MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub: In the matter of Petition under Section 94 (1) (f) of the Electricity Act, 2003 (EA 2003), read with Regulation 40 of the MPERC (Conduct of Business) (Revision-I) Regulations 2016 for seeking review of certain aspects of the True Up Order dated 20.03.2023 in Petition No. 83/2022 for MPPMCL and MPPoKVVCL, MPPaKVVCL & MPMKVVCL as the Distribution Licensees.

Order

(Hearing through Video Conferencing)

Date of order**:** 07.11.2023

1. MP Power Management Co. Ltd.	
2. MP Poorv Kshetra Vidyut Vitran Co. Ltd (East DISCOM)	
3. MP Paschim Kshetra Vidyut Vitran Co. Ltd (West DISCOM)	**Petitioners**
4. MP Madhya Kshetra Vidyut Vitran Co. Ltd. (Central DISCOM)	

1. Shri Manoj Dubey, advocate appeared on behalf of Petitioners. Shri Lokesh Malviya, DGM appeared on behalf of MPPMCL. Shri D.P Ahirwar, CE appeared on behalf of Central Discom. Shri Shailendra Jain, Dy. Director appeared on behalf of West Discom. Shri Shailendra Kushwaha, Dy. Director appeared on behalf of East Discom.

2. The subject petition is filed by petitioners seeking review of certain aspects of true-up order for FY 2021-22 issued on 20th March, 2023 in petition no. 83/2022 for State Discoms. The petitioners have made following prayers:

   a) *Take the accompanying Review petition of the above Petitioners on record and treat it as complete;*

   b) *Review portions of the order dated 20.03.2023 passed in Petition No.83/2022, as set out in the present Petition and consider the issues as raised in the present petition;*

   c) *Correct all the errors / issues of oversight that have crept in the Order dated 20th March 2023,in Petition No.83/2022;*

   d) *Consider and approve Petitioner's Review Petition seeking review of the Petition and amount if any approved may be passed through in next Tariff Order;*

e) *Condone any inadvertent omissions/errors/ shortcomings and permit the Petitioner to add/ change/ modify/ alter portion(s) of this filing and make further submissions as may be required at a later stage; and*

f) *Pass such an order as the Commission deems fit and proper as per the facts and circumstancesof the case.*

3. At the motion hearing held on 04th July, 2023, the Counsel for petitioners explained the grounds for review of the petition. After hearing the petitioners' Counsel, the Commission admitted the petition for scrutiny and further deliberations.

4. Thereafter, the Commission communicated additional data requirements vide letter dated 21st August, 2023 to be submitted by 31.08.23. The Commission vide letter dated 31st August, 2023 received communication from Petitioners for extension of time by 15 days for submission of additional information to fill data gaps.

5. The Commission vide letter dated 04th September, 2023 allowed 15 days additional time up to 15.09.2023 for furnishing the additional information to fill data gaps.

6. The Petitioners submitted the consolidated additional information to fill data gaps vide letter dated 15th September, 2023 **except month wise actual and Technical Minimum scheduling duly certified by SLDC for FY 2021-22**.

7. The issues on which review has been sought by petitioners are as follows:
   i. Error in assessment of monthly distribution losses and power purchase scheduling.
   ii. Error in treatment of consumer contribution and grant utilized during the year.
   iii. Error in disallowance of Sale under unmetered categories.
   iv. Associated impact of above errors on calculations of Interest on Working Capital.

8. On account of above issues, the Petitioners have claimed the impact of Rs. 492.33 Crore in the review petition as shown below:- **Rs. Crore**

Sr. No	Particulars	Allowed in True-up FY22	Revised Claim FY22	Review Impact
1	Impact of Re-assessment of Distribution Losses with normative profiling in tandem with actual loss	17363.98	17753.44	22.73
2	Impact of Assessment of Power Purchase quantum considering TMM & MOD (Variable)			366.73

Sr. No	Particulars	Allowed in True-up FY22	Revised Claim FY22	Review Impact
3	Impact of disallowance of unmetered Sales (AG+Dom) on revenue	(80.81)	80.81	80.81
4	Impact of erroneous disallowance of sales on Power purchase	-	22.98	22.98
5	Impact on Return on Equity due to correction in CC & Grant	721.65	725.30	3.65
6	Impact on Interest on Project Loan to correction in CC & Grant	806.33	815.48	9.15
7	Impact on Depreciation to correction in CC & Grant (with 50% disallowance – as it is in TO)	485.87	489.37	3.50
8	Additional income due to correction in CC & Grant			(17.22)
	Total Impact			**492.33**

9. The Commission noted that the Review Petition has been filed under Regulation 40 of MPERC (Conduct of Business) (Revision I) Regulations, 2016, which specifies as follows:

   *"**40. Review of the decisions, directions and orders***

   (1) The Commission may on its own motion or on the application of any of the person or parties concerned, within 60 days from the date of making any decision, direction or order, review such decision, direction or order and pass such appropriate order asthe Commission thinks fit.

   (2) An application for such review shall be filed in the same manner as a petition under Chapter II of these Regulations subject to fulfilment of the following conditions, namely :-

   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."

10. It is well settled that a review petition has a limited purpose and cannot be, allowed to be an appeal in disguise. An error which is not self-evident and has to be detected by process of reasoning can hardly be said to be error apparent on the face of record for the Court to exerciseits power to review under Order 47 Rule 1 of CPC. It is also well settled that the power of review cannot be exercised to substitute a view. However, the Commission would like to examine below each reason via-a-vis the facts on record during

proceedings held in petition no. 83/2022 for true up of FY2021-22.

11. In light of above, the Commission has dealt with each issue raised by the petitioners in this review petition and the same is given below:

Issue (i): - Error in assessment of monthly Distribution Losses and Power Purchase Scheduling

<u>Petitioners' Submission:</u>

12. Petitioners submitted that for the Distribution Licensees the normative Distribution Losses are approved for a year as specified in the applicable Tariff Order or Regulations, nowhere it has been specified that Distribution Licensee has to maintain constant Distribution losses throughout the year.

13. Petitioners submitted that the assessment of Renewable Energy Purchase Obligation (RPO) target or Normative Plant Availability Factor (NPAF) or Normative Plant Load Factor (NPLF) are being done on cumulative basis at the end of the year. However, for the assessment of Distribution Losses different approach has been adopted. This has resulted in not only differential treatment for Discoms but also in disallowance of actual legitimate cost being incurred corresponding to scheduling of Stations, which as per the Commission's methodology never got scheduled.

14. Petitioners submitted that the methodology for assessment of Distribution Losses should be so designed that in case the Distribution Licensee achieves the normative level of losses, then there should not be any disallowance.

15. Petitioners submitted that the total normative Energy requirement, i.e., 73,985 MUs is same in both the methodologies, however, the monthly Energy requirement and hence scheduling differs. When the methodology as adopted by the Commission is considered the variable cost of Stations which actually got scheduled as per real operations never gets accounted. Therefore, the Petitioners requested the Commission to consider the assessment of Distribution Losses on cumulative basis. They further submitted that the Commission may consider the normative profiling in tandem with actual loss profiling as submitted by the Petitioners while reassessing the Distribution Losses.

16. Petitioners submitted that the Commission has adopted methodology wherein no Technical Minimum scheduling is being ensured. Rather, the Commission has directly applied the Merit Order Despatch (MOD) Principle on the Energy Available against the Stations as per monthly State Energy Account. Therefore, the methodology as adopted by the Commission contradicts from its own Detailed Operating Procedure (DOP) and MP Electricity Grid Code. Hence, there is an error apparent on the face of the

record, which needs to be corrected.

17. Petitioners further submitted that as per the Commission's methodology, the stations with higher energy charges never get scheduled on MOD, which actually are required to be scheduled for at least 55% of Maximum Continuous Rating or MCR loading (i.e. on TMM). The TMM run of thermal generating stations ensures the availability of power during time period when power from renewable energy sources is not available, as once a station is backdown or given Reserve Shut Down it takes considerable time to get on bar. The methodology as adopted by the Commission is mythical which cannot be implemented in real operations and has resulted in substantial loss to the Petitioners in terms of Energy Charges. Hence, there is need to correct the scheduling methodology.

18. Petitioners have worked out their own computation wherein they have recalculated the Energy Charges by considering the impact of Technical Minimum Scheduling and have worked out the revised Energy Charges as Rs. 17,753.44 Crore as against Rs. 17,363.98 Crore as approved in the impugned Order. Accordingly, there is an impact of Rs. 389.46 Crore which the Petitioners are entitled to claim.

Commission's observations

19. The Commission in its true-up order, has adhered to the established practice of considering Distribution Losses as outlined in the MYT Regulations, 2015 and subsequent amendments. The Commission while allowing the power purchase cost for FY 2021-22 at normative distribution losses has computed the monthly energy requirement at normative distribution losses and applied the MOD principles to allow the power purchase cost corresponding to normative distribution losses on monthly basis. This consistent approach has been applied to previous years' true-up orders as well. The Commission in its Order on true-up for FY 2020-21 has also applied the similar approach and Order on true-up for FY 2020-21 has attained finality. As per CEA (Installation and Operation of Meters) Regulations, 2006 and amendments thereof it is mandatory to install meters on DTRs. Petitioners are yet to comply with CEA Regulations. Despite repeated directives of the Commission to install meters on feeders and DTRs for energy audit and conduct energy audit, DISCOMs have not yet been able to provide satisfactory reports of energy audit. As such the Petitioners have not complied with CEA Regulations and directions of this Commission. Suo Motu proceedings have already been initiated against the Petitioners in the matter of non-compliance. For want of proper energy audit metering and availability of satisfactory energy audit reports loss profiling submitted by the Petitioners in this review Petition cannot be accepted. Commission cannot allow monthly losses assessed by the Petitioners and burden retail consumers with energy charges based on such assumptions.

20. With regard to consideration of TMM scheduling for computation of energy charges the Commission observes that in true-up petition for FY 2021-22 the Petitioners have themselves worked out and submitted the power purchase cost as per the methodology adopted by the Commission in true-up order of FY 2013-14, whereas in instant review petition, petitioners have proposed different methodology considering TMM scheduling for computation of energy charges in power purchase cost. Petitioners have also not supplied the Commission additional information sought in respect of month wise actual and Technical Minimum scheduling duly certified by SLDC for FY 2021-22.

21. Moreover, the Petitioners have sought the review of this matter on grounds of error apparent. The Commission is of the view that error apparent means any computational error on the face of it. However, in this case, it is the methodology adopted by the Commission which is relevant and the error apparent does not apply to the methodology or principles adopted while issuing an Order. There is therefore, no error apparent on the face of record and hence issue (i), as raised by the Petitioners, does not warrant any intervention through a review process, and as such, is hereby dismissed.

Issue (ii):- Error in treatment of Consumer Contribution and Grant

<u>Petitioners' Submission:</u>

22. The Petitioners submitted that in True-up Petition, they have requested before the Commission to revisit its approach towards treatment of Consumer Deposit and Grants wherein the Commission use to consider Consumer Deposit and Grants received during the year as utilized during the year. However, the Commission has not entertained the Petitioner's request and has continued with its approach stating that the Commission had been adopting the same approach in all its previous true up orders which have already attained finality.

23. The Petitioners submitted that the erroneous treatment of Consumer Deposit and Grants is resulting in perpetual loss to the Petitioners and casting heavy financial loss to the Petitioners. The Petitioners further submitted that the consideration of Consumer Contribution and Grants should be done on "utilization basis" rather than on "received basis".

24. The Petitioners submitted that consumer contribution and grant received during the year equivalent to utilization as financing part of Capitalization which will not subject to usual accounting treatment i.e. no interest on loan, return on equity and depreciation will be provided but petitioners have to pay interest, repayment etc. entirely on such capitalisation in future year thus, treating these funds as capitalization financing is an incorrect accounting practice.

25. The Petitioners submitted that this issue may be addressed by providing the impact of non-utilization of Consumer Contribution and Grants on yearly basis. For an instance the unutilized Consumer Contribution and Grants may be treated as an investment in either Fixed Deposit (FDs) or Bank savings. Accordingly, an estimated income may be arrived which can be considered as non-Tariff income thereby giving impact of non-utilization of Consumer Contribution and Grants.

<u>Commission's observation</u>

26. The Commission observed that the Petitioners in true-up petition of FY 2021-22 have requested the Commission for consideration of Consumer Contribution and Grants on "utilization basis" rather than on "received basis". The Commission has to encourage efficiency and economical use of resources as per Section 61(d) of the Electricity Act, 2023. Partial utilization of available consumer contribution and grants cannot be allowed by the Commission as the same will result in non-utilization of the funds available with the Petitioner and burdening the consumers with financing costs through interest on loan and return on equity. This issue is well settled and the Commission in the true-up order of FY 2021-22 and in review petition of true-up up order FY 2020-21 (P. No.38/2022) has reiterated its view on this matter. Therefore, review sought by the Petitioners once again on the same issues does not satisfy the conditions for review of the impugned order as per Regulation 40 (2) of the provision of MPERC (Conduct of Business) (Revision I) Regulations, 2016. Further, the Commission also observed that the Petitioners in true-up petition for FY 2021-22 has not raised the issue of treatment of non-utilization of Consumer Contribution and Grants during the year in Non-Tariff Income.

27. The Petitioners have sought the review on the grounds of error apparent. As discussed earlier, the error apparent means any computational error on the face of record. While in this issue, it is matter of methodology adopted by the Commission. The error apparent does not apply to the methodology or principles adopted while issuing the Order.

28. As there is no error apparent on the face of record issue (ii), as raised by the Petitioners, does not warrant any intervention through a review process, and as such, it is hereby dismissed.

Issue (iii):- Error in Disallowance of Sale under unmetered categories

<u>Petitioners' Submission:</u>

29. The Petitioners submitted that Commission has disallowed sales towards unmetered Domestic connections as well as unmetered Agricultural connections stating that the same has been booked by the

Licensees in excess of benchmark specified. For East Discom, the Commission has disallowed sale of 14.02 MUs and 51.20 MUs for unmetered Domestic and Agricultural connections respectively. For Central Discom, Commission has disallowed 1.67 MUs and 116.54 MUs for unmetered Domestic and Agricultural connections, respectively. For West Discom, the disallowed sales of 24.93 MUs pertain to unmetered agricultural connections.

30. The Petitioners submitted that the Commission has inadvertently placed the excess sales booking of East Discom in the Central Discom and vice-versa.

31. The Petitioners submitted that Commission has disallowed sales booked in excess of the norms specified thereby disallowing the corresponding power purchase quantum and hence cost at normative level. However, the Commission has considered the full revenue as per audited accounts which includes revenue against such disallowed sales too; thereby, impacting the Petitioners from both sides, i.e., from expense as well as revenue side.

32. The Petitioners submitted that the Commission has erroneously disallowed sales of 51.20 MUs for East Discom, 6.68 MUs for Central Discom and 24.93 MUs for West Discom. Since these are actual sales booked, disallowance of the same has resulted in lower admittance of power purchase requirement at normative level. Further, the revenue realized against aforesaid sales has already been considered in True-up and since the sales are within the norms specified, therefore the Petitioners are entitled to recover the expenses incurred against the same in the form of additional power purchase cost.

33. The Petitioners requested the Commission to allow the sales and power purchase quantum & cost as per Monthly TMM & MOD principle as proposed by the Petitioners in this Petition corresponding to aforementioned sales.

34. Further, the Petitioners requested the Commission to reduce the total admitted revenue by Rs. 80.81 Crore and allow the marginal increase in variable cost of power purchase by Rs. 22.98 Crore in the review of sale for unmetered domestic and agricultural category.

<u>Commission's observation</u>

35. Regarding an inadvertent error, the Commission observed that there has been inadvertent error in Table 7 of the impugned order. The sales booked in excess of the specified benchmark for "East DISCOM as 14.02 MUs and Central DISCOM as 1.67 MUs" mentioned in Table 7 stand replaced with "East DISCOM as 1.67 MUs and Central DISCOM as 14.02 MUs". The revised Table 7 is as follows:-

"…….

Table 7 : Summary of sale to the unmetered domestic category booked in excess of the specified benchmark (MU):

DISCOM	*Unmetered Sales as per monthly R15*	*Sales booked in excess of the specified benchmark*
East	*307.31*	*1.67*
West	*28.97*	*0.00*
Central	*302.87*	*14.02*
State	***639.15***	***15.68***

……"

36. Regarding disallowance of Sale under unmetered categories, the Commission observes that Petitioners have submitted some circumstances for appearance of higher sales in a month than the norms in true-up petition for FY 2021-22 which are same as submission of the Petitioners in review petition. Therefore, no new discovery and important matter or evidence has been brought to knowledge by the Petitioners when the order was passed by the Commission.

37. Further, The Commission in review petition of true-up up order FY 2020-21 (P. No.38/2022) has reiterated its view on this matter. Therefore, review sought by the Petitioners once again on the same issues does not satisfy the conditions for review of the impugned order as per Regulation 40 (2) of the provision of MPERC (Conduct of Business) (Revision I) Regulations, 2016.

38. In view of the above, only issue regarding an inadvertent error in Table 7, raised by the Petitioners is accepted and rectified accordingly. However, issue regarding disallowance of Sale under unmetered categories does not warrant any intervention through a review process, and as such, it is hereby dismissed.

Issue (iv) : Associated impact of above errors on calculations of Interest on Working Capital

<u>Petitioners' Submission:</u>

39. The Petitioners submitted that the various corrections sought in this review Petition will also have an impact on Interest on working capital of the Discom, since the working of the same is dependent on various ARR items. Therefore, the Petitioners requested the Commission to give effect to such corrections in the calculation of Interest on working capital for Truing-up of FY 2021-22.

<u>Commission's observation</u>

40. The Commission has not allowed review on any of the above-mentioned issues which will have an impact

on calculations of interest on working capital. Therefore, there is no need for revision in interest on working capital.

41. In view of the above, Issue (iv), as raised by the Petitioners, does not warrant any intervention through a review process, and as such, it is hereby dismissed.

42. On examining the reasons/grounds mentioned by Petitioners and in view of the foregoing observations, the Commission does not find any ground for review of the impugned true-up order for FY 2021-22 issued on the 20th March, 2023 in petition no. 83/2022 for State Discoms. Therefore, the present Review Petition is dismissed and disposed of.

Prashant Chaturvedi **Member**	**Gopal Srivastava** **Member (Law)**	**S.P.S. Parihar** **Chairman**