

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 112 of 2022

Case of Maharashtra State Power Generation Company Limited seeking approval of the Commission to enter into Power Purchase Agreement and a Tripartite Agreement with Ideal Energy Projects Ltd. pursuant to Case IV Bidding Phase- III.

Coram
Sanjay Kumar, Chairperson
Mukesh Khullar, Member

Maharashtra State Power Generation Co. Ltd. (MSPGCL)Petitioner

V/s

Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) Respondent No.1

Ideal Energy Projects Ltd. (IEPL) Respondent No. 2

Appearance

For the Petitioner : Shri P.K. Kotecha, CE, MSPGCL
For the Respondent No.1 : Adv. Rahul Sinha, MSEDCL
For Respondent No.2 : Shri Uday Kamat, IEPL

ORDER

Date: 8 July, 2022

1. Maharashtra State Power Generation Company Limited (**MSPGCL**) has filed the Petition being Case No. 112 of 2022, on 9 June, 2022 seeking approval of the Commission to enter into Power Purchase Agreement (PPA) with Ideal Energy Projects Ltd. (IEPL) and a Tri Partite Agreement (TPA) with MSEDCL & IEPL pursuant to Case IV Bidding Phase- III.
2. **Main Prayers of MSPGCL are as follows:**

“

- a) Approve the selection M/s Ideal Energy Projects Limited as successful bidder.
- b) Direct MSEDCL to provide unconditional consent for entering into Tri-partite Agreement with M/s Ideal Energy Projects Limited.
- c) Allow MSPGCL to enter in Power Purchase Agreement with M/s Ideal Energy Projects Limited and Tri-partite Agreement with M/s Ideal Energy Projects Limited and MSEDCL.
- d) Condone any error/omission and to give opportunity to rectify the same.
Permit the Petitioner to make further submissions, addition and alteration to this Petition as may be necessary from time to time.....”

3. MSPGCL in its Petition has stated as under:

- 3.1 The Central Electricity Authority (CEA) vide its Notification dated 8 June, 2016, envisaged following five types for allowing flexibility of utilization of coal:
 - **Case-1:** Use of Coal aggregated with the State in its own State Generating Stations
 - **Case-2:** Use of Coal aggregated within one State in Generating Stations of other state’s utilities
 - **Case-3:** Use of Coal aggregated with State in Central Generating Stations and vice versa
 - **Case-4: Use of Coal by any State/ Central generating company in Private Generating Stations (IPPs)**
 - **Case-5:** Use of coal assigned to the Central Generating Company in their own plants or any other more efficient plants.
- 3.2 The Guidelines for Case - IV type bidding were issued by CEA on 20 February, 2017. The Government of Maharashtra (GoM) vide Government Resolution (GR) dated 15 May, 2017 appointed MSPGCL as State Notified Agency.
- 3.3 Accordingly, MSPGCL has implemented two phases of Coal tolling arrangements under Case IV Bidding in past as under:

Phase	Total Capacity of bid	Period	Name of the Successful bidder	Ceiling Tariff	Quoted Tariff	Capacity Offered
Phase I	400 MW	15 th April 2018 – 13 th January 2019	Dhariwal Infrastructures Ltd (DIL)	Rs. 2.80 / kWh	Rs. 2.760/kwh	185 MW
		21 st May 2018 (for 36 days)	Ideal Energy Projects limited (IEPL)			215 MW
Phase II	380 MW	2 nd Nov. 2019 to 31 st March 2022	Dhariwal Infrastructures Ltd (DIL)	Rs. 2.89/kWh	Rs. 2.889/kWh	185 MW
		Terminated due to event of default	Ideal Energy Projects limited (IEPL)			195 MW

3.4 The objective of Coal tolling arrangement is to optimize the cost of generation. Thus, the overall costs of power supplied under the tolling arrangement needs to be lower than the cost of generation from MSPGCL stations considered for tolling. Such optimization of the cost is on account of the efficient operational parameter and the reduction in landed cost of coal due to lower transit / transportation cost, whereby the coal procurement cost remains unaffected.

3.5 As per the provisions of the Case IV bidding Guidelines, MSPGCL had selected two Generating Stations i.e. Nashik Units No. 3 to 5 and Bhusawal Unit No. 3. The Ceiling Tariff was considered based on the quoted tariff discovered earlier under Case IV phase - II bidding i.e., Rs. 2.889/kWh plus impact of change in law Rs.0.47/kWh, for Mine Specific Coal charges along with other applicable charges and accordingly, the ceiling Tariff of Rs. 3.359/kWh was considered for floating a tender under Case IV Phase III arrangement.

3.6 MSPGCL submits that by proposing Nashik and Bhusawal Unit No. 3, under Case IV scheme, the burden on consumers will be lowered by 48 to 59 paise per unit.

3.7 MSPGCL floated tender, under CASE IV (Phase III) considering ceiling Tariff of Rs.3.359/kWh for purchase of 380 MW power on short term basis for a period of 12 months starting from 01 April, 2022 to 31 March, 2023 on Round the Clock (RTC) basis from Independent Power Producers (IPP) considering the use of coal from WCL Mines.

3.8 Notice inviting Tender (NIT) was issued on 28 February, 2022 and Request for Proposal (RfP) was uploaded on Discovery of Efficient Electricity Price (DEEP) Portal on 2 March, 2022. The last date for online submission was 28 March, 2022 which was further extended up to 7 April, 2022. The date of opening of Bids which was initially kept on 29 March, 2022 was also extended up to 8 April, 2022.

3.9 In response to the RfP, 2 (two) Bidders have submitted their Bids before the deadline of Bid submission. (i.e., 7 April 2022) The Bids were opened on 8 April, 2022 as under:

Bid	Name of Bidder	Name of the Plant	Location of the Power Station	Installed Capacity (MW)	Capacity Offered (MW)	% of total Capacity
1/2	Ideal Energy Projects Limited (IEPL)	Ideal Energy Projects Limited	Near Village Bela, Tah. - Umred, Dist.- Nagpur, State- Maharashtra, P.O.- Bela 441115	270 MW (1 x 270 MW)	180 MW	47% - 53%
2/2	Prithvi Ferro Alloys Private Limited (PFAPL)	Gupta Energy Private Limited	Ghughus, Village Vsegaon, Dist. Chandrapur, Maharashtra	120 MW (2 x 60 MW)	100 MW	21%

- 3.10 A working Committee was constituted for technical and financial evaluation of the Bids. Based on the scrutiny of the documents submitted by the bidders, the Working Committee formed for Evaluation of Technical and Financial Bid held that M/s Prithvi Ferro Alloys Private Limited does not fulfil the Eligibility criteria as provided in Clause 2.2 (d) of the RFP and as per clause no. 4.1.1 (c) of MoP’s Case-IV Guidelines dated 20 February, 2017 i.e., bidders must have installed capacity equal to or more than 200 MW, against which the installed capacity of Prithvi Ferro Alloys Private Limited was 120 MW (60 MW x 2 Units).
- 3.11 Accordingly, the Working Committee recommended disqualification of the Bidder (M/s Prithvi Ferro Alloys Private Limited) and also recommended for opening of price bid only for M/s Ideal Energy Projects Limited as the technical bid was found meeting the qualifying requirements.
- 3.12 Based on the qualification of single bidder, i.e., IEPL , the Opening of initial price offer was undertaken through DEEP portal on 27 April, 2022. The result of the initial price offering was as follows:

Price Header	Ideal Energy Projects Limited
Bid-Qty-MW	180
Ceiling Tariff	3.359
Bid Price-Rs/unit	3.358
Min. Order Qty-MW	180

- 3.13 Since IEPL was the single bidder, the reverse auction was not conducted on MSTC’s DEEP portal. IEPL has provided the discount of only Rs. 0.001 paise per unit on the ceiling tariff.
- 3.14 As per Clause 4.3 (iii) of the Case IV Guidelines, the approval of the Commission is required for selection of bidder, if number of bidders responding to RfP is less than two. The relevant extract of the Case IV Guidelines is reproduced herein below:

“4.3 E-Auction Process:

iii. To ensure competitiveness, the minimum number of Bidders should be at least two for each requisition. If the number of Bidders responding to the RFP is less than two, and Procurer still wants to continue with the selection process, the selection of that single Bidder may be done with the consent of the Appropriate Commission.”
(Emphasis Supplied)

- 3.15 In view of this, MSPGCL requests the Commission to approve the selection of IEPL done through the transparent bidding process on DEEP portal as per Guidelines issued by the MoP, GoI and allow MSPGCL to enter in PPA with IEPL and TPA with MSEDCL & IEPL.

- 3.16 MSPGCL informed MSEDCL about the coal tolling arrangement. MSEDCL has neither accepted nor rejected the ceiling tariff, and no reply was communicated by MSEDCL in response to the letters from MSPGCL.
- 3.17 However, MSEDCL vide its letter dated 03 June 2022 has given its conditional consent for signing the tripartite agreement subject to condition that MSPGCL is to control the impact of future change in law events by ensuring proper coal mix such that net variable rate including change in law events will not exceed discovered tariff.
4. **IEPL in its reply dated 20 June, 2022 has stated that:**
- 4.1 IEPL concurs with the stand of MSPGCL as it is in line with standard bidding document/ norms and Case IV Bidding Guidelines.
- 4.2 IEPL reiterates that any change in the coal cost needs to be borne by the buyer.
5. **MSEDCL in its reply dated 21 June, 2022 has stated as under:**
- 5.1 In view of likely benefits of about 48 to 59 paise per unit as envisaged by MSPGCL in the coal tolling arrangement, MSEDCL requests the Commission to consider the request of MSPGCL and the Commission may approve the selection of IEPL as successful bidder against one unit of Nashik TPS having last four months average variable rate of Rs. 3.949/kwh for supply of 180 MW RTC power.
- 5.2 MSEDCL submits that in response to MSPGCL letters for signing of TPA with successful bidder, MSEDCL vide letter dated 3 June, 2022 has communicated the consent for signing of TPA subject to the condition that MSPGCL should control the impact of future change in law events, if any by ensuring proper coal mix such that net variable rate including change in law (CIL) events will not exceed the quoted rate of Rs.3.358/kwh.
- 5.3 MSEDCL agrees with the contention of MSPGCL that CIL events are not within the control of the parties of the Bid. However, parties in the Bid can take actions to minimize the impact of such CIL events. Supply of cheaper coal to nullify/minimize the impact of CIL event will definitely minimize the compensation to be paid to the affected party due to CIL events.
6. At the E- hearing held on 24 June, 2022 MSPGCL, IEPL and MSEDCL reiterated their respective submissions made in the Petition and replies. The Commission enquired from MSPGCL as to whether by accepting Mine Specific Price (MSP) Coal, MSPGCL has foregone its entitlement of linkage coal price under Fuel Supply Agreement (FSA). The Commission allowed MSPGCL to make its additional submission within three days.

7. MSPGCL in its rejoinder submission dated 28 June, 2022 has stated that:

- 7.1 The present additional submissions are being filed in reply to the queries raised by the Hon'ble Commission during the hearing dated 24 June, 2022 and pursuant to the liberty granted by the Hon'ble Commission during the said hearing.
- 7.2 The queries raised by the Commission during the hearing held on 24 June 2022 are outlined as below:
- a) Whether by accepting M S P (Coal), MSPGCL has foregone the right under FSA.
 - b) By considering MSP Coal, is there any deviation in determination of Ceiling Tariff for which no approval was sought?

Whether by accepting MSP Coal, MSPGCL has forgone the right under FSA:

- 7.3 As per Clause 3.1.1 of the FSA, the total contracted capacity with WCL will be supplied from the Sellers' Mines which are specified under Coal Field of WCL in Schedule 1. With respect to the price of the coal, under Clause 1.1 (e) of the FSA, the base price is clearly defined as the price notified from time to time by Coal India Limited or WCL. The similar provision is also reflected in Clause 8.1 of FSA, which clearly states that the base price of the coal to be provided by Coal India Limited may undergo change from time to time and Purchaser is obliged to procure the coal at the said rates. Further, Clause 3.3 of FSA, also provides that Coal India Limited shall endeavour to supply coal from own sources and also have an option to supply from alternate source in case of any shortfall.
- 7.4 As specified in FSA, coal allocated from the source of the mine of the coal field of WCL, will be supplied to MSPGCL at the price notified from time to time by CIL or WCL and applicable at the time of delivery of coal.
- 7.5 With respect to MSP coal, as per WCL Circular No. WCL / GM(M&S) / 2019 / 307 dated 1 November 2019, it has clearly stated that in case of supply of coal from the different source of mine other than from where MSPGCL gets their supply of coal, Mine Specific Price shall be applicable. This will be applicable to 11 mines from 2 November 2019. The said mines are covered under the Coal field as specified in the FSA. The said Notification, read with the above outlined clause of FSA, specifies that WCL can provide coal from any mine at a notified price which by way of Circular dated 1 November 2019 has been amended and revised for specific mine. Accordingly, the price as per WCL Notification is a notified price only but limited to 11 specific mines and in line with clause 1.1.(e) and clause 8 of FSA, allows WCL / CIL to change and notify the price on time-to-time basis.
- 7.6 MSPGCL vide its letter dated 4th July 2020 to WCL, has stated that supply of coal under MSP is contrary to the terms of FSA signed and WCL is obliged to supply coal at notified price to MSPGCL. MSPGCL requested WCL to supply coal at notified price only as per agreed terms of FSA. WCL replied vide its letter dated 6th July 2020, that it has clearly stated that as per Mine Specific policy, Subsidiary Companies of Coal India Limited are entitled to notify the prices of Mine Specific Sources and therefore, the prices notified by

subsidiary companies become new Notified Prices for such sources. In addition to the above, WCL has also stated that prior to 2 November 2019, MSPGCL was getting coal on old notified prices which post notification, the said mines are identified as “Mine Specific Sources”, new notified price has come into effect which is payable by all Power & Non-Power Sector consumers taking coal from such sources under FSA and hence it does not violate any clause of FSA. Also, as per the policy, existing FSA holder is not required to enter into separate MoU for coal from Mine Specific Sources as existing FSA provides for supply of coal at notified prices as amended from time to time. WCL also communicated that due to less availability of coal from notified pried mines, WCL will supply coal against existing FSA from Mine Specific Sources, Cost Plus sources as well as Non-Mine Specific Sources to meet the FSA quantum.

7.7 MSPGCL has on several occasion shown its displeasure to WCL on acceptance of Mine Specific Coal and has also requested Secretary , Ministry of Coal to issue directives to Coal India Ltd. to reduce basic coal cost of WCL at par with its other subsidiaries viz MCL & SECL. Even the clear denial of the offer to WCL to buy Mine Specific Coal, WCL unilaterally issued Mine Specific Coal Rate notice dated 1 November 2019 for 11 specified mines, and it made applicable to MSPGCL w.e.f. 2 November 2019.

7.8 Therefore, despite earlier resistance by MSPGCL on MSP Coal, MSPGCL has provided consent to accept the Mine Specific Coal as a Mine Specific notified coal, considering the above letter of WCL, depletion of coal stock at MSPGCL Generating Station with current coal shortage scenario and provisions as specified in FSA. Moreover, MSPGCL Units are geographically situated close to WCL area and hence WCL coal is largely monopoly commodity for Coal sourcing for MSPGCL to cater its requirement that too by and large in unregulated regime.

7.9 Further, WCL has identified majority of Open Cast (OC) coal mines under Mine Specific source and majority of Underground (UG) mines under Notified Coal mine. MSPGCL submits that most of the notified mines are UG mines whereby the production of coal is insignificant and cannot meet MSPGCL’s requirement and hence dependence on MSP coal has been increased. The details of the OC and UG mine identified by WCL are provided as below:

Mine Source	Cost Plus	Mine Specific			Notified			Total
	OC	OC	UG	Total	OC	UG	Total	
Bander		2		2		1	1	3
Kamptee		5		5		4	4	9
Pench Kanhan	1				2	7	9	10
Tawa Valley			1	1		2	2	3
Umrer		3		3				3
Wardha Valley	10	9	1	10	1	5	6	26
Grand Total	11	19	2	21	3	19	22	54

7.10 Post identification of certain coal source as MSP, the coal quantity allocation from such mine has been gradually increasing and currently is around 63% of the total coal allocation whereas the coal from earlier notified sources has reduced to the extent

of only 9%, which demonstrates that the coal allocated from Notified source by WCL has gradually reduced to large extent. The detailed break-up of coal allocation from WCL for FY 2021-22 from different type of sources is outlined as below:

Coal Allocation for FY 2021-22		
Type of Mine Source	Quantity (Tonne)	Allocation - %
Cost Plus	81,80,704.32	27.95%
MSP	1,84,72,141.00	63.12%
Notified	26,12,006.87	8.93%
Total	2,92,64,852.19	100.00%

7.11 With respect to the Nashik Power Station, which has been considered as a Generating Station for Case IV Phase III, the total allocation in last 4 months i.e., from January 2022 to April 2022 is outlined below, which identifies around 70% of cost allocation from MSP Coal source:

Coal Receipt from	Jan-22	Feb-22	Mar-22	Apr-22	Total	%
Notified Grade Coal	7.88	23.25	6.9	3.32	41.35	5.68
MINE Specific Coal	121.29	108.18	114.3	167.22	510.99	70.25
Cost Plus Coal	27.14	46.55	81.9	19.47	175.06	24.07
TOTAL	156.31	177.98	203.1	190.01	727.40	100.00

7.12 MSPGCL submits that whatever coal is available under heading MSP is a notified coal only with add-on price as specified by WCL. Hence the ceiling tariff is derived considering present allocation of MSP Coal.

7.13 Therefore, considering above it is submitted that MSPGCL has not foregone any right under FSA, but has made best efforts to optimise coal cost and maintain coal stock within the available options.

By considering MSP Coal, is there is deviation in determination of Ceiling Tariff for which no approval was sought?

7.14 As per the Guidelines dated 20 February 2017, the ceiling tariff to be considered for the tariff bids shall be the variable cost of generation of the State generating station whose power is to be replaced by generation from IPP.

7.15 With respect to the approval of Tariff, as per Clause 7 of the Guidelines, it clarifies that since the quantum and tariff discovered through the bidding process is within the approved Tariff Orders, the same will be considered to be deemed approved by the said Commission.

7.16 In the light of clause 3.3 of MoP's Guidelines, at the time of floating the tender for Case-IV (Phase-III), considering MSPGCL's Stations, against which Case-IV implementation was planned (i.e., Nashik and Bhusawal Unit 4 TPS), the ceiling tariff was computed within the approved operational parameters as specified in the Tariff Order

dated 12 September, 2018 in Case No. 196 of 2017 and the actual landed price of MSP Coal of the specific grade to be delivered to IPP and GCV of the said generating Stations.

7.17 With respect to Ceiling Tariff and in line with the suggestion of MSEDCL (being an ultimate buyer), the same was considered based on the quoted tariff discovered under Case IV bidding i.e., Rs. 2.889/kWh plus impact of change in law Rs.0.47/kWh, for MSP along with other applicable change in law event notified between November 2019 to March 2022 by Coal India Limited / WCL. Accordingly, the ceiling tariff of Rs. 3.359/kWh was considered for floating a tender under Case IV Phase III arrangement.

Commission's Analysis and Ruling:

8. The Commission notes that the present Petition has been filed by MSPGCL seeking approval of the Commission to enter into Power Purchase Agreement with Ideal Energy Projects Ltd. and a Tripartite Agreement with MSEDCL & Ideal Energy Projects Ltd. pursuant to Case IV Bidding Phase- III under Coal Tolling Arrangement.
9. The Commission notes MSPGCL's submission that in the bidding process there was a single qualified bidder and as per Clause 4.3 (iii) of the Case IV Bidding Guidelines, the approval of the Commission is required for selection of bidder, if number of bidders responding to RfP is less than two.
10. The Commission notes the submission of IEPL that it concurs with the stand of MSPGCL as it is in line with standard bidding document/ norms and Case IV Bidding Guidelines. IEPL has submitted that any change in the coal cost needs to be borne by the buyer.
11. MSEDCL has consented with the Agreements and requested the Commission to consider the request of MSPGCL to approve the selection of IEPL as successful bidder' against one Unit of Nashik TPS. MSEDCL further submitted that MSEDCL agrees with the contention of MSPGCL that CIL events are not within the control of the parties of the Bid. However, parties in the Bid can take actions to minimize the impact of such CIL events. Supply of cheaper coal to nullify/minimize the impact of CIL event will definitely minimize the compensation to be paid to the affected party due to CIL events.
12. Having heard all the parties and considering the submissions made, the Commission is of the view that there are two issues which need to be analyzed in the Case to arrive at conclusion as to whether the MSPGCL shall go ahead in the phase -III of Case IV bidding or not. Therefore, the Commission has framed and analyzed following two issues in subsequent paragraphs.

Issue No.1: Whether MSPGCL has followed due process of Competitive Bidding to ensure fair bidding process?

Issue No. 2: Whether the Coal Tolling arrangement proposed in phase -III of Case -IV bidding is beneficial to the end consumers of MSEDCL?

13. The two issues framed by the Commission, its analysis and the Commission's Ruling on both the issues is as under:

Issue No.1: Whether MSPGCL has followed due process of Competitive Bidding to ensure fair bidding process?

14. The Commission notes that MSPGCL has followed one stage bidding process for selection of the bidder for award of the Contract. Two envelop method (Application & financial bid) in one stage method has been adopted by MSPGCL wherein the financial bids of only qualified Applicants are opened.
15. The Commission notes that Notice inviting Tender was issued on 28 February, 2022 and Request for Proposal was uploaded on DEEP Portal on 2 March, 2022. The last date for online submission was 28 March, 2022 which was further extended up to 7 April, 2022. The date of opening of bids which was initially kept on 29 March, 2022 was also extended up to 8 April, 2022. In terms of the bid specification, the potential bidders who have registered on MSTC's DEEP portal and paid the portal fees were allowed to download the tender document from the portal and seek clarifications/request changes on the terms and conditions of bid specification.
16. The Commission notes that MSPGCL vide Office Note dated 8 March 2022 has constituted a Committee for evaluation of bids to be submitted under Case-IV (Phase -III)
17. The working Committee has submitted its Report on 18 April, 2022. It is evident from the Working Committee Report that the pre-bid Meeting was conducted on 14 March, 2022 as per the Notice uploaded on the DEEP Portal.
18. The Commission also notes that there were two bidders in the bid. During the scrutiny of the working Committee, it has held that one of the bidders (i.e., M/s Prithvi Ferro Alloys Private Limited) did not fulfil the Eligibility criteria as provided in Clause 2.2 (d) of the RFP and as per clause no. 4.1.1 (c) of MoP's Case-IV Guidelines dated 20 February, 2017 i.e. bidders to have installed capacity equal to or more than 200 MW, against which the installed capacity of Prithvi Ferro Alloys Private Limited was 120 MW (60 MW x 2 units). Accordingly, the Committee recommended disqualification of the Bidder (M/s Prithvi Ferro Alloys Private Limited) and opening of price bid for IEPL as the technical bid was found meeting the qualifying requirements.
19. The Commission further notes that Clause 4.3 (iii) of the Case IV Guidelines, the consent of the Commission is required for selection of bidder, if number of bidders responding to RfP is less than two. The relevant extract of the Case IV Guidelines is reproduced herein below:

“4.3 E-Auction Process:

- i. The process of bidding shall be conducted electronically. For this purpose, provisions like registration, log in, downloading and uploading etc. in the e-Bidding portal shall be specified in the Bid document. The link for the e-Bidding portal shall be available on the website of Ministry of Power (www.powermin.nic.in). An event involves both e- Tender and e-Reverse auction process. Each event of the auction would require independent Digital Signature of the Bidder. An event may have requirement of power at different time and period.*
 - ii. The process of e-Bidding shall be conducted online, in accordance with the provisions laid herein. Each e-Bidding event shall comprise of two parts i.e. e-Tender and e- Reverse Auction. An event may have multiple requisitions (i.e. independent requirements of power at different time or places). To participate in the event each Bidder will have to specify the source(s) of power for that particular bid. Each bid will have only one price per requisition accompanied by total quantum of power, the Bidder intends to supply and minimum threshold quantum acceptable to the Bidder. However, the Bidder shall have the option to choose the requisition of an event in which it intends to participate.*
 - iii. To ensure competitiveness, the minimum number of Bidders should be at least two for each requisition. **If the number of Bidders responding to the RFP is less than two, and Procurer still wants to continue with the selection process, the selection of that single Bidder may be done with the consent of the Appropriate Commission.**” (Emphasis Supplied)*
20. The Commission notes that IEPL and MSEDCL have concurred with the submissions of MSPGCL in respect of the bidding process and no objection or no negative comment has been observed by the Commission by any party on the issue of E- Auction process.
21. The Government of India has introduced the DEEP Portal to ensure a transparent and fair competitive bidding process for procurement of Power. MSPGCL has conducted the bidding on DEEP portal. Further as there was single qualified bidder, the reverse auction was not carried out even though it was initially covered in the RfP.

22. In view of the above, the Commission is inclined to accept the submission of MSPGCL on the issue of fairness of the bidding process and hence issue -I is decided in affirmative. The Commission in principle finds that the bidding process is fair.

Issue No. 2: Whether the Coal Tolling arrangement proposed in phase -III of Case - IV bidding is beneficial to the end consumers of MSEDCL?

23. The Commission is of the opinion that the objective of coal tolling arrangement is to optimize the cost of generation and therefore it is necessary to ensure that the overall costs of power supplied under tolling arrangement is lower than the cost of generation from MSPGCL stations considered for tolling. Such optimization of the cost is on account of the efficient operational parameter and the reduction in landed cost of coal due to lower transit / transportation cost, whereby the coal procurement cost remains unaffected.
24. The Commission notes the submission of MSPGCL that it has selected two Generating Stations namely Nashik Units No. 3 to 5 and Bhusawal Unit No. 3. The Ceiling Tariff was considered based on the quoted tariff discovered earlier under Case IV phase -II bidding i.e., Rs. 2.889/kWh plus impact of change in law Rs.0.47/kWh, for Mine Specific Coal charges along with other applicable charges and accordingly, the ceiling tariff of Rs. 3.359/kWh was considered for floating a tender under Case IV Phase III arrangement.
25. MSEDCL contended that MSPGCL should control the impact of future change in law events, if any by ensuring proper coal mix such that net variable rate including change in law events will not exceed the quoted rate of Rs.3.358/kwh.
26. The Commission also notes the submission on Commission's query wherein it has clarified that whatever coal is available under MSP is a Notified Coal only with add-on price as specified by WCL. Hence the ceiling tariff is derived considering present allocation of MSP Coal.
27. The Commission notes the submission of MSPGCL that it has written to WCL vide its letter dated 4th July 2020 wherein it is stated that supply of coal under MSP is contrary to the terms of FSA signed and WCL is obliged to supply coal at notified price to MSPGCL. MSPGCL has also requested WCL to supply coal at Notified Price only as per agreed terms of FSA.
28. The Commission also notes the submission of MSPGCL that it has shown its displeasure on several occasion to WCL on acceptance of Mine Specific Coal and has also requested Secretary, Ministry of Coal to issue directives to Coal India Ltd. to reduce basic coal cost of WCL at par with its other subsidiaries viz MCL & SECL. Even the clear denial of the offer to WCL to buy Mine Specific Coal, WCL unilaterally issued Mine Specific Coal Rate

notice dated 1 November 2019 for 11 specified mines, and it has been made applicable to MSPGCL w.e.f. 2 November 2019.

29. The Commission is of the opinion that MSPGCL needs to escalate the issue of unilateral action of WCL in Notifying Mine Specific Price with appropriate authorities. This is necessary since the same mines were supplying the coal earlier under the notified price regime of CIL. MSPGCL should follow up with Ministry of Coal on this issue and may also consider legal recourse including representation in appropriate Forum or the Competition Commission of India, subject to its own due diligence.
30. The Commission notes that the Ceiling tariff was considered for this bidding as Rs. 3.359 which is based on the quoted tariff discovered under phase -II Case IV bidding i.e., Rs. 2.889/kWh plus impact of change in law Rs.0.47/kWh, for MSP along with other applicable change in law event notified between November 2019 to March 2022 by Coal India Limited / WCL.
31. The Commission also notes that the variable charge for Nashik TPS during last six months December, 2021 to May, 2022 as per FAC computations was Rs. 3.861, 3.901, 4.023, 4.012, 3.911 and 3.894 per kWh respectively which is higher than the ceiling Tariff decided for Energy charge under Case IV arrangement in phase – III.
32. Therefore, the Commission is inclined to accept the submission of MSPGCL wherein it has envisaged the benefit of Rs. 0.48 to Rs. 0.59 per unit on account of this coal tolling arrangement. However, it would not be appropriate to conclude this issue in this proceeding without carrying out prudence check on the actual parameters. Therefore, MSPGCL shall approach the Commission separately showing the actual benefits on account of Coal Tolling arrangement with complete details and impact on tariffs for power supplied under coal tolling arrangement after conclusion of the Agreement period with IEPL. Accordingly, the issue -II is disposed of.
33. In view of the above the Commission allows MSPGCL to go ahead with the bidding process in respect of IEPL.
34. Hence, the following Order:

ORDER

- 1. The Case No. 112 of 2022 is allowed.**
- 2. The Commission allows MSPGCL approves the bidding process in respect of IEPL.**

3. MSPGCL shall approach the Commission separately showing the actual benefits on account of Coal Tolling arrangement with complete details and impact on tariffs for power supplied under coal tolling arrangement after conclusion of the Agreement period with IEPL.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(Sanjay Kumar)
Chairperson

