

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 232 of 2020

Case of Maharashtra State Electricity Distribution Company Limited seeking approval of supplementary agreement with Rattan India Power Limited dated 11 December 2020 under Electricity Act, 2003 read with Article 15.3 of the Power Purchase Agreements

Coram

**I.M.Bohari, Member
Mukesh Khullar, Member**

Maharashtra State Electricity Distribution Company Ltd. Petitioner

RattanIndia Power LimitedRespondent

Appearance

For Petitioner:

Shri Ashish Singh (Adv.)

For Respondent:

Shri Venkatesh (Adv.)

ORDER

Date: 30 December, 2020

1. Maharashtra State Electricity Distribution Company Ltd. (**MSEDCL**) filed this Case on 14 December 2020 seeking approval of supplementary agreement with RattanIndia Power Limited (**RIPL**) dated 11 December 2020 under Electricity Act, 2003 (**EA, 2003**) read with Article 15.3 of the Power Purchase Agreements (**PPA**) dated 22 April 2010 and 5 June 2010.

2. MSEDCL's main prayers are as under:

- a) *Approve the Supplementary PPA initialled on 11.12.2020 between the MSEDCL and RPL.*
- b) *Pass the appropriate direction that revised Energy Charges to become applicable after suitable revision in MoD from the date of the Order passed by this Hon'ble Commission;*

3. MSEDCL's in its Petition has stated as follows:

- 3.1 RIPL is supplying power of 1200 MW to MSEDCL since 3 March 2013 under PPA dated 22 April 2010 (450 MW) and dated 5 June 2010 (750 MW) at levelized tariff of Rs. 3.260/kWh for a period of 25 years as approved by the Commission vide its Order in Case No. 22 of 2010 dated 28 December 2010 in accordance with the provisions of EA, 2003 and the Competitive Bidding Guidelines issued by the Central Government.
- 3.2 MSEDCL schedules electricity from RIPL's Plant based on a merit order drawn up on the basis of the variable charges. Further, RIPL can claim Capacity Charges in full only if the Plant declares a Plant Availability Factor (**PAF**) of 85%.
- 3.3 On 1 October 2020, MSEDCL issued a letter to RIPL and, *inter alia*, expressed its difficulty in recovery due to Covid-19 Pandemic situation and, *inter alia*, sought rebate in fixed charges and waiver of Later Payment Surcharge (**LPS**) from RIPL.
- 3.4 In response to the MSEDCL's letter, RIPL on 28 October 2020 stated as follows:
- i) RIPL is facing severe financial constraints due to zero scheduling for the last 8-9 months. However, RIPL had procured and maintained coal inventory equivalent to approx. 4 months valuing in excess of 750 Crores.
 - ii) Such blockage of fund had burdened RIPL with unrecoverable interest and inventory carrying cost.
 - iii) Further, RIPL had undergone a One Time Settlement (**OTS**) effective 31 December 2019. While the OTS was successfully completed, RIPL's Project has not fully emerged out of stress and continues to face challenges. In addition, the entire cash flows from operations now operate through a Trust & Retention Account (**TRA**), which is managed entirely by the lenders to the Project.
 - iv) In light of the above background, since RIPL's Project has not received any schedule for more than last 8 months and RIPL is incurring expenses to maintain 100% plant availability, RIPL will not be able to sustain its financial obligations in case it was to accept MSEDCL's proposal of discounts and waiver of interest/LPS.
 - v) Considering the difficulties faced by MSEDCL and its consumers, the investors of RIPL have agreed to alternatively offer MSEDCL a proposal to advance the Non-Escalable Energy Charge applicable from 1 April 2021 to become effective from 1 November 2020. This proposal will reduce RPL's Non-Escalable Energy Charges by 46 paise per unit w.e.f. 1 November 2020 and help MSEDCL in reducing its overall power procurement cost to the tune of Rs.170 Crores (at normative PLF) and alleviating the financial hardship being faced by it.

3.5 On 25 November 2020, RIPL proposed for advancement of Non-Escalable Energy Charge (stipulated under Schedule 8 of the PPAs) applicable from 1 April 2021 (for FY 2021-22) to become effective from 1 December 2020. RIPL in its representation has stated as under:

(a) Anticipating high electricity demand during the summer season during calendar year 2020, RIPL started building fuel stock so that full capacity could be offered to MSEDCL. Accordingly, RIPL built up a coal stock of two million tonnes to supply full capacity to MSEDCL during the upcoming summer season.

(b) However, Covid-19 pandemic and ensuing lockdown since March 2020, led to a sudden fall in demand of electricity. Due to the said situation:

i) RIPL did not get any schedule for its Plant as the electricity supplied from the Plant falls towards the lower end of Merit Order Despatch (**MoD**);

ii) Due to the huge coal inventory, critical working capital finances of ~Rs. 650 Crores is blocked leading to severe financial stress;

iii) In addition, RIPL, under the Fuel Supply Agreement (**FSA**) is mandated to procure minimum quantity of coal. Any shortfall is liable to be penalized and shortfall in off-take below 30% of the Annual Contracted Quantity (**ACQ**) could potentially lead to termination of the FSA.

(c) Hence, while RIPL is stressed due to the above facts, the situation has become extremely critical and could potentially jeopardize the FSA signed by RIPL. In case the FSA is cancelled/ terminated, both RPL and the consumers of Maharashtra would be severely jeopardized as the consumers also stand to lose a competitively priced source of Thermal Generation.

3.6 RIPL vide its letter dated 25 November 2020 proposed to execute the Supplementary PPA in furtherance of the PPA executed between MSEDCL and RIPL. As per the supplementary PPA:

i) RIPL will advance the Non-Escalable Energy Charge (stipulated under Schedule 8 of the PPAs) applicable from 1 April 2021 (for FY 2021-22) to become effective from 1 December 2020.

ii) In the Schedule 8: Quoted Tariff; for the Contract Year 7, Quoted Non Escalable Energy Charges shall be paid at Rs. 0.9600 /kWh for the period starting from 1 April 2020 to 30 November 2020 and Rs. 0.500/kWh for the period starting from 1 December 2020 and ending on 31 March 2021.

3.7 The Commission vide its various previous Orders had directed MSEDCL to take efforts for reduction in power purchase cost by exploring various options and its operational

expertise. Recently the Commission vide letter dated 20 April 2020 in the matter of prior-approval of FAC- guidelines has also directed MSEDCL to implement power procurements plans in cost effective manner. Accordingly, MSEDCL is taking utmost efforts and continuously exploring the various options for reduction in power purchase cost.

- 3.8 The above-proposed amendment by way of a Supplementary PPA initialled on dated 11 December 2020 is in the interest of consumers in the State of Maharashtra for the following reasons:
- (a) Energy Charges payable by MSEDCL would be reduced by 46 paisa; and
 - (b) The estimated consumer benefit due to such reduction in tariff would be around Rs. 48 Crores for the period 1 December 2020 to 31 March 2021.
- 3.9 The Commission has jurisdiction and power to approve the Supplementary PPA proposed by MSEDCL under Article 15.3 of the PPAs (provision of amendment) read with Section 63 of the EA, 2003. The criterion stipulated in Article 15.3 of the PPAs are being complied with by MSEDCL as there is written agreement for such amendment to the PPAs and the same is put forth before the Commission for its kind approval.
- 3.10 The Commission has the requisite statutory powers to allow amendments under the respective PPAs executed as per the Competitive Bidding Guidelines. In addition, it also has the regulatory power under Section 86 (1) (b) of the EA, 2003 in the absence of any such guidelines or specific provisions in the guidelines with regard to amendment of the PPAs to approve such proposed amendment.
- 3.11 Apart from the regulatory power of the Commission under Section 86(1) (b) of the Act, Regulations 92, 93 and 94 of the MERC (Conduct of Business) Regulations, 2004 provide for inherent powers of the Commission which can be exercised to deal with situations which are not envisaged under the Act or Regulations.
- 3.12 The Commission, in its Order dated 3 September 2019 in Case No. 225 of 2019 has exercised its regulatory powers and has approved amendment to PPA on the ground that *firstly*, provision to amendment was envisaged in the PPA; and *secondly*, that such amendment would be beneficial for the consumers at large.
- 3.13 Similarly, in the present case, the proposed amendment is beneficial for the consumers of the State of Maharashtra and is in line with the current regulatory framework. Therefore, in light of the foregoing submissions, it is requested to allow the present Petition and approve the Supplementary PPA initialled on 11 December 2020.

4. RIPL in its submission dated 22 December 2020 has stated as below:

- 4.1 A Supplementary PPA dated 11 December 2020 (which is effectively an addendum to the original PPA) has been executed/ initialled between the parties in order to seek the

approval of the Commission. The said Supplementary PPA is in the interest of consumers in the State of Maharashtra as there would be a reduction of Energy Charges payable by MSEDCL to the tune of 46 paisa/kWh.

- 4.2 Currently, the scheduling of power is taking place based on the original variable charges and not on the basis of proposed revised reduced variable charges and also the matter is listed before the Commission on 29 December 2020, the revised tariff proposed in the Supplementary PPA may be made applicable from the date when the Commission approves the Supplementary PPA and not 1 December 2020.
5. At the time of E-hearing dated 29 December 2020, Advocates of both parties have reiterated their submission in Petition / Reply.

Commission's Analysis and Ruling:

6. MSEDCL has filed this Petition for approval of supplementary PPA dated 11 December 2020 initialled with RIPL for advancement of non-escalable energy charge which would be effective from 1 April 2021 for FY 2021-22 to 1 December 2020. RIPL is supplying power of 1200 MW to MSEDCL since 3 March 2013 under PPA dated 22 April 2010 (450 MW) and dated 5 June 2010 (750 MW) at levelized tariff of Rs. 3.260/kWh for a period of 25 years.
7. Based on documents placed on records, the Commission frames following issues for its consideration in the present matter:
- Whether the Commission is empowered to approve supplementary PPA?
 - Whether execution of supplementary PPA is beneficial to the consumers?
 - Whether supplementary PPA qualifies requirement for approval?

8. Issue A: Whether the Commission is empowered to approve supplementary PPA ?

8.1 The Commission notes that it has approved PPAs between MSEDCL and RIPL vide its Order in Case No. 22 of 2010 dated 28 December 2010 under Section 63 of EA, 2003. Said PPAs is based on model PPA notified by the Central Government under Section 63 of the EA, 2003. Article 15.3 of the PPAs (450MW and 750 MW) provides for any amendment or supplementary agreement to the PPA. Relevant extract of the same is as below:

“15.3.1 This Agreement may only be amended or supplemented by a written agreement between the Parties and after obtaining the approval of the Appropriate Commission, where necessary.”

Thus, Article 15.3 of the PPAs itself has envisaged circumstances that PPA can be amended or supplemented with the approval of the Commission.

8.2 In view of the above, the Commission is empowered to approve amendment / supplement to the PPA signed under the present matter.

9. Issue B: Whether execution of supplementary PPA is beneficial to the consumers?

9.1 The Commission notes that the proposed supplementary agreement proposes advancement of Non-Escalable Energy Charge (stipulated under Schedule 8 of the PPAs) applicable from 1 April 2021 (for FY 2021-22) to 1 December 2020. Such advancement will reduce energy charge from Rs 0.96 per kWh to Rs 0.50 per kWh, thereby benefiting the consumers with Rs 0.46 per kWh for the period of 1 December 2020 to 31 March 2021. This will reduce the power purchase cost of MSEDCL and thereby benefit the end consumers.

9.2 However, the Commission notes that such benefit of reduced tariff would be available only if RIPL power is scheduled based on the MoD principles. During the hearing, it was clarified that although RIPL was not getting any schedule for last few months due to low demand, in the recent time due to increase in consumer demand, RIPL's units are being scheduled even if it is positioned at higher level in MoD stack. Under such circumstances, proposed reduction in non-escalable energy charge would benefit end consumers.

9.3 The Commission is also aware of the fact that such revision in energy charge would impact position of other generators on MoD stack. In this regard, it is important to note that MoD stack principle is being adopted with the objective to ensure economic despatch of energy wherein lesser variable cost component of power purchase expenses of the Distribution Licensee gets first priority. Distribution licensee therefore needs to constantly look for power at cheaper cost. Procuring cheaper power through power exchanges by backing down/ zero scheduling contracted generator is one such example of such effort which Distribution Licensee always undertake. Present proposal is also a step towards the same objective. Under such circumstances, it is not prudent to object on efforts of sourcing cheaper power by Distribution Licensee till such power is getting scheduled by the same MoD principles.

9.4 In view of the above, the Commission notes that proposed supplementary PPA would save power purchase expenses of MSEDCL and hence is beneficial for the consumers.

10. Issue C: Whether supplementary PPA qualifies requirement for approval?

10.1 As mentioned in earlier part of this Order, Article 15.3 of the PPAs signed between MSEDCL and RIPL stipulates following conditions for approval of supplementary agreement:

15.3.1 This Agreement may only be amended or supplemented by a written agreement between the Parties and after obtaining the approval of the Appropriate Commission, where necessary."

Thus, there must be a written agreement between the parties and same needs to be approved by the Commission.

10.2 In the present matter, Supplementary Agreement has been initialled by both the parties on 11 December 2020. Hence, first condition of having written agreement has been fulfilled. Further, the Commission has noted that proposed agreement would reduce the power purchase expenses of MSEDCL and hence is in the interest of the consumers. Hence, the Commission is inclined to approve such supplementary PPA. Therefore, second condition of Commission's approval would also be fulfilled.

10.3 Therefore, the proposed supplementary PPA qualifies the requirement for approval as stipulated in the Article 15.3 of the PPAs signed between MSEDCL and RIPL. At the same time, it is important to note that supplementary PPA is proposed to be made effective from 1 December 2020. Such retrospective applicability of supplementary PPA which envisaged revision in energy charge would create complication in energy settlement for past period as till date MoD stack has been prepared based on energy charge stipulated in original PPA and power is scheduled accordingly. Therefore, the Commission directs MSEDCL and RIPL to make this supplementary PPA applicable with prospective effect and same may be reflected in MoD stack preferably before 1 January 2021.


11. Hence, the following Order.

ORDER

1. Case No 232 of 2020 is partly allowed.
2. The Commission accords approval to supplementary PPA initialled between Maharashtra State Electricity Distribution Co. Ltd and RattanIndia Power Ltd. for advancing non-escalable energy charge which would be applicable from 1 April 2021. However, said supplementary agreement be made applicable with prospective effect and same shall be reflected in MoD stack preferably before 1 January 2021.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member


(Abhijit Deshpande)
Secretary

