

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

HERC/Petition No. 24 of 2024

Date of Hearing : 24.07.2024
Date of Order : 26.07.2024

In the Matter of

Petition seeking determination of Fuel Cost for Biomass based Renewable Energy power plants for FY 2024-25, on the basis of independent State specific study considering all relevant factors regarding prevailing market conditions including all incidental costs related thereto, under Sections 61, 62 and 86(1)(a) & (b) of the Electricity Act, 2003 read with Regulation 9(1) 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

Petitioner

M/s. Star Wire (India) Vidyut Pvt. Ltd.

Respondents

1. Haryana Power Purchase Centre, Panchkula (HPPC)
2. HAREDA

Present on behalf of the Petitioner

1. Shri Buddy Rangnathan, Advocate
2. Shri Raukan Jain, Advocate
3. Shri Varun Todi, Director

Present on behalf of the Respondents

1. Ms. Sonia Madan, Advocate on behalf of HPPC

Quorum

Shri Nand Lal Sharma
Shri Mukesh Garg

Chairman
Member

ORDER

Brief Background of the case

1. M/s. Star Wire (India) Vidyut Pvt. Ltd. (SWIVPL) has filed the present petition seeking the determination of the fuel cost for biomass based Renewable Energy power plants for the FY 2024-25, on the basis of independent State specific study to be conducted by HAREDA and after considering objections and suggestions to the same.
2. The petitioner has sought determination of Fuel Cost for Biomass based Renewable Energy ["RE"] power plants for FY 2024-25, on the basis of independent State specific study considering all relevant factors regarding prevailing market conditions including all incidental costs related thereto, under Sections 61, 62 and 86(1)(a) & (b) of the Electricity Act, 2003 ["the Act"] read with Regulation 9(1) 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 ["HERC RE Regulations, 2021"].

3. **Petitioner's submissions:-**

- 3.1 That the Hon'ble Appellate Tribunal for Electricity ["APTEL"] vide its Judgement dated 23.03.2015 in O.P. No. 3 of 2012 issued certain directions to all the State Commissions, including the Respondent HERC, under Section 121 of the 2003 Act, for future, *inter-alia*, to determine the variable charges for biomass based power projects periodically on the basis of prevailing Biomass fuel price which may be fixed after carrying out a State specific study. The relevant directions are as under:-

"17. Accordingly, this Tribunal deems it appropriate to give the following directions to the State Commission for future determination of tariff for Biomass based power projects:-

*i) The State Commission shall determine two part tariff i.e. fixed and variable charges in respect of Biomass based power projects instead of single flat energy tariff. The fixed charges may be determined for the life cycle of Biomass power projects. **However the variable charges may be determined periodically on the basis of prevailing Biomass fuel price which may be fixed after carrying out a State specific study. The fuel price may be determined annually through an independent study.** Alternatively fuel price may be determined for the first year of the Control Period of say 2 to 3 years with percentage annual escalation linked to appropriate indices for the subsequent years of the Control Period. At the end of the Control Period, the fuel price may be re-determined for the first year of the next Control Period..."*

[Emphasis added]

- 3.2 The Commission in its Orders dated 27.01.2021 (HERC/PRO-50 of 2020 and HERC/PRO-51 of 2020, in the matters of M/s GEMCO and M/s Starwire) and 03.03.2021 (HERC/PRO-47 of 2020, in the matter of M/s Sri Jyoti), 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 added]

3.3 That on 30.04.2021, Hon'ble Commission notified the HERC RE Regulations, 2021. As per Regulation 9(1), the fuel cost component determined on annual basis under the regulations shall also apply prospectively to the projects commissioned during the previous Control Periods.

petitioner has challenged the constitutional validity and vires of the HERC RE Regulations, 2021 in CWP No. 1055-2022 (O&M) before the Hon'ble High Court of Punjab & Haryana and the same is presently pending adjudication.

In terms of Regulation 7(1) of the HERC RE Regulations, 2021-

“7. Petition and proceedings for determination of tariff. –

(1) The Commission shall determine the indicative tariff on the basis of suo-motu petition at least six months in advance at the beginning of each year of the Control period for renewable energy technologies for which norms have been specified under the Regulations.”

Further, as per Regulation 9(1) of the HERC RE Regulations, 2021-

“9. Tariff Design. –

(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.

The State Nodal Agency i.e. HAREDA shall collect the relevant data on fuel cost and submit the same to the Commission on a half yearly basis.”

3.4 In December, 2021 the Ld. HERC issued a draft discussion paper for determination of fuel cost 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 under the HERC RE Regulations, 2021 and invited comments /suggestions /objections from the public by 31.12.2021.

- 3.5 That the petitioner filed its comments/ suggestions/ objections to the draft discussion paper specifically pointing out that the alleged MDU Rohtak Report as referred to in the draft discussion paper had never been made available in the public domain and is therefore not a public document. No opportunity to rebut the contents of the said alleged report had been given to the stakeholders, including the petitioner and as such, it is squarely a violation of the sacrosanct principles of audi alteram partem.
- 3.6 That the HERC held an online public hearing on 05.01.2022 and heard the objectors, including the petitioner. HERC observed that HPPC had not yet filed its comments on the draft order. Vide its daily order dated 06.01.2022, HERC again granted an opportunity to HPPC to submit its views on the draft paper and the comments/response of various generators.
- 3.7 That on 21.01.2022, HPPC filed its comments on the draft discussion paper. In para 2 of the said comments, HPPC agreed with the petitioner and submitted before the HERC that:-
- “2. The Hon’ble Commission has relied upon a report of MDU Rohtak for determining the fuel cost for renewable projects in its draft Suo Moto order. **The authenticity of the facts and figures present in the said report are unknown. Also, the parameters considered and the background analysis made for the preparation of report has not been disclosed thereby making the report not worthy of any consideration.** Moreover, the report has not been shared in public domain despite specific provision of section 86 (3) of the Electricity Act 2003 which provides that that the Commission shall ensure transparency while exercising its powers and discharging its functions.”*
- [Emphasis added]
- 3.8 That on 21.03.2022, the Hon’ble Commission issued the tariff order in Case No. HERC/Petition No. 52 of 2021 for determination of fuel cost for renewable energy projects set up / to be set up in Haryana for FY 2022-23. In para 10 of the order, the Commission provided the fuel cost of biomass on the basis of weighted average cost of biomass and paddy straw mix in the ratio of 70:30, as Rs. 3313.94/MT (Rs. 0.7x3400 + 0.3x3113.14). The Commission in para 10 of the order stated as under:-*“10. In order to assist the Commission in assessing the quantum and delivered cost of paddy stubble and bagasse at the power generator’s site, in Haryana, a work order no. 502/HERC dated 18.05.2021 was issued to the MD University, Rohtak. MDU, Rohtak had submitted their final report, vide letter no. DAA-1668 dated 10.11.2021. On the basis of the report of MDU, Rohtak, the Commission proposed the cost of paddy straw as Rs. 3113.14/MT (square bale upto 25 KM) and cost of bagasse as Rs. 2,000/MT, for the FY 2021-22 and FY 2022-23 (without any escalation). Accordingly, the cost of*

biomass fuel determined on the basis of weighted average cost of biomass and paddy straw mix in the ratio of 70:30, will come out to Rs. 3313.94/MT (Rs. $0.7 \times 3400 + 0.3 \times 3113.14$).”

The said tariff order dated 21.03.2022 has been challenged by the petitioner before the Hon'ble APTEL in Appeal No. 609 of 2023. An appeal bearing Appeal No. 364 of 2023 has also been filed by HPPC against the said tariff order before the Hon'ble APTEL. Both the appeals are pending adjudication.

3.9 That on 30.03.2022, the petitioner preferred an RTI application with the Ld. HERC to obtain certain documents. In reply to the above, on 18.04.2022, the HERC supplied the information, including the MDU Rohtak Report dated 10.11.2021. The said Report titled “*Research/ Study for assistance of the Haryana Electricity Regulatory Commission (HERC) in assessing the quantum and delivered cost of paddy stubble & bagasse at the power generator's site”, is admittedly, confined to the suggestions on the cost of paddy stubble only, without reference to cost of other biomass fuels. Even assuming the Report to be genuine, the compulsory usage of paddy has been restricted to 30% of the Fuel Mix. For the remaining 70% cost of biomass fuel, there is no determination at all and no independent State specific study based on current market trends.*

3.10 That on 23.01.2023, the petitioner approached the Ld. HERC by filing a petition bearing Petition No. 8 of 2023, seeking directions for removing certain difficulties that arose in implementation of the Tariff Order dated 21.03.2022 for FY 2022-23. The Ld. HERC vide its order dated 20.03.2024 dismissed the petition as not maintainable.

It is stated that the present petition is seeking determination of fuel cost for FY 2024-25, hence, on a completely different cause of action.

3.11 That in the second half of FY 2022-23, the only two biomass projects approved by HAREDA were unable to procure the biomass at the cost provided by the Haryana Commission and the plants were shut down and could not operate at the rated PLF. Hence, petitioner sent letters and requests dated 25.04.2023, 06.07.2023 & 07.07.2023 to the Haryana Commission to conduct a detailed study to determine the appropriate biomass price for FY 2023-24 aligned to the prevailing market conditions and taking into account necessary factors such as distance of the power plant from the nearest paddy growing areas and transportation costs.

3.12 That vide its letter dated 20.07.2023, Ld. HERC replied to the above letters sent by the petitioner and stated that the Commission is a quasi-judicial body and follows

prescribed procedure. petitioner was directed to refrain from such filings which do not conform to the filing procedures.

- 3.13 That the Ld. HERC passed an ex-parte Tariff Order dated 28.07.2023 in Case No. HERC / Petition No. 40 of 2023 Suo Motu, *inter-alia* determining the Fuel Cost for renewable energy projects set up / to be set up in the State of Haryana for the FY 2023-24, on the basis of earlier Tariff Order dated 21.03.2022 for FY 2022-23.

petitioner filed a review petition bearing no. 8 of 2023 against the said *ex-parte* tariff order dated 28.07.2023 before the Hon'ble HERC. The Ld. HERC vide its order dated 20.03.2024 dismissed the review petition, *inter-alia*, on the grounds that there is no error apparent on record. petitioner reserves its remedies as available in law against the said order.

The present petition is seeking determination of fuel cost for FY 2024-25, hence, on a completely different cause of action.

GROUNDS:

- 3.14 That for the reason that as per Regulation 9(1) of the HERC RE Regulations, 2021, *inter-alia*, the 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*". Further, per Regulation 7(1), the Commission shall determine the indicative tariff on the basis of suo-motu petition at least six months in advance at the beginning of each year of the Control period for renewable energy technologies for which norms have been specified under the Regulations. Since no such determination has fallen thus far from this Hon'ble Commission, hence, the present petition is being filed by the petitioner.
- 3.15 That for the reason that second proviso to Regulation 38 of the HERC RE Regulations, 2021 relating to Fuel Cost for Biomass based Power Projects provides as under:-
"Provided that to gainfully utilize and thereby prevent burning of paddy straw / stubble in the farms, the Commission would endeavor to promote use of the same in the power projects. Hence, while determining fuel cost / GCV on a year to year basis applicable for the existing as well as to be commissioned biomass / bagasse power projects, appropriate price weightage could be considered. Designated Agency/HAREDA may provide the relevant data collected from the field on a half yearly basis for consideration of the Commission. However, the details of usage of paddy straw / stubble shall be certified by the IPPs and verified by HPPC based on the data emanating from the local authorities concerned."

In terms of the above, the GCV on a year to year basis is also required to be determined on as per data provided by HAREDA to this Hon'ble Commission for the purpose of "appropriate price weightage". Moreover, the actual fuel usage statements are already provided by the petitioner to HPPC and also provided as part of the present petition so that the GCV, as available from the data emanating from the local authorities, certified agencies, accredited laboratories, as concerned appropriate by this Hon'ble Commission, may be considered for providing appropriate price adjustment.

3.16 That for the reason that even assuming the MDU Rohtak Report to be genuine (which is in respect of cost of paddy stubble only), it is unjustified to place reliance on the said Report for fixing the cost of remaining 70% biomass fuel price other than paddy stubble, in the absence of any market based fuel study/ research conducted in the State, contrary to the to the directions issued by the Hon'ble Tribunal vide its Judgement dated 23.03.2015 in O.P. No. 3 of 2012.

3.17 That for the reason that as per Clause 13.1 (i) of the PPA dated 22.06.2012, the biomass power plant should be designed to utilize multiple fuels "available within the vicinity of the biomass power project". However, the MDU Rohtak Report does not consider that Paddy straw is not cultivated all over the State of Haryana and hence allocating 30% weightage to paddy straw for fuel cost determination would result in forcing plants to source biomass fuel from far-away places while ignoring the biomass available in the vicinity of the plants. The findings of the Ld. HERC in its Order dated 13.08.2014 on this specific issue may be taken note of:

"10. The Commission observes that in the case of biomass based RE projects availability of fuel at a reasonable cost is a critical issue. Hence HAREDA, while approving DPR for biomass based RE Projects, should ensure that a minimum distance of 50 KM is maintained between such projects. In its absence biomass based RE projects may become unviable vis-à-vis other non – solar RE projects due to the fact that the Commission has put a cap on the biomass fuel cost."

3.18 That for the reason that the MDU Rohtak Report takes into consideration the availability of paddy straw only in 12 districts of the State of Haryana (pg. 8 of the Report). The Report does not take into consideration Mohindergarh District where the present petitioner is located. The non-availability of Paddy straw in Mohindergarh District, Haryana is further evidenced from the biomass assessment studies conducted by HAREDA in April, 2010 (Table 15.4). Further, since paddy straw is not available in the vicinity of the plant, most projects have not considered the same at the time of design

of the plant. Hence, there is no study in respect of availability of biomass fuel within the vicinity of petitioner's power plant or even its district.

3.19 That for the reason that, FY 2023-24, petitioner procured NIL amount of Bagasse, primarily due to huge mismatch between the cost approved by the Hon'ble Commission and the prevailing market rates. In FY 2022-23, the petitioner could only manage to procure 1.20% of its total fuel consumption from Bagasse, that too at a net rate of Rs. 5025.43/MT (including the handling costs), which is more than twice the cost approved by the Hon'ble Commission for FY 2022-23 i.e. Rs. 2,000/MT as well as for subsequent FY 2023-24 (Rs. 2059/MT). The petitioner procured 1.99% Paddy of its total fuel consumption in FY 2023-24, that too at a net rate of Rs. 6434.36/MT (including handling costs), which is almost twice as compared to the cost of Paddy approved the Hon'ble Commission for FY 2023-24 i.e. Rs. 3204/MT.

3.20 That the average GCV assumed by the Hon'ble Commission for the Biomass plants (Air Cooled - TG, Biomass Mix) under the Tariff Order dated 21.03.2022 i.e. 3100/kCal is also not aligned to the actual GCV of the biomass fuels. Hence, the quantum of fuel required by the Biomass plants is much higher in order to produce the amount of heat, as compared to the assumptions by the Ld. HERC. This further has an adverse impact on the procurement costs of biomass fuels. The petitioner, in ordinary course of business, conducted regular sampling tests from certified and approved testing agency. The test results dated 30.12.2021, 14.02.2021 & 18.03.2022 of testing agency would show that the actual average GCV of 2380/kCal is observed for Bagasse with around 40-43% moisture content. Further, the test results dated 21.12.2021, 16.11.2022 & 20.09.2023 of testing agency would show that the actual average GCV of 2513/kCal is observed for Paddy with around 13-16% moisture content. It is clear from the above that the Ld. HERC has assumed far higher average GCV of biomass fuels than what is actually prevailing in the State.

3.21 The actual fuel consumption (quantum) of the petitioner for FY 2021-22 to FY 2023-24 is as under:-

SUMMARY OF ACTUAL FUEL CONSUMPTION (QUANTUM)						
FUEL TYPE	2021-22		2022-23		2023-24	
	Qty(Tonnes)	Fuel %	Qty (Tonnes)	Fuel %	Qty (Tonnes)	Fuel %
BAGGASSE	3320.53	3.97 %	792.49	1.20 %	0.00	0.00%
PADDY	1714.47	2.05 %	187.78	0.29 %	1942.81	1.99%
OTHER BIOMASS	78502.24	93.97 %	64802.31	98.51 %	95749.56	98.01%
TOTAL	83537.24	100.00%	65782.58	100.00%	97692.37	100.00%

3.22 The actual fuel costs (net rate) of the petitioner for FY 2021-22 to FY 2023-24 is as under:-

SUMMARY OF ACTUAL FUEL COSTS (NET RATE)					
FUEL TYPE	2021-22				
	Qty (Tonnes)	Amount Rs	Gross Rate Per MT	Handling Rs	Net Rate Per MT
BAGGASSE	3320.53	15813806.48	4762.43	308.10	5070.53
PADDY	1714.47	7938340.78	4630.20	308.10	4938.30

FUEL TYPE	2022-23				
	Qty (Tonnes)	Amount	Gross Rate Per MT	Handling	Net Rate Per MT
BAGGASSE	792.49	3710642.00	4682.23	369.94	5052.17
PADDY	187.78	1143820.75	6091.16	369.94	6461.10
FUEL TYPE	2023-24 (Sep 23)				
	Qty (Tonnes)	Amount	Gross Rate Per MT	Handling	Net Rate Per MT
PADDY	1942.81	9909343.61	5100.51	219.23	5319.74

- 3.23 The actual handling costs of the petitioner for FY 2021-22 to FY 2023-24 in relation to the biomass fuels is as under:-

Summary of Fuel Handling Cost					
S.NO.	PARTICULARS	2021-22	2022-23	2023-24	Total
1	MANPOWER CHARGES	1955316.00	1559166.00	2680752.50	6195234.50
2	VEHICLE EXPENSES	23189494.60	18126207.44	22818607.60	64134309.64
3	LAND, WEIGHING & SYSTEM COST	2641525.00	2891249.00	2518499.00	8051273.00
	TOTAL	27786335.60	22576622.44	28017859.10	78380817.14
	Handling Cost/MT of Biomass Fuel	332.62	343.20	286.80	

There were minor arithmetic errors in the data submitted by the petitioner in P.No. 8 of 2023 and RP No. 8 of 2023. While the figures regarding fuel cost and fuel consumption remain the same, the total has changed due to correction of arithmetic errors.

Hence, the petitioner has requested to conduct an extensive State specific study, considering the prevailing market conditions, availability of biomass fuels within the vicinity of the power projects (as per the terms of the PPA), including all incidental costs relating thereto, such as transportation, chipping, handling, loss in GCV of fuel, increase in SHR, and all other relevant factors for the purpose of determining the Fuel Cost for biomass plants for FY 2024-25.

- 3.24 That for the reason that, at present, the biomass power plants do not have a two-part tariff. Hence, the duty enjoined upon this Hon'ble Commission to determine a fair variable cost for the sustainability of renewable energy is vital, having following due process of law. It is evident that the cost of biomass fuel determined by HERC, on the single-sided submissions by HPPC, was arbitrarily fixed at Rs. 3000/MT subject to an escalation of 2.93% per annum for FY 2020-21. The said fixation is unrealistic, arbitrary, unreasoned and without any study, completely ignoring the fact that CERC, the Central Regulator determined the cost of biomass fuel for the very same State i.e. Haryana at Rs. 3786/MT subject to an escalation of 5% per annum for FY 2020-21; Rs. 3975.3/MT with escalation of 5% per annum for FY 2021-22; Rs. 4174.07/MT with escalation of 5% per annum for FY 2022-23; and Rs. 4382.77/MT with escalation of 5% per annum for FY 2023-24, on the basis of market studies. The examples of other States such as Andhra Pradesh, Maharashtra and Uttar Pradesh have no bearing on the actual cost of biomass in Haryana where the crop patterns and biomass availability are vastly different.

3.25 Cognate litigations between the parties –

- a) petitioner has filed a Writ Petition before the Hon'ble High Court of Punjab & Haryana, being CWP No. 25337 of 2015 (O&M) against certain provisions of the HERC RE Regulations, 2015, which is presently pending adjudication.
- b) The petitioner had earlier filed an appeal before the Hon'ble APTEL being Appeal No. 31 of 2014, for determination of project specific tariff. The aforesaid plea of the Appellant was not allowed by the Hon'ble APTEL vide its Judgement dated 02.09.2014 in Appeal No. 31 of 2014. Though the earlier appeal filed by the petitioner may not be relevant for the purpose of the present petition, it is submitted that, as a consequence, since the generic tariff alone is applicable in the case of the petitioner, it becomes even more relevant that the applicable generic fuel cost determined timely by the Hon'ble HERC, is market driven, based on identified parameters and not arbitrary.
- c) petitioner has filed a common appeal being Appeal No. 379 of 2023 (earlier DFR No. 41 of 2022) against the Order dated 27.01.2021 in Case No. HERC/PRO – 51 of 2020 and Order dated 22.12.2021 in Case No. HERC/RA-11 of 2021 passed by the Ld. HERC. A cross-appeal being Appeal No. 218 of 2022 (earlier DFR No. 132 of 2021) is also filed by Respondent HPPC before the Hon'ble Tribunal. Both the said appeals are tagged together and presently pending adjudication.
- d) petitioner has filed a Writ Petition before the Hon'ble High Court of Punjab & Haryana, being CWP No. 1055-2022 (O&M) against certain provisions of the HERC RE Regulations, 2021, which is presently pending adjudication.
- e) petitioner has filed an appeal before the Hon'ble APTEL being Appeal No. 609 of 2023 (earlier DFR No. 261 of 2022) against the Tariff Order dated 21.03.2022 passed by this Hon'ble Commission. Respondent HPPC has also filed an appeal bearing Appeal No. 364 of 2023 against the same Tariff Order, wherein HPPC has contended that the Ld. HERC erred in giving prospective application to the Tariff Order dated 21.03.2022 from 01.04.2022 and that it should have been made applicable from the date of notification of the HERC RE Regulations, 2021 i.e. 30.04.2021.
- f) petitioner had approached the Ld. HERC by filing a petition bearing Petition No. 8 of 2023, seeking directions for removing certain difficulties that arose in implementation of the Tariff Order dated 21.03.2022. The Ld. HERC vide its order dated 20.03.2024 disposed of the said petition as not maintainable.
- g) petitioner had filed a review petition before this Hon'ble Commission bearing Review Petition No. 8 of 2023 praying for review of the ex-parte Tariff Order dated 28.07.2023 in Case No. HERC / Petition No. 40 of 2023 Suo Motu. The Ld. HERC

vide its order dated 20.03.2024 dismissed the review petition, *inter-alia*, on the grounds that there is no error apparent on record. petitioner reserves its remedies as available in law against the said order.

- 3.26 That the following prayers have been made: -
- a) To conduct an extensive State specific study, considering the prevailing market conditions, availability of biomass fuels within the vicinity of the power projects, including all incidental costs relating thereto, such as transportation, chipping, handling, loss in GCV of fuel, increase in SHR, and all other relevant factors;
 - b) Determine the Fuel Cost for Biomass based Renewable Energy power plants for FY 2024-25, on the basis of such independent State specific study conducted by HAREDA and after considering objections and suggestions to the same; and
 - c) Pass such further order(s) as this Hon'ble Commission may deem fit in the interest of justice, equity and good conscience.

Proceedings in the Case

4. Upon perusal of the written submissions placed on record by the petitioner, the Commission considered it appropriate to afford an opportunity to them to present their case and hear the preliminary submissions on the maintainability of the petition, before going into the merits of the case.
5. The case was heard on 05.06.2024, as scheduled in the courtroom of the Commission. Upon hearing the parties, the Commission allowed HPPC to file its reply on maintainability of the present petition.
6. **In compliance, HPPC filed its reply on 25.06.2024. HPPC has submitted as under:-**
 - 6.1 That the determination of the tariff, including the fuel cost, is the sole prerogative of the Hon'ble Commission. The methodology to be adopted for computation of the fuel cost i.e. whether the same is required to be determined by way of an independent state-specific study or otherwise, is the sole discretion of the Hon'ble Commission. The attention of the Hon'ble Commission is also brought towards the judgment dated 23.03.2015 passed by the Hon'ble APTEL in O.P. No. 3 of 2012- ***Indian Biomass Power Association Vs. Ministry of Power and Others*** wherein, though, the Hon'ble APTEL had directed that the State Commission ***shall*** determine a two-part tariff, however at the same time has left the methodology to be adopted for fixing the fuel cost to the wisdom of the Hon'ble Commission, while stating that fuel price ***may*** be determined through an independent study. The relevant part of the judgment dated 23.03.2015 is reproduced below:

“17. Accordingly, this Tribunal deems it appropriate to give the following directions to the State Commission for future determination of tariff for Biomass based power projects:-

i) *The State Commission shall determine two part tariff i.e. fixed and variable charges in respect of Biomass based power projects instead of single flat energy tariff. The fixed charges may be determined for the life cycle of Biomass power projects. However, **the variable charges may be determined periodically on the basis of prevailing Biomass fuel price which may be fixed after carrying out a State specific study. The fuel price may be determined annually through an independent study. Alternatively, fuel price may be determined for the first year of the Control period say 2 to 3 years with percentage annual escalation linked to appropriate indices for the subsequent years of the Control period.** At the end of the Control period, the fuel price may be re-determined for the first year of the next Control Period ...”*

As such, the petitioner cannot be permitted to file a petition seeking exercise of discretion cast upon the Hon’ble Commission in a particular manner.

THE HON’BLE COMMISSION IS ALREADY SEIZED OF THE MATTER CONCERNING THE CONDUCT OF STUDY:

- 6.2 That the Hon’ble Commission is already seized of the matter with respect to periodic determination of the fuel cost and the state specific study has already been initiated. As such the present petition has become infructuous and can be disposed off *qua* the relief sought.
- 6.3 That earlier also, the Hon’ble Commission has got conducted an extensive study for determination of fuel cost through Maharishi Dayanand University (MDU), Rohtak on 10.11.2021. Based on the study so conducted by MDU, Rohtak, the Hon’ble Commission vide its order dated 21.03.2022, after due consideration of the comments/ objections/ suggestions received by various stakeholders, including the petitioner herein determined the fuel cost. Thus, the cost of fuel already stands aligned with the prevalent market conditions in line with the intent of the judgment dated 23.05.2015 passed by the Hon’ble APTEL.
- 6.4 That vide order dated 27.01.2021 in HERC/PRO-51 of 2020 titled ***M/s Star Wire (India) Vidyut Private Ltd. Vs. Haryana Power Purchase Centre, Panchkula (HPPC)*** the Hon’ble Commission had clarified 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.” Thereafter, a formal work order no. 502/HERC dated 18.05.2021 was

issued by the Hon'ble Commission to the MDU, Rohtak, seeking assistance in assessment of the quantum and delivered cost of paddy stubble and bagasse at various power generators' sites, in the State of Haryana. The final report was submitted by MDU, vide letter no. DAA-1668 dated 10.11.2021 and on the basis of this report i.e. an independent state-specific study, the Hon'ble Commission proposed the cost of paddy straw as Rs. 3113.14/MT (square bale upto 25 KM) and cost of bagasse as Rs. 2,000/MT, for the FY 2021-22 and FY 2022-23 (without any escalation).

- 6.5 That the Hon'ble Commission also hosted a public notice on its website calling for comments/suggestions/objections from the stakeholders. Thereafter, after following the due process of law, the Hon'ble Commission has, vide Suo-Moto Order dated 21.03.2022 in HERC/PRO-52 of 2021 observed as under:

"... The report prepared by the MDU and submitted in october, 2021 was based on first establishment of the entire value chain of paddy stubble procured by the power generators i.e. cutting, raking, baling, loading, transportation and un-loading, storage etc. within a catchment area of 25 KMs. The major stakeholders in the value chain i.e. farmers, aggregators, power generators/ end – user were consulted. The findings of the study was therefore based on descriptive, exploratory, empirical and analytical research design. The primary data was collected from 12 districts in Haryana that are actively involved in the paddy cultivation viz. Ambala, Fatehabad, Hisar, Jind, Kaithal, Karnal, Kurukshetra , Panipat, Sirsa, Sonapat, Yamunanagar and Jhajjar. Further, the major aggregators / balers and power generators including bagasse-based co-generators were also contacted for the purpose of collecting primary data. Accordingly, the random sample size comprised of 9 aggregators and 2143 farmers. Given, the uniformity in the activity as against diverse practices from farm to generator's site, the sample size, dispersed over 12 districts, has been considered as significant for the purpose of generalization of the findings."

THE PRESENT PETITION IS OTHERWISE ALSO UNTENABLE:

- 6.6 That the petitioner is unable to point out why any additional state specific study is required. Any discrepancy in the present methodology being adopted by the Hon'ble Commission has not been pointed out. Attention in this regard is also brought towards Regulation 9 (1) of the RE Regulations, 2021 provides as under:

"9. Tariff Design. –

(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.**

The State Nodal Agency i.e. HAREDA shall collect the relevant data on fuel cost and submit the same to the Commission on a half yearly basis.”

Except of reliance on judgment dated 23.03.2015 passed by the Hon'ble APTEL in O.P. No. 3 of 2012- **Indian Biomass Power Association Vs. Ministry of Power and Others**, the petitioner has not been able to substantiate the requirement of additional state specific study is required. All the objections raised by the petitioner have either already been decided and rejected by the Hon'ble Commission or have been appealed against and are pending adjudication before Superior Forums.

- 6.7 That the present petition has been filed by the petitioner while relying on Section 61, 62 and 86(1) (a) & (b) of the EA, 2003. Section 61 of the EA, 2003 lays down the guiding principles to be followed by the Hon'ble Commission while determining the tariff. It has been stated therein that while determining the tariff the Hon'ble Commission shall be guided by the factors which would encourage competition, efficiency, economical use of resources, good performance and optimum investment. Further, the interest of the consumers and recovery of cost of electricity in a reasonable manner is also required to be taken note of by the Hon'ble Commission. The petitioner has not been able to show whether and/or how any of the factors enumerated in Section 61 of the EA, 2003 has been violated at the time of determination of the fuel cost. Not even a single submission has been made by the petitioner with the respect to the factors enumerated under Section 61 of the EA, 2003. As such, reliance of the petitioner on Section 61 of EA, 2003 is vague. Similarly, Section 62 of EA, 2003 deals with the determination of tariff. Section 62(4) specifically lays down that- *“No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.”* As such, this petition is not maintainable under Section 62 of the EA, 2003 as well. Insofar as the reliance of the petitioner on Section 86 (1) (a) & (b) are concerned, the same relates to the functions of the Hon'ble Commission which includes the determination of tariff and regulate the electricity purchase and procurement process. It is reiterated that the methodology to be adopted for determination of the tariff, including the fuel cost, is the sole prerogative of the Hon'ble Commission. Thus, the petitioner has vaguely relied upon the aforesaid Sections as well as Regulation 9(1) of the RE Regulations, 2021, however, there is no allegation with respect to the non-compliance of the said provisions of the EA, 2003.

The Regulations itself demands collection of relevant data by the agency of the State-HAREDA. However, the petitioner has failed to show any non-compliance of the same.

MATTER RES SUB-JUDICE BEFORE SUPERIOR FORUMS:

- 6.8 That the issue with respect to the conduct of state-specific study by the Hon'ble Commission has been raised by the petitioner herein before the superior forums including the Hon'ble Punjab and Haryana High Court as well as Hon'ble APTEL. Attention of the Hon'ble Commission is brought towards the relevant part of the "prayer clause" in Civil Writ Petition No. 10555 of 2022 titled **Star Wire (India) Vidyut Private Limited & Anr. Vs. Haryana Electricity Regulatory Commission**, reproduced below:

"In the facts and circumstances mentioned herein above, it is respectfully prayed that:-

...

*(b) This Hon'ble Court may kindly be pleased to pass any appropriate Writ, order, or direction including a Writ in the nature of Mandamus **to direct the Respondent HERC to adopt the norms of fuel cost as determined by CERC in their entirety**, as has also been done in the past for determination of fuel cost for the existing projects;*

*(c) **Alternatively**, it is prayed that a writ of mandamus be issued **directing the HERC to carry out extensive and independent market-based studies based on actual ground realities**, as directed by the APTEL vide its Judgement dated 23.03.2015 in O.P. No. 3 of 2012, after giving all the stakeholders an opportunity of being heard on the report, for determination of the variable cost of existing biomass projects on an annual basis; ..."*

(Emphasis Added)

- 6.9 That in appeal bearing DFR No. 261 of 2022 titled- **Star Wire (India) Vidyut Private Limited Vs. HERC & Ors.**, which is pending adjudication before the Hon'ble APTEL, the petitioner has prayed as under:-

"The Appellant humbly prays that the Hon'ble Tribunal be pleased to-

...

(c)Direct the HERC to continue the norms with respect to fuel mix, fuel cost escalation, SHR and GCV as per the year of commissioning of the plant;

***Alternatively, HERC may be directed to carry out extensive market study based on actual ground realities for determination of fuel cost**, as directed by the Hon'ble APTEL vide its judgement dated 23.03.2015 in O.P. No.3 of 2012, and give the opportunity to all the stakeholders to submit their views;"*

(Emphasis Added)

As such, the petitioner has sought an alternative direction before the Superior Forums i.e. either norms determined by the Hon'ble CERC may be adopted or a state-specific study may be carried out. However, in contradiction to the prayers made before the Superior Forums, the petitioner by way of the present petition has sought that only a state-specific study be conducted.

- 6.10 That in case, the alternate prayer for adoption of the norms specified by the Hon'ble CERC is allowed, in such a scenario, the present proceedings would be rendered otiose. The law doesn't contemplate multiple adjudications of the same dispute and contrary or inconsistent decisions on the same issues, facts and law between the parties. There cannot be more than one adjudication of the very same dispute. The relief being sought by way of the present petition is consequential to the determination of the non-severable factual and legal issues which are pending adjudication before the superior forums. Therefore, in such circumstances, the doctrine of *Res sub-judice* is required to be applied and the present petition is liable to be dismissed given the possibility of conflicting decisions.
- 6.11 That the petitioner has wrongly projected that the present petition is seeking the determination of fuel cost for FY 2024-25 and hence a completely different cause of action has arisen. However, such an averment of the petitioner is misleading in nature and incorrect. It is submitted that every passing year does not give rise to cause of action in favour of the petitioner to choose and seek implementation of a separate methodology for determination of fuel cost. The petitioner cannot seek reliance on the fuel cost determined by Hon'ble CERC for one financial year and reliance on a state-specific study in financial year another. As such, it is wrong and denied that a separate cause of action has arisen in the favour of the petitioner. It is the case of the Answering Respondent that the petitioner is a chronic litigant, is trying to re-agitate the same issues by way of the present petition, by merely stating that the present petition now relates to FY 2024-25.

ALLEGATIONS AGAINST HPPC AS WELL AS THE ALLGICATIONS REGARDING VERACITY OF MDU REPORT CANNOT BE LOOKED INTO IN A PETITION SEEKING A SOLE RELIEF OF CONDUCT OF STATE-SPECIFIC STUDY:

- 6.12 That throughout the petition the petitioner has raised a number of allegations, for instance:

- 6.12.1 At para H of the petition, the petitioner has alleged the report of MDU Rohtak was never made available in the public domain and no opportunity to rebut the same was given to the petitioner.
- 6.12.2 At para L of the petition, the petitioner has alleged that the MDU Report is confined to the suggestions on the cost of paddy stubble only, without reference to the cost of other biomass fuels. The petitioner has further questioned the genuineness of the said report.
- 6.12.3 At para F of the 'Grounds', it has been alleged that petitioner had procured paddy at a net rate of Rs. 6434.36/MT which is twice as compared to the cost of paddy. The petitioner had further alleged that the average GCV assumed by the Hon'ble Commission is not aligned with the actual GCV.
- 6.12.4 At para G of the 'Grounds', the petitioner has raised allegations against HPPC while stating that the cost of biomass fuel was based on a the single-sided submissions of HPPC and was arbitrarily fixed.

In this regard, it is submitted that the tariff order as well as the RE Regulations, 2021 have already been challenged by the petitioner before the Hon'ble APTEL as well as the Hon'ble High Court, as such, any contention against the validity of tariff cannot be looked into in the present petition. In fact, similar grounds have also been urged in the Petition/ Review Petition filed before the Hon'ble Commission i.e. Petition no. 8 of 2023 and Review Petition no. 8 of 2023. In view of the Order passed in said Petitions filed by the petitioner, it does not lie in the mouth of the petitioner to raise repetitive baseless and frivolous allegations against the HPPC, which has already been raised earlier and considered by this Hon'ble Commission. Moreover, the relief sought in the instant petition does not warrant/ substantiate raising of such frivolous allegations. Needless to state that the Hon'ble Commission had categorically held that *".. The fuel cost for the FY 2022-23 was determined based on an extensive study. The Commission is of the considered view that getting the same study done for the next financial year, would not have yielded a different result and instead it would be appropriate to escalate the fuel cost determined for the FY 2022-23 by the inflation factor determined in the regulations in vogue. It may be noted that MDU Rohtak is a reputed public institution of higher learning and research. Hence, a study conducted by them ought to be given due weightage."*

The doctrine of res sub-judice is squarely applicable to the facts and circumstances of the present case. The petitioner is legally estopped from raising any allegations qua the Respondent- HPPC in the present Petition in view of the Orders earlier passed and also in view of the same being unrelated and inconsequential for adjudication of instant

Petition. Similarly, the allegations raised against HPPC cannot be looked into in a petition where a sole relief with respect to conduct of state-specific study has been sought.

- 6.13 That in view of the aforementioned facts and circumstances, the present petition being misconstrued, non-maintainable and devoid of any merit, may kindly be dismissed, in the interest of justice.

7. Respondent's rejoinder:-

Conducting a State-specific study is the prerogative of the Hon'ble Commission-

- 7.1 That as a matter of fact, and law, the Petitioner has invoked the jurisdiction of this very Hon'ble Commission under Regulations 7(1) & 9(1) of the HERC RE Regulations, 2021 for determination of fuel cost for FY 2024-25, which are extracted for convenience as under:-

"7. Petition and proceedings for determination of tariff. –

(1) The Commission shall determine the indicative tariff on the basis of suo-motu petition at least six months in advance at the beginning of each year of the Control period for renewable energy technologies for which norms have been specified under the Regulations."

Further, as per Regulation 9(1) of the HERC RE Regulations, 2021-

"9. Tariff Design. –

(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.

The State Nodal Agency i.e. HAREDA shall collect the relevant data on fuel cost and submit the same to the Commission on a half yearly basis."

Hence, Petitioner has approached this Hon'ble Commission and has not approached any other forum or Court for determination of the Fuel Cost for FY 2024-25. The Respondent suggests in its Reply that the Petition is not maintainable since the Petitioner prays that this Commission ought to determine the Fuel Cost after undertaking a study. It is Petitioner's statutory right to Petition this Hon'ble Commission

for determination of Fuel Cost in a manner expressly permissible in law. The Respondent obviously does not appreciate the difference between the right of a party to make a prayer and the discretion of the Court or Tribunal to pass an order. Further, the Petitioner is nowhere suggesting, in its petition or otherwise, that this Hon'ble Commission is bound to follow only one particular methodology while determining the Fuel Cost. As per HPPC's own submissions in the para under reply, the mandate set by the Hon'ble APTEL in the Judgment dated 23.03.2015 passed in O.P. No. 3 of 2012-*Indian Biomass Power Association Vs. Ministry of Power and Others*, is that:-

".....the variable charges may be determined periodically on the basis of prevailing Biomass fuel price which may be fixed after carrying out a State specific study."

The Hon'ble Commission in its Orders dated 27.01.2021 (HERC/PRO-50 of 2020 and HERC/PRO-51 of 2020, in the matters of M/s GEMCO and M/s Starwire) and 03.03.2021 (HERC/PRO-47 of 2020, in the matter of M/s Sri Jyoti), 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."

Therefore, while determining the Fuel Cost (by whatsoever methodology in a transparent manner), the Hon'ble Commission may do so on the *basis of prevailing Biomass fuel price which may be fixed after carrying out a State specific study*.

Hon'ble Commission is already seized of the matter concerning the conduct of study -

- 7.2 That merely because the process of getting an independent State specific study for determination of the fuel cost for biomass based RE power plants for the FY 2024-25, is underway, it does not mean that the present Petition filed by the Petitioner will get wiped out or rendered otiose. The acts of the Court/ Hon'ble Commission cannot prejudice a party, in the present case, the Petitioner. It may be noted that this Hon'ble Commission in its interim order dated 06.06.2024 has noticed the plea of the Petitioner

to take up the case along with the suo-moto proceedings which the Commission may initiate for determination of fuel cost of biomass for the FY 2024-25. There is no response from HPPC to the said plea of the Petitioner and also there exists no reason why the present Petition, which was instituted before the Hon'ble Commission on 13.04.2024 i.e. much before the initiation of suo-motu proceedings, cannot be taken up simultaneously.

If at all the MDU Rohtak Report dated 10.11.2021 was sufficient for the purpose of determining the Fuel Cost for FY 2024-25, as alleged by HPPC in its paras under reply, there would be no occasion or necessity for the Hon'ble Commission to initiate the process of getting an independent State specific study for determination of the fuel cost for biomass based RE power plants for the FY 2024-25. In point of the fact, the MDU Rohtak Report has admittedly not carried out any survey in Mahendergarh District where the Petitioner's plant is located. Hence, it is unambiguous that conducting a State specific study on basis of prevailing Biomass fuel price is the *sine qua non* for determination of prevalent fuel cost.

Present petition is otherwise also untenable –

- 7.3 That HPPC has omitted to answer as to how the present petition, which is filed under the statutory provisions of Sections 61, 62 and 86(1)(a) & (b) of the Act read with Regulations 7(1) & 9(1) of the HERC RE Regulations, 2021, is not maintainable before this Hon'ble Commission. By seeking to challenge the "additional state specific study" (which process has admittedly already been initiated by the Hon'ble Commission), HPPC is indirectly seeking to challenge the interim order dated 06.06.2024, wherein it was informed by the Commission that the process of initiating an independent State specific study for determination of the fuel cost for biomass based RE power plants for the FY 2024-25, had already been started. It is respectfully submitted that without filing any review petition or appeal challenging the said interim order dated 06.06.2024, HPPC cannot assail the findings of the Hon'ble Commission regarding conducting an independent State specific study for determination of the fuel cost for biomass based RE power plants for the FY 2024-25. Hence, the submissions of HPPC in the para under reply are liable to be rejected by this Hon'ble Commission.
- 7.4 That Sections 61, Section 62, Sections 86 (1) (a) & (b) of the Act are substantive provisions which empower only the Hon'ble Commission to determine the tariff (including the Fuel Cost) for the power supplied by the Petitioner to HPPC in the State of Haryana. Admittedly, under Section 61, the Commission, while specifying the terms

and conditions for the determination of tariff, shall be guided by the factors which would include generation, transmission, distribution and supply of electricity are “*conducted on commercial principles*”, encourage competition, efficiency, economical use of resources, good performance and optimum investment etc.. Further, the interest of the consumers and recovery of cost of electricity in a reasonable manner is also required to be taken note of by the Hon’ble Commission. Surely, it cannot be the Respondent HPPC’s case that the determination of fuel cost by the Commission ought not be on the basis of “*commercial principles*” as mandated under Section 61 of the Act. Similarly, the mandate under Section 61 is also to be observed under Section 62 (1) (a), while determining the tariff for supply of electricity by a generating company to a distribution licensee. There has been no determination of fuel cost for FY 2024-25, hence the powers and functions of the Commission are invoked and HPPC cannot have a quarrel with the same.

- 7.5 That the Hon’ble Commission is under obligation under Regulations 7(1) and 9(1) of the HERC RE Regulations, 2021 to determine the fuel cost on annual basis, atleast six months in advance. Hence, the powers and functions of the Hon’ble Commission to determine the Fuel Cost in a time-bound manner as per the guiding principles specified under Sections 61 and 62 have been invoked and any objection to the same by HPPC, is liable to be rejected.

Matter res sub-judice before superior forums -

- 7.6 That the prayers of the Petitioner in the present Petition are extracted below for convenience:-

“(a) To conduct an extensive State specific study, considering the prevailing market conditions, availability of biomass fuels within the vicinity of the power projects, including all incidental costs relating thereto, such as transportation, chipping, handling, loss in GCV of fuel, increase in SHR, and all other relevant factors;

(b) Determine the Fuel Cost for Biomass based Renewable Energy power plants for FY 2024-25, on the basis of such independent State specific study conducted by HAREDA and after considering objections and suggestions to the same; and

(c) Pass such further order(s) as this Hon’ble Commission may deem fit in the interest of justice, equity and good conscience.”

- 7.7 That the Petitioner has not sought the above reliefs before any other Court or Forum and there are no pending proceedings in respect of the above prayers before any other Court or Forum. The “matter” in issue in the present proceedings is with respect to determination of Fuel Cost for the FY 2024-25 and not the constitutional validity or challenge to the *vires* of the HERC RE Regulations, 2021, which are a separate subject

matter pending before the Hon'ble High Court of Punjab & Haryana in CWP No. 1055-2022 (O&M). HPPC is wrongly seeking to conflate the matter with regard to challenge to the HERC RE Regulations, 2021 pending before the High Court, with the present Petition which is filed seeking determination of Fuel Cost for Biomass based RE power plants for FY 2024-25, on the basis of such independent State specific study. The two matters are completely different and independent of each other.

7.8 That the Petitioner has filed an appeal bearing DFR No. 261 of 2022 titled - Star Wire (India) Vidyt Private Limited Vs. HERC & Ors. before the Hon'ble APTEL against the Tariff Order dated 21.03.2022 for the FY 2022-23 in case number HERC/Petition No. 52 of 2021 passed by this Hon'ble Commission, however, the present petition is filed seeking determination of Fuel Cost for the FY 2024-25, which is altogether a separate subject matter and cause of action. If at all the argument of HPPC is accepted, then HPPC itself would never be able to file a tariff petition before this Hon'ble Commission for any subsequent year, if at all it has challenged a tariff order before the Hon'ble APTEL pertaining to an earlier year.

7.9 That the apprehension of HPPC that the present petition would be rendered otiose is ill-founded as this Hon'ble Commission, vide its interim order dated 06.06.2024, has clarified that the process of initiating an independent State specific study for determination of the fuel cost for biomass based RE power plants for the FY 2024-25, has already been started. Hence, it is obvious that without filing any review petition or appeal challenging the said interim order dated 06.06.2024, HPPC is seeking to assail the findings of the Hon'ble Commission in its interim order, which cannot be permitted.

7.10 That HPPC vide its submissions dated 21.01.2022, in para 2, submitted before this Hon'ble Commission as under:-

"2. The Hon'ble Commission has relied upon a report of MDU Rohtak for determining the fuel cost for renewable projects in its draft Suo Moto order. The authenticity of the facts and figures present in the said report are unknown. Also, the parameters considered and the background analysis made for the preparation of report has not been disclosed thereby making the report not worthy of any consideration. Moreover, the report has not been shared in public domain despite specific provision of section 86 (3) of the Electricity Act 2003 which provides that that the Commission shall ensure transparency while exercising its powers and discharging its functions."

7.11 That when HPPC itself admits that the MDU Rohtak report cannot be relied upon for FY 2022-23, then it cannot now be permitted to take inconsistent pleas and state that the same report is good for determination for Fuel Cost for FY 2024-25.

7.12 That the Petitioner has invoked its rights as available in law and HPPC may choose to contest the same on merit. However, making baseless allegations on affidavit does not

benefit a State utility and only reflects on its poor choice of words, lacking merit and legal depth.

Allegations against HPPC as well as the allegations regarding veracity of MDU report cannot be looked into in a petition seeking a sole relief of conduct of state-specific study -

- 7.13 That the MDU Rohtak report has been referred, only to show that the said Report, admittedly, is confined to the suggestions on the cost of paddy stubble only, without reference to cost of other biomass fuels. Further, the MDU Rohtak Report takes into consideration the availability of paddy straw only in 12 districts of the State of Haryana. The Report does not take into consideration Mahendergarh District where the present Petitioner is located. The report has only considered 12 districts of the State out of 22 which itself shows that the report has taken only 54.54% area of the State. With such low coverage, applying the study report to across the State is in itself a flaw which should have been considered earlier. Therefore, the said MDU Rohtak report does not get in the way of conducting the State-wide study for discovering the market price of remaining 70% biomass fuel other than paddy stubble. In no manner has the Petitioner challenged the said MDU Rohtak report in the present petition, nor sought any relief against the said MDU Rohtak report. Even otherwise, in view of the interim order dated 06.06.2024 wherein this Hon'ble Commission has clarified that the process of initiating an independent State specific study for determination of the fuel cost for biomass based RE power plants for the FY 2024-25, has already been started, the present objection of HPPC is infructuous and liable to be rejected.
- 7.14 That none of the submissions regarding non-determination of timely Fuel Cost as provided in Regulation 7(1) of the HERC RE Regulations, 2021, or providing "appropriate price weightage" on the GCV on a year to year basis, mandated under Regulation 38 of the HERC RE Regulations, 2021, have been addressed. The same case is with the allegations in respect of Clause 13.1 (i) of the PPA dated 22.06.2012 executed between the Petitioner and HPPC and also the procurement price of biomass fuels by the Petitioner. Later on, HPPC cannot be allowed to raise any objections to the said submissions and fuel costs as HPPC has itself chosen not to respond to the same in its Reply. Hence, due to the principle of non-traverse, the submissions of the Petitioner shall be deemed to be admitted by HPPC.
- 7.15 In view of the foregoing, it is respectfully submitted that the grounds submitted in its reply by HPPC are untenable in law. The petition deserves to be allowed and the Petitioner is entitled for the relief(s).

Commission's Order

8. The petition preferred by M/s. Starwire was called for hearing on maintainability. The Commission heard the arguments of the parties at length as well as perused the written submissions and documents placed on record by them.
9. The Commission observes that the present petition has been filed invoking the powers of the Commission vested under Regulation 9 (1) of the HERC RE Regulations, 2021 to conduct an extensive State specific study considering all the incidental factors for determination of the Fuel Cost for Biomass based Renewable Energy power plants for FY 2024-25, on the basis of such independent State specific study conducted by HAREDA and after considering objections and suggestions to the same.

(Emphasis supplied)

The Commission has carefully examined the provisions of Regulation 9(1) of the HERC RE Regulations, 2021, which provides as under:-

"9. Tariff Design. –

(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.

The State Nodal Agency i.e. HAREDA shall collect the relevant data on fuel cost and submit the same to the Commission on a half yearly basis."

The Commission observes that in the ibid regulations, there is no mandate for the generator to seek extensive State specific study from HAREDA for determination of generic tariff of biomass based power plants. The State Nodal Agency i.e. HAREDA is mandated to file the relevant data on fuel cost of renewable energy projects on a half yearly basis. The regulation cited by the petitioner has an obligation cast on the Commission for determination of annual fuel cost. It may be based on the escalation factor applied on the already discovered fuel cost or on the basis of a fresh study. The fuel cost may also be determined by the Commission based on the experience gained while determination of project specific tariff of the power plants using biomass, bagasse and paddy straw as fuel. Further, the Commission may also get the study conducted after inviting proposals from limited agencies. Accordingly, the process of getting an

independent State specific study for determination of the fuel cost for biomass based Renewable Energy power plants for the FY 2024-25, has already been initiated and upon the receipt of the report, the same shall be made available on the website of the Commission. The petitioner has averred that the present case can be taken up along with the suo-moto proceedings which the Commission may initiate for determination of fuel cost of biomass for the FY 2024-25.

The Commission is of the considered view that the main contour of the present petition i.e. to get an independent State specific study, is already under its consideration. Therefore, keeping alive of the present petition and merging of the same with the future suo-moto proceedings to be initiated by the Commission for determination of fuel cost of biomass for the FY 2024-25, does not stand to logic. In any case, the study report shall be hosted on the website of the Commission inviting comments/ suggestions/ objections of all the intervenors including the petitioner herein.

10. In terms of the above discussion, the present petition stands dismissed being rendered infructuous.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 26.07.2024.

Date: 26.07.2024
Place: Panchkula

(Mukesh Garg)
Member

(Nand Lal Sharma)
Chairman