

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of Petition under Regulation 45 of MPERC (Conduct of Business) (Revision-I) Regulations, 2016 seeking appropriate directions against Levy of Fixed Charges for Availing Standby Support for whole month and for refund of amount recovered towards fixed charges in violation of applicable Regulations and Agreement for availing standby support.

ORDER

(Date of Order: 18 March 2024)

M/s. Dhanuka Biotech Private Ltd., Neemuch - Petitioner

V/s

MP Paschim Kshetra Vidyut Vitran Co. Ltd. - Respondent

- i. Shri Dheeraj Singh Panwar, Advocate appeared on behalf of the petitioner.
- ii. Shri Shailendra Jain, Deputy Director appeared on behalf of the respondent.

1. The subject petition is filed by the Petitioner seeking appropriate directions against Levy of Fixed Charges for availing Standby Support for whole month and for refund of amount recovered towards fixed charges by the Respondent which are in violation of applicable Regulations and Agreement for availing standby support. The petitioner is aggrieved by demand of fixed charges levied for whole month in the monthly bill of August 2023 and September 2023 contrary to the terms of Agreement for availing Stand-by support and applicable Regulations. The petitioner has made following prayer in its petition: -

- (i) *That, present petition may kindly be allowed and the respondent's demand of fixed charges of Rs.34,65,000/- raised in bill of August '2023 and Rs. 34,65,000/- raised in bill of September, 2023 with further recovery of Fixed Charges may kindly be set aside in the interest of Justice.*
- (ii) *That, the respondents be directed to refund the entire excess amount recovered by way of Fixed Charges, along with interest as per Section 62 (6) of Electricity Act, 2003.*
- (iii) *That, the Respondent be directed not to levy the Fixed Charges for the whole month for Petitioner Stand-by Support Connection and to levy the Fixed charges only for the*

actual number of days period during which the Stand-by support supply is availed by Petitioner.

2. The brief facts as submitted by the petitioner in petition are as under :-
- a) The petitioner has established a 7.5 MW Captive Thermal Generating Plant (Agri Waste Fuel Based Steam). The Petitioner had applied for 5000kVA Stand-by connection to the Respondent on 05/01/2023 for the purpose of availing Stand- by power supply for his industry as and when the petitioner's own captive power plant comes to halt due to Breakdown / Congestion resulting from the usage of Agri-waste Raw Material.
 - b) That, the petitioner paid following amounts to the Respondent Discom.

Registration Fees	Rs.16,800/-
Supervision Charges	Rs.54866/-
System Study Fee charges	Rs.37,700/-
Advance Security Deposit	Rs.19,20,000/-

for 5 days period before executing Agreement apart from other compliances.
 - c) That, the above connection was required for the purpose of using electricity energy as Standby support.
 - d) The respondent agreed to levy the charges and fixed charges only for the period during which the supply of standby support is availed by the petitioner. Petitioner availed the standby support facility during 28/07/2023 to 03/08/2023 for which the bill was to be raised in the month of August-2023. The Respondent raised bill on 28/08/2023 wherein the respondent has levied fixed charges of Rs.7,82,419/- for the period of 28/07/2023 to 03/08/2023 as per agreement and applicable provisions.
 - e) That, the respondent immediately, thereafter changed the bill and issued another bill on same date 28/08/2023 wherein demand of fixed charges was increased from Rs. 7,82,419/- to Rs.34,65,000/- i.e., for the whole month of August'2023 which is the second bill challenged in this petition. Thus respondent has raised two bills with different amounts for the same month. Further again in September 2023 respondent imposed fixed charges Rs.34,65,000/- i.e. for the whole month, whereas petitioner availed stand by support supply only from 06/09/2023 to 12/09/2023.
 - f) That, the petitioner was required to pay the entire bill amount as respondent did not accept the part payments. The petitioner submitted letters dated 11/09/2023, 13/09/2023 and 12/10/2023 for payment of the impugned demand under protest.
 - g) That, keeping in view of above approach of respondent, the petitioner is not availing the standby support supply from September 2023 and petitioner is compelled to close down the production activities during the period of breakdown. Due to this, availing connection has become a failure and there is no use of huge investment of about Rs. 3 Crores made for standby connection by installing transformer of High Capacity and other arrangements.

