

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 50 of 2019

Case of Maharashtra State Electricity Distribution Co. Ltd. seeking approval for procurement of power from wind projects whose EPAs with MSEDCL have expired

Coram

Anand B. Kulkarni, Chairperson
I.M. Bohari, Member
Mukesh Khullar, Member

Maharashtra State Electricity Distribution Company Limited ... Petitioner

Maharashtra Energy Development Agency Impleaded Respondent

Appearance

For Petitioner : Smt. Kavita Gharat (Rep.)
For Impleaded Respondent : None

ORDER

Date: 9 April, 2019

1. Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) has filed its Case on 26 February, 2019 seeking approval for procurement of power from wind projects whose Energy Purchase Agreements (EPAs) with MSEDCL have expired.
2. **MSEDCL's main prayers are as follows:**
 - a) *To admit the Petition as per the provisions of the MERC (RPO, Its Compliance and Implementation of REC Framework) Regulations, 2016.*
 - b) *To allow MSEDCL to procure the Wind Power from the Wind generators of Group II, III and IV whose EPAs with MSEDCL have expired, at the Tariff of Rs. 2.52/- per unit for balance useful life.*

c) To allow MSEDCL to claim such procurement for the fulfilment of RPO of MSEDCL

3. MSEDCL in its Petition has stated as follows:

- 3.1. The Commission vide Order dated 12 July, 2018 in Case No. 84 of 2015 in the matter of Petition filed by Jawahar Shetkari Sahakari Sakhar Karkhana Ltd, has ruled that extension of Wind EPA has to be based on a competitive bidding mechanism and MSEDCL will have to necessarily float tenders and interested projects will have to participate in the bid process for EPA extension.
- 3.2. The Commission in the same Order decided to set a ceiling tariff of Rs. 0.75 per unit for discovery of fixed cost of wind turbine generators (Group III), whose initial EPA had expired or were due for expiry. It has also stipulated that for the bidding purpose, it has to be single part tariff bidding.
- 3.3. Through its Petition filed in Case No. 264 of 2018, MSEDCL requested the Commission to review its decision in Order dated 12 July, 2018 relating to the Ceiling Tariff for procurement of power from RE Generators whose EPAs had expired. MSEDCL had broadly raised following set of issues:
 - a. Clarification regarding treatment to be given to the contracts entered into by MSEDCL for the short-term wind power procurement at Rs. 2.52 per unit rate (allowed by the Commission vide Order dated 15 November, 2017 in Case No. 155 of 2017) whose PPA were already executed or LOI's were already issued.
 - b. Clarification regarding treatment to be given to expired EPA with Group-I, II & IV wind projects where the Commission has not determined any tariff for post expiry period.
 - c. MSEDCL has also prayed to fix the ceiling tariff of Rs. 0.75 per unit for Wind Projects and allow first right of refusal to MSEDCL in case of post expiry of wind EPA or else allow MSEDCL to fix the ceiling rate for Competitive Bidding.
- 3.4. The Commission allowed the review and issued the Order dated 2 November, 2018, and ruled that MSEDCL shall continue to procure short term power (3 to 12 months) through a web based portal and purchase wind energy at Rs. 2.25 per unit for group I and at Rs. 2.52 per unit from Group II, III and IV Wind projects through MoU route for RPO mitigation.
- 3.5. For Long term procurement, the Commission directed MSEDCL to procure the power from group III wind projects whose EPA has expired by calling competitive bids (with e-reverse auction) with a ceiling tariff rate of Rs. 1.97 per unit.

