

RECORD OF PROCEEDINGS

DATE OF HEARING : April 25, 2007 at 12.30 hrs
CASE No. : 4 of 2007
PETITIONERS : Reliance Energy Limited

MATTER : Petition filed by Reliance Energy Limited seeking (i) waiver of their obligation to achieve the minimum targets in terms of the Order dated August 16, 2006 in Case No. 6 of 2006 for FY 2006-07; (ii) relaxation in the prescribed RPS target of 4% for 2007-08 in terms of the said Order to 2.4%.

Reliance Energy Limited (“REL”) filed a Petition on April 9, 2007, seeking (i) waiver of their obligation to achieve the minimum targets in terms of the Order dated August 16, 2006 in Case No. 6 of 2006 for FY 2006-07 (in the matter of long term development of renewable energy sources and associated regulatory RPS framework); (ii) relaxation in the prescribed RPS of 4% for 2007-08 in terms of the said Order to 2.4%. The Commission scheduled the hearing in the matter on April 25, 2007 in the presence of consumer representatives authorised on a standing basis under the Electricity Act, 2003 (“EA 2003”). Notices were issued accordingly.

2. At the hearing held in the matter on April 24, 2007, Smt. Anjali Chandurkar, Counsel for REL submitted that inspite of diligent efforts undertaken by REL, it is not practically possible to achieve the minimum RPS target of 3%, as specified under paragraph 2.6.8 in the Order dated August 16, 2006 in Case No. 6 of 2006 (“**the RPS order**”) for FY 2006-07, due to various constraints. Further, the minimum RPS target of 4% for FY 2007-08 may also be relaxed and modified to 2.4%. Counsel submitted the following portion in the RPS Order to in support of the submissions:

“2.6.12. The Commission may waive the above minimum targets for the year as per clause 2.6.8 of this Order subject to supply constraints or any other uncontrollable factors in the opinion of the Commission.”

Counsel further submitted that the disallowance of the penalty for failure to achieve RPS targets, as “pass through” expenses in the ARR, as per paragraph 2.10.7 of the RPS Order would cause sufficient hardship to REL, should the aforesaid prayers not be allowed. The Commission enquired whether it would be possible for REL to achieve the cumulative average of the RPS percentage (as otherwise specified for FYs 2006-2007, 2007-08, 2008-09 and 2009-2010). REL should try to make good any shortfall in the RPS target pertaining to one FY, in the following FY. It would not be judicious to grant exemption as prayed for at this stage when steps towards procurement of renewable energy have already been initiated. Further, such exemptions would defeat the RPO scheme as other utilities would seek similar exemptions from the RPS framework. Counsel submitted that achieving the cumulative average of the RPS framework may be difficult owing to the insufficiency of renewable energy available in Maharashtra.

Counsel referred to the following portion from the 'Final Report on Assessment for availability of RE source in the State of Maharashtra', which is annexed to the present Petition and marked as Annexure 3:

"7. Conclusion:-

Here while Assessing the Renewable Energy generation and reviewing the entire RPS framework, for calculated the percentage of RPS base is taken as 82000 MUs which is of 05-06, by MEDA and on that basis derived and projected the Renewable energy generation for the Maharashtra state.

Where as the Demand projection derived for utilities for year 07 to 10 are higher than those hence Renewable Generation required is higher than the MEDA projection.

Renewable energy Generation in Maharashtra for F.Y. 06-07 till Dec 06 was 2410 MUs with installed capacity of 1907 MW and for the F.Y. 09-10 will be 6956 MUs with installed capacity between 3500 to 4000 MW.

As there is a shortage of Renewable Energy generation to meet the RPS obligation and therefore there is immense potential for the Renewable energy development for the next three year time period in Maharashtra."

The Commission invited the opinion of Shri. Ajit Pandit, a consultant to the Commission, on the said report submitted by REL.

3. Shri. Ajit Pandit submitted that the gross energy requirement levels submitted by REL for FY 2007-08, 2008-09 and 2009-2010 are overstated in comparison to the energy input requirement levels specified by the Commission in the Order dated April 24, 2007 passed in Case No. 75 of 2006 (in the matter of approval of ARR for REL-D for Control Period FY 2007-08 to FY 2009-10, and Retail Tariff for FY 2007-08). As for example, with respect to FY 2009-10, REL has submitted the gross energy input level as 10,378 MUs, under Table 3-4 in the said report. However, as per the Order dated April 24, 2007 the said level has been specified as 9,890 MU. Several other levels mentioned in the said report are also overstated as compared to the levels specified by the Commission.

4. The Commission observed that REL would be able to adhere to RPS targets, should it adhere to the energy input requirement levels as specified by the Commission. REL has to re-asses their energy input requirement levels and endeavor achieving the RPS targets. The Commission observed that all utilities in Maharashtra subject to the RPS Order, should collaboratively participate in the technical task force to be set up by MEDA to achieve RPS targets. MEDA should take initiative to set up this task force.

5. Shri. Girish D. Rane, MEDA, submitted that as per the data submitted by MEDA before the Commission in an earlier point of time, the amount of renewable energy (especially bagasse power) available in Maharashtra is sufficient for distribution licensees

to achieve the 4% RPS target specified for FY 2007-08. The Commission enquired whether MEDA has allocated the availability of the total renewable energy as per each utility. This availability allocation is crucial considering that though all renewable energy sources of Maharashtra are located in the distribution license area of MSEDCL, MSEDCL has failed to achieve the RPS target of 3% in FY 2006-07. Shri. Pandit submitted that MEDA should further provide with realistic projections/assessments with respect to availability and capacity addition of renewable energy. The Commission observed that realistic projections/assessments may be easily ascertained by MEDA via SCADA recording.

6. Shri. J.D. Kulkarni, TPC, submitted that the energy input requirement levels submitted by REL are not much of an overstatement, in comparison to the levels specified by the Commission under the order dated April 24, 2007. TPC has initiated to set up a 100 MW windfarm to achieve the RPS target. There may be a shortfall in achieving the RPS target pertaining to FY 2006-07 which would be adjusted during FY 2008-09, as soon as the said project is commissioned. Shri. Kulkarni further submitted that streamlining/settling the RPO would aid utilities in achieving the RPS targets. The Commission observed that issues connected to settlement of RPO are not connected to the achieving of RPS targets.

7. Smt. Deepa Chawan, Counsel for MSEDCL, submitted that the imposition of penalty under paragraph 2.10.7 in the RPS Order has not been in consonance with decisions passed by the Hon'ble Supreme Court which hold that the levying of penalty can be permitted only under express statutory sanction. Counsel cited the judgment passed in (i) Civil Appeal No. 2089 of 1969 – M/s. Khemka & Co. Vs. State of Maharashtra and Civil Appeal No. 2118 of 1970 – State of Mysore Vs. M/s. Goldas Narasappa Thimmaiah Oil Mills [AIR 1975 SC 1549] and (ii) Shree Digvijay Cement Co. Ltd & Anr. Vs. Union of India & Anr. [(2003) 2 SCC 614] in this regard. In the first cited matter the Hon'ble Supreme Court has held as follows:

“20.It, therefore, stands to reason that rebate is included within the procedural part of collection and enforcement of payment. Penalty like imposition of tax cannot be included within the procedural part.”

In the later cited judgment, the Hon'ble Supreme Court has held as follows:

“26. It is no doubt true that in taxing legislation, the legislature deserves greater latitude and greater play in joints. This principle, however, cannot be extended so as to validate a levy which has no sanction of law, however laudable may have been the object to introduce it and howsoever laudable may have been the purpose for which the amount so collected may have been spent.”

Smt. Chawan submitted that MSEDCL would submit their submissions in writing shortly. The same could not be submitted within the present date owing to the Petition being received by MSEDCL as late as April 16, 2007.

8. Shri. C.H. Shinde, BEST, submitted that BEST may not be able to achieve the RPS target for FY 2006-07. However, initiatives are being taken to achieve RPS target in the following years. BEST has approached TPC for procurement of renewable energy. BEST has initiated procurement of renewable energy from solid waste energy sources developed by the MCGM.

The hearing in the matter concluded thereafter.

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List of Persons present at the hearing held in Case No. 4 of 2007 on April 25, 2007

1. Shri. G.D. Rane, MEDA.
2. Shri. P.S. Pandya, REL.
3. Smt. Anjali Chandurkar, Counsel for REL.
4. Smt. Gauri Dhumal, Advocate of REL.
5. Shri. R.R. Mehta, REL.
6. Shri. Sridhar Prabhu, REL.
7. Shri. Surendra Khot, REL.
8. Shri. Kapil Sharma, REL.
9. Shri. D.D. Wangikar, MSEDCL.
10. Shri. S.G. Bharti, MSEDCL.
11. Shri. C.S. Dani, MSEDCL.
12. Shri. C.H. Shinde, BEST.
13. Shri. N.V. Bhandari, BEST.
14. Shri. S.B. Dhole, BEST.
15. Shri. S.R. Khedkar, BEST.
16. Shri. K.R.A. Shetty, BEST.
17. Shri. N.V. Kumar, M/s. Suzlon Energy Limited.
18. Shri, Niraj Kumar, Sencagy Global.
19. Shri. M.K. Gupta, TPC.
20. Shri. J.D. Kulkarni, TPC.
21. Shri. V.H. Wagle, TPC.
22. Smt. Deepa Chawan, Counsel for MSEDCL.