

# ● PRAYAS

Initiatives in Health, Energy,  
Learning and Parenthood



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23<sup>rd</sup> January 2013

To,  
The Secretary,  
MERC,  
Mumbai.

**Subject:** Prayas comments in the matter of for adjudication of dispute u/s 86 of the Electricity Act, 2003 and for return of Performance Guarantee pursuant to the termination dated 16.02.2011.

**Ref:** MERC case no 68 of 2012 and record of proceedings of the hearing dated 18 January, 2013

Dear Sir,

This submission is regarding the matter mentioned above. Please find below submission made by us during the hearing held on 23<sup>rd</sup> January. Apart from the points raised during the hearing, an additional point has been added at para no 15 of this submission. We will make further submissions regarding the arguments made by the Amicus Curiae, once the commission shares written copy of the same. As the proceedings for this case had been initiated de-novo, the submission made by us on 9th October 2012 is re-submitted as Annexure 1 and the commission is requested to take the same on record. We will also submit in writing various comments and submissions made by us during the past hearings within a week. We request the commission to direct all parties to submit para-wise reply to this submission on affidavit and to kindly take this submission on record. We also request the commission to allow us to make further submissions based on subsequent hearings and proceedings in this matter.

1. As per the record of the proceedings of the hearing dated 18<sup>th</sup> January 2013, the commission has decided to combine this matter with a petition that was filed by MSEDCL in October 2008 regarding adoption of the tariff discovered through a process of competitive bidding (case-1 stage 1). Pursuant to this bidding process, MSEDCL has signed PPAs with M/s Adani Power at levelised tariff of Rs 2.642 per unit; M/s Lanco at levelised tariff of Rs 2.70 per unit and JSW Energy at levelised tariff of Rs 2.716 per unit. The present matter is regarding a petition filed by one of the successful bidders, namely M/s Adani Power Maharashtra Ltd who is now claiming to have terminated the said PPA.
2. The petition in the present case, (case no 68 of 2012) was filed on 16.07.2012 with following prayers:
  - a. Direct the Respondent (i.e. MSEDCL) to return the Performance Guarantee No. 007GM07082270001dated (Rs. 99 crores) dated 14.08.2008 to the Petitioner ;
  - b. In the alternative, and without prejudice to prayer a) this Hon'ble Commission to:
    - i. Direct the Respondent to consider revision of tariff and execution of a new PPA, substantially based on terms of the PPA dated 8.9.2008, which PPA has since been terminated;

- ii. Consider the revised fuel cost for generation and supply of power from the Petitioner's power plant in order to enable revision of tariff;
- c. Without prejudice to prayers (a) and (b) above, pending hearing and final disposal of the present petition, this Hon'ble Commission be pleased to allow the Petitioner to sell power, within or outside the State of Maharashtra;

Interim Prayer:

Restrain the Respondent from invoking the Performance Guarantee of Rs. 99 crores submitted by the Petitioner at the time of bid submission and from taking any coercive actions against the Petitioner;

### 3. Implications of the petitioner's claims:

- a. **For governance and competition in the sector:** The petitioner after willingly taking fuel related risks, opted to quote a fixed tariff even though the bidding framework provided the option of quoting escalable components to pass through fuel costs at the time of bidding. After eliminating competitors, the bidder is on one hand claiming unilateral termination of the PPA and on the other demanding increase in tariff and signing of a new PPA without giving other competitors any opportunity to compete on the same terms and conditions.
  - b. **For consumers:** As per the PPA, this generation of 1320 MW (which would translate into 9829 MU / yr.) should have become available to MSEDCL from August 2012. Not getting this power (and also power from Lanco) as per agreed rate and at decided schedule has led to shortage and high cost short/medium term power purchase. In fact, MSEDCL is buying medium term power @ Rs. 4 per unit from the same Tiroda project of Adani to meet the present supply shortfall. The petitioner is seeking increase in tariff as against the PPA rate to about a range Rs. 3.11 to 3.63 per unit. Increase of first year tariff to say Rs. 3.11 per unit will imply an additional tariff burden of Rs. 423 Cr / yr. for the consumers whereas raising it to say Rs. 3.63 per unit will impose a burden of almost Rs. 934 Cr. / yr. If the tariff is revised by say Rs. 0.50 per unit more than the PPA agreed rate, then for next 25 years such increase will impose an additional burden of Rs. 4,539 Cr (based on NPV of this amount calculated at a discount rate of 10%).
4. During the course of hearing undertaken in this matter, on 21 December, 2012 Member Shri Vijay L. Sonavane recused himself from this case as he was a witness to the execution of the PPA dated 8 September, 2008 signed between the present disputing parties and which is being relied upon by the parties in this case. The post of member finance or the third member at MERC, has been vacant since September 2010 as the Government of Maharashtra has failed to make any appointment in the last two years. Based on a PIL filed against the State Government, the High Court has direct the Government to fill this vacancy within a period of six months.
  5. The Clause 29 of Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004, empowers the Commission to direct that any specific matters or issues be heard and decided by a bench constituted by less than the full strength of the Commission. Using this provision, the commission decided that this case shall de-novo be heard by the Chairman as a single member Commission. Prayas raised concerns regarding this decision as the present matter highlights major lacunae in regulatory processes and raises serious governance

issues and hence suggested that it will be desirable to wait for the Government to appoint the third member and then initiate proceedings in this matter. However, the commission decided to proceed with matter as a de novo case with single member Commission.

6. In the subsequent hearings the petitioner has contended that cancelation of the Lohara coal blocks, for which ToR was granted to the petitioner, effectively translated into a Force majeure event. Therefore, using the force majeure related provision under section 3.3.3 of the PPA, the petitioner decided to unilaterally terminate the contract in February 2011. While claiming to have terminated the contract, the petitioner is simultaneously making a prayer for revising the discovered tariff and has informed willingness to supply at such increased rates.
7. In the intervening period, i.e. from February 2011 till this present petition was filed, no information was provided to the commission regarding the said termination by either MSEDCL or the petitioner. On numerous occasions during this intervening period Prayas had demanded the commission to inform the public regarding the actual status of projects contracted under long term PPAs and based on these submissions the commission had directed MSEDCL on several occasions to provide such information (Case No. 104 of 2009, Case No. 14 of 2010, Case no 56 of 2010, Case No. 22 of 2010, etc.). However, no information regarding the said termination was provided by MSEDCL while replying to such queries. Also, the commission never undertook any independent status review of capacity addition even when such review was categorically demanded and when the commission was in fact dealing with multiple cases related to long term and medium term power procurement where such information can have significant financial impact on the final decisions.
8. During the hearings regarding the present petition (case no 68 of 2012) Prayas made several submissions regarding un-tenability of force majeure claims and hence the termination, under the present PPA and bidding framework (details annexed as Annexure 1). Termination of a PPA is a serious legal and commercial issue which has significant financial implications for the consumers as well as lenders. Prayas also demanded that considering the gravity and complexity of this case, the commission should frame issues for this matter and address them one by one to avoid confusions that will lead to further litigations. However, without dealing with such appeals regarding the serious legal issue of termination, the commission initiated discussions concerning financial viability of the project without establishing un-viability of the project under the present situation, notably the petition also does not establish or quantifies the same. In fact the commission asked all parties to come up with various scenarios (irrespective of their legal applicability or implications) to assess the issue of financial viability.
9. Failure to frame issues while seeking more and more submissions and information regarding project viability is a serious lacuna in a matter of such significance and involving such high level of legal complexity and in fact can be considered tantamount to attempt at vitiating due process of law, as it denies opportunity to all the parties to make specific submissions on the real governance related and legal issues, if they were appropriately framed.
10. Based on commission's demand to present options to make the project viable (without establishing un-viability of the PPA discovered tariff), the petitioner made a presentation during the hearing held on 18<sup>th</sup> January 2013, laying out various scenarios considered by them based on commission's suggestions. The presentation puts forth various options which indicate increase in the first year tariff from the PPA rate of Rs. 2.68 per unit to range of about Rs. 3.11 to 3.63 per unit. Increase of first year tariff to say Rs. 3.11 per unit will imply an additional tariff burden of

Rs. 423 Cr / yr. for the consumers whereas raising it to say Rs. 3.63 per unit will impose a burden of almost Rs. 934 Cr. / yr. In fact if the tariff is revised by say Rs. 0.50 per unit, then for next 25 years such increase will impose an additional burden of Rs. 4,539 Cr (based on NPV of this amount calculated at a discount rate of 10%). In spite of such huge tariff implications for the consumers, the commission till date has not shared any independent scrutiny or analysis regarding the petitioner's claims concerning un-viability of the tariff agreed as per PPA.

11. Thereafter, in the same hearing dated 18<sup>th</sup> January 2013, the commission suddenly pointed out that adoption of Tariff discovered through this process (case-1 stage 1) has not taken place and attributed to a lapse on part of the Commission. It was further stated that neither MSEDCL nor APML pursued the matter with the Commission. The record of proceeding issued by commission in this regard states the following:

*"8. We have now looked through the Petition dated 16 October 2008 submitted by MSEDCL for adoption of Tariff and prima facie, find that the transparent process of competitive bidding has been followed by MSEDCL for procurement of 2000 MW of power through Case-1 route.*

*9. The only thing that remains to be done is the formal Order from the Commission regarding adoption of Tariff. It also needs to be pointed out that this matter of adoption of Tariff was neither followed up by MSEDCL nor the concerned selected Bidders/ Generating Companies. On the other hand, the preamble / introduction of PPA signed on 8 September 2008 states as follows:*

*"Whereas*

*A. The Procurer has obtained order of the Maharashtra Electricity Regulatory Commission adopting the Tariff (as defined hereinafter) under Section 63 of Electricity Act, 2003, copy of which has been made available to the Seller, the receipt of which is hereby acknowledged by Seller, on date of execution of this Agreement."*

*10. Under Section 86(3) of Electricity Act, 2003, "the State Commission shall ensure transparency while exercising the powers and discharging its functions". In view of this, a full set of documents submitted by MSEDCL and received by the Commission Office on 17 October 2008, for adoption of Tariff is being made available to all Parties and authorised Consumer Representatives. Parties and Consumer Representatives are requested to make any responses on these sets of documents as a part of present proceeding of Case No 68 of 2012."*

12. It is important to point out that this issue of absence of tariff adoption order, has been brought to the notice of the commission on more than one occasion by Prayas and the commission has refrained from pursuing this matter from time to time. Below are excerpts from Prayas submissions in this regard and reply from MSEDCL filed on affidavit in response to them:

1. Prayas submission dated 6<sup>th</sup> August 2010 regarding Petition of MSEDCL for adoption of the tariff for procurement of 2000 MW (-20% / +30%) power on Long Term Basis under International Competitive Bidding Process (Case 1 Stage 2) Case No. 22 of 2010. Para 7 on this submission states: *"MSEDCL is referring to the current matter as stage-2 of case-1 bidding process however it is not clear whether tariff discovered through stage-1 of this process has been adopted by the commission. The commission should kindly clarify this point."* The order issued by the commission in this case captures all other points raised by Prayas except the tariff adoption related issue.

2. Thereafter Prayas submission dated 24<sup>th</sup> October 2010 regarding the petition of MSEDCL for approval of 125 MW PPA with Adani Power Maharashtra Ltd and adoption of its tariff, (case no 56 of 2010) reiterated the earlier query: *“MSEDCL is referring to the current matter as stage-2 of case-1 bidding process however it is not clear whether tariff discovered through stage-1 of this process has been adopted by the commission. The commission should kindly clarify this point.”*
3. MSEDCL in its response to the issues raised by Prayas in case no 56 of 2010, submitted a clarification to the commission. Through this response MSEDCL replied to each question in a tabulated manner. As per MSEDCL’s reply, the answer to the query regarding whether tariff for case-1 stage 1 bidding process has been adopted by the commission or not, MSEDCL stated the following:

		provisions of the PPA and non.	Commission will be appraised about it.
vii	Case I Stage 2: Tariff adoption. Case I Stage I: Tariff adopted or not? Its not clear		Case I stage I Tariff is adopted for all the three cases i.e. Adani, Lanco and JSW as per Case no. 39 of 2009 dated 27 <sup>th</sup> November, 2009.
viii	Detailed status report of completed and		MSEDCL has completed competitive bidding

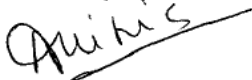
4. Again in the order pertaining to case no 56 of 2010, MERC has not commented anything regarding the issues raised by Prayas regarding lack of clarity regarding whether tariff adoption order or validity of the reply filed by MSEDCL in this regard. Though the order does reproduce other replies of MSEDCL regarding the submission made by Prayas.
- 13.** Above submission makes it clear that it is factually incorrect to say that absence of tariff adoption order in this regard is ‘mere procedural lapse’ on part of the commission, as this issue was categorically brought to the commission’s notice during several important cases pertaining to power purchase and the commission has refrained from commenting on the same. In fact, the circumstances stated above raise very serious concerns regarding regulatory governance and the functioning of the commission itself. The present case i.e. case no 68 of 2012 is based on dispute pertaining to the PPA signed under competitive bidding process. However, absence of a regulatory order adopting the PPA discovered tariff may raise concerns regarding legal validity of the PPA itself. Therefore, in light of such serious governance lapses on part of the commission, it will not be ethically appropriate to combine the present matter pertaining to the PPA dispute (case no 68 of 2012) with tariff adoption petition filed in October 2008, and this action would be of legally doubtful validity.
- 14.** Given these circumstances, we demand that the commission should initiate a thorough investigation to identify reasons which prevented the commission from taking up the tariff adoption matter at the appropriate time or at least after this lapse was clearly pointed out to it on several occasions and also fix responsibility for the same. The matter related to dispute concerning the said PPA should be heard as a separate case for which the commission should first frame issues and only then proceed further.
- 15.** In this context it is also essential to note that on several instances petitioner would have claimed existence of a legally binding PPA and on that basis may have sought various state resources as well as concessions and approvals from various state and central agencies. More importantly request and allocation of coal linkages and alternate captive coal block would have been made based of existence of a valid PPA. So if the PPA is not legally valid ab-initio or has been

terminated in February 2011 as claimed by the petitioner, then all these clearances, concessions and fuel resources would also become infructuous and legally invalid and the same will have to be obtained de-novo. In this regard it becomes pertinent for the commission to seek specific information on affidavit from the petitioner regarding whether it has informed about the said termination of the PPA to agencies such as Central Electricity Authority, Ministry of Power, Ministry of Coal, Coal India Ltd and its relevant subsidiaries.

16. We will make further submissions once the commission shares written copy of the arguments made by the Amicus Curiae. As the proceedings for this case had been initiated de-novo, the submission made by us on 9<sup>th</sup> October 2012 is re-submitted as Annexure 1 and the commission is requested to take the same on record. We will also submit the submissions made by us during the intervening hearings in writing within a week. We request the commission to direct all parties to submit para-wise reply to this submission on affidavit and to kindly take this submission on record.

Thanking you

Sincerely



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## Annexure 1

### ● PRAYAS

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9<sup>th</sup> October 2012

To,  
The Secretary,  
MERC, Mumbai.

**Subject:** Prayas submission in the matter of Petition filed by Adani Power Maharashtra Ltd. for adjudication of dispute u/s 86 of the Electricity Act, 2003.

**Ref:** Hearing dated 22<sup>nd</sup> August 2012 in Case No. 68 of 2012

Dear Sir,

With reference to the above mentioned matter, a hearing was undertaken on 22<sup>nd</sup> August 2012 for which we were present and have submitted our comments. The commission has directed the petitioner to submit data regarding all its sources of fuel procurement and details of all its fuel related contracts. Similarly the respondent was also directed to share chronology wise details of its correspondence with the petitioner in respect of present matter. However, subsequent to the last hearing no additional data has been shared by either party. We request the commission to kindly again direct both parties to share all their additional submissions with us. Based on the discussion during this hearing dated 22<sup>nd</sup> August, our preliminary submission is summarized below. We request the commission to take the same on record and allow us to make further submissions based on information shared by other parties in the subsequent proceedings.

1. **Brief facts of the matter:** The petitioner is setting up generating stations in Tiroda and has signed PPA on 8<sup>th</sup> Sept 2008 for capacity of 1320 MW comprising of units 2 and 3 with MSEDCL under the case-1, stage-1 bidding round of MSEDCL. The petitioner chose to quote fixed tariff in spite of the flexibility under the bidding framework to quote escalable parameters for fuel cost, transportation and handling. On account of the low tariff quoted by the petitioner, it emerged as the L1, thereby winning the bid. Subsequent to this process, the petitioner has filed the present case before MERC claiming termination of the said PPA under clause 3.3.3 on grounds of claimed force majeure. The petitioner is claiming its inability to source fuel from the coal blocks which were promised to it, as a force majeure event. However, in the same petition, the petitioner is also making a simultaneous prayer to consider revised fuel cost for generation.

2. The Competitive Bidding Guidelines define case-1 as a type of bidding, “Where the location, technology, or fuel is not specified by the procurer”. As recorded by the petitioner on affidavit, (ref. page no 13 of the petition, paragraph no 13) information regarding fuel arrangements as submitted by petitioner in the bid document states:  
*Fuel: Lohara (West) and Lohara (Extn.) coal blocks have been allocated to the Project, which will meet the **part of coal requirement** of the project. The **balance coal requirement** of the projects shall be met from **coal supply by CIL or its subsidiary and Imported Coal**.*
3. As is evident from the points mentioned above, from the beginning of the bidding process, the bidder was fully aware that arranging the fuel is solely his responsibility and that the procurer is not obliged to assist in any manner in this regard. Further, in the qualifying process the bidder made it clear that it had plans to source fuel from all possible sources i.e. captive block, linkage from Coal India Ltd. and imported coal, thereby not indicating any absolute reliance on the blocks supposed to be allocated to it. More importantly, the bidding process gave the bidder complete flexibility to quote escalable charges for fuel cost, fuel handling and fuel transportation. However, in spite of this flexibility the bidder choose to quote fixed fuel charge and managed to emerge as the lowest bidder (L-1) in the process and thereby won the contract. Therefore, as far as the PPA is concerned there is no connection between the source of the fuel and the PPA agreed tariff, as the bidder is given the flexibility to procure fuel at any cost and from any location at any point of time. Hence, cancelation or otherwise of the said coal blocks do not have any material impact on the PPA terms and conditions.
4. After winning the bid and signing the PPA, the petitioner now claims to have terminated the contract by issuing a notice under section 3.3.3 of the PPA to MSEDCL on 16<sup>th</sup> February 2011. Clause 3.3.3 of the PPA states: “In case of inability of the seller to fulfill the conditions specified in Article 3.1.2 **due to any Force Majeure event**, the time period for fulfillment of the Condition Subsequent as mentioned in Article 3.1.2, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of ten (10) Months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either the procurer or the Seller by giving a notice of at least seven (7) days in writing to the other Party.” (**emphasis added**)
5. The clause 12.3 of the PPA defines Force Majeure event as: “A ‘Force Majeure’ means any event or circumstance or combination of events and circumstances including those stated below that **wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with prudent practices:**” (**emphasis added**)
6. Further, section 12.4 of the PPA defines Force Majeure Exclusions. This clause states: “**Force Majeure shall not include** (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:
  - a. **Unavailability, late delivery, or changes in cost of** the plant, machinery, equipment, materials, spare parts, **Fuel or consumables for the Project:**”



7. As shown above, a Force Majeure event implies inability of the affected party to perform its obligations as per the contract on account of events beyond its reasonable control. As shown before, the petitioner chose to quote fixed fuel cost in spite of having flexibility to include escalable parameters and while acknowledging possibility of procurement from all possible sources such as captive block, linkage and imports. Further and more importantly, the petitioner is not claiming any inability to perform, as it is simultaneously seeking tariff revision which clearly implies that sourcing fuel for generation is not the problem. Thus, purported high cost of fuel is the only difficulty for petitioner in complying with the PPA terms, which has been explicitly excluded under the force majeure definition, as the bidder had the discretion to pass on such costs at the time of bidding. In fact therefore, there is no relief for variation in fuel cost under the article 12 of the PPA which deals with relief measures in case of a Force Majeure event. This fact itself proves that there is no force majeure event as claimed by petitioner.
8. Therefore, harmonious reading of the bidding guidelines (which give the bidder complete flexibility in choosing the fuel location and source and passing through such costs), along with clauses of the PPA article 12, makes it clear that unavailability of captive coal block cannot be construed as a Force Majeure event. The commission has itself upheld this interpretation of the PPA in its order dated November 16, 2011 in Case No. 9 of 2011 by ruling that: *“Thus, Article 12.4 Force Majeure Exclusions, **specifically excludes the unavailability or changes in cost of Fuel from Force Majeure** unless the same are consequences of an event of Force majeure.”* In absence of Force Majeure event, the claimed termination notice issued under section 3.3.3 ceases to have any legal validity and hence the same should be declared as ab-initio null and void.
9. The petition however highlights serious lacunae as demonstrated below, in MSEDCL’s communication with the commission and hence the consumers, which need careful scrutiny. As claimed by the petitioner, termination notice under clause 3.3.3 of the PPA was issued to MSEDCL in February 2011. It is indeed a serious concern that a hearing in this matter should come up before the commission after more than 18 months, since this crucial development took place. In the intervening period nothing was communicated to the commission regarding such termination notice and subsequent steps taken by MSEDCL, if any, in this connection.

10. Merely few weeks before this petition was filed, questions regarding status of this project and capacity addition therefrom were posed before MSEDCL during the tariff revision process. In the commission's order dated 16<sup>th</sup> August 2012 in case no 19 of 2012, MSEDCL in its reply to such questions has stated the following with respect to status of units contracted with the petitioner:

#### Adani Power (IPP)

- 4.4.51 MSEDCL has contracted 1320 MW of power with Adani Power through Competitive Bidding for procurement of power under Case-I route. MSEDCL submitted that it has entered into agreement with Adani Power Ltd. for purchase of 1320 MW power from Tiroda project in Maharashtra. MSEDCL submitted that Unit 2 and 3 of 660 MW each are expected to get commissioned in August 2012. Accordingly, MSEDCL has considered a purchase of 5,566 MUs from Adani Power for FY 2012-13 considering PLF 80%. MSEDCL further submitted that it had computed the total cost by considering fixed charges of Rs. 1.42 per unit and variable charges of Rs. 1.69 per unit.
- 4.4.52 In reply to one of the queries raised by Consumer Representative Prayas, MSEDCL submitted that it has considered the Commissioning of Tiroda Power Project for July 2012. The Commission asked MSEDCL to justify its assumption of commissioning dates of the project. MSEDCL replied that it has considered the availability from Adani power project based on the following assumptions. MSEDCL submitted that it has considered the commissioning dates based on information provided by the generator, which is more realistic.

Table 60: Availability of power from Adani Power under Long-term Case-I route as projected by MSEDCL

	COD	Capacity	MUs
Unit 1	Aug-12	660 MW	2,661
Unit 2	Sep-12	660 MW	2,281
Unit 3	Aug-12	125 MW	624
<b>Total</b>			<b>5,566</b>

11. In fact, during the proceedings related to MSEDCL's medium and long term power procurement, time and again questions were raised regarding status of the various projects (including the units of the petitioner) from which power has already been contracted. On more than one occasion the commission, upon insistence for such data, has directed MSEDCL to submit such details. For examples order in case No. 14 of 2010 Dated: 8th September, 2010 states the following:

8. Data to be furnished :

a. During the hearing the Commission directed MSEDCL to submit the following information on all the approvals given by the Commission for Long Term power procurement by MSEDCL, within one week of the hearing:

1. Date of approval by the Commission
2. Case I/Case II bidding and MW capacities
3. RFQ issue-date
4. RFP issue-date
5. Bids received date
6. Bids accepted date
7. Project details
  - 7.1 Project Name
  - 7.2 Capacity in MW
  - 7.3 Levelised Tariff
  - 7.4 First year Tariff
  - 7.5 Likely CoD
  - 7.6 Progress of the Project( upto March 31, 2010)
  - 7.7 Present status of the Project

Thereafter, through its **order dated 28 December 2010 in case no 22 of 2010** the commission had directed MSEDCL as follows:

g. The Commission observed that the MSEDCL has not submitted any information on status of the Projects and progress report of each Project as sought by the Commission as well as Consumer Representative during the hearing. The Commission directs MSEDCL to submit half yearly progress report of each project under Case 1 Stage 2 with the following information as under:

- 1.1. Project Name
- 1.2. Contracted Capacity in MW
- 1.3. Levelised Tariff
- 1.4. Scheduled and Likely CoD
- 1.5. Progress of the Project
- 1.6. Present status of the Project
- 1.7. Intermediate milestones achieved
- 1.8. Any other information

12. The present case once again highlights the cost of regulatory failure in crucial matters such as power purchase planning and procurement. Despite such clear directions on several occasions, MSEDCL did not submit this crucial information regarding the said termination notice to the commission. Also, in spite of repeated submissions from consumer representatives in this regard (Case No. 104 of 2009, Case No. 14 of 2010, Case no 56 of 2010, Case No. 22 of 2010, etc.) the commission has neither insisted compliance on part of MSEDCL with its directives, nor has it taken the necessary steps to suo-motu assess progress and status of the projects from which capacity has been contracted on long term basis. This being the state of affairs in spite of the fact that power purchase cost accounts for more than 70% of the distribution company's revenue requirement and failure in power purchase planning has both cost and service quality implications for consumers.


13. Thus, based on the points mentioned above, we pray to the commission that:

- a. Declare the said termination notice as ab-initio null and void, as there is no force majeure event as per Article 12 of the PPA.
- b. Direct the petitioner to ensure performance of its contract as per the agreed terms and conditions under the PPA dated 8<sup>th</sup> Sept 2008.
- c. Undertake a detail scrutiny and assessment of MSEDCL's response to the said notice and steps taken by it in this regard. Direct MSEDCL to undertake necessary corrective actions to prevent such lapses in communication in future.
- d. In light of such developments, undertake suo-motu public process to asses power purchase planning of MSEDCL with emphasis on following aspects:
  - i. Project wise data such as quantum of power contracted with private generators through competitive bidding process and capacity contracted through MoU processes with IPPs, centre and state generating stations.
  - ii. Plant-wise and unit-wise actual status of this contracted capacity
  - iii. Comparative analysis of the commissioning timeframe of this capacity; such as when the capacity is/was expected to be commissioned as per the respective contract and what is the actual present status of the plant/unit.

We request the commission to our submissions in this matter on record and allow us to make further submissions based on information shared by other parties in the subsequent hearings.

Thanking you.

Sincerely



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