

Sub: In the matter of petition under Sections 86(1)(e) and 86(1)(f) of the Electricity Act, 2003 for recovery of tariff payable by the respondent in terms of the three separate Power Purchase Agreements dated 07.08.2015, 19.01.2016 and 19.01.2016 signed between M/s CLP Wind Farms (India) Pvt. Ltd. and MPPMCL.

ORDER

(Date of hearing: 23rd August,2016)

(Date of order: 2nd September,2016)

M/s CLP Wind Farms (India) Pvt. Ltd.,
15th Floor, Oberoi Commerz,
Off Western Express Highway,
Goregaon (East), Mumbai - 400063

- Petitioner

M.P. Power Management Co. Ltd.,
Block No. 11, 3rd Floor, Shakti Bhawan,
Rampur, Jabalpur- 482008

- Respondent

Shri Parinay Deep Shah, Advocate appeared on behalf of the petitioner.
Shri Manoj Dubey, Advisor (Law) and Shri V.S. Mehato, A.O. appeared on behalf of the respondent.

2. The petitioner, M/s CLP Wind Farms (India) Pvt. Ltd. has filed this petition under Sections 86(1)(e) and 86(1)(f) of the Electricity Act, 2003 for recovery of tariff payable by the respondent in terms of the three separate Power Purchase Agreements dated 07.08.2015, 19.01.2016 and 19.01.2016 signed between the petitioner and the respondent. In its petition, the petitioner mainly prayed as under:

- (i) Direct the Respondent to settle all the unpaid Bills amounting to INR 25,80,37,176 (Rupees Twenty Five Crore Eighty Lakhs Thirty Seven Thousand One Hundred and Seventy Six Only) (as on 30.04.2016) raised by the petitioner in a time bound manner and in accordance with Article 7.6 of the PPAs;
- (ii) Direct the Respondent to pay the delayed payment surcharge on the abovementioned outstanding amount as per Article 7.6.3 of the PPAs which is INR 2,32,58,996 (Rupees Two Crore Thirty Two Lakh Fifty Thousand Nine Hundred and Ninety Six Only) as on 30.04.2016;
- (iii) Direct the Respondent to start a LC as payment security as per paragraph 12.16 of the Tariff Order dated 26.03.2013 for payment of the power being supplied by the Petitioner;

Interim Prayer :

- a) As an ex parte ad-interim measure and pending the hearing and final disposal of the present Petition, direct the Petitioner to pay the Unpaid Bills amounting Rs. 25,80,37,176 (Rupees Twenty Five Crore Eighty Lakhs Thirty Seven

Sub: In the matter of petition under Sections 86(1)(e) and 86(1)(f) of the Electricity Act, 2003 for recovery of tariff payable by the respondent in terms of the three separate Power Purchase Agreements dated 07.08.2015, 19.01.2016 and 19.01.2016 signed between M/s CLP Wind Farms (India) Pvt. Ltd. and MPPMCL.

Thousand One Hundred and Seventy Six Only) immediately in terms of Article 12.15 of the Tariff Order and Paragraph 7.7 of the PPA;

- b) As an interim measure and pending the hearing and final disposal of the present Petition, direct the Respondent to pay the bills raised by the Petitioner during the pendency of the Petition through an irrevocable letter of credit on presentation of bill;

3. The case was listed for motion hearing on 21.06.2016. During the motion hearing, the petitioner restated the contents of the petition and requested the Commission to direct the respondent to clear current bills by their respective due dates as an interim arrangement. The Commission admitted the petition for hearing and fixed the next date of hearing for 26.07.2016 which was adjourned to 23.08.2016. The respondent filed a written submission on 22.08.2016.

4. During the hearing on 23.08.2016, the respondent stated that:

- a) The letter dated 22.01.2016 sent to the petitioner did not force the petitioner to waive of the interest and surcharge and it was a request on the part of the respondent so that early payment may be considered. The respondent is facing a severe liquidity crunch due to which the payments to the developers are being delayed.
- b) The respondent has an option to make payments through any mode of payment.
- c) The amount allowed in the Retail Supply Tariff Order is not in the shape of any advance cash assistance to the respondent.
- d) The petitioner has never raised a dispute notice under Article 13 of the PPA before approaching the Commission.
- e) The provisions of Sections 86(1)(e) and 86(1)(f) of the Electricity Act, 2003 are not attracted in this case.
- f) The prayer made by the petitioner by way of interim relief and main relief are similar in nature. If the interim relief is granted at initial stage it will amount to granting of the main relief also simultaneously.

5. During the hearing on 23.08.2016, the petitioner has filed some documents related to Renewable Energy Sector in India and narrated some of its contents. He has also submitted that the payments are always delayed. As per Regulations, PPA and Tariff orders, the respondent should open Letter of Credit towards payment security. The tariff order is a part of the PPA.

6. Having heard the petitioner and the respondent and on considering their written submissions, the Commission has noted that:

- (i) The respondent has not submitted any schedule for payment to the petitioner.
- (ii) The payments are not being made by the respondent timely in terms of the

Sub: In the matter of petition under Sections 86(1)(e) and 86(1)(f) of the Electricity Act, 2003 for recovery of tariff payable by the respondent in terms of the three separate Power Purchase Agreements dated 07.08.2015, 19.01.2016 and 19.01.2016 signed between M/s CLP Wind Farms (India) Pvt. Ltd. and MPPMCL.

provisions of the tariff order and the PPA. Therefore, the cash flow of the petitioner shall be affected, which will ultimately determent to the promotion of generation of electricity from renewable sources of energy and thereby affects the discharge of functions by the Commission under Section 86 (1)(e) of the Electricity Act, 2003.

(iii)The respondent is accepting the claim of the petitioner but holding the payment of the outstanding bills of the petitioner for months together on the pretext of liquidity problem.

7. Under the aforesaid circumstances, the Commission directs the respondent to make the payment of outstanding invoices to the petitioner in terms of the provisions of the PPAs/tariff orders.The Commission further directs the respondent to make suitable arrangements so that in future such delay is avoided and generation of electricity from renewable sources of energy is promoted as envisaged under Section 86 (1)(e) of the Electricity Act, 2003. The Commission also directs the respondent to report compliance promptly.

8. With the above directions, the petition no. 33/2016 stands disposed of.

Ordered accordingly.

(Alok Gupta)
Member

(A.B.Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman