

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

**Case No: HERC / Petition No. 26 of 2022**

**Date of Hearing**  
**Date of Order**

**28.02.2023**  
**28.02.2023**

**In the Matters of:**

Petition under Section 86 (1)(b) of the Electricity Act, 2003 for approval of Expression of Interest (EOI)/Bidding document prepared by HPPC to procure 400MW of Hydro power through e-Tender and e-Reverse Auction.

**Petitioner**

Haryana Power Purchase Centre, Panchkula (HPPC)

**Present on behalf of the Petitioner**

1. Shri Naveen S. Bhardwaj, Advocate
2. Shri Gaurav Gupta, Xen, HPPC

**Quorum**

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

**Chairman**  
**Member**

**ORDER**

**Brief Background of the case**

1. The present petition has been filed by HPPC seeking approval of the EOI/Bidding document along with the draft PPA to procure 400 MW hydro power from the already commissioned plants or plants to be commissioned by March 2027 under section 63 of the Electricity Act for whole year at Haryana State Periphery for a period of 35 years through e-Tender and e-Reverse Auction.
2. The brief submissions of the petitioner are as under:-
  - 2.1 That HPPC continuously conducts in-depth analysis of demand and supply of power in the State of Haryana to ensure continuous and smooth supply of power. HPPC has projected demand-supply scenarios upto FY 2031-32. Perusing the said demand-supply, it can be ascertained that the state of Haryana has substantial deficit in peak season of forthcoming years and same is reproduced as under:-

<b>Year</b>	<b>Deficit (in MW)</b>
FY 2022-23	118 MW to 2052 MW
FY 2023-24	168 MW to 2476 MW
FY 2024-25	535 MW to 3177 MW
FY 2025-26	927 MW to 3935 MW
FY 2026-27	991 MW to 4580 MW
FY 2027-28	837 MW to 4889 MW
FY 2028-29	1000 MW to 5249 MW

FY 2029-30	1480 MW to 6260 MW
FY 2030-31	1980 MW to 7329 MW
FY 2031-32	2501 MW to 8459 MW

It is pertinent to mention that as per the demand availability scenario the average deficit from FY 2022-23 to FY 2031-32 ranges from 912 MW to 3590 MW.

- 2.2 That Haryana State is experiencing critical power supply position due to outage of several generating stations i.e., Adani Power, CGPL Mundra, FGPP & RGTPP-II which is tabulated below:

Sr. No.	Name of Plant	Capacity in MW	Reason
1	Adani	1424	Adani Power has expressed the non-viability of unit no. 7, 8 & 9 on 06.05.2021, 04.07.2021 & 25.08.2021 respectively.
2	CGPL Mundra	380	Non-viability expressed by CGPL and shut down its all units since 18.09.2021
3	FGPP	432	FGPP units are generally under shut down due to non- availability of APM gas.
4.	RGTPP-2	600	RGTPP- Unit 2 of 600 MW is under shut down since 19.09.2020 and there is uncertainty about the availability of the same.

- 2.3 That SCPP in its 62nd meeting decided to float an Expression of Interest (EOI) for procurement of 400 MW of Hydro Power on long term basis for 35 years.
- 2.4 That the power from Hydro plants is best suited as the demand curve of the State exactly matches with the Hydro-Generation i.e., Hydro generation is on its peak in the months of June, July, September due to monsoon where the demand of Haryana is generally high due to peak summer or paddy sowing period.
- 2.5 That any State having major share of Hydro in its power portfolio will be less burdened with the Renewable Energy Targets. Therefore, efforts should be made to enter Hydro arrangements so as to ease the renewable targets.
- 2.6 That Hydro power stations have inherent ability for instantaneous starting, stopping, load variations etc. and help in improving reliability of power system. Hydro stations are the best choice for meeting the peak demand. 70% of the power from Hydro Source comes in the peak season and therefore, the hydro power is most viable option to meet the peak demand of the State. Moreover, hydro plants achieve 100% PLF during rainy season thereby helping meet the demand of the State for paddy season.
- 2.7 That the power from Hydro plants having pondage act as balancing power because of its flexibility in generation as per requirement, which in turn further helps to maintain security and stability of grid. Further, such flexibility provides an opportunity to optimally utilize the generation from RE sources. Therefore, higher percentage of

Hydro share in the portfolio of Discoms not only secure the position to meet peak demand efficiently but also help to utilize the RE sources optimally. As on date, the total installed and contracted generation capacity available to the State is 12329.77 MW having a mix of 8092.84 MW (65.64%) of Coal Thermal, 2250.41 MW (18.25%) of Hydro, 649.09 MW (5.26%) of Gas, 100.93 MW (0.82%) of Nuclear and 1236.5 MW (10.03%) of Renewable Power.

- 2.8 That the Ministry of Power vide Notification dated 29.01.2021 introduced Hydro Purchase Obligation (hereinafter referred to as “HPO”) which could only be met from the eligible Large Hydro Projects (>25 MW) commissioned on and after 08.03.2019 and upto 31.03.2030. HERC has also defined the HPO targets for the Discoms and the same are tabulated as under:-

Year	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30
Expected HPO Targets	0.35	0.66	1.08	1.48	1.80	2.15	2.51	2.82

- 2.9 That, considering all the tied-up Hydro Source with HPPC at present the status of Hydro Purchase Obligation of the Discoms is as under:-

Year	Energy Consumpti on eligible for HPOs	Expected HPO Targets		Expected Mus for HPO envisaged from tie-ups	% HPO Envis aged	Shortfall (-) /Surplus(+)	Shortfall (-) /Surplus(+)
	in MUs	in %	in MUs	in MUs	in %	in MUs	in %
2022-23	44078	0.35	154	40	0.09	-114	-74%
2023-24	45704	0.66	302	618	1.35	316	105%
2024-25	47391	1.08	512	674	1.42	162	32%
2025-26	49190	1.48	728	1586	3.23	858	118%
2026-27	50953	1.80	917	1547	3.04	629	69%
2027-28	52833	2.15	1136	1547	2.93	411	36%
2028-29	54783	2.51	1375	1408	2.57	33	2%
2029-30	56804	2.82	1602	1408	2.48	-194	-12%

- 2.10 That, Hydro Energy Certificate mechanism is yet to be developed by CERC which could be used alternatively to comply with HPO Obligation. In addition to this, Ministry of Power, GOI in its order dated 29.01.2021 mentioned that the ceiling price for such Hydro certificates would be Rs. 5.50/unit with an annual escalation of 5.5%. Thus, it would be better for the Discoms to make timely efforts to tie up Hydro sources duly eligible for HPO benefit so as to meet Hydro Purchase Obligations effectively.
- 2.11 That in order to protect the interest of consumers of the State at large and transparency in the procurement process, it needs to be ensured that a platform must be provided to the developers so as to promote competition thereby boosting the power sector in efficient and feasible manner which is also one of the key objectives of the Tariff Policy dated 28.01.2016, notified by Ministry of Power, GOI i.e., to ensure availability of electricity to consumers at reasonable and competitive rates. Since,

there is currently no competitive bidding guidelines for procurement of power from Hydro Projects, an Expression of Interest is the best alternative to source power from Hydro plants competitively.

- 2.12 That, currently there are no guidelines to procure Hydro Power on Long term basis hence HPPC has prepared an EOI/Bidding document for procurement of 400 MW Hydro Power perusing the bid document floated by UPPCL for procurement of Hydro Power on long term basis which was prepared by them in line with the standard bid document issued by Ministry of Power, GOI for Procurement of Electricity on medium term basis. The said EOI/Bidding document along with the Power Purchase Agreement to procure 400 MW of hydro power for whole year at Haryana State Periphery for a period of 35 years through e-Tender and e-Reverse Auction at DEEP portal of M/s PFCCL is attached.
- 2.13 That, M/s PFCCL vide email dated 29.03.2022 intimated that approval of appropriate commission for deviation from Model Bidding Document issued by Ministry of Power is required.
- 2.14 That, the deviations from Standard Bidding Document for Invitation of e-Tender and e-Reverse Auction for Medium Term Procurement of Power on DEEP Portal as issued by Ministry of Power is enumerated as under:-

Sr. No	As per Standard Model Bidding document	Bidding document prepared by HPPC
1.	The Bidder shall quote a Base Variable Charge comprising the generating cost of electricity, the transmission charges and the transmission losses. Based on its Bid, a lumpsum tariff shall be paid to the Supplier comprising of (a) a Variable Charge, and (b) a Fixed Charge.	The Bidder shall quote Energy Charge (Rs./KWh) at Delivery Point. Based on its Bid as per the provisions of the PPA, the Tariff shall be paid to the Supplier equal to Energy Charge for the quantum delivered at Delivery Point for whole contracted period.
2.	In case, capacity required is not met fully by lowest bidder. All other bidders will be asked to match the lowest bid in L-1 matching round. In the event that none of the other bidders match the bid of lowest bidder, the procurer in its discretion. Invite fresh bids from all other bidders. Annul the bidding process.	In case, capacity required is not met fully by lowest bidder. All other bidders will be asked to match the lowest bid in L-1 matching round. In the event that none of the other bidders match the bid of lowest bidder, the procurer in its discretion.  (i) Invite fresh bids from all other bidders. (ii) Annul the bidding process. Allocate the remaining capacity, if any, after completion of L-1 matching round to the bidders at the tariff quoted in e-reverse auction stage in the order as they were at the end of L-1 matching round.
3.	Eligibility of Bidders For determining the eligibility of Bidders for their pre-qualification hereunder, the following shall apply: The Bidder should be a corporate entity; The Bidder should either be the owner and operator of the Power Station from	The modification to the Eligibility criteria of Applicants/ Bidders of the model bidding document is as under: (a) Same. (b) Same. (c) Same.

	<p>where electricity shall be supplied or a Trading Licensee; In case of Bidder being a Trading Licensee, such Trading Licensee should have executed a power purchase agreement or an equivalent arrangement with the Developer for atleast the Capacity for which the Application has been made; [the Power Station has access to an assured supply of Fuel; and] [Other eligibility conditions shall include the following]</p>	<p>(d) the Power Station(s) has access to an assured supply of Fuel (water); (e) The Power Station(s) must have pondage capacity to cater the peak demand of atleast 3 hours at a stretch in a day as per the requirement of purchaser; (f) The Hydro Power plant of the applicant must have been commissioned on or after 08.03.2019 such that the power from the plant shall be eligible for Hydro Purchase Obligation (HPO). However, if the plant is under construction, then applicant shall ensure that the plant will be ready for operation by 31.03.2027; (g) The Hydro Power Station(s) must have been remaining useful life of 35 years.</p>
4.	<p>Test of responsiveness Prior to evaluation of Applications, the Utility shall determine whether each Application is responsive to the requirements of the RFQ. An Application shall be considered responsive if:</p> <p>it is received as per format at Appendix-I. it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.13.2; it is digitally signed and uploaded as stipulated in Clauses 2.11 and 2.12; it is accompanied by the Power of Attorney as specified in Clause 2.2.4; it contains all the information and documents (complete in all respects) as requested in this RFQ; it contains information in formats same as those specified in this RFQ; it contains certificates from its statutory auditors in the formats specified at Appendix-I of the RFQ for each Eligible Project; it contains a copy of power purchase agreement or equivalent arrangement with the Developer in case the Bidder is a Trading Licensee; it contains a copy of Fuel Supply Agreement or equivalent arrangement for the Power Station; it contains an attested copy of the system generated receipt or receipt of the Utility for payments towards the cost of the RFQ process, cost of the RFP process, fees submitted to PFCCCL as per Clause 1.2.2 and Bid Security as specified in Clause 1.2; it does not contain any condition or qualification; and it is not non-responsive in terms hereof</p>	<p>Following addition has been made in Test of responsiveness in the standard model bidding document</p> <p>(a) it contains a document indicating the remaining useful life of 35 years of Hydro Power Station from which power is to be supplied. it contains a copy of Detailed Project Report (DPR) duly approved by CEA;</p>

5.	In the event that two or more Bidders quote the same amount of Tariff for (a) the full Capacity Required; (b) one full Capacity Required and other part of the Capacity Required; (c) Capacity totaling more than the Capacity Required and (d) Capacity totaling to the Capacity Required (the "Tie Bidders"), the Utility shall identify the Selected Bidder under (a) by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend; under (b) by declaring the Bidder who has offered full Capacity Required as the Selected Bidder; under (c) by declaring the Bidder with maximum Capacity as first Selected Bidder and other Bidder as second Selected Bidder with remaining Capacity and under (d) by declaring both the Bidders as the Selected Bidder with respective Capacity.	In the event that two or more Bidders quote the same amount of Tariff (the "Tie Bidders") for (a) the full Capacity Required; (b) one full Capacity Required and other part of the Capacity Required; (c) Capacity totaling more than the Capacity Required and (d) Capacity totaling to the Capacity Required, the Procurer shall identify the Selected Bidder under (a) the time of submission of bid will be the deciding factor for their ranking; under (b) by declaring the Bidder who has offered full Capacity Required as the Selected Bidder; under (c) by declaring the Bidder with maximum Capacity as first Selected Bidder and other Bidder as second Selected Bidder with remaining Capacity and under (d) by declaring both the Bidders as the Selected Bidder with respective Capacity
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2.15 HPPC has made the following prayers:-

- a) Grant the approval of the EOI/Bidding document along with the PPA attached with the document to procure 400 MW hydro power from the already Commissioned plants or plants to be commissioned by March 2027 under section 63 of the Electricity Act for whole year at Haryana State Periphery for a period of 35 years through e-Tender and e-Reverse Auction.
- b) Pass any other order(s) and/or direction(s), which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

### Proceedings in the Case

3. The case was heard on 28.02.2023 in the court room of the Commission. The petitioner, in compliance of the directions of the Commission dated 04.08.2022/19.01.2023, made a detailed presentation on the emerging power demand and supply scenario in Haryana and its plan to optimize power purchase quantum and cost, duly vetted by the Chairman of Power Utilities. Further, HPPC vide memo no. Ch-54/CE/HPPC/XEN/LTP-I/NIT-97 dated 02.02.2023, has submitted as under:-

#### 3.1 Reason for non-scheduling of 350 MW power from M/s. RKM Power generation: -

That after obtaining the approval from the Commission on 04.05.2022, PPA for procurement of 350 MW power was signed on 18.05.2022 with M/s RKM Powergen Ltd, Chennai. As per PPA, date of commencement of power supply shall be within 90 days (i.e. 16.08.2022) from the date of signing of PPA i.e. 18.05.2022. In lieu of power shortage in the state, HPPC vide email dated 28.6.2022 requested firm to intimate the

date of commencement of power supply, to which M/s RKM Powergen Ltd replied vide email dated 28.06.2022 as under:

*"Subject to signing of FSA amendment this week and receipt LC as per PPA terms and other compliance conditions from HPPC and grant of STOA by WRLDC/PGCIL we expect to start power supply from 01.08.2022 well before 16.08 2022 the appointed date as per PPA terms. The same has been mentioned in our draft form MTOA-3 for NOC submitted to HPPC"*

Further, HPPC vide mail dated 05.08.2022 and 12.08.2022 again requested M/s RKM Powergen Ltd to commence supply to Haryana at the earliest. M/s RKM Powergen Ltd vide letter dated 12.08.2022 expressed its inability to commence power from 16.08.2022 and requested for a period of 1 month for execution of FSA with SECL.

In response to this, HPPC vide letter 23.08.2022 denied extension of time and informed M/s RKM Powergen Ltd that the performance security submitted by the firm will be apportioned at the rate of 0.3% for each day's delay in commencement of power.

