

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION**  
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

Petition No. 53 of 2021  
Date of Order: 04.05.2022

Petition under Regulation 8 and 9 of PSERC (Harnessing of Captive Power Generation) Regulations 2009 and other relevant rules and regulations as approved by the Commission including Regulations 68,69,70,71 and 72 and other relevant provisions of Chapter XIII of the Conduct of Business Regulations 2005 as amended up to date and the provisions of the Electricity Act, 2003 for directing PSPCL to allow/grant banking facility to the Petitioner for its CPP being operated with renewable biomass fuel.

AND

In the matter of: M/s KRBL Limited having its office and works at Village Bhasaur, Dhuri Sangrur, Punjab through its authorized Representative Sh. Ravinder Kumar Sharma, Chief Operating Officer.

.....Petitioner

1. Punjab State Power Corporation Ltd. (PSPCL), having its office at the Mall, Patiala, through its Chairman-Cum-Managing Director.
2. Chief Engineer (Power Purchase & Regulations), Shakti Vihar, PSPCL, Patiala.
3. Chief Engineer (Commercial), The Mall PSPCL, Patiala
4. Superintending Engineer/DS Circle, PSPCL, Barnala.
5. Senior Executive Engineer/DS Division, PSPCL, Dhuri.
6. Assistant Executive Engineer/DS, Suburban Sub-Division, PSPCL, Dhuri.
7. Punjab Energy Development Agency, having its office at Plot No 1 and 2, Sector 33D, Chandigarh through its Director.

Present: Sh. Viswajeet Khanna, Chairperson  
Ms. Anjuli Chandra, Member  
Sh. Paramjeet Singh, Member

## ORDER

M/s KRBL Limited has filed the present petition for directions to PSPCL to allow/grant banking facility to the petitioner as per the regulations and policy and to set aside the communication dated 16.04.2021, 12.05.2021 and all the subsequent communications whereby, PSPCL has declined to allow banking facility to the petitioner.

2. The petition was admitted vide order dated 14.10.2021. PSPCL, respondents no. 1 to 6, filed reply to the petition vide memo no. 7770 dated 03.12.2021. PEDTA filed its reply to the petition vide letter no. 157 dated 06.01.2022. The petitioner filed rejoinder dated 09.01.2022 to the reply filed by PSPCL. After hearing the Ld. Counsel of the parties order was reserved vide order dated 25.04.2022 allowing the parties to file their respective written arguments within a week. The petitioner filed the written submissions dated 27.04.2022.

### **Submissions of the petitioner**

- 3.1 The submissions of the petitioner, in brief, are that the Petitioner has set up and is running a 12.5 MW capacity non-fossil Biomass fuel based fully captive co-generation power plant at its works at Village Bhasaur, Dhuri, District Sangrur, Punjab. Petitioner has been utilizing the entire power generated from its power plant for its captive purposes, but during many situations /exigencies, Petitioner has surplus power from the CGP which earlier was being purchased by PSPCL under short term PPA. Thus, there is only import meter installed. The Petitioner keeps

the generation of electricity from its CGP below its requirements so that there is always net import of power from PSPCL. If any inadvertent power flows to PSPCL, the same is not recorded and is treated as dump power. However, such flow of power should in fact be treated as banked power in the account of the Petitioner, in terms of Harnessing of Captive Power Generation Regulations 2009 framed by this Commission. However, PSPCL is not providing the banking facility to the petitioner of its surplus power exported on the grid of PSPCL and is mechanically treating the power so injected by the petitioner as surrendered.

3.2 That earlier PSPCL was purchasing such surplus power from the Petitioner flowing to PSPCL grid by executing short term PPAs with PSPCL, but this practice has been stopped by PSPCL. The Petitioner requested PSPCL vide Letter dated 22.03.2021 for allowing banking facility to the Petitioner, as Section 86(1)(e) of Electricity Act, 2003 provides for promotion of Co-generation and NRSE project by the State Commission, which have been kept at par with NRSE projects since co-generation helps in efficient utilization of national resources and the plant of the Petitioner is both Co-generation plant and also NRSE Plant using rice husk as fuel. The Petitioner received Letter dated 16.04.2021 from PSPCL informing that PSPCL is already power surplus and there is no modus-operandi for banking of power defined in the PSREC (Terms and Conditions for Short Term Open Access) Regulations, 2011. Therefore, PSPCL is not in position to enter into Banking of Power arrangement.

