

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 21 of 2020

Case of Maharashtra State Electricity Distribution Co. Ltd for relaxation of penalized clauses to the extent of non- fulfilment of RPO targets by 2022-23 and fixing of tariff for procurement of power from RE-sources post expiry of EPA and related matters.

And

Miscellaneous Application Nos. 1 to 35 of 2020

Coram

I.M. Bohari, Member
Mukesh Khullar, Member

Maharashtra State Electricity Distribution Co. Ltd. Petitioner

Maharashtra Energy Development Agency Impleaded Respondent

1. Fasttrack Packers Private Limited
2. M/s Giriraj Enterprises
3. M/s D. J. Malpani
4. Maharashtra State Co-Operative Sugar Factories Federation Ltd.
5. Indian Wind Power Association-Maharashtra State Council
6. M/s S. K. Veerbhadrapa & Co.
7. M/s Sree Veerbhadreshwara Rice & Flour Mill
8. M/s Shivashri Techno Homes Private Limited
9. M/s Aurolex Cablnet
10. M/s Mahabal Metals Pvt Ltd
11. M/s Mahabal Auto Ancillaries Pvt. Ltd
12. M/s Subhash B. Mutha
13. M/s Canpex Chemical Pvt. Ltd

14. M/s Balkrishna Sizing Industries
15. M/s Sun Irrigation Systems Pvt . Ltd
16. M/s S. K. Parik
17. M/s Jathar Textiles Pvt . Ltd.
18. Harshita Sales Corporation
19. M/s Shri Tradco India Pvt . Ltd.
20. M/s Vandana Textiles
21. M/s Ankur Textiles
22. M/s Umang Textiles
23. M/s Pragati Agencies
24. Shri Charbhuj Sales Corporation
25. M/s B. C. Shivakumar_HUF
26. M/s B. S. Channabasappa & Sons
27. M/s B. C. Umopathy_HUF
28. M/s B. S. C. Textiles
29. M/s Sridevi Trading Company
30. M/s B. C. Chandrashekar_HUF
31. Arvind Cotsyn (India) Ltd.
32. Roha Dyechem Pvt Ltd
33. Shushbindu MFG Pvt, Ltd.
34. M/s Sanjana Power (Divison of Sanjana Cryogenic Storages Ltd.)
35. Indian Products Trading Co. Pvt. Ltd. Impleaded Parties

Appearance for the:

Petitioner : Sh. Abhishek Khare (Adv)
Maharashtra Energy Development Agency : Dr. J. V Torane (Rep.)

Fasttrack Packers Private Limited }
M/s Giriraj Enterprises } : Sh. Sagar Durgavale (Rep.)
M/s D. J. Malpani }

Maharashtra State Co-Operative Sugar Factories Fed. Ltd. : Sh. Sudeep Nargorkal (Adv.)
Indian Wind Power Association-Maharashtra State Council : Smt. Dipali Sheth (Adv.)

M/s S. K. Veerbhadrappa & Co.	}	
M/s Sree Veerbhadreshwara Rice & Flour Mill		
M/s Shivashri Techno Homes Private Limited		
M/s Aerolex Cablnet		
M/s Mahabal Metals Pvt Ltd		
M/s Mahabal Auto Ancillaries Pvt. Ltd		
M/s Subhash B. Mutha		
M/s Canpex Chemical Pvt. Ltd		
M/s Balkrishna Sizing Industries		
M/s Sun Irrigation Systems Pvt . Ltd		
M/s S. K. Parik		
M/s Jathar Textiles Pvt . Ltd.		
Harshita Sales Corporation		: Sh. Sandeep Sambhushete (Rep.)
M/s Shri Tradco India Pvt . Ltd.		
M/s Vandana Textiles		
M/s Ankur Textiles		
M/s Umang Textiles		
M/s Pragati Agencies		
Shri Charbhuj Sales Corporation		
M/s B. C. Shivakumar_HUF		
M/s B. S. Channabasappa & Sons		
M/s B. C. Umopathy_HUF		
M/s B. S. C. Textiles		
M/s Sridevi Trading Company		
M/s B. C. Chandrashekar_HUF		
Arvind Cotsyn (India) Ltd.		: Sh. Shekar Karandikar (Adv.)
Roha Dyechem Pvt Ltd		: Sh. Sachin Chavan (Rep.)
Shusbindu MFG Pvt, Ltd.	: Sh. Sheo Ram Ararwal (Rep.)	
M/s Sanjana Power	}	
Indian Products Trading Co. Pvt. Ltd		: Sh. Anup Singh (Rep.)

ORDER

Date: 1 January, 2021

1. Maharashtra State Electricity Distribution Company Limited (**MSEDCL**) has filed the present Petition on 22 January 2020 under Regulation 19 of the Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligations, its Compliance for removal of difficulty and Implementation of REC Framework) Regulations, 2019 (**RPO-REC**)

Regulations 2019) seeking relaxation of penalty Clauses under the Regulation to the extent of non- fulfilment of RPO targets by FY 2022-23. Further, MSEDCL has sought fixing of tariff for procurement of power from RE-sources post expiry of EPA and seeking increase in ceiling tariff for procurement of solar and wind power through competitive bidding process.

2. MSEDCL’s main prayers are as follows:

- a) *To admit the Petition as per the provisions under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 and Regulation 19 of the MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations.*
- b) *To not levy the penalty, on non-compliance of standalone annual targets and cumulative targets of RPO, till 2022-23, in lieu of repeated efforts by MSEDCL to procure power through Renewable Energy sources but not receiving responses from the bidders.*
- c) *To allow MSEDCL to revise the ceiling tariff rate for competitive bidding tenders floated under MSKVY for solar project with capacity 2 to 10 MW at 11 kV level from Rs.3.15/kWh to Rs 3.30/kWh or above as per the market conditions.*
- d) *To allow MSEDCL to purchase the said 50MW bagasse power with expiry EPAs at APPC price of respective financial years, for remaining useful life, with a tariff cap of Rs. 4.00 per unit.*
- e) *To allow MSEDCL to issue tenders with combination of ‘post EPA expiry wind’ and new capacities, to encourage better participation and accordingly allow, MSEDCL to increase ceiling tariffs, for upcoming Wind Energy tenders, based on the market conditions.*

3. MSEDCL in its Petition has stated as follows:

3.1. In line with Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2016, MSEDCL has achieved the Solar RPO target up to FY 2015-16 and Non-Solar target up to FY 2017-18:

Period	Solar (MU)	Non-Solar (MU)
FY 2016-17	671	0
FY 2017-18	1476	0
FY 2018-19 (Provisional)	1321	1933
Total	3468	1933

- 3.2. MSEDCL is trying to fulfill the above said shortfall in RPO target by purchase of RECs and energy. Considering the existing shortfall and future RPO targets, MSEDCL needs to procure additional RE power for fulfillment of RPO targets.
- 3.3. MSEDCL is facing difficulties in purchasing RECs due to non-availability of sufficient quantities of RECs and increased rates of RECs in the market. The REC prices discovered in the market for the months of November 2019 and December 2019 are as given below:

