

Sub: In the matter of petition under Section 86(1)(e) of the Electricity Act,2003 in the matter of billing of kWh consumption made in the windfarms at temp. supply tariff for HT Industries on the instruction of MPPMCL which is in violation of the provisions of applicable wind power tariff order, agreement in force and MPERC Regulations

ORDER

(Date of hearing: 21st June,2016)

(Date of order: 5th July,2016)

M/s M.P. Windfarms Limited, - Petitioner
Energy Tower,
64, B-Sector, Kasturba Nagar, Bhopal

Vs

M.P. Power Management Co. Ltd., - Respondent No.1
Block No. 11, 3rd Floor, Shakti Bhawan,
Rampur, Jabalpur- 482008

M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd., - Respondent No.2
GPH Compound, Pologround, Indore

Shri R. Ramanujam and Shri H.D. Motiramani, Sr. Consultants appeared on behalf of the petitioner.

Shri Manoj Dubey, Advisor (Law) appeared on behalf of the respondent no.1.

Shri P.K. Jain, ASE appeared on behalf of the respondent no.2.

2. The petitioner, M/s M.P. Windfarms Limited, Bhopal has filed this petition under Section 86(1)(e) of the Electricity Act,2003 in the matter of billing of kWh consumption at temporary supply tariff for HT Industries on the instructions of MPPMCL which is in violation of the provisions of applicable wind power tariff order, agreement in force and MPERC Regulations. In its petition, the petitioner prayed that the Commission may direct the respondents as follows:

- (i) Not to deviate from the provisions of the agreements in force & to withdraw the Electricity bills for kWh consumption issued in the name of Petitioner from November,2015 onwards.
- (ii) To accept the bills of WEG owners for sale of energy from their WEGs and Arrange for timely payment of these bills.

3. The case was listed for motion hearing on 24.05.2016. During the motion hearing on 24.05.2016, the petitioner restated the contents of the petition. The petition was admitted by the Commission and the next date of hearing was fixed for 21.06.2016. The respondents have filed the written submissions.

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4. During the hearing on 21.06.2016, the Respondent no. 1 stated that:

- (i) The present petition is to be filed under Section 86(1)(f) instead of 86(1)(e) of the Electricity Act, 2003 and fee is to be deposited accordingly. Therefore, it suffers from filing defect of incorrect provision of law and insufficient filing fee.
- (ii) As per clause 1 of the PPA, "The Company shall abide by any law, rules, Regulations or any notification or order issued thereunder by the Central Govt. or State Govt. or Commission or Local Authority or any other Authority prescribed under the Law connected with the project of the Company." It is clear that the petitioner had agreed to abide by the Regulations framed by the Commission subsequent to execution of PPA. Even otherwise, it is settled principle of Law that the provisions of Law will prevail over the contractual terms of the agreement.
- (iii) The tariff order dated 18.05.2010 for FY 2010-11 also provides that the generator has to pay fixed charges and temporary charges at temporary rate corresponding to the tariff applicable to HT industry. Further, the generator including the CPP shall execute an agreement for start-up power in tune to terms and conditions of clause 1.30 of the tariff order. Therefore, the PPA has to be read in consonance to the aforesaid Regulations and the tariff order.

5. During the hearing on 21.06.2016, the respondent no.2 also submitted that the instructions issued by the respondent no.1 are valid and consistent with the provisions of Clause 10 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 and also with the relevant provisions of the applicable Wind Power Tariff Order and the Agreements in force. Therefore, the present petition is devoid of merit and may be dismissed.

6. During the hearing, the petitioner restated the contents of the petition and filed a written submission, which states that:

- (i) Section 86 (1)(e) of the Electricity Act, 2003 provides promotion of electricity generation from RE sources as one of the functions of the Commission, which includes successful operation of windfarms. By stopping the payment, the windfarm cannot operate successfully. Therefore, the petition along with fee filed under Section 86(1)(e) is appropriate.
- (ii) The power drawn during shut down period and start-up power (which is essential for wind power production) are not the same.
- (iii) The payment towards kVARh is not disputed.
- (iv) Tariff order dated 18.05.2010 is not applicable to start-up power for wind generators.
- (v) The departure from prevailing practice is not warranted.

7. Having heard the petitioner and the respondents and on considering their written submissions, the Commission is of the view that the Clause 10 of MPERC (Cogeneration and

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Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 shall be applicable in the event of drawing of power by the petitioner during shut down of the plant or during other emergencies. During the shut down or emergency periods, the plant shall not generate power and requires power for repairs and maintenance purposes, for which the petitioner shall have to avail power and would be billed at temporary supply tariff as specified in the aforesaid Regulations. However, the power is required by the petitioner for start up of WEGs frequently, which cannot be considered under drawl of power during shut down or emergency periods. The Commission has noted that the provisions of the aforesaid Regulations have been misinterpreted by the respondents. As such, this petition cannot be considered under Section 86(1)(f) of the Electricity Act, 2003. The Commission, therefore, directs the respondents to take action accordingly as mentioned above and revise the impugned bills from November, 2015 if found necessary. The Commission further directs the respondent no.1 to make the payment of bills of the petitioner for sale of energy from its WEGs as per the terms and conditions of the applicable tariff orders/PPAs.

Ordered accordingly.

(Alok Gupta)
Member

(A.B.Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman