

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

Coram
Dr. V. K. Garg, Chairperson
Shri R. K. Sharma, FIE Member

Petition No.....28/ 2011

In the matter of

Petition for seeking approval of the Draft Power Purchase Agreement proposed to be entered into by Electricity Wing of Engineering Department with NHPC and already signed PPAs with NTPC.

And in the matter of:

Electricity Department, UT of Chandigarh.Petitioner

Present

1. Sh. M. P. Singh, Superintending Engineer

ORDER

9.05.2011

The petitioner filed an affidavit dated 02.02.11, submitting copies of PPAs proposed to be entered/already entered by them with NHPC and NTPC under clause 60 (a) and 60(c) of the JERC(Conduct of Business) Regulations 2009. No specific relief is sought in the affidavit, in their covering letter bearing memo. No. 277 dated 2.02.11, though, they had mentioned that these were being submitted to seek approval of the Commission. They have also stated in the said letter of 2.02.11, that fee submitted by them vide an earlier draft dated 21.01.11 be adjusted against this application, which they had inadvertently sent as payment of annual Licence Fee.

In their affidavit dated 24.03.11, filed under clause 60 (a) of the JERC (Conduct of Business) Regulations 2009, they have submitted another list of PPAs already entered into by them. Accompanied by a separate fee.

In their affidavit dated 1.04.11, as filed with the Commission, they have stated that they propose to enter into a PPA with NHPC for Subansiri Lower HEP Project and they have submitted a draft PPA under clause 60 (c). They also requested that the fee submitted by them with their affidavit dated 02.02.11, be considered as fee for the instant petition.

In para 6 of their affidavit dated 2.05.11, in response to the advice of Commission's law officer, have stated "*that the UT Chandigarh shall file one petition for PPA already entered into and submitted under Clause 60 (a) & shall file a separate petition for the draft PPA to be approved by Commission under section 60 (c) of the Conduct of Business Regulations 2009. Further action shall be taken after passing out the order by the Hon'ble JERC on the next date of hearing i.e: 9.5.11.*"

The learned law officer of the Commission requested the Commission to take decision on the matter after referring to an order given by the APTEL which may be relevant in this case.

The matter is discussed in two parts as follows:

1. Request for Approval of the draft PPA between petitioner and NHPC for their Subansiri Lower HEP Project under clause 60 (c) of the JERC(Conduct of Business) Regulations 2009 .

Sections 62, 63, 86 (1) b, clause 60 of the JERC(Conduct of Business) Regulations 2009, clause 5.1 National Tariff Policy (NTP) are mainly relevant to the case.

Clause no 5.1 of National Tariff Policy states:

" All future requirement of power should be procured competitively by distribution licensees except in cases of expansion of existing projects or where there is a State controlled/owned company as an identified developer and where regulators will need to resort to tariff determination based on norms provided that expansion of generating capacity by private developers for this purpose would be restricted to one time addition of not more than 50% of the existing capacity.

Even for the Public Sector projects , tariff of all new generation and transmission projects should be decided on the basis of competitive bidding after a period of five years or when the Regulatory Commission is satisfied that the situation is ripe to introduce such competition....."

In terms of clarification dated 09/12/2010 No 23/2/2005-R& R(Vol-V) Government of India, Ministry of Power (hereinafter clarification dated 09/12/2010), generation projects of PSUs/CPSU for which PPA(S) have been signed on or before 05/01/2011 are exempted from Competitive Bidding process; that is, with effect from 06/01/2011, the distribution licensees are required to purchase power through

competitive bidding process even from PSUs/CPSU and therefore provision of section 63 of the Act shall apply.

The above gives rise to a question. Is the competitive bidding process as provided in clause 5.1 of the National Tariff Policy 2006 read with Clarification dated 09/12/2011 of MOP is mandatory for procurement of power by a distribution licensee?

The Hon'ble APTEL had dealt with the above provisions of the Act and clause 5.1 of the Tariff policy in appeal no 106 and 107 of 2009 dated 31.02.2010 in BSES Rajdhani Power limited Vs DERC & Ors . The relevant extract of the their order is as follows:-

“ the argument advanced by the Ld. Counsel for the Appellants that resort to tariff determination under Section 62(1)(a) without adopting the Competitive Bidding Process will render clause 5.1 of the NTP redundant as the distribution licensees in the future will procure power from the generating companies only through the negotiated route, cannot be accepted as it is always open to the State Commission to direct the distribution licensee to carry out power procurement through Competitive Bidding Process only in case where the rates under the negotiated agreement are high . In other words, the state Commission have been given discretionary powers either to chose Section 62, 62 (1) (a) to give approval for the PPA or to direct the distribution licensee to resort to the Competitive Bidding Process as per clause 5.1 of the NTP read with Section 63 of the Act.....”

The Commission therefore examines the draft PPA as submitted by the petitioner in the light of above under clause 60 of the JERC (Conduct of Business) Regulations 2009.

It is observed on enquiry that the power from many of the hydro power stations of which the petitioner presently is a beneficiary, the average rates during 2010-11 are upward of Rs. 2.62p/unit from Chamera II (NHPC), Rs. 5.12p/unit from Dulhasti (NHPC), Rs. 4.25p/unit from Tehri (THDCIL) Rs. 4.12p/unit from Sewa II (NHPC). It was stated by the petitioner that the tariff of the project under examination (Subansiri lower), is projected at Rs. 2.31p/unit. It is therefore considered competitive.

It has been provided in the draft PPA that *“The tariff shall be determined as per tariff Notifications/orders/direction issued/to be issued by CERC from time to time.....”*. CERC is the competent agency for the purpose and follows an established transparent process of fixing the tariff.

The petitioner has projected a demand of 425 MW by 2015-16. 17th EPS projects a demand of 602 MW in 2016-17. As per their information supplied, with the signing of this agreement petitioner will still be within the projected demands. The Commission directs that the difference in demand projections as mentioned above shall be reconciled by the petitioner in consultation with the Authority and to initiate action for tying up the balance power on long term basis.

In view of above, the requirements of clause 60(b) are met. The Commission finds the draft PPA generally in order and approves the same.

The draft agreement provides that it shall remain operative for a period of five years from the date of commercial operation of the last unit with a provision of extension. In case the agreement, on expiry of the period for which it is entered into, is formally renewed, extended or replaced, the same shall be carried out only after the prior approval of the Commission.

2. Submission of PPAs already entered into by the petitioner and their copies submitted to the Commission under clause 60 (a) of the JERC (Conduct of Business) Regulations 2009.

Commission has observed that for the PPAs which have already been entered into and submitted along with their affidavit of 2.02.11 under clause 60 (a) JERC(Conduct of Business) Regulations 2009 do not bear the approval of the Commission. This is not in line with the provisions of clause 60 of JERC (Conduct of Business) Regulations 2009 and section 86 1(b) of the Act.

The petitioner therefore needs to explain as to why they did not take approval of the Commission before signing the contracts.

Decision, on fee to be levied by the Commission in line with section 86 (g) of the Act for the purpose, as the same is not mentioned in the schedule II of JERC(Conduct of Business) Regulations 2009, shall be given in the final order.

The reply shall be furnished by 30th June 2011.

The matter shall be heard on 8th July, 2011.

sd/-
(R. K. SHARMA)
MEMBER

sd/-
(DR. V.K.GARG)
CHAIRPERSON

