

RECORD OF PROCEEDINGS

HEARING : 3 April, 2013 at 10.30 hrs.
CASE NO : 24 of 2013
PETITIONER : Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)
INTERVENERS : 1. Adani Power Maharashtra Ltd.
2. Lanco Vidharbha Power Ltd.
MATTER : Petition of MSEDCL for Submission of the Power Purchase Agreements (PPA) for the adoption of Tariff along with other Certificate and documents
CORAM : Shri V. P. Raja, Chairman

1. **Pleadings by the Petitioner:** Shri Chirag Balsara, Advocate for the Petitioner, submitted that the Commission's mandate under Section 63 of the Electricity Act, 2003 is limited to either adopting or rejecting the tariff found after ascertaining that the process set out under Competitive Bidding Guidelines and the tariff has been discovered in a transparent manner and is consistent with the market.
2. **Pleadings by the Intervener(s):** Shri Sanjay Sen, Advocate for Adani Power submitted that he has filed an objection to the adoption of tariff, as there has been a long gap between the completion of the process set out under the Competitive Bidding Guidelines (CBG) and ignores the developments that have taken place in the interim.
3. Shri Ramanuj Kumar, Advocate for Lanco Vidharbha submitted that they have not yet received a copy of the Petition and requested time to study and file written submissions.
4. **Pleadings by Consumer Representatives:** Prayas Energy Group submitted that in the present case the adoption of tariff of L1 and L2 bidders may be considered a mere formality as the Commission vide order in Case No 39 of 2009 has already adopted the tariff of L3 in the bidding process. As per the Competitive Bidding Guidelines, it is the responsibility of the Commission to ensure that the process is fair and transparent.
5. Shri Ashok Pendse of Thane Belapur Industries Association (TBIA) submitted that under Section 63, the Commission may either adopt or reject a tariff discovered under CBG. He submitted as per a Karnataka ERC judgment tariff discovered under the CBG process may be submitted to the Commission and adopted by it without even a separate hearing.

He also submitted that MPERC in a recent case had adopted the PPA while approving deviations to it.

6. A general checklist on CBG process and specific checklist on the documents to be submitted by the Petitioner for adoption of tariff and approval of PPA as prepared by the internal team of the Commission was handed over to all the parties. A copy of the checklist is annexed.

7. Directions of Commission:

8. Adani Power Maharashtra Limited and Lanco Vidharbha are impleaded as a party in this case. The Commission directed MSEDCL to serve the copy of Petition to Adani Power Maharashtra Ltd., Lanco Vidharbha and authorized Consumer Representatives. All parties are directed to submit their written submissions within two weeks' time and rejoinders thereto within 10 days of written submission with copy served to all parties.
9. The Commission also directed MSEDCL to make available the expected date of synchronization and expected date of CoD for long term and medium term PPAs under Competitive Bidding Guidelines on MSEDCL's website.
10. All the parties are directed to make their written submissions and rejoinders well before the date of the next hearing.

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 Chirag Balsara, Advocate, Petitioner
2. Shri Kiran Gandhi, Advocate, Petitioner
3. Shri A. S. Chavan, CE (PP), MSEDCL, Petitioner
4. Shri Sanjay Sen, Advocate, APML – Intervener (1)
5. Shri Jatin Jalundhwala, APML- Intervener (1)
6. Shri Ramanuj Kumar, Advocate, Lanco Vidharbha - Intervener (2)
7. Shri Gurunath Wadke, Lanco Vidharbha, Intervener (2)
8. Smt. Ashwini Chitnis, Prayas Energy Group, Consumer Representative
9. Shri Ashok Pendse, Thane Belapur Industries Association, Consumer Representative

MERC
CHECK LIST FOR PETITIONS
(Section A: General Check List & Section B: Specific Check List)

Date of Petition : _____
 Petitioner : _____
 Received Date : _____
 Nature of Petition / Matter in brief: _____

SECTION A : GENERAL CHECK LIST:-

<u>S.No.</u>	<u>Reference</u>	<u>Details of Checks</u>	<u>Y/N</u>
1	MERC (CoB) Regulations 2004. Regulation.35	The Petition is typewritten / cyclostyled /printed / handwritten, neatly and legibly on one side of the paper and every page is consecutively numbered.	
2	MERC (CoB) Regulations 2004. Regulation.36	The Petition is filed in a computer disk or through electronic media in accordance with such terms and conditions as determined by the Commission	
3	MERC (CoB) Regulations 2004. Regulation.37	The contents of the Petition are divided appropriately into separate paragraphs, numbered serially.	
4	MERC (CoB) Regulations 2004. Regulation.44	The Petitions is presented in person / by any representative at the head office / such other filing centre or centres during its working hours, as may be notified by the Commission from time to time / by registered post / speed post or courier with acknowledgement due to the Commission at such places.	
5	MERC (CoB) Regulations 2004. Regulation.45	Upon receipt, the Secretary or Officer of the Commission designated for the purpose of receiving the Petition has acknowledged the receipt by stamping and endorsing the date on which the Petition has been presented and has issued a duly stamped and dated acknowledgement to the person filing the Petition. Note: In case the Petition is received by registered post, the date on which the Petition is actually received at the office of the Commission shall be taken as the date of the presentation of the Petition and the post or courier acknowledgement shall be considered as acknowledgement of receipt.	

<u>S.No.</u>	<u>Reference</u>	<u>Details of Checks</u>	<u>Y/N</u>
6	MERC(CoB) Regulations 2004. Regulation.46	The presentation and the receipt of the Petition has been duly entered in the register maintained for the purpose by the office of the Commission, showing serial no. of Petition, date of its receipt, names and addresses of the parties, brief subject matter of the Petition, etc., claim/relief sought, interim relief sought, if any, approximate number of pages and date of disposal with final result thereof.	
7	MERC (CoB) Regulations 2004. Regulation.38	The Petition is accompanied by such documents, supporting data and statements as the Commission may determine. (Refer to Section B: Specific Check List for Document List)	
8	MERC (CoB) Regulations 2004. Regulation.39	Petitions contains a summary / synopsis of the brief facts, issues, case law referred to, and reliefs sought therein and shall mention the following particulars	
8(a)		(a) the statutory provisions under which the Petition is being filed before the Commission	
8(b)		(b) reasons why the Commission has jurisdiction to try, entertain and dispose of the Petition;	
8(c)		(c) whether the Petition is filed within the time limit prescribed in the Limitation Act, 1963, and if not, the period of delay and whether the Petitioner is seeking condonation of delay, and on what grounds	
9	MERC (CoB) Regulations 2004. Regulation40	General headings: The general heading in the Petitions before the Commission is in Form II enclosed in MERC CoB Regulations 2004	
10	MERC(CoB) Regulations 2004. Regulation41	Affidavit in support:	
10(a)		(a) The statement of fact contained in a Petition filed, is supported by a duly notarized affidavit. Every such affidavit is in Form- III. enclosed in MERC CoB Regulations 2004 Provided that the Commission may, at its discretion, waive the requirement of affidavit in any particular case.	
10(b) (i)		(b) (i)Every affidavit is drawn up in the first person and stating the full name, age, occupation and address of the deponent and the capacity in which he is signing.	
10(b) (ii)		ii)The deponent has furnished information with regard to any proceeding pending in any court of law/ tribunal or arbitrator or any other authority, wherein the deponent is a party and where issues arising and/ or reliefs sought are identical or similar to the issues arising in the matter pending before the Commission	

<u>S.No.</u>	<u>Reference</u>	<u>Details of Checks</u>	<u>Y/N</u>
10(c)		(c) Every affidavit has clearly and separately indicated the statements which are true to the –	
10(c) (i)		(i) knowledge of the deponent;	
10(c) (ii)		(ii) based on information received by the deponent which he believes	
10(d)		(d) Where any statement in the affidavit is stated to be true based on the information received by the deponent, the affidavit has also disclosed the source of the information and a statement that the deponent believes such information to be true.	
11(i)	MERC(CoB) Regulations 2004. Regulation43	Presentation and scrutiny of the pleadings, etc. (i) The Petition is filed with six identical copies and each set of the Petition is complete in all respects.	
11(ii)		(ii) The fees as specified by the Commission or prescribed by the State Government, as the case may be, from time to time, are payed along with the Petition.	
12(i)	MERC(CoB) Regulations 2004. Regulation47	<u>Petitions found Defective on Scrutiny</u> (i) The defects have been notified to the party concerned within a period of ten (10) working days, through a letter as per standard letter format attached as Form IV to the MERC (CoB) Regulations 2004, advising him to rectify the defects within a specified time	
12(ii)		(ii) Whether the Defect has been removed OR On failure to remove defects within the time allowed, the Petition stands dismissed	
12(iii)		(iii) Whether any person aggrieved by the Defect Notice has made any presentation regarding the same to the Commission	
13	MERC(CoB) Regulations 2004. Regulation50	<u>Petitions accepted after scrutiny / Defect Rectified</u> Accepted Petition is duly registered and given a number in the manner to be determined by the Commission	
14	MERC(CoB) Regulations 2004. Regulation51	Accepted / Rectified Petition is put up to the Commission on Date _____	
15	MERC(CoB) Regulations 2004. Regulation53	<u>Serving of Notices :</u> (i) Notices served to the respondents and other affected or interested parties regarding filing of the Petition; (b) Notices served directing the parties concerned to file replies, rejoinder affidavits, and documents (in opposition or in support of the Petition);	

SECTION B : SPECIFIC CHECK LIST:- (DOCUMENTS LIST)

(Refer Item S.No. 7 of General Check List)

Petitioner : MSEDCL

Received Date :

Nature of Petition / Matter in brief: Case 24 of 2013

<u>S.No</u>	<u>Details of Checks</u>	<u>Y/N</u>
1.	<u>Documentary proof regarding the following :</u>	
1.1	Required approvals for conducting the bid process have been obtained by the Procurer	
1.2	Deviations in the bidding documents have been approved by the Commission.	
1.3	The bid process been completed within the timeline stipulated under CBG. If not, details regarding the approval of the Commission for condonation of delay	
1.4	Whether the number of qualified bidders responding to the RFQ/RFP other than any affiliate company or companies of the procurer was more than two? And, if not, in such case, has Procurer obtained the approval of the Commission, to carry on the bid process	
1.5	Evaluation Committee has been constituted as per the requirements of the CBG	
1.6	the Procurer has made the bids received by it public, as per the requirements of the CBG	
2	<u>Documents enclosed with the Petition</u>	
2.1	List of persons on Bid Evaluation Committee	
2.2	PPA signed by the Procurer and the Supplier	
2.3	Certificate of the Bid Evaluation Committee set up as per the requirements of the CBG on conformity of the bid process evaluation according to the provisions of the RFP document	
2.4	Certificate of the Procurer on conformity of the bid process to the Competitive Bidding Guidelines	
2.5	In case any Post bidding negotiation have been made.	
2.5(i)	Proceedings of the Negotiation Committee	
2.5(ii)	Certificate of the Bid evaluation committee regarding acceptance of the outcome of the same.	