



DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110017.

F.11(1394)/DERC/2016-17/5288

Petition No. 27/2016

- In the matter of:**
- (1) Petition for execution of PPA by the Discoms of Delhi with the petitioner;**
 - (2) Petition for determination of Generation Tariff in respect of MSWTE Project at Bawana; and**
 - (3) Petition for directions for synchronization of the power plant of the petitioner**

And

In The Matter of:

M/s. Delhi MSW Solutions Limited (DMSL)
6-3-1089/G/10&11, Gulmohar Avenue,
Raj Bhavan road, Somajiguda
Hyderabad-500082, Andhra Pradesh

Through: Mr. IYPE George
Sector 5, Pocket N-1,
Behind Pragati Power Plant,
Bawana Industrial Area, New Delhi

....Petitioner

-Versus-

1. Tata Power Delhi Distribution Ltd.
Through its: **Managing Director**
33Kv Sub Station Building,
Hudson Lane,
Delhi 110 009,
2. BSES Rajdhani Power Limited
Through its: **CEO**
BSES Bhawan, Nehru Place,
New Delhi-110019.
3. BSES Yamuna Power Ltd.
Through its: **CEO**
Shakti Kiran Building,
Karkardooma
New Delhi – 110092.
4. The Secretary
New Delhi Municipal Council
Palika Kendra, Sansad Marg
New Delhi 100001
5. Delhi Transco Limited
Shakti Sadan, Kotla Road,
New Delhi 110002
6. State Load Despatch Centre, Delhi
Shakti Sadan, Kotla Road,
New Delhi- 110002

...Respondents

7. Chief Engineer (Utilities)
CWE, MES, Kotwali Road,
Delhi Cantt,
New Delhi 110011
8. Executive Engineer EMS
North Delhi Municipal Corporation
Office of the Executive Engineer (DEMS) I
Room No. 31, Dr. B.R Ambedkar Stadium,
Delhi Gate Delhi 110002

Coram: Sh. B.P Singh, Member

ORDER

(Date of Order: 22.02.2017)

1. This Order relates to the Petition filed by Delhi MSW Solutions Limited (hereinafter referred to as "DMSL" or "Petitioner") for adjudication of Draft Power Purchase Agreement (hereinafter referred to as "PPA") for sale of Power to BSES Rajdhani Power Limited (BRPL), BSES Yamuna Power Limited (BYPL), Tata Power Delhi Distribution Limited (TPDDL) and New Delhi Municipal Council (NDMC) (hereinafter referred to as "Discoms" or "Distribution Licensees").
2. DMSL had filed the Petition pursuant to the direction of the National Green Tribunal. The Tribunal vide its order dated 04.04.2016 has directed this Commission to determine the generation Tariff of the Petitioner's MSW Plant for the purpose of sale to the Delhi Distribution. The petitioner was also directed to file an appropriate petition before the Commission. In the Petition M/s DMSL has made the following prayer:
 - "i. *Direct the Respondent Licensees to execute Power Purchase Agreement(s) with the Petitioner, in terms of the National Tariff Policy dated 28.01.2016 read with the letter dated 23.02.2016(DERC's) for the capacity of the power plant;*
 - ii. *Determine the tariff payable by the distribution licensees for sale of electricity from the Petitioner's power plant;*
 - iii. *In the interim direct as follows;*
 - (a) *Direct the Respondent Nos. 5 and 6 to synchronize the power plant of the petitioner with the Delhi STU grid.*

(b) Pass order for provisional tariff to be payable by the Respondent licensees, effective from the date of synchronization till final tariff is determined."

3. Hearings in the matter were held on 29.04.2016, 17.05.2016, 09.06.2016 and 19.07.2016 and during the hearing on 29.04.2016 the Commission observed that it has already issued letter dated 23.02.2016 to the Discoms to comply with the amended provisions of the National Tariff Policy notified on 28.01.2016, whereby it is made compulsory for the Discoms to procure 100% power produced from all the waste to energy plant in the state in the ratio of power procured by them from all sources. The relevant provision of the said policy is reproduced hereunder;

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

...

(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."

In the State of Delhi percentage wise ratio of Power Procurement amongst the Discoms is given in the table below;

DISCOMs	Approved Energy Input for FY 2013-14 (MU)	Percentage
BRPL	11508.8	41.81%
BYPL	6577.38	23.90%
TPDDL	8039.94	29.21%
NDMC	1400.02	5.09%
Total	27526.14	100.00%

4. Keeping in view the provisions of the amended National Tariff Policy, the Commission vide order dated 29.04.2016 directed the petitioner to provide draft PPAs to the Discoms within 3 days from the date of order for procurement of power generated from the waste to energy project of the Petitioner at Bawana in the ratio provided in the table above and all the Discoms were directed to execute the PPA within one week thereafter. Further, on the hearing dated

17.05.2016 the Commission directed the Discoms to finalize the PPA through a meeting across the table. However, on the hearing dated 09.06.2016 the parties requested the Commission for some more time for finalizing the PPA since there were some issues which were unresolved.

