

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

CORAM

Shri Alok Tandon (Chairperson)
Smt. Jyoti Prasad, Member (Law)

Petition No. 100/2023

Date of Hearing: 16.05.2023

Date of Order: 02.06.2023

In the matter of:

Petition for approval of agreement for “Purchase of Power through DG Sets to deliver 5 MW power continuously to the 33 KV Grid of the Electricity Department at Chatham/Phoenix Bay Power House Complex with minimum guaranteed unit delivery of 2.92 MUs per month for a period of three years or till commissioning of 50 MW LNG Power Plant, whichever is earlier” between the Electricity Department, A&N Administration, and M/s Sudhir Ready Gensets Consortium.

And in the matter of:

Electricity Department,
Andaman and Nicobar Administration
Port Blair – 744101

...Petitioner

And in the matter of:

M/s Sudhir Ready Gensets Consortium,
60, Rajdhani Nikunj94, 1.P Extension,
Patparganj, Delhi-110092

....Respondent

Present for the Petitioner

1. Sh. Karuna Jayadhar, Superintending Engineer
2. Sh. Suresh Kumar, Assistant Engineer (PR)
3. Ms. Jayashree, Junior Engineer (PR)

For the Respondent

1. Sh. N.K. Gupta (Partner)
2. Sh. Bhusan Chowdhary (Commercial Senior Manager)
3. Sh. Naveen Shera, GM (Operation)
4. Sh. Manish Srivastav, GM (Design)

ORDER

- 1) The Commission heard the petitioner and the respondent at length.
- 2) The petitioner's submissions in brief are as under:
 - a. That the major power requirement of Port Blair and South Andaman is met by way of purchase of power from private power producers. Whereas, two major private power plants of 1 X 10MW & 5 MW generating capacity is functioning in the vicinity of Phoenix Bay Power House complex (PBPHC) and 1x10 MW private power plant in the vicinity of Bambooflat Substation complex.
 - b. That upon envisaging expiry of existing power sale agreement executed for 3 years between the Electricity Department and M/s NTPC Vidyut Vypar Nigam Ltd, New Delhi on 07.03.2018, the A&N Administration has accorded approval for extension of power sale agreement with M/s NTPC Vidyut Vypar Nigam Ltd for a period of one-year w.e.f. 29/04/2021 including approval for floating fresh tender.
 - c. That after envisaging expiry of extension of the existing agreement of 5MW with M/s NTPC Vyapar Nigam Ltd., the Executive Engineer (PG) has requested circle office, Electricity Department to initiate action to provide 5MW power on continuous basis at (PBPHC). Accordingly, proposal was sent to the Administration for according in principle approval for the floating tender.
 - d. That proposal for in-principle approval for floating the tender, vetting of draft tender document prepared in line with model tender document was submitted to the Administration before opening of the bid uploaded for 5MW,10 MW power purchase at Bambooflat and 1.2MW Power Purchase at Panighat, Mayabunder. Whereas during the pre-bid meeting held on 02/12/2021 for the tender uploaded for 5MW,10 MW Power Purchase at Bambooflat and 1.2MW power purchase at Panighat, Mayabunder, the bidder raised queries in certain clauses i.e., SFC, NGT norms & usual Power charges in the tender document.
 - e. That the bidders queries were placed before the technical committee of the Electricity Department and Technical committee recommended for SFC @ 0.263 Ltrs. per unit instead of 0.25 Ltrs. per unit. Accordingly, the proposal was sent to the Administration for amendment in the model tender document. The Administration conveyed the approval of the competent authority for amendment of the model tender clause vide letter No. EL/PR/124A/5 MW-PBPH/2020 dated 22.02.2022.
 - f. That after making necessary changes in the tender clauses the updated tender document was uploaded at GeM portal vide bid no. GEW2022/B/2228726 dated 01.06.2022 with bid opening date on 28.06.2022 and pre-bid meeting scheduled on 13.06.2022.
 - g. That Pre-bid meeting was held on 13/06/2022. During the meeting, the bidders raised certain queries which were placed before the committee. The committee under the discretion and deliberation recommended to make amendment in clause no. 16 i.e., (installation of HSD storage tank) of the tender document.

- h. That keeping in view the changes to be made in the instant tender document, the proposal was again sent to the Administration for the amendment made in the tender clause no. 16 in the instant tender. In response, the Administration conveyed the approval of the competent authority for amendment of the tender clause. Accordingly, the Corrigendum of the amendment made in the tender clause was uploaded in Gem Portal vide GEM/2022/B/2228726 dated 22.07.2022.
- i. That technical bid was opened on 13.06.2022. The technical evaluator evaluated the bid and submitted their recommendation on 06th September 2022. As per the recommendation of the evaluators, out of four bidders, following three firms qualified from technical and financial point of view:
- i. M/s Sudhir Ready Gensets Consortium
 - ii. M/s Aggreko Energy Rental Pvt. Ltd.
 - iii. M/s Express Gen set Consortium Pvt. Ltd.

whereas the following bidder was disqualified for not meeting the required technical qualification as per the tender document:

- i. M/s Modem Energy Rental Pvt. Ltd.
- j. That Price Bid was opened in GeM Portal on 09.09.2022 and e-comparative statement downloaded found that M/s. Sudhir Ready Gensets Consortium has quoted the lowest @Rs. 0.92 per unit.
- k. The rate quoted by the three successful bidders are as follows:

Bidder Name	Unit Price (Rs./kWh)	Rank
Sudhir Ready Gensetss Consortium	0.92	L1
Express Gen set Consortium Pvt. Ltd.	0.96	L2
Aggreko Energy Rental Pvt. Ltd.	0.98	L3

- l. That the Commissioner-cum-Secretary (Power), Andaman & Nicobar Administration has accorded the administrative approval vide letter No. Proc/40/2022-Purchase-ELE-ELE-AN dated 17.11.2022 and sanctioned for acceptance of L1 rate of Rs. 0.92/- per unit, inclusive of taxes and awarding the contract to the firm M/s. Sudhir ready Gensets Consortium, Delhi at a total cost of Rs. Rs 9,67,10,400/- (Nine Crore sixty-seven lakh ten thousand four hundred only).

- m. That the Petitioner provided the additional information towards the annual saving as brought as under:

Particulars	Value
The Specific Fuel Consumption (SFC) of Departmental Power House (A)	0.304 litre/ kWh
The SFC allowed to Private Power Plant (B)	0.263 litre/kWh
Difference (A-B)	$0.304 - 0.263 = 0.041$ litre/kWh
Monthly Guaranteed Unit Generation	2.92 MUs = 2920000 kWh
Monthly HSD saved through Private Power Plant	$0.041 * 2920000 = 119720$ litre
Cost of HSD per litre at Port Blair	Rs 89/ litre
Total Cost of HSD saved per month	$119720 * 89 =$ Rs 1.07 Crore
Annual Saving	1.07 Crore * 12 = Rs 12.84 Crores

- 3) That the PPA submitted for approval in the present petition deals with the Performance Security as well. The Performance Security furnished by the successful bidder for execution of the agreement will remain valid for complete contractual period and six months beyond the agreement period. The performance security will be released after completion of the contract provided there is no liabilities against the Power producer.

The relevant extract of the clause 6.0.0 of the PPA is provided here:

6.0.0 Performance Guarantee:

The 2nd Party has submitted performance guarantee for an amount of Rs. 29,01,312/- (3% of the total value of the contract) in the form of Drawn from in favour of the Assistant Accounts Officer (DDO) Circle, Electricity Department Port Blair, having valid for a period of 42 months from the date of execution of Power Purchase Agreement.

In case of non-performance of contract by the 2nd Party, the amount of performance security will be forfeited by the 1st Party by forfeiting the performance security deposit or invoking the performance bank guarantee, as the case may be.

The performance security deposit will not bear any interest and the same will be refunded to the 2nd Party within a reasonable period after the closure of the contract.

- 4) That the Petitioner through this petition has sought the approval for the Power Purchase Agreement (PPA) to be executed between the Electricity Department Andaman & Nicobar and M/s Sudhir Ready Gensets Consortium for hiring of DG Sets to deliver 5MW power continuously to 33kV Grid of Electricity Department at Chatham/Phoenix Bay Power House Complex with minimum guaranteed unit delivery of 2.92 MUs per month

for a period of three (3) years or till the commissioning of 50MW LNG Power Plant, whichever is earlier.

- 5) The Commission has considered the submissions of the petitioner & the respondent. It has also examined the draft Power Purchase Agreement (PPA) duly initialized by both the parties along with the additional information placed on record by the petitioner. The Commission has also examined the relevant provisions of the Electricity Act, 2003 and Rules & Regulations made there under.
- 6) The Commission is relying on Section 63 and Section 86 1(b) of the Electricity Act, 2003 for approval of the power purchase agreement.
- 7) The Section 63 of Electricity Act, 2003 provides that:

“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.”
- 8) Section 86 (1)(b) of Electricity Act, 2003 provides that the State Commission shall discharge the following functions, namely: -

“1) 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;”
- 9) The Commission has noted that as per terms & condition of the PPA, power is to made available within 120 days from the date of execution of the PPA duly approved by the Commission. The date on which full 05 MW Power is delivered to the Grid continuously at least for 8 hours will be considered as Commercial Operation Date (COD) and the period of contract will be valid for three years from COD or till establishment of 50 MW LNG Power Plant at South Andaman, whichever is earlier. The units delivered during testing & commissioning period i.e., infirm power will be paid on per unit cost basis. No penalty on the account of less unit generation, peak load shortage shall be imposed during testing period. However, penalty will be imposed on account of excess HSD consumption beyond 0.263 Ltr/kWh (below 3.8 kWh/Ltr.) during the testing and commissioning period. The monthly invoice for the month in which COD will be achieved shall be allowed on pro-rata basis if the date of COD falls on any date other than 1st day of the month. In such case the minimum guaranteed unit to be delivered will be calculated on pro-rata basis.
- 10) The Commission has further noted that the 2nd party is required to supply, install and commission all weather proof DG Sets of suitable capacity so as to provide continuous 05 MW power on round the clock basis (24 hrs. a day for at least for 80% to 85% time in a month) to the 33kV Grid/Bus Bar of Electricity department of A&N Administration at Chatham/Phoenix Bay Power house Complex, A&N Islands initially for a period of three years. The total operation & maintenance shall be the responsibility of the 2nd party. The capacity, type and number of DG Sets, transformers, switch gears and allied auxiliaries may be decided/designed based on the available space, load pattern, grid characteristic,

climatic condition etc. However, the rating of each DG Set should not be less than 1000 kW (1250 kVA).

- 11) The Commission has further noted that the SFC of Department Power House is 0.304 litre/ kWh. The SFC allowed to the respondent is 0.263 litre/kWh. Thereby monthly HSD saved through the respondent will be 119720 litre. The cost of HSD per litre at Port Blair is Rs. 89/Litre and total cost of HSD saved per month will be Rs. 1.07 Crore.
- 12) The Commission has further noted that the performance Security furnished by the Respondent will remain valid for complete contractual period (Three Year) and six months beyond the agreement.
- 13) The Commission has further noted that M/s Sudhir Ready Gen set Consortium has submitted performance Guarantee for an amount Rs. 29,01,312/- (3% of the total value of the contract) in favour of the Assistant Accounts Officer (DDO) Circle, Electricity Department Port Blair, which should be valid for a period of six months beyond the contract expiry period.
- 14) The Commission has further noted that Liquidated damage @ 0.5% will be levied per week for the delay in installation & commissioning of DG Sets or part thereof subject to a maximum Liquidated damage of 10% of the total value of the contract (total value of the contract will be rate quoted by the 2nd party x 2.92 MUx36 Months). In case the 2nd Party fails to achieve the COD (Commercial Operation Date) beyond 10 weeks after the targeted period of COD, further 45 days period shall be allowed for achieving the COD, failing which the 1st party will be at the discretion to invoke termination clause.
- 15) The Commission has further noted that the 2nd Party is liable to pay double the per unit cost for any shortfall of unit delivery below 2.044 MU per Month [Illustration: Assumed unit delivered = 2.0 MU, Shortage in unit delivery = 2.044 - 2 = 0.044MU = 44,000 Unit. Penalty to be imposed = Rs. {(quoted per unit lost x2) x 44,000}.
- 16) The Commission is not convinced with the submissions of the petitioner pertaining to infirm power i.e., the unit delivered during testing & commissioning period. It is of the view that infirm power is defined as the electricity generated by a generating company during its trial operation prior to commercial operation of such generating unit. The infirm power (as its name itself signifies) is generated according to the requirements of trial operation of a generating unit, and its generation cannot be predicted on any firm basis. It is implied that the generation of infirm power cannot be scheduled in advance. As regards to its sale rate, the present practice is to specify the prevailing rate of 'Unscheduled Interchange (UI)'. This is in line with the concept of Unscheduled Interchange, since any power which cannot be scheduled in advance is in fact Unscheduled Interchange.
- 17) The present JERC (Generation, Transmission and Distribution Multi Year Tariff) Regulations, 2021 envisages that for Generation Tariff, the prevailing CERC Tariff Regulations shall be applicable. The extant Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulation, 2019 envisages sale of infirm power as reproduced below:

“7. Sale of Infirm Power: Supply of infirm power shall be accounted as deviation and shall be paid for from the regional deviation settlement fund accounts in accordance with the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related matters) Regulations, 2014:

Provided that any revenue earned by the generating company from supply of infirm power after accounting for the fuel expenses shall be applied in adjusting the capital cost accordingly.”

- 18) From above, it is evident that any excess revenue from actual cost of fuel charge shall be accounted for reduction in capital cost as already stipulated. In other words, ‘infirm power’ injected into the grid during trial operation; if any, has to be compensated for actual cost of fuel charge only as any excess revenue other than fuel cost shall be accounted for reduction in fixed charge. Since, in the present case, the required fuel (HSD) is supplied by the A&N Government free of cost, therefore there is zero expenditure against the fuel cost and no capital cost is involved which is required to be adjusted by excess revenue.
- 19) In view of the above, the petitioner’s prayer for approval of rate of Infirm Power is unwarranted and legally is untenable. Hence rejected.
- 20) The Commission has further 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 SCC (80), 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.”

- 21) 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.

- 22) In the present Petition, the Commission has noted that the Central Government has not issued any guidelines for procurement of power from the DG Sets under Section 63. 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 duly initialised Power Purchase Agreement between the Electricity Department, Andaman & Nicobar Administration and M/s Sudhir Ready Gensets Consortium under Section 86 (1) (b) of the Electricity Act, 2003.
- 23) The Commission directs the petitioner and the respondent to execute the Power Purchase Agreement as per terms & conditions duly approved by the Commission as per said order and place a duly notarised copy of the said PPA before the Commission within a week after execution of the said PPA.
- 24) Ordered accordingly.

Sd/-
(Jyoti Prasad)
Member (Law)

Sd/-
(Alok Tandon)
Chairperson

Certified True Copy



(S.D Sharma)
Secretary (I/c), JERC