



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION HYDERABAD.
5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004**

O. P. No. 68 of 2018

Dated: 24.12.2018

Present

Sri. Ismail Ali Khan, Chairman

Between:

Biomass Energy Developers Association,
Regd. Office at No. 13, 4th Floor, Maitri Arcade,
2-3-42/52, M.G. Road, Secunderabad – 500 003.

.... Petitioner.

AND

1. Southern Power Distribution Company of Telangana Ltd.,
Corporate Office, # 6-1-50, Mint Compound,
Hyderabad – 500 063.
2. Northern Power Distribution Company of Telangana Ltd.,
H. No. 2-5-31 / 2, Corporate Office, Vidyut Bhavan,
Nakkalgutta, Hanamkonda, Warangal – 506 001.
3. Telangana State Power Coordination Committee,
Vidyut Soudha, Somajiguda, Hyderabad – 500 063.

.... Respondents.

This petition came up for hearing on 17.11.2018 and 01.12.2018. Sri. Challa Gunaranjan, Advocate for the petitioner along with Sri. N. Sai Phanindra Kumar, Advocate and Sri. Y. Rama Rao, Standing Counsel for the respondent along with Ms. M. Pravalika, Advocate appeared on 17.11.2018 and 01.12.2018, This petition having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Biomass Energy Developers Association (petitioner) has filed a petition under sections 86 (1) (a), (b), (c) and (e) along with 62 (1) read with clauses 38 and 40 of the Conduct of Business Regulation, 2015 seeking directions to the distribution

licensees to extend the benefit of additional tariff for the year 2017 – 2018 by clarifying the letter of the Commission dated 07.12.2017.

2. The petitioner stated that it is an association formed by the biomass based power projects, who have setup the projects in the erstwhile State of A. P. and presently some of its members have the plants in the State of Telangana. It has been participating actively in various procedures before the Commission from time to time to espouse the cause of its members.

3. The petitioner stated that the tariff for the biomass based projects has been determined by the then APERC which is a two part generic tariff that is fixed cost and variable cost. Initially the fixed cost was determined for the 1st year to 10th year in the year 2004 and variable cost for the control period 2004-2009. Subsequently, the variable cost was determined for the control period 2009-14 and 2014-2019. For the projects who have completed 10 years the Commission has determined the fixed cost from 11th year- 20th year. The biomass projects were unable to sustain based on the said tariff, therefore, they had to approach the Government of Telangana (GoTS) seeking additional tariff for the projects to become viable.

4. The petitioner stated that the petitioner had approached the erstwhile Government of Andhra Pradesh requesting to provide additional tariff to the biomass projects to the tune of Rs. 2.00 per unit for the FY 2012-13. This request was considered by the government and accordingly by letter dated 24.11.2012, the government has agreed to provide additional tariff of Rs. 1.50 per unit to the biomass projects as the existing tariff was not supporting the units and by order dated 31.12.2013 it was extended up to March, 2014. Thereafter the formation of the Telangana, the petitioner had approached the GoTS requesting to provide additional tariff to the biomass projects to the tune of Rs. 1.50 per unit. The GoTS vide its letter dated 01.04.2015 and 10.08.2016 extended the same facility up to year 2016-17. In fact many of the projects became impede and they had to close down the units and only 6 units are presently in operation. It is stated that the petitioner had approached the GoTS subsequently, requesting to provide additional tariff to the biomass projects to the tune of Rs. 1.50 per unit for the FY 2017-18. This request was considered by the GoTS and accordingly by letter dated 15.07.2017, the GoTS has agreed to provide additional tariff of Rs. 1.50 per unit to the biomass projects as the

existing tariff was not supporting the units. It is stated that such additional tariff in case of biomass units is borne by the GoTS and does not form part of the tariff structure considered for fixing the retail tariff and therefore, there is no additional burden to the consumer.

5. The petitioner stated that it is pertinent to note that Telangana State Power Coordination Committee (TSPCC) vide their letter dated 24.03.2016 clearly recommended the additional tariff for the year 2016-18 in addition to the generic tariff fixed by Commission for the sale of power to TSDISCOMs under long term PPAs. Therefore, it appears that the matter was brought to the notice of the Commission by TSPCC regarding the additional tariff provided for the biomass projects. The Commission appears to have reiterated its decision taken in order dated 13.06.2016 in O. P. No. 18 of 2016 wherein while determining the generic tariff for Municipal Solid Waste (MSW) and Refused Derived Fuel (RDF) Projects the incentives availed by the said projects were allowed as pass through to the DISCOMs.

6. The petitioner stated that it has again represented to the GoTS, requesting to provide additional tariff of Rs. 2/- per unit for the year 2018-19. On such request, the government has sought for remarks of TSPCC and TSTRANSCO. While submitting remarks, TSPCC has informed the Government of Telangana that this Commission by letter dated 07.12.2017 had clarified that any incentives, government grants etc. received by the biomass power developers shall be passed on to the DISCOMs and the government may pass on the additional tariff directly to the generators vide letter dated 29.08.2018. The petitioner thereafter has represented to this Commission by letter dated 04.09.2018 seeking intervention on the clarification letter 07.12.2017. It is further stated that by letter dated 15.09.2018 the Commission advised it to file appropriate petition seeking clarification. Therefore, it is advised to file this present petition before the Commission.

7. The petitioner stated that the biomass based power projects stand on totally different footing having regard to the peculiarities and variations in the availability of the fuel etc., which affect such projects to a large extent in meeting the sustaining levels. Having taken a note of these circumstances the governments of erstwhile Andhra Pradesh and Telangana provided additional tariff of Rs. 1.50 per unit from time to time on yearly basis which is in fact an addition but not any incentive. It is

stated that the said additional tariff is provided to the projects from the FY 2011-12 onwards and the said fact is already within the knowledge of the Commission. The incentives offered by the government for any sector are in the form of policy enshrined with appropriate government orders for encouraging a particular sector to promote the establishment of such units apart from bringing in cost competitiveness and such additional tariff of Rs. 1.50 per unit does not fall under the category of incentives.

8. The petitioner stated that for the FY 2017-18 when the GoTS has issued orders providing additional tariff, the TSPCC appears to have approached this Commission through a letter seeking appropriate orders, which has resulted in issuance of the letter dated 07.12.2017. It is stated that the additional tariff is basically compensatory in nature and a relief measure to tide over a situation arising out of unfavourable tariff to the industry owing to various factors of drought and availability of biomass at projected prices at the time of fixation of tariff in 2014. Therefore, it does not form part of any incentive given by the government. The Commission was not properly appraised of (or) placed with the necessary facts, those made the GoTS to provide additional tariff before considering the letter of TSPCC which resulted in the Commission's decision on the subject matter. The facts and circumstances necessitated in passing orders in O. P. No. 18 of 2016 and the case of the petitioner are totally different inasmuch as in the former case, this Commission was considering incentives unlike the additional tariff provided in the latter case. The additional tariff provided by the GoTS is in addition to the tariff determined by the Commission, which is neither an incentive nor grant but is only compensatory in nature. The Commission has already determined both fixed and variable tariff vide orders dated 19.07.2014 and 08.06.2017 applicable to the biomass power projects and the orders does not place any embargo on the GoTS in providing additional tariff at any rate. The additional tariff is paid by the GoTS and not the DISCOMs and particularly when the Commission has not placed any restriction as such in its tariff orders as applicable in the projects. It is further stated that the DISCOMs or the TSPCC have no role play at all in the payment of the additional tariff by the government. Even the letter dated 07.12.2017 which was issued by the Commission was not in the notice of the petitioner's association nor its members as otherwise they would have appeared before the Commission to place all the relevant

facts and factors that necessitated the government to provide additional tariff. As the petitioner did not have the opportunity in the earlier occasion through this present petition, the petitioner is seeking appropriate orders for availing the additional tariff of Rs. 1.50 approved by the GoTS.

9. The petitioner has sought the following relief in the petition –

“to hold that the biomass energy projects are entitled for the additional tariff at the rate of Rs.1.50 per unit as provided by the Government of Telangana by clarifying the letter dated 07.12.2017.”

10. The Sothern Distribution Company of Telangana Limited (TSSPDCL) being the respondent No. 1 has filed counter affidavit on its behalf as also respondent No. 2 and stated as below.

i) It is stated that the petitioner has filed the present petition under section 86 (1) (a), 86 (1) (b), 86 (1) (c) r/w section 62 (1) of the Act, 2003 and clauses 38 and 40 of the Commission’s Conduct of Business Regulations, 2015 praying the Commission to hold that the biomass energy projects are entitled the additional tariff at the rate of Rs.1.50/- per unit as provided by the GoTS and the petitioner prayed the Commission to issue a clarification to this extent to the Commission letter dated 07.12.2017.

ii) The petitioner is an association representing various biomass based power projects set up in the states of Telangana and Andhra Pradesh.

iii) The following biomass energy projects under PPAs / PWPAs have been allocated to the state of Telangana as per their geographical locations, for sale of power to TSDISCOMs:

Sl. No.	Name of the Developer	TSDISCOM	Capacity in MW	COD
1.	Gowthami Bio Energies	TSNPDCCL	6	23.07.2001
2.	Rithwik Power Projects	TSNPDCCL	6	23.11.2002
3.	NSL Renewable Power	TSNPDCCL	6	15.02.2003
4.	Shalivahana Green Energy Limited	TSNPDCCL	6	07.12.2002
5.	My Home Power	TSSPDCL	9	06.02.2002
6.	Saro Power	TSSPDCL	6	28.05.2003
7.	Surya Teja Power	TSSPDCL	6	13.04.2007

8.	Gayatri Agro	TSSPDCL	6	28.02.2001
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iv) The existing biomass power projects are entitled for Commission approved generic tariff that is fixed cost as per order of the then APERC dated 22.06.2013 and 19.07.2014, as adopted by TSERC vide Regulation No. 1 of 2014 and variable cost as per TSERC order 10.04.2018 as submitted below:

Year of Operation	Fixed Cost Rs / unit	Variable Cost for FY 2018-19 Rs / unit	Total Cost Rs. / unit
1 st	1.77	4.7955	6.5655
2 nd	1.74	4.7955	6.5355
3 rd	1.72	4.7955	6.5155
4 th	1.69	4.7955	6.4855
5 th	1.67	4.7955	6.4655
6 th	1.67	4.7955	6.4655
Year of Operation	Fixed Cost Rs. / unit	Variable Cost for FY 2018-19 Rs. / unit	Total Cost Rs. / unit
7 th	1.65	4.7955	6.4455
8 th	1.64	4.7955	6.4355
9 th	1.59	4.7955	6.3855
10 th	1.23	4.7955	6.0255
11 th	1.25	4.7955	6.0455
12 th	1.31	4.7955	6.1055
13 th	1.37	4.7955	6.1655
14 th	1.43	4.7955	6.2255
15 th	1.49	4.7955	6.2855
16 th	1.56	4.7955	6.3555
17 th	1.64	4.7955	6.4355
18 th	1.71	4.7955	6.5055
19 th	1.8	4.7955	6.5955
20 th	1.89	4.7955	6.6855

v) These biomass power projects presently in 12th to 18th year of operation are also eligible for an incentive of Rs.0.50 per unit for generation above threshold PLF of 80%.

- vi) It is stated that in spite of cost-effective tariff determined by the Commission, BEDA has challenged the APERC orders dated 19.07.2014 generic tariff order determining fixed cost for biomass power projects from 11th to 20th year of operation and 16.05.2014 variable cost for control period 2014-19 before ATE. However, TSDISCOMs did not chose to contend the same.
- vii) During the year 2012, when the biomass power projects were experiencing severe fuel crisis and steep rise in fuel prices resulting in partial capacity in operation. As a bailout package to put the entire available Biomass capacity into operation so as to cope with the prevailing power shortage in the united Andhra Pradesh, the then GoAP vide letter dated 24.11.2012 based on recommendations of Group of Ministers, directed the then APDISCOMs to pay additional tariff of Rs.1.50 per unit subject to maximum ceiling of Rs.5.50 per unit to the Biomass developers for a period of one year, without limiting this incentive up to 80% PLF, stating that the additional expenditure would be met by the State Government from its budget.
- viii) Further, vide letter dated 31.12.2013, the then GoAP ordered for continuation of additional tariff of Rs.1.50 per unit till 31.03.2014, with the same maximum ceiling limit of Rs.5.50 per unit. It was further held that the amounts will be released by the government only after submission of the actual claims by the biomass developers.
- ix) After bifurcation of state, when the newly formed state of Telangana was facing severe power shortage, upon the recommendations of TSTRANSCO, the GoTS vide letter dated 01.04.2015, accorded approval for providing an additional tariff of Rs.1.00 per unit to the biomass developers for the year 2014-15 without any condition on PLF, with a view to meet the power demand.
- x) However for the FY 2015-16, additional tariff of Rs.1.50 per unit was approved for the biomass developers provided that the projects shall cross 70% PLF without limiting this incentive to 80% PLF. For the purpose of calculating PLF, monthly cumulative average was to be taken into consideration.
- xi) The expenditure towards the above additional tariff amount for FY 2014-15 and FY 2015-16 was indicated to be met within the budget estimates (BE) of 2015-16.

xii) Further, on the representation of the biomass energy developers association (BEDA), GoTS vide letter dated 10.08.2016 extended the additional tariff of Rs.1.50 per unit to the biomass developers for the FY 2016-17 also with the same conditions as was prescribed for the FY 2015-16 and the expenditure towards the above additional tariff amount shall be met within the B.E. of 2016-17.

xiii) The GoTS, vide letter dated 15.07.2017, extended the additional tariff of Rs.1.50 per unit to the biomass developers for the FY 2017-18 with the same conditions as was prescribed for the FY 2015-16 and 2016-17 and it was communicated that the expenditure towards the above additional tariff amount shall be met within the B.E. of 2017-18.

xiv) Accordingly, the sanction of GoTS for additional tariff of Rs.1.50 per unit to the biomass developers for FY 2017-18 was submitted to the Commission for approval.

xv) In response, The Commission vide letter dated 07.12.2017, informed that the Commission reiterates its decision taken in suo moto determination of waste to energy generic tariff order dated 13.06.2016 in O. P. No. 18 of 2016.

230) The Commission expressed the following view in the said order with reference to the incentives like tipping fees, government grants or subsidy etc.,

“... ..

While the incentives and other measures announced by the Government of India or the Government of Telangana are for the promotion of the WTE projects, it is pertinent to note that the electricity consumers should not be unduly burdened with the higher tariffs. In this regard, the DISCOMs have drawn our attention to the fact that the preamble of the Act, 2003 which enjoins upon the Commission to ensure that the consumer interest is protected. Therefore, the same needs to be factored in while determination of the tariffs. On the same length, the Commission is also to ensure environmentally benign policies. Thus, the effort of the Commission is to balance the interest of the industry and the consumers. This shall ensure reasonable returns to the project developers and also shall not pose any undue burden to the consumer.

*Thus, the Commission determines that any incentives, including but not limited to tipping fees, interest rates, Government grants, generation based incentives shall be passed on to the Distribution Companies
.....”*

xvi) The TSPCC also followed the Commission’s directions that any incentive such as generation based incentives shall be passed onto the DISCOMs.

xvii) It may be pertinent to submit that adverting to the proposal of BEDA for sanction of additional tariff of Rs. 2.00 per unit for the FY 2018-19, the TSPCC declined to consider the proposal taking into account the higher tariff fixed by the Commission (average tariff at the rate of Rs. 6.00 / Kwh). Further, vide letter dated 29.08.2018 of Energy Department, GoTS was informed that the GoTS can consider the request of BEDA and additional tariff payments can be made to the individual biomass power projects directly by the government as a matter of policy decision since the DISCOMs are obligated to pay tariff to biomass projects as fixed by the Commission from time to time.

xviii) Further, it is not out of context to mention that audit objections are raised by the Principal Accountant General (Audit) on extension of additional tariff support to the biomass developers by the government, since the tariff determined by the Commission has already taken all the factors into consideration.

11. I have heard the counsel for the parties, perused the material placed on record and considered the submissions made at the time of hearing.

12. The short issue that arise for consideration in this petition is –
Whether the petitioner association and its members are entitled to additional tariff of Rs. 1.50 per unit as allowed by the GoTS, if so, any clarification is required to the letter dated 07.12.2017 issued by the Commission?

13. Admittedly the then Government of Andhra Pradesh and later the GoTS have been extending incentive tariff to the biomass generators so as to make the generation viable and to sustain the generating companies. From the year 2012 onwards, the government had been extending additional tariff of Rs. 1.50 per unit

except for the year 2014-15 wherein the additional tariff is limited to Re.1.00 per unit.

14. The distribution companies have been reimbursed the amounts expended towards the additional tariff for biomass projects by the government. From the record, it is seen that the petitioner had been requesting the government to extend the benefit of additional tariff and the government had been issuing directions to the distribution companies to pay additional tariff for the respective years.

15. Such directions were given by the GoTS in the year 2015 and 2016 as also in the year 2017 to the DISCOMs for payment of additional tariff to the biomass projects. In fact pursuant to the directions of the government, the Telangana Power Purchase Coordination Committee had addressed a letter dated 24.03.2016 to the government and stated as below.

“With reference to the representation of Biomass Energy Developers Association (BEDA) for sanction of Rs.2.00 per Kwh as additional support to Biomass Based Power Projects for a period of two years, it is to inform that TSPCC has agreed for recommending Rs.1.50 per Kwh, the existing rate, for next two years i.e., FY 2016-17 & FY 2017-18 in addition to the generic tariff fixed by TSERC for sale of power to TSDISCOMs under long term PPAs. Further to inform that the facility of additional support price may be made applicable to the Biomass power developers, whoever crosses 70% PLF annually (monthly cumulative average) only, subject to reimbursement of the additional support price by Government of Telangana State.”

16. Again in the year 2017, the government had issued directions to the DISCOMs directing them to extend the benefit of additional tariff to the biomass projects duly extending the scheme allowed in the years 2015-16 and 2016-17 for the year 2017-18. Thereafter, the TSPCC wrote to the Commission vide letter dated 31.07.2018 requesting approval from the Commission for undertaking payment of additional tariff for biomass projects for the year 2017-18.

17. The Commission had required the DISCOMs to comment on the same, which they have replied in the negative. Based on the reply of the DISCOMs the Commission had communicated its decision vide letter dated 07.12.2017 as below.

“With reference to the request made by the TSPCC cited under reference (1) above, I am directed to inform that the Commission reiterates its decision taken in Suo-Moto determination of waste to energy Generic tariff order dt:13.06.2016 in O. P. No. 18 of 2016.”

Now the issue in this petition boils down to clarifying this letter.

18. Inasmuch as the reply sent by the Commission to the TSPCC is not relevant to the facts in issue as the TSPCC requested approval of payment of additional tariff to the biomass projects, whereas the reference has been made to the tariff on waste to energy projects. The grievance of the petitioner is that pursuant to this letter of the Commission, the DISCOMs have not paid the additional tariff as directed by the government for the year 2017-18. Therefore, the same is required to be clarified.

19. As extracted above, the TSPCC itself has committed before the government that it would pay additional tariff of Rs. 1.50 per unit for the year 2017-18 also while replying to the letter of the government in the year 2016. It is also relevant to state that on one hand the TSPCC writes to the Commission on 31.07.2017 and even before the Commission could consider the issue, the government issued G. O. Ms. No. 49 dated 01.08.2017 releasing the funds towards additional tariff dues for the year 2015-16 and 2016-17.

20. The government had, in its letter dated 15.07.2017, already directed the TSPCC to extend the benefit of additional tariff to the biomass projects for the year 2017-18 also. In view of the directions of the government and the TSPCC's commitment in its own letter to the government, the petitioner associations' members are entitled to be paid the additional tariff as directed by the government.

21. Moreover, the payment of additional tariff is not directed to be paid from the funds of the DISCOMs themselves, but the same is being refunded by the government from its budget estimates. As such, the DISCOMs ought to have extended the benefit of additional tariff to the biomass projects.

22. One aspect that the respondents have raised and referred to is the order passed by this Commission on 13.06.2016 in O. P. No. 18 of 2016 determining the generic tariff for the waste to energy projects. The said order is neither related nor

applicable to the facts of this case. It is also relevant to state that the reference drawn by this Commission in its letter dated 07.12.2017 is also misplaced one as it was quoted out of context. Therefore, the contention of the respondents is refused.

23. In view of the discussion in the foregoing paragraphs, the Commission considers it appropriate to clarify and direct the DISCOMs to pay additional tariff by reading the letter dated 07.12.2017 as a direction to pay additional tariff.

24. For all the reasons stated above, the petition is allowed to the extent indicated above, but in the circumstances leaving the parties to bear their own costs.

This order is corrected and signed on 24th day of December, 2018.

Sd/-

**(ISMAIL ALI KHAN)
CHAIRMAN**

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