

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

**Petition No.48 of 2013
Date of Order: 24.03.2014**

In the matter of: Petition under Section 61 and 86 of the Electricity Act, 2003 for determination/grant of generic/preferential tariff and directing the respondent No.1 for purchase of surplus power upto 6 MW from petitioner's 12 MW Co-Generation Power Plant at Mukerian, District Hoshiarpur on long term basis at tariff so determined as per CERC RE Regulations duly adopted by the PSERC in order to promote co-generation and 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: Indian Sucrose Limited, G.T.Road Mukerian (ISL) having its registered office at 5A, 2nd Floor, 18 Poorvi Marg, Vasant Vihar, New Delhi-110057 through Shri Balwant Singh Grewal, Chief General Manager (W)

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.

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

ORDER

Indian Sucrose Limited (ISL) filed this petition before the Punjab State Electricity Regulatory Commission (Commission) under Section 61 and 86 of the Electricity Act, 2003 (Act) for determination / grant of generic / preferential tariff and directing the Punjab State power Corporation Ltd.(PSPCL) to purchase surplus power up to 6 MW from the 12 MW non-fossil fuel based co-generation project (project) of the petitioner at Mukerian, District Hoshiarpur as per Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources), Regulations, 2012 (CERC RE Regulations, 2012) adopted by the Commission in order to promote

co-generation and generation of electricity from renewable sources of energy as envisaged under the Act, National Electricity Policy, Tariff Policy and New and Renewable Sources of Energy (NRSE) Policies of Government of Punjab (GoP).

2. The petitioner submitted that it is a public limited company incorporated under the provisions of the Companies Act, 1956 and it operates a sugar mill with a crushing capacity of 5000 metric tonnes per day of sugar cane and power generation facility in co-generation mode. The sugar mill was previously operating under the name and style of Oswal Sugars Ltd. and had three back pressure TG sets of 2.5 MW each commissioned in 1990-91, which were not running properly. Thereafter, the petitioner took over the reins of the said project and decided to increase the crushing capacity of the sugar mill and further to utilize the available bagasse efficiently. The petitioner decided to set up a new 12 MW back pressure Turbine Generator (TG) set with boiler as per latest technology. The erection of the project was taken up and the petitioner requested the erstwhile Punjab State Electricity Board (PSEB) for grant of approval to the power project. PSPCL after a huge time gap and delay granted the approval for the power project on 20.03.2012. The petitioner further submitted that after obtaining clearances from other agencies, the project was commissioned with a load of only 500 kW on 14.04.2012 due to off season. The petitioner submitted that it was anticipating to generate surplus power during the crushing season of the sugar mill, therefore, on 26.07.2012, in order to sell the surplus power to PSPCL, executed a short term Power Purchase Agreement (PPA) with PSPCL so as to sell the surplus power up to 6 MW during the trial run and stabilization of the project in the crushing season. Thereafter, the petitioner installed the ABT meters in compliance to the PPA and on 16.11.2012, PSPCL granted approval to the petitioner to synchronize the power project with its system. The project was finally synchronized with grid and export of power was started on 05.12.2012. The project was run on captive cum merchant basis and short term PPA was extended by one month i.e. up to 30.04.2013 to utilize the available bagasse.

The petitioner further submitted that the power project of the petitioner having 12 MW capacity is running on co-generation mode with exhaust steam being taken from the turbine at a pressure of 1.5 kg per cm square for use in the sugar mill after it has given the useful power generation. The bagasse produced in the mill and rice husk procured from the open market is being used for running the boiler of the power project to generate green energy. Out of the 12 MW power generated at full capacity of the TG set, 1.5 MW approx. is used as auxiliary consumption and about 4.5 MW as captive consumption. The balance up to 6 MW power during the crushing season is surplus with

the petitioner which can be exported. The petitioner submitted that the project is connected to 66 KV sub-station of PSPCL through a 66 KV transmission line and bay at the PSPCL sub-station, both erected at the cost borne by the petitioner. The project mainly uses bagasse as fuel during the crushing season of the mill and is also capable of using other fuels such as rice straw, wheat straw, wood cuttings and other biomass fuels in small quantities by mixing with rice husk as per their availability in local market. The petitioner submitted that it signed a short-term PPA at a tariff of ₹4.04 per kWh with PSPCL till 30.04.2013. The petitioner further submitted that during commissioning and stabilization of the project, the supply of power at the rate of ₹4.04 per kWh was below the generation cost which works out to ₹7.62 per kWh.

The petitioner also submitted that its project is using renewable fuel and the electricity generated and sold to PSPCL is counting towards Renewable Purchase Obligation (RPO) resulting in reduction of purchase of Renewable Energy Certificates (REC) by PSPCL; hence the tariff on account of sale of power to PSPCL has to be in line with the cost of generation to keep the operations of the sugar mill viable. The petitioner further submitted that the generation of renewable energy (RE) needs support from the stakeholders for continued operations. The Act and policies framed from time to time and Regulations provide for promotion of generation from New and Renewable Sources of Energy. The petitioner quoted relevant extracts from the Act, National Electricity Policy and Tariff Policy in the petition.

The petitioner submitted that it commissioned the project during the year 2012-13 and sold power to PSPCL @ ₹4.04 per kWh as per short term PPA and during this period exported more than 133 lakh units of electricity to PSPCL. The petitioner further submitted that at the time of signing the short term PPA, the petitioner had raised objection that the tariff of ₹4.04 per kWh offered for sale of power was quite inadequate and it did not compensate the petitioner for the expenses being incurred in generation of power and had requested PSPCL to sign PPA on long term basis on preferential tariff notified by the Commission but PSPCL had offered to sign long term PPA only after the petitioner signs an Implementation Agreement (IA) with Punjab Energy Development Agency (PEDA) under NRSE Policy. Accordingly, the petitioner discussed the matter with PEDDA to register its project under NRSE Policy but PEDDA informed that IA will be signed only after new NRSE Policy is approved and notified by the Government of Punjab. Therefore, under the compelling circumstances and also due to the reason that crushing season was at the threshold, the petitioner had no option but to sign a short term PPA with PSPCL. The petitioner further submitted that after the NRSE Policy, 2012 was notified by GoP and after the crushing season of the mill was over, the petitioner

approached PEDA vide letter dated 20.06.2013 for signing of IA and also submitted all the relevant documents. The team from PEDA visited the project on 18.07.2013 to inspect the co-generation process and to physically verify the details submitted by the petitioner. The petitioner also submitted that as its project was commissioned in the year 2012, it expected preferential tariff, as notified by the Commission, for its project. However, PEDA vide letter dated 22.08.2013 informed the petitioner to sign IA with PEDA for signing the PPA on long terms basis with PSPCL for sale of surplus power of 6 MW at ₹4.04 per kWh.

The petitioner further submitted that the tariff offered by PEDA does not even cover the cost of generation of power incurred by the petitioner which has been calculated as ₹7.62 per kWh as per details annexed at Annexure P-9 with the petition. The petitioner further submitted that the power being sold by the petitioner is at a loss and the petitioner is being forced to run the project partially as per the co-generation requirements only. PEDA is offering the rates on the basis of the provision of NRSE Policy, 2012 which was notified on 26.12.2012, which states that the projects commissioned under the period of NRSE Policy, 2006 (notified on 24.11.2006 and valid for 5 years) will be offered the last escalated tariff of NRSE Policy, 2006 and this action of PEDA offering tariff as per NRSE Policy, 2006 is illegal, contrary to the settled law inter alia on the following grounds:

- a. Because the Commission has already notified generic tariffs for the NRSE projects since 2010-11, therefore, the relevant provision of NRSE Policy, 2006 has been superseded by the new policy and the NRSE Policy, 2006 ceased to exist as far as prescribing rates of sale of power to PSPCL is concerned. Thus, the respondents cannot offer the tariff on the basis of superseded provisions of the policy.
- b. Because without prejudice to above, it is submitted that had PEDA implemented the new policy within time i.e. by 23.11.2011, the petitioner's company would have been entitled to get tariff as per new policy. Therefore, the petitioner company cannot be punished for the delay in implementation of new policy by PEDA.
- c. Because the Commission has already granted generic tariffs to the projects commissioned since 2007, thus, the project of the petitioner cannot be discriminated and PEDA cannot use two yard sticks for similarly situated projects.

The petitioner further submitted that the rate of power in short term PPA does not cover even the operational costs of the generation. The Commission is empowered to determine/grant generic tariff to the petitioner's project. Further, the petitioner does not have any long term commitment with any one for sale of power and the petitioner has voluntarily offered to sell its surplus power to PSPCL on long term basis on preferential tariff which will help PSPCL to meet its RPO targets since PSPCL is short of non solar RPO. Therefore, petitioner is approaching the Commission by the way of this petition to seek the relief from the Commission as prayed for. The petitioner also submitted that it is willing to sell power at generic / preferential tariff determined as per RE Regulations on long term basis by the Commission for the projects commissioned in the year 2012-13 keeping in view actual cost of generation and it is also ready to sign Implementation Agreement with PEDA under the NRSE Policy, 2012 for sale of power at tariff as determined by the Commission for projects commissioned during the year 2012-13.

The petitioner submitted that the Commission has already determined 532 paise per kWh as generic tariff (190 paise as fixed charge and 342 paise as fuel cost) for NRSE co-generation projects for 2012-13 vide Order dated 19.07.2012 in Petition No.35 of 2012 (Suo-Motu). Further, both the CERC RE Tariff Regulations of 2009 and 2012 lay down that the tariff is at the Inter-Connection Point located in the switch yard of the project and also that transmission line and bay will be erected by the PSPCL for evacuation of power as provided in the NRSE Policy, 2012. Therefore, the cost paid by the petitioner towards 66 KV transmission line and bay needs to be refunded by PSPCL. The petitioner further submitted that the Commission, in case of Rana Sugars Ltd. who had commissioned the co-generation project in 2007, had granted 495 paise per kWh as generic tariff (153 paise as fixed charge and 342 paise as fuel cost) vide Order dated 30.11.2012 in Petition No.52 of 2012 and PEDA signed IA with them accordingly. Further, the Commission, in case of A.B. Grain Spirits Pvt. Ltd., who had commissioned the co-generation project on 08.04.2008, granted 502 paise per kWh as generic tariff (160 paise as fixed charge and 342 paise as fuel cost) vide Order dated 19.09.2012 in Petition No.44 of 2011. Also in the case of A. B. Sugars Limited, the Commission had granted generic tariff of 495 paise per kWh for the power project commissioned in 2007-08 (153 paise as fixed charge and 342 paise as fuel cost) vide Order dated 30.11.2012 in Petition No.53 of 2012. Lakshmi Energy and Foods Ltd. has also been granted generic tariff of 502 paise per kWh for the power project commissioned in 2008-09 (160 paise as fixed charge and 342 paise as fuel cost) by the Commission vide Order dated 28.02.2013 in Petition No.69 of 2012. Wahid Sandhar Sugars Ltd. has also been granted generic tariff of 517 paise per kWh for the power project commissioned on 17.04.2009 (175 paise as fixed charge and 342 paise as

fuel cost) by the Commission vide Order dated 28.02.2013 in Petition No.72 of 2012 and PEDA has signed IA with them accordingly. The petitioner submitted that in line with the above decisions for similarly placed co-generation projects, the Commission may grant generic/preferential tariff to the petitioner's project under RE Tariff Regulations depending upon the year of commissioning i.e. 2012-13 and direct PEDA to sign IA and PSPCL to sign PPA accordingly. PSPCL also needs to be directed to bear the cost of evacuation line and bay as per NRSE Policy and CERC RE Regulations adopted by the Commission.

The petitioner prayed to:

- a) grant the tariff for petitioner's project based on RE Tariff Regulations as project was commissioned in the year 2012-13.
- b) pass the necessary directions to PEDA to sign Implementation Agreement with the petitioner at the tariff so granted by the Commission to encourage NRSE projects to continue the generation as per Govt. of India/GoP policies stated above.
- c) pass the necessary directions to PSPCL to purchase power from the petitioner's project at the tariff so granted by the Commission to encourage NRSE projects.
- d) direct PSPCL to bear the cost of evacuation system i.e. 66 KV transmission line from project switch yard to Licensee's grid and 66 KV bay erected in Licensee's grid as per RE Tariff Regulations & NRSE Policy and refund the amount already deposited on this account.
- e) pass any such Order as may be deemed just and proper in facts and circumstances of the case.

3. The petition was admitted vide Order dated 17.09.2013. PSPCL and PEDA were directed to submit replies by 10.10.2013. PSPCL filed a request on 03.10.2013 to grant extension in time for atleast 15 days for submission of reply.

4. PEDA in its reply received on 11.10.2013 submitted that the petitioner placed work order on Triveni Engineering & Industries Ltd., Noida (U.P) to install the 12 MW TG set in the year 2005. Due to billing dispute in the year 2004, the power supply to the petitioner's project was cut off by PSPCL for non payment of electricity charges. The petitioner's company received 12 MW Turbine at site in the year 2007 and requested erstwhile PSEB (now PSPCL) for approval of installation of 12 MW turbine vide letter dated 01.06.2007. Due to payment dispute with PSPCL, the feasibility clearance &

installation permission of 12 MW TG set was granted to the petitioner on 20.03.2012 which was commissioned on 15.04.2012. The power project was synchronized with PSPCL grid on 05.12.2012 for export of power. PEDA further submitted that the delay in getting approval for synchronization with PSPCL grid was due to continuous lengthy dispute between the petitioner & PSPCL and that the same cannot be made a ground for grant of higher tariff when the equipment of the project was already in place at the site in year 2007. PEDA submitted that the boiler used for the project is 80 TPH at 45 kg/cm², 410°C, 2003 make ISGEC John Thomson and the 12 MW turbine is back pressure type, make Triveni, having inlet steam at 44 kg/cm², 410°C, exhaust steam at 1.5 kg/cm² and bleed steam at 7 kg/cm². PEDA further submitted that as per Annexure P-4 of the petition, the TG set was synchronized, loaded with the house load of 500 KW and was run for 17 hours on 14.04.2012 after receipt of approval on 20.03.2012. The petitioner also has three TG sets of 2.5 MW each to meet the house load, which were set up and running prior to the addition of this 12 MW TG set. The petitioner has a house load of around 6 MW against the earlier installed capacity of 7.5 MW and present installed capacity of 19.5 MW. PEDA submitted that the petition is silent on the fact that to meet the house load, the 12 MW TG set was not run prior to the stated commissioning date, since there was a delay for grant of approval of this project by PSPCL. Further, the petitioner's submission that the project is capable of using other biomass fuels is yet to be demonstrated. PEDA submitted that the project of the petitioner is certainly an NRSE co-generation project generating green energy and having been connected to local grid, results in reduction of line losses of PSPCL. The generation from the project is countable towards RPO of PSPCL.

PEDA further submitted that the as per NRSE Policy, 2012, the purchase of power on APPC rates by PSPCL can be made only after compliance of RPO. Since, PSPCL is still short of NRSE Power to meet its RPO, power procurement on APPC by PSPCL is rightly not being made. The petitioner chose to sell power to PSPCL on short term basis as the project was yet under commissioning & stabilization in the last crushing season and due to the fact that the new NRSE Policy to replace earlier NRSE Policy, 2006 was still under approval. PSPCL signed short term PPA with the petitioner on terms and conditions including tariff as per practice in vogue at that time. PEDA submitted that the petitioner requested PEDA to sign IA to enable it to sign PPA with PSPCL on long term basis. The NRSE Policy, 2012 was notified on 26.12.2012 and therefore, the project of the petitioner was commissioned during the period when NRSE Policy, 2006 was in force. PEDA also submitted that the cost of generation filed by the petitioner is not relevant as neither the NRSE policies nor the generic RE tariffs being notified by the

Commission are based on cost plus approach. PEDA is bound by the policies notified by State Govt. for development of NRSE projects in Punjab. PEDA also submitted that as claimed by the petitioner, the project was synchronized to grid on 05.12.2012 and at that time NRSE Policy, 2006 was applicable. It is a fact that though tariff for sale of power to PSPCL for the projects were specified in the NRSE Policy, 2006, the Commission adopted the Generic RE Tariff Regulations of CERC and determined Generic Tariffs for various projects set up during the period of NRSE Policy, 2006 even by reopening of the already signed PPAs. PEDA signed the Implementation Agreements with the developers as per orders of the Commission in all such cases. However, wherever there are no orders of the Commission, it is bound by the policies duly notified by GoP. PEDA further submitted that the petitioner has not signed the IA as per the provisions of NRSE Policy, 2012 in spite of processing of his case by PEDA on his request since as per his contention the rate offered is not as per generic tariff determined by the Commission.

PEDA also submitted that the RE Tariff Regulations provide for laying of evacuation line including bay at grid substation by the Distribution Licensee. However, this provision is for new projects whereas the project of the petitioner is already commissioned and is an old project. Further, no such reimbursement of cost of evacuation lines has been allowed to such projects commissioned during the period of NRSE Policy, 2006 though these have been allowed RE generic tariffs depending on the year of commissioning. In the NRSE Policy, 2012, only tariff for such projects has been allowed and no other incentives/ benefits have been allowed.

PEDA submitted that non-fossil fuel based cogeneration has been defined as the process in which more than one form of energy is produced in a sequential manner by using biomass. As per Regulation 4(d) of the RE Tariff Regulations, a project to qualify as non-fossil fuel based cogeneration project must be using new plant and machinery with topping cycle mode of operation which uses the non-fossil fuel input for power generation and utilizes the thermal energy generated for useful heat applications in other industrial activities simultaneously, and where the sum of useful power output and half of useful thermal output is greater than 45% of the project's energy consumption during the season. In view of the above provisions in CERC RE Regulations for tariff determination, the petitioner needs to establish that they have used the new plant and machinery with topping cycle mode and submit calculations to establish its eligibility for generic RE tariff.

5. The parties were heard on 15.10.2013. During hearing the petitioner filed an Application for allowing it to withdraw its claim with respect to cost of evacuation system along with liberty to file a fresh claim at appropriate stage. The Application was taken on

record vide Order dated 23.10.2013 and PSPCL was asked to file reply by 05.11.2013 and petitioner to file rejoinder to the replies of PEDA and PSPCL by 12.11.2013.

6. The Petitioner filed another Application dated 13.11.2013 submitting that GoP has directed the sugar mills in the State to start operations from 15.11.2013 and in pursuance to above directions, it will have to operate the co-generation project for running the sugar mill and will have surplus power for sale to PSPCL. In view of above, the petitioner requested that it may be allowed to synchronize the power project with PSPCL grid system and PSPCL be directed to accept the surplus power so injected at the tariff to be decided by the Commission. The Commission in its Order dated 20.11.2013 on the hearing held on 19.11.2013, where PSPCL sought time to file consolidated reply to petition and Applications of the petitioner, directed PSPCL to file the same by 02.12.2013 with advance copy to the petitioner.

7. PSPCL in its reply dated 25.11.2013 received on 26.11.2013 submitted that there was only a short term PPA dated 26.07.2012 which was entered into by PSPCL with the petitioner for purchase of the surplus power from the biomass based generating station of the petitioner. The said PPA was for supply of power upto 31.03.2013 at the tariff of ₹4.04 per kWh as per the provisions of the NRSE Policy, 2006. The short term PPA was extended for supply of power upto 30.04.2013. PSPCL further submitted that the project of the petitioner was commissioned on 05.12.2012 and on the said date, NRSE Policy, 2006 was in force, so the petitioner needs to be necessarily governed by the provisions of the NRSE Policy, 2006 only. PSPCL also submitted that clause 5.3 of the NRSE Policy, 2012 squarely applies to the case of the petitioner and there is complete clarity regarding the tariff to be applied to the project of the petitioner and there can be no question of application of NRSE Policy, 2012 to the petitioner's project which was commissioned before the notification of the said policy and during the time when the NRSE Policy, 2006 was still in force.

PSPCL submitted that where required, the NRSE Policy, 2012 has made exception(s) e.g. it provides for redetermination of tariff for projects set up under the NRSE Policy, 2001. However, in cases like that of the petitioner, the long term PPA can be signed by PSPCL only on the last escalated tariff of NRSE Policy, 2006 payable for FY 2011-12. PSPCL also submitted that the petitioner has placed on record certain data claiming that its generation cost is about ₹7 per kWh and therefore the tariff as per the NRSE Policy, 2006 cannot be applied to the petitioner, is entirely incorrect. In case the petitioner wishes to sign the Implementation Agreement with PEDA and the Power Purchase Agreement with PSPCL, the petitioner will be bound by the terms of NRSE

Policy, 2006 including the tariff provided there under and if such tariff is not acceptable to the petitioner, PSPCL will not be in a position to purchase the power.

8. During hearing on 03.12.2013, the petitioner had submitted that the connectivity be granted immediately for injecting up to 6 MW power into the grid as it is suffering a loss of about ₹ 5 lac daily. The petitioner had also submitted that tariff as determined by the Commission in this petition shall be acceptable for the energy supplied to PSPCL and bills for the energy supplied shall be raised without carrying cost and only after passing of the final Order by the Commission in this petition. PSPCL requested for about a week's time to consider and respond to the same. The Commission after considering the submissions, directed PSPCL vide Order dated 05.12.2013 to give immediate connectivity to the project on the condition that electricity supplied from the date of connectivity shall be billed at the tariff rate to be decided by the Commission through final Order disposing this petition and the bill for the energy supplied shall be raised without any carrying cost by the petitioner after the final Order in this petition.

9. PSPCL in its reply dated 16.12.2013, to the Application dated 13.11.2013 of the petitioner, submitted that the petitioner is only entitled to the tariff of ₹ 4.04 per kWh for the reasons mentioned in its reply to the main petition and further submitted that the same is also the contention of PEDA.

10. The petitioner in its rejoinder to the reply of PEDA submitted that though it received the TG set in the year 2006 at site but PSPCL never gave approval for the installation of the TG set and without the approval of the licensee it could not install / commission the project commercially. This delayed various activities related with the commercial commissioning of the TG set. After PSPCL gave its approval to set up / commission the project and accorded feasibility clearance of grid connectivity in March, 2012, the petitioner commissioned the project commercially in December, 2012 after completing various formalities. The petitioner further submitted that PSPCL in its reply to the petition has clearly stated that the project was commissioned on 05.12.2012. The petitioner further submitted that it already had three TG sets of 2.5 MW each which were sufficient to meet the captive demand of power and steam for its sugar mill. Still, it planned to install this new plant of 12 MW to utilize the excess bagasse due to enhancement of crushing capacity of the sugar mill and to achieve higher efficiency through co-generation at higher steam pressure. However, the petitioner's investment remained blocked during years 2007 to 2012 due to dispute with PSPCL and the petitioner had to bear the interest during construction and upkeep of equipment which

increased the capital cost of the project. The petitioner submitted that the date of commissioning be taken as 05.12.2012 as verified by PSPCL in its reply and also evident from the short term agreement executed with PSPCL in 2012-13. The petitioner also submitted that argument put forward about the project run on house load of 500 KW on 15.04.2012 carries no weight as it is known to PEDA that commercial operation of a TG set is complete only when it is run on full rated load for 72 hours and within a range continuously for about 13 days. As full captive load is available only during crushing season and full rated generation required connectivity with PSPCL grid, project was tested and commissioned after it was connected with grid and short term PPA for accepting exported power was signed with PSPCL.

The petitioner submitted that its proposal for signing of IA was processed by PEDA which should have asked for documents regarding calculations to establish Topping Cycle Mode and eligibility of the project for generic RE tariff before approving the project for signing of the IA. The petitioner annexed calculations for establishing Topping Cycle Mode along with the copies of purchase orders for the TG set and boiler and delivery invoices/ challans as proof to establish the same as new equipments.

11. The petitioner in its rejoinder to the reply of PSPCL submitted that PSPCL advised it to first sign IA with PEDA before signing PPA with the petitioner. Accordingly, the petitioner approached PEDA for signing IA based on generic tariff applicable to project as on the date of commissioning. PEDA agreed to sign IA on the last escalated tariff of NRSE Policy, 2006 and advised the petitioner to approach the Commission thereafter for grant of generic tariff based on the date of commissioning. The petitioner further submitted that it entered into a short term PPA with PSPCL for crushing season of 2012-13 for sale of power @ ₹4.04 per kWh, but the PPA nowhere states that tariff is as per NRSE Policy, 2006. Further, for signing the short term PPA, PSPCL did not make signing of IA as a pre-condition. The petitioner also submitted that as evident from clause 4.0 of the PPA, PSPCL made the recovery of the due amounts totalling about ₹ 560 lac as a pre-condition for purchasing the power and that the petitioner had no option but to sign the PPA with PSPCL.

The petitioner submitted that RE Tariff Regulations were notified by CERC in 2009. These Regulations were adopted by the Commission in 2010 and generic tariffs for FY 2010-11 were determined and being determined every year since then by the Commission. The petitioner further submitted that these generic tariffs were allowed to the RE generators in spite of there being no amendment by GoP/PEDA in the NRSE Policy, 2006. Therefore, for all intents and purposes, tariff rates provided in NRSE Policy,

2006 and provisions in this regard in 2012 policy have no legal value since both PEDA and PSPCL are bound to follow the generic tariff Orders of CERC as adopted by the Commission for the State of Punjab.

The petitioner submitted that generic tariffs were determined by the Commission for Wahid Sandhar Sugars Limited and Lakshmi Energy and Foods Limited(both set up during the period of NRSE Policy, 2006) and Orders for these were issued on 28.02.2013 though the NRSE Policy, 2012 was notified on 26.12.2012 and thus the case is identical to that of the petitioner and in spite of notification of NRSE Policy, these two projects have been given the generic tariff based on the date of commissioning, thus the petitioner is also entitled for the same. The petitioner has submitted that generation cost of its project is as per the calculations annexed and deserves the generic tariff determined by the Commission for co-generation projects commissioned during FY 2012-13.

12. The petitioner during hearing on 06.01.2014, had filed the layout sketch of the project, data sheet and complete copy of purchase order dated 23.01.2003 for supply of machinery and equipment for 1 no. 80 TPH, 45 Kg./cm², 410°C, bagasse fired travelling grate boiler, which were taken on record vide Commission's Order dated 08.01.2014.

13. PEDA filed sur-rejoinder on 20.01.2014 and submitted that based on the various submissions made by the petitioner in its rejoinder to the reply of PEDA, the project of the petitioner qualifies as NRSE bagasse based co-generation power project and generation from the project is countable towards RPO of PSPCL. PEDA further submitted that the State Government and PEDA are committed for the development of such NRSE Projects.

14. The parties were heard on 21.01.2014 and the Commission in its Order dated 23.01.2014 observed that based upon the documents submitted by the petitioner, PEDA has not clarified as to whether the petitioner's co-generation project complies with the condition(s) to be met for non-fossil fuel based co-generation projects. PEDA in its clarification filed on 30.01.2014 submitted that the project of the petitioner under CERC RE Regulations 2012 qualifies as NRSE bagasse based co-generation project using new plant & machinery with topping cycle mode of operation having cycle efficiency greater than 45%.

15. The Commission heard the arguments of the parties on 11.02.2014 and in its Order dated 12.02.2014 decided to close further hearing of the case and directed the parties to file written submissions by 18.02.2014. Order was reserved.

16. The petitioner has filed written submissions/arguments on 18.02.2014 and reiterated its submissions already made. The petitioner has further submitted that it is willing to sell power to PSPCL on long term basis at generic/ preferential tariff determined by the Commission as per RE Regulations for the projects commissioned during the year 2012-13.

The petitioner has submitted that the Commission has already determined generic tariff for NRSE co-generation projects for 2012-13 in its Order dated 19.07.2012 in Petition no. 35 of 2012 (Suo-Motu). The petitioner, while referring to a few Orders of the Commission, has submitted that many generators who had commissioned their projects during the period of NRSE Policy, 2006, have also been granted generic/preferential tariff by the Commission. The petitioner has submitted that the Commission may grant generic/preferential tariff for its power project, being similarly placed. The petitioner has further submitted the number of the working days of crushing of sugar cane for the last three seasons i.e. during the years 2010-11, 2011-12 and 2012-13 as 110, 126 and 131 days respectively.

17. PSPCL has filed written submissions received on 21.02.2014 and reiterated the earlier submissions that the petitioner is entitled to the tariff of ₹ 4.04 per kWh as provided in the NRSE Policy, 2006 as adopted by the Commission.

18. Observations of the Commission

i) The petitioner prayed for grant of tariff for its project commissioned in FY 2012-13 based on RE Regulations. The petitioner requested that PEDA be directed to sign the Implementation Agreement and that PSPCL should purchase power from petitioner's project at the tariff determined by the Commission.

ii) The petitioner's project, Indian Sucrose Limited comprises of a sugar mill and co-generation facility at Mukerian in Punjab. Earlier, it operated under the name & style of Oswal Sugars Ltd. with 3x2.5 MW TG sets commissioned in 1990-91. This was taken over by ISL and another 12 MW TG set was proposed to be installed in 2006-07. PSPCL granted approval for this 12 MW power project in March, 2012. The project was synchronized with the grid on 05.12.2012. A short term PPA dated 26.07.2012 was signed with PSPCL for supply of power up to a maximum of 6 MW till 31.03.2013, which was further extended up to 30.04.2013 vide amendment no.1 dated 17.04.2013. The tariff as per the said PPA was ₹4.04 per kWh.

iii) The project mainly uses bagasse as fuel during crushing season and is also capable of using other fuels such as rice straw, wheat straw, wood cuttings and other biomass fuels by mixing with rice husk. The petitioner has attached one page calculations for the tariff of its project as ₹7.62 per kWh but without considering any of the technical & financial parameters for the tariff calculations as per the CERC RE Regulations, 2012, adopted by the Commission with State specific modifications in its Order dated 19.07.2012, currently in vogue.

iv) The petitioner requested PSPCL to sign the PPA on long term basis on the preferential tariff notified by this Commission, but PSPCL desired that the petitioner should first sign the IA with PEDA under the NRSE Policy. PEDA, in turn, asked the respondent to sign the IA with PEDA at tariff of ₹4.04 per kWh for sale of 6 MW surplus power in order to sign the PPA on long term basis with PSPCL.

v) PEDA, in its reply received in the Commission on 11.10.2013, submitted that the petitioner received the 12 MW TG set in the year 2006-07. This was confirmed from the invoice dated 27.06.2006 supplied by the petitioner. PEDA also submitted that the boiler was year 2003 make, which was confirmed from the invoice dated 29.10.2003 supplied by the petitioner. PEDA further submitted that the petitioner's project could not be commissioned due to billing dispute with PSPCL since 2004. PEDA admitted that the petitioner's project is a non-fossil fuel based co-generation power project and the power received from the same would count towards compliance of RPO by PSPCL. PEDA vide its sur-rejoinder received on 20.01.2014 submitted that the State Government and PEDA are committed for the development of such RE projects and further confirmed vide its letter dated 30.01.2014 that, based on the submissions made, petitioner's project qualifies as a non-fossil fuel based co-generation project using new plant and machinery with topping cycle mode of operation under the CERC RE Regulations, 2012. PEDA requested the Commission to take appropriate decision in this matter.

vi) During hearing on 15.10.2013, the petitioner filed an Application for allowing it to withdraw its claim with respect to cost of evacuation system along with liberty to file a fresh claim at appropriate stage. The Application was taken on record vide Order dated 23.10.2013 and PSPCL was asked to file reply to the petition and the Application by 05.11.2013. PSPCL has not responded to the said Application of the petitioner in its submissions.

vii) The petitioner filed another Application dated 13.11.2013 praying for directions to PSPCL to allow connectivity to its power project with PSPCL grid system for sale of up to

6 MW power and to accept the power so injected at the tariff rate to be decided by the Commission in the present petition. The Commission, in its Order dated 05.12.2013, after considering the submissions of the petitioner and PSPCL, deemed it fit to direct PSPCL to give immediate connectivity to the petitioner's project on the condition that the electricity supplied from the date of connectivity shall be billed at the tariff rate to be decided by the Commission through final Order. Further, as submitted by the petitioner, the bill shall be raised only after the passing of the final Order in this petition and without claiming any carrying cost.

viii) PSPCL in its reply to the petition, received in the Commission on 26.11.2013, submitted that the power project of the petitioner was commissioned on 05.12.2012 when NRSE Policy, 2006 was in force. Further, PSPCL cited the provision under para 5.3 of the NRSE Policy, 2012 which was notified by the Govt. of Punjab on 26.12.2012, stating that RE projects set up and commissioned during the period of NRSE Policy, 2006 and not registered with PEDA so far or not having signed the IA will be allowed to get registered with PEDA and to sign the agreement to facilitate power purchase by PSPCL and PSPCL will sign only long term PPA with such registered projects on the last escalated tariff of NRSE Policy, 2006 payable for FY 2011-12. Accordingly, PSPCL has submitted that neither PEDA nor PSPCL can unilaterally offer to sign IA or PPA with the petitioner at a tariff different from the last escalated tariff of the NRSE Policy, 2006. PSPCL, further, vide its submissions received on 17.12.2013 and 21.02.2014, submitted that the petitioner's power project is entitled to tariff of ₹4.04 per kWh as applicable under the relevant policy (NRSE Policy, 2006) of the Govt. of Punjab, which would remain as such during the life of the project. Further, the electricity to be supplied by the petitioner to PSPCL would constitute a part of RPO of PSPCL.

19. Findings and Decision of the Commission

- i) Considering the aforementioned observations, the Commission finds that the petitioner's offer for supply of upto 6 MW power from its said 12 MW non-fossil fuel based co-generation project commissioned on 05.12.2012 (FY 2012-13) under a PPA to be signed on long term basis, at tariff to be determined by the Commission, is acceptable to both the respondents (PSPCL and PEDA) subject to observations.
- ii) In its Order of 13.12.2007, the Commission while accepting the tariff as proposed in the NRSE Policy, 2006 had observed 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.”

