

RECORD OF PROCEEDINGS

HEARING : 13 February, 2013 at 11.00 hrs.
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

The Commission informed that Petitioner has submitted an Application for amendment of the Petition and the Commission will take a view on amendment of Petition. The copies of all Orders related to Case 1 Stage 1 Competitive Bidding Process and where reference of Case 1 Stage 1 Competitive Bidding process were made in the Orders were circulated to both the Parties and the Consumer Representatives.

1. **Pleadings by the Petitioner:** Shri Sanjay Sen, Advocate for Petitioner submitted that Order for adoption of Tariff under section 63 of Electricity Act, 2003 has not been issued by the Commission. He said that the Petitioner would like to submit a Rejoinder to MSEDCL's replies on the Application for Amendment of the Petition.
2. **Pleadings by the Respondent:** Shri Chirag Balsara, Advocate for Respondent, submitted that Rejoinder to Amendment to the Petition has been submitted by them. He further stated that Commission has to adopt the Tariff under section 63 of EA, 2003. He submitted that the Amendment to Petition should not be allowed at this stage in the hearing. He further submitted that the Application for Amendment of Petition is in contradiction to the prayers of the original Petition. He also submitted the Commission should first consider issue of adoption of Tariff under Section 63 of EA, 2003 and then take up the original Petition.
3. **Pleadings by Consumer Representatives**
Shri Pendse of Thane-Belapur Industries Association stated that the Competitive Bidding Guidelines (CBG) has a provision for deviation, and though the process defined the CBG has been followed it has not been completed as Tariff has not been adopted. This is to be taken as deviation and the Commission has powers to approve the deviation. He further

stated that APML has signed Fuel Supply Agreements (FSAs) based on the PPA with MSEDCL. In case this PPA is cancelled, what would be the fate of the FSAs?

Ms.Ashwini Chitnis of Prayas Energy Group said that this issue was raised by them earlier on two occasions. In the Order on Case No. 39 of 2009, MSEDCL has stated that Lanco PPA is approved; therefore, the Adani PPA also stands approved. Should the Commission accept this stand? She requested Amicus Curiae to clarify on this. She further wishes to know the stand of the Petitioner on status of the PPA.

4. Amicus Curiae

Shri Harinder Toor, Amicus Curiae, pointed out that under Section 63 of the EA, 2003, the Commission has to adopt the Tariff discovered after ensuring that proper procedure has been followed. He stated that section 176 of EA, 2003 and Competitive Bidding Guidelines are to be read while adopting the Tariff.

He brought to the Commission's notice that under Regulations 94 and 95 of MERC (Conduct of Business) Regulations, 2004, the Commission has the power to deal with any matter or exercise any power under the Act for which no Regulations have been framed and the Commission may deal with such matters.

5. Both parties agreed that the Petition for adoption of Tariff under Section 63 must be taken first by the Commission and then followed by Case No. 68 of 2012.

6. Directions of Commission:

- a) The Commission directs Registry of the Commission to issue deficiency letter latest by 14 February, 2013 to MSEDCL on the Petition dated 16 October, 2008.
- b) MSEDCL is directed to comply with the points in the deficiency letter by 18 February, 2013.
- c) The Commission also directs Petitioner and Respondent to comply with all the direction given under Daily Orders in this case. The Petitioner is also directed to reply to queries raised by Authorized Consumer Representatives.
- d) The Petitioner may file Rejoinder on the reply filed by MSEDCL on application for Amendment of Petition.
- e) All Parties are directed to submit their submission on the application for Amendment of Petition, made by the Petitioner.

Post for further hearing in the Case of adoption of Tariff under Section 63 of Electricity Act, 2003 (Case No. 24 of 2013) and Case No. 68 of 2012 on 3 April, 2013 at 11.00 Hours.

List of Participants present during the hearing held on 13. 02 .2013 at 11.00 hours

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