

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 113 of 2020

Case of Maharashtra State Electricity Distribution Company Ltd. seeking approval for long term procurement of wind Power from Maharashtra Energy Development Agency's projects whose EPA with MSEDCL has expired, for meeting Non-Solar RPO target.

Maharashtra State Electricity Distribution Company Ltd.	 Petitioner
Maharashtra Energy Development Agency	 Respondent

Coram

I.M. Bohari, Member
Mukesh Khullar, Member

Appearance

For the Petitioner	: Smt. Kavita Gharat (Rep.)
For the Respondent	: Dr. Shri J V Torne (Rep.)

ORDER

Date: 6 October 2020

1. Maharashtra State Electricity Distribution Company Ltd. (**MSEDCL**) has filed the present Case on 22 May 2020 seeking approval for long term procurement of wind Power from Maharashtra Energy Development Agency (**MEDA**)'s projects whose Energy Purchase Agreements (**EPAs**) with MSEDCL have expired, for meeting Non-Solar Renewable Purchase Obligation (**RPO**) targets.
2. **MSEDCL's main prayers are as follows:**

- a) *To admit the Petition as per the provisions of the Regulation 19 of MERC (RPO, Its Compliance and Implementation of REC Framework) Regulations, 2019.*
- b) *To accord approval for procurement of wind power from MEDA's projects which has completed EPA period at fixed Tariff of Rs. 2.52 per unit for wind Projects in Groups II to IV and at fixed Tariff of Rs. 2.25 per unit for Group I Projects for further useful life of the projects.*
- c) *To accord approval that the energy purchased by MSEDCL through these projects is entitled for fulfilment of non-solar RPO target of MSEDCL.*

3. MSEDCL in its Case has stated as follows:

3.1 MEDA has installed following demonstration wind power project:

Sr.No.	Location of WTG	Capacity in MW	Tenure of expired EPA
1	Girye (Vijayadurg), Tal-Deogad, Dist. Sindhudurg	1.5 (Group-I)	14.07.1994 to 13.07.2014 (20 Years)
2	Chalkewadi, Dist. Satara	2 (Group-I)	21.07.1996 to 20.07.2016 (20 Years)
3	Gudepachgani, Tal- Shirala, Dist. Sangli	1.84 (Group I)	17.04.1999 to 16.04.2018 (20 years)
4	Motha, Tal- Chikhaladara, Dist. Amravati	2 (Group III)	09.06.2003 to 08.06.2016 (13 years)
5	Chalkewadi, Tal & Dist.Satara	3.75 (Group III)	20.09.2004 to 19.09.2017 (13 years)
Total		11.09 MW	

3.2 The wind power projects mentioned at Sr. No. (1 to 3) were commissioned before 27 December 1999, hence they are group-I projects as per MERC Wind Project Tariff Order dated 24 November 2003. EPA tenure was 20 years from date of commissioning and said EPAs were expired in July 2014, July 2016 and April 2018 respectively.

3.3 The projects mentioned at Sr. No. (4 and 5) commissioned between 1 April 2003 to 31 March 2010 are group-III projects. EPA tenure for these projects was 13 years from date of commissioning and said EPAs expired in June 2016 and September 2018, respectively.

3.4 MEDA vide letter dated 31 October 2019, requested MSEDCL to sign EPA for these 5 projects at Rs. 2.52 per unit, the rate offered to all wind projects after expiry of their PPA. Further, MEDA vide letter dated 12 January 2020, informed that the Commission vide Order dated 9 April 2019 in Case No. 50 of 2019 allowed MSEDCL to decide the ceiling Tariff for purchase of Power from the projects after expiry of EPA at the rate, not exceeding the Tariff

approved by the Commission and requested that EPA shall be executed with all 5 projects from date of their expiry till useful life at the rate of Rs. 2.52 per unit.

3.5 The Commission has issued following Orders regarding the tariff to be offered to wind projects post expiry of long-term EPA.

i. The issue of tariff for sale of power after expiry of EPA of group I /II wind project was dealt with first time in Order dated 7 April 2014 in Case No. 92 of 2012 in the matter of policy review related to wind power in Maharashtra. Thus, the Commission has not determined tariff for sale of power after expiry of EPA in case of Group-I projects. However, the Commission has indicated to initiate regulatory process for determination of tariff for Group-II projects post expiry of EPA. The said rate for Group-II projects, Rs.2.52 per unit was an interim rate.

ii. Subsequently the Commission in Order dated 2 November 2018 to Review certain issues in the Commission's Order dated 12 July 2018 in Case No. 84 of 2015 i.e. Case No. 264 of 2018 has ruled to procure the wind power at Rs. 2.25 and Rs. 2.52 per unit from group I and II projects, respectively.

iii. The Commission by Order in Case No. 50 of 2019 dated 9 April 2019 has ruled that MSEDCL should decide the ceiling rate after proper due diligence but the same shall not be more than the rates approved for the short term procurement of wind energy (i. e. Rs.2.52 per unit for wind Projects in Groups II to IV and Rs. 2.25 per unit for Group I Projects)

3.6 There was shortfall to fulfill Non-Solar RPO Targets of FY 2018-19. For FY 2019-20, the provisional data upto 3rd quarter (April 2019 to December 2019) reveals that, there is shortfall for fulfillment of Non-Solar RPO target which is around 476 MUs.

3.7 Further, long term energy purchase agreements of around 1100 MW capacity with Renewable Energy generators will be expiring by FY 2023-24.

3.8 The response is poor to the tenders especially for procurement of RE energy from post expiry wind generators through competitive bidding process. In order to fulfill the Non-Solar RPO targets and as MEDA is a Government Agency, MSEDCL requests the Commission to allow MSEDCL to enter into the contract with MEDA through MoU route for its projects, whose EPAs with MSEDCL have expired, at fixed Tariff of Rs. 2.52 per unit for wind Projects in Groups II to IV and at fixed Tariff of Rs. 2.25 per unit for Group I Projects.

4. **MEDA in its Reply dated 4 August 2020 has stated as under:**

4.1 As per the Commission's Order dated 9 April 2019 in Case No. 50 of 2019, MEDA vide letter dated 12 January 2020, requested MSEDCL for signing of EPA for its five demonstration wind power projects at the rate of Rs.2.52 per unit through MOU route.

- 4.2 MSEDCL vide letter dated 6 March 2020 requested MEDA to provide consent for execution of EPA for the said projects, at Rs.2.25 per unit for group-I & II projects and Rs.2.52 per unit for Wind Projects in Group III through MoU route instead of competitive bidding.
- 4.3 Accordingly, MEDA by its letter dated 9 March 2020, confirmed to MSEDCL for signing of EPA through MoU route for its five demonstration Wind Power Projects from the date of expiry of earlier EPAs till stoppage of project/s or further order of the Commission.
- 4.4 MEDA had closed down wind demonstration project at Mouje Girye, Tal. Devgad, Dist. Sindhudurg in August 2015. Therefore, MEDA is requesting to approve EPA upto 31 August 2015.
- 4.5 MEDA is also proposing to repower wind demonstration project Chalkewadi - I at Mouje Chalkewadi, Tal. & Dist. Satara by next year. Therefore, MEDA is requesting to approve EPA up to 31 July 2023.
- 4.6 Wind electric generators under group I & II projects are based on old technology available at that time. Generation from these projects is low as compared to generation from project based on current technology. Considering generation, expenditure on O & M, administrative expenses, statutory payments, higher tariff of 2.52 per unit is required for financial viability of Group I & II projects at Chalkewadi (2.00 MW), Girye (1.5 MW) and Gudepanchgani (1.84 MW). Hence MEDA requests Commission to approve rate of Rs. 2.52 per unit for all demonstration projects of MEDA under group I, II & III projects.
- 4.7 These are not commercial projects, but demonstrative projects initiated on behalf of Government of Maharashtra and Ministry of New and Renewable Energy to demonstrate and promote Renewable Energy in the State and therefore need special consideration.
5. At the e-hearing through video conferencing held on 25 September 2020, the representative of MSEDCL reiterated its submission in the Petition. The representative of MEDA reiterated its submission in the reply and further stated that though it has agreed with MSEDCL for the tariff as per ceiling rate approved by the Commission in Case No 50 of 2019, considering the expenses of O & M, Administration and Statutory payments, Rs.2.52 per unit tariff should be made applicable to group I,II and III projects.

