Press Note **21 August, 2013**

MERC allows 57 paise extra per unit for power to be supplied over and above 520 MW from Adani Tiroda Units 2 & 3 as an interim relief

Salient points of the ruling:

1. Allows an interim relief to Adani Power's Tiroda units 2 & 3 to the extent of Rs 0.574 per unit for 800 MW. The first 520 MW from units 2&3 with a total capacity of 1320 MW will be supplied at the levellised tariff Rs 2.642 per unit of power as per the PPA. (In the 1st year the tariff works out to Rs 2.55 per unit.)
2. MERC has rejected the Force Majeure plea saying that procurement of coal under the competitive bidding process was the sole responsibility of APML and hence the non-availability of coal from the Lohara coal blocks is not a valid reason for invoking Force Majeure.
3. Accordingly, termination of the PPA on this account has been declared null and void.
4. However, keeping in mind the interests of the consumers of Maharashtra, as well as to safeguard the interest of the lenders and to promote a positive investment climate in the power sector in the State, the Commission has directed the parties to set up a committee to look into issue of compensatory charges to provide temporary financial relief to APML.
5. MERC has also awarded temporary interim charge of Rs. 0.574 per unit over and above the levellised PPA tariff of Rs 2.642 per unit for power supplied from units 2&3 beyond the first 520 MW.
6. This temporary interim charge will be applicable either for a maximum of one year from the date of this Order or a decision by the Commission on the report of the above-mentioned committee, whichever occurs earlier.

Background:

Adani Power Maharashtra Limited (APML) filed a Petition with the Maharashtra Electricity Regulatory Commission (MERC) on 16 July, 2012 for adjudication of dispute pursuant to the termination of its Power Purchase Agreements (PPA) with Maharashtra State Electricity Distribution Company Limited (MSEDCL). The said PPA was signed between APML and MSEDCL subsequent to the selection of APML as a successful bidder by MSEDCL in FY 2007-08.

In its Petition APML sought the return of its Performance Guarantee pursuant to termination of the PPA with MSEDCL. In the alternative, APML prayed to the Commission to revise tariff and direct MSEDCL to execute a new PPA based substantially on the terms of the earlier one dated 8 Sept, 2008. It also prayed to the Commission to consider a revised fuel cost for generation and supply of power from the APML's Tiroda plant.

In its judgment dated 21 August, 2013 the Maharashtra Electricity Regulatory Commission has ruled as follows:

- As the PPA between MSEDCL and APML was signed based on a bid process, the responsibility of fuel tie-up rests only with APML. The Commission rejected the plea of APML that a force majeure event had occurred and stated that the sourcing of coal from Lohara extension coal blocks was an arrangement made by APML, without involvement of the procurer (MSEDCL). The PPA does not include any condition that it can be terminated if coal from Lohara coal block is not available. The Commission also ruled that the termination of PPA by APML was not correct on this ground.
- The Commission also took note of the fact that expensive coal has to be arranged to generate and supply power to consumers of Maharashtra. Therefore, the Commission believes that APML may incur temporary financial losses in supplying power from Unit 2 and 3 of Tiroda TPS to MSEDCL at the Tariff quoted in the PPA, considering the present situation of coal supply for the project.
- Therefore, the Commission has directed the formation of a Committee to look into the details of the case, evaluate the financial impact of non-availability of coal from Lohara Extn coal blocks on Units 2 and 3 of Tiroda TPS and accordingly, determine a compensatory charge to be provided to APML, if required, over and above the Tariff agreed in the PPA, for a limited period till the coal situation eases, subject to a periodic review by the parties to the PPA.
- Accordingly, the Commission has directed APML and MSEDCL to constitute a Committee within 10 days from the issuance of this Order. The Committee shall consist of Principal Secretary (Energy), Government of Maharashtra/Managing Director of MSEDCL, Chairman of APML, or their nominees, an independent financial analyst, an independent technical expert and an eminent banker of repute. The financial analyst, technical expert and the banker will be selected based on mutual consent of APML and MSEDCL. The Committee shall consider all the aspects

highlighted in this Order and submit its final report outlining principles and on the precise mechanism for calculation of compensatory charge within three (3) months from the date of this Order. Once the Committee submits its report, the Commission will initiate proceedings to consider a final view on compensatory charge, if required.

  - In the interim, the Commission observes that there is a need to intervene to ensure that the project continues to operate and supply power to the State. Therefore, there is a need to provide some temporary relief so as to ensure continuous supply of power to the State from the project, till such time as a final decision is taken on this matter.
  - The Commission, while arriving at the decision, has been fully conscious of the significant issues involved in the present case, regarding the sanctity of contracts, Section 63 of EA-2003 and issues arising out of implementation of a 25 year long contract. Notwithstanding these, what has weighed with the Commission is the need to keep in mind the necessity to ensure reliable power supply to the consumers, prevent stranded assets and NPAs on the books of the lenders and boost investor confidence in the sector. A stranded asset is neither in the interest of the Generating Company nor in the interest of Consumers, lenders or the State.
  - Since the Commission feels that APML should also bear some burden arising due to its inability to firm up coal supply for Unit 2 and 3, the capacity charges for interim relief has been computed by reducing 50% of Return on Equity as per the information submitted by APML. The Energy Charge is calculated based on tariff data available from PPA of units 4 and 5, which was concluded within 18 months from conclusion of the PPA for Units 2 & 3. Accordingly, an interim relief has been worked out at Rs 0.574 per kWh over and above existing first year tariff of Rs 2.55 per kWh (based on the levellised tariff of Rs 2.642 per kWh).

- The interim relief shall be applicable for sale of power beyond the initial 520 MW (for which the Fuel Agreements exist) supplied from Units 2 and 3 and shall be limited to the remaining 800 MW. This interim relief shall be applicable from the date of commercial operation of respective units 2 and 3. This shall mean that the quantity of power supplied beyond 520 MW, in any time block, shall be billed at Rs. 3.124 per kWh. For the initial 520 MW, Tariff shall be applicable as per PPA dated 8 September, 2008. This direction of the Commission shall not alter any other terms and conditions of the above-mentioned PPA.