

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 111 of 2011

In the matter of

**Petition of Shree Renuka Sugars Ltd. seeking reimbursement of expenses from
MSEDCL/ MSETCL incurred towards creation of evacuation infrastructure for its
Bagasse based co-generation project of 30 MW capacity in the State of Maharashtra
on BOOT basis**

**Shri V.P. Raja, Chairman
Shri Vijay L. Sonavane, Member**

ORDER

Dated: 23rd November, 2011

M/s. Shree Renuka Sugars Ltd
Corporate Office:
7th Floor, Devchand House,
Shivsagar Estate, Dr. Annie Besant Road,
Worli, Mumbai- 400 018.

...Petitioner

Vs.

Maharashtra State Electricity Distribution Co. Ltd.
Rep. by the Managing Director
Prakashgad, Bandra (East),
Mumbai 400 051

.....Respondent No. 1

Maharashtra State Electricity Transmission Co. Ltd.
Rep. by the Managing Director
Prakashganga, Plot No. C-19
E- Block, Bandra-Kurla Complex
Bandra (East), Mumbai 400 051

... Respondent No. 2

Deshbhakta Ratnappanna Kumbhar
Panchaganga Sahakari Sakar Karkhana Ltd.,
Ganganagar, Ichhalkaranji,
District Kolhapur 416 116

...Respondent No. 3

Maharashtra Energy Development Agency (MEDA)
Rep. by the Director General
MHADA Commercial Complex, 2nd Floor,
Yerwada, Pune 411 006

...Respondent No. 4

Maharashtra State Load Despatch Centre (MSLDC)
Rep. by the Chief Engineer,
State Load Despatch Center,
Thane-Belapur Road, Airoli,
Navi Mumbai 400 708

...Respondent No. 5

M/s Shree Renuka Sugars Ltd. (SRSL) filed a Petition under affidavit before the Commission on July 13, 2011 under Regulations 92, 93 and 94 of MERC (Conduct of Business Regulations) 2004, seeking reimbursement from Maharashtra State Electricity Distribution Company Ltd. (MSEDCL)/ Maharashtra State Electricity Transmission Company Ltd. (MSETCL) for expenses incurred towards creation of evacuation infrastructure by Shree Renuka Sugars Ltd. (SRSL) for its Bagasse based co-generation project of 30 MW capacity in the State of Maharashtra on BOOT basis. SRSL vide its Petition made the following prayer:

“To direct the respondents to reimburse the expenses already incurred by Shree Renuka Sugars Ltd. for creation of evacuation infrastructure.”

2. SRSL, in the Petition, submitted that it is a Company registered under the Companies Act, 1956, which is into the business of manufacturing and marketing of sugar with co-generation and ethanol plants at various locations in the country. As part of its business, SRSL entered into an Agreement dated January 9, 2008, which was subsequently amended on May 6, 2009, with Deshbhakta Ratnappanna Kumbhar Panchganga SSK Ltd. (DRKPSSKL) for development of 30 MW Bagasse based cogeneration project in the premises of DRKPSSKL on BOOT basis. The amendment in the agreement was made since the said project was initially taken up in the name of Shree Renuka Energy Ltd. (SREL), a group company of SRSL, which was later on transferred in the name of SRSL.

3. As per submissions in the Petition, the said co-generation plant was commissioned in December 2009. An Energy Purchase Agreement (EPA) was entered into by SRS� with MSEDCL for the period from January 29, 2010 to March 31, 2010, immediately after commissioning of the project. Accordingly, SRS� had supplied power to MSEDCL during abovementioned period. However, it was also submitted that during the same period, SRS� was not able to supply power directly to the Host Sugar Factory, i.e., DRKPSSKL, due to lack of clear guidelines/policies from MSEDCL regarding BOOT projects and in view of this SRS� opted for supplying surplus power to Reliance Energy Trading Limited (RETL) for the period starting from April 01, 2010 to March 31, 2011 as per EPA.

