

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION BHOPAL

Sub: In the matter of application filed by MPIDC Bhopal for grant of power distribution license for Industrial Area at Mohasa – Babai, Dist. Hoshangabad, MP under Sections 14 and 15 of the Electricity Act, 2003 and as per MPERC (Procedure of Application for License) Regulations, 2004.

Petition No. 59 of 2020

ORDER

(Date of Order: 10th May, 2021)

M. P. Industrial Development Corporation Ltd.

16-A, CEDMAP Bhawan, Arera Hills, Bhopal - 462011

- **Petitioner**

Vs.

(i) M. P. Power Management Company Ltd.,

Block No. 15, Shakti Bhawan, Rampur, Jabalpur – 482008

(ii) M. P. Madhya Kshetra Vidyut Vitaran Co. Ltd.

Nishtha parisar, Govindpura, Bhopal – 462023

(iii) Energy Department, Government of Madhya Pradesh

Vallabh Bhawan, Bhopal - 462004

(iv) M. P. Power Transmission Company Ltd.,

Shakti Bhawan, Rampur, Jabalpur – 482008.

- **Respondents**

Shri Ayush Dev Bajpai, Advocate appeared on behalf of the Petitioner.

Shri Manoj Dubey, Advocate appeared for the Respondents No.1 and 3.

2. The subject petition was filed by M. P. Industrial Development Corporation Limited Bhopal seeking grant of License for distribution of electricity with in the Industrial Area at Mohasa – Babai, Dist. Hoshangabad, MP under the provisions of Sections 14 and 15 of the Electricity Act, 2003 and MPERC (Procedure of Application for License) Regulations, 2004.

3. **Petitioner's submission:**

In the subject petition, the petitioner broadly submitted as under;

- i. *That, the Petitioner is a Public Sector Undertaking Company and is wholly owned and controlled by the Government of Madhya Pradesh. The Petitioner is developing the Industrial Area Mohasa–Babai in Hoshangabad district with an intend to promote, encourage and assist the establishment, growth and development of industries in the state of Madhya Pradesh by developing the said industrial area into a world-class industrial growth center with state-of-art infrastructure.*
- ii. *That, the State of Madhya Pradesh has taken various policy decisions to promote investment in the state, which includes a dedicated industrial area with smart and advanced infrastructure to cope-up with the competitive world. It has been a long-awaited demand of the proposed investors interested to invest in the State that they may be provided with subsidized electricity tariff in the investment zones to be more competitive.*
- iii. *Hence to promote the investors to consider investments on green field projects area of the state, the Government of Madhya Pradesh took a cabinet decision on 19/02/2020 wherein the Industrial Area of Mohasa–Babai was declared Industrial Township authorizing the Petitioner to provide all the necessary services as may be required for within the Notified Area including supply of electricity and in furtherance of the same, the petitioner was authorised and directed to seek a distribution license from this Hon'ble Commission. The copy of the order/notification declaring **Industrial Area of Mohasa–Babai as Industrial Township** and authorizing Petitioner for obtaining distribution license is marked and enclosed herewith as Annexure P-1.*
- iv. *That, this Hon'ble Commission has laid down Performa for Terms & Conditions of Distribution License vide the MPERC regulations "The Condition of distribution license for distribution license (including deemed license)". The copy of the Performa terms & conditions issued by this Hon'ble Commission is marked and enclosed herewith as Annexure P-2.*
- v. *That, it is most humbly submitted that, the Petitioner intends to procure power through **long and medium-term arrangements** with the Madhya Pradesh Power Management Company Ltd. (MPPMCL). The State Government while taking the Cabinet decision dated 19/02/2020 (Supra) has issued direction that the Madhya Pradesh Power Management Company Ltd shall sell the power to the petitioner at the Average Power Purchase Cost (APPC) as notified by this Hon'ble Commission. It is pertinent to mention over here that the Petitioner also intends to manage the **peak load requirements and unanticipated load requirements, through short term contracts, either by competitive bidding or power exchanges.***

vi. *That following information as required to be furnished as per clause 1.8 (h) of the Madhya Pradesh Electricity Regulatory Commission (procedure of application for license) Regulation 2004, as amended from time to time, is enclosed herewith:*

- a. *Form I to V: Annexure P-3*
- b. *Business Plan: Annexure P-4*
- c. *Annual Accounts for three years i.e. FY 16-17, 17-18, 18-19: Annexure P-5*
- d. *Map of the Notified Industrial Area: Annexure P-6*
- e. *Single line diagram of proposed electricity network map: Annexure P-7*
- f. *Self-Declaration for additional requirements (Capital Adequacy, Credit Worthiness, or Code of Conduct): Annexure P-8*
- g. *Copy of draft notice to be published within 7 days of filing of the application for license in the national newspaper as required under Section 15(2) of the EA 2003. Annexure P-9*

vii. **Jurisdiction:**

The Hon'ble Commission has the jurisdiction to adjudicate the matter Under Section 14 (b) and Section 15 read with Section 181 (2) (a, b, c, d) of the Electricity Act 2003 and Under section 15 of The Madhya Pradesh Vidhut Sudhar Adhiniyam, 2000.

viii. **Grounds in support of the case:**

That in light of the above facts and circumstances in the interest of the overall economic growth of the State of Madhya Pradesh and so as to comply with the industrial policy of the State to promote investment in the State, this Hon'ble Commission may graciously be pleased to grant the distribution license for supply of electricity within the notified area of 'Industrial Area Mohasa-Babai' on the following grounds: -

