

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

**Petition No. 32 of 2018
Date of Order: 29.11.2018**

Present: Sh. S.S. Sarna, Member
Ms. Anjali Chandra, Member

In the matter of: Petition under Section 86(1)(b) of the Electricity Act, 2003 seeking approval of PPA executed by the Petitioner with the Respondent, Shree Ganesh Edibles Private Limited.

AND

In the matter of: Punjab State Power Corporation Limited, The Mall, Patiala.

..... Petitioner

Versus

Shree Ganesh Edibles Private Limited,
Registered Office: Shop No. 25-B, New Grain Market, Khanna, District Ludhiana, Punjab.

..... Respondent

ORDER

Punjab State Power Corporation Limited (PSPCL) filed this petition under Section 86(1)(b) of the Electricity Act, 2003 seeking approval of Power Purchase Agreement (PPA) executed by it with Shree Ganesh Edibles Private Limited (SGEPL) for purchase of surplus power of 500 kW from the 2.92 MW biomass fuel based co-generation power project being established by SGEPL at Village Shahpur, Distt. Fatehgarh Sahib (Punjab) on BOO basis under NRSE Policy, 2012. SGEPL is a generating company under section 2(28) of the Electricity Act, 2003 and is in the process of establishing a 2.92 MW Biomass fuel based co-generation power plant in the State of Punjab.

2. The petition was admitted vide Order dated 28.09.2018. SGEPL was directed to file reply to the petition by 09.10.2018. PSPCL was directed to file rejoinder, if any, to the reply by 19.10.2018. Next date for hearing was fixed as 25.10.2018. SGEPL filed reply dated 09.10.2018 to the petition. The petition was taken up for hearing on 25.10.2018. During hearing, PSPCL requested some more time to file rejoinder to the reply filed by SGEPL. Vide Order dated 29.10.2018, the Commission directed PSPCL to file rejoinder within a week. Next date for hearing was fixed as 14.11.2018. PSPCL vide memo. no. 5000/TR-5/892 dated 06.11.2018 filed rejoinder to the reply of SGEPL.

3. The submissions made by PSPCL in the petition are summarized as under:

i) PEDA executed and signed an Implementation Agreement (IA) dated 11.08.2017 with SGEPL for sale of surplus power upto 1 MW from the Project to PSPCL under the New and Renewable Sources of Energy (NRSE) Policy, 2012.

ii) The Commission in its Order dated 31.10.2017 in petition no. 50 of 2017 (Suo-Motu) determined the tariff for Bagasse based Co-Generation Power Projects as Rs. 6.12 per kWh [(Levelling Fixed Cost as Rs. 2.74 per kWh + Variable Cost for FY 2017-18 as Rs. 3.55 per kWh) – Benefit of Accelerated Depreciation, if availed as Rs. 0.17 per kWh] amongst other renewable technologies in the State of Punjab.

iii) Clause 4.1 of IA dated 11.08.2017 provides as under:

“GoP grants permission to the company to establish, operate, maintain the 2.92 MW Biomass Based Co-generation Power Project and sell surplus power up to

1.0 MW from this project to PSPCL under NRSE Policy, 2012 as per tariff yet to be notified by PSERC for Non-Fossil Fuel based Co-generation Projects for FY 2017-18. The company shall be eligible for getting the applicable tariff for the scheduled project commissioning year or actual whichever is earlier as per tariff order notified by PSERC for Non-Fossil Fuel based Co-generation Projects for the project commissioning year 2018-19.”

- iv) Considering the provision in Clause 6.4(2) of the revised Tariff Policy notified by Ministry of Power on 28.01.2016, as the tariff based competitive bidding was not possible in the case of power procurement from the Co-Generation Power Projects, the firm was asked to offer discount on the generic tariff determined by the Commission in its Order dated 31.10.2017 in petition no. 50 of 2017 (Suo-Motu). The tariff determined by the Commission was the ceiling tariff and it was open to the generator to offer a lower tariff, which would be in public interest. Accordingly, it was considered desirable to negotiate the tariff with SGEPL to bring it lower than the generic tariff determined by the Commission.
- v) After holding negotiations, SGEPL vide its letter dated 13.12.2017 offered to sell the surplus power upto 500 kW to PSPCL at a tariff of Rs. 5.25/kWh for the first year with 5% per year increase in the variable cost (fuel cost) per annum.
- vi) PSPCL conveyed its consent to SGEPL vide Memo dated 19.12.2017 for purchase of surplus power of 500 kW at a tariff of Rs. 5.25 per kWh with the breakup of Rs. 2.74 per kWh as fixed cost and variable cost of Rs. 2.51 per kWh as per CERC norms valid for 20 years period and 5% escalation on variable cost applicable as per CERC norms. As the

generating company is availing the accelerated depreciation benefit (ADB), Rs. 0.17 per kWh has been reduced from the fixed charges component of the tariff. Therefore, the revised applicable tariff for the project of the generating company comes out to Rs. 5.08 per kWh for which the PPA has been signed.

vii) The Commission determined the levelized tariff for Bagasse based Co-generation Projects as Rs. 6.12/kWh for the projects to be commissioned in FY 2017-18. The said tariff determined by the Commission was the last available tariff for renewable based co-generation projects. CERC has determined tariff for Bagasse based Co-generation Projects for FY 2018-19 as Rs. 6.33 per kWh. The tariff for the future projects based on cost basis would be higher as evident from the tariff determined by CERC for FY 2018-19.

viii) The principle of negotiation of tariff in the interest of the consumers has been upheld by Hon'ble APTEL in the case of Madhya Pradesh Power Trading Company Ltd. v. MPERC & Ors. in Appeal No. 44 of 2010. In the said judgment, even when the tariff is determined in a bidding process, it is open to the parties to negotiate the tariff to reduce it further in consumer interest. The relevant extract of the said judgment is as under:

“35. It cannot be debated that the negotiations, as claimed by the Appellant before the State Commission, is only for reduction in the prices which is in the best interest of the consumers. In this case the negotiations also have actually resulted in the reduction in prices considerably. According to the Counsel for the Appellant negotiations with RPL has resulted in a great impact due

to the fact that the bidders have reduced their prices to a great extent.

.....
So, the reduction in the prices which is considerable could be highly beneficial both to the State as well as to the consumers at large in the State.

36. As indicated above, the bid documents provide that the Appellant has the right to reject any bids or all bids, if the quoted prices of tariff is not aligned to the market prices. This shows the procurer itself can reject all the bids or any other bids if the quoted price is not acceptable or it is not aligned to the market prices. This would mean, the procurer can make efforts to ensure that it gets supply for the reduced price from the very same bidders. Therefore, instead of rejecting the bids outright, the procurer is well within its right to negotiate with the parties to bring down the price which is aligned to the prevailing market price. In other words, when the procurer has the right to reject the bid, the procurer has got similar right to negotiate with the parties to bring down the price quoted in the bids.”

- ix) The negotiations have been conducted to reduce the tariff from the generic tariff determined by the Commission under section 62 of the Act based on costs and expenses. The said negotiated tariff is in consumer interest. The said generating station is expected to be commissioned by 2019. The power generated would be useful for Non-Solar RPO compliance which is required by the State of Punjab as the State of Punjab is surplus in solar power but deficient in non-solar power.
- x) Clause 2.1.1(iii) of the PPA specifically provides that no additional payment shall be payable on any account. Further, in case of any grant or subsidy from Govt. of India, the same

will be adjustable in tariff.

- xi) The Regulations of CERC also permit the parties to agree on a lower tariff, which is in consumer interest. Agreement on tariff with different norms and parameters is permitted subject to the tariff being lower. Regulation 84 of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 provides as under:

“84. Deviation from norms

Tariff for sale of electricity generated from a generating station based on renewable energy sources, may also be agreed between a generating company and a licensee, in deviation from the norms specified in these regulations subject to the conditions that the levellised tariff over the useful life of the project on the basis of the norms in deviation does not exceed the levellised tariff calculated on the basis of the norms specified in these regulations.”

In application of the above Regulation, the parties have agreed on a lower levellized tariff as determined by the Commission. The Commission vide Order dated 31.10.2017 in petition no. 50 of 2017 (Suo-Motu) determined the generic tariff for FY 2017-18 and adopted the said Regulations of CERC.

- xii) It is prayed to the Commission to approve the PPA dated 25.01.2018 executed by it with SGEPL for purchase of power upto 0.5 MW from the generating station established by SGEPL at the tariff of Rs. 5.08 per kWh i.e. Rs. 2.57 per kWh as levellized fixed charges after taking into account Rs. 0.17 per kWh as Accelerated Depreciation Benefit availed by the

respondent and Rs. 2.51 per kWh as variable charges for the first year with escalation of 5% per annum.

4. The submissions made by SGEPL in its reply dated 09.10.2018 are summarized as under:

i) SGEPL approached Punjab Energy Development Agency (PEDA), the nodal agency of Govt. of Punjab for development of new and renewable sources of energy, for development of the project under NRSE Policy, 2012 to be operated on Biomass i.e. rice straw, rice husk, wooden sawdust etc. After the submission of DPR, the project was approved by PEDA and the IA was signed on 11.08.2017.

ii) Article 4.1 (i) of the IA provides as under:

“The GoP grants permission to the Company to establish, operate, maintain the 2.9 MW Biomass Based Co-generation power project and sell surplus power upto 1.0 MW from this project to PSPCL under NRSC Policy – 2012 as per tariff yet to be notified by PSERC for non fossil fuel based co generation projects for FY 2017-18”.

iii) The Commission determined the tariff for non-fossil fuel/Bagasse based co-generation plants as Rs. 6.12 per kWh after availing the benefit of accelerated depreciation of Rs. 0.17 per kWh for FY 2017-18 in petition no. 50 of 2017. Further, the Commission determined the tariff for non-fossil fuel/Bagasse based co-generation plants as Rs. 6.33 per kWh after availing the benefit of accelerated depreciation of Rs. 0.15 per kWh for FY 2018-19 in petition no. 23 of 2018.

iv) SGEPL approached PSPCL for signing of PPA. PSPCL informed that it wants to negotiate the tariff payable. As SGEPL had no option, it reworked the viability of the project

and reduced the quantum of surplus power to 0.5 MW and negotiated the tariff, which is as under:

Levelling Fixed Tariff	1 st year variable tariff	Total	Accelerated Depreciation Benefit	Net Tariff Payable
2.74	2.51	5.25	0.17	5.08

v) The PPA was signed on 25.01.2018 between SGEPL and PSPCL. The plant was commissioned on 23.02.2018. Sale of power as per PPA is yet to commence as 11 kV line to be erected by PSPCL is yet to be made operational by it.

vi) SGEPL is not in a position to offer any reply on the compliance of the CERC RE Tariff Regulations in the matter and applicability of the case law quoted in para 3(viii) above. It is prayed that the PPA and the tariff provided therein may be approved.

5. PSPCL in its rejoinder dated 06.11.2018, with regard to the submission of SGEPL that it signed the PPA without any option but to negotiate, thereby seeking to suggest lack of full and free consent, submitted that the suggestion is baseless. PSPCL further submitted in the rejoinder that the parties have executed a commercial contract based on negotiations and the respondent has taken advantage of the same and has set up the project. PSPCL stated that SGEPL has itself prayed for the approval of the PPA including the tariff of Rs. 5.08 per kWh as provided in the PPA. It was further stated that the same is in the public interest as the said tariff is lower than the capped tariff determined by the Commission.

Findings and Decision

6. The Commission has carefully gone through the petition, the reply submitted by SGEPL and the rejoinder submitted by PSPCL.

The Commission notes that vide petition no. 50 of 2017 (Suo-Motu), the Commission determined the generic tariff for FY 2017-18 for Bagasse based Co-Generation Projects @ Rs. 6.29 per kWh i.e. Rs. 2.74 per kWh as levelled fixed cost and Rs. 3.55 per kWh as Variable Cost for FY 2017-18. Upon adjusting for Accelerated Depreciation benefit of Rs. 0.17 per kWh, the tariff was Rs. 6.12 per kWh. The Commission further notes that Regulation 84 of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 provides as under:

“84. Deviation from norms

Tariff for sale of electricity generated from a generating station based on renewable energy sources, may also be agreed between a generating company and a licensee, in deviation from the norms specified in these regulations subject to the conditions that the levelled tariff over the useful life of the project on the basis of the norms in deviation does not exceed the levelled tariff calculated on the basis of the norms specified in these regulations.”

The Commission notes that both the parties i.e. PSPCL and SGEPL have executed the PPA on 25.01.2018 with a tariff of Rs. 5.08 per kWh for purchase of 500 kW power from 2.92 MW Bagasse based power project being established by SGEPL and prayed for approval of the same. The Commission finds no merit in the SGEPL's contention that it had no option but to negotiate the tariff for the project. The Commission is of the view that the decision of SGEPL to agree to the said tariff is a commercial decision especially when it has considered and reduced the quantum of power offered to PSPCL from upto 1 MW to 500 kW and also signed the PPA

unconditionally.

Accordingly, the Commission approves the procurement of 500 kW power from the said 2.92 MW Bagasse based co-generation Power Project under the PPA signed between PSPCL and SGEPL on 25.01.2018 at the tariff of Rs. 5.08 per kWh i.e. Rs. 2.57 per kWh as levellised fixed charges and Rs. 2.51 per kWh as variable charges for the first year with 5% per annum escalation in variable charges for the tariff period of 20 years.

The petition is disposed of in terms of the above.

Issued as per section 92(2) of the Electricity Act, 2003.

Sd/-
(Anjuli Chandra)
Member

Sd/-
(S.S. Sarna)
Member

Chandigarh
Date: 29.11.2018