



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

O. P. No. 24 of 2025

And

I. A. No. 7 of 2025

Dated 12.03.2025

Present

Dr. Justice Devaraju Nagarjun, Chairman

Between:

M/s. Hyderabad MSW Energy Solutions Pvt. Ltd.

Level 11B, Aurobindo Galaxy, Hyderabad Knowledge City,
HITECH City Road, Hyderabad, Telangana-500081.

...Petitioner

AND

Southern Power Distribution Company of Telangana Ltd.

Corporate Office, 6-1-50,

5th Floor, Mint Compound, Hyderabad, Telangana - 500 063.

...Respondent

This petition came up for hearing on 24.02.2025 and 12.03.2025. Sri. Matrugupta Mishra being the counsel for the petitioner has appeared for the petitioner on 24.02.2025 and on 12.03.2025. Sri. Avinash Desai senior advocate along with Sri. Nipun Dave counsel for petitioner appeared on 12.03.2025. Sri Mohammad Bande Ali, law attaché appeared on behalf of the respondent on 24.02.2025 and 12.03.2025. Sri V. Prabhakar, Chief Engineer (IPC), TGSPDCL was also present at time of hearing on 12.03.2025. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

The present petition is filed by M/s. Hyderabad MSW Energy Solutions Private Limited. (petitioner) under sections 86 (1) (b), 86 (1) (e) and 86 (1)(k) of the Electricity Act, 2003 (Act, 2003) and clause No. 3 (7) read with clause No. 11 of the Renewable Power Purchase Obligation (Compliance by Purchase of Renewable Energy / Renewable Energy Certificates) Regulations, 2022 (RPPO Regulation No. 7 of 2022) seeking directions to Southern Power Distribution Company of Telangana Limited (respondent DISCOM) for appropriate direction(s), in a time bound manner, including but not limited to execution and / or approval of a power purchase agreement (PPA) with the petitioner for purchase of power from its Unit - 2 (Phase II) of 24 MW refused derived fuel (RDF) based power plant.

The contents of the Petition in brief are as under:

- A). The Petitioner is a company incorporated under the provisions of Companies Act, 2013 and is a generating company within the meaning of section 2 (28) of the Act, 2003.
- B). The respondent 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 licensed area. The petitioner's plant is falling within the licensed area of the respondent.
- C). The Petitioner has successfully commissioned its first unit of waste to energy plant with 19.8 MW RDF based power plant on 20.08.2020 and has been supplying power to the respondent since then as per the terms of the PPA dated 19.02.2020 at a tariff of Rs. 7.84 / KWh in terms as per the suo-moto order dated 18.04.2020 passed by the Commission.
- D). The petitioner has established its second unit, a 24 MW (expanding capacity from 24 MW to 48 MW) RDF-based power plant, which is strategically located adjacent to its existing first Unit by following strict compliance with the mandated guidelines and after securing all necessary sanctions and approvals from various state authorities.
- E). On 02.11.2022, respondent / TGSPDCL has addressed a letter to the petitioner along with the draft PPA for purchase of power from the 24 MW RDF-based power

project under Phase-II of the petitioner's power project and requested the petitioner to sign the draft PPA along with the required documents stipulated in the letter. In response to the communication dated 02.11.2022, petitioner sent a reply dated 14.11.2022 to the respondent / TGSPDCL proposing certain changes in the draft PPA. On 16.03.2023, the petitioner sent another communication to the respondent requesting the update on the status of the modifications proposed to the draft PPA by the petitioner. The respondent / TGSPDCL sent communication dated 20.03.2023 to the petitioner along with the revised draft PPA stating that proposals made by the petitioner vide communication dated 14.11.2022 for modification in the draft PPA are not necessary except for modification sought in Article 6.7, Article 9 & Article 13 of the draft PPA. The petitioner shared revised proposal to the draft PPA and requested the respondent to call for meeting to discuss and finalize the PPA to mutual agreement at the earliest to achieve Financial Closure and quickly commission the project.

F). The respondent / TGSPDCL sent another communication dated 21.05.2024 to the petitioner stating that the validity of the suo moto generic tariff order dated 18.04.2020 issued by the Commission expired on 31.03.2024 and proposed for signing of the draft PPA in line with agreement executed in the case of M/s. Dundigal waste 2 Energy Private Limited that is on project specific tariff to be determined by the Commission along with other parameters such as tipping fee, normative plant load factor (PLF) and others. Further, the respondent/ TGSPDCL has requested the petitioner to confirm its acceptance to arrange 'draft PPA' in respect of the project.

G). In response to the communication by the respondent / TGSPDCL dated 21.05.2024, the petitioner sent a communication dated 27.05.2024 submitting that it accepts the proposal for signing the draft PPA in line with agreement executed with M/s. Dundigal waste 2 Energy Private Limited, with project specific tariff to be determined by the Commission along with other parameters. The petitioner requested the respondent to arrange revised draft PPA for its review, concurrence and execution.

H). On 23.09.2024 and on 18.12.2024, the petitioner has addressed letters to the respondent / TGSPDCL reiterating that most of the work is completed and is due synchronisation by March, 2025 and requested for mutual discussions and execution of the PPA.

2). The petitioner has finally prayed as under:

To direct the Respondent Discom to take all necessary actions in a time bound manner, including the expeditious execution and/or for approval of the Power Purchase Agreement, to ensure the procurement of power from the Petitioner's 24 MW RDF-based power project under Phase-II/Unit-2, in compliance with Regulation 3(7) of the Renewable Power Purchase Obligation (RPPO) Regulations, 2022, and to prevent any risk of the project becoming a stranded asset post-commissioning;

3). The respondent / TGSPDCL has filed its counter affidavit, the content of which in brief are as under:

a) On receipt of the proposal from the petitioner, the request of the developer was considered and acceptance was communicated to petitioner, vide letter dated 02.11.2022 for signing the PPA towards procurement of power from their proposed Phase-II RDF based power project, keeping in view the provisions of NTP and also TGERC RPPO Regulation, 2022.

b) However, the Respondent / TGSPDCL has considered it appropriate to assess the capacity as well as fuel to be utilized in the upcoming plant, keeping in view the findings of the Commission issued vide order dated 30.10.2023 in O.P (SR) No. 116 of 2022, which is extracted below –

"12. The Petitioner ought to have verified all the aspects before executing a draft amendment to the PPA and approaching the Commission for obtaining its consent. In the absence of concrete specific stand of the Petitioner (TGSPDCL) as to the capacity and fuel, the Commission cannot consider the pray of the petitioner for according consent to the amendment PPA for enhanced capacity"

c) An inspection team was appointed consisting of officials from TGSPDCL and also a member from TGREDCO to verify all the aspects including capacity and fuel to be utilized at the plant. The report dated 18.01.2025 was furnished by the team with the following findings pertaining to Phase-II 24 MW power project of HMESPL:

- a) The upcoming plant is proposed in the same premises of the existing Phase-1 19.8 MW power plant;
 - b) The fuel being utilised in the existing Phase-1 19.8 MW plant is proposed to be utilized in upcoming Phase-II plant as well;
 - c) The fuel being utilized in the existing plant is assessed as not be RDF but segregated MSW of size > 70 mm;
 - d) The list of main equipment, auxiliary equipment is not available even with the representatives of under construction power plant and existing power plant. The capacities / details of the equipment are also not available;
- d) Without prejudice to the rights of the respondent / TGSPDCL, it is proposed to sign the draft PPA with the petitioner suitably modifying the agreement reflecting the power plant as MSW instead of RDF, considering the conclusions of the inspection report.
- e) The petitioner has filed a rejoinder stating that the respondent seeks to mischaracterize the fuel as municipal solid waste (MSW), when in fact, the facility of M/s HIMSW (a sister company) which processes and provides RDF) derived after extensive mechanical processing, in compliance with CPCB guidelines and CPHEEO's manual on solid waste management. It is also mentioned that the RDF utilized for power generation at unit - I of HMESPL as corroborated by independent inspections carried out by Jawaharlal Nehru Technological University (JNTU), Greater Hyderabad Municipal Corporation (GHMC), in line with the approval accorded issued by TGREDCO.
4. Heard Mr. Avinash Desai, learned Senior Counsel along with Mr. Nipun Dave, Advocate appearing for the petitioner and Mr. Mohammad Bande Ali, law attache representing the respondent. Perused to the record including material filed by both sides.
5. The point to be considered is whether the direction as sought for by the petitioner can be granted to the respondent / DISCOM.

6. There is no dispute that the petitioner M/s. Hyderabad MSW Energy Solutions Pvt. Ltd a company incorporated under Companies Act, 2013 has been generating 19.8 MW electricity within the meaning of Section 2 (28) of the Electricity Act, 2003, allegedly by using RDF as a fuel and is supplying the power to the respondent DISCOM. In fact, it is the respondent TGSPDCL which has addressed letter to the petitioner generating company to execute the PPA. Subsequently lot of correspondence exchanged into between the petitioner and the respondents DISCOM on many aspects. Ultimately the proposal of the respondent DISCOM to sign a PPA in line with PPA executed on 18.04.2020 for supply of 19.8 MW of power was accepted.

7. Even though the respondents DISCOM has initially agreed to sign the PPA considering the fuel being used as RDF, it is only on account of this commission's directive with regard to nature of fuel, the respondent DISCOM has raised objection with the petitioner. This aspect has actually gained importance on account the fact that the fuel being used will make difference in respect of tariff.

8. As rightly submitted by learned senior counsel appearing for the petitioner, this Commission has considered similar issue while deciding O. P. No. 25 of 2024 on 01.03.2020 and observed as under.

“14. The issue as to which fuel is being used for generating the electricity has attained significance, as this Commission as per the orders dated 18.04.2020 for the period FY 2020-21 to FY 2023-24 has decided Rs. 7.84/- per kWh as the generic tariff, if RDF is used as fuel to generate power. Thereby, if the fuel being used is not RDF the generator is not entitled for Rs. 7.84/- per kWh.

15. Infact the issue of use of fuel for generating power is actually debated out of proportion in this petition which is filed for giving consent for PPA. The debate as to whether generator uses the RDF as fuel to generate power will not arise in case if the generator is not seeking for generic tariff.”

9. In view of the above, since both the parties have agreed to determine tariff under section 62 of the Electricity Act, the nature of the fuel being used for generating electricity is not that significant at this point of time of execution of PPA.

10. Therefore, now it is to be considered whether this Commission can direct the respondent DISCOM to execute the PPA. At the first place as already observed, it is the respondent DISCOM which has proposed the petitioner to execute PPA in the present form. When the respondent DISCOM has sought for certain modifications in respect of fuel being used to generate the electricity. The petitioner has accepted the same and agreed to modify the nature of the fuel being used as RDF/MSW. Therefore, in principle the respondent shall not have any objection to sign the PPA after proposed modifications.

11. In addition, to that Mohammad Bande Ali, law attaché has submitted that as per the Power Purchase Agreement the generator has mentioned that RDF is being used to generate the power, whereas according to his instructions received from TGSPDCL the generator is not using the RDF instead MSW is being used as fuel, thereby, the TGSPDCL has objections in signing the PPA in the present form. On the contrary, the learned senior counsel appearing for the petitioner has submitted that the fuel being used is only RDF and not MSW. Since, the tariff in respect of the proposed PPA will be decided by this Commission by following the procedure under section 62 of the Electricity Act 2003, the question as to the nature of the fuel being used to generate the electricity is not really matters at this point of time. However, since the DISCOM has raised the objection Mr. Avinash Desai, Senior Advocate has submitted after consulting his clients that the respondent is agreeing to modify the draft PPA by substituting as RDF or MSF instead of RDF so that either the RDF or MSW can be used for generating the electricity.

In addition, to the above paragraph 6.4 of the National Tariff Policy, 2016 (NTP), mandates that the distribution licensee(s) shall compulsorily procure 100% power produced from all the WTE plants in the state. The policy made under section 3 of the Act, 2003 is a statutory policy and it has been observed by the Hon'ble APTEL as well as the Hon'ble Supreme Court of India that such policy being made in exercise of power under section 3 of the Act, has statutory flavour. In the absence of a contrary

provision made by a regulatory commission, such mandate under the policy is binding on the state Commission. However, in the present scenario, the Commission has laid down the mandate of law under clause No. 3 (7) of RPPO Regulations, 2022 for procurement of power from the WTE plants in the state.

Further, clause 3 (7) of the RPPO Regulations 2022 notified by the Commission 04.04.2022. is reproduced herein below:

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."

As also, clause 11 of the RPPO Regulations 2022 as extracted below, empowers the Commission to issue directions for implementation of any regulations thereunder.

"11. Power to issue directions

(1) The Commission may, from time to time, issue order and practice directions in regard to the implementation of this Regulation and procedures to be followed."

12. It is pertinent to mention that the Hon'ble Supreme Court vide its judgement dated 02.01.2025 in Civil Appeal No. 7463-7464 of 2023 has reiterated the larger public interest nature of WTE projects in disposing huge quantities of waste generated in our cities, inter-alia, as under:

48. In our view, there is no inconsistency between the provisions of Section 63 of the Act and Rule 15 of the SWM Rules 2016. The provisions of Rule 15 of the SWM Rules 2016, which are enacted under the Environment (Protection) Act, 1986, mandate the appellant to undertake WTE project(s).

49. It can thus be seen that insofar as the WTE projects are concerned, the provisions under the Act will have to be read in addition to the provisions under Rule 15 of the SWM Rules 2016 and not in derogation thereof.

50. Apart from that, Rule 6.4 of the Tariff Policy, which is notified in compliance with the mandate of Section 63 of the Act, the distribution licensees are mandated to compulsorily procure 100% of the power produced from all the WTE plants in the State in the ratio of their

procurement of power from all sources including their own. Not only that, the Appropriate Commission is also required to provide suitable regulatory framework for encouraging such other emerging renewable energy technologies.

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56. The APTEL also failed to take into consideration that the WTE project in question was in the larger public interest thereby providing for disposal of the huge quantity of waste generated in the city of Delhi."

13. In view of the factual aspects referred above, the National Tariff Policy of 2016 clause 3 (7) of RPPO obligations 22 of this Commission and on considering the judgement of the Hon'ble Supreme Court of India in Civil Bill No. 7463 – 7464 of 2023, dated 02.01.2025, this Commission is of the view that the petitioner be directed to execute the PPA after making the modifications as directed above.

14. In the result, petition is allowed, in part and the petitioner is directed to revise the draft PPA duly modifying the nature of fuel as RDF or MSW and submit the same to the respondent DISCOM and within a period of 4 weeks thereafter the respondent DISCOM is directed to execute the PPA and submit the copy of the same to the Commission.

15. All other miscellaneous applications pending in the above petition stands closed.

This order is corrected and signed on this the 12th day of March, 2025.

Sd/-

(Dr. JUSTICE DEVARAJU NAGARJUN)
CHAIRMAN

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