

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

Petition No.76 of 2022
Date of Order: 12.12.2023

Approval of the Power Purchase Agreements (PPAs) and Procurement Process of Punjab State Power Corporation Limited in respect of Non-Conventional Generating Stations in pursuance to the Order dated 16.12.2020 passed by the Commission in Petition No. 17 of 2020.

AND

In the matter of : Punjab State Power Corporation Limited, The Mall,
Patiala

.....Petitioner

1. Hydro Energy & Infrastructure, Bhikhi, Sangrur (0.25 MW)H.No.15-A/224, PakkiGali, Dhuri, Distt. Sangrur.
2. Salasar Hydro UrjaPvt. Ltd.,Ferozepur (3 x 0.5 MW)Regd Office: Ward No. 7 ,Old Grain Market, Badhani Kalan, Distt. Moga, Punjab.
3. Preetech Power Pvt. Ltd.,Kalabala, Gurdaspur (0.8 MW)Preetech Power Pvt. Ltd.,Kalabala, Gurdaspur.
4. Preetech Power Pvt. Ltd.,Tugalwala, Gurdaspur (0.85 MW)Regd Office: 701-L, Mall Road,Model Town, Jalandhar-144003.
5. M/s Chadha Sugar & Industries Private Limited(Project Cap. 23 MW) (Contract Cap. Upto 16-20.5 MW)709-711, 7th Floor, Gate No. 4, Ambience Mall Ambience Island, NH-8, Gurugram (Haryana)-122002.
6. Nawanshahr Power Pvt. Ltd., Nawanshahr (Bagasse)(Proj. Cap. 15 MW) (Contr. Cap. 13.5 MW)Regd. Office: 159, Industrial Area, Phase-2, Chandigarh-160036.
7. Bhogpur Coop Sugar Mills Ltd., Bhogpur, Jalandhar (Bagasse) (Proj. Cap. 15 MW) (Contr. Cap. 8.54 MW)Bulalowal Road, Bhogpur Distt. Jalandhar (Punjab) 144201

...Respondents

Commission: Sh. Viswajeet Khanna, Chairperson
Sh. Paramjeet Singh, Member

PSPCL: Ms. Poorva Saigal, Advocate

Chadha Sugars: Sh. Sunil Chadha, Senior Advocate.

NPPL: Sh. Aditya Grover, Advocate.

ORDER

1. The Petitioner (PSPCL) has filed the present petition seeking approval of its power procurement arrangements from the following intra-State RE generators in pursuance to the Commission's observations/ directions in Petition 17 of 2020 alongwith condonation of delay in filing the same:

a) Small Hydro Projects:

- (i) Hydro Energy & Infrastructure, Bhikhi Sangrur (0.25MW)
- (ii) Salasar Hydro Urja Pvt. Ltd., Ferozepur (3x0.5MW)
- (iii) Preetech Power Pvt. Ltd., Kalabala, Gurdaspur (0.80MW)
- (iv) Preetech Power Pvt. Ltd., Tugalwala, Gurdaspur (0.85MW)

b) Non-Fossil Fuel Based Co-Generation Projects:

- (i) Chadha Sugars & Ind. Limited, Gurdaspur (upto 18MW)
- (ii) Nawanshahr Power Private Limited (upto 13.5 MW)
- (iii) Bhogpur Co-op Sugar Mills Ltd., Jalandhar (upto 8.54 MW)

1.1 After considering the averments made by the petitioner, the petition was admitted vide Order dated 19.12.2022 with directions to implead the concerned Generating Companies being the necessary parties for adjudication of the petition. Accordingly, notices were issued to all the 7 generating companies to file their replies/comments in the petition. PSPCL vide an additional affidavit dated 20.03.2023 also submitted the details regarding the capacity, SCoD/Actual CoD, basis of tariff and copies of the PPAs under consideration.

1.2 The Commission extended the time for submission of reply by the respondent parties vide Orders dated 27.01.2023, 13.04.2023, and 21.07.2023. However, despite of several opportunities afforded to file their respective reply to the petition, only M/s Chadha Sugar & Industries Private Limited (Chadha Sugars) and M/s Nawanshahar Power Private Limited (NPPL) i.e., the Respondent Nos. 5 and 6 chose to file their reply to the petition. Accordingly, the Commission vide Order dated 11.09.2023 decided to proceed ex-parte against the other Respondents (i.e., 01 to 04 and 07). On 13.10.2023, PSPCL filed its rejoinder to the replies filed by M/s Chadha Sugars and NPPL.

1.3 Further, on the issue of 3 parties in the instant petition i.e. M/s Chadha Sugars, NPPL and Bhogpur Co-op Sugar Mills Limited being also the impleaded parties in the Petition No. 19 of 2022 filed by PSPCL for review of the applicable variable charges and rate of escalation thereof, in the hearing held on 19.07.2023, the Ld. Counsels for M/s Chadha Sugars and NPPL submitted that it will be appropriate that the present petition is taken up after the decision in petition No. 19 of 2022. Whereas, the Counsel for PSPCL suggested that the order in the present petition can be passed either after the decision or subject to the Order passed in petition No. 19 of 2022.

1.4 After hearing the final arguments by the parties on 15.11.2023, the Order was reserved. Subsequently, in reference to the project of M/s Dallanwala MHP of 0.6MW (referred to at S. No. 23 in Petition 17 of 2020), PSPCL vide email dated 28.11.2023 has communicated that the IA with the project company stands terminated by PEDDA w.e.f 09.02.2023 as the project company has failed to develop the project which amounts to material

breach of the terms of the Agreement and the PPA dated 16.11.2012 stands terminated by PSPCL on 07.03.2023.

