

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

Case No. HERC/PRO-31 of 2019

**Date of Hearing : 25.06.2019
Date of Order : 15.07.2019**

In the Matter of

Petition under Section 86(1)(b) read with 86(1) (f) of the Electricity Act, 2003 (PRO-31 of 2019)

Petitioners 1. M/s. Jind Bio-Energy LLP and
2. M/s Fatehabad Bio- Energy LLP
V/s

Respondents 1. Haryana Power Purchase Centre, Panchkula (HPPC)
2. HAREDA
3. M/s Hind Samachar Ltd.
4. M/s Sukhbir Bio Energy Ltd.

Present On behalf of the Petitioners

1. Shri Varun Pathak, Advocate for M/s. Jind Bio- Energy LLP
2. Shri Tarsem Rana, M/s. Jind Bio- Energy LLP

Present On behalf of the Respondents

1. Smt. Sonia Madan, Advocate for HPPC
2. Shri J. S. Kohli, TE/HAREDA
3. Shri P. K. Nantyal, SE/HAREDA
4. Shri Vikas Kadiyan, XEN/HPPC
5. Shri Randhir Singh, AEE/HPPC

Quorum

Shri Jagjeet Singh, Shri Pravindra Singh Chauhan, Shri Naresh Sardana,	Chairman Member Member
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ORDER

Brief Background of the Case

1. The present Petition has been filed by M/s. Jind Bio- Energy LLP Ld. and M/s Fatehabad Bio- Energy LLP seeking issuance of directions to HPPC regarding execution of fresh power purchase agreement (PPA) with the petitioner in light of the directions

contained in the Order dated 03.01.2019. Ld. Advocate, Shri Varun Pathak appearing on behalf of the Petitioners submitted that power purchase agreement with HPPC was signed on 22.02.2019 under the impression that it was as per the draft approved by the Commission. However, subsequently it was discovered that HPPC had changed the terms of the draft agreement without informing the petitioner. The Ld. Advocate further argued that it is settled law that the licensee cannot unilaterally change the terms of the agreement approved by the Commission.

Proceedings in the Case

2. The case was heard by the Commission on 25.06.2019, as scheduled, wherein the counsel appearing on behalf of the Petitioners mainly reiterated the contents of their petition which for sake of brevity not reproduced herein.

Ld. counsel for the Petitioners further argued that the grievance of the Petitioners in the present Petition is with respect to definition of "tariff" incorporated in PPA, The definition of tariff as contained in PPA is reproduced hereunder :-

"Tariff" means year to year rate payable by the Discom @ tariff determined by HERC w.r.t. CoD of the project factoring the discount offered by the IPP as a part of the RfP for every kW of delivered energy at the metering point subject to the ceiling tariff i.e. annual generic tariff of HERC for the year 2017-18 with appropriate factoring of the discount negotiated with the bidders as a part of the RfP."

It was prayed that the expression "*subject to ceiling tariff i.e. annual generic tariff of HERC for the year 2017-2018*" in the above stated definition had been included by HPPC against the order of the Commission.

3. Per-contra, Smt. Sonia Madan, Ld. Counsel for the Respondent (HPPC), argued that the Petitioner is seeking fresh execution of Power Purchase Agreement (PPA) which had already been executed between the parties with free will and consent in terms of Order of the Commission dated 03.01.2019 passed in the case no. HERC/PRO-45 of 2018 on the plea that the terms of the PPA executed between the parties is different from the terms approved by this Commission, without pointing out such difference.

Counsel for the Respondent further argued that the expression "*subject to ceiling tariff i. e. annual generic tariff of HERC for the year 2017-2018*", is in line para 10 of the Commission Order dated 03.01.2019, where it is provided that "*Tariff shall be decided on*

separate petition to be filed by Generators under section 62 of the Electricity Act, 2003, wherein the ceiling tariff shall be the annual/ generic tariff of HERC for the year 2017-18 with appropriate factoring of the discount negotiated with the bidders....". Thus, the expression in the definition of Tariff which has been objected to by the Petitioners is in line with the Commission's Order dated 03.01.2019 vide which the draft PPA was approved. The same is also in line with the Commission' Order dated 04.04.2019 on the review Petition filed by the Petitioner wherein it was again reiterated by the Commission that "tariff quoted by the project developers is the ceiling tariff to be considered by the Commission at the time of determination of tariff under Section 62 of the Electricity Act, 2003 and in no case the tariff over and above the ceiling limit shall be allowed".

It was further argued that the Petitioners have challenged the order of this Commission dated 04.04.2019 before the Hon'ble Appellate Tribunal for Electricity (APTEL). Thus, this petition is a mean to build up frivolous grounds before the Hon'ble APTEL.

Commission's Analysis and Order

4. The Commission heard the arguments of the parties at length as well as perused the application/reply filed in the matter and takes note of the following para 11.ii.a of the Commission's Order dated 03.01.2019 approving the procurement of 49.8 MW power from paddy straw biomass based power projects (HERC/PRO-45 of 2018):-

"(ii) The Commission has perused the draft PPAs for four paddy straw based power projects submitted for its approval. The Commission has noticed a few aberrations in the same as under:-

a) The definition of Tariff needs to be changed to read that the tariff payable to the IPP shall be the year to year tariff determined by the Commission w.r.t. CoD of the project and the discount offered by the IPPs as part of the RFP shall be deducted from the year to year tariff determined by the Commission."

The Commission observes that the PPA signed between HPPC and the Petitioners on 22.02.2019 defines "Tariff" at clause no. 38 of Article 1 of the PPA as under:-

"Tariff" means year to year rate payable by the Discom @ tariff determined by HERC w.e.t. CoD of the project factoring the discount offered by the IPP as a part of the RfP for every kWh of delivered energy at the metering point subject to the ceiling tariff i.e.

annual generic tariff of HERC for the year 2017-18 with appropriate factoring of the discount negotiated with the bidders as a part of the RfP.”

The Commission observes that it was not open for the HPPC to deviate from the definition of the word “Tariff” from the definition approved by the Commission in its Order dated 03.01.2019. The reference of the ceiling tariff in the ibid Order of the Commission dated 03.01.2019 is for the Commission to consider while determining year to year tariff on the petition to be filed by the Petitioners for determination of tariff. The same does not form part of the term of PPA. The terms of the PPA has to be necessarily as per the approval of the same granted by the Commission.

Accordingly, the Commission directs the Petitioners and Respondents to modify the PPA signed on 22.02.2019 and submit a copy of the same to the Commission within 15 days from the date of this Order.

The Petition is accordingly disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 15.07.2019.

Date: 15.07.2019 (Pravindra Singh Chauhan) (Naresh Sardana) (Jagjeet Singh)
Place: Panchkula Member Member Chairman