

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.mercindia.org.in / www.merc.gov.in

Case No. 155 of 2017

Date: 9 November, 2017

CORAM: Shri. Anand Kulkarni, Chairperson
Shri. Azeez M. Khan, Member
Shri. Deepak Lad, Member

Petition of Maharashtra State Electricity Distribution Co. Ltd. for approval of short term procurement of Wind and Solar power through Competitive Bidding

Maharashtra State Electricity Distribution Company Ltd.Petitioner
Maharashtra Energy Development AgencyImpleaded Party

Appearance

For Petitioner : Ms. Kavita Gharat(Rep.)
Mr. Sanjay Rajput (Rep.)
Ms. Rekha Kolhe (Rep.)
For Impleaded Party : Mr. Manoj Pise (Rep.)

Daily Order

Heard the Representatives of Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) and Maharashtra Energy Development Agency (MEDA).

1. MSEDCL stated that:

- (a) As per provisions of National Tariff Policy 2006, National Electricity Policy, 2005, the Commission's Renewable Purchase Obligation (RPO) Regulations, 2016, Renewable Energy (RE) Tariff Regulation, 2015 and the Ministry of New and Renewable Energy (MNRE), Govt. of India (GoI)'s Guidelines for Competitive Bidding (Solar and Wind), MSEDCL is seeking approval to purchase RE through a

competitive bidding process towards fulfilment of its RPO targets for Solar and non-Solar Energy.

- (b) MSEDCL is in shortfall of 693 MUs against its Solar RPO target and 1822 MUs against its Non- Solar RPO target for FY 2016-17. Also, it has a shortfall of 532 MUs against its FY 2017-18 Solar RPO target and 970 MUs against its Non- Solar RPO target (upto the 1st quarter of FY 2017-18).
 - (c) After completion of their Energy Purchase Agreement (EPA) tenure, some Wind Energy Generators (from Groups II, III and IV) have approached MSEDCL for sale of their Wind Energy on short term basis at a tariff as determined by the Commission. MSEDCL has proposed to purchase the power at Rs 2.25 per unit for Group I and at Rs. 2.52 per unit for Group II, III, IV Wind Projects.
 - (d) The Govt. of Maharashtra (GoM) has accorded approval to MSEDCL, vide its letter dated 17 July, 2017, for purchase of Wind and Solar power through the competitive bidding process. Accordingly, MSEDCL has floated a tender on the DEEP Portal, as per the prescribed procedure, for procurement of 100 MW of Solar and 200 MW of Wind power on short-term basis from 1.11.2017 to 31.10.2018 on 29.9.2017. An advertisement was also published in daily newspaper on 2.10.2017 and a Pre-Bid Meeting was conducted on 6.10.2017. Due to some technical difficulties, the bid due date was extended upto 24.10.2017. The sole Bidder for Solar was technically disqualified. As regards Wind power, only the NTPC Vidyut Vyapar Nigam Ltd. (50.4 MW) and Sarla Performance Fibres Limited (6 MW) are qualified. After e-reverse auction, the lowest rates arrived at are Rs 3.39 per unit for 50.4 MW and Rs 3.44 per unit for 6 MW. As per the tender condition, the contract has to be awarded to the selected bidder within 15 days from the e-reverse auction by signing the Power Purchase Agreement and, therefore, MSEDCL has approached the Commission through this Petition.
2. The Commission asked MSEDCL why it had approached the Commission only after opening of the bids. In reply MSEDCL stated that, on the basis of the Guidelines issued by MNRE for Solar and Wind power, it has followed this process for the first time and was doubtful about its success or outcome. Moreover, it has followed the Guidelines for procurement of short term power through Competitive Bidding issued by the Ministry of Power (MoP), GoI's revised Notification dated 30.3.2016 which are for procurement for a period upto one year. After getting a good response, MSEDCL has approached the Commission for approval.

