey)
Chairperson

Chandigarh
Dated: 16.08.2013