

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of petition seeking permission under Clause 6.2 of MPERC (Cogeneration & Generation of Electricity from Renewable Sources of energy) (Revision-I) Regulation, 2010 amended on 9th November' 2010 and 30th June' 2011 for the extension of PP&WA for a period of 5 years (wind farm at Rabadiya Hill Distt – Dewas)

Petition No. 39/2018

ORDER

(Date of Order: 15th January, 2019)

M/s. G I Power Corporation Ltd.
91-A, Mittal Court, Nariman Point,
Mumbai – 400 021

- **Petitioner**

Vs.

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

- **Respondent No. 1**

M.P. Paschim Kshetra Vidyut Vitran Co. Ltd.
GPH Compound, Pologround, Indore

- **Respondent No. 2**

Shri Dharmen Mehta, Director of the Company appeared on behalf of the Petitioner.

Shri Manoj Dubey, Advisor for the Company and Shri R.K. Thukral, AGM (Coml) appeared on behalf of Respondent no. 1.

None appeared on behalf of the respondent no. 2.

2. The petitioner M/s. G I Power Corporation Ltd., Mumbai filed a petition on 14.08.2018 for seeking permission under Clause 6.2 of MPERC (Cogeneration & Generation of Electricity from Renewable Sources of energy) (Revision-I) Regulation, 2010 amended on 9th November, 2010 and 30th June' 2011 and Section 86(1)(c)(e) of the Electricity Act 2003 for selling power to the third party from their wind farm at Rabadiya Hill Distt – Dewas and extension of PP&WA for a further period of 5 years from 01.10.2018 to 30.09.2023.

3. In the petition the petitioner prayed as under:

(i) *To renew and extend the period of PP&WA for further balance period of plant life i.e. for 5 years from 01.10.2018 to 30.09.2023 in accordance with the plant life to M/s. Gajra Gears Ltd., Dewas for 70% of total units and M/s. Kirloskar Brothers Ltd. for 30% of total units generated per month respectively.*

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- (ii) *To permit the petitioner for sale of inadvertent flow of energy on monthly basis, if any to M.P. Power Management Co. Ltd. at the rate determined in the Tariff orders from time to time.*
- (iii) *Any other relief as granted by MPERC, deemed fit.*

4. The case was listed for motion hearing on 28.08.2018. During the motion hearing, the petitioner restated the contents of the petition. The Commission admitted the petition for further hearing and directed the petitioner to serve a copy of the petition to the respondents within a week's time. The respondents were directed to file the reply by 18.09.2018, with a copy to the other parties. The case was listed for next hearing on 25.09.2018. Respondent no. 1 submitted the reply on 19.09.2018.

5. During the hearing held on 25.09.2018, the respondent no. 1 reiterated the contents of the reply made vide submission dated 19.09.2018 and challenged the authorization of Shri Gajanan Yadav, appeared on behalf of the petitioner. In response, the petitioner requested the Commission to allow some time for submission of the appropriate documents in favour of the authorization of Shri Gajanan Yadav in the matter. The Commission accepted the request and directed the petitioner to submit the relevant documents by 05.10.2018. The petitioner also stated that the petitioner would not charge any amount from the respondents towards inadvertent flow of energy. The Commission directed the petitioner to file written submission in this regard and accordingly revise the payer in the petition. The case was listed for next hearing on 09.10.2018.

6. During the hearing held on 09.10.2018, the petitioner reiterated its submission that the petitioner would not charge any amount from the respondents towards inadvertent flow of energy and furnished the undertaking dated 03.10.2018 to the respondents stating that

“The Petitioner hereby undertakes as stated and agreed in the hearing on 25th September and agrees to give an undertaking that any and all inadvertent power flow generated shall be supplied free of all cost and without any consideration to be paid to the Petitioner.”

Respondent no. 1 stated that any action in the matter would be subject to scrutiny of the legal / financial implications in light of the provisions of the agreements executed and requested for

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some time for submission of the reply. The Commission accepted the request and directed that same be submitted by 25.10.2018 in hard copy with a copy to the other party. The respondent no. 1 and the petitioner also agreed to convene a meeting shortly to resolve the issue. With regard to submission of the documents in favour of the authorization of Shri Gajanan Yadav, the Commission observed that the petitioner had not made any submission in the matter. The Commission, therefore, directed the petitioner to submit the requisite documents by 25.10.2018 in hard copy with a copy to other party. The case was listed for next hearing on 30.10.2018.

7. In the meantime, the Counsel for MPPMCL vide letter No. 05-01/500-832 dated 23.10.2018 requested for adjournment of the hearing stating that

“As I have to be before High Court of Madhya Pradesh at its bench at Indore on the same day, it shall not be possible for me to appear in the above referred cases before Hon’ble Commission on 30.10.2018”.

During the hearing held on 30.10.2018, the Commission considered the abovementioned request for adjournment and scheduled the next hearing on 15.11.2018.

8. During the hearing held on 15.11.2018, the petitioner informed submission of the revised petition in the matter on 12.11.2018. The representative of the respondent no. 1 requested for some time for submission of their reply. The Commission considered the request and directed the respondents to submit their reply in soft and hard copy with copy to the other party by 27.11.2018. The petitioner had also submitted the documents indicating Shri Gajanan Yadav as an employee of M/s GI Power Corporation Ltd. on 13.11.2018. The case was listed for next hearing on 12.12.2018.

9. During the hearing held on 12.12.2018, the petitioner stated that the petitioner was supplying and would like to supply the power under open access to third party and not selling the power to Discom. The Electricity Act, 2003 permits third party sale and the petitioner has all rights to operate its WEGs and make third party sale by availing open access. The representative of the respondent no. 1 raised the issue of life of WEGs as the tariff was determined for the period of 20 years considering it as life of WEGs and this period is already over. In this situation the petitioner’s request for renewal / extension of the old PP&WA dated 13.11.2011 would not

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be entertained. Respondent no. 1 stated that the reply submitted vide dated 19.09.2018 would also be considered for the revised petition filed by the petitioner.

10. The petitioner in the petitions and during various hearings held submitted before the Commission as below:

- i. *The Petitioner is a Wind Electricity Generator (WEG) having 26 numbers of WEGs each of 230 KW totaling to 5.98 MW capacity situated at Village Rabadiya, District Dewas (M.P.). These WEGs were commissioned in phases from 01.09.1999 to 30.11.1999. Since inception, the petitioner has been selling power to third parties and presently upto 65 lakh Units per annum i.e. 70% to M/s. Gajra Gears Pvt. Ltd. and upto maximum 29 lakh Units per annum i.e. 30% to M/s. Kirloskar Brothers Ltd. from the total power generated from the said WEGs. Out of the remaining power generated, the total energy fed into the system less 2% wheeling charges in terms of Units, in case being excess to aforesaid total of 94 lakh Units had been treated as excess energy sold to erstwhile Madhya Pradesh Electricity Board and subsequently to M.P. Power Trading Company Ltd. and MP Power Management Company Ltd. at a rate of Rs. 2.25 per Unit. This was in pursuance of the Power Purchase and Wheeling Agreement dated 19.01.1999 with erstwhile Madhya Pradesh Electricity Board for a period of 12 years and which was extended with then MP Power Trading Company Ltd. for a period of eight years from 30.09.2011 till 30.09.2018 vide PP&WA dated 13.12.2011.*
- ii. *During pendency of the present case, the validity period of the aforesaid PP&WA dated 13.12.2011 expired on 30.09.2018. The petitioner approached to the Respondent No. 1, well in advance; by way of letter dated 08.03.2018 seeking extension of the validity period of the PP&WA dated 13.11.2011 for a further period of five years from 01.10.2018 till 30.09.2023. But, the same remained not replied by the Respondent No. 1, compelling the petitioner to approach the Hon'ble Commission by way of its initial petition dated 8th August' 2018 and sought to be modified by instant rectification petition amongst other on following grounds.*
 - a. *The respective WEGs of the petitioner are still functioning well and are expected to continue generating power as such for a further period of five years.*
 - b. *The life of the WEGs selling power to third parties is not determined anywhere. It is only that the plant should adhere to grid safety norms. The plant life, for 20 years or 25 years or for any other period, is determined in respective Tariff Orders u/s. 61, 62 or u/s. 63 or u/s. 86(1)(e) of the Act*

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for the limited purpose of tariffs in case of sale of power to State Utilities and not for third party sale. In instant case, the petitioner is not seeking plant life in determination of Tariff for sale of power to the respondents. Addressing of inadvertent power in case of third party sale is the sole issue in present petition.

c. The cross-subsidy surcharge and other charges as per regulations in vogue compensate the Respondents in all respect. Therefore, it is not open for the Respondents to assail that they are being put to loss by losing their customers by way of third parties sale. Law permits third party sale and the petitioner has all rights to operate its WEGs and make third party sale. Provisions of Section 86(1)(e) of the Electricity Act, 2003 provide well for promotion in this respect.

d. The regulations framed by the Hon'ble Commission provide for dealing with inadvertent flow of power. However, the petitioner, has already submitted before the Hon'ble Commission and agrees to give an undertaking that any and all inadvertent power flow generated shall be supplied free of all cost and without any consideration to be paid to the petitioner. The petitioner hereby again confirms to supply the inadvertent power free of all costs to the Respondents.

e. The Respondents being fully State owned Companies and Government Utilities ought to have considered petitioner's humble and sincere request made vide its letter dated 08.03.2018 in all promptitude and positivity. Inaction on the part of the respondent not only leads to loss of optimum utilization of State owned resources in national interest but also to commercial losses to the petitioner.

f. The present petition is made under all bonafides.

g. The petitioner relies on all the documents filed on its behalf vide its initial petition dated 8th August' 2018 filed under the signatures of its authorized representative – Shri Gajanan Yadav.

11. The petitioner in the revised petition has prayed to the Commission to

- i. Permit substitution of initial petition dated 8th August, 2018 filed under the signature of its authorized representative – Shri Gajanan Yadav by present petition in a way to rectify the filing and prosecuting defects as pointed out during earlier hearings of the case.*
- ii. Allow the present petition by directing the Respondents to provide a draft PP&WA to the Petitioner, finalize and execute the same in a bound time, as may*

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be considered appropriate by the Hon'ble Commission, to the effect that the earlier PP&WA dated 13.11.2011 is extended and / or renewed for a further period of five years; and

- iii. The Hon'ble Commission may, further, be pleased to grant any other suitable relief as may be considered just and proper in favour of the Petitioner.*

12. The respondent no. 1 vide submission dated 19.09.2018 stated that the present petition is not only bereft of merits, but also suffers from procedural defects being represented by an incompetent person. As such the same is liable to be dismissed outright. In the submission the respondent no. 1 submitted as below:

- i. The Petitioner has sought the permission to extend the PPWA dated 19-01-1999 for a further period of five years w.e.f. 01-10-2018.*
- ii. The Petition is bereft of merits as the Petitioner has not indicated any right in his favour seeking extension of the PPWA for a period post useful life of the plant.*
- iii. The Petitioner's generating station is an old plant and is not governed by Tariff Order No. 1/121/2017-Reg-Aff/(RE-Tariff-2017-20 dated 17-04-2017. The useful life of 25 years as mentioned in the said Tariff Order is not applicable to Petitioner's Generating Station. The Petitioner's Generating Station has completed its useful life of 20 years and therefore, there does not arise any question of extension of the PPWA. The plant is operating much below CUF on outdated technology and its plant life has not been acknowledged to have been extended. The plant has not been upgraded to recent technology on which recent WEGs are performing above CUF and have a longer plant life of 25 years. The Petitioner cannot enter into a PPWA for a plant, of which the life has expired.*
- iv. Even otherwise, extension of PPWA amounts to a fresh agreement and in view of the recent Tariff Policy notified by the Central Government on 28th January, 2016, the Petitioner is obliged to procure power from WEGs only by way of bidding mode.*
- v. Once the Commission has considered the plant life of Petitioner's generating station as 20 years, vide Tariff Order dated 21.11.2017, it simply cannot be considered that now the plant life has been changed to 25 years. It is only the plants that are covered by Tariff Order dated 14.05.2010 have been considered to have plant life of 25 years. In older plants, as in case of Petitioner, the plant life has been considered to be 20 years vide Tariff Orders dated 11.06.2007 and 21.11.2007 and the same cannot be changed now.*

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- vi. *The Petitioner is in a state of surplus power and is conveniently achieving its Renewable Purchase Obligations.*
- vii. *In the facts and circumstances, it is not in the interest of the Petitioner to extend the PPWA.*

13. The Commission has noted that the main issue is regarding renewal and extension of PP&WA beyond the plant life for which one party of the existing PP&WA is not agreed. By the order dated 04.10.2010, the Commission had granted permission for renewal of Power Purchase Agreement dated 19.01.1999 for further period of 8 years with effect from the date just after expiry of the earlier agreements and extension sought for 13 years was not allowed at that time. However in the order, the following was mentioned:-

“ However, the petitioner is at liberty to approach the Commission three months before the end of the project life of 20 years for getting suitable directions of the Commission for any subsequent extension of PPA beyond project life of 20 years.”

Further, the aforesaid permission was accorded subject to the condition that the sale of power to M/s Gajra Gears Pvt. Ltd., Dewas is limited to 70% of the total electricity generated from WEGs or maximum 65 lakhs units per annum, whichever is less and 30% of the total electricity generated from WEGs or maximum 29 lakhs units per annum, whichever is less to M/s Kirloskar Brothers Ltd., Dewas. The Commission has further noted that the petitioner has categorically stated in the petition that *“The respective WEGs of the petitioner are still functioning well and are expected to continue generating power as such for a further period of five years.”* Also, the petitioner has not submitted any relevant document which can substantiate the allotment of land in the name of the petitioner or its period of Lease. Moreover, the petitioner has offered that in case of inadvertent flow of power; it will not charge any amount to the respondent no.1. The respondent no. 1, however, contested that in the Tariff Orders dated 11.06.2007 and 21.11.2007, the Commission considered the plant life of generating stations as 20 years only. The petitioner

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had executed PP&WA with the respondents as per the Tariff Order dated 21.11.2007 and for which the period of 20 years is already over. The respondent no. 1 also stressed on the issue of being in a state of surplus power and conveniently achieving its Renewable Purchase Obligations and hence, it is not in the interest of the respondents to extend the PP&WA for a further period of five years.

14. Having heard the petitioner and the respondents and considering their written submissions, the Commission is of the view that the instant case is governed through the tariff order applicable at that time wherein the project life was considered for 20 years with the provision of third party sale. The power generated from the aforesaid project is an in-firm power, whereas the firm power is being supplied to the third parties. Therefore, adjustment of such in-firm power against the firm power for the period beyond the project life of 20 years as per the applicable tariff order is not equitable.

15. Regarding the submission of the respondent no.1 on the issue of applicability of Renewable Purchase Obligations, the Commission has observed that the Regulation 9(b) of the seventh amendment to the MPERC (Cogeneration and generation of electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010, specified the following :

“The generation of energy from Wind, Solar, Small Hydro and Municipal Solid Waste shall not be subjected to ‘ Merit Order Despatch Principles’.”

Therefore, the electricity generated from the WEG plant must be procured by the respondents. Hence, the issue of Renewable Purchase Obligations is not relevant in this case.

16. In view of the position explained above and as one of the party to the PP&WA is not agreed to renew the period of the PP&WA beyond the life of the Wind Electric Generators in terms of the applicable tariff order, the request of the petitioner for extension of PP&WA for a further period of 5 years beyond the project life of 20 years has not been considered. The

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petitioner may explore the options available for sale of electricity generated as per the provisions of the Electricity Act, 2003 and Regulations there under.

17. In view of the above, the Petition No. 39/2018 stands disposed of.

Ordered accordingly.

**Sd/-
(Mukul Dhariwal)
Member**

**Sd/-
(Dr. Dev Raj Birdi)
Chairman**