

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION  
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

**Case No. HERC/PRO-33 of 2019**

**Date of Hearing : 25.06.2019  
Date of Order : 25.06.2019**

**In the Matter of**

Petition seeking revision of the unit rate of power export to UHBVN, as being given to M/s Naraingarh Sugar Mills Ltd and; further to provide the unit banking system to the applicant; and further to provide arrears of the revised unit rate with regard to the power supplied by the applicant to UHBVN since 01.04.2012, along with interest @ 8% P.A.

**Petitioner:** Haryana Cooperative Sugar Mills Ltd, Bhali Anandpur, Rohtak, Haryana  
**V/s**

**Respondent:** Haryana Power Purchase Centre (HPPC), 2nd Floor,  
Shakti Bhawan, Sector – 6, Panchkula 134109, Haryana

**Present On behalf of the Petitioner:** Shri Kuldeep Sheoran, Advocate

**Present On behalf of the Respondent:** Shri Vikas Kadiyan, XEN/HPPC  
Shri Randhir Singh, AEE/HPPC

**Quorum**

**Shri Jagjeet Singh, Chairman  
Shri Pravindra Singh Chauhan, Member  
Shri Naresh Sardana, Member**

**ORDER**

**Brief Background of the Case**

1. The present Petition has been filed by M/s. Haryana Cooperative Sugar Mills Ltd., seeking revision of tariff in respect of power supplied by it to HPPC from its bagasse based cogeneration power plants, since 01.04.2012, along with interest @ 8% P.A. The petitioner has further prayed to allow banking facility.

2. The brief facts of the case are as under:-

i) Haryana Cooperative Sugar Mills Ltd, Bhali Anandpur, Rohtak, entered into an Power Purchase Agreement (PPA) dated 18.06.2009 with HPPC on behalf of Uttar Haryana Bijli Vitaran Nigam & Dakshin Haryana Bijli Vitaran Nigam, for sale of 12 MW of electricity generated during cane crushing season from its 16 MW cogeneration bagasse based power plant.

ii) As per Clause 1.1 of the PPA, HPPC agreed to purchase the electrical energy at the interim rate of Rs. 3.74 per KWh with escalation of 2% every year from financial year 2008-09 upto 2011-12 i.e. upto 31.03.2012 and thereafter for the remaining duration of agreement with the approval of Haryana Electricity Regulatory Commission and it was further agreed that the escalated tariff will be applicable from 1st day of April of each year. Clause 1.1 of the above agreement is reproduced below:-

*“1.1 The HPPC shall purchase and accept all such electrical energy up to 12 MW, with PLF 0.75 only during the crushing season, generated by the society as co-generation and made available at the interconnection point, from the Society's facility pursuant to the terms and conditions of this agreement at the interim rate of Rs. 3.74 per kWh subject to the final outcome of case presently pending before HERC w.e.f. 2007-08 (power export from 2007-08) with escalation of 2% every year from financial year 2008-09 upto 2011-12 i.e upto 31-03-2012 and thereafter for the remaining duration of agreement with the approval of Haryana Electricity Regulatory Commission (hereinafter referred to as "The Commission"). The escalated tariff will be applicable from 1st day of April of each year. This rate would be uniform throughout the day for the entire year. No additional payment, what-so-ever, may be on any account, shall be payable by HPPC.*

*The above interim rate of Rs. 3.74/- per unit is applicable for the agreed normative sale of 38.88 MU ( 12 X1000 X24X 180X0.75\*10/6 ) to the HPPC during the crushing season and for any generation more than this normative generation. the Society shall be paid only for the fuel cost @ Rs. 0.86 unit plus incentive of Rs. 0.20 per unit for the first year with annual escalation at the rate of 5% only on the cost of fuel for the subsequent years upto five years”.*

iii) The tariff of Rs. 3.74/kWh determined for the FY 2007-08 escalated up to FY 2011-12 i.e. up to 31.03.2012 and was fixed at Rs. 4.05 KWh in the year 2012. Thereafter, the said rate has not been increased/escalated till date.

