

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL**

**Sub : In the matter of permission under Section 86(a) of the Electricity Act, 2003 for Sale of energy generated from biogas based power project to M.P. Tradeco.**

**Petition No. 08/2009**

**ORDER**

**(Date of hearing 29<sup>th</sup> January, 2010)**

**(Date of order 4<sup>th</sup> February, 2010)**

M/s RDM Care (India) Pvt. Ltd.,  
2/12, West Patel Nagar,  
New Delhi – 110008. - Petitioner

V/s

M.P.Poorv Kshetra Vidyut Vitaran Co. Ltd.,  
Jabalpur. - Respondent No. 1

M.P.Power Trading Co. Ltd.,  
Jabalpur - Respondent No. 2

Shri M.L.Jaiswal, Sr. Counsel appeared on behalf of the Respondent No. 2.

2. The Petitioner had filed a petition on 02.03.2009 to grant permission for sale of energy generated by 1.2 MW biogas based power plant to be set up at Pariyat, District Jabalpur on the rates (provisionally) determined by the Commission for biomass based projects. The Commission had directed to fix the date of hearing on 08.04.2009.

3. During the hearing on 08.04.2009, the Petitioner had also made a request to grant permission for evacuation of power at 33kV with nearest 33/11 kV Sub-station instead of 132/33 kV Sub-station as the amount involved was of the tune of Rs. 1.2 Crores. The Respondent No. 2 made a submission that the Power Purchase Agreement (PPA) could be signed only after the tariff and terms & conditions for procurement of power from biogas based plant were decided by the Commission. The petition was disposed off through an order dated 08.04.2009 with the following directions :

“On hearing both the Petitioner and the Respondents, the Commission directed the Respondent No. 2 to execute PPA with the condition that the tariff and terms &

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conditions shall be as decided by the Commission from time to time. The Commission also directs the Respondent No.1 to explore the possibility of evacuation facility at the nearest 33/11 kV sub-station in consultation with the Petitioner so as to minimize overall project cost.”

4. The Petitioner vide letter dated 15.10.2009 informed the Commission that MP Power Trading Co. Ltd. has not executed the PPA and made a request to the Commission to issue directives to the Respondent No. 2 to execute PPA in the matter as per the Order dated 08.04.2009. The Commission vide letter dated 05.12.2009 directed the Respondent No. 2 to submit reply explaining as to why the Commission’s Order dated 08.04.2009 had not been complied with. In response, the Respondent No.2 vide letter No. 2746 dated 26.12.2009 submitted that the Board of Director of MP Power Trading Co. Ltd. has directed that the Petitioner should first get the tariff approved from the Commission and then only execution of PPA would be considered. The Commission then directed to issue notice under Section 142 of the Electricity Act, 2003 to the Respondent No. 2 for non-compliance of the Order passed by the Commission on 08.04.2009 directing the Respondent No. 2 to submit the reply and appear personally or through Advocate on 29.01.2010 at 11:00 am.

5. During the hearing on 29.01.2010, the representative of the Respondent No. 2 submitted a written reply pleading that at no point of time they had any intention, willful or otherwise, to contravene the direction/order dated 08.04.2009. The Respondent submitted that the PPA could be signed only after the tariff and terms & conditions were finalized. In support of this argument, the Respondent submitted a copy of the judgement of Hon’ble Supreme Court in Civil Appeals Nos. 3510-3511 of 2008 and others.

6. During the hearing the Commission sought to know from the Respondent No. 2 as to why the Commission was not approached immediately after the receipt of the Commission’s Order dated 08.04.2009, if they felt that the orders of the Commission could not be implemented. Raising this issue of non-implementability after almost nine months of the order, that too in response to a notice under Section 142, clearly suggests that the Respondent No.2 had not taken the Commission’s Order seriously. In response to the above, Respondent No.2 admitted that they should have approached the Commission with their difficulties shortly after receipt of the order, however, they could not explain their failure to do so but assured the

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Commission that they would be more careful in future. The Commission also asked Respondent No. 2 to explain whether it is their consistent approach not to sign PPAs unless the tariff and terms & conditions are finalized. The Respondent No.2 informed that PPAs are signed only after incorporating the terms & conditions even if tariff is not finalized, however, an indicative tariff is mentioned in such PPAs.

7. The Commission observed that the Respondent's action in not signing the PPA, as directed by Order dated 08.04.2009, or approaching the Commission for removal of their perceived difficulty has obstructed progress in execution of a generation project, that too of a renewable source of energy. The State is already facing shortage of energy and it is expected from the Respondent to facilitate addition of more generation capacity and not to put obstructions. The Commission does not approve the approach of the Respondent No.2 in this case and advise him to take pro-active approach in future to facilitate much sought after capacity addition.

8. The Respondent No. 2 informed the Commission that they would be able to sign the PPA with the Petitioner, M/s RDM Care (India) Pvt. Ltd. based on the model PPA for Biomass based generation project without insisting for prior approval of tariff by the Commission.

9. After hearing the Respondent No.2, the Commission was of the view that the Respondent had failed to comply with the Commission's directions but in view of their assurance to be more careful in future and also in view of Para 8 above, the Commission decided not to further pursue the case under Section 142 of the Electricity Act, 2003. The Commission directs Respondent No.2 to execute the Power Purchase Agreement with the Petitioner without further delay, based on the terms and conditions as per the tariff order dated 07.08.2007 issued for procurement of power through Biomass based generators, without insisting for prior approval of tariff. Final tariff will be determined by the Commission separately in due course and shall be binding on all the parties. They are further directed to report the compliance to the above direction to the Commission by 18<sup>th</sup> February, 2010.

Ordered accordingly,

**(C.S.Sharma)**  
**Member (Eco.)**

**(K.K.Garg)**  
**Member (Engg.)**