5. Thereafter, the Commission vide order dated 27.07.2016 determined the tariff for the plant and the plant has been synchronized w.e.f. 9th July, 2016. Further, it was held that the remaining issue of approval of PPAs shall be decided by a separate order. Pursuant to the orders of the Commission, the petitioner DMSL has filed the draft PPA for sale of Power to Discoms, affirming that the negotiations with Discoms on PPA were concluded, however, a few specific points and issues of the PPA have remained unresolved and it sought the indulgence of this Commission on the following unresolved issues:

- a) Obligation of Procurer for Purchase of Power for lower/higher PLF & Applicable Tariff;
- b) Event of Default and Termination in case contracted energy is not met;
- c) payment of monthly bills; and
- d) Dispatch & Scheduling and Merit order dispatch

6. The Contentions of Discoms that the Commission may approve or disapprove or modify the agreed terms of PPA but cannot determine the terms of PPA have been considered and the Commission is of the view that the instant case is different from ordinary cases coming from approval of PPA under the provision of the Electricity Act, 2003. In such cases the parties already agree to the terms of the PPA and the draft PPA is submitted to the Commission for approval and in case there is no agreement or issues remain unresolved, no PPA is signed and the chapter gets closed. However, in the instant case PPA has to be necessarily signed because as per the National Tariff Policy dated 28.01.2016, the DISCOM shall compulsory procure 100% power produced from all Waste to Energy Plants in the State, therefore, it is not the volition of the DISCOMs to enter into a PPA or to avoid it if some of two issues remain unresolved. The pending issues have to

be resolved either by the parties themselves or through intervention of the regulatory body.

7. Section 86(1)(e) of the Electricity Act, 2003 makes it incumbent upon the Commission to promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. Therefore, it is the duty of the Commission to facilitate signing of PPA in the aforesaid case by resolving the issues pending between the DISCOMs and the petitioner.
8. It is also pertinent to mention that the Commission does not have any regulations qua MSW power plants and has *vide* Order dated 19.05.2016, for the purpose of specifying terms and conditions for tariff determination from Renewable Energy Sources in respect of Municipal Solid Waste (MSW), till further order, adopted the Central Electricity Regulatory Commission (Terms & Conditions for tariff determination from Renewable Energy Sources) Regulations, 2012, as amended from time to time.
9. Accordingly, in accordance with the requirement of the Act and Regulations referred above, the Discoms were required to seek approval of the draft PPA entered or proposed to be entered by it from the Commission. However, the Discoms and the petitioner had sought indulgence of the Commission on the following unresolved issues :

9.1 Commission's Analysis of the PPA and Order on the same.

The draft PPA submitted by the petitioner has been examined in light of the relevant rules & regulations. The specific points and issues of the PPA sought to be resolved by the Commission and the comments/remarks for resolving the same are being summarized below:-

- a) **Issue regarding the obligation of Procurer for Purchase of Power for lower/higher PLF & Applicable Tariff.**

Discoms submission:

TPDDL has submitted that in the event of Generation beyond Normative CUF corresponding to contracted capacity the procurement of power shall be subject to the approval of this Commission and at the tariff approved by this Commission. Further, if for any contract year, it is found that the seller has not been able to supply to the procurer at the interconnection point, the minimum energy in MU's (corresponding to CUF value which is 4% lower than the normative CUF by the seller at the point of signing the PPA), the seller shall be liable to pay as penalty for such shortfall in generation and wants the seller to redeem Renewable Energy Certificate (REC) towards such shortfall.

NDMC has submitted that the PPA is silent about the scenario if the generator is not able to generate contracted capacity.

BRPL & BYPL have submitted that the obligation of procurement to be limited to the contracted capacity (MW) of the plant. The responsibility of getting approval from the Commission regarding the excess quantum to be sold to the procurer, in ratio of their share, and the rate at which the same shall be sold shall lie with the petitioner. Further, the responsibility for getting Open Access for supply of such excess generation would also be on the seller.

Petitioner's Submission

DMSL has submitted that the procurer is obligated to off take the entire power generated by the Seller, in proportion to its share of power, as per the tariff determined by this Commission in terms of the National Tariff Policy notified on 28.01.2016, as there is no specific fixed

contracted capacity, and as such there can be no excess capacity. Whatever generated by DMSL, is deemed to be scheduled as the plant is "Must Run".

Commission's View

It is observed that National Tariff Policy mandates that the entire power generated by Waste to Energy projects should be procured. The purpose of Waste to energy is to dispose off the waste and divert from dump with the objective of protecting environment. The plant is also "Must Run" and deemed to be scheduled. Ministry of Power *vide* press release dated 20.01.2016 has stated that in order to give boost to Swachh Bharat Mission, Government of India has made amendments to National Tariff Policy directing that the Discoms shall mandatorily procure 100% power produced from Waste-to-Energy plants and has excluded waste to energy from competitive bidding process and these amendments will benefit power consumers in multiple ways. Such plants would also aid the objectives of Swachh Bharat Mission as well as Namami Gange Mission through conversion of waste to energy, usage of sewage water for generation and in turn ensure that clean water is available for drinking and irrigation.

The Commission has *vide* Order dated 19.05.2016, has specified terms and conditions for tariff determination from Renewable Energy Sources in respect of Municipal Solid Waste(MSW), till further orders, adopted the Central Electricity Regulatory Commission (Terms & Conditions for tariff determination from Renewable Energy Sources) Regulations, 2012 as amended from time to time.

Therefore, it is pertinent to mention that as per CERC Regulations, the risk and benefit of lower/excess generation as compared to normative generation is to the account of RE developer. Hence, the entire generated power shall be procured by the Discoms as per the tariff determined by the Commission *vide* order dated 27.07.2016.

b) Issue regarding the Event of Default and Termination

Discoms Submission

TPDDL has submitted that the PPA can be terminated after the Date of Commercial Operation (COD), if the contracted energy is not met for a continuous period of 2 months and such default is not rectified within 30 days from the receipt of first notice from the procurer or if the petitioner fails to meet the contracted energy for 2 contract years.

Petitioners Submission

DMSL has submitted that the PPA can be terminated after the Date of Commercial Operation (COD), if the contracted energy is not met for a continuous period of 6 months and such default is not rectified within 30 days from the receipt of first notice from the procurer. DMSL has further submitted that the provision regarding termination of PPA if petitioner fails to meet the contracted energy for 2 contract years should be deleted.

Commission's view

The Commission has fixed single part tariff as per CERC norms for this project for 20 years which is directly related to quantum of generation of the plant, therefore if the plant is not generating any power for a particular period, there will be no recovery of any charges. Therefore, the Commission is of the view that this clause need not be included in the PPA.

c) Issue regarding the payment of monthly bills

Discoms Submission

BRPL and BYPL have submitted that the sequence of apportionment of monthly bills should be towards earlier unpaid monthly bills, towards current monthly bill and towards late payment surcharge in that order.

Petitioners Submission

DMSL seeks the apportionment of the monthly bills should be towards late payment surcharge, towards earlier unpaid monthly bills and towards current monthly bills in that order.

Commission's view

The Commission has considered the issue and has decided that as per the practice followed in other PPAs, all payments made by Discoms shall be appropriated by DMSL for amounts due in the following order of priority:-

- i. Towards late payment surcharge, payable if any;
- ii. Towards earlier unpaid Monthly bill, if any;
- iii. Towards the current Monthly bill

The late payment surcharge shall be applicable as per the regulations issued from time to time by the Commission.

d) Issue regarding the Dispatch & Scheduling and Merit order dispatch

Discoms Submission

BRPL, BYPL & TPDDL seek compliance with scheduling and dispatch procedures as per DERC/CERC Regulations. The CERC has specified that municipal solid waste shall be subjected to scheduling and dispatch code as specified under CERC (Unscheduled Interchange and related matters) Regulations, 2009 including amendments thereto.

Petitioners Submission

DMSL has pleaded that the waste to energy plants should be excluded from scheduling.

Commission's view

The Commission noted that the sector is new and has no operational experience of MSW to energy plants and it is also noted that many other State Electricity Regulatory Commissions have provided some

relaxation to waste to energy power projects for scheduling. The Commission opined that the MSW to energy projects shall forecast their generation as per the standard provision under the CERC/DERC Regulations. However, there shall be no commercial/financial implication in case of deviation from the scheduled power for a period of maximum 2(two) year from the date of the commissioning of the project and the actual generation shall be treated as scheduled generation. The Commission may review the same thereafter.

10. The Discoms are required to take note of the abovementioned views of the Commission and incorporate necessary corrections in the draft PPA before execution of PPA with the Petitioner and submit a compliance of the same.

11. Accordingly, this petition is disposed of.

12. Ordered accordingly.

Sd/-
(B.P. Singh)
Member