



Delhi Electricity Regulatory Commission

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

F.11(2055)/DERC/2022-23/7602

Petition No. 72/2022

In the matter of: Petition u/Section 63 and 86(1)(b) and other applicable provisions of the Electricity Act, 2003 for approval of bidding process of Municipal Waste based plant at Narela – Bawana, adoption of Tariff and approval of Draft PPA.

Municipal Corporation of Delhi

Petitioner

Vs.

Tata Power Delhi Distribution Ltd. & Ors.

Respondents

Coram:

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

Appearance:

1. Ms. Swapna Seshadri, Advocate, MCD
2. Mr. Buddy A Ranganadhan, Adv. BRPL, BYPL
3. Ms. Anuja Jain, Adv. TPDDL
4. Mr. Shailja Kulshreshtha, Adv. DTL & SLDC

ORDER

(Date of Order: 07.03.2023)

1. The instant Petition has been filed by M/s Tata Power Delhi Distribution Co. Ltd. for approval of bidding process of Municipal Waste based plant at Narela – Bawana, adoption of Tariff and approval of Draft PPA. The Petitioner has prayed the following:
 - i. Approve the fresh bidding process being conducted by MCD;
 - ii. Approve the Draft PPA to be executed by the Distribution Licensees/Respondent No. 1 – 5 viz TPDDL, BRPL, BYPL MES and NDMC; &
 - iii. Adoption of lowest levelled tariff arising through competitive bidding process.

Petitioner's Submissions

2. The Government of India has formulated Solid Waste Management Rules, 2016 ("SWM Rules), which impose an obligation on MCD to adopt suitable process for processing and disposal of Municipal Solid Waste (MSW).

3. The National Tariff Policy, 2016 notified by the Ministry of Power Government of India also mandates the purchase of power by the Distribution licensees from the power generated from Municipal waste.
4. The Ministry of New and Renewable Energy (MNRE) has issued the Twentieth Standing Committee Report on Power from Municipal Waste in August 2016 wherein MNRE has enumerated the role of municipal authorities in Solid Waste Management. In the said Report, it is stipulated that one of the functions of the Municipal authorities is to make adequate provisions of funds for capital investments as well as operation and maintenance of solid waste management services in the annual budget.
5. In furtherance of its functions and pursuant to the above-mentioned Rules, Policy and Report MCD is desirous of augmenting its waste management capability and expanding its waste processing, management and disposal capabilities and decided to set up Municipal Solid Waste (MSW) to Energy Processing Facility of minimum 28MW capacity at Narela, Bawana, New Delhi for 3000 (\pm 20%) TPD of MSW (hereinafter referred to as Project)
6. The proposed project has been designed to accept the waste to 3600 TPD, MSW and therefore considering additional quantities, power generation may go up to 36MW. The capacity can be allocated in the appropriate ratio as decided by the Commission to the distribution licensees, Respondents No. 1-5 to the present Petition, as had been decided in the SDMC case. Since, the entire energy has to be scheduled mandatorily, it would suffice to decide the ratio of power to be purchased.
7. As regards the excess power, the concessionaire will be allowed to sell the power beyond 36MW in open access arrangements, subject to the approval of the Commission and other concerned agencies. However, in such a case, MCD has retained the first right of refusal for purchasing the power. This provision has been kept in view of the fact that the entire cost of the project will be paid by the consumers of Delhi through the Distribution Companies.
8. In June 2022, the Regional Centre for Urban & Environmental Studies (RCUES), Lucknow had prepared and submitted a Techno-Economic Feasibility Report to MCD as transaction advisory service for setting up the Waste to Energy Facility at Narela-Bawana. The report contains guidelines for Solid Waste Management, principles for Solid Waste Processing, as-is assessment of SWM in MCD, proposed plan for SWM project, cost estimates, project structuring, financial feasibility and

bidding strategy, risks and mitigation measures and environmental management plan.

9. MCD had issued a Notice Inviting Tender (NIT) along with Request for Proposal (RfP) on 15.07.2022 for selection of developer to design, engineer, finance, construct, commission, operate and maintain the above referred Project and invited bids for undertaking the Project.
10. The bidding documents related to setting up the project were sent to the Commission for consideration on 03.08.2022. In its response, vide letter dated 24.08.2022, the Commission had directed MCD to file a petition for approval of draft PPA, RFP, etc.
11. Thereafter, with the approval of competent authority, tendering process of NIT dated 15.07.2022 was closed because only one tender was received. Fresh tenders were then invited for subject cited work vide NIT No. EE/WtE/DEMS/TC/2022-23/01 dated 21.10.2022.
12. On 03.11.2022, MCD had issued a reply to the pre-bid queries raised by prospective bidders. MCD has also issued a Draft Concession Agreement as the part of the bidding documents.
13. As per the fresh NIT dated 21.10.2022, the due date for bidding was 14.11.2022. The bidding process was undertaken on 14.11.2022 and two technical bids were received on 14.11.2022
14. The qualification/technical bids were opened on the same day i.e on 14.11.2022 M/s JITF Urban Infrastructure Limited and M/s JBM Renewable Pvt. Ltd. had submitted their bids. For evaluation of bids and other related issues, an evaluation committee was constituted, with the approval accorded by Commissioner, MCD on 27.09.2022 under chairmanship of Additional Commissioner (DEMS).
15. MCD also took the assistance of RCUES, a transaction advisory agency who submitted final evaluation report of qualification/technical bids. In the meeting of evaluation committee held on 17.11.2022, the documents submitted by the bidders vis-à-vis the requirement of the RFP document were discussed in detail. The committee, after detailed deliberation, recommended declaring both the bidders i.e. M/s JITF Urban Infrastructure Ltd. And M/s JBM Renewable Pvt. Ltd. as technically qualified for opening of their financial bids.

16. On recommendation of the evaluation committee, competent authority allowed to open the financial bids of both the bidders i.e., M/s JITF Urban Infrastructure Limited and M/s JBM Renewable Pvt. Ltd. On 17.11.2022 at 4:30 pm.
17. Accordingly, financial bids were opened on due date & time and the same was forwarded to RCUES, transaction advisory agency, for calculation of levelized tariff. On 18.11.2022, RCUES calculated the levelized tariff on the basis of parameters already mentioned in RFP of both the bidders and communicated through email as under:

Name of the Bidder	Levelized Tariff (Rs./kWh)
M/s JITF Urban Infrastructure Limited	7.380
M/s JBM Renewable Pvt. Ltd.	9.909

18. On 26.11.2022, the financial bids were evaluated by the evaluation committee. The Commission vide its letter dated 24.08.2022, referred to Petition No. 56 of 2017 which had been filed by the then South Delhi Municipal Council (SDMC) before the Commission in 2017 as well as similar Petition No. 27 of 2018 moved by the East Delhi Waste Processing Co. Ltd. SDMC case in which the Waste to Energy Plant was proposed to be set up at Tehkhand, Okhla and has prepared its bidding documents in consonance with the documents prepared by SDMC. The Commission had approved the bidding process and Draft PPA therien and had directed the DISCOMs to enter into PPAs with SDMC vide Orders dated 02.11.2018 and 13.12.2019.
19. In the fact and circumstances mentioned above, MCD is filing the present petition before the Commission for approval of the fresh bidding documents and the draft PPA to be entered into by the successful and the distribution licensee in Delhi.
20. Under Section 86(1)(b) of the Electricity Act, 2003, it is only the Commission which has to function to approve the power procurement process of the Distribution Licensee.
21. **Respondent No. 1, (TPDDL) Submissions**
 - i. Waste to Energy Research & Technology Council ("WtE Energy & Research Council") has filed a petition being Petition No. 65 of 2022 before this Commission *inter alia* contesting the authority of MCD to issue Request for Proposal ("RFP"), as the MCD is not a licensee, within the meaning of the Electricity Act, 2003 ("Act"). The Commission had reserved its order in the said petition vide Daily Order dated 31.01.2023.

- ii. MCD has no authority under the extant statutory framework to issue RFP in relation to procurement of power, as the MCD is not a licensee under the terms of the Act. The present RFS and draft PPA have been issued contrary to the provisions of the Act. As MCD does not have any valid license under Section 14 of the Act to undertake trading of electricity, therefore, the present Notice Inviting Tender ("NIT") has been issued by MCD exceeding its authority and the same is violative of objects and provisions of the Act.
- iii. The levelized tariff of Rs. 7.38 kWh, calculated in terms of the tender issued by the Petitioner, is very high, making the same economically unviable for the distribution companies, such as the Answering Respondent herein. As the cost of power procurement along with transmission of electricity comprises around 80% of the Annual Revenue Requirement ("ARR") of the Answering Respondent, high cost of tariff will cause grave cash flow impact on the Answering Respondent, considering especially that Power Purchase Cost Adjustment Charges ("PPAC") is fixed belatedly on quarterly basis. The said high cost on account of the tariff, in effect will adversely affect the consumers of the Answering Respondent and will entail additional PPAC impact.
- iv. Further, as per the details shared by the Petitioner, the Project has been approved with Viability Gap Fund (VGF) of Rs. 151 Crores i.e. 25% of the total project cost of Rs. 604.26 Crore. The levelized tariff has been calculated without considering the Viability Gap Funding ("VGF") of Rs.151 Cr. Provided by MCD to the developer under Clause 1.5.1 of the RFP, for the purpose of developing of Project, during the period commencing from the construction of the Project till Date of Commercial Operation ("COD"). The high cost of tariff ought to be reduced proportionately considering the comfort of VGF. The levelized tariff of existing waste to energy projects operating in Delhi are significantly lower than the lowest levelized tariff stated in the present Project. The Petitioner's proposed Project has a much lower efficiency and is much more expensive than other projects of similar nature, such as the 25 MW project proposed by SDMC.
- v. Not only the RFP issued by the MCD is under challenge before this Commission and the same is issued without any authority, the Petition is also conspicuously silent on whether or not the tendering process followed by MCD for the tenders invited vide NIT No. EE/WtE/DEMS/TC/2022-23/01 dated 21.10.2022 was even approved by this Commission.

- vi. The draft PPA is an unnegotiated PPA and is lacking various important provisions that are not only necessary under the extant regulations but also does not efficiently deal with provisions governing the rights of distribution companies.
- vii. The VGF for similar Waste to Energy Plant i.e., for Tehkhand Waste to Energy Project Limited is 33.33% of the Project cost instead of 25% as in the present case. The Commission to make the VGF at least 33.33% of the Project cost and to share the revised levelized tariff so to bring down the tariff for securing the overall interest of the consumer of Delhi.
- viii. The Cost of power procurement along with transmission of electricity comprises around 80% of the Annual Revenue Requirement (ARR) of the Answering Respondent. The high cost of tariff will cause grave cash flow impact on the, considering especially that Power Purchase Cost Adjustment Charges (PPAC) is fixed belatedly on quarterly basis. Consequently, it will adversely affect the consumers of the Answering Respondent and will entail additional PPAC impact.
- ix. The tariff discovered through competitive bidding is higher when it is compared to other similar Waste to Energy Project's commercialized in Delhi. The Current & Highest tariff for running Waste to Energy Projects is mentioned below:

Project	Current Tariff (Rs./Unit)	Highest Tariff (Rs./Unit)
TOWMCL	5.742	6.435
TWEPL	4.300	6.000

- x. As per bid working assumption for 36MW and 28MW, the Project cost has been considered as Rs. 736.37 Crores and Rs. 664.60 Crores respectively. In both the cases, Project cost is much higher than the estimated cost quoted by MCD i.e. Rs. 604.26 Crores. Therefore, even after considering the VGF fund of Rs. 151 Crores, the Project cost is still very high and simultaneously tariff for the same is also higher than the other similar projects.

Appropriate Modification to be made in Draft PPA

- xi. Some of the modifications which the Answering Respondent has proposed in the draft PPA, have been elaborated hereunder:

- a. As per the draft PPA, it is stated that the Seller will implement the Project by installing the plant having a capacity of 28MW which may go up to 36MW. The draft PPA does not mention the fixed capacity of the plant in MW terms. Therefore, it is proposed that the capacity of the plant is to be fixed (i.e. 28MW or 36MW).
 - b. The clause for COD is to be deliberated after deciding the final capacity of the Plant (i.e. 28MW or 36MW). The draft PPA does not contain any clause for penalty in case the Seller fails to commission the project within the approved timelines. Therefore, a penalty clause may be added in case the COD is not achieved within the approved timelines. Similarly, compensation is to be provided to the beneficiaries in case of non-compliance of Renewable Purchase Obligation (RPO) on account of delay in commissioning of the project or less generation than the normative generation by the Seller.
 - c. Similarly, the draft PPA is also silent on the penalty clause in case when the Seller fails to schedule minimum energy within a contract year to the beneficiaries to meet their RPO.
 - d. The draft PPA needs to capture scheduling of minimum and maximum energy.
 - e. The tariff should only be applicable after full commissioning of the Project.
 - f. The beneficiaries including the Answering Respondent should not be burdened with any additional cost on generation of electricity beyond 28MW.
- xii. The RFP issued by the Petitioner is pending adjudication before the Commission and the same is issued without any authority, but the Petition is also conspicuously silent on whether the tendering process followed by the Petitioner for the tenders invited is even approved by the Commission or not. The Answering Respondent specifically holds its reservations in this regard and as such the Petitioner may be put to strict proof of adherence with the tendering process and its approvals.

22. Respondents No. 2 (BRPL) and 3 (BYPL) Submission

- i. WtE Research & Technology Council has filed a petition being Petition No. 65/2022 before the Commission challenging the entire tendering process in relation to the Project, in which proceedings, the Answering Respondents have

not been impleaded as Respondents. WtE Research & Technology Council has also filed an application seeking intervention in the present Petition as well (being IA NO. 01 of 2023). That being the case, it may be in the fitness of things for the Commission to first dispose off Petition No. 65 of 2022 since a decision in that matter, may have far reaching consequences on the present Petition. The present proceedings may be kept in abeyance till the order reserved in Petition No. 65 of 2022 is passed by the Commission.

- ii. The draft PPA appended with the Petition is concerned, whose approval is also being sought, the same has neither been negotiated with the Answering Respondents nor an opportunity been provided to them to comment upon the same. Therefore, this Commission may grant them an opportunity to negotiate the PPA with the Petitioner and place a negotiated / signed document for the consideration of this Commission, as opposed to granting its imprimatur to the draft PPA appended with the present Petition. Some of the key concerns which the Answering Respondents have in the draft PPA, have been elaborated hereunder for the kind consideration of this Commission:
 - a. Recital E of the draft PPA provides that the Seller will implement the Project by installing plant and equipment having a capacity of 28 MW which may go up to 36 MW. The draft PPA does not specify whether the commercial operations shall be achieved at a capacity of 28MW or 36MW.
 - b. Article 8 of the draft PPA pertaining to applicable Tariff, does not provide for a year wise scheduled tariff. Additionally, the provision is silent about the assumed installation capacity for the purpose of charging tariff. It would however appear that in this Project, tariff based on 36MW of capacity is being charged.
 - c. The draft PPA is silent about the provision for supply of 'infirm power' in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019.
 - d. The draft PPA does not provide for a clause which prescribes the penalty in case the Seller fails to provide the power on the date of commercial operation.
 - e. The charges for deviation should be in accordance with Regulation 8 of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2022.

- f. Clause 8.1 of the draft PPA states that Seller should be entitled to collect tariff for the supply of electricity. However, in the Answering Respondent's view, this clause should clarify that full tariff would be charged only when the Supplier's Plant is able to achieve maximum COD. Until then, partial / concessional tariff should be levied.
 - g. The provision for incentives, as stated under Clause 8.3 of the draft PPA, should be provided to the Supplier only after approval from this Commission.
 - h. The draft PPA should also specify the manner in which payments are to be appropriated in relation to unpaid and / or disputed invoices qua current and undisputed bills.
 - i. The DISCOMS, including the Answering Respondents should be provided with monetary compensation in case there is any delay in commissioning of the Project or the Supplier generates less electricity than the normative generation.
 - j. Article 11 which covers the *force majeure* events should also include pandemic (like COVID-19) and requisite relief should be provided to the affected Party.
 - k. Delivery Point should be DTL's periphery and the consequent clauses like metering etc. should accordingly be aligned.
- iii. As per the Petitioner's minutes of the meeting held on 26.11.2022, the evaluation committee has recommended for consideration and adoption, a levelized tariff of Rs 7.38/ kWh ostensibly arrived through a competitive and transparent bidding process. It also appears that this tariff has been arrived at without considering the viability gap funding of Rs. 151 Cr., which is to be provided by MCD as fixed component as per this bidding process. It is submitted a viability gap funding of Rs. 151 Cr. is to be provided to the developer for the purpose of development of the project during construction period till COD. Since, the Levelized Tariff as quoted, is exclusive of the impact of viability gap funding, the same needs to be considered and the tariff be reduced proportionately. This is specially on account of the fact that Levelized Tariff of existing waste to energy projects operating in Delhi, discovered

through competitive bidding and managed by the same developer, are significantly lower.

23. **Respondent No. 6 (DTL) Submission**

- i. That the Petitioner has not sought any relief or made any prayer against the Answering Respondent in the present Petition. Thus, the present Petition does not in any manner whatsoever pertain to them. They are not a necessary party in view of the relief sought by the Petitioner before this Commission.

24. **Respondents No. 7 (SLDC) Submission**

- i. As per Section 32 of the Electricity Act, 2003, the State Load Despatch Centre (SLDC) ensures integrated operation of the power system in a State. SLDC exercises supervision and control over the intra-State transmission system. SLDC is responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code. SLDC keeps accounts of the quantity of electricity transmitted through the State grid.
- ii. That in the present petition the Petitioner is praying for the approval for fresh bidding process, approval for draft PPA and adoption of lowest levelled tariff arising through competitive bidding process. The Answering Respondent is not having any scope or role in the bidding process and adoption of tariff. However, it is pertinent to mention herein that the Answering Respondent has important function in the scheduling and dispatch of power in accordance with Electricity Act, 2003. Article 5 of Scheduling and Despatch under the draft PPA is related with scheduling and dispatch of electricity. The Hon'ble CERC vide notification dated 14.03.2022 issued CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2022, which was implemented w.e.f. 05.12.2022. In this Regulations, the charges for deviation for a generating station based on Municipal Waste are defined as under:

Entity	Charges for deviation payable to Deviation and Ancillary Service Pool Account.	
Seller	Deviation by way of over injection	Deviation by way of under injection
For general seller being a generating station based on municipal solid waste	Zero: Provided that such seller shall be paid back for over injection up to [20% Deviation – general seller (in%)]	(i) Zero upto [20% Deviation – general Seller (in%)]: Provided that such seller shall pay back for the short fall in energy against its schedule in

	@contract rate, or in the absence of a contract rate, @ the weighted average ACP of the Day Ahead Market segments of all Power Exchange for the respective time block.	any time block due to under injection up to [20% Deviation – general seller (in%)] @50% of the contract rate, or in the absence of a contract rate @ 50% of the weighted average ACP of the Day Ahead Market segments of all Power Exchanges for the respective time block; And (ii) @ normal rate of charges for deviation beyond [20% Deviation-general seller (in%)]
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- iii. The Commission vide its order dated 26.12.2022 issued directives for implementation of the above CERC Deviation Settlement Regulations, 2022 at Intra State Level.

- iv. The project of MCD, Municipal Waste based plant at Narela – Bawana will be commissioned after the order dated 26.12.2022 of Commission, hence in compliance with the order of the Commission, deviation settlement mechanism (DSM) will be applicable on the above stated project/plant. Accordingly, Petitioner will be covered under scheduling and dispatch code of grid code, wherein the Petitioner’s Plant will be required to declare their declared capacity in 15 minutes time block on day ahead basis and scheduling will be done by SLDC. Any deviation from Schedule will be treated under Deviation Settlement mechanism as provided by CERC under (Deviation Settlement Mechanism and Related Matters) Regulations, 2022. The Answering respondent prayed that to consider the submission of SLDC and accordingly the Petitioner may be directed by the Commission to ensure appropriate modification into the PPA.

25. **Rejoinder on behalf of Petitioner**

- i. The basis of initiation of the bidding process was the Record of Discussion dated 14.05.2022 which has been captured in the Minutes of Meeting dated 30.05.2022 (hereinafter 'ROD'). In the said meeting, all the major details about the bidding process were discussed with the DISCOMs.

- ii. Further, the draft PPA which is circulated in the present process to the DISCOMs is almost in line with the PPA which was executed in the Tehkhand MSW Project

between the DISCOMs and the successful bidder. However, if any further issues remain after the tariff is adopted by this Commission, then the PPA terms can be discussed between the DISCOMs and the successful bidder.

- iii. As regards the objections raised by BRPL and BYPL to the terms of the PPA, the clarification to each contention is as follows:
 - a. Recital E of the draft PPA provides that the Seller will implement the Project by installing plant and equipment having a capacity of 28 MW which may go up to 36 MW. The draft PPA does not specify whether the commercial operations shall be achieved at a capacity of 28 MW or 36 MW.
 - b. In this regard, it is submitted that since the PPA stipulates in Clause 3.4.2 that 100% of power is to be procured by the DISCOMs and that the respective obligations of the parties will commence even to the extent of partial COD (in Clause 4.1.2), this issue may not have any impact on the DISCOMs.
 - c. After receiving and evaluating all the bids, MCD had also sought the opinion of the Regional Centre for Urban and Environmental Studies, Lucknow. The said organisation has evaluated the tariff of Rs. 7.38/kWh in the present case.

Commission Analysis

26. The instant Petition has been filed by the Petitioner u/S 63 and 86(1)(b) of the Electricity Act, 2003 for approval of bidding process of Municipal Waste based plant, adoption of tariff arrived through Competitive Bidding Process & approval of Draft PPA. MCD is augmenting its Waste Management capability and expanding its Waste processing management and disposal capabilities and decide to set up Municipal Solid Waste (MSW) to Energy Processing Facility of minimum 28MW Capacity at Narela, Bawana, New Delhi for 3000(±20%) TPD of MSW.
27. The DISCOMs have raised preliminary objection that pending disposal of Petition No.65 of 2022, wherein the Petitioner WtE Research & Technology Council has filed Petition before this Commission challenging the entire tendering process in relation to this project. The contention of DISCOMs is that the order of Petition No. 65 of 2022 will have bearing on the present Petition, therefore the present proceeding may be kept in abeyance till the order in Petition No.65 of 2022 is passed by the Commission. In this regard it is observed that the Commission was not inclined to entertain the Petition No 65 of 2022 on the ground of maintainability. However, an opportunity was given to the Respondent to file reply to the Petition and both parties to argue. The matter was taken up for hearing on 31.01.2023 and after hearing the arguments of both the parties, the Commission had reserved the order. However, the order of

Petition No. 65 of 2022 has already been issued on 06.03.2023, therefore this issue has become redundant.

28. This Commission in Petition No. 56 of 2017 filed by South Delhi Municipal Corporation has also approved levelised tariff discovered through bidding route of Tehkhand Waste based plant. MCD being a statutory body is mandated under SWM Rules, 2016 to facilitate construction, operation and maintenance of solid waste processing facilities and associated infrastructure. Therefore, the objection raised on the above ground holds no good.
29. The above project has been designed to accept the Waste upto 3600 TPD, MSW and therefore, the additional quantities power generation may go up to 36MW. The Petitioner also seeks indulgence of the Commission to decide the appropriate ratio of allocation of power to Distribution licensee, Respondent No. 1-5 in the present Petition.
30. MCD had issued Notice inviting Tender (NIT) along with Request for Proposal (RfP) on 15.07.2022 for Selection of developer to design, engineer, finance, construct, Commission, operate and maintain the Waste to Energy (WtE) Project.
31. Because, only one tender was received, therefore, tendering process of NIT dated 15.07.2022 was closed and fresh tenders were invited on 21.10.2022.
32. The qualification/technical bids were opened on 14.11.2022 M/s JITF Urban Infrastructure Limited and M/s JBM Renewable Pvt. Ltd. had submitted their bids. For evaluation of bids and other related issues, an evaluation committee was constituted, with the approval accorded by Commissioner, MCD on 27.09.2022 under chairmanship of Additional Commissioner (DEMS).
33. MCD also took the assistance of RCUES, a transaction advisory agency who submitted final evaluation report of qualification/technical bids. In the meeting of evaluation committee held on 17.11.2022, the documents submitted by the bidders vis-à-vis the requirement of the RFP document were discussed in detail. The committee, after detailed deliberation, recommended declaring both the bidders i.e. M/s JITF Urban Infrastructure Ltd. And M/s JBM Renewable Pvt. Ltd. as technically qualified for opening of their financial bids. On recommendation of the evaluation committee, the financial bids of both the bidders i.e., M/s JITF Urban Infrastructure Limited and M/s JBM Renewable Pvt. Ltd., were opened on 17.11.2022 at 4:30 pm.
34. On 18.11.2022, RCUES calculated the levelized tariff on the basis of parameters already mentioned in RFP of both the bidders as under:

