

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub: In the matter of review of Retail Supply Tariff Order for FY 2015-16 dated 17th April 2015 (Petition No. 30/2014).

ORDER

Date of hearing: 24.11.2015

Date of order: 04.03.2016

The Electricity Consumer Society

C/o. All India Manufacturers Association
(M.P. State Board) Industrial Estate,
Pologround, **Indore -452015 MP:**

Petitioner

V/s

1. **The Managing Director,**
M.P. Power Management Company Ltd.
Shakti Bhawan, Rampur, **Jabalpur – 482 008**
2. **The Managing Director,**
M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd.
GPH Compound, Pologround, **Indore - 452 015.**
3. **The Managing Director,**
M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd.
Nishtha Parisar, Govindpura, **Bhopal – 462 023.**
4. **The Managing Director,**
M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd.,
Shakti Bhawan, Rampur, **Jabalpur – 482 008.**

Respondents

Dr. Gautam Kothari, Hon. Secretary appeared on behalf of the petitioner. Shri A.R. Verma, GM (Com), appeared on behalf of the respondent no. 1 & 3. Shri Pavan Kumar Jain, ASE (Comm) appeared on behalf of the respondent no.2. Shri Lokesh Malviya, Manager, appeared on behalf of the respondent no.4

2. The petitioner M/s Electricity Consumer Society, Indore has filed a review petition and subsequently the additional submission against the retail supply tariff order for FY 2015-16 issued by the Commission in the matter of petition number 30/2014 on 17th April 2015 (hereinafter referred to as the “tariff order”). Petitioner has stated that the review of tariff order has been requested on the issues of apparent errors in estimation and where new facts have come to the notice. The petitioner has further requested to revise the tariff order from date of issue. Vide daily order dated 25.08.2015 the Commission admitted the petition for further deliberation and directed to issue notice to the respondents. The Commission held the hearings in the matter on 29.09.2015, wherein the respondents 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

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub: In the matter of review of Retail Supply Tariff Order for FY 2015-16 dated 17th April 2015 (Petition No. 30/2014).

(hereinafter referred to as “the regulations”). The Commission heard the arguments put forth by the petitioner and the respondents during the hearings.

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

- i. By referring to the stand taken by the respondents in the petition filed by them for determination of ARR and retail supply tariff for FY 2014-15 that the respondents had not proposed any tariff hike during 2014-15 and the revenue gap as envisaged by the respondents was to be addressed by improving the operational efficiency and efficient management of surplus energy, the petitioner has stated that the Commission has made an apparent error in determining the tariff for FY 2015-16 whereby not considering the possibilities as envisaged by respondents in FY 2014-15.
- ii. The petitioner has filed extracts from IEEMA Journals. By referring to an article captioned “Power Discoms in Madhya Pradesh to get Rs. 7728 Crore” the petitioner has stated that this is a working capital loan and this loan and interest on it have to be converted into consistent loan. Further, this loan thus wipes out the past losses, hence considering true up costs of Rs. 1730 Crore in the tariff order by the Commission is as error apparent and requires to be corrected. The petitioner has also submitted a press note from the “Times of India” indicating that the GoMP has made a budgetary provision of Rs. 9704.08 Crore and part of this amount would be for financial restructuring, hence this amount should have been considered while finalising ARR for FY 2015-16. Further, by referring to an article about determination of tariff in Bihar wherein it is indicated that the exercise for tariff determination considers Govt. subvention and working efficiencies of the Discoms, the petitioner has stated that this is a new disclosure and by not considering these areas, the Commission has erred in fixing Tariff. The petitioners by referring to another article about writing off, of accumulated losses by the State and Central Govt., the consumers in state should not be burdened with accumulated losses issuing out of such schedules. This issue has not been given consideration by the Commission and the State Govt. and thus the determination of tariff is flawed.
- iii. Change in the consumption of domestic and agricultural categories of consumers by the Commission is ad-hoc and without justification. This is an error apparent. The reduction in agriculture consumption by 1700 MU and the increase in domestic consumption by the same quantum cannot be a coincidence and has been done to accommodate certain section of consumers. The reduction in agriculture consumption has been made to limit the amount of agriculture subsidy and to keep the tariff at the same level as tariff of FY 2014-15.

In the additional submission, a news item from the “Times of India” has been referred to, wherein the excess billing of agricultural consumers by MP Poorv Kshetra Vidyut Vitaran Co. Ltd. has been highlighted. Also through a press report of a news paper “Nai Duniya” referring a provision of about 1.5 Lakh permanent agricultural connections by

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub: In the matter of review of Retail Supply Tariff Order for FY 2015-16 dated 17th April 2015 (Petition No. 30/2014).

West Discom in next five months, the petitioner has sought to assess the impact of this step on irrigation consumption.

- iv. The revenue from sale of power has been worked out by giving advantage to the Discoms and disadvantage to the consumers. The petitioner argued that the higher rate for PXIL of Rs. 3.35 per unit could have fetched revenue of Rs. 6563 Crore, i.e. Rs. 372 Crore more than revenue worked in tariff order.

In additional submission the petitioner has referred to a news item of the “Times of India” wherein the average price in FY 2014-15 has been indicated as Rs. 3.52 per unit. The petitioner has asked for considering this rate for sale of surplus power and revision in the tariff order.

- v. The Power purchase cost for FY 2015-16 has been worked out on higher side. The pooled power purchase cost in FY 2014-15 was Rs. 2.79 per unit. This is in spite of 5% marginal cost has come down to Rs. 3.88 per unit from Rs. 4.79 per unit. Further, through the additional submission the petitioner has claimed that the benefits of reduction in coal costs are not passed on to the consumer and therefore the Commission has erred in working out the ARR.
- vi. RPO obligation can be fulfilled by purchase of REC certificates sold at the exchange. This would have reduced the ARR costs.
- vii. With the wheeling charges and cross-subsidy surcharge re-fixed in the tariff order, the energy purchased from power exchanges will now be sold by distribution companies. This would lead to increase in revenue of the Discoms. This aspect has not been considered in the tariff order.

4. In regard to maintainability of subject review petition, the respondents through their written submission dated 24.09.2015 have submitted as below:

“ the Clause 1.32 of MPERC (Details to be furnished and fee payable by Licensee or generating company for determination of tariff & manner of making application) Regulation 2004 is reproduced below:

A petition for review of tariff can be admitted by the Commission under following conditions:

- (a) The review petition is filed within sixty days from the date of the tariff order and
(b) It is proved an error apparent from the records is there.*

As per the above condition under (b) error is to be proved for review of the tariff order. Here the definition of error is “An error is deviation from accuracy or correctness” and there is NO deviation from accuracy and correctness in the data of tariff order. On this ground this review petition is liable to be rejected. Further, the petitioner has submitted the facts as per article issued in the newspapers and not as per the facts based on actual records, which is not correct and therefore petition is liable to be rejected.

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub: In the matter of review of Retail Supply Tariff Order for FY 2015-16 dated 17th April 2015 (Petition No. 30/2014).

The respondents have stated that while deciding the tariff for the FY 2015-16 the Commission has thoroughly scrutinized the ARR filed by the respondents by duly considering the suggestions/objections of the public and keeping in view the provisions of National Electricity Policy & Tariff Policy including some of the grounds mentioned in the instant petition. On the various issues in the petition and the additional submission the respondents have submitted as below:

- i. While deciding the ARR for FY 2014-15 for the Discoms, the Commission allowed only the prudent costs based on the normative parameters and computed zero uncovered gap/surplus thus no tariff hike was admitted. The difference in the cost provisionally approved in the tariff order and actual cost (based on the audited accounts) is to be considered in the true-up as and when filed by the Discoms. The resultant gap/surplus will be passed on to the consumers as and when approved by the Commission.
- ii. The petitioner has relied on the press note from IEEMA journal rather than the actual records. The scheme, if any, regarding writing off the accumulated losses by the State and Central Government is to be decided by the respective government(s). Therefore, it may not be appropriate to comment on such scheme(s). At present no such scheme exists in Madhya Pradesh. In future, if such scheme is made applicable, the benefit of the same will be passed on to the consumers.
- iii. Respondents had projected the sale based on historical growth observed during the last four (04) years and further considered a very nominal growth for projecting the sales for FY 2014-15 and FY 2015-16. The Respondents envisaged a goal to supply power for 24 hrs. to all non-agricultural consumers and minimum 10 hrs. supply to agricultural consumers, which would lead to improved sales during FY 2015-16. In view of this, a reasonable growth has been considered by the Respondents to project the sales for FY 2015-16. However, after considering various factors prudently, the Commission accepts projected sales for various consumer categories.
- iv. MPPMCL has been constantly making efforts for efficient management of surplus energy through competitive sale rates so as to recover maximum revenue. Any benefit arising out of such sale will be passed on to the consumers through true-up.
- v. MPPMCL procures solar and non-solar energy directly from the generator(s) which is usually available at more competitive prices than RECs are traded on power exchanges. In addition, procurement of RECs to meet RPO obligation, is a mere virtual transaction and no renewable energy is actually available for consumption. Therefore, the respondents prefer to purchase renewable energy through long term agreements. This also promotes utilization of renewable resources in the State and reduces the consumption of conventional resources. This in turn reduces carbon footprints of the State.
- vi. The tariff order for FY 2015-16 is issued based on the prudent costs determined on normative parameters as per the prevalent regulations and thus after finalization of the prudent costs, the Wheeling charges and Cross Subsidy Surcharges have been determined. If any consumer reverts to the State Discoms due to the revised cross subsidy

