

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. 74 of 2009

In the matter of
MSEDCL's Petition seeking approval of Power Purchase Agreements signed
between MSEDCL and MSPGCL for procurement of power from 250 MW
Parli (Unit-7) and 250 MW Paras (Unit- 4)

Shri. V. P. Raja, Chairman
Shri. S. B. Kulkarni, Member
Shri. V.L. Sonavane, Member

ORDER

Dated: May13, 2010

Maharashtra State Electricity Distribution Company Limited (MSEDCL) submitted a Petition under affidavit on November 25, 2009, for approval of Power Purchase Agreement (PPA) between MSEDCL and Maharashtra State Power Generation Co. Ltd (MSPGCL) for purchase of power from the new coal based thermal power Generating Stations, viz., 250 MW TPS Paras (Unit- 4) and 250 MW TPS Parli (Unit-7), in compliance with Regulation 24 of MERC (Terms and Conditions of Tariff) Regulations, 2005.

2. MSEDCL, under its Petition, prayed as under:

“Examine and approve the draft PPAs for power purchase from the Mahagenco project at 250 MW TPS Paras (Unit-4) and 250 MW TPS Parli (Unit-7).”

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

- (a) Maharashtra State Electricity Board (MSEB)'' a board constituted under the Electricity (Supply) Act, 1948 was the integrated electricity Board in the State of Maharashtra undertaking the electricity generation, transmission, distribution and supply in the state. MSEB has been unbundled into separate entities MSPGCL, MSETCL and MSEDCL for undertaking the generation, transmission and distribution of electricity, respectively, with effect from June 6, 2005.
- (b) Hence, MSPGCL and MSEDCL, being separate entities are required to enter into Power Purchase Agreement for power purchase from the Generating Stations of MSPGCL.
- (c) MSPGCL is establishing new coal based thermal power Generating Stations, viz., 250 MW TPS Paras (Unit-4) and 250 MW TPS Parli (Unit-7) and desires to enter into long term PPAs for sale of energy from these power plants.
- (d) MSPGCL and MSEDCL have finalised draft PPAs to be signed. MSEDCL Board in its meeting held on November 5, 2009 passed the resolution approving the PPA. The PPAs are being submitted for the approval of the Commission.
- (e) MSEDCL and MSPGCL have already signed PPAs for existing stations on April 1, 2009. The present draft PPAs are in line with existing PPA executed with MSPGCL.

4. The Commission, vide its Notice dated December 9, 2009, scheduled a hearing in the matter on December 29, 2009, and directed MSEDCL to serve a copy of its Petition along with its accompaniments to the four authorised Consumer Representatives.

5. At the hearing held in the matter on December 29, 2009, Shri .G.S. Trimukhe, Chief Engineer (Power Purchase) and Shri. V.M. Shinde, Dy. E.E, MSEDCL appeared on behalf of MSEDCL and Shri. C.S.Thotwe, Director (Projects) and Shri. L.N. Ambekar, General Manager appeared on behalf of MSPGCL..

6. MSEDCL submitted that they have made detailed submission in regard to the Power Purchase Agreement signed between MSEDCL and MSPGCL as per Regulation 24 of the MERC (Terms and Conditions of Tariff) Regulations, 2005, and MSEDCL and MSPGCL have already signed PPAs for existing stations on April 1, 2009 and the present draft PPAs are in line with existing PPAs executed with MSPGCL.

7. During the hearing, the Commission had enquired whether there is any penalty leviable on MSPGCL in case MSPGCL does not complete the project on schedule. MSEDCL submitted that the penalties have been incorporated under the EPC contract. The Commission observed that as a power purchaser MSEDCL has to protect the interest of the consumers and penalty Clause should be there in the PPA.

8. Having heard MSEDCL and after considering the material placed on record, the Commission is of the view as under:

(i) In Case No. 39 of 2007 ‘in the matter of MSEDCL Petition for Approval of Power Purchase Agreement between MSEDCL and MSPGCL’, disposed of by an Order dated July 28, 2008, the Commission had conducted the process envisaged under Section 86(1)(b) of the Electricity Act, 2003 for approving the terms and conditions and various clauses to be inserted in power purchase agreements to be executed between MSEDCL and MSPGCL.

The said Order dated July 28, 2008 applies even to the PPAs submitted for approval in the present case. Also, in the said order the Commission had referred to its Order dated July 7, 2006 in Case No. 27 of 2005, wherein the following decision was communicated:-

“*The Commission opined that therefore, the Commission will not get into the detailed PPA provisions but will only look at submissions made to the extent of its implication on the consumers and revenue requirement in the ARR.*”

In view of the Order dated July 28, 2008 in Case No. 39 of 2007 read with Order dated July 7, 2006 in Case No. 27 of 2005, MSEDCL is directed to incorporate all clauses and modifications in the present PPAs concerning 250 MW Parli (Unit-7) and 250 MW Paras (Unit- 4) as directed by the Commission in its the Order dated July 28, 2008. Having said that, the Commission is of the view that there should be clauses in the PPAs that would ensure some financial deterrent if COD of a Unit or of the Contracted Capacity is delayed beyond the Scheduled Commercial Operation Date. In another proceeding, in Case No. 39 of 2009, MSEDCL had submitted a PPA for approval of procurement of 300 MW from JSW Energy Ltd., on which the Commission had issued its Order dated November 27, 2009. In the said PPA with JSW Energy Ltd, MSEDCL had proposed inclusion of a Clause which is reproduced below:

“If COD of a Unit or of the Contracted Capacity is delayed beyond the Scheduled Commercial Operation Date as offered by the Selected Bidder in response to RFP, the Selected Bidder shall be liable to pay to Procurer liquidated damages as per the terms in Article 4. To avoid such liquidated damages, the Selected Bidder shall have the option of supplying the contracted power to Procurer from alternate sources. Delay in Commercial Operation Date due to non-availability of Open Access on the CTU network shall be considered to be a Force Majeure Event. In case the landed cost of supply of alternative power at Maharashtra STU boundary is higher than Quoted Tariff, the Selected Bidder will have to bear such additional cost including Open Access Charges, Transmission Charges, Transmission Losses, RLDC Charges, SLDC Charges etc”

(ii) The Commission directs that MSEDCL incorporates a similar Clause as mentioned above in the present PPAs and also in the subsequent PPAs between MSEDCL and MSPGCL. Also, as the said Order dated July 28, 2008 would apply to 250 MW TPS Paras (Unit-4) and 250 MW TPS Parli (Unit-7), it would be appropriate to have the PPAs for power purchase from the said MSPGCL's stations inserted and kept as supplementary PPAs signed between MSEDCL and MSPGCL in accordance with the said Order dated July 28, 2008 in Case No.39 of 2007 read with this order.

9. The Commission directs MSEDCL to submit modified PPAs complying with the directions given in this Order to the Commission for its information.

With this Order, the Commission disposes off MSEDCL's Petition in Case No.74 of 2009.

Sd/-
(V. L. Sonavane)
Member

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(V. P. Raja)
Chairman