



TELANGANA ELECTRICITY REGULATORY COMMISSION HYDERABAD

Vidyut Niyamtran Bhavan', G.T.S. Colony, Kalyan Nagar, Hyderabad 500 045

O. P. No. 21 of 2024

Dated 04.08.2025

Present

Dr. Justice Devaraju Nagarjun, Chairman

Between:

Southern Power Distribution Company of Telangana Ltd.

Corporate Office, 6-1-50, 5th Floor, Mint Compound,

Hyderabad, Telangana - 500 063.

...Petitioner

AND

M/s. Hyderabad MSW Energy Solutions Pvt. Ltd.

Level 11B, Aurobindo Galaxy, Hyderabad Knowledge City,

Hitech City Road, Hyderabad, Telangana - 500081.

...Respondent

This petition came up for hearing on 25.11.2024, 09.12.2024, 27.12.2024, 06.01.2025, 10.02.2025, 12.03.2025, 08.04.2025 and 25.04.2025. Sri Mohammad Bande Ali, law attaché appeared on behalf of petitioner (TGSPDCL) on 25.11.2024, 09.12.2024, 27.12.2024, 06.01.2025, 10.02.2025, and 12.03.2025, Sri N. Sreedhar Reddy, learned counsel representing TGSPDCL was present on 25.04.2025. Sri. Matrugupta Mishra being the counsel for the respondent (M/s. Hyderabad MSW Energy Solutions Private Ltd. In short M/s. HMESPL) has appeared on 25.11.2024, 09.12.2024, 27.12.2024, 06.01.2025, 10.02.2025, 08.04.2025 and on 25.04.2025. Sri. Avinash Desai, Senior advocate along with Sri. Nipun Dave counsel for

M/s. HMESPL appeared on 12.03.2025. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

The petitioner Southern Power Distribution Company of Telangana Ltd. (TGSPDCL in-short) a distribution licensee for the state of Telangana has entered into Power Purchase Agreement (PPA) on 19.02.2020 with the respondent M/s. Hyderabad MSW Energy Solutions Private Limited for purchase of power generated from 19.8 MW waste to energy plant situated at Jawaharnagar, Medchal - Malkajgiri District, Hyderabad, and this Commission accorded consent to the said PPA.

2. On 06.12.2022 the TGSPDCL has filed a petition u/s 62(1) (a) and 86(1) (b) of the Electricity Act, 2003 for seeking approval of the draft first Amendment dated 10.10.2022 to the Power Purchase Agreement (PPA) dated 19.02.2020 executed between TGSPDCL and M/s. HMESPL for enhancement of capacity of Waste to Energy plant from 19.8 MW to 24 MW located at Jawaharnagar, Medchal - Malkajgiri District. On admitting the petition, this Commission has directed TGSPDCL to submit details of justification and other relevant information including capacity of the plant and the reports of inspections.

3. In response to the directions of this Commission, TGSPDCL has informed the Commission by way of letter dated 27.07.2023 that on their inspection of the plant on 31.01.2023 to examine the feasibility of plant to generate 24 MW of power, they noticed that existing plant is rated at 24,750 kVA with a power factor of 0.8, equivalent to 19.8 MW, and that no augmentation of generator, turbine, boiler, or auxiliaries had taken place and that CEIG certification also confirmed the generator capacity as 19.8 MW, and that there was no change in equipment ratings there by the plant will not be able to generate 24 MW of power. Further by way of letter dated 16.10.2023 the TGSPDCL has requested the Commission to permit the TGSPDCL to withdraw the petition filed for giving consent for amendment of PPA dated 10.10.2022. This Commission however, while rejecting the request of the TGSPDCL to withdraw the petition filed for giving consent for amendment of PPA, has passed orders vide SR. No. 116 of 2022 dated 30.10.2023 declining to give consent for amendment of PPA dated 10.10.2022.

4. Aggrieved by the orders of this Commission dated 30.10.2023 in SR. No. 116 of 2022 the M/s. HMESPL has approached the Hon'ble ATE vide Appeal No. 63 of 2024, and Hon'ble ATE has allowed the appeal and remanded the matter directing the Commission to pass fresh orders. Relevant portion of the order is reproduced below for ready reference:

“As the impugned order does have civil consequences on the Appellant, we are of the view that the Commission, in compliance with the Audi alteram rule, ought to have put the Appellant (who is signatory to the amended PPA) on notice, and should have given them a reasonable opportunity of being heard. Failure of the first Respondent to comply with the rules of natural justice and would require the impugned order to be set aside on this score, the Commission to be directed to put the Appellant on notice, give all the parties to the proceedings a reasonable opportunity of being heard, and thereafter pass an order afresh and in accordance with law. We make it clear that we have not expressed any opinion on merits, and the Commission shall hear the petition afresh uninfluenced by any observations made in this order. The appeal stands disposed of accordingly.”

5. On receiving the orders of Hon'ble ATE, this Commission has restored the SR. No. 116 of 2022 and numbered as O.P No. 21 of 2024, issued notices to both the sides, heard the matter afresh.

6. The contents of the Petition filed by TGSPDCL in brief are as under:

- a) That M/s. HMESPL, the generator has requested for enhancement of capacity of its waste to energy plant at Jawaharnagar, Medchal - Malkajgiri District from 19.8 MW to 24 MW capacity and TGSPDCL having approved the request of the M/s.HMESPL entered into 1st draft amendment of PPA on 10.10.2022 to the original PPA dated 19.02.2020 for enhancement of capacity of the plant from 19.8 MW to 24 MW.
- b) That as per the National Tariff Policy 2016, the distribution licensee shall compulsorily procure 100 percent power produced from all the waste to energy plants.
- c) That TGSPDCL is not able to meet the non-solar RPPO targets fixed by the TGERC and that in the light of higher RPPO targets fixed by the

MNRE, the procurement of enhanced energy generated from M/s. HMESPL helps TGSPDCL to comply the RPPO targets.

- d) The amendment to the PPA is agreed by both the parties and executed on 10.10.2022 and will be effective upon obtaining consent from the Commission.
- e) TGSPDCL finally prayed the Commission to accord consent to the draft 1st amendment (dated 10.10.2022) to the PPA dated 19.02.2020.

7. M/s. HMESPL has filed reply to the petition filed by the TGSPDCL-

- a. The Government of Telangana has granted permission to M/s. HMESPL to enhance the capacity of the existing waste to energy plant from 19.8 MW to 48MW vide G.O. Ms. No. 42, dated 05.12.2020 and that MOEF & CC, Govt. of India vide sanction letter dated 23.12.2021 accorded environmental clearance for enhancement of the capacity. Subsequently, Telangana State Pollution Control Board and TGREDCO have accorded approval for enhancement of capacity.
- b. That since the date of execution of amendment of PPA dated 10.10.2022, the M/s. HMESPL has been injecting power commensurate to 24 MW and entitled to tariff for the same as per order dated 18.04.2020 in OP No. 14 of 2020 from the date of execution of PPA amendment dated 10.10.2022.
- c. M/s. HMESPL finally prayed the Commission to approve the 1st Draft amendment PPA dated 10.10.2022 to the PPA dated 19.02.2020.

8. During the course of hearing on 06.01.2025, this Commission has directed the TGSPDCL to place on record Joint Meter Readings (JMR) in respect of electricity being injected by M/s. HMESPL from 10.10.2022 onwards. In compliance with the above directions, the TGSPDCL has submitted the data relating to Joint Meter Readings vide letter dated 28.10.2024. Further, M/s. HMESPL has also placed the reports before the Commission showcasing the plant injecting 24MW of power.

9. On hearing both the sides, the Commission felt it is sine-quo-non to appoint a Committee of Experts on the following Terms of Reference.

“The main objective is to inspect the equipment of the generator i.e, 19.8 MW Waste to Energy Power Plant of M/s. Hyderabad MSWESPL, at Jawahar Nagar, Kapra Mandal of Medchal - Malkajagiri District, Hyderabad to report as to whether the existing equipment of the generator is capable of generating and injecting 24 MW of power, as mentioned in the amended Power Purchase Agreement entered by the said firm with TGSPDCL.”.

10. The Expert Committee has inspected the plant on 21.02.2025 and submitted its report to the Commission on 20.03.2025. The conclusion and recommendations of the Committee are as follows:

“3. Based on the above observations, the committee is of the view that the existing WTE plant of M/s HMSWESPL is able to generate 24 MW power periodically as demonstrated during the visit of the committee and shown in the selected generation data provided by HMSWESPL.

However, a continuous demonstration of 24 MW generation cannot be ascertained based on the data provided. It is recommended that the TGERC may approach Ministry of New and Renewable Energy (MNRE) for appropriate guidelines for performance acceptance test of MSW/RDF-based Waste to Energy Plants based on continuous run without LDO support for a minimum duration. TGERC, based on the MNRE guidelines, may seek a performance acceptance test for the plant to demonstrate a continuous capacity of 24 MW”.

11. Both the parties have filed their objections / comments to the Expert Committee report. TGSPDCL submitted a letter dated 24.04.2025 making the following observations / objections on the report.

- i. As per paras 4 and 8 of the report, the existing equipment is designed to generate 19.8 MW only.
- ii. As per paras 6, 7 and 12 of the report, the 19.8 MW capacity WTE plant of M/s. HMESPL is not generating 24 MW.
- iii. As per paras 10,11 and 14 of the report, existing equipment of the 19.8 MW capacity WTE plant of M/s. HMESPL is capable of producing a variable power output with respect to variable steam flow only, and not

able to generate 24 MW power continuously with the present equipment at the plant. i.e., without augmentation of equipment at the plant.

- iv. The existing equipment at the 19.8 MW capacity plant is not capable to generate 24 MW continuously and hence proposed enhancement is not possible without augmentation of the capacities of boiler, turbine and generator.

12. M/s. HMESPL has filed the objections to the Expert Committee report as under.

a. During the inspection of the plant by the committee of experts on 21.02.2025, the plant demonstrated a generation of 24.05 MW of power and the same was recorded in the inspection report.

b. M/s.HMESPL along with Original Equipment Manufacturers (OEM) of the boiler unit, the steam turbine generator and the alternator have made a presentation to the expert committee and requested the Commission to consider the same while passing the order.

c. M/s.HMESPL denies the recommendation made by the Expert Committee with regard to seeking guidelines from the Ministry of New and Renewable Energy (MNRE) for performance acceptance test of MSW/RDF on grounds that it is beyond the scope of Terms of Reference of the Expert Committee.

d. The OEM certification, operational data and generation data submitted by M/s.HMESPL emphatically establishes the plant's ability to generate power up to 24MW and that there is no requirement of installation of new / additional equipment or alteration for extended output of 24MW as the said capacity is already in-built in the plant.

e. M/s.HMESPL has been injecting power into the grid from the execution of draft first amendment of PPA dated 10.10.2022, with enhanced capacity and that delay in non-approval of the draft amendment is causing severe hardship and stress to the generator.

13. Basing on the rival contentions, the points required to be determined are:

1. Whether the existing equipment of the M/s. HMESPL plant is capable of generating 24 MW power.

2. And if so, whether the request of the TGSPDCL to accord consent for amendment of PPA of 10.10.2022 can be acceded even after TGSPDCL sought to withdraw the petition.

14. Heard Mr. N. Sreedhar Reddy, learned counsel representing the TGSPDCL and Mr. Matrugupta Mishra learned counsel, representing M/s. HMESPL. Perused entire record including PPA dated 19.02.2020, amended PPA dated 10.10.2022, the report of the expert committee dated 20.03.2025, objections filed by M/s. HMESPL dated 22.04.2025, observations of the TGSPDCL dated 24.04.2025 and other connected records.

15. TGSPDCL has filed this petition seeking approval of first amended PPA dated 10.10.2022 to the original PPA dated 19.02.2020 executed between the TGSPDCL and M/s. HMESPL for enhancement of capacity of waste to energy plant from 19.8 MW to 24 MW situated at Jawaharnagar, Medchal– Malkajgiri District, Hyderabad.

16. The TGSPDCL has filed this petition on 06.12.2022 with a prayer to accord consent to the amended PPA dated 10.10.2022 to the original PPA dated 19.02.2020 where under the capacity of the existing waste to energy plant is enhanced from 19.8 MW to 24 MW. Similarly, M/s.HMESPL has also submitted in writing seeking consent of the Commission for amended PPA dated 10.10.2022. In normal course since both the parties have been asking for according consent of the Commission for approval of the first amended PPA dated 10.10.2022, this Commission could have consented for the same.

17. However, the problem started when this Commission during the process of scrutiny of the petition, has directed the TGSPDCL by way of letter dated 29.12.2022 to furnish the information as to how the plant has proposed to generate additional power of 4.2 MW and whether the plant was augmented with additional equipment. The TGSPDCL has submitted a reply to this Commission dated 27.07.2023 stating that the original rated capacity of the plant is only 19.8 MW and the generator was

not augmented with any additional equipment to enhance the capacity of the boiler, turbine, generator and thereby there is no possibility for generation of 24 MW power. Subsequent upon the same, on 03.10.2023 the TGSPDCL has submitted a letter to this Commission to permit the TGSPDCL to withdraw this petition.

18. Therefore according to TGSPDCL, though it has filed petition seeking consent for the amended PPA dated 20.20.2022, the existing plant is not technically capable of generating 24 MW of power. On the other hand, the contention of the generator is that even without adding any equipment, the existing plant is capable of generating 24 MW of power.

19. In order to have an independent expert opinion with regard to capacity of the existing plant to generate 24 MW power, an expert committee comprising of Prof. Anoop Singh, IIT Kanpur, Prof. S.K. Singh, Vice Chancellor Rajasthan Technical University and Mr. Asif Iqbal, Deputy Director, CEA is appointed. The said committee has visited the plant on 21.02.2025 and permitted the representatives of both sides to submit data/ make presentations. The expert committee has submitted its report dated 20.03.2025 to the Commission. The copies of the expert committee report were furnished to both the sides. On which the M/s.HMESPL has filed certain objections in respect of certain observations of the expert committee. However, TGSPDCL has submitted a letter to the Commission making certain comments in respect of certain observations of the report of the expert committee.

20. Mr. N. Sreedhar Reddy, learned counsel appearing for TGSPDCL has submitted that the rated capacity of the existing plant is only 19.8 MW and thereby the existing plant is not capable of generating 24 MW of power unless it is supplemented with suitable equipment. In support of his contention, he has taken support of the details mentioned on the name plate of the generator which discloses that the capacity of the plant is 24750 kVA, power factor 0.8 lag, voltage 11,000 volts and year of manufacture 2018. Basing on the said name plate details, he has submitted that the plant is capable of producing only 19.8 MW.

21. In the contrary, learned counsel for M/s. HMESPL, Mr. Matrugupta Mishra and senior counsel Mr. Avinash Desai submitted that though the name plate of the generator indicates that it produces 19.8 MW of power, the plant is capable of

generating 24 MW of power by utilizing the design margins embedded in the original plant design including alternator, boiler and steam turbine.

22. The expert committee has enclosed a letter dated 26.02.2025 addressed by TD Power Systems Limited to M/s. GREENESOL Power Systems Private Limited as one of the enclosures to its report. The contents of the said letter are to the effect that though M/s. HMESPL placed an order to the TD Power Systems Limited through M/s. GREENESOL Power Systems Private Limited for supply, installation and commissioning of 19.8 MW alternator for their Jawaharnagar plant, the TD Power Systems Limited supplied its standard TC-210 frame size alternator which supports the capacity range from 18 MW to 24 MW. The letter further states that although the name plate reflects buyer's specified capacity of 19.8 MW (24750 kVA at 0.8 power factor), TC-210 alternator is engineered to operate continuously up to 24 MW at 0.8 pf. The original manufacturer has also endorsed in the said letter that the machine installed by them is capable of producing 24 MW of power at 0.8 pf continuously.

23. This Commission, having perused the letter issued by the Original Equipment Manufacturer (OEM) dated 26.02.2025, finds no merit in relying solely upon the nameplate inscriptions of the generator to delineate its operational capacity. It is trite law that mere form cannot triumph over substance, and technical inscriptions are not watertight indicators of capacity of the plant. The capacity of the plant to generate power depends upon frame size of alternator, other connected equipment and relative factors. Hence, the Commission is persuaded that the plant's capacity is not circumscribed by the superficial label affixed thereto, but by the embedded design margin envisaged ab initio. Therefore, the argument of the TGSPDCL that since the name plate inscriptions shows only 19.8 MW of power, it cannot generate 24 MW of power cannot be accepted.

24. The other argument submitted by learned counsel for the TGSPDCL is that the generator has not added any other equipment to the existing plant which is capable of producing only 19.8 MW and thereby with the existing plant and the machinery, the generator will not be able to generate 24 MW of power. Learned counsel for the generator on the other hand submitted that with the existing plant, the generator is able to generate 24 MW of power by utilizing the design margin embedded in the original plant including alternator, boiler and steam turbine.

25. Admittedly the generator has not added any equipment to the existing 19.8MW plant. The report of the expert committee dated 20.03.2025 also speaks that the generator has not done any augmentation to enhance the capacity of the plant from 19.8 MW to 24 MW. The TGSPDCL contends that augmentation is sine qua non for capacity enhancement. But this Commission is of the opinion, that there exists neither statutory mandate nor jurisprudential precedent requiring the physical addition of equipment to consent for such enhancement. As discussed above, as per original equipment Manufacturer the existing plant of 19.8 MW of power, is capable of generating 24 MW of power without adding additional equipment. According to the generator the enhanced capacity is derived out of existing marginal capacity of the plant equipment with regard to increase of calorific value, as the equipment was designed to cater variable calorific value, nature of RDF.

26. Therefore, irrespective of capacity of the plant as inscribed on the name plate of the plant or as mentioned in the letter of Original Equipment Manufacturer, the question as to whether the plant is capable of producing 24 MW of power without adding of any equipment, will have to be decided basing on the actual statistics of generation of power by the plant and not otherwise. The question, therefore, is not whether further augmentation of any hardware to the plant has been done, but whether the quantum of generation demonstrably meets the enhanced benchmark of 24 MW. Therefore, this Commission will examine the statistics with respect to generating capacity of the plant in order to determine as to whether the plant has actually generated 24 MW of power even though the name plate of the generator shows 19.8 MW.

27. The expert committee appointed by this Commission has inspected the plant on 21.02.2025 and submitted its report dated 20.03.2025. Learned counsel appearing for the TGSPDCL has submitted that during the visit of the committee the plant was generating only 21 MW of power and submitted further that though the plant has produced 24 MW of power at particular point of time, it was only on account of increasing the power factor to 0.959. On the other hand, the counsel representing the HMESPL has submitted that as per the report, the plant has produced 24 MW of power many a times and therefore the plant is capable of generating 24 MW of power.

28. Perused the report carefully. As per the report, when the committee has visited the plant, it was generating around 21 MW of power. However, at 13:29 hours on 21.02.2025 when the expert committee was still inspecting, the plant has generated 24.05 MW of power. To that extent, a screenshot of the monitor showing the details of power generated has also been enclosed to the report. Though TGSPDCL has submitted that the generator has achieved 24.05 MW by increasing the power factor, the report of the committee of experts does not disclose that the plant has generated 24.05 MW of power on account of increasing the power factor. Therefore, the assertion of generator that the existing plant is capable of reaching enhanced output owing to inherent design tolerances is fortified by OEM testimony in the form of letter which is corroborated by statistical data.

29. One of the submissions of the learned counsel appearing for TGSPDCL is that though the plant has generated 24 MW of power, it was only momentarily and the plant has no capacity to produce 24 MW of power continuously. As per the report of the Committee of experts though in order to generate 24 MW of power LCV required is 1650 kcal/kg, as per the graph of the LCV values enclosed to the report in majority occasions the plant has generated 24 MW of power even when LCV is less than 1650 kcal/kg. The contents of the report also go to show that on 21st, 22nd, 24th, 26th & 28th of February, 2023, the plant has produced 24 MW of power and that on 19th, 27th February, it has produced 23.8 MW of power whereas on 25.02.2023 it has generated 23.5 MW of power. In addition to that from 23.05.2022 to 04.06.2022 and from 14.06.2022 to 20.06.2022 and also from 19.03.2023 to 27.03.2023, the plant has generated power ranging from 23.5 MW to 24.7 MW.

30. However, as rightly submitted by learned counsel for TGSPDCL the plant has not generated 24 MW of power continuously. Therefore the question is, what is the duration that the plant is expected to generate 24 MW of power continuously, in order to determine that the plant is capable of generating 24 MW of power. There are no guidelines, regulations or rules of TGERC or CERC or MNRE or TGREDCO mandating the period of continuous generation of specific MW of power to determine the capacity of the renewable energy based plants. In case of thermal power projects are concerned, as per the CERC regulations, the thermal power plant shall run continuously for 72 hours in order to determine the thermal plant is capable of

generating specific megawatt of power. In so far as power being generated through non-conventional renewable energy sources like wind, solar, MSW and biomass etc., it is not possible for a plant to generate specific megawatt of power continuously, as it depends upon many relative factors including weather, seasons, nature of fuel, moisture content etc.,

31. Further, in respect of existing 19.8 MW plant is concerned, the TGSPDCL has given the “Certificate of Contracted Capacity” on achieving 19.8 MW of power at 16:00 hours on 11.12.2020 and that the TGSPDCL has not asked the generator to demonstrate continuous generation of 19.8 MW of power as the condition precedent prior to issuing of “Contracted Capacity Certificate” at the time of commissioning. Hence, the TGSPDCL is not justified in demanding the M/s.HMESPL to demonstrate continuous generation of 24 MW of power in order to enhance the capacity from 19.8 MW to 24 MW.

32. In addition to the above, the conduct of the TGSPDCL is quite contradictory to the admitted statistics. Initially, the TGSPDCL itself filed application for giving consent of the amended PPA dated 10.10.2022 for enhanced capacity of the plant from 19.8 MW to 24 MW. In fact by the time such application is filed, the TGSPDCL has already executed the amended PPA. That means the TGSPDCL must have satisfied before the execution of amended PPA that the plant is capable of generating 24 MW of power. This is because once proposal of enhancing the capacity is placed before the TGSPDCL, it is expected that TGSPDCL shall inspect the plant and satisfy itself about the capacity of existing plant to produce 24 MW of power. But surprisingly, having filed the petition before the Commission to consent for amended PPA, the TGSPDCL has started questioning the capacity of the plant to generate 24 MW of power.

33. Further, on filing of the petition by TGSPDCL to consent for amended PPA, this Commission has addressed a letter on 29.12.2022 to the TGSPDCL asking it to inform as to whether the generator has installed any equipment to claim that the plant is capable of generating 24 MW of power. On receipt of the said letter, the TGSPDCL has constituted a committee of Divisional Engineer (MRT), Divisional Engineer (RAC) and Superintending Engineer (DPE) to inspect the plant to report about augmentation of existing operative capacity from 19.8 MW to 24 MW. The said

committee has inspected the plant on 31.01.2023 and submitted the report on 04.02.2023 to the Chief General Manager IPC. The findings of the said committee go to show that during the period of their visit the plant was generating 23.81 MW of power with auxiliary consumption of 2.38 MW and the captive consumption of 0.76 MW and exporting 20.78 MW to the grid. The report further speaks that on analysis of the meter data of gross generation meter at power plant, the total power generated was observed as 27.128 MW and that as per the history of the billing meter at the interface point, the power exported is in the range of 21.42 MW to 24.49 MW from December, 2020.

34. Therefore, on perusal of the detailed inspection report of the engineers of TGSPDCL dated 04.02.2023, it is clear that as on their date of visit also, the plant was generating 23.81 MW and that it has generated even 27.128 MW and that the billing meter data indicates that it has generated power ranging from 21.42 MW to 24.49 MW from December 2020 onwards. Therefore, the TGSPDCL is clearly aware of the fact that the plant is capable of generating 24 MW of power, however strangely the TGSPDCL has addressed letter dated 27.07.2023 to this Commission stating that without enhancing capacity of boiler, turbine, generator and auxiliary equipment, the proposed enhancement of generation capacity from 19.8 MW to 24 MW is not possible. The report of engineers is also enclosed to the letter dated 27.07.2023. Therefore, the stand of the TGSPDCL right from the beginning that the power plant is not capable of generating 24 MW of power is factually incorrect and this defense has been taken deliberately in order to cause loss to the generator and drive the generator to this Commission as well as to the Hon'ble ATE.

35. In addition to that the Government of Telangana has issued a G.O. Ms. No. 42 dated 05.12.2020 permitted the M/s.HMESPL to enhance the waste to energy power plant from 19.8 MW to 48 MW. Consequent upon issuance of G.O by the Government of Telangana the TGREDCO had issued proceedings on 14.03.2022 permitting the M/s.HMESPL for augmenting of the existing capacity from 19.8 MW to 24 MW and to install another plant of 24 MW capacity at survey No. 173 at Jawahar Nagar. Similarly pollution control board also gave consent for enhancing the capacity of the plant. Therefore, the project has got clearance of Government of Telangana and TGREDCO for enhancement of the capacity for M/s.HMESPL plant from 19.8

MW to 24 MW. If at all the TGSPDCL has felt that the capacity of the plant cannot be enhanced from 19.8 MW to 24 MW, it should have raised the issue with the Government and requested for the cancellation of the G.O, and proceedings issued by the TGREDCO. Further either the G. O. Ms. No. 42 dated 05.12.2020 or the proceedings of TGREDCO did not speak that the generator has to add the equipment for enhancement of the capacity from 19.8 MW to 24 MW. Therefore, the stand taken by the TGSPDCL is against the approval of Government of Telangana, Pollution control board and also TGREDCO. It is not clear whether TGSPDCL has put the government on notice prior to taking a plea against GO 42 and proceedings of TGREDCO.

36. Above all even according to the TGSPDCL, amended PPA was executed voluntarily with the M/s.HMESPL on 10.10.2022. Once the parties have voluntarily executed an agreement in the form of PPA, now the TGSPDCL being one of the parties to the said amended PPA, has submitted to this Commission, not to accord consent for the amended PPA dated 10.10.2022. It is not the case of the TGSPDCL that the amended PPA dated 10.10.2022 was got executed either by force or coercion or undue influence or by any other illegal means. In fact, as observed above, it is the TGSPDCL which has approached this Commission seeking approval of the amended PPA. Therefore, once PPA has been voluntarily executed in the form of a contract, the TGSPDCL cannot rescind from the said amended PPA affecting the interest of the generator.

37. Hon'ble Supreme Court in *Gujrat Urja Vikas Nigam Limited & Ors Vs Renew Wind Energy (Rajkot) Private Limited and Ors*, reported in 2023 SCC Online SC 411 has held as under.

“74. In the present case, this salutary rule was thrown to the wind, by the State Commission. In this court's opinion, APTEL, in the most cavalier fashion, virtually rubber stamped the State Commission's findings on coercion, in regard to the entering into the PPA by the parties. There was no shred of evidence, nor any particularity of pleadings, beyond a bare allegation of coercion, alleged against Gujarat Urja. It is incomprehensible how such an allegation could have been entertained and incorporated as a finding, given that the respondents are established companies, who enter into negotiations

and have the support of experts, including legal advisers, when contracts finalized. The findings regarding coercion are, therefore, wholly untenable. This court is also of the opinion that the casual approach of APTEL, in not reasoning how such findings could be rendered, cannot be countenanced. As a judicial tribunal, dealing with contracts and bargains, which are entered into by parties with equal bargaining power, APTEL is not expected to casually render findings of coercion, or fraud, without proper pleadings or proof, or without probing into evidence. The findings of coercion are therefore, set aside. Conclusions

75. In view of the foregoing discussion, it is held that the concurrent findings and orders of the State Commission and APTEL cannot be sustained. They are accordingly set aside. The appeals are allowed, with costs payable to the appellants.”

38. In the case referred above one of the parties have taken plea of coercion and fraud while executing the PPA. The ERC and APTEL have endorsed the contentions of one of the parties that the PPA was got executed by playing coercion. In the case in hand the TGSPDCL not even pleaded that the generator has played either coercion or fraud or any illegal method while PPA was got executed. Hence once PPA was executed voluntarily, the TGSPDCL cannot rescind it.

39. It is pertinent to mention that the Hon'ble Supreme Court vide its judgement dated 02.01.2025 in Civil Appeal No. 7463-7464 of 2023 has reiterated the larger public interest nature of WTE projects in disposing huge quantities of waste generated in our cities, inter-alia, as under:

“48. In our view, there is no inconsistency between the provisions of Section 63 of the Act and Rule 15 of the SWM Rules 2016. The provisions of Rule 15 of the SWM Rules 2016, which are enacted under the Environment (Protection) Act, 1986, mandate the appellant to undertake WTE project(s).

49. It can thus be seen that insofar as the WTE projects are concerned, the provisions under the Act will have to be read in addition to the provisions under Rule 15 of the SWM Rules 2016 and not in derogation thereof.

50. Apart from that, Rule 6.4 of the Tariff Policy, which is notified in compliance with the mandate of Section 63 of the Act, the distribution licensees are

mandated to compulsorily procure 100% of the power produced from all the WTE plants in the State in the ratio of their procurement of power from all sources including their own. Not only that, the Appropriate Commission is also required to provide suitable regulatory framework for encouraging such other emerging renewable energy technologies.

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56. The APTEL also failed to take into consideration that the WTE project in question was in the larger public interest thereby providing for disposal of the huge quantity of waste generated in the city of Delhi."

40. In view of the factual aspects referred above, the National Tariff Policy of 2016 clause 3 (7) of RPPO obligations 2022 of this Commission and on considering the judgement of the Hon'ble Supreme Court of India in Civil Bill No. 7463 – 7464 of 2023, dated 02.01.2025, this Commission is of the view that the above orders of Hon'ble Supreme Court of India , National Tariff Policy, 2016, Regulations of this Commission applies for not only the PPAs for new plants but also for enhancement of capacity of existing Waste to Energy plants.

41. Considering the discussions made above, this Commission holds that the issues that are raised by the TGSPDCL that the inscriptions on the plate shows plant capacity as 19.8 MW, that the generator has not supplemented with equipment, and that the plant has not been continuously generating 24 MW of power, are not tenable. The statistics in respect of generation of power by the plant that are placed before the Commission have demonstrated that the existing plant has generated 24 MW of power without augmenting any equipment. This Commission therefore, exercising its quasi-judicial mandate, rests its reasoning in favour of M/s.HMESPL. Accordingly, this Commission inclined to pass following,

- I. The petition filed by TGSPDCL seeking to give the consent to the draft first amendment dated 10.10.2022 to the original PPA dated 19.02.2020 in respect of enhancing of waste to energy plant from 19.8 MW to 24 MW capacity situated at Jawaharnagar, Kapra Mandal, Medchal - Malkajgiri district is allowed.
- II. Consequently, the prayer of the TGSPDCL made in the letter dated 03.10.2023 seeking to withdraw the petition is hereby dismissed.

- III. The TGSPDCL is directed to submit amended PPA before this Commission within one month from the date of receipt of this letter.

This order is corrected and signed on this the 4th day of August, 2025.

Sd/-

(Dr. JUSTICE DEVARAJU NAGARJUN)

CHAIRMAN

//CERTIFIED COPY//

