



Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17.

No. F.11(1986)/DERC/2022-23/7397

Petition No. 28/2022

In the matter of : **Petition under Section 86(1)(b) of Electricity Act, 2003 seeking approval of the actions with reference to the Tender No. Head(PMG)/BRPL/E Tender/2021-22/1198 dated 14.02.2022 and relaxation of directions passed by the Commission in its Order dated 13.04.2022.**

BSES Rajdhani Power Limited

.... Petitioner

Versus

Manikaran Power Ltd. & Ors.

..Respondents

Coram:

Hon'ble Shri Justice Shabihul Hasnain 'Shastri', Chairperson
Hon'ble Dr. A. K. Ambasht, Member

Appearance:

1. Mr. Buddy A Ranganadhan, Advocate, BRPL
2. Mr. Hasan Murtaza, Advocate, BRPL

ORDER

(Date of Order: 11.05.2022)

1. The Instant Petition has been filed seeking approval of the actions with reference to the Tender No. Head(PMG)/BRPL/E Tender/2021-22/1198 dated 14.02.2022 and relaxation of directions passed by the Commission in its Order dated 13.04.2022 in Petition No. 21 of 2022.
2. The Petitioner has made the following prayers in its Petition:
 - b. *Modify/Waive the conditions imposed by this Commission in its order dated 13.04.2022 wherein the Commission has held that additional liability shall not be a pass through in the ARR for FY 2022-23.*
3. The Petitioner submits the following:
 - a) On 30th March 2016, the Ministry of Power (hereinafter "the MoP") issued *Guidelines for short-term (i.e. for a period of more than one day to one year)*

Procurement of Power by Distribution Licensees through Tariff based bidding process (hereinafter "the MoP Guidelines"). As per the MoP Guidelines and more specifically under Clause 11.4 thereof, in case the quantum of power procured and tariff determined are within the blanket approval granted by the Appropriate Commission (i.e., this Commission) in Annual Revenue Requirement (hereinafter "the ARR") of the respective year, then the same will be considered to have been adopted by the Appropriate Commission. However, if that is not the case, the procurer (i.e. the Petitioner) is required to approach the Appropriate Commission for adoption of tariff within 2 days of the signing of the PPA/LOI, which shall, in turn, communicate its decision within a period of 7 days from the date of submission of the Petition.

- b) On 31st January 2017, this Commission notified the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 (hereinafter "*Tariff Regulations*"). As per Regulation 152(c) of the Tariff Regulations, in case the Petitioner is desirous of entering into a short-term arrangement or agreement (other than trading through the Power Exchange) the Petitioner is mandated to follow a transparent bidding process in accordance with the extant guidelines issued by the MoP, i.e., the MoP Guidelines.
- c) In the ensuing financial year, i.e., FY 2022-2023, anticipating a shortage of power, especially in the summer months, the Petitioner decided to procure short term power by way of a transparent bidding process and in accordance with the MoP Guidelines. To this end, the Petitioner invited bids by way of Tender No. Head (PMG)/BRPL/E Tender/2021-22/1198 dated 14th February 2022 for procurement of upto 350 MW of power for the period 1st April 2022 to 30th September 2022 (hereinafter "**the Tender**").
- d) The Petitioner received several bids from various entities with bids ranging from 40 MW to 350 MW.
- e) The Petitioner evaluated the quoted bids and analysed the bid prices. The price discovered through bidding were in line with the earlier discovered prices of other utilities in recent tenders. Thereafter, the Standing Committee issued certification on conformity of the bid process evaluation according to the provisions of the RfP document.
- f) As noted above, the MoP Guidelines require approval of the Appropriate Commission in case the quantum and rate of power exceed the figures approved in the ARR for the concerned year. However, while the procurement

is scheduled for FY 2022-2023, as on date, there is no ARR Order passed by this Commission for FY 2022-2023. Therefore, by way of abundant caution, the Petitioner filed Petition No. 21 of 2022 before this Commission and for the purposes of the same, the Petitioner relied upon the findings of the tariff order dated 30 September 2021 wherein this Commission approved the ARR for FY 2021-22 (hereinafter “the **Tariff Order**”).

4. The rate approved in the Tariff Order was less than the rate discovered by the Petitioner in the tendering process and therefore, in light of Clause 11 of the MoP Guidelines, the Petitioner filed Petition No. 21 of 2022 seeking approval of this Commission.
5. This Commission vide its final order dated 13.04.2022 in Petition No. 21 of 2022 was pleased to grant approval to Letters of Intent dated 11.04.2022 issued to the successful bidders.
6. It is submitted that in the order dated 13.04.2022, this Commission recognized that the prices discovered by the Petitioner were competitive and less than the average IEX prices for the period 11.03.2022 – 11.04.2022 which were in the range of Rs. 10.55-10.97/ kWh.
7. This Commission in its said order dated 13.04.2022 was pleased to further direct as under:

“11.....
However, if the arrangement fails, it shall be the sole responsibility of Petitioner to procure & supply power to its consumers at the Tariff discovered in the said bidding process and additional liability, if any, for this quantum of power, shall not be a pass through in the Aggregate Revenue Requirement (ARR) of FY 2022-23.....” (emphasis added)
8. Subsequent to the passing of the said order dated 13.04.2022 by this Commission, one of the traders viz. i.e. Manikaran Power Ltd. (“MPL”) was unable to accept the LOI issued by the Petitioner due to various factors including but not limited to the emergent crisis arising out of the shortage of coal.
9. The Petitioner has taken all steps that any prudent licensee could possibly have taken in pursuance of the aforesaid procurement. It is submitted that the LOI was issued in time as per the Bid document and has been accepted not only by other bidders but also by the same MPL in respect of another source.

10. The Petitioner has also had extensive discussions with the Respondent – MPL and the Generator, but to no avail. Hence, the Petitioner has no other option but to invoke the EMD and find suitable replacement sources. However, the power scenario currently prevalent in the country as described below is very grave and power is simply not available.
11. The emergent crisis arising out of the shortage of coal resulted in skyrocketing of prices of electricity to the extent that this Commission took steps to ensure 24X7 supply of power to consumers of Delhi. This Commission vide its letter dated 29.04.2022 passed certain directions granting "Relaxation in Directives due to Current Power Crisis".
12. Similarly, the Central Electricity Regulatory Commission also passed directions directing the power exchanges to re-design, with immediate effect, the bidding software, in such a way that members could submit the bids in day ahead market in the price range of Rs. 0/kWh to 12/kWh thus capping the price for trading at Rs. 12/kWh. Even at that price, the CERC recognized that the buy bids were much more than the sell bids.
13. The present emergent situation arising out of the shortage in coal corresponding to the increased demand is unprecedented and is akin to force majeure. As a result of the failure of MPL to supply power at the bid rates, the Petitioner faced a shortage of supply and as a result, in order to prevent any disruption, the Petitioner has renegotiated with MPL, which rates for supply of electricity are still considerably cheaper.
14. The rates currently available at the exchange are much higher than they could have been anticipated by the Petitioner. As stated earlier, in view of the current situation this Commission and the Central Electricity Regulatory Commission, both had to take emergent steps.
15. This Commission in its letter dated 29.04.2022 has also been pleased to grant exemption in seeking prior approval of banking and bilateral contracts. Considering the same, the Petitioner is seeking that this Commission modify/waive the directions passed by it in its order dated 13.04.2022 whereby this Commission had directed that "additional liability", if any, for this quantum of power, shall not be a pass through in the Aggregate Revenue Requirement (ARR) of FY 2022-23.....".

16. The rates renegotiated by the Petitioner towards procurement of electricity with MPL are considerably lower than the current market rates and the rates recently approved by this Commission for Tata Power Delhi Distribution Limited.
17. The actions taken by the Petitioner are bonafide and in the interest of securing continuous supply of electricity. However, if the additional liability is not allowed to be a pass through then grave financial loss will have to be borne by the Petitioner for no fault of its.

Commission Analysis

18. A request vide letter dated 10.05.2022 has been made by the Counsel for the Petitioner "BRPL" to take up the matter for urgent listing on the ground of the ongoing scenario of power purchase. On their request, on 11.05.2022 this Special bench was constituted.
19. The Commission vide its order dated 13.04.2022 in Petition No. 21 of 2022 has stated that:

"11.....However, if the arrangement fails, it shall be the sole responsibility of Petitioner to procure & supply power to its consumers at the Tariff discovered in the said bidding process and additional liability, if any, for this quantum of power, shall not be a pass through in the Aggregate Revenue Requirement (ARR) of FY 2022-23....."
20. In this regard, BRPL has stated that if the additional liability is not allowed to be a pass through then grave financial loss will have to be borne by the Petitioner for no fault of its.
21. The Commission observes that the reasons for failure of the arrangement approved in Order dated 13.04.2022 are not attributable to BRPL. Therefore, the Commission grants approval to the prayer at para B of the subject Petition.
22. Ordered accordingly.

Sd/-
(Dr. A.K. Ambasht)
Member

Sd/-
(Justice Shabihul Hasnain 'Shastri')
Chairperson