

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 84 of 2011

In the matter of
Petition filed by Reliance Infrastructure Limited for adoption of tariff determined through transparent process of bidding under Section 63 of the Electricity Act, 2003 in respect of Power Purchase Agreement entered into between Reliance Infrastructure Limited on the one hand and Abhijeet MADC Nagpur Energy Pvt. Ltd.

Shri V.P. Raja, Chairman

ORDER

Dated: July 1, 2011

Reliance Infrastructure Ltd. (RInfra) submitted a Petition under affidavit on June 14, 2011 under Section 63 of the Electricity Act, 2003 (hereinafter referred as EA 2003) for adoption of tariff determined through transparent process of bidding in respect of Power Purchase Agreement entered into between Reliance Infrastructure Limited and Abhijeet MADC Nagpur Energy Pvt. Ltd. (AMNEPL).

2. The main prayers of the Petitioner, are as under:

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1) that this Hon'ble Commission may be pleased to approve extension of time taken for the entire bidding process under Case 1- procurement of power on medium term basis and to condone the delay under para 5.16 read with para 5.19 of the Guidelines;

2) that this Hon'ble Commission may be pleased to adopt the tariff in the Power Purchase Agreement entered into between Reliance Infrastructure

*Ltd. And Abhijeet MADC Nagpur Energy Pvt. Ltd. Dated 04th August, 2010
(Annexure “A”);*

- 3) *that this hon’ble Commission may be pleased to note the certification certificates provided by the Evaluation Committee and RInfra being Annexures “B” and “C” hereto.*
- 4) *that this Hon’ble Commission may please clarify whether the compliance of Clause 6.3 of CBG is require before or after adoption of tariff by Hon’ble Commission*
- 5) *For such and further and other reliefs as the Hon’ble Commission may deem appropriate in the facts and circumstances of the case.”*

3. The Petitioner in its Petition submitted as under:

(i) Introduction:

RInfra generates about 500 MW power at its Dahanu Thermal power Station. This power is used by RInfra to supply to its Distribution Licensed area i.e. Mumbai suburbs.

(ii) Background:

RInfra filed a Petition before the Commission for approval of proposed quantum of power for Medium Term Power Procurement (MTPP) through Competitive Bidding process under Case 1 bid. The Commission disposed the matter vide its Order dated July 21, 2009 in Case No. 94 of 2008.

On approval of the quantum, RInfra issued a Request For Proposal (RFP) on July 30, 2009 for procurement of power through Case 1 bids for Medium Term Power Procurement (MTPP). Abhijeet MADC Nagpur Energy Pvt. Ltd. placed an offer vide its letter dated September 9, 2009 to supply 55 MW of power on medium term basis containing financial and non financial bids respectively.

(iii) Seriatim of the Events:

- a) RInfra vide its letters dated September 22, 2009 called upon AMNEPL to submit clarifications/additional documents which were provided by AMNEPL on September 25, 2009.

- b) A meeting was scheduled by RInfra on January 7, 2010 for discussion on financial bid submitted by AMNEPL. The Bid validity was extended by AMNEPL till January 17, 2010 from the earlier validity date of January 10, 2010.
- c) AMNEPL submitted the revised financial bid on January 14, 2010, where it mentioned that instead of supplying power at original levelled tariff of Rs.5.476/kWh, it was willing to supply at a lower levelled tariff of Rs.4.80/kWh.
- d) AMNEPL again submitted the revised financial bid on May 10, 2010. Accordingly, RInfra on the same day issued a Letter of Intent to AMNEPL for procurement of 55 MW power at a levelled tariff of Rs.4.80/kWh.
- e) The Commission vide letter dated April 27, 2010 enquired about the actual status of the MTPP process, to which RInfra submitted replies vide its letters dated May 19, 2010 and May 24, 2010 to the Commission. In the said letters, RInfra pointed out that it had already issued a LoI to AMNEPL for the MTPP for 55 MW and Wardha Power Company Ltd. (WPCL) and Reliance Power Ltd. (RPower). Further, RInfra informed the Commission that from April 1, 2010, the financial bid negotiations were in progress with other bidders. Moreover, the Evaluation report was also submitted to the Commission.
- f) In reply to the Commission's letter dated June 15, 2010, RInfra informed the Commission that AMNEPL has requested for further 45 days for signing of PPA as its bankers need time to provide the Contract Performance Guarantee.
- g) However, the Power Purchase Agreement (PPA) was executed with WPCL for 260 MW on June 4, 2010, Vidharbha Industries Power Ltd. (VIPL) for 134 MW on June 16, 2010 and with AMNEPL for 55 MW on August 4, 2010.
- h) Though RInfra entered into a PPA with AMNEPL on August 4, 2010, RInfra informed AMNEPL vide its letter dated December 21, 2010 about the Expression of Interest (EoI) invited by the Commission on October 6, 2010. In the said letter, RInfra informed AMNEPL that it would be unable to proceed further. However, AMNEPL on January 29, 2011, requested RInfra to increase the validity period as per Clause 3.2 for further three months and later on approached the Commission.
- i) Further, AMNEPL vide its letter dated February 26, 2011 requested RInfra to comply with the obligations under Clause 3.2 of the PPA. However, RInfra through its letter dated March 10, 2011 again informed AMNEPL that it would be unable to proceed further as per the PPA due to the EoI invited by the Commission.

- j) Therefore, AMNEPL filed a Petition before the Commission bearing Case No. 42 of 2011 on March 29, 2011 under Section 63, Section 86 (1) (b) and Section 86 (1) (f) of the EA 2003.
- k) The Commission vide Notice dated March 29, 2011 scheduled a hearing in the matter on March 30, 2011 and the matter was heard from time to time. Further, the Commission disposed of the Petition vide Order May 31, 2011 in Case No. 42 of 2011 and directed RInfra to file a Petition under Section 63 of the EA 2003 for adoption of the tariff discovered through transparent bidding process as per the Competitive Bidding Guidelines (CBG) of Ministry of Power (MoP), Government of India within two weeks time period from the date of the said Order.

(iv) Additional points in the Petition:

- a) Signing of the Escrow Agreement: R-Infra has not submitted the Escrow/Hypothecation agreements along with its petition.
- b) Clarification on Article 6.3 of the CBG:
Article 6.3 of the CBG, states that the name of the successful bidder shall be made public and that a notice regarding the same should be published in at least two newspapers. RInfra requested the Commission for providing clarification on the same that whether the same is required to be published before or after the adoption of the tariff by the Commission.
- c) Condonation of Delay:
RInfra submitted that the entire Bidding process took more than 195 days. Therefore, it requested the Commission to condone the delay in the Bidding process. As the delay is due to various factors like the extension of the period for receipt of Bids and RInfra's endeavour to reduce the financial Bids as originally received by it.

4. The Commission vide Notice dated June 17, 2011 scheduled a hearing in the matter on June 28, 2011 at 15.00 hrs. in the presence of authorised Consumer Representatives under Section 94 (3) of the EA 2003.

5. During the hearing held on June 28, 2011, Shri. G.J. Thakkar, Senior Manager appeared on behalf of RInfra. Consumer Representative Shri. S.L. Patil and Shri. Ashok Pendse on behalf of Thane Belapur Industries Association (TBIA) were present for the hearing.

Shri. G.J. Thakkar from RInfra submitted that RInfra has signed a PPA with AMNEPL on 4th August, 2010 and in pursuant to the Commission Order dated 31st May, 2011, RInfra has submitted this Petition for adoption of tariff. He further submitted that RInfra will sign the Default Escrow Agreement and Hypothecation Agreement with AMNEPL within 2 days and will submit the same to the Commission. Further, he requested for clarification on the Clause 6.3 of the CBG.

6. Having heard the Petitioner, the Commission holds as follows:

The Commission issued an Interim Order dated April 15, 2011 in Case Nos. 11 and 42 of 2011 and has issued the following directions.

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- f) *As regards AMNEPL, the plant is currently supplying 54 MW from Unit 1 to MSEDCL and other units have not yet achieved the CoD. AMNEPL is not presently in position to supply power to RInfra-D as per the PPA. However, since the PPA that has been executed is for a period of three (3) years, the legal validity thereof is subject to the outcome of the proceedings and final disposal thereof, the Commission directs that till the final outcome of the proceedings RInfra-D shall not terminate the PPA dated August 4, 2010, and maintain status quo till further Orders of the Commission.”*

Further, the Commission issued the Final Order dated May 31, 2011 in Case No.42 of 2011 and directed AMNEPL to complete the formalities of scheduling and start supply of 55 MW Power to RInfra from July 1, 2011 as per PPA dated August 4, 2010. The Commission also directed RInfra to file an appropriate Petition/application under Section 63 of the EA 2003 along with requisite documents, information and details for adoption of the tariff discovered through transparent bidding process as per the Competitive Bidding guidelines of Ministry of Power, Government of India.

7. In light of the above, the Commission is of the view as under:

- a. As regards the timelines for the single stage bid process, the Competitive Bidding Guidelines and its amendments carried out upto 21st July 2010 stipulate that in normal circumstances, the bid process is likely to be completed in a period of 120 days and the Procurer may give extended timeframe, if required. However, if the bidding process is likely to take more than 195 days, approval of the Appropriate Commission shall be obtained in accordance with Clause 5.16. In this regard, RInfra has submitted that due to various factors, including the request for extension of the

period for receipt of the bids by the prospective bidders as well as RInfra's endeavour to reduce the Financial Bids as originally received by it, completion of the bidding process was to be extended. In the circumstances stated above, the Commission condones the extended time taken in the bidding process and directs RInfra to adhere to the timelines stipulated in the Competitive Bidding Process for new bidding processes in future.

- b. The Commission approves the adoption of the tariff for 55 MW as per the following schedule consequent to the selection process in accordance with the terms and conditions as finalised in the RFP bid documents. The levelled tariff approved for adoption is as under:

Sr. No.	Period of Supply	Timing (hrs.)	Quantum	Levelled Tariff (Rs./kWh)
1	Starting from July 1, 2011 to March 31, 2014	Round the Clock	55 MW	4.80

- c. The Commission directs RInfra to submit the final PPA with Abhijeet MADC Nagpur Energy Pvt. Ltd. along with duly signed Escrow Agreement and Hypothecation agreement to the Commission.
- d. The Commission directs RInfra to adhere to the following provisions :-

“6.3 For the purpose of transparency, the procurer shall make the bids public by indicating all the components of tariff quoted by all the bidders, after signing of the PPA or PPA becoming effective, whichever is later. While doing so, only the name of the successful bidder shall be made public and details of tariffs quoted by other bidders shall be made public anonymously. The procurer shall also make public the PPA signed in accordance with clause 6.1.

For above purpose, a notice will be published in at least two national newspapers and full details shall be passed on the website of the procurer for at least thirty days.”

Accordingly, RInfra shall comply with the provisions under para 6.3 of the Competitive Bidding Guidelines issued by the Ministry of Power quoted above, with immediate effect.

With the above observations and rulings, RInfra Petition in Case No.84 of 2011 is disposed of.

Sd/-
(V. P. Raja)
Chairman