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub: In the matter of review of Retail Supply Tariff Order for FY 2015-16 dated 17th April 2015 (Petition No. 30/2014).

surcharge, the Discom may get additional revenue. This additional revenue, if any will be passed on to the consumers through the true-up petition of the relevant year.

5. 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:

(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:

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub: In the matter of review of Retail Supply Tariff Order for FY 2015-16 dated 17th April 2015 (Petition No. 30/2014).

- i. The contention of the petitioner that the Commission has not considered the possibilities as envisaged by the respondents in their petition filed for determination of retails supply tariff and ARR for FY 2014-15 is not correct. It is true that the respondents envisaged a revenue gap of Rs. 1267.05 Crore but had not proposed any tariff hike in their aforementioned petition. The respondents proposed to recover maximum revenue from efficient management of surplus energy available with them by selling it at competitive rates and by improving the operational efficiency by way of reducing technical and commercial losses. While determination of ARR for FY 2014-15 the Commission had thoroughly examined the petition and the submissions of respondents, wherein they had proposed to sale the half of the surplus energy through power exchange @ Rs. 3.50 per unit and remaining through competitive bidding route @ Rs. 4.50 per unit. The Commission being aware of the prevailing market conditions was not at all convinced with the proposal and therefore, admitted the sale of surplus power @ Rs 3.15 per unit. Further, as the Commission determines ARR as per the provisions in the regulations only, the effect of the improvement in operational efficiency by way of reducing technical and commercial losses in advance was not considered and the ARR was determined on the basis of normative losses only. The Commission found that the tariffs as applicable for FY 2013-14 were enough to recover the ARR so determined for FY 2014-15, hence the Commission continued with the then existing tariffs. Any difference / deviation from the Commission's order in light of the actual performance of the respondents shall be appropriately dealt in the true-up exercise.
Further, determination of ARR and tariffs is an exercise carried out by the Commission on the basis of the relevant Act / Regulations / Policies wherein the principles have been enumerated in detail. The insubstantial proposals in the petitions, if any, do not form the basis of the Commission's analysis and orders thereon. Therefore, the above assumption / reference / corollary drawn by the petitioner from the ARR and retail supply tariff petition for FY 2014-15 is devoid of merit for forming the basis for review of the tariff order.
- ii. The petitioner has sought the review of the tariff order on the basis of the certain information gathered by the petitioner from the news items / press notes from IEEMA Journals. These contentions of the petitioner do not form the basis of review of the Commission's tariff order. The reference of news items cannot be made basis of the review as merely bringing out the news items only without any substantiation is not acceptable in the judicial / legal process. However, deliberation on the contentions is given in the following paragraphs:
 - a. The allocation of Rs. 7728 Crore from Govt. of MP is in the form of a loan and the substitution of revenue requirement through a loan is not apposite. A loan to the Discoms has been serviced through tariff as per the principles specified in the regulations. The contention of the petitioner for wiping of the past losses and the true up cost of Rs. 1730 Crore through the above referred loan is against the principles of finance and devoid of merit.

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub: In the matter of review of Retail Supply Tariff Order for FY 2015-16 dated 17th April 2015 (Petition No. 30/2014).

