

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

Case No. HERC/PRO-58 of 2022

Date of Hearing : 08.12.2022

Date of Order : 12.12.2022

In the Matters of

Petition under Section 86(1)(b) of the Electricity Act, 2003 read with Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 seeking approval of PPA dated 30.05.2022 for procurement of 96 MW power from (2X48) MW Jorethang Loop Hydro Project situated at Jorethang, South District of Sikkim, of M/s Dans Energy Pvt. Ltd.

Petitioner

Haryana Power Purchase Centre, Panchkula

Respondent

M/s Dans Energy Private Limited (DEPL)

Present on behalf of the Petitioner

1. Ms. Sonia Madan, Advocate for HPPC

Present on behalf of the Respondent

1. Mr. Shishir Sharma

Quorum

**Shri R.K. Pachnanda
Shri Naresh Sardana**

**Chairman
Member**

ORDER

Brief Background of the case

1. The petitioner i.e. HPPC has preferred the present petition seeking ex-post facto approval of the Commission to the Power Purchase Agreement (PPA) dated 30.05.2022 executed between HPPC (on behalf of the distribution licensees in Haryana) and M/s Dans Energy Private Ltd. (DEPL), in terms of the order of the Commission dated 26.05.2022 passed in IA No. 11 of 2022 in PRO-7 of 2021. HPPC has submitted that the power under the PPA is being scheduled w.e.f. 27.05.2022.
2. HPPC has submitted as under: -
 - 2.1 That the PPA dated 30.05.2022 has been executed in terms of the order of the Hon'ble Commission dated 26.05.2022. The salient terms and conditions of the PPA are reproduced hereunder for ready reference: -

“7. OPERATION AND MAINTENANCE

7.1 Operation and Maintenance Responsibilities

7.1.1 Company's Responsibilities

Company shall operate and maintain the Project in accordance with the relevant orders, notifications and regulations of the Commission/IEGC/RPC, Electricity Act 2003, the Law, terms of all consents and Prudent Utility Practices.

7.1.2 Purchaser's Responsibilities

The Purchaser shall take all actions necessary to draw the Purchaser Contracted Power and Purchaser Contracted Energy from the Delivery Point including but not limited to utilising the open access on the transmission system of the Central Transmission Utility, in accordance with the Indian Electricity Grid Code (including Reactive Power management), the Law and Prudent Utility Practices and absorb such output in accordance with the Agreement. The Purchaser shall also supply all information and do all actions in a timely manner as may be necessary for Company to meet its obligations under this Agreement.

7.1.2 Third Party Sale

*If Purchaser does not avail/schedule any part or all of the Declared Capacity (limited to the Contracted Capacity) provided by the Company post signing of this agreement, Company may sell all or part of such un-availed capacity to a third party. In case the tariff realized from such third party sale; net of all the charges incurred for such third party sale of electricity & trading margin, is in excess of Energy Charge (in two part tariff), the net sale realization both in case of **(single part tariff & two part tariff)** in excess of energy charges, other charges incurred for sale of electricity & trading margin from the sale of Power to a third party in case Purchaser doesn't avail/schedule any part or all of the declared capacity shall be equally shared by the Company and Purchaser. **If sharing of gain as mentioned in the PPA due to third party sale is not supported by any regulation.** Purchaser shall continue to pay the capacity charge for such period. In case of single part tariff, if tariff realized, net of all the charges incurred for such third party sale of electricity & Trading Margin, is in excess of 50 % of single part tariff as energy charge, the net sale realization in excess of energy charge shall be equally shared by the Company and Purchaser. However, the Purchaser shall pay the 50% of single part tariff as capacity charge for such period.*

9. BILLING AND PAYMENT

9.1 General

9.1.1 *The Purchaser shall pay to Company, the payments comprising:*

- i) *Tariff Payment as mentioned under clause 9.1.2 and,*
- ii) *Transmission charges paid by Company to CTU, RLDC/SLDC charges or other applicable charges that may be payable by the Company for use of transmission system from delivery point to drawl point of the Purchaser (i.e. CTU substation at Purchaser state periphery) for each month of every tariff Year, determined in accordance with this Clause 9. The actual payment shall be made against the Purchaser Monthly Bills issued by the Company for each Month.*

All payments by the Purchaser shall be in Indian Rupees.

9.1.2 Tariff:

- i) *The Purchaser shall pay to the Company for the energy supplied at a tariff determined by Haryana Electricity Regulatory Commission vide Order dated 27.04.2021 in PRO-31 of 2018 i.e., a levelized tariff of Rs.4.34/kWh for the entire Term of Agreement.*
- ii) *The tariff at any point in time during the Term of Agreement shall not exceed the determined tariff even as a consequence of any order/intervention of any statutory authority including HERC, CERC, APTEL, or Court of Law, except statutory levies/taxes subsequently imposed by the Government which would be reimbursed to the Company.*
- iii) *The design energy of 445.70 MUs as determined by HERC in its Tariff Order dated 27.04.2021 will not change under any circumstance and as a result, thereto, there will be no revision in the tariff payable in terms of Clause 9.1.2(i) for the entire Term of Agreement.*
- iv) *The Purchaser shall not be liable to pay any claim/damages to the Company, of whatsoever nature, for the period starting from 26.05.2021 till 26.05.2022. In no event shall the Purchaser be liable for any damages whatsoever (including, without limitation, incidental, direct, indirect, special, and consequential damages, damages for loss of profits, business interruption, or other pecuniary loss) arising out of the exit made by Purchaser from the PPA dated 06.10.2020 vide letter dated 26.05.2021.*

ANNEXURE – A

DESIGN ENERGY OUTPUT OF THE PROJECT

In accordance with the provisions in this PPA, the Design output for the Project is 445.70 MUs as determined by Haryana Electricity Regulatory Commission (HERC) vide its Tariff Order dated 27.04.2021 in PRO-32 of 2018.”

- 2.2 That as per Section 86(1)(b), the Commission is vested with powers to regulate the Power Purchase Agreements. Such powers are wide enough to include granting ex-post facto approval to the PPA executed between the parties. In view of the above, HPPC, in the present Petition, seeks the kind indulgence of the Hon'ble Commission to grant ex-post facto approval to the PPA dated 30.05.2022 executed between the parties.
- 2.3 That in light of the submissions made hereinabove and in the larger interest, this Hon'ble Commission may be pleased to accord approval to the PPA dated 30.05.2022 executed between HPPC and M/s Dans Energy Pvt. Ltd.

Commission's Order

3. The case was heard on 08.12.2022, wherein Ms. Sonia Madan, the learned counsel for the petitioner mainly reiterated the contents of the petition, which for the sake of brevity have not been reproduced.
4. In order to impart clarity to the matter, Ms. Madan, the learned counsel for the petitioner HPPC, was asked to clarify the issue of two-part tariff appearing in clause 7.12 of the PPA (Third Party Sale). Ms. Madan submitted that the said clause was incorporated in the old PPA prior to the determination of tariff by this Hon'ble Commission and remained unchanged while signing the revised PPA on 30.05.2022. She further submitted that this Hon'ble Commission may issue necessary clarifications in the matter to be read along with the PPA already executed between the parties. The representative of the respondent, present at the time of hearing gave acquiescence to the submissions of the petitioner.
5. After careful consideration of the averments of the learned counsel and the PPA submitted for ex-post facto approval in pursuance of the order passed by the Commission in the present matter, the following is observed: -
 - i) The wording of clause 7.12 needs to be read along with the following clarifications so as to avoid any mis-construction of the same.

ii) Reference to ‘Regulations’ and “Two-part tariff” are redundant. There are no such regulations in vogue setting out terms of ‘third party sale’. Hence, the same shall be governed by the terms and conditions as mutually agreed upon by the parties in the present concluded PPA approved by this Commission.

iii) Reference to ‘two-part tariff’ is redundant as this Commission has already determined a single part tariff for the entire useful life of the project.

iii) Additionally, it is noted that the purchaser (HPPC/Discoms) shall pay, 50% of the tariff in vogue, even when they are not requisitioning any power from the seller (DEPL). Further, the gain net of associated costs / charges in giving effect to ‘third party sale’ by the DEPL, over and above the 50% of the tariff in vogue, shall be shared equally between the parties i.e. HPPC and DEPL.

With the above observations, to be read with the concluded PPA, the present petition is allowed.

In terms of the above order, the present petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 12.12.2022.

Date: 12.12.2022
Place: Panchkula

(Naresh Sardana)
Member

(R.K. Pachnanda)
Chairman