

ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012

Present: **Shri S. P. Nanda, Chairperson**
 Shri S. P. Swain, Member
 Shri A. K. Das, Member

Case No. 82/2014

M/s. Essel Bhubaneswar MSW Ltd.	Petitioner
Vrs.		
GRIDCO Ltd. and Others	Respondents

In the matter of: **An application u/S. 61 (h), 62 (1), 64 & 86 (1) (e) of the Electricity Act, 2003 read with Rules and Regulation made there under for determination of tariff for sale of power to the distribution utility/GRIDCO in the State of Odisha from its 11.5 MW Municipal solid waste (MSW) based power project of M/s Essel Bhubaneswar MSW Limited located at Bhuasuni, Bhubaneswar.**

AND

Case No. 22/2015

MSW Bhubaneswar Ltd.	Petitioner
Vrs.		
GRIDCO Ltd. and Others	Respondents

In the matter of: **An application under S.142 of the Electricity Act, 2003 for non-compliance of Interim Order dated 09.04.2015 of the Commission passed in Case No. 82 of 2014.**

For Petitioner: Shri Shantanu Kumar Nanda, Advocate on behalf of M/s. EBML,
 Shri Nimish Vora, PWC, the authorised representative of M/s. EBML,
 Shri Anil Mahajan of M/s. EBML,

For Respondents: Ms. Sasmita Patjoshi, D.M (PP), GRIDCO Ltd.,
 Shri U. N. Mishra, CGM (PP), GRIDCO Ltd.,
 Shri B. P. Mishra, CGM (RT&C), Shri G. K. Padhi, DGM, EHT (C),
 and Shri S. K. Puri, GM (RT&C) on behalf of OPTCL,
 Ms. Sujata Dash, Verifier OREDA, Shri G. Mishra, IDCO,
 Shri Jayaram Parida, GM (Com., ABT), SOUTHCO Utility, Shri
 Subrat Kumar Routray, DMF (Com. & RA), SOUTHCO Utility, Ms.
 Niharika Pattnayak, ALO, DoE, GoO.

Nobody is present on behalf NESCO Utility, WESCO Utility, CESU, GEDCOL, BMC & CMC.

Order

Date of hearing: 13.10.2015

Date of order: 29.01.2016

The present application has been filed by M/s. Essel Bhubaneswar MSW Ltd. (in short M/s. EBML) for determination of tariff for sale of power to the distribution utility/GRIDCO in the State of Odisha from its 11.5 MW Municipal solid waste (MSW) based power project located at Bhuasuni, Bhubaneswar. M/s. Essel Bhubaneswar MSW Limited (EBML) has submitted this proposal to GRIDCO for selling of power generated from its proposed 11.5 MW Municipal Solid Waste (MSW) based power plant at Bhuasuni village near Bhubaneswar to the latter. The proposed power plant would utilise municipal solid waste of twin city of Cuttack and Bhubaneswar. M/s. EBML had executed a concession agreement for 20 years with Bhubaneswar Municipal Corporation (BMC) and Cuttack Municipal Corporation (CMC) on 29th May 2014 for establishment of 600 Tonnes Per Day (TPD) MSW treatment plant at Bhuasuni on Design, Build, Finance, Operate and Transfer (DBFOT) basis. According to the said agreement BMC and CMC will collect the waste from the cities concerned with the help of their own resources and deliver it at the designated transfer stations. M/s. EBML will be responsible for processing the wastes to generate green power. For the development of MSW processing plant and SLF development, BMC and CMC have jointly provided a land area around 61.485 acre under BMC area. As per the terms of the concession agreement M/s. EBML has agreed to pay land lease rental @ Rs.1/ per acre per annum to BMC up to end of concession period as per RFP document. The Petitioner further submitted that they have received the conditional Letter of Intent (LOI) from GRIDCO Ltd. on dated 03.04.2015 for purchase of power by GRIDCO Ltd. to be generated from its MSW based power generating unit.

2. In summary M/s. Essel Bhubaneswar MSW Limited (EBML) has following prayers:
- The Commission may specify the levelled tariff for the proposed MSW power project for 20 years tariff period which is useful life of the plant.
 - Approve the levelled tariff of Rs. 8.55 for 20 years for sale of electricity generated from the proposed MSW Power project to the distribution licensees in the state.
 - Direct distribution licensees to allow Part PPA for the Project.
 - Direct distribution licensees to remove clauses on Discount on Early Payment from PPA.

