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Case Update

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION REJECTS BEST PETITION FOR APPROVAL TO TERMINATE PPA WITH TPC-G FOR TROMBAY UNIT 5

On October 11, 2024, the Maharashtra Electricity Regulatory Commission (MERC) decided Petition No. 134 of 2024 filed by the Brihanmumbai Electric Supply and Transport Undertaking (BEST). The Petition sought approval for the termination of the power purchase agreement (PPA) signed between BEST and Tata Power Company Limited - Generation (TPC-G) for Unit 5 of the Trombay Thermal Power Station.

The petition filed by BEST in August 2024 aimed to discontinue its PPA with TPC-G for Unit 5 due to its high energy costs. BEST argued that the agreement was financially onerous, with recent costs for Unit 5's power supply rising to as much as Rs. 8 to 11/kWh. BEST's power procurement strategy for FY 2024-25, as presented in a previous order, highlighted a demand increase that was to be expected and laid the foundation for exploring cheaper alternatives.

Previously, MERC vide its Orders had directed for an extension of the PPA with TPC-G for five more years, until March 2029, to ensure reliable power supply for the Brihanmumbai region.

Furthermore, the State Transmission Utility also submitted that it would not be possible to meet the power demands and stability of the grid in the region with the exclusion of Trombay Unit-5 and Unit-8. The Mahrashtra State Electricity Load Dispatch centre also submitted before the MERC that the committed availability of the Trombay Unit 5 generation is essential for reliable and resilient Mumbai system operation.

TPC-G in its submissions had alluded to the fact that termination of PPA in respect of its Unit 5 is not in consonance with the provisions of the PPA executed between the parties. Further, there is no provision contained under the Section 86 (1) (b) of the Electricity Act, 2003 that enables BEST to approach the MERC for termination of the PPA. It was further argued that once the PPA (entered into by mutual consensus of TPC-G and BEST) has been extended (on the direction of the MERC in Case No. 39 of 2023), it does not remain in the hands of BEST to make a summersault and unilaterally seek for termination of PPA.

On the other hand, BEST Undertaking made submissions stating that it would be uneconomical for BEST to buy M/s Sai Wardha power while continuing to pay the fixed cost for power purchased from Unit-5, with approximated Rs. 183.46 Crs per year of costs being in the balance for BEST.

Tata Power Company Limited – Distribution (TPC-D) made submissions highlighting that it has, on several occasions, requested zero scheduling from Unit-5 of TPC-G and directed the Unit to run on a technical minimum. If BEST is allowed to exit the PPA, the entire burden of absorbing Unit-5 under technical minimum will come on TPC-D – as currently the technical minimum is allocated both – to TPC-D and BEST.

The MERC, while accepting the submissions made by TPC-G, has emphasised the fact that the dispute raised by BEST regarding high energy costs does not relate to any legal grounds to challenge the validity of the PPA. As per the PPA, the termination is only allowed under specific conditions – such as TPC-G's failure to meet obligations or if it becomes bankrupt. Notably, the contention raised by BEST with respect to financial viability does not constitute legal grounds for revoking the PPA.

To qualify its stand, the MERC further relied on the Supreme Court's ruling in *Gujarat Urja Vikas Nigam Limited v. Solar Semiconductor Power Co. (India) P. Limited (2017)16 SCC 498*, wherein it was held that the terms of a PPA are binding on the parties and cannot be unilaterally altered unless there is mutual consent by the parties or in case of an event of default. Basis the above principle, the MERC made it clear that it cannot allow the request of BEST to revoke its PPA with Unit 5 of TPC-G.

Furthermore, the commission also noted that the STU and the MSLDC recommended contiuniation of the TPC-G for further few years till all planned transmission projects are commissioned to ensure a reliable and resilient operation of the Mumbai system.

MERC also observed that revoking the PPA purely based on financial grounds, without accounting for these operational and regulatory factors, could jeopardize the reliability of Mumbai's power supply. It further emphasized the importance of Unit 5 for grid stability, especially in light of the ongoing transmission constraints. Conclusively, the MERC noted that premature termination of the PPA between BEST and TPC-G would not be in the best interests of Mumbai's power consumers or grid security.

While the Commission has been clear and unequivocal in stating that the PPA with TPC-G for Unit 5 cannot be revoked before the end of the extended period, it has ruled that BEST can subject the costly units supplied by the TPC-G from unit 5 to zero scheduling for optimisation of costs.

However, in the interest of tackling present transmission constraints, to provide reliable and secure power supply to the Mumbai region the MERC was not inclined to allow the termination of the PPA. Furthermore, as stated above, there was no event of default or mutual consent – meaning the Commission found no legal grounds for the termination of the PPA in this event.

Tata Power Company - Generation was represented before the Maharashtra Electricity Regulatory Commission by Shri Venkatesh, Managing Partner; Bharath Gangadharan, Counsel; Shivam Kumar; Mohit Gupta, Associate; Ananya Dutta, Trainee Associate of the SKV Law Offices Team.