- h) That, the respondents are liable to refund the amount illegally recovered Rs.34,65,000/- along with interest and also liable to pay compensation for the loss of production and business profits due to their arbitrary action.

Grounds Urged

- i) Because the demand of fixed charges for whole month in bills of August and September, 2023 has been made contrary to the terms and conditions of the agreement for availing standby support. The respondent's action is in violation of Clause 7 of agreement which reads as under :-
"Clause 7:- The total period for the purpose of billing for standby support shall be from the time the WEST Discom closes the interconnecting breaker in the premises of the consumer in presence of its representative for the availability of standby support up to the time the interconnecting breaker is re-opened for disconnection of standby supply in presence of the consumer's representative pursuant to communication of the consumer and the subject to provision in clause 4.10".
- j) Because, the respondent demand is against the provisions of Clause 4.16, 4.17, 4.20 and 4.21 of MPERC (Power Purchase and other matters with respect to conventional Fuel Based Captive Power Plants) Regulations (Revision-I), 2009.
- k) Because, the petitioner is liable to pay Fixed Charges for the number of days for which the connection is availed during the month as per Clause 1.20 of General Terms and Condition of High Tension of Tariff Order for FY 2023-24.
- l) Because, the petitioner has complied with the applicable Regulations and has made payment as per Clause 4.15.
- m) Because, the respondent has recovered excess amount in violation of Tariff Order of Hon'ble MPERC and in violation Section 62 of Electricity Act, 2003.
- n) Because the amount recovered deserves to be refunded along with interest provided under Section 62 (6) of Electricity Act, 2003.
2. At the motion hearing held on 13th December, 2023, the Commission admitted the petition. The Commission heard the petition on 4th January, 2024 and 23rd January, 2024.
3. At the hearing dated 23rd January, 2024, arguments were heard. On request of the parties, the Commission granted three days' time to file written submission, if any. The case was reserved for order.
4. Respondent Discom has submitted their reply vide affidavit dated 11th January, 2024. The following broad submissions were made by the Respondent.
- i. That, from perusal of averment made in the petition along with relief claimed, it is apparent that the primary grievance raised by the petitioner vide instant petition is with respect to the billing of fixed charges to the petitioner for the whole billing month as against the claim of the petitioner regarding levy of the Fixed charges only for the actual*

number of days period during which the Standby support supply is availed by the petitioner. In support of its claim Petitioner is placing the reliance on the Clause 1.20 of the General Terms and Condition of High Tension Tariff given in the Retail Supply Tariff Order for FY 2023-24.

ii. Respondent denies and disputes each and every allegation, averment and contention made in the petition and stated that Billing has been done by the respondent according to the provisions of the MPERC (Power Purchase and other matters with respect to conventional Fuel Based Captive Power Plants) Regulations (Revision-I), 2009.

iii. The relevant part of the MPERC (Power Purchase and other matters with respect to conventional Fuel Based Captive Power Plants) Regulations (Revision-I), 2009 (Regulations) is reproduced as under:

Charges for Stand-by support

4.16 In addition to above commitment charges, the User shall also be required to bear energy charges and fixed charges for the power consumed during period of Stand-by support which shall be same as applicable for temporary connection as approved by the Commission for corresponding category in its tariff orders from time to time.

4.17 The fixed charges shall be applied on the maximum demand at any 15 minutes time block covered under stand-by period subject to minimum of 90 % of the contract demand. The standby period for this purpose shall be reckoned maximum up to 30 continuous days. The energy charges shall be applied on the total energy consumed across all time-blocks covered under stand-by period.

4.18 In case the recorded maximum demand at the CPP premises exceeds the Stand-by contract demand, the excess demand recorded shall be billed for at 2 times the fixed charges arrived at from Clause 4.17.

4.19 The Stand-by support availed by the User shall be entitled for power factor incentives and penalties as approved by the Commission for retail supply consumers in its Tariff Order. However, the load factor concession shall not be applicable.

4.20 There shall be no minimum energy charges on power consumed under Stand-by support for such Users.

4.21 In case the stand-by support is availed by the User for more than one time in a particular month, the fixed charges shall be billed for the first time only.

iv. Further, the Retail Supply Tariff order provides for the following with regard to the rate of Energy charges & fixed charges applicable for the temporary connections:

GENERAL TERMS AND CONDITIONS OF HIGH-TENSION TARIFF

1.20 Temporary supply at HT: The character of temporary supply shall be as defined in the M.P. Electricity Supply Code, 2021 as amended from time to time. If any consumer requires temporary supply then it shall be treated as separate service and charged subject to the following conditions:

(a) Fixed Charges and Energy Charges shall be charged at 1.25 times the normal tariff. The fixed charges shall be recovered for the number of days for which the connection is availed during the month by prorating the monthly fixed charges. Month shall be considered as the number of total days in that calendar month.

That, from the perusal of the aforesaid provision, following conclusion may be drawn:

a. **The User is required to pay energy charges and fixed charges for the power consumed as applicable for temporary connection. In other words connection is not being treated as temporary connection and only rate of fixed charges shall be the same as applicable to temporary consumer.**

b. Clause 1.20 (a) of the HT General Terms and Condition given in the Tariff Order provides the following with regard to temporary connections:

i. Applicable Fixed Charges and Energy Charges shall be 1.25 times the normal tariff.

ii. The fixed charges shall be recovered for the number of days for which the connection is availed during the month by prorating the monthly fixed charges.

iii. Month shall be considered as the number of total days in that calendar month.

- v. *The Regulation 4.16 of the Regulations 2009 merely provides that the fixed charges shall be same as applicable for temporary connection. There is no further provision that such fixed charges shall be recovered for the number of days by prorating the monthly fixed charges. Therefore, Applicable fixed Charges shall be 1.25 times the normal tariff. Further, two conditions as mentioned in para 4(iv) (b) (ii) and (iii) above shall not be applicable with regard to the billing of the stand by charges. It is submitted that as the nomenclature indicates fixed charges are fixed in nature. The energy charges are variable charges and payable only based on the consumption. However, fixed charges are payable irrespective of whether any energy is consumed or not. Thus, considering the provision of Regulations 2009 read with the rate given in the Tariff Order fixed charges shall be billed for the whole month.*
- vi. *As per Regulation 4.17, fixed charges will be applied on the maximum demand at any 15 minutes time block covered under stand-by period subject to minimum of 90% of the contract demand. In other word for the purpose of the billing of fixed charges billing demand shall be the actual maximum kVA demand of the consumer (in any 15 minutes time block) during the billing month or 90% of contract demand whichever is higher.*
- vii. *At the same time Regulation 4.17 specifically provides that the standby period (billing period) shall be maximum for the 30 days. There is rational behind this condition as the rate of fixed charges provided in the tariff order is only for the one month. So as to ensure full recovery of fixed charge it has provided that billing month cannot be for the period more than 30 days. Therefore, if power is being drawn for 45 days there would be two billing month for the purpose of the billing of fixed charges. In case argument of petitioner is accepted there was no need of this condition in scenario of billing of fixed charges on daily basis.*
- viii. *Again use of term 'contract demand' in Regulation 4.17 has much significance. Term 'Contract Demand' always uses in the context of permanent consumers. Further, Regulation specially provides that there shall be minimum billing of fixed charges with regard to 90% of contract demand. Neither in the Regulations 2009 nor in the Clause 1.20 of the HT General Terms and Condition given in the tariff order there is provision regarding proration of 'contract demand' on the basis of number of days as sought to be*

argued by the petitioner. Thus, billing shall be done for the whole billing month for the maximum demand subject to minimum of 90% of contract demand.