1.5 On 07.12.2023, M/s Chadha Sugar and Industries Limited has filed an application for taking on record written synopsis. The same is allowed, written synopsis is taken on record and the application stands disposed of.

2. Analysis and Decision of the Commission

The petition is for seeking approval of PSPCL's power procurement process from intra-State RE Sources under Section 86(1)(b) of the Electricity Act read with PSERC (Power Purchase and Procurement Process of Licensee) Regulations 2012. The Commission refers to the relevant provisions of the Electricity Act and PSERC Regulations framed there under for regulating the Power Purchase & Procurement process of the Licensee, which mandates the Commission to examine the same on the criteria of its "Necessity" and "Reasonability of Cost/Economical Viability of tariff". The Commission notes that the instant petition has been filed in pursuance of the Commission's observations/directions made in Petition 17 of 2020, wherein, vide Order dated 16.12.2020, it has already been held that "the Commission is of the opinion that in so far as the need/ requirement of procurement of power from NRSE/RE sources from the PPAs/PSAs listed herein is concerned, the same is well established", thus endorsing the need and necessity of procuring power from these NRSE/RE Sources. Accordingly, the Commission proceeds to analyse the submissions made by PSPCL, the respondents and the documents adduced on the record on the issue of the reasonability of the tariffs mentioned for procurement of RE power from these generating companies as under:

2.1 Hydro Energy & Infrastructure, Bhikhi, Sangrur (MHP: 0.25 MW)

[PPA/SPPA dated 03.02.2016/19.08.2021, SCoD/CoD: 11.10.2017/19.08.2021]

2.1.1 PSPCL's submission:

The Commission in Petition 17 of 2020 (Sr. No. 22) has observed/directed as under:

“As per PPA signed on 03.02.2016, the tariff will be the tariff declared by PSERC for small hydro projects below 5 MW for the year in which the scheduled date of the Commercial Operation of the project falls. The tariff shall remain constant throughout the tariff period following the year of commissioning.

The scheduled date of commercial operation (SCOD) for the Project as intimated by PSPCL was 11.10.2017 (FY 2017-18). PSPCL has intimated the tariff of project as Rs. 6.00/kWh which is the generic tariff for FY 2017-18 determined by the Commission in its Order dated 31.10.2017 in petition no. 50 of 2017 (suo-motu) for small hydro projects below 5 MW.

It is noted that the project is yet to be commissioned. PEDDA has granted extension for commissioning of the project up to December, 2020. PSPCL has submitted that due to the delay in commissioning of the Project, PSPCL may negotiate the tariff with the company and thereafter Supplementary PPA shall be signed with the company at negotiated tariff, which shall also be got approved from the Commission.

Considering the above, the tariff for the project cannot be approved at present. The Commission has recently determined the generic tariff for Small Hydro Projects up to 5 MW for FY 2020-21 in its Order dated 18.09.2020 in petition no. 26 of 2020 (suo-motu) as Rs. 4.30/kWh. PSPCL is directed to file a separate application on commissioning of the Project, for consideration of the Commission.”

With regard to the above, it is submitted that, **on 19.08.2021**, PSPCL granted approval of Synchronization/ Commissioning to the Hydro Energy & Infrastructure for its 0.25 MW Mini Hydro Project (**MHP**). Further, a Supplementary Power Purchase Agreement dated 19.08.2021 (**SPPA**) has been signed between parties. Article 2.1.1 (i) of the SPPA reads as under:

“The applicable tariff will be Rs.4.30/kWh or the tariff notified by the PSERC for Small Hydro Projects (below 5 MW) for the actual project commissioning financial year, whichever is lower.”

As the Commission has adopted the generic tariffs of FY 2020-21 for the projects commissioned in FY 2021-22, in terms of the SPPA dated 19.08.2021, the proposed tariff of Rs. 4.30/kWh, without escalation for the term of PPA i.e. 35 years from the date of commissioning, is as per the generic tariff applicable for the Hydro Projects (below 5 MW) commissioned in FY 2021-22.

2.1.2 Reply by the Respondent:

No reply has been submitted by the Respondent.

2.1.3 Commission’s Analysis:

The Commission observes that vide Order dated 18.09.2020 in Petition No. 26 of 2020 (Suo-Motu), a levellised generic tariff of Rs 4.30/kWh was determined for the Hydro Power Projects of below 5 MW Capacity to be commissioned in FY 2020-21. The said tariff was also allowed to be considered for the spilled over project(s), vide the Commission’s Order in Petition 34 of 2021(Suo-Motu), with the direction that,

“..In case of a spilled over project, if any, wherein the tariff for project in the PPA is linked with the generic tariff for the year of commissioning, the

generic tariffs as determined in Order dated 18.09.2020 in Petition No. 26 of 2020 (Suo-Motu) shall be considered.”

In view of above and the reported commissioning of the impugned project in FY 2021-22, PSPCL’s proposal of power procurement from this project at the stated tariff of Rs.4.30/kWh (without escalation for the term of PPA i.e. 35 years from the date of commissioning) as per terms of the generic tariff determined by the Commission for Hydro Power Projects of below 5 MW Capacity, is held to be reasonable in cost considering the then prevalent investment cost/rates. Thus the Commission allows the prayer of PSPCL qua this project.

