

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 22 of 2010

In the matter of
Maharashtra State Electricity Distribution Company Ltd.'s (MSEDCL) Petition
for adoption of the tariff for procurement of 2000MW (-20%/+30%) power on Long
term basis under International Competitive Bidding Process (Case 1 Stage 2)

Shri V.P. Raja, Chairman
Shri Vijay L. Sonavane, Member

ORDER

Dated: December 28, 2010

Maharashtra State Electricity Distribution Company Limited (MSEDCL) filed a Petition under affidavit before the Commission on June 19, 2010, for adoption of the tariff for procurement of 2000 MW (-20%/+30%) power on long-term basis under Competitive Bidding Process (Case 1 Stage 2).

2. The main prayers in the Petition are as follows:

“

1. *Note the certificates and relevant approvals, documents under Annexure -8.*
2. *Approval for adoption of the tariff discovered through the competitive bid process (Case 1-Stage 2) and further negotiated by Government of Maharashtra and approved by the Cabinet Sub Committee of Energy.*



3. *Approval for extension of time taken in the entire bidding process under Case 1- Stage 2 procurement of power on long term basis and request the condonation of the delay.”*

3. MSEDCL in its Petition submitted as under:

- a) The Commission issued direction to MSEDCL in its Order dated May 7, 2009 in Case No. 3 of 2009 for starting Competitive Bidding process in line with Standard Bidding Documents (SBD) notified by Ministry of Power (MoP). Accordingly, MSEDCL floated the advertisement for procurement of 2000 MW power on long-term basis under Case 1 Stage 2.
- b) Since, MSEDCL desired to incorporate some deviations from the SBD issued by MoP, it approached the Commission for approval of the same, and accordingly the Commission in its Order dated July 23, 2009 in Case No. 28 of 2009 directed MSEDCL to amend the bidding documents.
- c) MSEDCL submitted that total 17 bidders collected RFP documents and only 8 bidders submitted the RFP bids on August 7, 2009.
- d) MSEDCL finalized 4 out of 8 bidders on the basis of Technical Bid Evaluation Committee reports and the financial bids of responsive bidders were opened on September 24, 2009. MSEDCL Evaluation Committee observed that the tariff quoted by the bidders were not unduly high and recommended power procurement of 1850 MW (sum of three lowest bids) at an average levelised tariff of Rs. 3.24 /kWh.
- e) MSEDCL Board considered the Evaluation Committee reports and accordingly sent proposal to Government of Maharashtra (GoM) on November 17, 2009 for negotiation of price, as it involved huge quantum of power procurement.
- f) The request for extension of bid bond and its validity was sent to qualified bidders. M/s. Emco Energy Ltd. declined to extend the bid bond validity and hence, MSEDCL Board issued Letter of Intent (LoI) to Emco Energy Ltd. for procurement of 200 MW at levelised tariff of Rs 2.879/kWh (quoted lowest bid price).
- g) A high level negotiation committee was formed under the chairmanship of Chief Secretary and the Committee accorded its consent and final approval to negotiated



levelised tariff of responsive bidders on March 6, 2010. Accordingly, LoIs were issued to M/s. Indiabulls Power Ltd. for supply of 450 MW from Amravati Project, and to M/s. Adani Power Maharashtra Ltd. for supply of 1200 MW from Tirodia Project.

- h) Indiabulls Power Ltd. submitted its offer to MSEDCL for supply of additional 750 MW at Rs 3.260/kWh on March 20, 2010 from its Amravati Plant, which received its final consent from GoM on May 24, 2010.
- i) The Power Purchase Agreement's (PPA's) were executed by MSEDCL with Emco Energy Ltd on March 17, 2010., with Adani Power Maharashtra Ltd. on March 31, 2010, and with Indiabulls Power Ltd., Amravati on April 22 and June 5, 2010.
- j) The negotiated levelised tariff approved by GoM are as under:

Sl.	Name of Bidding Company	Successful Bidders	Capacity Offered (MW)	Levelised Tariff (Rs./kWh)
1	Emco Energy Ltd.	L1	200	2.879
2	Indiabulls Power Ltd.(Amravati)	L2	450	3.260
3	Indiabulls Power Ltd. (Amravati)	L2	750	3.260
4	Adani Power Maharashtra Ltd.	L3	1200	3.280

4. The Commission, vide its Notice dated July 14, 2010, scheduled a hearing in the matter on August 3, 2010, and directed MSEDCL to serve a copy of its Petition along with its accompaniments to the four authorised Consumer Representatives.

