

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

Case No. 48 of 2021

Case of Pune Bioenergy systems Pvt Ltd. seeking review of the Commission Order dated 22 March 2021 passed in Case No. 162 of 2019 for determination of Tariff for supply of electricity to Distribution Licensees in Maharashtra from 750 TPD capacity of Municipal Solid Waste processing project to be commissioned at Pune.

Pune Bioenergy Systems Pvt. Ltd.

..... Petitioner

Maharashtra State Electricity Distribution Co. Ltd.

..... Respondent No. 1

Maharashtra State Electricity Transmission Co. Ltd.

..... Respondent No. 2

Maharashtra State Load Dispatch Centre

..... Respondent No. 3

Coram

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

Appearance

For the

Petitioner

: Smt. Deepa Chawan (Adv.)

: Dr. Kunal Khemnari (Rep.)

: Sh. Nimish Vohra (Rep.)

Respondent No. 1

: Sh. Ravi Prakash (Adv.)

Respondent No. 2

: Sh. Jagannath Chude (Rep.)

Respondent No. 3

: Sh. E.T.Dhenge, (Rep.)

ORDER

Date: 3 July, 2021

1. Pune Bioenergy Systems Pvt. Ltd. (**PBESPL**) has filed the present Petition on 23 April 2021 under Section 94 (1) (f) of the Electricity Act 2003 (**EA**) and Regulation 85 & 92 of the MERC (Conduct of Business) Regulation 2004 seeking review of the Commission's Order dated 22 March 2021 in Case No. 162 of 2019 (**Impugned Order**) for determination of Tariff for supply of electricity to Distribution Licensees in Maharashtra from 750 Tons Per Day (TPD) capacity of Municipal Solid Waste (MSW) processing project to be commissioned at Pune.

2. **PBESPL's main prayers are as follows:**

- a) *correct the error of considering SBI MCLR rates of FY 2020-21 in place of FY 2019-20 for the purpose of calculating interest rates;*
- b) *address the inconsistently considering Tax rates while calculating ROE and discount rate;*
- c) *address the inconsistency w.r.t. Contract Demand charges. Either provide the benefit of zero Contract Demand charges to the Petitioner or allow them as a part of the O&M costs;*
- d) *correct the error of inadvertent disallowance in entitled 30% of Land cost towards RoW compensation of transmission lines*
- e) *address the inconsistency of treatment of Tipping fees by considering its receivables as a part of working capital requirement*
- f) *correct the error of recognizing CFA in tariff determination and the methodology involved*
- g) *correct the escalation rates for O&M and the Periodic O&M*
- h) *correct the omission of contingency costs in capital cost*
- i) *correct the omission of allowing terminal cost or such depreciation in light of the concession agreement already executed with PMC*

3. **PBESPL in its Case has stated as follows:**

3.1. PBESPL, on 20 August 2020, submitted a revised petition in accordance with the MERC RE Tariff Regulations, 2019 for supply of electricity to Distribution Licensee in Maharashtra from 750 TPD capacity of MSW processing project to be commissioned at Pune. The Commission has issued the Order for determination of Tariff dated 22 March 2021 in Case No. 162 of 2019.

3.2. In the impugned Order, there are certain apparent errors and certain matters have been ruled without appropriate discussion on them. Hence, PBESPL is approaching the Commission with this Petition seeking review of the Order.

3.3. This Petition is submitted for consideration and rectification of the apparent errors and review of the certain critical rulings of the Commission so that the resultant tariff for the Project is appropriately re-stated.

4. MSEDCL in its reply dated 22 May 2021 has stated as under:

4.1. PBESPL has failed to raise any plausible ground regarding mistake or error apparent on the face of record in the Order dated 22 March 2021. In a catena of judgements, the Supreme Court has held that a mere possibility of two views on a subject matter is not a ground for review.

4.2. Moreover, it is not the case of PBESPL that there is discovery of any new and important matter or evidence which, after the exercise of due diligence, was not within knowledge or could not be produced by it.

4.3. The Commission has given detailed reasons for the view taken after considering the PBESPL's contentions. Reconsideration of the entire matter cannot be undertaken in review petition. PBESPL is trying to equate the review proceedings with the original hearing of the appeal.

4.4. It is pertinent to highlight that MSEDCL has approached the Hon'ble Appellate Tribunal for Electricity (APTEL), assailing the Order dated 22 March 2021 passed by the Commission in Case No. 162 of 2019.

4.5. Therefore, in furtherance of the contentions raised and the contents stated hereinabove, the present Review Petition holds no merit whatsoever. The same is thus liable to be dismissed with heavy costs.

5. Maharashtra State Load Dispatch Centre (MSLDC) in its reply dated 27 May 2021 has stated as under:

5.1. Prayers sought by PBESPL in the present petition do not pertain to MSLDC. Hence, MSLDC is not responding to these prayers.

6. At the e-hearing through video conferencing held on 28 May 2021, the representative of the Petitioner reiterated its submissions as made out in the review Petition. The Commission

highlighted that MSEDCL has challenged the impugned Order before the APTEL and sought clarification from PBESPL whether the review Petition could be proceeded with during the pendency of the Appeal before APTEL. The representative of PBESPL clarified that they are only seeking certain correction in the Commission's Order dated 22 March 2021 in Case no. 162 of 2019 and highlighted that there is no nexus between the present review Petition and the grounds sought by MSEDCL before APTEL. The Commission directed PBESPL to file their written notes of arguments on the maintainability of the matter within 3 days.

7. PBESPL filed its written notes of arguments dated 31 May 2021 with the following additional points:

7.1. The Commission can proceed with the hearing of the present Review Petition for the following reasons:

i. The Review Petition in respect of the impugned Order dated 22 March 2021 was filed by PBESPL on 23 April 2021, within the time stipulated under Regulation 85 (a) of the MERC (Conduct of Business) Regulations, 2004.

ii. Thereafter, on or about 27 May 2021, MSEDCL preferred an Appeal under Section 111 of the Electricity Act, 2003, against the impugned Order dated 22 March 2021 with the APTEL. In fact, the said Appeal has been filed seeking condonation of delay as the stipulative time for filing the Appeal had lapsed. Thus, it is clear that the present Review Petition has been filed prior to the Appeal filed by MSEDCL. This submission is matter de-hors the fact that both the proceedings have been preferred by different parties.

iii. The Appeal filed on 27 May 2021, is presently sub-judice and has not been disposed of.

7.2. Thus, the present Review proceeding filed prior in point of time, when the Appeal preferred by MSEDCL is pending, can be considered and finally disposed of by this Commission. PBESPL relies upon the SC judgement in *Thungabhadra Industries Ltd. Versus. Govt. of A.P. AIR 1964 SC 1372* and Hon'ble Delhi High Court judgement in *Hari Singh Versus Smt. S. Seth AIR 1996 Del 21*.

8. The Commission notes that the Review Petition has been filed under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 which specifies as follows: Review of decisions, directions, and orders:

“85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of

due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.”

Thus, the ambit of review is limited and MSEDCL’s Petition has to be evaluated accordingly.