- a. Further, the petitioner has also sought the review of tariff order on the basis of a news item that certain amount of fund has been allocated by the Govt. to Energy Deptt. which would be used for financial restructuring and therefore needs to be considered in ARR. The petitioner has not substantiated the claim. The news item appears to be a part of the budget provisions made by the State Govt which cannot form the basis for review. However, the effect, if any, on account of such allocations are appropriately considered in the true-up exercise carried out on basis of the audited statement of accounts. Hence, the claim of the petitioner does not qualify for a review.
 - b. The petitioner's contention that the Commission has not considered Govt. subventions and working efficiencies of Discoms while determining the tariff does not warrant a review of the tariff order. The Govt. of MP issues the order for providing subsidy only to certain categories of the consumers. The Commission determines the tariff without considering the Govt. subsidy. The provision of general tariff subsidy i.e. subsidy to all categories of consumer has not been a case in Madhya Pradesh. Further, the Commission has provided norms in the tariff regulations which take care of working efficiency of the Discoms. Gains or losses on account of deviation from these norms are to be retained / absorbed the licensees. Such comparison by the petitioner on the basis of the assumptions drawn from the irrelevant news items, without validation of the facts indicates his ignorance and does not attract review of the order.
 - c. The contention of the petitioner that the Commission has not considered the State Govt. and Central Govt. schemes for writing of the accumulated losses while determining the tariff and thus the determination of tariff has been flawed is wide of the mark. The tariff orders and the true ups of the tariff orders are primarily based on the audited statement of accounts of the licensees. These audited accounts would definitely indicate the writing of the accumulated losses, if happened. In such situations the Commission would address the issue appropriately after prudent examination in the true-up exercise. It would be premature to consider such schemes while estimating the ARR for determination of tariff. The petitioner has not substantiated his claim with figures in this regard. Hence, this contention as being an assumption of the petitioner does not attract a review of the tariff order and is devoid of merit.
- iii. The contentions of the petitioner with regard to estimation of sale in the tariff order by the Commission do not form the basis for a review of the Commission's tariff order. The sale of energy as envisaged by a licensee is its business proposition. The Commission had taken due cognizance of projected increase in sale by the Discoms. The Discoms had proposed the sale in the petition with a view of their achievement of feeder separation programme during FY 2015-16. This would lead to increase in demand of electricity in the rural area of the State. The State Govt. and the Discoms are looking forward to

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub: In the matter of review of Retail Supply Tariff Order for FY 2015-16 dated 17th April 2015 (Petition No. 30/2014).

provide unrestricted 24 hours supply throughout the State. The Commission being supportive of Discoms' endeavour to provide unrestricted supply to all consumers admitted the total quantum of sale as projected by the Discoms. Further, in light of the fact that the supply to agriculture sector even after the implementation of feeder separation would not increase to the extent projected in the petition and simultaneously the sale to domestic category would be more than the projected sale, the Commission had therefore rightly realigned the sale projections in these two categories.

Further, the petitioner's contentions of not assessing the excess billing of agricultural consumers by MP Poorv Kshetra Vidyut Vitaran Co. Ltd. and a provision of about 1.5 Lakh permanent agricultural connections by West Discom in next five months for estimating the ARR since derived from the news items published in newspapers and hence do not have the basis for consideration in estimation of various elements of ARR. A tariff order has been issued in accordance with the provision in the regulations. Such actions by the Discoms have to be substantiated with proper data / information. The petitioner's contentions indicated hereinabove since being based on the assumptions and news items; do not attract a review of the tariff order.

- iv. The petitioner's contention that revenue from sale of power has been worked out by giving advantage to Discoms and disadvantage to consumers is not correct. In the retail supply tariff order for FY 2015-16 the Commission estimated 19592 MUs as surplus energy available with Discoms. The Commission allowed this surplus energy for sale to outside MP @ Rs. 3.16 per unit. It has clearly indicated at para 3.80 of the retail supply tariff order for FY 2015-16 that the average rates of sale of energy by IEX, PXIL and through Bilateral route were Rs. 3.16/unit, Rs. 3.35 / unit and Rs. 4.28 / unit respectively during last one year. Further, the Commission had also taken the cognizance of the licensees' submission that the above rates include expenditure (NLDC, RLDC, STU, CTU charges etc.) of Rs. 0.22 per unit and also the quantum of sale occurred through the aforementioned different routes. Accordingly, the Commission prudently considered a rate of sale of surplus energy to outside the State as Rs. 3.16 / unit for the purpose of determination of ARR. The Commission had also directed the Discoms and MPPMCL to explore to maximize revenue by sale at higher rates through PXIL and Bilateral route for which presently the quantum of energy transaction is not much. The petitioner's contentions on the price of sale of surplus energy since being based on the assumptions and news items; do not attract a review of the tariff order.
- v. The petitioner's contentions that the power purchase cost has been worked out on higher side and benefits of reduction in cost of coal have not been passed on to the consumers are not correct. The power purchase cost was appropriately worked out on the basis of the average of variable cost of last 12 months, fixed cost from the latest available orders of the appropriate Commissions and also on the basis of PPA executed between generators

