# TELANGANA STATE ELECTRICITY REGULATORY COMMISSION

**5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004**

**O.P.No.73 of 2022**
**and**
**I.A.No.56 of 2022 &**
**I.A.No.57 of 2022**

**Dated 02.01.2024**

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

Between:

M/s Hyderabad MSW Energy Solutions Private Limited,
Level 11B, Aurobindo Galaxy, Hyderabad Knowledge City,
Hitech City Road, Hyderabad 500 081. ... Petitioner

AND

1. Southern Power Distribution Company of Telangana Limited.,
   Corporate Office, H. No.6-1-50, 5th Floor, Mint Compound,
   Hyderabad – 500 063.
2. Telangana State Power Coordination Committee, TSPCC,
   Vidyut Soudha, Khairatabad, Hyderabad, Telangana – 500 082.
3. Transmission Corporation of Telangana Limited, Vidyut Soudha,
   Khairatabad, Hyderabad, Telangana – 500 082.

… Respondents
*(Respondent Nos.2 and 3 are deleted by the Commission)*

The petition came up for hearing on 21.11.2022, 12.01.2023 and 04.04.2023. Sri Matrugupta Mishra, Advocate alongwith Ms. Ishita Thakur, Advocate for petitioner appeared on 21.11.2022, Ms. Ishita Thakur, Advocate representing Sri Matrugupta Mishra, counsel for petitioner appeared on 12.01.2023 and Sri Avinash Desai, Senior Advocate alongwith Sri Matrugupta Mishra, Advocate and Ms. Ishita Thakur, Advocate for petitioner appeared on 04.04.2023. Sri Mohammad Bande Ali, Law Attaché for respondent appeared on 21.11.2022, 12.01.2023 and 04.04.2023 and the matter

having been heard and having stood over for consideration to this day, the Commission passed the following:

**ORDER**

M/s Hyderabad MSW Energy Solutions Private Limited (petitioner) has filed a petition under Section 86(1)(f) and (k) of the Electricity Act, 2003 (Act, 2003) read with clause in the power purchase agreement (PPA), seeking directions to the respondent in respect of billing under PPA and reimbursement of the excess deduction made towards import charges. The averments in the petition are extracted below:

a. It is stated that the present petition is being preferred by petitioner for adjudicating upon the disputes arising with M/s Southern Power Distribution Company of Telangana Limited (respondent No.1/TSSPDCL) relating to the capping imposed by the latter on procurement of power in violation of the provisions of the PPA dated 19.02.2020 executed between the petitioner and respondent No.1. The tariff for the sale of power under the said PPA is in accordance with the generic tariff order dated 18.04.2020 issued by the Commission in O.P.No.14 of 2020 (tariff order).

b. It is further stated that the petitioner is aggrieved by the excess import charges deducted by respondent No.1, hence, the petitioner is seeking the indulgence of the Commission for declaration of such deduction as wrongful and prays for reimbursement of the same.

c. It is stated that the petitioner is a company incorporated under the provisions of the Companies Act, 2013 and is a generator within the meaning of Section 2(28) of the Act, 2003. The petitioner has set up and operates a 19.8 MW refuse derived fuel (RDF) based waste to energy (WtE) plant at Jawaharnagar, Hyderabad in the State of Telangana.

d. It is stated that the respondent No.1 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 a license by the Commission for carrying on the business of distribution and retail supply of electrical energy within its area of operation. The respondent No.1 is a statutory company constituted under Section 23 of the A.P. Electricity Reform Act, 1998.

e. It is stated that the Telangana State Power Coordination Committee (respondent No.2 TSPCC) is the State body which manages the purchase of power on behalf of the DISCOMs, in the State of Telangana. It is stated that the Transmission Corporation of Telangana Limited (respondent No.3) (TSTRANSCO) is the State Transmission Utility of the State of Telangana, which is entrusted with the task of planning, constructing and maintaining the transmission network in the State of Telangana.

f. It is stated that a PPA was executed between the petitioner and respondent No.1 on 19.02.2020 for the purchase of power generated from the 19.8 MW RDF based power project located at Jawaharnagar village, Hyderabad at the tariff determined by the Commission. The PPA was duly approved by the Commission vide its order dated 02.06.2020.

g. It is stated that clause 1.9 of the PPA defines the 'contracted capacity' to mean the integrated municipal solid waste management (IMSWM) with a capacity of 19.8 MW contracted with DISCOM for supply by the company to the DISCOM at the interconnection point. While clause 1.10, defines 'delivered energy' as the kilo Watt hour (kWh) of electrical energy generated by the project and delivered to the respondent at the interconnection point. Clauses 1.9 and clause 1.10 of the PPA are extracted herein below for the ready reference of the Commission:

*"1.9 "Contracted Capacity" means an integrated municipal solid waste management with a capacity of 19.8 MW contracted with DISCOM for supply by the company to the DISCOM at the interconnection point from the project and same shall not be more than the installed capacity. Contracted capacity shall be in MW measured in alternate current (AC) terms and shall not change during the tenure of this agreement.*

*"1.10 "Delivered Energy" means with respect to any billing month, the Kilo Watt hours (kWh) of electrical energy generated by the project and delivered to the DISCOM at the interconnection point, as defined in clause 1.18 and as measured by the energy meters at the interconnection point during that billing month at the designated substation of TSTRANSCO or the DISCOM;*

*Explanation 1: For removal of doubts, the delivered energy, excludes all energy consumed in the project, by the main plant and equipment, lighting and other loads of the project from the energy generated and as recorded by the energy meter at interconnection point.*

*Explanation 2: The delivered energy in a billing month shall be*

*limited to the energy calculated at 100% PLF of net exportable capacity that is after deducting capacities for auxiliary consumption from the installed capacity as mentioned in this agreement for sale to DISCOM, based on the contracted capacity in kW multiplied with number of hours and fraction thereof, the project is in operation during that billing month. Whenever generation exceeds by installed capacity such energy delivered into the grid by the project above 100% PLF during such period shall be considered payment or otherwise in terms of the rules and regulations in vogue.*

*Explanation 3: The delivered energy shall be purchased by the DISCOM at a tariff for that year stipulated in Article 2.2 of this agreement."*

Accordingly, 'interconnection point' has been defined under clause 1.18 as under:

*"1.18 "Interconnection Point" means the point or points where the project and the TSTRANSCO/DISCOM's grid system are interconnected at designated TSTRANSCO/DISCOM substation. The metering for the project will be provided at the interconnection point as per Article 4.1;*

*Explanation: In case of power projects based on waste to energy (RDF based) the interconnection point will be at designated TSTRANSCO/ DISCOM substation, based on voltage level of evacuation."*

h. It is stated that the amount due for payment under the PPA had to be made in terms of the delivered energy supplied during a billing month becomes due for payment. The 'Due Date of Payment' has been prescribed under clause 1.12 as follows:

*"1.12 "Due Date of Payment" means the date on which the amount payable by the DISCOM to the company hereunder for delivered energy, if any, supplied during a billing month becomes due for payment, which date shall be thirty (30) days from the date of invoice. If the bill is received after 5 days of metering date in a particular month, the due date shall be reckoned from the date of receipt of invoice. In the case of any supplemental or other bill or claim, if any, the due date of payment shall be thirty (30) days from the date of the presentation of such bill or claim to the designated officer of the DISCOM/TSTRANSCO."*

i. It is stated that the plant load factor (PLF) has also been defined in the PPA, under clause 1.22, to mean as follows:

*"1.22 "Plant Load Factor (PLF)" means the ratio of total kWh (units) of power generated by plant in a tariff year, as decided by TSERC and contracted capacity in kW multiplied with number of hours in the same tariff year."*

j. It is stated that the 'Tariff Year', under clause 1.33, means each period of the twelve months commencing from the commercial operation date (COD) of the

project. It is stated that for the purposes of the billing under the present PPA, the tariff month is reckoned as the 21st day of the current month to the 21st day of the next month. Further, the tariff year as per provisions of PPA is reckoned as the billing month of August of the current year to billing month of July of the next year.

k. It is stated that the purchase of energy and tariff has been dealt with under Article 2 of the PPA, wherein clause 2.1 states that after the date of commercial operation of the project, all the delivered energy at the interconnection point for sale to respondent No.1 will be purchased by it, at the tariff provided for in clause 2.2. clause 2.1 is being reproduced herein below for the ready reference of the Commission:

*"Article-2*
*Purchase of Delivered Energy and Tariff*

*2.1 All the delivered energy at the interconnection point for sale to DISCOM (net capacity) will be purchased at the tariff provided for in Article 2.2 from and after the date of commercial operation of the project. Title to delivered energy purchased shall pass from the company to the DISCOM at the interconnection point."*

l. It is stated that clause 2.2 stipulates that the tariff for the net energy delivered at the interconnection point for sale to DISCOM at the tariff as determined by the Commission, from time to time. Clause 2.2 has been extracted herein below:

*"2.2 The Company shall be paid the tariff for the net energy delivered at the interconnection point for sale to DISCOM at the tariff as determined by TSERC from time to time. No tariff will be paid for the energy delivered at the interconnection point beyond contracted capacity. The orders of TSERC are enforceable in entirety and shall be considered for the purposes of computation of tariff."*

It can be inferred from the above that respondent No.1, vide the prescriptions made under clause 2, after the commercial operation date (COD) of the project, was obligated to purchase "all the delivered energy at the interconnection point" at the tariff as determined by the Commission from time to time.

m. It is further stated that under clause 2.4(a), respondent No.1 was entitled to bill the petitioner when, in any billing month, the petitioner drew energy, from the grid of respondent No.1 restricted to its auxiliary consumption. This billing was to be done as per the applicable tariff to High Tension Category-I (HT–I)

consumers as determined by the Commission from time to time. Clause 2.4(a) has been extracted herein below:

*"2.4 No transmission or wheeling charges or other charges or assessments charges shall be levied by the TSTRANSCO/DISCOM on purchased energy.*

*a) Where in any billing month, the company is entitled to draw the energy from DISCOM/TSTRANSCO grid restricted to its auxiliary consumption during shut down periods, maintenance periods and plant tripping periods only. The company shall not draw any power from DISCOM/TSTRANSCO during plant running period. The contracted load of the plant shall be taken as the auxiliary consumption that is, 11 % of installed capacity for RDF based projects. The energy supplied by the DISCOM to the company, shall be billed by the DISCOM and the company shall pay the DISCOM for such electricity supplies, at the DISCOM the then-effective TSERC applicable tariff to high tension category-I consumers as determined by TSERC from time to time."*

n. It is stated that the payment mechanism has been laid down in clause 6. The relevant sub-clauses have been extracted herein below:

*"6.1 For delivered energy purchased, the company shall furnish a bill to the DISCOM calculated at the rate provided for in Article 2.2, in such form as may be mutually agreed between the DISCOM and the company, for the billing month on or before the 5$^{th}$ working day following the metering date.*

*6.2 Any payment made beyond the due date of payment, the DISCOM shall pay simple interest at prevailing base prime lending rate of State Bank of India and in case this rate is increased/reduced, such an increased/reduced rate is applicable from the date of such notification."*

o. It is stated that the dispute resolution mechanism has been prescribed under clause 15 wherein sub-clauses 1 to 3 prescribed the method for amicable settlement through the process of appointment of representatives on behalf of each party who shall subsequently attempt to resolve the dispute. Sub-Clause 4 states that in the event of failure to resolve the dispute amicably, any party may approach the Commission in terms of Section 86(1)(f) of the Act, 2003. Clause 15 is being extracted herein below:

*"Article-15*
*Dispute Resolution*

*15.1 Each party shall designate in writing to the other party a representative, who shall be authorized to resolve any dispute arising under this agreement in an equitable manner.*

*15.2 Following notice by one party to the other setting out the particulars of the dispute, if the designated representatives are unable to resolve a dispute under this agreement within 15 days, such dispute shall be*

*referred by such representatives to a senior officer designated by the company and a senior officer designated by the TSSPDCL respectively, who shall attempt to resolve the dispute within a further period of 15 days.*

*15.3 The parties hereto agree to use their best efforts to attempt to resolve all disputes arising hereunder promptly, equitably and in good faith and further agree to provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such dispute.*

*15.4 Failing resolution of the disputes in terms of above provisions or even otherwise, any party may approach the TSERC to the dispute in terms of Section 86(1)(f) of the Act, 2003."*

p. It is stated that the Commission being desirous of determining the generic tariff for 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, passed an order dated 18.04.2020 in O.P.No.14 of 2020 (tariff order).

q. It is stated that the tariff order vide issue No.4 dealt with PLF wherein, at para 34, the Commission approved the PLF of 65% for the 1st year, 75% for 2nd year and 80% from the 3rd year and onwards. Paragraph 34 of the tariff order has been extracted herein below:

*"34. The PLF in case of a WtE project is dependent on factors like availability of waste, quality of waste, number of operating hours, geographical area of waste collection and project site. As the supply of waste to the developer is governed by the terms of the Concession Agreement, it is the responsibility of the developer to ensure adequate fuel for the power project for achieving the normative PLF. The project also requires some time for uninterrupted operations by ironing out the initial teething problems. In light of the same, the Commission deems it fit to approve the PLF of 65% for first year, 75% for second year and 80% from third year and onwards."*

r. It is stated that subsequently, the petitioner achieved COD of its 19.8 MW RDF based WtE plant, as per the applicable law read with the terms and conditions of the PPA, on 20.08.2020. The petitioner has been supplying power to respondent No.1 as per the PPA since the achievement of COD.

s. It is stated that though the petitioner has been supplying power to respondent No.1 as per the terms and conditions of the PPA, however, barring for the month of August 2020 till February 2021 and June 2022, though part of the payment from this period is still outstanding, respondent No.1 stopped releasing amount towards the outstanding payable in terms of the energy units supplies. The

petitioner has been interacting with various officers of respondent No.1 from time to time, to secure the release of the outstanding amount due to the tune of around Rs.179 crore. In this regard, both the petitioner and the respondents were trying to arrive at a workable modality for sale side discounting of the bills and accordingly, exchanged many communications in that respect.

t. It is stated that the petitioner, recognizing the huge amount payable by respondent No.1 towards electricity bills raised by the petitioner, decided to opt for the method of bill discounting. In furtherance of such decision, the petitioner issued a letter dated 30.04.2022 stating its proposal for availing the bill discounting process, towards the outstanding receivables due from respondent No.1 to the petitioner. In the letter dated 30.04.2022, the petitioner annexed a tabular calculation of the total amount receivable from respondent No.1 for the period from 21.12.2020 to 21.08.2021, amounting to Rs.79,85,98,080/-.

u. It is stated that it so transpired during the said interactions between the representatives of the petitioner and that of the respondents, that the method of computation and accounting of the monthly bills in the books of respondent is not in consonance with the calculations of monthly bills made and submitted by the petitioner.

v. It is stated that additionally, respondent No.2 issued a letter dated 25.05.2022 to the petitioner conveying its agreement to the proposal for bill discounting provided that certain terms and conditions, listed in the letter, were fulfilled by the petitioner. It was requested to consider the terms and conditions and to communicate the acceptance for execution of bills of exchange. The financial controller on behalf of TSPCC, has vide the above letter, summed up that the total amount due for the 1st tariff year as Rs.55 crore, while the petitioner reckoned the amount for the same period as Rs.79.86 crore. During further the in-person interaction with the officers of the respondents, the monthly billing computation sheets were provided to the petitioner.

w. It is stated that a bare perusal of these monthly billing computation sheets reveals that the computation by respondent is ostensibly linked to a cap of the billing regarding plant load factor namely 65% for 1st year, 75% for 2nd year and 80% from 3rd year and onwards, as prescribed under the tariff order. It is

informed by the Financial Controller representing the respondents that it is the interpretation of the respondents that the normative PLF mentioned by the Commission in its tariff order as mentioned above, is applicable for the purpose of payment, whenever the PLF is more than such normative PLF in the respective years. Thus, the respondents have been computing the billing by applying the PLF, allegedly as per the provisions of the tariff order of the Commission.

x. It is stated that the petitioner, vide its letter dated 27.05.2022, brought to the notice of TSPCC, a discrepancy between the calculation of the amount receivable/outstanding, as produced by the petitioner in its letter dated 30.04.2022, and the records produced by respondent No.2, in its letter dated 25.05.2022.

y. Accordingly, the petitioner requested that the amount of Rs.55 crore, for the period from 21.12.2020 to 21.08.2021, may be rectified to Rs.79,85,98,080/. The petitioner substantiated this amount by annexing a statement depicting the list of all invoices and the amount thereof, vis-à-vis the payment remitted by respondent No.1 against the monthly invoices for the year starting from 20.08.2020 to 21.08.2021.

z. It is stated that the petitioner sent another letter dated 22.06.2022 to TSTRANSCO, citing meetings held on 08.06.2022 and 21.06.2022. During the meetings, the above discrepancy in the calculation of the amount outstanding and payable by the respondent to the petitioner, towards the power procured for the tariff period ending 21.08.2021, was brought to the attention of respondent. The representative of the petitioner, during the mentioned meetings, was informed that the deduction is made as per the tariff order of the Commission and is ostensibly linked with the bench-mark norm of PLF as given in the tariff order dated 18.04.2020, namely 65%, 75% and 80% for 1$^{st}$, 2$^{nd}$, and the 3$^{rd}$ year onwards, respectively. The letter dated 22.06.2022 stated that there is no symmetry, rationality or transparency in computation annexed by TSPCC and moreover no communication on such important matters of summary deduction, which the petitioner came to know about a year at this point of time.

aa. It is stated that the petitioner also mentioned that under clause 1.12 of the PPA dated 19.02.2020, the 'Due Date of Payment' has been stipulated as "*thirty (30) days from the date of presentation of such bill or claim to the designated officer of the DISCOM/TSTRANSCO*". It is thereby an unusual delay at the end of respondent No.1, owing to which the petitioner has not received any payment for the period commencing 21.12.2020. Therefore, the petitioner invoked clause 15.2 of the PPA, requesting for the arrangement of a meeting, within 15 days of receipt of the letter dated 22.06.2022, with the concerned officers to be designated by respondent No.1 to review and examine reconciliation in an amicable manner.

ab. It is stated that thereafter, the Joint Managing Director of the petitioner, wrote a letter dated 05.07.2022, to the Joint Managing Director of TSTRANSCO citing their meeting held on 30.06.2022, preceded by meetings on 08.06.2022 and 21.06.2022, discussing the above issues. Further, new terms for the procedure of bill discounting were proposed by the petitioner. It was also mentioned that any discrepancy in the billing amount raised by the petitioner vis-à-vis certified by TSPCC on account of its perception, on applying the PLF purportedly as per the tariff order passed by the Commission, shall be resolved through mutual discussions, failing which the procedures prescribed in PPA will apply.

ac. It is stated that the representatives of respondent No.1 have also verbally conveyed their inclination for the Commission to resolve the above dispute relating to the application of PLF and hence the petitioner takes recourse to clause 15.4 of the PPA praying for the Commission to adjudicate the given dispute.

ad. It is stated that the petitioner is aggrieved by the said computation adopted by respondents which is evidently in violation of the provisions of the National Tariff Policy 2016 (NTP), enunciated by the Commission in the very first paragraph of its tariff order. It is also violative of the terms and conditions of the PPA which mandated respondent No.1 for procuring and paying for the delivered energy at the intersection point to the extent of 100% of PLF as computed on a billing month basis. Thus, unilateral PLF-based capping imposed by respondents on a monthly billing quantum ostensibly as per provisions of the PPA clearly

violated the provisions of the PPA and NTP and the dispute has arisen between the petitioner and respondents.

ae. It is stated that prior to the above issue pertaining to wrongful computation of bills payable, grave financial injury had also been caused to the petitioner due to the illegal deduction of import charges by respondent No.1.

af. It is stated that the petitioner had executed an agreement dated 08.08.2020, for the supply of electricity at high tension with respondent No.1 (HT agreement). The HT agreement was purposed for the supply of electricity to the petitioner, at a specified voltage of supply as per tariffs for the purpose of evacuation of power, HT-I category. The petitioner availed back charge from respondent No.1 for pre-commissioning of the instant 19.8 MW RDF-based WtE plant. The petitioner was billed for import charges as per the conditions of the said agreement for the stipulated period. The validity of the HT agreement was only for a period of one year.

ag. It is stated that in this regard, the petitioner had addressed a letter dated 12.11.2020, to respondent No.1, stating that it has received electricity bills for import energy for the months of August 2020, September 2020 and October 2020, while the import charges for the months of August 2020 and September 2020, had already been made by it. For the computation of these demand charges for the months of August, September and October, the rate of Rs.390/kVA had been adopted. It was pointed out by the petitioner vide the letter dated 12.11.2020, that as per retail supply tariffs for FY 2018-19, passed by the Commission, vide paragraph 7.130, "*the power plants availing power for start-up power shall pay demand charges at rate of 50% of the rate approved for this category*". In view of the same, the petitioner requested respondent No.1 to look into the matter and revise the electricity bills raised by it, by adopting the demand charges at the rate of Rs.195/kVA.

ah. It is stated that in response to the above, respondent No.1 issued a letter dated 11.01.2021, to the petitioner wherein it agreed to withdraw an amount of Rs.6,79,536/- for the months of September 2020 and October 2020, while the bills for the month of November 2020, would be issued as per the petitioner's request. Further, the excess MD charges for the month of September 2020,

October 2020 and November 2020 amounting to Rs.10,19,304/- was adjusted towards the December 2020 current consumption bill.

ai. It is stated that regardless of the above understanding, respondent No.1 has been uniformly deducting import charges at the rate of Rs.390/kVA per month. The petitioner vide letter dated 27.08.2021 again brought to the attention of TSTRANSCO that it is arbitrarily deducting import charges in contravention to its own admittance in the letter dated 11.01.2021 and the direction vide paragraph 7.130 of the retail supply tariffs for FY 2018-19, issued by the Commission. The petitioner also stated that the huge backlog of payment is crippling the petitioner financially and its plant is struggling to keep the operations sustained optimally.

aj. It is stated that the respondent No.1, vide its letter dated 23.11.2021, informed the petitioner that the supply of electricity with a CMD of 2178 kVA under HT Category-I, is terminated w.e.f. 23.06.2021. Further, it was stated by respondent No.1 that as per the provisions of the HT agreement, the service may be dismantled, duly collecting the minimum charges for the agreement period as no service exists and it is "converted as Generator with effect from date of synchronization, that is 20.08.2020". Hence the HT service was terminated with effect from 08.08.2021.

ak. It is stated that the petitioner is aggrieved by such illegal and arbitrary deduction made by the respondent towards import charges. Hence the petitioner is constrained to prefer the present petition for redressal of its grievances as sought for under the prayer clause.

al. It is stated that it may be noted that the petitioner has most recently addressed a letter dated 25.08.2022 to TSTRANSCO seeking the payment of total receivables dues for the sale of energy from 26.03.2021 till 22.08.2022, to the tune of Rs.180,63,00,000/-. The petitioner also stated that the backlog payment is crippling it financially and its plant is struggling to keep the operations sustained optimally.

am. It is stated that notwithstanding the repeated reminders having been shared by the petitioner to respondent No.1, the latter has failed to make payment of such

a tremendous amount, while illegally deducting amounts towards import charges as well as imposing a cap on the procurement of power.

an. It is stated that under the PPA, Article 6 deals with billing and payment in respect of the supply of power by the petitioner to the respondent and the consideration payable to the petitioner. Under clause 6.3, it is made mandatory to make payment for the bills on monthly basis by opening a revolving letter of credit (LC) for a minimum period of 1 year in favour of the petitioner.

ao. It is stated that clause 6.4 it mandates that the respondent is under obligation to effect an irrevocable revolving LC in favour of the petitioner by the scheduled bank for 1 monthly billing value, not later than 30 days prior to the scheduled COD of the 1st unit of the petitioner's project. Further, clause 6.4 details the other terms and conditions pertaining to the LC. For ready reference of the Commission, clauses 6.3 and 6.4 are extracted herein below:

*"6.3 The DISCOM shall make payment for the bills on monthly basis as per Article 6.1, by opening a revolving Letter of Credit for a minimum period of one year in favour of the company.*

*6.4 Letter of Credit: Not later than 30 days prior to the SCOD of the first generating unit, DISCOM shall cause to be in effect an irrevocable revolving Letter of Credit issued in favour of the company by a scheduled bank for one monthly billing value. Each Letter of Credit shall*

*a) on the date it is issued, have a term of one year;*

*b) be payable upon the execution and presentation by an officer of the company of a sight draft to issuer of such Letter of Credit supported by a meter reading statement accepted and signed by both the parties or a certification from the company that the DISCOM failed to sign the meter reading statements within five (5) days of the metering date or that a supplemental bill has been issued and remains unpaid until the due date of payment;*

*c) provided that the company shall have the right to draw upon such Letter of Credit not withstanding any failure by the DISCOM to reimburse the issue therefore for any draw down made under; and*

*d) not less than thirty (30) days prior to the expiration of any Letter of Credit, the DISCOM shall provide a new or replacement Letter of Credit. Each monthly bill or supplemental bill shall be presented the said scheduled bank for payment under the Letter of Credit and shall become payable thereunder. The opening charges for Letter of Credit (L/C) and negotiation charges will be borne by the beneficiary that is the company;*

*(e) The DISCOM is entitled for a discount of 1% on exported energy, if the payment is made within the due date;"*

ap. It is stated that till date, the respondent has failed to open LC as mandated under the PPA, which has substantially affected the financial viability of the project, which itself is reflective, in the amount outstanding to be payable by the respondent.

aq. It is stated that in the light of the above, the petitioner is being constrained to prefer the present petition before the Commission for the redressal of its grievances through the dispute, which requires to be adjudicated by the Commission in exercise of its power under Section 86(1)(f) of the Act, 2003. This Commission has the exclusive jurisdiction to adjudicate upon these disputes in hand.

ar. It is stated that being aggrieved by the arbitrary and illegal conduct of the respondent, the petitioner craves leave to file the present petition, on the following grounds, which are independent of each other and the petitioner reserves its right to add, alter or modify the grounds as and when the need arises with the leave of the Commission:

*The Respondent Discom is obligated to purchase 100% of the Energy supplied by the petitioner*

(i) It is stated that under the PPA, explanation 2 of clause 1.10 of PPA mandates that respondent No.1 is obligated, not only to purchase and pay for the energy delivered at the intersection point at 100% PLF monthly basis net of auxiliary consumption, but also to pay for the energy over and above 100% PLF or as per the rules and regulations in vogue.

(ii) It is stated that the PPA, therefore, prescribes for the delivered energy to be limited to 100% PLF, while the purchase of energy under the PPA has to be for the entire delivered energy. Additionally, it is against this delivered energy, that the tariff is payable by respondent No.1 to the petitioner.

(iii) It is stated that the provisions of the PPA leave no ambiguity to the above conclusion drawn that the respondent is obligated to purchase 100% of the energy delivered at the interconnection point. The respondent No.1 has acted in complete ignorance of the provisions of the contract that entirely dictates and binds the supply and purchase of energy between the petitioner and respondent No.1.

*The National Tariff Policy, 2016 mandates Distribution Licensee(s) to compulsorily procure 100% power produced from all the Waste-to-Energy plants*

(iv) It is stated that the PPA, vide clause 13.1, has made a reference to the NTP, notified by the Government of India (GoI), for the mandate prescribed under it for waste to energy projects.

(v) It is stated that the tariff order, vide para 1, also makes reference to the NTP stating that it mandates distribution licensees to compulsorily procure 100% power produced from all the WtE plants in the state, in the ratio of their procurement of power from all sources including their own, at the tariff to be determined by the Commission from time to time.

(vi) It is stated that as per clause 6.4 of the NTP, the respondent is bound to procure the entire power generated from WtE plants. The mention of this mandate at the very beginning of the order, thereby, acknowledging the mandate of the policy for procurement of 100% power produced from all WtE plants by the DISCOM in the state. For the ready reference, relevant portions of clause 6.4 of the NTP is extracted herein below:

"6.4 Renewable sources of energy generation including Co-generation from renewable energy sources:

(1) Pursuant to provisions of Section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall be taken into account while determining tariff by SERCs. Long term growth trajectory of Renewable Purchase Obligations (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.

Provided that cogeneration from sources other than renewable sources shall not be excluded from the applicability of RPOs.

(i) Within the percentage so made applicable, to start with, the SERCs shall also reserve a minimum percentage for purchase of solar energy from the date of notification of this policy which shall be such that it reaches 8% of total consumption of energy, excluding Hydro Power, by March 2022 or as notified by the Central Government from time to time.

(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.

… … "

(vii) It is stated that under the scheme of the Act, 2003, the legislators have created Section 3 of the Act, under which the NTP is being notified. Such policy is framed by the GoI in consultation with the State Governments and various other industrial bodies and stakeholders. Therefore, under the Act, 2003, the policy decision made in exercise of Section 3 of the Act, 2003 has a statutory flavour and it is binding on the parties on such

eventualities, which are neither covered under the regulation nor under the Act, 2003 made by the Commission.

(viii) It is stated that the Commission has not notified any regulation which governs the determination of tariff and incidental issues so far as procurement of power from renewable energy/RDF-based WtE plants are concerned. Therefore, in the absence of any regulation by the Commission, the NTP, being a statutory policy, is to be mandatorily complied with. In this respect, reference may be made to the judgment passed by the Hon'ble Appellate Tribunal Electricity (ATE) in the matter of Maruti Suzuki India Limited v. HERC and Anr. in Appeal No.103 of 2012.

(ix) It is stated that the mandate under clause 6.4 of the NTP has also been recognized by several State Commissions. The Haryana Electricity Regulatory Commission (HERC), vide the order dated 11.05.2022, passed in Petition No.48 of 2021, relied upon clause 6.4 of the tariff policy to reaffirm that distribution companies have to compulsorily procure 100% of the electricity generated from WtE plants, at the tariff to be determined by the Commission under Section 62 of the Act, 2003. The relevant portion of the order, at para 9, passed by the HERC has been extracted herein below:

> *"The Commission has also referred to the order(s) of various Commissions on the issue of procurement of entire generation of municipal solid waste projects by the distribution licensees without any limitation on the quantum of electricity vis-à-vis the contracted capacity. The Hon'ble Regulatory Commissions of the states of Punjab, Himachal Pradesh, Maharashtra, Gujarat, Delhi and Kerala, cited by the petitioner, have decided that in accordance with the Tariff Policy notified on 28.01.2016 by the Ministry of Power, Government of India, the distribution licensee shall compulsorily procure 100% power from waste to energy power plants set up in the State. The Commission has considered the submissions of the petitioner that such restrictions on the quantum of injection of power by waste-to-energy project, are nowhere imposed in India, as imposed by the respondent Nigam and supported by the ULB.*
>
> *The Commission observes that the PPA signed between the parties provides that HPPC shall accept all such electrical energy up to 6.77 MW delivered at the interconnection point from the seller's facility.*
>
> *… …*
>
> *The Commission observes that the power plant of the petitioner is a "Must Run" plant and covered under Regulation 10(1) of Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 (HERC RE Regulations, 2021), reproduced hereunder:*
>
> *"10. Despatch principles for electricity generated from*

*Renewable Energy Sources. –*

*(1) All renewable energy power plants, except for Biomass power plants of installed capacity 10 MW and above, shall be treated as 'MUST RUN' power plants. Biomass power with installed capacity of 10 MW and above shall be subjected to scheduling and dispatch as specified under Haryana Grid Code and other relevant regulations including amendments thereto."*

*The Commission has considered the objection raised by the department of Urban Local Bodies (ULB) that acceptance of all the energy generated by the waste-to-Energy plant will entail additional financial burden on them. Urban Local Bodies are vested with an array of functions entrusted upon them by the State Government. These functions broadly relate to public health, social welfare, public safety, public infrastructure works, and development activities. The more numbers of such Waste-to-Energy projects will not only augment RE power which is counted towards fulfilment of RPO in the Haryana Discoms, but also ensure better waste management and provide relief to the society at large from the legacy heaps of waste which is a health hazard for the entire city. Further, the generator cannot be denied the benefits of generation of power by burning solid waste on the ground of financial burden on a body whose main function is social welfare. Therefore, the objection of additional financial burden raised by ULB is devoid of merits and is rejected as such.*

*The importance of promoting MSW power projects from environmental and public health point of view, cannot be undermined. It is all the more necessary to give boost to the "Swachh Bharat Mission (SBM)" of Government of India through conversion of waste to energy in the most environment friendly manner.*

*Therefore, given the provisions of National Tariff Policy, 2016, variability of power generation by Waste-to-Energy plants depending on the nature and characteristics of fuel fed and associated objective of such projects viz. management and disposal of municipal waste, the interpretation of the PPA which mentions that HPPC to accept all such electrical energy up to 6.77 MW, has to be construed with reference to the quantum of power injected by the generator on an annual basis. Such dispensation that is reckoning with the contracted capacity on an annual basis shall also allay the fear of respondent no. 2 that is ULB that they will have to bear additional financial burden in the case the petition is allowed by the Commission."*

(x) It is stated that in passing of the above order, the HERC, in para 2(xv), accepted orders passed by various State Commissions wherein, the

entire generation of municipal solid waste generating station is procured by the distribution licensees without any limitation on the quantum of electricity. It is stated that the facts in Petition No.48 of 2021, before the HERC are strikingly similar to the facts herein. Moreover, the PPA in the present case prescribes that respondent No.1 pay for all such electrical energy MU delivered at the interconnection point from the petitioner's facility in excess of 100% monthly PLF in the absence of any regulations in this regard.

(xi) It is stated that further, while the financial burden of the distribution licensee when forced to procure 100% of the energy produced by the generator has been recognized, the HERC has notwithstanding such financial burden, upheld the mandate of distribution licensees to compulsorily procure 100% power produced from all the WtE plants in the state. The petitioner, therefore, urges the Commission to consider the order passed by the HERC as well as similar orders being passed by various State Commissions.

<u>The normative PLF prescribed in the generic tariff order dated 18.04.2020 is not applicable for the computation of bills payable</u>

(xii) It is stated that through the summary of electricity bills produced by the petitioner, and the communications made by the representatives of all the respondent, it can be inferred that the respondent No.1 is making illegal deductions on the alleged ground that the PLF prescribed by the tariff order is to be adopted for computation of bills.

(xiii) It is stated that the Commission, at para 34 of the tariff order, after hearing the deliberations made by various stakeholders including the petitioner herein, approved PLF of 65% for the first year, 75% for the second year and 80% from third year onwards for all RDF based WtE plants. It is stated that PLF is one of the benchmarks for ascertaining the efficacy and efficiency of an electricity generating plant. The Hon'ble CERC in its Tariff Regulations, 2019, defines PLF under clause 3(48) as follows:

> *"Plant Load Factor' or '(PLF)' in relation to thermal generating station or unit for a given period means the total sent out energy corresponding to scheduled generation during the period, expressed as a percentage of sent out energy corresponding to installed capacity in that period and shall be computed in accordance with the following formula: … …"*

A similar definition has also been prescribed under clause 2.65 of TSERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2019.

(xiv) It is stated that a perusal of the PPA clarified vide clause 1.10 explanation 2 which clarifies that delivered energy in a billing month shall be limited to energy calculated at 100% PLF of net exportable capacity that is after deducting auxiliary consumption. It further states that whenever generation exceeds installed capacity, such energy delivered into the grid by the project above 100% PLF during such period shall be

considered payment or otherwise in terms of the rules and regulations in vogue.

(xv) It is stated that under the contract, respondent No.1 has agreed to offtake delivered energy which is limited to 100% PLF, however, for energy generated and delivered beyond or above 100% PLF, then such power so delivered would be considered as payment, meaning, such injected power would be procured by the respondent.

(xvi) It is stated that in compliance with the procurement of energy prescribed under clause 2.1, also in the absence of any regulation made to the contrary read with the window provided under explanation 2 to clause 1.10, read with clause 2.2 of the PPA, the petitioner is not only entitled to the tariff for the energy injected at 100% PLF, but also for the energy injected beyond 100% PLF.

(xvii) It is stated that in the present case, there are no regulations to the contrary nor the tariff order applicable to the PPA executed, has dealt the subject in issue. Further, the PPA allows offtake of power to the extent of 100% PLF and beyond the same. In the absence of a regulation to the contrary, the provisions of tariff policy will be applicable and by virtue of that the petitioner is entitled to inject all power generated from its RDF based WtE plant and such units are to be mandatorily procured by respondent No.1.

(xviii) It is stated that the parties are bound by the normative principles laid down by the Commission in the tariff order and there can be no departure from the normative principles without obtaining appropriate order from the Commission. The parties have recorded such intention in clause 2.2 of the PPA which prescribes that the orders of the Commission are enforceable in entirety and shall be considered for the purposes of computation of tariff.

(xix) It is stated that nowhere in the order dated 18.04.2020 has it been conveyed by the Commission that the PLF prescribed under para 34, is to be used for the computation of the monthly bills. A perusal of the order dated 18.04.2020 would make it apparent that the normative PLF adopted was only for the purpose of determination of tariff and not for setting a cap on the computation of monthly bill. As a matter of practice, PLF is a normative benchmark prescribed by regulations or by precedence for the purpose of arriving at the tariff number, as to what ideal level of efficiency at which the plant should function to be eligible to get full tariff, so that it can serve the capital cost invested and fuel thereof. However, in case of WtE project even though the PLF is being prescribed, on the basis of which the tariff has been arrived at, the project is entitled to full tariff in terms of para 6.4 of the NTP, wherein as a matter of policy mandate the GoI has laid down that a WtE plant is a must run plant and the respondents are under an obligation to procure 100% power injected by such WtE projects into the grid.

(xx) It is stated that in violation of the above settled law, respondent No.1 has adopted the normative PLF and has prescribed it as the limit for the purposes of accepting the bills raised by the petitioner. It is stated that

the petitioner has thereby approached the Commission to clarify that the PLF contemplated under the PPA has to be dealt throughout the life of the project, while the normative PLF is only stipulated for the purpose of determination of tariff and not the purpose of computation of monthly bills payable.

(xxi) It is stated that the petitioner seeks that the assertions made by the representatives of the respondents, regarding the applicability of the normative PLF may be corrected by the Commission.

Double deduction with regard to the import charges of energy from grid and incorrect application of the applicable energy charges under HT Category I

(xxii) It is stated that the petitioner was being billed for import charges as per the conditions of the HT agreement for its applicable period. The HT agreement continued to be valid for one year from 08.08.2020 to 08.08.2021, whereafter it was terminated by respondent No.1. The HT supply agreement prescribed that payment of a certain minimum charges even if no electricity is consumed and at actuals in respect of actual use. The concerned authorities of respondent No.1 have initially computed such minimum charges with Rs.390/kVA as the applicable demand charge.

(xxiii) It is stated that in fact, vide its termination notice dated 23.11.2021, respondent No.1, informed the petitioner that the HT service was terminated with effect from 08.08.2021, since no service exists and it is "converted as generator with effect from date of synchronization that is 20.08.2020".

(xxiv) It is stated that further, clause 2.4(a) of the PPA stipulates that if in any billing month, the petitioner is entitled to draw energy from the grid of the respondents equivalent to its auxiliary consumption, such energy supplied by the respondent No.1 to the petitioner, shall be billed at 'the then effective applicable tariff to HT-I category consumers as determined by the Commission from time to time.'

(xxv) It is stated that paragraph 7.130 of the retail supply tariff order states that the power plants availing power for start-up power shall pay demand charges at rate of 50% of the rate approved for this category. The latest retail supply tariff also retained the same provision that 50% of the rate approved for the relevant category shall apply.

(xxvi) It is stated that paragraph 7.130 of the retail supply tariff order states that the power plants availing power for start-up power shall pay demand charges at the rate of 50% of the rate approved for this category. The same was pointed out by the petitioner vide its the letter dated 12.11.2020. It is stated that vide letter dated 11.01.2021, respondent No.1 had agreed to adjust the excess MD charges for the month of September 2020, October 2020 and November 2020, thereby agreeing that the rate of Rs.195/kVA, being 50% of the rate approved for this category, is to be for computation of import charges. respondent No.1 has collected all the dues towards import charges during the period for which the said agreement was in vogue and effective.

(xxvii) It is stated that be that as it may, respondent No.1 has been accounting all monthly bills by showing a deduction of the minimum monthly charges at the demand charge of Rs.390/kVA concurrently. Hence, all the minimum billing charges accounted and deducted and/or proposed to be deducted (because the payments for the month of February 2021 onwards are not yet paid by respondents as on date) by respondents from August 2020 to August 2021 is a double recovery. Hence, it is submitted that the respondents be restrained from accounting of any deduction towards import charges for the period August 2020 to August 2021 and reimburse with interest deductions made in the monthly bills of September, October, November, December months of 2020 and January 2021 and further restrain from any reduction in processing the monthly bills upto August 2021 because remittance for the same period was already complied by the petitioner for this period during the subsistence of the said agreement including interest.

(xxviii) It is stated that in violation of such understanding, respondent No.1 has continued to make deduction at the rate of Rs.390/kVA, also in contravention of paragraph 7.130 of the retail supply tariffs for FY 2018-19 stipulating that demand charges are to be levied at rate of 50% of the rate approved for this category.

(xxix) It is stated that additionally, another error committed by the respondent No.1 in deduction against Import charges is that such deductions have been made every month. Whereas clause 2.4(a) of the PPA dictates that if in any billing month, the petitioner is entitled to draw the energy from the respondent grid restricted to its auxiliary consumption, the energy supplied by respondent No.1 to the petitioner, shall be billed at 'the then-effective Commission's applicable tariff to HT-I category consumers as determined by Commission's from time to time.'

(xxx) It is stated that a perusal of clause 2.4(a) of the PPA that the supply of energy by respondent No.1 to the petitioner is only to be billed in the months that the petitioner draws energy from respondent No.1 grid, restricted to its auxiliary consumption and not every month irrespective of the petitioner's consumption. In such eventuality, the petitioner shall be billed as per actuals, at a tariff applicable to HT-I category. Therefore, the monthly deductions made by the respondent irrespective of actual consumption by the petitioner, is violative of the provisions of the PPA.

(xxxi) It is stated that in blatant violation of the mandate under clause 2.4(a) of the PPA, the respondent No.1 has been approximately deducting an amount of Rs.11.8 lakhs to Rs.14.6 lakhs, every month, in terms of import charges, for the period from 21.08.2021 to 21.06.2022.

(xxxii) It is stated that the petitioner, therefore, submits that the deduction towards import charges is liable to be declared as wrongful deduction. Not only has there been double deduction by charging the rate of Rs.390/kVA, but such deductions have also been made every month, in violation of clause 2.4(a) of the PPA.

<u>Respondent No.1 has shown an irrational and unjustifiable delay in the payment towards monthly bills payable</u>

(xxxiii) It is stated that as per the terms of the PPA, respondent No.1 is bound to make timely payments. However, it is clear from the payment details that respondent No.1 in gross violation of the terms of the PPA has not been making full payment for invoices raised by the petitioner. It is stated that due to the non-payment of the tariff by respondent No.1, the petitioner is facing tremendous financial crisis and unable to meet its O&M expenses and debt payment obligations for operation of its plant optimally.

(xxxiv) It is stated that the petitioner is aggrieved by the delay in release of the payments by respondent No.1 so much that, an amount of Rs.180.63 crore stands unpaid starting from the monthly bill of February 2021 to monthly bill of August 2022, a computation of which has been added in the petitioner's letter dated 25.08.2022 sent to respondent No.1.

(xxxv) It is stated that the petitioner also prays for the Commission to direct respondent No.1 to make the payment of the total amount due of Rs.180.63 crore. Under clause 6.2 of the PPA, the failure of respondent to make payment within the due date, makes the respondent liable to pay simple interest at the rate of prevailing base prime lending rate of SBI. Therefore, the petitioner is entitled to the interest to be calculated upon the outstanding amount till the date of realization. The petitioner reserves its right to adduce a complete sheet of calculation of interest amount on the basis of the notified rates from time to time, as and when the need arises, with the leave of the Commission.

(xxxvi) It is stated that the Commission has taken cognizance of the importance of WtE plants to be set up in the State for the purpose of an efficacious disposal of solid waste through the mechanism of converting such waste into energy. The Commission is under an obligation under Section 86(1)(e) for promotion of such entities and also for the growth of generation of power through renewable energy sources. The Commission has also referred to the relevant provisions of the NTP while determining tariff for the control period in vogue.

(xxxvii) On the same breath, the petitioner begs to state that the failure on the part of the respondents to make payment, arbitrary deductions etc. are irretrievably defeating the very objective with which the Commission has been promoting to ensure proliferation of WtEs in the state, in fulfilment of the objectives under the Act, 2003.

<u>Failure to open LC</u>

(xxxviii) It is stated that the sacrosanct nature of the contract is to be honoured by both the parties to the PPA. The PPA is not only to be implemented in its letter but also in its spirit. It is noteworthy to mention herein that a payment security mechanism in the form of LC is very much conceived as an expressed provision in the contract and the same was blessed by the Commission in exercise of power under Section 86(1)(b) of the Act, 2003. Therefore, there is no window of non-compliance of any of the terms and conditions of the PPA by the respondent at its own whims and caprice.

(xxxix) It is stated that the respondent No.1 has not only conducted itself in a manner violative of the terms and conditions of the contract but also acted with prejudice to the financial interest of the petitioner, which is reflective not only from the failure of the respondent to make outstanding payment under the PPA but also the very unwillingness and categoric violation of the terms of the PPA for not opening LC, in the manner prescribed under the PPA.

(xxxx) It is stated that the Commission may take judicial cognizance of the rising menace of outstanding payables, being piled on against the DISCOMs, in the country, for the purpose of which the central government had in the past mandated for opening of LC on the part of each and every DISCOM for getting supply of power. The bindingness of the language itself under clauses 6.3 and 6.4 are evident enough to demonstrate the very intent of the parties to make PSM as a condition precedent event before the scheduled commercial operation date. Therefore, the indulgence of the Commission is being sought for directing the respondent to open an LC in favour of the petitioner, in the manner provided under the PPA.

as. It is stated that for that a bare perusal of the terms of the PPA as well as the tariff policy, it is undeniable that DISCOMS are obligated to compulsorily procure 100% power and even beyond if produced from all the WtE plants. It is also stated that through the speculations and affirmations made by respondent No.1 itself, it is evident that respondent No.1 has misinterpreted the applicability of the normative PLF, while making also excess deductions towards import charges.

at. It is stated that in light of the above arguments and the precedents cited, respondent No.1 has committed several errors with respect to the billing under the PPA dated 19.02.2020 and has deprived the petitioner of a significantly huge amount the non-payment of which has been impacting the operation of the petitioner.

au. It is stated that there is a prima facie case in favour of the petitioner and against respondent No.1, since at the very outset, respondent No.1, while failing to pay the legitimate bills receivable by the petitioner, has also been making excess deductions towards import charges in contravention to its previous agreement.

av. It is stated that unless the prayers made herein below are granted in favour of the petitioner, it shall suffer and incur irreparable harm and loss to its business and grave prejudice will be caused to the petitioner and the same shall affect

the viability of the WtE plant. The present petition is bona fide and made in the interest of justice.

2. The petitioner has sought the following prayers in the petition for consideration:

"a. To declare that respondent No.1 is obligated to purchase all the energy delivered at the intersection point and supplied by the petitioner in view of the power purchase agreement dated 19.02.2020 read with para 6.4 of the National Tariff Policy, 2016 at tariff as determined by the Commission.

b. To restrain the respondent No.1 from deducting excess amounts towards import charges and reimburse an amount of Rs.2,04,00,000/- along with interest towards the deducted amounts during the period when the HT-I category agreement was in subsistence.

c. To direct the respondent No.1 to collect the import charges only at actuals and as per applicable tariff in compliance with clause 2.4(a) of the PPA read with relevant Regulations notified by the Commission from time to time

d. To direct the respondent No.1 to make payment of Rs.180,63,00,000/- towards outstanding dues payable as per clause 6.2 of the PPA.

e. To direct the respondent No.1 to make timely payment towards the monthly electricity bills raised by the petitioner towards supply of electricity from its 19.8 MW RDF based WtE plant at Jawaharnagar, as stipulated under the PPA.

f. To direct respondent No.1 to open letter of credit as per clause 6.3, read with clause 6.4, of the PPA dated 19.02.2020."

3. The petitioner has filed an Interlocutory Application (I.A.No.56 of 2022) and sought the following relief in the application.

"a. To pass an *ex parte ad interim* direction, restraining the respondent No.1 from applying the threshold PLF prescribed in para 34 of the tariff order for the purpose of billing under the PPA dated 19.02.2020.

b. To pass an *ex parte ad interim* order, thereby restraining the respondent No.1 from deducting any additional amounts towards import charges in violation with clause 2.4(a) of the PPA read with relevant regulations notified by the Commission from time to time.

c. To pass an *ex parte ad interim* order, directing the respondent No.1 to make an upfront payment of 50% of the principal amount outstanding to the tune of Rs.180,63,00,000/-."

4. The petitioner has also filed another Interlocutory Application (I.A.No.57 of 2022) and sought to list the petition at the earliest possible on an urgent basis.

5. The respondent has filed counter affidavit and the contentions raised thereof are extracted below:

a. It is stated that the present petition is based on four issues, viz.,

*Issue-1: purchase of 100% energy supplied without restricting the units to threshold PLF;*

*Issue-2: double deduction of import charges for the energy drawn from grid and incorrect application of the applicable energy charges under HT-I category;*

*Issue-3: delay in payment towards monthly energy bills payable;*

*Issue-4: failure to open LC;*

b. In the matter of Issue-1: Purchase of 100% energy supplied without restricting the units to threshold PLF, the following is stated –

(i) The contention of the petitioner is that the respondent DISCOM is obligated to purchase 100% of the energy supplied by the petitioner on the following grounds:

(a) Explanation 2 of clause 1.10 of PPA mandates for purchase and payment for the energy delivered at 100% PLF monthly basis and over and above 100% PLF also as per rules and regulations in vogue;

(b) Provisions of PPA obligate DISCOM to purchase 100% of the energy delivered at the interconnection point;

(c) NTP mandates distribution licensees to compulsorily procure 100% power produced from all the WtE plants;

(d) Clause 13.1 of the PPA and para 1 of the tariff order also makes reference to the tariff policy;

(e) In the absence of any notified regulation governing determination of tariff and incidental issues for procurement of power from WtE plants, NTP is to be mandatorily complied with;

(f) The mandate under clause 6.4 of the NTP has been recognized by several State Commissions including HERC. Reference is drawn from HERC orders dated 11.05.2022 issued in Petition No.48 of 2021;

(g) The normative PLF stipulated in the generic tariff order dated 18.04.2020 is only for the purpose of determination of tariff and not applicable for the computation of bills payable;

(ii) It is stated that the attention of the Commission is drawn to the Article 1.10 of the PPA dated 19.02.2020 for sale of power generated from their 19.8 MW RDF based power project at Jawarharnagar village, Kapra mandal, Medchal district.

*"Article 1.10*

*"Delivered Energy" means with respect to any billing month, the Kilo Watt hours (kWh) of electrical energy generated by the project and delivered to the DISCOM at the interconnection point, as defined in clause 1.18 and as measured by the energy meters at the interconnection point during that billing month at the designated substation of TSTRANSCO or the DISCOM;*

*Explanation 1: For removal of doubts, the delivered energy, excludes all energy consumed in the project, by the main plant and equipment, lighting and other loads of the project from the energy generated and as recorded by the energy meter at interconnection point.*

*Explanation 2: The delivered energy in a billing month shall be limited to the energy calculated at 100% PLF of net exportable capacity that is after deducting capacities for auxiliary consumption from the installed capacity as mentioned in this agreement for sale to DISCOM, based on the contracted capacity in kW multiplied with number of hours and fraction thereof, the project is in operation during that billing month. Whenever generation exceeds by installed capacity such energy delivered into the grid by the project above 100% PLF during such period shall be considered payment or otherwise in terms of the rules and regulations in vogue.*

*Explanation 3: The delivered energy shall be purchased by the DISCOM at a tariff for that year stipulated in Article 2.2 of this agreement."*

(iii) From the aforementioned Article of the PPA, the following can be concluded:

(iv) The energy delivered at the interconnection point shall be purchased at the tariff stipulated in Article 2.2. Article 2.2 of the PPA, reads thus:

*2.2 The company shall be paid the tariff for the net energy delivered at the interconnection point for sale to DISCOM at the tariff as determined by TSERC from time to time. No tariff will be paid for the energy delivered at the interconnection point beyond contracted capacity. The orders of TSERC are enforceable in entirety and shall be considered for the purposes of computation of tariff.*

*(a) Article 2.2 clearly provides that the tariff payable is as determined by the Commission from time to time and hence, the connected tariff order of the Commission dated 18.04.2020 becomes enforceable.*

*(b) Tariff order at paragraph 34 provides the applicable annual PLF that is 65% for the first year at 75% for the second*

*year and 80% from third year onwards. It further states that neither tariff nor any incentive is payable for the energy supplied beyond threshold PLF;*

*(c) As per explanation 2 of Article 1.10, the delivered energy in a billing month shall be limited to 100% PLF of the net exportable capacity, that means no payment for the energy units supplied beyond the stipulated annual PLF indicated in the applicable tariff order of the Commission will have to be made;*

(v) It is stated that hence, the contention of the petitioner that DISCOM is obligated to purchase power even beyond 100% PLF becomes baseless.

(vi) It is stated that it is an undisputed fact that the energy delivered at the interconnection point shall be paid in accordance with Article 2.2 of the PPA.

(vii) It is stated that it is abundantly clear from the above Article 2.2 of the PPA that the payment for the energy delivered will be in accordance with the tariff determined by the Commission and that the orders of the Commission shall be applicable in its entirety. As such, the petitioner cannot interpret the tariff order to their advantage to the extent of tariff without taking the corresponding PLF into account.

(viii) It is stated that the Commission passed the tariff order dated 18.04.2020 in O.P.No.14 of 2020 in the matter of suo-moto determination of generic tariff for electricity generated from RDF based power projects in the State of Telangana in respect of the projects who achieve COD during the period from FY 2020-21 to FY 2023-24. Since the project of the petitioner achieved COD on 20.08.2020, the said generic tariff order becomes applicable in entirety in terms of Article 2.2 of the PPA.

(ix) It is stated that the generic tariff for the RDF based power projects has been determined duly taking into consideration the following financial and technical norms:

| Sl. No. | Parameter | Units | Approved Norm |
|---|---|---|---|
| 1. | Capital Cost | Rs Crore/MW | 9 |
| 2. | Plant Load Factor (PLF) | % | First year – 65% Second year – 75% From Third year – 80% |
| 3. | Operation & Maintenance expenses | % | 5% of capital cost |
| 4. | Annual escalation on O&M expenses | % | 5.72% |
| 5. | Plant Life | Years | 20 |
| 6. | Land Value (indicative only, included in the capital cost) | Rs. Lakh/MW | 5 |
| 7. | Salvage Value | % | 10% |
| 8. | Depreciation | % | 5.83% for first 12 years and 2.50% for the following 8 years |
| 9. | Rate of Return | % | 16% |

| Sl. No. | Parameter | Units | Approved Norm |
|---|---|---|---|
| | on Equity (Post-tax) | | |
| 10. | Income Tax | - | Income Tax paid by the Generator on the income derived from the power project shall be reimbursed by the Distribution Licensee(s) on submission of challans of payment of Tax to the Income Tax Department |
| 11. | Interest on long-term loan | % | 12% |
| 12. | Loan Tenure | Years | 12 |
| 13. | Debt Equity ratio | - | 70:30 |
| 14. | Working Capital components | - | 1. O&M expenses for 1 month<br>2. Maintenance spares@1% of the capital cost escalated at 5% per annum<br>3. Receivables equivalent to 1 month for sale of electricity calculated on normative PLF<br>4. Fuel Cost for 1 month equivalent to normative PLF |
| 15. | Rate of Interest on Working Capital | % | 12.5% |
| 16. | Discount Rate | % | 13.20% |
| 17. | Auxiliary Consumption | % | 11% |
| 18. | Station heat Rate | kCal/kWh | 4000 |
| 19. | Gross Calorific Value | kCal/kg | 2500 |
| 20. | Base Fuel Price | Rs./MT | 1800 |
| 21. | Annual Fuel Price escalation | % | 5% |
| 22. | Incentives | - | Any incentives, State or Central and not limited to Tipping Fee received by the Generator to be passed on to the Distribution Licensee(s) procuring power from the Generator |

(x) It is stated that the levelized tariff of Rs.7.84/kWh was determined comprising of levelised fixed cost of Rs.3.42/kWh and levelized variable cost of Rs.4.42/kWh with the above parameters, taking into consideration achievable PLF of 65% for 1st year of operation, 75% for 2nd year of operation and 80% from 3rd year of operation onwards with useful life of 20 year. The levelized tariff of Rs.7.84/kWh was made applicable for the RDF based power projects in the State of Telangana who achieve COD during the period from FY 2020-21 to FY 2023-24.

(xi) It is stated that this indicates that the entire capital cost along with other incidental costs (interest on debt, O&M charges, working capital requirements, depreciation etc.) and return on equity (RoE) are

apportioned to the energy units calculated with adopted PLF and accordingly the levelized tariff of Rs.7.84/unit is arrived. As such, all the costs are recovered in the tariff when the plant is operated at 65% PLF for 1st year, 75% PLF at 2nd year and 80% PLF from 3rd year onwards and this is the reason why this Commission, in order dated 18.04.2020, did not indicate any tariff for the energy beyond specified PLF since that would result in granting additional revenue to the petitioner over and above the norms at the cost of burdening the end consumer/common man.

