

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of review petition filed by M/s BLA Power Pvt. Ltd. under section 94(f) of the Electricity Act, 2003 seeking review of the order dated 22.05.2015 in Petition No. 16 of 2015.

Petition No. 35 of 2015

ORDER

(Date of Motion Hearing: 21st July, 2015)

(Date of Order: 23rd July, 2015)

M/s. BLA Power Pvt. Ltd.

- Petitioner

Vs.

- 1. Energy Department, Government of Madhya Pradesh,**
- 2. M. P. Power Management Co. Ltd., Jabalpur**
- 3. M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd., Jabalpur**
- 4. M. P. Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal**
- 5. M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd. , Indore.**
- 6. M. P. Power Transmission Co. Ltd. , Jabalpur**
- 7. State Load Despatch Centre, Jabalpur**

-Respondents

Shri Sanjay Sen, Senior Advocate and Shri Pratik Bhurat, Authorized Representative appeared on behalf of the petitioner.

M/s. BLA Power Pvt. Ltd. has filed subject petition under Section 94(f) of the Electricity Act, 2003 for review of Commission's order dated 22nd May' 2015 (in Petition No. 16/2015) for determination of tariff for Unit No. 1 of Petitioner's power plant. In the subject petition, the petitioner has sought review on following issues:

- i. "Re-visitation of coal price on account of the fact that the variable (energy) charges had to be calculated for coal consumed / as fired with GCV on as received basis (ARB) as against on air dried basis (ADB)/Equilibrated Basis.*
- ii. Interest to be paid on tariff to be recovered as per the impugned order by the Petitioner Company, to be calculated since the COD of Unit-1.*

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iii. *MPPMCL shall reimburse the entire fees paid by the Petitioner Company for the Provisional Tariff Petition, being Petition No. 28 of 2012, and the Final Tariff Petition, being Petition No. 16 of 2014.*”

2. Motion hearing in the matter was held today i.e. 21.07.2015. During the course of hearing, Learned Counsel on behalf of the petitioner stated that the petitioner is not inclined now to press upon the last two issues at serial no. (ii) and (iii) above. Therefore, his oral submissions were limited only to the first issue as mentioned above at serial no.(i). Learned Counsel reiterated the same contention as mentioned in the review petition on the aforesaid issue. Learned Counsel also stated that the basis and methodology for determination of actual Energy (Variable) charges for the purpose of billing is mentioned in the Commission’s order on which the review is sought by the petitioner.

3. Having heard the Learned Counsel of the petitioner and also on examination of the contents in the review petition, the Commission has observed the following :

- (i) The above mentioned issue related to GCV of coal for computation of energy charges was not mentioned in the prayer sought in the main Petition No. 16 of 2014 on which the tariff order was issued by the Commission under Section 62 of the Electricity Act, 2003.
- (ii) The main petition (Petition No. 16 of 2014) was filed on 1st August 2014 whereas; this issue was referred for the first time by Respondent (MPPMCL) on 10th November’ 2014 in its comments offered on the main petition. Subsequently, the review petitioner filed its counter affidavit on the same.
- (iii) With regard to the Gross Calorific Value to be considered for determination of energy (variable) charges of thermal generating stations, Regulation 39.2 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2009 and Regulation 41.2 of the MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2012, provides as under:

“Energy (variable) Charges in Rupees per kWh on ex-power plant basis shall be determined to three decimal places as per the following formula:

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(i) *For coal fired stations*

$$ECR = (GHR - SFC \times CVSF) \times LPPF \times 100 / \{CVPF \times (100 - AUX)\}$$

Where,

AUX= Normative Auxiliary Energy Consumption in percentage.

ECR = Energy Charge Rate, in Rupees per kWh sent out.

GHR = Gross Station Heat Rate, in kCal per kWh.

SFC = Specific Fuel Oil Consumption, in ml/kWh

CVSF = Calorific value of Secondary Fuel, in kCal/ml.

LPPF = Weighted average Landed price of Primary Fuel, in Rupees per kg, per liter or per standard cubic meter, as applicable, during the month.

*CVPF = **Gross Calorific Value of Primary Fuel as fired, in kCal per kg, per liter or per standard cubic meter.***

- (iv) Taking into cognizance the issue related to Gross Calorific Value of coal, the Commission has discussed and adequately addressed this issue under the heading of “Gross Calorific Value and landed price of Coal” in light of the above applicable Regulations in paragraphs 9.81 to 9.84 and 9.87 to 9.88 of the Commission’s order under review in the subject petition. Therefore, the contention of the review petitioner that there are no findings, observations or even a whisper on this issue in the aforesaid order of the Commission is found totally misplaced.

In view of the above-mentioned facts, the Commission finds no reason to review its order on this issue.

4. Regarding the other two issues, the observations of the Commission are as under:
- (a) **Issue: “Interest to be paid on tariff to be recovered as per the impugned order by the Petitioner Company, to be calculated since the date of COD of Unit-1 being 03.04.2012”**
- (i) With regard to the above issue, Regulation 8.5 of the MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2009 provided as under:

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“If the Tariff already recovered is more than the Tariff determined after true up, the Generating Company shall refund to the Beneficiaries the excess amount so recovered along with simple interest at the rate equal to short term prime lending rate of State Bank of India as on 1st April of the respective Year. Similarly, in case the Tariff already recovered is less than the Tariff determined after true up, the Generating Company shall recover from the Beneficiaries, the less recovered amount along with simple interest at the rate equal to short term prime lending rate of State Bank of India as on 1st April of the respective Year/Years subject to adhering to the timelines specified by the Commission for filling of True-up application. In case, it is found that the filling of True-up is delayed due to the reasons attributable to the Generating Company, the under recovery shall not bear any interest.”

Similar provisions are there in Regulation 8.5 of the MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2012 for the next control period of FY 2013-14 to FY 2015-16.

- (ii) It is clearly mentioned in Para 9.95 of the Commission’s order under review that the deficit/surplus amount as a result of this order shall be recovered or passed on to the M.P. Power Management Company Ltd. / three Distribution Companies of the state **in terms of the applicable Regulation (emphasis supplied)** in the ratio of energy supplied to them in equal six monthly installment during FY2015-16.

Therefore, in view of the clear provisions under Regulations and the adequate directions in aforesaid Para in the Commission’s order under review, the Commission finds no reason to review its order on this issue also.

- (b) Issue: “MPPMCL shall reimburse the entire fees paid by the Petitioner Company for the Provisional Tariff Petition, being Petition No. 28 of 2012, and the Final Tariff Petition, being Petition No. 16 of 2014”**

- (i) With regard to the recovery of fee paid to MPERC for determination of tariff, Regulation 36.1 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2012 provides that the generating company shall claim fees to be paid to MPERC separately as actual.

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- (ii) In Para 9.92 of the Commission's order dated 22nd May 2015 under review, the following is mentioned for other charges:

“The petitioner is allowed to recover expenses towards filing of subject tariff petition and the expenses incurred on publication of notices in news papers on the subject petition,(emphasis supplied) directly from the beneficiaries, in accordance with the Regulation 30 of MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2012.”

In view of the above, it is clear that the issue regarding recovery of fee paid by the petitioner to MPERC for determination of generation tariff is adequately addressed by the Commission in its provisional and final tariff orders. Therefore, the Commission finds no reason for review of its order on this issue also.

5. 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.

6. As discussed above, on careful examination of all three issues in the review petition, in light of the above circumstances, the Commission has found that the subject petition is not maintainable for review of the Commission's order dated 22nd May' 2015 in Petition No. 16 of 2015.

With the above observations, this petition is disposed of.

(Alok Gupta)
Member

(A.B.Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman