

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

Petition No. 39 of 2018
Date of Order: **05.03.2019**

Present: Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member
Ms. Anjali Chandra, Member

In the matter of: Petition under Section 86(1) (a) of the Electricity Act, 2003 read with rule 10 of the PSERC (Conduct of Business) Regulations, 2005 for re-determination of tariff for the 4MW Bio-gas based(Otto Cycle) Technology power project of the Petitioner.

AND

In the matter of: M/s. Green Planet Energy (P) Ltd., having its registered office at Village Birpind, Tehsil-Nakodar, Sub Post Office, Sarinh, District Jalandhar, Punjab and having Corporate Office at 2A, Welspun House, Ground Floor, Kamala City Senapati Bapat Marg, Lower Parel Mumbai-400013 and Project Office at S.C.O. 42, 1stFloor, Sector 41-D, Chandigarh through its authorized signatory Narinder Singh Theti.

...Petitioner

Versus

1. Punjab State Power Corporation Ltd., through its Chairman-cum-Managing Director, The Mall, Patiala.
2. Punjab Energy Development Agency, (PEDA) through its Director, Solar Passive Complex, Plot No. 1 & 2, Sector 33-D, Chandigarh.
3. Government of Punjab through the Secretary, Department of Science, Technology, Environment and Non-Conventional Energy, Civil Secretariat, Chandigarh.

...Respondents

ORDER

The Petitioner has filed the present petition under Section 86(1) (a) of the Electricity Act, 2003 for re-determination of the tariff for 4MW Bio-gas based (Otto Cycle) technology power Project of the Petitioner or in the alternative to award the tariff determined by the Commission for the FY 2018-19. The petition was admitted vide Order dated 14.11.2018 directing the respondents to file their respective replies.

2. The Petitioner has submitted that Punjab Energy Development Agency (PEDA) invited the private developers/ companies for setting up of Biomass Power Projects on BOO basis in the State of Punjab. M/s M.P.P.L.-Kamala-Darashaw Consortium was allotted various Bio Mass Power projects on the basis of above tender in the State of Punjab vide letter of allotment dated 15.10.2007. Pursuant to the above said allotment letter a Memorandum of Understanding (MOU) was executed between PEDA and MPPL-Kamala-Darashaw Consortium on 15.11.2007 for a 10 MW capacity project in Tehsil Garhshankar, District Hoshiarpur, Punjab. Thereafter, a Special Purpose Vehicle (SPV) in the name of Green Planet Energy Pvt. Ltd. was formed to set up biomass based power projects in the state of Punjab which was approved by PEDA vide letter dated 07.02.2008. In pursuance to the allotment letter, MOU and approval of the SPV, an Implementation Agreement (IA) dated 03.07.2009 was executed between the Petitioner and Government of Punjab through the Chief Executive, PEDA for the 10 MW Biomass Power Project to be set up by the Petitioner at Village Binjon, Tehsil Garhshankar, District Hoshiarpur on BOO Basis which was to be set up in two parts having separate technology for both the parts. One part was of 6 MW capacity having Rankine Cycle technology and second part was for 4 MW capacity having Bio-gas based (Otto Cycle) technology and was clearly mentioned in the definition of project given in the I.A.

- 2.1. Pursuant to the IA, the Petitioner and Punjab State Power Corporation Limited (PSPCL) executed a Power Purchase Agreement (PPA) dated 14.10.2009 for the above said project of 10 MW capacity at village Binjon. As per the said PPA the Petitioner was required to commission the project within 395 days from the date of signing of the PPA and PSPCL agreed to purchase the power generated from the project in question at the rate approved by the Commission vide Order dated 13.12.2007.
- 2.2. The Government of Punjab (GOP), Department of Science, Technology, Environment and Non-Conventional Energy had notified its NRSE Policy 2006 vide Notification No. 10/106/06-STE (1)/5390 dated 24.11.2006 and issued directions under section 108 of the Electricity Act, 2003 for complying with the said policy. The Commission vide Order dated 13.12.2007 while deciding the tariff for NRSE projects and accepting the tariff as proposed in the NRSE Policy 2006 further observed that these rates shall be considered as the minimum rates that a NRSE developer can claim and there being a possibility that NRSE projects adopting different technologies and/or fuels might need enhanced rates for their encouragement, in that case, the individual developer shall be free to approach the Commission for determination of such enhanced rates. The Commission shall at that stage decide whether rates are to be approved individually in each case or generically for a category of cases.
- 2.3. That the tariff approved vide Order dated 13.12.2007 was not viable for the Petitioner. Accordingly, the Petitioner filed a petition no. 29 of 2010 before the Commission seeking re-determination of tariff for the three bio-mass based power plants of 6 MW each located at village Binjon, district Hoshiarpur, village Bir Pind, district Jalandhar and village Manuke Gill, district Moga. The total capacity of the project at Village Binjon was 10 MW and out of this 6 MW capacity was based on Rankine Cycle technology and 4 MW on Otto Cycle technology. All the three projects regarding which petition no. 29 of 2010 was filed were based on Rankine Cycle technology. The

Commission vide Order dated 13.01.2011 while deciding the said petition, re-determined the tariff for the said projects of the Petitioner based on Rankine Cycle Technology and held that the Petitioner will be entitled to generic tariff determined by the Commission for the year in which each of its generating unit achieves COD.

2.4. The Petitioner filed petition no. 44 of 2012 before the Commission for re-determination of tariff for the remaining 4 MW capacity of the project situated at village Binjon based on Otto Cycle technology. The Commission vide Order dated 17.10.2012 decided the petition no. 44 of 2012 and determined the tariff of Rs. 6.44 per kWh since the Petitioner was not availing accelerated depreciation. The Commission further vide Order dated 30.10.2012 amended Para 23 of the said Order in order to align the same with the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012. Despite re-determination of the tariff by the Commission vide Order dated 17.10.2012 and 30.10.2012 passed in petition no. 44 of 2012, the execution of the project at Binjoin got delayed due to various reasons beyond the control of the Petitioner, including adoption and execution of German technology under Indian conditions being the biggest challenge, slump in Biogas Industry in Germany led to serious set-back to the project in 2012-13. Also the Technical Collaborators backed out for deputing their experts to oversee the erection activities and even sought huge charges to resume their activities causing delay in execution of Project. However, since the project was first of its kind, the Petitioner revived the project with Indian know how which took a lot of time.

2.5. Despite facing all the odds, the Petitioner started the project however, PEDDA issued a notice dated 08.03.2017 for termination of the MOUs and IAs for Hoshiarpur, Jalandhar and Moga sites which included the present project of 4 MW capacity also based on Bio-gas (Otto Cycle) technology. The Petitioner submitted a detailed representation dated 05.04.2017 to PEDDA

stating that it has already completed the major part of the project. In the meanwhile, PSPCL also issued notice dated 06.06.2017 for terminating the PPAs for various projects of the Petitioner including the above said 4 MW Bio-gas based project.

- 2.6. That in the meantime PEDDA considering the representation made by the Petitioner as well as the fact that the projects were at advanced stage of completion and huge investments had already been made by the Petitioner, extended the commissioning of the 3 biomass projects till 31.03.2018 vide its letter dated 21.06.2017. Even though PEDDA extended the commissioning period but since PSPCL had issued notice for terminating the PPAs including PPA for the 4 MW project, the Petitioner could not proceed to complete the same. Therefore, the Petitioner made a representation dated 25.07.2017 to PSPCL against the notice of termination of PPAs dated 06.06.2017 and requested for withdrawal of the notice for termination of PPAs issued by PSPCL. PSPCL without considering the representation of the Petitioner issued a memo dated 26.09.2017 terminating the PPAs of three biomass projects of the Petitioner including the project of 4 MW capacity based on Bio-gas (Otto Cycle) technology. The Petitioner took up the issue with the higher management of PSPCL and also at Government level. Pending decision of PSPCL and Government of Punjab, the Petitioner requested PEDDA to extend the commissioning date of the project vide letter dated 26.03.2018. PEDDA after considering the request of the Petitioner extended the date of commissioning of the above said three projects to 30.09.2018 vide letter dated 12.04.2018.
- 2.7. That PSPCL also, after considering the requests of the Petitioner, decided to revoke the termination of two PPAs out of total 3 PPAs. Accordingly, PSPCL vide letter dated 26.04.2018 revoked the termination of 2 PPAs including the PPA related to 4 MW Otto Cycle based project at village Binjon. After revocation of the termination of the PPA for the project in question, the Petitioner again started the project and completed the same in the month of August, 2018. Thereafter the

Petitioner requested PSPCL to give permission to synchronize vide letter dated 10.08.2018. PSPCL gave permission for synchronization vide letter dated 17.08.2018 and the plant of the Petitioner was synchronized on 17.08.2018. PSPCL also issued a letter dated 18.08.2018 in this regard.

- 2.8. That as on 17.08.2018 the Petitioner has incurred a total capital cost of Rs. 5160.16 Lakhs on the said 4 MW project. As stated earlier by the Petitioner, the Commission had determined the tariff for Bio-gas based projects at Rs. 6.44 per kWh and the said tariff was granted to the Petitioner while deciding the petition no. 44 of 2012 vide Order dated 17.10.2012 and 30.10.2012 respectively. In the said tariff Rs.3.06/- was determined towards levelised fixed cost and Rs.3.38/- towards variable charges. The Petitioner pointed out that at the time of determination of above said tariff there was every likelihood of the completion and synchronization of the project in the year 2012 itself. But due to the reasons as mentioned by the Petitioner hereinabove being beyond the control of the Petitioner, the project was commissioned only on 17.08.2018 resulting in increase in the cost of the project also.
- 2.9. Further, the Ld. CERC had determined the generic tariff for FY 2012-2013 w.e.f 01.04.2012 for renewable energy power projects (RE projects) vide which tariff for biogas based power projects had been fixed as Rs. 6.44/- per kWh with base year as FY 2012-13. While determining the above said tariff CERC had considered the Capital Cost for above projects as Rs. 800/- Lakh per MW, net of subsidy. But the Petitioner has incurred a cost of Rs. 5160.16/- Lakh for the 4 MW project and has not received any subsidy on this cost incurred.
- 2.10. That vide Order dated 31.10.2017 passed in petition no. 50 of 2017, the Commission has adopted the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 (CERC RE Regulations, 2017). These Regulations were effective from 01.04.2017 and were to remain in force for a

period of 3 years from the date of commencement i.e. upto 31.03.2020, unless reviewed earlier or extended by CERC subject to certain provisos specified in Regulation 5. The tariff determined under these Regulations for the RE Projects commissioned during the control period shall continue to be applicable for the entire duration of the Tariff Period as specified in the Regulations. Subsequently, CERC vide Order dated 31.05.2017 in petition no. 05/SM/2017 (Suo-Motu) determined levellised generic tariff for RE Project for FY 2017-18. Thereafter, the Commission vide Order dated 31.10.2017 passed in petition no. 50 of 2017 determined the levellised generic tariff for RE projects for FY 2017-18 in line with the CERC RE Regulations, 2017 and CERC's aforesaid Order dated 31.05.2017. The present project falls under eligibility criteria described in section 4(g) of CERC (Terms & Conditions of Tariff determination from Renewable Energy Sources) Regulations 2017 which have been duly adopted by the Commission as mentioned above.

2.11. That the Ld. CERC vide Order dated 28.03.2018 passed in petition no. 02/SM/2018 (Suo-Motu) determined the levellised generic tariff for RE Projects for FY 2018-19. The Commission vide Order dated 09.08.2018 passed in petition no. 23 of 2018 decided that the levellised generic tariff for FY 2018-19 determined by the Ld. CERC vide ibid Order for the RE technologies i.e. Biomass based Power Projects, Biomass Gasifier Power Projects, Biogas based Power Projects, Small Hydro Power Projects and Non-fossil fuel based Co-Generation projects, for the State of Punjab shall be applicable in the State. In this order the Commission further determined the tariff and as per Table-1 of the order generic tariff for Biogas based power projects for FY 2018-2019 was Rs. 7.79 per kWh.

2.12. That while giving the permission for synchronization vide letter dated 17.08.2018 PSPCL had also directed the Petitioner to get the tariff determined by the Commission before claiming any power bill for the electricity supplied from the project of the Petitioner. Hence, the present petition has been filed seeking

re-determination of tariff as per the cost incurred by the Petitioner and the CERC (Terms & Conditions of Tariff determination from Renewable Energy Sources) Regulations 2017, adopted by the Commission in petition No. 50 of 2017.

3. PSPCL in its reply to the petition submitted that the PPAs were signed between the Petitioner and PSPCL on 14.10.2009 for purchase of power from the following projects:

- i. 10 MW biomass power project (comprised of one unit of 6 MW based on Rankine cycle and 2nd unit of 4 MW capacity based on Otto cycle) at village Binjon, Distt. Hoshiarpur;
- ii. 10 MW biomass power project (comprised of one unit of 6 MW based on Rankine cycle and 2nd unit of 4 MW capacity based on Otto cycle) at village Birpind, Distt. Jalandhar;
- iii. 6 MW Biomass Power Project based on Rankine Cycle at Village Manuke Gill, Distt. Moga.

3.1. That as per Clause 10.1.0 of the PPAs, the Petitioner was required to commission the projects and synchronize with the Grid within 395 days from the date of signing of the PPAs. Therefore, the Scheduled Commercial Operation Date was 13.11.2010.

3.2. That the 6 MW units based on Rankine cycle of the Biomass power projects mentioned at Point (i) and (ii) above were commissioned on 10.05.2012 and 14.05.2013 respectively. However, units of 4 MW each capacity based on Otto cycle of both the projects and 6 MW project based on Rankine Cycle at Village Manuke Gill were not commissioned within the prescribed period as per the PPA.

3.3. That as per Clause 13.6.0 of the PPA, either the Petitioner or PSPCL were entitled to terminate the agreement upon notice to the other party, in case the Petitioner fails to begin generation of the electric energy within 3 years from the planned COD.

Therefore, notice for termination of PPAs for the aforementioned three units was issued by PSPCL to the Petitioner vide memo dated 06.06.2017. Subsequently, since the Petitioner had failed to resume the supply even within 60 days of the termination notice issued by PSPCL, it terminated the PPAs vide letter dated 26.09.2017 for the units in issue. In the meanwhile, considering the numerous representations made by the Petitioner, PEDA vide letter dated 21.06.2017 agreed to grant extension of time to the Petitioner to commission the projects till 31.03.2018 subject to the condition that no revision in tariff shall be sought by the Petitioner on the ground of extension. On 25.10.2017, based on the representations of the Petitioner, the Principal Secretary, Government of Punjab requested the Chairman and Managing Director, PSPCL for considering the withdrawal of the termination of PPAs executed with the Petitioner. Considering the said request, a committee was constituted by PSPCL to verify the status of the projects. After due deliberations and negotiations with the Petitioner, it was decided to revoke the termination of the PPAs in respect of the following two projects:

- i. 2nd unit of 4 MW Otto Cycle Project at village Binjon
- ii. 6 MW Rankine cycle project at Village Manuke Gill

Accordingly, the PPAs were revoked by PSPCL at applicable tariff & subject to maximum PLF of 80% on the condition that all the terms & conditions and its amendments will remain unchanged.

- 3.4. That as per Clause 2.1.1 of the PPA dated 14.10.2009, the Board (PSPCL) was to purchase power and accept all energy made available at interconnection point from the Generating Company's facility pursuant to the terms & conditions of this agreement at the rate approved by the Commission vide its Order dated 13.12.2007. However, the Petitioner synchronized its 4 MW (Otto Cycle) Biomass Power Project at village Binjon after a huge delay on 17.08.2018 and is seeking the re-

determination of tariff based on the tariff determined by CERC for FY 2018-19.