2.2 Salasar Hydro Urja Pvt. Ltd., Ferozepur (MHP: 3x0.5 MW)

[PPA dated: 29.04.2015, SCoD/CoD: 05.01.2017/18.06.2021]

2.2.1 PSPCL’s submission:

The Commission in Petition 17 of 2020 (Sr. No. 24) has observed/ directed as under:

“As per PPA signed on 29.04.2015, the applicable tariff is Rs. 3.65/kWh [Benchmark tariff of Rs. 5.16/kWh for the year 2013-14 (being tariff with normal rate of depreciation) less discount of Rs. 1.51/kWh], and evaluated as lowest bidder. However, the company shall be eligible for getting the approved tariff for the project commissioning year as per further tariff order notified by PSERC (net applicable tariff rate upon adjusting for normal depreciation benefit – discount Rs. 1.51/kWh). The tariff shall remain constant throughout the tariff period following the year of commissioning.

PSPCL has submitted that the project was selected by PEDDA after following competitive bidding process on the basis of discount of Rs.1.51/kWh offered by the company on the generic tariff of Rs. 5.54/kWh for FY 2016-17 for small hydro projects below 5 MW determined by

PSERC in Order dated 23.11.2016 in petition no. 55 of 2016 (suo-motu) i.e. Rs. 4.03/kWh (net tariff). It has been further mentioned by PSPCL that the company shall be eligible for getting the approved tariff for the project commissioning year as per further tariff orders notified by PSERC (Net applicable tariff rate upon adjusting for Accelerated Depreciation Benefit – Discount Rs. 1.51/kWh).

The Commission notes that there is variation in the submission of PSPCL and the provision in the PPA with regard to tariff. As per submission of PSPCL, the bidding was carried out on the generic tariff of FY 2016-17 determined by the Commission in its Order dated 23.11.2016 in petition no. 55 of 2016 (suo-motu). However, the PPA has been signed on 29.04.2015 and it provides for a different tariff based on discount offered by the company on the generic tariff of FY 2013-14.

Considering the above, the tariff for the project cannot be approved. Moreover, the project has not been commissioned till now. PSPCL is directed to file a separate application on commissioning of the project with all the relevant and necessary details, for consideration of the Commission.”

With regard to the above, it is submitted that, on 18.06.2021, PSPCL granted approval of Synchronization/Commissioning to the Salasar Hydro Urja Pvt. Ltd. for its 1.5 MW Mini Hydel Project (**Salasar MHP**). Salasar MHP filed a Petition bearing Petition No. 72 of 2021 before the Commission seeking the tariff applicable for the FY 2019-20 even though the project was commissioned in FY 2021-22. The said Petition stands dismissed by the Commission vide Order dated 25.08.2022, as under:

“....., the Commission is of the view that, in the absence of the provisions in the agreements/contract entered into by it, the petitioner’s prayer to

declare the financial year 2019-20 as the year of commissioning and grant of the tariff in terms thereof in place of the actual year of commissioning (i.e, FY 2021-22) as provisioned in the bidding documents and subsequent Agreements entered into by it, is not sustainable.....

In light of the above analysis and discussion, the prayer of the petitioner does not find merit and cannot be sustained and the petition is hence dismissed.”

In light of the above, PSPCL submits that the proposed tariff of Rs. 2.79/kWh (Rs. 4.30/kWh - Rs. 1.51/kWh) without escalation for Salasar MHP, is less than the generic tariff determined by the Commission and should be approved for the term of the PPA i.e. 35 years from the date of commissioning without escalation.

2.2.2 Reply by the Respondent:

No reply has been submitted by the Respondent.

2.2.3 Commission's Analysis:

Considering the generic levelled tariff of Rs. 4.30/kWh for Hydro Power Projects of below 5 MW Capacity for the project commissioning year of FY 2021-22 and the discount of Rs. 1.51/kWh offered by the generating company in its bid, PSPCL's proposal of power procurement at the stated tariff of Rs. 2.79/kWh (without escalation for the term of the PPA i.e. 35 years from the date of commissioning) is considered reasonable in cost and thus the Commission allows the prayer of PSPCL qua this project.

2.3 Preetech Power Pvt. Ltd., Kalabala, Gurdaspur (MHP: 0.8 MW)
 [PPA dated: 16.11.2012, SCoD/CoD: 19.02.2014/29.07.2021]

2.3.1 PSPCL's submission:

The Commission in Petition 17 of 2020 (Sr. No. 25) has observed/directed as under:

“As per PPA signed on 16.11.2012.... the company shall be eligible for getting the approved tariff for the project commissioning year as per further tariff order notified by PSERC.

..... The project is yet to be commissioned. PEDDA has granted extension in commissioning of the project up to January, 2021.

.....PSPCL has revised the tariff from 5.16/kWh to Rs. 4.29/kWh, stating that PSERC has notified the tariff of Rs. 4.29/kWh for FY 2020-21 vide Order dated 18.09.2020 in petition no. 26 of 2020 (suo-motu) considering the likely commissioning of the project in January, 2021 as per extension granted by PEDDA.

Considering the above, the tariff for the project cannot be approved at present. Moreover, the tariff determined by the Commission in its ibid Order dated 18.09.2020 is Rs. 4.30/kWh for small hydro projects below 5 MW and not Rs. 4.29/kWh, which is the tariff determined for projects with capacity 5 MW to 25 MW. As such, PSPCL is directed to file a separate application on commissioning of the project with all the relevant and necessary details, for consideration of the Commission.”

With regard to the above, it is submitted that PEDDA granted an extension in commissioning of the power project first upto January, 2021 and then further upto July, 2021. On 29.07.2021, PSPCL, granted approval for commissioning/synchronization of 0.8 MW Mini Hydel Project. The proposed tariff of Rs. 4.30/kWh is as per the generic tariff applicable for

the Hydro Projects (below 5 MW) commissioned in FY 2021-22.

2.3.2 Reply by the Respondent:

No reply has been submitted by the Respondent.

2.3.3 Commission's Analysis:

Considering the reported commissioning of the impugned hydro project in FY 2021-22, PSPCL's proposal of power procurement from this project at the stated tariff of Rs.4.30/kWh (without escalation for the term of PPA i.e. 35 years from the date of commissioning) as per terms of the generic tariff determined by the Commission for Hydro Power Projects of below 5 MW Capacity is held to be reasonable in cost considering the then prevalent investment cost/rates. Thus the Commission allows the prayer of PSPCL qua this project.

2.4 Preetech Power Pvt. Ltd., Tugalwala, Gurdaspur (MHP-0.85 MW)

[PPA dated: 16.11.2012/09.04.2021, SCoD/CoD: 19.02.2014/29.05.2019]

2.4.1 PSPCL's submission:

The Commission in Petition 17 of 2020 (Sr. No. 26) has observed/directed as under:

“As per PPA signed on 16.11.2012, the tariff is mentioned as Rs. 4.88/kWh for small hydro projects below 5 MW commissioned during the year 2012-13, as per generic Tariff Order for FY 2012-13 dated 19.07.2012 in petition no. 35 of 2012 (suo-motu). Further, the company shall be eligible for getting the approved tariff for the project commissioning year as per further tariff orders notified by PSERC. The

tariff shall remain constant throughout the tariff period following the year of commissioning.

The schedule date of commercial operation of the project was 19.02.2014. The project has been commissioned on 29.05.2019 (FY 2019-20). PEDDA has granted extension in commissioning of the project up to 29.05.2019.

PSPCL in its submissions has mentioned the tariff of the project as Rs. 5.16/kWh ... It has been further mentioned by PSPCL that due to delay in commissioning of the project, PSPCL has sought tariff negotiation with the company for which a meeting was fixed on 09.10.2020 and submitted that thereafter, supplementary PPA shall be signed with the company at the negotiated tariff, which shall be got approved from PSERC.

Considering the above and the fact that PSPCL has not informed the Commission about outcome of the negotiations which were scheduled to be held with the company on 09.10.2020, the tariff for the project cannot be approved at present. As such, PSPCL is directed to file a separate application with all the relevant and necessary details, for consideration of the Commission.”

With regard to the above, the Supplementary Power Purchase Agreement dated 09.04.2021 (**SPPA**) has been entered into between the parties after negotiations. In terms of the SPPA, the revised applicable tariff is Rs. 4.70/kWh as against the generic tariff of Rs. 5.16/kWh determined by the Commission for FY 2019-20, which shall remain in force for 35 years from the date of the commissioning. The tariff has been reduced from Rs. 4.88/kWh to Rs. 4.70/kWh (reduction of Rs. 17 paisa/kWh).

2.4.2 Reply by the Respondent:

No reply has been submitted by the Respondent.

2.4.3 Commission's Analysis:

Considering the reported commissioning of the impugned hydro project in FY 2019-20, PSPCL's proposal for power procurement at the negotiated tariff of Rs. 4.70/kWh (without escalation for the term of the PPA i.e. 35 years from the date of commissioning) against the generic tariff of Rs. 5.16/kWh determined for hydro projects of below 5 MW capacity, is considered as reasonable in cost considering the then prevalent investment cost/rates. Thus the Commission allows the prayer of PSPCL qua this project.

2.5 Chadha Sugars & Industries Ltd., Kiri Afgana, Gurdaspur [Co-Gen Bagasse: upto 18MW, PPA dated: 10.09.2012, CoD: 20.12.2010]

2.5.1 PSPCL's submission:

The Commission in Petition 17 of 2020 (Sr. No. 27) has observed/directed as under:

"As per PPA signed on 10.09.2012, the tariff is mentioned as Rs. 4.57/kWh (Rs. 1.73/kWh for fixed tariff and Rs. 2.84/kWh for variable tariff with 5% annual escalation), as applicable to the projects commissioned in FY 2010-11, as per the generic Tariff Order for FY 2010-11 dated 30.09.2010 in Petition No. 32 of 2010 (suo-motu).

It is noted that project was commissioned on 20.12.2010 (FY 2010-11). However, the PPA was signed on 10.09.2012 (FY 2012-13) by PSPCL with the generic levellised tariff of FY 2010-11 as mentioned above. By that time, the generating machinery/equipment had depreciated for two years, which prima facie, ought to have been taken into consideration while agreeing to the tariff.

In view of the above, the tariff for the project cannot be approved at present. PSPCL is directed to file a separate application forthwith with the

clarification on the above aspect and all relevant and necessary details, for consideration of the Commission. However, monthly tariff payments to the developer would continue unaffected till a final decision is taken in the matter.”

With regard to the above, a committee was constituted by PSPCL for determining the applicable fixed cost component of tariff after calculating the depreciation value of the assets for two years. The committee has recommended that the Commission may be requested to approve the tariff as under:

- i) Tariff of Rs. 4.85/kWh (Fixed Cost Rs.1.72/kWh + Variable Cost Rs.3.13/kWh) for FY 2012-13 with 5% annual escalation on variable cost component against PPA signed with the Company in FY 2012-13. This tariff shall be applicable for the tariff period of 13 years from the actual date of commercial operation. For the balance term of the agreement till the useful life of 20 years of the project, the tariff shall be determined by the commission. In case there is delay in determining the tariff by the commission, the tariff payable shall be the last escalated tariff for the 13th year till the commission determines new tariff.*
- ii) The reduction of fixed cost component of tariff by Rs. 0.01/kWh for first 12 years from the date of commissioning (20.12.2010) of the project due to capital subsidy availed by the generating company i.e., fixed cost component of tariff payable to the generating company M/s Chadha Sugar & Industries Private Limited shall be Rs. 1.71/kWh upto 19.12.2022.”*

In view of the above, PSPCL submits that the Commission may take into consideration the recommendation of the Committee and take into account the effects of Depreciation and Subsidy availed by M/s Chadha Sugar.

2.5.2 Reply by M/s Chadha Sugars & Industries Pvt. Ltd.

The submissions are summarised as under:

- a) It would be necessary to reproduce Clause No. 6 of Chapter No.1 of the Central Electricity Regulatory Commission Notification dated 16.09.2009, which reads thus:

“6. Tariff Period

(1)The Tariff Period for Renewable Energy power projects except in case of Small Hydro Projects below 5 MW, Solar PV, and Solar thermal power projects shall be thirteen (13) years.”

In view of the above, the tariff was fixed under the PPA dated 10.09.2012 in which the fixed component was Rs.1.73/kWh and Rs.2.84/kWh was the variable tariff with 5% annual escalation. The said tariff was fixed after due deliberations and it has been acted upon for almost 13 years as of now. It does not lie in the mouth of PSPCL to seek reduction of the fixed component from Rs.1.73/kWh to Rs.1.72/kWh, on the alleged ground that at the time of entering into the PPA on 10.09.2012, the generating machinery/equipment had been depreciated for two years. Thus, the present petition filed by PSPCL qua the answering respondent seeking reduction of fixed component is clearly barred by the principal of promissory estoppel and also on account of delay and laches. In any case, since the period of 13 years is going to expire on 10.09.2023 as per PPA dated 10.09.2012, no change in the tariff can be made with retrospective effect. Also, though the PPA was entered into on 10.09.2012, the tariff was fixed at the rate as was applicable in the year 2010 as the said PPA was valid for only 18 years and not 20 years. From the very start of the project in 2010 till 2012, the

power was supplied to PSPCL under Short Term PPA. As such, reduction in tariff to the tune of Rs. 0.01/kWh on the alleged account of depreciation of two years is unjustified since the power was supplied to PSPCL itself.

- b) Since the Commission had not sought comments from PSPCL for availing or non-availing of capital subsidy, therefore, the said reason as per PSPCL's Committee is not a cause of consideration before the Commission. Further, as per its own admission by PSPCL, once the tariff paid to the generating stations, including the answering respondent has been duly approved by the Commission, it cannot be reviewed without the approval of the Commission or as agreed to amendment of the PPA. Thus, the relief claimed by PSPCL in the present petition is not legally sustainable.
- c) Keeping in view the totality of the facts and circumstances mentioned above, the petition be dismissed qua the answering respondent with exemplary costs being devoid of any merit.

2.5.3 PSPCL's Rejoinder to the reply filed by M/s Chadha Sugar:

- a) PSPCL has undertaken the exercise of calculating the effect of depreciation for two years pursuant to the directions of this Commission in Petition No. 17 of 2020. In so far as M/s Chadha Sugars is concerned, PSPCL is seeking an approval of the PPA dated 10.09.2012 entered into for a period of 20 years.
- b) Further, on the issue of reduction in tariff on account of availing the capital subsidy, it is submitted that:

- (i) Before signing of the PPA, on 06.09.2012 M/s Chadha Sugars undertook to inform PSPCL in case it avails of any subsidy/grant from the MNRE (GoI). Further, in the said undertaking, M/s Chadha Sugar also stated that it shall abide by the decision of the PSPCL for reduction in tariff on account of the above benefits as per PSERC Orders/ CERC RE Tariff Regulations 2009.
- (ii) Subsequently on 28.06.2021, PEDDA provided a list of Generating Companies availing subsidies from the MNRE, which included a capital subsidy of Rs. 84.77 lakhs availed by M/s Chadha Sugar, which has been also considered by the Committee constituted by PSPCL pursuant to the directions of the Commission in its Order dated 16.12.2020 in Petition No. 17 of 2020.
- (iii) In terms of Article 2.2.1(iii) of the PPA, in case the Generating Station (Chadha Sugar) avails of any grant or subsidy for the Project, the fixed cost component of the tariff determined in the Generic tariff order is required to be re-computed. Chadha Sugar is not disputing the fact that a capital subsidy amounting to Rs. 84.77 lakhs has been availed by it. Accordingly, in terms of Clause 2.2.1(iii) read with 2.2.1(vi) of the PPA dated 10.09.2012, PSPCL is entitled to a commensurate reduction in the tariff being charged by M/s Chadha Sugar.
- c) As regards the CERC RE Tariff Regulations, 2009 adopted by the Commission vide its Order dated 30.09.2010 in suo-moto Petition No. 32 of 2010 and relied upon by M/s Chadha Sugar, Regulation 22 expressly provides that any incentive/subsidy availed by the Generating Station (herein

M/s Chadha Sugar) shall be taken into consideration by the Commission while determining the tariff. Further, Regulation 15 of the CERC RE Tariff Regulations, 2009 provides that the depreciation will be chargeable from the first year of Commercial Operation. In the present case, CoD occurred in 2010, whereas the PPA was entered into in 2012. It is relevant to note that, in the present case, the assets were already depreciated at the time of executing the PPA, and therefore, the fixed component was reduced accordingly.

