

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

**Petition No. 53 of 2013
Date of Order: 13.12.2013**

In the matter of: Petition for approval of purchase of electricity by the petitioner, Punjab State Power Corporation Limited from M/s RSSB Educational & Environmental Society from its proposed 7.52 MW Solar PV Power Project using Crystalline Technology on rooftop.

AND

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

AND

- In the matter of
- 1 Punjab Energy Development Agency, Plot No.1&2 Sector 33-D, Chandigarh (U.T.)-160034.
 2. RSSB Educational & Environmental Society, Dera Baba Jaimal Singh, Beas, District Amritsar.

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

ORDER

Punjab State Power Corporation Limited (PSPCL) has filed this petition under Section 86 (1) (b) of the Electricity Act, 2003 for seeking approval to purchase electricity from RSSB Educational and Environmental Society (RSSB) from its proposed 7.52 MW Solar PV Power Project using Crystalline Technology on rooftop. PSPCL has submitted that the Government of Punjab (GoP) has issued policies from time to time for development of non-conventional and renewable energy sources in the State. The GoP had previously issued the NRSE Policy, 2001 & NRSE Policy 2006. Recently GoP has issued NRSE Policy, 2012 for the development of renewable energy sources and in particular solar energy generation in the State. GoP has designated Punjab Energy Development Agency (PEDA) as the nodal agency

under NRSE Policy, 2012. RSSB Educational and Environmental Society, has proposed to set up 7.52 MW Rooftop Solar PV Power Project at Dera Radha Soami Satsang Beas, District Amritsar and has entered into an Implementation Agreement (I.A.) with PEDDA dated 11.09.2013 on the terms and conditions contained in the said I.A.

2. PSPCL has submitted that the said I.A. dated 11.09.2013 has the salient provisions as under:-

- (a) RSSB Educational and Environmental Society (Respondent No.2), shall establish a 7.52 MW Rooftop Solar PV Power Project using Crystalline Technology on the Rooftop in Dera Radha Soami Satsang, Beas, District Amritsar.
- (b) The I.A. shall remain in force from the date of execution of I.A. till 10 (Ten) years from the date of commencement of Commercial Operation of the Project.
- (c) The Project developer shall supply electricity to the petitioner at the tariff of ₹3.59 per kWh which is the Average Pooled Cost of Purchase (APPC) applicable for the year 2013-14. This tariff shall continue to change on Financial Year basis as per the APPC determined by the Commission from time to time.
- (d) On the request of RSSB, the I.A. can be extended for a further period of 15 years at the then prevailing APPC tariff or at the tariff to be mutually agreed between PSPCL and RSSB EES from the date of expiry of the initial agreement period of 10 years.
- (e) As per the Article 4.5 of the IA, RSSB (Respondent No.2) shall enter into a Power Purchase Agreement (PPA) with PSPCL which shall remain in force for a period of 10 (Ten) years from the date of commissioning of the Project.

3. PSPCL has further submitted that proposed purchase of electricity by the petitioner from the respondent No.2 is in the interest of the State. In terms of Section 86 (1) (b) and 86 (1) (e), the procurement of electricity by PSPCL including from renewable sources is regulated by the Commission. The

regulatory jurisdiction includes approval for the procurement of electricity, the terms and conditions of such procurement and also approval of the tariff at which the electricity is proposed to be procured.

4. PSPCL has prayed to:

- (a) Approve the procurement of power from 7.52 MW Solar Power Project of RSSB Educational and Environmental Society, Beas, District Amritsar.
- (b) Pass such other further order(s) as the Commission may deem just in the facts of the case.

5. The petition was taken up for admission on 08.10.2013 and was admitted. Govt. of Punjab, Department of Power, was made a respondent vide Order dated 14.10.2013. The respondents were directed to file reply to the petition by 24.10.2013 with advance copy to PSPCL.

6. PEDDA filed reply vide No.6206-9 dated 22.10.2013. PEDDA has submitted that proposal from respondent No.2 was received and accepted as per the provisions of the NRSE Policy, 2012. The I.A. was signed providing for sale of power on APPC tariff under CERC REC Regulations. PEDDA has requested for approving the tariff and PPA period as provided in the I.A. and grant approval of the power purchase as sought in the petition. PEDDA has submitted that the cost of this power purchase shall become pass through in the ARR of PSPCL after the requisite approval is accorded by the Commission under the provisions of the Electricity Act, 2003. PEDDA has prayed for approval of procurement of power from 7.52 MW Solar Power Project by the petitioner from Respondent No.2.

7. RSSB Educational and Environmental Society filed reply dated 23.10.2013 and has admitted all the averments and facts of the petition and has also prayed for granting approval as prayed for in the petition.

8. GoP has responded vide memo dated 24.10.2013 and has submitted that Department of Power, GoP, concurs with the reply filed by Punjab Energy Development Agency (PEDA).

9. After briefly hearing the parties on 29.10.2013 and considering the replies filed by the respondents, the Commission directed the parties vide Order dated 29.10.2013 to file further information/clarifications by 08.11.2013. RSSB Educational and Environmental Society was asked to intimate the likely date of commissioning of the 7.52 MW Solar PV rooftop Project. PEDA was directed to clarify as to how the Project is covered under NRSE Policy, 2012, as the same is not being set up through a competitive bidding, whereas NRSE Policy, 2012 provides that projects under REC mechanism will be bid out competitively based on the share of REC revenue. PEDA was further asked to clarify about the possibility of the developers, who had been allotted Solar PV projects (250 MW) through competitive bidding, opting out of the same by paying prescribed penalty and praying for APPC tariff as prayed in this petition. PSPCL was directed to clarify its earlier stand not to accept NRSE power at APPC rates in a number of cases decided by this Commission in recent past. PSPCL was further directed to submit its proposal to meet with the cumulative shortfall for Solar RPO for FY 2011-12 and FY 2012-13 which was about 25.80 MU and had been permitted by the Commission to be carried over to FY 2013-14 alongwith Solar RPO estimated to be 60 MU for FY 2013-14. PSPCL was further directed to submit a proposal to meet with Solar RPO specified in the Tariff Policy, which has specified Solar RPO for 2012-13 as 0.25%, to incrementally go upto 3% in 2021-22.

10. (i) PSPCL filed reply dated 11.11.2013 in compliance with Order dated 29.10.2013. PSPCL has added to the prayer that while allowing the purchase of power at APPC rates, the Commission may also allow purchase of solar RECs corresponding to this energy to meet with the RPO target and pass through the cost of this power and RECs in the ARR through tariff.

(ii) RSSB Educational and Environmental Society has submitted in response to the query of the Commission vide Order dated 29.10.2013 that likely date of commissioning of the 7.52 MW Solar Project is 1st March, 2014.

(iii) PEDDA in its reply dated 08.11.2013 has reproduced the relevant clause of NRSE Policy, 2012 as under:

“REC based Solar projects will be encouraged where the Solar PV and Solar Thermal IPP projects will be bid out competitively based on the share of REC revenue. The power can be sold on APPC/Open Access and proponent can claim REC for trading in power exchange. However, PSPCL/Licensee shall retain the first right of refusal to such NRSE power and in case of refusal, the developer can sell power under open access.”

and has added that this clause is applicable if PEDDA invites competitive bidding for Solar Power Projects set up under REC Mechanism. As this Project is being set up by the owners on rooftop belonging to them, the applicability of competitive bidding clause is not there. PEDDA has also submitted that NRSE Policy, 2012 provides for promotion of rooftop projects in all sectors including Govt. buildings in order to enhance the generation of solar power in the State. As the project was to be set up under REC Mechanism, the consent of PSPCL to buy power on APPC was required. A meeting of Project Allotment Committee was held in which senior officers of PSPCL as members participated. The recommendations of the Committee on the project proposal were approved by the Government. After the approval of the Government, I.A. was signed for this project. Further in reply to the second query, it has submitted that PEDDA has recently allocated 250 MW capacity Solar PV Power Projects in the State through tariff based competitive bidding wherein there is no provision in the RfP document under which the developer can switch over to any other mode for sale of power such as REC mechanism.

