

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

**Petition No.46 of 2010
Date of hearing: 19.06.2013
Date of Order: 24.06.2013**

In the matter of: Petition under Section 86 of the Electricity Act, 2003 for re-determination/revision of rates for sale of power from petitioner's Co-generation Power Plant with an aggregate capacity of 12 MW taking into account the escalation in operational cost in order to promote co-generation and generation of electricity from renewable sources of energy as envisaged under the Electricity Act and the NRSE Policy.

AND

In the matter of: M/s Rana Sugar Limited having its at SCO No.49-50, Madhya Marg, Sector 8-C, Chandigarh through Shri Gursharan Singh Dhiman, President.

Versus

State of Punjab and Others

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

For the petitioner: Shri Gursharan Singh Dhiman

For PSPCL: Shri Sanjeev Gupta, SE/TR-2
Shri Mandeep Singh, Addl.SE/IPC

For Govt. & PEDDA: Shri Rajesh Kohli, System Engineer

ORDER

Rana Sugar Limited, Chandigarh has filed this petition under Section 86 of the Electricity Act, 2003 (Act) for re-determination/revision of rates for

sale of power from its Co-generation Plant of 12 MW (Project) at Village Buttar Seviyan, Tehsil Baba Bakala, District Amritsar. The petitioner has submitted that the Project was set up in year 2002 in co-generation mode. A Power Purchase Agreement (PPA) was executed with erstwhile Punjab State Electricity Board on 4th May, 2005 for sale of 10.2 MW surplus power. PPA is still in operation as the same shall remain in force for a period of 20 (twenty) years from the date of commencement of supply of power to erstwhile PSEB (now PSPCL) i.e. 01.03.2002, which would be extended by another 10 (ten) years through mutual agreement. The Project is connected to 66 kV Sub Station Sathiala of PSPCL. The fuel used for generation of power is bagasse during the operation of sugar mill and thereafter a mixture of bagasse and rice-husk is used which is available locally. The petitioner has further submitted that the Project was set up in the year 2002 under the then prevailing NRSE Policy, 2001. A Financial Collaboration Agreement was signed with Punjab Energy Development Agency (PEDA) on 28.03.2000. The approval of general terms and conditions of sale of power was accorded by this Commission vide Order dated 21.06.2004 passed in Petition No.11 of 2003. Clause 2.1.1 of the PPA provided that tariff rate of sale of power would be Rs.3.01 per unit with base year 2000-01 with 5% annual escalations upto the year 2004-05. The PPA further provided that there would be no further escalation during the pendency of the Agreement. Accordingly, the power is being sold at the tariff of Rs.3.65 per unit since 2004-05. The petitioner has stated that this Commission had passed an Order dated 13.12.2007 for RE Projects under NRSE Policy, 2006 and had granted five annual escalations in tariff during period 2006-10 on the base rate of 2005-06. It had also been provided in the said Order that while recognizing the possibility of need for enhanced rates for encouraging different technologies/fuels that such developers would be free to approach the Commission for re-determination of rates. The petitioner did not approach the Commission on the presumption that Order dated 13.12.2007 was not applicable in its case.

The petitioner has given a detail of rise in the cost of sugar cane since 2005-06, submitting that this rise is 56.52%. Increase in the Wholesale Price Index (WPI) has been 61% since 2005-06 upto 2010-11. Rise in Consumer Order in Petition No.46 of 2010

Price Index (CPI) with base year 2001 is 70% upto year 2010. Sale rate of power to LS Industries was Rs.3.06 per unit in year 2001-02 which has risen by 49.7% to Rs.4.58 per unit in year 2010-11. Against this rise in these well established indicators ranging from 50% to 100%, the tariff rate of sale of power for the petitioner has risen only by 15.8%. The petitioner has submitted that cost of rice-husk has increased tremendously during last few years from Rs.1100 to Rs.5000 per Metric Tonne due to increased demand of rice husk in different industries including RE Projects. As it is not possible to generate power to sell it to PSPCL at a fixed tariff, the petitioner may be compelled to default on PPA as no developer can operate the plant at a loss.

The petitioner has also submitted that the Commission has passed Order dated 30.09.2010 in Petition No.32 of 2010 determining generic tariffs for renewable energy power projects, other than solar, on the basis of norms adopted by Central Electricity Regulatory Commission. The tariff fixed for co-generation projects for the year 2010-11 as Rs.4.57 per unit is higher than Rs.3.65 per unit being paid to the petitioner. Apart from this, the new developer will get rise in tariff every year for the 13 years control period.

The petitioner has prayed to :

- (a) Re-determine tariff for sale of power from the petitioner's project to PSPCL for the remaining period of PPA.
- (b) Pass any such order as may be deemed and just proper in facts and circumstances of the case.

2. The petition was admitted vide Order dated 21.12.2010. PEDDA filed its reply vide No.4997-5000 dated 17.01.2011 and has submitted that NRSE Policy 2001 was notified on 03.08.2001 and remained in force for five years. Purchase price of electricity by the erstwhile PSEB from old NRSE Projects was fixed at Rs.3.01 per unit (base year 2000-2001). Annual escalation @ 5% was payable upto year 2004-05 according to which the maximum tariff for the sale of power from co-generation power projects was Rs.3.658 per unit. However under this policy a number of other incentives were given to the developers. The petitioner was allowed to set up this Bagasse Co-generation project as a demonstration project. PPA was signed under NRSE Policy, 2001 and the petitioner was entitled to get the financial and fiscal benefits

Order in Petition No.46 of 2010

available under the policy. The petitioner was aware of the fact regarding available tariff under NRSE Policy, 2001. The petitioner was classified as the old projects category under the Policy. The Commission in its Order dated 13.12.2007 had given its decision as under:

“The Commission, accordingly, allows rates as approved in this order to both categories subject to the condition that these would not be applicable in the case of such projects that have achieved COD before announcement of the NRSE Policy-2006”.

The project of the petitioner had achieved COD in March, 2002, which was before the announcement of NRSE Policy, 2006. The request of the petitioner was not tenable as PPA was signed under NRSE Policy, 2001. PEDDA had prayed that in light of its submissions, there was no merit in the petition and same may be dismissed. PEDDA also filed reply on behalf of the State Government vide No.5043-46 dated 21.01.2011, making similar/same submissions as made by PEDDA in its reply discussed above.

3. PSPCL filed its reply vide C.E./ARR & TR memo No.5047 dated 19.01.2011. PSPCL submitted that the averment of the petitioner that project has fed 23.25 crore units of electricity to rural grid every year is not true. The fact is that the units supplied vary from 0.37 crore to 4.01 crore for different years from 2000-01 to 2009-10 as per Annexure-3 of the petition itself. PSPCL also contested the submission of the petitioner that the project was becoming financial unviable on the ground that the sale of power by the petitioner was utilization of excess power generated from baggasse of Sugar Mill. Tariff was known to the petitioner at the time of execution of PPA on 04.05.2005 as per approval of the Commission vide Order dated 21.06.2004 under NRSE Policy, 2001. There was no provision in any Order for revision of tariff covered under the category of 'old projects'. PSPCL further contended that the submission of the petitioner was not correct as the sale of surplus power to PSPCL was an additional benefit to the petitioner and in no way a cause for loss to the petitioner. Rise in rates of sugar cane was irrelevant as the same was related with the main business of the petitioner of running a sugar mill and not with the sale of surplus power. Similarly rise in WPI and Order in Petition No.46 of 2010

CPI and rise in tariff of LS consumers of PSPCL were irrelevant to the issue in the petition. PSPCL submitted that the prayer of the petitioner for re-determination of tariff for sale of surplus power to PSPCL from the Project of the petitioner, should not be considered as same will cause loss to the respondent and will be against the terms and conditions of PPA based on NRSE Policy.

4. The hearings of the petition were held on 25.01.2011, 15.03.2011, 03.05.2011 and 28.06.2011. The petitioner then filed replication to the replies filed by the respondents vide No.RSL/PRES/2011-12 dated 12.09.2011. In the replication, the petitioner submitted that Hon'ble Appellate Tribunal for Electricity had considered the issue of re-opening of the PPAs in the case titled Rithwick Energy Systems Ltd. and others versus Transmission Corporation of Andhra Pradesh and others and had held that a PPA can be re-opened for the purpose of encouraging and promoting renewable sources of energy projects. This Commission had also held in Petition No.29 of 2010 filed by Green Planet Energy Private Limited that PPA can be re-opened for giving thrust to the non-conventional energy projects. The petitioner further submitted that after the commissioning of the Project of the petitioner in 2002, there had been many developments on the front of non-conventional generation:

- a) PEDA came out with the NRSE policy 2006 which provided for escalation of tariff for 5 years and thereafter linked it to the LS Tariff of state utility.
- b) The Commission instead of linking it to LS Tariff gave option to the developers to get the tariff revised from the Commission.
- c) The policy also provided for renewable purchase obligation of the State Utility but no penalty was prescribed for not meeting the RPO.
- d) The CERC came out with the Generic Tariffs for NRSE projects based on the year of commissioning concept and worked out tariffs after analyzing actual parameters for different technologies using normative components.

- e) CERC also simultaneously came out with Renewable Energy Certificate Regulation for promotion of NRSE technologies and laid down mechanism of Renewable Purchase Obligation for consumers / State Utilities and penalties for non compliance.
- f) It also declared floor and fore-bearance price of RECs.
- g) The Commission rightly adopted these tariffs with Punjab specific normatives thereby allowing increased cost of Biomass Fuel.
- h) The Commission also accepted the plea of some of the projects earlier set up under 2006 policy and allowed tariffs on generic basis by working out the indexation for their year of commissioning. This decision distorted the situation against the petitioner as such projects were not the producers of Fuel themselves and could not afford purchase of fuel at high cost. This has resulted in higher sale rate of Baggase of other sugar mills in Punjab not under PPA with PSPCL. Even the other users of such fuels like Vanaspati mills, paper mills, dyeing industry etc. were offering higher prices for the Baggase in open market which was being sold at Rs.2000 – Rs.2200 per tonne. In fact the whole scenario went sea change since the project of petitioner was conceived and set up and this fact was required to be kept in view while considering the present petition.

The petitioner further contested the submissions of PSPCL that price of sugar cane is concern of the main business of the petitioner and was irrelevant to the surplus power being sold to PSPCL by submitting that the baggase as a fuel is generated from sugar cane and, therefore, rate of sugar cane impacted the rate of baggase and hence power generated at the project. The petitioner reiterated that power generation at fixed tariff had become unviable and petitioner was being forced to shut the generating plant. Selling baggase in open market would be more economical to the petitioner. Shutting up of the project would adversely impact the RPO of the PSPCL. The petitioner submitted that many other developers like Malwa Power Ltd. and Indian Acrylic Ltd. had got their PPA re-opened by way of petitions also

relating to NRSE Policy, 2001. The petitioner reiterated its prayer in the replication and added a prayer that alternatively foreclosure / termination of PPA may be permitted as it had already remained operative for a period of about 10 years.

5. The Commission vide Order dated 14.09.2011 observed that the Government of Punjab, Department of Science, Technology, Environment and Non-conventional Energy was in the process of formulating a revised New and Renewable Sources of Energy (NRSE) Policy which was likely to be notified shortly. The Commission had taken a view that this policy would address the issues raised in the instant petition. The petition was accordingly adjourned sine die to await for the revised policy.

6. The petitioner filed an application dated 08.03.2013 and submitted that the PEDDA has already notified the NRSE Policy, 2012 which laid down that the Commission may decide / re-determine / grant higher tariff to the projects set up under NRSE Policy, 2001 in whose case the tariff has been stagnant at Rs.3.65 per unit. The petitioner requested that Petition No.46 of 2010 filed by the petitioner and adjourned sine die may be taken up again and remunerative tariff with appropriate fixed cost and variable cost at current fuel prices be granted to the petitioner.

7. Respondents were directed to file reply vide Order dated 15.03.2013. PEDDA filed joint reply on behalf of PEDDA and Government of Punjab vide No.8658-60 dated 25.03.2013. PEDDA and Government have made submissions that their replies to the main petition filed vide No.4997-5000 dated 17.01.2011 and No.5043-46 dated 21.01.2011 may be considered again. PEDDA has further submitted that the claims of the petitioner for revision of tariff of its co-generation plant in the ambit of para 5.4 of the NRSE Policy 2012 of the State Government notified on 26th Nov. 2012 states as under:-

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

PEDDA submitted that from the above para of the NRSE Policy, 2012, no relief to the petitioner can be granted as the project of the petitioner is not an IPP but it is a co-gen project for 12 MW as the NRSE Policy, 2012 covers only the IPP Biomass / Biogas power project of NRSE Policy, 2001.

Government of Punjab and PEDDA have prayed that the petition may be rejected.

8. PSPCL has also filed reply to the application dated 08.03.2013 submitted by petitioner, vide C.E./ARR & TR memo No.5500/01 dated 28.03.2013 and has reiterated its submissions made in the reply to the main petition. As regards the NRSE Policy, 2012 notified by the State Government for re-determining/granting higher tariff to the projects set up under NRSE Policy, 2001, PSPCL has stated that as per para 5.4 of the NRSE Policy 2012, this provision is applicable only for IPP/Biomass/Biogas projects allocated by PEDDA and set up during the period of NRSE Policy 2001, whose tariff has become stagnant at Rs.3.49 per unit. The Project of the petitioner being co-generation project is not eligible for re-determination of tariff under this provision of NRSE Policy, 2012.

PSPCL has prayed that tariff already decided and incorporated in the executed long term PPA may not be re-determined in view of no provision in the present NRSE Policy 2012 for co-generation projects commissioned under NRSE Policy, 2001.

9. The petitioner filed replication to the replies filed by PSPCL and PEDDA & GoP vide No. RSL/PRES/2013-14 dated 14.05.2013 and prayed to list the case for hearing after 15.06.2013. The petitioner, PEDDA and PSPCL submitted during hearing on 19.06.2013 that no decision has been taken by the Government of Punjab for modifying the NRSE Policy, 2012 to cover Co-gen Projects commissioned under NRSE Policy, 2001. The petitioner prayed for more time to await for decision of the Government. The Commission after due consideration of the fact that enough time has already been allowed in waiting for the modification of the NRSE Policy, 2012 and also the fact that the petitioner can always file a fresh petition as and when a new cause of action arises, decided to close the further hearing of the case.

10. **Observations of the Commission:**

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

i) The petitioner signed a Power Purchase Agreement (PPA) on 04.05.2005 with PSEB (now PSPCL) for supply of 10.2 MW surplus RE power from its 12 MW Co-generation plant at village Buttar Seviyan, Tehsil Baba Bakala, District Amritsar.

ii) As per PPA, the tariff applicable was Rs.3.01 per kWh (base year 2000-01) with 5% annual escalation upto 2004-05 after which no escalation was allowed during the pendency of the Agreement. As on date and after 2004-05 the petitioner is selling power to PSEB/PSPCL at Rs.3.65 per kWh.

iii) PEDDA submitted in its reply dated 17.01.2011 to the petition that the petitioner was allowed to set up this Bagasse based Co-generation power project as a demonstration project and signed a PPA under the NRSE Policy-2001. PEDDA further submitted that the petitioner's project was entitled to get the financial and fiscal benefits available under the said policy which were extended to the project. Also PEDDA made an equity participation of Rs.255 lac

in this project on behalf of the State Govt. under the then Ministry of Non-Conventional Energy Sources (MNES), Government of India programme for demonstration of Co-generation projects. The MNES, GOI also provided a capital subsidy of Rs.430.04 lac and a soft loan @ 9% interest was provided by the Indian Renewable Energy Development Agency (IREDA). In addition, the petitioner was sanctioned a grant of Rs.169.96 lac by USAID. As submitted by PEDDA, the fixed cost of petitioner's project already stand reduced to a large extent by the grants/subsidies provided by MNRE,GOI, soft loan by IREDA and grant by USAID. PEDDA has requested to dismiss the petition.

iv) PEDDA submitted that as the petitioner's project was set up during NRSE Policy, 2001, the same is not entitled to relief under the Commission's Order dated 13.12.2007 which is applicable to the projects set up under the NRSE Policy, 2006.

v) PSPCL in its reply dated 19.01.2011 to the petition submitted that the petitioner's primary business is running of the sugar mill and not the Co-generation facility which is incidental. PSPCL requested that in view of no provision in the PPA for enhancement of tariff beyond the year 2004-05, the Commission may not consider the prayer of the petitioner for re-determination of tariff.

vi) The reply of Govt. of Punjab dated 21.01.2011 to the petition, filed through PEDDA, is similar to the reply of PEDDA.

vii) The petitioner in the replication dated 12.09.2011 to the replies filed by the respondents submitted that Hon'ble Appellate Tribunal for Electricity has already considered the reopening of the PPAs in the case of Rithwik Energy Systems Ltd. and Others Versus Transmission Corporation of Andhra Pradesh Ltd. and Others wherein the Hon'ble Tribunal held that a contract could be reopened for the purpose of encouraging and promoting renewable sources of energy projects and the Hon'ble Commission has also held in petition no. 29 of 2010 filed by Green Plant Energy (P) Ltd. that PPA could be reopened for giving thrust to non- conventional energy projects.

viii) The Commission in its Order dated 14.09.2011 adjourned the petition sine die after observing that Government of Punjab, Department of Science, Technology, Environment and Non-Conventional Energy is in the process of formulating a revised New and Renewable Sources of Energy (NRSE) Policy, which is likely to be notified shortly, and further observed that it is expected that this policy would address the issues raised in the instant petition.

ix) The Govt. of Punjab notified the revised New and Renewable Sources of Energy (NRSE) Policy, 2012 on 26.12.2012.

x) The petitioner filed an Application dated 08.03.2013 and submitted that NRSE Policy, 2012 has already be notified and prayed that petition no. 46 of 2010 filed by the petitioner and adjourned sine die by the Commission, may be taken up again and tariff for sale of power from the petitioner's project to PSPCL for the remaining period of PPA may be re-determined.

xi) PEDDA in its reply dated 25.03.2013 to the said Application of petitioner submitted that as per para 5.4 of the NRSE Policy, 2012, no relief to the petitioner can be granted as project of the petitioner is not an IPP but it is a Co-generation project and NRSE Policy, 2012, for the purpose, covers only the IPP Biomass/Biogas power projects of NRSE Policy, 2001. PEDDA has requested that considering the replies already filed by PEDDA & Govt. of Punjab in the petition, the petition may be rejected.

xii) PSPCL in reply dated 28.03.2013 to the said Application has submitted that there is no provision in the PPA for enhancement of tariff on any account. Also, it has been submitted that as per provisions of the policy (NRSE Policy, 2001), 5% annual escalation was allowed for four years on the then prevalent single part tariff i.e. including both variable and fixed components whereas in the generic tariff, no escalation is allowed on the fixed component and a percentage escalation is allowed on the variable part only.

xiii) PSPCL has further submitted that the provision in para 5.4 of the NRSE Policy, 2012 is applicable only for IPP Biomass/Biogas projects allocated by PEDDA set up during the period of NRSE Policy, 2001 and petitioner's project being Co-generation project is thus not eligible for re-

determination of tariff under this provision. PSPCL has prayed that tariff already decided and incorporated in the PPA may not be re-determined.

11. Findings and Decision of the Commission:

The Commission in its Order dated 14.09.2011 held as under:

“The Commission observes that the Government of Punjab, Department of Science, Technology, Environment and Non-Conventional Energy is in the process of formulating a revised New and Renewable Sources of Energy (NRSE) Policy, which is likely to be notified shortly. It is expected that this policy would address the issues raised in the instant petition.

In view of this, the petition is adjourned sine die. In the mean while the petitioner may take up the matter with the department concerned, if so advised.”

The Commission finds that as per the submissions of PEDDA and PSPCL to the Application dated 08.03.2013 of the petitioner, the Co-generation projects, like that of the petitioner commissioned during the period of NRSE Policy, 2001 have not been included in the NRSE Policy, 2012 for re-determination of tariff by the Commission as in case of IPP Biomass/Biogas power projects, covered in para 5.4 of the said policy. The Commission notes that neither petitioner has been able to take up the matter successfully nor PEDDA, the State Nodal Agency for promotion and development of NRSE projects in the State, has been able to persuade/convince the Government of Punjab to include the Co-generation projects like that of the petitioner, set up during NRSE Policy, 2001 and stuck up at the tariff of around Rs.3.65 per kWh for the last many years, in the NRSE Policy, 2012 for grant of relief by way of re-fixation of tariff as provided in para 5.4 of the said policy in the case of IPP Biomass/Biogas projects. Under the circumstances, the Commission holds that the petitioner’s project, for the

present, is not entitled to relief by way of re-determination of tariff for its Co-generation project. Further the alternate prayer of petitioner for foreclosure/termination of PPA is not acceded to.

The petition is dismissed without assigning any cost to either party.

Sd/-
(Gurinder Jit Singh)
Member

Sd/-
(Virinder Singh)
Member

Sd/-
(Romila Dubey)
Chairperson

Chandigarh
Dated : 24.06.2013