3. The Commission observed that the MoP, vide its Notification dated 3.8.2017, has issued Guidelines u/s 63 of the Electricity Act (EA),2003, for Tariff-based Competitive Bidding process for procurement of power from grid connected Solar PV Power Projects for long term power procurement for 5 MW and above capacity. The Commission also observed that MNRE has also published draft 'Guidelines for procurement of Wind Power (individual size of 5 MW and above) through Competitive Bidding in April, 2017 u/s 63 of the EA, 2003 for comments. However, these are not yet notified. MSEDCL could have pursued the MoP's notified Solar PV Guidelines and sought the approval of any deviations required in the Bidding Document for consideration by the Commission.
4. The Commission asked MSEDCL about the likely reasons for Wind Projects from the Groups whose EPA periods had expired not participating in the bidding process undertaken by it, which MSEDCL could not explain. The Commission observed that this might be due to the short period of the proposed procurement.
5. MSEDCL stated that, while floating the Bids, it has applied a ceiling of Rs. 2.52 per unit, which was the rate for Group II Wind Generators determined by the Commission in its Order dated 10.12.2008 in Case No 58 of 2008. The Commission observed that its Generic Tariff in respect of those Wind EPAs was for a period of 13 years, less than the useful life of the Projects, and the tariff determined such that the capital investment is recouped during that shorter period. Hence, thereafter, only the operating costs need to be considered and the consequent tariffs could, therefore, be substantially lower. MSEDCL should also have taken note of these facts in the light of its own submissions in the proceedings of Case No. 84 of 2015 (Petition of Jawahar Sahakari Shetkari Sakhar Karkhana Ltd.) which is under consideration of the Commission.
6. In this context, the Commission also noted that the current Renewable Energy Certificate (REC) rates (October, 2017) for non-Solar being Rs.1.50 per unit, MSEDCL could also have initiated a consultative process for rates of Wind Energy Generators whose EPAs are expected to expire shortly or have already expired.
7. In this background, the Commission notes and finds as follows:
 - 1) MSEDCL has filed this Petition on 1.11.2017, after the entire bidding process, including reverse e-auction, was over. Prior to this, MSEDCL did not approach the Commission for approval of this process, the bidding documents and confirmation that the procurement of Wind and Solar Energy in this manner would qualify for meeting its RPO shortfall.
 - 2) MSEDCL issued Invitations for separate Bids for 200 MW of Wind Energy (0000 to 24 hours per day) for 1 year from 1 November, 2017 to 30 October, 2018, and for 100

MW of Solar Energy (0600 to 1900 hours) for the same period. We are presently concerned only with the Bids received for the supply of Wind Energy, since no qualified Bidder was found for supply of Solar Energy.

3) The Central Government has issued only Draft Competitive Bidding Guidelines for the procurement of Wind Energy. These have not been finalized, and are for long-term procurement whereas MSEDCL is undertaking short-term procurement for a period of one year.

4) In this context, MSEDCL has, instead followed the Bid Documents and procedures under the GoI. 'Guidelines for short-term (i.e. for a period of more than one day to one year) procurement of power by Distribution Licensees through Tariff-based bidding process' notified by the MoP, GoI on 30 March, 2016, through e-bidding on the MSTC DEEP portal, along with reverse e-auction. The Commission notes that these Guidelines do not expressly differentiate between procurement of conventional or RE power, although they have been generally used for the former.

5) MSEDCL has not expressly sought any deviations from the stipulations of those Guidelines and the associated Bid Documents. However, the Commission notes that the proposed Power Purchase Agreement (PPA) contains the following provision (Clause 13) with regard to Liquidated Damages:

"13. Payment of Liquidated Damages for failure to supply the Instructed Capacity

Intra-State:

The Capacity Utilization Factor (CUF) shall be 22% calculated on yearly basis. In case the availability is less than 70% generation on annual basis considering the specified CUF for respective requisition, the bidder shall pay MSEDCL for the actual shortfall in terms of units at the prevailing floor price fixed by the CERC."

The Commission is of the view that this provision is appropriate considering that it takes into account the nature and variability inherent in Wind Energy generation, in contrast to conventional power.

6) The Invitation for Bids floated by MSEDCL also sets (Clause 5.3) a ceiling bidding rate of Rs. 2.52 per unit for Intra-State Wind Power Projects commissioned before 1.4.2003, and of Rs. 3.50 per unit for Intra-State Projects commissioned thereafter as well as for Inter-State Projects. These ceiling rates have been fixed considering the benchmark of the final year generic/preferential tariffs approved by the Commission in respect of the relevant Groups of Wind Projects whose EPAs with MSEDCL would be expiring before

the useful life of the Projects is over. In any case, the lowest bids received and proposed for approval are not from any such Projects.