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub: In the matter of review of Retail Supply Tariff Order for FY 2015-16 dated 17th April 2015 (Petition No. 30/2014).

and MPPMCL as per the prevailing practices. The reduction in the variable cost as claimed by the petitioner due to reduction in coal cost would be evident in the bills of the generators to be issued in forthcoming months. This shall be suitably affected through the mechanism of FCA whereby passing the benefit to the consumers. Further, any deviation shall be appropriately considered at the time of true up. The petitioner has wrongly indicated the pooled power purchase cost in FY 2014-15 as Rs. 2.79 per unit. The pooled power purchase cost for FY 2014-15 was Rs. 2.66 per unit and for FY 2015-16 this is Rs. 2.79 per unit. Further, the inference drawn by the petitioner that since the cost of top 5% marginal power has reduced to Rs. 3.88 per unit in retail supply tariff order for FY 2015-16 from Rs. 4.79 per unit as per retail supply tariff order for FY 2014-15, there would be reduction in pooled power purchase cost in FY 2015-16 from FY 2014-15 is not based on the facts and figures. It has already been stated hereinabove that the power purchase cost has been computed meticulously as per the authentic information available on record. The petitioner's contentions on consideration of power purchase cost on higher side since being based on the assumptions; devoid of merit and therefore do not attract a review of the tariff order.

- vi. The petitioner's contention with regard to fulfillment of renewal purchase obligation through purchase of REC certificates would have reduced the ARR costs is not acceptable. The Commission has estimated the RPO for distribution licensees as per the provisions the MPERC (Cogeneration and generation of electricity from renewable sources of energy), Regulations 2010 (Revision – 1) wherein , 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 the 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. Any deviation on any account would be a matter of consideration in true-up. Further, the Commission agrees with the views of the respondents in this regard. The procurement of RECs to meet RPO obligation, is only a virtual transaction wherein renewable energy is not actually available for consumption. Hence preferring the purchase of renewable energy through long term agreements promotes the utilization of renewable resources in the State and reduces the consumption of conventional resources. In view of the foregoing the petitioner's contentions are devoid of merit and do not call for review of the tariff order.
- vii. The petitioner's contentions with regard to the determination of wheeling charges and cross subsidy surcharges are not true. The wheeling charges and cross subsidy surcharge have been worked out exactly in the manner stipulated in the Tariff Policy issued by the Ministry of Power, Government of India and on the basis of latest network cost and power purchase cost available with the Commission at the time of determination of ARR. Further, subsequent to revision in the wheeling charges and cross subsidy surcharge in the tariff order if the open access consumer resort to the distribution company of his area for meeting his power requirement the distribution company may get additional revenue which would be

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub: In the matter of review of Retail Supply Tariff Order for FY 2015-16 dated 17th April 2015 (Petition No. 30/2014).

appropriately dealt with in the true-up petition of the relevant year. The petitioner's premise in this regard is based on his assumptions that has cropped up after the issue of the tariff order and hence cannot be considered a basis for review of the tariff order.

Further, the petitioner's contention that offset of demand has not been provided in the tariff order is not correct. The appropriate provision has been present in the retail supply tariff order for FY 2015-16. At clause 1.5 "Billing Demand" of terms and conditions for high tension tariff, it is provided for exclusion of open access demand from the maximum demand recorded for open access consumers. This stipulates as:

"Billing Demand – The billing demand for the month shall be the actual maximum kVA demand of the consumer during the month excluding the demand availed through open access or 90% of the contract demand, whichever is higher."

Therefore, the petitioner's contentions are devoid of merit and do not call for review of the tariff order.

9. In light of the facts and circumstances as enumerated hereinabove, the petitioner has failed to establish the error apparent / calculation error or any violation of provisions of the regulations / Act. Further, the petitioner is also not able to produce any other sufficient reason for review of the retail supply tariff order issued by the Commission on 17th April 2015 for FY 2015-16. Mere disagreement with the order of the Commission or mere possibility of alternative views on the subject matter cannot be the ground for invoking a review. As such, this review petition is not maintainable and therefore, dismissed.

The petition thus stands disposed of.

(Alok Gupta)
Member

(A. B. Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman