

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub:In the matter of petition filed under Clause 11.10, 11.11, 11.14, 11.17, 11.18 and 11.19 of the M.P. Electricity Supply Code, 2013 read with Regulation 3 sub-clause (I) read with Schedule 1 Clause 14 sub-clause (E) of the MP (Fees, Fines and Charges) Regulations, 2005 for removal of difficulties and for invoking extra-ordinary powers of the Commission. (P.No. 41/2020)

Order

(Hearing through Video conferencing)

Date of order: **10.02.2021**

Association of All Industries, Mandideep : **Petitioner**

V/s

- (i) Energy Dept. GoMP, Bhopal; : **Respondents**
(ii) MP Power Management Co. Ltd., Jabalpur (MPPMCL)
(iii) MP Madhya K VVCL, Bhopal;(Central Discom)
(iv) MP Paschim KVVCL, Indore ;(West Discom)
(v) MP Poorv KVVCL, Jabalpur ;(East Discom)

ShriAlkesh Agarwal, Advocate appeared on behalf of the petitioner. Shri V.D. Joglekar, GM (RM) appeared on behalf of MPPMCL. Shri A.R. Verma, Dy. CGM and Shri G.R.Patele, GM appeared on behalf of Central Discom. Shri Nirmal Sharma, SE and Shri Shailendra Jain,Dy. Director appeared on behalf of West Discom. Shri Deepak Chandela, DGM appeared on behalf of East Discom.

1. The petitionerhas filed the subject petition under Clause 11.10, 11.11, 11.14, 11.17, 11.18 and 11.19 of the M.P. Electricity Supply Code, 2013 read with Regulation 3 sub-clause (I) read with Schedule 1 Clause 14 sub-clause (E) of the MP (Fees, Fines and Charges) Regulations, 2005 for removal of difficulties and for invoking extra-ordinary powers of the Commission and has prayed as under:

- (i) *The due date for electricity bills for the months of March & April 2020 of industrial and commercial users, namely LT and HT users, shall be extended till 10th June' 2020.*
- (ii) *The fixed charges per KVA for electricity consumption of industrial and commercial users, namely LT and HT users, be waived off for the next 6 months for April, 2020 to September, 2020 and the said bills be raised on actual meter readings and fixed capacity (demand) charges.*

- (iii) *The power factor calculated for minimum consumption shall not be computed during the period of the lockdown for LT and HT users.*
- (iv) *No Penal Charges shall be applicable for late payment of bills for the month of March, 2020 if the same is paid till the new extended date of 10th June' 2020.*
- (v) *Minimum Energy charges per KVA for the month of March, April and May, 2020 be not accounted and only actual consumption per KVA be billed to the industrial consumers.*
- (vi) *Any other relief which this commission deems just and proper in the facts and circumstances of the case.*

2. The Commission held the motion hearing on 23.06.2020 wherein the counsel for the petitioner requested the Commission that it intends to file revised petition in light of several pronouncements made by the State Govt to provide special relief to LT/HT industrial consumers and sought time extension which was accepted by the Commission. Subsequently, the petitioner has filed the revised petition on 13.08.2020 and has made following prayer :

- (i) *The fixed charges per KVA for electricity consumption of industrial and commercial users, namely LV and HV users, be waived off for the Financial Year 2020-21 and/or be calculated at 60% of contract demand for the financial year 2020-21.*
- (ii) *Billing for LV-4 and HV-3 consumers be based on the Average Cost of Supply as per Tariff Order for FY 2019-20.*
- (iii) *The power factor calculated for minimum consumption shall not be computed during the period of the lockdown for LV and HV users..*
- (iv) *Any other relief which this commission deems just and proper in the facts and circumstances of the case.*

3. During the motion hearing held on 15/09/2020, the petitioner requested that similar nature of petition no. 49/2020 filed by Association of Industries, Dewas being heard by the Commission separately may be clubbed with it and that both petitions be listed on the same day for next hearing. The Commission having heard the submission made by the petitioner observed that the relief sought by petitioner relates to all the affected LT non -domestic and LT/HT industrial consumers in the state and outcome of this petition would also be applicable in jurisdictions of all three Discoms. As MPPMCL and Central Discom were only made respondent it felt appropriate to seek the response from East and West Discoms also so as to take a comprehensive view in the matter. The Commission vide daily order dated

22.09.2020 admitted the revised petition and directed to enlist the East and West Discoms also as respondents in the matter. The Commission also directed petitioner that a copy of petition be served to the Respondents for seeking their responses.

4. During the next hearing held on the 29.09.2020, the Commission observed that only Central Discom had submitted its reply while replies from other respondents were awaited. It was brought to the notice of the Commission, that East & West Discoms could not furnish their response due to fact that copy of petition has been served to them by the petitioner a day before the scheduled date of the hearing. During the course of hearing, counsel for petitioner apprised that some of issues raised in the petition are different with the clubbed petition. The petitioner requested the Commission to direct the respondents that their reply should cover those specific issues also. The Commission accepted petitioner's prayer and directed respondents to furnish their reply, specific to issues raised in the revised petition. Subsequently, respondents East, West & Central Discoms, MPPMCL and the State Govt. filed their replies. The State Govt. in its reply made following submission -

I. The fixed charges be waived off or be calculated at 60% of contract demand for the FY 2020-21 –

(a) The fixed charges in the tariff structure have been incorporated as a component of two part tariff as per the provisions under clause 45(3) of the Electricity Act, 2003 and clause 8.4 of the Tariff policy 2016 notified by GoI which is meant for recovery of fixed cost of Discoms for payment of capacity charges to Generators as obligations against the power purchase agreements based on two part tariff, irrespective of power purchase by them, which depends on the demand of Consumers. In addition to above, Discoms have their own fixed cost relating to retail supply and wheeling cost.

(b) At present, the fixed charges as determined under Tariff are not sufficient to recover the above mentioned fixed cost of the Discom. As such, provision of tariff minimum charges is designed in the Tariff Order to compensate the gap. Further Regulation 42.1(d) of the MPERC Tariff Regulations, 2015, clearly states that tariff minimum charges shall be recoverable from the consumers till the time fixed charges are aligned with recovery of full fixed costs.

(c) There is no provision of waiver of fixed charges and tariff minimum charges or to be calculated at 60% of contract demand in clause 11.2 of force majeure in the MP Electricity Supply code, 2013. The clause only allows the facility to the Consumers to reduce its Contract demand with certain conditions of limit in reduction of contract demand at relevant voltage levels, notice period, minimum and maximum reduction period.

(d) A bare perusal of the conditions shows that hon'ble Commission has not intended and therefore not mentioned any provision of waiver of fixed charges and/or tariff minimum charges. Further, the Hon'ble Commission has stipulated the minimum reduction which is allowed up to the relevant voltage levels. Hence, the Hon'ble Commission has made appropriate provisions for both the Consumers and Discoms to maintain the minimum demand relevant of voltage level.

(e) It is also pertinent to note that the reduction in contract demand in turn reduces the fixed charges and tariff minimum charges of the Consumers, during the concerned period.

II. Billing for LV-4 and HV-3 Consumers be based on the average cost of supply as per tariff order for FY 2019-20 –

The Discoms have stood with its all categories of Consumers during the time of crisis even when its own revenue has been badly suffered due to Covid-19 pandemic. However, the Regulations and Tariff Order do not permit discrimination in calculation of billing methodology based on the average cost of supply for billing of particular class of category i.e. LV-4 and HV-3 category Consumers, as sought by the petitioner. Therefore, the Discoms have to adhere to the terms and conditions provided for the LT and HT Consumers in the existing Tariff Order.

III. The power factor for minimum consumption shall not be computed during lockdown period –

(a) As per the provisions of clause 42 (g) of MPERC Tariff Regulations, 2015 Power Factor incentive/surcharge in tariff may be allowed /levied to consumers based on the scheme approved by the Commission in its Tariff Orders issued from time to time.

(b) As per the provisions contained in clause 6.13 to 6.17 for LT Consumers and clause 6.21 for HT Consumers in MP Electricity Supply code, 2013, the Consumers are bound to maintain minimum average power factor as specified by the Hon'ble Commission in its retail supply tariff order. The Consumers shall be liable to pay penalty or receive incentive, as the case may be, as specified by the Commission from time to time, on account of variation from specified power factor.

(c) As per the provisions in retail supply tariff order in vogue, the LT Consumers have to maintain average power factor above 80% in a month. If the average power factor is above 85%, there is provision of paying percentage incentive on billed energy charges to LT Consumers as per the table specified in the clause no 7(e) of general terms and conditions of LT tariff. Similarly as per clause 8(e) of general terms and conditions of LT Consumers, there is provision of percentage penalty on billed energy charges, if average power factor is less than 80%.

(d) Similarly, the HT Consumers have to maintain average power factor above 90% in a month. As per clause 1.8 of general terms and conditions of HT tariff, there is provision of paying percentage incentive on billed energy charges to HT Consumers as specified in table, if average power factor is above 95%. Similarly there is provision of levying penalty in case of average power factor less than 90% for HT Consumers as per the clause no 1.14 of general terms and conditions of HT tariff.

(e) From above, it is evident that Hon'ble Commission has made provision of not only imposing penalty but also awarding incentive to Consumers for maintaining average power factor in a month. By maintaining the average power factor, Consumers are not rewarded with the incentive but also its monthly maximum demand gets reduced, which in turn reduces the energy bills also.

(f) As there is no provision contained in any Regulation or in Force Majeure clause of Supply Code, 2013 regarding not computing average power factor for minimum consumption, this request of petitioner is not acceptable.

IV. Relief provided by State Government to Consumers during lockdown period due to spread of covid-19 pandemic –

It is further to submit that the State Government has already provided following relief measures to its consumers, in view of the lockdown due to Covid-19 pandemic:-

(a) The recovery of fixed charges, in respect of LT Non Domestic, Industrial and HT(HV-3 category) Consumers, for the month of April, May and June, 2020 have been deferred and the deferred amount shall be recovered along with the regular payment of monthly electricity bills in six equal installments without any levy of interest w.e.f oct 2020 to March 2021.

(b) An incentive of 1% (upto the maximum of Rs Ten Thousand only for LT Consumers and Rs one lakh only for HT consumers) has been provided for timely payment of electricity bills within the due date for the month of april and May 2020. Order dated 02.06.2020 issued in this regard .

V. *All three Discoms have extended the facility of reduction in contract demand to their consumers as per the provision contained in the Force Majeure clause 11.2 of MP Electricity Supply Code, 2013, notified by the Hon'ble Commission.*

VI. *It is therefore submitted that the State Government and Discoms are committed to extend full support to the Industries in the State and have already provided various relief measures to the Consumers of the State within the available framework of existing acts and applicable Regulations.*

VII. *In light of above, the instant petition deserves to be dismissed by Hon'ble Commission.*

5. During the next hearing held on 02.11.2020, the petitioner and respondents were heard. The counsel for petitioner requested the Commission to allow him to file additional submission after going through the reply filed by the respondents. The Commission considering the prayer made by the Counsel for the petitioner allowed ten days to file written submission. It was made clear that no further time for any written submission shall be allowed to the petitioner. The Commission vide daily order dated 09.11.2020 has reserved the case for order. Subsequently, the petitioner filed its rejoinder which is reproduced below:

1. *That the respondents have generally provided responses which fall in the following broad categories:-*

A. *That there is no provision for the reliefs sought in the Supply Code or under Tariff Policy or Supply agreement. Further existing laws have to be followed to the letter.*

B. *If any relief or waiver is provided it will lead to escalating costs of the respondents and put extra burden on them. The discom and transmission companies have also suffered losses due to reduced demand.*

C. *Force Majeure conditions are already being followed and no departure is allowed from procedure of 11.01 and 11.02 of supply code.*

D. *If penalty is imposed, incentives are also given so its almost equal in the end for consumers.*

E. *State government has already provided reliefs and nothing more can be done.*

The reply to these statements of respondents are as under:-

A. Letter of the Law:-

2. *That as mentioned in the petition of the petitioner, the remedy availed by the petitioner squarely falls within Clause 11.10 and 11.11 of the MP Supply Code, 2013, which clauses are reproduced below for the sake of brevity:*

“Unforeseen Circumstances

11.10 If any circumstances not envisaged by the provisions of this Code arise, the licensee shall, to the extent reasonably practicable in the circumstances, consult promptly and in good faith with all affected parties in an effort to reach an agreement as to what should be done. If agreement between the licensee and those parties cannot be reached to a conclusion, the licensee shall determine it in the manner best to its ability.

11.11 Wherever the licensee makes such a determination, it shall do so having regard, wherever possible, to the views expressed by the affected parties and, in any event, to what is reasonable in the circumstances. Each party shall comply with all instructions given to it by the licensee following such a determination, provided that the instructions are consistent with the prevailing Codes, Regulations and Act. The licensee shall promptly refer all such unforeseen circumstances, and any such determination to the Commission for consideration. “

3. *That the Respondents have intentionally failed to reply to the petitioners claims under clause 11.10 and 11.11 of the MP Electricity Supply Code, 2013 which provide for measures to be taken by the Respondents during unforeseen circumstances. Clause 11.10 encourages the Respondents to reach to an agreement with the affected parties in good faith in an effort to consider the unforeseen circumstances not covered by the provisions of the Code. Hence, the arguments served by the Respondents that they are bound by statutory obligations to not provide any further relief has no logical stand.*
4. *Clause 11.11 of the MP Electricity Supply Code, 2013 clarifies that the Respondents shall have a regard to the views expressed by the affected parties and make advancements for any such determination to the Commission for consideration in times of unforeseen circumstances. The Covid-19 pandemic in India has devastated the business prospects of the MSMEs and put them in immense fiscal stress because of which they are in acute need of protection from the State in order to survive and overcome this calamity to prosper in the future or otherwise they will be forced to close down their ventures which will be in contravention to the latest policy of the central government i.e. Atmanirbhar.*
5. *That tribunals are created for proper disposal of all disputes, that this commission has been establish to remedy all disputes between parties and it has been provided far-reaching powers to remedy any situations not specifically provided in the code.*

6. *That clauses 11.14 provides powers to remove difficulties to this commission and clauses 11.17 to 11.19 provide for provisions which allow the commission to take steps to provide complete justice to parties and to also take steps at variance from the established procedure if there exists any need.*
7. *That the present pandemic has certainly changed the manner of working for the entire world and shifted everyone to figure out ways to make life possible without physical contact and from virtual world, that nothing of the present situation could have been imagined while drafting any laws or framing regulations for the power sector. That in spite of the same, ample authority was provided to this Commission under this code, to start functioning virtually only 2 months after the first lockdown and to think of the needs of the industry and the consumers without delay.*
8. *That there is no law which denies this commission authority to adopt procedure in variance to how things have been done in the past and the respondents incessant obsession to stay the course is not fruitful to the cause of the petitioners and other MSMEs of the state and will only help the respondents and not provide actual relief to consumers.*

