

**RAJASTHAN ELECTRICITY REGULATORY COMMISSION
JAIPUR**

Petition No. RERC/2147/2023

Petition filed under Section 86(1)(f) read with Sec.142 of the Electricity Act for adjudication of dispute.

Coram:

Dr. B.N. Sharma, Chairman

Shri Hemant Kumar Jain, Member

Dr. Rajesh Sharma, Member

M/s. Transtech Green Power Pvt. Ltd.

..... **Petitioner**

Versus

Rajasthan Urja Vikas Nigam Ltd.,

Jaipur Vidyut Vitran Nigam Ltd.,

Ajmer Vidyut Vitran Nigam Ltd.,

Jodhpur Vidyut Vitran Nigam Ltd., .

.....**Respondents**

**Date(s) of hearing: 22.08.2023, 21.09.2023, 21.11.2023, 14.12.2023 and
30.01.2024.**

Present : Sh. P. N. Bhandari, Advocate for Petitioner.

Sh. Bipin Gupta, Advocate for Respondents.

Date of order

26.03.2024

Order

1. Petitioner, M/s Transtech Green Power Pvt. Ltd. (hereinafter referred to as the 'Petitioner') has filed the present Petition under Section 86(1)(f) read with Sec.142 of the Electricity Act,2003 for adjudication of dispute.

2. The matter was heard on 22.08.2023, 21.09.2023, 21.11.2023, 14.12.2023 and finally heard on 30.01.2024. Sh. P. N. Bhandari, Advocate

appeared for Petitioner. Sh. Bipin Gupta, Advocate appeared for Respondents.

SUBMISSIONS OF THE PETITIONER:

3. Petitioner in its petition and during hearing submitted as under:

(1) Petitioner is a biomass generator, with capacity of 12 MW and plant was commissioned on 28.7.2010. PPA was executed on 30.7.2008, with the three Discoms of Rajasthan.

(2) Article 12 of the PPA reads thus :

"12.1 Settlement of Disputes

Except where expressly provided to the contrary in this PPA, any matter or dispute or difference of whatsoever nature, however arising under, out of or in connection with the PPA (collectively called 'Disputes') between the parties herein shall be resolved by mutual agreement and if the matter is not resolved within 30 days or such extended period as mutually agreed upon., then such Dispute shall be submitted to adjudication by the RERC as provided under section 86 of the Electricity Act, 2003 and the RERC may either adjudicate itself or refer the matter for Arbitration."

(3) Respondents have made the large scale deductions, in total violation of the Regulations in spite of the repeated protests by the Petitioner. The statement is as follows:

Biomass vs Solar power calculation

Date	Biomass power Exported +Imported	Eligible Solar Power Generation @15% of Biomass Generation	Actual Solar Power Generated	Excess Power Generated by solar against approved
Month	MWh	MWh	MWh	MWh
Apr'21	36,33,696	5,45,054	-	5,45,054
May'21	26,46,768	3,97,015	-	3,97,015
Jun' 21	39,53,964	5,93,095	-	5,93,095
Jul'21	27,00,060	4,05,009	-	4,05,009
Aug'21	40,14,276	6,02,141	-	6,02,141
Sep'21	21,13,980	3,17,097	-	3,17,097
Oct'21	4,10,424	61,564	216,110	(1,54,546)
Nov'21	28,13,124	4,21,969	2,43,000	1,78,969
Dec'21	2,56,536	38,480	2,57,100	(2,18,620)

Date	Biomass power Exported +Imported	Eligible Solar Power Generation @15% of Biomass Generation	Actual Solar Power Generated	Excess Power Generated by solar against approved
Jan'22	12,34,512	1,85,177	2,66,070	(80893)
Feb'22	13,19,808	1,97,971	3,02,700	(1,04,729)
Mar'22	13,32,108	1,99,816	3,45,160	(1,45,344)
Total	2,64,29,256	39,64,388	16,30,140	23, 34,249

Deductions done by Discom for the year 2021-22

Date	Date	Units	Amount
1	18-Apr-22	168217	12,12,844
2	12-May-22	166476	12,00,294
3	13-Jun-22	188836	13,61,509
	Total	523529	37,74,647

(4) Regulation 44 of the RERC (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2020 (hereinafter the '2020 Regulations') reads thus-

"44 Use of fossil fuel or Solar Power

44.1 For new biomass power projects based on Rankine cycle technology installed after notification of these Regulations, use of fossil fuels or solar power shall not be allowed.

44.2 For existing biomass power projects based on Rankine cycle technology installed prior to notification of these Regulations, use of fossil fuels to the extent of 15% in terms of gross calorific value on annual basis or solar power within the limit of 15% of total energy generation on annual basis, shall be allowed for the Useful Life of the project from the date of commercial operation. For example, if total generation from biomass based plant in a year is 100 MU, then maximum 15MU can be generated using fossil fuel or from solar power:

Provided that in case of usage of solar power, the project developer shall furnish to the RRECL and to the distribution licensee, the details of solar power generation and consumption for each month, along with the monthly energy bill."

(5) The issue is that the computations & consequent deductions have been made arbitrarily by the Respondents, in utter disregard of the Rules and Regulations.

(6) It is well established that in such matters, the Discoms cannot set up their own procedures, in conflict with the Regulations, and also cannot amend the Regulations & introduce their own terms & conditions.

(7) Regulation 42.2 states that 15% blending is permitted annually and the Discoms cannot arbitrarily choose the period of calculating the 15% ceiling. It is well established that for tariff purposes, year is counted from 1st April to 31st March, which is also confirmed by the definition clause, this regulation further says that if total biomass generation in a year is 100 MU, then fossil fuel/ or solar component can be a maximum of 15 MU.

(8) In addition to the above, the Discoms are also calculating Solar generation in 15 minutes' schedule & deducting additional solar units generated in each 15 minutes' duration. The Statement of unauthorized deductions done by Discom on 15- minute slots for excess power above PPA-Less 12% Aux. Power is as follows:

Solar Energy Extra units' deduction

S. No.	Month	Deduction Units	Tariff Rs/Unit	Deduction Rs
1	Nov'21	30,574	7.21	2,20,439
2	Jan'22	3,575	7.21	25,776
3	Feb'22	1	7.21	7
4	Mar'22	24	7.21	173
5	Jun'22	90	7.21	649
6	Sep'22	78	7.21	562
7	Oct'22	194	7.21	1,399
8	Nov'22	22	7.21	156
9	Dec'23	166	7.21	1,194
10	Jan'23	968	7.21	6,982
	Total	35,692	7.21	2,57,336

(9) From its very nature, biomass is universally recognized as infirm power & introduction of this parameter, directly opposite to the Regulations and such audacious measures are a direct challenge to the authority of the Hon'ble Commission. Huge recoveries have been made through these unauthorized & arbitrary measures, which are still continuing. These

recoveries are patently illegal & in gross violation of the RERC Regulations 2020.

(10) The opening part of the PPA reads thus:

"AND WHEREAS the Power Producer desires to set-up such Biomass Power plant of 12 MW capacity (air cooled) at Patwar area Kachela Bagsari, Tehsil- Sanchor, District-Jalore to produce the grid quality energy /power and **sell the entire (100%)electrical energy so produced for commercial purpose through grid.....**"

(11) It has been repeatedly stated in the PPA that payment would be made for the injected energy, without any deductions. Definition clause(x) reads thus:

"(x) "Delivery Energy" means the net electrical energy measured in terms of kWh generated by the Power Plant and **delivered** by Power Producer at the Delivery Point in accordance with this PPA."

(12) Hence, payment has to be made for the delivered energy, as recorded in the meter. This has been further elaborated in clause (xxii) which reads thus:

"(xxii) "Net electrical Power" means energy output in kWh **net delivered** at delivery point, after deducting of import power."

(13) Therefore, only the energy imported from the Discom can be deducted and no other deduction is permissible. This concept is further elaborated in clause (xxxiii) of PPA which reads thus:

"(xxxiii) "Tariff" means the rate for purchase of electrical energy/ power delivered, at delivery point measured in kWh, **as per the reading shown in the meters** installed at Delivery Point."

(14) This further clarifies that the reading the meter is sacrosanct, hence there is no scope for any deduction, beyond what is recorded in the meter. The primacy of the units recorded by the meter is again reflected in Article 5.1 of the PPA which reads thus:

"5.1 Billing Procedure -

The billing will be on monthly basis. The Discom(s) will be billed by the Power Producer based on **joint meter reading** promptly following, the end of each month for the energy supplied and

amount will be due on the fourth working day following the delivery of billing invoice."

(15) Article 5.2 of the PPA also deserves to be quoted, which reads thus:

"5.2 Payment Procedure –

.....

iii) All payments for energy supplied under this Agreement as per the joint meter reading shall be made free of any restriction or condition and **without deduction or withholding on account of any other amount, whether by way of set off or otherwise** but the making of such payments shall be without prejudice to other rights after adjusting power import dues on Power Producer, if any, and/or any amount due on Power Producer on account of excess payment made or adjustment due to wrong billing."

(16) From the above provisions it can be inferred that the deductions being made by the Discoms are patently illegal. It is lamentable that while the Commission through the Regulations has provided for annual adjustment of the solar component up to 15% but the Discoms, in utter defiance of the Regulations, have switched over to adjustment every fifteen minutes.

(17) The Discoms are also making a deduction of 12% towards Auxiliary Charges, which are an internal matter of the generator, and the payment has to be based on the energy actually injected & as recorded in the meter. Hence, the deduction on account of Auxiliary Charges is patently illegal and violative of the Regulations.

(18) The Commission may direct that the above recoveries are void ab initio & should be refunded with interest.

Mandatory Liability of Interest

(19) The framers of the Electricity Act wanted to remove the discretionary element in grant of interest. Hence, Section 62(6) was framed, making the payment of interest mandatory in all cases of delay. The above recoveries are totally unjust and unfair. Section 62(6) reads thus-

"62 (6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest

equivalent to the bank rate without prejudice to any other liability incurred by the licensee."

(20) RERC (Electricity Supply Code & Connected Matters) Regulations, 2004 too have repeatedly emphasised this aspect for which some of the provisions may be referred as follows:

(21) In common parlance "Tariff" is treated to be the tariff determined by the Commission in ARR petitions of the Discoms. But the Electricity Act has used this expression on a much wider scale. Section 45 of the Act reads thus: -

"45. Power to recover charges (1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be **in accordance with such tariffs fixed from time to time** and conditions of his licence.

(2) The charges for electricity supplied by a distribution licensee shall be -

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission:

.....

(3) The charges for electricity supplied by a distribution licensee may include -

.....

....

(b) **a rent or other charges** in respect of any electric meter or electrical plant provided by the distribution licensee.

.....

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and **the regulations made in this behalf by the concerned State Commission.**"

(22) It is observed from above that significantly the expression used is "TARIFFS". Hence, TARIFF includes a variety of "Services" also. Sec 45(3)(b) includes "OTHER CHARGES" also.

(23) Definition Clause 61 of the Supply Code Regulations, 2021 reads thus :-

"61. "Tariff Order" means the Tariff Order issued by the Commission for different categories of consumers of electricity in the area of supply of licensee **for supply of electrical energy and services** for the specified period;"

From the above narration, there is no doubt that TARIFF includes "other services" also.

(24) The Commission has consistently maintained a very just & fair approach in the matter of allowing interest, whether to the Consumer or to the Licensee. It has always been guided by the standard commercial practices prevailing in the business world. A few extracts may be quoted from RERC (Electricity Supply Code and Connected Matters) Regulations 2021 (hereinafter 'Supply Code Regulations,2021').

(25) The Supply Code Regulations, 2021 have gone into the minutest details to ensure that if any excess amount remains with the licensee or consumer, interest must be allowed.

"7.12 Withdrawal of application

..... but the security money shall be **refunded** whereas the amount, deposited by the applicant towards the line cost and plant cost **will be refunded as here-under:**

.....
The refund shall be made by the licensee within **30 days** of the receipt of withdrawal/refusal letter, **beyond which interest shall be payable at the Bank rate."**

"8.4 Annual review of security amount

.....
c) Adjustment of **excess** security If, the security given by a consumer is found to be in **excess** the licensee **shall refund the excess security amount** to the consumer by adjustment through bills issued or otherwise, latest by September end of the next year, thereafter the licensee **shall pay the interest** on the unpaid security amount **at the bank rate plus 2% per annum from 1st October of the year."**

"8.7 Payment of interest on security deposit

a) **The Licensee shall pay interest on security deposit (SD) of the Consumer at the Bank Rate prevailing as on 1st April of the Financial Year for which interest is due** and the amount of interest on security deposit payable shall be rounded off to the nearest Rupee.

b) The **accrued interest on security deposit** for each financial year shall be credited to the consumer's account latest by July end of the subsequent financial year and be adjusted against

the consumption charges **failing which interest at the Bank Rate on the unpaid amount of the interest** shall also be payable from 1st August. If connection is permanently disconnected at any time, then account shall be settled considering interest on SD on settlement date.

[Note: Commission has not restricted itself to mere declaration about interest but has also mandated that interest will have to be paid, even for delayed payment of interest]

c) The details of **the deposits lying with Licensee and the interest** thereon shall be provided to the consumers along with the bill in the month in which the interest is adjusted. d) For the security deposit (SD) collected during the course of the year, interest on such deposit shall be computed for the months following the month in which such SD is collected. e) In respect of new installations, interest on security deposit shall be computed for the months following the month in which service is provided to the installation.

d) For the security deposit (SD) collected during the course of the year, **interest on such deposit shall be computed for the months following the month in which such SD is collected.**

e) In respect of new installations, **interest on security deposit shall be computed** for the months following the month in which service is provided to the installation."

.....
.....

"10.5 Annual statement of bills to consumers

The licensee at the end of every financial year shall furnish the details of statement of accounts....., the **security held and interest payable and when it was paid, additional security**, if any, required"

.....
.....

"10.8 Refund of excess amount

If a licensee recovers charges exceeding the tariff fixed by the Commission, the licensee shall refund the excess amount recovered to the person from whom it was recovered along with interest equivalent to bank rate of Reserve Bank of India prevalent on April 1 of the year when the amount was recovered."

(26) Regulation 8.7 has been kept very comprehensive to cover all situations without any exception. The Licensee cannot escape its liability under this provision, if it exceeds the tariffs by indirectly recovering through other means.

(27) Hence, the expression "tariff" has to be understood in the wider sense of recovering "any amount" directly or indirectly, which is more than the

prescribed amount of tariff. The mode of recovery may be different, but in the net result, if the licensee has recovered any amount, in prescribed excess of amount, then this provision is attracted, and interest becomes payable.

(28) Under this clause, in light of the Section 45 of the Act (dealing with Tariffs) and clause 61 of the Supply Code Regulations (defining “Tariff Order”, including services), the excess recovery of any amount under the services category also attracts this clause.

(29) In light of the interest provisions for a variety of purposes, no part of TCOS Regulations can be interpreted in isolation.

(30) The intention can be gathered on the basis of a combined reading of all the provisions regarding payment of interest. The common theme of all the provisions, is that whoever has recovered or retained any amount in excess of what the Licensee is entitled, it has to pay interest for the excess recovery.

(31) The very heading of this Regulation speaks of Recovery of Excess Amount. It cannot be the intention of TCOS that while interest for direct recovery of excess tariff would be payable, if the Licensee recovers extra amount indirectly, which is not prescribed and not permissible. The non-implementation of any provision attracts Section 142 of the Act.

(32) The word “TARIFFS” has to be understood in the wider context as laid down in Section 45 of the Act. It does not mean that under one head, excess charging is not permitted but under other hands the licensee is free to charge in excess. If the licensee is liable to pay interest for any excess recovery made directly beyond what has been prescribed it is equally liable to pay interest for any indirect recovery which results into recovery of higher tariff (which includes services), than what is prescribed.

(33) It is therefore requested that the Commission may be pleased to allow the petition and direct for the refund of the excess recoveries with interest as per section 62.6.

(34) Section 142 of the electricity act reads thus:

“142. In case of any complaint is filed before the appropriate Commission by any person or **if the Commission is satisfied that any person has contravened any provisions of this Act or rules or regulations made thereunder**, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of first such direction.”

(35) Hence, any violation of the Rules or Regulations attracts Section 142.

PRAYER:

(36) It is prayed by the petitioner that:

(1) May kindly allow the petition & accordingly direct the Respondents, for the refund of the excess recoveries with interest as per Section 62 (6).

(2) The Respondents may kindly be directed to discontinue forthwith the deductions on account of linkage with 15 minutes cycle & alleged excess solar generation during each cycle.

(3) May kindly direct the Respondents to pay for the net electricity injected as per the PPA Minus the electricity imported from the Discoms, without deducting auxiliary charges or any other ground.

SUBMISSIONS OF THE RESPONDENT:

4. Respondents in their reply and during hearing submitted as under:

(1) The Petitioner's solar power plant was commissioned on 18.10.2021 and it is claiming 15% for the period prior to COD of the solar plant, which is not permissible, and the demand of the petitioner is ex-facie illegal.

(2) The Regulation on which the reliance is placed came into existence on 02.11.2020. Under Regulation 44.2 it is clear enough that the petitioner

and similarly other generators can use solar power within the limit of 15 percent of the total energy generation on an annual basis. The said regulations have to be read in consonance with ABT regulations and since ABT meter has been installed which records the generation in block of 15 minutes, the benefit was given to the petitioner and like generator that in case if biomass fuel is not available then they can use fossil fuels to the extent of 15 % or the solar power. It cannot be read in a manner that by claiming 15 % the generator like petitioner would be entitled by closing down his biomass generation and supply by solar generation and therefore, the interpretation which is being made by the petitioner is not tenable and liable to be rejected.

(3) Respondents here submitted the data from October 21 to March 2022 and April 2022 to March 2023. As per the data the export and import and net energy of biomass has been mentioned, similarly solar export, import and net energy has been mentioned. From the above, it would be evident that in the financial year 2021-2022, the petitioner was entitled for 9,92,096.47 solar units but the payment was made of 15,15,626 units thus, excess was paid which was recovered. The contention of the petitioner raised herein is wrong and therefore the petition is liable to be rejected. In the year FY 2022-23 total solar Power supplied by the Petitioner is 28.78 Lakh whereas as per regulation 44.2 the Petitioner can supply 31.46 Lakh units hence no amount has been deducted in FY 22-23 against excess solar energy as Petitioner supplied less energy through solar.

(4) In view of Regulation 44.2 Respondents are making energy calculations on the following basis.

- (1) The Power injected by the power producer in any time block of 15 minutes may be restricted to the generation corresponding to the contracted capacity of biomass power plant after deducting normative auxiliary consumption during the time period of solar generation.

- (2) The tariff determined by RERC is arrived at after due consideration of the normative auxiliary consumption of the plant.
- (3) In every block of 15 minutes, the total energy exported (Biomass 12 MW + Solar 2 MW) cannot be more than the Contracted biomass capacity (12 MW).
- (5) The prayers made by the Petitioner are not admitted and denied. It is prayed that the reply of Respondent may be taken on record and petition may be rejected.

REJOINDER OF THE PETITIONER:

5. Petitioner in their rejoinder and during hearing submitted as under:

(1) The petitioner has suppressed nothing, nor the respondents have been able to show specifically, as to what has been suppressed Solar plant was set up in October 2021. As per the Regulations, the calculations under the Regulations are based on annual figures. The claim of 15% is entirely based on the 2020 Regulations, which require calculations on an annual basis.

(2) It may kindly be noted that from April 21 to March 22 for the full financial year petitioner's total biomass generation was 2,64,29,256 units. As per the 2020 Regulations, 15% blending is to be allowed on annual basis. Hence, petitioner's solar entitlement on 15% of biomass generation comes to 39,64,388 units. Against this the petitioner's actual solar generation is only 15,15,626 units. Thus, the solar component is 5.7% only of the biomass generation for the year 21-22 instead of being excess. It is much less than petitioner's entitlement of solar energy by 24,48,762 units.

(3) Most arbitrarily, the Discoms have deducted 5,23,529 units from the petitioner's solar generation of 15,15,626 units for 21-22, which is a gross violation of Regulation 44.3, which clearly states that Biomass generation for the entire year has to be considered. Discoms have conveniently ignored the petitioner's biomass generation from April to September period

when the Regulations have mandated for annual calculations, the Discoms cannot arbitrarily ignore the figures of six months of petitioner's biomass generation.

(4) The biomass generation cannot be constant, round the year. Such generation rises or falls due to the availability or otherwise of fuel. Keeping in view of this handicap of the biomass generators, the Regulations have prescribed annual calculations instead of monthly calculations.

(5) If the 2020 Regulations do not envisage a 15-minute block, the 2020 Regulations cannot be amended by the Discoms through the back door. The 15% provision cannot be superseded or diluted because of the installation of ABT meters. The general provisions of ABT Regulations cannot override the specific provision of 15% as prescribed by the 2020 Regulations. There is no question of closing down the biomass generation by the petitioner, even for a short spell. The biomass generation has continued month after month without any interruption, though there is a rise and fall in generation depending upon the availability or shortage of raw material.

(6) The Regulations leave not an iota of doubt that all calculations are based on an annual basis. The Respondent is trying to cover up the gross violation of the Regulations through misinterpretations and concocted excuses.

(7) The Petitioner's total biomass generation was 2,64,29,256 units and 3,17,784 units were imported from Discom as starting power. Hence, the net biomass generation was 2,61,11,472 units and 15% of that comes to 39,16,721 units. Against this background, there is no question of any excess payment, and the recovery was patently illegal.

(8) With clauses unambiguously speaking of net energy there is no question of introducing the concept of auxiliary consumption. The Respondents have nothing to do with the petitioner's auxiliary consumption. Only net energy has to be paid for by the Discoms. Neither "auxiliary consumption" nor "15 minutes blocks" have any relevance under

the 2020 Regulations. When the 2020 Regulations require annual calculations and cannot be calculated on the basis of 15 minute's blocks.

(9) Considering the above submissions the reply filed by the Respondent Discoms deserved to be rejected and the prayer made in the main petition deserves to be allowed with heavy cost for the undue harassment.

COMMISSION'S VIEW:

6. The Commission has considered the submissions made by the Petitioner/Respondents in petition, their written submissions and oral arguments made the during hearing(s).

7. The contention of petitioner is that the Regulation 44.2 allows 15% blending on annual basis whereas the Respondents have arbitrarily chosen the period of calculating the 15% ceiling and calculating Solar generation in 15 minutes' schedule & deducting additional solar units generated in each 15 minutes' duration. Petitioner has requested the Commission to direct the Respondent to discontinue forthwith the deductions on account of linkage with 15 minutes' cycle and alleged excess solar generation during each cycle. Further, according to the Petitioner for the purpose of Regulation 44.2 the date of commercial operation of the solar plant considered by the Discom is patently wrong as the entire Regulation 42.2 speaks of the biomass projects and COD of the biomass plants may be considered, not the COD of the Solar plant. It is also their contention that Respondents are also making deduction of 12% towards Auxiliary Charges, which is an internal matter of the Generator, and the Petitioner has to pay for net electricity injected as per PPA minus the electricity imported from the Discoms, without deducting auxiliary charges or any other ground. It is also requested by the Petitioner that the Commission may direct the Respondents for refund of excess recoveries made by them with interest as per Section 62(6) of the Electricity Act, 2003. In addition, it is also submitted that violation of Rules and Regulations attracts Section 142 of the Electricity Act,2003.

8. Per contra, it is the contention of the Respondents that claim for the 15 percent blending for the period prior to COD of the solar plant is not permissible. According to the Respondent, as per Regulation 44.2 the petitioner and similarly other generators can use solar power within the limit of 15 percent of the total energy generation on an annual basis. The said Regulations have to be read in consonance with ABT Regulations since ABT meter has been installed to record the generation in block of 15-minutes, the benefit was given to the petitioner and like generator that in case if biomass fuel is not available then they can use fossil fuels to the extent of 15 percent or the solar power. It is also submitted that for the FY 2021-2022, according to the Respondent, the petitioner was entitled for 9,92,096.47 solar units, however, the Respondents have made payment for 15,15,626 units. Thus, the excess amount so paid has been recovered by them from the Petitioner. Petitioner in their reply explained the methodology stating that they are making energy calculations on the Power injected by the power producer in any time block of 15-minutes restricted to the generation corresponding to the contracted capacity of biomass power plant after deducting normative auxiliary consumption during the time period of solar generation. The tariff determined by the Commission is arrived at after due consideration of the normative auxiliary consumption of the plant. As per the Respondent in every block of 15-minutes, the total energy exported cannot be more than the energy corresponding to the contracted biomass capacity (12 MW).

9. We have gone through the rival contentions of both the Petitioners and Respondents.

10. Respondents in their reply have submitted the following methodology adopted by them for 15% ceiling of the solar power:

S. No.	Month	Energy generated from Biomass plant(Solar+Biomass)					Solar Energy			Net Energy from Biomass	Net Solar Energy for which payment is already made
		Export Energy	Import Energy	Net Energy (Bio+Solar)	Deduction	Net Energy (Bio+Solar) Billed	Export Energy	Import Energy	Net Energy from Biomass fuel		
		A	B	C=A-B	D	E=C-D	F	G	H=F-G		
1	18.10.21 to 31.10.21	319680	9228	310452		310452	142200	600	141600	168852	141600
2	Nov-21	2813124	16752	2796372	30574	2765798	245400	2400	243000	2553372	212426
3	Dec-21	256536	21396	235140	0	235140	259200	2100	257100	-21960	257100
4	Jan-22	1234512	18960	1215552	3575	1215552	265200	2100	263100	952452	259525
5	Feb-22	1319808	19620	1300188	1	1300188	304800	2100	302700	997488	302699
6	Mar-22	1332108	18132	1313976	24	1313952	344400	2100	342300	971676	342276
Total	18.10.21 to Mar-22	7275768	104088	7171680	34174	7137506	1561200	11400	1549800	5621880	1515626

Total generation (Solar+Biomass) as per regulation (K)	1/0.85	6613976.47
15% Solar Energy (L)	(K-I) or 15% of K	992096.47
Excess solar energy already verified (M)	J-L	523529.93
Tariff (Rs.)	7.12	
Variable (Rs.)	4.56	
Fix(Rs.)	2.56	

11. Petitioner has contended that the payments have to be made by the Respondent for the energy injected as per the PPA minus the electricity imported from the Discoms, without deducting auxiliary charge or any other ground for which the Delivered Energy, Net electric power, Tariff, Billing Procedure, Payment Procedure defined in the PPA have also been put forth.

12. From the submissions of the Respondent, in the normal course the Discom would have made payment for the net energy (after meeting the Auxiliary Energy Consumption) recorded by the meter of the Biomass

power plant. However, in the instant case there is generation from both Biomass power plant and solar power plant, and according to the Respondent, for every time block of 15 minutes, they have worked out the total billed energy by restricting the total net generation (after deducting the auxiliary energy consumption) corresponding to the contracted capacity of 12 MW during the time period of solar generation.

13. In this regard, it is worth noting that the generation from a Biomass power plant varies with quality of Biomass fuel which is uneven in nature and also the auxiliary consumption does not remain constant in each time block as it also varies over the period. Thus, it would not be appropriate to apply same and maximum aux energy consumption during each 15-minute block and some allowance has to be considered. Further, the principle of a biomass power plant is also uses boiler and turbine to generate electricity similar to a thermal power plant. As each generating machine is to have operational capability of instantaneously picking up to a minimum of 105% of their operating level and upto 105% to 110% of their Maximum Continuous Rating (MCR), whenever the system frequency falls suddenly. Even as per IEGC the machine should have such capability. Therefore, the Petitioner's generating machine also by virtue of its inherent design can even generate more than its name plate rating/ contracted capacity. It is further noted that Regulations are silent as regards the methodology for 15-minute time block that can be adopted in the instant case, which is a peculiar case of combination of Biomass and Solar power generation. The Biomass generation can take place round the clock but has significant auxiliary energy consumption, whereas, solar generation take place during the day hours only and there is no significant auxiliary energy consumption.

14. On the other hand the concern of the Respondent is that in a given block the biomass generator should not inject power beyond a capacity while using both modes of generation. Accordingly, keeping in view the concern of both Petitioner and Respondent and in order to remove the

difficulty, Commission considers it appropriate that in each 15- minute time block, the total net generation recorded by the meter should not exceed the total net generation (after accounting for auxiliary consumption) corresponding to 105% of contracted capacity of the Petitioner's plant. Therefore, the total net generation from the biomass power plant plus solar power plant has to be restricted during the time period of solar generation. To illustrate, for a 15-minute time block, the total allowable net generated units from the petitioner's plant works out as under:

$$\begin{aligned} &= \text{Contracted capacity (MW)} \times 10^3 \times (1 - \text{Aux}\%) \times 1.05 \times 1/4 \\ &= 12 \times 10^3 \times (1 - 12\%) \times 1.05 \times 1/4. \\ &= 2772 \text{ units.} \end{aligned}$$

Therefore, if in a 15-minute time block the total net electricity units generated from both Biomass power plant and solar power plant exceed the above limit, then total net generated units have to be restricted to 2772 unit and excess units will be disallowed. In case the total net generated units are less than above limit of 2772 units, then there will be no restriction. Petitioner should ensure to balance his biomass & solar generation in accordance this.

15. In our considered view, the above methodology would be fair and reasonable to arrive at the Net Energy billed (Biomass + solar) from 12 MW Biomass plus 2 MW solar capacity and would balance the interest of both parties.

16. It is also the contention of the Petitioner that calculations for 15% usage of solar power have to be based on an annual basis. If the 2020 Regulations do not envisage 15-minute blocks metering the general provisions of ABT Regulations cannot override the specific provision of 15% as specified by the 2020 Regulations on the premise of the installation of ABT meters. Further, according to the Petitioner for FY 2021-22, the ceiling of 15% is also to be worked out on an annual basis. To further substantiate its argument, the Petitioner has also submitted that Regulation 44.2 of the

2020 Regulations speaks of COD of the Biomass plants and not the COD of the solar plant.

17. According to the Respondent as per Regulation 44.2, the Petitioner and other similarly placed generators can use solar power within the limit of 15% of the total energy generation on an annual basis. The said Regulation has to be read in consonance with ABT Regulations since ABT meter has been installed which records the generation in 15-minute time block. The benefit was given to the Petitioner and similarly placed generators that in case biomass fuel is not available they can use fossil fuel or solar power to the extent of 15%. This in no manner entitles the Petitioner or similarly placed generator to claim 15% by closing down their biomass generation and supply by solar generation.

18. To further appreciate the rival submissions, it would be appropriate to look into the relevant Regulation 44 of the 2020 Regulations, which reads as under:

“44 Use of fossil fuel or Solar Power

44.1 For new biomass power projects based on Rankine cycle technology installed after notification of these Regulations, use of fossil fuels or solar power shall not be allowed.

44.2 For existing biomass power projects based on Rankine cycle technology installed prior to notification of these Regulations, use of fossil fuels to the extent of 15% in terms of gross calorific value on annual basis or solar power within the limit of 15% of total energy generation on annual basis, shall be allowed for the Useful Life of the project from the date of commercial operation. For example, if total generation from biomass-based plant in a year is 100 MU, then maximum 15 MU can be generated using fossil fuel or from solar power:

Provided that in case of usage of solar power, the project developer shall furnish to the RRECL and to the distribution licensee, the details of solar power generation and consumption for each month, along with the monthly energy bill."

[Emphasis supplied]

19. The Petitioner has submitted that the ceiling of 15% has to be considered on an annual basis. According to the Respondent and as per Regulation 44.2, the Petitioner and similarly placed generator can use solar

power within the limit of 15% of the total energy generation on an annual basis. However, the Petitioner's solar plant was commissioned on 18.10.2021 and therefore, the Petitioner's claim of 15% on annual basis for FY 2021-22 for the period prior to commissioning of their solar plant is not permissible. It is also stated by the Respondent that FY 2022-23 they considered the ceiling of 15% on annual basis and as the solar generation is less than within the above ceiling no amount has been deducted by them against excess solar energy.

20. From the above, the Commission observes that the ceiling of 15% has to be applied on the annual basis which is in accordance with Regulation 44.2. Therefore, such imposition of ceiling on solar generation on 15-minute time block basis would not be a correct position. We, thus, decide that ceiling of 15% use of solar shall be considered on annual basis at the end of relevant Financial Year. The deduction on account of excess solar energy, if any, shall be recovered in three equated amounts from monthly bills raised by the biomass energy generator/developer during the first three months of the next Financial Year.

21. Now we consider FY 2021-22, where both parties have taken different stands. From the reading of the whole regulation 44, the facility of use of 15% solar power is permissible to the existing biomass power plants, which, according to the Regulations have already achieved COD prior to coming into effect of the 2020 Regulations. In view of this the balance useful life should refer to a Biomass power plant as after completion of the useful life of the Biomass power plant itself, the 15% usage of solar will become meaningless. Considering the rival submissions and harmonious interpretation of Regulation 44, we find that the approach adopted by the Respondent for FY 2021-22 is correct as for the period 1.04.2021 to 17.10.2021, the solar power plant of the Petitioner was not even in existence hence did not inject any power as the Petitioner's solar plant started generation from 18.10.2021 only. In our view the ceiling of 15% has to be considered from COD of Solar power plant only. Accordingly, we do

not find any infirmity in the Respondent's approach of considering the ceiling of 15% from the date of the Petitioner's solar power plant commissioned. Considering the above we are not inclined to agree with the argument of the Petitioner of considering the ceiling of 15% use of solar power for FY 2021-22 also on an annual basis including the period when solar plant was not in existence and accordingly, reject the same. Therefore, in view of this, we decide that the ceiling of 15% is to be made applicable from the COD of the Petitioner's solar power plant, i.e., 18.10.2021.

22. In view of the foregoing analysis, we do not find any infirmity in the methodology adopted by the Respondent. Therefore, the prayer of the Petitioner regarding refund of excess recovery and interest u/s 62(6) of the Electricity, 2003 is rejected. Further, we do not find violation of any Rule or Regulations and thus, there is no ground to invoke Section 142 of the Electricity Act, 2003 against the Respondent.

23. Accordingly, we order as follows:

(1) The total net generation (after accounting for the auxiliary consumption) during a 15-minute time block should not exceed the total net energy corresponding to the contracted capacity plus 5%.

(2) The ceiling of 15% use of solar power generation shall not be applied on the 15-minute time block basis.

(3) The ceiling of 15% use of solar power generation shall be considered on an annual basis at the end of the relevant Financial Year. The deduction on account of excess solar energy, if any, shall be recovered in three monthly equated amounts from the monthly bills raised by the biomass energy generator/developer during the first three months of the next Financial Year.

(4) For FY 2021-22, the ceiling of 15% use of solar power generation shall be applicable from the COD of the solar power plant installed by the biomass energy generator/developer.

(5) The Respondent may rework its calculations in terms of this order and Petitioner may incorporate the credit/ debit amount as the case may be, in its next bill issued after the date of the order.

24. The Petition is disposed of in above terms and no order as to cost.

(Dr. Rajesh Sharma)
Member

(Hemant Kumar Jain)
Member

(Dr. B.N. Sharma)
Chairman