

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 60 of 2023

Petition of A.A Energy Limited seeking renewal / extension of Energy Purchase Agreement dated 19 September 2017.

A.A. Energy Ltd (AAEL)...

Petitioner

Maharashtra State Electricity Distribution Company Limited (MSEDCL)...

Respondent

Coram

Sanjay Kumar, Chairperson
I.M. Bohari, Member
Mukesh Khullar, Member

Appearance:

For the Petitioner :

Ms. Deepa Chavan (Adv.)

For the Respondent :

Mr. Ravi Prakash (Adv.)

ORDER

Date: 25 May 2023

1. A.A. Energy Ltd. (AAEL) operates a 10 MW Biomass Plant, located at Wadsa, Desaiganj, District Gadchiroli. AAEL has filed the present Petition under 86(1)(e) read with 86 (1) (b), (k) of the Electricity Act, 2003 seeking the Commission's nod for renewal of Energy Purchase Agreement (EPA) dated 19 September 2017.
2. **AAEL's main prayers are as follows:**

- “
1. *give approval to the Petitioner and the Respondent to renew the EPA dated 19.09.2017 for further period of 8 months as per the terms and conditions mentioned therein and at the tariff rate determined by the Hon'ble Commission in view of the forced outages suffered by the Petitioner;*
 2. *direct the Respondent to adjust the power taken by the Petitioner during the period of the shutdowns from October 2022 to Feb. 2023 and April 2020 to June 2020, with units exported by the Petitioner in the month of July 2020 and in March 2023;*
 3. *pending the hearing and final disposal of this Petition, direct the Respondent to purchase power from the Petitioner of 10 MW generated by it at Wadsa, Desaiganj, District. Gadchiroli through its Biomass based plant, in Desaiganj, District. Gadchiroli, at the rate specified in the EPA dated 17.09.2017.*
 4. *pass such ad-interim / interim orders to ensure smooth generation and evacuation of the power to the Respondent post 29.04.2023, subject to the outcome of the present Petition.*
...”

3. **AAEL's in its Case has stated as follows:**

3.1 AAEL is one of the companies to get registered with UNFCCC and benefits from Certified Emission Reduction generated from its 10 MW Plant. AAEL employs 200 people directly at its generating facility and 150 indirectly.

3.2 Major events are as below:

Date	Events
30.04.2010	AAEL has set up 10 MW Biomass Plant located at Wadsa, Desaiganj, District-Gadchiroli. The project was commissioned in 16 months.
19.09.2017	AAEL & MSEDCL entered into an Energy Purchase Agreement. EPA stipulates that the term of the agreement shall remain effective from 1 November 2017 and shall remain in full force and effective until the 13 th anniversary from date of commissioning (30.04.2010) i.e. up to 29.04.2023.
11.08.2020	AAEL informed MSEDCL that during the COVID – 19 pandemic lockdown months i.e. April, May, June-2020, the plant was shut down due to labour non-availability. The plant re-started in the month of July-2020. However, during plant shut down months AAEL was being charged by the MSEDCL for input power taken for various maintenance purposes. Therefore, AAEL requested MSEDCL to adjust the units consumed during these three (3) months, with the exported units in the month of July-2020.

12.08.2020	AAEL also requested MSEDCL to waive the demand charges for lockdown period i.e. April, May, June-2020.
16.12.2021	MNRE vide its letter conveyed its view that the Biomass power plant in the State of Maharashtra, whose electricity EPAs have expired or are about to expire need support in order to ensure that the Biomass Power Projects are optimally utilized, as per their designed life and requested Government of Maharashtra to take necessary actions.
18.02.2022	The Joint Secretary of MNRE (Biomass Division) requested the State Government to intimate the action taken by it on the issues faced by the Biomass power plants.
27.10.2022	AAEL vide its letter to the Deputy Director, Industrial Safety and Health, Udyog Bhawan, Chandrapur informed about occurrence of a fatal accident in plant.
02.11.2022	MNRE (Biomass Division), Government of India, granted administrative approval for implementation of Biomass programme under the umbrella Scheme of National Bio Energy Programme for duration of FY 2021-2022 to 2025-2026 (Phase-I).
Mid November 2022	MNRE (Biomass Division) Government of India, issued guidelines for implementation of Biomass programme scheme to support promotion of manufacturing Briquette & Pellets and Biomass (Non-Bagasse) based cogeneration in Industries for the period of FY2021-22 to 2025-26.
23.12.2022	AAEL informed MSEDCL about an accident in Plant in October-2022 that lead to shut down of the plant. AAEL requested to waive the bill generated during the closure of the plant for the same period.
23.01.2023	AAEL vide its letter to the MSEDCL requested that the plant was shut down for around 105 days. AAEL sought an extension of PPA for those four (4) months, during which time the plant was shut down due to unforeseen circumstances.

- 3.3 On 24 April, 2023, there was a meeting between the AAEL & MSEDCL, wherein the issues were discussed in the light of Article 5 and 21.8 of the EPA dated 19 September 2017. The provisions of EPA contemplate renewal / extension. MSEDCL expressed its willingness for renewal of the EPA with a period corresponding to the unforeseen forced outages aggregating to about eight (8) months.
- 3.4 Article 5 of the EPA dated 19 September 2017 provides that Agreement will remain effective up to 29 April, 2023, unless renewed for extended period under Article 5.2. In other words, the intention of the parties to the EPA is clearly and unambiguously reflected to the extent of the EPA providing for a renewal or extension as stipulated in Article 5.1.

- 3.5 The EPA as a contract, is a creature of an agreement between the parties and can be interpreted as giving literal meaning, as it is devoid of any ambiguity. In fact, Article 21.8 clarifies the rationale for cooperation and therefore the EPA as a contract has to be interpreted to give effect to the cooperation as contemplated by both the parties.
4. At the e-hearing through video conferencing held on 09 May 2023, Advocate of the Petitioner reiterated submissions on renewal of EPA and associated provisions. MSEDCL did not oppose prayer for extension of EPA.

Commission's Analysis and Rulings

5. The Commission notes that AAEL is a biomass generator and has generic tariff based EPA with MSEDCL. AAEL has filed the present Petition seeking following main reliefs:
 - a. Renewal of EPA dated 19 September 2017 which expired on 29 April 2023 for a period of 8 months.
 - b. Adjustment of power consumed during period of shutdowns from October 2022 to Feb. 2023 and April 2020 to June 2020, with units exported by the Petitioner in the month of July 2020 and in March 2023.

MSEDCL has not opposed any of the above reliefs sought by the AAEL.

6. The Commission notes AAEL submission that its plant was shut down on account of non-availability of labour due to national lockdown in the month of April to June 2020 and due to accident in the month of October 2022 to February 2023. Accordingly, it has requested an extension/renewal for the corresponding 8 months only.
- 4 For renewal of EPA, AAEL relied upon Article 5.2 which is reproduced below:

“

5 Terms

....

5.2 Option to Renew

*Prior to the Expiry of the Term then in effect, the Term may be **renewed or extended only by mutual written agreement of the Parties** hereto on terms and conditions mutually agreeable to the Parties.*

- 5 As MSEDCL has not opposed renewal/ extension and EPA has such provision for extension of period and considering the fact that renewal is requested only for 8 months corresponding to the period in which plant was shut down due to unforeseen situation, the Commission is inclined to allow such extension of EPA for 8 months.

- 6 With regards to request for adjusting energy consumption, the Commission notes that energy netting arrangement, wherein energy consumed is adjusted against energy supplied, is available under the EPA. However, in present cases, during the above-mentioned shutdown period as no energy was generated, consumed energy cannot be adjusted in those months and hence AAEL is requesting for adjusting it during the month of July 2020 and March 2023 i.e. immediate subsequent months in which AAEL has generated and supplied energy to MSEDCL. As MSEDCL has not opposed such request and considering broader framework of energy netting arrangement, the Commission allows this request of AAEL.
- 7 Having allowed the relief sought as above, the Commission would like to clarify that considering the peculiar fact of the case and limited relief sought on account of accident that prevented generation of energy during the subsistence of EPA for 8 months, the above dispensation is specific to the present matter and cannot be used as precedence in any other matter. For any further extension of EPA with present Petitioner or any other RE generator whose EPA has expired or going to be expired, MSEDCL shall adopt uniform approach based on earlier Orders of the Commission in these regards.
- 8 Hence, the following Order.


ORDER

1. **Case No. 60 of 2023 is allowed.**
2. **EPA dated 19 September 2017 between AA Energy Ltd and MSEDCL is extended by 8 months.**
3. **Power consumed by AA Energy Ltd during the period of shutdowns from October 2022 to Feb. 2023 and April 2020 to June 2020 be adjusted against units exported in the month of July 2020 and in March 2023.**
4. **Above Order is based on specific facts in present matter and cannot be used as precedence in any other matter.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Dr. Rajendra Ambekar)
I/c Secretary

