

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 236 of 2020

Case of Maharashtra Airport Development Company Ltd seeking approval for its power procurement plan and for undertaking competitive bidding as per guidelines issued by Ministry of Power, Government of India dated 30 January, 2019 for Medium Term Power Procurement for 4 years starting from 1 March, 2021 to 28 February, 2025.

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

Maharashtra Airport Development Company LtdPetitioner

Appearance

For the Petitioner : Shri Rahul Sinha (Adv)

ORDER

Date:14 January 2021

1. Maharashtra Airport Development Company Ltd (**MADC**), being deemed Distribution Licensee for MIHAN SEZ area at Nagpur, has filed this Case dated 20 December, 2020 seeking approval for its medium term power procurement plan and for undertaking competitive bidding for Medium Term Power Procurement for 4 years starting from 1 March, 2021 to 28 February, 2025 under Section 86 of the Electricity Act, 2003 (**EA, 2003**) read with Competitive Bidding Guidelines issued by the Ministry of Power (**MoP**) Government of India (**GoI**) dated 30 January, 2019.

2. MADC's main prayers are as under:

(i) Approve the plan for Medium term procurement of power in its capacity as a Distribution Licensee as per the Revised Guidelines for Procurement of Electricity for Medium Term from Power Stations set upon Finance, Own and Operate (FOO) basis dated 30.01.2019 issued by the Ministry of Power, Government of India, for the period of 4 years starting from 01.03.2021 to 01.03.2025;

- (ii) *As an interim prayer kindly allow MADC to start tendering process simultaneously in order to match time line of commencement of power from 01.03.2021. However, finalization of bidder and placing of LOA shall be done only after approval of Hon'ble Commission.*
- (iii) *Allow the deviation sought as per Clause No. 4 of the 'Revised Guidelines for Procurement of Electricity for Medium Term from Power Stations set up on Finance, Own and Operate (FOO) basis dated 30.01.2019 issued by the Ministry of Power, Government of India*
- (iv) *Allow MADC to charge consumers in the MIHAN SEZ area, the tariff that is applicable for the respective category of consumers in the MSEDC area of supply, as modified from time to time, as the '**maximum ceiling tariff**' in its area of supply, till such time the ARR and the tariff is determined by this Hon'ble Commission, and approve the appropriate tariff schedule as applicable in the MSEDC area of supply;*
- (v) *In case the requirement of power in the MIHAN SEZ increases from 16 MW, then in that case MADC be allowed to amend the contract to procure the required capacity .*
- (vi) *Direct MSEDC for extending its co-operation and support to MADC in supplying power to consumers in MIHAN SEZ.*

3. MADC in its Petition has stated as follows:

- 3.1 With a view to provide uninterrupted power supply in the MIHAN Area and in pursuance of an international competitive bidding process, a Concession Agreement dated 07 November 2007 had been signed between MADC and Abhijeet MADC Nagpur Energy Pvt. Ltd (**AMNEPL**) for developing and operating a coal-based power plant for supplying power to MIHAN SEZ area. Vide the said Concession Agreement, it was *inter alia* agreed between the MADC and AMNEPL, that AMNEPL would erect the power plant along with interconnection facilities, and MADC, on the other hand, would set up the distribution network in the MIHAN SEZ area and handover the same to AMNEPL for operation and maintenance. Supply of power would be done by AMNEPL directly to the consumers. The Government of India, Ministry of Commerce, vide Notification dated 03 March, 2010, changed the status of the SEZ Developers as Deemed Distribution Licensee.
- 3.2 The Commission vide its Order in Case No. 16 of 2011 dated 03 August, 2012 declared MADC to be a deemed Distribution Licensee under Section 14 of the EA, 2003 for the notified SEZ area.

3.3 The Commission, vide its Order in Case No 23 of 2013 dated 23 August, 2013 has rejected the petitions filed by MADC and AMNEPL as non-maintainable with the observation that the present arrangement between MADC and AMNEPL under the Concession Agreement involving generation and sale of electricity by a generating company to the consumers directly, including the price at which the electricity would be generated and sold to consumers under bilateral agreements, was not regulated by the Appropriate Commission and the said arrangement did not fall either under Section 62 or Section 63 of the EA, 2003.

3.4 Thereafter, MADC has purchased power through IEX and through short term tender, under the relevant Guidelines for Short-term Procurement of Power issued by MoP from time to time, as under:

- a) Through IEX during period from 22 November, 2014 to 28 February, 2015. From M/s. Lloyd for the month of March 2015 against short term power purchase tender.
- b) Through IEX during period from 1 April, 2015 to 10 June, 2015.
- c) From Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) during period from 11 June, 2015 to 30 October, 2016 against Short Term Power Purchase tender. Subsequently extended up to 31 December, 2016 and then up to 28 February, 2017.
- d) From MSEDCL during period from 1 March, 2017 to 31 August, 2017 against Short Term Power Purchase agreement approved by the Commission vide its Order in Case No. 175 of 2015 dated 27 December, 2016.
- e) From MSEDCL during the period from 1 September, 2017 to 31 August, 2018 against Short Term Power Purchase agreement approved by the Commission vide its Order in Case No. 116 of 2017 dated 04 August, 2017 read with Order in Case No. 125 of 2017 dated 30 August, 2017.
- f) From MSEDCL during the period from 1 September, 2018 to 31 September, 2019 against short term power purchase agreement approved by the Commission vide Order dated 19 July, 2018 in Case No. 191 of 2018 read with Order dated 20 August, 2018 passed in Case No. 238 of 2018.
- g) From MSEDCL during the period from 1 September, 2019 to 31 August, 2020 against short term power purchase agreement approved by the Commission vide Order dated 13 August, 2019 in Case No. 244 of 2019.

3.5 Presently MADC is purchasing power from MSEDCL from 4MW to 16MW in accordance with the Order dated 29 August 2020 passed by the Commission in Case No. 174 of 2020. This contract period is expiring on 28 February 2021.

3.6 Hence, MADC has filed the present Petition seeking approval for medium term Power Procurement Planning for the period starting from 1 March 2021 to 28 February 2025.

3.7 Insolvency proceedings have been initiated against AMNEPL. In this regard, the National Company Law Tribunal (**NCLT**) in its Order in C.P. No. 1315 of 2017 dated 21 September, 2017 has passed a direction to the Interim Resolution Professional and the Committee of Creditor (**COC**) to co-operate with the MADC for supplying electricity to SEZ area and also to extend all further co-operation as and when required by MADC. Also the NCLT in its Order dated 20 August, 2018 has duly protected the rights of MADC and has clarified that the liquidation process shall be subject to the rights of MADC.

3.8 MADC has filed MYT petition for Final Truing Up of FY 2014-15 and provisional Truing Up of FY 2016-17 to 2019-20 and MYT Petition for FY 2020-21 to FY 2024-25 on 29 November 2020.

3.9 MADC is approaching the Commission in pursuance of the Guidelines dated 30 January 2019 seeking approval of the Commission for the Medium-Term Power Procurement Plant and the Bidding documents in terms of the Model Bidding Documents.

3.10 In accordance with the Guidelines, MADC is proposing to initiate the process of procurement of power on Medium term basis for the period 1 March 2021 to 28 February 2025 as per the table given below:

Period	Peak load		
	09:00 Hrs to 13:45Hrs	14:00 Hrs- 16:45 Hrs	17.00 Hrs. -19:45 Hrs
<u>Including Base Load of 6 MW (RTC)</u>			
1.03.2021 to 28.02.2022	13MW	12MW	11MW
1.03.2022 to 28.02.2023	14MW	12 MW	11MW
1.03.2023 to 28.02.2024	15MW	13MW	12MW
1.03.2024 to 28.02.2025	16 MW	14MW	12MW

3.11 The successful bidder would supply power at the interface point of 220 kV AMNEPL (bus) and Maharashtra State Electricity Transmission Company Limited (**MSETCL**) transmission network at Khari-khurd Hingna, Nagpur. Hence, in this regard, MADC seeks a deviation in the interconnection point under clause 4 of the Guidelines as MADC distribution network in MIHAN SEZ is not directly connected to State Transmission Utility (**STU**) but connected through AMNEPL switchyard and transmission network. The Commission vide Order dated 18 November 2014 passed in Case no. 149 of 2014, the Order dated 13 October, 2016 passed in Case no. 100 of 2016, the Order 04 August, 2017 passed in Case No. 116 of 2017 and the Order dated 19 July, 2019 had allowed the said deviation in respect of the inter-connection point.

3.12 MADC has developed a SEZ area at MIHAN in which presently MADC has 3 number of HT consumers on 33 KV, 16 number of HT consumers on 11 KV and 52 number of LT consumers.

3.13 Further it is requested to approve applicability of MSEDL Tariff for the respective category as maximum ceiling tariff as per the proviso to Section 62(1) (d) of the EA, 2003 till such time the ARR and the tariff is determined by the Commission.

3.14 It is requested to approve the proposed Power Procurement Plan for procurement of 6 MW power to 16 MW of power for 4 years from 01 March 2021 to 28 February, 2025, through the Competitive Bidding Process in accordance with the existing Guidelines. The present requirement of power is 4 MW to 16 MW at the interface point of 220 KV AMNEPL Bus and MSETCL Transmission Network at Khairi-Khurd, Hingna, Nagpur.

4. At the time of E-hearing dated 7 January, 2021, MADC reiterated the submission made in the Petition. The Commission expressed its concern about the proposed interface point in 220kV AMNEPL switchyard in the background of Liquidation process of AMNEPL and directed MADC to make submission on the efforts taken by it for availing direct connectivity to STU network.

5. MADC in its additional submission dated 8 January, 2020 has stated as follows:

5.1 The NCLT vide its Order dated 20 August, 2018 has duly protected the rights of MADC and has clarified that the liquidation process shall be subject to the rights of MADC. Therefore, current arrangement of connecting to STU through AMNEPL 220 kV switchyard is still continuing as on date and MADC intends to align itself with the acquirer of the assets of AMNEPL (now in Liquidation) in order to avoid any disruption in Transmission facility at Khairi-Khurd, Hingna, Nagpur.

5.2 Further, as an alternate arrangement for InSTS connectivity, MSETCL is constructing 132/33 kV MIHAN SEZ sub-station outside SEZ of MIHAN adjacent to MIHAN boundary. The Petitioner has already handed over a piece of land of 3.62 acres MSETCL for construction of GIS sub-station. MADC intends to obtain InSTS connectivity from 33 kV bus of proposed 132/33 kV MIHAN SEZ sub-station. The scheme has been submitted to the Commission.

5.3 However, now MSETCL has requested for a land of about 5.56 acres, to which it is informed that MADC is not in a position to provide the said additional land as requested as the plots are already allotted.

5.4 It is requested to allow it to continue with the current interface point at 220 kV AMNEPL sub-station.

Commission's Analysis and Ruling

6. MADC has been recognized by the Commission as a deemed Distribution Licensee vide its Order in Case No. 16 of 2011 dated 03 August 2012 under Section 14(b) of the EA, 2003 being the Developer of the MIHAN SEZ.

7. MADC is presently procuring power under a PPA entered into with MSEDL through competitive bidding under the MoP Guidelines at a rate of Rs 4.89/kWh which has been approved by the Commission vide its Order dated 29 August, 2020 in Case No 174 of 2020. The term of that PPA is up to 28 February, 2021.
8. MADC has approached the Commission seeking approval for its medium-term power procurement plan and for undertaking competitive bidding as per the guidelines dated 30 January, 2019 issued by the MoP. As an interim relief, MADC is seeking to start tendering process simultaneously in order to match timeline of commencement of power from 1 March 2021. In addition to that MADC is seeking, approval for deviation in the bidding document for interconnection point; approval for applicability of ceiling tariff of MSEDL till the finalisation of tariff Order by the Commission.
9. Based on the issues discussed during these proceedings, the Commission frames following issues for its considerations:
 - a. Medium Term Power procurement and starting of tendering process.
 - b. Deviation in the bidding document for interconnection
 - c. Approval for applicability of ceiling tariff of MSEDL
 - d. Approval to amend PPA if requirement of power exceeds than the projected power

