

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 39 of 2009**

**In the matter of**  
**Petition for approval of procurement of 300 MW under Case 1 Phase 1 and**  
**approval of amendments in the Power Purchase Agreement initialed**  
**between MSEDCL and M/s JSW Energy Ltd.**

**Shri V.P. Raja, Chairman**  
**Shri S.B. Kulkarni, Member**

The Maharashtra State Electricity  
Distribution Company Limited  
Prakashgad  
Anant Kanekar Marg,  
Bandra (E),  
Mumbai 400051

Applicant

**Dated: November 27, 2009**

**ORDER**

The Applicant, the Maharashtra State Electricity Distribution Company Limited (MSEDCL) filed a Petition on July 20, 2009, seeking the Commission's approval for procurement of 300 MW power under Case-1 Phase-1 and approval of amendments in the Power Purchase Agreement (PPA) initialed between MSEDCL and M/s JSW Energy Ltd (JSWL).

2. In its Petition, MSEDCL submitted that it had undertaken the process of procurement of 300 MW power under Competitive Bidding Guidelines (CBG) Case -1 Phase-1 from JSW Energy Ltd. MSEDCL further submitted that it has initiated the Power



Purchase Agreement (PPA) with some amendments for procurement of power from M/s JSWL, on 15.01.2009. In this regard, MSEDCL submitted the details mentioned as under:

- a. MSEDCL had initiated a bid process for procurement of power and after the bids were opened and evaluated, a High Power Committee, involving the Government of Maharashtra (GoM), was formed to negotiate the tariff with the three bidders in the L1 basket, namely, M/s Adani Power Maharashtra Ltd. (Adani), M/s Lanco Mahanadi Power Ltd. (Lanco), and M/s JSW Energy Ltd. (JSWL).
- b. Based on the report of the negotiating committee and Order of the GoM dated 28.07.2008, (PPAs) were signed with M/s Lanco and M/s Adani respectively, the copy of which was submitted to the Commission vide letter dated 16.10.2008.
- c. Negotiations were further conducted by the High Power Committee with M/s JSWL for procurement of 300 MW power. JSWL confirmed their commitment for supply as follows :
  - i) Penalty clause to be applicable if scheduled COD is delayed beyond 1.10.2010
  - ii) Power shall be given to MSEDCL from whichever Unit is commissioned first.
  - iii) No penalties to be imposed for Scheduled COD before 1.10.2010
  - iv) Adoption of the tariff quoted in the bid document.
- d. Based on the above, MSEDCL and JSW initialed the PPA for 300 MW supply of power on 15.01.2009, subject to approval of the GoM, the Board of Directors of MSEDCL and the Commission.
- e. The GoM, vide letter dated 16.02.2009, accorded approval for 300 MW power purchase on long term basis from M/s JSW Energy Ltd at the tariff offered in the bid document under CBG Case -1 Bid.
- f. The Board of MSEDCL vide Board Resolution passed in the meeting held on 16.04.2009 authorised the MSEDCL to procure power from M/s JSWL at the tariff quoted in the bid document. It approved the terms and conditions of the initialed PPA, subject to the approval of the Commission.

- g. Certain amendments as compared to the Standard Bid Document have been incorporated in the PPA document, which have been submitted to the Commission for approval.
3. MSEDCL prayed that the Commission may kindly:
- a. *Approve the power procurement of 300 MW from JSW Energy Ltd. under CBG- Case 1, Phase 1*
  - b. *Approve the amendments in the PPA*
  - c. *Condone any inadvertent omissions/ errors/ shortcomings and permit MSEDCL to add/ change/ modify after this petition and make further submissions as may be required at a future date; and*
  - d. *Pass such other and further orders as are deemed fit and proper in the facts and circumstances of the case.”*
4. The hearing in the matter was held on 27.08.2008 and the four consumer representatives authorized under Section 94(3) of the Electricity Act 2003 were also invited to attend the same. MSEDCL was represented in the said hearing by Shri G.S. Trimukhe and Shri S G Mete, and Shri Shreyas Mhatre (M/s Pricewaterhouse Coopers Ltd.). After hearing MSEDCL, the Commission directed it to submit the following information under affidavit:
- (i) Comparison between the provisions of the PPA presented to the Commission and the Standard PPA notified by the Ministry of Power for procurement of power through competitive bidding under Case-I route;
  - (ii) The exact date of the signing of the Power Purchase Agreements (PPA) with the other successful bidders, viz., Adani Power and Lanco;
  - (iii) The status reports as received from the successful bidders, viz., Adani Power, JSW Energy; along with detailed site-inspection report on status of the various activities undertaken by the bidders till date after visiting the project site;
  - (iv) The proposed course of action with specified timelines in case MSEDCL observes any delay in supplying the contracted quantity in accordance with the time-line as agreed under the signed PPA;

- (v) Report on action taken or action proposed to be taken by MSEDCL in respect of M/s. Lanco.

The Commission scheduled the next hearing in the matter on 14.09.2009.

5. During the hearing on 14.09.2009, MSEDCL submitted that, as directed during the previous hearing held on 27.08.2009, though MSEDCL could complete the site inspection of JSW Energy Ltd., it could not complete the visits to two other sites, viz. (i) Adani Power and (ii) Lanco Power, and that the same would be completed by the end of the current month. Therefore, the report on affidavit as desired by the Commission could not be submitted. MSEDCL thus requested the Commission to grant two weeks' time to collect the information and to adjourn the hearing.

6. The Commission observed that MSEDCL had not taken due cognizance of urgency and importance of the matter, and directed MSEDCL to take efforts to conduct site visits as directed and collect the information at the earliest. The Commission also directed MSEDCL to submit the compliance report as per the earlier direction and scheduled next hearing in the matter on 29.09.2009.

Meanwhile, as per the Commission's directions, on 16.09.2009 and 23.09.2009, MSEDCL submitted, under affidavit, the report based on the site visits to the plants of M/s JSW, Lanco and Adani Power as follows:

- a) MSEDCL team visited the Jaigad site of the **JSW** plant on 6.7.2009. and reported that the progress of erection of the 400 kV transmission lines required to evacuate the power from the Jaigad Power plant was very slow. As informed, out of 150 transmission towers, only 90 towers had been erected to date. The start-up power which will be routed through the same transmission lines, should be available 210 days prior to the synchronizing date of the Unit. Hence, it is felt that synchronizing of Unit 1 of JSW's Jaigad thermal plant may be possible in July/August 2010, provided JSW concentrates totally on Unit 1 and transmission lines works.

- b) MSEDCL team visited the 3 X 660 MW site of **M/s Adani Power** Maharashtra Ltd (APML) at Tiroda, Dist Gondia on 19.09.2009. The COD as per the PPA is 14.08.2012. It was informed by APML that they have scheduled to synchronize all Units by March 2012. Considering the initial progress of the plant, MSEDCL concludes that the project progress is satisfactory.
- c) MSEDCL team visited the site of M/s **Lanco**'s plant at Mandava, Dist Wardha on 20.09.2009. As per the PPA, the project location was in Chhattisgarh. However, M/s Lanco informed that the proposed site is now changed to Mandva, Dist Wardha in Maharashtra. M/s Lanco requested MSEDCL to accord approval to the changed site. As per the PPA, the scheduled COD is 04.09.2012. It was noted by MSEDCL team that as on date, the proposed land at Mandva was not in possession of M/s Lanco and no construction activity had been initiated. The fuel supply agreement was not in place. In view of the above observations, MSEDCL concluded that the project progress was not satisfactory.

7. During the hearing held on 29.09.2009, the Commission enquired regarding the steps that MSEDCL had planned in view of the observations of MSEDCL's site inspection team regarding the Lanco project. MSEDCL submitted that as per the PPA signed, M/s Lanco is required to complete all the activities specified in Article 3.1.2 within 18 months of 4.09.2008 (the effective date). Hence, any action can be taken by MSEDCL only after completion of the said period. MSEDCL further submitted that in anticipation of the delay in commissioning of the above thermal power plant of M/s Lanco, MSEDCL plans to tide over the shortage by procuring equivalent amount of additional power under Phase 2 of Case 1 bidding, regarding which, provision is already in place.

8. Regarding the proposed PPA with M/s JSW Energy, the Commission enquired whether the tariff agreed to was firm for the next 25 years. MSEDCL informed that M/s JSWL had not agreed for firm tariff and they had proposed tariff on the basis of "Escalable cost". MSEDCL further informed that even though the GoM had earlier instructed to negotiate for firm tariff, subsequently the GoM, vide its letter dated 16.02.2009 intimated that the Cabinet Sub Committee for Energy, on 21.01.2009, had given consent for

procurement of 300 MW energy from M/s JSWL at the tendered rates on “Escalable cost” basis.

9. MSEDCL requested for the Commission’s approval to the following changes in the PPA made with JSW :

i) Definition of Scheduled COD

**Original** : “means (i) for the first Unit, 1<sup>st</sup> October 2010 or such other dates from time to time, specified in accordance with the provisions of this agreement”

**Amendment** : “means (i) for the first Unit, 1<sup>st</sup> October 2010 or such other dates from time to time, specified in accordance with, the provisions of this Agreement; in case some unit other than the first unit is synchronized / commissioned, then the power from such unit shall be supplied till such time the first unit specified in the definition achieves the COD. However, the Seller shall make best efforts to supply power from 1<sup>st</sup> October 2009.”

ii) Clause 4.4.6 :

**Original** : “The Seller may offer Scheduled Commercial Operation Date, for whole or part of the capacity offered, before expiry of 48 calendar months from the date of signing PPA.”

**Amendment** : “The Seller has offered Scheduled Commercial Operation Date, for whichever unit that comes earlier for whole or part of the capacity before expiry of 1<sup>st</sup> October 2010.”

#### 10. Commission’s analysis and ruling :

In the Order issued on August 14, 2008, in the matter of Case 54 of 2008 , the Commission had directed MSEDCL that,

*“The Commission will consider the matter of adoption of tariff for long term procurement of power through Case-1 competitive bidding process in accordance with the provisions of Section 63 of the Electricity Act, 2003 and Competitive Bidding Guidelines notified by the Ministry of Power, after MSEDCL submits the PPAs signed with the selected bidders, along with other certificates and documents on affidavit, for adoption of the tariff by the Commission”*

In view of the above and based on the Petition and the supporting documents submitted by MSEDCL, the Commission rules as follows:

### **11.1 Amendment to the PPA**

The Standard bidding documents for Case-I, Request for proposal, issued by the Ministry of Power recently, stipulates as follows:

*“In case of Requisitioned Capacity being equal to or greater than 500 MW, the Procurer/Authorized Representative shall have the option to decide the Scheduled Delivery Date which shall not be less than four (4) years from the Effective Date. For Requisitioned Capacity less than 500 MW, the Scheduled Delivery Date shall be decided by the Procurer/Authorized Representative. However, the Scheduled Delivery Date can be preponed on mutual consent of the Seller and the Procurer(s).”*

In the present case, the Commission has observed that the amendment proposed by MSEDCL in the PPA is in line with the above stipulation. Further, as implied through the same, it is observed that for any sequence of unit commissioning followed by JSWL, MSEDCL with the proposed amendment stands to receive the power from the first commissioned unit, instead of needlessly staying tied down to Unit 1 as may be construed through the original clauses of the PPA. **In view of this, the Commission approves the above mentioned amendment in the PPA initialed with M/s JSWL as proposed by MSEDCL.**

### **11.2 Approval of quantum of power to be procured :**

As regards the approval for the quantum of power to be procured from M/s JSW Energy Ltd., the Commission observations are given below :

The Commission observes that Clause 3.1 (iii) (b) of the CBG stipulates as follows:

*“Approval of the Appropriate Commission shall be sought prior to initiating the bidding process in respect of the following aspects:*

*...For the quantum of capacity / energy to be procured, in case the same is exceeding the projected additional demand forecast for next three years following the year of expected commencement of supply proposed to be procured. Such demand forecast shall be based on the latest available (at the time of issue of RFQ) Electric Power Survey published by Central Electricity Authority. (Both for Case 1 and Case 2)...”*

The Commission observes that MSEDCL has cited the findings of the EPS Report published by CEA which provides the demand forecasts for the entire State.

Based on the peak load estimates for MSEDCL after considering the 17<sup>th</sup> EPS report and estimates for Mumbai and capacity addition by MSPGCL, allocated supply from Central sector including the UMPP allocations and the proposed procurement of 2000 MW under Phase 1 of Case 1 scheme, MSEDCL has projected annual power shortages as follows :

Year 2009 : 4053 MW; Year 2010: 4233 MW; Year 2011 4449 MW; Year 2012: 2687 MW.

The Commission has noted that MSEDCL had initiated the process of procurement of 2000 MW power in October 2007 under Class I, Phase-I procurement in line with the Competitive Bidding Guidelines made by the Ministry of Power.

Based on MSEDCL's submission, and the data enclosed along with the submission, the Commission has noted that after opening the bids received in response to the said enquiry it was found that none of the bidders had quoted for supply of entire 2000 MW quantum of power for which MSEDCL had obtained approval. After evaluation of the bids, , the bids of M/s Adani, M/s Lanco and M/s JSW Energy Ltd., together amounting to supply of 2000 MW power and being the lower among the qualified bids, were placed by MSEDCL in "L1" basket for further negotiations.

It is noted that as per the stipulations in the Competitive Bidding Guidelines of the Ministry of Power, the bidders are free to quote Escalable or Non-Escalable charges for the components of tariff. It is further noted by the Commission that M/s Lanco and



M/s Adani had quoted Non-escalable tariff and had based their quotation on use of indigenous coal fuel, while M/S JSW Energy Ltd. had quoted Escalable tariff and had based the bid on use of Imported coal fuel.

From the submission made by MSEDCL, the Commission has observed that the Non Escalable fuel charges quoted by M/s Lanco and M/s Adani consist of firm figures, rising by the year in a hyperbolic trajectory, which is based on the bidders' assumed inflation rates and risk factors, over the entire period of 25 years. The Escalable tariff quoted by M/s JSW consists of Constant figures for the Escalable Energy charge, with the proviso that the same would be escalable by a formula based on actual inflation rates declared by CERC for those years. With this condition, the "Escalable" tariff also will follow a hyperbolic trajectory based on the prevalent inflation index declared by CERC at that time.

The Commission has noted that for evaluating the bids, MSEDCL has converted the quoted prices as above into levellised tariff rates which are as follows :

Adani Power Rs 2.642 per kWh; Lanco Rs 2.70 per kWh ; JSW Energy Rs 2.716 per kWh

On the basis of the levellised tariff and price comparison, it is noted that due to the price difference between M/s JSW Energy and next lower bidder, viz., M/s Lanco, over the period of 25 years, for 300 MW power, at Load Factor of 0.85, the procurement from M/s JSW Energy will be costlier by approx. Rs 89 Crores at their quoted price as compared to the same at M/s Lanco's price.

It is further observed that due to the price difference in the levellised bids of the lowest bidder of L1 basket, viz M/s Adani Power Ltd. and the other two bidders in the same basket, power procurement of 680 MW from M/s Lanco for 25 years at load factor 0.85 at its quoted price will be costlier by approx. by Rs 734 Crores and power procurement of 300 MW from from M/s JSW Energy Ltd done at their quoted price will be costlier by approx. Rs. 413 Crores as compared to that done at M/s Adani's quoted price which is the lowest among the bids in the L1 basket

The Commission has noted that in compliance with the directive given by the Commission, MSEDCL had sent inspection teams to the proposed power plant sites of

all the above three bidders. It is further noted that as stated under Item 6 (c) above, the fact finding team of MSEDCL had visited the Lanco thermal plant site on 20<sup>th</sup> September 2009, and it has reported that the construction activity of the plant by M/s Lanco has been delayed and that the planned COD of 4.9.2012 of the Lanco plant may not be achieved. The Commission directs MSEDCL to immediately initiate action as per the terms of approved PPA to protect the economic interest of its consumers

Accordingly, **the Commission approves the procurement of 300 MW power by MSEDCL from M/s JSW Energy as above on long term basis as proposed and directs MSEDCL to submit the PPA signed with M/s JSW Energy Ltd.**

With the above observations and rulings, MSEDCL's Petition in Case No. 39 of 2009 is disposed of.

Sd/-  
(S. B. Kulkarni)  
Member

Sd/-  
(V .P. Raja)  
Chairman, MERC



(Sanjay Sethi)  
Secretary, MERC