- 3.5. That after PSPCL having already taken a lenient view while revoking the PPAs, the Petition ought not to seek any more indulgence on account of its own delay and seek the higher tariff for FY 2018-19 and also that the Commission had determined the applicable tariff of Rs.6.44/- per Kwh for the Petitioner's projects vide Order dated 17.10.2012 passed in petition no. 44 of 2012, which was to be applicable for 20 years with variation in only fuel costs.
- 3.6 That it has been settled by the Hon'ble Appellate Tribunal for Electricity (APTEL) vide Judgment dated 06.04.2016 in Appeal No. 86 of 2015 Western Region Transmission (Maharashtra) Pvt. Ltd. Vs. CERC & Ors. that if the developer has been seeking extension in commissioning, it will not be entitled to any financial implications of enhancement of tariff. Even otherwise, the increased capital cost due to the delay in commissioning has already been taken into consideration by PSPCL despite the condition of PEDDA that no revision of tariff will be allowed to the Petitioner due to extension of time. PSPCL agreed that applicable tariff be allowed to the Petitioner by which the financial interests of the Petitioner have been duly taken care of despite their own default and huge delay in commissioning of the project.
- 3.7. That the Petitioner should not be permitted to seek a higher tariff for FY 2018-19 and should be entitled only to the tariff as provided for in the PPA, as the Petitioner has already received a substantial benefit in the form of revocation of the termination.
4. PEDDA filed a short reply submitting that as per the terms and conditions of Letter of Award (LOA) dated 15.10.2007, the petitioner was bound to give a percentage of energy share of saleable electricity to PEDDA for 30 years from the date of commissioning of the project. Also it was categorically

stipulated in the IA dated 03.07.2009 that the total time frame for implementation and commissioning of the project in question was stipulated to be 13 months (1 year & 30 days) from the date of signing of PPA i.e. 14.10.2009, meaning thereby that the project in question was to be commissioned in all respects on or before 12.11.2010 i.e. 13 months from the date of signing of the PPA with PSPCL.

- 4.1. That due to the huge delay in the commissioning of the project having capacity of 4 MW, it had sent a notice/communication dated 08.03.2017 to the petitioner for termination of allotment letter(s), MOU(s) and IA(s) pertaining to the captioned project. PEDDA through the ibid notice/communication categorically informed the Petitioner that despite various extensions granted to the Petitioner by it, the Petitioner has failed to perform its obligation of commissioning the project in time and left with no other option PEDDA had to cancel the project in question. In response to the notice dated 08.03.2017, the Petitioner sent a communication dated 05.04.2017 seeking further extension for the purposes of commissioning the Project having capacity of 4MW. Subsequently, PEDDA considering the request of the Petitioner granted further extension to the Petitioner up to 31.03.2018 for commissioning the project having capacity of 4 MW based on Otto Cycle technology with the condition that no revision in tariff shall be sought by the Petitioner on the ground of extension granted by PEDDA. PSPCL in the meanwhile terminated the PPA dated 14.10.2009 entered into with the Petitioner. PEDDA once again issued a communication on 24.01.2018 to PSPCL requesting it to withdraw the termination of PPA qua the Petitioner. Finally, PSPCL withdrew the termination of the PPA vide communication dated 26.04.2018 intimating the Petitioner that all other terms and conditions of the PPA dated 14.10.2009 and its amendments will remain unchanged.
5. The Petitioner filed rejoinder to the replies filed by PSPCL and PEDDA reiterating the submissions made in the petition and

further submitted that this is the prerogative of the Commission to determine the tariff as per the provisions of the Electricity Act, 2003 and the petitioner is not seeking revision of tariff on the ground of extension granted by the PEDDA but on merits. Further, the Electricity Act, 2003 itself provides for promotion of electricity generation from renewable sources. Section 61 of the Act deals with the framing of tariff regulations by the appropriate commission wherein it has been specifically mentioned that the appropriate Commission while framing tariff regulations would be guided by the principle that the power generation from the renewable sources has to be promoted. Similarly as per section 86(1) of the Act it is the function of the Commissions to promote generation of electricity from the renewable sources.

- 5.1. That at the time of applying for synchronization PSPCL informed the Petitioner regarding approaching the Commission for re-determination of the tariff and PSPCL while issuing the letter dated 17.08.2018 for synchronization specifically mentioned that the petitioner will get the tariff re-determined from the Commission and only thereafter submit the bill for the electricity generated and supplied.
- 5.2. That the judgment passed by the Hon'ble APTEL in Appeal No. 86 of 2015 is not applicable in the present case since the said case relates to a contract obtained through tariff based competitive bidding process. But in the present case the tariff has been determined by the Commission.
- 5.3. That the capital cost incurred by the petitioner is much more than the estimated which requires re-determination of tariff to ensure viability of operations. The petitioner has not received any subsidy on this cost incurred because of which the project of the petitioner will not be able to survive with the tariff determined by the Commission in petition No. 44 of 2012. Further more than 50% of the total project cost has been incurred between the period April, 2012 to date of

synchronization. Therefore, for the said reasons the petitioner is seeking re-determination of tariff.

6. The matter was argued on 13.02.2019 and after hearing the parties the petition was reserved for orders.

7. Observations, Findings and Decision

The Commission has carefully gone through the petition, replies of PSPCL & PEDDA and rejoinders thereto by the petitioner. The Petitioner has prayed that tariff for its 4 MW Bio-gas based power project may be re-determined as per the cost incurred by the project or in alternate the tariff determined by the Commission for FY 2018-19 may be awarded as the project has been commissioned in FY 2018-19.

The tariff for the said project was determined by the Commission vide Order dated 17.10.2012 in petition no. 44 of 2012 filed by the Petitioner, as under:

“22. Accordingly, the tariff for the 4 MW bio-gas based power project (Otto cycle) of the petitioner’s said generating plant to be commissioned/commissioned in FY 2012-13 would be the generic tariff for such power projects as per Commission’s Order dated 19.07.2012, which is as under:

<i>Levelling Fixed Cost</i>	<i>Variable Cost (FY 2012-13)</i>	<i>Applicable Tariff Rate</i>	<i>Benefit of Accelerated Depreciation, if availed</i>	<i>Net Applicable Tariff Rate upon adjusting for Accelerated Depreciation benefit (3-4)</i>
<i>(Rs./kWh)</i>	<i>(Rs./kWh)</i>	<i>(Rs./kWh)</i>	<i>(Rs./kWh)</i>	<i>(Rs./kWh)</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
3.06	3.38	6.44	0.21	6.23

23. The tariff period shall be for a minimum period of thirteen (13) years as per Regulation 6 of the Central Electricity Regulatory Commission (Terms & Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 (RE Regulations, 2012) adopted by the

Commission with State specific modification(s) in its Order dated 19.07.2012. The levelled 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.”

Para 23 of the aforesaid Order was amended vide Order dated 30.10.2012 as under:

“23. The tariff period shall be twenty (20) years as per Regulation 6 of the Central Electricity Regulatory Commission (Terms & Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 (RE Regulations, 2012) adopted by the Commission with State specific modification(s) in its Order dated 19.07.2012. The levelled 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.”

As per the submissions made by the Petitioner, the execution of the project was delayed as the technical collaborators (from Germany) backed out for deputing their experts to oversee the erection of the project. Consequently, PEDDA issued the notice for termination of MoU and IA for the project on 08.03.2017. The petitioner vide letter dated 05.04.2017 requested PEDDA to cancel the said notice of termination and allow extension for completion of the project during FY 2017-18 since major part of the project had already been completed. In the meantime, PSPCL vide letter dated 06.06.2017 issued notice for terminating the PPA. PEDDA vide letter dated 21.06.2017 extended the date of commissioning of the project till 31.03.2018 subject to the condition that no revision in tariff shall be sought by the Petitioner on the ground of extension granted to it by PEDDA. The Petitioner vide letter dated 25.07.2017 requested PSPCL to withdraw the notice dated 06.06.2017. However, PSPCL vide letter dated

26.09.2017 terminated the PPA. The Petitioner vide letter dated 26.03.2018 requested PEDA to extend the date of commissioning of the project to 30.09.2018 which was extended by PEDA vide letter dated 12.04.2018. Also, PSPCL vide letter dated 26.04.2018, revoked the termination of the PPA at the applicable tariff referring to the Petitioner's letter dated 04.01.2018. On the request dated 10.08.2018 of the Petitioner, PSPCL vide letter dated 17.08.2018 granted synchronization approval for the project provisionally subject to compliance of certain condition/formalities further stating that the Petitioner will not claim power sale bills till tariff is got determined from the Commission as per undertaking given by it. The plant was synchronized with the grid on 17.08.2018.

Considering the prayer in the petition and submissions of the parties, the Commission decides as under:

The tariff for the Petitioner's Project was determined by the Commission in its Order dated 17.10.2012 in petition no. 44 of 2012 modified vide Order dated 30.10.2012. The applicable tariff rate for the project was Rs. 6.44/kWh (without availing accelerated depreciation benefit) comprising Rs. 3.06/kWh as levelled fixed cost and Rs. 3.38/kWh as variable cost (for FY 2012-13) and Rs. 6.23/kWh upon adjusting for accelerated depreciation benefit. It was further provided in the said Order that the levelled fixed component is to 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 Commission notes that the termination of the IA was revoked by PEDA on the specific condition that no revision in tariff shall be sought by the Petitioner on the ground of extension granted by PEDA. Further, PSPCL also revoked the termination of the PPA at the applicable tariff only. Moreover, the revocation of termination of IA and PPA by PEDA and PSPCL occurred in FY 2017-18 i.e. just a few months before the completion and synchronization of the project in August

2018. Hence the Petitioner was fully aware of the cost implications, if any and still decided to go ahead with the completion of the project. As such, the levellised fixed cost/tariff of Rs. 3.06/kWh does not merit any consideration of the Commission. Therefore, the Commission holds that the levellised fixed cost/tariff of Rs.3.06/kWh as determined by the Commission earlier shall remain the same.

Additionally, the Commission is mindful that the project was scheduled for commissioning in FY 2010-11 as per PPA and the project did not contribute towards compliance of Renewable Purchase Obligation (RPO) of PSPCL from FY 2011-12, the year from which RPO was specified, upto FY 2017-18, during which PSPCL remained in shortfall of its non-solar RPO compliance on yearly basis.

As per the original Order dated 17.10.2012 modified vide Order dated 30.10.2012, the levellised fixed component will remain the same during the tariff period. However, the variable component will change each year. As per the said Order dated 30.10.2012, the variable component was to change based on whether the petitioner opts for fuel price indexation mechanism or normative escalation factor of 5% as per provisions in the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 (RE Regulations, 2012) adopted by the Commission after due process. However, the RE Regulations, 2012 were applicable upto 31.03.2017 and now RE Regulations, 2017 are in vogue w.e.f. 01.04.2017 as adopted by the Commission in Order dated 31.10.2017 in petition no. 50 of 2017 (Suo-Motu). In the 2017 Regulations, there is no provision for fuel price indexation mechanism. The relevant provision for biogas based power projects is as under:

“75. Fuel Cost (Feed stock Price)

Feed stock price during first year of the Control Period (i.e. FY 2017-18) shall be Rs.1228.72/MT and shall be

escalated at 5% to arrive at the base price for subsequent years of the Control Period, unless specifically reviewed by Commission. For the purpose of determining levellized tariff, a normative escalation factor of 5% per annum shall be applicable.”

The Commission is of the considered opinion that in all fairness, the Petitioner is entitled to the variable component based upon the fuel cost of the year of commissioning i.e. FY 2018-19 to recover its fuel cost. As such, the Commission allows the variable cost/tariff of Rs. 4.40/kWh, same as in generic tariff for FY 2018-19 for such projects determined by the Commission in its Order dated 09.08.2018 in petition no. 23 of 2018 (Suo-Motu). Accordingly, the tariff for the petitioner’s project shall be as hereunder:

Levelling Fixed Cost (Rs./kWh)	Variable Cost (FY 2018-19) (Rs./kWh)	Applicable Tariff Rate (FY 2018-19) (Rs./kWh)	Benefit of Accelerated Depreciation, if availed (Rs./kWh)	Net Applicable Tariff Rate upon adjusting for Accelerated Depreciation benefit (Rs./kWh)
1	2	3	4	5(3-4)
3.06	4.40	7.46	0.21	7.25

The Petitioner shall be entitled to the variable component of the tariff in terms of Regulation 75 as brought out above i.e. with a normative escalation factor of 5% per annum for the tariff period.

The petition is disposed of in terms of the above.

(Anjuli Chandra)
Member

(S.S. Sarna)
Member

(Kusumjit Sidhu)
Chairperson

Chandigarh
Date: **05.03.2019**