

**JOINT ELECTRICITY REGULATORY COMMISSION
FOR THE STATE OF GOA AND UNION TERRITORIES
GURUGRAM**

CORAM

Ms Jyoti Prasad, Member Law

Petition No. : 55 /2021

Date of Hearing : 11.01.2022

Date of Order : 20.05.2022

In the matter of:

Petition for the Commission's approval of the Power Purchase Agreement for hiring DG Sets to provide power on round the clock basis to 4 isolated locations i.e., Smith Island, Ganesh Nagar, Shanti Nagar and Gandhi Nagar from M/s Express Engineers and Spares Private Ltd., New Delhi.

And in the matter of:

.....**Petitioner**

The Electricity Department,
A&N Administration, Vidyut Bhavan,
Port Blair -744101

Present

For the Petitioner

1. Mr Karuna Jaydhar, Superintending Engineer
2. Ms Rizwana, Executive Engineer
3. Mr Pran Kumar Mistry, Assistant Engineer (Procurement)
4. Ms Usha Kapoor, Assistant Engineer (Planning)

ORDER

1. The Petitioner, Electricity Department, Andaman & Nicobar, through this Petition has sought the approval for the Power Purchase Agreement (PPA) to be executed between Electricity Department, Andaman & Nicobar and M/s Express Engineers and Spares Private Ltd., New Delhi for hiring of DG sets to provide power on round the clock basis to Smith Island, Ganesh Nagar, Shanti Nagar and Gandhi Nagar.

2. The Commission has heard the Petitioner in detail. The Petitioner's submissions in brief are as under:-

- i. That the four un-electrified villages viz. Gandhi Nagar, Ganesh Nagar, Shanti Nagar & Smith Island are located in dense reserved forest inside the creeks. The approach to these villages are only possible through creeks by means of mechanized Dinghies. Therefore, transportation of men & materials viz. Lub oil, SD, spares and other materials are laborious and challenging.
- ii. That Smith Island, Ganesh Nagar, Shanti Nagar & Gandhi Nagar have a total population approximately 427, 196, 104 & 356 respectively.
- iii. That the concerned Division of Electricity Department, Andaman & Nicobar Admn. has suggested to provide power through hired DG sets as hiring DG sets are the only source to deliver round the clock power to these villages.
- iv. That village wise number of consumers-vis-a-vis connected load is as under:

| SL. No. | Name | No. of Consumers | Connected Load (KW) |
|----------------|----------------------------|-------------------------|----------------------------|
| 1 | Gandhi Nagar | 107 | 30 |
| 2 | Ganesh Nagar | 72 | 38 |
| 3 | Shanti Nagar | 56 | 54 |
| 4 | Sagar Dweep (Smith Island) | 103 | 46 |

- v. That the proposal of the Petitioner was approved by the Andaman & Nicobar Admn. vide Letter No. 3-14(74)/2012-Power(PF) dated 06.08.2020.
- vi. That a tender notice for *Purchase of Power through containerized DG Sets to deliver power continuously to the existing LT network / feeder of Electricity Department on Islanding mode at Gandhi Nagar, Shanti Nagar, Ganesh Nagar*

& Smith Island, Diglipur, North Andaman' was issued vide Tender No. EL/PR/124A/NA/T/2020 dated 10.09.2020 with date of Opening on 05.10.2020.

vii. That in response to the above tender notice, the following two (2) firms submitted their offer and the technical bids were opened on the due date i.e., 05.10.2020: -

- a) M/s Express Engineers and Spares Private Limited.
- b) M/s Mona Generator Services (P) Ltd., New Delhi

viii. That the price bid of the technically qualified firms were opened and analysed by the Technical Evaluation Committee and comparative statement was prepared. M/S Express Engineers and Spares Private Limited, New Delhi emerged as the lowest bidder. Details of L1 bidder are submitted as under:

| S.L. No. | Island Name | Rate per hour without GST (Rs.) |
|----------|----------------------------|---------------------------------|
| 1 | Gandhi Nagar | 75.00 |
| 2 | Ganesh Nagar | 73.00 |
| 3 | Shanti Nagar | 74.00 |
| 4 | Sagar Dweep (Smith Island) | 72.00 |

Note: Cost per hour running charge of DG set to deliver power to the LT Grid of Electricity Department on round the clock basis at following four villages of North Andaman including all operation & maintenance charges etc (excluding HSD oil).

ix. That the A&N Administration vide letter No. 3-14(74)/2012-Power (PF) dated 08.02.2021 conveyed the approval of the competent authority for acceptance of L1 rate offered by M/s Express Engineers and Spares Private Limited (L1 bidder).

- x. That the Petitioner received administrative approval and expenditure sanctioned during Feb., 2021, but due to Covid 19 pandemic could not file the Petition in time.
- xi. That Power Purchase Agreement was duly executed between the Petitioner and the L-1 bidder M/s Express Engineers and Spares Private Ltd. on 27.04.2021. The contractor has established small capacity DG sets at all four islands immediately and COD was achieved w.e.f. 28.04.2021.
- xii. That the location / island wise present number of consumers vis-à-vis connected load and demand is tabulated as under:-

a)

| SL. No. | Location | Consumers (Nos) | Connected Load (KW) | Peak Demand (KW) | Average Demand (KW) |
|---------|-----------------------------|-----------------|---------------------|------------------|---------------------|
| 1. | Gandhi Nagar | 63 | 30 | 12 | 20 |
| 2 | Ganesh Nagar | 74 | 38 | 17 | 9 |
| 3 | Shanti Nagar | 115 | 54 | 10 | 18 |
| 4 | Sagar Dweep (Smith Island), | 89 | 46 | 18 | 14 |

b) The Total units generated per month by these DG Sets.

| Month | Gandhi Nagar | | Ganesh Nagar | | Shanti Nagar | | Smith Island | |
|--------|--------------|--------|--------------|--------|--------------|--------|--------------|--------|
| | DG- I | DG- II | DG- I | DG- II | DG- I | DG- II | DG- I | DG- II |
| April | - | 630 | 544 | Nil | 157 | 193 | - | 429 |
| May | 60 | 8524 | 1984 | 4240 | 542 | 3844 | 93 | 5426 |
| June | 2332 | 6080 | 2536 | 3388 | 1562 | 2684 | 262 | 4562 |
| July | 2740 | 6702 | 3464 | 3278 | 1665 | 2226 | 2422 | 3462 |
| August | 3084 | 6844 | 4242 | 2304 | 1948 | 2050 | 2106 | 3784 |

- xiii. That the cost of generation at Gandhi Nagar, Ganesh Nagar, Shanti Nagar and Smith Island are as under:-

a) Cost of generation

| Gandhi Nagar | | | | | | |
|---------------------|------------------------------|------------------------|---------------------------------|--|---------------------------|-----------------------------|
| Month | Unit Generation (KWH) | Unit Sold (KWH) | HSD Consumption (Litres) | Per hour running charges (inclusive of GST) | HSD Cost (Rs./Ltr) | Total HSD Cost (Rs.) |
| Apr-21 | 7428 | 7285 | 4050 | 88.50 | 78.04 | 316057 |
| May-21 | 8584 | 8409 | 4462 | 88.50 | 78.04 | 348209 |
| Jun-21 | 8412 | 8355 | 4112 | 88.50 | 83.68 | 344111 |
| Jul-21 | 9442 | 9256 | 4870 | 88.50 | 87.29 | 425079 |
| Aug-21 | 9928 | 9808 | 4960 | 88.50 | 86.80 | 430526 |
| Sep-21 | 9512 | 9477 | 4764 | 88.50 | 85.00 | 404953 |
| Oct-21 | 8984 | 8766 | 4908 | 88.50 | 86.49 | 424483 |
| Total | 62290 | 61356 | 32126 | | | |

| Ganesh Nagar | | | | | | |
|---------------------|------------------------------|------------------------|---------------------------------|--|---------------------------|-----------------------------|
| Month | Unit Generation (KWH) | Unit Sold (KWH) | HSD Consumption (Litres) | Per hour running charges (inclusive of GST) | HSD Cost (Rs./Ltr) | Total HSD Cost (Rs.) |
| Apr-21 | 5884 | 5332 | 4000 | 86.14 | 78.04 | 312155 |
| May-21 | 6224 | 5819 | 4260 | 86.14 | 78.04 | 332445 |
| Jun-21 | 5924 | 5802 | 3862 | 86.14 | 83.68 | 323189 |
| Jul-21 | 6742 | 6614 | 4490 | 86.14 | 87.29 | 391911 |
| Aug-21 | 6546 | 6480 | 4352 | 86.14 | 86.80 | 377751 |
| Sep-21 | 6524 | 6494 | 4322 | 86.14 | 85.00 | 367382 |
| Oct-21 | 6648 | 6588 | 4415 | 86.14 | 86.49 | 381844 |
| Total | 44492 | 43129 | 29701 | | | |

| Shanti Nagar | | | | | | |
|---------------------|------------------------------|------------------------|---------------------------------|--|---------------------------|-----------------------------|
| Month | Unit Generation (KWH) | Unit Sold (KWH) | HSD Consumption (Litres) | Per hour running charges (inclusive of GST) | HSD Cost (Rs./Ltr) | Total HSD Cost (Rs.) |
| Apr-21 | 4144 | 4048 | 3949 | 87.32 | 78.04 | 308175 |
| May-21 | 4386 | 3915 | 4173 | 87.32 | 78.04 | 325655 |
| Jun-21 | 4246 | 4190 | 3890 | 87.32 | 83.68 | 325533 |
| Jul-21 | 4288 | 4203 | 4030 | 87.32 | 87.29 | 351760 |
| Aug-21 | 3998 | 3879 | 3774 | 87.32 | 86.80 | 327581 |
| Sep-21 | 4298 | 4283 | 3890 | 87.32 | 85.00 | 330661 |
| Oct-21 | 4384 | 3937 | 3975 | 87.32 | 86.49 | 343789 |
| Total | 29744 | 28455 | 27681 | | | |