- 3.3 That the Petitioner intimated PSPCL that it will be drawing power from PSPCL also in case of power requirement at its plant and PSPCL billing will be on net import basis only. Further, the Petitioner has not sought the banking facility under PSERC (Terms and Conditions for Intra State Open Access) Regulations, 2011 as its Co-gen plants are situated within the premises and the Petitioner does not require any open access facility for wheeling of power. Section 86 (1)(e) of the Electricity Act 2003 provides for promotion of cogeneration in industry. The National Electricity Policy also provides in Section 5.12 for promotion of co generation. NRSE Policy 2012 notified by GOP also promotes cogeneration with usage of renewable fuel and provides for banking facility to RE based plants. In line with these provisions, the Commission has also notified Regulations for such captive power plants as per “Punjab State Electricity Regulatory Commission (Harnessing of Captive Power Generation) Regulations, 2009” (PSERC CPP Regulations) to promote such plants in the state. These provisions are also reiterated in PSPCL’s Electricity Supply Instruction Manual 2018. (ESIM) Therefore the Petitioner, once again requested PSPCL that In line with the provisions of the above stated regulations and ESIM, banking facility may be allowed to the Petitioner with further request that If any modus operandi/procedure etc is to be framed, the same may be finalized so that industry in Punjab is facilitated to bring more investment, increase the GDP of the state and create more job avenues.
- 3.4 That the petitioner received Letter dated 12.05.2021 from PSPCL, intimating that there is no modus-operandi for banking

of power defined in the PSREC (Terms and Conditions for Short Term Open Access) Regulations, 2011 till now. However, considering the request of the Petitioner, PSPCL offered to off-take/purchase excess power @ Rs. 2.50 KWh by signing PPA with the Petitioner. The approach of PSPCL is totally illegal, arbitrary, unjust and unsustainable in the eyes of law and PSPCL has mechanically declined the requests of the Petitioner to provide the Banking facility on the purported pretext that there is no modus operandi for banking. In case PSPCL is not directed to allow the banking facility to the petitioner immediately for the surplus power injected on PSPCL grid, the petitioner shall suffer an irreparable loss.

#### **Submission of PSPCL**

- 4.1 The reply submitted by PSPCL, in brief, is that there is no merit in the present Petition and the same is liable to be dismissed. The generating station of the Petitioner is a co-located unit with the consumption premises of the petitioner and there is no open access that is sought for the purposes of captive supply of electricity. When there is no open access at all, the question of banking does not arise. The Petitioner cannot seek to have the banking facility by way of a net metering arrangement which is available even to Solar Plants in the State of Punjab.
- 4.2 That PSPCL had entered into the last PPA with the petitioner for buying surplus power on 07.05.2012 for the period from 07.05.2012 to 30.06.2012 and after the expiry of the term of the PPA, no PPA was entered into between PSPCL and the petitioner. Since, no power was being procured by PSPCL from

the captive generation plant of the petitioner, the export meter installed at the premises of the Petitioner was removed.

4.3 That despite PSPCL making its stand clear to the Petitioner on issue of procuring surplus power from the Petitioner, the Petitioner again wrote to PSPCL on 23.04.2021, seeking for the provision of banking. The petitioner has itself admitted to the fact that *“we are aware that PSPCL is surplus in power”*. The present petition ought to be dismissed on the basis of the said admission alone. It cannot be the case of the Petitioner that PSPCL should procure excess power from it even though after admitting that PSPCL is power surplus. However, considering the repeated requests of the Petitioner, PSPCL offered to purchase excess power from the Petitioner at a tariff of Rs. 2.50/- per unit by signing a PPA. PSPCL offered to purchase excess power from the petitioner in the interest of the petitioner even though it is power surplus most of the year. However, the Petitioner did not accept the aforesaid bonafide offer and has instead filed the present petition.

4.4 That presently, as per the Regulations in place in the State of Punjab, the provision of net metering has been extended only to Solar Photo Voltaic Rooftop Plants in terms of the Punjab State Electricity Regulatory Commission (Grid Interactive Rooftop Solar Photo Voltaic Systems) Regulations, 2021. Therefore, in terms of the aforesaid Regulations, the only category of consumers which are eligible for availing net metering are Rooftop Solar Photo Voltaic Systems. The petitioner seeks net metering facility for its plant under the garb of banking facility.

4.5 That the question of banking from a CPP was before the Hon'ble Tribunal in Appeal No. 231 and 233 of 2006 wherein it has been

held that banking is a commercial arrangement and has to be worked out by the parties keeping in view their respective commercial interests. It was further held that banking cannot be part of tariff policy and can only be permitted if the financials of the purchasing company permit such as arrangements, as the losses cannot be passed on to the consumers of the Distribution Company and no Order directing the distribution company to bank power can be passed without keeping in mind the consequences of banking on the distribution company. Punjab being power surplus would be adversely affected financially in case it enters into banking arrangements.

#### **Submissions of PEDDA**

5.1 The reply submitted by PEDDA, in brief, is that the petitioner has not claimed any relief against PEDDA and therefore PEDDA has no role in it. However, PEDDA is the premier agency of the Govt. of Punjab to promote and implement New and Renewable Sources of Energy within the State of Punjab and the Govt. of Punjab has notified the “New and Renewable Sources of Energy” (NRSE) policy 2012 on 26.12.2012 which superseded the earlier policy notified on 24.11.2006. As per Para 2.1 read with Para 2.3 of the NRSE policy 2012, Biomass based plants (Rice Husk/ Paddy Straw) are covered under the NRSE Policy 2012. As per para 4.1 read with para 4.2 of the NRSE Policy 2012, Govt. of Punjab shall provide all the assistance for setting up of NRSE projects in the State and PEDDA shall be the nodal agency for the same. As per para 6.5 of the NRSE policy 2012, banking facility for the power generated is to be allowed for a period of 1 year by PSPCL or licensee with only one condition that any power bank

during non-paddy and non-peak season will not be allowed to be drawn during paddy season and peak season. Moreover, Section 86(1) (e) of the Electricity Act 2003, enjoins the Commission to promote co-generation of Electricity with the power plants based on renewable sources of energy and for this purpose, the inter-se sale and purchase of electricity has to be encouraged by adopting suitable measures. The position has been further clarified by the Commission in the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access) (7<sup>th</sup> Amendment) Regulations 2016 whereby proviso has been added to Regulation 31 (1) (c) which shows that banking of power is allowed for bagasse (biomass) captive co-generation NRSE plant generating power for own use for a maximum period of six months for 15 days from the closure of cane crushing season of the sugar mill, whichever is earlier. Therefore, the Commission may pass appropriate orders keeping in view the aforesaid legal position.

#### **Rejoinder filed by the Petitioner**

6. The petitioner filed rejoinder to the reply filed by PSPCL. The petitioner has reiterated its earlier submissions made in the petition. It has been further submitted by the petitioner that there is no relation between Open Access and banking facility and banking is to be provided to the CPP under CPP Regulations whether it is availing open access or not. Further, once, PSPCL has considered to buy the power @ Rs.2.50/kWh from the petitioner, it cannot deny the banking facility on the ground of being surplus with power.

## **Findings and Decision of the Commission**

7. The Commission has examined the petition the reply filed by the respondents, rejoinder and written submissions filed by the petitioner as well as the other documents adduced on record by the parties.

The petitioner has setup and is running 12.5MW capacity rice husk/non fossil Biomass fuel based captive co-generation power plant and has been utilizing the entire power generated from its power plant for captive use. The petitioner is also a large supply consumer of PSPCL with sanctioned load of 16432 kW and contract demand of 4100kVA which is fed at 66kV supply voltage. The petitioner has filed the present petition under Regulation 8 and 9 of PSERC (Harnessing of Captive Power Generation) Regulations, 2009 read with Regulations 68, 69, 70, 71 and 72 of Conduct of Business Regulations for directing PSPCL to grant banking facility to the petitioner. It has further been submitted that PSPCL was buying the surplus power from the petitioner through short-term power purchase agreements. The last such PPA was from 7.5.2012 to 30.06.2012 and thereafter the export meter was removed on 21.07.2014. Presently, any inadvertent power flow in to PSPCL system is not recorded and is treated as dumped power. The petitioner vide letter dated 22.03.2021 requested PSPCL to allow banking facility in accordance with clause 6.5 of NRSE Policy, 2012 notified by Govt. of Punjab and Regulation 8 of PSERC (Harnessing of Captive Power Generation) Regulations, 2009. However, PSPCL vide letter dated 16.04.2021 intimated the petitioner that PSPCL is surplus in power and there is no modus

operandi for banking of power defined in PSPCL (Terms & Conditions for Intra-State Open Access) Regulations, 2011. However, PSPCL offered to purchase the excess power @ Rs. 2.5 per unit by signing PPA, if so desired by the petitioner.

PSPCL argued that the generating plant of the petitioner is co-located unit within the premises of the petitioner and there is no interchange of electricity with the grid for the purpose of supply of electricity from the captive plant. There is no open access sought by the petitioner and thus facility of banking is not permissible. The petitioner approached PSPCL for allowing banking after almost 9 years since the last short term PPA ended on 30.6.2012. PSPCL alleged that petitioner is actually seeking net metering facility in the guise of banking arrangement, net-metering is available only to solar plants in the State of Punjab. PSPCL submitted that the provisions of Regulation 8 of CPP Regulations regarding banking facility is applicable only in case of open access where the open access user pays the transmission and wheeling charges to compensate the licensee. However, the petitioner refuted this argument and submitted that there is no relation between open access and banking facility. The petitioner also argued that he is not seeking net metering facility.

PSPCL also quoted the order dated 03.02.2009 passed by Hon'ble APTEL in Appeal No.231 and 233 of 2006 wherein it has been held that banking is a commercial arrangement and has to be worked out by the parties keeping in view their respective commercial interests. It has further been held that banking should only be permitted if the operational requirements

and financials of the purchasing company permit such an agreement since any losses in such an arrangement would be passed on to the consumers of the purchasing company which would be grossly unfair to the fuel consumers.

PEDA in its reply submitted that the petitioner has not claimed any relief from the respondent and thus it has no role in allowing such a banking facility. PEDA however, brought out various provisions of NRSE Policy, 2012 and section 86(1)(e) of the Electricity Act, 2003 to highlight the intentions of the policy makers to promote NRSE projects in the State.

The main argument of the petitioner is that as per clause (1) of Regulation 8 of the PSERC (Harnessing of Captive Power Generation) Regulations, 2009, banking of energy in case of NRSE based CPPs is permitted as per NRSE Policy, 2012 notified by the Govt. of Punjab. Further, the petitioner quoted para 6.5 of the NRSE Policy, 2012 which provides that the banking facility for the power generated shall be allowed for a period of one year by PSPCL. However, the energy banked during non paddy season and non peak hours are not allowed to be drawn during paddy season and peak hours respectively.

The Commission observes that the objective of the NRSE Policy is to promote and facilitate setting up of new and renewable sources of energy based plants and also to provide financial & fiscal assistance. Accordingly the policy lays down procedure and steps required to be taken by various stakeholders to achieve this objective. The policy has to be read in its entirety and para 6.5 cannot be read in isolation.

The para 4 of the policy provides for the steps envisaged to facilitate NRSE Projects. Sub-para 4.5 under the caption “Allotment of projects” provides that :

*“4.5 -----Surplus Power from NRSE Co-generation Projects shall be procured by signing of Implementation Agreement (IA). In case of upcoming NRSE technology demonstration projects, the MOU route may be considered.-----”.*

Further in para 5.3 of the policy, it has been mentioned that:

*“5.3 To maximize the availability of NRSE Power for PSPCL/LICENSEE and to meet its RPO, NRSE based captive / co-gen power 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 Implementation agreement will be allowed to get themselves registered with PEDDA and to sign agreement to facilitate power purchase by PSPCL/LICENSEE. PSPCL will sign only long term PPA with such registered projects on the last escalated tariff of NRSE Policy-2006 payable for FY 2011-12.*

And the para 6 of the Policy under the caption “Implementation of projects” reads as under;

## **“6. IMPLEMENTATION OF PROJECTS**

*6.1 After issuing of all applicable statutory clearances the Producer shall enter into an Implementation Agreement with PEDDA within a period of 15 days from the date of grant of applicable statutory clearances for the project and also notification of tariff if*

*applicable. The project developer shall be required to submit a performance security in the shape of Bank Guarantee of Rs 20lacs per MW in case of non-solar projects and Rs.40 Lacs per MW in case of solar projects before signing of implementation agreement or as stipulated in the bid document. The performance security shall be forfeited by PEDA for delays attributable to the developer as given in the allotment letter/implementation agreement/bid document.*

6.2 *The implementation agreement shall contain the major provisions for project allocation, land, location, power evacuation, project completion schedule ,time period, project life, tariff, tariff period, PPA period, various fiscal and technical assistance granted to the projects under NRSE policy, penalty provisions in case of delay, arbitration etc.*

6.3 *PSPCL/LICENSEE shall sign a Power Purchase Agreement within 30 days from the date of order issued by Commission in case tariff approval is to be given by PSERC. In case of competitively arrived tariff/preferential tariff and APPC, the PPA shall be signed within 30 days from the date of signing Implementation agreement by PEDA.*

6.4 **Scheduling:** *The NRSE projects operating in synchronization with PSPCL /PSTCL system and selling /wheeling power shall be required to adhere to scheduling as per applicable regulations of the Appropriate Commission.*

6.5 **Banking:** *The banking facility for the power generated shall be allowed for a period of one year by the PSPCL/LICENSEE/PSTCL. However, the energy banked during non-paddy season and non peak hours will not be*

***allowed to be drawn during paddy season and peak hours respectively.***

- 6.6 ***Injection of NRSE power:*** PSPCL/LICENSEE/PSTCL will accept the injection of energy in full even during sustained high frequency hours to ensure full utilization of non-conventional energy resources and merit order shall not be applicable.
- 6.7 ***Energy Payment:*** PSPCL/LICENSEE will clear dues within 60 days. However if the Developer requests for payment in 30 days or against Letter of Credit / payment in 7 days, rebate of 1% or 2% respectively, as the case may be, will be admissible to PSPCL/LICENSEE. Delay in payments will attract interest as per PSERC/CERC regulations.
- 6.8 ***Letter Of Credit:*** PSPCL/LICENSEE/PSTCL will provide facility of irrevocable and revolving, Letter of Credit issued by any nationalized bank. The amount of the Letter of Credit shall be equal to the bill amount of one month on the basis of average of last three months. All expenditures on Letter of Credit shall be borne by the power producers.
- 6.9 All project developers shall be required to submit monthly statement for verification of usage of fuel as detailed out in RE regulations and orders for determination of generic tariff issued by CERC. In addition, monthly information with regard to other parameter like energy generated, revenue earned, power factor and plant load factor achieved, reasons for non-achievement of full generation etc as directed by PEDDA shall also be submitted so as to maintain and update data bank on NRSE generation in the state and also for the purpose of monitoring generation under RPO regulations.”[Emphasis added]

The sub-para 6.1 provides that after issuing of all applicable statutory clearances, the producer shall enter into an Implementation Agreement (IA) with PEDDA within a period of 15 days from the date of grant of statutory clearances for the project. Sub-para 6.3 specifies that PPA is to be signed with the licensee within 30 days. Para 6.4 provides for scheduling in case the NRSE project is operating in synchronization with PSPCL system. Thereafter the banking facility is mentioned in sub-para 6.5. As the CPP setup by the petitioner does not fulfill these conditions, so the provision of banking provided in para 6.5 of the NRSE policy is not applicable in case of the petitioner.

Whereas the issue of banking from a CPP and the reliance of the petitioner on section 86(1)(e) of Electricity Act, 2003 and National Electricity Policy is concerned, the matter has been dealt with by Hon'ble Tribunal in Appeal No.231 and 233 of 2006 and held in its order dated 03.02.2009 as under :-

- 19) *Whether the generating company and the distribution company would enter into a commercial agreement of purchase with banking is a question of a calculation of profit and loss. **The facility of banking is merely a facility of purchasing power from the distribution company at a concessional price. It is entirely a commercial arrangement and has to be worked out by the parties keeping in view their respective commercial interests.** It is to be noticed further that the Commission itself had clarified in the very first order that the revenue loss, if any, would have to be borne by the parties themselves. This meant that the distribution company was not entitled to pass the loss suffered by the transaction with TSIL to*

its ultimate consumers by raising the tariff. In this context it becomes all the more important to examine all the details of the calculations submitted by NESCO before the Commission could direct NESCO to purchase power as per the 2nd agreement that is at the rate of Rs.1/- per unit and to bank 1/3rd of the power purchased. It is also to be noticed that although TSIL wants the power to be banked it does not propose an alternate commercial arrangement namely the price at which it is willing to sell to NESCO. Nor has the TSIL made any allegation that on account of denial of banking it has suffered any loss. **Banking is not the usual term of a power purchase agreement. It is only an exception. The National Tariff Policy does not provide for banking. It can be understood that banking cannot be a part of tariff policy and can only be permitted if the financials of the purchasing company permits such an agreement, particularly if loss, if any, cannot be passed on to the consumers of the purchasing company. No order asking the purchasing company to bank can be passed without noticing the consequences of banking on the company which purchased power. In case banking is not allowed the generating company will buy at the same rate at which all other similarly placed consumers of the distribution company will take electricity. The Commission has passed the two impugned orders without taking into consideration the financials of NESCO and the financial consequences of its order of banking as per the 2nd agreement. Such an order cannot be upheld.[emphasis added]**

*“28.(iv) So far as the power of the Commission in interfering with the agreement entered into by the parties is concerned our attention has been drawn to the Commission’s power under section 86(1)(b) and 86(1)(e) of the Electricity Act, 2003 (hereinafter called the Act). Section 86(1)(b) of the Act endows the Commission with the function to “regulate electricity purchase and procurement process of distribution licensees including the price at which the electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.” Section 86(1)(e) of the Act requires the Commission to “promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person and also specify for purchase of electricity from such sources, a percentage of total consumption of electricity in the area of a distribution licensee.”*

30) *The Commission has to keep in view the interest of the entire electricity sector so as to (a) develop the electricity industry, (b) promote competition, (c) protect interest of the consumers, (d) supply of electricity to all areas, (e) rationalize electricity tariff, (f)transparency regarding subsidies, (g) promotion of efficient and environmentally benign policies. In this situation, regulation of the procurement process of a distribution licensee would mean that **the Commission while encouraging purchase from the CPP which is a co-generation plant has to protect the interests of the consumers. The Commission also had to keep in mind the development of electricity industry and promotion of competition. Obviously all these purposes cannot be achieved if a distribution company is asked to purchase power from the co-generation plant on terms which are not commercially viable.** The impugned orders*

*requires the NESCO to provide for banking without examining at all whether banking would be conducive for the development of electricity industry even if such banking may lead to monetary loss to the distribution company. [emphasis added]*

In view of the above, the Commission is of the view that neither PSERC (Harnessing of Captive Power Generation) Regulations, 2009 read with NRSE Policy, 2016 nor section 86(1)(e) of the Act bestow any right on the petitioner to claim banking facility for its in-situ captive power plant from the distribution licensee particularly if such arrangement is not commercially viable for the licensee.

The petition is dismissed accordingly

Sd/-

(Paramjeet Singh)  
Member

Sd/-

(Anjuli Chandra)  
Member

Sd/-

(Viswajeet Khanna)  
Chairperson

Chandigarh  
Dated: 04.05.2022