

Subject: In the matter of MPPTCL's petition regarding approval for Relaxation in Threshold limit for development of power evacuation system for proposed 1*660 MW super critical unit at ATPS Amarkantak Chachai by MPPGCL through Regulated Tariff Mechanism (RTM).

Petition No. 55 / 2023

ORDER

(Hearing through Video Conferencing)

(Date of Order: 12th December, 2023)

M. P. Power Transmission Co. Ltd.

Shakti Bhawan, Jabalpur

- **Petitioner**

V/s

1) M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd., Jabalpur

2) M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal

3) M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd., Indore

4) M.P. Industrial Development Corporation Ltd., Indore

5) West Central Railways, Jabalpur

- **Respondents**

Shri Abhinav Anand, AE appeared on behalf of the petitioner.

Petitioner's submissions:

2. The petitioner Madhya Pradesh Power Transmission Company Limited, Jabalpur (MPPTCL) has broadly submitted the following:

- i. *MP Power Generating Co Ltd. (MPPGCL) has proposed installation of 1 x 660MW new Super Critical Unit at Amarkantak Thermal Power Station, Anuppur in place of Phase-I (2 x 30 MW) and Phase-II (2 x 120 MW) units and schedule to be commission by*

January-2027. In order to examine and finalize the power evacuation arrangement from new 1 x 660 MW Unit ATPS, Chachai, a Committee comprising of officers from MPPGCL and MPPTCL was constituted and after several meetings, the Committee has finalized the power evacuation arrangement and the scope of works to be executed by MPPGCL and MPPTCL are as given here under:-

Works to be executed by MPPGCL:

- a. Construction of 400/220 KV Substation with 1 x 500 MVA, 400/220 KV transformer at ATPS.
- b. Construction of 2 Nos. 400 KV feeder bays with 1 No. 1 x 50 MVAR line reactor on ATPS-Katni line section.
- c. Provision of 220 KV feeder bays in existing ATPS 220 KV switchyard to terminate 6 Nos. 220 KV existing circuits.

Works to be executed by MPPTCL:

- a. LILO of one circuit of Birsinghpur TPS-Katni 400 KV line at ATPS new 400 KV switchyard.
 - b. Charging of second circuit of Katni-Damoh 400 KV DCDS line (Presently charged on 220 KV between Katni and Damoh 220 KV S/s) on 400 KV level between Katni and Damoh (PGCIL) S/s.
 - c. LILO of both circuits of ATPS-Shahdol-Sidhi 220 KV line at Amarkantak (Anuppur) 220 KV S/s.
 - d. Re-routing of ATPS-Anuppur interconnector and RTS feeders from ATPS switchyard to Amarkantak (Anuppur) 220 KV Substation.
 - e. Re-routing of existing 220 KV lines outside the existing ATPS 220 KV switchyard as per 220 KV bay position / provisions.
- ii. The power evacuation arrangement to be executed by MPPTCL has been approved in the 11th Consultation Meeting for Evolving Transmission Scheme in Western Region (CMETS-WR) held on 30.09.2022.
- iii. On approval of the Board, the survey of the line work has been completed and based on the detail survey the estimation for LILO of one circuit of Birsinghpur TPS-Katni 400 KV line at ATPS new 400 KV Switchyard has been worked out to Rs. 368 Crore.

iv. *Energy Deptt., Govt. of MP vide letter No. 9009/2023/XIII/04 dated 05.09.2023 accorded in principle approval to carry out aforesaid work through Regulatory Tariff Mechanism and also directed to obtain approval from the MPERC for relaxation in threshold limit mentioned under Clause-2 of 1st amendment of MPERC (Terms and Conditions for determination of Transmission Tariff) (Revision-IV), Regulations, 2020 {RG-28(IV) of 2020}*” issued by the Commission on dated 23rd January 2023.

v. The instant petition is being filed under the following provisions -

(a) *Clause 7.1 (Sr. No. 7 & 8) of Tariff Policy 2016 issued by Ministry of Power, Government of India issued on 28th January, 2016 –*

*(7) While all future inter-state transmission projects shall, ordinarily, be developed through competitive bidding process, the **Central Government** may give exemption from competitive bidding for (a) specific category of projects of strategic importance, technical upgradation etc. or (b) works required to be done to cater to an urgent situation on a case to case basis.*

(8) CERC has specified Regulation on framework for the inter-State transmission. A similar approach should be implemented by SERCs for the intra-State transmission, duly considering factors like voltage, distance, direction and quantum of flow.

(b) *Para 7 of MPERC Order dated 15th January 2021 in the matter of the Threshold Limit for Intra-State Transmission projects in MP in accordance with clause 5.3 of Tariff Policy dated 28/01/2016.*

(7) In view of all aforesaid and considering the aforesaid submissions of MPPTCL, the Commission hereby decides that in the State of Madhya Pradesh, the intra-state transmission projects shall be developed by State Government through competitive bidding process for projects costing above a threshold limit of Rs. 250 Crore (Rupees Two Hundred and Fifty Crores) in accordance with Clause 5.3 of the Tariff Policy dated 28/01/2016. However, the Commission has not considered yearly escalation in the threshold limit. The threshold limit shall be reviewed at the time of commencement of next MYT control period (from FY 2024-25) on a reasoned

proposal received from the Government of Madhya Pradesh / MPPTCL. Under special circumstances, deviation from the aforesaid threshold limit may be considered by the Commission on a case to case basis on a reference made by the Government of Madhya Pradesh / MPPTCL.

vi. The petitioner prayed as under;

Kindly accord approval for relaxation in threshold limit for development of power evacuation system for proposed 1x660MW Super Critical Unit at Amarkantak Thermal Power Station (ATPS), Chachai by MPPTCL through Regulated Tariff Mechanism (RTM).

Procedural History:

3. Motion hearing in the matter was held through video conferencing on 29th November, 2023. The Commission heard the petitioner and reserved the case for Orders on admissibility of the petition. Daily Order dated 29/11/2023 was issued.

Commission's Observations & Analysis:

4. On perusal of the subject petition and the relevant documents on record, the Commission observes the following:

i. Clause 5.3 of the Tariff Policy dated 28/01/2016 notified by the Ministry of Power, Government of India, New Delhi provides as under;

*“5.3... intra-state transmission projects shall be developed by State Government through competitive bidding process for projects costing above a **threshold limit** which shall be decided by the SERCs”.*

ii. MPERC issued Order dated 15/01/2021 in the matter of the threshold limit for intra-state transmission projects in Madhya Pradesh in accordance with Clause 5.3 of the Tariff Policy dated 28/01/2016 broadly mentioning the following:

“The Commission hereby decides that in the State of Madhya Pradesh, the intra-state transmission projects shall be developed by State Government through

*competitive bidding process for projects costing above a **threshold limit of Rs. 250 Crore** (Rupees Two Hundred and Fifty Crores) in accordance with Clause 5.3 of the Tariff Policy dated 28/01/2016. However, the Commission has not considered yearly escalation in the threshold limit. The threshold limit shall be reviewed at the time of commencement of next MYT control period (from FY 2024-25) on a reasoned proposal received from the Government of Madhya Pradesh / MPPTCL. Under special circumstances, deviation from the aforesaid threshold limit may be considered by the Commission on a case to case basis on a reference made by the Government of Madhya Pradesh / MPPTCL”.*

iii. Hon’ble Supreme Court of India in Judgment dated 23/11/2022 in Civil Appeal No. 1933 of 2022 in Tata Power vs MERC has directed as under:

*“We direct all State Regulatory Commissions to frame Regulations under Section 181 of the Act on the terms and conditions for determination of tariff within three months from the date of this judgment. While framing these guidelines on determination of tariff, the Appropriate Commission shall be guided by the principles prescribed in Section 61, which also includes the NEP and NTP. Where the Appropriate Commission(s) has already framed regulations, they shall be **amended** to include provisions on the criteria for choosing the modalities to determine the tariff, in case they have not been already included. The Commissions while being guided by the principles contained in Section 61 shall effectuate a balance that would create a sustainable model of electricity regulation in the States. The Regulatory Commission shall curate to the specific needs of the State while framing these regulations. Further, the regulations framed must be in consonance with the objective of the Electricity Act 2003, which is to enhance the investment of private stakeholders in the electricity regulatory sector so as to create a sustainable and effective system of tariff determination that is cost efficient so that such benefits percolate to the end consumers”.*

iv. In order to comply with the directions of the Hon’ble Supreme Court, MPERC issued public notice No. 2700 dated 22/12/2022 to invite suggestions / comments / objections on the draft of the First Amendment in MPERC (Terms and conditions for determination

of Transmission Tariff) (Revision –IV) Regulations, 2020 {(RG – 28(IV)(i) of 2022} (MYT Regulations). MPPTCL vide its letter No. 5170 dated 11/01/2023 submitted its comments. Public hearing in the matter was held on 20/01/2023.

- v. MPERC issued First amendment to Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Transmission Tariff) (Revision –IV) Regulations, 2020{ARG-28 (IV) (i) of 2023}” on 23/01/2023 with amendment to Regulation 2 of the principal Regulations.

Regulation 2 as amended reads as under:

“2. Scope and extent of application:

These Regulations shall apply in all cases of determination of transmission Tariff under Section 62 of the Electricity Act, 2003 to be charged by the Transmission Licensee to Distribution Licensees/ Open Access Customers, where the capacity of the Transmission System has been allotted under MPERC (Terms & Conditions of Intra- State Open Access in MP) Regulations, 2005, as amended from time to time.

*Provided, the tariff of **all new intra-state transmission projects costing above a threshold limit of Rs. 250 Crore (Rupees Two Hundred & Fifty Crore), shall be determined through transparent bidding process and shall be adopted by the Commission under section 63 of the Electricity Act’ 2003 after prudence check in accordance with the relevant Guidelines (and its amendments) issued by the Ministry of Power, Government of India.***

- vi. The MYT Regulations do not have any provision for Relaxation in Threshold limit for TBCB projects. The petitioner has only referred to an Order of the Commission issued on 15th January, 2021 i.e. prior to the Judgment dated 23/11/2022 of Hon’ble Supreme Court in CA No. 1933 of 2022. The petitioner has neither cited any provision of Regulations in its petition while seeking changes in the threshold limit, nor has sought any change in the Regulations.

- vii. Hon'ble Supreme Court in its Judgment dated 15/03/2010 in CA No. 3902/2006 in PTC vs. CERC has observed that:-
“43. The above two citations have been given by us only to demonstrate that under 2003 Act applying the test of “general application”, a Regulation stands on higher pedestal vis - a - vis an Order (decision) of CERC in the sense that an Order has to be in conformity with the Regulations.....”
- viii. With the above citation, it is amply clear that the Order dated 15th January, 2021 of this Commission, which the petitioner is relying upon to seek relaxation in the threshold limit for TBCB projects, cannot overtake the MYT Regulations as amended on 23/01/2023.
- ix. Existing MYT Regulations issued by the Commission shall be in force upto 31/03/2024. The process to issue MYT Regulations for future control period is likely to commence shortly. CERC vide public notice dated 26/05/2023 had already sought comments and suggestions on the Approach paper in the matter of terms and conditions of Tariff for the period commencing from 01/04/2024. MPERC shall also issue public notice to invite comments and suggestions on the Draft of MYT Regulations for control period w.e.f. 01/04/2024 in due course of time. The petitioner is at liberty to submit its comments with respect to threshold limit at that time.
5. In view of aforesaid legal provisions, the Commission observes that the Petitioner has not invoked any provisions of the applicable MYT Regulations, nor do the existing Regulations contain any provision for relaxation in Threshold limit for TBCB projects. Therefore, the Commission is of the considered view that the subject petition is not admissible. As such, the subject petition stands dismissed and disposed of.

Ordered accordingly.

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S. P. S. Parihar)
Chairman