

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 15 of 2019

Case of Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) seeking approval for adoption of Tariff discovered through competitive bidding process conducted by MSPGCL for Long Term Procurement of 200 MW Solar Power, under Section 63 of the Electricity Act, 2003 from the solar Projects (Phase-I) to be set up under ‘Mukhyamantri Saur Krishi Vahini Yojana’ to meet its Solar Renewable Purchase Obligations

Coram

Anand B. Kulkarni, Chairperson
Mukesh Khullar, Member

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

Appearance

For MSEDCL

.....Mrs. Kavita Gharat

ORDER

Date: 22 February, 2019

1. MSEDCL has filed this case for approval and adoption of Tariff for Long Term Procurement of 200 MW Solar Power through MSPGCL from the Solar Projects (Phase-I) to be set up under ‘Mukhyamantri Saur Krishi Vahini Yojana’ to meet MSEDCL’s Solar Renewable Purchase Obligations (RPO).
2. **MSEDCL’s main prayers are as follows:**
 - a. *To approve the Power Sale Agreement (PSA) document to be executed with MSPGCL.*
 - b. *To accord approval for adoption of tariff of Rs.3.072 per Kwh for evacuation of Power at 11 kV level and Rs. 3.05 per kWh for evacuation of power at 33 kV level for*

25 years and signing of PSA with MSPGCL for 200 MW solar power projects under Mukhyamantri Saur Krishi Vahini Yojana.

- c. To make eligible the power procured through these agreements for meeting the Solar RPO requirement of MSEDCL.

3. MSEDCL in its Petition has stated as follows:

- 3.1 The Compliance status of MSEDCL's existing Solar RPO is as under:

Period	Shortfall in Mus
FY 2010-11 to FY 2015-16	1360
FY 2016-17	690
FY 2017-18 (Provisional)	1476
Total	3526

- 3.2 MSEDCL is fulfilling the above said shortfall in Non-Solar and Solar RPO target by way of purchase of Non-Solar and Solar RECs. However, considering the future RPO targets, MSEDCL needs to procure additional RE power for fulfillment of RPO targets so as to accommodate the actual power in the system rather than to rely on RECs. Also, in the current scenario of increasing rates of REC in the exchanges, it is more appropriate to purchase actual power than the RECs.
- 3.3 The Government of Maharashtra (GoM) has undertaken “Mukhyamantri Saur Krishi Vahini Yojana” vide GR dated 14 June, 2017 & 17 March, 2018 for supplying power to the agriculture sector during day time and reduction in line losses. As per guidelines issued by GoM vide GR dated 17 March, 2018, for this scheme MSPGCL and MSEDCL are designated as ‘Implementation agencies’.
- 3.4 The Commission vide Order dated 16 October, 2018 in respect of Case No. 172 of 2017, did not approve the rate of INR 3.15/unit for MSPGCL’s 200 MW Phase-I solar projects and directed MSPGCL to reduce the same after taking into account the associated costs relating to land, evacuation of energy and metering arrangement, which will be borne by MSEDCL/MSPGCL. It was expected that the rates so worked out would be in the vicinity of the rates discovered by MSEDCL on the similar terms and conditions.
- 3.5 Pursuant to directives of the Commission, MSPGCL negotiated the rate with Selected Solar Power Developers and vide letter dated 10 January, 2019 approached MSEDCL for seeking consent for tariff rates for cumulative 200 MW Phase-I solar projects under *Mukhyamantri Saur Krishi Vahini Yojana* at tariff rate of INR 3.072/unit for evacuation of Power at 11 kV level and

INR3.05/unit for evacuation of power at 33 kV level, after negotiations with successful bidders. The details of 200 MW solar capacity are as under:

Tender	Phase details and Capacity envisaged by MSPGCL	Consent given by MSEDCL	Tariff offered by successful bidder /MSPGCL (INR/unit)	Scope of work
Phase I	200 MW	Vidarbha : 50 MW Marathwada : 50MW Northern Maharashtra:50 MW Western Maharashtra : 50 MW Total: 200 MW	INR 3.072/unit for evacuation of Power at 11 kV level and INR 3.05/unit for evacuation of power at 33 kV level	1. developed land plot, construction of approached road, WBM periphery road, bore well, Topographical survey will be given by MSPGCL 2.Evacuation infrastructure is being done by MSEDCL

3.6 MSPGCL after its due-diligence has offered the rate of INR 3.072/unit for evacuation of Power at 11 kV level and INR 3.05/unit for evacuation of power at 33 kV level to MSEDCL, by considering the impact on tariff due to Land and evacuation cost.

3.7 MSPGCL has also proposed revised deemed generation clauses and submitted justification that the 1st tender was invited by Mahagenco for implementation of AG Solar Power Project in line with the GR dated 14 June, 2017 of Govt. of Maharashtra regarding Mukhymantri Saur Krushi Vahini Yojana, for procurement of 200 MW Solar Power under Phase-I in Vidarbha, Marathwada, Northern Maharashtra and Western Maharashtra in the month of July 2017. The evacuation of the power was envisaged at 33 KV level and metering at Solar Plant level in the Request for Proposal (**RfP**) while inviting the tender. The deemed generation clause was not mentioned in this tender. However, subsequently, Ministry of Power vide Resolution dated 3 August, 2017 has issued guidelines for tariff base competitive bidding process for procurement of power from grid connected Solar PV Power Projects. The deemed generation

clause as per the MNRE guidelines was incorporated in the PPA signed between Mahagenco and M/s. Waacox Energy Pvt. Ltd. on 21 February, 2018. Also, considering MSEDCL's proposal for evacuation of solar power at 11 kV Voltage Level and Metering at Sub-Station, MSPGCL proposed deemed generation clauses as below:

Deemed Generation Clause for evacuation at 33 KV level:

Deemed Generation Clause as per PSA of Discom	Revised Clause of Deemed Generation
<p>Grid unavailability in a contract year as defined in the PSA : (only period from 8 am to 6 pm to be counted):</p> <p>Generation Loss = [(Average Generation per hour during the contract year) x (number of hours of grid unavailability during the contract year)]</p> <p>Where, Average Generation per hour during the contract year (kWh) = total generation in the contract year (kWh) ÷ total hours of generation in the contract year.</p> <p>The excess generation by MSPGCL equal to this generation loss shall be procured by the Procurer at the PSA tariff so as to offset this loss in the succeeding 3 (three) Contract Years.</p> <p>Contract year, shall be as defined in this PSA.</p> <p>Provided that as an alternative to the mechanism provided above, the Procurer may choose to provide Generation compensation, in terms of PSA tariff, for the Generation loss as defined in Article 5.7.a), and for Grid unavailability beyond 50 hours in a Contract Year as defined in the PSA.</p>	<p>Grid unavailability in a contract year as defined in the PSA : (only period from 8 am to 6 pm to be counted):</p> <p>Generation Loss = [(Average Generation per hour during the contract year) x (number of hours of grid unavailability during the contract year)]</p> <p>Where, Average Generation per hour during the contract year (kWh) = total generation in the contract year (kWh) ÷ total hours of generation in the contract year.</p> <p>The excess generation by MSPGCL equal to this generation loss shall be procured by the Procurer at the PSA tariff so as to offset this loss in the succeeding 3 (three) Contract Years.</p> <p>Contract year, shall be as defined in this PSA.</p> <p>Provided that as an alternative to the mechanism provided above, the Procurer shall provide Generation compensation, in terms of PSA tariff, for the Generation loss as defined in Article 5.7.a), and for Grid unavailability beyond 50 hours in a Contract Year as defined in the PSA.</p>

The due payment against the loss in generation due to unavailability of the grid should be submitted by the developer along with the monthly invoice raised by the developer for getting the payment of power generated. The payment against

the loss in generation should be cleared according to the invoices raised by the developer along with the payment of the regular generation by the purchaser.

Deemed Generation Clause for evacuation at 11 KV level:

Deemed Generation Clause as per PSA of Discom	Revised Clause of Deemed Generation
<p>Grid unavailability in a contract year as defined in the PSA : (only period from 8 am to 6 pm to be counted) :</p> <p>Generation Loss = [(Average Generation per hour during the contract year) x (number of hours of grid unavailability during the contract year)]</p> <p>Where, Average Generation per hour during the contract year (kWh) = total generation in the contract year (kWh) ÷ total hours of generation in the contract year.</p> <p>The excess generation by MSPGCL equal to this generation loss shall be procured by the Procurer at the PSA tariff so as to offset this loss in the succeeding 3 (three) Contract Years.</p> <p>Contract year, shall be as defined in this PSA.</p> <p>Provided that as an alternative to the mechanism provided above, the Procurer may choose to provide Generation compensation, in terms of PSA tariff, for the Generation loss as defined in Article 5.7.a), and for Grid unavailability beyond 50 hours in a Contract Year as defined in the PSA.</p>	<p>In any given year during the contract, if the availability of the distribution line / transmission line after the point of supply at the SPV plant for evacuation of power (during 6 am to 6 pm) is below 99% i.e. the line unavailability is more than 1% i.e. 43.80 hrs (1% x 365 days x 12 hrs) and the power is not evacuated, for reasons not attributable to the Solar Power Generator, then the generation loss shall be compensated by MSPGCL at the 100% PPA tariff so as to offset this loss as given below :</p> <p>Duration of Grid unavailability provisions for Generation Compensation Grid unavailability in a contract year as defined in the PPA.</p> <p>Generation Loss = [(Average Generation per hour during the contract year) x (number of hours of grid unavailability beyond 43.80 hrs i.e. 1% during the evacuation period of contract year)]</p> <p>Where, Average Generation per hour during the contract year (kWh) = total generation in the contract year (kWh) ÷ total hours of generation in the contract year.</p>

The due payment against the loss in generation due to unavailability of the grid should be submitted by the developer along with the monthly invoice raised by the developer for getting the payment of power generated. The payment against the loss in generation should be cleared according to the invoices raised by the developer along with the payment of the regular generation by the purchaser.

- 3.8 Tariff arrived in MSEDCL's 1000 MW Taluka wise Ag feeder tender was in the range of INR 3.09 to 3.15/unit and the rate offered by MSPGCL of INR 3.072/unit for evacuation of Power at 11 kV level and INR 3.05/unit for evacuation of power at 33 kV level.
 - 3.9 MSPGCL requested to convey the consent for the revised clause of PSA to file joint Petition for the Commission's approval.
 - 3.10 It is also seeking approval of the Commission for the draft PSA of above mentioned solar projects at the agreed tariff.
 - 3.11 MSEDCL submits to the Commission for adoption of Tariff under Section 63 of the Electricity Act, 2003 for the rates discovered through the competitive bidding process and offered by MSPGCL and consented by MSEDCL.
4. The proceedings of the hearing held on 4 February, 2019, the representative of MSEDCL reiterated its submission as made in its Petition.

Commission's Analysis and Rulings

5. MSPGCL had filed a Petition in Case No. 172 of 2017 and sought approval to the Draft PPA, PSA and the discovered rate of INR 3.15/unit for 25 years. This competitive bidding was taken up by MSPGCL through its tender under Phase-I of *Mukhyamantri Saur Krishi Vahini Yojana* for 200 MW. The Commission in its Order dated 16 October, 2018 did not approve the proposed rate of INR 3.15/unit since the rate worked out very high after considering various factors like lease rent of Re 1.00 per annum for land, evacuation cost to be borne by Govt., then prevailing rates discovered through bidding, etc. The relevant excerpts from the Order is reproduced below:

"19.

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In view of the above observations the Commission is not inclined to allow the rate of Rs. 3.15 per unit and hence directs MSPGCL to consider the impact of availability of land at lease rent of Re.1 per annum, evacuation cost being borne by the Govt. through Green Cess and the metering cost which is not required to be borne by the bidder. Further the placement of meters in the tender of MSPGCL absolves the bidder from bearing the Distribution Losses. Thus the rates shall be reduced after taking into account the associated costs relating to Land, Evacuation of energy and metering arrangement. It is expected that the rates so reworked out would be in the vicinity of the rates discovered by MSEDCL on the similar terms and conditions."

6. MSEDCL, in the instant petition has submitted that MSPGCL has negotiated the rates with selected solar power developer and has sought approval to:

- 6.1. Power Sale Agreement (PSA) document to be executed with MSPGCL
- 6.2. Adoption of tariff of INR 3.072/unit for evacuation of Power at 11 kV level and INR 3.05/unit for evacuation of power at 33 kV level for 25 years and signing of PSA with MSPGCL for 200 MW solar power projects under *Mukhyamantri Saur Krishi Vahini Yojana*
- 6.3. Make eligible the power procured through these agreements for meeting the Solar RPO requirement
7. The Commission observes various deficiencies in the instant Petition, as submitted by MSEDCL and the same have been discussed as follows.

8. Deviation Clause introduced in the Instant Petition:

- 8.1. MSEDCL has submitted that MSPGCL has proposed deviation in the Deemed generation clause for evacuation at 33kV and 11kV level, as reproduced at above para. 3.7. This deviation has been proposed after the bidding process has been completed and has been introduced at the time of renegotiation with the selected solar power developer. The Commission underscores that introduction or deviation to certain clauses after the entire bidding process has been completed shall be considered as changing rules of the game and should have been avoided.
- 8.2. It is not clear from the Petition whether the deviation clause was proposed to all the bidders during the negotiation or was proposed only to the selected developer. The Office of Commission sought clarification from MSEDCL vide its mail dated 12 and 18 February, 2019 however, no response has been submitted by MSEDCL till date..

9. Introduction of M/s. Waacox Energy Pvt. Ltd. as developer in the Instant Petition:

- 9.1. The Commission notes that the instant Petition is in continuation to the Order issued by the Commission in Case No. 172 of 2017 dated 16 October, 2018. MSPGCL, in that case had submitted the region wise bidders and the Bid winner, as reproduced below:

“The details of tariff rates received in Reverse Bidding process for all four tenders are as tabulated below:

Sr. No.	Region & Tender No	Name of bidder	Base price for Reverse bidding (Rs/kWh)	Reverse bidding date	Rates received in R. B. (In Rs/kWh)
1	Western Maharashtra	M/s. Waaree Energies Ltd	3.25	07.10.2017	3.17

Sr. No.	Region & Tender No	Name of bidder	Base price for Reverse bidding (Rs/kWh)	Reverse bidding date	Rates received in R. B. (In Rs/kWh)
	(55743)	M/s. Sangam Advisors Ltd.			3.15 (L1)
2	Northern Maharashtra (53929)	M/s. Sangam Advisors Ltd.	3.2	18.10.2017	3.15 (L1)
		M/s. Puja Entertainment India Ltd.			3.16
3	Marathwada Region (53926)	M/s. Sangam Advisors Ltd.	3.2	18.10.2017	3.16
		M/s. Puja Entertainment India Ltd.			3.15 (L1)
4	Vidarbha Region (53930)	M/s. Sangam Advisors Ltd.	3.2	18.10.2017	3.15 (L1)
		M/s. Pooja Entertainment & Films Ltd.			3.16

9.2. The Commission observes that in none of the region M/s. Waacox Energy Pvt. Ltd. has been listed as a bidder or bid winner (L1). The Commission highlights that there is no clarity on how negotiation have been held with M/s Waacox Energy Pvt. Ltd. despite not being the bidder or bid winner (L1) in the original tendering/bidding process.

10. No clarity on Negotiation process to arrive at revised rates: From the Petition it is not clear that how the Renegotiation process was carried out? Also, whether equal opportunity was given to all the bidders? Whether the first right for negotiations was given to L1 bidder? Under what conditions 150 MW has been awarded to M/s. Waacox Energy Pvt. Ltd who did not figure as the L1 bidder or for that matter did not figure in the bidders list at all. The Office of Commission sought clarification from MSEDCL on this however, no response was submitted by MSEDCL.

11. Petition for 200MW and adoption for 150 MW: MSEDCL has filed petition for adoption of Long-Term Procurement of 200 MW solar power for which the tariff has been discovered though bidding process conducted by MSPGCL. However, it has provided details of only 150 MW which has been proposed to be developed by M/s Waacox Energy Pvt. Ltd. There is no clarity on how the remaining 50 MW will be procured and at what rate.

12. Negotiated Tariff in Higher Range

- 12.1. MSEDCL has submitted that the negotiated tariff offered by MSPGCL are INR 3.072/unit for evacuation of Power at 11 kV level and INR 3.05/unit for evacuation of power at 33 kV level after considering the impact on tariff due to Land and evacuation cost. The Commission notes that as per the documents placed on records, M/s. Waacox Energy Pvt. Ltd. will be developing only 20 MW at 33kV level and 130 MW will be developed at 11kV level.
 - 12.2. The Commission in its earlier Order in Case No. 172 of 2017 did not approve the tariff of INR 3.15/unit citing various cost parameters like Land, Evacuation and Metering which will not be borne by the developer. The revised rates have been reduced by only 2.5% (considering 130MW). As per the Commission's analysis, the reduction in capital cost by avoiding Land, Evacuation and Metering cost have impact of 7% - 10% on the total tariff.
 - 12.3. Further, in another Petition filed by MSEDCL under Case No. 7 of 2019 for adoption of 180 MW under '*Mukhyamantri Saur Krishi Vahini Yojana*', which will be connected at 11kV/22kV, the rates discovered were INR 3.29/unit and INR 3.30/unit. These tariff discovered through competitive bidding includes component of 18 paise owing to Safeguard Duty. Further, the tariff also includes the impact of Land, Evacuation and Metering Cost which will be borne by the developer. The Commission in its Order dated 15 February, 2019 has accorded its approval for procurement of solar power from these projects at INR 3.29/unit and INR 3.30/unit.
 - 12.4. Further, the Commission notes that in a recent auction of 1000MW invited by MSEDCL, the Tariff discovered through competitive bidding was INR 2.74/unit – INR 2.75/unit. The Commission underscores that these projects will be connected at CTU/STU level, however, the discovered tariff includes the cost of land, evacuation, metering and also the impact of Safeguard Duty.
13. The Commission also notes that Section 63 of the Electricity Act, 2003 which requires the Commission to adopt the tariff discovered through competitive bidding, emphasises on transparent process of bidding. Post bid negotiation(s) with non-bidders and proposed modification in PSA post completion of bidding process are serious deviations from the mandated transparent bidding process. Further, rate proposed for adoption is also not in accordance with current market conditions. In addition to these, there are number of discrepancies in the Petition filed by MSEDCL. Hence, the Commission is of the opinion that MSEDCL's proposal to adopt tariff discovered under this Petition is not complying with the mandate of Section 63 of the Electricity Act, 2003 and hence cannot be allowed.

14. In view of above, the Commission rules that MSEDCL/MSPGCL should file a fresh petition by inviting fresh bids to arrive at a competitive rate as prevalent in the current market situation.

ORDER

The Case No. 15 of 2019 is dismissed.

**Sd/-
(MukeshKhullar)
Member**

**Sd/-
(Anand B. Kulkarni)
Chairperson**

