

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

Petition No. 23 of 2022  
Date of Order: 11.11.2022

Petition under Section 62 of Electricity Act, 2003 Chapter VI of Conduct of Business Regulations and MYT Regulations 2014 read with other relevant provisions of the Electricity Act 2003 as well as Regulations framed by this Commission from time to time, for Pradhan Mantri Kisan Urja Suraksha Evam Utthaan Mahabhiyaan (PM-Kusum) Scheme of setting up grid connected solar power plants of individual capacity ranging from 500 KW to 2 MW under Component –A and determination of Levelized ceiling tariff for setting up of grid connected solar power plants of capacity ranging from 500 KW to 5 MW for feeder level solarization of grid connected agriculture pumps.

AND

In the matter of: Punjab Energy Development Agency, Plot No. 01 and 02, Sector 33-D, Chandigarh, through its Director Sh. M.P Singh.

..Petitioner

Versus

1. Punjab State Power Corporation Limited through its Chairman & Managing Director having its office at the Mall, Patiala- 147001, Punjab.
2. Ministry of New and Renewable Energy (MNRE) through its Director, having office at Block 14, CGO Complex, Lodhi, Road New Delhi.

....Performa Respondents

Commission: Sh. Viswajeet Khanna, Chairperson

Sh. Paramjeet Singh, Member

Petitioner: Sh. Aditya Grover, Advocate

Respondents: Ms. Poorva Saigal, Advocate

Sh. Rupinderjit Singh Randhawa, CE/ARR&TR

Sh. Ravi Luthra, SE/TR-2

Sh. Gurvinder Singh, Sr.Xen/TR-5

## ORDER

1. The Petitioner has filed the present petition seeking determination of tariffs for grid connected solar power plants of individual capacity ranging from 500 KW to 2MW in the State under Components A and C of the PM-KUSUM. Subsequently, the Petitioner submitted, that as per MNRE Office Memorandum dated 18.08.2022, for Component-C the State Implementing Agencies can invite bids without waiting for the ceiling tariff, accordingly its prayer in the petition would survive for component-A only. Accordingly, the Commission is restricting the proceedings to the issues relevant to Component-A of the Scheme only.
2. The submissions made in the petition are summarised as under:
  - a) Under component-A of PM-KUSUM Scheme, MNRE had allocated initially a target of 30MW grid connected solar power plants to Punjab, which was later revised to 220 MW. Under this Scheme the DISCOMs are eligible to get PBI @ Rs. 0.40/unit for the purchased power or Rs. 6.60 Lac per MW of installed capacity, whichever is lower, for a period of five years from the COD.
  - b) The Petitioner filed Petition No. 8 of 2020 before the Commission seeking determination of Levelized Tariff in terms of said Scheme for sale of solar power generated thereof to the DISCOM in the State. In the meanwhile CERC came out with CERC tariff regulations 2020-23 for various RE projects. Accordingly, after following due process of hearing and considering the objections/ submissions submitted thereon, the Commission vide order dated 09.10.2020 determined the levelized tariff as Rs. 2.748 per KWh for solar PV projects to be setup under the ibid Scheme.

- c) PEDDA invited e-bids for installation of solar power plants under ibid Scheme as per the said tariff of Rs. 2.748/kWh. However, only three applications for 1MW capacity each were received for the cumulative capacity of 3 MW against the allocated target of 220 MW.
- d) PEDDA informed MNRE, GOI regarding the low participation of the farmers in the ibid scheme. In response thereof, MNRE vide DO dated 14.12.2021 observed that the low participation in the bid is mainly due to the low tariff approved by the State Regulator, whereas in the neighbouring State of HP, this tariff is Rs. 3.98/kWh and in Haryana it is Rs. 3.11/kWh. In Rajasthan, where the solar irradiation is the highest in the country, the tariff approved by SERC is Rs. 3.14/kWh. MNRE suggested that a review petition may be filed before the Regulator to reconsider the approved tariff based on the cost of land, solar irradiation and other relevant parameters.
- e) Accordingly, in a meeting chaired by Principal Secretary, Power and NRES, Government of Punjab on 06.01.2022, which was attended by the officials of the petitioner and PSPCL, where upon after deliberating the issue with regard to allocation of solar power plants to the farmers and achieving the allocated target of 220 MW, it was inter-alia decided that the plants be allocated to all the three successful farmers and e-tender be floated for inviting of applications from the farmers for setting up of solar power plants of the remaining capacity of 217 MW. Also, a petition be filed before the Commission for redetermination of tariff.
- f) The petitioner vide e-mail dated 23.02.2022, inter-alia sought information from MNRE, GOI with regard to the latest rates of

1MW solar plants to be set-up under the Scheme. In response thereto, MNRE vide communication dated 23.02.2022 conveyed that the present cost of 1 MW solar plant can be considered as Rs. 4.50 Cr/MW. Further, the 11 KV line has been considered on an average of 5 Km and based on the cost of the line intimated by PSPCL, the cost of the solar power plant including 11 KV line, comes out to be Rs 4.85 Cr/MW. Based on these indicative financial estimates, the petitioner has also worked out the levelized tariff for a period of 25 years, which has been calculated at Rs. 3.718/KWh.

- g) In light of the facts and circumstances mentioned above, the commission may kindly be pleased to determine levelized tariff in terms of PM-KUSUM Scheme for setting up of grid connected solar power plants of individual capacity ranging from 500KW to 2 MW under Component-A of the ibid scheme for sale of power generated thereof to the State DISCOM PSPCL.
3. After considering the averments made in the petition, the Commission vide Order dated 19.05.2022, admitted the petition with directions to the Petitioner that it shall get a public notice published as required under the PSERC (Conduct of Business) Regulations, 2005 for information of the public and other stakeholders. In compliance thereof, a public notice was got published by the Petitioner inviting objections/suggestions on the impugned petition for determination of tariff under Section 62 of the Act and CERC (Terms and Conditions for Tariff Determination from RE Sources) Regulations as adopted by the Commission.
4. MNRE vide its office memorandum dated 12.07.2022 submitted that it agrees to the submission of PEDDA that the tariff of Rs. 2.748/kWh is insufficient to induce interest among the farmers/developers as the

same is not financially viable. The methodology and assumption taken in calculation by PEDDA seems to be broadly consistent with the relevant orders, practices and market trends. However, while finalizing the tariff, the following observations may be taken cognizance of:

*“The cost of Rs. 4.5 Cr/MW is based on market trends for solar power plants with DC/AC ratio of 1.2 i.e. upto 1.2 MW DC capacity for a 1 MW plant. It may also be noted that the prices have increased due to supply chain disruptions on account of pandemic and introduction of BCD and Safeguard Duty. The higher DC/AC ratio would result in achieving higher CUF and the same is required to be considered while deciding the tariff.”*

5. However, the Respondent PSPCL, while objecting to the maintainability of the petition, submitted as under:
- a) At the outset, PSPCL submits that the present petition in regard to the re-determination of tariff for the Component A is not maintainable. PEDDA, by way of the present Petition is seeking to set aside the Order dated 09.10.2020 passed by the Commission, without challenging the said Order. The said Order was passed after a detailed deliberation by the Commission and has attained finality.
  - b) PEDDA has not assailed or challenged any of the findings of the Commission, nor has it filed a review Petition. There is no provision under the Regulations, which permit PEDDA to seek a re-determination of the levelized tariff determined by the Commission. Even the ibid Scheme does not contemplate re-determination of ceiling tariff.
  - c) Without prejudice to the above, the grounds raised by PEDDA seeking re-determination of tariff do not bear any merit. At the

time of filing of Petition no. 8 of 2020, PEDDA itself sought tariff determination at a capital cost of Rs. 3.40 Cr/MW and the same was duly considered by the Commission. The same has not been challenged and cannot now be sought to be re-worked.

- d) As per the Component - A of the Scheme, the Renewable Power Generator has to lay a dedicated 11 KV line from the project site to the substation. The Commission approved a tariff of Rs. 2.748/kWh in petition no. 8 of 2020 considering this aspect. There is therefore no occasion for PEDDA to consider an additional cost of Rs. 35 lac for laying 11 KV line over and above the capital cost.
- e) In fact, in the recent Order dated 01.06.2022 by the Commission's in Petition No. 13 of 2022, PEDDA has agreed to supply power from 4x4 MW Solar Plants at a tariff of Rs. 2.748/kWh to PSPCL. It is further mentioned that PEDDA has to lay a dedicated 11 KV line from project site to substation at its own expense.
- f) In a recent competitive bidding conducted by PSPCL in May 2021 for procurement of 250 MW solar power from solar plants to be established within Punjab, PPAs have been executed at a tariff of Rs. 2.65/kWh. The power from these projects will be fed at 66/132 KV substation of PSPCL/PSTCL and all expenses related to transmission including laying of power upto PSPCL/PSTCL substation shall be borne by the developers. Further, the Commission in its Order dated 06.04.2022 in Suo-Motu Petition No. 06 of 2022 has approved FiT for selling of solar power to PSPCL under Net-Billing and Gross Metering arrangement at a tariff of Rs. 2.34/kWh for FY 2022-23.

- g) The reliance placed by PEDDA on MNRE e-mail dated 23.02.2022 to justify the capital cost of Rs. 4.50 Cr/MW is misconceived. On 27.10.2021, MNRE had specifically issued the benchmark cost for rooftop solar plants and clarified that the cost for upto 500KW modules is Rs. 35,886/KW (without GST) and Rs. 40,838/KW (incl. GST) which is much lower than the capital cost of Rs. 4.50 Cr/MW being proposed by PEDDA. In view of the same, the benchmark cost for solar plants above 500 KW may be derived as Rs. 37,424/KW (incl. GST).
6. The petition was taken up for hearing as well as public hearing on 19.07.2022. Nobody from public attended the public hearing. During hearing, Ld. Counsel of PSPCL reiterated the issues raised earlier in its written submission and objected to the maintainability of the Petition. The Ld. Counsel of PEDDA submitted that PSPCL has consented to the filing of the petition as evident from MoM dated 06.01.2022 annexed with the Petition. This was objected to by PSPCL by stating that the contents of the MoM cannot be considered its express consent for the procurement. After hearing the parties, the Commission while observing that, the CERC RE Tariff Regulations adopted by the Commission under Regulation 8(2) mandates the "Consent from beneficiary for procurement of power from renewable energy project at tariff approved by the Commission, in the form of initialled PPA or MOU", directed the petitioner to file its rejoinder in the matter.
7. In response to thereof, PEDDA filed additional submissions on 28.07.2022, submitting as under:
- a) That it is a matter of fact that the respondent PSPCL in terms of MOM dated 06.01.2022 had categorically agreed to file a petition for re-determination of tariff in terms of the suggestions/

directives rendered by MNRE. In terms of the ibid scheme, it is mandatory for the DISCOM to procure the power from the proposed generating stations and it is not optional for the DISCOM/ PSPCL to refuse the procurement of the said power as the scheme is to be implemented in the State of Punjab.

- b) So far as the Regulation 8(2) of CERC RE Tariff Regulations as adopted by the Commission is concerned, it is submitted that once PSPCL in terms of MoM dated 06.01.2022 has consented for re-determination of tariff by filing a petition before the Commission with regard to Component-A, the same amounts to a consent. PSPCL was always on board while taking decision for implementation of PM-KUSUM Scheme. PSPCL is now taking a contrary stand and raising un-warranted issues with regard to maintainability of the petition.
8. PSPCL filed its reply on 03.10.2022 to the PEDAs additional submissions stating that:
- a) It is reiterated that the Minutes of the Meeting held on 06.01.2022 cannot be construed as consent by PSPCL to re-determine the tariff determined by the Commission in its order dated 09.10.2020 without following due legal process, namely for review of the said Order.
- b) From the MoM dated 06.01.2022, it can be specifically observed that MNRE had suggested that PEDAs file a Review Petition before the Commission to reconsider the tariff based on the cost of land, solar radiation and other relevant parameters. The present Petition filed by PEDAs however has not been in the nature of a review petition but rather an independent petition seeking a fresh determination, de hors the earlier order dated 09.10.2020.



- c) PEDA cannot seek to circumvent the findings of the Commission only by virtue of the Minutes of a Meeting. In any event, there can be no estoppel against law or public interest. Even assuming (but not admitting) that PSPCL had consented to the re-determination in the manner alleged by PEDA, PSPCL as a regulated entity cannot waive any requirement under the law. Further, in the decision of All India Power Engineer Federation v. Sasan Power Ltd. (2017) 1 SCC 487, it has been made clear by the Hon'ble Supreme Court that there can be no waiver contrary to consumer interest.
- d) Further, assuming but not admitting that PEDA can invite fresh bids in respect of Component C, the power procurement by PSPCL will be subject to the approval by the Commission in consonance with Section 86(1)(b) of the Electricity Act, 2003 read with the Regulation 10 and 13 of the PSERC (Power Purchase and Procurement Process of Licensee) Regulations, 2012 as well as the applicable provisions under the Conduct of Business Regulations.
9. During the hearing held on 26.10.2022, Ld. Counsel of both parties reiterated their submissions made earlier in the matter on the issue of maintainability of the petition. Ld. Counsel of PSPCL submitted that PSPCL is not willing to procure the power at the rate projected by the Petitioner. After hearing the parties, Order was reserved.

**10. Findings and Decision of the Commission:**

The Commission has carefully gone through the petition, reply by the respondents and additional submissions/arguments made by the parties in the matter. The Petitioner's plea is for determination of project specific levelized tariff for solar plants to be set-up under

Component-A of the PM-KUSUM Scheme, whereas PSPCL is objecting to the maintainability of the same. The Commission refers to Section 62 of Electricity Act, 2003, which specify as under:

*“62. (1) The Appropriate Commission shall determine the tariff in accordance with provisions of this Act for –*

*(a) supply of electricity by a generating company to a distribution licensee.”*

Further, in the matter of RE Tariffs, the Commission follows the CERC Regulations with requisite State specific amendments. Accordingly, upon notification of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020, the Commission vide Order dated 18.09.2020 in Suo-Motu Petition No. 26 of 2020, after following the due process and careful deliberations/consideration of objections/ suggestions of the stakeholders, adopted the same with one State specific amendment i.e. CUF of 40% for small hydro projects. The Regulation 8(2) of these Regulations states as under:

*“8 (2) A petition for determination of project specific tariff shall be accompanied by such fee ....., and shall be accompanied by:*

*e) Consent from beneficiary for procurement of power from renewable energy project at tariff approved by the Commission, in the form of initialled Power Purchase Agreement or Memorandum of Understanding;”*

In the instant case, while the Petitioner is pleading that PSPCL has given consent to the filing of the petition vide MoM dated

06.01.2022 annexed with the Petition, PSPCL has submitted that the said minutes cannot be construed as consent of power procurement.

**The Commission is of the view that as mandated in the Regulations, in the absence of a specific consent of the beneficiary PSPCL, for procurement of power from the impugned projects, the Petitioner's prayer for determination of levelled tariff for sale of power from said solar power projects to PSPCL is not maintainable. MoM cannot substitute for a proper agreement or formal consent. In fact, the Respondent PSPCL is specifically denying any consent in their submissions to this petition and objecting to its maintainability. PSPCL has also brought out conclusively that in its bids it has successfully signed PPAs recently and discovered tariff far lower than the tariff approved by the Commission vide its Order dated 09.10.2020 i.e. Rs. 2.748 kWh for solar PV projects.**

**The Commission also refers to the Tariff Policy 2016, specifying as under:**

*"6.4(2) States shall endeavor to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from the waste to energy plants...."*

**Keeping all the above in mind, the Commission is of the considered view that the petition is not maintainable in its present form.**

**However, the Petitioner is at liberty to explore the market for establishing the said solar projects through a competitive bidding process, as is being proposed to be followed by it in**

case of Component-C of the Scheme. In case of discovery of competitive and economical tariffs through such transparent competitive bidding and the beneficiary procurer i.e. PSPCL consenting to enter into an agreement for procurement of power at the said tariff, the identified Generator(s)/PSPCL shall be free to approach the Commission for approval of the same in accordance with the provisions of the Act and the regulations giving due justification in respect of its “Necessity” and “Reasonability of cost” as mandated under PSERC (Power Purchase and Procurement Process) Regulations, 2012.

Accordingly, the petition is dismissed in limine.

Sd/-  
(Paramjeet Singh)  
Member

Sd/-  
(Viswajeet Khanna)  
Chairperson

Chandigarh  
Dated: 11.11.2022