



**Petition No. 1610 of 2020**

**BEFORE**

**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**

**LUCKNOW**

**PRESENT:**

1. Hon'ble Sh. Raj Pratap Singh, Chairman
2. Hon'ble Sh. Kaushal Kishore Sharma, Member
3. Hon'ble Sh. Vinod Kumar Srivastava, Member (Law)

**IN THE MATTER OF:** Seeking approval of Supplementary PPA dated 10.07.2020 signed between M/s Sapaak Bresson Pvt. Ltd. and UP Power Corporation Ltd. in term of Regulation 5 of UPERC CRE Regulations, 2019, for extension in COD of 14 MW MSW based power plant to be developed by M/s Spaak Bresson Pvt. Ltd. at Village-Kuberpur, Distt Agra.

M/s U.P. Power Corporation Ltd.,  
(through its Superintending Engineer, PPA-R),  
14<sup>th</sup> Floor, Shakti Bhawan, 14-Ashok Marg,  
Lucknow - 226001

----- **Petitioner**

M/s Spaak Bresson Pvt. Ltd.,  
(through its Director),  
G.F. -50, Block-V, Eros Garden, Charmwood Village,  
Faridabad, Haryana - 121009

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Following were present:

1. Sh. Deepak Raizada, SE, PPA-RE, UPPCL
2. Sh. Punit Agarwal
3. Sh. Salik Shafique
4. Sh. Sanjay Upadhayay, Advocate, M/s Spaak Bresson Pvt. Ltd.

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**ORDER**  
**(Date of Hearing 29.10.2020)**

1. The instant Petition is filed by M/s Spaak Bresson Pvt. Ltd. for approval of amended PPA dated 10.07.2020 for purchase of 14 MW power from 15 MW MSW Plant. The original PPA was signed on 16.10.2017 which was approved vide order dated 06.10.2017 by the Commission in Petition no.1240 of 2017. The PPA was further amended on 24.01.2018 and the same was approved vide order dated 23.04.2018 by the Commission in Petition No.1298 of 2018.
2. During the hearing, the Petitioner submitted as follows:
  - a. In accordance with PPA dated 24.01.2018, the Generating Company was required to perform and complete the various prescribed activities and commission the generation facility and synchronize it with STU system grid by Feb 2019, but the generating plant could not achieve scheduled commissioning due to non-availability of NOC from Taz Trapazium Zone Authority (TTZ). The M/s Spaak Bresson Pvt. Ltd requested UPPCL, vide letter dated 04-07-2018 to extend commissioning date by one year i.e., from February 2019 to February 2020.
  - b. After amended PPA dated 24.01.2018, which was approved by the Commission vide order dated 23.04.2018, the Petitioner had further amended the PPA on account of extension of SCOD date from Feb 2019 to Feb 2020. However, the same could not filed before the Commission for approval and as meanwhile the Petitioner has further requested UPPCL to extend COD of the Plant by 18 months i.e., August 2021 due to non-availability of NOC from Taz Trapazium zone authority (TTZ).
  - c. In view of the request of the Generating Company for extension of SCOD, UPPCL accorded approval for extension of COD by one year





i.e. from February 2019 to February 2020, vide their letter no. 1154/CE/PP(R) dated 27-07-2018 with the following conditions:-

- i. Tariff for sale of power for only first commissioning year (now February 2020) of the plant will be Rs.6.90/unit.
  - ii. Due to this extension of COD, UPPCL/ UPPTCL shall not bear any financial liability.
  - iii. There shall be no further extension of Commissioning date under any circumstances and UPPCL shall have liberty to terminate the PPA after observing the process.
  - iv. M/s Spaak Bresson Private Limited, Kuberpur, Agrashall ensure installation of ABT meters in their premises and the submission of DC on the regular basis through login on UPSLDC website ([www.esss.upsldc.org](http://www.esss.upsldc.org)).
- d. Before petition for the approval of Amended PPA signed on 04.02.2019 could be filed; M/s Spaak Bresson Private Limited further requested UPPCL vide letter dated 14.11.2019 to extend COD of the Plant by 18 months i.e. August, 2021 from the earlier COD date Feb,2020 due to non-availability of NOC from Taz Trapaziumzone authority (TTZ).
- e. Accordingly, a Supplementary PPA has been signed between M/s Spaak Bresson Private Limited and UPPCL on date 10.07.2020 for extension in commissioning in the month of August 2021 (FY 2021-22). Further, all other Terms and conditions of PPA dated 06-10-2017 read with amendment dated 24-01-2018 and 04.02.2019 and orders passed by UPERC and conditions laid down from time to time by UPPCL shall remain applicable.
- f. The generating plant is now scheduled for commissioning by August 2021 (FY 2021-22) with the condition that the first-year





tariff i.e., FY 2021-22 will be of Rs. 6.90 per unit and the tariff for subsequent years shall be as per CRE Regulation 2019-24 according to the actual Commissioning Year i.e., FY 2021-22. Therefore, the Commission may approve the Supplementary PPA dated 10.07.2020 entered into between M/s Spaak Bresson Pvt. Ltd. and U.P. Power Corporation Limited.

3. Sh. Sanjay Upadhyay, the learned Counsel of Respondent i.e., M/s Spaak Bresson Pvt. Ltd submitted that the plant is facing the issues relating to the statutory clearances. The work cannot be started due to non-availability of NOC from Taz Trapazium zone authority (TTZ). He further submitted that there is a moratorium of Hon'ble Supreme Court on 22.03.2017 stating that such plants are red category plants and clearance is required from the Hon'ble Supreme Court of India. They would be able to proceed only after consent to establish is received.
4. Sh. Sanjay Upadhyay, the Counsel of M/s Spaak Bresson Pvt. Ltd further submitted that the plant has been recommended by various authorities like CPCB, NEERI etc and it is before the Hon'ble Supreme Court of India for final decision, which is probably taking time due to Covid-19 Pandemic. He therefore, requested the Commission to approve the PPA dated 10.07.2020 entered into between M/s Spaak Bresson Pvt. Ltd. and U.P. Power Corporation Limited.

### **Commission's View**

5. The present Petition is filed to extend COD of WTE power plant by 18 months i.e till August 2021 due to pending clearances and is awaiting directions of the Hon'ble Supreme Court of India. However, looking at the present situation that the Plant has not even received the consent to establish, it seems difficult that the Plant would be commissioned by August 2021. In this regard, it is pertinent to mention that National Tariff Policy, 2016 provides that Distribution Licensee(s) shall compulsorily





procure 100% power produced from all the Waste-to-Energy plants in the State. The relevant extract of the same is reproduced as below: -

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**6.4 Renewable sources of energy generation 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.

Provided that cogeneration from sources other than renewable sources shall not be excluded from the applicability of RPOs.

.....

**(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.**

.....

(2) States shall endeavor to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from the waste to energy plants. Procurement of power by Distribution Licensee from renewable energy sources from projects above the notified capacity, shall be done through competitive bidding process, from the date to be notified by the Central Government.

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6. Further, Regulation 18 (iv) and 21 of under UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2019 provide as below:

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**Regulations 18 (iv)**

*The Distribution Licensee shall purchase power from all RE sources only through competitive bidding (except Municipal Solid Waste and rooftop solar covered under RSPV Regulations). The tariff for projects discovered by competitive bidding shall be as per their PPA.*

**Regulations 21 Environmental and other Clearances**

*The Generating Plant shall abide by the emission standards, as the case may be, set by the Union/State Government and for that purpose it shall obtain all the required environmental and pollution clearances from the Central / State pollution control authorities and submit copies of Clearance Certificates to the Commission.*

7. There is already an existing agreement dated 06.10.2017 and 24.01.2018 signed between the parties which has been approved by the Commission and the same exists unless it is mutually terminated by the parties and approved by the Commission. It is also clear from the provisions mentioned in above paragraphs that the Power Purchase from waste to energy is mandatory for distribution licensees. Therefore, when the plant is Commissioned, the distribution licensee is under obligation to purchase the power from such plant. **Therefore, the request for providing extension of COD till August 2021 to MSW Plant is granted on account of enabling provision in National Tariff Policy, 2016 and UPERC CRE Regulations, 2019 subject to the decision of the Hon'ble Supreme Court of India in IA nos. 172378 and 172379/2018 in Writ Petition (Civil) No.13381 of 1984.**
8. Though the respondent has agreed to proposed tariff of Rs. 6.90/unit for FY 21-22, based on extended scheduled commissioning of the Plant, the

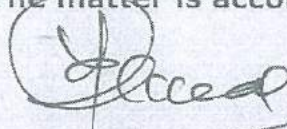


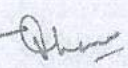
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


tariff for supply of power to UPPCL would be dependent upon actual commissioning of Plant. Under present situation, when TTZ and other clearance are not available, the prayer for approval of amendment in PPA by way of SPPA dated 10.07.2020 containing tariff for supply of power cannot be granted at this juncture. Accordingly, the parties may approach the Commission for approval of SPPA at least one month before commissioning of the Plant.

**The matter is accordingly disposed of with above said directions.**

  
(Vinod Kumar Srivastava) Member (Law)

  
(Kaushal Kishore Sharma) Member

  
(Raj Pratap Singh) Chairman

Place: Lucknow

Date: 18. 01.2021

