

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub : In the matter of recovery of proportionate expenses towards augmentation of distribution system.

Petition No. 38/2011

ORDER

(Date of hearing 19th December, 2011)

(Date of order 22nd September, 2012)

M.P.Madhya Kshetra Vidyut Vitaran Co. Ltd., - Petitioner
Nishtha Parisar, Govindpura, Bhopal.

Shri P.M.Tilloo, AE (Comm.) and Shri Enosh George Carlo, Advocate appeared on behalf of the petitioner.

2. The petitioner MP Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal has filed this petition in the matter of recovery of proportionate expenses towards augmentation of distribution system.

3. A Suo-Moto petition (SMP-49 of 2009) was registered by the Commission, in the matter of recovery of proportionate expenses towards augmentation of distribution system as per KVA basis by the distribution Licensee. Vide order dated 13.11.2009 the Commission opined that the respondent Discoms ought to have obtained approval of the Commission, for any change in implementation of the Regulations. The Commission directed the Discoms to withdraw the demand of proportionate expenses from those EHT/HT consumers and colonizers/developers who have been served or handed over the infrastructure during the period from 24.11.2006 to 06.09.2009 and further directed to refund such charges to the consumers who have already paid either fully or partially.

4. Aggrieved with the aforesaid order, the petitioner filed an appeal before the Hon'ble Appellate Tribunal. Vide order dated 22.02.2011, Hon'ble APTEL remanded the matter back to the Commission for de-novo consideration. Hon'ble APTEL also directed the Commission to decide the issue uninfluenced by any of the observations made in its order dated 13.11.2009. Accordingly, the present petition has been filed by the petitioner.

5. The petitioner contended that the provisions of Chapter V of the MPERC

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(Recovery of expenses and other charges for providing electric line or plant used for purpose of giving supply) Regulations, 2006, specifically authorizes the petitioner to recover such expenses for up-gradation / augmentation on proportionate basis from the consumer. However, the said Regulation does not prescribe any specific rate or charges for recovery of proportionate expenses for augmentation / up-gradation of the system.

6. The petitioner submitted that the most rational justified method to calculate the proportionate expenses to be recovered from a particular person could be on kVA basis i.e. the connected load to the consumer. It was further stated that in absence of any prescribed method, the one adopted by the petitioner has been completely misunderstood to be the same as other charges allowed to be recovered by the petitioner on KVA basis.

7. The petitioner further mentioned that under the said Regulation there is no further requirement to obtain any specific approval from the Commission for charging such expenses. The petitioner further asserted that each consumer who sought supply of electricity during the period 24.11.2006 to 06.09. 2009, is required to pay the proportionate and reasonable expenses incurred on up-gradation / augmentation as per the provisions of Clause 5.4 of the aforesaid Regulation.

8. Further it was contended that the Commission lacks jurisdiction to direct the refund of the amount already collected by the petitioner during the period 24.11.2006 to 06.09.2009. The petitioner contended that contention of the consumers in their representation before the Commission in SMP No. 49/2009, for charging the cost towards strengthening of system twice is totally misleading and incorrect. The petitioner filed an affidavit before the APTEL, stating that no expenses, incurred on up-gradation / augmentation of system, have been recovered twice.

9. In light of the above submissions the petitioner has prayed as under:

- a. Allow the petition and set aside the order dated 13.11.2009 passed by the Commission.

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- b. Allow the petitioner to recover the charges due in the period 24.11.2006 to 06.09.2009 from the consumers for which augmentation of system was done.

10. The case was listed for hearing on 21.06.2011. During the hearing on 21.06.2011, the advocate for the petitioner made a submission that he was not ready to argue in the matter that day and requested the Commission to adjourn the case for a next date. The next date of hearing was fixed on 26.07.2011.

11. During the hearing on 26.07.2011, the representative of the petitioner requested for adjournment of hearing on the ground that the senior advocate was un-well. The Commission considered the request and fixed the next date of hearing as 20.09.2011.

12. During the hearing on 20.09.2011, the representative of the petitioner requested for adjournment of hearing on the ground that the Senior Advocate was busy attending cases in other courts. The Commission considered the request of the petitioner and adjourned the hearing.

13. The case was listed for hearing on 22.11.2011 which was rescheduled to 19.12.2011.

14. During the hearing on 19.12.2011, the representative of the petitioner reiterated the contents of the petition and submitted that the decision of the Commission in Suo Motu Petition No. 49/2009 was against the spirit of MPERC (Recovery of expenses and other charges for providing electric line or plant used for purpose of giving supply) Regulations, 2006. He also submitted that an appeal was filed in the Appellate Tribunal for Electricity against the above order and the Appellate Tribunal for Electricity directed the petitioner to file a separate petition before the Commission and the respondent Commission was directed to consider the issue on merits thus, remanding the matter to be considered afresh.

15. During the hearing, the Commission enquired from the petitioner whether the distribution system includes transmission system. The representative of the petitioner

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submitted that any consumer is the consumer of the distribution system as there is no definition of transmission system in the Electricity Act, 2003. Also there is no formula in the Regulation for working out the amount. The Commission further asked the petitioner if other two Distribution Licensees have not recovered the proportionate expenses then why only the Central Discom was recovering the same. The representative of the petitioner submitted that the Central Discom was recovering proportionate expenses as per the provisions of Clause 5.4 of the Regulation which entitles the Distribution Licensee to recover from the consumer such proportionate expenses reasonably incurred.

16. For proper appreciation of the issue the relevant provisions in the regulation need to be recapitulated. These are as under:

“5.1. In case of applications where there is a need to erect a new Power Sub-station, HT line/EHT line from the sub-station or extend the existing HT/EHT line or undertake improvement/augmentation works in the station or works of strengthening the line in order to extend supply up to the metering point to the applicant, the Distribution Licensee in case of HT, and Distribution Licensee in co-ordination with Transmission Licensee in case of EHT shall prepare an estimate for arranging such power supply corresponding to the applicant’s actual requirement and provide the estimate to the applicant for arranging payment to the Licensee.

5.2 The estimate shall be prepared by the distribution licensee based on Schedule of Rates approved by the Commission. In addition to above, new service connection charges @ Rs. 100 per KVA of contract demand shall also be payable by the consumer limited to a maximum of Rs. 1,00,000 (Rupees One Lakh only).

5.3 The distribution licensee after duly collecting the estimated amount and charges for new service connection from the Applicant and executing agreement may carry out the work. Alternatively the Applicant, if he so desires, shall be permitted to deposit supervision charges at the following rates of material

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component of the estimated cost of work and on depositing such supervision charges, the work may be got executed by the Applicant through an approved licensed contractor/agency:-

Estimated cost of material Rate of supervision charges.

For up to Rs. 2 Crores 5% of estimated cost of material

For above Rs. 2 Crores but up to Rs. 5 Crores 2.5% of estimated cost of material

For above Rs. 5 Crores 1.5% of estimated cost of material

5.4 Where the provision of supply to an applicant entails works of augmentation of the distribution system, the Distribution Licensee shall be authorized to recover from the applicant such proportion of the expenses reasonably incurred on such works of the incremental capacity that will be created by augmentation of the distribution system.”

17. It would be seen that provision in 5.1 allows recovery of cost of EHT & HT line as also allows recovery of cost for new sub-station/augmentation of capacity of sub-station, if required. The clauses 5.2 and 5.3 detail the procedure to be allowed and also extend an option to the consumers to create the required infrastructure by paying prescribed supervision charges. The point of contention is clause 5.4 of the Regulations. It is contended that the distribution system mentioned therein also includes transmission system and therefore allows the Distribution Company to recover cost of augmenting EHV transformers. The Distribution Company has fixed these charges on per KVA basis and this petition seeks that such recoveries be upheld. The definition of distribution system as provided in sub-section 19 of Section 2 of the Act and which is also included in the said Regulation is as under:

“Distribution System means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers.”

18. The contention herein is that the words “or the generating station connection” also includes transmission system. This interpretation is not valid as this is an alternative to “delivery point on transmission lines”. All the HT/EHT consumers of the

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petitioner are connected to the transmission lines and not to the generating station. The contention therefore that mention of distribution system bestows a right to them to recover cost of augmentation of intervening EHV transformers is farfetched and is rejected. Another pertinent issue is that this matter pertains to be period 24/11/2006 to 06/09/2009. For this period, the tariff for Transmission Company has already been decided allowing for serving of all such assets as are held by them. Any recovery by the Distribution Company on this account may tantamount to double recovery. However, the Director (Finance) of the Distribution Licensee vide letter no. CMD/MK/05/Spl/Exp.-05/2855 dated 08.02.2011 has already clarified with regard to issue of double charge relating to augmentation charges.

19. On hearing the petitioner, the Commission holds that the distribution licensee is entitled to recover expenses for improvement/augmentation of EHV substation under the provisions of Clause 5.1 of MPERC (Recovery of expenses and other charges for providing electric line or plant used for purpose of giving supply) Regulations, 2006 on establishing that such improvement/augmentation was needed for that specific consumer. The Commission maintains that the distribution licensee cannot recover these charges in a generalized manner on per KVA basis as per then extant regulations. As this matter pertains to period from November 2006 to September 2009, the licensee needs to ensure that cost of servicing assets created out of expenses claimed as above was not included in the ARR of respective years by Transco/Discom. The Commission also holds that since the matter is considered afresh as per the directions of Hon'ble APTEL, the impugned order dated 13.11.2009 passed by the Commission in SMP No. 49/2009 shall be considered as withdrawn.

20. With the above directions, the Petition No. 38 of 2011 stands disposed of.

Ordered accordingly,

Sd/-
(C.S.Sharma)

Member (Eco.)

Sd/-
(Rakesh Sahni)

Chairman