



नईदिल्ली
NEW DELHI

याचिका संख्या./ Petition No.345/MP/2018

कोरम/ Coram:

श्री पी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson
श्रीआई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 25TH April, 2022

IN THE MATTER OF:

Treatment of power drawn by CTU-connected 750 MW Rewa Solar Project during non-generation night hours and during shutdown periods and determination of tariff thereof.

AND IN THE MATTER OF:

Madhya Pradesh Power Management Company Limited,
Registered office, Shakti Bhawan, Rampur
Jabalpur – 482008

...Petitioner

Versus

- M/s Athena Jaipur Solar Power Private Limited,**
(formerly known as ACME Jaipur Solar Power Private Limited)
Plot No. 152, Sector 44, Gurgaon,
Haryana-12202
- M/s Mahindra Renewables Private Limited,**
Mahindra Towers, Dr G.M. Bhonsle Marg,
P.K.Kurane Chowk, Worli,
Mumbai-400018

3. **M/s Arisun Clean Energy Private Limited,**
Office-201,2nd Floor, Pentagon P-2, Magarpatta City, Hadaspur,
Pune-411013
4. **M/s Rewa Ultra Mega Solar (RUMS) Limited,**
Urja Bhawan, Shivaji Nagar, Link Road No. 2,
Bhopal-462016, Madhya Pradesh
5. **M/s Western Region Load Dispatch Centre,**
F-3, MIDC Area, Marol, Andheri (East),
Mumbai – 400093

...Respondents

Parties present: Shri G. Umapathy, Sr. Advocate, MPPMCL
Ms. Pavitra Balakrishnan Advocate, MPPCL
Shri Shreshth Sharma, Advocate, MRPL
Ms. Molshree Bhatnagar, Advocate, MRPL
Shri Nishant Talwar, Advocate, MRPL
Shri V. Bharadwaj, MPPMCL
Shri Aditya Das, WRLDC
Shri Alok Kumar Mishra, WRLDC
Ms.S. Usha, WRLDC
Shri Rajnish Kumar Reja, MPPMCL

आदेश/ ORDER

The Petitioner, Madhya Pradesh Power Management Company Ltd. (MPPMCL) has filed the present petition seeking directions of the Commission for treatment of power drawn by CTU-connected Rewa Solar Power Project during non-generation night hours, shutdown periods and consequent determination of tariff thereof for the said duration.

2. The Respondent No. 1 [M/s Athena Jaipur Solar Power Private Limited (formerly known as M/s ACME Jaipur Solar Power Private Limited)], the Respondent No. 2 (M/s Mahindra Renewables Private Limited) and the Respondent No. 3 (M/s Arisun Clean Energy Private Limited) are solar power project developers who were awarded 250 MW each through competitive bidding. Accordingly, three Power Purchase Agreements (PPAs) were executed with RUMSL and MPPMCL on 17.04.2017. The Respondent No. 1, Respondent No. 2 & Respondent No. 3 hereinafter are collectively referred to as ‘Respondent-SPDs’.

3. The Respondent No. 4, Rewa Ultra Mega Solar Limited (RUMSL) is a joint venture company of Madhya Pradesh Urja Vikas Nigam Limited and Solar Energy Corporation of India (SECI) with both the entities holding equal shareholding in RUMSL. MNRE has designated RUMSL as the solar power park developer for the Rewa Solar Project.
4. The Respondent No. 5, Western Region Load Dispatch Centre (WRLDC) is the Regional Load Dispatch Center. The Respondent-SPDs have already commissioned initial part capacity of their projects and have connectivity by separate 220 kV lines of the 400/220 KV PGCIL Substation Rewa (Delivery Point of generation) of CTU network coming under the jurisdiction of WRLDC.
5. The Petitioner has made the following prayers:
 - (i) *formulate appropriate tariff and other treatments in respect of power drawn by solar projects during non-generation night hours and during shutdown periods;*
 - (ii) *permit the Petitioner to bill the Solar Power Developers towards power drawn during non-generation night hours and during shutdown periods or during any emergencies including its repair and maintenance, etc; and*
 - (iii) *Pass such other relief as Hon'ble Commission deems fit and appropriate under the circumstances of the case and in the interest of justice.*

Background

6. The Government of Madhya Pradesh initiated the Rewa Ultra Mega Solar Ltd. (RUMSL) project of 750 MW as a part of solar park scheme of Government of India (GoI) in Rewa District in the State of Madhya Pradesh Rewa Solar Project [RSP]. The said 750 MW solar project is being set up at Gurh, Rewa, (M.P.) under the ambit of RUMSL to supply energy generated from three units (250 MW each) to MPPMCL and Delhi Metro Rail Corporation (DMRC). The Respondent-SPDs have already commissioned initial part capacity of 150 MW, 35.7 MW and 10 MW respectively. The projects have connectivity by separate 220 kV lines from respective pooling stations at 220 kV side of the 400/220 KV PGCIL Substation Rewa (Delivery Point of generation) of CTU network which is under the jurisdiction of WRLDC.

