

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

SITENO.3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

Petition No. 59 of 2024
Alongwith IA No. 05 of 2025
Date of Order: 17.04.2025

Petition under Section 86 (1) (a) and (b) of the Electricity Act 2003 read with rule 10 of the PSERC (Conduct of Business) Regulations 2005 and clause 2.1.1 (i) of the Power Purchase Agreement dated 19.02.2004 (amended vide amendment II dated 26.08.2013) for determination of tariff for the 6MW Biomass based power plant of the petitioner located at village Gulabewala, Tehsil Mukatsar, District Mukatsar, Punjab.

In the matter of: M/s Malwa Power Pvt. Ltd., Registered office Unit No.1, Prithla, Tatarpur Road, Village Tatarpur, District Palwal through its authorized Signatory B.S Jangara, Head Power Division 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 (PEDA) through its Director, Solar Passive Complex, Plot No. 1 & 2, Sector 33-D, Chandigarh.

...Respondents

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

ORDER

The Petition was taken up for hearing on admission on 09.04.2025. PSPCL has filed its reply on the issue of maintainability of the petition and the Petitioner has filed rejoinder, thereto. Ld. Counsel of the parties reiterated the submissions as made in their respective reply/rejoinder on the aspect of maintainability of the Petition. After hearing the parties, the order on maintainability of the Petition was reserved vide the Commission's Order dated 11.04.2025.

The Commission observes that:

- a) The Petitioner's submission is that, in terms of the PPA, the term of the Agreement is twenty (20) years and is extendable by another ten (10) years through mutual Agreement and the tariff for the extended term of the Agreement, if applicable, beyond the useful life of the project of 20 years, shall be as decided and approved by the Commission. Accordingly, vide letter dated 14.09.2024 the petitioner gave its consent for extension of the PPA for further 10 years. However, in response to the above said consent letter, the Respondent PSPCL vide memo No. 1723/IPC-121 dated 11.10.2024 gave its consent for the extension subject to the condition that the tariff will be of a fixed rate of Rs. 3.50 per unit. The Petitioner's plea is that, in terms of the PPA, PSPCL could only give its consent to extend the PPA but has no power to put any condition about the tariff as the same has been specifically mandated to be decided and approved by this Commission. Thus, the condition of tariff of Rs. 3.50 per unit put by the PSPCL has no value in the eyes of law and its letter dated 11.10.2024 has to be read by overlooking and ignoring the said condition.
- b) On the other hand, PSPCL's submission is that the Petitioner's plea that PSPCL has already granted its consent to extend the PPA is incorrect and misconceived. In fact, *vide* its letter dated 11.10.2024, PSPCL had made it amply clear that its consent was contingent upon the Petitioner accepting the tariff of Rs. 3.50 per unit. However, no such acceptance of the condition was communicated to PSPCL by the Petitioner. In such an event, it cannot be the plea of the Petitioner that the consent

has been granted by PSPCL. Simply put, if there is no mutual consent between the parties, the PPA expires at the end of the twenty-year term on 26.04.2025. The legality of the condition imposed by PSPCL is relevant to the present petition as well as to Article 12.1.0 of the PPA. The stage of determination of tariff, if any, follows only after both parties mutually agree to extend the PPA. However, there is no such mutual consent arrived at between the parties as on the date of filing of the present Reply. Therefore, in the absence of any clear and unambiguous mutual consent between the parties agreeing to extend the PPA by another 10 years, the present Petition is not maintainable. It is stated that the PPA dated 19.02.2004, as entered into between the parties, would stand expired on 26.04.2025 unless extended by mutual consent.

From the above submissions of the parties, it is evidently clear that there exists a dispute between the parties even on the issue of whether there exists a mutual consent/agreement in terms of the PPA for its extension or not, which requires the examination of the issues being raised in detail. Further, it cannot be disputed that the Commission has been assigned the function of adjudication of the dispute(s) between the generating company and the distributing licensee PSPCL under Section 86(1)(f) of the Electricity Act. The Commission also refers to the following observation by the Hon'ble Supreme Court made in Civil Appeal No. 7524 of 2012:

“Since, one of the objectives of the new enactment (Electricity Act 2003) is to ensure expeditious adjudication of the disputes raised by the parties, there is no warrant for entertaining preliminary/interlocutory objections raised by either party and decide the same by long-drawn hearing and by recording lengthy orders. The

State Commission and the Tribunal should, while deciding the main matter consider all objections including the one relating to their jurisdiction to entertain the matter”.

In view of above, as there is a dispute between the parties, the Commission decides to admit the petition in order to examine the issues being raised in detail for passing of appropriate orders. Notice be issued to PEDDA also.

PSPCL and PEDDA are directed to file their replies on merits within one week with a copy to the Petitioner (through hard copy & soft copy). The rejoinder thereto, if any, may be filed by the Petitioner before the next date of hearing with a copy to PSPCL (through hard copy & soft copy).

The petitioner has also filed an IA submitting that the term of the PPA dated 19.02.2004 would come to an end on 26.04.2025 and thereafter PSPCL may stop taking power from the power project of the petitioner which would cause a great loss to the petitioner. The petitioner has requested the Commission to issue directions to PSPCL to accept power generated from its project at the last escalated tariff till the decision of the petition. PSPCL has filed its reply to the IA vide memo no. 5555 dated 04.04.2025.

The petition alongwith IA shall be taken up for further hearing on 23.04.2025 at 11.30 AM.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: 17.04.2025