4. SRS� submitted that, in the meanwhile, the Board of Directors of MSEDCL vide Resolution No.1143 had taken a policy decision to enter into long-term energy purchase agreements (EPA) for 13 years with cogeneration projects who have installed or propose to install power plant on Build Own Operate & Transfer (BOOT) basis in the premises of Co-operative Sugar Factories and sell 100% surplus power after auxiliary and Host Sugar Factory consumption to MSEDCL at the rates determined by the Commission. MSEDCL issued Circular No. 124 dated May 29, 2010 which allows direct supply of electricity to the Host Sugar Factory. However, SRS� submitted that it was not able to take benefit of this policy as SRS� was bound by an EPA that was already entered into with RETL.

5. Further, upon the expiry of the EPA with RETL on March 31, 2011, SRS� submitted a proposal for executing long term EPA with MSEDCL. It was agreed upon and decided by both the parties (SRS� and MSEDCL) to enter into a long term EPA for 13 years for supply of surplus power after auxiliary and Host Sugar Factory consumption to MSEDCL at the rates determined by the Commission.

6. SRS� stated that while it was about to sign the EPA on May 3, 2011, it was brought to SRS�'s notice by MSEDCL that since the project got commissioned in December 2009 and SRS� did not sign Long Term EPA (for 13 years) with MSEDCL immediately upon commissioning of the project, there is lack of clarity on the issue of reimbursement of expenses towards evacuation facilities already created by SRS� and therefore, it was decided that clarification shall have to be sought from the Commission regarding the same.

7. Further, it was submitted by SRS� that both the parties (SRS� and MSEDCL) agreed to sign the EPA and incorporate a clause into the Agreement for seeking clarity/direction from the Commission regarding issue of reimbursement of evacuation expenditure already

incurred by SRSL. The relevant Clause of the EPA signed on June 7, 2011, submitted along with the present Petition, is reproduced as under.

“ ...

Clause 4: Evacuation Facilities

The Generator shall bear the cost of Generation Facility switchyard and interconnection facilities at the Generation Facility up to the point of energy metering. The MSEDCL/MSETCL will bear the cost of transmission lines and associated facilities beyond the point of energy metering for the evacuation of power. The Generator(s) shall provide an interest free advance to the MSEDCL/ MSETCL equivalent to an amount of 50% of the cost of works to be carried out by the MSEDCL/MSETCL for power evacuation purposes. The MSETCL/MSEDCL shall refund the above interest free advance to the Generator(s), in five equal instalments, spread over the period of five years, commencing from one year after the date of commissioning of the respective co-generation projects. In this project M/s. SRSL have already invested 100 % amount for Constructing the Evacuation facility beyond the point of energy metering. As such, MEDA will refund 50 % of the evacuation cost and MSEDCL/ MSETCL will refund remaining 50% of the Evacuation cost in five equal instalments spread over a period of five years to M/s. SRSL from the date of commissioning of power to MSEDCL's grid from the co-generation project. However, the refund of instalment of interest free advance towards evacuation arrangement will not be released in the subsequent operating year if the Generator fails to supply continuously for 3 months during season for the previous operating year.

In this case Shree Renuka Sugars Ltd. has commissioned co-gen project in December 2009. As SRSL has not entered long term EPA (13 Years) with MSEDCL immediately after commissioning of the project i.e December 2009, it is required to seek approval from MERC regarding reimbursement of evacuation expenditure. Accordingly, the petition will be filed by SRSL to MERC for refund of evacuation cost. If approved by MERC then MSEDCL/MSETCL will refund the evacuation cost.

...(Emphasis Added)”

8. SRSL submitted that the project under consideration is the first project based on BOOT policy of Government of Maharashtra. The very purpose of such projects is to provide relief to financially sick units of co-operative sugar sector in the State of Maharashtra. SRSL contended that under BOOT policy, the cogeneration project developer provides enormous benefits to the Host Sugar Factory and the society at large. Some of the benefits as stated in the Petition by SRSL are mentioned below:

- a. Free supply of power to the Host Sugar Factory (HSF).
- b. Free supply of steam to the Host Sugar Factory for process requirements.
- c. Un-interrupted power supply without investment in cogeneration project.
- d. Absolved from the responsibility of repayment of debt as the asset is created by the project developer.
- e. Royalty payment to HSF for Bagasse supplied to the cogeneration project.
- f. Improved cash flow from the operations, which provides ability to pay farmers on time against supply of sugar cane.
- g. Creation of conducive business environment for all the stakeholders.
- h. Help to ensure sustainable development in the region.
- i. Decentralised power generation helps to reduce transmission losses and hence, conservation of energy.
- j. Power generation based on non-fossil fuel like Bagasse helps in reduction of Green House Gases and hence, mitigation of impact of carbon emissions.
- k. The cogeneration asset, which will be free from all the liabilities, will be transferred to the Host Sugar Factory at the end of BOOT period.

9. In addition, SRSL stated that while looking at the benefits provided by the cogeneration projects based on BOOT policy, it is very much important to encourage such projects. All such projects should be supported by the various policy interventions (like the one which got introduced - direct supply to HSF) so that they are financially viable. Therefore, in order to ensure that the project under consideration is financially viable, SRSL contended that it needs to be reimbursed the cost of evacuation infrastructure incurred by the Petitioner as per the policy.

10. The Commission, vide Notice dated August 5, 2011, scheduled a hearing in the matter on September 6, 2011, and directed SRSL to serve a copy of the Petition, along with its accompaniments to MSEDCL, MSETCL and the authorised consumer representatives.

11. During the hearing held on September 06, 2011, SRS� made a detailed presentation on the background of its Petition and prayed to the Commission to direct MSEDCL or MSETCL to reimburse the expenses incurred by SRS� towards creation of evacuation infrastructure for its Bagasse based co-generation project, built on BOOT basis. MSETCL sought permission for impleading Maharashtra State Load Despatch Centre (MSLDC) along with Maharashtra Energy Development Agency (MEDA) as a party to the case.

12. After hearing the Petitioner and the Respondents, the Commission directed SRS�:
- a. To implead MSLDC, MEDA and DRKPSSKL as parties to the Petition
 - b. To serve copies of its Petition and other subsequent submissions in the matter to MEDA, MSLDC and DRKPSSKL.
 - c. To submit copies of all Government of Maharashtra Notifications and Circulars pertaining to revival of sick sugar factories under BOOT scheme.
 - d. To submit audited results of Host Sugar Factory (DRKPSSKL) duly certified by the Sugar Commissioner and details of power sold to Reliance Energy Trading Limited (RETL)

The Commission further directed MSEDCL and MSETCL to submit comments on the Petition and the matter, vide notice dated September 8, 2011, stood over to October 3, 2011.

13. MSEDCL, vide its letter dated September 09, 2011, submitted the para-wise comments on the petition filed by SRS� as directed by the Commission, briefly stated as follows:-

- a) As regards evacuation arrangement of the Project under consideration, MSEDCL submitted that the co-generation project is grid connected by LILO arrangement at 110 kV level at 110 kV Kolhapur II-Ichalkaranji Line. Further, MSEDCL stated that, as per the directives of the Commission, the evacuation arrangement beyond the interconnection point is the responsibility of MSETCL (being on EHV level) and the developer (SRS� in this Case) shall deposit 50% amount of evacuation expenses as an interest fee advance with MSETCL, which shall be refunded in 5 equal instalments spread over a period of 5 years after one year of commercial operation date.
- b) While drawing references from the clauses of the guidelines issued by Government of Maharashtra dated October 14, 2008 and its subsequent amendment dated August 03, 2009, MSEDCL submitted that the refund of expenses towards creation of evacuation facilities to the developer is applicable only in cases where the generator sells at least 50% power to MSEDCL and the remaining 50% in the State of Maharashtra.
- c) In addition to the above, MSEDCL highlighted that GoM vide a Resolution dated July 14, 2010 has made certain modifications to the earlier notifications in the matter, and

submitted that the sanctioned estimate by MSEDCL/MSETCL or the actual expense incurred by the project holder or the maximum amount of Rs 4 crore per project, whichever is lower, shall be considered as the basis for refund of evacuation cost (beyond the interconnection point).

- d) MSEDCL further submitted that, in the present case, SRSL did not enter into long term EPA with MSEDCL but has executed EPA with M/s RETL for sale of power for a period from April 01, 2010 up to March 31, 2011 and since the sale of power was to a trader, the power sale was not limited only to the State of Maharashtra and therefore, SRSL is not eligible for refund of evacuation expenses in line with the Policy guidelines of Government of Maharashtra.
- e) In this context, MSEDCL stated that on one side SRSL is availing benefit of the GoM policy on BOOT basis and has set up the power plant, while on the other side, for refund of expenses, it is trying to be covered under the Commission's directives wherein evacuation arrangement is the responsibility of MSEDCL/MSETCL.
- f) MSEDCL submitted that SRSL has made a claim of Rs. 6,95,67,000.00 (Rupees Six Crore Ninety Five Lakh Sixty Seven Thousand Only) on the grounds of expenses incurred toward creation of evacuation expenses for its co-generation plant. However, MSEDCL requested in its submission that such refund may not be considered in the present case due to the aforesaid reasons.

14. In response to the directive to submit comments on the Petition by SRSL, MEDA vide its letter dated October 01, 2011 opined that MSEDCL/MSETCL may consider the claim of SRSL for reimbursement of expenses towards creation of evacuation infrastructure, in view of the fact that SRSL has now signed long term EPA with MSEDCL.

15. The matter was further heard on October 3, 2011 wherein SRSL made a detailed presentation on the background of the present Petition and prayed to the Commission to direct MSEDCL/MSETCL to reimburse the expenses incurred by SRSL. MSEDCL reiterated its written submissions submitted earlier in the matter and stated that the Petitioner prior to the execution of long term EPA with MSEDCL has sold power to M/s RETL, a trader and to Power Exchanges, and thus, the power might have been supplied outside Maharashtra.

16. After hearing the Petitioner and the Respondents, the Commission directed the Petitioner to submit the reasons for discontinuing supply of power from the said plant to MSEDCL, after supplying power to MSEDCL for the initial three months of operation of plant. The Commission further directed MSLDC to certify the power sold by SRSL to RETL and Indian Energy Exchange (IEX). Further, the Commission also directed MEDA to submit

standard policies for reimbursement of evacuation expenses in case of Renewable Energy projects. Lastly, the Commission asked MSETCL to submit its views within eight days with respect to a suggestion that MSETCL may need to reimburse the expenses incurred for evacuation systems to SRSL on the ground that power from the said plant was supplied outside Maharashtra only for about two months period and SRSL has already entered into long term EPA with MSEDCL for supply of power from the said plant for 13 years. Subsequently, the matter, vide notice dated October 3, 2011 stood over to October 24, 2011.

17. SRSL, vide its submission dated October 21, 2011, stated the following reasons for discontinuing supply of power to MSEDCL after supplying power to MSEDCL initially for three months:

- a) SRSL stated that the project has been developed on BOOT basis by SRSL in the premises of host sugar factory, DRKPSSKL.
- b) However, there were no guidelines from MSEDCL for direct supply of electricity to the host sugar factory when the said project was commissioned. Therefore, SRSL entered into EPA with MSEDCL for short duration of three months upto March 31, 2010 with expectation that the guidelines will be announced soon by MSEDCL, which will provide more clarity on the matter. However, the guidelines were not announced by MSEDCL before expiry of the existing agreement, i.e., before March 31, 2010.

18. MSETCL, vide its submission dated October 17, 2011, replied to the queries raised by the Commission during the previous hearing held in the matter, as under:

- a) Intimation letter for Grid Connectivity to M/s Shree Renuka Energy Ltd. under Open Access was issued vide letter dated September 19, 2008 by State Transmission Utility (STU).
- b) The scheme for evacuation of power from 30 MW co-generation project set up by M/s Shree Renuka Energy Ltd., Ganganagar Ichalkaranji, District Kolhapur has been approved by competent Authority, viz., Director (Projects), vide letter No. 1112 dated December 06, 2009 at an estimated cost of Rs. 424.75 Lakh. The cost estimate has been approved by MSETCL along with the scheme approval.
- c) The work of 132-110 kV D/C line (LILO line) 1 Km and 132/110 kV switchyard along with metering arrangement has been completed by M/s. Shree Renuka Energy Ltd., under supervision of MSETCL. The co-generation scheme is synchronised on December 14, 2009. The above co-generation scheme evacuation infrastructure is not yet handed over by M/s Shree Renuka Energy Ltd to MSETCL.

- d) MSETCL submitted that, in view of condoning the sale of energy by M/s Shree Renuka Energy Ltd. outside Maharashtra for two months by the Commission, the reimbursement of expenses by MSETCL incurred towards creation of evacuation infrastructure by M/s Shree Renuka Energy Limited for its Bagasse based co-generation project of 30 MW capacity in the State of Maharashtra on BOOT basis would be made after completion of all necessary formalities of handing over of the evacuation infrastructure by M/s. Shree Renuka Energy Limited to MSETCL.

19. In response to the directive to MEDA for submitting relevant Government Notifications in the matter, MEDA vide its letter dated October 20, 2011 submitted the GoM Non-conventional Energy Generation Policy dated August 14, 2008 and relevant portion of its implementation methodology document dated July 14, 2010.

20. MSLDC vide its submissions dated October 22, 2011 provided the necessary certification as sought by the Commission, certifying the details of power sold from the co-generation plant of SRSI. MSLDC certified the following facts as part of the said submission:

- a) Grid Connectivity issued for the power plant by CE, STU on November 17, 2009
- b) Synchronisation permission given by SLDC on November 18, 2009
- c) Synchronised the plant by SRSI on December 14, 2009
- d) COD of the plant declared on February 19, 2010
- e) Infirm power contract executed with RETL and sold 4.28 MU as infirm power to RInfra.
- f) Executed PPA with MSEDCL for a period January 29, 2010 to March 31, 2010 and sold 40.42 MU to MSEDCL.
- g) Executed PPA with RETL for period April 01, 2010 to March 31, 2011 and sold 141.527 MU to RInfra.
- h) Sold total 11.88 MUs to IEX in the month of April 2010, May 2010, February 2011, April 2011, May 2011 and June 2011.
- i) Signed EPA with MSEDCL on June 7, 2011 and SRSI is selling power to MSEDCL from June 11, 2011.

21. The matter was further heard on October 24, 2011. During the hearing, MSETCL submitted that the transmission infrastructure scheme along with metering arrangement for evacuation of power from the Petitioner's co-generation plant has been completed under supervision of MSETCL. However, MSETCL contended that the said evacuation scheme has

not yet been handed over by the Petitioner to MSETCL, which needs to be coordinated and completed by the respective zonal office of the MSETCL. MSETCL further reiterated its consent conveyed through its earlier written submission that it has no objection to provide refund to the Petitioner, subject to the Petitioner's fulfillment of necessary formalities towards handing over of the asset to MSETCL.

22. To the above contention of MSETCL, the Petitioner, SRS� submitted during the hearing that it shall complete the handing over process of the evacuation scheme as required by MSETCL. Further, the Commission asked SRS� to submit on affidavit the details of Renewable Energy Certificates (REC) benefits availed by SRS� during the period it was selling power to traders, prior to signing of long term PPA with MSEDCL.

23. In response to the directive of the Commission, SRS� vide its submission dated October 25, 2011 submitted the following details regarding RECs claimed for generation from its co-generation plant, which is currently under consideration in the present Petition:

- a) SRS� did not claim any REC up to March 31, 2011.
- b) The co-generation project of SRS� was registered for REC on March 09, 2011, with registration number MH0NSSRSL013R090311.
- c) The number of RECs issued to SRS� with respect to power exported from its co-generation plant are 12156, 1765 and 3634 RECs respectively during the months of April 2011, May 2011 and June 2011.
- d) SRS� also stated that, as it has now entered into a long term Energy Purchase Agreement (EPA) with MSEDCL for a period of 13 years, it will no more be eligible to claim RECs post signing the EPA as per the current policy structure.

24. Having heard the Parties and after considering relevant materials placed on record, the Commission makes the following observations and rulings:

25. The Commission is of the view that the primary responsibility of setting up evacuation infrastructure lies with the respective Distribution Company or the Transmission Company. However, in the present case, Commission observes that the infrastructure for evacuation of power from the co-generating plant to the nearest grid substation has been developed by the generator (SRS�). Thus, SRS� has made 100% investment for setting up of the necessary evacuation facility. In order to promote grid connectivity of renewable energy based generators in the State, Government of Maharashtra has specified a mechanism for reimbursement of cost incurred by the RE generator in case the evacuation infrastructure is

being set up by it. The relevant mechanism as specified in the Policy issued vide Resolution dated October 14, 2008 and amendment dated August 3, 2009, has been reproduced as below:-.

“...

After handing over the evacuation facility to MSEDCL/MSETCL, the evacuation expense beyond the interconnection point shall be refunded to the project holder as below:

Out of the evacuation expense considered for refund to the project holder:

- a. 50% amount of total expense incurred on evacuation infrastructure beyond the inter-connection point will be refunded to the Non-Conventional Energy Project Developers by MEDA, from Green Cess Fund.*
- b. Remaining 50% amount will be refunded by MSEDCL/MSETCL in five equal instalments spread over a period of five years commencing from one year after the date of commissioning of the project.*

...”

26. SRSL has now signed long term EPA with MSEDCL and thus the power generated during the EPA period is envisaged to be sold to MSEDCL. Further, the Commission notes that the condition under Policy Guidelines for at least 50% sale to MSEDCL was not accomplished during initial period (i.e., upto execution of long term PPA with MSEDCL on June 7, 2011) due to change over of offtake arrangement from MSEDCL to RETL due to ambiguity in guidelines for sale to Host Sugar factory under BOOT route, which were beyond control of the Petitioner as highlighted by the Petitioner. In view of the above, the Commission is of the view that SRSL is mostly complying with the stipulations in Policy guidelines. Keeping in view the facts, data/records made available and submission made by various Parties, the Commission is of the view that the claim for reimbursement of evacuation infrastructure under this case deserves consideration, as a special case.

27. As regards claim for capital cost towards evacuation infrastructure beyond point of interconnection point, the Commission observes that SRSL has claimed amount of Rs 695.67 Lakh whereas MSETCL has approved capital cost estimate of Rs 424.75 Lakh. In this context, the Commission observes that as per Annexure-B of GOM NCE Policy notification dated July 14, 2010, the basis for reimbursement of costs associated with evacuation infrastructure beyond interconnection point is stipulated as lower of budget estimate approved by MSETCL/MSEDCL or actual expenditure or maximum limit of Rs 4 crore per project. In view of above, the Commission rules that the basis for reimbursement of capital

expenditure towards evacuation infrastructure shall be limited to Rs 4 Crore in the present case in line with the stipulations under the said GOM Policy notification.

28. The Commission further observes that MEDA and MSETCL vide their submissions dated October 1, 2011 and October 17, 2011, respectively, have agreed to the contention of SRSL for reimbursement of cost of creation of evacuation infrastructure in accordance with the provisions under GOM policy. However, MSETCL has highlighted that such reimbursement shall be made once all the necessary formalities for handing of evacuation infrastructure have been completed by SRSL. In view of the above, the Commission directs SRSL to complete all necessary formalities of asset handing over to MSETCL within three weeks from date of issuance of this Order. Further, MSETCL and MEDA are directed to initiate the reimbursement in accordance with the mechanism as specified in the Policy guidelines in this regard and covered under Para 25 of this Order with the modification that the yearly period for refund of five equal instalments by MSETCL shall commence from date of issuance of this Order and subsequent refund instalment shall be due on each anniversary date thereafter. The timelines for refund by MEDA shall be in accordance with the procedure for reimbursement from green cess fund, as outlined under said GOM policy notification dated July 14, 2010.

With the above observations and ruling, the Petition filed by SRSL in Case No. 111 of 2011 is disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman