

**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.org.in

Website: www.mercindia.org.in

Case No. 94 of 2008

In the matter of

**Reliance Infrastructure Limited- Distribution Business's Petition for Approval
of proposed quantum of power for Medium-Term Power Procurement through
Competitive Bidding route via Case-I and approval of Bid Documents**

Shri. V.P Raja, Chairman

Shri. A. Velayutham, Member

Shri. S. B. Kulkarni, Member

ORDER

Dated: July 21, 2009

Reliance Infrastructure Limited-Distribution Business (RInfra-D) filed a Petition under affidavit before the Commission on October 23, 2008, seeking approval of the proposed quantum of power for Medium-term power procurement through competitive bidding process under Case-I bidding and approval of Bid Documents.

2. The prayers made by RInfra-D in the Petition were:

- a) *“Examine and approve the proposed quantum of power procurement under Medium Term, for both Round The Clock (RTC) and Peak requirement, for three supply periods.*
- b) *Examine and approve the draft bidding documents for medium term power procurement.*
- c) *Condone any inadvertent omissions/ errors/ shortcomings and permit the Petitioner to add/ change/ modify/ alter this filing and make further submissions as may be required at a future date.*



- d) *Grant suitable opportunity to the petitioner within a reasonable time frame to file additional material information that may be subsequently available and / or as may be required by the Hon'ble Commission.*
- e) *Expedite the approval process so as to enable the petitioner to complete the process as per RfP datelines.*
- f) *Pass such order as the Hon'ble Commission may deem fit & proper in the facts & circumstances of the case."*

3. RInfra-D made the following submissions in its Petition:

- a) The overall peak demand in RInfra-D's area of supply exceeds 1500 MW, which is met by generation from its own generating station at Dahanu, i.e., Dahanu Thermal Power Station (DTPS) to the extent of 500 MW, RInfra-D's share in the capacity of The Tata Power Company Limited's (TPC) generating stations to the extent of 500 MW, and balance through procurement from short-term sources and surplus power available in the State Imbalance Pool.
- b) RInfra-D submitted that it is presently meeting a substantial demand in its area of supply through procurement from short-term sources, which is mostly procured on a day-ahead basis. Further, the cost of such procurement varies in the range of Rs. 6/kWh to Rs. 11/kWh, with the average price being Rs. 8.50/kWh.
- c) RInfra-D submitted that in order to ensure reliable power supply and to reduce the power procurement cost to its consumers, it has planned to procure power through Case-I bidding, in accordance with the Guidelines for Procurement of Power by Distribution Licensees issued by Ministry of Power (MoP), Government of India. RInfra-D submitted that it has planned to procure power, initially on a medium-term basis and thereafter, on a long-term basis. Under the Competitive Bidding Guidelines (CBG), MoP has issued Standard Bidding Documents (SBD) for Procurement of Power by Distribution Licensees under Case-II and draft Standard Bidding Documents under Case-I.
- d) Based on the Documents issued by the MoP as referred above, RInfra-D has prepared the Request for Proposal (RFP) and the model Power Purchase Agreement (PPA) for procurement of power on a Medium Term basis, i.e., for a period of 2 to 6 years.



- e) RInfra-D submitted that in accordance with the CBG issued by MoP, approval of the appropriate Regulatory Commission is required for the quantum of energy to be procured, and deviations, if any, in the Bid Documents from the CBG and the SBD issued by MoP. The relevant Clauses of the CBG issued by the MoP are as given below:

“2.3. Unless explicitly specified in these guidelines, the provisions of these guidelines shall be binding on the procurer. The process to be adopted in event of any deviation proposed from these guidelines is specified later in these guidelines under para 5.16.”

...

“Deviation from process defined in the guidelines

5.16 In case there is any deviation from these guidelines, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the Bid Documents within a reasonable time not exceeding 90 days.”

- f) RInfra-D submitted that in order to estimate the quantum of energy to be procured, it instituted a study to forecast demand (and hence, power requirement) for the period from 2009 to 2015 and has submitted the study report, which provides the projections of energy required and peak demand.
- g) RInfra-D submitted that based on the aforementioned study it has proposed to procure power on ‘Round the Clock (RTC)’ basis and/or on ‘Time of Day (ToD)’ basis for a period of 2 to 6 years for different Supply Periods as shown in the Table below:

Supply Period	Scheduled Delivery Date	Scheduled Expiry Date	Time of Day	
			Round The Clock	Peak (0800-2300)
Supply Period 1	1 st April 2009 to 31 st March 2010	31.03.2015	350 MW	100 MW
Supply Period 2	1 st April 2010 to 31 st March 2012	31.03.2015	500 MW	300 MW
Supply Period 3	1 st April 2012 to 31 st March 2014	31.03.2015	700 MW	500 MW

Order in Case No. 5



- h) RInfra-D submitted that in accordance with Clause 5.1 of the CBG, the Procurer shall prepare the RFP and PPA in accordance with the SBD and circulate the same to the Bidders after issuing the RFP Notice. However, to expedite the power procurement process, RInfra-D has modified the Bid Documents as deemed necessary, with an objective to promote more competition and to protect the interest of its consumers. RInfra-D submitted that a pre-bid meeting had also been conducted, whereby the comments of the prospective Bidders were taken and the same have been incorporated in the Documents, if deemed appropriate.
- i) RInfra-D submitted that it proposes to undertake the process of inviting bids for medium-term power procurement, selection of preferred bidder, signing of the PPA and other related activities and expects to complete the process in a time period of two months after obtaining approval of deviations sought in the Bid Documents from the Commission.

4. The Commission scheduled a Technical Validation Session (“TVS”) in the matter in the Commission’s office on December 11, 2008, and directed RInfra-D to serve copies of its Petition to the four Consumer Representatives authorised on a standing basis under Section 94(3) of the Electricity Act, 2003 (“EA 2003”).

5. During the TVS, RInfra-D made a presentation highlighting the salient features of the proposed Bid Documents. During the TVS, the Commission enquired of RInfra-D about the reasons for considering historical data of only three years for demand projection purposes. RInfra-D submitted that three years historical data has been considered on account of the significant variation in sales growth and other economic factors in the Mumbai region during that period. RInfra-D further submitted that since the Petition is for the approval of Medium Term Power Procurement, the impact of variation in the last three years is expected to contribute significantly.

6. The Commission also enquired of RInfra-D as to how it intends to undertake the long term procurement of power. RInfra-D submitted that it has also initiated



another process to procure power on long-term basis through competitive bidding route for which it will approach the Commission separately.

7. The Commission directed RInfra-D to submit appropriate justification for the proposed deviations and explain as to how the deviations could be justified to be in the interest of RInfra-D's consumers.

8. In the context of RInfra-D's submission that bids from any Power Station whose capacity is under dispute shall be disqualified, the Commission enquired regarding the documentary evidence sought by RInfra-D from bidders to confirm that the capacity for which it has bid is not under any dispute. RInfra-D submitted that the bidders would be asked to submit a certificate confirming that the capacity bid is not under any dispute. The Commission suggested that this issue may be re-examined by RInfra-D as such certificate by the bidder may not serve any purpose.

9. The Commission suggested that RInfra-D could consider the option of buying power in blocks of 50 MW capacity, irrespective of the capacity quoted by the bidders as this is a medium-term power procurement process.

10. In the context of the limitation that one power station can submit bid only for one supply period irrespective of the number of Units, the Commission opined that a power station can have multiple Units and the bidder should be allowed to bid for different supply periods from the same power station. The Commission suggested that RInfra-D could consider incorporating the flexibility of receiving separate bids for different supply periods from different Units of the same power station.

11. The Commission enquired about the reasons for considering a penalty for such bids which commit a delivery date later than the scheduled delivery date and opined that this penalty mechanism may limit the number of bidders or the bidders would load the impact of such penalty in their bids. RInfra-D submitted that a longer period for scheduled delivery date has been specified instead of single commencement date to ensure that the power stations, which are likely to commence operation after the commencement date are also able to participate in the bidding process. As regards penalty mechanism, RInfra-D submitted that if the delivery date is quoted later than the scheduled delivery date, it has to procure power from bilateral sources for its



consumers on short-term basis and hence, the penalty has been proposed by RInfrac-D. The Commission suggested that RInfrac-D may re-examine this issue.

12. The Commission enquired of RInfrac-D about participation of traders in the bidding process and whether draft Standard Bidding Documents (SBD) under Case-I route allows traders to participate in such bidding. RInfrac-D submitted that capacities have been tied up by traders as they have entered into PPA with the generators. Hence, to have better participation, traders have been allowed. RInfrac-D added that the draft SBD is silent on this issue and does not specifically permit or disallow traders from participating in the bid process. The Commission observed that the trader should submit a legally binding document and RInfrac-D should ensure that back to back PPA must be signed by trader with the generator in line with the approved PPA issued with Bid Documents. The Commission suggested that specific provisions with respect to traders need to be included in the PPA, which addresses all the measures for passing on the damages to the generator in case of default.

13. In the context of providing option to unsuccessful bidder in one supply period to participate in the subsequent supply periods, the Commission suggested that RInfrac-D could modify the provision such that the option of automatic participation is indicated in the Bid itself and no such option is provided after submission of bids.

14. On the issue of restricting Seller from selling power to RInfrac-D's consumers directly, the Commission enquired of RInfrac-D regarding the provisions of the EA 2003 under which such restriction can be applied. RInfrac-D suggested that it would modify this clause in such a manner that in case the Seller sells directly to RInfrac-D's consumers then RInfrac-D's committed off-take would be reduced correspondingly.

15. On the issue of seeking open access on short-term basis as a Procurer's obligation, the Commission opined that such a mechanism may lead to non-procurement of power due to unavailability of the transmission corridor for short-term open access as well as payment to the Seller for such non-procured power, which will lead to increase in tariffs for the consumers. The Commission suggested that RInfrac-D could re-examine this aspect.



16. Subsequently, RInfra-D submitted its replies to the queries raised during TVS vide its submission dated January 6, 2009. The relevant replies have been summarised below:

(a) **Appropriate Justification for the Proposed Deviations**

RInfra-D submitted that approval for a large number of deviations have been sought due to customisation of the Bid Documents for medium-term procurement. However, wherever deviations have been sought in the interest of better participation and competition and therefore, in the interest of consumers, the rationale has been outlined in the deviations sought.

(b) **Documentary Evidence regarding Disputed Capacity**

RInfra-D submitted that the competitive bidding process is based on the premise that the Bidders would submit correct and accurate information about all aspects of the Bid. Further, a declaration that the capacity offered is not under dispute shall be considered as a 'representation' from the Bidder. Since any misrepresentation should later qualify as a 'Seller Event of Default' under the PPA, which would lead to termination of the PPA and consequent penalty on the Seller, the Bidder would be deterred to a considerable extent from offering capacities under dispute. RInfra-D further submitted that the deviation has been sought in specific interest of the consumers in its licence area, who are likely to suffer in case of delays in supply of power from such capacities under dispute.

