

RECORD OF PROCEEDINGS

HEARING : 10 & 11 June, 2013 at 11.00 hrs.

CASE NO : 68 of 2012 and Misc. Application No. 04 of 2013 in Case No.68 of 2012

PETITIONER : Adani Power Maharashtra Ltd.

RESPONDENT : Maharashtra State Electricity Distribution Co. Ltd.

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
Smt. Chandra Iyengar, Member

Submissions by the Petitioner

1. Advocate Shri Sanjay Sen submitted that as per NCDP, the Petitioner considered that 100% coal supply will be met through linkages. The Petitioner had originally planned for 2 units of 600 MW (sub-critical) and accordingly applied for coal allocation for 1200 MW generation. The plan was subsequently changed to 5 * 660 (super critical) totaling to 3300 MW.
2. The Petitioner was qualified at RFQ stage for 1541 MW, based on his LOA from CIL, the fuel from captive mines and balance from imports. The Petitioner submitted a chart of coal allocation, which the Commission asked him to update and provide more details.
3. The Petitioner was also allotted Lohara captive block for meeting 1000 MW generation requirement and for balance permanent linkage was accorded by CIL. On further examination, it was found that mines will yield sufficient coal only for 800 MW and not for 1000 MW. Tapering linkages for 800 MW was approved from date of operation of the Units 2 and 3 in lieu of the Captive Block.
4. Petitioner than stated their understanding of various clauses of PPA and interpretation of the facts.
5. On the issue of Force Majeure and the Opinion of Advocate General, Petitioner submitted that GoM is not bound by the opinion. MSEDCL submitted that AG

being top Law Officer of the State, his advice has sufficient weightage and has to be considered. The Commission enquired MSEDCL about the list of queries sent to AG.

6. Petitioner submitted that section 61 of EA, 2003, provides guidance for tariff regulation, Section 62 and 63 are two methods of determination of tariff and is mutually exclusive. The Commission has further Powers to regulate tariff, under Powers vested to it under 86(1) (b) of the Act.
7. The Commission read out Maharashtra Government Industrial and Power Policy, 2005 and stated that Policy provided for various incentives to Project Proponents, when they set up Projects in specified areas. The Commission directed Petitioner to submit the incentives availed by him while setting up the Project and his commitment to the State in lieu thereof.

Submissions by the Respondent

8. Advocate Shri Rahul Chitnis, outlined the Respondent's point of view that withdrawal of ToR does not constitute a Force Majeure; hence termination of PPA by Petitioner on this ground was illegal. He reiterated, by quoting provisions in the RFQ, RFP and the PPA, that fuel sourcing was the sole responsibility of the Petitioner in Case1 Bid Process, and this had been stated clearly in the RFQ, RFP and the PPA.
9. He further submitted that a change in the cost of fuel is not a Force Majeure event. He submitted that under Article 19 of the PPA, supply from alternate sources was allowed with no consequent change in tariff.
10. In response to the Commission's query on why the Respondent did not take up the Petitioner's offer of supply from Units 4 & 5 in lieu of Units 2 & 3, the Respondent submitted that the offer was for a limited period and was offered on the condition that the power from Units 2 & 3 would be sold elsewhere. He submitted that under the PPA terms, the generator cannot sell power to anyone else.

Submissions by Consumer Representatives

11. Ms. Ashwini Chitnis of Prayas Energy Group, (Authorized Consumer Representative) reiterated that in their opinion, termination of the PPA by the Petitioner was wrong as there are no grounds for Force Majeure. She submitted that the Petitioner must be aware of the fact that environmental clearance for the Lohara coal block was denied in 1999 also and pointed out that the coal block was cited as a risk factor in the Company's Red Herring Prospectus. Therefore ToR withdrawal cannot be termed as a Force Majeure event.

12. Ms. Chitnis submitted that the current status of both L1 and L2 bidders' projects in the Case 1 stage 1 bid must be appraised to the Commission, as the failure of these projects to take off, would have huge tariff implications for the State's consumers.
13. Shri Ashok Pendse of Thane Belapur Industries Association submitted that the Commission must take note of the fact that the L3 bidder in the bid process, JSW, is supplying power to the Respondent at Rs 2.716 per unit from a plant that runs on totally imported coal. He pointed out that the difference in the quoted tariff between both bids is only 6 paise per unit, despite there being a huge difference in the prices of imported coal and domestic coal and that from captive mines.
14. He further submitted that out of the 1320 MW contracted to the Respondent, the Coal from Lohara captive mines accounts only for 800 MW(for which tapering linkage has been provided), whereas for the balance 520 MW, CIL has provided permanent linkage from WCL. Thus Petitioner may supply entire 1320 MW to Respondent under the PPA till the present Petition is disposed off.
15. He further submitted that since the Petitioner himself offered to supply Power from Units 4 & 5 in lieu of Units 2 & 3 at the PPA rates, when Units 4 & 5 do not have any coal linkage, where is the question of increasing the price of power.

Directions of the Commission:

16. The Commission reiterates its earlier direction given in Daily Order dated 18 January, 2013 and directs APML and MSEDCL to make efforts to work out options for feasible Tariffs amicably in line with the enabling provisions of Article 17.2 of the PPA. The parties are directed to keep the aspects highlighted in Daily Order dated 18 January, 2013 in perspective in their efforts to reach an amicable solution. The parties are directed to evaluate the feasibility of the options after considering different scenarios, including a) feasibility considering only Unit No. 2 and 3 of Tiroda TPS and b) feasibility considering all five units of Tiroda TPS. The Commission directs the parties to conduct the above mentioned meeting(s) before the next hearing and submit the minutes of the said meeting(s) to the Commission.
17. APML is directed to provide the following information/clarifications before the next hearing:
 - a) Whether APML was aware at the time of submission of RFP in Case 1 Stage-I bid process that a proposal for mining project in same proposed location (Lohara) was rejected earlier in 1999? When did APML come to know about this fact?

- b) Whether APML submitted a revised conservation plan, once the original conservation plan was rejected by Principal Chief Conservator of Forests, Maharashtra?
 - c) APML to clarify whether the offer for supply from alternate units, i.e., Unit-4 and 5 was for a specific period or entire tenure of PPA.
 - d) Detail of unit-wise coal supply, which shall include a) details of project capacity for which coal allocation was requested at various point of time along with the projected break- up of coal source i.e., Captive Mines, Linkage Coal, Imported coal and any other source, if any. (b) Allotment of coal for the entire five units against the request made. (c) Current status of coal supply for all Units (1 to 5) with source, cost and quantum.
 - e) Lohara coal block was allocated to Adani Power for 1000 MW power plant at Tiroda. By natural principle supply of coal from Lohara coal block should be provided to first unit of power plant which is coming at the Tiroda. However, at the time of bidding APML has excluded Unit 1 in Case 1 Stage 1 bidding process. APML to explain reasons behind it.
 - f) APML is required to submit the benefits availed by APML under the policy dated 28th March, 2005 of Government of Maharashtra i.e., “Maharashtra State Policy for investment in power generation sector for capacity addition of 500 MW and above”. APML to further clarify the impact of the provisions relating to a certain percentage of sales of power to Maharashtra as per the policy on validity of termination of PPA.
18. MSEDCL is directed to provide the following information before the next hearing:
- a) The specific queries raised to the Advocate General, Maharashtra and query-wise reply thereof.
 - b) Chronology of action taken by MSEDCL/GoM on receipt of termination notice from APML.
 - c) MSEDCL to clarify the reasons for not considering the offer of APML to supply power from alternate units, i.e., Unit- 4 and Unit-5 of Tiroda TPS and whether it has formally replied to the said offer of APML
 - d) Some of the document seems to suggest that responsibility of approval of plan for mining is with State Government. MSEDCL may kindly find whether it

should be done by parent Department or any other Department. If latter, what steps taken by parent Department to approach other Department. Whether any steps taken within the Government if there is conflict of interest between the Departments.

- e) Reasons for accepting higher tariff bid for Unit 1 when contract has been signed at comparatively lower tariff from Unit 2 and 3 of the same Power Plant.

The parties are also directed to provide information related to the present case as sought by Authorised Consumer Representatives and have meetings with them, if required, before the next hearing.

Post these matters for hearing on 3 July, 2013 at 11:00 hrs.

List of Participants present during the hearing held on 10 & 11 June, 2013 at 11.00 hrs.

1. Shri Sanjay Sen, Advocate, Petitioner
2. Kandarp Patel , Adani Power
3. Shri Rahul Chitnis , Advocate, Respondent
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 Srihari Dukkupati, Prayas Energy Group, Consumer Representative
9. Shri Ashok Pendse, Thane Belapur Industries Association, Consumer Representative