

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 26 of 2020

Petition of Maharashtra State Cooperative Sugar Factories Federation Ltd. for increasing the ceiling tariff of Rs 3.56/kWh kept by MSEDCL under tender no. MSEDCL/RE/Bagasse/2019/75 Dated 27 December 2019 and to extend the bid submission date from 27 January 2020 by at least 2 months

Maharashtra State Cooperative Sugar Factories Federation Ltd.	: Petitioner
Maharashtra State Electricity Distribution Company Ltd.	: Respondent No.1
Department of Energy, Govt. of Maharashtra	: Respondent No.2
Maharashtra Energy Development Agency	: Impleaded Respondent

Case No. 27 of 2020

Petition of Cogeneration Association of India for increasing the ceiling tariff of Rs 3.56/kWh kept by MSEDCL under tender no. MSEDCL/RE/Bagasse/2019/75 Dated 27 December 2019 and to extend the bid submission date from 27 January 2020 by at least 2 months

Cogeneration Association of India	: Petitioner
Maharashtra State Electricity Distribution Company Ltd.	: Respondent No.1
Department of Energy, Govt. of Maharashtra	: Respondent No.2
Maharashtra Energy Development Agency	: Impleaded Respondent

Appearance in both the Cases:

Maharashtra State Cooperative Sugar Factories Federation Ltd.	: Shri. Sudeep R. Nargolkar (Adv.)
Cogeneration Association of India	: Shri. Sunil Natu (Adv.)
Maharashtra State Electricity Distribution Company Ltd.	: Shri. Shashwant Kumar (Adv.)
Department of Energy, Govt. of Maharashtra	: Shri. Manoj Pise (Rep.)
Maharashtra Energy Development Agency	: Shri. Manoj Pise (Rep.)

Coram
I.M. Bohari, Member
Mukesh Khullar, Member

COMMON ORDER

Date: 30 September, 2020

1. Both Maharashtra State Cooperative Sugar Factories Federation Ltd. (MSCSFFL) and Cogeneration Association of India (CAI) have filed their Petitions on 23 January 2020 seeking increase in the ceiling tariff of Rs 3.56/kWh kept by Maharashtra State Electricity Distribution Company Limited (MSEDCL) under tender no. MSEDCL/RE/Bagasse/2019/75 Dated 27 December 2019 and to extend the bid submission date from 27 January 2020 by at least 2 months. As both Petitions have been filed on the same subject with more or less similar prayers, these are being dealt with this Common Order. In the order, MSCSFFL and CAI have been jointly termed as the Petitioners.
2. MSCSFFL and CAI amended their Petitions on 20 May 2020 and 29 May 2020, respectively, by which they have requested approval for procurement of power from Bagasse based projects through MoU route instead of competitive bidding.
3. **MSCSFFL and CAI's main prayers are as follows:**

Original Prayer in Case No. 26 and 27 of 2020

- a) *The Commission to Consider Our Petition and Direct MSEDCL to Increase the Ceiling Tariff, at least to Rs 5/kWh as well as extend the Bid Submission Date from 27.01.2020 By At Least 2 Month (Tender No MSEDCL/Re/Bagasse/2019/75 Dated 27.12.2019)*

Amended Prayer in Case No. 26 and 27 of 2020

- b) *By taking recourse to the powers conferred on this Commission for removal of difficulties under Regulation 19 of MERC (Renewable Purchase Obligations, Its Compliance And Implementation of Renewable Energy Certificate Framework) Regulations, 2019 and all other enabling powers available with this Commission, this Commission be pleased to approve the modality of procurement of power through MoU executed between the Cogeneration Projects for the balance period of their useful life, however, subject to the conditions and taking into consideration the points enumerated supra especially paragraph 7 and more particularly clauses 'B' [pertaining to rate] and 'F' [pertaining to tenure]*

4. Petitioners in their Case have stated as follows:

- 4.1. There is acute shortage of sugar cane during the crushing season 2019-20 and the crushing season is expected to last only for 100-120 days, against the normal crushing season of 150-160 days. Such situations intermittently arise with a periodic frequency of 3-4 years.
- 4.2. This situation has created negative/ cash loss financial situation of the sugar factories and they will not be in a position to continue to pay the Fair and Remunerative Price (FRP) to the sugarcane farmers. The availability of bagasse has reduced substantially and the bagasse prices in the market have increased beyond Rs 3,500/MT.
- 4.3. The variable cost component for Cogeneration Power Projects whose Energy Purchase Agreements (EPAs) have expired cannot be lower than those projects whose EPAs are yet to expire and in fact shall be higher due to higher O&M expenses. The input cost of bagasse and labour cost which constitute the variable costs largely can be no different. The tariff as per Approach-I for Non Fossil Fuel based Cogeneration projects for Financial Year 2018-19 in the Commission's Order dated 18 August 2018 in Case No. 204 of 2014 consists of variable charge as Rs.4.17/kWh and can be no different for projects whose EPAs have expired and are due for renewal. The return on investment / profit margin and the recovery of residual fixed cost would also be required to be factored in. Therefore, the ceiling price of Rs.3.56/kWh is apparently unviable and ought to be rejected and revised accordingly.
- 4.4. This situation is expected to continue for the forthcoming crushing season, 2020-21 and thereafter as well. Therefore, the ceiling tariff of Rs 3.56/kWh kept by MSEDCL under tender is unviable for operating their Cogen power plants and it is necessary that the ceiling tariff be increased to Rs 5/kWh.
- 4.5. This increased ceiling tariff will also be viable to MSEDCL, as they earn additional Rs 1.05/kWh for meeting their non-solar Renewable Purchase Obligation (RPO), from purchase of this power.
- 4.6. The Commission is requested to increase the ceiling tariff, at least to Rs 5/kWh, to make the operations of Cogen power plants and sugar plant economically viable and help the sugar factories to pay the FRP to the sugarcane growers. It is also requested to extend the bid submission date under this tender from 27 January 2020 by at least 2 months.

5. MSEDCL in its submission dated 15 May 2020 has stated as under:

- 5.1. The Petitioners prayers regarding increasing the ceiling rate up to Rs 5.00/kWh is exorbitantly high as compared with the present approved rate of Rs. 3.56/kWh.
- 5.2. The Commission vide Order dated 12 July 2018 in Case No. 84 of 2015 in the matter of Petition filed by Jawahar Shetkari Sahakari Sakhar Karkhana Ltd, ruled that extension of bagasse based co-generation EPA has to be based on a competitive bidding mechanism and MSEDCL would have to necessarily float tenders and interested projects will have to participate in the bid process for EPA extension
- 5.3. The Commission vide its Order dated 9 January 2019 in Case No. 225 of 2018 and Order dated 22 May 2019 in Case No. 72 of 2019 approved Rs. 3.56/kWh (APPC excluding renewable energy & transmission charges for FY 2018-19) for FY 2018-19 as rate for procurement of energy from bagasse-based co-generation projects which have completed EPA period of 13 years
- 5.4. MSEDCL had filed Petition in Case No. 88 of 2019 seeking approval for long term procurement of power from FY 2019-20 onwards for remaining useful life of the project at APPC rate (corresponding year in which tender is floated) with ceiling of Rs. 4.00/kWh, without conducting competitive bidding process. The Commission vide its Order dated 31 May 2019 in Case No. 88 of 2019 has not considered the above prayer of MSEDCL and directed to procure such power through competitive bidding only with ceiling price of Rs. 3.56/kWh.
- 5.5. Accordingly, the tender for procurement of 50 MW bagasse power from post EPA expiry projects on long term basis was floated. Total 6 bidders participated in tender. However, due to incongruous results of reverse auction the tender was cancelled. The 6 nos. of participants in the above bidding process requested to MSEDCL that they are ready to sign PPA with MSEDCL at a rate of Rs. 3.56/kWh for further useful life of the project.
- 5.6. In response to the above request of the participants, MSEDCL filed the Petition with Case No. 321 of 2019, seeking approval for procurement of bagasse power from these 6 nos. of participants at Rs. 3.56/kWh for further useful life of the plant.
- 5.7. The Commission vide its Order dated 4 December 2019 in Case No. 321 of 2019 has approved rate of Rs. 3.56/kWh for FY 2019-20 only and directed to initiate competitive bidding process from FY 2020-21 for procurement of bagasse power
- 5.8. MSEDCL floated the tender on 27 December 2019 for procurement of 150 MW bagasse based co-generation power post expiry of EPA with ceiling rate of Rs. 3.56/kWh with the

last date of bid submission as 27 January 2020. However, no bids were received against the tender.

- 5.9. MSEDCL has followed the directives issued by the Commission from time to time and accordingly floated tender for procurement of bagasse based co-generation power post expiry of EPA.
- 5.10. In view of the above and considering the peculiar characteristics of Bagasse based co-generation power project relating to availability of firm power during the peak load season of MSEDCL, and that large number of primarily Cooperative co-generation plants are willing to sell power to MSEDCL only as there is no such long term market available for seasonal power selling except MSEDCL, it is requested to allow MSEDCL for long term procurement of power from FY 2020-21 onwards for remaining useful life of the bagasse based co-generation project whose EPA validity has expired or to be expired so that MSEDCL will be able to fulfill the stipulated RPO Target in the future. Further in this market scenario when there is only one buyer and also capacity available to sell is also known then MSEDCL is of the opinion that there is no scope for competitive bidding for EPA expired bagasse based cogeneration projects and hence MSEDCL requests to allow it to procure power through MoU route.

6. MSCSFFL and CAI amended their Petitions on 20 May 2020 and 29 May 2020 respectively, with the following submissions:

- 6.1. Considering the procurement of power through MoU route, the Petitioners are ad idem with MSEDCL and agree to the modality of procurement of power through MoU executed between the Co-generation Projects for the balance period of their useful life, however, subject to the conditions and taking into consideration the following points:
 - a. MoU be executed by MSEDCL and approved by the Commission inter alia on the conditions that the rate of procurement of power should be the sum total of Variable Cost to be fixed by the Commission on year to year basis and the Fixed Cost to be negotiated and fixed by the parties to the MoU subject to the maximum cost fixed by this Commission in Order dated 12 July 2018 passed in Case No. 84 of 2015 capped at Rs. 0.66/kWh.
 - b. The Competitive Bidding under Section 63 of the Electricity Act, 2003 (EA) by MSEDCL for Cogen & Biomass is itself an overreach of the policy and hence the same is illegal. The Ministry of Power (MoP) / Ministry of New and Renewable Energy (MNRE) has come out with guidelines for Competitive Bidding only for

Solar & Wind Power. The matter challenging this Bidding process is already pending in the Appellate Tribunal for Electricity (APTEL), New Delhi.

- c. The Order dated 12 July 2018 in Case No. 84 of 2015 categorically holds that the Operating Cost for Cogen and Biomass Plants must be taken into account while fixing the ceiling. In fact, the Variable Cost should be common to all (New & Old plants alike) and only the Fixed Cost / Charge portion should be placed for bidding, if at all (Cogen – Rs. 0.66/kWh max / Biomass – Rs. 0.55/kWh max).
 - d. The Commission is in the process of determining the Variable Cost for Cogen Plants (Bagasse) for FY 2020-21 and has initiated the process for appointment of Consultants and the Tender in this behalf has been issued. The course of action adopted by the Commission is fair and in the teeth of such transparent method of determining the Variable / Operating Cost, any Cogen plant supplying power below that rate would be deemed to be doing so under duress / coercion, as is obvious from the fact situation.
 - e. Useful Life of Cogen & Biomass Plant has been increased by the Commission to 25 years from the earlier 20 years. The proposed MoU for such plants (completing/completed 13 years) must, logically and practically be for 12 years minimum in all fairness, for the remaining period of “Useful Life” of the plants.
 - f. The Cogen plants which have entered into EPA with MSEDCL at Rs. 4.75/kWh are finding it unviable to operate, and hence, have not commenced the export of power thereby defeating the very purpose of promoting renewable energy.
7. The Commission held the first e-hearing through video conferencing in the present matter on 7 July 2020. The Commission passed the Daily Order, dated 8 July 2020, reproduced below seeking additional information from the Parties within 15 days from the date of Daily Order:

“Heard the Representatives of the Petitioners and Respondents. As both the Petitions are seeking identical relief in relation to the Bagasse based Co-generation plants whose 13 years EPAs with MSEDCL have expired, the Commission has clubbed both these matters for further proceedings.

The Commission notes that Petitioners initially filed instant Petitions to increase the ceiling rate fixed by MSEDCL for competitive bidding process for procurement of power from Bagasse based Co-generation plants whose EPAs with MSEDCL had expired. However, based on MSEDCL’s reply that it would procure power from such projects

through MoU route for the remaining useful life of the project, Petitioners have amended their prayers for sale of power by MoU with MSEDCL. They have further submitted that under MoU route, Tariff should be the sum total of Variable Cost to be fixed by the Commission on year to year basis and the Fixed Cost to be negotiated subject to the maximum cost fixed by the Commission in its Order dated 12 July 2018 in Case No. 84 of 2015 i.e. Rs. 0.66 /unit. MSEDCL is yet to file its reply on this amended Petition.

The Commission also notes that based on submissions from both sides in the past, the Commission has issued several Orders since 2018 dealing with the issues of procurement of power from Bagasse based Co-generation plants whose EPAs had expired. Further, the Commission has already adopted rate discovered through competitive bidding for new Bagasse based Co-generation plants. The Government of Maharashtra has also allowed MSEDCL to procure such power from competitive bidding. In the opinion of the Commission, in order to maintain consistency in decision making, all these aspects need to be taken into consideration while deciding the present matter.

The Petitioners and the Respondents agreed that the petition needs to be supported with more details before the Commission can take up the matter for decision.

