

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub : In the matter of petition for dispensation on the directions contained in para 27.6 of MPERC (Terms & conditions for determination of Transmission Tariff) Regulation, 2009 (RG-28 (i) of 2009) under Section 94(f) of the Electricity Act, 2003, and para 40, 49 and 50 of MPERC (Conduct of Business) Regulations, 2004.

Petition No. 47/2009

ORDER

(Date of Order 1st May, 2012)

M.P. Power Transmission Co. Ltd., - Petitioner
Block No. 2, Shakti Bhawan, Rampur,
Jabalpur.

V/s

Secretary, Energy Department, - Respondent No. 1
Govt. of Madhya Pradesh.

M.P.Poorv Kshetra Vidyut Vitaran Co. Ltd., - Respondent No. 2
Jabalpur.

M.P.Madhya Kshetra Vidyut Vitaran Co. Ltd., - Respondent No. 3
Bhopal.

M.P.Paschim Kshetra Vidyut Vitaran Co. Ltd., - Respondent No. 4
Indore.

The petitioner filed this petition in the matter of the directions contained in para 27.6 of MPERC (Terms & conditions for determination of Transmission Tariff) Regulation, 2009 (RG-28 (i) of 2009) under Section 94(f) of the Electricity Act, 2003, and para 40, 49 and 50 of MPERC (Conduct of Business) Regulations, 2004.

2. The matter was fixed for motion hearing on 05.10.2009.

3. During the motion hearing on 05.10.2009, the representatives of the petitioner submitted that the petitioner was making its best efforts to comply with the directions of the Commission of getting actuarial valuation done but the task was not entirely under the control of the petitioner, therefore more time was required for this activity. Hence, the time limit of 30th September, 2009 may not be linked to consequences as mentioned in para 27.6(c) of the Regulations. The requirement of setting up terms for operating the MPSEB Terminal Benefits Trust as envisaged in para 27.6(b) of the Regulations had already been complied with. They also informed that the Nodal Officers had already been appointed and work of data collection

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was already over. They further requested review of the direction given in para 27.6 of the MPERC (Terms and conditions for determination of Transmission Tariff) Regulations, 2009.

4. On hearing the Petitioner, the Commission was of the view that since the scheme of funding was required to be formulated by the State Government, they should also be made a party. The Commission admitted the petition and directed issue of notices to the respondents and the State Government to attend the Commission hearing and submit documents, if any, in support. The case was listed for hearing on 30.10.2009.

5. During the hearing on 30.10.2009, the petitioner submitted that steps had been taken for appointment of actuary by the end of November, 2009 and the actuarial analysis was expected to be completed by the end of February, 2010. They further informed that Rules 7, 10 and 11 under Madhya Pradesh Electricity Reform First Transfer Scheme Rules, 2003 had been amended and liability of employees as of 31.05.2005 also lay with Transmission company which was to be met through transmission tariff. The liability after this cut-off date shall be borne by the respective companies either through tariff or from the State Government. During the hearing the representative of the respondent informed that the Energy Department had already submitted a written reply.

6. On hearing both the petitioner and the respondent, the Commission was of the view that the issue involves major implications on consumer tariff besides the principle as to who should bear the burden of past unfunded liabilities pertaining to terminal benefits of MPSEB employees. The Commission was also of the view that it would be appropriate to study the treatment given to this issue in other major States which have undergone unbundling and corporatization. The Commission directed the petitioner to study the practice adopted in other States regarding funding of past liabilities and to submit the report by 20.11.2009 alongwith proper justification so that consumers are not unduly burdened for past unfunded liability. The case was listed for hearing on 24.11.2009.

7. During the hearing on 24.11.2009, the petitioner informed that in some of the States

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like Delhi and UP, the State Governments have taken the responsibility for past liabilities whereas in Maharashtra and Gujarat, there was contributory pension scheme and hence there was no unfunded liability for pension. The representative of the State Government submitted that the Commission has no powers under Section 86 of the Electricity Act, 2003 to interfere in Transfer Scheme notified by the State Government. Therefore, the Commission's regulations should be consistent with the Transfer Scheme and the Commission needs to allow contribution for past as well as current liability so that sufficient corpus could be created.

8. On hearing both the parties, the Commission was of the view that it would be appropriate to study the notified Transfer Schemes of other States including its implementation containing provisions for contribution of past liability towards pension to the employees. The Commission also observed that to ensure that this liability is not recovered twice, the expenditure booked/provisioning made in MPSEB books of accounts for past years regarding employees' terminal benefits should be furnished on affidavit. The Commission directed the respondent No.1 to make written submission of above details by 15.12.2009. The next date of hearing was fixed on 06.01.2010.

9. During the hearing on 06.01.2010, the representative of the petitioner informed that the Actuarial Analysis was likely to be completed by the end of February, 2010. The Commission had directed the petitioner and the respondent No. 1 to submit a scheme for funding the current/past liabilities towards pension to the employees by 10.03.2010. The Commission had further directed Commission Secretary to initiate the process for review of the provisions of Clause 27.6 of MPERC (Terms and conditions for determination of Transmission Tariff) Regulations, 2009. The next date of hearing was fixed on 23.03.2010.

10. The respondent No.1 vide letter dated 11.03.2010 informed the Commission that a final report of Actuarial Analysis had already been submitted by the MPPTCL to the Commission vide letter date 05.03.2010.

11. During the hearing held on 23.03.2010, the respondent No. 1 mentioned that the aforesaid Scheme was to be submitted by 30.04.2010.

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12. As regard the provision of 27.6 of MPERC (Terms and conditions for determination of Transmission Tariff) Regulations, 2009, the Commission initiated the process of review and the public hearing in the matter was scheduled on 13.04.2010. The next date of hearing was fixed on 26.05.2010.

13. During the hearing on 26.05.2010, the representative of the petitioner made a submission that now the State Government is required to submit the scheme for funding arrangement of the retirement benefit fund.

14. During the hearing, the representative of the respondent No. 1 submitted that the matter is under active consideration of the Government.

15. On hearing the representatives of the petitioner and the respondents, the Commission directed the respondent No. 1 to submit the scheme at the earliest keeping in view the provisions made by other States in this regard. The Commission further directed that the next date of hearing shall be decided after receipt of the scheme.

16. The Secretary, Energy Department, Government of MP vide letter dated 19.08.2010 submitted a detailed note mentioning the provisions of Transfer Scheme Rules and submitted that the Commission may take necessary steps as per provisions of the Transfer Scheme Rules notified by the State Government. The Commission then decided to wait till such time the case pending before the Hon'ble High Court, Jabalpur concluded.

17. The Hon'ble High Court, Jabalpur disposed of the WP No. 10080 of 2009 stating that the petitioners, the MPSEB and the respondent companies, if so advised, may approach the Commission to modify the regulations and the Commission shall look into the same and if so advised or required, exercise its powers under regulations 45 to amend or modify the regulations. The matter was considered by the Commission from time to time and directed that other SERCs may be requested to send details of arrangements made in their States towards pension and terminal benefit expenses. Accordingly, letter was sent to other SERCs.

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18. Further, the MP Tradeco, MP Transco, MP Genco and three Distribution Co. jointly filed a petition on 10.01.2012 in the matter of funding of pension and other terminal benefit liabilities of the pensioners/employees working in the successor entities of the MPSEB. The petition was registered as P-03/2012 and a motion hearing was held on 30.01.2012. The Commission admitted the petition and posted the matter on 13.02.2012 for arguments on merits. The Commission after hearing decided to delink the issues of pension payment and related matters from Tariff Regulations and to frame a separate Regulation for this purpose and disposed of the petition. Accordingly, a separate regulation was notified on 20.04.2012.

19. The Commission is of the view that the issues contained in para 27.6 of the MPERC (Terms and conditions for determination of Transmission Tariff) Regulations, 2009 are now no more relevant in view of the notification of separate regulations on the issue of pension and other terminal benefits.

20. In view of the above, the petition No. 47/2009 is closed as disposed of.

Ordered accordingly,

sd/-
(C.S.Sharma)
Member

sd/-
(Rakesh Sahni)
Chairman