

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL**

**Sub:In the matter of the Petition under Section 65 of the Electricity Act, 2003 read with MPERC (Manner of payment of subsidy by the state Govt.)Regulation, 2007{G-32 of 2007}, seeking appropriate directions of the Hon'ble Commission to be given to the Govt. of M.P. to comply with the provision of the MPERC (Manner of payment of subsidy by the state Govt.) Regulation, 2007}, specifying the manner of payment of subsidy by the State Govt.(P.No. 54/2021)**

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**Daily Order**

(Hearing through Video Conferencing)

Date of order:**30/08/2022**

Madhya Pradesh Vidyut Mandal Abhiyanta Sangh Jabalpur : **Petitioner**

V/s

- (i) The Energy Dept. Govt. of MP  
(ii) MP Power Management Co. Ltd.  
(iii) MP Poorv Kshetra Vidyut Vitran Co. Ltd ; : **Respondents**  
(iv) MP Paschim Kshetra Vidyut Vitran Co. Ltd ;  
(v) MP Madhya Kshetra Vidyut Vitran Co. Ltd

Shri Pawan Jain, appeared on behalf of the petitioner. Shri Manoj Dubey, Advocate and Shri Ajasara Gupta ,GM , MPPMCL appeared on behalf of Respondents (i) to (v).

1. The petitioner has filed the subject petition for seeking appropriate directions of the Commission to be given to the Govt. of M.P. to comply with the provision of the MPERC (Manner of payment of subsidy by the state Govt.) Regulation, 2007, specifying the manner of payment of subsidy by the State Govt. The petitioner in its petition has made the following prayer :

- i. Present Petition may be allowed by the Commission.*
- ii. As per the MPERC (Manner of payment of subsidy by the state Govt.) Regulation, 2007} the Commission may issue appropriate direction to the State Govt. of M. P. to make the payment of balance amount of subsidy immediately and to ensure payment of subsidy in advance on quarterly basis to the DISCOMs of MP*

2. At the motion hearing held on 22.02.2022, the Petitioner was asked to explain its locus standi in the matter in terms of Section 65 of the Electricity Act, 2003. In response, the petitioner stated that the matter be heard in public interest and that Respondents may be asked to present current status regarding outstanding payment towards subsidy by the State Government. After hearing the petitioner, the Commission decided that it would be appropriate to hear the Respondents and the petitioner together before deciding upon maintainability of the petition.
3. At the motion hearing held on 12.04.2022, both the Petitioner and Respondents were heard. Respondents pleaded that petition is not maintainable because petitioner has no locus -standi in the matter. Having heard both the parties, it was decided that Respondents shall file their replies within a week on the limited issue of maintainability of the petition. The Commission would first decide the issue of maintainability of petition and thereafter, hear the matter on merits, if necessary. Subsequently, all the three Discoms and MPPMCL have filed their reply jointly in the matter. The reply from Energy Deptt. was received on 07.06.22 whereby MPPMCL has been authorized to plead the matter on behalf of Energy Dett. GoMP. Respondents in their written submission stated that the petitioner is not an aggrieved party and thus not entitled to prefer present petition. Respondents also stated that petitioner does not have a cause of action and a locus standi to file present petition.
4. At the motion hearing held on 14.06.2022, Petitioner sought time extension for one week to file rejoinder which was granted by the Commission and listed the matter to be heard on maintainability on 26.07.2022.
5. Subsequently, Petitioner has filed rejoinder stating that as per section 142 of Electricity Act 2003, any person in case of contravened any of the provisions of this Act or the rules or Regulations made thereunder, or any direction issued by the Commission, can file the complaint before the Commission and thus, this section gives the locus-standi to public at large to seek appropriate direction/order of the Commission.
6. In aforesaid rejoinder, the petitioner, has referred the following provisions under para 8.2.1 (3) of Tariff policy 2016 notified by Central Govt. :-  
*“Section 65 of the Act provides that no direction of the State Government regarding grant of subsidy to consumers in the tariff determined by the State Commission shall be operative if*

*the payment on account of subsidy as decided by the State Commission is not made to the utilities and the tariff fixed by the State Commission shall be applicable from the date of issue of orders by the Commission in this regard. The State Commissions should ensure compliance of this provision of law to ensure financial viability of the utilities. To ensure implementation of the provision of the law, the State Commission should determine the tariff initially, without considering the subsidy commitment by the State Government and subsidised tariff shall be arrived at thereafter considering the subsidy by the State Government for the respective categories of consumers.”*

7. The petitioner, further submitted in his rejoinder that presently financial viability of Discoms are at the stake due to non-receipt of subsidy amount.

In view of above, petitioner has revised his prayer through aforesaid rejoinder as per following :-

- a. Present Petition may be allowed by the Commission;*
- b. As per the provisions of MPERC (Manner of payment of subsidy by the State Government) Regulations 2007, the Commission may issue appropriate directions to the State Government of M.P. to make payment of balance amount of subsidy immediately and ensure payment of subsidy in advance on quarterly basis to the DISCOMs of MP as per clause 5 of said regulations;*
- c. In case of non compliance of directive mention in clause 5 of MPERC (Manner of payment of subsidy by the State Government) Regulations 2007 directives be issued to DISCOM'S to implements the provision envisages in clause 6 of MPERC (Manner of payment of subsidy by the State Government) Regulations, 2007 ;*
- d. Such other order as this Commission deems fit including actions as it mentioned in section 142 of the Electricity Act 2003 and proper in the circumstances of the case.*

8. At the motion hearing held on 26.07.2022, the Commission heard both the parties and reserved the case for order on issue of maintainability.

**The Commission's observations:**

9. The Commission perused the submissions made by the petitioner & Respondents on the limited issue of maintainability of the petition. The question before the Commission for consideration was whether the petitioner has any cause of action/Locus Standi on the matter of subsidy to be provided by the State Govt. to the Distribution Licensees. The Petitioner submitted that being an Association for the Engineers of the all six state power companies as well as a consumer covered under Section 2(15) of the Electricity Act 2003, he is an aggrieved party as its Electricity Bills may adversely be affected in case of non-payment of subsidy in a timely manner, in terms of provisions under Section 65 of the Electricity Act 2003 and Regulations notified by the Commission namely "MPERC (Manner of payment of subsidy by the State Government) Regulation, 2007 and amendment thereof".

The provisions of Section 65 of the Electricity Act 2003 is as under:

*" If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government: Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard".*

10. Further, in compliance to the aforesaid provisions of Section 65 of the Electricity Act, the Commission has notified MPERC (Manner of payment of subsidy by the State Government) Regulation, 2007 and amendment thereof. The Regulation 3 of aforesaid Regulations provides the purpose of this regulation which is to define subsidy, the method of its computation, the manner in which it shall be paid by the State Government, the person eligible to receive subsidy, and consequences of delays/ non receipt of subsidy by the concerned person. The relevant Regulations 5& 6 of aforesaid Regulations are as under:

**Regulation 5 (Manner of payment of Subsidy by the State Government)**

*“ (1)The Licensee shall implement the decision of the State Government in regard to providing subsidy to consumer or class of consumers.*

*(2) The quantum of subsidy shall be payable by the State Government in advance every quarter to the person affected by the grant of subsidy. The Licensee shall furnish to the Commission a statement on quarterly basis regarding quantum of subsidy claimed and subsidy released by the State Government by the end of each quarter.*

*(3) The Distribution Licensee/person affected by the grant of subsidy shall provide quarterly information to the Commission and the State Government of the quantum of sales to the consumer or class of consumers for whom the subsidy is being provided and the amount of subsidy received in advance from the State Government.*

*(4) The State Government shall provide the subsidy to the affected person in cash in advance of the quarter for which the subsidy is granted. If the State Government desires to provide the subsidy to the affected person/Licensee through adjustment of any dues or amounts payable by the State Government, the Commission shall consider such request and in doing so shall keep in mind the receivables of the Licensee from Departments of the State Government.”*

**Regulation 6: Consequences of non-payment, partial payment or excess payment of subsidy :-**

*“ (1) The adjustment in tariff by way of subsidy shall be in proportion to the extent to which the total requirement of the person is received from the State Government. Provided that in case subsidy is not received as per estimate from the State Government before the issuance of the bill, the affected person shall raise bills at tariffs as determined by the Commission.*

*(2) The affected person, while raising the bill on the consumer/class of consumers shall clearly indicate in each bill (a) the amount payable as per the tariff determined by the Commission; (b) the amount of subsidy paid by the State Government and (c) the net amount payable by the beneficiary for the billing period.*

*(3) In case the subsidy is paid in excess of the requirement/estimate, the excess amount shall be adjusted in the next quarter.”*

11. The Commission has also placed reliance on submissions (rejoinder) made by the petitioner whereby it is stated that as per section 142 of Electricity Act 2003, any person in case of contravention any of the provisions of this Act or the rules or Regulations made there under, or any direction issued by the Commission, can file a complaint before the Commission and thus, this section gives the locus-standi to public at large to seek appropriate direction/order of the Commission. The Commission is also of the view that consequences of non-payment of subsidy in timely manner may adversely affect to tariff of consumers' including petitioner as well financial stability of the Distribution Licensees.

12. Therefore, after taking into consideration the respective arguments of parties through their counsels accompanied with their submissions, provisions of the Electricity Act 2003 and the Regulations, the Commission observed that the petitioner has a locus-standi to file the subject petition as the jurisdiction to file the same is vested under the abovementioned provisions of the Electricity Act 2003 and relevant Regulations MPERC (Manner of payment of subsidy by the State Government) Regulations, 2007 and amendment thereof. Accordingly, the said petition is admitted for further deliberations. Respondents are directed to file their reply and serve the copy of same to the petitioner within fifteen days. The case is listed on 27/09/2022.

**(Gopal Srivastava)**  
**Member (Law)**

**(Mukul Dhariwal)**  
**Member**

**(S.P.S. Parihar)**  
**Chairman**