

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 54 of 2008

In the matter of
Petition by Maharashtra State Electricity Distribution Company Ltd. (MSEDCL)
seeking approval for adoption of the tariff for long term Power Procurement under
Case-I bidding under Section 63 of the Electricity Act, 2003

Shri. A. Velayutham, Member

Shri. S. B. Kulkarni, Member

ORDER

Dated: August 14, 2008

Maharashtra State Electricity Distribution Company Limited (MSEDCL) filed a Petition under affidavit under Section 63 of Electricity Act, 2003 (hereinafter referred to as 'the Act') for approval of the proposed amendment to the Power Purchase Agreement (PPA) and adoption of tariff for long term power procurement under Case-I competitive bidding process for supply of electricity. The main prayers in the Petition filed by MSEDCL are as follows:

“In view of the above, the Petitioner respectfully prays that the Honourable Commission may:

- 1. Note the details of the bid process after the approval of the bid documents by the Commission and convey the approval for adoption of the tariff discovered through the bid process under Section 63 of the Electricity Act, 2003 for the purpose of tariff determination as and when the supply from these sources commence;*



2. *Approve the proposed amendment to the Power Purchase Agreement which as (should be read as ‘has’) already been agreed to by the selected bidders.”*

2. The hearing in the matter was held on August 13, 2008 at the Commission’s office. During the hearing, MSEDCL gave an overview of the bidding process, and submitted that the top four qualifying bids totalling to 2000 MW were short-listed. However, since MSEDCL was of the opinion that the bids received in Maharashtra were on the higher side as compared to bids received in other States, it was decided to form a high-powered Negotiation Committee, chaired by the Chief Secretary, Government of Maharashtra, to examine the scope for reduction in tariffs. The Committee negotiated with individual Bidders separately and requested the Bidders to consider reduction in the price bids. As a consequence, there was further reduction in the Rates offered under the top three Bids.

3. MSEDCL submitted that GoM had communicated its consent for the Rates offered by Bidders subject to the following Amendments to Article 3.3.2 of PPA.

“Subject to Article 3.3.3, if:

(i). fulfilment of any of the conditions specified in Article 3.1.2 is delayed beyond the period of three (3) Months and the Seller fails to furnish any additional Performance Guarantee to the Procurer in accordance with Article 3.3.1 hereof; or

(ii). the Seller furnishes additional Performance Guarantee to the Procurer in accordance with Article 3.3.1 hereof but fails to fulfil the conditions specified in Article 3.1.2 for a period of eight (8) months beyond the period specified therein,

the Procurer ~~or Seller~~ shall have the right to terminate this Agreement by giving a notice to the Seller / Procurer in writing of at least seven (7) days.

*If the Procurer ~~or the Seller~~ elect to terminate this Agreement in the event specified in the preceding paragraph of this Article 3.3.2,
.....the Performance Guarantee, if any,
shall be payable by the Seller to the Procurer within ten (10) days from the end of*



eight (8) Months period from the due date of completion of conditions subsequent.”

4. MSEDCL explained that the amendment was suggested as the existing terms of the PPA enables the Seller to terminate the agreement for non fulfilment of any conditions specified in Article 3.1.2 by giving seven (7) days notice before the Commercial Operation Date (COD). MSEDCL submitted that the proposed amendment to the PPA would protect MSEDCL from the eventuality of PPA being terminated under this clause thereby protecting the interest of the consumers. MSEDCL further submitted that the successful bidders have already provided their consent for the suggested amendment.

5. Further, MSEDCL submitted that it has issued letter of intent on July 29, 2008 to M/s Adani Power Limited for supply of 1320 MW at a levelised tariff of Rs 2.642 per kWh and to M/s Lanco Kondapalli Power Ltd. for supply of 680 MW at a levelised tariff of Rs 2.70 per kWh. As per the provisions of the Bid Documents, the Power Purchase Agreements and other project documents have to be signed with-in three weeks from the date of issue of the letter of intent.

6. MSEDCL submitted that it desired to amend its Prayers and requested the Commission to approve the above mentioned amendment to PPA first, to enable MSEDCL to sign the PPA with the selected bidders. MSEDCL also submitted that after execution of the PPA with the selected bidders, MSEDCL will approach the Commission for adoption of tariff in accordance with the provisions of Section 6.4 of the “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees (Competitive Bidding Guidelines)”.

7. Article 3.1.2 of the PPA stipulates as follows:

“3.1.2 The Seller agrees and undertakes to duly perform and complete the following activities within 18 (eighteen) Months from the Effective Date , unless such completion is affected due to any Force Majeure event or if any of the activities is specifically waived in writing by the Procurer:

i. the Seller shall have received the Initial Consents as mentioned in Schedule 1, either unconditionally or subject to conditions which do not materially prejudice its rights or the performance of its obligations under this Agreement ;



ii. the Seller shall have executed Fuel Supply Agreement and provided the copies of the same to the Procurer;

iii. the Seller:

a) the Seller shall have appointed the Construction Contractors, if Seller itself is not the Construction Contractor, for the design, engineering, procurement, construction and Commissioning of the Project and shall have submitted a documentary proof along with the copy of the contract to the Procurer and shall have given to such contractor an irrevocable Notice To Proceed; and

b) 1) in case the Project is proposed to be developed on the books of the Bidder, he shall have completed the execution and delivery of the Financing Agreements for at least twenty five percent (25%) of the debt required for the Project as certified by the Lender/Lead Lender; or

2) in case the Seller develops the Project on a non recourse basis, Seller shall have achieved Financial Closure;

iv. the Seller shall have made available to the Procurer the data with respect to the Project for design of Interconnection Facilities and Transmission Facilities, if required;

v. the Seller shall have finalised the specific delivery point for supply of power in consultation with the Procurer;

vi. the Seller shall have got vacant possession of the Sites and shall have obtained valid, enforceable, unencumbered and insurable freehold or leasehold title thereto and such other real property rights including wayleaves as may be required for the Project or the performance of its obligations under this Agreement,

vii. The Seller shall have sent a written notice to the Procurer indicating that a) the Scheduled COD shall be as per the original Scheduled COD i.e (i) for the first Unit, [Insert Date]; (ii) for the second Unit, [Insert Date]; (iii) for the third Unit, [Insert Date] and so on till last Unit] or b) that it intends to prepone the Scheduled COD to be (i) for the first Unit, [Insert Date]; (ii) for the second Unit, [Insert Date]; (iii) for the third Unit, [Insert Date] and so on till last Unit] (hereinafter referred to as "Revised Scheduled COD")."



8. The Commission is of the view that the proposed amendment in the PPA is favourable to MSEDCL as it will protect MSEDCL from the eventuality of the termination of PPA as specified in the Article 3.1.2 of the PPA, which in turn, will protect the interest of the consumers of the State of Maharashtra. **Accordingly, the Commission approves the deviation as regard to the Article 3.3.2 of the PPA which provides for right for termination only to Procurer (MSEDCL) for the non-fulfilment of the conditions specified in the Article 3.1.2 for the period specified in the Article 3.3.2.**

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

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P B Patil)
Secretary, MERC