

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Subject: In the matter of MPAKVN(I)L's review petition against the order dated 23/03/2015 in P. No. 21/2014 for determination of ARR and tariff for FY 2015-16. (P No. 52/2015)

ORDER

Date of Hearing: 21/06/2016

Date of Order : 6/08/2016

**MP Audyogik Kendra Vikas Nigam (Indore) Ltd.
(MPAKVN(I)L)**

Petitioner**Vs**

**MP Power Management Co. Ltd.
(MP PMCL)**

Respondent

Shri Ajay Porwal, Consultant and Ms. Bhakti Vyas Legal Consultant appeared on behalf of the petitioner.

2. The petitioner MPAKVN(I)L has filed the subject petition for review of the Commission's order dated 23/03/2015 in Petition No. 21/2015 in the matter of determination of ARR and retail supply tariff for SEZ Pithampur for FY 2015-16. The petitioner has also requested to condone the delay in filing the subject review petition. The motion hearing in the matter was held on 13/10/2015 wherein the Commission condoned the delay. The petition was admitted and the notice was issued to MP Power Management Co. Ltd. (MPPMCL) who was made respondent in the case.

3. The petitioner through the instant review petition has requested for the following reliefs:

I. Interim Relief: Give interim relief to recover additional charge of Rs. 1.00 per unit towards energy charge on account of ToD, power factor, A&G expenses of petitioner, land lease rent and other un-recovered expenses till disposal of this review petition with immediate effect.

II. Reliefs:

- Allow the petitioner to recover FCA from SEZ consumers.
- Amend tariff order for FY 2015-16 by withdrawing ToD tariff.
- Amend tariff order for FY 2015-16 by withdrawing PF incentive.
- Allow the petitioner to recover lease rent charges for the use of land for substation and line and premium for the substation land.
- Allow the petitioner to recover A&G expenses over and above service charges paid to MP Paschim Kshetra Vidyut Vitaran Co. Ltd.

4. During the hearing held on 19/01/2016 the Commission enquired about the status of execution of the long term power purchase agreement (PPA) by the petitioner and also the basis

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of levying the FCA by the respondent on the power purchase made by the petitioner. The representatives of the petitioner and the respondent informed to the Commission that the requisite power purchase agreement would be executed shortly which would also take care of the issues related with the levy of FCA. The Commission decided to adjourn the proceedings in the instant petition till the execution of long term power purchase agreement by the petitioner. Vide letter dated 06/04/2016 the petitioner informed to the Commission about the execution of the PPA with MPPMCL on 20/03/2016 and requested the Commission to schedule the next hearing in the matter which was slated on 24/05/2016.

5. During the hearing on 24.05.2016, the petitioner referred to an Order of the Commission dated 07.10.2010 in petition no. 51 of 2010 in the matter of review of Retail Supply Tariff Order dated 18.05.2010 for FY 2010-11. In the said order, the Commission had decided to revise the load factor incentive formula in condition 1.9 (i) of general terms and condition of HT tariff of Tariff order FY2010-11 after due deliberations so as to make it more equitable for both to the consumer and to the Discoms and also consistent with general philosophy to encourage higher power factor. The petitioner requested the Commission to allow him to make additional submission on factual status illustrating the adverse impact on petitioner's revenue on account on prevailing incentives such as ToD tariff and power factor incentives making power business operation of petitioner unsustainable. The Commission accepted the request and directed the petitioner to submit detailed reply comprising analysis of factual details drawn from consumers' bills and its linkage with petitioner's revenue for the period in question.

6. During the hearing on 21/06/2016 the petitioner submitted the following information:

- i. Month wise comparative statement of power sales and purchase showing direct gap/surplus,
- ii. Monthly R-15 consolidated R-15 for the year,
- iii. Month wise comparison of major consumers' sale with purchase,
- iv. UI/DSM summary for the year and
- v. Month wise purchase bill of MPPMCL as per long term power agreement.

7. 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:

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“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:

(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.”

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 instant petition for review of the retail supply tariff order for SEZ for 2015-16 have been scrutinized for establishing the maintainability of the subject petition in light of the statutory provisions. The review sought by the petitioner is 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.

9. The Commission observed that the petitioner has prima facie failed to establish a review of the tariff order. However, the point wise status as per the petition filed by the petitioner for determination of ARR and retail supply tariff for FY 2015-16 (Petition No. 21/2014) and the Commission's order dated 23rd March 2015 in the matter of aforementioned petition on the issues raised by the petitioner in the instant review petition is given below:

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- a. Allow petitioner to recover FCA from SEZ consumers:

In the retail supply tariff order for FY 2015-16 for SEZ Pithampur in chapter 3 "Fuel Cost Adjustment Charge" the Commission had categorically stated that

"The Commission has observed that the petitioner has proposed to procure the power from MPPMCL and not from any generator directly. In this case the fuel cost adjustment charge shall not be applicable. If the petitioner resorts to procure the power directly from a generator the FCA charges as stipulated below would be applicable."

The petitioner has subsequently executed the PPA with MPPMCL on 20/03/2016 with retrospective effect i.e. the PPA is applicable w.e.f. 01/04/2015. As per the provisions of PPA, the petitioner would be required to source the power from the allocated generating stations indicated in the PPA. During the financial year 2015-16, the petitioner sourced the power on short term basis from MPPMCL wherein MPPMCL imposed the fuel cost adjustment charges on the basis of the approval granted by the Commission for recovery of difference in the fuel cost from the consumers of the Discoms and not from MPAKVN(I)L which is a distribution licensee. Further, a perusal of the information (Annexure P1 and P5) submitted by the petitioner during the hearing on 21/06/2016 revealed that MPPMCL had raised the supplementary bills on account of power purchased by the petitioner during FY 2015-16 only in the month of May 2016 on the basis of the PPA. If MPAKVN(I)L had sourced the power from MPPMCL during FY 2015-16 at a price different from that admitted in the retail supply tariff order for FY 2015-16 for SEZ, the difference in the power purchase cost would now only be addressed through the true up exercise on the basis of audited balance sheet. The Commission has never disallowed the legitimate recovery of FCA or difference of power purchase cost by a distribution licensee from its consumers subject to prudent examination of the claim of the distribution licensee but the distribution licensee is required to resort to the provisions of the tariff order and the procedure specified in the tariff order. Without complying the Commission's order the petitioner's claim that there is an error apparent in the order is devoid of merit for review of the Commission's Order.

- b. Amend tariff order for FY 2015-16 by withdrawing ToD tariff and
c. Amend tariff order for FY 2015-16 by withdrawing PF incentive.

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In the petition filed by MPAKVN(I)L for determination of ARR and retail supply tariff for FY 2015-16 for SEZ (P – 21/2014) the scheme of Time of Day Surcharge / Rebate itself was proposed by the petitioner as given below:

S. No.	Peak / Off-peak Period	Surcharge / Rebate on energy charges on energy consumed during the corresponding period
1.	Evening peak load period (6PM to 10 PM)	15% of Normal rate of Energy Charge as Surcharge
2.	Off peak load period (10 PM to 6 AM next day)	7.5 % of Normal rate of Energy Charge as Rebate

By taking cognizance of the fact that during FY 2015-16 there would be ample availability of power and the petitioner inclined to implement the ToD scheme for the consumers of SEZ ,the Commission considered the Time of Day Surcharge / Rebate in the retail supply tariff order for FY 2015-16 for the consumers of SEZ as given below:

S. No.	Peak / Off-peak Period	Surcharge / Rebate on energy charges on energy consumed during the corresponding period
1.	Evening peak load period (6PM to 10 PM)	5% of Normal rate of Energy Charge as Surcharge
2.	Off peak load period (10 PM to 6 AM next day)	15 % of Normal rate of Energy Charge as Rebate

In the petition filed by MPAKVN(I)L for determination of ARR and retail supply tariff for FY 2015-16 for SEZ (P – 21/2014) the provision of Power Factor Incentive itself was proposed by the petitioner as given below:

Power Factor	Percentage incentive payable on billed energy charges
Above 95% and up to 96%	1.0 (one percent)
Above 96% and up to 97%	2.0 (two percent)
Above 97% and up to 98%	3.0 (three percent)
Above 98 % up to 99%	5 (five percent)
Above 99 %	7 (seven percent)

By taking cognizance of the petitioner's submissions and intentions in this regard the Commission considered and allowed the power factor incentive as proposed by the petitioner in the retail supply tariff order for SEZ for FY 2015-16.

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The ToD scheme and power factor incentives were stipulated in the impugned tariff order on the behest of the distribution licensee. Now through the instant review petition the petitioner has requested to withdraw the ToD scheme and power factor incentives from the tariff order. The petitioner had not substantiated its claim with the relevant data / information in the review petition. However, during the hearing on 21/06/2016 the petitioner submitted some information as R-15 statements, a comparison between the average rate realized and cost of power purchase and also UI/DSM summary. The perusal of these statements has revealed that the R-15 statements (Annexure – II of the submission of 21/06/2016) carry the name of MP Paschim Kshetra Vidyut Vitaran Co. Ltd. and the information is for Pithampur Division of Indore O&M Circle. This information along with the information in Annexure III and IV of the submission of 21/06/2016 do not carry any relevance with the prayer of the petitioner in the petition. These information being obscure in nature does not lead to any conclusion and hence ineffectual for any purpose in context to the instant petition.

The reasons for withdrawal of ToD and PF incentive given in the petition appear to be afterthought as the exercise carried out by the petitioner after implementation of the retail supply tariff order for FY 2015-16 for SEZ which would have been carried out at the time of filing of the petition. The submissions in a petition (in the instant matter in P-21/2014) are supposed to be made after due deliberations by the petitioner and therefore, considered by the Commission as legitimate demand of the petitioner. In the instant situation when the petitioner himself failed to envisage the outcome of implementation of his submission, his claim that there is an error apparent in the order on the aforesaid issues is devoid of merit. Any difference between the expenses and revenue income of the petitioner shall be appropriately and prudently addressed through true up exercise to be taken up when a proper petition would be filed by the petitioner.

- d. Allow the petitioner to recover lease rent charges for the use of land for substation and line and premium for the substation land:

The Commission has noted that that the petitioner had not made any claim on this account in the original petition hence the expenses on this account were not considered in the retail supply tariff order. To claim that there is an error apparent in the tariff order, when the petitioner himself had not made any filing in this regard, is devoid of merit for review of the Commission's order.

- e. Allow the petitioner to recover A&G expenses over and above service charges paid to MP Paschim Kshetra Vidyut Vitaran Co. Ltd.:
on the basis of the O&M agreement executed by the petitioner with West Discom as had been done in the previous years subsequent to execution of the O&M agreement with

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West Discom. Any other expenses on account of employee cost, R&M and A&G had not been considered by the Commission in previous two years retail supply tariff orders issued by the Commission and the petitioner had accepted the same. In this situation the petitioner's contention on this issue is devoid of merit for review of the Commission's order.

- f. Interim Relief: Give interim relief to recover additional charge of Rs. 1.00 per unit towards energy charge on account of ToD, power factor, A&G expenses of petitioner, land lease rent and other un recovered expenses till disposal of this review petition with immediate effect.

The petitioner has sought the interim relief to recover additional charge of Rs. 1 per unit as above. In light of the deliberations of the Commission on the issues raised by the petitioner for review as indicated hereinabove, since the review of the Commission's order is not sustainable, the question of allowing the petitioner for recovery of additional charge of Rs. 1 per unit from the consumers does not arise.

10. Further, the Commission has also noted that in respect of petition number 18 of 2015 filed by Pithampur Audyogik Sangathan, Indore the petitioner filed certain statement as respondent before the Commission. MPAKVN(I)L through written submissions dated 16th July 2015 and 08th September 2015 filed that *Pithampur Audyogik Sangathan has wrongly represented the facts and figures in the petition by challenging the sanctity of the retail supply tariff order for SEZ for FY 2015-16. MPAKVN(I)L has not been challenging this tariff order passed by the Commission on 23rd March 2015 for retail supply business in its license area and has completely accepted the tariff schedules. The Commission has accurately estimated the revenue for FY 2015-16. There is no need to revise the estimated revenue for FY 2016 onwards.*

11. In light of the facts and circumstances as enumerated hereinabove the petitioner has failed to put forth or establish an error apparent / calculation error or any violation of provisions of the regulations / Act. The Commission has reiterated that all the legitimate expenses of the distribution licensees would be prudently considered in the true up exercise. Therefore, the instant review petition is not maintainable. The petition is dismissed.

Orderd accordingly.

(Alok Gupta)
Member

(A. B. Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman