



**TELANGANA ELECTRICITY REGULATORY COMMISSION**  
**'Vidyut Niyamtran Bhavan', G.T.S. Colony, Kalyan Nagar, Hyderabad 500 045**

**O. P. (SR) No. 50 of 2024**  
**and**  
**I. A. (SR) Nos. 51, 52 and 70 of 2024**

**Dated 14.10.2024**

**Present**

Sri. T. Sriranga Rao, Chairman  
Sri. M. D. Manohar Raju, Member (Technical)  
Sri. Bandaru Krishnaiah, Member (Finance)

Between

M/s. Dundigal Waste 2 Energy Private Limited,  
Level 11 B, Aurobindo Galaxy,  
Hyderabad Knowledge City, Hitech City Road,  
Hyderabad 500 081.

... Petitioner

**AND**

Southern Power Distribution Company of Telangana Limited,  
# 6-1-50, Corporate Office, Mint Compound, Hyderabad,  
Telangana State 500 063.

... Respondent

The petition came up for hearing on 09.09.2024. Sri. Matrugupta Mishra counsel for petitioner along with Nipun Dave, advocate appeared on 09.09.2024. The petition having stood over for consideration to this day, the Commission passed the following:

**ORDER**

M/s. Dundigal Waste 2 Energy Private Limited (petitioner) has filed under Section 86(1)(a), (b) & (e) read with Section 62 and 64 of the Electricity Act, 2003 (Act, 2003) as also clause 2.2 of the power purchase agreement (PPA) entered by it with Southern Power Distribution Company of Telangana Limited (TGSPDCL) undertaking sale of energy generated from 14.2. MW refuse derived fuel (RDF) at Dundigal in the

State of Telangana, for determination of project specific tariff. The averments mentioned in the petition are extracted below:

- a. It is stated that the petitioner herein is a company incorporated under the provisions of the Companies Act, 2013 (Act, 2013) and is also a generator within the meaning of Section 2 (28) of the Electricity Act, 2003 (Act, 2003). The petitioner owns and operates a 14.5 MW refused derived fuel (RDF) based waste to energy (WTE) power plant at Dundigal, Medchal. Malkajgiri District in the State of Telangana.
- b. It is stated that the petitioner's plant is falling within the licensed area of the respondent being TGSPDCL/respondent) which is a distribution licensee, within the meaning of Section 2(17) of the Act, 2003, operating in the State of Telangana and carries on the business of distribution and retail supply of electrical energy within its area of operation.
- c. It is stated that vide the present petition, the petitioner herein is seeking from the Commission determination of project specific tariff under Sections 86(1)(a), 86(1)(b) and 86(1)(e) and Sections 61, 62 and 64 of the Act, 2003 read with Article 2.2 of the PPA dated 14.02.2024 executed between petitioner and TGSPDCL for generation and supply of electricity from its 14.5 MW capacity RDF based WTE plant at Dundigal, Medchal-Malkajgiri district in the State of Telangana.

#### I. FACTUAL AND LEGAL BACKGROUND

##### A. Introduction

- d. It is stated that Hyderabad city is the capital for the State of Telangana of India and known for its rich heritage, culture, and architectural importance, spread over the area of 625 Sq. km with a population of above 10 million. In the recent years, the city has seen a massive population growth driven by industrialization, commercialization, economic growth, and mass migration majorly due to its strong hub for information technology.
- e. It is stated that the improved standard of living and rise in the disposable income of a large chunk of population, have substantially contributed towards the change in pattern of consumption. Hence, such changed pattern of urban

consumption has given rise to generation of substantial higher and progressively increasing quantum of solid waste in the city.

- f. It is stated that such rise in the generation of solid waste has become a major challenge for the urban local body (ULB) to manage municipal solid waste (MSW). To overcome this challenge, in 2009, Greater Hyderabad Municipal Corporation (GHMC), the urban local body of the city, responsible for civic management entered into the concession agreement with the M/s Hyderabad Integrated Municipal Solid Waste Company Limited (HIMSW) for the management of the municipal waste in a scientific way.
- g. It is stated that over the decade, the MSW generation in the city of Hyderabad has been doubled, and projected to be above -

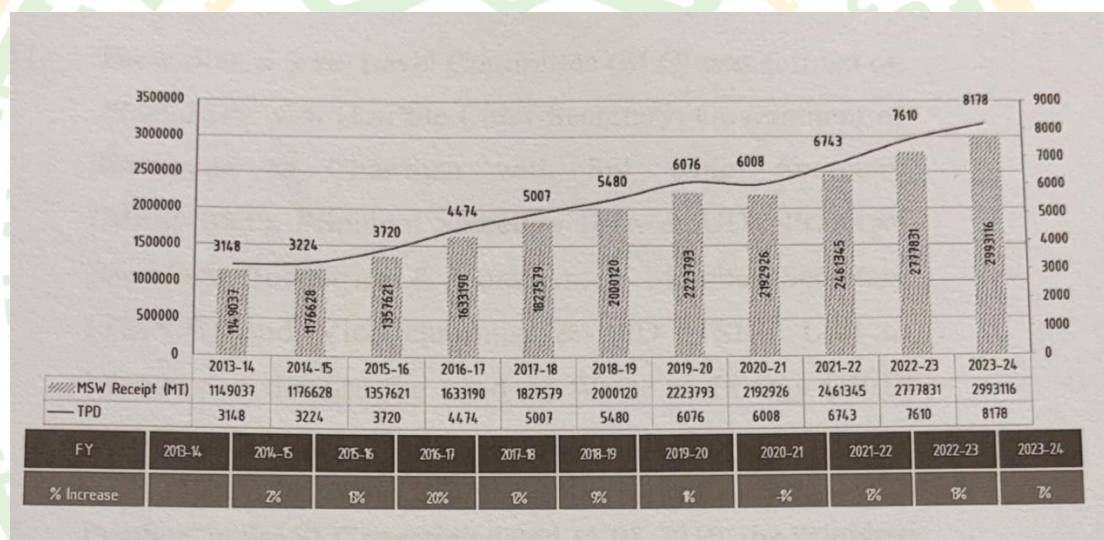


Figure 1-Y-o-Y MSW generation in Hyderabad

Further, this increase in MSW has gradually increased the quantum of RDF generation, which is the segregated combustible fraction of MSW in the form of fluff which can be used as fuel for power generation.

- h. It is stated that accordingly, HIMSW was approached and it was proposed that, the RDF can be used for the power generation using incineration technology. Further with utilisation of RDF for power generation, it has a potential to reduce the waste to the extent of 90% by volume and 75% by weight. However, if these processed RDF were collected and dumped at the landfill sites, then it may cause an environmental/health hazard and the loss of land available for a fast growing population. Thus, upon confirmation from M/s HIMSW for supplying

RDF for power generation, it was proposed to setup a 14.5 MW RDF based WTE Project at Dundigal

- i. It is stated that thereafter a State level committee (SLC) was formed on 20.07.2019 with Chief Secretary, Government of Telangana as Chairman with Special Chief Secretary (MoEFS&T), Principal Secretary (MA&UD), Principal Secretary (Industries & Commerce), Member Secretary (TSPCB) and Vice Chairman and MD (TSIIC Ltd) as Member to discuss the need of WTE plants in the city. Further, in the SLC meeting dated 16.08.2019, the Principal Secretary (MA&UD) had emphasised the need for WTE plant to de-risk the single waste generation and disposal facility in the city. Accordingly, the committee recommended to setup a WTE plant at Dundigal village.
- j. In pursuance of the recommendations of the SLC meeting chaired by Chief Secretary held on 16.08.2019, NOC was issued to M/s Re Sustainability Limited (erstwhile, Ramky Enviro Engineers Limited) for establishment and implementation of waste to energy plant at Dundigal vide letter dated 08.01.2020 and issued by Telangana State Industrial Infrastructure Corporation Limited (TSIIC). Accordingly, the petitioner was formed as a special purpose vehicle (SPV as a wholly owned subsidiary of M/s Re Sustainability Limited for setting up 14.5 MW RDF based WTE plant at Dundigal.
- k. It is stated in the premise, the petitioner submits that the RDF based WTE power project is an urgent need in the context of the availability of the waste generated in the city along with the associated environmental benefits as recognised by the SLC.

**B. LEGAL AND REGULATORY FRAMEWORK FOR WASTE TO ENERGY PROJECTS**

- i. It is stated that the provisions of the Act, 2003 Sections 86(1 (e), 61(h) provide for the promotion of cogeneration and generation of electricity from renewable sources of energy. Further, under Section 61(d) and 61(g) of the Act, 2003, the tariff to be determined in a manner which reflects the cost of supply of electricity. The relevant portion from the Act is reproduced below for the ready reference:

*"61. Tariff Regulations. The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely,*  
.....

(d) *safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner*

... ..  
(g) *that the tariff progressively reflects the cost of supply of electricity and also reduces cross-subsidies in the manner specified by the Appropriate Commission:*

(h) *the promotion of co-generation and generation of electricity from renewable sources of energy:*

... ..  
86. *Functions of State Commission: The State Commission shall discharge the following functions, namely:*

... ..  
(e) *promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;*

... ..  
m. It is stated that on 12.02.2005, the National Electricity Policy (NEP, 2005) was notified by Ministry of Power (MoP), Government of India (GoI) for encouraging setting up of municipal solid based WTE projects not only from perspective of utilising non convention sources of energy but also safeguarding the environment. The relevant extract from NEP, 2005 is reproduced below for the ready reference of the Commission.

*"5.10.5 Setting-up Municipal Solid Waste energy projects in urban areas and recovery of energy from industrial effluents will also be encouraged with a view to reducing environmental pollution apart from generating additional energy"*

n. It is stated that on 28.01.2016, the MoP, GoI issued revised National Tariff Policy, 2016 (NTP, 2016) in compliance with Section 3 of the Act, 2003, whereby it amended its erstwhile tariff policy dated 06.01.2006. The GoI for the first time introduced a specific provision under NTP, 2016 requiring a distribution licensee to mandatorily procure 100% power generated from all the WTE sources at the tariff to be determined by appropriate Commission under Section 62 of the Act, 2003, that is cost plus basis. The relevant portion is as under:

"6.4 (1) *Renewable sources of energy generation including co-generation from renewable energy sources:*

... ..  
(ii) *Distribution Licensee(s) shall compulsorily procure 100% power produced from all the Waste-to-Energy plants in the State, in the ratio of their procurement of power from all sources including their own, at the*

*tariff determined by the Appropriate Commission under Section 62 of the Act.*

....

- (2) *States shall endeavour to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from the waste to energy plants. Procurement of power by Distribution Licensee from renewable energy sources from projects above the notified capacity, shall be done through competitive bidding process, from the date to be notified by the Central Government.*

....

- o. It is stated that the above conferment of 'must run' and 'must procure' status to WTE sources aims to facilitate the fulfilment of the objectives of Gol, Swachh Bharat Mission (2014) relating to scientific municipal solid waste disposal alongside electricity generation. The same also reflects the statutory mandate under Sections 86(1)(e), 61(h) of the Act, 2003 to foster growth and development of environmentally benign generating plants such as that of the petitioner. Not only is the petitioners' plant is generating electricity from a non-conventional source but is also disposing the waste rejects such as the RDF and thus aids an ULB in performing its statutory obligation and responsibility qua its citizens. These aspects are salient to be taken into consideration while determining its project specific tariff.
- p. It is stated that on 13.06.2016, the Commission passed a *Suo Moto* generic tariff order determining tariff for purpose of purchase of electricity from MSW and RDF based power projects in the State of Telangana achieving commercial operation date (COD) from 13.06.2016 to 13.03.2019. The Commission has also been pleased to recognize vide this order, the 'must run' status of WTE projects and excluded it from the applicability of merit order despatch rule and has observed as under:

"Scheduling and Despatch

138. *The Waste-to-Energy Power Projects in the State of Telangana shall be treated as must-run i.e., not subjected to the Merit Order Despatch. The generating company has to furnish the Day-Ahead Schedule and maintain it. However, for the purpose of Grid stability and discipline in the event of contingencies arise and when no other means of Grid discipline is available, the schedule can be changed by the State Load Despatch Centre (SLDC) keeping in view the CERC (Indian Electricity Grid Code) Regulation, 2010 (as amended up-to-date) and CERC (Un-scheduled Interchange and related matters), Regulations, 2009 amendments thereto, including amendments thereto."*

- q. It is stated that on 18.04.2020, the Commission passed another suo moto generic tariff order (tariff order) determining tariff for purchase of electricity generated from RDF-based power projects in the State of Telangana achieving COD during the period of 01.04.2020 to 31.03.2024. The Commission determined a levelized tariff of Rs.7.84/kWh. The relevant extract is reproduced below:

"GENERIC TARIFF DETERMINED BY THE COMMISSION

96. *Based on the approved financial and technical norms, the Commission had determined the Levelised Tariff of Rs.7.84/kWh comprising of Levelised Fixed Cost of Rs.3.42/kWh and Levelised Variable Cost of Rs.4.42/kWh. The Levelised Tariff of Rs.7.84/kWh shall be applicable for the RDF based power projects in the State of Telangana achieving COD during the period from FY 2020-21 to FY 2023-24"*

- r. it is stated that on 04.04.2022, the Commission notified Telangana State Electricity Regulatory Commission Renewable Power Purchase Obligation (Compliance by Purchase of Renewable Energy/Renewable Energy Certificates) Regulation, 2022 (RPPO Regulation, 2022 (Regulation No.7 of 2022)). The said regulation has also mandated the distribution licensee to compulsorily procure 100% power from all waste to energy plants in the State of Telangana under clause 3(7) of Regulations No.7 of 2022. The relevant portion is as under:

"Preamble

*In this regard, it may be relevant to notice the relevant provisions of the Tariff Policy, 2016 as notified by the Government of India exercising powers under Section 3 of the Electricity Act, 2003.*

2. *Distribution Licensee(s) shall compulsorily procure 100% power produced from all the Waste to- Energy plants in the State, in the ratio of their procurement of power from all sources including their own, at the tariff determined by the Appropriate Commission under Section 62 of the Act.*

*Accordingly, in exercise of powers conferred on it under Sections 61, 66, 86(1)(e) and 181 of the Electricity Act, 2003 (Central Act No.36 of 2003) and all other powers enabling it in this behalf, and after previous publication, the Telangana State Electricity Regulatory Commission hereby makes the following Regulation for prescribing the obligation for purchase of Renewable Power and its compliance by purchase of Renewable Energy/Renewable Energy Certificates, namely: -*

....

3. *Renewable Power Purchase Obligation (RPPO)*

....

- (7) *Distribution Licensees shall compulsorily procure 100% power produced from all the Waste-to-Energy plants in the Telangana State.*

.....“

- s. It is stated that the Commission has not notified any regulations relating to tariff determination for RDF based WTE projects after the generic tariff order dated 18.04.2020 which was applicable only till 31.03.2024 and thereafter there were no regulations in place till date in the State of Telangana. The Central Electricity Regulatory Commission (CERC), has however notified the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulation, 2024 (CERC RE regulation) on 12.06.2024.
- t. It is stated that in absence of regulations framed by the Commission on the subject of tariff determination from renewable sources of energy including RDF based WTE plant, the petitioner crave reference to Section 61 of the Act which provides as under:
- "61. Tariff Regulations. The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely,*
- (a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licenses"*
- u. It is submitted since the aforesaid regulations have been notified after meeting the statutory requirement under the Electricity (Procedures for Previous Publication) Rules, 2005 notified vide G.S.R.387(E) dated 09.06.2005, therefore, in absence of any regulation being notified by the Commission as per the aforesaid rules, the Commission is bound by the same and the norms and principles of tariff determination as laid down under the CERC RE regulation, 2024 and can be considered while determining the project specific tariff. It may also be pertinent to mention that the aforesaid regulation has been finalised after extensive deliberation with witnessed participation from 42 different stakeholders including not just key industrial stakeholders like Independent Power Producers (IPPs), Industry Associations as well as developers but also from Central Electricity Authority, research institutions like Indian Institute of Technology (IIT) and other non governmental organizations.

### C. NEED FOR PROJECT SPECIFIC TARIFF



- v. It is stated that on 01.07.2020, the Telangana State Pollution Control Board (TGPCB) accorded its Consent for Establishment for setting up of a 14.5 MW WTE plant at Dundigal village, Dundigal- Gandimaisamma mandal, Medchal-Malkajgiri district, Telangana and amended consent was subsequently issued to the petitioner, vide its order dated 07.03.2022. On 09.12.2020 the petitioner was incorporated under the Companies Act, 2013, wherein it was issued certificate of incorporation by the Registrar of Companies. Thereafter, upon making an application, Telangana State Renewable Energy Development Corporation Limited (TGREDCO) accorded in-principal sanction to the petitioner to set up its proposed plant vide its proceedings dated 25.11.2021 containing the terms and conditions of the permission as per the MNRE guidelines issued from time to time.
- w. It is stated that upon receipt of the above approvals, the petitioner addressed a letter dated 03.12.2021 to the TGSPDCL informing it of the proposed standalone RDF based WTE project of 14.5 MW and requested to arrange for execution of draft PPA for sale of power from the said plant. Further, for the utilization of the land, a no objection certificate (NOC) dated 28.01.2022 was issued by the TSIICL after verifying the proposal for setting up of the plant. TSIICL also made the necessary submissions to the Government of Telangana (GoTG) for the necessary instructions so as to execute amendments to lease deed
- x. it is stated that on 30.04.2022, Transmission Corporation of Telangana Limited (TGTRANSCO) accorded approval for grid connectivity to the petitioner's proposed 14.5 MW RDF based WTE plant at Dundigal, Medchal-Malkajgiri district. On 15.12.2022, TSIICL amended the lease deed with erstwhile, M/s Ramky Enviro Engineers Limited, permitting it to sub-lease 22 acres of land to the petitioner for setting up the proposed 14.5 MW WTE plant. Further, vide the same letter, the petitioner has further obtained approval to sub-lease five (5) acres parcel of land to TGTRANSCO for erection of 132 kV LILO switching station as per the condition specified in the grid connectivity approval dated 30.04.2022 from TGTRANSCO for evacuation of the generated 14.5 MW power to the grid.

y. It is stated that thereafter the petitioner issued several reminder letters dated 27.01.2023, 24.02.2023 and 16.03.2023, requesting the TGSPDCL to expedite the process of execution of the PPA for the petitioner's 14.5 MW RDF based power plant since the plant was nearly at the testing and commissioning stage. On 03.04.2023, petitioner approached the Commission by preferring a petition being O.P.(SR) No.71 of 2023 seeking issuance of directions to TGSPDCL for the execution of PPA with the petitioner for its proposed 14.5 MW RDF based WTE plant at Dundigal. However, the Commission vide its order dated 28.06.2023 in O.P.(SR) No.71 of 2023 dismissed the petition and observed that unless the licensee takes steps to enter into an agreement, the Commission cannot, of its own accord or at the instance of the petitioner, require the licensee to enter into agreement for procurement of power. The relevant extract from the order dated 28.06.2023 is as under:

*“... .. It is, thus, clear that the Commission is of the considered view unless the licensee takes steps to enter into an agreement, this Commission cannot, of its own accord or at the instance of the petitioner, require the licensee to enter into agreement for procurement of power. As such, no relief can be considered in favour of the petitioner.”*

z. It is stated that on 09.08.2023, a joint meeting was held accordingly, to resolve the issues between the petitioner and TGSPDCL mutually, in the chambers of the Secretary Department of Finance, GoTG chaired by Secretary Department of Finance, GoTG cum Commissioner, GHMC. In the meeting the officers of GHMC, TGSPDCL, TGTRANSCO and petitioner were present. During the meeting, TGSPDCL informed that it is not agreeable to execute PPA under the ambit of generic tariff order dated 18.04.2020. Further, there is possibility of prolonged legal entanglement on the said issue. However, after discussion on the possibilities for execution of PPA, participants arrived at a consensus that petitioner would file a project specific tariff petition before the Commission for tariff determination and such other terms and conditions on which the Commission will take its decision. The petitioner thereafter, approached TGSPDCL seeking execution of the draft PPA. TGSPDCL apprised that the matter is pending with Telangana State Power Co- Ordination Committee (TGPOC). TGPOC vide its letter dated 26.01.2024 proposed to modify Article 2.2 (tariff) in the draft PPA. Accordingly same was modified by Petitioner and

draft PPA was executed with TGSPDCL on 14.02.2024. The relevant article is reproduced below:

"2.2 The company shall be paid the tariff as to be determined by TSERC under Section 62 of the Electricity Act 2003 for the energy delivered corresponding to the net exportable capacity to grid at the interconnection point for sale to Discom, upon filing of petition filed by the developer for such determination of tariff. While determining the tariff, Commission will be requested to take Tipping Fee into consideration and incorporate the same into the tariff directly. Payment for the energy delivered beyond threshold PLF, reimbursement of Income tax etc., shall also be as decided by TSERC along with determination of tariff. No tariff will be paid for the energy delivered at the interconnection point beyond contracted capacity, i.e., the capacity agreed for export to Grid. The orders of TSERC are enforceable in entirety and shall be considered for the purposes of computation of tariff. An interim tariff may be sought from TSERC by filing an L.A in the tariff determination Petition to be filed by the Developer."

aa. It is stated that on 01.03.2024, with all due permissions from TGTRANSCO and TGSPDCL, the plant was synchronized with grid on 01.03.2024. On 03.03.2024, the Petitioner has commenced injection of power from its 14.5 MW RDF based WTE plant into the grid and has been supplying power to the respondent in terms of the PPA dated 14.02.2024. In view of the above, the petitioner has preferred the present petition for determination a project specific tariff for supply of electricity from its 14.5 MW capacity RDF based WTE plant at Dundigal, Medchal - Malkajgiri District, Telangana.

## II. KEY PROJECT ATTRIBUTES

### A. INTRODUCTION

ab. It is stated that WTE technology is an energy recovery process that converts chemicals from waste residues into practical forms of energy like electricity, heat, or steam. The RDF based WTE plants use RDF as their primary fuel source which is the processed MSW. RDF has several advantages over raw MSW as a fuel source. It has a higher energy content and calorific value which produces fewer emissions when burned. RDF is a processed form of MSW with several advantages over raw MSW. It has a higher energy content, meaning it produces more usable energy when burned, and minimises emissions into the atmosphere.

ac. It is stated that the plant will utilize a thermochemical process, specifically thermal combustion, to convert the energy stored in RDF into electricity. This

method is most suitable for RDF because it has a low moisture content and a high percentage of combustible matter. RDF is first stored and then fed into a boiler where it is combusted for generating steam. This steam drives turbines that ultimately produce electricity. The document also emphasizes the safety measures in place, such as fire protection systems, and highlights that all necessary clearances from relevant authorities have been obtained.

### III. CAPITAL AND FUEL COST OF THE PROJECT

#### A. Capital Cost of the Project

- ad. It is stated that the plant consists of a single boiler, single turbine generator cum condensing machine which has a generation capacity of 14.5 MW and able to handle 800 TPD of RDF. The capital cost breakup of the actual cost incurred until the date of synchronization in establishing the RDF based WTE power plant as per audited accounts of the petitioner is reproduced below for the ready reference of the Commission:

Table 1: Breakup of the Capital cost

Particulars	Cost (Rs. in crore)
1) Civil works	129.64
• Chimney Plant civil works relating to WTE • Enclosure for tipping hall, RDF Pit, TG hall • RE ramp	
2) Electromechanical works	181.56
Supply of boilers, ACC, TG, transformers, and BoP Erection of electro mechanical equipment's relating to leachate treatment facility and other miscellaneous works	
3) Miscellaneous	34.11
Power evacuation line and substation end switchyard and LILO information Miscellaneous works like raw water, pipeline, leachate pipeline, construction power panel, workshop and lab equipment, office equipment Leachate treatment facility	
4) Statutory payments	9.11
5) Interest During Construction (IDC), pre operative, contingency, startup expenses etc	67.19
Total in Rs. in crore	421.65

#### i. Civil works

- ae. It is stated that civil works includes the construction of works like boiler and steam turbine foundations, air cooled condenser foundations, construction of chimney foundation, construction of leachate treatment foundations, building

civil construction, and the cost of auxiliaries and utilities. Further, the civil works cost also includes heavy construction of tipping hall and the RDF pit which is an integral part of handling and unloading of RDF carried by the trucks.

- af. It is stated that the project cost does not consider any cost for the land, since it is provided on lease basis. However, the area identified for the project requires levelling and development. Further, cost towards construction of colony, guest house, etc., is not considered in the cost estimates. However, cost of construction of DG shed, administration buildings, canteen and vehicle parking shed are considered in the project cost.
- ag. It is pertinent to mention that due to the specific characteristics of RDF based WTE projects, the foundations like RDF storage pit, ramp, flue gas treatment system and air-cooled condenser etc are necessary, which are otherwise not required for other type of power plants such as conventional biomass based or thermal power plants. Thus, the petitioner stated that the Commission may approve civil works related cost of Rs.129.64 crore as per the audited accounts.
  - ii. Electro-mechanical works
- ah. It is stated that this head of capital cost include the project cost under the scope of supply and services by the respective contractors which includes boiler, turbine, ACC and all the other auxiliary systems of the power plant, like the auxiliary cooling water system, inclusive of auxiliary cooling tower and pumps, compressed air system, AC, firefighting system, instrumentation system, etc. It includes the transmission costs for evacuation of power from the power plant switch yard to the switching station of TGTRANSCO as per grid connectivity approval TGTRANSCO dated 30.04.2022. It also includes complete electrical package including, LT & HT package, transformers, DG package, switch yard etc. The petitioner stated that the sub-station has full capability to receive the power, that is 14.5 MW.
- ai. It is stated that the miscellaneous works like, leachate pipeline, construction power panel, workshop and lab equipment, etc, are also included in the scope of work of the power plant. The petitioner stated that the Commission may approve electro mechanical works related cost of Rs.181.56 crore as per the audited accounts of the petitioner.

- iii. Statutory payments
- aj. It is stated that the capital cost incurred for the bank guarantee, processing fees, project appraisal fees and application and NoC fees for various statutory clearances for the project are claimed under this head. The petitioner stated the Commission may approve statutory payments for Rs.9.15 crore as per the audited accounts of the petitioner.
- iv. Other expenses
- ak. It is stated that the other expenses include preliminary expenses to cover the project management expenses, travel, startup and training, project feasibility studies, technical and commercial studies and related activities for conceptualising the project, expenses on ecology and topological survey, soil investigation study, land fencing, preconstruction office cost, IDC, startup expenses, contingency expenses, preoperative activities etc. The petitioner requests the Commission to approve statutory payments of Rs.67.19 crore with IDC of Rs.40.24 crore considering 33 months construction period as per the audited accounts of the petitioner. In view of above, the petitioner stated that the Commission may approve the total capital cost of Rs.421.65 crore incurred on the project.

#### IV. FIXED COST OF THE PROJECT

- al. It is stated by the petitioner that the following components of fixed cost have been considered for determination of tariff for the proposed RDF based WTE power plant:
- (i) Operation and Maintenance (O&M) expenses
  - (ii) Interest on loans
  - (iii) Depreciation
  - (iv) Interest on working capital loans
  - (v) Return on Equity grossed with minimum alternate tax (MAT)
  - (vi) Plant Load factor
  - (vii) Auxiliary consumption
  - (viii) Discount Rate
- A. Operation and Maintenance (O&M) expenses
- am. It is stated by the petitioner that the O&M expenses into the following heads:

Employee Expenses: Employee expenses are based on manpower requirement for each activity associated in the power plant operations.

Administrative and General Expenses: Administration and general expense (A&G) cost are associated with admin cost, water and electricity charges etc.

Repair and Maintenance Expenses: It is associated with plant and that includes costs for maintenance, consumables, spares, activated carbon, hydrated lime and boiler chemicals.

The petitioner has considered normative O&M charges as in line with the CERC RE Tariff Regulations 2024 with annual escalation of 5.25%.

an. It is stated that the below mentioned factors contribute to the abovementioned O&M costs: -

- (i) *RDF based power plants require highly skilled personnel and careful maintenance. RDF plants are capital intensive and require high maintenance costs and comparatively higher technically trained operators. Further, for the boiler maintenance, a dedicated team has been formed with training from the boiler manufacturer. Further, the boiler operation requires frequent cleaning of tubes and grates which has a cleaning cycle of 3-4 months.*
- (ii) *Preventive maintenance with proper planning and execution of plant and equipment overhauls. This maintenance activity should be clearly planned with regard to the availability of material and labour. Such inspections, by trained personnel reveal defects not necessarily detected by mere visual inspection.*
- (iii) *Bag Filters: The plant requires bag filters to have stringent control on dust and emissions. The bag filters need to be replaced frequently.*
- (iv) *Grab cranes: PLC based grab crane control mechanism is required involve the prevention of collision between two sets of cranes, prevention of collision at rail end, prevention of grab overturning, prevention of swing and PLC control will be integrated with DCS.*
- (v) *Startup of the plant requires fuel oil. More shutdowns necessitate consumption of fuel oil for startup.*
- (vi) *Special tiles/bars that make up the grate have to be replaced periodically.*
- (vii) *Continuous usage/hourly consumption of hydrated lime and activated carbon to suppress ash, gases and pollutants such additives are over and above normal additives used in conventional power plants.*
- (ix) *In addition to normative O&M expenses, for the first year of operation, the minimum fixed charges for startup power imported by the plant as per the applicable HT-II(A) category connection are Rs.64.80 lakh.*
- (x) *The petitioner submits that the minimum import billing charged shall be limited to power imported months only and in case of non drawl of power from the grid, the minimum billing shall not be charged to the petitioner.*
- (xi) *Further, as per the grid connectivity approval from TGTRANSCO, the Petitioner is expected to pay O&M charges to TRANSCO for O&M of LILO 132 kV switching station. The estimated charges are Rs.172 lakh per year.*
- (xii) *Accordingly, the petitioner has considered the normative O&M cost as 8.5% of the total capital cost based on the methodology adopted by The CERC in its RE tariff regulations 2024 with the escalation factor of*

5.25%. In addition to normative O&M of 8.5%, annual O&M charges to be paid to TRANSCO for LILO switching station O&M charges of Rs.172 lakhs per year upto 20 years and Rs.64.80 lakh start-up power connection in HT-II(A) category only for first year have been considered. It is stated that, the above additional O&M charges for LILO switching station are not escalated year on year similar to normative O&M.

ao. It is stated that the Commission may approve the O&M cost as 8.5% of the total capital cost with annual escalation of 5.25%. also requested to approve the additional annual O&M charges to be paid to TRANSCO for LILO switching station O&M charges of Rs.172 lakh per year upto 20 years and Rs.64.80 lakh start-up power connection in HT-II(A) category only for first year.

A. Interest on loan

ap. It is stated that the Commission in its generic tariff order 2020 has considered debt equity ratio of 70:30 which is in line with the clause 13 of the CERC RE tariff regulations, 2024. The relevant extract from the CERC RE tariff regulations, 2024 is reproduced below for the ready reference of the Commission:

*"13.1 For determination of generic tariff and project specific tariff, the debt-equity ratio shall be considered as 70:30:*

*Explanation I: project specific tariffs, where the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as a normative loan;*

*Explanation II: - project specific tariffs where equity actually deployed is less than 30% of the capital cost, the actual equity shall be considered for determination of tariff;*

*Explanation III: - the equity invested in foreign currency shall be designated in Indian rupees on the date of each investment;*

*Explanation IV: - the debt-equity ratio shall be considered after deducting the amount of grant or capital subsidy received for the project for arriving at the amount of debt and equity.*

*Explanation V - The premium, if any, raised by the generating company while issuing share capital and investment of internal resources created out of its free reserve for the funding of the project shall be reckoned as paid-up capital for the purpose of computing return on equity only if such premium amount and internal resources are actually utilised for meeting the capital expenditure of the renewable energy project."*

Accordingly, a debt equity ratio of 70:30 has been considered by the petitioner for the computation of interest on loan.

aq. It is stated that the petitioner has not availed any loan from external agencies and the financing is done through its own equity funding. Thus, a normative



debt of 70% of the total project capital cost is considered with a loan repayment period of 15 years in line with the methodology adopted by the CERC in its RE tariff regulations 2024.

