



**BEFORE THE
ARUNACHAL PRADESH STATE ELECTRICITY REGULATORY COMMISSION
ITANAGAR**

MP-08 OF 2024.

In the matter of:

Petition for approval of Draft Power Purchase Agreement (PPA) between Department of Power, Government of Arunachal Pradesh and M/s Halaipani Hydro Project Private Limited.

Date of Hearing: 25.10.2024.

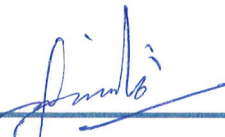
Date of Order: 25.10.2024.

Coram: **Mr.R.K.Joshi Hon'ble Chairperson,**
Mr.Nich Rika Hon'ble Member (Law).

Petitioner : Department of Power, Arunachal Pradesh, Vidyut Bhawan, Itanagar, Arunachal Pradesh (DOPAP).

Appearance:

1. Er. Okam Siram, S E (Com), Department of Power.
2. Er. Rajesh Sharma, J E (Com), Department of Power
3. Mr.P.K.Agarwal, Managing Director, M/s Halaipani Hydro Project Private Limited.


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ORDER

This Order addresses the Petition submitted by the Department of Power, acting in its capacity as a distribution licensee under Electricity Act-2003, seeking approval for a Power Purchase Agreement (PPA) with M/s Halaipani Hydro Project Private Limited developer of a Small Hydro Power project designated as Halaipani Small Hydro Power Project (16 MW).

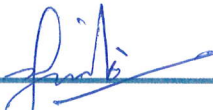
1. Matter was called out for Admission hearing.
2. The Department of Power, Government of Arunachal Pradesh being the petitioner in the instant case has filed this petition for approval of Draft Power Purchase Agreement (PPA) between the Department of Power, Government of Arunachal Pradesh, and M/s Halaipani Hydro Project Private Limited.
3. Petitioner's representative, Shri Rajesh Sharma J.E (Com), Department of Power, Government of Arunachal Pradesh appeared and put forward submission that:
4. An Memorandum of Agreement (MOA) was signed between Consortium of M/s P.K Hospitality Services Pvt. Ltd & M/s Regent Energy Limited with the Government of Arunachal Pradesh on 30.10.2020 for execution of Halaipani Hydro Electric Project (4 x 4


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MW) for 50 years on Build , Own , operate and Transfer (BOOT) basis .


5. As per provision in the clause 2.24 of the MOA, Consortium has created a Special Purchase Vehicle (SPV) in the name and style of M/s Halaipani Hydro Project Private Limited, for implementation of this project and the same is acknowledged vide letter CE(M) HPD/W-608/2020-21/1126-128 , Dated 27.01.2022 .
6. As per the letter No CE(m)/HPD/W-608/2020-21/7169-60, dated 30th October 2020, the developer has agreed to give 23.05 % free power to the Govt. of Arunachal Pradesh.
7. The petitioner further submits that as per MOA Clause 5.2 , the State Government will purchase the power generated from the project at a tariff Rs 0.10 less as finalized by the Electricity Regulatory Authority as per Electricity Act 2003 . a separate PPA will be entered into for such purchase of power between the State Government and the Developer, accordingly, this Power Purchase Agreement is initiated.
8. The petitioner has got the Draft PPA vetted by Finance Department vide e-file No. CE(COM) PPA/HALAIPANI/89/2022 -23 (Computer No. 69554) , Note #78 dated 05.01.2024 and by Law Department Vide e-file No. CE (COM)/PPA/HALAIPANI/89/2022-23 (Computer No. 69554) , Note #39, dated 16.01.2024.



