



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION HYDERABAD
5th Floor, Singareni Bhavan Lakdi-ka-pul Hyderabad 500 004

O.P.No.4 of 2020

Dated: 20.03.2020

Present

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

Between:

M/s Sri Venkateswara Green Power Projects Ltd.,
3rd Floor, # 5-9-22, My Home Sarovar Plaza,
Secretariat Road, Saifabad,
Hyderabad – 500 063.

..... Petitioner

AND

Southern Power Distribution Company of Telangana Ltd.,
Mint Compound, Hyderabad – 500 034.

..... Respondent

This Original Petition has come up for hearing on 25.01.2020 and 22.02.2020. Ms. Priya Iyengar, Advocate for the petitioner appeared on 25.01.2020 and 22.02.2020. Sri Y.Rama Rao, Standing Counsel for the respondent appeared on 25.01.2020 and Sri Y.Rama Rao, Standing Counsel for the respondent along with Sri K.Vamshi Krishna, Advocate appeared on 22.02.2020. This Original Petition having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

The Original Petition is filed by M/s Sri Venkateswara Green Power Projects Limited (petitioner) under Section 86 (1) (a) of the Electricity Act, 2003 (hereinafter referred as 'Act'), seeking to extend the tariff for the electricity being purchased by the respondent from the petitioner company for the period subsequent to 31.03.2019 upto March 2040 (duration of PPA between the petitioner and respondent) in accordance with the orders passed in *Suo-Moto* O.P.No.18 of 2016 by the

Commission notifying the fixed cost and variable cost. The averments of the Petitioner as stated in the petition are briefly stated hereunder.

- 1.1 The petitioner is a company incorporated under the Companies Act, 1956 on 07.09.1999 and its main object is to encourage power production and is involved in renewable energy production by the usage of waste refuse derived fuel (RDF). It is established with an objective to generate and supply power produced from non-conventional sources of energy and well positioned with long term fuel access to its WtE power plant and its power projects which are under planning and was formed with a vision to be one of the leading players in WtE power sector.
- 1.2 It is setting up a WtE power plant, based on RDF which is a renewable energy power plant with installed capacity of 12 MW in Sy. No. 105 / (8, 10, 11), 122, 123, 124 Yacharam Village and Mandal, Ranga Reddy District, Telangana State and 10.68 MW shall be injected to the grid with interconnection point at TSSPDCL, Yacharam substation and willing to sell the power generation as agreed to TSSPDCL.
- 1.3 It is imperative to install projects to recover renewable energy through suitable technology to reduce the overall quantities of waste to be disposed of scientifically in a controlled manner. There are several benefits that will accrue to the society at large including the urban local bodies by establishing the WtE power plants.
- 1.4 It had an agreement with Greater Hyderabad Municipal Corporation (GHMC) for the supply of 700 TPD municipal solid waste, which will be processed and RDF is produced. The municipal waste processing and treatment is intended to reduce the amount of waste to be disposed of as well as to change its composition in a way that prevents adverse effects on the environment. RDF fuel will be stored in an enclosed RCC pit which will be used for power generation.
- 1.5 The Act aims to bring about substantial reforms in the Indian electricity sector. Consequent to the enactment of the Act the process of approval of retail tariffs is vested with the state Commission. The object of Act is to promote cogeneration and generation of electricity from renewable sources of energy

by providing suitable measures for connectivity with the grid and sale of electricity to any person and also specify for purchase of electricity from such sources.

1.6 One of the main objects of the National Tariff Policy, 2016 (NTP) is to promote generation of electricity from renewable sources and to ensure creation of adequate capacity including reserves in generation, transmission and distribution in advance for reliability of supply of electricity to consumers.

1.7 The Commission vide order dated 13.06.2016 in O.P.No.18 of 2016 (*Suo-Moto*) determined the variable and fixed cost for the period from 13.06.2016 to 31.03.2019 in respect of the plants based on RDF.

Description	FY 2016-17	FY 2017-18	FY 2018-19
Fixed cost	3.83	3.83	3.83
Variable cost	3.24	3.40	3.57
Total Cost	7.07	7.23	7.40

1.8 The Commission had also ratified the draft PPA between it and TSSPDCL.

1.9 The above tariff fixation expired on 31.03.2019, whereas the petitioner project is under implementation, has already signed the draft PPA with the respondent TSSPDCL, made substantial investment on the power generation plant. The project is expected to be completed by March, 2020.

1.10 The Commission may be pleased to further extend the tariff fixation for WtE power project for the PPA period of 20 years (April, 2020 to March, 2040) after 31.03.2019 in terms of the orders passed by the Commission in order dated 13.08.2016 in O.P.No.18 of 2016 failing which it will be put to irreparable loss and hardship as it would not be in a position to do financial planning / prepare itself for the next financial year if the tariff is not fixed by the Commission and the same would not cause any prejudice to the respondent.

2. The Respondent (TSSPDCL) has filed counter affidavit praying to dismiss the petition as not maintainable in terms of Section 94 (2) and 64 (6) and the averments of the Respondent as stated in the counter affidavit are briefly stated hereunder.

2.1 The petitioner has filed the present petition before this Commission under section 86 (1) (a) of the Act seeking to fix the tariff for the petitioner's 12 MW WtE power plant based on RDF.

- 2.2 The petitioner is praying for extension of tariff for the electricity to be purchased by the TSSPDCL for the period subsequent to 31.03.2019 upto March, 2040 (duration of PPA between petitioner and TSSPDCL) in accordance with the orders passed in *Suo-Moto* O.P.No.18 of 2016 on 13.06.2016 by this Commission notifying the fixed cost and variable cost.
- 2.3 The NTP mandates DISCOMs for procurement of power from renewable energy sources through competitive bidding except from WtE projects. Further, the policy mandates the distribution licensees to compulsorily procure 100% power produced from all the WtE plants in the state at the tariff determined by the appropriate Commission under section 62 of the Act.
- 2.4 Accordingly, the respondent (TSSPDCL) entered into a draft power purchase agreement (PPA) dated 19.08.2017 with the petitioner in respect of purchase of power at a tariff determined by this Commission vide orders dated 13.06.2016.
- 2.5 The Commission issued order dated 13.06.2016 in O.P.No.18 of 2016 in the matter of *Suo-Moto* determination of generic tariff for the energy generated from municipal solid waste (MSW) and RDF based power projects in the state of Telangana achieving CoD during the period from 13.06.2016 to 31.03.2019 as below.

For MSW Projects:

Levelized tariff of Rs.5.90/kWh for entire project life of 20 years.

<i>For RDF based projects</i>			
Description	FY 2016-17	FY 2017-18	FY 2018-19
Fixed cost Rs./kWh	3.83	3.83	3.83
Variable cost Rs./kWh	3.24	3.40	3.57
Total cost Rs./kWh	7.07	7.23*	7.40*

* Provisional variable cost determined taking indicative fuel price escalation @ 5%

- 2.6 ***For RDF based power projects*** to be commissioned during the control period of 13.06.2016 to 31.03.2019, the Commission determined levelized fixed cost for the entire project life as Rs.3.83/kWh. The variable cost for FY 2016-17 was determined as Rs.3.24/kWh and for further years it is to be determined as per actual fuel price escalation.
- 2.7 As the situation stands above, since the petitioner project is yet to be commissioned, M/s SVGPPL is praying the commission for extension of the

tariff determined vide generic tariff order dated 13.06.2016 for the period of their project commissioning till expiry of the PPA (viz. upto 31.03.2040 assuming the project to be commissioned by March 2020).

2.8 The prayer of the petitioner is to extend the tariff already determined by the Commission for MSW/RDF based power projects (for the control period 13.06.2016 to 31.03.2019) for subsequent period upto 31.03.2020, which is nothing but seeking extension of control period, which is not permissible in terms of the Hon'ble Supreme Court judgment dated 25.10.2017.

2.9 The petitioner's project is yet to be commissioned; the generic tariff determined vide order dated 13.06.2016 cannot be extended to M/s SVGPPL.

2.10 The grant of extension of tariff for a new control period as prayed by the petitioner is beyond the powers of the state Commission, in light of the judgment of the Hon'ble Supreme Court, which has dealt with the applicability of section 94 (2), section 64 (6) etc., in a case between Gujarat Urja Vikas Nigam Limited Vs. Solar Semiconductor Power Company Private Limited. 2017 (16) SCC 498, which held as under:

“.....

37. *The Commission being a creature of the statute cannot assume to itself any powers which are not otherwise conferred on it. In other words, under the guise of exercising its inherent power, as we have already noticed above, the Commission cannot take recourse to exercise of a power, procedure for which is otherwise specifically provided under the Act.*

38. *Extension of control period has been specifically held to be outside the purview of the power of the Commission as per EMCO (supra) ...”*

2.11 Also, it is pertinent to note that various financial parameters (viz., loan tenure, interest of term loan, interest on working capital, depreciation, discount factor, etc.) affecting the tariff determination have varied widely since 2016, as noted below:

Parameter	As per TSERCC Order 13.06.2016	As per CERC RE tariff order for FY 2019-20
Term of loan	12 years	13 years
Interest on term loan	12%	10.41%
Interest on working capital	12.50%	11.41%
Depreciation	5.83% for first 12 years & 2.50% for following 8 years	5.28% for first 13 years 3.05% for next 7 years
Discount factor	13.20%	9.36%

- 2.12 As could be seen from the above, the interest rates have seen a downward trend and would result in reduction of tariff. As such, it is not appropriate for extension of the control period determined vide order dated 13.06.2016 particularly in view of the Hon'ble Supreme Court orders dated 25.10.2017 in Civil Appeal No.6399 of 2016.
- 2.13 The petitioner filed the present petition U/s 86 (1) (a) of Act, which mandates on this Commission to make a fresh determination of generation/supply tariff applicable to the petitioner's project from the date of commissioning of the project, but not mere extension of tariff control period which order was already lapsed by 31.03.2019.
3. The counsel for the Petitioner has filed rejoinder responding to the averments and submissions made by the Respondent as below.
- 3.1 Petitioner is engaged in business of running integrated MSW management facility with 12 MW based power plant for steam generation and the total steam will be used in steam turbine for power generation, which is one of the most efficient and effective solutions for sustainable energy supply to supplement the increasing energy demand and reducing environment pollution is renewable energy resources. Further the said municipal waste refuse derived fuel (RDF) based power projects provide many social benefits. They not only provide environmentally clean electricity but also encourage efficient and economically favourable utilization of municipal waste.
- 3.2 Further, on 22.02.2020, the Commission has directed the petitioner to file a rejoinder to the counter affidavit filed by the TSSPDCL and written submissions and reserved the order to be delivered. Hence, the petitioner prays liberty of the Commission to allow the present rejoinder to be brought on record, since the TSSPDCL has raised issues both in facts and in law, which requires to be TSSPDCL in the form of the present rejoinder.
- 3.3 The petitioner disputes and denies all averments, allegations and contentions raised by the respondent in its reply unless specifically admitted hereinafter. Any omission on the part of the petitioner to deal with any specific averments, allegations and contentions should not be construed as an admission of the same by the petitioner. The petitioner reiterates the contents of the petition,

which may kindly be read as part and parcel of the present rejoinder and the same are not being repeated herein for the sake of brevity.

- 3.4 The project is under development and the same is likely to be commissioned in 2022. For the purpose of establishing the above project, the petitioner has obtained all required statutory and other approval from the appropriate authorities.
- 3.5 The original PPA shall be executed after incorporating the changes /modifications, if any, to be suggested by the Commission and subject to the determination of tariff by the Commission. Accordingly, the petitioner executed the draft PPA with the TSSPDCL on 19.08.2017 for purchase of the entire delivered energy which is equal to the electrical energy to be generated by the project and delivered to the TSSPDCL.
- 3.6 The Commission has already ratified the draft PPA between the TSSPDCL and the petitioner.
- 3.7 The Commission in exercise of its powers under section 62 read with section 86 (1) (e) and being governed by the principals laid down under section 61(f) and (h) read with the NTP, initiated the *Suo-Moto* proceedings being O.P.No.18 of 2016, and passed an order dated 13.06.2016 whereby a generic tariff was determined for energy generated from MSW and RDF based power projects in the state of Telangana. Such tariff is applicable to the entities which have achieved COD during the control period that is from 13.06.2019 to 31.03.2019. Thus, the stipulated control period for this *Suo-motto* order is about two and half years only which expired on 31.03.2019. Further, the Commission did not have quorum at the time of expiry of the control period of the order dated 13.06.2016 that is on 31.03.2019.
- 3.8 The Commission may take note of the fact that during the aid period of two and half years (13.06.2016 to 31.03.2019), PPA was executed under this order namely M/s. RDF Power Projects Limited. However, the said project is yet to achieve its COD. Hence, no WtE project has started commencement of operation under tariff order dated 13.06.2016.
- 3.9 The Commission has risen to the occasion vide its *Suo-Moto* proceeding being O.P.No.18 of 2016, whereby a generic tariff order was determined for

energy generated from MSW and RDF based power projects in the state of Telangana. The very nucleus of initiating a *Suo-Moto* process for the generic tariff order was entered on the edifice of the growing necessity for scientific management of solid waste and the sustainable development being the need of the hour. Accordingly, the Commission had proposed a draft norms and invited objections / suggestions and comments from all stakeholders. It also undertook a public hearing.

- 3.10 The Commission has relied upon the Act and considered the mandate that a distribution licensee 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, as mandated under the NTP, 2016.
- 3.11 The Commission has determined the tariff under various norms and parameters for WtE plants based on MSW as well as RDF vide its order dated 13.06.2016. The said order has annexures which tabulated the computation of generic tariff for WtE plants for a period of 20 years. In the said order, it is provided that the tariff shall be applicable to all the MSW or RDF based plant whose COD is declared during and within the balance period of 3rd control period that is the date of the order in FY 2016-17 to FY 2018-19. However, no WtE plant has achieved COD during the above-mentioned period. The petitioner was constrained to file the present petition since, the plant of the petitioner is set to get commissioned by 2022 and the draft PPA executed by the petitioner, as mentioned above, makes reference of the tariff determined by the Commission, from time to time, to be the tariff at which the power to be generated from the WtE plant, shall be supplied to the TSSPDCL. Now in the absence of a tariff, due to expiry of the previous control period, the plant of the petitioner cannot be put to prejudice or be stranded after its commission, since, WtE plant is “must run” facility under the NTP, 2016.
- 3.12 The petitioner is set to commission a RDF based WtE plant in the state of Telangana, has no other option but to prefer the present petition for extension of the control period, whereby the vacuum / contradiction of there being no tariff coupled with the mandatory procurement of 100% power from WtE, can be filled / bridged up with the tariff already determined, read with the norms and parameters so determined under the table annexed with the erstwhile

tariff order dated 13.06.2016 that lapsed after two and half years on 31.03.2019.

- 3.13 The WtE projects are nascent in India. There are no more than four (4) operating WtE plants in the country with a cumulative capacity of 70 MW as on today, which are processing 3750 tons per day of waste on pan-India basis. Such processing of 3750 tons per day of waste is not comparable with the actual generation of waste of around 2 lakh tons per day. Even the capital city of Hyderabad itself is generating about 7000 Tons of MSW per day.
- 3.14 The order of the Commission in O.P.No.18 of 2016, in the matter of *Suo-Moto* determination of generic tariff for energy generated from municipal and RDF based power projects, came into being. A summary of the orders of various state ERCs is given as below for RDF based WtE power project under generic tariff orders for two-part tariff comprising of variable and fixed components. Notably, unlike the order of the Commission dated 13.06.2016 fixing period of 2.5 years, the Electricity Regulatory Commissions in the state of Uttarakhand and Chhattisgarh, have fixed the control period for 5 years, taking into consideration the long gestation period for WtE projects, given its necessary and also its complexity compared to other RE projects.

SERC	Parameter Rs./kWh	RDF based waste to Energy Projects two-part tariff						
		2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
TSERC	Fixed Cost	3.83	3.83	3.83				
	Variable cost	3.24	3.4	3.57				
	Total	7.07	7.23	7.4				
UKERC	Fixed cost			4.44	4.44	4.44	4.44	4.44
	Variable cost			3.56	3.74	3.92	4.12	4.32
	Total			8.00	8.18	8.36	8.56	8.76
CSERC	Fixed cost	4.54	4.49	4.44	4.4	4.36		
	Variable cost	3.56	3.74	3.92	4.12	4.32		
	Total	8.1	8.23	8.36	8.52	8.68		

- 3.15 Apart from a lesser control period prescribed in the order dated 13.06.2016 for two and half years only till 31.03.2019, it is remarkable to note that the assumptions/parameters underlying the generic tariff order, both technical and financial, could not be put to any test since no WtE project could come up in

the state of Telangana during the lapsed control period of generic tariff order. It may not be out of the place to mention herein that the capacity of the petitioner's plant is 12 MW juxtaposed to the total power load of the TSSPDCL in the FY 2019-20 of 12000 MW of TSSPDCL portfolio, amounts to 0.101% of the total power load. Further, as a matter of policy, the power generated from the WtE plant is to be compulsorily procured by the distribution license and in the absence of a tariff at the time of commencement of operation of the plant in 2022 the PPA would not be given effect to that gives any comfort to lenders not investors and the plant will be stranded and fail to attract any investment in this sector. This eventuality shall defeat the very purpose of section 86 (1) (e) of the Act and be volatile of the provisions of NTP, 2016.

Preliminary Submission

Judgements relied upon by TSSPDCL are distinguishable and not applicable to the present matter.

- 3.16 The provisions of the Act dealing with the powers of the Commission will demonstrate that the Commission has the power to amend the order passed by it and extend the control period. Furthermore, the facts and applicable regulations in the judgment relied upon by the respondent, being M/s. Gujarat Urja Vikas Nigam Limited vs. M/s. Solar Semiconductor Power Company Private Limited reported in 2017 (16) SCC 498, are entirely different from the present case and as such are distinguishable and non-applicable. It is a settled principal of law that each and every judgment shall be applicable in similar factual conditions, not otherwise.
- 3.17 The present case in the absence of any applicable tariff order, the plant would be stranded and it would be a clear violation of the NTP, which mandated that distribution licensee to compulsorily procure 100% power produced from all WtE plants in the state, in proportion to its procurement from all sources.
- 3.18 The aforementioned judgement deals with the issue of extension of a pervious control period by allowing amendment of the PPA, which provided for determination of tariff by either the generic tariff order or as given in the PPA,

whichever was lower, in light of delay in commissioning of plant due to force majeure events.

- 3.19 The key factual difference in the aforementioned case, which formed the crux of the question of law in the aforementioned matter, was that, could the Commission exercise its powers to amend terms of already executed PPA which was entered into by the parties consensus ad idem, while the said PPA provided a clause whereby, if the plant were to commission after the expiry of the control period under which it was executed, then the tariff would be as determined by the Commission applicable on the date of commissioning of the project or the tariff determined by the Commission vide its orders dated 29.01.2010, whichever is lower. The relevant clause of the PPA under consideration by the Hon'ble Supreme Court is reproduced herein below:

“5.2 GUNVL shall pay the fixed tariff mentioned hereunder for the period of 25 years for all scheduled energy/energy injected as certified in the monthly SEA by SLDC. The project tariff is to be determined by the Hon'ble Commission vide Tariff Order for Solar based power project dated 29-01-2010.

Tariff for photovoltaic project: Rs.15/kWh for first 12 years and thereafter Rs.5 kWh from 13th year to 25th year. Above tariff shall apply for solar projects commissioned on or before 31.12.2011. In case, commissioning of solar power project is delayed beyond 31.12.2011 GUNVL shall pay the tariff as determined by the Hon'ble GERC for solar projects effective on the date of the commissioning of solar power projects or abovementioned tariff, whichever is lower.”

- 3.20 Further, the question of law determined in by the Hon'ble Supreme Court, are entirely different from the present set of facts. The relevant portion of the judgement is extracted herein below:

“43. A petition under Section 125 of the Electricity Act, 2003 would be maintainable only on the grounds specified in Section 100 of the Civil procedure Code i.e. only on substantial question of law. In the present case, the following substantial questions of law arise for determination:

-

- 43.1 *Whether the State Commission has inherent powers to extend the control period of Tariff Order dated 29.01.2010 beyond the control period thereby adversely affecting the sanctity of PPA which was entered into by the parties by consensus-ad-idem?*
- 43.2 *Whether the State Commission can invoke Regulations 80-82 of Conduct of Business Regulations – inherent powers of the Commission to grant substantive relief to the generating company like respondent*

No.1 and thereby alter the terms of the contract arrived at between the parties consensus-ad-idem?”

3.21 The factual background of the aforementioned judgement suggests, extension of control period of a previous generic tariff order for only one generator, not the extension of control period in rem for all projects to be commissioned in the absence of a new generic tariff order, as is evident from the following para of the Judgement in M/s GUNVL Vs. M/s Solar Semiconductor Power Company Private Limited.

“1. The principal question which arises in this case is whether the Gujarat Electricity Regulatory Commission (the Commission), in exercise of its inherent powers, could have extended the control period for the 1st respondent Company (Respondent No.1). The control period is the period during which a particular tariff order operates.”

3.22 The aforementioned clause of the PPA and the question of law framed by the Hon'ble Supreme Court, based on which the Hon'ble Supreme Court passed its decision in M/s GUVNL Vs. M/s Solar Semiconductor power Company Private Limited. It is clear that these are entirely different and non-applicable to the present case. In the present case, the PPA provides for tariff as determined by the Commission from time to time, and does not provide for any other tariff or any other method for determination of tariff in absence of the same and as such there would be no conflict or amendment of the PPA, entered into between the parties in the event of extension of control period. However, in the absence of the extension of the control period as prayed for by the petitioner, the project may land up to the commissioned at a period where there would be no existing tariff order of the Commission, applicable to the project, as required under the PPA. Clause 2.2. of the draft PPA executed between the petitioner and the TSSPDCL, mandates that the applicable tariff, shall be the tariff to be determined by the Commission, from time to time. The PPA is a pre requisite for the financial closure and disbursement of funds for the project, any amount of delay shall not only lead to cost and time overrun, but also lead to environmental consequences in the absence of the WtE plant to absorb the MSW generated in the city of Hyderabad.

3.23 Clause 7.2 (ii) of the PPA mandates the DISCOM to purchase energy generated from the project in accordance with clause 2.2, as per the tariff determined by the commission, as reproduced herein below:

“7.2 The DISCOM agrees:

...

(ii) for purchase of delivered energy from the Project as per Article 2.2”.

3.24 The Solar Semiconductor judgement as relied by the TSSPDCL, is with reference to powers of the Commission to extend the control period in respect of only one PPA, keeping in mind the sanctity of the PPA as is manifest from the following paras of the aforementioned judgement of the Hon'ble Supreme Court, as elucidated upon by Hon'ble Justice R.Bhanumati:

“WHETHER THE STATE COMMISSION HAS INHERENT POWERS TO EXTEND THE CONTROL PERIOD OF TARIFF ORDER DATED 20-01-2010 BEYOND THE CONTROL PERIOD IN RESPECT OF ONE PPA:

...

“60. In the case at hand, rights and obligations of the parties flow from the terms and conditions of the Power Purchase Agreement (PPA). PPA is a contract entered between the GUVNL and the first respondent with clear understanding of the terms of the contract. A contract, being a creation of both the parties is to be interpreted by having due regard to the actual terms settled between the parties. As per the terms and conditions of the PPA, to have the benefit of the tariff rate at Rs.15/- per unit for twelve years, the first respondent should commission the Solar PV Power project before 31-12-2011. It is a complex fiscal decision consciously taken by the parties. In the contract involving rights of GUVNL and ultimately the rights of the consumers to whom the electricity is supplied, Commission cannot invoke its inherent jurisdiction to substantially alter the terms of the contract between the parties so as to prejudice the interest of GUVNL and ultimately the consumers.

61. As pointed out earlier, the Appellate Tribunal has taken the view that the control period of the Tariff Order was fixed by the State Commission itself and hence the State Commission has inherent power to extend the control period of the Tariff Order. It may be that the tariff rate as per the Tariff Order (2010) as determined by the Committee has been incorporated in clause 5.2 of the PPA. But that does not in any manner confer power upon the State Commission to exercise its inherent jurisdiction to extend the control period to the advantage of the project proponent-first respondent and to the disadvantage of GUVNL who are governed by the terms and conditions of the contract. It is not within the powers of the Commission to exercise its inherent jurisdiction to extend the control period to the advantage of any party and to the disadvantage of the other would amount to varying the terms of the contract between the parties.

...

72 Conclusions:

72.1 When the 1st respondent commissioned its project beyond 13.03.2012, Commission cannot exercise its inherent jurisdiction and vary the terms

to extend the control period of Tariff Order dated 29.01.2010 in so far as the 1st respondent of the contract-Power Purchase Agreement (PPA) between GUVNL and the first respondent;

72.2 the earlier order passed by this Court in C.A.No.2315 of 2013 dated 01.04.2013) has not conclusively decided the substantial question of law inter-se the parties-that is exercise of inherent jurisdiction by the Commission to vary the terms of PPA by extending the control period beyond the stipulated time.

73. On the above reasonings, I agree with the conclusion of my esteemed brother justice Kurian Joseph.”

Powers of the Commission to amend / modify the generic tariff order and extend the control period.

- 3.25 The provisions of the Act dealing with the powers of the Commission will demonstrate that the Commission has the power to amend the order passed by it and extend the control period. Further, several state commissions in exercise of their inherent powers have modified/amended generic tariff orders and extended / renewed the control period after expiry, in the absence of an applicable generic tariff order in the new control period.
- 3.26 Further, clause 38 of the TSERC (Conduct of Business) Regulations, 2015 provides for powers of the Commission. Clause 42 empowers the Commission to extend any time period prescribed in its order by adducing sufficient reason. For the purpose of giving effect to the relief sought by the petitioner herein in the petition, there is no restriction neither under the Act nor under the regulations passed by the Commission, which would restrain the power of the Commission to extend the control period beyond the FY 2018-19.
- 3.27 The Commission is endowed with this sublime objective of promotion of generation of power from renewable energy sources under section 86 (1) (e) of the Act. Further, while laying down the terms and conditions of determination of tariff the petitioner shall have to take into consideration the provisions of section 61 (h) of the Act. Nonetheless, it may find a mentioning that the NTP, 2016 is a statutory policy which is binding on the Commission, since the said policy is notified under section 3 of the Act. In the said policy, under clause 6.4 (1) (ii), it has been made mandatory to procure 100% power generated from WtE plant.

- 3.28 Unless the generic tariff order is extended, the absence of a tariff shall tantamount to failure on the part of the Commission to act in accordance with section 86 (1) (e) read with section 61 (h) of the Act. Therefore, in furtherance of the power vested with the Commission, the generic tariff period can be extended to fill the vacuum, since, in the absence of an order in force, prescribing applicable tariff, the TSSPDCL would not be in a position to procure power from the petitioner under the provisions of the Act.
- 3.29 The Commission while functioning as a sectoral regulator and exercising regulatory powers has the power not only to pass an order and fix the control period but also to modify and alter the same as its regulatory powers do not get exhausted with the passing of the original order.
- 3.30 It is settled law that a Commission which has passed a tariff order is empowered to amend the same and renew/extend/modify the control period in exercise of its powers to meet the ends of justice, specifically when no applicable tariff order, and the same has time and again exercised by several Commissions across the country.
- 3.31 The Madhya Pradesh Electricity Regulatory Commission has extended the control period of a previous generic tariff order for procurement of power from MSW based power generating plants in Madhya Pradesh after expiry of the control period vide order dated 07.03.2019.
- 3.32 The Gujarat Electricity Regulatory Commission has also held that a State Electricity Regulatory Commission has the power to amend / modify an order for determination passed by it and extended the control period of a previous generic tariff order after expiry of the control period vide its order dated 23.10.2017 in *Suo-Moto* petition No.1654 of 2017.
- 3.33 The Maharashtra Electricity Regulatory Commission has also in exercise of its powers extended the applicability of a generic tariff order after expiry of the control period, vide its order dated 04.11.2015 in Case No.134 of 2015.
- 3.34 From the combined readings of the Telangana State Electricity Regulatory Commission (Conduct of Business) Regulations, 2015 and the provisos of the Act, it is clear that the Commission has the power to pass appropriate order in any case before it for meeting the ends of justice and also to abridge or

extend the control period or time limit prescribed in the generic tariff order by recording the reasons.

3.35 In the present matter the extension of control period of the previous generic tariff order dated 13.06.2016, in the absence of a new generic tariff order during a period wherein the project of the petitioner is scheduled to be commissioned, would in no way affect the sanctity of the PPA and as such is well within the powers of the Commission to extend the control period of the previous generic tariff order and the observations of the Hon'ble Supreme Court in the matter of GUVNL vs. Solar Semiconductor power Company Private Limited, are inapplicable and distinguishable from the present facts and circumstances. The petition in its present form the present facts and circumstances is maintainable and dispute in question deserves to be adjudicated by the Commission. The Petitioner has filed Para-Wise Reply as given hereunder.

- i) The contents of the reply are denied and disputed. That further, the project of the petitioner is going to be commissioned at a time which is beyond the control period prescribed under the generic tariff order, for the very reason of which the petition for extension of control period is being preferred. As per the generic tariff order, the timing of execution of PPA is not relevant rather the commissioning of the plant has to be within the relevant control period, in order to enable the plant to be entitled to the tariff so determined under the generic order. As such, the contention of the TSSPDCL that the generic tariff as determined by the Commission vide order dated 13.06.2016 would not be applicable on the plant of the petitioner on the basis of when the PPA was signed is untenable. Hence the petitioner is constrained to seek extension of the control period of the previous generic order and the plea is not barred on account of the ground relied upon by the TSSPDCL in its reply.
- ii) The petitioner reiterates that the reliance placed by the respondent on GUVNL vs, Solar Semiconductor Power Company Private Limited is entirely misplaced, as the facts and applicable regulations in the judgement relied upon by the respondent, are entirely different from the present case and as such are distinguishable and non-applicable.

- iii) The petitioner reiterated that the petitioner has only prayed for the renewal / reset of the generic tariff for the new control period, as per the principles for determination of tariff as adopted by the Commission in its erstwhile generic tariff order, and has not asked for any increase in tariff beyond what has already been determined and allowed by the Commission.
- iv) The contention of the TSSPDCL completely loses sight of the fact that upon commissioning of the plant of the petitioner, in the absence of the tariff order, the PPA becomes unenforceable and the generating plant shall be stranded without an applicable tariff at which the power is to be supplied. Therefore, the Commission is vested with power to exercise it in a manner which would culminate in furtherance to the objectives of the enactment, rather than being sabotaged by mere technicalities, on the pretext of which the TSSPDCL is making an effort to overcome its responsibilities.
- v) The reply filed by the TSSPDCL are denied as being wrong, incorrect, false, baseless and misconceived, save and except being the matters of records and the averments contained in the present rejoinder and the petition are reiterated in response to the paras under reply. It is reiterated that the facts and questions of law determined in the judgement relied upon by the TSSPDCL entirely different from the present case and as such the distinguishable.

4. We have heard the arguments of the counsel of the parties and perused the material on record.

Commission's View

5. The Commission's view on the contentions of the Petitioner and the Respondents are stated hereunder.

5.1 The Commission has taken in to consideration that there has been no commissioning of Municipal Solid Waste (MSW) [*commercial and residential wastes generated in a municipal or notified areas either in solid or semi-solid form including treated biomedical waste but excluding industrial hazardous wastes*] or Refuse Derived Fuel (RDF) [*a segregated combustible fraction of solid waste other than chlorinated plastics in the*

form of pellets or fluff produced by drying, de-stoning, shredding, de-hydrating and compacting combustible components of solid waste that can be used as fuel] based projects within the stipulated 3rd control period as indicated in the Commission order in O.P.No.18 of 2016 dated 13.06.2016. Moreover, the Petitioner's project is 12 MW RDF based project and is expected to be commissioned in 2022 i.e., in the 4th year of 4th control period.

- 5.2 The provisions of the Act require that the Commission should promote the generation of electricity from renewable sources of energy. The revised Tariff Policy, notified by the Central Government on 28th January, 2016 stipulates that Distribution Licensee(s) shall compulsorily procure 100% power produced from all the WtE plants in the State. Further, as per the Central Electricity Regulatory Commission (CERC) (Terms and Conditions for Tariff determination from RE Sources) Regulations, 2017 WtE plants shall be treated a 'MUST RUN' power plants and shall not be subjected to 'merit order despatch' principles.
- 5.3 The regulation made by the CERC require that the determination of tariff is undertaken on project specific basis for MSW and RDF based projects with Rankine cycle technology. The Commission is of the view that the project specific tariff determination will be most suitable for the projects which have become operational for providing the realistic parameters. As the project itself has not come into operation, absence of empirical data about the project, would deter the Commission from undertaking the project specific tariff, as such, the Commission is not resorted to the project specific tariff. Accordingly, it is necessary that the Commission to undertake generic tariff exercise to determine normatives and the tariff for WtE projects.
- 5.4 The prayer in the petition is to extend the generic tariff for the electricity being purchased by the respondent from the petitioner company for the period subsequent to 31.03.2019 upto March, 2040 (duration of PPA between the petitioner and respondent) in accordance with the orders passed in *Suo-Moto* O.P.No.18 of 2016 by the Commission notifying the fixed cost and variable cost. The petitioner relied on the provisions relating to the tariff determination on generic basis as also other functions of the Commission. The petitioner has sought the determination of tariff on generic basis exercising the function

under Section 86 (1) (a) of the Act, but the prayer is with reference to its own project. The Commission considers that the same cannot be accepted.

- 5.5 The Respondent (TSSPDCL) in its contention with regard to various financial parameters affecting the tariff determination of WtE projects relied on the regulation issued by the CERC in the year 2019. The Commission observed that the said regulation does not touch upon the WtE projects and is applicable to other than renewable sources of energy.
- 5.6 The Petitioner sought to rely on Section 86 (1) (b) of the Act, 2003. The function of the Commission under this provision is to regulate power procurement process including the price at which electricity is procured for distribution and supply in the state. Though reliance is placed on the earlier order with regard to tariff and which is sought to be applied to the petitioner project till a new tariff determination is made, as observed by the Commission earlier, there cannot be any project specific tariff in the case of the Petitioner.
- 5.7 The Petitioner also relied on Section 86 (1) (e) of the Act, 2003, which mandates this Commission to encourage renewable sources of energy. Though the contention may be correct, but at the same time, it is also subject to the other provisions of the Act, 2003, regulations and policies. Policies issued by the government are guiding factor, more particularly in the case of WtE projects. However, as the licensee has already entered into the agreement for procurement of power and that agreement provided for determination of tariff by this Commission, the relief sought under the Section 86 (1) (e) of the Act is not applicable to this case.
- 5.8 The Petitioner relied on Section 94 (2) of the Act, 2003, which mandates the Commission to pass such interim orders in any proceeding, hearing or matter as may be appropriate to meet the ends of justice. An interim direction necessitates in the matter of tariff determination where there is a need for payment of certain tariff for the energy proposed to be supplied immediately. Nothing of this sort is happening between the parties, as the project is yet to be completed and brought into operation.
- 5.9 The Petitioner contention is that the projects commissioned in respective financial years would be entitled for the same fixed charge and only the

variable part will be changed as set out in the generic tariff order for the useful life of the project, from date of commissioning. Further, states that the Commission is empowered under section 64 (6) of the Act to amend or modify its earlier tariff order. Whereas, the norms and formula specified in the Commission order are limited to 3rd control period only i.e., w.e.f. the date of the order 13.06.2016 in FY 2016-17 to FY 2018-19.

- 5.10 The Petitioner has relied on instances where the Commission of the respective states of Madhya Pradesh, Gujarat and Maharashtra have extended the order passed by them beyond the control period in terms of the powers conferred under the Act, 2003. It is pragmatic in the above referred instances that the WtE projects are of MSW based projects and not RDF based projects, having fixed levelized tariff and none of them having any escalable tariff as determined by this Commission for RDF based projects.
- 5.11 The Commission has examined the contentions of the Respondent (TSSPDCL) that there is no feasibility of extending the order passed by the Commission earlier, which has provided for applicability during the control period only under Section 64 (6) of the Act, 2003. The Commission agrees with the Respondent for the reason that any extension, if no determination is taking place immediately of the tariff, before the expiry of the control period, the order can be extended under the provisions of the Act, 2003 but not otherwise.
- 5.12 The generic tariff order passed by this Commission has worked out itself due to specific time for its application being mentioned therein and no extension of the order could take place at the relevant time. Thus, the prayer of the petitioner to extend the generic tariff for the electricity being purchased by the respondent from the petitioner company for the period subsequent to 31.03.2019 upto March, 2040 (duration of PPA between the petitioner and respondent) in accordance with the orders passed in *Suo-Moto* O.P.No.18 of 2016 by the Commission notifying the fixed cost and variable cost, cannot be acceded to.
- 5.13 The contention of the petitioner that the project would be stranded in the absence of tariff is premature and without any basis for the present. Having

filed the present petition, the petitioner could not have alleged that there may be a resultant absence of tariff when the project actually commences operation. Thus, the contentions do not sustain and are rejected.

6. Suffice for the reasons enumerated and the observations made herein above, the Commission is not inclined to accede to the prayer in the petition. However, the Commission may hasten to add here that the option of determining the generic tariff and for that purpose it may undertake such appropriate action in due course of time to comply with the mandate of the Act along with the policies and regulations applicable on the subject matter.

7. In the premises as above, the Original Petition is dismissed, no costs.

This order is corrected and signed on this the 20th day of March, 2020.

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

//CERTIFIED COPY/