Submissions of the Petitioner

7. The Petitioner has submitted as under:

- a) The Respondent-SPDs draw power during non-generation night hours regularly. In addition, they also draw power during shut down for maintenance and other purposes.
- b) It is estimated that once all the projects of the Respondent-SPDs start and become fully operational, they would collectively consume about 160 MUs from the grid for the above purposes.
- c) However, there are no regulations of the Commission dealing with drawl of such power enabling treatment of such power by the concerned entities and the concerned Regional Load Despatch Centers (RLDCs), which is being done continuously by the units post commissioning of the project. Thus, there is no mechanism for accounting of the said drawl of power under the present regime.
- d) On 18.07.2018, the concern was raised with RUMSL/WRLDC on the billing of such power drawn from the grid for its own use by the Respondent-SPDs. It was also informed that Madhya Pradesh Electricity Regulatory Commission (MPERC) determined the charges for energy drawn from the grid @ HT Temporary tariff and KVARh consumption from the grid @ 27 paise/KVARh which is required to be paid by the developer to the distribution licensees in whose territorial area the generator's unit is located and that CE [Commercial] was advised to intimate the concerned Respondent-SPDs to apply for HT connections and enter into an agreement for the same.
- e) On 06.08.2018, WRLDC informed that all the Respondent-SPDs are in the control area jurisdiction of WRLDC and any drawl from ISTS grid by any of the three Respondent-SPDs has already been taken care of, accounted and billed as per the Second Amendment to the Central Electricity Regulatory Commission (Deviation Settlement Mechanism) Regulations, 2015 (in short "the DSM Second Amendment Regulations, 2015"). It was further informed that these Respondent-SPDs would be governed by the Regulations of CERC and no additional charges would be applicable as far as drawl of power is concerned.
- f) On 05.09.2018, the Petitioner informed WRLDC *inter-alia* that there is no specific regulation of the Commission for treatment of power drawn by renewable energy regularly in night hours or during plant shutdown or any emergency periods after their date of commercial operation (COD). The matter is to be taken up before the Commission to decide a mechanism/procedure and rates for billing of such power drawn by the Respondent-SPDs.
- g) The claim of WRLDC that no charge is required to be levied in the light of Appeal

No. 233 of 2013 passed by Appellate Tribunal for Electricity (APTEL) is incorrect. The judgment of APTEL is with regard to a case where the drawl was only for the purposes of testing and commissioning activities but does not cover the treatment to be afforded when power is withdrawn post commission regularly during night hours and/or during shut down for maintenance. Post commissioning of RE projects, actual generation/ drawl should be settled against scheduled generation/ drawl and any deviation should be treated as unscheduled interchange with treatment in accordance with the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 as amended from time to time (in short “the DSM Regulations, 2014”). However, the concern of the Petitioner was not being considered.

- h) WRLDC has referred to Clause 7 of Regulation 8 of the Central Electricity Regulatory Commission (Grant of connectivity, Long Term Access and Medium Term Open Access interstate transmission and related matters) Regulation, 2009 as amended from time to time (in short “the Connectivity Regulations, 2009”). The same is related to only drawl of power by the generators for commissioning activities and does not take into account the power drawn by such generators post commissioning.
- i) MPERC through 7th amendment to Clause 10 of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 (Revision-I) {RG33 (I) of 2010} (in short “the MPERC Regulations, 2010”) provides treatment for power drawn by the RE generators. The clause clearly stipulates the treatment which ought to be given for any power drawl during night and/or for shutdown and maintenance and that such power shall be billed at the rate applicable to temporary connection under HT Industrial category as per the retail supply tariff order passed by Commission.

“10. Drawing power by Generator/ Co-generation from Renewable energy sources

The Generator/ Co-generation from Renewable Sources would be entitled to draw power exclusively for its own use from the Transmission/Distribution Licensees’ network for synchronization of plant with the grid or during shutdown period of its plant or during such other emergencies. The power availed during synchronization of plant with the grid shall be billed for the period and at the rate as per retail supply tariff order under tariff schedule for synchronization. In other cases, it would be billed at the rate applicable to temporary connection under HT Industrial category”.

- j) It is pertinent to note that solar projects do not provide any drawl schedule during

non-generation night hours and during shut down for maintenance and other purposes. In such circumstances, for all technical purposes, solar projects remain as generators all through 24 hours of a day.

- k) In terms of Clause 10 of Regulation 7 of the DSM Regulations, 2014, every regional entity shall have to make sign of their deviation change, at least once, after every 12 time blocks. The provision is as under:

“In the event of sustained deviation from schedule in one direction (positive or negative) by any regional entity, such regional entity (buyer or seller) shall have to make sign of their deviation from schedule changed, at least once, after every 12 time blocks. To illustrate, if a regional entity has positive deviation from schedule from 07.30 hrs to 10.30 hrs, sign of its deviation from schedule shall be changed in the 13th time block i.e. 10.30 to 10.45 hrs from positive to negative or negative to positive as the case may be”

- l) A perusal of the above provision establishes that the regulations notified by this Commission do not deal with the power drawl by solar projects during non-generation night hours and during shut down for maintenance and other purposes. Such drawl cannot be treated as unscheduled interchange as the Respondent-SPDs do not submit any drawl schedule for such consumption. If Respondent-SPDs submit power drawl schedule, such drawl should be treated appropriately as drawl by appropriate consumer category for application of tariff and DSM incentives/ penalties. Also, there is no sign change of deviation for prolonged hours of non- generation during night and during shut down for maintenance and other purposes. As such, the existing CTU-connected solar power projects are drawing power during night hours or maintenance without a mechanism for levying charges for such drawl.
- m) In view of the above, this Commission may give appropriate directions/guidance for providing appropriate treatment to power drawn by CTU-connected solar power projects during non-generation night hours and during shutdown periods and for determination of tariff thereof. It is obligatory on the part of the Respondent-SPDs to compensate for the power drawn during the above period which is a significant amount and requires to be settled by the Respondent-SPDs through appropriate tariff to be fixed by this Commission.

Submissions of the Respondent No. 1 (Athena Jaipur Solar Power Private Limited)

8. Athena Jaipur Solar Power Private Limited vide its reply dated 15.03.2019 has submitted as under:

- a. In terms of Regulation 6.4.2 (b) of the Indian Electricity Grid Code, 2010 (in short “the Grid Code”), Rewa Solar Project is an ISTS connected solar generating station within the control area jurisdiction of WRLDC and RUMSL had availed connectivity with CTU system for 750 MW at REWA Pooling station of PGCIL for its Rewa Solar Project.
- b. In terms of Clause 6.1 (d) read with Para 6.5 of the Grid Code, Rewa solar generating station is a regional entity and any commercial impact on account of deviation from schedule would be accounted and settled in accordance with the provisions of the DSM Regulations.
- c. There is no supply of electricity by the Petitioner or from the State grid of Madhya Pradesh to the Respondent-SPDs and, therefore, the Petitioner's claim of tariff for drawl of the power by the Respondent-SPDs in terms of MPERC Regulation, 2010 as quoted by the Petitioner is an illegal.
- d. The Petitioner can only bill for drawl of the power by the Respondents if the Petitioner is supplying electricity to the Respondent-SPDs. In the instant case, WRLDC is undertaking system operation and the Respondent-SPDs are drawing and injecting power in the grid in terms of the DSM Regulations, 2014.
- e. Respondent-SPDs are ISTS connected solar generating stations and their nodal agency is WRLDC. It is governed by the rules and regulations of this Commission and are supplying power to buyers in more than one State. Moreover, as the plant is neither connected to STU network of MP State nor connected to the distribution network of the Petitioner, the Petitioner's claim of the tariff for drawl of power by Respondent-SPDs in terms of the MPERC Regulations, 2010 is illegal.
- f. It is an established principle that the generating station drawing power for its auxiliary consumption is not a consumer.
- g. The Petitioner has not specified under which provision of the Electricity Act, 2003 (in short “the Act”) this petition has been filed and reliefs have been sought. The Petitioner is seeking relief to get the tariff formulated by this Commission at which the Petitioner can bill the Respondent-SPDs for the power imported by the Respondents from CTU. This Commission does not have jurisdiction to formulate tariff for a State distribution company.
- h. The Petitioner in the garb of relief under the petition is seeking amendment of the DSM Regulations, which is impermissible under the law.

Submissions by Respondent No. 3 [Arinsun Clean Energy Private Limited (ACEPL)]

9. ACEPL vide its reply dated 30.04.2019 has submitted that this Commission does not have the power to determine tariff for distribution licensee under the Act. Section 79(1) of the Act does not have a clause similar to Section 86(1)(b) since the Central Commission does not have the power to deal with the functions of a distribution licensee under the said Act.

Submissions of the Respondent No. 2 [Mahindra Renewables Private Limited (MRPL)]

10. MRPL vide its reply dated 13.06.2019 has submitted as under:
- a. It has commissioned 200 MW generation capacity and not 10 MW, as stated in Para 3 of the petition.
 - b. The provision of Clause 10 of Regulation 7 of the DSM Regulations does not deal with drawl by solar projects during night hours and does not justify the claims made by the Petitioner in this petition. Solar generation cannot be controlled and thus sign of deviation cannot be changed. Regulation 7 (1) of DSM Regulations clearly exempts solar generating stations from the charges mentioned in Regulation 7 of the DSM Regulations. The Petitioner has misinterpreted the application of this clause of DSM Regulations and WRLDC has rightly interpreted that this clause is not applicable to RE generators.
 - c. The Petitioner has wrongly stated that the solar projects are required to provide drawl schedule during the non-generation hours. MRPL is providing generation schedules as per prevalent DSM Regulations and its amendments which govern the rules of scheduling of regional entities.

Submissions vide Rejoinder filed by the Petitioner

11. MPPMCL vide its rejoinders dated 19.06.2019 and 20.06.2019 has submitted as under:
- a. The Petitioner agrees that the provisions of the Grid Code and the DSM Regulations do not deal with the drawl by solar projects during non-generation night hours and during shut down for maintenance and other purposes as unscheduled interchange as the solar power developers cannot submit any drawl schedule for such consumption.
 - b. The petition filed by the Petitioner is for a direction for treatment of power drawn by CTU-connected generating stations during non-generating night hours and during shut

down period would fall under Section 79(1)(c)&(d) of the Act.

- c. This Commission alone has the jurisdiction to determine the treatment of power drawn during night hours as the existing mechanism does not provide for any such treatment.
- d. Solar PV system is a static DC power generation technology, wherein generation of power starts automatically as and when sun light is available and these plants do not need drawl of power from the grid for synchronization, like any rotary generators, in case of conventional power plants. Therefore, power drawn by solar power plants during night and/or for shutdown and maintenance, for its own use cannot be treated as power required for synchronization of the plant, as in case of conventional rotatory power plants. Status of such drawl is consumption of power by a consumer within the jurisdiction of the concerned distribution licensee and should be billed at the rate applicable to temporary connection under HT Industrial category as per the retail supply tariff order passed by State Commission.
- e. The Grid Code and Clause 10 of Regulation 7 of DSM Regulations do not deal with the power drawn by solar projects during non-generation night hours and during shut down for maintenance and other purposes as unscheduled interchange as the Respondent-SPDs cannot submit any drawl schedule for such consumption. If Respondent-SPDs submit power drawl schedule, such drawl should be treated appropriately as drawl by appropriate consumer category for application of tariff and DSM incentives/ penalties. Also, there is no sign change of deviation for prolonged hours of non- generation during night and during shut down for maintenance and other purposes. As such, the existing CTU-connected solar generating stations are drawing power during night hours or during maintenance without a mechanism for levying charges for such drawl.

Hearing dated 11.11.2021

12. After hearing the parties, the Commission directed the learned counsel appearing for Respondent No.1 to file the details of the entity which has acquired ACME Jaipur Solar Power Private Limited.

Additional Submission by the Petitioner

13. MPPMCL vide additional submissions dated 17.11.2021 has submitted that:

- a. Drawing power against zero injection schedule in regular fashion cannot be treated as negative injection of generator; rather it should be treated as regular power consumption.
- b. Fixed/ planned regular drawl without submission of its schedule by the Respondent-SPDs cannot be settled under DSM by WRLDC. The drawl of power during night hours cannot be considered as under injection.
- c. Deviation for a generator is accounted under DSM as the actual generation minus scheduled generation. As per DSM Regulations, the ‘actual injection’ in a time-block means the electricity generated or supplied by the seller, as the case may be, measured by the interface meters. Drawl of power from the grid regularly in night hours or during any emergency periods may not be adjusted in DSM.
- d. As far as the power drawn from the grid is concerned, for the CTU-connected RE generators, power evacuation cum drawl network before CTU interface, may be treated as STU network and such RE generators should be treated as consumers of the distribution licensee.
- e. SERCs have also issued Deviation Settlement Regulations for RE Generators, only for the power supplied (injected) into the grid, but not for the power drawn from the grid. The power drawn from the grid is governed by separate regulation. Thus, the RE generators (Wind & Solar) can neither give power drawl schedule nor this drawl can be settled against zero injection schedule given under the provisions of DSM Regulations.
- f. SECI has PPAs with Respondent-SPDs. As per these PPAs, energy drawn from the grid will be regulated as per the regulations of respective State Commission where the projects are located. The relevant Clauses in PPA, are reproduced as below:

“6.1.4 Auxiliary power consumption will be treated as per the concerned State regulations.

