

**Sub: In the matter of procurement of power by M.P. Power Management Company Limited from Biomass based power project in Chhindwara District with a unilateral tariff rate other than the tariff applicable to the project as per the generalized tariff fixed by the Commission vide its order dated 03.05.2013**

**ORDER**

**(Date of hearing: 4<sup>th</sup> February, 2016)**

**(Date of order: 8<sup>th</sup> February, 2016)**

M/s Shalivahana Green Energy Ltd.,  
7<sup>th</sup> Floor, Minerva Complex,  
94, S.D. Road, Secunderabad- 500003

- Petitioner

M.P. Power Management Co. Ltd.,  
Shakti Bhawan, Rampur,  
Jabalpur- 482 008

- Respondent No.1

New and Renewable Energy Department,  
Government of Madhya Pradesh,  
Main Road No.2, Urja Bhawan,  
Near 5 No. Bus Stop,  
Shivaji Nagar, Bhopal- 462 016

- Respondent No.2

Shri M. Naveen Kumar, Director and Shri B. Madhusudan, GM of the company appeared on behalf of the petitioner.

Shri Manoj Dubey, Advisor (Law), Shri N.K.Sharma, AGM and Shri Sanjeev Khare, DGM appeared on behalf of the respondent no.1.

None appeared on behalf of the respondent no.2.

2. The petitioner, M/s Shalivahana Green Energy Ltd., Bhopal has filed this petition for seeking directions to the respondent no.1 for procurement of power by M.P. Power Management Company Limited from Biomass based power project in Chhindwara District at the tariff applicable to the project as per the generalized tariff fixed by the Commission vide its order dated 03.05.2013. The case was listed for motion hearing on 24.11.2015. The Commission admitted the petition and the next date of hearing was fixed for 15.12.2015. The respondent no.1 filed a written submission on 11.12.2015 and the petitioner filed an additional submission on 17.12.2015.

3. During the motion hearing on 15.12.2015, the petitioner re-stated the contents of the petition. They also stated that the plant was commissioned on 12.06.2015. The CERC vide its order no. SM/354/2013 dated 15.05.2014 in clause no. 12 has mentioned that "in terms of regulation 6(e) & (f) of RE Tariff Regulations..... the tariff shall be reckoned from the date of commercial operations of the RE Projects....". Therefore, the tariff is to be given as of the date of commissioning. During the hearing, the respondent no.1 stated that the intention of the petitioner was not correct. The Letter of Intent (LOI) was issued at Average Power Purchase Cost (APPC) and the permission was already given by the Electrical Inspectorate in

**Petition No. 58/2015**

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the year 2011, but the commissioning was delayed by the petitioner till the year 2015. In its written submission, the respondent no.1 mentioned that the LOI was issued from time to time to the petitioner at its requests. The petitioner's plant was ready for commissioning during the control period of Commission's order dated 07.08.2007. Therefore, the petitioner's case is similar to that of M/s ASN. Accordingly, the Commission may allow fixed tariff for 20 years as per tariff order dated 07.08.2007 and variable tariff in line with Commission's order dated 13.08.2015 in SMP-08/2013 as under:

Fixed tariff

(Tariff @ Rs./unit)

Year	1	2	3	4	5	6	7	8	9	10
Tariff	1.91	1.87	1.83	1.79	1.75	1.72	1.68	1.65	1.62	1.58
Year	11	12	13	14	15	16	17	18	19	20
Tariff	1.19	1.22	1.26	1.29	1.33	1.37	1.41	1.46	1.50	1.55

Variable tariff

Year	1	2	3	4	5	6	7	8	9	10
Tariff	3.11	3.27	3.43	3.60	3.78	3.97	4.17	4.38	4.60	4.83
Year	11	12	13	14	15	16	17	18	19	20
Tariff	5.07	5.32	5.59	5.87	6.16	6.47	6.79	7.13	7.49	7.86

Total tariff

Year	1	2	3	4	5	6	7	8	9	10
Tariff	5.02	5.14	5.26	5.39	5.53	5.69	5.85	6.03	6.22	6.41
Year	11	12	13	14	15	16	17	18	19	20
Tariff	6.26	6.54	6.85	7.16	7.49	7.84	8.20	8.59	8.99	9.41

4. During the hearing, the Commission enquired from the petitioner as to why there is a gap of about four years in commissioning of the plant from the date of application to the Electrical Inspectorate for obtaining charging permission. The petitioner could not reply adequately. However, in its written submissions, the petitioner mentioned that the Electrical Inspectorate had given the consent that all the equipments on electrical side are ready to take up the commissioning activities in November, 2011. The petitioner approached the respondent no.1 for release of short term LOI or long term PPA. In the absence of viable tariff, the petitioner expressed the interest for sale of power at APPC in anticipation of getting additional revenue through Renewable Energy Certificate. The respondent no.1 issued the LOI for sale of power at APPC in 2012. The scheduled commissioning was delayed on account of the cost involved in start-up of plant. The Commission has passed order on 18.07.2012 allowing 2 MVA power for taking up pre-commissioning activities. Since the tariff determined vide order dated 07.08.2007 was not viable, the petitioner appealed before various regulatory authorities for revision of tariff. By order dated 13.08.2015, the Commission has decided to extend the applicability of same tariff based on order dated 03.05.2013 for the FY 2014-15 and 2015-16. The petitioner company has also faced severe financial crunch due to the recession in the

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market and repayment to the lenders etc. The restructuring of the repayment schedule and additional funding were approved in the month of August, 2014 and the facilities were released for the project to complete the balance commissioning activities in the month of January, 2015. Also, during trial run some of the auxiliaries of major equipments at boiler side were found damaged and warranted for replacement. After replacement of these parts, the plant could be commissioned on 12.06.2015. The petitioner further requested the Commission to accord applicable tariff for the FY 2015-16.

