

No. PP/MERC/RE/Bagasse Petition/

No 2 1 3 7 2

Date:

0 6 SEP 2018

To,

**The Secretary,**

**Maharashtra Electricity Regulatory Commission,**

13<sup>th</sup> Floor, Centre No.1, World Trade Centre,

Cuffe Parade, Colaba,

Mumbai – 400 005.

**Sub:** Filing of Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 requesting the Hon'ble Commission to review its order dated 12.07.2018 passed in Case No. 85 of 2015.

**Ref:** Hon'ble Commission order dated 12.07.2018 passed in Case No. 84 of 2015.

Respected Sir,

Please find enclosed herewith the Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 requesting the Hon'ble Commission to review its order dated 12.07.2018 passed in Case No. 84 of 2015.

The requisite fee is paid on 04.09.2018 through NEFT mode vide UTR no.-MAHBH182471418.

Submitted for your further needful please.

Thanking you.

Yours faithfully,

  
Chief Engineer (Power Purchase)

Copy s.w.r. to: The Director (Commercial), MSEDCL, Mumbai.



**BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY REGULATORY  
COMMISSION  
AT MUMBAI**

REVIEW CASE NO \_\_\_\_\_ OF 2018

IN

CASE NO 85 of 2015

IN THE MATTER OF:

Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 requesting the Hon'ble Commission to review its order dated 12.07.2018 passed in Case No. 84 of 2015

AND

IN THE MATTER OF:

Petition of Jawahar Shetkari Sahakari Sakhar Karkhana Ltd. regarding compliance of direction given by the Commission in the Order dated 11 November, 2014 in Case No. 127 of 2014 and Discussion Paper regarding the treatment of similar cases post expiry of Energy Purchase Agreement tenure.

AND

IN THE MATTER OF:

The Chief Engineer (Power Purchase),  
Maharashtra State Electricity Distribution Co. Ltd  
Plot No G-9, Prakashgad, 5th floor, Station Road,  
Bandra (East), Mumbai – 400051  
E-mail : ceppmsedcl@gmail.com  
....Review Petitioner/Applicant

Versus

Jawahar Shetkari Sahakari Sakhar Karkhana Ltd

....Respondent

**REVIEW PETITION ON BEHALF OF PETITIONER (MSEDCL) MOST  
RESPECTFULLY SHEWETH:**

**1. DESCRIPTION OF PARTIES:**

**PETITIONER:**

- (i) Maharashtra State Electricity Distribution Company Limited (hereinafter referred to as "MSEDCL" or "The Review Petitioner") is a Company constituted under the provisions of Government of Maharashtra General Resolution No. PLA – 1003 / C. R. 8588 dated 25th January 2005 and is duly registered with the Registrar of Companies, Mumbai on 31st May 2005. The Petitioner Company is functioning in accordance with the provisions envisaged in the Electricity Act, 2003 and is engaged, within the framework of Electricity Act, 2003, in the business of distribution of electricity to its consumers situated over the entire State of Maharashtra, except Mumbai City & its suburbs (excluding Mulund & Bhandup).

**RESPONDENTS:**

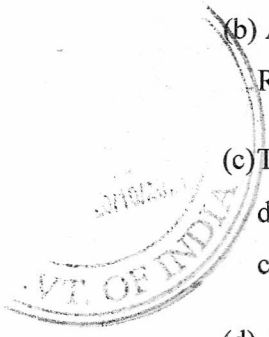
- (ii) Respondent is JSSSKL's bagasse based co-generation plant has successfully executed the EPA with Maharashtra State Electricity Distribution Company Limited (MSEDCL) for a capacity of 12 MW with tenure of 13 years.

**2. PROVISIONS FOR REVIEW:**

2.1 Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004:

85. Review of decisions, directions, and orders:

- (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.



- (b) An application for such review shall be filed in the same manner as a Petition under these Regulations.
- (c) This Hon'ble Commission shall for the purposes of any proceedings for review of its decisions, directions and orders be vested with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.
- (d) When it appears to the Commission that there is no sufficient ground for review, the Commission shall reject such review application.
- (e) When the Commission is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the decision or order, the review of which is applied for.

2.2 Section 94 (1) (f) of Electricity Act, 2003:

Section 94. (Powers of Appropriate Commission):

- (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -
  - (a) .....
  - (f) reviewing its decisions, directions and orders;

**3. ISSUES RAISED IN REVIEW (WITHOUT PREJUDICE TO ONE ANOTHER):**

- (i) The order dated 12.07.2018 does not mention the treatment to be given to Group- II, Wind Projects and only lays emphasis on Group- III, Wind Projects.
- (ii) Wind projects have single part tariff wherein Biomass and Bagasse has two part tariff.
- (iii) While on one hand, ceiling tariff for Wind projects have been determined and locked, ceiling tariff for Biomass and Bagasse would only be fixed for fixed component, and this would be added in the variable cost component as per the Generic tariff order issued by the Hon'ble Commission time to time, which would lead to increase of purchase cost.
- (iv) This Hon'ble Commission vide order dated 12.06.2018 issued in Case No. 122 of 2018 has allowed purchase of wind power to the quantum of 250 MW with a ceiling rate of Rs.

2.52 per unit. Hence, it may be clarified as to the treatment to be given to such contracted capacity.

(v) This Hon'ble Commission has determined ceiling tariff of Rs. 0.75 per unit for group-III wind generators which may be very less and wind generators may not be inclined to participate in the bidding procedure as Hon'ble Commission has not mandated these generators(after post expiry of PPA) to offer such power to MSEDCL. Hence these wind generators may opt for open access as they are getting rates more than determined ceiling rate of 0.75 p.u., thus MSEDCL may lose the opportunity to buy cheaper wind power to fulfill its RPO.

(vi) MSEDCL humbly request to the commission as what treatment is to be given to the short term wind power procurement at Rs. 2.52 per unit rate (allowed by this Hon'ble Commission vide order 155 of 2017 dated 15.11.2017) whose PPA are already executed or LOIs are already issued.

#### **4. GROUNDS (WITHOUT PREJUDICE TO ONE ANOTHER)**

- (a) That the order dated 12.07.2018 lays down a roadmap to be followed for procurement of power from Group-III Wind Projects but does not mention anything w.r.t the treatment and procurement procedure to be followed for purchase of power from Group-I, II & IV Wind Projects.
- (b) That the order dated 12.07.2018 recognizes that Wind Project have single part tariff and Biomass and Bagasse have two part tariff. However, the said order only fixes the ceiling tariff of fixed cost w.r.t Biomass and Bagasse projects which is only one part of the tariff and lets the other part of the tariff i.e. variable cost to be added up to the ceiling tariff which would increase the cost of power purchase from such projects.
- (c) That allowing variable cost based on generic tariff which is fixed every year by this Hon'ble Commission to be added up with the ceiling tariff/rate discovered through competitive bidding would lead to increase in overall cost of power purchase of MSEDCL.
- (d) As per the Generic RE tariff order for FY-2018-19 the tariff for bagasse based co generation is Rs. 4.83 p.u. (F.C. Rs. 0.66 p.u. + V.C. 4.17 p.u.).
- (e) Further to this MSEDCL has conducted the competitive bidding for procurement of Bagasse based cogeneration power for 300MW (200MW +100MW) and has discovered maximum rate of Rs. 4.99 per unit. Further as per the PPA successful bidders has agreed

for 50 : 50 proportion of Fixed & Variable cost in the quoted tariff. Thus considering the variable cost of Rs. 2.50 & Fixed cost of 0.66 the total tariff comes to be Rs.3.16 per unit.

(f) Moreover Govt. of Maharashtra vide letter dated 13.07.2018 has directed MSEDCL to procure additional 200MW Bagasse based cogeneration power at a ceiling rate of Rs. 4.00 per unit.

Considering the rates in all above three cases rate determined in the impugned order by Hon'ble Commission for Bagasse based cogeneration is unviable to buyer.

(g) Moreover, variable cost should not be fixed for Bagasse & Biomass based projects that have completed their EPA's of 13 years and it should be left open to MSEDCL to decide a ceiling tariff based on market algorithm after which transparent competitive bidding shall reveal the final rates, which this Hon'ble Commission shall either allow under Section 63 of Electricity Act, 2003.

(h) That the Commission was pleased to fix the ceiling tariff of Rs. 0.75 p.u. for Group-III wind projects, but has not made compulsive to sell such power from this projects to MSEDCL. Wind generators may not be inclined to participate in the bidding procedure and may opt for open access making MSEDCL lose the opportunity to buy cheaper wind power to fulfil its RPO.

(i) While it may be true that all these projects who have completed 13 years have serviced their debts, however fixing such lower ceiling rate for competitive bidding to them and keeping option of selling open access would demotivate such projects to sell their power to MSEDCL which in turn would lead to procurement of costlier power.

(j) That the useful life of such projects whose EPA's have expired is 20 years. Hence for the remaining 7 years, a methodology should be devised for allowing MSEDCL to purchase such power at such cost which is beneficial to all stakeholders by giving MSEDCL the first right of refusal.

(k) That this Hon'ble Commission vide order in case no. 155 of 2017 has allowed MSEDCL, rates agreed between MSEDCL and the concerned wind generators (i.e. post expiry of EPA) and also allowed to consider this power in meeting out RPO.

Accordingly, MSEDCL has developed a web based portal from 01.01.2018 through which wind generator shall apply on-line for the sale of power to MSEDCL on short term basis, 30 days in advance of the period for which he desires to sale power. The wind energy shall

be purchased only if the period of short term sale is for minimum 3 months and maximum 12 months. As per MERC order dated 15.11.2017 in case no. 155 of 2017, MSEDCL is purchasing this wind energy @ Rs. 2.25/- per unit for group I and @ Rs. 2.52/- per unit Group II, III and IV through MoU route.

(l) Till date, total 103 Nos. PPAs for 107.48 MW capacities are executed. LOIs are issued to 21 No. of wind generators for the 39.78 MW capacity but PPA is not executed yet in view of the MERC order dated 12.07.2018. Further, 15 Nos. of wind generators have applied on web portal for short term sale to MSEDCL which are under process.

(m) MSEDCL humbly request to the commission as what treatment is to be given to this short term wind power procurement whose PPA are already executed or LOIs are already issued.

5. The MSEDCL craves leave of this Hon'ble Commission to file additional affidavit, reply/documents etc. in case need arises at a subsequent stage with the prior permission of this Hon'ble Commission.
6. That MSEDCL has not filed any other proceedings arising out of the present matter claiming similar reliefs before any court or forum.

#### **PRAYER**

In view of the above, it is therefore most respectfully prayed that this Hon'ble Commission may graciously be pleased to:

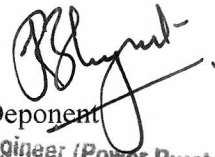
- (a) Allow the present review petition by reviewing the order dated 12.07.2018 passed in Case No. 84 of 2015 as prayed herein.
- (b) Clarify the treatment to be given to the contracts entered by MSEDCL based on order dated 15.11.2017 issued in Case No. 155 of 2017.
- (c) Clarify the treatment to be given for post expiry of EPA with Group-I, II & IV wind projects where commission has not determined any tariff.
- (d) Fixing the ceiling tariff of Rs. 0.75 per unit for Wind Projects and allow first right for refusal to MSEDCL in case of post expiry of wind EPA or else allow MSEDCL to fix the ceiling rate for Competitive Bidding.

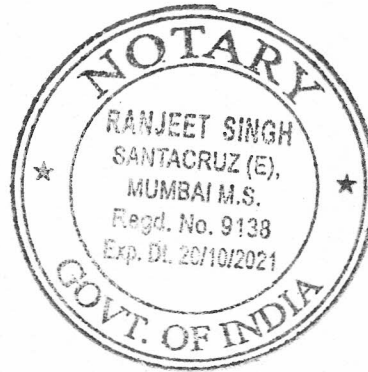
- (e) MSEDCL humbly request to the commission as what treatment is to be given to this short term wind power procurement whose PPA are already executed or LOIs are already issued.
- (f) Not to keep variable cost fixed for Bagasse & Biomass based projects that have completed their EPA's of 13 years and allow MSEDCL to decide a ceiling tariff based on market algorithm.
- (g) Pass such further orders as this Hon'ble Commission deems fit and proper in the interest of justice and good conscience.

It is prayed accordingly.

Date: 06<sup>th</sup> September-2018

Place: Mumbai

  
Deponent  
Chief Engineer (Power Purchase)  
M. S. E. D. C. L.





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AND

IN THE MATTER OF:

The Chief Engineer (Power Purchase), Maharashtra State Electricity Distribution Co. Ltd

Plot No G-9, Prakashgad, 5th floor, Station Road,

Bandra (East), Mumbai – 400051

E-mail : ceppmsedcl@gmail.com

....Review Petitioner/Applicant

Versus

Jawahar Shetkari Sahakari Sakhar Karkhana Ltd.


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....Respondent

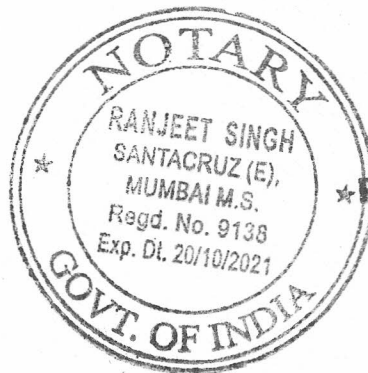
**SUBMISSION ON AFFIDAVIT ON BEHALF OF PETITIONER (MSEDCL)**

1. I, PARESH RAMCHANDRA BHAGWAT, aged 46 Years, son of RAMCHANDRA BHAGWAT, having my office at 5th Floor, Prakashgad, Bandra (East), Mumbai-400051 do solemnly affirm and say as follows:
2. I am the Chief Engineer (Power Purchase) of Maharashtra State Electricity Distribution Co. Ltd., the Review Petitioner in the above matter and am duly authorized as the Respondent to make this affidavit.
3. The statements made in the enclosed submission are based on the information received from the concerned officers of the Company and I believe them to be true.


I solemnly affirm at Mumbai on this 6<sup>th</sup> day of September, 2018 that the contents of this affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.

Identified before me

  
Deponent  
Chief Engineer (Power Purchase)  
M. S. E. D. C. L.



BEFORE ME

  
★ RANJEET SINGH  
M.Sc.LL.B.  
NOTARY  
MAHARASHTRA  
GOVT. OF INDIA

6 SEP 2018

