

RECORD OF PROCEEDINGS

HEARING : 3 April, 2013 at 11.00 hrs.
CASE NO : 68 of 2012 and M. A. No. 04 of 2013 in Case No. 68 of 2012

PETITIONER : Adani Power Maharashtra Ltd.

RESPONDENT : Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)

MATTER : In the matter of for adjudication of dispute u/s 86 of the Electricity Act, 2003 and for return of Performance Guarantee pursuant to the termination dated 16.02.2011.

CORAM : Shri V. P. Raja, Chairman

1. The Commission informed that subsequent to the last hearing on 13 February, 2013, an in-chamber hearing had taken place, with advocates and representatives for both the Petitioner and the Respondent being present, on 20 February, 2013 at MERC. The Daily Order for this hearing was posted on the website of the Commission and was sent to both the Parties as well as the Consumer Representatives. Prayas Energy group has made written submission on the Daily Order dated 20 February, 2013 (copy enclosed).
2. The Commission informed that some observations were made by the Secretary of the Commission regarding the procedure and the decision of the Commission regarding the hearing held on 20 February, 2013. Records of above mentioned observations and noting on the Commission's decision was read out in the Court room and copies were circulated. A copy of the document is annexed. The Commission reiterated that the said decision was in the interest of the people of the State in view of current power situation Further, under the interim arrangement, the Petitioner has agreed to supply the power at a levelised rate of Rs. 2.64/kWh as per the PPA.
3. The Commission mentioned that at the time of hearing MSEDCL was in shortage of power from approved sources, i.e., Parli (shut down due to shortage of water supply), RGGPL and Uran Power Plants (lower power generation due to shortage of gas) and drought situation in Maharashtra, the said interim decision of allowing Adani Power to supply power to MSEDCL at a levelised rate of Rs. 2.64/kWh (as per PPA signed in 2008) was in the interest of the State of Maharashtra. This levelled rate of Rs. 2.64/kWh is the lowest tariff rate arrived through a Competitive Bidding process.

4. Shri.Ashok Pendse, Consumer Representative, pointed out that out of the last 40 days energy has flowed into the grid only on six (6) days from APML. Adani representative said that Unit #2 has achieved COD on 30 March, 2013 and Unit #3 is ready to be synchronized and is waiting for SLDC permission for the same. Unit #1 achieved COD on 23 September, 2012.

Directions of Commission:

5. The Commission directed MSEDCL, the Respondent to submit the details of power supplied by APML.MSEDCL is also directed to provide details of Power being received by it under all other long term and medium term PPAs, besides those coming from Central Sector allocations.
6. All the parties including Consumer Representatives are directed to submit their comments on the documents of Prayas and those circulated by the Commission and make their written submissions and rejoinders well before the date of the next hearing.
7. Daily Order dated 20 February, 2013 will continue to remain in force till further Orders.

Post these matters for hearing on Thursday, 9 May, 2013 at 11:00 AM.

List of Participants present during the hearing held on 03.04.2013 at 11.00 hours

1. Shri Sanjay Sen, Advocate, Petitioner
2. Shri Jatin Jalundhwala, Adani Power
3. Shri Chirag Balsara, Advocate, Respondent
4. Shri Kiran Gandhi, Advocate, Respondent
5. Shri A. S. Chavan, CE (PP), MSEDCL
6. Smt. Ashwini Chitnis, Prayas Energy Group, Consumer Representative
7. Shri Ashok Pendse, Thane Belapur Industries Association, Consumer Representative

● PRAYAS

Initiatives in Health, Energy,
Learning and Parenthood

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26th February 2013

To,
The Secretary,
MERC,
Mumbai.

Subject: Prayas comments in the matter of for adjudication of dispute u/s 86 of the Electricity Act, 2003 and for return of Performance Guarantee pursuant to the termination dated 16.02.2011.

Ref: MERC daily order dated 20th February in case no 68 of 2012

Dear Sir,

This letter is regarding the matter mentioned above. At the outset we wish to clarify that this submission is without prejudice to our other submissions made in this matter (case no 68 of 2012) as well as our rights as interveners in this case. Please find below our submission with respect to the daily order issued by the commission on 20th February 2013 in this regard.

1. As per the daily order issued by the commission on 20th February 2013, the petitioner had sought approval from the commission on its interim petition. Following are the details mentioned in the order in this regard:

"Subsequent to the hearing held in the matter on 13th February, 2013, vide letter dated 19 February, 2013 a request has been made to the Commission to allow the Petitioner to mention on 20 February, 2013 at 10.30 hours the Interim Application filed on 12 February, 2013. The interim application filed by the Petitioner contains the following prayers:

*"i) to direct the Respondent to procure the power at the mutually agreed tariff or such other tariff as this Hon'ble Commission may deem fit in the facts and circumstances of the present case till the time and subject to final disposal of the main petition;
ii) Any other or further relief(s) which the Hon'ble Commission may deem fit may be passed."*

2. Further the daily order states the following:

"In view of existing circumstances under which MSEDCL is in shortage of Power from approved sources i.e. Parli Power Plant (shut down due to shortage of water supply) and RGGPL & Uran Power Plant (lower power generation due to shortage of gas), the interim arrangement as proposed by the Petitioner, is justified and for the benefit of consumers. Further, under the interim arrangement, the Petitioner has agreed to supply the power at a levellised rate of Rs. 2.64/kWh as per PPA.

Therefore, the Commission approves the supply of power at Levellised Tariff of Rs. 2.64/kWh based on the terms and conditions provided in the PPA as an ad interim measure till the Interim Application dated 12 February, 2013 is heard by the Commission and subject to further orders.

*This is without prejudice to the rights of both the parties in Case No. 68 of 2012.”
(Emphasis added)*

3. The above details imply that till the commission decides case no 68 of 2012 and issues a final order, the petitioner will be obligated to supply power to MSEDCL as per the terms and conditions of the PPA dated 8th September 2008.
4. The Article 11 of this PPA deals with billing and payment and states the following:

11 ARTICLE 11 : BILLING AND PAYMENT

11.1 General

From the COD of the Second Unit, Procurer shall pay the Seller the Monthly Tariff Payment, on or before the Due date, comprising of Tariff for every Contract Year, determined in accordance with this Article 11 and Schedule 6. All Tariff payments by the Procurer shall be in Indian Rupees.

Provided however, if the Procurer avails of any Electrical output from the Seller prior to the Commercial Operation Date (“**Infirm Power**”) of the Unit, then the Procurer shall be liable to pay only Energy Charges (as applicable for the Contract Year in which the Infirm Power is supplied or next Contract Year in case no Energy Charges are mentioned in such Contract Year), for Infirm Power generated by such Unit. The quantum of Infirm Power generated by Units synchronized but not have been put on COD shall be computed from the energy accounting and audit meters installed at the Power Station as per Central Electricity Authority (installation and operation of meters) Regulations 2006 as amended from time to time.

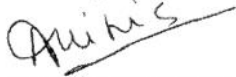
5. Therefore, it becomes clear that as per this daily order and based on the PPA terms and conditions, for any power supplied by the petitioner before commercial operation, MSEDCL will have to pay at the rate of first year variable charge which is Rs. 1.440 /kWh as per the schedule 10 of the PPA. Once the identified Units declare commercial operation, MSEDCL will have to pay as per the first year tariff of Rs. 2.553 /kWh (comprising of capacity charge of Rs.1.113 /kWh and variable charge of Rs. 1.440 /kWh) according to the schedule 10 of the PPA.
6. It is important to mention here that there was no communication from the commission regarding possibility of conducting any hearing based on the interim petition on this day. In fact, during the hearing held on 13th February 2013, the commission explicitly mentioned that there would be no hearing on 20th, but MSEDCL should make best efforts to ensure that all formalities necessary for filing the petition dated October 2008 are completed so that it can be formally admitted by the commission. The daily order however sheds no light on whether this formality has been completed by both MSEDCL and the commission and whether the said petition (dated October 2008) has been filed and whether it will be considered during the hearing dated 3rd

April 2013. The commission should clarify the status of the process pertaining to this October 2008 petition.

7. By conducting an 'in chamber' hearing in this manner the commission effectively denied opportunity to other parties to intervene in this crucial matter. From the point of view of conduct of regulatory processes, such action on part of the commission is a matter of serious concern and we urge the commission to avoid such practices.
8. We will shortly file additional submission to capture the issues raised by us during the hearing dated 13th February 2013. We request the commission to kindly take this submission on record and allow us to make such further submissions.

Thanking you

Sincerely



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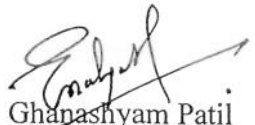
Note:

20 February 2013

Subject : In the matter of for adjudication of dispute u/s 86 of the Electricity Act, 2003 and for Return of performance guarantee pursuant to the termination dated 16.02.2011.

Case No. 68 of 2012

Subsequent to the Chamber hearing in the matter held on 20 February 2013 at 10.30 am, legally vetted Daily Order is put up for approval.


Ghanashyam Patil
Dy. Director (Tech)

Secretary

Chairman

An ad interim ~~rate~~ levelised tariff of Rs ~~2.16~~ Rs 2.64/KWh as per PPA is being proposed in the draft daily order. I may mention here that though I suggested the daily order not to be sent on the file, I used to check important daily orders and correct them wherever necessary.

When I came to know this hearing and checked the draft of daily order, I thought it proper from the point of view of consumers' interests to bring on record the infirmities or errors associated with the draft daily order.

I submit my views as below:

(1) This hearing was not organized in a proper manner. Even Secretary or Director (concerned) was not called for or informed about this hearing. No Consumers Representative was present. Even the concerned deputy director was called in the chamber of Chairman, ~~MPRE~~ at the end of the discussion.

Separately, I would enquire as to who organised this hearing disregarding all procedures and Rules. No transparency was maintained during this hearing.

I extend my apology to the Commission for the administrative lapse shown by officers/consultants of the Commission.

(2) The Adani Powers are trying to get all the advantages. While requesting for ad interest relief of Rs 2.64/kwh and as per the PPA which has been ~~was~~ unilaterally terminated by themselves but at the same time, maintaining the termination of the PPA, the Adani Powers continue their request for force majeure relief. If finally, the force majeure turns out to be in the favour of Adani Powers, they would certainly demand the payment of difference of the finally approved tariff and the ad interest tariff of Rs 2.64/kwh. Moreover, the say of MSRDCL has ^{not} been recorded. Therefore, considering all above, allowing ad interest tariff of Rs 2.64/kwh by a daily order would, I most humbly submit, be against the interest of Consumers of Maharashtra. This thus, I request the Commission not to allow this ad interest tariff. Member (VLS) may like to see it for order.

~~seen~~ Member (VLS) [for inf]

Chairman I have carefully considered the points brought out by Secretary. There

was a chamber hearing in my
chamber today morning when the
Advocates from both sides were present.

31/N


Unit 2 is already synchronised to the
Grid and is already supplying Infirm
power to MSEDC at Variable cost. It
will soon attain COD. Unit 3 is likely
to get synchronised very soon. The tariff
of Rs 2.64 (~~levelised~~ levelised) was arrived
at through a competitive bidding process.
The adoption of Tariff had remained to be
done by the Commission in October 2008.
That is being separately looked into.
Now that petition on adoption of
Tariff (Case No. 24 of 2013) is being
taken up and hearing has been
fixed on 3rd April 2013.

Since I am proceeding on leave from
tomorrow evening onwards and since
I am hearing the main case 68 of 2012,
(Member having recused himself), it
is necessary to take action on the
~~the~~ mention made by the Advocates of
both sides in a chamber hearing.

taking the larger interest of the
State and the consumers of
Maharashtra.

With severe drought in ~~State~~
Maharashtra, the Parli Units
of Maharashtra are closed. R.G.PPL
is short of Gas. Keeping
all this in mind the Tariff of
Rs 2.64 (levelised) is very
attractive. It has been the
lowest tariff of all competitively
bid tariffs. On any event,
this is only an "interim arrangement".
All parties including the
consumer representatives will get
full and adequate opportunity to
present their views on 3-4-2013
and in further hearings thereafter.

Daily Order is approved. Kindly
issue and upload on our web-site.
Send copies to all concerned including
consumer representatives.

Secretary 
20/2/13

VPR/2013 -
20/2/2013

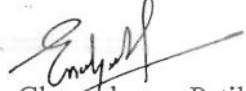
Note:

21 February 2013

Subject : In the matter of for adjudication of dispute u/s 86 of the Electricity Act, 2003 and for Return of performance guarantee pursuant to the termination dated 16.02.2011.

Case No. 68 of 2012

Subsequent to the Chamber hearing in the matter held on 20 February 2013 at 10.30 am, draft Record of Proceedings (RoP) in line with Daily Order is put up for approval.


Ghanashyam Patil
Dy. Director (Tech)

Dy. Director (Legal) (Ghosh) — on leave.

Secretary

Chairman

I was not aware of any such hearing. I was very much present in the office. There was no notice issued for this hearing. It may be noted that a ~~see~~ counsel from Delhi appeared on behalf of the Petitioner. I have no idea why such a hearing was held. There are many questions raised by Consumer Representatives in this case. I may note here that I feel that there are deliberate attempts to keep Secretary away from this case. I request the Commission for the following prayers.

(1) The proceedings of Case No 68/2012 be stopped immediately till the third member of the Commission joins.

(11) All orders / pop^s issued so far be cancelled.

[Signature]
21/02/2013

~~5th Member (128)~~

Chairman

1. I completely disagree with Secretary.

CHAIRMAN'S OFFICE
Date: 21/2/13

All orders issued are done by the Commission.

2. Next hearing in this case is fixed on

3rd April 2013 when all including

~~the~~ consumer representatives will be heard. Hopefully

the third member will be in position by that time.

3. The tenor and insinuation made by the Secretary are not appreciated

Secretary

P. ensure that the nodal officer should handle the subject & file.

[Signature]
21/2/13

VPRojec -

21/2/2013

Sh. S. S. (RBS)