

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION  
BHOPAL**

**Subject: Petition under Regulation 56.3 of Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 (RG-26 (III) of 2015) seeking deviation from norms relating to Rebate at Regulation 45.**

**Petition No. 20 of 2019**

**ORDER**

(Date of Motion Hearing: 11<sup>th</sup> June' 2019)

(Date of Order: 14<sup>th</sup> June' 2019)

- |  |   |   |  |             |
|--|---|---|--|-------------|
| 1. <b>M.P. Power Generating Company Ltd., Jabalpur</b> | } | - |  | Petitioners |
| 2. <b>M.P. Power Management Company Ltd.,</b>          | } |   |  |             |

Shri Sudhir Saxena, CE (CS) and Shri Salil Choudhary, EE(CS) appeared on behalf of petitioner No. 1.

Shri Prakash Pachori, GM (Commercial) and Shri Manoj Dubey, Advocate appeared on behalf of petitioner No. 2.

M.P. Power Generating Company Ltd. Jabalpur and M.P. Power Management Company Limited, Jabalpur have jointly filed the subject petition under Regulation 56.3 of Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 (RG-26 (III) of 2015) seeking deviation from norms relating to Rebate at Regulation 45.

2 In the subject petition, the petitioner broadly submitted the following:

- i. *MPPGCL entered into various Power Purchase Agreements (PPAs) with the Petitioner No. 2.*
- ii. *That, the PPAs provide that the tariff payable by Petitioner No.2 to Petitioner No. 1 shall be in accordance with the terms & conditions contained thereto and determined by the Commission. Petitioner No. 1 accordingly raises bills for energy sold to Petitioner No.2 since 01.06.05 as per the tariff determined by the Commission from time to time.*
- iii. *That, Clause 6.5.1 of Power Purchase Agreement, executed on 29.11.06 between the Petitioners provides for Payment of Bills raised by Petitioner No. 1 as:*

*“6.5.1. For the period that "Cash Flow Mechanism" is valid, the GENCO and TRADECO shall act in accordance with the "Cash Flow Mechanism" agreed to between GENCO, TRADECO, MPSEB, TRANSCO and DISCOMs and notified as Schedule III to the Order dated June 3<sup>rd</sup> 2006, issued by the State Government. Clauses 6.5.2 to 6.5.4 and 6.6 stated below shall be applicable only after termination of Cash Flow Mechanism.”*

- iv. *The Power Purchase Agreement also provides payment security, rebates and interest/surcharge for ensuring timely payment of the bills as:-*

***Payment Security, Rebates and Surcharge***

***6.5.2. Rebate:***

*In the event the TRADECO makes payment of any amounts due to GENCO before the due date(s) of payment, the TRADECO shall be eligible for a rebate on the amount paid in accordance with the provisions of the terms and conditions of tariff as prescribed by the State Commission. The above rebate would not be available to TRADECO during a period when TRADECO is in payment default or material default of any of its other obligations of the Power Purchase Agreement.*

***6.5.3. Late Payment surcharge:***

*If payment in full is not received by GENCO on or before the Due Date, the TRADECO shall pay to GENCO a Late Payment Surcharge (on the amount for which the payment is delayed) at Default Interest Rate in accordance with the provisions of the terms and conditions of tariff as prescribed by the State Commission in its regulations. This shall be without prejudice to any other rights of GENCO.*

- v. *That, subsequently, GoMP, vide Notification dated 29.03.12, kept MP Power Generating Company Limited and MP Power Transmission Company Limited outside the operations of the Cash Flow Mechanism (CFM) and made both the companies independent in their financial managements.*
- vi. *That, the Power Purchase Agreements, for payments of bills, inter-alia, are governed by MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 (RG-26 (III) of 2015), relevant Regulation No. 45 and 46 of which provides as under;*

***“45. Rebate:***

*45.1 For payment of bills of the generating company through **letter of credit** on presentation or through National Electronic Fund Transfer (NEFT)/ Real Time Gross Settlement (RTGS) within a period of 2 days of presentation of bills by the generating company, a rebate of 2% shall be allowed.*

*45.2 Where payments are made on any day after 2 days and within a period of 30 days of presentation of bills by the generating company, a rebate of 1% shall be allowed.*

***46. Late payment surcharge:***

*In case the payment of any bill for charges payable under these Regulations is delayed beyond a period of 60 days from the date of billing, a late payment surcharge at the rate of 1.25% per month shall be levied by the generating company.”*

- vii. *That, as a consequence of the decision of Energy Department, GoMP, regarding keeping M.P. Power Generating Company Limited outside the operations of the Cash Flow Mechanism (CFM), and as mentioned in the Power Purchase Agreements, the “Payment Security Mechanism” automatically comes into force, which provides payment through Irrevocable Unconditional Revolving Letter of Credit. The details of the same are annexed as Annexure-P/2.*
- viii. *That, the Tariff Policy, 2016, vide para 6.2 “Tariff Structuring and associated issue” at sub clause (2) provides for ensuring adequate and bankable security arrangement to the Petitioner No. 1.*
- ix. *That, for reasons owing to insufficient revenue realization by the DISCOMS, inspite of their best endeavor, requests made by Petitioner No. 1 to Petitioner No. 2 to open Irrevocable Unconditional Revolving Letter of Credit towards payment security mechanism, could not materialize till date.*
- x. *That, as a consequence, owing to financial constraint of Petitioner No. 2 in releasing timely payment to Petitioner No. 1, the receivables from Petitioner No. 2 had mounted steeply to the tune of about Rs. 2225.81 Crores till 31.03.17 as captured in Annual Statement of Accounts for 2016-17 at Note 7 - Trade Receivables at page 27 annexed as Annexure-P/3. This has resulted in acute liquidity crunch for MPPGCL also, affecting adversely its functioning and also financial costs. This may also affect the Credit Ratings of MPPGCL, adversely resulting in additional cost burden due to higher interest rates.*
- xi. *That, it is apposite to mention here that applying the aforesaid provisions Regulations 45 and 46 of the Regulations of 2015 and also in accordance with the related provisions of PPAs, MPPGCL had billed surcharge amounting to Rs. 248.97 Crores for the period 01.04.12 to 31.03.17 as detailed in Note 26.1 Other Income at point No. 20 (Annexure-P/4) detailed hereunder :-*

<i>a) FY 2016-17</i>	<i>Rs. 230.00 Crores</i>
<i>b) FY 2015-16</i>	<i>Rs. 18.97 Crores</i>

*However, on the request of MPPMCL, the Energy Department, GoMP vide letter dated 12.04.2017, as contained in Annexure-P/5 hereto, directed MPPGCL to write-off the aforesaid amount of surcharge as DISCOMS of the State are in precarious financial position. Accordingly, MPPGCL has written-off the aforesaid amount of surcharge amounting to Rs. 248.97 Crores in its Books of Accounts for FY 2016-17.*

*Similarly, a Surcharge for the period April’2017 to Aug’2017 amounting to Rs. 99.99 Crores has also been waived of in FY 2017-18, since the GoMP vide letter dated 20.09.18 has considered the request of MPPMCL to not to levy any delayed payment surcharge and have decided to write off the same as annexed as Annexure-P/6.*

The step was taken towards improvement of in Liquidity position of MPPGCL by Government. The details are indicated in audited Annual Statement of Accounts of MPPGCL for FY 2017-18 at Point No.27.4pageNo.79annexedas Annexure-P/7.That, the Petitioner No. 1 has been constantly requesting the Petitioner No. 2 to ensure timely payment. However, since the over-dues of Petitioner No. 1 were mounting considerably, therefore, the matter was taken up jointly by the Petitioners to find an amicable solution.

xii. As an outcome of joint effort of the two companies, consensus for the new scheme of rebate has been agreed to. The scheme is briefed hereunder :-

- a) On a cutoff date, i.e., 1<sup>st</sup> September, 2017, the total outstanding amount, which was payable by Petitioner No. 2 to Petitioner No. 1, will be frozen and no surcharge shall be charged on it by the Petitioner No. 1. This frozen amount shall be payable by Petitioner No. 2 in mutually agreed installments to Petitioner No. 1
- b) After 01.09.2017, i.e., after cut-off date, Petitioner No 1 should offer a rebate of 3% to MPPMCL, if the payment is made within agreed time line.

