

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 9 of 2008

In the matter of
MSEDCL's Petition seeking approval of the agreement for Standby Support by
MSEDCL to TPC, REL and BEST.

Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member

Maharashtra State Electricity Distribution Co. Ltd
Plot No. G-9, Prakashgad
Bandra (East),
Mumbai 400 051

..... Petitioner

Vs.

1. The Tata Power Company Ltd.,
Bombay House,
24, Homi Mody Street,
Fort, Mumbai 400 001.
2. Reliance Energy Limited,
Reliance Energy Centre,
Santacruz (East),
Mumbai 400 055.
3. BEST Undertaking,
BEST Bhavan, BEST Marg,
Mumbai 400 001.

.... Respondents

ORDER

Dated: August 17, 2009

In pursuance of the Petition filed by Maharashtra State Electricity Distribution Co. Ltd. ("MSEDCL") in Case No. 59 of 2006, the Commission had passed an Order dated 7th February 2007 directing MSEDCL to execute legally valid and binding contracts with TPC, REL and BEST with regard to the standby arrangement with them. MSEDCL informed the Commission vide letter dated 20th February, 2008 stating that there were differences between the distribution licensees due to which it is



legally not possible to sign or execute the agreement as the terms and conditions have not been agreed upon between the parties. In furtherance thereto MSEDCL filed a Petition before the Commission under affidavit, under its letter dated 15th April, 2008, inter alia, seeking approval of the agreement for the Standby Support by MSEDCL to Tata Power Co. Ltd. (TPC), Reliance Energy Ltd. (REL) and BEST Undertaking (BEST), with the following main prayers:

- i. *Examine the proposals of the petitioner for a favourable dispensation;*
- ii. *Approve the Standby agreement and pass such orders as considered appropriate in view of the facts of the case;*
- iii. *To recommend and give directions on the factors as specified in clause 8 and 9 of the petition with respect to standby support to BEST and sharing of the standby support in the event of the simultaneous outage of the generating units of both TPC and REL units;*
- iv. *To recommend and to give directions on the factors as specified in clause 13 and 14 of the petition with respect to the scheduling of standby power and penalty clause.*

2. The facts of the case as stated in the Petition are as follows:

- (i) The vertically integrated Maharashtra State Electricity Board (MSEB), a statutory body, was disaggregated w.e.f. June 6, 2005, into three separate functional corporate entities, Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL or Maha Vitaran), a distribution utility in the State being one of them. MSEDCL is a Distribution Licensee under the provisions of the Electricity Act, 2003 (the "Act") having license to supply electricity in the State of Maharashtra, except in the specified licensed areas of Mumbai.
- (ii) Tata Power Company Limited (TPC) is a generator of electrical energy and is also authorised to supply electricity in the city of Mumbai and suburbs along with REL and BEST. TPC and MSEDCL are interconnected at 5 EHV points with MSETCL and at 19 HV points with MSEDCL, for exchange of power between TPC and MSEDCL. Also, MSETCL is interconnected with REL at 220 kV at Bhoisar. TPC was availing standby facility/demand support of 550 MVA from erstwhile MSEB till the date of restructuring of MSEDCL and thereafter, it continues to avail the said facility from MSEDCL. The said facility is being availed of by virtue of the agreement between TPC and erstwhile MSEB dated 12th March 1985 and as per agreed and revised terms and conditions from time to time thereafter.
- (iii) The Commission in its Order dated 20th October 2006, in the matter of Tariff Determination of MSEDCL for 2006-07 directed MSEDCL to recover standby charges from TPC, REL and BEST as against the ongoing practise of recovering the same from TPC only. The fixed demand charges were determined as Rs.396 crores per annum for the agreed stand by support of 550 MVA. The break up of this amount payable separately



by each of the utilities viz, TPC, REL and BEST was also determined in the above order. Accordingly, MSEDCL has been billing BEST for recovery of Standby Charges. However, BEST has no generation capacity of its own and is not connected to either MSEDCL or MSETCL network, but is connected with the TPC network only for its power requirement. In view of the above, MSEDCL submitted that the Commission needs to clarify the methodology through which the standby agreement with BEST is to be executed.

- (iv) As per the existing standby agreement, MSEDCL will give support to the extent of 550 MVA/ 500 MW equivalent to the largest generating unit of TPC. MSEDCL submitted that in the event of simultaneous outage of TPC and REL units, the method of sharing of the standby support needs to be addressed by the Commission.
 - (v) In the Petition filed by MSEDCL (Case No. 59 of 2006) for review of tariff Order dated 20th October 2006, the Commission vide Order dated 7th February 2007 has clarified and reiterated that MSEDCL shall raise bills for standby charges directly on each of the distribution licensees namely, TPC, REL and BEST, on a monthly basis. The Commission further observed that MSEDCL, having been formed pursuant to the restructuring of MSEDCL, as an independent entity under the Companies Act, 1956 to function on commercial principles, is required to commercialise its existing arrangements, which includes the standby capacity provided to other licensees. The Commission further directed that, in order to obviate any future ambiguous contentions, that may be raised in future proceedings before it, that MSEDCL shall execute legally valid and binding contracts with TPC, REL, BEST with regard to the standby arrangements with them.
 - (vi) MSEDCL further submitted that as per the directions of the Commission, a draft standby agreement was prepared and the same was discussed with TPC, REL and BEST during a meeting held at MSEDCL's office on 12th July 2007. However, as no consensus could be arrived at during the meeting, TPC, REL and BEST were asked to give their comments in writing. There were certain clauses in the Agreement that were not agreed upon by all the parties.
3. The main issues raised in the Draft Agreement were:
- i. **Scheduling of Stand by requirement:** MSEDCL in its draft agreement had inserted a clause that required TPC, REL and BEST to indicate their exact hourly requirement out of the contracted Standby support of 550 MVA, so as to enable MSEDCL to plan its strategy to provide such assistance towards fulfilment of the obligation under the Standby Agreement.
 - ii. **Penalty clause:** It is a known fact that there is severe power shortage in the state of Maharashtra and MSEDCL is forced to undertake load shedding in its



licensed area to curb demand. In view of this situation, MSEDCL proposed a penalty clause in the Draft Agreement, wherein it was proposed that in case of over drawl with reference to the agreed demand support, penal charges shall be applicable. The penal charges were proposed given the fact that any over drawl over and above the agreed demand support would adversely affect the power supply of MSEDCL's consumers.

4. MSEDCL in its letter dated 20th February 2008 to the Commission stated that due to the above differences between the distribution licensees it is legally not possible to sign or execute the agreement as the terms and conditions have not been agreed between the parties and filed the present petition under Regulation 24 of the MERC (Terms and Conditions of Tariff) Regulations 2005 wherein Regulation 24.1 provides as under:

“Every agreement or arrangement for long-term power procurement by a Distribution Licensee from a Generating Company or Licensee or from other source of supply entered into after the date of notification of these Regulations shall come into effect only with the prior approval of the Commission:

Provided that the prior approval of the Commission shall be required in accordance with this Regulation 24 in respect of any agreement or arrangement for procurement of electricity by the Distribution Licensee from a Generating Company or Licensee or from any other source of supply on a standby basis”.

5. MSEDCL also submitted that it wishes to submit certain revisions in the Draft Standby Agreement which can be considered at the time of Public hearing for comments.

6. A hearing was held in the matter on 30.04.2008. It was submitted on behalf of MSEDCL that there have been directives issued by the Commission to recover standby charges from the respective distribution licensees in Mumbai area and also that MSEDCL should enter into contracts with the licensees on commercial principles for standby. It was also submitted on behalf of MSEDCL that in compliance with the said directives of the Commission the process was initiated immediately. There were meetings held on 12th July 2007 where majority of proposed clauses were agreed upon between the parties. There were however two or three issues that the utilities could not agree to. Therefore, MSEDCL approached the Commission regarding the dispute / disagreements between the utilities on such issues. It was further submitted on behalf of MSEDCL that one issue is for the exact quantum of standby requirement. The standby requirement of 550 MVA is primarily based on the outage of maximum size unit either in TPC system or REL system and 550 MVA is therefore the guaranteed support from MSEDCL's system. However, considering the demand – supply gap that is currently faced by MSEDCL there is a need for systematic planning to provide the standby support. Therefore, it is necessary for licensees to provide hourly schedule of the exact requirement of standby support and the time period for which the licensees would require this support. On these lines there is a clause that is proposed in the draft agreement / contract that is proposed to be executed



7. It was further submitted on behalf of MSEDCL that the second issue relates to the drawl of the 550 MVA power. The time period for such drawl and the over drawl in excess of 550 MVA requires to be specified in the contract. These are necessary requirements for incorporating commercial principles in the contract. This is also required for the planning of the system and to prevent licensees from taking undue advantage of standby support. In light of this, there is a need to implement penalty system in case there is over drawl above 550 MVA which is the guaranteed standby support, as well as if there is extension of time which was committed at the beginning on the occurrence of the outage. The proposed penal charges are Rs. 1,00,000/- per MVA per 15 minute interval. In addition, there is a proposal to collect the energy charges also.

8. It was submitted on behalf of MSEDCL that the third issue relates to the direct agreement between MSEDCL and the three licensees. As far as REL and TPC are concerned there are no indications as to whether there would be any direct agreement. BEST is not interconnected with MSEDCL system. There is no clarity as to the commercial terms of the proposed agreement arising inter alia due to issues such as whether TPC in turn would be giving standby support to BEST and therefore whether such an agreement need to be routed through TPC or whether it would be a separate agreement with BEST. The issue is whether the standby support to BEST would be routed through TPC. Therefore, MSEDCL has requested for the intervention of the Commission. In response, the Commission enquired as to whether standby support is being provided and will continue to be provided as per the old arrangement. MSEDCL confirmed that the same standby commitment would continue till the proposed agreements are executed amongst the licenses and MSEDCL. On this submission, the Commission directed MSEDCL to submit the same on an affidavit. One-week time was given to MSEDCL to file the affidavit. The hearing in the matter concluded thereafter.

9. As directed by the Commission, MSEDCL submitted an Affidavit on 30.04.2008 confirming that the Standby support to the Mumbai licensees shall be continued as per prevailing terms and conditions, till such time the matter is adjudicated by the Commission or the revised commercial agreement between the licensees is executed. Subsequently, the Commission vide its letters dated 25.05.2009 and 21.07.2009 directed MSEDCL to inform the Commission, the prevailing terms and conditions of the standby support, being provided to the Mumbai Licensees. In response, MSEDCL submitted an affidavit on 30.07.2009 enclosing the prevailing terms and conditions of the Standby Support by MSEDCL to Mumbai Licensees which are given below:

- (i) TPC was availing Standby support of 550 MVA from the erstwhile MSEB till the date of restructuring of MSEDCL and thereafter the Standby support is continued to be provided by MSEDCL. The said facility is being provided by MSEDCL and availed by TPC/Mumbai Licensees, during the outage of their generating units, by virtue of the agreement between TPCL and the erstwhile MSEB on 12th March 1985 and as per agreed terms and conditions from time to time thereafter.



