

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

**Petition No. 58 of 2014
Date of Order: 25.06.2015**

Present: Smt.Romila Dubey, Chairperson
Shri Gurinder Jit Singh, Member

In the matter of: Petition under Section 61 and 86 of the Electricity Act, 2003 for redetermination / grant of revised generic / preferential tariff for purchase of power from petitioner's 12 MW Rice Straw / Biomass based Power Plant at village Bhagaura, District Patiala on long term basis at tariff to be determined as per amendment No.1 of CERC RE Regulations 2012 with normative parameter for Rice Straw and travelling grate boiler base plant in order to promote generation of electricity from renewable sources of energy as envisaged under the Electricity Act, 2003, National Electricity Policy, National Tariff Policy and the NRSE Policies of GoP.

AND

In the matter of: Punjab Biomass Private Limited, having its works at Village Bhagaura, Sub Tehsil Ghanour, Tehsil Rajpura, District Patiala and head office at D-73/1, TTC Industrial Area, MIDC Turbine, Navi Mumbai-400705, through its Plant Manager Shri Sukhwinder Singh Grewal (12 MW).

-----Petitioner

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.

3. Government of Punjab through the Secretary,
Department of Science, Technology, Environment
and Non-Conventional Energy, Civil Secretariat,
Chandigarh

-----Respondents

ORDER

Punjab Biomass Private Limited (PBPL) a private Limited Company, the petitioner, has a 12 MW Rice Straw / Biomass based Power Plant at village Bhagaura, District Patiala. Punjab State Power Corporation Limited (PSPCL), respondent No.1, is a deemed distribution Licensee, having long term Power Purchase Agreement (PPA) with PBPL for procurement of power at the tariff determined by this Commission. Punjab Energy Development Agency (PEDA) is State Nodal Agency for development of projects under NRSE Policy of the Government of Punjab. Respondent No.3 is Government of Punjab through Secretary, Department of Science, Technology, Environment and Non-Conventional Energy. PBPL has filed this petition under Section 61 and 86 of the Electricity Act, 2003 for determination / grant of revised generic / preferential tariff for its plant at a tariff to be determined as per amendment No.1 of Central Electricity Regulatory Commission RE Regulations, 2012 with normative parameters for rice straw and traveling grate boiler based plant in order to promote generation of electricity from renewable sources of energy.

2. The petitioner submitted as under:-

- (i) The erstwhile Punjab State Electricity Board (PSEB), now PSPCL invited tenders for setting up 12 Rice Straw based Power Projects of 10 MW capacity each on Build, Own and Operate (BOO) basis. Bermaco

Energy Systems Ltd. and Jalkheri Power Private Limited formed a consortium vide Memorandum of Understanding dated 09.11.2002 and submitted their proposal against the said tender. Bid of consortium was accepted and an Implementation-cum-Power Purchase Agreement (IA-cum-PPA) was signed on 29.04.2003 by Consortium of Bermaco & JPPL and PSEB for 9 Nos. biomass based projects in the State of Punjab.

- (ii) In compliance of the provisions of PPA dated 29.04.2003, the petitioner filed Petition No.14 of 2003 before this Commission for determination of tariff. The Commission by Order dated 04.10.2005, directed that a fresh PPA be signed as per NRSE Policy, 2001, as has been signed by PSEB with other NRSE Project Developers setting up the projects under NRSE Policy, 2001.
- (iii) In pursuant to Order dated 04.10.2005 of the Commission passed in Petition No.14 of 2003, a fresh Implementation cum Power Purchase Agreement was signed between Punjab Biomass Power Limited (a SPV set up by the bidder consortium to set up the first project) and the erstwhile PSEB on 10.08.2006.
- (iv) Government of Punjab notified the 'New and Renewable Sources of Energy (NRSE) Policy, 2006 on 24.11.2006, replacing NRSE Policy, 2001. The project of the petitioner was yet not commissioned. The petitioner, as such, filed Petition No.14 of 2007 before this Commission for grant of tariff as per NRSE Policy,

2006. This Commission adopted tariff of NRSE Policy, 2006 with certain conditions vide Order dated 13.12.2007. Thereafter, the Petition No.14 of 2007 of the petitioner was decided by the Commission vide Order dated 19.12.2007 as per terms of the Order dated 13.12.2007. Accordingly IA-cum-PPA was revised on 25.06.2008 providing for the tariff for the sale / purchase of power from the project as per Order dated 19.12.2007.

- (v) Power Plant was synchronized with the grid in June, 2010. After overcoming the initial technical problems, the power export from the project started in October / November, 2010.
- (vi) Central Electricity Regulatory Commission (CERC) notified CERC (Terms and Conditions for Determination of Tariff) Regulations, 2009. Simultaneously regulations and procedure for Renewable Energy Certificates (REC) were notified. PSERC adopted the above regulations with state specific amendments.
- (vii) Many developers selling power to PSEB / PSPCL under PPAs, filed petitions before the Commission for grant of tariff as per RE Tariff Regulations, 2009. The Commission in line with its Order dated 13.12.2007 and in accordance with Hon'ble APTEL Order in case of Rithwik Energy Systems Limited re-opened the PPAs and granted generic RE tariff to all projects set up under NRSE Policy, 2006 based on the date of commissioning of each project. This petitioner also filed

Petition No.45 of 2011 for grant of generic tariff which was granted vide Order dated 28.03.2012.

- (viii) CERC notified RE Tariff Regulations for the next control period of 2012-17 vide notification dated 06.02.2012. No separate norms were provided for rice-straw based power plants and these remained clubbed with Biomass plant in these Regulations. However, Hon'ble CERC constituted a Committee to study the parameters for biomass based power projects, keeping in view the comments of the RE Project Developers on the Staff Paper. The petitioner also made submissions before the Committee. CERC issued 1st Amendment to the Regulations revising the various norms / parameters and determination of fuel price for biomass based power projects. Pursuant to issuance of Amendment No.1 to RE Regulations, 2012 by CERC, PSERC issued Staff Paper for Determination of Tariff for NRSE Projects for the year 2014-15 vide Petition No.42 of 2014 (Suo-motu). PBPL and other developers submitted comments / objections on the Staff Paper stressing that Amendment No.1 of CERC RE Tariff Regulations be made applicable to the existing NRSE plants also. The Commission determined the generic tariff for the year 2014-15 vide Order dated 05.09.2014 in line with CERC RE Tariff Regulations, 2012 but did not accept the request of the petitioner for adopting parameters as per Amendment No.1. Though CERC had specified different parameters for Rice Straw based NRSE Projects but instead of determining tariff

for rice straw based projects, the Commission in para 4 of ibid Order held :

“Similarly, if a developer wishes to set up a Biomass Power Project with proven technology for exclusive use of rice straw, it may approach the Commission for tariff applicability / determination for its project also duly approved by PEDDA in this regard”.

- (ix) The comments / objections of developers including that of the petitioner were dealt by the Commission in Annexure-2 of the Order dated 05.09.2014. While discussing the applicability of variable part of tariff to existing power plants vide issue no. 7 of objection no.1, the Commission has observed that they may file petition(s) separately, if they so desire. In response to the submissions of PBPL (in its comments) with regard to very high per MW cost and technical problems, the Commission had recorded following views:

“It appears that Biomass Power Projects using rice straw as fuel exclusively have technical problems, Developers are required to keep in view the provisions of Regulations while setting up the projects”.

The petitioner has submitted that above views of the Commission may apply to and hold good for new plants, whereas the plant of the petitioner has been

already in operation for last 4 years and had overcome the technical problems for using 100% rice straw.

- (x) The petitioner has further submitted that CERC in the 'Statement of Reasons' of the Amendment No.1 had observed as under:-

“The revised norms may be prospectively applicable to the existing projects if the project developer and distribution licensee agree to the norms through appropriate amendment to the PPA subject to the approval of the respective State Commission”.

- (xi) The matter was taken up by the petitioner with PSPCL and PEDDA and after discussions with them it was noted that determination of tariff and re-opening of PPA is the prerogative of PSERC and hence this petition.

- (xii) The petitioner has submitted the details to show as to how its project is not commercially viable on account of lower tariff determined for it. The petitioner's plant is even getting lesser fixed and variable cost than the Biomass Power Projects to be commissioned in FY 2014-15, as determined by this Commission vide its Order in Suo-motu Petition No.42 of 2014.

- (xiii) Prayer:-

“In light of the facts and submissions above this Commission may be pleased to :

- Pass necessary directions to the Respondent(s) as to reopening of the PPA;

- Grant redetermination of the revised/ generic/ preferential tariff for the project of the petitioner as per the normative parameters adopted by the Hon'ble CERC vide amendment no.1 with Rice straw.
- Pass any other order in favour of the petitioner which this Commission deems fit in the facts and circumstances of the present matter”.

3. The petition was taken up for admission on 14.10.2014 and after hearing the petitioner, the Commission decided to have response of PSPCL and PEDDA before admitting the petition and accordingly PSPCL and PEDDA were directed vide Order dated 16.10.2014 to file their comments on the issue of admissibility of the petition by 28.10.2014.

4. PSPCL filed reply in compliance of Order dated 16.10.2014 vide memo No. 5311 dated 27.10.2014 on the issue of admissibility of the petition. PSPCL submitted that the petitioner entered into a revised IA-cum-PPA dated 25.06.2008 with PSEB (now PSPCL) on terms and conditions acceptable to the parties including tariff determined by the Commission vide Orders dated 13.12.2007 and 19.12.2007. The petitioner again filed Petition No.45 of 2011 for grant of generic tariff which was determined and granted by the Commission vide Order dated 28.03.2012. The Amendment of IA-cum-PPA was signed on 22.10.2012 in compliance of the Order dated 28.03.2012 of the Commission. The petitioner filed Appeal No.101 of 2012 before the Hon'ble APTEL against the Order dated 28.03.2012 of the Commission which was

dismissed by the Hon'ble APTEL vide Order dated 27.05.2014. The Judgment of Hon'ble APTEL dismissing the Appeal No.101 of 2012 has not been challenged and has attained finality. This Commission has already refused to re-determine the tariff for the project of the petitioner as prayed by the petitioner during Public Hearing of Staff Paper of the Commission for determination of generic tariff for RE Projects for the year 2014-15 as admitted by the petitioner in para 19 of the petition. The present petition is an abuse of process of the Court because the petitioner is seeking to initiate successive petitions in a repetitive manner for re-determination of tariff.

PSPCL further submitted that the Regulations of CERC does not have retrospective effect so as to apply to old projects. There is no basis for seeking re-opening of the PPA for re-determination of tariff, particularly when the tariff already determined by the Commission has been fully accepted by the petitioner. Further, merely because subsequent plants established in the State are provided with different norms and parameters is no ground for re-opening the tariff accepted by the petitioner without protest.

PSPCL submitted that in the above facts and circumstances, the petition is not maintainable and ought to be dismissed in limine with costs. PSPCL sought to file a detailed reply, if found necessary during the proceedings.

5. PEDA filed reply dated 18.11.2014 and submitted the gist of earlier petitions filed by the petitioner and orders of the Commission passed in those petitions. PEDA submitted that Order dated 27.05.2014 of Hon'ble APTEL in Appeal No.101 of 2012 has not been challenged and hence has attained finality and Order

dated 28.03.2012 of the Commission in Petition No.45 of 2011 remains upheld. The petitioner had submitted / demonstrated in Petition No.45 of 2011 that the project of the petitioner can not operate on 100% rice straw as fuel and required mixing of high density fuel to the extent of 25 to 30 percent. Now the petitioner has filed this petition on the basis that the project of the petitioner is a 100% rice straw based project and requires re-determination of tariff on the basis of the Tariff Order dated 05.09.2014 passed by the Commission in Petition No.42 of 2014 (Suo-motu), wherein the Commission has held that projects running the plant on 100% rice straw as fuel may file separate petitions for re-determination of tariff on the basis of higher operation and maintenance charges, lower calorific value and higher fuel cost. The version of the petitioner that the petitioner is using 100% rice straw as fuel can not be relied upon, in view of its earlier stand in Petition No.45 of 2011. The petitioner has not approached the Commission with clean hands. The petition is liable to be dismissed on this score alone. However, in the petition, the petitioner is seeking re-determination of tariff as per normative parameters adopted by CERC vide Amendment No.1, for projects using rice straw as fuel. Hence the petition is misconceived and is liable to be dismissed at threshold. PEDDA sought leave to file detailed reply, if necessary, in the course of proceedings.

6. The petition was again taken up for admission on 18.11.2014. The petitioner filed a presentation during hearing depicting improvements carried out at the plant at huge capital cost for running the plant on purely rice-straw as fuel. The Commission after hearing the petitioner, PSPCL and PEDDA,

directed that Director/PEDA alongwith senior officers of PSPCL shall jointly visit the plant and after the visit, Director/PEDA would certify by 10.12.2014 whether the plant can run on 100% rice-straw as fuel. PEDA submitted vide No.15145 dated 15.12.2014 that plant was jointly visited by senior officers of PEDA and PSPCL on 10.12.2014 and some documents were sought from the petitioner. PEDA sought 7 days time to submit the report which was allowed vide Order dated 17.12.2014.

After hearing the petitioner and respondents on 16.12.2014, the petition was admitted vide Order dated 17.12.2014. The respondents were directed to file detailed reply to the petition by 15.01.2015 with copy to the petitioner.

7. A joint report was submitted by PEDA and PSPCL vide C.E./ARR & TR, PSPCL No.5059 dated 19.01.2015 after visiting the plant on 10.12.2014. PEDA also filed the same report vide No.15682 dated 21.01.2015. The observations of the committee are as under:-

- “1. It was observed that modification in the fuel feeding system has been made by PBPL due to which power generation as reported by the company has been increased. The company informed that it has replaced its existing 4 fuel spreaders by modified pneumatic spreaders for spreading of variable sized fuel in all weather conditions and the fuel spreaders were also shown to the team of officers.
2. The company informed that it has installed a new SA Booster Fan for increase in SA header pressure for proper spreading of fuel on the travelling grate in the

boiler and also showed a new direct bale feeding system set up to improve consistency of pressure and flow of rice straw bales & also to lessen the burden of fuel chopping. It was also informed that for avoiding frequent damage to the refractory, modification in the water wall system has been made by lowering the front water wall header. The company has also provided underground fuel feeding system through twine screw feeder, conveyor and VFD so as to feed offline chopped fuel to increase flame stability and controlled firing and to maintain constant steam pressure and temperature in the boiler.

3. Further, the company informed that modification of the existing RBC (Fork Type) for continuous feeding of undercut paddy straw has been made and has modified screw flight for all 4 nos. screw feeders for free flow of fuel & to reduce jamming of fuel. The existing fuel feeding chutes from RBC to screw feeders has been modified for free flow of paddy straw to boiler and modification in the excess fuel return line has been carried out so that the excess fuel fed to boiler will be sent back to fuel yard as against the main feeding line thereby reducing fuel jamming.
4. The inspection team during the visit noted the parameters on the control panel of the DCS system and it was found that the plant was running at a capacity of 11.89 MW at 16:55 hrs and at a capacity of 12 MW at 16:57 hrs using only rice straw as fuel. The temperature & pressure of the boiler & turbine were found stable.

The company vide letter dated 4.12.2014 addressed to Director, PEDDA has informed that during November, 2014 total units generated is 5.60 MU and units exported is 4.91 MUs (which work out to monthly PLF of 72%).

5. During the visit, it was informed by the company that it has opened 12 fuel collection centers for collection & storage of rice straw and the team randomly visited one fuel collection and storage centre at Village Sohne Majra and approximately 2200 MT rice straw was available at storage centre during the visit.
6. PBPL has also submitted Monthly fuel usage & stock statement from the month of November, 2013 to November, 2014 duly certified from Chartered Accountant showing that only biomass fuel is used to generate power from their 12 MW power plant at Distt. Patiala and no fossil fuel is used during this period.
7. A certification from Cheema Boiler dated 15.12.2014 is submitted by the company showing the boiler specifications as under:-
Boiler Capacity: 60TPH
Pressure: 67 Kg/Cm²
Temperature: 430+/-5°C
Fuel: Specially designed for 100% Rice Straw
Boiler Height: 35 mtrs.
8. The company has also submitted to PEDDA fuel analysis reports dated 6.10.2014, 1.11.2014 and 2.12.2014 showing the fuel name as rice straw bales, its moisture content, ash %, Dust% and the GCV.

9. In addition to the above, the index of documents & pictures submitted by the company with respect to modifications carried out by them in the 12 MW rice straw based power plant have been submitted by PBPL for the information of the Commission.

Accordingly, the Committee of PEDA and PSPCL officers found that the plant was operating solely on paddy straw during the visit. The company officers informed that there is no clinker formation in the boiler and no choking or ash fusion. Further, PSPCL opinion vide its letter no. 1983 dated 19.12.2014 is that in order to certify that the plant is not using any other fuel for generation of power, the observations need to be taken over a period of time, say 5-6 months consisting of some period of Off season through surprise visits by the officers of PEDA & PSPCL”.

