

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 125 of 2016, MA No. 18 and MA No. 21 of 2016 in Case No. 125 of 2016

Dated: 27 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 (MOD) principles, compilation of MOD 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

**Miscellaneous Application of Adani Power Maharashtra Ltd. for impleadment in Case
No. 125 of 2016
[MA No. 18 of 2016 in Case No. 125 of 2016]**

And

**Miscellaneous Application of RattanIndia Power Limited under Section 86, 142 & 146
of the EA, 2003 seeking compliance of the Commission's Daily Order dated 4 October,
2016
[MA No. 21 of 2016 in Case No. 125 of 2016]**

M/s RattanIndia Power Ltd. (RPL)	: Petitioner
Maharashtra State Load Despatch Centre (MSLDC)	: 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 Vishrov Mukerjee (Adv.)
Representatives of the Respondent No. 1	: Shri Sanjay Kulkarni (Rep.)
Representatives of the Respondent No. 2	: Shri Paresh Bhagvat (Rep.)
Representatives of the Respondent No. 3	: Shri U.K. Dhamankar (Rep.) Shri V. P. Rathod (Rep.)

Representative of the Intervener : Shri Akshay Mathur (Rep.)
Authorized Consumer Representative : Shri Ashok Pendse, TBIA

Daily Order

Heard the Advocate/Representatives of the Petitioner, Respondents, Intervener and the Authorized Consumer Representative.

1. Advocate for the Petitioner stated that it has filed a Miscellaneous Application for non-compliance of the Commission's directions given in Daily Order dated 4 October, 2016. He briefly explained the non-compliance by MSPGCL as under:
 - i. As per the Commission's Daily Order dated 4 October, 2016, the Merit Order Despatch (MOD) stack needs to be prepared based on the Energy Charge Rate approved by the Commission. This direction has not been complied with by MSPGCL while providing its MOD stack rates for October, 2016, and MSPGCL has also furnished the 'projected normative fuel charge' which is not mentioned in the Commission's MYT Order dated 30 August, 2016.
 - ii. MSLDC has accepted the MOD rates furnished by MSPGCL ignoring the directions of the Commission. MSLDC should have done the necessary computations to satisfy itself that these are in line with the Commission's directions.
 - iii. Due to non-compliance by MSPGCL and the lack of due diligence by MSLDC, MSPGCL and MSLDC ought to be penalized under Section 142 and 146 of the Electricity Act, 2003 for non-compliance of the Commission's directions.

Further, in support of his prayer, he submitted various Orders of higher Courts.

2. In response, MSLDC stated that :
 - i. The Commission's Daily Order was immediately communicated to all concerned Utilities for submission of data for preparation of the MOD stack. MSLDC received MOD rates from MSPGCL, MSEDCL, TPC-G, VIPL-G and RInfra-G. Following submissions were made by these Utilities while submitting their MOD rates:
 - a. MSPGCL stated that it had submitted MOD rates as per the directives of the Daily Order and MYT Order dated 30 August, 2016. As Fuel Surcharge Adjustment (FSA) data for (n-1)th month i.e. September, 2016 was not then available, data for the (n-2)th month, i.e. August, 2016, had been considered by it.
 - b. MSEDCL stated that, for contracted IPPs, Change in Law bills for September, 2016 i.e. (n-1)th month were not available. For MSPGCL, FSA data for (n-1)th

month was not available. For NTPC, ED and Cess for (n-1)th month were not available, and accordingly data for (n-2)th month had been considered.

- c. RInfra-G had confirmed that the MOD rates for both RInfra-G and VIPL-G are as per the Daily Order.
 - d. TPC-G stated that the MOD rates submitted are as per the directions issued in Regulation 48.5 of the MYT Regulations, 2015.
 - ii. Based on these data, MSLDC had prepared the MOD stack for October, 2016, which was subject to revision on the submission of latest data and directions of the Commission.
 - iii. No backup calculation was available with MSLDC for checking the correctness of the MOD stack rates.
 - iv. It is the responsibility of the respective Utilities to provide the correct Variable Charges for MOD stack preparation, and MSLDC has no role or wherewithal to ascertain its correctness and has no authority to make any changes.
 - v. In view of the above, there has been no contravention of the Commission's directions by MSLDC.
3. Representative of MSEDCL stated that,:
- i. FSA data from MSPGCL for September, 2016 (n-1)th month was not received, and hence the latest FSA bill communicated by MSPGCL for August, 2016, i.e. (n-2)th month was considered.
 - ii. In case of NTPC, it had not received ED and Cess bill for September, 2016, i.e. (n-1)th month, and hence the latest available ED and Cess bill for August, 2016, i.e. (n-2)th month, was considered.
 - iii. In case of IPPs, Change in Law bills for September, 2016 i.e. (n-1)th month were yet to be received, and hence the latest available Change in Law bills for August, 2016, i.e. the (n-2)th month were considered.
 - iv. It had calculated Variable Charge of MSPGCL inclusive of other Variable Charges, NTPC inclusive of POC losses and ED and Cess, wherever applicable, and for the IPPs (EMCO and CGPL) inclusive of POC losses.
 - v. In addition, it had calculated MOD rates with the latest available data for the month of September, 2016, i.e. (n-1)th month. However, Change in Law, ED and Cess, and FSA are considered for the month of August, 2016, i.e. (n-2)th month.