- a. *Because, As per the definitions given under Section 2(3) of the Electricity Act 2003 'area of supply' means the area within which a distribution licensee is authorized by its license to supply electricity.*

Ministry of Power (MoP), Government of India through Distribution of Electricity License Rules, 2005, notified on 23rd March 2005, stipulated the minimum area of supply as follows:

"For the grant of license for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the area falling within a Municipal Council or a Municipal Corporation as defined in

the article 243(Q) of the Constitution of India or a revenue district shall be minimum area of supply"

*The Industrial Area Mohasa-Babai **qualifies the above criteria** of area of supply.*

- b. Because, the Government of Madhya Pradesh has authorized Petitioner vide order no. F-17-27/2019/S-11, Dated 04.03.2020 to provide all the necessary services as may be required for within the notified area including supply of electricity.*
- c. Because, the Petitioner has been notified as the Developer of the Industrial Area Mohasa-Babai by Government of Madhya Pradesh. Further, the Industrial Area Mohasa-Babai has been notified as the 'Industrial Township' under the provisions of Article 243 (Q) of the Constitution of India. Copy of the said notification is enclosed as Annexure P-1.*
- d. Because the Petitioner qualifies the norm of 30% equity on cost of investment as determined under sub-rule (1) of Rule 3 of the Distribution of Electricity License (Additional Requirement of capital adequacy, creditworthiness and code of conduct) rules 2005, including the promoters, and is also in a position to make available resources for such equity of the project on the basis of net-worth and generation of internal resources of the business including of promoters in the preceding three years after excluding the promotor's other committed investment, it is pertinent to mention over here that under the financial structure for the Hoshangabad's Industrial Area, 50% of the total Project Cost is being incurred by the Government of Madhya Pradesh with 10% equity by MPIDC and 40% as Grant from the Government of MP. Rest 50% shall be met through consumer deposit and long-term debt.*
- e. Because, the Petitioner possess technical competence and skilled workforce for managing the distribution business. Further, the Petitioner also intends to seek support of consultants, having proven expertise, for bringing efficiencies for managing the various operations of the power distribution business. Reference may be taken from the case of Pithampur SEZ where MPIDC is already managing the various operations of power distribution business.*
- f. Because, the instant application for distribution license is made for the **Green Field Industrial Area**, being developed by the applicant at the Mohasa- Babai area of Hoshangabad District. Hence the*

*benefit of the same would be for the **new consumers who established their industries in the area**. Therefore the instant distribution license if granted to MPIDC will not have any effect on the revenue of the existing distribution companies. On getting the distribution license, the MPIDC shall have the opportunity to procure power directly from **generating sources without paying** additional cost of subsidy charges for its industrial area. This will lead to supply of low priced power to its consumer in the Mohasa-Babai industrial area. These will in-turn lower the production cost of the manufacturing units in the area, leading to a globally competitive manufacturing costs.*

- g. Because as per MPERC the retail supply tariff order dated 08/08/2019 applicable for financial year 2019-20 "management of supply energy" table no. 34 "detail of power purchase cost through sale of surplus energy" and serial no. 6 "Net surplus energy available for sale" at the rate below Rs 3.85 per KW is 25,657 million units in the year 2019-20. The requirement of energy for the Mohasa-Babai industrial area is **only 2.23 million units** in the financial year 2020-21 which **may increase upto 126.14 million units** till the financial year 2024-25. Hence the requirement for the energy at the Mohasa-Babai industrial area will help in utilization of excess surplus energy available in the state and will also attract new industrial consumers.*
- h. Because, the petitioner is a company promoted and owned by Government of Madhya Pradesh with the objective of improving industrialization and economic development in the state of MP.*

- 4. With the aforesaid submissions, the petitioner prayed as under:
"It is therefore most humbly prayed that this Hon'ble Commission may graciously be pleased to issue distribution license to the petitioner with the specific conditions as laid in law, for its developed and upcoming industrial area at Mohasa-Babai for a period of 25 years, so that the consumers are benefitted with lower electricity prices and are able to produce goods and deliver services at globally competitive rates."

5. Procedural History of the case is as under:

- i. During the course of motion hearing in the subject matter held on 13.10.2020, Ld. Counsels appeared for the petitioner submitted the salient details of the subject matter alongwith the legal provisions for filing the subject petition. It was informed that a notice of the subject

application has been published by the petitioner in terms of Section 15(2) of the Electricity Act, 2003.

The petition was admitted. However, the petitioner was directed to implead M. P. Madhya Kshetra Vidyut Vitaran Co. Ltd, Bhopal, M. P. Power Management Co. Ltd., Jabalpur and the Energy Department, Govt. of MP as the Respondents in the subject matter. The petitioner was also directed to serve a copy of the subject petition on all the aforesaid Respondents within a week's time and report compliance to the Commission. The Respondents were directed to file their reply to the subject petition by the 10th November 2020. The petitioner was informed that the subject petition is under examination and the information gaps and requirement of additional information/ documents shall be communicated to the petitioner. The case was fixed for hearing on 24/11/2020.

- ii. During the course of hearing held on 24.11.2020, the Commission observed the following:
 - a. Ld. Counsel who appeared for the Respondent No.1 stated that he had received copy of the petition on 11.11.2020, therefore, he needs three weeks' time to file reply to the subject petition.
 - b. Despite clear directives to the petitioner to serve copy of petition on all the Respondents within a week, the Respondents received the copy of petition after a period of about three weeks. Such a delay in service of the petition has made the hearing ineffective.
 - c. No one appeared on behalf of the Respondents No.2, 3 and 4.
 - d. On perusal of the contents in the subject petition, the Commission had sought certain information/documents from the petitioner by 10th December'2020.
 - e. Regarding power procurement, the petitioner informed that MPPMCL shall sell power to the petitioner at the Average Power Purchase Cost (APPC) as notified by the Commission. As APPC does not include renewable component, in accordance with the provisions under Section 86(1)(e) of the Electricity Act'2003 and MPERC (Co-Generation and Generation of Electricity from Renewable Sources of Energy) Regulations,2010 as amended from time to time, the petitioner as a Distribution Licensee would require to fulfill the Renewable Purchase Obligations as specified by the Commission from time to time.

In view of the above, the petitioner was directed to explain the reasons for delay in serving the copy of subject petition to the Respondents. The petitioner was also directed to submit the information/documents in a timely manner as sought by the Commission. The Respondents were

directed to file their replies to the subject petition within 15 days. The representatives of the Respondents No. 2, 3 and 4 were directed to ensure their appearance at the next hearing without fail. The case was fixed for hearing on the 19th January' 2021.

6. Reply submitted by the Respondents:

a. Vide letter dated 15/01/2021 on Affidavit, the Respondent No. 1, M. P. Power Management Company Limited submitted as under:

- (1) *That, the Petitioner, M.P Industrial Development Corporation (MPIDC) being a Public Sector Undertaking Company and fully owned and controlled by the Government of Madhya Pradesh and for the reasons mentioned in the petition, has prayed for grant of Distribution License in its favour.*
- (2) *That, in para 1.5 of the petition, the Petitioner has mentioned that as per Cabinet decision dated 19-02-2020, MPIDC has to procure power for Mohasa-Babai Industrial Area from MP Power Management Company Ltd. at the Average Power Purchase Cost determined by the Hon'ble Commission. It is humbly submitted that MPPMCL does not have entitlement to any long-term power from the Generators as the same has been allocated by the Energy Department, GoMP for Discoms of the State (Copies of Notifications dated 21-03-2016 & 30-03-2016 issued by GoMP are annexed as Annexure I & II). Therefore, any power to be supplied to the Petitioner shall have to be specifically allocated by the Energy Department, GoMP to MPPMCL, for supply to the petitioner.*
- (3) *That, as per National Tariff Policy and National Electricity Policy issued by Govt. of India, MPIDC, the prospective licensee, if granted distribution license by this Hon'ble Commission, is obligated to procure its requirement of power through competitive process & not under bilateral contracts. As such in compliance to cabinet decision dated 19-02-2020, the quantum of power s may requested by MPIDC, the petitioner, could be considered by Energy Department GoMP for allocation in favour of the petitioner from the pool of regulated and contracted power available with answering respondent.*
- (4) *The Average Power Purchase Cost determined by the Hon'ble Commission in its Retail Tariff Order for FY 2020-21 is Rs. 4.40/ Unit at DISCOM periphery. The above cost is determined by this Hon'ble commision based on normative losses of DISCOMs. Since the actual*

losses of the DISCOMs are higher than the normative losses, the Average Power Purchase Cost (APPC) per unit at DISCOM periphery is actually higher than that approved by the Hon'ble Commission on normative loss, as such a reasonable hike, in the form of multiplying factor, be considered by commission for charging tariff from the petitioner, instead of APPC rate determined under retail tariff order.

- (5) That, in Para 3.6 of the Petition, the Petitioner has mentioned that the instant application for Distribution License is for Green Field Industrial Area being developed at the Mohasa Babai Area, therefore it will not have any effect on the revenue of the existing Distribution Company. It is to submit that since MPPMCL has made Long Term Power Purchase Agreements considering the future demand of the State including that of Industrial Sectors, therefore the stranded capacity of MPPMCL will increase leading to payment of fixed charges thereon. It will also lead to loss of Cross Subsidy from the Industrial Consumers.*
- (6) That, in Para 3.7 of the Petition, the Petitioner has submitted that the requirement of energy at Mohasa-Babai Industrial Area will help in utilization of excess Surplus Energy available in the State. In this regard, it is to submit that the availability of surplus energy is not constant during the entire year and varies with demand availability scenario. Whereas, the demand of Mohasa-Babai Area is a round-the-clock demand being industrial in nature. Therefore, assuming that the same can be met throughout the year from the surplus energy is not practical.*
- (7) That, further, it is submitted that the sale of power by M P Power Management Company Ltd. to the Petitioner shall be a bi-lateral agreement on the terms and conditions as may be agreed between the parties and subject to various decisions/directives of Government of Madhya Pradesh and rules and regulations, as may be applicable from time to time.*
- (8) That, save the prudence consideration of Hon'ble Commission, the averments made in rest of the paragraphs of the petition are not denied.*
- (9) That, in view of the various decisions of the Government of Madhya Pradesh and submission of answering respondent, the Hon'ble Commission may consider for grant of license as prayed for by the Petitioner.*

(10) That, an affidavit in support is filed herewith.

b. Vide letter dated 17/12/2020 on Affidavit, the Respondent No. 2, M. P. Madhya Kshetra Vidyut Vitaran Company Limited Bhopal submitted as under:

(1) As revealed from the content of petition, the petitioner (MPIDC) is a Public Sector Undertaking Company and is wholly owned and controlled by the Government of Madhya Pradesh. The petitioner is developing the Industrial Area in Mohasa- Babai in Hoshangabad district with an intend to promote, encourage and assist the establishment, growth and development of industries, in the state of Madhya Pradesh by developing the said Industrial area into a world-class industrial growth center with state-of-art infrastructure.

(2) MPIDC has prayed for grant of Distribution License in its favour to supply power for the prospective consumers of said area and filed this petition for this purpose.

(3) Government of Madhya Pradesh in its cabinet decision taken on 21.09 2020 has approved the following points related to Mohasa Babai industrial area:

(3.1) The Cabinet has approved establishment of Bulk Drug Park at Mohasa- Babai Industrial Area.

(3.2) Approval is given for promissory note in respect of granting all the necessary permission to the units participated in the park through a single window.

(3.3) State Government should ensure 24x7 uninterrupted power and Water Supply.

(3.4) MPIDC shall procure power from MPPMCL even if the average power purchase cost approved by Commission is higher than 5% However, in case the approved power purchase cost is higher than 5%, the difference in amount above 5% shall be provided by Government of Madhya Pradesh.

(3.5) The entities / Industries associated with the park shall be exempted from Electricity Duty for a period of 5 years from the date of electrical connection.

(4) The Hon'ble Commission may consider MPIDC (Mohasa – Babai Industrial area) for grant of Distribution License for power supply to prospective consumers of Bulk Drug park of proposed Mohasa Babai Industrial Area subject to fulfillment of the provisions under”

(4.1) Section 14 (Grant of License) and Section 15 (Procedure of grant of License) of the Electricity Act 2003.

(4.2) CEA Regulations on Technical Standards for construction of Electrical Plants and Electric Lines as well as Regulations on connectivity to the Grid for the distribution system proposed by the petitioner.

(4.3) Other applicable provisions of Electricity Act 2003.

c. Vide letter dated 12/01/2021 on Affidavit, the Respondent No. 3 the Energy Department, Government of Madhya Pradesh, Bhopal submitted as under:

(1) That, the Petitioner, being a Public Sector Undertaking Company and fully owned and controlled by the Government of Madhya Pradesh and for the reasons mentioned in the petition, has prayed for grant of Distribution License in its favour.

(2) That, in view of the various decisions of the Government of Madhya Pradesh, the Hon'ble Commission may consider for grant of license as prayed for by the Petitioner.

(3) That, in para 1.5 of the petition, the Petitioner has mentioned that as per Cabinet decision dated 19-02-2020, MPIDC has to procure power for Mohasa-Babai Industrial Area from M P Power Management Company Ltd. at the Average Power Purchase Cost determined by the Hon'ble Commission. The Average Power Purchase Cost determined by the Hon'ble Commission in its Retail Tariff Order for FY 2020-21 is Rs. 4.40 / Unit at DISCOM periphery. The above cost is determined based on normative losses of DISCOMS as approved by the Hon'ble Commission. Since the actual losses of the DISCOMs are higher than the normative losses, the Average Power Purchase Cost per/ unit at DISCOM periphery is actually higher than that approved by the Hon'ble Commission.

(4) That, in Para 3.6 of the Petition, the Petitioner has mentioned that the instant application for Distribution License is for Green Field

Industrial Area being developed at the Mohasa-Babai Area, therefore it will not have any effect on the revenue of the existing Distribution Company. It is to submit that since MPPMCL has made Long Term Power Purchase Agreements considering the future demand of the State including that of Industrial Sectors, therefore, the stranded capacity of MPPMCL will increase leading to payment of fixed charges thereon. It will also lead to loss of Cross Subsidy from the Industrial Consumers.

(5) That, in Para 3.7 of the Petition, the Petitioner has submitted that the requirement of energy at Mohasa-Babal Industrial Area will help in utilization of excess Surplus Energy available in the State. In this regard, it is to submit that the availability of surplus energy is not constant during the entire year and varies with demand / availability scenario. Whereas, the demand of Mohasa-Babai Area is a round-the-clock demand being industrial in nature. Therefore, assuming that the same can be met throughout the year from the surplus energy is not practical.

(6) That, further, it is submitted that the sale of power by M P Power Management Company Ltd. to the Petitioner shall be a bi-lateral agreements on the terms and conditions as may be agreed between the parties and subject to various decisions/directives of Government of Madhya Pradesh and rules and regulations, as may be applicable from time to time.

(7) That, save the prudence consideration of Hon'ble Commission, the averments made in rest of the paragraphs of the petition are not denied.

(8) That, an affidavit in support is filed herewith.

d. Vide letter No. 5096 dated 23/12/2020 on Affidavit, the Respondent No. 4, M. P. Power Transmission Company Limited Jabalpur submitted its reply as under:

(1) That, the Petitioner, being a Public Sector Undertaking Company and fully owned and controlled by the Government of Madhya Pradesh and for the reasons mentioned in the petition, has prayed for grant of Distribution License.

(2) That. in view of the order dated 04.03.2020 of Department of Industrial Policy and Investment Promotion, Government of Madhya

Pradesh (Annexure P-1 of the Petition). the Hon'ble Commission may kindly consider the request of petitioner for grant of distribution license for upcoming industrial area at Mohasa-Babai, District Hoshangabad (M.P.).

