

Sub: In the matter of petition under Section 86(1)(e) of the Electricity Act,2003 in the matter of billing of kWh consumption made in the windfarms at temp. supply tariff for HT Industries on the instruction of MPPMCL which is in violation of the provisions of applicable wind power tariff order, agreement in force and MPERC Regulations

ORDER

(Date of hearing: 18th October,2016)

(Date of order: 27th October,2016)

M/s D B Corp. Limited,
280, Sarkhej, Gandhinagar Highway,
Near YMCA Club, Makarha, Ahmedabad

- Petitioner

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

- Respondent No.1

M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd.,
GPH Compound, Pologround, Indore

- Respondent No.2

Shri R.C.Somani and Shri R.S.Goyal, Consultants appeared on behalf of the petitioner.

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

Shri Pavan Kumar Jain, ASE and Shri Anant Chaure, Law Officer appeared on behalf of the respondent no.2.

2. The petitioner, M/s D.B. Corp. Ltd., Bhopal has filed this petition under Section 86(1)(e) of the Electricity Act,2003 in the matter of billing of kWh consumption made in the windfarms at temp. supply tariff for HT Industries. In its petition, the petitioner prayed that the Commission may direct the respondents for “Not to deviate from the provisions of the agreements in force and to withdraw the electricity bills for kWh consumption issued in the name of the petitioner from September, 2015 onwards.

3. The case was listed for motion hearing on 26.07.2016, which was adjourned to 23.08.2016. During the motion hearing, the petitioner restated the contents of the petition. The petition was admitted for hearing and the next date of hearing was fixed for 20.09.2016.

4. During the hearing on 20.09.2016, the reply could not be submitted by the respondent no.1 due to non-receipt of the copy of petition. Replying to the above, the petitioner submitted that copy of the petition was already sent to the respondents. The petitioner, however, was ready to send a copy of petition to the respondents. The respondents were directed to ensure filing of reply by 14.10.2016. The next date of hearing was fixed for 18.10.2016. The respondents have filed the written submissions.

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5. During the hearing on 18.10.2016, the respondent no.2 quoted the decisions of the Hon'ble Supreme Court and stated that the provisions of the relevant Regulations framed by the Commission shall be made applicable irrespective of any agreement in force.

6. During the hearing, the respondent no.1 stated that 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. He has also stated that it is a settled principle of Law that the provisions of Law will prevail over the contractual terms of the agreement. Therefore, the provisions of the Regulations shall prevail over the PPA/tariff order.

7. Having heard the petitioner and the respondents and on considering their written submissions, the Commission is of the view that 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 WEGs frequently, 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 has also noted that this petition cannot be considered under Section 86(1)(f) of the Electricity Act, 2003 as there is no dispute and therefore, question of fee according to petition under Section 86(1)(f) does not arise. The Commission, therefore, directs the respondents to take action accordingly as mentioned above and revise the impugned bills from September, 2015 if found necessary. The respondents are also directed to report compliance by 15.11.2016.

Ordered accordingly.

(Alok Gupta)
Member

(A.B.Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman