

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION  
AT PANCHKULA**

**Case No. HERC/PRO-25 of 2017**

**Date of Hearing : 20.02.2019**

**Date of Order : 08.03.2019**

**In the Matters of**

Application under section 86(1)(b) of the Electricity Act, 2003 for the approval of the Commission for procuring of power at regulated tariff from Tashiding Hydro Electric Project (106.7 MW), Sikkim: Draft PPA for approval.

**Petitioner**

Haryana Power Purchase Centre, Panchkula

**Present On behalf of the Petitioner**

1. Smt. Swapna Seshadri, Advocate for M/s Dans Energy Pvt Ltd.
2. Shri Rajiv Mishra, Xen, HPPC.
3. Shri Ravi Juneja, AEE, HPPC.

**Quorum**

**Shri Jagjeet Singh, Chairman**  
**Shri Pravindra Singh Chauhan, Member**

**ORDER**

1. **Brief Background:** The Haryana Power Purchase Centre (HPPC) vide memo no. Ch-89/CE/HPPC/SE/C&R-I/PPA-150 dated 08.05.2018, had submitted the draft PPA with M/s. Shiga Energy Pvt. Ltd., agreed upon by both the parties, for approval of the Commission for procurement of power from Tashiding Hydro Electric Project (106.7 MW), Sikkim, in compliance to the order of the Commission dated 30.11.2017, wherein the Commission had directed HPPC to recast the PPA based on the format and other terms as in line with the PPA approved by the Commission in case of Teesta-III, Sikkim.
2. Subsequently, HPPC vide memo no. Ch-97/CE/HPPC/SE/C&R-I/Tashiding/PPA-147 dated 04.06.2018, intimated that Steering Committee of Power Planning (SCPP) in its 45<sup>th</sup> meeting held under the Chairmanship of ACS/Power, GoH, on 15.05.2018 has decided to incorporate the time period of 30 days in the Exit Clause (clause no. 9.1.3 (ii)(b)) of the PPA for capping

the exit option in the PPA after initial determination of tariff by the HERC, as under:-

*“both the parties shall give their concurrence for acceptance within 30 days of initial determination of tariff by the Commission”.*

3. The case was heard by the Commission on 20.02.2019 as scheduled. HPPC filed its written submission vide its memo no. Ch-64/CE/HPPC/SE/C&R-I/PPA-147 dated 18.02.2019, as under:-

“

- a) That Commission vide memo no. 4041/HERC/Tariff dated 19.12.2018, had directed to submit the acceptance of all four Hydro Power developers to amend clause in 9.1.3 (ii) (b) of signed PPA’s, as under:-  
*“both the parties shall give their concurrence for acceptance within 30 days of initial determination of tariff by the Commission”.*

Accordingly, the matter was deliberated in detail and decided that the clause 3.3.2 needs to be amended for exit clause option without touching the clause 9.1.3(ii) (b) . The same is required to be modified as under:

Draft PPA Clause	Amended Clause
<p><b>Clause 3.3.2</b>                      The Purchaser/ Company will have the right to terminate this Agreement in case the tariff determined by the Commission initially pursuant to the Petition filed by the Company under HERC Tariff Regulations in compliance of condition precedent at clause 3.1.1(ii), is not acceptable.</p>	<p><b>Clause 3.3.2</b>                      The Purchaser/ Company will have the right to terminate this Agreement within 30 days of the order regarding initial determination of tariff by HERC pursuant to the First Tariff Petition filed by the Company under HERC Tariff Regulations in compliance of condition precedent at clause 3.1.1(ii) if the tariff so determined by the Commission is not acceptable.</p>
<p><b>9.1.3 (ii)(b)</b>                      If the initial tariff determined by the Commission is not acceptable to the Purchaser/ Company and this Agreement is terminated under Clause 3.3.2, no differential shall be paid (i.e. Tariff determined /approved by the Commission over and above the Average Power Purchase cost) for the power already supplied.</p>	<p style="text-align: center;">No Change</p>

- b) **Regarding wheeling charges definition:** the reference is invited to the purchaser obligations wherein all the wheeling charges and losses need to be borne by the purchaser so, in line with the same, the definition of

wheeling charges need to be aligned with Electricity Act,2003, so the same is required to be amended as under:

Draft PPA Clause	Amended Clause
<p><b>Wheeling Charges</b> means the wheeling energy / charges and losses to be paid by the Generator/Purchaser to STU / CTU, as the case may be, for transmission of power from Delivery Point to the Purchaser's State periphery, and to be paid/reimbursed by Purchaser for the capacity of the plant after adjusting the normative auxiliary consumption, transformation loss &amp; free power to the State</p>	<p><b>Wheeling Charges</b> means the wheeling charges to be paid by the Generator/Purchaser to STU / CTU, as the case may be, for transmission of power from Delivery Point to the Purchaser's State periphery, and to be paid/reimbursed by Purchaser for the capacity of the plant after adjusting the normative auxiliary consumption, transformation loss &amp; free power to the State.</p>

- c) That the Generators (Chuzachen Hydro Electric Power Project, Jorethang Loop Hydro Electric Power Project, Tashiding Hydro Electric Power Project, Chanju-I Hydro Electric Power Project) have given consent to the above amendments.
- d) That the Project developers at Jorethang & Tashiding were requested to demonstrate the capacity in lean season as per Regulation as agreed in the draft PPA for the capacity mentioned in the PPA i.e. 105.6MW &106.7MW respectively. The Generators viz Jorethang & Tashiding in the meeting with CE/HPPC had clarified that the project capacity of 96 MW & 97 MW respectively along with the overload capacity of 10%. Therefore, the capacity of the projects needs to be treated as 96 MW & 97 MW which is the rated capacity of machines instead of 105.6 MW & 106.7 MW appearing in the PPA, with the overload capacity of 10%, for projects at Jorethang & Tashiding, respectively. Accordingly, the signed draft PPA needs to be amended.
- e) That the term of the PPA approved by the Commission is at levelised tariff for 35 years for the generators, whereas the projects have already commissioned before the start of power, hence the PPA duration cannot be for 35 years but for the residual life of the project from the date of start of scheduling the power, the same is tabulated here as under:

Name of the Project	Contract ed Capacity (MW)	Date of source approval	CoD	Date of Starting Scheduling of Power	Duration of the project from COD as per I.A. Agreement	Duration of PPA with HPPC
Chuzachen HEP (East Distt. Sikkim) 110 MW (2 x 55 MW) HEP (Petition No. HERC/PRO-24 of 2017) M/s Gati Infra Pvt. Ltd. Ltd (Developer)	110	13.11.17	18.05.13	14.05.18	35 Year	30 Years
Tashiding HEP (West Distt. Sikkim) 97 MW (2 x 48.5 MW) (Petition No. HERC/PRO-25 of 2017) Shiga Energy Pvt. Ltd. (Developer)	97	30.11.17	06.11.17	18.05.18	35 Year	34 Years 6 Months
Jorethang HEP (South, Distt. Sikkim) 96 MW (2 x 48MW) (Petition No. HERC/PRO-26 of 2017) Dans Energy Pvt. Ltd. (Developer)	96	13.11.17	30.09.15	17.05.18	35 Year	32 Years 4 Months
Chanju -1 HEP 36 MW (Petition No. HERC/PRO-15 of 2016) I A Energy Pvt. Ltd. (Developer)	36	10.04.17	23.02.17	01.06.18	35 Year	35 Years

Accordingly, the duration of PPA shall be as mentioned above and needs to be incorporated in the PPA.”

4. HPPC vide its letter no. Ch-65/CE/HPPC/SE/C&R-I dated 23.02.2019 reiterated that the “Exit Clause” has been agreed by both the parties (HPPC and Generators) which is the sole base to proceed further in the matter for approval of PPA and start the supply of power. HPPC further submitted that the said clause provides the balance of convenience to both the parties to protect their interest, in case the same is not protected the option of exit from the contract is still there. The same also bounds the generators to come with clean hands for tariff approval in the matter. Accordingly, HPPC has requested to retain the “Exit Clause” while approving the PPA’s in the matter.
5. The Commission has considered the additional submissions made by HPPC vis-à-vis the signed draft PPA and Order of the Commission dated 30.11.2017, as under:-
  - a) **Clause 3.3.2 & Clause 9.1.3 (ii)(b):** The Commission considered the exit clause of 30 days sought in clause 3.3.2 of the PPA. The Commission also observed that the ceiling tariff has already been decided by the Commission in its Order dated 30.11.2017. The generator is already giving power supply at average power purchase cost (APPC) to be

adjusted against the final tariff determined by the Commission. Thus, both HPPC and generators have the fair idea of the range within which the tariff shall be determined by the Commission. In case the tariff to be determined by the Commission exceeds the ceiling tariff agreed upon, the applicable tariff is to be capped at the ceiling tariff. Thus, retaining unprecedented exit clause is likely to put at risk both the parties i.e. the HPPC regarding quantum of power from the much needed Hydro sources as well as the generator for their such exit.

**In view of the above, the Commission is of the considered view that the exit provision sought in clause 3.3.2 of the PPA is unprecedented. Accordingly, clause 3.3.2 and 9.1.3 (ii) (b) contained in the draft PPA shall be removed. Needless to point out that in case of any difficulty to either party arising from the tariff or for that matter any other dispute, mechanism for seeking relief is available under the relevant clause of the Electricity Act, 2003.**

- b) **Clause 1.1 regarding Wheeling Charges:** The Commission considered changes sought by HPPC in clause 1.1 of the PPA, regarding wheeling charges. The Commission further observed that Clause 9.2.5 of the PPA specifies that *“The wheeling charges payable from the delivery point to the Sub-station or CTU at Sikkim State Periphery at which power shall be injected, if applicable, shall be subject to a maximum of 2% of the energy transmitted as per the agreement signed/ to be signed by the Company with State Government of Sikkim. Any increase in wheeling charges beyond 2% of the energy transmitted at any time during the tenure of this Agreement shall be borne by the Company.”*

The Commission has examined both the clauses and observes that delivery point is the generator’s switchyard. However, the Commission in its Order dated 30.11.2017 (HERC/PRO-25 of 2017), while granting the source approval, observed the following at para 10:-

*“.....However, in order to address the issue raised by the intervener, HPPC may ensure that the negotiated price is reasonable and that they would not be able to source power at a rate lower than that of the projects selected by them.”*

Accordingly, in line with the *ibid* Order of the Commission, HPPC and the Generator agreed to cap the Wheeling charges & losses to 2% as per clause 9.2.5 of the signed draft PPA. The said acceptance having created a binding enforceable obligations interse between the parties, there can be no change in the agreed contractual terms at the later stage, which has the effect of increased financial burden on the consumers. The financial parameters are essential term of the contract and a contractual agreement can be novated only by consensus of the signatory parties of the contract. The Commission cannot elect to substitute the consensual acts of the contracting parties, when any such substitution has a far reaching financial implications and increased financial burden on the consumers. Agreeing to any such demand would compromise larger public interest in order to secure windfall gain for the generator who had voluntarily, consciously and willingly agreed to a particular tariff.

The Commission observed that the definition of wheeling charges includes losses. Therefore, changing the definition of wheeling charges will result in the exclusion of losses from the capping of 2% of the energy transmitted. The generator present during the hearing made no submissions to this effect. Accordingly, the Commission is of the considered view that granting relaxation in the provision already contained in the signed draft PPA is not justified.

- c) The Commission has considered the clarification given by HPPC that the project capacity of the project is 97 MW along with the overload capacity of 10%. Further, in the Commission observes that in the Order dated 30.11.2017 the capacity approved was 97 Mw only. The relevant part of the Order of the Commission dated 30.11.2017 is reproduced as under:-
- “13. Having approved the purchase of power from 97 MW (2X48.5 MW) Tashiding HEP, the Commission has perused the draft PPA attached with the present petition for approval of the Commission and observes that the same does not incorporate a lot of details that a contract of such nature should necessarily have. ....”*

Accordingly, the Commission directs that the capacity of the project shall be mentioned in the PPA as 97 MW which is the machine rated capacity instead of 106.5 MW.

- d) The Commission has considered the submission of HPPC to approve the PPA for 34 years 6 months instead of 35 years. The Commission observes that after due deliberations the Commission vide its Order dated 30.11.2017 had passed the term of PPA to 35 years. Hence, no amendment /review of the same is admissible at this stage. However, while determining tariff the Commission shall take into account the period elapsed between CoD of the project and the date on which power started flowing to HPPC/Haryana.
6. Further, the Commission has perused the signed PPA/reply filed in the matter vis-a-vis the Order dated 30.11.2017 approving the procurement of power from Tashiding Hydro Electric Project and terms contained in the PPA approved by the Commission for Teesta III Sikkim, observes that the following terms of the signed PPA also needs to amended/incorporated, suitably in the approved PPA:-
- a) Clause 1.1: Auxiliary consumption:-**  
The following term shall be added, in line with the relevant provision in the approved PPA of Teesta III, Sikkim:-  
“Provided that the same shall not exceed the auxiliary consumption limit specified by clause 37 (6) of CERC (Terms & Conditions of Tariff) Regulations, 2014.”
- b) Clause 9.9: Breakdown of the grid and payment:-**  
The following term shall be added:-  
“Provided that no such payment shall be made if such an eventuality arise on account of force majeure events mentioned in Chapter 10 of the PPA.”  
Clause 7.7 shall also be amended accordingly.
7. In view of the above discussions, Commission approves the PPA subject to the amendment approved in the present Order.
8. The petition is accordingly disposed of. HPPC / Discoms shall submit a signed copy of the PPA for the record of the Commission within two weeks from the date of this Order.  
This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 08<sup>th</sup> March, 2019.

Date: 08.03.2019  
Place: Panchkula

(Pravindra Singh Chauhan)  
Member

(Jagjeet Singh)  
Chairman