

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

SITE NO. 3, BLOCK B, SECTOR 18-A, MADHYA MARG, CHANDIGARH

**Review Petition No. 06 of 2021
in Petition No. 17 of 2020
Date of Order: 23.08.2022**

Application under Section 94 (f) read with Section 86(1) of the Electricity Act for reviewing order dated 16.12.2020 passed by the Commission in the captioned matter by recalling the same to the extent of clerical error, which has apparently occurred in column No. 05 at page 18 with regard to calculation made for tariff applicable to the applicant for purchase of power from the applicant.

AND

In the matter of: M/s Sampurn Agri Ventures Pvt. Ltd. having its registered office at Unit No. 306-B, 3rd floor, B-Block, Plot No. 178-178 A, Elante Building, Industrial & Business Park, Industrial Area, Phase-I, Chandigarh

...Applicant/Petitioner

Vs

Punjab State Power Corporation Ltd. (PSPCL).
The Mall, Patiala.

...Respondent

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

Petitioner: Sh. A.S Gagrha, Advocate

Respondent: Ms. Poorva Saigal, Advocate

Order

1. The instant review application has been filed by the petitioner, for reviewing the Commission's Order dated 16.12.2020 to the extent of clerical error (in column 5 at page 18 of the Order) with respect to mentioning of the applicable levellised fixed cost for the Petitioners Bio-gas project.

2. Petitioner's Submissions:

Submissions of the Petitioner are summarized as under:

- a) The Petitioner came to know about Commission's Order dated 16.12.2020 upon receiving of demand notice/letter dated 11.10.2021 from PSPCL, asking it to deposit the excess amount allegedly paid on the basis of tariff determined in pursuance of aforesaid Orders.
- b) The PPA for purchase of power was executed with PSPCL on 07.04.2014 and the relevant clause 2.1.1 of the same regarding applicability of tariff stated that, *"the company shall be eligible for getting the applicable tariff for the project commissioning year as per further tariff orders notified by PSERC."*
- c) The project was commissioned on 24.04.2015. Therefore, it is entitled to get tariff applicable for FY 2015-16 to the Biogas based projects i.e. Rs. 3.57/kWh as the levellised fixed cost and Rs. 4.29/kWh as the variable cost in pursuance of Suo-Motu Order dated 24.07.2015 passed by the Commission in petition no. 43 of 2015. Whereas, in column no. 5 at page 18 of the Order, fixed cost has been mentioned as Rs. 3.30/kWh, which was applicable for the projects commissioned in year 2013-14.

d) In view of above, appropriate direction/order may kindly be passed to rectify and/or clarify the tariff applicable to the applicant company so that ambiguity created due to a clerical error be cleared. And/or operation of the impugned order dated 16.12.2020 be stayed during the pendency of the present application so that recovery in pursuance of notice dated 11.10.2021 may not be effected during the pendency of the present application.

3. After hearing the review petitioner, the petition was admitted vide Commission's Order dated 21.01.2022 with directions to PSPCL to file its reply. PSPCL filed its reply dated 07.02.2022.

4. PSPCL's Reply

Submissions of PSPCL are summarized as under:

a) The specific prayer made by the review petitioner is in regard to the approval of a Fixed Cost of Rs.3.30/kWh (fixed cost pertaining to the projects commissioned in FY 2013-14) whereas the project was actually commissioned on 24.04.2015 (FY 2015-16) wherein the fixed cost had been fixed at Rs. 3.57/kWh.

b) In accordance with Article 2.1.1 (i), the Review Petitioner is entitled to the tariff as determined by the Commission for the year of commissioning (FY 2015-16). However, Article 2.1.1 (vii) envisages the signing of a supplementary PPA in case the SCOD falls in a year subsequent to 2013-14. No such supplementary PPA has been signed, but PSPCL has been paying the tariff to the petitioner as applicable to the projects commissioned in FY 2015-16 i.e. Fixed Cost of Rs. 3.57/kWh determined by the Commission in Generic Tariff Order dated 24.07.2015 in Petition

No. 43 of 2015 for the biogas based projects commissioned during FY 2015-16.

c) After Commission's Order dated 16.12.2020 in petition no. 17 of 2020 (considering fixed cost of Rs. 3.30/kWh), PSPCL intimated the review petitioner and sought the recovery of Rs. 2.31 Lac as per the Order passed by the Commission.

5. In the hearing held on 24.03.2022, the learned Counsel for the review petitioner submitted that rejoinder is not required to be filed. Accordingly, the matter was listed for arguments. During the arguments, the learned counsel for PSPCL submitted that for allowing the prayer sought by the review petitioner it is required that both the parties enter into a supplementary PPA; the review petitioner expressed its willingness to enter into the Supplementary PPA. In the final arguments held on 10.08.2022, it was submitted that though PSPCL is not interested in executing the supplementary PPA, it shall abide by the decision as may be made by the Commission in the matter. After hearing the parties, the Order was reserved vide Commission's Order dated 12.08.2022.

6. Findings and Decision of the Commission

The Commission has carefully gone through the submissions and arguments made by the parties. The findings and decision of the Commission in the matter is as under:

a) The Petitioner's plea is that its Biogas based project was commissioned in FY 2015-16 and thus it is entitled to the levellised fixed cost of Rs. 3.57/kWh as determined by the Commission for such projects commissioned during the said year.

b) PSPCL, while agreeing with the above plea of the Petitioner has further contended that Article 2.1.1 (vii) envisages the signing of a supplementary PPA in case the SCOD falls in a year subsequent to 2013-14. While no such supplementary PPA has been signed, PSPCL has been paying the tariff to the petitioner as applicable to the projects commissioned in FY 2015-16 i.e. Fixed Cost of Rs. 3.57/kWh as determined by the Commission in Generic RE Tariff Order dated 24.07.2015 for the biogas projects commissioned during FY 2015-16. However, it has sought recovery of the excess amounts paid only after the Commission's Order dated 16.12.2020 mentioning therein the applicable fixed cost as Rs. 3.30/-unit for this project.

c) The Commission observes that both the parties are on the same page regarding the year of project's commissioning i.e. FY 2015-16 and the applicable levelled fixed cost of Rs. 3.57/kWh for the commissioning year. The Commission also finds it prudent to refer to the relevant terms of the PPA between the Petitioner and PSPCL, specifying as under:

"2.1.1 The PSPCL shall purchase and accept all energy made available at the interconnection point from the Generating Company's Facility, pursuant to the terms and conditions of this Agreement at the rate approved by the Commission in its order dated 25.06.2013 on Suo Moto Petition No. 37/2013, which is set below:

(i) *Rs. 6.91/- per unit for the projects commissioned during year 2013-14, comprising of levelled fixed tariff of Rs. 3.30/-unit and variable first year tariff of Rs. 3.61/- per unit.*

However, the Company shall be eligible for getting the applicable tariff for the project commissioning year as per further tariff orders notified by PSERC....

.....
(vii) In case the Scheduled Date of Commercial Operation as per clause 10 of the Agreement falls in the year 2013-14 or subsequently, then the tariff and other financial terms & conditions will be as per the orders of the Commission for the relevant year. In such a case, both parties shall sign Supplementary Agreement for the applicable tariff and other financial terms & conditions...

The Commission notes that, since the project has been commissioned in FY 2015-16, as such in term of the PPA, it is entitled to a levellised Fixed Cost of Rs. 3.57/kWh, as determined by the Commission for such Biogas based Power Projects commissioned during the year 2015-16. Further, the Commission observes that as is evident from the above extract of the PPA; “signing of Supplementary Agreement for the applicable tariff and other financial terms & conditions” is not a pre-requisite but a follow up action and the use of the words “shall sign” makes it obligatory and mandatory for the contracting parties to sign the supplementary PPA. In such a case, both parties are mandated to sign Supplementary Agreement so as to incorporate therein the applicable tariff and other financial terms & conditions as per the relevant year of commissioning.

Thus the Commission observes that mentioning of the Fixed Cost of Rs. 3.30/kWh (i.e. the levellised Fixed Cost determined for FY 2013-14) in the Commission’s Order dated 16.12.2020 in petition no. 17 of 2020 for the Petitioner’s Biogas project commissioned in FY 2015-16, was an inadvertent error. Accordingly, the Commission amends the relevant para for the Petitioner project in the Commission’s said Order, to substitute the words “FC of Rs.

3.30/kWh (FY 2013-14)” with “FC of Rs. 3.57/kWh (FY 2015-16)”. The parties may compute the tariffs applicable to the Petitioner project for the respective years accordingly and sign the supplementary PPA as mandated in the original PPA.

The prayer of the petitioner is thus allowed in terms of the above.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: 23.08.2022

