

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 157 of 2017**

**In the matter of**  
**Petition of Maharashtra State Electricity Distribution Co. Ltd. for approval of**  
**Long/Medium/Short term procurement of Renewable Energy through**  
**Competitive Bidding under Regulation 5 of MERC (Terms and Conditions for**  
**determination of Renewable Energy Tariff) Regulations, 2015.**

**Coram**

**Shri. Anand Kulkarni, Chairperson**  
**Shri. Deepak Lad, Member**

Maharashtra State Electricity Distribution Company Ltd. ....Petitioner  
Maharashtra Energy Development Agency .....Impleaded Party

**Appearance**

For Petitioner : Shri. Satish Chavan, (Rep.)  
For Impleaded Party : Shri. Manoj Pise, (Rep.)

**ORDER**

**Date: 06 December, 2017**

1. Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL), Prakashgad, Plot No G-9, Anant Kanekar Marg, Bandra East, Mumbai-400051, has filed a Petition on 7 November, 2017 approval of Long/Medium/Short term procurement of Renewable Energy(RE) through Competitive Bidding under Regulation 5 of the MERC (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2015('RE Tariff Regulations, 2015') and Regulation 94 of MERC ( Conduct of business) Regulation, 2004.
2. MSEDCL's prayers in its Petition dated 6 November, 2017, are as follows:  
“
  - a) *“To admit the Petition as per the provisions of the Regulation 19 of MERC (RPO, Its Compliance and Implementation of REC Framework) Regulations, 2016.*”

- b) *To accord approval and to permit the Petitioner to procure Renewable Energy on short term basis, at the rate discovered through tariff based Competitive Bidding (e-reverse auction) where the tariff determined by the Commission in the respective category of renewable energy will be ceiling rate and the same to be made eligible for meeting the Solar and Non-solar RPO requirement of MSEDCL.*
- c) *To accord, in principle approval and to permit the Petitioner to procure Renewable Energy on long and medium term basis, at the rate discovered through tariff based Competitive Bidding (e-reverse auction) and the same to be made eligible for meeting the Solar and Non-solar RPO requirement of MSEDCL.*
- d) *To allow MSEDCL to approach Hon'ble Commission for adoption of the tariff discovered through the Competitive Bidding under Section 63 of the EA, 2003.*
- e) *To consider the submission made by the Petitioner and consider the same positively while deciding the Petition as well as for further actions;*
- f) *To pass any other order/relief as the Hon'ble Commission may deem fit and appropriate under the circumstances of the case and in the interest of justice;*
- g) *Condone any error/omission and to give opportunity to rectify the same;*
- h) *To permit the Petitioner to make further submissions, addition and alteration to this Petition as may be necessary from time to time."*

MSEDCL's revised prayers in its additional submission dated 30 November, 2017 are as follows;

- 1) *"To admit the present additional submissions and allow MSEDCL to change its prayers.*
- 2) *To accord approval and to permit the Petitioner to procure wind, solar & Bagasse based cogeneration power on short term, medium term and long term basis, at the rate discovered through tariff based Competitive Bidding (e-reverse auction) which should be lower than the tariff determined by the Hon'ble Commission from time to time for respective category of renewable energy i. e. ceiling rate and the same to be made eligible for meeting the Solar and Non-solar RPO requirement of MSEDCL.*
- 3) *To accord approval for the draft RfS and draft PPA for procurement of wind/solar/Bagasse based cogeneration power on short/medium/long term basis.*
- 4) *To allow MSEDCL to approach Hon'ble Commission for adoption of the tariff discovered through the Competitive Bidding under Section 63 of the EA, 2003.*

- 5) *To pass any other order/relief as the Hon'ble Commission may deem fit and appropriate under the circumstances of the case and in the interest of justice;*
- 6) *Condone any error/omission and to give opportunity to rectify the same;*
- 7) *To permit the Petitioner to make further submissions, addition and alteration to this Petition as may be necessary from time to time."*

3. The Petition states as follows:

1) MSEDCL has been incorporated under Indian Companies Act, 1956 pursuant to decision of Government of Maharashtra (GoM) to reorganize erstwhile Maharashtra State Electricity Board (MSEB). MSEDCL is a Company constituted under the provisions of GoM, General Resolution (GR) No. PLA-1003/C.R.8588/Energy-5 dated 25 January, 2005 and is duly registered with the Registrar of Companies (RoC), Mumbai on 31 May, 2005. MSEDCL is functioning in accordance with the provisions envisaged in the Electricity Act, 2003(EA,2003) and is engaged, within the framework of the EA,2003, in the business of distribution of Electricity to its consumers situated over the entire State of Maharashtra, except some parts of city of Mumbai.

2) The National Tariff Policy, 2016, under clause 6.4 provides that 'States shall endeavour to procure power from Renewable Energy (RE) sources through Competitive Bidding to keep the tariff low, except from the waste to energy plants. Procurement of power by Distribution Licensee from RE sources from projects above the notified capacity shall be done through Competitive Bidding process, from the date to be notified by the Central Government.

3) Also, the National Electricity Policy, 2005 notified on 12 February, 2005, provides for Competitive Bidding in Renewable Energy, under para 5.12.2:-

*"...Progressively the share of electricity from non-conventional sources would need to be increased as prescribed by State Electricity Regulatory Commissions. Such purchase by distribution companies shall be through Competitive Bidding process...."*

4) Regulation 2 (1) (j) of the MERC (Renewable Purchase Obligations, Its Compliance and Implementation of REC Framework) Regulations, 2016(RPO Regulations, 2016) makes it clear that:

*"An 'Obligated Entity' means the distribution licensees, users owning captive power plants, and open access consumers in the State of Maharashtra, who have to mandatorily comply with renewable purchase obligation under these Regulations subject to fulfillment of conditions outlined under Regulation 5"*.

5) Hence, Renewable Purchase Obligation (RPO) of distribution companies/direct buyers of electricity were to be fixed by State Electricity Regulatory Commission (SERC)s across the States.

6) While determining the RE tariff Order for FY 2017-18, MSEDCL referred to the Gujarat Electricity Regulatory Commission (GERC) letter dated 18 March, 2017 by which it has permitted procurement of RE through Competitive Bidding. A similar approach may be adopted while determining the Generic Tariff for RE Technologies in Maharashtra for FY 2017-18, and Competitive Bidding may be allowed to Distribution Licensees for procurement of Wind and Solar power.

7) In this regards, the Commission's ruling in RE Generic Tariff Order dated 28 April, 2017 is as below:

*"As regards Competitive Bidding for RE procurement by Distribution Licensees, Regulation 5 of the RE Tariff Regulations specifies that the Commission shall adopt the Tariff in respect of RE Projects if it is determined through a transparent process of Competitive Bidding conducted under Section 63 of the EA, 2003".*

8) In light of this, MSEDCL would like to make the following submissions before the Commission for its kind consideration and necessary approval under the aforesaid Regulations, for procurement of RE through Competitive Bidding process towards the fulfilment of RPO from RE sources on Short Term/Long term contract basis through reverse auction process.

9) As per Regulation 7.1 of the RPO Regulations, 2016, the RPO targets are as below:

Year	Quantum of purchase (in%) from RE sources (in terms of energy equivalent in kWh)		
	Solar	Non-Solar (other RE)	Total
2016-17	1.00%	10.00%	11.00%
2017-18	2.00%	10.50%	12.50%
2018-19	2.75%	11.00%	13.75%
2019-20	3.50%	11.50%	15.00%

10) Also, as per Government of India's (GoI) RE capacity installation, target is of 175 GW by Year 2022 and for Maharashtra it will be 22 GW. As per draft National Electricity Plan (NEP), 2016, India's total installed capacity shall be 684 GW by 2027 (under Base case scenario) and the share of RE shall be 40.2% in capacity terms and 24.2% in energy terms.

11) Regulation 7.2 of RPO Regulations, 2016 provides that:

An obligated entity to meet its RPO target by way of its own generation or procurement of power from another RE Project or by purchase from a Licensee or by purchase of RECs or by a combination of these options. However, the RE power generated within Maharashtra by a Distribution Licensee at a rate other than that approved by the State Commission directly from a Generator or a Trading Licensee

shall not be considered as eligible quantum for fulfillment of the RPO of Distribution Licensee.

12) MSEDCL has contracted RE (as on 31 August, 2017) for fulfillment of Solar and Non-Solar RPO target on preferential tariff with all RE generators except for 1000 MW Solar power from SECI through Competitive Bidding, which is as below:

Sr. No.	Source of Renewable Energy	Contracted Capacity in MW	Commissioned Capacity in MW
1	Wind	3631.65	3631.65
2	Bagasse based Co-generation	1999.75	1904.85
3	Biomass	211	157
4	Small Hydro	115.625	88.875
5	Solar	1327	322
6	MSW	4	4
Total		7289.03	6108.38

13) In view of above, MSEDCL RPO Compliance (provisional) for FY 2016-17 and FY 2017-18 (1st quarter) is as below:  
FY 2016-17:

MSEDCL GEC in (MU)		Solar RPO (MU)		Non Solar RPO (MU)		Total	
		111536	Target	1115	1.00%	11154	10.00 %
	Achievement	422	0.38%	9332	8.37 %	9753	8.74%
	Shortfall	693 MU		1822 MU		2516 MU	

FY 2017-18 (1<sup>st</sup> Quarter):

MSEDCL GEC in (MU)		Solar RPO (MU)		Non Solar RPO (MU)		Total	
		33373	Target	637	2.00%	3342	10.50 %
	Achievement	105	0.33%	2372	7.45 %	2477	7.78%
	Shortfall	532 MU		970 MU		1502 MU	

MSEDCL is in shortfall of 1822 MUs for fulfillment of Non- Solar RPO target for FY 2016-17. Also, there is shortfall of 970 MUs for fulfillment of Non- Solar RPO target for FY 2017-18-1<sup>st</sup> quarter. Hence, MSEDCL has to purchase Solar and Non-solar RECs or procure RE power to meet the RPO target given by the Commission.

Regulatory Provisions and recent trends in RE power procurement through Competitive Bidding:

14) The National Electricity Policy, 2005 notified on 12 February, 2005, provides for Competitive Bidding in Renewable Energy, under para 5.12.2

*“...Progressively the share of electricity from non-conventional sources would need to be increased as prescribed by State Electricity Regulatory Commissions. Such purchase by distribution companies shall be through Competitive Bidding process....”*

15) RE Tariff Regulations, 2015 also encourage competitively bid RE power procurement by the utilities. The relevant extract is reproduced below.

*“5. Competitive Bidding for procurement of power generated by grid-connected RE Projects-*

*The Commission shall adopt the tariff for a RE Power Project where such tariff has been determined through a transparent process of Competitive Bidding in accordance with guidelines under Section 63 of the Act as and when issued by the Central Government.”*

16) Therefore, MSEDCL seek approval regarding proviso under Regulation 5 of RE Tariff Regulations, 2015 to allow the Long /Short term purchase of RE through Competitive Bidding process by MSEDCL towards fulfillment of Solar and Non-Solar RPO target.

Recent development in RE procurement in neighbouring states:

17) Considering the provisions of the National Tariff Policy for procurement of power from RE projects, the Gujarat Electricity Regulatory Commission (GERC) vide Order dated 6 October, 2017 has mentioned the procurement of RE by the Distribution Licensees through Competitive Bidding under Section 63 of the EA, 2003 for wind and solar projects or by following the Competitive Bidding process followed by SECI / MNRE, etc. The tariff determined by the Commission in the respective category of Renewable Energy will act as a ceiling tariff and the Distribution Licensees may approach the Commission for adoption of the tariff discovered through such Competitive Bidding process.

18) KERC has given advice to the Government of Karnataka, to direct Discoms not to enter any fresh PPAs with Wind Power Projects until further review by KERC. Also, to bring Policy for procurement of Wind Power through Competitive reverse Bidding in line with the Guidelines issued by MoP/MNRE with prior approval of KERC.

19) Recently, in a reverse auction Competitive bid process conducted by SECI for setting up of 1 GW Wind Power projects as per MNRE guidelines, the wind tariff rates discovered of Rs.2.64 per unit. Likewise, recently in Rajasthan, reverse auction

of 500 MW of solar projects lowest winning bid is at Rs 2.44 per unit. Thus there is a strong trend towards fall in the prices of RE technologies in Competitive Bidding process. The implication of Competitive Bidding is that it is opening new markets for capacity expansion. In some cases, the Competitive rates are lower than 50% of feed in tariff (FIT) rates.

RE procurement through Competitive Bidding by MSEDCL:

20) MSEDCL wishes to procure wind, solar and Bagasse based Co-generation power, henceforth through Competitive Bidding process only.

21) Accordingly, MSEDCL vide its letter dated 9 June, 2017 has sought permission from GoM for purchase of wind and solar energy through Competitive Bidding process. The GoM vide its letter dated 17 July 2017 has accorded approval for the same.

22) Further, MSEDCL vide letter dated 28 July, 2017 also requested to GoM, to give approval for purchase of 500 MW (in step of 100 MW) Bagasse based Co-generation power through Competitive Bidding with ceiling rate of Rs. 4.00 per unit. The ceiling rate of Rs. 4.00 per unit has been derived considering the average variable cost of thermal generation as Rs. 2.90 per unit and cost of Non-Solar REC as Rs. 1.00.

23) The GoM, vide letter dated 11 October, 2017, has accorded approval for the purchase of baggase based cogeneration power through Competitive Bidding process with ceiling rate of Rs. 4.00 per unit.

24) MSEDCL has filed Petition for seeking approval for short term procurement of wind and solar power through Competitive Bidding. The Bidding process has been conducted on PFC's Discovery of Efficient Electricity Price (DEEP) portal. (*Final Order in this matter under Case No 155 of 2017 has been issued by the Commission on 15 November, 2017*)

25) MSEDCL is also in process of filing petition requesting the Commission for approval of Competitive Bidding process for Bagasse based co-generation power on long term basis. The Bidding process is being carried out on Telecommunications Consultants India Limited (TCIL) portal.

26) Further, to promote the Renewable Energy and also to mitigate RPO targets, MSEDCL is presently in process of implementation of various scheme:

i) Sub-station Land Solar project- The scheme to utilize the spare land at substations for the generation of solar energy of 200 MW through Competitive Bidding. *(This matter has been registered as Case No 164 of 2017).*

ii) “Chief Minister Solar Agriculture Scheme”- Solar agricultural Feeder pilot Project scheme is being implemented with the joint venture of MSEDCL, Mahagenco and MEDA

27) During the preparation of Bidding document/PPA, MSEDCL has followed the guidelines issued by GoI/MNRE for Short/Long term procurement of RE power through Competitive Bidding with e- reverse auction. In case, if there is no standard Bidding documents available for any RE source like Bagasse based co-generation through Competitive Bidding, then MSEDCL will prepare the Bidding document in line with the GoI/MNRE guidelines with necessary modification as required in existing PPAs.

28) MSEDCL requests the Commission to consider and seeks approval for the power proposed to be procured from RE generators and for various Government schemes through Competitive Bidding (e-reverse auction) with the tariff determined by the Commission in the respective category of RE will be taken as ceiling tariff rate, towards meeting the RPO requirement of MSEDCL.

29) For Short term basis procurement, the ceiling rate for Competitive Bidding shall be lower than the tariff/preferential rate as decided by the Commission. MSEDCL request to the Commission to consider such RE power procurement through Short term basis Competitive Bidding process towards meeting the RPO requirement of MSEDCL. In case of Long term basis and Medium term Competitive Bidding process MSEDCL will approach to the Commission for adoption of tariff offered under Section 63 of the EA, 2003 after completion of process. The Competitive Bidding process will be done as per GoI/MNRE guidelines.

4. By referring to the Commission’s Notice dated 10 November, 2017 in the present Case, Maharashtra State Co-op. Sugar Factories Federation Ltd. (MSCSFFL), Mumbai in its letter dated 15 November, 2017 has stated that:

1) MSEDCL has floated a tender dated 6 November, 2017 for procurement of power generated from Bagasse based co-generation power projects in Maharashtra on Competitive Bidding and reverse auction. In this tender MSEDCL has made the following stipulations under clause 3.6 B in respect of Tariff payable.

- a. Tariff shall remain constant for the PPA term and there shall be no escalation during the contractual period.
- b. Tariff shall be as that arrived after reverse Bidding process.
- c. Ceiling Tariff of Rs. 4.0 per unit shall be the upper limit.
- d. Tariff shall be bifurcated into fixed charges and variable charges in 50:50 ratio.

2) In this regards MSCSFFL submits that Ceiling tariff prescribed at Rs. 4.0 per unit contradicts to that fixed by the Commission at Rs. 6.33 per unit for FY 2017-18. The reverse Bidding process and tariff bifurcation (fixed and variable) shall render the Commission's Order infructuous ignoring the key provisions of RE Tariff structure calculations in case of Non-fossil Fuel based Co-generation projects.

3) A pre-bid meeting was held at MSEDCL, Prakashgad office on 13 November, 2017 to discuss the tender document. This meeting was attended by Bagasse based co-gen power project promoters and representatives from MSCSFFL and Cogeneration Association of India (Cogen India). The submissions/clarifications are made to MSEDCL by MSCSFFL. Last date of submission of the Bid is 22 November, 2017.

4) On behalf of its member sugar factories MSCSFFL submits that;

a. The Commission may direct MSEDCL to make available copy of the Petition to Cogen India ([cogenindia.pune@gmail.com](mailto:cogenindia.pune@gmail.com)) to enable it to go through and to submit suggestions /objections.

b. The Commission may accord approval and acceptance to MSEDCL for its prayers purely on the sanctity of the Commission's Order dated 28 April, 2017. The Commission may disallow MSEDCL's prayers in respect of following;

i) Complete Bidding through e-reverse auction

ii) Ceiling tariff of Rs. 4 per unit.

iii) Bifurcation of tariff on 50:50 ratio of fixed and variable charges.

c. The Commission may kindly accept and consider its submissions as above and provide an opportunity to be heard in person at the hearing scheduled on 21 November, 2017 (MSCSFFL in its letter dated 20 November, 2017 under Case No 159 of 2017 has requested to provide an opportunity to be heard in person at the hearing scheduled on 4 December, 2017) regarding the above.

5. By referring to the Commission's Notice dated 10 November, 2017 in the present Case, Cogeneration Association of India (Cogen India), Pune in its letter dated 15 November, 2017 has stated that:

1) MSEDCL has floated a tender dated 6 November, 2017 for procurement of power generated from Bagasse based co-generation power projects in Maharashtra on Competitive Bidding and reverse auction.

2) MSEDCL has fixed ceiling limit of Rs.4.0 per unit and asked the Commission its approval. The referred tender/tendering procedure should immediately declared invalid and cancelled thereof in view of violation the Commission's guidelines for ceiling Tariff, and/or advice MSEDCL to revise the ceiling tariff at the Commission's declared tariff of Rs.6.33 per unit as per the Order dated 28 April, 2017.

3) A pre Bid meeting was held at MSEDCL's office on 13 November, 2017 to discuss the above tender document. The meeting was attended by Bagasse based Cogen power project promoters, representatives from Cogen India and from MSCSFFL. The submissions/clarifications are made to MSEDCL by Cogen India. Last date of submission of the Bid is 22 November, 2017.

4) On behalf of its member sugar factories Cogen India submits that;

a. The Commission may direct MSEDCL to make available copy of the Petition to Cogen India ([cogenindia.pune@gmail.com](mailto:cogenindia.pune@gmail.com)) to enable it to go through and to submit suggestions /objections.

b. The referred tender/tendering procedure should immediately be declared invalid and cancelled thereof in view of violation the Commission's guidelines for ceiling Tariff.

c. The Commission may advise MSEDCL to revise the ceiling tariff at the Commission's declared tariff of Rs.6.33 per unit.

d. The Commission may kindly accept and consider its submissions as above and provide opportunity to be heard in person at the hearing scheduled on 21 November, 2017 (Cogen India in its letter dated 18 November, 2017 under Case No 159 of 2017 has requested to provide opportunity to be heard in person at the hearing scheduled on 4 December, 2017) regarding the above.

6. MSEDCL in its additional submission dated 30 November, 2017 has stated that:

1) Pursuant to the Commission's Order dated 15 November, 2017 in Case No. 155 of 2017; MSEDCL is filing this additional submission in Case No. 157 of 2017.

2) MSEDCL has filed this Petition for seeking approval for procurement of Long /Medium/ Short term Renewable Energy through Competitive Bidding under Regulation No. 5 of RE Tariff Regulations, 2015.

3) Vide Order dated 15 November, 2017 in Case No. 155 of 2017, the Commission observed that the MoP, vide its Notification dated 3 August, 2017, has issued Guidelines under Section 63 of the Electricity Act (EA),2003 for Tariff- based Competitive Bidding for long-term procurement of 5 MW and above from grid-connected Solar PV Power Projects. The Commission also observed that MNRE has also published draft 'Guidelines for procurement of Wind Power (individual size of 5 MW and above) through Competitive Bidding in April, 2017 under Section 63 of the EA, 2003 for comments. However, these are not yet finalized.

4) The Commission has directed MSEDCL not to undertake any further Competitive Bidding for RE power till the final disposal of the instant Petition in Case No. 157 of 2017 filed for seeking approval for procurement of long

/medium/short term Renewable Energy power through Competitive Bidding).

5) MSEDCL is willing to float tender for procurement of wind and solar power through Competitive Bidding (e-RA) on Long term/Short term/Medium term basis.

6) Considering the MoP guidelines dated 3 August, 2017 i.e. Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects MSEDCL has prepared a draft Request for Specification (RfS) with draft Power Purchase Agreement (PPA) for procurement of solar power on Long term/Medium term basis.

7) MNRE has published draft 'Guidelines for procurement of Wind Power (individual size of 5 MW and above) through Competitive Bidding in April, 2017 under Section 63 of the EA, 2003 for comments. However, these are not yet finalized.

8) MNRE has issued draft guidelines F.No.238/1/2017 for procurement of Wind Power through Competitive Bidding. Clause 5.1 (c) of these draft guidelines provides that, till the time the Standard Bidding Documents are notified by the Central Government, for purpose of clarity, if the Procurer while preparing the draft RfS, draft PPA, draft PSA and other Project agreements provides detailed provisions that are consistent with the Guidelines, such detailing will not be considered as deviations from these Guidelines even though such details are not provided in the Guidelines. It also provides that in case of an ongoing Bidding process, if the bids have already been submitted by the bidders prior to the notification of these Guidelines and/or SBDs, then if there are any deviations between these Guidelines and/or the SBDs and the proposed RfS, PPA, PSA (if applicable), the RfS, PPA and the PSA shall prevail.

9) Accordingly, MSEDCL has prepared a draft RfS with draft PPA for procurement of wind power on long term/medium term basis. On the basis of these draft guidelines, GERC has accorded approval for the Competitive Bidding process initiated by Gujarat Urja Vikas Nigam Limited.

10) On the basis of these draft guidelines, GERC has accorded approval for the Competitive Bidding process initiated by the Petitioner therein i.e. Gujarat Urja Vikas Nigam Limited, under Section 63 read with Section 86 (1) (b) of the Act and also grant in principle approval to the bid documents (RfP and PPA and Addendums to it) issued by the Petitioner therein after pre-bid conference with the prospective bidders. Also, GERC directed the Petitioner therein to submit the details of the Bidding process, bid evaluation report etc. and also approach the Commission for adoption of the discovered tariff and approval of PPA after successful completion of the Competitive Bidding process.

11) In the recent Judgment of the Gujarat High Court dated 6 November, 2017 (in Indian Wind Energy Association (InWEA) vs. Gujarat Urja Vikas Nigam Ltd. and others) in Spl. Civil Application No. 19312 of 2017 wherein InWEA had challenged an Order of the Gujarat Electricity Regulatory Commission on the ground that no

Competitive Bidding Guidelines for Wind Energy had been notified by GoI under Section 63 of the EA, 2003. The Judgment states inter alia as follows:

*“16. The Supreme Court, in the afore-stated case, while addressing the issue as to whether in a situation where there are no guidelines or in a situation, which is not covered by the guidelines issued by the Central Government under Section 63, it could be said that the Commission’s power to regulate tariff was completely done away with, held inter alia that regulatory power of the Central Commission under Section 79(1)(b) was a general one, and when the Commission adopts tariff under Section 63, it does not function dehors its general regulatory power. Taking a cue from the said observations made by the Supreme Court, it is required to be construed that in the instant case, the general regulatory power of the State Commission under Section 86(1)(b) is the source of power to regulate the electricity purchase and procurement process, including the power to determine or adopt the tariff. As observed by the Supreme Court, in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Commission is bound by those guidelines and must exercise its regulatory functions, in accordance with those guidelines, however, in a situation where there are no guidelines framed at all or where guidelines do not deal with a given situation, the Commission’s general regulatory power could be exercised. The Court, therefore, finds much force that though in the instant case, the draft guidelines [for long-term Wind Energy procurement by Competitive Bidding] are issued by the Central Government keeping in view Section 63, and paragraph 5 thereof also permits the application of those guidelines to the ongoing Bidding process, nonetheless, even if such draft guidelines are not taken into consideration, then also the Commission could exercise the general regulatory powers under Section 86(1)(b) of the said Act.*

*“19. ....the very objective of initiating the Competitive Bidding process was to procure the wind power at the lowest possible rate for the benefit of the consumers and considering the larger public interest, the Court should not interfere with the same.”*

12) MSEDCL is in process of tendering for procurement of Bagasse based co-generation power through Competitive Bidding (e-Reverse Auction). Accordingly, MSEDCL has filed a Petition (Case No. 159 of 2017) for seeking the approval of the same and to be made eligible for fulfillment of RPO. The bid opening date was 22 November, 2017.

13) As there is/are no standard Bidding document(s) available for procurement of Bagasse based Co-generation power through Competitive Bidding. Hence, MSEDCL has prepared a Bidding document (RfS) & PPA in line with the MoP guidelines for Long term Solar Power purchase. The Bidding document (RfS) & PPA for Bagasse based Co-generation power through Competitive Bidding has been submitted before

the Commission, under Case No. 159 of 2017, for seeking approval.

14) As per the directives from the Commission in Case No. 155 of 2017, a tender which has been already floated on dated 6 November, 2017 along with bid (RfS) document and draft PPA for long term power procurement from Bagasse based co-generation projects through Competitive Bidding (E-reverse auction) using TCIL portal, has been extended the date of bid submission from 22 November, 2017 to 30 November, 2017 after the pre-bid meeting dated 13 November, 2017.

15) The Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017, Statement of Reasons (SORs) dated 18 April, 2017 regarding Project Specific tariff, states that:

*The Revised Tariff Policy of 2016 stated the following in Clause 6.4(3):*

*“The Central Commission should lay down guidelines for pricing intermittent power, especially from renewable energy sources, where such procurement is not through Competitive Bidding. The tariff stipulated by CERC shall act a ceiling for that category.”*

*“It is understood that GERC has already directed its distribution licensees to procure electricity from wind and solar power projects through Competitive Bidding. Thus, the Commission concludes that States shall act in accordance with guidelines of Tariff Policy, thereby eliminating the need for generic tariff for solar and wind plants...”*

16) MoP guidelines for short term procurement of Power through Competitive Bidding (e-RA) are available on the DEEP portal. In line with this, MSEDCL has prepared RfS and PPA for short term procurement from wind and solar projects.

17) Approval is requested for;

- i) Procurement of wind, solar & Bagasse based cogeneration power through Competitive Bidding.
- ii) The draft RfS and PPA for procurement of wind, solar & Bagasse based cogeneration power on Medium/Long term basis are enclosed and the same are also submitted in Case No. 159 of 2017 for Bagasse based cogeneration power on Long term basis.
- iii) The draft RfS and PPA for procurement of wind and Solar power on short term basis.

18) MSEDCL requested the Commission to consider its revised prayers as mentioned at para 2 of this Order.

7. The proceedings of the hearing held on 4 December, 2017 are summarized as follows:

1) Shri Sunil Natu of Cogen India stated that as per target given in Government Resolution and after obtaining all project appraisal/approvals, the Bagasse based Cogeneration project Promoters has invested huge amount considering the Preferential tariff of Rs. 6.33 per unit determined by the Commission in its Order dated 28 April,2017.The ceiling limit of Rs.4.0 per unit fixed by MSEDCL for Competitive Bidding procedure is violating the Commission's said Order and it should immediately be declared invalid and cancelled. Cogeneration Association of India has requested for revision of the Ceiling Limit determined by MSEDCL during the meeting held on 21 November, 2017 of the Committee formed at Government level for rate determined by MSEDCL. The Promoters may likely to accept the ceiling limit of Rs.5.85 per unit.

2) Shri Sanjay Khatal Managing Director of Maharashtra State Co-Op Sugar factories Federation Ltd, on behalf of the Co-operative Sugar Factories Co-generation Power Projects has stated that fixing the ceiling limit of Rs.4 per unit by MSEDCL has no financial and techno-commercial basis. The levelised tariff of Rs. 6.33 per unit determined by the Commission has technical and financial sanctity. Hence the rate fixed by MSEDCL shall not be considered.

3) The Commission asked MSEDCL about its plan for purchasing RE through Competitive bidding i.e. quantum of RE and specific period or in particular financial year and also, which SERCs has given such blanket permission for purchasing RE through Competitive bidding in absence of notified guidelines. MSEDCL stated that it has proposed to purchase RE power for long term, medium term and short term. The Commission asked MSEDCL whether the ceiling limit of Rs.4 per unit is subject to change or fixed. MSEDCL stated that the rate may not likely to go below Rs.4 per unit, however, the matter is taken by the stake holders with Government of Maharashtra. The consultation process is going on at Government of Maharashtra level. After receipt of directives if any from Government of Maharashtra the ceiling rate for the competitive bidding may be finalized.

The Commission reserved the matter for final orders.

8. Additional written submission by Maharashtra Rajya Sahakari Sakhar Karkhana Sangh Ltd 30 November,2017 stated that;

a. 15 sugar factories in the State ( 9 Co-operative & 6 private) went ahead with the implementation, involving huge investments through equity& bank loans, based on documented Govt. of Maharashtra policies and GRs, as well as approvals from the office of the Commissioner of Sugar, sanction of equity from Govt. of Maharashtra, MSEDCL in principal grid evacuation approvals, the Commission tariff Orders, loan sanctions and disbursements by financial institutions with appraised project based on the Commission declared tariff. All these co-operative, sugar factories have completed

their projects and were ready for power export from October, 2016. The investment is standstill and these projects have already become NPAs.

b. MSEDCL abruptly stopped signing of PPAs from June, 2016, without giving any prior notice and conveyed to the concerned sugar factories who already commissioned their Co-gen power projects. Due to non signing of PPAs by MSEDCL, all these completed projects have become NPAs (having capital investment of Rs.2500 Cr).

c. The claim made by MSEDCL that they have completed target of 2000 MW as per GoM policy is incorrect, as it is the target for exportable power which is fed to MSEDCL after meeting the steam and power requirements of sugar factory. The actual target achievement as per the GoM policies by MSEDCL is only 1375 MW of exportable surplus and additional 625 MW exportable power must be absorbed by MSEDCL to meet the GoM targets.

d. These projects have to become financially viable on standalone basis. The MERC declared tariff every year is based on the normative capital cost and various operating costs including bagasse cost, interest cost, station heat rate, O & M expenses, PLF ,season and off season days, thermal efficiency etc. The tariff decided by the Commission is through very elaborate computation and public hearing. Hence the tariff declared by the Commission is presumed as bankable by most of financial institutions for appraisal and sanction of term loans. Any tariff below the Commission declared tariff, hence, becomes non-bankable and economically unviable.

e. MSEDCL has floated a tender for procurement of Power from bagasse based Co-generation power projects in Maharashtra for only 100 MW installed capacity, through competitive bidding and e-reverse auction on 6 November, 2017(against 270 MW installed capacity of the captioned 15 ready to commission bagasse based Cogen power projects) fixing the Ceiling Tariff of Rs 4.00per unit for the purpose. The revised last date for submission of bids is 6 December.2017 (Earlier 22 November,2017 extended to 30 November,2017)

f. A pre-bid meeting was held at MSEDCL, Prakashgad,Mumbai on 13 November,2017 at 11.00 hrs to discuss the tender document. This meeting was attended by bagasse based Cogen power project promoters and representatives from Cogeneration Association of India (Cogen India) and Maharashtra State Federation of Co-Operative Sugar Factories Ltd. (Sakhar Sangh).

g. MSEDCL submitted Petitions for seeking approval of the Commission for procurement of renewable energy for long/short/medium term basis (Case No 157 of

2017) and for procurement of bagasse based co-generation power for long term basis (Case No 159 of 2017) on 10 November, 2017 through competitive bidding with e-reverse auction.

h. As per the Commission's notices in response to the above referred MSEDCL petitions, it has clearly indicated that the upper cap must be Rs. 6.33 per unit. In both petitions, MSEDCL has inappropriately fixed upper tariff cap of Rs 4.00 per unit for bagasse based Cogen power projects. MSEDCL started tendering process without prior approval of the Commission. Hence entire tendering process by MSEDCL in this matter is incorrect, invalid, illegal and violets the guidelines of the Commission.

i. Further, both the above referred Petitions have clearly indicated that MSEDCL has a short fall of 1822 MUs for the year 2016-17 and 970MUs for the first quarter of FY 2017-18. The major shortfall in RPOs by MSEDCL indicates that there has been no plan for REC or RE power procurement for the last two years as well as the prayer from MSEDCL that the power procured under the proposed competitive bidding may be considered eligible for meeting the RPO, does not qualify under the above clauses of the said Commission's Order.

j. In the event of shortfall of RPO, it is mandated that the distribution licensee must meet the shortfall year on year basis by procurement through RECs or RE power at the tariffs decided by the Commission. The Commission may consider any request from MSEDCL for procurement of RE power, through competitive bidding, only after meeting RPO through REC or RE power at MERC declared tariffs. In such event, the prayer by MSEDCL is totally inappropriate, illegal and violating the framework of RPO set up by MoP Govt of India, CERC and MERC.

k. Top level meetings were recently held with the Minister for Energy, GoM and the Minister for Co-Operative, GoM and Hon Chief Minister, GoM along with the concerned Secretaries and MSEDCL officials during November 21-23, 2017 along with the Chairman of the affected sugar factories, Sakhar Sangh and Cogen India. The following decisions were principally agreed by the Hon. Chief Minister, GoM.

- (i) Power evacuation from sugar factories with the commissioned Cogen power plants will be started immediately, up to 300 MW installed capacity with undertaking that the rate decided by MERC shall be binding on either parties. The GoM will instruct MEDA to issue infrastructure Clearances for these projects and to MSEDCL to proceed with evacuation arrangements, so as to start the power evacuation by 15 December, 2017 with due undertaking to be given by such of sugar factories.

- (ii) The GoM will work out the sustainable / bankable tariff (the reduction in tariff proposed by the appointed committee of Rs 5.85 per unit was still not acceptable to GoM) and the final tariff will be decided shortly, through technical committee based on Technical, Financial and Commercial benchmark followed by mutual discussions between GoM and concerned sugar factories/ their association. The mutually acceptable tariff will be proposed jointly to the Commission for approval and endorsement as per procedural system in place. The PPAs for all such projects will be signed thereafter.

1. In this background, submission and positive actions taken by GoM prayed Commission to direct MSEDCL to immediately withdraw/ cancel the referred tendering process for bagasse based cogeneration power projects from sugar factories in state of Maharashtra.

9. Cogen Association of India dated 30 November, 2017 in its additional submissions has primarily submitted the above issues as raised by Maharashtra Rajya Sahakari Sakhar Karkhana Sangh. In addition it has stated as follows;

- (i) To pursue this matter, cogen India has been writing specific letters to all the concerned authorities/ Govt. bodies, since August, 2016, requesting their time to discuss and resolve the issue immediately. Several high level meetings were held from September, 2016 onwards till the date to resolve the matter.
- (ii) MSEDCL abruptly stopped signing of PPAs from June, 2016, without giving any prior notice and conveyed to the concerned sugar factories who already commissioned their Co-gen power projects. Due to non signing of PPAs by MSEDCL, all these completed projects have become NPAs (having capital investment of Rs.2500 Cr). Additionally several upcoming projects with capital investment of Rs. 5000 Crs have been stuck. Due to this, there have been heavy socio-economic and environmental losses and employment opportunity losses to the State.

### **Commission's Analysis and Rulings**

10. **Under the present Petition, MSEDCL has made revised prayers in its additional submission dated 30 November, 2017 and has sought approval to the following:**

- 1) to procure wind, solar & Bagasse based cogeneration power on Short term, Medium term and Long term basis, at the rate discovered through tariff based Competitive Bidding (e-reverse auction) which should be lower than the tariff determined by the Commission from time to time for respective category of Renewable Energy i. e. ceiling rate;**

2) Consideration of the above procurement towards MSEDCL's Solar and Non-Solar RPO target;

3) The draft RfS and draft PPA for procurement of Wind/Solar/Bagasse based cogeneration power on Short term/ Medium term /Long term basis; and

4) Allow MSEDCL to approach the Commission for adoption of the tariff discovered through the Competitive Bidding under Section 63 of the EA, 2003.

The Petition was heard on 4 December 2017 and the Commission dealt with the above issues of procurement of Wind, Solar & Bagasse based cogeneration power on Short term, Medium term and Long term basis, at the rate discovered through tariff based Competitive Bidding (e-reverse auction) and whether it would count towards fulfilment of its RPO. Based on the submissions, facts and material placed on records, the Commission observed and decided as follows:

11. The Section 86(1)(b) of the EA, 2003 reads as follows:

*“8. Functions of State Commission*

*The Commission shall discharge the following functions, namely: -*

*...(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;...”*

12. The Commission notes in this context the recent Judgment of the Gujarat High Court dated 6 November, 2017 (in Indian Wind Energy Association (InWEA) vs. Gujarat Urja Vikas Nigam Ltd. and others) in Spl. Civil Application No. 19312 of 2017. InWEA had challenged an Order of the Gujarat Electricity Regulatory Commission on the ground that no Competitive Bidding Guidelines for Wind Energy had been notified by GoI under Section 63 of the EA, 2003. The Judgment states inter alia as follows:

*“16. The Supreme Court, in the afore-stated case [Energy Watchdog, Prayas (Energy Group), etc. reported in 2017(4) SCC 580] Judgment of April, 2017], while addressing the issue as to whether in a situation where there are no guidelines or in a situation, which is not covered by the guidelines issued by the Central Government under Section 63, it could be said that the Commission's power to regulate tariff was completely done away with, held inter alia that regulatory power of the Central Commission under Section 79(1)(b) was a general one, and when the Commission adopts tariff under Section 63, it does not function de hors its general regulatory power. Taking a cue from the said observations made by the Supreme Court, it is required to be construed that in the instant case, the general regulatory power of the*

*State Commission under Section 86(1)(b) is the source of power to regulate the electricity purchase and procurement process, including the power to determine or adopt the tariff. As observed by the Supreme Court, in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Commission is bound by those guidelines and must exercise its regulatory functions, in accordance with those guidelines, however, in a situation where there are no guidelines framed at all or where guidelines do not deal with a given situation, the Commission's general regulatory power could be exercised. The Court, therefore, finds much force that though in the instant case, the draft guidelines [for long-term Wind Energy procurement by Competitive Bidding] are issued by the Central Government keeping in view Section 63, and paragraph 5 thereof also permits the application of those guidelines to the ongoing Bidding process, nonetheless, even if such draft guidelines are not taken into consideration, then also the Commission could exercise the general regulatory powers under Section 86(1)(b) of the said Act.*

*...20. ....the very objective of initiating the Competitive Bidding process was to procure the Wind power at the lowest possible rate for the benefit of the consumers and considering the larger public interest, the Court should not interfere with the same.”*

The Commission notes that Indian Wind Energy Association (InWEA)'s has filed Special Leave Petition against the Gujarat High Court Judgment dated 14 November, 2017 in LPA No. 1914/2017 w.r.t. competitive bidding process initiated by Gujrat Urja Vikas Nigam Ltd. (GUVNL). During the hearing in present Case on 4 December, 2017, the Commission notes MSEDCL's submission that there is no stay by the Supreme Court on this matter.

Further, the National Tariff Policy, 2016, notified on 28 January, 2016 under clause 6.4(2) provides that;

*“6.4 Renewable sources of energy generation including Cogeneration from renewable energy sources:*

*(2)“States shall endeavour to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from the waste to energy plants....”*

13. MSEDCL under the present Case has sought approval of the Commission to procure Wind, Solar & Bagasse based cogeneration power on Short term, Medium term and Long term basis, at the rate discovered through tariff based Competitive Bidding (e-reverse auction) which should be lower than the tariff determined by the Commission from time to time for respective category of Renewable Energy i. e. ceiling rate. Considering the existing framework of RE procurement by a Distribution Licensee through Competitive Bidding process

for Short term, Medium term and Long term basis, and the prayers of MSEDCL the Commission's observations and findings are as follows;

**A. For Long Term and Medium Term power procurement from RE Sources:**

**13.1 MNRE has prepared Guidelines in December, 2012, for Tariff Based Competitive Bidding Process for Grid Connected Power Projects based on RE Sources, under Section 63 of the EA, 2003 for Long Term (7 years and above) and Medium Term (upto 7 years but exceeding 1 year). These guidelines shall apply for procurement of power requirements through Competitive Bidding for Case-1 (where the location or technology of RE project is not specified by the procurer) and Case-2 (location specific RE projects) mechanism. These Guidelines covers RE sources viz., Solar PV, Solar Thermal, Biomass, Geothermal, Tidal, Cogeneration (Non-Fossil fuel) and Hybrid among RE Sources.**

**13.2 MNRE has also prepared Guidelines in June, 2016, for Tariff Based Competitive Bidding Process for Grid Connected Small Hydro Power (SHP) projects above 10 MW capacity under Section 63 of the EA, 2003 for Long Term (7 years and above) and Medium Term (upto 7 years but exceeding 1 year) procurement of electricity by a Distribution Licensees.**

**13.3 MNRE has published draft Guidelines in April, 2017, for Procurement of Wind Power through Competitive Bidding under Section 63 of the EA, 2003 for Grid connected Wind Power Projects having individual capacity of 5 MW and above with PPA period of 25 Years from date of Commercial Operation Date (CoD). However though these are not yet notified Clause 5.1 (c) of these draft guidelines provides that, till the time the Standard Bidding Documents are notified by the Central Government, for purpose of clarity, if the Procurer while preparing the draft RfS, draft PPA, draft PSA and other Project agreements provides detailed provisions that are consistent with the Guidelines, such detailing will not be considered as deviations from these Guidelines even though such details are not provided in the Guidelines.**

**13.4 MoP vide its Notification dated 3 August, 2017 has notified Long Term Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects for capacity of 5 MW and above, under the provisions of Section 63 of the EA, 2003.**

**B. For Short Term power procurement from RE Sources:**

**13.5** In case of procurement of power on Short Term basis, from RE sources through Competitive Bidding, the Distribution Licensees shall refer the MoP's Notification dated 15 May, 2012 as amended from time to time. The amended guidelines notified by MoP, GoI on 30 March, 2016 provides for 'Guidelines for Short Term (i.e. for a period of more than one day to one year) procurement of Power by Distribution Licensees through Tariff based Bidding process'. The Distribution Licensee shall prepare and invite the Request for Proposal (RfP) in line with these Guidelines.

- 14.** The Commission while noting the above facts, in its Order dated 15 November, 2017 in Case of 155 of 2017 has already accorded its approval to the Short term Bidding process carried out by MSEDCL for Wind power procurement and approved the rate discovered therein under the process of Competitive Bidding. MSEDCL during those proceedings had also sought approval or adoption of the rates discovered in the Bidding process for procurement of Wind Energy for meeting the shortfall against its non-Solar RPO targets. The Commission finally in that Order dated 15 November, 2017 in Case of 155 of 2017 considering the nature and purpose of the process undertaken by MSEDCL and the consumer interest, has allowed MSEDCL to consider that Wind Power procured under Short term basis (following the analogy of purchase of REC's) to count toward fulfilment of its RPO target for the relevant period.

In line with above Rulings the Commission hereby accords its approval to permit MSEDCL to procure Wind, Solar and Bagasse based cogeneration RE power on Short Term basis at the rate discovered through Tariff based Competitive Bidding(e-reverse auction). The Commission rules that MSEDCL shall consider such power procured under Short term basis toward fulfilment of its Solar and Non-Solar RPO target for the relevant period. MSEDCL's prayers w.r.t. power procurement from RE sources on Short Term basis is addressed accordingly.

- 15.** Further, MSEDCL under the present Case has also sought approval to procure Wind, Solar & Bagasse based cogeneration power on Medium term and Long term basis, at the rate discovered through tariff based Competitive Bidding (e-reverse auction). In this context, the Commission during the proceeding of the Case in Case No 155 of 2017, and as recorded in its Daily Order dated 9 November, 2017, has opined and observed that, MSEDCL could have pursued the MoP's notified Solar PV Guidelines dated 3 August, 2017 for Tariff Based Competitive Bidding Process for procurement of Power from Grid Connected Solar PV Power Projects for Long Term and sought approval of any deviations required in the Bidding Document for consideration by the Commission.

In line with above observations, the Commission rules that MSEDCL shall procure Wind, Solar & Bagasse based cogeneration RE power on Medium term and Long term basis, at the rate discovered through tariff based Competitive Bidding (e-reverse auction) by following the above said MoP's Long Term Guidelines dated 3 August, 2017 for Solar PV. The Commission rules that MSEDCL shall consider such power procured under Medium term and Long term basis toward fulfilment of its Solar and Non-Solar RPO target for the relevant period. MSEDCL's prayer w.r.t. power procurement from RE sources under Medium term and Long term basis is addressed accordingly.

16. Under the present Case, the Commission notes MSEDCL's additional submission dated 30 November, 2017 that it has prepared the draft RfS and draft PPA, for procurement of Wind/Solar/Bagasse based cogeneration power on Short term/ Medium term /Long term basis, in line with the MoP guidelines for Short term procurement as available on DEEP portal and in line with the MoP guidelines for Long Term Solar power purchase. The Commission notes that MSEDCL in the present Case has not expressly sought any deviations from the stipulations of those guidelines and the associated Bid Documents. In light of these facts, the Commission as of now accepts MSEDCL's submission in this regard. The Commission however rules that MSEDCL shall come before the Commission through specific Petition prior to the bidding process only if MSEDCL requires any deviation with respect to the bidding documents.
17. In case the standard bidding document is used by MSEDCL then a specific petition shall be filed by MSEDCL after bidding process for adoption of tariff as is mandated under Sec-63 of EA 2003. The said Petition shall cover the following, for approval of the Commission.
- (i) quantum of power ,  
(ii) Period of power flow,  
Tariff rate of the RE power to be procured, under Tariff Based Competitive Bidding Process for Short term/ Medium term /Long term basis for adoption under Section 63 of the Act.

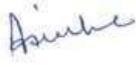
The Petition of Maharashtra State Electricity Distribution Co. Ltd. in Case No.157 of 2017 stands disposed of accordingly.

Sd/-

(Deepak Lad)  
Member

Sd/-

(Anand B. Kulkarni)  
Chairperson

  
(Ashwani Kumar Sinha)  
Secretary

