



Prakashgad, Plot No.G-9, Bandra (East), Mumbai – 400 051
(O) 26474211 / 26472131, Fax- 26580645 Website: www.mahadiscom.in

REF: CE/PP/Case 1 Stage 1/ 32885

Date: 3 SEP 2015

To,
The Secretary,
Maharashtra Electricity Regulatory Commission,
World Trade Centre, Centre No.1,
13th Floor, Cuffe Parade,
Colaba, Mumbai- 400005.

Subject: - Petition for seeking amendment in the PPA signed under Case 1 Stage 1 project in relation to ambiguity in definition of contracted capacity and installed capacity.

Dear Sir,

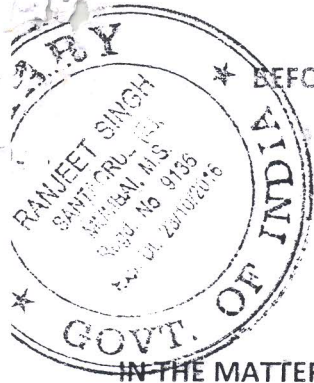
With reference to the above subject, please find enclosed herewith MSEDCL's Petition for seeking amendment in the PPA signed under Case 1 Stage 1 project in relation to ambiguity in definition of contracted capacity and installed capacity. This may please be taken on the record and placed before Hon'ble Commission.

Thanking you.

Encl: 1. Original Petition with 6 copies.
2. DD No. 930772 Dated 02.09.2015 for Rs. 10,000/-

Yours faithfully,

Devalop
Chief Engineer (PP)
MSEDCL



BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY COMMISSION,
MUMBAI

FILING NO. :

CASE NO. of _____

IN THE MATTER OF:

PETITION FOR SEEKING AMENDMENT IN THE PPA
SIGNED UNDER CASE I STAGE 1 PROJECT IN RELATION
TO AMBIGUITY IN DEFINITION OF CONTRACTED
CAPACITY AND INSTALLED CAPACITY.

AND

IN THE MATTER OF

SECTION 86 (1) (b) (f) OF THE ELECTRICITY ACT 2003

AND

IN THE MATTER OF

REGULATION 92,93,94 & 96 of MERC (CONDUCT OF
BUSINESS) REGULATIONS 2004

AND

IN THE MATTER OF THE PETITIONER:

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION
COMPANY LIMITED, PRAKASHGAD, ANANT KANEKAR
MARG, BANDRA (EAST), MUMBAI 400051.-
PETITIONER

Affidavit in support of Petition

I, Ashok Sitaram Chavan, aged 57years, son of Shri. Sitaram Chavan having my office at MSEDCL, Prakashgad, Plot No.G-9, Anant Kanekar Marg, Bandra (E), Mumbai-400051 do solemnly affirm and say as follows:

I am, Chief Engineer (Power Purchase) of Maharashtra State Electricity Distribution Co. Ltd., the Petitioner in the above matter and am duly authorized by the said Petitioner to make this affidavit.

The statements made in the enclosed submission in the matter of Petition For Seeking Amendment In The PPA Signed Under Case I Stage 1 Project In Relation To Ambiguity In Definition Of Contracted Capacity And Installed Capacity, are based on the

information received from the concerned officers of the Petitioner and I believe them to be true.

I say that there are no proceedings pending in any court of law/tribunal or arbitrator or any other authority, wherein the Petitioner is a party and where issues arising and /or relief sought are identical or similar to the issues arising in the matter pending before the Commission.

I solemnly affirm at Mumbai on this 27th day of August 2015 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.

A. S. Chavan

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

Date: 27 AUG 2015

Place: Mumbai.

Identified before me

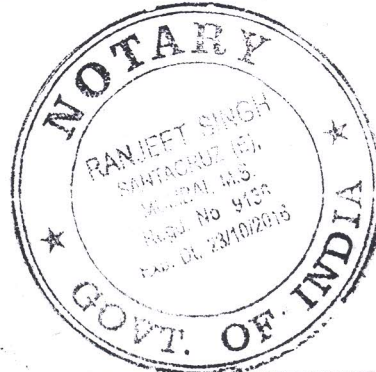
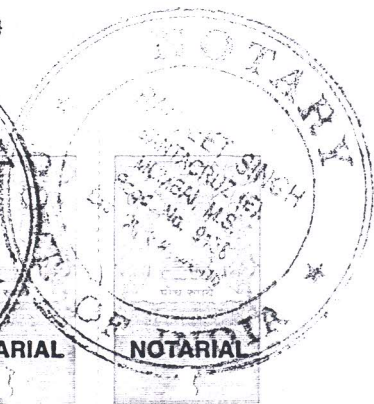
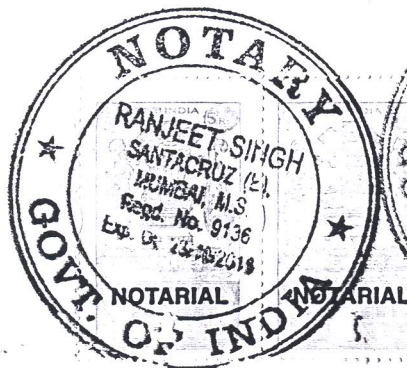
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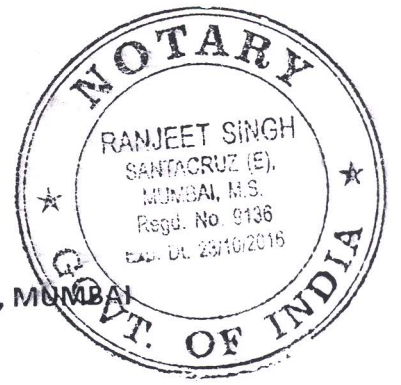
Ranjeet Singh
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M.S. 11 B

NOTARY
MAHARASHTRA
GOVT. OF INDIA

27 AUG 2015

RANJEET SINGH
SANTACRUZ (E),
MUMBAI, M.S.
Regd. No. 9136
Exp. Dt. 23/10/2015





BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY COMMISSION, MUMBAI

Filing No. : _____

Case No. : _____

IN THE MATTER OF:

PETITION FOR SEEKING AMENDMENT IN THE PPA SIGNED UNDER CASE I STAGE 1 PROJECT IN RELATION TO AMBIGUITY IN DEFINITION OF CONTRACTED CAPACITY AND INSTALLED CAPACITY.

AND

IN THE MATTER OF

SECTION 86 (1) (b) (f) OF THE ELECTRICITY ACT 2003

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IN THE MATTER OF

REGULATION 92,93,94 & 96 of MERC (CONDUCT OF BUSINESS) REGULATIONS 2004

AND

IN THE MATTER OF THE PETITIONER:

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED, PRAKASHGAD, ANANT KANEKAR MARG, BANDRA (EAST), MUMBAI 400051.-
PETITIONER

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED RESPECTFULLY SUBMITS AS FOLLOWS:

1. Background of the Petitioner

1.1. Maharashtra State Electricity Distribution Co. Ltd. (hereinafter referred to as "MSEDCL") has been incorporated under Indian Companies Act, 1956 pursuant to decision of Government of Maharashtra to reorganize erstwhile Maharashtra State Electricity Board (herein after referred to as "MSEB"). The said reorganization of the MSEB has been done

by Government of Maharashtra pursuant to "Part XIII – Reorganization of Board" read with section 131 of The Electricity Act 2003. MSEDCL has been incorporated on 31.5.2005 with the Registrar of Companies, Maharashtra, Mumbai and has obtained Certificate of Commencement of Business on 15th Sep 2005. MSEDCL is a Distribution Licensee under the provisions of the Electricity Act, 2003 (EA, 2003) having license to supply electricity in the State of Maharashtra except some parts of city of Mumbai.

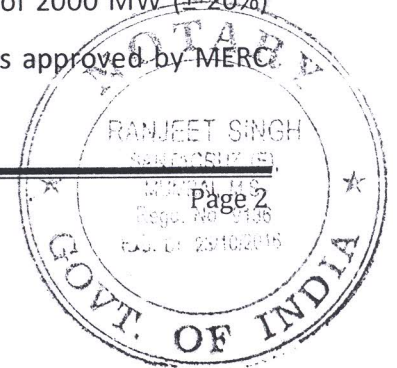
1.2. MSEDCL is a Company constituted under the provisions of Government of Maharashtra, General Resolution No. PLA-1003/C.R.8588/Energy-5 dated 25th January 2005 and is duly registered with the Registrar of Companies, Mumbai on 31st May 2005.

1.3. MSEDCL is functioning in accordance with the provisions envisaged in the Electricity Act, 2003 and is engaged, within the framework of the Electricity Act, 2003, in the business of Distribution of Electricity to its consumers situated over the entire State of Maharashtra, except some parts of Mumbai City .

2. Petitioner's Submission

2.1. In the year 2007, MSEDCL initiated Case 1 Stage 1 bidding process for procurement of 2000 MW power. However, Case 1 Bidding documents were not published by MoP at that time. Hence, as per modified Case 2 documents of the Ministry of Power, Government of India, Case 1 Bidding documents were prepared with some modifications and the same are approved by the Hon'ble Commission vide order dated 24th January 2008 in Case No. 38 of 2007.

2.2. Based on the above mentioned modified documents, duly approved by the Hon'ble Commission, MSEDCL initiated bidding process for power purchase of 2000 MW ($\pm 20\%$) under case 1 stage 1. The bid document containing RFP and PPA as approved by MERC



were used and advertised accordingly. The process commenced in the year 2006 with the issue of the Request for Qualification (RFQ) documents, and the evaluation of financial proposals was concluded in the year 2008.

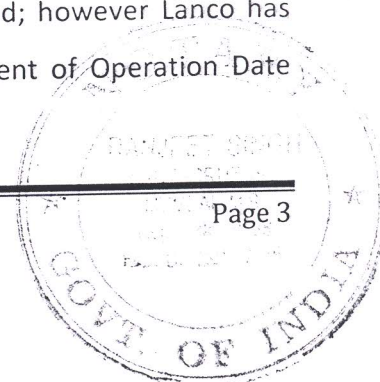
2.3. Consequent upon opening of bids and evaluation thereof, a High Power Committee, involving the Government of Maharashtra (GoM) was formed to negotiate the tariff with the three successful bidders namely, APML, Lanco Mahanadi Power Ltd. and JSW Energy Ltd. Based on the report of negotiating committee and order of GoM, Power Purchase Agreements (PPA) were signed with JSW and APML and Lanco for quantum of 1320 MW, 300 MW and 680 MW respectively. The details of the PPAs signed are as follows:

Sr. No.	Name of the bidder	PPA quantum (MW)	PPA date	Levelised tariff	Units specified in PPA	Unit configuration
1.	APML	1320	8 th Sep 2008	2.64	Unit 2 & 3	2*660 MW
2.	JSW Energy Ltd	300	23 rd Feb 2010	2.71	Unit 1	300 MW
3.	Lanco Vidarbha	680	25 th Sep 2008	2.71	Unit 1 & 2	2*340 MW

2.4. The PPAs were signed exactly as per the Bidding documents published, made available to public and as approved by Commission, no deviation & no subsequent changes were made in the Tender documents.

2.5. The Hon'ble Commission has adopted the Tariff under Section 63 of the Electricity Act 2003, vide order dated 27th November 2009 (Case No. 39 of 2009) and 19th August 2013 (Case No. 24 of 2013) and are enclosed with this petition as Annexure 1.

2.6. The supply from APML and JSW Energy Ltd has been commenced; however Lanco has failed to commission the project as per Scheduled Commencement of Operation Date (SCOD).



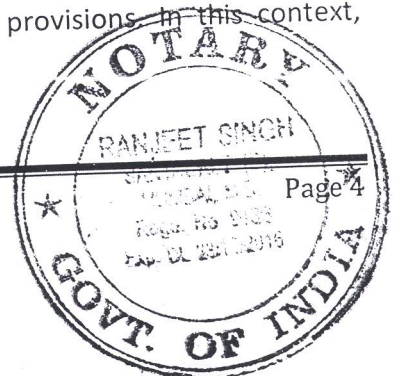
2.7. As per the PPA provisions, the contracted capacity is considered as 1320 MW and 300 MW for APML and JSW respectively and capacity charges are paid accordingly from CoD.

2.8. It is resubmitted that due to non-availability of Case 1 bidding Documents from MoP, the necessary modification were undertaken in available case 2 documents and Case1 bidding documents were prepared and submitted for Hon'ble Commission's approval. The revised bid documents were in compliance with the Competitive Bidding Guidelines issued by the Ministry of Power (MoP) and the commercial principles enumerated in Case 2 documents were followed, except those that were specific to case 1 bidding. The Standard Bidding Documents with the required modification were approved by Hon'ble Commission vide order dt. 24th Jan 2008 in case no. 38 of 2007.

2.9. MSEDCL has entered into the PPA with Respondents, which is approved by the Commission. However, some provisions within the PPA, which were in line with then available Case 2 Documents and adopted in the Case 1 PPA results into contradiction and MSEDCL's action as per PPA provision and CAG Audit observation thereof are highlighted in the following Paras. MSEDCL seeks clarification and revision from the Hon'ble Commission U/s. 86 (1) (b), (f) of the ACT and Regulation 92, 93, 94 & 96 of MERC (CONDUCT OF BUSINESS) REGULATIONS 2004.

3. Provisions of PPA

3.1. As per RfP document, contracted quantum is unit based, hence the supply of power shall be from specific unit specified in the bids by the bidder. It is submitted that the basic Gross rated Capacity of the respective power units were considered for determining the Contracted Capacity. However, within the provisions of the PPA, an ambiguity has been raised in relation to the understanding of the term "contracted capacity", "Installed Capacity" and the billing provisions considering the above provisions. In this context, some of the conditions of PPA are reproduced as below-



3.2. Contracted Capacity:

3.2.1. As per the PPA, Contracted capacity is rated as net capacity at the interconnection point, the relevant definition under Article 1 of the respective PPAs is extracted below:

As per PPA with APML dated 8th September 2008-

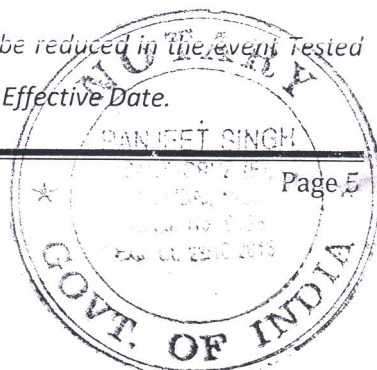
“Contracted Capacity”- “Means (i) for the second unit 660MW and; (ii) for the third Unit 660MW, rated net capacity at the interconnection point offered to and accepted the procurer, and in relation to the power Station as a whole means 1320MW rated net capacity at the Interconnection Point offered to and accepted by the procurer, or such rated capacities as may be determined in accordance with Article 6.3.4 or Article 8.2 of this Agreement (i.e. derating capacity), where the rated capacity offered to and accepted by the procurer could be the entire rated net capacity of the unit or a portion thereof;”

As per PPA with JSW dated 23rd February 2010 -

“Contracted Capacity” - “Means (i) for the first unit 300MW rated net capacity at the interconnection point offered to and accepted the procurer, and in relation to the power Station as a whole means 300MW rated net capacity at the Interconnection Point offered to and accepted by the procurer, or such rated capacities as may be determined in accordance with Article 6.3.4 or Article 8.2 of this Agreement, where the rated capacity offered to and accepted by the procurer could be the entire rated net capacity of the unit or a portion thereof;

6.3.4 if a unit's Tested Capacity after the most recent Performance Test mentioned in Article 6.3.3 has been conducted, is less than its Contracted Capacity as existing on the Effective Date, the Unit shall be de-rated with the following consequences in each case with effect from the date of completion of such most recent test :

- 1) The Unit's Contracted Capacity shall be reduced to its Tested Capacity at the most recent Performance Test.*
- 2) The quoted Non Escalable Capacity Charge (in Rs./kWh) shall be reduced in the event Tested Capacity is less than 95% of its Contracted Capacity as existing on Effective Date.*



3) The Seller shall not be permitted to declare the Available Capacity of the Unit at a level greater than its Tested Capacity.

4) The Availability Factor of the derated Unit shall be calculated by reference to the reduced Contracted Capacity.

5) The Capital Cost & each element of the Capital Structure Schedule shall be reduced in proportion.

3.3. Incentive payable

3.3.1. The Capacity Charges are payable upto 80% (normative availability) of the contracted capacity as per the PPA and incentive is payable above that. The relevant clauses as per the respective PPAs are as extracted below:

As per PPA with APML dated 8th September 2008-

“Schedule 6: Tariff

1.2.4 Contract Year Energy Incentive Payment

If and to the extent the Availability in a Contract Year exceeds eighty percent (80%), an incentive at the rate of 40% of the Quoted Non Escalable Capacity Charges (in Rs. /kWh) for such contracted Year mentioned in Schedule 10 subject to a maximum of 25 paise/kwh, shall be allowed on the energy (in kwh) corresponding to the availability in excess of eighty percent (80%)”

As per PPA with JSW dated 23rd February 2010 -

“Schedule 6: Tariff

1.2.4 Contract Year Energy Incentive Payment

If and to the extent the Availability in a Contract Year exceeds eighty percent (80%), an incentive at the rate of 40% of the Quoted Non Escalable Capacity Charges (in Rs. /kWh) for such contracted Year mentioned in Schedule 10 subject to a maximum of 25 paise/kwh, shall be allowed on the energy (in kwh) corresponding to the availability in excess of eighty percent (80%)”

