

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 214 of 2020

Case of Maharashtra State Electricity Distribution Company Limited seeking approval to float Open tenders under Mukhyamantri Saur Krishi Vahini Yojana.

Maharashtra State Electricity Distribution Co. Ltd. Petitioner

Maharashtra Energy Development Agency Respondent

Coram

I.M. Bohari, Member
Mukesh Khullar, Member

Appearance

For the Petitioner : Sh. Paresh Bhagwat (Rep.)
For the Respondent : Dr. J. V Torane (Rep.)

ORDER

Date: 18 December, 2020

1. Maharashtra State Electricity Distribution Company Limited (**MSEDCL**) has filed the present Petition on 10 November 2020 seeking approval to float Open tenders under Mukhyamantri Saur Krishi Vahini Yojana (MSKVY) Scheme.
2. **MSEDCL's main prayers are as follows:**
 - a) *To allow MSEDCL to float the Tenders under Mukhyamantri Saur Krishi Vahini Yojana with the deviation in Guidelines for Development of Decentralised Solar Power Plants dated 13.12.2019 in regards to Minimum CUF from 15 % to 19 %.*

- b) *To initiate the tendering process without the provisions of lands with the ceiling Tariff of Rs. 3.30 per unit, till the online web land portal will be operational and land bank is available with MSEDCL in portal.*
- c) *To approve the formula/methodology for per unit impact as mentioned in the Petition*
- d) *To approve the tender documents i.e. RFS and Draft PPA submitted as a part of this Petition*

3. **MSEDCL in its Case has stated as follows:**

- 3.1 On 21 September 2020, MSEDCL filed the Petition before the Commission seeking approval to float Open tenders and taking land on lease by paying rent under MSKVY Scheme.
- 3.2 The Commission vide Order dated 29 October 2020 in Case No. 189 of 2020 directed MSEDCL to file modified RfS document after addressing various issues and directions mentioned below, for approval of the Commission:
 - a. Revisions in RfS documents as per amendments to guidelines time to time, if any.
 - b. Possibilities of calling EoI before floating Tender
 - c. Providing land upfront to selected bidders
 - d. Specifying the formula for DC capacity to be considered for Change in Law computation
 - e. Provision of formula in RfS document for arriving at per unit impact of Change in Law compensation to be recovered over the tenure of PPA
 - f. Addressing operational difficulties, if any, faced by already commissioned projects under MSKVY.
- 3.3 In compliance with the Commission's Order dated 29 October 2020 in Case No. 189 of 2020, MSEDCL has prepared the Tender Documents i.e. RfS and draft PPA considering the directions of the Commission and has addressed the issues as mentioned below:
 - a. **Revisions in RfS documents as per amendments to guidelines from time to time, if any.**
 - i. MSEDCL in the next upcoming Tenders with monthly frequency will incorporate the necessary guidelines if there are any amendments or will come before the Commission for deviations in pursuance of the observations of the Commission regarding incorporating amendment in the Guidelines for Development of

Decentralised Solar Power Plants dated 13 December 2019, if any, issued by Ministry of New and Renewable Energy (MNRE).

- ii. While preparing the Tender documents which are placed before the Commission through this Petition, above said guidelines dated 13 December 2019 have been taken into consideration except for the deviation for minimum CUF of 19% in line with the previous Tenders instead of the minimum CUF of 15% mandated in guidelines.
- iii. In this regard, MSEDCL requests the Commission to allow this deviation considering the intention of MSEDCL for keeping similar CUF for the already contracted/commissioned under MSKVY.

b. Possibilities of calling EoI before floating Tender

- i. The Commission has directed MSEDCL to explore the possibility for arriving at the capacity for bidding by calling for Expression of Interest (EoI).
- ii. MSEDCL, while selecting the district/circle capacity is relying on the Agricultural load in the district. Under MSKVY, MSEDCL is floating tenders of 50 MW for the district/circle having agriculture load of more than 100 MW and tenders of 25 MW for the district/circle having agriculture load more than 50 MW and above.
- iii. Even after enormous efforts during last 2-3 years, MSEDCL was able to contract only 527 MW against 1873 MW of Bids received through competitive bidding processes conducted for total capacity of 6500 MW under MSKVY. Further, all of five Tenders totaling to 6500 MW floated under MSKVY were under subscribed.
- iv. Such poor response is especially on account of un-viability of the Tariff and the un-availability of low cost lands in the State. Therefore, MSEDCL could hardly arrive at the situations to conduct e-reverse auction under MSKVY Tenders.
- v. In view of past experience and increasing shortfall in solar RPO against the Target till FY 2024-25, MSEDCL's is unable to meet its objectives of getting maximum capacity through the tendering process considering multifold benefits of decentralized generation at the load centers and that too below the already adopted ceiling Tariff of Rs. 3.30/unit. In such situations, stretching the requirements for the purpose of competition may result in increase in MSEDCL's shortfall in RPO and may be required to deviate in power procurement plan as approved in Multi Year Tariff Order. Also, going for EOI option initially, will also consume time and will not be helpful considering the past experience.

- vi. Further, the provisions of tender document have taken care of safeguarding against any gaming/cartel formation and in such cases, MSEDCL has the discretion to short close the tender or to cancel the tender, if the bids are abruptly high.
- vii. Therefore, MSEDCL requests the Commission to allow MSEDCL to float the Tenders based on the documents approved by Commission instead of calling for EoI, for saving time

c. Providing lands upfront

- i. In response to suggestion of the Commission for inclusion of provisions of lands upfront from day one, instead of waiting for 3 months, it is most respectfully submitted that one of the reasons for under subscription of past tenders is unavailability of lands. Hence in order to facilitate the bidders, MSEDCL came up with proposal of providing lands in case there is no response. However, land identification and further actions of taking possession takes some time.
- ii. Also, MSEDCL is in the process of development of online web portal for registering lands from interested farmers. As and when the portal will be functional, MSEDCL will register the Lands after verifying legality of documents submitted and list of such lands will be provided as a part of Tender documents and in such case the ceiling Tariff will be Rs. 3.11/unit. Further, in such cases wherein lands will be provided by MSEDCL, the Commissioning period will be allowed as 9 months instead of 12 months as per the guidelines. These both provisions viz. Rs. 3.11/unit ceiling tariff and SCoD period of 9 months will be incorporated in the future tender documents after lands will be in possession of MSEDCL.
- iii. The Commission may acknowledge the efforts of MSEDCL by development of on-line land portal and allow some time instead of providing land at the outset and thus allow MSEDCL to initiate the tendering process time being without the provisions of lands and with the ceiling Tariff of Rs. 3.30/unit.

d. Specifying the formula for DC capacity to be considered for Change in Law computation

- i. The Commission directed to incorporate changes in bid conditions specifying the formula for DC capacity to be considered for Change in Law computation as follows:
DC Capacity for Change in Law = AC Contracted Capacity x (Declared CUF/Minimum CUF stipulated in RfS)

- ii. MSEDCL has included the same in its Draft PPA.
- e. Provision of formula in RfS document for arriving at per unit impact due to Change in Law event during construction period (compensation to be recovered over the tenure of PPA)**

- i. In compliance with the directions of the Commission, the methodology/formula for arriving at per unit impact of change in law compensation to be recovered over the tenure of PPA proposed by MSEDCL is as follows:

Mechanism/ Methodology for the determination per unit rate of compensation due to Change in Law

For the Change in Law impact of every Rs. 1 Lakh, the compensation in terms of additional tariff will be Rs. 0.005 per unit (considering the carrying cost).

For calculation of the same following assumptions are considered by MSEDCL

- Capacity Utilization Factor (CUF) of 19% as in line with the RFS document
 - Depreciation is considered at 5.83% per annum for the first 12 years and remaining depreciation is spread over the remaining life of the plant in line with MERC (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2019.
 - Entire additional capital cost due to impact of change in law is considered under debt (i.e. a debt equity ratio of 100:0)
 - Interest rate is considered at 8% (MCLR of 7% as on 1st week of November 2020 plus 100 basis points) in line with MERC directions that the carrying cost should be less than that of late payment surcharge (which is 125 basis points above the SBI's 1-year MCLR in PPA)
 - O&M cost and Interest on Working Capital are not considered since the same will not be impacted by the Change in law during construction.
- ii. The Commission may suggest the best suitable methodology/formula safeguarding interest of both MSEDCL as well as bidders.
- f. Operational difficulties to already commissioned projects under MSKVY, if any**
- i. MSEDCL submits that the projects under this scheme are commissioned in recent time and operational difficulties may be observed over the time. Since the projects under this scheme spread over the length and breadth of Maharashtra State, they may

have peculiar facts/issues/problems depending upon the various conditions such as load, agriculture crop pattern, availability water for irrigation, etc., which may also differ on year to year basis. Presently, individual's projects may have some project specific issues which may or may not be generic to all the decentralized projects. Hence, commenting on difficulties will be pre-mature.

4. MEDA, through its letter dated 27 November 2020 submitted that process adopted by MSEDCL is less time consuming and is a welcome step. MEDA recommends the same to be approved by the Commission
5. At the e-hearing through video conferencing held on 2 December 2020, the representative of MSEDCL and MEDA reiterated their submissions as made in the Petition.

Commission's Analysis and Rulings

6. MSEDCL had initially filed a Petition under Case No. 189 of 2020 seeking approval to float Open tenders and taking land on lease by paying rent under MSKVY Scheme. MSEDCL, in that Petition had highlighted that in order to comply with its Solar RPO shortfall for previous years and also to comply with the future targets, it needs to procure ~5000 MW of Solar power in next two years, of which, about 3000 MW of Solar capacity has been planned through MSKVY.
7. Further, MSEDCL cited that on various occasions, the tenders floated by it under MSKVY have been undersubscribed. In the present Petition it has highlighted that it has tendered about 6500 MW of solar projects under MSKVY, however, it received bids for only 1873 MW capacity and so far, it has been able to contract only 527 MW of Solar projects.
8. The Commission, recognizing the hardship of MSEDCL, in its Order dated 29 October 2020 in Case No. 189 of 2020 principally approved the proposal of MSEDCL, however, the Commission opined that there could be certain operational challenges which shall be addressed before inviting the bids. The Commission gave the following dispensation in the said Order:

“10. The Commission acknowledges the proactive proposal of MSEDCL to accelerate the bidding process under MSKVY and is principally inclined towards the proposal of MSEDCL to conduct Open Tender i.e. continuous re-bidding till targeted capacity is fulfilled, for procurement of Solar power under MSKVY. However, the Commission postulates that, as traced below, there may be certain operational challenges which needs to be addressed while inviting the bids on monthly basis:

10.1 As per methodology proposed by MSEDCL, initial tender (RfS) document will form base for all future continuous bidding process to be conducted in each month till targeted capacity is fulfilled. Such process may take several months. In case, there is any amendment or issuance of new guideline by the Central Govt. or any other substantial market development which requires revisions in RfS, there needs to be provision for the same.

10.2 Due to proposed methodology of continuous bidding till fulfillment of targeted capacity, there is possibility that bidders will quote only the ceiling tariff which will vitiate the intent of competitive bidding. To avoid this, MSEDCL may adopt the approach of other agencies like Solar Energy Corporation of India (SECI) wherein it initially invites the Expression of Interest (EOI) to assess the scale of bids which may be received and if EOI received is less than the anticipated capacity, then bids are called for less capacity (usually 80%) of the EOI received. This process may safeguard against any gaming/cartel formation.

10.3 MSEDCL has proposed the option of providing land to bidders only if 3 months of continuous bidding process do not provide satisfactory response. However, MSEDCL already has enough experience of low response in last 2 years, hence instead of waiting for 3 months, if land is available, MSEDCL may include it upfront from day one. MEDA has submitted that MSEDCL may enhance the lease rent rate of the land to be developed for solar projects. As stated in above para 9, the Commission opines that such rates shall be offered by the utility as per their own commercial analysis.

10.4 It is also important to incorporate changes in bid conditions to reflect learning from recent disputes adjudicated by the Commission in respect of competitively bided solar projects. One of such prominent disputes is DC capacity to be considered for allowing Change in Law compensation. Such dispute has arisen because of industrial practice of providing oversized DC module capacity vs-a-vis contracted AC capacity. Although, providing DC oversizing is commercial decision of bidder, while allowing compensation towards Change in Law, inefficiencies on account of such decision cannot be allowed as passthrough. Hence, MSEDCL in its RfS document shall specify the formula for DC capacity to be considered for Change in Law computation as follows:

$$\text{DC Capacity for Change in Law} = \text{AC Contracted Capacity} \times (\text{Declared CUF/Minimum CUF stipulated in RfS})$$

10.5 Further, MSEDCL shall also include formula for arriving at per unit impact of such Change in Law compensation to be recovered over the tenure of PPA. While

providing for such formula, appropriate interest rate (which should be lower than DPC) shall be allowed on differed payment of Change in Law compensation. This inclusion shall assist in providing clarity to the potential bidders and will minimize future litigations.

11. In view of above, the Commission directs MSEDCL to make necessary changes in RfS document to address above issues and submit through fresh Petition for approval of the Commission. During such process, MSEDCL shall also submit operational details of already commissioned projects under MSKVY and whether they have faced or facing any operational difficulty, if any. Such review of commissioned projects would only assist in modifying the RfS document so as to attract more bidders in future bid process.”

9. MSEDCL has filed the instant Petition addressing the issues highlighted by the Commission in the Order dated 29 October 2020. The Commission has following observations in respect to the submissions of MSEDCL in the present Petition:

9.1 With regard to incorporating any recent amendments to the bidding guidelines in Bid Document to be used for open tender, MSEDCL has submitted that it will incorporate them in the subsequent upcoming tender. MSEDCL has also submitted that it will come before the Commission for approval of any deviations from the Guidelines. The Commission notes this submissions of MSEDCL.

9.2 Regarding inviting EOI, MSEDCL has submitted that it will be inviting tenders of different capacities for different circles/districts which will be based on their agriculture loads. MSEDCL has also highlighted that based on its experience the EOI mode may not give the desired results and will also consume time. The Commission notes MSEDCL's submission. The Commission had suggested this approach so as to have more competition amongst the prospective bidders. However, considering practical difficulties and MSEDCL's intent to complete the bidding process as early as is possible, and further MSEDCL's assurance that cartelisation would not happen, the Commission allows MSEDCL to go for direct bidding process instead of inviting EoI first and ascertaining capacity to be bidden. Further, the Commission is of the view that after realizing certain practical experience of inviting Open Tenders under MSKVY, if required, MSEDCL may consider exploring the option of inviting EOI.

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 determined 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.

- 9.4 Regarding formula for DC capacity to be considered for Change in Law computation, MSEDCL has complied with the Commission's direction and has included the formula in the Draft PPA.
- 9.5 Further, MSEDCL has included the formula for computation for arriving at per unit impact for such Change in Law compensation. MSEDCL has claimed that the formula proposed by it is in line with what have been administered by the Commission in its various recent Orders pertaining to compensation for Change in Law. However, the Commission notes that MSEDCL's proposed methodology considers impact of increase in expenses on account of Change in Law as increase in capital cost and accordingly computes its impact on tariff using RE Tariff Regulations by considering funding of such expenses through loan only and thereafter apply RE Tariff Regulations. The Commission in its recent Orders has clearly stated that increased expenses on account of Change in Law needs to be allowed on reimbursement basis and parameters of RE Tariff Regulations cannot be used as various input parameters such as capital cost is not disclosed in the bid. Also, MSEDCL has proposed compensation of Rs. 0.005/kWh for ever increased expenses of Rs.1 lakh/MW due to Change in Law which is computed based on CUF of 19%. In recent bidding process, most of the bidders have declared CUF above the 19% minimum required and is varying from project to project. Under such circumstances, having fixed rate of compensation and that too at lower than declared CUF is not correct. Therefore, formula suggested by MSEDCL is not in accordance with methodology prescribed by the Commission and hence cannot be allowed. Further, such methodology for computation of Change in Law impact was required to be stipulated as the then applicable guideline or bid document does not have any provision dealing with computation of Change in Law impact in per unit terms, therefore the Commission has to use its regulatory powers to lay down the principles for computing Change in Law impact.
- 9.6 However, recently notified Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind Solar Hybrid Projects dated 14

October 2020 has provided following formula for computing per unit impact of Change in Law:

“Let Financial Impact of Change in Law = P;

Then, the modification in PPA tariff (M.T.)for compensating the financial impact is given by

$$M.T. = Y/X$$

Where, X = estimated monthly electricity generation (in kWh) = (1/12) [contracted capacity of the RE power plant as per PPA (in MW) x Annual CUF declared in PPA (in %) x 8760 hours x 10]; and

$$Y=[(P \times M_r)\{(1+M_r)^n\}] \div [\{(1+M_r)^n\}- 1]$$

where, n = no. of months over which the financial impact has to be paid; and M, = monthly rate of interest = ; where R = annual rate of interest on loan component (in %) as considered by Central Electricity Regulatory Commission (CERC) in its Order for Tariff determination from Renewable Energy Sources for the year in which the project is commissioned. In absence of relevant CERC Orders for the concerned year, the interest rate shall be average interest rate plus 200 basis points above the average State Bank of India Marginal Cost of Funds based leading rate (MCLR of one year tenor) prevalent during the last available six months for such period.

Further, the M T. shall be trued up annually based on actual generation of the year so as to ensure that the payment to the Generator is capped at the yearly annuity amount.”

- 9.7 Although above formula is applicable for Hybrid RE projects, same can be incorporated for Solar projects under MSKVY by making necessary changes with respect to interest rate and allowable compensation. Accordingly, MSEDCL shall incorporate following provisions related to Chang in Law compensation in its bid Document:

Allowable Change in Law Compensation (P)= Actual per MW variation in expenses on account of Change in Law event x Allowable DC capacity for Change in Law compensation;

Then, the modification in PPA tariff (M.T.) for compensating the financial impact is given by

$$M.T. = Y/X$$

Where, X = estimated monthly electricity generation (in kWh) = (1/12) [contracted capacity of the RE power plant as per PPA (in MW) x Annual CUF declared in PPA (in %) x 8760 hours x 10]; and

$$Y=[(P \times M_r)\{(1+M_r)^n\}] \div [\{(1+M_r)^n\} - 1]$$

where, n = no. of months over which the financial impact has to be paid; and M,= monthly rate of interest = ; where R = annual rate of interest equal to 125 basis points above the average State Bank of India Marginal Cost of Funds based leading rate (MCLR of one year tenor) prevalent during the last available six months for such period.

Further, the M T. shall be trued up annually based on actual generation of the year so as to ensure that the payment to the Generator is capped at the yearly Change in Law amount.

- 9.8 With respect to operational difficulties projects already commissioned under MSKVY, MSEDCL has submitted that as those projects have been commissioned recently, it will be premature to comment upon the operational difficulty encountered under it. The Commission notes MSEDCL's submission.
10. Further, the Commission notes that MSEDCL has sought deviation to the MNRE's Guidelines for Development of Decentralised Solar Power Plants dated 13 December 2019, with respect to the minimum CUF of 15% as mandated in guidelines to 19%. This deviation is proposed to maintain consistency with the previous tenders under MSKVY. Also, selected bidders under those earlier bidding process have declared CUF above 19%. Therefore, the Commission accords its approval to the minimum CUF of 19% instead of 15%.
11. The Commission underscores that in the MNRE's Guidelines for Development of Decentralised Solar Power Plants dated 13 December 2019, though there is no reference of 'Appropriate Commission' to be approached for seeking any deviation from the guidelines, as provided in other guidelines like, Solar, Wind, Wind-Solar hybrid etc., the Commission is of the opinion that since the deviation is important for implementation of bidding process, and project is being setup in Maharashtra for sale to MSEDCL, the Commission is approving deviation sought in the present matter.
12. Accordingly, subject to changes suggested in foregoing paragraphs, the Commission allows MSEDCL to proceed with bidding process under MSKVY through continuous bidding process.

13. Hence, the following Order.

ORDER

1. Case No. 214 of 2020 is partly allowed.
2. Maharashtra State Electricity Distribution Co. Ltd. to make changes in bid document as directed in para 9.7 above.
3. Subject to changes suggested to be incorporated in bid documents, Maharashtra State Electricity Distribution Co. Ltd. is allowed to proceed with continuous bidding process for selection of bidder under Mukhyamantri Saur Krishi Vahini Yojana.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