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- 9.** Draft Power Purchase Agreement (PPA) has been duly initiated by both parties, thus seeks approval from this commission.
- 10.** Also seen the notice dated 26.09.2024 issued by the Commission whereby a copy to also served upon the Director, Halaipani Hydro Project Pvt Ltd.
- 11.** The representative of M/s Halaipani Hydro project Pvt. Ltd , The Managing Director , Shri P.K Agarwal also present before the Commission .
- 12.** Placing submission by the representative, M/s Halaipani Hydro project Pvt. Ltd argue that he is not aware of the contents of the petition filed by the Department of Power , Government of Arunachal Pradesh but prayed that for commencing of construction works , bank loan is necessary and the mandatory requisite document Power Purchase Agreement (PPA) has to be entered by the parties beforehand .Representative further submits that due to non-execution of PPA ,Banks are not accepting the proposal of granting the loan in its absence of which project construction is not initiated till today .
- 13.** The Commission on being asked matter regarding current development status of ongoing project till date , the representative , M/s Halaipani Hydro project Pvt informed that Forest Clearance



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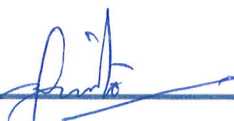
of the project is still not yet issued by the Ministry of Environment , Forest and Climate Change , Government of India.

14. On further submission the representative , M/s Halaipani Hydro project Pvt also intimated that Land Acquisition and Techno Economic Clearance (TEC) has been obtained for the project.

15. The Commission placed that no convincing submissions were put forth by the representative in regard to the slow development status of the ongoing project after signing of the MOA with the Government of Arunachal Pradesh.

ANALYSIS & OBSERVATION

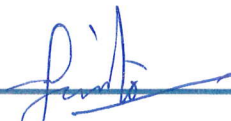
16. The commission after having gone through the petition and submissions of the petitioner as well as the representative of M/s Halaipani Hydro project Pvt. Ltd , observed that the Memorandum of Agreement (MOA) within the parties was inked and executed on 30.10.2020. it is seen that nowhere in the petition or annexed documents details of the work undertaken as of date are reflected. The petitioner admits of not having any knowledge or any documents regarding the progress of the project and informs that this part is taken care by some other Department of Government and on the instructions of the law department to the petitioner to take approval of PPA this petition is submitted.



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- 17.** The project was envisaged for commissioning within 3 years from the allotment i.e in October 2023 Government of Arunachal Pradesh was expecting power from the project for supplying it to consumers of that area.
- 18.** It is observed that out of 3 critical milestones i.e Techno Economic Clearance (TEC), Forest Clearance (F C) and Land Acquisition (L A) , progress is not aligning to the commissioning schedule of October, 2023. The TEC issued to the project has already expired thus not effective and developer needs to take a fresh TEC. Revision is critical given all possibilities of increase in capital cost due to the significant time gap between TEC approval i.e December 2021 and actual project execution. The project site has experienced three monsoons, likely resulting in the deterioration of existing infrastructure and necessitating a revision of reconstruction costs to see that power from this project is still viable.
- 19.** The procurement of necessary forest clearance remains pending, which is a prerequisite for advancing the project.
- 20.** As intimated during oral submission the Land Acquisition is obtained but requires to be verified.
- 21.** When the project was allotted in October 2020, the Government of Arunachal anticipated completion within three years (by October 2023). However, even after an additional year has elapsed beyond scheduled of 2023 , the project has yet to secure




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mandatory clearances required before any construction activity can commence. This delay of 4 years in project execution and completion have already rendered the project potentially unviable and uneconomical, undermining the interests of consumers.

- 22.** No Resource Adequacy Plan as per RA Regulation 2024 has been submitted by the Distribution Licensee for the Commission's approval which is required to decide how many PPAs are required by the licensee and when.
- 23.** The Commission has observed that several similar PPAs have been executed by the petitioner with other parties, but still those projects are not visible on horizon. keeping such PPAs in hand without reality check is going to give an unrealistic resources availability to the petitioner , which will result into wrong projections of resources in hand for distribution to the consumers of the state .
- 24.** The Memorandum of Agreement (MOA) clause 2.7 states that "the State Government shall accord necessary clearances, if any, under its purview within a reasonable period," but Forest Clearance does not fall under the purview of the State Government.
- 25.** The power sector fabric of the State is changing rapidly. Holding onto economically unviable projects with PPAs in hand could misrepresent the availability of power to the distribution licensee and the Government of Arunachal Pradesh. Past PPAs signed by the distribution licensee rely on uncertain timelines, leading to a false



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sense of power availability. This situation could hinder the licensee's ability to secure economically viable resources for consumption. The licensee should review all such PPAs and develop a realistic pool of resources with clear timelines in its procurement plan and Resource Adequacy Plan.

26. The petitioner failed to satisfy the commission in terms of project coming to reality in near future. To the Commission's understanding, no visible work is seen as of date in regard to the project.

27. The Commission while referring to the Article 12.1 of the Memorandum of Agreement which reads as:

"12.1 The Company shall achieve the financial closure within a period of 6(six) months from the date of agreement and commission the project in 30(thirty)months from the date of MOA. In the event that it is confirmed as impossible or impractical to achieve financial closure or if the financial closure is not achieved on or before the expiry of six months from the aforesaid, for the reasons other than those attributable to the Government of Arunachal Pradesh, The Government of Arunachal Pradesh reserves the right to terminate the agreement."



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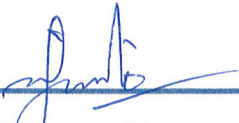
28. That by bare reading of the Article 12.1 of the MOA it implies that the project should have to be completed within 30 (thirty) months from the date of MOA . but in present case the Commission observed that almost four years had past since the date of MOA exceeding the stipulated time period of 30 (thirty) months.

29. The submission placed by the representative of Developer linking the slow progress of project with bank loan which is not coming forth due to non-availability of PPA is not a fact . No project gets loans from lending institutions before project reaches to a bankable position by having mandatory clearance in hand . This part is always done by the developer from the funds of his equity. therefore, the statement of representative of developer regarding non availability of PPA resulting into not funding of loan which is further resulting into non commencing of the project at ground is not acceptable.

CONCLUSIONS:

30. Pursuant to Section 86(b) of the Electricity Act, 2003, the Commission is empowered to regulate the electricity purchase and procurement processes of distribution licensees within the state.

31. Approving a Power Purchase Agreement for a project that has not yet achieved mandatory obligations prior to construction, without updated capital cost projections and a clear timeline for



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completion, is imprudent and not in the best interests of consumers and emphasizes the importance of due diligence by distribution licensees in their procurement processes.

- 32.** The approval of PPA at this stage can be considered as premature.

ORDER

Based on the foregoing observations and conclusions, the Commission hereby:

- 33.** Dismisses the petition for approval of the Power Purchase Agreement, on the grounds of unpreparedness of distribution licensee to finalise Resource adequacy plan, insufficient progress of project, missed critical milestones resulting into uncertainty in project coming to reality on ground, and lack of viability due to abnormal delay in start of execution since MOA.
- 34.** The Petitioner may submit a new petition in event of any changes in circumstances addressing the deficiencies noted herein, along with a comprehensive plan detailing the pathway to achieving all requisite approvals and milestones.
- 35.** The MOA for the development of small hydro power projects contains clauses for purchasing power; however, these cannot be interpreted in isolation from the overarching goals of providing



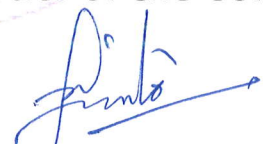
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essential infrastructure for citizens. The Government must not wait indefinitely for delayed projects. Given, the four years elapsed without ground breaking, parallel options of alternative power sources must be pursued to ensure 24x 7 supply of quality power to its consumers on economical cost . The burden of purchasing costly power from such delayed projects with indefinite time line should not fall on consumers, necessitating a review of the project in a fresh way for its viability.

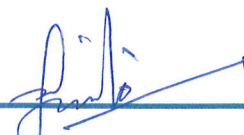
- 36.** In views of the forgoing observations, we are satisfied that at this stage the approval of Power Purchase Agreement (PPA) will be pre mature. Thus the petition M.P 08 of 2024 for approval of Draft Power Purchase Agreement (PPA) between the Department of Power, Government of Arunachal Pradesh and M/s Halaipani Hydro Project Private Limited is refused and dismissed.

By order of the Commission.



Secretary I/c

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