

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

BHOPAL

Subject:- In the matter of revision in PAFM of MPPGCL's Hydro Generating Stations by MPLDC on the basis of CERC order dated 20.12.2016 in petition no. 40/MP/2016.

Petition No. 14 of 2018

ORDER

(Date of Hearing: 30th January' 2019)

(Date of Order: 2nd February' 2019)

**M.P. Power Management Company Ltd (MPPMCL)
Shakti Bhawan, Rampur,
Jabalpur (M.P.)**

- Petitioner

Vs.

**1. Madhya Pradesh State Load Despatch Centre (MPSLDC)
Nayagaon, Jabalpur, (M.P.).**

**2. M.P. Power Generating Co. Ltd., (MPPGCL)
Shakti Bhawan, Jabalpur, (M.P.).**

- Respondents

Shri Ajasra Gupta, GM (Commercial) and Shri Aashish Barnard, Advocate appeared on behalf of petitioner.

Shri Devasish Chakraborty, EE appeared on behalf of Respondent No. 1, (MPSLDC).

Shri Sudhir Saxena, CE (CS) and Shri Salil Choudhari, EE (CS) appeared on behalf of Respondent No. 2, (MPPGCL).

M.P. Power Management Company Ltd. has filed the subject petition under Section 86 (1) (f) of the Electricity Act 2003 for revision in PAFM of MPPGCL's Hydro Generating Stations by MPLDC on the basis of CERC order dated 20.12.2016 in petition no. 40/MP/2016 in specific case of NHDC Indira Sagar and Omkareshwar Power Station.

2. The petition was admitted on 5th June' 2018 with the directions to the petitioner to serve copies of petition to all Respondents in the matter. The respondents were directed to file their response on the petition by 30th June' 2018 after serving a copy of same on other side also.

3. By affidavit dated 28th June' 2018, Respondent No. 1 (MPSLDC) filed its reply to the subject petition. Respondent No. 2 (MPPGCL) also filed its reply to the subject petition on 7th July' 2018. Thereafter, the petitioner sought two weeks' time for filing its rejoinder on the aforesaid reply filed by both Respondents. Thereafter, the petitioner filed its rejoinder by affidavit dated 6th September' 2018. Both the respondents i.e. MPSLDC and MPPGCL also filed their response on the aforesaid rejoinder filed by the petitioner vide their letter dated 24th September' 2018 and 9th October' 2018, respectively.

4. Vide Commission's daily order dated 10th October' 2018, Respondent No. 1 (MPSLDC) was directed to file the following details and documents with the Commission by 15th November' 2018:

(i) Date-wise instances with duration and specific reasons for which MP SLDC recalculated PAF & revised SEA(s) of Indira Sagar Power Station and Omkareshwar

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- Power Station pursuant to the CERC Order dated 20.12.2016 in Petition No. 40/MP/2016.
- (ii) The instances with date-wise duration for which MP SLDC has recalculated PAF and revised the State Energy Accounting of MPPGCL's Hydro Power Stations pursuant to the CERC's order dated 20.12.2016.
 - (iii) The information for MPPGCL's Hydel Power Stations as sought at S. No. (ii) was sought in tabulated form mentioning the details of occasions and reasons, authority imposed the restrictions, details of check if any, exercised by MP SLDC in terms of Clause 6.5(10) of IEGC and the references of the documents considered in each case.
 - (iv) All supporting documents considered by MP SLDC while re-calculating PAF and revising the State Energy Accounting of MPPGCL's Hydel power stations were also sought alongwith above information.
 - (v) Documentary evidence provided to the MPPMCL, showing the details of recalculated PAF along with the incidence wise reasons for recalculation.

5. During the course of hearing held in this matter on 12th December' 2018, it was observed by the Commission that Respondent No. 1 (MPSLDC) filed the information as sought above but the same was incomplete on certain issues raised by the Commission. MPSLDC sought permission to file the complete information by the end of December' 2018. Further, vide daily order dated 12th December' 2018, attention of parties in the matter was drawn by the Commission on the Civil Appeal No. 6320 of 2011 filed by MPPGCL with the following background:

- (i) MPPGCL had filed an Appeal No. 170 of 2010 before APTEL against Commission's Order dated 26th May' 2010 seeking relaxation in various Norms provided under MPERC Tariff Regulations. One of the issues raised in aforesaid Appeal was PAFM of its Hydro Power Stations due to restrictions on release of water for generation by WRD or in case reservoir level drops below MDDL or any other constraint imposed by local/Administrative authorities in which units are not allowed to run due to local "Mela" or any other problems. The above Appeal was dismissed by Hon'ble Appellate Tribunal for Electricity.
- (ii) Aggrieved from the above order, MPPGCL has filed a Civil Appeal No. 6320 of 2011 before Hon'ble Supreme Court and the same is pending before Hon'ble Supreme Court.
- (iii) The core issue i.e revision in PAFM on account of reasons mentioned in the present petition is common which is raised by MPPGCL in Civil Appeal No. 6320 of 2011 *sub-judice* before the Hon'ble Supreme Court of India.

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6. In view of the above, the Petitioner and Respondents in subject matter were directed to explain/submit the following:

- (i) MPPGCL and SLDC are required to explain the reasons for revision of PAFM in respect of Hydro Power Stations on the same grounds which are *sub-judice* in the aforesaid Civil Appeal before the Hon'ble Supreme Court of India.
- (ii) The Respondent No. 2 (MP SLDC) to file full information as desired by the Commission in its last order in this matter by filling all columns in the format furnished by it enclosing all supporting documents for each case where revision in PAFAM was made by it .
- (iii) Reasons for revision of PAFM on account of low demand in some instances.
- (iv) Revision for revision of PAFM in some of the instances considering availability 100% and above based on the submissions of MPPGCL.

7. Respondent No. 1 and 2 filed their response on the issues communicated to them vide Commission's daily order dated 12th December' 2018. Vide letter dated 29th December' 2018, Respondent No. 2 i.e. MPPGCL broadly submitted the following:

"(i) Pendency of the issue of "Relaxation in operating Norms in Regulation RG-26(I) of 2009 for Control Period FY-10 to FY-12" vide Civil Appeal No. 6320 of 2011 before Hon'ble Supreme Court has its independent footing and may not affect adjudication of present case till final outcome of the Civil Appeal.

.....
(ii) NHDC being aggrieved on the same issue has filed a petition before Hon'ble CERC. Hon'ble CERC vide its order dated 20.12.2016 has provided the relief on aforesaid issue of computation of availability, by giving the correct interpretation of clause of regulation to compute the availability and accordingly, MPSLDC has revised the SEA for MPPGCL also giving effect to the order of CERC, as MPPGCL has also been aggrieved of such wrong interpretation of SLDC. Further, after resolution of this issue, i.e. acceptance and realization of Bills by MPPMCL, the portion of relief received through the order of CERC will not be taken further before Hon'ble Supreme Court.....

(iii) In the above context, MPPGCL wish to further submit that considering the current scenario, when prayer is pending on subject issue before Hon'ble Supreme Court, the compliance of CERC order made by SLDC providing relief to MPPGCL is correct and lawful, as its an act of giving justice by clarifying the part of Regulation which was being misinterpreted in past due to which MPPGCL was aggrieved. Further prayer of MPPGCL for relief pending before Hon'ble Supreme Court nowhere stops from compliance action which is lawfully genuine."

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8. Vide letter dated 1st January' 2019, Respondent No. 1 (MPSLDC) besides submitting other information and documents has mentioned the following:

"Regarding Civil Appeal No. 6320 of 2011 subjudice before the Supreme Court of India, it is to intimate that MP SLDC was not aware of the pendency of above appeal before the Hon'ble Supreme Court of India. In this context it is to be intimated that MP SLDC is neither made a party to the referred Appeal nor MPPGCL intimated SLDC in this regard.

MPSLDC guided by the CERC order dated 20.12.16 in Petition No. 40/MP/2016 has revised the PAFM in respect of Hydro Power Stations of the State."

9. During the course of last hearing in the subject matter held on 30th January' 2019, the representative appeared on behalf of Respondent No. 2 (MPPGCL) submitted that both parties in the subject matter i.e MPPMCL and MPPGCL are fully owned companies of Government of M.P. and Energy Department is an administrative department for the matter related to these companies. The remedy to resolve the dispute in the subject matter by intervention of Energy Department, GoMP has not been exhausted before approaching the Commission. With aforesaid contention, the representative of MPPGCL requested the Commission to provide an opportunity to approach the Energy Department, GoMP in the subject matter. On the aforesaid submission by MPPGCL, Ld. Counsel of the petitioner submitted that the request by Respondent No. 2 to approach the Government in this matter may be considered by the Commission subject to the condition that the bills/ demand raised by MPPGCL on the petitioner on account of revision in PAFM in the subject matter be not recoverable from the petitioner till such time.

10. In view of the above, without going into the merits in the petition and subsequent submissions by all parties in this matter, the parties are allowed to approach the Energy Department GoMP on the issues in the subject petition and the bills/ demand raised by MPPGCL on the petitioner on account of revision in PAFM in the subject matter shall not be recoverable from the petitioner till the dispute is decided. However, the petitioner may approach the Commission afresh in light of aforesaid observations in this order. With the aforesaid directions, the subject petition is disposed of.

(Mukul Dhariwal)
Member

(Dr. Dev Raj Birdi)
Chairman