5. At the hearing held in the matter on August 3, 2010, Shri A.S. Chavan, Chief Engineer (Power Purchase), Shri Manoj Multani and Shri. Arpit Agrawal (Consultant for MSEDCL) appeared on behalf of MSEDCL. Ms. Ashwini Chitnis, Prayas Energy Group, authorised Consumer Representative also attended the hearing. MSEDCL reiterated the submissions made in the Petition during the hearing in the form of presentation with details of the procedure followed in the Competitive Bidding process.



6. During the hearing, the Commission enquired about the status of the projects. MSEDCL submitted that the projects are at advanced stage and will be completed before the scheduled Commercial Operation Date (COD).

7. Prayas Energy Group, vide its letter dated August 6, 2010, submitted the following:

- a) The Standard Bidding Documents and the Guidelines notified by MoP undergo amendments from time to time. Hence, MSEDCL should clearly mention the version of SBD with respect to which deviations have been sought.
- b) As per the Clause 5.6 of the Competitive Bidding Guidelines, the model PPA proposed in the bidding documents may be amended based on the inputs received from the interested parties, and shall be provided to all parties responding to the Request for Proposal (RFP), and no further amendments shall be carried out beyond the RFP stage. This Clause implies that for a single stage bidding process, as in the said process, the PPAs signed with all the bidders shall be identical.
- c) The preliminary analysis of the PPAs signed between MSEDCL and the selected bidders (i.e., Indiabulls Power Ltd., Adani Power Maharashtra Ltd., Emco Energy Ltd.) have certain difference in important Clauses in the PPAs. The summary of the deviations observed is as under:

Article/ Schedule	SBD PPA- Case I	Emco Energy Ltd. PPA	Adani Power Maharashtra Ltd.PPA	Indiabulls PowerLtd. PPA
3.1.1 c-	Seller responsible for maintaining transmission linkage [Insert where the Seller is responsible for obtaining necessary transmission linkage] The Seller shall have obtained the necessary permission for long term open access for the	Present	Deleted	Deleted



Article/ Schedule	SBD PPA- Case I	Emco Energy Ltd. PPA	Adani Power Maharashtra Ltd.PPA	Indiabulls PowerLtd. PPA
	transmission system from the Injection Point up to the Delivery Point and have executed the Transmission Service Agreement with the transmission licensee for transmission of power from the Injection Point up to the Delivery Point and provided a copy of the same to the Procurer(s);			
3.2.1 a	[Insert this clause where the Procurer(s) is responsible to arrange for obtaining necessary transmission linkage] The Procurer(s) shall have obtained necessary permission for [Insert 'medium term' or 'long term' as applicable] open access for the transmission system from the Injection Point up to the Delivery Point and shall have executed the Transmission Service Agreement with the	Present	Deleted	Deleted



Article/ Schedule	SBD PPA- Case I	Emco Energy Ltd. PPA	Adani Power Maharashtra Ltd.PPA	Indiabulls PowerLtd. PPA
	<p>CTU and / or STU [select whichever is applicable] for transmission of power from the Injection Point up to the Delivery Point and provided a copy of the same to the Seller;</p> <p>[Insert this clause where the Seller is responsible to arrange for obtaining necessary transmission linkage] The Procurer(s) shall facilitate the representation of the Seller in the relevant RPC forum in coordinating on applicable inter-state/regional transmission linkages required from the Injection Point to the Delivery Point.</p>			
4.1.1	<p>The Seller shall be responsible to commence supply of power up to the Aggregated Contracted Capacity by the Scheduled Delivery Date in accordance with the provisions of this Agreement, which is</p> <p>[insert the date specified by the Procurer / Authorized</p>	Not less than 4 years from effective date	4 years from the effective date	Not less than 4 years from effective date



Article/ Schedule	SBD PPA- Case I	Emco Energy Ltd. PPA	Adani Power Maharashtra Ltd.PPA	Indiabulls PowerLtd. PPA
	Representative in the RFP]. However, the Seller and the Procurer(s) may mutually agree for commencement of supply of power in a phased manner from the Revised Scheduled Delivery Date(s) as specified in Article 3.3 of this Agreement.			
Schedule 6	Schedule 6 ends at Schedule 6.1.4	As per SBD	Additional Clause 6.1.5, 6.1.6	Additional Clause 6.1.5

- d) Prayas Energy Group further submitted that one such important deviation is the difference in scheduled delivery dates for different sellers. For Indiabulls Power Ltd. and Emco Energy Ltd., the scheduled delivery date is mentioned as ‘not less that four years’ from the PPA being effective whereas for Adani Power Maharashtra Ltd., it is ‘four years from’ effective date. The SBD requires the procurer to clearly mention the scheduled delivery date in the PPA.
- e) Most of the power projects are in advanced stage of completion and the power from projects would be available before scheduled delivery date. In such case, bidding guidelines provide ample scope for MSEDCL to ensure that generation from the contracted capacity becomes available even prior to the scheduled delivery date, and in absence of such efforts, the power may be diverted through the short term market in intermediate period, in spite of the contracted capacity with MSEDCL. Thus, MSEDCL and the Commission should exercise the right for the contracted capacity of power to be used in power deficit Maharashtra as soon as commercial operation of plant is achieved.



- f) MSEDCL should submit a detailed status report of all its competitive bidding process, both completed as well as ongoing along with the status of the said power projects.
- g) MSEDCL should publish the assumptions if any, along with the financial models on its website (Excel Sheet Model) used for bid evaluation and arriving at levelised tariff process on MSEDCL website.
- h) MSEDCL should clearly mention that the scheduled delivery date for different Sellers in its respective PPA are as per Standard Bidding Documents (SBD). The procurer should clearly mention the scheduled delivery date in the PPA.
- i) As per Clause 5.6 of Competitive Bidding guidelines, no further amendments can be made beyond the RFP stage. Therefore, in the single stage bidding process, the PPA's signed should be identical for all bidders.
- j) The Commission should prudently check the terms and conditions along with earlier approved deviations adopted by the parties in the PPA's and ensure that the PPA's include only those deviations that have been approved by the Commission.

8. Having heard the Parties, and after considering the material placed on record, the Commission is of the view as under:

- a. The SBD of MoP dated March 27, 2009 in Article 1.1 under definitions states as under:

“

*“Power Station's Net Capacity” shall mean [.....] MW, being Installed Capacity of the Power Station measured at the bus-bar, reduced by the normative auxiliary power consumption as prescribed by CERC from time to time;
In case of a dedicated transmission line connecting the bus-bar and the Interconnection Point, the Power Station's Net Capacity shall beMW, being the Installed Capacity of the Power Station measured at the Interconnection Point and reduced by the normative auxiliary power consumption and losses, if any, of such dedicated transmission line;”*



The definition of Power Station's Net Capacity is also the same in RFP document issued by MSEDCL. In case of PPA with Emco Energy Limited, the Power Station's Net Capacity may be modified as 280.5 MW instead of 300 MW after reducing the Auxiliary Consumption as prescribed by CERC from the installed capacity of 300 MW.

- b. The Standard PPA issued by MoP on March 27, 2009 in Article 1.1 under definitions states as under:

“

“STU Interface”

shall mean the point at which the CTU network is connected to the intrastate transmission system of the Procurer(s)'s State(s), and at which the Procurer(s) agree to receive power up to the Requisitioned Capacity;

For generation source in the same state as that of the Procurer(s), the STU Interface shall be the bus-bar of the generating station from which power is contracted to be supplied, at an appropriate voltage level as specified by the STU.”

The above said Clause is not there in PPA signed between MSEDCL and Emco Energy Ltd. The same Clause may be inserted in the PPA signed between MSEDCL and Emco Energy Ltd.

- c. In case of PPA with Emco Energy Ltd., Clause 3.1.1 (c) of the PPA stipulates as follows:

“The Seller shall have obtained the necessary permission for long term open access for the transmission system from the Injection Point up to the Delivery Point and have executed the Transmission Service Agreement with the transmission licensee for transmission of power from the Injection Point up to the Delivery Point and provided a copy of the same to the Procurer(s);”



Further, the Clause 3.2.1 (b) of the PPA stipulates as follows:

The Procurer shall have obtained necessary transmission linkage for long term open access for the transmission system from the Power Station switchyard up to the Delivery Point and shall have executed the Transmission Service Agreement with the STU for transmission of power from the Power Station switchyard up to the Delivery Point and provided a copy of the same to the Seller. Further, the Procurer shall indicate in writing to the Seller, the voltage level at which supply of power is to be made to the Procurer.

The above two clauses in the PPA appears to be contradictory as the injection point is defined as Power Station Switchyard bus and hence these clauses may be amended appropriately.

- d. The definition of Transmission Service Agreement in Standard PPA issued by MoP on March 27, 2009 in Article 1.1 under definitions states as under:

“

“Transmission Service Agreement” [Insert if the Seller is responsible for obtaining open access from the Injection Point to the Delivery Point] shall mean the agreements(s) signed by the Seller and the relevant transmission licensee for transmission of power up to the Aggregate Contracted Capacity from the Injection Point to the Delivery Point;
[Insert if the Procurer(s) is/are responsible for obtaining open access from the Injection Point to the Delivery Point] shall mean the agreement (s) signed by the Procurer(s) and the relevant transmission licensee for transmission of power up to the Aggregate Contracted Capacity from the Injection Point to the Delivery Point;”

MSEDCL, in its PPA with Adani Power Maharashtra Ltd., has defined Transmission Service Agreement as under:



“

“Transmission Service Agreement” shall mean the agreement (s) signed for transmission of power up to the Aggregate Contracted Capacity from the Delivery point;”

MSEDCL is directed to modify the definition of Transmission Service Agreement in accordance with the provisions of SBD clearly stipulating the Party who has signed the Transmission Service Agreement in the PPA executed with Adani Power Maharashtra Ltd.

- e. The Commission has observed that in Article 4.1.1 of the PPA for Indiabulls Power Ltd. and Emco Energy Ltd., the scheduled delivery date is mentioned as “not less than four years from the Effective Date”, whereas for Adani Power Maharashtra Ltd., it is mentioned as “four years from the Effective Date”.

The Article 4.11 of Standard PPA issued by MoP stipulates as under:

“The Seller shall be responsible to commence supply of power up to the Aggregated Contracted Capacity by the Scheduled Delivery Date in accordance with the provisions of this Agreement, which is [insert the date specified by the Procurer / Authorized Representative in the RFP]”

MSEDCL is directed to incorporate the scheduled delivery date in the PPAs executed with Indiabulls Power Limited and Emco Energy Ltd.

- f. It has been observed that Schedule 12 of the Standard PPA issued by MoP is not there in the PPA between MSEDCL and Emco Energy Ltd and the PPA mentions that this Schedule has been deleted. MSEDCL has neither sought any approval for this deviation from Standard PPA nor submitted any reason for deleting this Schedule in the PPA executed with Emco Energy Ltd. MSEDCL is directed to incorporate Schedule 12 of the Standard PPA issued by MoP in the PPA between MSEDCL and Emco Energy Ltd.



g. The Commission observed that the MSEDCL has not submitted any information on status of the Projects and progress report of each Project as sought by the Commission as well as Consumer Representative during the hearing. The Commission directs MSEDCL to submit half yearly progress report of each project under Case 1 Stage 2 with the following information as under:

- 1.1. Project Name
- 1.2. Contracted Capacity in MW
- 1.3. Levelised Tariff
- 1.4. Scheduled and Likely CoD
- 1.5. Progress of the Project
- 1.6. Present status of the Project
- 1.7. Intermediate milestones achieved
- 1.8. Any other information

h. As regards the timelines for the bidding process, the Competitive Bidding Guidelines stipulates 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. 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, the Commission would like to highlight that MSEDCL has not submitted any specific reasons for delay in the bidding process, however, considering the acute supply shortage scenario, the Commission hereby considers the delay in the bidding process carried out and directs MSEDCL to adhere to the timelines stipulated in the Competitive Bidding Process for new bidding processes in future. .

i. Based on the above observations, the Commission in principle approves the adoption of the tariff for 2000 MW (-20%/+30%) (Case 1-Stage 2) as per the prayer (2) of the Petitioner, MSEDCL. The levelised tariff in principle approved for adoption is as under :



Sl.	Name of Bidding Company	Successful Bidders	Capacity Offered (MW)	Levelised Tariff (Rs./kWh)
1	Emco Energy Ltd.	L1	200	2.879
2	Indiabulls Power Ltd.(Amravati)	L2	450	3.260
3	Indiabulls Power Ltd. (Amravati)	L2	750	3.260
4	Adani Power Maharashtra Ltd.	L3	1200	3.280

- j.** The Commission directs MSEDCL to submit the final PPAs with M/s. Emco Energy Limited, M/s. Adani Power Maharashtra Ltd and M/s. Indiabulls Power Limited to the Commission after incorporating the observations made by the Commission in this Order in the respective PPAs.
- k.** The Commission has analysed the levelised bid tariff rates discovered through the Competitive Bidding and compared those with the levelised tariffs calculated through MOU route with same assumptions. After analysing the above said data, it has been observed that the tariffs discovered through both the routes are comparable.
- l.** The Commission directs MSEDCL to make available the PPAs executed alongwith all other bids received on its website in accordance with the provisions under Para 6. 3 of the Competitive Bidding Guidelines issued by the Ministry of Power.



With the above observations and rulings, MSEDCL's Petition in Case No. 22 of 2010 is disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V.P. Raja)
Chairman

(K.N. Khawarey)



Secretary, MERC