

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

Review Petition No. 2 of 2017
in Petition No. 53 of 2016
Date of Order: 09.08.2017

Present: Shri D.S. Bains, Chairman
Shri S.S. Sarna, Member

In the matter of: Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 64 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 read with Order 47, Rule 1 of Code of Civil Procedure, 1908 for Review of Order dated 06.12.2016 in petition no. 53 of 2016 passed by this Hon'ble Commission.

In the matter of: Punjab State Power Corporation Limited

... Review Petitioner

Versus

1. Sukhbir Agro Energy Ltd., Faridkot Road, Guru Har Sahai, District Ferozepur, Punjab - 152022
2. Punjab Energy Development Agency (PEDA), Plot No.1 & 2, Sector 33-D, Chandigarh.
3. State of Punjab, Deptt. of Technology, Environment and Non Conventional Energy, Civil Secretariat, Chandigarh.

....Respondents

ORDER

PSPCL has filed the present Review Petition seeking review of the Order dated 06.12.2016 passed by the Commission in Petition No. 53 of 2016 filed by Sukhbir Agro Energy Limited (SAEL), whereby, the Commission determined the tariff for two 100% rice straw based

biomass power projects proposed to be set up by SAEL in the State of Punjab at village Jaitu, District Faridkot and village Ferozshah, District Ferozpur. While determining the said tariff, the Commission allowed the generic levelled generation tariff for biomass based power projects using exclusively (100%) rice straw as fuel determined by it for FY 2016-17 vide Order dated 23.11.2016 passed in Petition No. 55 of 2016 (Suo-Moto) for the ibid projects.

2. The grounds on which review has been sought in the present petition are as under:

- i) allowing SAEL to set up the two 100% rice straw based biomass power projects in the State even when the technology proposed to be used in the said projects is yet to be proven (as required under the Request for Proposal (RfP) issued by PEDDA with respect to 100% rice straw based power plants;
- ii) allowing the fuel price of Rs. 3342.60 per MT as determined by the Central Electricity Regulatory Commission(CERC) for 100% rice straw based biomass power plants of SAEL even when rice straw is available in the State free of cost as per this Hon'ble Commission's own observations;
- iii) not considering the statutory option made available under the Amendment dated 18.03.2014 to the CERC RE Regulations, 2012 for constituting a Committee to determine the cost of rice straw annually on the basis of an independent market survey so as to arrive at realistic biomass fuel price for the SAEL's projects; and
- iv) opining that in the long run, purchasing power from renewable energy projects set up in the State should be the preferred option

for RPO compliance by PSPCL, thereby putting fetters on the rights of PSPCL to act in furtherance of its commercial prudence and fulfill its Renewable Purchase Obligation (RPO) mandated under section 86(1) (e) of the Electricity Act, 2003 and the Tariff Policy framed thereunder through preferential tariff route or through the route of Renewable Energy Certificates(RECs).

3. The Commission has carefully gone through the grounds on which review has been sought and observes as under:

- i) The issue of proven technology to be used in the biomass based power projects was well appraised and it was observed in the Commission's Order dated 06.12.2016 that in terms of the RfP, the certificate of proven technology certifying that the machinery & equipment to be installed for the said two 100% rice straw based biomass power projects by SAEL is fully capable for exclusive use of rice straw as fuel, is to be issued at the time of submitting the documents for financial closure, and that PEDDA shall take care of the same and issue the relevant certificate to PSPCL at the appropriate time, on the basis of documents/demonstration given by SAEL after fully satisfying itself. It was further directed that a clause in the PPA shall be incorporated to this effect at the time of signing the same. Therefore, the ground is not fit for review.
- ii) Pertaining to the issue of fuel price for 100% rice straw based biomass power plants, the Commission in its Order dated 06.12.2016 observed that though rice straw is available for free as the same is being burnt by the farmers in the open fields, however, the same needs to be collected, baled and transported to the storage/project site. Also, almost 11 months' requirement

would need to be stored. It was further observed that normally the fuel handling/transportation costs could be estimated as 10-15% of the fuel cost. However, in the case of rice straw, this component is perceived to be higher where additional equipment/transportation/storage could be required. The Commission opined that allowing the same process for rice straw as that allowed for biomass other than rice straw, considered by CERC, is justifiable on above account considering that the price of rice straw is insignificant. Accordingly, the fuel price of Rs.3342.60 per MT appears to be fair and just.

- iii) As regards the issue of constituting a committee for determination of cost of rice straw annually on the basis of amendment in Regulation 44 carried out vide the First Amendment dated 18.03.2014 of the CERC RE Regulations, 2012, the same was well considered in the Commission's Order dated 06.12.2016. The Commission observed that it has dealt with the same in its generic Tariff Order dated 23.11.2016 and reiterated the views already expressed in its Order dated 05.09.2014 in petition no. 42 of 2014 (Suo-Motu) to the effect that the methodology for determination of the fuel price annually by applying the fuel price indexation mechanism specified in Regulation 45 of CERC RE Regulations, 2012 adopted by the Commission is a preferable option and the same is fair and just. The same shall continue to apply.
- iv) The issue of RPO compliance in the long run was duly considered and discussed in the Commission's Order dated 06.12.2016 and it was observed that purchasing power from renewable energy projects set up in the State should be the preferred option which

would be beneficial to (i) PSPCL in respect of RPO compliance (ii) the people and the State in terms of employment generation and (iii) the environment due to an efficient and fruitful utilization of biomass / rice straw.

The Commission further observes that in Petition No. 61 of 2016 in the matter of petition filed by PSPCL for allowing carry forward of the shortfall of RPO compliance for FY 2015-16 to FY 2016-17, PSPCL had strongly contended to comply RPO through purchase of renewable energy rather than RECs which were stated to result in revenue expenditure without there being any purchase of electricity or RE capacity addition in the State of Punjab.

In view of the above, the Commission observes that all the issues raised by PSPCL in the present Review Petition were duly considered and decided after giving appropriate opportunity of being heard to each side. Therefore, now by filing the instant Review Petition, the said issues cannot be reviewed.

4. The Commission observes that review of an order / decision can be sought by an aggrieved person if there is discovery of any new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person or could not be produced by him at the time when the Order was passed by the Commission or on account of some mistake on the face of record. The Commission notes that section 94 (1)(f) of the Electricity Act, 2003 provides for the Commission to review its decisions, directions and orders. Further, the scope of power of review as envisaged under Order 47 Rule 1 of the Code of Civil Procedure, 1908 is as under:

“1. Application for review of judgment - (1) Any person considering himself aggrieved —

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order....”

Regulation 64 of the PSERC (Conduct of Business) Regulations, 2005 pertaining to the Review of the decisions / directions and orders, stipulates that

“Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decision / order was passed by the Commission or on account of some mistake or error apparent on the face of record, or for any other sufficient reason, may apply for review of such order within 60 days of the date of decision / order of the Commission.”

The Commission notes that all the issues raised by PSPCL in the Review Petition were already considered by it while passing the Order dated 06.12.2016 in Petition No.53 of 2016, as brought out above. The Commission further observes that no new facts or evidence has been put forward by PSPCL in the Review Petition in terms of the aforementioned Rules/Regulations. Also, no mistake or error apparent on the face of record has been brought out in the Review Petition. In view of the above, the Commission finds that the Review Petition is not maintainable on the ground that it lacks the stipulated requirements for entertaining the same. Therefore, the Review Petition is not admitted.

Sd/-
(S.S. Sarna)
Member

Sd/-
(D.S. Bains)
Chairman

Chandigarh
Dated: 09.08.2017