9. PBSEPL’s contentions and the Commission’s rulings on each issue are set out below, considering the provisions of Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004 which govern the review aspects.
10. Issue I: Marginal Cost of Funds Based Lending Rate (MCLR) considered for the FY 2020-21 instead of FY 2019-20:

PBSEPL’s Submission:

- 10.1. The Commission has considered the average SBI MCLR rates for FY 2020-21 for calculating the interest rates instead of the SBI MCLR rates for FY 2019-20 as provided for in the MERC RE Tariff Regulations, 2019. This is an error apparent on the face of record and needs correction.
- 10.2. The MERC RE Tariff Regulations, 2019 expressly specify the MCLR rate of the previous year to be considered. The relevant clauses of the Regulations state the following:

16.2 (c) For the purpose of computation of tariff, the average of the one-year Marginal Cost of Funds-based Lending Rate (‘MCLR’) as declared by the State Bank of India for the previous year plus 200 basis points, shall be considered as the normative interest rate;

19.3 Interest on Working Capital shall be the average of the one-year Marginal Cost of Funds based Lending Rate (‘MCLR’) as declared by the State Bank of India for the previous year plus 150 basis points.

- 10.3. The Tariff Order being released in FY 2020-21, makes the previous year to be FY 2019-20. The MCLR rate for FY 2019-20 which is 8.14% should have been considered for calculating the interest rates. Instead, the MCLR rate for FY 2020-21 which is 7.05% and is wrongly considered by the Commission.

- 10.4. The above error in consideration of SBI MCLR rate has affected the interest on term loans, interest on working capital and also the IDC cost.
- 10.5. The Commission is requested to review the apparent error in the consideration of MCLR rate. Accordingly, the correction would require rectification of all affected parameters.

Parameters	Value as approved in Order of Case No. 162 of 2019	Rectification as requested in review
Interest rate for long-term loan	9.05 %	10.14 %
Interest rate for working capital loan	8.55 %	9.64 %
Interest During Construction (IDC)	Calculated with interest rate 9.05 %	To be Calculated with interest rate 10.14 %

Commission’s Analysis and Ruling:

- 10.6. The Commission notes that in its impugned Order dated 22 March 2021, it has categorically noted that FY 2020-21 was coming to an end and therefore it has considered the MCLR for FY 2020-21 instead of FY 2019-20. The relevant section from the impugned Order is reproduced below:

“5.15.4 The Commission notes that the Petition was filed by PBESPL in the month of August 2020, hence the PBESPL has considered the average of 1 -year MCLR of SBI for FY 2019-20. Now the Commission is of the view that as the FY 2020-21 is approaching towards the financial year end and the Order has been made during the last month of the FY 2020-21, hence, the Commission considers the average of 1 -year MCLR of SBI for FY 2020-21 (i.e., from April 2020 to March 2021).”

- 10.7. Thus, after noting the provisions of the Regulations, the Commission has consciously considered the MCLR for FY 2020-21 so as to factor in realistic existing market dynamics and ensure that the end consumer and the project developer are not affected.
- 10.8. Such reasoned and considered decision of the Commission cannot be treated as error apparent on face of record or any ground for seeking review. Hence, review sought in this regard needs to be rejected.
11. Issue II: MAT rate considered for grossing up ROE

PBSEPL’s Submission:

- 11.1. The consideration of Tax rate in the Tariff Order is inconsistent and needs to be corrected. The apparent inconsistency is that the Commission has considered the Corporate Tax rate for calculating the Weighted Average Cost of Capital (WACC), whereas it has used the MAT rate for grossing up the post-tax ROE.
- 11.2. Tax rate has to be consistently considered i.e. the same Tax rate needs to be considered for calculating the WACC and for grossing up the post-tax ROE.
- 11.3. Moreover, as submitted in the original Petition under Case No. 162 of 2019, 80IA benefit of 10-year tax holiday is discontinued for new RE plants and corporate tax shall be applicable to PBESPL. Grossing up post-tax ROE with MAT rate will not be representative of the prevalent regime and would result in reducing the actual return on equity envisaged for the project.
- 11.4. PBESPL requests the Commission to gross up the post-tax ROE considering actual tax applicable to it, i.e., Corporate Tax Rate and use the same for calculating the WACC. Accordingly, the correction would require rectification in the following parameter:

Parameters	Value as approved in Order of Case no. 162 of 2019	Rectification as requested in review
Grossed up RoE	16.96 %	19.75 %

Commission’s Analysis and Ruling:

- 11.5. The Commission notes that the grossing up of RoE with MAT rate is as per the Regulation 18 of the MERC RE Tariff Regulations, 2019. While justifying such provisions, the Commission in its Statement of Reasons has stated as follows:

“4.5.3 Analysis and Commission’s Decision

The Commission has already clarified this aspect in the Explanatory Memorandum published along with the Draft MERC RE Tariff Regulations, 2019, as under:

.....

*This rate of return needs to be grossed up with applicable tax rate. **Regarding the applicable tax rate, the existing approach provides for consideration of MAT rate for first 10 years and applicable tax rate for remaining period. However, the effective tax rate for remaining period is also coming out close to MAT rate. It is proposed not to consider differential treatment over useful life. Hence, it is proposed to consider MAT rate prevailing as on 1st April of the previous financial year for the entire useful life of the project for grossing up Rate of Return.**”*

Hence, no change has been made to the Regulation on this account.”

Thus, commission’s decision of applying MAT rate for grossing-up of RoE was based on analysis that not only for first 10 years but most of the years of project life, MAT rate would be applicable if various exemptions in Income Tax Act are considered.

- 11.6. However, PBESPL has pointed out that 10-year tax holiday granted under Section 80IA of the Income Tax Act, because of which MAT become applicable for these 10 years, was no more applicable. The Commission notes that such exemption was applicable only for the projects to be commissioned till FY 2016-17. Hence, such benefit would not be applicable to project under consideration and in the absence of such benefit, project would be eligible for payment of Corporate Tax and not MAT. This situation has created difficulty in giving effects to the provisions of the Regulations in its letter and spirit. Hence, the Commission deems it fit to invoke its power under following Regulation 77 of RE Tariff Regulations, 2019 for removing this difficulty:

“77. Power to remove difficulties

If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by general or specific Order, make such provisions, not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty.”

- 11.7. Accordingly, the Commission rules that RoE will be grossed up by applicable Corporate Tax rate. Having ruled as above, the Commission notes that through Finance Act, 2020, the Government of India has introduced Section 115 BAA which ultimately provides options to eligible companies to either opt for lower corporate tax of 22% and forgo all exemptions/deductions available including MAT or continue with regular corporate tax rate of 30% and avail applicable deductions/exemptions whenever become applicable.
- 11.8. In present submission, PBESPL has stated that MAT would not be applicable to it. Under such circumstance, the Commission decides to consider lower corporate tax rate of 22% (effective tax rate is 25.17% after applying applicable cess) for grossing up of RoE. Same rate will also be used for arriving at WACC.
- 11.9. Thus, review of this aspect is allowed and accordingly changes in tariff computation has been undertaken.
12. Issue III: Contract Demand charges disallowed as part of O&M cost, but not directed to be waived off:

PBSEPL's Submission:

- 12.1. PBESPL had prayed to the Commission to grant the benefit of zero contract demand charges for the present Project.
- 12.2. The Commission has allowed to net off the energy consumption from the grid (during shut down and start-up), from the saleable units. In doing so, the Commission has disallowed the energy charges (including the Contract Demand charges) to be part of the O&M cost.
- 12.3. However, the Commission has not expressly waived the Contract Demand charges for the Project as was prayed by the Petitioner. Non-waiver of such charges in the Tariff Order is an inconsistent treatment and may create confusion at the time of signing EPA with MSEDCL.
- 12.4. The Commission may either waive off the Contract Demand Charges for the life of the Project or allow the same to be part of the O&M cost. Accordingly, the correction would require rectification in the following parameter:

Parameters	Value as approved in Order of Case no. 162 of 2019	Rectification as requested in review		
O&M Cost (1 st year)	Rs. 1,928.33 Lakh	Rs. 1,928.33 Lakh + Rs. 64.8 Lakh (Contract Demand Charges) = Rs. 1,993.13 Lakh	Or	Rs. 1,928.33 Lakh + consider the benefit of zero Contract Demand Charges for the life of the Project
Interest on Working capital		Increase on account of rise in O&M expenses, leading to change in working capital required		

Commission's Analysis and Ruling:

- 12.5. In this regard, the Commission notes that in the impugned Order it had specified that as the proceeding for the Tariff Determination was under Section 62 of EA, the Commission has allowed netting-off the power drawn from the grid with the power injected into the grid. The relevant excerpt from the impugned Order is reproduced below:

"5.12.35 The Commission notes that, PBESPL has also prayed for waving off Contract demand charges.

5.12.36 The Commission vide its MYT Order for MSEDCL in Case No. 48 of 2016 dated 30 November 2016 has addressed the issue of requirement of Start-up power for

generating units. The Commission has ruled that, the start-up power requirement for power plants may be availed from the Distribution Licensee through a separate connection or through the existing evacuation infrastructure. However, if power plants are having PPAs under Section 62 of the EA, the energy drawn by such power plants shall be netted off with the energy injected into the grid.

5.12.37 Since the present proceeding of Tariff determination is under Section 62 of EA, Commission allows PBESPL, to net off the power drawn from the grid during plant shutdown and start-up power requirement with the power injected into the grid from its MSW power plant. The Commission has considered this estimated energy consumption of 1.75 MUs as additional energy consumption during plant shut down and start-up power requirement and accordingly has reduced the Net energy generation from its MSW power plant.

5.12.38 Considering that the provision of netting off is available for PBESPL and the Commission has considered this energy consumption as discussed above, the separate provision of energy expenses of Rs. 269.6 Lakhs as a part of A&G expenses will not be required. Hence the Commission has reduced the A&G expenses accordingly.”

12.6. Thus, the Commission has clearly ruled that netting-off arrangement needs to be allowed to PBESPL which means any energy drawn by PBESPL’s project will be deducted from energy injected by PBESPL. Such arrangement does not require separate connection from Distribution Licensee and hence issue of levying Contract Demand Charges does not arise. Therefore, there is no error on this aspect in the impugned Order.

13. Issue IV: Incomplete cost allowed as part of compensation for Transmission RoW:

PBSEPL’s Submission:

13.1. Under the RoW compensation for transmission lines, the Commission has considered 15% compensation towards “Diminution of land value” but has not considered 15% compensation towards “Non-usability allowance”. 15% compensation towards “Non-usability allowance” is provided for in the MoP guidelines dated 16 July 2020 for payment of compensation for Right of Way (RoW) for transmission lines in urban areas.

13.2. The proposed transmission line for the project is an underground line in a municipality urban area wherein the compensation to be provided is relatively higher.

a. In line with the above, compensation of 30% (15% towards “Diminution of land value” + 15% towards “Non-usability allowance”) is to be provided. It is pertinent to note that the petitioner is set to incur compensation cost (30% of Land cost).

- b. Therefore, it is requested to allow compensation of 30% of Land cost towards RoW compensation of transmission lines.

Parameters	Value as approved in Order of Case no. 162 of 2019	Rectification as requested in review
ROW (transmission soft cost)	Rs. 5.09 Cr. (RoW compensation @ 15% of land value)	Rs. 9.96 Cr. (RoW compensation @ 30% of land value)

Commission’s Analysis and Ruling:

- 13.3. The Commission notes that PBESPL has relied upon following MoP ‘Guidelines for payment of compensation in regard to Right of Way (RoW) for transmission lines in urban areas’ dated 16 July 2020 for claiming additional 15% compensation towards “Non-usability allowance”:

“3(ii) Compensation towards diminution of land value in the width of Right of Way (RoW) Corridor due to laying of transmission line and imposing certain restriction would be decided by the States as per categorization/type of land in different places of States, subject to a maximum of 15 % of land value as determined based on Circle rate/Guidelines value/Stamp Act rates.

3(iii) In addition to the provisions mentioned at Para 3(i) and (ii) above, additional compensation in form of Non-Usability allowance up to 15% of the land value for the width of RoW corridor would be applicable in the notified urban areas. No construction activity of any kind would be permitted under the RoW of the transmission line.”

- 13.4. In this regard, the Commission notes that in the impugned Order it has already allowed 15% compensation towards diminution of land value as per para 3(ii) of the above quoted MoP’s guidelines. However, inadvertently non-usability allowance as per 3(iii) of above quoted guidelines has not been allowed. This is error apparent on face of record.
- 13.5. Therefore, the Commission allows 15% of land value towards non-usability allowance. Accordingly, cost towards RoW compensation is revised from Rs. 5.09 Cr to Rs. 9.72 Cr and same is used for tariff computation.

14. Issue V: Receivables from tipping fee not considered as part of Working Capital requirement calculation:

PBSEPL’s Submission:

- 14.1. The Commission has disallowed the receivables from tipping fees, which should be considered for 2 months as per the Clause 8.2.1 of the Concession Agreement (CA). Since,

payment for the tipping fee would be made within fifteen days of submission of tipping fee statement of the preceding month, PBESPL has to arrange for that amount of preceding month (30 days) + submission of signed tipping fee statement (15 days) + payment from PMC (15 days) = Total (60 days). The relevant Clause from the CA is reproduced below:

“8.2.1. The Tipping Fee shall be payable on monthly basis. PMC shall, within 15 (fifteen) days from the date of receipt of the tipping fee statement duly signed by the Concessionaire and an officer authorized by PMC in this regard, pay to the Concessionaire, an amount equal to 100% (one Hundred Percent) of the amount stated in the Tipping Fee Statement MSW Delivered/Processed.”

14.2. The Project has two sources of revenue – (a) Sale of power and (b) Tipping fee. For source (a) i.e. Sale of power, receivables equivalent to two months is considered to be part of the Working Capital. However, for the source (b) i.e. Tipping fee, receivables from tipping fee is not considered by the Commission to be part of Working Capital requirement. This is an inconsistent treatment and needs correction.

14.3. PBESPL requests the Commission to correct the apparent inconsistency and allow the receivables from tipping fees to be considered as part of working capital requirement computation.

Parameters	Value as approved in Order of Case No. 162 of 2019	Rectification as requested in review Petition
Working Capital requirement	Fuel costs for four months equivalent to normative Plant Load Factor ('PLF') + O&M expenses for one month + Receivables equivalent to two months of fixed and variable charges for sale of electricity calculated on the target PLF + Maintenance spares @ 15% of O&M expenses	Already approved components + Receivables equivalent to two months of receivables of Tipping fees

Commission’s Analysis and Ruling:

14.4. In this regard, the Commission in the impugned Order has already clarified that the Regulations 19.2 (c) of the MERC RE tariff Regulations 2019 stipulates that only the receivables of fixed and variable charges for sale of electricity are to be considered for computation of interest on working capital:

“19.2 The Working Capital requirement in respect of Biomass-based Projects, non-fossil fuel based Co-Generation Projects, and Waste to Energy Projects shall consist of:

- a) *Fuel costs for four months equivalent to normative Plant Load Factor ('PLF');*
- b) *O&M expenses for one month;*
- c) ***Receivables equivalent to two months of fixed and variable charges for sale of electricity calculated on the target PLF;***
- d) *Maintenance spares @ 15% of O&M expenses."*

(Emphasis Added)

Therefore, while computing the interest on working capital, the Commission has not considered the receivables on account of non-tariff income (Tipping Fees).

14.5. However, the Commission notes that Tipping Fees contribute almost 9-10% of annual cost of PBESPL and is used for reducing the tariff. As Tipping Fees is source of income for PBESPL and its contribution is almost 10% and benefit of it is being passed on through reduction in tariff, it would be appropriate to include its implication on working capital requirement. Hence, using its power of removal of difficulties under Regulation 77 of RE Tariff Regulations, 2019, the Commission rules that in case of MSW projects, two months receivables on account of Tipping Fees needs to be considered as part of Working Capital Requirement.

14.6. Review on this account is allowed. Same is accordingly reflected into the revised Tariff computation.

15. Issue VI: Determination of Tariff with Central Financial Assistance considered to be availed:

PBSEPL's Submission:

15.1. The treatment of CFA provided in the Order is not in line with the MERC RE Tariff Regulations, 2019. The Regulations provide that any CFA shall be considered as part of tariff only if it is availed, whereas the Commission has considered the CFA, to the maximum extent, already availed by PBESPL and has reduced the tariff to the extent of CFA. The relevant clause from the Regulations are as follows:

*"Clause 25.1: The Commission shall take into consideration any grant, subsidy or incentive offered by the Central or State Government or their agencies, including accelerated/additional depreciation benefit, **if availed**, while determining the tariff under these Regulations" [Emphasis added]*

15.2. Hence, considering the CFA already availed and reducing the tariff to the extent of CFA is an error apparent on the face of record by the Commission and needs correction.

15.3. The MNRE's Revised Guidelines of Waste to Energy Programme, 2020 mentions achievement of Financial Closure to be a pre-condition for being eligible for CFA, and also indicates the destination of the funds disbursed through CFA. The relevant clause from these guidelines is as follows:

"Clause 3: Eligibility Criteria

3.5 Loan

a. Waste to Energy (WTE) projects

*i). To avail financial support, the applicant must have availed term loan from any Bank/financial institution. **One time back ended** Central financial assistance for Waste to Energy projects through banks/FIs will be provided **for offsetting loan amount**. Loan may be taken from any Indian Bank (commercial and cooperatives)/Financial Institution or International Bank/Financial Institution.*

.....

6.1 Release of CFA to Waste to Energy Projects

*i) The **Developer would inform the Ministry about COD of the project** and request concern SNA for the physical inspection of the plant & fulfillment of plant performance. Representatives of SNA would visit plant to inspect plant performance after successful COD.*

*ix)The entire CFA will be released to the developer's loan account maintained in the lending FIs/banks for the purpose of offsetting the loan amount **only after successful COD** subject to submission of complete documents as per terms & conditions of 'Inprinciple' approval letter, guidelines and availability of funds."*

15.4. With hypothetically reduced tariff, it will not be possible to achieve financial closure for the Project, in the absence of which, CFA cannot be availed. This recursive nature of the relationship between achievement of Financial Closure and being eligible for CFA may potentially jeopardize the viability of the Project, if above the error pertaining to CFA is not corrected.

15.5. Moreover, the RE Tariff Regulations, 2019 clearly lays out the process of availing CFA and intimation of CFA being availed to the Commission. The relevant Clauses are:

"Clause 25.2: The State Nodal Agency shall inform the Distribution Licensee regarding any such grant, subsidy or incentives received by a Project Entity on a quarterly basis.

Clause 25.3: Any such grant, subsidy or incentives availed by a Project Entity shall be deducted by the Distribution Licensee in subsequent bills raised by the particular Project Entity towards sale of electricity in suitable instalments or within such period as may be stipulated by the Commission.”

- 15.6. As per the above clause, the State Nodal Agency i.e. MEDA shall inform the DISCOM about CFA, if any availed by the PBESPL. This makes the process of availing CFA transparent and eliminates any chances of misinformation or concealment of information by PBESPL.
- 15.7. The treatment of CFA as considered in the impugned Order is erroneous in the light of the provisions of MNRE’s scheme. It states that the CFA would be disbursed to the bank directly for offsetting loan amount post COD and after physical inspection of the plant by SNA. This would leave equity amount and IDC accrual unaffected by the payment of CFA.
- 15.8. However, the Commission has erred in the impugned Order, where CFA is deducted from the Capex. This has incorrectly deflated IDC and Equity which project is going to demand. Accordingly, subsequent computation of the Levelised tariff has been affected. Correct treatment would be to reduce the outstanding loan amount with CFA amount whenever it is credited by MNRE post COD.
- 15.9. Since the amount and timing of such CFA is uncertain at this moment, petitioner would reach out to the Commission with actual details of CFA amount, its date and then prevailing interest rates for arriving at tariff adjustment factor applicable thereafter.
- 15.10. Hence, at this stage, the PBESPL most humbly requests the Commission to determine Tariff without any reduction on account of CFA.

Parameters	Value as approved in Order of Case no. 162 of 2019	Rectification as requested in review
CFA	Value of Rs. 50 Cr. reduced from overall Capex	Not to reduce the Capital cost while determining levelized tariff at this stage Subsequently, it will reduce the outstanding loan amount as per actuals

Commission’s Analysis and Ruling:

- 15.11. In this regard, the Commission notes that it was aware of the provisions of RE Tariff Regulations which requires consideration of subsidy only if it is availed and hence in the impugned Order has determined tariff without considering CFA (Rs. 6.95/kWh) and with

CFA (Rs. 6.08/kWh). The Commission in its impugned Order has justified levying of tariff without CFA in initial years as follows:

“6.1.1 In pursuance of Regulation 9 of MERC RE Tariff Regulations, 2019, the Commission hereby determines the project specific levelised Tariff for the said MSW-based power project of PBESPL as Rs. 6.95/ kWh without considering the applicability of CFA and Rs. 6.08/kWh after considering the maximum CFA of Rs. 50 Crore.

6.1.2 The difference between the tariffs of with and without CFA is Rs. 0.88/kWh. The Net Present Value of the revenue generated from the difference between the tariffs results into Rs. 69.50 Crore calculated for the period of 25 years. The Commission opines that upon receiving CFA of Rs. 50 Crore, the balance amount of Rs. 19.50 Crore may be considered as inordinate and hence should not be passed on into the tariff. In view of the same, the Commission considers the levelized tariff of Rs. 6.08/kWh, which shall be applicable over a period of 25 years from the date of its Commercial Operation or for tenure of Concession Agreement, whichever is earlier. This Tariff Order shall be valid subject to fulfilment of Condition Precedent as outlined under Concession Agreement with PMC.

6.1.3 The Commission notes that PBESPL shall apply for the CFA in accordance with MNRE’s letter F. No. 20/222/2016-17 dated 28 February 2020 immediately after getting financial closure of the said MSW based power project. The Commission rules that, PBESPL and MEDA shall inform the Commission regarding the CFA or any such grant, subsidy or incentives received by PBESPL.

6.1.4 If PBESPL fails to receive the CFA within 48 months from the date of issuance of this Order after making all efforts, the PBESPL may file a Petition before the Commission to revise the tariff without considering the CFA. PBESPL shall also bring out clearly in that Petition details of the efforts made along with justifications for failure of these efforts in obtaining the CFA. The Commission shall take appropriate decision after considering the efforts made and scrutinizing the matter. If it is found that the PBESPL have submitted the requisite documents and have made all the efforts to avail the CFA, then the Commission may admit the Petition and accordingly may allow levy of tariff without CFA i.e. Rs. 6.95/kWh. In addition, the Commission may also determine the carrying cost on account of the lower tariff received in past period due to the consideration of CFA in the capital cost of the project. Such impact in tariff may be directed to be recovered from the Distribution Licensee in subsequent bills to be raised by PBESPL towards sale of electricity.”

Thus, the Commission has observed that if tariff is determined without considering CFA and such CFA amount if availed is reimbursed to Discom without altering the tariff determined, then generator would be accruing unintended amount of Rs. 19.50 Cr which cannot be allowed to be retained. Hence, to protect the interest of both parties, the Commission has ruled that in initial years, tariff determined with CFA (Rs. 6.08/kWh) would be applicable. Generator has to avail CFA in 48 months from CoD. In case even after taking all efforts, generator is not able to avail CFA then it can approach the Commission and the Commission may allow levy of tariff without considering CFA (Rs. 6.95/kWh). Further such higher tariff would be applicable from retrospective effect i.e. from date of CoD and generator would be compensated for lower revenue in the past period by way of carrying cost.

15.12. Such a reasoned decision balancing interest of both the sides cannot be the ground for review. Further, in the opinion of the Commission, such explicit ruling providing retrospective applicability of tariff without CFA with corresponding carrying cost, in case generator fails to avail CFA, would not pose any issue for financial closure.

15.13. Further, as far as PBESPL's contention that such arrangement would understate IDC and Equity contribution is concerned, in the impugned Order considering the fact that CFA would be available post COD of the project, the Commission has ensured that IDC is computed without considering CFA. Hence, IDC remains unaffected in tariff determined with or without CFA. Regarding RoE, it is normal financial principle adopted in any tariff determination process to reduce subsidy amount from total project cost and then on the reduced project cost, debt-equity ratio is considered.

15.14. Hence, there is no error on this aspect in the impugned Order.

16. Issue VII: Operation and Maintenance escalation rate calculated after considering the yearly avg. WPI and CPI for the period FY 2015-16 to FY 2019-20:
&
Issue VIII: Periodic Operation and Maintenance escalation rate calculated considering avg. yearly WPI for the years FY 2015-16 to FY 2019-20:

PBSEPL's Submission:

16.1. The Commission has calculated the escalation rate of O&M cost based on the Average yearly WPI and CPI of the past five financial years i.e. from FY 2015-16 to FY 2019-20 in accordance with the MERC Tariff Regulations, 2019. The Regulations cross refer to the

Clause 47.1(c) of the MERC (Multi-Year Tariff) Regulations, 2019 on matters of O&M escalation rate. The relevant clause from the MYT Regulations state:

“The Operation and Maintenance expenses for each subsequent year shall be determined by escalating these Base Year expenses of FY 2019-20 by an inflation factor with 50% weightage to the average yearly inflation derived based on the monthly Wholesale Price Index of the respective past five financial years as per the Office of Economic Advisor of Government of India and 50% weightage to the average yearly inflation derived based on the monthly Consumer Price Index for Industrial Workers (all-India) of the past five financial years as per the Labor Bureau, Government of India, as reduced by an efficiency factor of 1% or as may be stipulated by the Commission from time to time, to arrive at the permissible Operation and Maintenance expenses for each year of the Control Period.”

- 16.2. However, PBESPL would like to draw the Commission’s attention to the fact that the above Clause in the MYT Regulations is applicable for the projects having true-up mechanism in place to rectify error of estimate, if any. WtE Project of PBESPL would not enjoy such mechanism for correction.
- 16.3. O&M cost is the single major cost driver for the WtE project which has the highest sensitivity on the tariff. Therefore, its estimation needs to be accurate to protect commercial viability of the project. Accuracy depends on the base year O&M cost and the estimated escalation rate. Therefore, it is necessary to estimate relevant and realistic escalation rate to protect the viability of the project.
- 16.4. For realistic escalation over the project life, PBESPL requests the Commission to consider the horizon of WPI and CPI rates to be same as the project life i.e. 25 years. The average yearly WPI and Avg. yearly CPI for the period of FY 1995-96 to FY 2019-20 (25 years) comes out to be 5.73%.
- 16.5. However, the escalation rate considered by the Commission (based on the horizon of FY 2015-16 to FY 2019-20) is 3.59%, which if considered, will significantly depress the tariff.
- 16.6. Further, the Commission has recognized WtE projects to be in the same family as Biomass projects while calculating the working capital requirement. This is based on similarity in features like need for input feedstock, high O&M cost etc. Clause 19.2 of MERC RE Tariff Regulations 2019 recognizes WtE in the same family of Biomass and Co-gen projects:

“19.2 The Working Capital requirement in respect of Biomass-based Projects, non-fossil fuel-based Co-Generation Projects, and Waste to Energy Projects shall consist of...”

16.7. Unlike other RE projects, RE Tariff Regulations 2019 distinctly provides for escalation rate of 5% for Biomass projects. This takes care of above concern on realistic escalation rates. WtE projects should also be entitled similarly realistic escalation rates.

“47.2 The Biomass fuel price shall be revised by the Commission taking into consideration the Biomass fuel price determined by the Central Commission, or a normative escalation factor based on an independent study by the Commission, or 5% per annum, as the Commission may consider appropriate.”

16.8. Moreover, the Commission has power to relax regulations in such circumstances. Since, WtE projects are eligible for project specific tariff as per the RE Tariff Regulations, 2019; they can be accorded with specific O&M escalation rate.

16.9. Therefore, PBESPL most earnestly requests the Commission to consider the O&M escalation rate of 5.73%.

Parameters	Value as approved in Order of Case No. 162 of 2019	Rectification as requested in review
O&M escalation rate	3.59%	5.73%

16.10. Similarly, the Commission has approved the escalation rate for the periodic O&M cost based on the average yearly WPI values over the horizon of past five years i.e. FY 2015-16 to FY 2019-20.

16.11. On account of the same reasons as in case of O&M escalation rate, considering the average yearly WPI values of the past 25 years i.e. from FY 1995-96 to FY 2019-20 provides an escalation rate of 4.89%. Compared to this, the escalation rate approved by the Commission is 2.02%. Divergence in escalation rates as large as this significantly impacts the viability of the project.

16.12. PBESPL requests the Commission to consider the average yearly WPI values over the past horizon of 25 years and determine the escalation rate accordingly.

Parameters	Value as approved in Order of Case no. 162 of 2019	Rectification as requested in review
Periodic O&M escalation rate	2.02%	4.89%

Commission’s Analysis and Ruling:

16.13. The Commission notes that PBSPL had requested for similar relief in the impugned Order on which the Commission has ruled as follows:

“5.13.11 Regulation 20 of the MERC RE Tariff Regulations, 2019 stipulates that the Base Year O&M is to be escalated at the rate specified in the MERC MYT Regulations, 2019 over the Tariff Period for determination of the levelised Tariff. The Regulation 47.1(c), of the MERC (Multi-Year Tariff) Regulations, 2019, provides for escalation of O&M expense in subsequent years beyond the base year.....

.....

5.13.12 Accordingly, the Commission has analysed the last 5-year average WPI and CPI indices from FY 2015-16 to FY 2019-20 considering 50% weightage to WPI and CPI, which works out to 2.59% per annum after deduction of 1% efficiency factor as shown in below:

.....

5.13.13 The Commission further notes that the PBESPL has requested not to deduct efficiency factor from the O&M escalation rate. The Commission is of the view that waste to energy projects are relatively at nascent stage as compared to other renewable energy sources. The Commission is also aware that it requires additional efforts to reduce the foul smell, minimize emissions and maintain the plant PLF during the O&M unlike other RE sources. Hence, the Commission has considered annual escalation factor for projecting O&M expenses without deducting efficiency factor as 3.59% per annum.”

Thus, in the impugned Order the Commission has computed O&M escalation index of 2.59% based on five years data of WPI & CPI as provided in the Regulations. However, considering nature of Municipal Solid Waste project, the Commission has decided not to deduct efficiency factor of 1% and allowed higher O&M escalation index of 3.59%. Similarly, escalation on periodic O&M Cost is allowed at 2.02% based on last five years data of WPI.

16.14. In the present review Petition, PBESPL is re-iterating its submission in original petition. This cannot be allowed under review jurisdiction.

16.15. PBESPL has also contended that unlike other RE projects, the Commission in RE Tariff Regulations has provided escalation rate of 5% to Biomass project. In this regard the Commission notes that such escalation rate of 5% is for fuel cost of Biomass plant and not

for O&M Escalation. RE Tariff Regulations have provided same escalation rate for all RE projects. Hence, this connection of the PBESPL is not correct.

16.16. Hence, there is no error on this aspect in the impugned Order.

17. Issue IX: Contingency cost not considered as part of total soft cost:

PBSEPL's Submission:

- 17.1. The Commission in the impugned order has disallowed the contingency cost of 3% (as % of hard cost) citing that contingency risks like variation of USD rate may bring about adverse as well as favorable impact for PBESPL.
- 17.2. PBESPL submits that Hon'ble Ministry of Housing and Urban Affairs' guideline under Swachh Bharat Mission provides for a contingency cost of 3% of capital cost of the plant. Therefore, PBESPL requests the Commission to allow it as 3% of hard cost.
- 17.3. The contingency cost of 3% is considered for other unforeseen circumstances which may cause time and cost overrun in commissioning of the WtE plant.
- 17.4. Unforeseen events can significantly affect project timelines beyond control. During the ongoing pandemic of COVID-19, there were unpredictable lock-down for works and cross-border movement of machinery and people. During last year, MNRE and MoP have issued several notifications to extend project timelines to safeguard imposition of liquidated damages on the delayed projects. However, for the long gestation project like WtE, added implication on IDC on account of such delay is highly likely. Therefore, the contingency costs are needed to be approved while granting capital expenditure.
- 17.5. Further, the construction of the transmission line is now added in the scope of the PBESPL. It is set to cross 2 National Highways and one Railway line, getting the necessary approvals from concerned authorities, and RoW may induce delay since most of the government offices are running with limited resources during this pandemic period. In normal circumstances too, the Commission in its MYT Order for R-Infra (Transmission) (Case No. 201 of 2017) has approved contribution to contingency reserve at 0.25% of the original cost of fixed assets. Therefore, it is desired that contingency costs are approved for the proposed WtE project:
- 17.6. The proposed plant is set to import technology and equipment. It brings-in the exposure to Foreign Exchange Rate variation. Capital costs are proposed based on the quotations received from the vendors. The period between receiving quotation from the vendors, to

actually making payment is generally 2-3 years. Historically, the INR has always devalued w.r.t the USD over horizons of 2-3 years. Hence, based on historical data, it is more likely that the capital cost of the project would increase in INR terms as compared to that considered at the time of determining tariff. Contingency costs have been approved for similar WtE projects in Bihar, Gujarat, etc. in the past.

Parameters	Value as approved in Order of Case no. 162 of 2019	Rectification as requested in review
Contingency cost	-	3% of Hard Cost

Commission’s Analysis and Ruling:

- 17.7. The Commission notes that PBESPL in this review proceeding has submitted Ministry of Housing and Urban Affairs’ (MOHUA) guideline under Swachh Bharat Mission which provides for a contingency cost of 3% of capital cost of the plant and accordingly has requested the Commission to consider the same for its project. PBESPL has also submitted that unforeseen events like COVID-19 can affect the project timelines before control and has sought contingency cost for certain cushioning. It has further submitted that in the past various other State Commissions have approved contingency cost for MSW projects.
- 17.8. The Commission notes that PBESPL has brought new document on records and same needs to be considered appropriately.
- 17.9. The Commission notes that as per the MOHUA guidelines on ‘Usage of Refuse Derived Fuel in Various Industries’ dated September 2018, to determine Tentative Capital Cost for setting up to 100 TPD plant it has considered contingency reserve of 3%. The 3% contingency reserve is as per the table provided in the document to determine the Tentative Capital Cost for setting up to 100 TPD plant. Further, the Commission notes that the said document of MOHUA deliberates that the entire cost working is based on theoretical knowledge and discussion with various experts and is subject to change. Therefore, there is no firm basis to benchmark contingency cost as 3% of the total Hard cost.
- 17.10. However, at the same time the Commission also recognizes the current COVID-19 circumstances may impact project timelines which would impact project cost and therefore certain buffer needs to be provided to mitigate any unforeseen circumstances. Therefore, in line with MOHUA guidelines, the Commission also approves contingency cost of 3% of the total project cost approved by the Commission in the impugned Order.
- 17.11. Therefore, the Commission approves Rs. 704.68 Lakhs as Contingency cost for the PBESPL MSW project.

18. Issue X: Insufficient depreciation/ terminal cost considered while determining tariff:

PBSEPL's Submission:

18.1. The Commission has disallowed the terminal cost (10% of Capital cost). The Commission has stated in the Order that at the end of the project life, the PMC has been given rights under the Concession Agreement (CA) to either hand-back the entire project at nil cost or hand-over the vacant possession of land by PBESPL.

18.2. There seems to be a mistake in the interpretation of the clause of the CA. As per the CA, PMC can take a decision on hand-back of the entire project at nil cost by PBESPL or hand-over of the vacant possession of land by PBESPL. Hence, PBESPL doesn't have the right to decide in this matter and will have to abide by PMC's decision. The relevant clauses from the CA are reproduced below:

10.2(i) The Concessionaire shall, on the date of expiry of the Concession Period or subject to Article 12.6.2 upon termination of this Concession Agreement, hand back peaceful possession of the plant and Project Land free of cost and in normal operating condition

10.2(v) In the event, PMC does not wish to take over the plant, the Concessionaire shall be under an obligation to provide a vacant possession of the project Land, in which the Concessionaire shall be, notwithstanding anything contained in this Agreement, be responsible to dismantle and dispose the entire plant, including all movables and embedded machineries forming part of the plant, the manner as it deems fit and bear all costs for the same.

18.3. The present project is unlike regular BOO projects. In the eventuality of handover of the entire project at nil cost by the PBESPL to PMC, it cannot recover salvage value from the Project.

18.4. Moreover, in the second eventuality of hand-over of the vacant possession of land by PBESPL to PMC, it would need to incur additional cost to dismantle the plant and make the vacant land ready for hand over, which will in turn, offset any scrap value recoverable from the Project. Hence, in either of the eventualities, salvage value from the project is not recoverable from the project by PBESPL.

18.5. Therefore, PBESPL submits that the Commission may allow 10% of the capital cost to be recovered as terminal cost in the tariff or alternatively provide for depreciation of that 10% during the useful life of the project.

Parameters	Value as approved in Order of Case No. 162 of 2019	Rectification as requested in review		
Terminal cost	-	10% Capital cost	Or	100% depreciation during useful life

Commission's Analysis and Ruling:

- 18.6. The Commission notes that with respect to the issue of terminal cost, in the instant review Petition, PBESPL has made the same submission as made in the original Petition in Case No. 162 of 2019. Reiterating/rearguing same submission is not permissible under the review jurisdiction.
- 18.7. It is well settled regulatory principle to allow depreciation only upto 90% of the project cost and considered 10% as salvage value. However, by referring to provisions under Concession Agreement (CA), PBESPL is requesting to allows remining 10% amount through Tariff. In this regard, the Commission is of the opinion that although it is upto Pune Municipal Corporation and PBESPL to make various provisions under the CA, but in order to protect interest of larger consumers, the Commission cannot allow implication adverse provisions of such CA be passed on in the Tariff.
- 18.8. Hence, there is no error on this aspect in the impugned Order.
19. Issue XI: Direction not given to MSEDCL on payment security provision via LC and delayed payment surcharge
&
Wheeling charge, Regulatory Asset Surcharge, Pension Trust Surcharge, Cross Subsidy Surcharge & Additional Surcharge on sale of power to third parties not waived off

PBSEPL's Submission:

- 19.1. The Commission in the Tariff Order has decided not to provide directions to MSEDCL to provide for payment security provision via LC (equivalent to 6 months of bill amount). The Commission has also not allowed PBESPL to levy delayed payment surcharge of 1.25% on every month of delay on pro-rata basis beyond the payment due date.
- 19.2. Further, the Commission has also not waived off the Wheeling charges, Regulatory Asset Surcharges, Pension Trust Surcharges, Cross Subsidy Surcharges & Additional Surcharges

on sale of power to third parties. The Commission has stated that since the sale of power from the present project will be to MSEDCL, waiving off such charges is not relevant.

- 19.3. The Commission has stated in the Order that all conditions relating to rebate, late payment surcharge etc. shall be as per MERC RE Regulations, 2019 and the EPA will have provisions to deal with defaults in payment by the off taker. PBESPL submits that inclusion of such payment security provisions in the EPA will be subject to bilateral negotiations between PBESPL and MSEDCL and will not be as balanced as directed by the Commission.
- 19.4. PBESPL highlights that it is required to protect material commercial aspects of such project than just limiting to determination of tariff, especially the counterparty is also the regulated entity (a distribution licensee) under the watch of the Commission.
- 19.5. MoP in its Order dated 28 June 2019 has stated that despite having provisions regarding maintenance of adequate Payment Security Mechanism mainly in the form of Letters of Credit by the Distribution Licensees, such LCs are not being given and there is huge outstanding to Generators on account of unpaid power bills.
- 19.6. PBESPL had prayed to the Commission to issue such directions considering the history of long delay in payment by MSEDCL (as per the PRAPTI portal).
- 19.7. Therefore, PBESPL had requested the Commission to direct MSEDCL to provide for payment security provision via unconditional, irrevocable and revolving LC equivalent of 6 months of bill amount. It will allow the PBESPL to invoke the LC if MSEDCL fails to pay the monthly invoice within 60 days of invoicing. It also requests Commission to allow PBESPL to levy delayed payment surcharge of 1.25% on every month of delay on pro-rata basis beyond payment due date. This will help arranging additional working capital which is required to continue operation of the project in such situation.
- 19.8. If the payment from MSEDCL is inordinately delayed, then PBESPL will have no option but to sell power to third parties in interim, to secure cash flows to continue project operations. In such situation, high cost of WtE tariff as compared to other RE power would be a big challenge. Further, levy of third-party transaction charges will make it even more in-feasible to exercise the option to survive the project.
- 19.9. Generally, a municipal corporation like PMC might come to rescue in such situation by agreeing to procure power for itself. Therefore, PBESPL has requested the Commission to grant waiver on Wheeling charges, Regulatory Asset Surcharges, Pension Trust

Surcharges, Cross Subsidy Surcharges & Additional Surcharges for the life of the Project and for the eventuality of sale of power directly to such third party.

Parameters	Value as approved in Order of Case No. 162 of 2019	Rectification as requested in review
Directions to MSEDCL	-	LC (equivalent to 6 months of bill amount) + delayed payment surcharge of 1.25% on every month of delay
Waiver of third-party charges	-	Waiver on Wheeling charges, Regulatory Asset Surcharges, Pension Trust Surcharges, Cross Subsidy Surcharges & Additional Surcharges for the life of the Project

Commission’s Analysis and Ruling:

19.10. The Commission in the impugned Order has ruled as follows:

“6.1.8 All other conditions including rebate, late payment surcharge etc. as stipulated in MERC (Terms & Condition for determination of Renewable Energy Tariff) Regulations 2019 shall be applicable in the matter.”

Thus, the Commission has clearly ruled that late payment surcharge as stipulated in RE Tariff Regulations, 2019 shall be applicable. Said provision of RE Tariff Regulations is reproduced below:

“22. Late Payment Surcharge

In case the payment of any bill for charges payable under these Regulations is delayed beyond a period of 30 days from the date of billing, Late Payment Surcharge on simple interest basis at the one-year MCLR as declared by the State Bank of India as on 1st of the respective month plus 350 basis points per annum on the billed amount, shall be levied for the period of delay by the Project Entity”

Thus, no separate ruling on late payment surcharge is required.

19.11. Regarding, request for directing MSEDCL to provide payment security mechanism by way of Letter of Credit, the Commission notes that RE Tariff Regulations do not have any provision for the same. Hence, it is up to the contracting parties to negotiate for the same as providing such security involves expenses and while procuring such MSW power at much higher rate than other RE sources because of mandate given under the Tariff Policy,

Discom may like to negotiate for non-tariff issues. Nevertheless, Late Payment Surcharge has already been stipulated in Regulations for protecting interest of the generators. The Commission recognizes that timely payment to generator is essential for smooth running of the plant but at the same time it will be incorrect to direct the procurer to build in an additional payment security mechanism which involves an additional cost. Late payment surcharge would act as an incentive for timely payment to the generator. Also, PMC is an important stakeholder and beneficiary of the project and they could consider temporary financial support to PBESPL. It will be incorrect to burden the electricity consumers of the state with the additional costs which are not mandated. Hence, the Commission has left this issue for parties to negotiate and decide. Hence, there is no error in the impugned order on this issue.

19.12. On the issue of exemptions requested by PBESPL for selling power to third party on the event of default, the Commission in its impugned Order has clearly ruled that such requests cannot be dealt with in present proceedings as such charges are determined through separate tariff proceedings. Hence, there is no error on this aspect. Further, to keep records clear, the Commission notes that no 'Pension Trust Surcharge' is approved and levied in Maharashtra. PBESPL as a responsible entity should have checked the facts while stating so in their Review petition also.

20. In view of above analysis, the Commission is allowing:

- a. review on the aspect of grossing up of RoE with corporate tax rate of 22%,
- b. inclusion of 15% non-usability allowance under Transmission RoW,
- c. inclusion of receivables from tipping fees in Working Capital and
- d. allowing contingency cost in capital cost.

The same has been discussed in above para 11, 13, 14 and 17 respectively. Accordingly, the Levelised Tariff of the PBESPL's MSW based power project is revised as Rs. 7.45/kWh without considering the applicability of CFA and Rs. 6.53/kWh after considering the maximum CFA of Rs. 50 Crores.

The revised computations are shown in Annexure-1 of this Order.

21. Hence, the following Order:

ORDER

1. Case No. 48 of 2021 is partly allowed.

2. The Commission allows review on Issue II: grossing up of RoE with corporate tax rate, Issue IV: compensation for Transmission RoW, Issue V: Receivables from tipping fees in Working Capital and Issue IX: Contingency cost.
3. Accordingly, the Commission hereby determines the project specific levelised Tariff for the said MSW-based power project of PBESPL as Rs. 7.45/kWh without considering the applicability of CFA and Rs. 6.53/kWh after considering the maximum CFA of Rs. 50 Crore.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member



Annexure – 1: Summary of Levelised Tariff (with CFA)

MERC FORM 2.2 - Determination of Tariff for MSW based Power Plant in Pune																												
Particulars	Unit	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25		
Units Generation																												
Installed Capacity	MW	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19	13.19		
Gross Generation	MU	75.11	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	92.44	
Auxiliary Consumption	MU	12.44	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	17.26	
Transmission Loss	MU	0.04	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	
Energy to be netted off for consumption during start up and shut down	MU	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	
Net Generation	MU	60.88	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	73.38	
Tariff Components (Fixed Charge)																												
Fuel cost	Rs. lakh	200.64	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	246.94	
O&M Expenses	Rs. lakh	1,928.33	1,997.65	2,069.45	2,143.74	3,380.91	2,300.53	2,383.17	2,468.78	2,557.47	3,931.20	2,744.52	2,843.11	2,945.25	3,051.06	4,577.00	3,274.21	3,391.84	3,513.69	3,639.92	5,335.61	3,906.15	4,046.48	4,191.86	4,342.45	6,227.56	368.36	
Depreciation	Rs. lakh	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70	1,396.70
Interest on Term Loan	Rs. lakh	1,454.29	1,327.83	1,201.37	1,074.91	948.45	821.99	695.53	569.07	442.61	316.15	189.69	63.23	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Interest on Working Capital	Rs. lakh	113.76	129.01	131.41	133.94	159.77	139.43	142.40	145.53	148.84	177.93	156.04	159.95	164.08	168.46	201.36	178.00	183.20	188.71	194.56	232.00	207.35	214.34	221.77	229.66	272.57	-	
ROE (Pre-tax)	Rs. lakh	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85	1,343.85
Gross Fixed Cost (A)	Rs. lakh	6,437.57	6,441.97	6,389.72	6,340.09	7,476.61	6,249.44	6,208.59	6,170.88	6,136.42	7,412.77	6,077.74	6,053.78	5,068.48	5,178.67	6,737.51	5,411.36	5,534.19	5,661.55	5,793.63	7,526.76	6,072.65	6,219.97	6,372.78	6,531.27	8,459.28	-	
Less: Revenue from Tipping Fees	Rs. lakh	788.40	851.47	919.59	993.16	1,072.61	1,158.42	1,251.09	1,351.18	1,459.27	1,576.02	1,702.10	1,838.26	1,985.33	2,144.15	2,315.68	2,500.94	2,701.01	2,917.09	3,150.46	3,402.50	3,674.70	3,968.67	4,286.17	4,629.06	4,999.39	-	
Net Fixed Cost	Rs. lakh	5,649.17	5,590.50	5,470.13	5,346.93	6,404.00	5,091.02	4,957.50	4,819.70	4,677.14	5,836.76	4,375.64	4,215.52	3,083.16	3,034.51	4,421.83	2,910.42	2,833.17	2,744.46	2,643.17	4,124.26	2,397.95	2,251.30	2,086.61	1,902.21	3,459.89	-	
Per Unit COG																												
PU fuel	Rs. / kWh	0.33	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	0.34	
PU O&M Expenses	Rs. / kWh	3.17	2.72	2.82	2.92	4.61	3.13	3.25	3.36	3.49	5.36	3.74	3.87	4.01	4.16	6.24	4.46	4.62	4.79	4.96	7.27	5.32	5.51	5.71	5.92	8.49	0.50	
PU Depreciation	Rs. / kWh	2.29	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90
PU Interest on Term Loan	Rs. / kWh	2.39	1.81	1.64	1.46	1.29	1.12	0.95	0.78	0.60	0.43	0.26	0.09	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
PU Interest on Working Capital	Rs. / kWh	0.19	0.18	0.18	0.18	0.22	0.19	0.19	0.20	0.20	0.24	0.21	0.22	0.22	0.23	0.27	0.24	0.25	0.26	0.27	0.32	0.28	0.29	0.30	0.31	0.37	0.37	
PU ROE (Pre-tax)	Rs. / kWh	2.21	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	1.83	
PU Gross Fixed Cost (A)	Rs. / kWh	10.57	8.78	8.71	8.64	10.19	8.52	8.46	8.41	8.36	10.10	8.28	8.25	6.91	7.06	9.18	7.37	7.54	7.71	7.89	10.26	8.28	8.48	8.68	8.90	11.53	-	
Less: PU Revenue from Tipping Fees	Rs. / kWh	1.30	1.16	1.25	1.35	1.46	1.58	1.70	1.84	1.99	2.15	2.32	2.50	2.71	2.92	3.16	3.41	3.68	3.98	4.29	4.64	5.01	5.41	5.84	6.31	6.81	-	
PU Net Fixed Cost	Rs. / kWh	9.28	7.62	7.45	7.29	8.73	6.94	6.76	6.57	6.37	7.95	5.96	5.74	4.20	4.14	6.03	3.97	3.86	3.74	3.60	5.62	3.27	3.07	2.84	2.59	4.71	-	
PU Net Cost of Generation (CoG)	Rs. / kWh	9.28	7.62	7.45	7.29	8.73	6.94	6.76	6.57	6.37	7.95	5.96	5.74	4.20	4.14	6.03	3.97	3.86	3.74	3.60	5.62	3.27	3.07	2.84	2.59	4.71	-	
Levelised Tariff																												
Discount Factor		1.00	0.92	0.84	0.77	0.71	0.65	0.60	0.55	0.50	0.46	0.42	0.39	0.36	0.33	0.30	0.28	0.25	0.23	0.21	0.20	0.18	0.17	0.15	0.14	0.13	0.13	
Net Fixed Cost (Net Tariff)	Rs. / kWh	9.28	6.99	6.28	5.64	6.20	4.52	4.04	3.61	3.21	3.68	2.53	2.24	1.50	1.36	1.82	1.10	0.98	0.87	0.77	1.10	0.59	0.51	0.43	0.36	0.60	-	
Levelised Tariff	Rs. / kWh	6.53																										