- ar. It is stated that it is pertinent to mention that the Commission vide its generic tariff order dated 18.04.2020 observed that RDF based WTE plants are in nascent stage, thus the developers may not be able to negotiate aggressive interest rates with the lenders. Accordingly, in line with the methodology adopted by CERC in its RE Tariff Regulations 2024, the petitioner stated an interest rate of 10.65% for determination of normative interest on long-term loan. The petitioner stated that the Commission may approve interest rate of 10.65% on long term loan for the 15 years.

#### C. Depreciation

- as. It is stated that for the purpose of computation of depreciation, the petitioner has considered the depreciation maximum up to 90% of the total capital cost of the project with a salvage value of 10% in line with the methodology adopted by the Commission in the generic tariff order 2020 and clause 15 of the CERC RE tariff regulation, 2024. The relevant extract from the CERC RE tariff regulation, 2024 is extracted below:

*"1. The value base for the purpose of depreciation shall be the capital cost of the project admitted by the Commission. The salvage value of the project shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the capital cost of the project:  
Provided that, no depreciation shall be allowed to the extent of grant or capital subsidy received for the project."*

- at. It is stated that accordingly, the petitioner has sought for the first 15 years that is till the loan repayment, the rate of depreciation is considered as 4.67%. Further, the remaining depreciable amount has been spread over the remaining useful life of the project at the rate of 4.00%. The petitioner stated that the Commission may approve the depreciation rate of 4.67% per annum for the period of 1 to 15 years, and 4.00% per annum from the 16th year onwards up to tariff period of 20 years.

#### D. Interest on working capital

- au. It is stated that the CERC in its RE tariff regulation, 2024 has considered O&M expense, maintenance spares, receivables, fuel cost as the components under

the working capital. The relevant extract from the CERC RE tariff regulations 2024 is reproduced below:

- "a) *Operation and Maintenance expenses for one month.*
- b) *Receivables equivalent to 45 days of tariff for the sale of electricity calculated on the normative Capacity Utilisation Factor or Plant Load Factor, as the case may be;*
- c) *Maintenance spares equivalent to 15% of Operation and Maintenance expenses".*

av. It is stated that accordingly, the petitioner sought the working capital to be computed in line with the methodology adopted by the CERC in its RE tariff regulation 2024. Additionally, CERC in its RE tariff regulation 2024 had approved an interest rate equivalent to the normative interest rate of three hundred and twenty-five (325) basis points above the average State Bank of India Marginal Cost of Funds based Lending Rate (MCLR) (one-year tenor) prevalent during the last available six months.

aw. It is stated that in line with the methodology adopted by CERC in its RE tariff regulation 2024, the petitioner humbly submits an interest rate of 11.90% for determination of interest on working capital. The petitioner stated that the Commission may approve the interest on working capital at the rate of 11.90%.

#### E. Return on equity

ax. It is stated that the value base for equity shall be as determined by considering a normative equity of 30% of the total project capital cost in line with the submission stated supra. Further, CERC in its RE tariff regulation 2024 had approved the rate of return on equity of 14% on a post-tax basis for the computation of return on equity, to support RDF based power plants. Accordingly, the petitioner stated that it has considered the base for equity shall be as determined by considering a normative equity of 30% of the total project capital cost and the rate of return on equity of 14% on a post-tax basis throughout the project life. The petitioner stated that the Commission may approve normative return on equity at the rate of return at 14% post tax grossed up with Minimum Alternate Tax (MAT) rate.

#### F. Plant Load factor

ay. It is stated that the calorific value and composition of RDF fluff is highly variable as it will have heterogeneous mix and it cannot be predicted. Further, during

monsoon season, there will be higher moisture content in the RDF fluff that will reduce the calorific value and therefore the power production of the plant.

az. It is stated that given the unique nature of the plant, the stabilization period in the first year will be longer as unforeseen circumstances will lower its productivity. However, the petitioner stated that the RDF used in the project is coming from the Hyderabad Integrated Municipal Solid Waste Management Project (HIMSW). Thus, the power project is to be supplied with RDF fluff regularly for the efficient utilization of the plant. Accordingly, the Petitioner has considered PLF as approved by the CERC in RE tariff regulation 2024.

ba. It is stated that the Following are the PLF considered for computation of the tariff:

- a) First Year: 65.00% (including stabilization period of 6 months)
- b) Second Year Onwards: 80.00% (post stabilisation)

The petitioner stated that the Commission may approve the PLF of 65% for first year, 80% for the subsequent years

G. Auxiliary consumption

bb. It is stated that the WTE plants have higher auxiliary consumption than the thermal plants due to the following reasons:-

- (i) The size of the plant is big if compared with the thermal power projects.
- (ii) The plant utilises air cooled condenser which takes more load.
- (iii) WTE plants require more sophisticated flue gas treatment system which makes the cost of such systems high.
- (iv) The plant will use grab cranes for RDF spreading, aeration and feeding to the hoppers.

bc. It is stated that further, the CERC had also recognised that RDF based power projects would entail higher auxiliary consumption to the tune of 15% as per the clause 64 of RE tariff regulations 2024. The relevant portion is extracted from the regulation and is placed below:

*"64. The auxiliary consumption for determination of tariff shall be considered as 15%."*

Thus, based on the actual auxiliary consumption in line with the market trends and norm specified by the CERC, the petitioner sought the auxiliary

consumption as 15%. The petitioner stated that the Commission may approve the auxiliary consumption of 15%.

H. Treatment for the excess power generation over and above the normative PLF

bd. It is stated that as per the CERC RE tariff regulation 2024 the treatment for over generation is as per the below clause:

*"11. In case a renewable energy project, in a given year, generates energy in excess of the capacity utilization factor or plant load factor, as the case may be specified under these Regulations, the renewable energy project may sell such excess energy in the market under bilateral or collective transactions, provided that the first right of refusal for such excess energy shall vest with the concerned beneficiary. In case the concerned beneficiary purchases the excess energy, the tariff for such excess energy shall be equal to the tariff applicable for that year.*

be. It is stated that further, the over generation clause in the PPA signed between DW2EPL and TGSPDCL states that.

*"2.2 The company shall be paid the tariff as to be determined by the TSERC under Section 62 of Electricity Act, 2003 for the energy delivered corresponding to the net exportable capacity to grid at the interconnection point for sale to DISCOM, upon filing of petition by the developer for such determination of tariff. While determining the tariff, Commission will be requested to take Tipping Fee into consideration and incorporate the same into the tariff directly. Payment for the energy delivered beyond threshold PLF, reimbursement of Income tax etc., shall also be as decided by TSERC along with determination of tariff. No tariff will be paid for the energy delivered at the interconnection point beyond contracted capacity, i.e., the capacity agreed for export to Grid. The orders of TSERC are enforceable in entirety and shall be considered for the purposes of computation of tariff. An interim tariff may be sought from TSERC by filing an LA in the tariff determination Petition to be filed by the Developer."*

bf. It is stated that the net exportable power is expected to vary with variation in the fuel characteristics and auxiliary consumption. With variation in net exportable power the normative plant load factor is expected to vary. Since, the WTE projects are 'must run' projects, it is expected that, distribution licensee shall procure all the power generated and exported by the WTE plant. In view of the above it is stated that technicality involved variation of the net CUF of the plant and distribution licensee may be directed to procure all the power exported by the petitioner's WTE plant without restricting upto the contracted capacity at the tariff determined by the Commission.

I. Discount Rate

- bg. It is stated that the Commission has approved the discount factor of 13.20% based on the weighted average cost of capital (WACC). The CERC has also considered the discount rate as WACC. The formula for computation of WACC is given below:

$$\text{WACC} = \text{Cost of Debt} + \text{Cost of Equity}$$

$$\text{Cost of Debt} = 0.70 \times \text{rate of interest submitted by the petitioner in this petition}$$

$$\text{Cost of equity} = 0.30 \times \text{return on equity post tax}$$

The Petitioner submits that the discount rate of 11.66% is computed based on the above formula, which is the weighted average cost of capital for determination of levelized tariff. The petitioner stated that the Commission may approve the discount rate of 11.66% calculated based on WACC.

V. VARIABLE COST OF THE PROJECT

A. Transportation cost

- bh. It is stated that the petitioner is receiving the RDF from M/s Hyderabad Integrated Municipal Solid Waste (HIMSW) management plant. The distance between HIMSW plant and petitioner's plant is about 50 KMS. The petitioner has entered into a fuel supply agreement (FSA) for delivery of 800 TPD of RDF at an agreed contract price of Rs.1800/MT. Accordingly, Petitioner has proposed basic transportation cost of Rs.500/MT with annual escalation of 5% for 20 years on the transportation cost as variable cost for the purpose of determination of the levelized variable tariff under the petition. The petitioner is not seeking any fuel cost component except for the transportation cost incurred in delivery of fuel, that is RDF from the door step of HIMSW to the petitioner's plant. The petitioner submits that the Commission may approve the basic transportation cost of Rs.500/MT with an annual price escalation of 5% for 20 years and consider the same for determination of variable levelized tariff.
- bi. It is stated that though under Article 2.2 of the PPA dated 14.02.2024, it is provided that the tipping fee will be considered by the Commission at the time of determination of tariff, however, it is clarified herein that there is no tipping fee received by the petitioner. The petitioner is a 'stand-alone', 'separate and distinct' special purpose vehicle/company which is using RDF procured from HIMSW under a FSA and generating 14.5 MW by incinerating such fuel. There

is no nexus or any agreement with any ULB or any other authority with regard to receipt of MSW or RDF at a tipping fee.

bj. It is stated that respondent, TGSPDCL has time and again raised the issue of tipping fee, seeking adjustment of the same in the power generation process.

In this regard, the petitioner stated, without prejudice as under.