xiii. In the meeting held on 14.08.17 between the Managing Directors of both the Petitioners, the Petitioner No. 1 has proposed 1% higher rate of Rebate i.e. total (2%+1%) = 3%, in case the payments are made on priority to MPPGCL asunder :-

<b>Particulars</b>	<b>Upto 2 Days</b>	<b>3-15 Days</b>	<b>16-30 Days</b>	<b>31-45 Days</b>	<b>46-60 Days</b>	<b>After 60 Days</b>
<b>Rebate offered by MPPGCL</b>	3.00%	3.00%	2.00%	1.50%	1.00%	0.00%
<b>Rebate permitted by MPERC</b>	2.00%	1.00%	1.00%	0.00%	0.00%	0.00%
<b>Difference</b>	1.00%	2.00%	1.00%	1.50%	1.00%	0.00%

That, the above proposal is in deviation to Regulation 45 of the MPERC (Terms and Conditions of Generation) Tariff Regulations, 2015 where maximum Rebate provided is 2% as against which the Petitioner No. 1 has agreed for a much better Rebate.

xiv. The above Proposal for Rebate was put up before the Board of Directors of both the parties and the same was approved vide 91<sup>st</sup> meeting of BoD of Petitioner No. 1 (Annexure-P/8) and 76<sup>th</sup> meeting of BoD of Petitioner No. 2.

xv. The aforesaid mechanism have following benefits:-

- a) It will provide adequate reason for Petitioner No. 2 to make payments in time limits, as such ensuring payment security to Petitioner No.1.
- b) It will ease out liquidity problem of Petitioner No. 1.
- c) This will help in making timely payment by Petitioner No. 1 towards procurement of coal, etc, so that loss of availability due to coal shortage can be avoided.

- d) *This will minimize the interest/ penalty payable, on account of delayed payment by Petitioner No. 1.*
- e) *This will also reduce the interest burden of Working Capital / Project loans due to delayed payment by MPPMCL.*
- f) *Improve credit rating of Petitioner No. 1 due to timely payments of its dues.*
- g) *The above rebate was offered for the period Sept'17 upto July'18.*

xvi. *As detailed under preceding paragraphs, Petitioner No. 2 has started making payments to Petitioner No. 1, since 01.09.2017 onwards. As an outcome, Petitioner No. 1 has started making timely payments to Coal India Limited & Railways, PFC loans, etc. This has resulted in MPPMCL availing a huge rebate of Rs. 119.5 Crores upto 31.03.2018.*

xvii. *Subsequently, it has been observed that as the Rebate Rate in the earlier scheme was in band of few days and not on daily basis, the Cash flow to Petitioner No.1 was not regular and smooth. Therefore, Petitioner No. 1 has offered Rebate on daily basis at the Rate as detailed in table below:-*

Day	0-15	16	17	18	19	20	21	22	23	24
Rebate	3.00%	2.93%	2.87%	2.80%	2.73%	2.67%	2.60%	2.53%	2.47%	2.40%
Day	25	26	27	28	29	30	31	32	33	34
Rebate	2.33%	2.27%	2.20%	2.13%	2.07%	2.00%	1.97%	1.93%	1.90%	1.87%
Day	35	36	37	38	39	40	41	42	43	44
Rebate	1.83%	1.80%	1.77%	1.73%	1.70%	1.67%	1.63.%	1.60%	1.57%	1.53%
Day	45	46	47	48	49	50	51	52	53	54
Rebate	1.50%	1.47%	1.43%	1.40%	1.37%	1.33%	1.30%	1.27%	1.23%	1.20%
Day	55	56	57	58	59	60				
Rebate	1.17%	1.13%	1.10%	1.07%	1.03%	1.00%				

xviii. *The rate of Rebate offered on daily basis has been approved by respective 96<sup>th</sup> and 80<sup>th</sup> meetings of Board of Directors of Petitioner No. 1 and 2 and as is evident from minutes of meetings contained in Annexures P/9 and Annexures P/10 hereto. The above rebate is being offered from Aug'18 onwards.*

xix. *The instant petition is related to deviation from norms relating to Rebate clause at Regulation 45 of the Tariff Regulations of 2015. The petitioners have agreed upon the deviations in rebate clause for which approval of Hon'ble Commission shall be obtained. The petitioners through this instant petition hereby approach Hon'ble Commission and humbly pray to permit the same. The proposal in trail stage has improved the liquidity position of MPPGCL, further reducing the burden on end users i.e. Electricity consumers of state of Madhya Pradesh.*

xx. *Hon'ble Commission has jurisdiction and powers to grant approval as prayed for vide instant petition.*

xxi. *The Regulation 56.3 of MPERC Regulations, 2015 provide that:-*

*“Nothing in these Regulations shall bar the Commission from adopting, in conformity with the provisions of the Act, a procedure, which is at variance with any of the provisions of this Regulation, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.”*

xxii. *That, the difficulties, owing to revenue realization by the DISCOMs, faced by the parties have necessitated present proposed arrangements amongst themselves relating to rebates. The deviations, as proposed, do not tent to affect the retail tariffs. The present is a fit case for the Hon’ble Commission to exercise its valuable powers to remove difficulty in relevant provisions under Regulations 55 of the Tariff Regulations of 2015, which provide as under:*

**“55. Power to Remove Difficulty:** *If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by order, make such provision not inconsistent with the provisions of the Act or provisions of other Regulations specified by the Commission, as may appear to be necessary for removing the difficulty in giving effect to the objectives of these Regulations.”*

xxiii. *In view of cognate reasons stated above, the petitioners humbly pray that they may be permitted to amend the provisions relating to rebates in the respective Power Purchase Agreements between themselves to the effect as under:*

Day	0-15	16	17	18	19	20	21	22	23	24
Rebate	3.00%	2.93%	2.87%	2.80%	2.73%	2.67%	2.60%	2.53%	2.47%	2.40%
Day	25	26	27	28	29	30	31	32	33	34
Rebate	2.33%	2.27%	2.20%	2.13%	2.07%	2.00%	1.97%	1.93%	1.90%	1.87%
Day	35	36	37	38	39	40	41	42	43	44
Rebate	1.83%	1.80%	1.77%	1.73%	1.70%	1.67%	1.63.%	1.60%	1.57%	1.53%
Day	45	46	47	48	49	50	51	52	53	54
Rebate	1.50%	1.47%	1.43%	1.40%	1.37%	1.33%	1.30%	1.27%	1.23%	1.20%
Day	55	56	57	58	59	60				
Rebate	1.17%	1.13%	1.10%	1.07%	1.03%	1.00%				

xxiv. *That, the Petitioners reserve their rights that in case either of them, in times to come, need a further review in the above mechanism, they shall seek the consent of other by giving 30 days notice and approach Hon’ble Commission jointly for review of the same as per law.*

3. With the above submission, the petitioners prayed the following:

(a) Permit the Petitioners to amend the Rebate Clauses - Regulation 45 of MPERC Regulations, 2015 and the Power purchase agreements executed between them to the effect as tabulated below:-

i. For the period Sept'17 upto July'2018:-

<b>Particular</b>	<b>Upto 2 Days</b>	<b>3-15 Days</b>	<b>16-30 Days</b>	<b>31-45 Days</b>	<b>46-60 Days</b>	<b>After 60 Days</b>
<b>Rebate offered by MPPGCL</b>	3.00%	3.00%	2.00%	1.50%	1.00%	0.00%

ii. For the period August'2018 onwards:-

Day	0-15	16	17	18	19	20	21	22	23	24
Rebate	3.00%	2.93%	2.87%	2.80%	2.73%	2.67%	2.60%	2.53%	2.47%	2.40%
Day	25	26	27	28	29	30	31	32	33	34
Rebate	2.33%	2.27%	2.20%	2.13%	2.07%	2.00%	1.97%	1.93%	1.90%	1.87%
Day	35	36	37	38	39	40	41	42	43	44
Rebate	1.83%	1.80%	1.77%	1.73%	1.70%	1.67%	1.63%	1.60%	1.57%	1.53%
Day	45	46	47	48	49	50	51	52	53	54
Rebate	1.50%	1.47%	1.43%	1.40%	1.37%	1.33%	1.30%	1.27%	1.23%	1.20%
Day	55	56	57	58	59	60				
Rebate	1.17%	1.13%	1.10%	1.07%	1.03%	1.00%				

4. Motion hearing in the subject matter was held on 11<sup>th</sup> June' 2019. During the course of hearing, the petitioners reiterated their contents in the petition.
5. On perusal of the contents in subject petition, the Commission has observed that MPPGCL acted in deviation with regard to two provisions under the Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) Regulations' 2015. These Regulations are 45 and 46, regarding rebate and late payment surcharge, respectively. As per Regulation 46, in case the payment of any bill for charges payable under these Regulations is delayed beyond a period of 60 days from the date of billing, a late payment surcharge @ 1.25% per month shall be levied by the generating company. Although due to delay in bill payment, Petitioner No-1 (MPPGCL) levied late payment surcharge on Petitioner No-2, (MPPMCL), later on MPPGCL had written off the surcharge amount twice. It has written off a surcharge of Rs. 248.97 Crore in its books of accounts for FY 2016-17 and Rs. 99.99 Crore in FY 2017-18. In fact Rs. 2225.81 Crore was outstanding as on 31<sup>st</sup> March' 2017. Considering the financial constraints of MPPMCL in releasing timely payment to MPPGCL, the outstanding amount has been freezed on a cut off date i.e. 1<sup>st</sup> September' 2017 for not levying the surcharge. This is not in line with the MPERC Tariff

Regulations. Further, MPPGCL has stopped levy of surcharge on the outstanding amount as well it has written-off the surcharge amount without informing the Commission. This has been brought to the notice of the Commission through this petition only. But for deviation in the provisions for Rebate in Regulations, the MPPGCL & MPPMCL have jointly filed this petition seeking permission from the Commission.

6. As per Regulation 45, the rebate is applicable on the current bill. As per this Regulation, if payment is made within a period of 2 days of presentation of bills by the generating company, a rebate of 2% is allowed. After two days and within a period of 30 days of presentation of bill, a rebate of 1% is allowed in the Regulation. As per the petition, MPPGCL is proposing a rebate on the outstanding amount for the period from September' 2017 upto July' 2018 and for the period August 2018 onwards. While as per the Regulations, the rebate is allowed on the current bill only, MPPGCL has proposed deviation in the rate of rebate on the outstanding amount as well as on the current bills. As per prayer made by MPPGCL, a rebate between 3% to 1% has been proposed for 0-15 days and thereafter with different rebate for each day from 16<sup>th</sup> day to the 60<sup>th</sup> day. However, in the comments recently furnished on the draft Generation Tariff Regulations for the control period 01.04.2019 to 31.03.2024, MPPGCL has proposed the payment within a period of 45 days of the presentation of bill. So there is a contradiction in the proposal of MPPGCL with regard to the new draft Regulations for the control period FY 2019-24 and the proposal submitted for approval in the instant petition for the current bills. Further the rebate is proposed on the outstanding amount while surcharge on such amount is payable as per the MPERC Regulations.
7. In the subject petition, the petitioners have prayed for amendment in the rebate clauses under MPERC Tariff Regulations, 2015 and the Power Purchase Agreement executed between them. MPERC (Terms and Conditions for determination of Tariff) Regulations' 2015 had the control period upto 31<sup>st</sup> March' 2019 and the MPERC Tariff Regulations for new control period is under finalization stage after the public hearing. It is pertinent to mention that the subject petition is filed with the Commission on 8<sup>th</sup> May' 2019. In view of the aforesaid and the Commission's observations in Para 5 and 6 of this order, the proposal for amendment in MPERC Tariff Regulations' 2015 at this stage in the subject petition is not tenable. Accordingly the subject petition is disposed of.

**Sd/-**  
**(Mukul Dhariwal)**  
**Member**

**Sd/-**  
**(Dr. Dev Raj Birdi)**  
**Chairman**