

Subject: In the matter of petition filed by MPAKVN (I) Ltd for true up of ARR of SEZ area for FY2015-16. (Petition No. 02 of 2017)

ORDER

Date of Order : 01.08.2017

M.P.A.K.V.N (Indore) Ltd.

**3/54, Press Complex, Free Press House :
A.B. Road, Indore**

Petitioner

1. The petitioner has filed the subject petition for determination of true-up of the ARR for FY 2015-16. The Commission vide order dated 21.02.2017 had admitted the petition for further deliberations and directed the petitioner to publish the public notice for inviting the comments from the stakeholders. The Commission held the public hearing on 21.03.2017 and heard the comments of stakeholders.
2. The Commission has noted that in the instant petition, the petitioner has filed a gap of Rs 25.44 Crore to be recovered from consumers for FY2015-16. On the other hand, petitioner has not complied the Commission's directives given in past years for adjustment of their surplus income of Rs 7.13 Crore in FY2010-11 and Rs 16.63 in FY2011-12 respectively through the Commission's provisional True-Up order for FY2010-11 and FY2011-12 issued on 20.09.2012 (in tariff P.No. 16/2012). The Commission at para 6.1.11 (directions to petitioner) of aforesaid order had directed the petitioner to adjust the surplus income for past period by way of refund to the consumers in equal monthly installments in time bound manner. The aforesaid directives is reproduced below –

“Adjustment of surplus income from the consumers: After finalizing the expenses for the year FY 2010-11 and FY 2011-12, the Commission has observed that there has been surplus income to the licensee on account of the tariff charges and due to the fact that the ARRs for these years were not finalized. The Commission has now finalized the expenses for FY 2010-11 and FY 2011-12 also and has found that revenue earned by the licensee during these 2 years has been more than that of the expenses as admitted by the Commission. The tariff to be billed for these years to the consumers who availed supply during these years has been indicated in the tariff schedules for the respective year. The billing done for these two years for then existing consumers should be revised accordingly. The billing already done based on HV 3.1 of the tariff Order for distribution and retail supply applicable to the Discoms of the State during the year FY 12-13 till the issue of this Order should also be reworked based on the tariff being prescribed in this Order. The rate of fixed charges and energy charges to be billed for FY 2010-11 and 2011-12 have been given in tariff schedules at annexure I. The adjustments / credit in consumers bills on

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account of surplus income be allowed to the consumers in their monthly bills in 18 equal installments commencing from the month of October billed in November, 2012."

3. In subsequent development, the petitioner has filed an appeal (Appeal No.71/2013) against the Commission's aforesaid order before the APTEL after dismissal of their review petition by the Commission vide its order dated 21.12.2012 in the matter. The APTEL vide its judgment dated 30.10.2014 upheld the Commission's order and had taken the stance that the State Commission has correctly adjusted ARR and tariff of the Appellant for FY2010-11, FY2011-12 and period from 01.04.2012 to 30.09.2012 and providing respective adjustment and directing refund to be given to consumers of SEZ area of the appellant.

4. Against the aforesaid judgment of APTEL dated 30.10.2014, the petitioner has preferred an appeal before Hon'ble Supreme Court of India. Hon'ble Supreme Court admitted the petitioner's appeal (Civil Appeal no. 3074 of 2015) and stayed the APTEL order dated 30.10.2014. Subsequently, Hon'ble Supreme Court vide its order dated 16.08.2016 (I.A.07/2016) has made following observations in the matter.

"In the circumstances, we do not see any impropriety for the first respondent- Commission carrying on the statutory exercise. The earlier order of this Court is only staying the operation of the order of the first respondent- Commission, impugned in the instant appeal."

In pursuance of Hon'ble Supreme Court said order, the Commission vide its letter dated 20.01.2017 has directed the petitioner to submit revised petition in the matter of final true up for FY2010-11 and FY2011-12 in accordance with requisite audited accounts duly audited by statutory auditors appointed by CAG for the respective years so as to enable the Commission to determine final true up for FY2010-11 and FY2011-12.

5. It is notable that the Commission has been consistently directing the petitioner to furnish the requisite audited accounts for electricity business in SEZ area being statutory requirement in accordance with the provisions of the Electricity Act, 2003 so as the Commission would be able to finalise the True up of ARRs of previous years in comprehensive manner. Further, in the Retail Supply Tariff Order for FY2017-18 for SEZ area at paragraph 7.3 the Commission has directed the petitioner to submit all the pending requisite audited accounts duly audited by the statutory auditor along with the True up petitions for respective years within three months.

6. In instant case, the Commission has noted that although the petitioner has filed the audited balance sheet for FY 2015-16 along with the instant true up petition, the audited accounts for past financial years i.e. FY 2010-11 to FY 2014-15 are yet to be filed by the petitioner. The petitioner further informed the Commission that the audit of past years' accounts is under process in accordance with the requirement of Electricity Act, 2003. The Commission has taken the cognizance of the petitioner's aforesaid submission and opined that past years

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audited accounts would definitely have bearing upon the audited accounts of 2015-16. This would be ascertained at the time of scrutiny of the same.

7. The Commission is of the view that petitioner's power business account should have adequate clarity so that the expenses against the power business are properly identifiable and separate accounts for all the activities related to power business should be maintained sub-head wise henceforth. These accounts should be got duly audited and certified by the auditors and submitted to the Commission timely. The Commission has therefore, deemed it appropriate to deal with the pending truing up of the ARRs of the previous years in a comprehensive manner instead of finalizing the true up for FY 2015-16 in silo i.e. without ramification of previous years' impact and accordingly directed the petitioner to file the revised true up petitions of the ARRs from FY 2010-11 to FY 2016-17 on the basis of the requisite audited accounts of respective years without any further delay. The petition is thus disposed of.

(Alok Gupta)
Member

(A. B. Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman