

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

Coram*

Sh. S.K.Chaturvedi, Member

Petition No. 87/2012

In the matter of

Petition for seeking approval of Power Purchase Agreement u/s 63 of the Electricity Act, 2003 proposed to be entered into between Electricity Department of DNH and EMCO Energy Limited.

And in the matter of

Electricity Department of DNH, UT of Dadra and Nagar Haveli.

And in the matter of

EMCO Energy Limited.

Present

1. Shri H.M. Patel, Executive Engineer, ED-Dadra and Nagar Haveli
2. Shri Anand K. Ganeshan, Advocate, ED- Dadra and Nagar Haveli.
3. Shri R. Muralidaran, Associate Vice President, GMR Energy Ltd.
4. Shri Pradnya Kulkarni, Associate G.M., GMR Energy Ltd.
5. Shri Jatinder Kumar, Jr. Manager, GMR Energy Ltd.
6. Shri Tarun Mahajan, Executive Engineer, GMR Energy Ltd.
7. Shri Sukumar Pattjoshi, Advocate, GMR Energy Ltd.

Order

19.2.2013

1. In exercise of the powers conferred by Section 83 of the Electricity Act, 2003 the Central Government constituted a two member (including Chairperson) Joint Electricity Regulatory Commission for all Union Territories except Delhi to be known as "Joint Electricity Regulatory Commission for Union Territories" with Headquarters at Delhi as notified vide notification no. 23/52/2003- R&R dated 2nd May, 2005. Later with the joining of the state of Goa, the Commission came to be known as "Joint Electricity Regulatory Commission for the State of Goa and Union Territories" as notified on 30th May, 2008. The Joint Electricity Regulatory Commission (for the State of Goa and Union Territories) started functioning with effect from August 2008 in the district town of Gurgaon, Haryana.

2. The petitioner ED-DNH has filed the present Petition u/s 63 of the Electricity Act, 2003 for seeking approval of Power Purchase Agreement proposed to be entered into between Electricity Department of DNH and EMCO Energy Limited for procurement of 200 MW power on long term basis as per the Case-I bidding guidelines of Ministry of Power.

3. The Commission held hearing in the petition on 26.11.2012 and passed following order:-

“At the very outset the representative of the petitioner submitted that there are some factual and technical errors in the petition. They want to file an application for seeking amendment in the petition and prayed for 15 days time for filing the application.

The Commission considered the request and directed the petitioner to file application for amendment of the petition, if any, on or before 14.12.2012.

Scheduled for hearing on 19.12.2012 at 11:00 AM”.

4. The Commission again held hearing on 19.12.2012 and passed the following order:-

“The Commission in the order dated 26.11.2012 directed the petitioner to file application for amendment of petition, if any, on or before 14.12.2012. The petitioner did not file any application for amendment of the petition.

The petitioner sent a fax dated 12.12.2012 with a prayer to adjourn the hearing. The representative of the petitioner also prayed for one month time for filing application for amendment of the petition.

The Commission considered the request, acceded the same and directed the petitioner to file application in affidavit for amendment of the petition describing that all conditions in SBD issued by Ministry of Power are strictly followed and if there is any deviation from the conditions, whether the same have prior approval of the Commission or not, including quantum of energy/capacity on or before 16.01.2013.

The matter is scheduled for hearing on 23.01.2013 at 11:00 AM”.

5. The Commission in the hearing held on 23.01.2013 passed following order:-

The petitioner ED- DNH in compliance of the order dated 19.12.2012 of the Commission filed an application dated 14.01.2013 for seeking amendment of the petition received in the Commission on 16.01.2013.

The Commission heard representative of ED-DNH on the application for amendment of the petition at length and perused the record carefully and thoroughly. The Commission is of the opinion that the earlier petition filed by the petitioner is not in line with the Electricity Act, 2003 and JERC Regulations. The amendment sought is essential for proper adjudication of the petition. Therefore, in the interest of Justice and for proper adjudication of the matter in issue the application for amendment of the petition is allowed.

The Commission gave directions to ED- DNH to submit the following on or before 11.02.2013:-

- “i. Amended petition.*
- ii. Present status of all clearances required from different authorities/ agencies for installation of generation project of lowest bidder- EMCO Energy Ltd., as specified in Case –I bidding guide lines such as Environmental clearance, water linkage, forest clearance etc.*
- iii. Present status of coal block allocation/ fuel supply arrangement.*
- iv. Documents showing that all pages of bid documents of all three qualified bidders are initialled by their authorized representatives as per the bid document conditions.*
- v. Statement showing sensitivity analysis of year wise power purchase cost (separately for capacity charges and energy charges) for the lowest bidder by applying different escalation percentage from 1% to 10% and impact from year on year basis calculated as per escalation formula provided in the draft PPA”.*

6. The petitioner ED- DNH in compliance of the order dated 23.01.2013 of the Commission filed amended petition dated 15.02.2013 received in the Commission on 15.02.2013.
7. The Commission heard representative of the petitioner, found the petition in line with JERC (Conduct of Business) Regulations, 2009 and admitted the petition.
8. EMCO Energy Ltd. herein second petitioner also filed an application dated 23.01.2013 received in the Commission on 12.02.2013 under Regulations 23 and 79 of JERC (Conduct of Business) Regulations, 2009 read with section 94 (2) of the Electricity Act, 2003 to implead as party along with a petition with prayer that the PPA to be executed between the parties may kindly be approved.
9. The Commission further heard representative of the second petitioner and has gone through their petition carefully and thoroughly and applied mind on the facts and

circumstances of the present petition. The petitioner ED- DNH has filed the present petition u/s 63 of the Electricity Act, 2003 for seeking approval of the Commission of Power Purchase Agreement proposed to be entered into between Electricity Department of DNH and EMCO Energy Limited for procurement of 200 MW power on long term basis as per the case-I bidding guidelines of Ministry of Power.

10. The PPA is to be executed between petitioner ED- DNH and second petitioner EMCO Energy Ltd. Though for approval of the PPA second petitioner is not necessary party but as the second petitioner EMCO Energy Ltd. is an interested party and the documents sought to be produced by the Commission in the order dated 23.01.2013 are in the possession of second petitioner EMCO Energy Ltd., therefore, the second petitioner is a necessary party and for proper adjudication of the petition, to bring all relevant and necessary documents on record and to afford opportunity of being heard to all interested and concerned as well as in interest of justice EMCO Energy Ltd. – applicant is allowed to be impleaded as second petitioner.
11. The petitioner produced the documents showing Present status of all clearances required from different authorities/ agencies for installation of generation project of lowest bidder- EMCO Energy Ltd., as specified in Case –I bidding guide lines such as Environmental clearance, water linkage, forest clearance etc., present status of coal block allocation/ fuel supply arrangement, documents showing that all pages of bid documents of all three qualified bidders are initialled by their authorized representatives as per the bid document conditions and Statement showing sensitivity analysis of year wise power purchase cost (separately for capacity charges and energy charges) for the lowest bidder by applying different escalation percentage from 1% to 10% and impact from year on year basis calculated as per escalation formula provided in the draft PPA along with the petition as ordered by the Commission in the order dated 23.01.2013.
12. The Commission heard representative of the parties at length and has gone through the record carefully and thoroughly and applied mind on the facts and circumstances of the present petition.
13. The Commission observed that all the pages of the bids are signed by the bidder except financial bid as the financial bidding process was by e-bidding the signatures on e-bidding are in electronic form and the same constitutes valid documents as per the provisions of The Information Technology Act and The Indian Evidence Act.
14. The Commission also observed that in terms of bidding documents of the Govt. of India following clearances are also obtained:-
 - i. Site identification and land acquisition.

- ii. Environmental clearance for the power station.
 - iii. Fuel arrangements: In case of domestic coal, the bidder shall have made firm arrangements for fuel tie up either by way of mine allocation or fuel linkage
 - iv. Water linkages
15. The Commission further observed that the parties have produced Statement showing sensitivity analysis of year wise power purchase cost (separately for capacity charges and energy charges) for the lowest bidder by applying different escalation percentage from 1% to 10% and impact from year on year basis calculated as per escalation formula provided in the draft PPA for the period covering PPA.
16. In the light of above discussion and observations the Commission is of the opinion that the PPA to be entered into between Electricity Department of DNH and EMCO Energy Limited for procurement of 200 MW power on long term basis as per the case-I bidding guidelines of Ministry of Power is in line with the provisions of JERC Regulations and the Electricity Act, 2003. Therefore, the Commission approves the PPA to be entered into between Electricity Department of DNH and EMCO Energy Limited for procurement of 200 MW power on long term basis as per the case-I bidding guidelines of Ministry of Power.

Sd/-
(S.K.Chaturvedi)
Member

- * Hon'ble Chairperson is prevented from attending the hearing due to ill health. According to Regulation 9 of JERC (Conduct of Business) Regulations, 2009 Coram for Conduct of transaction and business of the Commission shall be "Two". But as per proviso of Regulation 9 of JERC (Conduct of Business) Regulations, 2009 if the Chairperson is prevented from attending hearing and meeting for which he has been given due notice, the Member shall constitute valid Coram. The Hon'ble Chairperson has due notice of the hearing. Hence the Member only constitute a 'Valid Coram'.