

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 69 of 2006

In the matter of
**MSEDCL Petition for Purchase of Power of 4000 MW on Long Term basis under
Case-2 of Competitive Bidding Guidelines**

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

ORDER

Dated: May 28, 2007

Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) filed a Petition on December 19, 2006 under Section 63 of the Electricity Act, 2003 seeking approval for procurement of an additional quantum of 4000 MW of power through Competitive Bidding Guidelines (CBG) via Case-2 route.

The main prayers under the Petition are as under:

- “1. to examine the proposal of the Petitioner for procurement of an additional quantum of 4000 MW of power and allow it to initiate the bidding process under Case-2 of Competitive Bidding Guidelines.
2. to examine the proposed reduced time-frame for long-term power purchase via Case-1 route and allow MSEDCL to undertake the bidding process as per the proposed reduced time-frame of 275 days.”

2. MSEDCL, in its Petition, submitted that as the demand supply gap in the State of Maharashtra was growing rapidly, MSEDCL had previously approached the Commission for approval of long term power purchase of 4000 MW [comprising procurement of 850 MW as base load, 900 MW as peak load and 2250 MW for intermediate load, for a period of 8 months during the year] through the competitive bidding process via Case-1 route (Case 22 of 2005) and the Commission had issued its Order in the matter on October 17, 2006.



3. The relevant portion of the Commission's Order in Case 22 of 2005 is reproduced below.

"The Commission directs MSEDCL to prepare 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 to be undertaken for only 2000 MW, unless the demand forecast establishes the need for 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."

4. MSEDCL, in its Petition submitted that it was in the process of engaging experts for the development of detailed demand forecast as per the Commission's directives. Meanwhile, the demand-supply projections for the State of Maharashtra had changed and considering the peak requirement and availability, MSEDCL projected that the demand supply gap will be close to 4000 MW in the year 2011-12, and significantly increase there onwards.

5. MSEDCL, in its Petition submitted that considering the uncertainties involved in the Case-1 route of competitive bidding, it has decided to initiate the process of power procurement under Case-2 route and the Maharashtra State Power Generation Company Limited (MSPGCL) has also identified various sites for setting up of power plants, such as Dhopave (imported coal based), Talegaon (Natural Gas based), etc.

6. As regards MSEDCL's request for revision in the time frame for power procurement under Case-1 route, the relevant part of the Commission's Order dated October 17, 2006, regarding revision of time frame of the bidding process for long term power procurement under Case-1 route is reproduced below:

"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.”

7. MSEDCL, in its Petition submitted that it has already initiated the process of procurement of 2000 MW power through competitive bidding under Case-1 route as directed by the Commission. However, considering the severe power shortage situation in the State and to take immediate measures to bridge the gap, MSEDCL requested the Commission to approve the proposed reduction in the timeframe for Case-1 bidding process.

8. The Commission scheduled the hearing in the matter for February 6, 2007 and notices were issued accordingly including consumer representatives.

9. The Commission received a Letter from Principal Secretary (Energy), Government of Maharashtra (GoM) ref: Letter No. POP-2006/RR-5337/NRG-5 dated February 3, 2007. GoM, in its letter, submitted that the State has reached a high level of load shedding and the quantum was exceeding 5000 MW. GoM stated that in the absence of a better forecast, all State utilities in the Country have been following Electric Power Survey (EPS) carried out by CEA. GoM added that while the EPS projections can certainly be refined through a better methodology for which appointment of a Committee of experts is desirable, considering the huge shortage at present and in the years to come, it would be imprudent to hold up the process of giving approvals to projects and to power purchase proposals. GoM further mentioned that for the appointment of the Committee of Experts for carrying out the demand forecasting on scientific basis, GoM would be guided by the Commission's advice and requested the Commission to suggest the names of the experts who can be approached for their willingness and also to suggest indicative Terms of Reference for the Committee. GoM in its letter added that till such time the Committee suggests the methodology and the Commission accepts the same, the GoM is of the view that the EPS should form the basis for capacity addition planning and that the projects proposed should be processed for early approval. GoM added that it had directed MSPGCL and MSEDCL to approach the Commission in this regard.

10. The hearing in the matter was held on February 6, 2007 and during the hearing, no consumer representative was present.

11. With reference to the GoM Letter No. POP-2006/RR-5337/NRG-5 dated February 3, 2007 (addressed to the Commission), the Commission observed that MSEDCL has been directed to form a Committee of Experts for carrying out the demand forecasting on a scientific basis. MSEDCL may consider nominating the Chairman of this Committee first, who may suggest/propose suitable committee members. The Commission suggested the name of Dr Vijay Kelkar, Chairman, IDFC as Chairman and Dr. Sunando Roy [Advisor, Reserve Bank of India, Department of Banking Supervision, (Risk Research



and Analysis Wing)] and Shri. Sunil Verma [(Member (E & C), Central Electricity Authority)] as members of the said Committee. More members may be nominated on the advice of the selected Chairman. The Committee will concentrate on methodology of long term demand forecasting and the actual study could be done by one of the reputed energy advisory firms. Shri. Palamwar, Director (Operations) of MSEDCL, undertook to expedite the formation of the said Committee of Experts. The Commission further directed MSEDCL to submit the demand forecast based on which any additional procurement of power may be sanctioned.

12. The Commission observed that the 16th EPS would not be sufficient for sanctioning long-term power procurement inasmuch as MSEDCL needs to identify the sources of power to meet its peak load and intermediate load requirement, apart from the base load. MSEDCL should undertake peak load planning for the ensuing 25 years to justify any requirement for additional long-term procurement. Base load planning would not serve the purpose. Approval for procurement of additional power may be granted when MSEDCL can measure its peak demand for the ensuing 25 years and further, identify a source from where such peaking requirement can be met. It was observed that it is crucial that MSEDCL prepares an integrated resource plan to procure power keeping in view the provisions of MERC (Terms and Conditions of Tariff) Regulations, 2005 and at the same time submit a scientific demand forecast and this is obligatory on MSEDCL. Shri. Palamwar undertook that MSEDCL would comply with the requirement and submit the demand forecast as directed by the Commission.

13. Shri. Palamwar submitted MSEDCL has already taken steps to set up the Projects of 2000 MW as per the Order dated October 17, 2006 in Case No. 22 of 2005. However, while various sources have been identified, certain uncertainties and difficulties have also been identified, which are acting as hurdles in the completion of the process.

14. Shri Palamwar submitted that MSEDCL, in its Petition, has sought the Commission's approval for completing the power procurement projects (e.g., with respect to Dhopave, Uran, etc.) via the Case-2 route of the CBG, by forming a special purpose vehicle in collaboration with MSPGCL. Officials of MSEDCL and MSPGCL have jointly visited the sites at Dhopave, Uran, Nasik, Dhule and Talegaon where the procurement process may be expeditiously completed, if initiated via the Case-2 route of the CBG. Shri. Palamwar submitted that MSPGCL has already initiated the procurement process and MSEDCL had originally decided to appoint MSPGCL as Project Development consultant. However, this arrangement would debar MSPGCL for bidding while MSEDCL invites bid offers and hence MSEDCL is not appointing MSPGCL as consultants for bidding process.

15. The Commission observed that approval as sought for by MSEDCL for procurement of additional quantum of 4000 MW of power and allow it to initiate the bidding process under Case-2 of Competitive Bidding Guidelines cannot be given at the present stage and that the Petition of MSEDCL, so far as this particular prayer is concerned, is premature.



16. The Commission observed that MSEDCL must submit a detailed procurement plan including specifications regarding the type of fuel, the proposed phasing, etc., if power is to be procured via the Case-2 route under CBG. The Commission enquired on the specifications as to rail linkage, keeping in view the uncertainty of coal transportation.

17. Shri. Palamwar informed that Uran would be a gas-based source, Dhopave would be an imported coal-based project, and Nasik would be partly gas-based and partly imported coal-based. Shri. Palamwar added that the work on Uran Project was expected to commence by May 31, 2007.

18. The Commission enquired whether there was any written representation, e.g., a letter of intent or otherwise, on record, with specifications in relation to cost estimate, risk allocation and such other crucial factors, for the specific projects. Shri. Palamwar replied that MSEDCL will engage its consultants to work out the said details.

