

**Sub : In the matter of petition under Section 86(1)(a) and (e) of the Electricity Act, 2003 and Regulations 10,16,17 & 18 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 and in the matter of clarification relating to decide tariff applicable for power drawn during shut down by generator/co-generator from renewable energy sources**

**ORDER**

**(Date of hearing: 23<sup>rd</sup> August,2016)**

**(Date of order: 25<sup>th</sup> October,2016)**

M.P. Biomass Energy Developers Association, H.No. 6/4, Saket Nagar, Bhopal- 462 024	-	Petitioner
M.P. Power Management Co. Ltd., Shakti Bhawan, Rampur,Jabalpur- 482 008	-	Respondent No.1
M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd., Shakti Bhawan, Rampur,Jabalpur- 482 008	-	Respondent No.2
M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd., Nishtha Parisar, Govindpura,Bhopal- 462 023	-	Respondent No.3
M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd., GPH Compound, Pologround,Indore- 452 015	-	Respondent No.4
M.P. New and Renewable Energy Department , Main Road No. 2, Urja Bhawan, Near 5 No. Bus Stop, Shivaji Nagar,Bhopal- 462 016	-	Respondent No.5

Shri Aditya K. Singh, Advocate appeared on behalf of the petitioner.

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

Shri Sanjay Okhade, DGM and Shri Devaditya Dubey, Manager appeared on behalf of the respondent no.2.

Shri R.S. Yadav, DGM appeared on behalf of the respondent no.3.

Shri P.K. Jain, ASE appeared on behalf of the respondent no.4.

None appeared on behalf of the respondent no.5.

2. The petitioner, M.P. Biomass Energy Developers Association has filed this petition under Section 86(1)(a) & (e) of the Electricity Act,2003 and Regulation 10,16,17 & 18 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 seeking clarification relating to decide tariff applicable for power drawn during shut down by generator/co-generator from renewable energy sources. In its petition, the petitioner prayed to clarify applicability of the clause 10 of M.P. Renewable Energy Regulations in cases of binding contractual agreement with renewable energy generator to supply start up power in compliance of tariff order applicable for all generators (conventional and non-conventional).

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3. The case was listed for motion hearing on 26.04.2016. During the motion hearing, the petitioner restated the contents of the petition. The Commission observed that the relevant documents were not filed along with the petition. The petitioner sought time to submit the required documents. The Commission allowed time up to 16.05.2016 for submission of the same and the next date of motion hearing was fixed for 24.05.2016.

4. During the motion hearing on 24.05.2016, the petitioner restated the contents of the petition and filed a written submission. The petition was admitted for hearing and the next date of hearing was fixed for 26.07.2016 which was adjourned to 23.08.2016.

5. During the hearing on 23.08.2016, 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 and is not maintainable.
- (ii) If the Regulations specify any terms and conditions, then on the same issue PPA cannot be considered. 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. Therefore, the PPA has to be read in consonance to the aforesaid Regulations and the tariff order.
- (iii) Meter can't distinguish whether the supply was availed for start up or shut down.

5. During the hearing on 23.08.2016, the respondent no.2 requested the Commission to clarify as to how the start up power and power for shut down/other emergencies shall be distinguished along with the applicable tariff.

6. During the hearing on 23.08.2016, the petitioner stated that:

- (i) In the petition, only clarifications on some issues were asked and not disputed on any issue. Therefore, the petition is maintainable.
- (ii) The Regulations, 2010 does not talk on normal conditions. The power drawn during shut down period and start-up power are not the same.
- (iii) As per PPA executed, tariff applicable shall be as per Schedule HV-7.
- (iv) All other generators are not paying at temporary rate.
- (v) The renewable energy generators are to be encouraged as per the Electricity Act, 2003.

7. Having heard the petitioner and the respondents and on considering their written submissions, the Commission is of the view that that this petition cannot be considered under

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Section 86(1)(f) of the Electricity Act, 2003 as the petitioner has not raised any dispute but asked clarification on the applicable tariff. Also, the Clause 10 of MPERC (Cogeneration and 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 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. If the power is required by the petitioner for synchronisation of the plant with the grid, the same cannot be considered under drawl of power during shut down or emergency periods and the provisions of the aforesaid Regulations shall not apply and, therefore, shall be billed as per the provisions of tariff schedule HV-7. The Commission, therefore, directs the respondents to take action accordingly as mentioned above.

Ordered accordingly.

**(Alok Gupta)**  
**Member**

**(A.B.Bajpai)**  
**Member**

**(Dr. Dev Raj Birdi)**  
**Chairman**