Although, the Commission has noted difficulties mentioned by both parties in following the process for procurement through competitive bidding and their insistence on MoU route, the Commission notes that in order to take any considered decision in the present matter, both parties need to assist the Commission with following additional details:

- a. Cogeneration Association of India shall file list of power plants who have authorized them to represent in the present matter.*
- b. Cogeneration Association of India in its Petition has mentioned that it has filed Appeal before APTEL challenging competitive bidding process. CAI shall file present status of this Appeal.*
- c. MSEDCL to file submission on Petitioner's amended prayer. MSEDCL shall also clarify tariff at which it is proposing to sign MoU with bagasse-based cogeneration plants whose 13 year EPAs have expired.*
- d. MSEDCL needs to file list of Bagasse-based Co-generation plants whose EPAs have expired or are going to expire in near future with details such as capacity, EPA period (start and end date), balance useful life etc.*

- e. *MSEDCL shall also submit status of its non-solar RPO fulfillment and its action plan to meet shortfall, if any, through various sources available under non-solar RPO category and its cost implications.*
- f. *The Commission has adopted competitively discovered tariff for several Bagasse based co-generation projects. MSEDCL should submit present status of these plants.*
- g. *As MSEDCL has already discovered tariff for bagasse-based Co-generation plants through competitive bidding which has already been adopted by the Commission, Petitioners and MSEDCL may suggest mechanism to maintain sanctity of such discovered rate while proposing tariff for EPA under MoU route.*
- h. *Principal Secretary Energy Government of Maharashtra who is joined as respondent by the petitioner is yet to respond in these matters. Another chance is given to Principal Secretary Energy to file the position of the Energy Department in the matter. While doing so, the Government could consider providing some financial support for minimizing impact of procurement of such power by MSEDCL at relatively higher tariff than other available options for meeting non-solar RPO.*
- i. *Maharashtra Energy Development Agency (MEDA) shall file its submission on possibility of using Green Cess Fund for providing some financial support for reducing tariff impact.*
- j. *As Petitioners and MSEDCL seem to have agreed on MoU route, in addition to power procurement from these plants which are being run by Cooperative Societies, they could consider working out a mechanism for inclusion in the MoU by which MSEDCL could recover its electricity dues from members of such cooperative societies. They may link some part of generation tariff with recovery of electricity dues from members of cooperative societies in addition to fees / incentives applicable on collected revenue to billing-collection based franchisees.*

All above submission shall be filed by 22 July 2020 (within 15 days) with copy served on all other parties in these matters.”

8. CAI made the following submissions dated 17 July 2020:

8.1. It has received authorization from below listed 10 generators:

Generators/Factories Authorized CAI	
S. No.	Name of the Generator
1	Bhimashankar Sahakari Sakhar Karkhana Ltd.

2	Shree Chhatrapati Shahu Sahakari Sakhar Karkhana Ltd.
3	Dr. Babasaheb Ambedkar Sahakari Sakhar Karkhana Ltd.
4	Jawahar Shetkari Sahakari Sakhar Karkhana Ltd.
5	Manas Agre Industries & Infrastructure Ltd.
6	Mula Sahakari Sakhar Karkhana Ltd.
7	Rajarambapu Patil Sahakari Sakhar Karkhana Ltd.
8	Shri Dnyaneshwas Sahakari Sakhar Karkhana Ltd.
9	Shree Pandurang Sahakari Sakhar Karkhana Ltd.
10	Shri Vighnahar Sahakari Sakhar Karkhana Ltd.

8.2. Following Cases have been filed by CAI in APTEL:

S. No.	Appeal No.	Case Title	Date of Appeal Filed	Present Status
1	APL/381/2018	CAI Vs MERC & Ors.	26.09.2018	Matter is pending in APTEL
2	APL 65/2019	CAI Vs MERC & Ors.	26.11.2018	Matter is pending in APTEL

9. **MSCSFFL has submitted authorization letter from below 9 factories dated 27 July 2020:**

S. No.	Name of the Generator
1	Bhimashankar Sahakari Sakhar Karkhana Ltd.
2	Shree Chhatrapati Shahu Sahakari Sakhar Karkhana Ltd.
3	Dr. Babasaheb Ambedkar Sahakari Sakhar Karkhana Ltd.
4	Jawahar Shetkari Sahakari Sakhar Karkhana Ltd.
5	Mula Sahakari Sakhar Karkhana Ltd.
6	Rajarambapu Patil Sahakari Sakhar Karkhana Ltd.
7	Shri Dnyaneshwas Sahakari Sakhar Karkhana Ltd.
8	Shree Pandurang Sahakari Sakhar Karkhana Ltd.
9	Shri Vighnahar Sahakari Sakhar Karkhana Ltd.

10. **The Government of Maharashtra (GoM) through its letter dated 17 July 2020 authorized MEDA to make submission on its behalf.**

11. **MEDA made the following submission through its letter dated 22 July 2020:**

11.1. MEDA's Submission:

- a. The Green Cess funds are utilized for RE projects in line with the policies framed by the GoM. As per the GoM policy dated 14 October 2008, the Co-generation projects were entitled to reimbursement of evacuation expenditure and one-time capital subsidy. Under the policy as per target, for 1000 MW of Biofuel/Bagasse based power projects, MEDA has given financial support maximum upto Rs. 3 crores per project during the tenure of the Policy. The total projects that benefited under the policy are having capacity of 937.25 MW. After GoM policy dated 20 July 2015 this financial support is no longer in existence.
- b. At present there is no financial support of the GoM for new co-generation projects or the old ones for minimizing impact of procurement of such power by MSEDCL at reduced tariff than the available option for achieving its non-solar RPO target.
- c. The GoM is in the process of framing a new policy for RE sources. The constraint raised in the present petition will be taken into considerations while finalizing this proposed new RE policy.

11.2. GoM's Submission (Filed by MEDA):

- a. GoM has been keenly promoting RE sector in Maharashtra through various policies to promote/support this sector in Maharashtra. Accordingly, for Bagasse based co-generation projects financial incentives was introduced in the policy dated 14 October 2008, wherein co-generation projects were eligible for reimbursement of evacuation expenditure (Maximum 2 Crores) and one-time capital subsidy (Maximum 1 Crore) per project.
- b. In the Policy, target given was 1000MW, out of which total support that has been given is for the total capacity of 937.25 MW. However, as per later policy decision included in government resolution dated 20 July 2015, this financial support is no longer available.
- c. The Government is in the process of framing a new policy for renewable projects. While formulating this policy the government would take into consideration difficulties, concern raised in this petition and would take decision if such cogen projects could in any way be financially supported.

12. MSEDCL made the following submission dated 27 July 2020:

12.1. MSEDCL through its various submissions in different cases requested to allow the procurement of power from bagasse-based co-generation projects post expiry of EPA at APPC (excluding renewable energy) through MoU route with a cap of Rs. 4.00/kWh. The tariff proposed by MSEDCL is justified by considering the alternate cost for meeting this demand and fulfilling the RPO target i.e. considering maximum variable cost of thermal generating units around Rs 3.00/kWh + Rs. 1.00/kWh, maximum price for REC as decided by CERC totaling to Rs. 4.00/kWh. From the non-solar sources available for fulfilment of RPO target, other cheaper option available is wind and last tender rates are of Rs. 2.85 to 2.87/kWh, however availability of maximum power from wind is during night hours and that too in rainy seasons when MSEDCL demand is low and hence it is not suitable to meet MSEDCL's power demand. In fact some times to accommodate wind during night hours MSEDCL is required to back down its cheaper thermal plants. Considering above points, the procurement of power from these Cogen plants at APPC i.e. Rs 3.85/kWh for FY 20-21 with maximum ceiling of RS 4.00/kWh is reasonable and beneficial to MSEDCL. However as per Petitioner submission, it is not feasible for these co-gen plants considering their production cost.

12.2. Further GoM & MEDA vide their letter dated 22 July 2020 have submitted that the GoM is in process of framing a new policy for renewable projects. While formulating this policy GoM would take into consideration the difficulties, concerns raised in this petition and take decision if these projects can any way be financially supported. MSEDCL requests the Commission to allow it to submit its final reply regarding the tariff for purchase of such power through MoU route after finalization of the proposed new GoM RE policy.

12.3. With respect to the Bagasse-based Co-generation plants whose EPAs have expired or are going to expire in near future, MSEDCL has submitted a list of 32 projects summarized in the Table as under:

Sr. No.	Details	Nos of Projects	Capacity (MW)
1	EPAs expired as on May 2020	9	131
2	EPAs which will be expired by March 2024	23	423
3	Total	32	563

12.4. MSEDCL's non-solar RPO compliance from FY 2016-17 till FY 2019-20 is as below:

FY	Target	Achievement	Shortfall (-)/ Surplus
2016-17	11154	11154	0
2017-18	12801	12891	90
2018-19	14403	12468	-1934
2019-20	14683	10453	-4230

Total		-6074 MUs
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12.5. MSEDCL submitted following Action Plan to meet shortfall and issues faced therein:

- a. Signed 500 MW PPA with inter/intra state wind generators at Rs 2.85/kWh to 2.87/kWh and out of this only 274.4 MW project are commissioned, and 225.6 MW are expected to commission in FY 2020-21.
- b. Executed Power Sale Agreement (PSA) with SECI for procurement of 500 MW wind power at Rs. 2.59/kWh for which the Scheduled Commercial Operation Date (SCOD) was February 2020, however, due to Inter State Transmission System (ISTS) grid connectivity issue and pandemic situation of Covid-19, SCOD is extended to June 2021.
- c. Signed PPA through Competitive Bidding process with 412 MW bagasse-based co-generation projects at Rs. 4.75/kWh to Rs. 4.99/kWh and out of this, 325.5 MW capacity is already commissioned and are supplying power.
- d. In the past two years PPAs of 1000 MW capacity of wind generators expired after completion of 13 years and only 82 MW generators signed PPA with MSEDCL for balance life through competitive bidding process with ceiling rate of Rs 2.52 per unit and around 918 MW capacity is reduced from PPAs which leads to increase in RPO short fall.
- e. MSEDCL has filed Petition (Case No. 21 of 2020) mentioning the difficulties faced in meeting the RPO target. The hearing in the matter is awaited.

12.6. Regarding sanctity of maintaining the discovered rate vis-à-vis rates under MoU route and devising mechanism for procurement of Cogen power from Sugar Co-operative Societies, MSEDCL has submitted that MoU based PPAs are proposed for projects which are ready and have completed 13 years PPAs with MSEDCL at the Commission's approved feed in tariff whereas PPAs are signed with new projects after Competitive bidding Process. PPA signed with bidders after last competitive bidding process at rate of Rs 4.75/kWh is for 20 years i.e. full useful life. Hence PPAs with new project through competitive bidding process and PPAs with old projects which has already completed 13 years term of PPA can't be compared.

13. The Second e-hearing was held on 28 July 2020, wherein the respondents submitted that since the Government is in process of formulating and finalizing new RE Policy, the Commission may grant some time to get some clarity on the likely provisions in the policy

for incentives to bagasse based co-generation projects, if any. The Commission accepted the request and accordingly hearing was adjourned.

14. MEDA, on behalf of GoM made the below submission dated 4 September 2020:

14.1. The Energy Department, GoM has moved a cabinet note for giving some relief to the Petitioner cogeneration projects. The same is under consideration before the State Govt. and is likely to take some time. Thus, GoM seeks time to file reply.

15. The Third e-hearing was held on 8 September 2020. The Petitioners submitted that the submissions made by MSEDCL in the present case is contrary to that of the MSEDCL's submission in Case no. 21 of 2020 (Petition filed by MSEDCL to determine Tariff for projects whose EPA of 13 years has expired). Further, the Petitioners also submitted that the FRP has been increased by Rs. 100/ quintal and the farmers need to be compensated at the new FRP, therefore, the Tariff would need to be decided accordingly. MEDA submitted that since Energy Department, GoM is seeking certain reliefs, for co-generation projects, from the State Govt., it requires additional time to make final submission. The Commission highlighted the fact it is in the interest of the stakeholders that the matter gets adjudicated at the earliest since the Sugarcane crushing season will be starting soon. The Commission gave one last chance to parties to make their final submission within 15 days.

16. The Petitioners made the following submission on 18 September 2020:

16.1. Meeting through VC dated 15 September 2020 was held between MSEDCL and Petitioners. Accordingly, it is proposed as under:

- a. The Tariff rate for the plants whose EPAs have expired the stipulated 13 years period can be fixed at Rs 4.75/unit

Reasoning:

Variable Cost (Restricted to Fuel Cost) as fixed by MERC vide Order dated 30 April 2019 for 2019-20 and Order dated 2 April 2020 for 2020-21.	Rs. 4.38
O&M Cost for part of Fixed Cost but with inflation factored by MERC and for 14 th year as fixed for Biomass Projects as per Order dated 30 April 2019 for 2019-20.	Rs. 0.66
Total	Rs. 5.04

- b. Tariff will limited to Rs.4.75/kWh to ensure that tariff does not exceed the discovered rate for New Plants as per competitive bidding.

c. MSEDCL has consented for life of the Cogen Plants at 25 years instead of 20 years.

17. MSEDCL made the following submission on 21 September 2020:

17.1. MSEDCL on 20 January 2020 had filed Petition (Case No. 21 of 2020) for removal of difficulty under Regulation 19 of MERC (RPO, its Compliance and Implementation of REC Framework) Regulations, 2019 being Case No. 21 of 2020. Also, MSEDCL has filed MA No. 1 to 32 in Case No 21 of 2020, However, the hearing in the matter is not yet scheduled. In this petition MSEDCL has mentioned various difficulties faced for meeting RPO and one of the difficulties mentioned is about Bagasse based co-generation projects after the expiry of the EPAs. The relevant para is as below:

“8. However, in case of power from Bagasse based co-generation projects after expiry of the EPAs, considering its characteristic as firm power, availability during the peak load season, RTC availability and project’s willingness to sell power only to MSEDCL, it is proposed to allow MSEDCL for long term procurement of power from FY 2020-21 onwards for remaining useful life of the bagasse based cogeneration project whose EPA validity has expired or to be expired at the ceiling rate of Average Power Purchase Cost (APPC) of the respective year (excluding RE and Transmission charges) with a cap of Rs. 4.00 per unit, so that MSEDCL will be able to fulfill the stipulated RPO Target in the future and will not have uncertainty of getting this power through time consuming competitive bidding.”

