



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

No. F.11(1794)/DERC/2020-21/6849

Petition No. 28/2020

In the matter of: Petition for exemption of various charges in respect of the sale of 49% of electricity under Open Access and relaxation of the Deviation Settlement Mechanism for intra-state scheduling purposes for the petitioner's Waste to Energy Project.

East Delhi Waste Processing Company Ltd.

.... Petitioner

Coram:

Hon'ble Sh. Justice S S Chauhan, Chairperson

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

Appearance:

1. Mr. Srinivas Murthy, Advocate
2. Ms. Anuradha, Advocate

ORDER

(Date of Order:15.02.2021)

1. The aforesaid Petition has been filed by East Delhi Waste Processing Company Limited (EDWPCL) seeking exemption of various charges in respect of the sale of 49% of electricity under Open Access and relaxation of the Deviation Settlement Mechanism for intra-state scheduling purposes for the petitioner's Waste to Energy Project. The petitioner has made the following prayers in its petition:
 - a. Allow the Petitioner to avail relaxations of Deviation Settlement Mechanism for intra state scheduling of power from the project provided under the Order No. F.9 (164)/DERC/DS/2015-16/C.f 5110, dated 21.01.2019 of this Commission; and
 - b. Allow the petitioner to avail exemptions of wheeling charges, Transmission charges, Regulatory Assets Surcharge, Pension Trust Surcharge and Cross subsidy surcharge under open access Regulations as provided under the Order No. F.9 (164)/DERC/DS/2015-16/C.F 5110, dated 21.01.2019 of this Commission.

2. The petitioner has submitted the following:
 - a. That the Power Purchase Agreement (PPA) as approved by the Commission was signed between BYPL and EDWPCL on 29.10.2009, which stipulated for sale of 49% of net available electricity in bulk from the Project (after offsetting the auxiliary consumption). Thereafter, the Commission vide order dated 21.02.2020 in the matter of EDWPCL Vs. BYPL in Petition No. 10/2020, has allowed the foreclosure of the PPA between BYPL and EWPCCL dated 29.10.2009 based on mutual consent in terms of clause 2.2 of the PPA (which provided for termination based on mutual consent of the parties). Accordingly, the Commission held that the petitioner was free to sell the remaining available 49% of power under any mode, including open access.
 - b. The Commission in the PPA Foreclosure Order, however held that the exemptions from Open Access charges as contained in this Commission's Order dated 21.01.2019 would not be available to the petitioner because second proviso of the Order says that exemption from Open Access charges shall not be applicable in case of premature termination of the Power Purchase Agreement with a view to avail the benefits of exemption. In this regard, this Commission held that unless anything extraordinary or exemplary is observed, it would not be prudent to reverse this Commission's Order dated 21.01.2019, which was the order that granted such exemptions for open access sales.
 - c. The fundamental purpose of the Exemption Order dated 21.01.2019 was to provide waste to energy (WtE) projects exemption of various charges under open access and relaxation of the Deviation Settlement Mechanism for intra-state scheduling purposes of waste to energy projects on account of the underlying objectives of such WtE projects in protecting the environment by diverting dumping of waste and disposing off the waste. The relaxation of the Deviation Settlement Mechanism was also provided on account of the quality and supply pattern of MSW. The Petitioner's Ghazipur WtE project fulfils and meets these underlying objectives.
 - d. The foreclosure by mutual consent of the PPA in terms of Clause 2.2 of the PPA by the Petitioner and BYPL, does not fall under the second proviso to the Exemption order. The second proviso to the Exemption Order only excludes existing WtE projects with PPA from availing the

benefit under open access in accordance with the Exemption Order “in case of premature termination of the Power Purchase Agreement with a view to avail the benefits of exemption of cross subsidy surcharges etc.”

- e. The foreclosure by mutual consent is clearly not the same as a premature termination by one of the parties “with a view to avail the benefits of exemption of cross subsidy surcharges etc.” Foreclosure by mutual consent is directly subject to the terms of Clause 2.2 of the PPA and was a result of meeting of minds by both parties and this is thus distinctly different from termination of PPA by one party unilaterally, with a view to avail benefits of exemptions from various charges associated with open access. It may be noted that the foreclosure of the PPA by the parties was done to ensure sustainability of this environmentally critical project, which was also the fundamental purpose for the Exemption Order of 21.01.2019.
- f. Further, as this Commission is aware, the situation resulting from the COVID-19 pandemic and the consequent Government lockdown measures, have resulted in significant stress on various sectors of the economy. The lockdown has resulted in the reduction of electricity consumption by more than 40%, and this has significantly impacted the sustainability of the Ghazipur WtE project. Therefore, the need for additional support is even greater in the context of the COVID-19 pandemic, in order to ensure the continued viability of the Project, whose main consumer base is commercial and industrial consumers. In this scenario, the exemption from the various charges as set forth above would provide much needed impetus and incentive for the project to operate sustainability.
- g. Given the higher capital costs of the Ghazipur WtE Project, on account of its vertical design and higher investment on emission control mechanisms, as well as the unique set of circumstances emerging in the context of the COVID-19 pandemic, the benefit of exemption from the wheeling charges, additional surcharge, transmission charges, regulatory asset surcharge, pension trust surcharge and cross subsidy surcharge and from penalties on deviation from scheduled generation will go a long way in ensuring viability and competitiveness of the Ghazipur WtE project.

- h. It is also important to underscore that the Ghazipur WtE project is not a commercial power project but is a unique and the first of its kind waste processing facility in India that generates Refuse Derived Fuel (RDF) to produce energy as by product. The project does not receive any tipping fee but is dependent only on the revenue from the sale of electricity generated. Till date the project has processed over a million tons of waste and generated over 100 million units of Green Energy. The project has prevented a million tons of waste from being dumped on the overflowing Ghazipur dumpsite and reduced water, air pollution and prevented vector borne diseases.
- i. Recently, in the notifications issued pursuant to COVID-19 under the Disaster Management Act, 2005 the Government of India has directed that maintenance of operations in the waste management sector at the municipal/local body level is an essential service that cannot be stopped. Furthermore, the Ministry of New and Renewable Energy (MNRE) has vide office Memorandum dated 01.04.2020 clarified that Renewable Energy Generating Stations have been granted 'must-run' status and this must-run status will remain unchanged during the period of lockdown.
- j. Very significant must run status has been granted to WtE plants, and to be able to fully benefit from the same, the sale of all the electricity from Ghazipur WtE project should be eligible for all exemptions as provided in the Exemption Order of 21.01.2019 in relation to its open access sale.
- k. Even after the lockdown is lifted, MSW processing will continue to be remain classified as an essential service. In order to ensure its viable and continued operations, exemptions from wheeling charges, additional surcharge, transmission charges, regulatory asset surcharge, pension trust surcharge and cross subsidy surcharge and from penalties on deviation from scheduled generation will provide a much needed assurance to the Project.

Commission Analysis

- 3. The petitioner has relied upon the order dated 21.01.2019 providing exemption from certain charges to WtE projects. The Petitioner has insisted upon that proviso in the order is applicable to those PPAs, which have been pre maturely terminated with a view to avail benefits of exemption of cross subsidy surcharge etc., whereas, the

pre mature termination of PPA in the instant case is on mutual consent basis and not with a view to avail the benefits of exemption of cross subsidy surcharge etc.

4. To examine the scope of exemptions of various charges under Open Access, the relevant provisions of the Order dated 21.01.2019 have to be referred to, which are as follows: -

“For generation projects based on Waste to Energy sources in the National Capital Territory of Delhi shall be exempted from following: -

(i) Wheeling Charges, Transmission Charges, Regulatory Asset Surcharge, Pension Trust Surcharge and Cross Subsidy Surcharge on sale of electricity within NCT of Delhi under Open Access Regulations:

(ii) Any commercial/financial implication in case of deviation from the scheduled power under Deviation Settlement Mechanism from the date of the commissioning of the project and the actual generation shall be treated as scheduled generation:

Provided that the above exemptions shall be applicable for the useful life of the existing and future projects commissioned or Power Purchase Agreement signed on or before 31st March, 2022.

Provided further that the existing waste to energy projects having entered into a Power Purchase Agreement for sale of electricity with the distribution licensee at a tariff determined under section 62 or adopted under section 63 of the Act by the Commission shall not be eligible for availing the benefit under open access for availing cross subsidy surcharge and other charges as mentioned above in case of premature termination of the Power Purchase Agreement with a view to avail the benefits of exemption of cross subsidy surcharges etc.”.

5. It is to be understood that pre mature termination even on mutual consent have some considerations, which may involve benefits of exemptions of charges etc. It may also be seen that the second proviso to the aforesaid Order nowhere provides that the pre-mature termination “only” with a view to avail benefits of exemption of cross subsidy surcharge would not be entitled for benefits of such exemptions. A plain reading of the Order clearly indicates that pre mature termination of PPAs would disentitle any WtE project from availing benefits of exemption of charges. The argument of Petitioner that the PPA was not foreclosed with the purpose of availing benefits of exemption of charges may not be acceptable from the fact that the

prayer clause of the Petition No. 10 of 2020 filed by the Petitioner for foreclosure of PPA, itself contains the prayer for allowing exemption from payment of Wheeling charges etc., in terms of the Order dated 21.01.2019. Therefore, it cannot be claimed by the Petitioner that while going for foreclosure of PPA, the Petitioner didn't have any intention of availing exemption of Wheeling charges etc. as mentioned in the Order dated 21.01.2019.

6. The Commission vide its Order dated 21.02.2020 in the matter of EDWPCL Vs. BYPL in Petition No. 10 of 2020, has stated that EDWPCL shall be free to sell available power under any mode including open access, however, exemption from wheeling charges, cross-subsidy charges etc. would not be available in terms of the Order of this Commission dated 21.01.2019.
7. Moreover, the Petitioner has not made any specific arguments except that due to COVID-19 Pandemic and prevailing market conditions, the levy of such charges makes its power costlier.
8. This had always been a consideration for this Commission that the renewable energy projects like WtE projects etc. have environmental components and must be supported; and this is why DERC Open Access Order dated 01.06.2017 exempts various charges for purchase of renewable energy as under:

"6. Quantum of Renewable Purchase Obligation (RPO):

(1) Open Access consumer shall fulfill its RPO as per Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012 as amended from time to time.

(2) Wheeling, Transmission and Additional surcharge shall not be applicable on Open Access Consumers availing energy from all renewable energy sources within or outside Delhi. Open Access consumer receiving electricity from renewable energy sources shall be exempted from the cross subsidy surcharge to the extent of RPO:

Provided that the generators using renewable energy sources shall certify that no REC/RPO claim for this power has been made.

(3) No banking facility shall be provided for supply of electricity from renewable energy sources through Open Access."

9. Therefore, in terms Para 6(2) of the of DERC Open Access Order dated 01.06.2017, the WtE projects being Renewable Energy Projects in Delhi are already exempted from payment of Wheeling charges, Transmission charges, Additional surcharges and to the extent of RPO, the Cross Subsidy Surcharge.

10. On the issue of deviation from schedule power under the Deviation Settlement Mechanism (DSM), it is clarified that such exemption is allowed to WtE projects, which supply power under a legal Power Purchase Agreement and not through open access. DERC Open Access Order, 2017 (dated 01.06.2017) stipulates for settlement of deviation at injection point as under: -

"3.2 Settlement of Deviation at Injection Point:

Deviation between the schedule and the actual injection in respect of Open Access taken by a Generating company/ Seller shall be settled as per the applicable Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 as amended from time to time."

11. An issue was also raised by SLDC, Delhi that when waste to energy generator is drawing power from grid, the schedule of open access consumer is revised to zero and the generator draws the power from grid and this energy remains unaccounted. The issue has been addressed by DERC vide its Order dated 06.03.2020, which states as under:

"2. Settlement of unaccounted energy of waste to energy plant:

The unaccounted excess energy generated by waste to energy plant from its scheduled generation and the energy drawn from the grid (i.e. negative energy) shall be settled in the energy account of distribution licensee where the waste to energy plant is located."

12. The Petitioner has also been arguing that 51% of the Power from WtE plant is already exempted from various charges under Open Access as per Order dated 21.01.2019 and remaining 49% of the power released after termination of PPA is not exempted from various charges under Open Access. The Commission is of the view that allocation of energy to different consumers cannot be categorised whether this energy is out of 51% or remaining 49%. Further, the sale in open access to different consumers will also vary from time to time as open access can be availed by the consumer on short term basis, medium term basis or long term basis. The treatment and applicability of charges for the total energy supplied under open access to the consumers other than distribution licensee has to be the same. The Commission is also aware of the fact that certain exemptions have already been given to Renewable Energy sources vide DERC Order dated 01.06.2017.

13. In view of the foregoing discussion, following is held and clarified:

- (i) The exemptions stipulated in Order dated 21.01.2019 shall be applicable to the Waste to Energy Generating Projects of Delhi for the energy sold to the Distribution Licensees of Delhi.
- (ii) In case the Waste to Energy generating project is selling power both to the distribution licensee of Delhi and other consumers through open access, the exemptions of charges as allowed in DERC Open Access Order dated 01.06.2017 as amended from time to time, shall be allowed on the power sold to the consumers (other than distribution licensee) through open access mode.
- (iii) Exemption from Deviation Settlement Mechanism (DSM) shall be applicable in case the Waste to Energy generating project is selling power either to the distribution licensee only or to the both, the Distribution Licensee of Delhi and other consumers through open access and in such cases, the actual generation shall be treated as scheduled generation. In such mixed sale of electricity, the settlement of unaccounted energy of waste to energy plant shall be done in the energy account of distribution licensee where the waste to energy plant is located.
- (iv) In the absence of part sale of electricity to a Distribution licensee, exemption from Deviation Settlement Mechanism shall not be allowed and the provisions of DERC Open Access Order dated 01.06.2017 for settlement of deviation at Injection Point shall be applicable.

14. With the above directions, the case is disposed of accordingly.

Sd/-

(A.K. Ambasht)
Member

Sd/-

(Justice S S Chauhan)
Chairperson