

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 87 of 2022

Case of Maharashtra State Electricity Distribution Co. Ltd. for approval of short-term power purchase arrangement with CGPL for sourcing of power to cater to the demand of the State.

Coram
Sanjay Kumar, Chairperson
Mukesh Khullar, Member

Maharashtra State Electricity Distribution Company Ltd:-	Petitioner
Vs	
Coastal Gujarat Private Ltd: -	Respondent

Appearance

For Petitioner: -	Smt. Deepa Chavan (Sr.Adv.)
For Respondent: -	Shri. Hemant Sahai (Adv.)

ORDER

Date:17 August, 2022

1. Maharashtra State Electricity Distribution Company Ltd (MSEDCL) has filed this Petition on 31 March, 2022 seeking approval of short-term power purchase arrangement with Coastal Gujarat Private Ltd (CGPL) for sourcing of power of 1160 MW to cater to the demand of the State from 10 April, 2022 to 15 June, 2022 (760 MW) and from 12 April, 2022 to 15 June, 2022 (400 MW). This Petition has been filed under Regulation 22.2, 22.5 and 106 of the MERC (Multi Year Tariff) Regulations, 2019 read with Regulation 92 and 94 of the MERC (Conduct of Business) Regulations 2004.
2. **MSEDCL's main prayers are as under:**
 - a. *That pending the finalization of supplementary PPA, allow the Petitioner MSEDCL to procure power from CGPL at the proposed tariff in the present Petition and allow to reconcile the balance charges upon finalization of the supplementary PPA terms between GUVNL (lead procurer) and CGPL, for short term period till 15.06.2022 as per the instructions of MoP, in the meetings held on 17th March 2022 and 12th April*

2022, and considering the present precarious situation of increase in demand and shortfall in supply from contracted sources.

- b. To accord approval for short term power purchase from CGPL of additional 400 MW over and above the contracted capacity of MSEDCL, under similar terms and conditions as that of supplementary PPA.

3. MSEDCL in its Petition has stated as follows:

3.1 In the month of March-2022, due to post Covid effect, increase in industrial and commercial activities coupled with heat wave and increase in Agricultural pumping load, the peak demand of MSEDCL reached all time high up to 24,400 MW. On the supply side due to the coal shortage scenario and forced outages, the generation from contracted thermal generators significantly reduced which created a shortfall in generation. In order to cater to this increase in demand and shortfall in generation, MSEDCL was compelled to utilize Koyna Hydro at its full capacity and also procured power from power exchanges at the prevailing rates.

3.2 In comparison to last year, the peak demand has witnessed an increase of 8.20% and average demand has witnessed an increase by 6% in the month of March 2022.

3.3 The availability from coal based generating station has also reduced due to forced /planned outage and coal supply issue. The contracted capacity and existing availability from the generating stations is as below:

Utility	Contracted Capacity (MW)	Generation Availability w.r.t. Ex bus contracted Capacity as on 18 th April.2022 (MW)	Shortfall w.r.t Contract Capacity (MW)
NTPC	5451	4200	1251
MSPGCL	9540	6700	2840
APML	3085	1695	1390
RIPL	1200	1200	0
CGPL	760	0	760
JSW	300	0	300
Sai Wardha	240	240	0
GMR-Warora	200	200	0
TOTAL	20,776	14,235	6,541

* Gross generation Availability

3.4 Thus, there is combined shortfall of around 6541 MW in generation availability with respect to its contracted coal based thermal capacity in the month of April, 2022.

3.5 Present demand, generation availability from all contracted sources (including utilization of Koyna hydro @ 0.20 TMC per day) and shortfall during various durations of day is as given below:

Period	Availability (MW)	Demand (MW)	Shortfall (MW)
Night period	19000	22200	3200
Morning peak	22000	24500	2500
Day peak	22400	24400	2000
Evening peak	19800	21400	1600

- 3.6 In spite of full utilization of Koyna hydro generation, it is getting difficult to manage the demand during the early morning, night and evening peak hours, especially when there is non-availability of solar generation. In such case, MSEDCL is compelled to procure costly power from power exchanges at the rate up to Rs 20.00 per unit in some time blocks.
- 3.7 Due to nationwide increase in power requirement, the rates in exchanges ruled high in the month of March 2022. The Round the clock (RTC) rate on Indian Energy Exchange (IEX) reached all time high i.e. up to Rs18.67 per unit. In addition to this, the Real Time Market (RTM) rates reached up to its ceiling rates i.e. Rs. 20.00 per unit during most of the time blocks in morning/evening peak and night period. Taking into account the current power market situation, Central Electricity Regulatory Commission (CERC) issued suo-motu Order on 1 April, 2022 and reduced the cap on the exchange prices to Rs. 12.00 per unit. Even at such high rates, partial quantum was executed most of the times, hence MSEDCL cannot rely on power exchanges to meet the shortfall in generation which accounts to around 24% of the total demand requirement.
- 3.8 Keeping in view its historic demand and power supply position, MSEDCL had planned utilization of allocated Koyna dam water for generation during the Water Year (WY) 2021-22. However, in current water year, during the months of September 2021 and October 2021 there was nationwide coal shortage crisis which led to drastic decrease in generation availability from all the thermal power stations in the Country. Also, Ministry of Power (MoP), Government of India (GoI) had instructed to utilize full hydro generation even during off peak hours till 31 October, 2021, since by that time, the generation from thermal plants was expected to get normalized. Therefore, as per instructions of MoP, Koyna Hydro was utilized to its maximum extent up to 1900 MW of its capacity continuously during this coal crisis scenario. Due to this, excess water was utilized in the months of September 2021 and October 2021 which was unplanned. Further, during the present period also due to abnormal rise in demand, unavailability of contracted thermal capacity and high market rates, Koyna hydro was again utilized to its full capacity.
- 3.9 MSEDCL requested Water Resource Department, GoM to allocate additional 15 TMC water quota during this water year for Koyna Hydro Power Station. Recently, WRD, GoM, vide letter dated 1 April, 2022 has also allocated 10 TMC additional water quota to MSEDCL. However, considering the present utilization of water to meet the demand shortfall, water quota for Koyna is fast depleting & is likely to get exhausted soon. In the month of April 2022 around 0.50 to 0.70 TMC water is being utilized daily due to the shortfall in generation and rise in demand. The balance water quota at Koyna is only