(c) **Penalty on such Bids, which commit a Delivery Date later than the Scheduled Delivery Date**

RInfra-D submitted that it has considered the merit of introducing penalty provisions in the evaluation process. After careful consideration of the Commission's views on the said provisions, it has revised the evaluation criteria. While the penalty provisions are still included, they have been modified to apply only for evaluation purposes and not for actual payment. RInfra-D further submitted that removal of penalty provisions altogether may lead to an advantage to the capacities that are expected to be commissioned later than the scheduled delivery date, which is detrimental to the interest of the consumers.



(d) Open Access on short-term basis as the Procurer's Obligation

Regarding the Commission's concern on the non-availability of short-term open access leading to additional burden on the consumers, RInfra-D submitted that in case of non-availability of open access, RInfra-D (the Procurer under the PPA) should not be obliged to pay any Capacity Charge or Penalty for Non-Scheduling. Therefore, in case of short-term open access not being available, no financial implication is expected on the consumers.

RInfra-D further submitted that all other suggestions of the Commission, i.e., option of buying power in blocks of 50 MW, number of bids to be submitted from a power station, specific provisions related to traders, option to unsuccessful bidder in one supply period to automatically participate in the subsequent supply periods, restricting seller from selling power to RInfra-D's consumers, etc., other than those discussed above, are acceptable to RInfra-D and have been incorporated into the Bid Documents.

(e) Options of Buying Power in block of 50 MW

RInfra-D, in its reply, proposed the amendment to Clause 2.5 (j) in the RFP Document as follows:

"Capacity Selected may, in multiples of 50 MW, be a part of the Capacity Offered. For avoidance of doubt, if the Capacity Offered by a Bidder is 200 MW, such Bidder may be selected to supply either 50 MW or 100 MW or 150 MW or 200 MW depending upon the Requisitioned Capacity and the ranking of the Bidder as per clause 3.5.2."

(f) Number of Bids that may be submitted from a Power Station

RInfra-D, in its reply, proposed the amendment Clause 2.4.1.1 (x) in the RFP Document as follows:

"Bidders, at their discretion, may bid for any number of Blocks up to the Requisitioned Capacity, subject to the condition that the Bidder submits Bid as per the format prescribed in Format 4.12. The Quoted Tariff of the Successful Bidder shall be inserted in Schedule 8 of the PPA. The Bidder is allowed to submit only one Bid from one Unit of a Power Station/Project/Generating Station. For avoidance of doubt, a Bidder is allowed to Bid for either RTC Requirement or Peak Requirement in any one Supply Period from one Unit of a Power Station/Project/Generating Station."



(g) **Restricting the Seller from selling power to RInfra-D's consumers**

RInfra-D, in its reply, proposed an amendment to Clause 4.3.4 in the PPA Document as follows:

“In case, the “Seller”, if seller is not an Electricity Trader, or “Electricity Trader or the Generator”[if seller is an Electricity Trader], either directly or through a power Trading Licensee, sells power to consumers of the Procurer in Mumbai License Area, the Contracted Capacity shall be reduced, by the amount of capacity being sold by [Insert “Seller” if seller is not an Electricity Trader, or “Electricity Trader or the Generator” if seller is an Electricity Trader] to the consumers of the Procurer in Mumbai License area, for the remaining term of the PPA.”

(h) **Option to unsuccessful bidder in one supply period to automatically participate in the subsequent supply periods**

RInfra-D, in its reply, proposed an amendment to Clause 3.5.5 of the RFP Document as follows:

“Bids that are unsuccessful in one Supply Period can participate in the subsequent Supply Periods. For instance, a Bid for Supply Period 1, if not successful, can participate in the Supply Period 2 and Supply Period 3. The choice to participate in the subsequent Supply Periods shall be with the Bidder. The Bidder shall have to make such a choice in the Financial Bid as outlined in Format 4.12. For avoidance of doubt, a Bidder, who, in the Financial Bid, has opted to participate in subsequent Supply Periods shall not have the choice to opt out at a later stage. Further, for avoidance of doubt, a Bid for RTC Requirement shall not be entitled to participate for Peak Requirement and vice versa.

Further, the Quoted Tariffs for subsequent Supply Periods shall be the tariffs quoted for corresponding financial years under the original Bid.”

10. RInfra-D submitted a summary of deviations in the bidding process from that specified in the CBG issued by MoP along with the rationale for such deviation. RInfra-D also submitted the comparison of key provisions of its Bidding Documents with the Bidding Documents approved by the Commission in case of the long-term power procurement under Case-I bidding for Maharashtra State Electricity Distribution Company Ltd. (MSEDCL).



11. RInfra-D further submitted that all other queries of the Commission regarding discrepancy and rationale for considering various numbers in the Bid Documents have been incorporated in the revised summary of the Deviations.

12. The Commission admitted the Petition in Case No. 94 of 2008 on February 3, 2009 and directed RInfra-D to issue a Public Notice for inviting suggestions and objections on the Petition. The Public Notice appeared in various newspapers including The Times of India (English), Indian Express (English), DNA (English), Saamna (Marathi), Lokmat (Marathi) and Loksatta (Marathi). The Commission scheduled a Public Hearing in the matter on March 4, 2009 at 11.00 hours at the office of the Commission.

13. The Commission received written suggestions and objections from a total of two (2) objectors. The list of individuals/organizations who have submitted written suggestions and objections is placed at **Annexure - 1**. The Public Hearing in the matter was held on March 4, 2009. The list of stakeholders who participated in the Public Hearing is placed at **Annexure-2**.

14. During the Public Hearing, RInfra-D discussed the issues raised by M/s Emco Energy Limited (EMCO) and M/s JSW Energy Limited (JSW), as elaborated in the subsequent paragraphs.

15. M/s Emco Energy Ltd. (EMCO) submitted that the Bid Documents specify that the Networth shall be computed based on the Annual Accounts of the latest completed financial year, however, as per Draft SBD for Case-I, the Networth shall be computed based on any of the last three financial years. EMCO requested that the provision of the Draft SBD should be maintained.

16. As regards the provisions for single part tariff, EMCO quoted Clause 4.1 of the CBG, which stipulates as under:

“For procurement of electricity under these guidelines, tariff shall be paid and settled for each payment period (not exceeding one month). A multi-part tariff structure featuring separate capacity and energy components of tariff shall ordinarily form the basis for bidding. However, for medium term procurement the procurer may, at his option, permit bids on a single part



basis, and the same shall be clearly specified in the Request for Qualification (RFQ) / Request for Proposal (RFP).”

EMCO submitted that the CBG clearly specifies that the Procurer has necessarily to call the price bids in multi part tariff structure making a provision to accept/reject a bid quoted on a single part tariff basis. However, the Procurer has no right to call for prices in single part only and requested the Commission to allow Bidders to submit the price Bid under two-part tariff and allow for escalations in capacity and energy charges, in accordance with the Documents for Long-Term Power Procurement under Case-1 Bidding already approved by the Commission for MSEDCL.

17. EMCO submitted that the ratio of minimum to maximum quoted tariff has been insisted to be not less than 0.5, whereas under the Draft SBD, the ratio of minimum to maximum quoted tariff should not be less than 0.7. EMCO requested the Commission to specify the ratio of minimum to maximum quoted tariff to be not less than 0.7.

18. As regards the provision related to reduction in the contracted capacity if the Bidder sells directly to RInfra-D's consumers in the Mumbai Licence area, EMCO submitted that the rationale provided by RInfra-D is against the provisions of the Open Access Regulations and the Electricity Act, 2003. The Procurer cannot stop anybody from selling power to its consumers and requested to modify the provisions in this regard. In this regard, M/s JSW Energy Ltd. (JSW) submitted that this provision is restrictive in nature and is not in accordance with the spirit of open access. JSW suggested that this provision may be applicable only in case the supply under open access is given from the same Unit of the power station under PPA and not for other Units/power stations.

19. As regards the provision of penalty at the rate of 20% of the total tariff as against 20% of the capacity charge for lower availability, EMCO submitted that the penalty provision should be maintained as 20% of the capacity charge.

20. As regards the provision of capacity charge considered as Rs. 1/kWh for penalty purposes, EMCO submitted that the basis for the same should be clarified and the penalty provision should be maintained as 20% of the capacity charge.



21. JSW submitted that it is not clear whether Bidder has an option to supply from alternate sources in case he is unable to supply from the same Unit of power station/project/generating station by the scheduled delivery date.

22. As regards the penal tariff for evaluation purposes, JSW submitted that the reasons for intimation of the penal tariff 15 days before the last date of the submission of Bid should be clarified. JSW further requested that the penal tariff should be approved by the Commission to bring transparency to the Bid evaluation process.

23. As regards the provision in the RFP related to the Procurer's right to reject all the Bids or procure less than the requisitioned capacity if the quoted tariffs are not aligned to the prevailing market price, JSW submitted that as the medium-term contracts and investment in power generation is substantial, obligation to supply part of the capacity offered in the Bid could be a disadvantage for the sellers. Therefore, JSW requested the Commission that in such cases, the Bidder should be provided the right of refusal.

24. As regards the normative availability of 85% mentioned in the Bid Document, JSW submitted that for other Case-I bidding, normative availability has been considered as 80% and moreover, the normative availability in the MERC (Terms and Conditions of Tariff) Regulations, 2005 has been specified as 80%. Accordingly, JSW requested to consider the normative availability as 80%.

25. JSW suggested that the following provisions of the Draft SBD should be retained:

- (a) maximum liquidated damages payable
- (b) collateral arrangements through Escrow Account
- (c) incentive component for availability above 90%.

26. JSW submitted that the evaluation model given along with Bid Documents is not operational/functional for the supply period 2 and 3 and needs to be corrected.

27. Meanwhile, on March 27, 2009, the Ministry of Power issued the "Amendment to the Guidelines for Procurement of Power by Distribution Licensees" (dated March 27, 2009) and also the "Standard Bid Documents for procurement of power on (Long-Term or Medium-Term) under Case-I bidding."



28. The Commission vide its letter dated April 16, 2009 communicated to RInfra-D that the Bid Documents prepared for Medium-Term Power Procurement through Competitive Bidding route via Case-I are based on the earlier CBG and Draft SBD issued by MoP for Case-I bidding. RInfra-D, in its Petition, has sought approval for deviations with respect to base documents, which have been amended now. Accordingly, the Commission directed RInfra-D to modify its Petition and Bid Documents and submit the deviations in its revised Bid Documents with respect to Amended CBG and final Bid Documents (RFP and PPA) notified by MoP for Case-I.

29. RInfra-D, vide its submission dated May 28, 2009 submitted the revised Bid Documents (i.e., separately for base load and peak load) in accordance with the Amended CBG and final SBD notified by MoP for Case-I. RInfra-D adopted the Final Bid Documents notified by MoP with certain deviations and also submitted the summary of such deviations vis-à-vis the Amended CBG and final SBD notified by MoP for Case-I.

30. Subsequently, the Commission scheduled a hearing in the matter on July 3, 2009 in the presence of the authorised Consumer Representatives and notice was issued accordingly.

31. During the hearing, RInfra-D made a presentation on the comparison of the demand projected by it based on the study report with demand as projected by the Maharashtra State Transmission Utility (STU) and salient features of the proposed Deviations in the Bid Documents. The summary of demand projected by RInfra-D is given in the following Table:

Year	Demand in MW
FY 2009-10	1,623
FY 2010-11	1,719
FY 2011-12	1,822
FY 2012-13	1,931
FY 2013-14	2,047

32. The summary of deviations proposed by RInfra-D in the Bidding Documents for medium term procurement of power with respect to amended CBG and SBD are as follows:

a) Summary of the Deviations proposed in the RFP Document



- (a) RInfra-D has included the definition of 'Generating Company' on account of the fact that the Generating Company has not been defined in RFP.
- (b) RInfra-D has included the definition of 'Scheduled Expiry Date' as March 31, 2015, the date on which the PPA between the Procurer and the Seller shall expire, as the supply of power under medium term power procurement is proposed to end on March 31, 2015, irrespective of the Scheduled Delivery Date.
- (c) RInfra-D has modified the definition of 'Requisitioned Capacity' as Requisitioned Capacity is different across supply periods and therefore, the same has been defined separately for different time-blocks.
- (d) RInfra-D has incorporated the provision that the Bidders are required to quote scheduled delivery date since, Bidders need to mention a date for commencement of supply of power.
- (e) RInfra-D incorporated the provision that for those bidders who are not qualified in Step I or Step II of the evaluation process, the Financial Bids shall be returned unopened, as Bidders have sought for such proviso in the pre-bid conference.
- (f) RInfra-D incorporated the provision that in case the Capacity Offered by Bidder is higher than the capacity for which the Bidder qualifies after Evaluation of Non Financial Bid, the Bidder shall be obliged to supply such revised capacity for which the Bidder has qualified. RInfra-D submitted that in a single stage process, the maximum capacity that a Bidder can offer is evaluated after the submission of Capacity Offered and the Financial Bids. Therefore, a situation may arise wherein a Bidder has offered a capacity more than its eligibility. The clause provides for the evaluation and selection modalities in such a case.
- (g) RInfra-D incorporated the provision that only the Bids qualifying in Step III shall be evaluated in the third stage. Financial Bids shall be evaluated separately for each Supply Period and for Base Load Requirements (Peak Load in the RFP of peak load) within a Supply Period. RInfra-D submitted that each Time-Block is proposed to be evaluated separately as the time blocks have been defined separately in terms of Requisitioned Capacity as well as Scheduled Delivery Date and this clause provides for the same.
- (h) RInfra-D has modified the provisions related to computation of levelised tariff and proposed to apply a penalty only for evaluation purposes on the Bidders offering Scheduled Delivery Date later than the Evaluation



Scheduled Delivery Dates. The clause outlines the mechanism for computation of such penalty for evaluation of the bids.

b) Summary of the Deviations proposed in the PPA

RInfra-D incorporated provisions related to arrangement of open access by the Procurer, since no medium-term open access is available and the Procurer will have to obtain short-term open access. However, in case of congestion, it is possible that only part or no open access is available and the document provides for the modalities in such cases.

33. During the hearing, the Commission directed RInfra-D to provide:
- a) Comparison of actual demand for the first 3 months of FY 2009-10 with the demand projected by RInfra-D in its Petition
 - b) Comparison of actual demand for the first 3 months of FY 2009-10 with demand projected by the STU
 - c) Comparison of demand projections by STU with CEA's 17th EPS projections for FY 2009-10 onwards for the State

34. Shri Shantanu Dixit, representing Prayas Energy Group, one of the authorised Consumer Representatives, enquired of RInfra-D regarding revised quantum of procurement of power under Medium-Term and Long-Term considering the latest development with respect to the fact that The Tata Power Company Ltd.- Generation Business's (TPC-G) may not supply 500 MW power to RInfra-D beyond FY 2009-10.

35. Shri Shantanu Dixit also enquired of RInfra-D regarding how the PPA addresses the issue of the change of licensee as the distribution licence of RInfra is valid only till August 15, 2011. RInfra-D submitted that the relevant Clause of the PPA does consider such a situation, which stipulates as under:

"This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing:

Provided that, such consent shall not be withheld if the Procurer seeks to transfer to any transferee all of its rights and obligations under this Agreement; and



(a) such transferee is either the owner or operator of all or substantially all of the distribution system of such Procurer and /or such transferee is a successor entity of the Procurer; and
(b) this Agreement and the other RFP Documents shall continue to remain valid and binding on such successor.”

36. Shri Shantanu Dixit requested the Commission to obtain an independent legal opinion on the assignment of PPA in case of change in licensee. The Commission directed RInfra-D to submit the legal opinion with respect to assignment clause in the PPA in case of change in licensee.

37. Shri Shantanu Dixit further submitted that RInfra-D may modify supply periods and scheduled delivery dates as the current provision regarding the supply periods and scheduled delivery dates may lead to a situation where after considering the penal tariff for evaluation, some Bids with later delivery dates may be cheaper. He further suggested that penal tariff for evaluation purposes of the Bid for different supply periods may be stipulated in the RFP itself.

38. During the hearing, the Commission allowed two Interveners to present their views on the present Petition. Shri Rakshpal Abrol quoted Regulations 21, 22 and 23 of the MERC Tariff Regulations regarding the Power Purchase Agreement or Arrangement and submitted that RInfra-D has not entered into any agreement with any source of generation apart from its own generating stations. Shri N. Ponrathnam submitted that though the present case is for RInfra-D's proposal for medium-term power procurement, however, the past events in this regard also need to be analysed. He further submitted that RInfra-D does not have valid licence to supply power in the Mumbai region and moreover it has also not entered into any agreement till date apart from the arrangement entered into with its own generating station.

39. During the hearing, the Commission observed that issues relating to validity of licence and non execution of power purchase agreement/arrangement till date except the arrangement for 500 MW with RInfra-G, does not fall within the purview of the present case which is for the approval of the proposed quantum for procurement on medium-term basis via Case-I bidding and approval of deviations from CBG and SBD.



40. Subsequently, RInfra-D vide its letter dated July 8, 2009 submitted the replies to the information asked by the Commission during the hearing.

41. As regards the comparison of the actual demand of FY 2009-10 for first three months with the demand projected in the Petition, RInfra-D submitted that the actual demand as recorded in RInfra-D system at T< >D interface in the first three months of FY 2009-10 is as under:

- April 2009 – 1516 MW
- May 2009 – 1446 MW
- June 2009 – 1516 MW (estimated)

RInfra-D submitted that it is observed in the past years that the peak system demand in RInfra-D system is reached in the month of October-November due to festivals as well as hot weather. In FY 2007-08, the peak demand at T< >D interface was recorded in the month of November 2007, which was 1443 MW and in FY 2008-09, the peak demand was recorded in October 2008, which was 1476 MW.

RInfra-D further submitted that the demand recorded at T< >D interface is grossed up to arrive at demand at G< >T interface, which is the power purchase requirement. Assuming about 4.85% losses in Intra State Transmission System (InSTS), the peak demand at G< >T interface so far in FY 2009-10 would be about 1600 MW. RInfra-D, in its Petition, has projected demand of 1623 MW for FY 2009-10, which is fairly close to the likely actual to be achieved during the year.

42. As regards the comparison of the actual demand for first three months of FY 2009-10 with the demand projected by the STU, RInfra-D submitted that the peak demand projected by the STU for FY 2009-10 for Mumbai is 3368 MW. Considering RInfra's contribution to the Mumbai demand at about 56.7%, as per STU data, the demand in RInfra system would be about 1910 MW, which is substantially higher than the actual demand recorded in the first 3 months.

43. As regards the comparison of the demand projections by STU with CEA 17th EPS projections for FY 2009-10 onwards for the State, RInfra-D provided the comparison as shown below:

Peak Demand in MW (Maharashtra State)	STU	CEA (17th EPS)
FY 2009-10	21880	19839
FY 2010-11	23166	20870



FY 2011-12	24522	21954
------------	-------	-------

44. As regards the legal vetting of the proposed Clause with respect to assignment of the PPA in case of change in Licensee, RInfra-D submitted that it has confirmed with its Legal Counsel that the ruling of the Honourable Supreme Court with respect to freedom of generator and that a generator could not be directed by a Regulator in respect of which seller it wishes to sell its power to, shall not be of any consequence in the present PPA as the assignment clause contained in the PPA is mutually agreed between the buyer and seller at the time of signing the PPA.

45. As regards the revised quantum of power procurement under Medium-Term considering the latest developments with respect to TPC-G capacity, RInfra-D submitted that it has modified the quantum for Medium-Term procurement,

46. As regards the modification in supply periods and scheduled delivery dates, RInfra-D modified the supply periods and scheduled delivery dates with the revised quantum after inclusion of additional 500 MW under Medium-Term procurement as under:

Supply Period	Scheduled Delivery date	RTC Quantum (MW)	Peak Quantum (MW)
Supply Period I	01 Oct. 2009 to 31 March 2010	850	300
Supply Period II	01 April 2010 to 31 March 2011	1000	300
Supply Period III	01 April 2011 to 31 March 2012	1000	300
Supply Period IV	01 April 2012 to 31 March 2013	1200	300
Supply Period V	01 April 2013 to 31 March 2014	1200	500

47. As regards specifying the penal tariff for the purpose of evaluation of the Bid for different supply periods, RInfra-D submitted that the penal tariff for all supply periods for evaluation of bids shall be Rs 6/kWh, which would be mentioned in the relevant places in the RFP.



Commission's Analysis and Ruling

48. Having heard RInfra-D and the stakeholders, and after considering the material placed on record, the Commission is of the view as under:

49. As regards the suggestions and objections raised during the public hearing on the earlier Bid Documents, the Commission has analysed only such suggestions and objections, which are still relevant with respect to the revised Bid Documents submitted under the Amended CBG.

50. In accordance with the provisions of the CBG, the Commission has to approve the quantum of the power to be procured under certain circumstances and deviations in the Bid Documents from the CBG and the Standard Bidding Documents before they are finally issued to the prospective bidders.

A. Separate Bid Documents for Base Load and Peak Load Power Requirement

51. As regards separate Bid Documents for Base Load and Peak Load requirements, the Commission observes that in this regard, the Amended CBG stipulates as under:

“The following paragraph is added at the end of clause 2.2:

However separate RFP shall be used for procuring base load or peak load or seasonal load requirements as the case may be.”

52. As observed from the above Clause of the Amended CBG, the Procurer (RInfra-D) has to prepare separate RFP for procuring base load and peak load requirements. RInfra-D, in its Revised Petition, has submitted separate RFP for base load and peak load requirements. Accordingly, the Commission permits RInfra-D to proceed with the process for procurement of power on medium-term basis through competitive bidding under Case-I route for peak load and base load separately.

B. Approval of Quantum to be procured and Supply Periods



53. As regards the approval for the quantum of power to be procured, the Commission observes that Clause 3.1 (iii) (b) of the CBG stipulates as follows:

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

...For the quantum of capacity / energy to be procured, in case the same is exceeding the projected additional demand forecast for next three years following the year of expected commencement of supply proposed to be procured. Such demand forecast shall be based on the latest available (at the time of issue of RFQ) Electric Power Survey published by Central Electricity Authority. (Both for Case 1 and Case 2)...”

54. The Commission observes that the EPS Report published by CEA provides the demand forecasts for the entire State and not for each Distribution Licensee separately. As discussed in previous paragraphs, the Commission obtained the details of the actual demand in first three months of FY 2009-10 and compared the same with the demand projected by RInfra-D in its Petition. The actual demand during first three months of FY 2009-10 is around 1516 MW, which is fairly close to the demand projected by RInfra-D for FY 2009-10 in the Petition.

55. The Commission also analysed the demand as projected by CEA and STU for the period from FY 2009-10 to FY 2011-12 for the State of Maharashtra and observed that there is a wide variation between the same. Further, currently RInfra-D has a Power Purchase Arrangement of 500 MW for Dahanu Thermal Power Station owned by its Generation Business, i.e., RInfra-G. Therefore, considering the current demand of around 1516 MW during first three months of FY 2009-10 and a firm capacity of 500 MW, the current demand shortfall is more than 1000 MW. The Commission is of the view that the demand projected by RInfra-D for future years appears to be reasonable considering the demand projected for FY 2009-10 and actual demand witnessed during the first 3 months.

56. As regards RInfra-D's proposal to procure additional capacity of 500 MW in addition to earlier proposed quantum to be procured under medium term, the Commission has accepted the request of RInfra-D in this regard, on account of the fact that TPC-G through its letter dated June 25, 2009 has communicated that its



generation capacity would not be available to RInfra-D beyond FY 2009-10. Therefore, RInfra-D needs to procure this additional capacity of 500 MW.

57. Further, the Commission observes that as directed during the hearing, RInfra-D has proposed to adopt 5 supply periods for procurement of power on medium-term basis.

58. Considering the above aspects, the Commission accords its approval to RInfra-D's request to procure following quantum of power on medium-term basis through competitive bidding process under Case-1 Bidding in the different supply periods.

Supply Period	Scheduled Delivery date	RTC Quantum (MW)	Peak Quantum (MW)
Supply Period I	01 Oct. 2009 to 31 March 2010	850	300
Supply Period II	01 April 2010 to 31 March 2011	1000	300
Supply Period III	01 April 2011 to 31 March 2012	1000	300
Supply Period IV	01 April 2012 to 31 March 2013	1200	300
Supply Period V	01 April 2013 to 31 March 2014	1200	500

C. Obligation of Supply of Revised Capacity

59. As RInfra-D has proposed a deviation that in case the capacity offered is higher than the capacity for which the Bidder qualifies after the evaluation of Non-Financial Bid, the Bidder shall be obliged to supply such revised capacity for which the Bidder has qualified on account of the fact that in a single stage process, the maximum capacity that a Bidder can offer is evaluated after the submission of capacity offered and the Financial Bids and a situation may arise wherein a Bidder has offered a capacity more than what he is eligible for. The Commission agrees with the views of RInfra-D in this regard and therefore, **the Commission approves the same.**

D. Automatic Participation of unsuccessful Bidder in subsequent supply period

60. In the context of providing option to unsuccessful bidder in one supply period to participate in the subsequent supply periods, the Commission during the TVS



suggested to RInfra-D that it could modify the provision such that the option of automatic participation is indicated in the Bid itself and no such option is provided after submission of bids. As RInfra-D has incorporated such provision in the Bid Document, **the Commission approves the same considering the fact such an option may provide more number of bids for different supply periods.**

E. Penal Tariff for Evaluation of Bids

61. The Commission observes that after the TVS RInfra-D submitted that it has considered the merit of introducing penalty provisions in the evaluation process. After careful consideration of the Commission's views on the said provisions, RInfra-D has revised the evaluation criteria and the penalty provisions have been modified to apply only for evaluation purposes and not for actual payment. RInfra-D further submitted that removal of penalty provisions altogether may lead to an advantage to the capacities that are expected to be commissioned later than the scheduled delivery date, which is detrimental to the interest of the consumers.

