

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 22 of 2005

In the matter of
**Approval of Long-term purchase of power by MSEDCL through
Competitive Bidding Process**

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

ORDER

Dated: October 17, 2006

The Commission issued its Order on the ‘Demand forecast methodology for long-term purchase of power through competitive bidding by MSEDCL’ in Case No. 22 of 2005, dated September 8, 2005. In its Order, the Commission ruled as follows:

“19. In sum, considering the present circumstances which justify an emergent dispensation, and in the light of the foregoing, the Commission directs that:

- i. MSEDCL may initiate the competitive bidding process as above, and submit revised draft bidding documents for approval of the Commission.*
- ii. Separately, MSEDCL should submit a revised demand forecast as indicated at para 18, following a more robust methodology.”*

2. The Ministry of Power (MoP), Government of India, issued the Competitive Bidding Guidelines (CBG) on January 19, 2005, which stipulated:

“2.1. These guidelines are being issued under the provisions of Section 63 of the Electricity Act, 2003 for procurement of electricity by distribution licensees (Procurer) for:



- a. long-term procurement of electricity for a period of 7 years and above;
- b. Medium term procurement for a period of upto 7 years but exceeding 1 year.

2.2. The guidelines shall apply for procurement of base-load, peak-load and seasonal power requirements through competitive bidding, through the following mechanisms:

- (i) Where the location, technology, or fuel is not specified by the procurer (**Case 1**);
- (ii) For hydro-power projects, load center projects or other location specific projects with specific fuel allocation such as captive mines available, which the procurer intends to set up under tariff based bidding process (**Case 2**).

3. The Competitive Bidding Guidelines further stipulated that the Commission's approval has to be sought if the procurer desired to deviate from the bidding conditions, as reproduced below:

"3.1. To expedite the bid process, the following conditions shall be met by the procurer:

- i. *The bid documentation shall be prepared in accordance with these guidelines and the approval of the appropriate Regulatory Commission shall be obtained unless the bid documents are as per the standard bid documents issued by the Central Government. In such cases, an intimation shall be sent by the procurer to the appropriate Regulatory Commission about initiation of the bidding process.*
- ii. **Approval of the Appropriate Commission shall be sought in event of the deviations from the bidding conditions contained in these guidelines, following the process described in para 5.16 of these guidelines.**

5.16. In case there is any deviation from these guidelines, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 90 days."**(emphasis added)**

4. The Ministry of Power (MoP), also circulated the draft Standard Bid Documents for procurement of power through competitive bidding for Case II (fuel specified) projects on September 21, 2005, and invited comments on the same. The draft Standard Bid Documents for procurement of power through competitive bidding for Case I (location or fuel not specified) projects was circulated on October 4, 2005. The standard Bid Documents for Case II type projects have been notified by the MoP on 18th May 2006 and modified again on August 21, 2006, while the standard Bid Documents for Case I type projects are yet to be notified by the MoP.

5. Maharashtra State Electricity Distribution Company Limited (MSEDCL) submitted its proposal for long-term purchase of power through competitive bidding for the Commission's approval on January 31, 2006. MSEDCL's proposal only enclosed the Bid Documents proposed by MSEDCL.

6. The Commission informed MSEDCL, vide letter dated February 28, 2006, that in accordance with the CBG notified by the MoP, the Commission's approval is to be sought only in the event of deviations from bidding conditions stipulated under the Guidelines. MSEDCL was therefore, directed to submit the deviations proposed from the MoP notified Bid Documents and the justification for the deviations to the Commission, with a copy to the designated Consumer Representatives. In the letter, the Commission clarified that the Commission would approve only the deviations, provided adequate justification was submitted by MSEDCL and upon hearing the matter, and would not approve the Bid Documents *per se*.

7. Accordingly, MSEDCL submitted its Petition on March 6, 2006, seeking the Commission's approval for the deviations vis-à-vis the MoP notified Bid Documents, but no justification or rationale for the proposed deviations were submitted. The Commission again directed MSEDCL, vide letter dated March 10, 2006, to supplement its submission highlighting the deviations proposed in the bidding process/documents along with adequate justification, with a copy to the designated Consumer Representatives.

8. MSEDCL submitted the deviations along with the bid documents on March 27, 2006. The Commission held a Technical Validation session on MSEDCL's Petition, in the presence of authorised Consumer Representatives, on May 5, 2006, in the office of the Commission. During the Technical Validation session, the Commission directed MSEDCL to clearly submit the deviations for which the Commission's approval is being sought, and to ensure that all the deviations are identified. The Commission also enquired from MSEDCL whether it was seeking approval under Case I or Case II, as Case I was applicable only in cases where the location is not specified. MSEDCL clarified that it was seeking approval under Case I, with the condition that the project be located in Maharashtra.

9. MSEDCL submitted a revised Petition before the Commission on June 9, 2006, for approval of the competitive bidding process and the documents thereof. MSEDCL proposed to pursue the procurement through competitive bidding under Case I route. The documents submitted along with the Petition included Request for Qualification (RFQ), Request for Proposal (RFP) and Model Power Purchase Agreement (PPA). The Commission admitted the Petition on June 29, 2006, and invited objections, comments and suggestions from authorised consumer representatives, various stakeholders and the public. Four weeks time was given to interested parties to submit their views. The Public Hearing on MSEDCL's Petition was held on Friday, 28th July 2006, at Centrum Hall, 1st Floor, Centre No. 1, World Trade Centre,



Cuffe Parade, Mumbai 400 005. In all, 15 objectors submitted written comments on MSEDCL's Petition (**Appendix 1**), and 9 objectors presented their views during the Public Hearing (**Appendix 2**).

10. The salient features of MSEDCL's Petition are given below:

- a) MSEDCL sought approval to procure upto 4000 MW of power through long term competitive bidding route, in the following time-slots:
 - § Base load – 0000 to 2400 hrs : 850 MW,
 - § Intermediate load – 0600 to 2300 hrs : 2250 MW, and
 - § Peak load – 0700 to 1100 hrs & 1700 to 2200 hrs : 900 MW
- b) MSEDCL did not furnish demand forecast for next 3 years with robust methodology despite earlier directives and also did not furnish long term (five year) power procurement plan as per Tariff Regulations.
- c) MSEDCL only furnished projections of demand and availability for FY 2011-12 along with the Petition.
- d) MSEDCL stipulated several conditions in the Bid Documents, viz.,
 - i. Only bidders who set up new/greenfield power projects in Maharashtra are allowed to participate in the bidding process.
 - ii. Bidder has to offer minimum capacity of 500 MW.
 - iii. MSEDCL sought approval to the deviation from condition under CBG as regards timeframe for conducting bid process from 425 days to 195 days. The faster timelines are specified in view of acute power shortage in the State.
 - iv. MSEDCL specified that it plans to procure 4000 MW at the delivery points in the MSETCL system at 400 kV bus or 220 kV bus at Kalwa, Lonikand, Padgha, Karad or Babhaleshwar.
 - v. MSEDCL gave supporting rationale for selection of Delivery Points in the western part in Maharashtra that though total demand in western Maharashtra is 8662 MW, availability is only 5624 MW leading to shortfall of 3038 MW, whereas, in Eastern Maharashtra, against demand of 4293 MW, availability is around 5008 MW leading to surplus of 715 MW. Hence, MSEDCL has specified such 'delivery points' in order to serve demand in western Maharashtra, reduce transmission losses, and optimize total delivered cost to serve consumers.

11. The objections and comments received on the Petition have been detailed below:

Demand Forecasting

Shri. Shantanu Dixit, on behalf of Prayas Energy Group, submitted that though the Commission had directed MSEDCL to submit a revised demand forecast following a more robust methodology, MSEDCL has not submitted the revised demand forecast even after ten

months from the date of the Order. On the contrary, MSEDCL has contended that in its Order, the Commission has accepted the methodology as well as the shortfall projections indicated by MSEDCL.

Prayas submitted that demand forecast using robust, scientific methodology and development of least cost capacity addition plan is critical to ensure long term economy and efficiency in the sector.

Dr. S.L. Patil, Secretary General, Thane Belapur Industries Association, submitted that the long term power procurement process of MSEDCL needs to have a scientific basis and proper methodology backed with demand forecast. He added that MSEDCL needs to prioritise immediate power requirement, followed with medium-term and long-term power requirement.

Shri S. D. Damle submitted that MSEDCL's projections of demand and supply needed to be scrutinised in detail. Shri Vivek Velankar objected to MSEDCL's Demand projections as being unscientific.

Integrated Capacity Addition Plan

It was submitted that, besides the said requirement of a sound demand forecast, MSEDCL's petition is deficient and against consumer interest in as much as the failure on their part to devise an integrated capacity addition plan, with specifications of the required base load capacity, intermediate load capacity, type of fuel and type of technology to mitigate the demand risk. MSEDCL has also not identified the project costs, risk mitigation mechanisms for identified projects.

The Maharashtra State Power Generation Company Limited (MSPGCL) submitted that MSEDCL has indicated capacity addition by MSPGCL as 500 MW (Parli TPS Expansion II - 250 MW and Paras TPS Expansion II - 250 MW) by 2011 – 12. However, in addition to these two units, 1500 MW shall also be available till 2010 through Khaparkheda 1x500 MW and Bhusawal 2x500 MW. MSPGCL submitted that all the basic inputs have been tied up and these plants are fully geared and will come up on fast track basis.

Approval of Bidding Documents

Shri. Dixit of Prayas submitted that MSEDCL would require the Commission's specific approval on the entire set of bidding documents issued by MSEDCL [including the Request for Qualification (RFQ), Request for Proposal (RFP) and the Model Power Purchase Agreement] as all these documents would be deemed to be deviations from the Central Government guidelines particularly as there are currently no standard bidding documents issued by the Central Government for Case - 1 type projects in pursuance of Section 63 of the EA 2003.

Maharashtra Electricity Consumers Association (MECA) requested the Commission to approve the entire bid documents instead of approving only the deviations in the bid documents.

Maharashtra Energy Generation Limited (MEGL) submitted that once the Ministry of Power finalised the bidding documents for Ultra Mega Power Projects, such documents should be deemed to be the standard bidding documents for the present power procurement proposal of MSEDCL under competitive bidding route. MEGL added that since MSEDCL would be procuring capacity from Ultra Mega Power projects and would therefore be required to adopt the bidding documents finalized thereunder, two different criteria should not be adopted by MSEDCL while procuring capacity from two different private parties. Illustratively, in the Ultra Mega Power Project Scheme, a three tier security mechanism (LC, Escrow and Third Party Sale) has been provided, and the same basis should be adopted for the present scheme of power procurement by MSEDCL.

Essar Power Limited submitted that the MoP is going to notify Standard Bid Documents for Case-I projects on similar lines as that for Case-II projects. Hence, in view of the imminent finalization of Standard bid Documents for Case-I projects, Essar Power Limited requested the Commission to direct MSEDCL to incorporate the appropriate provisions of the final Standard Bidding Documents for Case 1 as and when notified by the Ministry of Power and defer the hearing till such time MSEDCL files its revised bid documents after incorporating the provisions of the Standard Bidding Documents for Case-I projects.

Classification under Case I or Case II

Vidarbha Industries Association (VIA) submitted that restricting new power projects to Maharashtra is against the CBG, as Case I is applicable in cases where location, technology, or fuel is not specified by the procurer. VIA opined that MSEDCL by including a restriction on location and stipulation of delivery points located only in the western part of Maharashtra, is restricting competition thereby defeating the whole spirit of the CBG. Dr. Pendse of Mumbai Grahak Panchayat (MGP) submitted that as the bidding documents stipulate that the power plant should be located in Maharashtra only it would be contrary to the spirit of competition envisaged in the CBG and EA 2003.

Deviations from Competitive Bidding Guidelines & Conditionalities imposed by MSEDCL

Shri. Dixit submitted that the terms of the bid documents floated by MSEDCL would have the effect of curtailing competition, which is against the intent of Section 63 of the EA 2003 and the CBG. He explained that certain terms which are likely to impose restrictions on competition are:

- (i) The project has to be located in Maharashtra
- (ii) The project should be a new/Greenfield project

- (iii) At the time of RFP, the following documents have to be submitted - site location and status of land acquisition process supported with documentary evidence, signed term sheet for supply of fuel, and clearance from Maharashtra State Pollution Control Board
- (iv) The timeline for signing of PPA has been truncated to 195 days as against 425 days stipulated in the CBG
- (v) Power supply to commence within 42 months from the signing of PPA as against 48 months stipulated in the CBG.

Shri. Dixit submitted that the restrictions sought to be imposed by MSEDCL would result in a situation where only those projects which are at an advanced stage of development and located in the State of Maharashtra would be eligible to bid. Effectively, there would not be sufficient competition as very few bidders would be eligible for the proposed power procurement.

Shri. Ramarao of Emco Limited submitted that the condition of minimum contracted capacity of 500MW would restrict the entry of new projects. He submitted that smaller units have lower gestation periods, and therefore, the minimum contracted capacity should be reduced to 200 MW. JSW Energy (Ratnagiri) Limited and Maharashtra Electricity Consumers Association (MECA) submitted that the condition of minimum contracted capacity of 500MW should be reduced to 250 MW to ensure competition and participation of more than one bidder. Vidarbha Industries Association submitted that the minimum capacity should be considered as 100 MW or lower as this would benefit MSEDCL through significantly lower project development time, and more number of small projects will afford flexibility in operations and would felicitate genuine competitive bidding.

Shri. Ramarao submitted that the condition of delivery points should not be construed to mean that the project should physically interconnect on these buses. He added that though the bids may be evaluated by MSEDCL by adding transmission costs and transmission losses at the designated delivery point, the transmission company has to provide grid connectivity to the project in accordance with the procedure in the Grid Code. JSW Energy (Ratnagiri) Limited submitted that the project should be able to deliver power at the bus bar of the plant and the tariff should be calculated keeping in consideration that the off-take by MSEDCL should ideally be at such bus bar rather than at injection points/delivery points in the MSETCL system. If this is not done, a power plant which is located closer to the injection point would be at an advantageous position as compared to another power plant which is located farther away from the injection point.

Gupta Power submitted that projects located at coal pit head should be considered as they would offer reduced cost of generation, and delivery should be considered at nearest 400/220 kV Sub-station. Gupta Power opined that coal transportation cost will be very high for any

power project located in Western Maharashtra since coal is rarely available in this region. Vidarbha Industries Association (VIA) objected to MSEDCL's proposal to restrict new power plants to the western part of Maharashtra due to lack of transmission capacity, as being highly frivolous. VIA submitted that worldwide, the power plants are set up near fuel or mine pit head since transportation of power is much cheaper than transportation of fuel and that the western part of Maharashtra does not have fuel source available locally for generating power. VIA submitted that even in case of imported fuel, the generation cost would always be higher than pit head based plant and the power tariff would always be subjected to international prices of fuel and foreign currency risk. Hence, VIA suggested that MSEDCL should procure power from pit head stations, wherever they are located in the country. VIA also submitted that these planned power plants would take at least four years to achieve COD from the date of sale of RFQ documents which is sufficient to build up new transmission capacities by PGCIL or MSETCL or by private sector.

JSW Energy (Ratnagiri) Limited submitted that the requirement of achieving COD in 42 months should not be compulsory but may form part of evaluation criteria as an additional bidding parameter and weightage should be given to the bidder who commits to achieving COD within 42 months, with the provision of penalty for failure to achieve COD within committed timeframe. Maharashtra Energy Generation Limited (MEGL) submitted that the Commercial Operation Date (COD) should be equal to 48 months as prescribed in the CBG, rather than 42 months, with provision for incentives for early achievement. TPC, Shri. Vivek Velankar, and Shri. S. D. Damle also submitted that the COD should be equal to 48 months as prescribed in the CBG.

MEGL submitted that the procurement period is defined in the RFP as eight months and procurement would be done at peak load during 07:00 to 11:00 hours and 17:00 to 22:00 hours (over and above base load and intermediate load). As only 47% of the capacity of the power plant would be purchased by MSEDCL, the bidders would quote a higher tariff since they have to find procurers for the balance availability of 53%. MEGL opined that procurement period for base load requirement should be 12 months since it would be difficult for power stations to look for alternate buyers for 4 month period over a long term.

MEGL added that a contract for purchase of 47% of capacity cannot require submission of technical details and incorporate buy-out provisions, which are common in contracts signed for full capacity. MEGL submitted that the procurers of the balance capacity would have equal or more rights on the power plant, as they would be contracting to buy a major percentage of the plant's capacity. Therefore, the rights of MSEDCL as a procurer would be limited. In view thereof, MSEDCL can insist on conditionalities befitting a short term power procurement contract, with penalties for not fulfilling the commitments, rather than conditionalities included in PPAs committing full capacity.



The Tata Power Company Limited (TPC) submitted that considering the conditions imposed by MSEDCL the PLF would work out to only 49%. However, projects with low PLF are normally considered risky, and result in higher tariffs, which are undesirable from consumer's point of view. TPC proposed that 3100MW could be procured from Greenfield projects and the balance 900 MW of peak requirement could be procured from traders or Brownfield projects (wherein projects are not set up for MSEDCL). JSW Energy submitted that since the bidding is for Greenfield projects, the procurement should be for the entire year and not selectively for eight months since a base load plant cannot remain idle for 4 months.

Approval of Petition

Shri. Dixit submitted that the MSEDCL's proposal for power procurement of 4000 MW should be rejected, and no approval should be accorded to additional power procurement quantum beyond 2000 MW as sought for by MSEDCL under its petition which culminated in the Order dated 8th September 2005.

Dr. Pendse submitted that the Commission would need to consider according approval on procurement of small quantum of power from small and captive power projects (distributed generation) rather than from mega-projects for procuring large quantum of power.

Statutory Approvals Required

JSW Energy (Ratnagiri) Limited submitted that the onus of obtaining all necessary clearances, consents, and permits required for developing the project and operation of the project during the term of the PPA should be on MSEDCL rather than on the generating company as these approvals are in the nature of administrative or executive approvals of the State Government and MSEDCL would be in a better position to obtain the same.

TPC submitted that since the fuel linkage is within the scope of the bidder, the comfort letter for fuel linkage to be submitted to MSEDCL may not be necessary and should not be insisted for submission with RFP.

Regarding the clause for submission of the evacuation plan and details of MSEDCL/MSETCL plans for upgrading existing network and estimated cost and time frame, VIA submitted that it would be difficult for most of the bidders to submit the same, unless he gets the study done by MSEDCL/MSETCL.

TPC submitted that the availability of the transmission network to evacuate the power is not within the scope of the Bidder and any delay in commissioning of the transmission lines should not be attributable to the Bidder. JSW Energy submitted that the Interconnection and Transmission Facilities to enable the power station to be connected to the Grid System, must be the responsibility of the Procurer.

Definitions, Formats & Requirements

REL proposed that Contracted Capacity should be defined in net terms, because Seller's obligation to deliver power to MSEDCL at Delivery point is in net terms.

REL suggested that definition of Emergency should include emergency situations within the power plant also, in addition to emergency on Interconnection and Transmission Facilities of Transmission Company.

REL submitted that the PPA tenure should be the same irrespective of the fuel, for like to like comparison of the offered capacity, and hence the definition of Expiry Date should be modified accordingly. REL also requested clarification on the significance of 'excluding the period required for commencement of supply'.

REL requested that Delivery Point and Interconnection Point should be the same as both these terms are being used interchangeably.

REL submitted that the Reference Exchange Rate affects the total debt amount and should be defined. REL requested that capitalized terms such as 'Liquidated Damages', 'Expert', etc., need to be defined.

JSW submitted that the definition of Lenders should include international financial institutions, multilaterals and export credit agencies.

JSW and MEGL opined that the power required for construction, start up and commissioning should be supplied by Procurer since the Bidder has no other source of supply.

TPC submitted that MSEDCL should accept general Power of Attorney from the Bidders at the RFQ stage and specific Power of Attorney should be requested only at the RFP stage, since it requires Board approval, which may lead to delays. REL requested that the Power of Attorney may be given to any person who may not be necessarily be an employee.

TPC and REL submitted that the requirement of Board Resolution committing 100% of equity requirement should be required only at the RFP stage, and hence, submission of the Board resolution at RFQ stage should not be insisted upon.

JSW Energy (Ratnagiri) Limited submitted that the stipulation in the RFP that consortium members may reduce their equity to 26% of initial holding only after ten years of successful operation should be reduced, to take care of lock-in requirements during construction and commissioning phase and for a reasonable time frame thereafter. MEGL submitted that equity lock-in is justified only if the plant is dedicated to MSEDCL, which will not be the case for Intermediate and peak capacity; hence the same is required to be deleted. In case of dedicated

plant, REL suggested to have equity lock-in on the following basis, which is generally accepted in the industry:

§ 51% lock in for 2 years after COD

§ 26% lock in for 8 years thereafter.

Provisions of Model PPA

JSW Energy stated that the Model PPA stipulates that certain activities would be required to be completed by the selected Bidder within a time frame from the execution of the PPA, as 'conditions subsequent'. JSW Energy submitted that, in the first instance, these activities should be 'conditions precedent' and not 'conditions subsequent'. Secondly, the bank guarantee to be furnished by the selected Bidder should not be invoked if the selected Bidder fails to achieve financial closure within a stipulated time frame since achieving financial closure may not be in the control of the selected Bidder. As regards the terms of the bank guarantee, JSW Energy suggested that at the time of invocation of the bank guarantee an authorised representative of MSEDCL should certify to the bank that MSEDCL is invoking the bank guarantee being entitled to the same. Any extension to the bank guarantee should be with the consent of the selected bidder.

MEGL and JSW Energy proposed that Procurer should be obligated to absorb electrical output generated during testing and commissioning and pay for the same @125% of Energy Charges quoted for first/Base year, in line with the industry practice for projects located within the State. JSW Energy submitted that in case the Procurer asks for deferment of commissioning tests or repeat performance test, the cost of such deferment should be paid by the Procurer. MEGL requested clarification that the Seller would be paid Capacity Charges during the deferred period because Seller is ready for Commissioning Test and hence, should be paid Capacity Charges.

MEGL submitted that the Seller and the Procurer should follow the Metering Code to be developed by the STU [as mentioned in the MERC (State Grid Code) Regulations, 2006] and revised from time to time. All scheduling and SLDC charges applicable shall be borne by the Procurer, in line with the practice being followed for other Projects in the Country.

REL opined that rebate for prompt payment of bills should be on Capacity charges only and not Energy charges. REL added that rebates should be 1% and 0.5% of Capacity charges paid by Procurer for payment within 7 days and 30 days, respectively, in line with the present interest rate regime and the interest paid by procurer for late payment, i.e., SBI PLR + 2%.

MEGL submitted that in case of dispute in bill amount, MSEDCL should pay at least 95% of the disputed amount and final payment (including interest) could be based on provisions of

the PPA, because Seller would be required to meet debt service obligations, fuel and other operational expenses.

MEGL and JSW Energy submitted that Force Majeure events should also cover terrorism and Political Force Majeure. JSW Energy added that governmental action, and orders of courts also need to be included as Force Majeure events.

As regards the events of default and termination of PPA, MEGL submitted that the requirement of maintaining 92% of Contracted Capacity at any time, should be modified to 90%, and added that this should not be treated as Event of Default (EoD) but may cause de-rating of capacity. MEGL submitted that if Procurer fails to establish Payment Security Mechanism like Letter of Credit or Escrow Mechanism, this EoD should be treated as any other Procurer EoD and Seller should be allowed to terminate the PPA, because Payment Security Mechanism is an integral part of Lender's comfort in the project's bankability. MEGL proposed that there should not be any buyout of assets upon an EoD by any party, and only Liquidated Damages/penalties, as already mentioned in the Draft PPA, should be payable by the defaulting party. For the purpose of determining the liability of Procurer in the event of Procurer EoD, MEGL proposed that quoted tariff should be determined assuming the fuel and capacity charge (escalable as well as non-escalable), which is similar to the principle in case of Seller EoD.

JSW Energy submitted that in the event of termination upon Procurer's EoD, the Seller should be entitled to terminate the PPA and offer the plant to procurer at a pre determined buy out price, or alternatively ask for a termination compensation and retain the plant.. JSW Energy opined that payment of amount equivalent to six months of billing at the quoted tariff by the Procurer appears to be inadequate.

MEGL submitted that the proposed formula for recovery of Capacity Charges linked to Availability does not allow recovery of Capacity Charges reduced due to lower Availability than Normative Availability, when Actual Availability becomes more than Normative Availability in future. MEGL has proposed that the Incentive to be paid if Scheduled energy > Normative energy should be increased from 25% to 40% of non-escalable charges, and incentives should be linked to actual availability and not scheduled energy. MEGL also requested clarification on whether incentives would be calculated on annual basis or monthly basis. MEGL proposed that adjustments for lower Availability than Normative should be made at the end of the Procurement Period as defined in the PPA and not monthly.

MEGL submitted that there is no reference to fuel 'Take or Pay', which should be borne by Procurer in case Scheduled Energy < Normative Availability.

RFQ Provisions

Vidarbha Industries Association (VIA) submitted that the benchmark fuel prices considered, impact of change in royalty, electricity duty and other such duties/cess to be passed on in terms of energy charges needs to be elaborated in the PPA, in case of domestic fuel usage. VIA submitted that in case of imported fuel usage, where the index for fuel price escalation is denominated in foreign currency, then the impact of foreign exchange variation vis-à-vis Indian Rupee should be taken into account for computing escalation. VIA added that the number of years to be considered for calculating median escalation rate for the Fuel Price Index in case of imported fuel has to be clearly specified.

REL submitted that the median escalation rate published by CERC for the fuel price adopted by the Bidder should be used only for evaluation purposes and actual energy charges payment should be made based on the fuel price escalation formula quoted by bidder.

Eligibility Criteria

Vidarbha Industries Association (VIA) submitted that clause 2.1.2 (i) stipulates minimum internal resource generation for the bidder to invest in the project by way of equity. Further clause 2.1.2 (ii) stipulates minimum net worth requirements which sufficiently ensures that the bidder is well capitalized and has sufficient equity reserves. Clause 2.1.3 specifies minimum project development experience. In view of these criteria, VIA opined that the additional clause 2.1.2 (iii) about the minimum annual turnover of the bidder should be removed as it does not serve any purpose and would rather inhibit competition, as many large Infrastructure Development Companies who have set up large infrastructure projects like Built-Operate-Transfer (BOT) Road projects do not have a large annual turnover as their revenues are only toll collection receipts though they possess sufficient project development experience.

Bid Evaluation Criteria

Thane Belapur Industries Association (TBIA) submitted that the principles of bid evaluation have to be analysed in detail and the bids should also be scrutinized for sustainability of prices, nature of fuels used, mechanism for capping of rates and other such measures.

JSW Energy objected to MSEDCL's proposal to give preference to the Bidder with the lower non-escalable capacity charges in the initial five years, if two Bidders have the same levellised tariff. JSW Energy submitted that if two or more bidders have the same levellised tariff, then considering only the non-escalable capacity charges in the initial five years is not appropriate, since bidders could back end these charges, hence, in the event of same levellised tariffs, both the bidders should be invited for negotiations or alternatively levellised capacity charge for the entire term should be compared rather than for initial five years. REL requested MSEDCL to clarify whether the non-escalable capacity charges in initial five years used for comparison would be the sum, simple average, levellised, etc., for the given five years. TPC

submitted that the evaluation criteria need to be clarified further by adding that the quotes will be compared time slot-wise only.

Submission of Project Details

JSW Energy and MEGL objected to the requirement of submission of Project Cost details, and submitted that in competitive bidding process, the details of project cost are irrelevant and need not be submitted to the procurer. On the same grounds, REL also requested for deletion of requirement to submit details of all key operating parameters used for determination of tariff such as plant heat rate, auxiliary consumption, secondary fuel oil consumption, fuel calorific value, working capital assumptions, etc.

Payment Security Mechanism

TPC, MEGL and JSW Energy submitted that the Letter of Credit (L/C) is inadequate and hence, other mechanisms such as escrow need to be discussed and agreed. MEGL proposed that the Letter of Credit should be opened at least six months prior to COD and for the first Contract Year, amount of Letter of Credit should be equal to 1.2 times the estimated average monthly billing based on Normative Availability which would improve bankability of Project. MEGL added that L/C drawal should be allowed for payment of Supplementary bill also because discrimination between monthly bill and supplementary bill is not justified.

JSW questioned the basis for specifying a ceiling of 25% of capacity, which the seller can sell to the third party in case of default. In this regard, MEGL proposed that 'x' days should be from the date on which default is cured and not when Notice is served, as this would enable the Seller to assure third parties of the duration of power supply to them.

MSEDCL Replies

12. The replies given by MSEDCL have been detailed below:

- a) The bidding documents have been prepared for an estimated quantum of procurement of 4000 MW classified into seasonal and peak/off-peak requirement instead of 2000 MW, due to the projected power supply availability in 2011-12, and the estimated peak shortfall of 5067 MW. MSEDCL has adopted the 16th EPS figures as per the Central Electricity Authority (CEA) report.
- b) MSEDCL has undertaken an integrated resource planning using the following methodology:
 - (i) Analysis of historical daily load curve data and study of the seasonal variations, to derive representative daily load curve for monsoon and non-monsoon seasons.
 - (ii) Calculation of the ratios of hourly demand to peak demand during the day from representative load curves.

- (iii) Calculation of the yearly peak demand up to FY 2011-12 based on 16th EPS (maximum demand) projections.
 - (iv) Calculation of hourly demand by multiplying peak demand calculated under step (iii) above with hourly ratios calculated under step (ii) above to arrive at representative load curves for FY 2011-12.
 - (v) Calculation of the availability by considering MSPGCL capacity addition plan and purchases from CPSU and other inter-State projects.
 - (vi) Computing hourly shortfall in FY 2011-12 to arrive at the procurement plan.
- c) MSEDCL added that the integrated resource planning takes into account the requirement of MSEDCL at peak load, intermediate load and base load. MSEDCL clarified that the procurement plan is only for stable load and hydro resources have been separately earmarked for fluctuating demand.
- d) MSEDCL submitted that it is an internationally recognised phenomenon that base load plants are likely to have PLF of around 85% to 90%, intermediate load plants are likely to have PLF of around 65% to 70% and peak load plants are likely to have low PLF of around 5% to 15%, as these plants are designed only to function during the peak period, unlike coal based plants which are operative throughout the day.
- e) In the absence of standard bidding documents from MoP with regard to Case 1 (non fuel specific and non location specific), the Commission's approval for the proposed bidding documents would be necessary without which MSEDCL cannot initiate further bidding processes. MSEDCL submitted that the State Electricity Regulatory Commissions in other States such as Punjab have accorded approvals in similar cases. MSEDCL submitted that the CBG has been followed in totality while drafting the present bidding documents for Case 1, and MSEDCL has further followed standard bidding documents released by the Ministry of Power with regard to Case 2 while incorporating provisions for Case 1.
- f) The minimum contracted capacity of 500MW as an eligibility condition is in consonance with the CBG, and minimum capacity of 500 MW would not only take advantage of economies of scale but also minimise the administrative processes related to procurement.
- g) The COD has been kept as 42 months from the signing of the PPA in view of the acute shortage in the availability of power. The CBG stipulates that the RFP shall provide the maximum period within which the selected bidder must commence supplies after the PPA is entered into, which shall ordinarily not be less than four years from the date of signing of the PPA with the selected bidder. Therefore, by the use of the words 'ordinarily', the intention in the CBG is not to provide for a compulsory term of 48 months but allow a lesser time period subject to the prior approval of the Commission for such deviation.

Further, the deviation is only six months. NTPC and similar organizations have commissioned 500 MW plants in 35 months in the past. Therefore, only those bidders who are not prepared would object to such a minor deviation. MSEDCL does not seek responses from bidders who are not prepared.

- h) As per the CBG, the delivery points are to be specified by the procurer. As per analysis carried out by MSEDCL on the load and demand in the State (Western Region and Eastern Region) the deficit of power is in the western region and the delivery points have been specified accordingly. This has been done to meet the unmet demand in the Western region, to reduce the transmission losses, and to optimize the total delivered cost to the consumer. This has been done in the interests of consumers so that the power is delivered at the point of consumption so that no unexpected cost in terms of transmission losses and transmission charges arises in future.
- i) MSEDCL submitted that the CBG stipulates that the procurer may require construction milestones to be specified by the bidders. Therefore, in the bid documents of MSEDCL, it has been stipulated that the bidders should submit some information (such as evidence of availability of land, etc) in terms of milestones so that MSEDCL is able to gauge at the RFP stage itself about the preparedness and seriousness of the bidders.
- j) The bid documents specify that only new/Greenfield projects should participate in the procurement process of MSEDCL, as there is no spare capacity in the existing projects in the State.
- k) MSEDCL has proposed in its bid documents that the PPA should be signed within 195 days from the publication of RFQ, as against the suggested timetable of 425 days in the CBG, on account of the prevailing acute shortage of power availability in the State.

Commission's Analysis

13. The Commission's analysis of the issues involved is given in the following paragraphs:

Approval of Proposed Quantum to be procured under CB route

MSEDCL has sought approval to procure upto 4000 MW of power through long term competitive bidding route in the following manner - Base load of 850 MW between 00:00 to 24:00 hrs, Intermediate load of 2250 MW between 06:00 to 23:00 hrs, and Peak load of 900 MW between 07:00 to 11:00 hrs and 17:00 to 22:00 hrs.

As per Clause 3.1 (iii) of the Competitive Bidding Guidelines (CBG) notified by the MoP, approval of Appropriate Commission has to be sought prior to initializing bidding process as regards quantum of capacity/energy to be procured, in case the same exceeds the projected additional demand forecast for next three years. Further, as per Regulation 23.1 of MERC



(Terms and Conditions of Tariff) Regulations 2005, the licensee is required to furnish long-term (five-year) power procurement plan to the Commission for approval. Such plan shall be an Annual Rolling Plan with first plan period commencing from April 1, 2006.

MSEDCL has not submitted such detailed Plan and it has only furnished revised quantum of power to be procured by MSEDCL under Long-term Power Purchase (LTPP) route along with the Petition. Earlier, the Commission under its Order dated September 8, 2005 (Case 22 of 2005) had directed MSEDCL to submit demand forecast using more robust methodology.

Approval for quantum of power procurement is linked to approval of demand forecast and approval of long term power procurement plan including annual rolling plan. MSEDCL has neither furnished demand forecast for next 3 years with robust methodology despite earlier directives nor furnished long term (five year) power procurement plan as per Tariff Regulations. It has only furnished projections of demand and availability for FY 2011-12 along with Petition. During the Public Hearing, MSEDCL submitted that it has relied only on the projections made by the Central Electricity Authority (CEA) in the Sixteenth Electric Power Survey (EPS) as CEA is a highly recognised body particularly with regard to demand forecasting.

