

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Subject: MP Power Transmission Package – I Ltd.’s petition u/s 86(1)(c), 86(1)(f) & 86(1)(k) of the Electricity Act, 2003 and Regulation 45 of MPERC (Conduct of Business) Regulations, 2016 read with Articles 4.4, 11, 16 & other relevant clauses of Transmission Service Agreement (TSA) dated 21/01/2023 for seeking Extension of Scheduled Commercial Operation Date (SCOD) on account of Force Majeure events and consequential reliefs arising therefrom.

Petition No. 41 and IA Nos. 6 & 7 of 2024

Daily Order

**(Hearing through Video Conferencing)
(Date of Motion Hearing: 6th August 2024)
(Date of Daily Order: 6th August 2024)**

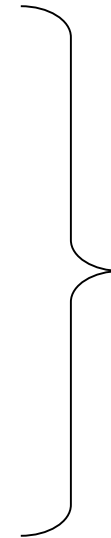
M. P. Power Transmission Package - I Limited

2nd Floor, Niryat Bhawan, Rao Tularam Marg,
Vasant Vihar, New Delhi - 110057

- **Petitioner**

V/s

- 1) Managing Director**
M.P. Power Management Company limited
Shakti Bhawan, Rampur, Jabalpur, MP – 482008
- 2) Chief Executive Officer**
REC Power Development and Consultancy Limited
Core-4, SCOPE Complex, 7, Lodhi Road,
New Delhi – 110 003
- 3) Additional Chief Secretary**
Energy Department, Government of MP,
Mantrallaya, Bhopal – 462004
- 4) Managing Director**
M.P. Power Transmission Company limited
Shakti Bhawan, Rampur, Jabalpur, MP – 482008



- **Respondents**

Shri Aditya Singh, Advocate, Ms Ayushi Saxena, Advocate and Shri Akshaya Kumar Pradhan, GM appeared on behalf of the petitioner.

2. Heard the petitioner. The petition is admitted. The Commission observed that the project is on Built, Own, Operate & Transfer (BOOT) basis and the STU (MPPTCL) may also be made a Respondent in the matter. The Petitioner sought time to amend the Memo of parties and briefed about the petition and IAs. The Petitioner is directed to add MPPTCL as a Respondent by amending Memo of parties within 3 days.
3. The Petitioner is further directed to serve copy of the petition on all Respondents within 3 days and report compliance to the Commission.

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4. i. At the motion hearing, it was submitted by the petitioner that the execution of the project is getting delayed due to number of force majeure events and as a result, the timelines for achieving SCOD cannot be met for various transmission elements as given in the petition. However, it is apprehended that in the event of not meeting the timelines, Respondent No. 1 (MPPMCL) may invoke coercive and precipitative measures under TSA including but not limited to encashment of Contract Performance Guarantee of Rs 28.90 Crore causing irreparable loss to the petitioner. Therefore, it is prayed by the Petitioner that delay on account of force majeure events be recognized by the Commission and that the date / timeline for achieving SCOD be extended.
- ii. The Commission has examined the prayer of the petitioner in detail and has observed that delay in execution of project has been attributed by the petitioner due to non-performance by a number of agencies including Respondents, Railways, National Highway Authority of India, MP Road Development Corporation, Collector / District Magistrates, etc. It is also alleged by the petitioner that there has been resistance by local residents against the execution of the project.
- iii. The Petitioner has sought intervention of the Commission by invoking its powers under Section 86(1)(f) of the Electricity Act, 2003. The Section 86(1)(f) of the Electricity Act, 2003 provides that the Commission shall discharge the following function:
“adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration”.
- It follows from the above that the Commission is empowered to adjudicate the disputes or to refer any dispute for arbitration.
- iv. This issue regarding reference of disputes for arbitration by the Commission also came up before the Hon’ble APTEL in Appeal No. 397 of 2022 (Southern Power Distribution Co. of AP Ltd. vs. APERC and JSW Power Trading Co. Ltd.). Hon’ble APTEL vide Judgment dated 14/11/2022 has issued directions, which are relevant to the subject petition. Hon’ble APTEL has also held that the Commission has wide Jurisdiction in the matters regarding reference of disputes for arbitration.
- v. The Petitioner has submitted that number of agencies are responsible for delay in execution of the project and therefore in order to decide whether or not the delay is on account of the Petitioner or other agencies and whether or not, conditions of force majeure are prevalent in this particular case, the concerned stakeholders will have to be heard. This includes Collector / District Magistrates, local residents and other agencies, which is likely to take substantial time and for which it seems appropriate that a dedicated Arbitrator is brought into play.

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- vi. With this background, the Commission observed that Regulations 23, 24, 25 & 26 of the MPERC (Conduct of Business) Regulations, 2016 also provide for Arbitration. Regulation 23(2) provides that *“The Commission may issue notice to the concerned persons to show cause as to why the disputes between the licensees should not be adjudicated and settled through arbitration”*.
5. After hearing the Petitioner during motion hearing, the Commission directs that show cause notice be issued to the Petitioner and Respondents to explain why the matter may not be referred for arbitration. The reply to the aforesaid show cause notice be submitted by the Petitioner and the Respondents within two weeks.
6. The petitioner has also filed two IAs. One for urgent hearing and other for restraining MPPMCL from taking coercive and precipitative action against the petitioner under TSA. With the present hearing, the first IA gets disposed of. The Commission observes that no case is made out for restraining any party from taking appropriate action under TSA at this stage. Accordingly, the IA in this regard is rejected and stands disposed of.
7. The case is fixed for hearing on the **3rd September 2024**.

(P. K. Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S. P. S. Parihar)
Chairman