



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION HYDERABAD**  
**5<sup>th</sup> Floor, Singareni Bhavan, Lakdi-ka-pul Hyderabad 500 004**

O.P.No.8 of 2019

&

I.A.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 Hyderabad MSW Energy Solutions Pvt. Ltd.,  
13<sup>th</sup> Floor, Ramky Grandiose, Anjiah Nagar,  
Gachibowli, Hyderabad – 500 032.

..... Petitioner

**AND**

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

..... Respondent

This Original Petition has come up for hearing on 04.01.2020, 25.01.2020 and 22.02.2020. Sri Matrugupta Mishra, Advocate for the petitioner along with Sri Omar Waziri, Advocate appeared on 04.01.2020 and 25.01.2020, Sri M.G.Ramachandran, Senior Advocate representing Sri Matrugupta Mishra, Advocate for the petitioner along with Sri Omar Waziri, Advocate appeared on 22.02.2020. Sri Y.Rama Rao, Standing Counsel for the respondent along with Sri K.Vamshi Krishna, Advocate appeared on 04.01.2020. Sri Y.Rama Rao, Standing Counsel 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 Hyderabad MSW Energy Solutions Private Limited (petitioner) under Section 94 (2), 64 (6), 86 (1) (a), (b) and (e) of the Electricity Act, 2003 (hereinafter referred as 'Act') seeking the extension of the

generic tariff as determined by this Commission by order dated 13.06.2016 passed in O.P.No.18 of 2016 for energy generated from MSW and RDF based power projects, with the adoption of the same fixed cost and variable cost in accordance with the escalation as set out in the erstwhile generic tariff order for the useful life of the project, from the date of Commissioning to a new control period, from the expiry of the FY 2019-20, in exercise of power under Section 64 (6) of Act. The averments of the Petitioner as stated in the petition are briefly stated hereunder.

- 1.1 The project is under development and the same is likely to be commissioned in March / April, 2020. For the purpose of establishing the above project, the petitioner has obtained all required statutory and other approval from the appropriate authorities.
- 1.2 It entered into a development agreement with Telangana State Renewable Energy Development Corporation (TSREDCO), which is the state nodal agency of development of any RE project, for development of its 19.8 MW refuse derived fuel (RDF) based waste to energy (WtE) power plant, which is likely to be commissioned in March–April, 2020.
- 1.3 The growing menace of municipal solid waste (MSW) has been a matter of concern for urban and even semi urban and rural areas. The central government as well as the state government have been taking steps towards dealing with such menace to reduce and minimize the impact on the biodiversity and the ecology at large. Modern day consumption pattern amongst individuals have enormously contributed towards the growing size as well as heterogeneity of MSW, which keeps on challenging the civic bodies to manage the same. These are not only space consuming and difficult to dispose, but also happen to be environmentally hazardous and a threat to the public health at large.
- 1.4 Be it at the centre or at the state level, it has been quite an accepted fact that the conventional brick and mortar methodology and experience available with the civic bodies are no conceivable answer to the deep penetrating questions of environmental hazard put forth by the menace called MSW. Therefore, it has been a trend and with the legislative evolvement reflected in MSW rules

from time to time, disposal of MSW by an integrated processing and converting the same into electricity, has become the call of the hour.

- 1.5 Taking into consideration these aspects, the Commission has risen to the occasion whereby a generic tariff was determined for energy generated from MSW and RDF based power projects in the state of Telangana, vide a *Suo-Moto* proceeding being O.P.No.18 of 2016. Section 62 read with section 86 (1) (e) and being governed by the principles laid down under Section 61 (f) and (h) read with the National Tariff Policy, 2016, (NTP) initiated the aforesaid *Suo-Moto* proceeding. It is commendable on the part of the Commission, which made a progressive intervention at the very outset on its own volition for determining tariff of WtE plants, being well aware of the mandate of NTP which makes a WtE plant, a must run and the distribution licensee of the concerned area is under an obligation to 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.
- 1.6 The Commission vide its order dated 13.06.2016 determined generic tariff for energy generated from MSW and RDF based power project in the state of Telangana. Such tariff is applicable to the entities which have achieved COD during the control period 13.06.2016 to 31.03.2019. Thereafter, there has been no generic tariff order applicable to WtE plants. On 23.07.2019, TSSPDCL (state DISCOM) has executed a draft PPA with it for purchase of the entire delivered energy which is equal to the electrical energy generated by the project and delivered to the DISCOM at the interconnection point. Further, as per the clause 2.2 of the PPA, the tariff shall be determined by the Commission.
- 1.7 The above tariff fixation has expired on 31.03.2019, whereas it's project is under implementation, has already signed draft power purchase agreement with TSSPDCL, made substantial investment, for the construction and development of 19.8 MW RDF based waste to energy project at Sy.173, Jawaharnagar, Hyderabad. Further, it is stated that the generic tariff determined by the Commission vide its generic tariff order for control period 13.06.2016 to 31.03.2019, is yet to be implemented for any operationalized project, in the state since there has been no commissioning of any WtE plant

during the aforesaid control period, in the state during this period. Therefore, it is stated that the generic tariff prescribed by the Commission in its generic tariff order dated 13.06.2016 (since lapsed on 31.03.2019) be renewed/re-prescribed as applicable for the current control period that the Commission may prescribe for. The generic tariff order dated 13.06.2016 has prescribed the following two part tariff for RDF power plants:

<b>Description</b>	<b>FY 2016–17</b>	<b>FY 2017–18</b>	<b>FY 2018–19</b>
Fixed cost Rs./kWh	3.83	3.83	3.83
Variable cost Rs./kWh	3.24	3.40	3.57
Total unit cost Rs./kWh	7.07	7.23	7.40

- 1.8 The Commission may consider the renewal/reset of the generic tariff for the new control period, for example 3 years from FY 2019–20, as per the principles for determination of tariff as adopted in the generic tariff order as below.

<b>Description</b>	<b>FY 2019–20</b>	<b>FY 2020–21</b>	<b>FY 2021–22</b>
Fixed cost Rs./kWh	3.83	3.83	3.83
Variable cost Rs./kWh	3.75	3.93	4.13
Total unit cost Rs./kWh	7.58	7.76	7.96

- 1.9 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. The Commission is empowered under section 64 (6) of the Act to amend or modify its earlier tariff order. Admittedly, there has been no commissioning of WtE project within the stipulated control period as indicated vide the order dated 13.06.2016. However, apart from it there are other projects which are also coming up within the state, which would kick start their operation in the coming years, for the very purpose of which it is very much required to have a tariff in place which enable the developers to revert, construct, operate and supply power to the respective DISCOMs.
- 1.10 In RDF based WtE plants, RDF is used as fuel. Such RDF is created after processing the MSW by adopting the universally accepted prescribed technology. Thereafter, these RDF are stacked and ready to be put for incineration for generation of electricity. However, these RDF are not safe to stack for a longer period of time, which would otherwise catch fire being stored in open space after coming in contact with the atmosphere. Therefore,

the generic tariff order passed by the Commission is required to be extended to the next control period for the benefit of the sector at large and in the interest of public resulting into operation of the WtE plant which would ultimately put MSW and the processed RDF to use. The successful operation and supply of power from the upcoming WtE plants are definitely conditioned upon a determined tariff to be at the disposal so that the plants can be operationalized and PPAs can be implemented. Further, the Commission has carried out a detailed study and after applying the normative principles, arrived at the numbers as displayed in the generic tariff order.

2. The Respondent (TSSPDCL) has filed counter affidavit on 01.02.2020 praying to dismiss the petition as not maintainable in terms of Sections 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 under section 94 (2) read with sections 64 (6), 86 (1) (a), (b) and (e) of the Act seeking extension of control period in the matter of *Suo-Moto* determination of generic tariff for energy generated from MSW and RDF based power projects in the state of Telangana.

2.2 The NTP resolution 2016 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.

2.3 Accordingly, the respondent (TSSPDCL) entered into a draft power purchase agreement (PPA) dated 23.07.2019 with the petitioner in respect of purchase of power from their 19.8 MW capacity RDF based power project at Jawaharnagar village, Kapra mandal, Medical district at a tariff to be determined by the Commission.

2.4 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 MSW and refuse derived fuel (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 twenty (20) years.

<b>For RDF based projects</b>			
<b>Description</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>
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%

- 2.5 **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.
- 2.6 As the situation stands above, the petitioner entered into power purchase agreement on 23.07.2019 that is after the expiry of generic tariff order in respect of MSW / RDF based projects (viz., 31.03.2019) and is praying the Commission for extension of the control period determined vide generic tariff order dated 13.06.2016. The petitioner is seeking for adoption of the same fixed cost but for variable cost, worked out as per the percentage escalation stipulated in the generic tariff order.
- 2.7 It is stated that the petitioner entered into PPA with TSSPDCL post the expiry of the control period and as such the plant, which is yet to be commissioned, does not fall within the control period as determined by the Commission. Hence, the generic tariff determined vide order dated 13.06.2016 cannot be extended to the petitioner.
- 2.8 The grant of extension of tariff for a new control period as prayed by the petitioner is beyond the powers of the Commission, in light of the judgment of the Hon'ble Supreme Court, which has dealt 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) ”*

2.9 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:

<b>Parameter</b>	<b>As per TSERC Order 13.06.2016</b>	<b>As per CERC RE tariff order for FY 2019-20</b>
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%

2.10 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.

3. The Petitioner has filed rejoinder controverting the material aspects contained in the counter affidavit stating as below.

3.1 The present petition has been filed by it under section 64 (6) read with section 86 (1) (a), (b) and (e) of the Act, seeking extension of control period under the generic tariff order for energy generated from MSW and RDF based power projects, as determined by the Commission *Suo-Moto* vide its order dated 13.06.2016 in O.P.No.18 of 2016.

3.2 Under the Record of Proceedings (RoPs) dated 04.01.2020 as well as 25.01.2020, it has been erroneously mentioned that the captioned petition is being preferred for extension of control period from 31.03.2019 to 31.03.2020

in respect of generic tariff fixed in O.P.No.18 of 2016 dated 13.06.2016. On the last occasion i.e. during the hearing dated 25.01.2020 this issue was pointed out, however, the same understanding is again reflected in the RoP dated 25.01.2020. In this respect, it is stated that the petitioner has not sought for one year extension of the control period that is from 31.03.2019 to 31.03.2020. In this respect, reference may be made to the prayer clause as well as para 19 of the petition, which makes it clear that the petitioner has sought extension of the generic tariff order to a new control period, without specifying the tenure for which the extension is being sought for.

- 3.3 The petitioner has already filed formal application for modification of the RoPs dated 04.01.2020 and 25.01.2020, to that effect. In the prayer clause of the petition, reference to FY 2019-20 is a typographical error, which may be read as FY 2018-19.
- 3.4 The petitioner disputes and denies all averments, allegations and contentions raised by the TSSPDCL in its reply unless specifically admitted hereinafter. Any omission on the part of it 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.
- 3.5 That the Petitioner vide its letter dated 07.02.2019 and 23.02.2019 requested the TSSPDCL for execution of PPA for procurement of power from its 19.8 MW waste to energy power plant. The TSSPDCL vide its letter dated 30.04.2019 requested the petitioner to come forward to sign the draft PPA with the TSSPDCL. Further, it was stated that 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 23.07.2019 for purchase of the entire delivered energy which is equal to the electrical energy to be generated by the project and delivered to the DISCOM at the interconnection point. Further, the TSSPDCL vide its letter dated 19.12.2019 requested the petitioner to execute the PPA and further, requested to approach the Commission for determination of tariff. As per the

clause 2.2 of the PPA, the tariff shall be determined by the Commission, as given below:

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

The Commission in exercise of its powers under section 62 read with section 86 (1) (e) and being governed by the principles 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 13.06.2016 to 31.03.2019. Thus, the stipulated control period for this *Suo-Moto* 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.

- 3.6 The Commission may take note of the fact that during the said period of two and half years (13.06.2016 to 31.03.2019), only one PPA was executed under this order namely M/s RDF Power Projects Ltd. However, the said project is yet to achieve its COD. Hence, no WtE project has started commencement of operation under the tariff order dated 13.06.2016.
- 3.7 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 draft norms and invited objections/ suggestions and comments from all stakeholders. It also undertook a public hearing.

- 3.8 The Commission has relied upon the provisions of the Act and considered the mandate of 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.
- 3.9 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 3<sup>rd</sup> 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 June/ July, 2020 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 commissioning in the month of June/July, 2020, since, WtE plant is “must run” facility under the NTP, 2016.
- 3.10 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.
- 3.11 The WtE projects are nascent in India. There are no more than four (4) operating waste to energy 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.