7) Section 86(1)(b) of the EA, 2003 reads as follows:

“8. Functions of State Commission

The Commission shall discharge the following functions, namely: -

...(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State; ...”

8) The Commission notes in this context that, in its recent Judgment dated 6.11.2017 (in Indian Wind Energy Association (InWEA) vs. Gujarat Urja Vikas Nigam Ltd. and others) in Spl. Civil Application No. 19312 of 2017, the Gujarat High Court has rejected InWEA’s plea against the competitive bidding process allowed by the Gujarat Electricity Regulatory Commission on the ground that no Competitive Bidding Guidelines for Wind Energy had been notified by the Central Govt. under Section 63 of the EA, 2003. The Judgment states inter alia as follows:

“16. The Supreme Court, in the afore-stated case [Energy Watchdog, Prayas (Energy Group), etc. reported in 2017(4) SCC 580] Judgment of April, 2017], while addressing the issue as to whether in a situation where there are no guidelines or in a situation, which is not covered by the guidelines issued by the Central Government under Section 63, it could be said that the Commission’s power to regulate tariff was completely done away with, held inter alia that regulatory power of the Central Commission under Section 79(1)(b) was a general one, and when the Commission adopts tariff under Section 63, it does not function dehors its general regulatory power. Taking a cue from the said observations made by the Supreme Court, it is required to be construed that in the instant case, the general regulatory power of the State Commission under Section 86(1)(b) is the source of power to regulate the electricity purchase and procurement process, including the power to determine or adopt the tariff. As observed by the Supreme Court, in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Commission is bound by those guidelines and must exercise its regulatory functions, in accordance with those guidelines, however, in a situation where there are no guidelines framed at all or where guidelines do not deal with a given situation, the Commission’s general regulatory power could be exercised. The Court, therefore, finds much force that though in the instant case, the draft guidelines [for long-term Wind Energy procurement by competitive bidding] are issued by the Central Government keeping in view Section 63, and paragraph 5 thereof also permits the application of those guidelines to the ongoing bidding process, nonetheless, even if such draft guidelines are not taken into consideration, then

also the Commission could exercise the general regulatory powers under Section 86(1)(b) of the said Act.

...20.the very objective of initiating the competitive bidding process was to procure the wind power at the lowest possible rate for the benefit of the consumers and considering the larger public interest, the Court should not interfere with the same.”

9) In the ordinary course, a proposal for procurement of additional Wind Energy or conventional power by MSEDCL for a period of one year would not normally pass muster considering the substantial quantum of already contracted surplus power for which MSEDCL is paying capacity charges even without any off-take. To meet intermittent shortfalls in supply against demand and minimize load shedding, the Commission has separately allowed MSEDCL, vide its recent Order dated 6.10.2017 in Case No. 135 of 2017, to procure power for short periods through competitive bidding to the extent required upto December, 2017.

10) However, MSEDCL has sought approval or adoption of the rates received in the present bidding process for procurement of Wind Energy to enable it to meet the shortfall against its non-Solar RPO target. While the RPO Regulations, 2016 provide for RE procurement in accordance with the tariffs approved under its RE Tariff Regulations, which are for longer term Tariff Periods, the RPO Regulations also allow Distribution Licensees and other Obligated Entities the alternative of purchasing RECs against their RPO; and allow RE procurement undertaken under Section 63 or a scheme approved by the Ministry of New and Renewable Energy, Govt. of India. The Commission notes that RECs are not long-term instruments. Considering this analogy, and also considering the nature and objective of the process undertaken by MSEDCL and the consumer interest, the Commission allows the procurement of 56.4 MW of Wind Energy for a short-term period of one year as now proposed by MSEDCL to count against its non-Solar RPO for the relevant period.

11) Accordingly, the following procurement and rates are approved by the Commission, as proposed by MSEDCL:

Name of the Bidder	Quantum of Power approved in MW	Period	Time	Rate Rs. Per kWh
NTPC Vidyut Vyapar Nigam Limited	50.4	From the date of signing of PPA to 31 October, 2018	00:00 Hrs to 24:00 Hrs	3.39
Sarala Performance Fibers Limited	6			3.44

8. The Commission directs MSEDCL not to undertake any further competitive bidding for RE power till the final disposal of its separate Petition in Case No. 157 of 2017.

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member

Sd/-
(Anand Kulkarni)
Chairperson