

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400 005
Tel. No. 022 22163964/65/69 – Fax 022 22163976
E-mail mercindia@mercindia.com
Website: www.mercindia.com

Case No. 23 of 2011

In the matter of
Maharashtra State Electricity Distribution Company Ltd.'s (MSEDCL) Petition
for adoption of Tariff and approval of reduction in requisitioned capacity to
1000 MW for Medium Term Power Procurement under Case I Bidding

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

ORDER

Dated: May 19, 2011

Maharashtra State Electricity Distribution Company Limited (MSEDCL) submitted a Petition on February 25, 2011, seeking approval for adoption of tariff and approval of reduction in requisition capacity to 1000 MW for Medium Term Power Procurement (MTPP) under Case I Bidding under Section 63 of the Electricity Act, 2003 (herein after referred as EA 2003).

2. The prayers made by MSEDCL are as follows:

“

- a) *Approve the requisition capacity of 1000 MW for one year (Instead of already approved 2000 MW for two years).*
- b) *Approve adoption of the tariff discovered through the bid process and subsequently negotiated with L1 & L2 for the*

purpose of tariff determination as and when the supply from these contracted sources commence.

- c) *Examine the concerns expressed by the petitioner for a favourable dispensation as detailed in the petition.*
- d) *Condone any inadvertent omissions/errors/shortcomings and permit MSEDCL to add/change/modify/alter this filling and make further submissions as may be required at a future date.”*

3. MSEDCL, in its Petition, submitted as under:

- a) MSEDCL floated an advertisement for procurement of power of 2000 MW (\pm 20%) on medium term basis under Case I Stage 2 on April 19, 2010.
- b) The Request for Proposal (RFP) documents were uploaded on the MSEDCL's website and a Petition for approval of the deviations taken from Standard Bidding Documents (SBD) issued by Ministry of Power on September 27, 2010 was filed to the Commission.
- c) The Commission approved the deviations proposed by MSEDCL and directed to amend the bidding documents as per the directions given in the Order dated December 1, 2010 in Case No. 63 of 2010.
- d) The amended documents were uploaded on the MSEDCL's website and the last date of submission of the bids was December 22, 2010.
- e) Six bidders submitted the bid and the non-financial bids were opened on the same day.
- f) A bid evaluation committee was formed consisting of external Independent Member as per Competitive Bidding Guidelines and MSEDCL officials. Prof. Sangita Kamdar, Head of Economic Department, NMIMS University Mumbai as external Independent Member.
- g) As per the non-financial bid evaluation report, all the six bidders were found responsive and hence on January 20, 2011, the financial bids opened. The same were evaluated by the evaluation committee.
- h) The rates received against the tender varied from Rs. 4.27/kWh to Rs. 4.88/kWh for the first year and Rs.4.22/kWh to Rs.5.43/kWh for the second year at MSETCL periphery. The following table depicts the same in detail.

Financial Summary of Medium Term Power Procurement 2000 MW								
Sr. No	Bidder	Source / Interconnection point	Quantum MW	First Contract Year (1st March 2011 - 28.02.2012)				
				Quoted Non Escalable Capacity Charges	Quoted Non Escalable Energy Charges	Quoted Non Escalable Inland Transportation Charges	Quoted in Rs/ kwh	Evaluated in Rs/kwh (at MSETCL Periphery)
1	Adani Power Ltd	Tiroda, Gondia / Tiroda Project Bus bar	800	2.27	1.5	0.5	4.2700	4.2700
2	JSW Energy Ltd	Jaigad, Ratnagiri/ Jaigad Project Bus bar	550	1.5	2.97	0	4.4700	4.4700
3	Jindal Power Ltd	Tamanar , Chhattisgarh / 400 kV PGCIL Kumhari Distt Raipur	200	3	1.5	0	4.5000	4.8880
4	Essar Power MP Ltd	Singrauli , MP / 400 kV Pooling Station near Sipat	Not quoted					
5	Essar Power Gujarat Ltd	Salaya Power Project, Gujarat / Salaya Project Bus bar	Not quoted					
6	National Energy Trading Services Private Ltd	Lanco , Kondappalli , Ibrahimpattanam / 400 kV PGCIL Nunna , Andhra Pradesh	Not quoted					
7	National Energy Trading Services Private Ltd	BALCO, Korba , Chhattiasgarh / 400 kV PGCIL Korba LILO	Not quoted					
8	Abhijeet MADC Nagpur Energy Pvt. Ltd	MIHAN, Nagpur / Wardha Ambajhari 220 kV LILO	Not quoted					