- Grant exemption from Merit Order Dispatch Principles for the Project.
 - Grant waiver on Cross Subsidy Surcharge on sale of power from the Project to other parties.
3. M/s. EBML has submitted the details of tariff calculation along with its petition and prayed for approval of levelled project specific tariff for a tariff period of 20 years. The Commission heard the matter on 07.04.2015 and in its interim order dated 09.04.2015 directed the following:

“Therefore, both M/s. EBML and GRIDCO Ltd. are directed to submit the PPA within one month of issue of this order. The other non-tariff issues such as metering, connectivity and evacuation of power etc. should also be resolved within this period and should form the part of the PPA.”.
 4. In reply to such directions GRIDCO submitted that the Empowered Committee on Infrastructure of Government of Odisha has advised GRIDCO to purchase power from MSW based power plant at the rate of solar power or OERC determined tariff whichever is less.
 5. When GRIDCO failed to enter into a PPA with M/s. EBML as per the direction of the Commission dated 09.04.2015 the Petitioner filed a case under Section 142 of the electricity Act alleging non-compliance of the Commission’s direction by GRIDCO. This was registered as Case No. 22/2015.
 6. The Commission again heard the matter on 01.09.2015 analogously along with Case No. 22/2015 and in its interim order dated 02.09.2015 observed that the advice of Empowered Committee on Infrastructure is extraneous to the present proceeding. The Commission is mandated under Section 62 of the Act to determine the tariff at which GRIDCO will purchase power from both the conventional and renewable Generators. The Commission thus directed GRIDCO to sort out all the difference including non-tariff issues with the Petitioner and submit the PPA within 15 days of issue of this order.
 7. Accordingly, GRIDCO submitted the draft PPA within the stipulated time. The case was again heard on 13.10.2015. The Commission after hearing the parties directed both the petitioner and GRIDCO to submit their written note on the point of divergence contained in the draft PPA which is to be executed between the petitioner and GRIDCO within seven days after which the Commission would pass appropriate

order on PPA and provisional tariff at which GRIDCO would purchase power from the petitioner.

8. Both Petitioner and GRIDCO have accordingly made their submissions on the disagreed points in draft PPA.

The Petitioner and GRIDCO have disagreed on the following points:

Sl No.	Clauses of PPA	Item	View of GRIDCO	View of EBML
1	2.2	Entitlement of Power for GRIDCO	GRIDCO shall at all times have the right on behalf of Government of Odisha to receive the entire power sent out from the MSW Power Station of the developer.	GRIDCO has removed provision to procure infirm power from the proposed project.
2	6.0	Tariff	The levellised tariff for sale of power by M/s. Essel Bhubaneswar MSW Ltd. to GRIDCO shall be the lower of the levellised tariff for the Solar PV Projects determined by OERC vide Order dated 15.01.2014 in Case No. 80/2013 or the project specific tariff to be determined by OERC, whichever is lower.	The levellised tariff for sale of power by M/s. Essel Bhubaneswar MSW Ltd. to GRIDCO shall be the project specific levellized tariff as determined by OERC.
3	10.0	Settlement of Disputes	In the event a monthly bill/ supplementary bill presented by the Developer is disputed by GRIDCO for any reason, the GRIDCO shall without prejudice to its dispute against that bill, pay the undisputed amount of the bill upon furnishing a Note of Dispute on that bills along with the following Particulars to M/s. Essel Bhubaneswar MSW Ltd. (i) Item disputed, with full details/ data and reasons of dispute. (ii) Amount disputed against each item. (iii) Upon such payment of the undisputed amount of the monthly bills along with the Note of Dispute, it shall be deemed to have been paid in full for the purpose of Clause 7.3 hereof.	In the event a monthly bill/ supplementary bill presented by the developer is disputed by GRIDCO for any reason, the GRIDCO shall without prejudice to its dispute against that bill, pay 75% of the total bill amount upon furnishing a Note of Dispute on that bills along with the following particulars to M/s. Essel Bhubaneswar MSW Ltd. (i) Item disputed, with full details/ data and reasons of dispute. (ii) Amount disputed against each item. (iii) Upon such payment of the undisputed amount of the monthly bills along with the Note of Dispute, it shall be deemed to have been paid in full for the purpose of Clause 7.3 hereof.

9. We have examined the issues placed before us and offer following views, considering intentions of Electricity Act, 2003 and Policies made thereunder:

(a) **Entitlement of Power:**

Under the present arrangement, GRIDCO is the bulk procurer of power for all the DISCOMs of the State. As per the terms of the concession agreement with BMC, M/s EBPL has been provided with land and other facilities by Govt./BMC up to end of concession period. Therefore, we accept the views of the GRIDCO to receive entire power sent out from the power stations of the developer M/s EBPL. We make it clear that in case of sale of power by the developer to others the first right of refusal lies with GRIDCO.

(b) **Tariff:**

The Petitioner has requested Commission for Project Specific Tariff to be determined by OERC. On the other hand GRIDCO has pleaded for levellised tariff of Solar PV Project and project specific tariff determined by OERC whichever is lower. We are of the view that the input costs, technology, process and equipments with infrastructure for Solar are completely different from that of used by MSW Waste to Energy Project. We are not inclined to accept the views of the GRIDCO since both are different in nature. Therefore, the Commission will determine the project specific tariff taking into consideration all applicable factors till a generic tariff with such technology is in place.

(c) **Settlement of Disputes:**

The petitioner has requested for 75% upfront payment of its bill in case the bill is disputed whereas GRIDCO has agreed for payment of undisputed amount of the monthly bill upon furnishing a note of dispute. We observe that the proposal of GRIDCO may have impact on the cash flow of the petitioner which will cause unnecessary hardship to him. Therefore, we are of the view that GRIDCO shall pay the undisputed amount of bill or 60% of the total amount of bill whichever is higher upon furnishing a note of disputes on that bill along with other particulars mentioned in the agreement as usual. In case parties do not agree to the settlement over any bill through negotiation, they are at liberty to approach the Commission for resolution.

10. Determination of Provisional Tariff:

The Commission in its interim order dated 13.10.2015 have expressed views to pass appropriate order on PPA and provisional tariff for transaction of business between the Petitioner and GRIDCO.

Generation of power from MSW using mass burn controlled combustion technology proposed by the developer is a recent trend and sufficient data is not placed before us to accept the tariff proposed by the developer. Therefore, we have referred to the orders from other Commissions, Central Govt. and CERC wherever relevant to form an opinion on the tariff provisionally to facilitate the developer to proceed further. We have also noted the approach of Govt. of India to provide subsidy on sale of compost to make the processing of municipal solid waste economically viable and have considered the tipping charges in the concession agreement with BMC and proceed on to decide the provisional tariff presuming use of such benefits by the developer.

11. The proposed plant is of 600 TPD/ 11.5 MW Waste to Energy generation plant based on mass burn controlled combustion technology. The MSW based waste to energy electricity tariff has been determined by CERC which is around Rs.7/- per unit as per Ministry of Urban Development Letter dated 11.12.2015. In addition to that the subsidy @ Rs.1500 per MT towards sale of compost under Swachh Bharat Mission of Ministry of Urban Development, Govt. of India (MUD) will also have impact on the said tariff. For this project the plant and machinery cost has been proposed at Rs.130.48 crore whereas other costs (Building & Civil Cost, Engineering Expenses, Ash disposal Plant, Transmission cost, Transfer Station Cost, Staff Costs, IDC, margin money for working capital, preliminary expenses and contingent cost) have been proposed at Rs.122.02 crore by the Petitioner. No plan, design, drawing and specification have been submitted. Since the plant is in concept stage and in absence of any detailed cost data supported by evidential documents the actual expenses cannot be ascertained at this stage. Considering the above and likely subsidy to be available to the Petitioner the tariff is fixed at Rs.6.70 per unit provisionally at present upto CoD of the project.

The Commission will fix the final tariff after detailed deliberation basing on actual capital cost followed by prudent check of all information, parameters and norms. This shall be based on documents and records placed before the Commission as applicable in a transparent and competitive environment and independent verification report on equipments and works completed.

12. Since GRIDCO has already submitted the draft PPA as per our interim order dated 02.09.2015 there is no reason in continuing with proceeding under Section 142 of the Act in Case No.22/2015. This case is accordingly dropped.
13. The PPA basing on the above tariff shall be signed within one month by both the parties. With above order and directions, the Case No.82/2014 and Case No.22/2015 are disposed off.

Sd/-
(A K Das)
Member

Sd/-
(S P Swain)
Member

Sd/-
(S P Nanda)
Chairperson