



**ORDER**

**OF THE**

**WEST BENGAL ELECTRICITY REGULATORY COMMISSION**

**IN CASE NO. OA-465/23-24**

IN REGARD TO THE PETITION SUBMITTED BY CESC LIMITED FOR APPROVAL OF DEVIATION OF 200 MW HYDRO POWER FROM PROJECTS SET UP UNDER FOO BASIS THROUGH COMPETITIVE BIDDING UNDER SECTION 86 (1) (b) AND OTHER APPLICABLE PROVISIONS OF THE ELECTRICITY ACT, 2003 AND IN TERMS OF APPLICABLE REGULATIONS OF THE WEST BENGAL ELECTRICITY REGULATORY COMMISSION.

**PRESENT:**

**DR MALLELA VENKATESWARA RAO, CHAIRPERSON**

**SRI PULAK KUMAR TEWARI, MEMBER**

**DATE: 16.05.2024**



### **Facts in brief:**

- 1.0 The Commission vide Order dated 06.03.2024 in Case No. OA-465/23-24 has approved the deviations from the Model Bidding Documents (medium term) for procurement of 200 MW Hydro power by CESC Limited ("CESC") from projects set up under Finance, Own and Operate ("FOO") basis through competitive bidding under Section 63, Section 86 (1) (b) and other applicable provisions of the Electricity Act, 2003 and in terms of applicable Regulations of the West Bengal Electricity Regulatory Commission. In terms of the clause 4.2 of this order, the Commission while allowing certain deviations from the Model Bidding Documents issued by Ministry of Power has directed CESC Limited to obtain prior approval for any further deviations during the bidding process as well as before effectuating any agreement for the procurement of 200 MW hydro power.
- 2.0 CESC Limited has filed a Petition dated 22.03.2024 for approval of further deviations from Model Bidding Documents approved earlier by this Commission vide order dated 06.03.2024 which emanated during the bidding process for procurement of 200 MW Hydro power through competitive bidding under Section 63, Section 86 (1) (b) and other applicable provisions of the Electricity Act, 2003 and in terms of applicable Regulations of the West Bengal Electricity Regulatory Commission. CESC Limited has submitted a supplementary petition dated 03.04.2024 to the petition dated 22.03.2024 with modified deviations for approval of the Commission. The Commission has admitted the applications dated 22.03.2024 along with the supplementary petition dated 03.04.2024, in Case No. OA – 465/23-24 on 15.04.2024.
- 3.0 The application of CESC Limited inter-alia states the following:
  - 3.1 In the pre-bid meeting held on 16.03.2024, three potential bidders, namely Tata Power Trading Company Limited, Manikaran Power Limited and NTPC Vidyut Vyapar Nigam Limited have participated. Certain issues have emanated from the queries / concerns received from the potential bidders necessitating further deviations from the Model Bidding Documents approved in order dated 06.03.2024.
  - 3.2 The proposed deviations are as below:



- a) Period of supply from "June to October" instead of "May to September" every year;
  - b) Treatment of withdrawal of consent of cross-border transactions by the Government of India as Force Majeure;
  - c) Modification in the definition of "Delivery Point";
  - d) Modification in the definition of "Trading Licensee";
  - e) Changes in Clause 13.2.3 of the Draft Agreement for Procurement of Power ("Approved Draft PPA").
- 3.3 Two out of three potential bidders, who have participated in the pre-bid meeting have requested for extension of the contract period to October. Further, they have expressed their inability to supply power in the month of May.
- 3.4 Power availability was an issue in October 2023 which led to grid over-drawal at times as well as Puja festivities are celebrated in October every year. CESC has submitted data of Indian Energy Exchange (IEX) for the month of October 2023 which shows that the exchange price for the power procured during evening period (16:00 Hrs to 20:00 Hrs) almost consistently hit the ceiling price of Rs. 10/Unit throughout the month. Further, the exchange price during night (20:00 Hrs to 01:00 Hrs) also hit the ceiling price in majority of the time blocks for almost half of the month. The aforesaid period of high market price of power at the exchange coincides with the high demand period as per the submitted Load Curve of the October month, where demand is significantly higher than the committed capacity available with CESC.
- 3.5 It is revealed from the prebid meeting that two out of three prospective bidders have expressed their inability to supply hydro power during the month of May every year and hydro power is also available during the month of October. Considering the requirement of peak power during October as envisaged from the Load curve of October 2023, CESC has proposed for modification of the period of supply as June to October in stead of May to September every year for the proposed hydro power procurement which will help CESC to manage its demand in a cost effective and secured manner.



- 3.6 CESC has submitted that one of the participants in the pre bid meeting is envisaging supply of power available with State Government (s) as their share of free power but the existing definition would not permit Trading Licensees to supply power available with State Government (s) as their share of free power due to the reason that exclusive power purchase agreement (s) might not be existing with the State Government (s) having free power since the State Government (s) are normally equipped with other relevant documents / agreements which vest in them their right to utilise their free share of power. Therefore, as requested by one of the participants, the definition of Trading Licensee is proposed to be modified to include "other relevant agreement" along with executed power purchase agreement. Further, two more lines are proposed to be added at the end of the definition of Trading Licensee(s). The definition of Trading Licensee(s) is prayed to be amended as below:

*"Trading Licensee(s) shall mean the Applicant/Bidder which is an Electricity Trader or a Distribution Licensee in terms of the Electricity Act, 2003 and submits its Application on the basis of an exclusive power purchase agreement **or any other relevant agreement** executed with the entity with identified generation source from where the power is proposed to be supplied by the Bidder. **It is being clarified that in case any state government or any state controlled entity wants to supply power either directly or through a Trading Licensee, the Supplier shall ensure the obligations of the Developer (s) are being met through such state government or state controlled entity. Such state government / state controlled entity shall also ensure that the power is being supplied from hydro-electric sources.**"*

- 3.7 CESC has submitted that since supply of power may also be from imported source / cross border source(s), one participant in the pre bid meeting has requested to include "non-approval of grant of supply / non grant of continuation of supply of cross border power by Gol" under force majeure clause and same has been requested to be incorporated in the Approved Draft PPA (Draft Agreement for Procurement of Power of the Model Bidding Documents approved in Order dated 06.03.2024). CESC has submitted that allowing the deviations prayed for will increase competitiveness of the bidding process. Since Clause 17.2 (e) is also covered through Clause 17.2 (j), which are identical to each other, CESC proposes to modify Clause 17.2 (e) as below:

*"Refusal to grant any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Supplier, [Developer if Supplier is a*



*Trading Licensee] to perform their respective obligations under this Agreement for supply of cross border power and/or approval of Designated Authority, Govt. Of India, for supply of cross border power as required from time to time.”*

- 3.8 CESC has also prayed for further modification in the definition of Delivery Point (Clause 26.1) and Clause 13.2.3 sighting some typographical error.
- 3.9 In view of the above, CESC Limited has prayed to approve the deviations sought from the Approved Draft PPA (Draft Agreement for Procurement of Power of the Model Bidding Documents approved in Order dated 06.03.2024) which emanated during the bidding process, as detailed in the Annexure of the petition.

**Observations of the Commission:**

- 4.1 **Period of supply from “June to October” instead of “May to September”:** The Commission observes that electricity demand of CESC stayed at an elevated level during the month of October, 2023 with respect to the already tied up capacity. It is also noted that the exchange price in IEX for the power procured during 16:00 Hrs to 20:00 Hrs and 20:00 Hrs to 01:00 Hrs of October, 2023 was high. Therefore, the Commission finds it prudent to allow modification of the period of supply as “June to October” instead of “May to September” every year as was provisionally approved in the Order dated 06.03.2024.
- 4.2 **Modification in the definition of “Trading Licensee”:** The Commission takes into cognizance of the utilization of free pooled hydro power available with the State Government (s). Accordingly, the proposal of CESC is suitably treated.
- 4.3 **Treatment of withdrawal of consent of cross-border transactions by the Government of India as Force Majeure:** The Commission has noted that the Cross Border Trade of Electricity is guided by regulation of Competent Authority. Further, the Force Majeure is a settled provision in law and exhaustively defined in the draft Agreement for Procurement of Power (“Draft APP”) of Model Bidding Documents. Therefore, the Commission finds it prudent not to allow any deviation in clauses related to Force Majeure of Draft APP of Model Bidding Documents.



Approval of deviation from the Model Bidding Documents (medium term) for procurement of 200 MW Hydro power from projects set up under FOO basis through competitive bidding under Section 63, Section 86 (1) (b) and other applicable provisions of the Electricity Act, 2003 and in terms of applicable Regulations of the West Bengal Electricity Regulatory Commission



4.4 **Other Deviations from Model Bidding Documents:** The Commissions finds that other modification in the definition of Delivery Point under Clause 26.1 and Clause 13.2.3 of Draft APP of Model Bidding Documents, approved in Order dated 06.03.2024, arises due to typographical error, are admissible.

4.5 In view of the above, the Commission concludes the followings:

- (i) The 200 MW hydro-electric power from June to October of every year of the agreement will help CESC Limited to meet its RPO target, improve renewable energy portfolio and meet the increasing demand in CESC's licensed area in the coming years.
- (ii) Some of the proposed deviations, as discussed above, are towards improving bidder participation and in consumers' interest.

**Order:**

5.1 The Commission after considering the above facts, approves the deviations, attached with this order as Annexure – I, from the Model Bidding Documents (medium term), approved in Order dated 06.03.2024, for procurement of 200 MW Hydro power from projects set up under FOO basis through competitive bidding under Section 63, Section 86 (1) (b) and other applicable provisions of the Electricity Act, 2003 and in terms of applicable Regulations of the West Bengal Electricity Regulatory Commission.

