



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

I.A.No. 11 of 2025

IN

O. P. No. 26 of 2025

Dated 02.06.2025

Dr. Justice Devaraju Nagarjun, Chairman

Between

M/s. Dundigal Waste 2 Energy Pvt. Ltd

.... Petitioner

AND

M/s. Southern Power Distribution Company of Telangana Limited

.... Respondent

This interlocutory application has come up for hearing before the Commission on 25.04.2025. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

This petition is filed by M/s. Dundigal Waste 2 Energy Limited against respondent Southern Power Distribution Company of Telangana Limited (herein after read as TGSPDCL) seeking to allow interim tariff at Rs. 7.84/kWh from the date of injection of power i.e. 03.03.2024 from 14.5MW Refuse Derived Fuel (RDF) based project located at Dundigal, Medchal Malkajgiri District.

2. The contents of the petition in brief are as under:

- A. M/s. Dundigal Waste 2 Energy Private Limited is a company incorporated under the provisions of the Companies Act, 2013. It is a generating company within the meaning of section 2 (28) of the Electricity Act, 2003. The petitioner owns and operates

14.5MW (RDF) based Waste to Energy power plant at Dundigal, Medchal Malkajgiri District, Telangana. TGSPDCL has executed Power Purchase Agreement (herein after referred as PPA), with petitioner on 14.02.2024 for supply of electricity from the said 14.5 MW RDF based Waste to Energy plant at Dundigal. As per orders in O. P. No. 25 of 2024 this Commission has formally approved PPA executed on 14.02.2024. The petitioner has filed main petition in O. P. No. 26 of 2025 under Section 86 (1) (e) and Section 61, 62 and 64 of the Electricity Act, 2003 requesting the Commission to determine the project specific tariff for supply of electricity from the said project.

- B. The plant was synchronised with the grid on 01.03.2024 and with affect from 03.03.2024 the petitioner has been injecting the power from the said 14.5 MW plant. The petitioner has injected more than 100 million units of power until February, 2025 and has not received any consideration so far from the respondent. The petitioner has sought for grant of interim tariff under section 86 (1) (a) and 86 (1) (e) of Electricity Act, 2003 read with article 2.2 of PPA until project specific tariff is determined in O. P. No. 26 of 2025.

3. Respondent TGSPDCL has filed counter affidavit. The contents of the said counter affidavit in brief are that the Dundigal Waste to Energy Plant of the petitioner has been utilising Municipal Solid Waste (herein after called as MSW) as a fuel and not RDF as claimed by the petitioner, and since this Commission has passed orders on 13.06.2016 in O. P. No18 of 2016 fixing the Generic Tariff at Rs. 5.90/kWh for MSW based power plants, after deducting the tipping fee component of Rs. 3.54/kWh, the interim tariff be fixed of Rs. 2.36/kWh,

4. Heard Mr. Matrugupta Mishra, learned counsel for the petitioner and Mr. N. Sreedhar Reddy, learned counsel representing the respondent. Perused the record

5. Now, the point for determination is whether the interim tariff can be fixed at the rate of Rs. 7.84/kWh as sought for by the petitioner.

6. It is submitted by Mr. Matrugupta Mishra learned counsel appearing for the petitioner, that the petitioner is entitled for interim tariff as per section 86 (1) (a), 86 (1) (e) of the Electricity Act, 2003 read with article 2.2 of the Power Purchase Agreement dated 14.02.2024. He has further submitted that the determination of tariff is a lengthy process and that the petitioner has been injecting the power, which the respondent has been utilising since 03.03.2024 without any remuneration. He has also submitted that the petitioner has made substantial investments in the plant and grant of interim tariff is crucial for financial viability of the project and that in case if the interim tariff is not granted, it may likely to lead to financial distress of the petitioners company and it will also erode the confidence of the investors in the power sector in the state of Telangana. He has further submitted that grant of interim tariff also ensures continued operation of the plant which will not disrupt in the management of the waste disposal thereby upholds public interest.

7. Learned counsel for the petitioner has further submitted that Electricity Regulatory Commissions of Haryana and Chattisgarh have recognised need for interim tariff in similar circumstances and accordingly interim tariff was fixed. The petitioner has quoted the order passed by the Haryana Electricity Regulatory Commission in case No. 54 of 2022, dated 20.10.2022 and orders passed by the Chattisgarh Electricity Regulatory Commission in petition No. 22 of 2021 and 42 of 2018, 15 of 2016, 26 of 2019 of Haryana Electricity Regulatory Commission. He has further submitted that the tariff order dated 18.04.2020 in O. P. No. 14 of 2020 can be the basis of interim tariff, wherein this Commission has determined generic tariff of Rs. 7.84/kWh for RDF based power plant.

8. Mr. N. Sreedhar Reddy, learned counsel representing the respondent on the other hand submits that the orders passed by this Commission in O. P. No. 14 of 2020 dated 16.04.2020 cannot be the basis for fixation of the interim tariff, since the said tariff was fixed assuming that RDF based fuel is being used in the plant, however the petitioner has not being using RDF based fuel instead using Municipal Solid Waste (MSW) for generating the power. He has further submitted that, this Commission in O. P. No. 18 of 2016 has fixed generic tariff at Rs. 5.90/kWh for the

plants utilizing the Municipal Solid Waste (MSW), thereby the said tariff can be taken as basis of fixation of interim tariff. Learned counsel has further submitted that even out of Rs. 5.90/kWh fixed for MSW based plants, Rs. 3.54/kWh has to be deducted towards tipping fee and thereby sought for fixation of interim tariff at the rate of Rs. 2.36/Kwh.

9. Prior to adverting to the rival submissions let me examine relevant statutory provisions empowering the Commission to determine the tariff and the contractual obligations between the parties as per the PPA dated 14.02.2024 in respect of fixation of interim tariff.

Relevant portions of section 86(1) of the Electricity Act, 2003 runs as under:

“Section 86 (1) The state Commission shall discharge the following functions, namely:-

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State.

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

Section 86 (1)(b) [.....]

Section 86 (1)(c) [.....]

Section 86 (1)(d) [.....]

Section 86 (1)(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;

Above provisions mandate this Commission to determine the tariff for generation, supply and transmission etc. and to promote the generation of electricity from renewable sources.

10. Section 61 of the Electricity Act mandates this Commission to specify the terms and conditions for determination of tariff on the basis of certain guidelines mentioned therein. Section 62 of the Act gives the power to this Commission to determine the tariff in accordance with the provisions of the Electricity Act, 2003, for

supply of electricity by generating company. Similarly, Section 64 of the Electricity Act speaks about the procedure for determination of tariff under section 62.

11. There is no dispute that both the parties have entered into Power Purchase Agreement (PPA) on 14.02.2024 in respect of power generated by the petitioner in 14.5 MW plant located at Dundigal, Medchal Malkajgiri District.

The relevant portion of Article 2.2 of the PPA of 14.02.2024 read as under:

“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 fact in the counter affidavit the respondent has also admitted that both the parties have agreed interim tariff to be determined by this Commission. Therefore, the provisions of the Electricity Act, 2003 and recitals of PPA dated 14.02.2024 enables this Commission to determine interim tariff.

12. In respect of the to be considered by this Commission while taking up the application for determination of interim tariff, the learned counsel appeared for the **petitioner has submitted an authority of the Hon’ble Supreme Court of India decided in case between the *BSES Ltd vs Tata Renewable Company Limited* reported in (2004) 1 SCC 195, the relevant paragraph No. 26 of judgement is extracted hereunder.**

“An interim arrangement is normally made on a prima facie consideration of the matter and on broad principles without examining the matter in depth. The matter has been remitted to the Commission by the High Court by the judgement and order dated 03.06.2023 and a period of nearly three-and-a-half months has already elapsed. Regulation 101 of the Central Electricity Regulatory Commission provides that the Commission may normally dispose of the petitions finally within six months of admission. The State Commissions are also expected to follow this time-limit for disposal of petitions. Since the order made by the High Court is only by way of interim arrangement and the Commission is expected to decide the disputes finally within a short period, we do not consider it proper to interfere with the order made by the High Court in this regard. After the decision of the Commission, the equities can be adjusted and the excess amount paid by any party can be refunded to it along with appropriate interest or can be adjusted in future bills.”

Therefore, Hon'ble Apex Court has observed that an interim arrangement can be made basing on *prima facie* considerations and in depth examining of the matter is not required and that equities can be worked out in future.

13. The petitioner has filed main O.P. No. 26 of 2025 for determination of project specific tariff @ Rs. 15.87/kWh. In this interlocutory application this Commission has to determine appropriate, reasonable and fair interim tariff, prior to determination of final tariff under section 62 of the electricity Act, which may likely to take longer time. The petitioner though has claimed Rs. 15.87/kWh as project specific tariff in the main petition, he has sought for Rs. 7.84/kWh as interim tariff. The respondent while quoting the orders of this Commission fixing the tariff of Rs. 5.90/kWh in O.P. No. 18 of 2016, for MSW fuel plants, has prayed this Commission to deduct Rs. Rs. 3.54/kWh towards tipping fee and to fix Rs. 2.36/kWh as interim tariff.

14. As observed above at the time of determination of interim tariff this Commission need not go in detail of the factors that determine the tariff, which will be considered by this Commission at the time of determination of final tariff. The main objection of the respondent in respect of the claim of petitioner in respect of interim tariff is that the petitioner has not been using the RDF based fuel for generating the electricity there by the interim tariff cannot be fixed at Rs. 7.84/kWh, as fixed by this Commission in O. P. No. 14 of 2020. The second objection of the respondent is that while considering the interim tariff the tipping fee has to be deducted.

15. It is true that the Rs.7.84/kWh has been fixed by this Commission in O. P. No. 14 of 2020 dated 18.04.2020 considering that the fuel being used in the project is RDF based. However, at this stage of determination of interim tariff, the question as to the nature of fuel that is being used by the petitioner for generation of power, need not be gone into. The issue as to whether the petitioner has been using the RDF based fuel or MSW based fuel will be determined only at the time of consideration of main petition if necessary by appointing an expert committee. Therefore, while considering quantum of interim tariff the issue of nature of fuel being used by the generator need not be gone into.

16. In respect of tipping fee, this Commission while passing the orders in O. P. No. 14 of 2020, dated 18.04.2020 has observed as under:

a. 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.

b. The Tipping Fees shall be reimbursed to the Distribution Licensee(s) on receipt of the same by the Generator under the provisions of its Concession Agreement.

On perusal of the above order, it is clear that this Commission has not considered the request of the respondent DISCOMs to deduct the tipping fee while determining the tariff and has fixed the tariff at Rs. 7.84/kWh. However, this Commission has directed the generator to reimburse the tipping fee to the DISCOMs on receipt of the same under the provisions of its concession agreement.

17. Aggrieved by the orders of this Commission in respect of reimbursement of tipping fee, the generator has preferred an appeal before the APTEL and same is pending for consideration before the APTEL in Appeal No. 617 of 2023. Therefore, as long as the decision of this Commission in O. P. No. 14 of 2020 dated 18.04.2020 is not reversed by APTEL in Appeal No. 617 of 2023, the contention of the Respondent to deduct tipping fee while determining the interim tariff cannot be accepted.

18. The Interim tariff has to be decided in such manner so that it shall not be so high which may be close or equal to that of the final tariff claimed by the petitioner. At the same time, it shall also not be so less so that the respondent DISCOM shall not be burdened with huge backlog of arrears once final tariff is decided. The other aspect to be kept in mind while considering the grant of interim tariff is that the petitioner has been injecting the power to the respondent for more than one year, however without receiving any remuneration. The interim tariff to be determined shall be less than the project specific tariff claimed by the petitioner at Rs.15.87/kWh.

19. As referred supra the Hon'ble Supreme Court has held in **BSES Ltd vs Tata Power Co. Ltd and others** that the interim arrangements required to be made on a prima facie considering the matter on broad principles without examining the matter in depth. The learned counsel for the petitioner has cited order of the Central Electricity Regulatory Commission (CERC) order in Application No. 11 of 2000 in Petition No. 19 of 2000 order dated 26.04.2000 wherein the CERC has observed as under:

"After considering the facts on record and submissions made by the representatives of the parties present at the hearing, we find that it would be just and fair to allow the petitioner to raise bills for the system which is already under commercial operation and is being utilised by the beneficiaries. However, the claim of the petitioner to 100% of the tariff does not seem to be justified because the entire project cost has not yet been spent and according to petitioner's own admission a sum of Rs.100 lakhs is yet to be spent by 31.3.2001. Similarly, the contention of some of the respondents that only 80% charges be allowed for the time being is not justified. It has been stated that payment over and above 80% will cause undue financial hardship to the respondent. We are not convinced by this argument advanced on behalf of the respondents for the reason that they are making full use of the system which is already in commercial operation. Even otherwise, it would add to huge arrears that would be against the interests of the beneficiaries themselves as also the petitioner. Therefore, we direct that the respondents shall pay 90% of the tariff claimed by the petitioner in this petition on provisional basis subject to adjustments of tariff, as may be finally determined by the Commission, though the petitioner is at liberty to raise the bills for the full amount calculated and claimed by it."

20. Finally, the interim tariff being fixed by this Commission is only a stop-gap arrangement, so that the generator will get some reasonable and fair remuneration for the power that is being injected by him. This interim tariff will merge into final tariff and the final tariff will be implemented from the date of injection of power. If the orders of the CERC are taken into consideration the interim tariff can be fixed upto 90% of the main tariff sought for. As already observed though the petitioner has sought for Rs.15.87/kWh the interim tariff sought for is Rs. 7.84/kWh, which is 49.40% of the main tariff claimed by the petitioner. Therefore, taking into consideration of the observations of the Apex Court and the interim orders of the CERC the interim tariff can be fixed as sought for by the petitioner.

21. Considering the discussions made above, taking into totality of the circumstances this Commission is of the opinion to fix interim tariff at Rs. 6.87/kWh which will have to be paid by the DISCOM from the date of injection i.e. 03.03.2024 until determination of final tariff subject to adjustments of tariff finally determined by the Commission.

This order is corrected and signed on this the 2nd day of June, 2025.

Sd/-

(Dr. JUSTICE DEVARAJU NAGARJUN)

CHAIRMAN

//CERTIFIED COPY//

