

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

**Petition No. 72 of 2012  
Date of Order: 28-02-2013**

In the matter of : Petition under Section 61 and 86 of Electricity Act, 2003 for determination/grant of generic/preferential tariff and directing Respondent No.1 for purchase of surplus power upto 7 MW from petitioner's 12 MW Co-Generation Power Plant at Phagwara, District Kapurthala on long term basis at tariff so determined as per CERC RE Regulations duly adopted by PSERC in order to promote co-generation and generation of electricity from renewable sources of energy as envisaged under Electricity Act, 2003, National Electricity Policy, Tariff Policy and NRSE Policy of GoP.

AND

In the matter of Wahid Sandhar Sugars Limited (WSSL) having its Registered Office at G.T.Road, Phagwara-144401 through Shri Chander Mohan Narula, General Manager

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**

The petitioner has submitted that it is a Public Limited Company under the Companies Act, 1956 and operates a Sugar Mill and Power Generation Plant in co-generation mode at Phagwara in the State of Punjab. The Power plant of 12 MW capacity was commissioned commercially on 17.04.2009 and it has been running the same on Captive cum Merchant basis. An Open Access Agreement dated 15.04.2009 was signed by the petitioner with erstwhile Punjab State Electricity Board. The petitioner has been selling power on short term basis in open market / power exchange and to Punjab

State Power Corporation Limited (PSPCL) since the commissioning of the project and presently has a short term power purchase agreement with PSPCL valid upto 31.03.2013. The project is connected to 33 kV Sub-Station of PSPCL at Hoshiarpur Road Phagwara. The Project mainly uses bagasse as fuel during the crushing season of the Mill and left over bagasse and rice husk during non-crushing season. The project is also capable of using other fuels such as wheat straw, wood cuttings and other biomass fuels in small quantities by mixing with rice-husk.

The petitioner has further submitted that power sold to PSPCL is counted towards RPO of the PSPCL. The petitioner has signed short term PPA with PSPCL during FY 2012-13 @ tariff rate of Rs.4.04 per unit as per NRSE Policy, 2006. It is the submission of the petitioner that due to amended wheeling charges of 143 paise/unit for open access vide Order dated 13.12.2012 of the Commission passed in Petition No.58 of 2012, revision of UI rates by CERC and rise in the rates of rice-husk, the Merchant NRSE plants have become totally unviable. It is, therefore, not possible to generate power and sell it to PSPCL at the fixed tariff of last year i.e. 404 paise per unit without escalation. The petitioner had requested PSPCL vide letter dated 27.08.2012 to permit sale of power at APPC under REC mechanism of CERC. But PSPCL declined to purchase power at APPC rates and offered to purchase power at NRSE rates to meet its RPO vide letter dated 04.10.2012. Under these circumstances, the petitioner signed a short term PPA dated 18.11.2012 to supply power to PSPCL at the last escalated tariff under NRSE Policy, 2006 i.e. 404 paise per unit. PSPCL offered to sign long term PPA at preferential tariff only after the petitioner signs an Implementation Agreement (IA) with Punjab Energy Development Agency (PEDA) under NRSE Policy. The matter was then taken up with PEDA to register petitioner's project under NRSE Policy, 2006 but petitioner was informed that IA will be signed only after new NRSE Policy is approved by Government of Punjab. The petitioner has further submitted that short term PPA signed with PSPCL provides for revision of tariff by the Commission and petitioner is willing to sell power to PSPCL at generic / preferential tariff determined as per RE Regulations on long term basis as determined by the Commission which was commissioned in the year 2009-10 during the period of NRSE Policy, 2006. The petitioner is

also ready to sign IA with PEDDA under the NRSE Policy. This will encourage the petitioner to run the project at full capacity, maximize usage of the RE fuels and also help PSPCL to meet its RPO targets. The petitioner has also submitted that this Commission has already determined 532 paise per unit as generic tariff for NRSE co-generation projects for 2012-13. Rana Sugars Ltd. has been granted 495 paise per unit as generic tariff for their plant commissioned in FY 2007-08 and AB Grains Sprints Pvt. Limited has been granted generic tariff of 502 paise per unit for their project commissioned in FY 2008-09. The petitioner has prayed to:

- a) Grant the tariff for Petitioner's project based on RE regulations as project was commissioned in the year 2009-10 during the period NRSE policy 2006 was operative.
- b) Pass the necessary directions to the respondent No.1 i.e. PSPCL to purchase power from the Petitioner's project at the tariff so granted by this Commission to encourage NRSE plants to continue the generation as per GOI/GOP Policies stated above.
- c) Pass any such order as may be deemed just and proper in facts and circumstances of the case.

2. The petition was admitted vide Order dated 27.12.2012 and PSPCL and PEDDA were directed to file replies by 25.01.2013. PSPCL has filed reply vide C.E./ARR & TR memo No.5136 dated 24.01.2013 and has submitted that PSPCL is ready to purchase power from the petitioner on long term basis at the NRSE tariff determined by the Commission but the PSPCL can sign long term PPA only after the petitioner signs an IA with PEDDA under NRSE Policy. PSPCL has further submitted that the tariff determined by the Commission for long term PPA shall be applicable only from the date the long term PPA is executed between the parties and not for the earlier period.

3. PEDDA has filed reply vide No.6885/87 dated 08.02.2013 and has submitted that the power generated at the petitioner's project is RE power and power sold to PSPCL is counted towards meeting RPO of PSPCL. The proposal of PEDDA to set up projects based on Biomass and Agro-waste is for increasing the overall share of NRSE power in the State. The projects proposed need to be capable of using different types of biomass produced in

Punjab. PEDDA has further submitted that cost of Rice-husk is increasing due to its usage in different industries but the cost of Rice straw, Wheat straw, Sugarcane trash, Cotton stalks etc. have not increased proportionately since these are sparingly used by the industry. Further the generic tariff allows 5% or indexed increase in the cost of fuel per year to cover the normative rise in fuel cost. PEDDA has stated that the petitioner has discussed proposal to register its project under NRSE Policy with PEDDA. The NRSE Policy, 2012 has now been notified by the Government of Punjab and sub-clause 5.3 of clause 5 of this Policy provides that captive / co-gen projects set up and commissioned during period of NRSE Policy 2006 having surplus power and not registered with PEDDA so far or have not signed IA, will be allowed to get themselves registered with PEDDA and to sign agreement to facilitate power purchase by PSPCL / Licensee. Since now the petitioner has filed this petition requesting therein for signing of IA and registration under NRSE Policy, PEDDA will grant the registration and sign Agreement. PEDDA has submitted that issue under contention is duly covered under NRSE Policy, 2012, therefore, the petitioner should withdraw this petition and approach PEDDA under clause 5 of the Policy for signing IA and thereafter for signing long term PPA with PSPCL on the last escalated tariff of NRSE Policy, 2006.

4. The petitioner filed replication dated 11.02.2013 to the reply of PEDDA. The petitioner in its replication has submitted that if the proposal of PEDDA is accepted, it would be just unwinding the process already covered in 2 months period (since filing of the petition) and after signing the IA and long term PPA at Rs.4.04 per unit (last escalated tariff of NRSE Policy, 2006, which is to remain stagnant for the PPA tenure), the petitioner will have to again approach this Commission for grant of Generic Tariff as has been done for other similarly placed Co-generators / IPPs who had commissioned their projects in the period 2006-12 and in the meanwhile PSPCL will be deprived of RE power and face shortfall of RPO. This contention of PEDDA is contrary to its submission that PEDDA has agreed to sign IA. The petitioner has reiterated its prayer to grant generic / preferential tariff and has submitted that IA and long term PPA with PEDDA and PSPCL respectively, will be signed by the petitioner. The petitioner has also filed replication dated 11.02.2013 to the reply filed by PSPCL and has submitted that statement of PSPCL that prayer

of the petitioner is totally wrong and hence denied, is not understandable as it has committed to sign a long term PPA on preferential / generic tariff with the petitioner. The petitioner has reiterated its prayer for determination of generic tariff for the project and direct the respondents to sign long term PPA and IA with the petitioner at the earliest.

5. After hearing the petitioner, PEDA and PSPCL on 19.02.2013, further hearing of the petition was closed and Order was reserved.

6. **Observations of the Commission:**

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

i) The petitioner has prayed for grant of preferential tariff for sale of surplus power upto 7 MW from its 12 MW co-generation power plant on long term basis at tariff to be determined by the Commission and directing PSPCL to purchase the same.

ii) The co-generation plant of 12 MW capacity of the petitioner was commissioned on 17.04.2009. The petitioner has been selling surplus power on short term basis through traders/bilaterally in the open market/ power exchange and to PSPCL since the commissioning of the project.

iii) Presently, the petitioner is supplying power (upto 7 MW) from the said plant to PSPCL on short term basis under a Power Purchase Agreement (PPA) dated 16.11.2012 and valid upto 31.03.2013, at a tariff of Rs. 4.04/- per kWh.

iv) Clause 3.1.1 of the said PPA provides that “The applicable rate for sale of energy shall be Rs. 4.04/- per unit subject to adjustment on either side with retrospective effect as and when the new rate is fixed by the PSERC under NRSE Policy.....”

v) In support of its petition, the petitioner has brought out various provisions of the Electricity Act, 2003 [sections 61 and 86 (1) (e)], National Electricity Policy (paras 5.2.20, 5.12), Tariff Policy (para 6.4) and National Action Plan on Climate Change (NAPCC).

vi) The petitioner has also submitted that the Commission has determined the tariff for other co-generation projects like Rana Sugars Ltd., A.B. Sugars Ltd., A.B. Grain Spirits Pvt. Ltd. and many other generating projects, which had been commissioned during the period of the NRSE Policy, 2006.

vii) PSPCL has expressed its readiness to purchase power from petitioner's said co-generation plant on long term basis at the NRSE (new and renewable sources of energy) tariff decided by the Commission. PSPCL has requested that these rates be made applicable from the date of execution of PPA. Prior to this, the petitioner is required to sign an Implementation Agreement (IA) with PEDDA.

viii) PEDDA has, while quoting clause 5.3 of the NRSE Policy, 2012 notified by the Government of Punjab, submitted that the issue under contention has been duly covered under the said Policy and therefore, the petitioner should withdraw the petition and approach PEDDA for Agreement and thereafter for signing long term PPA with PSPCL on the last escalated tariff of NRSE Policy, 2006, which was Rs. 4.04/- per kWh for such projects.

ix) As per clause 5.3 of the NRSE Policy, 2012, 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.

#### **7. Findings and Decision of the Commission:**

i) Considering the aforementioned observations, the Commission finds that the petitioner's offer for supply of upto 7 MW power under a PPA on long term basis from its said 12 MW non-fossil fuel based co-generation plant commissioned on 17.04.2009 (FY 2009-10), 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 tariff rate be made applicable from the date of signing of the PPA with PSPCL with prior signing of Implementation Agreement with PEDDA. On its part, PEDDA while quoting para 5.3 of the NRSE Policy, 2012, has stated that the petitioner should

withdraw its petition and approach PEDA for signing of IA. The Commission further finds that in the existing PPA for supply of power on short term basis upto 31.03.2013, the applicable rate for sale of energy is Rs. 4.04/- per kWh subject to adjustment on either side with retrospective effect as and when the new rate is fixed by the PSERC.

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 5.3 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.

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 2009-10 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 2009-10 comes to Rs. 422.55 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. 359.09 lac per MW for the year 2012-13. With this capital cost and using normative parameters for FY 2012-13, the levelled fixed cost works out to Rs. 1.75 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				
Levelled 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
1.75	3.42	5.17	0.10	5.07

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 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) The existing PPA provides for revision in tariff rate as and when the new rate is fixed by the Commission. However, it is clarified that no cognizance is to be taken of the provision in the said existing PPA in respect of tariff revision with retrospective effect. The same has not been allowed by the Commission in any of the earlier petitions. Also, in order to comply with the procedural requirements, the Commission directs the petitioner and PEDDA to sign the IA forthwith, to facilitate signing of the long term PPA.

xi) 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.

The petition is disposed of accordingly.

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

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

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

**Chandigarh**  
**Dated: 28.02.2013**