- iii) In its earlier Orders on similar petitions, the Commission has expressed that it 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) The Commission notes that both PEDA & PSPCL admitted that the electricity to be supplied from the petitioner's project to PSPCL would contribute towards compliance of RPO by PSPCL. In the ARR petition for FY 2014-15 filed by PSPCL separately in the Commission, it has demanded ₹ 141 crore in the review for FY 2013-14 and ₹ 134 crore in the proposal for FY 2014-15 for purchase of Renewable Energy Certificates considering that electricity from renewable energy sources would be in short supply to meet its RPO target for FY 2014-15. Considering the above, the Commission feels that the electricity to be supplied by the petitioner's project would lessen this burden and accordingly would be beneficial to the interest of the consumers of the State.
- v) In respect of the submission of PSPCL that the petitioner should execute long term PPA at the last escalated tariff of NRSE Policy, 2006 payable for FY 2011-12 as per clause 5.3 of NRSE Policy, 2012, the Commission observes that such an anomalous provision will place the petitioner's project at an adverse pedestal as compared to several other projects implemented under the NRSE Policy, 2006 in the past, where the Commission has determined the tariff.
- vi) 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 FY 2012-13 & FY 2013-14 in its Orders dated 19.07.2012 & 25.06.2013 respectively 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.

vii) For working out the levellised fixed cost of the petitioner's project for the year of applicability of tariff i.e. FY 2013-14, the Commission has worked out the capital cost of petitioner's non-fossil fuel based co-generation project as discussed hereunder:

The Commission notes that although the petitioner's project was commissioned in FY 2012-13, major machinery and equipment like TG set (invoice dated 27.06.2006) and boiler (invoice dated 29.10.2003) were received much earlier in the years 2006-07 & 2003-04 respectively. As the plant and machinery stood received in June, 2006, the capital cost of the project would need to be worked out for FY 2006-07 and then depreciated to the year of applicability of tariff i.e. FY 2013-14. Accordingly, the Commission intends to work out the capital cost of the project for FY 2006-07 by applying the capital cost indexation mechanism as specified in the RE Regulations, 2012, on the normative capital cost of ₹ 420 lac per MW for non-fossil fuel based co-generation projects for the year 2012-13 and then depreciate it at the standard book depreciation rate of 5.28% per annum up to the applicable year of tariff i.e. FY 2013-14. With this methodology, the normative capital cost for the petitioner's project for the year 2006-07 works out to ₹ 345.39 lac per MW. As the boiler was received in FY 2003-04, this capital cost would further need to be adjusted to factor in the depreciation of boiler from the year of its purchase i.e. FY 2003-04 to FY 2006-07. This depreciation, based on the capital cost of the boiler intimated by the petitioner as ₹ 530 lac i.e. ₹ 44.17 lac per MW, works out to ₹ 6.63 lakh at the standard book depreciation rate of 5.28% per annum. Therefore, the capital cost for the petitioner's project for the year 2006-07 comes to ₹338.76 lac per MW. Accordingly, the capital cost for the petitioner's project works out to ₹ 231.73 lac per MW for FY 2013-14 after depreciation at the standard book depreciation rate of 5.28% per annum. With this capital cost and using normative parameters for FY 2013-14, the levellised fixed cost works out to ₹ 1.51 per kWh. The variable cost for FY 2013-14 for the petitioner's project would be the same as allowed to

other such projects to be commissioned in the State in the year 2013-14 as per Commission's Order dated 25.06.2013 i.e. ₹ 3.66 per kWh.

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

Tariff for the year 2013-14				
Levellised Fixed Cost (₹/kWh)	Variable Cost (FY 2013-14) (₹/kWh)	Applicable Tariff Rate (₹/kWh)	Benefit of Accelerated Depreciation, if availed (₹/kWh)	Net Applicable Tariff Rate upon adjusting for Accelerated Depreciation benefit (3 - 4) (₹/kWh)
1	2	3	4	5
1.51	3.66	5.17	0.07	5.10

ix) The above tariff shall be payable to the petitioner with effect from the date of issue of this Order. Further, as already decided by the Commission in its interim Order dated 05.12.2013 in this petition after considering the submissions of the petitioner and PSPCL, payment for the electricity already supplied by the petitioner to PSPCL after connectivity was granted by PSPCL as per directions of the Commission in the said interim Order up to the date of this Order, shall also be made at the above tariff but without any claim for carrying cost as submitted by the petitioner in the hearing on 03.12.2013. The payment(s) shall be made to the petitioner after signing of PPA for supply of power on long term basis with PSPCL. Both the parties are directed to sign the PPA for supply of power on long term basis expeditiously. The levellised 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. The tariff period shall be for a minimum thirteen (13) years from the date of application of tariff determined in this Order.

x) Also, in order to comply with the procedural requirements, the Commission directs the petitioner and PEDA to sign the IA forthwith, to facilitate signing of the PPA for supply of electricity on long term basis.

xi) 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.

xii) In view of the Application filed by the petitioner for allowing it to withdraw its claim with respect to cost of evacuation system with the liberty to file a fresh claim at appropriate stage which was taken on record vide Order dated 23.10.2013, the Commission considers the prayer under sub-para (d) in the petition as deemed to have been withdrawn by the petitioner. PSPCL did not respond to the said Application of the petitioner in its submissions in the petition despite having been asked to do so in Commission's Order dated 23.10.2013.

The petition is disposed of accordingly.

Sd/-
(Gurinder Jit Singh)
Member

Sd/-
(Virinder Singh)
Member

Sd/-
(Romila Dubey)
Chairperson

Chandigarh
Dated: 24.03.2014