62. As regards the issue of penal tariff, during the hearing the Commission directed RInfra-D to specify the penal tariff in the RFP. RInfra-D, after the hearing submitted that the penal tariff for all supply periods shall be Rs. 6/kWh only for the purpose of evaluation. As RInfra-D has now specified the penal tariff for evaluation purposes and not for actual payment and also considering the current average power purchase cost on short-term basis, which varies in the range of Rs. 5-8/kWh, the Commission finds it reasonable to consider penal tariff as Rs. 6/kWh only for evaluation of bids and **accordingly, approves the same.**

F. Assignment of the PPA in case of change in Licensee

63. The Clause related to assignment of the PPA is reproduced as under:

“This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing:

Provided that, such consent shall not be withheld if the Procurer seeks to transfer to any transferee all of its rights and obligations under this Agreement; and



(a) such transferee is either the owner or operator of all or substantially all of the distribution system of such Procurer and /or such transferee is a successor entity of the Procurer; and
(b) this Agreement and the other RFP Documents shall continue to remain valid and binding on such successor.”

64. As regards the impact of the Judgment of the Supreme Court on the issue of allocation of generation capacity, RInfra-D submitted its legal opinion that the said Order is not of any consequence for the present PPA as the assignment Clause contained in the PPA has to be mutually agreed between buyer and seller at the time of signing of PPA. The sanctity of the contract will have to be maintained.

65. The Commission is of the view that to provide clarity and to incorporate such conditions for assignment of PPA on account of change in the Licensee, the clause should be modified as under:

“This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing:

Provided that, such consent shall not be withheld if the Procurer seeks to transfer to any transferee all of its rights and obligations under this Agreement; and

(a) such transferee is either the owner or operator of all or substantially all of the distribution system of such Procurer and /or such transferee is a successor entity of the Procurer; and

(b) this Agreement and the other RFP Documents shall continue to remain valid and binding on such successor.

Provided that, in case the Procurer opts out of the Licence or any new entity becomes the Licensee in its place, the Procurer shall ensure that it transfers all of its rights and obligations under this Agreement to such successor entity and that such successor entity executes this Agreement on identical terms and conditions for the balance term”.

G. Provisions Related to Open Access

66. As regards the provisions related to arrangement of open access by the Procurer, RInfra-D submitted that as no medium-term open access is available, the



Procurer will have to obtain short-term open access. The Commission observes that RInfra-D submitted the revised Bid Document on May 28, 2009; however, during the same period on May 20, 2009, the Central Electricity Regulatory Commission (CERC) notified the CERC (Open Access in Inter-State Transmission) (Amendment) Regulations, 2009, wherein it has specified following provisions related to Medium-Term Open Access:

“medium-term customer” means a person granted medium-term open access for use of the inter-State transmission system.”

4. Amendment of regulation 3 - Regulation 3 of the principal regulations shall be substituted as under, namely –

“Scope

“3. (1) The long-term-customer and the medium-term customer shall have priority over the short-term customer for use of the inter-State transmission system.

(2) The short-term customer shall be eligible for short-term open access over the surplus capacity available on the inter-State transmission system after use by the long-term customer and the medium-term customer, by virtue of-

(a) inherent design margins;

(b) margins available due to variation in power flows; and

(c) Margins available due to in-built spare transmission capacity created to cater to future load growth or generation addition.”

67. Considering the fact that the revised Regulations provides for medium term open access, **the Commission directs RInfra-D to modify the provisions related to open access suitably after considering the Amended Open Access Regulations notified by CERC.**

68. Since the other deviations in the RFP proposed by RInfra-D are either customisation in accordance with the SBD or are included for having more clarity with respect to interpretation of the Bid Documents, **the Commission approves the same.**



69. The Commission directs RInfra-D to amend the Bidding Documents by complying with the directions given in this Order and issue the Bidding Documents to Bidders and submit the same to the Commission for record purposes.

With this Order, the Commission disposes off RInfra-D's Petition in Case No. 94 of 2008.

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(V. P. Raja)
Chairman



(P B Patil)
Secretary, MERC



Annexure-1

List of Objectors

S.No.	Name & of the Objector	Designation	Institution
1.	Shri B.J. Amritkar	General Manager(BD)	Emco Energy Ltd.
2.	Shri Navraj Singh	Vice President - Energy	JSW Energy Ltd.

Annexure-2

The list of stakeholders who participated in the Public Hearing held on March 4, 2009

S.No.	Name	Institution
1.	Shri Vivek Mishra	Reliance Infrastructure Ltd
2.	Shri Pankaj Pandya	Reliance Infrastructure Ltd
3.	Shri Kerman Karkaria	Reliance Infrastructure Ltd
4.	Shri Pankaj Vaidya	Reliance Infrastructure Ltd
5.	Shri Vikas Garg	Reliance Infrastructure Ltd
6.	Shri Kapil Sharma	Reliance Infrastructure Ltd
7.	Shri Ganesh Balasubramanian	Reliance Infrastructure Ltd
8.	Shri R. R. Mehta	Reliance Infrastructure Ltd
9.	Shri G. Srinivasa Rao	Reliance Infrastructure Ltd
10.	Shri Ajay Kumar	JSW Energy Limited
11.	Shri R.C. Padhya	JSW Energy Limited
12.	Shri Prashant Joshi	Tata Power Company Ltd
13.	Shri R.M. Ranade	Tata Power Company Ltd
14.	Shri S.R. Mahajan	EMCO Energy Limited