- (i) that the tipping fee payable by GHMC to HIMSW is qua the rights and obligations of HIMSW under the concession agreement (CA) dated 29.02.2009. The tipping fee, which is a quoted amount in the bid floated by GHMC in the year 2009, in terms of the competitive bidding, in pursuant to which, HIMSW was selected, is only a part consideration for such obligations and rights of HIMSW under the CA. As per the scheme of the bid process for selection of the bidder by GHMC, the RFP issue for the purpose and the CA signed with HIMSW, the successful bidder, the tipping fee payable by GHMC was neither envisaged to be a total consideration or a consideration for any associated business such as power projects to be established for utilisation of RDF. The disposal of RDF and the entire revenue realisation therefrom was allowed to be appropriated as consideration for the services under the CA itself, without being appropriated towards any other purpose. This was in addition to the tipping fee and there is no provision for adjustment of tipping for the services rendered by HIMSW. Such terms, namely, that the tipping fee is not the entire consideration of the services under the CA and the revenue earned from the disposal of RDF being the other part of the consideration was pursuant to a competitive bidding process wherein the bidders were selected and cannot therefore, be varied to the contrary under the implementation of the PPA. It is therefore fundamentally wrong to consider tipping fee to be available either wholly or partly for reduction in tariff and tariff determined under the generic tariff order in the present case. As per the CA it is entirely for the HIMSW to enter into such commercial agreements as it considers appropriate to earn revenue that is possible out of the disposal of the RDF and other by-products and appropriate the same absolutely as consideration for the services rendered under the CA, including for meeting expenditure in operating collection, transportation, processing and disposal of the municipal solid waste and also to scientifically maintain the sanitary landfill. There was no obligation under the CA that HIMSW should undertake power generation, by using the RDF. HIMSW was entitled to dispose of the RDF/waste in any manner and absolutely appropriate the proceeds of such disposal absolutely in such manner as it considers appropriate and there was then no requirement to account for any part of such sale proceeds.
- ii. It is stated that, the above has been the essence of the competitive bidding held and the CA entered into between GHMC and HIMSW. Accordingly, the tipping fee payable by GHMC could not be a part of any adjustment in the tariff for power generation and sale of electricity, nor it can be factored in while determining tariff for sale of power by using the RDF generated by HIMSW after processing the waste.

- iii. It is stated that the Petitioner that the adjustment of tipping fee in the tariff payable by the TGSPDCL to the petitioner, will lead to non-sustainable operations of both HIMSW and the petitioner. Assuming but not admitting that the collection, transportation, treatment and disposal of the municipal waste under the CA, as well as generation and supply of electricity under the PPA, are considered together, the cost elements of the various operation under both the heads, (a) collection, transportation, treatment and disposal and (b) generation and supply of electricity, would result in revenue much less than the reasonable return, contemplated for a regulated entity, even by inclusion of tipping fee as a revenue for both, in addition to the tariff payable under the PPA.
- iv. It is stated that the petitioner has obtained audited financial documents from HIMSW the operator of waste management facilities under the CA with GHMC. These documents demonstrate the financial performance of HIMSW Limited for the fiscal years 2020-21 to 2022-23. This data unequivocally demonstrates that HIMSW Limited has not experienced any undue enrichment or windfall gains. The summary data in tabular format is reproduced herein below:

Table: ROE Achieved by M/s HIMSW

Particulars	2022-23	2021-22	2020-21
I. Numerator			
Profit after tax	3814	-1396	3288
II Denominator			
Shared capital	14221	14221	14221
Other Equity	16953	13149	14439
Share Holder's Equity	31174	27371	28661
Avg. Share holders Equity	29272	27371	28661
Return on Equity			11.7%

It is therefore, stated that the Commission may not consider any part of tipping fee payable to HIMSW by GHMC for both legal and financial implications in determining the project specific tariff for the petitioner.

- bk. It is stated that the petitioner respectfully submits that the transportation cost of Rs.500/MT, with a proposed annual escalation of 5%, should be considered for the determination of the levelized variable tariff. The petitioner stated that the tipping fee paid to HIMSW by GHMC is irrelevant to the petitioner's operations and tariff calculation. The petitioner, as a standalone entity with no involvement in waste collection or disposal, does not receive any tipping fee. There is no privity between the petitioner and GHMC. Furthermore, factoring the tipping fee in the tariff would financially destabilize both HIMSW and the petitioner, contradicting the regulatory goal of ensuring reasonable returns for regulated entities. Therefore, based on legal, contractual and financial considerations, the

petitioner urges the Commission to exclude the tipping fee from the tariff determination process.

#### VI. PROPOSED LEVELIZED TARIFF

- bl. It is stated that the fixed cost of project comprises of O&M expenses, depreciation, interest on term loan, interest on working capital and return on equity, are considered while seeking tariff.
- bm. It is stated that the variable cost computed of multiplying specific fuel consumption by transportation cost and gross generation.
- bn. It is stated that the levelized tariff for both fixed and variable cost is computed as mentioned in appendix II TSERC Tariff form.

2. In light of submissions advanced above, the petitioner has sought the following prayers in this petition.

- “(a) admit the present petition in terms of under Sections 86(1)(a), 86(1)(e) and Sections 61, 62 and 64 of the Act read with Article 2.2 of the power purchase agreement dated 14.02.2024 executed between the petitioner and TGSPDCL;*
- (b) approve the fixed cost of Rs.2,335.39 crore as prayed in this petition;*
- (c) approve the variable cost of Rs.482.76 crore towards transportation of RDF as prayed in the petition;*
- (d) approve the levelized final tariff of Rs.15.87/kWh (Rs.13.47/kWh as levelized fixed component and Rs.2.40/kWh as levelized variable component) in respect of 14.5 MW RDF based WTE plant at Dundigal, Telangana as prayed in this petition.*

3. The petitioner has raised additional submissions after conclusion of the hearing and stated as below:

- a. Vide this additional affidavit, the petitioner seeks to address the Commission on the issues raised at the time of the hearing.
  - i. In re: the use of fuel by the petitioner as MSW and not RDF
    - a. The Hon'ble Technical Member raised the issue of petitioner issuing raw MSW as the fuel and not RDF based on the version of facts disclosed by TGSPDCL before the Commission.
    - b. The petitioner seeks to place following pertinent facts for the Commissions consideration:
      - i. The petitioner has been inspected only once on its plant by TGSPDCL, that is prior to execution of the PPA on 14.02.2024. No other inspection has occurred on its plant site till date.



- ii. TGSPDCL has submitted its report on the fuel use as RDF a day prior to the execution of the PPA, vide its letter dated 13.02.2024. Only after having satisfied itself of the fuel use, TGSPDCL has executed the PPA on 14.02.2024.
  - iii. The commissioning and synchronization certificate executed duly by TGSPDCL and TGTRANSCO along with petitioner whereafter, it injected around 51 Million MUs of energy into the grid.
  - iv. The issue of fuel use is settled on perusal of the letter issued by GHMC on 23.07.2024, wherein GHMC has certified as to the fuel in use by the petitioner as RDF.
  - v. The petitioner stated that it has not received any communication either from the Commission or from TGSPDCL on the use of fuel at any point qua its plant. Further, the inspection report, which is awaited from the DISCOM, as indicated by the Commission during the hearing, may be clarified, since there has been no such inspection carried out by the TGSPDCL or by any other agency after the declaration of COD of the plant.
- c. In view of the above, there is no room left for any doubt as to use of fuel being RDF in the present facts.
- ii. PPA approval pending, maintainability of the present petition
- a. The Commission has raised that since the PPA approval is pending, the maintainability of the present petition is to be clarified.
  - b. The petitioner submits that pendency of PPA approval petition does not come in the way of admission of the present petition inasmuch as PPA is duly executed by the TGSPDCL and the petitioner is supplying power since 03.03.2024 and approximately, 51 million MUs of energy has been injected. The energy injected is uncontroverted as TGSPDCL has executed joint meter readings.
  - c. It is also pertinent to place for the benefit of the Commission, observations of the Hon'ble Supreme Court passed in Andhra Pradesh Southern Power Distribution Power Company Limited. v. Hinduja National Power Corporation Limited, 2022 (5) SCC 484, wherein it has held that the state Commission erred in dismissing the tariff determination petition, pending PPA approval petition. The relevant extract is reproduced hereinunder for ready reference:

*"115. In any event, we find that the State Commission has totally erred in dismissing O.P.No.21 of 2015 filed by HNPCL. Perusal of Section 64 of the 2003 Act would reveal that even a generating company is entitled to make an application for determination of tariff under Section 62 of the 2003 Act. As such, irrespective of the question, as to whether an application for withdrawal of O.P.No.19 of 2016 filed by the appellant Discoms could have been*

*entertained, the State Commission was wholly unjustified in dismissing O.P.No.21 of 2015 filed by HNPCL. In any case, we have held that in the facts of the present case and, particularly, taking into consideration the conduct of the appellant Discoms, APTEL has rightly held that the appellant Discoms could not have been permitted to withdraw O.P.No.19 of 2016.*

- iii. Execution of the PPA at project specific tariff
- a. The Commission has raised the query as to the reason for execution of the PPA at project specific tariff when the commissioning is during the control period of generic tariff order dated 18.04.2020.
- b. It is stated that petitioner was agreeable to execute the PPA at generic tariff, however, it was only at the instance of TGSPDCL that the petitioner was made to execute the PPA at project specific tariff. In this regard, petitioner seeks to place reliance on MoM dated 09.08.2023 executed in presence of GHMC, the relevant portion is reproduced hereinbelow for the ready reference:
- "However, TSSPDCL informed that it is not agreeable to execute PPA under the ambit of generic tariff order as reimbursement of tipping fee is flowing out of the order. Considering the rival contention of not being liable for such reimbursement TSSPDCL is not considering the execution of PPA based on undertaking, considering the possibility of prolonged legal entanglement on the issue."*
- Therefore, the petitioner may not be put to any further prejudice and it may be granted an interim tariff, pending disposal of the present petition as well as PPA approval petition. The Commission may also seek any further clarifications from the petitioner which it finds fit and proper for the disposal of the present petition.
- c. In view of the above, present submission may be taken on record and be taken as satisfactory to address the issues and concerns raised during the hearing; and this Hon'ble Commission may decide accordingly.

4. The petitioner has filed an interlocutory application seeking interim order in the matter and contents of the application are extracted below:

- a. It is stated that the petitioner herein is a company incorporated under the provisions of the Act, 2013 and is also a generating company within the meaning of Section 2(28) of the Act, 2003. The petitioner owns and operates a 14.5 MW RDF based WTE power plant at Dundigal, Medchal District, Telangana. Malkajgiri

- b. it is stated that the petitioner's plant is falling within the area of the TGSPDCL which is a distribution licensee, within the meaning of Section 2(17) of the Act, 2003, operating in the State of Telangana and carries on the business of distribution and retail supply of electrical energy within its command area.
- c. It is stated that vide the accompanying petition, the petitioner herein is seeking from the Commission to determine a project specific tariff under Sections 86(1)(a), 86(1)(e) and Sections 61, 62 and 64 of the Act, 2003 read with Article 2.2 of the PPA dated 14.02.2024 executed between petitioner and TGSPDCL for supply of electricity from its 14.5 MW capacity RDF based WTE plant at Dundigal, Medchal - Malkajgiri district, Telangana.
- d. It is stated that petitioner had approached TGSPDCL seeking execution of the draft PPA. TGSPDCL apprised that the matter is pending with TGPC. TGPC vide its letter dated 26.01.2024 proposed to modify Article 2.2 (Tariff) in the draft PPA. Accordingly same was modified by petitioner and draft PPA was executed with TGSPDCL on 14.02.2024. The relevant Article is reproduced below for the ready reference of the Commission:

*"2.2 The company shall be paid the tariff as to be determined by TSERC under Section 62 of the Electricity Act 2003 for the toy delivered corresponding to the net exportable capacity to grid at the interconnection point for sale to Discom, upon filing of petition filed by the developer for such determination of tariff. While determining the lariff, Commission will be requested to take Tipping Fee into consideration and incorporate the same into the tariff directly. Payment for the energy delivered beyond threshold PLF, reimbursement of Income tax etc., shall also be as decided by TSERC along with determination of tariff. No tariff will be paid for the energy delivered at the interconnection point beyond contracted capacity, i.e., the capacity agreed for export to Grid. The orders of TSERC are enforceable in entirety and shall be considered for the purposes of computation of tariff. An. interim tariff may be sought from TSERC by filing an I.A in the tariff determination Petition to be filed by the Developer."*

In view of the above, the petitioner has preferred the accompanying petition as well as the present Interim Application under Sections 86(1)(a), 86(1)(e) and Sections 61, 62 and 64 of the Act, 2003, read with Article 2.2 of the PPA dated 14.02.2024 executed between petitioner and TGSPDCL to determine a project specific tariff for supply of electricity from its 14.5 MW capacity RDF based WTE plant at Dundigal, Medchal - Malkajgiri district, Telangana.

e. It is stated that with all due permissions from TGTRANSCO and TGSPDCL, the plant was synchronized with grid on 01.03.2024 and with effect from 03.03.2024, the petitioner has commenced injection of power from its 14.5 MW RDF based WTE Plant. The contents of the accompanying petition are not repeated herein and the same may be read as part and parcel of the present application and is not reiterated for the sake of brevity.

f. It is stated that vide the present application, the petitioner is seeking interim relief under the facts and circumstances of the present matter. The applicant has raised the following grounds.

In re: entitlement to interim tariff pending final determination:

- i. The petitioner is entitled to an interim tariff based on a robust statutory and policy framework. Sections 86(1)(e) and 61(h) of the Act, 2003, mandate the promotion of renewable energy generation, including WTE projects. This is further reinforced by the NEP, 2005 and the NTP, 2016, which both highlight the importance of WTE projects in addressing waste management and energy generation challenges. Moreover, the NTP, 2016, specifically mandates distribution licensees to procure 100% of the power generated from WTE plants at a tariff determined by the appropriate Commission (TSERC, in this case). TSERC itself has consistently recognized the 'must run' status of WTE projects through its *Suo Moto* generic tariff orders and RPPO regulation, 2022, further solidifying the regulatory support for such projects in Telangana.
- ii. The contractual provision in Article 2.2 of the PPA explicitly allows for the determination of an interim tariff, clearly reflecting the intention of both parties to ensure the project's financial viability during the potentially lengthy tariff determination process.
- iii. Granting an interim tariff is crucial for the financial viability of the project. The petitioner has made substantial investments in the WTE plant, and without an interim tariff, it would be unable to generate revenue from power generation, potentially leading to financial distress and project delays. Furthermore, the grant of an interim tariff would instill confidence in investors, thereby encouraging further investments in renewable energy projects in Telangana.
- iv. It is stated that an interim tariff serves the broader public interest. WTE projects play a vital role in addressing the challenges of municipal solid waste management and contributing to renewable energy generation, both of which are essential public services. Granting an interim tariff ensures the continued operation of the plant, preventing disruptions in waste disposal and energy generation, thereby upholding public interest.
- v. It is stated that the Electricity Regulatory Commissions (ERCs) of several states, including Haryana and Chhattisgarh, have recognized the need for interim tariffs in similar circumstances. Learned Haryana Electricity Regulatory Commission (HERC), for instance, has consistently granted interim tariffs to WTE projects while final tariff determination is underway.

These judicial precedents categorically acknowledge the lengthy tariff determination process and the importance of ensuring the financial viability of these projects during this interim period. In this regard, reliance is placed on following decisions by other SERCs:

- a. Order dated 20.10.2022 passed in Case No.54 of 2022 by HERC, the relevant portion is reproduced hereinbelow for the ready reference of the Commission:

"10. Before parting with the order. considering that tariff petition is yet to be filed and the same has to be subjected to public proceedings, the Commission as an interim measure, approves that in case energy drawl is resorted to from this source, prior to determination of final tariff. by the Commission. the same may be paid for at the APPC subject to adjustments vis-à-vis the final tariff as the case may be. without any liability to either party on account of interest/carrying cost on such adjustment. in line with clause 2.1.2 of the PPA. However. scheduling shall be in accordance with the relevant clause of the HERC RE Regulations in vogue"

- b. Order dated 10.04.2018 passed in Case No.42 of 2018 by HERC, the relevant portion is reproduced hereinbelow for the ready reference of the Commission:

"11. The Commission has further taken note of the clause 2.1.1 of the main PPA dated 12.03.2014, entered into between the parties, as under:-

"b. The fuel (biomass mix/bagasse) cost (Rs/kWh) decided by the Commission shall be subject to the cap of twice (2 times) the fuel cost (Rs./kWh) approved by the Commission for thermal power generation of HPGCL in Haryana. Beyond which the HPPC/Discoms shall be under no obligation to purchase power from the company. In such an event, the Company shall have the right to sell the entire power generated by them to a third party including offering power to the Discoms at the average pool power cost (APPC) as determined by the Commission, selling power through the power exchange etc."

In view of the consent already accorded by HPPC to the Generator for purchase of power from its generating station with biomass as the fuel, it is ordered that the tariff shall be decided on the separate petition to be filed by Generators under Section 62 of the Electricity Act, 2003, in accordance with clause 2.1.1 of the main PPA dated 12.03.2014, entered into between the parties. The tariff petition shall include DPR approved by HAREDA and all other relevant documents to arrive at the reasonable incremental capital cost to be incurred on running with biomass as the fuel, if any, and all other tariff components.

*However, as the power has already started flowing to the DISCOMs and the tariff determination is a long exercise including public proceedings. the Commission as an interim measure, approves that till the time final tariff is determined by the Commission upon filing of the requisite application by the Generator, the interim tariff shall be APPC for the power generated using biomass as fuel and injected into the grid subject to adjustments vis-à-vis the final tariff determined by the Commission."*

- c. Order dated 10.04.2018 passed in Case No.15 of 2016 by HERC, the relevant portion is reproduced herein below for the ready reference of the Commission:

*"The duration of the PPA may also be increased from 25 years as proposed to 35 years. The initialed draft PPA by both the parties shall be submitted for approval of the Commission within one month from the date of the present order. As tariff determination is a long exercise including public proceedings and the fact that the project has already attained CoD the Commission, as an interim measure, approves that in case energy drawl is resorted to from this source prior to determination of final tariff by the Commission the same may be paid for the APPC subject to adjustments vis-à-vis the final tariff as the case may be."*

- d. Order dated 13.11.2017 passed in Case No.26 of 2017 by HERC, the relevant portion is reproduced herein below for the ready reference of the Commission:

"13. Taking all the above discussions into consideration, the Commission approves procurement of power from the Jorethang Loop Hydro Electric Project, throughout the year, at the tariff to be determined by the Commission on separate petition to be filed by the generator with Rs.4.71/kwh being the ceiling tariff for first 25 years of the PPA. The rate of power purchase for the balance ten years shall be at variable cost only. Having approved the purchase of power from 96 MW (2x48 MW) Jorethang Loop HEP, the Commission has perused the draft PPA attached with the present petition for approval of the Commission and observes that the same does not incorporate a lot of details that a contract of such nature should necessarily have. HPPC may recast the PPA based on the format and other terms as in line with the PPA approved by the Commission for Teesta III, Sikkim. The duration of the PPA may also be increased from 25 years as proposed to 35 years. The initialed draft PPA by both the parties shall be submitted for approval of the Commission within one month from the date of the present order. As tariff determination is a long exercise including public proceedings and the fact that the project has already attained CoD the Commission, as an interim measure,

*approves that in case energy drawl is resorted to from this source prior to determination of final tariff by the commission the same may be paid for APPC subject to adjustments."*

- e. Order dated 22.09.2021 passed in Petition no. 22 of 2021 by Chhattisgarh State ERC, the relevant portion is reproduced herein below for the ready reference of the Commission:

*"18. CSPDCL submitted that they have no objection if provisional tariff is determined at this stage and agreed that the petitioner may be allowed to file rejoinder at the time of the disposal of the petition filed for determination of final tariff*

*19. Considering the above submissions, the Commission decides to determine the provisional tariff in the present petition in accordance with the CSERC MYT Regulation, 2015. While computing the provisional tariff from 25.06.2021 to 31.03.2022, the Commission has segregated this duration in two parts (i) duration from 25.06.2021 to 29.06.2021 and (ii) duration from 30.06.2021 to 31.03.2022 as the Unit-1 and Unit-2 achieved COD on 25.06.2021 and 30.06.2021 respectively."*

- f. For, the tariff order dated 18.04.2020 in O.P.No.14 of 2020 can be the basis for grant of provisional tariff. Vide this order, the Commission has determined a generic tariff of Rs.7.84/kWh, levelised for RDF-based power projects achieving COD between 01.04.2020 and 31.03.2024. Hence, applying the tariff of Rs.7.84/kWh as an interim tariff is therefore fair, reasonable, and consistent with law.

- g. It is submitted that the grant of provisional tariff is a settled regulatory practice and the same would not cause any prejudice to the public or the consumers. However, if the interim relief is not granted, there will be an irreparable injury to the petitioner inasmuch it would not be entitled to run its operations and would be denuded of the tariff until the pendency of the petition.

5. In light of submissions advanced, the applicant has sought the following prayer for consideration of the Commission in favour of the petitioner.

- (a) *allow the present application.*  
(b) *allow an interim tariff in terms of Article 2.2 of the power purchase agreement dated 14.02.2024 of Rs.7.84/kWh as determined by the Commission in O.P.No. 14 of 2020 vide its order dated 18.04.2020 to the petitioner for supply of power to TGSPDCL from the date of injection that is 03.03.2024 till the pendency of the present petition.*

6. The petitioner has filed another interlocutory application seeking the listing of the petition at an early date and stated as below:

- a. The present petition is being preferred by the 'applicant/petitioner' for determination of the project specific tariff under Sections 86(1)(a), 86(1)(b), 86(1)(e) and Sections 61, 62 and 64 of Act, 2003 read with Article 2.2 of the PPA dated 14.02.2024 executed between petitioner and TGSPDCL for supply of electricity from its 14.5 MW capacity RDF based WTE plant at Dundigal, Medchal - Malkajgiri district, Telangana.
- b. The petitioner herein is a company incorporated under the provisions of the Act, 2013 and is also a generating company within the meaning of Section 2(28) of the Act, 2003. The petitioner owns and operates a 14.5 MW RDF based WTE power plant at Dundigal, Medchal - Malkajgiri district, Telangana.
- c. The Respondent/TGSPDCL is a distribution licensee, within the meaning of Section 2(17) of the Act, 2003, operating in the State of Telangana that has been granted license by the Commission for carrying on the business of distribution and retail supply of electrical energy within its command area.
- d. That a PPA was executed between the petitioner and the respondent, on 14.02.2024 for supply of electricity from its 14.5 MW capacity RDF based WTE plant at Dundigal, Medchal - Malkajgiri District, Telangana, at the tariff determined by the Commission.
- e. With all necessary permissions from TGTRANSCO and TGSPDCL, the plant was synchronized with the grid on 01.03.2024 and 03.03.2024, the petitioner on commenced the injection of power from its 14.5 MW RDF-based WTE plant into the grid and has been supplying power to the TGSPDCL in accordance with the PPA dated 14.02.2024. Despite supplying power for the past four months, no payments have been received, making it extremely difficult for the petitioner to supply power in accordance with the terms of PPA and petitioner is struggling to optimally sustain the operations of its plant maintaining the plant.
- f. The contents of the accompanying petition are not reproduced herein but may be read as part of the present application.
- g. The petitioner sought orders of the Commission for the approval of the two part levelized tariff of Rs.15.87/kWh in line with the prescriptions under CERC RE regulation, 2024.



- h. In view of the above averments, it is most stated that the captioned petition may be listed urgently and at the earliest possible date otherwise grave and irreparable injury will be caused to the applicant herein.
- i. The balance of convenience and the prima facie case lies in the favour of the applicant and if the prayer sought for herein is not granted, the same will lead to severe adverse impact on the applicant and render the applicant to further financial distress. Moreover, no adverse impact is likely to be caused to the respondents if the prayers herein are granted and this petition is listed before the Commission on an urgent basis.
7. In the facts and the circumstances of the present case, it is therefore prayed by the petitioner that the Commission may be pleased to consider the following prayers.
- a) *allow the present application;*
  - b) *list the accompanying Petition filed by the Applicant at the earliest possible date on an urgent basis;*
  - c) *adjudicate the interim relief preferring along with the accompanying petition; and*
8. After the hearing was concluded and as the matter stood reserved for orders, the petitioner filed another interlocutory application and stated as follows.
- a. M/s Dundigal Waste 2 Energy Private Limited, the petitioner herein has preferred the present petition seeking orders from the Commission to determine a project specific tariff under Sections 86(1) a), 86(1)(b) 86(1)(e) and Sections 61, 62 and 64 of the Act read with Article 2.2 of the PPA dated 14.02.2024 executed between petitioner and TGSPDCL for generation and supply of electricity from its 14.5 MW capacity RDF based WTE plant at Dundigal, Medchal—Malkajgiri district, Telangana.
  - b. The present application seeks modification of the record of proceeding dated 09.09.2024 notified by the Commission on account of certain erroneous recording of the factual aspect and omission in recording contents of additional submissions made vide affidavit dated 10.09.2024, physical copy of the same was served on 11.09.2024.

- c. That on 09.09.2024, the Commission had heard the petitioner on the maintainability of the present petition and has raised following issues while reserving the order:
- (a) The use of fuel by the petitioner as MSW and not RDF
  - (b) PPA approval is pending, maintainability of the present petition;
  - (c) Execution of PPA at project specific tariff.
- In re: aspects relating to modification in the RO.P.dated 09.09.2024
- d. The contents of the record of proceedings dated 09.09.2024 notified by the Commission in the captioned matter is reproduced as under:

*"Petition filed seeking adjudication of a dispute in relation to the claims of line and bay maintenance charges imposed on the petitioner.*

*Sri Matrugupta Mishra Counsel for the petitioner along with Sri Nipun Dave, Advocate and Sri Mohammad Bande Ali, Law Attaché being the representative of the respondents have appeared in the matter. The counsel for the petitioner stated that the matter is posted for admission on maintainability. It is stated that the plant has been synchronized to the grid on 01.03.2024 and regularly injecting energy from 03.03.2024. prior to synchronization the petitioner has entered into PPA on 14.02.2024.*

*This project has been established out of the recommendations of the standing committee on environment in terms of the policies of the government including the tariff policy of the Ministry of Power, Government of India. The petitioner's project has been completely bank rolled with a heavy component of loan. The petitioner is running the plant on RDF which is fuel for the project. The Commission had determined generic tariff for the control period of 01.04.2020 to 31.03.2024 by order dated 18.04.2020. The petitioner is entitled to the generic tariff. The Commission had determined the generic tariff for RDF based projects only and not for MSW projects. Therefore, the petitioner is entitled to the tariff determined by the Commission.*

*The petitioner has been injecting energy into the grid from the date of synchronization. It is entitled to interim tariff pending finalization of the tariff for the project by the Commission. Since, PPA is already entered, the petitioner is before the Commission seeking to obtain orders or tariff payable by the respondents. It is the case of petitioner that as the PPA provided for tariff to be determined by the Commission, the petitioner has no other alternative except to obtain orders of the Commission towards tariff. Also, as the PPA has already been entered the respondents is bound to honour the PPA and provisions made there of towards tariff payment for the energy delivered.*

*The petitioner sought to state that the project is conceived with reference to environmental issues and meeting had been taken by the GHMC on the issues being confronted by the project. To that effect it has relied on the minutes of the meeting conducted by the Greater Hyderabad Municipal Corporation. The petitioner also relied on the letter issued by*

*the GHMC with regards to the project, as also the agreement entered between the TGREDCO and petitioner.*

*The petitioner relied on Central Electricity Regulatory Commission notified tariff regulation of 2024 for proposing the tariff as there is no tariff generically decided by the Commission subsequent to 01.04.2024. As the petitioner is injecting energy, for the present Commission may consider granting interim order at the existing tariff as on date of synchronization till the Commission decides the matter finally after due process of law and after due public consultation and examination of the parameters of the project.*

*The Commission pointed out that earlier it has refused to determine tariff where the PPA has not been approved by it in one or two instances. As such the case of the petitioner cannot be considered as the PPA is yet to be consented by the Commission. The petitioner stated that the project is based on bank funding, and it has to make payment for the loans availed. The Commission would be protecting its interest by granting the interim order in favour of petitioner to offset the financial difficulties faced by it.*

*The Commission also pointed out that the issue of fuel is not yet finalized and the commission is awaiting a report from the licensee towards its statement that the fuel being employed is MSW and not RDF. After receipt of the licensee 's views, the PPA will be considered, and the matter will be taken up for consent. The petitioner pointed out that the issue of fuel and other parameters would come for consideration during the determination of tariff and not at this stage hence the Commission may consider the tariff petition and interim order to protect the interest of the petitioner.*

*Having heard the submission of the counsels of the petitioner the matter is reserved for orders. "*

- e. That it is erroneously recorded that the present petition was filed inter-alia, for, 'bay maintenance charges imposed on the petitioner.' The same is factually not correct as the petition is only with respect to project specific tariff qua its RDF based standalone WTE plant.
- f. That, no notice was issued to the respondent discom as the Commission was hearing the matter on maintainability and as such the appearance of "*Sri Mohammad Bande Ali, Law Attaché being the representative of the respondents have appeared in the matter*" have been wrongly and erroneously recorded.
- g. That, it is being recorded that petitioner has sought for generic tariff that is, 'the petitioner is entitled to the generic tariff', the same is not wholly correct inasmuch as the generic tariff is being sought only as an interim measure, pending disposal of the captioned Petition.

h. That further on 11.09.2024, the petitioner placed additional submissions on record to clarify in details the issues raised by the Commission. However, the same does not find mention in the record of proceeding dated 09.09.2024 so uploaded subsequently on the website of the Commission. Petitioner requests to take into account submissions made vide additional affidavit for completeness of record. In brief, the petitioner stated, are as under:

- (a) Petitioner has addressed the concern raised by the Technical Member regarding the use of raw MSW instead of RDF as fuel. The petitioner clarified that the plant was inspected by TGSPDCL only once before the PPA execution on 14.02.2024, and TGSPDCL confirmed the use of RDF as fuel. This was reaffirmed in a letter from GHMC letter dated 23.07.2024, certifying the use of RDF. The petitioner has not received any further communication challenging the fuel type, and no additional inspection has occurred post-COD. Therefore, the petitioner asserts that there is no doubt regarding the use of RDF as fuel.
- (b) Regarding the pending PPA approval, the petitioner argues that the pendency should not affect the maintainability of the current petition. The petitioner has already injected around 51 MU of energy into the grid since 03.03.2024, with joint meter readings executed with TGSPDCL confirming the same. The petitioner relies on a Hon'ble Supreme Court judgment (Andhra Pradesh Southern Power Distribution Power Company Limited. v. Hinduja National Power Corporation Limited., of 2022), which held that tariff determination petitions can proceed even if the PPA approval is pending.
- (c) Additionally, the petitioner clarified that the PPA was executed at a project-specific tariff at TGSPDCL's insistence, despite the petitioner's willingness to execute it at a generic tariff. This change stemmed from concerns about reimbursement of the tipping fee, as noted in the minutes of a meeting on 09.08.2023. In light of this, the petitioner requests the Commission to grant interim tariff pending the final decision on both the present petition and the PPA approval.

The contents of the above additional affidavit have not been referred or recorded in the order dated 09.09.2024.

- (i) While it is true that there is substantial investment made by the petitioner in respect of the project, however, it has been recorded at several instances that petitioner's project has been 'completely bank rolled', the same may be rectified inasmuch as the investment made by the petitioner is entirely out of its own equity funds and no loan has been availed from any financial institutions.
- (j) Finally, the petitioner respectfully submits that all issues raised during the hearing have been addressed and requests the Commission to take this submission on record and issue appropriate orders and grant interim tariff at the earliest.

9. In light of the aforementioned facts and circumstances of the present matter, the petitioner has prayed that the Commission may undertake modification of the record of proceedings.

*“Allow the present application and grant modifications as sought under the present application;”*

10. The Commission has heard the counsel for the petitioner and perused the material as is available on record. The submission made on the date of hearing are reproduced for ready reference.

*Record of proceedings dated 09.09.2024*

*... .. The counsel for the petitioner stated that the matter is posted for admission on maintainability. It is stated that the plant has been synchronized to the grid on 01.03.2024 and regularly injecting energy from 03.03.2024. prior to synchronization the petitioner has entered into PPA on 14.02.2024.*

*This project has been established out of the recommendations of the standing committee on environment in terms of the policies of the government including the tariff policy of the Ministry of Power, Government of India. The petitioner's project has been completely bank rolled with a heavy component of loan. The petitioner is running the plant on RDF which is fuel for the project. The Commission had determined generic tariff for the control period of 01.04.2020 to 31.03.2024 by order dated 18.04.2020. The petitioner is entitled to the generic tariff. The Commission had determined the generic tariff for RDF based projects only and not for MSW projects. Therefore, the petitioner is entitled to the tariff determined by the Commission.*

*The petitioner has been injecting energy into the grid from the date of synchronization. It is entitled to interim tariff pending finalization of the tariff for the project by the Commission. Since, PPA is already entered, the petitioner is before the Commission seeking to obtain orders for tariff payable by the respondents. It is the case of petitioner that as the PPA provided for tariff to be determined by the Commission, the petitioner has no other alternative except to obtain orders of the Commission towards tariff. Also, as the PPA has already been entered the respondents is bound to honour the PPA and provisions made there of towards tariff payment for the energy delivered.*

*The petitioner sought to state that the project is conceived with reference to environmental issues and meeting had been taken by the GHMC on the issues being confronted by the project. To that effect it has relied on the minutes of the meeting conducted by the Greater Hyderabad Municipal Corporation. The petitioner also relied on the letter issued by the GHMC with regards to the project, as also the agreement entered between the TGREDCO and petitioner.*

*The petitioner relied on Central Electricity Regulatory Commission notified tariff regulation of 2024 for proposing the tariff as there is no tariff generically decided by the Commission subsequent to 01.04.2024. As the petitioner is injecting energy, for the present Commission may consider granting interim order at the existing tariff as on date of synchronization till the Commission decides the matter finally after due process of law and after due public consultation and examination of the parameters of the project.*

*The Commission pointed out that earlier it has refused to determine tariff where the PPA has not been approved by it in one or two instances. As such the case of the petitioner cannot be considered as the PPA is yet to be consented by the Commission. The petitioner stated that the project is based on bank funding, and it has to make payment for the loans availed. The Commission would be protecting its interest by granting the interim order in favour of petitioner to offset the financial difficulties faced by it.*

*The Commission also pointed out that the issue of fuel is not yet finalized and the commission is awaiting a report from the licensee towards its statement that the fuel being employed is MSW and not RDF. After receipt of the licensee's views, the PPA will be considered, and the matter will be taken up for consent. The petitioner pointed out that the issue of fuel and other parameters would come for consideration during the determination of tariff and not at this stage hence the Commission may consider the tariff petition and interim order to protect the interest of the petitioner.*

*Having heard the submission of the counsels of the petitioner the matter is reserved for orders.*

11. The petitioner has sought specific directions for determination of tariff in respect of the project having been established based on RDF as fuel under WTE project by invoking Section 86(1)(a), (e) read with Section 61, 62 and 64 of the Electricity Act, 2003 along with Article 2.2 of the PPA entered by it with TGSPDCL on 14.02.2024.

12. The prayers also include approval of fixed cost of Rs.2,335.39 crore, Rs.482.76 crore towards transportation of RDF with a levelized final tariff of Rs.15.87/kWh in respect of 14.5 MW WTE project.

13. The petitioner has raised several contentions in the petition detailing the requirement of project specific tariff as the project is established based on RDF as fuel and the plant is generating power since 03.03.2024, which came to light during the submissions made by the counsel for petitioner at the time of hearing of the petition on maintainability. In the submissions made towards the tariff determination vide present petition though the petitioner has raised and adverted to the parameters that are required to be considered for determination of tariff, yet the absence of specific provisions in the PPA this is yet to be consented these submissions cannot be considered.

14. At this stage the Commission notices that the distribution licensee had sought consent for the power purchase agreement vide petition filed on 26.02.2024. After examination of the material on record and in absence of tariff clause, the Commission could not proceed further and as it was about to take a decision the Commission

received a report from the distribution licensee about the fuel being used in the sister project as well as this project. It was opined therein that the petitioner is not using RDF but is only using MSW for generation of power. Based on the above report having examined the matter the Commission required the distribution licensee to spell out its stand from the managements side with regard to the usage of fuel. The said information is yet to see the light of the day by the Commission. Whilst thus this petition has been filed wherein the Commission had considered the aspect and decided to await the views of the management of the distribution licensee to expedite the hearing of the petition filed by it for determination of project specific tariff. The Commission having considered the request has placed the matter at the hearing table and heard the counsel for the petitioner as recorded and summarised in the paragraph supra.

16. At the time of hearing several facts came to light and few of the submissions ran contrary to the submissions made in the earlier matters. It is the case of the petitioner that the project PPA has been entered on 14.02.2024 and the project itself was synchronised to the grid on 01.03.2024. Generation of power was proceeded with and injunction of the same into the grid took place from 03.03.2024 and is continuing so.

17. It is stated that the generic tariff order of 2020 did not apply to the petitioner case for the reason that the tariff under the generic order was with reference to RDF as fuel-based power project and not MSW as fuel-based power project. Thus, the tariff order is inapplicable in case of the petitioner. Therefore, the parties to PPA have agreed that the tariff has to be determined by the Commission specifically for the project. Though it is stated initially the petitioner was agreeable for the generic tariff being applied, the TGSPDCL has not responded on the same. Hence it has not agreed to the same. Thus, the provision in the PPA came to be inserted.

18. During the course of hearing the counsel for petitioner emphasised that the project has been conceived as an environmental project and clearances have been obtained from the pollution control authorities. Also, it is his case that the GHMC sought to clarify regarding the material that is being sent to WTE plant. However, said letter dated 23.07.2024 of GHMC gave a picture that it is issuing a letter at the request of the petitioner.

19. The counsel for petitioner placed reliance on the decision quoted in 2022 (5) SCC 484 in the matter of Andhra Pradesh Southern Power Distribution Power Company Limited and Another Vs. Hinduja National Power Corporation Limited and Another. The said case involves generation of electricity through conventional fuel. From this judgement of the Hon'ble Supreme Court it is noticed that the distribution company which is appellant had at first instance approached the Commission for consent under Section 21(4) of the Andhra Pradesh Electricity Reform Act, 1998 and subsequently filed a interlocutory application before the appropriate Commission seeking to withdraw the petition for consent. Thus, the said set of facts are not present in the instant case. Further, in terms of the NTP the distribution licensee is bound to purchase the capacity established by the WTE plants. In that view of the matter the said judgment of the Hon'ble Supreme Court would not apply to present situation unless and until the PPA is consented by the Commission. Thus, the judgement does not aid the petitioner to the limited extent that the tariff be determined specifically for the project pending consent being accorded to the PPA. It is also worth mentioning that the observation relied upon by the petitioner would not also aid the petitioner for the reason the Hon'ble Supreme Court itself made it clear that the observations made therein are in the facts and circumstances of that case and not a general finding of law.

20. Reliance is placed on the orders of the other State Commissions, which are neither binding nor applicable to the facts and circumstances of the case. The said orders were specifically in the context of specific cases towards payment of tariff as such this do not aid the petitioner. Moreover, the orders of other Commissions are neither binding nor have precedent value for the reason that the same given by coordinate bodies. The orders referred to are of interim nature and at the most they are only of persuasive value. Hence, they need not be relied or discussed in the facts and circumstances of the case.

21. Be that as it may, the Commission had occasion to consider the issue of determining tariff or not in the absence of PPA. M/s Madhucon Sugar and Industries Limited had approached the Commission in O.P.No.09 of 2021. The Commission has observed as below:

“9. *Section 86(1)(b) of the Electricity Act, 2003 empowers the Commission to regulate electricity purchase and procurement process of distribution*



licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State. The petitioner's cogeneration power plant was commissioned on 20.10.2008 i.e., in FY2008-09 and eventually there exists the Commission already determined generic tariffs to the cogeneration plants which were commissioned during the period FYs 2004-09 for first 10 years of operation and subsequently for 11<sup>th</sup> to 20<sup>th</sup> years of operation vide orders dated 22.06.2013 and 05.08.2014 respectively.

10. Section 62 of the Electricity Act, 2003 empowers the Commission to determine tariff for supply of electricity by a generating company to a distribution licensee. The petitioner has requested the Commission for determination project specific tariff, without having PPA with the respondent. In the present case, there is disagreement between the petitioner and the respondent on the basis to be considered for tariff, let alone the non-existence of the Power Purchase Agreement (PPA). Such disagreements can be ironed out only if a PPA is executed between the parties. Tariff determination in the present case would be a futile exercise as there is no mutual consent of the parties for sale and purchase of electricity, in the form of PPA. In view of the same, the Commission does not find it appropriate to accept the petitioner's request to determine the project specific tariff in the absence of PPA.

13. The respondent being a distribution licensee is empowered to purchase required energy for distribution and retail supply in accordance with the regulations, guidelines, directions issued by the Commission from time to time, which shall further be subject to approval of the Commission. A power purchase agreement (PPA) contains provisions related to commercial, technical, tariff and other related matters and therefore it is the exclusive domain of the respondent to take decisions on entering into PPA for availing the required power. In the petitioner's case, the Commission finds that there is a fundamental disagreement between the petitioner and respondent on the capacity itself. Essentially what emerges from the submission is that the parties are seeking adjudication, without even having PPA between themselves, which is unwarranted. In light of the above, the petitioner's request to direct the respondent to enter into PPA with the petitioner is beyond the regulatory purview of the Commission and hence the Commission does not accept the same. The petitioner is at liberty to approach the respondent for execution of PPA, if it intends to sell power from its bagasse based cogeneration power plant."

In view of the finding and stand taken by the Commission, as the consent for PPA is still pending consideration with the Commission in the instant case, this petition filed by the petitioner is premature.

22. The petitioner sought to raise several other contentions which are irrelevant and are not being considered in view of the factual matrix and the legal position ascertained supra.

23. Since the original petition is being considered for final disposal the Interlocutory Applications relating interim tariff and expeditious hearing are not required to be considered. Hence the said interlocutory applications I.A.(SR) Nos.51 and 52 of 2024 stand refused. However, in so far as I.A.(SR) No.70 of 2024 is partially allowed to the extent as shown below:

*Existing -*

*“Petition filed seeking adjudication of a dispute in relation to the claims of line and bay maintenance charges imposed on the petitioner”*

*Substitute-*

*“Seeking determination of project specified tariff for supply of electricity from its 14.5 MW capacity refused derived fuel (RFD) based waste to energy (WTE) Plant”*

*Existing -*

*“Sri. Matrugupta Mishra Counsel for the petitioner along with Sri. Nipun Dave, Advocate and Sri. Mohammad Bande Ali, Law Attaché being the representative of the respondents have appeared in the matter”*

*Substitute-*

*“Sri. Matrugupta Mishra Counsel for the petitioner along with Sri. Nipun Dave, Advocate appeared for the petitioner”.*

Subject to the observations made above the said Interlocutory Applications stands disposed of.

24. For the reasons stated and observations made in the preceding paragraphs the Commission finds no merit to entertain this petition at this stage and accordingly the same is rejected at the stage of admission but in the circumstances with no costs.

**This order is corrected and signed on this the 14<sup>th</sup> day of October, 2024.**

Sd/-	Sd/-	Sd/-
(BANDARU KRISHNAIAH)	(M. D. MANOHAR RAJU)	(T. SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

**//CERTIFIED COPY//**