

# BIOMASS ENERGY DEVELOPERS ASSOCIATION

To  
Secretary  
TSERC, 5<sup>th</sup> Floor  
Singareni Bhavan  
Hyderabad



Dated : 10.07.2023


Ref : Your Notice D.No: 409/23, Dated : 16.06.2023

Sub : Consequential Order pursuant to APTEL Judgment Dated : 08<sup>th</sup> March 2022

With reference to the above, we are herewith submitting Preliminary Submissions(Original +4 Sets)for determination of Variable Cost for the period from 01.04.2014 to 31.03.2019 in respect of existing plants based on non-conventional energy(NCE) sources in the State of Telangana.

Yours Truly

For Biomass Energy Developers Association

  
M. Komaraiah  
Treasurer



**BEFORE THE  
TELANGANA STATE ELECTRICITY REGULATORY COMMISSION  
AT HYDERABAD**

**O.P. No. 32 of 2014 (Suo Motu)**

*On remand from the Appellate Tribunal for Electricity pursuant to the Common  
Judgement dated 08.03.2022 in Appeal No 250 of 2014 & batch*

In the matter of

*Determination of Variable Cost for the period from 01.04.2014 to 31.03.2019 in  
respect of existing plants based on non-conventional energy (NCE) sources in the  
State of Telangana*

Submissions on behalf of

**BIOMASS ENERGY DEVELOPERS ASSOCIATION**

**Preliminary Submissions**

1. These submissions are made on behalf of the Biomass Developers Association and its Members.
2. This Hon'ble Commission has issued Notice on the remand proceedings for the first time by D.No.409/23 dated 16.06.2023 which was posted on 16.06.2023 and received by us and some members of the Association on 17.06.2023 and subsequently. Inter alia, the notice required that views / objections / suggestions are to be sent by 21.06.2023.

The notice does not state the original O.P. Number of the proceedings which must necessarily be the same O.P. Number from which the appeal proceedings arose resulting in a remand. Therefore, we have considered the present remand proceedings as in the original O.P. No. 32 of 2014 (suo motu).

3. This Hon'ble Commission has jurisdiction only with respect to the sale of energy by biomass plants situated within Telangana to the distribution licensees situated within Telangana. The notice has also been sent to biomass plants situated within Andhra Pradesh which are not within the jurisdiction of this Hon'ble Commission. The Hon'ble Commission may

therefore forthwith withdraw the notice to biomass plants located in Andhra Pradesh and delete them from the array of parties in the present remand proceedings. The only bio-mass power plants in Telangana are those at Items 4, 12, 14, 16 and 18 of the notice. Further, the Hon'ble Commission may ascertain completion of due service on these power plants as the addresses for some of the power plants have changed.

4. As the time available to respond to the notice was unreasonably short, the Association sent a letter dated 19.06.2023 to the Hon'ble Commission seeking reasonable extension of time for submission of objections by 15 days and to reschedule the public hearing. The Hon'ble Commission was thereupon pleased to revise the due date to 10.07.2023 and to defer the public hearing.
5. One of the Members of our Association, Shalivahana Green Energy Ltd, has also sought extension of time while pointing out that they had not submitted any such document as stated in the study report, and requesting copies of the the alleged documents. None of the requested documents were made available.
6. The Association addressed letter dated 28.06.2023 to the Hon'ble Commission for inspection and copies of various documents referred to in the study report and the proceedings of the study committee. The request has not been complied with so far.
7. In the circumstances, these submissions are being made raising preliminary issues which must necessarily be decided before taking up further proceedings on the subject matter of remand. The right to make such further submissions as may be required in the course of the proceedings is reserved seeking leave so to do.

**Scope of the proceedings on remand and the limited jurisdiction of the Commission**

8. In terms of the Judgement of the Hon'ble Appellate Tribunal, the limited scope of the limited remand proceedings and the limited jurisdiction of the Hon'ble Commission with respect to determination of the variable cost of biomass based plants for the control period of FY 2014 to 2019 is only to the following extent, and no further:
  - (a) To issue revised fuel cost for FY 2014-15 as per directions in para 65 read with paras 63.
  - (b) To issue revised fuel cost escalation index as per directions in para 69 read with paras 67 and 68 applicable for FYs 2015-16 to 2018-19.
  - (c) To consequently revise the variable cost for each year of the control period of FY 2009-2014.
9. The Hon'ble Appellate Tribunal has definitively decided on other operative parameters for tariff including the Station Heat Rate, Auxiliary consumption and Gross Calorific Value of Fuel for the control period of FY 2014-2019, and it is beyond the jurisdiction of this Hon'ble Commission to delve into such issues. The Hon'ble Commission cannot interfere with those definitive findings. To the extent that the notice dated 16.06.2023 issued by the Hon'ble Commission purports to make proposals on Station Heat Rate, Gross Calorific Value of fuel, specific fuel consumption and auxiliary consumption, the proceedings are without jurisdiction.
10. In para 103 of the Judgement of the Hon'ble Appellate Tribunal, the State Commissions were directed to initiate a study for determining normative parameters for the plants under their jurisdiction and frame Tariff Regulation. This is clearly for the purposes of the future periods and the tariff regulations framed on such study would only have prospective effect. This is a separate and distinct direction to be separately complied with respect to future plants and future periods and it cannot form part of the present remand proceedings.

In response to the Hon'ble Commission's communication to the Association in September 2022, the Association had responded by letter dated 13.09.2022 stating that the study as directed by the Hon'ble Appellate Tribunal in para 103 of the Judgement could be only with respect to new plants set up in future in Telangana. It was also submitted that the Judgement of the Hon'ble Tribunal was by way of remand only on the issues of fuel price and fuel escalation. Unfortunately, the aforesaid submissions did not receive appropriate consideration by the Hon'ble Commission and no response was received from the Hon'ble Commission thereon.

11. Para 104 of the Judgement of the Hon'ble Tribunal dated and pronounced on 08.03.2022 specifically directs that the Hon'ble Commission shall pass consequential order within 45 days of the communication of the Judgement. That period has long passed. The Hon'ble Commission has issued notice in the remand proceedings more than 15 months later, and only on 16.06.2023. We are not aware of any application made to the Hon'ble Tribunal for extension of time or any order of the Hon'ble Tribunal granting extension of time.

#### **Constitution and functioning of the Study Committee**

12. Despite this Association's submissions in letter dated 13.09.2022 with respect to the constitution of the study committee which is overwhelmingly dominated by State Utilities, the study committee was so constituted. Ab initio, there could not be a fair, unbiased and rational functioning of such a committee.
13. As it has turned out ex-facie, the study committee was clearly overly dominated, and dictated to, by the members of the Telangana Discoms with a view to over-reaching the judgement of the Hon'ble Appellate Tribunal with respect to the decided parameters for FY 2014-2019 and to advance the interest of the Discoms to the detriment of the biomass developers in an

unfair, biased, hostile and unbecoming manner. Such a committee ought not to have been constituted at all.

14. The legitimate scope of any study committee constituted by the Hon'ble Commission pursuant to the Judgement of the Hon'ble Appellate Tribunal could only have been to make a fair, impartial and bona fide study of new biomass plants set up in Telangana so as to enable the Hon'ble Commission to frame tariff regulations effective prospectively. There is no indication in the scope as specified by the Hon'ble Commission that the committee should, or could, concern itself with intermeddling with the decisions of the Hon'ble Appellate Tribunal or with respect to the period or matters definitively decided by the Hon'ble Tribunal's judgement. If the Hon'ble Commission had so intended, it would have been highly improper.
15. As stated in the Hon'ble Commission's letter dated 27.10.2022, the study committee was required to submit its report within 15 days. It is seriously disputed that the committee held proper meetings or ascertained the views of any others. It appears that after inordinate lapse of time, the Chairman of the committee along with the TSSPDCL member unilaterally rushed to produce the totally one-sided, totally biased, self-serving, misdirected, manipulated and misconceived report. The Association has requested the Hon'ble Commission by letter dated 28.06.2023 for access to all the records and proceedings of the study committee, and no response has been received.

#### **Submissions on the Study Committee Report**

16. On a plain perusal of the study report we are deeply concerned and disturbed by several apparent distorted, vague and/or untrue facts and references in the study report. It is clearly misdirected, misconceived and vitiated by hostile bias. Further, the study report is signed only by three of several members and we have reason to suspect that there were no proper meetings and proceedings of the study committee. We seek leave and reserve the right to

make more elaborate and specific comments after we have obtained inspection and copies of the documents and records as earlier requested in our letter dated 28.06.2023 to the Hon'ble Commission.

17. At least the following discrepancies are clearly noticed :
- (a) On page 1 of the study report, in the first paragraph, there is reference to "*secondary data to ascertain the moisture content ....*". In the second para there is reference to "*other secondary research reports / data*". As no such secondary data referred to and relied upon is available to us, it has to be inferred that no such data exists and the study report cannot be relied upon.
  - (b) On page 1 it has been stated that Rithwik Power Projects Ltd (RPPL) had submitted "*self certified fuel mix in year wise*". The company informs that the table below mentions fuel mix is completely at variance with what was stated by them, and that they gave no "self-certified" documents. As no copy of the specific document with so-called "self - certification" purportedly relied upon by the committee is made available, it must be inferred that no such document exists, and the authenticity, veracity and contents of the study report is called into serious question.
  - (c) On page 2 of the study report, it has been stated that Shalivahana Green Energy Ltd (SGEL) had submitted "*self-certified fuel mix in year wise*". The said company informs that no such document was submitted by them and that they have also written to the Hon'ble Commission for a copy. As no copy of the specific document with so-called "self - certification" purportedly relied upon by the committee is made available, it must be inferred that no such document exists, and the authenticity, veracity and contents of the study report is called into serious question.
  - (d) On page 3, reference is made to audited data purportedly submitted by the two companies. While SGEL informs that nothing of the sort was submitted by them, RPPL states that there was no mention of audit by

them. As no copy of the specific document with so-called audited data purportedly relied upon by the committee is made available, it must be inferred that no such document exists, and the authenticity, veracity and contents of the study report is called into serious question.

- (e) On page 4, the table purports to refer to "*BEDA submission data*". No such data was submitted by this Association to the committee. As no copy of the specific document purportedly relied upon by the committee is made available, it must be inferred that no such document exists, and the authenticity, veracity and contents of the study report is called into serious question.
- (f) On page 6, it is vaguely stated that the "*Committee has undertaken market research from various sources*" with respect to fuel prices. With respect to fuel price escalation also there is a vague mention of "*market research*" on page 7. As no records of the so-called market research and the sources of information are made available, it must be inferred that no such documents exist, and the authenticity, veracity and contents of the study report is called into serious question.
- (g) The study report is signed only by three members and clearly under the domination and dictation of the Chairman/Member of the Discoms. As no records of the proceedings of the committee and no records of the study are made available, it must be inferred that the study report was fashioned and made by the Discoms, for the Discoms, and against the legitimate interests and concerns of the biomass power plants in an arbitrary, unfair, unreasonable and biased manner.

18. From the above it is seen that substantial facts and averments in the study report are seriously questionable as false and/or fabricated. Natural Justice and the mandatory principles of transparency require that all the material upon which the study report is purportedly based is made available for inspection and copies by the objectors who will be seriously affected by the outcome of the present proceedings. In the absence of the documents and



records being produced, the conclusion can only be that the study report is unsustainable, unsubstantiated, manipulated, false and/or fabricated and liable to be ignored and trashed in these proceedings.

19. The report of the study committee is further seriously misdirected and deviously inconsistent at least in the following :-

(a) The study committee ought not to have gone into the operational parameters of plants established as far back as in 2004 and where the operational parameters of such plants have already been decided by the Hon'ble Tribunal in Judgement dated 20.12.2012 and by Judgement dated 08.03.2022. It is a serious misdirection which cannot even be considered as bona fide. The study committee, in any case, ought to have confined itself to new plants alone.

(b) In so far as the study committee purports to dabble with the station heat rate and GCV of existing old power plants, the report is to be wholly ignored. Accordingly, we refrain from addressing these aspects except where necessary incidentally to show the inconsistent, arbitrary and whimsical approach of the committee.

(c) In the first paragraph on page 4, the study report says that the committee has considered the fuel mix as per the CEA report. However, the study report, inconsistently and whimsically, considers different fuel mix while computing the fuel cost. The same inconsistency is evident even with respect to GCV.

(d) In the last para on page 4 it is stated that moisture content in as received condition is taken as per CEA report. CEA report nowhere specifically gives the moisture in as received condition for specific categories of biomass fuels. It only makes a passing observation that the woody biomass and agricultural residues can be as high as 40%. The study report goes on to state that the data regarding moisture content in as fired condition is not available anywhere. The moisture content in as fired

condition is, in fact, stated in Table-4 of the CEA report. In the table on page 4, the study committee incorrectly takes the moisture content of rice husk as per CEA in both the as received and as received condition as "0". The inconsistency and contradiction in the study report is clearly evident.

- (e) In the last para on page 5 the study report states that the fuel cost is arrived at on RPPL and APTEL parameters. What is meant by APTEL parameters is incomprehensible unless it refers to the table at the end of page 34 of the APTEL Judgement. The tables of purported fuel cost calculations on pages 6 and 7 of the study report are a maze of errors, inconsistency, contradictions, misrepresentation, mischief and incomprehensible methodology.

In the table on page 6 the fuel mix the values are not what has been given by RPPL as already stated supra. In column 3 Row 5 the conversion factor is wrongly taken as 0.75 instead of 0.47. The heading of Column 4 is wrongly stated as "Qty as fired" instead of "Qty as received". The prices mentioned in column 6 are the prices mentioned by RPPL as determined in the previous ERC order based on the then KPMG study report. There is no heading for Column 7. Having computed the total of proportionate price as Rs 4059.60 in Column 8 Row 6, it is incomprehensible as to how the figure of 3181 is arrived at in column 9.

In the table on page 7 the fuel mix indicated in column 2 is arbitrary as SGEL informs that they have not given any such data. The heading of Column 4 is wrongly stated as "Qty as fired" instead of "Qty as received". The source of the fuel cost considered in column 6, purportedly on the basis of "market research" is unknown and arbitrary. How coal is being considered is inexplicable particularly when the study committee at the same time states that it has considered the fuel mix as per CEA. Even otherwise it cannot be understood how the cost of coal is taken as 2850/- when the committee itself states in the table at the bottom of page 7 shows the coal cost as 2942/-.

(f) Having referred to audited data in the 3<sup>rd</sup> para on page 3, the report curiously states in the 2<sup>nd</sup> para on page 7 that the data submitted is not supported by audited documents. The approach of the study committee is wholly inconsistent and whimsical.

(g) With respect to fuel cost escalation, the consideration of coal is meaningless and irrelevant. The various comments in the study report are without relevance and application and meaningless. The alleged source for the data in the first table on page 8 are denied as SGEL has informed that they have not furnished any such data. The reasoning given for recommending escalation of 2% is arbitrary, perverse and irrational. The determination of tariff for 2019-20 is a separate and distinct exercise to operate for the period to which it pertains. It cannot be any limitation on the escalation to be allowed for a previous period on the basis of a normative index.

20. For all the above reasons, the study report deserves to be ignored and trashed for the purposes of this proceeding.

#### **Further submissions**

21. The Hon'ble Commission has issued notice with proposals on the basis of the impeached study report and included matters and also parties beyond the legitimate and limited jurisdiction of the Hon'ble Commission in the proceedings upon limited remand from the Hon'ble Appellate Tribunal.

22. For the above reasons it is prayed that the Hon'ble Tribunal may, before proceeding any further –

(a) direct the deletion of the power plants located in Andhra Pradesh as parties, and

(b) verify and ascertain the due service of notice on the parties, and

- (c) specifically limit the scope of this proceedings to the determination of fuel cost and fuel cost escalation, and
- (d) set aside and disregard and trash the study report and all proposals based thereon.
23. Thereafter, the Hon'ble Commission may be pleased to take up afresh the matters within its limited jurisdiction on remand, affording due opportunities to this Association and the parties to make written and oral submissions limited to such matters, and pass consequential orders in terms of the remand directions of the Hon'ble Appellate Tribunal. This Association would make further relevant submissions in such proceedings when take up afresh.
24. The Association requests and requires that they may be heard in person through counsel.

At Hyderabad  
10.07.2023

For Biomass Energy Developers Association

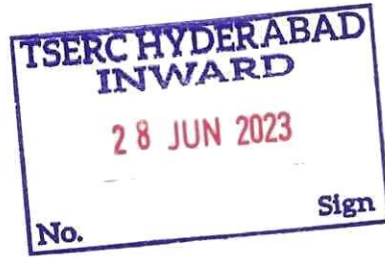
For BIOMASS ENERGY DEVELOPERS ASSOCIATION



M. KOMARAJAH  
Treasurer

# BIOMASS ENERGY DEVELOPERS ASSOCIATION

To,  
Secretary,  
TSERC, Hyderabad



Date: 28.06.2023

Ref: Your Notice: D.No: 409/23 dated 16.06.2023

**Sub: Consequential Order pursuant to APTEL Judgement 08<sup>th</sup> March 2022**

Further to our letter dated 19.06.2003, it is submitted for the urgent attention and consideration of the Hon'ble Commission as follows:-

1. On a preliminary perusal of the study report we are deeply concerned and disturbed by several apparent distorted, vague and/or untrue facts and references in the study report. It is clearly misdirected, misconceived and vitiated by hostile bias. Further, the study report is signed only by three of several members and we have reason to suspect that there were no proper meetings and proceedings of the study committee. We seek leave and reserve the right to make more elaborate and specific comments after we have obtained inspection and copies of the documents and records as hereinafter requested.
2. On page 1 of the study report, in the first paragraph, there is reference to "secondary data to ascertain the moisture content ....". In the second para there is reference to "other secondary research reports / data". We request and require that all such secondary data referred to and relied upon be made available to us to enable us to verify their authenticity, veracity, relevance and the inferences sought to be drawn therefrom.
3. On page 1 it has been stated that Rithwik Power Projects Ltd (RPPL) had submitted "self certified fuel mix in year wise". The company informs that the table below mentions fuel mix completely at variance with what was stated by them, and that they gave no "self certified" documents. We request that a copy of the specific document with so-called "self certification" purportedly relied upon by the

# **BIOMASS ENERGY DEVELOPERS ASSOCIATION**

committee be made available to verify the authenticity and veracity of the contents of the study report.

4. On page 2 of the study report, it has been stated that Shalivahana Green Energy Ltd (SGEL) had submitted "self certified fuel mix in year wise". The said company informs that no such document was submitted by them and that they have also written to the Hon'ble Commission" for a copy. We request that a copy of the specific document be made available to verify the authenticity and veracity of the contents of the study report.
5. On page 3, reference is made to audited data purportedly submitted by the two companies. While SGEL informs that nothing of the sort was submitted by them, RPPL states that there was no mention of audit by them. We request that a copy of the specific document be made available to verify the authenticity and veracity of the contents of the study report.
6. On page 4, the table purports to refer to "BEDA submission data". No such data was submitted by this Association to the committee. We request that a copy of the specific document be made available to verify the authenticity and veracity of the contents of the study report.
7. On page 6, it is vaguely stated that the "Committee has undertaken market research from various sources" with respect to fuel prices. With respect to fuel price escalation also there is a vague mention of "market research" on page 7. We require to see the records of the so-called market research and the sources of information to verify the authenticity and veracity of the contents of the study report and to submit our objections and comments thereon.
8. From the above it is seen that substantial facts and averments in the study report are prima facie seriously questionable. Natural Justice and the mandatory principles of transparency require that all the material upon which the study report is purportedly based is made available for inspection and copies by the objectors who will be seriously affected by the outcome of the present proceedings.

# **BIOMASS ENERGY DEVELOPERS ASSOCIATION**

9. As the Hon'ble Commission has been pleased to extend the time for submitting comments to 10.07.2023, it is a matter of urgency that the information requested above is made available urgently so that the Association and its members are able to effectively submit their views / objections / comments. Otherwise, the biomass developers will be seriously prejudiced and subject to irreparable harm and injury.

Thanking you,

Yours Truly

For Biomass Energy Developers' Association



President

# BIOMASS ENERGY DEVELOPERS ASSOCIATION

To,  
Secretary,  
TSERC, Hyderabad

Date: 19.06.2023

Ref: Your Notice: D.No: 409/23 dated 16.06.2023

**Sub: Consequential Order pursuant to APTEL Judgement 08<sup>th</sup> March 2022**

Your above notice dated 16.06.2023, posted on 16.06.2023, received by us in the afternoon of 17.06.2023. The notice required our views / objections to be sent on or before 21.06.2023, leaving only two working days for us to prepare and submit the objections. The purported report of the study committee has to be studied in detail by us in consultation with such of our members who have been referred in the report and also other members who may be affected. The time available to us is wholly insufficient and not reasonable. We need at least 15 days' time to submit our responses.

Therefore, it is requested that the Honourable Commission may be pleased to extend the time for the submission of objections by a further 15 days. Consequentially, the Honourable Commission may reschedule the Public Hearing to a later convenient date.

Thanking you,

Yours Truly

For Biomass Energy Developers' Association



M.Komaraiah

Treasurer

