

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

**Petition No.35 of 2011
Date of Order: 26.03.2013**

In the matter of: Petition under Section 86 read with Section 94(f) of the Electricity Act, 2003 for revision of rates of tariff of Biomass based power project with an aggregate capacity of 6 MW.

AND

In the matter of: Malwa Power Private Limited, 1255, Sector 14, Faridabad-121007 and Regd. Office A-177, Okhla Industrial Area, New Delhi-110020 through Shri B.S.Jangra, Head Biomass Division.

VERSUS

1. State of Punjab through the Secretary to Govt. of Punjab, Deptt. of Science, Technology, Environment and Non-conventional Energy, Civil Secretariat, Chandigarh.
2. Punjab State Power Corporation Limited
3. Punjab Energy Development Agency (PEDA), Plot No.1 & 2, Sector 33-D, Chandigarh through its Director.

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

ORDER

This petition has been filed by Malwa Power Private Limited, New Delhi, a company under the Companies Act, 1956 under Section 86 read with Section 94(f) of the Electricity Act, 2003 for revision of rates of tariff of the Biomass based power plant at village Gulabewala, District Muktsar with an aggregate capacity of 6 MW in terms of the provisions of Section 61 and 62 of the Electricity Act, 2003.

2. The petitioner has submitted that the Punjab Energy Development Agency (PEDA) allotted the site at Gulabewala, District Muktsar for the project and MOU for the site was signed with PEDA on 16.04.2002. The Detailed Project Report was submitted to PEDA and requisite sanction to install the project was granted by PEDA on 25.11.2002. Accordingly Implementation

Agreement was signed with PEDDA on 20.02.2003. The petitioner had filed a petition before this Commission for tariff determination, which was disposed of vide Order dated 08.04.2003, allowing the tariff rate as fixed by the State Government in its NRSE Policy, 2001 with some modifications like bringing the installation and maintenance of the evacuation system in the scope of the promoter, thereby enhancing the overall cost of the project. Accordingly the petitioner executed a Power Purchase Agreement (PPA) with erstwhile Punjab State Electricity Board (now succeeded by PSPCL) on 19.02.2004. The project was commissioned in April, 2005. As per clause 2.1.1 of the PPA, the Board is to purchase and accept all energy made available at the interconnection point from the Generating Company's facility, pursuant to terms and conditions of PPA, at the rate approved by the Commission which was Rs.3.01 per kWh (base year 2001-02) with 3% annual escalation upto 2005-06. Thereafter, no escalation was to be allowed during the pendency of the Agreement. The petitioner has stated that an amendment was made in the said PPA on 08.02.2006 whereby clause 2.1.1 was amended and annual escalation was fixed upto 2006-07.

The petitioner has further submitted that Government of Punjab (GoP) notified 'New and Renewable Sources of Energy (NRSE) Policy, 2006 vide Notification dated 26.11.2006. In pursuance to NRSE Policy, 2006 of GoP, this Commission passed Order dated 13.12.2007 and fixed the tariff rate for purchase of power by the Board during the year 2007-08 as Rs.3.66 per unit (5% annual escalation for Biomass projects), Rs.3.59 per unit (3% annual escalation for Biomass based co-generation projects) on the basis of Rs.3.49 per unit for 2006-07. It was mentioned in the said Order that individual developers would be free to approach this Commission for determination of such rates and the Commission at that stage will decide whether rates are to be approved individually in each case or generically for a category of cases.

The petitioner has further submitted that tariff in respect of Biomass projects is fuel sensitive and depends upon the cost of the fuel. This Commission had adopted Biomass fuel price at Rs.1300/MT for the purpose of fuel cost and also allowed escalation of 5% per annum (equivalent to WPI,

inflation) without compounding. However the minimum workable average fuel price for the company comes out to be Rs.2682 per MT. The cotton stalk is main fuel for the project, price of which has increased tremendously and same was available at the rate of Rs.1516 per MT in year 2007-08 and Rs.2870 per MT during the year 2010-11. Alternate fuels like mustard waste, paddy waste etc. are also expensive and not easily available. Rate of rice-husk varied between Rs.3500 per MT and Rs.4500 per MT during the year 2010-11. The petitioner has prayed that cost of fuel for its project be considered at least Rs.2682 per MT. The petitioner has submitted that this Commission in its Order in petition filed by Consortium of Bermaco Energy Systems Limited and Jalkheri Power Private Limited, Mumbai, gave a finding that in the event of revision in the NRSE Policy of the Government in future regarding escalation of fuel, the petitioner's right to approach the Commission for suitable orders does not get infringed in any manner. Further this Commission had fixed the tariff for biomass based power projects as Rs.5.05 per unit for financial year 2010-11 in its Order dated 30.09.2010 passed in Petition No.32 of 2010 (Suo-Motu). This Commission, in Petition No.11 of 2009 filed by Universal Biomass Energy Pvt. Ltd., had granted tariff rate of Rs.5.12 per unit for the year 2010-11. The petitioner has worked out tariff for its 6 MW Biomass based power project for FY 2010-11 as Rs.5.14 per unit. The petitioner has also submitted that this Commission in Petition No. 29 of 2010 filed by Green Planet Energy (P) Ltd. had held vide Order dated 13.01.2011 that it is bounden duty of the Commission to incentivise generation of electricity from renewable sources of energy and the PPAs would be re-opened only for the purpose of giving thrust to non-conventional energy projects. This Commission had based the said Order on the Order of Appellate Tribunal for Electricity passed in Rithwik Energy Systems Ltd. and others versus Transmission Corporation of Andhra Pradesh Ltd. and others.

The petitioner has also submitted that in the event of non-acceptance of the petition of the petitioner to revise the rates as claimed, the petitioner be permitted Inter-state Open Access in terms of Notification dated 11.06.2009 of the Government of Punjab.

The prayer of the petitioner is as under:

“It is therefore, most respectfully prayed that cause shown hereinbefore may kindly be accepted and the tariff rate in respect of BIO-MASS BASED POWER PROJECT in respect of the petitioner may kindly be revised and fixed at Rs.5.65 per unit (Cost Rs.5.14 + 10% profit) with 5% escalation per year till the matter of further revision of rates is re-considered by this Commission in the interest of justice.

It is further prayed that in the event of non-acceptance of the petition of the petitioner to revise the rates as claimed by the petitioner in the present petition, the petitioner be permitted to Inter-state Open Access in terms of Notification dated 11.6.2009 in the interest of justice.”

3. The petition was admitted vide Order dated 30.6.2011 and the respondents were directed to file reply by 30.8.2011 with copy to the petitioner, who may file rejoinder, if any, by 07.09.2011. PEDDA filed its reply vide No.4237-39 dated 26.08.2011. Reply on behalf of State of Punjab was filed by PEDDA vide No.4478-80 dated 09.09.2011 and reply by PSPCL was filed vide C.E./ARR & TR memo. No.5763 dated 08.09.2011.

4. The reply of PEDDA is summed up as under:-

(i) The petitioner has signed a valid and binding Power Purchase Agreement with erstwhile PSEB (now PSPCL) on 19.02.2004 in compliance with the Order of this Commission dated 08.04.2003. The PPA provides for the applicable tariff during the term of the Agreement (20 years) as per subclauses 2.1.1 and 2.1.3 of clause 2.0.0. Therefore the petition seeking relaxation of the tariff is not maintainable. The petitioner has not brought out any clause of the PPA requiring PSPCL to review the tariff payable due to changes affecting the petitioner.

(ii) The Order passed by the Commission in Petition No.14 of 2007 filed by Punjab Biomass Power Limited (SPV constituted by Consortium of Bermaco Energy Systems Limited and Jalkheri Power Private Limited) is not applicable to the petitioner since the project of the petitioner was commissioned prior to the notification of NRSE Policy, 2006, whereas project of Punjab Biomass, which was commissioned in October, 2010 and met the conditions of Commission's Order dated 13.12.2007, was given tariff of NRSE Policy, 2006. The project of the petitioner was set up long ago, probably at a much lower capital cost and, therefore, generic tariff as per Order dated 30.09.2010 of the Commission is not admissible when legal and binding PPA is already operative. The Commission has already held in similar petitions filed by similarly placed developers like IAL etc. that they signed the PPA with PSEB (now PSPCL) under NRSE Policy, 2001 and the project also achieved COD before the issue of NRSE Policy, 2006 and had ordered that no relief is admissible to such petitioners.

(iii) PEDDA has prayed that in light of the submissions made by it in its reply, the petition may be rejected by the Commission.

The reply of Government of Punjab filed by PEDDA vide No.4478-79 dated 09.09.2011 was on similar lines as in reply filed by PEDDA.

5. PSPCL submitted in its reply dated 08.09.2011 briefly as under:

(i) It has been mentioned in para 4 of the Order dated 08.04.2003 of this Commission that during hearings before the Commission all the petitioners including this petitioner and respondents were in agreement to the rate and terms and conditions to be incorporated in the PPAs which included cost of transmission lines and related works for evacuation of power alongwith its maintenance to be carried out by the developer as reiterated through the two directives of the State Government as per NRSE Policy, 2001.

(ii) PSPCL has cited para 6 (a) of Order dated 13.12.2007 of the Commission and has contended that all developers have not been allowed by

the Commission to approach it for determination of tariff. There is no provision in the PPA to change the rates on account of factors as stated by the petitioner. The provision has been made for giving 3% annual escalation for five years on single part tariff which was due to change in factors during the five years. PSPCL has submitted that in the generic tariff no escalation is allowed on the fixed part of the tariff and only a percentage escalation is allowed on variable part.

(iii) The petitioner was given the required escalation on the total tariff which included the variation in cost of fuel also. Therefore, the petitioner is not eligible for any further increase in tariff on account of escalation in the cost of fuel since single part tariff does not provide for the same. The petitioner was allowed escalation on fixed part of the tariff also which should otherwise have been constant for five years. The petitioner has not been put to any loss. PSPCL has stated that the petitioner is required to manage and explore the cheaper source of fuel and to arrange the technology upgradation for fuel management rather than asking for escalation which is not as per terms and conditions of the PPA. The Order passed by the Commission in the petition filed by Consortium of Bermaco Energy Systems Limited and Jalkheri Power Private Limited is not applicable in the case of the petitioner because in the case of said Consortium, their Project was yet to be commissioned on the date of notification of NRSE Policy, 2006; whereas the project of the petitioner stood commissioned on 20.04.2005 before the notification of NRSE Policy, 2006. Therefore the Order dated 13.12.2007 is not applicable in the case of the petitioner.

(iv) In respect of Order dated 26.11.2010 passed in the petition filed by Universal Biomass Energy Pvt. Ltd., PSPCL has submitted that the petition for revision in tariff was filed by the company in June, 2009 as per provisions in Order dated 13.12.2007, much before the adoption of CERC Regulations, 2009 by PSERC vide Order dated 30.09.2010. Therefore the provisions of that Order is not applicable to the petitioner.

(v) The data of procurement of fuel by the petitioner from 2007-08 to 2010-11 is neither based on any approved norms nor on any authenticated figures.

(vi) PSPCL has agreed that the project of the petitioner is environmental friendly and therefore a number of financial and fiscal incentives were given to such projects under NRSE Policy, 2001.

(vii) PSPCL has submitted that re-opening of PPA is not in the interest of justice to the licensee since as per the NRSE Policy, 2001, the rates are freezed after the year 2006-07 in all the contracts. It is to be seen whether the contract can be re-opened after six years of commissioning of the project by the developer to be viable during the term of the Agreement and resulting into financial implications to the PSPCL and ultimately burdening the consumers.

(viii) The Power Purchase Agreement had been signed for purchase of power for 20 years from the date of commissioning of the project. The petitioner can not breach the Agreement in case of non-acceptance of revision in tariff by the Commission and supply power to the consumers outside the State through Open Access.

(ix) PSPCL has further submitted that it is wrong to contend by the petitioner that different yardsticks have been applied for different developers by the Commission. No PPA signed under NRSE Policy 2001 and commissioned before the applicability of the NRSE Policy 2006 has been given escalation in tariff beyond NRSE Policy, 2001. PSPCL has prayed that petition be dismissed since a legal contract can not be re-opened during the term of the Agreement to encourage the development of Renewable Energy Sources, thus forcing the licensee to buy costly power during the pendency of the contract and thereby putting an extra burden on the consumers.

6. The Commission observed that the Government of Punjab was in the process of formulating a revised New and Renewable Sources of Energy

(NRSE) Policy and it was expected that the revised policy would address the issues raised in the instant petition. In view of this position, the petition was adjourned sine die vide Order dated 14.09.2011.

7. The petitioner filed Application dated 28.12.2012 for listing of the case, which was adjourned sine-die to await the new NRSE Policy of the Government and submitted that the State of Punjab has now formulated a 'New and Renewable Sources of Energy (NRSE) Policy, 2012 vide notification dated 26.12.2012, para 5.4 of which provides as under:-

“5.4 As per Power Purchase Agreements signed with PSEB (now PSPCL) by IPP Biomass/Biogas power projects allocated by PEDDA & set-up during the period of NRSE Policy 2001, the tariff has become stagnant at Rs.3.49 per unit since 2006. The generic tariff as per RE tariff regulation 2012 notified by CERC and adopted by PSERC for biomass power projects allows 5% annual rise in the fuel cost for the tariff period from the date of commissioning. Therefore to enable these projects to continue generation, the tariff for these projects will be re-determined by PSERC for the remaining period of PPA”.

The petitioner prayed that the petition may be listed for hearing and tariff rate in respect of bio-mass based project of the petitioner be re-fixed w.e.f. date of filing of the petition, keeping in view the submissions made in the petition dated 19.05.2011 as well as the submissions made in the present application in the interest of justice. The copy of the application was supplied to the respondents, who were directed vide Order dated 23.01.2013 to file reply to the application by 18.02.2013. PSPCL filed reply vide C.E./ARR & TR memo No.5288 dated 18.02.2013 and PEDDA filed joint reply of Government of Punjab and PEDDA vide No.7128-30 dated 26.02.2013. The petitioner, PSPCL and PEDDA submitted during hearing on 26.02.2013 that they have nothing more to submit in the petition except the submissions already made by them in this petition.

Further hearing of the petition was closed and Order was reserved by the Commission vide Order dated 27.02.2013.

8. Observations of the Commission:

Considering the submissions made in the petition, replies of the respondents, application of the petitioner and replies thereto, the Commission observes as here under:

i) The petitioner was allotted the project site by Punjab Energy Development Agency (PEDA) for operating a Biomass based power project and the MOU and Implementation Agreement (IA) for the same were signed by the petitioner on 16.04.2002 and 20.02.2003 respectively, with PEDA.

ii) The Commission in its Order dated 08.04.2003, in response to petition(s) filed by NRSE Project Developer(s) including the petitioner, specified the tariff rates for the NRSE project(s) of the petitioner(s), which were in accordance with NRSE Policy, 2001.

iii) In pursuance to the Commission's said Order dated 08.04.2003, the petitioner signed a Power Purchase Agreement (PPA) with Punjab State Electricity Board (now PSPCL) on 19.02.2004 for supply of power from its 6 MW Biomass based power project. The project was commissioned in April, 2005.

iv) As per the PPA, the tariff was fixed as Rs. 3.01 per kWh (base year 2001-2002) with 3% annual escalation upto FY 2005-06 and thereafter no escalation was to be allowed during the pendency of the Agreement. However, vide Amendment no.1 dated 08.02.2006, clause 2.1.1 of the PPA was amended to provide for annual escalation upto FY 2006-07.

v) The petitioner filed a petition in the Commission dated 19.05.2011 praying for revision of the tariff and in case of non-acceptance of the same, sought permission for interstate Open Access. In the petition, the petitioner relied upon the Commission's Order dated 13.12.2007 and Orders of the Commission in other petitions, wherein consequent upon the said Order,

revision/re-determination of tariff for their respective projects was sought by the renewable energy project developers.

vi) PSPCL and PEDDA in their respective replies to the petition requested for dismissal of the petition out rightly. PSPCL and PEDDA submitted that reliance on the projects set up during the NRSE Policy, 2006 is not applicable in the instant case as petitioner's project was set up under NRSE Policy, 2001, i.e. prior to the notification of NRSE Policy, 2006. PSPCL further submitted that the petitioner be directed to abide by the tariff rates and terms & conditions of the PPA dated 19.02.2004 and amendment dated 08.02.2006.

vii) The NRSE Policy, 2006 notified by Government of Punjab in November, 2006 provided that the tariffs therein would also be available in the case of such projects where MOUs/Implementation Agreements had been signed under the NRSE Policy, 2001 but PPAs were yet to be signed. In its Order dated 13.12.2007, the Commission, while approving the tariff rates indicated in the NRSE Policy, 2006 also included the projects under the NRSE Policy, 2001 which had signed the PPAs as well, in pursuance of MOUs/IAs but no concrete steps had, thereafter, been taken to implement the project for one reason or another, stating that they had completed at least one more additional step for implementing the project. However, the projects which had signed the PPAs under the NRSE Policy, 2001 and started generation before the notification of the NRSE Policy, 2006, like that of the petitioner, were not entitled for tariff revision in the NRSE Policy, 2006.

viii) The Commission in its Order dated 14.09.2011 adjourned the petition sine die after observing that Government of Punjab is in the process of formulating a revised NRSE Policy which is likely to be notified shortly and further observed that it is expected that this policy would address the issues raised in the instant petition.

ix) The Government of Punjab, Department of Science, Technology, Environment and Non-conventional Energy vide its notification dated 26.12.2012 notified the New and Renewable Sources of Energy (NRSE) Policy, 2012. Para 5.4 of the policy provides:

“As per Power Purchase Agreements signed with PSEB (now PSPCL) by IPP Biomass/Biogas power projects allocated by PEDDA & set-up during the period of NRSE Policy 2001, the tariff has become stagnant at Rs. 3.49 per unit since 2006. The generic tariff as per RE tariff regulation 2012 notified by CERC and adopted by PSERC for biomass power projects allows 5% annual rise in the fuel cost for the tariff period from the date of commissioning. Therefore to enable these projects to continue generation, the tariff for these projects will be re-determined by PSERC for the remaining period of PPA”.

x) The petitioner, citing the said provision in the NRSE Policy, 2012, filed an Application dated 28.12.2012 praying for grant of tariff for re-fixation of tariff with effect from the date of filing the petition.

xi) PSPCL in reply to the said Application has acknowledged petitioner's reference to para 5.4 of the NRSE Policy, 2012 (brought out above) and not contested the same.

However, PSPCL has submitted that there is no provision in the PPA for enhancement of tariff after the last 3% annual escalation allowed upto 2006-07. Also, it has been submitted that the annual escalation was applicable on the then prevalent single part tariff i.e. including both variable and fixed components whereas in the generic tariff, no escalation is allowed on the fixed component. PSPCL has reiterated that reference by the petitioner to the Commission's Orders in other petitions filed by the developers for projects set up during the NRSE Policy, 2006 for revision in tariff is not relevant in the instant case as petitioner's project was set up during NRSE Policy, 2001. Also, there is no case for claiming any loss on account of non-revision of tariff as indicated in the Application.

xii) GoP and PEDDA in a joint reply to the petition submitted that tariff for the petitioner's project may be re-determined in accordance with clause 5.4 of the NRSE Policy, 2012.

9. Findings and Decision of the Commission:

i) Considering the aforementioned observations, the Commission finds that the petitioner's 6 MW Biomass based power project was commissioned in

April, 2005 (FY 2005-06) during the period of NRSE Policy, 2001. The NRSE Policy, 2006 provided applicability of tariff provided therein to projects where MOU/IA was signed under the NRSE Policy, 2001, but PPAs had not been signed. The NRSE Policy, 2001 did not provide for any escalation in tariff after five years whereas NRSE Policy, 2006 provided that at the end of the specified escalations, the tariff payable shall be the last escalated tariff or the PSEB HT tariff applicable in that year whichever is higher. In the Commission's Order dated 13.12.2007, the Commission held that even the projects where PPAs were signed during NRSE Policy, 2001 but no concrete steps to implement the project had been taken thereafter, would also be eligible for tariff rates indicated in the NRSE Policy, 2006, which were also approved by the Commission in the said Order. In the said Order, while approving the tariff rates, the Commission also held 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.”

It would be seen that the category of the project(s), like that of the petitioner, which had steadfastly been set up during the period of the NRSE Policy, 2001 itself, signed the PPA(s) and started generation, had been at a relative disadvantage as compared to the project(s) which had signed the MOU/IA/PPA during NRSE Policy, 2001 but were not implemented for one reason or the other as well as project(s) set up under the NRSE Policy, 2006. This anomalous situation which had placed the projects like that of the petitioner at a comparatively adverse pedestal has been set right in the NRSE Policy, 2012. The Commission notes that an enabling provision has been made under para 5.4 of the said Policy stating that in the case of the IPP biomass/biogas power projects set up during the period of NRSE Policy, 2001, the tariff has become stagnant at Rs. 3.49 per unit since 2006 and,

therefore, to enable such projects to continue generation, the tariff for these projects will be re-determined by PSERC for the remaining period of PPA.

ii) The Commission notes that PSPCL has not contested clause 5.4 of the NRSE Policy, 2012. On their part, PEDDA and Government of Punjab in the joint reply filed in the Commission, stated that tariff for such projects may be re-determined by the Commission, in accordance with clause 5.4 of the NRSE Policy, 2012. Accordingly, in view of the discussion above and considering the tenets of natural justice, equity and good conscious, the Commission finds it fairly reasonable to consider the prayer of the petitioner for re-visiting the tariff provided in the PPA dated 19.02.2004.

iii) In its earlier Orders on similar petitions pertaining to the projects under NRSE Policy, 2006, 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 dated 19.02.2004 and subsequent amendment dated 08.02.2006 to the PPA signed between the petitioner and PSPCL would not stand in the way of considering appropriate tariff for the said project.

With regard PSPCL’s submission that as per tariff in the PPA read with its amendment, annual escalation was applicable only upto FY 2006-07 and on the single part tariff i.e on both the fixed and variable components, the Commission holds that the same was as per the methodology/tariff regime prevalent at that time which incidentally, in the instant case, was applicable for only one year i.e. FY 2005-06 to FY 2006-07. From FY 2010-11 onwards, after the adoption of CERC RE Regulations, tariff is determined in two components i.e. fixed and variable and escalation is allowed only on the latter as per the Regulations. The other concerns expressed by PSPCL as brought out in para 8 (xi) above also stand suitably addressed in various paras of this Order.

v) 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 parts i.e. levellised fixed cost and variable cost.

vi) For working out the levellised fixed cost of the petitioner's biomass based power project for the year of applicability of tariff i.e. FY 2012-13, the Commission intends to determine the capital cost of petitioner's project commissioned in FY 2005-06 for that year by applying the capital cost indexation mechanism as specified in the RE Regulations, 2012, on the normative capital cost of Rs. 445 lac per MW for biomass based power 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 2005-06 comes to Rs. 361.54 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. 247.31 lac per MW for the year 2012-13. With this capital cost and using normative parameters for FY 2012-13, the levellised fixed cost works out to Rs.1.60 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. 3.71 per kWh.

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

Tariff for the year 2012-13				
Levell-ised Fixed Cost	Variable Cost (FY 2012-13)	Applicable Tariff Rate	Benefit of Accelerated Depreciation, if availed	Net Applicable Tariff Rate upon adjusting for Accelerated Depreciation benefit (3 - 4)
(Rs/kWh)	(Rs/kWh)	(Rs/kWh)	(Rs/kWh)	(Rs/kWh)
1	2	3	4	5
1.60	3.71	5.31	0.07	5.24

viii) The above tariff shall be payable to the petitioner prospectively with effect from the date of issue of this Order. 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.

ix) As per the 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. The Commission notes that as per clause 12.1.0 of the PPA, the term of the agreement is twenty (20) years extendable by another ten (10) years through mutual agreement. The Commission holds that the provision in the PPA would prevail.

x) Further, in accordance with Regulation 22 of the RE Regulations, 2012, any incentive or subsidy offered by the Central or State Governments if availed by the generating company for the renewable energy power plant(s), is to be deducted while determining tariff. Although per unit reduction on account of accelerated depreciation benefit has been quantified, reduction in tariff on account of other incentives and subsidies has not been specified. In the circumstances, the Commission directs that PSPCL will work out subsidy/incentive, if any, availed by the petitioner as per the scheme(s) of the Ministry of New and Renewable Energy, Govt. of India and reduce the tariff to that extent for the period of 12 years. Also tariff adjustment will be made on account of subsidy/grant/incentive of the Govt. of Punjab, if any, availed by the petitioner. Further, sharing of CDM benefits will be as per the RE Regulations, 2012.

The petition is disposed of accordingly.

(sd/-)
(Gurinder Jit Singh)
Member

(sd/-)
(Virinder Singh)
Member

(sd/-)
(Romila Dubey)
Chairperson

Chandigarh
Dated: 26.03.2013