



Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17.

No. F.11(1571)/DERC/2017-18/6090

Petition No. 27/2018

In the matter of: Approval of project specific tariff for generation and sale of electricity from part of the Petitioner's 12MW Integrated Waste to Energy Power Plant Project based on Refuse Derived Fuel (RDF) at Ghazipur, Delhi.

East Delhi Waste Processing Company Ltd.

....Petitioner

Versus

BSES Yamuna Power Ltd. & Ors.

.....Respondents

Coram: Hon'ble Mr. Justice S S Chauhan, Chairperson

Appearance:

1. Ms. Poorva Saigal, Adv., EDWPCL
2. Mr. Shubham Arya, Adv., EDWPCL
3. Mr. Buddy Ranganadhan, Adv. BRPL & BYPL
4. Mr. Raunak Jain, Adv. TPDDL
5. Mr. Vishvendra Tomar, Adv., TPDDL
6. Mr. Tushar Sannu, Adv., NDMC

ORDER

(Date of Hearing: 25.10.2018)
(Date of Order: 02.11.2018)

1. The Petitioner East Delhi Waste Processing Co. Ltd. (hereinafter referred to as '**EDWPCL**') through this petition has sought approval of project specific tariff for generation and sale of electricity from part of the Petitioner's 12 MW Integrated Waste to Energy Power Plant Project based on Refuse Derived Fuel (RDF) at Ghazipur (hereinafter referred to as '**Ghazipur WTE Project**'), Delhi. The Petitioner has made the following prayers in its petition:

- a) Approve the capacity of the 'Ghazipur WTE' Project as 12MW;
- b) Approve the project based tariff of Rs. 13.99/Kwh for the sale of energy from 7.1 MW Capacity from Petitioner's 12MW 'Ghazipur WTE Project' in terms of the provisions of Section 61, 62 and 64 of the Electricity Act, 2003;
- c) Direct the distribution licensee i.e Respondent No. 1 to 5 to execute Power Purchase Agreement (PPA) with the Petitioner for

procurement of power at the tariff and quantum of power as to be approved by the Hon'ble Commission in terms of National Tariff Policy 2016;

- d) The Commission as may consider deemed fit may approve for the first 2 years, the allocation of energy for 2MW capacity of 'Ghazipur WTE Project' to DMRC. And after a period of 2 years, the entire energy from 7.1MW of 'Ghazipur WTE Project' be allocated to the distribution licensees of the State;
 - e) To direct the distribution licensees i.e. Respondent No. 1 to 5 to pay at the rate of tariff as to be approved for the energy availed from the Petitioner's project for the period of date of Commercial Operations i.e 28.04.2017 till the date of approval of tariff by the Commission in proportion quantum of which has to be decided by the Commission;
 - f) To pass the order that no commercial/financial implication shall be applicable for deviation from schedule power for 2 years from the date of COD.
 - g) Pass such further order or orders as this Commission may just and proper in the circumstances of the case.
2. The Petitioner has further submitted that it has filed the present petition for seeking approval on issues like the Capital Cost, Plant Load Factor, Auxiliary Consumption, Debt to Equity Ratio, Depreciation, Interest on Working Capital, Interest on Loan, Operation & Maintenance Cost, Return on Equity, Plant Life and Project's Excellent performance & Accreditation.
3. The Petitioner has also filed additional affidavits in the matter forwarding the following additional information for the consideration of the Commission:
- i. Increase in capacity of 'Ghazipur WTE Project' from 10 MW to 12 MW;
 - ii. Justification for capital cost of 'Ghazipur WTE Project';
 - iii. Approval and Statutory Clearances;
 - iv. Grant received;
 - v. Bidding Methodology; and
 - vi. Auditor Certificate.
4. In respect of increase in capacity of Ghazipur WTE Project from 10 MW to 12 MW, the Petitioner has submitted that:
- i. Indraprastha Energy & Waste Management Co. Ltd. (erstwhile New Delhi Waste Processing Company Private Limited), the nodal agency, undertook the bidding process and issued RFQ and RFP documents on

17.07.2008 for selection of developer for 'Ghaziपुर WTE Project, on tariff based bidding and completed the process on 22.10.2008. FRQ & RFP documents that the bids were invited for supply of minimum 8 MW (10 MW Gross capacity) of power at generator bus-bar of BYPL switch yard.

