

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 45 of 2008

In the matter of
Petition filed by Brihan-Mumbai Electric Supply & Transport Undertaking (BEST)
for approval of Expression of Interest Bidding Procedure followed to procure
Renewable Energy from eligible sources inside Maharashtra as Competitive
Bidding Process.

Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member

ORDER

Dated: November 21, 2008

The Brihan-Mumbai Electric Supply & Transport Undertaking (BEST) submitted a Petition under affidavit before the Commission on April 30, 2008, and made a further submission on May 30, 2008, seeking the Commission's approval for the Expression of Interest (EOI) Bidding Procedure adopted to procure Renewable Energy (RE) from eligible sources inside Maharashtra as a Competitive Bidding Process and approval for the rate of procurement of RE discovered through EOI Bidding Process.

2. BEST, in its Petition, prayed as under:

3.1 "Normally, for the long term power procurement, distribution licensees are required to go by the procedures and guidelines issued by Ministry of Power, Govt. Of India. However, we have separately initiated the procedure and already submitted our demand projection to Commission. To meet the RPS obligation, which is a small percentage of the total power procurement, we can not go by these guidelines for the following reason considering the time consuming process.

3.1.1 Long term power procurement procedure is very elaborate and consists of number of stages which may be applicable for large quantity of power. As the



RPS procurement is a time bound obligation and is required to meet in near future from within the state, we have gone by the procedure of “Expression of Interest” as where the competitive prices were requested. The copies of advertisements given in Newspapers and correspondence carried out with various parties are placed in Annexure-‘C’. Therefore, considering the constraints as mentioned above, Commission’s approval is requested to allow the Expression of Interest bidding procedure followed by BEST to procure the RE power, from sources inside Maharashtra (mentioned in Para 2.3.3 and 2.5.5) as competitive bidding procedure and allow it as pass through in the ARR. Incidentally, it may further be mentioned that for our APR petition 2008-09, we have taken into consideration the procurement of RPS power at Rs. 5/- per unit on the basis of prices offered against our “Expression of Interest” and thus this prayer is in alignment with consideration made in APR petition.

3.2 The Hon’ble Commission’s approval is also requested to allow BEST Undertaking to enter into an EPA for the period of minimum 5 years @ Rs. 5/- per unit (escalation of 5% per annum) in order to meet the RPS obligation in consistence with the RPS framework.

3.3 The approval of Hon’ble Commission is requested to allow BEST to account all RE energy purchase, from all the RE sources, as metered and on monthly basis on the similar lines as is being followed in case of MSEDCL.”

3. BEST, in its Petition, submitted as under:
- a) As regards the Commission’s Order dated August 16, 2006 in the matter of Long term Development of Renewable Energy Sources and associated Regulatory (RPS) Framework (Case No. 6 of 2006), the RPS obligation for BEST works out to 191 MU for FY 2007-08, 255 MU for FY 2008-09, and 324 MU for FY 2009-10.
 - b) BEST’s distribution licence area is about 68.75 sq. km. and is essentially metropolitan area with dense population, and for obvious reasons, no RE source is available nor there is any RE potential in its licence area. BEST has to essentially depend on procurement of renewable energy from outside its distribution licence area. So far in Maharashtra, all RE projects are located in Maharashtra State Electricity Distribution Company Limited’s (MSEDCL) licence area. Due to



- topographical region, administrative convenience, and absence of hassles in connection, metering, accounting and grid connectivity, etc., RE developers normally prefer to approach MSEDCL and other licensees are not in their priority.
- c) BEST advertised an EOI on February 23, 2007 for setting up a 50-100 MW wind energy power project in Maharashtra. Only M/s Suzlon Energy Ltd., responded with the proposal for setting up a 51 MW wind power project. The proposal lacked many details and several important matters had to be clarified including decision about raising a fund of Rs. 330 Crore. The proposal was submitted to BEST Committee for its approval. BEST committee has kept the proposal in abeyance.
- d) On September 3, 2007, BEST advertised an EOI for the purchase of renewable power from all eligible sources with the requirement of 300 MU of renewable energy per year starting from September 2007 to March 2010. In response to the said EOI, only one offer was received from M/s TPTCL for supplying renewable energy from 25 MW biomass based project of M/s Spark Green Energy Pvt. Ltd., Ahmednagar and M/s Spark Green Energy Ltd., Satara, with the actual capacity for sale being 22.5 MW each. The bid price of the offer received is Rs. 5.00 per unit with compounded escalation of 5% per annum from second year of operation, for each of the 25 MW projects, respectively. Energy proposed to be sold to BEST from each Unit is 150 MU (+/- 10%) for the duration of 330 days per year. The construction of the projects will take upto 18 months to complete from the date of signing of the Energy Purchase Agreement.
- e) BEST intends to buy renewable energy from both the Units for the period of five years at the rate of Rs. 5.00 per kWh with 5% annual escalation. The Commission has determined the tariff for procurement of biomass based energy vide its Order dated August 8, 2005 (Case 37 of 2003), which falls in the range of Rs. 3.04 to Rs. 3.43 per unit for the period of thirteen years. However, in view of acute power shortage, the rate has gone up multifold. Further, tariff based Competitive Bidding Guidelines (CBG) issued by the Government of India states that the Commission's approval is not necessary in case the procurement is carried out following competitive bidding guidelines.



- f) BEST's load demand is increasing at faster rate due to infrastructure development in the city of Mumbai, and hence, BEST is in the process of procurement of power at higher rate on short-term basis.
- g) BEST advertised EOI on urgent basis, and hence, it did not strictly adhere to the guidelines issued by Central Government under the provisions of Section 63 of Electricity Act, 2003 (EA 2003) for procurement of electricity by distribution licensee, due to time consuming procedure involved and time constraint for meeting RPS obligation. Further, renewable power is just a small fraction of total power requirement of BEST.
- h) Procurement of the green power would reduce the quantum of power from outside sources to meet the shortages in contracted capacity. The rates offered (Rs. 5.00 per kWh) are much lower than the cost of the power being procured from external sources, which would be in the consumer interest. Further, said power procurement would also obviate the enforcement charges of Rs. 6.00 per kWh being levied by Maharashtra Energy Development Authority (MEDA) for non-compliance of RPS obligation.

4. The Commission, vide its Notice dated July 24, 2008, scheduled the admissibility hearing in the matter on August 13, 2008, and directed BEST to serve a copy of its Petition along with its accompaniments to the four authorised Consumer Representatives.

5. At the admissibility hearing held in the matter on August 13, 2008, Shri Harinder Toor, Advocate appearing for BEST, referred to the prayers specified in the Petition and submitted that the Petition has been filed by BEST pursuant to the Commission's Order dated August 16, 2006 in Case No. 6 of 2006, wherein the RPS requirements are specified in percentage terms. Shri Harinder Toor further submitted that in order to meet the RPS obligation, BEST advertised an EOI on February 23, 2007 for setting up a 50-100 MW wind energy power project in Maharashtra. Only M/s Suzlon Energy Ltd. responded with the proposal for setting up a 51 MW wind power project, which has been kept in abeyance as it needs to be approved by BEST's Standing Committee. On September 3, 2007, BEST again advertised the Expression of Interest to meet its RPS obligation, which was widely published. BEST also intimated the same to all major players in the renewable energy area. However, BEST received only one proposal from M/s TPTCL.



6. Shri Harinder Toor referred to BEST's submission under its Petition and submitted that BEST intends to procure renewable energy from M/s. Spark Green Energy Group Companies.

7. The Commission enquired of BEST as to the legal provisions under which the approval was being sought from the Commission. Shri Harinder Toor referred to Sections 61, 62 and 63 of EA 2003 and submitted that the guidelines specified under Section 63, viz., "*Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.*", are yet to be issued by the Central Government. However, BEST has still invited offers. Shri Harinder Toor submitted that since the Central Government Guidelines were not available, the bidding process could not be undertaken as per the Guidelines. Although requirement for renewable energy procurement was adequately published, only one offer has been received by BEST and the same is in principle agreeable to BEST. Shri Harinder Toor submitted that BEST has sought the sanction of the Commission to proceed further with the matter.

8. The Commission enquired of BEST whether BEST would not be required to seek approval of the Commission for the entire bidding document formulated by BEST since, the Standard Bidding Documents for such RE procurement are yet to be notified by Central Government, as opposed to a case where the Standard Bidding Documents have been notified by the Central Government, and only the deviations to the Standard Bidding Documents would be required to be approved by the Appropriate Commission. Shri Harinder Toor urged the Commission to treat the matter in the Petition relating to power procurement as an "*arrangement*" in order to enable BEST to meet with the requirements to fulfil the RPS obligations and submitted that this would be an arrangement between BEST and M/s Spark Green Energy. Shri Harinder Toor submitted that till such time Guidelines are notified by the Central Government, the Commission could consider the power procurement as an arrangement, which needed to be sanctioned by the Commission.



9. The Commission observed that the issue was related to adoption of tariff in such cases; in pursuance of Section 63 of EA 2003. The Commission further observed that it could never be a *fait accompli* for the Commission to accept when the process itself is not approved by the Commission. If the distribution licensee wishes to procure power through competitive bidding, then the Bid documents would need to be formulated by the distribution licensee. In case Bid documents are as per the Guidelines issued by the Central Government, then the distribution licensee could approach the Commission to seek its prior approval of any deviations after submitting the same with reasons for such deviations, such as in the case of MSEDCL where it was with reference to Case II type of bidding. In case where there are no standard Bid documents issued by the Central Government, as was the case for Case I type bidding, then the Licensee, as Maharashtra State Electricity Distribution Co. Ltd., (MSEDCL) did have to seek the Commission's prior approval for the entire Bidding Document, which can be granted by the Commission after due regulatory process.

10. Shri K.N. Rajgopal, Dy. Chief Engineer, BEST, submitted that the Tariff Policy stipulates that, "*procurement of non conventional energy by the distribution licensee shall be done as far as possible through competitive bidding process under Section 63 of the Act within suppliers offering energy from the same source*". Shri K.N. Rajgopal further submitted that as far as renewable energy is concerned, unlike the requirement of the distribution licensee to meet its total load demand forecast for 10 years or 15 years, RE targets have already been specified by the Commission through its various Orders. Hence, it is the obligation on the licensee to meet RE purchase requirements. Since these Guidelines were not clear about non-conventional sources, BEST had submitted a letter dated August 21, 2007 to the Commission seeking guidance on the process of advertising an Expression of Interest for fulfilling its obligations towards procurement of renewable energy. However, no such guidance has been received from the Commission. The Commission observed that under the MERC (Conduct of Business) Regulations, 2004 notified by the Commission, if any relief is sought by any person, then the filing of a Petition is a necessary requirement instead of seeking clarification through letter. Moreover, since consumer interest is involved, stakeholders' comments are required to be obtained by following appropriate regulatory process.



11. Shri. A.G. Patil, Chief Engineer, BEST, submitted that the Competitive Bidding Guidelines already issued by the Central Government are (i) typically applicable for procurement of high quantum of energy, and (ii) stipulate a time frame of around 480 days (which is required to be curtailed to 360 days). Shri. A.G. Patil further submitted that RPS obligation is 6%, which is a small fraction of the total requirement of the distribution licensee. Moreover, there needs to be a time bound implementation programme, otherwise the distribution licensees are liable to pay penalties as specified under the RPS Order dated August 16, 2006. Therefore, if BEST follows the process of competitive bidding, which is essentially time consuming, it would be difficult for BEST to adhere to the time frame for securing power procurement under the RPS regime. For this purpose, BEST had initiated an Expression of Interest, which in the opinion of BEST could help in adhering to the timelines. Therefore, BEST has sought the Commission's approval to the process of Expression of Interest based bidding.

12. Shri. A.G. Patil submitted that no offers have been received by BEST reflective of the tariff specified by the Commission for FY 2007-08 for procurement of RE power. MEDA and others have time and again stipulated that distribution licensees should procure RE from the market, however, when market initiatives are taken such as invitation of Express of Interest; it is difficult to get the prices as specified by the Commission. Therefore, it is necessary to seek the Commission's approval to the competitive price received by BEST, which may not be necessarily as per the Commission's Tariff Orders, but have been received under a transparent process of Express of Interest.

13. Shri. M. Palaniappan, Regulatory Expert of the Commission, raised four issues as under:

- a) Prior approval for entire Bidding Documents could be sought, similar to that in the case of MSEDCL for Case I bidding or for approval of deviations from Standard Bidding Documents under Case II bidding, as the case may be.
- b) Whether it would be appropriate to grant post-facto approval for the competitive bidding process, after the winning bid has been selected?
- c) BEST has submitted that the rate of Rs.5.00 per kWh proposed by BEST for procurement of renewable energy has been approved by the Commission in its Tariff Order. However, it is clarified that such approval was only provisional, and



the Tariff Order clearly mentions that the consideration of rate as Rs. 5.00 per kWh should not be construed as approval by the Commission for the rate of Rs.5.00 per kWh.

- d) Can power purchase from trader qualify under RPS obligation? Is a trader a renewable source of energy? In the present case, TPTCL is the bidder, rather than the renewable energy producer, viz., Spark Green Power. Further, there is not even a Tripartite Agreement between BEST, TPTCL and RE generator, as claimed by BEST during the proceedings.

14. Shri A. G. Patil clarified that a Tripartite Agreement has been stipulated, and will be entered into.

15. The Commission observed that even assuming that proposed RE purchase is from biomass project, the Commission vide its Biomass Order dated August 8, 2005 has determined the rate of Rs.3.04 per kWh for the first year, which is applicable for power purchase by all licensees in the State of Maharashtra from biomass-based projects. The Commission enquired from BEST as to whether the Commission was required to accept the price “discovered” through “competitive bidding” done by a Licensee on its own, if the same was higher than the tariff determined by the Commission?

16. Shri Harinder Toor submitted that if the competitive bidding process as specified under Section 63 has been followed by a distribution license and pursuant to that if only one offer has been received, then in that event it would be a statutory duty on the Commission to adopt the tariffs so received even from one single selected bidder.

17. Shri Harinder Toor further submitted that the entire bidding process sets out the contract between the Parties. Even if the rate agreed is higher than the one notified by the Commission, such rate would be the contract between the parties.

18. Having heard the Parties and after considering the material placed on record, the Commission hereby rules as under:

19. The main issue is that the competitive bidding envisaged under Section 63 is the one, which has the prior approval of the Commission as per the “Guidelines for



Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees”, issued by the Ministry of Power vide notification dated 19.1.2005 (as amended on 30.3.2006, 18.8.2006 and 27.9.2007). In this case, since for RE power no “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees” have been issued by the Central Government, it is incumbent to seek the Commission’s approval for the entire set of documents.

20. The “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees” stipulates as under:

“Deviation from process defined in the 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.”

In terms of the above, the bid documents are required to be placed before the Commission for approval unless the bid documents are as per the standard bid documents issued by the Central Government. Admittedly, BEST has not done so. No intimation has either been sent by BEST to the Commission about initiation of the bidding process. Clearly, the provisions of paragraph 5.16 of the aforesaid Guidelines are applicable in the present case. The words “*subject to*” as it appears in the said paragraph, can only mean prior approval and not post facto approval.

21. The Commission notes that as per paragraphs 3.1 (i) and 5.16 of the Competitive Bidding Guidelines (CBG) notified by the Central Government, approval of the Commission for the bidding documents, for deviations if any, has to be sought prior to initiation of bidding process. Hence, there is no provision to accord post-facto approval to the Bidding Documents or the deviations from the Standard Bidding Documents, as the case may be.

22. As is evident, there are infirmities in the Petition submitted by BEST, which cannot be covered by citing paucity of time. In view of this, the Petition filed by BEST is not maintainable and therefore stands rejected. However, the Commission grants liberty to BEST to file an appropriate Petition to seek the Commission’s prior approval on the



deviations contained in the bidding documents in accordance with the procedure prescribed by the “*Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees*”. Moreover, BEST can always procure renewable energy as per rates and other terms approved by the Commission in its respective Orders as detailed in the table below, which are applicable for all licensees in the State of Maharashtra, and meet its RPS obligation.

Order	Date
Non-fossil fuel (bagasse) based co-generation	16 th August 2002
Non-fossil fuel (bagasse) based Non-Qualifying Co-generation	25 th May 2005
Wind Energy	24 th November 2003
Biomass	8 th August 2005
Small Hydel	9 th November 2005
Municipal Solid Waste	6 th April 2004
Renewable Purchase Obligation (RPO)	3 rd September 2004
Long term Development of Renewable Energy Sources and associated Regulatory (RPS) Framework	16 th August 2006

Accordingly, BEST’s Petition in Case No. 45 of 2008 stands dismissed.

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(Prafulla S. Varhade)
Secretary, MERC