iv) The applicant produces electricity only during the crushing season which is purchased by HPPC at Rs. 4.05 per unit. Whereas, in the off season when the electricity is not produced by the applicant the same is provided to the applicant at Commercial rate of Rs. 6.38/- per unit.

v) The applicant submitted that M/s Naraingarh Sugar Mills Ltd. – which is a private sugar mill is also selling electricity to DISCOMs vide Power Purchase Agreement dated 10.03.2014. The above Sugar Mill is selling the electricity @ Rs. 6.52 per unit, whereas

till date the applicant is being paid the old rate of Rs. 4.05 per unit. The applicant further submitted that the principles of Natural Justice are integral part of the guarantee of equality assured by Article 14 of the Constitution.

vi) The applicant has further submitted that unit banking system may also be provided, which has not been provided to the applicant till date. Point no. 4 (iv) of the Order of the Commission dated 15.05.2007 provides as under:-

*“The Banking facility shall be allowed anytime of the day and night subject to condition that surplus energy at the end of the financial year shall not be carried over to the next year.”*

vii) That the applicant is also entitled to the arrears of the revised unit rate with regard to the power supplied by the applicant to UHBVN since 01.04.2012 (i.e. the date from which the same has not been revised), along with interest @ 8% P.A.

viii) In view of the foregoing, following prayer has been made:-

- a) The petition may be allowed by directing the respondents to revise the unit rate of power export to UHBVN, as being given to M/s Naraingarh Sugar Mills Ltd and ;
- b) The Respondents may kindly be directed to provide the unit banking system to the applicant;
- c) The respondents may be directed to provide arrears of the revised unit rate with regard to the power supplied by the applicant to UHBVN since 01.04.2012, alongwith interest @ 8% P.A.

### **Proceedings in the Case**

3. The case was heard by the Commission on 25.06.2019, as scheduled, wherein the counsel appearing on behalf of the Petitioner mainly reiterated the contents of their petition which for sake of brevity not reproduced herein. However, the counsel did not press for the re-determination of the tariff w.e.f. 01.04.2012 and instead prayed to maintain parity with the tariff applicable to M/s Naraingarh Sugar Mills Ltd. The Petitioner was asked to explain the possibility of maintaining parity of tariff of a power plant commissioned in 2009 with the power plant commissioned in 2018. Faced with the question, the counsel of the petitioner prayed that the tariff may be determined w.e.f. current date in accordance with the HERC RE Regulations, 2017 (Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from

Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017) and they shall not press for the arrears.

4. Per-contra, Smt. Sonia Madan, Ld. Counsel for the Respondent (HPPC), argued that reliance of the applicant on Article 14 of the Constitution of India claiming equality with Naraingarh Sugar Mills Ltd. is of no significance and for claiming equality under Constitution of India, there has to be classification based on an intelligible differentia having rational relation to the object. The plant of applicant was commercially operated in the year 2009, whereas the plant of the Naraingarh Sugar Mills was commercially operated in the year 2018. The cost of setting up of the plant in the year 2018 cannot be compared to the cost incurred for setting up of mill in the year 2009.

Counsel for the Respondent further argued that with regard to the contention of the applicant that during off-season, the electricity is provided to the applicant at commercial rate which is higher than the rate of export, the contention of the petitioner is liable to be rejected in view of Clause 2.5 of the PPA, reproduced below:-

*“2. Billing procedure and Payments:*

*.....*

*2.5 The two transactions i.e. import of energy to the society from the Distribution Company and the export of energy to the HPPC would be treated as separate. For import of energy, the society would pay to the Distribution Company (at present UHBVN) for the power sold to the society by the Distribution Company as per the tariff applicable. For energy exported by Society to the HPPC, the Society shall raise money bills as per the tariff described in Clause 1.1”.*

The Ld. Counsel for the Respondent further argued that the Petitioner has not made any representation/application to the Respondent since 31.03.2012, except for a representation dated 20.03.2019 and is demanding escalation after 7 years along with the arrears, which is liable to be rejected.

Regarding banking facility demanded by the Petitioner, it was argued that HERC RE Regulations, 2017 notified on 24.07.2018 provides for banking of Renewable Energy subject to payment of charges and other terms & conditions, which may be availed by the applicant, without prejudice to the terms & conditions of PPA.

### **Commission’s Analysis and Order**

5. The Commission heard the arguments of the parties at length as well as perused the application/reply filed in the matter and observes that the Petitioner is being paid tariff

in respect of power supplied by it from its bagasse based cogeneration power plant at the rate determined in the Order dated 15.05.2007, which has been escalated @ 2% upto 31.03.2012 i.e. Rs. 4.05/kWh. Clause 1.1 of the PPA provides that the tariff for the remaining duration of the agreement i.e. after 31.03.2012 shall be determined with the approval of Haryana Electricity Regulatory Commission ("Commission").

The Commission observes that the fuel cost is the major factor of tariff which escalates over the period of time. However, it is also noted that the escalation @ 2% was provided for co-generation (bagasse) also on entire tariff and not limited to fuel cost up to 2012. Hence, it appears that no bagasse based co-generation plant felt aggrieved and hence no directions were sought from the Commission. Since, the present petition has been preferred by the Haryana Cooperative Sugar Mills Ltd., the Commission is duty bound to look into the tariff issue raised by them. As pointed out during the course of hearing also, the prayer of the Petitioner to maintain parity of tariff of its power plant with the tariff applicable to the power plant of M/s. Naraingarh Sugar Mill Ltd., is not maintainable. However, taking a lenient view in the matter considering the fact that the Petitioner has not approached this Commission earlier for getting their tariff determined w.e.f. 01.04.2012 and counsel for the petitioner, in the hearing held on 25.06.2019, has expressed its willingness to get the tariff re-determined from current date, the Commission considers it appropriate not to dwell upon the issue further and instead proceed for the re-determination of current tariff to be made applicable in the instant case.

The Commission observes that tariff of Rs. 3.74/kWh was determined for the FY 2007-08 with the fuel cost of Rs. 2.14/kWh (Rs. 0.90/kg x 2.38 kg/kWh) at normative specific fuel consumption and balance of Rs. 1.60/kWh (Rs. 3.74 minus Rs. 2.14) being the fixed cost. The same has been escalated @ 2% p.a. upto FY 2011-12, with the tariff of Rs. 4.05/kWh (Fixed cost Rs. 1.73/kWh and Variable cost Rs. 2.32/kWh), determined w.e.f. 01.04.2012, as tabulated below:-

FY	Fixed cost (Rs/kWh)	Variable cost (Rs/kWh)	Total cost (Rs/kWh)
2007-08	1.60	2.14	3.74
2008-09	1.63	2.18	3.81
2009-10	1.66	2.23	3.89
2010-11	1.70	2.27	3.97
2011-12	1.73	2.32	4.05

The Commission further observes that fuel cost of bagasse based power projects for the FY 2017-18 has been determined in the HERC RE Regulations, 2017 as Rs. 4.03/kWh with annual escalation of 5%, which comes to Rs. 4.44/kWh for the FY 2019-20. Thus, substituting variable cost of Rs. 2.32/kWh with Rs. 4.44/kWh, will give the tariff of Rs. 6.17/kWh (Fixed cost Rs. 1.73/kWh and Variable cost Rs. 4.44/kWh) for the FY 2019-20. Accordingly, the Commission orders that the Petitioner shall be paid tariff of Rs. 6.17/kWh w.e.f. 01.07.2019 and annual escalation of 5% in the fuel cost from the FY 2020-21 shall be applicable till the life of the project as per concluded PPA. The escalated tariff shall be applicable from 1<sup>st</sup> day of April of each year.

The Commission observes that banking facility demanded by the Petitioner, is already available under Regulation Clause No. 58 HERC RE Regulations, 2017 as amended from time to time and the petitioner may, if it so desires, avail the same, subject to the terms & conditions specified for availing banking facility as well as the PPA.

The Petition is accordingly disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 25.06.2019.

Date: 25.06.2019 (Pravindra Singh Chauhan) (Naresh Sardana) (Jagjeet Singh)  
Place: Panchkula Member Member Chairman