- ix. Regulation 4.21 specifically provides that in case the stand-by support is availed by the User for more than one time in a particular month, the fixed charges shall be billed for the first time only. There is rational behind this provision. As fixed charges for the whole month is to be billed there cannot be any further billing for the subsequent drawl in the very same billing month. If for the sake of argument interpretation of the petitioner considered, fixed charges shall not be billed at all in case power has drawn second & subsequent times. As per the submission of the petitioner, for the power drawn first time fixed charges shall be billed for those number of days only for which power is availed and for the second and subsequent drawl regulation 4.21 prohibits the billing of fixed charges this no billing shall be done. Thus, there would be under recovery of fixed charges. Such interpretation which renders any statutory provision (Regulation 4.21 in the instant case) as infructuous cannot be supplied. Therefore when consider the Regulation 4.16 & 4.17 along with Regulation 4.21 it is clear that fixed charges are to be billed for the whole month.*
- x. In light of above, Respondent requested that the petition filed by the petitioner is devoid of merit and may be dismissed.*

10 Petitioner has filed the rejoinder and additional submission vide letter dated 22/1/24 and 24/1/24 respectively, whereby following broad submission are made :

- i. Petitioner is already paying commitment charges of Rs. 31/- Per KVA Per Month as per Clause 4.15 of Regulations even without availing standby support.*
- ii. Petitioner is already paying fixed charges and energy charges at 1.25 times of Normal Tariff which is the Highest Tariff fixed by the Hon 'ble MPERC.*
- iii. If respondent submission is accepted then petitioner industry or any other industry cannot survive because the cost of energy charges per unit will go on higher side by approximately 500 times. If respondent's billing is accepted it will come to about Rs.60 per unit which is beyond the Tariff fixed by MPERC.*
- iv. If the respondent felt any ambiguity in the provision, they could have approach MPERC for clarification but respondents have acted arbitrarily and applied the rate which is*

almost 500 times of energy rates applicable. The respondent made it difficult for the Petitioner Industry to survive by levy heavy financial burden.

- v. *That, the billing process is wholly against the Tariff Order and applicable Regulations and the object of MPERC to provide smooth power supply enabling survival of the Industry.*
- vi. *That, the respondents have recovered as per Tariff of Temporary Charges for last more than 10 years from all similar consumers and only in case of petitioner the arbitrary action has been taken by applying the rate which is 500 times of rate applicable.*
- vii. *That, the word contract demand is considered for permanent connection. MPERC in Petition No. 67/2022 by order dated 30/12/2022 has held that standby support connection is meant for captive users only and cannot be equated with a permanent connection where continuous power supply is required.*

11 Subsequently, vide affidavit dated 25th January, 2024, the Respondent has filed written submission whereby following broad submissions were made:

- a) *The User is required to pay energy charges and fixed charges for the power consumed as applicable for temporary connection. As per Tariff Order Fixed Charges and Energy Charges shall be charged to the temporary consumer at 1.25 times the normal tariff. Petitioner has sought to submit that billing should be done considering the connection as temporary connection. However, there is no such stipulation in the above mentioned provision of the Regulations in this regard. In other words connection is not being treated as temporary connection and only rate of fixed charges & energy charges shall be the same as applicable to temporary consumer. It may further be noted that Regulations 2009 is complete code in itself with regard to the billing of stand by charges. In other words what conditions of the tariff order shall be applicable has specifically provided in the Regulations itself. Therefore, other conditions of tariff order applicable to temporary consumer but not specified/provided in the Regulations shall not be applicable.*
- b) *Without prejudice the aforesaid submission, it is submitted that even the tariff order does not provide for the billing of fixed charges to the temporary consumer on the basis of number of days in which supply is actually availed as sought to be argued*

by the petitioner. It is stated that tariff order merely provided that in case of temporary consumers the fixed charges shall be recovered for the number of days for which the connection is availed during the month by prorating the monthly fixed charges and there is no provision in the tariff order that fixed charges shall be billed for number of days on which supply is actually availed as sought to be argued by the petitioner in the instant case.

- c) As per Regulation 4.17, fixed charges will be applied on the maximum demand at any 15 minutes time block covered under stand-by period subject to minimum of 90% of the contract demand. In other word for the purpose of the billing of fixed charges billing demand shall be the actual maximum kVA demand of the consumer (in any 15 minutes time block) or 90% of contract demand whichever is higher. Therefore, rate of fixed charges applicable to a temporary consumer taken from the applicable tariff order shall be multiplied to the maximum demand to derive the fixed charges to be billed for standby support. The provision is clear and explicit. There is no provision regarding further proration.*
- d) Use of term 'contract demand' in Regulation 4.17 has much significance. Term 'Contract Demand' always uses in the context of permanent consumers. Further, Regulation specially provides that there shall be minimum billing of fixed charges with regard to 90% of contract demand. Similar provision is there in the Tariff order for the permanent consumers vide Clause 1.6 of HT Tariff Order's General Terms and Conditions.*
- e) In the instant case Contract Demand for the Standby Support is 5000 KVA and Maximum Demand Recorded in the month of August-2023 is 2880 KVA. Thus, following the provision of the Regulations minimum billing for the fixed charges has been done considering the 90% of Contract demand i.e. 4500 KVA. It is reiterated that neither in the Regulations 2009 nor in the Clause 1.20 of the HT General Terms and Condition given in the tariff order applicable to temporary consumer, there is a provision with regard to the proration of the 90% of Contract Demand on the basis of number of days in which supply is actually availed as sought to be argued by the petitioner.*

- f) *At the same time Regulation 4.17 specifically provides that the standby period (billing period) shall be maximum for the 30 days. There is rational behind this condition as the rate of fixed charges provided in the tariff order is only for the one month. So as to ensure full recovery of fixed charge it has provided that billing month cannot be for the period more than 30 days. Therefore, if power is being drawn for 45 days there would be two billing month for the purpose of the billing of fixed charges. In case argument of petitioner is accepted there was no need of this condition in scenario of billing of fixed charges on daily basis.*
- g) *Regulation 4.21 specifically provides that in case the stand-by support is availed by the User for more than one time in a particular month, the fixed charges shall be billed for the first time only. There is rational behind this provision. As fixed charges for the whole month is to be billed there cannot be any further billing for the subsequent drawl in the very same billing month. If for the sake of argument interpretation of the petitioner considered, fixed charges shall not be billed at all in case power has drawn second & subsequent times. As per the submission of the petitioner, for the power drawn first time fixed charges shall be billed for those number of days only for which power is availed and for the second and subsequent drawl regulation 4.21 prohibits the billing of fixed charges thus no billing shall be done. Thus, there would be under recovery of fixed charges. Such interpretation which renders any statutory provision (Regulation 4.21 in the instant case) as infructuous cannot be supplied.*
- h) *The Petitioner's reliance on the various terms condition given in the HT General Terms and Condition with regard to the billing of Temporary Connection is misplaced. It is reiterated that Regulation 2009 nowhere provides that billing of standby support shall be done considering the connection as temporary one and only fixed charges/energy charges applicable to temporary connection is to be considered. In case billing done considering the connection has temporary connection various contradiction would arise between the tariff order and Regulations 2009. Summary of such contradiction has already been submitted in the reply dated 11.01.2024 by the answering Respondent.*

Commission's Observations and Findings:

- 12 In the present case, the Petitioner has contested that levy of fixed charges by Respondent for availing standby support for the month of August and September 2023 are contrary to clause 7 of the terms and conditions of the agreement executed by petitioner with Respondent for availing Stand-by support and are in violation of Regulation 4.16, 4.17, 4.20 and 4.21 of MPERC (Power purchase and other matters with respect to conventional Fuel based Captive Power Plants) Regulations (Revision 1), 2009 and amendment thereof. The petitioner has argued that he is liable to pay Fixed charges for the number of days for which the standby support is availed during the month as per clause 1.20 of General Terms and Conditions of High-Tension Tariff of Retail supply tariff order for FY2023-24.
- 13 Respondent in its reply submitted that for availing Stand-by support as per Regulation 4.16 of aforesaid Regulations, the petitioner is required to pay energy and fixed charges for the power consumed at the same rates as applicable for temporary connection as per clause 1.20 of General Terms and Conditions of HT tariff of Retail supply tariff order for FY2023-24. Respondent further stated that Regulation 4.21 of aforesaid Regulations provides that in case the Stand-by support is availed by user for more than one time in a particular month, the fixed charges shall be billed for the first time only. There is rational behind this provision as fixed charges for the whole month are to be levied for first drawl, there cannot be any further billing for the subsequent drawl in the very same billing month.
- 14 In regard to the petitioner's contention that levy of fixed charges for availing Stand-by support for whole month is contrary to the provisions of Regulations, the Commission has examined the provisions of relevant Regulations of MPERC (Power purchase and other matters with respect to conventional Fuel based Captive Power Plants) Regulations, (Revision -1) 2009 and amendment thereof.
- 15 The Commission observed that Regulation 4.16 of aforesaid Regulations stipulates that besides, commitment charges, user is required to pay energy charges and fixed charges for the power consumed during period of Stand-by support which shall be same as applicable for temporary connection as approved by the Commission for corresponding category in its tariff orders from time to time. The said Regulation is reproduced below:-

4.16 "In addition to above commitment charges, the User shall also be required to bear energy charges and fixed charges for the power consumed during period of Stand-by support which shall be same as applicable for temporary connection as approved by the Commission for corresponding category in its tariff orders from time to time".

- 16 It is observed that the petitioner, in his submission has made selective reference to Clause 7 of Standby Agreement mentioning that impugned billing of fixed charges has been contrary to the aforesaid clause of terms and conditions of the Agreement. The said clause mentions the period for the purpose of billing for standby support. At the same time Agreement contains a number of other clauses that are taken from pertinent Regulations. For instance, Standby Agreement of petitioner also comprises of provisions of Regulations viz. 4.16, 4.17, 4.18, 4.19, 4.20, 4.21 and 4.22 of MPERC (Power Purchase and other matters with respect to conventional Fuel Based Captive Power Plants) Regulations (Revision-I), 2009. Regulations are subordinate legislations and therefore take precedence over other clauses of Agreements, which are not consistent with the Regulations. Furthermore, clause 1.34 of General terms and conditions of HT Tariff of Retail supply order FY 2023-24 mentions that “all conditions prescribed herein shall be applicable notwithstanding if any contrary provisions, exist in the agreement entered into by the consumer with the licensee”.
- 17 Regulation 4.21 specifies that in case the standby support is availed by the User for more than one time in a particular month, the fixed charges shall be billed for the first time only. The said Regulation is reproduced below :-
- 4.21 In case the stand-by support is availed by the User for more than one time in a particular month, the fixed charges shall be billed for the first time only.*
- As per aforesaid Regulation if supply is availed for the first time for a single day, second time for three days and the third time for six days, it cannot be assumed that fixed charges shall be levied only for one single day. Regulation 4.21 can be read only in one way that first time itself fixed charges for the whole month are to be levied. With such interpretation only, subsequent billing for duration of drawal being more than first time drawal will not be required.
- 18 As per Regulation 4.16, Energy and Fixed charges for Stand-by support shall be the same as applicable to Temporary connection. Charges being same does not imply that terms and conditions of temporary connection shall apply for Standby support. It is noted that Consumer’s Standby supply is a support and not a temporary connection. Specific provisions are made in the Regulations to deal with standby support which is special facility for consumers, who need standby support during breakdown of their own captive plants. For availing this special facility the commitment, energy and fixed charges are laid down by way of Regulations and Tariff Order. Commitment charges are recovered for

reserving capacity in transmission system only. At the same time Distribution Licensee has to maintain resource adequacy to supply standby consumer on demand. For maintaining such resource adequacy Distribution Licensee has to pay fixed cost. As mentioned in paragraph 17, unless monthly fixed charges are recovered for standby support availed for the first time, there will be a free ride for standby support for subsequent instances of longer duration.

- 19 On the basis of the foregoing conclusions, billing period taken by the Respondent i.e one month, in the instant case for determination of fixed charges for providing Stand-by Support to Petitioner, is found to be in accordance with provisions of the Regulations of the Commission. The Petition is dismissed accordingly and stands disposed of.

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S. P. S. Parihar)
Chairman