

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 47 of 2005**

**ORDER**

**In the matter of**  
**Maharashtra State Electricity Distribution Company Limited (MSEDCL) Petition for**  
**approval of rates for power purchase from Captive Power Project Holders.**

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

**Dated: 11<sup>th</sup> August, 2006.**

The Maharashtra State Electricity Distribution Company Ltd., vide their letter dated 2<sup>nd</sup> February, 2006 have filed a Petition for approval of rate for power purchase from CPP project holders of Maharashtra under Section 86 of the Electricity Act, 2003.

2. The prayers in the Petition are, inter alia:
- i) *“Examine the proposals of the Petitioner for a favourable dispensation with reference to para 5.1 to 5.7 of the petition.*
  - ii) *Approve the rate at which the additional power can be purchased to meet demand along with the mechanism to recover the cost of said purchases.*
  - iii) *The total cost of this power may be allowed as a pass through to all the consumers / specific area consumers under FAC (cap to be removed) as the liquidity position is very critical.*
  - iv) *The additional financial cost may be allowed as a pass through to all the consumers / specific area consumers under FAC (cap to be removed) as the liquidity position is very critical.*
  - v) *Pass suitable orders with respect to the time period for which the rate can be approved.*
  - vi) *Condone any inadvertent omissions / errors / shortcomings and permit MSEDCL to add / change / modify / alter this filing and make further submissions as may be required at a future date.*
  - vii) *Pass such further and other orders, as the Commission may deem fit and proper keeping in view the facts and circumstances of the case. “*

3. MSEDCL in its Petition submitted that the State of Maharashtra has been experiencing significant growth in power consumption during last few years and such increased demand has resulted in significant surge in the peak demand both during morning and evening hours.



4. MSEDCL submitted that the Commission in its Order dated 10<sup>th</sup> January 2006 regarding Revision in the Principles and Protocol for load shedding by MSEDCL had issued various directives to alleviate the situation of huge demand supply gap and one of the strategies proposed by the Commission was to utilise captive generation capacity to meet the shortfall in urban and industrial conglomerations.

5. MSEDCL submitted that in the past, it had attempted to purchase power from the Captive Power Project (CPP) holders, however, the response was not encouraging. Subsequently, various high level meetings were held with the CPP representatives in presence of GoM, and the GoM has impressed upon the CPPs the need for coming to an agreement on the issue. Accordingly, the CPP holders have expressed their willingness to sell surplus power to MSEDCL till the power deficit situation becomes manageable.

6. MSEDCL submitted that it is proposing to purchase around 150MW of surplus CPP capacity based on Heavy Fuel Oil and it has already initiated talks with the CPP representatives. MSEDCL proposed a “normative” approach for efficiency parameters, and the published retail prices of fuel from fuel manufacturers, for determination of variable cost. Further, in case the CPPs are eligible for bulk discounts, then the benefit of the same should be considered, while determining the variable cost.

7. As regards the approval of rate for CPPs based on HFO as fuel, MSEDCL submitted that based on the applicable regulations and norms of operations, the power purchase cost works out to approximately Rs 4.75 per unit. However, during various discussions with the representatives of CPPs, this unit cost was not acceptable to the CPPs, who desired that various factors like age of plant, level of maintenance and relative inefficiency of the plants should be considered while deciding these rates. MSEDCL submitted that the CPPs have neither indicated the rate nor provided any basis for computation of the unit rate. MSEDCL submitted that considering all the above factors, the Commission may consider the rate of Rs 5.60 per unit for power purchase from HFO based CPP.

8. MSEDCL submitted that only the Operation & Maintenance portion of the expenditure may be allowed to be recovered as the plant and equipment may have already depreciated and also repaid the debt portion related to the CPP. In case the CPP is able to provide substantive evidence that it has debt repayment obligations and depreciation left to be charged to the CPP, the same may be considered on case-to-case basis.

9. MSEDCL requested the Commission to stipulate an appropriate normative level of efficiency for the CPPs to eliminate the administrative hassles and to facilitate tapping of surplus power from CPPs for the State. Further, MSEDCL requested the Commission to decide the model for operationalisation of this scheme and mentioned that MSEDCL will prefer the power to be fed into the grid.

10. MSEDCL proposed that the total cost of this power may be allowed as a pass through to all the consumers/specific area consumers as the case may be under Fuel Adjustment Cost (FAC) (after removal of the cap on FAC recovery) as the liquidity position is very critical. MSEDCL further submitted that it should be compensated for such additional costs including costs of financing, in case MSEDCL finances the expenditure through borrowings. The compensation may be allowed as a pass through to all consumers/specific area consumers as the case may be under FAC and the Order issued by the Commission in respect of similar proposals from Confederation of Indian Industry (CII) Pune, may be considered for applicability throughout the State.



11. Subsequently, MSEDCL vide its letter dated 10th February, 2006 submitted that the Commission may consider the rate of Unscheduled Interchange (U.I.) charges of Rs.5.70 per unit, as per the Order dated 8<sup>th</sup> September, 2004 on Captive Power, but without any cap which is very close to proposed rate of Rs.5.60 per unit, for purchase of power from CPPs.

12. The Commission issued the Order in the matter of Power Purchase and other dispensation in respect of fossil fuel based Captive Power Plants on 8<sup>th</sup> September, 2004. The Commission in this Order approved the rate of purchase of power by Distribution Licensee from the CPP as ***“UI rate subject to the Floor rate of Rs.2.30 per kWh intersection frequency of 49.925 Hz) and Ceiling rate of 2/3rd of UI Charge at 49 Hz”***

13. Subsequent to issue of Order by Commission on 8<sup>th</sup> September, 2004, the erstwhile MSEB filed a Writ Petition in Hon’ble High Court of Mumbai (Writ Petition No. 599 of 2005), vide which, they challenged the impugned order dated 8<sup>th</sup> September 2004, passed by the Commission. MSEB in its Writ Petition submitted that *“The Respondent No. 1 Commission does not have the jurisdiction to deal with the policy of the Captive Power Plants as per Section 86 of the Electricity Act, 2003 and MERC in its tariff order for 2001-02 verdicted as captive power policy is in the jurisdiction of Government”*. MSEB further submitted that *“In accordance with the provisions of Section 86 of the Electricity Act, 2003, the only role which the Respondent No. 1 Commission could have played in relation to the Policy of Captive Power Plants, if called upon to do so by the State Government was an Advisory Role as contemplated under Section 86(2) of the Electricity Act, 2003. The MERC has no power to consider and formulate the CPP Policy suo motu (based on fossil fuels, being domain of Central Government)”*.

14. The Hon’ble High Court of Mumbai issued an Order dated 30<sup>th</sup> March 2005, on Writ Petition No. 599 of 2005 and Writ Petition No. 545 of 2005, and the salient features of the Order were:

- Para 2 of the Hon’ble High Court Order states, *“Both these petitions are already admitted. As far as these two petitions are concerned, what we find is that the petitions are somewhat incomplete. For deciding the objections raised in both these petitions against the order dated 8<sup>th</sup> September 2004 passed by MERC in case No. 55 and 56 of 2003 we will require the application made by the Vidarbha Industries Association and Ballarpur Industries Ltd. to the MERC as also the particular objection filed by MSEB and Reliance Energy Ltd. to these applications. It is submitted by both the learned Counsel appearing for petitioners that the order is erroneous and goes outside the powers of MERC as available under the Electricity Act, 2003. There are various directions in this order. Petitioners will have to pin point as to what are their specific objections with respect to each of these directions by relating them to the specific provisions of the Electricity Act, 2003, which along will enable the court to better appreciate the submissions of the petitioners. The petitioners, may, therefore, amend both these petitions and place on record the applications by the contesting respondents to the MERC, the objections by the Petitioners as also their specific submissions with respect to the Order passed by MERC as indicated above. It will be fruitful to hear both these matters only thereafter”*
- Para 3 of the Hon’ble High Court Order states *“In the W.P. No. 599 of 2005 we have already passed an order on 14<sup>th</sup> February 2005 restraining MERC from taking any further steps in pursuance of the Order dated 1<sup>st</sup> February 2005 under Section 142 of Electricity Act, 2003 on the basis of alleged breach of the directions given earlier viz., the directions in case No.55 and 56 of 2003. That protection will*



*be available also to Reliance Energy Limited, which is the Petitioner in W.P. 545 of 2005. We find that it will not be desirable to proceed with the alleged contempt proceedings before MERC. In the meanwhile the MERC will therefore stay any such proceedings if pending and filed before it for the alleged breaches of order passed in case no. 55 and 56 of 2003 vis-à-vis these two petitioners”.*

- Para 5 of the Hon'ble High Court Order states “*It will be open to the petitioners to get these two petitions listed for hearing after the pleadings are completed. It will be also open to go to the Appellate Tribunal, if they are of the view that they should better go to appellate tribunal in which case they may withdraw these petitions.*”

15. The matter in the case of present Petition was heard on 20<sup>th</sup> February, 2006 in the presence of authorised consumer representatives and other Distribution Licensees. During the hearing, the Commission asked MSEDCL to clarify as to why they have approached the Commission for approval of rate for purchase of power from CPPs, when the MSEDCL has challenged the jurisdiction of the Commission with regards to Policy for Captive Power vide its Writ Petition No. 599 of 2005. The Commission further observed that MSEDCL has not withdrawn the Writ Petition No. 599 of 2005, vide which MSEDCL has challenged the jurisdiction of the Commission in the matter. Since the representative of MSEDCL could not respond on issues raised by the Commission, he asked to take instructions from MD-MSEDCL and the Commission adjourned the matter for a period of 10 minutes.

16. After resuming the hearing, Shri.S.K.Dhabade, Executive Director, MSEDCL sought adjournment of two days. The Commission directed MSEDCL to make its submission on affidavit on the issue of jurisdiction of the Commission with respect to approval of rate for purchase of power from CPPs and MSEDCL's course of action to withdraw the Writ Petition. Considering the severity of the problem of demand supply shortfall, the Commission decided to continue the proceedings and asked MSEDCL to make its submissions.

17. Shri S K Dhabade and Shri A J Deshpande representing MSEDCL reiterated the submissions made in the Petition. Shri A J Deshpande of MSEDCL submitted that though MSEDCL has proposed the rate of Rs.5.60 per unit for purchase of power from HFO based CPP, MSEDCL has assumed that it will be allowed as a pass through expense in the ARR. He submitted that at present MSEDCL is unable to sustain this cost from liquidity point of view. He requested the Commission that MSEDCL should be allowed to charge higher FAC charge after including the impact of power purchase from CPPs for pass through to the consumers.

18. The Commission asked MSEDCL to clarify the proposed treatment of recovery of additional power purchase cost for purchase of power from HFO based CPPs. Mr. Deshpande submitted that if the power from CPPs comes from different regions in the State, it will accumulate into the normal pool and will not be a region specific power as is the case in the proposal of CII, Pune. He requested the Commission that as the proposed 150MW power purchase from HFO based CPPs will be supplied throughout the State, MSEDCL should be allowed to recover the extra charge from all the consumers in the State through FAC charge, over and above the FAC ceiling. The Commission suggested that this additional power purchase from CPPs could be reserved for industrial areas and MSEDCL could identify the feeders for supply of this additional power to industrial areas based on discussion with industries and only such industrial consumers would have to bear the cost of this additional power purchase.

19. Dr. S.L.Patil, Secretary, Thane Belapur Industries Association (TBIA) submitted that as mentioned by MSEDCL, a detailed meeting was held with CPPs in presence of the Hon'ble Energy Minister, GoM, and subsequently the Chief Secretary, wherein the quantum



of additional power that can be generated by CPPs was discussed. During the meeting, 35 CPPs, who were present during the discussions, agreed to generate and pool in the power into the grid. Further, there was a debate about the rate of power purchase from CPPs running on HFO, Naphtha and Diesel as fuel. He further submitted that MSEDCL's Petition is not based on purchase of power from CPPs with all fuels, i.e., HFO, Naphtha and Diesel and is restricted to seeking approval for rate of power purchase from HFO based CPPs. He submitted that surplus capacity is available with naphtha based CPPs and TBIA's survey shows that these CPPs can supply power throughout the day. He further submitted that if the Commission determines the rate for such purchase of power, there is a possibility that around 300 to 400 MW of power could become available within a short span of time. He further submitted that some CPPs may not have be connected in parallel to the MSEDCL grid. In case these CPPs are ready to generate the power at the rate decided by the Commission, that power can be self-consumed, which needs to be considered as deemed generation. He submitted that this aspect has not been considered in the Petition and requested the Commission to consider this issue.

20. Shri. Deshpande submitted that presently MSEDCL wants to go ahead with the proposal for CPPs using HFO as a fuel. As regard to naphtha and diesel based CPPs, he submitted that that the suggestions of Thane Belapur Industries Association are noted but the MSEDCL's Petition is for purchase of power from HFO based CPPs and they would not like to change it.

21. The Commission opined that MSEDCL is seeking removal of the cap of 2/3<sup>rd</sup> of UI Rate for purchase of power from CPPs as provided in the Commission's Order dated 8<sup>th</sup> September, 2004 but nowhere it has pleaded or brought this out clearly in its Petition. The Commission queried as to whether the Petition is only for approval of the rate of Rs.5.60 for purchase of power from HFO based CPPs. Shri. Deshpande clarified that the Petition is for approval of rate of Rs.5.60 for power purchase from HFO based CPPs and removal of cap on FAC. The Commission opined that FAC is a separate issue.

22. The Commission queried as to the time required by MSEDCL for submitting the affidavit. Shri. Deshpande assured that MSEDCL would be submitting the Affidavit by 24<sup>th</sup> February, 2006.

23. Subsequent to the hearing, MSEDCL submitted an additional affidavit on its Petition for approval of rates for power purchase from CPP holders on 24<sup>th</sup> February 2006.

24. MSEDCL in its additional affidavit submitted that in the Petition, it had proposed a rate of Rs 5.60 per unit, which is very close to the highest UI rate. MSEDCL requested the Commission to consider approval of rate of Rs 5.60 per unit for purchase of power from CPPs in line with this highest UI rate.

25. As regards to the matter being sub-judice before the Hon'ble High Court, Mumbai, MSEDCL made the following submissions:

- a) *"We would be moving the High Court with a request to permit us to proceed with this case in Appellate Tribunal at New Delhi*
- b) *We have never challenged the jurisdiction of the Hon'ble Commission with regards to tariff fixation. The Petition pertains to limited issues of retrospective setting aside of the circulars*
- c) *We undertake to move an application before High. Court, Mumbai for deletion of grounds (a) and (i) of Petition No. 370 of 2004."*



26. MSEDCL submitted that the Commission has directed reduction in consumption in respect of continuous and non-continuous process industries and MSEDCL requests the Commission to consider appropriate restoration of this reduction to the CPP power that could be made available through CPPs. MSEDCL further submitted that this power given to continuous and non-continuous process industries shall be charged at the rate of procurement of power as approved by Commission to the said group of industries to ensure simultaneous recovery. MSEDCL further submitted that it has no other proposal for purchase of power from Naphtha or diesel based CPPs and the same has already been discussed at the High Level Committee formed for this purpose at Government level.

27. The Commission observed that though the MSEDCL in its Petition submitted that it has never challenged the jurisdiction of the Hon'ble Commission with regards to tariff fixation and the Writ Petition pertains to limited issues of retrospective setting aside of the circulars, the Commission finds that it has challenged its jurisdiction to formulate the policy for Captive Power Plants vide its Writ Petition No. 599 of 2005.

28. The Commission further observed that, the Hon'ble High Court did not stay the Commission's Order dated 8<sup>th</sup> September, 2004 and had only stayed the proceedings related to the alleged breaches of the said Order. Further, MSEDCL confirmed that it would be moving the Hon'ble High Court with a request for permission to withdraw the writ petition. Accordingly, the MSEDCL moved the Hon High Court for withdrawal of the said petition No. 599 of 2005. Hon'ble High Court vide its Order dated 5<sup>th</sup> May 2006 have permitted MSEDCL to withdraw the Petition.

29. Considering the prevalent demand-supply gap position, the need to explore all sources of power purchase and viewed MSEDCL's proposal to purchase 150 MW power from HFO based CPPs as a step to reduce the demand supply gap to a certain extent. As regards to the tariff for purchase of power from HFO based CPPs, MSEDCL in its original Petition requested the Commission to approve the rate based on the normative costs. However, MSEDCL in its subsequent submission requested the Commission to approve the rate as equivalent to UI charges without any cap.

30. The Commission is of the opinion that it will not be advisable to get into the details of cost workings based on efficiency parameters and the fuel costs, as the same will vary on case to case basis and approving the cost of power purchase from CPPs on case to case basis will be a time consuming exercise. To facilitate the immediate purchase of power from CPPs to mitigate the emergency situation of demand supply gap in the State, the Commission hereby modifies the ceiling rate for purchase of power by Distribution Licensee from fossil fuel based CPPs and the revised ceiling rate shall be equivalent to **"UI Charge at 49 Hz"**. All other terms and conditions for purchase of power by Distribution Licensee from fossil fuel based CPPs shall remain unchanged as approved the Commission in its Order dated 8<sup>th</sup> September 2004 in Case No. 55 and Case No. 56 of 2003 shall remain unchanged.

31. As regards to the purchase of power by consumers from Fossil fuel based CPPs, the Commission orders that the same shall be guided by the MERC (Distribution Open Access) Regulations 2005.

32. As regards recovery of cost for purchase of power from CPPs, the Commission is of the opinion that ideally the incremental costs of such high cost power purchase should be internalized by the specified consumers of urban and industrial conglomerations, who are willing to consume such high cost power. However, as the determination of additional charge to be levied on the specified consumers is a "tariff" design issue, the Commission will address this issue while approving the Annual Revenue Requirement and Tariff of MSEDCL. In the meantime, the Commission accepts MSEDCL's proposal to consider the additional power



purchase costs for purchase of power from CPPs as a part of pooled power purchase cost of MSEDCL. As regards to the MSEDCL's request for removal of ceiling on recovery through FAC, MSEDCL had filed a separate Petition for removal of FAC cap (Case No. 52 of 2005) on which the Commission has already passed the Order on 21<sup>st</sup> March, 2006.

With this Order, the Commission disposes the Petition of MSEDCL.

(S.B. Kulkarni)  
Member

(A. Velayutham)  
Member

(Dr Pramod Deo)  
Chairman

  


(Ms. Malini Shankar)  
Secretary, MERC