

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

Review Petition No. 02 of 2021
In Petition No. 41 of 2020
Date of Hearing:12.07.2023
Date of Order: 22.08.2023

Review Application under Section 94 (f) of the Electricity Act, 2003 (hereinafter referred to as 'the Act' 2003) read with Rules 64 & 69 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 (hereinafter referred to as 'Regulations 2005') for reviewing/recalling the order of this Hon'ble Commission dated 12.04.2021 passed in Petition No. 41 of 2020 titled as M/s Indian Sucrose Ltd. Vs. Punjab State Power Corporation Ltd. and another.

In the matter of: M/s Indian Sucrose Ltd. having its registered office at G.T. Road, Mukerian, District Hoshiarpur, Punjab through its authorized signatory Sh. Ved Prakash Gupta, Vice President of the Company.

... Petitioner

Versus

1. Punjab State Power Corporation Ltd, through its Chairman-cum Managing Director, The Mall, Patiala
2. Punjab Energy Development Agency, through its Director, Solar Passive Complex, Plot Nos. 01 and 02, Sector 33-D, Chandigarh

.....Respondents

Commission: Sh.Viswajeet Khanna, Chairperson
Sh. Paramjeet Singh, Member

Petitioner: Sh. Tajinder Joshi, Advocate
Sh. Ved Prakash Gupta

PSPCL: Ms. Poorva Saigal, Advocate

PEDA: Sh. Aditya Grover, Advocate

ORDER

The instant 2nd review petition has been initiated in compliance of Hon'ble APTEL's Order dated 09.02.2023. Brief history of the case is as under:

- 1.1 M/s Indian Sucrose Ltd. had filed Review Petition No. 02 of 2021 before the Commission to review the Order dated 12.04.2021 passed by the Commission in Petition No. 41 of 2020 wherein the Commission had held that since the PPA was never approved by the Commission at any stage, therefore, the agreement would be deemed to be an agreement between two individuals and violation, if any, of the same would not give jurisdiction to the Commission to adjudicate its legality. On the issue of Review Petition PEDA filed its short reply on 05.07.2021 and PSPCL filed its reply on 06.07.2021. In view of the submissions by all the parties for the adjudication of the instant dispute by the Commission, the Review Petition filed by the petitioner was admitted vide order dated 14.07.2021 and Petition No. 41 of 2020 was revived for adjudication.
- 1.2 The issue under consideration was the petitioner's prayers for seeking quashing of PSPCL's letter/notice dated 08.10.2020 terminating the PPA dated 23.12.2016 and supplementary PPA dated 05.02.2019 executed between them for sale of upto 30MW surplus power from Non-fossil fuel based 40 MW Co-generation Power Project of the petitioner and for extension of period of commissioning of said Power Project

upto 31.10.2021 at the tariff of Rs. 6.22 per kWh. M/s Indian Sucrose also filed an IA No. 19 of 2021 dated 08.09.2021 seeking modification of the prayer clause pertaining to extension of time to read as for extension of time upto 28.02.2022. The Ld counsel for the parties addressed the arguments on 29.09.2021. PSPCL also filed its written submissions on 19.10.2021.

1.3 The Commission vide Order dated 02.11.2021 in Review Petition 02 of 2021, while setting aside the termination letter/notice issued by PSPCL also extended the date of commissioning of the project to 28.02.2022, with the observations as under:

“8.2..... The Commission observes that it has held the termination notice issued by PSPCL to be unjustified and invalid in the above paras. The Commission is also aware of the adverse effects of the Covid-pandemic and restrictions imposed by the Governments to control the spread of same. Considering the adverse impact of Covid-19, MNRE has also allowed extension to all RE projects under implementation through RE Implementing Agencies designated by the MNRE or under various schemes of the MNRE and also advised the State Agencies to consider the same. Further, the Commission notes that the terms and conditions of Power Purchase Agreements entered into by the parties specify that the date of commissioning can be extended by PEDDA, which has already, unequivocally, submitted at the bar and in written submissions that the IA is still valid, and that it is willing to grant the extension as required, since it is promoting the renewable energy project. The Commission is also conscious of the fact that, PSPCL is still substantially deficient in RPO compliance and is not able to meet with its Renewable Purchase Obligations and has sought exemptions and reduction of RPO Compliance requirements from the Commission over the last couple of years. Moreover, the power from the project after the renegotiated and reduced rate of Rs.6.22 per kWh as defined in the supplementary PPA signed in 2019, is economical as compared to the applicable generic tariff of

Rs. 6.69 per kWh for FY 2020-21 and other comparable Bagasse based projects whose PPAs with PSPCL already stand approved by the Commission vide Order dated 16.12.2020 in petition no. 17 of 2020 filed by PSPCL seeking the Commission's approval. Accordingly, keeping in view the mandate to promote generation of electricity from renewable sources of energy given under the Electricity Act, the Commission based on PEDAs willingness to grant extension, allows the petitioner to commission the project by 28.02.2022, the revised date sought by the petitioner and endorsed by PEDAs...

1.4 PEDAs filed a Review application seeking review of the order dated 02.11.2021 which was returned back by the Commission vide communication dated 11.02.2022 on the ground that a second review petition is not maintainable before the Commission.

1.5 Subsequently, PSPCL and PEDAs filed appeals before Hon'ble APTEL vide Appeal No. 135 of 2022 and DFR No. 311 of 2022, respectively, against Order dated 02.11.2021 passed by the Commission in Review Petition No. 02 of 2021. Hon'ble APTEL vide order dated 09.02.2023, has set aside the Commission's Order with the following specific directions:

"to consider whether or not the Appellant herein is justified in their submission that they had neither given any such concession nor had they filed any written submission before the Commission."

1.6 Taking notice of Hon'ble APTEL's order dated 09.02.2023; notices were issued to the parties that they may file their replies in the 2nd review petition, keeping in view the order passed by Hon'ble APTEL. In response thereon, PEDAs and PSPCL filed their respective additional affidavits on 21.04.2023 and 24.04.2023. The review petition was taken up for hearing on 28.04.2023 when the matter was adjourned to

11.05.2023 as none had appeared on behalf of M/s Indian Sucrose.

1.7 In the hearing held on 11.05.2023, Ld. Counsel for PEDDA stated that there had been some misunderstanding during the hearing of the first review petition and that PEDDA's view had been that the petitioner should approach PEDDA for considering their request for extension of IA. In response, the Ld. Counsel for PSPCL stated that they were to file some additional submissions since they have already terminated the earlier PPA and PEDDA could no longer consider the issue of extending the I.A. The Ld. Counsel for M/s Indian Sucrose also requested for time to file written submissions. The Commission allowed time to parties to file their respective submissions and adjourned the matter to 07.06.2023. PSPCL filed their written submissions on 07.06.2023. However, the matter could not be taken up for hearing on 07.06.2023 and was adjourned to 12.07.2023. PEDDA filed its written submissions on 11.07.2023. M/s Indian Sucrose Ltd. filed their reply to the written submissions filed by PSPCL as well their own written submissions on 11.07.2023.

1.8 In the hearing held on 12.07.2023, the Ld. Counsel of PEDDA while stating that its submission has been incorrectly recorded in the Commission's Order, submitted that PEDDA's stand was that in case the Commission refers back the matter to PEDDA, then it is bound to honor it and will consider the same on merits. Whereas, Ld. Counsel of M/s Indian Sucrose submitted that, during the proceedings before the Commission in petition No. 41 of 2020, the counsel for the PEDDA had indeed made a statement at the bar that the IA is

still valid and in case the Commission gives permission they would extend the SCOD. Ld. Counsel sought to submit an affidavit in this regard from their representative who was present in the relevant hearing.

2. The submissions made by the parties in respect of the issue under consideration are summarized as under:

2.1 Submissions by the PEDDA:

PEDDA, vide its additional Affidavit dated 21.04.2023, submitted that PEDDA had neither shown its willingness to extend the date of commissioning of the project nor had filed any written submissions giving any such consent nor instructed its counsel to consent or agree or give any statement regarding the willingness of PEDDA to grant an extension to ISL. Vide its written submissions dated 11.07.2023, PEDDA has further stated that;

- (i) It has been designated as a nodal agency for promotion of Renewable Energy Projects in the state of Punjab under NRSE Policy-2012. Under the said Policy the Answering Respondent is engaged in Promotion and Development of Non-Conventional and Renewable Sources of Energy in the State of Punjab.
- (ii) PEDDA came to be in receipt of a communication dated 17.08.2020, requesting for extension of scheduled date of commissioning of the project under reference. since the petitioner and PSPCL had mutually settled the terms and conditions amongst themselves without taking any concurrence from the applicant/ respondent and had mutually amended the original terms, while reducing the amended terms qua the project into a supplementary

PPA, to which it was not a party. Thus PEDDA had no choice apart from referring the request of the petitioner for seeking the extension in the revised SCOD to PSPCL, especially when PSPCL has been repeatedly showing resentment towards any action taken by PEDDA with regard to development and promotion of renewable energy projects wherein sale of power is involved to PSPCL which has been asserting that concurrence of PSPCL may be obtained prior to any such decision by PEDDA.

(iii) Consequently, being aggrieved of the action of PSPCL of termination of PPA, the petitioner preferred petition no. 41 of 2020 before the Commission. The PEDDA duly submitted its response in the petition on 04.02.2021 before the Commission, which is part and parcel of the present proceedings. Thereafter, PEDDA also filed its reply on the Review Petition No. 2 of 2021 inter-alia relying upon the reply filed in the main Petition No 41 of 2020.

(iv) However, on the perusal of the Order dated 02.11.2021 passed by the Commission in Review Petition No. 02 of 2021, it transpired that the Commission has recorded that PEDDA in its written submissions has stated that IA is still valid and that it is willing to grant the extension as sought by ISL. Whereas, no such undertaking was ever given by PEDDA. In fact, PEDDA had not even submitted any written submissions in the matter.

(v) Therefore, PEDDA filed a Review Application in Review Petition No. 02 of 2021, which was returned by the Commission vide communication dated 11.02.2022 on

the ground that it is not maintainable and review order passed in a review petition cannot be further reviewed. As a result, PEDDA was constrained to file an appeal before Hon'ble APTEL vide DFR No. 311 of 2022. Hon'ble APTEL vide order dated 09.02.2023, disposed of the said appeal and remanded back the matter to the Commission with a direction to consider 'whether or not the second respondent i.e. PEDDA is justified in their submissions that they had neither given any such concession nor had they filed any written submission before the Commission'.

(vi) PEDDA reiterates that no such undertaking was given in its written submissions to the effect that the IA is still valid, and that it is willing to grant the extension as required, since it is promoting the renewable energy project. Rather it has not even submitted any written submission in the matter. As such, it has rendered no such concurrence to extend the commissioning date of the project in any of its reply or orally. The said statement has been erroneously recorded in the order dated 02.11.2021 which requires to be modified.

2.2 Submissions by PSPCL

(i) In pursuance of order dated 23.12.2022 passed by Hon'ble APTEL in Appeal No. 135 of 2022, PSPCL communicated its consent to ISL to procure upto 30 MW of surplus power at fixed tariff of Rs. 3.30 kWh and is currently procuring power as an adhoc arrangement. The said interim arrangement is also applicable in respect of

surplus 6 MW (out of 12 MW) which has subsumed in the 40 MW Co-gen plant.

(ii) On 11.05.2023, the Counsel appearing for PEDDA submitted that 'there had been some misunderstanding during the hearing of first review petition and that PEDDA's view had been that the petitioner should approach PEDDA for considering their request for extension of IA'. The said view is a complete volte face to the stand taken by PEDDA before the Hon'ble Tribunal. PEDDA, after duly stating that it had not granted any extension to Indian Sucrose at the opportune time nor was it willing to and after filing a substantive appeal to the same effect before Hon'ble APTEL, cannot now take an inconsistent stand and seek to consider the extension of time to Indian Sucrose. Moreover, as the PPA is an integral part of Implementation Agreement (IA) executed between PEDDA and ISL, therefore, when PPA stands terminated by PSPCL, PEDDA cannot grant extension to ISL de-hors the PPA. PEDDA itself has stated that since supplementary PPA was signed between ISL and PSPCL, therefore, action, if any, has to be taken by PSPCL. Thus, PEDDA has not only rejected the extension but has also accepted the termination by PSPCL as valid.

(iii) Further, where the subject matter of the contract is liable to fluctuate in value, which in this case is the tariff payable, time is regarded as the essence of the contract. Therefore, the non-commissioning of plant by SCOD has an impact on the tariff considering that the prevalent tariff is in the range of Rs. 3.50 per kWh in contrast to Rs.6.22

per kWh (fixed cost of Rs. 2.73 per kWh and variable cost of Rs. 3.49 per kWh with 5% annual escalation on variable cost) sought by ISL. The Tariff of Rs. 6.22 per kWh cannot be said to be a viable tariff in the interest of consumers of PSPCL.

2.3 The submissions of M/s Indian Sucrose are as under:

- (i) The Commission vide order dated 02.11.2021 had decided both the issues i.e. i) wrongful cancellation of the PPA by PSPCL and ii) extension of SCOD, in favor of ISL. but PEDDA filed a Review application in Review Petition No. 02 of 2021 before the Commission on the ground that the Commission has inadvertently mentioned in its order dated 02.11.2021 that PEDDA in its written submissions has stated that the Implementation Agreement is still valid and that it is willing to grant extension as sought by ISL. Said Review application was returned back by the Commission on the ground that a second review petition is not maintainable before the Commission. PSPCL and PEDDA filed appeals before Hon'ble APTEL vide Appeal No. 135 of 2022 and DFR No. 311 of 2022, respectively, against the Commission's Order in Review Petition No. 02 of 2021. Hon'ble APTEL without any observation on the merit of the appeal has remanded the matter to the Commission only to consider the review application filed by PEDDA in Order dated 02.11.2021. Accordingly, the decision of the Commission on the issue of legality of cancellation of PPA by PSPCL vide default termination notice dated 08.10.2020 has

attained finality since Hon'ble APTEL has not given any finding on merits.

(ii) PEDDA in Para -29 of the review application has stated that they had not given any concession in writing but has not objected to the finding of the Commission regarding statement made at bar by the Counsel of the PEDDA. Thus, the grievance of the PEDDA is that it has not given any concession in any of its submission or reply made in writing. The PEDDA has not mentioned or objected to the finding recorded by the Commission regarding statement made at bar by the counsel of the PEDDA.

(iii) It is pertinent to mention here that during the proceedings before the Commission in petition No. 41 of 2020 the counsel for the PEDDA made a statement that the IA is still valid and in case the Commission gives permission they would take a decision and extend the SCOD. That there could be a typographical error on the part of the Commission in noting the fact that the PEDDA had filed written submissions. But that does not mean that the counsel of the PEDDA did not make any such concession and showed the willingness of the PEDDA to grant extension.

(iv) The willingness of PEDDA to extend SCOD is also clear from the reply filed by PEDDA in Petition No. 41 of 2020 where PEDDA has mentioned that PSPCL has asked them not to take any action regarding development and promotion of RE Projects where sale of power is involved without seeking prior concurrence of PSPCL. Thus, it is evident that though PEDDA was ready to extend SCOD

but could not do so due to the pressure of PSPCL. PEDDA has not challenged the facts noted in Para 6 of order dated 02.11.2021 that IA is still valid and they are willing to consider the request for extension, since it is promoting the renewable energy project and want it to be commissioned.

(v) Even if for arguments sake it is presumed that the PEDDA did not give any consent for extension of SCOD, the Order dated 02.11.2021 passed by the Commission was not based on this solitary ground. There were various grounds considered while giving Extension for SCOD of the Project.

(vi) As regards PSPCL's submission about the delay in commissioning of the project beyond 28.02.2022, it is submitted that the plant was ready in Jan., 2022 but could not be commissioned till Feb. 2023 due to delay on the part of PSPCL in granting permission. ISL sent a letter dated 08.11.2021 and reminders dated 22.11.2021, 13.12.2021, 21.12.2021, 13.01.2022, 31.01.2022, 21.02.2022, 16.03.2022, 05.05.2022, 30.05.2022, 29.06.2022 to PSPCL requesting it to grant technical clearances but PSPCL delayed the grant of technical clearances and to amend the PPA and supplementary PPA. Ultimately vide letter dated 06.07.2022, PSPCL informed ISL that it is ready to grant connectivity in terms of interim order dated 29.04.2022 passed by Hon'ble APTEL and thereafter granted permission of synchronization/ commissioning of the project vide letter dated 30.01.2023 and the project was commissioned on

03.02.2023. As such, the delay in commissioning occurred due to fault of the PSPCL only.

(vii) Further, the petitioner has agreed for a tariff of Rs. 3.30 per kWh as interim measure as PSPCL was adamant in not taking the power of the plant of the petitioner and it is suffering losses by supplying power at Rs. 3.30 per kWh instead of approved rate of Rs. 6.22 per kWh. The renegotiated and reduced tariff of Rs. 6.22 per kWh is economical as compared to the applicable generic tariff of Rs. 6.69 per kWh for FY 2020-21 approved by the Commission. The rate of Rs. 3.50 per kWh as cited by PSPCL does not depict the actual tariff derived by any legitimate method. Sugarfed, is a Govt. of Punjab undertaking and the minutes show that no calculation has been done, thus, the said rates cannot be said to be genuine. Also, the rates fixed by PSPCL is in violation of order dated 19.01.2023 passed by the Commission in Petition No. 34 of 2021 (Suo- Motu) wherein the Commission had held that the tariff of power could be fixed on the basis of tariff discovered during recent competitive biddings and the prevalent market rates.

(viii) M/s Indian Sucrose has also filed an affidavit dated 25.07.2023 by Sh. Ved Prakash Gupta, Vice President of the company, stating as under:

"1. That it is submitted here respectfully that I was present in person before this Hon'ble Commission at the time the matter of Petition No. 41 of 2020 was heard. During the proceedings before this Hon'ble Commission on 17-02-2021 the Counsel for the PEDDA in petition No. 41 of 2020 had made a statement at

Bar to the effect that the IA is still valid and in case the Commission gives permission they would take a decision and extend the SCOD of the project of the petitioner.

2. That the counsel for the PEDDA also made a statement that the PSPCL is not allowing them to pass any order and in case this commission gives permission they would take a decision and extend the SCOD of the project of the petitioner.”

3. Observations and Analysis of the Commission

The Commission has examined the submissions and arguments made by the parties. PSPCL has also raised other arguments on merits as per events beyond the scope of Hon'ble APTEL's remand order which the Commission does not consider or decide upon here since the scope of remand is specific and limited to determining the issue of PEDDA's statements/ submissions on the issue of granting extension in the implementation period of the project. The analysis of the Commission on the issue under remand is as under:

3.1 At the outset, the Commission is absolutely certain and clear that PEDDA had made the statement at the Bar on 17.02.2021 that the IA is still valid and that it is willing to grant an extension as required, since it is promoting the renewable energy projects. PEDDA has also repeatedly stated in various written submissions before the Commission that it is engaged in promotion and development of Renewable Sources of Energy in the State and has signed the IAs for development of these projects, however it often faces resistance from PSPCL. In the present review petition too, in its written submissions filed on 11.07.2023, it has stated as under:

“1. That the Respondent No 2 has been designated as a nodal agency for promotion of Renewable Energy Projects in the State of Punjab under NRSE Policy formulated by State of Punjab. Under the said Policy the Applicant Respondent is indulged into Promotion and Development of Non-Conventional and Renewable Sources of Energy in the state of Punjab

.....
4., an Implementation Agreement dated 30.11.2016 was signed by the petitioner with the Applicant/Respondent for setting up of 40 MW Baggasse based Co-generation power plant in its sugar mill premises, wherefrom the petitioner proposed to export 30 MW surplus power to the Respondent PSPCL.

.....
19. That in fact, the Answering/respondent during various meetings held with respondent PSPCL with regard to promotion and development of RE Projects has been categorically asked by PSPCL not to take any action without seeking concurrence of respondent - PSPCL. ...”

Accordingly, the observation regarding willingness of PEDDA has been made in the Commission’s impugned Order dated 02.11.2021. It is also noted that an affidavit to that effect has also been filed by the Petitioner’s representative who was present in the hearing on that date. Even PSPCL has noted PEDDA’s said submission before the bar on 17.02.2021 regarding its willingness to grant extension, as evidenced from its reply thereto and objection filed on 26.02.2021, reproduced below:

“63. PEDAs submission that it shall grant extension in case PSPCL agrees to the same is not tenable. It is submitted that PEDAs cannot grant extension at this belated stage, once the PPA has already been terminated....

.....
84. The contention of PEDAs that the implementation Agreement is still continuing is irrelevant. it is not clear how the IA is still continuing even after termination of PPA.

85. Further, once PSPCL has issued default notice and terminated the PPA, it is not open to PEDAs to contend that it would consider the request for extension.....it is not clear on what basis PEDAs can claim that it would consider the request for extension”

3.2 The Commission has also observed and noted the repeatedly changing stand of PEDAs in different hearings and submissions. This has also been recorded in the earlier Order of the Commission dated 12.04.2021 in Petition 41 of 2020, reproduced below:

“7.1..... PEDAs in its reply initially submitted that it has nothing to say as the petitioner and PSPCL had mutually amended the terms and conditions without taking any concurrence from PEDAs. However, subsequently PEDAs submitted that, it is open to consider the extension in SCOD in case it is directed by the Commission.

.....
7.4 The petitioner is citing delay in commissioning occurring due to the reasons beyond the control of the petitioner, force majeure events and faults of PSPCL. However, PSPCL’s stand is

that it has acted as per the procedure and manner agreed between the parties. Whereas, PEDDA is continuously changing its stand.”

Above observations by the Commission, referring to PEDDA's changing stance and its subsequent submission indicating its openness/willingness to grant extension in case it is directed to do so, were not challenged by any of the parties. Rather, the PEDDA vide its subsequent reply dated 05.07.2021 in Review Petition 02 of 2021 only stated that it has already filed its reply in petition No. 41 of 2020, which may be considered as part and parcel of the instant reply and in case the Commission decides to adjudicate upon Petition No. 41 of 2020, the reply filed by it may be considered in response thereto.

3.3 PEDDA's indication of its willingness in the matter was also reiterated during the proceedings of Review Petition No. 02 of 2021 as reinforced and confirmed by PSPCL's final written submissions dated 19.10.2021 reproduced below:

“C. CONTENTIONS OF PEDDA

111. The contention of PEDDA that the implementation Agreement is still continuing is irrelevant. The PPA is the contract between PSPCL and the Petitioner and the same has been validly terminated. If PEDDA wants to continue the implementation Agreement despite the termination of PPA, the same cannot in any manner create any obligation on PSPCL. Further, if the PPA is an intrinsic part of IA, it is not clear how the IA is still continuing even after termination of PPA.

112. Further once PSPCL has issued default notice and terminated the PPA, it is not open to PEDDA to contend that it would consider the request for extension..... it is not clear on what basis PEDDA can claim that it would consider the request for extension.”

3.4 The Commission also refers to the PEDDA’s application dated 16.12.2021 submitted for seeking review of the Commission’s Order dated 02 11.2021, which reads as under:

“29.A. That this Hon’ble Commission while granting extension to the petitioner for commissioning of its project has inadvertently stated that PEDDA in its written submissions has stated that the IA is still valid, and that it is willing to grant the extension as required, since it is promoting the renewable energy project. However, no such undertaking has been made by the PEDDA in its written submissions rather PEDDA has not even submitted any written submissions in the matter.”

The Commission observes that PEDDA’s above submission that it has not even submitted any written submissions in the matter is not correct. As also observed in Para 3.2, PEDDA vide its reply dated 05.07.2021 in Review Petition 02 of 2021 has submitted its written submission stating that it has already filed its reply in petition No. 41 of 2020, which may be considered as part and parcel of the instant reply and in case the Commission decides to adjudicate upon Petition No. 41 of 2020, the reply filed by it may be considered in response thereto. Further, as is evident the PEDDA in the said application seeking second review has based its contentions only on the issue of its undertaking in the written submissions. It didn’t raise any issue regarding its oral

submissions clearly and unambiguously made at the bar through its Counsel.

3.5 The Flip-flop by PEDDA is also evident from its submissions made before the Commission vis-a-vis those made before Hon'ble APTEL. PEDDA while elaborating before the Commission on the outbreak of COVID pandemic forcing lockdowns and the MNRE's directions for extending the date of commissioning of RE projects has stated as under:

"14 That in the meanwhile, in the year 2020 an unwarranted outbreak of Global Pandemic COVID -19 took place, which led to in position of Forced lock down in the entire country including State of Punjab, with effect from 23.03.2020. The said lock down was extended by the Govt. from time to time and was strictly applicable up till 02.06.2020. However, from 03.06.2020, the unlock period was initiated by the Govt., which is still persisting and the Govt. is trying to bring the normalcy on track in a phased manner.