MSPGCL submitted that capacity addition programme of around 4500 MW has been planned in next 4 to 5 years with around 500 to 1500 MW to be added every year commencing from 2006 to 2009 at various locations such as Paras, Parli, Khaparkheda and Bhusawal. This is in addition to other long term measures proposed such as re-commissioning of Dabhol Power Project (through RGPPL) which would provide capacity of 2128 MW and capacity share from central sector projects to the extent of 523 MW (197 MW NTPC Vindhyachal III and 326 MW from NPC Tarapur Unit 3) by end of FY 2006-07. The Commission has already given in-principle clearance to the capacity addition programme of MSPGCL at Paras, Parali and Khaparkheda totalling to capacity addition of 750 MW.

In the State of Maharashtra, the distribution licensees are following different methods for undertaking demand forecasting. In this context, the Commission had discussions with the Planning Commission on the need to formulate uniform methodology for demand forecasting to be used by all Utilities in the country. The Commission understands that the Planning Commission is currently in the process of formulating the uniform framework for this purpose. However, in the meantime, the Commission directs MSEDCL to prepare a detailed demand forecast by engaging experts. The methodology to be adopted should be presented to the Commission for in-principle approval. Based on this demand forecast, long-term power procurement plan including annual rolling plan should be submitted for the Commission's approval.

For the purpose of this Order, the Commission has considered the bidding process to be undertaken for only 2000 MW, unless the demand forecast establishes the need for a higher quantum of procurement. The demand forecast would also need to take a re-look at the demand-supply gap during peak and off-peak hours, and the duration of the peak and off-peak hours.

Conditions stipulated by MSEDCL

Condition-1: Location limited to Maharashtra

The Bid Document specifies that only Bidders who set up new/Greenfield power projects in Maharashtra are allowed to participate in the Bidding process. However, Clause 2.2 (i) of CBG stipulates that under Case-I route, the Procurer shall not specify location, technology or fuel, as follows:

“The guidelines shall apply for procurement of base-load, peak-load and seasonal power requirements through competitive bidding, through the following mechanisms:

*(i) Where the location, technology, or fuel is not specified by the procurer (Case 1);
(emphasis added)*

Thus, stipulating the location within Maharashtra alone clearly amounts to non-compliance of the requirement for adopting Case-I route and also limits competition in the process. If MSEDCL desires to adopt Case-I route for competitive bidding, then it cannot insist on location within Maharashtra.

Condition-2: Minimum capacity of 500 MW

The Bid Documents stipulate that the Bidder has to offer minimum capacity of 500 MW. This condition has to be viewed in the context of projected Base Load requirement of 850 MW and Peak Load requirement of 900 MW as specified by MSEDCL in the Bid Documents. As per Clause 4.16 of CBG, the RFQ/RFP should specify minimum offtake conditions for procurement from such stations. As per Cl. 5.4 (i) of CBG, Procurer has to specify its requirement in MW and also provide flexibility to the bidders to bid within a range. In addition, procurer may specify flexibility to bidder to bid for part of tendered quantity, subject to a given minimum quantity.

Several stakeholders have submitted that this provision would effectively result in limiting the competition, as all projects below 500 MW would not be eligible to bid. The economies of scale and operational requirement would necessitate specifying certain minimum capacity requirement; however, the same should not result in restricting the tendering process to limited number of bidders. Moreover, qualification criteria stipulated under RFQ such as networth, annual turnover and experience, etc., are linked to MW parameter.

Considering the views expressed by the objectors and the reply given by MSEDCL, the Commission advises MSEDCL to reconsider its position in the matter. The objective of the Competitive Bidding Process is to ensure that adequate competition exists, which would ensure that the tariffs are competitive. At the same time, there is merit in ensuring that the minimum quantum offered by the Bidder is not too small, as it would increase the administrative burden on MSEDCL.

Condition-3: Timetable for Bid Process

MSEDCL has sought approval to the deviation from condition under CBG as regards timeframe for conducting bid process from 425 days to 195 days, in view of the acute power shortage in the State. On the other hand, Cl. 5.18 of CBG enables the procurer to specify extended timeframe than that indicated under the CBG based on prevailing circumstances and further clarifies that such alterations shall not be construed as deviations from the Guidelines. A comparison of timeframe for Bid Process as stipulated under CBG and that proposed by MSEDCL is summarized in the following Table:

| Event | Elapsed Time from Zero date - CBG (Cl 5.18) | Elapsed Time from Zero date - MSEDCL proposal |
|---|--|--|
| Publication of RFQ | Zero date | Zero date |
| Submission of Responses of RFQ | 60 days | 30 days |
| Shortlisting based on responses and issuance of RFP | 90 days | 45 days |
| Bid clarification, conferences etc | 150 days | 75 days |
| Final clarification and revision of RFP | 180 days | 90 days |
| Technical and price bid submission | 360 days | 135 days |
| Shortlisting of bidder and issue of LOI | 390 days | 165 days |
| Signing of Agreements | 425 days | 195 days |

The intent of the provision for extension of the timeframe is to facilitate competition, and bearing in mind the usual delays that take place in such competitive bidding processes. It is clear from MSEDCL's proposal that it wishes to curtail the timeframe for bid process by over 50% across all the steps as compared to CBG. While MSEDCL's urge to speed up the process is laudable, in the process, MSEDCL has not complied with requirement under Clause 5.5 of CBG, wherein, Procurer is required to provide at least 2 months time for submission of Bid from issuance of clarification and revision in RFP. MSEDCL has provided only 45 days for submission of bids. Moreover, pursuant to such revision, if any, RFP has to be distributed to all who had sought RFQ in the first place. The relevant extract of Clause 5.5 of CBG is as under:



“5.5. RFP shall be issued to all bidders who have qualified at the RFQ stage. In case the bidders seek any deviations and procurer finds that deviations are reasonable, the procurer shall obtain approval of the Appropriate Commission before agreeing to deviation. The clarification/revised-bidding document shall be distributed to all who had sought the RFQ document informing about the deviations and clarifications. Wherever revised bidding documents are issued, the procurer shall provide bidders at least two months after issue of such documents for submission of bids.

14. Hence, MSEDCL needs to revise the time-frame for the Bid Process, keeping in mind the provisions of the CBG and the ground realities.

Condition-4: Specification of Delivery Points

MSEDCL has specified that it plans to procure 4000 MW at the delivery points in the MSETCL system at 400 kV bus or 220 kV bus at Kalwa, Lonikand, Padgha, Karad or Babhaleshwar. The rationale given by MSEDCL is that such delivery points are intended to serve demand in western Maharashtra, reduce transmission losses, and optimize total delivered cost to serve consumers.

Specification of Delivery Point is crucial as several commercial obligations are linked to the Delivery Point under PPA and RFP. The Bidder has to bid for Capacity and Capacity Charges and Energy Charges at identified ‘Delivery Points’ as defined above. Further, definition of terms such as Net Station Heat Rate and Scheduled Energy, etc., are linked to Delivery Point and hence payment obligation is linked to such Delivery Point. In addition, operationalisation of other commercial clauses such as Metering, Meter Reading, Events of Force Majeure, procurer’s obligations for events of default, etc., are linked to references to Delivery Point.

Permitting bidder to locate the generating station anywhere in Maharashtra and insisting on Delivery Point in Western Maharashtra does not address the issue of East-West Transmission Corridor Congestion or reduction in transmission loss as contemplated by MSEDCL, unless transmission capacity is added. It can be addressed without transmission capacity addition only if the Project is located within Western Maharashtra in proximity to identified Delivery Points. Thus, specifying Delivery Points is tantamount to specifying location or load centre. The Bidder should have flexibility to specify Delivery Point at any Interconnection Point on the State transmission network. Further, once the PPA is signed, there is enough time for the MSETCL to install the required transmission network, in case there is no transmission network in that area, or additional transmission capacity has to be created.

In this context, it is worthwhile to note various provisions of CBG (Cl. 3.3, Cl. 4.3 and Cl. 5.14) as summarized below -

“3.3. It is recommended that the procurer should obtain the transmission clearances necessary for receiving power at the delivery points prior to inviting bids. However

this shall not be a binding condition for the bid process. Unless otherwise specified in the bid documents, it shall be the responsibility of the selected bidder to obtain transmission linkage for evacuation and inter-State transmission of power (where applicable).

4.3. Tariffs shall be designated in Indian Rupees only. Foreign exchange risks, if any, shall be borne by the supplier. Transmission charges in all cases shall be borne by the procurer.

5.14. The bidder may quote the price of electricity at the generating station bus-bar (net of auxiliaries), or at the interface point with the State transmission network. For purposes of standardization in bid evaluation, the tariffs shall be compared at the interface point of the generator/supplier with the State transmission network. In case the bidder quotes his rate at the generating station bus-bar, normative transmission charges for the regional/inter-regional network, if applicable, based on the prevailing CERC orders shall be added to the price bid submitted. The charges for the State transmission network shall be payable by the procurer, and shall not be a part of the evaluation criteria. (emphasis added)

In view of the above, stipulating the Delivery Points in Western Maharashtra clearly amounts to non-compliance of the requirement for adopting Case-I route, as well as other Clauses of the CBG. If MSEDCL desires to adopt Case-I route for competitive bidding, then it cannot insist on Delivery Points in Western Maharashtra.

Approval of Bid Documents

As per clause 3.1 (i) of CBG, approval of Appropriate Commission to bid documents is necessary, only if Bid Documents are not in line with Standard Bid Documents (comprising RFQ, RFP and Model PPA) to be issued by the Central Government. Earlier, the Commission had clarified to MSEDCL that the Commission will not approve the Bid Documents per se and that it will only approve the deviations, provided adequate justification is submitted by MSEDCL for the deviations, and upon hearing the matter.

The Central Government has finalized Standard Bid Documents for Case-II type cases (for hydro projects or load centre projects or location specific/fuel specific projects), while the Standard Bid documents for Case-I type cases (where location, technology or fuel is not specified by procurer) are yet to be finalized by Central Government. MSEDCL has proposed to pursue above procurement through competitive bidding under Case-I route.

In this context, the Conference of Energy/Power Secretaries of States and Chiefs of Power Utilities held on 30th May 2006 at New Delhi, opined that lot of uncertainties are associated with Case-I projects, and States have to identify more projects under Case-II, as reproduced below:

"Para II: Executive Summary of conclusions/decisions taken in respect of IX Plan preparedness

..

(h) With regards to Private sector projects it was clarified that MoU route for development of projects under Private Sector is not available. Therefore, States have to process the cases as per the guidelines issued by Ministry of Power with regard to Tariff based competitive bidding. The projects being considered under Case - 2 of the guideline (ie. bidding on site specific projects) are required to be finalized by March, 2007. Lot of uncertainties are associated with Case-I, as in respect of number of primary inputs, there is no certainty and is left to the vendor to do the required ground work. In view of this, conceiving a project under Case-I for commissioning within the XI Plan is practically not feasible. Therefore, States have to identify more projects under Case-II for commissioning during the course of XI Plan."

The meeting held on 28th August 2006 under the Chairmanship of Additional Secretary (Power) with Energy Secretaries of Western, Southern and Northern States for development of power projects in the range of 1000 MW/2000 MW through tariff based bidding route at New Delhi, concluded that genuine competitive bidding resulting in attractive tariffs was not possible under Case-I for the present, and it was necessary for the States to quickly proceed with the process of inviting tariff based bids under Case-II. Some excerpts of the discussions are given below:

"Case-I assume free availability of fuel both coal and gas for power projects. This is not the case at present. In the short term there is no gas on the basis of which new projects can be taken up and as a result the 11th Plan is primarily becoming coal based. Domestic coal availability both by way of linkage and allocation of coal blocks is constrained.

iv) The process of bidding through a SPV had merged as a way of both reducing the time for project development as well as reducing the risk perception of bidders regarding land acquisition and R&R, water and environmental clearances and in the process getting a more competitive tariff. However, the option of inviting bids only on the basis of coal blocks/coal linkage remained with the State Government committing itself to offering the successful bidders full assistance in land acquisition, water etc.

v) It was noted that some states had initiated competitive bidding under Case-I of the bidding guidelines which envisaged a bid for procurement for power without any stipulation regarding site and fuel. It was clarified that given the absence of domestic gas, unusually high prices of LNG in the international market and constraints in the domestic availability of coal linkage/coal blocks, the competitive bidding process in

case – I was unlikely to result in genuine completion and an attractive tariff. The Coal Ministry was not in a position to give linkage/coal blocks to all prospective bidders.

vi) Where bidding under Case-I had been initiated and short-listing done it should not be difficult to transform the process to a case-II bidding with assured linkage/coal block allocation. This would save time in the bidding process.

...Given the constraints in the availability of coal and gas, genuine competitive bidding resulting in attractive tariffs was not possible for the present under Case-I. It was necessary for the States to quickly proceed with the process of inviting tariff based bids under Case-II with either coal linkage or coal block allocation. Requests for coal linkage/coal blocks need to be made to the Coal Ministry at the earliest.”

The above observations of the Conference of Energy/Power Secretaries of States and Chiefs of Power Utilities and the meeting under the Chairmanship of Additional Secretary (Power) with Energy Secretaries of Western, Southern and Northern States, clearly brings out that Case-I is not the preferred approach, and there appears to be a consensus that Case-I is not feasible. Hence, MSEDCL may consider undertaking the Competitive Bidding process under the Case-II route. If MSEDCL desires approval for any deviations vis-à-vis the Standard Bid Documents under Case-II, it may approach the Commission for approval of the same, and due regulatory procedure would be followed by the Commission for granting approval for the same.

However, if MSEDCL is confident that the Case-I route will also yield positive results, then it may continue with the process, subject to the directions given in this Order. The Commission, in line with its earlier ruling, has decided not to approve the Bid Documents per se and will approve only the deviations from the standard Bid Documents, provided adequate and appropriate rationale is given by MSEDCL. MSEDCL is directed to approach the Commission for approval of deviations desired from standard Bid Documents under Case-I route, once they are notified.

In the meantime, considering the severe supply shortage in the State, MSEDCL is permitted to invite bids from interested bidders under the Request for Qualification (RFQ) process.

While undertaking the bid process under Case-I or Case-II, MSEDCL should bear in mind the submissions made by the prospective bidders and stakeholders on conditionalities sought to be imposed by MSEDCL, as elaborated above. This would ensure the success of the competitive bidding process.

Commission's Ruling

15. The Commission's Ruling is summarised below for ease of reference:
16. The Commission directs MSEDCL to prepare a detailed demand forecast by engaging experts. The methodology to be adopted should be presented to the Commission for in-principle approval. Based on this demand forecast, long-term power procurement plan including annual rolling plan should be submitted for the Commission's approval.
17. For the purpose of this Order, the Commission has considered the bidding process to be undertaken for only 2000 MW, unless the demand forecast establishes the need for a higher quantum of procurement. The demand forecast would also need to take a re-look at the demand-supply gap during peak and off-peak hours, and the duration of the peak and off-peak hours.
18. Stipulating the location within Maharashtra alone clearly amounts to non-compliance of the requirement for adopting Case-I route and also limits competition in the process. If MSEDCL desires to adopt Case-I route for competitive bidding, then it cannot insist on location within Maharashtra.
19. Stipulating the Delivery Points in Western Maharashtra clearly amounts to non-compliance of the requirement for adopting Case-I route, as well as other Clauses of the CBG. If MSEDCL desires to adopt Case-I route for competitive bidding, then it cannot insist on Delivery Points in Western Maharashtra
20. MSEDCL needs to revise the time-frame for the Bid Process, keeping in mind the provisions of the CBG and the ground realities as detailed under Commission's observations under Condition-3 of Para 13 of this Order.
21. There appears to be a consensus at the Ministry of Power that Case-I is not feasible. Hence, MSEDCL may consider undertaking the Competitive Bidding process under the Case-II route. If MSEDCL desires approval for any deviations vis-à-vis the Standard Bid Documents under Case-II, it may approach the Commission for approval of the same, and due regulatory procedure would be followed by the Commission for granting approval for the same.
22. However, if MSEDCL is confident that the Case-I route will also yield positive results, then it may continue with the process, subject to the directions given in this Order. The Commission, in line with its earlier ruling, has decided not to approve the Bid Documents per se and will approve only the deviations from the standard Bid Documents, provided adequate and appropriate rationale is given by MSEDCL, after following due regulatory



procedure. MSEDCL is directed to approach the Commission for approval of deviations desired from standard Bid Documents under Case-I route, once they are notified.

23. In the meantime, considering the severe supply shortage in the State, MSEDCL is permitted to invite bids from interested bidders under the Request for Qualification (RFQ) process.

24. While undertaking the bid process under Case-I or Case-II, MSEDCL should bear in mind the submissions made by the prospective bidders and stakeholders on conditionalities sought to be imposed by MSEDCL, as elaborated above. This would ensure the success of the competitive bidding process.

The Petition is disposed off accordingly.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr Pramod Deo)
Chairman



Secretary, MERC

APPENDIX 1

List of Individuals who submitted written objections/comments and spoke during the Public Hearing on MSEDCL's Proposal for approval of long-term power purchase through Competitive Bidding Process

| Sl. | Name | Organisation | Spoke during Public Hearing |
|-----|---------------------|--|-----------------------------|
| 1 | Shri Shantanu Dixit | Prayas, Energy Group | Yes |
| 2 | Dr. Ashok Pendse | Mumbai Grahak Panchayat | Yes |
| 3 | Dr. S.L. Patil | Thane Belapur Industries Association | Yes |
| 4 | Shri R.B. Goenka | Vidarbha Industries Association | |
| 5 | Gupta Power | | Yes |
| 6 | Shri Anil Jain | Nag-Vidarbha Chamber of Commerce | |
| 7 | Shri Jayant Deo | Individual | |
| 8 | Shri Mukesh Tyagi | M/s. Essar Power Limited | |
| 9 | Shri Vivek Velankar | Individual | |
| 10 | Emco Limited | | Yes |
| 11 | Shri S.D. Damle | Individual | |
| 12 | Shri Vinay Bapat | Maharashtra State Power Generation Company Limited - (Mahagenco) | Yes |
| 13 | Shri K.J. Varkey | JSW Energy (Ratnagiri) Ltd. | Yes |
| 14 | Shri Pramod Gupta | Maharashtra Energy Generation Ltd. | |
| 15 | Shri Pratap Hogade | Maharashtra Rajya Veej Grahak Sanghtana | |
| 16 | Shri J.D. Kulkarni | The Tata Power Company Limited | Yes |



APPENDIX 2

List of Individuals who attended the Public Hearing on 28.07.2006 on MSEDCL's Proposal for approval of long-term power purchase through Competitive Bidding Process

| Sl. | Name | Organisation |
|-----|---------------------------|--|
| 1 | Shri Shantanu Dixit | Prayas, Energy Group |
| 2 | Dr. Ashok Pendse | Mumbai Grahak Panchayat |
| 3 | Dr. S.L. Patil | Thane Belapur Industries Association |
| 4 | Shri Vinay Bapat | Maharashtra State Power Generation Company Limited - (Mahagenco) |
| 5 | Shri K.J. Varkey | JSW Energy (Ratnagiri) Ltd. |
| 6 | Ashwini Kumar | |
| 7 | Shri. V.H. Wagle | The Tata Power Company Limited |
| 8 | Shri. G.S. Trimukhe | MSEDCL |
| 9 | Shri Hitesh Sachdev | CRISIL |
| 10 | Shri. N.P. Sahar | NTPC |
| 11 | Smt. V.S. Salvi | MSEDCL |
| 12 | Shri. Umesh Agarwal | CRISIL |
| 13 | Shri. M.H. Deshpande | MSEDCL |
| 14 | Shri. Vijay L. Sonawane | MSEDCL |
| 15 | Shri. A.J. Deshpande | MSEDCL |
| 16 | Shri. K. Satheesan | MSEDCL |
| 17 | Shri. A.D. Palamwar | MSEDCL |
| 18 | Shri.Sameer Tirkar | Essar Power Ltd |
| 19 | Shri. Anil Sharma | Essar Power, Ltd |
| 20 | Shri. M.K. Gupta | The Tata Power Company Limited |
| 21 | Shri. P.D. Sawant | The Tata Power Company Limited |
| 22 | Shri. L.N. Ambekar | MSPGCL |
| 23 | Shri. S. Jayaprakash | MSPGCL |
| 24 | Shri. S.A. Nikalje | MSPGCL |
| 25 | Shri. A.V. Khare | BEST |
| 26 | Shri. A.G. Patil | BEST |
| 27 | Shri. S. Kumar | MEGL |
| 28 | Shri. Suresh N. Relfarthe | MEGL |
| 29 | Shri. Vivek | REL |

| Sl. | Name | Organisation |
|-----|-------------------------|--------------|
| 30 | Smt. Preetika | REL |
| 31 | Shri Siddharth Honnikal | REL |
| 32 | Shri. W.R. Aswar | MSPGCL |
| 33 | Shri. S.R. Mahajan | EMCO Ltd |
| 34 | Shri. A.M. Deshkar | EMCO Ltd |
| 35 | Shri. Hemant Sahai | Advocate |
| 36 | Shri. K.J. Varkey | JSW Ltd |
| 37 | Dr. S.L. Patil | JBIA |
| 38 | Shri. R. Ramarao | EMCO Ltd |
| 39 | Shri. P.S. Dixit | Gupta Energy |