11. RSSB Educational and Environmental Society filed additional submissions dated 25.11.2013 wherein it has prayed that I.A. with PEDDA be honoured and the Commission may accord approval to the same. It has further

submitted that without prejudice to their rights under terms and conditions of I.A. various options may be considered. In case tariff discovered by PEDDA for 5 MW to 30 MW Projects is to be considered, then additional cost for a rooftop project, may be factored in. It has submitted the detail of the cost which according to the developer is additional cost and has computed a tariff of ₹9.62 per kWh .

12. During hearing on 26.11.2013, PSPCL and PEDDA prayed for time to file response to the additional submissions dated 25.11.2013 of RSSB Educational and Environmental Society. They were directed to do so by 09.12.2013 vide Order dated 28.11.2013. Only PSPCL has filed reply and after reiterating its prayer, has submitted that in alternate proposal for supply, the tariff of ₹9.62 per unit has been arrived at by the developer assuming the tariff as per the lowest bid of ₹7.67 per kWh as discovered in the competitive bidding by PEDDA for 5-30 MW category of projects and approved by this Commission and adding additional tariff of ₹1.95 per kWh on account of additional cost claim for the rooftop project. PSPCL has submitted that determination of tariff and approval of power purchase by PSPCL from respondent is under the jurisdiction of the Commission and therefore the Commission may conduct the prudence check with regard to the tariff claimed by the Respondent No.2.

After hearing the petitioner, RSSB EES and PEDDA on 10.12.2013, the Commission had closed the further hearing and reserved the Order.

13. Observations and findings of the Commission

(i) PSPCL has sought approval for procurement of power from 7.52 MW Rooftop Solar PV Power Project to be established at Dera Radha Soami Satsang (Dera Baba Jaimal Singh), Beas, District Amritsar by RSSB EES.

(ii) PEDDA informed PSPCL vide letter dated 16.08.2013 that Government of Punjab has approved the proposal of RSSB EES for supplying power for the said project at the Average Pooled Cost of Purchase (APPC) under provisions of the New and Renewable Sources of Energy (NRSE) Policy. PEDDA entered into an Implementation Agreement (I.A.) on 11.09.2013 with RSSB EES. The I.A. shall expire after a period of 10 years from the Commercial operation Date

(CoD) of the Project. The Agreement may be mutually extended for a further period of 15 years.

(iii) RSSB EES shall supply electricity to PSPCL at the tariff of ₹ 3.59 per kWh, which is the Average Pooled Cost of Purchase (APPC) applicable for FY 2013-14. The tariff applicable shall be the APPC as determined by this Commission from time to time.

(iv) The I.A. envisages that PSPCL shall sign a Power Purchase Agreement (PPA) with RSSB EES upon approval of the power purchase sought in this petition.

(v) PEDDA in its reply dated 22.10.2013 to the petition has brought out the relevant provision(s) in NRSE Policy, 2012 of the Government of Punjab as under and stated that the proposal of the petitioner was accepted in view of the said provision(s):-

“REC based Solar projects will be encouraged where the Solar PV and Solar Thermal IPP projects will be bid out competitively based on the share of REC revenue. The power can be sold on APPC/Open Access and proponent can claim REC for trading in power exchange. However, PSPCL/LICENSEE shall retain the first right of refusal to such NRSE power and in case of refusal, the developer can sell power under open access.”

PEDA in its reply has prayed that the Commission may approve the procurement of power by the PSPCL from RSSB EES.

(vi) PSPCL in its reply dated 11.11.2013 to the query of the Commission in Order dated 29.10.2013 to clarify its earlier stand not to accept NRSE power at APPC rates submitted that NRSE power at APPC rates on long term basis has not been offered to PSPCL in the past whereas in the present case, RSSB EES has offered 7.52 MW Solar power on long term basis at APPC rates only. PSPCL has further submitted that in order to encourage generation of Green Energy in Punjab and promote the concept of rooftop solar projects, PSPCL is seeking approval for purchase of the said power at APPC rates and PSPCL may have to procure equivalent Solar Renewable Energy Certificates (RECs) corresponding to this energy to comply with the Solar RPO specified by the Commission.

PSPCL has prayed in its submissions dated 11.11.2013 that while allowing the purchase of power at APPC rates, the Commission may also allow

purchase of Solar RECs corresponding to this energy to meet with the Solar RPO and allow the cost of such RECs as a pass through in the Annual Revenue Requirement (ARR) recoverable from the consumers through the tariff.

(vii) PSPCL in its reply dated 11.11.2013 to the queries of the Commission in Order dated 29.10.2013 as to how PSPCL proposes to meet with the cumulative shortfall for the Solar Renewable Purchase Obligation (RPO) for FY 2011-12 and FY 2012-13 (25.80 MU approx.) allowed by the Commission in a separate petition to be carried over to FY 2013-14 for compliance alongwith Solar RPO estimated to be 60MU(approx.) for FY 2013-14 and its financial implications, PSPCL while listing out the solar projects in the pipeline including 250 MW solar power projects allotted by PEDDA, submitted that a net shortfall of 46580 no. Solar RECs is estimated for Solar RPO compliance for FY 2013-14. The cost of purchase of such RECs at the floor price @ ₹ 9300 per REC would be ₹ 43.30 crore.

(viii) With regard to Commission's query as to how PSPCL proposes to meet with the solar RPO specified in the Tariff Policy as 0.25% by the end of 2012-13 and further up to 3% by 2022, PSPCL has submitted that the primary onus rests on PEDDA, being the designated nodal agency in the NRSE Policy 2012 for exploring and implementing renewable energy projects in Punjab.

(ix) PEDDA in its submissions dated 08.11.2013 in reply to the queries of the Commission as to how this project is covered under NRSE Policy, 2012 has submitted that as this project is being set up by RSSB EES themselves on their rooftop as a self identified project, the clause for the competitive bidding for Solar Power Project to be set up under REC Mechanism would not be applicable.

(x) RSSB EES in its reply dated 07.11.2013 with regard to the query of the Commission informed that the likely date of commissioning of the project is 01.03.2014.

(xi) RSSB EES in its submissions dated 25.11.2013 brought out that the deliberations between the parties for supplying power from the said project at preferential tariff rates to be settled amongst themselves keeping in view the rates discovered in the competitive bidding process conducted by PEDDA for 250 MW Solar PV Power Projects instead of APPC rate, were not fruitful.

(xii) The Commission observes that PSPCL has prayed to allow power purchase from the 7.52 MW Solar PV Power Plant of RSSB EES at APPC rate in the petition and further prayed in its submissions dated 11.11.2013 that while allowing the purchase of power at APPC rate, the Commission may also allow purchase of Solar RECs corresponding to this energy to meet with the Solar RPO and allow the cost of such RECs as a pass through in the Annual Revenue Requirement (ARR) recoverable from the consumers through the tariff. PEDDA has also expressed full consonance to the same.

The Commission notes that buying power from renewable energy sources at APPC rates denies the benefit of green component of that power to the purchaser as the generator becomes eligible for issuance of RECs in lieu of the same. These RECs are then saleable at the power exchanges for purchase by entities falling short of RPO compliance. The contention of PSPCL and PEDDA that they are buying/supporting purchase of power from this project to promote green power is not really tenable as even though PSPCL would purchase the power from a solar project, the same would not be counted towards its RPO compliance as it would be purchased at APPC rate. PSPCL earlier has been taking a stand refusing purchase of NRSE power at APPC rates. This stand of not accepting RE power at APPC rates was taken by PSPCL in Petition No.64 of 2012 filed by Chandigarh Distillers and Bottlers Limited, Chandigarh and in Petition No.59 of 2012 filed by Enterprises Business Solutions Pvt. Ltd. Jalandhar for their RE projects at Banur and Balachaur respectively. Even PEDDA in its reply vide no. 6055/56 dated 10.10.2013 against paras 10 and 11 in another petition (48 of 2013) submitted as here under:

“The NRSE Policy 2012 of Govt. of Punjab states that the purchase of power on APPC by PSPCL will be made only after the power procurement limit as per RPO is exhausted. Since, PSPCL is still short of NRSE Power to meet RPO; power procurement on APPC by PSPCL is rightly being not made.”

