

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

Case No. HERC/Petition No. – 48 of 2021

**Date of Hearing : 04.05.2022
Date of Order : 11.05.2022**

IN THE MATTER OF:

Petition under Section 86 (1)(a), (b), (e) and (f) and other applicable provisions of the Electricity Act, 2003 read with the relevant provisions of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019.

Petitioner

M/s. JBM Environment Management Pvt. Ltd.

Respondents

1. Haryana Power Purchase Centre, Panchkula (HPPC)
2. Department of Urban Local Bodies, Haryana (ULB)

Present on behalf of the Petitioner

1. Mr. Anand K. Ganeshan, Advocate
2. Ms. Swapna Seshadri, Advocate
3. Mr. Amal Nair, Advocate

Present On behalf of the Respondents

1. Ms. Sonia Madan, Advocate, for HPPC
2. Mr. Ashok Rawat, SE, MC, Sonapat
3. Mr. Anand Aggarwal, Xen, ULB

Quorum

**Shri R.K. Pachnanda
Shri Naresh Sardana**

**Chairman
Member**

ORDER

Brief Background of the case

1. The present petition has been filed by M/s. JBM Environment Management Pvt. Ltd. seeking directions to HPPC to procure entire electricity generated, at the tariff of Rs. 7.05/- per unit, from their MSW (Municipal Solid Waste) based generating power plant without restricting the quantum of generation to 6.77 MW in each 15 minute time block of a day and to direct HPPC to refund the amount withheld by it along with applicable late payment surcharge.
2. The submissions of the petitioner are as under:-
 - i) That respondent no. 2 i.e. Department of Urban Local Bodies, is entrusted with the duty for creation and maintenance of urban infrastructure in the State of Haryana.
 - ii) That 8 MW MSW based generating station was established by the petitioner pursuant to the competitive bidding process initiated by the respondent no. 2.

- iii) That pursuant to being selected as the successful bidder in the said competitive bidding process, the petitioner entered into a Concession Agreement dated 26/09/2017 with the Urban Local Body for implementation of MSW based generating station at Village Murthal, District Sonapat.
- iv) That under the bidding process, the petitioner was entitled to a total tariff of Rs. 10.60/- per unit as the aggregate tariff, which is to be divided between the respondent No. 1 and 2, based on the determination of tariff by the Hon'ble Commission.
- v) That the petitioner has entered into a PPA dated 21/09/2018 with HPPC for sale of electricity from this 8 MW generating station. The PPA, inter alia, provides for a capacity of up to 6.77 MW to be delivered, at the interconnection point of the petitioner, to be supplied to the HPPC.
- vi) That the generating station of the petitioner being a Municipal Solid Waste to Energy (WtE) based generating station, is under a promotional scheme of the Government of India. The National Tariff Policy, 2016 gives a special dispensation and a promotional scheme to waste-to-energy plants such as that of the petitioner. The mandate to the distribution companies is to compulsorily procure 100% of the electricity generated from waste-to-energy plants, at the tariff to be determined by the Appropriate Commission under Section 62 of the Electricity Act, 2003. In this regard, National Tariff Policy, 2016, *inter alia*, provides as under:-

"6.4 Renewable sources of energy generation and including Co-generation from renewable energy sources

(1) Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall be taken into account while determining tariff by SERCs. Long term growth trajectory of Renewable Purchase Obligations (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.

.....

ii) Distribution Licensee(s) shall compulsorily procure 100% power produced from all the Waste-to-Energy plants in the State, in the ratio of their procurement of power from all sources including their own, at the tariff determined by the Appropriate Commission under Section 62 of the Act."

- vii) The petitioner has submitted that the nature of operation of a MSW plant is such that the quantum of energy generated varies based on the input fuel as available from time to time. The MSW received during rainy and winter season has high moisture content and low calorific value, on the other hand in summers the calorific value is high. The quantum of electricity generation greatly varies with such factors. Hence, MSW based

power generating plants ought to be provided with a flexibility of +/- 20% on contractual power generation and billing.

- viii) That considering the above, and particularly the nature and quantum of fuel that is available, the quantum of generation in particular time blocks and during a particular day may exceed the capacity of 6.77 MW on such time blocks.
- ix) That the petitioner raised its first energy supply invoice on HPPC on 02.09.2021 for the period from 14.08.2021 to 31.08.2021. The invoice was raised at the tariff of Rs. 6.84/- per unit, as determined by the Hon'ble Commission, for the entire electricity generated and supplied by the petitioner during the said period, i.e. 27,82,108 units (approx.) of electricity. Correspondingly, the invoice was raised for the total value of Rs. 1,90,29,620. However, HPPC cleared the invoice for the sum of Rs. 1.76 crore only.
- x) That the petitioner was given to understand that the payment by HPPC was only up to the capacity of 6.77 MW computed for each time block of 15 minutes and any electricity generated and injected by the petitioner over and above the capacity of 6.77 MW was being treated by HPPC as inadvertent injection for which no payment is required to be made.
- xi) Similarly, for the subsequent invoice dated 01.10.2021 raised by the petitioner, wherein as against the total invoice value of Rs. 2.36 crore raised by the petitioner for a total quantum of 34,60,800 units supplied, HPPC has admitted an amount of Rs. 2.29 crore towards payment, limiting the total quantum to 33,57,451 units.
- xii) That the above action of HPPC, to limit the total quantum of injection by the petitioner to 6.77 MW for each time block of 15 minutes, is grossly erroneous.
- xiii) That HPPC is under an obligation to procure the entire electricity generated (being a waste-to-energy plant) and injected by the petitioner from its generating station.
- xiv) That the primary objective of waste-to-energy plants is the management and disposal of municipal waste. Therefore, it is in fact in the interest of all concerned that there is maximum usage of municipal waste for generation of electricity, and any higher quantum of electricity that will be generated ought to be encouraged, rather than be treated as inadvertent injection and supply of power free of cost.
- xv) That in all other states, the entire generation of municipal solid waste generating station is procured by the distribution licensees without any limitation on the quantum of electricity. A few instances are referred in the table below:-

SN	Date	Orders/ Regulations	Forum	Particulars
1.	22/03/2016	Petition No. 3 of 2016	Punjab State Electricity Regulatory Commission	<i>"7. The Commission notes that as per the submissions made by Secretary, Local Government & CEO-cum-JMD, PMIDC and JITF, the revised Tariff Policy notified by Ministry of Power, Govt. of India on 28.01.2016 in para 6.4 (1)(ii) provides that the Distribution Licensee(s) shall compulsorily</i>

				<p>procure 100% power produced from all the waste to energy plants in the State, in the ratio of their procurement of power from all sources including their own, at the tariff determined by the Appropriate Commission under Section 62 of The Electricity Act, 2003. Further, para 6.4 (2) of the said Policy also provides that States shall endeavour to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from the waste to energy plants. The Commission further notes that as per the information furnished by PSPCL from time to time with regard to its RPO compliance, PSPCL has been unable to procure sufficient quantum of power from renewable sources of energy to comply with its Non-Solar RPO in the past. The Commission also notes that the power procured from these waste to energy projects will contribute towards RPO compliance of PSPCL and serve the important social objective of scientific disposal of waste, as submitted by PEDDA. The Commission further notes that PSPCL has no objection to the adoption of Fourth Amendment, 2015 to the CERC RE Regulations, 2012 by the Commission and the tariff determined for such projects.</p> <p><i>In view of the above, the Commission is of the considered opinion that there is no reason for PSPCL not to procure all the power offered to it from MSW based Power Projects and RDF based MSW Power Projects by the generators. Accordingly, the Commission finds no hesitation to direct PSPCL to procure all power offered to it from such projects and not to refuse the same.</i></p>
2.	11/04/2016	HPERC (Promotion of Generation from Renewable Energy Sources and Terms and Conditions for Determination of Tariff) (Second Amendment) Regulation, 2016.	Himachal Pradesh Electricity Regulatory Commission	<p>“5. Amendment of Regulation 8 - At the end of Regulation 8 of the said Regulations, the following 2nd proviso shall be added, namely: - “Provided further that in accordance with the Tariff Policy notified on 28.01.2016 by Ministry of Power, Government of India, the distribution licensee shall compulsorily procure 100% power from the waste energy plants in the State and such plants have also been excluded from the competitive bidding process for tariff determination.”</p>
3.	10/10/2016	Order No. 87 of 2015	Maharashtra Electricity Regulatory Commission	<p>“Summary of Commission’s Directives and Rulings</p> <p>5.1.5. KGEPL may enter into an EPA with any Distribution Licensee in Maharashtra for the Tariff Period of 20 years applicable to its MSW Project</p>

				<p>for the sale of power, in accordance with Clause 6.4(1)(ii) of Tariff the Policy, 2016 (under which procurement of all power produced by WTE Plants in the State by Distribution Licensee (s) is mandatory).</p> <p>KGEPL shall submit a copy of the EPA to the Commission as soon as it is entered into. The other terms and conditions of EPA such as rebate, late payment surcharge, taxes and duties, etc. shall be in accordance with the RE Tariff Regulations, 2015.”</p>
4.	10/11/2016	Order No. 4 of 2016	Gujarat Electricity Regulatory Commission	<p>“Commission’s Decision</p> <p>The Commission examined the submission of the stakeholder with regard to the pricing of renewable attribute. The Tariff Policy dated 28 January 2016 under clause 6.4 (1) (ii) recommends that the distribution licensees shall compulsorily procure 100% power produced from all waste to energy plant in the State in the ratio of their procurement of power from all sources including their own at the tariff determined by the appropriate Commission under Section 62 of the Act.</p> <p>The Commission approves the mechanism proposed by GUVNL for apportioning the renewable attribute units and their cost to all distribution licensees in the state in proportion to their power consumption of previous year.</p> <p>The Commission recognized the importance of promoting MSW power projects from environmental and public health point of view and therefore decides to relax the provisions specified under GERC (Procurement of energy from Renewable Energy Sources) Regulations 2010 to the extent of pricing the renewable attribute of the electricity generated from MSW to energy projects in light of the clause 6.4(1)(iv) of the Tariff Policy. The Commission directs the obligated distribution licensees to make payment of electrical and renewable attribute component of energy generated from MSW to energy projects as per the methodology specified in para 14 of Government of Gujarat Waste to Energy Policy, 2016.”</p>
5.	22/02/2017	Petition No. 27 of 2016	Delhi Electricity Regulatory Commission	<p>“Commission’s View</p> <p>It is observed that 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 has stated that in</p>

				<p>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.</p> <p>Therefore, it is pertinent to mention that as per CERC Regulations, the risk and benefit of lower/excess generation as compared to normative generation is to the account of RE developer. Hence, the entire generated power shall be procured by the Discoms as per the tariff determined by the Commission vide order dated 27.07.2016."</p>
6.	07/02/2020	Kerala State Electricity Regulatory Commission (Renewable Energy and Net Metering) Regulations, 2020	Kerala State Electricity Regulatory Commission	<p>"7. Preference for the purchase from the renewable energy generating units within the State. –</p> <p>Every distribution licensee shall purchase the quantum of renewable energy required to meet its renewable purchase obligation preferentially from the renewable energy generating units within the State if available, with the prior approval of the Commission, and at the tariff approved by the Commission. Provided that, considering the environmental concerns, the distribution licensee shall necessarily purchase the electricity generated from municipal solid waste, with the prior approval of the Commission at the tariff approved by the Commission."</p>
7.	22/03/2021	Case No. 162 of 2019	Maharashtra Electricity Regulatory Commission	<p>"6.1.6 The Commission under section 86(4) of the EA directs MSEDCL to abide by the provisions of Tariff Policy, 2016 and accordingly procure 100% power produced from the MSW project. MSEDCL may further file a Petition before the Commission for development of Regulatory Framework for sharing of such expenses with other Distribution Licensees as explained in para 5.22.3 above. The Commission has the responsibility to promote all type of RE sources and direct the State Distribution Licensees to procure such power to reduce carbon emissions and help in achieving the targets of the state RE policy."</p>
8.	05/10/2021	OP No. 40/2021	Kerala State Electricity Regulatory Commission	<p>"Analysis and Decision</p> <p>6. (2) The Tariff Policy, 2016, notified by the Central Government in compliance of the Section-3 of the Electricity Act, 2003 provide as follows.</p>

				<p><i>“6.4(1)(ii) Distribution Licensee(s) shall compulsorily procure 100% power produced from all the Waste-to-Energy plants in the State, in the ratio of their procurement of power from all sources including their own, at the tariff determined by the Appropriate Commission under Section 62 of the Act.”</i></p> <p><i>In line with the Tariff Policy 2016, the Commission has already instructed KSEB Ltd to procure the entire electricity generated from MSW based power plants at the tariff determined by this Commission.”</i></p>
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- xvi) That without prejudice to the above, even if there has to be a restriction on the total supply of power to 6.77 MW, the limitation has to be necessarily applied only on an annual basis and cannot be applied on every 15 minutes time block basis, as the same is contrary to the treatment given to conventional energy generators wherein the plant load factor and capacity utilisation factor is computed only on an annual basis.
- xvii) In view of the above averments, the petitioner has prayed for the following relief:-
- (a) hold and direct that HPPC is obligated to procure the entire electricity generated at the tariff of Rs. 6.84/- per unit from the MSW based generating station of the petitioner without restricting the quantum of generation to 6.77 MW on every 15 minutes time block basis; and
 - (b) direct HPPC to pay an amount of Rs. 24 lacs for the months of August, 2021 and September, 2021 and any such further amount as may be disputed by HPPC for the future month on the basis of injection of electricity over and above 6.77 MW on a 15-minute time block basis; and
 - (c) hold and direct that HPPC is liable to pay the late payment surcharge in terms of Article 3.7 of the PPA on the differential amounts payable in terms of prayer (b) above, computed from the date when the payments became due till such date the payments are remitted by HPPC to the petitioner;
 - (d) award costs of the present petition in favour of the petitioner and against the respondent; and
 - (e) pass such further order(s) as the Hon'ble Commission may deem just in the facts of the present case.
3. On the relief sought by the petitioner, the respondent no. 1 i.e. HPPC filed its reply on 04.02.2022, as under:-
- i) That the generation capacity was limited by the petitioner on its own while entering into PPA and the terms of the PPA were accordingly drafted, which mandated HPPC to procure power **up to** 6.77 MW. (emphasis added)

- ii) That as per the power scheduling by the Discoms, for the purposes of energy accounting, injection of power is recorded in 96 time blocks of 15 minutes intervals for each day starting from 00.00 hours to 24.00 hours. Therefore, the power supplied by the petitioner every 15 minutes time block is seen vis-à-vis the power agreed to be procured under the PPA. The PPA clearly provides for procurement of power up to 6.77 MW. Accordingly, any energy supplied over and above 6.77 MW, in every time block, is treated as excess/dumped energy which is not paid for in terms of the PPA.
- iii) That the plant of the petitioner was commissioned w.e.f. 13.08.2021. Since then, the injection of energy was analyzed in each time block of 15 minutes duration while processing the monthly bills raised by the petitioner. The said dispensation was also accepted by the petitioner, which is evident from the fact that credit notes were duly tendered by the petitioner based on such adjustment from August 2021 to December 2021 and the petitioner did not dispute the deductions/adjustments done by the HPPC. The disputes alleged in the present petition are therefore an afterthought which is not worthy of any consideration. The petitioner is thus, barred by its own act and conduct of having accepted the interpretation of the Clause 2.2.1 in line with that of the respondent herein.
- iv) That the petitioner has set up a case before the Hon'ble Commission as if HPPC is not interpreting the terms of the PPA in line with the Electricity Act and the National Tariff Policy, 2016. Nothing has been stated as regard to its own representation stipulated in the PPA i.e. the procurement of power up to 6.77 MW capacity.
- v) The respondent i.e. HPPC has submitted that in the event the Hon'ble Commission holds that the HPPC shall procure power over and above 6.77 MW capacity, there shall be no default attributable to HPPC for having acted in terms of the PPA w.e.f. August 2021. No claim, whatsoever, was raised by the petitioner with the respondent as regards the non-release of outstanding payment. In such event, even if the Hon'ble Commission holds that any further payment has to be released to the petitioner for the period from August to December, 2021, the HPPC cannot be made liable to make payment of any late payment surcharge as there was no 'dispute' regarding late payment surcharge subsisting between the parties before the filing of the present petition which may be adjudicated in the present petition. Thus, HPPC shall not be made liable to any late payment surcharge as the HPPC has acted in all bonafides in compliance of the order of the Hon'ble Commission and the terms of the PPA.
- vi) That the liability of the HPPC towards payment of late payment surcharge arises only in the event of delayed payment, for reasons attributable to them. However, in the instant case, as explained above, the payment found due in terms of the PPA has been duly

released by the HPPC. The acceptance of the same is further fortified from the credit notes tendered by the petitioner.

4. The respondent no. 2 i.e. ULB filed its reply on 22.03.2022. ULB has submitted that it is paying the difference of Rs. 3.76 per unit for the power purchased by the HPPC for 6.77 MW. In case, the petitioner is allowed to charge for the entire power generated and supplied to the HPPC, the respondent ULB shall be burdened with 1.3 MW over and above the Concession Agreement. The petitioner had, intentionally and knowingly, agreed to enter into Power Purchase Agreement with the respondent no. 1 i.e. HPPC. The petitioner has no legal right to turn away from its own conditions of the Agreement, infact the petitioner is legally bound to strictly adhere to the agreement entered into with the HPPC. Therefore, the petitioner may not be allowed to claim payments over and above the Agreement.
5. The petitioner has filed its rejoinder to the replies filed by HPPC and ULB, mainly reiterating the contents of the petition i.e. reference of the National Tariff Policy, 2016 on Waste to Energy (WtE) plants, variable factors due to nature of plant and social benefits attached to WtE plants, which have not been reproduced herein for the sake of brevity.

Proceedings in the Case

6. The case came up for hearing on 09.02.2022, 16.03.2022, 13.04.2022 and 04.05.2022. The Commission vide its interim order dated 18.04.2022 directed the respondent no. 1 (HPPC) to file an affidavit that none of the generators, including intra-state generator i.e. HPGCL is paid for the power injected by them over and above their capacity (MW) approved by the Commission, in 96 slots of 15 minutes duration in a day. HPPC was directed to clarify that they are adopting similar practice of payment for energy injected as in the case of the petitioner herein.
7. In response to the *ibid* interim order of the Commission dated 18.04.2022, the HPPC filed its affidavit dated 29.04.2022, submitting that slot-wise injection of power is verified for all the similarly placed generators, whose PPAs restrict the injection of power upto contracted capacity. The same is not monitored for HPGCL, since the PPA executed with HPGCL, dated 09.12.2013, is for purchase of all the power produced by HPGCL.

Commission's Analysis and Order

8. The Commission heard the arguments of the parties at length on 04.05.2022 as well as perused the written submissions placed on record by the parties. The petitioner is

aggrieved by the action of HPPC restricting the quantum of generation from their MSW based generating station to 6.77 MW on every 15 minutes time block basis and treating the injection of power over and above 6.77 MW in each time slot as free power, instead of paying for the entire electricity generated, as provided in the National Tariff Policy, 2016 and decision of the other State Commissions. Per-contra, HPPC argued vehemently on the clause 2.2.1 of the PPA signed with the generator and acceptance of the fact by the petitioner herein by way of submission of credit notes in respect of deductions made in the bills.

9. The Commission has carefully examined the National Tariff Policy, 2016 and Power Purchase Agreement (PPA) dated 21.09.2018, relied upon heavily by the parties hereto. The relevant clauses of the PPA dated 21.09.2018, are reproduced hereunder:-

“Whereas, the Seller proposed to operate & maintain a municipal solid waste to energy based power project (hereinafter called “project” at Village Murthal, District Sonapat, Haryana) in the State of Haryana with an installed capacity of 8 MW. The Seller is desirous to sell generated energy upto 6.77 MW to HPPC at delivery point.”

“2.1.1 The HPPC after deduction of commercial operation shall purchase and accept all such electrical energy up to 6.77 MW delivered at the interconnection point from the Seller’s facility, pursuant to the terms and conditions of this agreement at the rates determined by HERC.”

Further, the National Tariff Policy, 2016, has provided a special dispensation for waste to energy based power project. The clause 6.4 (1) (ii) of the policy provides as under: -

“Distribution Licensee(s) shall compulsorily procure 100% power produced from all the Waste-to-Energy plants in the State, in the ratio of their procurement of power from all sources including their own, at the tariff determined by the Appropriate Commission under Section 62 of the Act.”

The Commission has also referred to the order (s) of various Commissions on the issue of procurement of entire generation of municipal solid waste projects by the distribution licensees without any limitation on the quantum of electricity vis-à-vis the contracted capacity. The Hon’ble Regulatory Commissions of the states of Punjab, Himachal Pradesh, Maharashtra, Gujarat, Delhi and Kerala, cited by the petitioner, have decided that in accordance with the Tariff Policy notified on 28.01.2016 by the Ministry of Power, Government of India, the distribution licensee shall compulsorily procure 100% power from waste to energy power plants set up in the State. The Commission has considered

the submissions of the petitioner that such restrictions on the quantum of injection of power by Waste-to-Energy project, are nowhere imposed in India, as imposed by the respondent Nigam and supported by the ULB.

The Commission observes that the PPA signed between the parties provides that HPPC shall accept all such electrical energy up to 6.77 MW delivered at the interconnection point from the seller's facility. Further, Ms. Swapna Seshadri, the learned advocate appearing on behalf of the petitioner, argued at length that the PPA does not provide for monitoring and restricting the quantum of power injected up to 6.77 MW in 15 minutes time slot. Additionally, she pointed out that the plant load factor (PLF) is calculated on monthly or annual basis and not on 15 minutes time slot.

The Commission observes that the power plant of the petitioner is a "Must Run" plant and covered under Regulation 10 (1) of Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 (HERC RE Regulations, 2021), reproduced hereunder:-

*"10. Despatch principles for electricity generated from Renewable Energy Sources. –
(1) All renewable energy power plants, except for Biomass power plants of installed capacity 10 MW and above, shall be treated as 'MUST RUN' power plants. Biomass power with installed capacity of 10 MW and above shall be subjected to scheduling and dispatch as specified under Haryana Grid Code and other relevant regulations including amendments thereto."*

The Commission has considered the objection raised by the department of Urban Local Bodies (ULB) that acceptance of all the energy generated by the Waste-to-Energy plant will entail additional financial burden on them. Urban Local Bodies are vested with an array of functions entrusted upon them by the State Government. These functions broadly relate to public health, social welfare, public safety, public infrastructure works, and development activities. The more numbers of such Waste-to-Energy projects will not only augment RE power which is counted towards fulfilment of RPO in the Haryana Discoms, but also ensure better waste management and provide relief to the society at large from the legacy heaps of waste which is a health hazard for the entire city. Further, the generator cannot be denied the benefits of generation of power by burning solid waste on the ground of financial burden on a body whose main function is social welfare. Therefore, the objection of additional financial burden raised by ULB is devoid of merits and is rejected as such.

The importance of promoting MSW power projects from environmental and public health point of view, cannot be undermined. It is all the more necessary to give boost to the

“Swachh Bharat Mission (SBM)” of Government of India through conversion of waste to energy in the most environment friendly manner.

Therefore, given the provisions of National Tariff Policy, 2016, variability of power generation by Waste-to-Energy plants depending on the nature and characteristics of fuel fed and associated objective of such projects viz. management and disposal of municipal waste, the interpretation of the PPA which mentions that HPPC to accept all such electrical energy up to 6.77 MW, has to be construed with reference to the quantum of power injected by the generator on an annual basis. Such dispensation i.e. reckoning with the contracted capacity on an annual basis shall also allay the fear of respondent no. 2 i.e. ULB that they will have to bear additional financial burden in the case the petition is allowed by this Hon'ble Commission.

The petitioner has also raised the issue of late payment surcharge in terms of Article 3.7 of the PPA on the differential amounts payable, even though the petitioner has issued credit notes on its own, accepting such adjustment for the period from August 2021 to December 2021. Admittedly, as established by the respondent i.e. HPPC, the petitioner has not raised any dispute at the contemporaneous time and also issued credit note without raising any dispute. Further, the Commission tends to agree with HPPC that the late payment surcharge cannot be levied on the amount which becomes payable to the generator, by way of relief granted by the Commission as a special dispensation. HPPC is directed to grant necessary adjustment within 30 days from the date of this order, failing which, late payment surcharge as provided under Article 3.7 of the PPA shall become applicable.

10. In terms of the above order, the present petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 11.05.2022.

Date: 11.05.2022
Place: Panchkula

(Naresh Sardana)
Member

(R.K. Pachnanda)
Chairman