

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 125 of 2016 and MA No. 18 of 2016

Dated: 4 October, 2016

**CORAM: Shri Azeez M. Khan, Member
Shri Deepak Lad, Member**

**In the matter of
Petition of RattanIndia Power Ltd. seeking directions for compliance of Merit Order
Despatch principles, compilation of Merit Order Despatch Stack in accordance with the
Order dated 17.05.2007 in Case No. 42 of 2006 and State Grid Code and seeking
compensation for loss suffered by the Petitioner on account of frequent backing down
instructions, non-adherence to MOD principles and under-declaration of Energy
Charges**

and

**Application of M/s. Adani Power Maharashtra Ltd. for impleadment in Case No. 125 of
2016**

M/s RattanIndia Power Ltd. (RPL)	: Petitioner
Maharashtra State Load Despatch Centre (SLDC)	: Respondent No.1
Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)	: Respondent No. 2
Maharashtra State Power Generation Co. Ltd. (MSPGCL)	: Respondent No. 3
Adani Power Maharashtra Ltd. (APML)	: Intervener
Representative of the Petitioner	: Shri Amit Kapoor (Adv.)
Representatives of the Respondent No. 1	: Shri Sanjay Kulkarni (Rep.)
Representatives of the Respondent No. 2	: Shri Satish Chavan (Rep.)
Representatives of the Respondent No. 3	: Shri Arijit Maitra (Adv.)
Representative of the Intervener	: Shri Akshay Mathur (Rep.)
Authorized Consumer Representative	: Shri Ashok Pendse, TBIA

Daily Order

Heard the Advocates/representatives of the Petitioner, Respondents, Authorized Consumer Representative and representative of the Intervener.

1. Advocate for the Petitioner set out the background of the Petition. He stated that it has been filed on account of violation of principles of Merit Order Dispatch (MOD) stipulated in the Order dated 17 May, 2007 for preparation of MOD stack, and scheduling power from various Generating Units as per the monthly MOD stack. RPL stated that:
 - i. MSPGCL is declaring lower Energy Charges for MOD stack preparation, in violation of Tariff and computation mechanism approved by the Commission. Due to this, MSPGCL is getting priority in dispatch for its costlier power. Once MSPGCL's Units get scheduled, the differential amount is sought to be recovered in subsequent months as Fuel Surcharge Adjustment leading to under financial burden and loss to the consumers. This is also affecting other Generating Companies in the MOD stack.
 - ii. MSPGCL is effectively abusing the regulatory process and adversely impacting competition in the sector.
 - iii. SLDC is preparing MOD stack in contravention of Tariff determined by the Commission and on the basis of data being obtained from MSPGCL without application of mind. Role of SLDC is beyond mere compilation of Energy Charge received from the Generating Companies. SLDC is required to carry out prudence check so that the objective of economic load dispatch is achieved in real sense. The Order dated 17 May, 2007, in Case No. 42 of 2006 (ABT Order) requires validation of the above data by SLDC.
 - iv. MSEDCL vide letter dated 9 September, 2016, had requested SLDC to consider the MOD rates of MSPGCL units including 'Other Variable Charges' wef September, 2016. MSPGCL does not take into account other Variable Charges and fuel adjustment charges for MOD stack as will also be seen from the letter of MSEDCL.
 - v. MOD stack from September, 2016 onwards needs to be prepared based on the Energy Charges approved by the Commission in MSPGCL's MYT Order in Case No. 46 of 2016 considering all elements of the Energy Charges.
 - vi. RPL has no objection to the Intervention Application filed by APML.

2. In response, SLDC stated that :
 - i. It is the responsibility of the respective Utilities to provide the correct Variable Charges for MOD stack preparation and SLDC has no role to ascertain its correctness and it has no authority to make any changes.
 - ii. The MOD stack for the 'n' month is prepared on the basis of variable cost data provided by the Generating Companies / Distribution Licensees for the (n-2) month in case of MSPGCL.
 - iii. The Generating Companies having long term PPAs with Distribution Licensees and whose Tariff is determined by the Commission under Section 62 of the Electricity Act, 2003, are submitting their Energy Charges (variable cost) for MOD stack purpose to SLDC by 10th of every month, while Distribution Licensees are

submitting variable cost of power purchase from IPPs awarded under competitive bidding under Section 63 and Central Generating Stations as per their PPAs.

