

18th March 2011

To,
The Secretary,
MERC
Mumbai

Subject: Petition for adoption of Tariff and approval of reduction in requisitioned capacity to 1000 MW for Medium Term Power Procurement under Case 1 Bidding

Ref: MERC Case No. 23 of 2011

Dear Sir,

This submission is with reference to the matter mentioned above; Case no 23 of 2011. We will not be able to attend the hearing but we wish to submit our comments and suggestions in this regard. We request the commission to kindly take on record these comments and submissions.

1. We would like to highlight here that we have not yet received hard copy of the petition and even the soft copy that has been sent (on 16th March 2011) is incomplete. Hence we request the commission to consider this as our preliminary submission and allow us to make subsequent submissions, if any, after the complete petition along with all the annexures has been shared with us.
2. In the current demand supply situation with deficit of around 4000 MW steps towards contracting additional power are desirable. Hence we welcome this initiative from MSEDCL to contract such additional capacity on medium term basis. However care has to be taken to ensure that the contracted power comes at a reasonable cost and the process is as per the competitive bidding guidelines and in the long term interest of consumers and MSEDCL.
3. As per Electricity Act 2003, the SERC can adopt the tariff if same has been discovered through transparent bidding process which meets all requirements of bidding guidelines issued by MoP and the discovered tariff is in line with prevalent market rates. In such case the SERC has to satisfy itself that all provisions of bidding guidelines, Electricity Act 2003 and PPAs have been complied with.
4. In case the power procurement process is not in compliance with the guidelines and still if the commission wants to adopt such a tariff, then in such case it becomes the duty and responsibility of the commission to satisfy itself that tariff being discovered is reasonable and that due process has been followed.
5. In this context we would like to bring to the commission's notice certain points raised by the bid evaluation committee as well as other process related observations.
6. Firstly, the petition does not clearly mention the final quantum of capacity proposed to be contracted from each bidder. The capacity offered by L1 i.e. Adani Power Ltd is 800 MW for first year and by L2 i.e. JSW Energy Ltd is 550 MW which comes out to be 1350 MW. However in the current petition, MSEDCL states that after deliberations by the Board on tariff quoted and transmission constraints, it has decided to procure 1000 MW for one year period but it is not

clear exactly how much capacity is proposed to be procured from each bidder and details of finally negotiated tariff (for example break-up between capacity and energy charge, escalable and no-escalable components, unit nos. etc.)

7. One of the bidders, i.e. M/s Adani Power Pvt Ltd has valid and legally binding PPA with MSEDCL to supply power on long term basis at pre decided tariff from the same units, capacity from which is now being offered on medium term basis.
8. As per the PPA dated October 2008 M/S Adani Power limited has quoted fixed capacity charge of Rs. 1.113 per unit and fixed energy charge of Rs. 1.440 per unit (total first tariff being Rs. 2.553 per unit). In the current bid process, from the same units, bidder has quoted capacity charge of Rs. 2.27 per unit and energy charge of Rs. 2.00 per unit amounting to total tariff of Rs. 4.27 per unit. This tariff was revised based on negotiations to Rs. 4.10 per unit, break-up of which (capacity and energy charge, fixed and escalable) is not known.
9. In this respect observations of bid evaluation committee and independent member regarding the difference in quoted capacity charges become very important to consider. The bid evaluation committee states that:

Considering the above trend of NDPL, Price of Short Term Transaction of Electricity through Traders and recently called short term tenders of MSEDCL, the rates offered by bidders for Medium Term Power Procurement seems to be on higher side.

So, in fact, the bid evaluation committee has not unambiguously certified that the discovered tariff is in line with prevailing market rates which is one of the important requirements of the bidding guidelines.

10. Even if one discounts the high energy charges on grounds of higher cost of imported coal, the evaluation committee has pointed out that capacity charge quoted by Adani in the current bidding process is greater by almost Rs. 1.1/unit (which corresponds to additional tariff burden of ~ Rs. 578 Cr for one year) than the first year capacity charge quoted in the earlier long term bid process (PPA dt. October 2008).
11. Even the bid evaluation committee report observes that in light of the differences observed in capacity charges as well as energy charges, the bidder should provide details to justify such difference.
12. Further, the issues analyzed in the note of internal audit section (PP), also need to be considered. Bid evaluation committee report / IA note, states that:

Secondly, if we enter in to PPA for purchase of Mid Term power from APL , it is necessary to amend the PPA entered in Case-I stage 1

In this regard legal implications and compliance with bidding guidelines becomes a critical factor for the commission to consider before approving such tariff.

13. As per PPA with APL dated October 2008, it is mandatory on part of APL to supply all power from units 2 and 3 to MSEDCL as per PPA terms and tariff (which, as mentioned above is less than currently proposed tariff by over Rs. 1 / unit).

14. Please see below some of the relevant extracts from the said PPA:

4.4.6 The Seller may offer Scheduled Commercial Operation Date, for whole or part of the capacity offered, before expiry of 48 calendar months from the date of signing of the PPA. In the event the Unit No 2 and Unit No 3 of the Power Station is commissioned earlier than the stipulated Scheduled COD, power must be supplied only to the Procurer and no third party sale is allowed. However if the Maharashtra STU is unable to evacuate such early power from the Delivery Point, the plant would be allowed to sell power to a third party till such time as Maharashtra STU can start evacuating power from the Delivery Point. Procurer would also provide a suitable notice period to the seller to commence the supply of power at the Delivery Point

11 ARTICLE 11 : BILLING AND PAYMENT

11.1 General

From the COD of the Second Unit, Procurer shall pay the Seller the Monthly Tariff Payment, on or before the Due date, comprising of Tariff for every Contract Year, determined in accordance with this Article 11 and Schedule 6. All Tariff payments by the Procurer shall be in Indian Rupees.

Provided however, if the Procurer avails of any Electrical output from the Seller prior to the Commercial Operation Date (“**Infirm Power**”) of the Unit, then the Procurer shall be liable to pay only Energy Charges (as applicable for the Contract Year in which the Infirm Power is supplied or next Contract Year in case no Energy Charges are mentioned in such Contract Year), for Infirm Power generated by such Unit. The quantum of Infirm Power generated by Units synchronized but not have been put on COD shall be computed from the energy accounting and audit meters installed at the Power Station as per Central Electricity Authority (installation and operation of meters) Regulations 2006 as amended from time to time.

Schedule 6: Tariff

1.2.9 Tariff for the period prior to Scheduled COD of second unit and for Contract Years beyond the 25 years from the COD of the second Unit

The Tariff for the period prior to Scheduled COD of the second unit shall be the quoted tariff of the first year with escalation for relevant period only for energy charge. The Tariff for the Contract Years beyond the 25 years from the COD of the second Unit shall be the Quoted Tariff of the 25th year from the COD of the second Unit with applicable escalation.

15. Here it is also essential to note that existing, legally binding PPA with MSEDCL has been instrumental in developing the project (including securing land, water, fuel and financing) and hence MSEDCL is entitled to all benefits as per the PPA.

16. It is relevant to quote our earlier submission (dated. 6th August 2010) regarding case no 22 of 2010 in this context: *“It is also important to note that all of these projects are in advanced stage of completion and may achieve commercial operation much before the four year provision. In such case, bidding guidelines provide ample scope for MSEDCL to ensure that generation from the contracted capacity becomes available even prior to the scheduled delivery date. In the*

absence of such effort there is a danger of power being from the said projects being diverted to the short term market in intermediate period, in spite of MSEDCL having PPA. Considering the severe prevalent power shortage, both commission and MSEDCL should ensure that generation from the contracted capacity becomes available to MSEDCL as soon as it achieves commercial operation.”

17. It needs to be noted that like Adani, MSEDCL also has a valid and legally binding PPA with JSW Energy Ltd for capacity of 300 MW under the same bid process. In case M/s JSW Energy Ltd is going to supply the current capacity from the same units, power from which has already been contracted, then issues related to Adani PPA highlighted above also will become applicable for JSW bid.
18. Any commercial and legally binding contract must lead to equitable sharing of risks and benefits. It would be undesirable and legally untenable to deviate from such risk allocation in one-sided manner. (i.e. increasing tariff if fuel cost is higher but claiming tariff as per PPA if fuel cost is lower)
19. As we have been repeatedly pointing out before the commission, it is essential to ensure that MSEDCL is able to secure power as per PPA terms and tariff from all contracted sources. Allowing deviations from such contract terms, without undertaking through scrutiny, validating different claims and without public hearings, would set a detrimental precedence and may encourage further non-compliance with PPAs, and hence would be against the spirit and provisions relating to competition.
20. Above submission, along with various issues raised by the bid evaluation committee and lack of procurer certification regarding compliance with the bidding guidelines, establish that the said process is not in compliance with the competitive bidding guidelines and the SERC need not adopt the said tariff.
21. Considering above submission, we request the commission to determine reasonable tariff and process to ensure that the said power is made available to MSEDCL and Maharashtra consumers in a timely manner.

We once again request the commission to kindly take on record these comments and submissions.

Thank you

Yours sincerely

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