

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION  
BHOPAL**

**Subject: In the matter of review of final generation tariff order passed by the Hon'ble Commission on 07.01.2016 for 2x250 MW Ext. Unit No. 10 and 11 of Satpura Thermal Power Station, Sarni PH-IV from CoD of Unit No. 10 to 31.03.2016.**

**Petition No. 09/2016**

**ORDER**

**(Date of Motion Hearing: 26<sup>th</sup> April, 2016)**

**(Date of Order: 4<sup>th</sup> May, 2016)**

**M.P. Power Generating Company Ltd., Jabalpur**

**Petitioner**

**V/s**

**1. M.P. Power Management Company Ltd., Jabalpur.**

**Respondents**

**2. M.P. Power Transmission Co. Ltd., Jabalpur.**

Shri S.K. Tripathi, SE, Shri Salil Choudhari, EE and Shri Viswas Sullere, CA appeared on behalf of the petitioner.

M.P. Power Generating Company Ltd., Jabalpur has filed the subject petition for review of Commission's Order dated 7<sup>th</sup> January' 2016 in Petition No. 13 of 2015 for determination of final generation tariff of 2x250 MW Ext. Unit No. 10 and 11 of Satpura Thermal Power Station, Sarni PH-IV from CoD of Unit No. 10 to 31<sup>st</sup> March' 2016.

2. The petitioner has sought review on the following issues in the above mentioned order passed by the Commission:

- A. Interest during Construction and Financing Charges (IDC & FC) beyond Scheduled CoD of Units.
- B. The cost of imported coal consumed during Infirm Power Generation.
- C. Deferment of provisional additional Capital Expenditure for FY 2014-15 and projected capital expenditure for FY 2015-16.
- D. Recovery of carrying cost as per Regulation 15.4 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012.

3. Motion hearing in the matter was held on 26<sup>th</sup> April' 2016. On examination of the grounds sought for review by the petitioner on above issues, the Commission has observed the following:

**A. Interest during Construction and Financing Charges (IDC & FC) beyond Scheduled CoD of Units.**

The petitioner has sought review on this issue with the following contention:

- (i) It has been observed by the Commission in Para 71 of the Commission's order dated 7<sup>th</sup> January' 2016, that most of the reasons (enumerated in Para 68 of the aforesaid order) for delay in CoD of generating units were controllable and attributable to the contractor/ vendors. Therefore, there has been no imprudence on the part of the

**Subject: In the matter of review of final generation tariff order passed by the Hon'ble Commission on 07.01.2016 for 2x250 MW Ext. Unit No. 10 and 11 of Satpura Thermal Power Station, Sarni PH-IV from CoD of Unit No. 10 to 31.03.2016.**

petitioner in executing the project.

- (ii) As per Para 7.12 of the Hon'ble APTEL's order dated 27.04.2011 in Appeal No. 72 of 2010, the petitioner is eligible to be given the benefit of the additional cost on account of IDC & FC incurred due to time over-run. **However, the consumers would get full benefit of the LDs recovered from the contractors/suppliers, if any, whenever the same are finalized and deducted from the their respective bills and submitted before the Commission, to reduce the capital cost.** (Emphasis Supplied)

4. The Commission has found the following on examination of above issue:

- (a) The interest during construction and finance charges have been allowed in the aforesaid order with the following approach:
- Up to scheduled CoD of the units, the IDC & FC as claimed by the petitioner has been allowed.
  - Out of the IDC and FC claimed by the petitioner beyond Scheduled CoD to actual CoD of the units, 50% of the IDC & FC has been allowed. The remaining 50% IDC & FC beyond scheduled CoD to actual CoD has been disallowed on account of delay in CoD of the units since the petitioner was not able to inform the amount of Liquidated Damages (LD) deducted from vendors/ contractor.

Accordingly, the additional cost due to time over-run is shared between the generating company and the consumers.

- (b) While disallowing 50% portion of IDC and FC beyond scheduled CoD, the observations and the approach of the Commission have been detailed in Para 68 to Para 76 of the Commission's Order dated 7<sup>th</sup> January' 2016. The Commission has provided full opportunity to MPPGCL to inform the amount of LD right from processing the petition for determination of provisional tariff of its generating units till disposal of the petition for determination of final tariff of its generating units. Despite its commitment during the scrutiny of petition for determination of provisional tariff, MPPGCL had not been able to inform the amount of Liquidated Damages deducted from contractor's bill. In response to the query of the Commission on this issue, MPPGCL informed the following:

*"MPPGCL had granted provisional time extension to M/s BHEL and M/s MBEL for completion of all facilities of Unit No. 10 and 11 up to 18/08/2013*

**Subject: In the matter of review of final generation tariff order passed by the Hon'ble Commission on 07.01.2016 for 2x250 MW Ext. Unit No. 10 and 11 of Satpura Thermal Power Station, Sarni PH-IV from CoD of Unit No. 10 to 31.03.2016.**

*and 31/12/2013, respectively, without prejudice to the recovery of LD and interest on unadjusted advance portion as per Contract. It is humbly submitted that the copies of letter Nos. 1757 dated 12/09/2013, 1872 dated 28/09/2013 and 2238 dated 16/12/2013 regarding provisional time extension have already been submitted with the Petition as Annexure-6, Annexure-7 and Annexure-8.*

*As the COD of Unit No. 11 could not be achieved till 31/12/2013, it was decided that if the deduction is started towards recovery of LD this may hamper the work of Unit No. 11. As such, considering the security in hand, which is far more than the LD for delay, it was decided not to deduct LD from the subsequent bills. Therefore, no recovery on account of LD due to delay in commissioning of the Units has been made till date. The actual position in respect of the LD amount deducted/ to be deducted from respective contractors' bills shall be submitted once the final decision in the matter is taken by the competent authority.”(Emphasis Supplied)*

- (c) From the above contention of MPPGCL recorded in Para 8 of Annexure 'A' with the Commission's order also, it was observed that MPPGCL granted time extension to its vendors/ contractors and failed to deduct LD at the appropriate time for certain reason. Hence, it is not conceded that there has been no imprudence on the part of petitioner in executing the project. However, while disallowing 50% IDC & FC charges beyond SCOD, the following is mentioned in Para 76 of its order, which is reproduced below:

*“Despite several queries and follow-up by the Commission while processing the subject petition, the petitioner has not been able to inform the position in respect of LD amount deducted from the contractor's bill whereas, it was committed by MPPGCL in earlier petition that the actual position of LD amount shall be submitted at the time of filing the subject petition. However, the petitioner is still at liberty to approach the Commission at the earliest with the actual amount of LD if any, deducted from its Contractor(s)/ Vendor(s) along with all relevant supporting documents.”(Emphasis Supplied)*

- (d) Moreover, the petitioner in Para 14 (a) of the subject petition has accepted that the consumers will get full benefit of Liquidated Damages to be recovered from the contractors/ suppliers whenever, the LDs are finalized and deducted from their

**Subject: In the matter of review of final generation tariff order passed by the Hon'ble Commission on 07.01.2016 for 2x250 MW Ext. Unit No. 10 and 11 of Satpura Thermal Power Station, Sarni PH-IV from CoD of Unit No. 10 to 31.03.2016.**

respective bills, to reduce the capital cost of the project.

- (e) The status of Liquidated Damages observed by the Commission in Para 76 of its order dated 7<sup>th</sup> January, 2016 is unchanged in the subject review petition. Therefore, the contention of MPPGCL for review on this issue with the same status of Liquidated Damages is found devoid of merit.

**B. The rate of Imported Coal consumed during Infirm Power Generation.**

The petitioner has sought review on this issue with the following contention:

- (i) The Commission has not approved full amount of Rs. 73.53 Crore towards cost of coal consumed in both units during infirm energy generation and has allowed only Rs. 66.94 Crore on this account. This amount of Rs. 66.94 Crore has been determined by the Commission based on total quantity of coal consumed during the infirm power generation as filed but at the weighted average rate of domestic/Indian coal only. It is further contended by the petitioner that out of the above figure of Rs. 66.94 Crore determined in its order, the Commission has actually allowed only the capitalized expenditure till 31/03/2014, which comes to Rs.65.61 Crore. Thus an amount of Rs.7.92 Crore on account of expenditure on coal during generation of infirm power from the two units, as capitalized till 31.03.2014, has been disallowed by the Commission.
- (ii) The petitioner has further submitted that the interpretation of clauses of CERC (Deviation Settlement Mechanism and related matters) Regulation, 2014 in Para 89 to 92 of the Commission's order is not intended interpretation of the referred clauses of CERC (DSM) Regulations, 2014. As per contention of review petitioner, both type of coal i.e. Domestic and imported coal are to be considered as main fuel.

5. On examination of the above contention of MPPGCL in its subject review petition, the Commission has observed the following:

- (a) The ceiling of cap rates in the aforesaid CERC (DSM) Regulations, 2014 are different for Domestic coal and Imported coal as Rs. 1.78 per kWh and Rs. 3.03 per kWh, respectively. Therefore, it is not appropriate to consider both type of coal i.e. Domestic coal and imported coal as the main fuel as contented by MPPGCL in the subject review petition. Therefore, the arguments placed in the subject review petition on this issue are arbitrary and misplaced.
- (b) The reason for allowing only capitalized expenditure for generation of infirm power till 31<sup>st</sup> March' 2014 and disallowing an amount of Rs. 7.92 Crores towards

**Subject: In the matter of review of final generation tariff order passed by the Hon'ble Commission on 07.01.2016 for 2x250 MW Ext. Unit No. 10 and 11 of Satpura Thermal Power Station, Sarni PH-IV from CoD of Unit No. 10 to 31.03.2016.**

expenditure on coal during generation infirm power from both two units, have been detailed in Para 93 to 96 of the Commission's order dated 7<sup>th</sup> January' 2016 (in Petition No. 13 of 2015).

- (c) Total quantity of both type of coal i.e. domestic and imported coal as claimed by MPPGCL has been considered while the weighted average rate of domestic/ Indian coal only has been worked out and applied on the aforesaid quantity for computation of coal cost for generation of infirm power from both the units (Table 21 under Para 93 of the Commission's order in the subject petition).
- (d) During scrutiny of its main petition, MPPGCL had submitted the capitalization booklet duly certified by the auditor as Annexure 9 with its additional submission. The total cost of fuel filed in the petition for generation of infirm power was not capitalized in the capitalization booklet certified by the auditor.
- (e) It was found on the basis of aforesaid capitalization details that 98.54% and 97.27% of the total fuel cost for generation of infirm power from Unit No. 10 and 11, respectively was capitalized as on 31<sup>st</sup> March' 2014. With the aforesaid observations in Para 94 and 95 of the order, the percentage of fuel cost capitalized in the capitalization booklet has been applied on the coal cost computed and arrived at S. No. (c) above for generation of infirm power from both the units. Accordingly, the coal cost was allowed in the Commission's order in the subject review petition.
- (f) However, the coal cost disallowed on account of less capitalization of fuel cost in the books of account shall subject to true-up as and when the remaining fuel cost is capitalized in the books of account of the respective year.

6. In view of the above, the Commission has correctly allowed the coal cost and fuel cost for generation of infirm power from two units as on 31.03.2014. Therefore, the grounds for seeking review by MPPGCL on this issue are devoid of merit.

**C. Deferment of provisional additional Capital Expenditure for FY 2014-15 and projected capital expenditure for FY 2015-16.**

MPPGCL has submitted that the Commission has not allowed the provisional additional capital expenditure and projected capital expenditure for FY 2014-15 and FY 2015-16 respectively for the units. While seeking review on this issue, MPPGCL has requested to allow the provisional additional capital expenditure filed by it for FY 2014-15 and also the projected capital expenditure filed and claimed by it for FY 2015-16.

**Subject: In the matter of review of final generation tariff order passed by the Hon'ble Commission on 07.01.2016 for 2x250 MW Ext. Unit No. 10 and 11 of Satpura Thermal Power Station, Sarni PH-IV from CoD of Unit No. 10 to 31.03.2016.**

7. On examination of the contents of review petition on this issue, the Commission has observed the following:

(a) Vide Commission's order in the subject matter, the Commission has determined capital cost for both the units on the basis of figures recorded/ capitalized in audited annual account of MPPGCL filed by it. Only the assets capitalized and recorded in Annual Audited Accounts were considered.

(b) With regard to the additional capitalization, the following is mentioned in para 108 of the final tariff order dated 7<sup>th</sup> January, 2016 issued by the Commission:

*"In view of the above, the Commission has considered the additional capitalization in different heads to the extent of cost admitted in this order and proportionately capitalized in the books of accounts for FY 2013-14, in accordance with the Regulation 20.1 of the Regulations, 2012 -----."*

(c) In past also, the Commission has been issuing the final tariff for other generating units of MPPGCL i.e. ATPS PH-III (1x210 MW) by following the same approach i.e. admitted capital cost of the assets capitalized in the audited accounts of the generating unit. Earlier, MPPGCL had filed an Appeal No. 17 of 2013 before Hon'ble Appellate Tribunal of Electricity against the final tariff order for ATPS 210 MW issued by the Commission. MPPGCL in its aforesaid Appeal had challenged the same approach of the Commission adopted by it in its order for determination of final tariff of 2x250 MW Extn Unit at STPS Sarni issued on 7<sup>th</sup> January' 2016. Vide Judgment dated 25<sup>th</sup> October, 2013, Hon'ble Tribunal hold the Commission's approach and dismissed the appeal filed by MPPGCL. The findings of Hon'ble Tribunal for Electricity in Para 22 to 26 of the judgment are reproduced below:

*"We find that the State Commission in determining the additional capitalization and capital cost has relied on the audited accounts and the Asset-cum-Depreciation register for prudence check. (Emphasis Supplied) In fact for FY 2010-11 the State Commission has allowed additional capital expenditure of Rs.70.56 crores as against Rs.32.51 crores claimed by the Appellant. According to the State Commission it has allowed a higher additional capitalization during 2010-11 on the basis of the Asset-cum-Depreciation Register.*

*We do not find any infirmity in the approach of the State Commission in determining the capital cost including additional capitalization. The State Commission is required to apply prudence check to the capital expenditure*

**Subject: In the matter of review of final generation tariff order passed by the Hon'ble Commission on 07.01.2016 for 2x250 MW Ext. Unit No. 10 and 11 of Satpura Thermal Power Station, Sarni PH-IV from CoD of Unit No. 10 to 31.03.2016.**

*claimed by the Appellant as per its Regulations. The State Commission for prudence check of the capital cost/additional capitalization has relied on the audited accounts and Asset-cum-Depreciation Register. The State Commission could not have allowed the capital expenditure incurred in the capital Works in Progress for the FY 2009-10 and 2010-11 which were already over when the tariff order was issued. (Emphasis Supplied)*

*Accordingly to the Learned Counsel for the Appellant the Regulations 20.1 stipulate that the capital expenditure incurred or projected to be incurred has to be considered for additional capitalization. We find that the 2009 Tariff Regulations are Multi Year Tariff Regulations. The control period under consideration is for FY 2009-10 to FY 2011-12. Thus, if the tariff is to be determined before the commencement of the control period, the additional capitalization projected to be incurred during the various years of the control period will be considered. However, in the present case the final tariff of the project for FYs 2009-10 and 2010-11 is being decided after the period is already over. Thus, for FY 2009-10 and FY 2010-11, the State Commission has to consider the capital cost incurred and not projected to be incurred. The State Commission has gone as per the audited accounts and Asset-cum-Depreciation Register submitted by the Appellant in deciding the capital cost incurred during FY 2009-10 and FY 2010-11. (Emphasis Supplied)*

.....

*We do not find force in the submissions of the Appellant. The Appellant had replied to the queries of the State Commission on 3.4.2012, two years after the end of FY 2009-10 and one year after the end of FY 2010-11, and even then the additional capitalization had not been capitalized in the books of accounts. The Asset-cum-Depreciation Register had also not included the additional assets. Under these circumstances, the State Commission has correctly decided the capital cost/additional capitalization based on the books of accounts.(Emphasis Supplied) If the Appellant has not been vigilant in updating its accounts and Asset Register, it could not find fault with the impugned order of the State Commission. In fact we agree with the State Commission that it is not possible for them to physically check all the assets which are capitalized and has to rely on the books of accounts and records maintained by the Appellant.”*

**Subject: In the matter of review of final generation tariff order passed by the Hon'ble Commission on 07.01.2016 for 2x250 MW Ext. Unit No. 10 and 11 of Satpura Thermal Power Station, Sarni PH-IV from CoD of Unit No. 10 to 31.03.2016.**

In view of the above observations, the contentions of MPPGCL seeking review on this issue are devoid of merit.

**D. Recovery of carrying cost as per Regulation 15.4 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012.**

MPPGCL has submitted the following on this issue:

- “(i) Regulations 15.3 and 15.4 of MPERC Generation Tariff Regulations 2012 provide that in case of new projects, (whose COD has been achieved after 31/03/2012) the recovery of the deficit amount between the final tariff and provisional tariff shall be done along with simple interest at the rate equal to the State Bank of India's Base Rate as on 1<sup>st</sup> of April of that year plus 3.5%.*
- (ii) In view of the above and to avoid any ambiguity during billing to the beneficiaries, it is humbly submitted that the Hon'ble Commission may kindly specify in its Order that the Petitioner is allowed recovery of the deficit amount between the final tariff and provisional tariff from the beneficiaries along with simple interest at the rate equal to the State Bank of India's Base Rate as on 1<sup>st</sup> of April of that year plus 3.5% as per the Regulations 15.3 and 15.4 of MPERC Generation Tariff Regulations 2012.”*

8. On examination of the above issue, the Commission has observed the following:

- (a) With regard to the issue of carrying cost, Proviso to Regulation 15.3 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012, provides as under:

*“Provided that where the Tariff provisionally billed exceeds or falls short of the final Tariff approved by the Commission under these Regulations, the Generating Company, shall refund to or recover from the Beneficiaries, within six months from the date of determination of final Tariff under these Regulations along with simple interest at the rate equal to the State Bank of India's Base Rate as on 1<sup>st</sup> of April of that year plus 3.50%.”*

- (b) Regulation 15.4 of the aforesaid Regulations, 2012, further provides that:

*“Where application for determination of tariff of **an existing or a new project (Emphasis Supplied)** has been filed before the Commission in accordance with Clause 15.1 and Clause 15.2 of this Regulation, the Commission may consider in its discretion to grant provisional tariff upto 95% of the annual fixed cost of the project after prudence check subject to **adjustment as per proviso to clause***



**Subject: In the matter of review of final generation tariff order passed by the Hon'ble Commission on 07.01.2016 for 2x250 MW Ext. Unit No. 10 and 11 of Satpura Thermal Power Station, Sarni PH-IV from CoD of Unit No. 10 to 31.03.2016.**

***15.3 of this Regulation after the final tariff order has been issued:"***  
**(emphasis supplied)**

- (c) Above-mentioned provisions under the Tariff Regulations, 2012, are explicitly clear for recovery of carrying cost. Therefore, these provisions under Regulations are not required to be specified in the tariff order which is issued in accordance with the same Regulations.

9. For review of the order, Regulation 40(1) of the MPERC (Conduct of Business) Regulations, 2004, provides as under:

*"The Commission may on its own motion, or on the application of any of the person or parties concerned, within 60 days of the making of any decision, direction or order, review such decision, direction or orders and pass such appropriate orders as the Commission thinks fit."*

10. Further, in accordance with Rule 1 Order 47 of the Code of Civil Procedure (CPC), a person aggrieved by an order may apply for a review under the following circumstances:

- (a) On discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at a time when the order was made;
- (b) An error apparent on the face of the record;
- (c) For any other sufficient reason.

11. In view of the above-mentioned observations on examination of each issue, it is found that the issues raised by the review petitioner in the subject review petition do not fall under any of the above-mentioned circumstances articulated in Rule 1 Order 47 of CPC for review in the instant case. Therefore, the subject review petition is not maintainable, hence disposed of.

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

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

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