

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub: In the matter of filing of a review petition against the order dated 23.03.2015 issued by the MPERC on ARR & Retail supply tariff order for electricity distribution business for SEZ area Pithampur of MPAKVN Indore.

ORDER

Date of order: 22.04.2015

**M/s Pithampur Audyogik Sangathan ,
231, Saket Nagar
Indore -452018 MP, :** **Petitioner**

V/s

**M.P.A.K.V.N (Indore) Ltd.
3/54, Press Complex, Free Press House : Respondent
A.B. Road, Indore**

Dr. Gautam Kothari, President appeared on behalf of the petitioner. Shri Ajay Porwal, Consultant, Ms. Bhakti Vyas, Legal Consultant and Shri R.S. Patel, Consultant appeared on behalf of respondent.

2. The petitioner Pithampur Audyogik Sangathan, Indore has filed a review petition against the retail supply tariff order for FY 2015-16 for SEZ area Pithampur issued by the Commission in the matter of petition number 21/2014 on 23rd March 2015 (hereinafter referred to as the “tariff order”). Petitioner has prayed in the petition that omission / error observed by the petitioner in the said tariff order be corrected & accordingly tariff be re-determined. Vide daily order dated 09.06.2015 the Commission admitted the petition for further deliberation and directed to issue notice to the respondent. The Commission held the hearings in the matter on 21.07.2015, 25.08.2015 and 13.10.2015, wherein the respondent filed the replies on the issues contested by the petitioner in the petition and additional submission. The tariff order was issued by the Commission in accordance with MPERC (Terms and conditions for determination of tariff for supply and wheeling of electricity and methods and principles for fixation of charges) Regulations, 2012 (hereinafter referred to as “the regulations”). The Commission heard the arguments put forth by the petitioner and the respondent during the hearings.

3. The petitioner has sought the review of the Commission’s aforementioned order on the basis of the following issues contested in the petition and in the additional submission filed on 21.07.2015:

- i. The balance sheet and profit and loss account of MPAKVN(I) Ltd. for FY 2010-11 and FY 2012-13 certified by Chartered Accountant was available hence based on these accounts the Commission could have fixed the true up costs for FY 2012-13 and allowed the benefits to the consumers, instead of giving time to respondent to file a true up petition. This has given undue benefit to respondent and caused loss to consumers.

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- ii. Strict compliance of submission of true up petition for FY 2013-14 be ensured before June 2015 so as to finalise the costs by July 2015 and any benefits accruing thereof be made available during the tariff year 2015-16 itself.
- iii. The Commission has erred by giving benefit of reduced losses to the licensee. The benefit of losses which are actually achieved and which are less than the regulations should have been allowed and equally shared between licensee and consumers.
- iv. The Commission has considered the procurement of power @ Rs 3.16 per unit against the proposed rate of Rs. 3.48 per unit by the licensee. This rate is same at which the surplus energy is proposed to be sold to exchange as per retail supply tariff order for Discoms for FY 2015-16 issued by the Commission on 17.04.2015. In respect of sale to MPAKVN(I)L directly by the licensee, loading of exchange charges of nearly 22 paise could be avoided. Thus the rate of Rs 2.94 per unit which is the rate for short term power for FY 2014-15 could be retained and the benefit in reduction in cost could be passed on the consumers.
- v. Instead of purchasing renewable energy directly RPO obligations could also be met by purchasing Renewable Energy Certificates (REC) traded in the market. This method of purchase can bring down the cost. By not examining the alternative the Commission has erred and has estimated higher expenditure which needs to be corrected.
- vi. By not maintaining separate accounts for power business, the respondent obviously getting certain benefits and these need to be assessed and passed on to the consumers.
- vii. MPAKVN(I)L had estimated revenue from sale of power from existing tariff for the year 2015-16 as Rs. 96.45 Crore. This revenue is based on actual load factors achieved and the rate of realization. Bringing down this revenue by the Commission unilaterally is an error apparent and the revenue figure needs to be restored and reduction in tariff be allowed. The working of revenue based on any other basis than done by the respondent in the submission of ARR is an omission.
- viii. While working out cross-subsidy costs the Commission has ignored the basic principles laid down in Tariff Policy. Clause 8.5.1 (cross-subsidy surcharge & additional surcharge for open access) of the National Electricity Policy lays down that the amount of cross-subsidy surcharge should not be so onerous that it eliminates competition intended through open access. The cross subsidy surcharge should be brought down progressively and by the year 2015-16 there should not be any cross subsidy surcharge.
- ix. Delayed payment surcharge ought to be considered as income for working the revenue for FY 2015-16.
- x. MPAKVN(I)L filed the expenses viz. Depreciation, interest charges, income tax, RoE, etc. twice the expenses as per records. These need to be disallowed.
- xi. The capital investment plan as per earlier proposal for Rs. 270.16 lakh excludes 132/33 kV Substation. This plan would be restored in ARR.

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4. The respondent MPAKVN(I)L through written submissions dated 16th July 2015 and 08th September 2015 submitted that the petitioner has wrongly represented the facts and figures in the petition challenging the sanctity of the retail supply tariff order for SEZ for FY 2015-16. The respondent further submitted that it has not been challenging the tariff order passed by the Commission on 23rd March 2015 for retail supply in its license area and has completely accepted the tariff schedules. The issue wise reply to the contentions of the petitioner is given below:

- i. The audited accounts for FY 2012-13 were finalised at a later date and the true-up petition was filed in June 2015. As per the true-up petition respondent incurred a revenue loss of Rs. 2.19 Crore in FY 2012-13 which is yet to be passed on to the consumers. Hence, the claim of the petitioner that undue benefit was given to respondent and loss to consumers is null and void. Further, since the true-up petitions for FY 2012-13 and FY 2013-14 were not filed with retail supply tariff petition for FY 2015-16, the gaps / surplus of these true-ups would be reflected in ARR for FY 2016-17 in accordance with clause 11.1 of the regulations.
- ii. The audited accounts for FY 2013-14 are under process of finalisation. The Commission has been requested for time extension for filing the true-up petition for FY 2013-14.
- iii. The regulations clearly states that the gains made by the licensee in reduction of losses shall be retained by the licensee. The relevant extract from the regulations 35 (I) of 2012 is given below:

If the distribution licensee is able to achieve a faster reduction in losses and thus able to save expenses on power purchase, the gains thus made shall be allowed to be retained by the licensee to incentivise their operations.
- iv. The Commission has allowed Rs. 3.16 per unit as cost of power purchase from MPPMCL to the respondent, while respondent has been incurring Rs. 3.45 per unit for procurement of power. This additional burden is already having negative impact on respondent's commercial operations. Further, the contention for reducing the cost of power purchase from Rs. 3.16 per unit to Rs. 2.94 per unit is totally unjustified in light of the provisions of clause 11.1 of the regulations.
- v. The respondent is relying solely on MPPMCL for meeting the power purchase requirement. Since the Commission has included the RPO in the retail supply tariff order for Discoms and MPPMCL for FY 2015-16 and the respondent power purchase is a subsequent purchase from MPPMCL wherein RPO compliance cost has already been included, the respondent may not additionally comply with RPO as it would burden the consumers twice with RPO cost. The respondent in the reply to additional submission stated that RPO has been provided in the tariff order as per discretion of the Commission.
- vi. The respondent is taking to ensure the complete transparency in electricity distribution activities and associated costs. The respondent has already separated its power business from other activities and is maintaining separate books of accounts for its power business.

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- vii. The Commission has accurately estimated the revenue for FY 2015-16. There is no need to revise the estimated revenue for FY 2016 onwards.
- viii. The Commission has computed the cross subsidy surcharge as per methodology stated by and within the provisions of National Tariff Policy 2006.
- ix. The treatment to the income from delayed payment surcharge has been given as per the provisions of the regulations.
- x. The Commission had allowed less amount against the expenses viz. Depreciation, interest charges, income tax, RoE, etc. filed by the respondent.
- xi. The capital investment plan was filed as per the requirement of the system.

5. The Commission has pondered over the issue. The Commission has issued the retail supply tariff order for FY 2015-16 as per the filing of the respondent and the data / information /documents as made available to the Commission by the respondent. The Commission had stated in tariff order that with the filing of the ARR and retail supply tariff petition for FY 2014-15, the respondent had submitted abstracts of the Balance Sheet and Profit and Loss Account of MPAKVN (I) Ltd., Indore for FY 2011-12 and FY 2012-13, for its power business of SEZ at Pithampur, certified by Chartered Accountant. These abstracts of Balance Sheet and Profit and Loss Account of power business were carved out from the annual accounts of MPAKVN (I) Ltd. on pro-rata basis making certain assumptions for each item of expense related to the power business. The respondent could not submit actual expenses incurred in the power business. On this basis the Commission had determined the ARR and tariff provisionally for FY 2014-15. The respondent was required to furnish the audited accounts for FY 2013-14 with the filing made for determination of ARR and retail supply tariff for FY 2015-16, which had not been furnished. However, the respondent filed the actual data (on provisional basis i.e. unaudited) in the petition. In view of the lack of submission of audited statement of accounts / financial statements exclusively for power business of SEZ Pithampur by MPAKVN (I) Ltd., Indore for FY 2013-14, the Commission deemed it appropriate to consider the certified bases carved out from the audited statement of accounts of MPAKVN(I)L for 2012-13 and the provisional actual data for FY 2013-14 to determine the ARR and tariff provisionally for FY 2015-16. This has always been subject to true-up in accordance with the appropriate provisions of relevant Acts enacted by Govt. of India and Govt. of Madhya Pradesh and the regulations notified by the Commission.

6. A review of a tariff order is admissible as per the clause 1.32 and 1.33 of MPERC (Details to be furnished and fee payable by licensee or generating company for determination of tariff and manner of making application) Regulations 2004. This is given below:

“Review of Tariff Order :

1.32 All applications for the review of tariff shall be in the form of petition accompanied by the prescribed fee. A petition for review of tariff can be admitted by the Commission under the following conditions:

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(a) The review petition is filed within sixty days from the date of the tariff order and

(b) It is proved that an error apparent from the records is there.

1.33 The Commission on its own, being satisfied that there is a need to review the tariff of any generating company or the licensee, shall initiate the process of review the tariff of any generating company or the licensee in accordance with the procedures set out in MPERC (Conduct of Business) Regulations.”

7. Further, for filing a review petition before the Commission, the following conditions have to be fulfilled:

(a) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or;

(b) on account of some mistake or error apparent on the face of the record or;

(c) any other sufficient reason.

8. The contentions raised in the subject petition for review of the tariff order have been scrupulously scrutinized for establishing the maintainability of the subject petition in light of the aforementioned provisions. The review sought by the petitioner is based on certain assumptions which are inconsistent with the provisions therein provided for review of an order under the legal / regulatory jurisprudence in vogue. The petitioner has claimed errors in the tariff order of the Commission without any substantiation and also without referring to the regulations specified by the Commission under various provisions of the Electricity Act 2003. Hence, the petitioner has prima facie failed to establish a review of the tariff order. However, the issues contested by the petitioner and the decision of the Commission on these issues are elaborated in the following paragraphs:

- i. **Audited statements of accounts:** The contention of the petitioner in this regard is not correct. The true-up exercise is based on the actual performance of the licensee simultaneously scrutinized with the audited statement of accounts / financial statements. Therefore, the Commission insists for filing of the true-up petition separately which not only provides the achievement (or failures) of the licensee as per the retail supply tariff order but also the audited statement of accounts / financial statements clearly indicating actual and provisional expenses need to be considered prudently in true-up. Further, the licensee is required to maintain and file separate audited statement of accounts / financial statements exclusively for its power business in accordance with the provisions enunciated in “the Conditions of distribution license for distribution licensee (including

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deemed licensee), 2004” specified under section 16 of the Electricity Act 2003. The requisite documents were not available with the licensee at the time of dealing with the petition for determination of ARR and retail supply tariff for FY 2015-16. The licensee filed the abstracts of Balance Sheet and Profit and Loss Account which have been carved out from annual accounts of MPAKVN (I) Ltd., Indore for FY 2012-13, for its power business of SEZ at Pithampur and certified by Chartered Accountant. On the basis of these documents / information the determination of true-up would be perfunctorily exercise and injustice to the licensee and the consumers. Moreover, as per the provisions of MPERC (terms and conditions determination of tariff for supply and wheeling of electricity and methods and principles for fixation of charges) Regulations, 2012 the distribution licensee is required to file the true up petition with audited account of respective year. Hence, the Commission had appropriately not considered the determination of true-up of ARR for FY 2012-13 in the tariff order and directed the petitioner to file the petition by 30th June 2015. The licensee has now filed the requisite petitions for determination of true-up for FY 2012-13 which is under process. In view of the foregoing the petitioner’s request for seeking a review of the tariff order for inclusion of true-up of ARR for FY 2012-13 in the tariff order is devoid of merit.

ii. **Filing of petition for true-up of ARR for FY 2013-14:** While passing the retail supply tariff order for FY 2015-16 the Commission observed that the petition for true-up of ARR for FY 2013-14 had already become due, therefore, in retail supply tariff order for FY 2015-16 the Commission directed MPAKVN(I)L to file the petition by 30th June 2015. In response MPAKVN(I)L sought time extension up to 14th August 2015. MPAKVN(I)L has now filed the petition for determination of true-up of ARR for FY 2013-14 (P – 48/2015) which is under scrutiny for admission. The petition for true up of ARR of a distribution licensee is subject to scrupulous examination as per regulatory requirement for prudence of the expenses incurred by the licensee along with the actual performance of the licensee. The proceeds of the true-up are considered with the next ARR and retail supply tariff determination exercise for passing through to the consumers. The order for retail supply tariff for FY 2015-16 for SEZ has been issued by the Commission on 23rd March 2015. Further, section 62(4) of the Electricity Act 2003 stipulates that no tariff or part of any tariff may ordinarily be amended more frequently than once in any financial year except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified. In light of the foregoing the petitioner’s request to finalise the true up for FY 2013-14 by July 2015 and any benefits accruing thereof be made available during the tariff year 2015-16 itself does not attract a review of the tariff order and is devoid of merit.

iii. **Distribution losses:** The trajectory of the distribution losses for respondent has been specified by the Commission at clause 25.1 of MPERC (terms and conditions for determination of tariff for supply and wheeling of electricity and methods and principles

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for fixation of charges) Regulations, 2012, as given below:

FY 2013-14 – 3.7%, FY 2014-15 – 3.5%, FY 2015-16 – 3.3%

Accordingly, the Commission has appropriately considered the distribution losses as 3.3% for working out the ARR for FY 2015-16. Further, in clause 25.2 of the aforementioned regulations it has also been specified that if the licensee is able to achieve a faster reduction in losses and able to save expenses on power purchase, the gains thus made shall be allowed to be retained by the licensee to incentivise their operations. In view of the foregoing provisions the contention of the petitioner that the benefit of losses actually achieved which are less than the regulations should have been equally shared between the licensee and the consumers does not attract a review of the tariff order and is devoid of merit.

Power procurement cost: In the petition filed for determination of ARR and retail supply tariff for FY 2015-16 MPAKVN(I)L had proposed the procurement of power from MPPMCL for FY 2015-16 at the rate of Rs. 3.16 per unit + 10% i.e. Rs. 3.48 per unit. Since MPAKVN(I)L had not submitted any basis for considering the rate at 10% increase from FY 2014-15, the Commission considered procurement of power @ Rs. 3.16 per unit for FY 2015-16. Any variation in the power purchase cost shall be appropriately considered at the time of true up of retail supply tariff order FY 2015-16 for SEZ. Further, the petitioner has compared the power purchase rate considered in the retail supply tariff order for SEZ for FY 2015-16 with the rates as considered in the retail supply tariff order for FY 2015-16 for Discoms of the state. Any such comparison by the petitioner is not appropriate as the power purchase in both the cases has been dealt in different manners. However, the rate of Rs. 3.16 per unit for sale of surplus energy given in the retail supply tariff order for FY 2015-16 for Discoms does not include the exchange charges of nearly 22 paise as stated by the petitioner in the subject petition. In view of the foregoing the contentions of the petitioner on the power purchase cost considered in the tariff order do not call for a review and devoid of merit.

- iv. **Renewable Purchase Obligation (RPO):** The Commission has rightly estimated the RPO for distribution licensee as per the provisions of MPERC (Cogeneration and generation of electricity from renewable sources of energy), Regulations 2010 (Revision – 1). Accordingly, the obligated entity i.e. the licensee is obliged to procure the power from renewable sources (RPO) as per the quantum stipulated in that regulation and in case if such power is not available the licensee may resort to procure RECs. In this situation, the Commission has to consider prima facie the procurement of power from renewable sources while determining the ARR. Any deviation from the stipulations in the tariff order would be appropriately considered in true-up. In view of the foregoing the insistence of the petitioner in this regard does not attract a review of the tariff order. The request is devoid of merit.

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Further, respondent's submission that respondent may not require to comply RPO as the Commission has included the RPO in the retail supply tariff order for Discoms and MPPMCL for FY 2015-16 and the respondent power purchase is a subsequent purchase from MPPMCL wherein RPO compliance cost has already been included, is inconsistent with the provisions of regulations. The licensee has to comply with the provisions of the regulations and tariff order in this regard.

- v. **Separate accounts for power business:** The respondent MPAKVN(I)L as deemed distribution licensee is required to comply with second proviso of section 51 of the Electricity Act 2003. Extract of the same is reproduced below:

...Provided further that the distribution licensee shall maintain separate accounts for each such business undertaking to ensure that distribution business neither subsidies in any way such business undertaking nor encumbers its distribution assets in any way to support such business.

Further, the Distribution licensee is required to comprehensively comply with "the Conditions of distribution license for distribution licensee (including deemed licensee), 2004 and as amended from time to time, notified by the Commission under section 16 of the Electricity Act, 2003 for preparation and maintenance of various Financial statements.

The issue of preparation and maintenance of separate accounts for power business has already been under consideration of the Commission. The true-up exercise is primarily based on the audited accounts of the licensee. Accordingly, the outcome of the true up is a pass through. The Commission has been therefore, consistently directing MPAKVN(I)L in this regard. The petitioner's statement that by not maintaining separate accounts for power business, the respondent obviously getting certain benefits and these need to be assessed and passed on to the consumers, is his assumption which cannot be procured for a review of the tariff order.

- vi. **Estimation of revenue:** There was no error in estimating the revenue from the existing tariffs. The Commission has rightly estimated the revenue based on the submission made by MPAKVN(I)L. While estimating the revenue from existing as well as new tariffs, the parameters such as load, sales and consumers as filed by the respondent and prudently admitted by the Commission have normally been considered. The variations shall be appropriately considered at the time of true-up when actual/audited figures of revenue are available. Further, the petitioner's contention that bringing down the revenue as filed by the respondent unilaterally by the Commission is an error apparent and the revenue figure needs to be restored and reduction in tariff be allowed, without any substantiation is devoid of merit and does not attract a review of the tariff order.

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- v. **Cross subsidy and average cost of supply:** The Commission has been following the principles laid down in the Tariff policy & National Electricity policy for working out the cross subsidy and average cost of supply. Accordingly, the cross subsidy would be in the range of +/- 20% of average cost of supply which has been considered by the Commission to maximum possible extent. Further, there is no mandate to further reduce the cross subsidy percentage beyond limits of +/- 20%. In view of the foregoing, any such insistence by the petitioner which is not mandated by a legitimate stipulation does not attract a review of the tariff order and is devoid of merit.
- vii. **Delayed payment surcharge:** As per the clause 41 of the regulations the delayed payment surcharge has not been considered as the income neither the penal charges incurred by the licensee is considered as expense in the determination of tariff / true-up exercise. The contention of the petitioner is not in line with the provisions of the regulations hence does not attract a review of the tariff order and is devoid of merit.
- viii. **Determination of various expenses under ARR:** The Commission had determined the various expenses of the ARR as per the provisions of the regulations and on the actual capitalisation filed by MPAKVN(I)L. The details of calculation have been indicated in the tariff order. The petitioner has contested the filing of MPAKVN(I)L which had already been appropriated by the Commission as per the provisions of the regulations. Hence, the issue does not attract a review of the tariff order and is devoid of merit.
- ix. **Capital Investment Plan:** It has been categorically stated by the Commission in the tariff order in respect of the capital invest plan filed by MPAKVN(I)L that the Commission had not considered the Capex filed as the requisite details as per the appropriate guidelines issued by the Commission were not filed / furnished to the Commission. Since the issue was not considered in the tariff order the contention of the petitioner in this regard does not attract a review of the tariff order and is devoid of merit.

9. In light of the facts and circumstances as enumerated hereinabove, the petitioner has failed to put forth or establish the error apparent / calculation error or any violation of provisions of the regulations / Act. The petitioner is not able to produce any new and important matter or evidence which could not be produced before the Commission when the tariff order was passed. Further, the petitioner is also not able to procure any other sufficient reason for review of the retail supply tariff order for SEZ for FY 2015-16. Mere disagreement with the order of the Commission or mere possibility of alternative views on the subject cannot be the grounds for invoking a review. As such, this review petition is not maintainable and therefore, dismissed.

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The petition thus stands disposed of.

Sd/-

(Alok Gupta)
Member

Sd/-

(A. B. Bajpai)
Member

Sd/-

(Dr. Dev Raj Birdi)
Chairman