10.72 TMC as on 20 March, 2022 for balance 42 days of the Water Year. Considering the depletion in water quota due to higher demand, the Koyna Hydro generation may not be available in month of May 2022 (~1920 MW).

- 3.10 Due to surge in demand and lack of commensurate power availability and as overall average power purchase cost from power exchanges was expected to be costly, MSEDCL had floated a short-term tender for procurement of 500 MW RTC power for the period from 15 March, 2022 to 31 May, 2022. However, the discovered price in this short-term tender floated by MSEDCL was Rs. 6.99 per unit.
- 3.11 MSEDCL has floated a fresh short-term tender for purchase of 700 MW RTC power for the period from 1 April, 2022 to 15 June, 2022. Only single bidder has participated in the tender with quantum of 200 MW at bid rate of Rs. 11.96 per unit.
- 3.12 MSEDCL has signed Power Purchase Agreement with Coastal Gujarat Pvt. Ltd. (CGPL), UMPP Mundra on 22 April, 2007. Out of 4000 MW (5 X 800 MW) installed capacity; MSEDCL's contracted capacity is 760 MW at levelised tariff of Rs. 2.26 / kWh. The plant is based on imported coal from Indonesia. Gujarat State is lead procurer in CGPL and other procurers are Maharashtra, Punjab, Rajasthan and Haryana.
- 3.13 Owing to the decision of Indonesian Government on selling of coal outside Indonesia at benchmark price it created impact of the same on coal cost. CGPL filed petition at various legal forums to compensate for the anticipated loss. The dispute finally reached the Hon'ble Supreme Court. The Hon'ble Supreme court vide judgment dated 11 April, 2017 in Civil Appeal No. 5399 and 5400 of 2016 (*Energy Watchdog Case*) and batch denied any compensation to CGPL on account of Indonesian coal promulgation as the case does not fall in the category of Force Majeure or Change in Law under PPA. After the judgement of the Hon'ble Supreme Court, CGPL requested all the procurers to consider afresh the issues of the compensatory tariff and the ways to compensate the hardship faced by CGPL.
- 3.14 As per directives of MoP "Working Group Committee (WGC)", was formed to find resolution for the three projects namely M/s. CGPL, M/s. Adani Power, Mundra and M/s. Essar Power Gujarat Limited. M/s. SBI Capital Markets Ltd was co-opted in the working group to facilitate secretarial and administrative responsibilities. Further, NTPC was assigned to conduct technical due diligence of all the three plants.
- 3.15 The report of WGC was circulated by SBI Capital on 10 January, 2018 and on 17 January, 2018 SBI Capital requested Government of Gujarat (GoG) to form High Power Committee (HPC) for review and to make necessary recommendations. Therefore, GoG vide its letter dated 1 February, 2018 requested Government of India (GoI) for the coordination of the process of resolution of issues related to imported coal based power projects in the State of Gujarat. However, GoI vide letter dated 13 April, 2018 informed GoG that they may form the High Power Committee comprising of individuals with

proven expertise drawn from the Judiciary, Banking and Power Sector to examine the issue and take further action for resolution.

- 3.16 Pursuant to Government of Gujarat's GR No. CGP-12-2018-166-K dated 3 July, 2018, the HPC was formed for reviewing the report of the WGC. The final report is submitted by Chairman of HPC to Govt. of Gujarat on 3 October, 2018. As per report, the suggested framework is based on the premise that the hardships faced by these projects are to be equitably shared by all the stakeholders and the recommendations provided are as below.
- (i) Past losses to be borne by the Developers and the resolution plan being applicable from prospective cut-off date (15 October, 2018).
 - (ii) Full pass through of the fuel cost on actual basis with the ceiling for imported fuel cost to be considered as 110 USD/MT which will be reviewed after 5 years. It also suggested that the fuel cost beyond the ceiling of 110 USD/MT shall be the risk of the generator.
 - (iii) Developer to declare 90% availability and Capacity Charge payable will be applicable at 80% normative availability. If cumulative availability is less than 90%, then the capacity charges to be reduced by 10% and Pro-rata capacity charges below 80% normative availability will be applicable as per PPA.
 - (iv) Reduction of Capacity charge by 20 paise per unit on account of sacrifice by lenders against the debt reduction of Rs. 4,240 Crs and to reduce this amount from the variable charges so as to adjust the plant in MOD.
 - (v) Offer for tie-up of free capacity of Adani and Essar to Gujarat and Haryana Utilities. The same is not applicable to MSEDCL.
 - (vi) Extension of PPA tenure by another period of 10 years after the completion of the PPA tenure of 25 years but with the option of acceptance with Procurers and
 - (vii) Sharing of profit from the Indonesian Mines and pass on the benefit by Developers to the Procurers provided that the discount to be passed on behalf of mining profit shall always be subject to a minimum discount of 15 paise per unit and this floor is corresponding to the Seller's share of coal from the coal mine or coal consumed from its mine this year and will be adjusted if coal production/consumption from the mine reduces.
- 3.17 Govt. of Gujarat (GoG) approached Hon'ble Supreme Court to seek approval on amending the existing PPAs of above said stressed projects based on the recommendations laid down by HPC in light of previous judgment of Hon'ble Supreme Court dated 11 April, 2017. Hon'ble Supreme Court vide its Order dated 29 October, 2018 held that applicants may approach CERC for approval of proposed amendments and further directed CERC to act expeditiously on this matter within period of 8 weeks from the date of order.
- 3.18 GoG vide GR No. CGP-12-2018-166-K dated 1 December, 2018 decided to accept the HPC recommendations and enter into supplementary PPA with imported coal-based power plants in Gujarat based on HPC recommendations.

- 3.19 On 28 January, 2019 CGPL filed Petition bearing No. 24/MP/2019 before CERC seeking approval for acceptance of HPC recommendations and for signing of Supplementary PPA in accordance with HPC recommendations.
- 3.20 MSEDCL submitted comments on recommendation of HPC to GoM vide letter dated 5 November, 2018 and requested GoM that a policy decision is required to be undertaken by State Government whether to direct Distribution Company i.e. MSEDCL to amend the existing PPA as a policy decision.
- 3.21 GoM vide its G.R. dated 13 August, 2020 has principally approved signing of Supplemental PPA in accepting recommendations of High Power Committee with CGPL based on certain conditions as follows:
- “In regards with M/s. CGPL, by taking into consideration the recommendation by HPC, if all power procurer states accept to jointly sign Supplementary PPA with same tariff and terms & conditions, then MSEDCL is principally allowed to sign supplemental PPA subject to approval of CERC. Before Signing of Supplementary PPA, MSEDCL shall get approval from GoM.”*
- 3.22 MSEDCL vide letter dated 20 October, 2020 intimated to CGPL regarding GoM’s G.R. dated 13 August, 2020 and further informed that MSEDCL’s action will be in accordance with the GR only. CGPL has so far not responded to the said letter of MSEDCL.
- 3.23 Due to increase in price of imported coal and various other reasons CGPL’s units are under outage since 14 January, 2021. Further, CGPL has withdrawn all its five units from 18 September, 2021 due to increase in imported coal prices and stopped supply of power to all the procurers.
- 3.24 Considering critical power position, MoP issued guidelines on 8 October, 2021 regarding operationalizing to achieve optimum utilization of generating stations as per the requirement in the electricity grid wherein MoP has stated power plants shall continue to have obligation and duties to make their plant available as per the terms of PPA. Further MoP also mentioned that in case the procurer does not schedule power the generator is free to sell the un-requisitioned power in the Exchange.
- 3.25 CGPL vide letter dated 9 October, 2021 sought MSEDCL’s consent for non-requesting of power so that the power not scheduled by MSEDCL can be sold in Day Ahead Market and the half of the gains will be shared with MSEDCL & MSEDCL will need to pay fixed charges.
- 3.26 MSEDCL vide its letter dated 9 October, 2021 wrote to CGPL that it is CGPL’s contractual obligation and duties to make their plant available as per PPA and further requested to commence supply of the contracted power to MSEDCL immediately.

- 3.27 CGPL vide its letter dated 10 October, 2021 informed that the imported coal prices (HBA) have touched a high of 163 USD/MT and are likely to go up further making it impossible to operate the plant. CGPL further informed the estimated variable cost at various HBA rates and further informed that if CGPL is paid variable costs at actual as a special case to overcome the critical power situation, CGPL is ready to generate and supply electricity.
- 3.28 Punjab (PSPCL) gave consent to CGPL for paying actual variable cost for period of one week from 12 October, 2021. Further, Gujarat (GUVNL) gave consent on 13 October, 2021 to CGPL at fixed Energy Charge of Rs. 4.50/kWh and Capacity charges as per the PPA for period of four week. Subsequently Rajasthan (RUVNL) also gave consent.
- 3.29 On 14 October, 2021 CGPL requested to give consent for selling MSEDCL quota in power exchange for four weeks with profit sharing in 50:50 proportions. However, MSEDCL denied the offer and demanded to supply contracted quantum as per PPA.
- 3.30 On 14 October, 2021 MSEDCL wrote to WRLDC to schedule contracted power from CGPL Plant as per share of capacity under PPA. On 15 October, 2021 CGPL wrote to WRLDC to schedule power only to PSPCL, GUVNL and RUVNL who have given consent for purchasing power at fixed variable charges of Rs.4.50/KWh plus capacity charges of capacity charges of Rs.0.90/kWh.
- 3.31 MSEDCL vide letter dated 15 October, 2021 again requested to schedule contacted capacity as per clause 4.1.1 of PPA. MSEDCL vide various letters requested CGPL to supply power as per terms and conditions of existing PPA. However, CGPL vide its various letters informed their inability to supply power as per existing PPA rate due to precarious financial health owing to fuel cost under-recovery.
- 3.32 A meeting was held on 17 November, 2021 to discuss the issues related to CGPL under the Chairmanship of Secretary (Power), Ministry of Power through video conference. During the meeting Secretary (Power) directed GUVNL to take lead for resolution of Supplementary PPA issue in the CGPL matter.
- 3.33 A second meeting was held in Delhi on 17 March, 2022 under the Chairmanship of Hon'ble Union Minister of Power with the officials of Govt. of Gujarat to discuss the Coal and Power situation in Gujarat. The issue regarding signing of Supplementary PPA with CGPL was also discussed in this meeting. After detailed discussions in the meeting following decisions were taken in respect of CGPL Mundra:
- i. Effective date: CGPL and GUVNL shall sign supplemental PPA with effective date as 1 January 2022 to be valid until the prices of imported coal reaches the pre-covid levels, after which original PPA would be effective.
 - ii. FOB Coal price: Actual or HBA derived price whichever is lower would be applicable. CGPL would give invoices to support its claims.
 - iii. Technical parameters: Lower of Actual or as per as per CERC tariff regulation.

- iv. Fixed Cost: Rs.0.20 per kWh hair cut by lenders.
- v. Incentive: Applicable when availability is above 90%.
- vi. Sharing of Mining Profit: 100% of mining profit on the coal supply to CGPL as per HPC recommendations shall be shared by Tata Power which shall be minimum 15 paise/unit. TPL will not make any profit by selling coal elsewhere while CGPL suffers non availability of coal. In case, this is found, TPL will be heavily penalized.
- vii. Availability: CGPL shall maintain the availability as per PPA failing which Govt. of Gujarat may impose necessary penalties.
- viii. No Shutdown until Oct 2022: CGPL will start full plant in 7 days and do not plan any shutdown until October 2022 for preventive maintenance and supply uninterrupted power to GUVNL.
- ix. Other procurer States of CGPL also need to resolve SPPA as per resolution arrived in this meeting. In case some procurer States are not willing to take power from CGPL, other willing States may be considered for allocation.

3.34 On 12 April, 2022, MoP held another meeting to review the operationalization of imported coal based plant and during the meeting it was decided to operationalize the remaining 2 units (Unit # 3, Unit # 4) of CGPL at the earliest. Principal Secretary, Gujarat confirmed that the State of Gujarat was going to issue instructions to CGPL to operationalize its units Under Section 11 of EA, 2003. It was decided that tariff calculations need to be as per minutes of meeting held on 17 March, 2022 issued by MoP vide OM dated 29 March, 2022 along with clarification issued in this regard on 8 April, 2022.

3.35 Further, it is decided that the action taken by Gujarat (lead procurer State) would be shared with the other procurer States Viz., Punjab, Haryana, Maharashtra and Rajasthan. Other states were advised to follow the methodology adopted by the State of Gujarat to operationalize all units of CGPL so as to enable getting power as per their entitlement in the Power Purchase Agreement (PPA).

3.36 CGPL vide letter dated 30 March, 2022 has informed MSEDCL that CGPL has supplied power to Gujarat in the months of January 2022, February 2022 and March 2022 at an approximate variable cost of Rs 4.45/kWh, Rs 4.50/kWh and Rs 4.90/kWh respectively plus fixed cost of Rs 0.70/kWh based on the Supplementary PPA (SPPA) terms. This variable cost will be subject to variation in the prices of international coal which is being procured every month. CGPL also indicated readiness to supply power based on supplemental PPA being finalized with Gujarat/GUVNL. CGPL has also informed that the supplementary PPA will be submitted once it is finalized and signed with GUVNL.

- 3.37 MSEDCL vide letter dated 5 April, 2022 requested GoM to accord the approval to procure 760 MW power from CGPL at the rates communicated by CGPL purely on short term basis upto 15 June, 2022.
- 3.38 On 8 April 2022, GoM consented to procure power to meet the shortfall and provide continuous power supply in the state of Maharashtra in order to avoid load shedding and authorised MSEDCL's Board of Directors to take decision for procurement of power from CGPL on short term basis.
- 3.39 In line with the approval from GoM, MSEDCL Board accordingly decided to source power from CGPL and requested CGPL on 10 April, 2022 to schedule the Power till 15 June, 2022 purely on short term basis at the rates that would be decided in the proposed supplementary PPA to be signed with GUVNL. Accordingly, CGPL has accepted the MSEDCL's request and started to schedule the Power from 00.00 Hrs. of 12 April, 2022.
- 3.40 Presently MSEDCL's peak demand is to the tune of 25,150 MW which in upcoming period may reach up to 25,500 MW due to the agriculture demand and increase in temperature in the summer months.
- 3.41 The following Table shows the daily peak demand observed in recent times in MSEDCL license area

Date	Peak Demand (in MW)	Date	Peak Demand (in MW)
6th April 2022	24,683	13th April 2022	24,608
7th April 2022	24,657	14th April 2022	25,144
8th April 2022	24,466	15th April 2022	23,708
9th April 2022	24,449	16th April 2022	23,882
10th April 2022	24,116	17th April 2022	23,150
11th April 2022	23,747	18th April 2022	23,981
12th April 2022	24,809	19th April 2022	23,817

- 3.42 The expected generation availability from all contracted generators excluding Koyna generation during upcoming months may be to the tune of 20,500 to 21,000 MW. The expected shortfall to meet the peak demand is expected to remain in the range of 3500 to 4500 MW. Even if Koyna generation is utilised as per available water i.e. @ 0.20 TMC per day, this shortfall will be still in the range of 1800 MW to 2400 MW. Hence, there is an emergent need to arrange for alternate power.
- 3.43 The rate discovered by MSEDCL for purchase of power on short term basis through recent tenders floated through competitive bidding in accordance with the MoP Guidelines, was Rs. 6.99 per unit. In order to determine a lower rate MSEDCL re-floated a tender for short term purchase, but only discovered a much higher rate i.e. Rs. 11.96 per unit (almost double the rate of initial tender). The short-term arrangement proposed with CGPL is expected to source power at comparatively lower rates than the rates discovered through competitive bidding.

- 3.44 It is further submitted that procurement of power from Power Exchanges (currently in the range of Rs. 4.49 to Rs. 13.76 per unit for April 2022) would only result in increase in overall power purchase cost of MSEDCL. Procurement of power from CGPL Mundra would result in savings in power purchase cost and therefore in overall benefit to the consumers of MSEDCL.
- 3.45 It is requested to approve the power purchase arrangement with CGPL, Mundra on short term basis for the period from 12 April, 2022 to 15 June, 2022 in line with the terms and conditions including the rate that would be decided in the proposed supplementary PPA to be signed by CGPL with GUVNL.
- 3.46 Availability of power from CGPL as per the existing contract will surely reduce the shortfall in generation capacity to meet the demand. However, this capacity is still not sufficient to completely eradicate the shortfall. MSEDCL is therefore required to have firm power at the standard rate at least for short term period till 15 June, 2022
- 3.47 Therefore, to further mitigate the shortfall in demand, MSEDCL has been in talks with CGPL for additional supply of 400 MW over and above the 760 MW proposed to be made available as per contracted capacity.
- 3.48 CGPL has recently agreed to supply additional 400 MW along with 760 MW at the same rate at which CGPL would be providing power to GUVNL through supplementary PPA. Hence CGPL has agreed to supply 1160 MW for short term period till 15 June, 2022.
- 3.49 MSEDCL is proposing a provisional tariff of Rs. 5.60/kWh (variable charge of Rs. 4.90 /kWh and fixed charge of Rs. 0.70/kWh) and initial payment of 75% of the said provisional tariff to CGPL till the time supplementary PPA is finalized and signed between GUVNL (lead procurer) with CGPL and seeks to reconcile the balance charges upon finalization of the supplementary PPA terms between GUVNL (lead procurer) and CGPL.
- 3.50 Therefore, it is requested to kindly approve the power purchase from CGPL for short term to the tune of 1160 MW, in line with the terms and conditions of supplementary PPA between GUVNL and CGPL to be executed. This power from CGPL would significantly reduce the short supply in generation almost by 50%.
- 3.51 Section 86 (1) (b) empowers the State Commission to regulate the electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured. Further as per Regulation 22.1 of MERC (MYT) Regulations, 2019, Distribution Licensee can undertake additional power procurement over and above the approved power procurement plan. And Regulation 22.2 of MERC (MYT) Regulations, 2019 provides for Distribution Licensee to go for additional power procurement for reasons such as unanticipated increase in demand or shortfall in supply.

- 3.52 MSEDCL has witnessed unanticipated increase in demand and at the same time significant capacity of generation is either under forced outage or short supply of fuel. The peak demand in April 2021 was around 22,832 MW which has now reached around 25,150 MW in April 2022 thereby an increase of more than 10% in comparison to last year.
- 3.53 In order to meet the unexpected increase in demand in recent times, MSEDCL be allowed to procure power under Regulation 22.2 of MERC (MYT) Regulations, 2019.
- 3.54 The proposed power which is to be procured from CGPL power station at a supplementary rate than that approved in MYT Tariff Order dated 30 March 2020 is expected to lead to an increase of more than 5% in the overall approved power purchase cost of MSEDCL for FY 2022-23.
- 3.55 MSEDCL is filing the present Petition before the Commission seeking prior approval for procurement of power from CGPL at supplementary rate which is different than the rate approved by MERC for the 4th Control Period.
- 3.56 Considering the shortfall in generation from approved contracted sources and emergent situation considering the present power scenario, MSEDCL requests the Commission to approve procurement of the power from CGPL on short term basis.

4. At the time of E-hearing held on 6 May, 2022

- 4.1 Advocate of the MSEDCL stated that this Petition has been filed for short term power procurement on the background of increasing demand in the State and the deficit in the supply from tied up sources. Proposed short term PPA with CGPL is different from its long term PPA and is based on terms and the conditions of PPA to be executed between CGPL and Gujarat Urja Vikas Nigam Ltd (GUVNL) following the guidelines from Ministry of Power (MoP). MSEDCL is proposing the tariff of Rs 5.60 per unit, and payment of 75% of the bill amount on ad-hoc payment and reconciliation of the same after execution of short term PPA with CGPL. MSEDCL also highlighted that rate of such power procurement is Rs 4.11 per unit in month of April 2022.
- 4.2 Advocate of CGPL stated that MoP has come out with the latest notification dated 5 May, 2022 under Section 11 of the EA 2003 to revive the plants operating on imported coal and the benchmark rates for the plants are to be approved by the Committee constituted under the notification. Further he stated that CGPL is supplying power to Gujarat from September 2021 and the efforts are being taken for execution of Supplementary PPA in line with the recommendations from High Power Committee. He took objection on the methodology of ad-hoc payment proposed by MSEDCL and requested the Commission to give time for making submission on this point.
- 4.3 The Commission observed that power procurement under proposed short term PPA had already commenced which was helping in mitigating supply shortfall. However,

commercial aspects of proposed short-term PPA were yet to be finalised between parties. Without such finalised terms and conditions of PPA it would be difficult and premature to scrutinise commercial aspect of the contract. Advocate of both parties agreed to this observation of the Commission. Advocate of CGPL submitted that post issuance the day before, of direction under Section 11 by GoI, the Terms and Conditions of Short Term PPA would now be finalised soon. The Commission also enquired about precedence of any regulatory approval in such circumstance and whether the lead procurer, GUVNL had been procuring power from CGPL under any Regulatory approval. Considering that these important aspect were not covered in the Petition and also the fact that scheduling of power had already started, the Commission decided to give time to MSEDCL and CGPL to include the relevant aspects in the pleadings and posted this matter for hearing on next date.