Sr. No	Bidder	Source / Interconnection point	Second Contract Year (1st March 2012 - 29.02.2013)					
			Quantum in MW	Quoted Non Escalable Capacity Charges in Rs/ kwh	Quoted Non Escalable Energy Charges in Rs./kwh	Quoted Non Escalable Inland Transportati on Charges in Rs. Kwh	Quoted in Rs/kwh	Evaluated in Rs/kwh (at MSETCL Periphery)
1	Adani Power Ltd	Tiroda, Gondia / Tiroda Project Bus bar	1500	2.22	1.5	0.5	4.2200	4.2200
2	JSW Energy Ltd	Jaigad, Ratnagiri/ Jaigad Project Bus bar	550	1.5	2.88	0	4.3800	4.3800
3	Essar Power Gujarat Ltd	Salaya Power Project, Gujarat / Salaya Project Bus bar	100	3.064	1.116	0	4.1800	4.5606
4	Essar Power MP Ltd	Singrauli , MP / 400 kV Pooling Station near Sipat	500	3.752	0.615	0	4.3670	4.7572
5	Abhijeet MADC Nagpur Energy Pvt. Ltd	MIHAN, Nagpur / Wardha Ambajhari 220 kV LILO	100	2.62	2.15	0	4.7700	4.7700
6	Jindal Power Ltd	Tamanar , Chhattisgarh / 400 kV PGCIL Kumhari Distt Raipur	300	3	1.5	0	4.5000	4.8970
7	National Energy Trading Services Private Ltd	BALCO, Korba , Chhattiasgarh / 400 kV PGCIL Korba LILO	100	2.25	2.6	0	4.8500	5.2649
8	National Energy Trading Services Private Ltd	Lanco , Kondappalli , Ibrahimpattanam / 400 kV PGCIL Nunna , Andhra Pradesh	300	2.25	2.32	0	4.5700	5.4389

- i) The Commission was appraised by MSEDCL that as per the power position vis-a-vis procurement against medium term power, it is planning to restrict the procurement to 1000 MW against 2000 MW.
- j) This proposal was placed before the Board of MSEDCL on February 15, 2011 representing the demand scenario and capacity addition. MSEDCL Board suggested forming a two member committee to negotiate the rates and modify the clause relating to payment of Capacity Charge for non-availability of Inter-State/ State transmission constraint.
- k) The Board approved the proposal of 1000 MW quantum instead of 2000 MW and for a period of one year from March 1, 2011 to February 29, 2012. Further the proposal was placed before the Holding Company/Government of Maharashtra.
- l) Further, the two member committee consisting of Director (Operation) and Director (Finance) negotiated with the bidder and the bidders agreed on the negotiated tariff of Rs.4.10/kWh
- m) The RFP document was for 2000 (\pm 20%) MW. However, considering the present demand scenario, it is now proposed to procure 1000 MW for one year only.
- n) MSEDCL further submitted the following reasons for urgent dispensation of the case:
 - (i) The rates are reasonable and market trend is rising for Short Term and Medium Term Power Purchase
 - (ii) The bidder may not extend the bid validity
 - (iii) The power purchase rates received in the other States are higher than received by MSEDCL
 - (iv) This power is absolutely essential to ensure that MSEDCL moves away from Load Shedding scenario
 - (v) Maharashtra will plunge in darkness and load management would be out of control if this power is not received

4. The Commission vide its Notice dated March 4, 2011, scheduled a hearing in the matter on March 18, 2011 at 16.00 hrs and directed MSEDCL to serve a copy of its Petition along with its accompaniments to the four Consumer Representatives authorised under Section 94(3) of the EA, 2003.