However PEDDA has taken a different stand in the instant case.

There is no denying the fact that the developer is setting up a rooftop solar PV project of reasonably substantial capacity (7.52MW) in the State, and the power from the said Project will be consumed within the State. The Commission is mandated under the Electricity Act, 2003, National Electricity

Policy and the Tariff Policy to promote generation of electricity from renewable sources of energy, adopt suitable promotional measures for encouraging higher generation from renewable energy sources and determine preferential tariff for such projects.

Considering the above and the submissions made by all the parties in the petition, the Commission allows PSPCL's prayer to purchase power from the said project of RSSB EES at APPC rates. However, with regard to the subsequent prayer made by PSPCL in its submissions dated 11.11.2013 to allow the cost of such RECs as a pass through in the Annual Revenue Requirement (ARR) recoverable from the consumers through the tariff, the findings of the Commission are discussed in the following paras. Furthermore, purchase of power in the instant case at APPC rate has been allowed as an exception as PEDDA has already signed the I.A. in this regard. PEDDA is directed not to sign any other I.A. for purchase of power from renewable energy projects at APPC rates in future till PSPCL is in a position to comprehensively comply with its RPO specified by the Commission.

The Commission notes that as estimated by PSPCL, it envisages purchase of 46580 Solar RECs i.e. a shortfall of 46.58 MU to comply with its solar RPO upto FY 2013-14 including the carried over shortfall of FY 2011-12 and FY 2012-13. PSPCL has estimated the cost of purchase of such RECs as ₹43.30 crore at the floor price of ₹9300/- per Solar REC. However, considering that the forbearance price is ₹13,400 per Solar REC, which gives an average price per Solar REC as ₹11,350/-, the financial burden could be more i.e. ₹52.87 crore. As submitted by PSPCL, it has purchased 14.22 MU Solar power upto September, 2013 and another 13 MU is expected to be available from the existing sources upto December, 2013 i.e. 27.22 MU, which comes to 3 MU per month. On this basis, another 9 MU purchase of Solar power is expected in the remaining three months of FY 2013-14 i.e. 36.22 MU against the requirement of 85.80 MU (25.80 MU carried forward for FY 2011-12 & FY 2012-13 and estimated 60 MU). Thus, the estimated shortfall could be 49.58 MU upto the end of FY 2013-14 as against 46.58 MU estimated by PSPCL, thereby requiring it to purchase about 3000 more Solar RECs at an additional cost of ₹3.4 crore. As the Commission is mandated to balance the interests of all the stakeholders

in the State, it is of the considered opinion that in case the cost of purchase of Solar RECs corresponding to the power to be purchased from this project at APPC rate is allowed as a pass through in the ARR of PSPCL to recover the same from the consumers of the State as prayed by PSPCL, it would be unfair to the consumers of the State.

Accordingly, the Commission is not inclined to accept this prayer of PSPCL and the cost of purchase of RECs required to be purchased corresponding to the power to be purchased from this 7.52 MW rooftop Solar PV Project of RSSB EES at APPC rate will not be a pass through in the ARR of PSPCL till PSPCL is able to fulfill its RPO targets. The rate of Solar REC at which such amount would be calculated for the power to be purchased from this project will be the average of the rates at which PSPCL would purchase Solar RECs in a particular financial year to meet with its Solar RPO in that year.

Petition is disposed of in above terms.

Sd/-
(Gurinder Jit Singh)
Member

Sd/-
(Romila Dubey)
Chairperson

Chandigarh
Dated: 13.12.2013