- i. The SPD shall be required to make arrangements and payments for import of energy (if any) as per applicable regulations.*

10.2.1 The SPD shall issue to SECI hard copy of a signed Monthly Bill/Supplementary Bill for the immediately preceding Month/relevant period based on the issuance of Energy Accounts along with all relevant documents (payments made by SPD for drawal of power, payment of reactive energy charges, Metering charges or any other charges as per guidelines of SERC/CERC, if applicable.

Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on Energy Accounts issued by RPC or any other competent authority which shall be binding on both the Parties. The Monthly

Bill amount shall be the product of the energy as per Energy Accounts and the Applicable Tariff. Energy drawn from the grid will be regulated as per the regulations of the respective State the Project is located in.

- g. MPERC through the MPERC Regulations, 2010 and subsequent amendment provides treatment for power drawn by the generator/ co-generation from renewable.

Additional Submission by the Respondent No.1

14. The Respondent No.1 vide additional submissions dated 22.11.2021 informed that at the time of filing of the petition, the Petitioner was under the control and ownership of ACME Solar Holding Limited (ASHL). However, the ASHL has subsequently executed a Share Purchase Agreement with Actis Greengen Limited (AGL) on 26.02.2020 and accordingly 100% ownership and control over the Respondent No. 1 company has been transferred to AGL. Subsequent to the transfer of 100% ownership and control over to AGL, the name of the Respondent No. 1 company has been changed from ACME Jaipur Solar Power Private Limited to Athena Jaipur Solar Power Private Limited.
15. In view of above the Petitioner filed the revised "Memo of Parties".

Hearing dated 13.1.2022

16. The matter was heard on 13.1.2022. The learned counsel for the Petitioner, the learned counsel appearing on behalf of Respondent-SPDs and the representative of WRLDC made detailed submissions and after hearing the parties, the Commission reserved the order in the matter.

Analysis and Decision

17. We have heard the learned counsels for the Petitioners and the Respondents and have carefully perused the records.
18. The Petitioner has mainly made the following arguments:
- a) The Respondent-SPDs draw power during non-generation night hours and during shut down for maintenance and other purposes, without providing any drawl schedule for the same. Hence, technically the Respondent-SPDs remain as generators all through 24 hours of a day. Once all the projects of the Respondent-SPDs become fully operational they would collectively consume about 160 MUs electricity from the grid

for above purposes without submitting drawl schedule. There are no regulations of the Commission dealing with drawl of such power post commissioning and no mechanism for accounting of the said drawl of power. In view of the above, the Commission may formulate appropriate tariff and other treatments in respect of power drawn by the solar projects during non-generation night hours and during shutdown periods.

- b) WRLDC has submitted that all Respondent-SPDs are in the control area jurisdiction of WRLDC and any drawl from ISTS grid by any of the three Respondent-SPDs has already been taken care of, accounted and billed as per the DSM Second Amendment Regulations, 2015. Hence, these Respondent-SPDs would be governed by Regulations of CERC and no additional charges would be applicable as far as drawal of power is concerned. However, the Petitioner has submitted that there are no specific regulations of the Commission for treatment of power drawn by the RE generators regularly in night hours or during plant shutdown or any emergency periods after the date of commissioning of the generating plants. MPERC Regulations, 2010 provide that any power drawl during night and/or for shutdown and maintenance and such power shall be billed at the rate applicable to temporary connection under HT Industrial category as per the retail supply tariff order passed by the Commission. In view of the above, the Commission should permit the Petitioner to bill the Respondent-SPDs towards power drawn during non-generation night hours and during shutdown periods or during any emergencies including its repair and maintenance, etc. as per MPERC Regulations, 2010.

19. The following issues emerge in the context of the present petition:

- a. *Whether there exists any framework in the Regulations of CERC to deal with a situation where the solar projects, post commissioning, draw power during non-generation night hours and during shutdown periods without providing any drawl schedule?*
- b. *If not, whether there is any need for formulating tariff and other treatments to take care of such power drawn by the solar projects during non-generation night hours and during shutdown periods?*
- c. *Whether the Petitioner be allowed to bill the solar projects towards power drawn during non-generation night hours and during shutdown periods or during any emergencies including their repair and maintenance, etc. as per the MPERC Regulations, 2010; or whether WRLDC should continue to bill the solar projects as per the DSM Regulations, 2014?*

20. We now deal with each of these issues.

Issue (a): Whether there exists any framework in the Regulations of CERC to deal with a situation where the solar projects, post commissioning, draw power during non-generation night hours and during shutdown periods without providing any drawl schedule?

And

Issue(b): If not, whether there is any need for formulating tariff and other treatments to take care of such power drawn by the solar projects during non-generation night hours and during shutdown periods?

21. As Issue (a) and Issue (b) are inter-connected, we deal with these issues together.

22. We observe that Clause (35) of Regulation 2 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (in short “the Tariff Regulations”) provides as under:

“(35) ‘Infirm Power’ means electricity injected into the grid prior to the date of commercial operation of a unit of the generating station in accordance with Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009”

23. We further observe that Clause (7) of Regulation 8 of the Connectivity Regulations, 2019 as amended in 2014 provides as under:

“(7) Notwithstanding anything contained in Clause (6) of this Regulation and any provision with regard to sale of infirm power in the Power Purchase Agreement, a unit of a generating station including captive generating plant which has been granted connectivity to the grid in accordance with these regulations shall be allowed to interchange infirm power with the grid during the commissioning period including testing and before the COD after obtaining prior permission of the concerned Regional Load Despatch Centre.....

*.....
.....*

Provided also that the infirm power so interchanged by the unit(s) of the generating plant shall be treated as deviation and the generator shall be paid/charged for such injection/drawal of infirm power in accordance with the provisions of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 as amended from time to time or subsequent re-enactment thereof.”

24. We also note that Clause (5) of Regulation 5 of the DSM Regulations, 2014 provides as under:

“(5) The infirm power injected into the grid by a generating unit of a generating station

during the testing, prior to COD of the unit shall be paid at Charges for Deviation for infirm power injected into the grid, consequent to testing, for a period not exceeding 6 months or the extended time allowed by the Commission in the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access and related matters) Regulations, 2009, as amended from time to time, subject to ceiling of Cap rates corresponding to the main fuel used for such injection as specified below:

Domestic coal/ Lignite/Hydro - `1.78 / kWh sent out.

APM gas as fuel - `2.82/ kWh sent out up to 31.3.2014 and thereafter `5.64/ kWh sent out.

Imported Coal - `3.03 / kWh sent out.

RLNG - `8.24 / kWh sent out.

25. A harmonious reading the aforesaid provisions of the Tariff Regulations, Connectivity Regulations, 2009 and the DSM Regulations, 2014 quoted above reveals that the existing regulations deal with infirm power injected into the grid prior to the COD of a generating unit of a generating station. Such infirm power is treated as deviation and is paid for at the rate of charges for deviation as specified in the DSM Regulations, 2014. However, the rates so specified in the DSM Regulations, 2014 do not include the rates for solar generators. This infers that the solar generators may not generally need to inject/draw infirm power prior to COD, and even if they do they will have to make other arrangements – arrangements for sale/purchase other than through DSM.
26. In the instant case, the issue is of drawl of power (during non-generation night hours and during shutdown periods) akin to infirm power but after the COD. Clearly, there is no provision in the existing Regulations of CERC for injection/drawl of such power and its treatment as deviation. Therefore, it would be incumbent upon the solar generators to make their own arrangements for purchase of such power during non-generation night hours and during shutdown periods, instead of leaning on the grid through DSM. The Commission notes that the Petitioner has submitted that once all the projects of the Respondent-SPDs start and become fully operational, they would collectively consume about 160 MUs (approx.) electricity from the grid for the above purposes. This makes it all the more necessary that proper arrangements for scheduled sale/purchase is made for such drawl of power by the solar generators.
27. As regards the need for formulating tariff and other treatments to take care of such power drawn by the solar projects during non-generation night hours and during shutdown periods, the Commission would like to reiterate that the requirement of infirm power of any nature, whether before or after the COD has to be met through scheduled transaction by entering into

contract as per the provisions of the Act. It is this philosophy that explains the provision of Clause (3) of Regulation 8 the Central Electricity Regulation Commission (Deviation Settlement Mechanism and related matters) Regulations, 2022 (in short “the DSM Regulations, 2022”), which has been notified but yet to be brought into effect. The provision reads as under:

“(3) (a) The charges for deviation for injection of infirm power shall be zero.

(b) The charges for deviation for drawal of start-up power before COD of a generating unit or for drawal of power to run the auxiliaries during shut-down of a generating station shall be payable at the normal rate of charges for deviation.”

28. As per the aforesaid provision of the DSM Regulations, 2022, the injection of infirm power or drawl of start-up power/power for auxiliaries during shut-down condition, through DSM is discouraged - by creating a disincentive in the form of zero payment for injection of infirm power and a deterrent in the form of liability to pay DSM Charges in the event of drawl of start-up power/power for auxiliaries during shut-down condition. Clearly, through this regulatory dispensation the Commission wants such generators to enter into contracts which can be scheduled.
29. In view of the above discussion, Issue (a) and Issue (b) are decided accordingly. The prayer of the Petitioner to “*formulate appropriate tariff and other treatments in respect of power drawn by solar projects during non-generation night hours and during shutdown periods*” is also settled accordingly, in that a regulatory framework has already been created to this effect.
30. Now, we deal with Issue (c).

Issue(c): Whether the Petitioner be allowed to bill the solar projects towards power drawn during non-generation night hours and during shutdown periods or during any emergencies including their repair and maintenance, etc. as per the MPERC Regulations, 2010; or whether WRLDC should continue to bill the solar projects as per the DSM Regulations, 2014?

31. We observe that the Respondent-SPDs were awarded 250 MW each project through competitive bidding under RUMSL project of 750 MW and have already commissioned initial part capacity of 150 MW, 35.7 MW and 200 MW respectively. The projects have connectivity by separate 220 kV lines from the respective pooling stations at 220 kV side of the 400/220 KV PGCIL Substation Rewa (Delivery Point of generation) of CTU network.

32. The Petitioner has submitted that if Respondent-SPDs submit power drawl schedule, such drawl should be treated appropriately as drawl by appropriate consumer category for application of tariff and DSM incentives/ penalties. Also, there is no provision for sign change deviation for prolonged hours of non- generation during night and during shut down for maintenance and other purposes. As such, the existing CTU-connected solar power projects are drawing power during night hours or maintenance without a mechanism for levying charges for such drawl.
33. *Per contra*, the Respondent-SPDs have submitted that Rewa Solar Project is an ISTS connected solar generating station within the control area jurisdiction of WRLDC and RUMSL had availed connectivity with CTU system for 750 MW at REWA Pooling Station of PGCIL for its Rewa Solar Project. Any commercial impact on account of deviation from schedule would be accounted and settled in accordance with the provisions of the DSM Regulations. There is no supply of electricity by the Petitioner or from the State grid of Madhya Pradesh to the Respondent-SPDs. Therefore, the Petitioner's claim of tariff for drawl of the power by the Respondent-SPDs in terms of the MPERC Regulations, 2010 is illegal.
34. The Commission observes that the relevant provisions of Grid Code are as under:

6.4 Demarcation of responsibilities:

.....

2. *The following generating stations shall come under the respective Regional ISTS control area and hence the respective RLDC shall coordinate the scheduling of the following generating stations:*

(a) *Central Generating Stations (excluding stations where full Share is allocated to host state),*

(b) *Ultra Mega Power Projects including projects based on wind and solar resources and having capacity of 500 MW and above.*

(c) *In other cases, the control area shall be decided on the following criteria:*

(i) *If a generating station is connected only to the ISTS, RLDC shall coordinate the scheduling, except for Central Generating Stations where full Share is allocated to one State.*

(ii) *If a generating station is connected only to the State transmission network, the SLDC shall coordinate scheduling, except for the case as at (a) above.*

(iii) *If a generating station is connected both to ISTS and the State network, scheduling and other functions performed by the system operator of a control area will be done by SLDC, only .if state has more than 50% Share of power ,The role of concerned RLDC, in such a case, shall be limited to consideration of the schedule for inter-state exchange of power on account of this ISGS while determining the net drawal schedules of the respective states. If the State has a*

Share of 50% or less, the scheduling and other functions shall be performed by RLDC.

(iv) In case commissioning of a plant is done in stages the decision regarding scheduling and other functions performed by the system operator of a control area would be taken on the basis of above criteria depending on generating capacity put into commercial operation at that point of time. Therefore it could happen that the plant may be in one control area (i.e. SLDC) at one point of time and another control area (i.e. RLDC) at another point of time. The switch over of control area would be done expeditiously after the change, w.e.f. the next billing period.

35. The Commission notes that the RUMSL project (of 750 MW) is of more than 500 MW and connected to the ISTS, and as such as per the aforesaid provision of the Grid Code, RLDC (WRLDC in the instant case) has the jurisdiction to coordinate scheduling and dispatch of the said project. Further, in view of the fact that the project is connected to ISTS, the argument of the Petitioner - that the power drawn by solar power plants during night and/or for shutdown and maintenance, for its own use should be treated as consumption of power by a consumer within the jurisdiction of the concerned distribution licensee – does not sustain.

36. The Petitioner has further argued that as per the PPAs between SECI and the Respondent-SPDs, the energy drawn from the grid will be regulated as per the regulations of respective State Commission where the projects are located. In the instant case, as per the Petitioner, MPERC through the MPERC Regulations, 2010 and subsequent amendment provides treatment for power drawn by the generator/ co-generation from renewable.

37. We observe that the relevant Clauses in PPA are as under:

“6.1.4 Auxiliary power consumption will be treated as per the concerned State regulations.

.....

ii. The SPD shall be required to make arrangements and payments for import of energy (if any) as per applicable regulations.

.....

10.2.1 The SPD shall issue to SECI hard copy of a signed Monthly Bill/Supplementary Bill for the immediately preceding Month/relevant period based on the issuance of Energy Accounts along with all relevant documents (payments made by SPD for drawal of power, payment of reactive energy charges, Metering charges or any other charges as per guidelines of SERC/CERC, if applicable.

Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on Energy Accounts issued by RPC or any other competent authority which shall be binding on both the Parties. The Monthly Bill amount shall be the product of the energy as per Energy Accounts and the Applicable Tariff. Energy drawn from the grid will

be regulated as per the regulations of the respective State the Project is located in.”

38. At the outset, the Commission would like to state that the provisions any PPA cannot be in derogation of or in conflict with any provision of the Act or the Regulations. In case of conflict, the provisions of the Act and the Regulations will prevail over the provisions of the PPA. In the instant case, however, the Commission does not find any conflict. Rather, the PPA provides in clear terms that “the SPD shall be required to make arrangements and payments for import of energy (if any) as per applicable regulations”. This is exactly in line with the interpretation of the Commission in the context of Issue (a) and Issue (b). The DSM Regulations, 2014 do not make a provision for solar generators drawing power during night hours and/or for maintenance and shut down. This should be interpreted to mean that such solar generators cannot meet their drawl requirement through DSM but need to enter into power purchase arrangement for such drawl. Such power purchase arrangement can be with the distribution licensee of the State in which the generator is located or with any other entity through open access. It is only when the arrangement is made with the State in which the generator is located that the ‘energy drawn from the grid will be regulated as per the regulation of the respective State the Project is located in’. In the instant case, there is no such arrangement between the SPDs and the distribution licensee(s) of MP. As such, the energy drawn by the SPDs during night hours and/or for maintenance and shut down cannot be accounted for as import from the distribution licensee of MP. For such energy accounting, power purchase arrangement and drawl schedule of SPDs and the corresponding injection schedule of the distribution licensee(s) are a pre-condition. In the absence of any such arrangement, the prayer of the Petitioner that it be allowed to bill the SPDs towards power drawn during non-generation night hours and during shutdown periods or during any emergencies including their repair and maintenance, etc. is rejected.
39. However, a consequential question remains. The question is as to whether the WRLDC should continue to bill the SPDs as per the DSM Regulations. We have already interpreted the provisions of the DSM Regulations in detail in the context of Issue (a) and Issue (b). We reiterate that as the DSM Regulations do not have any provision dealing with drawl of power by the SPDs during night hours and/or for maintenance and shut down, it should be interpreted to mean that such SPDs cannot be allowed to inter-change such drawl through DSM Regulations.

40. Therefore, the Respondent-SPDs should immediately and not later than one month from the date of this Order, enter into power purchase arrangement for such drawl of power either with the distribution licensee of the State in which they are located or with any other entity through open access. Once such an arrangement has been made, the energy drawn should be scheduled and accounted as per the provisions of the Grid Code and deviation settled as per the provisions of the DSM Regulations, 2014 or the DSM Regulations, 2022 once the same is brought to force.
41. As regards the past billing and the billing until the power purchase arrangement is made, the Commission observes that the WRLDC had used its own judgment, without any malafide in undertaking the billing in respect of the Respondent-SPDs. Therefore, the Commission feels it expedient to invoke its inherent powers under Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (in short “the Conduct of Business Regulations”), which reads as under:
- “111. Nothing in these regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.”*
42. In exercise of the powers under the aforesaid Regulation 111 of the Conduct of Business Regulations, the Commission hereby regularizes the billing done by the WRLDC in respect of the SPDs till the date of this Order, and also directs that the billing be done by WRLDC based on the same methodology for the period from the date of this Order till the power purchase arrangement is made by the SPDs as per the direction in this Order.
43. In view of above, Petition No. 345/MP/2018 is disposed of in terms of the above

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(पी. के. सिंह)
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