19. The Commission observed that it is incumbent on MSEDCL to prepare a Detailed Project Report (DPR) with details on fuel and transport linkages, environmental clearances, etc., and work out a feasible plan of action consulting various other utilities, organizations, bodies, if procurement is to be carried on via the Case-2 route of the CBG. Thereafter, MSEDCL should submit its proposed procurement plan to the Commission together with deviations to standard bid documents, for approval. If MSEDCL anticipate a requirement of 4000 MW, it should go ahead to work out the required procurement plan. The Commission further observed that business planning is not a regulated activity and the Commission's approval for its initiation is not required and MSEDCL may initiate its planning to procure 4000 MW as considered necessary. The need for approval would only arise on submission of DPR and deviations to bidding documents with respect to standard bidding documents and a public hearing may be required to be conducted thereafter.

20. MSEDCL submitted that even before MSEDCL initiates a DPR, approval of the Commission on the quantum of power desired to be procured is necessary for the purposes of acquiring land, obtaining water transportation linkage and environment clearances. Shri. Sachdeva, consultant to MSEDCL submitted that pursuant to the Commission's Order dated October 17, 2006 in Case No. 22 of 2005, MSEDCL has already acquired the land and obtained input transportation linkage and environment clearance with respect to Uran plant. However, with respect to the Dhopave plant, only an in-principle clearance has been obtained and the land acquisition is in process. The Commission enquired regarding the time within which MSEDCL may be able to submit a DPR with respect to the projects at Uran and Dhopave. Shri. Palamwar submitted that unless in-principle prior approval of the Commission is obtained with regard to the quantum of power, MSEDCL would not be in a position to acquire land for the same.

21. The Commission observed that since land has already been acquired for the project at Uran, MSEDCL may proceed with its Uran project first, and submit DPR and deviations to bid documents with regard to the same. MSEDCL may adopt a staggered process and submit its DPR and deviations to bid documents for the Dhopave project thereafter. The Commission further observed that in-principle approval for power procurement is required only when the procurement process deviates from the standard



guidelines under the CBG. The Commission would be able to consider the same only on submission of a DPR since approval should be given on a scientific basis and in a fully regulated manner. In the said circumstances, MSEDCL may first submit DPR and deviations to bid documents for its procurement project at Uran and thereafter submit DPR and deviations to bid documents for its procurement project at Dhopave. Shri. Palamwar undertook to comply with the aforesaid requirement.

22. As regards MSEDCL's second prayer on reduction of time frame for undertaking the bidding process under Case-1 route, MSEDCL made a power-point presentation and submitted that this prayer of MSEDCL is in accordance with the Commission's Order dated October 17, 2006 in Case No. 22 of 2005 and MSEDCL has sought to execute these projects within 275 days starting from the date of publication of RFP, instead of 425 days as provided under the CBG. MSEDCL cited the practices undertaken by Utilities in the States of Punjab, Gujarat and Haryana where timeframe for procurement of power under the Case-1 route has been sufficiently reduced to tide over situations of acute shortage of power.

23. The Commission enquired regarding the stages for which time lines has been revised/shortened. MSEDCL submitted that "Submission of responses of RFQ" and "Shortlisting based on responses and issuance of RFP" is envisaged to be completed within 90 days (60 + 30) as per CBG guidelines. However, MSEDCL seeks approval for concluding "Bid clarification, conferences, etc", within 10 days thereafter, deviating from the 60 -day timeline provided in the CBG. Further, MSEDCL seeks to conclude "Technical and price bid submission" within 65 days from completion of "Final clarification and revision of RFP" deviated from the 180-day timeline provided in the CBG. MSEDCL seeks to extend the 30-day timeline from "Technical and price bid submission" to "Shortlisting of bidder and issue of LOI" provided in the CBG, to a 50-day timeline. Lastly, MSEDCL seeks to conclude "Signing of documents" within 30 days from "Shortlisting of bidder and issue of LOI" deviating from the 35-day timeline provided in the CBG.

24. The Commission enquired whether MSEDCL has finished the stage under "Shortlisting based on responses and issuance of RFP" for Case-1 Bidding. MSEDCL submitted that as on February 4, 2007, MSEDCL has received 32 responses/ submissions of RFQ, after the publication of RFQ and the short listing of the said responses would be completed within 30 days thereof.

25. The Commission observed that shortening of the period for bid submission may not be in the interest of MSEDCL in the long run as it may get under prepared bids and may even lose good bids if the bidding timeframe is reduced. The Commission opined that it would be not be fair or feasible to keep only 65 days for technical and price bid submission.

26. The Commission observed that prima facie, this second prayer of MSEDCL is also premature. Since the Ministry of Power has not issued standard bid documents for Case-1 Bidding, it would be difficult to identify any deviation in bidding terms, under the Case-1 route. Deviation of any sort can be identified only on comparison with a standard document. In the absence of the same, MSEDCL may either approach the Ministry of



Power to expeditiously issue standard bid documents or in the alternative, conform to the standard timeframe as stipulated in the CBG.

Commission's Ruling

27. The Commission, in its Order dated October 17, 2006 (Case 22 of 2005), directed MSEDCL to initiate the process for procurement of power under competitive bidding route in view of severe supply shortage in the State, although MSEDCL had not furnished requisite demand forecasts (as per Clause 3.1(iii) of Competitive Bidding Guidelines) and long term power procurement plan (as per Regulation 23.1 of MERC (Terms and Conditions of Tariff) Regulations, 2005).

28. Clause 3.1 (iii) of 'Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees dated January 19, 2005 as notified and amended by the Ministry of Power' stipulates as follows:

"Approval of the Appropriate Commission shall be sought prior to initiating the bidding process in respect of the following aspects:

(a) For the quantum of capacity / energy to be procured, in case the same is exceeding the projected additional demand forecast for next three years (Both for Case 1 and Case 2).

(b) For the transfer price of fuel, in case of fuel specific procurement enquiry, if such price has not been determined by government, government approved mechanism or a fuel regulator (under Case 2)."

29. Further, Clause 5.16 of 'Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees dated January 19, 2005 as notified and amended by the Ministry of Power' stipulates as follows:

"5.16 In case there is any deviation from these guidelines, the same shall be subject to approval by the Appropriate Commission".

30. The Commission is of the opinion that the approval sought by MSEDCL for procurement of an additional quantum of 4000 MW of power as base load under Case-2 of Competitive Bidding Guidelines can be considered only on adhoc basis. MSEDCL must undertake long term demand forecast on scientific basis to firm up its future procurement plan which will give a mix of base load, intermediate load and peak load. Further, for procurement of power on competitive bidding basis under Case-2 route, the need for approval would only arise on submission of DPR and deviations in Bidding Documents with respect to Standard Bidding Documents.

31. As regards MSEDCL's second prayer, i.e., to allow MSEDCL to undertake the bidding process for long-term power purchase via Case-1 route as per the proposed reduced time-frame of 275 days, the Commission is of the opinion that this prayer of MSEDCL is also pre-mature as the Ministry of Power has not issued the standard bid documents for Case-1 Bidding and in the absence of same, the entire bidding document may need to be approved by the Commission.



32. Further, the Commission during the hearing held on February 6, 2007, directed MSEDCL to expedite the constitution of Expert Committee. The Commission directs MSEDCL to submit the status of constitution of Expert Committee for carrying out the demand forecast on scientific basis, within two weeks from the date of this Order.

33. During the hearing itself, the Commission had indicated that as the Uran Project falls under Case-2 route for which the Standard Bidding Documents have been notified and the land has also been acquired for the project, MSEDCL may proceed with its Uran Project and submit DPR and deviations to bid documents to the Commission. However, till date, the Commission has neither received the DPR nor MSEDCL's Petition for approval of deviations in the bidding documents with respect to Standard Bidding Documents for the Uran Project. The Commission directs MSEDCL to submit the DPR and deviations from Standard Bid Documents for Uran Project within one month from the date of this Order.

With this Order, the Commission disposes off MSEDCL's Petition in Case No. 69 of 2006.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr Pramod Deo)
Chairman, MERC



(Secretary, MERC)