Month	Buy Bids (REC)	Cleared Price(Rs/REC)
Nov-19	Solar	2,400
	Non-Solar	1,800
Dec-19	Solar	2,400
	Non-Solar	2,000

- 3.4. As per the RPO REC Regulations 2019, the Obligated entities are mandated to purchase the percentage of RE quantum shown in the table below:

Year	Quantum of purchase (in %) from Renewable Energy sources (in terms of energy equivalent in kWh)		
	Solar	Non-Solar (other RE)	Total
(a)	(b)	(c)	
2020-2021	4.50%	11.50%	16.00%
2021-2022	6.00%	11.50%	17.50%
2022-2023	8.00%	11.50%	19.50%
2023-2024	10.50%	11.50%	22.00%
2024-2025	13.50%	11.50%	25.00%

- 3.5. The Commission has also set out penalties for any shortfall in meeting the targets as are set out in Regulation 7 of Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2019 as stipulated below:

“12.3. Any shortfall in meeting the minimum percentage of RE as specified in Regulation 7 may be carried forward from FY 2020-21 and FY 2021-22 to FY 2022-23 and from FY 2023-24 to FY 2024-25 and Obligated Entity shall meet such shortfall on cumulative basis by 31 March 2023 and 31 March 2025, respectively;

Provided that Distribution Licensee shall be subjected to reduction in Annual Revenue Requirement at a rate of Rs 0.10 per kWh for cumulative shortfall in total RE procurement target for each year;

Provided further that other Obligated Entities shall be subjected to penalty of Rs. 0.10 per kWh for cumulative shortfall in total RE procurement target for each year;

Provided further that any cumulative shortfall in RE procurement as on 31 March 2023 and/or 31 March 2025 shall not be carried forward for next year and be adjusted by imposing reduction in ARR for Distribution Licensees and imposing penalty for other Obligated Entities, at rate of floor price of respective REC as on that date;

Provided further that if Obligated Entity is able to demonstrate that even after taking all possible measures including procurement of RECs, it is not able to meet RPO then the Commission may reduce the penalty amount subject to conditions as may be stipulated in that Order....”

3.6. As on 31 December 2019, MSEDCL has contracted and commissioned capacity as shown in the Table below:

S. No.	Source	Contracted Capacity in MW	Commissioned in MW
1	Solar	4017	2109
2	Wind	3999	2999
3	Bagasse based Co-generation	2406	2248
4	Biomass	236	182
5	Small Hydro	121	112
6	Municipal Solid Waste	16	4
Total		10795	7654

3.7. Further, some of Energy Purchase Agreements (EPAs) of MSEDCL are expiring in the upcoming years. Out of 7654MW of total commissioned Renewable Power projects, EPAs of 1765.77MW will be expiring during years from FY 2019-20 to FY 2023-24. The Source wise details of the same are shown below:

Technology	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Wind	495.3	220.25	141	43.57	223.45
Bagasse	67	43.5	0	73.7	297
Biomass	0	16	71	10	40
Small/Mini/Micro Hydro	0	3	2.25	10	8.75
Total	562.3	282.75	214.25	137.27	569.2

- 3.8. To achieve RPO targets as set out by the Commission in the RPO-REC Regulations, 2019, MSEDCL will be required to procure around 8000 MW additional Solar and around 2000 MW additional Non-Solar power.
- 3.9. MSEDCL has been aggressively calling for tenders through transparent competitive bidding from December 2017, under Solar and Non-Solar category. Details of such tender under both categories are summarized below:

S.No.	Technology	No. of Tenders (Nos)	Total Tendered Capacity (MW)	Rate discovered (Rs/unit)	Bid received	Contracted Capacity (MW)
1	Solar	11	10650	2.71-3.30	4085	2235
2	Wind	6	2450	2.52-2.87	594	588
3	Bagasse	8	1179	4.75-4.99	471.85	411.85
4	Others (Wind-Solar Hybrid)	2	180	-	0	0
	Total	27	14459	0	5150.85	3234.85

3.10. Solar Power tenders under MSKVY:

- a. The Government of Maharashtra (GoM) vide Government Resolution (G.R) dated 14 June 2017 and its amendment dated 17 March 2018 has issued Policy under “Mukhyamantri Saur Krishi Vahini Yojana” (MSKVY) to provide power to Agricultural (AG) Consumers during daytime by installation of Solar Projects and appointed Maharashtra State Power Generation Company Limited (MSPGCL) and MSEDCL as implementation agency.
- b. The details of tenders floated by MSEDCL under MSKVY through competitive bidding is as shown below:

Sr. No.	Date of Tender	Capacity of Tender (MW)	Bids received (MW)	Tariff discovered (Rs/kWh)	PPAs signed (MW)
1	27.04.2018	1000	235	3.09 to 3.15	235
2	15.09.2018	1400	180	3.29 to 3.30	Nil
3	07.01.2019	1400	1170	3.16 to 3.30	10
4	20.09.2019	1350	5	3.14	Under process
		5150	1590		245

- c. The abstract shows the tenders floated under MSKVY are under-subscribed and has shown the same pattern for a period of almost two years. Out of total tendered capacity of

5150 MW under MSKVY, bids for only 1590 MW capacity were received and Power Purchase Agreements for 245 MW Solar capacity were executed.

3.11. Solar power tenders other than MSKVY:

- a. MSEDCL floated following inter/intra state Solar tenders during last two years. The details are as follows.

S.N.	Tender Type	Capacity (MW)	Tender Date/ Month	Ceiling Tariff (Rs./kWh)	Capacity of bids received (MW)	Discovered Tariff (Rs./kWh)
1	Inter/Intra state	1000	09.04.2018	3.00	1000	2.71 to 2.72
2	Inter/Intra state	1000	05.12.2018	2.90	1000	2.74 to 2.75
3	Inter/Intra state	1000	04.06.2019	2.80	0	NA
4	Inter/Intra state	500	23.08.2019	2.80	0	NA
5	Intrastate	500	22.11.2019	2.90	500	2.89 to 2.90
6	Intrastate	500	27.12.2019	2.90	-	In process
7 TOTAL.		4500			2500	

- b. Even in the Grid connected Inter/Intra state Solar Tenders, total 1500 MW Capacity did not receive any response on account of the lower ceiling Tariff which compelled MSEDCL to increase the ceiling Tariff to Rs. 2.90/unit in subsequent tenders for active participation of the bidders.
- c. MSEDCL has also issued few technology agnostic tenders as listed below. The Commission may note that none of these tenders have received any response from the bidders even after multiple extensions to the bid submission date.

S.No.	Tender Type	Capacity (MW)	Tender Date/ Month	Ceiling Tariff (Rs./kWh)	Capacity of bids received (MW)	Discovered Tariff (Rs./kWh)
1	Floating Solar – Ujjani Dam	1000	24.12.2018	3.00	0	NA
2	Hybrid (Solar-Wind)	100	02.01.2019	2.75	0	NA
3	Hybrid (Solar – Wind)	80	06.09.2019	2.80	0	NA

3.12. Wind Power tenders for post expiry of EPAs:

- a. 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 (JSSSKL), ruled that

extension of Wind EPA has to be based on a competitive bidding mechanism and MSEDCL would have to necessarily float tenders and interested projects will have to participate in the bid process for EPA extension.