5. The Commission has considered the written submissions made by the petitioner and the respondent no.1 and observed that the charging permission from the Chief Engineer (Electrical Safety) and Chief Electrical Inspector was obtained on 30.08.2011. By letter dated 10.01.2012 and 01.09.2012, the petitioner informed the respondent no.1 that the plant is ready for commissioning/synchronization with the grid but the plant was commissioned on 12.06.2015. The Commission, therefore, decided that a hearing may be held on 02.02.2016 so that the petitioner may be given last opportunity to put forth the reasons for such abnormal delay in commissioning the project despite its readiness to commission in FY 2011-12. Subsequently, the hearing was adjourned to 04.02.2016.

6. During the hearing, the petitioner reiterated the contents of the written submissions made earlier to the Commission. The petitioner could not submit any cogent document which can substantiate the compelling reasons and justify such abnormal delay in commissioning the project. Also, the petitioner failed to submit any document which shows that auxiliaries of major equipments at boiler side were found damaged after the readiness of the project in January, 2011 and these equipments were got replaced during the period of four years from 2011 to 2015. During the hearing, the respondent no.1 stated that the actual expenditure was done by the petitioner during the control period of the tariff order dated 07.08.2007 and no major additional expenditure was made thereafter. Therefore, no additional burden may be allowed on account of delay in commissioning by the petitioner.

7. Having heard the petitioner and the respondent no.1 and on considering their written submissions, the Commission has noted that the plant was ready to commission in the Financial Year 2011-12 before 02.03.2012 and the permission from Electrical Inspectorate was also obtained on 30.08.2011. Under the aforesaid circumstances, the Commission is to strike balance between the two aspects to meet the ends of justice i.e. the petitioner should get its legitimate expenditure incurred in commissioning the project and on the other hand, the petitioner would not get undue advantage by going for the literary or technicality of the provisions of tariff order dated 02.03.2012 as amended, which provides that the tariff shall be applicable from the date of commissioning of the project.

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8. Clause 46(1) of the MPERC (Conduct of Business) Regulations, 2004 provides as under:

“ Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission.”

9. The Commission has noted that though the tariff order dated 02.03.2012 as amended on 03.05.2013 provides that the tariff is applicable from the date of commissioning of the project, but in the instant case, the plant was ready for commissioning within the control period of the tariff order dated 07.08.2007 but actually commissioned in the financial year 2015-16. Therefore, in the interest of justice to both the petitioner and the respondent no.1, it would be appropriate that the fixed charges may be allowed as per tariff order dated 07.08.2007 which was applicable for the projects commissioned before 02.03.2012. In view of the above facts and to prevent the abuse of the process of the Commission, it is necessary to invoke inherent powers of the Commission under clause 46(1) of the MPERC (Conduct of Business) Regulations, 2004 to decide the applicability of tariff in the instant case. Therefore, the Commission decides to allow fixed charges based on the tariff order dated 07.08.2007. Also, as the Commission already decided vide order dated 13.08.2015 to continue the same tariff for the projects commissioned during FY 2014-15 & 2015-16 as determined for the projects commissioned during the FY 2013-14, the variable charges may be allowed based on the order dated 03.05.2013 as determined for FY 2013-14 as follows:

**Fixed tariff (Tariff @ Rs./unit)**

Year	1	2	3	4	5	6	7	8	9	10
Tariff	1.91	1.87	1.83	1.79	1.75	1.72	1.68	1.65	1.62	1.58
Year	11	12	13	14	15	16	17	18	19	20
Tariff	1.19	1.22	1.26	1.29	1.33	1.37	1.41	1.46	1.50	1.55

**Variable tariff**

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Tariff	5.07	5.32	5.59	5.87	6.16	6.47	6.79	7.13	7.49	7.86

**Total tariff**

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Tariff	5.02	5.14	5.26	5.39	5.53	5.69	5.85	6.03	6.22	6.41
Year	11	12	13	14	15	16	17	18	19	20
Tariff	6.26	6.54	6.85	7.16	7.49	7.84	8.20	8.59	8.99	9.41

10. The Commission, therefore, directs the respondent no.1 to make the payment accordingly as above from the date of actual commissioning of the project i.e.12.06.2015. The

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Commission is also constrained to note that the respondent no.1 was issuing Letter of Intent to the petitioner from time to time at its requests without critically examining the current status of the project. The Commission, therefore, directs the respondent no.1 to take necessary action in future while issuing Letter of Intent in such cases.

11. With the above directions, the petition no. 58 of 2015 stands disposed of.

Ordered accordingly.

**(Alok Gupta)**  
**Member**

**(A.B.Bajpai)**  
**Member**

**(Dr. Dev Raj Birdi)**  
**Chairman**