

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No.95 of 2017

Date: 3 August, 2017

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

Petition of Maharashtra Biomass Energy Developers Association seeking Review of the Order dated 28 April, 2017 Passed in Case No. 33 of 2017.

Maharashtra Biomass Energy Developers Association (MBEDA)Petitioner
V/s
Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)
Maharashtra Energy Development Agency (MEDA) Respondents

Appearance:

For the Petitioner : Shri. Abhishek Khare (Adv.)
: Shri. Jagdish Farsinavis (Rep.)
For MSEDCL : Shri. Ashish Singh (Adv.)
: Shri. Satish Chauhan (Rep.)
For MEDA : Shri. Sameer Ghodake (Rep.)
For Consumer Representative: : Dr. Ashok Pendse, TBIA

Daily Order

Heard the Petitioner, Respondents and Consumer Representative.

1. Advocate of MBEDA stated that :

- (i) The Petition is filed for review of the Commission's Order dated 28 April, 2017 in Case No. 33 of 2017 and, besides other prayers, its main prayer is to determine the price of Biomass as Rs. 4395.66/MT by applying escalation of 5% on the previous year's (i.e. 2016-17) biomass price of Rs. 4186.35/MT.
- (ii) The reasons for the review Petition are set out at paras 5 and 9. At Para 5 of its Petition MBEDA has stated that the Review Period of RE Tariff Regulations, 2015 is five financial years, i.e. upto the end of FY 2019-20. At para 9 it has pointed out the change in approach while deciding the fuel cost by the Commission as consideration of the biomass fuel price based on Central Electricity Regulatory Commission (CERC) vis a vis based on the normative escalation factor of 5% per annum.

- (iii) The Commission may consider MBEDA's request considering that, unlike RE sources such as Wind and Solar where the fuel is available in nature, in its case the fuel, i.e. Biomass, is required to be purchased from rural areas. Moreover, various other related costs such as for procurement, transportation, manpower and aggregation are not included in the fuel cost. Further, the non-availability of Biomass also increases the costs.
- (iv) The Generator has no control over its fuel price and it is completely dependent on market variation /dynamics. Biomass fuel such as rice husk varies during the year w.r.t. its availability and cost. In the case of other fuels, the price is a pass through in tariff and is not determined by the Regulator. However, in case of Biomass, the price is fixed on an annual basis and there is no mechanism such as Fuel Adjustment Charge (FAC) for pass through of the variation (increase or decrease) in fuel cost.
- (v) Referring to para 3 of its Petition, MBEDA stated that it is important to maintain consistency in the principles and approach followed for determination of Biomass price. In the present case, when the Review Period is five years and for the previous two years (FY 2015-16 & FY 2016-17) the Commission has fixed the price by applying escalation of 5% on the base price, the same approach needs to be continued and the CERC figures should not be adopted mid-way. Apart from inconsistency, the price of Rs. 3896.21 / MT fixed by the Commission is not cost-reflective. CERC fixes only the Biomass price but does not take into account the cost of transportation, loading –unloading and associated handling costs, and thus the figure given by CERC is not cost- reflective.
- (vi) To the observation of the Commission that these uncertainties were there in the past also, MBEDA replied that it has been addressing these issues before the Commission with supporting empirical and market data since 2010. The Gokhale Institute of Economics & Politics, Pune, in a study in 2010 considered by the Commission stated that Biomass was available at Rs. 900 to 1300 /MT, which was challenged by Biomass Plant developers, including MBEDA, without any response. MBEDA had submitted the data of Biomass fuel cost since 2010, but this was not recorded.

- (vii) Referring to the Appellate Tribunal for Electricity (ATE) Judgment dated 12 August, 2014 in Appeal No. 253 of 2013 (Gujarat Biomass Energy Developers Association v. GERC & Anr), MBEDA stated that the CERC figures are only guiding and not binding on the Commission. Further, referring to para 10 of the ATE Judgment dated 23 March, 2015 in OP 3 of 2012 (Indian Biomass Power Association v. Ministry of Power & Ors), MBEDA stated that ATE has also emphasized the need for promotion of electricity generation through Renewable sources and the need to fix realistic, cost reflective and viable prices for the Biomass sector based on State-wise study.
- (viii) To a query of the Commission regarding ascertaining the realistic cost for Biomass fuel, MBEDA replied that all the actual data such as for transportation cost, manpower cost and aggregation cost is available, and based on that a yearly average Biomass fuel price can be worked out. MBEDA stated that the Developer can only control its salaries, maintenance cost, etc. w.r.t. its Plant but has no control over the Biomass availability and price. Moreover, only 210 MW capacity has been commissioned out of the target of 300 MW, and only 8 Plants (70 MW) are still working. With application of escalation of 5% on the base price for the past two years, Biomass Plants are getting effective tariff of Rs. 6.29/unit. Even this effective tariff is low but a reduced escalation may not be viable for the 8 working Plants in future, and they may shut down. Thus, it is a question of survival of the Biomass sector and the Commission may take a sympathetic and realistic view for deciding the Biomass fuel price.
- (ix) MBEDA referred to the doctrine of promissory estoppel set out at para 19 of the Supreme Court Judgment dated 11 May, 2016 in Civil Appeal No 2480 of 2008 (Manuelsons Hotels Pvt. Ltd. v/s State of Kerala and Others). Accordingly, the dispensation which was being provided to Biomass Plants for the previous two years (FY 2015-16 & FY 2016-17), when the Commission fixed the price by applying 5% escalation on the base price, may be continued for the 5-year Review Period of the RE Tariff Regulations, 2015, i.e. upto the end of FY 2019-20. The price of Biomass may be taken as Rs. 4395.66/MT by applying the escalation of 5% on the previous year's (i.e. 2016-17) price of Rs. 4186.35/MT.
- (x) Many Biomass Plants are incurring accumulated losses and becoming Non-Performing Assets. In the past, the Commission has considered its request under Case No 83 of 2008 (Order dated 14 December, 2009) for review of the variable

charge component for Biomass Plants. While MSEDCL had supported it during those proceedings in the light of then power shortage scenario, it has now opposed the present claim contending that it is a costly power and it is now in power surplus too. This argument of MSEDCL about the power being costly is not justifiable since it is Renewable power which has environmental attributes and Biomass Plants also helps farmers. Moreover the quantum is negligible and hardly affects MSEDCL's costs.

- (xi) Biomass tariff of Rs. 7.24/unit is for FY 2017-18 (applicable only to 2-3 Biomass Plants) whereas many Biomass Plants are commissioned in FY 2008-09 and the fixed cost has been reduced to Rs. 1.25 /unit and their present effective tariff is Rs. 6.29/unit. Moreover, delayed payments and non-payments of interest on delayed payments by MSEDCL adds to their losses.
2. The commission noted that MSEDCL had filed its Reply dated 27 July, 2017 including comparison of Biomass tariffs of various States in support of its contention that the tariff approved in Maharashtra is higher.
 3. The Commission observed that the determination of Biomass price is generic and is applicable to all the Distribution Licensees (MSEDCL, BEST, TPC-D & RInfra-D) of whom at least one (BEST) is purchasing power from Biomass Plants.
 4. The Commission directs MBEDA to implead all the Distribution Licensees, besides MSEDCL, and serve a copy of its Petition to them immediately. All the Distribution Licensees may file their Replies within two weeks, and MBEDA may file its Rejoinder, if any, within 10 days thereafter. MBEDA may also file its Rejoinder to MSEDCL's Reply in 10 days.

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

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member