

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA**

**Case No. HERC/Petition No. 36 of 2022**

**Date of Hearing : 22.12.2022**

**Date of Order : 04.01.2023**

**In the Matter of**

**Petition for determination of tariff under Section 62 of the Electricity Act, 2003 seeking project specific tariff determination for sale of power from its 2.0 MW biomass- based gasifier- based power plant**

**Petitioner**

M/s. K2 Power Renewable Pvt. Ltd.

**Respondents**

1. Haryana Power Purchase Centre, Panchkula (HPPC)
2. Department of New and Renewable Energy, Haryana (HAREDA),

**Present on behalf of the Petitioner**

Shri Naveen S. Bhardwaj, Advocate

**Present On behalf of the Respondents**

1. Ms. Sonia Madan, Advocate

**Quorum**

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

**Chairman  
Member**

**ORDER**

**Brief Background of the case**

1. The present petition has been filed by M/s. K2 Power Renewable Pvt. Ltd. (M/s. K2) seeking determination of tariff under Section 62 of the Electricity Act, 2003, for its 2.0 MW biomass-based gasified-based Power plant at Rewari. MOU was signed with HAREDA on 01.04.2016. The Commission granted source approval on 14.11.2017 and PPA was executed with HPPC on 28.09.2018. As per clause 2.1.1 of the PPA, billing tariff will be generic tariff as determined by HERC in applicable year. Petitioner has started injecting power in the Grid, w.e.f. 10.02.2022.
2. Brief submissions of the petitioner is as under:-
  - 2.1 That this Commission, for biomass gasifier project like that of the petitioner, has determined fuel cost for the FY 2022-23 at Rs. 4.60 / kWh. However, the cost of biomass i.e. Rs. 3313.94 / MT, considered while arriving at the per unit fuel rate, is not compensatory, given the high cost of storing, loss of GCV and high moisture content. Moreover, ever while determining the fuel cost as above, reference of plant similar to petitioner plant and the Mustard Husk as fuel has not been considered. The petitioner's plant is unique in technology, the fuel consumption of which has not been represented in above fuel cost determination process. Moreover, given the high degree of clean producer gas generated the fuel has to undergo several iterations of cleaning up leading to significantly high wastage levels.
  - 2.2 That specific fuel consumption may be considered as 1.60 kg/kwh, for the purpose of project specific tariff determination as against the notified norms of 1.25 Kg / kWh. In addition to this

regular fuel consumption, significant amount of initial fuel consumption takes place on every start of the gasifier before the producer gas is available for firing in the Engines.

- 2.3 That the Commission having determined the fuel cost applicable for the biomass-based gasifier power plant, has not determined the Capital Cost that may have been applicable for the project of the petitioner. Hence, no fixed cost for such projects as that of the petitioner herein has ever been determined by this Hon'ble Commission.
- 2.4 That this Hon'ble Commission, vide its order dated 7.09.2020 (Case No. HERC / PRO-46 of 2019), in the petition filed under section 62 of the Electricity Act, 2003 for determination of tariff of 1.2 MW biogas based power plant to be set up by M/s MOR Bio Energy Private Limited in Jind, has approved the specific fuel consumption at 5.35kg/kwh (as against the norms of 3 kg/kwh).
- 2.5 Following prayers have been made by the petitioner:
  - a. Admit the present petition.
  - b. To condone any inadvertent errors and allow the Petitioner to rectify the same; and
  - c. To approve the tariff for 20 years from the date of COD of the plant; and
  - d. Relax the provisions of Renewable Energy Regulation-2021 where necessary in the facts and circumstances of the instant case; and Allow and consider capital cost per MW as per actual, in case of Bio gasifier power plant in the state of Haryana being first of its kind and Allow and consider specific fuel consumption at least @ 1.6kg/kwh rather than 1.25kg/kwh as specified in rule 51(6) of HERC regulation 2021.
  - e. Allow relaxed PLF norm in the first year of operation.
  - f. Allow the Petitioner to further submissions, addition and alteration to this Petition as may be necessary from time to time; and
  - g. Pass any other order as Hon'ble Commission may deem fit and appropriate under the circumstances of the case and in the interest of justice.

3. HPPC, the respondent in the present matter, has filed its reply on an affidavit dated 21.09.2022. HPPC has submitted as under:-

- 3.1 PPA clause 2.1.1 of the PPA, provides for supply of power at generic tariff. Therefore, the present petition is not maintainable.
- 3.2 The Hon'ble Supreme Court in Civil Appeal no. 6399 of 2016 has held that the terms of the contract between the parties cannot be substantially altered so as to prejudice the interest of parties.
- 3.3 HPPC had filed petition before this commission (PRO-16 of 2017) seeking approval of purchase of power from petitioner's 2000 KW capacity grid connected Biomass Gasifier Power Plant along with PPA. During the course of hearing of said petition, the petitioner gave categorical acceptance for supply of power at generic tariff determined by this Hon'ble Commission. The relevant extract of the Interim Order dated 21.08.2017 as regards the statement of the Counsel for the petitioner is reproduced as under:-

*"...Additionally, the Ld. Counsel cited various provisions of the Electricity Act, 2003, National Tariff Policy, 2016 and HERC RE Regulations, 2010 (1st Amendment, 2011) which casts statutory obligation on the State Commission to promote generation of power from RE Sources. **He further submitted that the Generic Tariff determined by the***

**Commission from biomass gasifier based power plants shall be acceptable to them.”**

(Emphasis Supplied)

In view of the same, the Hon'ble Commission ordered as under:-

*“ii) Given the peculiarity of biomass gasifier power plants as pointed out by HAREDA, the generic tariff determined by the Commission for such projects shall be applicable and payable by the Discoms / HPPC to the IPP in case the plant is commissioned during the control period covered under the RE Regulations to be notified by the Commission.”*

The petitioner is therefore, estopped from deviating from the terms of the PPA by seeking project specific tariff. The said request of the Petitioner is therefore, legally impermissible.

4. The petitioner herein (M/s. K2), has filed its rejoinder to the reply filed by the HPPC, on an affidavit dated 14.12.2022. M/s. K2 has submitted as under:-
  - 4.1 The tariff has been determined considering the biomass mix with paddy husk (70:30) and not for mustard husk as the biomass fuel.
  - 4.2 The order of the Commission dated 05.08.2022 (determining generic indicative tariff), lacks clarity / tariff for the projects who has not been granted subsidy, as in case of the petitioner, the subsidy of Rs. 1.50 crore/MW has not been granted by Ministry of New and Renewable Energy (MNRE).
  - 4.3 Total project cost in the DPR submitted to HAREDA is Rs. 25.83 crore.
  - 4.4 Article 2.1.1 of the PPA refers to the tariff which is comparable to similar projects.

**Commission's Analysis and Order**

5. The Commission heard the arguments of the parties at length as well as perused the written submissions placed on record by the parties. The Commission has carefully examined clause 2.1.1, Article 2 of the PPA as reproduced hereunder:-

*“2.1.1 The HPPC after declaration of commercial operation shall purchase and accept all such electrical energy up to 2 MW delivered at the interconnection point from the Seller's facility, pursuant to the terms and conditions of this agreement at the generic tariff determined by the Commission for such projects shall be applicable/payable by Discoms/HPPC to the IPP in case plant is commissioned during the control period covered under the RE Regulations to be notified by the Commission.”*

The Commission has also observed that the petitioner itself has agreed during the proceedings before this Commission, for approval of PPA, way back in the year 2019, recorded in the interim order dated 21.08.2017 (HERC/PRO-16 of 2017), that generic tariff determined by the Commission for biomass gasifier based power plants shall be acceptable to them.

In view of the above, it is not open for the petitioner to re-agitate the issue and argue that the PPA has mentioned generic tariff for such projects, whereas the Commission has determined generic tariff for biomass gasifier based power plants and not for Mustard Husk based power plant. Infact biomass can be of various types e.g. woody fuels, agriculture/forestry residue, various types of crops residue, animal waste etc. and generic tariff is not determined for each type of biomass fuel and other State Commissions.

Further, the issue of non-receipt of subsidy by the petitioner is also not relevant, as the power was tied up with the viability arrived at on the understanding that capital subsidy of Rs. 1.50 crore/MW shall be available to the project, which was applicable at the time when the MoU was signed by the petitioner with HAREDA on 01.04.2016. Therefore, it is apparent that the capital subsidy could not be availed by the petitioner, due to laxity of the petitioner in establishing the power plant and related time overrun. Further, the Ministry of New and Renewable Energy (Waste to Energy Division), has issued 'National Bioenergy Programme', vide letter dated 02.11.2022, under which it has been provided that application for Central Financial Assistance (CFA) received up to 31.03.2021 as well as the projects commissioned during the period from 31.03.2021 till 02.11.2022, may also be considered under this programme, which has provided CFA of Rs. 15,000 per KW for the biomass gasifier projects 100% gas engine for electrical application. The petitioner is therefore, advised to pursue its case for grant of CFA under the ibid guidelines.

6. In terms of the above order, the present petition is liable to be dismissed, as not maintainable, for determination of project specific tariff.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 04.01.2023.

Date: 04.01.2023  
Place: Panchkula

(Naresh Sardana)  
Member

(R.K. Pachnanda)  
Chairman