17.2. It is clear that the submissions made by MSEDCL in Case No. 21 of 2020 and in Case No. 26 of 2020 & Case No. 27 of 2020 are similar and are not at all contrary to each other.

17.3. Further as per directives of the Commission in its daily order dated 7 July 2020 a meeting was held on 15 September 2020, between the Petitioners and respondent. Further, again vide letter dated 18 September 2020 Petitioners have proposed the tariff of Rs. 4.75/kWh through MoU route in respect of the bagasse based projects post expiry of 13 years of EPA period.

17.4. A meeting was held in Mantralaya on 21 September 2020 in the matter regarding the tariff in respect of procurement of power from bagasse based co-generation projects post expiry of EPA. In the meeting, Shri. Sanjay Khatal, Managing Director, MSCSFFL proposed that with the Variable Cost as fixed by the Commission for 2019-20 & 2020-21 is Rs.4.38/kWh and O&M Cost for part of Fixed Cost is Rs. 0.66/kWh, total amounts to Rs. 5.04/kWh. However, the Tariff rate for the new plants for 20 years period derived through competitive bidding is Rs.4.75/kWh. Hence to maintain the sanctity as per the Commission’s Combined Daily Order dated 8 July 2020 and to ensure that the tariff of old plants whose EPA expired after 13 years does not exceed the discovered tariff for New Plants through competitive

bidding, it was decided that the PPA will be signed at Rs 4.75/kWh. The Chairman & Managing Director, MSEDCL agreed to the above proposal and tariff. Therefore, a tariff of Rs. 4.75/kWh was mutually decided for procurement of power from bagasse based co-generation projects post expiry of EPA through MoU route.

- 17.5. MSEDCL in the Petition filed in Case no. 21 of 2020 has requested for relief for meeting RPO target because of various difficulties faced and does not intend to withdraw its Petition. However, the decision in the existing case may also be made applicable in Case No. 21 of 2020 in respect of procurement of power from bagasse based co-generation projects post expiry of EPA.
18. The Fourth e-hearing was held on 22 September 2020. The Parties reiterated their submissions as provided in their replies and rejoinders.

Commission's Analysis and Rulings

19. The Commission notes that these Petitions were initially filed seeking increase in ceiling tariff for the bid called by MSEDCL for power procurement from bagasse-based co-generation plants whose EPAs have expired. However, during the proceedings of these cases, parties have agreed to sign MoU based EPA for balance life of the projects at mutually agreed tariff of Rs. 4.75/kWh. Before, dealing with these Petitions, it is important to summarise important relevant Orders issued in the past relating to bagasse-based Co-generation plants and the interim events which require consideration in this case:

- 19.1. The Commission has issued its first Order on 'Purchase of power from Bagasse based Co-generation projects' on 16 August 2002. In that Order, as against the request of parties to fix tenure of EPA to useful life of the project i.e. 20 years, the Commission allowed EPA tenure of 13 years. While justifying such tenure lower than useful life, in addition to other reasons, the Commission has stated the following:

"The Commission has also considered that, one of the basic functions of the Commission is to promote competition, efficiency and economy in the activities of the electricity industry within the State. The Commission is of the opinion that the EPA tenure should not pose limitations in free market operations as and when enabled, and the benefits of such market operations should be available to the MSEB, the consumers and the developer of the co-generation project."

Thus, through its first Order on bagasse-based co-generation project, the Commission made it abundantly clear that benefit of generic tariff would be available only for 13 years of EPA and post expiry of such period, tariff would be subjected to market

operations. Thus, there was never an assurance of purchase of power post expiry of 13 years of EPA.

19.2. In Case No. 84 of 2015, M/s Jawahar Shetkari Sahakari Sakhar Karkhana Ltd. (JSSSKL) approached the Commission for tariff post expiry of its 13-year EPA for bagasse based co-generation power. Considering the generic nature of the issue raised in the Petition, the Commission floated a Discussion Paper in the matter and sought public comments. Post public consultation process, the Commission issued Order dated 12 July 2018 providing steps to be followed with respect to EPAs whose tenure have expired. Same are summarized below:

- a. Out of three options viz Option I – procurement at APPC rate, Option II- Tariff based on operating cost recovery principle and Option III – Tariff discovery through competitive bidding process, the Commission approved Option-III for deciding tariff post expiry of EPA. Thus, the Commission continued its stand of Tariff Discovery through Competitive Bidding Process under Section 63 of the EA, 2003.
- b. Considering useful life of 20 years, post expiry of 13-year EPA, additional EPA up to 7 years can be signed
- c. Single part bidding for Wind Projects. Biomass and Bagasse based projects will also have single part bidding for discovery of fixed cost, whereas variable cost would be same as determined in RE Generic tariff Order.
- d. Ceiling tariff of Rs. 0.75 per unit for discovery of fixed cost of wind (Group III), Rs. 0.66 per unit for bagasse co-generation projects and Rs. 0.55 per unit for biomass projects, whose initial EPAs have expired or are due for expiry.

19.3. However, in FY 2018-19, as the number of bagasse-based co-generation projects with expired EPA was limited, competitive bidding was not possible and hence the Commission allowed tariff rate of Rs. 3.56/kWh, mutually agreed between the parties for that year and directed MSEDCL to conduct competitive bidding for FY 2019-20 onwards by considering ceiling rate as Rs. 3.56/kWh.

19.4. Accordingly, MSEDCL floated a tender for 50 MW bagasse power on long term basis from projects whose EPA had expired. Total 6 bidders participated in tender. However, due to incongruous results of reverse auction the tender was cancelled. The 6 nos. of participants, namely, JSSSKL, Mula Sahakari Sakhar Karkhana (MSSK), Shree Pandurang Sahakari Sakhar Karkhana Ltd. (SPSSKL), Shri Viganahar Sahakari Sakhar Karkhana Ltd. (SVSSKL), Bhimashankar Sahakari Sakhar Karkhana Ltd. (BSSKL)

and Rajarambapu Patil Sahakari Sakhar Karkhana Ltd. (RPSSKL) in the bidding process requested MSEDCL that they were ready to sign PPA with MSEDCL at a rate of Rs. 3.56/kWh for further useful life of the project. Accordingly, MSEDCL filed the Petition with Case No. 321 of 2019, seeking approval for procurement of bagasse power from these 6 nos. of participants at Rs. 3.56/kWh for further useful life of the plant.

- 19.5. The Commission vide its Order dated 4 December 2019 in Case No. 321 of 2019 approved rate of Rs. 3.56/kWh for FY 2019-20 only and directed MSEDCL to initiate competitive bidding process from FY 2020-21 onwards for procurement of bagasse power.
- 19.6. In compliance with the Commission's direction MSEDCL floated the tender on 27 December 2019 for procurement of 150 MW bagasse-based co-generation power post expiry of EPA with ceiling rate of Rs. 3.56/kWh with the last date of bid submission as 27 January 2020.
- 19.7. MSCSFFL and CAI filed these Petitions in the present matter on 23 January 2020, initially seeking increase in the Ceiling Tariff to Rs 5/kWh and to extend the bid submission date from 27 January 2020 by at least 2 months.
20. MSEDCL through its reply filed in this matter suggested to procure power from Bagasse based co-generation project through MoU route as most of these Plants were Cooperative co-generation plants and were willing to sell power to MSEDCL only as there is no long term market available for seasonal power except MSEDCL within the distribution network of which the Cogen plants were embedded. In the market scenario when there is only one buyer available and also capacity available to sell is also known, there is no scope for conducting competitive bidding for such projects. It may be noted though that this submission of MSEDCL is contrary to their own admission in Para 12.5(c) above.
21. To understand the proposed modalities of fixing the rates for procurement of power through MoU route, the Commission during the first hearing dated 7 July 2020 sought additional information from the Parties. The same has been reproduced at Para. 7 of this Order.
22. Based on the above factual matrix and the submissions of the parties, the Commission frames following issues which need to be addressed in the present matter:
 - A. Under which legal framework could such Procurement of power from the bagasse based co-generation projects post expiry of EPA be dealt? (Section 62, Section 63 or Regulatory Powers)

B. What shall be the Ceiling Tariff/Tariff for Procurement of power from such projects?

C. What shall be other terms and conditions of extended EPA?

The Commission has dealt with the above listed issues in the following sections.

23. Issue A: Under which legal framework could such Procurement of power from the bagasse based co-generation projects post expiry of EPA be dealt? (Section 62, Section 63 or Regulatory Powers)

23.1. Both MSEDCL and Petitioners have requested the Commission to approve the mutually agreed Tariff through MoU route. The Commission underscores that as per the EA, the Tariff can be determined either under Section 62 (Determination of tariff) or discovered under Section 63 (Determination of tariff by bidding process).

23.2. As summarized in para 19 above, the Commission through its various previous Orders has directed MSEDCL to procure power from bagasse based co-generation projects whose EPAs had expired, by conducting transparent competitive bidding process only. In one of such bidding process exercises wherein MSEDCL had called bid for 50 MW the same turned out to be futile as the tariff rates discovered were incongruous (Rs.0.01/kWh). As directed by the Commission, MSEDCL again floated bid for 150 MW (against which present petitions have been filed), but no bid was received by the due date. Petitioners have alleged that ceiling rate of Rs. 3.56/kWh fixed for bidding process is not viable.

23.3. At the same time, the Commission also notes the fact that MSEDCL has successfully concluded competitive bidding process for new bagasse-based co-generation plants with EPA tenure of 13 years and 20 years. The Commission has also adopted such competitively discovered tariff vide following Orders:

Sr. No.	Order date and Case No.	Number of Bagasse-based Co-generation plants	Total Capacity (MW)	PPA Tenure	Tariff Adopted (Rs/kWh)
1	14 June 2018 130/2018	5	105	13 years	4.97 to 4.99
2	30 June 2018 165/2018	12	202.85	13 years	4.97 to 4.99
3	22 July 2019 109/2019	5	109	20 years	4.75
4	19 Sep 2019 243/2019	4	55	20 years	4.75

Thus, EPAs with 26 bagasse-based co-generation plants have been entered post successful competitive bidding. Further said rate discovered through competitive bidding is fixed for entire tenure of EPA and is inclusive of fixed and variable charges. Therefore, as against competitive bidding process for bagasse-based co-generation with expired EPAs, competitive bidding process for new bagasse-based plant has been successful.

- 23.4. Petitioners have alleged that ceiling rate of Rs. 3.56/kWh fixed for plant with expired EPA is very low. In this regard, the Commission notes that initially it had asked MSEDCL to conduct competitive bidding for discovery of only fixed cost with ceiling of Rs. 0.66/kWh and variable charges would be based on annual generic tariff Order. However, as competitive bidding was not possible with only one plant with expired EPA available at that times, the Commission vide Order dated 2 November 2018 approved entering into EPA with the rate of Rs. 3.98/kWh (APPC for FY 2018-19) for the limited period of FY 2018-19 and directed MSEDCL to conduct competitive bidding process for FY 2019-20. However, both parties further negotiated and arrived at the rate of Rs. 3.56/kWh, which being lower than APPC and agreed by both parties, has been approved by the Commission in its Order dated 9 January 2019. Further, upon unsuccessful bidding process for FY 2019-20, 6 co-generation plants with expired EPA agreed to supply electricity at Rs. 3.56/kWh. Thus, rate of Rs. 3.56/kWh was arrived based on consent given by bagasse-based co-generation plants themselves. However, it is also a fact that long term bidding process with ceiling of Rs. 3.56/kWh could not get concluded for selection of successful bidder. The Commission has been insisting on the Section 63 process for discovery of Tariff. MSEDCL on its part has been making efforts to procure power through competitive bidding process. MSEDCL stated that competitive bidding would not be successful as MSEDCL is a single buyer for such seasonal electricity generation plants and capacity to be procured is known which may be resulting in bidders quoting the ceiling tariff.
- 23.5. The Commission also notes that MSEDCL is having shortfall for its Non-Solar RPO also. The shortfall is further increasing due to expiry of EPAs on continuous basis (Expiry of Wind and Bagasse based co-generation). Further MSEDCL has also informed that the power generation by these Co-generation plants suits its demand profile.
- 23.6. Considering all the facts presented in this case including the difficulties in the bidding process, the Commission is of the view that for bagasse based co-generation plants who have completed their 13 year EPA, MSEDCL would need some more time to shift its procurement process to that under section 63 of EA Act, 2003. Commission is of the opinion that at present, the only other option for tariff determination under section 62 of the EA, 2003 would need to be looked into. For determining the tariff under Section 62 of EA, the same is to be determined based on Regulations framed by the Commission. In the present case, relevant Regulations would be MERC (Terms and Conditions of Renewable

Energy Tariff) Regulations, 2019 notified by the Commission on 30 December 2019 and which are applicable from 1 April 2020 onwards. However, the Commission is of the opinion that in the present case, the Tariff determination under these Regulations also is not possible because of the following reasons:

- The Commission has discontinued the determination of generic tariff for Bagasse based co-generation projects and has categorized them under determination of tariff through competitive bidding only. Further, for the existing projects, the Commission shall determine only the variable cost of such projects in accordance with the norms specified in the Regulations.
- Under the mode of Project Specific Tariff also, the norms specified in the said Regulations are for the projects which shall be commissioned during the Review Period of these Regulations starting from FY 2020-21 till FY 2024-25. The parameters, both Financial and Technical, specified in these Regulations are as per the existing market conditions and may not be applicable to the projects which were set-up about 13 years back.

23.7. In view of above, the Commission notes that in the present case, a peculiar situation has arisen wherein tariff discovery through competitive bidding under Section 63 is running into difficulties and at the same time Regulations framed under Section 62 cannot be made applicable in its entirety to the present case for determining the tariff under section 62.

23.8. The Commission notes that Hon'ble Supreme Court in its Judgment dated 11 April 2017 in the matter of Energy Watchdog vs. CERC & Ors., has ruled that in cases if there are no laid down guidelines to deal with the given situation, the Commission can exercise its Regulatory Powers. The relevant excerpts the said Order is reproduced below:

“19. It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff under Section 63, it functions de hors its general regulatory power under Section 79(1)(b). For one thing, such regulation takes place under the Central Government's guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the guidelines, can it be said that the Commission's power to “regulate” tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions. The first rule of statutory interpretation is that the statute must be read as a whole. As a concomitant of that rule, it is also clear that all the discordant notes struck by the various Sections must be harmonized. Considering the fact that the non-obstante clause advisedly restricts itself

to Section 62, we see no good reason to put Section 79 out of the way altogether. The reason why Section 62 alone has been put out of the way is that determination of tariff can take place in one of two ways – either under Section 62, where the Commission itself determines the tariff in accordance with the provisions of the Act, (after laying down the terms and conditions for determination of tariff mentioned in Section 61) or under Section 63 where the Commission adopts tariff that is already determined by a transparent process of bidding. In either case, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. In fact, Sections 62 and 63 deal with “determination” of tariff, which is part of “regulating” tariff. Whereas “determining” tariff for inter-State transmission of electricity is dealt with by Section 79(1)(d), Section 79(1)(b) is a wider source of power to “regulate” tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. **As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission’s general regulatory powers under Section 79(1)(b) can then be used.**”(Emphasis Supplied)

Accordingly, the Commission notes that it can exercise its Regulatory power conferred under Section 86 (1) of EA, to regulate power procurement in present matter.

- 23.9. However, before exercising such regulatory powers, the Commission needs to satisfy itself that this case deserves such intervention. Admittedly, only option available in the present matter for tariff determination was competitive bidding. However, repeated attempts of discovering tariff through competitive bidding has failed. The Commission also notes that MSEDCL does not have any specific mandate to procure such power from these bagasse based co-generating plants, neither any Order of this Commission has assured power procurement post 13 years of EPA. MSEDCL can comply with their RPO by sourcing power from other non-solar RE sources. However, MSEDCL has shown readiness to procure such power from bagasse-based co-generation plants whose 13 year EPA has expired through MoU route. The Commission notes that EA mandates the Commission to promote renewable energy and co-generation. Bagasse based co-generation plant is recognised RE source which requires non fossil fuel source and hence has two component of tariff i.e. fixed cost and variable cost. Therefore, in its Order dated 12 July 2018, the Commission directed MSEDCL to discover only fixed charges through competitive bidding and variable cost would as decided by the Commission in annual Generic Tariff Order. However, as co-generating plants whose EPAs have expired had shown readiness for total tariff of Rs. 3.56/kWh, the Commission directed MSEDCL to

discover total tariff through competitive bidding by putting ceiling of Rs. 3.56/-. However, bidding process at that ceiling price was not successful. Therefore, the Commission thinks it appropriate to intervene in the matter.

23.10. As bagasse-based power plants' generation is at peak during crushing season which normally starts in October, at which time such energy is useful for MSEDCL also for managing its peak power requirement which normally falls in October. Therefore, the Commission is inclined to consider the request of the Petitioners and MSEDCL under the Regulatory Powers of the Commission under Section 86 (1) (b) & (e) of the EA, 2003 and in accordance with the ruling of the Hon Supreme Court in the Energy Watchdog Case. The consideration of procurement of power from the bagasse-based co-generation projects post expiry of EPA through MoU route will be required to be addressed by balancing the interests of all the stake holders including the Consumers.

24. Issue B: What shall be the Ceiling Tariff/Tariff for Procurement for such projects?

24.1. Both MSEDCL and Petitioners have mutually agreed to the rate of Rs. 4.75/kWh for the transaction of power through MoU route. The Petitioners in their submission dated 18 September 2020 have justified MoU rate of Rs. 4.75/kWh as below:

Variable Cost (Restricted to Fuel Cost) as fixed by MERC vide Order dated 30 April 2019 for 2019-20 and Order dated 2 April 2020 for 2020-21.	Rs. 4.38
O&M Cost for part of Fixed Cost but with inflation factored by MERC and for 14 th year as fixed for Biomass Projects as per Order dated 30 April 2019 for 2019-20.	Rs. 0.66
Total	Rs. 5.04

Tariff will be limited to Rs.4.75/kWh to ensure that tariff does not exceed the discovered rate for New Plants as per competitive bidding.

24.2. The Commission notes that above rate is based on Commission's Order dated 12 July 2018 wherein the Commission has directed MSEDCL to discover fixed charge through competitive bidding with ceiling of Rs.0.66/kWh and variable cost would be as per annual generic tariff. The Commission notes that by agreeing to Rs. 4.75/kWh, parties have effectively agreed for fixed cost of Rs. 0.37/kWh. Although this Fixed cost has not been discovered through competitive bidding, if the Variable Cost is considered as Rs 4.38/kWh then the Fixed cost is about 56% of ceiling rate decided by the Commission, hence the Commission is inclined to adopt the same. Regarding variable charge of Rs. 4.38/kWh which is as per RE Generic Order dated 2 April 2020, the Commission notes that said rate

has been approved purely on provisional basis subject to independent study of fuel cost. Relevant part of the Order is reproduced below:

“For the reasons stated in para 7 above, the Commission is extending existing variable charges for Biomass and Non-fossil fuel-based Co-generation Projects as determined under RE Tariff Order dated 30 April, 2019 in Case No. 52 of 2019 on provisional basis till the Commission determines variable cost for these projects based on fuel cost arrived through independent study.....

.....

Above provisional variable charges will be applicable for FY 2020-21 to the existing projects whose EPA has been signed based on Generic Tariff determined by the Commission in earlier years. Further, based on proposed independent study and the subsequent Public Process, the Commission will determine the final variable charges which would be adjusted in subsequent bills or through supplementary bill.”

Thus, based on independent study of fuel cost, which is presently under progress, variable cost of Rs. 4.38/kWh may undergo further change.

24.3. Under above circumstances, as rate of Rs. 4.75/kWh has been worked out based on principle approved by this Commission in Order dated 12 July 2018, the Commission approves the same subject to following conditions:

- a. Fixed Cost of Rs. 0.37/kWh is fixed for entire tenure of extended EPA.
- b. Provisional variable charge of Rs. 4.38/kWh is approved. In case the variable cost so determined through the ongoing study decreases below Rs. 4.38/kWh, then total tariff would decrease by that extent. In case variable cost so determined increases above Rs. 4.38/kWh, then total tariff would still be fixed to Rs. 4.75/kWh so as to maintain parity with tariff determined through competitive bidding.
- c. Such tariff decided at ‘b’ above would be fixed for entire tenure of EPA.
- d. Above tariff shall be applicable prospectively from the date of this Order. Any energy produced by the cogen plants after expiry of their EPA will continue to be settled at the prevailing rate of 3.56 per kwh for 2019-20 duly adopted by Commission.

24.4. Having ruled as above, the Commission cannot ignore the fact that there is no obligation on the MSEDCL to procure power specifically from bagasse based co-generation projects as it can fulfill its non-solar RPO by procuring power from other cheaper sources as

compared to bagasse-based co-generation projects. Hence the MOU route rate for these co-generation plants needs to be looked at in the correct perspective. Co-generating plants in addition to supplying electricity to MSEDCL also need to shoulder some additional responsibility which can assist the MSEDCL to reduce its financial burden to some extent and thereby be compensated for the power procurement through MoU route instead of Competitive bidding. The Commission notes that most of the bagasse-based co-generation projects are being run by Cooperative Societies, therefore they can work with MSEDCL to increase collection efficiency with active support of their members, share holders or farmers supplying sugarcane to the factories. Thus, farmers who are selling their sugarcane to the plants having Cogen would all be required to be covered for improvement in recovery with active involvement of these plants and all the stake holders. For this reason, the Commission in its Daily Order dated 8 July 2020 had suggested following:

“j. As Petitioners and MSEDCL seem to have agreed on MoU route, in addition to power procurement from these plants which are being run by Cooperative Societies, they could consider working out a mechanism for inclusion in the MoU by which MSEDCL could recover its electricity dues from members of such cooperative societies. They may link some part of generation tariff with recovery of electricity dues from members of cooperative societies in addition to fees / incentives applicable on collected revenue to billing-collection based franchisees.”

However, none of the parties made any concrete submission to devise such mechanism. In the opinion of the Commission, once MSEDCL has shown readiness to procure bagasse based co-generation power by responding positively to the financial difficulties faced by the Cogen plants, co-generation plant owners / co-operative societies in turn are also required to extend their support to MSEDCL by actively liaising with their members to clear their electricity dues worked out by MSEDCL as per methodology laid down by the Commission.

24.5. As both parties have not made any submissions on this important issue which was directed by this Commission through Daily Order, the Commission is required to balance the interests of the stake holders. Accordingly, the Commission directs as under:

- a. Co-generation Plant shall identify area (subdivision(s)/ division(s)) in its command area in which it shall take responsibility of bill collection of LT Agriculture Consumers who are the members of their Plant.
- b. MSEDCL shall identify collection efficiency of Agriculture category of that area for FY 2019-20 which will act as base level collection efficiency.

- c. Co-generation plant shall improve the collection efficiency from base level by at least 10% in the first ensuing year and thereafter additional 10% every year till it reaches 90% or more.
- d. In case, co-generation plant fails to achieve such target in any year, the co-generation plant would be eligible for only 95% of approved tariff.
- e. For achieving above objective, the Commission suggests following:
 - i. The collection efficiency improvement needs to be based on the correct current bills.
 - ii. In these difficult times of Pandemic, the facility of self-readings (Photo readings) as is being done presently could be extended to all the Farmers/Agriculture consumers also. This will help in reducing the load on MSEDCL and will also help in issuing correct bills to the Agriculture category consumers.
 - iii. While benchmarking and comparing the improvement in the Collection efficiency of bills issued to the Members or shareholders or otherwise who supply the sugarcane to the Cogen plants, it needs to be ensured that the bills are correct and that the disputes are reduced to the minimum to the extent possible.
 - iv. The consumers could submit the quarterly photo reading to the concerned Cogen plant, who in turn will take up the responsibility of verifying the correctness of the same and shall draw a tentative bill after considering the details of the previous bill.
 - v. In case the bill reading is not available for any reason, the recovery needs to be made as per the Supply Code Provisions on Average basis.
 - vi. The disputes in the bills (if any) will be settled between the consumer and MSEDCL directly.
 - vii. The Cogen plant shall recover this amount amongst other methods, from the sale proceeds payable to the farmer. The amount so recovered from the members, shareholders etc shall be transferred to MSEDCL account through Digital mode.

- viii. The Co-gen plant should be compensated by MSEDCL for performing this activity of meter reading, billing and recovery and such compensation amount is added to the bill for payment of the generated power as per EPA.
- ix. This methodology may be incorporated in the MoU between MSEDCL and the Cogen Plants for procurement of cogen power and can be implemented for the overall benefit of all the stake holders.
- x. MSEDCL and the Co-gen plants entering into MOU agreement are free to add any other relevant covenant so that the expected improvement in the collection efficiency is achieved.

24.6. The Commission is aware of the fact that the collection of consumer bills does not have any direct relation with co-generation tariff. But at the same time, tariff approved in present case is higher than the Rs. 3.56/kWh, for which 6 Co-generating plants had earlier given written consent. The Commission has allowed the tariff based on its earlier Order dated 12 July 2018, but co-generation plants have to take extra effort (as stated in para above) to get this tariff. In the opinion of the Commission this would be fair proposition and would balance the interest of both parties.

25. Issue C: Terms and Conditions of EPA

25.1. All terms and conditions of old EPA shall be continued for this extended period.

25.2. Regarding tenure of EPA for extended period, it should be applicable for residual period of project life. The Commission's Order and Regulations prior to 2019 has envisaged the life of bagasse-based cogeneration plant as 20 years. However, RE Tariff Regulations 2019 has notified plant life as 25 years. Based on same, Petitioner have requested to consider the useful life of these projects as 25 years instead of 20 years. The Commission is inclined to allow this request subject to condition that no extra cost would be payable for maintaining plant till 25th year. Accordingly, the Commission rules that extended EPA post expiry of 13-year EPA may be valid till end of 25th year from commissioning of co-generation plant or such lower period upto 20 years as MSEDCL and the Generator may agree.

26. Prospective EPA's signed based on provisions specified above, including conditions of improving collection efficiency of Agriculture category, shall be filed for records of the Commission.

27. Hence, the following Order.

ORDER

1. Case Nos. 26 of 2020 and 27 of 2020 are allowed.
2. Maharashtra State Electricity Distribution Company Limited shall enter into MoU with the Co-generation plants whose 13-year EPA have expired at the tariff decided as per para 24.3 above with prospective effect.
3. Such tariff shall be subjected to condition specified in para 24.5 above.
4. All other terms and conditions of 13-year EPA would be continued for extended EPA.
5. Tenure of extended EPA may be fixed for a period up to the end of 25th year of Co-generation plant from its commissioning date or such lower period upto 20 years as MSEDCL and the Generator may agree.
6. Maharashtra State Electricity Distribution Company Limited shall file the signed EPAs based on provisions specified in this Order, including conditions of improving collection efficiency of Agriculture category, for records of the Commission.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member


(Abhijit Deshpande)
Secretary