- (3) That, it is submitted, if the petitioner procure the power directly from the Generating Companies or gets allocation of power from MP Power Management Co. Ltd. and want to use the transmission services of Respondent No. 4, then, the petitioner shall be required to execute a transmission Service Agreement, on the terms and conditions as may be agreed by and between the parties for payment of transmission charges, as decided by the Hon'ble Commission from time to time and subject to various decisions/directives of Government of Madhya Pradesh and rules and regulations as may be applicable from time to time.*
- (4) That, the petitioner MPIDC may be directed to execute the transmission service agreement with Respondent No. 4 MPPICL on MW basis on the anticipated transmission capacity required on FY 2021-2022, FY 2022-2023 and FY 2023-2024 subject to revision upon enhancement of demand of petitioner in future.*
- (5) That, the petitioner MPIDC may be directed to bear the cost dedicated infrastructure which would be required to cater the demand of power of the industrial area at proposed 132 KV S/s Mohasa.*
- (6) That, save the prudence consideration of Hon'ble Commission, the averments made in rest of the paragraphs of the petition are not denied.*

7. Commission's Analysis and Observations:

The Commission observed the following from the contents in the subject petition and additional submissions filed by the petitioner, M. P. Industrial Development Corporation Ltd., Bhopal:

- (i) The petitioner is a Public Sector Undertaking Company and is wholly owned and controlled by the Govt. of MP. The petitioner is developing the Industrial Area Mohasa-Babai in Hoshangabad district with an intent to promote, encourage and assist the establishment, growth and development of industries in MP by developing the said industrial area into a world-class industrial growth centre with state-of-art infrastructure.

- (ii) The petitioner intends to procure power through long and medium-term arrangements with MPPMCL. The State Government in the cabinet decision dated 19.02.2020 (Supra) has issued direction that MPPMCL shall sell the power to the petitioner at the Average Power Purchase Cost (APPC) as notified by the Commission. The petitioner also intends to manage the peak load requirements and unanticipated load requirements, through short term contracts, either by competitive bidding or power exchanges.
- (iii) The industrial area Mohasa-Bhabai qualifies the criteria of area of supply as per Section 2(3) of the Electricity Act 2003 and also the stipulated minimum area of supply as per the Distribution of Electricity License Rules, 2005 notified by the Ministry of Power, Govt. of India.
- (iv) Government of MP has authorized the petitioner vide order No. F-17-27/2019/S-11 dated 04.03.2020 to provide all the necessary services as may be required within the notified area including supply of electricity.
- (v) The petitioner has been notified as the **Developer** of the **Industrial Area** Mohasa-Babai by Government of MP and the Industrial Area Mohasa-Babai has been notified as the **Industrial Township** under the provisions of Article 243(Q) of the Constitution of India.
- (vi) The petitioner qualifies the norms of **30% equity** on cost of investment as determined under sub-rule (1) of Rule 3 of the Distribution of Electricity License (Additional Requirement of Capital Adequacy, Credit Worthiness and Code of Conduct) Rules, 2005 including the promoters and is also in a position to make available resources for such equity of the project on the basis of net-worth and generation of internal resources of the business including of promoters in the preceding three years after excluding the promoters other committed investment, it is pertinent to mention over here that under the financial structure for the Hoshangabad's Industrial Area, 50% of the total project cost is being incurred by the Government of MP with 10% equity by MPIDC and 40% as Grant from the Government of MP. Rest 50% shall be met through consumer deposit and long term debt.
- (vii) The petitioner possesses technical competence and skilled workforce for managing and distribution business. Further, the petitioner also intends to seek support of consultants, having proven expertise, for bringing efficiencies for managing the various operations of the power distribution business.

- (viii) The instant application for distribution license is made for the **Green Field Industrial Area** and hence the benefit of the same would be for the **new consumers who established their industries in the area**. Therefore, the instant distribution license if granted to MPIDC will not have any effect on the revenue of the existing distribution companies. On getting the distribution license, the petitioner shall have the opportunity to procure power directly from generating sources without paying additional cost of subsidy charges for its industrial area. This will lead to supply of low priced power to its consumer in the Mohasa-Babai industrial area. These will in-turn lower the production cost of the manufacturing units in the area, leading to a globally competitive manufacturing costs.
- (ix) The requirement of energy for the industrial area is only 2.23 million units in the financial year 2020-21 which may increase upto 126.14 million units till the financial year 2024-25. Hence the requirement for the energy at the Mohasa-Babai industrial area will help in utilization of excess surplus energy available in the state and will also attract new industrial consumers.
- (x) With the above submissions, the petitioner has prayed the following in subject petition:
 "Hon'ble Commission may graciously be pleased to issue distribution license to the petitioner with the specific conditions as laid in law for its developed and upcoming industrial area at Mohasa-Babai for a period of 25 years, so that the consumers are benefitted with lower electricity prices and able to produce goods and deliver services at globally competitive rates."
- (xi) The petition was admitted and the petitioner was directed to implead M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal, M.P. Power Management Co. Ltd., Jabalpur and Energy Department, GoMP as Respondents in the subject matter. The petitioner was also directed to serve a copy of the subject petition on all the aforesaid respondents within a weeks' time and report compliance to the Commission. The respondents were directed to file their reply to the subject petition by 10th November' 2020.
- (xii) By affidavit dated 19th October' 2020, the petitioner MPIDC, Bhopal filed an application under Order 1 Rule 10 of the Code of Civil Procedure for impleading the answering parties. In the aforesaid application, the petitioner requested that the following respondents may be impleaded as party respondents in the instant matter:

- (a) The State of Madhya Pradesh, Energy Department
- (b) M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal
- (c) M.P. Power Management Co. Ltd., Jabalpur
- (d) M.P. Power Transmission Co. Ltd., Jabalpur

(xiii) In the aforesaid affidavit, the petitioner has also stated the following with regard to compliance with Section 15(2) of the Electricity Act, 2003:

"That, I State that, the applicant herein in compliance of the provisions laid down under section 15 of the act of 2003, the applicant made a paper publication, in one English and one Hindi news paper, of the application made by the applicant under section 14 of the act of 2003 on 12.09.2020. The copy of the paper Publication dated 12.09.2020 is marked and enclosed herewith as Annexure C/1.

That, I State that, the applicant has not received any objection on the said application under section 14 for the grant of distribution licensee till 30 days next after the publication in the news paper as on 12.10.2020."

(xiv) The petitioner has filed the following documents with the subject petition (reference page in the petition):

- Certificate of Incorporation (Page 9)
- Copy of Memorandum of Association (Page 10 to 16)
- Copy of Articles of Association (Page 17 to 47)
- GoMP Notification of 2020 declaring MPIDC (Bhopal) as developer of Industrial Township i.e. Industrial Area Mohasa- Babai under proviso to clause (1) of 243 (Q) of the Constitution of India. (Page 48)
- Distribution Business Report of MPIDC (Page 84)
- Proforma for Terms & Conditions of License (Page 49 to 50)
- Form I (Page 51)
- Form II (Page 104)
- Form III (Page 105)
- Form IV (Page 106)
- Form V (Page 107-108)
- Business Plan (Page 109 to 159)
- Annual Accounts for three years i.e. MPAKVN FY 16, 17 & 18 and MPIDC Bhopal Provisional 2019 (Page 160 to 207, 208 to 244)
- Map of Notified Industrial Area (Page 245)
- Single line diagram of proposed electricity network map (Page 246)
- Self-Declaration for additional requirements (Capital Adequate and Credit Wordiness & Code of Conduct) (Page 247 to 248)

(xv) On examination of the subject petition, the following was observed:

(a) The subject petition is to be examined under the following legal framework:

- Sixth Proviso of Section 14 of the Electricity Act' 2003.
- Rule 3 and Rule 4 of Distribution of Electricity License (Additional Requirement of Capital Adequacy, Credit Worthiness and Code of Conduct) Rules, 2005 notified by the Ministry of Power, Govt. of India.
- Section 15 of the Electricity Act' 2003.
- MPERC (Procedure of Application for License) Regulations, 2004.

(b) Sixth Proviso of Section 14 of the Electricity Act, 2003 provides as under:

"Provided also that the Appropriate Commission may grant a license to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of license within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements (including the capital adequacy, creditworthiness, or code of conduct) as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of license, shall be refused grant of license on the ground that there already exists a licensee in the same area of the same purpose."

(c) Rule 3 & Rule 4 of the Distribution of Electricity License (Additional requirement of capital adequacy, creditworthiness and Code of Conduct) provided under Rules 2005 made by the Central Government provides as under:

3. Requirements of capital adequacy and credit worthiness.—

(1) The Appropriate Commission shall, upon receipt of an application for grant of license for distribution of electricity under sub-section (1) of section 15 of the Electricity Act, 2003, decide the requirement of capital investment for distribution network after hearing the applicant and keeping in view size of the area of supply and the service obligation with that area in terms of section 43.

(2) The applicant for grant of license shall be required to satisfy the Appropriate Commission that on a norm of 30% equity on cost of investment as determined under sub-rule (1), he including the promoters, in case the applicant is a company, would be in a position to make available resources for such equity of the project on the basis of net worth and generation of internal resources of his business including of promoters in the preceding three years after excluding his other committed investments.

Explanation.- For the grant of a license for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the area falling within a Municipal Council or a

Municipal Corporation as defined in the article 243-Q of the Constitution of India or a revenue district shall be the minimum area of supply.

4. **Requirement of Code of conduct.**- The applicant for grant of license shall satisfy the Appropriate Commission that he has not been found guilty or has not been disqualified under any of the following provisions within the last three years from the date of application for the grant of license:
- (a) section 203, section 274, section 388-B or section 397 of the Companies Act, 1956;
 - (b) section 276, section 276-B, section 276-BB, section 276-C, section 277 or section 278 of the Income-tax Act, 1961;
 - (c) section 15-C, section 15-G, section 15-H or section 15-HA of the Securities and Exchange Board of India Act, 1992;
 - (d) clause (b), (bb), (bbb), (bbbb), (c) or (d) of sub-section (1) of section 9 of the Central Excise Act, 1944;
 - (e) section 132 or section 135 of the Customs Act, 1962, and that the applicant is not a person in whose case license was suspended under section 24 or revoked under section 19 of the Act, within the last three years from the date of application:

Provided that where the applicant is a company, it shall satisfy the Appropriate Commission in addition to provisions of this rule that no petition for winding up of the company or any other company of the same promoter has been admitted under section 443(e) of the Companies Act, 1956 on the ground of its being unable to pay its debts."

- (xvi) Section 15(2) and 15(5) of the Electricity Act, 2003 provides as under:

"Section 15. (Procedure for grant of license): ...

- (2) Any person who has made an application for grant of license shall, within seven days after making such application, publish a notice of his application with such particulars and in such manner as may be specified and a license shall not be granted –
- (i) Until the objections, if any, received by the Appropriate Commission in response to publication of the application have been considered by it:
Provided that no objection shall be so considered unless it is received before the expiration of thirty days from the date of the publication of the notice as aforesaid;
 - (ii) Until, in the case of an application for a license for an area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defence purposes, the Appropriate Commission has ascertained that there is no objection to the grant of the license on the part of the Central Government."

“(5) Before granting a license under section 14, the Appropriate Commission shall -

- (a) publish a notice in two such daily newspapers, as that Commission may consider necessary, stating the name and address of the person to whom it proposes to issue the license;
- (b) consider all suggestions or objections and the recommendations, if any, of the Central Transmission Utility or State Transmission Utility, as the case may be.”

(xvii) The provisions under MPERC (Procedure for Application for License) Regulations, 2004 shall be applicable.

(xviii) In terms of all aforesaid provisions under Section 14 and 15 of the Electricity Act, 2003 read with Rules 2005 made by the Central Government for Distribution of Electricity License (Additional requirement of capital adequacy, creditworthiness and Code of Conduct) and Provisions under MPERC (Procedure of Application for License) Regulations, 2004, the following status was observed in the subject petition:

- a. The petitioner has made a paper publication in two newspaper on the subject application filed under Section 14 of the Electricity Act, 2003. This publication was made on 12th September' 2020.
The petitioner has stated that it has not received any objection on the above paper publication in newspapers.
- b. With regard to the provisions under Sixth Proviso of Section 14 of the Electricity Act, 2003, the petitioner has filed a self-declaration on affidavit dated 04.09.2020 with regard to fulfillment of Additional requirements (Capital Adequacy and Credit Worthiness & Code of Conduct).
- c. The petitioner has filed the documents and details as required under Regulation 1.8 of MPERC (Procedure of Application for License) Regulations, 2004. The petitioner has also filed the details as required under Regulations 1.9 of MPERC Regulations.

8. Commission's Query & the petitioner's response:

In view of the analysis mentioned at para above, vide letter No. 1339 dated 23/11/2020, the Commission directed the petitioner to submit the following information along with documents:

- (i) A copy of public notice of the application published in newspapers under Section 15(2) of the Electricity Act, 2003.

- (ii) Compliance report for adding M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal, M.P. Power Management Co. Ltd., Jabalpur and Energy Department, GoMP as the respondents and service of petition to them.
- (iii) To confirm on affidavit that the area proposed under Distribution License does not include any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defence purposes.
- (iv) As per the single line diagram of proposed electricity network filed as Annexure P/7 with the subject petition, the electricity to the proposed area shall be supplied from new 220/132 kV sub-station and 132/33 kV sub-station under construction whereas, the 11 KV supply is proposed from the existing 4 Nos. 33/11kV substation. It appears that these existing 4 Nos., 33/11 KV substations may be supplying power in rural areas presently. It may please be intimated that when new EHV substations have been proposed for catering to new industrial load in the area, why new 33/11 KV substations have not been proposed. In view of aforesaid, the petitioner is required to also explain how the reliability of supply to its proposed area for 11 KV and LT loads shall be maintained from the existing 33/11 kV substations, which may be supplying power to rural areas also.
- (v) As mentioned in the petition, the petitioner shall procure power from M.P. Power Management Co. Ltd. at average power purchase cost as determined by the Commission. Any Power Purchase Agreement executed with M.P. Power Management Co. Ltd., Jabalpur be submitted.

The petitioner was asked to submit the above information/ documents to the Commission by 10th December' 2020.

Petitioner's response:

In response, vide its letter on Affidavit dated 09/12/2020, the petitioner submitted copies of the public notice dated 12/09/2020 published by it under section 15(2) of the Electricity Act 2003 and confirmed that No objection was received from any person / organization by it in response to the said public notice. The petitioner submitted the following response in detail:

"In reference to your letter cited above regarding petition No. 59 of 2020, point wise replies are submitted below for Hon'ble Commission's kind reference and perusal:

- (1) *The copies of the public notice of the application published in the newspapers under section 15(2) of the Electricity Act 2003 are marked and attached as Annexure-1.*

- (2) *The compliance report for impleading the MP Madhya Kshetra Vidyut Vitaran Co. Ltd Bhopal, MP Power Management Co. Ltd Jabalpur, Energy Department GoMP Bhopal and the MP Power Transmission Co. Ltd Jabalpur as party respondents & proof of service of the petition are marked and attached as Annexure-2.*
- (3) *The affidavit confirming that area proposed under distribution license does not include any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defence purpose is attached as Annexure-3,*
- (4) *For Industrial Area Mohasa Babai, broad scheme of electrical infrastructure has been provided along with the Petition. Further, key relevant points related to the same are being provided below for perusal of the Hon'ble Commission:*
 - (i) *4 Nos of 33/11 kV sub stations are under construction (work almost completed); the same have been shown in the single line diagram of distribution network of the Industrial Area. It is submitted that the proposed distribution infrastructure is for exclusive use in Industrial Area Mohasa Babai. Capital Expenditure of the proposed distribution infrastructure has also been submitted to this Hon'ble Commission.*
 - (ii) *4 Nos of 33 kV feeders are under construction (work almost completed) for power supply from under construction MP Power Transmission Co. Ltd 132/33 KV Sub Station within the Industrial area Mohasa Babai for which land is provided by the MPIDC.*
 - (iii) *11 kV Lines, 11/0.4 kV Sub Stations & LT Lines have been constructed already for exclusive use in Industrial Area Mohasa Babai only.*
 - (iv) *Street Lighting arrangements have already been made for the Industrial Area. Capital Expenditure of the same has also been submitted to the Hon'ble Commission.*
 - (v) *33 kV feeder double circuit of 32 Kms from existing MP Power Transmission Co. Ltd' 132/33 KV Sub-Station at Gujarwada has been constructed 3 years back for arrangement of power supply in Industrial Area Mohasa Babai. The construction has been*

done with the investment of MPIDC. This double circuit 33 kV feeder from Gujarwada 132/33 Sub-Station will be used as standby supply link for Industrial Area of Mohasa Babai after commissioning of new 132/33 kV Sub-Station in the Industrial Area.

Further, it is confirmed and submitted by the Petitioner that the above electrical infrastructure created for Industrial Area Mohasa Babai will not be extended to any rural area or any other area beyond the operational boundary of Mohasa Babai Industrial Area. The proposed electrical infrastructure is dedicated to Industrial Area only to ensure reliable and quality supply in the Industrial Area.

(5) MPIDC has planned for power purchase from MP Power Management Co. Ltd Jabalpur as approved by the Govt of M.P. (submitted as Annexure P-1 along with the Petition no 59/2020) and process for signing the power purchase agreement shall be initiated after the grant of the distribution license.

9. At the hearing held on 19.01.2021, the Commission observed the following:

- (i) By affidavit 19.10.2020, the petitioner submitted that in compliance with the provisions under Section 15 (2) of the Electricity' Act'2003, the petitioner had published a notice of its subject application in Hindi and English newspapers on 12.09.2020. It was further submitted by the petitioner that it has not received any objection on the said application filed under Section 14 of the Electricity Act'2003 seeking grant of Distribution License.
- (ii) Vide letter on affidavit dated 09.12.2020, the petitioner filed the copies of above public notice published in newspapers. By aforesaid affidavit, the petitioner also submitted the information sought vide Commission's letter No. 1339 dated 23.11.2020.
- (iii) By affidavit dated 17.12.2020, the petitioner filed its explanation/reply in compliance to the directives of the Commission in last order dated 04.12.2020.
- (iv) Vide letter dated 15.01.2021 filed on affidavit dated 12.01.2021, the Respondent No.1 (MPPMCL) filed reply to the subject petition.
- (v) By affidavit dated 17.12.2020, the Respondent No.2 (Central Discom) filed reply to the subject petition.
- (vi) By affidavit 12.01.2021, the Respondent No.3 (Energy Department, GoMP) filed reply to the subject petition.
- (vii) Vide letter No. 5096 dated 23.12.2020, the Respondent No.4

(MPPTCL) filed reply to the subject petition.

In view of the above, the Commission decided to publish a notice under Section 15(5) of the Electricity Act'2003 seeking comments/ objections from various stakeholders.

10. Public notice issued by the Commission:

Vide notice No./MPERC/Dir(L&R)/2021/211 dated 03.02.2021 the Commission issued a public notice under sub-section (5)(a) of Section 15 of the Electricity Act, 2003 and Regulation 1.25 of MPERC (Procedure of Application for License) Regulations, 2004. The public notice broadly stated as under:

The application for granting the License under Section 14 of the Electricity Act,2003 is under consideration of the Commission and this notice is published under sub-section 5(a) of Section 15 of the Electricity Act, 2003. A copy of the application along with annexures and enclosures filed by the applicant before the Commission can be accessed at the Commission's website www.mperc.in by any local authority, licensee or person, desirous of making any representation with reference to application filed with the Commission. The application shall also be available at the office of the petitioner and in the Commission's office, which may be seen by following the laid down procedure.

Any representation or objection on the application may be sent directly to the Commission Secretary, MP Electricity Regulatory Commission, Metro Plaza, 5th Floor, E-5, Arera Colony, Bittan Market, Bhopal-462016 along with a copy to the applicant also, so as to reach the Commission's office within 21 days from the date of publication of this notice.

The persons who have filed their representation in writing with the Commission may send their contact no. and e-mail ID to participate in the public hearing to be held in this matter on the 9th March, 2021 at 11.00 AM at the Commission's Office, Bhopal.

11. Public Hearing:

During public hearing was held through Video conferencing on 09/03/2021 wherein only the representatives of the petitioner and respondents appeared for hearing. The petitioner reiterated its prayer and confirmed that it has not received any comments / objections in the matter. The Commission had also not received any comments / objections in the matter. The Commission further observed that the petitioner fulfils

the conditions laid down under Section 14, 15, 86(1)(d) of the Electricity Act, 2003 read with MPERC (Procedure of Application for License) Regulations, 2004 with respect to Grant of Distribution License”.

- 12.** In view of all aforesaid, the Commission approves grant of distribution license to the petitioner Madhya Pradesh Industrial Development Corporation Limited for distribution and supply of power within Industrial Area at Mohasa – Babai, Dist. Hoshangabad, MP in accordance with the provisions of section 14 of the Electricity Act, 2003 on the terms and conditions specified therein. The Commission directs the Secretary of the Commission to seek willingness of the petitioner on draft Distribution License in terms of the provisions under Regulations 1.29 and 1.30 of MPERC (Procedure of Application of License), Regulations, 2004. The Order along with the petition and its annexures be uploaded on the petitioner's website.

Ordered accordingly.

-sd-
(Shashi Bhushan Pathak)
Member

-sd-
(Mukul Dhariwal)
Member

-sd-
(S. P. S. Parihar)
Chairman