Name of the Bidder	Levelized Tariff (Rs./kWh)
M/s JITF Urban Infrastructure Limited	7.380
M/s JBM Renewable Pvt. Ltd.	9.909

35. On perusal of the pleadings and arguments put forth by the Respondents, DISCOMs have raised an objection that MCD does not have any valid licence under Section 14 of the Act to undertake trading of electricity, therefore, MCD is exceeding its authority and the same is violative of the objects and provisions of the Act.

36. In this regard, perused the SWM Rules, 2016 notified by Ministry of Environment, Forest and Climate Change on 08.04.2016. In Rule 3 (30) of MSW Rules 2016, the local body is defined as follows;

" local body" for the purpose of these rules means and includes the municipal corporation, nagar nigam, municipal council, nagarpalika, nagar Palikaparishad, municipal board, nagar panchayat and town panchayat, census towns, notified areas and notified industrial townships with whatever name they are called in different States and union territories in India"

37. Rule 15 of SWM Rules, 2016 deals with duties and responsibilities of local authority which stipulates as follows;

"15. Duties and responsibilities of local authorities and village Panchayats of census towns and urban agglomerations- The local authorities and Panchayats shall, -

.....

(v) facilitate construction, operation and maintenance of solid waste processing facilities and associated infrastructure on their own or with private sector participation or through any agency for optimum utilisation of various components of solid waste adopting suitable technology including the following technologies and adhering to the guidelines issued by the Ministry of Urban Development from time to time and standards prescribed by the Central Pollution Control Board. Preference shall be given to decentralized processing to minimize transportation cost and environmental impacts such as:

a) bio-methanation, microbial composting, vermi-composting, anaerobic digestion or any other appropriate processing for bio-stabilisation of biodegradable wastes;

b) waste to energy processes including refused derived fuel for combustible fraction of waste or supply as feedstock to solid waste based power plants or cement kilns;

38. The DISCOMs also raised an objection that the levelized tariff of Rs. 7.38/kWh, calculated in terms of the tender is very high, making the same economically

unviable for the distribution companies. In this regard the Commission analysed the price of power procured through WtE plants in Delhi as well as in other states of India. The summary of WtE plants is given hereinunder;.

Summary of WtE Plant in Delhi

Waste to Energy Plant	Delhi DISCOM s Share (%)	Discom-wise Allocation (%)				Tariff (Rs./k Wh)	Remark
		BRPL	BYPL	TPDDL	NDM C		
TOWMCL (23 MW)	76.65%	50.00%	0.00%	26.65%	0.00%	6.43 (TPDDL)	Tariff determined under Section 63 of Electricity Act, 2003. Tariff for BRPL is Rs. 2.92/kWh
MSW Bawana (24MW)	100.00%	41.81%	23.90%	29.20%	5.09%	7.03	Tariff determined under Section 62 of Electricity Act, 2003
EDWPCL (12 MW)	0.00%	Sale entire power through Open Access				NA	
Tehkhand Okhla (21MW)	100.00%	41.72%	23.33%	30.09%	4.86%	5.13	Tariff determined under Section 63 of Electricity Act, 2003
Narela WtE Plant (Present Petition filed by MCD for approval of Tariff ofthe Project & to approve Draft PPA) (28 MW)	Proposed 100%					7.38	Tariff determined under Section 63 of Electricity Act, 2003.
Total	108 MW						

Summary of Waste to Energy Plants in Andhra Pradesh, Maharashtra, and Telangana:

Waste to Energy Plant	Installed Capacity (MW)	Tariff approved by SERC (Rs./kWh)
Guntur, Andhra Pradesh	15	6.165
Vizag, Andhra Pradesh	15	6.226
Telangana	Suo-Moto Determination of Generic Tariff	7.84, under Section 62 of EA, 2003
Pune, Maharashtra	13.19	7.45, under Section 62 of EA, 2003
Ananthapur MSW, Andhra Pradesh	5	7.50, under Section 63 of EA, 2003
Kadapa, Andhra Pradesh	5	7.50, under Section 63 of EA, 2003
Tadepalligudem, Andhra Pradesh	5	7.50, under Section 63 of EA, 2003
Nellore, Andhra Pradesh	5	7.50, under Section 63 of EA, 2003

39. The Counsel for Petitioner also submitted that the documents, namely, the financial evaluation report signed by the bid evaluation committee and a certificate on the conformity to the bidding process to the approved bidding documents by the Evaluation Committee has been furnished alongwith the petition.
40. Since, the documents have been submitted by the Petitioner and after examination of the documents containing financial evaluation report and certificate on the conformity to the bidding process, the tariff of Rs. 7.38/kWh in respect of Municipal Waste based plant at Narela – Bawana as determined through bidding, it is observed that the price of levelized tariff of Rs. 7.38/kWh is competitive.
41. With regard to objection raised by the DISCOMs that the levelized tariff has been calculated without considering the Viability Gap Funding ("VGF") of Rs.151 Cr. the petitioner's contention is that the percentage of assistance in the Tehkhand MSW project was 33.33% while in the present project, it is 25%. The same has been deliberated on discussion held on 14.05.2022 under the Chairmanship of Chief Secretary to review the progress of setting up of the proposed WtE facility by MCD. On perusal of above documents, it is observed that the Viability Gap Funding which was discussed on 14.05.2022 has been considered and levelised tariff has been calculated based on the above decision. Therefore, the Commission did not find any infirmity in this.
42. The DISCOMs have also raised that the draft PPA does not mention the fixed capacity of the plant in MW terms. Therefore, it is proposed that the capacity of the plant is to be fixed either at 28MW or 36MW. The clause for COD is to be deliberated after deciding the final capacity of the Plant.
43. The 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 had 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 PPA also stipulates that 100% of power is to be procured by

DISCOMs and that the respective obligations of the parties will commence even to the extent of partial COD. Since 100% power is to be procured by DISCOMs therefore the capacity of project is whether 28MW or 36MW is irrelevant.

44. The DISCOMs in its submissions suggested that Delivery Point should be DTL's periphery and the consequent clauses like metering etc. should accordingly be aligned. Petitioner in response to this, agreed to the suggestions, therefore this issue is also resolved.
45. The SLDC in its reply stated that since WtE Plant is to be Commissioned after the order dated 26.12.2022 of the Commission therefore the deviation Settlement mechanism (DSM) will be applicable for above project. It is held that the project will be covered under scheduling and despatch code of Grid Code, wherein the Petitioner's Plant will be required to declare their declared capacity in 15 minutes' time block on day ahead basis and scheduling will be done by SLDC. Any deviation from Schedule will be treated under Deviation Settlement mechanism as provided by CERC under (Deviation Settlement Mechanism and Related Matters) Regulations, 2022. Considering, the submission of SLDC it is held that the PPA needs to be modified.
46. DISCOMs have raised an objection that draft PPA is an unnegotiated and does not efficiently deal with provisions governing the rights of distribution licensees. In reply to this, Petitioner submitted that the parties have held discussion on 14.05.2022, PPA was circulated in line which was executed in the Tehkhand MSW Project between the DISCOMs and the successful bidder. They also agreed further issues remain after the tariff is adopted by this Commission, then the PPA terms can be discussed between the DISCOMs and the successful bidder. Considering the submissions of Petitioner, Parties are directed to negotiate the terms of PPA and submit signed copy of PPA to this Commission for approval.
47. In view of above and considering the submissions made by the Petitioner as well as on examination of the documents containing financial evaluation report and certificate on conformity to the bidding process, the tariff of Rs. 7.38/kWh in respect of Municipal Waste based plant at Narela – Bawana to Electricity plant as determined through bidding process is adopted by the Commission
48. The ratio of Power to be purchased by Respondent No. 1-5 will be decided at the time of approval of PPA.

49. The parties are directed to negotiate the terms of PPA and submit negotiated signed PPA before the Commission within three months from the date of issuance of the order.
50. Ordered accordingly.

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