B. Burden on Respondents

9. *That the respondents have generally and specifically stated in their replies about the financial burden on respondents, but the respondents have failed to mention the facts that all Transmission and Power Plants have been granted certain reliefs by states and central government and the same have been passed on to the Respondents. That POWER-GRID has itself passed rebate of Rs. 1075 Crores to Discoms and States. Similarly, MP Power Management Company had written to various power transmission companies invoking force Majeure and reducing losses as early as March, 2020 and not stated fixed time period in their notices for force Majeure, so how could they ask the consumes for the same.*
10. *That the Respondents are instruments of the State and have been incorporated for the benefits of its citizens they can be asked to bear some part of the burden of the Covid-19 pandemic losses and not pass all of it on the consumer. That the instrumentalities of the state cannot be functioning for their profits but for benefit of citizens.*
11. *The respondents must understand that its attitude will kill the industries and closing down of industries will ultimately have a financial implication on the respondents themselves. And the Respondents was virtually killing the goose that was laying the golden eggs.*
12. *That the hon'ble High Court of Madras while considering similar prayer of a Discom has in the matter of **The South Indian Spinners Association vs. TANGEDCO And Ors.** WP.No.7678/2020 held that "An attempt has been made by TANGEDCO to portray as if there will be a huge revenue loss for the TANGEDCO if they are made to collect the Minimum Charges. This claim made by the TANGEDCO is without any substance. The TANGEDCO is aware of the fact that the Minimum Charges are paid as a part of fixed cost and the actual charges are paid with respect to energy charges. Therefore, TANGEDCO is not actually losing any revenue towards consumption of electricity".*

13. That the above interpretation of the Madras High Court, squarely covers the present attitude of the Respondents.

C. Force Majeure Only

14. That the next statement of the Respondents is that the Force Majeure Conditions as envisaged in Clause 11.01 and 11.02 are to be seen and nothing else. That the Respondents are when themselves seeking relief from the Government or the Transmission and Production Companies, the attitude towards similar clauses is entirely different as is clear from the below except from letter of MP Power Management Company addressed to PML dated 31.03.2020 as under:-

“1. This letter is being issued in continuation and in addition to our earlier force majeure and vis major notice bearing letter no. 328 dated 30.3.2020 duly notifying you the prevalence of force majeure situation in the State of MP and the Country in the wake of COVID-19 (Corona Virus) outbreak and nationwide lockdown declared by the National Disaster Management Authority (NDMA) vide order no. 1-29/ 2020-PP (Pt-II) dated 24.03.2020. A copy of FMC Notice dated 30.3.2020 was uploaded on the website of MPPMCL and is in public domain.

2. As already intimated to you among other things that due to the outbreak of COVID-19, all Discoms and trading licensees such as MPPMCL, operating in the State of M.P are faced with an unforeseen, unprecedented and Imposing challenge and that demand of the State has also been sharply decreased due to closure of Industries, Shops and other major establishments due to lockdown forcing us not to schedule or partly schedule power from some of the Generators.

3. We have already invoked the provisions force majeure clause of the power purchase agreement and also the provisions of Vis Major and notified that the present events of nationwide lockdown and steps being taken to contain spread of COVID-19 as the force majeure event affecting the performance obligations of MPPMCL under the PPA.

Under the above circumstances and without prejudice to the notice dated 30.3.2020, please take further notice that due to the above mentioned force majeure situation and vis major situation, MPPMCL is at present not desirous to avail power from your Power Generating Plant as there is no such power requirement due to massive drop in consumers demand and that the Declared Capacity (DC) not being accepted MPPMCL in respect of your Power Generating Plant till further notice. It is therefore requested that no power generated from your plant shall be accepted by MPPMCL during force majeure and vis major situations as stated here in above. The commencement of the event of force majeure is 24.3.2020 and will continue till the situation is revised by the National Disaster Management Authority, notice thereof was also issued on 30.3.2020.

It may be noted that presently, we are unable to determine how long this Force Majeure situation will continue. However, we will review the situation and inform you as and when further clarity is received in this regard. It may be reiterated that, no cause of

action for breach or liability or procurer event of default will arise as a consequence of these Force Majeure Events. 6. This notice is being issued without prejudice to our rights under law or equity. We look forward to your kind support and cooperation during this grave situation for enabling us continuity of power supply in the national interest.”

15. From the above, the petitioner wishes to show that even the force Majeure Clause is interpreted differently by respondent and other state functionaries based on the benefit they receive. That further, as mentioned above, the petitioner’s petition does not invoke the force Majeure clause as some members of petitioner organisation had invoked it during lockdown but the procedure to invoke it has to be condoned and the right to invoke it must be unconditional for ones who couldn't get the benefit of the same.

D. Penalty on PF Factor

16. The Respondents have prematurely and without any application of mine, dismissed the prayer of the Petitioner to not calculate the power factor for minimum consumption during the period of the lockdown for LV and HV users for the F.Y. 2020-21, on an irrational ground that it poses no barrier of minimum consumption for computation of average monthly power factor.

17. The Petitioner contends that power factor cost is a penal charge which is imposed as a punishment on default. The Petitioner cannot be held guilty for the unprecedented circumstances brought by the Coronavirus. National lockdown was enforced on the decision of the Central Government under separate acts and thus, the Petitioner cannot be held liable to obey the restrictions imposed on it and stop the production to further the cause of the government.

*18. That the charges on non-maintenance of Power factor are penal charges which are levied by the Respondent on default. In **The South Indian Spinners Association vs. TANGEDCO And Ors.** WP.No.7678/2020, the hon’ble Madras High Court, while dealing with a similar petition has held that the industries cannot escape paying for the energy which it actually consumes and this is distinct from the Minimum Charges provided in the regulation. Power Factor is fixed to ensure that the consumer consumes the optimum power without interruptions or impediments. It is possible to maintain a healthy power factor limit only when the establishment is able to operate its electrical equipment and infrastructure with the power supplied by the Licensee.*

19. During the pandemic, the establishment has been shut down and therefore there is no effective utilization of power at the consumer’s end. Any measured power factor can only be the incoming PF from the Distribution Licensee. The levy of compensation charges for low PF is in the nature of penalty. It is extracted that whenever the HT consumer fails to maintain the PF and it is levied as a penalty. The Madras HC said that before imposing such

penalty, the consumer must be given an opportunity to explain the reason for such fall in PF and if the same is not done, it will be violative of the principles of natural justice.

20. *That further, if there is no default on the part of members of Petitioners, no compensation for the same can be calculated and claimed by the respondents for the same. That the lockdown imposed due to the Corona virus pandemic did not allow industries to use the electricity for almost three months and thereafter production is still slow because of the various restrictions still present hence industries are not liable to pay any sort of penalty.*
21. *That further, provision of incentives for this period could not be forwarded to the consumers and only the penalties can be imposed so this ground does not hold water that incentives are also offered. That further, the rules framed under the code and the present circumstances are so divergent that only clause 11.10 and 11.11 of the code gives some opportunity to the Respondents and this Commission to deal with the situation arising herein.*

E. Relief already provided by State Government

22. *That it has been contented by the Respondents that as the state government has passed on certain reliefs to the consumers of various categories by orders dated 07.04.2020 and 02.06.2020, the consumers cannot be granted any further relief.*
23. *That the state of Madhya Pradesh, through its Energy Department only gave to reliefs to industrial and non-industrial consumers, a) Notification dated 07/04/2020 -Deferment of fixed charges for the bill of April, 2020 to May, 2020 and 1% rebate on timely payment; b) Notification dated 02/06/2020 - Deferment of Fixed Charges for the month of April, May and June to six equal installments from October, 2020 to March, 2021.*
24. *That from cursory view of these alleged relief granted, it is clear that deferment of fixed charges gives no incentives to the industries, as the pandemic did not end in June, 2020 and is still raging. The industries require much more than only postponement/ deferment of fixed charges. Such relaxation only extend the time period of the petitioners to pay the liability but in absence of any business for almost 2-3 months the petitioner won't be able to bear such liability in future as well.*
25. *That State Governments of West Bengal, Tamil Nadu, Punjab and Uttar Pradesh have all waived fixed costs for at least 1 or 2 months.*
26. *That also various state electricity commissions suo-moto or separate petitions given waiver on fixed charges. For example, TNERC has held "In the case of HT consumers, whose recorded demand does not exceed the 20% of sanctioned demand during this lock-down period – those HT consumers are to be considered to fall within the Proviso of Regulation 6(b) and twenty percent of the contracted demand or recorded demand whichever is higher can be recovered besides the charges for the actual consumption of electricity. "*
27. *That similarly, fixed charges were waived off by the Government of Uttar pradesh, Punjab and Haryana for a period of 2-3 months of March to May, 2020. That the MSERC*

(Meghalaya) in Petition no. 6/2020, while deciding a petition for reliefs related to Covid-19 has held that :-

“12. Under the above facts and circumstances, it is very clear that all States are providing some relief to the Industrial/Commercial consumers considering the Covid19 pandemic which is unprecedented and an exceptional circumstance. However, quantum, method and period differ from State to State in providing relief to the said Commercial and Industrial consumers. Hence, in our considerate view, we agreed that, it would be prudent to provide some relief for the said period of lockdown to the consumers of Industrial/Commercial establishment of our State considering the extraordinary and unprecedented situation caused by the pandemic.

13. However, we find that there is no straight jacket formula that can be adopted in providing relief and at the same time equity demands that the Utility should not be placed under undue in-conveniences while providing relief to the Petitioners such as complete waiver of demand charge during the period of nationwide Lockdown. Hence, the quest is to find workable formula that is based on equity, Rules and Regulations even if it amount to some stretching.

.....

15. Situated thus, in our considerate view, under the extraordinary circumstances caused by the Covid19 pandemic, and by invoking the provision of Regulation 106 and 108 of the Meghalaya State Electricity Regulatory Commission (Multi Year Tarrif) Regulations, 2014, read with Regulation 12.7 and Regulation 12.9 of the Meghalaya State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2018, application of pro-rata on actual consumption as provided in Regulations 8.1 (13) of the Meghalaya State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2018 as per the Tariff orders would meet the end of justice and is accordingly applied for the lockdown period i.e. w.e.f. 25/03/2020 to 30/06/2020.

Accordingly, we herein ordered as follows; For the month of April, May and June 2020, Pro rata Rate of Demand Charges per KVAH of Unit consumed during the month = Rate of full Demand per KVA as applicable tariff order x Contracted load in KVA Contracted load in KVA X 24 (hrs) x 30 (days)

(ii) No delay payment shall be levied to the Petitioner for payment of energy bill from the month of April up to June 2020 for which the Respondent has not charged as per their written reply.

(iii) The balance payment for energy bill for the month of April to June 2020 shall be cleared on or before 31-10-2020. However, the Respondent, in view of the application of pro-rata demand charges the same shall be calculated for the month of April, May and June 2020.

(iv) In view of the demand charge calculated on pro-rata basis for the month of April, May and June 2020, given in this order, their monthly bill shall be revised if necessary by the Respondent on or before 30/09/2020.

16. This order has been passed in view of the lockdown caused by the Covid19 pandemic and the measures taken by the Central and State Government and also in compliance of the Letter dated 28-03- 2020 Ministry of Power and also taking into consideration of the letter dated 15th May, 2020 along with the corrigendum dated 16th May 2020 from the Ministry of Power in the matter of rebate to Distribution Companies (DISCOM) by Central Generation and Transmission Companies of Ministry for Power for the Lockdown period on account of Covid-19 pandemic.

However, before we part the case, it is made clear that this order shall not set as precedent in any other circumstances.”

28. Also, JERC (Jharkhand) in petition no. 15/2020 has held that :-

“The Commission opines that in the present situation, while some relief have been made available to the DISCOMs under the directions of the State Government, by order dated 24.04.2020, passed in Suo-Moto case no. 06 of 2020, some respite also needs to be given to the electricity consumers who are adversely impacted by the Lock down situation. In order to mitigate to some extent, the difficulties being faced by the electricity consumers, the Commission after careful consideration of the situation at hand, decided to provide following relaxation:

II. Moratorium of three months for payment of electricity bills which were due between 01.04.2020 and 30.06.2020, without levying any Delayed Payment Surcharge (DPS) for all consumers of all the Distribution Licensee in the State of Jharkhand, till current month i.e. September, 2020.

III. Waiver of Demand/Fixed Charges (Provisionally) for the month of April, May and June, 2020 for all Industrial & Commercial consumers of all Distribution Licensee of Jharkhand.

IV. The implementation of the above sub-clauses should not have any adverse affect on the applicable Tariff/rebate and other Terms & Conditions of Supply.

6. If the Licensees have received any amount from the consumers either against DPS or fixed/demand charge (Industrial & Commercial consumers only) for the period from 01.04.2020 to 30.06.2020, the said amount should be allowed as adjustment by way of reduction of said amount in the bills of subsequent month after the issuance of this order. ”

29. That also DERC(Delhi) in order dated 07/09/2020 has held that :-

“Accordingly, in exercise of its power conferred under Regulations 168 & 172 of the DERC Tariff Regulations, 2017 and Regulations 84 & 85 of the DERC (Supply Code and Performance Standards) Regulations, 2017, the Commission hereby decides that for electricity bill pertaining to consumption related to April 2020 and May 2020, the eligible Industrial and Non-domestic (Commercial etc.) consumers whose monthly Maximum Demand is less than the Contract Demand/Sanctioned Load, the Billing Demand for computation of Fixed Charges for such consumers shall be split into two parts as follows:

i) 1st part: Fixed Charges for Billing Demand upto Maximum Demand shall be billed as per existing rate of Rs.250/kVA/month; Plus

ii) 2nd part: Fixed Charges for remaining Billing Demand i.e., {Contract Demand/Sanctioned Load minus Maximum Demand} shall be billed at 50% of existing rate i.e., Rs. 125/kVA/month.

8. In view of above, the Fixed Charges for the unutilized capacity for April 2020 and May 2020 (Contract Demand/Sanctioned Load - MDI) for eligible Industrial and Non-domestic (Commercial etc.) consumers shall be billed at reduced rate of Rs.125/kVA/month as against existing rate of Rs.250/kVA/month. The Distribution Licensees are directed to adjust the Fixed Charges of April 2020 and May 2020 for such consumers in subsequent two billing cycles from the issuance of this Order. ”

30. That from the above, it is clear that the relief provided by the state government is not sufficient and the commission has ample authority to provide relief.

ADDITIONAL ARGUMENTS:-

31. That The Respondents in their reply claim that the earlier acts of the Commission on this matter clearly reveal that the Commission does not intend to waiver fixed charges and/or tariff minimum charges and hence, it wouldn't do so in future as well. This attitude of the Respondents thus reveals their unwillingness to participate despite having the authority to do so. The Respondents seem to be grossly negligent, careless and indifferent towards the struggle of these industries post Covid19. By denying favours to the Petitioner in these tough times, the Respondents are only escaping from their inherent duties.

32. That the Respondents also heavily rely on Clause 1.26 of other terms and conditions for permanent connection under General Terms and Condition of High Tension Consumers and clause (m) of other terms and condition of General Terms and Conditions of Low Tension which allows change in tariff or tariff structure including tariff minimum charges with prior written permission of the Commission and not otherwise. Hence, a simple reading of clause explains that relaxation to the consumer industries under the Petitioner is possible if the Commission allows for the same.

33. That, the power regulator CERC (Central Electricity Regulatory Commission) has recently advised the union ministry of power against jurisdictional overreach in framing regulations for the power sector that infringes the substantive functions of the central commission.

Hence, it can be concluded that the MPERC holds all the power to regulate the electrical sector of the state and is responsible to take care of the interests of all stakeholders.

- 34. The Respondents claim that the state of MP has granted relief like the other states mentioned in the petition, the same is clearly untrue and true facts have not been brought to the notice of the commission by the Respondents, as the reliefs granted by the state of Madhya Pradesh are only in nature of postponement and not actual relief.*
 - 35. That as can be seen from above, the demand of the member industries under the Petitioner is not unreasonable. The present petitioners first sought the mercy of this commission as early as 16th April, 2020 when a soft copy of petition was filed with Secretary of this commission. That its taken 7 months for this petition to attain finality and during this time, many of the members of the petitioner organization are in the fear of going under and may not survive this financial year. That it is in these dire circumstances, that the petitioner seek relief from the Commission.*
 - 36. The pandemic resulted in a complete shutdown which caused heavy loss without any fault of the Petitioner. MSMEs are essential for the growth of economy for any country hence it becomes the duty of the Respondent to protect them and to help them revive. An attempt has been made by the Respondent to portray as if there will be a huge revenue loss for if they provide any further concessions. Claim made by Respondent has no legs to stand and it can never be a ground to deny the right available to a consumer industries. Levying unnecessary charges on the consumers during the lockdown period is unfair as crunch is being faced by almost all industries due to the lockdown and there is a huge challenge post the pandemic which is made worse by Respondent. Respondent must understand that its attitude will kill the industries and closing down of industries will ultimately have a financial implication on it as well.*
 - 37. The Respondent already enjoy the benefits of many relief packages granted to them by the government but are reluctant to pass on the advantages of the same to the Petitioner. The Petitioner does not deny payment as a whole but only request to share the financial stress in order to balance the interests of both the parties. The Petitioner in no sense intends the loss of the Respondent.*
 - 38. Finally, the installments for fixed charges are already started being recovered from the petitioners members and if no final relief is granted to them, the industries will suffer from heavy loss, fall into a vicious cycle of debt and will eventually breakdown.*
 - 39. Hence, in view of the above, the petitioner prays that the prayer as sought in the petitioners petition be allowed.*
6. The Commission observed that in the revised prayer, the petitioner has mainly requested to waive-off the fixed charges for industrial and commercial HV & LV users for the financial year 2020-21 and/or to calculate fixed charges at 60% of contract demand for the financial

year 2020-21. The petitioner has also requested billing for LV-4 and HV-3 consumers based on the average cost of supply as per tariff order for FY 2019-20 and also requested that the power factor should not be calculated for minimum consumption during the period of lockdown for HV and LV users.

7. On request of the Petitioner that power factor should not be calculated for minimum consumption during the period of lockdown, the Commission observed that Distribution Licensee imposes Power Factor Penalty if average monthly power factor of the consumer under defined consumer category falls below 90 percent. It is billed as per methodology and at the rates specified in the respective Retail Supply Tariff Order. There is also a provision for incentive on power factor above 95% as per methodology given in the Retail Supply Tariff Order.

Power Factor is a ratio between kilowatt Hour (kWH) and Kilovolt Ampere Hour (kVAH). Low power factor means inefficient use of electricity. Therefore, marginal cost incurred on account of inefficient use is recovered in the form of penalty /surcharge from those consumers who are responsible for such use. Low power factor related issue can however be addressed by installing right size of capacitors.

The Petitioner mentioned that during the pandemic, the establishment was shut down and there was no effective utilization of power at the consumer's end. Petitioner further stated that any measured power factor can only be the incoming power factor from the Distribution Licensee. The pleading of the Petitioner is technically not sustainable. Power factor at the consumer's installation has been calculated based on the ratio of kWH and kVAH units consumed by him and recorded at his meter. During the lockdown period, if electrical supply was not availed by the consumer, then power factor shall not be recorded. As such, issue of power factor shall arise only in the event of consumption of electricity. The Commission has also observed that power factor penalty/incentive is calculated on total amount of bill under the head of "Energy Charges". As the power factor is calculated on actual kWH and kVAH consumption, energy charges used for calculating power factor surcharge/incentive should also be based on actual consumption, even if it is below the required minimum consumption. Moreover, during the period of lockdown, if the electricity was used for emergency purposes, it was possible to address the issue of low power factor by appropriate use of capacitors installed by industries for this purpose. Therefore, prayer made by the petitioner that power

factor surcharge should not be levied for the period of lockdown for LT and HT users is devoid of merit and cannot be entertained

8. The Commission has notified Madhya Pradesh Supply Code, 2013 which is applicable for the Distribution licensees of the State and consumers of these Licensees. Sub-Clauses 11.10 and 11.11 of the Supply Code 2013 specify the following for unforeseen circumstances:-

11.10 If any circumstances not envisaged by the provisions of this Code arise, the licensee shall, to the extent reasonably practicable in the circumstances, consult promptly and in good faith with all affected parties in an effort to reach an agreement as to what should be done. If agreement between the licensee and those parties cannot be reached to a conclusion, the licensee shall determine it in the manner best to its ability.

11.11 Wherever the licensee makes such a determination, it shall do so having regard, wherever possible, to the views expressed by the affected parties and, in any event, to what is reasonable in the circumstances. Each party shall comply with all instructions given to it by the licensee following such a determination, provided that the instructions are consistent with the prevailing Codes, Regulations and Act. The licensee shall promptly refer all such unforeseen circumstances, and any such determination to the Commission for consideration.”

9. The above-mentioned sub-clause 11.10 provides that if any circumstances not envisaged by the provision of this Code arise, the licensee shall, to the extent reasonably practicable in the circumstances, consult promptly and in good faith with all affected parties in an effort to reach an agreement as to what should be done. It has further been provided that if agreement between the licensee and those parties cannot be reached to a conclusion, the licensee shall determine it in a manner best to its ability.
10. The Commission observed that in these unforeseen circumstances due to lockdown during the Covid-19 pandemic period, the State Government/ Discoms have provided various reliefs to the consumers of Discoms.

- a. As a first step, the State Government/ Discoms have deferred payment of the fixed charges in respect of LT non -domestic, industrial and HT (HV3) categories of consumers for the months of April to June' 2020.
 - b. The consumers were allowed to make payment of the deferred amount, without any interest, in six equal instalments from October' 2020 to March' 2021.
 - c. Incentive of 1% was also provided, in case consumer made payment of bills for April and May months in a timely manner.

11. Monthly bills payable by consumers to Discoms has a component of fixed charges and energy charges which is as per Section 45(3) of the Electricity Act 2003 and provisions in the Tariff Policy notified by the Government of India. Discoms are required to pay fixed charges to the generators for making power available by them, whether it was scheduled or not due to the load conditions linked to the consumer demands at that time.

12. For ensuring 24x7 quality power supply to the consumers, Discoms are required to have long term power purchase agreements with the generators. Payment to the generators by Discoms includes capacity charges to recover the annual fixed charges which includes financial charges on capital cost of the project and operational cost incurred by the generator. Similarly, transmission charges payable by Discoms are solely having fixed component for allowing recovery of the capital cost incurred for the project. It is mandatory for distribution licensees to pay fixed charges based on normative availability on those accounts whether electricity for the period has been availed or not. Discoms also recover Financial Charges on capital cost incurred through a fixed cost component on distribution infrastructure developed for providing electricity to the consumers. However, in order to protect retail consumers from tariff shock, the fixed component of consumers bills is much lower in the retail supply tariff orders, than the actual fixed cost incurred. Some portion of the fixed cost component is being recovered through minimum charges also. As such, Discoms are not fully compensated for the fixed cost paid to the Generators/Transmission Licensees through fixed charges/minimum charges in the retail supply tariff. Waiving of certain portion of fixed and minimum charges to be recovered from the retail supply consumers would therefore adversely affect the financial viability of the Discoms. Further, if the Commission waives off certain portion of the fixed component of the retail tariff, Discoms will be entitled to recover that portion through true-up petition in future from all categories of consumers.

13. The Commission further observed that vide submission dated 27.10.2020, Respondent MPPMCL has conveyed that NTPC and other CPSUs generators have provided a rebate of Rs. 144.61 Crore on the capacity charges payable by the State Distribution Companies. PGCIL also provided rebate of Rs. 67.97 Crore to State Discoms payable as transmission charges. The Commission has already passed through these rebates of Rs. 212.58 Crore to electricity consumers of the State in the retail supply tariff order issued on 17th December' 2020 for the year FY 2020-21.
14. The Commission further observed that Clause 11.1 and 11.2 of the Electricity Supply Code, 2013 provides relief to the consumers on certain specific force majeure conditions. The clauses is reproduced as under:

“Force Majeure:

11.1 The licensee shall not be liable for any claim by the consumer for loss, damage or compensation whatsoever arising out of failure of supply when such failure of supply is due, either directly or indirectly, to war, mutiny, civil commotion, riot, terrorist attack, flood, fire, strike, lockout, cyclone, tempest, lightning, earthquake or act of God or act of Central/State Government.

11.2 If at any time during the continuance of the agreement between the licensee and the consumer, if the use of electricity is not possible fully or partially by the consumer due to Force Majeure conditions such as war, mutiny, civil commotion, riot, terrorist attack, flood, fire, strike (subject to certification by Labour Commissioner), lockout (subject to certification by Labour Commissioner), cyclone, tempest, lightning, earthquake, act of God, act of Central/State Government, etc. which are beyond the control of the consumer, he may, on giving 7 clear days notice in writing to the licensee, about such a situation, take a reduced supply of power as may be necessary and feasible within permissible limits of contract demand at relevant voltage levels. In all cases where the consumer claims Force Majeure conditions, the licensee's authorised representative shall verify the same. Such a facility shall be available to the consumer only if the period of reduced supply is for a minimum continuous period of 10 days and up to a maximum of six months. The aforesaid period of reduced supply shall not be counted towards the initial period specified in the agreement and the initial period

of agreement shall be extended for a further period equal to the period of reduced supply. There is no restriction on number of times of such facility availed by the consumer subject to maximum period of total six months of all such occasions.”

15. In the above mentioned sub-clauses , there is no provisions for waiver of fixed charges and tariff minimum charges. The sub-clause 11.2 only facilitates the consumers to reduce their contract demand to a certain limit at relevant voltage level . This Sub-clause 11.2 provides that for a certain force majeure conditions, consumers can reduce their contract demand up to a defined period by giving seven clear days notice to the distribution licensee. The respondents Distribution Licensees intimated that they have provided relief to those consumers who had made such request under provisions of the aforesaid clause. Therefore, Discoms had acted upon in this regard as per provisions of the Supply Code 2013.
16. Further, under the above-mentioned Sub-Clause 11.2, the consumers were having an option to reduce their contract demand at relevant voltage level limit. The consumers who wanted to reduce their contract demand during the lockdown period, had the option to submit such a request through electronic mode to the Distribution Licensee. Distribution Licensees have appraised the Commission that they had already acted upon on such requests as per provisions of the Supply Code 2013.
17. In view of the measures already taken by the State Government, and the distribution licensees under provisions of the Supply Code 2013 and rebates provided by CPSU electricity generators & PGCIL having been passed on in the Retail Supply Tariff order for FY 2020-21, the Commission finds no merit in the prayers made by the Petitioner.

The petition is disposed of.

(Shashi Bhushan Pathak)
Member (Law)

(Mukul Dhariwal)
Member

(S.P.S. Parihar)
Chairman