- 3.12 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 refuse derived fuel based power projects, came into being. A summary of the orders of various state Commissions is given as below for RDF based WtE 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 nascency and also its complexity compared to other RE Projects.

SERC	RDF Based Waste to Energy projects two part tariff							
	Rs./kWh	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		

- 3.13 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 19.8 MW juxtaposed to the total power load of the TSSPDCL in the FY 2019-20 of 12000 MW of TSSPDCL's portfolio, amounts to 0.165% 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 licensee and in the absence of a tariff at the time of commencement of operation of the plant in June / July, 2020, 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 very eventuality shall defeat the very purpose of section 86 (1) (e) of the Act and be violative of the provisions of NTP, 2016.

**Preliminary Submissions**

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

- 3.14 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 judgement relied upon by the TSSPDCL, being Gujarat Urja Vikas Nigam Limited vs. 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 principle of law that each and every judgment shall be applicable in similar factual conditions, not otherwise.
- 3.15 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 licensees to compulsorily procure 100% power produced from all WtE plants in the state, in proportion to its procurement from all sources.
- 3.16 The aforementioned judgement deals with the issue of extension of a previous 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.
- 3.17 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 by consensus ad idem, while the said

PPA provided a clause where by, 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 order 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 GUVNL 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 13<sup>th</sup> year to 25<sup>th</sup> 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 GUVNL shall pay the tariff as determined by Hon'ble GERC for solar projects effective on the date of the commissioning of solar power projects or abovementioned tariff, whichever is lower."*

3.18 Further, the questions of law determined in by the Supreme Court, are entirely different from the present set of facts. For the ready reference of the Commission, the relevant portion of the judgment is extracted herein below:

*"43. A Petition under Section 125 of the Act 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?"*

3.19 The factual background of the aforementioned judgment 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 GUVNL vs. 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.*”

3.20 The aforementioned clause of the PPA and the questions of law framed by the Hon'ble Supreme Court, based on which the Hon'ble Supreme Court passed its decision in GUVNL vs. 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 be 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.

3.21 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”*

3.22 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 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 29.01.2010 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 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 this commission to amend/modify the Generic Tariff Order and extend the control period:

- 3.23 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.
- 3.24 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 regulation passed by the Commission, which would restrain the power of the Commission to extend the control period beyond the FY 2018-19.
- 3.25 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.
- 3.26 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.

- 3.27 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.
- 3.28 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 been exercised by several Commissions across the country.
- 3.29 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.
- 3.30 The Gujarat Electricity Regulatory Commission has also held that it 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.
- 3.31 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.134/2015.
- 3.32 From the combined readings of the Telangana State Electricity Regulatory Commission (Conduct of Business) Regulations, 2015 and the provisions 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.
- 3.33 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 is maintainable and dispute in question deserves to be adjudicated by the Commission. The Petitioner has filed Para-wise-Replies as stated hereunder.

- i) The contents of the reply are denied and disputed, in the manner alleged or at all. The petitioner had made a representation to the Commission vide letter dated 29.07.2019, seeking the extension of the control period and upon the direction of the office of the Commission vide letter dated 06.08.2019 to file a petition in proper procedure, the present petition is preferred.
- ii) 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 grounds relied upon by the Respondent in its reply.
- iii) The petitioner reiterates that the reliance placed by the TSSPDCL 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 TSSPDCL are entirely different from the present case, and as such are distinguishable and not applicable.

- iv) The petitioner further 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.
- v) 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, this 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.
- vi) The reply filed by the TSSPDCL are denied as being wrong, incorrect, false, baseless and misconceived, save and except being the matters of record 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 judgements relied upon by the TSSPDCL are entirely different from the present case, and as such are distinguishable.

4. The Petitioner has filed written submissions as below.

4.1 The Petitioner is developing and implementing a 19.8 MW refuse derived fuel (RDF) based waste to energy project, which is expected to be commissioned in June/July 2020. The project is being established with the due approval of the concerned authorities.

4.2 The electricity generated from the project is tied up to the TSSPDCL, the distribution licensee in the area where the project is situated. The PPA has been executed between the aforementioned parties on 19.02.2020 and the tariff has to be determined by the Commission.

- 4.3 The WtE project is a renewable source of energy within the scope of sections 61 (h), 86 (1) (e) etc. of the Act. The WtE, in fact, is one of the most important projects to be promoted as it achieves important social object of treatment of municipal waste / RDF and also generates electricity.
- 4.4 The WtE project is also to be promoted in terms of the NTP dated 12.02.2005, the NTP dated 28.01.2016 notified by the Central Government in exercise of the powers under Section 3 of the Act.
- 4.5 The GoTS has also been promoting the WtE project through the Nodal Agency, namely, TSREDCO.
- 4.6 The development of WtE projects in India is still at the nascent stage with very few projects having been successfully established, commissioned and operating. The commercial incentive for making investment in the WtE project in the country has still to be increased considering the project being not an usual power project, the number of projects established being still less in number and the ability of the entrepreneurs as well as the lending institutions to make the risk of investment in projects is associated with high risk factor.
- 4.7 By the Order dated 13.6.2016, the Commission determined the generic tariff for the energy generated from the MSW and RDF for the WtE project in the state of Telangana. The relevant analysis of the order is as under:
- (a) The introductory paragraphs of the said order (Pages 34-35) underlines the importance of the project for protection of environment, need for determination of the tariff for the project etc.
  - (b) At Pages 35–36, the Commission has referred to the legal provisions.
  - (c) At Pages 36–37 the Commission had taken note of the tariff determined by MNRE for the year 1993; Andhra Pradesh Electricity Regulatory Commission for the financial years 2004 – 05 onwards up to 2013-14; the absence of any specific forms in the above for determination of tariff for WtE project; engagement of KPMG; the Independent Consultant to analyse the operating parameters; norms and economics of WtE project; public hearing held inviting comments, suggestions etc.

- (d) At Page 38 onwards, the Hon'ble Commission considered the parameters including the capital cost, PLF, O & M expenses, plant life (20 years), debt equity ratio, loan tenure, return on equity, interest on loan, interest on working capital, auxiliary consumption, station heat rate, calorific value of RDF, fuel cost, fuel cost escalation etc. These are at Pages 38 to 54.
- (e) After detailed analysis, the Commission laid down the parameters at Pages 62-64 in respect of both WtE project.
- (f) At Para 139 of the order, the Commission provides that the tariff shall be applicable to MSW / RDF power plant projects which are declared under commercial operation (COD) during the period from FY 2016-17 to FY 2018-19.
- (g) In Paras 141 to 144 (Page 64) read with the Annexures attached to the Order at Page 65-67, the Commission has given the tariff in respect of the projects commissioned during FY 2016-17, 2017-18 and 2018-19 separately and tariff trajectory for the year 1 to 20 in respect of WtE projects.
- (h) While the fixed cost of the project for each of the three financial years 2016-17, 2017-18 and 2018-19 have been kept constant at Rs.3.83 / kWh, the variable cost is provided at Rs.3.24/kWh for FY 2016-17 and for the subsequent years with an escalation of 5%, namely, at Rs.3.40 / kWh for FY 2017-18 and Rs.3.57 for FY 2018-19. The tariff trajectory for various issues in the annexure also captures the same quantum of fixed cost and the variable cost escalation of 5%.

4.8 Thus, the Commission in the order dated 13.06.2016 has gone into all the details and determined the tariff, though the applicability of the tariff has been stated in Para 119 as to the projects commissioned only upto the financial year 2018-19 i.e. by 31.3.2019, the trajectory given in the annexure captures the tariff applicable for the years even after 31.03.2019.

***Implication of the Order dated 13.06.2016:***

4.9 The order dated 13.6.2016 has clearly proceeded on the basis of the prevalent situation with MSW/RDF projects is not at present of the nature that

the capital cost or the variable cost will be reduced in the years to come. It proceeds on the basis that the capital cost will be at least constant to be serviced at Rs.3.83/kWh as fixed cost and variable cost is to be serviced at Rs.3.24/kWh in the base financial year 2016-17 and thereafter with an escalation of 5% year on year.

