

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 54 of 2010

In the matter of
Petition of Tata Power Co Ltd for clarification on determination of Tariff
for 40 MW DG Set at Lodhivli

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

ORDER

Dated: 13th December, 2010

The Tata Power Company Limited (hereafter referred to as “TPC”) submitted a Petition on September 2, 2010, seeking certain clarifications regarding determination of Tariff for a 40 MW DG Set of the Petitioner situated at Lodhivli, Maharashtra.

2. The prayers made by TPC are as follows:

- “1. Clarify and confirm that the tariff for the 40 MW DG sets would not be determined by the Hon’ble Commission and this project would fall under the competitive bidding process.
- 2 Pass any orders it deems fit in this matter.”

3. TPC, in its petition, submitted as under:



- (i) TPC is proposing to set up a 40 MW power plant using Diesel Generation (DG) technology at Lodhivli, 119/A/B Dand-Apta Road, P O Mohopada, Village Ris, Taluka Khalapur, Dist. Raigad, Maharashtra. TPC submitted that the original proposal was for setting up the power plant for 100 MW capacity. However, the same was scaled down to 40 MW in view of various constraints faced.
- (ii) TPC further submitted that way back in January 2006/February 2006 it had requested the Commission to accord “In principle clearance” for the project. The Commission vide its letter No. MERC/HFO based DG sets/TPC/0337 dated 14th February 2006 informed TPC that the project being a generation project, did not require any prior in principle clearance as specified in the “Guidelines for in-principle clearance of proposed investment schemes” dated February 9, 2005 . TPC further submitted that vide its letter No. REG/MERC/06/40 dated 6th March 2006, TPC had once again requested the Commission to grant in principle clearance to the project. TPC further explained that on this request the Commission, vide its letter MERC/HFO based DG sets/TPC/1277 dated 14th June 2006, had explained its stand as follows :

“As per clause 5.1 of the NTP, all future requirements of power should be procured competitively by the Distribution Licensees except in cases of expansion of existing projects where there is a state controlled/owned company as identified developer . It is further stipulated that the expansions of generating capacity by a private developer for this purpose would be restricted to one time addition of not more than 50% of the existing capacity. In this regard, CERC has sought clarification from MoP on interpretation of “future requirement” to which clarification are provided by MoP on 28th March 2006.

As per the NTP guidelines, read with the clarifications issued by MoP, TPC’s proposal for DG sets falls squarely under competitive bidding process.”

4. TPC vide its letter dated 27th June 2006, once again requested the Commission to grant the necessary approval for the project. TPC submitted that in reply to the above letter, the Commission reiterated its stand and communicated the same in its letter dated 5th December 2006, as follows:



“The Commission had earlier communicated to TPC by its letter dated 14.06.2006 that TPC’s proposal squarely falls under Competitive Bidding process. The Commission has reiterated its decision in the tariff order for FY 07 issued on 03.10.2006. In this connection I am further directed to inform you that the Commission has examined the issues raised in TPC’s letter dated 27.06.2006 but does not find any merit in TPC’s request requiring reconsideration of the earlier decision”

5. In its petition, TPC further submitted that in another related development, TPC in December 2006, signed an agreement with BEST and Minutes of the Meeting (Arrangement) between its generation and distribution division for contracting a certain portion of the capacity of the power plants of The Tata Power Company Ltd. TPC further submitted that in the said Power Purchase Agreement /Arrangement (PPA), a share of capacity from the above DG project was envisaged for BEST and Tata Power’s Distribution division. TPC further explained the point by highlighting Article 4.6 of the PPA with BEST which states as follows:

“The parties acknowledge that TPC-G is in the process of setting up 100 MW DG sets and 250 MW Coal based thermal unit 8. Subsequent to the commissioning of Unit 8 , existing Trombay Unit 4 will be decommissioned. The contracted capacity allocated from TPC-G to BEST after commissioning of the proposed generating units and decommissioning of Trombay Unit 4 shall be as given in Table 2. This shall be in addition to the capacity allocated as on date of this agreement in Table -1.”

6. In Table 2, of the PPA, the capacity apportionment of “Future” generating capacity of TPC is shown.

7. TPC further stated that as per Article 8 of the PPA, the tariff for the electricity contracted through the PPA would be determined under Part – E of the MERC (Terms and Conditions of Tariff) Regulations, 2005.

8. TPC submitted that Tata Power’s Distribution division and BEST had sought approval of the Commission for their respective Long Term PPA as presented above, and that the proposed DG plant was part of the said PPA

9. TPC submitted that the Commission approved the respective PPA in the Order dated 6th November 2007 in the Case 30 of 2007.



10. TPC further submitted that a plain reading of various articles of the PPA and the Order of the Commission may suggest that tariff from the DG project would be determined under Part E of the Tariff regulations and not through the competitive bidding route indicated in the letters of the Commission.

11. TPC further submitted that it appeared to TPC that the Commission had inadvertently but effectively approved the power purchase from the DG set at the tariff determined by the Commission.

12. TPC finally requested the Commission to clarify that approval of the PPA by the Commission did not include the approval for determination of tariff for the DG project of the Tata Power by the Commission.

13. The hearing in the case was scheduled on 26th November 2010 and the petitioner as well as the Consumer Representatives authorized under Section 94(3) of the Electricity Act, 2003 were intimated accordingly.

Submission by TPC

14. During the said hearing held on 26th November 2010, TPC was represented by Shri. V.H.Wagle and Shri. Prashant Joshi. The petitioner made a presentation to the Commission in which the following information was furnished by TPC.

15. TPC stated that the said DG based power generating plant of TPC was located at Lodhivli in Khalapur District and the Capacity of the said plant was 40 MW (4 x 10 MW). Each unit comprised of Sulzer 16 ZAV 40S HFO Engine and Alstom 11 kV Alternator.

Fuel : used: The plant uses, Heavy Fuel Oil (HFO) / Light Diesel Oil (LDO) / High Speed Diesel (HSD) and was being modified for Dual Fuel – Oil & Gas

Transmission Connectivity: Power output from the said plant was connected to Tata power Company's (Transmission) 110 kV Khopoli – Chembur Line, Looped in- Looped out (LILO) at Lodhivali

Metering : ABT meters have been provided on Lodhivali– Chembur & Lodhivali – Khopoli Lines

TPC further stated that one Unit DG 12 was synchronised with the grid on 22nd October 2010 on trial basis.



16. TPC further stated that it had done a costing exercise regarding the cost of energy output from the DG installation as given below with the assumptions as stated therein:

- a) Variable Cost on Oil firing :
Oil Cost – 29000 Rs/T, Net Heat Rate – 2200 Kcal/ kWh
Energy cost Rs 6.08 / kWh
- b) Variable Cost on Gas firing :
Gas Cost – 8 US Dollars /MMBTU, Net Heat Rate – 2200 kcal/ kWh
Energy Cost Rs. 3.28/ kWh
- c) Total Cost at 80 % PLF - 70 % Gas + 30 % HFO
Energy Cost Rs 5.40/ kWh
- d) Total Cost at 50 % PLF - 70 % Gas + 30 % HFO
Energy Cost Rs.6.17/kWh

17. TPC stated that the energy costs calculated above were only indicative as the same were totally dependent on the factors such as fuel costs, fuel mix used and the Plant Load Factor.

18. On a query as to whether TPC had tested out acceptability of these rates among its consumers, TPC replied that the plant was still at trial stage and the said survey regarding acceptability of likely rates of energy had not been carried out.

Power Purchase Agreement between TPC and BEST:

19. Earlier, a petition was filed by Brihan-Mumbai Electric Supply and Transport Undertaking (“BEST”) of the Municipal Corporation of Greater Mumbai, (Case No. 87 of 2006) seeking approval of a proposed Power Purchase Agreement (“PPA”) with the generation division of The Tata Power Company Limited (“TPC” or “TPC-G”) under the provisions of Regulation 24 of the MERC (Terms and Conditions of Tariff) Regulations, 2005 (“Tariff Regulations”).

20. A petition was also earlier filed by TPC, (Case No. 88 of 2006) for seeking approval of proposed internal capacity allocation from the generation division of TPC to its own distribution division under the provisions of Regulation 24 of Tariff Regulations.



21. In the above petitions, the Commission had issued an Order dated November 6, 2007, wherein the Commission had given the following ruling, which is relevant for the present clarificatory petition:

“
(2) COMPLIANCE OF THE PPA BETWEEN TPC-D AND BEST AND THE TERMS AND CONDITIONS OF THE INTERNAL CAPACITY ALLOCATION BETWEEN TPC-G AND TPC-D, WITH THE MERC (TERMS AND CONDITIONS OF TARIFF) REGULATIONS, 2005

A)

B) *In view of the above, the Commission hereby approves the PPA between BEST and TPC and the internal capacity allocation from the generation division of TPC to its own distribution division, as proposed, with effect from April 1, 2008. Hence, the Commission approves the Power Purchase Agreement between TPC-G and BEST for 800 MW and the Power Purchase Arrangement between TPC-G and TPC-D for 477 MW, as sought by BEST and TPC-D, respectively”*

22. In the present proceedings, TPC has clarified that the allocation of 800 MW capacity to BEST was made Unit wise from the power generation facilities of TPC. In support of the same, TPC referred to Table – 1 in the above mentioned Power Purchase Agreement (PPA) between TPC-G and BEST signed in 2006.

23. **Table-1** under Section 4.1.1 in the said PPA shows the unit wise power capacity allocation of TPC-G generating capacity to BEST as given below:

Gen. Station	Khopoli	Bhivpuri	Bhira	Trombay Unit 4	Trombay Unit 5	Trombay Unit 6	Trombay Unit 7	Total MW (Approx)
Capacity contacted with BEST MW	32.41	33.76	134.06	67.53	225.10	225.10	81.04	800



24. The Commission observed that on the basis of the details shown above in Table-1 of the PPA, it is clear that the Commission had, at that time, given its approval for allocation of 800 MW contracted capacity of TPC and that the DG capacity which was not installed at that time was not included in the 800 MW allocated at that time from the existing generating capacity.

25. TPC-G agreed to the same and further stated that **Table-2** mentioned in the petition submitted by the petitioner and appearing under Section 4.6 of the said PPA shows the “Contracted Capacity (with BEST) from Future Generating Units of TPC”, wherein the depletion effect of the retiring units and the addition by the incoming new units has been shown as given below:

Table 2 :

Name of Generating unit	D G Sets	Trombay Unit 8	Reduction due to decommissioning of Unit 4	Total
Future generating Capacity contacted to BEST - MW	40	100	-67.33	72.47

26. The Commission observed that, with decommissioning of Unit 4, the said 800 MW capacity had got depleted by 67.53 MW and was amply made up by 100 MW added contract capacity of Unit 8.

Commission’s Ruling :

27. Based on the facts and figures submitted by TPC-G and those presented during the hearing, the Commission observes that the Generating capacity comprising of the DG sets of TPC-G indicated in its petition, was not covered in the approval of 800 MW capacity contracted to BEST by TPC-G. Further, the Commission observes that the capacity depletion of 67.33 MW by retiring of Trombay Unit 4 of TPC-G has been amply compensated by the newly commissioned Trombay Unit 8 of TPC-G, of which 100 MW capacity has been allocated to BEST. Based on the above observations, the Commission clarifies that the



question of determining the tariff of the said DG capacity of TPC would arise only if and when TPC files a petition for determination of tariff under Section 64 of the Electricity Act, 2003. Alternatively, the Commission shall adopt the tariff under Section 63 if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.

With these clarifications Case No. 54 of 2010 stands disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman



(K. N. Khawarey)
Secretary