

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL**

**Sub: Subject: In the matter of True up petition for FY 2012-13 for MPAKVN(II)L, Indore for SEZ area.**

**ORDER**

**Date of order: 07/10/2016**

**Madhya Pradesh Audyogik Kendra  
Vikas Nigam (Indore) Ltd.**  
Free Press House, First Floor,  
3/54, Press Complex, Agra-Mumbai Road,  
**Indore – 452 018.**

**Petitioner**

Shri S.K. Pal, E.E, Shri Ajay Porwal, Consultant and Shri A. Choure, Legal Officer appeared on behalf of petitioner.

2. The petitioner has filed the subject petition for final true up of ARR for FY 2012-13 against the Commission's Retail Supply Tariff Order for FY 2012-13 for SEZ Pithampur issued on 20.09.2012 in respect of petition no. 16/2012. The petitioner has requested to consider the net ARR of Rs. 92.53 Crore and indicated a net gap of Rs 2.19 Crore as per following details -

*(Amount in Rs. Crore)*

<i>S.No.</i>	<i>Particulars</i>	<i>As per Tariff Order</i>	<i>Actual as claimed</i>
1	Power Purchase Cost	83.05	79.25
2	Transmission Cost	4.10	-
3	R&M Expenses	0.53	0.21
4	Employee Expenses	1.87	3.51
5	A&G Expenses	1.27	6.34
6	Interest & Finance Charges	0.63	0.77
7	Depreciation & Amortisation	0.37	0.41
8	RoE including Interest on Normative Loan	0.91	0.89
9	Interest and Bank Charges	-	0.09
10	Net prior period charges/(credit)	-	(0.85)
11	Income Tax	0.11	2.09
12	Gross ARR	92.84	92.71
13	Less: Other Income	0.10	0.18
14	Net ARR	92.74	92.53
15	Revenue from sale of power	92.74	90.34
16	<b>Surplus / (Gap)</b>	-	<b>(2.19)</b>

3. The motion hearing in the matter was held on 04/08/2015. The Commission had observed that the petitioner had not filed the requisite separate audited accounts for power business of SEZ in compliance to the provisions under Section 51 of the Electricity Act, 2003 despite of repetitive directions of the Commission given in the tariff orders issued by the Commission in past years. Instead, the petitioner furnished the consolidated accounts of MPAKVN(II)L Indore along with the expenses incurred on retail supply business carved out from the consolidated accounts on some apportionment basis certified by the Chartered Accountants. The Commission had also

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observed that the petition was grossly deficient for want of certain vital information/data gaps. Therefore, the Commission had not admitted the petition. The data gaps and additional information requirement were conveyed to the petitioner vide Commission's letter dated 17/08/2015. In the event of non-submission any response to the Commission's aforementioned letter a reminders was also sent on 07/10/2015. The petitioner's response of 02/12/2015 was received in the office of the Commission on 05/12/2015.

4. The observations of the Commission in respect of the submission of the requisite audited accounts conveyed to vide Commission's letter dated 17/08/2015 are given below:

1. *The petitioner has claimed that certified copy of final audited account statement and auditor's report for FY 2012-13 with sign and seal of the Auditor is attached with the petition. Scrutiny of the petition has revealed that the petitioner has attached the annual accounts and abstract of Profit and Loss Statement for power business certified by Chartered Accountants. The petitioner being a deemed distribution licensee is required to comply with second proviso of section 51 of the Electricity Act 2003. Extract of the same is reproduced below:*

***...Provided further that the distribution licensee shall maintain separate accounts for each such business undertaking to ensure that distribution business neither subsidies in any way such business undertaking nor encumbers its distribution assets in any way to support such business.***

*Further, in the matter of Petition No. 16/2012 for determination of ARR and retail supply tariff order for SEZ area, Pithampur of MPAKVN(I) Ltd. for FY 2012-13 dated 20th September, 2012, the Commission had categorically stated the requirement of annual accounts for power business duly audited by the statutory auditors for True-up. Accordingly, the petitioner is required to furnish separate annual accounts for power business duly audited by the statutory auditors.*

2. *The petitioner as a deemed distribution licensee is required to comprehensively comply with "the Conditions of distribution license for distribution licensee (including deemed licensee), 2004 and as amended from time to time, notified by the Commission under section 16 of the Electricity Act, 2003. Clause "7 - ACCOUNTS" of the aforementioned conditions specifies the provisions for preparation and maintenance of the various Financial Statements by a licensee. Further, in the aforesaid conditions of license the "Auditors" have been defined as "the Licensee's auditors holding office in accordance with the requirement of Section 224 or Section 619 as appropriate, of the Companies Act, 1956". Since, petitioner is a Govt. Company, Section 619 of the Companies Act shall apply and accordingly, the auditors for petitioner for preparation and maintenance of the accounts for power business shall be appointed by the Comptroller and Auditor General of India (CAG).*

3. *In view of the foregoing the petitioner is required to establish/substantiate that the separate accounts for power business filed for true-up are as per the requirement of the Electricity Act 2003 and the Conditions of distribution license for distribution licensees (including deemed licensee), 2004 as amended from time to time.*

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5. In response vide the letter dated 02/12/2015 the petitioner has submitted as below:

*1. MPAKVN (I) Ltd is the notified developers of SEZ area in Indore. MPAKVN (I) Ltd is also a deemed distributing licensee of power in SEZ area. For the Financial year 2012-2013 MPAKVN (I) Ltd has prepared its accounts by accumulating all the income arrive from several sources. They are including Lease rent, Maintenance Charges, Water Charges, and Sales of Power etc. One of the Business activities of MPAKVN (I) Ltd is the distribution of Power, therefore MPAKVN (I) Ltd.'s final accounts consisting of Power Distribution activities also.*

*In the books of MPAKVN (I) Limited, all the ledger accounts pertaining to Power business activities of SEZ area are maintained separately and specifically headed with "SEZ-POWER". As per requirement only one set of statutory Books of Accounts need to be maintained, therefore it covers Power Business also.*

*Statutory Auditor of the Company is appointed by CAG u/s. 619 (2) of The Companies Act, 1956. Statutory Auditors of the Company has audited books of accounts of MPAKVN (I) Ltd. including Power business .Similarly CAG audit was also carried out of MPAKVN (I) Ltd as a whole, including Power distribution business and related activities.*

*Audited Abstract of the Power business of the Company was prepared from the Balance Sheet, which is audited, and Signed by Statutory Auditors of the Company and which is also audited by CAG. It means Power Business activities were audited by Statutory Auditors as well as by CAG Audit team also. Hence Power Balance Sheet abstract can also considered to be audited by both Statutory Auditor as well as CAG audit also.*

*2. Statutory auditor of the Company is appointed by Comptroller and Auditor General of India (CAG) u/s. 619 (2) of the Companies Act, 2013. The duty of appointed Statutory Auditor is to do the Audit of complete books of accounts of the Company and all the business activities. Out of several business activities of the Company, one of the activities is Power Business, hence while auditing books of accounts of MPAKVN (I) Ltd; Power Business is also audited by the Statutory Auditor.*

*3. In the light of reply given against point nos. 1 & 2, therefore the Hon'ble Commission is requested to consider the same while allowing the true up for FY 2012-13.*

6. The Commission has observed that the petitioner has been incomprehensibly responding on the issue of complying the specific directives given by the Commission regarding exclusively maintaining and submission of separate audited accounts in respect of the distribution and retail supply of electricity business in the SEZ area by the licensee MPAKVN(I)L. The Commission has comprehensively dealt with this subject in the Order passed by the Commission on 09/08/2016 in the matter of determination of ARR and retail supply tariff for FY 2016-17 in the Petition No. 01 of 2016. Accordingly, the petitioner ought to fulfill the statutory provisions under the Commission's jurisdiction established through various provisions of the Acts.

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7. In the meantime, certain endorsements by the petitioner, CAG and GoMP have been made to the Commission with regard to various communications held between them in respect of conducting the special / supplementary statutory audit of the petitioner's annual accounts. A perusal of these correspondences has revealed that subsequent to the reference from the petitioner, GoMP asked the CAG for regular supplementary audit of the balance sheet pertaining to the power business of MPAKVN(I)L as the comprehensive balance sheet of MPAKVN(I)L had already been audited. In response vide letter dated 03/05/2016 the CAG has stated that a special audit of MPAKVN(I)L power business activity in terms of clause 17 of Regulation of Audit and Accounts, 2007 is found necessary. Further, Govt. of Madhya Pradesh, Commerce, Industries and Employment Department, vide letter dated 26/08/2016 has requested the Accountant General for special audit of the power business activities of MPAKVN(I)L for FY 2010-11 to 2015-16 under clause 17 of the Regulation on Audit Accounts 2007 and also audit of power business activities of MPAKVN(I)L from FY 2016-17 onwards under the scope of regular supplementary audit.

8. In view of the facts and circumstances narrated in the paragraphs hereinabove, the Commission has noted that instant petition has been lying pending before the Commission since about a year due to reluctance of the petitioner on submission of the requisite audited accounts and hence the matter has been unnecessarily delayed. Further, the Commission has also observed that even if taking cognizance of the request of Commerce, Industries and Employment Department, Govt. MP the audit of the power business activities of MPAKVN(I)L for FY 2010-11 to 2015-16 for SEZ area would now be expected to commence, it would definitely take substantial time for finalization. The finalized audited accounts would also have bearing on the filings of the petitioner in the matter of various true up petitions filed before the Commission and consequently the petitions may undergo significant alterations. Under such circumstances it would not be appropriate to keep the instant petition pending further. The petitioner is therefore, directed to file the revised petition in accordance with the requisite audited accounts when they are available. The instant petition is thus disposed of.

9. Ordered accordingly.

**(Alok Gupta)**  
**Member**

**(A. B. Bajpai)**  
**Member**

**(Dr. Dev Raj Birdi)**  
**Chairman**