

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION,
BHOPAL

Date of order _____

Sub : In the matter of directions to respondent regarding applicability of “Bulk Supply Tariff HV-7” for Petitioner for additional power requirement for upcoming units within SEZ.

ORDER

(Date of hearing – 30.10.2009)

Manager (SEZ) MPAKVN (I) Ltd. Free Press Complex, AB Road, Indore.	Petitioner
Superintending Engineer (O&M) M.P. Paschim KVVC Ltd. Pologround, Indore	Respondent No.1
M.P. Power Transmission Co. Ltd. , Jabalpur	Respondent No.2
M.P. Power Trading Co. Ltd.,Jabalpur	Respondent No.3

Shri Ajay Porwal, Electrical Consultant, appeared on behalf of the petitioner MPAKVN (I) Ltd. Indore. Shri S.S. Tripathi, Addl. S.E. and Shri K.S. Vyas, Advisor, M.P. Paschim Kshetra V.V. Co. Ltd., Indore appeared on behalf of Respondent No.1, Shri Vincent D’Souza appeared on behalf of M.P. Power Transmission Co. Ltd., Respondent No.2, and Shri D.K. Ojha, Consultant appeared on behalf M.P. Power Trading Co. Ltd., Respondent No.3.

2. The petitioner in its initial submission has stated that they are Developer of Indore Special Economic Zone (SEZ) for promotion of export oriented industries and are also a deemed distribution licensee as per Section 11 of the Indore Special Economic Zone (Special Provisions) Act, 2003. Accordingly, they are authorized to provide all required infrastructure within the Zone including the supply of electricity to all units being established in the Zone. It is further stated that out of 15% unallocated quota of NTPC power stations, GoI had allocated 13 MW power to SEZ, Indore. At present, the petitioner has released electricity connections for about 18 MW capacity in the Zone and therefore, they are in need of about 5 MVA additional

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power which the petitioner is seeking on urgent basis from M.P. Paschim Kshetra V.V. Co. Ltd., Indore. The petitioner has submitted before the Commission to include the petitioner in the applicability clause for bulk supply tariff for Exemptees i.e. HV-7(a) and to direct the Distribution Company to supply power to them.

3. A motion hearing was conducted on 15th September, 2009, wherein the Commission decided to admit the petition and directed that besides M.P. Paschim Kshetra V.V. Co. Ltd., Indore, M.P. TRADECO and M.P. TRANSCO will also be made respondents in the matter.

4. Next hearing was conducted on 6th Oct., 2009 wherein besides the respondent, M.P. Paschim Kshetra V.V. Co. Ltd., Indore, the M.P. TRANSCO and M.P. TRADECO also appeared as respondents. During the course of hearing, it was submitted to the Commission that the M.P. TRANSCO and M.P. TRADECO had not received the notice issued and therefore they requested for some more time to respond in the matter. Accordingly, next date of hearing was fixed on 30th Oct., 2009 with direction to respondents to file reply within 10 days.

5. During the course of hearing on 30th October, 2009, the representative of SEZ, Indore Shri Ajay Porwal informed that the copy of the petition as well as the desired details were forwarded to M.P. Power Transmission Co. and M.P. Power Trading Co., as directed by the Commission during the course of last hearing.

6. The MPPKVVCL, Indore, the MP Power Transmission Co. Ltd., Jabalpur, M.P. Power Trading Co. Ltd., Jabalpur and the petitioners have made submissions. Brief of the submissions is as given below:-

- (i) M.P. Paschim Kshetra V.V. Co. Ltd. vide letter dated 13.10.2009 has stated that:
- (a) The respondent cannot offer any comments in so far as interpretation of State and Central Act is concerned.
 - (b) Further, if Hon'ble Commission decides a suitable tariff and modalities for supply of power to MPAKVN for SEZ, they have no objection.

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(ii) M.P. Power Transmission Co. Ltd. vide letter dated 22.10.2009 has stated that:

- (a) Enhancement of requirement of power by the petitioner from 13 MW to 18 MW can be catered through existing infrastructure, however, they may have to avail the open access as per laid down procedure.
- (b) That the matter of serving connection to petitioner is not under purview of their Company. However, if petitioner is required to undertake works with regard to erection infrastructure, it may be carried in consultation with SE(Testing and Communication), MPPTCL, Indore for ensuring safety requirements.

(iii) M.P. Power Trading Co. Ltd. vide letter dated 22.10.2009 has stated that:

- (a) As per provisions of M.P. Electricity Reforms Transfer Scheme Rules, 2006, they are not authorized to supply power to the consumers and hence they cannot respond on this issue.
- (b) As per the letter of allocation of power issued by the Ministry of Power, GoI to the SEZ, the MPAKVN, it was required to establish a captive power plant to meet the requirement of units located in SEZ area.
- (c) The applicability clause of Tariff Schedule as requested by the petitioner does not appear to be correct.

(iv) The petitioner's response to the replies of the respondents in brief is as given below:-

- (a) In response to the reply of M.P. Paschim Kshetra V.V. Co. Ltd., Indore, it is informed that GoMP vide its notification of 12th Aug., 2008 has made certain amendments to Indore Special Economic Zone Act. It has been further informed that M.P. Paschim Kshetra V.V. Co. Ltd., Indore has provisionally accorded approval for sanction of 5 MVA power at 33 KV with certain terms and conditions vide letter dated 21.10.2009.

- (b) In response to MP Transco's reply, the petitioner has submitted that requisite charges for erection of necessary infrastructure have already been deposited.
- (c) In response to M.P. Power Trading Co.'s reply, it is indicated by the petitioner that the petition was limited for the purpose of applicability of bulk supply tariff for additional power to the SEZ. Separate efforts are being made for allocation of power from NTPC and GoMP. The petitioner has also contented that M.P. Power Trading Co. may give supply to petitioner and there are no legal hurdles. It is further indicated that it is not technically feasible to establish a coal based CPP within SEZ area nor it is mandatory for a distribution licensee to establish CPP within SEZ.

7. During the course of hearing on 30th October, 2009, the issue regarding the status of SEZ, Indore as licensee was deliberated further. The Indore Special Economic Zone (Special Provisions) Act, 2003 at Section 11 provides authority to Development Commissioner of the SEZ to designate the Developer or Co-Developer or any other person to undertake the activities in the Zone for Transmission, Distribution, Supply and Sale of electricity with authority to purchase the energy requirements in the Zone from such consumers as may be considered appropriate and conducive to the Development of the Zone. The Development Commissioner has been further authorized to prescribe the terms and conditions as well as the tariff for the generation, transmission, distribution, sale, supply and use of electricity in the Zone. Subsequently, the GoI notified the Special Economic Zones Act, 2005. The GoI further notified the Special Economic Zones Rules, 2006, Ministry of Commerce and Industry and also issued guidelines vide No.P.6/3/2006-SEZ.1 dated 27.02.2009 for power generation, transmission and distribution in area of SEZs. The Special Economic Zone Rules, 2006 at Section 5 (c) provides that generation, transmission and distribution of power within a SEZ shall be subject to the provisions of the Electricity Act, 2003. The guidelines, as mentioned above, provide that distribution of power is a licensed activity as specified in Section 14 of the Electricity Act, 2003. It further provides that tariff of the electricity for any sales within SEZ's shall be determined in accordance with the provisions of the Electricity Act, 2003/Rules made

there-under. It also states that all the provisions of the Electricity Act, 2003 and Electricity Rules, 2005 as amended from time to time by Ministry of Power along with various resolutions issued by the Ministry of Power will be applicable including amongst others to the power distribution activities in the SEZ's. In view of the provisions as indicated above, the Commission felt that the latter Central SEZ Act, 2005 would prevail over the earlier said State Act namely Indore Special Economic Zone (Special Provisions) Act, 2003 and shall be overriding in case of any conflict in the provisions. The Commission is of the opinion that the SEZ, Indore is required to obtain a license for the distribution and supply of electricity and other activities related thereto within the Zone.

8. The representative of SEZ Shri Ajay Porwal submitted that they agree with the observation of the Commission and are ready to submit the application for availing the distribution license. They have already submitted in their response vide 10899 dated 24th October, 2009 to the Commission that they are ready to file ARR, if Commission directs so. The petitioner further submitted that they would be submitting an application for license shortly, say within a month.

9. The petitioner further informed that as submitted by them earlier that hitherto they have been working as per the provisions of the Indore Special Economic Zone (Special Provisions) Act, 2003 under which they have been drawing power through open access for 13 MW. As already brought to the notice, some new industries have come up in SEZ area for which they require additional power to the tune of 5 MW on an urgent basis. These industries are in readiness to avail the power and since the issue of allocation of additional power to the SEZ from various sources including NTPC as well as release of 5 MW HT connections by the Discom is not yet resolved, the new industries waiting to avail power are not able to run, thereby suffering losses, as they have already made investments but are not able to produce. Looking to the urgency of the situation, M.P. Paschim Kshetra V.V. Co. Ltd., Indore have sanctioned 5 MW power for the SEZ, Indore subject to certain terms and conditions including the condition that the sanction is subject to approval of the Commission on the terms & conditions and the tariff as the Commission may finalize. The petitioner has submitted the desired documents and has also deposited necessary charges as

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demanded by the M.P. Paschim Kshetra V.V. Co. Ltd., Indore, however, the agreement of supply of power is to be finalized. The officers present on behalf of the M.P. Paschim Kshetra V.V. Co. Ltd., Indore stated that they would examine the documents submitted by the petitioner and would respond to the applicant within next 7 days.

10. The petitioner further pleaded with the Commission that they agree to abide by the terms and conditions including tariff as may be decided by the Commission for release of 5 MW connection and expressed the urgency explaining the situation for delay in release of power shall affect adversely on the development of SEZ and promotional activities for industries in the State. The petitioner, therefore, requested that while they are ready to take the license and shall take prompt action to proceed in the matter as also fulfill all the license conditions, however, in the intervening period the Commission may provide some interim arrangement so that the development activities of the SEZ, Indore are not hampered and the new industries are provided with the required power supply.

11. The Commission considered all the facts submitted before it and is of the opinion that there is an urgent need to make an interim arrangement so that the industries coming under SEZ, Indore area do not suffer for want of supply of power. This is felt necessary in the larger interest of State as development of new industries in the State would not only help the State exchequer but will also generate employment and attract more investment in future. Moreover, while the industries in areas other than SEZ are free to avail as much power as they require and as and when required, the industries which are situated in SEZ area should be treated at par and should at least get similar benefits/ facilities, if not more. The Commission, therefore, directs the M.P. Paschim Kshetra V.V. Co. Ltd., Indore to release a new 5 MVA, HT connection at 33 KV to the SEZ, Indore, as an interim measure, subject to the following conditions and also directs the petitioner to comply with these conditions:-

- (i) The supply to the SEZ will be provided by installing proper metering arrangements and shall be billed at the rates prescribed under Tariff Schedule HV 3.1 (Industrial) in the Commission's Retail Supply Tariff Order for the year 2009-10.

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- (ii) All the terms and conditions as prescribed in the Tariff Order for the year 2009-10 applicable to the connections under Tariff Category HV 3.1 shall also be applicable on the HT connection provided to SEZ, Indore.
- (iii) The SEZ, Indore may recover tariff for electricity supplied to various industries and other connections situated within the area of SEZ at the rates not more than the rates prescribed in the Retail Supply Tariff Order for the year 2009-10 issued by the Commission, based on the applicability for the purpose for which the connections are being used. All the terms and conditions of the Retail Supply Tariff Order 2009-10 shall also be applicable in such cases.
- (iv) This interim arrangement shall continue up to the period for which the Retail Supply Tariff Order 2009-10 issued by the Commission on 29th July, 2009, is applicable or upto the time SEZ Indore on being made a licensee gets the tariff determined by the Commission, whichever is earlier.
- (v) The SEZ, Indore shall submit the application for license for distribution of supply within the SEZ, along with all the details including supportive documents and fulfill all other requirements related there to, to the Commission by 30th Nov., 2009.
- (vi) The Commission expects that the SEZ, Indore should be able to submit its ARR/Tariff proposals, subsequent to issue of license, by 15th Jan., 2010.
- (vii) The SEZ, Indore shall also comply with the provisions of Electricity Act, 2003, Rules made there under, and the Regulations applicable while availing the 5 MVA HT connection and its continuance thereafter.

The Commission decides to close the case.

Ordered accordingly.

(C.S. Sharma)
Member (Economics)

(K.K. Garg)
Member (Engg.)

(Dr. J.L. Bose)
Chairman