

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION  
BHOPAL**

Dated: 12<sup>th</sup> October, 2012

**Subject: In the matter of approval of final generation tariff for 2x10 MW Bansagar IV (Jhinna) hydel power station for the period of 30 years w.e.f. 01/09/2006 under Section 62 (1) and 86(1)(a) of the Electricity Act, 2003.**

**Petition No.63 /2012**

**ORDER**

(Date of Motion Hearing: 6<sup>th</sup> October, 2012)

**M.P. Power Generating Company Ltd., Jabalpur**

**Petitioner**

V/s

1. M. P. Power Management Co. Ltd., Jabalpur
2. M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd., Jabalpur
3. M. P. Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal
4. M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd., Indore
5. M. P. Power Transmission Co. Ltd., Jabalpur

**Respondents**

Shri S.K. Khiani, Addl. CE(CS) appeared on behalf of the petitioner.

MP Power Generating Co. Ltd. (MPPGCL) has filed the subject petition seeking approval of final generation tariff for 2x10 MW Bansagar IV (Jhinna) project by applying tariff and terms/conditions of the tariff order for small hydro based generation projects issued by the Commission on 30<sup>th</sup> June, 2008.

2 The subject petition has been filed by the petitioner in the following backdrop:

- (i) A Multi Purpose Hydel Project of 2x10 MW units at Bansagar-IV (Jhinna) was commissioned on 20<sup>th</sup> August, 2006 by the petitioner. The petition for determination of generation tariff for the aforesaid project was filed by the petitioner on 12<sup>th</sup> October, 2006.
- (ii) Vide Commission's order dated 18<sup>th</sup> January, 2008, the generation tariff was determined for the above-mentioned project. In the aforesaid tariff order, these units were treated as Multi Purpose Hydel Project (MHP) and the tariff was determined for Multi Year tariff period from FY 2006-07 to FY 2008-09.
- (iii) Government of Madhya Pradesh notified "Incentive Policy for development of small hydro based generation projects in MP" on 8<sup>th</sup> August, 2006. Pursuant to provision under sub-clause C-2.0(2) of the aforesaid Policy, Water Resources Department (WRD), Government of M.P. filed a petition with the Commission for fixation of generalized tariff and other charges for sale of power by existing and new small hydro- power projects in M.P.

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- (iv) Vide Commission's order dated 30<sup>th</sup> June, 2008, the Commission determined the generalized tariff for procurement of power by distribution licensees from small hydro based generation projects. This is a levelized tariff for a period of 30 years.
- (v) The tariff for 2x10 MW Bansagar-IV (Jhinna) project (as mentioned in Para 2 (ii) above) was a project specific tariff and it was determined on the principles and methodology specified in MPERC (Terms & Conditions for determination of Generation Tariff) Regulations, 2005.
- (vi) The levelized generation tariff for SHPs (as mentioned in Para 2 (iv) above) was determined on the petition filed by WRD, GoMP and M/s Narmada Valley Development Authority (NVDA) wherein the petitioner i.e MPPGCL was not made a party or respondent.
- (vii) After consistent follow up and several directions by the Commission for filing the final tariff petition of 2x10 MW Bansagar-IV (Jhinna) project, the petitioner through instant petition has approached the Commission seeking applicability of same tariff and terms/conditions on the aforesaid project as fixed by the Commission for small hydro based generation.

3 On comparing the generalized tariff determined by the Commission for small hydro based generation project (for 30 years) and the project specific tariff provisionally determined by the Commission for 2x10 MW Bansagar-IV (Jhinna) project (for FY 2006-07 to FY 2008-09), the following is observed:

<b>S. No.</b>	<b>Financial Year</b>	<b>Base tariff for small hydro based generation project for 10 MW to 25 MW determined on 30.06.2008</b>	<b>Project specific tariff for 2x10 MW Bansagar-IV (Jhinna) determined on 18.01.2008</b>
1	FY 2006-07	Rs.5.40/unit	Rs.1.44/unit
2	FY 2007-08	Rs.5.80/unit	Rs.2.16/unit
3	FY 2008-09	Rs.5.60/unit	Rs.2.11/unit

4 Besides, it is observed that the tariff determined for small hydro based generation projects is based on the minimum percentage of free power with exemption for a period specified in the Incentive Policy notified by GoMP whereas, the project specific tariff for 2x10 MW Bansagar-IV (Jhinna) had no such provision.

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5 On examination of the issues involved in the subject petition, the Commission has observed as under :

- (i) The Incentive Policy for development of Small Hydro Power Projects in MP was notified by GoMP vide No.24-4-99-M-XXXI dated 8<sup>th</sup> August, 2006. Some relevant provisions related to applicability of the aforesaid Incentive Policy as observed by the Commission are given below :

**a) Scope**

*“2.1 This new policy shall apply to all the SHPs up to 25 MW capacity which have been identified for being set up by the Water Resources Department (WRD)/Narmada Valley Development Authority (NVDA)/ Madhya Pradesh Power Generation Company Limited (MPPGCL) and/or any other State agency that may be undertaking this task, or a private developer. This policy shall also apply to all the projects, which had been allotted by the erstwhile Madhya Pradesh Electricity Board (MPEB) now Madhya Pradesh State Electricity Board (MPSEB) and which are yet to attain the stage of commercial production.”*

*“2.3 The list of identified SHPs up to an estimated generating capacity of 25 MW will be notified by the WRD and NVDA. This list shall be continually updated on identification of more sites. The jurisdiction of WRD will extend to all irrigation projects as well as river system within the state. Similarly the jurisdiction of NVDA will extend to all major irrigation/hydel power projects including those under execution or proposed to be executed within Narmada basin.”*

**b) Operative Period**

*“A 1.2 All the projects allotted or to be allotted under this policy shall be on Build, Own, Operate & Transfer (BOOT) basis. The BOOT period, which shall start from the Commercial Operation Date (COD) of the project shall be of 30 years or the life of the project whichever is earlier. At the end of the BOOT period the entire project including its assets relating to water structures and power generation shall be transferred to the State Government free of cost. However, in case the land of project site has been privately acquired by the developer, it shall be transferred to the State Government on payment of cost of land at prevailing market rate determined by the Collector of the district where the project is located.”*

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**c) Procedure for selection of developers for SHPs**

*“A2.2.2 The procedure for selection of the developers shall be as under:*

- i) The projects to be offered for development through private sector participation are being listed and the list shall be published/available on the respective web site of the WRD/NVDA. The list may be updated based on fresh information/sites being available. Projects shall be offered out of these sites through public invitation process for CPP as well as IPPs. In case of both IPP & CPP, the developer shall have the option of setting up the project under a Special Purpose Vehicle (SPV) as defined in the Electricity Rules under EA 2003.*
- ii) The bidding criterion shall be pre qualification based on technical and financial capabilities as well as past experience, and the quantum of energy that each bidder is willing to offer free of cost to WRD/NVDA.*
- iii) The minimum free power to be offered for the projects shall be as under:*

<b>Serial No.</b>	<b>Estimated Installed Capacity</b>	<b>Free power as % of actual total generation minus Auxiliary Consumption</b>
1.	Upto 5 MW	5%, with exemption of 3 years from the COD
2.	More than 5MW & up to 10 MW	8%, with exemption of 2 years from the COD
3.	More than 10 MW up to 25 MW	10%, with exemption of 1 year from the COD

- iv) The bidders shall quote their bids accordingly along with an earnest money deposit to be specified in case of each project by the concerned nodal department.*
- v) The bidding process shall be time bound and the successful bidder shall be intimated of his selection by issue of a Letter of Permission (LoP). The issue of this LoP shall entitle the bidder to take up preparation of a Techno -Economic Feasibility Report (TEFR). All the relevant data and information with the WRD, NVDA and MPPGCL shall be made available to the successful bidder immediately and without any cost. On the approval of TEFR, a Letter of Allotment (LoA) will be issued to the bidder, and a Hydro Power Development Agreement (HPDA) will be signed between State Government and the developer.”*