(xii) It is stated that in other words the Commission while fixing the tariff of Rs.7.84/kWh took all the expenditure apart from providing returns by way of return on equity for the capital invested when the plant is operated at specified PLF into consideration and hence the claim for payment for the energy delivered beyond the threshold PLF made by the petitioner is wholly unjustified and unrealistic.

(xiii) It is stated that had the Commission considered PLF more than the threshold PLF, the tariff would have been lower than Rs.7.84/unit. Accordingly, any generation beyond threshold PLF has not been factored for pricing/tariff fixation. Therefore, no payment is allowed for such energy.

(xiv) It is stated that in this context, it is pertinent to reiterate the views of the Commission in the generic tariff order dated 18.04.2020 in connection with PLF as stated at paragraph No.33 in Page No.10.

*"Commission's view*

*33. The Commission does not subscribe to the stakeholder's submission that power generation is only incidental to the process of solid waste management. There are various technological options of solid waste management and power generation is one among those options. The RDF based power projects currently under development in the State are of 14 MW and 19.8 MW installed capacities. The developer of 19.8 MW capacity power project has further plans to expand two more units of 15 MW and 28 MW in the next 2-3 years. Such significant potential for power generation cannot be brushed away as incidental to the process of solid waste management. Feasibility of such significant power generation capacity is an indication of availability of adequate fuel for power generation.*

*34. The PLF in case of a WtE project dependent on factors like availability of waste, quality of waste, number of operating hours, geographical area of waste collection and project site. As the supply of waste to the developer is governed by the terms of the Concession Agreement, it is the responsibility of the developer to ensure adequate fuel for the power project for achieving the normative PLF. The project also requires some time for uninterrupted operations by ironing out the initial teething problems. In light of the same, the Commission deems it fit to approve the PLF of 65% for first year, 75% for second year and 80% for third year and onwards.*

*35. The Commission does not subscribe to the stakeholders*

*submission that providing incentive for higher PLF than the approved PLF.*

(xv) It is stated that in light of the Commission observations at paragraph 35 of the generic tariff order dated 18.04.2020, concluding that providing incentive for higher PLF than the approved PLF cannot be considered and hence, the petitioner's contention for payment of full tariff for the entire energy delivered is baseless.

(xvi) It is stated that the petitioner makes reference to the NTP for purchase of 100% energy delivered by the MSW plants. In this regard, for better illustration, the provisions of the NTP are extracted below:

*6.4 Renewable sources of energy generation including cogeneration from renewable energy sources:*

*(1) Pursuant to provisions of Section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall be taken into account while determining tariff by SERCs. Long term growth trajectory of Renewable Purchase Obligations (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.*

*Provided that cogeneration from sources other than renewable sources shall not be excluded from the applicability of RPOs.*

*(i) Within the percentage so made applicable, to start with, the SERCs shall also reserve a minimum percentage for purchase of solar energy from the date of notification of this policy which shall be such that it reaches 8% of total consumption of energy, excluding Hydro Power, by March 2022 or as notified by the Central Government from time to time.*

*(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.*

*(iii) It is desirable that purchase of energy from renewable sources of energy takes place more or less in the same proportion in different States. To achieve this objective in the current scenario of large availability of such resources only in certain parts of the country, an appropriate mechanism such as Renewable Energy Certificate (REC) would need to be promoted. Through such a mechanism,*

*the renewable energy-based generation companies can sell the electricity to local distribution licensee at the rates for conventional power and can recover the balance cost by selling certificates to other distribution companies and obligated entities enabling the latter to meet their renewable power purchase obligations. The REC mechanism should also have a solar specific REC.*

*(iv) Appropriate Commission may also provide for a suitable regulatory framework for encouraging such other emerging renewable energy technologies by prescribing separate technology-based REC multiplier (i.e., granting higher or lower number of RECs to such emerging technologies for the same level of generation). Similarly, considering the change in prices of renewable energy technologies with passage of time, the Appropriate Commission may prescribe vintage based REC multiplier (i.e., granting higher or lower number of RECs for the same level of generation based on year of commissioning of plant).*

*(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. However, till such notification, any such procurement of power from renewable energy sources projects, may be done under Section 62 of the Electricity Act, 2003. While determining the tariff from such sources, the Appropriate Commission shall take into account the solar radiation and wind intensity which may differ from area to area to ensure that the benefits are passed on to the consumers.*

(xvii) It is stated that the petitioner is misleading the Commission by illustrating a particular part of clause of the tariff policy ignoring the connected clauses. The context of clause 6.4(1)(ii) guiding to procure 100% power from WtE plants is on a different note as stated below:

*a. It is stated that clause 6.4 relates to notification of renewable purchase obligation to be met by the distribution licensees.*

*b. It is stated that further, the clause also mandates for procurement of power from RE plants only through competitive bidding.*

*c. It is stated that while stating that even RE power for meeting RPPO also shall be procured through competitive bidding, the tariff policy states that power from WtE plants shall not be subjected to competitive bidding and as such entire energy from such WtE plants can be procured at the tariff determined by the*

*Commission u/s 62 of the Act, 2003 without insisting on competitive bidding.*

*d. It is stated that thus it becomes very much clear that the petitioner misinterpreted clause 6.4 of the NTP. In the circumstances mentioned above, the contention of the petitioner that the tariff determined by the Commission is applicable to the energy delivered even beyond threshold PLF by the RDF plant becomes wholly irrational and misleading.*

*e. It is stated that the very reading of the policy with reference to power purchase from WtE plants is that in the RE power purchase obligation, there is no percentage ceiling for WtE plants power. Further, this power purchase from WtE plants is governed by the tariff determined by the Commission that is the tariff determined by the Commission, which tariff in turn clearly states that the developer is not entitled to any tariff for the power supplied beyond threshold PLF.*

(xviii) It is stated that the contention of the petitioner that the normative PLF is only stipulated for the purpose of determination of tariff and not for the purpose of computation of monthly bills is illogical; since such conclusion vanishes the sanctity of the tariff determined by the Commission, duly specifying that 'no tariff for energy pumped beyond threshold PLF'

(xix) It is stated that it is not out of context to mention that in the cost plus methodology where generic tariff is determined for the RE projects by the Commission adopting certain threshold PLFs, the tariff is payable only for the energy delivered upto threshold PLF and beyond which nominal incentive is payable, as listed below:

| Name of the RE Project | Threshold PLF | Incentive Payable | Commission order dated | Remarks |
|---|---|---|---|---|
| Biomass/ Industrial Waste | 80% | 35 paise/kWh | 22.06.2013 | For first 10 years of operation |
| | | 50 paise/kWh | 19.07.2014 | From 11th to 20th year of operation |
| Bagasse | 55% | 35 paise/kWh | 22.06.2013 | For first 10 years of operation |
| | | 50 paise/kWh | 05.08.2014 | From 11th to 20th year of operation |
| Mini Hydel | 45% | 35 paise/kWh | 22.06.2013 | For first 10 years of operation |
| | | 50 paise/kWh | 23.08.2014 | From 11th to 20th year of operation |

(xx) It is stated that however the generic tariff order dated 18.04.2020 in respect of RDF based power projects did not subscribe to the stakeholders' submissions for payment of any incentive for the energy generated beyond normative PLF at paragraph 35 of Commission's generic tariff order dated 18.04.2020) and as such no incentive is granted. It may be noted that the petitioner is well aware of the fact that no tariff is payable for power supplied beyond threshold PLF since the submission of the petitioner in the process of tariff determination even for payment of incentive was rejected by the Commission. Since the

order has attained finality in so far as the petitioner did not challenge the same, the petitioner is bound by the terms & conditions of the order.

(xxi) It is stated that it is opposite to state that the Commission while issuing order dated 21.11.2022 in O.P.No.47 of 2021 while observing that adoption of higher CUF would be resulting in lower tariff, held that the petitioner therein (M/s Mytrah Vayu (Godavari) Private Limited is not entitled for payment to tariff for the energy delivered beyond normative CUF.

(xxii) It is stated that the tariff policy resolutions of the centre and the regulations of CERC act as guiding principles for the Commissions. Keeping in view of the same, the SERCs issue tariff regulations and also determine the tariff. However, the State ERCs are not bound by the CERC regulations.

(xxiii) It is stated that the contention of the petitioner that in the absence of any notified regulation governing determination of tariff and incidental issues for procurement of power from WtE plants, NTP is to be mandatorily complied with is irrational; since the Commission initiated a suo-moto exercise to determine the generic tariff for electricity generated from RDF based power projects in the State of Telangana achieving COD during the period from 01.04.2020 to 31.03.2024, under sec 62 of Act, 2003, duly notifying the proposed norms and calling for objections/suggestions from all the stakeholders.

(xxiv) It is stated that the Commission having taken up the exercise of determination of generic tariff for the RDF based power projects under Section 62 of the Act, 2003, passed the order dated 18.04.2020 which order attained finality, since no party, including the petitioner, challenged the said order.

(xxv) It is stated that it is an undisputed fact that the petitioner was a party to the process of tariff determination. The Commission addressed the objections/ submissions made by the developer for incentive tariff for the energy supplied beyond annual threshold PLF. The Commission had clearly recorded its views regarding refusal to grant incentives claimed by the stake holders at paragraph 35 of the applicable generic tariff order dated 18.04.2020.

(xxvi) It is stated that the order of the HERC relied on by the petitioner is not applicable to the facts and circumstances of the present case for the reason that the petitioner having participated in the process of determination of tariff not only accepted the determined tariff, but also the conditions laid down in the tariff order by not contesting the same and has been enjoying the benefits of the tariff so determined by the Commission.

(xxvii) It is stated that in light of the submissions made above, it is prayed that the Commission may be pleased to reject the relief sought by the petitioner for payment towards the energy generated beyond normative PLF.

c. The following is stated with reference to Issue-2: (double deduction of import charges for the energy drawn from grid and incorrect application of the applicable energy charges under HT-I category)

(i) It is stated that as stated by the petitioner, prior to the commissioning of their RDF plant they have been availing power from the respondent through a separate HT agreement.

(ii) It is stated that however, as per the provisions of the PPA, no separate HT connection is required for availing power from the respondent and the petitioner is entitled to draw energy from the grid.

(iii) It is stated that as such, post the commercial declaration of the petitioner's plant the HT service agreement stood non-est. The availability of separate HT connection was brought to the notice of the billing authority post billing of energy imported from the grid. Pursuant thereto, necessary action was initiated by the officials of respondent to avoid double recovery for the import energy drawn by the petitioner and the same has been rectified.

(iv) It is stated that the doubly levied HT charges have been withdrawn since the plant of the petitioner is synchronized with the grid that is on 20.08.2020.

(v) It is stated that coming to the contention of the petitioner about incorrect application of the applicable energy charges under HT-I category, it is stated that the billing for the import energy is being done in accordance with the provisions of the PPA. The related articles of the PPA dated 19.02.2020 are extracted below:

*"2.4 No transmission or wheeling charges or other charges or assessments charges shall be levied by the TSTRANSCO/ DISCOM on purchased energy.*

*a) Wherein any billing month, the company is entitled to draw the energy from DISCOM/TSTRANSCO grid restricted to its auxiliary consumption during shut down periods, maintenance periods and plant tripping periods only. The company shall not draw any power from DISCOM/TSTRANSCO grid during plant running period. The contracted load of the plant shall be taken as the auxiliary consumption that is 11% of installed capacity for RDF based projects. The energy supplied by the DISCOM to the company, shall be billed by the DISCOM and the company shall pay the DISCOM for such electricity supplies, at the DISCOM the then effective TSERC applicable tariff to high tension category-I consumers as determined by TSERC from time to time.*

*b) For this purpose, the maximum demand recorded during such periods in a billing cycle shall be considered, in shutdown period, the billing demand would be 80% of auxiliary consumption or recorded maximum demand whichever is more.*

*c) Billing Energy: 50 kVAH per kVA of billing demand or*

*actual units recorded whichever is more.*

*d) For the purpose of billing TOD tariff, TOD compatible meters may be installed.*

*e) However, the minimum HT-I category billing shall be made applicable to the company in a billing cycle that may be decided by TSERC from time to time, based on the voltage of the generator."*

(vi) It is stated that the said provisions clearly stipulate the manner in which the import energy drawn by the petitioner is to be billed and the same are being adhered to. In compliance of clause 2.4(e) of the PPA, minimum HT-I category billing is made applicable.

(vii) It is stated that in terms of the provisions of the PPA, for all practical purposes in so far as import of energy from the grid is concerned, the petitioner shall be treated as a HT Category I consumer, except that the developer need not seek a separate HT connection.

(viii) It is stated that the Commission in the matter of extension of the period of PPA for other RE developers, directed the developers to get a separate HT connection in order to establish clear partition between the energy purchased and energy sold.

(ix) As such the contention of the petitioner in regard to the alleged wrongful deduction of import charges becomes untenable.

d. In the matter of contention of petitioner pertaining to issue-3: It is stated that the delay in payment of monthly energy charges, it is stated that the outstanding dues payable to the tune of Rs. 89.90 Crore for the period from March 2021 to October 2021 and December 2021 till April 2022 due by 3rd June 2022 have been covered under LPS Rules 2022 notified by MoP - GoI notification dated 03.06.2022 and are payable in 12 EMIs through REC/PFC. Out of 12 EMIs, 5 (five) instalments worth Rs 37.46 Crore have been already released by REC/PFC upto 05.12.2022. The balance amount of Rs.52.44 crore is due for release on 5th of every month. It is therefore submitted that the contention of the petitioner is not correct.

e. In the matter of contention of petitioner pertaining to issue-4: It is stated that the failure to open LC is due to non-availability of sufficient non fund based limits sanctioned by the bankers, The respondent could not open LC in favour of the petitioner. However, payments to the petitioner are being released regularly in line with the guidelines issued by the MoP, GoI vide notification dated 3rd June 2022. Further, it is stated that respondent is constantly approaching the bankers to enhance the non-fund base limits to open the LCs in favour of generators. Hence, opening of LC in favour of petitioner would be considered on par with

the other generators after enhancement of non fund based limits by the bankers in favour of the respondent.

f. It is stated that the petitioner also filed I.A. along with the present petition. Since both the billing of energy exported by the petitioner to the grid and energy imported from the grid are made in accordance with the provisions of the signed PPA, there stands no liability on part of the respondent.

g. It is stated that in view of the facts and submissions made above, it is prayed the Commission to dismiss the petition.

6. The petitioner has filed rejoinder to the counter affidavit filed by the respondent and the contents thereof are reproduced below:

a. It is stated that the facts and submissions made by the petitioner in the petition may be read as part and parcel of the present rejoinder. For the sake of brevity, the same are not reiterated here.

b. It is stated that a bare perusal of the counter affidavit filed by respondent No.1, would show that respondent No.1 has misinterpreted material provisions of the PPA dated 19.02.2020 in making the objections thereunder, along with failing to take into account the applicable law.

c. It is stated that the petitioner, in preferring the present petition has raised the following issues:

   i. Wrongful adoption of normative plant load factor (PLF) stipulated in the tariff order for the computation of monthly bills.
   ii. Illegal deduction towards Import Charges.
      a. Double deduction during the tenure of the agreement dated 08.08.2020, for the supply of electricity at high tension with respondent No.1
      b. Continued deduction after the termination of the HT agreement on 23.11.2021.
   iii. Non-payment of outstanding dues under the PPA by respondent No.1.
   iv. Failure of respondent No.1 to open LC.

d. It is stated that the respondent No.1 has also bifurcated the counter affidavit on the basis of these four issues, the objections raised thereunder are being disputed and denied by the petitioner in its entirety, save and except what are matters of record or facts, specifically admitted by the petitioner. For the very reason of which, the petitioner is making the following submissions at the very

outset which will defeat all the arguments made by the respondent, put together:

e. It is stated that through the present petition, the petitioner has prayed that the entire energy generated by its 19.8 MW RDF based WtE plant, is to be purchased by respondent No.1 pursuant to the terms of the PPA dated 19.02.2020, executed between the petitioner and respondent No.1. It is stated that the tariff applicable for the sale of power to respondent No.1 herein has been computed by the Commission in tariff order dated 18.04.2020. The Commission, in computing such tariff, at para 34, assumed the normative annual PLF of 65% for the first year, 75% for the second year and 80% from third year onwards. The respondent No.1 has erred in applying this threshold PLF, assumed by the Commission in determination of tariff, for computation of monthly bills.

f. It is stated that the provisions of the PPA leave no ambiguity inasmuch as the obligation of respondent No.1 to purchase 100% of the energy delivered at the interconnection point. respondent No.1 has acted in complete ignorance of the provisions of the PPA that holistically dictate and bind the supply and purchase of energy between the petitioner and respondent No.1.

g. It is stated that the NTP states that distribution licensee(s) shall compulsorily procure 100% power produced from all the WtE plants in the state. The same has also been recognized in clause 3(7) of the Renewable Power Purchase Obligation (Compliance by Purchase of Renewable Energy/Renewable Energy Certificates) Regulation, 2022 (RPPO Regulation, 2022).

h. It is stated that further, while it has been sufficiently cited by the petitioner in the present petition, the petitioner, on account of respondent No.1's failure to appropriately object to the principle laid down by it, is reiterating its reliance upon the order dated 11.05.2022, passed by the HERC in Petition No.48 of 2021. In the said case, the mandate under para 6.4 of the NTP has been recognized by the HERC to reaffirm that distribution companies have to compulsorily procure 100% of the electricity generated from WtE plants, at the tariff to be determined by the appropriate Commission under Section 62 of the

Act, 2003. The relevant portion of the order para 9 passed by the HERC, has been extracted in the present petition.

i. It is stated that with relation to the arguments made by respondent No.1, pertaining to the issue of deductions made on account of import charges, respondent No.1 has failed to show which payments have been made and which have been disputed. The petitioner, vide annexures enclosed herein, has demonstrated the total amount payable by respondent No.1, on account of illegal deductions made towards import charges, both during the subsistence of the HT agreement as well as after its termination.

j. It is stated that the objections made by respondent No.1, pertaining to the non-payment of outstanding dues under the PPA by respondent No.1, as well as its failure to open LC, have been sufficiently addressed in the subsequent paragraph wise replies.

k. It is stated that in view of the above fallacies characterizing the objections made by respondent No.1 in its counter affidavit, the petitioner denies and disputes all arguments put forth by respondent No.1 in the matter below.

l. It is stated that at the outset the petitioner denies each and every submission made in the counter affidavit filed by the respondent, in the manner alleged or at all, save and except what are matters of record or facts, specifically admitted by the petitioner. The denial of the allegation made through the averments of the respondent No.1 are made in toto, failure of any specific response to any allegation, may not be construed as an admission.

m. It is stated that it is denied to the extent of the conclusion that no payment ought to be made towards the energy units supplied beyond the annual PLF indicated in the applicable tariff order. The respondent No.1 has erred in arriving at such a conclusion from a reading of Article 1.10, read with Article 2.2, of the PPA. Articles 1.10 and 2.2 of the PPA which are already extracted by the petitioner in its arguments.

n. It is stated that for immediate reference of the Commission, ‘Contracted Capacity’, as defined in Article 1.9 which is extracted in its submissions.

o. It is stated that the respondent No.1 has further failed to acknowledge Article 1.2 which prescribes that all the delivered energy at the interconnection point

for sale to respondent No.1, will be purchased at the tariff provided for in Article 2.2. Article 2.1 of the PPA, comes under Article 2, which bears the heading "Purchase of delivered energy and tariff". Article 2.1 and 2.2 which are already extracted by the petitioner.

p. It is stated that a perusal of the above provisions of the PPA, dictating the sale of power to the respondent, demonstrates the following:

i. *It is stated that under Article 2 of the PPA which governs the purchase of energy and tariff, the quantification of the energy which is to be purchased, is in terms of 'Delivered Energy'. It, therefore, becomes of foremost importance to understand what qualifies as 'Delivered Energy'. Article 1.10 is the primary provision prescribing the definition of delivered energy, wherein as per Explanation 2, the delivered energy in a billing month 'shall be limited to the energy calculated at 100% PLF of net exportable capacity'. The emphasis herein has to be put on the delivered energy being 'calculated at 100% PLF' of net exportable capacity. Explanation 2 further goes on to state that whenever generation exceeds by installed capacity, in this case being 19.8 MW, such energy delivered into the grid by the project above 100% PLF, shall be considered payment or otherwise in terms of the rules and regulations in vogue.*

ii. *It is stated that vide Article 1.2, it has been prescribed that 'all the delivered energy at the interconnection point' for sale to the respondent, 'will be purchased at the tariff provided for in Article 2.2'. A bare perusal of the above, read with explanation 2 of Article 1.10, would clarify that all of the delivered energy, which is limited to the energy calculated at 100% PLF of net exportable capacity after deducting auxiliary consumption, is liable to be purchased at the tariff provided for in Article 2.2. At the cost of reiteration, it is stated that in the scenario that generation exceeds by installed capacity, which is 19.8 MW, such energy 'delivered into the grid by the project above 100% PLF' shall be considered for payment or otherwise in terms of the rules and regulations in vogue.*

iii. *It is stated that subsequently, under Article 2.2, the petitioner will be paid the tariff for the net energy delivered at the interconnection point for sale 'at the tariff as determined by TSERC from time to time'. It further states that no tariff will be paid for the energy delivered at the interconnection point beyond the contracted capacity, being 19.8 MW. The respondent No.1 has relied upon this clause to erroneously state that it is not obligated to procure all the energy generated by the petitioner, whereas Article 2.2 only makes such exception for energy delivered 'beyond contracted capacity'. The PPA is a contract which is approved by the Commission in exercise of its power under section 86(1)(b) of the Act, 2003, which governs the relationship between the petitioner and the respondent No.1 qua supply of power from its project. The terms and conditions of the PPA have to be harmoniously construed and to be read in its entirety. Further, the PPA cannot be read independent of the tariff order as well as the RPPO Regulations, 2022 and the tariff policy. Explanation 2 to Article 1.10 cannot have a limited interpretation or*

*construction while interpreting Article 2.2. It may not be out of the place to mention herein that the policy read with the RPPO Regulations, 2022 make it abundantly clear and unequivocal that the petitioner's RDF-based WtE plant shall be entitled to tariff for each and every unit injected into the grid, irrespective of the fact that the same is beyond the contracted capacity, let alone, the argument of 100% PLF.*

iv. *It is stated that the terms and conditions of the PPA as well as the tariff order passed by the Commission cannot have a meaning and interpretation which runs antithesis to the NTP as well as the expressed provision of RPPO Regulations, 2022. The Hon'ble Supreme Court of India has already concluded on the above premise and the same is no more res integra. Even the tariff order passed by the Commission has in the absence of a regulation to that effect, specifically relied upon and referred to the provisions of para 6.4 of the NTP.*

v. *It is stated that the respondent No.1 has erred in overlooking all the above provisions which unambiguously dictate that all the energy delivered, calculated at 100% PLF, is liable to be purchased by respondent No.1 and has instead placed heavy reliance on Article 2.2 which goes on to state that 'the orders of TSERC are enforceable in entirety and shall be considered for the purposes of computation of tariff'. The petitioner has nowhere rebutted the factum that the orders of the Commission being enforceable in entirety, however it is pertinent to highlight that such enforceability is to be 'considered for the purposes of computation of tariff'.*

vi. *It is stated that the respondent No.1 is wholly misplaced in stating that the petitioner is interpreting the tariff order to its advantage to the extent of tariff, without taking the corresponding PLF into account. The terms of the PPA are clear inasmuch the extent of applicability of the tariff order being 'considered for the purposes of computation of tariff'.*

vii. *It is stated that even if any ambiguity exists qua the interpretation of the clauses of a contract between the parties, the intention of the parties herein has to be given primacy while interpreting the clauses of the PPA and the said intention can be culled out from a reading of the clauses in the PPA in its entirety as well as the provisions of the tariff policy and RRPO Regulation, 2022.*

viii. *It is stated that a holistic reading of the PPA, would indicate that there can be no other interpretation of Article 2.2 and explanation 2 of Article 1.10 of the PPA except that respondent No.1 is obligated to purchase 100% of the energy supplied by the petitioner, in terms explanation 2 of Article 1.10, for, under the PPA, it could never have been the intention of the petitioner to supply energy free of cost and enrich the respondent No.1 unjustly. On the same breath, respondent No.1, as per the language of explanation 2 of Article 1.10, has agreed to receive delivered energy which is limited to 100% PLF; however, for energy generated and delivered beyond or above 100% PLF, respondent No.1 has agreed to consider for payment of such extra injected energy in terms of the rules and regulations in vogue. It would be to the contrary to commercial prudence and business sense to aver that respondent No.1 could have procured the said extra injected energy*

*free of cost without paying anything, whereas the regulations as well as the NTP state otherwise.*

ix. *It is stated that the contents pertain to the tariff order passed by the Commission and are answered jointly. The petitioner has adequately dealt with the extent to which the tariff order will be applicable to the payment towards sale of energy, which is dictated by Article 2.2 of the PPA.*

x. *It is stated that the Commission may not lose sight of the principle laid down by the Hon'ble Supreme Court of India in M/s PTC India Limited. vs Central Electricity Regulatory Commission, reported in 2010 (4) SCC 603, that the PPA shall govern the relationship between the generator and the DISCOM procurer, however, it is always subject to regulatory in-road into the contract. Therefore, the supremacy of the regulations being delegated piece of legislation as well as the requirement of harmonious construction of the PPA with the regulations, is paramount and sacrosanct medium of interpretation of the PPA.*

xi. *It is stated that the respondent No.1 has rightly stated above that the entire capital cost along with other incidental costs (interest on debt, O and M charges, working capital requirements, depreciation etc) and return on equity (RoE) are apportioned to the energy units calculated with adopted PLF and accordingly the levelized tariff of Rs.7.84/- unit was determined. It may be appreciated that the Commission initiated a suo moto tariff proceeding for determining generic tariff for all RDF-based WtE plants to be commissioned in the state of Telangana within the control period of 2019-2024. Therefore, as opposed to a project-specific tariff, the Commission has applied the normative standards for each and every component of tariff, to arrive at the levelized tariff rate of Rs.7.84/kWh. Hence, these factors utilised to mathematically arrived at a tariff number, cannot be construed to be interpreted against the very substratum of paragraph 6.4 of the NTP, which the Commission is well cognizant of and duly referred to the same in the tariff order. The Commission also while formulating RRPO Regulation, 2022 has reflected the same provision of paragraph 6.4 of the NTP, which itself is sufficient to negate the apprehensions and wrongful interpretation of the tariff order as suggested by respondent No.1.*

xii. *It is stated that the petitioner vehemently opposes the pick and choose approach of respondent No.1 while it is reading and interpreting the tariff order. It may be appreciated that the tariff order cannot be read and interpreted being completely bereft of the following.*

xiii. *It is stated that there is no prior experience in the state with regard to operation of RDF based WtE plant, the petitioner's plant being the first successfully commissioned and operating RDF based WtE plant in the state, which is recognized as a state of the art in itself.*

xiv. *It is stated that the Commission is devising a generic tariff order whereby it is relying upon no actual past data but on the normative principle available in the industry.*

xv. *It is stated that the factum of the requirement of promotion of RDF based WtE plant (which is in its nascent stage) as well as the peculiarity of the technology and the process, shall have to be taken into consideration.*

xvi. *It is stated that on the pretext of the above only, the NTP puts WtE in a separate pedestrian even in comparison to renewable generators using other renewable sources of energy.*

xvii. *It is stated that the Commission, being conscious of the above has made similar provisions while laying down the RRPO Regulation, 2022.*

q. It is stated that while respondent No.1 herein, has placed reliance on the tariff order, it has not been able to substantiate how such threshold PLF, assumed by the Commission at para 34 of the tariff order, is applicable to the actual sale of the energy and for the computation of bills payable towards such sale. Paragraphs 34 and 35 of the tariff order of the Commission are extracted by the respondent in its submissions at point (o) in paragraph 5 supra.

r. It is stated that nowhere in the tariff order has it been conveyed by the Commission that the PLF prescribed, under Para 34, is to be used for the computation of the monthly bills. A perusal of the tariff order would make it apparent that the normative PLF adopted was only for the purpose of determination of tariff and not for setting a cap on the computation of monthly bill.

s. It is stated that the respondent No.1 has misconstrued the applicability of the 2nd proviso to paragraph 6.4(1) of tariff policy in saying that it has to be read together with the rest of the clause, being paragraph 6.4(2). While respondent No.1 has rightly stated that paragraph 6.4 deals with notification of renewable purchase obligation to be met by the distribution licensees and prescribes under para 6.4(2), that states shall endeavour to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from WtE plants, it has failed to establish how such prescription would affect the mandate under 2nd proviso to para 6.4(1). In arriving at such a conclusion, respondent No.1 has assumed a relation between the 2nd proviso to para 6.4(1), with para 6.4(2), in contravention of a golden rule of interpretation that a proviso does not travel beyond the provision. [See Dwarka Prasad v. Dwarka Das Saraf, 1976 (1) SCC 128]

t. It is stated that on the contrary, the very submission made by the respondent No.1 with regard to the interpretation of paragraph 6.4 is contradictory. How come the paragraph 6.4 is not applicable to the present case, whereas it squarely falls within the ambit of the facts and circumstances of the present

case. The NTP through its proviso, carves an exception to the rule provided under the enabling part of paragraph 6.4(1). The respondent No.1 has also failed to pay heed to the fact that the Commission has relied upon the said clause while passing the tariff order.

u. It is stated that the petitioner has sufficiently dealt with the outcome of the applicability of the above NTP to the present case. Further, the attention of the Commission is brought to the order dated 07.03.2023 passed by the Delhi Electricity Regulatory Commission (DERC) in Petition No.72 of 2022. The DERC, in a petition for approval of bidding process and draft PPA of municipal waste based plant at Narela – Bawana, adoption of tariff, highlighted the significance of the mandate under the NTP, along with the 'must run' status designated to WtE plants by the Ministry of Power (MoP). The learned DERC conclusively held that when 100% of the power is to be procured by the DISCOMs, the capacity of the project is irrelevant. The relevant paragraph is extracted herein below:

> *"43. The National Tariff Policy mandates that the entire power generated by Waste to Energy projects should be procured. The purpose of Waste to energy is to dispose off the waste and divert from dump with the objective of protecting environment. The plant is also "Must Run" and deemed to be scheduled. Ministry of Power vide press release dated 20.01.2016 had stated that in order to give boost to Swachh Bharat Mission, Government of India has made amendments to National Tariff Policy directing that the DISCOMs shall mandatorily procure 100% power produced from Waste-to-Energy plants and has excluded waste to energy from competitive bidding process and these amendments will benefit power consumers in multiple ways. Such plants would also aid the objectives of Swachh Bharat Mission as well as Namami Gange Mission through conversion of waste to energy, usage of sewage water for generation and in turn ensure that clean water is available for drinking and irrigation. The PPA also stipulates that 100% of power is to be procured by DISCOMs and that the respective obligations of the parties will commence even to the extent of partial COD. Since 100% power is to be procured by DISCOMs therefore the capacity of project is whether 28 MW or 36 MW is irrelevant."*

v. It is stated that in this regard, the attention of the Commission is also brought to the RPPO Regulations 2022, notified on 04.04.2022, recognising this mandate on the distribution licensees to procure 100% of power produced from all the WtE plants in the State under the preamble, as well as clause 3(7). Additionally, clause 3(10) stipulates that the power from renewable energy

sources being purchased by the obligated entity(s) under the existing PPAs shall continue till the validity of the existing agreements, even if the total purchases under such agreements exceed the percentages specified in the regulation. The relevant portions of the RPPO Regulations 2022 are extracted herein below:

> *"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) <u>Distribution Licensees shall compulsorily procure 100% power produced from all the Waste-to-Energy plants in the Telangana State.</u>*
>
> *… …*
>
> *(10) The power from renewable energy sources being purchased by the obligated entity(s) under the existing power purchase agreements shall continue till the validity of the existing agreements, even if the total purchases under such agreements exceed the percentages specified hereinabove."*

w. It is stated that vide notification of the above regulation, the Commission has unambiguously adopted the mandate on the distribution licensees to compulsorily procure 100% power produced from all the WtE plants in the State of Telangana, which was previously only prescribed through a policy of the central government. The contention of respondent No.1 that the NTP is only guiding principles is therefore rendered frivolous.

x. It is stated that it is also pertinent to point out that explanation 2 of Article 1.10 of the PPA prescribes that whenever generation exceeds by installed capacity, such energy delivered into the grid by the project above 100% PLF, shall be considered payment or otherwise 'in terms of the rules and regulations in vogue'. The RPPO Regulations 2022 and the mandate prescribed therein sufficiently amount to 'rules and regulations in vogue', therefore governing the payment for the generation exceeding the installed capacity above 100% PLF. A reading of Article 1.10, on the premise of the RPPO Regulations 2022, would undeniably demonstrate that respondent No.1 is obligated to procure and purchase 100% of the power produced from the petitioner's 19.8 MW WtE plant.

y. It is stated that the contents are denied and answered jointly that the respondent No.1 has erred in interpreting that the payment towards 100% of the energy delivered at the interconnection point, would be an 'additional revenue', and was therefore rejected by the Commission.

z. It is stated that in a generic tariff order, for the purpose of arriving at a tariff, the parameters are laid down, which are to be achieved by the generator in order to get the benefit of the tariff so determined under the generic tariff order. Further, whenever a tariff is determined by the appropriate Commission, a normative PLF is determined at the threshold taking into consideration various factors such as the input material, outages, fuel mix, nature of the boiler and other atmospheric issues. The tariff is determined on the basis of such normative PLF so that when the normative PLF is achieved on an annual basis, the generator through the tariff recovers the entire fixed cost of the plant as well as the fuel cost.

aa. It is stated that needless to state, a distribution licensee is allowed to either procure power under Section 63 of the Act, 2003 through a transparent and competitive bidding route and the discovered tariff is to be adopted by the Commission, or, in the alternative, under Section 62 of the Act, 2003 the Commission shall determine the tariff on cost plus basis, be it generic or project specific.

ab. It is stated that under the tariff order, the Commission has dealt with PLF under Issue No.4 whereby after hearing the stakeholders, the Commission has stated that no incentive for higher PLF than the approved PLF is allowed. The Commission did not prescribe any disincentive payable by the generators for failure to achieve the threshold PLF or the normative PLF prescribed in the tariff order. In the absence of any other condition to the contrary, the determinative factor, thus, becomes the PPA, which has been executed between the parties, as well as the provisions of the applicable NTP and the RRPO Regulations, 2022. It is wrong on the part of the respondent No.1 to equate incentive payable for higher PLF with the tariff payable for the purpose of supply of energy units to the procurer. The reference to various orders passed by the Commission in other RE project, is inconsequential, since in those orders there was an incentive provided and neither the tariff policy nor the relevant regulations make any such provision for 100% procurement at the tariff qua other sources of renewable energy as opposed to procurement of power from WtE plant.

ac. It is stated that the respondent No.1 has fallaciously relied upon the order passed by the Commission in the case of M/s Mytrah Vayu (Godavari) Private Limited vs Southern Power Distribution Company of Telangana Limited and others in O.P.No.47 of 2021, which is wholly inapplicable to the facts of the present case. It is stated that in the said order, the Commission has upheld the provisions of the contract between the parties which govern the rights and obligations of the parties, as being sacrosanct. In arriving at the conclusion that the petitioner in the said case was not entitled to payment of tariff for the energy delivered beyond the normative CUF, the Commission has purely relied upon provisions of the PPA executed between the parties, which are substantially distinct from the provisions of the PPA dated 19.02.2020, governing the parties herein.

ad. It is stated that be that as it may, it is to be noted that the said matter concerned the sale of power from a wind power project, in which case no such mandate on the distribution licensees to compulsorily procure 100% of the power produced exists, through regulations or policy, as in the case of WtE plants. Therefore, the distinction drawn on terms of the PPA, as well as the applicable law, makes the reliance upon the above precedent wholly inappropriate.

ae. It is stated that while the petitioner does not agree with the deduction of respondent No.1 that the NTP resolutions are only guiding principles and the SERCs are not bound by them, in the present case the tariff policy was governing the field at the time of passing of the tariff order and more so the same was also adopted by the Commission while notifying the RPPO Regulations, 2022. Hence, there is neither any scope of ambiguity nor any regulatory gap in which an alternative interpretation can be adhered to. Additionally, the fallacious reasoning adopted by respondent No.1 in arguing that the NTP is not applicable to the present case since the Commission has initiated a sue-moto exercise to determine the generic tariff under Section 62 of the Act, 2003 has been sufficiently addressed by the petitioner above.

af. It is stated that the contents are denied on account of being wholly misplaced. The petitioner is in no way challenging the tariff order or the normative PLF assumed by the Commission under the tariff order, in order to compute the applicable tariff herein. The petitioner is simply highlighting the purpose for assuming such normative PLF and is arguing for the same to be distinguished from any threshold adopted for computation of bills. The arguments in support of the said averment has been sufficiently addressed by the petitioner above.

ag. It is stated that based on the above clarification, respondent No.1 has failed to establish why the order of the HERC, extracted by the petitioner in the present petition, is inapplicable to the facts and circumstances. The facts, as well as the terms of the PPA, under the matter before the HERC are squarely identical to the facts of the present case and therefore it is prayed that the principle laid down thereunder be considered by the Commission.

ah. It is stated that therefore, there appears to be no rhyme or reason as to why the normative PLF prescribed in the tariff order shall be applicable for the computation of bills payable by respondent No.1, particularly when it has already been opined that respondent No.1 is obligated to purchase 100% of the energy supplied by the querist as per explanation 2 of Article 1.10 under the PPA, read with the NTP, as well as clause 3(7) of the RPPO Regulations 2022.

ai. It is stated that the contents of para 5 of counter affidavit are denied and disputed in the manner alleged or at all, save and except what are matters of

record and facts specifically admitted and the response to such contents of para 5 of the counter affidavit are dealt hereinunder:

i. *It is stated that the contents are denied on account of being vague and unsubstantiated. The respondent No.1 has not given any substantiation as to which amounts have been accepted by it towards payment and which are denied. For the convenience of the Commission, the petitioner is reiterating that the submissions made by it pertaining to import charges into the following categories, can be bifurcated into the following categories.*

   a) *Double deduction during the tenure of the HT agreement dated 08.08.2020, for the supply of electricity at high tension.*

   b) *Continued deduction after the termination of the HT agreement on 23.11.2021.*

aj. It is stated that during the subsistence of the HT agreement, the respondent No.1 was only entitled to charge 50% of the rate for the category of power plants availing power for startup, due to the application of clause 7.130 of the retail tariff supply order, 2018. Notwithstanding such double deduction, the respondent No.1 has also continued to charge for the import of the same energy under the HT agreement, as well as Article 2.4(a) of the PPA. While the same has been accepted by the respondent No.1 in para 5(iv), there continues to be an amount of Rs.165.9 Lakhs to be reimbursed by the respondent No.1 towards double deduction.

ak. It is stated that not only has respondent No.1 failed to reimburse the above amount, it has further a penalty of amount of Rs.1,25,343.60/- by way of surcharge at the rate of 1.5% per month vide its notice dated 13.01.2022 towards alleged non-payment of dues under the HT agreement. The same was paid by the petitioner under protest vide its letter dated 19.02.2022. The following paragraphs of the petitioner's letter dated 19.02.2022 offers further clarity on the deductions made by respondent No.1 towards import charges:

*"3. Under the HT agreement, HMESPL has already made payment to a tune of Rs.65,67,209/- towards monthly minimum import energy charges for the period 08.08.2020 till 22.02.2021. TSSPDCL has adjusted the total import charges from the security deposit of Rs.32,67,466/- at the time of issuing the notice for termination of services and informed to pay the balance amount which now as per Form B is Rs.15,49,703/- (ref letter 5 above).*

*4. It is submitted to you that minimum monthly bills for import energy charges are also being deducted from the export energy bills. Since it amounts to double recovery of minimum monthly bills for import energy,*

*HMESPL requested TSSPDCL not to raise bills for import energy as it was already deducted at FACC/TSTRANSCO end and requested to refund the balance import charges."*

al. It is stated that the contentions pertain to the continued deductions made by the respondent No.1 after the termination of the HT agreement and are answered jointly. Article 2.4(a) is the charging provision under the PPA for the drawl of energy from the respondent and states that the respondent shall bill the petitioner wherein any billing month, the petitioner is entitled to draw energy, while Article 2.4(e) only governs the manner in which such energy drawn by the petitioner is to be billed. The respondent No.1 has wrongly relied upon Article 2.4(e) to maintain that only minimum HT-I category billing is made applicable.

am. It is stated that further, the respondent No.1 has also failed to offer any basis inasmuch the amounts it is claiming as being rightly applicable. Per contra, the total amount deducted by the respondent No.1 towards import charges, without the petitioner having drawn any energy during those billing months, is Rs.162 Lakhs. The petitioner therefore maintains that the said amount is liable to be reimbursed.

an. It is stated that there continues to be an amount of Rs.139,34,79,124/-, without interest, is payable by the respondent No.1 towards energy bills raised. In this regard, the petitioner requests that a reconciliation of the books of both the petitioner and the respondent No.1 be permitted so as to arrive at a concurrence qua the total amount due by the respondent No.1 towards sale of energy under the PPA.

ao. It is stated that however, the respondent No.1 had till now, failed to communicate such failures qua opening of LC on its behalf. As a prudent business practice, the respondent No.1 ought to have disclosed, the reasons for its failure to perform one of its obligations under the PPA, at an earlier stage.

ap. It is stated that the failure of the respondent No.1 to open the LC is significantly impacting the petitioner's financial security. The petitioner trusts the wisdom of the Commission to issue the appropriate direction to the respondent No.1 towards its inability to open the LoC and also take notice of its failure the duly communicate the same to the petitioner.

aq. It is stated that in view of the detailed submissions made hereinabove, read with the submissions and grounds made in the captioned petition, the petition is required to be allowed. Accordingly, the prayer sought by the respondent No.1 in the counter affidavit and is vehemently denied and disputed.

ar. Therefore, it is prayed the Commission to issue directions as prayed for in the captioned petition.

7. The respondent has filed additional submissions and the same are extracted below.

a. It is stated that the petitioner filed rejoinder to the reply affidavit furnished by the respondents. During the hearing on 04.04.2023, while reserving the matter for orders, the Commission directed both the parties to file additional written submissions, if any.

b. It is stated that the respondents submit the following additional submissions in continuation of the oral submissions made on 04.04.2023.

c. It is stated that at the outset, it is an admitted fact that as per the terms of the PPA payment of energy delivered at the inter-connection point shall be as per the generic tariff determined by the Commission by order dated 18.04.2020. Article 2.2 of the PPA dated 19.02.2020 read with definition in Article 1 (definition pertaining to delivered energy) lays down the details for the payment to the energy delivered. For the sake of convenience Article 2.2 is extracted below:

*"2.2 The Company shall be paid the tariff for the net energy delivered at the interconnection point for sale to DISCOM at the tariff as determined by TSERC from time to time. No tariff will be paid for the energy delivered at the interconnection point beyond contracted capacity. The orders of TSERC are enforceable in entirety and shall be considered for the purposes of computation of tariff."*

d. It is stated that the said Article very clearly stipulates the following:

(i) The tariff for the energy delivered at the interconnection point for sale to DISCOM shall be as determined by the Commission.

(ii) No tariff will be paid for the energy delivered beyond contracted capacity. The contracted capacity is defined as 19.8 MW at Article 1.9 of the PPA. As such the contention of the developer for payment of tariff for the energy delivered beyond 100 % PLF is baseless.

(iii) The orders of the Commission determining the tariff to be paid shall be enforceable in entirety. The Commission while determining tariff considered PLF as one of the key parameters; it therefore implies that any increase in PLF invariably would result in reduction in tariff. Accordingly, the contention of the petitioner for adopting the tariff as per generic tariff, leaving the PLF aside is illogical and hence not acceptable.

e. It is stated that hence, the contention of the petitioner that the threshold PLF adopted in the tariff determination process shall not be utilized for computation of monthly bills becomes untenable.

f. It is stated that as the entire costs incurred by the petitioner are apportioned over the threshold PLF units in the 'cost plus approach' while determining the per unit tariff, any payment made for the units delivered beyond the threshold PLF amounts to additional unreasonable revenue to the generator resulting in additional financial burden on the electricity consumers of the State.

g. It is stated that since the NTP mandates the distribution licensees to procure 100% power from the WtE plants at the tariff determined by the Commission, PPA with the petitioner for procurement of power from their 19.8 MW RDF based power project was concluded by the respondent, without subjecting them to competitive bidding process. However, the terms and conditions for procurement and payment as provided in the PPA read with the tariff order dated 18.04.2020, are binding on both the parties.

h. It is stated that ignoring certain provisions of the PPA, the petitioner is cherry picking certain articles which are beneficial to them. However, the PPA shall be viewed holistically and cannot be implemented in piecemeal and cannot be interpreted to the advantage of the developer.

i. It is stated that even the tariff policy provisions lay down that the procurement of energy from WtE projects is to be done at the 'tariff determined by SERC' that is whatever the Commission tariff order stipulates is final for implementation. Once the agreement is signed for procurement of power from petitioner's project at the tariff determined by Commission under Section 62 of the Act, 2003, the directions of the NTP advising DISCOMs to procure 100% power from WtE plants stand complied and pursuant thereto the signatories of the PPA would be bound by the terms and conditions of the PPA.

j. It is stated that explanation 2 of Article 1.10 of the PPA in respect of arranging payment for the energy delivered, specifically mandates the petitioner to limit the delivered energy to 100% PLF calculated based on the net exportable capacity. As such the petitioner cannot claim any amount for the energy pumped beyond 100% PLF.

k. It is stated that it is pertinent to note that even if the developer fails to achieve the specified normative annual PLF and delivers energy below the threshold PLF also, there is no reduction in tariff to compensate DISCOM for under generation. This itself clearly explain the philosophy behind restricting the payment to the energy supplied up to the specified PLF.

l. It is stated that the Commission involved the petitioner in the tariff determination process while fixing the generic tariff vide orders dated 18.04.2020. By that time the PPA was already concluded. The petitioner did not bring any valid objections in respect of purchase of energy beyond the threshold PLF either during the process or after the issuance of order dated 18.04.2020. The petitioner was satisfied with the proceedings of the Commission and hence did not chose to challenge the tariff order before higher forum. The petitioner having accepted the generic tariff order based on which the payments are being made as per the PPA, is estopped from deviating the generic tariff order.

m. It is stated that it is 0pposite to reiterate the findings of the Commission in the generic tariff order dated 18.04.2020 on the proposal of the stakeholders for providing incentive to the generation beyond threshold PLF – The same reads thus:

> *"35. The Commission does not subscribe to the stakeholders submission that providing incentive for higher PLF than the approved PLF."*

n. It is stated that the said findings of the Commission clearly indicate that the Commission is not inclined to grant any incentive for the energy delivered beyond threshold PLF as claimed by the petitioner.

o. It is stated that it is not appropriate on the part of the developer to insist the Commission to disturb its findings which attained finality long back.

p. It is stated that the Commission in O.P.No.47 of 2021 filed by M/s Mytrah Vayu (Godavari) Private Limited seeking payment of amount towards the energy

generated over and above capacity utilization factor (CUF) as per the PPA held as follows:

*"… …*

*24. The Commission passed order dated 15.11.2012 in O.P No.13 of 2012 through public consultation process duly considering all the comments/suggestions of the stakeholders and determined generic levelized tariff @ Rs 4.70 per unit for the wind based generating plants that enter into PPA between 15.11.2012 and 31.03.2015 for a period of 25 years by factoring normative CUF of 23% in order to encourage efficiency and optimal selection of sites and also considered factors like advancement of technology, higher hub heights and larger rotor diameter machines. It is known fact that that the generic levelized tariff and CUF are inversely proportional and for higher CUF the generic levelized tariff would be lower than the determined tariff for entire period of 25 years. … … ."*

q. It is stated that the said findings of the Commission clearly illustrate that the relation between the tariff and the CUF (PLF in the present case) that is in case the CUF is higher, the generic levelized tariff would be lower.

r. It is stated that similarly, the generic levelized tariff was determined for the RDF based projects vide orders dated 18.04.2020 also factored certain PLF (viz., 65% for 1st year, 75% for 2nd year and 80% from 3rd year onwards). If higher PLFs were factored, the levelized tariff would have been proportionately lower for the entire 25 years PPA period. As such, keeping this fact in view, the Commission categorically declined the proposal of the generators for providing incentive for higher PLF than the approved PLF at paragraph 35 of the generic tariff order.

s. It is further stated that the petitioner and their parent company also filed petitions before this Commission disowning their liability to comply the directions of Commission issued in generic tariff order dated 18.04.2020 in the matter of reimbursement of tipping fee paid by GHMC to the respondent.

t. It is stated that on one side the generator fails to oblige the directions of the Commission in reimbursing the tipping fee to the respondent and on the other side claims for payment towards energy generated over and above the approved PLFs. Having participated in the entire tariff determination process and having accepted the tariff order as the same has not been challenged by the developer in higher forums, the petitioner is acting greedy. Therefore, the

relief sought by the petitioner is completely unjustified and hence deserves no consideration.

u. It is stated that the reliance is placed by the petitioner on the order dated 11.05.2022 passed by the HERC in Petition No.48 of 2021. In this connection, *the following is stated that:*

*i) The facts and circumstances of the said case are completely different from the present petition, in so far as –*

*a. the petitioner/generator in the Haryana case was selected through competitive bidding process as against the petitioner in the present case is not so.*

*b. The modalities which the Haryana generator shall be complied with are based on the RfS of the competitive bid process; The petitioner on the other hand is bound by the terms and conditions of the PPA signed with the respondent DISCOM.*

*c. The prayer of the generator in the Haryana case is directions for procurement of electricity generated without restricting quantum of generation to 6.77 MW (PPA capacity 8 MW) in each 15-minute time block. There is no mention of threshold PLF for payment of tariff.*

*ii) The findings of the HERC in the said petition is extracted below for ready reference:*

*"… …*

*Therefore, given the provisions of National Tariff policy, 2016, variability of power generation by Waste-to-Energy plants depending on the nature and characteristics of fuel fed and associated objective of such projects viz management and disposal of municipal waste, the interpretation of the PPA which mentions that HPPC to accept all such electrical energy upto 6.77 MW, has to be construed with reference to the quantum of power injected by the generator on an annual basis. Such dispensation ie., reckoning with contracted capacity on an annual basis shall also allay the fear of respondent no. 2 ie., ULB that they will have to bear additional financial burden in the case the petition is allowed by this Hon'ble Commission. … … "*

*iii) Thus, the HERC directed to consider all such energy upto 6.77 MW on an annual basis without restricting the capacity on 15 minute time block basis. There is no mention regarding either threshold PLF or payment for the energy beyond threshold PLF, as the same were not part of the petition. As such, the referred order is not relatable to the present petition.*

*iv) However, it is clarified that the energy injected by the petitioner at the interconnection point has never been subject to curtailment honouring the 'must-run' status to the petitioner's project. Also, the energy for the payment of tariff is being calculated on annual basis based on the*

*threshold PLF granted by the Commission in the generic tariff order as stipulated in the PPA.*

v. It is stated that the Delhi Electricity Regulatory Commission (DERC) order dated 07.03.2023 passed in Petition No.72/2022 furnished by the petitioner during the hearings on 04.04.2023 is connected with the enhancement of PPA capacity, which is not the prayer in the subject petition, hence irrelevant. Further, there are issues like viability gap funding factor in determination of tariff and selecting the developer in competitive bidding etc., in the petition disposed by DERC, which are not at all relevant to the Commission's order dated 18.04.2020 and also in the present proceedings before Commission.

w. It is stated that at this point, in the context of the new submissions made by the petitioner during the hearings held on 04.04.2023, respondent begs to request the Commission to look into the matter of injecting additional energy with respect to enhancement of capacity from 19.8 MW to 24 MW, approval for which is yet to be accorded by the Commission. The prayers of the developer in the petition needs to be examined in the light of these new submissions on 04.04.2023.

x. It is stated that also, the argument of the petitioner that as per NTP the respondent is bound to take all the energy imported to the grid irrespective of installed capacity is misconceived. The PPA clearly defines the contracted capacity, installed capacity and net exportable capacity. The DISCOMs design their power procurement plan in line with these capacities defined in the PPAs. DISCOMs are subject to penalties for any deviations in terms DSM Regulations for both under/over injection/drawls. It may be recalled that even in respect of some of the other NCE agreements, there is no tariff payment for the energy delivered beyond threshold PLF and so also any incentive. In the tariff order applicable to the petitioner's project, even the incentive payment for the energy supplied beyond threshold PLF has been denied. As such, the contention of the petitioner for injection of energy beyond net exportable capacity becomes untenable.

y. It is stated that the petitioner during the hearings stated that they have enhanced their capacity from 19.8 MW to 24 MW and started their generation from 1$^{st}$ April. The Commission may please note that the consent for

enhancement of PPA capacity is yet to be accorded and pending such approval, the petitioner is estopped from enhancing generation and in case does so the same amounts to grid indiscipline.

z. It is stated that in light of the above, the Commission is prayed to take into consideration all the submissions made by the respondents and deny the prayers of the petitioner.

8. The petitioner has filed written submissions, which are extracted below.

a. It is stated that the respondent No.1 has been procuring power from the petitioner's 19.8 MW WtE plant by virtue of the PPA dated 19.02.2020 executed between the petitioner and respondent No.1, at the tariff determined by the Commission in the generic tariff order dated 18.04.2020.

b. It is stated that the petitioner, in preferring the present petition under Sections 86(1)(f) and (k) of the Act, 2003 has raised the following issues.

c. It is stated that the Commission, in paragraph 34 of the tariff order factored the normative annual PLF of 65% for the first year, 75% for the second year and 80% from third year onwards for the determination of tariff. The respondent No.1, in absolute ignorance of the applicable laws and the terms of the PPA governing the sale of energy between the parties, has been erroneously applying this PLF for the computation of monthly bills payable to the petitioner. This application of the normative PLF by the respondent No.1 came to the knowledge of the petitioner in July, 2022, owing to the average delay of 18 to 20 months in payment of bills by the respondent No.1.

d. It is stated that the above conduct of respondent No.1 can be specifically discerned from the annexures to the letter dated 22.06.2022 issued by the petitioner to respondent No.1, making it evident that respondent No.1 has been applying the threshold PLF of 65% and 75% to the bills computed for the first and the second tariff year. The application of this PLF solely for the first two years of the petitioner's project life is amounting to a difference of Rs.4075.76 lakhs.

e. It is stated that the provisions of the PPA leave no ambiguity inasmuch as the obligation of respondent No.1 to purchase 100% of the energy delivered at the

interconnection point. Under Article 2 of the PPA, which governs the purchase of energy and tariff, the quantification of the energy, which is to be purchased, is in terms of delivered energy. The Article 1.10 is the primary provision prescribing the definition of delivered energy, wherein as per Explanation 2, the delivered energy in a billing month shall be limited to the energy calculated at 100% PLF of net exportable capacity. Explanation 2 further goes on to state that whenever generation exceeds by installed capacity, in this case being 19.8 MW, such energy delivered into the grid by the project above 100% PLF, shall be considered for payment or otherwise in terms of the rules and regulations in vogue.

f. It is stated that a bare perusal of the above, read with explanation 2 of Article 1.10, would clarify that all of the delivered energy, which is limited to the energy calculated at 100% PLF of net exportable capacity after deducting auxiliary consumption, is liable to be purchased at the tariff provided for in Article 2.2. However, in the scenario that generation exceeds by installed capacity, which is 19.8 MW, such energy delivered into the grid by the project above 100% PLF shall be considered payment or otherwise in terms of the rules and regulations in vogue.

g. It is stated that the petitioner also places reliance on the NTP wherein the 2nd proviso to paragraph 6.4 mandates distribution licensee(s) to compulsorily procure 100% power produced from all the WtE plants in the state. Such mandate has also been recognized by the Commission in clause 3(7) of the RPPO Regulation, 2022.

h. It is stated that the PPA is a contract which is approved by this Hon'ble Commission in exercise of its power under Section 86(1)(b) of the Act, 2003, which governs the relationship between the petitioner and the respondent No.1 qua supply of power from its project. The terms and conditions of the PPA have to be harmoniously construed. Further, the PPA cannot be read independently of the tariff order as well as the RPPO Regulations, 2022 and the tariff policy, which make it abundantly clear and unequivocal that the petitioner’s RDF based WtE plant shall be entitled to tariff for each and every unit injected into the grid, irrespective of the fact whether the same is beyond the contracted capacity, let alone, the argument of 100% PLF.

i. It is stated that for the above, the petitioner also relies upon the order dated 11.05.2022, passed by the HERC in Petition No.48 of 2021. The relevant portion of the order, at paragraph 9, passed by the HERC, has been extracted earlier by the petitioner. The petitioner further places reliance upon the order dated 07.03.2023 passed by the DERC in Petition No.72 of 2022, while hearing a matter for approval of bidding process and draft PPA of municipal waste-based plant at Narela – Bawana, adoption of tariff, highlighted the significance of the mandate under the NTP, along with the must run status designated to WtE plants by the MoP. The DERC conclusively held that when 100% of the power is to be procured by the DISCOMs, the capacity of the project is irrelevant. The relevant paragraph is extracted herein below:

> *"43. The National Tariff Policy mandates that the entire power generated by Waste to Energy projects should be procured. The purpose of Waste to energy is to dispose off the waste and divert from dump with the objective of protecting environment. The plant is also "Must Run" and deemed to be scheduled. Ministry of Power vide press release dated 20.01.2016 had stated that in order to give boost to Swachh Bharat Mission, Government of India has made amendments to National Tariff Policy directing that the DISCOMs shall mandatorily procure 100% power produced from Waste-to-Energy plants and has excluded waste to energy from competitive bidding process and these amendments will benefit power consumers in multiple ways. Such plants would also aid the objectives of Swachh Bharat Mission as well as Namami Gange Mission through conversion of waste to energy, usage of sewage water for generation and in turn ensure that clean water is available for drinking and irrigation. The PPA also stipulates that 100% of power is to be procured by DISCOMs and that the respective obligations of the parties will commence even to the extent of partial COD. Since 100% power is to be procured by DISCOMs therefore the capacity of project is whether 28 MW or 36 MW is irrelevant."*

j. It is stated that given the above, the petitioner prays for a declaration to the effect that respondent No.1 is obligated to purchase all the energy delivered at the interconnection point and supplied by the petitioner and declare that the PLF factor in a generic tariff order is only utilized for determination of tariff and is not applicable for computation of bills.

k. It is stated that the petitioner is claiming reimbursement of the following excess deductions made by the respondent No.1 towards import charges:

   *i. Double deduction during the tenure of the HT agreement dated 08.08.2020, for the supply of electricity at high tension with respondent No.1.*

l. It is stated that the petitioner had executed an agreement dated 08.08.2020, for the supply of electricity at high tension with respondent No.1. The HT agreement was purposed for the supply of electricity to the petitioner, at a specified voltage of supply as per tariffs for the purpose of evacuation of power, HT-I category. The petitioner availed back charge from respondent No.1 for pre-commissioning of the instant 19.8 MW RDF-based WtE plant. The petitioner was billed for import charges as per the conditions of the said agreement for the stipulated period. The validity of the HT agreement was only for a period of one year.

m. It is stated that during the subsistence of the HT agreement, respondent No.1 was only entitled to charge 50% of the rate for the category of power plants availing power for start-up power, due to the application of clause 7.130 of the retail tariff supply order, 2018. While the same has been accepted by respondent No.1, it has failed to adjust the entire amount deducted towards such charge. Notwithstanding such double deduction, respondent No.1 has also continued to charge for the import of the same energy under the HT agreement, as well as Article 2.4(a) of the PPA.

n. It is stated that therefore, during the subsistence of the HT agreement, there is an amount of Rs.165.9 Lakhs to be reimbursed by respondent No.1 towards double deduction.

*i. Continued deduction after the termination of the HT agreement on 23.11.2021.*

o. It is stated that even after the termination of the HT agreement by the respondent No.1, it continued to make deductions under Article 2.4(a) of the PPA, every month. Article 2.4(a) of the PPA is the charging provision under the PPA for the drawl of energy from the DISCOM and states that the DISCOM shall bill the petitioner wherein any billing month, the petitioner is entitled to draw energy, while Article 2.4(e) only governs the manner in which such energy drawn by the petitioner is to be billed. The respondent No.1 has continued to consistently deduct amount towards import charges every month.

p. It is further stated that respondent No.1 has also failed to offer any basis inasmuch the amounts it is claiming as being rightly applicable. Per Contra, the total amount deducted by respondent No.1 towards import charges, without the

petitioner having drawn any energy during those given billing months, is Rs.162 Lakhs. The petitioner therefore maintains that the said amount is liable to be reimbursed.

q. It is stated that the total amount payable on account of excess deductions made for import charges is Rs.327.9 Lakhs. The petitioner prays for a direction for reimbursement of the same from the respondent No.1.

r. It is stated that there continues to be an amount of Rs.139,34,79,124/-, and interest amounting to Rs.29,46,73,511/- payable by respondent No.1 towards energy bills raised.

s. It is stated that in this regard, the petitioner prays from the Commission effecting a reconciliation of the books of both the petitioner and respondent No.1 so as to arrive at a concurrence qua the total amount due by respondent No.1 towards sale of energy under the PPA.

t. It is stated that while the respondent No.1 has now accepted its inability to open the LC due to inadequacy of funds, it is reiterated that respondent No.1 had failed to communicate such failures earlier. The failure of respondent No.1 to open the LC is significantly impacting the petitioner's financial security. As a prudent business practice, respondent No.1 ought to have disclosed, the reasons for its failure to perform one of its obligations under the PPA, at an earlier stage.

u. The petitioner prays for an appropriate direction for the Commission to respondent No.1 in this regard on account of the financial vulnerability caused to the petitioner by virtue of the failure of respondent No.1 to open the LC in accordance with Article 6.4 of the PPA.

9. The Commission has heard the parties as well as considered the material available to it. The submissions made by the parties on various dates are extracted for ready reference.

*Record of proceedings dated 21.11.2022:*

*"… … The counsel for petitioner stated that the matter is coming up for the first time and the counter affidavit has to be filed in the matter. The representative of the respondent sought time of one month to file counter affidavit. Considering the request of the respondent, the matter is adjourned."*

*Record of proceedings dated 12.01.2023:*

*"… … The advocate representing the counsel for petitioner stated that the counter affidavit has been filed today and she requires time to file rejoinder in the matter. Time may be granted for two weeks and the matter may be scheduled after the said period. The representative of the respondent has no objection. Expressing that the Commission is required to undertake tariff determination exercise on several counts, the matter is adjourned."*

*Record of proceedings dated 04.04.2023:*

*"… … The counsel for petitioner stated that the petitioner is a MSW project undertaking supply of power to the respondent under a PPA. The issue raised in the petition is with regard to payment of amount for the energy supplied to the respondent at 100% as is required under National Tariff Policy, 2016 (NTP) and also in terms of the Regulation No.7 of 2022.*

*The counsel for petitioner stated that the licensee has paid amounts for the power supply that has been made at the rate of 65% of the power supply for the first year, 75% for the second year and 80% for the third year. The COD of the project is in the year 2020 and the issue of short payment by the respondent came to light in the year 2022 when the amounts were being reconciled against the energy supplied under the PPA.*

*The counsel for petitioner stated that in fact, the PPA provided for payment of tariff for the entire energy delivered after deducting the auxiliary consumption as agreed thereof. The petitioner has been achieving capacity of more than 100% of the plant in occasional generation and has been injecting such generation into the grid. As per the policy and the regulation mentioned above, the petitioner is entitled to payment for the entire generation dehors of the normatives by deducting the auxiliary consumption only. To this effect, the provisions of PPA are specific and clear. The licensee is not complying with the same. The NTP specifically requires direct procurement of MSW RDF based generation without following the process of competitive bidding which is required in respect of other renewable sources. The Commission had recognized and quoted with approval the said condition provided in the national tariff while determining the generic tariff for MSW projects in the year 2020. Further, the Commission recognized this aspect in its regulation also made in the year 2022 with regard to renewable power purchase obligation.*

*The counsel for petitioner stated that when the order of the Commission on tariff as well as regulation is specific and clear, the licensee cannot deviate from the provisions thereof and implement the order of the Commission or the regulation in its own fancied manner. The licensee is bound to give effect to the order of the Commission along with regulation including the terms of the PPA. Inasmuch as the terms of the PPA are inline with the NTP and the Regulation of 2022 and there is no ambiguity in this regard. Moreover, because the Commission had pointed out that the generation would be available to the extent of 65%, 75% and 80% respectively for the 1st, 2nd and 3rd year, it does not mean that it is estopped from giving effect to the NTP as also subsequent regulation made by the Commission.*

*The counsel for petitioner stated that the project is conceived for 19.8 MW initially, however, due to technical requirement the capacity installed is capable of generation upto 24 MW. In fact after the COD, the petitioner had been able*

*to achieve more than 19.8 MW generation. Thus, it had injected additional quantum of energy for which the present petition is filed to recover the tariff of the said generation. The petitioner sought to rely on the observations made by HERC and DERC on the same. The counsel for petitioner brought to the notice of the Commission the various clauses in the PPA which would highlight the case of the petitioner. He also stated that since the petitioner's project is a renewable source and is also otherwise can environmental friendly project undertaking the disposal of the waste management of the municipal authorities, it is necessary that it should be encouraged by allowing to recover the amounts beyond the applicable parameters insofar as the energy generated.*

*The counsel for petitioner stated that the petitioner is not inclined to press for the payment of the tariff beyond 100% eventhough it had generated excess energy over and above 100%. The counsel for petitioner stated that the petitioner is not inclined to agitate for the amounts which are beyond the tariff provisions and the PPA. However, the licensee should pay the amount towards 100% generation after deducting auxiliary consumption as provided in the PPA and the order of the Commission alongwith regulation.*

*The representative of the respondent while opposing the petition stated that the petitioner has violated the orders of the Commission and the PPA and injected additional quantum of energy, which is not sought for by the licensee. The provisions in the PPA and the regulation made by the Commission have specifically provided as to what is the quantum of energy that is required to be procured by the respondent. It cannot cross the PLF as provided in the PPA as also the tariff order. Only because, it could achieve higher generation than the normatives, it does not mean that the respondent is bound to pay for all the energy delivered. When the petitioner has violated the normatives and the provisions of the PPA, the respondent is not required to oblige the petitioner towards such generation and payment thereof.*

*The representative of the respondent stated that the petitioner is seeking to interpret the provisions of the PPA to mean that whatever energy is generated by it, is required to be procured by the respondent and pay for the same. The provisions do not establish such a case for the petitioner. No doubt the tariff policy and the regulation might have provided for procurement of 100% of the energy generated but it would be upto the contracted capacity only applying the normatives. The licensee cannot on its own motion or to facilitate the petitioner, deviate from the clauses in the agreement read with the policy and the regulation. The respondent has been giving effect to the provisions of the PPA including the normatives as set out by the Commission in its generic tariff order. Nothing precluded the petitioner from limiting its generation to the normatives and the provisions of regulation without there being any authority to generate excessively.*

*The representative of the respondent stated that the respondent is not agreeable to procure the additional quantum of generation which has been achieved by the petitioner beyond the contracted capacity. Though, it may be technically feasible to generate excess quantum, the same has not been ratified by the Commission. The references made by the petitioner with regard to the orders passed by other Commission are neither binding nor applicable to this case. The same have arisen in a different set of circumstances. Therefore, the Commission may not consider the case of the petitioner and accordingly reject*

*the relief sought for by the petitioner.*

*The counsel for petitioner stated that the claims made by the petitioner and the correspondence made with the respondent did not yield result in the matter. Therefore, to safeguard its interest and to highlight the misinterpretation being indulged by the respondent, the petitioner had approached the Commission. No doubt reference made to orders of the other Commissions are not binding but are of persuasive value, yet the Commission may consider the interpretation that is placed in respect of RDF projects. The Commission may consider allowing the petition in order to encourage renewable source."*

10. The Telangana State Power Coordination Committee (respondent No.2 TSPCC) is the state body which manages the purchase of power on behalf of TSDISCOMs, in the State of Telangana and the Transmission Corporation of Telangana Limited (respondent No.3) (TSTRANSCO) is the State Transmission Utility of the State of Telangana, which is entrusted with the task of planning, constructing and maintaining the transmission network in the State of Telangana. The Commission has deleted both these respondents from the array of parties as they are not connected with the issue and are not required to contest the same as they are having no statutory authority under the Electricity Act, 2003 or regulations thereof. Thus, the distribution licensee is sole respondent in this case.

11. The Commission had taken up the petition as well as Interlocutory applications as sought for expeditiously. Hence, the I.A.No.57 of 2022 stood allowed as an interim measure.

12. The petitioner sought to rely on several clauses in the PPA as also clubbing several issues in the petition. The prayer and the grievance that is required to be considered is the requirement of purchase of delivered energy in terms of the PPA read with the provisions of the Tariff Policy 2016. The petitioner also clubbed the prayers relating to the claims made by the respondent towards import charges as also the dues payable by the respondent apart from the aspects of timely payment and opening LC. The Commission has examined the various contentions in terms of the elaborate submissions made by the parties on the various issues and the point of contention as set out by the parties.

13. Having heard the submissions of the counsel for petitioner and the representative of the respondent, the points of issue that arise for consideration are as below:

a. *Whether the petitioner is entitled for payment of charges for the delivered energy beyond the normative PLF set by the Commission?*

b. *Whether the claim towards import charges is related to payment for delivered energy to be made by the respondent (licensee) and if so, can it be considered along with the prayer for payment towards delivered energy?*

c. *Whether the issues relating to arrears due from the respondent and opening of LC can be clubbed to the prayer for payment of charges for delivered energy over and above normative PLF, if not, is the prayer beyond the scope of the petition?*

14. The first and foremost issue raised by the petitioner is with regard to payment of charges for the energy delivered by the petitioner beyond the normative PLF. In this regard, it is the contention of the petitioner that it had delivered energy beyond the contracted capacity of 19.8 MW for which it had raised invoices and sought payment thereof. The petitioner further contended that the respondent has not only restricted the payment upto normative PLF but did not pay the charges for the energy delivered beyond the contracted capacity duly violating the PPA and the Tariff Policy 2016.

15. To the contrary, the respondent contested that the tariff payable for the energy delivered has to be limited to the normative PLF as decided by the Commission in the generic tariff order and it cannot be extended beyond the contracted capacity.

16. This aspect came to light when the licensee (herein the respondent) came before the Commission with a proposal and filed a petition in O.P.(SR) No.116 of 2022 wherein the licensee sought to amend the PPA particularly with reference to the contracted capacity from 19.8 MW to 24 MW. While examining the matter, the Commission had thorough enquiry as to how the proposal can be considered and allowed. These aspects came to light prior to, and post final hearing of the present matter and it had been noticed that technically the petitioner could not have run the plant beyond the rated capacity of the plant. It appears that the petitioner had not only run the plant beyond the rated capacity in terms of PLF but also beyond the contracted capacity.

17. The Commission had advantage of the technical details and also the functioning of the plant while examining the said petition filed by the licensee for amendment of the PPA. It has aided the Commission in arriving at a proper and just decision in this matter also. To appreciate the fact, the finding set out by the

Commission in the said order is extracted below:

*"… …*

*5. Initially, upon in-principle consent accorded by the Commission vide letter No.L-36/6/Secy/JD(Law)-1/D.No.212, dated 03.12.2019 to draft PPA dated 23.07.2019, a fair NCE PPA No.01/2020 dated 19.02.2020 was entered between petitioner and HMESPL for setting up RDF based power project of capacity 19.8 MW at Jawaharnagar (V), Kapra (M), Medchal District with a proposal of 2.178 MW for auxiliary consumption and 17.622 MW for export to grid for sale to petitioner at a tariff determined by the Commission from time to time for a period of 20 years from Commercial Operation Date (COD). The following are the definition and provisions in the PPA relevant to the present case:*

*Article 1.16 "Installed Capacity" means 19.8 MW that is the total rated capacity in Mega Watts of all the generators installed.*

*Article 10.2 No oral or written modification of this Agreement either before or after its execution shall have any force or effect unless such modification in writing and signed by the duly authorized representatives of the company and the DISCOM, subject to the condition that any further modification of the agreement shall be done only with the prior approval of TSERC. However, the amendments to the agreement as per the respective orders of TSERC from time to time shall be carried out. All the conditions mentioned in the agreement are with the consent of TSERC.*

*… …*

*8. Having approved the request of HMESPL vide its letters dated 17.08.2022 and 12.09.2022, the petitioner entered into first draft amendment on 10.10.2022 to the PPA dated 19.02.2020 with HMESPL for enhancement of capacity of the WtE plant from 19.8 MW to 24 MW capacity (i.e., augmentation of existing capacity) subject to the consent of the Commission, and hence filed this petition seeking consent to the draft first amendment to PPA on 06.12.2022.*

*9. The Commission on scrutiny of the petition, had addressed a letter to the petitioner on 29.12.2022 seeking certain information ….*

*10. In reply letter dated 27.07.2023 the petitioner stated that an inspection has been carried out of HMESPL power project on 31.01.2023 by a team of officers of the petitioner and also stated that rating of the generator has been assessed through name plate details of the power plant as 19.8 MW and the fuel used in the power plant is as Municipal Solid Waste (MSW) and no preparation of RDF. Further stated in the said letter that on its own volition had entrusted the inspection of the same power plant to the Jawaharlal Nehru Technology University, Hyderabad (JNTU) a third party, which has constituted a committee and the said Committee concluded that the generator is using RDF in the form of fluff. The Commission notices that the reports placed before the Commission is contrary to each other.*

*11. Inasmuch as the existing plant of the generator according to the*

*petitioner is delivering higher capacity than the rated capacity of the plant, which itself is an unauthorized action, contrary to the original agreement entered between the petitioner and generator. The petitioner failed to bring forth the factual situation while filing the petition itself and only brought these facts on record after filing the petition that too upon insistence by the Commission.*

*… …*

13. *At the time of hearing the matter, the petitioner was at pains to explain the technical and other aspects due to lapses on its part. Having failed to convince the Commission about its fair action, subsequently the petitioner conveniently to obviate any adverse order as also sustain the PPA ostensibly has sought to withdraw the petition through a letter dated 03.10.2023. There is also no request for liberty for resubmitting the same for fresh consideration after compiling the proper information. In this regard it may be appropriate to observe that the Commission having come to the conclusion in the matter and having expressed its view across the hearing, it may not be appropriate to allow the petitioner to escape the clutches of adversity at the hands of the Commission.*

14. *No doubt that the petitioner has option to withdraw the petition, but subject to certain conditions. It is trite that the petitioner has sought permission to withdraw the petition albeit given the factual situation arising out of the enquiry made by the Commission. Though the circumstances in this case do exists and the petitioner has consciously realised the same and wanted to abandon the petition, the Commission is constrained to observe that the request came as afterthought and that too after a period of about 12 days have passed by, after the Commission has expressed its displeasure and sought to pass orders in the matter at the time of hearing. Hence the Commission could have ordinarily allowed the petitioner to withdraw the petition but is refraining from doing so, as it is on record to have made up its view and also distinctively made known its view at the time of hearing.*

*… …*

16. *Allowing the petitioner to withdraw the petition may also lead to adverse consequences, as the said beneficiary the generator, who signed the amendment to the PPA would allege it, being party to PPA and beneficiary, had been denied opportunity to place its case as to why the amended PPA has been entered by the petitioner herein. Since the Commission is not satisfied with the submission of the petitioner and to obviate the adverse consequences of such withdrawal, it is not permitting the same.*

17. *In these circumstances, the Commission cannot permit the petitioner to go scot free for its lapses and withdraw the petition. Accordingly, while refusing to consider the request made by petitioner in its letter dated 03.10.2023, the Commission is not inclined to entertain the petition and accordingly rejects the same at the admission stage."*

*From the finding set above in the earlier order, it is clear that the petitioner in this case had surreptitiously acted and sought to force the licensee to enter into an agreement for enhancement of the capacity, solely because it had been generating power in excess of the plant*

*capacity and contracted capacity also. Merely because, the petition could achieve higher generation beyond the rated capacity of the plant, it does not mean that the petitioner is entitled to claim the tariff for the capacity beyond the rated or contracted capacity.*

18. Reliance is placed on the delivered energy as also contracted capacity apart from the payment of the tariff for the delivered energy as agreed between the parties and consented by the Commission. Turning to the definitions relied upon by the petitioner towards contracted capacity, delivered energy, plant load factor (PLF) and payment of the tariff for the delivered energy, the Commission opines that the definitions provided in the PPA have to be read harmoniously along with substantive provisions thereof and for clarity the said relevant definitions of the PPA are extracted hereunder:

> *"1.9 "Contracted Capacity" means an integrated municipal solid waste management with a capacity of 19.8 MW contracted with DISCOM for supply by the company to the DISCOM at the interconnection point from the project and same shall not be more than the installed capacity. Contracted capacity shall be in MW measured in alternate current (AC) terms and shall not change during the tenure of this agreement.*
>
> *"1.10 "Delivered Energy" means with respect to any billing month, the Kilo Watt hours (kWh) of electrical energy generated by the project and delivered to the DISCOM at the interconnection point, as defined in clause 1.18 and as measured by the energy meters at the interconnection point during that billing month at the designated substation of TSTRANSCO or the DISCOM;*
>
> *Explanation 1: For removal of doubts, the delivered energy, excludes all energy consumed in the project, by the main plant and equipment, lighting and other loads of the project from the energy generated and as recorded by the energy meter at interconnection point.*
>
> *Explanation 2: The delivered energy in a billing month shall be limited to the energy calculated at 100% PLF of net exportable capacity that is after deducting capacities for auxiliary consumption from the installed capacity as mentioned in this agreement for sale to DISCOM, based on the contracted capacity in kW multiplied with number of hours and fraction thereof, the project is in operation during that billing month. Whenever generation exceeds by installed capacity such energy delivered into the grid by the project above 100% PLF during such period shall be considered payment or otherwise in terms of the rules and regulations in vogue.*
>
> *Explanation 3: The delivered energy shall be purchased by the DISCOM at a tariff for that year stipulated in Article 2.2 of this agreement."*
>
> *"1.22 "Plant Load Factor (PLF)" means the ratio of total kWh (units) of power*

*generated by plant in a tariff year,* ***as decided by TSERC*** *and contracted capacity in kW multiplied with number of hours in the same tariff year."*

*"Article-2*

*Purchase of Delivered Energy and Tariff*

*2.1 All the delivered energy at the interconnection point for sale to DISCOM (net capacity) will be purchased at the tariff provided for in Article 2.2 from and after the date of commercial operation of the project. Title to delivered energy purchased shall pass from the company to the DISCOM at the interconnection point."*

*"2.2 The Company shall be paid the tariff for the net energy delivered at the interconnection point for sale to DISCOM at the tariff as determined by TSERC from time to time.* ***No tariff will be paid for the energy delivered at the interconnection point beyond contracted capacity. The orders of TSERC are enforceable in entirety and shall be considered for the purposes of computation of tariff****."*

19. On a harmonious construction of the above stated clauses of articles of the PPA, it is emphatically clear that the petitioner has to comply with the tariff order of the Commission and at the same time the respondent has to procure the capacity upto the level of normative PLF without any demur. The tariff order viz., "*In the matter of Suo Moto determination of Generic Tariff for electricity generated from Refuse Derived Fuel (RDF) based power projects in the State of Telangana achieving Commercial Operation Date (COD) during the period from FY 2020-21 to FY 2023-24 (O.P.No.14 of 2020 dated 18.04.2020)"* referred to by the petitioner made it specifically clear that the petitioner being new project has to comply with the PLF of 65%, 75% and 80% for the first three years of the project. It is a fact that the petitioner project has come into operation in August, 2020 and would complete the first three (3) years of operation only in August, 2023.

20. In this context, the petitioner sought to relay that the provisions of the PPA, more particularly over the '*Explanation 2 of Article 1.10 of the PPA'*, which made a facility for limiting the delivered energy in a billing month at 100% PLF of net exportable capacity, to be purchased by the respondent. The interpretation seems to be inappropriate as the petitioner is of the understanding the '100% PLF' would mean literally hundred percent of the generation from the plant. However, the said understanding is erroneous for the reason that on combined reading of the provisions of PPA as also the tariff order of the Commission, the 100% PLF would mean the capacity that is allowed in terms of the PPA upto the rated capacity and upto normative PLF as decided by the Commission in the generic tariff order. In this regard the

article 2.2 of the PPA clearly stipulates that "*No tariff will be paid for the energy delivered at the interconnection point beyond contracted capacity. The orders of TSERC are enforceable in entirety and shall be considered for the purposes of computation of tariff.*"

21. Even before the completion of the initial period of the operation, the petitioner could not have achieved higher plant capacity more than the rated capacity of the plant or for that matter the contracted capacity under the PPA. It is strange and unconscionable that the petitioner could have achieved higher PLF than that of normatives as set by the Commission in its order dated 18.04.2020. Assuming but not accepting that the plant and machinery had functioned exceptionally, yet it is expected that the generator would have to run the plant upto the rated capacity only and not otherwise, keeping in mind the contracted capacity. Technically speaking, it is axiomatic that no plant and machinery would run beyond the rated capacity, but it is surprisingly run beyond the rated capacity. Only because it could achieve higher rated capacity, it does not mean that the respondent is bound to pay for all the energy delivered beyond the rated/contracted capacity in terms of the PPA.

22. The petitioner while generating the power did not adhere to the normatives and on the contrary violated the same. Consequently, it also violated the terms of the PPA. The petitioner now turning to the Commission and seeking that violations be regularized and payment towards the energy additionally delivered over and above the terms of the PPA, tariff order, rated capacity and contracted capacity cannot be accepted. The petitioner having generated the power in violation of the terms of the PPA cannot allege that the respondent is deviating from the terms of the PPA. The terms of the PPA and terms of the Commission generic tariff order dated 18.04.2020 are clear and emphatic in this regard.

23. As the petitioner had generated excess energy and the respondent while computing the payment based on meter readings had considered the delivered energy to the extent of the normative PLF and giving effect to the provisions of the PPA. The respondent has, therefore, has rightly enforced the orders of the Commission in entirety and also given effect to the provisions of the PPA. The claims made by the petitioner, therefore, are beyond the provisions of the PPA as also the tariff order. The petitioner could not have alleged wrongdoing by respondent when it has agreed to the

terms of the PPA as also did not challenge the tariff order before appellate authority. Thus, on this pretext, the petitioner cannot claim the relief in this petition.

24. The petitioner also raised the contention with regard to giving effect to the provisions of the Tariff Policy 2016 wherein it has been provided that DISCOMs have to procure 100% of the energy delivered by WtE projects. The petitioner is under misconception that the provision made in the Tariff Policy 2016 would have to be given effect to dehors the normatives as fixed by the Commission or that the rated capacity of the plant. It is also subject to such other orders and agreements and cannot be termed or accepted beyond the general understanding that 100% is to be given effect to. However, as has been held by the Hon'ble Supreme Court in several other cases that the PPA is basic understanding of the parties, as such cannot be deviated upon.

25. The petitioner cannot insist upon enforcing the provisions of the Tariff Policy 2016 contrary to its own agreement, which specifically provided that the energy has to be considered at 100% PLF and the tariff is to be paid in terms of the tariff order of the Commission. The petitioner is supposed to read both the Tariff Policy 2016 and the PPA harmoniously. On such understanding, the petitioner cannot claim any relief towards excess energy generated and injected into the grid without consent of the respondent. Towards this end, the Commission is in complete agreement with the submissions of the representative of the respondent.

26. The petitioner's contention that Tarif Policy 2016 has to be given effect to by the Commission as well as the respondent is not denied. At the same time, the irresistible fact about the actions of the petitioner generating excess energy over and above the rated and contracted capacity agreed to, would amount to negating the understanding between the parties as also the normatives as fixed by the Commission in its order dated 18.04.2020. On both counts, the provisions have attained finality and it cannot be tinkered with at this point of time for the sole reason that the petitioner wittingly or unwittingly violated the terms of the PPA and the tariff order. Thus, this contention also does not survive.

27. Further, the petitioner attempted to thrust the matter on the Commission by saying that it has accepted the regulation made by it in the year 2022, that '*Distribution Licensees shall compulsorily procure 100% power produced from all the Waste-to-*

*Energy plants in the Telangana State (under clause 3(7) of Regulation No.7 of 2022)*' under the renewable power purchase obligation. There is no denial of the fact as the regulation should be inconformity with the Tariff Policy 2016. Having said that the interpretation with regard to 100% PLF has already been set out by the Commission in the earlier paragraphs as such the same reason holds good here also. Therefore, the petitioner cannot base its case on this pretext.

28. The other prayers in the petition as have been raised by the petitioner are adverted to in reply to the other questions. The petitioner has sought to raise the claims made by the respondent towards import charges for the power drawn by it and stated that it is not liable for the same. The claims made by the respondent are in terms of the agreement for power supply as also agreed to in the PPA. The claims being objected by the petitioner also fall within the ambit of General Terms and Conditions of Supply (GTCS) whereby it is liable for the charges as long as power supply connection is subsisting from the respondent in terms of the tariff determined by the Commission.

29. The relief sought on this count has no nexus to the relief that the petitioner claim for payment of tariff for the energy generated by it over and above 100% PLF contrary to normatives. The petitioner ostensibly has clubbed this aspect claiming refund of the amount already paid by it, despite the fact that the service connection was live for a period of one-year from the date of availing the same for such period the respondent has sought payment and adjusted the amount towards the sums payable to the petitioner. At any rate, the said aspect of refund is a billing dispute and it could not have raised before the Commission, as the claim can be resolved by the Consumer Grievance Redressal Forum (CGRF) when the petitioner approaches it for the said purpose.

30. The petitioner extensively relied on the correspondence between it and respondent on the aspect of import charges. It is the case of the petitioner that there is double deduction and incorrect application of energy charges under HT-I category. The petitioner stated that the respondent has conceded that the demand charges have to be levied in accordance with tariff order to the extent of power drawn for auxiliary consumption. The demand charges applicable would be 50% of the demand charges for HT-I category. Even this aspect can be agitated as a part of the billing dispute as

the petitioner is seeking implementation of the decision of the Commission while determining the retail supply tariff for any financial year. Under the guise of these charges, the payments have been reduced by the respondent to that extent. Inasmuch as the levy of or deduction of the amounts towards import charges can be appropriately agitated before the concerned CGRF as the issue is unrelated to payment of tariff for the delivered energy. Accordingly, this prayer cannot be considered by the Commission.

31. The petitioner has raised the issue of delayed payments towards monthly bills for the energy supplied as a generator. Though partly the issue is linked to the claims towards delivered energy, in any case, it is an independent dispute between the parties, it is alleged that the respondent is due for an amount of Rs.180.63 crore. However, this aspect is rebutted by the respondent and stated that the payments have been arranged in a timely manner insofar as the petitioner is concerned. Though there are certain arrears to the tune of Rs.89.90 crore towards monthly delivered energy charges, the same is covered by the LPS rules of MoP. The respondent had arranged for payment of the amount due through REC and PFC. An amount of Rs.37.46 crore had already been released in five instalments and the balance is Rs.52.44 crore would be released in about seven instalments. The Commission finds that there is a force in this contention of the respondent, as it had already noticed in several payment cases that the respondent is affecting payments in a similar manner, which cases have been disposed of by the Commission earlier.

32. The facts in this case would demonstrate that there is a dichotomy between the parties with regard to amount claimed as due by the petitioner and payable by the respondent. Such dichotomy cannot be the subject matter of a petition where the payment is claimed towards delivered energy and not with regard to arrears of payment of the energy bills in favour of the petitioner. Therefore, the issue cannot be resolved in this petition as it is a separate and distinct prayer arising out of a separate cause of action. The petitioner could not have raised the issue by clubbing the prayer in this petition and ought to have initiated separate proceedings before the Commission to the extent of arrears of payment by the respondent, wherein the Commission would have a liberty to examine and decide whether really there exists a cause of action or otherwise. Thus, this issue though partly related to payment for

delivered energy, cannot be considered in this petition.

33. The other contention, which is unrelated to the prayer of payment for delivered energy though it may have bearing on payment of bills to the petitioner, is the opening of LC. Under the PPA, the respondent is bound to open an LC in favour of the petitioner for securing payments to the petitioner towards power supply made by the petitioner to the respondent. The relevant provision in this regard is extracted at point (ao) of the petitioner's pleadings. The provisions of the PPA are clear on the aspect of establishing LC. However, in view of the rules of MoP, the payments are being made regularly and effects are being made to establish the LC also. The Commission finds this contention of the respondent is acceptable.

34. Apart from the prayer set out in the petition, a reliance has been placed on the orders passed by the HERC and DERC with regard to computation of delivered energy, while obviating the need for reproducing the findings made by the said Commissions, it is to state that:

a. In the matter before the DERC, interpretation sought to be made is with regard to procurement of 100% of the power generated as the WtE plants derived '*must run status'* under the Tariff Policy 2016. Such drawl of power is with reference to the energy generated and it has been given importance against the capacity installed, which has become irrelevant. However, this condition is not available to the petitioner in this case as there is a subsisting PPA with a specific contracted capacity of 19.8 MW and the tariff condition of PLF being 65% for the first year, 75% for second year and 80% for third year and subsequently. Moreover, the issue of delivered energy pertains to the first and second year of the operation of the petitioner's plant. That being the case, the reference made to the decision of the DERC has no bearing on the facts of the case.

b. In the matter before the HERC, the dispute was between the generator and the Urban Local Bodies (ULBs), wherein the generated insisted in procurement of 100% capacity and the ULBs were objecting to procurement of 100% capacity as it would burden them with additional capacity and charges in the form of tariff. The HERC while interpreting the provisions of Tariff Policy 2016 accepted the condition that 100% of the energy delivered has to be procured by the ULBs,

but it cannot exceed the capacity contracted for. The similar situation is not arising in the case of the petitioner. The petitioner in the instant case had generated the energy more than the rated capacity of the plant as also the contracted capacity, which are similar to each other. Thus, there is a subtle distinction between the decision of the HERC and the facts available in this case, as such the petitioner cannot have the benefit of the said decision.

Accordingly, both the decisions of the other Commissions are neither applicable nor support the case of the petitioner. They are also not binding on this Commission, accordingly, the contentions based on both the decisions are liable to be rejected.

35. On the other hand, the respondent relied on the decision of this Commission in O.P.No.47 of 2021 in the matter of M/s Mitrah Vayu (Godavari) Private Limited. The said decision has no relevance for the reason that the matter referred involved wind generation and it is not a firm power generation, which is contrary to the case of the petitioner. Also, the wind generation is based on the capacity utilization factor and not on plant load factor. Due to these distinctions, the same cannot be relied upon by the respondent, as such the contention is refused.

36. A reference has been made by the petitioner to various orders of the Commission wherein incentive has been allowed over the threshold PLF at nominal rate other than the regular tariff upto the PLF. The Commission has dealt about the issue of Plant Load Factor (PLF) and Incentives for higher PLF than the approved normative PLF in the generic order dated 18.04.2020 and the Commission not inclined to admit to the stakeholders objection at paras 28 to 34 of the said order and which is reproduced below:

> ***"Issue No.4: Plant Load Factor (PLF)***
>
> ***Stakeholders' submission***
>
> *28. Annual operating hours of WtE plants do not translate to PLF in terms of electricity generation. Waste combustors are sized on throughput of waste basis than on steam generation capacity. The primary purpose of waste management through WtE is to achieve volume reduction of waste, dispose thermally reducing the waste to high density ash and power generation is only incidental.*
>
> *29. The PLF for the WtE plants with even refined and segregated waste cannot be on par with 80% which is an applicable benchmark for coal based and biomass power plants. The main reason is the characteristics of fuel. Unlike coal having uniform characteristics with respect to calorific value, size or moisture, in case of MSW, the characteristics differ from*

*season to season with respect to moisture etc. and this fluctuation is intrinsic of waste due to heterogeneity, method of collection, economic vibrancy of the area of collection of waste, climatological data of the region where the plant is set up. The WtE plants are comparable to biomass power plant, with additional characteristics of WtE plants like choking, sudden pressure drops etc., and there is not record of the biomass power plants achieving the PLF of 80% in the country.*

30. *The WtE plant of M/s Delhi MSW Solutions Pvt. Ltd. has been in operation for 3 years and could achieve PLF of 51%, 65%, and 69% in FY 2017-18, FY 2018-19 and FY 2019-20 respectively. The WtE plant of M/s East Delhi Waste Processing Company Ltd. with 12 MW installed capacity in Ghazipur, Delhi could achieve the generation of 37346714 kWh in FY 2019-20.*

31. *The stakeholders' suggestions regarding the PLF are as under:*
    - i. *65% for first year and 70% from second year onwards.*
    - ii. *65% for first year and 75% from second year onwards.*
    - iii. *65% for first year and 80% from second year onwards.*
    - iv. *65% for first two years and 70% from third year onwards.*
    - v. *65% for first two years and 75% from third year onwards.*
    - vi. *65% for first year, 70% for second year and 75% from third year onwards.*

32. *The stakeholders have also suggested that incentive for achieving PLF higher than the norm may be specified in line with approved incentive of 25 paise/kWh for biomass and MSW plants.*

*Commission's view*

33. *The Commission does not subscribe to the stakeholders' submission that power generation is only incidental to the process of solid waste management. There are various technological options of solid waste management and power generation is one among those options. The RDF based power projects currently under development in the State are of 14 MW and 19.8 MW installed capacities. The developer of 19.8 MW capacity power project has further plans to expand two more units of 15 MW and 28 MW in the next 2-3 years. Such significant potential for power generation cannot be brushed away as incidental to the process of solid waste management. Feasibility of such significant power generation capacity is an indication of availability of adequate fuel for power generation.*

34. *The PLF in case of a WtE project is dependent on factors like availability of waste, quality of waste, number of operating hours, geographical area of waste collection and project site. As the supply of waste to the developer is governed by the terms of the Concession Agreement, it is the responsibility of the developer to ensure adequate fuel for the power project for achieving the normative PLF. The project also requires sometime for uninterrupted operations by ironing out the initial teething problems. In light of the same, the Commission deems it fit to approve the PLF of 65% for first year, 75% for second year and 80% from third year and onwards.*

35. *The Commission does not subscribe to the stakeholders submission that providing incentive for higher PLF than the approved PLF."*

This holds good as it is attained finality since it is not challenged before appellate authority.

37. Viewing from any angle, the contentions of the petitioner would not enthuse the Commission to consider the relief sought for and allow the case of the petitioner. The contentions and submissions as discussed in the preceding paragraphs do not support the claims of the petitioner for according the relief in any manner.

38. Accordingly, the petition is dismissed, but in the circumstance, the parties shall bear their own costs. Since the original petition itself is disposed of, nothing survives in both the interlocutory applications and accordingly the said interlocutory applications stand closed.

**This Order is corrected and signed on this the 2nd day of January 2024.**

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

**//CERTIFIED COPY//**