- ii. The Concession Agreement dated 21st May, 2008 signed by erstwhile Municipal Corporation of Delhi, which formed the integral part of RFQ/RFP documents, has a provision that the capacity of power plant of 'Ghaziपुर WTE Project' can go up to 12 MW. The relevant extract of the same is reproduced below:

1.1.40"Power Plant" means the a power generation plant of the name plate capacity of up to twelve mega watt (12 MW) that may be established at the site and will generate electricity by using the Municipal Solid Waste or Supplementary Fuel or both, as the case may be...

- iii. That the Environment Clearance dated April 15, 2008, issued by Ministry of Environment and Forest, which was also formed an integral part of the RFQ/RFP documents, envisaged that 10-12 MW power generation plant will be setup using RDF and Biogas.

5. The Petitioner has also provided additional affidavit whereby a communication from Ministry of Finance is submitted to demonstrate that the capacity of project is considered as 12 MW.

6. The Respondent No. 1, BSES Yamuna Power Limited (BYPL) and Respondent No. 2, BSES Rajdhani Power Limited (BRPL) have submitted a joint preliminary Reply in the petition stating that:

- 6.1 On the present petition the answering Respondent submit as follows:

A. BYPL share 49% from 10 MW or 12 MW (revised project capacity)

- i. EDWPCL in the instant petition has submitted that the BYPL share from the project through competitive bidding process is 4.9 MW i.e. 49% of 10 MW. Further, EDWPCL has also submitted that BYPL has no share in the enhanced capacity i.e from 10 MW to 12 MW and hence requested Hon'ble Commission to determine the tariff for the capacity of 7.1 MW (12 MW-4.9 MW).

- ii. the PPA signed with EDWPCL was for 49% of available energy which means, BYPL is entitled to draw the 49% of ex-bus energy generated by the EDWPCL. The relevant Paras of the PPA signed are reproduced below:

- a. **Clause D (Page 5 of the signed PPA):** "Pursuant to the said bidding process M/s Delhi International Airport Pvt. Limited in consortium with M/s SELCO International

Limited has been identified by the Authorised Representative, **as the Selected Bidder to construct the Project for a minimum Capacity (as defined hereunder) of 10 MW and sale and supply of 49% of net available electricity in bulk there from the Procurer in accordance with the terms of this Agreement.**

b. **Clause 1.1: Minimum off-take Guarantee means:** "Minimum off take Guarantee means guaranteed off take of **forty nine percent (49%) of total Available Energy (ex bus) at all the times.**"

c. **Clause 4.3: Purchase and sale of Energy:** "4.3.1 Subject to the terms and conditions of this Agreement, **the seller undertakes to sell to the Procurer, and the Procurer undertake to pay the Tariff for 49% of the net Available Energy of the Power station, generated and delivered at any time throughout the term of this Agreement.**

4.3.2 It is expressly stated that herein that **Seller shall be free to captively consume/sell/trade remaining 51% of the generated energy** using the grid of the Procurer subject to charges and rules applicable under the Electricity Act, 2003 and as per the guidelines of the Appropriate Commission from time to time."

d. **Clause 4.4 Right to Available Energy:** "4.4.1 Subject to other provisions of this agreement, **49% of the net energy available at the Grid shall at all times be for the exclusive benefit of the Procurer and the Procurer shall have the exclusive right to purchase 49% of such available Energy from the Seller. The Seller shall not grant to any third party or allow any third party to obtain any entitlement to such 49% of the Available Energy.**"

iii. Apart from the aforementioned clauses, there are many other references in the PPA which clearly indicate that the BYPL share is 49% of net available energy of the project and not limited to 49% of the original capacity of 10MW.

iv. EDWPCL's contention that the project capacity has been revised from 10MW to 12 MW and hence additional 2 MW power is not related to BYPL. In fact the project capacity has been revised as per the terms of the RFP and PPA documents. Clause 3.1.1 A of the PPA is reproduced below:-

"3.1.1A The Seller shall have the option to change the Unit configuration (but not less than 10MW) after the Effective

Date till NTP, provided that Seller submits the undertaking that the changed Unit configuration meets all the conditions specified in RFP including Format 3 of Annexure 6 of RFP and the changed Unit configuration meets all Functional Specification. **Any additional cost arising out of the changed Unit configuration shall be to the account of the Seller and no adjustment in the Tariff will be permitted."**

In view of the above, BYPL share remains 49% of the net available energy from the project even after the capacity is revised.

- v. Further, it is also submitted that the Hon'ble Commission vide its order dated 04.09.2017 has directed that the balance power other than through competitive bidding shall be allocated to the DISCOMs in the ratio of procurement of power from all sources.
- vi. Based on the above mentioned directions, Delhi SLDC put up the matter in the 18th GCC meeting of Delhi wherein the allocation from EDWPCL was discussed. Considering the installed capacity of 12MW of EDWPCL Project, Delhi SLDC vide letter dated 04.01.2018, allocated the power as per following details:-

DISCOM	BRPL	BYPL	TPDDL	NDMC	MES
% Allocation	25.63%	49%	20.92%	3.77%	0.68%

- vii. However, EDWPCL neither during the meeting nor after the Delhi SLDC letter has raised any reservations. In fact, according to above allocation, Delhi SLDC has started to issue the monthly REA accounts and EDWPCL is raising the monthly energy bills for which BYPL is making the monthly payments.

B. TWO (2) MW Open Access for DMRC:-

- i. EDWPCL in its petition has submitted that the contract of 2 MW for 2 years has been finalized with DMRC.
- ii. The PPA has been signed with BYPL for 49% of energy generated (5.9 MW), and, DERC vide order dated 04.09.2017, has distributed the balance capacity (6.1 MW) among the other Delhi Discoms. Delhi SLDC has started accounting of entire energy from EDWPCL Project to Delhi Discoms w.e.f. 28.04.2017 onwards. Hence, no spare capacity is available from the Project to be sold through Open Access.

- iii. However, allocation of 2 MW power from the balance power i.e. 51% of available energy (6.1 MW) for 2 years may be decided by this Hon'ble Commission.

C. ORIGINAL BID WAS FOR THE ENTIRE 10MW AND NOT ONLY FOR THE 49% BEING SOLD TO BYPL.

- i. It is submitted that the original Bid submitted by EDWPCL was for the entire 10MW capacity of the Project and not only for the 49% of exportable energy being sold to BYPL. This clear, inter alia, from the following clauses of the RFP and RFQ documents:

RFP dated 17.07.2018

1.3 The objective of the bidding process is to select a Successful Bidder for development of the Project as per terms of the RFP. The Project will have a Contracted Capacity of minimum of 8 MW (Net, 10MW Gross) in accordance with the terms of the PPA. The Selected Bidder shall be responsible for ensuring that the Seller undertakes development, finance, ownership, design, engineering procurement construction, commissioning, operation and maintenance of the Project as per the terms of the RfP Project Documents. The Selected Bidder shall also ensure that all equipment and auxiliaries are suitable for operation in the frequency range of 47.5 to 51.5 Hz (-5% to +3% of rated frequency of 50.0 Hz).

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Annexure 6

Format 1: Bidders' Undertakings

[On the Letter Head of the Bidding Company/Lead Member of Bidding Consortium]

To

Mr. Deepak Gupta/Mr. S. Baskaran

New Delhi Waste Processing Company Private Ltd.

C/o IL&FS Infrastructure Development Corporation Ltd.

1st Floor, Eros Business Complex, Hotel Shangri-La

19, Ashoka Road, New Delhi 110 001

Tel No: +91 11 43002100/43002300

Dear Sir,

Sub: Bidders' Undertaking for Bid for supply to procurer/Authorised Representative

We hereby undertake on our own behalf and on behalf of the Seller, that if selected as the Successful Bidder for the Project:

.....

7. We confirm that our Bid meets all the conditions specified in Format 3 and Format 4 of Annexure 6 of RFP namely:

a) The Scheduled COD of the Unit shall not be later than 18 months from the Effective Date as defined in PPA, subject to the provisions of the PPA.

b) The Scheduled COD of the Power Station shall not be later than 18 months from the Effective Date as defined in PPA, subject to the provisions of the PPA.

d) The Capacity of the Unit shall not be less than 8MW (Net)(10MW Gross) at the Delivery Point.

e) The Project, if awarded to us would meet all Critical (must meet) conditions specified in Format 4 of Annexure 6.

ii. It is therefore clear that the original bid rates of Rs. 3.667/Unit (levelised tariff of Dial Selco) was for the entire energy being generated from 10MW capacity and not only for the 49% being sold to BYPL. Hence, the Petitioner's attempts to now have the tariff re-opened for 10 MW minus 4.9MW, i.e. for 5.1 MW is nothing but an attempt to re-open its bid rate.

6.2 In light of the aforesaid contentions the Petitioner is not entitled to any of the reliefs prayed for in the Petition at Paragraph 31, in as much as it seeks to execute a fresh PPA between the answering Respondents (other Respondents) and the Petitioner for procurement of power at the tariff and quantum of power as to be approved by the Hon'ble Commission in terms of the National Tariff Policy.

6.3 Further, the present Petition must be dismissed in as much as it directs the answering Respondents to pay the rate of tariff as to be approved for the energy availed from the Petitioner's Project for the period of date of commercial operations i.e. 28.04.2017 till the date of approval of tariff by the Hon'ble Commission in proportion quantum of which has to be decided by Hon'ble Commission. It is further submitted by the answering Respondents that the Petitioner is not entitled to any of the other reliefs prayed for Petitioner and most humbly prays that this Petition may be dismissed.

7. The Respondent No. 3, Tata Power Delhi Distribution Limited has submitted the following that:

7.1 In the Petitioner's own submissions, Petitioner had executed PPA dated 29.10.2009 with BSES Yamuna Power Ltd., Respondent No. 1 herein for sale of 49% power out of entire available capacity, while

Petitioner was expressly permitted under Clause 4.3.2 of the said PPA with BSES Yamuna Power Limited to captively consume/sell/trade the remaining 51% power using open access. This PPA being part of the original RFT and having been approved by this Hon'ble Commission, clearly provides the treatment of balance 51% power and Petitioner's right to captively consume/sell/trade the remaining 51% power. Therefore, having elected and expressly exercising his option to captively consume/sell/trade the remaining 51% power and also having done so till date from the date of its commissioning, the Petitioner now cannot turn around and plead that it is entitled to sell the balance 51% power also to other Discoms other than BSES Yamuna Power Limited, who have not even entered into a PPA with the Petitioner GENCO. Hon'ble Commission is therefore requested to consider the same and pass order as it deem fit.

- 7.2 It is clear that the Petitioner had participated in the bidding process as approved by this Hon'ble Commission way back in the year 2008 *vide* its order dated 11.07.2008 in Petition No. 26/2008 and further specifically elected to gain benefit of captive use/sale/trade of the balance 51% power. Petitioner further also exercised the said option of captive use/sale/trade of the balance 51% power from the date of its commissioning in accordance with the terms of the RFQ, RFP and standard PPA as approved by this Hon'ble Commission. Hon'ble Commission is therefore requested to consider the same and pass order as deemed fit.
- 7.3 Inter alia, and without prejudice to the above, it is respectfully submitted that at the time of bidding, the draft PPA issued as part of RFP had envisaged to supply and sell **49% of net available electricity** from the entire available capacity power plant of the Petitioner at the tariff determined by the State Commission. Thus, the tariff was decided for the entire unit of 10MW capacity (as it stood then) by the State Commission, however, the Petitioner had the option of captively consuming/selling/trading the 51% balance power, which option the Petitioner has duly exercised and acted upon. Thus, as on date, there is no requirement to re-determine the project specific tariff of atleast initial 10 MW capacity, having already determined by the State Commission and 49% of said power having being contracted by Respondent No. 1 BYPL. To the said extent of initial 10 MW capacity therefore, there cannot be

any re-determination of project specific tariff in the case of the Petitioner at this stage.

- 7.4 Though the Answering Respondent is opposing the relief sought by the Petitioner herein since it has already firmly and unequivocally exercised the option of captive use/sale/trade of the balance 51% power, however, still if Hon'ble Commission is going ahead with the project specific determination of the balance 51% power, the same may be done only for the corresponding increased capacity i.e 51% of 2MW i.e 1.02 MW only. This is because the tariff u/S 63 of the EA 2003 for initial capacity of 10 MW has already been determined by the Ld. DERC vide its Tariff Order 10.06.2009. It would be rather anomalous situation that 49% of same 10MW capacity for sale to discoms is granted tariff u/S 63 of the EA 2003, while the remaining 51% of same 10MW capacity for sale to discoms is granted another tariff u/S 62 of the EA 2003, while the capex, O&M expenses and other norms etc. for the said 10 MW capacity remain the same. In this context, it is important to note Clause 4.4 of the PPA dated 29.10.2009 executed by EDWPCL with Respondent No. 1 BSES Yamuna Power Ltd., which is as under:-

“Clause 4.4 Right to Available Energy:-

*Subject to other provisions of this Agreement, **49% of the net energy available at the Grid shall at all times** be for the exclusive benefit of the Procurer and the Procurer shall have **the exclusive right to purchase 49% of such Available Energy** from the seller. The Seller shall not grant to any third party or allow any third party to obtain entitlement to such 49% of the Available Energy.”*

- 7.5 From the above, it is clear that at all times, the Procurer i.e. Respondent No. 1, BSES Yamuna Power Ltd. is entitled to receive 49% of the electricity available from the Petitioner's plant at the Grid. The Seller i.e. EDWPCL cannot sell the said 49% of available electricity to any third party. Thus, from the increased capacity of 2MW, 49% power is to be supplied to Respondent No. 1, BSES Yamuna Power Ltd. i.e. 0.98 MW, while remaining 51% of 2 MW i.e. 1.02 MW may be supplied to the remaining four distribution licensees of Delhi region. The quantum to be supplied to the remaining licensees may be decided by the Hon'ble Commission.
- 7.6 The Respondent TPDDL has also submitted comments relating to Capital Cost, IDC computation, Plant Load Factor, Auxiliary Consumption, Depreciation, Interest on Working Capital, Interest on Loan, Operation and Maintenance Cost, Return on equity and Plant Life.

7.7 It is further submitted that the tariff of Rs. 13.99/kWh as claimed by the Petitioner is exorbitant and unjustified and hence should not be allowed. The Capital Cost claimed by the Petitioner of Rs. 40.13 Crore/MW is unjustified and hence is liable to be rejected. Hon'ble Commission is requested to allow tariff based on Capital Cost of Rs. 15 Crore/MW if at all it is considering the project specific determination of tariff of the Petitioner's Project. The Hon'ble Commission may consider impact of any change in law event if the same is demonstrated properly.

7.8 The Petitioner is bound to provide comparative model stating the cost benefit of Fuel cost versus Capital cost, as no amount has been factored in tariff model with respect to fuel cost. However, the Petitioner has filed no such details in the present petition.

7.9 In view of the above, it is requested that the Hon'ble Commission to dismiss the Petition as no occasion whatsoever arises in the present case to re-determine the project specific tariff of the Petitioner's Project. However, in case this Hon'ble Commission is inclined to determine the project specific tariff for the additional/increased capacity of 2 MW of Petitioner's Project, then only the corresponding capacity of 0.98 MW i.e. 49% of 2 MW may be required to be purchased by the DISCOMs (Respondent No. 1 – 5) as per proportion to be decided by the Hon'ble Commission.

8. After considering the submissions made by the Petitioner and the arguments of the Respondents it is noticed that there are following 5 Key issues to be adjudicated by the Commission:

Issue No. 1: To consider the capacity of project as 12 MW;

Issue No. 2: Whether 49% of 10 MW or 12 MW has to be procured by BYPL as per terms of PPA;

Issue No. 3: To determine tariff for 51% of the capacity of the project;

Issue No. 4: The DISCOMs of Delhi be directed to procure power as per new Tariff Policy, 2016 on the issue of remaining 51% of the capacity of the Project; and

Issue No. 5: Whether intervention of DERC is required for sale of power to DMRC.

9. So far as the **issue No. 1** is concerned the argument of the counsel for the Petitioner that the Project was conceptualised initially for minimum of 10 MW, which could go upto 12MW. But later on, the Petitioner proposed to increase in the capacity of the Project and the Government of India thereafter considered the issue and vide Ministry of Finance Notification dated 1st Jan 2016 provided

grant to the Petitioner treating the capacity of the Project as 12 MW. The relevant portion of the said Notification reads as under:

“For providing (i) additional Grants in-aid Salaries to Environment Information Education and Awareness (Genires of Excellence) (Rs.4.90 Crore) and (ii) Grant-aid-general(Rs. 20 Crore) to East Delhi Waste Processing Company Limited for the 12 MW Waste to Energy Project inwards viability gap funding for Waste Management Facility under Climate Change Action Plan”

Therefore, it is observed that the capacity of the plant has been considered by the Government as 12 MW

10. Regarding **issue No. 2**, on whether 49% of 10 MW or 12 MW has to be procured by BYPL as per PPA, the provisions of the PPA as well as RFP and RFQ has to be resorted to find out what should be procurement by BYPL. It may be seen that as per PPA the relevant Paras of the PPA signed are reproduced below:
 - I. **Clause 1.1: Minimum off-take Guarantee means:** “Minimum off take Guarantee means guaranteed off take of **forty nine percent (49%) of total Available Energy (ex bus) at all the times.**”
 - II. **Clause 4.3: Purchase and sale of Energy:** “4.3.1 Subject to the terms and conditions of this Agreement, **the seller undertakes to sell to the Procurer, and the Procurer undertake to pay the Tariff for 49% of the net Available Energy of the Power station, generated and delivered at any time throughout the term of this Agreement.**”
11. Even from the submission made by the Petitioner it is noticed that the Project was conceptualized minimum 10 MW which was later on enhanced to 12 MW. Whereas, as per the terms of PPA, M/s BYPL has to procure 49% of the net available energy of the Project which at present has the capacity of 12 MW (gross) and therefore a conjoint reading of RFP and PPA leaves no ambiguity that the Petitioner is to provide 49% of the net available energy of the existing capacity of the Project to BYPL and the Petitioner is at liberty to sell the 51% of the remaining net available energy to third party.
12. Regarding **issue No. 3** for determination of tariff for remaining 51% of the energy from the Project, as the Petitioner is making prayer to direct the Respondent DISCOMs to procure power under compulsory route as per the new tariff policy, such tariff exercise is not required as a tariff of Rs. 3.66 per unit has already been obtained through competitive bidding for one of the Respondent DISCOM namely BYPL and therefore this tariff will uniformly be applicable to all the Respondent DISCOMs as they cannot be discriminated in case of procurement of power from the same waste to energy Project. If at all the Petitioner intend to sell the power to a third party other than DISCOMs of Delhi, the tariff of such

procurement of power by a third party does not fall within the jurisdiction of the Commission and therefore there is no need to determine tariff for remaining 51% of the power in such circumstances.

13. Regarding **issue No. 4 and issue No. 5**, the generator in the present case has requested for permission to sell the remaining 51% energy generated in Open market and in case the Petitioner does not get adequate purchaser in the Open market then he may be permitted to sell the generated energy to the Respondent DISCOMs at the tariff approved by the Commission.
14. The Petitioner has further submitted that an agreement has been entered into on 05.02.2017 with DMRC for sale of energy of 2MW of Ghazipur WTE project for a period of 2 years. Accordingly, the Petitioner has also made a prayer in the Petition for granting permission for sale of 2 MW energy generated by the Ghazipur WTE project.
15. It has been informed to the Commission that DMRC has applied for Open Access to SLDC. The procedural requirement will be fulfilled by the Petitioner in due course of time. As far as sale of 2 MW in Open Access market to DMRC is concerned the Petitioner requires no permission from the Commission provided all formalities as required under law are complied with.
16. Apart from the above issues, the Counsel for the Petitioner has also submitted that the generation is taking place since long but it is not being sold on account of the pending Petition and there being no order from the Commission, the Ghazipur WTE is suffering on account of the non payment by the beneficiaries to whom the power has been supplied by the Petitioner. Any project requires financial viability and non payment of pending bills by beneficiaries is not acceptable. The beneficiaries who have procured power from the project have to make payment of pending bills as per the due procedure, without further delay.
17. On the issue of deviation from scheduled power, the Commission noted that the sector is new and has no operational experience of MSW to energy Projects and it is also noted that two other similar waste to energy power projects in Delhi some relaxation have been provided by the Commission in respect of scheduling of energy. 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 2(two) years from the date of the commissioning of the project and the actual generation shall be treated as scheduled generation.

18. In view of the foregoing discussions the decision of the Commission regarding the prayers of the Petitioner is summarized as under:-

- i. The capacity of the Gazipur WTE Project is considered as 12MW for the purpose of sale of 49% of power to BYPL;
- ii. There is no need to determine tariff for remaining 51% if sold to a third party other than Respondent DISCOMs and in case it is sold to Respondent DISCOMs then the WTE Project will at liberty to sell the energy at the approved rate at 3.66 Per Unit.
- iii. In the aforesaid situation the Petitioner shall execute PPA with the Respondent No. 1-4 for procurement of power under new tariff policy. As much it is related to assigning proportion of remaining power to different DISCOMs it has to be on the basis of approved energy input of respective DISCOMs during the year, which is as under:

DISCOMs	Approved Energy Input for FY 2016-17 (MU)	Percentage
BRPL	12564.16	41.72%
BYPL	7027.92	23.33%
TPDDL	9062.97	30.09%
NDMC	1464.36	4.86%
<i>Total</i>	<i>30119.41</i>	<i>100.00%</i>

- iv. This is beyond the jurisdiction of the Commission to allocate energy to DMRC. Further even if the Petitioner intend to sell 2 MW power to DMRC, no intervention of the Commission is required provided the required procedure and conditions as per Law are complied with. In such a case the 2MW power shall be deducted from remaining 51% power of the Project and the remaining quantum of power shall be assigned to the Respondent DISCOMs procuring power under new tariff policy as per the approved percentage of procurement;
- v. The Respondent DISCOMs who have already procured power from the Project from the date of COD are required to clear the pending bills at a tariff of Rs. 3.66 per unit as per the due procedure and no unwarranted delay shall be caused for payment of the pending bills; and
- vi. For a period of 2(two) years from the date of the commissioning of the Project, there shall be no commercial/financial implication in the case of deviation in actual generation from the scheduled power; and the actual generation shall be treated as scheduled generation.

19. With the above directions the Petition is disposed of.

Sd/-
(Justice S S Chauhan)
Chairperson