4.4 Considering request of CGPL, the Commission allowed one week's time to CGPL for making their submission in the matter. The Commission also directed both parties to check and submit whether GUVNL's short term power procurement from CGPL had been approved by regulator. Further, in case terms of PPA got finalised, parties should file a copy of the same.

5. CGPL in its additional affidavit dated 12 May, 2022 has stated as follows:

5.1 MSEDCL has proposed a certain tariff and terms of payment for short term procurement. In this regard it is submitted that aggregate quantum of short-term procurement of power will be subject to final reconciliation in terms of the SPPA to be executed between CGPL and MSEDCL. MSEDCL proposes to follow SPPA that may be executed between CGPL and GUVNL who is the lead procurer.

5.2 MoP on 5 May, 2022 has issued directions to generating companies under Section 11 of EA, 2003 particularly to all imported coal based power plants. By way of the said directions, all the imported coal-based power plants inter-alia are directed to operate and generate power to their full capacity. Further said directions provide for constitution of a committee to set benchmark rates of power worked out to meet all the prudent costs of using imported coal for generating power including the present coal price, shipping cost and O&M costs etc. The procurer States have been provided with an option to either enter into mutually negotiable rates with the generator or the benchmark rate worked out by the Committee

5.3 In view of the issuance of directions from MoP, the present Petition filed by MSEDCL is rendered infructuous and is liable to be disposed of by the Commission accordingly.

5.4 TPCL is supplying power and has no objection to continue to supply of power in terms of the said directions under Section 11 of EA, 2003. In respect of the supplies made by TPCL for the period between 12 April, 2022 to 5 May, 2022 TPCL submits that

- a. For the supply of power made by TPCL with effect from 12 April, 2022 at the rate in line with the proposed SPPA terms as being supplied to GUVNL was agreed to be paid by MSEDCL vide letter / Communication dated 10 April, 2022
- b. Power was supplied by TPCL to MSEDCL with effect from 12 April, 2022 based on the above terms and accordingly provisional invoice dated 29 April, 2022 and monthly invoice dated 5 May, 2022 were raised for such supply of power for the Month of April, 2022
- c. There exists no arrangement between TPCL and MSEDCL for initial payment of 75% of the above tariff till finalisation and execution of SPPA. It was unequivocally agreed between the parties that payment of 100% of the provisional tariff was to be made to TPCL towards such supply of power.
- d. TPCL entered into an agreement with GUVNL for supply of power for the periods from October to December, 2021 and January, 2022 onwards on similar arrangement. As per the same arrangement, TPCL also started supplying power to MSEDCL at the aforesaid tariff.

5.5 In view of the above submissions read with the communications exchanged between the parties and the directions issued by MoP vide its letter dated 5 May, 2022, it is submitted as under

- a. For the power supplied by CGPL to MSEDCL from 6 May, 2022 onwards, compensation as finalised by the Committee constituted by MoP in terms of the directions dated 5 May, 2022 is to be paid which is outside the purview of the contractual arrangements agreed between the parties for the period prior being 12 April, 2022 to 5 May, 2022.
- b. In case the compensation for the supply of power under Section 11 directions is not finalised between the parties, then in accordance with Section 11(2) of the Act, the appropriate Commission (Central Electricity Regulatory Commission) shall determine the appropriate compensation for offsetting the adverse financial impact on account of such generation and supply of power under Section 11 of the Act.
- c. For the power supplied by CGPL to MSEDCL, the payment and the tariff paid / to be paid for the supplies with effect from 12 April, 2022 to 5 May, 2022 shall be reconciled in accordance with the terms agreed in SPPA.
- d. In case SPPA is not executed between the parties or the supplies made by CGPL for the period 12 April, 2022 to 5 May, 2022 are excluded from the purview of the SPPA then all the supplies that have been made will not be subject to any reconciliation of payments. In such case, the payments made towards supplies of power on above tariff shall be reckoned on the basis of monthly invoice dated 5 May, 2022 and

invoice to be raised by CGPL for the power supplied during period from 1 May, 2022 to 5 May, 2022

6. At the time of hearing held on 8 July, 2022

- 6.1 Advocate of MSEDCL stated that CGPL has filed the case before CERC in Case No 128/MP/2022 under Section 11(2) of EA, 2003 for determination of suitable rate/compensation for the supply of power. As the case is pending before CERC for final disposal, it is requested to keep the matter in abeyance.
- 6.2 Advocate of CGPL stated that the matter pending before the CERC is for the compensation for the supply of power under the MoP notification dated 5May, 2022 under Section 11 of EA, 2003. So for supply of power from 6 May, 2022 onwards, CERC has jurisdiction to decide the compensation. He further stated that the payments for the period from 12 April, 2022 to 5 May, 2022 is to be made as per SPPA to be executed between MSEDCL and CGPL in line with SPPA between CGPL and GUVNL. He stated that as decided in the minutes of meeting of MoP, 20 paise per unit discount and mining profit has been provided in the bills submitted to MSEDCL for the supply of power from 12 April, 2022 to 5 May, 2022. In spite of that MSEDCL had unilaterally withheld the 30% amount of the bills since the SPPA is not yet executed. This is causing financial difficulties in cash flow of CGPL. He stated that GUVNL has paid the actual bill amount for the supply of power. Accordingly, it is requested to direct MSEDCL to pay the actual bill amount for the supply of power.
- 6.3 In reply to the query of the Commission, he stated that GUVNL has not filed similar case for procurement of power from CGPL before Gujarat Electricity Regulatory Commission.

7. MSEDCL in its submission dated 1 August, 2022 has stated as follows

- 7.1 Power Purchase cost for the month of April and May has increased drastically due to significant increase in actual demand as compared to the estimated demand.
- 7.2 In order to assess whether there is anticipated increase in power purchase cost during first block of six months of FY 2022-23, the power purchase cost for first half of FY 2022-23 is projected based on actuals, for the months of April 2022 and May 2022 from all generating sources; power purchase units for the months of June to September 2022 is considered based on the variation in demand expected in these months and the variable and fixed cost of all the contracted sources of MSEDCL for the months of June to September 2022 are kept same as that approved by the Commission for these months, except in case of CGPL, wherein the variable and fixed cost for the months June to September 2022 is considered based on the actual for the month of May 2022. No cost on account of Change in Law is considered for the months of June to September 2022.

7.3 The approved and actual/estimated power purchase cost for the months of April to September 2022 based on the discussions above is as below

Month	Approved PP cost (Rs. Cr.)	Actual/Estimated PP cost (Rs. Cr.)	% Increase
April 22	5,483	6,676	22%
May 22	5,617	7,132	27%
June 22	5,017	5,796	16%
July 22	4,852	4,796	-1%
Aug 22	4,849	4,796	-1%
Sep 22	4,929	5,610	14%
TOTAL	30,746	34,806	13%

Thus, expected increase in estimated power purchase cost as compared to the approved power purchase cost of H1 of FY 2022-23 is about 13%.

7.4 Considering the actual power purchase cost for the month of April and May 2022 and keeping the power purchase cost of June to September 2022 same as approved, the power purchase cost for H1 of FY 2022-23 is expected to increase by 9% as compared to the approved power purchase cost.

7.5 There was no other generation source available except CGPL to supply additional power, at reasonable rate. CGPL has raised monthly bill for April 2022 (for the period from 12 April, 2022 to 30 April, 2022) at Energy Charge Rate of Rs. 5.1531 per unit and Capacity Charge Rate of Rs. 0.7011 per unit. MoP, vide notification dated 13 May, 2022 notified the benchmark Energy Charge of Rs. 6.05 per unit for CGPL as determined by Committee constituted by MoP. Further, MoP vide notification dated 27 May, 2022 and 17 June, 2022 has notified rates for CGPL as Rs. 6.22 and Rs. 5.99 respectively

7.6 The issue regarding energy charge rates for supply of power by CGPL under Section 11 from 6 May, 2022 onwards is currently sub-judice before CERC.

7.7 CGPL has raised invoice for the period from 1 May, .2022 to 5 May, 2022 as per Section 11 rates of Rs. 6.05 per unit notified by MoP. However, MSEDCL has returned the invoice to CGPL for the said period from 1 May, .2022 to 5 May, 2022 as Section 11 is applicable from 6 May, 2022 onwards. MSEDCL has considered the rates for above period (i.e. 1 May, 2022 to 5 May, 2022) as per April Energy Bill raised by CGPL i.e. Energy Charge Rate of Rs. 5.1531 per unit and Capacity Charge Rate of Rs. 0.7011 per unit.

7.8 MSEDCL is requesting the Commission to approve the said rate (Energy Charge Rate of Rs. 5.1531 per unit and Capacity Charge Rate of Rs. 0.7011 per unit) for the period from 12 April, 2022 to 5 May, 2022.

- 7.9 The issue of Fixed Charge/ Capacity charge to be charged for the supply from 12 April, 2022 was already final. It was decided that Capacity charge calculated as per PPA dated 22 April, 2007 with a discount of 20 paise/kWh to be given by lenders was applicable. With respect to the Energy Charge the issue of passing of Mining Profit is yet not resolved which if agreed by CGPL as per contention of GUVNL/MSEDCL the amount in the invoice raised by CGPL for supply in the Month of April will get revised to lower amount. In view of this MSEDCL has considered for 75% of payment of invoice raised for the month of April 2022. Further, payment and tariff will be reconciled after finalization of SPPA between CGPL and MSEDCL as per agreed terms.

Commission's Analysis and Ruling

8. MSEDCL has filed present petition seeking approval for supplementary power procurement agreement with CGPL for 1160 MW on short term basis from 10 April, 2022 to 15 June, 2022 for meeting anticipated shortfall in meeting consumer demand.
9. The Commission notes that MSEDCL already has a long term PPA with CGPL for 760 MW, however subsequent to various rounds of litigations, at present the said PPA is pending before the CERC for renegotiating terms in consultation with buyers. Therefore, power under said long term PPA is not available at PPA tariff to MSEDCL. CGPL has shown readiness to supply the power if buyer is ready to compensate it for actual cost of coal.
10. In March 2022, as per directives of the MoP, CGPL has agreed to supply power to beneficiaries based on supplementary PPA to be signed for short term power supply. Accordingly, CGPL has conveyed its readiness to supply short term power to MSEDCL under supplementary PPA to be signed based on terms agreed by GUVNL (which is lead procurer).
11. MSEDCL in its Petition while justifying such procurement has stated that its peak demand has reached all time high up to 25000 MW in April, 2022 which is an increase of more than 10% as compared to April, 2021 and is expected to rise further considering summer season and increased Agriculture Demand. Whereas supply from contracted thermal sources has reduced significantly due to the coal shortage scenario and forced outages, creating a shortfall around 6500 MW. Even after full utilisation of Koyna hydro capacity, anticipated shortfall is around 1800 MW to 2500 MW. Further, tariff discovered in bidding process on DEEP Portal (Rs. 6.69 per unit and Rs. 11.96 per unit) and DAM/RTM prices on IEX (Rs 18.97 per unit) especially during peak hours have been ruling very high.
12. Under such circumstances, 1160 MW power from CGPL under supplementary agreement will be available at Rs 5.9 per unit which is cheaper than other available alternatives. MSEDCL has already started receiving power from CGPL from 12 April, 2022. MSEDCL has requested the Commission to approve this additional power procurement as per the provisions of MYT Regulations, 2019. MSEDCL has also sought approval to

the supplementary PPA in line with the supplementary PPA between GUVNL and CGPL for the short-term supply of power of 1160 MW from 12 April 2022 to 15 June, 2022.

13. In view of above, the Commission notes that MYT Regulations, 2019 provides following provisions related to the additional power procurement:

“22.1 The Distribution Licensee may undertake additional power procurement during the year, over and above the power procurement plan for the Control Period approved by the Commission, in accordance with this Regulation.

22.2 Where there has been an unanticipated increase in the demand for electricity or a shortfall or failure in the supply of electricity from any approved source of supply during the Year or when the sourcing of power from existing tied-up sources becomes costlier than other available alternative sources, the Distribution Licensee may enter into additional agreement or arrangement for procurement of power.

22.3 Any variation, during the first or second block of six months of a Year, in the quantum or cost of power procured, including from a source other than a previously approved source, that is expected to be in excess of five per cent of that approved by the Commission, shall require its prior approval:

Provided that the five per cent limit shall not apply to variation in the cost of power procured on account of changes in the price of fuel for own generation or the fixed or variable cost of power purchase that is allowed to be recovered in accordance with Regulation 10

22.4 Where the Distribution Licensee has identified a new short-term source of supply from which power can be procured at a Tariff that reduces its approved total power procurement cost, it may enter into a short-term power procurement agreement or arrangement with such supplier without the prior approval of the Commission.

22.5 The Distribution Licensee may enter into a short-term arrangement or agreement for procurement of power without the prior approval of the Commission when faced with emergency conditions that threaten the stability of the distribution system, or when directed to do so by the MSLDC to prevent grid failure.”

Thus, in cases where there is an anticipated shortfall in fulfilling the demand due to reduction in the supply from the tied-up sources, Licensee can enter into the additional power procurement agreement. Prior approval of the Commission for such power procurement is required only when there is possibility of increase in quantum or cost of power beyond 5% of the approved level for first or second block of six months of a year.

14. In the present case, as summarised in para 7.3 above, MSEDCL has anticipated that cost of power procurement will increase beyond 5% of approved level. Therefore, prior

approval of the Commission is required. Accordingly, MSEDCL has filed this Petition on 31 March 2022 for seeking prior approval of short-term power procurement for supply to commence in the month of April 2022. During the pendency of the Petition, considering system requirement, actual power flow has started from 10 April 2022. As MSEDCL has procured such power to meet the consumer demand and the cost of which is relatively cheaper than power available on power exchanges at that point of time, the Commission allows the said power procurement from CGPL.

15. Having allowed short term power procurement as above, next issue is to be decided is the tariff at which such power procurement is to be allowed. Present petition has been filed for short term power procurement during the period of 10 April 2022 to 15 June 2022. However, from 6th May 2022, CGPL has been running its plant as per the Govt of India's direction under section 11 of the EA, 2003 and dispute regarding compensation amount for the same is pending before the CERC. Hence, both parties have agreed that issue of tariff for power supply from 6th May 2022 is to be decided by CERC and not by this Commission. Hence, this Commission has to decide the tariff for limited period of 10 April to 5 May 2022.
16. For deciding the tariff, agreement signed by parties needs to be perused. It is an agreed position that supplementary PPA is yet to be signed between parties. Parties do not have any dispute on fixed charges but have difference of opinion on sharing of mining profit for reduction in variable charges. Such dispute which has impact on final tariff can only be decided if parties have signed supplementary PPA and agreed to the terms and conditions mentioned therein. It is important to note that this transaction is being undertaken under special circumstances and on the intervention of the Central Government. Therefore, the Commission would be in a position to adopt / approve the tariff for this short term PPA only when supplementary PPA to be signed between parties is made available. At this stage it is premature for this Commission to approve such tariff without knowing terms and conditions of supplementary PPA. Hence, the Commission is not approving tariff part of this short term power procurement in this Order.
17. Having ruled as above, the Commission notes that CGPL has supplied the power to MSEDCL and has raised the invoice based on an understanding between parties. Commission agrees with CGPL that as per the terms settled with GUVNL to which Government of Maharashtra has given its consent to go ahead, generator is getting full payment of the power from GUVNL. MSEDCL cannot vary those terms unilaterally. Commission therefore rules that MSEDCL shall scrutinise the invoice raised by CGPL for the supply made to it and make payment accordingly without restricting it to 75% of invoice amount. This is important as generator needs to be paid fully so that it can make arrangement for coal. After finalisation of supplementary agreement, adjustment if any, can be made in subsequent bills as MSEDCL has long term PPA with CGPL. Further, during upcoming Mid Term Review proceeding, MSEDCL shall submit copy of supplementary PPA, if signed between parties and also apprise about final tariff arrived for such short-term power supply.

18. Further, during the Mid Term Review, MSEDCL shall also submit the status of similar arrangement in other states especially Gujarat, the lead procurer, in respect of the Regulatory approvals.
19. Hence, the following order

ORDER

1. Case No. 87 of 2022 is partly allowed.
2. The Commission allows the additional short term power procurement from CGPL.
3. Maharashtra State Electricity Distribution Co. Ltd. to submit supplementary PPA, if signed between parties, the status of Regulatory approvals in other states and the breakup of final tariff arrived for such short-term power supply, during the Mid-term Review.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(Sanjay Kumar)
Chairperson