5. Prayas vide its email dated March 18, 2011 submitted their primary comments and submission in the matter and informed their inability to attend the hearing. The comments/submission are as under:

- a) Prayas submitted that it has not received hard copy of the Petition and this is preliminary submission and requested the Commission to allow subsequent submissions, if any, after the complete Petition along with all the annexures has been shared with us.
- b) In the current demand supply situation with deficit of around 4000 MW steps towards contracting additional power are desirable. Hence, Prayas welcome this initiative from MSEDCL to contract such additional capacity on medium term basis. However, care has to be taken to ensure that the contracted power comes at a reasonable cost and the process is as per the Competitive Bidding Guidelines and in the long term interest of consumers and MSEDCL.
- c) As per Electricity Act 2003, the SERC can adopt the tariff if same has been discovered through transparent bidding process which meets all requirements of Competitive Bidding Guidelines issued by MoP and the discovered tariff is in line with prevalent market rates. In such case, the SERC has to satisfy itself that all provisions of Competitive Bidding Guidelines, Electricity Act, 2003 and PPAs have been complied with.
- d) In case the power procurement process is not in compliance with the guidelines and still if the Commission wants to adopt such a tariff, then in such case it becomes the duty and responsibility of the Commission to satisfy itself that tariff being discovered is reasonable and that due process has been followed.
- e) In this context, Prayas like to bring to the Commission's Notice certain points raised by the bid evaluation committee as well as other process related observations.
- f) Firstly, the Petition does not clearly mention the final quantum of capacity proposed to be contracted from each bidder. The capacity offered by L1 i.e. Adani Power Ltd. is 800 MW for first year and by L2 i.e. JSW Energy Ltd. is 550 MW which comes out to be 1350 MW. However in the current petition,

MSEDCL submits that after deliberations by the Board on tariff quoted and transmission constraints, it has decided to procure 1000 MW for one year period but it is not clear exactly how much capacity is proposed to be procured from each bidder and details of finally negotiated tariff (for example break-up between capacity and energy charge, escalable and no-escalable components, unit nos. etc.)

- g) One of the bidders, i.e. M/s Adani Power Ltd has valid and legally binding PPA with MSEDCL to supply power on long term basis at pre decided tariff from the same units, capacity from which is now being offered on medium term basis.
- h) As per the PPA dated October 2008 M/s. Adani Power Limited has quoted fixed Capacity Charge of Rs. 1.113 per unit and fixed Energy Charge of Rs. 1.440 per unit (total first tariff being Rs. 2.553 per unit). In the current bid process, from the same units, bidder has quoted Capacity Charge of Rs. 2.27 per unit and Energy Charge of Rs. 2.00 per unit amounting to total tariff of Rs. 4.27 per unit. This tariff was revised based on negotiations to Rs. 4.10 per unit, break-up of which (Capacity and Energy charge, Fixed and Escalable) components are not known.
- i) In this respect observations of bid evaluation committee and Independent Member regarding the difference in quoted Capacity Charges become very important to consider. The bid evaluation committee states that:

“Considering the above trend of NDPL, Price of Short Term Transaction of Electricity through Traders and recently called short term tenders of MSEDCL, the rates offered by Medium Term Power Procurement seems to be on higher side.”

So, in fact, the Bid Evaluation Committee has not unambiguously certified that the discovered tariff is in line with prevailing market rates which is one of the important requirements of the bidding guidelines.