| Smith Island | | | | | | |
|--------------|-----------------------|-----------------|--------------------------|---|--------------------|----------------------|
| Month | Unit Generation (KWH) | Unit Sold (KWH) | HSD Consumption (Litres) | Per hour running charges (inclusive of GST) | HSD Cost (Rs./Ltr) | Total HSD Cost (Rs.) |
| Apr-21 | 4956 | 4929 | 3747 | 84.96 | 78.04 | 292411 |
| May-21 | 5519 | 5340 | 4191 | 84.96 | 78.04 | 327060 |
| Jun-21 | 5524 | 5448 | 3858 | 84.96 | 83.68 | 322855 |
| Jul-21 | 5884 | 5772 | 4445 | 84.96 | 87.29 | 387983 |
| Aug-21 | 5890 | 5830 | 4475 | 84.96 | 86.80 | 388428 |
| Sep-21 | 5942 | 5906 | 4344 | 84.96 | 85.00 | 369252 |
| Oct-21 | 6084 | 5515 | 4485 | 84.96 | 86.49 | 387898 |
| Total | 39799 | 38740 | 29545 | | | |

xiv. That Clause 14.4.0 of Power Purchase Agreement provides that:-

“The GST being a statutory payment, shall be paid as per actual from time to time. Variation in the rates of GST due to Govt. orders shall be paid or recovered as the case may be.”

xv. That the performance guarantee of 10% of the total value of the contract in the Tender Document is reduced to 3% of the total value of the contract in the PPA is in accordance to the No. F.9/4/2020-PPD dated 12.11.2020 issued by the Ministry of Finance, Govt. of India.

xvi. That Clause 3.2.0 of the Power Purchase Agreement provides as under:-

“The DG Set will be connected to existing LT outdoor network at each station of Electricity Department, hence the first party will not be responsible for any damage due to line fault for which requisite safety and protection shall be provided by the second party in the engine control panel as well as generator control panel.”

- xvii. That as per GFR, 2017, Rule 173(xix), two bidders participated in the tender and both were qualified and finalized as per GFR, 2017. Same is quoted below.

“(xx) Lack of competition in Rule 173 (xix) shall not be determined solely on the basis on the number of Bidders. Even when Only one bid is submitted, the process may be considered valid provided following conditions are satisfied:-

- (a) the procurement was satisfactorily advertised and sufficient time was given for submission of bids.*
- (b) the qualification criteria were not unduly restrictive; and 3*
- (c) prices are reasonable in comparison to market values.”*

- xviii. That the maximum power demand of all the four locations is between 8 to 15 KW only and the total monthly generation is around 6000 to 10000 units. Hence, power purchase at per unit rate is not possible. Power supply to Smith Island, Ganesh Nagar, Shanti Nagar and Gandhi Nagar on 24x7 basis will be maintained by hiring DG Sets on hourly rate by the M/s Express Engineers and Spares Private Ltd.

- xix. That as per Clause 11.5.0 of the Power Purchase Agreement, the M/s Express Engineers and Spares Private Ltd. at his own cost shall collect monthly requirement of HSD oil from SITA Nagar Power House, Diglipur and shall transport and store at the respective station.

3. The Commission has considered the submissions of the Petitioner. It has examined the Power Purchase Agreement along with additional information provided by the Petitioner. The Commission has also examined the relevant provisions of Electricity Act, 2003 and Rules and Regulations made thereunder.

I. Section 63 of the Electricity Act, 2003 provides that:

Determination of tariff by bidding process: Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

II. Section 86 1(b) of Electricity Act, 2003 provides that:

(1) The State Commission shall discharge the following functions, namely: -

b) *Regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;*

4. The Commission has noted that the Electricity Department, Andaman & Nicobar has issued a tender notice vide Tender No. EL/PR/124A/NA/T/2020 dated 10.09.2020 for procurement of Power on round the clock basis to provide electricity at Gandhi Nagar, Shanti Nagar, Ganesh Nagar & Smith Island villages. The Technical bids were opened on 05.10.2020 and the bids were analysed by Technical Evaluation Committee. M/s Express Engineers and Spares Private Limited was emerged as the lowest bidder (L1).
5. M/s Express Engineers and Spares Private Limited has quoted hourly rate for all the 4 villages as under:-

| SL.NO. | ISLAND NAME | RATE PER HOUR WITHOUT GST (RS) |
|--------|----------------------------|--------------------------------|
| 1. | Gandhi Nagar | 75.00 |
| 2. | Ganesh Nagar | 73.00 |
| 3. | Shanti Nagar | 74.00 |
| 4. | Sagar Dweep (Smith Island) | 72.00 |

6. The Commission has perused the Power Purchase Agreement and noted as under:-

- i. That the maximum power demand of all the location is between 8 to 15 KW only and the total monthly generation is around 6000 to 10000 units. Thus, Power Purchase at per unit rate is not possible and power supply to all the 4 locations on 24x7 basis will to be maintained by hiring DG Set on hourly rate basis.
- ii. That the DG Sets will be connected to existing LT outdoor network at each station of Electricity Department. The Electricity Department, Andaman & Nicobar Admn. will not be responsible for any damage due to line fault for which requisite safety and protection shall be provided by the M/s Express Engineers and Spares Private Limited in the engine control panel as well as generator control panel.
- iii. That as per Clause 11.5.0 of the Power Purchase Agreement M/s Express Engineers and Spares Private Limited, New Delhi/contractor at his own cost shall collect monthly requirement of HSD Oil from Sita Nagar Power House, Diglipur and shall transport and store it at the respective station.
- iv. That the terms & conditions of the tender at Clause B (7) provides as under:-
 - a. An open area as suitable for installation of DG Sets. The Department will not provide any building/shed.
 - b. The contractor may build his own shed / building etc. as may be required as per their suitability at his own cost.
 - c. The required quantity of HSD oil will be handed over to the contractor / his authorized representative once in 10 days except on holidays from Sita

Nagar Power House, Diglipur, North Andaman and same to be transported by the contractor to respective station at his own cost.

- d. HSD storage facilities for 10 days HSD requirement to be arranged in barrels by the contractor at respective sites.
 - v. That a Power Purchase Agreement provides that the GST being a statutory payment shall be paid as per actual from time to time. The variation in the rate of GST due to Government Orders shall be paid or recovered as the case may be.
 - vi. That the performance guarantee of 10% of the total value of the contractor in the tender document is reduced to 3% of total value of the contract in the Power Purchase Agreement is in accordance to the number F.9/4/2020-PPD dated 12.11.2020 issued by the Ministry of Finance, Government of India.
7. The Commission noted that the procurement of power by the Petitioner is not in accordance with the transparent process of bidding as per the guidelines issued by the Central Government under Section 63 of the Electricity Act, 2003. In this context, the Commission has further noted that in Energy Watchdog Versus. Central Electricity Regulatory Commission & Others and other related Appeals ((217) 14 SCC80), the Hon'ble Supreme Court observed that

“..... In fact, Sections 62 and 63 deal with “determination” of tariff, which is part of “regulating” tariff. Whereas “determining” tariff for inter-State transmission of electricity is dealt with by Section 79 (1) (d), Section 79 (1) (b) is a wider source of power to “regulate” tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central

Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79 (1) (b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79 (1) (b) can then be used."

8. It is clear from the above that where the guidelines issued by Central Government under Section 63 covers the situation, the Central Commission shall exercise its regulatory powers under Section 79 (1) (b) in accordance with the guidelines. However, where there are no guidelines or the guidelines do not deal with a given situation then the Commission's general regulatory powers under Section 79 (1) (b) can be used. Extending the said principle in case of JERC, it emerges that where there are no guidelines or guidelines issued under Section 63 do not cover a situation, the Joint Commission shall exercise its regulatory powers under Section 86 (1) (b) along with Section 63 for approval / adoption of tariff and procurement process of distribution licensee.
9. In the present Petition, the Commission has noted that the guidelines issued by the Central Government under Section 63 of the Electricity Act does not cover the procurement of power from the DG Sets. In the light of the principle enunciated in Energy Watchdog judgement, the Commission approves / adopts the tariff discovered through the tendering process carried out by the Electricity Department, Andaman & Nicobar Administration under Section 86 (1) (b) read with Section 63 and approves the Power Purchase Agreement between the Electricity Department, Andaman & Nicobar Administration and M/s Express Engineers and Spares Private Limited under Section 86 (1) (b) of the Electricity Act, 2003.

10. In the light of above discussion, the Commission is of the considered view that till such time the requisite guidelines for procurement of power from DG Sets under Section 63 of the Electricity Act, 2003 are issued by the Central Government, for any future procurement of power through DG set, the Petitioner is directed to develop a uniform procedure containing the terms and conditions for procurement through the tendering process, and get the same approved from the Commission.

11. Ordered accordingly.

Sd/-

(Jyoti Prasad)
Member Law

(Certified Copy)



(Rakesh Kumar)
Secretary, JERC