

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

Case No. HERC/RA-16 of 2019

**Date of Hearing : 30.09.2019
Date of Order : 03.10.2019**

In the Matter of

Application under Section 94(1) of the Electricity Act, 2003 read with Regulation 85 & 91 of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2004, for condonation of delay in filing the accompanying application for review / modification of the order dated 07.09.2018 passed by this Commission in Case No.HERC/PRO-86 of 2017 and HERC/PRO-30 of 2018.

Petitioner

Haryana Power Purchase Centre

Respondents

1. Department of Urban Local Bodies, Haryana (ULB)
2. Ecogreen Energy Gurgaon Faridabad Pvt. Ltd.
3. JBM Environment Management Pvt. Ltd.

Present On behalf of the Petitioner

1. Smt. Sonia Madan, Advocate
2. Shri Randeep Singh, SE/HPPC
3. Shri Vikas Kadiyan, XEN/HPPC
4. Shri Randhir Singh, AEE/HPPC

Present On behalf of the Respondents

1. Shri Satish Goyal, XEN/ULB
2. Shri Rohit Sharma, A.G.M., M/s. JBM Environment Management Pvt. Ltd.
3. Shri Paresh Jindal, DGM, M/s. Ecogreen Energy Gurgaon Faridabad Pvt. Ltd.

Quorum

Shri D.S. Dhesi,	Chairman
Shri Pravindra Singh Chauhan,	Member
Shri Naresh Sardana,	Member

ORDER

Brief Background of the Case

1. The present Review Petition has been filed by HPPC seeking modification of the Order dated 07.09.2018 passed by the Commission in Case Nos. HERC/PRO-86

of 2017 and HERC/PRO-30 of 2018, praying for condonation of delay of 246 days.

2. The Petitioner is aggrieved by the impugned order of the Commission dated 07.09.2018, vide which a levelized tariff of Rs. 7.05/- per kWh has been allowed, based on the Haryana Electricity Regulatory Commission (Terms & Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2010 (HERC RE Regulations, 2010), whereas, this Commission had already notified the new HERC RE Regulations, 2017 on 24.07.2018 for control period from FY 2017-18 to 2020-21 i.e. before the passing of Order dated 07.09.2018. The Commission did not take into account the normative parameters of HERC RE Regulations, 2017 which were operative at the relevant time to allow levelized tariff of Rs. 7.05/unit. HPPC has further submitted that the said tariff, if calculated in accordance with normative parameters of HERC RE Regulations, 2017 taking into account Return on Equity (ROE) of 14% on normative capacity as against 16% specified in HERC RE Regulations, 2010, the tariff will work out as Rs. 6.84/unit.

Proceedings in the Case

3. The Respondents i.e. Urban Local Bodies, M/s. Ecogreen Energy Gurgaon Faridabad Pvt. Ltd. and M/s. JBM Environment Management Pvt. Ltd., were directed to file their comments vide letter no. 6396-99/HERC dated 20.06.2019.
4. In response, M/s. Ecogreen Energy Gurgaon Faridabad Pvt. Ltd., submitted that the financial model of the project submitted to lenders is based upon the tariff of Rs. 7.05/kWh and any change in the final stage of lending of funds shall adversely affect the viability of Integrated Solid Waste Management Project (ISWM) and may leads to further delay in the execution of the Project. Further, the Review Petition is not maintainable on the ground that it is filed after a delay of 246 days.

Per contra, HPPC, vehemently rejecting the objections raised by M/s. Ecogreen Energy Gurgaon Faridabad Pvt. Ltd., submitted that the Respondent will continue to receive the agreed tariff of Rs. 10.60/kWh, which formed the basis of the bidding documents. Thus, the necessary amendments will not cause any prejudice to the Respondent No. 2. The plant is still in the stage of development

and supplementary PPA can be executed between the parties to correct the 'generic tariff' payable by HPPC under the PPA.

5. M/s. JBM Environment Management Pvt. Ltd., also filed a detailed reply, summarized as under:-
- a) The Request for Proposal ("RfP") for Development of Integrated Solid Waste Management for Sonipat Cluster was issued by the Directorate of Urban Local Bodies wherein it was enumerated that the SPV (the answering respondent) would be entitled to receive the tariff of INR 7.05/ kWh for the generating stations to be established in the State of Haryana.
 - b) The Lol was issued in favour of the successful bidder on which is for the supply at the base tariff of Rs. 7.05/- per unit, with the balance tariff of Rs. 3.55/- per kWh being paid by the local Municipal Corporation.
 - c) The tariff of Rs. 7.05/- per unit was incorporated in the bidding process, based on the generic tariff already determined by the Commission. There was no tariff determination in the bidding process itself for payment by the Petitioner, but it was only that the tariff already determined was incorporated in the bidding process.
 - d) PPA was signed on 21.09.2018 and thereafter Waste to Energy Plant was set up at Sonipat Cluster. It is not correct on the part of the Petitioner now to reopen the entire case to the prejudice of the answering Respondent.
 - e) Based on the tender documents, the answering Respondent has executed the following agreements and also acted upon the same:
 - i) Concession Agreement dated 26/09/2017 with the Sonipat Municipal Corporation;
 - ii) Land Lease Agreement dated 24/11/2017 with the Sonipat Municipal Corporation;
 - iii) Power Purchase Agreement dated 21.09.2018 with HPPC;
 - f) The claim of the Petitioner that the tariff is to be reopened and reduced on account of individual cost elements is also incorrect. The tariff in a bidding process is a consolidated tariff, based on which the bids are invited. It is for the parties to arrange their commercial affairs within the given tariff. In the present case, the bids were submitted in March, 2017, which was much prior to the coming into force of the Goods and Services Tax (GST). However, subsequent to the above, the GST has come into force, which has resulted in increase in various cost elements for the project developer. All these are not

considered in the tariff, even though there is a substantial increase in the cost elements.