15 That in this regard, realizing the difficulties being faced in the commissioning of the projects, even the Govt. of India came out with a relief while extending the date of commissioning of the projects for a period of 5 months from 25.03.2020 to 24 08.2020."

It has later taken a contrary stand before Hon'ble APTEL by submitting as under:

"dd(iv) That the Respondent no. 1 was already in default much prior to the Covid-19 Lockdown. The Respondent no. 1 had already sought extension for the SCOD on 17.02.2020 i.e., much prior to the Covid-19 Lockdown.

(v) *That the Respondent no. 1 as an afterthought to erroneously take extension has taken the plea of force majeure apropos the Covid-19 Lockdown.*

(vi) *That the Ld. Regulatory Commission has erroneously placed reliance upon the Office Memorandum dated 13.08.2020 as the same is not binding upon the state departments.”*

3.6 PEDA’s constantly changing stance and indicated willingness to consider the issue of the extension to the Petitioner is further noted even by PSPCL in its written submissions filed as later as on 29.05.2023 in the present (2nd review) Petition, which are reproduced below:

“7(a).....

.....on 11.05.2023, the Counsel appearing for PEDA submitted that ‘there had been some misunderstanding during the hearing of first review petition and that PEDA’s view had been that the petitioner should approach PEDA for considering their request for extension of IA’. **The said view is a complete volte face to the stand taken by PEDA before the Hon’ble Tribunal**, namely, that (i) PSPCL had validly terminated the Supplementary PPA on grounds of delay in commissioning; (ii) No Force Majeure ground had been made out by Indian Sucrose justifying any extension of time; and (iii) PEDA does not have any role in the Supplementary PPA.”

(emphasis added)

3.7 The Commission also observes that the statement made by Ld. Counsel for PEDA at the bar in the hearing held on 11.05.2023 that “there had been some misunderstanding during the hearing of first review petition and that PEDA’s view had been that the Petitioner should approach PEDA for

considering their request for extension of IA” is an afterthought albeit a misplaced one and cannot be accepted in view of the factual background that the Petitioner M/s Sucrose India had earlier already approached PEDDA for an extension. PEDDA, as per its own admission, had transferred the same without any input to PSPCL for consideration. The relevant extract of PEDDA’s written submissions filed on 11.07.2023 in the present review petition is reproduced below:

“16, the answering respondent came to be in a receipt of communication dated 17.08.2020, requesting for extension of scheduled date of commissioning of the project under reference

.....

21 That since the petitioner and respondent- PSPCL had mutually settled the terms and conditions amongst themselves without taking any concurrence from the applicant/respondent and had mutually amended the original terms, while reducing the amended terms quo the project into supplementary PPA, to which the answering respondent was not a party, thus the answering respondent had no choice apart from referring the request of the petitioner for seeking the extension in the revised SCOD to the respondent - PSPCL, especially when respondent PSPCL has been repeatedly showing resentment that for any action taken by PEDDA with regard to development and promotion of renewable energy projects wherein sale of power is involved, concurrence of PSPCL may be obtained in prior thereto.”

In conclusion, the Commission is clear that ‘PEDDA had indeed stated at the Bar in the hearing dated 17.02.2021 and during the subsequent proceedings in Review Petition No. 02

of 2021 that the IA was still valid and that it is willing to grant an extension. The shifting and constantly contradictory stand and denial of statements has been elaborated above and is amply corroborated by PSPCL's own written replies/submissions. The Commission thus addresses the directions and the issue flagged in the remand order by Hon'ble APTEL and clearly records that PEDDA had indeed indicated its willingness to extend the date of completion of the project since the IA was still valid. As noted above, PSPCL had objected to and challenged PEDDA's contention that the IA was still valid and had not been cancelled.

Thus the Commission is constrained to frown upon PEDDA's repeatedly shifting and contradictory stand and attempt to retreat from its statements made at the bar.

The Commission stands by and reiterates its earlier Order dated 02.11.2021 and disposes of this 2nd review petition in light of the above analysis and observations.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: 22.08.2023