- iv. For September, 2016, MSEDCL had recalculated the Variable Charge for MSPGCL Units and requested SLDC to consider this for MOD stack preparation. The issue was taken up with MSPGCL. However, MSPGCL confirmed that the rates submitted by it are as per the ABT Order. Since the ABT Order requires that the Energy Charges information has to be provided by the Generating Companies, MSPGCL rates were considered by SLDC and the issue was closed.
- v. SLDC has been following the procedure as per the principles laid down under ABT Order in transparent manner and is posting the MOD stack on its website since July, 2015.
- vi. In case of abnormal system condition and drastic low demand, the Grid Co-ordination Committee has approved Reserve Shutdown Procedure. The decision to withdraw any Unit is to be taken by SLDC based on system security requirements.
- vii. Since February, 2016, MSEDCL has taken initiative to take the costliest Units out of grid for mitigating its surplus availability and hence it has given zero schedules for such costliest Unit/s.
- viii. ABT Order requires submission of Variable Charge for MOD stack by 5th of every month. However, Maharashtra State Power Committee (MSPC) on its own has decided to allow the receipt of Variable Charges by 10th of every month.

The Commission observed that the ABT Order requires the Energy Charge data to be submitted to SLDC by 5th of every month. The current practice of allowing its submission till by 10th of every month is not in accordance with the ABT Order and MSPC has no power to take such a decision.

The Commission further observed that there is no uniformity in submission of Variable Charges by various Generating Companies for MOD stack preparation, even with regard to the period. In these circumstances, it was expected that SLDC would approach the Commission on these issues but it has not done so.

The Variable Charges for MOD stack shall be the per unit energy charge outlined in the energy bill for the previous month in respect of each Generating Station or the latest information available in respect of such Generating Station. In this situation, while preparing MOD stack for nth month, Variable Charges/Energy Charge Rate (ECR) for the Generating Company are to be taken as determined by the Commission and per unit energy charge for fuel variation as outlined in the Fuel Surcharge Adjustment bill (FSA) for the previous month, i.e. 'n-1 month'. (i.e. MOD for nth month= Energy Charge Rate determined by the Commission including Other Variable Charges and FAC given by the Generating Company for the (n-1)th month).

3. Advocate and Representative of MSPGCL stated that:

- i. MSPGCL has been submitting the data for the monthly MOD stack based on the ABT Order which states that the Energy Charge rate shall be in accordance with the Station Heat Rate, Auxiliary Consumption, delivered cost of fuel for that month and the formula for Energy Charge Rate as approved by the Commission. The ABT Order does not specify that the Energy Charge Rate as appearing in the Tariff Order is to be taken for MOD stack.
- ii. As can be seen from the MOD stack, the Energy Charges of the Petitioner are also varying in different months.
- iii. As per ABT Order, there is an alternate remedy available to RPL whereby it can approach MSPC for the dispute.
- iv. There is an immense delay in filing the present Petition and there is no question of urgency for grant of interim reliefs.
- v. Since the interim prayers and final prayers are same, granting of interim relief would tantamount to granting the final relief itself. Hence interim relief should not be granted.
- vi. Present Petition is not admissible under Section 33 of the Act, as no dispute has been raised in respect of quality of electricity or safe and secure operation of the State Grid.
- vii. The prayers in the submission filed on 4 October, 2016 should be rejected as these are different from those made in the Petition.

To a query raised by the Commission regarding consideration of ‘Other Variable Charges’ for MOD stack purpose, MSPGCL stated that:

- i. These Charges are incurred inside the plants which are in the nature of Fixed Charges and do not depend on the generation output.
- ii. MSPGCL understands that the ABT Order does not specify the “Other Variable Charges” or that these shall be considered for the MOD stack.
- iii. MSPGCL has already submitted a letter seeking clarification on various issues decided in the MYT Order, which includes the issue of “Other Variable Charges” also.
- iv. RPL has not raised this issue in its Petition.

The Commission stated that implementation of MYT Order cannot be deferred citing the submission of letter for clarification, and all the components of Energy Charges as stipulated in the MYT Order have to be included while submitting the MOD rates.

4. MSEDCL stated that:

- i. It submits the Energy Charge Rate preparation of monthly State MOD in respect of MSPGCL, IPP and NTPC. MSEDCL takes following components related to fuel cost for submission to SLDC by 11th of every month:
 - a. MSPGCL : Normative Variable Charges and Other Variable Charges as approved by MERC, and FSA as given by MSPGCL
 - b. IPPs: Variable rate and change in law

- c. NTPC: Variable rate, ED and Cess charged on auxiliary consumption and Inter-State Transmission losses.
 - ii. MSEDCL takes into consideration data that is two months earlier, which is in line with MOD Committee guidelines.
 - iii. Other Variable Charges as approved by the Commission in the MYT Order for MSPGCL need to be considered for MOD stack.
 - iv. Due to transmission constraints, power inflow to Nashik and Bhusawal areas is restricted, and hence these Generating Units are run without considering the MOD stack. This helps in meeting the demand of these areas.
 - v. Zero scheduling is given based on the demand-supply situation and technical constraints in Transmission network. MSEDCL makes all efforts to schedule economic power to consumers in line with MOD principles.
 - vi. The Petitioner's claim for compensation has no basis and is totally out of the scope of the PPA between MSEDCL and RPL. The Petitioner is eligible for capacity charges for entire declared capacity even during backing down and zero schedule periods.
5. Prayas (Energy Group), an authorized Consumer Representative, vide letter dated 5 October, 2016 requested the Commission to initiate a suo-moto process to review the current MOD practice/principles and come out with background paper which will cover issue like increase in open access and greater role of renewables etc. The Commission noted that it had already initiated a process for operational guidelines for MOD principles separately.
6. Dr. Ashok Pendse on behalf of Thane Belapur Industries Association(TBIA), an authorized Consumer Representative, stated that:
 - i. There is no provision in the ABT Order which states that all Generating Stations are to be run at technical minimum.
 - ii. Between July and December, 2015, cheaper power of Korba Generating Station was not purchased and costlier power of MSPGCL stations was purchased.
 - iii. The MOD rates furnished by MSPGCL is not only lower than the Commission approved rate but also lower than those submitted by MSPGCL in its MYT Petition.
 - iv. There are instances when either one or two Units of Nashik Generating Station are kept out during summer period. These costlier units, therefore, can be kept out in other seasons as well for optimum scheduling and power purchase.
7. Representative of Adani Power Maharashtra Ltd. (APML), Intervenor, stated that it has filed an Application for impleadment as the issues in the matter may impact APML also. The Commission observed that, although the issues may be similar, the specific grievances may be distinct, and APML may prefer to file a separate Petition. APML sought one day's time to consider this and revert to the Commission.
8. Responding to MSPGCL's submissions, RPL stated that:
 - i. Unless the MYT Order is set aside by a higher authority, it has to be implemented.

- ii. MSPC is required to follow all Regulations and further Orders while taking decisions on any matter. As regards the alternative remedy suggested by MSPGCL, RPL stated that it is not a member of MSPC and hence its dispute cannot be addressed by MSPC.
 - iii. The interim prayers and final prayers are distinct.
 - iv. MSPGCL has not submitted FSA bills for all the relevant months and thus made a selective submission, to which MSPGCL responded that it has submitted sample bills for a few months.
 - v. The issue of Transmission constraints for supporting scheduling of costlier units of Nashik and Bhusawal has not been substantiated in the Petition and there is no finding to that effect which is placed on record.
 - vi. The Commission's MYT Order for MSPGCL needs to be implemented with immediate effect for MOD stack preparation.
9. Having heard the parties, the Commission observed that the ABT Order requires submission of MOD stack data based on either the previous month's fuel cost data or latest available information. The relevant extract is given below:

“.....4.5 Basis for computation of Ex-Ante Imbalance Pool Price

(e) The variable cost of each generating station for the purpose of Merit Order Despatch stack and for computation of 'Ex-Ante Imbalance Pool Price' shall be the per unit energy charge outlined in the energy bill for the previous month in respect of each generating station or the latest information available in respect of such generating station, as the case may be.”

Further the Commission has included Other Generation-related Costs in the Energy Charge Rate for MSPGCL. Relevant extract of MSPGCL's MYT Order is given below:

“6.14.2 The Commission has approved the other generation-related costs of Rs. 398.80 crore and Rs. 393.60 crore for FY 2014-15 and FY 2015-16, respectively. Considering MSPGCL's submissions, the Commission is allowing the other generation-related costs for the 3rd Control Period as projected by MSPGCL. As for previous years, these have been included in deriving the Energy Charge Rate.”

In view of the above, the Commission directs that, for the purpose of monthly MOD stack, the Energy Charges Rate/ Variable Charges for the Generating Stations for which the Tariff is determined by the Commission shall be considered as the Energy Charges as approved by the Commission for the financial year for the respective Station plus Fuel Surcharge Adjustment for previous month, i.e., n-1 month.

The Commission directs MSPGCL to submit following information:

1. Copies of Fuel Surcharge Adjustment Bills for all months from December 2015 to July 2016.
2. Station-wise comparison of all parameters considered for MOD rate vis-à-vis tariff determined by the Commission pertaining to all months starting from February, 2016

to September, 2016 in hard as well as soft copy (MS Excel). It should be indicated whether MOD rates so arrived are inclusive of Other Variable Charges.

Copies of above submissions shall be served on all Parties, including the Authorized Consumer Representatives within two weeks. Further additional data requirements, if any, would be communicated to the Parties.

Next date of hearing shall be communicated by the Secretariat of the Commission.

**Sd/-
(Deepak Lad)
Member**

**Sd/-
(Azeez M. Khan)
Member**