- j) Even if one discounts the high Energy Charges on grounds of higher cost of imported coal, the Evaluation Committee has pointed out that Capacity Charge quoted by Adani in the current bidding process is greater by almost Rs. 1.1/unit (which corresponds to additional tariff burden of ~ Rs. 578 Cr for one year) than

the first year Capacity Charge quoted in the earlier long term bid process (PPA executed in October 2008).

- k) Even the bid Evaluation Committee report observes that in light of the differences observed in Capacity Charges as well as Energy Charges, the bidder should provide details to justify such difference.
- l) Further, the issues analyzed in the note of internal audit section (PP), also need to be considered. Bid Evaluation Committee report/IA note, states that:

“Secondly, if we enter in to PPA for purchase of Mid Term power from APL, it is necessary to amend the PPA entered in Case-1 Stage 1”

- m) In this regard, legal implications and compliance with Bidding Guidelines becomes a critical factor for the commission to consider before approving such tariff.
- n) As per PPA with APL dated October 2008, it is mandatory on part of APL to supply all power from Units 2 and 3 to MSEDCL as per PPA terms and tariff (which, as mentioned above is less than currently proposed tariff by over Rs.1/unit). The relevant extracts from the said PPA:

“4.4.6 The Seller may offer Scheduled Commercial Operation Date, for whole or part of the capacity offered, before expiry of 48 calendar months from the date of signing of the PPA. In the event the Unit No.2 and Unit No.3 of the Power Station is commissioned earlier than the stipulated Scheduled COD, power must be supplied only to the Procurer and no third party sale is allowed. However if the Maharashtra STU is unable to evacuate such early power from the Delivery Point, the plant would be allowed to sell power to a third party till such time as Maharashtra STU can start evacuating power from the Delivery Point. Procuree would also provide a suitable notice period to the seller to commence the supply of power at the Delivery Point.”

...

Schedule 6: Tariff

“1.2.9 Tariff for the period prior to Scheduled COD of second unit and for Contract Years beyond the 25 years from the COD of the second Unit

The Tariff for the period prior to Scheduled COD of the second unit shall be the quoted tariff of the first year with escalation for relevant period only for energy charge. The Tariff for the Contract Years beyond the 25

years from the COD of the second Unit shall be Quoted Tariff of the 25th year from the COD of the second Unit with applicable escalation.”

- o) From the above, it is important to note that existing, legally binding PPA with MSEDCL has been instrumental in developing the project (including securing land, water, fuel and financing) and hence MSEDCL is entitled to all benefits as per the PPA.
- p) Prayas submitted that it is relevant to quote our earlier submission (dated 6th August 2010) regarding Case No. 22 of 2010 in this context:

“It is also important to note that all of these projects are in advanced stage of completion and may achieve commercial operation much before the four year provision. In such case, bidding guidelines provide ample scope for MSEDCL to ensure that generation from the contracted capacity becomes available even prior to the scheduled delivery date. In the absence of such effort there is a danger of power being from the said projects being diverted to the short term market in intermediate period, in spite of MSEDCL having PPA. Considering the severe prevalent power shortage, both commission and MSEDCL should ensure that generation from the contracted capacity becomes available to MSEDCL as soon as it achieves commercial operation.”

- q) Prayas submitted that like Adani, MSEDCL also has a valid and legally binding PPA with JSW Energy Ltd for capacity of 300 MW under the same bid process. In case, M/s JSW Energy Ltd is going to supply the current capacity from the same units, power from which has already been contracted, then issues related to Adani PPA highlighted above also will become applicable for JSW bid.
- r) Any commercial and legally binding contract must lead to equitable sharing of risks and benefits. It would be undesirable and legally untenable to deviate from such risk allocation in one-sided manner. (i.e. increasing tariff if fuel cost is higher but claiming tariff as per PPA if fuel cost is lower)
- s) Prayas further submitted it is essential to ensure that MSEDCL is able to secure power as per PPA terms and tariff from all contracted sources. Allowing deviations from such contract terms, without undertaking through scrutiny, validating different claims and without public hearings, would set a detrimental

precedence and may encourage further non-compliance with PPAs, and hence would be against the spirit and provisions relating to competition.

- t) From the above submission, along with various issues raised by the bid evaluation committee and lack of procurer certification regarding compliance with the Bidding Guidelines, establish that the said process is not in compliance with the Competitive Bidding Guidelines and the SERC need not adopt the said tariff.

- u) Prayas requested the Commission to determine reasonable tariff and process to ensure that the said power is made available to MSEDCL and Maharashtra consumers in a timely manner.

6. During the hearing, Shri. A. S. Chavan, CE (PP) and Shri. S. G. Metre, EE (PP) appeared on behalf of MSEDCL.

- a) Shri. A.S. Chavan made a detailed presentation on the Petition. In the presentation, Shri. Chavan compared the bid rates offered and negotiated power purchase rates for first contract year from Adani Power Ltd. and JSW Energy Ltd., and the offered power purchase rates of other States like Punjab, Uttar Pradesh, and Andhra Pradesh. MSEDCL submitted that the power procurement for the first contract period will be 800 MW from (L1) Adani Power Ltd. and 200 MW from JSW Energy Ltd (L2).
- b) Further, Shri. Chavan submitted that there are certain power evacuation constrains, like in case of Adani Power Ltd., the 400 kV Tiroda-Warora Line is constructed by M/s.APML transmission and the 400 kV Warora-Wardha Line is being constructed by MSETCL. The expected date of the later is September 2011, whereas in case of JSW Energy Ltd., the 400 kV Jaigad-Karad transmission line is expected to be commissioned by May 2011.
- c) The preliminary submissions of Prayas Energy Group vide its email dated March 18, 2011 were taken on record by the Commission and directed MSEDCL to submit a reply on the same.

After hearing the Petitioner, the Commission directed MSEDCL to submit the following at the earliest.

- a) Whether traders were allowed to bid or prohibited from bidding?
- b) What are the assumptions made by Adani Power Ltd. on availability of coal and details of the same?

- c) Breakup of the offered and negotiated rate of both Adani Power Ltd. and JSW Energy Ltd.
- d) Updated status of the 400 kV Tiroda-Warora Line, 400 kV Warora-Wardha Line and 400 kV Jaigad –Karad transmission line network.

Further, the Commission directed MSEDCL to submit the copies of the Petition along with the Annexures to all the authorised Consumer Representatives. The Commission also suggested MSEDCL to modify its prayer with respect to the power quantum and the period of PPA from 1 year to 15 months in order to meet the criteria of medium term power procurement under Competitive Bidding Guidelines.

7. The Commission vide its Notice dated March 21, 2011, scheduled a hearing in the matter on March 30, 2011 at 10.00 hrs. and directed MSEDCL to serve a copy of its Petition along with its accompaniments to the four Consumer Representatives authorised under Section 94(3) of the EA, 2003. MSEDCL was directed to send its reply on the E-Mail dated March 18, 2011 to Prayas Energy Group with a copy to the Commission's office.

8. During the hearing, Shri. A.S. Chavan, CE (PP) and Shri. S.G. Metre, EE (PP) appeared on behalf of MSEDCL. Shri. Shantanu Dixit and Ms. Ashwini Chitinis of Prayas Energy Group and Dr. Ashok Pendse of Thane Belapur Industries Association (TBIA) attended the hearing as authorised Consumer Representatives.

- a) Shri. Chavan submitted that MSEDCL has replied to the comments and suggestions raised by Prayas vide its letter dated March 18, 2011.
- b) Shri. Chavan submitted that the rates have been negotiated by two member committee consisting Director (Operations) and Director (Finance) with the bidders and agreed on the negotiated tariff of Rs.4.10/kWh. In the negotiation it has been decided that M/s.Adani Power Ltd. will supply 800 MW from Tiroda Plant (In case of shortage power from Mundra project or any other source as per PPA) and M/s. JSW Energy will supply 200 MW from Unit 2 of JSW, Ratnagiri Power Plant at Rs. 4.10/kWh, respectively.
- c) Shri. Ashok Pendse submitted that MSEDCL has earlier approved the quantum of power purchase from 1000 MW in Case No.104 of 2009 and further raised the quantum to 2000 MW in Case No. 14 of 2010. Now, MSEDCL has approached the Commission for adoption of Tariff and approval for reduction of

requisitioned capacity to 1000 MW for medium Term Power Procurement under Case I bidding.

- d) Shri. Shantanu Dixit enquired that whether the power sourced from the Mundra at Rs.4.10/kWh includes transmission charges? Shri. Dixit further submitted that Adani had a PPA with MSEDCL under Long Term Power Procurement (LTPP) Case I Stage 1 for supply of 1320 MW at a levelised tariff of Rs. 2.642/kWh .In the said PPA, in case,plant is synchronized early than scheduled delivery date then, Adani would have to supply the power at MSEDCL at Rs.2.642/kWh. Shri. Dixit also requested MSEDCL to submit the certificate that it has followed the process under the Competitive Bidding Guidelines.

9. After hearing the Consumer Representatives and MSEDCL, the Commission directed MSEDCL to submit the following data:

- a) The rationale for reduction of requisitioned capacity to 1000 MW for Medium Term Power Procurement under Case I bidding.
- b) To confirm that the power purchased from Mundra Power Plant will be at Rs.4.10/ kWh at the Maharashtra State Boundary.
- c) To certify that Adani Power has not tied-up with any other procurer to sell power from the same Units which are going to supply power to MSEDCL for medium term.
- d) To check whether Adani Power committed power from same Units both in Case I, Stage-1 for LTPP as well as MTPP for MSEDCL.
- e) To check in the PPA with Adani Power, (Tiroda Units) under Case I, Stage-1 for LTPP, whether MSEDCL has a condition that in case the CoD is achieved before the scheduled delivery date , then the power will be supplied to MSEDCL at levelised tariff of Rs.2.642/kWh.
- f) The certificate as per Clause 6.2 of the CBG issued by Ministry of Power, Government of India.

10. MSEDCL vide its letter dated March 22, 2011, replied to the comments of Prayas Energy Group. The submissions in the matter are as under:

- a) The bidding process is carried out as per Competitive Bidding process as approved by Commission and the rates were received through Competitive Bidding. Further, MSEDCL has taken steps to negotiate the rates in view of interest of MSEDCL and Consumers. During negotiation

Bidders reduced the rates and considering market trend negotiated rates were reasonable.

- b) The details of the offered capacity rate and the negotiated rate of L1 and L2 bidder is as under:

Sr No	Bidder	Offered quantum MW	Offered Rate in Rs./kWh				Negotiated Rate in Rs./kWh			
			Capacity charge	Energy Charge	Transport Charge	Total	Capacity charge	Energy Charge	Transport Charge	Total
1	Adani Power Ltd	800	2.27	1.50	0.50	4.27	2.10	1.50	0.50	4.10
2	JSW Energy Ltd	550	1.50	2.97	0.00	4.47	1.13	2.97	0.00	4.10

- c) As per the stacking order, MSEDCL approved to purchase full quoted quantum of 800 MW from M/s. APML (L1) bidder and balanced 200 MW from M/s. JSW energy (L2) bidder.
- d) MSEDCL have PPA for 1320 MW with Adani Power Maharashtra Limited (APML) from Tiroda Project Unit2 and Unit3 with COD (Commercial Operation Date) of August 14, 2012.
- e) The coal source quoted is Lohara Coal Block and Coal linkage. However the Lohara Coal block Term of Reference (ToR) was cancelled by Ministry of Environment and Forest (MoEF) and subsequently Coal block is cancelled by Ministry of Power (MoP).
- f) APML informed that first unit of Tiroda will be commissioned by September 2011. APML requested to accord approval to supply power through Medium Term Tender for a period prior to COD as defined in PPA with imported Coal in place of Tiroda coal block.

- g) The Case I Stage1 (1320 MW) PPA with M/s APML will be amended , after the adoption of tariff in medium term tender and signing of Medium term PPA.
- h) With respect to JSW, it is supplying 300 MW as per long term Case I Stage 1 PPA. The power offered in the medium term is other than the 300 MW power being supplied under long term Case 1 Stage1 PPA.

11. On March 29, 2011, the Commission received MSEDCL's submission in the matter w.r.t. the amendment of the Petition. MSEDCL submitted that as per the Commission's direction, it has amended the original Petition and amended the said PPA of one year to one year and one day in order to satisfy the condition of medium term. The same is agreed by the L1 and the L2 bidders viz. Adani Power Ltd. and JSW Energy Ltd. with the negotiated tariff rate of Rs. 4.10/kWh.

12. Further, MSEDCL on April 18, 2011 submitted its reply on the RoP of the hearing held on March 18, 2011 are as under:

- a) As per RFP document of Medium Term Power Purchase tender traders were allowed to bid.
- b) As per RFP document submitted by Adani Power Limited they have mentioned coal details as Coal linkage for Tiroda Project with SECL /WCL (1180MW), Imported Coal FSA for 5 yrs up to 8.5 MTPA, Grade : F & A, Distance : up to 1000 k.m.
- c) The 400 KV Tiroda-Warora line being constructed by M/s. APML and is expected by September 2011.
- d) The 400KV Warora – Wardha line being constructed by MSETCL and is expected by September 2011.
- e) 400KV Jaigad-Karad line being constructed by JPTEL and is expected by May 2011.

13. In the same letter, MSEDCL also replied on the RoP of the hearing held on March 30, 2011. The submissions relating the same are as under:

- a) MSEDCL has submitted that the required Quantum for the first year of Contract is to the tune of 1000 MW only.

- b) As per RFP submitted by Adani Power, the power will be supplied from Tiroda plant Maharashtra, alternatively for the initial period they have offered from Mundra Project Gujarat. As per RFP conditions, the bidder has to supply power at offered rate up to MSETCL periphery. Further, M/s. Adani Power vide their letter dated April 1, 2011 has confirmed that APL will bear the Transmission Charges and Transmission Losses up to MSETCL periphery in case of power being supplied from Mundra Project.
- c) APML confirmed that out of 4620 MW, of Mundra project 1980 MW capacity has already been commissioned and is under operation with net capacity of 1817 MW. Out of said Net capacity, they are supplying 1000 MW to Gujarat Urja Vikas Nigam Ltd. (GUVNL) and APL has 817 MW free Capacity.
- d) APML has also confirmed that from Tiroda Project 125 MW of Unit-1 and 1320 MW of Unit 2 and 3 has been tied up with MSEDCL. MSEDCL also mentioned that GoM has approved to sale power of Unit 2 and 3 to MSEDCL under MTPP.
- e) APML had committed 1320 MW power from Unit 2 and 3 under Case I, Stage 1 whereas as per PPA the early power generated before schedule COD has to be supplied as per PPA rate to MSEDCL. However GoM had approved APML to participate against Medium Term Power Procurement Tender for the period prior to Schedule COD i.e, August 14, 2012 . APML has to supply power from August 14, 2012 from Unit 2 and Unit 3 as per PPA in Case-I Stage 1 under long term power procurement.
- f) Out of 660 MW of Unit 1, APL has offered additional Power of 125 MW to MSEDCL under Case I, Stage 2 for which approval of PPA and adoption of tariff is awaited. As per PPA, MSEDCL has no first right on power generated prior to schedule of CoD. However, MSEDCL can avail power prior to CoD if mutually consented.
- g) MSEDCL has submitted the Certificate as per clause 6.2 of CBG.

14. After considering the facts and the material placed on record, the Commission rules as under :

- a) APMIL had committed 1320 MW power from Unit 2 and Unit 3 of Tiroda Power Plant under Case I, Stage 1 under Long Term Power Procurement, and as per PPA, the power generated prior to scheduled COD has to be supplied to MSEDCL. The relevant extract of the PPA is reproduced below:

“4.4.6 The Seller may offer Scheduled Commercial Operation Date, for whole or part of the capacity offered, before expiry of 48 calendar months from the date of signing of the PPA. In the event the Unit No.2 and Unit No.3 of the Power Station is commissioned earlier than the stipulated Scheduled COD, power must be supplied only to the Procurer and no third party sale is allowed. However if the Maharashtra STU is unable to evacuate such early power from the Delivery Point, the plant would be allowed to sell power to a third party till such time as Maharashtra STU can start evacuating power from the Delivery Point. Procurere would also provide a suitable notice period to the seller to commence the supply of power at the Delivery Point.”

(Emphasis added)

“Schedule 6: Tariff

1.2.9 Tariff for the period prior to Scheduled COD of second unit and for Contract Years beyond the 25 years from the COD of the second Unit

The Tariff for the period prior to Scheduled COD of the second unit shall be the quoted tariff of the first year with escalation for relevant period only for energy charge. The Tariff for the Contract Years beyond the 25 years from the COD of the second Unit shall be Quoted Tariff of the 25th year from the COD of the second Unit with applicable escalation.”

(Emphasis added)

As per the PPA, the Scheduled Delivery Date of Adani Power Maharashtra Ltd. Units are as under:

“ (i) for second Unit, 14th August 2012 (ii) for the third Unit, 14th August 2012 or such other dates from time to time , specified in accordance with the provisions of this Agreement;”

In case, prior generation of power from Unit 2 and Unit 3 of Tiroda Thermal Plant, the power supplied to MSEDCL will be at the rate discovered through the Competitive Bidding in Case I, Stage 1 for long term power procurement as mentioned in the PPA.

- b) MSEDCL is directed to enquire the present status of the project of Unit 2 and Unit 3 of Tiroda Power Project and likely date of synchronization and CoD from Adani Power Maharashtra Ltd. (Tiroda Unit). It is be useful for MSEDCL to procure power from Unit 2 and Unit 3 from Adani Power Maharashtra Ltd as agreed in the PPA, if the power is generated prior to scheduled CoD in Case I, Stage 1 under Long Term Power Procurement plan.
- c) As regards the generation from Unit 1 of Tiroda or Mundra Power Plant or any other power sources (Other than Unit 2 and Unit 3 of Tiroda Power Plant) for the quantum of 800 MW under Medium Term Power Procurement, the Commission observes that the tariff is discovered through Competitive Bidding process and further negotiated by the two member committee in the interest of consumers and MSEDCL at Rs.4.10/kWh on MSETCL Periphery. The Commission approves the power procurement of 800 MW from Unit 1 or Mundra Power Plant or any other power source (Other than Unit 2 and Unit 3 of Tiroda Power Plant) at a tariff of Rs.4.10/kWh at MSETCL Periphery for a period of one year and one day from the date of scheduling of power after issue of this Order.
- d) The Commission also approves the Medium Term Power Procurement from Unit 2 of JSW Energy for the quantum of 200 MW, Ratnagiri Power Plant at Rs 4.10/kWh for a period of one year and one day from the date of scheduling of power after issue of this Order.
- e) The Commission directs MSEDCL to make available the PPAs executed alongwith all other bids received on its website in accordance with the provisions under Para 6. 3 of the Competitive Bidding Guidelines issued by the Ministry of Power.

Accordingly, the Commission approves the procurement of 800 MW power by MSEDCL from Adani Power Ltd. and 200 MW from JSW Energy Ltd. as above on medium term and directs MSEDCL to submit the PPAs signed with Adani Power Ltd. and JSW Energy Ltd. to the Commission.

With the above Case No. 23 of 2011 stands disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman