

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION BHOPAL**

**Sub: In the matter of determination of ARR & Retail Supply Tariff for FY 2016-17 for SEZ area, Pithampur.**

**ORDER**

**Date of order: 09.08.2016**

**Madhya Pradesh Audyogik Kendra**

**Vikas Nigam (Indore) Ltd. (MPAKVN(I)Ltd.**

Free Press House, First Floor, 3/54, Press Complex,  
Agra-Mumbai Road, **Indore – 452 018.**

**Petitioner**

Shri S.K.Pal, EE, Shri Anand Chaure, Law Officer, Shri Ajay Porwal, Consultant and Ms. Bhakti Vyas, Advocate appeared on behalf of the petitioner.

2. The instant petition has been filed by the petitioner through Shri N.K.Sharma, CGM, MPAKVN(I)L for determination of ARR & Retail supply tariff for FY 2016-17 for Special Economic Zone (SEZ) area of Pithampur based on the tariff principles laid down in “MPERC (Terms and conditions for determination of tariff for supply and wheeling of electricity and methods and principles for fixation of charges) Regulations, 2015 for control period FY 2016-17 to FY 2018-19 on 31/12/2015. The Petitioner has requested the Commission to consider and approve the ARR of Rs. 125.85 Crore indicating revenue deficit of Rs. 23.25 Crore.
3. The motion hearing in the matter was held on 04/02/2016 wherein the Commission enquired about the status of petitioner’s preparedness with regard to the submission of audited accounts for SEZ area. The Commission regretted to note that the petitioner’s representatives were not updated with contents of the petition filed and the status of readiness of requisite audited accounts. The Commission further observed that present petition was grossly deficient for want of certain vital information/data gaps which were conveyed to the petitioner vide Commission’s letter dated 15/02/2016. Further, the Commission observed that the petitioner had not filed the requisite separate audited accounts for power business of SEZ in compliance to the provisions under Section 51 of the Electricity Act, 2003 despite of repetitive directions of the Commission given in the tariff orders issued by the Commission in past years and therefore, the Commission had not admitted the petition. The observation of the Commission in respect of the submission of the requisite audited accounts conveyed to vide Commission’s letter dated 15/02/2016 are given below:

*The petitioner being a deemed distribution licensee is required to comply with second proviso of Section 51 of the Electricity Act 2003. Extract of the same is reproduced below:*

*...Provided further that the distribution licensee shall maintain separate accounts for each such business undertaking to ensure that distribution business neither subsidies in any way such business undertaking nor encumbers its distribution assets in any way to support such business.*

*The Commission has been reiterating time and again the need for MPAKVN(I) Ltd. to adhere to the above stated requirement through its Tariff Orders. In this context, the*

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*Commission had categorically stated the requirement of annual accounts for power business duly audited by the statutory auditors for True-up in its Order in the matter of Petition No.38/2013 for determination of ARR and retail supply tariff order for SEZ area, Pithampur of MPAKVN(I) Ltd. for FY 2013-14 dated 10th September, 2013. Similar directions had also been given by the Commission in its Order in the matter of Petition No. 58 of 2013 and No. 21 of 2014 for the determination of Aggregate Revenue Requirement and Tariff for the Financial Year 2014-15 and 2015-16 respectively for MPAKVN (I) Ltd. The directive is reproduced below:*

*In accordance with the Section 51 of Electricity Act 2003, the Distribution Licensee has to maintain separate Accounts for Power Business. The petitioner is in process of segregating its accounts for power business from comprehensive accounts of MPAKVN(I)L on apportionment basis on some assumptions and are not based on actual expenses against the items of power business but the same has also not been achieved by the petitioner. The Commission again directs the petitioner to maintain separate accounts for its power business to ensure that distribution business neither subsidizes in any way business other than power business nor encumbers its distribution assets in any way to support other business. The response of the petitioner in the matter is not acceptable. The Commission directs the petitioner to ensure compliance of the directives on this issue in letter and spirit.*

*Further, MPAKVN(I)L being a deemed distribution licensee is also required to comprehensively comply with the regulations “Conditions of distribution license for distribution licensee (including deemed licensee), 2004” and as amended from time to time, notified by the Commission under Section 16 of the Electricity Act, 2003. Accordingly, the Regulations 7, “ACCOUNTS” of the aforementioned Regulations specifies the provisions for preparation and maintenance of the various Financial Statements by a licensee. Further, in the aforesaid conditions of license the “Auditors” have been defined as “the Licensee’s auditors holding office in accordance with the requirement of Section 224 or Section 619 as appropriate, of the Companies Act, 1956”. Since, MPAKVN(I)L is a Govt. owned Company, Section 619 of the Companies Act shall apply and accordingly, the auditors for petitioner for preparation and maintenance of the accounts for power business shall be appointed by the Comptroller and Auditor General of India (CAG).*

*Accordingly, the MPAKVN(I)L is required to submit the separate accounts for power business as per the requirement of the Electricity Act 2003 and the Conditions of distribution license for distribution licensees (including deemed licensee), 2004 as amended from time to time duly audited by the statutory auditors.*

*MPAKVN(I)L has to submit Audited Annual Accounts for FY 2014-15 along with the schedules for its power business of SEZ at Pithampur duly audited by the statutory auditor*

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4. In response to the Commission's aforementioned observation the petitioner vide letter dated 29/02/2016 has stated as below:

*MPAKVN(I)L is the notified developers of SEZ area in Indore. MPAKVN(I)L is also a deemed distribution licensee of power in SEZ area. For the Financial year 2014-15 MPAKVN(I)L has prepared its accounts by accumulating all the income arrive from several sources. They are including Lease rent, Maintenance Charges, Water Charges, and Sales of Power etc. One of the Business activities of MPAKVN (I) Ltd is the distribution of Power, therefore MPAKVN(I)L's final accounts consisting of power Distribution activities also.*

*In the books of MPAKVN(I) Limited, all the ledger accounts pertaining to power business activities of SEZ area are maintained separately and specifically headed with "SEZ POWER". As per requirement only one set of statutory Books of Accounts need to be maintained, therefore it cover Power Business also.*

*Statutory Auditor of the Company is appointed by CAG u/s. 619 (2) of The Companies Act, 1956. Statutory Auditors of the Company has audited books of accounts of MPAKVN(I)L including power business. Similarly CAG audit was also carried out of MPAKVN(I)L as a whole, including power distribution business and related activities.*

*Under rule 19(1) of DPC Act 1971 (Duties, powers and conditions of service) amendment Act 1971 "The duties and powers of the controller and auditor general in relation to the audit of the accounts of Govt companies shall be performed and exercised by him in accordance with the provisions of the Companies Act 1956 (1 of 1956)".*

*Audited Abstract of the power business of the Company was prepared from the Balance Sheet, which is audited, and Signed by Statutory Auditors of the Company and which is also audited by CAG.*

*It means Power Business activities were audited by Statutory Auditors as well as by CAG Audit team also. Hence Power Balance Sheet abstract can and shall be considered to be audited by both Statutory Auditor as well as CAG audit.*

*It is further stated that separate accounts for all activities (viz. power purchase, transmission, capital cost, power sale, repair and maintenance, lease rent etc.) of power business are already maintained and only following accounts are on apportionment basis:-*

*1.Employee Cost: out of the total employee cost only part of their salary has been allocated for power business as these employees are also doing other work. This has resulted into reduced employee cost and lower power tariff for SEZ consumers. If dedicated employees are employed for power business then the cost will increase and will result into higher tariff for SEZ consumers.*

*2.A&G expenses: Similarly if separate office building and administrative set up is created then also the cost will increase.*

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5. The petition was next heard on 08/03/2016 wherein the Commission had observed that the petitioner had not filed the requisite audited accounts. The Commission had expressed serious displeasure over the act of repetitive non-compliance of the petitioner and further cautioned that in the event of non-submission of requisite documents within the two weeks, the Commission would proceed suo motu in accordance with the appropriate provisions of the Electricity Act, 2003 for determination of retail supply tariffs for SEZ. In the subsequent hearing held on 29/03/2016 the petitioner informed to the Commission that in a bid to comply the Commission's directives the petitioner had approached to the office of Accountant General for needful and office of the Accountant General had assured the petitioner to reply within three weeks. The petitioner sought time extension of four weeks. The Commission accepted the request and admitted the subject petition. The petitioner had also informed the Commission about the execution of long term power a power purchase agreement. The Commission directed the petitioner to inform the status in this regard. The case was last heard on 26/04/2016, wherein the petitioner furnished the copy of long term power purchase agreement executed with MP Power Management Co. Ltd. During the hearing the petitioner informed that the matter of statutory audit of the annual accounts exclusively pertaining to the electricity retail supply business of the petitioner in SEZ area has been under consideration with the office of Comptroller and Auditor General (CAG) and Govt. of Madhya Pradesh, Commerce, Industries and Employment Department (GoMP). The petitioner assured the Commission about informing the progress and achievement in the matter. However, the petitioner has neither informed to the Commission about the latest developments in the matter nor submitted the requisite audited accounts to the Commission.
6. The Commission has been incessantly directing the petitioner for submission of the audited accounts exclusively pertaining to the electricity retail supply business in SEZ area since deliberating on the petition filed for issue of the distribution and retail supply tariff order for SEZ area Pithampur for FY 2012-13 onward. The petitioner however has not complied with the direction till date. The details of the orders of the Commission including of the formal correspondence of the Commission issued are given hereunder:
- i. **Paragraph 6.1.5 of Order issued on 20<sup>th</sup> September, 2012:** In the matter of Petition No. 16/2012 for determination of ARR and Tariff for FY 2010-11, 2011-12 and 2012-13 based on the applications filed by (MPAKVN(I)L) for Special Economic Zone (SEZ) at Pithampur Area, District Dhar, Madhya Pradesh.
  - ii. **Paragraph 6.7 of Order issued on 10<sup>th</sup> September, 2013:** In the matter of Petition No. 38/2013 for determination of ARR and Tariff for Financial Year 2013-14 for Special Economic Zone (SEZ) area, Pithampur of MPAKVN (Indore) Ltd.
  - iii. **Paragraph 6.7 of Order issued on 18<sup>th</sup> February, 2014:** In the matter of Petition No. 58/2013 for determination of ARR and Tariff for Financial Year 2014-15 for Special Economic Zone (SEZ) area, Pithampur of MPAKVN (Indore) Ltd.

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- iv. **Paragraph 6.7 of Order issued on 23<sup>rd</sup> March, 2015:** In the matter of Petition No. 21/2014 for determination of ARR and Tariff for Financial Year 2015-16 for Special Economic Zone (SEZ) area, Pithampur of MPAKVN (Indore) Ltd.
  - v. **Letter No. MPERC/D(RE)/1454 issued on 13<sup>th</sup> August 2015:** Data gaps / additional information conveyed in the matter of Petition No. 38 of 2015 for True up of ARR for FY 2012-13.
  - vi. **Letter No. MPERC/D(RE)/1454 issued on 14<sup>th</sup> September 2015:** Data gaps / additional information conveyed in the matter of Petition No. 48 of 2015 for True up of ARR for FY 2013-14.
7. In response the petitioner has been conveniently stating that the financial statement pertaining to power business certified by the auditors has been submitted. The petitioner has also contested that the statutory auditor has been doing the audit of the complete books of accounts of MPAKVN(DL) comprising several activities including the power business. Hence, while auditing, the accounts of the power business has also been audited by the statutory auditor. The petitioner's contention in this regard has been indicated in the paragraph 4 above.
8. The Commission has observed that the petitioner has been obscurely responding on the issue of complying the specific directives given by the Commission regarding exclusively maintaining and submission of separate audited accounts in respect of the distribution and retail supply of electricity business in the SEZ area by the licensee MPAKVN(DL) under the garb of procedural aspects flagged by it during the hearings held on 04/02/2016, 08/03/2016, 29/03/2016 and 26/04/2016. The Commission has been specifically directing to the petitioner in the matter as per the provisions of Section 51 of Electricity Act 2003 so as the exercise for determination of ARR and retail supply tariff / true up of ARR could be undertaken in accordance with the statutory provisions enumerated in this regard. Further, the insistence of the Commission in the matter is also conforming to the provisions specified in the conditions of distribution license for distribution licensee (including the deemed licensee). Since the Commission's retail supply tariff orders / true up orders are issued in accordance with quasi legislative powers conferred upon the Commission and also under the quasi judicial functions ordained upon the Commission in the Electricity Act, 2003, it is therefore incumbent upon the petitioner to scrupulously comply with the statutory provisions. Instead the petitioner has chosen to narrate its own version of audited accounts for acceptance by preferring to submit certain statements certified by their own auditors carved out from the comprehensive accounts of MPAKVN(DL) on apportionment basis on some assumptions which have not been based on actual expenses against the items pertaining to power business. Time and again, the Commission has observed that the petitioner has miserably failed to comply with the directives given by the Commission in respect of maintaining the separate accounts for the electricity distribution business in the SEZ area and submitting the same to the Commission after getting them duly audited in accordance with the provisions of the Electricity Act, 2003 and the Companies Act, 1956. Under the circumstances the petitioner's contentions are

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not acceptable. The petitioner ought to fulfill the statutory provisions under the Commission's jurisdiction established through various provisions of the Acts.

9. In the meantime, certain endorsements by the petitioner, CAG and GoMP have been made to the Commission with regard to various communications held between them in respect of conducting the special / supplementary statutory audit of the petitioner's annual accounts. A perusal of the correspondence has revealed that subsequent to the reference from the petitioner, GoMP asked the CAG for regular supplementary audit of the balance sheet pertaining to the power business of MPAKVN(I)L as the comprehensive balance sheet of MPAKVN(I)L had already been audited. In response vide letter dated 03/05/2016 the CAG has stated that a special audit of MPAKVN(I)L power business activity in terms of clause 17 of Regulation of Audit and Accounts, 2007 is found necessary. No further reference or feedback in the matter has been made to the Commission thereafter.
10. In view of the facts and circumstances elucidated in the above paragraphs, the Commission has observed that the matter has not been strongly persuaded by petitioner. The petitioner has also failed to update the Commission with the latest developments / achievements in the matter. The Commission has noted with grave concern that the petitioner is lackadaisically managing the matter leading to unnecessarily delay in finalizing the subject petition and also other matters pertaining to the true up of ARR of the past years. However, the instant petition cannot be kept pending indefinitely for want of response from the petitioner. Therefore, under such state of affairs the Commission is forced to deliberate upon in the matter as stated hereinabove.
11. The Commission is constrained to decide that the Commission's Order in the matter of petition No. 21 of 2014 shall continue to be in force during FY 2016-17 i.e. up to 31<sup>st</sup> March 2017 unless amended, extended or modified by an order of the Commission. Accordingly, the retail supply tariffs and charges along with the terms and conditions therein as specified vide Commission's retail supply tariff order in the matter of petition No. 21 of 2014 for SEZ Pithampur for FY 2015-16 dated 23<sup>rd</sup> March, 2015 shall be continued to be recovered by the petitioner MPAKVN(I) Ltd. in their licensed area of supply within SEZ Pithampur. Thus the petition is disposed of.
12. Ordered accordingly

**(Alok Gupta)**  
**Member**

**(A. B. Bajpai)**  
**Member**

**(Dr. Dev Raj Birdi)**  
**Chairman**