- b.* Further, MSEDCL filed the Petition before Commission to review the Commission's Order dated 12 July 2018 in Case No. 84 of 2015 related to the Ceiling Tariff for procurement of power from RE Generators whose EPAs have expired.
- c.* The Commission vide Order dated 2 November 2018 in Case No. 264 of 2018 allowed the review 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. The Commission also directed MSEDCL to procure the Long term 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/unit.
- d.* MSEDCL on 20 December 2018 floated a tender for procurement of 500 MW power through competitive bidding on long term basis from the Wind Generator whose EPA are due for expiry at ceiling Tariff of Rs. 1.97 per unit. During the pre-bid meeting, the participants requested to increase the Ceiling Tariff, however, MSEDCL did not revise the ceiling rate of Rs. 1.97 per unit as it was fixed in compliance with the Commission's Order dated 2 November 2018 in Case No. 264 of 2018. Even after the extension of last date of bid submission from 14 January 2019 to 21 January, 2019, no bid was received and MSEDCL cancelled the tender.
- e.* Further, the Commission vide Order dated 9 April 2019 in Case No. 50 of 2019 has allowed MSEDCL to decide the ceiling rate after proper due diligence subject to condition that the same shall not be more than the rates approved for the short term procurement of wind energy (Rs. 2.52/unit).
- f.* In compliance with the Commission's directives, MSEDCL, on 4 June 2019 floated the tender for procurement of 500 MW Wind energy, whose EPAs with MSEDCL have expired to which MSEDCL received very poor response i.e. only 7 MW bids out of 500 MW floated capacity at a tariff of Rs. 2.52/unit.
- g.* Later, on 30 August 2019 MSEDCL floated a tender for procurement of power from new wind projects to be developed and the wind projects whose EPAs with MSEDCL have expired, with a ceiling tariff of Rs. 2.95/unit. This Tender also did not receive any response, which compelled MSEDCL to cancel the same.

- h.* The details of the EPAs with wind generators expiring in the recent period is shown in the Table below (in MW):(Please add total at the end-one more column)

Technology	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Wind	525	495.3	220.25	141	43.57	223.45

- i.* Most of tenders for ‘post expiry of EPA’ have received very low response due to low commercial attractiveness of the ceiling tariffs set and the generators with such projects are selling in Open Access markets for better prices.
- j.* Also, MSEDCL is able to contract with a very less quantum in comparison to the capacity expiring year on year basis. During last year, although EPAs of around 1000 MW Wind capacity expired, Generators only for 300 MW capacity applied to MSEDCL on web portal for short term procurement.

3.13. Other non-solar Power Tenders:

- a.* Tender for procurement of 50 MW bagasse-based co-generation power from projects which have completed EPA period of 13 years was floated. Total 6 bidders participated in tender. The result of reverse auction was found incongruous and hence, MSEDCL canceled the tender.
- b.* The Commission vide Order dated 4 December 2019 allowed MSEDCL to procure power from these six projects at Rs. 3.56 for the year 2019-20 and directed to conduct competitive bidding for subsequent years.
- c.* As per the directives of the Commission, MSEDCL has floated the tender for procurement of 100 MW power from Bagasse based co-generation projects, whose EPAs with MSEDCL have expired or will be expiring upto FY 2020-21, which is around 158.50 MW.

- 3.14. Wind projects EPAs with MSEDCL are expired/getting expired and MSEDCL is also not receiving the response to the tenders floated for the procurement of power from expired capacity. Therefore, MSEDCL is getting less non-solar power during the recent period which is resulting in an increase in shortfall to fulfill the non-Solar RPO target of FY 2018-19 and FY 2019-20. This has resulted into the reduction in procurement of around 2890 MUs of wind power from around 1500 MW Wind capacity.

- 3.15. MSEDCL is proposing to increase the ceiling Tariff for wind post-expiry tenders from the existing ceiling of Rs. 2.52/unit as approved by the Commission. MSEDCL in its recent tender with the ceiling Tariff of Rs. 2.95/unit did not receive any response. Considering the same and to receive active participation from these expired projects in future tenders, MSEDCL has to increase the ceiling Tariff, as the procurement of non-solar power is very essential for MSEDCL to fulfill the RPO Targets.
- 3.16. In case of Bagasse based co-generation projects after expiry of the EPAs, considering its characteristic as firm power, availability during the peak load season, RTC availability and project's willingness to sell power only to MSEDCL, it is proposed to procure power these projects from FY 2020-21 onwards and upto remaining useful life at the ceiling rate of APPC of the respective year (excluding RE and Transmission charges) with a cap of Rs. 4/unit, so that MSEDCL will be able to fulfill the stipulated RPO Target in the future and will not have uncertainty of getting this power through time consuming competitive bidding.
- 3.17. In case of Solar project under MSKVY, MSEDCL is of the view that the existing ceiling tariff of Rs. 3.15 per unit is not viable for the bidders considering the existing module prices, size and scale of the projects, increased labor cost, land acquisition rates in Maharashtra and falling rupee exchange rate, etc. Therefore, MSEDCL, on 1 January 2020 has floated the tender with the ceiling Tariff of Rs. 3.30/unit. MSEDCL hereby proposes to further increase the ceiling Tariff for Solar Power under MSKVY, if no or negligible response is received to the floated tender for Solar Power.
- 3.18. The circumstances cited above puts MSEDCL in position of shortfall in achievement of RPO Targets on one hand, and on the other hand constrains MSEDCL for purchase of REC at higher prices. This may result in the levy of the penalty as stipulated under MERC RPO-REC Regulations 2019 which ultimately affects common consumers of MSEDCL.
- 3.19. Hence, to relieve MSEDCL from the circumstances cited above and with a view to tie-up RE generation as per the targets specified by the Commission, it is essential that the developers should positively participate in competitive bidding process. Hence, no penalty should be levied for not meeting the RPO targets till FY 2019-20.
- 3.20. Further, it is pertinent to note that even-though MSEDCL had floated more than 9650 MW of Solar and about 3629 MW of Non-Solar based tenders during last two years but had received very poor response which has resulted in contracting 2245 MW in Solar and about 1000 MW in Non-Solar only. Despite multiple efforts in floating RE tenders and giving enormous publicity over newspapers, response has been poor over past two years. This will impact the RPO targets of FY 2020-21 and 2021-22.

- 3.21. Till date, MSEDCL is getting around 1300 MW Power from commissioned projects selected under competitive bidding process against the capacity of around 1735 MW approved by the Commission during last 2 years and remaining 435 capacity is expected during next few months.
- 3.22. Above status shows that MSEDCL is getting the RE Power from the contracted project within their Scheduled Commissioning Date and if MSEDCL receives the offers for complete tendered capacity, MSEDCL might get the additional 6000 MW Solar capacity and might be in a position to procure around 10000 MUs of Solar Power (considering 19% CUF), which is much more than the cumulative shortfall of 3468 MUs till FY 2018-19 and the expected shortfall till FY 2021-22.
- 3.23. Regulation 19 of the RPO-REC Regulations 2019 provides for removing difficulties arises in giving effect to the provisions of the Regulations.
- 3.24. To attract the bidders, MSEDCL is proactively planning for RE procurement and is also in process to invite EoI for land banking which will facilitate the bidders to develop the solar plants with ease and offer attractive rates subject to the approval of the Commission. MSEDCL also submits that, it is planning to float new tender in Solar, and Non-Solar category. However, commissioning such plants would take at least eighteen (18) to twenty-four (24) months from now. Therefore, considering all the facts and the efforts taken by MSEDCL for achieving stipulated RPO Targets, it is humbly requested not to levy any penalty on MSEDCL for not meeting the cumulative shortfall and the expected standalone shortfalls to RPO targets till FY 2022-23.
4. **The submissions made in MA No. 1 to MA No. 35 (except MA No. 4 and 5) are same. The Applicants under these MA have stated as under:**
- 4.1. The Applicants are interested in the relief sought by the MSEDCL with respect to Wind power projects whose EPAs have expired. Applicants will be able to take decision about sale of its generated energy i.e. post expiry of EPA, on the basis of judgement of present Petition.
- 4.2. MSEDCL may be directed to procure Wind Energy at Rs. 4/- per unit flat rate or Rs. 3.50 per unit with 5% year on year escalation.
5. **Applicant Maharashtra State Co-Operative Sugar Factories Federation Ltd. (MSCSFFL), in its MA No 4 of 2020 has stated as under:**

- 5.1. The Applicant has approached the Commission in Case No 26 of 2020 for increase in the Ceiling Tariff at least to Rs. 5 per unit and also the Bid submission date be postponed by at least 2 months from 27 January 2020.
- 5.2. The Applicant represents the 10 sugar factories which have completed the 13 years PPA with MSEDCL and are exploring the opportunity to participate in the competitive bidding to be held by MSEDCL.
- 5.3. In the absence of Guidelines for Bagasse based Cogeneration Power Projects, the Competitive Bidding contradicts the very spirit and essence of EA particularly Section 63 of the Electricity Act 2003 (EA). The National Tariff Policy directs that procurement of power from RE sources must be done by tariff determination under Section 62 of EA also does not recognize the concept of e-reverse auction.
- 5.4. The Commission in its Generic Tariff Order for FY 2018 and FY 2019 has determined variable charge for bagasse as Rs 4.17 and 4.38/unit respectively. Therefore, rationality of fixing ceiling tariff of Rs. 3.50/unit or even Rs. 4/unit is questionable.
- 5.5. The Present EPA period of 13 years and renewal period of 7 years makes it a total period of 20 years. However, the life of Cogeneration plants is effectively 30 years. Therefore, the EPAs for renewal may be done for balance 17 years and the rate should be and ought to be fixed at Rs. 5/unit.

6. MSEDCL in its reply dated 11 May 2020 submitted as below:

In reply to MA No.1 to 32 (except MA No. 4)

- 6.1. Main prayer of 31 MAs in the present case regarding increasing the power purchase rate of post expiry wind tenders and the rates mentioned in these intervene applications are exorbitantly high as compared with the present approved rate of Rs. 2.52 per unit for post expiry of wind PPA.
- 6.2. The Commission has put up ceiling tariff restriction on MSEDCL for procurement of power from EPA expired wind project, however there is no restriction on the rate for selling power in the market. Further when EPA expired wind generator are free to sell power in the market without restriction in rate then there is no use of putting capping on ceiling rate for selling power to MSEDCL only. Hence, MSEDCL shall be allowed to issue tenders by making eligible 'post EPA expiry wind' and new project, to have better participation of bidders in tendering process at ceiling tariffs based on the market conditions for fixed tenure of PPA i.e. 7 years or 25 years.

In reply to MA No. 4 MSEDCL has stated that:

6.3. Considering peculiar characteristics of Bagasse based co-gen project, and their willingness to sell power to MSEDCL only as there is no long term market available for seasonal power selling except MSEDCL, MSEDCL may be allowed for long term procurement of power from FY 2020-21 onwards for remaining useful life of the bagasse as only one buyer is available and also capacity available for sell is also known. Hence MSEDCL is of opinion that there is no scope for competitive bidding for EPA expired bagasse-based cogeneration project, so MSEDCL may be allowed to procure power through MoU route.

7. Intervener No. 5, IWPA, made the following submissions dated 11 May 2020:

7.1. The Hon'ble Appellate Tribunal for Electricity (APTEL) vide order dated 25 April 2014 in Appeal No. 24 of 2013 while dealing with RPO compliance unambiguously held that if the distribution licensees are not able to make arrangements to procure adequate renewable energy to meet the RPO targets, then they have to resort to alternate mechanism of REC specified in the RPO Regulations to meet the shortfall in RPO. Further, with respect to carry forward of shortfall in RPO, the APTEL had laid down certain guidelines which have been reiterated in subsequent Orders as well.

7.2. The APTEL vide order dated 16 April 2015 in Appeal Nos. 258 of 2013 and 21 of 2014 has inter alia while dealing with the issue of revision of RPO targets by the Gujarat Electricity Regulatory Commission has held that the State Commission has to ensure that such revision should not defeat the object of the Electricity Act, 2003 (EA) and RPO Regulations and non-availability of REC is a pre-condition for carrying forward of RPO.

7.3. The REC mechanism is a market-based instrument that aims at promoting investment in the renewable energy projects, provide an additional revenue stream to the RE generators for recovery of their costs and to facilitate RPO compliance by obligated entities.

7.4. With respect to implementation of any RPO Regulations, if there is no indication of enforcement of penal provisions then the obligated entities shall ignore the requirement of RPO compliance. Hence, timely monitoring of RPO compliance is necessary. In case a blanket protection is given to MSEDCL at the beginning of the Control Period against penal provisions of RPO Regulation, 2019, it may prove detrimental as MSEDCL may not take any efforts for RPO compliance.

