



Delhi Electricity Regulatory Commission

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi –110 017.

No. F.11(1783)/DERC/2020-21

Petition No. 27/2020

In the matter of: Petition for approval of revised declared capacity of 23MW and other consequential reliefs.

Timarpur Okhla Waste Management Company Ltd. Petitioner

Vs.

BSES Rajdhani Power Ltd.Respondent No. 1

Tata Power Delhi Distribution Ltd.Respondent No. 2

State Load Despatch CentreRespondent No. 3

Coram:

Hon'ble Shri Justice S. S. Chauhan, Chairperson

Hon'ble Dr. A. K. Ambasht, Member

Appearance:

1. Mr. Manoj Kumar Singh, Adv., TOWMCL
2. Mr. Buddy A Ranganathan, Adv. BRPL

ORDER

(Date of Order: 22.06.2021)

1. The aforesaid Petition has been filed by Timarpur Okhla Waste Management Company Ltd. (TOWMCL) for approval of petitioner's revised declared capacity of 23 MW and other consequential reliefs.
2. The petitioner has made the following prayers in its petition:
 - i. Approve plant's revised declared capacity 23 MW;
 - ii. Declare auxiliary consumption for plant as 15%;
 - iii. Approve Open Access quantum for power sale to third parties of balance quantity of 42.11614 MUs (based on 90% PLF) per year or any remaining power after completion of the obligations towards Respondent No. 1 (BRPL) and 2 (TPDDL) in a year; and
 - iv. Direct respondent No. 3 to provide approval of sale of power in open access to the petitioner.

WEAR FACE MASK WASH HANDS REGULARLY MAINTAIN SOCIAL DISTANCING

Brief facts of the case

3. The petitioner Timarpur Okhla Waste Management Company Ltd, is a Generating Company engaged in the business of municipal solid waste management and operates a generating plant for treatment of Urban/Municipal Solid Waste and generation of renewable power there from.
4. In a joint venture effort along with Municipal Corporation of Delhi (MCD) the Petitioner has set up a Municipal Solid Waste to Power Project by installing plant and equipment having intake capacity of 1,950MT of waste per day and installed capacity capable of generating 16MW and exporting a minimum 13MW of power, situated at Okhla, based on Municipal Solid Waste.
5. The recent technological upgrades undertaken by the Petitioner in its plant, including but not limited to improvement of plant technology, adding of brush seals in the turbine, improvement in the segregation of waste by installing ballistic separator resulted into increase in calorific value and consequently resulted into increase in the generation capacity from 16 MW to 23 MW.
6. The Petitioner has stated that it has received the necessary Environment Clearance from the Ministry of Environment and Forest on 15.01.2020 with regard to the present increase in generation from 16 MW to 23 MW.
7. The petitioner is making this petition before the Commission for amendment of net installed and generation capacity from 16 MW to 23 MW and approval of auxiliary consumption of the plant as 15% in view of the report of Certified Energy Auditor and approval for sale of balance power through open access.

Petitioner's Submissions

8. The Petitioner has submitted that:
 - i. The primary form of compensation/revenue earned by the Petitioner (for running the project and disposing close to 2000 MT of MSW per day) is through selling of the electricity generated/other by-products generated as a result of the waste to energy conversion process. Accordingly, on 20.01.2010, the Petitioner and the Respondent No. 1 (BRPL) had entered into the Energy Purchase Agreement (EPA) and in terms thereof, the Respondent No. 1 agreed to purchase 50% ex-bus energy (after the plant's auxiliary consumption of upto 22%) from the petitioner's 16 MW capacity plant on monthly basis, for a period of 25 years for onward supply to consumers of the Respondent.
 - ii. The above mentioned EPA was entered into by the Petitioner with Respondent No. 1 in pursuance of a competitive bidding process held by the Govt. of

National Capital Territory of Delhi. The idea, as mentioned above was to compensate the Petitioner for treatment of MSW through sale of power of Respondent No.1 to the extent provided by EPA.

- iii. The Petitioner had also filed a petition before this Commission, Petition No. 18/2010. The said Petition was filed to adopt the tariff and approval of the EPA executed between the aforementioned parties, vide order dated 20.01.2011 which was further amended on 27.07.2011 wherein the maximum entitlement of the Respondent No. 1 was 60 MU in a year. Further, the Petitioner's plant is also connected at 33 KV voltage level at BSES Jasola substation. The petitioner is allowed to sell remaining power to third party/captive sale.
- iv. The petitioner has also entered into subsequent Power Purchase Agreement with Respondent No. 2 for long term open access sale of power. As per the PPA with Respondent No. 2, the Petitioner has the obligation for sale of contracted capacity of 6.13 MW amounting to 51.01386 MU's (6.13 MW at 95% CUF) per year for 20 years. The same was approved by this Commission vide its letter dated 19.12.2016. Also, Respondent No. 3 has also duly granted approval to the transaction between Petitioner and Respondent No. 2.
- v. Therefore, in view of the above submissions, it transpires that in a year:
 - a) The petitioner's power plant, as per revised declared capacity is capable of generating 23 MW of gross. At 90% PLF, the plant will be generating about 181.3 MUs;
 - b) After considering auxiliary consumption, the exportable units will be 154.13 MUs;
 - c) Respondent No. 1 (BRPL) is entitled 60 MUs per year as per EPA dated 22.01.2010 along with duly Amendment;
 - d) Respondent No. 2 (TPDDL) is entitled to 51.01386 MUs per year (6.13 MW at 95% CUF);
 - e) Balance power after sale as per existing obligations will be 154.13 MUs- (60+51.01386) MUs = 42.11614 MUs.
- vi. In light of the revised declared capacity of 23MW, the current generation and consumption of the power plant per year as per the Revised Balance Open Access power per year is summarized below:

Generation as per Revised Declared Capacity	Auxiliary Power Consumption (As per CEA Report)	Exportable Units	Entitlement of BRPL	Entitlement of TPDDL	Revised Balance Open Access
181.3 MUs	15%	154.13 MUs	60 MUs	51.01386 MUs	42.11614 MUs

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- vii. Therefore, as per the above submissions, after selling of power to the Respondent No. 1 and Respondent No. 2, the petitioner is discharged from its obligations under the already existing PPAs. Accordingly, the petitioner will have excess 42.11614 MUs of power per year. The petitioner is free to sell this power under open access to third parties. Accordingly, in the present petition, the petitioner prays that the Commission (in addition to approving the revised declared capacity of 23 MW) give permission to sell the balance 42.11614 MUs of power per year through Open Access. At present, the petitioner is having a short term arrangement with one KE(I)PL for sale of 2.8 MUs of power per year. However, the petitioner is not seeking any determination of tariff and the rights of the petitioner in this regard is reserved.
- viii. That in the facts and circumstances of the case as per the objectives of the Electricity Act, 2003, for promotion of Renewal Energy Projects such as that of the Petitioner and Environment and social benefits of the Municipal Solid Waste to Energy Projects, it is in the interest of justice and Public Interest that the petition as submitted by the petitioner may be allowed and relief as sought be granted.
- ix. The Petitioner in its rejoinder submitted that the perusal of the Order dated 20.01.2011 further clarifies the position wherein paragraph 11 (i) the Commission was pleased to order that the EPA shall be modified to the extent minimum 50% of the generation on daily basis subject to maximum cap of 60MU's per year. The contention of Respondent No. 1 that the Petitioner has billed 90.16 MU's in the financial year 2019-20 in order to fortify its entitlement of more than 20 MU's is total misconceived. The Petitioner is contractually under obligation to supply maximum 50% of generation on daily basis subject to maximum cap of 60 MU's per year.

RESPONDENT NO. 1 SUBMISSIONS (BRPL)

9. The Respondent No. 1 (BRPL) has submitted that:
- i. As a joint venture of the Petitioner with the MCD and the NDMC aimed at dealing with the growing problem of disposal of MSW in Delhi, the Petitioner successfully set up a Municipal Solid Waste to Power Project by installing plant equipment having intake capacity of 1950 MT of waste per day and installed capacity, capable of generating 16MW and exporting a minimum 13MW of power situated at Okhla, based on municipal solid waste.
 - ii. That pursuant to a competitive bidding process by the Government NCT of Delhi, the Respondent No. 1 and the Petitioner entered into an Energy Purchase Agreement ("EPA"), in terms whereof, the Respondent agreed to purchase 50%

ex-bus energy from the Petitioner's 16MW capacity plant on monthly basis for a period of 25 years for onward supply to the consumers of the Respondent.

iii. That the Petitioner had filed Petition No. 18/2010 for adoption of Tariff and approval of the EPA dated 20.01.2010 executed between the parties. The petition No. 18/2010 was disposed of with the following directions:

- a. EPA shall be modified to the extent that 50% of the generation on a daily basis subject to 60MU's per year shall be supplied to BRPL by TOMWCL.
- b. The tariff of first year would be Rs.2.49/Kwh and levelized tariff of Rs.2.833 shall prevail.
- c. Both parties to abide by the terms of EPA.
- d. The evacuation of power shall take place as per the provisions of the IEGC, the Delhi Grid Code, the satisfaction of State Load dispatch centre, Delhi.

iv. The EPA was accordingly amended on 27.07.2011 to insert the following provisions:

"AND WHEREAS minimum 50% of generating on daily basis subject to 60 MUs per year shall be supplied to procurer. i.e. BRPL by generating company i.e. TOWMCL"

v. The application of the Petitioner seeking registration under REC mechanism qua energy being supplied to the Respondent being untenable, same was not approved by NLDC. Subsequently, the Petitioner proceeded with the filing of one Petition No. 246 of 2012 before the Hon'ble Central Commission which was disposed off via order dated 18.09.2013 directing NLDC to accept the application of the Petitioner. The Petitioner has also filed Petition No. 77/MP/2014 which was filed seeking clarification of order dated 18.09.2013; the Petition No. 77/MP/2014 was disposed of on 30.04.2015 with a direction for the petitioner to be registered for grant of REC.

vi. The Petitioner has also entered into a Power Purchase Agreement with the Respondent No. 2 for long term open access of power. As per the PPA, the Petitioner has the obligation for sale of contracted capacity 6.13MW amounting to 51.01386 MU's per year for 20 years. That the above mentioned PPA was approved the Commission vide letter dated 19.12.2016.

vii. The Petitioner with deliberate intent wanted to illegally terminate the EPA to use the entire quantum of power generated for captive use. Consequently, the Respondent replied to this vide reply dated 24.09.2014 enumerating that the notice issued by the Petitioner is illegal, arbitrary, and not sustainable.

- viii. The Petitioner vide letters dated 21.10.2014 and 24.11.2014 alleged that the Respondent has given their consent to the illegal termination of the EPA and that the entire surplus of power could be used by the Petitioner for captive purpose.
- ix. The Respondent vide letter dated 27.11.2014 clarified that the demand of the Petitioner to use the entire surplus of power for captive purpose is illegal, arbitrary and in violation of the terms and conditions of the PPA. That no consent was accorded at any point by the Respondent to the Petitioner.
- x. The contention of the petitioner that the maximum entitlement of the Respondent is 60MU's is incorrect as the amendment on 27.07.2011 to the EPA clause is to be interpreted in the light of provisions of 50% of daily generation, subject to a minimum quantum of 60MU's per year; which under no scenario envisages the same as maximum entitlement of the Respondent as per the EPA. Based on revised PPA, petitioner is billing to Respondent, MUs billed in FY 2019-20 were 90.16MUs.
- xi. During pre-bid conference held on 21st Sept. 2007, it has been clearly clarified to the query to the bidders that it is mandatory to export minimum 60 MUs of energy per year to BRPL' substation. After selection the bidder can approach the Commission for selling to third party using BRPL's substation.
- xii. In view of the above, it is clear that the Petitioner is liable to give 50% of its daily generation share to BRPL and have to give minimum 60 MUs in BRPL's substation.
- xiii. The respondent is unaware of improvement in plant technology or segregation of waste that has been done by the Petitioner. It is denied that any independent auxiliary report was prepared w.r.t. to the plant auxiliary consumption being at 14.67%. It is humbly submitted that the Petitioner has been operating the plant at 22% auxiliary consumption and the said report must be scrutinised. The Petitioner may be put to strict proof thereof.

COMMISSION ANALYSIS

10. The petitioner M/s Timarpur Okhla Waste Management Company Ltd. in the instant Petition in its prayers has sought following reliefs;
 - (a) approval of plant's revised declared capacity of 23MW.
 - (b) to declare auxiliary consumption for plant as 15%.
 - (c) Approval of Open Access quantum for power sale to third parties of balance quantity of 42.116 MUs (based on 90% PLF) per year or any

remaining power after completion of the obligations towards Respondent No. 1 and 2 in a year;

(d) Direct Respondent No.3 to provide approval of sale of power in open access to the petitioner.

11. Regulation 2(26) of DERC (Terms and Conditions for determination of tariff) Regulations, 2017 stipulates as under:

“Date of Commercial Operation” or “COD” means;

(a) Date of commercial operation in case of a generating unit or block of the combined cycle thermal generating station shall mean the date declared by the Generating Entity after demonstrating the maximum continuous rating (MCR) or the installed capacity (IC) through a successful trial run and in case of the generating station as a whole, the date of commercial operation of the last generating unit or block of the generating station:

Provided that:

- i. Where the beneficiaries have been tied up for purchasing power from the generating station, the trial run shall commence after seven days notice by the Generating Entity to the beneficiaries and scheduling shall commence from 00:00 hrs. after completion of the trial run;*
- ii. the Generating Entity shall certify to the effect that the generating station meets the key provisions of the technical standards of Central Electricity Authority (Technical Standards from Constructions of Electricals plants and electric lines) Regulations, 2010 and Grid Code as amended from time to time;*
- iii. the certificate shall be signed by the competent authority of the Generating Entity and a copy of the certificate shall be submitted to the Member Secretary. (Northern Regional Committee) and SLDC;*

b.”

12. It is observed that the Petitioner has BRPL (Respondent No. 1) and TPDDL (Respondent No. 2) as the beneficiaries of the generating plant. Accordingly, the Petitioner is directed to demonstrate the maximum continuous rating (MCR) or the installed capacity through a successful trial run and submit the certificate to the concerned agencies as per provisions of the above Regulations.

13. With regard to declaring auxiliary consumption for plant as 15%, it is noticed that the petitioner and the Respondent no. 1 have executed EPA dated 20.01.2010. In terms of EPA, the Respondent no.1 agreed to purchase 50% ex-bus energy from the Petitioner's 16 MW capacity plant on monthly basis for a period of 25 years for onward supply to the consumers of the Respondent.
14. Thereafter, the Petitioner had filed Petition No. 18/2010 for adoption of Tariff and approval of the EPA dated 20.01.2010 executed between the parties. The Petition No. 18/2010 was disposed off vide Order dated 20.01.2011 with the following directions:
 - a. EPA shall be modified to the extent that 50% of the generation on a daily basis subject to 60MU per year shall be supplied to BRPL by TOWMCL.
 - b. The tariff of first year would be Rs. 2.49/kWh and levelized tariff of Rs.2.833 shall prevail.
 - c. Both parties to abide by the terms of EPA.
 - d. The evacuation of power shall take place as per the provisions of the IEGC, the Delhi Grid Code, the satisfaction of State Load Dispatch Centre (SLDC, Delhi).
15. In line with the Commission's Order dated 20.01.2011 the EPA clause was accordingly amended on 27.07.2011 as under:

“AND WHEREAS minimum 50% of generating on daily basis subject to 60 MUs per year shall be supplied to procurer. i.e. BRPL by generating company i.e. TOWMCL”
16. The Petitioner had filed Petition No. 25 of 2015 before this Commission for interpretation, meaning and applicability of some of the provision of EPA dated 20.01.2010 and amended EPA on 27.07.2011. The Commission vide its order dated 13.04.2021 has disposed of Petition No. 25 of 2015.
17. It is observed that the tariff of the project for which the said EPA has been executed, was discovered through competitive bidding route and adopted by the Commission vide order dated 20.01.2011 in Petition No. 18/2010. Since the tariff of the Station is not determined by the Commission based on the operating and financial parameters, therefore, there is no requirement of specifying Normative Auxiliary Consumption for the Station by the Commission.
18. The Petitioner has also sought permission to sell the balance 42.11614 MUs of power per year through Open access. It is observed that the Petitioner is having the obligations for sale of power to its beneficiaries under the EPA. Therefore, the

Petitioner is bound to meet its obligations under the terms of EPA. Similar Issue regarding sale of excess power under Open Access has also been raised by the Petitioner earlier. The Commission vide its letter dated 16/05/2018 has clarified that the Petitioner shall fulfil its obligations under the EPA with BRPL and TPDDL before selling power in Open Access. The Commission has notified DERC (Terms and Conditions for Open Access) Regulations, 2005 facilitating Open Access in Delhi. The Petitioner shall apply to the concerned Nodal Agency i.e. SLDC as specified in the Regulations for sale of power to third parties subject to meeting its obligations under the EPA/PPA, as amended.

19. Ordered accordingly.

Sd/-
(Dr. A.K. Ambasht)
Member

Sd/-
(Justice S. S. Chauhan)
Chairperson