- (ii) As provided in the said agreement dated 12.03.1985, w.e.f. 1.02.1984 MSEB would bill TPC for fixed demand of 300 MVA which would increase by 50 MVA each year effective from 1.04.1984.
- (iii) Subsequently, in 1990 MSEB and TPC have decided that the maximum billing demand would be fixed at 550 MVA.
- (iv) The fixed Demand of 550 MVA and the actual net Energy off-take by TPC were billed by MSEB/ MSEDCL at the tariff applicable from time to time as approved by the Government of Maharashtra.
- (v) Subsequently, the Commission vide its order dated 20.10.2006 on the fixation of tariff of MSEDCL for 2006-07, directed MSEDCL to recover Standby Charges from TPC, REL & BEST separately as per the break-up indicated in the said order.
- (vi) Through the aforesaid MSEDCL tariff order dated 20.10.2006, the Commission has also provided that in case of any inter-utility power exchange within the State, the rate applicable shall be the marginal cost of the supplying utility and the same shall be applicable on the net supply between utilities for any thirty-minutes time block.
- (vii) In para 31 of the Order dated 29.09.2006 in Case No.31 of 2006 in the matter of Determination of Transmission Tariff for the Intra-State Transmission system for FY 2006-07, the Commission has elucidated the methodology for determining the gross energy drawl by each TSU (or distribution licensee) shall be compared against the energy contracted (through own generation or power purchase by concerned TSU to establish overdrawal or under-drawal and underdrawal by various TSUs shall be settled on the basis of weighed average system marginal price prevalent for the month and shall be paid for by overdrawing TSU to under-drawing TSU.
- (viii) Under the aforesaid provisions MSEDCL continues to provide standby support to Mumbai Licensee. The Standby Charges prescribed by the Commission for each of the Distribution Licensee are billed directly on each of them by MSEDCL. The net energy off-take is taken care of under the energy accounting done by the SLDC as per the provisions at para 31 of the Order dated 29.09.2006.



10. Having heard the parties and after considering the materials placed on record, the Commission is of the view as under:-

- (i) MSEDCL has to prepare separate standby agreements for each of the three Mumbai Distribution Licensees as directed by the Commission. However, MSEDCL has prepared a common agreement.
- (ii) The terms and conditions of the new agreement should be more or less the same as that which were prevailing prior to the new agreement without imposing any additional financial burden on the licensees.
- (iii) Even though BEST is not directly interconnected with MSEDCL / MSETCL it has been paying its share of standby charges to MSEDCL directly. It has a proportionate allocation of TPC generation for which MSEDCL is providing standby support. Hence, MSEDCL can enter into a direct agreement with BEST on the same logic.

11. As regards the new clause on scheduling of quantum of standby requirement on hourly basis and its duration by licensees, the same will have additional financial implications and practical difficulties. This is a new clause deviating from the prevailing practice and the same needs to be suitably modified by mutual agreement so that no additional financial burden is imposed on the licensees.

12. As regards the clause on Penalty for overdrawal due to simultaneous outage of TPC's one 500 MW unit and another REL's 250 MW unit or for any other reasons, it has huge financial implications for licensees. Further, the rate for the penalty charges indicated is unreasonable and no scientific basis for the same is spelt out. Presently there is no such penalty. In fact under normal conditions MSEDCL/MAHAGENCO is not maintaining any generation capacity as an online spinning reserve for meeting the standby requirement of Mumbai licensees and hence not incurring any unremunerative and recurring expenditure. It is being provided only in emergencies/planned outages for a few hours / days during the entire year.



13. TPC has stated that it has provided its comments on MSEDCL's draft standby agreement without prejudice to TPC's rights in Appeal no. 415 of 2007 pending with the Hon'ble Supreme Court in the matter of sharing of standby charges between TPC and REL. Even though the dispute concerns the past period and on the issue of sharing of charges between them, it can reasonably be expected that the Hon'ble Supreme Court, while resolving this case, would be required to go into the very concept of standby charges and levy of the same, to arrive at the modalities regarding sharing of the standby charges between the distribution licensees. In view of this, it is advisable that the new agreements are made to correspond to the prevailing terms and conditions without any new financial implications to the licensees. The present methodology followed for payment of standby charges has been going on smoothly since the past three years without any complaint from the licensees and imposing of any radical changes for the new agreements are likely to result in disputes. With the above observations and findings, Case No. 9 of 2008 stands disposed of.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P.B. Patil)
Secretary, MERC