

Sub: In the matter of petition under Sections 61(h), 86(1) (c),(e),(f)(h), 30 and 142 of the Electricity Act, 2003 read with Regulation 9 of MPERC(Cogeneration and generation of electricity from renewable sources of energy) Regulations, 2010

ORDER

(Date of hearing: 7th January,2014)

(Date of order:3rd February,2014)

M/s Sterling Agro Industries Ltd.,
11th Floor, Aggarwal Cyber Plaza-II,
Netaji Subhash Place, Pitampura,
New Delhi
and others

- Petitioners No. 1to 10

M.P. Power Transmission Co. Ltd., Jabalpur

- Respondent No.1

M.P. Power Management Co. Ltd., Jabalpur

- Respondent No. 2

Shri T. Sundar Ramanathan, Advocate and Shri Sharad Saluja, Director of M/s Sterling Agro Industries Ltd. appeared on behalf of the petitioners.

Shri P.A.R. Bende, CE, SLDC appeared on behalf of the respondent no.1.

Shri A.S. Raghuwanshi, DGM appeared on behalf of the respondent no.2.

2. The petitioner, M/s Sterling Agro Industries Ltd. along with other wind electric generators had filed this petition seeking relief in scheduling and forecasting of intra-state transmission of power by wind electric generators.

3. The petitioners have stated that:

- (i) All the petitioners except the Indian Wind Power Association had set up wind electric generating plants in the state of Madhya Pradesh and after executing PPAs are supplying the power generated by it to the respondent no. 2. The Indian Wind Power Association is a non-profit organization and has worked consistently towards removing barriers to wind power development and creation of an enabling regulatory and policy environment for investments in the sector.

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(ii) The respondent no. 2 failed to make timely payments of bills to the petitioners.

The respondents made certain decisions with respect to implementation of RRF mechanism by the petitioners. These are contrary to the scheme and objectives of the Electricity Act, 2003 and Regulations made thereunder. The RRF mechanism has been applied to the petitioners despite the fact that each of the wind electric generators is generating power in Madhya Pradesh and is exclusively supplying the entire power so generated to the respondent no. 2 and as such are connected to the intra-state transmission system. None of the petitioners is connected to the inter-state transmission system and resultantly ought not to come within the purview of the RRF mechanism under IEGC, 2010. The MPERC (Commission) alone has jurisdiction on all matters dealing with such sale/supply, incidental or otherwise. The Commission had not applied the said RRF mechanism for existing wind electric generators which were commissioned before 01.04.2013. Hence this petition.

4. The petitioners also submitted the chronology of facts which led to the filing of the petition. In their petition, the petitioners prayed the Commission to consider the following submissions:

- (a) To direct respondent no. 2 to continue the processing of bills and pay in terms of the PPAs entered into by it with the petitioners till final adjudication of the case by the Commission.
- (b) To restrain respondent no. 1 from taking coercive action against the petitioners with respect to implementation of RRF mechanism and scheduling and forecasting therein until final adjudication of the case by the Commission.
- (c) To direct respondent no. 2 to issue an irrevocable revolving letter of credit equal to 2 months' payment to the petitioners.

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(d)To pass an order quashing and setting aside the directions of respondent no. 1 in so far as it had directed implementation of the RRF mechanism by the existing wind electric generators commissioned before 01.04.2013 in Madhya Pradesh exclusively connected to the intra-state transmission system and supplying the entire power generated locally within Madhya Pradesh.

5. The case was listed for hearing on 07.01.2014. During the hearing, the petitioners, by and large, reiterated what has been stated in the petition. The petitioners also submitted the following for consideration of the Commission:

- (a) The petitioners' wind farms are located in Madhya Pradesh and respondent no. 2 (a company of Government of M.P.) is the buyer and as such it is an intra-state transmission of power which falls under the jurisdiction of MPERC.
- (b) Neither the CERC nor the MPERC had given any directions to the respondents to initiate or assume zero scheduling.
- (c) Under clause 12.30 of the tariff order dated 26.03.2013, it was clearly mentioned that the existing and already commissioned wind electric generators i.e. projects commissioned before 01.04.2013 will continue to be governed under the terms and conditions as applicable at the time of their commissioning. The PPAs entered into by the petitioners with respondent no. 2 were governed by the aforesaid tariff order. Therefore, the petitioners were not required to carry out scheduling and forecasting under the RRF mechanism.
- (d) The jurisdiction of the Commission in matters pertaining to intra-state transmission is supreme and absolute. Section 30 of the Electricity Act, 2003 clearly brings out the extent and scope of jurisdiction, which has been vested in the Commission in matters of intra-state transmission system.
- (e) The projects of the petitioners were commissioned after the issue of tariff order

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dated 14.05.2010 and before issue of tariff order dated 26.03.2013 and, therefore, tariff order dated 14.05.2010 was applicable. As per clause 12.6 of the tariff order dated 14.05.2010, the wind electric generation projects were outside the purview of scheduling and merit order dispatch principles.

(f) As per Regulation 9 of MPERC (Cogeneration and generation of electricity from renewable sources of energy) (Revision-I) Regulations, 2009, the generation from co-generation and renewable sources of energy are excluded from the ambit of “merit order dispatch principles”. The same was also reflected in clause 19 of the PPAs entered into by the petitioners with respondent no. 2.

(g) In the tariff order dated 26.03.2013, the Commission made RRF mechanism applicable to new wind electric generation projects only i.e. projects commissioned on or after 01.04.2013.

(h) CERC has not yet notified the draft amendment to the CERC (Indian Electricity Grid Code) (Second Amendment) Regulations, 2010.

(i) The petitioners requested the Commission to pass suitable orders/directions to the respondents to refrain from proceeding, further in the matter with respect to implementation of scheduling, forecasting and RRF mechanism w.e.f. 15.07.2013.

6. During the hearing, respondent no. 1 submitted the following for the consideration of the Commission:

(a) CERC had notified the CERC (Indian Electricity Grid Code) Regulations, 2010 effective from 03.05.2010. A provision was made for scheduling wind and solar generation electric connected to the STU. As per Regulation 6.5.23 of the aforesaid Regulations, scheduling was to be implemented from 01.01.2011 and as per Annexure-I to the Regulations, the commercial mechanism was also to be implemented w.e.f. 01.01.2011.

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- (b) The effective date of implementation was then extended from time to time. By order dated 09.07.2013, CERC approved the detailed procedure for implementation of the RRF mechanism and directed that implementation shall start from 15.07.2013. Accordingly, the SLDC started to take action for the implementation of RRF mechanism.
- (c) In the meeting held at WRPC, Mumbai on 29.07.2013 with the State constituents, WRPC pointed out that as per the regulatory provisions, the wind farm/coordinating agency/developers have to provide schedules and advised that in case they don't provide the schedule, the same shall be treated as "Zero" by SLDC and the schedule shall be forwarded to the WRPC for preparing the bills. Accordingly, action was taken by the SLDC.
- (d) Scheduling is of the essence for secure and reliable operation of the grid and, therefore, the wind electric generators were not exempted from scheduling under the provisions of IEGC.
- (e) As per clause 3.1 (a) of the RRF procedure, this procedure shall also be applicable to all the wind generators which are connected to the transmission or distribution system of the state. Therefore, the RRF mechanism is applicable to intra-state wind generators.
- (f) The cut-off date for RRF mechanism implementation was clearly defined in the CERC order dated 09.07.2013 as 15.07.2013.
- (g) The M.P.Grid Code should be consistent with the IEGC. The amendment to the IEGC is yet to be notified. When the amendment is notified, a similar amendment shall be issued in the M.P. Grid Code. Therefore, at present, the directives issued by the CERC are also applicable to the state.
- (h) The Commission had not issued specific directives for providing any relaxation or exemption from scheduling under RRF for the wind electric

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generators commissioned during the period 03.05.2010 to 01.04.2013.

- (i) SLDC had issued directions to the wind electric generators on the basis of the directives issued by the CERC, NLDC, WRLDC and WRPC and SLDC is bound to follow their directions as per the Electricity Act, 2003. As such, the contention of the petitioners that the action of SLDC was without basis, is patently erroneous and completely contrary to the scheme and objectives of the Electricity Act, 2003 and the Regulations made by the Commission is denied.
- (j) The RRF mechanism had been implemented country wide at connectivity level 33 kV and above. The provisions of IEGC and Madhya Pradesh Electricity Grid Code (MPEGC) related to RRF cannot have inconsistencies as specified in para 5 of the CERC order dated 30.12.2011.
- (k) All the eligible wind electric generators including the petitioners through coordinating agency have started load forecasting of their generation and are also making real time revisions which is helping the grid management activities and better scheduling to avoid large drawl deviations from the grid.
- (l) In view of the above, respondent no. 1 submitted that the Commission may consider:
 - (i) the directions issued by the SLDC to the wind electric generators regarding implementation of RRF mechanism as just and proper.
 - (ii) holding that the action taken by the SLDC vide letter dated 31.10.2013 was within the purview of law.

7. During the hearing, respondent no. 2 submitted the following for the consideration of the Commission:

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- (i) The RRF mechanism for inter-state and intra-state renewable energy transactions should be made applicable only subsequent to the necessary amendments in the IEGC and the State Grid Code respectively. The payment by/to the respondent no. 2 to/from the RRF mechanism should start only after that.
- (ii) The petitioners and the respondents are both under obligation to comply with the provisions of the RRF mechanism issued by the CERC vide order dated 09.07.2013, subject to the directions of the Commission in this petition.
- (iii) As per clause 12.17 of the tariff order dated 14.05.2010, the provisions of payment by respondent no. 2 to the generators through the Letter of Credit (LOC) is an option available to respondent no.2 to avail extra rebate and is not available to the generators. Respondent no. 2 is not in a position to provide LOC because the working capital limit available from the bank is limited to fulfilling the requirement of LOC for bulk long-term power suppliers.

8. Having heard the petitioners, the respondents and considering their written submissions, the Commission has noted that the RRF mechanism was already in place as provided in CERC (IEGC)Regulations, 2010 notified on 03.05.2010. The Regulation 6.5(23)(i) of the aforesaid Regulations provides that with effect from 01.01.2011, scheduling of wind electric generation plants would have to be done for the purpose of UI where the sum of generation capacity of such plants connected at the connection point is 33 kV and above, and where PPA has not yet been signed. The Commercial mechanism specified the cut-off date as 03.05.2010. The effective date of implementation was subsequently extended till 15.07.2013 vide CERC order dated 09.07.2013.

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9. The Commission has also noted that the CERC issued a draft amendment to the CERC (IEGC) Regulations, 2010 in accordance with the order dated 09.07.2013, which was notified on 06.01.2014 and the Regulations shall come into force with effect from 17.02.2014. By order dated 07.01.2014, CERC intends to review the RRF mechanism and has directed that while the forecasting and scheduling of wind generation shall continue as per its order dated 09.07.2013, the commercial mechanism outlined therein shall remain suspended until further orders. CERC has also invited detailed views on the RRF mechanism and detailed procedure by 31.01.2014.

10. Under the above circumstances, the Commission is of the view that it would be appropriate for the respondent to make payments to the petitioners as per the provisions of tariff orders issued by the Commission without implementation of commercial mechanism outlined in the CERC's order dated 09.07.2013 till fresh directives in the matter are issued by the CERC. While the RRF mechanism remains suspended until further orders by the CERC, vide their order dated 07.01.2014 this Commission directs the petitioners to continue with forecasting and scheduling of wind electricity generation as per the CERC's order dated 09.07.2013.

11. The Commission also directs the petitioners to take action as deemed necessary regarding implementation of RRF mechanism as soon as it is implemented by the CERC without awaiting necessary orders from the Commission as the finalization of the State Grid Code to include necessary provisions regarding RRF mechanism may take some time.

12. The Commission further directs the Commission Secretary to initiate modification of the State Grid Code so as to avoid any difficulty to the petitioners and the respondents.

Ordered accordingly.

(Alok Gupta)
Member

(A.B.Bajpai)
Member

(Rakesh Sahni)
Chairman