- d) Any reliance on the principle of promissory estoppel by M/s Chadha Sugar, in the facts and circumstances of the present case, is misconceived. It is a settled principle that there can be no estoppel against law. [**Ref.** *Tata Chemicals Ltd. v. Commr. of Customs*, (2015) 11 SCC 628]. This is particularly when the PPA as well as the CERC RE Tariff Regulations, 2009 specifically contemplate and provide that any incentive/subsidy availed by the Generating Company has to be considered/reduced from the tariff.
- e) As regards the retrospective effect, it is submitted that tariff is a continuous process [**Ref.** *Uttar Pradesh Power Corporation Limited v. National Thermal Power Corporation Limited and Others* (2009) 6 SCC 235]. Further, Article 2.2.1 (iii) and (iv) do not stipulate any timelines. When it is brought within the knowledge of PSPCL that the Generator M/s Chadha Sugar has availed capital subsidy, PSPCL is entitled to take consequential action in terms of the PPA. This is particularly when Chadha Sugar did not inform PSPCL that it had availed a capital subsidy of Rs. 84.77 lakh.

- f) PSPCL is not seeking a review of the Tariff Order dated 30.09.2010 and/or the PPA dated 10.09.2012, but is seeking to implement the same, in terms of the applicable provisions quoted above.
- g) In addition to the above, on 16.06.2023, PSPCL advised Chadha Sugar to file a petition for re-determination of tariff for its 23 MW power plant in terms of Article 2.1.1 (i) and (v) of the PPA since the initial 13 years are coming to an end on 19.12.2023. Further, on 06.07.2023, 28.08.2023, and 28.09.2023, PSPCL again wrote letters to Chadha Sugar reiterating the contents of its letter dated 16.06.2023.

2.5.4 Commission's Analysis:

The Commission refers to its direction in Petition 17 of 2020, which reads as under:

“It is noted that project was commissioned on 20.12.2010 (FY 2010-11). However, the PPA was signed on 10.09.2012 (FY 2012-13) by PSPCL with the generic levellised tariff of FY 2010-11 as mentioned above. By that time, the generating machinery/equipment had depreciated for two years, which prima facie, ought to have been taken into consideration while agreeing to the tariff.”

- a) The Commission observes that the said observation was intended for a full tariff period of 13 years and a life period of 20 years of the project upon signing of the PPA, as envisaged under the generic tariff Orders. However, since the period of tariff/tenure of PPA has been kept as 13/20 years from the date of commissioning of the project and not from the date of signing the PPA, the Commission is in agreement with M/s Chadha Sugars that the applicable

levellised tariff ought to be considered as determined for the year of commissioning (FY 2010-11) and not the year of signing the Agreement (FY 2012-13).

Thus, the Commission is of the view that PSPCL's proposal as submitted in Petition 17 of 2020, mentioning the tariff for power procurement as Rs. 4.57/kWh (Rs. 1.73/kWh as the Levellised fixed tariff and Rs. 2.84/kWh as the variable tariff) as applicable to projects commissioned in FY 2010-11 with 5% annual escalation in the variable tariff as per terms of the generic tariff determined by the Commission for Non-Fossil Fuel based Co-Generation Projects commissioned in FY 2010-11, is in order and held to be reasonable in cost considering the then prevalent investment cost/rates. Thus, the Commission allows the same qua this project.

- b) On the issue of reduction in tariff on account of availing any incentive/subsidy by the generator, the Commission agree with M/s Chadha Sugars that the said issue is not a subject matter of consideration in the instant petition, as it was neither a part of the prayers nor the Commission's directions in Petition bearing No. 17 of 2020 pursuant to which the instant petition has been filed. However, the Commission notes that its Order dated 30.09.2010 in Petition No. 32 of 2010 (suo-motu), while determining the generic levellised generation tariff for RE Projects for FY 2010-11 has indicated its decision on the impact of such Govt. assistance/subsidy as under:

"7..... Regulation 22 of the RE Regulations stipulates that any incentive or subsidy offered by the Central or State Governments if availed by a

RE developer is also to be taken into consideration while determining tariffs. Although, CERC has quantified the per unit reduction on account of accelerated depreciation benefit, reduction in tariff on account of other incentives and subsidies has not been specified. The Commission notes that MNRE has in its communication No.3/19/2006-CPG dated 28.4.2010 conveyed the sanction of Gol for incentives/subsidies in respect of Grid Interactive Biomass Power and Bagasse Co-generation projects commissioned during 2010-11 and the remaining period of the 11th Five Year Plan..... However, such assistance/subsidy cannot be generically determined and will have to be worked out separately on the basis of project capacity. Accordingly, the Commission directs that Punjab State Power Corporation Ltd. will, before signing the Power Purchase Agreement with the developer, work out the subsidy as per formulae indicated in MNRE communications referred to above and reduce the tariff to that extent for a period of ten years.”

As such, as per the above Order of the Commission, PSPCL is mandated to work out the impact of such incentive/subsidy component, if any, and reduce the tariff to that extent before signing the PPA. The parties have the liberty to approach the Commission under the relevant provisions of the Act/Regulations/PPA in case there remains any dispute regarding the consideration/computation of the same.

- c) As regards the issue of filing of petition by the generating company for re-determination of its tariff in terms of Article 2.1.1 (i) and (v) of the PPA upon completion of 13 years of the tariff period coming to an end on 19.12.2023, the Commission is of the view that both parties can approach the

Commission for re-determination of same under the relevant provisions.

