

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

Case No. HERC/PRO-34 of 2019

Date of Hearing : 09.08.2023

Date of Order : 10.08.2023

In the Matter of

Application under Regulations 17, 85 and 88 of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 for clarification of Order dated 04.04.2019 passed by this Hon'ble Commission in Case No. HERC/PRO-10 of 2019 passed in proceedings under section 94 of the Electricity Act, 2003 for review of order dated 03.01.2019 passed by this Hon'ble Commission in PRO-45 of 2018 in exercise of its jurisdiction under Section 86 (1) (b) of the Electricity Act, 2003.

Petitioner Haryana Power Purchase Centre, Panchkula (HPPC)

V/s

Respondents

1. M/s. Jind Bio-Energy LLP
2. M/s Fatehabad Bio- Energy LLP
3. HAREDA
4. M/s Hind Samachar Ltd.
5. M/s Sukhbir Bio Energy Ltd.

Present On behalf of the Petitioner

1. Smt. Sonia Madan, Advocate for HPPC
2. Shri Gaurav Gupta, XEN/HPPC

Present On behalf of the Respondents

1. Shri S.P.S. Bakshi, for M/s. Hind Samachar Ltd. and M/s Sukhbir Agro Energy Ltd

Quorum

**Shri R.K. Pachnanda
Shri Naresh Sardana**

**Chairman
Member**

ORDER

Brief Background of the case

1. The present petition has been filed by Haryana Power Purchase Centre (HPPC), seeking expungement of para 12 of the order dated 04.04.2019 (HERC/PRO-10 of 2019).
2. **The petitioner (HPPC) has submitted as under:-**

- 2.1 That the applicant had filed a petition before this Hon'ble Commission, i.e. HERC/PRO – 45 of 2018 under section 86 (1) (b) of the Electricity Act, 2003 seeking approval of the Hon'ble Commission for procurement of 49.8 MW power from paddy straw biomass based power projects.
- 2.2 That the Hon'ble Commission vide order dated 03.01.2019 decided the petition of the applicant (PRO – 45 of 2018) and approved the PPAs to be signed between the applicant and paddy straw based power project developers i.e. M/s. Hind Samachar and M/s. Sukhbir Agro Energy, M/s Jind Bio-Energy LLP and M/s Fatehabad Bio-Energy, LLP.
- 2.3 That while disposing off the said petition, the Hon'ble Commission made following observations with respect to the applicable Tariff under Power Purchase Agreement –
- “a) **The definition of Tariff needs to be changed to read that the tariff payable to the IPP shall be the year to year tariff determined by the Commission w.r.t. COD of the project and the discount offered by the IPPs as part of the RFP shall be deducted from the year to year tariff determined by the Commission.**

It needs to be noted that the tariff payable has to be necessarily be the tariff determined by the Commission under section 62 or adopted by the Commission under section 63 of the Electricity Act, 2003. Hence, the issue of financial assistance by HAREDA / State Govt. , if any, between the year to year tariff determined by the Commission and Average Power Purchase Cost (APPC) is an issue between HPPC / Discoms and HAREDA / State Govt. and no intervention of this Commission is required. However, if any such financial assistance is received by the HPPC / Discoms the same shall be reckoned with while arriving / claiming power purchase cost of such projects in the ARR(s) of the Discoms.

c) **Clause 6.10 regarding payment for infirm power needs to be deleted as the tariff payable shall be the year to year generic tariff, hence, the concept of infirm power less fuel cost to be reckoned for reduction of capital cost is not applicable in such cases.** Hence, entire energy injected after synchronization of the power plant and injected into the Grid has to be paid for at the applicable tariff.

12. Having considered the contention with respect to refixation of the tariff as per the Regulations of 2017 framed by this Commission, the Commission finds merit in the submissions made on behalf of the petitioner. **Any change in the accepted tariff, without adhering to the ceiling limit of tariff already decided would reopen the entire contractual arrangement and would dilute the genesis of the contractual agreement/arrangement. Apart there from it would amount to re-writing the fundamental terms of the agreed contract. There is no valid basis furnished before the Commission by the respondents as to why a voluntarily agreed tariff consented to by the generators should be revisited and be increased at this stage notwithstanding that the same would have huge financial ramifications.** The Commission being a watchdog of the interest of the consumers and also being the harbinger of benign and transparent policies, cannot be seen as bestowing undue and unwarranted favour by redetermination of higher tariff by disregarding the ceiling limit of tariff already determined.”

2.4 That subsequent to the order of the Hon'ble Commission dated 03.01.2019, the respondents no. 1 and 2 filed a review petition under section 94 of the Electricity Act, 2003, praying for clarification that the tariff payable to respondents no. 1 and 2 shall be the tariff determined by this Hon'ble Commission minus the discount offered and that there shall not be any other ceiling on the tariff payable under Power Purchase Agreements (PPA) to be executed between the applicants and the respondents no. 1 and 2.

2.5 That the review petition filed by the respondents no. 1 and 2 was in effect a petition seeking alteration in the terms of PPA / genesis for selection of the generators and for consideration of ceiling tariff as tariff determined by the Commission from year to year or Rs. 8.00 kwh per unit. The Hon'ble Commission after considering the submissions of both parties have given categorical findings on the said issue. The relevant extracts of findings of the HERC is reproduced hereunder for ready reference:-

“.....It is evident from the above, that the tariff quoted by the project developers is the ceiling tariff to be considered by the Commission at the time of determination of tariff under Section 62 of the Electricity Act, 2003 and in no case the tariff over and above the ceiling limit shall be allowed.

.....

The Commission is of the considered opinion that the ceiling tariff forming the basis of selection of developers can't be different than the ceiling tariff to be

considered by the Commission while determination of year to year tariff, on the petition to be filed by the selected bidders.

The Commission observes that in the present case, the project developers, after consciously agreeing to a particular ceiling tariff and signing PPA on that basis, have approached the Commission to seek further relief, which is not maintainable.”

- 2.6 That the Hon’ble Commission rightly and justly disposed of the petition by giving categorical finding on the issue raised by the respondents no. 1 and 2 to the effect that that ceiling tariff has to be considered as was quoted by the developers, i.e. Rs. 8.00 kwh per unit. However, the applicant is affected by the concluding lines of the said order wherein this Hon’ble Commission observed as under –
- “However, before parting with the instant petition, the Commission decides that the issue may be re-visited at the time of determination of year to year tariff by the Commission on the Petitions to be filed by the Project Developers in this regard.”*
- 2.7 The instant application is being filed on the limited issue with respect to clarifying the import and interpretation of the concluding lines of the order of this Hon’ble Commission dated 04.04.2019, wherein the order of the Hon’ble Commission deciding to revisit the issue which has been adjudicated and settled in unequivocal terms creates ambiguity, contradiction and scope for multiplicity of frivolous litigation.
- 2.8 That in light of the findings given by this Hon’ble Commission in paras 6-11 of the order dated 04.04.2019, there is no basis for revisiting the issue of ceiling tariff. Para 12 of the order may be interpreted as contradictory to the findings of this Hon’ble Commission given in other paras of the order. Moreover the same may give unnecessary leeway to the developers to again urge this issue in spat of frivolous litigations. Therefore, in the larger interest of the parties, the Hon’ble Commission may consider omitting the concluding lines of the order dated 04.04.2019 as referred above being unnecessary and contradictory to the other findings.
- 2.9 The following prayers have been made: -
- (a) Pass an appropriate order clarifying that para 12 of the order dated 04.04.2019 shall not have any bearing in future on the issue of tariff adjudicated and settled by this Hon’ble Commission;

- (b) Pass an appropriate order omitting the concluding lines of the order dated 04.04.2019 as referred above being unnecessary and contradictory to other findings;
- (c) Pass any such other or further directions as this Hon'ble Commission may deem fit and proper.

Proceedings in the Case

3. The case was initially heard on 25.07.2019, wherein Shri Varun Pathak appearing on behalf of M/s. Jind Bio-Energy LLP pleaded for keeping the present petition in abeyance till the appeal bearing DFR No. 2161 of 2019, filed before the Hon'ble Appellate Tribunal for Electricity (APTEL) against the order of the Commission dated 03.01.2019 (Case No. HERC/PRO-45 of 2018) and 04.04.2019 (Case No. HERC/PRO-10 of 2019), vide DFR No. 2161 of 2019 (IA No. 1160 of 2019), is decided. Shri Pathak further informed the Commission that the issue of ceiling tariff has been challenged in the appeal. Accordingly, the Commission adjourned the case and directed the petitioner and respondent to approach the Commission at the appropriate time with the decision of the Hon'ble Appellate Tribunal for Electricity in the matter.
4. The case was subsequently heard on 30.09.2019, 03.12.2019 and 21.01.2020. However, the same was adjourned, pending decision on the appeal filed with the Hon'ble APTEL.

Commission's Order

5. The final hearing in the matter was held on 09.08.2023, wherein the petitioner (HPPC) submitted that the tariff has already been determined by the Commission for M/s. Hind Samachar (Petition No. 21 of 2022) and M/s. SAEL (Petition No. 22 of 2022), vide order (s) dated 13.04.2023, taking cognizance of the ceiling tariff of Rs. 8/kWh. Therefore, the issue raised in the present petition has become infructuous.
6. Shri S.P.S. Bakshi appearing on behalf of the respondent pleaded that a copy of the petition may be provided to them. Per-contra, Ms. Madan, the learned counsel for the petitioner (HPPC) vehemently argued that the petitioner is appearing before this Commission in the present matter since 2019 and the issue of non-service of the petition has not arisen till date. Now, it is not open for the respondent to take this ground at this moment.
7. The Commission has considered the submissions of the parties. The request of the respondent seeking a copy of the petition is not reasonable, since they

are appearing in the matter since 2019. In order to avoid confusion in future tariff determination proceedings, arising out of the approval granted to HPPC to procure 49.8 MW power from paddy straw based biomass power projects (order dated 03.01.2019 petition no. 45 of 2018), para 12 of the order dated 04.04.2019 (Petition No. 10 of 2019) is hereby expunged.

8. In terms of the above order, the present petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 10.08.2023.

Date: 10.08.2023
Place: Panchkula

(Naresh Sardana)
Member

(R.K. Pachnanda)
Chairman