4.10 Though the trajectory has been for 20 years commencing from 2016-17 as per the order and obviously for the projects which are commissioned in the year 2018-19, 20 year tariff need to be calculated even beyond the year 20 given in annexure to the order that is for a period of two years more. For the last two years of the projects commissioned for FY 2018-19, the variable cost would also be escalated by 5% as per the principles laid down in the order.

4.11 The important aspects are as under:

- (a) There is no change either in the Telangana or in the country on MSW / RDF projects' cost getting reduced as in the case of solar, wind etc.;
- (b) Similarly, there has been no reduction in the variable cost from the 5% escalation to the base variable cost of Rs.3.24 / kWh. On the other hand, the non-investment in waste to energy projects indicate that the tariff allowed may even not be adequate;
- (c) It cannot be said that the climate and incentive for investment in MSW/RDF based electricity generation projects has picked up.

4.12 In the above circumstances, the tariff determined as per the order dated 13.06.2016 with the trajectory provided in the annexure to the order can be taken as minimum tariff at which the projects can be implemented. In other words, if the project gets commissioned in the year 2019-20, the tariff could be Rs.3.83/kWh towards fixed cost and variable cost to be escalated beyond 2019-20 on year on year basis by 5% and, therefore, the variable cost for the projects commissioned in FY 2019-20 shall be Rs.3.75 and the aggregate cost shall be Rs.7.58/kWh. Similarly, for the projects commissioned during 2020-21, the fixed cost could be Rs.3.83/kWh and the variable cost could be Rs.3.93/kWh aggregating to Rs.7.76/kWh which shall be the year one tariff for the projects commissioned during FY 2020-21.

4.13 The Commission having done a detailed analysis in the order dated 13.06.2016 and there being no evidence of any reduction in the capital cost of

the WtE project during the period from 13.06.2016 till date and considering the investment climate, the above can be adopted as a methodology for determination of tariff for the projects commissioned from 2019-20 onwards, which would enable setting up of MSW/RDF Projects for the time being until an investment climate, interest of entrepreneurs to set up the project, capital cost of the project getting reduced etc. over a period of time.

4.14 In essence, the prayer of the petitioner is that the tariff principles laid down by the Commission in the order dated 13.06.2016 be extended for determination of tariff for the financial year 2019-20 onwards based on the date of the commissioning of the MSW/RDF based electricity generation projects, keeping all other parameters as contained in the order.

4.15 The present case is clearly distinguishable from the decision of the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited vs. Solar Semiconductor Power Company Limited 2017 (16) SCC 498 as claimed by the TSSPDCL. Broadly stated, the important aspects are as under:

(a) In Solar Semiconductor, the Hon'ble Supreme Court was dealing with the provisions of the PPA entered into between the parties vis-a-vis the extension of generic tariff order by the state Commission;

(b) Clause 5.2 of the PPA entered into between M/s. GUVNL and M/s. Solar Semiconductor provided that in case of delay in commissioning of the solar power project, M/s. GUVNL shall pay the tariff as determined by the Gujarat Electricity Regulatory Commission for solar projects effective on the date of the commissioning of solar power project or the tariff fixed vide order dated 29.01.2010, whichever is lower.

(c) The judgment has primarily proceeded on the basis that the PPA itself stipulates the consequences of not establishing the project within the control period, namely, the tariff determined for the next control period, if lower, would be applicable. This has been taken note of by the Hon'ble Supreme Court in Paragraphs 11, 17, 25, 45, 46. In this regard, the falling cost in the solar panel was the basis for the GUVNL to insert the special clause 5.2 Proviso (as quoted above) which is also

clear from Para 70. Accordingly, in Solar Semiconductor case, the extension of control period was considered in the context of a PPA providing for a reduced tariff as compared to the tariff which the developer would get if the order dated 29.01.2010 prescribing the control period is further extended and despite there existing another order reducing the tariff from the date of the expiry of the first order. None of these elements are present in the instant case. On the other hand, the relief which the petitioner is seeking is in fact, on the basis that the order dated 13.06.2016 has already determined the trajectory applicable for FY 2020-21 keeping the fixed costs being same and providing for the variable cost by application of escalation factor of 5%. Admittedly, the variable cost for FY 2020-21 or during the remaining term of the 20 Years need to be same irrespective of whether the project is commissioned in FY 2016-17 or FY 2020-21 or FY 2025-26, until such time the Commission finds that there is a substantial reduction in the variable cost. As at present, there is nothing to prove the same. It is therefore appropriate to maintain the same certainty contained in the trajectory of tariff for 20 years given in the Annexures of the order dated 13.06.2016.

- (d) The question of law determined by the Hon'ble Supreme Court specifically dealt with the inherent power of the state Commission to extend the control period thereby adversely affecting the sanctity of the PPA entered into between the parties;
- (e) In the PPA circulated by the TSSPDCL, the relevant clause provides that the tariff under the PPA shall be the tariff as determined by the Hon'ble Commission from time to time. There is no separate tariff or any term imposed in the PPA, as was in the case of Solar Semiconductor.

4.16 Similar extension of the tariff trajectory beyond the original planned tariff period has been considered in the following:

- (a) This Commission has inherent powers to extend the control period fixed by it or in other words, to extend the order dated 13.06.2016 till the fixation of new generic tariff by the Commission.
- (b) In regard to the above, the following state Commissions have extended the control period:
  - i. Order dated 7.3.2019 passed by the Madhya Pradesh Electricity Regulatory Commission wherein the Madhya Pradesh Commission has extended the control period of a previous generic tariff order for procurement of power from the Municipal Solid Waste based generating plants in Madhya Pradesh.
  - ii. Order dated 23.10.2017 passed by the Gujarat Regulatory Commission in *Suo-Moto* Petition No. 1654 of 2017.
  - iii. Order dated 4.11.2015 passed by the Maharashtra Electricity Regulatory Commission in Petition No.134 of 2015.

***I.A.No.04 of 2020***

5 The petitioner/applicant has filed an application seeking amendment/ modification of RoPs dated 04.01.2020 and 25.01.2020 issued in O.P.No.08 of 2019. The applicant/petitioner has stated in the application as under.

5.1 The captioned petition has been filed by applicant / petitioner under section 64 (6) read with section 86 (1) (a), (b) and (e) of the Act seeking extension of control period under the generic tariff order for energy generated from MSW and RDF based power projects, as determined by this Commission *Suo-Moto* vide order dated 13.06.2016 in O.P.No.18 of 2016.

5.2 The facts and circumstances giving rise to filing of the captioned petition have been stated in detail in the petition and the applicant / petitioner, for the sake of brevity and in order to avoid repetition, is not repeating the detailed facts herein and craves leave of this Commission to refer to and rely upon the same at the time of hearing.

5.3 It is necessary to state the following facts.

- i. The captioned matter being O.P.No.8 of 2019 titled 'Hyderabad MSW Energy Solutions Pvt. Ltd. Vs. Southern Power Distribution Company

of Telangana Limited' is pending adjudication before this Commission, for which hearings were held on 04.01.2020 and 25.01.2020.

- ii. During the aforementioned proceedings on 25.01.2020, the counsel for the applicant / petitioner brought to the notice of the Commission that there was an inadvertent error in the record of proceedings for the previous hearing on 04.01.2020, which was erroneously titled "petition filed for seeking extension of control period from 03.03.2019 to 31.03.2020 in respect of generic tariff fixed in O.P.No.18 of 2016 dated 13.06.2016". In this respect, it is submitted that the petitioner has not sought for one-year extension of the control period i.e. from 31.03.2019 to 31.03.2020. In this respect, reference may be made to the prayer clause as well as para 19 of the petition, which makes it clear that the petitioner has sought extension of the generic tariff order to a new control period, without specifying the tenure for which the extension is being sought for. There were no submissions either in pleadings or orally to the effect that extension of the control period was sought only for a particular time period and hence the title of the RoP was not as per the petition and is required to be amended / modified accordingly.
- iii. Even though the petitioner has mentioned the same on the last date of hearing i.e. on 25.01.2020, however, the said inadvertent recording as reflected in the RoP dated 04.01.2020, again found mentioning in RoP dated 25.01.2020.
- iv. However, as per the RoP issued for the hearing on 25.01.2020, the same was not amended and the inadvertent error, which the petitioner apprehends that the same is based solely on the submissions of the respondent.

5.4 Though the pleadings and specifically the prayer clause is stating otherwise, however, bringing on this application is important since it is pertaining to the nature, scope and ambit of the present petition. Unless, the RoPs are amended / modified to the extent prayed herein, such recording might prejudicially affect the rights and interest of the petitioner. Therefore, being aggrieved by the inadvertent error in the record of proceedings issued for the

hearings held on 04.01.2020 and 25.01.2020, the applicant / petitioner, has preferred the present application before this Commission, for amendment and modification of the record of proceedings.

5.5 The RoP dated 04.01.2020 itself records that the WtE plant of the petitioner is likely to be commissioned around the month of June / July, 2020, hence, the question of extending the control period by one year i.e. till 31.03.2020, does not arise at all. It is pertinent to point out herein that in the prayer clause of the petition, reference to FY 2019-2020 is a typographical error, which may be read as FY 2018-19.

5.6 That it is evident from the submissions and the prayer of the applicant / petitioner herein that the captioned petition has been preferred for the extension of the generic tariff order as determined by this Commission vide order dated 13.06.2016 to a new control period, without specifying or restricting the tenure for which such extension is being sought.

5.7 In view of the above, the record of proceedings issued for hearings on 04.01.202 and 25.01.2020 may be modified / amended so that there is no anomaly recorded in the proceedings undertaken before this Commission. This Commission is well empowered to undertake or grant relief in the present application by virtue of Regulations 38 and 39 of the TSERC (Conduct of Business) Rules, 2015 read with section 94 of the Act.

5.8 The applicant / petitioner has sought the following relief:

*“To pass an order direction for amendment/modification of record of proceedings issued for hearings on 04.01.2020 and 25.01.2020 before the Commission in O.P.No.8 of 2019”.*

6. The Petitioner also filed written submission in the application for amendment/modification of record of proceedings dated 04.01.2020 and 25.01.2020.

7. The TSSPDCL has not filed any reply to the application of the petitioner.

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

### **Commission's View**

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

9.1 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 3<sup>rd</sup> 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 19.8 MW RDF based project and is expected to be commissioned in June/July 2020 i.e., in 2<sup>nd</sup> quarter of 2<sup>nd</sup> year of 4<sup>th</sup> control period.

9.2 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 28<sup>th</sup> 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.

9.3 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.

- 9.4 The prayer in the petition is to extend the generic tariff as determined in the order of the Commission dated 13.06.2016 passed in O.P.No.18 of 2016. 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.
- 9.5 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.
- 9.6 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.
- 9.7 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.
- 9.8 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.

- 9.9 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. The petitioner stated that the Commission may consider the renewal/reset of the generic tariff for the new control period, 3 years from FY 2019–20, as per the principles for determination of tariff as adopted in the generic tariff order. The prospective tariff to the FY 2016-17, mentioned in the Commission order dated 13.06.2016 in O.P.No.18 of 2016 for RDF based power plants is indicative only (considering 5% indicative fuel escalation) whereas actual escalation factor is to be determined as per the formula mentioned in the order, and nevertheless the norms and formula specified in the Commission order are limited to 3<sup>rd</sup> control period only i.e., w.e.f. the date of the order 13.06.2016 in FY 2016-17 to FY 2018-19.
- 9.10 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.
- 9.11 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.

9.12 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 allow the extension of the generic tariff as determined by this Commission vide its order dated 13.06.2016 for energy generated from MSW and RDF based power project, with the adoption of the same fixed cost, and variable cost in accordance with the escalation as set out in the erstwhile generic tariff order for the useful life of the project, from date of Commissioning to a new control period, from the expiry of the FY 2019–20, cannot be acceded to.

9.13 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.

10. 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.

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

**I.A.No.4 of 2020**

12. The Commission has examined the contentions of the application and the relief sought therein i.e., with regard to amendment/modification for the record of proceedings dated 04.01.2020 and 25.01.2020. Now that the original petition itself being disposed of the contentions are not relevant at this point of time. However, the Commission is of considered opinion that it is appropriate to record the contentions as accepted and treat the errors pointed out in record of proceedings shall stand modified. Accordingly, I.A. is closed.

***This order is corrected and signed on this the 20<sup>th</sup> day of March, 2020.***

Sd/-  
(BANDARU KRISHNAIAH)  
MEMBER

Sd/-  
(M.D. MANOHAR RAJU)  
MEMBER

Sd/-  
(T. SRIRANGA RAO)  
CHAIRMAN

**//CERTIFIED COPY //**