

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 67 of 2022

Petition for adoption of the Tariff discovered through the Competitive Bidding process held for long term procurement of 15.85 MW wind power from the wind generators whose Energy Procurement Agreements (EPAs) with MSEDCL have expired.

Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) : Petitioner

1 M/s CLP Wind Farms (Khandke) Private Limited
2 M/s Vostok Fareast Securities Private Limited
3 M/s Bengal Cardboard Industries & Printers Private Limited.
4 M/s Silverline Investment Company Private Limited
5 M/s KPL International Ltd. } : Respondents

Coram

Sanjay Kumar, Chairperson

I.M. Bohari, Member

Mukesh Khullar, Member

Appearance:

For the Petitioner : Ms. Kavita Gharat, CE (RE)

For the Respondent : Ms. Bitika Kaur (Adv.)
Ms. Sheetal Chavan (Adv.)
Mr. Bhasker Panangadan (Rep)

ORDER

Date: 07 June 2022

1. Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) has filed the present Petition on 30 March 2022 seeking approval for adoption of tariff for long term procurement

of 15.85 MW wind power from the wind generators whose Energy Purchase Agreement (EPA) with MSEDCL have expired.

2. MSEDCL's major prayers are as follows:

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- a) *To admit the Petition as per the provisions of the Regulation 19 of MERC (RPO, Its Compliance and Implementation of REC Framework) Regulations, 2019.*
 - b) *To adopt the Tariff discovered through competitive bidding process held by MSEDCL for Procurement of 15.85 MW wind Power from Intra-state wind projects whose EPAs with MSEDCL are expired or going to expire till 31.03.2023.*
 - c) *To accord approval for signing of the Power Purchase Agreement with the successful bidders at the competitively discovered Tariff w.e.f from date of expiry of existing EPA/PPA/STPPA/OA or date of signing of PPA whichever is later.*
 - d) *To allow MSEDCL to claim such procurement for the fulfilment of RPO of MSEDCL.*
- ...”

3. MSEDCL in its Case has stated as follows:

- 31 The Commission vide its Order dated 09 April 2019 in Case No. 50 of 2019 had directed MSEDCL to procure wind power through competitive bidding route from wind power projects under Group II, III and IV whose EPAs with MSEDCL have expired and allowed MSEDCL to fix the ceiling rate after due diligence at their end, subject to condition that said tariff be not more than the rates approved for the short-term procurement of wind energy i.e. Rs. 2.52 per unit.
- 32 Further, the Commission vide Order dated 05 July 2019 in Case No. 110 of 2019 accorded its approval for deviation sought by MSEDCL in the Standard Bidding Guidelines dated 8 December 2017 for procurement of 500 MW wind power from wind generators whose EPAs have expired and directed MSEDCL to approach the Commission for adoption of final Tariff after completion of Competitive Bidding Process.
- 33 Subsequently, MSEDCL had filed the Petition (Case No.21 of 2020) on 22 January 2020 under Regulation 19 of the MERC (Renewable Purchase Obligations, its Compliance for removal of difficulty and Implementation of REC Framework) Regulations, 2019 (RPO-REC Regulations 2019) seeking relaxation in penalty Clauses under the Regulation to the extent of non- fulfilment of RPO targets by FY 2022-23. Further, MSEDCL had sought increase in ceiling tariff for procurement of power from wind generators post expiry of EPA.

The Commission in its Order in Case No. 21 of 2020 dated 01 January 2021 opined that the ceiling rate shall be determined 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.

- 34 Details of the EPAs with wind generators expiring in the recent period is shown in the Table below:

| Technology | FY 19-20 | FY 20-21 | FY 21-22 | FY 22-23 | FY 23-24 | Total |
|------------|----------|----------|----------|----------|----------|-------|
| Wind (MW) | 495.3 | 220.25 | 141 | 43.57 | 223.45 | 1123 |

- 35 MSEDCL floated following tenders for procurement of power from projects post Expiry of Wind EPA. Despite re-tendering of capacities and huge advertisement, subscription was almost negligible.