8. (i) PSPCL filed detailed reply to the petition vide C.E./ARR & TR memo No.5069 dated 22.01.2015. PSPCL submitted that the Commission determines the tariff for Biomass Projects on year to year basis for the projects to be commissioned in the respective year. The tariff so determined is not applicable for existing / old projects which are governed by previous orders and the PPAs entered into by the parties. The petitioner had filed Petition No.45 of 2011 seeking increase in tariff applicable to the project. Even though the claim of the petitioner was contrary to the PPA dated 25.06.2008 signed by the parties, however,

keeping in view the interest of the project, the Commission vide Order dated 28.03.2012 granted relief to the petitioner by allowing tariff with fixed charges at ₹1.73 per unit and variable tariff at ₹3.29 per unit. The petitioner challenged order dated 28.03.2012 of the Commission before Hon'ble APTEL in Appeal No.101 of 2012 on the primary ground of capital cost adopted by the Commission. The petitioner did not choose to challenge the decision of the Commission on the variable cost or escalation factor taken, which was fully accepted by the petitioner. Appeal was dismissed by Hon'ble APTEL vide Judgment and Order dated 27.05.2014. The petitioner did not challenge the Judgment of the Hon'ble APTEL. Thus the Judgment dated 27.05.2014 of APTEL and Order dated 28.03.2012 of the Commission have attained finality.

- (ii) PSPCL submitted that, now vide this petition, the petitioner has sought to apply the RE Regulations, 2012 of the CERC read with the Order dated 05.09.2014 passed by Hon'ble Central Commission in respect of biomass projects using rice straw as fuel. Merely because the norms and parameters for subsequent projects to be established have been amended, the same does not mean that existing projects are to be given a revised tariff. By the 1st amendment to the RE Regulations, 2012, the Central Commission has only provided for certain amendments to the capital cost and the treatment of variable cost for

the projects covered under the said Regulations. 1st amendment came into force with effect from 18.03.2014 and was made applicable prospectively. The order dated 05.09.2014 of this Commission adopting 1st amendment to the RE Regulations, 2012 of the Central Commission, have been made applicable only prospectively for the projects to be commissioned and not to the existing projects. The reliance by the petitioner on the statement of objects and reasons of 1st amendment to RE Tariff Regulations to contend that the existing PPAs are also required to be amended to incorporate the provisions of the said amendment is misconceived because the Central Commission has specifically stated that the amendment can be applied to the existing projects only if there is an agreement between the generating company and the distribution licensee subject to the approval of the Commission. That too only with respect to the fuel cost and not in any manner to the fixed cost as claimed by the petitioner.

- (iii) In any event the question of re-opening the PPA to the prejudice of the consumers at large does not arise, particularly when the tariff determined by the Commission including fuel price escalation has attained finality as the petitioner had chosen not to challenge any part of fuel cost before the Hon'ble Tribunal and had chosen to challenge the decision of the Commission on fixed charges payable and having remained unsuccessful even in that. To consider the

present petition, would only result in permitting the petitioner to claim revision in tariff every time there is a new norm determined for future projects, which is not the intention of the regulatory set up or the Electricity Act, 2003. The Regulations do not provide for mid period review of tariff or revision thereof on any additional capitalization, as has been claimed by the petitioner pursuant to new equipment claimed to have been installed by the petitioner for running the plant on rice straw as fuel. There was a joint inspection by PEDDA and PSPCL of the plant of the petitioner wherein the claims of the petitioner have been recorded. The equipment to be used, whether additional assets are to be added, their benefits etc. are the commercial decisions of the petitioner and can not be the grounds for revision of the tariff.

- (iv) PSPCL further submitted that the boilers of the petitioner are capable of using mixed biomass fuel. That the petitioner would use only rice-straw as fuel can not be verified. It is not possible without round the clock monitoring of the fuel being used. It is the option of the petitioner to use biomass fuel as deemed appropriate. There is no restriction on use of other biomass fuel or mix other fuel with rice straw. It may be that the petitioner uses only rice straw as fuel for sometime, but thereafter changes to mixed biomass fuel. These are all the commercial decisions of the petitioner and ought not to affect the consumers at large.

- (v) PSPCL sought the dismissal of the petition on the basis of facts and circumstances mentioned above and craved leave to add to the averments and make further submissions on various issues including reliance on authorities during the course of proceedings.
9. (i) PEDDA filed joint reply on behalf of itself and Government of Punjab, Department of Science and Technology, Environment and Non-conventional Energy, being respondents no.2 and 3 respectively vide No.16515-17 dated 04.03.2015. PEDDA submitted that the project of the petitioner was allotted by erstwhile PSEB (now PSPCL, respondent no.1) by way of bidding and consequently IA-cum-PPA was signed between respondent no.1 and the petitioner. IA-cum-PPA initially signed, has been time and again amended on the directions issued by this Commission in various petitions filed by the petitioner seeking higher tariff on one or the other pretext. Last petition filed by the petitioner was Petition No.45 of 2011, wherein the Commission vide its Order dated 28.03.2012 granted generic tariff to the petitioner and directed for amending the IA-cum-PPA. The petitioner accepted the same and signed the amended IA-cum-PPA with PSPCL. Thereafter challenged the order dated 28.03.2012 of the Commission vide Appeal No.101 of 2012 before Hon'ble APTEL. Appeal was dismissed by Hon'ble APTEL vide Order dated 27.05.2014, which as

per knowledge of PEDDA has not been challenged and hence has attained finality.

- (ii) That since the very inception, the petitioner had undertaken to run the project on 100% rice-straw as fuel. However, the petitioner by way of Petition No.45 of 2011, seeking re-determination of tariff has demonstrated that the plant of the petitioner can not operate on 100% rice straw as fuel and requires mixing of high density fuel to the extent of 25 to 30%. In this context, PEDDA had filed short reply in the present petition. The Commission vide Order dated 18.11.2014 had issued directions to both PEDDA and PSPCL to jointly visit the plant in order to certify whether the plant can run on 100% rice straw as fuel. In compliance with above directions, plant was jointly visited and a joint report dated 21.01.2015 was submitted to the Commission. It was opined in the report that during visit the plant was operating on 100% rice straw as fuel. The petitioner had also demonstrated the fuel collection facility set up by the petitioner.
- (iii) This petition has been filed by the petitioner on the basis of the plant being run on 100% rice straw as fuel, for determination of tariff, on the basis of Order dated 05.09.2014 passed by the Commission in Suo-motu Petition No.42 of 2014, wherein the Commission had held that the projects running on 100% rice straw as fuel, may file separate petition for determination of tariff on the basis of higher operation and maintenance

charges, lower calorific value as well as higher fuel cost.

- (iv) PEDDA submitted that the petitioner is not entitled to invoke jurisdiction of the Commission on the basis of tariff order dated 05.09.2014, as the directions have been rendered by the Commission only for the new projects to be set up during the tariff year under reference i.e. FY 2014-15.
- (v) That the petitioner is seeking re-determination of tariff in this petition as per normative parameters adopted by Hon'ble CERC vide amendment no.1 with rice straw as fuel on the basis of tariff Order dated 05.09.2014 for FY 2014-15. The Commission in the ibid Order had granted liberty to the effected projects to file separate petition on the basis of variable components only. Hence the petitioner is not entitled for re-determination of tariff qua capital cost i.e. the fixed cost.
- (vi) PEDDA prayed that the Commission may take appropriate decision in the matter in the light of the facts and submissions made above.

10. The Commission had directed vide Order dated 27.01.2015 to the petitioner to file reply to query of the Commission as to how the Central Electricity Regulatory Commission (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2012 notified on 06.02.2012 and its 1st Amendment notified on 18.03.2014 are applicable to the project of the petitioner in terms of Regulation 1(2) of the 2012 Regulations and Reg. 1(2) of the 2014 amendment thereto. The petitioner was

again directed vide Order dated 18.03.2015 to file reply to the query of the Commission by 31.03.2015 with copy to PEDA and PSPCL.

11. The petitioner filed reply to queries of the Commission, rejoinder to the reply of PSPCL and reply to the joint written statement of PEDA and GoP all on 06.04.2015. During hearing on 07.04.2015, the petitioner submitted that it intends to bring on record relevant additional documents for which time was required. The Commission vide its Order dated 09.04.2015, allowed the petitioner to file intended additional documents by 17.04.2015 and supply a copy of the same directly to the respondents. The petitioner filed application dated 27.04.2015 alongwith affidavit in support thereof, to bring on record the additional documents and facts, which was allowed by the Commission. The petitioner filed following additional documents:-

- (a) Copy of Order dated 04.10.2005 passed by this Commission in Petition No.14 of 2003
- (b) Copy of PPA dated 10.08.2006
- (c) Copy of NRSE Policy 2006
- (d) Copy of the Order dated 13.12.2007
- (e) Copy of Order dated 19.12.2007
- (f) Copy of PPA dated 25.06.2008
- (g) Copy of Petition No.45 of 2011
- (h) Copy of Order dated 28.03.2012 of the Commission in Petition No.45 of 2011.
- (i) Copy of Amendment no.2 of PPA dated 22.10.2012
- (j) Copy of NRSE Policy of 2012

- (k) Copy of CERC (Terms & Conditions for tariff determination) 1st Amendment
- (l) Copy of PPA dated 10.12.2014
- (m) Copy of Balance Sheets for 2011 to 2015

12. PSPCL filed additional submissions dated 15.05.2015 and contended that there is no justification or submission given by the petitioner in its reply dated 06.04.2015 to the query of the Commission as to how the CERC Regulations are applicable to the project of the petitioner?

PSPCL submitted that even the main Regulations of CERC of 2012 are not applicable to the case of the petitioner, since these are applicable for such projects for which the tariff is to be determined, not to the projects for which tariff has already been determined. 1st Amendment, which came into force on 18.03.2014 is also applicable for future projects and not for existing projects. In fact, during course of 1st Amendment of Regulations, specific representation of the stakeholders was that the norms and parameters determined by the Central Commission be applied to existing projects. The Central Commission did not agree and had held that norms may be applied prospectively to the existing projects only if there was an agreement to that effect by way of amendment to the PPA between the project developer and the distribution licensee subject to the approval of the Commission. In a very recent decision dated 28.04.2015, the Hon'ble Supreme Court in Bangalore Electricity Supply Company Limited v. Konark Power Projects Limited in Civil Appeal No. 5612 of 2012, has held that once the PPA was executed between the parties, the power under Sections 61, 62 etc. can not be used for re-determination of

tariff. Hon'ble Appellate Tribunal in its Judgment in case of Gujarat Biomass Energy Developers Asson. V. Gujarat Electricity Regulatory Commission in Appeal No.253 of 2013, dated 12.08.2014 had also held that the new tariff determined can not be applied to existing projects which have come up under prior tariff and PPA can not be directed to be modified. These decisions / judgments squarely applies to the present case. It is not open to the petitioner to seek new tariff made applicable to its existing project. Thus there is no merit in the petition, which is liable to be dismissed.

13. The arguments on behalf of the petitioner and respondents were heard at length on 21.05.2015. After hearing the learned counsels, the Commission decided to close further hearing of the petition. Order was reserved and the parties were directed vide Order dated 25.05.2015 to file Written Submissions by 01.06.2015.

14. The petitioner has filed the Written Submissions vide email dated 03.06.2015. PSPCL sought time of 7 days vide memo No.5877 dated 03.06.2015. PSPCL has also filed Written Submissions on 15.06.2015.

15. The Commission has gone through and considered the petition, replies of PEDDA and PSPCL, joint report filed by PEDDA and PSPCL after visiting the plant of the petitioner, rejoinder(s) filed by the petitioner, additional documents brought on record by the petitioner, arguments advanced on behalf of the petitioner and respondents as well as the Written Submissions filed by the petitioner and PSPCL.

Observations / Findings of the Commission are summed up in the succeeding paras.

16. **Observations and Findings of the Commission**

After going through the petition, replies of parties, rejoinders, other submissions, additional documents by the parties and hearing the arguments, the observations and findings of the Commission are as under:

Observations:

- i) PBPL filed this petition seeking re-determination of revised/generic/preferential tariff for its project as per the normative parameters for biomass power projects with rice straw as fuel specified in Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) (First Amendment) Regulations, 2014 (RE Regulations, 2014) notified on 18.03.2014 amending Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2012 (RE Regulations, 2012) and for passing necessary directions to the respondent(s) as to the reopening of the PPA.
- ii) Before admitting the petition, the Commission directed PSPCL and PEDDA to file their comments on the issue of admissibility of the petition.

PSPCL submitted that the petitioner signed a revised IA-cum-PPA dated 25.06.2008 with PSEB (now PSPCL) to incorporate tariff determined by the Commission vide

Order dated 13.12.2007 and 19.12.2007. The petitioner again filed Petition No. 45 of 2011 for grant of generic tariff, which the Commission determined vide Order dated 28.03.2012 and in compliance of the same, amendment to IA-cum-PPA was signed on 22.10.2012. PBPL filed Appeal No.101 of 2012 before Hon'ble APTEL against the said Order dated 28.03.2012 of the Commission which was dismissed by Hon'ble APTEL vide Order dated 27.05.2014. The said Order of the Hon'ble APTEL has not been challenged and thus attained finality. PSPCL further submitted that CERC Regulations 2014 are not applicable with retrospective effect so as to apply to old projects. PBPL is seeking re-determination of tariff in a repetitive manner and therefore, the present petition is an abuse of the process of the Court, not maintainable and ought to be dismissed in limine with cost.

PEDA in its reply on admissibility submitted the gist of earlier petitions filed by the petitioner and Orders of the Commission passed on those petitions. The Order dated 27.05.2014 of Hon'ble APTEL has not been challenged and thus attained finality and Order dated 28.03.2012 of the Commission in Petition No.45 of 2011 determining tariff for the petitioner's project remains upheld. PEDA further submitted that in the said petition, the petitioner had demonstrated/submitted that the project of the petitioner can not operate on 100% rice straw and required mixing of high density fuel to the extent of 25 to 30%. Now, PBPL has filed this petition on the premise that its project is 100% rice straw based and requires re-

determination of tariff in line with CERC's RE Regulations, 2014. PEDDA submitted that the petitioner has not approached the Commission with clean hands and its submission of using 100% rice straw can not be relied upon and the petition is liable to be dismissed on this account alone.

- iii) In the Order dated 18.11.2014, the Commission directed PSPCL and PEDDA to jointly inspect and certify by 10.12.2014 whether the petitioner's project can run on 100% rice straw as fuel. In the hearing on 16.12.2014, PEDDA sought time to file the joint report by 23.12.2014. The petition was admitted vide Order dated 17.12.2014. The Commission directed the respondents to file detailed reply to the petition by 15.01.2015.
- iv) In the joint report of PSPCL and PEDDA filed on 19.01.2015, it was submitted that during the time of inspection of the plant on 10.12.2014, it was operating at full capacity around 16.55 hrs. solely using rice/paddy straw as fuel. PSPCL additionally submitted that in order to certify that the plant is not using any other fuel, it needs to be observed for a period of 5 to 6 months including Off-season through surprise visits.
- v) PSPCL in its reply dated 22.01.2015 and additional submissions dated 15.05.2015 submitted that the petition is misconceived and liable to be dismissed on the following grounds:
 - a) The Commission re-determined the tariff provided in the PPA dated 25.06.2008 for petitioner's project vide Order dated 28.03.2012 in Petition No.45 of 2011. The

petitioner challenged the said Order before Hon'ble APTEL in Appeal no.101 of 2012 on the primary ground of capital cost adopted by the Commission choosing not to challenge the decision of the Commission on variable cost or escalation factor. Hon'ble APTEL dismissed the said Appeal vide Judgment dated 27.05.2014 which was not challenged by the petitioner and thus the said Judgment as well as Order of the Commission dated 28.03.2012 have attained finality.

b) Merely because the norms and parameters for subsequent projects to be installed after 18.03.2014 have been changed in RE Regulations, 2014 does not mean that existing projects are to be given revised tariff. The amendment of various parameters contained in RE Regulations, 2014 was made applicable prospectively. The Order dated 05.09.2014 of the Commission is also applicable prospectively for the projects to be commissioned and not existing projects.

c) Petitioner's reliance on the statement of objects and reasons of the 1st Amendment to RE Regulations, 2012 to contend that existing PPAs are also required to be amended to incorporate the provisions of the said amendment is misconceived as CERC has specifically stated that amendment can be applied to the existing projects only if there is agreement between the parties subject to approval of the Commission, that too only with respect to fuel cost.

d) The PPA can not be reopened to the prejudice of the consumers particularly when the Order of the Commission

determining the tariff has attained finality and the petitioner's Appeal before Hon'ble APTEL remained unsuccessful. Also, the petitioner did not choose to challenge the decision of the Commission with regard to fuel cost.

e) The Regulations do not provide for mid period review of the tariff or revision thereof on any additional capitalization. Consideration of the present petition would result in the petitioner to claim revision in tariff every time there is new norm determined for future projects.

f) In the joint inspection report of PEDDA and PSPCL, the claims of the petitioner have been recorded. The equipment to be used/assets to be added, their benefits etc. are the commercial decisions of the petitioner and can not be grounds for revision of tariff.

g) The boilers of the petitioner's plant are capable of using mixed biomass fuel. That the petitioner would use only rice straw as fuel can not be verified without round the clock monitoring. Since there is no restriction on using biomass fuel mix or rice straw for the petitioner's project, deciding which fuel to use at any particular time is the commercial decision of the petitioner, not to affect the consumers at large.

h) CERC Regulations, 2012 and CERC Regulations, 2014 are not applicable as these are applicable for such projects for which tariff is to be determined, and not for projects for which tariff has already been determined. During the course of 1st amendment of RE Regulations, 2012, specific representation of the stake holders that

norms and parameters determined by CERC should be applicable to the existing projects was not agreed by CERC and it was held that the norms will be applicable prospectively to the existing projects only if there was an agreement to that effect by amending the PPA subject to approval of the Commission. Hon'ble Supreme Court of India in its decision dated 28.04.2015 in Civil Appeal No.5612 of 2012, has held that once the PPA was executed between the parties, the powers under Sections 61, 62 etc. can not be exercised for re-determination of tariff. Hon'ble APTEL in Judgment dated 12.08.2014 in Appeal No.253 of 2013 also held that the new tariff determined can not be applied to existing projects which have come up under prior tariff and PPAs can not be directed to be modified. These decisions/judgments squarely apply to the present case and it is not open to the petitioner to seek new tariff to be made applicable to its existing project.

vi) PEDDA in its joint reply with Govt. of Punjab (respondent No.3) dated 04.03.2015 stating that Commission may take appropriate decision in the matter, submitted as under:

a) The project of the petitioner was allotted by erstwhile PSEB (now PSPCL) by way of bidding consequently signing an IA-cum-PPA which has been time and again amended through Orders of the Commission in various petitions filed by the petitioner seeking higher tariff on one pretext or the other, the last being Order dated 28.03.2012 in Petition No.45 of 2011. The Appeal before Hon'ble APTEL challenging the said Order dated

28.03.2012 was dismissed vide Hon'ble APTEL's Judgment dated 27.05.2014. The said Judgment having not been challenged, Commission's ibid Order has attained finality.

b) That since inception, the petitioner had undertaken to run the project on 100% rice straw as fuel. However, in Petition No.45 of 2011, seeking re-determination of tariff, the petitioner demonstrated/submitted that the project can not run on 100% rice straw as the fuel requires mixing of high density fuel to the extent of 25 to 30%.

c) The petitioner is seeking re-determination of tariff as per normative parameters specified in RE Regulations, 2014 with rice straw as fuel. The petitioner is not entitled to invoke jurisdiction of the Commission on the basis of Tariff Order dated 05.09.2014 which is applicable only for new projects to be commissioned during FY 2014-15.

vii) The Commission posed a query to the petitioner vide its Order dated 27.01.2015 as to how RE Regulations, 2012 or RE Regulations, 2014 are applicable to the petitioner's project in terms of Regulation 1(2) of both the Regulations. The Regulation 1(2) of both the Regulations states that the Regulations shall come into force with effect from the date of publication in the official gazette i.e 06.02.2012 and 18.03.2014 respectively. In reply to the same dated 06.04.2015, the petitioner referred to the statement of objects and reasons of RE Regulations, 2014 wherein CERC observed that the revised norms may be prospectively applicable to existing projects, if the project developer and the distribution licensee agree to

the norms through appropriate amendment to the PPA subject to approval of the respective State Commission.

Findings:

viii)The Commission notes that erstwhile PSEB (now PSPCL) allotted 9 nos. rice straw based power projects with the predecessor of petitioner and signed the PPA on 29.04.2003. The Commission further notes that in Petition No.45 of 2011 filed by PBPL, it was submitted and argued that the project can not be run on 100% rice straw and needs mixing of high density fuel with it to the extent of 25 to 30%. Recalling Commission's Order dated 28.03.2012, the Commission observes that pursuant to the Order dated 04.10.2005 in Petition No.14 of 2003, the petitioner had signed the IA-cum-PPA with erstwhile PSEB on 10.08.2006 wherein the Commission had allowed the tariff rates applicable to new projects under NRSE Policy, 2001 i.e ₹ 3.01 per kWh for base year 2001-02 and 5 escalations @ 3% per annum upto the year 2006-07 with no further escalation such that the tariff as applicable for 2006-07 would remain in force for the remaining term of the PPA. The Commission had, however, further stated that in the event of revision in the NRSE Policy of the Govt. of Punjab in future regarding escalation in cost of fuel, the petitioner's right to approach the Commission does not get infringed in any manner. Consequent to the notification of NRSE Policy, 2006 by Govt. of Punjab, the petitioner filed another petition (Petition No.14 of 2007) pleading for applicability of tariff as per NRSE Policy,

2006 which was disposed of by the Commission vide Order dated 19.12.2007. Pursuant to the said Order, the petitioner and erstwhile PSEB signed amendment to the PPA dated 25.06.2008 wherein the tariff was revised to ₹ 3.49 per kWh for the base year 2006-07 with 5 escalations @ 5% per annum upto the year 2011-12 with no further escalation to be allowed and tariff applicable for 2011-12 to remain in force for the remaining term of the PPA. The petitioner again approached the Commission by way of Petition No.45 of 2011 for revision in tariff in terms of Order dated 30.09.2010 passed by the Commission in Petition No.32 of 2010 (Suo-Motu), wherein the Commission adopted CERC RE Regulations 2009 with state specific modifications and determined the tariff for the renewable energy power projects to be commissioned in FY 2010-11. The petitioner's project was synchronized with the grid in June, 2010 and started injecting electricity in October, 2010. After considering the claims of the parties, the Commission revised the tariff for the petitioner's project in its Order dated 28.03.2012. The said Order was challenged by the petitioner before Hon'ble APTEL in Appeal No.101 of 2012 which was dismissed vide Judgment dated 27.05.2014.

As rightly contended by PEDDA, the petitioner has been seeking revision in tariff time and again. The Order of the Commission dated 28.03.2012 has attained finality. The Commission notes that relevant para 17(b) of the said Order reads as hereunder:

“.....The petitioner has further submitted that the plant would be using Biomass fuel comprising a mix of rice/wheat straw and rice husk in the ratio of 75:25. It has been explained that to avoid bridging of fuel in straw based plants, mixing of the same with high density fuel like husk/wood chip is required.”

Thus, despite the project having been allotted by erstwhile PSEB as rice straw based project, in the interest of all the stake holders, the Commission allowed the use of biomass fuel mix and accordingly determined the tariff of the project as a ‘Biomass based Power Project’ as provided in the RE Regulations, 2009 adopted by the Commission with state specific modifications in its Order dated 30.09.2010. The Commission notes that in the additional submissions filed on 07.11.2014, the petitioner has submitted a copy of the purchase order dated 27.09.2007 for supply of the boiler for its project, wherein the boiler parameters are as hereunder:

“Boiler Parameters: 1 no. 60 TPH, 67 Kg/cm² (g) steam pressure 430 +/- 5⁰C SH steam temperature, Paddy Straw fired Travelling Grate ‘POWERPAC’ boiler and its auxiliaries.”

Thus, it can be seen that as contended by PEDDA, the project, since inception, was construed and set up as a paddy/rice straw based project. However, considering the difficulties expressed by the petitioner with regard to bridging of fuel in Petition No.45 of 2011 as brought out above, the Commission had allowed the tariff based on biomass fuel mix.

The petitioner has been seeking repeated revisions in tariff. Incidentally, considering the merits of the petitions filed by the petitioner from time to time, the revision in tariff was allowed. The Commission's latest Order dated 28.03.2012 attained finality on dismissal of the Appeal filed by the petitioner before Hon'ble APTEL vide Judgment dated 27.05.2014.

However, the petitioner has now filed the instant petition again claiming revision in tariff on the basis of RE Regulations, 2014 notified on 18.03.2014, which incidentally provide separate norms for determination of tariff for rice straw based projects. As per Regulation 1(2) of these Regulations, the Regulations are applicable from the date of publication in official gazette, which is 18.03.2014. As such, the Regulations are prospective and applicable for projects to be commissioned after 18.03.2014. Even the RE Regulations, 2012 are not applicable in the case of the petitioner's project as the same was commissioned in the year 2010.

As per the RE Regulations, 2012 adopted by the Commission with state specific modifications, the preferential tariff determined by the Commission is applicable for the entire tariff period. As contended by PSPCL, there is no provision in the Regulations for allowing additional capitalization during the tariff period/tenure of the PPA. Definitely, there is provision for providing escalation in fuel cost every year depending upon the option exercised by the generator i.e normative

5% escalation per annum or as per indexation mechanism specified in the Regulations.

The Commission notes that the predecessor of the petitioner was allotted 9 nos. rice straw based power projects in the year 2003 out of which only one project has been commissioned in year 2010. The original tariff was revised in the year 2005 on the basis of NRSE Policy, 2001 and then in the year 2007 on the basis of NRSE Policy, 2006. Again the tariff was revised vide Commission's Order dated 28.03.2012 wherein the submission of the petitioner with regard to using biomass fuel comprising a mix of rice/wheat straw and rice husk in the ratio of 75:25 in place of 100% rice straw was allowed. This revision in tariff was on the basis of the RE Regulations, 2009 adopted by the Commission with state specific modifications in its Order dated 30.09.2010. Although the boiler of the petitioner's project was suitable for 100% paddy straw, still the petitioner changed the fuel from paddy straw to biomass fuel mix and got the tariff for biomass based power projects as brought out above. Now, since RE Regulations, 2014 have been notified with separate tariff for 100% paddy straw based new projects, the petitioner again wants to shift back to 100% paddy/rice straw based project despite the same being not applicable to its project having been commissioned earlier. Without saying so in so many words, this does tantamount to the abuse of the process of Court. The Commission further notes that though the petitioner has claimed that its project is running on 100% paddy straw,

the monthly fuel usage and stock statements duly certified by Chartered Accountants submitted along with the joint report of PEDA and PSPCL mention the fuel as biomass fuel and not paddy straw.

Accordingly, the petitioner is not entitled to invoke jurisdiction of the Commission on the basis of Tariff Order dated 05.09.2014 which is applicable only for new projects to be commissioned during FY 2014-15.

In view of the above, the Commission holds that there is no case for granting the prayer of PBPL in this petition seeking re-determination of revised/generic/preferential tariff for its project as per the normative parameters for biomass power projects with rice straw as fuel specified in RE Regulations, 2014 and for passing necessary directions to the respondent(s) as to the re-opening of the PPA. The Commission reiterates that no further revision is warranted in the tariff already allowed to the petitioner's project as per Commission's Order dated 28.03.2012, which attained finality after dismissal of Appeal by Hon'ble APTEL.

The petition is disposed of in terms of the above.

Sd/-
(Gurinder Jit Singh)
Member

Sd/-
(Romila Dubey)
Chairperson

Chandigarh
Dated: 25.06.2015