

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub : In the matter of review/modification of order dated 12.01.2012 passed by the Commission in Petition No. 64/2011.

Petition No. 36/2012

ORDER

**(Date of hearing 28th May, 2012)
(Date of order 30th May, 2012)**

M.P.Paschim Kshetra Vidyut Vitaran Co. Ltd. GPH Compound, Pologround, Indore (MP)	-	Petitioner
V/s		
M/s Chirayu Health & Medicare Pvt. Ltd., 6, Malipura, Bhopal (MP) - 462001.	-	Respondent No.1
MP Madhya Kshetra Vidyut Vitaran Co. Ltd., Nishtha Parisar, Govindpura, Bhopal (MP).	-	Respondent No.2
MP Power Transmission Co. Ltd., Shakti Bhawan, Vidyut Nagar, Jabalpur (MP).	-	Respondent No.3
MP Power Management Co. Ltd., Shakti Bhawan, Rampur, Jabalpur (MP).	-	Respondent No.4

Shri D.S.Pawar, Advocate and Shri Anant Chaure, Law Officer appeared on behalf of the petitioner.

Shri Anoop Sharma, Advocate appeared on behalf of the Respondent No.1.

Shri Manoj Tripathi, AE, O/o CE (Plg & PS) appeared on behalf of the Respondent No.3.

Ms. Parul Dangi, Legal Executive appeared on behalf of the Respondent No.4.

2. The petitioner has filed this petition in the matter of review/modification of order dated 12.1.2012 passed by the Commission in petition No. 64/2011.

3. The present petition has been filed under Clause 40 read with Clause 46 & 50 of MPERC (Conduct of Business) Regulation 2004. An application for condonation of delay has been filed along with the present petition. The petitioner has submitted that delay in filing the petition is caused due to procedural formalities.

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4. The petitioner is seeking review of order dated 12.01.2012 passed in Petition No. 64/2011 vide which the Commission directed the present petitioner to execute fresh agreement from date of filing of petition no. 64/2011. Relevant concluding para of the said order reads as under :

“On hearing Petitioner and Respondents, the Commission holds that earlier agreement continued to be in full force and effect as per provision in Section 17.1 of that agreement and that the said agreement was not terminated as accepted by Respondent No.2. Accordingly, Respondents are directed to make payment to Petitioner for surplus energy and provide adjustment of wheeled energy in the bills of captive consumer for the period from April, 2011 to the date of filing of petition by Petitioner. The Respondent No.2 is directed to execute a fresh agreement effective from the date of filing of this petition”.

5. In the present petition the petitioner has submitted that a PPA for Bulk Power Wheeling Agreement was executed with the respondent on 19.05.2007 for a period of 5 years. As per clause 17.1 of the said agreement the date of commencement of the agreement was date of connectivity to the grid i.e. 11.03.2006. The said clause of the agreement read as under:

“Clause 17.1 ... The date of connectivity to the grid/feeding power to the West DISCOM/TRANSCO system shall be deemed date of commencement of agreement.....”

6. The petitioner has submitted that the initial period of the said agreement therefore, expired on 10.3.2011. During the course of proceedings of petition no. 64/2011 the respondent No.1 referred to the petitioner's letter dated 08.04.2011 wherein it was stated that initial period of the agreement would expire in the month of May 2012. Relying on the said letter the respondent No. 1 had contended before the Commission that it has filed petition no. 64/2011, before the expiry of earlier agreement period. The said letter of the petitioner could not be verified from their office records since it was submitted by the respondent No. 1 before the Commission.

7. It is submitted that after the hearing on 10.01.2012 in petition No. 64/2011, the Commission had held that earlier agreement is still in force as per provision in clause

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17.1 of the agreement dated 19.05.2007 since the same has not been terminated by the respondent no. 2 (the petitioner in this review petition).

8. The petitioner has submitted that from perusal of the records including provision of clause 17.1 of the aforesaid agreement dated 19.05.2007 it is evident that the agreement was effective from the date of the connectivity to the grid/feeding power to the West Discom/Transco system i.e. from 11.03.2006 and hence its validity had already expired on 10.03.2011. The petitioner has also submitted that since the period of five years had already expired on 10.03.2011, the fresh agreement was required to be executed from 11.03.2011 and not from the date of filing of the petition no. 64/2011 i.e. on 17.10.2011.

9. Further, the petitioner has submitted that the Commission in the said order has directed it to execute fresh agreement from date of filing of petition no. 64/2011 on 17.10.2011. However as per the directives of the Commission enshrined in Tariff Order dated 21.11.2007, M.P. Tradeco. (now MP Power Management Co.) is required to execute Power Purchase Agreements/Power Purchase and Wheeling Agreements.

10. In view of the above submissions, the petitioner has prayed as under:

- i) Direction may kindly be issued for clarification as to the date from which fresh agreement is to be executed;
- ii) Direction for execution of agreement keeping in view provision contained in Tariff Order dated 21.11.2007.

11. The case was listed for hearing on 28.05.2012.

12. During the hearing on 28.05.2012, the representative of the petitioner reiterated the contents of the review petition and requested that clarification regarding the date from which fresh agreement is to be executed be issued in accordance with the provisions contained in the tariff order dated 21.11.2007.

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13. During the hearing, the Commission enquired from the petitioner whether the agreement dated 19.05.2007 effective from 11.03.2006 was terminated in accordance with the provisions contained in Clause 17.1 of the agreement. The representative of the petitioner submitted that the agreement was not terminated. Also, the representative of the petitioner could not submit sufficient grounds for review of Commission's order dated 12.01.2012.

14. During the hearing, the representative of the respondent No. 4 submitted that the respondent No.1 may be directed to execute a fresh agreement for the balance period of plant life with respondent No. 4 instead of the petitioner.

15. During the hearing, the representative of respondent No. 1 submitted that the Commission's order dated 12.01.2012 was not based on the letter dated 08.04.2011. Further, the aforesaid letter was not verified by the petitioner. It was further submitted that the Commission had issued the order dated 12.01.2012 based on the provisions contained in Clause 17.1 of the agreement dated 19.05.2007 according to which the agreement shall continue to operate till it is formally renewed, extended or replaced and hence review is not maintainable.

16. On hearing the petitioner and the respondents, the Commission is of the view that in so far as the issue regarding date from which fresh agreement is to be executed {prayer (i) above} is concerned the petitioner could not establish grounds for review of the Commission's order dated 12.01.20102. On the other issue of who should execute the agreement, the Commission directs the respondent No.1 to approach the respondent No. 4 for execution of agreement for the balance period of plant life instead of petitioner.

17. With the above directions, the Petition No. 36/2012 stands disposed of.

Ordered accordingly,

sd/-

(C.S.Sharma)
Member

sd/-

(Rakesh Sahni)
Chairman