



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

O. P. (SR) No. 71 of 2023

Dated 28.06.2023

Present

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

Between:

M/s Dundigal Waste 2 Energy Private Limited,
Survey No.684/1, Dundigal Village,
Dundigal-Gandimaisamma Mandal,
Medchal-Malkajgiri, Hyderabad 500 043.

... Petitioner

AND

Southern Power Distribution Company of Telangana Limited,
6-1-50, Corporate Office, Mint Compound, Hyderabad,
Telangana State 500 063.

... Respondent

The petition, having been taken up at SR stage for maintainability, came up for hearing on 05.06.2023. Sri. D. Prakash Reddy, Senior Advocate along with Sri. Matrugupta Mishra and Ms. Ishita Thakur, Advocates for petitioner appeared on 05.06.2023 and matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Dundigal Waste 2 Energy Private Limited (petitioner) has filed a petition under Section 86(1)(b), (e) & (k) of the Electricity Act, 2003 (Act, 2003) and clause 3(7) along with clause 11 of the Renewable Power Purchase Obligation (Compliance by Purchase of Renewable Energy/Renewable Energy Certificate) Regulations 2002 (Regulation No.7 of 2022) seeking directions to the Southern Power Distribution Company of Telangana Limited (respondent) for execution of a power purchase

agreement (PPA) with the petitioner. The averments in the petition are extracted below:

- a. It is stated that the present petition is being filed by the petitioner under Sections 86(1)(b), (e) and (k) of the Act, 2003 and clause 3(7) read with clause 11 of the Regulation No.7 of 2022, seeking issuance of directions to Southern Power Distribution Company of Telangana Limited (TSSPDCL) (respondent) for execution of a PPA with the petitioner for its proposed 14.5 MW Refuse Derived Fuel (RDF) based Waste to Energy (WTE) plant at Medchal-Malkajiri, Hyderabad in the State of Telangana.
- b. It is stated that the petitioner is a company incorporated under the provisions of Companies Act, 2013 and is a generator within the meaning of Section 2(28) of the Act, 2003.
- c. It is stated that the respondent is a distribution licensee, within the meaning of Section 2(17) of the Act, 2003 operating in the State of Telangana and carries on the business of distribution and retail supply of electrical energy within its command area. The petitioner's plant is falling within the command area of the respondent.
- d. It is stated that on 01.07.2020, the Telangana State Pollution Control Board (TSPCB) accorded its Consent for Establishment to M/s Hyderabad MSW Energy Solutions Private Limited, Unit-2 for setting up of a 14.5 MW WTE plant at Medchal-Malkajiri, Hyderabad. Subsequently and upon request, vide its order dated 07.03.2020, the above consent was amended to the name of the petitioner.
- e. It is stated that thereafter, upon making an application, Telangana State Renewable Energy Development Corporation Limited (TSREDCO) accorded in-principal sanction to the petitioner to set up its proposed plant vide its proceedings dated 25.11.2021 containing the terms and conditions of the permission as per the MNRE guidelines from time to time.
- f. It is stated that upon receipt of the above approvals, the petitioner addressed a letter dated 03.12.2021 to the respondent informing it of the proposed standalone RDF based WTE project of 14.5 MW and requested the respondent to arrange for execution of PPA for sale of power from the said plant. The

petitioner further submitted all relevant documents vide its letter dated 05.05.2022.

- g. It is stated that further, for the utilization of the land, a no objection certificate (NOC) dated 28.01.2022 was issued in by the Telangana State Industrial Infrastructure Corporation Limited (TSIICL) after verifying the proposal for setting up of the plant. The TSIICL also made the necessary submissions to the Government of Telangana (GoTS) for the necessary instructions so as to execute amendments to lease deed.
- h. It is stated that on 30.04.2022, Transmission Corporation of Telangana Limited (TSTRANSCO) accorded approval for grid connectivity to the petitioner's proposed 14.5 MW RDF based WTE plant at Dundigal, Medchal district.
- i. It is stated that the respondent reverted to the above requests of the petitioner vide its letter dated 23.07.2022 and considered the proposal of the petitioner, subject to inclusion of a tipping fee clause in the PPA. The respondent further sought the furnishing of certain documents and an undertaking from the petitioner in line with the generic tariff order dated 18.04.2020 passed by this Commission in O.P.No.14 of 2020. One such undertaking included the reimbursement of tipping fee from the petitioner to the respondent. The petitioner provided the above undertakings, after incorporating its suggestions, vide its letters dated 26.08.2022 and 05.09.2022. As such the petitioner agreed to the reimbursement of the tipping fee to the respondent, however the same was made subject to the outcome of a petition pending adjudication before this Commission, wherein the in-principle liability of a RDF based generator to reimburse the tipping fee to the distribution licensee was challenged under a review petition vide R.P.No.02 of 2022 being preferred against the order dated 18.04.2020, passed by this Commission in O.P.No.14 of 2020. It is highlighted herein the judgment of this Commission in the said matter continues to be awaited.
- j. It is stated that the TSIICL vide its letter dated 15.12.2022, amended the lease deed with M/s Ramky Enviro Engineers Limited, permitting it to sub-lease 22 acres of land to the petitioner for setting up the proposed 14.5 MW WTE plant. Further, the same letter, the petitioner has further obtained approval to

