

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**

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Case No. 66 of 2011

In the matter of

**Petition filed by Maharashtra State Electricity Distribution Company Ltd (MSEDCL)
seeking approval for Energy Purchase Agreement between MSEDCL and NTPC for
Purchase of wind energy as per CERC Order dated 09.11.2010 and CERC (Terms and
Conditions for Tariff determination from Renewable Energy Sources) Regulations,
2009.**

Shri. V. P. Raja, Chairman

Shri. Vijay L. Sonavane, Member

ORDER

Dated: July 6, 2011

The Maharashtra State Electricity Distribution Company Ltd., the Petitioner, herein, filed a petition on affidavit before the Commission on May 2, 2011 under Regulations 93 and 94 of the MERC (Conduct of Business) Regulations, 2004, seeking approval of an Energy Purchase Agreement between MSEDCL and NTPC for purchase of wind energy as per CERC Order dated November 9, 2010 and CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009.

2. The main prayers of the Petitioner are as follows;

“ ...

- a) *This Hon'ble Commission be pleased to approve the Energy Purchase Agreement with NTPC entered into by MSEDCL on 21.03.2011 which is in accordance with CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 and the CERC Suo-Motu order in Petition No.256/2010 dated 9th November, 2010 instead of MERC Regulations and Orders in the matter.*

- b) *This Hon'ble Commission be pleased to consider and hold eligible the entire quantum of wind energy purchased by MSEDCL from the above said project of NTPC, as per said EPA, in the Renewable Energy Purchase Obligation Target of MSEDCL.*
- c) *This Hon'ble Commission be pleased to pass any order in the said matter as deem fit."*

3. The Petitioner in its Petition submitted as follows;

3.1 National Thermal Power Corporation (NTPC) is setting up 39 MW wind power project at village Chakala in Nandurbar district of Maharashtra State. NTPC intends to supply this wind energy to the Petitioner by entering into an Energy Purchase Agreement (EPA).

3.2 In this connection, the State Commission i.e., MERC would regulate electricity purchase and procurement process including the price at which electricity shall be procured from NTPC but as NTPC is a Central Government organization, it is governed by CERC Rules and Regulations under Section 79 of the Electricity Act, 2003. Hence CERC rates would be applicable to NTPC Wind power project.

3.3 The functions of Central Commission as per Section 79(1) of EA 2003, is extracted below:-;

“

79(1) The Central Commission shall discharge the following functions namely;

a) to regulate the tariff of generating companies owned or controlled by the Central Government;

b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State.

.....”

3.4 The above provision is further reiterated in the proviso 3 of the CERC (Terms and Conditions of Tariff Determination from Renewable Energy Sources) Regulations, 2009 where in, it is clearly stated that CERC would determine the Tariff under the

section 79 of the Act. NTPC further requested the Petitioner to sign the EPA immediately in order to have investment approval from their Board urgently.

3.5 As per the Section 86(1) of the Electricity Act 2003, the functions of State Commission are extracted below;

“ 86 (1)

.....
(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;
.....

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

..... ”

3.6 Regulation 7.2 of MERC (Renewable Purchase Obligation, its compliance and Implementation of REC framework) Regulations 2010, to the extent relevant are extracted as follows:-

“

7.2 Every ‘Obligated Entity’ may meet its RPO target by way of own generation or procurement of power from RE developer or by way of purchase from other licensee or by way of purchase of renewable energy certificate or by way of combination of any of the above options.

Provided further that procurement of RE power generated within the State by Distribution Licensee at rate other than rate approved by the State Commission directly from generator or from trader shall not be considered as eligible quantum for fulfilment of renewable purchase obligation of such distribution licensee.”

3.7 With due regard to the fact that NTPC is a Government of India entity and also to meet the target of Renewable Purchase Obligation of the Petitioner as set out by the Commission, the Competent Authority of the Petitioner accorded approval to initialize the EPA, subject to approval of the Commission. Accordingly, the Petitioner has entered into an Energy Purchase Agreement with NTPC on March 21, 2011 subject to the following:-

A) The terms and conditions in the EPA regarding the rate of purchase of power and other provisions as per CERC Regulations (instead of MERC Regulations) would be agreed by the Petitioner subject to approval of the EPA from MERC.

B) The EPA would be effective only after approval of the MERC.

3.8 Furthermore, Regulations 93 and 94 of the MERC (Conduct of Business) Regulation, 2004, are extracted below:

“....

93. Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act, a procedure, which is at variance with any of the provisions of these Regulations including summary procedures, if the Commission, in view of the special circumstance of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for so dealing with such a matter or class of matters.

94. Nothing in these Regulations shall bar the Commission to deal with any matter or exercise any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

....”

3.9 In accordance with the above, it is submitted by the Petitioner that the Commission is empowered under Regulations 93 and Regulation 94 of MERC (Conduct of Business) Regulations, 2004 to adopt a different procedure than is specified in the Conduct of Business) Regulations.

4. Based on the Petitioner’s submission, the Commission admitted the Petition and the notice was issued to four authorized consumer representatives on May 5, 2011. Subsequently, a hearing was held on May 9, 2011. Shri. R.G. Sonavane, SE (Commercial) appeared on behalf of Petitioner. Shri. A. Nautiyal and Shri. H.

Harchandani, Dy. GM representatives of NTPC Ltd. were also present in the hearing.

5. During the hearing, the Petitioner requested the Commission to approve the Energy Purchase Agreement (EPA or PPA) executed between NTPC Ltd., and the Petitioner on 21st March, 2011, which is in accordance with CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 and the CERC Suo-Motu Order in Petition No. 256/ 2010 dated November 9, 2010 instead of MERC Regulations and Orders in this matter and consider and hold eligible the entire quantum of wind energy purchased by the Petitioner from the above said project of NTPC, as per said EPA, in the Renewable Energy Purchase Obligation target of the Petitioner. The representatives of NTPC Ltd., stated that the land for their proposed wind power project has been identified at village Chakala, Dist. Nandurbar and the wind power project will be commissioned within 12-18 months after the investment approval from the NTPC Board.
6. In accordance with the Tariff Policy notified by the Central Government all future requirement of power is to be procured competitively by the Distribution Licensee and the tariff thereof is to be decided on the basis of competitive bidding. This is however subject to certain exemptions. The said policy contains certain special provisions with regard to procurement of power from the non-conventional source of energy. The relevant provisions from clause 6.4 of the Tariff Policy are re-produced below:-

“It will take some time before non-conventional technologies can compete with the conventional sources in terms of cost of electricity. Therefore, procurement by distribution companies shall be done at preferential tariffs determined by the Appropriate Commission.”

“Such procurement by Distribution Licensees for future requirements shall be done, as far as possible, through competitive bidding process under Section 63 of the Act within suppliers offering energy from same type of non-conventional sources. In the long term, these technologies would need to compete with other sources in terms of full costs.”

The Tariff policy thus envisages intra-category competitive bidding in the interim stage and inter category competitive bidding in the ultimate scenario.

7. The Regulation 8 (1) of CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 provides that CERC shall determine

the generic tariff on the basis of suo-motu petition at least six months in advance at the beginning of each year of the Control period for renewable energy technologies for which norms have been specified under CERC RE tariff Regulations. Accordingly, CERC in due discharge of the mandate under Regulation 8(1) of CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009, has determined the generic tariff of the RE projects for the third year of control period (i.e. FY 2011-12) by Order dated November 9, 2010, Petition No. 256/2010 (suo-motu).

8. The Commission has examined the PPA signed between the Petitioner and NTPC Ltd., wherein the Clause No. 5 (5.1) and Clause No. 12 of PPA are reproduced as below;

“

5.0 Tariff

5.1 The Tariff for the electricity supplied from the commissioning of each WTG would be applicable rate without accelerated depreciation in Rs/kWh for the relevant year of the commissioning as notified by CERC from time to time based on the CERC (Terms and Conditions for Tariff determination from the Renewable Energy Sources) Regulations, 2009 as amended from time to time.

”

“

12.0 Effective Date and Duration of Agreement

The agreement shall come into effect for all purpose and intent from the date of signing of the agreement subject to approval of MERC.

Subject to the establishment and continuance of payment security as envisaged under Article 6.2 under Establishment of Letter of Credit (LC) and Payment Security Mechanism to the satisfaction of NTPC, agreement shall remain operative up to completion of Twenty Five (25) years from the date of commercial operation of the station, unless it is specifically extended on mutually agreed terms.

”

From the above clauses of the EPA/PPA, the Commission observed that there is uncertainty in the applicable tariff as the commissioning date of the said wind project is not clearly mentioned, which is subject to the investment approval from NTPC board. However, the wind tariff as mentioned in CERC Order dated November 9, 2010, Petition No. 256/2010 (suo-motu), is applicable for the wind power projects commissioned during F.Y 2011-12. Considering the fact that, in line with Regulation 8(1) of CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009, CERC shall determine the generic tariff on the suo-motu basis for renewable energy technologies for subsequent years also, the tariff determined by CERC during the subsequent year shall also be applicable to the NTPC wind power project commissioned during that year, provided that the Petitioner shall intimate and take the prior approval of this Commission regarding the wind zone wise applicable tariff, (for the NTPC's wind power project) at which the power would be purchased by the Petitioner.

In view of above, in exercise of the functions of this Commission under Sub-section (b) and (e) of Section 86 (1) of EA 2003, the Commission hereby approves the procurement of wind power by MSEDCL from NTPC and the consequent Energy Purchase Agreement (EPA)/PPA between NTPC Ltd. and the Petitioner, for 39 MW wind power project at Village Chakala (Nandurbar District).

9. During the hearing, a reference was made to the proviso to Regulation 7.2 of MERC (Renewable Purchase Obligation, its compliance and Implementation of REC framework) Regulations 2010 extracted in the above paragraphs.

It is clarified that the decision in the present case in terms of the above paragraphs is not affected by the proviso to Regulation 7.2 because the said proviso does not apply to those generating companies, whose tariffs are regulated under Section 79 of the EA 2003.

With the above, Case No. 66 of 2011 stands disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman