

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: Petition under Sections 61, 62 and 86(1)(b) of the Electricity Act 2003 read along with Regulation 61.5 and Regulation 66 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 for waiver of incentive payable to a Generating Company as per Regulation 42.6 of the aforesaid Regulations, 2020.

ORDER

**Date of Hearing- 14th June, 2022
(Hearing through video conferencing)
(Date of Order 13th July' 2022)**

1. Managing Director,
M.P. Power Management Company Ltd.,
Block No. 15, Shakti Bhawan,
Rampur, Jabalpur – 482008

2. The Managing Director,
M.P. Power Generating Co. Ltd.
Block No. 9, Shakti Bhawan,
Rampur, Jabalpur – 482 008

- Petitioners

Vs.

1. The Managing Director
M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd.
Shakti Bhawan, Rampur, Jabalpur.

2. The Managing Director
M. P. Madhya Kshetra Vidyut Vitaran Co. Ltd.
Nishtha Parisar, Govindpura, Bhopal.

3. The Managing Director
M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd.
GPH Compound, Polo ground, Indore.

Respondents

Shri Aashish Anand Bernard, Advocate appeared on behalf of the petitioner No. 1.

Shri S.K. Saxena, Chief Engineer appeared on behalf of the petitioner No. 2.

Shri Deepak Chandela, DGM appeared on behalf of Respondent No. 1.

M.P. Power Management Company Ltd. and M.P. Power Generating Company Ltd. have jointly filed this petition seeking approval of the Commission for waiver of incentive payable to petitioner No. 2 (MP Power Generating Company Ltd.) by the

petitioner No. 1 (MPPMCL) as per Regulation 42.6 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. The subject petition is filed under Sections 61, 62 and 86 (1) (b) of the Electricity Act, 2003 read with Regulation 61.5 and Regulation 66 of the aforesaid MPERC Regulations, 2020. All the three Distribution Companies are Respondents in this matter.

2. Earlier, the petitioner No. 1 (MPPMCL) had filed petition No. 03 of 2021 for waiver of incentives relating to thermal generating stations payable by the petitioner No. 1 to the M.P. Power Generating Company Ltd. (MPPGCL) under Regulation 42.6 of the MPERC Generation Tariff Regulations, 2020. In the aforesaid petition, MPPGCL was Respondent No. 1.
3. Vide Order dated 26th February' 2021 in aforesaid petition No. 3 of 2021, MPPMCL and MPPGCL were directed to approach the Commission jointly in terms of Regulation 61.5 of MPERC Generation Tariff Regulations, 2020 with the observation that as per the Regulation 61.1 of the Regulations, 2020, the generating company and beneficiary may mutually agree to charge a lower tariff and they are required to approach the Commission for charging lower tariff in accordance with Regulations 61.1 and 61.3.
4. With the above observation, the aforesaid petition No. 3 of 2021 was disposed of with liberty to file afresh petition in terms of Regulation 61.5 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020.
5. Accordingly, MP Power Management Company Limited (beneficiary) and the MP Power Generating Company Limited (Generator) have jointly filed this petition seeking approval for waiver of the incentive payable by the petitioner No. 1 to the petitioner No. 2. In the subject petition, the petitioners have broadly submitted the following:
 - i. *The Petitioner No.1, vide letter dated 04.08.2020 had requested Petitioner No.2 for waiver of incentive, as this results in enhancement of financial burden on Petitioner No.1 due to higher purchase cost due to inclusion of incentive cost over ECR and are compelled to purchase power from other Generating Stations having lower Sale cost. However, on waiver of incentive, generator will get higher schedule and accordingly the generating stations of petitioner No. 2 will operate at higher PLF (%) then normative NAPLF (%) which will lead to reduction in Auxiliary Power Consumption, Specific Coal and Oil Consumption etc. result in lower generation cost.*

- ii. *In response to request of Petitioner No. 1, Petitioner No. 2 vide its letter dated 13.11.2020 has informed to Petitioner No.1 that MPERC Regulation does not permit mutual acceptance for waiver of incentive. For this, permission/ directive from the Commission, is required to be obtained, by Generating Company and the Beneficiary, as per the Regulation 61.3 and 61.5 of Regulation 2020 for which both are required to file a joint petition in the matter before the Commission.*
- iii. *The instant petition is being filed by the Petitioner No.1 and 2 under section 61, 62 and section 86(1)(b) of the Electricity Act, 2003 read along with regulation 61.5 and regulation 66 of the MPERC (Terms and Conditions for determination of Generation tariff)Regulations, 2020 to seek approval of the Commission to the consent between the parties (Petitioners and Respondents) towards waiver in payment of Incentive by the Petitioner No.1 to the Petitioner No.2 as per Regulation 42.6 of the MPERC (Terms and Conditions for determination of Generation tariff)Regulations, 2020.*
- iv. *It is to submit that Units of Petitioner No.2 (MPPGCL) are performing well and some of its units may reach the normative target of normative NAPLF (%) set by MPERC and then thereafter scheduling of Ex-bus power above normative NAPLF (%) shall attract incentives for these stations. Any denial of scheduled energy by Petitioner No.1 (MPPMCL) will result in running of Units on reduced/ partial load or put under RSD which may further result in higher Auxiliary consumption, higher Heat Rate etc, and shall lead to higher commercial loss to MPPGCL. In view of above it is to submit that at times the commercial loss on running the Units on partial Load may exceed the Incentive receivable.*
- v. *After achieving the Normative NAPLF (%) as defined in Regulation 49.2 (e) and Regulation 49.3 (B) of the MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2020, the Cost of additional energy in excess to ex-bus energy corresponding to NAPLF (%) will be inclusive of incentive.*
- vi. *The benefit of the waiver of incentive on achievement of higher PLF of Power Stations of Petitioner No. 2, shall result in reduced cost of the power purchased i.e. at ECR without Incentive by the Petitioner No.1 from the Thermal Power Plants of Petitioner No.2 and thereby directly benefit the Respondents No.1, 2 and 3 in terms of cheaper cost of power purchase and supplied to the ultimate downstream consumers.*

- vii. *Scheduling of Ex-bus power from a generating station is being done by Petitioner No.1 (MPPMCL) as per Merit order Dispatch (MOD) defined under Sub Clause (3) (Merit Order Operation) of Clause 5 (Scheduling and Despatch) of the Madhya Pradesh Electricity Balancing and Settlement Code, 2015 and under Sub Clause 8.3.8 of Clause 8.3 of Section – 8 (Schedule and Despatch) of the Madhya Pradesh Electricity Grid Code (Revision – II), 2019 (No.- RG-14(ii) of 2019).*
- viii. *It is submitted that though incentive to be paid, as per proviso 42.6 of MPERC's (Terms and Conditions for determination of Generation tariff) Regulation 2020, does not constitute a part of Variable Cost (ECR) for computation of MoD, even then this will result in higher cost of power purchase for additional energy due to levy of incentive on additional energy. Petitioner No. 1 therefore shall prefer to schedule less power from the Thermal Power Stations of Petitioner No.2 who has achieved NAPLF (%), even when they will be qualifying for scheduling in MoD.*
- ix. *Subsequent to waiver of incentive by Petitioner No. 2, the Petitioner No.1 shall not restrict and continue to schedule the energy of Thermal Power Stations of Petitioner No2 above normative NAPLF (%) as they will get additional power in excess of ex-bus energy corresponding to NAPLF (%) at lower rate i.e. at ECR without incentive.*
- x. *The details of incentive pertaining to past years are summarized as below:*

Financial Year	Amount of incentive as per Regulations (Rs. Crores)
<i>FY 2017-18</i>	<i>7.47</i>
<i>FY 2018-19</i>	<i>5.07</i>
<i>FY 2019-20</i>	<i>6.05</i>
<i>FY 2020-21</i>	<i>20.65</i>

- xi. *It is submitted that Petitioner No.2 (MPPGCL), though facing acute liquidity crunch (Receivables are to the tune of Rs.7500 Crores at present), by optimising its resources, is operating its business at marginal Profit. MPPGCL has achieved financial turnaround in FY 2016-17 and since then is earning marginal profit in every financial year. Petitioner No.1 is facing acute financial crunch since long and requesting Petitioner No. 2, time to time, for waiver of payables by petitioner No.1.*
- xii. *Petitioner No. 2 (MPPGCL), since April 2012, has waived / Written off, quite large amount till now in spite of revenue receivable/ outstanding since past few years and*

even at present to the tune of Rs. 7500 Crores. The amount of incentive, qualified for payment as per relevant Regulations, in past few years, is very meager amount when compared to Annual Revenue Requirement of Respondents (Discoms).

It is also to submit that on considering the waiver of incentive under prevailing conditions, generator will get higher schedule and accordingly the generating stations of petitioner No. 2 will operate at higher PLF (%) than normative NAPLF (%) which will lead to reduction in Auxiliary Power Consumption, Specific Coal and Oil Consumption etc. resulting in lower generation cost.

- xiii. The Petitioner No.2 hereby gives/ conveys its consent to grant waiver towards the payment of incentive received by it, as per regulation 42.6 from the Petitioner No.1 (MPPMCL) for the additional power in excess of ex-bus energy corresponding to NAPLF% purchased from Thermal Power Plants of Petitioner No. 2
- xiv. The Petitioner No.1 (MPPMCL) & Petitioner No.2 (MPPGCL), both are facing financial crunch. The subject proposal of waiver of incentive will improve financial liquidity of Petitioner No. 1, to pay for respective invoices of the Petitioner No. 2. This will improve cash flow of Petitioner No. 2. Therefore, the proposal of Petitioner No.1 (MPPMCL) limited to waiver of incentive duly consented by Petitioner No.2, is submitted herewith for consideration, before Hon'ble Commission and to pass such orders as Hon'ble MPERC finds appropriate in light of the facts and circumstances of the case, to grant relief to Petitioners.

6. With the above submission, the petitioners prayed the following:

Approve, under section 61, 62 and 86(1)(b) of the Electricity Act, 2003, read along-with regulation 61.5 and 66 of the MPERC (Generation Tariff) Regulations, 2020, the grant of waiver in payment, by the Petitioner No.1, explicitly for payment of incentive to the Petitioner No.2 as per regulation 46.2 of the MPERC (Generation Tariff) Regulations, 2020;

- 7. Subject petition was admitted on 26.04.2022. Vide daily order dated 27.04.2022, the petitioners were directed to serve copy of the petition to Respondents within seven days. The Respondents were directed to file response on the subject petition within two weeks, thereafter. The petitioners were asked to file rejoinder within a week, thereafter.
- 8. At the hearing held on 14th June' 2022, it was noted that only Respondent No. 1, i.e., M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd. had filed reply to the subject petition

confirming that they are agreed with the prayer in subject petition. No reply was received from Respondent No. 2 and 3.Ld. Counsel, who appeared for petitioner No. 1 requested to file a written note within a week. He was allowed to file the same within a week. Having heard the parties, the case was reserved for order.

Petitioner No. 1 written submission:

9. Vide letter dated 24th June' 2020, the petitioner No. 1 (MPPMCL) has submitted the following in its written submission:
 - i. *The Petitioner No.2 has passed a Board Resolution dated 24.2.2021 wherein the Petitioner No.2 Company has resolved, consented and approved to grant waiver in the payment of incentive received by it, as per regulation 42.6 from the Petitioner No.1 (MPPMCL) for the power purchased from its Thermal Power Plants. A copy of the Board Resolution dated 24.2.2021 and letter dated 18.3.2021 of the Petitioner No.2 (MPPGCL) as Annexure-3 and 4 to the Petition respectively. It is therefore submitted that there is a clear, express, voluntary and unequivocal waiver by the Petitioner No.2 from receiving the incentive payments as per regulation 42.6 of the MPERC (Generation Tariff) Regulations, 2020.*
 - ii. *The benefit of the instant waiver shall reduce the cost of the power purchased by the Petitioner No.1 from the Petitioner No.2 plant and thereby directly benefit the Respondents No.1, 2 and 3 in terms of cheaper cost of power purchase and supplied to the ultimate downstream consumer.*
 - iii. *In real terms the benefit of waiver amount shall be saved by the Petitioner No.1 and utilized for other works and thereby improve the economy of the Petitioner No.1. It is submitted that the instant cost saving is also beneficial in public interest as the same is ultimately recovered from the downstream Consumers.*
 - iv. *The waiver is also beneficial to the Petitioner No.2 as the same shall reduce the per unit power price and thereby allow the power generated by the Petitioner No.2 to fall within the Merit order Dispatch (MOD) and thus the power shall then be scheduled by the respective DISCOMS for onward supply to the consumers. Once the power is scheduled the Petitioner No.2 shall also be entitled to payment of Energy Charges and thus it can be seen that the Waiver shall also be beneficial to the Petitioner No.2, thus improving the economy and operations of the Petitioner No.2 to a great extent.*

- v. *Under section 86(1)(b) of the Electricity Act, 2003 all power purchases and the price thereof is to be regulated by the State Commissions and therefore the jurisdiction of the State Regulatory Commission is wide and expansive and it is settled law that the State Commission therefore has regulate every aspect of the power procurement process and the price therewith. This is a settled position of law and has been upheld and explained in several judgements of the Hon'ble Apex Court and also the Hon'ble Appellate Tribunal.*
- vi. *In the instant case the Commission has framed regulations under section 61 and 62 of the Electricity Act, 2003 and it is submitted that as per the judgement of the Hon'ble Apex Court in the case of PTC India Ltd Vs. CERC reported in 2010 (8) SCC 644 it has been clearly held that the regulations framed by the Regulatory Commissions are in the nature of subordinate legislations and therefore have statutory force and are therefore not in the nature of executive instructions. It is therefore submitted that it is for this Commission to approve the grant of waiver consented voluntary and expressly by the Petitioner No.2 in favour of Petitioner No.1.*
- vii. *It is reiterated that, the waiver on payment of incentive granted by the Petitioner no.2 in favour of Petitioner no.1 is in public and consumer interest and is not contrary to public interest and moreover shall also benefit the Petitioner no.2 immensely and the details of the same have been mentioned in the Petition.*

Commission's Observation and findings

- 10. The Commission has observed the following from the subject petition and subsequent written submission filed by the petitioner No. 1:
 - i. M.P. Power Management Company Ltd. and M.P. Power Generating Company Ltd. have jointly filed the subject petition seeking approval for waiver of incentive payable by the Petitioner No.1 (MPPMCL) to the Petitioner No.2 (MPPGCL) as per Regulation 42.6 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020.
 - ii. Earlier, the Commission vide Order dated 26th February' 2021 in petition No. 3 of 2021 filed by petitioner No. 1 (MPPMCL) directed MPPMCL to approach the Commission jointly with MPPGCL, in terms of Regulation 61.5 of MPERC Generation Tariff Regulations, 2020 with the observation that as per the Regulation 61.1 of the Regulations, 2020, the generating company and

beneficiary may mutually agree to charge a lower tariff and they are required to approach the Commission for charging lower tariff in accordance with Regulations 61.1 and 61.3.

- iii. Regarding the incentive payable on generation over and above the Normative Annual Plant Load Factor (NAPLF), Regulation 42.6 of the Tariff Regulations, 2020 provides as under:

“42.6 In addition to the Capacity charge, an incentive to a generating station or unit thereof shall be payable @ 65 paise/kWh for ex-bus scheduled energy during Peak Hours and @ 50 paise/kWh for ex-bus scheduled energy during Off-Peak Hours corresponding to scheduled generation in excess of ex-bus energy corresponding to Normative Annual Plant Load Factor (NAPLF) achieved on a cumulative basis within each season (High Demand Season or Low Demand Season, as the case may be), as specified in Regulation 49.2 (e) of these Regulations.”

- iv. With regard to deviation from ceiling tariff, Regulations 61 of the MPERC Tariff Regulations, 2020 provide as under:

“61. Deviation from ceiling tariff:

61.1 Tariff determined in these Regulations shall be a ceiling tariff. The generating company and beneficiaries may mutually agree to charge a lower tariff.

61.2 The generating company may opt to charge the lower tariff for period not exceeding the validity of these regulations on account of lower depreciation based on the requirement of repayment. In such case, the unrecovered depreciation on account of reduction of depreciation by the generating company during useful life shall be allowed to be recovered after the useful life in these Regulations.

*61.3 The generating company may opt to charge the lower tariff for a period not exceeding the validity of these Regulations on agreeing to deviation from operational parameters, reduction in operation & maintenance expenses, reduced return on equity and **incentive specified in these Regulations.***

61.4 The deviation from the ceiling tariff specified by the Commission shall come into effect from the date agreed to by the generating company and the beneficiaries.

61.5 The generating company and the beneficiaries of a generating station shall be required to approach the Commission for charging lower tariff in accordance with Regulations 61.1 to 61.3 above. The details of the accounts and the tariff actually charged under Regulations 61.1 to 61.3 above shall be submitted at the time of true up.

- v. Vide letter dated 04.08.2020, petitioner No.1 had requested petitioner No.2 for waiver of incentive, as this results in enhancement of financial burden on petitioner No.1 due to higher purchase cost due to inclusion of incentive cost over ECR and are compelled to purchase power from other Generating Stations having lower Sale cost.
- vi. Meeting of Board of Directors of MPPGCL held on 24.02.2021, wherein the Board has resolved that
“MPPGCL is permitted to agree for waiver of Incentive of its Thermal Power Stations, subject to decision of the Commission on MPPMCL’s petition pending before MPERC, in this regard.”
- vii. In view of the above, the petitioner No.2 conveyed its consent to grant waiver towards the payment of incentive received by it, as per regulation 42.6 from the petitioner No.1.
- viii. Regarding the charging of lower tariff, Regulation 61.1 of the Tariff Regulations, 2020 stated that Tariff determined in these Regulations shall be a ceiling tariff and the generating company and beneficiaries may mutually agree to charge a lower tariff. Regulation 61.5 of the Tariff Regulations, 2020 further stated that the generating company and the beneficiaries shall be required to approach the Commission for charging lower tariff.
- ix. As observed above, the Board of the Petitioner No.2 have accorded approval for waiver in the payment of incentive receivable as per regulation 42.6 from the Petitioner No.1 (MPPMCL) for the sale of power from its Thermal Power Plants.
- x. The Respondent No. 1 i.e. M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd. has filed confirmation that they agree with the prayer of subject petition. Since other two Respondents have not preferred to file their response in this matter, therefore, their opportunity to file reply was closed. As per the petitioner No. 1, waiver on

payment of incentive is in public and consumer interest and moreover shall also benefit the Petitioner No.2.

11. In view of the foregoing and in terms of Regulation 61.5, the Commission has decided to accord approval for waiver of incentive as payable to MP Power Generating Company Limited as per Regulation 42.6 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 on mutual consent of both the petitioners. In accordance to the Regulation 61.2, the aforesaid waiver of incentive shall be applicable for a period not exceeding the validity of these regulations and shall come into effect in accordance to the Regulation 61.4 of the Tariff Regulations, 2020. The petitioners are directed to file details of the accounts and the tariff actually charged under Regulations 61.1 to 61.3 at the time of true up.
12. With the above observations and direction, the subject petition No. 18 of 2022 is disposed of.

(Gopal Srivastava)
Member (Law)

(Mukul Dhariwal)
Member

(S. P. S. Parihar)
Chairman