sub-lease 5 acres parcel of land to TSTRANSCO for erection of 132 kV sub-station for evacuation of the generated 14.5 MW power to the nearest grid connectivity. The same is underway.

- k. It is stated that thereafter, the petitioner issued reminder letters dated 27.01.2023, 24.02.2023 and 16.03.2023, requesting the respondent to expedite the process of execution of the PPA for the petitioner's 14.5 MW RDF based power plant since the plant was nearly at the testing and commissioning stage. Further, vide its letter dated 24.02.2023, the petitioner also annexed images of the erection works having been completed *qua* its 14.5 MW RDF based WTE plant to verify the progress. The respondent has failed to revert to these reminders.
- l. It is stated that in light of the above factual background, it can be demonstrated that the respondent has been unreasonably delaying the execution of the PPA for the petitioner's proposed 14.5 MW plant.
- m. It is stated that it is highlighted herein that Section 21(4) of the Telangana Electricity Reform Act, 1998 (Reform Act) empowers the respondent to enter into commercial arrangements with generators for procuring energy. Section 21(4) of the Reform Act is extracted herein below:

“Section 21: Restrictions on licensees and Generating Companies

... ..

- (4) *A holder of a supply or transmission licence may, unless expressly prohibited by the terms of its licence, enter into arrangements for the purchase of electricity from, -*
- (a) *the holder of a supply licence which permits the holder of such licence to supply energy to other licensees for distribution by them; and*
- (b) *any person or Generating Company with the consent of Commission.”*

- n. It is stated that the attention of the Commission is brought to para 6.4 of the National Tariff Policy, 2016 (NTP), which mandates that the distribution licensee(s) shall compulsorily procure 100% power produced from all the WTE plants in the State. The policy made under Section 3 of the Act, 2003 is a statutory policy and it has been observed by the Hon'ble APTEL as well as the Hon'ble Supreme Court of India that such policy being made in exercise of power under Section 3 of the Act, has statutory flavour. In the absence of a

contrary provision made by the Commission, such mandate under the policy is binding on the State Commission. However, in the present scenario, the Commission has laid down the mandate of law under clause 3(7) for procurement of power from the WTE plants in the State.

- o. It is stated that such mandate is also reflected in the preamble, as well as clause 3(7) of the Regulation No.7 of 2022 notified by the Commission on 04.04.2022. The relevant extract of the Regulation No.7 of 2022 is reproduced herein below:

“Preamble

... ..

In this regard, it may be relevant to notice the relevant provisions of the Tariff Policy, 2016 as notified by the Government of India exercising powers under Section 3 of the Electricity Act, 2003.

... ..

2. *Distribution Licensee(s) shall compulsorily procure 100% power produced from all the Waste to- Energy plants in the State, in the ratio of their procurement of power from all sources including their own, at the tariff determined by the Appropriate Commission under Section 62 of the Act.*

... ..

Accordingly, in exercise of powers conferred on it under Sections 61, 66, 86(1)(e) and 181 of the Electricity Act, 2003 (Central Act No.36 of 2003) and all other powers enabling it in this behalf, and after previous publication, the Telangana State Electricity Regulatory Commission hereby makes the following Regulation for prescribing the obligation for purchase of Renewable Power and its compliance by purchase of Renewable Energy/Renewable Energy Certificates, namely: -

... ..

3. *Renewable Power Purchase Obligation (RPPO)*

... ..

(7) Distribution Licensees shall compulsorily procure 100% power produced from all the Waste to-Energy plants in the Telangana State.”

- p. It is further stated that, clause 11 of the Regulation No.7 of 2022 empowers the Commission to issue directions for implementation of any regulations thereunder. Clause 11 of the Regulation No.7 of 2022 is extracted herein below:

“11. Power to issue directions

(1) The Commission may, from time to time, issue order and practice directions in regard to the implementation of this Regulation and procedures to be followed.”