- 7.5. Further, RPO targets are set keeping in view anticipation of capacity addition in State. Hence, any revision or relaxation of the RPO ought to be exercised only in case of exceptional circumstances.
- 7.6. The month wise REC Report uploaded on the website of Renewable Energy Certificate Registry of India clearly shows that there been a backlog of uncleared RECs every month since March, 2011 to March, 2020. Thus, though there is always a mismatch between the number of buy bids and sell bids, the fact that even at times when the buy bids are more than the sell bids the full volume of sell bids could not be traded resulting in unsold inventory of RECs and this indicates disinterest on the part of Obligated Entities towards fulfilment of their RPO targets by purchasing RECs.
- 7.7. MSEDCL ought to supplement its non-solar procurement with regular purchase of RECs at intervals of its own choosing so that it can take the benefit of advantageous rates. It should plan its REC purchase in advance so as to take advantage of market conditions favourable to it. Waiting till the end of the year for REC purchase results in spike in rates.
- 7.8. The low response to the tenders floated by MSEDCL is on account of the past bitter experience of inordinate delay on the part of MSEDCL to make payments under the PPAs and also because it is more beneficial for wind power generators to sell their power in the open market rather than to MSEDCL at the low ceiling tariff.
- 7.9. Many members of the Intervener established wind power projects across the State of Maharashtra with the intent of producing renewable clean energy and at a time when the renewable energy market in India was still in its nascent stage. Further these wind power projects were funded projects with an aim to recover the costs and earn a reasonable return on investment. The return on investment is allowed as a compensation to the investors for assuming the investment related risks. It is based on opportunity cost principle and risk premium. To ensure that it is fair to both the investors and the consumers, the return allowed should be commensurate with the returns available from alternate investment opportunities having comparable risk. The viability of these projects depended on the estimates calculated on basis of the aforementioned components of the Wind Tariff Order and while the tenure of the PPAs was fixed at thirteen (13) years when the estimated life of these wind power projects being twenty (20) years, the components considered for determining the tariff fixed at the rate of Rs.3.50/unit with an annual escalation of Rs.0.15 per unit every year for thirteen (13) years, not taking into consideration the return on equity (RoE) component of the projects after thirteen (13) years.
- 7.10. It is not appropriate to expect wind power projects especially Group III projects to operate on no-profit basis. Profit is essential for survival of any business as businesses rely on

generation of such surplus to fuel growth, buy new inventory, expand business and finance new investment

- 7.11. Factors such as operation and maintenance expenses, interest on working capital, RoE, retrofit expenses, depreciation, capacity utilization factor etc ought to be considered while determining the ceiling tariff. Failure to consider these factors will lead to negative returns which would lead to shutting down of such wind power projects.
- 7.12. In the interest of the Discom as well as generators that either let the market forces decide the tariff or such ceiling is determined keeping in mind the sustainability of these projects or comparable to return from open access. Therefore, the submissions of MSEDCL that participation in bid cannot be attracted without revising ceiling limit and making it attractive for the generator.
- 7.13. In view of the aforesaid, the Commission should not allow the prayer of MSEDCL seeking waiver of penalty in case of non-compliance of RPO.

8. Intervener No. 4, MSCSFFL submitted following additional submissions dated 13 May 2020:

- 8.1. The Applicant agrees with the modality proposed by MSEDCL for procurement of power through MoU route.
- 8.2. The MoU be executed and approved by the Commission on the conditions that the rate of procurement of power should be the sum total of Variable Cost to be fixed by the Commission on year-to-year basis and the Fixed Cost to be negotiated and fixed by the parties to the MoU subject to the maximum cost fixed by this Commission in Order dated 12 July 2018 in Case No. 84 of 2015 capped at Rs. 0.66 per unit.
- 8.3. Determination of “Useful Life of Cogen & Biomass Plants” is now enhanced by the Commission to 25 years from the earlier 20 years. The proposed MoU for such plants (completing/completed 13 years) must be for 12 years minimum.

9. Intervener No. 5, IWPA, in its rejoinder dated 14 July 2020 made the following submission:

- 9.1. It did not suggest any specific range for the tariff of wind power projects in its Application.
- 9.2. The Commission should not allow MSEDCL any relaxation in fulfilling its RPO targets. MSEDCL has adequate resources and alternatives to fulfil its RPO targets.

- 9.3. The Commission had vide its various orders such as Order dated 12 July 2018 in Case No. 84 of 2015, Order dated 2 November 2018 in Case No. 264 of 2018 and Order dated 9 April 2019 in Case No. 50 of 2019 set ceiling tariffs for MSEDCL for purchasing of power from various sources including purchase of wind power from wind power projects, the ceiling set therein were unviable for the wind energy producers including number of members of the Intervener organisation who own Group III projects and hence MSEDCL did not receive adequate or no bids for the tenders floated by them at such low ceiling rates.
- 9.4. The combined tender for older project capacity as well as new projects would prescribe unachievable norms for older projects such as the Group III projects of the members of the Intervener. The RfS issued by MSEDCL on 30 August 2019 for 500 MW, inter alia, contained following norms which are achievable only for new projects:
- a. EPA duration has been specified as twenty-five (25) years even for existing projects and therefore existing Group III projects having already operated for thirteen (13) years will not be able to enter into an EPA for the prescribed period of twenty-five (25) years.
 - b. Repowering option is not beneficial as the repowered project will only get partial EPA term from the date of repowering. Also, unless the investment made in older projects are recovered by investors, it will not be feasible for Group III generators to carry out repowering.
 - c. Further, there is no incentive for repowering as the EPA contracted capacity will be limited to the original contracted capacity and not to the repowered capacity.
 - d. The minimum Capacity Utilisation Factor (CUF) criteria was set at 22%, whereas for many older projects such as Group III projects the CUF ranges from 16% to 20%. Generation below specified CUF had penal consequences.
- 9.5. Tenders should be taken out separately for old and new projects instead of combined/single tender for all wind power projects as it is difficult for the Group III projects with inferior turbine technology to compete with the new projects with superior turbine technology as repowering of Group III projects is not viable at the moment. For Group III projects feasibility of a slightly longer EPA tenure of say between 7 (seven) to twelve (12) years may be explored as longer EPA tenure will allow generators to offer lower tariffs.
- 9.6. MSEDCL has entered into new power sale agreements with central bidding agencies such as SECI for procuring 500MW wind power which in turn has entered into back to back EPAs with wind power generating projects being established in other wind resource rich

states such as Gujarat and Tamil Nadu. Even for MSEDCL's own tenders for wind power procurement from new projects, MSEDCL will be procuring power from certain projects established outside the state. Despite Maharashtra being a wind resource rich state in itself, no preference has been given to procuring power from projects established within the state.

- 9.7. Even otherwise, the landed cost from these Inter State Transmission Systems (ISTS) projects are highly skewed because of the ISTS transmission charges waiver available to these projects getting commissioned by December 2022. There may be possible scenario where some of them may miss this deadline and as a result, these transmission charges may have to be shared between the procuring state and the wind generators, unless some relaxation is provided by the Central Government. It is submitted that it would not be fair to compare the landed cost of power from these projects availing ISTS transmission charges waiver with the power procurement cost of wind power projects established within the state of Maharashtra. For analytical purpose, the contribution of these ISTS charges would have been to the more than Rs 1/unit, bringing the landed cost in the range of Rs. 3.80/unit to Rs. 4/unit at state periphery.
- 9.8. MSEDCL can comply its RPO by purchase of renewable energy certificates (RECs), it may be noted that the cost of compliance of RPO through REC at the rate of Rs. 1.5 per unit plus Average Power Purchase Cost determined from time to time. The Average Power Purchase Cost determined by Central Electricity Regulatory Commission (CERC) for FY 2018-19 is Rs. 3.69 per unit, therefore compliance cost of RPO through this route is which is approximately Rs. 5.19 per unit is higher than the ceiling of Rs. 2.52 per unit and therefore, any ceiling if determined lower than such cost will be beneficial for MSEDCL as MSEDCL will be purchasing green power and encouraging the wind power generation.
10. Maharashtra Energy Development Agency (MEDA), through its Email dated 17 November 2020, has submitted that the Commission may consider the prayers of MSEDCL made in the Petition.
11. All the Intervening Applicants, except IA No. 4, 30 and 32, made the following key submissions to the reply of MEDA:
 - 11.1. There is a discrimination made by MSEDCL and MEDA by agreeing upon a fixed rate for Bagasse based cogen projects but no such fixed rate has been quoted for wind projects.
 - 11.2. MEDA being a responsible authority should promote encourage and protect non-conventional energy projects.

- 11.3. The Commission may allow procuring of power from wind projects, whose EPA has expired, through MoU route only at the tariff determined by the Commission and not through competitive bidding route.
- 11.4. Some of the projects have been set up under Group-IV and are supplying electricity at short-term rate of Rs. 2.52/unit only.
- 11.5. APTEL has recently passed an Order dated 13 November 2020 in Appeals No. 180, 181, 182, 183 and 184 of 2018:

“It is declared that the tariff of Rs. 4.50/kwh determined by the respondent Karnataka Electricity Regulatory Commission by its generic tariff order dated 24.02.2015 is applicable to the Wind Power Projects of the appellants for a period of twenty-five years with effect from the date of COD i.e. 31.03.2017 and that the State Commission is bound to approve the Power Purchase Agreements of the appellants with respondent HESCOM accordingly, the decision of rejection of the same on ground that there was no injection of power into the grid by 31.03.2017 being bad in law and consequently vacated;”

- 11.6. Various expenses are being borne by wind energy developers as mentioned below:
- i. Statutory Charges like GP tax and NA Tax
 - ii. Insurance Charges
 - iii. Introduction of new charges of power scheduling and forecasting
 - iv. High maintenance cost due to old technology & ageing turbines
- 11.7. The Commission is requested to waive off the DSM at Pooling Substation (PSS) and DSM at Periphery charges.
- 11.8. The Commission may pass necessary direction to MSEDCL to grant applicable power purchase tariff to projects installed under Group I to Group IV.
12. At the e-hearing through video conferencing held on 25 November 2020, the representative of MSEDCL and MEDA reiterated their submissions as made in the Petition. The representative of MSCSFFL (IA No. 4 of 2020) submitted that the prayers submitted by MSCSFFL, to increase the ceiling tariff, in the present Petition are identical to other Petitions filed by them in Case No. 26 of 2020 and 27 of 2020 (filed by Cogeneration Association of India), wherein the Commission has already adjudicated upon the matter in its Common Order dated 30 September 2020. Therefore, with respect to the Commission’s Common Order dated 30 September 2020 in Case Nos. 26 and 27 of 2020, MSCSFFL is not advancing its prayers in the Present Petition. Representative of IWPA impressed upon conducting

separate bids for the projects whose EPA/PPA have expired instead of inviting common bids for new projects and projects with expired EPA/PPA.

13. Applicants under IA Nos. 31 and 32 of 2020 made following additional submissions dated 3 December 2020:
 - 13.1. During the hearing, IWPA stated on behalf of intervener about increase in ceiling of tariff and has shown willingness for tender route for the post expiry EPA of wind projects.
 - 13.2. The Applicants submit that they do not endorse statement made by IWPA.
 - 13.3. The Commission is requested to allow/direct MSEDCL to procure energy at tariff determined by the Commission through MoU route only.
 - 13.4. The Commission may refer Order dated 30 September 2020 in Case Nos. 26 & 27, which is almost similar in nature.

Commission's Analysis and Rulings

14. MSEDCL has filed the instant Petition seeking the approval for the following:
 - A. Allow MSEDCL to revise the ceiling tariff rate for competitive bidding tenders floated under MSKVY for solar project with capacity 2 to 10 MW at 11 kV level from Rs.3.15 to Rs 3.30 per unit or more based on market condition
 - B. Allow MSEDCL to purchase bagasse power with expired EPAs at APPC price of respective financial years, for remaining useful life, with a tariff cap of Rs. 4.00 per unit.
 - C. Allow MSEDCL to issue tenders with combination of 'post EPA expiry wind' and new capacities, to increase ceiling tariffs, for upcoming Wind Energy tenders, based on the market conditions
 - D. Not to levy the penalty, on non-compliance of standalone annual RPO targets and cumulative targets of RPO, till 2022-23.
15. MSEDCL has highlighted that despite adhering to the Commission's directions in various Orders and taking several measures, it is unable to arrange long term contracts for the projects under different renewable energy categories like, MSKVY scheme, bagasse projects whose EPAs have expired and the wind projects.

16. MEDA, through its submission dated 17 November 2020 has principally supported the prayers of MSEDCL.
17. The Commission notes that apart from the applicant under IA No. 4 i.e. MSCSFFL, all other applicants are the parties concerned with the wind projects whose EPAs with MSEDCL have expired. Further, apart from applicant under IA No. 5 i.e., IWPA, remaining all applicants have requested for direction to MSEDCL to procure power through MoU route.
18. Based on the above facts and rival contentions, the Commission frames following issues for its consideration in the present matter:
 - a. Ceiling rate of project under MSKVY
 - b. Ceiling rate of Bagasse based projects whose EPAs have expired
 - c. Treatment of wind projects whose EPAs have expired
 - d. Relaxation in RPO penalty till FY 2022-23

The Commission has dealt with all above issues in the following paragraphs.

19. **Issue A: Ceiling rate of project under MSKVY**

- 19.1. MSEDCL in the present Petition has requested to increase the ceiling rate for competitive bidding tenders floated under MSKVY from Rs.3.15/kWh to Rs 3.30/kWh or above as per the market conditions.
- 19.2. However, MSEDCL in its separate Petition filed in Case No. 189 of 2020 has raised similar issues in respect of the projects under MSKVY and has suggested floating of Open tenders under MSKVY for attracting more bidders. The Commission in its Order dated 29 October 2020 has highlighted various issues to the draft RfS and directed MSEDCL to modify the same after addressing the highlighted issues and file a fresh petition.
- 19.3. In the said Petition, MSEDCL had recommended different ceiling tariff for different category of projects (projects where land will be provided by MSEDCL and where developer will identify the land). The Commission in its Order dated 29 October 2020 has reiterated that utility shall prescribe ceiling rate at their own due diligence and the Commission shall deal the rate aspect at the time of adoption of tariff. The relevant excerpts from the said Order is reproduced below:

“9. The Commission notes that MSEDCL has submitted ceiling rates for the bidding process as per the methodology submitted by it. The Commission underscores that in its various previous orders, the Commission has directed that utility shall prescribe ceiling rate at their own due diligence and the rate aspect shall be dealt by the Commission at the time of adoption of tariff.”

19.4. Further, as per the Commission’s direction, after addressing the highlighted issues in the Order dated 29 October 2020, MSEDCL filed a fresh Petition under Case No. 214 of 2020. The Commission in its Order dated 18 December 2020 approved the RfS documents with certain changes. The Commission in the said Order again impressed upon MSEDCL to fix ceiling rate as per its own due diligence. The relevant extract from the Order is as below:

“9.3 With respect to providing land upfront, MSEDCL has submitted that it is in the process of developing an online web portal for registering lands from interested farmers wherein, post verification of documents, MSEDCL will register the Land and list of such lands will be provided as a part of Tender documents. MSEDCL has further submitted that for such projects where land is offered by MSEDCL, the ceiling tariff will be Rs. 3.11/unit and commissioning period will be of 9 months. The Commission appreciates the efforts of MSEDCL and opines that such measures will assist in smooth implementation of the scheme. As land bank is yet to be created, MSEDCL can float tender without option of land being provided by MSEDCL. The Commission reiterates that ceiling rate shall be determine by the DISCOM as per its own due diligence. Competitiveness of such rate shall be dealt with by the Commission at the time of adoption of tariff.”

19.5. Accordingly, the issue related to the projects under MSKVY have been dealt with in the Order dated 18 December 2020 in Case No. 2014 of 2020 and hence no separate ruling is required in the present matter.

20. Issue B: Ceiling rate of Bagasse based projects whose EPAs have expired

20.1. As submitted by the representative of MSCSFFL during the e-hearing, with respect to the Bagasse based co-generation projects whose EPAs have expires, the Commission has already adjudicated upon the matter in its Common Order dated 30 September 2020 in Case Nos. 26 and 27 of 2020.

20.2. The Commission in that Order has accorded its approval to procure power from the bagasse-based co-generation projects whose EPAs have expired through MoU route. In order to balance the interest of all the stakeholder, including end consumer, the Commission

has provided a justified logic for procurement of power through MoU route. The relevant excerpts from the Order are as below:

“24.3 Under above circumstances, as rate of Rs. 4.75/kWh has been worked out based on principle approved by this Commission in Order dated 12 July 2018, the Commission approves the same subject to following conditions:

- a. Fixed Cost of Rs. 0.37/kWh is fixed for entire tenure of extended EPA.*
- b. Provisional variable charge of Rs. 4.38/kWh is approved. In case the variable cost so determined through the ongoing study decreases below Rs. 4.38/kWh, then total tariff would decrease by that extent. In case variable cost so determined increases above Rs. 4.38/kWh, then total tariff would still be fixed to Rs. 4.75/kWh so as to maintain parity with tariff determined through competitive bidding.*
- c. Such tariff decided at ‘b’ above would be fixed for entire tenure of EPA.*
- d. Above tariff shall be applicable prospectively from the date of this Order. Any energy produced by the cogen plants after expiry of their EPA will continue to be settled at the prevailing rate of 3.56 per kwh for 2019-20 duly adopted by Commission.”*

Further, the Commission has linked the tariff of bagasse based co-generation projects with the performance of such projects in executing the collection efficiency of Agriculture consumers as follows:

“24.4. Having ruled as above, the Commission cannot ignore the fact that there is no obligation on the MSEDCL to procure power specifically from bagasse based co-generation projects as it can fulfill its non-solar RPO by procuring power from other cheaper sources as compared to bagasse-based co-generation projects. Hence the MOU route rate for these cogeneration plants needs to be looked at in the correct perspective. Co-generating plants in addition to supplying electricity to MSEDCL also need to shoulder some additional responsibility which can assist the MSEDCL to reduce its financial burden to some extent and thereby be compensated for the power procurement through MoU route instead of Competitive bidding. The Commission notes that most of the bagasse-based co-generation projects are being run by Cooperative Societies, therefore they can work with MSEDCL to increase collection efficiency with active support of their members, share holders or farmers supplying sugarcane to the factories. Thus, farmers who are selling their sugarcane to the plants

having Cogen would all be required to be covered for improvement in recovery with active involvement of these plants and all the stake holders.....

24.5 As both parties have not made any submissions on this important issue which was directed by this Commission through Daily Order, the Commission is required to balance the interests of the stake holders. Accordingly, the Commission directs as under:

- a. Co-generation Plant shall identify area (subdivision(s)/ division(s)) in its command area in which it shall take responsibility of bill collection of LT Agriculture Consumers who are the members of their Plant.*
- b. MSEDCL shall identify collection efficiency of Agriculture category of that area for FY 2019-20 which will act as base level collection efficiency.*
- c. Co-generation plant shall improve the collection efficiency from base level by at least 10% in the first ensuing year and thereafter additional 10% every year till it reaches 90% or more.*
- d. In case, co-generation plant fails to achieve such target in any year, the co-generation plant would be eligible for only 95% of approved tariff.*
- e. For achieving above objective, the Commission suggests following:*
 - i. The collection efficiency improvement needs to be based on the correct current bills.*
 - ii. In these difficult times of Pandemic, the facility of self-readings (Photo readings) as is being done presently could be extended to all the Farmers/Agriculture consumers also. This will help in reducing the load on MSEDCL and will also help in issuing correct bills to the Agriculture category consumers.*
 - iii. While benchmarking and comparing the improvement in the Collection efficiency of bills issued to the Members or shareholders or otherwise who supply the sugarcane to the Cogen plants, it needs to be ensured that the bills are correct and that the disputes are reduced to the minimum to the extent possible.*

- iv. *The consumers could submit the quarterly photo reading to the concerned Cogen plant, who in turn will take up the responsibility of verifying the correctness of the same and shall draw a tentative bill after considering the details of the previous bill.*
- v. *In case the bill reading is not available for any reason, the recovery needs to be made as per the Supply Code Provisions on Average basis.*
- vi. *The disputes in the bills (if any) will be settled between the consumer and MSEDCL directly.*
- vii. *The Cogen plant shall recover this amount amongst other methods, from the sale proceeds payable to the farmer. The amount so recovered from the members, shareholders etc shall be transferred to MSEDCL account through Digital mode.*
- viii. *The Co-gen plant should be compensated by MSEDCL for performing this activity of meter reading, billing and recovery and such compensation amount is added to the bill for payment of the generated power as per EPA.*
- ix. *This methodology may be incorporated in the MoU between MSEDCL and the Cogen Plants for procurement of cogen power and can be implemented for the overall benefit of all the stake holders.*
- x. *MSEDCL and the Co-gen plants entering into MOU agreement are free to add any other relevant covenant so that the expected improvement in the collection efficiency is achieved.*

24.6. The Commission is aware of the fact that the collection of consumer bills does not have any direct relation with co-generation tariff. But at the same time, tariff approved in present case is higher than the Rs. 3.56/kWh, for which 6 Co-generating plants had earlier given written consent. The Commission has allowed the tariff based on its earlier Order dated 12 July 2018, but co-generation plants have to take extra effort (as stated in para above) to get this tariff. In the opinion of the Commission this would be fair proposition and would balance the interest of both parties.”

Accordingly, the Commission underscores that the issue related to the ceiling rate of bagasse based co-generation projects whose EPA has expired have been already dealt with in the Commission common Order dated 30 September 2020 in Case Nos. 26 and 27 of 2020 and no separate ruling is required in present matter.

21. **Issue C: Treatment of wind projects whose EPAs have expired**

- 21.1. With respect to the wind projects with expired EPAs, MSEDCL has highlighted that as per the Commission's Order, it has conducted several rounds of competitive bidding but has failed to secure credible amount of long-term procurement of energy. The key reason highlighted by the MSEDCL is low commercial attraction of the ceiling tariffs.
- 21.2. The Commission notes that apart from IWPA, all remaining intervening applicants with expired EPAs of wind project have suggested that MSEDCL should procure the power from their projects through MoU route at Rs. 4/kWh or Rs. 3.50/kWh with 5% year on year escalation. Further, some of the intervening applicants have proposed MoU for the expired wind projects by relying on the Commission's Common Order dated 30 September 2020 in Case Nos. 26 and 27 of 2020, in the matter of bagasse-based co-generation projects with expired EPAs.
- 21.3. Whereas IWPA has submitted to conduct separate bidding process for older and new projects. IWPA has reasoned out various technical and operational issues which will result in little or no participation from the older projects with expired EPAs as they will not be able to compete with the new projects with superior technology. Further, regarding tariff, IWPA has suggested that market forces shall be allowed to determine tariff for such projects which shall be comparable to return they are getting from Open Access.
- 21.4. In this regard, the Commission notes that it is incorrect to compare dispensation allowed to bagasse-based co-generation projects with Wind generators on account of the followings:
- a. Unlike wind generators who do not incur any expenses on fuel, bagasse-based co-generation projects has to incur fuel expenses and hence since first generic tariff for bagasse-based co-generation tariff, this Commission has adopted two-part tariff structure viz. fixed cost and variable cost. Further such variable cost is being revised every financial year, but fixed cost remains the same as that applicable for the year in which such project is commissioned.
 - b. While allowing MoU based EPA for co-generation projects with expired EPA, the Commission has put ceiling of such MoU based rate to Rs. 4.75/kWh which is competitively discovered rate for new bagasse-based co-generation project. If similar approach is adopted for wind generators, then its rate needs to be capped at Rs. 2.87/kWh which was discovered by MSEDCL through competitive bidding for new Wind projects. But interveners are seeking MoU rate at much higher level which is not as per principle adopted for bagasse-based co-generation plants.

c. In addition to above, as highlighted in para 20.2 above, while allowing MoU route for bagasse-based co-generation project with expired EPA, the Commission has put additional responsibility of collecting electricity bill amount from Agriculture consumers on such co-generation plants. Wind generators, due to a different category of generator may not be in a position to shoulder any such additional responsibility.

In view of above, it is incorrect to rely upon Commission's Order dated 30 September 2020 relating to bagasse-based co-generation plants for seeking MoU route extension of expired Wind EPAs.

- 21.5. On the issue of increased ceiling rate requested by MSEDCL, the Commission notes that although ceiling rate is one of the deciding factors for bidders to participate in the bidding process, financial soundness of the buyer/Distribution Licensee and its track record of promptly paying generator's bills is a vital decision point for any bidder to participate at given ceiling rate. If Discom is having poor record of payments, then bidders would obviously look for higher cost so as to secure itself from the impact of delayed payment. Hence, to attract more bidders, MSEDCL first has to demonstrate good paying culture towards its contracted generators or provide for robust and transparent payment security mechanism in bid document.
- 21.6. Further, the Commission in several Orders has repeatedly said that it would not fix any ceiling rate for bidding process and MSEDCL based on its due diligence has to fix such ceiling rate. The Commission will scrutinize the same at the time of adoption of tariff. Therefore, MSEDCL needs to ensure that such ceiling rate is reflective of current market rate.
- 21.7. MSEDCL may also think of procuring such power through Solar Energy Corporation of India (SECI) which has relatively better financial strength and hence is able to discover lowest rate for various Renewable Energy Technologies. However, MSEDCL may take such decision only after analyzing economics of sourcing such power through SECI by comparing landed cost of such power including SECI's trading margin vis-à-vis rate which MSEDCL can discover by inviting bids on its own.
- 21.8. The Commission opines that the wind generation capacity with expired EPA's is also important for MSEDCL in its endeavour to meet the RPO targets. IWPA has pointed out various clauses in bid documents which are restricting participation of Wind Generators in the competitive bidding. MSEDCL should try to address these issues so as to increase participation of Wind generators with expired EPA in bidding process.

- 21.9. It is also pointed out that Wind projects with expired EPA are getting higher revenue by selling its power under Open Access. This might be true, but all such contract with OA consumers is normally short term / medium term contract and hence always have uncertainty of future contract. Further if they are selling power to obligated OA consumers for fulfilling RPO, then such Wind Generators cannot claim REC on such energy. If these generators are assured prompt payment of their dues, they may be ready to participate for long term PPA.
- 21.10. Further, it is also important to note that ‘Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from grid Connected Wind Power Projects’ notified on 8 December 2017 by the Government of India under Section 63 of the EA, 2003 do not envisage putting ceiling tariff while inviting bids. However, all the Distribution Licences do have an obligation of procuring the power in most economic manner and accordingly, they may take all steps in meeting that objective.
- 21.11. In view of above, the Commission is of the opinion that MSEDCL may conduct separate competitive bidding process for the wind projects with expired EPAs and for new projects. The Commission in various Orders has iterated that the ceiling rate shall be determine by the utilities as per its own due diligence. MSEDCL may draw a cue to cap the ceiling rate to the tariff discovered for the new wind projects in the State of Maharashtra or at national level by agencies like SECI. The Competitiveness of such rate shall be dealt with by the Commission at the time of adoption of tariff. More critical factor is providing secured payment mechanism to the generators which could be covered in the Bid document itself.

22. Issue D: Relaxation in RPO penalty till FY 2022-23

- 22.1. MSEDCL has requested not to levy any penalty on non-compliance of standalone annual targets and cumulative targets of RPO, till 2022-23, as the repeated efforts by MSEDCL to procure power through RE sources has not resulted in any effective outcome.
- 22.2. In this regard, the Commission is of the view that such submissions are premature. Any penalty or incentive related to achieving the RPO targets shall be dealt with at the time of RPO verification process of the obligated entities. Till that time, MSEDCL shall take all efforts to fulfill its RPO including procurement of REC at regular intervals so as to avoid peak pricings in the power exchanges.

23. Hence, the following Order.

ORDER

1. Case No. 21 of 2020 is partly allowed.
2. The issues related to Mukhyamantri Saur Krishi Vahini Yojana and the Bagasse-based co-generation projects have been dealt separately by the Commission in its earlier Order and hence no separate ruling is required in present matter.
3. Maharashtra State Electricity Distribution Co. Ltd. to invite bids for the wind projects as per guidelines mentioned in para 21 above.
4. Maharashtra State Electricity Distribution Co. Ltd. to continue its efforts to fulfill its RPO including opting for procurement of REC at regular intervals so as to avoid peak pricings in the power exchanges.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