Commission's Analysis and Rulings:

6. MSEDCL under the instant Case has sought approval for procurement of long-term power from MEDA's 5 demonstrative projects through MoU route at a tariff of Rs. 2.25 for Group

I and Rs.2.52 per unit for Group II and III projects and also requested that this power procurement be made eligible for meeting its non-Solar RPO requirement. The details such as locations, Capacity of the projects, EPA expiry dates and proposed EPA tenure of these 5 demonstrative projects are as under:

Sr. No.	Location of WTG	Capacity in MW	Commissioning Date	EPA Tenure (yrs.)	EPA Expiry date	Additional EPA Tenure Proposed
1.	Mouje Girye, Tal. Devgad, Dist. Sindhudurg	1.5 (Group-I)	14/07/1994	20	13/07/2014	Till 31/08/2015.
2.	Mouje Chalkewadi, Tal. & Dist. Satara.	2.0 (Group-I)	21/07/1996	20	20/07/2016	7 years, i.e. upto 31/07/2023. (Will be due for repowering in next year)
3.	Mouje Gudepanchgani, Tal. Shirala, Dist. Sangli	1.84 (Group-I)	17/04/1999	20	16/04/2018	7 yrs. i.e. up to 30/04/2025
4.	Mouje Motha, Tal. Chikhaldara, Dist. Amravati	2.00 (Group-III)	09/06/2003	13	08/06/2016	14 yrs. i.e. up to 30/06/2030
5.	Mouje Chalkewadi, Tal. Dist. Satara	3.75 (Group-III)	20/09/2004	13	19/09/2017	14 yrs. i.e. up to 30/09/2031
6.	Total	11.09 MW				

7. The Commission notes that the EPAs of all these projects expired between July 2014 to April 2018. Except two projects at Sr.No 4 and 5 all other projects are in Group -1 category, having EPA tenure of 20 years. The projects at Sr. No. 4 and 5 are under Group-3 projects having EPA tenure of 13 years. MSEDCL has stated that initially MEDA vide its letter dated 31 October 2020 requested MSEDCL for executing the EPAs for these 5 projects at the rate of Rs. 2.52 per unit, the rate which is offered to all wind projects post expiry of their PPA. Later on, MEDA vide its letter dated 12 January 2020 suggested that the ceiling of Rs.2.52 per unit should be decided as per the Commission's Order dated 9 April 2019 in Case No 50 of 2019. In reply, MSEDCL vide its letter dated 6 March 2020 sought MEDA's consent for execution of EPA through MoU route at Rs.2.25 per unit for Group-I projects and Rs.2.52 per unit for Wind Projects in Group II and III, instead of competitive bidding. MEDA by its letter dated 9 March 2020, confirmed to MSEDCL its willingness for signing of EPA through MoU route. However, in its reply submitted in the instant Case, MEDA by considering the expenses of O & M, Administration and Statutory payments etc has proposed rate of Rs. 2.52 per unit for all projects i.e under Group I,II and III projects.

8. The Commission notes that MEDA in its reply has proposed repowering of one 2 MW Group-1 project. For remaining three projects, MEDA has not mentioned any proposed plan for repowering but has only proposed extension of EPA tenure of one project of 1.84 MW by 7 years after completing 20 years of EPA and 14 years after completing 13 years of EPA period for 2 projects of 5.75 MW (2 + 3.75 MW). Further for 1 project of 1.5 MW which was commissioned in 1994 and closed down in August 2015 after completing its 20 years in 2014, MEDA has sought approval of EPA for this project for the period between July 2014 to August 2015 in which MEDA has injected the energy into the Grid.
9. As can be seen from the instant Petition, MEDA has requested for approval of extended EPA with retrospective applicability i.e from the date of expiry of earlier EPA. In normal course, it is expected that the parties should approach the Commission at least six months prior to the expiry of original EPA for renew/ extension/amendment to EPA. In the instant Case either MSEDCL or MEDA should have approached the Commission way before their earlier EPAs started expiring between July 2014 to April 2018. In fact, in others similar matters, MSEDCL had approached the Commission for approval of tariff adoption and signing of EPA for Wind, bagasse power producers whose EPAs expired. MEDA was also party to most of these cases. But, both of them did not take any advance action with respect to these projects before expiry of these EPAs and have continued injection of energy into the Grid without having any valid EPA.
10. The Commission in its various recent Orders have stressed upon the importance of valid contract for injecting power into the grid. MSEDCL and MEDA were party to such proceedings. In those matters the Commission has ruled that injection of energy into the Grid without valid EPA should be discouraged and accordingly have ruled that generators are not entitled to any payment for the power injected without valid contract. The relevant extract of the Commission's Order dated 11 April 2018 in Case No 86 of 2016 is reproduced as under:
- “
- E)
- 3) In pursuance of this notice, Gopani should have stopped injecting power from its CPP into the grid of MSEDCL after 4 March, 2016, but did not. **Hence, Gopani is not entitled to any payment for the power injected thereafter, when the EPA no longer subsisted. This principle has been recently reiterated by the APTEL in its Judgment dated 8 May, 2017 in Appeal No. 120 of 2016 as follows:**
- “10. I (iv) ...The crux of these two judgments is also that a generator cannot pump electricity into the grid without having consent/ contractual agreement with the distribution licensee and without the approval/scheduling of the power by the SLDC. Injection of such energy by a generator is not entitled for any payments.”

The above dispensation was reiterated by the Commission in its Order dated 25 July 2018 in Case No. 120 of 2018 relevant extract is reproduced as under:

21. *The Commission notes that merely on the basis of the MSEDCL's willingness to accept the proposal for execution of Long term EPA, GIE has injected power in the MSEDCL's grid without any valid EPA or formal contract. In fact, no valid EPA has eventually materialized between MSEDCL and GIE. The Commission while noting this fact rules that in line with the principle as set out in APTEL Judgment dated 8 May, 2017 in Appeal No. 120 of 2016 GIE is not entitled to any payment for the power injected, if any, other than that injected during FY 2014-15 for which MSEDCL has already made payment to GIE. **In order to maintain the grid discipline the Commission rules that GIE and for that matter any other RE Generator should not inject its power into the grid of MSEDCL or any Distribution Licensee without any valid contract or EPA.***

The Commission again emphasized the important of valid EPA and ruled in its Order dated 23 July 2018 in Case No 121 of 2018 as under:

“

13. *Emphasis of the Petitioner on the applicability of the administrative Policy of the Government on Renewable power is not relevant for a Petition before this Commission as **no legal right accrues with Petitioner unless an EPA is executed between the Licensee and the Generator.** In the instant case, there is nothing on record to suggest that EPA was even agreed to be executed. In any case, MSEDCL is exercising the option to enter into EPA through competitive bidding route by which it is discovering much lower rates to the generic rates which the Petitioner is claiming. The Commission is only concerned about the fulfillment of RPO target and cannot force any Distribution Licensee to buy wind power from any particular RE generator. Without a valid and subsisting EPA, the issues raised in the petition do not constitute a dispute between MSEDCL and UMPPL and therefore section 86(1)(f) of EA, 2003 cannot be invoked. For the reasons mentioned above, MSEDCL cannot be directed to off-take the power generated from projects of UMPPL.*

Above principle was based on the APTEL Judgments dated 8 May 2017 in Appeal No. 120 of 2016 which is squarely applicable and needs to be adopted in the present matter also. Accordingly, the Commission rules that MEDA is not entitled for any payment towards the power injected from its 5 projects without valid EPAs.

11. The Commission notes that MSEDCL through its Petition in Case No. 50 of 2019 had approached the Commission for approval of procurement of Wind Power from the Wind Generators under Group II, III and IV whose EPAs had expired at the Tariff of Rs. 2.52 per unit for balance useful life of that Wind project under MoU route. The Commission vide its Order dated 9 April 2019 has disallowed such request and directed MSEDCL to procure power from such Wind Generators through competitive bidding only. In the same Order, the Commission has further stated as follows:

“12. In view of the foregoing, the Commission deems it appropriate to authorize MSEDCL to decide the ceiling rate after proper due diligence at their end and float the tender for procurement of energy for period more than 1 year from Wind Generators whose EPA have expired. Competitiveness of the rate so discovered will be dealt with by the Commission during the tariff adoption process. Further, considering the fact that these Wind Generators were in EPA with MSEDCL for several years and their projects are already commissioned and running, MSEDCL may take appropriate deviations, if any, from provisions of Competitive Bidding Guidelines with prior approval of the Commission.”

In compliance of the Commission's above Order, MSEDCL had floated the tender for procurement of 500 MW Wind energy, from WTGs whose EPAs with MSEDCL expired. In response, MSEDCL had received bid of only 7 MW at a tariff of Rs. 2.52 per unit. The Commission by its Order dated 22 November 2019 in Case No 275 of 2019 has accorded the approval for such discovered rate of Rs. 2.52 per unit. In the said bidding process MEDA did not participate to sell the power from its 5 Wind Projects whose EPA had already expired during that period. Further, the Commission also notes that considering very poor response to such competitive bidding, MSEDCL filed a Petition in Case No 21 of 2020 which is yet to be scheduled for hearing in which among other prayers, MSEDCL has sought increase in ceiling tariff of Rs. 2.52 per unit for post expiry wind projects and new wind projects.

12. Thus, the Commission has always ordered for discovery of tariff through competitive bidding process and would not like to consider any concession for commercially operated wind generation plants. However, in the present case, projects involved are not commercial projects but these are demonstrative projects which were developed by MEDA for promoting Wind energy in the State. These demonstration projects were also allowed the then RE tariff for wind as was allowed to any other Commercial project. The Commission expects that MEDA will continue to perform its role and mandate of promoting Renewable Energy in the State. For the purpose of promotion of the RE generation in the state, the revenue earned from these demonstrative projects post expiry of their EPAs, can be redeployed for the same specific activity. Therefore, it would not be proper to ask MEDA to participate in competitive bidding for selling energy generated from such demonstrative project. Hence, as an exceptional case, the Commission is inclined to allow extended EPA for these 5 demonstrative projects on MoU basis. However, such approval of MoU based EPA is subject to a condition that MEDA will deposit revenue earned from sale of electricity from these Wind Projects in a separate account and such amount can be used for meeting O&M related expenses of these projects and balance amount needs to be used for setting up new demonstration projects as ruled in subsequent paragraph. The Commission notes that both parties have not agreed on tariff rate for Group-I projects. The Commission notes that Group-

I EPAs have EPA tenure of 20 years whereas Group -II, III & IV have EPA tenure of 13 years. Therefore, tariff for these projects post expiry of EPA cannot be the same. Therefore, the Commission cannot allow MEDA's request of allowing tariff of Rs. 2.52/kWh for all 5 Wind Projects irrespective of their Group. Accordingly, the Commission approves procurement of Wind power from MEDA's demonstrative projects at Rs.2.25 for Group-1 projects and Rs. 2.52 for Group – II and III projects on long term basis through MoU route till the useful life of the project i.e. 25 years as per provisions of RE Tariff Regulations, 2019. Such rate is in any case equal or lower than the rate discovered through competitive bidding for Wind projects with expired EPAs and further that the revenues received thru sale of energy from these projects is required to be redeployed for new demonstration projects. However, such tariff shall be applicable from prospective effect only and such Wind Power procured from these projects shall be eligible towards fulfilment of MSEDCL's Non-Solar RPO for the respective periods.

13. Having ruled as above, the Commission would like to note here that MSEDCL in Case No. 304 of 2018 has approached the Commission for approval of RfS and PPA for procurement of Wind-Solar Hybrid project on long term basis for 25 years to be established on MEDA's land (the land of above 5 projects and land at Sautada, Beed was indicated in the Petition). The Commission by its Order dated 18 December 2018 approved RfS and PPA. However, the Commission is not apprised by MSEDCL/MEDA regarding further development in the matter. The Commission notes that MEDA being a State Nodal Agency, responsible for promotion and development of renewable sector in the State, is committed to explore the new technologies in various sources of renewable sector. Above referred demonstrative Wind projects in the instant case were part of MEDA's efforts at early stage of Wind Energy Projects penetration in Maharashtra. However, in recent years lot of technological changes have emerged that claim to be more cost effective with higher CUF. Wind Solar Hybrid, Wind coupled with Battery or Hydro Storage are some examples of such emerging technology. Repowering of WTs who are on the verge of completing their useful life is the need of the hour. The Commission expects that MEDA would explore possibilities of setting up of new demonstrative projects to establish economics of such emerging technologies so as to build confidence in investors. For doing so, MEDA has option of filing petition for project specific tariff under MERC RE Tariff Regulations, 2019 for determining tariff for such demonstrative project. Therefore, the Commission deems it fit to direct MEDA to submit within a year, detailed report on its plan to setup new demonstrative projects.

14. Hence, the following Order:

ORDER

1. The Case No. 113 of 2020 is partly allowed.

2. The Commission accords approval to proposed power procurement arrangement between Maharashtra State Electricity Distribution Company Limited and Maharashtra Energy Development Agency from demonstrative projects at Rs.2.25 for Group-1 projects and Rs. 2.52 for Group – II and III projects on long term basis through MoU route till the useful life of the project i.e. 25 years as per provisions of RE Tariff Regulations, 2019. However, such tariff shall be applicable with prospective effect only after signing of EPA's.
3. Maharashtra Energy Development Agency shall deposit revenue earned from sale of electricity from these Wind Projects during this extended EPA period in separate account and such amount shall be used for O&M related expenses of these projects and balance amount needs to be used for setting up of new demonstration projects as ruled in paragraph no. 13.
4. The Wind Power procured from these projects shall be eligible towards fulfilment of Maharashtra State Electricity Distribution Co. Ltd.'s Non-Solar RPO for the respective periods.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member


(Abhijit Deshpande)
Secretary