- q. It is stated that this Commission is under further obligation to promote generation from renewable energy sources, for the very reason of which the

Commission has notified the Regulation No.7 of 2022. Apart from that the Commission through its various orders and directions have been promoting purchase energy generated from renewable sources. Therefore, the indulgence of the Commission is being sought in the light of the failure of the respondent to comply with clause 3(7) of the Regulation No.7 of 2022, hence, the present petition is being preferred for passing necessary direction in this regard.

- r. It is stated that the Commission has relied upon para 6.4 of the NTP, in the absence of the Regulation No.7 of 2022, while passing the generic tariff order dated 18.04.2020 for procurement of power from RDF based WTE plants. Unless, the prayer sought herein are expeditiously and substantively passed in favour of the petitioner, the very objective behind clause 3(7) would be frustrated and notwithstanding the existence of the mechanism of regulation as well as the regulator, the fruit of the relevant regulations would be failed and negated.
- s. It is stated that therefore, in light of the above mandate on the respondent, there is no justification for the respondent to be delaying the execution of the PPA with the petitioner. The petitioner has already received all requisite approvals for setting up its proposed WTE plant and provided the respondent will all the documents/undertakings sought. Any delay in execution of the PPA, in spite of the petitioner's continued efforts, will significantly prejudice the sale of power from the petitioner's WTE plant.
- t. It is also stated that clause 3(7) has cast a statutory duty upon the respondent, being a distribution licensee operating in the State of Telangana, to compulsorily procure the power generated by the petitioner's WTE plant. In complete dereliction of this statutory duty, the respondent has failed to execute a PPA with the petitioner, despite its repeated reminders and follow-ups. The petitioner's plant is already at the stage of testing and is scheduled to achieve commissioning in May, 2023. Notwithstanding such progress, there is no PPA to ensure the sale of energy generated from this plant post commissioning.
- u. It is stated that the petitioner, in view of the respondent's inordinate delay in execution of the PPA and finalisation of the terms thereto, is praying for a direction from the Commission to the respondent to effect such execution and

enforce the mandate on the respondent under clause 3(7) of the Regulation No.7 of 2022. As such the petitioner was constrained to approach this Commission vide the present petition to protect itself from the potential financial hardship that may be caused due to the respondent's unresponsiveness and casual conduct.

v. It is stated that unless the prayers made herein below are granted in favour of the petitioner, the said petitioner shall suffer and incur irreparable harm and loss to its business, and the commissioning of the petitioner's plant will be severely affected in the absence of a PPA to ensure the sale of power from the petitioner's proposed plant.

2. The petitioner has sought the following prayer in the petition for consideration:
"To direct the respondent to expeditiously execute a power purchase agreement for sale of energy from the petitioner's proposed 14.5 MW RDF based WTE plant at Medchal-Malkajgiri, Hyderabad in the State of Telangana."

3. The Commission has heard the counsel for petitioner with regard to the maintainability of the petition and also considered the material available to it. The submissions are noticed below, which are extracted for ready reference:

Record of proceedings dated 05.06.2023:

"... .. The counsel for petitioner stated that the petition is filed for directions to the respondent to enter into PPA with the petitioner. The petitioner has established RDF based WTE project on the isolated basis. The respondent is required to procure the power generated from the project of the petitioner as is required under the policy of the government. The petitioner approached the respondent to enter into PPA for the project, however, the respondent insisted on producing the concession agreement entered with the GHMC as also an undertaking that it will reimburse the tipping fee that may be paid by the GHMC under the agreement for concession.

The counsel for petitioner explained in detail the correspondence set out between the petitioner and respondent with regard to production of documents as also giving an undertaking to reimburse the tipping fee as and when it is paid by GHMC. The counsel for petitioner stated that this aspect flows from the order of the Commission dated 18.04.2020 wherein it had directed the reimbursement of tipping fee. However, the Commission had also observed that it is for the DISCOM to verify before claiming the same in paragraph 92 of the said order.

The counsel for petitioner stated that the petitioner is not liable to pay the same as it is not the concessionaire who is drawing tipping fee from GHMC and this fact is confirmed by GHMC itself. The petitioner is willing to enter into agreement for power generation by incorporating the condition that it will reimburse the tipping fee as and when it is paid by GHMC, though, it may not

be paid so as it is not a concessionaire. Further, it is also stated that the issue of tipping fee is under consideration in separate petitions before the Commission and as such, it is agreeable to give an undertaking that reimbursement of tipping fee would be subject to the decision of the Commission.

The counsel for petitioner stated that the petitioner is ready with the project and directions may be given to the respondent to enter into PPA with the petitioner. In fact, the Commission had notified the Regulation No.7 of 2022, wherein the Commission had provided that it has power to give directions to the respondent to enter into PPA for procurement of power. Also, as per the policy of the government, the respondent is bound to purchase the capacity of 100% without fail.

In these circumstances, the counsel for petitioner prayed the Commission that the petition may be taken on file and pass appropriate orders as the project is ready for synchronization having obtained all the necessary consents and permissions. ...”

4. The Commission has heard the arguments of the counsel for petitioner on the maintainability of the petition filed before the Commission on the questions raised therein.

5. Section 21(4) of the Reform Act, 1998 and Section 86(1)(b) of the Act, 2003 govern the aspect of power purchase and procurement by the licensees. Section 21(4) has already been extracted by the petitioner. It is appropriate to notice Section 86(1)(b) of the Act, 2003. The same is extracted below.

“86. Functions of State Commission:- (1) The State Commission shall discharge the following functions, namely: -

(a)

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through 46 agreements for purchase of power for distribution and supply within the State.”

A conjoint reading of the above said provisions would emphatically make it clear that the Commission is required to regulate the power procurement through agreements and price that is required to be paid by the licensee. In both the provisions, the emphasis is laid on the licensees' actions and not of the generator or any other stakeholder. In fact, the Reform Act would lay emphasis that any agreement for procurement of power by the licensee if not consented by the Commission would stand to be void. Therefore, onus is on the licensee to enter into agreement, to obtain consent as also the price at which such power is procured by it. Accordingly, it is the licensee which is required to approach the Commission for obtaining the consent for

the agreement and price and it is not the responsibility of the generator or any third party intending to sell power generated by them.

6. The petitioner sought to rely on the provisions of the Regulation No.7 of 2022 to claim that the licensee should procure power from it and that the Commission has authority to direct the licensee to procure the same under this regulation. It has to be stated here that clause 3(7) of the said regulation is only enabling provision that the licensee shall procure 100% capacity of the RDF based projects and clause 11 thereof is a provision relating to giving effect to the provisions of the regulations if found necessary with regard to the implementation thereof. The said provisions neither support nor aid to the case of the petitioner.

7. The petitioner sought to rely on NTP in respect of MSW projects. No doubt, the provision states that the procurement of power by the licensee at 100% capacity is required to be considered, however, it is subject to the provisions of the Act, 2003. In this regard, it may be appropriate to notice that the said provision in the NTP, which is extracted below.

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

(1)

(i)

(ii) Distribution Licensee(s) shall compulsorily procure 100% power produced from all the Waste-to Energy plants in the State, in the ratio of their procurement of power from all sources including their own, at the tariff determined by the Appropriate Commission under Section 62 of the Act.

... ..”

However, it is for the licensee to bring forth before the Commission such procurement as is required to comply with the above provision and it is not for the Commission to direct the licensee to facilitate itself to procure such MSW capacity. The Commission has rightly determined the tariff and required the licensee to procure the power from such sources. In the instant case also, it is for the licensee to bring forth the necessary agreement for procurement of power from the generator, the only concession being that it can directly contract for the capacity without resorting to competitive bidding.

8. Section 86(1)(e) of the Act, 2003 and NTP do provide for procurement of power from the renewable sources of energy. However, it is subject to the policy notified by

the Government and regulations made by the Commission. Since the policy itself clearly demonstrates that the licensee has to procure 100% of power generated from WTE projects, the licensee is required to comply with the same. At the same time, the Commission cannot upon the request of the generator step-in to direct licensee for procurement of the same.

9. The Commission had occasion to observe as follows in O.P.No.9 of 2021 filed by M/s Madhucon Sugar and Power Industries Limited. The relevant portions are extracted below.

“9. Section 86(1)(b) of the Electricity Act, 2003 empowers the Commission to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

... ..

12. Section 86(1)(e) of the Electricity Act, 2003 mandates promotion of cogeneration and generation of electricity from renewable sources by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also to specify, for purchase of electricity from such sources a percentage of the total consumption of electricity in the area of a distribution license. The Commission, in fulfilment of this mandate, had issued the Regulation No.2 of 2018 wherein the RPPO had been specified for the Obligated Entities (including respondent), for the period from FY 2018-19 to FY 2021-22. The Commission finds merit in the petitioner’s submission that RPPO specifies the minimum quantity (in kWh) of electricity to be purchased from NCE sources. ...”

The Commission is on record as to the interpretation of the provisions of the Act, 2003 and the authority that is vested in it. However, the Commission cannot go beyond the authority as mandated by the Act, 2003. In this regard, it had further observed in the above said order as extracted below.

“13. The respondent being a distribution licensee is empowered to purchase required energy for distribution and retail supply in accordance with the regulations, guidelines, directions issued by the Commission from time to time, which shall further be subject to approval of the Commission. A power purchase agreement (PPA) contains provisions related to commercial, technical, tariff and other related matters and therefore it is the exclusive domain of the respondent to take decisions on entering into PPA for availing the required power. In the petitioner’s case, the Commission finds that there is a fundamental disagreement between the petitioner and respondent on the capacity itself. Essentially what emerges from the submission is that the parties are seeking

adjudication, without even having PPA between themselves, which is unwarranted.”

It is, thus, clear that the Commission is of the considered view unless the licensee takes steps to enter into an agreement, this Commission cannot, of its own accord or at the instance of the petitioner, require the licensee to enter into agreement for procurement of power. As such, no relief can be considered in favour of the petitioner.

10. The Commission is also required to consider the provisions made by it with regard to procurement of power by the licensee in the Regulation No.4 of 2016 being the Telangana State Electricity Regulatory Commission (Distribution Licence) Regulation, 2016. The provisions made in the said regulation need to be appreciated as extracted below:

“35. Power Procurement Procedure:

- 35.1 The Licensee shall purchase electricity from generators, traders and others as consented to by the Commission (except in cases of emergency purchases as per the relevant guidelines) in quantities which the Licensee considers sufficient to meet the expected demand of the Licensee’s Consumers, or where appropriate, such lesser quantities generators, traders and others are able to provide on account of shortage of available sources of electricity generations, imports or supply.*
- 35.2 The licensee shall not purchase electrical capacity and/or energy without an authorization granted by the Commission. The power procurement of licensee shall be consistent with the detailed power procurement plan submitted to the Commission as a part of resource plan.*
- 35.3 The licensee shall purchase electrical capacity and/or energy in an economical and efficient manner and under a transparent power purchase or procurement process and in accordance with the Regulations, directions, guidelines and orders made for the purpose by the Commission from time to time. In case of purchase of additional power over and above the power procured through the Power Purchase Agreements (PPA) consented to by the Commission, the licensees shall adopt competitive bidding method as per the competitive bidding guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act, and seek approval of the Commission for such procurement.*
- 35.4 In case of purchases of allocated share of electrical capacity and/or energy from the Central Sector generation and inter-utility exchanges of electrical capacity and/or energy from other/Regional Electricity Boards, such processes as are stipulated by the Central Electricity Regulatory Commission shall also be complied with in addition to the directions and orders of the Commission.*
- 35.5 An authorization required under clause 35.1 shall be granted when the Licensee has demonstrated to the Commission’s satisfaction that (a) the*

additional electrical capacity and/or energy is necessary to meet the Licensee's service obligation in accordance with Rule 24 of this regulation; and (b) The licensee has examined the economic, technical, system and environmental aspects of commercially viable alternatives to the proposals for purchasing additional electrical capacity and/or energy and such examination has been carried out in a manner approved by the Commission.

35.6 *The restriction imposed in clauses 35.1 and 35.2 of this Rule shall not be applicable for short term purchases (less than one year in duration), provided that such short term purchases are to be made in accordance with guidelines, if any, issued by the Commission.*

Provided that the Commission may fix with in the maximum and minimum process for such purchase in terms of Section 62(1) of the Act. Provided further that the details of such purchases shall be submitted to the Commission in the manner the Commission directs.

35.7 *Where the licensee proposes to procure power by a process different from that specified by the competitive bidding guidelines, it shall in its filing seek the consent of the Commission."*

From the above provision, it is clear that the licensee has to approach the Commission for procurement of the capacity and the Commission will examine the need and necessity for such procurement of power before the licensees are allowed to procure the same. Therefore, no petition can be entertained from a generator to direct the licensees to procure certain capacity of power at their instance.

11. Considering all the provisions and the interpretation thereof, the Commission is not inclined to entertain the petition, as it is not maintainable both under law as also by procedural aspect.

12. For the above said reasons the petition is not maintainable and accordingly the same is rejected. There shall be no order as to costs.

This order is corrected and signed on this the 28th day of June, 2023.

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

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