

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE NO. 168 of 2019

Case of Maharashtra State Electricity Distribution Co. Ltd to review Order in Case No. 64 of 2019, seeking approval for adoption of tariff discovered for Long Term Procurement of 1170 MW solar power under 'Mukhyamantrisaur Krishi Vahini Yojana'.

Maharashtra State Electricity Distribution Co. Ltd

.....Petitioner

And

- 1) Avaada Energy Pvt. Ltd,
- 2) Green Horse Solar Private Ltd,
- 3) KosolEnergie Pvt. Ltd,
- 4) IBC Solar Ventures India B.V.,
- 5) Sukhbir Agro Energy

..... Impleaded Respondent

Appearance

For the Petitioner	: Smt. Kavita Gharat
For the Impleaded Respondent No.1	: Shri. Rajiv Mestry
For the Impleaded Respondent No.2	: Shri. Asaman Gautam
For the Impleaded Respondent No.3	: None
For the Impleaded Respondent No.4	: None
For the Impleaded Respondent No.5	: None

Coram

I.M. Bohari, Member
Mukesh Khullar, Member

ORDER

Date: 9 August, 2019

1. Maharashtra State **Electricity** Distribution Co. Ltd (**MSEDCL**) has filed this Case dated 24 July, 2019 to review Order dated 7 June, 2019 in Case No. 64 of 2019 (said Order) seeking approval for adoption of tariff discovered for Long term procurement of 1170 MW solar power under 'Mukhyamantri saur Krishi Vahini Yojana'.

2. **Main Prayers of MSEDCL are as follows:**

- a) To admit the Petition as per the Sections 63 & 94 (1)(f) of The Electricity Act, 2003.
- b) To consider the submissions made by the Petitioner and consider the same positively while deciding the Petition as well as for further actions;
- c) To adopt the tariffs discovered through competitive bidding in respect of 1160 MW capacity of solar power projects as stated in para 5 of this petition

3. MSEDCL in its Petition has stated as under:

- 3.1 MSEDCL filed a Petition on 13 March, 2019 in Case No. 64 of 2019 for adoption of tariff in the range of Rs. 3.16 to Rs. 3.30 per unit which were discovered in the competitive bidding process for a cumulative capacity of 1170 MW Solar Power projects to be developed under ‘Mukhyamantri Saur Krishi Vahini Yojana’ in order to meet MSEDCL’s Solar Renewable Purchase Obligations (RPO).
- 3.2 The Commission vide its said Order had directed MSEDCL to renegotiate the tariff with the bidders. In compliance of the directives given by the Commission, MSEDCL invited all successful bidders for renegotiation of Tariff on 17 June, 2019 to bring the same in the range of tariffs that has been adopted by the Commission earlier in its Order dated 27 November, 2018 in Case No. 277 of 2018 (the range of Rs.3.09 to Rs.3.15 per unit). In the said meeting except for M/s Kosol Energie Pvt. Ltd., none of the bidders agreed to renegotiate the tariff. The result of renegotiation is as follows :

Sr No	Name of Bidder	Cumulative Bid Capacity (MW)	Original Quoted tariff (Rs/unit)	Negotiated tariff (Rs/unit)
1	Avaada Energy Pvt. Ltd	1000	3.30	No Change
2	Green Horse Solar Pvt.Ltd	100	3.30	No Change
3	IBC Solar Ventures India B.V	30	3.29	No Change
4	Sukhbir Agro Energy Ltd	30	3.28	No Change
5	Kosol Energie Pvt.Ltd	10	3.16	3.15

- 3.3 M/s KosolEnergie Pvt. Ltd. agreed to renegotiate the tariff from Rs. 3.16 per unit to Rs. 3.15 per unit for supply of power from its 10 MW solar power project. Therefore, execution of PPA with M/s Kosal Energies Pvt. Ltd. is under process for 10 MW solar power capacity as per the said Order.
- 3.4 The tariffs discovered in recent tenders floated on 5 October, 2018 by MSEDCL for procurement of solar power of 1000 MW were in the range of Rs. 2.74 to Rs. 2.75 per unit at STU periphery from solar PV projects connected at inter/intrastate transmission network. MSEDCL has converted this STU periphery tariff to 11 kV distribution level by adding the Maharashtra intra-state transmission charges and 33 KV level distribution/wheeling charges and losses as under:

Particular	Unit	Rate	Remarks
Tariff at STU Periphery from Solar Power Project	Rs/kWh	2.74	Tariff as determined in MSEDCL 1000 MW Tender dated April 2018 and as adopted by the Commission
InSTS Loss (3.30%)	Rs/kWh	0.09	Page 15 & 20 of MERC Order in Case No. 265 of 2018 - Revision of Intra-State Transmission Tariff determined in Order dated 22 July, 2016 in Case No. 91 of 2016 in pursuance of Mid-term Review process
InSTS Charges	Rs/kWh	0.29	
33kV Wheeling Loss (6%)	Rs/kWh	0.19	Page 467 of MERC Order in Case No. 195 of 2017 - MTR Petition of MSEDCL for Truing-up of Aggregate Revenue Requirement (ARR) of FY16 and FY17, Provisional Truing-up of ARR of FY18 and Revised Projections of ARR for FY19 and FY20
33kV Wheeling Charge	Rs/kWh	0.15	
Resultant Tariff	Rs/kWh	3.46	

- 3.5 The tariff discovered in the competitive bidding conducted by MSEDCL, for capacity of 1170 MW solar projects in various districts of Maharashtra to be connected at 11 kV level, is in the range of Rs. 3.16 to Rs. 3.30 per unit which is much lower than the resultant tariff of Rs. 3.46 per unit for solar projects connected at transmission level 132 kV and above or tariff discovered at STU periphery. Thus, the ceiling rate proposed by MSEDCL in the district wise tenders to procure cumulative 1170 MW power from 2 to 10 MW capacity solar projects to be connected at 11 kV level i.e. between Rs. 3.16 to Rs. 3.30 per unit are economically feasible and competitive.
- 3.6 Karnataka Renewable Energy Development Agency (KREDL) had floated a tender on 7 December, 2017 for development of 860 MW (AC) solar power projects in Karnataka to be implemented in 43 talukas/constituencies. As per the RFP, the minimum project capacity to be developed per Taluka/ Constituency was 3 MW (AC) and the maximum project capacity to be developed per Taluka / Constituency was 20 MW (AC). The tender documents specified that for generation capacity between 3 MW (AC) and 5 MW (AC), the interconnection to the nearest substation/delivery point shall be at the voltage level of 11 kV. Further, for generation capacity between 5 MW (AC) and 20 MW (AC), the Developer shall provide the interconnection to the nearest substation at the voltage level of 33 kV /66 kV/110 kV/220 kV. The tariff determined in the tender floated by KREDL was in the range of Rs. 2.94 per unit to Rs. 3.34 per unit with minimum project capacity offered by Bidders was 15 MW and maximum project capacity offered by Bidders was 20 MW with connectivity at 33 kV/ 66 kV/ 110 kV/220 kV. For 13 out of the 33 Talukas/ Constituencies, lowest tariff quoted by the successful bidder were higher than Rs. 3.15 per unit. While the tender floated by MSEDCL for development of 1400 MW capacity of solar projects in various districts of Maharashtra (wherein 1170 MW capacity projects were selected) provided for connectivity at 11kV, and hence the tariffs so determined through the bidding process i.e. in the range of Rs. 3.16 to Rs. 3.30 per unit are competitive and comparable with the tariff determined in similar KREDL's taluka wise solar tender with connectivity at 33 kV/66 kV/110 kV/220 kV.

- 3.7 Ministry of New and Renewable Energy, Government of India had issued a circular dated 25 January 2018 reaffirming its commitment of installing 100 GW of grid connected solar power projects in the country by 2022 from both ground mounted and rooftop projects. The MNRE in its circular had also directed all the states that the tariff discovered in one tender cannot be compared with the rates discovered in other tenders across India including the tenders floated by MSEDCL. MNRE had stated that the solar tariff discovered in one state in a bid floated in a particular period may not be identical to the tariff discovered in some other project as the tariff depends on multiple factors including solar insolation level which varies from place to place, cost of land, cost of financing and availability of power evacuation system etc. Therefore the tariffs discovered in the solar tenders of 1000 MW capacity (inter/intra state) floated by MSEDCL cannot be compared with the tariffs discovered in the tenders for 1400 MW solar power projects to be developed in 30 districts of Maharashtra in which solar projects with cumulative capacity of 1170 MW (intra-state) emerged as successful bidders.

Further the various solar tenders floated across India are typically for procurement of power from large scale solar projects (50 MW and above) which have the benefit of economies of scale and thus are able to offer lower tariffs and cannot be compared with solar projects of capacity 2 MW to 10/20 MW to be developed in Maharashtra.

- 3.8 Thus, the Tariffs discovered by MSEDCL through the competitive bidding process and as renegotiated with the successful solar bidders for solar project to be connected at 11 kV level, in the range of Rs.3.15 to Rs.3.30 per unit are feasible and competitive.

4. MSEDCL in its rejoinder dated 2 August, 2019 has stated as under:

Earnest Money Deposit (EMD) submitted by the bidders are expiring after 15 August, 2019. Avaada Energy Pvt.Ltd. has already requested MSEDCL to refund EMD. MSEDCL further stated that during the pendency of the Case if validity of EMD expires and the Commission accepts discovered tariff then there will not be any security mechanism available with MSEDCL.

5. At the hearing held on 7 August, 2019 the representative of MSEDCL reiterated its submission. The representative of Avaada Energy Pvt. Ltd and Green Horse Solar Private Ltd, stated that MSEDCL has already been informed regarding their inability to negotiate the tariff.

Commission's Analysis and Ruling:

6. MSEDCL has filed this Case for review, but has not specified any ground on which it has sought review of the said Order dated 7 June, 2019 in Case No. 64 of 2019.
7. The Commission notes that in the original matter in Case No. 64 of 2019, MSEDCL approached the Commission for adoption of the tariff discovered through competitive bidding which was in the range of Rs. 3.16 to Rs. 3.30 per unit for 1170 MW solar project to be developed under Mukhyamantri Saur Krishi Vahini Yojana. The Commission dealt with the Petition and issued a reasoned Order dated 7 June, 2019 as follows:

“ 26 In view of the above, rate proposed for adoption under present Petition is clearly not in accordance with recent rates discovered by MSEDCL and so adopted by this Commission by various Orders which includes the adoption of rates of Rs.3.10/unit under Mukhyamantri Saur Krishi Vahini Yojana. However, considering the importance of the Scheme and its benefit to the system and the farmers, the Commission thinks fit to direct MSEDCL to renegotiate the tariff with the bidders to bring the same in the range of tariffs as has been adopted by the Commission recently. In case the renegotiated tariffs are similar and in the range as per the adopted tariffs in Case No 277 of 2018 dated 27 November, 2018, the Commission deems the same approved and no new Petition needs to be filed.

27. Such negotiations may enable MSEDCL to procure part quantum of the tendered power from the generators who are willing to supply power at the rates which have been discovered in similar tender. This action is possible for MSEDCL as the tender for procurement is in stand alone / small capacities. This will ensure that part procurement will commence immediately. For balance quantum if necessary, MSEDCL may take further action by re-tendering the balance/ required quantity.

8. Pursuant to the above directives, MSEDCL invited all successful bidders for renegotiation of Tariff. Only M/s Kosol Energie Pvt. Ltd has agreed to renegotiate the tariff and reduced its quoted tariff from Rs. 3.16 per unit to Rs. 3.15 per unit for its 10 MW project. However, for remaining 1160 MW capacity, bidders have refused to reduce their quoted tariff.
9. The Commission in its earlier Order dated 27 November, 2018 in Case No 277 of 2018 has adopted tariff in the range of 3.09 to 3.15 per unit (weighted average of 3.13 per unit) which was discovered by MSEDCL through competitive bidding for 235 MW under Mukhyamantri Saur Krishi Vahini Yojana. Considering these rates, the Commission in the said Order dated 7 June, 2019 has directed MSEDCL to renegotiate tariff so that it can be brought in the range of earlier adopted tariff. However, barring M/s Kosol Energie Pvt. Ltd (10 MW), all other bidders with cumulative capacity of 1160 MW have refused to reduce the tariff.
10. Thereafter, instead of initiating re-tendering process, MSEDCL through this Petition is justifying higher discovered rate and has requested the Commission to adopt the same. While doing so, MSEDCL on one hand has quoted MNRE's letter which states that tariff discovered through bidding process in different States need not be compared as factors affecting rate may be different across the bids and on other hand, MSEDCL itself has compared its proposed rate of Rs. 3.30 per unit with its own recent discovered rate for 1000 MW STU connected bid and that discovered by KREDL to demonstrate that proposed rate of Rs. 3.30 per unit is reasonable.
11. In this regard, the Commission notes that MNRE's recommendation of avoiding comparison of solar tariff discovered through bidding process in different States at different point of time is on account of the fact that factors including solar insolation level which varies from place to place, cost of land, cost of financing and availability of power evacuation system etc. may be different in each of these bids. The Commission generally agrees with this view and hence, in its Original Order dated 7 June, 2019, it has compared discovered rate with rate

already adopted by it in Order dated 27 November, 2018 in Case No 277 of 2018 which was discovered by MSEDCL itself through competitive bidding and that too for similar size i.e 2 MW to 10 MW under Mukhyamantri Saur Krishi Vahini Yojana. Thus, the rates discovered by MSEDCL for similar schemes are required to be compared as there is no adverse development justifying the increase. Hence, there is no error in comparing rate adopted earlier by the Commission.

12. Further, the Commission also notes that role of the Commission in the process of tariff adoption under Section 63 of the Electricity Act, 2003 (EA) has been well laid down by the Hon'ble Supreme Court and Appellate Tribunal for Electricity (APTEL). In its Judgment dated 16 December, 2011 in Appeal No. 82 of 2011 (Essar Power Ltd. Vs UPERC and others), APTEL has categorically held that the Commission has to ensure that tariff discovered through competitive bidding process under Section 63 of the Electricity Act, 2003 is accordance with market conditions. Relevant part of APTEL Judgment is reproduced below:

“77. As indicated above, the bid process under Section 63 of the Act is entirely different from normal procurement of goods through competitive bidding process which is not governed by specific statutory scheme and guidelines. The bidding process under Section 63 is wholly based upon the objective of section 61 of the Act as well as the objectives of the Government of India guidelines. The Government of India guidelines have been framed to comply with the principles specified under Section 61 of the Act. The Government of India guidelines contained the mandate to safeguard the consumer's interest as well as to encourage competition, efficiency and economical use of the resources. Let us quote Section 63 of the Act for better understanding.

“63. Determination of tariff by bidding process.— Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

78. Thus the competitive bidding process as contemplated under Section 63 of the Act must meet the following mandatory statutory requirements:

- (a) Competitive bidding process under Section 63 must be consistent with the Government of India guidelines and Request for Proposal (RFP) including the finalized PPA approved by the State Commission*
- (b) The process must discover competitive tariff in accordance with market conditions from the successful bid – consistent with the guiding principles under Section 61 of the Act as well as the Government of India guidelines which strike a balance between the transparency, fairness, consumer interest and viability.”(Underline added)*

Further, Supreme Court in its Judgment dated 11 April, 2017 in the matter of *Energy Watchdog* has ruled that the Commission cannot act as a mere post office under Section

63 of the EA and it has to look into the merits of the tariff discovered. Relevant part of the Judgment is reproduced below:

“18. The construction of Section 63, when read with the other provisions of this Act, is what comes up for decision in the present appeals. It may be noticed that Section 63 begins with a non-obstante clause, but it is a non-obstante clause covering only Section 62. Secondly, unlike Section 62 read with Sections 61 and 64, the appropriate Commission does not “determine” tariff but only “adopts” tariff already determined under Section 63. Thirdly, such “adoption” is only if such tariff has been determined through a transparent process of bidding, and, fourthly, this transparent process of bidding must be in accordance with the guidelines issued by the Central Government. What has been argued before us is that Section 63 is a stand alone provision and has to be construed on its own terms, and that, therefore, in the case of transparent bidding nothing can be looked at except the bid itself which must accord with guidelines issued by the Central Government. One thing is immediately clear, that the appropriate Commission does not act as a mere post office under Section 63. It must adopt the tariff which has been determined through a transparent process of bidding, but this can only be done in accordance with the guidelines issued by the Central Government. Guidelines have been issued under this Section on 19th January, 2005, which guidelines have been amended from time to time. Clause 4, in particular, deals with tariff and the appropriate Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with clause 4.

19. It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff under Section 63, it functions de hors its general regulatory power under Section 79(1)(b). For one thing, such regulation takes place under the Central Government’s guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the guidelines, can it be said that the Commission’s power to “regulate” tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions. The first rule of statutory interpretation is that the statute must be read as a whole. As a concomitant of that rule, it is also clear that all the discordant notes struck by the various Sections must be harmonized. Considering the fact that the non-obstante clause advisedly restricts itself to Section 62, we see no good reason to put Section 79 out of the way altogether. The reason why Section 62 alone has been put out of the way is that determination of tariff can take place in one of two ways – either under Section 62, where the Commission itself determines the tariff in accordance with the provisions of the Act, (after laying down the terms and conditions for determination of tariff mentioned in Section 61) or under Section 63 where the Commission adopts tariff that is already determined by a transparent process of bidding. In either case, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power

to determine or adopt tariff. In fact, Sections 62 and 63 deal with “determination” of tariff, which is part of “regulating” tariff. Whereas “determining” tariff for inter-State transmission of electricity is dealt with by Section 79(1)(d), Section 79(1)(b) is a wider source of power to “regulate” tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission’s general regulatory powers under Section 79(1)(b) can then be used.

The above judgments have clearly laid down that Section 63 of the EA is just one of the ways of tariff determination which must be consistent with the objectives of Section 61 of the EA i.e. safeguarding consumer’s interest, encouraging competition, efficiency and economical use of the resources etc. Mandate of regulating tariff under Section 79 [86 for State Commission] is much wider than Section 63 of the EA. And hence, if Commission finds that the rate discovered through competitive bidding conducted as per guidelines notified by the Central Government is not as per market conditions, then in order to safeguard the objectives of Section 61 of the EA, by using its powers of regulating tariff, it can not allow adoption of such rates.

13. In order to demonstrate the reasonability of rate of Rs. 3.30 per unit, as shown in table in para 3.4 above, MSEDCL has computed landed cost at 11 kV voltage level for the tariff of Rs. 2.74 to 2.75 per unit (injection at STU level) adopted by the Commission in its Order dated 27 May, 2019 in Case No 87 of 2019. While doing so, in addition to factoring transmission and 33 kV losses, MSEDCL has also added transmission charges and 33 kV wheeling charges in that computation and has calculated resultant tariff of Rs. 3.46 per unit. In this regard, the Commission notes that transmission charges for Distribution Licensee determined by the Commission is based on consumer demand met last year. Hence, it is independent of generation source from which such demand is being met. Further, it is a fixed amount (Rs. Crore) per month which Distribution Licensee has to pay irrespective of actual usage. Hence, adding transmission charges as calculated by MSEDCL for taking power from STU periphery to 11 kV level is not appropriate. Further, adding of 33 kV Wheeling Charges is also not correct as Wheeling Charges is payable by consumer / OA consumer / OA Generator for third party sale, when Distribution Licensee uses its own network for wheeling power to its own consumer, it does not pay such wheeling charges. If we deduct such transmission charges and Wheeling Charges from table shown in para 3.4 above, then resultant rate will become Rs. 3.02 which is much lower than Rs. 3.30 proposed by MSEDCL.
14. As far as rate of 2.94 per unit to Rs. 3.34 per unit discovered by KREDL is concerned, in view of MSEDCL’s own submission and as per MNRE’s circular rate discovered in different States at different point of time need not be compared.
15. Incidentally, MSEDCL through a fresh Petition dated 7 August, 2019 (which is under scrutiny and not yet scheduled for hearing) has approached this Commission for approval of 300 MW solar power from the solar projects to be developed by EESL on the spare land

available in the existing MSEDCL/MSETCL/Government/Grampanchayat premises at the rate of Rs.3.00 per unit for day time supply to farmers under Mukhyamantri Saur Krishi Vahini Yojana. Even after factoring the impact of land and land development, there seems to be no justification for a higher rate than what is adopted in Case No 277 of 2018.

16. The Commission specifically notes that in the tariff adopted by the Commission in Case 277 of 2018 also, the spare land was not to be made available in the existing MSEDCL/MSETCL/Government/Grampanchayat premises which is similar to the proposal under this petition. MSEDCL has not given any justification as to such higher tariff (Rs 3.30 per unit) for similar tender conditions and has tried to justify the higher rate by comparing/deriving the rates from the bids in non-similar case.
17. In view of the foregoing, the rate proposed for adoption under the instant Case is clearly not in consonance with the market condition and hence cannot be adopted.
18. Hence, the following Order:

ORDER

The Case No.168 of 2019 is dismissed

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