To a query of the Commission, MSEDCL stated that Change in Law bills for the (n-1)th month were not available as coal cost reconciliation and freight rates were not available with IPPs for the (n-1)th month. As regards the query pertaining to PPA provisions for the period for raising of Change in Law bills, MSEDCL needs to ascertain the position.

4. The Commission observed that the submission filed by MSPGCL does not give the clarity on how the directives given in its Daily Order dated 4 October, 2016 have been

complied with. The Energy Charge determined by the Commission in its Tariff Order includes the other generation related costs and these are also required to be considered for MOD stack purpose. MSPGCL should have made efforts to include the FSA data for the (n-1) month, i.e. the most recent data, for the MOD stack.

5. Representative of MSPGCL made a presentation explaining how it has calculated MOD rates for October, 2016 as per the Commission's directions and has complied with the directions. In its presentation, MSPGCL explained that:

- i. While arriving at the MOD rates for the nth month, the actual data of coal price and coal GCV is required. Projected normative cost is then calculated considering the normative performance parameters fixed by the Commission in the MYT Order and actual the GCV and fuel prices.
- ii. Actual GCV is known only after receipt of coal sample analysis results. Presently, the data of actual GCV for the (n-1)th month is not available as the samples are required to be sent to CIMFR for GCV measurement, which takes 18 working days to furnish the GCV test results. Hence, for submission of MOD rates for the October, 2016 stack, MSPGCL has used calculated normative fuel cost as per FSA data for the month of August 2016 (i.e. n-2) and approved "other generation related costs" for FY 2016-17 as per the MYT Order dtd. 30.08.2016 in Case No. 46 of 2016.
- iii. The other generation related costs for October, 2016 MOD rates has been considered as per the MYT Order dtd. 30.08.2016 as the water charges have been excluded from other Variable Charges and have been included in Fixed Charges from FY 2016-17 onwards as per the MERC MYT Regulations, 2015.
- iv. If GCV is to be considered for (n-1)th month, it would be a declared GCV as per the invoice, which may be higher than the measured GCV. Data for (n-2)th month would be more realistic as it is a verified and tested figure by third party.
- v. Most of the allegations of RPL arise from lack of understanding of the Tariff determination and further billing /recovery mechanism under the Cost-plus Tariff mechanism.
- vi. MSPGCL has never under-declared the MOD rates for the sake of getting power scheduled and it has never tried to game.

6. Dr. Ashok Pendse on behalf of Thane Belapur Industries Association (TBIA), an Authorized Consumer Representative, stated that:

- i. There is a difference in the Energy Charges approved in the MYT Order and the MOD rates of MSPGCL, which are much higher than the per unit other generation related costs. Hence, there is no clarity as to how MSPGCL is arriving at the MOD rates. In order to analyze the issue, MSEDCL should be asked to submit the last six months MOD rates (i.e. April to Sept, 2016) and also the corresponding variable cost billed by MSPGCL.

- ii. After receipt of the above details from MSEDCL, MSPGCL should be asked to explain the variations, if any.
7. Adani Power Maharashtra Ltd. (APML), applicant Intervener, mentioned its Intervention Application and stated that the Commission may decide its impleadment request. The Commission stated that it is in the process of preparing operational guidelines for MOD and APML and other stakeholders would get an opportunity to raise their issues and provide comments in those proceedings. Hence, APML sought to withdraw its impleadment Application, which is allowed by the Commission.
8. In response to the submissions of the Respondents, RPL stated that the Commission's Daily Order dated 4 October, 2016 has to be complied with by MSPGCL and MSLDC. If required, more clarity may be given to include the specific reference of the Commission's MYT Order.
9. To a query raised of the Commission, MSLDC stated that TPC-G, vide its letter dated 18 October, 2016, has revised its Energy Charges in view of the Commission's Daily Order. As regards RIntra-G and VIPL-G, although they are submitting the charges on (n-1)th month, the fuel price are stated by them are stated to be provisional charges and subject to change after audit.
10. The Commission directs MSLDC to always seek details of MOD rates from MSPGCL, MSEDCL, TPC-G, RIntra-G and VIPL-G such as backup calculations, cost breakup, basis of various components, period (whether (n-1)th or (n-2)th) and verify the MOD rates before preparation of MOD stack.
11. MSPGCL is also directed to submit the following:
 - i. Copies of presentations made during the hearing (to all Parties and the Institutional CRs)
 - ii. Reply, if any, on the Misc. Application of RPL
 - iii. Resubmission of replies to Daily Order dated 4 October, 2016 in the light of discussions at the hearing.

The above submissions shall be filed on affidavit with copies to all Parties within one week, the responses to which may be filed within one week thereafter.

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

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member