5.2 In terms of Regulation 7.4.1 of the West Bengal Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2011, as amended, CESC Limited will take prior approval of the Commission before effectuating any agreement for power procurement.

5.3 The petition is thus disposed of.

5.4 A copy of the order shall be posted in the website of the Commission.

5.5 CESC Limited shall download the copy of the order from the website of the Commission and act on it. Certified copy of the order, if applied for, be given to the parties on



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completion of formalities laid down in the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013, as amended and on submission of necessary fees.

**Sd/-**  
**(PULAK KUMAR TEWARI)**  
**MEMBER**

**Sd/-**  
**(MALLELA VENKATESWARA RAO)**  
**CHAIRPERSON**

**Dated: 16.05.2024**

**Sd/-**  
**(SECRETARY)**







SI. No	Clause No.	Original Text of Draft APP of Model Bidding Documents Approved by the Commission in Order dated 06.03.2024	Revised Text of Draft APP of Model Bidding Documents approved by the Commission in this Order
	11.4.2	<p>The obligations of the Utility to pay Fixed Charges for the <u>contractual period (May to September)</u> in any Accounting Year shall in no case exceed an amount equal to the Fixed Charge corresponding to the Normative Availability of 85% (eighty five per cent) computed with reference to the Contracted Capacity at Delivery Point (the "Capacity Charge") in terms of Clause 5.1.2, subject to maintaining at least 85% availability by the Supplier at the Delivery Point corresponding to the Contracted Capacity at the Delivery Point.</p> <p>.....</p> <p>Provided that the Availability to be considered for calculation of Fixed Charges shall be <u>calculated on cumulative basis (for the contractual period of May to September) and reconciled annually for the specified months (May to September) for each year of the contract period.</u></p> <p>.....</p>	<p>The obligations of the Utility to pay Fixed Charges for the <u>contractual period (June to October)</u> in any Accounting Year shall in no case exceed an amount equal to the Fixed Charge corresponding to the Normative Availability of 85% (eighty five per cent) computed with reference to the Contracted Capacity at Delivery Point (the "Capacity Charge") in terms of Clause 5.1.2, subject to maintaining at least 85% availability by the Supplier at the Delivery Point corresponding to the Contracted Capacity at the Delivery Point.</p> <p>.....</p> <p>Provided that the Availability to be considered for calculation of Fixed Charges shall be <u>calculated on cumulative basis (for the contractual period of June to October) and reconciled annually for the specified months (June to October) for each year of the contract period.</u></p> <p>.....</p>



Approval of deviation from the Model Bidding Documents (medium term) for procurement of 200 MW Hydro power from projects set up under FOO basis through competitive bidding under Section 63, Section 86 (1) (b) and other applicable provisions of the Electricity Act, 2003 and in terms of applicable Regulations of the West Bengal Electricity Regulatory Commission



Sl. No	Clause No.	Original Text of Draft APP of Model Bidding Documents Approved by the Commission in Order dated 06.03.2024	Revised Text of Draft APP of Model Bidding Documents approved by the Commission in this Order
2.	Clause 13.2.3	If for any reason whatsoever, any amount due and payable in respect of the Monthly Invoice for and in respect of the preceding month is not paid in accordance with the provisions of the Agreement for Procurement of Power, the Supplier may, at any time after the 27th (twenty seventh) day of the month in which the Payment Due Date falls on the strength of Letter of Credit.	If any amount due and payable in respect of the Monthly Invoice for and in respect of the preceding month is not paid in accordance with the provisions of the Agreement for Procurement of Power, the Supplier may, at any time after the 27th (twenty seventh) day of the month in which the Payment Due Date falls, <b>recover such amount</b> on the strength of Letter of Credit.
3.	Clause 26.1	<b>Delivery Point</b> ” means any point in the Inter-State Transmission System having interface with the West Bengal STU where the electricity supplied under this Agreement is received by the Supplier. .....	“Delivery Point” means any point in the Inter-State Transmission System having interface with the West Bengal STU where the electricity <b>supplied</b> under this Agreement is received by the <b>Supplier-Utility</b> . .....
4.	Clause 26.1	“Trading Licensee” shall mean the Applicant/Bidder which is an Electricity Trader or a Distribution Licensee in terms of the Electricity Act, 2003 and submits its Application on the basis of an exclusive power purchase agreement executed with the entity with identified generation source from where the power is proposed to be supplied by the Applicant/Bidder.] ;	“Trading Licensee(s) shall mean the Applicant/Bidder which is an Electricity Trader or a Distribution Licensee in terms of the Electricity Act, 2003 and submits its Application on the basis of an exclusive power purchase agreement <b>or any other relevant agreement</b> executed with the entity with identified generation source from where the power is proposed to be supplied by the Bidder <b>which includes agreement with the State</b>



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			Government (s) having pooled hydro power as a part of contribution of free hydropower statutorily available to State Government (s) from the different hydro projects located in the State.