

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

CORAM:

Ms. Jyoti Prasad, Member (Law)

Petition No. - 86/2022

Date of Hearing: 20.12.2022

Date of Order: 24.04.2023

In the matter of:

Petition for approval of agreement for Purchase of Power through DG Sets to deliver 1.2 MW power on round the clock basis to the 33kV Transmission and Distribution System at Mayabunder having evening Peak Load of 1.6 MW (05:00 PM to 10:00 PM) and Average Day and Night Load to the tune of 1.2 MW with guaranteed generation of 5.2 lakh units per month for a period of three years, between Electricity Department, Andaman and Nicobar Administration, Vidyut Bhawan, Port Blair – 744101, and M/s Mona Generator Services Pvt. Limited, I-A, Basement, 30-31, Raja House, Nehru Place, New Delhi - 110019.

And in the matter of:

Electricity Department,
Andaman and Nicobar Administration
Port Blair – 744101

....Petitioner

And in the matter of:

M/s Mona Generator Services Private Limited,
I-A Basement, 30-31, Raja House, Nehru Place,
New Delhi – 110019

....Respondent

Present

For the Petitioner

1. Sh. Karuna Jayadhar, Superintending Engineer, Electricity Department
Andaman and Nicobar Administration
2. Ms. Usha Kapoor, Assistant Engineer – Planning, ED A&N Administration
3. Ms. Jayashree, Junior Engineer – Purchase Section, ED A&N Administration
4. Sh. Suresh Kumar, Junior Engineer – Purchase Section, ED A&N Administration

For the Respondent

1. Sh. Animesh Das, GM, Mona Generators
2. Sh. Vivek Singh – Electrical Engineer, Mona Generators
3. Sh. Maninder Singh - Electrical Engineer, Mona Generators

ORDER

- 1) The Commission heard the petitioner and the respondent at length.
- 2) The petitioner's submission in brief are as under:
 - a) That the Petitioner submitted that the District Headquarter in Mayabunder under North & Middle Andaman is located at a distance of 75 Kms away from the Centralized Power House at Rangat Bay and about 73 Kms away from the Kalpong Hydro Electric Power Station, Diglipur. The matter was taken up in the coordination & Monitoring meeting held under the Chairmanship of Chief Secretary A&N Administration on 30.04.2019, wherein Installation of stand-alone Generator at Mayabunder was discussed and deliberated.
 - b) That due to non availability of spare DG sets with the Department, it was proposed to outsource Purchase of Power through containerized DG Sets at Panighat (Mayabunder) in existing 33KV T&D system at Mayabunder having Evening peak load of 1.6 MW (05:00PM to 10:00PM) and average day and night load to the tune of 1.2 MW with guaranteed generation of 5.2 Lakh units per month.
 - c) That an agreement in this context for Power purchase at Mayabunder for a period of two years was executed with M/s. Mona Generators & Services Pvt Ltd., New Delhi vide No. EL/PR/124A/T-07/2019/09 Dated 28.08.2019. The 2(two) years power purchase agreement expired on 09.01.2021.
 - d) That the Executive Engineer (Rural) citing aforementioned expiry of the Power purchase contract, requested circle office, Electricity Department to initiate action to extend the Power purchase contract so as to provide round the clock power to Panighat.

- e) That, a proposal was submitted to Administration and approval was accorded from Administration. A BoQ (Bill of Quantity) Bid for "Purchase of Power through DG Sets was published in GeM Portal on 04.12.2021 (GeM Bid No. GeM/2021/B/1732323) with due date on 27.12.2021. The Pre-Bid meeting held on 14.12.2021, the technical Bid of GeM Bid No. GeM/2021/B/1732323 opened on 03.03.2022. In response to the said Bid, the following 4(four) bidders have participated.
- (i) M/ s Modern Hiring Services (P) Ltd, Mumbai.
 - (ii) M/ s. Sudhir Ready Genset Consortium, Patpargunj, New Delhi.
 - (iii) M/ s Express Gensets Consortium (P) Ltd., New Delhi.
 - (iv) M/ s Mona Generator Services (P) Ltd., New Delhi.
- f) That the bids of all the four bidders were placed before the empowered Tender Evaluation Committee for Evaluation of Technical Bid. That after analysing various factors the said Committee decided to 'cancel the tender. It was decided to go for rebidding as none of the bidders were found to be technically qualified in accordance with the condition stipulated in the Bid, based on Tender Evaluation Committee Report dated 22.03.2022 and vide Superintending Engineer Letter, dated 20.04.2022 for cancellation and for go ahead for re-tendering.
- g) That rebidding was done and BoQ Bid was published in GeM Portal on 28.04.22 2(GeM Bid No. GeM/2022/B/2138871) with due date on 24.05.2022.
- h) That the Pre-Bid meeting held was on 09.05.2022. The technical Bid of GeM Bid No. GeM/2022/B/2138871 opened on 13.06.2022. In response to the said Bid, the following 2(two) bidders have participated.
- (i) M/ s Mona Generator Services (P) Ltd., New Delhi.
 - (ii) M/ s Express Gen Set Consortium Pvt. Ltd., New Delhi.
- i) That the bids were forwarded to the Tender Evaluation Committee through GeM Portal. The said Committee evaluated the bids and qualified both bidders through GeM Portal. The Price-Bid opened in GeM Portal on 18.07.2022. That M/s Mona Generator Services (P) Ltd., New Delhi emerged as the lowest bidder. Details of L1 bidder is submitted below:
- j) That the details of rate offered by the lowest bidder is as under:-

Name of the Firm	Description	Rate per unit inclusive of taxes (Rs.)
M/s Mona Generator Services private limited, I-A, Basement, 30-31, Raja House, Nehru Place, New Delhi-110019	Cost of per unit energy (KWh) to be delivered to the 33 KV Grid of Electricity department for a minimum guaranteed generation of 5.2 Lakh units per month, maintaining 1.2 MW at day & night and 1.6 MW at evening peak hours at Mayabunder (inclusive of operation & maintenance charges, Lub oil, taxes & duties and GST but excluding the cost of HSD oil for a period of three years)	0.96 (Ninety Six Paisa)

k) That the Commissioner-cum-Secretary (Power), Andaman & Nicobar Administration has accorded the Administrative approval vide letter No. EL/PR/124A/T-02/2022 dated 30.08.2022, approval and expenditure sanction for acceptance of LI rate of 0.96 per unit and awarding the contract to the firm M/ s. Mona Generator Services Pvt. Ltd at a total cost of Rs. 1,79,71,200/- (Rupees One Crore Seventy-Nine Lakh Seventy-One Thousand Two Hundred only).

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

Particulars	Value
The Specific Fuel Consumption of Departmental Power House (SFC)	0.304 litre/ kWh
The SFC allowed to Private Power Plant	0.263 litre/kWh
Difference	0.304 - 0.263 = 0.041 litre/kWh
Monthly Guaranteed units	52 MUs = 520000 kWh

Monthly HSD saved through Private Power Plant	$0.041 * 520000 = 21320$ litre
Cost of HSD per litre at Port Blair	Rs 89/ litre
Total Cost of HSD saved per month	$21320 * 89 = \text{Rs } 19,61,440$
Annual Saving	$1961400 * 12 = \text{Rs } 2.35$ Crores

- 4) That in the absence of exclusive testing Bed, infirm Power generated from 1.2MW DG Power Plant prior to Commercial operation date is pumped into the grid to electricity department and is disbursed through various distribution feeders. During the testing process, the DG Power plant gradually build up their generation and demonstrate their capacity. The power available from the DG Plant is completely drawn to the grid.
- 5) The petitioner, Electricity Department, Andaman & Nicobar 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. Mona Generator Services Private Limited for hiring of DG Sets to deliver 1.6 MW Power on Round the clock basis to the existing 33KV T&D System at Mayabunder having evening peak load of 1.6 MW (5PM to 10PM) and average day and night load to the tune of 1.2 MW with guaranteed generation of 5.2 lakh units per month for a period of three years."
- 6) The Commission has considered the submission of the Petitioner & Respondent. It has also examined the draft Power Purchase Agreement (PPA) duly initialized by both the parties alongwith 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.
- 7) The Commission is relying on Section 63 and Section 86 (1) (b) of the Electricity Act, 2003 for approval of the power purchase agreement placed before it by the Petitioner.

8) 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.

9) Section 86 (1)(b) of Electricity Act, 2003 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:

10) Vide interim order dated 27.01.2023, the Commission directed the petitioner to revise Clause 15 of the draft PPA in respect of Arbitration which must adhere to the Section 86 (1) (f) of the Electricity Act, 2003. Further name of the representative of the M/s, Mona Generator Services Private Limited should be mentioned in 2nd Para of the draft PPA to be approved by the Commission.

11) The Commission has noted that the petitioner has filed revised draft PPA on an affidavit dated 17.03.2023 wherein Clause 15 regarding Arbitration is revised as per the Commission's directions in its interim order.

12) Further, the name of the duly authorised representative of the M/s. Mona Generator Services Private Limited is also mentioned in second Para of the revised draft PPA as per the direction of the Commission in its interim order.

13) The Commission has noted that the ED, Andaman & Nicobar has issued a tender notice vide 28.04.2022 for procurement of power through DG Set to deliver 1.2 MW power continuously at Mayabunder.

- 14) The Commission has further noted that the DG Sets of the M/s. Mona Generator Services Private Limited will be connected to the existing 33 KV T&D system of ED, Andaman & Nicobar Administration and hence the M/s. Mona Generator Services Private Limited should incorporate suitable protection scheme like Reverse Power, Under Voltage, Over voltage, Under frequency, Over frequency, Protection against lightning & switching surge etc. including all other standard protections in their design to protect their machineries and allied switchgear and ancillary equipment's from any damage. The ED, Andaman & Nicobar Administration will not be responsible for any damage to M/s. Mona Generator Services Private Limited machinery & equipment due to line fault, sudden isolation and charging safety and protection shall be provided by the M/s. Mona Generator Services Private Limited in the engine control panel as well as generator control panel.
- 15) The Commission has further noted that the HSD required for Power generation will be supplied by the Department. HSD will be supplied free of cost, provided the fuel efficiency of the all weatherproof DG Sets shall normally be maintained at 3.8 unit per Ltr. (0.263 Ltr./unit). Any excess consumption of HSD beyond 0.263 Ltr./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
- 16) The Commission has further noted that the transportation of DG Sets & its allied equipment up to the site at Panighat (Mayabunder), and vice-versa including insurance, Port Charges, transportation charges, seaworthy packing etc. shall be borne by the 2nd Party. The safety precautions during transit shall be the responsibility of the 2nd Party on its own cost.
- 17) The Commission has further noted that M/s. Mona Generator Services Private Limited will submit performance Guarantee being 3% of the total value of the contract in the form of fixed deposit receipt or Bank Guarantee from any Commercial Bank in favour of the Assistant Accounts Officer (DDO)

Circle, Electricity Department, Port Blair which should be valid for a period of 60 days beyond the contract expiry period.

18) The Commission has further noted that the installation & commissioning of DG Sets at Panighat (Mayabunder) shall be in such a manner, (including transportation, shipment, erection, commissioning, testing, etc.) so that power is made available within 120 days at Panighat, Mayabunder from the date of signing of this Power Purchase Agreement. Units 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/Unit (below 3.8 Unit/litr) during the testing and commissioning period. The date on which 1.6 MW Power or full load of 33 KV T&D system of Mayabunder is delivered continuously at least for 8 hours, will be considered as COD (Commercial Operation Date) or Commissioning date and the period of contract will be valid for three years from COD. 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.

19) 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 beyond the target date & COD 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 x 5.2 lakh Unit x36 Months). In case the firm fails to achieve the COD (Commercial Operation Date)

beyond 10 weeks after the targeted period of COD (Commercial Operation Date) beyond the maximum liquidated damage period, the contract is liable to be cancelled.

20) The Commission has further noted that the 2nd Party is liable to pay double the per unit cost for any short fall of supply or supply of energy below minimum generation of 4.6 Lakh unit per month. (Example: For penalty calculation, assume monthly unit delivered =4.5 Lakh, penalty to be imposed = Rs. (quoted per unit cost x2) x (4.6 Lakh Units minus 4.5 Lakh Units).

21) The Commission is not convinced with the submissions of the petitioner pertaining to infirm power. 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.

22) 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."

23) 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.

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

25) 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."

26) 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.

27) 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 draft Power Purchase Agreement between the Electricity Department, Andaman & Nicobar Administration and M/s Aggreko Energy Rental Private Limited under Section 86 (1) (b) of the Electricity Act, 2003.

28) The Commission directs the petitioner and the respondent to execute the Power Purchase Agreement as per terms & conditions duly approved by the it as per the order and place a duly notarised copy of the said PPA before the Commission within a week after execution of the said PPA.

29) Ordered accordingly.

Sd/-

(Jyoti Prasad)
Member (Law)

Certified Copy



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