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**d) A2.3 Bidding Process where DPR is available**

- “i) When the offer is called for setting up of a project the developers shall submit their request for pre qualification along with offer for free supply of power. The criteria for pre-qualification and individual weightage assigned to each criterion shall be specified in the bid document. For pre qualification, apart from the technical and financial strengths due importance shall be given to the bidders having experience of developing and running similar projects. The free power offer bids of only pre-qualified bidders shall be opened and the bidder who offer highest quantum of free power above minimum benchmark will be selected for developing the project.*
- ii) The selected bidder shall have to pay the cost of DPR prepared by the Government at such rates as may be decided by WRD/NVDA.”*

**e) A2.4 Bidding Process where DPR is not available**

- “i) When the offer is called for setting up of a project, the first invitation shall be for pre-qualification. The criteria for pre-qualification and individual weightage assigned to each criterion shall be specified in the bid document. Apart from the technical and financial strengths due importance shall be given to the bidders having experience of developing and running similar projects.*
- ii) Among the pre-qualified bidders, selection of the strongest bidder will be done based on the technical and financial capability and past experience in executing and/or running similar projects.*
- iii) On payment of a prescribed fee a Letter of Intent (LoI) granting the right to the selected bidder to take up the preparation of a DPR shall be issued immediately. The letter will also specify the time within which the bidder has to prepare a DPR for ascertaining the viability of the project. The time frame for preparation of such DPR shall be generally 12 months extendable further by another six months. In case of exigencies or any special circumstances the Project Clearance & Implementation Board (PCIB) may consider further extension of time for preparation of the DPR in its absolute discretion.*
- iv) After the finalization of DPR bidder shall submit it to the WRD/NVDA along with his offer for supply of free power subject to the minimum as per the norms of this policy.*
- v) WRD/NVDA shall, on receipt of such DPR and offer for free power invite bids from other pre qualified bidders within a stipulated time frame, for quantity of free supply of power. The initially selected bidder shall, in such cases, have the first right of refusal by equaling the highest bid that has been received through this public invitation.*

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vi) *In the event of the initially selected bidder not willing to match the highest bid, the highest bidder will be selected for developing the project and he shall be obliged to reimburse the cost of preparation of the DPR that would have been incurred by the initially selected bidder. This cost shall be specified in the DPR and/or the document inviting participation from the pre-qualified bidders.*

vii) *Under any circumstance (whether the project is viable or not) the bidder is not entitled for any claim or compensation from the Government for expenditure that he has made on investigations, preparation of DPR and its scrutiny, etc.”*

**f) A2.5 Selection Process in case of Self Identified Sites**

i) *“Any developer is free to come forward with the proposal for development of SHP at a site not identified in any of the lists published by WRD or NVDA. Such sites shall be treated as self identified sites.*

ii) *On receipt of an offer from a developer for a self identified site, and on payment of a prescribed fee, WRD/NVDA will ascertain that he meets the requisite pre-qualification bench mark, and on satisfaction, seek the approval of the developer by the PCIB. In case of multiple offers for the same site the principle of first come first serve shall apply. A Letter of Intent granting a right to the developer for taking up preparation of DPR shall be issued immediately. This letter shall also specify the time within which the developer has to prepare and submit for approval the DPR for ascertaining the viability of the project. The time frame for preparation of such DPR shall be generally 12 months extendable further by another six months. In case of exigencies or any special circumstances the PCIB may consider further extension of time for preparation of the DPR in its absolute discretion.*

iii) *Such developer, when submitting the DPR, shall also give his offer for supply of free power subject to the minimum as per the norms of this policy.*

iv) *WRD or NVDA shall, on receipt of such DPR and offer for free power will invite bids from others for pre-qualification as well as offer of free power within a stipulated time frame. The initial developer who prepared the DPR, shall in such cases, have the first right of refusal by equating the highest bid that is received through this public invitation.*

v) *In the event of the initial developer not willing to match the bid, the highest bidder will be selected to develop the project; and the selected bidder shall be obliged to reimburse the cost of preparation of DPR that would have been incurred by the initial developer. This cost shall be specified in the DPR and/or the document inviting participation from other pre-qualified bidders.”*

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**g) Approval of Techno-Economic Feasibility Report (TEFR) by WRD/NVDA**

*“A3.1.1 The TEFR submitted by the selected bidder (here onwards called ‘developer’) shall be approved by the WRD/NVDA after ensuring the following.*

- i) It is consistent with the requirement of domestic / irrigation / industrial water, navigation, flood control or any other public purpose.*
- ii) It proposes to exploit the full potential of the site in terms of generation of power. Generally no phase wise development shall be allowed and the developer would be expected to develop the full site to its potential in one phase only. However, PCIB may permit phase wise development in case of technical compulsions in which case its decision on the matter shall be final.*
- iii) It meets the norms regarding dam design and safety.”*

*“A3.2 : On being satisfied that all the conditions as per A3.1.1 have been met, WRD/NVDA shall issue LoA to the developer within 8 days of receipt of the TEFR or submission of clarification as may be sought by the WRD/NVDA. The developer shall deposit a performance security with WRD/NVDA and sign the Hydro Power Development Agreement (HPDA) within a period of 30 days of issue of the LoA. The performance security shall be 2% of the estimated cost of the project and may be in the form of a Bank Guarantee by a Schedule Bank acceptable to WRD/NVDA or cash security by way of a Demand Draft.”*

**A3.3 : Clearance and Approvals**

- “1) On signing of the HPDA, the developer shall seek and obtain all the necessary approvals and also arrange for financial closure within a period of 12 months after signing of the HPDA. This period can be extended by the PCIB on case to case basis if it is satisfied that the reasons for delay are beyond the control of the developers. WRD/NVDA shall extend all possible assistance for obtaining such approvals but the primary bonus of obtaining such permissions is that of the developer. In case of failure to obtain the approvals and the financial closure within the prescribed period, the HPDA shall stand automatically cancelled and the performance security shall be forfeited. In case the project can not be set up for want of an approval from the State or the Central Government, the security shall not be forfeited.*
- 2) The project shall be made operational within the time frame mentioned below from the date of signing the HPDA.*

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<i>Installed Capacity</i>	<i>Commissioning</i>
<i>Upto 5 MW</i>	<i>30 Months</i>
<i>More than 5MW &amp; upto 10 MW</i>	<i>36 Months</i>
<i>More than 10 MW upto 25 MW</i>	<i>40 Months</i>

*Note : In case, PCIB extends the period of 12 months for obtaining necessary approvals and financial closure, the commissioning period mentioned in the table above will be extended accordingly.*

3) *The project development milestone up to the COD shall form part of the HPDA and may be reviewed at a specific request of the developer by WRD/NVDA based on any exigencies that may arise during the development of the project. On successful commissioning of the project within the stipulated period, the security deposit shall be refunded/released with the approval of PCIB.”*

**h) *Grid Interface and Evacuation Arrangements***

*“A4.1.0 Interfacing including the transformer panels, protection, metering etc. from the point of generation to the nearest sub-station or an interconnection point or at nearest transmission line subject to fulfillment of technical and safety parameters in accordance with MP Grid Code, MP Electricity Supply Code, 2004, MPERC and CERC regulations as amended from time to time, shall be the responsibility of the Developer. The Madhya Pradesh Power Transmission Company Limited (MPPTCL) and/or the concerned Distribution Company may take up the work and maintain the same on cost basis which are to be borne by the developer.”*

6 Part C of the Incentive Policy has various provisions for eligibility of incentives for development of small hydro based generation project in MP. One of the provisions at Para C (2) provides that,

*“C2.0 The following incentive shall be available for the development of a SHP in the State of Madhya Pradesh:*

- 1. The energy produced by the SHP set up under this policy can be used for captive usage, sale to a distribution company, sale to a third party consumer/s within the state or outside or to a Power Trading Company within the state or outside. However in case of sale to any third party consumer or to any power trading company, the State Trading Company or State Distribution Company will have the first right of refusal.*



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2. *State Power Trading Company/concerned State Distribution Company may purchase power from the project if so opted by the Developer at rates to be decided by the MPERC. A petition to this effect, seeking the dispensation of MPERC, shall be filed by the WRD immediately on issue of this policy.*
3. *Open Access charges of any kind shall not be payable by such projects, subject to dispensation of MPERC on the petition of WRD to this effect immediately on the issue of this policy.*
4. *MPPTCL or concerned State Distribution Company shall facilitate wheeling of power in case of a Third Party Sale at such rates as may be decided by the MPERC. The State Government shall extend a subsidy @ 4% towards such wheeling charges as per existing policy only in case of third party sale within the State of MP.*
5. *No electricity cess shall be payable for the power supplied by the SHP.*
6. *The SHPs set up under this policy shall be treated as Industry for the purpose of the Industrial Promotion Policy, 2004 as well as Madhya Pradesh Industrial Investment Promotional Assistance Scheme, 2004, notified by the State Government and shall be eligible for the incentives available under this policy/scheme.*
7. *The industrial consumers opting to buy power from an SHP shall be allowed a corresponding reduction in contract demand on a permanent basis subject to dispensation of MPERC.*
8. *The land for the project, if available with the Government, shall be leased directly by the WRD/NVDA at a token lease rent of Rupee one per year as elaborated earlier.*
9. *In case of the developer acquiring private land for the project/part of the project, he will be eligible to get the land diverted for industrial purpose from the competent revenue authority without any diversion fee/rent.*
10. *No water rate shall be payable for the use of water by the SHP.*
11. *If a developer intends to generate and distribute electricity in a rural area as notified by the State Government vide Notification No. 2010- F-13- 05-13- 2006 dtd 25 March 2006, such developer shall not require any license for such generation and distribution of electricity, but he shall comply with the measures which may be specified by the Central Electricity Authority under section 53 of Electricity Act 2003.*

.....  
.....”

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7 On further examination of the contents in the petition in light of the above provisions in the Incentive Policy notified by GoMP and the Petition no.123/2006 filed by the Control Board for Major Projects, WRD, GoMP, Bhopal with the Commission on 11<sup>th</sup> December, 2006 for fixation of generalized tariff for small hydro based generation projects, the Commission has observed the following issues:

- a) *The policy is applied to all Small Hydro-power Projects up to 25 MW capacities which have been identified by the Water Resources Department, the Narmada Valley Development Authority and the Madhya Pradesh Power Generating Company Limited in their respective jurisdiction.*
- b) *The projects allotted under this policy shall be on "BOOT" basis. The BOOT period shall be of 30 years or the life of projects whichever is earlier. After the BOOT period, entire project shall be transferred to State Govt. free of cost.*
- c) *The projects shall be awarded through competitive bidding. The bidding participation is only through a pre qualification mechanism based on technical and financial capabilities of the potential bidders as well as their past experience, and the bidding criteria shall be quantum of energy that each bidder is willing to offer free of cost to WRD/NVDA. The MPPGCL will formulate its own norms and procedures for selection of developer of SHPs.*
- d) ***Free power to be committed/supplied by the Developer under the bidding process as per the SHP Policy :***  
*As per the provisions of the SHP Policy, the potential developers are required to bid for projects under a competitive bid by pre-qualified bidders. The bidding criterion is stipulated to be the amount of free power that the developer is willing to supply to WRD/NVDA from the generation from the SHP. The power so supplied by the Developer deserves to be treated as a cost item for tariff calculation.*

8 The Commission has further noted from the record of proceedings in the petition no.123 of 2006 filed by WRD that the petitioner in the instant petition i.e. MPPGCL was not made a party/respondent in the aforesaid petition. Moreover, MPPGCL had not responded also to the discussion paper floated by the Commission on 6<sup>th</sup> December, 2007 on the approach of the Commission for determination of tariff for small hydro based generation projects. The Commission also received no comment/suggestion from the petitioner i.e. MP Power Generating Co. Ltd., Jabalpur on the public notice issued for inviting comments/suggestions from all stakeholders. The petitioner (MPPGCL) also did not participate in the public hearing which was conducted by the Commission on 27<sup>th</sup> February, 2008 for determination of tariff for small hydro based generation. The Commission issued order for fixation of generalized tariff for small hydro based generation projects on 30<sup>th</sup> June, 2008.

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9 The control period of the aforesaid tariff order is from the date of issue of the order up to 31<sup>st</sup> March, 2013. Some relevant paragraphs in the aforesaid tariff order related its applicability is observed by the Commission as given below :

*5.1 This tariff order shall be applicable to all Small Hydro Power Projects up to 25 MW capacity in the State of Madhya Pradesh commissioned on or after the date of issue of this order and intended for sale of electricity to the Distribution Licensees within the State of Madhya Pradesh.*

*5.2 Existing Small Hydro Projects in the State shall be governed according to the "Incentive Policy for the Development of Small hydro Power Projects (SHP) in Madhya Pradesh".*

*5.3 It may be specifically noted that the tariff determined through this order is based on the Government of MP's incentive policy for the development of SHP in MP, notified on August 8, 2006. In this context the applicability of the Order shall be on the projects developed on the basis of above-mentioned incentive notification.*

*5.4 In case of change in the above-mentioned incentive policy of the Government of MP, the Commission may review the tariff as per the requirement."*

10 From the above discussion, the following facts emerge :

a) Incentive Policy of GoMP dated 8<sup>th</sup> August, 2006 :

The policy was to apply to projects identified for being set up by WRD/NVDA/MP Genco. The main thrust of the policy was to promote private participation. The projects were to be allotted through competitive bidding or in case of self identified projects allotted as per procedure outlined in the policy. The instant project was commissioned on 20<sup>th</sup> August, 2006 i.e. barely 12 days after announcement of policy. By any stretch of the imagination, it cannot be accepted as a project identified to be set up under the aforesaid policy.

b) Tariff order pursuant to the above Incentive Policy of GoMP was issued by this Commission on 30<sup>th</sup> June, 2008 i.e. almost 2 years after commissioning of this project. The order was applicable to projects commissioned on or after the date of issue of the order. The demand of the petitioner, made after 4 years of issue of this order, to modify it to include earlier projects like this one has no merit. Beside, review of a tariff order can only be considered up to 60 days of its issue.

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11 In view of the above facts that have emerged on examination of the subject petition vis-à-vis the “Incentive Policy for development of small hydro power projects in MP” and the record of proceedings/ tariff order issued by the Commission for fixation of generalized tariff for small hydro based generation projects, the subject petition is not maintainable and is, hence dismissed.

12 The provisional tariff for this project was determined by the Commission more than 4 years ago. The Commission has on a number of occasions directed filing of final tariff petition. The petitioner is once again directed to file a fresh petition for determination of final generation tariff in respect of 2x10 MW Bansagar-IV (Jhinna) project with all appropriate details within 3 months of the issue of this order. The Commission will like to caution the petitioner that provisional tariff cannot be allowed to apply indefinitely and if it fails to apply for determination of final tariff within the above specified period, it runs the risk of having no tariff for this project in the ensuing financial year.

Ordered accordingly.

Sd/-  
**(C. S. Sharma)**  
**Member**

Sd/-  
**(Rakesh Sahni)**  
**Chairman**