

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

CORAM

Ms. Jyoti Prasad, Member (Law)

Petition No. 87/2022

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 5 MW power continuously to the 33kV Grid of Electricity Department at Bambooflat with minimum guaranteed unit delivery of 2.92 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 and Nicobar Administration, Vidyut Bhawan, Port Blair – 744101, and M/s Aggreko Energy Rental Pvt. India Limited, the Chambers, Office Number 501, Plot Number 4/12/13, Viman Nagar, Pune

And in the matter of:

Electricity Department,
Andaman and Nicobar Administration
Port Blair – 744101

....Petitioner

And in the matter of:

M/s Aggreko Energy Rental India Private Limited
Chambers, Office No. 501, Plot No. 4/12/13, Viman Nagar
Pune – 411010

....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. Shobhit Taneja, Country Manager, Aggreko Energy Rental India Private Limited
2. Sh. Prashant Borse, Aggreko Energy Rental India Private Limited

ORDER

- 1) The Commission heard the petitioner and the respondent at length.
- 2) The petitioner's submissions in brief are as under:
 - a) That major power requirement of Port Blair and South Andaman is met by way of purchase of Power from private Power producers. Two major private Power Plants to the capacity of 10MW & 5 MW generating capacity is functioning in the vicinity of Phoenix Bay Power House complex (hereinafter referred to as "PBPH"). The PBPH being the prime load dispatch centre of Port Blair, the Power so generated from the private power producers are inter-alia evacuated and taken into the existing 33kV indoor bus of PBPH for further transmission through various feeders.
 - b) That due to expiry of the existing 5MW Power Purchase Agreement with M/s New Bharat Engineering Works Navi Mumbai on 08.01.2021, the Executive Engineer (PG) circle office, of the Petitioner, initiated the action to provide 5MW Power on continuous basis at PBPH.

That the Energy Management Centre (hereinafter referred to as – "EMC") is to be established in the proposed vicinity of the PBPH. The EMC is to be established by the PGCIL – (Power Grid Corporation of

India Limited) through M/s GE, T&D India Limited, which is to be funded by the Central Government. That in light of this, the proposal was made to change the location of Hired Power Plant (HPP) from PBPH to Bambooflat, to maintain the audibility and ambience of the site.

- c) That the approval received from Administration for floating of the Bid for – “Purchase of Power through DG Sets to deliver 5 MW power continuously to the 33 kV Grid of Electricity Department at Bambooflat with minimum guaranteed unit delivery of 2.92 MU per month for a period of three years or till the commissioning of 50 MW LNG Power Plant, whichever is earlier”.
- d) That tender was uploaded in CPP Portal on 13.04.2021 (Tender ID No. 2021_ ED_ 2918 with the due date on 10/05/2021). Due to Covid Pandemic and resultant restrictions all over India, the due date for submission of Bids was extended up to 17.05.2021.
- e) That the Technical bid was opened on 17.05.2021. In total 3 (three) Bidders have 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, Viman Nagar, Pune.
- f) That the Tender Evaluation Committee meeting was scheduled to be held on 27.05.2021, which was later held on 17.06.2021. The Tender Evaluation Committee after analysing various factors had decided to disqualify, two bidders owing to their failure to satisfy the terms & condition of the bid document and subsequently bid was cancelled.

- g) That necessary amendment was made in the tender clause and a Model tender document was prepared suitable to all DG Power Purchase Agreement.
- h) That after obtaining approval of the Model tender document from the Competent authority, the revised bid floated vide bid no. GeM/2021/B/1732262 dated 04.12.2021 with due date on 28.12.2021.
- i) That the Pre-bid meeting was held on 14.12.2021. That the Pre-bid MoM, and the corrigendum were uploaded on the website and the due date of Bid opening was extended till 03.03.2022. That the Technical bid was opened on 03.03.2022 and 5 (five) bidders participated in the bid namely:
- 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, Viman Nagar, Pune
 - iv. M/ s. Sudhir Sales & Service Ltd., Haryana
 - v. M/ s. Modern Hiring Services Pvt., Mumbai
- j) That the Tender evaluation Committee meeting was 'Bid' held on 22.03.2022. The Technical evaluation committee in the absence of sufficient document in support of experience criteria & performance has recommended to disqualify all the bidders. Accordingly, bid was cancelled.
- k) That the re-Bidding (2nd time) was initiated in GeM Portal on 27.04.2022 and GeM Bid published vide Bid No.

GEM/2022/B/2137139. That in respect of this tender, the pre-bid meeting was held on 07.05.2022, and attended by the following from the Petitioner's side:

1. Superintending Engineer (Ele), Port Blair,
2. Executive Engineer (PG/HQ), Electricity Department, Port Blair,
3. Accounts Officer (C), Electricity Department, Port Blair,
4. HoD (Electrical), DBRAIT, Port Blair, and
5. Assistant Engineer (Purchase) Electricity Department, Port Blair.

That the following prospective bidders participated in the Pre-Bid Meeting dated 07.05.2022:

1. Shri K. Baburajan, representative of M/s Sudhir Sale & Services Limited, Haryana
2. Shri Yasin Mallick representative of M/s Express Genset Consortium (P) Limited,
3. Shri Narsingh Aggarwal representative of M/s Modern Hiring Services, and
4. Shri K. Vajayarangan representative of M/s Aggreko Energy India Rental (P) Limited.

l) That the bid submission due date was scheduled on 23.05.2022 which was extended to 30.05.2022 initially and later it was extended to 13.06.2022 due to poor participation of the bidders.

m) The Technical Bid was opened on 13.06.2022 and the Bids forwarded to the Technical Evaluation Committee for evaluation through GeM Portal. Following 3 (three) Bidders found to have participated in the Bid GEM/2022/B/20137139 dated 27.04.2022.

- i. M/s. Express Genset Consortium, Pvt. Ltd, New Delhi

ii. M/ s Aggreko Energy Rental India Pvt. Ltd,
Viman Nagar, Pune.

iii. M/s. Sudhir Sales & Service Ltd, Haryana.

The Tender evaluation Committee evaluated the Bid through GeM Portal and submitted their recommendation qualifying all the three bidders.

n) The Price Bid opened in GeM Portal on 18.07.2022 and e-comparative statement downloaded found that M/s Aggreko Energy Rental Pvt Ltd has quoted the lowest @ Rs 1.02 per unit.

o) 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 Aggreko Energy Rental India Pvt. Ltd., Viman Nagar, Pune-411014	Cost of per unit energy (KWh) to be delivered to the 33 kV grid/bus of the Electricity department at Bambooflat for a minimum guaranteed generation of 2.92 MUs per month, maintaining 5 MW for at least 80 to 85% time in a month at minimum specific fuel consumption of 3.8 units/Lit. (0.263 litre per unit)	1.02 (Rupees One & two Paise only)

- p) 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.
- q) That the Commissioner-cum-Secretary (Power), Andaman & Nicobar Administration has accorded administrative approval dated 30.08.2022 and expenditure sanction for acceptance of L-1 rate of 1.02 per unit, inclusive of taxes and awarding the contract to the firm M/ s. Aggreko Energy Rental India Pvt. Ltd. at a total cost of Rs. 10,72,22,400/- (Rupees Ten Crores Seventy-Two Lakhs Twenty Two Thousand Four 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	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

- 4) That in the PPA submitted for approval in the instant matter deals with the Performance Security as well. That the Performance Security furnished by the successful bidder for execution of the agreement will remain valid for complete contractual period and two months beyond the agreement tenure

expiry. 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 3.4.0 of the PPA is provided here:

3.4.0 Performance Guarantee:

The 2nd Party has to submit performance guarantee for an amount of Rs. 3216672/- (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.

In case of non-performance of contract by the 2nd Party, the amount of performance security will be forfeited by the Department 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 bidder within a reasonable period after the closer (closure) of the contract.

- 5) That in the absence of exclusive testing Bed, the infirm Power generated from 5MW DG Power Plant prior to Commercial operation date is pumped into the grid of 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.
- 6) 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. Aggreko Energy Rental Pvt Limited, Pune, for hiring of DG Sets to deliver 5MW power continuously to 33kv Grid of Electricity Department at Bambooflat with minimum guaranteed unit delivery of 2.92 MU per

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

- 7) 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 party 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.
- 8) The Commission is relying on Section 63 and Section 86 1(b) of the Electricity Act, 2003 for approval of the power purchase agreement.
- 9) 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.”

- 10) Section 86 1(b) of Electricity Act, 2003 provides that (1) 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;”

- 11) Vide interim order dated 27.01.2023, the Commission directed the petitioner to revise Clause 12 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 Aggreko Energy Rental Pvt.

Ltd. should be mentioned in 2nd para of the draft PPA to be approved by the Commission.

- 12) The Commission has noted that the petitioner has filed revised draft PPA on an affidavit dated 17.03.2023 wherein clause 12 regarding Arbitration is revised as per the Commission's directions in its interim order.
- 13) Further, the name of the duly authorised representative of the M/s. Aggreko Energy Rental India Private Ltd is also mentioned in second Para of the revised draft PPA as per the direction of the Commission in its interim order.
- 14) The Commission has noted that the ED, Andaman & Nicobar has issued a tender notice vide 27.04.2022 for procurement of power through DG Set to deliver 5MW power continuously at Bambooflat.
- 15a) As per terms & condition of the PPA the power is made available within 120 days from the date of execution of the PPA duly approved by the Commission.
- 15b) 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 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 3.8 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.

- 16) The Commission has further noted that the specific fuel consumption of Department Power House (SFC) is 0.304 litre/ kWh. The SFC allowed to Private Power Plant is 0.263 litre/kWh. Monthly HSD saved through Private Power Plant is 119720 litre. The cost of HSD per litre at Port Blair is Rs. 89/Litre and total cost of HSD saved per month is Rs. 1.07 Crore.
- 17) The Commission has further noted that the performance Security furnished by the Respondent will remain valid for complete contractual period (Three Year) and two months beyond the agreement.
- 18) The Commission has further noted that M/s. Aggreko Energy Rental India Private Ltd will submit performance Guarantee for an amount Rs. 3216672/- (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.
- 19) 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.

20) 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.”

21) 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.

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

23) 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."

- 24) 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.
- 25) 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.

- 26) 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.
- 27) Ordered accordingly.

Sd/-

(Jyoti Prasad)
Member (Law)

Certified Copy


(S.D. Sharma)

(Secretary, I/c, JERC)