

Sub: In the matter of petition under Section 86 of the Electricity Act, 2003 and Regulations 16 and 17 of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010

ORDER

(Date of hearing: 24th January, 2017)

(Date of order: 9th February, 2017)

M/s Fortum FinnSurya Energy Private Limited, 1 A, Vandhna Building, 11, Tolstoy Marg, New Delhi- 110 001	-	Petitioner
M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd., GPH Compound, Pologround, Indore	-	Respondent No.1
M.P. Power Management Co. Ltd., Block No. 11, 3 rd Floor, Shakti Bhawan, Rampur, Jabalpur- 482008	-	Respondent No.2
Solar Energy Corporation of India, First Floor, A-Wing, D-3, District Centre, Saket, New Delhi	-	Respondent No.3

Shri Abhishek Nath Tripathi, Advocate appeared on behalf of the petitioner.
Shri P.K.Jain, ASE and Shri Kumar Shubham, AE appeared on behalf of the respondent no.1.
Shri Manoj Dubey, Advisor (Law) appeared on behalf of the respondent no.2.
None appeared on behalf of the respondent no. 3.

2. The petitioner, M/s Fortum FinnSurya Energy Private Limited has filed this petition seeking net off the power used for auxiliary consumption from the power generated by the Renewable Energy Generators or to introduce new category for Solar Power generators as permanent consumers for drawing power from Grid for the project. The case was listed for motion hearing on 20.09.2016. During the motion hearing, the petitioner was heard and the petition was admitted for hearing and the next date of hearing was fixed for 18.10.2016.

3. During the hearing on 18.10.2016, the petitioner restated the contents of the petition and submitted that the respondent no.1 has raised the illegal and arbitrary demand in the month of September, 2016 and is threatening for disconnection in case the bill is not paid by the petitioner. The Counsel for the petitioner has prayed the Commission to restrain the respondent no.1 from issuing such demand further and to disconnect the supply till the pendency of the main petition.

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4. During the hearing, the respondent no.2 raised the issue of non-fulfilling the criteria for start-up power, separation of petitioner's unit from the grid, use of synchronization power only for a maximum period of two hours etc. by the petitioner. The petitioner could not respond to the aforesaid issues adequately. The Commission allowed time to the petitioner to respond on the issues raised by the respondent no.2 during the hearing. The next date of hearing was fixed for 22.11.2016.

5. During the hearing on 22.11.2016, the petitioner restated the aforesaid issues and requested the Commission to allow exemption to the respondent no. 3 for appearance. The respondent no. 1 and 2 stated that the copies of the petition/rejoinder were not received. On hearing the petitioner and the respondents, the Commission directed the petitioner to provide copies of the petition/rejoinder to the respondents and to file a request for exemption of respondent no.3 for appearance during the hearing. The next date of hearing was fixed for 24.01.2017.

6. During the hearing on 24.01.2017, the respondent no.1 stated the following:

(i) The petitioner has never executed PPA with the respondents and, therefore, the same rule of billing as issued by the Commission from time to time be applicable.

(ii) The solar project is connected to the grid all the time and during the period from sunset to sunrise, the project is drawing power from the grid as standby power.

(iii) The Hon'ble APTEL passed an order on 23.04.2015 in Appeal No. 297/2013 (GMR Gujarat Solar Power Pvt. Ltd. Vs GERC & Others) and held that:

“ The Solar PV plant has to be charged at temporary HTP category tariff for import of standby power supply.”

7. During the hearing on 24.01.2017, the respondent no.2 stated the following:

(i) The petitioner does not have any PPA for sale of power generated by it to the respondents. Therefore, the question of netting of the power on import and export basis does not arise.

(ii) The provisions of the Regulations shall prevail over the provisions of the relevant PPAs on the issue of tariff applicable for the power drawn by the generator.

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8. During the hearing on 24.01.2017, the petitioner stated that on account of the following distinctions, the conclusions arrived at by Hon'ble APTEL would not apply in this case :

- (i) The order passed by the Hon'ble APTEL is misquoted and incorrectly applied by the respondent no.1 as no auxiliary consumption is allowed by GERC whereas MPERC allowed 0.25% in its tariff order.
- (ii) The GERC has made provisions for standby power to the Solar Power Projects and billing at temporary rates in its tariff order.
- (iii) The power purchase agreement between the GMR Gujarat Solar Power Pvt. Ltd. with the distribution licensee clearly provided that the energy supplied by the distribution licensee to the Solar PV Project shall be charged at temporary HTP supply rate.

9. During the hearing, the petitioner sought time to file a written submission. The Commission allowed 10 days' time for the same. The petitioner has filed a written submission on 08.02.2017.

10. Having heard the petitioner and the respondents and on considering their written submissions, the Commission has noted that the main issue is whether drawl of power during night hours daily by the petitioner from the grid may be billed at the rate as specified in the relevant Regulations/Supply Code or as per schedule HV-7 of the retail supply tariff order. The Commission has noted that the Hon'ble APTEL passed an order on 23.04.2015 in Appeal No. 297/2013 (GMR Gujarat Solar Power Pvt. Ltd. Vs GERC & Others) wherein this issue was discussed in detail and after considering all aspects held that:

“ The Appellant is entitled to be charged for import of power at temporary HTP category tariff as determined by the State Commission in retail supply tariff order from time to time....”

11. Under the above circumstances, the Commission is also of the view that the petitioner shall be billed as per the provisions of the Regulation 10 of MPERC (Cogeneration and generation of electricity from renewable sources of energy) (Revision-I) Regulations, 2010

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for import of power from the grid which provides as under:

“10. Drawing Power during shut down by Generator/Co-generation from Renewable Sources:

The Generator/Co-generation from Renewable Sources would be entitled to draw power exclusively for its own use from the Distribution Licensee’s network during shutdown period of its Plant or during other emergencies. The energy consumed would be billed at the rate applicable to Temporary Connection under HT Industrial Category.”

12. In view of the above, the petition no. 48/2016 stands disposed of.

Ordered accordingly.

Sd/-
(Alok Gupta)
Member

Sd/-
(A.B.Bajpai)
Member

Sd/-
(Dr. Dev Raj Birdi)
Chairman