| Sr. No. | Tender Type | Capacity (MW) | Tender Date | Ceiling Tariff (Rs./kWh) | Capacity of bids received (MW) | Contracted Capacity (MW) | Discovered Tariff (Rs./kWh) |
|--------------|-------------|---------------|-------------|--------------------------|--------------------------------|--------------------------|-----------------------------|
| 1 | Post Expiry | 250 | 12.04.2018 | 2.52 | 87 | 81 | 2.51 to 2.52 |
| 2 | Post Expiry | 500 | 20.12.2018 | 1.97 | 0 | 0 | NA |
| 3 | Post Expiry | 500 | 04.06.2019 | 2.52 | 7 | 7 | 2.52 |
| 4 | Post Expiry | 200 | 27.12.2019 | 2.52 | 1.25 | 1.25 | 2.52 |
| 5 | Post Expiry | 200 | 11.09.2020 | 2.52 | 0 | 0 | 0 |
| 6 | Post Expiry | 500 | 20.08.2021 | 2.65 | 170 | 157.70 | 2.65 |
| Total | | 2150 | | | 265.25 | 265.25 | |

- 36 Recently, in March 2021, during the auction for SECI's Tranche-X Wind tender, the lowest wind tariff discovered is Rs. 2.77 per unit. The ceiling tariff for MSEDCL's Wind tender for post expiry EPA needs to be less than the discovered tariff for new projects. Hence, MSEDCL decided to keep ceiling tariff as Rs. 2.65 per unit.
- 37 Earlier, on 20 August 2021, MSEDCL floated tender for procurement of 500 MW wind power from wind generators post expiry of EPA. The Commission vide its Order dated 16 February 2022 in Case No. 08 of 2022 has accorded approval for procurement of 157.9 MW on long term basis from wind generators at the discovered tariff rate of Rs. 2.65 per unit and allowed MSEDCL to enter into Power Purchase Agreement with the successful bidder for a period of Twelve (12) years and the same shall be eligible towards fulfillment of MSEDCL's Non-Solar RPO targets. As per approval, MSEDCL is in process of contracting 157.9 MW wind power.
- 38 To tie up more power, MSEDCL on 26 November 2021 floated the tender for Procurement of 342 MW (500-157.9) wind Power from Intra-state wind projects whose EPAs with

MSEDCL are expired or going to expire till 31 March 2023, with ceiling tariff of Rs. 2.65 per unit and PPA tenure of 12 years along with the deviations approved by the Commission vide Order dated 05 July 2019 in Case No. 110 of 2019.

- 39 The pre-bid meeting in respect of the said tender was conducted on 02 December 2021 and replies to pre-bid queries were uploaded on 21 December 2021. The last date of submission of bid was 13 December 2021 which was extended to 30 December 2021. Technical bids were opened on 05 January 2022. Five (5) bids were received with a total cumulative capacity of 15.85 MW and are technically qualified. The details are as below:

| Sr. No. | Name of Bidder | Bid capacity of the Bidder (MW) | Commissioning date | Date of expiry of EPA/STPPA/OA |
|---------|--|---------------------------------|---|---|
| 1 | CLP Wind Farms (Khandke) Private Limited) | 12.8 | 17.04.2009/28.05.2009/ 03.06.2009/12.06.2009 | 16.04.2022/27.05.2022/ 02.06.2022/11.06.2022 |
| 2 | Vostok Fareast Securities Private Limited | 0.6 | 20.12.2006 | 31.12.2021 |
| 3 | Bengal Cardboard Industries & Printers Private Limited | 0.6 | 01.11.2006 | 31.10.2021 |
| 4 | Silverline Investment Company Private Limited | 0.6 | 01.11.2006 | 31.10.2021 |
| 5 | KPL International Ltd | 1.25 | 25.03.2006 | 31.03.2022 |

- 3.10 Financial bids for 5 qualified bidders were opened on 13 January 2022, details of the same are given in table below:

| Sr. No. | Name of Bidder | Bid capacity of the Bidder (MW) | Bid Rate in Rs/Unit |
|---------|--|---------------------------------|---------------------|
| 1 | CLP Wind Farms (Khandke) Private Limited) | 12.8 | 2.65 |
| 2 | Vostok Fareast Securities Private Limited | 0.6 | 2.65 |
| 3 | Bengal Cardboard Industries & Printers Private Limited | 0.6 | 2.65 |
| 4 | Silverline Investment Company Private Limited | 0.6 | 2.65 |
| 5 | KPL International Ltd | 1.25 | 2.65 |

- 3.11 As the total quoted quantum was only 15.85 MW against the 342 MW Tender Capacity, e-reverse auction was not possible for this Tender.
- 3.12 The rate offered by successful bidders in this tender i.e. Rs. 2.65 per unit would be economical to meet the RPO target of MSEDCL & ultimately will benefit the common consumers of MSEDCL.
- 3.13 MSEDCL in this Petition prayed to the Commission for adoption of Tariff for 15.85MW wind Power discovered through competitive bidding process under Section 63 of the Electricity Act, 2003.

4. **Respondent No.2, 3, 4 &5 in their Reply dated 28 April 2022 and 30 April 2022 submitted following:**

- 4.1 The replies filed by Respondents 2, 3, 4 & 5 is same except dates of contracts.
- 4.2 During the pendency of bidding process, Respondents applied for short term PPA renewal. However, MSEDCL rejected the short term PPA application. As PPAs have not been signed, Respondents exported the power to MSEDCL without valid PPA.
- 4.3 For avoiding generation loss, Respondents requested revising the prayer clause (C) in the Petition, as below:

*C. To accord approval for signing of the Power Purchase Agreement with the successful bidders at the competitively discovered Tariff w. e. f from date of expiry of existing EPA/PPA/STPPA/OA or date of signing of PPA whichever is ~~later~~ **earlier**.*

5. **MSEDCL in its Rejoinder to Reply of Respondent No. 2, 3, 4 & 5 dated 17 May 2022 stated as follows:**

- 5.1. With regards to suggested change in Prayer clause, MSEDCL submitted that the said prayer is based on the provisions of RFS and Draft PPA documents. The relevant excerpts of the RFS and draft PPA document is reproduced as under:

RfS:

1.3 ELIGIBLE PROJECTS

1.3.2 The intra – state projects which are already supplying power to MSEDCL or any other Discom under Long term EPA (FIT), who’s such EPAs has already been expired or due to expire on or before 31.12.2022. If such wind power projects are presently wheeling/selling the power under Open Access/Short Term Power Purchase Agreements, then such projects are also eligible to participate in the tender. Such successful bidders shall supply power from their projects based on the terms of the new PPA from the date of new PPA or after the expiry of the existing EPA, whichever is later.

Draft PPA:

Definition:

“Effective Date” shall mean date of execution of new PPA or date of expiry of FIT EPA or existing Short term PPA or existing Open Access contract whichever is later;

A pre-bid meeting was held on dated 02 December 2021 and enough clarity was given regarding the said provision of RFS.

5.2. Denial of short-term sale application of the Respondents No.2 to 5 is completely different subject and cannot be part of present proceedings and hence merits no reply. Accordingly, the contention of the Respondent to revise the prayer Clause (C) is not tenable.

5.3. The Respondents No.2, 3, 4 & 5 participated in the tendering process, got the benefits of the process, got selected, and are now raising objection which is not tenable and hence Respondents are estopped from raising such pleas by the principle of estoppel.

6. **Respondent No.1 in its Reply dated 18 May 2022 submitted as below:**

61 M/s CLP Wind Farms (Khandke) Private Limited has accepted the terms and conditions as provided in the Petition and is agreeable to executing the PPA with MSEDCL in accordance with the accepted terms.

62 From 3 January 2022, the name of CLP Wind Farms (Khandke) Private Limited has changed to Apraava Wind Energy (Khandke) Private Limited. CLPWFPL had made similar submissions regarding the name change before the Commission along with the request to take the name change on record in Case No. 8 of 2022.

63 The Commission vide its Order dated 16 February 2022 in Case No. 8 of 2022 was pleased to record as follows as regards the name change of CLP Wind Farms (Khandke) Private Limited:

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13. *Having ruled as above, the Commission notes that during this proceeding, one of the bidder i.e. M/s CLP Wind Farm (Khandke) Pvt. Ltd. has requested the Commission to take on record change in its name. MSEDCL in its reply dated 27 January 2022 stated that on its request to provide necessary documents related to name change, M/s CLP Wind Farm (Khandke) Pvt. Ltd. has sought three months' time for submitting necessary documents. As such this issue seems to be premature and hence the Commission is not inclined to make any observation on the same. Any name change request may be dealt with as per applicable law.”*

CLP Wind Farms (Khandke) Private Limited submitted that similar directions be passed in present matter.

7. **At the e-hearing through video conferencing held on 20 May 2022:**

- 7.1. The Representative of MSEDCL narrated the sequence of events of tendering process and emphasized that the discovered tariff of Rs.2.65 per unit for Wind Power (whose earlier EPAs at generic tariff has been expired) is competitive and reflective of market conditions. Accordingly, MSEDCL requested the Commission to adopt such market discovered tariff.
- 7.2. Advocate of M/s CLP Wind Farms (Khandke) Pvt. Ltd. (Sr.No.1) submitted that it supports the Petition of MSEDCL. The representative of CLP informed that on 3 January 2022 name of M/s CLP Wind Farms (Khandke) Pvt. Ltd. has been changed to Apraava Wind Energy (Khandke) Private Limited. It was urged that issue of change of name be considered while deciding this Petition. Similar request was considered by the Commission in its Order dated 16 February 2022 in Case No.8 of 2022.
- 7.3. Representative of Respondent No.2, 3, 4, & 5 mentioned that for avoiding generation loss, amendment in prayer clause (c) be considered by the Commission.
- 7.4. In response to averments raised, MSEDCL submitted that it has framed prayer clauses based on RfS and Draft PPA documents. Further, with regards to change of name, the issue is procedural and will be dealt as per prevalent practice.

Commission's Analysis and Rulings

8. This Petition has been filed for adoption of tariff of Rs. 2.65 per unit discovered through competitive bidding for procurement of wind power from wind generators whose EPAs with MSEDCL have expired. Before conducting such competitive bidding process, MSEDCL has approached the Commission on several occasions on the issue of mode of procurement, ceiling tariff and deviation in bidding documents. Relevant Orders in these matters are summarized below:
 - 8.1. MSEDCL through its Petition in Case No. 50 of 2019 had approached the Commission for allowing MoU based power procurement from Wind Generators whose EPA with MSEDCL are expired. In that matter vide Order dated 9 April 2019, the Commission has directed MSEDCL to undertake such power procurement through competitive bidding only at a ceiling rate to be decided by MSEDCL after proper due diligence at their end but the same shall not be more than the rates (Rs. 2.25 – 2.52 P.U.) approved for the short-term procurement of wind energy.
 - 8.2. Thereafter, MSEDCL filed Petition in Case No.110 of 2019 seeking approval for deviation in bidding guidelines on the issues of minimum installed capacity, minimum bid capacity, relaxation from Performance Bank Guarantee & Financial Closure, relaxing minimum CUF requirement and providing clarity on repowering of Wind Turbines. Considering the fact that

said bidding process is to be conducted for already commissioned project whose EPA with MSEDCL has expired, the Commission vide Order dated 5 July 2019 has allowed such deviation sought by MSEDCL.

- 8.3. In Case No. 21 of 2020, amongst other issues related to other RE technologies, MSEDCL has requested to allow increase in ceiling rate for post expiry Wind power procurement as its repeated bidding attempts have failed to attract Wind generators. On this issue while reiterating its stand that ceiling tariff has to be decided by the Distribution Licensee after due diligence and the Commission will consider its competitiveness only at the time of tariff adoption, the Commission in that Order dated 1 January 2021 has made following suggestions on the issue of ceiling tariff:

“

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”

- 8.4. Thus, after initial capping of tariff to approved tariff for short term power procurement, after considering the fact that MSEDCL’s repeated attempt of bidding did not give fruitful results, the Commission advised MSEDCL to consider rate discovered for new wind project as ceiling tariff.
9. In present Petition, MSEDCL at para 3.6 has demonstrated that its repeated attempts of procurement of such Wind power from EPA expired generators have resulted into cumulative bid capacity of 265.25 MW as against 2150 MW capacity called through bidding process.
10. Considering ceiling tariff of Rs. 2.52 per unit as a reason for low response, MSEDCL has decided to increase the ceiling rate to Rs. 2.65 per unit. Bidding process conducted based on such ceiling rate of Rs. 2.65 per unit.
11. Recently, the Commission vide its Order dated 16 February 2022 in Case No. 08 of 2022 has accorded approval for procurement of 157.9 MW on long term basis from wind generators at the discovered tariff rate of Rs. 2.65 per unit.
12. In the present Case, bidding process conducted based on ceiling rate of Rs. 2.65 per unit and

received five (5) bids of 15.85 MW which are found technically eligible:

| Sr. No. | Name of Bidder | Bid capacity of the Bidder (MW) | Bid Rate in Rs/Unit |
|---------|--|---------------------------------|---------------------|
| 1 | CLP Wind Farms (Khandke) Private Limited) | 12.8 | 2.65 |
| 2 | Vostok Fareast Securities Private Limited | 0.6 | 2.65 |
| 3 | Bengal Cardboard Industries & Printers Private Limited | 0.6 | 2.65 |
| 4 | Silverline Investment Company Private Limited | 0.6 | 2.65 |
| 5 | KPL International Ltd | 1.25 | 2.65 |

13. As bids received are lower than the bid capacity of 500 MW, e-reverse auction was not undertaken, and above quoted rate thus become final.
14. The Commission notes that MSEDCL has conducted transparent bidding process after seeking approval for deviation from bidding guidelines. Further, tariff of Rs. 2.65 per unit discovered through competitive bidding process is lower than Rs. 2.69 per unit discovered by SECI in September 2021 for Tranche-XI Wind tender. Although such tariff comparison is not applicable to applicable comparison as SECI's bidding is for new Wind Generators whereas MSEDCL's bid is for existing Wind Generators with expired EPA, but still for MSEDCL as a Distribution Licensee any of this energy would meet its non-Solar RPO and hence tariff of Rs. 2.65 per unit would be beneficial to MSEDCL to that extent. The Commission also notes that said discovered tariff is higher than Rs. 2.52 per unit discovered earlier for similar type of Wind Generators. But Wind Generators are not responding to MSEDCL's repeated bids at such lower tariff of Rs. 2.52 per unit. Under such circumstances, the Commission considers tariff of Rs. 2.65 per unit discovered through present competitive bidding process is reflective of market trends.
15. The Commission also notes that PPA tenure of 12 years has been worked out by considering useful life of Wind Turbine as 25 years, which is as per RE Tariff Regulations, and 13 years of EPA period which has expired. Accordingly, in line with the mandate under Section 63 of the Electricity Act 2003, the Commission deems it fit to adopt and approve the tariff as highlighted in above para 12 for 15.85 MW cumulative Wind projects on long term basis.
16. Having ruled as above, the Commission notes that during this proceeding, Respondent No.1 M/s CLP Wind Farm (Khandke) Pvt. Ltd. has requested the Commission to consider taking on record change in its name subsequent to bidding. M/s CLP Wind Farm (Khandke) Pvt. Ltd referred to the Commission Order dated 16 February 2022 in Case No.8 of 2022. During the course of hearing, MSEDCL stated that the change of name request of the Respondent will be dealt by MSEDCL as per prevalent practice. As noted earlier by the Commission in its Order dated 16 February 2022, this issue seems to be premature and hence the Commission is not inclined to make any observation on the same. Any name change request may be dealt with as per applicable law.

17. Further, Respondent No.2, 3, 4 and 5 are praying for amendment in Prayer Clause (c) of the Petition, as follows:

C. To accord approval for signing of the Power Purchase Agreement with the successful bidders at the competitively discovered Tariff w. e. f from date of expiry of existing EPA/PPA/STPPA/OA or date of signing of PPA whichever is ~~later~~ earlier.

In this regard, the Commission notes that such request cannot be considered post completion of bidding process as published RfS and Draft PPA documents during bidding process clearly stipulated that contract under this bidding process will be effective from date of expiry of existing EPA/PPA/STPPA/OA or date of signing of PPA, whichever is later. Hence, bidders have consciously submitted their bid after knowing fully about effective date of PPA. Now allowing such change post bidding process will vitiate bidding process. Hence, such request cannot be allowed.

18. Further, issue of non-consideration of short term power offered by Respondents is not subject matter of present petition and cannot be considered in present proceeding.
19. Hence, the following Order.

ORDER

- 1. Case No. 67 of 2022 is allowed.**
- 2. The Commission accords its approval for procurement of 15.85 MW on long term basis from wind generator as stated in Para 12 and allows MSEDCL to enter into Power Purchase Agreement with the successful bidder for a period of Twelve years.**
- 3. The Wind Power procured from these projects shall be eligible towards fulfilment of Maharashtra State Electricity Distribution Co. Ltd.'s Non-Solar RPO for the respective periods.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson

(Abhijit Deshpande)
Secretary

