

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
World Trade Centre, Centre No.1, 13<sup>th</sup> floor, Cuffe Parade, Mumbai 400 005.

**CASE No.16 of 2001**

**In the matter of Approval of  
Tariff for Second Year energy exported to MSEB against tri-partite Power  
Purchase Agreement (PPA), dated 21.1.1999 entered into between the MSEB,  
Irrigation Department of GoM and the Dodson-Lindblom Hydro Power Private  
Limited, for Bhandardara Hydro Power Project Phase-1 (12 MW).**

**Shri P. Subrahmanyam, Chairman  
Shri Jayant Deo, Member  
Dr Pramod Deo, Member**

**AD-INTERIM ORDER**

**Dated: December 03, 2002**

The MSEB vide its letter No.TRC/DLHP/35105 dated 25<sup>th</sup> September 2002 has submitted that the Board has entered into a tripartite PPA dated 21.1.1999. Clause 7.1 and 7.2 of Article VII / page 34 of the PPA, deals with the rate at which the Board has to purchase the power from the unit. As per the clause 7.1 the Board was purchasing the power at Rs.2.125 per unit for the first year and the tariff for the second year of operation, as per the working table submitted by the Board, the rate would be Rs.2.48 per unit before applying the foreign exchange rate variation. However, as per Schedule-X, which is an illustrative tariff table for 30 years, the total rate per unit is shown as Rs.2.43 with out FOREX variation. The MSEB, therefore, sought direction whether to seek the Commission's approval or otherwise for any change in the rate, in line with the Sunflag Case.

2. An admissibility hearing was held on 22<sup>nd</sup> November 2002. During the admissibility hearing, the Technical Director (CP), MSEB submitted that earlier, the MSEB vide its affidavit dated 8<sup>th</sup> August 2001 approached the Commission for approval of the abovesaid PPA, and on which a technical validation session was held on 29<sup>th</sup> August 2001. During the said Technical Validation Session the Commission opined [refer RoP] *“as the PPA under reference has been entered into on 21<sup>st</sup> January 1999 i.e. before the formation of the Commission itself and there is no change in this PPA, the Commission decided not to admit the petition and permitted the MSEB to withdraw the same”*.

3. According to clause 7.2 of the PPA, the rate for second year of operation has been worked out as Rs.2.48 per unit before applying the foreign exchange rate variation, whereas as per the Working Table (Schedule-X/page 106) of PPA, the tariff for the second year operation is shown as Rs.2.43 per unit. Therefore, there appears to be a difference of 5 paise per unit. After applying the foreign exchange variation, the rate for payment would be Rs.2.99 per unit. The Board has submitted a copy of the calculation sheets for perusal of the Commission.

4. The TD further submitted that the tariff indicated in the table is only an indicative, which may undergo changes as per the market conditions such as wholesale price index, SBI's Prime Lending Rate (PLR). As the PPA provides for defacto norms and there is no uncertain clause/conditions, the MSEB should be allowed to calculate the tariff as per the schedule for rate calculation from year to year so that the operation of the PPA could go uninterrupted.

5. The Board has invited Commission's attention to the Order dated 22.02.2002 in Case No.14 of 2001 [Sunflag Iron & Steel Co. Ltd] stating that "*the Commission would like to clarify that if there is any change in purchase rate in 'absolute terms' arising out of the PPA formula, then the concerned purchaser utility has to approach the Commission.*" Therefore, the Board has approached the Commission for approval of the tariff for the second year of operation.

6. In substantiating further, Shri P.K. Gokhale, CE (Elect.) Hydro Power, Irrigation Department, submitted that this is an IPP project and the tariff has been finalised, in pursuance of the provisions of the Indian Electricity Act, 1910 and also Section 43-A of the Electricity (Supply) Act, 1948, as per the prevailing policies of the Government of India and/or Government of Maharashtra.

7. The Applicant submitted that it has made huge investment of about Rs.36.5 crores. The tariff has been calculated as per the PPA based on GoM guidelines and the company has taken certain risks. While there is no dispute, yet it may take substantial time for the Commission to arrive at a conclusion after fulfilling the due process. Meanwhile, if the payment is not forthcoming, then the entire economic viability of the project will be affected. The company has no other source to meet its Debt Servicing obligation of the contract. Since the PPA has been signed much earlier than the formation of the MERC for the phase I of the project, there is absolutely no need to take fresh approval of the Commission and therefore, the MSEB should be instructed to follow the conditions laid down in the PPA.

8. He felt that sovereign guarantees must be honoured by the Board. The Applicant submitted that the matter was earlier brought before the Commission on August 2001 by the MSEB and having satisfied itself, the Commission declined to admit the same. Therefore, once again being approached by the Board, the Commission may not reopen the issue. He admitted that engaging a legal counsel in the present circumstances, due to prohibitive cost involved, might not be possible for them. However, he has full faith in the Commission to get justice without any prejudice.

9. He further submitted that the Board made the payment for the first year of operation at 15% discounted rate. The rate determined as per the PPA is inclusive of foreign exchange fluctuation rate. The rate decreases when PPA attains the debt-repayment maturity. This will effectively offset the rising foreign exchange variation effect. He further submitted that while formulating the project, it was anticipated that there will be a maximum net rate of Rs.3.05 per unit, which is still less than the price determined by the Commission in respect of Bagasse based Co-generation projects.

10. Keeping the above issues in mind and the financial difficulties including irreparable damage to its financial health faced by the company in absence of MSEB's payment for the second year of operation, the Commission passes the interim order under Section 22(2)(e) of the ERC Act, 1998, and Regulation 68 of the MERC (Conduct of Business) Regulations, 1999:

- i) The Government of Maharashtra may file an affidavit confirming that it has complied the provisions under Section 43-A of the Electricity (Supply) Act, 1948, before finalising the PPA.
- ii) That pending finalisation in the matter the MSEB may make the payment, subject to any adjustment, subsequent to final order, at the prevailing rate (as enumerated in calculation sheet) - Annexure II of application dated 25<sup>th</sup> Sept. 2002 fulfilling the terms of the PPA.

Sd/-  
(Jayant Deo)  
Member

Sd/-  
(Dr Pramod Deo)  
Member

Sd/-  
(P. Subrahmanyam)  
Chairman, MERC

Sd/-  
(Sanjay Kumar)  
Secretary, MERC