- 3.6. As per the Commission's directives, on 21 October, 2018 MSEDCL floated a tender on TCIL Web Portal for procurement of 500 MW power through competitive bidding on long term basis from the Wind Generator whose EPA are due for expiry on or before 31 March, 2019 in line with the previous similar Tender floated for procurement of 250 MW Wind power from the Wind Generators post expiry of existing EPAs. As required under Competitive Bidding Guidelines, MSEDCL submitted intimation for initiation of the bidding process to the Commission on 20 December, 2018.
- 3.7. During the pre-bid meeting, entities who attended the pre-bid meeting requested to increase the Ceiling Tariff, however, MSEDCL did not revise the ceiling rate of Rs. 1.97 per unit as it was fixed as per the Commission's Order. Even after the extension of last date of bid submission from 14 January, 2019 to 21 January, 2019, no bid was received and MSEDCL had cancelled the tender process.
- 3.8. As allowed by the Commission, MSEDCL continued the procurement of Wind power on short term basis (at Rs. 2.25/kWh from Group-I and at Rs. 2.52/kWh from Group II, III and IV projects) through Web-based portal and same was considered in the RPO of MSEDCL. Similarly, MSEDCL is also procuring Solar Power on short term basis at Rs. 2.50 per unit from Solar projects.
- 3.9. MSEDCL is in shortfall of RPO targets and is already purchasing non-Solar RECs to fulfill the shortfall. After expiry of the EPAs with Wind Generator, MSEDCL may further fall short to get the non-Solar Power which will result into requirement of procurement of more non-Solar RECs to fulfill the obligations. Also, these wind generators are trying to sell power under open access at higher rate directly to bulk consumers of MSEDCL/Mumbai utilities. Thus, MSEDCL is getting adversely affected both ways i.e. Shortfall in RPO and the revenue loss due to Open Access.
- 3.10. MSEDCL is unable to purchase the Non-Solar RECs from the exchanges due to high demand and the inflated rates of RECs. In this scenario and with increasing targets of RPOs on year to year basis, it is essential that MSEDCL should contract sufficient non-Solar Power through the long term agreements.
- 3.11. Considering the above stated difficulties faced by MSEDCL for procurement of power from these wind generators with the Ceiling tariff of Rs. 1.97 per unit on long term basis through competitive bidding, it is requested that Commission allows MSEDCL to procure Power at the rate of Rs. 2.52 per unit from Wind generators of Group II, III and IV for the period of available useful life whose EPAs are expired/going to be expired.
4. At the hearing held on 26 March, 2019, the representative of MSEDCL reiterated its submission.

Commission's Analysis and Rulings

5. The Commission by its Order dated 15 November, 2017 in Case No 155 of 2017 has approved short-term procurement of Wind Energy at Rs. 2.52 per unit through the MoU route for wind Projects in Groups II to IV and Rs. 2.25 per unit for Group I Projects. Further, the Commission by its Order dated 12 July, 2018 in Case No 122 of 2018 has approved the deviation for long term procurement of 250 MW Wind Power at a ceiling of Rs.2.52 per unit for a PPA of 8 years. Subsequent to competitive bidding, MSEDCL had discovered a tariff of Rs.2.52 per unit for 87 MW of Wind Energy Capacity. MSEDCL in Case No 252 of 2018 approached the Commission for adoption of this discovered tariff which was approved and adopted by the Commission by its Order dated 25 September, 2018.
6. MSEDCL had filed a Petition in Case No 264 of 2018 to review the Commission's Order dated 12 July, 2018 in Case No. 84 of 2015 and sought clarification on some issues. One of the issue was the clarification relating to the treatment to be given Group-I, II & IV wind projects whose EPA have been expired and the Commission has not determined any tariff. In the same Petition, MSEDCL has claimed that ceiling tariff of Rs. 0.75 per unit determined by the Commission for group-III wind generators is very low and wind generators may not be inclined to participate in the bidding procedure. The Commission through its Order dated 2 November, 2018 has allowed the review and provided the following dispensation on the above issues:

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a) The impugned Order lays down a roadmap to be followed for procurement of power from Group-III Wind Projects, as Group-I which were commissioned before December,1999 and Group -II between December,1999 upto March, 2003 whose PPA had expired with the beneficiary long back and would have already entered into some off take arrangement by now. Similarly, PPA of Group IV projects would only expire in FY 2023 Hence the Commission in the impugned Order has dealt with the issue related to Group -III wind Projects which were commissioned after April 2003

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c) MSEDCL has also submitted that it 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 it desires to sale power. MSEDCL further stated that it is purchasing short term (3 to 12 months) wind energy @ Rs. 2.25/- per unit for group I and @ Rs. 2.52/- per unit Group II, III and IV through MoU route. However, in this petition it has sought approval for competitive bidding on Long term basis from wind energy. The Commission is of the view that MSEDCL shall continue to procure short term power on the above principle and for Long term

procurement, the Commission has provided the methodology in the subsequent paragraph.

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f) The participation in the competitive bidding will be from all the Wind Zones. Hence for determining a single value for fixing the ceiling rate, the Commission has considered average of all the Wind Zones i.e. 1.97 p.u. as a ceiling limit for competitive bidding.

g) Considering the reasons given above, Commission allows the review petition of MSEDCL on this point and modifies the ceiling rate of tariff for reverse auction to be Rs. 1.97 per unit which is the average per unit cost of Generation.

(Emphasis added)

The Commission by above dispensation has once again allowed MSEDCL to procure short-term (3 to 12 months) Wind Energy at Rs. 2.52 per unit through the MoU route for wind Projects in Groups II to IV and Rs. 2.25 per unit for Group I Projects, which was earlier approved by the Commission in its Order dated Order dated 15 November, 2017 in Case No 155 of 2017. Further, the Commission has considered Rs.1.97 per unit as ceiling limit for procurement of long term power through competitive bidding from the wind generators whose EPA have expired.

7. MSEDCL in the instant Case has stated that it had floated tender on 21 October, 2018 (MSEDCL erroneously mentioned 21 October instead of 21 December, 2018, this has been verified from MSEDCL's web site) on TCIL Web Portal for procurement of 500 MW Power through competitive bidding on long term basis from the Wind Generator whose EPAs are due for expiry on or before 31 March, 2019. As submitted by MSEDCL, during the pre-bid meeting, the bidders requested MSEDCL to increase the Ceiling Tariff. MSEDCL did not revise the Ceiling rate of Rs. 1.97 per unit as the said rate was fixed as per the Commission's Order. However, even after the extension of last date of bid submission from 14 January, 2019 to 21 January, 2019, no bid was received and MSEDCL had to cancel the tender process.
8. Therefore, MSEDCL under the instant Case has sought approval to procure the Wind Power from the Wind Generators under Group II, III and IV whose EPAs with MSEDCL had expired at the Tariff of Rs. 2.52 per unit for balance useful life of that Wind project. By plain reading of the prayers made by MSEDCL, the Commission observes that MSEDCL is not intending to go for competitive bidding route but seeking blanket permission to procure wind power by MoU route at rate of Rs. 2.52 per unit from group II, III and IV wind projects whose EPA had expired. Such request of MSEDCL i.e. opting for MoU route instead of competitive bidding is not consistent with recent Orders of the Commission which emphasizes procurement of Renewable Energy through competitive bidding. Hence, this request of MSEDCL cannot be allowed.

9. However, the Commission notes that when MSEDCL floated the tenders with Ceiling Tariff of Rs.1.97 per unit as approved by the Commission in its Order dated 2 November, 2018, it did not receive any response. This possibility could be due to commercial considerations since the prospective bidders whose EPAs had expired, had option of entering into short term contracts at Rs.2.25 per unit for group I and Rs.2.52 for group II to IV projects. This rate under Short Term route is higher than the ceiling of Rs.1.97 per unit fixed for Long Term EPAs. Also, these Wind Generators have option to sell its energy to Third Party under the provisions of Open Access.
10. The Commission also notes that in its Order dated 16 October, 2018 in Case No. 270 of 2018 and in its Order dated 18 December, 2018 in Case No 334 of 2018, it has recorded its observation that in case of competitive bidding for Solar Projects, ceiling tariff need not be approved by the Commission and Distribution Licensee at its own due diligence may fix suitable ceiling. Competitiveness of the rate can also be dealt at the stage of Tariff adoption stage. The Commission is of the opinion that these principles could squarely be made applicable to competitive bidding for sourcing Wind Energy also.
11. Under above circumstances, the Commission is of the opinion that its **Order dated 2 November, 2018 requires to be relooked**. In that Order, issue before the Commission was to decide tariff for Wind Generators whose EPAs had expired and accordingly after analysing various aspects, the Commission arrived at rate of Rs. 1.97 per unit. However, in the same Order, the Commission denied MSEDCL's request of first right of refusal after expiry of Wind EPA. Which means, Wind Generators whose EPAs expired are free to sell its energy to any buyer including MSEDCL. In addition, these same Generators have option of selling Wind Energy to MSEDCL under Short Term route at higher rate of Rs. 2.25 / 2.52 per unit. Thus, no fruitful results may be expected by going for competitive bidding at ceiling rate of Rs. 1.97 per unit. Therefore, as stated in para 10 above, MSEDCL may carry out its own due diligence to arrive at appropriate ceiling rate which in no case should be more than the rate approved for Short Term procurement of Wind Energy.
12. In view of the foregoing, the Commission deems it appropriate to authorize MSEDCL to decide the ceiling rate after proper due diligence at their end and float the tender for procurement of energy for period more than 1 year from Wind Generators whose EPA have expired. Competitiveness of the rate so discovered will be dealt with by the Commission during the tariff adoption process. Further, considering the fact that these Wind Generators were in EPA with MSEDCL for several years and their projects are already commissioned and running, MSEDCL may take appropriate deviations, if any, from provisions of Competitive Bidding Guidelines with prior approval of the Commission.
13. Hence, the following Order.

ORDER

- 1 The Case No. 50 of 2019 is partly allowed.
- 2 The Commission directs Maharashtra State Electricity Distribution Co. Ltd. to procure wind power through competitive bidding route from projects under Group II, III and IV whose EPAs have expired.
- 3 Maharashtra State Electricity Distribution Co. Ltd is allowed to decide the ceiling rate after proper due diligence at their end but the same shall not be more than the rates approved for the short term procurement of wind energy.
- 4 Competitive rate so discovered will be dealt with by the Commission during the tariff adoption process for meeting the non-Solar RPO requirement.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

Sd/-
(Anand B. Kulkarni)
Chairperson


(Dr. Rajendra Ambekar)
I/c Secretary

