

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

HERC/Petition No. 17 of 2025

Date of Hearing : 30.07.2025
Date of Order : 13.08.2025

In the Matter of

Petition filed under Sections 86(1)(a), 86(1)(b), and 86(1)(f) read with Section 94 of the Electricity Act, 2003 along with Regulation 65-67 & 69 of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 and applicable Regulations of the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations 2021, invoking the regulatory, adjudicatory and inherent jurisdiction of this Hon'ble Commission seeking alignment of the fuel cost with market dynamics and to clarify that the incentive for higher Plant Load Factor (PLF) of the 100 percent paddy waste to energy project established by the petitioner at Kurukshetra in the State of Haryana is applicable over and above the tariff determined by Commission irrespective of the ceiling limit and in addition hold and direct respondent to make immediate payments of amount wrongly withheld by Haryana Power Purchase Centre by illegally restricting the quantum of generation 15 MW on every 15 minute time block of the petitioner's project and pass other consequential order(s)/direction(s).

Petitioner

M/s. Hind Samachar Limited

Respondent

Haryana Power Purchase Centre (HPPC), Panchkula

Present on behalf of the Petitioner

1. Shri Buddy Ranganathan, Advocate
2. Ms. Molshree Bhatnagar, Advocate
3. Ms. Kamyra Sharma, Advocate
4. Ms. Shaيدا Das, Advocate
5. Ms. Shefali Tripathi, Advocate
6. Ms. Maulishree Gupta, legal representative for the petitioner
7. Shri S.P. Bakshi, Plant Head of the petitioner

Present on behalf of the Respondent

1. Ms. Sonia Madan, Advocate
2. Shri Lovepreet Singh, Advocate
3. Shri Gaurav Gupta, Xen, HPPC

Quorum

Shri Nand Lal Sharma
Shri Mukesh Garg

Chairman
Member

ORDER

Brief Background of the case

1. The present petition has been filed by M/s Hind Samachar Limited, praying to align the fuel cost of the project to the prevalent market conditions at least to the tune of Rs. 5.33/kWh as determined for FY 2024-2025 vide Order dated 26.03.2025 for the FY

2024-2025 with escalation @ 2.93 percent, allow the special incentive payable as per the Order dated 26.03.2025 and to declare that the power generated by the Waste to Energy Project established by the Petitioner shall not be restricted to the quantum of generation 15 MW on every 15 minute time block.

2. Petitioner's submissions:-

The petitioner has submitted as under:-

- 2.1 That the Petitioner is a generating company within the meaning of Section 2 (38) of the Electricity Act, 2003 and has established 15 MW 100 percent Paddy Straw (Air Cooled TG Technology) based Waste to Energy Project at Kaithal, Haryana. The Petitioner has entered into a Power Purchase Agreement dated 22.02.2019 with the Respondent herein and is supplying the entire power generated from the Project to the Respondent.
- 2.2 That the Respondent – Haryana Power Purchase Centre (hereinafter referred to as “HPPC”) is a joint forum created and owned by the State Distribution Licensees viz. Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Limited (hereinafter referred to as “Haryana DISCOMs”) with a mandate to arrange / procure economical, reliable and cost effective power including renewable and non-conventional sources for the Haryana DISCOMs in order to meet the universal service obligation of providing electricity to their consumers.
- 2.3 That the present petition has been filed under Sections 86(1)(a), 86(1)(b), AND 86(1)(f) read with Section 94 of the Electricity Act, 2003 along with Regulation 65-67 & 69 of the Haryana Electricity Regulatory Commission Conduct of Business Regulations, 2019 (hereinafter referred to as “HERC CoB Regulations”) and applicable regulations of Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 (hereinafter referred to as “HERC RE Tariff Regulations 2021”) invoking the regulatory, adjudicatory and inherent jurisdiction of this Hon’ble Commission seeking alignment of the fuel cost with market dynamics of the 15 MW 100 percent Paddy Straw Waste to Energy Project (hereinafter referred to as “Project”) established by the Petitioner at village Chajjipur, Tehsil- Pehowa, Distt. Kurukshetra, Haryana and also seeking directions for payments of amounts wrongly withheld by Haryana Power Purchase Centre (hereinafter referred to as “Respondent/HPPC”) by illegally restricting the quantum of generation 15 MW on every 15 minute time block of the Petitioner’s Project.
- 2.4 That the current Fuel Cost for the Project is inadequate and not aligned with market dynamics. The same is required to be aligned in consonance with the principles enshrined in Section 61(b) and (c) of the Electricity Act, 2003 while ensuring that

generation of electricity is done on commercial principles with a view to promote performance and investments. It is respectfully submitted that this Hon'ble Commission has time and again insisted on the need to have the fuel cost aligned to the market dynamics and most recently vide its order dated 26.03.2025 in Petition No. (Suo-Moto) 1 of 2025 (hereinafter referred to as "Order dated 26.03.2025"), has determined the Tariff towards the Fuel Cost for 100 percent Paddy Straw (Air Cooled TG Technology) as INR 5.33 per kWh for FY 2024-2025, considering the escalation factor of 2.93 percent over the O&M cost determined for FY 2023-2024.

- 2.5 That the Project was commissioned on 16.09.2021 in FY 2021-2022 and was allowed the Tariff towards Fuel Cost as INR 3.60 per kWh (in the year of COD). There is a year-on-year escalation at the rate of 2.93 percent on this base Tariff towards Fuel Cost (INR 3.60 per kWh), however, even after considering the escalation the year-on-year Fuel Cost is not aligned to the market dynamics, which have seen a steep rise in fuel procurement and aggregation cost. The same is evident from this Hon'ble Commission Order dated 26.03.2025, where, after considering the current market dynamics, the Tariff towards Fuel Cost for FY 2024-2025 has been determined as INR 5.33 per kWh.
- 2.6 That the Petitioner is one of the few Paddy Straw based Biomass Projects that was able to commission despite delays and impediments that were caused by Covid-19 and other akin force majeure events. Collecting and transporting paddy straw from geographically dispersed locations can be expensive and complex, adding to operational costs. Managing fuel quality and ensuring efficient combustion of paddy straw can be technically challenging, requiring specific expertise. While calculating the Fuel Cost for 100 percent paddy straw (air-cooled technology) based power projects, the Cost of procurement of Paddy Straw & consequential landed cost of Paddy Straw, are required to be aligned to prevalent market conditions. In absence of such alignment to prevalent market conditions, as prayed by the Petitioner, the Petitioner shall be compelled to not continue the operations of the Project.
- 2.7 That amongst the other statutory powers vested with this Hon'ble Commission in relation to aligning the Fuel Cost for the Project under the Electricity Act, 2003 ("Act"), this Commission has also been vested with power to adjudicate dispute that may arise between a generating company and a licensee. Notably, despite request made to HPPC seeking adequate fuel cost, no relief or consideration had been given by HPPC. Therefore, this Hon'ble Commission also has the power to regulate the PPA dated 22.02.2019 in so far providing the relief of adequate fuel costs is concerned. Moreover, the inherent power and the power to relax any norms or application of a provision /regulation on the Petitioner or HPPC is implicit under section 86 (1) (f) r/w section 86 (1) (e) of Act.

- 2.8 That it is further submitted that the Respondent/ HPPC has been erroneously restricting the quantum of electricity to be calculated for tariff payment to the extent of 15 MW on every 15-minute time block basis and therefore has been withholding the payment of tariff on the excess energy, over and above 15 MW computed on every 15-minute time block basis. Notably, the Respondent/HPPC since the date of commissioning of the Project has been paying the Petitioner short on the invoices raised under the terms of the PPA to the tune of INR 1,52,56,883/- till February 2025.
- 2.9 That the National Tariff Policy 2016, mandates the distribution licensees under the Electricity Act, 2003 to offtake 100 percent power from the Waste to Energy Projects at the tariff determined by the Appropriate Commission under Section 62 of the Electricity Act, 2003. The said mandate is to achieve the goal of efficient waste management but also to promote use of pollutants like Paddy Straw, and incentivise the generation based on such pollutant.
- 2.10 That on 03.08.2017, HAREDA floated a Request for Proposal (hereinafter referred to "RfP") for setting up of Paddy Straw based power projects on build, own and operate basis in the State of Haryana. In terms of the said RfP, bids were invited on behalf of the Government of Haryana for setting up 100% paddy straw-based power generating plants in the rice belt of the State, namely six projects of 5 MW to 15 MW capacity to be set up in Ambala, Karnal, Kurukshetra, Jind, Kaithal and Fatehabad Districts.
- 2.11 That when the bids were invited under the RfP in the year 2017, there was no generic tariff for biomass projects notified by this Hon'ble Commission. As such, in terms of Clause 1.6.1 of the RfP, the generic tariff as notified by Hon'ble CERC vide Order dated 31.05.2017 passed in Petition No. 05/SM/2017 (hereinafter referred to as "Order dated 31.05.2017") was to be the ceiling tariff applicable for all prospective bidders while submitting their respective proposals under the RfP. In Order dated 31.05.2017, the generic tariff for biomass power projects (rice straw and juliflora (plantation) based projects) with air cooled condenser and traveling grate boiler in the State of Haryana was prescribed at Rs. 8/kWh.
- 2.12 That on 10.10.2017, based on the above ceiling tariff of Rs. 8/kWh, the petitioner submitted its proposal for setting up a 100% Paddy Straw-based Biomass power Project with an installed capacity of 15 MW in Kurukshetra, Haryana. Under the said proposal, the petitioner offered a discount of Rs.0.73/kWh and as such, submitted its bid at the tariff of Rs.7.29/kWh. The said discount was a two-part discount on a two-part year to year tariff i.e., a discount of Rs.0.27/kWh on the fixed cost and Rs.0.44/kWh on the variable cost.

- 2.13 That on 11.01.2018, successful bidders were selected on the basis of discussions in the meeting of High-Powered Committee ("HPC") for allotment of Paddy Straw based biomass power projects in Haryana.
- 2.14 That on 16.02.2018, in furtherance to decision of HPPC dated 11.01.2018, HAREDA issued Letter of Intent (hereinafter referred to as "LOI") to PETITIONER granting in principle approval for setting up 15 MW Paddy Straw based Biomass power Plant in District Kurukshetra, Haryana. The LOI recorded that the allotment was based on the discount offered by the Petitioner of Rs.0.73/kWh on the ceiling tariff of Rs.8/kWh.
- 2.15 That on 09.04.2018, in pursuance of the LOI and the conditions stipulated therein, the Petitioner and HAREDA signed a Memorandum of Understanding (hereinafter referred to as "MOU") for setting up 100% Paddy Straw based power Plant for 15 MW.
- 2.16 That on 04.10.2018, HPPC filed Petition No. HERC/PR0-45 of 2018 before Ld. HERC seeking approval of draft PP As for procurement of 49.8 MW power from Paddy Straw Biomass based power Projects selected by HAREDA under the RfP in different districts of Haryana including the PPA for Petitioner's Project.
- 2.17 That on 03.01.2019, this Hon'ble Commission in PRO No. 45 of 2018, passed the Order approving the procurement of power from the Project and directed that the tariff for the said projects shall be decided by way of separate petition to be filed by the project developers.
- 2.18 That on 22.02.2019, the Petitioner executed a Power Purchase Agreement (hereinafter referred to as "PPA") with HPPC. Under the said PPA, the Fuel Cost is to be considered as per the regulations framed by this Hon'ble Commission.

Re. Inadequate Fuel Cost of the Project and its alignment to the market dynamics.

- 2.19 That on 04.04.2019, this Hon'ble Commission vide its Order in PRO No. 10 of 2019 held that the issue of applicable 'ceiling tariff' shall be dealt with at the time of determination of the year on year tariff.
- 2.20 That on 15.07.2019, this Hon'ble Commission passed an Order in PRO No. 31 of 2019 inter alia holding that it was not open for HPPC to deviate from the definition of the word 'Tariff' as approved by this Hon'ble Commission vide Order dated 03.01.2019. The reference to the ceiling tariff in Order dated 03.01.2019 was for Hon'ble Commission to consider while determining year to year tariff. The same does not form part of the term of PPA. The terms of the PPA have to be necessarily as per the approval granted by this Hon'ble Commission Accordingly, this Hon'ble Commission directed the parties to modify the PPA signed on 22.02.2019 and submit a copy of the same.

- 2.21 That on 20.12.2019, in accordance with Regulation 7(1) of HERC RE Tariff Regulations, Ltd. HERC determined the generic tariff Order for biomass, biogas and bagasse based RE Projects for FY 2019-20 and FY 2020-21 in PRO No. 53 of 2019 (Suo moto). In terms of the Annexure – A of the Order dated 20.12.2019, this Hon'ble Commission determined the generic tariff for paddy straw based projects with air cooled condenser and travelling grate boiler as INR 10.83 per kWh. [INR 3.06 per kWh (Fixed Cost) and INR 7.77 per kWh (Variable Cost)].
- 2.22 That on 16.01.2020, HPPC filed an appeal, being Appeal No. 95 of 2022, before the Hon'ble Appellate Tribunal for Electricity (hereinafter referred to as "Appellate Tribunal") challenging Order dated 15.07.2019 passed by this Hon'ble Commission PRO No. 31 of 2019. The Petitioner herein has been arrayed as Respondent No. 5 in the said Appeal. The said Appeal is pending as on date under "List of Finals" before the Hon'ble Appellate Tribunal.
- 2.23 That on 09.03.2020, the Petitioner herein filed a Petition before this Hon'ble Commission being Case No. HERC/PR0-27 of 2020 under Section 62 of the Act read with Regulation 7 of the HERC Tariff Regulations, 2017 seeking determination of tariff for its 15 MW 100% Paddy Straw based generation Project.
- 2.24 That on 26.10.2020, this Hon'ble Commission passed the orders in PRO No. 27 of 2020 and determined the capital and fuel cost of the Project.
- 2.25 That on 17.12.2020, being aggrieved by the Order dated 26.10.2020 passed by this Commission, the petitioner approached Hon'ble Tribunal challenging the Order dated 26.10.2020 in Appeal No. 35 of 2021 titled as Hind Samachar Limited v. State of Haryana & Ors.
- 2.26 That on 18.02.2022, the Hon'ble Appellate Tribunal while disposing of Appeal No. 35 of 2021, remanded the matter to this Hon'ble Commission with a direction to revisit the Order dated 26.10.2020 and decide the matter afresh for determination of tariff for the Project established by the Petitioner herein (hereinafter referred to as "Remand Order").
- 2.27 That on 21.03.2022, this Hon'ble Commission vide its Suo moto Order in Case No. 52 of 2021, determined the fuel cost for renewable energy projects based on paddy straw in terms of Tariff Regulations 2021. This Hon'ble Commission inter alia determined annual fuel cost for Biomass (Air Cooled- traveling grate boiler) Single Fuel (Paddy) projects for FY 2021-22 as Rs. 2,186.26/ MT i.e., Rs. 3.37/kWh and for FY2022-23 as Rs. 3,113.14/MT i.e., Rs. 4.79/kWh.
- 2.28 That on 13.04.2022, pursuant to the Remand Order, the petitioner filed Petition No. 21 of 2022 before this Commission seeking re- determination of completed Capital Cost and consequent tariff for supply of power from the Project.

- 2.29 That on 13.04.2023, this Hon'ble Commission passed order determining the tariff towards fixed cost as INR 2.67 per kWh and tariff towards fuel cost as INR 3.60 per kWh or FY 2021-2022. Consequently, the levelized tariff for the Project was determined as INR 7.11 per kWh for FY 2021-2022.
- 2.30 That on 23.05.2023, the above order dated 13.04.2023 came to be challenged in an appeal (bearing No. 561 of 2023) by the petitioner. In the said appeal, the petitioner herein has challenged the Order dated 13.04.2023, on the ground that the Ld. HERC has determined tariff of Rs. 7.11 per unit for supply of power from the Project. Moreover, the Ld. HERC, determined the weighted average Fuel Cost of Rs. 2881.42/MT with an annual escalation factor of 2.93% by considering the Fuel Cost determined by Ld. HERC vide Order dated 21.03.2022 in Case No. HERC/Petition No. 52 of 2021 as against the actual Fuel Cost of Rs. 3700/MT incurred by PETITIONER.
- 2.31 That on 26.03.2025, this Hon'ble Commission has approved and determined the Fuel Cost of FY 2024 -2025 for various technologies of biomass/bagasse/biogas. The fuel cost determined by this Hon'ble Commission shall be applicable for the RE Projects in Haryana commissioned during the previous control periods (to whom generic tariff is applicable) as well as such projects to be commissioned in the FY 2024-25 w.e.f. 01.04.2024. Notably, this Hon'ble Commission has also notified a special incentive of Rs. 0.50/unit and Rs. 1/- per unit, over and above the tariff of fuel cost (Rs./kWh) determined, for achieving the PLF above for 80%, is applicable to paddy straw-based power projects, for the annual generation achieving PLF between 80% to 90% and 90% to 100%, respectively. This incentivized tariff shall be applicable for additional generation achieved above the normative level of 80%.
- 2.32 That this Hon'ble Commission in its orders dated 27.01.2021 (HERC/PRO-50 of 2020 & HERC/PRO-51 of 2020, in the matter of M/s. GEMCO and M/s. Starwire) and dated 03.03.2021 (HERC/PRO-47 of 2020, in the matter of M/s. Sri Jyoti), had decided as under:

"The Commission is in the process of issuing RE Regulations, for the control period from FY 2021-22 to FY 2024-25. Accordingly, the tariff shall be charged by the Petitioner, for the energy supplied, during the control period from FY 2021-22 to FY 2024-25, in accordance with the provisions contained in these Regulations including dispensation on 'fuel cost' for the projects already commissioned prior to the FY 2021-22. Till then the fuel cost shall be frozen at the FY 2020-21 levels as per HERC Order dated 9.10.2015 for the projects commissioned in the FY 2013-14. It is added that, hence forth, the Commission shall determine 'fuel cost' on an annual basis for the RE Projects set up / to be set up in Haryana so as to ensure that fuel cost remains aligned to the prevailing market conditions."

(Emphasis supplied)

- 2.33 That Regulation 9 of the HERC RE Regulations specifies the tariff design, as under:-
*“(1)The generic tariff, for the control period as per these Regulations, shall be determined, for the entire tariff period/useful life of the project.
 Provided that for renewable energy projects having single part tariff with two components viz. fixed cost component shall be determined on levelized basis considering the year of commissioning of the project while **fuel cost component shall be determined on annual basis and the same shall also be prospectively (i.e. from the date of the Order) applicable for the projects commissioned during the previous control periods.***

*(2) For the purpose computation of levelled tariff, the discount factor equivalent to weighted average cost of capital {Term Loan (R) and Return on Equity (RoE)} shall be considered i.e. $\{(R \times 0.7) + (RoE \times 0.3)\}$.
 (3) The above principles shall also apply for the determination of project specific tariff under these Regulations.”*
 (Emphasis supplied)
- 2.34 That by virtue of National Tariff Policy, this Hon'ble Commission is bound to incentivize renewable projects. For Waste to Energy / Biomass projects, this Hon'ble Commission is statutory bound to mandate 100 percent procurement by DISCOMs at the tariff determined under Section 62 of the Electricity Act, 2003.
- 2.35 That the current fuel cost for the project is inadequate and not aligned to market dynamics. The same is required to be aligned to the market dynamics in consonance with the principles enshrined in Section 61(b) and (c) of the Electricity Act, 2003, while ensuring that generation of electricity is done on commercial principles with a view to promote performance and investments.
- 2.36 That the project was commissioned on 14.02.2022 in FY 2021-2022 and is being currently paid tariff towards fuel cost as Rs. 3.60 per kWh (in the year of COD). There is a year-on-year escalation at the rate of 2.93 percent on this base Tariff towards Fuel Cost (INR 3.60 per kWh), however, even after considering the escalation the year-on-year Fuel Cost is not aligned to the market dynamics, which have seen a steep rise in fuel procurement and aggregation cost. The same is evident from this Hon'ble Commission Order dated 26.03.2025, where, after considering the current market dynamics, the tariff towards fuel cost for FY 2024-2025 has been determined as Rs. 5.33 per kWh.
- 2.37 That this Hon'ble Commission is bound by the statutory mandate to treat the similarly placed generators equally. The Fuel Cost / Variable Tariff for 100 percent Paddy straw (air-cooled technology) based power projects, determined by this Hon'ble Commission vide Order dated 26.03.2025, must be allowed to the Petitioner, to avoid any discrimination and incentivise the technology as mandated under law. It is submitted

that grave prejudice will be caused to the petitioner if the fuel cost of the project is not aligned with the market dynamics

Re. Non-payment of tariff by HPPC for the excess energy injected by the Petitioner, over and above 15 MW.

- 2.38 That the project of the Petitioner was commissioned on 14.02.2022 and since then the whole power generated from the Project has been supplied to the Respondent/HPPC.
- 2.39 That in terms of Article 2.1.1 of the PPA, HPPC shall purchase 100% of the power generated up to the Contracted capacity of 15 MW, at the Tariff stipulated under the terms of the PPA. Article 2.1.1 is reproduced hereinbelow for the convenience of this Hon'ble Commission.

"2. Sale of Energy by Seller

2.1.1 The HPPC after declaration of commercial operation shall purchase and accept all such electrical energy upto 15 MW delivered at the interconnection point from the Seller's facility, pursuant to the terms and conditions of this agreement at the tariff determined by the Commission and amended from time to time. The IPP i.e. Seller along with all relevant documents shall file a tariff petition in the Commission for determination of Tariff."

- 2.40 That in terms of Article 3.1 of the PPA, Joint Meter reading is required to be undertaken on a monthly basis to measure the quantum of electricity supplied by the Petitioner to HPPC and the monthly bills are raised by the Petitioner to HPPC. Pertinently, the Respondent/HPPC is under an obligation to clear the invoices raised upon it within 30 days of receipt of invoice for the supply effected by the Petitioner.
- 2.41 That the above meter readings have also been undertaken by the parties on a periodic basis, and the monthly bills have been raised by the Petitioner. The Petitioner craves the leave of this Hon'ble Commission to place the invoices for the period from 14/02/2022 to 31/03/2025 by way of an Additional Affidavit.
- 2.42 That the definition of 'Monthly Energy Charges' under PPA makes it clear that the charges payable by the Respondent/ HPPC is for energy delivered at the metering point for the billing period at the applicable tariff. The relevant extract of the definition of 'Monthly Energy Charges' under PPA is reproduced herein below for the convenience of this Hon'ble Commission:

"Monthly Energy Charges" mean the charges payable by HPPC/DISCOMs for the energy delivered at the metering point for the billing period at applicable tariff."

In the very definition of Monthly Energy Charges, the expressions..... charges payablefor the energy deliveredfor the billing period at the applicable tariff, have to be given their plain and natural meaning. It only refers to the billing period which is to be reckoned and not any other period including every 15-minute time block basis.

- 2.43 That the Respondent/ HPPC has been illegally restricting the quantum of electricity to be calculated for tariff payment to the extent of 15 MW on every 15-minute time block basis, and therefore has been wrongly withholding the payment of tariff on the excess energy, over and above 15 MW computed on every 15-minute time block basis. Notably, the Respondent/HPPC since the date of commissioning of the Project has been paying the Petition short on the invoices raised under the terms of the PPA to the tune of INR 1,52,56,883/- till February, 2025.
- 2.44 That such erroneous deduction as stated hereinabove is only premised on the reasoning that the quantum of electricity under the PPA has been limited to 15 MW on every 15-minute time block basis. As a result, any power supplied by the Petitioner which beyond 15 MW for any time block of 15-minutes has been treated by the Respondent/HPPC as an inadvertent injection and is treated as a power supplied free of cost.
- 2.45 That there is no provision under the PPA that provides for monitoring and restricting the quantum of power injected up to 15 MW in 15-minutes time slot. On the other hand, the PPA provides for monthly bills to be raised, by computing the electricity for the entire month, by way of joint meter reading.
- 2.46 That in terms of the provisions of PPA, the Plant Load Factor (PLF) is calculated on monthly or annual basis and not on 15-minutes time slot. The Tariff Regulations provides for the Plant Load Factor (PLF) of 70% for the first year (after stabilisation) and 80% for the second year of commissioning onwards. The Tariff Regulations, in this regard, inter-alia, provides as under:

“Chapter 6

Technology specific parameters for Biomass based Power Projects

.....

35. Plant Load Factor. - (1) Threshold Plant Load Factor for determining fixed charge component of Tariff shall be:

- 1. During Stabilisation: 60%*
- 2. During the remaining period of the first year (after stabilization) : 70%*
- 3. From 2nd Year onwards: 80 %*

(2) The stabilisation period shall not be more than 6 months from the date of commissioning of the project.”

- 2.47 That Article 11.3 of the PPA provides for the plant to be run as a must run plant as per the Regulations of the Hon'ble Commission and not subject to the merit order despatch principle. Therefore, the question of the power generated from the Project being limited to any time block or otherwise there being no obligation of the Respondent to procure the entire power from the generating station does not arise. In fact, the said provision expressly records the actual generation and injection to be recorded and maintained

by the SLDC. The relevant extract of Article 11.3 is reproduced hereinbelow for the convenience of this Hon'ble Tribunal:

"11.3 The generating plant of the Seller being a must run plant as per clause 10(1) of HERC Regulation No. 40/2018 (Terms & Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) and its amendments from time to time, shall not be subject to 'merit order dispatch' principle.

For accounting purposes, the SLDC shall maintain the requisite records of actual energy generated and injected by the RE Power Projects into the Grid. The seller shall facilitate the SLDC accordingly."

- 2.48 That the Hon'ble Commission had also while approving the PPA in Case No. HERC/PRO-45 of 2018 for procurement of power from the generating plant of the Petitioner had granted MUST RUN status to the petitioner. The Hon'ble Commission in the above stated order, inter-alia, held as under:

"11. Having approved the source of power procurement the Commission has perused the draft PPA(s) submitted by the petitioner as well as submissions made by the parties in the hearing held on 18.12.2018 in the matter. The Commission observes as under:-
i) *The Ld. Advocate appearing for M/s. Hind Samachar and M/s. Sukhbir Agro Energy argued at length that such projects ought to be accorded 'must run status' by relaxing any regulations in vogue to the contrary. The Commission has considered the submissions of the Ld. Counsel on this issue and observes that the RE Regulations in vogue provides for 'must run status' to RE Power Plants below 10 MW only. However, given the fact that neither intra-state ABT has been introduced in Haryana nor any 9 Regulations including the Haryana Grid Code in vogue provides for deviation / energy settlement for intra-state RE Power Plants with single part tariff, moreover, the RE Projects, including paddy straw based, are being encouraged in the State in fulfillment of RPO of the Discoms as well as to encourage green power due to environmental concerns, the Commission, in exercise of power vested in it under regulation 65 of the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 and in public interest relaxes the provisions of regulation 10 of the ibid regulations. Hence, all such power projects shall have 'must run status'. It is added that for accounting purposes the SLDC shall maintain the requisite records of actual energy generated and injected by the RE Power projects into the Grid....."*

- 2.49 That the project of the petitioner is covered under Regulation 10 (1) of the HERC RE Tariff Regulations, 2021 which provides that *'all renewable energy power plants, except for Biomass power plant of installed capacity of 10 MW and above, shall be treated as 'MUST RUN' power plant.*
- 2.50 That once the provisions of Regulation 10 are relaxed to include paddy straw power generating plant of the Petitioner, the Petitioner's power plant must also be eligible for the benefits under Regulation 10 which is explained by the Hon'ble Commission in *M/s. JBM Environment Management Pvt. Ltd. v. Haryana Power Purchase Centre and*

Anr. Case No. HERC/Petition No. – 48 of 2021. This Hon'ble Commission held as under:

“The Commission observes that the power plant of the petitioner is a “Must Run” plant and covered under Regulation 10 (1) of Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 (HERC RE Regulations, 2021), reproduced hereunder:-

“10. Despatch principles for electricity generated from Renewable Energy Sources. – (1) All renewable energy power plants, except for Biomass power plants of installed capacity 10 MW and above, shall be treated as ‘MUST RUN’ power plants. Biomass power with installed capacity of 10 MW and above shall be subjected to scheduling and dispatch as specified under Haryana Grid Code and other relevant regulations including amendments thereto.”

The Commission has considered the objection raised by the department of Urban Local Bodies (ULB) that acceptance of all the energy generated by the Waste-to-Energy plant will entail additional financial burden on them. Urban Local Bodies are vested with an array of functions entrusted upon them by the State Government. These functions broadly relate to public health, social welfare, public safety, public infrastructure works, and development activities. The more numbers of such Waste-to-Energy projects will not only augment RE power which is counted towards fulfilment of RPO in the Haryana Discoms, but also ensure better waste management and provide relief to the society at large from the legacy heaps of waste which is a health hazard for the entire city. Further, the generator cannot be denied the benefits of generation of power by burning solid waste on the ground of financial burden on a body whose main function is social welfare. Therefore, the objection of additional financial burden raised by ULB is devoid of merits and is rejected as such.

The importance of promoting MSW power projects from environmental and public health point of view, cannot be undermined. It is all the more necessary to give boost to the “Swachh Bharat Mission (SBM)” of Government of India through conversion of waste to energy in the most environment friendly manner.

Therefore, given the provisions of National Tariff Policy, 2016, variability of power generation by Waste-to-Energy plants depending on the nature and characteristics of fuel fed and associated objective of such projects viz. management and disposal of municipal waste, the interpretation of the PPA which mentions that HPPC to accept all such electrical energy up to 6.77 MW, has to be construed with reference to the quantum of power injected by the generator on an annual basis. Such dispensation i.e. reckoning with the contracted capacity on an annual basis shall also allay the fear of respondent no. 2 i.e. ULB that they will have to bear additional financial burden in the case the petition is allowed by this Hon'ble Commission.

The petitioner has also raised the issue of late payment surcharge in terms of Article 3.7 of the PPA on the differential amounts payable, even though the petitioner has issued credit notes on its own, accepting such adjustment for the period from August 2021 to December 2021. Admittedly, as established by the respondent i.e. HPPC, the petitioner has not raised any dispute at the contemporaneous time and also issued credit note without raising any dispute. Further, the Commission tends to agree with HPPC that the late payment surcharge cannot be levied on the amount which becomes payable to the generator, by way of relief granted by the Commission as a special

dispensation. HPPC is directed to grant necessary adjustment within 30 days from the date of this order, failing which, late payment surcharge as provided under Article 3.7 of the PPA shall become applicable.”

- 2.51 That the case of the Petitioner is pari-materia to the above decision and the rationale provided by the Hon'ble Commission. Paddy straw-based power plant is a practical measure to ensure Green House Gas mitigation by preventing paddy stubble burning as well as its environmental impact in terms of waste management and promotion of better air quality. Additionally, paddy straw stock is not available throughout the year and during monsoons high moisture content reduces the calorific value of paddy stock, thereby affecting the power generation.
- 2.52 That by placing reliance on the JBM Environment Management (supra) decided by this Hon'ble Commission, it is submitted that Article 2.1 must be construed with reference to power of quantum of power injected by the Petitioner on an annual basis and not on a 15-minute time block basis. Additionally, as per the terms of the HERC RE Tariff Regulations, the tariff is determined on the basis of annual plant load factor due to the variability in generation and hence generation cannot be assessed basis 15-minute time block basis.
- 2.53 That any generating plant and more particularly biomass plants, do generate electricity in particular time blocks a little in excess of their installed capacity. Such generation is inherent in the process of generation. However, what is required to be examined is the annual PLF and the monthly generation for the purposes of billing. The methodology being adopted by HPPC, apart from being contrary to the PPA, the Regulations and the orders of the Hon'ble Commission, only leads to there being free supply of electricity. This can never be the situation, more particularly for projects which are required to be promoted under the Electricity Act.
- 2.54 That the Project of the Petitioner is being a Renewable source of energy generation station, is under the promotional scheme of Government of India. The National Tariff Policy, 2016 gives a special dispensation and a promotional scheme to the Renewable Energy Generation Plants such as that of the petitioner. It further mandates to the distribution companies to compulsorily procure 100% of the electricity generated, at the tariff determined by the Appropriate Commission under Section 62 of the Electricity Act, 2003. The relevant portion of the National Tariff Policy is reproduced herein for the convenience of this Hon'ble Commission:

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

(1) Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from renewable energy sources, taking

into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall be taken into account while determining tariff by SERCs. Long term growth trajectory of Renewable Purchase Obligations (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.

.....
(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.

Re. Inadequate Fuel Cost of the Project and its alignment to the market dynamics.

- 2.55 That this Hon'ble Commission has been vested with the general regulatory, adjudicatory and inherent power to provide the necessary relief(s) as prayed by the Petitioner herein. This Hon'ble Commission under the National Tariff Policy and under Section 86(1)(e) of the Electricity Act, 2003 has been given a mandate to promote renewable energy, especially Waste to Energy Projects.
- 2.56 That the Electricity Act of 2003 has been enacted to consolidate and upgrade the existing laws relating to generation, transmission, distribution, trade and use of electricity; for taking measures conducive to development of electricity as an industry; to promote competition therein and to protect the interest of consumers; rationalize tariff and promote efficient and environment friendly policies besides creating different regulatory and appellate bodies to deal with highly complex technical issues with regard to production, distribution and sale of electricity including fixation of tariff. While Section 61 of the Act lays down the principles for determination of tariff, Section 62 of the Act deals with the different kinds of tariffs/charges to be fixed. Section 64 enumerates the manner in which determination of tariff is required to be made by the Commission. On the other hand, Section 86 which deals with the functions of the Commission reiterates determination of tariff to be one of the primary functions of the Commission which determination includes, as noticed above, a regulatory power with regard to purchase and procurement of electricity from generating companies by entering into PPA(s).
- 2.57 That this Hon'ble Commission is vested with statutory powers under Section 62 read with Sections 86(1)(a), 86(1)(b) and 86(1)(e) of the Act to determine the fuel cost for the Project. Additionally, this Hon'ble Commission has the jurisdiction to adjudicate disputes between a generating company and a licensee under Section 86(1)(f) of the Act. It is pertinent to note that despite repeated requests made to HPPC for adequate fuel cost adjustments, no relief or consideration has been granted. Accordingly, this Hon'ble Commission possesses the authority to regulate the PPA dated 22.02.2019 to

ensure that adequate fuel cost is provided to the Petitioner. Furthermore, the Hon'ble Commission's inherent power, including the power to relax norms or exempt the Petitioner from strict application of provisions or regulations, is implicit under Section 86(1)(f) read with Section 86(1)(e) of the Act. In view of the above, the Petitioner is entitled to seek relief from this Hon'ble Commission for the alignment of the fuel cost with the market dynamics to ensure the viability of the Project and compliance with statutory mandates.

- 2.58 That in the present case, the tariff incorporated in the PPA between the Petitioner and HPPC is the tariff fixed by this Hon'ble Commission in exercise of its statutory powers. In such a situation it is not possible to hold that the tariff agreed by and between the parties, though finds mention in a contractual context, is the result of an act of volition of the parties which can, in no case, be altered except by mutual consent. Rather, it is a determination made in the exercise of statutory powers which got incorporated in a mutual agreement between the two parties involved.
- 2.59 That the Hon'ble Supreme Court has held that when the tariff order itself is subject to periodic review it is difficult to see how incorporation of a particular tariff prevailing on the date of commissioning of the power project can be understood to bind the power producer for the entire duration of the plant life (20 years).
- 2.60 That Section 62 read with Section 86(1)(b) of the Act empowers the State Commission to regulate the price of sale and purchase of electricity between the generating companies and distribution licensees through agreements for power produced for distribution and supply. The power to regulate has a wide import and therefore, when on facts and circumstances it is found that the Fuel Cost in the present case is far lower than the Fuel Cost determined for FY 2024-2025 and that the existing Fuel Cost being paid to the Petitioner is not aligned to market dynamics and therefore, causing a under-recovery, this Hon'ble Commission has been vested with sufficient powers to align the Fuel Cost with prevalent market conditions.
- 2.61 That the Hon'ble Appellate Tribunal even went to the extent of holding that if in the changed scenario occasioned by a drastic alteration of the facts and circumstances surrounding the determination of tariff, a review of the tariff is declined/refused the power producer will be left with no option but to shut down its plants. The Hon'ble Appellate Tribunal has categorically held that the State Commission should have considered the petition of the Biomass Generator for re-determination of tariff for the remaining period of PPA in view of the submission of the Biomass Generator that the fuel cost has increased substantially due to which it was not possible to continue generation of power even on non-profit basis.

- 2.62 That this Hon'ble Commission has been vested with the inherent powers under the HERC COB Regulations to meet the ends of justice and provide necessary relief. Regulation 65 of the COB Regulations do not in any way restrict or diminish the inherent authority of the Commission to issue such orders as may be required to achieve the ends of justice or to prevent the misuse of the Commission's processes. This inherent power enables the Commission to take appropriate measures to address unforeseen situations, rectify procedural anomalies, and safeguard the principles of fairness and equity, ensuring that the regulatory process is not abused or rendered unjust due to technicalities.
- 2.63 That the courts possess inherent powers to relax the provisions of their regulations in order to address practical difficulties, ensure fairness, and promote public interest, while simultaneously maintaining the integrity of the overall regulatory framework. These powers are exercised to prevent undue hardship and ensure that justice is not compromised by rigid adherence to procedural norms. In the present case, the Hon'ble Haryana Electricity Regulatory Commission (HERC) is well within its authority to apply this principle and grant relief to the Petitioner by allowing the applicable fuel cost of ₹ 5.33/unit.
- 2.64 That it is the statutory function of this Hon'ble Commission to ensure a fair and equitable balance among the interests of all stakeholders involved. This includes safeguarding the rights of consumers by promoting affordability, transparency, and quality of service while ensuring that the generators receive a reasonable return on their investments to maintain financial viability and operational efficiency of their projects. The Hon'ble Commission has to consider the needs and concerns of all parties, including the generators, in order to create a regulatory framework that maintains equilibrium between protecting public interest and enabling the continued development of the industry.
- 2.65 That the National Tariff Policy 2016, mandates the distribution licensees under the Electricity Act, 2003 to offtake 100 percent power from the Waste to Energy Projects at the tariff determined by the Appropriate Commission under Section 62 of the Electricity Act, 2003. The said mandate is to achieve the goal of efficient waste management but also to promote use of pollutants like Paddy Straw, and incentivise the generation based on such pollutant. It is therefore, most necessary that this Hon'ble Commission exercises its relevant and applicable powers under the National Tariff Policy, Electricity Act, 2003 and the regulations framed thereunder, to re-determine the Tariff towards Fuel Cost of the Project for FY 2024-2025 onwards, to allow the Petitioner to operate its Project efficiently and on prevalent economical/ commercial principles.

- 2.66 That this Hon'ble Commission is bound by the statutory mandate to treat the similarly placed generators equally. The Fuel Cost / Variable Tariff for 100 percent Paddy straw (air-cooled technology) based power projects, determined by this Hon'ble Commission vide Order dated 26.03.2025, must be allowed to the Petitioner, to avoid any discrimination and incentivise the technology as mandated under law.
- 2.67 That it is the bounden duty of the State Commission to ensure the compliance of the provision of Section 61(h) and Section 86(1)(e) of the Electricity Act, 2003 and promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures of connectivity with the grid or sale of electricity to any person and to save the co-generation projects like that of the Petitioner from possible closure on account of non-escalation in fuel price and proper determination of tariff based on proper fuel cost.
- 2.68 That without prejudice, it is submitted that the Petitioner herein has filed an Appeal No. 560 of 2023, which is pending adjudication before the Hon'ble Appellate Tribunal. In case the present petition finds favour with this Hon'ble Commission, the Petitioner hereby submits to withdraw the said appeal, to avoid any multiplicity of proceedings, if any and/or to avoid any possible conflict of orders between this Hon'ble Commission and the Hon'ble Appellate Tribunal. Therefore, this Hon'ble Commission may, if deemed fit, retain the capital cost as allowed previously and align the fuel cost as determined by way of the Generic Tariff Order dated 26.03.2025 with applicable escalation.
- 2.69 That since the issue of ceiling tariff qua similarly placed biomass generator is pending before Hon'ble APTEL (Jind-Bio Energy LLP & Anr.), the ceiling tariff of INR 8.00 per kWh for FY 2021-2022, may be subject to the outcome of such appeal and would be applicable to the Petitioner herein.

Re. Non-payment of tariff by HPPC for the excess energy injected by the Petitioner, over and above 15 MW

- 2.70 That clause 6.4 (1) (ii) of the National Tariff Policy, 2016, provides a special dispensation for Waste-to-Energy-based power projects and mandates that the Distribution Licensee(s) shall compulsorily procure 100% of the power produced from all Waste-to-Energy plants in the State. This procurement is required to be in the ratio of their total power procurement from all sources, including their own, at the tariff determined by the Appropriate Commission under Section 62 of the Act. Thus, any restriction imposed by the HPPC on the quantum of power injected by a Waste-to-Energy project is in direct violation of the said policy and must be set aside.

- 2.71 That any generating plant, and more particularly biomass plants, do generate electricity in particular time blocks a little in excess of their installed capacity. Such generation is inherent in the process of generation. However, what is required to be examined is the annual PLF and the monthly generation for the purposes of billing. The methodology being adopted by HPPC, apart from being contrary to the PPA, the Regulations and the orders of the Hon'ble Commission, only leads to there being free supply of electricity.
- 2.72 That the PPA does not contain any provision for monitoring or restricting the quantum of power injected within a 15-minute time slot. The Petitioner operates a "Must Run" plant and falls under the ambit of Regulation 10 (1) of the Haryana Electricity Regulatory Commission (HERC) Renewable Energy Regulations, 2021. Any attempt to limit the injection of power undermines the very status and purpose of the Waste-to-Energy project, which is meant to operate without curtailment.
- 2.73 That the Tariff Regulations provides for the Plant Load Factor (PLF) of 70% for the first year (after stabilisation) and 80% for the second year of commissioning onwards. The position being taken by the Respondent/ HPPC for limiting the generation of electricity to 15MW on every 15-minute time block basis is contrary to the regime in the Tariff Regulations.
- 2.74 That the development of more such Waste-to-Energy projects will not only contribute towards augmenting Renewable Energy (RE) power, which is counted towards the fulfilment of Renewable Purchase Obligation (RPO) in Haryana but will also significantly improve waste management in the State. These projects provide an essential service to society by mitigating the risks posed by legacy waste heaps, which are a major health hazard for the entire city.
- 2.75 That the generator cannot be denied the benefits of generating power from solid waste merely based on the apprehension of financial burden on consumers. It is pertinent to note that Waste-to-Energy projects play a crucial role in sustainable energy generation and environmental management. Thus, denying their rightful operation and full power injection contradicts both national policy and regulatory provisions, thereby hindering the intended benefits of such initiatives.
- 2.76 That Article 2.1.1 of the PPA obligates the Respondent/HPPC to purchase 100% of the power generated up to the Contracted capacity of 15 MW, at the Tariff stipulated under the terms of the PPA. Therefore, the Petitioner is entitled for the payment of the total energy injected.
- 2.77 That it is a settled principle of law that interest is not a penalty or punishment at all, but it is the normal accretion on capital.

- 2.78 That if the interest, late payment surcharge payable on the 'Amount Due' is not paid by the 'Due Date' such interest shall also be carried forward by way of adding the same to the 'Amount Due', and the late payment surcharge shall now be imposed on the new amount which includes the principal amount and the delayed interest not paid. The late payment surcharge will, therefore, be computed on a monthly compounded basis, till actual payments are made by HPPC.
- 2.79 That interest / LPS simply put, is compensation for the time value of money. In this regard, it is relevant to highlight the meaning of the word compensation, as has been laid down by the Hon'ble Supreme Court in the matter of R.C. Cooper Vs. Union of India (AIR 1970 SC 540) wherein it was held that "compensation means anything given to make things equal in value: anything given as an equivalent, to make amends for loss or damage." Further, the Hon'ble Supreme Court vide its judgment in the matter of Yadava Kumar Vs. The Divisional Manager, National Insurance Co. Ltd. and Anr. (2010 10 SCC 341) held that compensation is a comprehensive term and is aimed at restoring a party to the same economic position as if no injury was caused.
- 2.80 That the following prayers have been made: -
- a) Allow the present petition;
 - b) Issue appropriate order(s) / direction(s) aligning the Fuel Cost of the Project to the prevalent market conditions and at least to the tune of INR 5.33 per kWh as determined for FY 2024-2025 *vide* Order dated 26.03.2025 for the FY 2024-2025 with an annual year-on-year escalation at the rate of at least 2.93 percent;
 - c) Issue appropriate order(s) / direction(s) to the Respondent to make payment of the Fuel Cost for the FY 2024-25 as aligned by this Hon'ble Commission in terms of prayer (b) above along with interest;
 - d) Hold and declare that the special incentive payable as per the Order dated 26.03.2025 to the Petitioner, as and when applicable, shall be over and above any ceiling tariff that may be determined by this Hon'ble Commission for the Project; and
 - e) Hold and declare that the Respondent - HPPC is mandated under law to offtake entire power generated by the Waste to Energy Project established by the Petitioner and that restriction of the quantum of generation 15 MW on every 15 minute time block is wholly illegal and as a consequence thereof, direct Respondent – HPPC to immediately make payments of the amounts wrongly withheld by Respondent – HPPC from commencement of supply of power by the Petitioner, along with applicable interest; and

- f) Hold and declare that the Petitioner is entitled to receive interest on the amounts that remains due and payable by the Respondent – HPPC in connection with the prayers above, till the actual payment in full is received by the Petitioner;

Proceedings in the Case

3. The case was initially heard on 22.04.2025. The Commission, vide its Interim Order dated 23.04.2025, allowed the respondents to file their reply and the petitioner was allowed to file its rejoinder on the same.
4. **Reply filed by Respondent dated 21.05.2025: -**
- 4.1 That it is humbly submitted that the present petition has been filed by the Petitioner- M/s Hind Samachar Pvt. Limited while seeking the following reliefs:
- a. Re-determination of the Fuel Cost: The Petitioner, relying upon the order dated 26.03.2025 (Annexure P/12) issued by this Hon'ble Commission in HERC/Petition No. 01 of 2025—wherein the fuel cost for FY 2024-2025 was determined, has sought that the fuel cost be re-determined, at least to the tune of INR 5.33/kWh, for the Petitioner's project, as against the fuel cost actually being paid to the Petitioner is INR 3.60/kWh (in the year of COD i.e. FY 2021-22), with year-on-year escalation @2.93 percent on this base Tariff.
 - b. Payment of special incentive over and above any ceiling tariff: The Petitioner has further sought that the Answering Respondent be directed to pay the special incentive in terms of the order dated 26.03.2025 (Annexure P/12), over and above the ceiling tariff determined by the Hon'ble Commission for the Petitioner's project.
 - c. Not to restrict the quantum of generation 15 MW on every 15 minute time block: The Petitioner, while alleging, that the Answering Respondent had wrongly withheld payments by restricting the quantum of generation 15 MW on every 15 minute time block of the Petitioner's project, has sought that any such quantum restriction be removed.

RE: RE-DETERMINATION OF FUEL COST:

- A. CONTENTION RAISED BY THE PETITIONER SEEKING APPLICABILITY OF THE ORDER DATED 26.03.2025 TO THE PETITIONER'S PROJECT IS BARRED IN VIEW OF THE PRINCIPLE OF RES-JUDICATA:
- 4.2 That throughout the present petition, the Petitioner has heavily relied on the generic tariff order dated 26.03.2025 and has sought that the fuel cost determined by the Hon'ble Commission vide the said order be made applicable to the Petitioner's case as well. The issue with respect to the applicability of the order dated 26.03.2025 to the case of the Petitioner, already stands decided and adjudicated upon by this Hon'ble

Commission in the *ibid* order. It had been specifically held that since project-specific tariff already stands determined for the Petitioner herein, as such, the fuel cost determined by the Hon'ble Commission vide order dated 26.03.2025 is not applicable to the Petitioner's project. In fact, the Hon'ble Commission has also specifically rejected the ground raised by the Petitioner regarding the applicability of the power of the Hon'ble Commission to relax the provisions of the Regulations. Section 11 of the Code of Civil Procedure, 1908 alongwith the applicable 'Explanations' are reproduced below for ready reference of the Hon'ble Commission:

"11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

...

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other. Thus, the plea with the respect to the grant of the fuel cost determined vide order dated 26.03.2025 is barred by the applicability of the principal of *res-judicata* and the petition is liable to be dismissed on this ground alone.

- 4.3 That the Petitioner is, in essence, seeking review of the order dated 26.03.2025. Under the garb of the purported review of order dated 26.03.2025 has sought reliefs which have already been deliberated and rejected by the Hon'ble Commission by way of passing of a reasoned order. It is respectfully submitted that an error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under the Code of Civil Procedure, 1908.

B. PRESENT PETITION IS ALSO NOT-MAINTAINABLE AS THE MATTER RELATING TO FUEL IS SUB-JUDICE BEFORE THE HON'BLE APTEL:

- 4.4 That, the issue with respect to fuel cost is pending adjudication before the Hon'ble APTEL in Appeal bearing APL No. 561 of 2023 titled *Hind Samachar Pvt. Limited Vs. Haryana Electricity Regulatory Commission & Ors.* The said appeal had been preferred by the Petitioner herein and is pending adjudication before the Hon'ble APTEL. Vide the said appeal, the Petitioner/ Appellant has challenged the order dated 13.04.2023 passed by this Hon'ble Commission in Petition No.21 of 2022, whereby this Hon'ble

Commission had determined the fuel cost of Petitioner's power plant. The issue with respect to the fuel cost is already directly and substantially in issue before the Hon'ble APTEL.

- 4.5 Thus, the issue raised in the present petition is *sub judice* before the Hon'ble APTEL, wherein the core issue pertains to - whether fuel cost ought to be determined on the basis of actual expenditure. In view of the same, the present petition be kept in abeyance until final adjudication of the said appeal. In the alternative, the Petitioner may be directed to withdraw the aforesaid appeal before the Hon'ble APTEL, in so far it relates to the determination of fuel on actual basis, in order to avoid parallel proceedings and prevent the possibility of conflicting decisions on the same issue.

C. SUBMISSIONS WITH RESPECT TO THE ISSUE OF RE-DETERMINATION OF FUEL COST:

- 4.6 That the fuel cost for the Petitioners project was initially determined vide order dated 26.10.2020 in HERC/Petition No. 27 of 2020 titled M/s Hind Samachar Pvt Ltd. Vs. State of Haryana & Ors. filed by the Petitioner under Section 62 of the Electricity Act, 2003 (for brevity "EA, 2003"). Based on the historic information of the fuel cost approved for a similarly placed generator, the fuel cost approved for the Petitioner herein for FY 2020-21 was @ Rs.2082/MT with annual escalation of 5% per annum. As such, the fuel cost approved for the Petitioner in terms of the order dated 26.10.2020 comes out to be as under:

Financial Year	Fuel Cost (₹/MT)
2020-21	2082.00
2021-22	2186.10
2022-23	2295.41
2023-24	2410.18
2024-25	2530.69
2025-26	2657.22
2026-27	2790.08
2027-28	2929.58
2028-29	3075.06

- 4.7 That on appeal filed by the Petitioner before the Hon'ble APTEL i.e. APL No. 35 of 2021, the Hon'ble APTEL, vide its order dated 18.02.2022 remanded back the matter to the Hon'ble Commission, while holding as under:

"6. It is pointed out by the appellants that by a Tariff Order dated 20.12.2019 for FY 2019-20 and FY 2020-21 in respect of paddy straw-based projects with air cooled condensers, the same Commission has determined the generic levelized tariff at Rs. 10.83 per unit. It is submitted that post commissioning of the projects, the actual

expenditure can now be taken into account by the Commission to compute the capital expenditure accurately, appellants now being in a position to present the same comprehensively.

... ..

8. In our considered view, it will be appropriate that the Commission revisits the impugned Tariff Order bearing in mind the above mentioned and other contentions of the appellants qua the tariff determination exercise, there being seemingly a huge gap between the ceiling tariff as was reflected in the RfP and the tariff which has been determined in favour of the appellants, the generic Tariff Order dated 20.12.2019 also being at substantial variance.

9. In this view, with the consent of the parties that are present before us, we direct remit. Lest it be misconstrued, we have not expressed any opinion either way on any of the contentions or the possible counter-arguments in their context.

10. Given the small status of the power generating plants of the appellants, it is desirable that the Commission takes the fresh decision expeditiously. Therefore, we would expect the Commission to decide the matter afresh after hearing the parties in accordance with law within two months of this judgment.”

(Emphasis Supplied)

- 4.8 That, in the meanwhile, the Hon'ble Commission passed the order dated 21.03.2022 in Suo-Moto HERC/Petition No. 52 of 2021 whereby the fuel cost for the renewable energy projects set up in Haryana was determined. The said order also records the submissions made by the Petitioner as well as the Answering Respondent herein. The relevant part of the order dated 21.03.2022 is reproduced below:

Submissions on behalf of the Petitioner:

“d) SAEL Ltd. (formerly Sukhbir Agro Energy Ltd.) – 15 MW Paddy straw based in Kaithal.

(d) As such, this Commission has approved a normative fuel cost of Rs.3605.61/MT for FY 2019-20 in line with the learned CERC with an annual escalation of 5% i.e. Rs.3785.89/MT for FY 2020-21 considering the permitted rate of escalation, which is liable to be adopted in the draft order.”

(e) Hind **Samachar – 15 MW Paddy straw based in Pehowa.**

The Comments filed by M/s Hind Samachar are similar to the comments filed by M/s SAEL. Hence the same are reproduced again, for the sake of brevity.

Submissions on behalf of the Answering Respondent:

“HPPC's reply to issue no. 1 The norms specified in HERC RE Regulations 2021 are applicable on the renewable projects to be set up in the control period FY 2021-22 to

FY 2024-25. Further, in terms of Regulation 9 of ibid Regulations, the fuel cost component determined under the ibid Regulations shall also be applicable for the projects commissioned during the previous control periods. It is accordingly, understood that the variable cost determined in terms of HERC RE Regulations 2021 in vogue shall be applicable to all projects where generic tariff is applicable, irrespective of its date of commissioning and control period.

It is further understood that the generic tariff so determined under regulations shall not be applicable to projects whose tariff is/has been determined under section 62 of the Electricity Act, 2003. In such cases, the fuel cost has to be allowed by the Commission, on case to case basis, considering the actual cost of fuel with a ceiling of normative fuel cost as specified under the HERC RE Regulations.”

Finding of the Hon'ble Commission:

“Cost of Paddy Straw(Rs./MT)

The Commission observes that the generators have sought cost of paddy straw to be determined at par with the fuel cost determined by the CERC with an annual escalation of 5% i.e. Rs. 3785.89/MT for FY 2020-21, as against the cost of paddy straw as Rs. 3113.14/MT, accepted by the Commission based on the report of MDU, Rohtak.

The Commission has also considered the submissions of NSML to the effect that the average cost of paddy straw, taking into consideration of the fact that collecting huge quantum of paddy straw per year (in respect of its 25 MW power plant) is impossible to source from only vicinity, is Rs. 3100/MT (all inclusive i.e. collection cost, storing at centers, loss in storage, transportation and unloading cost, chipping cost, loss during processing etc.)

M/s. Sainsons Paper Industries Ltd., has submitted that actual average cost of paddy straw was in the range of Rs 1650/MT to Rs. 1750/MT, in the FY 2020- 21 and Rs. 1900/MT in the FY 2021-22. However, the invoices submitted by M/s. Sainson Paper Industries Ltd., could not substantiate its claim. Some of the invoices were unsigned with missing data / details. There was mismatch in the quantity mentioned in the invoices and total value of invoices. Therefore, the Commission considered it appropriate to discard the submissions of M/s. Sainsons and uphold the cost of paddy straw as Rs. 3113.14/MT, based on the report of MDU, Rohtak, which was based on the detailed survey of paddy grown area in the State of Haryana and based on the data collected from 2143 farmers, aggregators and power generators.

... ..

The ibid fuel cost determined by the Commission shall be prospectively applicable for the RE Projects in Haryana commissioned during the previous control period(s) as well as such projects to be commissioned in the FY 2021- 22 and the FY 2022-23 under generic tariff order of the Commission. Provided there exists a valid PPA specifically approved by this Commission between the generator / seller and the buyer / HPPC / Distribution Licensees i.e. UHBVN / DHBVN.

It is added that the fuel cost determined herein shall continue to be in force till such time the Commission amends or re-determines the same. In such cases, say for the FY 2023-24, the fuel price escalation clause as provided in the RE Regulations in vogue shall prevail, subject to the adjustments vis-à-vis those determined by the Commission.”

- 4.9 That, subsequently, on the basis of the remand order dated 18.02.2022, the Hon'ble Commission passed the order dated 13.04.2023 in HERC/Petition No. 21 of 2022, the relevant part of which is reproduced below:

“The petitioner herein, on the basis of fuel bills placed on record, has sought fuel cost (paddy straw / stubble at Rs. 3700 / MT for the purpose of tariff determination of its 15 MW 100% paddy straw / stubble-based power plant.

The Commission has considered the aforementioned averments of the parties on fuel cost. It is observed that after a detailed study including an independent study got conducted by an institution of repute, the Commission had allowed fuel cost of Rs. 3113.14 / MT and the same shall be reckoned with along with an annual escalation factor of 2.93% for determination of tariff. The Commission, for the sake of brevity, is not re-producing its order dated 21.03.2022 in Case No. HERC / Petition No. 52 of 2021, wherein the cost of paddy straw / stubble was determined at Rs. 3113.14 / MT. However, as the petitioner's project was commissioned on 08.01.2022 i.e. FY 2021-22, hence, for January 2022 to 31st March 2022, the fuel cost has been considered as Rs. 2186.26 and for the balance 9 months Rs. 3113.14 MT. Hence, the weighted average rate of Rs. 2881.42 has been reckoned with for determining the first year tariff i.e. 12 months from CoD.”

(Emphasis Supplied)

As such, this Hon'ble Commission granted fuel cost for January, 2022 to March 2022 @ Rs.2186.26 and for the balance 9 months i.e. for FY 2022-23 the same was considered as Rs. 3113.14 MT. The figures have been drawn on basis of a state-specific study that had earlier been conducted by this Hon'ble Commission. Further, as have been stated above, this order dated 13.04.2023 has been challenged in an Appeal bearing APL No. 560 of 2023 titled *Hind Samachar Pvt. Limited Vs. Haryana*

Electricity Regulatory Commission & Ors., which is pending adjudication. The primary ground taken by the Petitioner-Appellant therein is that the fuel cost ought to have been based on the actual cost incurred.

- 4.10 That, however recently, this Hon'ble Commission has passed an order dated 26.03.2025 in HERC/Petition No. 1 of 2025 in the matter of "*Determination of fuel cost, for the FY 2024-25, for renewable energy projects set up / to be set up in Haryana viz. Biomass, Paddy Stubble, Biogas, Biomass Gasifier & Bagasse / Non-bagasse (cogeneration), on the basis of parameters except fuel cost, provided in the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021- Suo Motu*". The Petitioner was present through counsel, before this Hon'ble Court and had made a number of submissions. The said submissions were rejected by the Hon'ble Commission while holding that the fuel cost determined vide order dated 26.03.2025 is only for the plants where generic tariff is applicable and not for the Petitioner's case i.e. where project-specific tariff has already been determined.

D. ADVERSE INFERENCE IS LIABLE TO BE DRAWN AGAINST THE PETITIONER IN VIEW OF THE NON-SUBMISSION OF DOCUMENTS SHOWING THAT HIGHER FUEL COST HAS BEEN INCURRED:

- 4.11 That, however, once again the Petitioner has approached this Hon'ble Commission seeking grant of higher fuel cost without placing on record any documents in support of its claim. It is submitted that no bills, invoices, statement of accounts or any other such documentary proof of the cost being incurred by the Petitioner Company has been attached with the present petition. It is further submitted that Section 62 of Electricity Act, 2003 provides for determination of tariff for supply of electricity by a generating company to distribution licensee in pursuance of agreement entered into between them. For the purpose of determination of tariff under section 62 of Electricity Act, 2003, the generating company is required to submit necessary details regarding various expenditure and cost associated with generation in order to enable determination of tariff for the project. The Project Specific Tariff under ibid section of Electricity Act, 2003 already stands determined by the Hon'ble Commission and no re-determination is required. Regulation 7(2) read with Regulation 11 of both HERC RE Regulations, 2017 and RE Regulations, 2021 categorically provides that the petition of determination of tariff should be accompanied with information in prescribed forms along with technical and operational details, site specific aspects, premise for capital cost and financing plan etc along with breakup of capital cost. However, in the instant

case the Petitioner has not filed the details of the actual cost components, its break up and technical & operational details of Project to enable re-determination of tariff with respect to fuel cost. Thus, the present Petition is liable to be dismissed being devoid of any specific details.

E. THERE HAS BEEN NO CHANGE OF CIRCUMSTANCES WARRANTING ANY “RE-DETERMINATION” OF FUEL COST FOR THE PETITIONER’S PROJECT:

4.12 That there have been no change of circumstances, warranting any re-determination of fuel cost. On the contrary, cultivation of paddy has increased tremendously over the years and is expected to increase in the future in response to the growing population. It is noticeable that this will lead to significant amounts of agricultural wastes annually, particularly rice straw. In fact, even in the order dated 26.03.2025, the Hon’ble Commission has taken note of the fact that some farmers have reported the cost of paddy straw as “Nil”, in the following terms:

“The Commission has also considered the submissions of M/s. CDLU, Sirsa, that dynamics of paddy straw fuel prices are changing, which in the present report has been arrived at Rs. 3255/MT. CDLU has observed that some farmers have reported cost of paddy straw as Nil, which has been ignored just to align the same to the overall sentiments of the cost of paddy straw as fuel at Rs. 3255/MT, in the interest of the generators.”

(Emphasis Supplied)

4.13 That the cost expended by the Generators towards fuel transportation, storage and handling largely depends on the efficacy of its fuel management channel. It is against the Regulations of this Hon’ble Commission to permit different Generators located in near vicinity to claim highly variable storage, handling and transportation cost. This only points to the inefficiencies of the Generator to be able to set up an effective fuel management channel. However, the inefficiencies of the Generators cannot fasten on to the consumers of Haryana in terms of additional cost. Especially when as per the RfP, the right to choose the project location was given to the Petitioner - *“12.2 The bidders are requested to ascertain on their own the plant capacities that they planned to install at any project location. Applicants are required to carry out their own biomass assessment studies.”*

IN RE: PAYMENT OF SPECIAL INCENTIVE OVER AND ABOVE ANY CEILING TARIFF

F. PROJECT OF THE PETITIONER ALREADY INCENTIVISED, NO FURTHER INCENTIVE IS PAYABLE:

- 4.14 That apart from determination of the fuel cost, this Hon'ble Commission had also granted certain incentive over and above the fuel cost, vide its order dated 26.03.2025 in the following terms:-

"A special incentive of Rs. 0.50/unit and Rs. 1/- per unit, over and above the tariff of fuel cost (Rs./kWh) determined above for 80% PLF, is applicable to paddy straw based power projects, for the annual generation achieving PLF between 80% to 90% and 90% to 100%, respectively. This incentivized tariff shall be applicable for additional generation achieved above the normative level of 80%."

In view of the above, the Petitioner has prayed that- *"...this Hon'ble Commission may graciously be pleased to: ... (d) Hold and declare that the special incentive payable as per the order dated 26.03.2025 to the Petitioner, as and when applicable, shall be over and above any ceiling tariff that may be determined by this Hon'ble Commission for the Project."*

- 4.15 That the question of granting any special incentive over and above the ceiling tariff does not arise. The applicability of the order dated 26.03.2025 to the Petitioner's project already stands rejected by the Hon'ble Commission. No incentive is liable to be granted to the Petitioner any excess generation by the developer over and above its normative PLF is already an incentive for the developer. Since, at normative PLF, all the fixed costs are recovered by the generator. Reference in this regard is provided to the "Statement of Reasons" of the CERC (Terms and Conditions for Tariff Determination for Renewable Energy Sources) Regulations, 2024 notified by Hon'ble CERC on 17.09.2024, wherein it has been stated as follows:

"Analysis and Decision:

8.13. The Commission is of the view that the tariff norms are so formulated that all the costs are recovered at the normative CUF for the respective technologies and any excess generation is an incentive to the developers. It is important to note that due to the variability of the renewable energy generation, the projects may end up generating lower than the normative CUF, in which case the cost is not fully recovered by the developers through tariff. Therefore, a risk-reward mechanism is built in by way of these tariff principles so as to encourage the project developers to bring in investments in projects.

xxxxxx."

Thus, an additional incentive to paddy straw-based power plants shall result in undue enrichment for the power developers which is ultimately to be recovered from the consumers of the State and shall be an extra burden on the consumers at large. It is worthwhile to mention here that the tariff for biomass-based power plants is already in

the range of Rs. 8 -10 /kWh and any further incentive could lead to an inflated tariff, negatively affecting the electricity consumers.

- 4.16 That the grant of higher fuel cost may also be contrary to the terms and conditions of the LOI issued in the favour of the Petitioner wherein it has been specifically mentioned that – *“The tariff quoted by the project is subject to the decision of HERC/HPPC in this regard and in no case escalation in the tariff will be allowed at a later stage, what so ever the reason may be.”* Thus, the prayer of grant of incentive to the Petitioner is liable to be rejected on the sole ground of it being contrary to the terms of the contract subsisting between the parties.

IN RE: NON-RESTRICTION OF THE QUANTUM OF GENERATION 15 MW ON EVERY 15 MINUTE TIME BLOCK:

G. RELIEF SOUGHT BY THE PETITIONER CONTRARY TO THE EXPLICIT TERMS OF THE CONTRACT:

- 4.17 That, the Petitioner has alleged that the restriction of quantum of generation of 15MW on every 15 minute time block is illegal and has thus, prayed that the Answering Respondent be directed to offtake entire power generated without any restriction on the quantum. In this regard, the attention is invited towards the following clauses of the PPA subsisting between the parties:

“ARTICLE-1

DEFINITION AND INTERPRETATIONS:

...

10) *“Contracted Capacity” means the energy offered for sale to, which shall be 15 MW.*

...

13) *“Delivered Energy” means the kilowatt Hours of electricity actually fed into Grid system and measured by energy meters at Delivery Point in a billing period.*

ARTICLE-2

ENERGY PURCHASE AND SALE

2.1 *Sale of Energy by Seller:*

2.1.1 *The HPPC after declaration of commercial operation shall purchase and accept all such electrical energy up to 15 MW delivered at the interconnection point from the Seller’s facility, pursuant to the terms and conditions of this agreement at tariff determined by the Commission and amended from time to time. The IPP i.e. seller along with all relevant documents shall file a tariff petition in the Commission for determination of Tariff.*

2.1.2 *No additional payment whatsoever may be on any account shall be payable by HPPC except those approved by appropriate commission/ court of law.”*

It is the case of the Answering Respondent, that the PPA entered between the parties obligates HPPC only to accept power upto 15 MW only. No obligation can be cast upon

HPPC contrary to the express conditions of the contract agreed upon. In fact, there can be no change in the agreed contractual terms at the unilateral asking of a singular party.

H. RELIANCE OF THE PETITIONER ON THE CASE OF M/S JBM ENVIRONMENT MANAGEMENT PVT. LTD. HIGHLY MISPLACED:

4.18 That, the Petitioner has relied on the decision in the case of *M/s JBM Environment Management Pvt. Ltd. Vs. Haryana Power Purchase Centre & Anr. [HERC/ Petition No. 48 of 2021]* to state that the Hon'ble Commission has on earlier occasion has also granted similar benefit to another Generator. Whereas, the plant of the said generator is MSW (Municipal Solid Waste) based generating power plant. The nature of operation of a MSW plant is such that the quantum of energy generated varies based on the input fuel as available from time to time. The MSW received during rainy and winter season has high moisture content and low calorific value, on the other hand in summers the calorific value is high. The quantum of electricity generation greatly varies with such factors. The JBM's case was rightly treated as peculiar considering the fluctuation of the energy generated by the waste to energy plant whereas the generation of the Petitioner plant is constant. The peculiar nature of the waste to energy power plant is evident as there is no control over the quantum of energy generated owing to the inconsistent nature of the fuel. However, no such inconsistency is present in Petitioner's case. There is no high variation/ fluctuations in the energy generated. As such, the facts and circumstances of the decision in *M/s JBM Environment (Supra)* cannot be made applicable to the Petitioner's case.

5. The case was heard in detail on 02.06.2025. The Commission, vide its interim order dated 02.06.2025, decided as under:-

"2. Upon hearing the parties, the Commission is of the considered view that substituting the ECR determined under Section 62 of the Electricity Act, 2003 with the levelized ECR determined by the Commission in its order dated 26.03.2025 (Petition No. 1 of 2025), can be considered as a one-time measure which shall not be taken as a precedence, in order to settle the long ongoing dispute between the parties and to take a balanced view in the matter, which will be in the nature of compromise settlement. Therefore, as desired by the respondent, the petitioner is directed to file the followings within three week from the date of issue of this order, with copy to the respondent:-

a) To withdraw the appeal filed before APTEL (Appeal no. 560 of 2023) against the tariff determined by this Commission and file an affidavit to this effect.

b) *To file an affidavit that the year to year tariff determined in the present petition by substituting the ECR determined in the order dated 13.04.2023 (Petition No. 22 of 2022) with the ECR determined by the Commission in its order dated 26.03.2025 (Petition No. 1 of 2025) w.e.f. 01.04.2024 with escalation factor @ 2.93% for subsequent years, after deducting the discount of Rs. 0.71 per unit and subject to the ceiling tariff of Rs. 8 per unit, shall be final for all the times to comes and shall not be reopened during the remaining useful life of the project. However, the issue of ceiling tariff of Rs. 8 per unit shall be subject to the outcome of a separate appeal no. 348 of 2019 pending before Hon'ble APTEL, wherein the present petitioner is the respondent.*

3. *The petitioner may also file its rejoinder on the reply filed by HPPC on the issue of special incentive as well as the restriction imposed by HPPC on the quantum of electricity to the extent of 15 MW on every 15-minute time block basis, within three weeks from the date of issue of this order with copy to the respondent.*

6. **Petitioner' Additional Affidavits: -**

In compliance of the interim order of the Commission dated 02.06.2025, the petitioner filed its additional affidavits dated 14.07.2025 and 16.07.2025, submitting as under: -

6.1 On 02.06.2025, this Hon'ble Commission vide its Order of the same date directed as under:

“

a) *To withdraw the appeal filed before APTEL (Appeal no. 560 of 2023) against the tariff determined by this Commission and file an affidavit to this effect.*

b) *To file an affidavit that the year to year tariff determined in the present petition by substituting the ECR determined in the order dated 13.04.2023 (Petition No. 22 of 2022) with the ECR determined by the Commission in its order dated 26.03.2025 (Petition No. 1 of 2025) w.e.f. 01.04.2024 with escalation factor @ 2.93% for subsequent years, after deducting the discount of Rs. 0.71 per unit and subject to the ceiling tariff of Rs. 8 per unit, shall be final for all the times to comes and shall not be reopened during the remaining useful life of the project. However, the issue of ceiling tariff of Rs. 8 per unit shall be subject to the outcome of a separate appeal no. 348 of 2019 pending before Hon'ble APTEL, wherein the present petitioner is the respondent.*

3. *The petitioner may also file its rejoinder on the reply filed by HPPC on the issue of special incentive as well as the restriction imposed by HPPC on the quantum of electricity to the extent of 15 MW on every 15-minute time block basis, within three weeks from the date of issue of this order with copy to the respondent.*

.....”

- 6.2 That the above-mentioned direction(s) were issued by this Hon'ble Commission to conclude multiple proceedings that have been pending before various forums and to provide adequate relief(s). The Respondent herein also, during the hearing held on 02.06.2025, consented that such one-time relief may be granted by this Hon'ble Commission, subject to the conditions stated in the Order dated 02.06.2025.
- 6.3 That on 11.07.2025, in compliance of the aforesaid directions of this Hon'ble Commission, the petitioner herein withdrew the Appeal No. 561 of 2023, which was pending before the Hon'ble Appellate Tribunal for Electricity at New Delhi (hereinafter referred to as "Hon'ble Appellate Tribunal"). The Hon'ble Appellate Tribunal, *vide* its Order dated 11.07.2025 has allowed the request of the petitioner herein to withdraw the said Appeal.
- 6.4 That the petitioner herein is also filing an Affidavit as directed *vide* Order 02.06.2025 along with the present application and the same is annexed.
- 6.5 That the petitioner herein has complied with the directions of this Hon'ble Commission in its entirety and the same is put on record by way of the present application.
- 6.6 That in furtherance to the above, it is respectfully submitted that the current fuel cost for the Project is inadequate and not aligned with the market dynamics, which have seen a steep rise in fuel procurement and aggregation cost. The same is also evident from this Hon'ble Commission's Order dated 26.03.2025 passed in Petition No. 01 of 2025 wherein the tariff towards Fuel Cost for FY 2024-2025 has been determined as INR 5.33 per kWh. In upcoming months, the Petitioner shall be required to procure necessary fuel for the year (paddy harvesting season) and therefore, it would be in the best interest of all the stakeholders that the present petition is adjudicated at the earliest and necessary relief(s) as prayed are granted.
- 6.7 That, during the hearing held on 02.06.2025, a question was posed by this Hon'ble Commission seeking clarity as to whether the Respondent / HPPC is making payments towards the entire energy generated by the Project and the 15 minute time block restriction put on scheduling of power by Respondent /HPPC is non-est in law.
- 6.8 That, the Respondent/HPPC have no power in law or under the Power Purchase Agreement, to restrict the injection of the Petitioner upto the Contracted Capacity in a 15-minute time block. It is respectfully submitted that under the National Tariff Policy 2016, which is binding on the Respondent / HPPC, the Distribution Companies are required to offtake 100 percent energy generated by Waste-to-Energy Projects, at the appropriate tariff as determined by the appropriate commission. Therefore, any argument to the contrary by Respondent /HPPC, is in teeth of the National Tariff Policy, 2016, which has force of law and cannot be meddled with by the Respondent /HPPC.

- 6.9 That, the action of Respondent / HPPC stating that it can only accept power upto 15 MW is a ground which is both legally and technically unfounded. The power is generated in 'Units' and not in 'MW' terms and therefore, in terms of NTP 2016, the entire power generated by the Project is liable to be procured by the Respondent / HPPC. For this purpose and for the ease of this Hon'ble Commission, the Petitioner has prepared a Table, which clearly indicates the energy in Million Unit(s) ('MUs') that are capable of being generated at 80 percent Plant Load Factor ('PLF') and 100 percent PLF. The Table also include the Exported Energy in MUs terms and the Energy in MUs terms considered by the Respondent / HPPC while making monthly payments.
- 6.10 That, evidently, from the CoD of the Project till date, there has been consistent deductions made by the Respondent/HPPC by not making payment towards the Energy Generated in MUs terms. It is the understanding of the Petitioner that the Respondent /HPPC while calculating the Tariff towards Monthly Bills, is restricting generation on 15-minute time block basis upto 15 MW. A practice which does not find any legal or technical merit. As per Article 2.1.1 of the Power Purchase Agreement (PPA), HPPC is contractually obligated to purchase 100% of the energy generated by the Petitioner Project. This purchase obligation is based on energy delivered at the interconnection point, and billing is to be carried out monthly through joint meter readings, with payments to be made within 30 days of invoice submission. Despite this clear framework, HPPC has been unlawfully limiting its payments by applying a 15-minute time block restriction, paying only for energy supplied up to 15 MW during each block.
- 6.11 That, the PPA does not contain any provision for restricting power supply or billing based on 15-minute time blocks. On the contrary, it explicitly provides for monthly billing based on cumulative energy supplied, determined through joint meter readings. Moreover, the definition of "Monthly Energy Charges" under the PPA clearly refers to the energy delivered during the billing period—i.e., monthly—and not segmented into 15-minute intervals. Also, the Plant Load Factor (PLF), which influences tariff determination, is also calculated on a monthly or annual basis as per HERC's Tariff Regulations.
- 6.12 That, the billing method currently used by the Respondent /HPPC not only contradicts the provisions of the Power Purchase Agreement, applicable regulations, and the directives of the Hon'ble Commission, but also results in the unintended outcome of supplying electricity for free.
- 6.13 That, under Article 11.3 of the PPA and the Commission's own order in Case No. HERC/PRO-45 of 2018, the Petitioner's project has been granted "Must Run" status.

This status mandates that all power generated must be accepted by the distribution licensee, regardless of system demand or dispatch preferences. The project, being based on biomass (paddy straw), is part of Haryana's green energy and waste-to-energy initiatives and is not subject to merit order dispatch. Therefore, it is also the case of the Petitioner, that energy generated even beyond 100 percent PLF is legally required to be off-taken by the Respondent / HPPC.

- 6.14 That, in view of the foregoing, this Hon'ble Commission may be pleased to take on record the annexure(s) enclosed with the present Additional Affidavit.

7. Respondent's reply / submissions dated 24.07.2025: -

HPPC filed its reply to the application dated 14.07.2025 and additional affidavit dated 16.07.2025 filed by the petitioner. The same is as under:-

- 7.1 That in compliance with the directions of the Hon'ble Commission, the Petitioner has filed an Application under Section 94 of the Electricity Act, 2003 read with applicable provisions of Conduct of Business Regulations placing on record the order of withdrawal of Appeal no. 561 of 2023. However, in para 7 of the said application, the Petitioner mentioned as under:-

"In furtherance to the above, it is respectfully submitted that the current fuel cost for the Project is inadequate and not aligned with the market dynamics, which have seen a steep rise in fuel procurement and aggregation cost. The same is also evident from this Hon'ble Commission's Order dated 26.03.2025 passed in Petition No. 01 of 2025 wherein the tariff towards Fuel Cost for FY 2024-25 has been determined as INR 5.33 per kWh. In upcoming months, the Petitioner shall be required to procure necessary fuel for the year (paddy harvesting season) and thereof, it would be in the best interest of all the stakeholders that the present petition is adjudicated at the earliest and necessary relief(s) as prayed are granted." (Emphasis Supplied)

- 7.2 That a perusal of the order of the Hon'ble Commission dated 02.06.2025 mentions about substituting the ECR as per order dated 26.03.2025 w.e.f. 01.04.2024, however, it was the explicit understanding that the said substitution of ECR in terms of order dated 26.03.2025 shall be based on consideration of project specific Station Heat Rate ('SHR') and GCV allowed by this Hon'ble Commission vide order dated 13.04.2023 for the Petitioner's plant. A comprehensive perusal of the instant application, however, does not clarify this aspect and instead appears to highlight that the fuel cost determined for the FY 2024-25 considering the SHR of 4200 Kcal/kWh i.e. Rs. 5.33 per kWh shall be substituted against the ECR determined by the Hon'ble Commission for the plant of the Petitioner vide the order dated 13.04.2023 considering the SHR of 3410 Kcal/kWh.

- 7.3 That on the issue of substitution of ECR, HPPC seeks the indulgence of the Hon'ble Commission to make it explicit that the compromise settlement proposed by the Hon'ble Commission is subject to substitution of 'corresponding ECR' in terms of order dated 26.03.2025 i.e. allowance of fuel cost without any change in other fuel related parameters such as SHR and GCV. The foregoing is even otherwise logical and aligned with the intent of the order dated 02.06.2025, which was passed to take a balanced view in the matter. The value of the parameters such as SHR have been specifically considered and allowed by the Hon'ble Commission while determining the project specific tariff based on the actual boiler and turbine efficiency and guaranteed values. Any alteration to the same at this stage would be unjust, more particularly when the settlement was in the perspective of compensating the Petitioner for the market aligned fuel cost only.
- 7.4 That the substitution of ECR by Rs. 5.33 per kWh, which has been determined considering the SHR of 4200 Kcal/kWh would be unjustly enriching the Petitioner as the year-on-year tariff determined with such substitution would nearly match the tariff that shall become payable if the entire disputed capital cost (which was the subject matter of the Appeal No. 561 of 2023) is awarded in favour of the Petitioner. Infact, the year-on-year tariff in case of substitution of ECR by Rs. 5.33 per kWh would surpass the tariff that shall become payable if the capital cost as per the DPR i.e. 140.2 crores is awarded in favour of the Petitioner. The foregoing is sufficed to reflect that a balanced settlement can only be to substitute the ECR determined in the order dated 26.03.2025 corresponding to the SHR of the Petitioner's Plant. The Respondent is setting out hereunder a comparative tabular presentation of year-on-year tariff for the Petitioner plant considering the substitution of ECR in terms of order dated 26.03.2025 corresponding to SHR of 4200 Kcal/kWh (as considered for the generic tariff) and 3410 Kcal/kWh (as determined for the Petitioner Plant) for ready reference:-

Financial Year	Tariff considering fuel cost and escalation as allowed in the order dated 26.03.2025 with value of all other parameters including capital cost, SHR, GCV same as determined specific to the Plant of Hind Samachar (CC – 978 millions FC - Rs. 3463/MT for FY 2024-25 onwards with escalation @ 2.93% SHR = 3410 Kcal/kWh)	Tariff considering fuel cost and escalation as allowed in the order dated 26.03.2025 with value of all other parameters except SHR same as determined specific to the Plant of Hind Samachar (CC – 978 millions FC - Rs. 3463/MT for FY 2024-25 onwards with escalation @ 2.93% SHR = 4200 Kcal/kWh)
2024-25	6.95	8.02
2025-26	7.05	8.16
2026-27	7.16	8.30
2027-28	7.28	8.44
2028-29	7.39	8.59
2029-30	7.52	8.75
2030-31	7.65	8.92
2031-32	7.78	9.09
2032-33	7.92	9.27
2033-34	8.06	9.45
2034-35	8.01	9.44

2035-36	8.23	9.70
2036-37	8.45	9.96
2037-38	8.67	10.23
2038-39	8.91	10.51
2039-40	9.15	10.80
2040-41	9.39	11.09

A perusal of the foregoing shows that there is a marked difference in the year-on-year tariff allowed to the Petitioner with substitution of ECR based on generic value of SHR and SHR determined specific to the plant of the Petitioner. To avoid any further litigation or dispute qua the tariff payable to the Petitioner as a result of the compromise settlement, the Hon'ble Commission may kindly make it explicit that the substitution of ECR shall be corresponding to the project specific parameters allowed in the order dated 13.04.2023.

7.5 That the petitioner has mentioned as under –

“7. That, as allowed by this Hon'ble Commission and with no objection from the Respondent/HPPC, the Petitioner shall take suitable steps to seek necessary relief(s), including but not limited to, transposing itself as one the co-appellant in Appeal No. 348 of 2019, and pursue the issue of ceiling tariff of Rs. 8 per unit before the Hon'ble Appellate Tribunal.”

7.6 That the foregoing submission of the petitioner is misconceived and mis-projected as no agreement has been accorded by the respondent to the effect that they will have no objection or in other words will waive of their legal assertion regarding the tenability of the joinder of the Petitioner as party in Appeal No. 348 of 2019. The Respondent objects to the same, in as much as, the compromise settlement as expressed in the order of the Hon'ble Commission dated 02.06.2025 does not mention any such waiver by the Respondent, as is sought to be projected by the Petitioner. The Respondent has already raised the issue of applicability of the decision of the Appeal No. 348 of 2019 on to the case of the Petitioner and the same shall stand as it is as the decision of Appeal No. 348 of 2019 cannot be *ipso facto* be applied to the Petitioner as part of the compromise settlement.

7.7 That the contention raised by the Petitioner as regards there being no provision in the PPA for restricting power supply and billing based on 15 minutes time slot is incorrect, misconceived and misrepresented. As per the terms of the PPA entered into between the parties, the Respondent (HPPC) is obligated only to accept power upto 15 MW only, which is the contracted capacity. The 15 minutes time slot is the essential element of energy recorded in the grid of the state, which has been explicitly mentioned in the Haryana Grid Code Regulations, 2009 ('HGC, 2009'). The definition of the 'time block', as contained in the HGC,2009 reads as under –

“Block of 15 minutes each for which special energy meters record specified electrical parameters and quantities with first Time Block starting at 00.00 Hrs.”

Further, the conditions of HGC, 2009 clearly provides that the energy recorded for all injection into the grid has to be considered in a 15 minute time block, which is used for all demand estimation and operational purposes of the state grid. The relevant regulations are reproduced hereunder :-

“5.6 DEMAND ESTIMATION FOR OPERATIONAL PURPOSES

(a) SLDC shall develop methodologies/mechanisms on the basis of the data submitted by generation company(s) and distribution companies for daily, weekly, monthly and yearly demand estimation (MW, MVar and MWh) for operational purposes. The data for the estimation shall also include load shedding, power cuts, etc. SLDC shall also maintain historical database for demand estimation.

(b) Distribution companies and other agencies involved in bilateral exchanges shall provide to the SLDC their estimates of demand/export for active power (MW), reactive power (MVar) and energy consumption (MU) at each connection / external interconnection point on daily, weekly and monthly basis as per the formats to be finalized by SLDC. The distribution companies shall intimate to the SLDC the methodology used in producing their forecasts.

(c) The SLDC shall use this data

(i) to determine the generation schedule for next day;

(ii) to determine the most onerous conditions affecting constraints and voltage performance for next week;

(iii) to check outage plan viability for peak and lean periods for next month.

(d) (i) The data shall be in the form of 96 blocks (15 minutes period) averaged demand figure for that day, weekly and monthly data shall be in the form of 24 hourly averaged demand figures for that week/month and yearly data shall be in the form of month wise energy requirement for the year. All the above data shall be in respect of each inter-connection point;

Xxxxx

(viii) SLDC shall maintain a database of State demand on a 15 minutes basis;

6.5 TARIFF METERING

6.5.1 The generating companies, CGPs, the transmission licensees and the distribution licensees and EHV consumers who intend to use open access provisions would need to install the meters suitable for Availability Based Tariff (ABT) at inter-utility exchange points which would record the parameters in accordance with the Central Electricity Authority Regulations on installation and operation of meters read with its amendment, if any.

xxxxxxx

6.5.8 In case of State transmission lines, meters suitable for Availability Based Tariff shall be provided having the following parameters:-

- (a) net active energy import/ export for each 15 minute time block of the day;
- (b) net reactive energy import/ export for the day above 103% of voltage;
- (c) net reactive energy export/ import when voltage is below 97%;
- (d) cumulative active energy export/ import;
- (e) average frequency for each 15 minute time block of the day;
- (f) provision of storage of data in non-volatile memory for at least 35 days.”

A perusal of the foregoing regulation clearly evince that the energy recorded for 15 minutes time slot vis-à-vis the contracted capacity under every power purchase agreement except for the waste to energy plant is not arbitrary and without reasoning. The Petitioner is bound to comply with regulation of the Hon'ble Commission as amended from time to time, which is an explicit obligation under the PPA. The significance of monitoring that the energy injected under any PPA shall not exceed the contracted capacity in a 15 minutes time block lies in continuous monitoring of the overall grid security as well as maintaining effective demand estimation and operation of the power grid. Thus, the claim of the Petitioner is not only against the terms of the PPA and regulations of the Hon'ble Commission but also has wider consequences as any relaxation to the plant of the Petitioner would permit bio-mass generators to start an irregular practice to inject power beyond the contracted capacity at specific times to compensate for the down time of the plant. Suffice to state that this shall also affect the obligation of the distribution licensee regarding demand estimations data submission to SLDC for the time block.

- 7.8 That the contention of the Petitioner as regards the reliance on the “Must Run” status to draw a parity with the waste to energy plant is also incorrect. Whereas, the nature of operation of a MSW plant is such that the quantum of energy generated varies based on the input fuel as available from time to time. The MSW received during rainy and winter season has high moisture content and low calorific value, on the other hand in summers the calorific value is high. The quantum of electricity generation greatly varies with such factors. As such, the waste to energy plant are peculiar considering the fluctuation of the energy generated by them whereas the generation of the Petitioner plant is constant, which is fortified from the log sheet appended along with reply. The peculiar nature of the waste to energy plant is evident as there is no control over the quantum of energy generated owing to the inconsistent nature of the fuel. However, no such inconsistency is present in Petitioner's case. There is no high variation/

fluctuations in the energy generated. In view thereof, the claim of the Petitioner is devoid of merit and not liable to be considered.

- 7.9 That it is also relevant to highlight here that the tariff awarded to the Petitioner is a one-part tariff which permits recovery of entire fixed cost on operation of plant at normative PLF. However, for any generation beyond the normative PLF, the Petitioner is still paid the full tariff thereby allowing recovery of the fixed cost beyond expended. Thus, the operation of the plant of the Petitioner beyond the normative PLF is itself an incentive payable to the Petitioner. The units generated by the plant of the Petitioner considering the 100% PLF for the entire contracted capacity of 15MW, if transposed in terms of the million units, comes to 131.4 MUs and the units corresponding to 80% PLF comes to 105.12 MUs. Meaning thereby, any generation beyond 105.12 MUs per year is an incentive for the Petitioner. In view thereof, non-restriction of injected energy in a time block would amount to permitting leeway to the Petitioner to generate maximum power above the normative PLF thereby adding to its incentive at the larger cost.
- 7.10 That in light of the foregoing submissions it is the respectful submission of the Respondents that the claim of the Petitioner with respect to payment of special incentive for generation beyond normative PLF and also removal of restriction of energy injected in a 15 minute time slot beyond contracted capacity and /or reimbursement of the withheld amount shall be dismissed being untenable and devoid of any merit.

8. **Petitioner's written submissions:-**

The petitioner has filed its written submissions dated 08.08.2025, as allowed by the Commission consequent to the hearing held on 30.07.2025. The same has been taken on record.

- 8.1 That the Petitioner has preferred to file the present Petition under Section 86 (1)(a), 86(1)(b) and 86(1)(f) read with Section 94 of the Electricity Act, 2003, along with Regulation 65-67 & 69 of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 and applicable regulations of Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificates) Regulations, 2021 invoking the regulatory, adjudicatory and inherent jurisdiction of this Hon'ble Commission seeking alignment of the ECR/Variable Cost/Fuel Cost with market dynamics of the 15 MW 100 percent paddy straw Waste to Energy Project established by the Petitioner at Pehowa, District Kurukshetra, in the State of Haryana and also seeking directions for payments of amounts wrongly withheld by the Haryana Power Purchase Centre (HPPC/Respondent) by illegally

restricting the quantum of generation of 15 MW on every 15 minute time block of the Petitioner Project.

8.2 That by way of the present Petition, humble indulgence of this Hon'ble Commission is being sought invoking its adjudicatory and regulatory jurisdiction, to align the Fuel Cost (Tariff) of the project with the prevalent market conditions i.e., at least INR 5.33 per kWh with applicable escalation, and to direct the Respondent/HPPC to make payment of the amount wrongly withheld by it illegally restricting the quantum of generation on every 15 minute time block of the Petitioner's Project.

8.3 That the instant matter was listed on 30.07.2025 before this Hon'ble Commission for final hearing. It is important to point out that this Hon'ble Commission, upon concurrence of HPPC, directed that in the interest of justice and to conclude multiple litigations on the said issue, the Petitioner herein to withdraw it's Appeal No. 561 of 2023 pending before Hon'ble Appellate Tribunal for Electricity at New Delhi and file an Affidavit to this effect. The directions of this Hon'ble Commission dated 02.06.2025 are set out herein below:

"

c) *To withdraw the appeal filed before APTEL (Appeal no. 561 of 2023) against the tariff determined by this Commission and file an affidavit to this effect.*

d) *To file an affidavit that the year to year tariff determined in the present petition by substituting the ECR determined in the order dated 13.04.2023 (Petition No. 21 of 2022) with the ECR determined by the Commission in its order dated 26.03.2025 (Petition No. 1 of 2025) w.e.f. 01.04.2024 with escalation factor @ 2.93% for subsequent years, after deducting the discount of Rs. 0.73 per unit and subject to the ceiling tariff of Rs. 8 per unit, shall be final for all the times to comes and shall not be reopened during the remaining useful life of the project. However, the issue of ceiling tariff of Rs. 8 per unit shall be subject to the outcome of a separate appeal no. 348 of 2019 pending before Hon'ble APTEL, wherein the present petitioner is the respondent.*

3. The petitioner may also file its rejoinder on the reply filed by HPPC on the issue of special incentive as well as the restriction imposed by HPPC on the quantum of electricity to the extent of 15 MW on every 15-minute time block basis, within three weeks from the date of issue of this order with copy to the respondent.

....."

8.4 That in compliance of the above directions and assurance provided by HPPC and this Hon'ble Commission, allowing the Petitioner to contest the issue of the capping of total tariff at INR 8 per kWh and that the Petitioner shall receive Fuel Cost (tariff) of INR 5.33 per kWh with escalation, that the Petitioner took steps to withdraw the aforementioned appeal and filed necessary affidavits before this Hon'ble Commission

as directed. However, much to the shock and surprise of the Petitioner herein, HPPC, took a complete u-turn, by filing a response to the Affidavits filed by the Petitioner (never once making any objection prior to such stage), and contented that the SHR and GCV to be considered for the Petitioner ought to be as per the previous Tariff Order (the appeal against which was withdrawn by the Petitioner). If the contentions of HPPC are confirmed, then the Petitioner shall not receive the Fuel Cost (Tariff) of INR 5.33 per kWh but a lesser tariff. This has never been the intention that was conveyed on 02.06.2025 either by HPPC or by Hon'ble Commission. Such conduct of HPPC is not only malicious but unworthy of a state instrumentality.

- 8.5 That if HPPC persists with such argument and contention, then the Petitioner shall be entitled to revive its Appeal before the Hon'ble Appellate Tribunal.
- 8.6 That this Hon'ble Commission, after hearing the submissions made by the parties herein, reserved the captioned matter for Orders and also directed the parties to file written submissions in support of the submissions, if any. Therefore, in terms of the directions issued by this Hon'ble Commission, the Petitioner is filing the present written submissions.

Re. Realignment of the fuel cost (tariff) of the Project

- 8.7 That this Hon'ble Commission, through its Order dated 13.04.2023, passed in Petition No. 21 of 2022, determined the tariff of the Project towards fixed cost as INR 2.67 per kWh and tariff towards fuel cost as INR 3.61 per kWh (base year tariff) for FY 2021-2022. There is a year-on-year escalation at the rate of 2.93 percent on this base tariff towards fuel cost. However, even after considering the escalation factor the current tariff is not aligned with the market dynamics, which has seen a steep rise in fuel procurement and aggregation and other parameters having an impact on the fuel cost (tariff). The said fact can be further substantiated by comparing it with the fuel cost (tariff) determined by this Hon'ble Commission in the Order dated 26.03.2025 passed in Petition No. 01 of 2025.
- 8.8 That on 26.03.2025, this Hon'ble Commission approved and determined the Fuel Cost (tariff) of FY 2024-25 for various technologies of biomass/bagasse/biogas. Vide the said Order, this Hon'ble Commission after considering the market dynamics has determined the tariff towards Fuel Cost (tariff) for FY 2024-2025 as INR 5.33 per kWh, for the projects based on 100 percent Paddy Straw (Air Cooled TG Technology), considering the escalation factor of 2.93 percent over the O&M cost determined for FY 2023-24.
- 8.9 That the Fuel Cost (tariff) determined by this Hon'ble Commission in the Order dated 26.03.2025, when compared with the current Fuel Cost (tariff) of the Project, exhibits a considerable disparity and a substantial variation in the Fuel Cost (tariff) within the

same state. In the humble submission of the Petitioner, there cannot be two different Fuel Costs within the same state. Therefore, to curb this variation in the Fuel Cost (tariff), the Fuel Cost (tariff) of the Project must be aligned by this Hon'ble Commission with the Fuel Cost (tariff) determined through Order dated 26.03.2025. Refusing such alignment of the fuel cost (tariff) would violate the principles of parity and non-discrimination under law, as similarly placed generators have been allowed a higher Fuel Cost tariff.

- 8.10 That this Hon'ble Commission under Sections 61, 62 and Section 86(1)(a), (b), (c) & (f) of the Electricity Act, 2003 is empowered to determine the tariff for supply of electricity from the generating company to the Distribution Licensee and to adjudicate the dispute between the generating company and the distribution licensee. Moreover, Section 61(g) of the Act mandates that the tariff must progressively reflect the cost of electricity.
- 8.11 That the NTP, 2016 mandates that the distribution licensee(s) shall compulsorily procure 100% power produced from all the Waste- to -Energy plants at the tariff determined by the Appropriate Commission under Section 62 of the Act. Notably, one of the primary objectives of the NTP, 2016, under Clause 4.0 (b), is to ensure the financial viability of the power sector and encourage investment. Generators will only be willing to invest if their investments are adequately safeguarded. Therefore, to support the financial stability of generators, it is crucial to strike a balance between the interests of consumers and the need for investment, as outlined in Clause 5.11 (a). In this context, this Hon'ble Commission needs to consider the financial interests of the generators.
- 8.12 That this Hon'ble Commission is bound by the statutory mandate to treat the similarly placed generators equally and therefore, the Fuel cost/variable charge determined by the Order dated 26.03.2025 must be allowed to the Petitioner.
- 8.13 The present Petition was heard by this Hon'ble Commission on 02.06.2025, wherein this Hon'ble Commission, in view of the submissions made by the Petitioner and as a one-time measure in order to settle the long ongoing dispute between the parties in the nature of the compromise settlement, issued the following directions:
- ".....
- a) *To withdraw the appeal filed before APTEL (Appeal no. 561 of 2023) against the tariff determined by this Commission and file an affidavit to this effect.*
- b) *To file an affidavit that the year to year tariff determined in the present petition by substituting the ECR determined in the order dated 13.04.2023 (Petition No. 21 of 2022) with the ECR determined by the Commission in its order dated 26.03.2025 (Petition No. 1 of 2025) w.e.f. 01.04.2024 with escalation factor @ 2.93% for*

subsequent years, after deducting the discount of Rs. 0.73 per unit and subject to the ceiling tariff of Rs. 8 per unit, shall be final for all the times to come and shall not be reopened during the remaining useful life of the project. However, the issue of ceiling tariff of Rs. 8 per unit shall be subject to the outcome of a separate appeal no. 348 of 2019 pending before Hon'ble APTEL, wherein the present petitioner is the respondent.

3. The petitioner may also file its rejoinder on the reply filed by HPPC on the issue of special incentive as well as the restriction imposed by HPPC on the quantum of electricity to the extent of 15 MW on every 15-minute time block basis, within three weeks from the date of issue of this order with copy to the respondent.

.....”

8.14 That in adherence to the above directions of this Hon'ble Commission, the Petitioner withdrew the Appeal No. 561 of 2023 and also filed an Affidavit dated 14.07.2025 accepting and acknowledging the substitution of ECR/Fuel Cost (tariff) determined by this Hon'ble Commission through its Order dated 13.04.2023 with the ECR/Fuel Cost (tariff) determined by this Hon'ble Commission through its Order dated 26.03.2025, w.e.f. 01.04.2024 with escalation factor @ 2.93% for subsequent years, after deducting the discount of Rs. 0.73 per unit and subject to the ceiling tariff of Rs. 8 per unit. However, the issue of ceiling tariff of Rs. 8 per unit shall be subject to the outcome of a separate Appeal No. 348 of 2019 pending before Hon'ble APTEL, wherein the present petitioner is the respondent.

8.15 That since the Petitioner has complied with the direction of this Hon'ble Commission in its entirety and the Withdrawal Order dated 11.07.2025 and the Affidavit dated 14.07.2025 have been put on record by way of the Application dated 14.07.2025. Therefore, this Hon'ble Commission may be pleased to substitute the ECR/ Fuel Cost (tariff) determined by the Order dated 13.04.2023 with the ECR/ Fuel Cost (tariff) determined by this Hon'ble Commission in its Order dated 26.03.2025.

Re. Objection raised by Respondent/ HPPC on substitution of ECR / Fuel Cost (Tariff) determined through Order dated 13.04.2023 with the ECR / Fuel Cost (Tariff) determined through Order dated 26.03.2025.

8.16 The Respondent/ HPPC in its Reply dated 24.07.2025 has raised objection pertaining to the substitution of the ECR determined in the Order dated 13.04.2023 passed in the Petition No. 21 of 2022 with the ECR determined by this Hon'ble Commission in its Order dated 26.03.2025 passed in Petition No. 01 of 2025 (*Para 4 & 5 of the Respondent/ HPPC Reply dated 24.07.2025*) and has sought indulgence of this Hon'ble Commission to make it explicit that the substitution of ECR shall be

corresponding to the project specific parameters allowed in the Order dated 13.04.2023.

- 8.17 That this Hon'ble Commission vide its Order dated 02.06.2025, to settle the long ongoing disputes between the parties and in the nature of a compromise settlement, specifically considered the substitution of the 'ECR' determined in the Order dated 13.04.2023 with the ECR determined vide Order dated 26.03.2025 as a one-time measure. The expression ECR encompasses within it all the parameters required to calculate the per-ton cost of the fuel and the corresponding variable charge rate to be billed to the discoms. The Order admittedly uses the expression 'ECR' as opposed to 'fuel cost'. It is respectfully submitted that the Petitioner sought the specific prayers of seeking INR 5.33 per kWh as Fuel Cost (Tariff), and it is only upon HPPC concurrence that the Petitioner proceeded to withdraw its appeal before the Hon'ble Tribunal. HPPC is legally restricted to change its stance as an afterthought and raise these objections now. HPPC had sufficient time to seek review of the Order dated 02.06.2025 or challenge the same, however, it waited for the Petitioner to comply with the directions, withdraw the appeal and then in utmost bad-faith proceeded to raise the aforementioned objections. Such conduct is unworthy of a state instrumentality.
- 8.18 Therefore, based on the aforesaid understanding and at the request of the Respondent/HPPC as recorded in the Order, this Hon'ble Commission passed the Order dated 02.06.2025 and directed the Petitioner to withdraw the Appeal No. 561 of 2023 and also to file an affidavit that the substitution of the ECR shall be final for all time to come and shall not be reopened during useful life of the Petitioner. Pertinently, the Respondent/HPPC has at no point in time ever sought any modification or review of the Order dated 02.06.2025.
- 8.19 That based on the said understanding and in terms of the Order dated 02.06.2025, the Petitioner withdrew the Appeal No. 561 of 2023 and filed an Affidavit dated 14.07.2025 before this Hon'ble Commission, accepting and acknowledging the substitution of ECR determined in Order dated 13.04.2023 with the ECR determined in Order dated 26.03.2025.
- 8.20 That, the Respondent/ HPPC never raised any objection when the Withdrawal Application was served upon it nor at the hearing of the said Application when the Appeal was withdrawn by the Petitioner.
- 8.21 That on 24.07.2025, pursuant to withdrawal of the Appeal and filing of the Affidavit dated 14.07.2025, the Respondent/HPPC at a belated stage has objected to the substitution of ECR viz. that this Hon'ble Commission may allow fuel cost to the Petitioner as per the Order dated 26.03.2025 without any change in any other fuel Parameter such as SHR and GCV. The said submissions of the Respondent/ HPPC

are contrary to the understanding based on which the Order dated 02.06.2025 was passed by this Hon'ble Commission. The Respondent/ HPPC, having led the Petitioner to act on the understanding recorded in the Order dated 02.06.2025 and luring the Petitioner to withdraw its Appeal, is estopped from backtracking on the same.

- 8.22 Furthermore, the SHR of the Petitioner's Project is in the range of 4200 Kcal/kWh or more for almost every month since the project was commissioned. The same is evident from the month-wise details duly certified by a Chartered Engineer. It is evident that the SHR of the Petitioner's project is far greater than the SHR of 3410 Kcal/kWh that had been determined by this Hon'ble Commission by way of its order dated 13.04.2023. The Petitioner by way of its appeal before APTEL, had challenged such determination of SHR. Subjecting the Petitioner to the said SHR after directing it to withdraw its appeal will be gravely prejudicial and in complete contravention to the terms on which the appeal was withdrawn.

Copy of the month-wise details of SHR duly certified by Chartered Engineer is annexed.

- 8.23 That the Respondent/HPPC cannot now be allowed to raise any such objection in the absence of any clarification, modification, or review of the Order dated 02.06.2025 sought by it, especially when the Petitioner, in terms of the Order dated 02.06.2025, has conceded its case before the Hon'ble Tribunal and have accepted the substitution of the ECR. Moreover, the Respondent/HPPC is cherry-picking the components of two different Orders despite the clear and explicit direction of this Hon'ble Commission that the ECR determined by Order dated 13.04.2023 will be substituted with the ECR determined by Order dated 26.03.2025, which includes all the components thereof.

- 8.24 Furthermore, the Respondent/HPPC in garb of the Reply dated 24.07.2025, is indirectly seeking a review of the Order dated 02.06.2025, which cannot be permitted by this Hon'ble Commission since the Petitioner has already withdrawn the Appeal and has changed its position to its detriment relying upon the understanding as recorded in the Order dated 02.06.2025 and it cannot at this stage be allowed to divert from the understanding by this Hon'ble Commission.

- 8.25 In view of the above, this Hon'ble Commission may be pleased to substitute the ECR determined in the Order dated 13.04.2023 with the ECR determined in the Order dated 26.03.2025.

Re. Non-payment of tariff by Respondent/ HPPC by illegally restricting the quantum of electricity of 15 MW on every 15-minute time block.

- 8.26 That the Petitioner, since the commissioning of the Project, has been supplying to the Respondent/HPPC the whole power generated from its project. However, the Respondent/HPPC acting contrary to the provision as stipulated under the PPA and

the Regulations has been illegally restricting the quantum of electricity to be calculated for tariff payment to the extent of 15 MW on every 15- minute time block basis and therefore, has been withholding the payment of tariff on the energy, over and above 15 MW computed on every 15 Minute time block. Notably, the Respondent/HPPC, since the date of commissioning of the Project, has been paying the Petitioner short of invoices raised under the PPA. The said fact can be substantiated from the invoices raised by the Petitioner upon HPPC and the corresponding payment receipts annexed and the CA Certificate certifying the Payment receipts corresponding to each of the invoices for the period from September, 2021 till March 2025 annexed with the Additional Affidavit dated 08.04.2025, filed by the Petitioner.

- 8.27 That the action of the Respondent/HPPC by accepting power only up to 15 MW is legally and technically unfounded. The Power from the Project is generated in Units and not in MW terms, and therefore, in terms of the NTP 2016, the entire power generated by the Project is liable to be procured by the Respondent/HPPC. The Petitioner, through its Additional Affidavit dated 16.07.2025, has also attached the table which clearly indicates the energy in Million Units (MU) that are capable of being generated at 80 percent PLF and 100 percent PLF. The table also include the Exported Energy and the Energy considered by the Respondent/HPPC while making payments.
- 8.28 That Article 2.1.1 of the PPA provides that the Respondent/HPPC shall purchase 100% power generated up to the contracted capacity of 15 MW at the tariff stipulated under the terms of the PPA. Further, as stated in the preceding paragraphs, the National Tariff Policy, 2016, contemplates the offtake of all the energy generated, without any scope of restriction of capacity over time.
- 8.29 That the term used in the PPA is '*Contracted Capacity*' and not '*Contracted Energy*' thereby asserting that there cannot be any limitation on the energy offtake within the contracted capacity.
- 8.30 That there is no express provision under the PPA that stipulates the restricting of quantum of power injected up to 15 MW in 15 minute time slot and the concept of '*time block*' has only been used in the context of scheduling and not for determining the energy offtake whereas on the other hand the PPA provides for the monthly billing to be raised for computing the electricity supplied for the entire month, by way of joint meter reading. Hence, the concept of restricting the energy injection or billing based on a 15-minute time block basis does not arise.
- 8.31 That in term of the PPA, the Plant Load Factor has to be calculated on a monthly or annual basis and not on a 15-minute time block basis. If the argument of the Respondent/ HPPC for restricting the power on a 15-minute time block basis is accepted, then the said provision of the PPA would be contrary to the position being

taken by the Respondent/HPPC for limiting the generation of electricity to 15 MW on every 15-minute time block basis.

- 8.32 That Clause 11.3 of the PPA provides for the plant to run as a must-run plant as per the Regulations of this Hon'ble Commission and shall not be subject to the merit order dispatch principle. This Hon'ble Commission had also, while approving the PPA in Case No. HERC/PRO-45 of 2018 for the procurement of power from the generating station had granted 'must run' status to the petitioner project. Therefore, the question of power generated being restricted to any time block does not arise.
- 8.33 That the case of the Petitioner is *Pari-Materia* to the decision and the rationale rendered by this Hon'ble Commission in *M/s JBM Environment Management Pvt. Ltd. v. Haryana Power Purchase Centre and Anr.* Case No. HERC/Petition No. 48 of 2021. In view of the decision and rationale given in the said case, it is submitted that Clause 2.1 of the PPA must be construed with reference to the quantum of power injected by the Petitioner on an annual basis and not on a 15-minute time block basis.
- 8.34 That the restriction of energy supplied by the Petitioner on 15-minute time block basis by the Respondent/HPPC is misplaced and unsupported by either the PPA or the applicable regulatory framework, which collectively envisage the purchase of all energy generated from the contracted capacity.
- 8.35 That this Hon'ble Commission may be pleased to substitute the ECR determined through Order dated 13.04.2025 with the ECR determined through Order dated 26.03.2025 in terms of its Order dated 02.06.2025 and also pass directions that the restriction of energy supplied by the Petitioner on 15 minute time block basis by the Respondent/HPPC is illegal and technically unfounded and further direct the Respondent/HPPC to make payment of the amount wrongly withheld by it along with interest and not make such deductions in the future.

Commission's Analysis and Order

9. The Commission heard the arguments of the parties at length as well as perused the written submissions placed on record by them. The petitioner herein has claimed following three reliefs:-
- a. Re-determination of the Fuel Cost: The Petitioner, relying upon the order dated 26.03.2025 issued by this Hon'ble Commission in HERC/Petition No. 01 of 2025, wherein the fuel cost for FY 2024-2025 was determined, has sought that the fuel cost be re-determined, at least to the tune of INR 5.33/kWh, for the Petitioner's project, as against the fuel cost actually being paid to the Petitioner i.e. Rs. 3.60/kWh (in the year of COD i.e. FY 2021-22), with year-on-year escalation @ 2.93 percent on this base Tariff.

- b. Payment of special incentive over and above any ceiling tariff: The Petitioner has further sought that the Answering Respondent be directed to pay the special incentive in terms of the order dated 26.03.2025, over and above the ceiling tariff determined by the Hon'ble Commission for the Petitioner's project.
 - c. Not to restrict the quantum of generation 15 MW on every 15 minute time block: The Petitioner, while alleging, that the Answering Respondent had wrongly withheld payments by restricting the quantum of generation of 15 MW on every 15 minute time block of the Petitioner's project, has sought that any such quantum restriction be removed.
10. The Commission has considered it appropriate to examine and decide each relief sought in the present lis, as under:-

Relief No. 1: Re-determination of the Fuel Cost:

Relief No. 2: Payment of special incentive over and above any ceiling tariff:

Relief No. 3: Not to restrict the quantum of generation 15 MW on every 15 minute time block:

After hearing the learned counsels for the parties and going through the record of the appeal, the findings of the Commission on the reliefs so sought, are as under:-

10.1 Relief No. 1: Re-determination of the Fuel Cost:

The proposal to procure power from 100% Paddy Straw-based Biomass power Project with an installed capacity of 15 MW in Kaithal, Haryana was selected under Request for Proposal (RfP) floated by Haryana New and Renewable Energy Department (HAREDA), based on the tariff to be decided by the Commission subject to ceiling tariff of Rs. 8/kWh as reduced by the discount of Rs.0.73/kWh offered by the petitioner and as such, effective ceiling tariff remained as Rs.7.27/kWh. The issue of applicability of ceiling tariff of Rs. 8/kWh, has been contested by the petitioner in appeal (No. 348 of 2019) filed before Hon'ble Appellate Tribunal for Electricity (APTEL).

The Project was commissioned on 16.09.2021 i.e. in the FY 2021-2022. The Commission, vide its order dated 26.10.2020 (Petition No. PRO-27 of 2020), allowed a tariff towards Fuel Cost/Variable Cost/ECR as Rs. 2.62 per kWh (for the first year), as against the extant fuel cost of Rs. 5.58/kWh determined for the FY 2019-20 & FY 2020-21, in the generic tariff order dated 20.12.2019 issued by this Commission (PRO No. 53 of 2019 -Suo moto). Accordingly, aggrieved by the order of this Commission, the petitioner filed an appeal before Hon'ble APTEL. Hon'ble APTEL, vide its order dated 18.02.2022 (Appeal No. 35 of 2021), observed as under:

"8. In our considered view, it will be appropriate that the Commission revisits the impugned Tariff Order bearing in mind the above mentioned and other contentions of

the appellants qua the tariff determination exercise, there being seemingly a huge gap between the ceiling tariff as was reflected in the RfP and the tariff which has been determined in favour of the appellants, the generic Tariff Order dated 20.12.2019 also being at substantial variance.

9. In this view, with the consent of the parties that are present before us, we direct remit. Lest it be misconstrued, we have not expressed any opinion either way on any of the contentions or the possible counter-arguments in their context.”

The remand back proceedings were disposed off by this Commission vide its order dated 13.04.2023 (Petition No. 21 of 2022), with the slight revision in the fuel cost from Rs. 2.62 per kWh (for the first year) to Rs. 3.60 per kWh (for the first year). The levelized tariff was determined as Rs. 7.11/kWh. Aggrieved against the ibid order of the Commission, the petitioner had filed an appeal before Hon'ble APTEL vide Appeal no. 561 of 2023, wherein all the parameters considered while determining the tariff in the order dated 13.04.2023 have been challenged viz. capital cost, GCV, SHR, Fuel cost and Debt:Equity Ratio.

Subsequently, this Commission, vide its order dated 26.03.2025, had determined the fuel cost/ECR/Variable cost, for various technologies of biomass/bagasse/biogas, including paddy straw based power plants, w.e.f. 01.04.2024. The Fuel Cost/ECR/Variable cost for the FY 2024-25, in respect of '100% paddy straw based Air Cooled biomass TG boiler power plant' was determined at Rs. 5.33/kWh, in order to align the same to market dynamics; whereas, the petitioner is being paid the ECR @ Rs. 4.12/kWh for the FY 2024-25. In order to maintain parity and to avoid apparent discrimination, the petitioner approached this Commission to align the fuel cost of the project with the market dynamics at least to the tune of INR 5.33/kWh for the FY 2024-25 with annual escalation @ 2.93%, thereafter.

Per-contra, HPPC in its reply dated 21.05.2025 vehemently argued against the petition filed by the petitioner seeking re-determination of fuel cost which was determined under Section 62 specific to the power project of the petitioner after taking into project specific parameters such as SHR, GCV and Fuel cost (Rs./MT). The respondent (HPPC) further argued that the matter is sub-judice before Hon'ble APTEL; therefore, the matter may be kept in abeyance until final adjudication of the said appeal or in the alternative, the Petitioner may be directed to withdraw the aforesaid appeal before the Hon'ble APTEL, in order to avoid parallel proceedings and prevent the possibility of conflicting decisions on the same issue.

The Commission heard the parties at length on 02.06.2025 as well as perused the written submissions placed on record by them. Accordingly, the following order dated 02.06.2025, was issued:-

“Upon hearing the parties, the Commission is of the considered view that substituting the ECR determined under Section 62 of the Electricity Act, 2003 with the levelized ECR determined by the Commission in its order dated 26.03.2025 (Petition No. 1 of 2025), can be considered as a one-time measure which shall not be taken as a precedence, in order to settle the long ongoing dispute between the parties and to take a balanced view in the matter, which will be in the nature of compromise settlement. Therefore, as desired by the respondent, the petitioner is directed to file the followings within three week from the date of issue of this order, with copy to the respondent:-

- a) To withdraw the appeal filed before APTEL (Appeal no. 561 of 2023) against the tariff determined by this Commission and file an affidavit to this effect.*
- b) To file an affidavit that the year to year tariff determined in the present petition by substituting the ECR determined in the order dated 13.04.2023 (Petition No. 21 of 2022) with the ECR determined by the Commission in its order dated 26.03.2025 (Petition No. 1 of 2025) w.e.f. 01.04.2024 with escalation factor @ 2.93% for subsequent years, after deducting the discount of Rs. 0.71 per unit and subject to the ceiling tariff of Rs. 8 per unit, shall be final for all the times to comes and shall not be reopened during the remaining useful life of the project. However, the issue of ceiling tariff of Rs. 8 per unit shall be subject to the outcome of a separate appeal no. 348 of 2019 pending before Hon’ble APTEL, wherein the present petitioner is the respondent.*

.....”

In compliance of the ibid order of the Commission dated 02.06.2025, the petitioner has withdrawn the Appeal No. 561 of 2023, which was allowed by Hon’ble APTEL, vide its Order dated 11.07.2025. The petitioner has also filed the requisite affidavit dated 14.07.2025 to accept and acknowledge that the year to year tariff determined for the Petitioner by substituting the ECR /fuel cost/ variable cost determined in the order dated 13.04.2023 (Petition No. 21 of 2022) with the ECR/ fuel cost/variable cost determined by the Commission in its order dated 26.03.2025 (Petition No. 1 of 2025) w.e.f. 01.04.2024 with escalation factor @ 2.93% for subsequent years, after deducting the discount of Rs. 0.73 per unit and subject to the ceiling tariff of Rs. 8 per unit, shall be final for all the times to comes and shall not be reopened during the remaining useful life of the project. However, the ceiling tariff of Rs. 8 per unit shall be subject to

outcome of a separate Appeal no. 348 of 2019 pending before Hon'ble Appellate Tribunal, wherein the Petitioner herein has been arrayed as a respondent.

Consequent upon the withdrawal of the Appeal by the petitioner filed before Hon'ble APTEL, the respondent (HPPC) in its reply dated 24.07.2025, submitted that it is only the fuel cost (Rs./MT) which is required to be substituted and not the entire ECR/variable cost which comprises of SHR also. The ECR/Variable cost has been determined for the FY 2024-25 considering the SHR of 4200 Kcal/kWh, as against the project specific determination of the same at 3410 Kcal/kWh. The substitution of entire ECR/Variable cost including SHR shall entail unjust enrichment of the Petitioner and it will not be a balanced compromise settlement.

The Commission is of the considered view that in so far as tariff determination is concerned, Section 61 of the Electricity Act, 2003 vests the State Electricity Regulatory Commission, with the power to specify the terms and conditions for determination of tariff, guided by the factors enumerated therein under Clauses (a) to (i). Safeguarding of consumers' interest is one such factor but promotion of co-generation and generation of electricity from renewable sources of energy is also a factor. Section 62 of the Act of 2003 deals with determination of tariff. It states that the Appropriate Commission shall determine the tariff in accordance with the provisions of the Act of 2003 for supply of electricity by a generating company to a distribution licensee. Section 64 enables a generating company or licensee to apply to the Appropriate Commission for determination of tariff under Section 62. A detailed procedure is prescribed thereunder as to how the Commission would then go about dealing with such an application. Once the Commission issues a tariff order upon such an application, Section 64(6) provides that such tariff order, unless amended or revoked, shall continue to be in force for such period as may be specified in the tariff order. The functions of State Electricity Regulatory Commissions, such as the HERC, are set out in Section 86 of the Act of 2003. Section 86(1)(a) empowers the Commission shall determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State. Section 86 (1)(b) provides that the Commission shall 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. The project specific tariff determination under Section 62 of the Electricity Act, 2003, ought not to escape the rigor of prudence check. In doing so, this Commission as a regulatory

body, is also mindful of its duties towards promoting of generation of electricity from renewable energy sources and protection of investment by electricity generators in the State. The tariff under Section 62 of the Electricity Act, 2003 is a cost-plus tariff i.e., the tariff is to necessarily compensate the generating company for the cost incurred towards generation. The Commission tends to agree with the arguments advanced by the petitioner that in project specific tariff determination under Section 62, the Commission can exercise its prudence check on the aspects of truthfulness and wrong claim made by the petitioner, if any. There might be endless probabilities of some other big market player buying something at even cheaper rate. The Commission has considered the submissions of the petitioner that in case such an approach is adopted in tariff determination under Section 62, the petitioner will never be able to recover the actual cost incurred and ultimately will go in bankruptcy. In tariff determination under Section 62, a certainty is assured to the project developer regarding recovery of its actual cost. In case of selection of bidder under Section 63, the petitioner would have quoted its tariff based on its actual cost and it would have been open for the procurer to accept the same. Whereas, under Section 62, denying actual cost incurred on the pretext of cost of procurement of some other project developer is unjustified; however, the actual cost incurred by the project developer should pass the test of reasonability and rigorous of prudence check.

The Commission, thereafter, dealt with the issue as to whether the petitioner herein has the right to exercise to approach this Commission under Sections 86(1)(a), 86(1)(b) and 86(1)(f) read with Section 94 of the Electricity Act, 2003, to align the tariff determined under Section 62 of the Electricity Act, 2003, with the market aligned tariff determined by the Commission in its subsequent order citing huge disparity between the tariff granted to the petitioner and the generic tariff determined by the same Commission. The Commission has examined the extant provisions, reproduced hereunder:

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

- a. determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:*

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

- 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 agreements for purchase of power for distribution and supply within the State;

c.

d. ...

e. ...

f. adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration;

.....”

“94. (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) discovery and production of any document or other material object producible as evidence;

(c) receiving evidence on affidavits;

(d) requisitioning of any public record;

(e) issuing commission for the examination of witnesses;

(f) reviewing its decisions, directions and orders;

(g) any other matter which may be prescribed.”

The examination of the above provisions explicitly exhibits that the Commission is vested with the statutory authority of determination of tariff, regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured as well as to adjudicate upon the disputes between the licensees and generating companies. Therefore, the specific relief sought needs to be evaluated in a wider perspective of natural justice and in order to settle the ongoing litigations.

The Commission has perused that the petitioner had claimed the following reliefs from Hon'ble APTEL in its appeal no. 561 of 2023, on the basis of actuals:-

Particulars	Approved by the Commission	Claim of the petitioner on the basis of actual	Remarks
Capital Cost	97.8 crore (@ normative Rs. 6.52 Crore/MW)	156.90 crore (@ 10.46 crore/MW)	Actual capital cost claimed by the petitioner was restricted to the extent of norms specified in the Regulations, without any adverse findings.
Station Heat Rate (SHR)	3410 kCal/kWh	4200 kCal/kWh	SHR restricted on the basis of DPR and guarantee given by the

			vendor, disregarding the actual SHR given by the petitioner which was in the range of 4151-4727 kCal/kWh.
Gross Calorific Value (GCV)	3100 kCal/kg	2600 kCal/kg	Actual GCV claimed by the petitioner was restricted to the extent of norms specified in the Regulations, without any adverse findings.
Weighted Average Fuel cost	Rs. 2881.42/MT	Rs. 3606/MT	Actual fuel cost was disregarded
O&M expenses	Escalation allowed @ 2.93%	Escalation claimed @ 5.73%	

In view of the above and in order to take a balanced view in the matter, the Commission considered it appropriate to allow the petitioner substituted ECR (comprising of weighted average fuel cost, SHR, GCV) determined by the Commission in its order dated 26.03.2025 (Petition No. 1 of 2025) with the ECR determined in the order dated 13.04.2023 (Petition No. 21 of 2022), w.e.f. 01.04.2024 and the petitioner will withdraw its claim pending in proceedings before Hon'ble APTEL, as a one-time measure which shall not be taken as a precedence, in order to settle the long ongoing dispute between the parties.

In compliance of the same, the petitioner has already withdrawn the appeal (Appeal no. 561 of 2023) pending before Hon'ble APTEL and filed the requisite affidavit also. At this stage, it is not open for the HPPC to argue that the impact on the resultant tariff will be higher than the claims foregone by the HPPC. HPPC should be mindful of the fact that the petitioner has foregone its claim on higher fuel cost as well as capital cost, which might have been gone either way.

In view of the above discussion, the Commission decides that the ECR determined in the order dated 13.04.2023 (Petition No. 21 of 2022) shall be substituted with the ECR determined by the Commission in its order dated 26.03.2025 (Petition No. 1 of 2025) w.e.f. 01.04.2024 with escalation factor @ 2.93% for subsequent years, after deducting the discount of Rs. 0.73 per unit from the revised year to year tariff and subject to the ceiling tariff of Rs. 8 per unit, shall be final for all the times to comes and shall not be reopened during the remaining useful life of the project. However, the issue of ceiling tariff of Rs. 8 per unit shall be subject to the outcome of a separate appeal no. 348 of 2019 pending before Hon'ble APTEL, wherein the present petitioner is the respondent. The revised year to year tariff, applicable w.e.f. 01.04.2024, shall be as under:-

YEARS	Fixed cost (Rs/kWh)	Fuel Cost (Rs/kWh)	Total Tariff (Rs/kWh)
24-25	2.61	5.33	7.94
25-26	2.59	5.49	8.07

26-27	2.56	5.65	8.21
27-28	2.54	5.81	8.35
28-29	2.52	5.98	8.50
29-30	2.50	6.16	8.66
30-31	2.48	6.34	8.82
31-32	2.46	6.53	8.99
32-33	2.45	6.72	9.17
33-34	2.43	6.91	9.35
34-35	2.22	7.12	9.33
35-36	2.26	7.33	9.59
36-37	2.31	7.54	9.85
37-38	2.35	7.76	10.11
38-39	2.40	7.99	10.39
39-40	2.45	8.22	10.67
40-41	2.50	8.46	10.97

However, since the tariff has been revised, under compromise settlement, as a one-time measure, on the prayer and affidavit of the petitioner, effective from a retrospective date i.e. w.e.f. 01.04.2024, HPPC shall not be liable to pay interest on the bill for the differential amount to be raised by the petitioner, in case payment is made by HPPC within 30 days from the date of its receipt in the HPPC. However, in case of delay in the payment of differential tariff beyond the allowed period of 30 days, HPPC shall be liable to pay late payment surcharge @ 1.25% per month as per Article 3.7 of the duly executed PPA between the parties.

10.2 **Relief No. 2: Payment of special incentive over and above any ceiling tariff:**

The Commission has closely examined the prayer of the petitioner to allow special incentive in terms of the order dated 26.03.2025 over and above the ceiling tariff.

Per-contra, HPPC has submitted that no incentive is liable to be granted to the Petitioner as any excess generation by the developer over and above its normative PLF is already an incentive for the developer. Since, at normative PLF, all the fixed costs are recovered by the generator and the applicability of the order dated 26.03.2025 to the Petitioner's project already stands rejected by the Commission.

In order to examine the issue raised by the petitioner, the Commission has considered it appropriate to examine the relevant part of the order dated 26.03.2025, reproduced hereunder:-

"A special incentive of Rs. 0.50/unit and Rs. 1/- per unit, over and above the tariff of fuel cost (Rs./kWh) determined above for 80% PLF, is applicable to paddy straw based power projects, for the annual generation achieving PLF between 80% to 90% and 90% to 100%, respectively. This incentivized tariff shall be applicable for additional generation achieved above the normative level of 80%."

Further, in the ibid order dated 26.03.2025, while addressing the similar arguments taken by HPPC, the Commission has decided as under:-

“Commission’s view

The Commission has examined the submissions of HPPC and agrees with their submissions that at normative PLF, all the fixed cost is recovered by a generator for its power plant. The Commission has already considered this and has allowed only the fuel cost for the paddy straw-based power generation beyond 80% PLF. The Commission is of the considered view that any excess generation by a developer over and above its normative PLF does not incentivize the developer to produce more, as the generator is able to recover only the actual cost incurred for excess generation as the generator is allowed to recover only the fuel cost.....”

Thus, the Commission in its ibid order has already clarified that the incentive shall be applicable in those case where two-part tariff is applicable i.e. recovery of fixed cost is allowed upto 80% PLF and PLF achieved beyond that only the fuel cost/ECR/variable cost is payable.

In the present case, the petitioner has been allowed single tariff comprising of fixed as well as variable cost in respect of energy supplied to HPPC. Therefore, the petitioner is already incentivised in form of higher fixed cost for energy generated beyond 80% PLF.

In view of the above discussion, the Commission decides that special incentive specified in the order dated 26.03.2025 is not admissible to the petitioner.

10.3 Relief No. 3: Not to restrict the quantum of generation 15 MW on every 15 minute time block:

The Commission has closely examined the prayer of the petitioner to allow refund of amount wrongly withheld by the respondent (HPPC), by restricting the quantum of generation of contracted capacity i.e. 15 MW on every 15 minute time block, in absence of any provision to this effect under the Electricity Act, Rules framed thereunder or Power Purchase Agreement. The National Tariff Policy 2016 (NTP, 2016), provides that the Distribution Companies (HPPC) are required to offtake 100 percent energy generated by Waste-to-Energy Projects. Ministry of New and Renewable Energy (Waste to Energy Division), Government of India (MNRE), in its memo dated 28.02.2020 has issued guidelines for promotion of waste to energy programmes which includes programme on energy from Agricultural Wastes.

Per-contra, HPPC has submitted that as per Article 2.1.1 of the Power Purchase Agreement (PPA), executed between the parties, HPPC is obliged to accept power only upto 15 MW as converted into kWh, which is the ceiling limit in each 15 minute time block and is also an essential element of energy recorded in the grid of the state, as per Haryana Grid Code Regulations, 2009 ('HGC, 2009'). The reliance made by the Petitioner on the order of this Commission dated 11.05.2022, in the case of M/s JBM Environment Management Pvt. Ltd. Vs. Haryana Power Purchase Centre & Anr. [HERC/ Petition No. 48 of 2021], is not applicable to the biomass power project of the petitioner. In the case cited by the petitioner, the issue involved was in respect of MSW (Municipal Solid Waste) based power plant. The nature of operation of a MSW plant is such that the quantum of energy generated varies based on the input fuel as available from time to time.

In order to examine the issue raised by the petitioner, the Commission has considered it appropriate to examine the relevant clauses of the PPA, NTP 2016, MNRE memo dated 28.02.2020, HCG, 2009, as well as this Commission's order dated 26.03.2025 (HERC/ Petition No. 48 of 2021). The extract of the relevant references are reproduced hereunder:-

The relevant clauses of the PPA dated 22.02.2019, duly executed between the parties, provides as under:-

"ARTICLE-1

DEFINITION AND INTERPRETATIONS:

...

10) *"Contracted Capacity" means the energy offered for sale to, which shall be 15 MW.*

...

13) *"Delivered Energy" means the kilowatt Hours of electricity actually fed into Grid system and measured by energy meters at Delivery Point in a billing period.*

...

33) *"Monthly Energy Charges" means the charges payable by the HPPC/DISCOMs for the energy delivered at the metering point for the billing period at applicable tariff.*

ARTICLE-2

ENERGY PURCHASE AND SALE

2.1 Sale of Energy by Seller:

2.1.1 *The HPPC after declaration of commercial operation shall purchase and accept all such electrical energy up to 15 MW delivered at the interconnection point from the Seller's facility, pursuant to the terms and conditions of this agreement at tariff determined by the Commission and amended from time to time. The IPP i.e. seller along with all relevant documents shall file a tariff petition in the Commission for determination of Tariff.*

2.1.2 No additional payment whatsoever may be on any account shall be payable by HPPC except those approved by appropriate commission/ court of law.

ARTICLE-3

BILLING PROCEDURE AND PAYMENTS

3.1 The designated representatives of the parties shall record joint readings of the meters at interconnection point at 12.00 Hours on the first (1) day of every calendar month and at 12:00 Hours on the dates the change of tariff becomes effective. Concerned AEE/AE 'Operation' Sub Division in whose area the plant is situated shall take joint meter reading on behalf of the DISCOM.”

From the examination of the above, it is apparent that although the ‘Contracted Capacity’ is 15 MW, but, the ‘Delivered Energy’ in respect of which HPPC is liable to pay ‘Monthly Energy Charges’ is the kilowatt Hours (kWh) of electricity actually fed into Grid system and measured by energy meters on monthly basis i.e. on 1st of every calendar month. Thus, PPA does not contain any explicit provision to restrict the generation of the petitioner to the energy produced in kWh by its 15 MW power plant in 15 minutes time slot.

Clause 6.4 of the National Tariff Policy, provides as under:-

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

(1) Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall be taken into account while determining tariff by SERCs. Long term growth trajectory of Renewable Purchase Obligations (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.

.....

(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.”

Thus, NTP, 2016 provides that HPPC is bound to procure 100% power produced by Waste-to-Energy power plant in the State. Further, MNRE, in its revised guidelines of

Waste to Energy Programme, issued vide F.No. 20/222/2016-17-WTE dated 28.02.2020, has recognised Energy produced from Agricultural Waste. The objectives of the ibid guidelines is reproduced hereunder:-

“1. Objective

The main objectives of the Programme are as follows:-

a. To promote setting up of projects for recovery of energy in the form of Biogas/BioCNG / Power from Urban, Industrial and Agricultural Waste and Captive Power and Thermal use through Gasification in Industries

b.....”

In line with the provisions in NTP, 2016, the power plants of the petitioner have been given a special status of ‘Must-Run’ i.e. HPPC is never allowed to restrict the energy injected by the petitioner.

HCG, 2009, provides as under:-

2. Definitions

(107) ‘Time Block’: Block of 15 minutes each for which special energy meters record specified electrical parameters and quantities with first Time Block starting at 00.00 Hrs.”

5.14.3 Monitoring Procedure

(a)...

...

(e) SGSs (excluding CGPs) shall provide to SLDC 15-minute block-wise generation summation outputs where no automatically transmitted metering or SCADA/RTU equipment exists. CGPs shall provide to SLDC 15-minute details of block-wise export / import of MW and MVar;

5.6 DEMAND ESTIMATION FOR OPERATIONAL PURPOSES

(a) SLDC shall develop methodologies/mechanisms on the basis of the data submitted by generation company(s) and distribution companies for daily, weekly, monthly and yearly demand estimation (MW, MVar and MWh) for operational purposes. The data for the estimation shall also include load shedding, power cuts, etc. SLDC shall also maintain historical database for demand estimation.

(b) Distribution companies and other agencies involved in bilateral exchanges shall provide to the SLDC their estimates of demand/export for active power (MW), reactive power (MVar) and energy consumption (MU) at each connection / external interconnection point on daily, weekly and monthly basis as per the formats to be

finalized by SLDC. The distribution companies shall intimate to the SLDC the methodology used in producing their forecasts.

(c) The SLDC shall use this data

(i) to determine the generation schedule for next day;

(ii) to determine the most onerous conditions affecting constraints and voltage performance for next week;

(iii) to check outage plan viability for peak and lean periods for next month.

(d) (i) The data shall be in the form of 96 blocks (15 minutes period) averaged demand figure for that day, weekly and monthly data shall be in the form of 24 hourly averaged demand figures for that week/month and yearly data shall be in the form of month wise energy requirement for the year. All the above data shall be in respect of each inter-connection point;

Xxxxx

(viii) SLDC shall maintain a database of State demand on a 15 minutes basis;

6.5 TARIFF METERING

6.5.1 The generating companies, CGPs, the transmission licensees and the distribution licensees and EHV consumers who intend to use open access provisions would need to install the meters suitable for Availability Based Tariff (ABT) at inter-utility exchange points which would record the parameters in accordance with the Central Electricity Authority Regulations on installation and operation of meters read with its amendment, if any.

xxxxxxx

6.5.8 In case of State transmission lines, meters suitable for Availability Based Tariff shall be provided having the following parameters:-

(a) net active energy import/ export for each 15 minute time block of the day;

(b) net reactive energy import/ export for the day above 103% of voltage;

(c) net reactive energy export/ import when voltage is below 97%;

(d) cumulative active energy export/ import;

(e) average frequency for each 15 minute time block of the day;

(f) provision of storage of data in non-volatile memory for at least 35 days.”

Thus, HGC, 2009 provides that the energy recorded for all injection into the grid has to be considered in a 15 minute time block, which when aggregated for all the time slots, gives the monthly entitled energy injection data. However, the significance of the same lies in continuous monitoring of all the injections and drawn for the overall grid security. It is on this context that Clause 4.9 (d) of HGC, 2009, provides that each generating unit shall be capable of instantaneously increasing output by 5% when the

frequency falls, limited to 105% MCR, ramping back to the previous MW level (in case the increased output level cannot be sustained) shall not be faster than 1% per minute. As has been mandated by law of land i.e. the HGC, 2009, the generator is required to keep its generating capacity up to 105% MCR.

The Commission observes the present projects were conceived to curb the menace of paddy straw burning in the fields. The Commission has also considered the order of Hon'ble National Green Tribunal ("NGT") dated 10.12.2015 titled '*Vikrant Kumar Tongad v. Environment Pollution (Prevention & Control) Authority and Ors.*', wherein taking cognizance of the environmental hazardous agriculture residue burning, following directions were issued:-

".....

b. All these State Governments and NCT Delhi shall immediately take steps to educate and advise the farmers through media, Gram Panchayats and Corporations that crop residue burning is injurious to human health, causes serious air pollution and is now banned or prohibited by law. They shall also be educated that the agriculture residue can be extracted and utilized for various purposes including manufacturing of boards, fodder, rough paper manufacturing and as a raw material for power generation etc.

.....

h. Every State will provide Machines, Mechanism and Equipments or its cost to the farmers to ensure that agricultural residue in the field in these states are removed, collected and stored at appropriate identified sites in each district.

** Such equipments like happy seeders would be provided to small farmers having land area less than 2 Acres free of Cost.*

** For the farmers possessing area of more than 2 Acres but Less than 5 Acres, the cost for such machines is to be Rs. 5000/-.*

** For land owners having land area more than 5 Acres the cost for such machines is to be Rs. 15,000/-.*

These costs are for each crop growing season only once.

i. We hereby direct and prohibit agricultural residue burning in any part of the NCT of Delhi, State of Rajasthan, State of Punjab, State of Uttar Pradesh and State of Haryana.

.....

n. The District Magistrates shall further ensure from the Gram Panchayat that farmers are educated by holding special program of public hearing, circulating pamphlets and by practically demonstrating to the farmers the amount of pollution caused and consequential harm to public health, including that of their children from agricultural

residue burning in open, as well as the possible ways for disposing agricultural crop residue by even providing benefit in terms of money. In some of the policies declared by the States, even some incentive and aid can be provided. Let the States implement this with greater sincerity and effectiveness.

m. We hereby direct all the State Governments and the Pollution control Boards should ensure that small land holding farmers are provided with the aid and machines for extracting agricultural crop residue in their respective fields and transport them to the designated sites in the respective districts where either it is used as a fuel in the plants or it is used for manufacturing of Straw/Fiber Boards and it can also be converted into a manure wherever it is possible.”

Thus, it is imperative that environmentally benign paddy-straw based power plants are promoted to consume maximum paddy straw in order to prevent its burning in the fields. Therefore, in case an existing power plant is capable of generating up to a level of 105% MCR in certain time blocks, it should be allowed.

The Commission in its order dated 26.03.2025 (HERC/ Petition No. 48 of 2021), while dealing with the similar matter pertaining to ‘Waste to Energy’ power plant granted ‘Must-Run Status’, in the case of M/s. JBM Environment Management Pvt. Ltd. v. Haryana Power Purchase Centre and Anr. , held as under:-

“The Commission observes that the power plant of the petitioner is a “Must Run” plant and covered under Regulation 10 (1) of Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 (HERC RE Regulations, 2021), reproduced hereunder:-

“10. Despatch principles for electricity generated from Renewable Energy Sources. – (1) All renewable energy power plants, except for Biomass power plants of installed capacity 10 MW and above, shall be treated as ‘MUST RUN’ power plants. Biomass power with installed capacity of 10 MW and above shall be subjected to scheduling and dispatch as specified under Haryana Grid Code and other relevant regulations including amendments thereto.”

The Commission has considered the objection raised by the department of Urban Local Bodies (ULB) that acceptance of all the energy generated by the Waste-to-Energy plant will entail additional financial burden on them. Urban Local Bodies are vested with an array of functions entrusted upon them by the State Government. These

functions broadly relate to public health, social welfare, public safety, public infrastructure works, and development activities. The more numbers of such Waste-to-Energy projects will not only augment RE power which is counted towards fulfilment of RPO in the Haryana Discoms, but also ensure better waste management and provide relief to the society at large from the legacy heaps of waste which is a health hazard for the entire city. Further, the generator cannot be denied the benefits of generation of power by burning solid waste on the ground of financial burden on a body whose main function is social welfare. Therefore, the objection of additional financial burden raised by ULB is devoid of merits and is rejected as such.

The importance of promoting MSW power projects from environmental and public health point of view, cannot be undermined. It is all the more necessary to give boost to the “Swachh Bharat Mission (SBM)” of Government of India through conversion of waste to energy in the most environment friendly manner.

Therefore, given the provisions of National Tariff Policy, 2016, variability of power generation by Waste-to-Energy plants depending on the nature and characteristics of fuel fed and associated objective of such projects viz. management and disposal of municipal waste, the interpretation of the PPA which mentions that HPPC to accept all such electrical energy up to 6.77 MW, has to be construed with reference to the quantum of power injected by the generator on an annual basis. Such dispensation i.e. reckoning with the contracted capacity on an annual basis shall also allay the fear of respondent no. 2 i.e. ULB that they will have to bear additional financial burden in the case the petition is allowed by this Hon’ble Commission.

The petitioner has also raised the issue of late payment surcharge in terms of Article 3.7 of the PPA on the differential amounts payable, even though the petitioner has issued credit notes on its own, accepting such adjustment for the period from August 2021 to December 2021. Admittedly, as established by the respondent i.e. HPPC, the petitioner has not raised any dispute at the contemporaneous time and also issued credit note without raising any dispute. Further, the Commission tends to agree with HPPC that the late payment surcharge cannot be levied on the amount which becomes payable to the generator, by way of relief granted by the Commission as a special dispensation. HPPC is directed to grant necessary adjustment within 30 days from the date of this order, failing which, late payment surcharge as provided under Article 3.7 of the PPA shall become applicable.”

In view of the above discussion, the Commission is of the considered view that it is a fit case to maintain parity with the decision of this Commission dated 11.05.2022 (HERC/ Petition No. 48 of 2021), in the matter of M/s. JBM Environment Management Pvt. Ltd. v. Haryana Power Purchase Centre and Anr. Accordingly, the decision given in the ibid case shall be applicable, mutatis-mutandis, in the present case i.e. HPPC to accept all such electrical energy up to 15 MW, has to be construed with reference to the quantum of power injected by the generator on an annual basis. HPPC is directed to grant necessary adjustments of the energy injected by the petitioner, since the date of CoD, within 30 days from the date of this order, failing which, late payment surcharge as provided under Article 3.7 of the PPA shall become applicable.

11. The present petition is disposed of in terms of the above order.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 13.08.2025.

Date: 13.08.2025
Place: Panchkula

(Mukesh Garg)
Member

(Nand Lal Sharma)
Chairman