2.6 Nawanshahr Power Pvt. Ltd., Nawanshahr (Co-gen upto 13.5MW)

[PPA dated: 21.07.2014, SCoD/CoD: 12.12.2014/27.07.2017]

2.6.1 PSPCL's submission:

The Commission in Petition 17 of 2020 (Sr. No. 29) has observed/ directed as under:

“As per PPA signed on 21.07.2014... the company shall be eligible for getting the applicable tariff for the project commissioning year as per further tariff orders notified by PSERC and that the company has opted for a normative escalation factor of 5% per annum for determination of variable charge component of the tariff.

PSPCL in its submissions has mentioned the applicable tariff as Rs. 6.29/kWh (Rs. 2.74/kWh for levellised fixed tariff and Rs. 3.55/kWh for variable cost) for FY 2017-18 with annual escalation of 5% on variable cost, determined by PSERC for FY 2017-18 in its Order dated 31.10.2017 issued in petition no. 50 of 2017(Suo-motu).

It is noted that Nawanshahr Power Pvt. Ltd. has filed a Petition No. 31 of 2019 praying for determination of project specific tariff, which is presently under adjudication before PSERC. As such, the final decision with regard to applicable tariff for the project is subject to the outcome of the said pending petition.”

With regard to the above, it is submitted that the Commission vide its Order dated 29.03.2022 in Petition No. 31 of 2019 has rejected the plea of NPPL for determination of project specific tariff. Therefore, the tariff as per Order 31.10.2017 passed in Suo-Moto Petition 50 of 2017 i.e., a tariff of Rs. 6.29/kWh (Rs. 2.74/kWh for levellised fixed tariff and Rs. 3.55/kWh for variable

cost for FY 2017-18 with annual escalation of 5% on variable cost) be approved.

2.6.2 Reply by M/s Nawanshahr Power Pvt. Ltd. (NPPL)

The submissions made by NPPL are summarised as under:

- a) The present petition is time barred, as the action of the Petitioner PSPCL of seeking approval of the terms of the power purchase is patently belated.
- b) PSPCL has filed a joint petition for seeking approval of different power purchase agreement entered with different power generators having different set of terms and conditions. The Petitioner cannot be permitted to join different cause of action arising out of issues with different parties under a different set of contracts, in one common petition. PSPCL has also not even bothered to append the PPAs with the present petition in which PSPCL is seeking approval from this Commission.
- c) Further, PSPCL is seeking a relief inter-alia against the NPPL without even impleading it as a party/Respondent. As such the instant petition is not at all maintainable in the present form.
- d) PSPCL is seeking an approval of the tariff for the power project being run by NPPL in terms of the Order dated 31.10.2017 passed in Suo-moto petition 50 of 2017 i.e. a tariff of Rs. 6.29/kWh (Rs. 2.74/kWh for levelised fixed tariff and Rs. 3.55/kWh for variable cost for FY 2017-18 with annual escalation of 5% on variable cost). Although, NPPL had earlier filed a Petition No. 31 of 2019 before the Commission seeking determination of project specific tariff

for its project, the Commission vide Order dated 29.03.2022 dismissed the said petition. The said Order by the Commission has been challenged by NPPL before APTEL by way of filing an Appeal No. 297 of 2022, which is pending adjudication and is fixed for final hearing, being posted in the list of finals. Thus, once APTEL is seized of the matter with regard to the applicable tariff for the project under reference, seeking the Commission's approval with regard to the existing tariff is of no consequence. Even otherwise, any Order passed in this regard shall be subject to the final outcome/finality of the proceedings pending before APTEL. The Commission may pass appropriate Orders in the instant matter subject to outcome/finality of the pending proceedings before APTEL against the Commission's Order dated 29.03.2022.

- e) Further, PSPCL has also filed a Petition No. 19 of 2022 titled as PSPCL v. M/s Malwa Power Pvt. Ltd. and Ors. seeking contrary reliefs as to the revision of the variable cost of existing Biomass/bagasse based power projects and revision of annual escalation rate of 5% on the variable cost thereof, which is pending adjudication before the Commission. PSPCL cannot be permitted to institute/maintain different petitions seeking contrary reliefs.

2.6.3 PSPCL's Rejoinder to the reply filed by NPPL:

- a) The question of limitation is before the Commission which has prudently admitted the present matter. The present petition has been filed pursuant to the liberty granted by the Commission *vide* Order dated 16.12.2020 in Petition No. 17 of 2020. Further, no prejudice is being caused to NPPL for

PSPCL is only seeking approval of the PPA determined tariff by way of the present petition.

- b) Pursuant to the directions of this Commission *vide* Order dated 27.01.2023, PSPCL has submitted copies of the PPAs executed with the respective generators (including NPPL) by way of an Additional Affidavit dated 21.03.2023. And, this Commission has impleaded the Respondents, including NPPL, as respondents to the present petition *vide* its Order dated 27.01.2023, making such respondents formal parties in the present petition.
- c) The implications of the Order of the APTEL in Appeal No. 297 of 2022 shall be read into the tariff determined under the present petition when such order is pronounced. PSPCL submits that the PPA executed with NPPL dated 21.07.2014 shall be in operation for 20 years, i.e., until 2034. Accordingly, delaying the approval for the PPA and the power procurement process associated thereto is not in the interest of the consumers of Punjab.
- d) So far as the implication of the Petition no. 19 of 2022 is concerned, it has already been clarified that the decision in the case of the said Petition shall automatically apply and the current approval can be considered by the Commission subject to the decision in Petition No. 19 of 2022.

2.6.4 Commission's Analysis:

The Commission agrees with PSPCL that the NPPL's contention regarding the present petition being time barred is misplaced. The same has been filed as per the observations/directions contained in Petition No. 17 of 2020.

The copy of the PPAs signed by the parties with mutual consent, in support of the proposed tariffs, also stands submitted by PSPCL vide additional affidavit dated 21.03.2023. Further, though a joint petition has been filed for seeking approval of power purchase arrangement with different power generators, the Commission has proceeded to examine them separately after impleading all the concerned generators as respondents in this petition and affording them full opportunity to file their respective replies/objections, if any, to the petition. Further, on the issue of the Judgment as may be decided by Hon'ble APTEL in Appeal filed by NPPL against the Commission's Order, there are no two opinions that the same shall prevail in the matter when pronounced, subject to further process, if any, as per law, as it attains finality.

Also, as regards the Petition No. 19 of 2022 filed by PSPCL seeking review of the variable costs of existing Biomass/bagasse based power projects and revision of annual escalation rate of 5% on the variable cost thereof which is pending adjudication, the Commission will pass appropriate Orders after following due process.

In view of the above and reported commissioning of the impugned Project in FY 2017-18, PSPCL's proposal of power procurement at the stated tariff of Rs. 6.29/kWh (Rs. 2.74/kWh as levelled fixed cost and Rs. 3.55/kWh as variable cost) for FY 2017-18 with annual escalation of 5% on variable cost as per terms of the generic tariff determined by the Commission for the Bagasse based Co-Generation Projects commissioned in FY 2017-18, is held to be reasonable in cost considering the then prevalent

investment cost/rates. Thus the Commission allows the prayer of PSPCL qua this project.

2.7 Bhogpur Co-op Sugar Mills Ltd., Jalandhar (Co-gen: upto 8.54 MW)

[PPA dated: 04.12.2018, SCoD/CoD: 03.12.2020/30.12.2020]

2.7.1 PSPCL's submission:

The Commission in Petition 17 of 2020 (Sr. No. 31), has observed/ directed as under:

“As per PPA signed on 04.12.2018, the tariff is mentioned as Rs. 6.29/kWh for the projects commissioned during the year 2017-18, (FC: Rs. 2.74/kWh; VC: Rs. 3.55/kWh). The PPA further provides that this tariff will be applicable to the project w.e.f. its commissioning for the entire tariff period. The PPA also provides that an escalation of 5% per annum will be applicable on variable cost after commissioning of the project.

The Commission notes that the SCOD of the project is 03.12.2020 (FY 2020-21) and the project is yet to be commissioned. The tariff of Rs. 6.29/kWh as per the PPA as intimated by PSPCL would suffice in case the project is commissioned as per SCOD in FY 2020-21, which the Commission approves. However, in case the commissioning of the project is delayed, PSPCL will file a separate application with relevant and necessary details, for consideration of the Commission.”

With regard to the above, it is submitted that PEDDA had extended the commissioning of the cogeneration plant of Bhogpur Co-op. Sugar Mills Ltd till 30.12.2020, and on the same date, PSPCL had granted approval for synchronization/ commissioning for sale of 8.54 MW at a tariff of Rs. 6.29/kWh (Rs. 2.74/kWh for levelised fixed tariff and Rs. 3.55/kWh for variable cost with 5% annual escalation).

2.7.2 Reply by the Respondent:

No reply has been submitted by the Respondent.

2.7.3 Commission's Analysis:

It has been submitted in the instant petition that the impugned project of M/s Bhogpur has been commissioned on 30.12.2020 against its SCOD of 03.12.2020.

The Commission notes that in its Order dated 16.12.2020 in Petition No. 17 of 2020, the Commission has held that the tariff of Rs. 6.29/kWh, as per the PPA as intimated by PSPCL, would suffice in case the project is commissioned as per SCOD in FY 2020-21, which the Commission approves.

The Commission is of the view that since the year of commissioning of the impugned project remains the same i.e. FY 2020-21, it shall not entail change in the tariff.

In view of the above and considering the reported commissioning of the impugned project in FY 2020-21, PSPCL's proposal to procure power at the stated tariff of Rs. 6.29/kWh (Rs. 2.74/kWh as levelled fixed cost and Rs. 3.55/kWh as variable cost in the year of commissioning with an annual escalation of 5% on the variable cost) as per terms of the generic tariff determined by the Commission for the Bagasse based Co-Generation Projects in its Generic Tariff Order for FY 2017-18, is held to be reasonable in cost considering the then prevalent investment cost/rates. Thus the Commission allows the prayer of PSPCL qua this project.

Accordingly, the Commission approves the PSPCL's said power procurement arrangements in terms of the above observations and analysis. However, the approval of variable charges in case of the Co-Gen plants of M/s Chadha Sugars, NPPL and Bhogpur Sugar Mills dealt under Paras 2.5 to 2.7 above, being also the impleaded parties in Petition 19 of 2022 filed by PSPCL for review of applicable variable charges and rate of annual escalation on thereof, shall be subject to the Commission's decision in the said petition.

The Commission also wishes to point out that it does not approve the detailed terms and conditions of the 'PPA/SPPA', which are to be decided by the contracting parties with mutual consent.

Further, PSPCL's prayer seeking liberty to approach the Commission in case of M/s Dallanwala MHP of 0.6MW (referred to at S. No. 23 in Petition 17 of 2020) upon its commissioning has been rendered infructuous in view of cancellation of the IA/PPA by the PEDA/PSPCL as communicated by PSPCL vide its email dated 28.11.2023.

The petition is disposed of accordingly.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: 12.12.2023