

**JOINT ELECTRICITY REGULATORY COMMISSION
FOR THE STATE OF GOA & UTS
GURUGRAM**

CORAM

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

Petition No. 101/2023

Date of Hearing 17.05.2023

Date of Order: 30.05.2023

In the matter of:

Petition for approval of agreement for “Purchase of Power through DG Sets to deliver 10 MW power continuously to the 33 KV Grid of Electricity Department at Bambooflat with minimum guaranteed unit delivery of 5.84 MU per month for a period of three years or till commissioning of 50 MW LNG Power Plant, whichever is earlier” between Electricity Department, Andaman & Nicobar Administration, Vidyut Bhavan, Port Blair-744101, and M/s. Sudhir Sales & Service Ltd.,Plot No.1Sector-34, EHTP Gurugram, Haryana-Pin-122001

And In the matter of:

Electricity Department,
Andaman & Nicobar Administration, Vidyut Bhavan,
Port Blair-744101

..... **Petitioner**

Vs

M/s. Sudhir Sales & Service Ltd.,

Plot No.1Sector-34

EHTP Gurugram,

Haryana-Pin-122001

.....**Respondent**

The following where present

For the Petitioner

Shri Karuan Jaydhar, Superintending Engineer
Shri S.Suresh Kumar, Assistant Engineer (PR)
Smti K.Jayshree, Junior Engineer (PR)

For the Respondent

Shri Bhusan Chowdhary, Commercial Senior Manager
Shri Naveen Shera, GM (Operation)
Shri 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 Petitioner is a government department engaged in the generation, transmission and distribution of electricity in the Andaman & Nicobar Islands. To meet its obligation for supply of electricity to its consumers, the petitioner sources energy from its own generating stations and by purchasing of power from other sources. In terms of section 63 & 86 of the Electricity Act, 2003, The Commission has the jurisdiction to approve the purchase of power from different sources.
 - b. That Power Purchase agreement with the Independent Power Producer (IPP) M/s. Surya Chakra Power Corporation Ltd, (SPCL) at Bambooflat for a period of 15 years expired on 31.03.2018.
 - c. That in order to resolve power crises at Port Blair and South Andaman, the Ministry of Power, GoI has nominated M/s. NTPC Ltd. to establish 15 MW Power Plant at Port Blair (5MW at Chatham Power House Complex & 10 MW at IPP Complex, Bambooflat) to resolve the power crisis of Port Blair and South Andaman.
 - d. Accordingly, M/s. NTPC Vidhyut Vyapar Nigam (NVVN) Limited has established a 10 MW Hiring Power Plant at Bambooflat by executing Power sale agreement with Electricity Department on 20.04.2018, for sale of Power for a period of 3(three) years. The Commercial operation of the Plant started w.e.f. 17.10.2018.
 - e. That in view of the three years term of Power Purchase with NVVN Ltd. the Executive Engineer (HQ) has requested Circle office to initiate action to provide 10 MW on continuous basis at Bambooflat IPP Complex.
 - f. Accordingly, proposal for purchase of 10 MW Power continuously to the 33 kV Grid/Bus-Bar of Bambooflat Sub-station for a period of three years or till the commissioning of 50 MW LNG Plant at Port Blair whichever is earlier was forwarded to Andaman & Nicobar Administration.
 - g. That Andaman & Nicobar Administration has accorded the approval for floating tender vide letter no. EL/PR58A(8)/10MW/Power Purchase/2021/PF dated 02/12/2021.
 - h. That Bid for Purchase of Power through DG Set to deliver 10 MW power continuously to the 33 KV Grid of Electricity Department at Bambooflat with

minimum guaranteed unit delivery of 5.84 MUs per month for a period of three years or till commissioning of 50 MW LNG Power Plant, whichever is earlier” was published in GeM Portal vide bid no. GeM/2021/B/ 1732116 dated 04.12.2021 with the pre-bid meeting scheduled on 15.12.2021 and Bid opening date on 30.12.2021.

- i. That Pre-bid meeting was held on 15.12.2021. Pre-bid notice, Pre-bid MOM, corrigendum was uploaded on the GeM portal and due date of Bid opening was extended till 18.01.2022.
- j. That Technical bid was opened on 03/03/2022 and following four bidders participated in the bid:
 - i. M/s. Mona Generator Services Pvt. Ltd., New Delhi
 - ii. M/s. Express Genset Consortium Pvt. Ltd, New Delhi
 - iii. M/s Aggreko Energy Rental India Pvt. Ltd, Nagar, Pune.
 - iv. M/s. Sudhir Sales & Service Ltd, Haryana.
- k. That the Tender Evaluation Committee meeting for technical Bid was held on 22.03.2022. The Technical evaluation committee in the absence of sufficient document in support of experience criteria & performance recommended disqualifying of all the bidders. Accordingly, proposal was submitted to A&N administration for cancellation of Bid & approval of initiating re-tender.
- l. That Re-Bidding was initiated in GeM Portal on 28.04.2022 and GeM Bid published vide Bid No. GEM/2022/B/20140322 with pre-bid meeting & bid submission due date scheduled 09.05.2022 and 24.05.2022 respectively.
- m. That Pre-Bid meeting was held on 09.05.2022. Due to poor participation of the bidders the Bid due date was extended till 13.06.2022.
- n. That the Technical Bid was opened on 13.06.2022 and the Bids forwarded to the technical Evaluator for evaluation through GeM Portal. Following 3 (three) Bidders participated in the Bid GEM/2022/B/20140322 dated 28.04.2022.
 - i. M/ s. Express Genset Consortium, Pvt. Ltd, New Delhi
 - ii. M/ s Aggreko Energy Rental India Pvt. Ltd, Nagar, Pune.
 - iii. M/ s. Sudhir Sales & Service Ltd, Haryana.
- o. That the Tender evaluation Committee evaluated the Bid through Portal and submitted their recommendations qualifying all the three bidders.
- p. The rate quoted by the three qualified bidders is as follows:
 - i. M/ s. Sudhir Sales & Service Ltd, L1 Rs. 1.01/- per unit

- ii. M/ s. Express Genset Consortium, Pvt. Ltd, L2 Rs. 1.08/- per unit
- iii. M/ s Aggreko Energy Rental India Pvt. Ltd., L3 Rs. 1.17/- per unit

- q. That the Price Bid opened in GeM Portal on 18.07.2022 and e-comparative statement downloaded found that M/s Sudhir Sales & Service Pvt. Ltd, Haryana, has quoted the lowest @ Rs 1.01 per unit.
- r. That the A&N Administration has accorded the Administrative approval and expenditure sanction for acceptance of L1 rate of Rs. 1.01/- per unit and awarding the contract to M/s Sudhir Sales & Service Ltd, Haryana, for Purchase of Power through DG Sets to deliver 10 MW power continuously to the 33 KV Grid of Electricity Department at Bambooflat with minimum guaranteed unit delivery of 5.84 MU per month for a period of three years or till commissioning of 50 MW LNG Power Plant, whichever is earlier at a total cost of Rs.21,23,42,400/(Rupees Twenty One Crore Twenty Three Lakh Forty Two Thousand only) vide order no. 2268 dated 30/08/2022.

3. That the petitioner provided the additional information as under:

Particulars	Value
Specific Fuel Consumption of Departmental Power House(sfc)	0.304 liter/Unit
Specific Fuel consumption(sfc) allowed to Private Power Plant	0.263 liter/Unit
Difference	0.304-0.263= 0.041 liter/Unit
Monthly Guaranteed Unit Generation	5.84Million Unit (Fifty Eight Lakh Forty Eight Thousand)
Monthly HSD saved through Private Power Plant	0.041x5840000= 239440 Litre
Cost of HSD per litre at Port Blair	Rs 89/-.
Total Cost of HSDsaved per month	239440 Litre x Rs 89 =Rs. 2,13,10,160.00(Rs. 2.13 Cr Approx)
Annual Saving	Rs.2.13 Cr x 12 =25.57 Cr.

4. The Commission has considered the submissions of the Petitioner & Respondent. It has also examined the draft Power Purchase Agreement (PPA) duly initialized by both the parties along with 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.
5. The Commission is relying on Section 63 and Section 86 (1) (b) of the Electricity Act, 2003 for approval of the power purchase agreement.
6. 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.
7. Section 86 (1)(b) of Electricity Act, 20003 provides that-
*S.86 (1)— The State Commission shall discharge the following functions, namely: -
b) Regulate electricity purchase and procurement process of 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*
8. The Commission has noted that the ED, Andaman & Nicobar has issued a tender notice dated 28.04.2022 for procurement of Power through DG Sets to deliver 10 MW power continuously to the 33 KV Grid/Bus-Bar of Electricity Department at Bambooflat.
9. 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 10 MW power on round the clock basis (24 hours a day for at-least for 80% - 85% time in a month) to the 33 KV Grid/Bus Bar of Electricity Department of A&N Administration at Bambooflat, 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, rating of each DG set should not be less than 1000 KW (1250 KVA).
10. The Commission has further noted that the HSD required for Power generation will be supplied by the 1st Party. HSD shall be supplied free of cost, provided the fuel efficiency of all weatherproof DG sets shall be

maintained at 3.8 Units/Litre i.e. 0.263 Ltr/Unit. Any excess consumption of HSD beyond 0.263 Litre/Unit will be to the 2nd Party's account and the cost of excess HSD consumed including transportation charges shall be recovered from the monthly bill of the 2nd Party. However, for specific fuel consumption for more than 3.8 Unit/ltr. (less than 0.263 Ltres. per Unit), no incentive will be paid.

11. The Commission has further noted that The 2nd Party has submitted performance guarantee for an amount of Rs.63,70,272/- (Rupees sixty three lakhs seventy thousand two hundred and seventy two only) (3% of the total value of the contract) in favour of the Assistant Accounts Officer(DDO), Circle, Electricity Department, Port Blair, having validity for a period of 42 (Forty two) months from the date of execution of Power Purchase Agreement.
12. The Commission has further noted that the installation & commissioning of all-weather proof DG Set shall be in such manner, (including transportation, shipment, erection, commissioning, testing etc.) so that power is made available within 120 days from the date of execution of agreement. The date on which full 10 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 Unit delivered during testing & commissioning period 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 of 0.263 Ltr/kWh (below 3.8kWh/Ltr.) during the testing and commissioning period. The monthly invoice for the month in which COD is 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.
13. The Commission has further noted that Liquidated damage @ 0.5% will be levied/deducted per week for the delay in installation & commissioning of DG Sets or part thereof subject to a maximum 10% of the total value of the contract (total value of the contract will be rate quoted by the 2nd party x5.84 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.

14. 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 4.088 MU per Month (Forty Lakh Eighty Eight Thousand Units per month) [Illustration: Assumed unit delivered = 4.0 MU, Shortage in unit delivery = $4.088 - 4 = 0.088$ MU = 88,000 Unit. Penalty to be imposed = Rs. $\{(\text{quoted per unit lost} \times 2) \times 88,000\}$.
15. The Commission is not convinced with the submissions of the petitioner pertaining to infirm power i.e. 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.
16. 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.”*
17. 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 (diesel) 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.

18. In view of the above, the petitioner's prayer for approval of rate of 'Infirm Power' is unwarranted and legally is untenable. Hence rejected.

19. 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 SCC80*), the 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."

20. It is clear from the above that where the guidelines issued by the 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.

21. 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* judgment, 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 initialized Power Purchase Agreement between the Electricity Department, Andaman & Nicobar Administration and M/s Sudhir Sales & Service Pvt. Ltd, Haryana, under Section 86 (1) (b) of the Electricity Act, 2003.


22. 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 notarized copy of the said PPA before the Commission within a week after execution of the said PPA.

23. Ordered accordingly.

Sd/-
(Jyoti Prasad)
Member(Law)

Sd/-
(Alok Tandon)
Chairperson

Certified True Copy


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