

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 88 of 2008

In the matter of
Petition filed by M/s. Kay Power and Paper Ltd., seeking review of Order dated 6.8.2002 in the matter of purchase of power from Bagasse based Co- generation Projects.

Shri. V.P. Raja, Chairman
Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member

Ms/. Kay Power and Paper Ltd.
(Formely Kay Pulp & Paper Mills Ltd.)
Gat. No. 454/457 At & Post : Borgaon,
T/D : Satara (Maharashtra)

.....Petitioner

Vs.

Maharashtra State Electricity Distribution Co. Ltd
Prakashgad, Mumbai

..... Respondent

ORDER

Dated: April 2, 2009

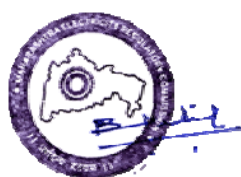
Ms/. Kay Power and Paper Ltd., filed a Petition before this Commission on 13.10.2008. The submissions made in the Petition are as follows:-

- (i) The Petitioner Company initiated its project activity in the year 1999 and signed a PPA with the erstwhile MSEB on 7.6.2000 as per the Government of Maharashtra/MNES Policy dated 18.10.1997. The Plant was made ready for commissioning in the month of December 2000 but when the Petitioner Company approached for synchronizing with the grid of the erstwhile MSEB, MSEB informed that they needed the Commission's approval on the PPA and for synchronizing.
- (ii) By virtue of clause No. (6.1) (Tariff rate and Tariff structure) of the amended PPA with CB/Bagasse/KayPulp/Co-Gen/Amend 1/15151501 dated 21.5.2003, the unit rate which had been decided by this Commission at that prevailing time was Rs 3.05 per KWh for the first year of operation of the co-generation project and escalation at the rate of 2% per annum on compounding basis. The said rate



which was fixed in the year 2002 is now not sufficient to cover the cost of production which mainly consists cost of Bagasse which has increased by almost 3-4 times. The bagasse prices in western Maharashtra have increased beyond imagination.

- (iii) The Petitioner Company suffered heavy losses due to the delay in synchronization almost for about 13 months. The Commission gave an interim Order dated 19.07.2001 for self use, then an interim Order dated 31.08.2001 for start up and export and finalized the tariff Order according to which the amendment of Initial PPA was made on 21.5.2003. The said amendment is in force now. All these provisional aspects took a lot of time and the Petitioner Company suffered heavily on all these accounts.
- (iv) Due to severe drought conditions, scarcity of fuel and procedural delay the Petitioner Company closed its operations in December 2003. Due to these losses, the Petitioner Company eroded its net worth and it approached BIFR on 22.04.2003 under the provisions of SICA. Eventually, on 1.02.2007 BIFR declared the Petitioner Company as a sick Company and appointed IREDA, as the monitoring agency.
- (v) In December 2006 (Season 2006-07) to rehabilitate the Petitioner Company the promoters infused funds and started the power plant and subsequently the paper plant. In the year 2006 (Season 2006-07) the availability of Bagasse was good. But in the year 2007-08, the prices of Bagasse started moving upwards and have increased phenomenally. Still the Petitioner Company continued its operations. But due to scarcity of sugar cane, the average bagasse prices are likely to go up to a level where it will not be possible to run the plant. The average bagasse prices having gross a calorific value of 2250 Kcal/Kg on wet basis for the year 2008-09 are likely to be around Rs.1700 pmt approximately plus applicable taxes including the cost of transportation, unloading, stacking and re-shifting to the conveyor belt. The Petitioner Company does not have any captive generation of bagasse and it depends on the nearby sugar mills for purchase of their surplus bagasse. In addition to the cost of bagasse paid to the sugar factories, the Petitioner Company has to incur the transportation charges, unloading, stacking and re-shifting to the bagasse feeders. The Petitioner Company has also to pay taxes on purchase of bagasse which is currently 4%.
- (vi) In the Tariff Order dated 16.8.2002 while calculating the cost of power the Commission considered the cost of bagasse as Rs. 559 pmt (having gross calorific value of 2250 kcal-kg on wet basis). Bagasse is a major constituent of the cost of generation of electricity. The average cost of bagasse is likely to be Rs. 1700 plus 4% taxes i.e. Rs.1768 (having gross calorific value of 2250 kcal-kg on wet basis) which is about 3.15 times than the cost considered by the Commission in its Tariff Order dated 16.8.2002. If other factors are considered such as debt servicing, operation and maintenance, depreciation, etc., the price today should be 3.15 times of Rs 3.05 i.e. Rs.9.60 per unit. As the bagasse season is approaching fast, the decision on the revised tariff structure may please be taken on an urgent basis to support such types of Co-Generation



projects. With the current bagasse prices it will not be possible to run the power plant because there will be direct losses and it is not possible even to cover the cost of fuel. In these circumstances, it is not economically viable to run the plant but it is not proper to keep the plant closed in the era of so much power scarcity.

(vii) It is stated that as the Commission has withdrawn the pass through facility, the Petitioner Company has to keep the plant shut during the rainy season. At the moment, the plant is closed and undergoing routine maintenance. The plant will be restarted again in the first week of November 2008.

2. In light of the above, it has been prayed as follows:-

- a) A rate of Rs. 9.60 per unit is given or the price be revised by the Commission to cover the cost of operation;
- b) The rate finalized by the Commission may kindly be made applicable from the 1st day of starting the plant for the season 2008-09.
- c) If MSEDCL is not willing to give the revised rates enough to run the plant in an economically viable manner then the Petitioner Company be permitted to sell power to third party and be granted open access instead of keeping the plant closed.

3. A reply has been filed by MSEDCL on 18.11.2008, wherein it is stated as follows:-

- a) Prima facie the rate requested by the Petitioner appears to be high as compared to the rates offered by other States for Cogeneration Projects;
- b) However, MSEDCL has no expertise to verify the rate calculated by the Petitioner;
- c) Further, the Commission vide its Order dated 16.08.2006, has already ruled as under:

(i) Sr No 2.3.15:

"Hence, post 31st March 2007 and prior to 31st March 2010, question of re- determination of tariff for renewable energy based generation projects within Maharashtra shall arise in case of wind energy, non-fossil fuel (incl. bagasse) based cogeneration projects and new RE technologies." i.e. the provision for revision of Tariff for cogeneration projects.

(ii) Sr. No. 2.3.21 :

"In view of above, the Commission rules that the tariff rates and tariff structure as approved under respective Tariff orders in case of (a) non-fossil fuel based (qualifying) co-generation projects (b) non-fossil fuel based (non- qualifying) co-generation projects (c) wind energy projects



(d) municipal solid waste to energy projects and (e) small hydro projects, shall be extended for further period upto 31st March 2010 under RPS Policy Framework as formulated under this order". Hence, the validation of the Order dated 15.07.2002 and 16.08.2002 has been extended upto 31.03.2010.

- d) As such, the Commission on the basis of Certification/ Vetting from the Government Nodal Agency, i.e., MEDA, may decide the appropriate/ justified rate.

4. MSEDCL has made certain prayers as under:

- a) To assess the tariff for procurement of power from the Petitioner covered under Non Conventional Energy Sources with due vetting from MEDA, a Government Nodal Agency;
- b) Not to consider the request of the Petitioner with reference to third party sale, as the Petitioner has already executed a long term agreement (EPA) with MSEDCL (erstwhile MSEB) for sale of power to MSEDCL.

It has also been submitted by MSEDCL that though the power procured from the Petitioner is pass through for the purposes of ARR, the Commission may please give them only a reasonable rate (and not the rate requested by the Petitioner).

5. A hearing was held on 19.11.2008. During the hearing, the Respondent handed over copies of its reply to the Petitioner. Since the Petitioner did not get a chance to file its rejoinder, the Petitioner was granted three weeks time to file its rejoinder. The hearing stood adjourned.

6. By letter dated 8.12.2008, the Petitioner informed the Commission that they approached MEDA on 5.12.2008 to seek co-operation in this matter and for advice as MEDA is the Nodal Agency. By the said letter, MEDA was informed that a Petition regarding review of Tariff order was filed by the Petitioner. Subsequently, the hearing was held by the Commission. MEDA was informed that the Respondent (MSEDCL) has projected to the Commission that they have no expertise to determine tariff and assess the unit rate, hence MEDA have been requested to assess the tariff rate being a Govt. Nodal Agency. Therefore, MEDA was requested to put up a reply to Commission. The following few facts were addressed to MEDA for considering while giving the reply in case of this particular project:-

- a) The existing rate of bagasse i.e., in current crushing season 2008-09 is Rs. 1400 to Rs. 1700 plus applicable taxes.
- b) This particular project has no by-product of bagasse. Hence, bagasse has to be procured from the sugar factories in the radius of 150 Kms.
- c) It is presumed that, while formulating of the co-generation policy at that particular time, mainly sugar factories have been considered, who had its own by-product i.e., bagasse as fuel. But the present project has to



procure bagasse from the sugar factories thus involving additional expenses.

d) The Petitioner has to incur additional expenses for the following incidences unlike other Co-Gen Projects:-

- i) Loading of bagasse at sugar factories.
- ii) Transportation of bagasse from Sugar factories to the project site.
- iii) Expenditure on road toll taxes.
- iv) Unloading and stacking of bagasse at project site.
- v) Conveying of bagasse from bagasse stack yard to the conveyer belt of the boiler, using Vehicles/Dozers/Trolly's and man power.

It has also been stated in the aforesaid letter that the above facts are true and has been personally seen and examined by MEDA officials during the visit to the project of the Petitioner. MEDA was therefore requested to highlight these points before the Commission to make this project economically viable for power generation. Since there is escalation in the bagasse prices it will not be possible to run the plant because there will be direct losses and it is not possible to cover the cost of even fuel. The indicated tariff rate has been worked out by the Petitioner as per the existing conditions.

7. Hearing was held on 9.2.2009. During the hearing the Petitioner handed over its rejoinder, wherein it has been submitted that the order of this Commission as referred to by MSEDCL in its reply was passed by this Commission not specifically determining the tariff when all the concerned parties were present. Moreover the situation of rise in bagasse price is abnormal and beyond any logic, so obviously any earlier price determination has not taken into account, such kind of abnormal rise. In their prayer MSEDCL has agreed that the Commission may give reasonable and appropriate rate to the Petitioner with due vetting from MEDA. The Petitioner has approached MEDA and submitted all the related papers regarding cost of production, but they need direction from the Commission or MSEDCL for submitting their recommendations. In the rejoinder it has also been submitted that considering this abnormal rise in fuel cost, Government of Karnataka has already passed an interim order for bagasse based co-generation projects @ Rs. 6.50 per unit. They have taken this decision to ensure that the plants are not standing idle, in so much scarcity of power. In the rejoinder it has also been submitted that even other bagasse based co-generation projects have also filed applications for tariff determination before this Commission. In light of the above it has been prayed as under:-

- a. The Commission may direct MSEDCL to club all the applications of bagasse based co-generation projects and initiate the proceeding for tariff determination.
- b. MEDA may kindly be advised to submit their recommendation on the cost of production as submitted by the Petitioner.
- c. The Commission may kindly assess the new tariff on receipt of details and give the Petitioner a reasonable rate.



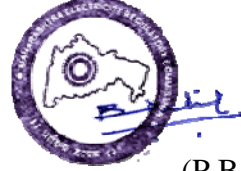
8. During the hearing, MSEDCL agreed to file a Petition clubbing all the applications of bagasse based co-generation projects with a proposal to submit revision in the applicable tariff. The Commission directed MSEDCL to submit detailed proposal clubbing all the similar applications including the issues related to the need for revision in tariff for bagasse based co-generation projects of the kind of Kay Power and Paper Ltd., in consultation with MEDA. However, the Petitioners and MSEDCL need to substantiate their claims with adequate justification and supporting documents to seek revision in tariff rather than merely seeking revisions without appropriate backup.

With the above observations and directions, the present petition stands disposed of.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(V.P. Raja)
Chairman



(P.B. Patil)
Secretary, MERC