

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

**Petition No.64 of 2012  
Date of Order: 28-02-2013**

In the matter of : Petition under Section 61 and 86 of the Electricity Act, 2003 for directing the PSPCL for purchase of upto 5 MW surplus power from Petitioner's NRSE Co-Generation Power Plant, which is located in Distillery Campus at Village Banur, Tehsil Mohali, District S.A.S. Nagar, Punjab in order to promote co-generation and generation of electricity from renewable sources of energy as envisaged under the Electricity Act, 2003, National Electricity Policy, Tariff Policy and the NRSE Policy of Govt. of Punjab.

AND

In the matter of: Chandigarh Distillers & Bottlers Limited having its Head Office at SCO.140-141, Sector 34-A, Chandigarh through Shri Pushpinder Singh Mamik, Authorized Signatory

Versus

1. Punjab State Power Corporation Limited (PSPCL) through its Chairman cum Managing Director, The Mall, Patiala
2. Punjab Energy Development Agency (PEDA) through its Director, Plot No. 1 &2, Sector 33-D, Chandigarh.

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

**ORDER**

This petition has been filed by Chandigarh Distillers & Bottlers Limited (CDBL) under Section 61 and 86 of the Electricity Act, 2003 for directing Punjab State Power Corporation Limited (PSPCL) for purchase of upto 5 MW surplus power from the NRSE Co-generation Power Plant of the petitioner (Plant). The Plant is located at Village Banur, Tehsil Mohali, District S.A.S. Nagar, Punjab. The petitioner has stated that it is a Public Limited Company

under the Companies Act, 1956. It has set up a power generation plant of 8.25 MW capacity in co-generation mode. The petitioner proposes to use about 3 MW power for captive use and surplus power upto 5.25 MW is proposed to be sold to PSPCL at preferential tariff under long term agreement. The Plant is connected to PSPCL Grid at 66 kV in the form of LILO arrangement in Rajpura-Derabassi line. The Plant uses Biomass and Biogas as its fuel, primarily NRSE fuel i.e. Rice husk and Biogas and is covered under NRSE Policy of Government of Punjab. The petitioner has further submitted that power from 18.08.2007 to 31.03.2011 was sold to PSPCL/erstwhile PSEB at NRSE tariff under NRSE Policy, 2006 by way of signing Short Term Power Purchase Agreements. Thereafter power from the plant has been sold through open access under Renewable Energy Certificate (REC) mode from 07.4.2011 to 31.07.2011. The petitioner has stated that the levy of full wheeling charges, cross subsidy surcharge and electricity duty has made the open access and sale of power under Renewable Energy Certificate route unviable now. The petitioner approached PSPCL to sell power at Average Power Procurement Cost (APPC), but PSPCL refused to buy power at APPC rates. Thereafter the petitioner filed a petition before this Commission and this Commission directed PSPCL to allow CDBL to sell power under open access. It has been stated that now PSPCL has come out with another proposal to amend Open Access Regulations for levying full wheeling charges on power wheeled outside the State and that this will further make Open Access unviable and sale of power under REC route non-remunerative. The petitioner has submitted that this Commission has already determined 532 paise per unit as generic tariff (190 paise as fixed charges and 342 paise as fuel cost) for NRSE Co-generation Plants for 2012-13. This Commission has also worked out tariff for NRSE Co-generation Plants set up in previous years which did not have Power Purchase Agreements with PSPCL under new Renewable Energy Tariff Order. The petitioner has made following prayer to the Commission:

- (a) To fix remunerative tariff for sale of surplus Renewable Energy Power to PSPCL from 8.25 MW Co-generation Plant of the petitioner set up in Distillery Unit at Village Banur, District SAS Nagar, Punjab.

- (b) To pass any such order as may be deemed fit and just in the light of facts and circumstances of the case.

2. The petition was admitted vide Order dated 13.12.2012 and PSPCL and Punjab Energy Development Agency (PEDA) were directed to file replies by 01.01.2013. PEDA filed its reply by way of para wise comments on the petition vide No.6175-77 dated 22.01.2013 and submitted that the petitioner needs to submit the certificate regarding date on which the synchronization and power injection on commercial basis started into PSPCL grid. The capacity of the co-generation plant is stated to be 8.25 MW and the net energy after auxiliary consumption of approximately 1 MW will be 7.25 MW. The captive consumption is stated to be about 3 MW, as such saleable surplus will be 4.25 MW and not upto 5.25 MW as stated in the petition. The petitioner had signed Implementation Agreement (IA) for 8.25 MW NRSE based power plant with PEDA on 29.01.2007 under NRSE Policy, 2006, however the long term PPA with PSPCL has not been signed by the petitioner. PEDA has further stated in its reply that power being generated by the petitioner is RE power and will count towards RPO of PSPCL and therefore grant of generic tariff and signing of long term PPA will help in meeting with the RPO targets of the Utility besides utilization of existing installed RE capacity in the State. PEDA prayed that in view of its submissions, the Commission is requested to take appropriate decision in the matter. PEDA filed additional submissions vide No.6889-91 dated 08.02.2013 with the request to take these on record. It has stated in its additional submissions that the commercial operation date (COD) of 8.25 MW co-generation plant of the petitioner is 18.08.2007 and the issue under contention is covered under NRSE Policy, 2012. Therefore, the petitioner should withdraw its petition and approach PEDA under clause 5 of the policy for facilitation and signing of long term PPA with PSPCL on the last escalated tariff of NRSE Policy, 2006.

3. PSPCL in its reply dated 24.01.2013 has submitted that CDBL had signed long term power purchase agreement dated 14.02.2005 for the sale of 2.5 MW power from their 3.9 MW TG set. As per clause 2.0 of the said PPA,

the applicable rate for purchase of power was Rs.3.01 per kWh with base year 2001-02 plus 3% annual escalation upto 2005-06 and no escalation thereafter. The said PPA is valid for a period of 20 years from the date of commencement of supply of power extendable to further 10 years through mutual agreement as per clause 12.1.0 of the PPA. It is further provided under clause 2.1.3 of the PPA that the petitioner will plan extension/ expansion / upgradation of the co-generation facility / load in such a way that minimum 40 lac units of energy per annum will be available for sale to erstwhile PSEB (now PSPCL) during the term of agreement. In view of the above said contractual obligation, the petitioner is bound to supply 40 lac units of energy per annum from 8.25 MW TG set firstly as per PPA dated 14.02.2005. Further the petitioner has signed IA with PEDDA under NRSE Policy, 2006 on 29.01.2007 but has not signed the Long Term PPA with PSPCL for 8.25 MW TG set as per this IA. PSPCL has purchased power at NRSE Policy 2006 rate during years 2008-09, 2009-10, 2010-11 and 2011-12 (from 04.11.2011 to 31.03.2012) on short term basis from 8.25 MW TG set. This Commission had allowed the petitioner to sell power under Open Access outside or within the State of Punjab from 8.25 MW Co-generation Plant vide Order dated 27.08.2012 passed in Petition No.34 of 2012 filed by the petitioner. However as per Order dated 27.08.2012, the petitioner shall also be bound to fulfill all its contractual obligations under long term PPA dated 14.02.2005. PSPCL has further submitted that tariff determined @ 532 paise per unit as generic tariff for NRSE co-generation Plants for 2012-13 is applicable only for RE Projects to be commissioned during FY 2012-13. PSPCL has also submitted that it shall purchase power from this project as per applicable tariff for this project under NRSE Policy. The PSPCL has prayed that the petitioner shall be bound firstly to fulfill all its contractual obligations under the long term PPA dated 14.02.2005 and tariff may be decided for execution of long term PPA as applicable under NRSE Policy.

4. PSPCL has submitted that the petitioner is supplying power to PSPCL from two TG sets of 3.9 MW and 8.25 MW capacity each. As per PSPCL submission, for Unit of 3.9 MW capacity, the petitioner had signed Power Purchase Agreement dated 14.02.2005 for 20 years. The petitioner has

supplied power to PSPCL from 8.25 MW Unit on short term basis at tariff as per NRSE Policy, 2006. It was observed that the metering arrangement for these Units of 3.9 MW and 8.25 MW is not independent of each other. The Commission directed PSPCL and the petitioner vide Order dated 30.01.2013 to make independent metering arrangement for two TG sets and submit a detailed report in this regard along with single line diagram within 2 weeks. PSPCL filed drawing showing the metering arrangement for metering energy of separate generators vide C.E./ARR & TR memo No.5216 dated 11.02.2013. PSPCL has submitted that the separate metering for TG set 8.25 MW and 3.9 MW is possible and presently separate meters have already been working at M1 location and M2 location as per single line diagram. The export meter for PSPCL at 66 kV voltage level, location M3 as shown in single line diagram is already working. Therefore as per existing arrangement generation from both TG sets can be measured separately through separate meters at generating ends. PSPCL filed additional submission during hearing of petition on 08.02.2013 stating that the firm has already signed short term PPA which is valid upto 31.03.2013 which may be considered while deciding the applicable tariff. After hearing the petitioner, PEDDA and PSPCL, further hearing of the petition was closed vide Order dated 21.02.2013. The Order was reserved.

5. **Observations of the Commission:**

Considering the submissions made in the petition, replies of the respondents, additional and written submission(s), the Commission observes as here under:

- i) The petitioner has prayed for fixing tariff for sale of surplus power upto 5.25 MW from its 8.25 MW co-generation power plant on long term basis to PSPCL at preferential tariff to be determined by the Commission.
- ii) The co-generation plant of 8.25 MW capacity of the petitioner was commissioned on 18.08.2007. The petitioner has been selling surplus power on short term basis to PSPCL upto 31.03.2011, under open access from 07.04.2011 to 31.07.2011 and thereafter again to PSPCL from 04.11.2011 to 31.03.2012.

iii) The petitioner is supplying power (upto 6 MW) from the said plant to PSPCL on short term basis under a Power Purchase Agreement (PPA) w.e.f. 12.04.2012 to 30.06.2012 which was further extended twice upto 31.12.2012 and is currently valid upto 31.03.2013.

iv) The petitioner has also submitted that the Commission has determined the tariff for other co-generation projects.

v) PSPCL has expressed its readiness to purchase power from petitioner's said co-generation plant on long term basis as per applicable tariff decided by the Commission under NRSE (new and renewable sources of energy) Policy. PSPCL has requested that the existence of a PPA for supply of power on short term basis upto 31.03.2013 be kept in view.

vi) PSPCL has submitted that the petitioner had signed a long term PPA dated 14.02.2005 for sale of 2.5 MW power from their 3.9 MW TG set at a tariff of Rs. 3.01 /kWh (base year 2001-02) with 3% annual escalation upto 2005-06 and thereafter no escalation was to be allowed. The said PPA is valid for a period of 20 years and extendable to further 10 years through mutual agreement. PSPCL has further submitted that as per clause 2.1.3 of the said PPA, the generating company was to plan its extension/expansion/upgradation of co-generation facility in such a way that minimum 40 (forty) lac units of energy will be available for sale to PSPCL during the term of PPA. PSPCL has requested that the petitioner is bound firstly to fulfil its contractual obligations under the said PPA.

vii) PSPCL has submitted the single line diagram depicting the interconnection of its distribution system with the generating units of the petitioner confirming its suitability for separate/independent metering for supply of power from each of the two generating units of the petitioner.

viii) PEDDA has submitted that the Implementation Agreement (IA) was signed with the petitioner on 29.01.2007 for the 8.25 MW NRSE Project under the NRSE Policy, 2006 and signing of PPA on generic tariff for long term supply of renewable power by the petitioner will count towards compliance of the renewable purchase obligation (RPO) by PSPCL.

ix) PEDDA has further submitted that the issue under contention has been duly covered under the NRSE Policy, 2012 notified by the Government of Punjab and therefore, the petitioner should withdraw the petition and approach PEDDA under clause 5 of the said Policy for facilitation and signing of long term PPA with PSPCL on the last escalated tariff of NRSE Policy, 2006, which was Rs. 4.04/- per kWh for such projects.

x) Perusal of the relevant sub-clause 5.3 of the NRSE Policy, 2012 reveals that NRSE based captive/co-generation 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 IA will be allowed to do so to facilitate power purchase by PSPCL/Licensee only on long term basis at the last escalated tariff of NRSE Policy, 2006 payable for FY 2011-12.

6. **Findings and Decision of the Commission:**

i) Considering the aforementioned observations, the Commission finds that the petitioner's offer for supply of upto 5.25 MW power under a PPA on long term basis from its said 8.25 MW non-fossil fuel based co-generation plant commissioned on 18.08.2007 (FY2007-08), at tariff to be determined by the Commission, is acceptable to both the respondents (PSPCL and PEDDA) subject to observations. PSPCL has requested that the existence of a PPA for supply of power on short term basis upto 31.03.2013 be kept in view. On its part, PEDDA has stated that the petitioner should withdraw its petition and approach PEDDA under clause 5 of the NRSE Policy, 2012.

ii) In its Order of 13.12.2007, the Commission while accepting the tariff as proposed in the NRSE Policy, 2006 had observed that

*“These rates will be considered the minimum rates that a NRSE developer can claim. It is entirely possible that NRSE projects adopting different technologies and/or fuels might need enhanced rates for their encouragement. Therefore, individual developers would be free to approach the Commission for determination of such rates. The Commission will, at that stage, decide whether rates are to be approved individually in each case or generically for a category of cases.”*

iii) In its earlier Orders on similar petitions, the Commission has expressed that the Commission is mindful of several provisions in the Electricity Act, 2003 (Act), the Tariff Policy and the National Electricity Policy framed under Section 3 of the Act, which enjoins the Central Govt. to prepare the National Electricity Policy and the Tariff Policy with a view to developing the power system based on optimal utilization of resources such as coal, natural gas, nuclear substances, hydro and renewable sources of energy. Sections 61 and 86 (1) (e) of the Act further mandate that the Commission while determining tariffs would be guided by the need to promote co-generation and generation of electricity from renewable sources of energy. Furthermore, para 6.4 of the Tariff Policy provides for preferential tariffs to be determined by the Commission for renewable energy projects while para 5.2.20 of the National Electricity Policy requires adoption of suitable promotional measures for encouraging higher generation from renewable energy sources.

iv) In this regard, the Commission would like to reiterate its observations/findings in its earlier Orders as here under:

*“..... The Commission also takes note of the observations of the Hon’ble Appellate Tribunal for Electricity in the case of Rithwik Energy Systems Ltd. and others versus Transmission Corporation of Andhra Pradesh Ltd. and others. In its judgment dated 28.9.2006, the Hon’ble Tribunal was pleased to observe that*

***‘A distinction, however, must be drawn in respect of a case, where the contract is re-opened for the purposes of encouraging and promoting renewable sources of energy projects pursuant to the mandate of section 86(1)(e) of the Act, which requires the State Commission to promote cogeneration and generation of electricity from renewable sources of energy.’***

*In para 35 of the order, the Hon’ble Tribunal further observed that it is bounden duty of the Commission to incentivize generation of electricity from renewable sources of energy and that PPAs can be reopened only for the purposes of giving thrust to non-conventional energy projects.”*

In the light of the above, the Commission concludes that the PPA for supply of power on short term basis upto 31.03.2013 signed between the

petitioner and PSPCL would not stand in the way of considering appropriate tariff for the said project for supply of power on long term basis.

v) In respect of the submission of PEDDA that the petitioner should execute long term PPA at the last escalated tariff of NRSE Policy, 2006 payable for FY 2011-12 as per clause 5 of NRSE Policy, 2012, the Commission observes that such an anomalous provision will place the petitioner's project at an adverse pedestal as compared to several other projects implemented under the NRSE Policy, 2006 in the past, where the Commission has determined the tariff. Moreover, it has been admitted by PEDDA that the petitioner did sign the IA on 29.01.2007 under the NRSE Policy, 2006 and thus the aforementioned submission of PEDDA is devoid of any merit.

vi) The Commission determines the tariff for the renewable energy projects in accordance with its Regulations. For the purpose, the Commission in its Order dated 19.07.2012 adopted the Central Electricity Regulatory Commission (Terms and Conditions for tariff determination from Renewable Energy Sources) Regulations, 2012 with State specific modifications in respect of non-fossil fuel based co-generation projects (RE Regulations, 2012). The Commission has already determined the generic tariff for various RE technologies for the year 2012-13 in its Order dated 19.07.2012 in accordance with the aforementioned RE Regulations. As per these Regulations, the tariff for renewable energy technologies/projects where biomass fuel mix is used, is to be determined in two part parts i.e. levelled fixed cost and variable cost.

vii) For working out the levelled fixed cost of the petitioner's project for the year of applicability of tariff i.e. FY 2012-13, the Commission intends to determine the capital cost of petitioner's co-generation project commissioned in FY 2007-08 for that year by applying the capital cost indexation mechanism as specified in the RE Regulations, 2012, on the normative capital cost of Rs. 420 lac per MW for non-fossil fuel based co-generation projects for the year 2012-13 and then depreciate it to the applicable year of tariff i.e. FY 2012-13. Accordingly, the normative capital cost for the petitioner's project for the year 2007-08 comes to Rs. 356.735 lac per MW which, after depreciation at the

standard book depreciation rate of 5.28% per annum upto FY 2012-13, works out to Rs. 271.99 lac per MW for the year 2012-13. With this capital cost and using normative parameters for FY 2012-13, the levellised fixed cost works out to Rs.1.53 per kWh. The variable cost for FY 2012-13 for the petitioner's project would be the same as allowed to other such projects to be commissioned in the State in the year 2012-13 as per Commission's Order dated 19.07.2012 i.e. Rs. 3.42 per kWh.

viii) Accordingly, the tariff payable for the petitioner's project is depicted in the following table:

Tariff for the year 2012-13				
Levell-ised Fixed Cost (Rs/kWh)	Variable Cost (FY 2012-13) (Rs/kWh)	Applicable Tariff Rate (Rs/kWh)	Benefit of Accelerated Depreciation, if availed (Rs/kWh)	Net Applicable Tariff Rate upon adjusting for Accelerated Depreciation benefit (3 - 4) (Rs/kWh)
1	2	3	4	5
1.53	3.42	4.95	0.08	4.87

ix) The above tariff shall be payable to the petitioner prospectively with effect from the date of issue of this Order but shall be paid after signing of the PPA for supply of power on long term basis with PSPCL. Both the parties are directed to sign the PPA afresh for supply of power on long term basis expeditiously. The levellised fixed component will remain the same during the tariff period. However, the variable component will change each year based on whether the petitioner opts for fuel price indexation or normative escalation factor of 5% as per RE Regulations 2012. The tariff period shall be for a minimum thirteen (13) years from the date of application of tariff determined in this Order.

x) Further, in accordance with Regulation 22 of the RE Regulations, 2012, any incentive or subsidy offered by the Central or State Governments if availed by the generating company for the renewable energy power plant(s), is to be deducted while determining tariff. Although per unit reduction on

account of accelerated depreciation benefit has been quantified, reduction in tariff on account of other incentives and subsidies has not been specified. In the circumstances, the Commission directs that PSPCL will work out subsidy/incentive, if any, availed by the petitioner as per the scheme(s) of the Ministry of New and Renewable Energy, Govt. of India and reduce the tariff to that extent for the period of 12 years. Also tariff adjustment will be made on account of subsidy/grant/incentive of the Govt of Punjab, if any, availed by the petitioner. Further, sharing of CDM benefits will be as per the RE Regulations 2012.

xi) With regard to the submission of PSPCL in respect of petitioner's obligation under the earlier PPA dated 14.02.2005, Commission's Order dated 27.08.2012 in petition no. 34 of 2012 filed by the petitioner may be referred to wherein it has been held that ".....the petitioner shall be bound to fulfil all its contractual obligations under the long term PPA dated 14.02.2005.....".

The petition is disposed of accordingly.

**Sd/-  
(Gurinderjit Singh)  
Member**

**Sd/-  
(Virinder Singh)  
Member**

**Sd/-  
(Romila Dubey)  
Chairperson**

**Chandigarh  
Dated: 28-02-2013**