M/s RKM Powergen Ltd vide letter dated 30.08 2022 again requested for extension of one-month time on account of delay in amendment of FSA. At the outset, HPPC vide letter date 07.09.2022 denied that the delay in supplying the contracted power to Haryana Utilities is on account of unavoidable reasons. Hence, no extension of time was granted to M/s RKM Powergen Ltd and again requested to commence the power supply failing which RKM Powergen Ltd. is liable for the consequences of delay in commencement of power supply in terms of the PPA dated 18.05.2022.

M/s RKM Powergen vide letter dated 14.09 2022 again requested for extension of one month for commencement of supply of power for execution of FSA with SECL, citing that delay was beyond control of M/s RKM Powergen.

In view of the above, on account of failure of RKM Powergen to commence supply, HPPC vide letter dated 04.10.2022 terminated the PPA and stated as under-

*"Since the execution of the PPA, while HPPC followed up numerous times for commencement of power supply and extended cooperation in the interest of receiving required power. However, M/s RKM Powergen Pvt. Ltd. continued to make false assurances/representations regarding commencement of power supply. **It was the sole responsibility and obligation of M/s RKM Powergen Pvt. Ltd. to ensure that power supply commences within 90 days after signing of the PPA failing which HPPC is entitled to forfeit the Performance Security along with the termination of PPA.**"*

***Needless to say, the non-supply of power by you within the stipulated time period, has caused financial losses to the HPPC/Haryana Utilities as adequate resources were deployed for execution of PPA with M/s RKM Powergen. Further, the non-supply of power under PPA has disrupted the power planning and has led to purchase of costly power from the Power Exchanges to meet the power requirements for the State of Haryana. The failure to commence power supply within the stipulated time is clearly a breach of agreement on your part and therefore, HPPC is constrained to issue notice for termination of PPA. In view of the foregoing, it is expressly stated that Power purchase agreement dated 18.05.2022 executed between HPPC and M/s RKM Powergen Pvt. Ltd. stands terminated on account of breach of PPA on your part and consequently, the Performance Bank Guarantee shall be forfeited in terms of PPA.***

In order to prevent HPPC from enclashing its Bank Guarantee, M/S RKM Powergen Ltd has filed an appeal before Hon'ble CERC and requested to direct HPPC not to take any coercive action in particular against the likely invocation of Performance Bank Guarantee. CERC vide order dated 27.10.2022 ordered that HPPC shall not take any coercive action against the Petitioner till the next date of hearing. The matter is pending before CERC.

**3.2 Availability of APM Gas to the Faridabad Gas CCGT may also resume and price of RLNG (Regasified Liquefied Natural Gas) may also be softened leading to availability of power from this source as well: -**

The matter was taken up by HPPC with NTPC and NTPC vide email dated 27.01.2023 replied as under:

*“as per MoP & NG guidelines, Domestic gas supplies (APM & Non -APM) to NTPC gas stations have become Nil w.e.f. 16.06.2021 due to diversion of GOI allocated gas to CGD Sector. Presently spot gas is procured through monthly tender basis, the ECR of RLNG Gas for Faridabad GPS is as under:*

	Combined Cycle, ECR (Rs/kWh)	Open Cycle ECR (Rs./kWh)
LT RLNG	11.45	16.52
Spot RLNG (GAIL)	22.31	32.19

**3.3 PPAs with Coastal Gujarat and Adani Power Limited: -** In this regard HPPC has submitted that the matter is under consideration with Govt of Haryana.

**3.4 Explore the proposals to procure power on medium term: -**

HPPC has given consent of 500 MW in the tender floated by PFCCCL, GOI for procurement of 4500 MW for a period of 5 years under SHAKTI scheme. Out of 4500 MW bids received by PFCCCL is 1170 Mw only. PFCCCL has discovered weighted

average tariff of Rs. 5.17 /kWh at Generator Busbar. However, final allocation of quantum from 500 MW shall be done by MOP.

HPPC is planning to float 1000 MW tender for procurement of power on medium term basis for a period of 3 years on standard bidding documents of GOI.

- 3.5 Inclusion of 800 MW DCRTTP to be setup by HPGCL in the availability:** - In this regard, it is submitted that the presentation has been revised after inclusion of 800 MW in the availability w.e.f. 01.01.2028.

### **Commission's Order**

4. The Commission heard the averments of the petitioner at length as well as perused the written submissions placed on record by them. The petitioner has presented a precarious demand supply scenario, on year to year basis, in the State of Haryana, with average deficit ranging from 1160 MW in the year 2024-25 to 4217 MW in the year 2032-33, considering availability of power from all approved sources. However, at present power is not being supplied by Adani, CGPL and FGPP. Considering non availability of these sources, the power deficit could range from 1946 MW in the year 2024-25 to 5337 MW in the year 2032-33. The petitioner further submitted that the present proposal is crucial for them to comply with the Hydro Purchase Obligation (HPO) specified in the HERC RE Regulations, 2021, pursuant to the order of the Ministry of Power dated 22.07.2022.
5. The Commission observes that the country, as a whole, has witnessed power shortage due to surge in the electricity demand and lesser availability of power due to increase in the prices of imported coal, oil and global disruptions in gas supply caused by Russia-Ukraine conflict, which is likely to keep the availability and supply of imported coal and RLNG at a significantly higher levels and uncertainty in availability of desired quantum. In order to address the emergent circumstances arising out of rising electricity demand and mismatch in demand and supply of domestic coal, Ministry of Power had issued directions dated 05.05.2022 under Section 11 to all the Imported Coal Based Plants (ICB), to operate and generate power to their full capacity. Since, the existing PPAs of the plants do not have provision for pass through of the increase in international coal price, to work out the ECRs at which the power is to be supplied to PPA holder, a Committee was constituted by the Ministry of Power (MoP), under the Chairmanship of Chairperson, CEA with representatives from MoP, CEA, NTPC and CERC. Accordingly, MoP has issued benchmark ECRs for selected ICB plants every fortnight, from May, 2022 onwards. The directive was effective till 31.12.2022. The last benchmark ECR issued by MoP for the period from 11.12.2022 to 31.12.2022 for CGPL, Mundra was 5.31/kWh. The similar directions under Section 11 have been

continued by MoP, vide its letter dated 20.02.2023. Discoms need to enter into an agreement for mutually negotiated rates with the generating company for taking power at benchmark rate plus fixed charge or at a rate mutually negotiated. HPPC has informed that they have not entered into supplementary PPA to enforce this arrangement of MoP and rather have filed suit for enforcement of PPA terms. Further, HPPC has to shell out huge amount of fixed charge without taking single unit of power from CGPL, Mundra, in the last around one year. **The Commission notes with concern that HPPC is buying power from exchange at a rate as high as Rs. 12/kWh and not buying power from CGPL, Mundra being offered at Rs. 5.31/kWh. This may have huge financial implications. Accordingly, HPPC is advised to conduct a cost-benefit analysis of the scheme of MoP and explore the possibilities of entering into supplementary PPA for taking power from ICB plants at benchmark rate, subject to the decision of the appeal filed for enforcement of the already executed PPA, since in any case it is paying fixed charge to the ICBs.**

6. In view of the above, the Commission has considered the request of the petitioner and grant approvals sought in the petition regarding deviation taken from the standard bidding documents. The Commission observe that a lot of uncertainty exists in hydro projects on account of geological surprises which leads to delay in commissioning and cost overrun leading to the issues of viability of such projects. In order to address such issues, it is directed that the offers/bids shall be invited from the hydro power plants already commissioned or in an advanced stage of commissioning with SCoD on or before 31<sup>st</sup> March, 2026.

It may be noted that non availability of power from FGPP, CGPL and APL may not be a medium to long term phenomena. Though the Commission at this stage is not inclined to accept this argument for purchase of power under long term agreement (s), in view of the gravity of the situation portrayed by HPPC, they may go ahead as directed above but the Commission, on the basis of rate (s) discovered in the competitive bidding will re-visit the issue while considering source approval subsequent to the outcome of the competitive bidding.

7. 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 28.02.2023.

Date: 28.02.2023  
Place: Panchkula

(Naresh Sardana)  
Member

(R.K. Pachnanda)  
Chairman