

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 37 of 2005

In the matter of
MSEDCL Petition for Review of Order dated 8.8.2005 in Case No. 37 of 2003 regarding
dispensation for procurement of power from Biomass based power generators.

Dr Pramod Deo, Chairman
Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member

Dated: 19th July, 2006

ORDER

M/s. Maharashtra State Electricity Distribution Company Limited (MSEDCL) had filed a Petition on 14th December 2005 seeking review of the Order issued by the Maharashtra Electricity Regulatory Commission (MERC) in the matter of Case No. 37 of 2003 - "Tariff and Related Dispensation for procurement of power from Biomass based generation projects" on 8th August 2005. In the Petition, MSEDCL had sought several clarifications as well as review of certain provisions of the Order.

2. After seeking views from various stakeholders, the Commission conducted a hearing in the matter on 6th February 2006.

3. During the hearing, the Commission sought clarification from MSEDCL, whether the Petition was a Review Petition or a Petition seeking clarifications on certain points in the Order. The MSEDCL clarified that while review of the Commission has been sought on some of the issues, it is primarily seeking clarifications from the point of view of implementation of the Order. In view of the clarification from MSEDCL, the Commission decided to hear the matter though the Petition did not satisfy the criteria for review under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004.

4. The following issues were raised by MSEDCL and other stakeholders during the regulatory process:

5. **Deemed Generation Benefit:** MSEDCL sought clarification on the applicability of Deemed Generation benefit under certain circumstances. Para 2.16 of the said Order dated 8th August, 2005 stated, "Accordingly, the Commission rules that the Projects should be entitled to the benefit of deemed generation in order to enable recovery of the fixed charge component, but upto a threshold PLF of 80%, if not dispatched due to transmission or system constraints or force majeure events. However, the non-availability or limited availability of fuel will not be considered for the purpose of the deemed generation benefit."



6. MSEDCL submitted that deemed generation should not be payable on account of force majeure events as it is likely that dishonest project developers could misuse it by claiming deemed generation benefit without supplying single unit of electricity.

7. Maharashtra Energy Development Agency (MEDA) suggested that deemed generation should be payable in case of non-availability of grid for evacuation of power from biomass project. MEDA also agreed with MSEDCL on the issue of removing 'force majeure' word from the deemed generation clause. Maharashtra Biomass Energy Developers Association (MBEDA) stated that the Order of the Commission is just and fair and therefore the clause need not be modified.

8. The Commission notes that there are standard industry practices to recognize that events would qualify as 'Force Majeure' events, such as natural calamities, war, political force majeure events, etc. Further, the Commission recognizes that the parties entering into the contract would be required to identify various 'Force Majeure' events and treatment to be accorded to those events. Further, the contract will have to establish the process of identifying event of 'force majeure' with requisite supporting documentation. It would be the responsibility of both the Parties to negotiate and finalise the 'Force Majeure' clause. However, the Commission would like to clarify that its intention is to ensure that neither MSEDCL/MSETCL nor project holder should misuse the 'Force Majeure' clause to deny the other party its legitimate dues. Therefore, the Commission had stated that non-availability of biomass/fossil fuel would not constitute 'Force Majeure' event for Project holder and similarly, inability to provide evacuation arrangements would not constitute 'Force Majeure' event for MSEDCL/MSETCL. Both the parties may discuss and adopt treatment for all other 'Force Majeure' events in their EPAs.

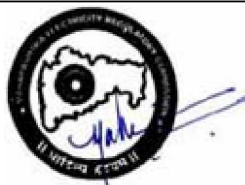
9. MSEDCL in Para 3(a) (vii) of its submission has stated "*It is also significant that in none of the earlier orders this Hon'ble Commission is there any provision for extending the benefits of deemed generation to any generating company using unconventional energy sources for any failure to supply.*" In this regard, the Commission would like to point out that in none of its earlier orders, has the Commission considered two-part tariff structure involving fixed and variable charges and therefore the Commission could not have considered deemed generation benefit in earlier Orders for other non-conventional energy sources.

10. MSEDCL has also submitted that no fixed charges should be payable if PLF (including deemed generation) of the project falls below 50%. The Commission would like to point out to Para 6.2. (4) of the said Order which states:

"The Project holder shall be entitled to recover the fixed charge component for generation (including deemed generation) upto a threshold PLF level of 80%."

11. The Commission is of the opinion that the developer should be able to recover his total fixed charges if the project is able to achieve threshold PLF level of 80%. In case the project is not able to achieve threshold PLF level, the developer should be permitted to recover fixed charges on pro-rata basis. For e.g., if the project achieves PLF (including deemed generation) of 40%, the project developer should be permitted to recover 50% of fixed charges.

12. **Linkage of fixed and variable charge to different years:** The Commission in its said Order had linked the fixed charge component to the year of operation based on the date of commissioning and variable charge component to the financial year. MSEDCL expressed difficulty in implementing this tariff structure and contended that it would lead to increase in



financial burden on the MSEDCL. Therefore, the MSEDCL requested the Commission to link both fixed and variable charges to the same year.

The Commission would like to further explain the rationale behind linking these two charges to different years. The fixed charges have been linked to year of commissioning as the Commission has assumed that the fixed costs would remain same for the period stipulated in the Order. If the fixed charges are linked to financial year, the projects completed later would automatically get higher costs which would lead to higher financial burden on the MSEDCL. Similarly, variable charges have been linked to the financial year, as variable charges have been determined using equivalent heat value basis for the financial year. Linking variable charges to the year of commissioning would entail significant fuel risks to the project developer. With a view of balancing the interests of both the utility and project developer, fixed and variable charges have been linked to different years. In view of this, the Commission rejects the request of the MSEDCL to link both fixed and variable charges to the same year. This aspect has already been elaborated in detail by the Commission in its said Order under paragraphs 2.3 (Review of Variable charge component of tariff), paragraph 2.4 (Methodology for determination of Tariff Rate), paragraph 6.1 (Determination of Tariff rate and structure) and paragraph 6.2(2),(7) (Tariff Rate and structure : other terms and conditions).

13. Directions regarding clearance of applications: MSEDCL submitted that it should be permitted to sign Energy Purchase Agreement only after receipt of final clearance from MEDA. The reason cited by MSEDCL is that MEDA, being nodal agency of the Government of Maharashtra is qualified to verify/scrutinize the bonafides of applications for biomass projects. While MEDA has agreed to the stand taken by the MSEDCL, it has suggested that modus operandi will have to be finalized by the MSEDCL and MEDA. On this issue, MBEDA has submitted that if the Energy Purchase Agreement was linked to the final clearance from MEDA, it would unnecessarily delay the financial closure of the projects.

Accordingly, the Commission further directs the stakeholders as follows:

- a) MEDA, MSEDCL or concerned distribution licensee and MBEDA should finalise draft Energy Purchase Agreement (EPA) to be signed by the MSEDCL and Project holder. The principles for EPA have already been elaborated in detail by the Commission in its Order dated 8th August, 2005 under Chapter-7.
- b) MEDA should give final clearance which would be used by MSEDCL or concerned distribution licensee to enter into EPA
- c) MSEDCL or concerned distribution licensee should sign EPA within two weeks after issue of final clearance by MEDA.

14. Verification of fuel usage statements: The Commission in its said Order had entrusted the responsibility of verification of fuel usage statements to both the licensee (i.e. MSEDCL in most cases) and MEDA. MSEDCL, in its submission has stated that since biomass projects would be located at remote places, it may not have qualified staff to verify/scrutinize fuel parameters. Further, it fears that that this requirement may lead to malpractices and corruption. MSEDCL therefore requested that it should be relieved of the responsibility of verification of fuel usage statements. Further, MSEDCL has argued that MEDA, being the nodal agency should be entrusted with this task.

15. MEDA in its submission suggested that the directives given by the Commission in the said Order should be followed. MBEDA in its submission argued that involvement of two agencies, i.e. MSEDCL and MEDA, in verification of fuel usage statements would lead to



cumbersome procedures and, therefore, a single agency MEDA may be entrusted with the responsibility of verification of fuel usage statements.

16. The Commission has discussed this issue at great length in its Order dated 8th August 2005. The arguments put forward by MSEDCL do not hold water as qualified staff can be deputed, if not already available. Further, fear of malpractice and corruption cannot be grounds for abdicating the job entrusted to it by the Commission. The Commission wants to ensure that biomass project developers use other fossil fuels only within the limits permitted by the Commission. Since MSEDCL/ distribution licensee would be purchasing the generated electricity and accounting for the same in Renewable Purchase Obligation, it is primarily the responsibility of MSEDCL/ distribution licensee to ensure that energy procured is indeed generated from renewable sources. During the regulatory process undertaken before issuing the said Order, several objectors had raised concerns over usage of conventional fuel by biomass project developers. The Commission had therefore, instituted two tier monitoring mechanism. The Commission, therefore, rejects MSEDCL's submissions in this regard and directs it to put in place the necessary mechanism to ensure that the Order dated 8th August, 2005 of the Commission is complied with.

17. **Sharing of CDM benefits:** The Commission, in its Order dated 8th August, 2005 had clearly stated that the Project Holder should share the Clean Development Mechanism (CDM) benefit with the licensee. However, the Commission had decided to take up determination of the extent of sharing at an appropriate time. MSEDCL, in its Petition requested the Commission to specify the ratio and manner in which the Project Developer should share such CDM benefits with the licensee and consumers. Further, MSEDCL suggested that all Project Holders should be directed to route their applications for CDM benefits through MEDA. Also, the responsibility of monitoring CDM related matters for effective implementation should be entrusted to MEDA.

18. On the other hand, MBEDA stated that CDM is a risk mitigation mechanism and revenue from CDM is expected to mitigate some of the hardships faced by the developers during operation of the project. Further, MBEDA submitted that costs of developing CDM projects are huge and range from US\$ 30000 to US\$ 40000 and these costs are being borne solely by the Project holder. Therefore, the project holder should not be asked to share the CDM benefits with the licensee.

19. The Commission in a Paragraph in Section 2.4 of the Order dated 8th August, 2005 had clearly stated its decision in this matter. The paragraph is reproduced below:

“As far as carbon credit and CDM related benefits are concerned, the Commission understands that several renewable energy projects may be eligible for these benefits. The Commission is of the view that, since the consumer is supporting the renewable energy and related non-conventional energy based projects by way of higher tariffs, it is essential that any such benefits secured by a Project are shared equitably by the Project holder with the Licensees and their consumers. The Commission may review the tariff structure for such Projects that become eligible for CDM or other similar benefit, and devise a system to enable sharing of benefits between the Licensees/consumers and the Project holders at the appropriate time.”

20. The Commission does not find any reason to modify its earlier Order dated 8th August, 2005. The Commission notes that none of the projects have reached the stage of getting carbon credits as significant uncertainty surrounds the actual benefit, which the developer may earn. In view of the above, the Commission rejects MSEDCL's submission in this regard.



21. **Evacuation facilities:** MSEDCL in its Petition expressed fears that the Project holder may stop generating energy, thereby making facilities created by MSEDCL, idle. MSEDCL requested the Commission to clarify that 50% amount provided by the Project holder for creation of evacuation facilities should be returned only if the project continues to generate electricity. Further, MSEDCL requested for guaranteed returns of 100% on investment in infrastructure created by MSEDCL.

22. MEDA submitted that since the Commission has adopted similar approach in case of earlier Orders for other renewable energy technologies, the approach prescribed by the Commission in the said Order should be followed.

23. The Commission has followed an uniform approach for funding of evacuation facilities for all projects based on non-conventional and renewable sources of energy. MSEDCL has not given any specific reason for adopting a different approach in case of biomass projects. Further, it appears that MSEDCL's fear is misplaced as, in most cases, facilities, if remain idle, the investment of the project developer would be significantly higher than that of MSEDCL. Hence, the Commission rejects MSEDCL's request in this regard.

24. **Bank Guarantee:** MBEDA, in its submission, requested that the requirement of bank guarantee under Monitoring Mechanism clause may be removed, as MSEDCL can withhold the payment if project holder defaults on the condition of fossil fuel usage. Further, MBEDA argued that the cost of obtaining such bank guarantee is prohibitive and would create unnecessary burden for the developer.

25. In this regard, the Commission is of the opinion that since the amount of bank guarantee has been equated to the value of penalty i.e. 30paise/unit, the concern expressed by MBEDA appears unfounded. Therefore, the Commission rejects the request of the MBEDA in this regard.

The Petition is accordingly disposed of.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr Pramod Deo)
Chairman



(Ms. Malini Shankar)
Secretary, MERC