- g) There is substantial delay in filing the present review petition. The delay is neither unintentional nor a bona fide delay.
- h) The basic premise of the bidding process is that the rules of the game cannot be changed after the bidding process is over. The review sought for by the Petitioner is actually changing the very terms of the bidding at this stage, which is impermissible.

Per contra, HPPC, vehemently rejecting the objections raised by M/s. JBM Environment Management Pvt. Ltd., submitted that there exist sufficient reason for the indulgence of the Commission to correct the tariff in terms of the prevailing regulations. The tariff specified in the RfP was 'generic tariff', therefore, tariff had to be computed as per the parameters provided in the Regulations. Further, the fact that the Respondent has executed the agreement and has acted upon the same has no bearing to the adjudication of instant petition. The plant is not yet operational and no obligations qua purchase and sale of power has come into being. The alteration in the terms of PPA is feasible at this stage.

6. The Directorate of Urban Local Bodies, in its reply filed vide memo no. Tech/Sec-I/ISWM/2019/7191 dated 27.09.2019, has submitted that the RfP was prepared with levelized tariff of Rs. 7.05/kWh, as per the Order of the Commission dated 28.09.2016 and HPPC memo no. Ch-33/CE/HPPC/SEC&R-I/WE dated 14.02.2017. Based on the same, bids were invited on 20.10.2016/ 30.12.2016, Letter of Indent (LOI) was issued on 21.04.2017/20.08.2017 and Concession Agreement was signed on 14.07.2017/26.09.2017, with approved output based incentive of Rs. 10.40/10.62 per unit with levelized tariff of Rs. 7.05 per unit payable by DISCOMs and balance by concerned ULBs. Therefore, if the base tariff is reduced from Rs. 7.05 per unit to Rs. 6.84 per unit, as pleaded by the Petitioner, it will incur huge financial burden to the Local Bodies. Further, the Review Petition is time barred and in the mean time third party right has been accrued in favour of the concessionaires.

7. The case was heard on 25.09.2019 as scheduled. After hearing the parties, the Commission directed HPPC to file detailed calculations in support of their claim of redetermination of tariff of Rs. 7.05/kWh.

8. In compliance of the Interim Order of the Commission dated 25.09.2019, HPPC filed its reply showing financial impact of Rs. 7462.40 lacs in 20 years life of project at 32 MW capacity, with the change of Return on Equity from 16% considered in the determination of levelized tariff of Rs. 7.05/kWh to 14% considered in the recalculated levelized tariff of Rs. 6.84/kWh. Further, the impact of tariff passed on to the ULB may affect only the beneficiaries of the Waste to Energy Project, which otherwise is to be shared by all the electricity consumers of the State. The same is bound to prejudicially affect the consumers of the State. Therefore, the technical objection of the petition being time barred, needs to be overlooked on merits.

Commission's Analysis and Order

9. The Commission heard the arguments of the parties at length as well as perused the replies/rejoinders filed in the matter. The Commission observes that the impugned order was passed on 07.09.2018, approving the petition filed by HPPC for approval of the draft PPA. However, the levelized rate of Rs. 7.05/kWh mentioned in the impugned order was calculated in the Order of the Commission dated 28.09.2016, as per HERC RE Regulations, 2010, as amended from time to time. In the calculation of the same, RoE was taken at 16% p.a. Subsequently, the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017, were notified on 24.07.2018 i.e. much before the date on which impugned order was passed by the Commission on 07.09.2018. The HERC RE Regulations, 2017 notified on 24.07.2018, has specified normative Return on Equity as 14%. In the considered view of the Commission, the Return on Equity prevailing on the date of impugned order should have been considered and accordingly levelized tariff mentioned therein should have been recomputed generic tariff. Therefore, there appears to be an apparent error in mentioning the levelized tariff of Rs. 7.05/kWh in the

impugned Order, as the HERC RE Regulations, 2017 had come into force prior to pronouncement of the impugned Order.

10. In terms of the above findings, the Commission condones the delay of 246 days in filing the present Review Petition and allows the prayer of the Petitioner. The Commission further observes that there is no financial impact on the generators due to recalculation of levelized tariff, since the generators will continue to get the balance portion of the Output based Incentive (OBI) from Urban Local Bodies (ULB). Accordingly, the revised PPA shall be entered into between HPPC and the Generators and HPPC shall submit copy of the revised PPAs so signed within a week of signing of the PPAs.

11. In terms of the above Order, the Petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 03.10.2019.

Date: 03.10.2019 (Naresh Sardana) (Pravindra Singh Chauhan) (D.S. Dhesi)
Place: Panchkula Member Member Chairman