

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub : In the matter of seeking directions upon the Respondent to purchase the surplus energy/inadvertent power at the rate specified by the Commission under Clause 12.22 in its Wind Tariff Order dated 14.05.2010 and execute energy wheeling agreement on the terms and conditions contained in this Commission's tariff order dated 14.05.2010.

Petition No. 57/2011

ORDER

(Date of order 19th October , 2011)

M/s Ruchi Soya Industries Ltd.,
408, Tulsiani Chamber,
Nariman Point, Mumbai – 400021. - Petitioner

V/s

M.P.Power Trading Co. Ltd.,
Shakti Bhawan, Rampur, Jabalpur. - Respondent

Petitioner has filed the present petition under Section 86(1) (f) and Section 142 of Electricity Act, 2003 on 26.08.2011. Petitioner is seeking directives against Respondent alleging non-compliance of the Commission's order dated 06.06.2011 passed in petition No. 19 of 2011 and tariff order dated 14.05.2010 and Regulation 12 of MPERC (Co-generation and generation of electricity of electricity from renewable sources of energy) (Revision-I) Regulations, 2010.

2. Petitioner is a developer of wind generating plants. Petitioner and M/s GFL have signed the energy wheeling agreement (EWA) for Location No. 05 and 02 for self use and for sale of inadvertent power with Respondent on 30.06.2005. The tenure of the said agreement expired on 29.06.2010. Consequently, Petitioner applied for renewal of the said wheeling agreement and for execution of fresh agreement for new wind power project with Respondent. However, Respondent vide its letter dated 20.11.2010 informed the Petitioner that they will execute EWA for wheeling of power for captive issue only and directed the Petitioner to implead West Discom as a party to the wheeling agreement. Alongwith the aforesaid letter a copy of the draft EWA was sent to Petitioner. The Petitioner has alleged that the said draft agreement was not in accordance with the Commission's order dated 14.05.2010, as the clause relating the

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payment of inadvertent flow of power was not incorporated in the same.

3. Subsequently, Petitioner, after including the clause of payment of inadvertent flow of power submitted the EWA to Respondent. Respondent vide its letter dated 01.02.2011, returned the EWA stating that the same were not as per the draft EWA which was sent vide letter dated 20.11.2010. Being aggrieved with the action of Respondent, the Petitioner filed Petition No. 19 of 2011 before the Commission on 12.02.2011. The Commission vide its order dated 06.06.2011 directed Respondent to ensure compliance of the provisions of tariff order dated 14.05.2010 without any delay.

The relevant extract of the order is as under :

“.....The Commission further observed that the Respondent No.1 cannot act contrary to the provisions of the order of the Commission. If proper energy accounting is done by the Respondents, there is no possibility of gaming by the Petitioner. The Commission, therefore, directs that the petition is misplaced as it is not filed under the applicable Section of the Electricity Act, 2003. The Commission also directs the Respondent No.1 to ensure compliance of the provisions of tariff order dated 14.05.2010 without demur.....”

4. Subsequently, Petitioner again requested Respondent vide its letter dated 05.08.2011 for compliance of the directives issued by the Commission in the aforesaid order. However, Respondent has neither given any reply to the aforesaid letter nor has executed the EWA in terms of the provisions stipulated in the tariff order dated 14.05.2010. Being aggrieved by the delay caused by Respondent in execution/renewal of EWA, Petitioner has filed this petition requesting to initiate penal action under Section 142 of the Electricity Act, 2003 against the Respondent. The Petitioner has submitted that under Section 142 of the Electricity Act, 2003, the Commission is empowered to take a penal action against any person for non-compliance of the directions issued by it. Petitioner has alleged that as the Respondent has contravened the directions of the Commission, penalty under Section 142 of the Act, 2003 may be

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imposed. The Petitioner has also cited number of judgments of Hon'ble Supreme Court and High Court in support of the said contention.

5. The Petitioner has sought the following reliefs through this petition :

- (i) To direct Respondent to purchase the surplus energy/inadvertent power at the rate specified under Clause 12.22 of the Wind Tariff Order dated 14.05.2010 and forthwith execute energy wheeling agreement as per the terms and conditions stipulated in tariff order dated 14.05.2010.
- (ii) To issue necessary directions to M/s MP Power Trading Co. Ltd. to correct the draft EWA as per the directions of the Commission.
- (iii) To initiate action under Section 142 of the Electricity Act, 2003 for non-compliance of its directions issued on various occasions to purchase the inadvertent flow of the power
- (iv) To direct Respondent to pay actual costs and punitive costs.

6. The case was listed for hearing on 18.10.2011. However, Petitioner has sent a letter to the Commission seeking permission to withdraw the present Petition No. 57/2011. Petitioner has informed that a meeting was held on 29.08.2011 with Respondent wherein the latter has agreed to sign the EWA in compliance with the Commission's order dated 22.09.2009 passed in Petition No. 19/2011 and tariff order dated 21.11.2007. The same has been conveyed to Petitioner through letter dated 21.09.2011 by Respondent. In light of the consent given by Respondent to sign the agreement, Petitioner has sought permission for withdrawal of the above petition.

7. Considering the request and facts of the case, the Commission allows Petitioner to withdraw the petition.

8. In view of the above, the Petition No. 57 of 2011 stands disposed of.

Ordered accordingly,

sd/-
(C.S.Sharma)
Member (Eco.)

sd/-
(K.K.Garg)
Member (Engg.)

sd/-
(Rakesh Sahni)
Chairman