



**ORDER**

**OF THE**

**WEST BENGAL ELECTRICITY REGULATORY COMMISSION**

**IN CASE NO. OA-465/23-24**

IN REGARD TO THE PETITION SUBMITTED BY CESC LIMITED FOR APPROVAL OF DEVIATION OF 200 MW HYDRO POWER FROM PROJECTS SET UP UNDER FOO BASIS THROUGH COMPETITIVE BIDDING UNDER SECTION 86 (1) (b) AND OTHER APPLICABLE PROVISIONS OF THE ELECTRICITY ACT, 2003 AND IN TERMS OF APPLICABLE REGULATIONS OF THE WEST BENGAL ELECTRICITY REGULATORY COMMISSION.

**PRESENT:**

**DR MALLELA VENKATESWARA RAO, CHAIRPERSON**

**SRI PULAK KUMAR TEWARI, MEMBER**

**DATE: 16.05.2024**





### **Facts in brief:**

- 1.0 The Commission vide Order dated 06.03.2024 in Case No. OA-465/23-24 has approved the deviations from the Model Bidding Documents (medium term) for procurement of 200 MW Hydro power by CESC Limited ("CESC") from projects set up under Finance, Own and Operate ("FOO") basis through competitive bidding under Section 63, Section 86 (1) (b) and other applicable provisions of the Electricity Act, 2003 and in terms of applicable Regulations of the West Bengal Electricity Regulatory Commission. In terms of the clause 4.2 of this order, the Commission while allowing certain deviations from the Model Bidding Documents issued by Ministry of Power has directed CESC Limited to obtain prior approval for any further deviations during the bidding process as well as before effectuating any agreement for the procurement of 200 MW hydro power.
- 2.0 CESC Limited has filed a Petition dated 22.03.2024 for approval of further deviations from Model Bidding Documents approved earlier by this Commission vide order dated 06.03.2024 which emanated during the bidding process for procurement of 200 MW Hydro power through competitive bidding under Section 63, Section 86 (1) (b) and other applicable provisions of the Electricity Act, 2003 and in terms of applicable Regulations of the West Bengal Electricity Regulatory Commission. CESC Limited has submitted a supplementary petition dated 03.04.2024 to the petition dated 22.03.2024 with modified deviations for approval of the Commission. The Commission has admitted the applications dated 22.03.2024 along with the supplementary petition dated 03.04.2024, in Case No. OA – 465/23-24 on 15.04.2024.
- 3.0 The application of CESC Limited inter-alia states the following:
  - 3.1 In the pre-bid meeting held on 16.03.2024, three potential bidders, namely Tata Power Trading Company Limited, Manikaran Power Limited and NTPC Vidyut Vyapar Nigam Limited have participated. Certain issues have emanated from the queries / concerns received from the potential bidders necessitating further deviations from the Model Bidding Documents approved in order dated 06.03.2024.
  - 3.2 The proposed deviations are as below:





- a) Period of supply from "June to October" instead of "May to September" every year;
  - b) Treatment of withdrawal of consent of cross-border transactions by the Government of India as Force Majeure;
  - c) Modification in the definition of "Delivery Point";
  - d) Modification in the definition of "Trading Licensee";
  - e) Changes in Clause 13.2.3 of the Draft Agreement for Procurement of Power ("Approved Draft PPA").
- 3.3 Two out of three potential bidders, who have participated in the pre-bid meeting have requested for extension of the contract period to October. Further, they have expressed their inability to supply power in the month of May.
- 3.4 Power availability was an issue in October 2023 which led to grid over-drawal at times as well as Puja festivities are celebrated in October every year. CESC has submitted data of Indian Energy Exchange (IEX) for the month of October 2023 which shows that the exchange price for the power procured during evening period (16:00 Hrs to 20:00 Hrs) almost consistently hit the ceiling price of Rs. 10/Unit throughout the month. Further, the exchange price during night (20:00 Hrs to 01:00 Hrs) also hit the ceiling price in majority of the time blocks for almost half of the month. The aforesaid period of high market price of power at the exchange coincides with the high demand period as per the submitted Load Curve of the October month, where demand is significantly higher than the committed capacity available with CESC.
- 3.5 It is revealed from the prebid meeting that two out of three prospective bidders have expressed their inability to supply hydro power during the month of May every year and hydro power is also available during the month of October. Considering the requirement of peak power during October as envisaged from the Load curve of October 2023, CESC has proposed for modification of the period of supply as June to October in stead of May to September every year for the proposed hydro power procurement which will help CESC to manage its demand in a cost effective and secured manner.





- 3.6 CESC has submitted that one of the participants in the pre bid meeting is envisaging supply of power available with State Government (s) as their share of free power but the existing definition would not permit Trading Licensees to supply power available with State Government (s) as their share of free power due to the reason that exclusive power purchase agreement (s) might not be existing with the State Government (s) having free power since the State Government (s) are normally equipped with other relevant documents / agreements which vest in them their right to utilise their free share of power. Therefore, as requested by one of the participants, the definition of Trading Licensee is proposed to be modified to include "other relevant agreement" along with executed power purchase agreement. Further, two more lines are proposed to be added at the end of the definition of Trading Licensee(s). The definition of Trading Licensee(s) is prayed to be amended as below:

*"Trading Licensee(s) shall mean the Applicant/Bidder which is an Electricity Trader or a Distribution Licensee in terms of the Electricity Act, 2003 and submits its Application on the basis of an exclusive power purchase agreement **or any other relevant agreement** executed with the entity with identified generation source from where the power is proposed to be supplied by the Bidder. **It is being clarified that in case any state government or any state controlled entity wants to supply power either directly or through a Trading Licensee, the Supplier shall ensure the obligations of the Developer (s) are being met through such state government or state controlled entity. Such state government / state controlled entity shall also ensure that the power is being supplied from hydro-electric sources.**"*

- 3.7 CESC has submitted that since supply of power may also be from imported source / cross border source(s), one participant in the pre bid meeting has requested to include "non-approval of grant of supply / non grant of continuation of supply of cross border power by Gol" under force majeure clause and same has been requested to be incorporated in the Approved Draft PPA (Draft Agreement for Procurement of Power of the Model Bidding Documents approved in Order dated 06.03.2024). CESC has submitted that allowing the deviations prayed for will increase competitiveness of the bidding process. Since Clause 17.2 (e) is also covered through Clause 17.2 (j), which are identical to each other, CESC proposes to modify Clause 17.2 (e) as below:

*"Refusal to grant any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Supplier, [Developer if Supplier is a*