10. Issue a: Medium Term Power procurement and to start tendering process:

- 10.1 Currently MADC is supplying to 3 number of HT consumers on 33 kV, 16 number of HT consumers on 11 kV and 52 number of LT consumers having base load of 4 MW and peak load of 16 MW in MIHAN SEZ area. It is observed that total base of 65 consumers of previous year has now increased to total base of 71 consumers thus increasing the electricity demand.
- 10.2 MADC in its Petition has not made any submission supporting the increase in base load demand from 4 MW to 6 MW and also for reduction in the current peak demand of 16 MW to 12 MW for FY 2020-21 and incremental increase of one MW per year up to FY 2024-25 reaching up to 16 MW.
- 10.3 The Commission notes that base load might have increased due to increase in the number of consumers. Whereas Covid-19 pandemic may have affected peak Demand. The Commission also notes that MADC has projected the load for medium term power procurement in line with its MYT Petition filed before the Commission on 29 November 2020 as follows:

Particulars	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
Load(MW)	12	13	14	15	16

10.4 In absence of detailed basis of load projection in the present Petition and considering the fact that projected load is similar to that of existing demand being served by MADC, the Commission assumes that MADC as a distribution licensee has carried out the sensitivity analysis of the past, current and future trends/ situations for projecting its demand.

10.5 In view of above, the Commission approves the projected demand as submitted by MADC as follows:

Period	Time slots for Peak hours		
	09:00 Hrs to 13:45Hrs	14:00 Hrs- 16:45 Hrs	17.00 Hrs. - 19:45 Hrs
Base Demand (RTC) of 6 MW			
1.03.2021 to 28.02.2022	7MW	6 MW	5MW
1.03.2022 to 28.02.2023	8MW	6 MW	5MW
1.03.2023 to 28.02.2024	9MW	8MW	6MW
1.03.2024 to 28.02.2025	10 MW	8MW	6MW

10.6 The Commission approves the Medium-Term Power Purchase as per the Table at Para 10.5 above and permits MADC to start tendering process.

11. **Issue b: Deviation in the bidding document for interconnection**

11.1 MADC submitted that MIHAN SEZ network is not directly connected to STU but is connected via interface point of 220 KV AMNEPL (bus) and MSETCL transmission network at Khari-khurd Hingna, Nagpur. Therefore, MADC seeks approval to this deviation in the interconnection point as per the guidelines issued by MoP, GoI dated 30 January, 2019

11.2 The Commission notes that Clause 4 of the guidelines provides for any deviation from the process defined the in Guideline. Relevant extract of the same is as below:

“4. Any deviation from the Model Bidding Documents shall be made by the Distribution Licensees only with the prior approval of the Appropriate Commission. Provided, however, that any project specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents.”

11.3 The Commission notes that in its earlier Orders, it has approved deviation in interconnection point considering the infrastructure developed and the circumstances of MADC. As same conditions still exist, the Commission allows deviation with regard to the interconnection point for the procurement of medium-term power.

11.4 Having allowed deviation in interconnection point as above, the Commission notes that in its Order dated 29 August 2020 in Case No 174 of 2020, MADC was directed to explore possibilities of directly connecting to the transmission network of STU. Relevant extract of the Order is as follows:

11.3 MADC being distribution licensee has statutory responsibility of maintaining continuity and reliability of power supply in its area of supply. As order of NCLT will decide fate of AMNEPL's dedicated transmission line which is sole point of supply connection between MADC's distribution network and State Transmission System, MADC as an affected party should keep eye on the liquidation process of AMNEPL and should approach appropriate authorities from time to time to avoid any possible adverse ramification on its consumers. The Commission would like to remind MADC that in the past the Commission had suggested MADC to explore possibilities of directly connecting to the State Transmission System. However, till date the Commission is not aware of any action taken by MADC in this regard. Considering the emerging situation, the Commission expects MADC to seriously work on having separate connectivity with State Transmission System.

11.5 During the present proceeding on being specifically reminded about above directives by the Commission, MADC has made submission and stated that it has handed over the plot to MSETCL for building 132/33 KV Mihan SEZ GIS substation and it has been submitted to the Commission for in-principle approval of the same. The Commission notes that certain queries have been raised by the office of the Commission in this regard and it is expected that MSETCL, considering urgency, should immediately address the same to expedite the approval process. Also, any other differences between MSETCL and MADC should be resolved at the earliest to avoid further delay in the execution of the project.

12. Issue c: Approval for applicability of ceiling tariff of MSEDCL

12.1 The Commission further notes that MADC in the present Petition has again prayed that it should be allowed to levy tariff to its consumers by considering MSEDCL's tariff as ceiling tariff till Commission decides tariff for MADC. The Commission in its Order in Case No 174 of 2020 dated 29 August 2020 has already raised concern as regards MADC seeking the same relief again and again in each Petition. Relevant extract of the Order is as follows:

13. The Commission further notes that in present Petition, MADC has also prayed that it should be allowed to levy tariff to its consumers by considering MSEDCL's tariff as ceiling tariff till Commission decides tariff for MADC. In this regard, the Commission notes that such relief has already been granted by this Commission in its Order dated 20 January 2015 in Case No. 149 of 2014 as follows:

"20. In its capacity as a Deemed Distribution Licensee and to fulfil its obligation to supply electricity to consumers in the MIHAN SEZ, MADC has sought approval for short term power procurement and provisional tariff for supplying power to consumers. The Commission notes that MSEDCL is another Distribution Licensee in the same area. Thus, MADC's Licence area falls under the proviso to Section 62(1) of the EA, 2003 which provides that, in case of distribution of electricity in the same area by two or more Distribution Licensees, the Commission may fix a ceiling tariff for retail sale of electricity. MSEDCL's tariff is the only

approved tariff for the area. Hence, the Commission rules that the tariff approved for the respective consumer categories of MSEDC will be the ceiling Tariff for the MIHAN SEZ area.”

Based on the above dispensation only, MADC is levying tariff to its consumers for the last five years. Therefore, the Commission does not understand propriety of seeking same relief again.

Now again MADC is again praying for the same relief in present Petition which only shows casual approach of MADC not commensurate with the statutory responsibilities of a Distribution Licensee. The Commission also notes that MADC has recently filed its MYT Petition before the Commission which is being processed separately. Till that time, above quoted ruling shall be applicable in respect of levying tariff to consumers in MADC area.

13. Issues d: Approval to amend PPA if requirement of power exceeds than the projected power.

13.1 MADC in the present Petition has also prayed for approval to amend contract if power requirement goes higher than projected demand of 16 MW to procure required capacity.

13.2 The Commission notes that MADC's Petition does not contain any supporting justification for such prayer. The Commission is of the view that though Distribution Licensees are free to source power through any source/alternate source to meet growing requirement of their consumer demand, it is expected that Distribution Licensee shall do so by conducting fresh bidding process. It needs to be shown that the sourcing of power is done in a most economic and transparent manner. Amending existing contract to source higher quantum of power is not advisable and can not be allowed without analysing its implications. Hence, this prayer of MADC cannot be allowed.

13.3 MADC should explore all possibilities of sourcing cheapest power so that consumers should not be unnecessarily burdened with increased cost.

14. Hence following Order.

ORDER

- 1. The Case No. 236 of 2020 is partly allowed.**
- 2. The Commission approved the power procurement plan of MADC as per para 10.5 above.**

3. MADC should ensure that it completes the bidding process and approaches the Commission well in time considering the fact that the present power procurement arrangement ends on 28 February 2021.
4. Speedy efforts shall be made by MSETCL and MADC for ensuring the connectivity of MADC directly from STU.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

