

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of review petition under Section 94(1)(f) of Electricity Act, 2003 read with Regulation 40 of MPERC (Conduct of Business) (Revision-I), Regulations, 2016

Petition No. 66/2016

ORDER

(Date of Motion Hearing: 20th June, 2017)

(Date of Order: 21st June, 2017)

M.P. Power Management Company Ltd.,

Petitioner

Block No. 16, Shakti Bhawan, Rampur, Jabalpur – 482008

Shri Ravin Dubey, Advocate, Dr. R.V. Saxena, AGM and Shri Gagan Diwan, DGM appeared on behalf of the petitioner.

M.P. Power Management Co. Ltd., Jabalpur (MPPMCL) has filed the subject review petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 40 of MPERC (Conduct of Business) Regulations, 2004 seeking review of Commission's order dated 8th August 2016 (in Petition No. 5 of 2016) in the matter of determination of Multi Year Tariff (MYT) for 2x250 MW (Phase I) Bina Thermal Power Station situated at Bina District, Sagar for the control period of FY 2016-17 to FY 2018-19.

2. The petitioner has sought review of MYT order solely on the ground that some important objections raised by it during proceedings in Petition No. 5 of 2016 were not considered while determining aforesaid MYT by the Commission. The review of Commission's aforesaid MYT order is sought mainly on the following three grounds/objections which were raised by it during determination of Multi-year Tariff:

- (i) Project cost or per MW project cost approved by the Commission is substantially higher as compared to that of other contemporaneous thermal power plant of similar capacity.
- (ii) Strict prudence check was to be applied by the Commission on the additional capitalization of Rs.100.16 Crore claimed by the generating company for FY 2015-16
- (iii) Blended Annual Capacity charges determined for unit no. 1 and 2 was opposed by the review petitioner citing cogent reasons.

3. In terms of Regulation 40 of MPERC (Conduct of Business) Regulations, 2004, the review petition is required to be filed within 60 days of the aforesaid order whereas, the petitioner has filed the subject review petition on 23rd November 2016. The petitioner has also requested for condonation of delay of 44 days in filing the subject review petition.

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4. The first motion hearing in the subject petition was held on 24th January'2017 when the Commission observed the following issues:

- (i) The MYT order under review was issued on **8th August' 2016** whereas, the petitioner has filed the subject review petition on 23rd November' 2016. The petitioner has requested for condonation for delay of 44 days in filing the subject review petition.
- (ii) The project cost challenged in the subject review petition (filed on 23rd November' 2016) was determined by the Commission on **26th November' 2014** and **3rd June' 2016**. The review petitioner had never preferred any review or appeal on this matter and it has now filed the subject review petition after a long period of time from the date of orders wherein the capital cost challenged in the subject review petition was admitted by the Commission.
- (iii) The contention of review petitioner that the capital cost of the project comes out to ₹3497.38 Cr is incorrect. The capital cost of ₹3484.12 Cr is determined by the Commission for both the units.
- (iv) The petitioner submitted a statement showing comparison of per MW cost of the generating station under subject petition with some contemporaneous thermal power plants having various capacity of 210 MW, 250 MW and 300 MW. On perusal of the aforesaid statement, it was observed that such comparison was arbitrary and meaningless in absence of the following authentic information:
 - (a) The source of information regarding per MW capital cost is not mentioned by the petitioner.
 - (b) Instead of including the project cost of similar 2x250 MW extn. units of STPS Sarni in the state, the petitioner had simply mentioned that the cost of Satpura Thermal Power Station, Sarni is also much lower at Rs. 6.065 Crore per MW without barrage and transmission line.
 - (c) It was not stated whether the power plants mentioned in the subject review petition for sake of comparison are green field or brown field projects.
 - (d) It was not mentioned whether the cost informed for each power station is provisionally allowed or finally admitted by the respective Commission or whether the project cost determined for these power plants was based on provisions/projections or the Audited Accounts of the respective generating company.

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- (e) The component-wise comparison of the capital cost of all such power plants with clarity of whether the capital cost claimed/ allowed include Transmission line, Barrage, CHP and Railway siding etc was not mentioned in the subject petition.
- (f) The quantum of additional capitalization if any, considered for these power stations was also not mentioned in the subject review petition.
- (g) The quantum of CWIP left over and above the capital cost admitted by the respective Appropriate Commission was not mentioned in the review petition.
- (h) Almost all the power plants (except Unit No. 2, 300 MW of Rosa Stage-1) achieved CoD much prior to CoD of power plant in the subject matter. Even the Unit No. 2, 300 MW of Rosa Stage-1 achieved COD in March 2010 as compared COD of 07.04.2013 of Unit No.2 of power plant in the subject matter.

5. In view of the above observations, the petitioner was directed to explain the reasons for a long delay in filing the subject petition and also to file a comprehensive reply to all above-mentioned observations of the Commission. With the above directions, the case was again fixed for motion hearing on 21st February' 2017.

6. On 21st February' 2017 the review petitioner had sought six weeks' time for filing its reply to the observations of the Commission. Considering the request of the review petitioner, the matter was again fixed for motion hearing on 18th April' 2017.

7. During the course of motion hearing held on 18th April' 2017, the representatives of the review petitioner again sought some more time for filing its reply in the subject matter. By providing the last opportunity, the review petitioner was directed to file its reply with the Commission at the earliest but not later than 5th May' 2017.

8. By affidavit dated 4th May' 2017, the review petitioner filed its reply only to the observations of the Commission at para 4(iv) of this order. Issue-wise response filed by MPPMCL is as given below:

- (a) **Issue:**
The source of information regarding per MW capital cost is not mentioned by the petitioner.

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Petitioner's Response:

The sources of the capital cost of the projects considered for the per MW comparison are indicated in Column 9 in Table-1, which is attached and marked as Annexure R/2.

(b) Issue:

Instead of including the project cost of similar 2x250 MW extn. units of STPS Sarni in the state, the petitioner has simply mentioned that the cost of Satpura Thermal Power Station, Sarni is also much lower at Rs. 6.065 Crore per MW without barrage and transmission line.

Petitioner's Response:

The Appellant has also considered the project cost of 2x250 Satpura Ext. project, while comparing the per MW cost of similar projects the same is indicated at Sl. No. 4 in Table-1, which is attached and marked as Annexure R/2.

(c) Issue:

It is not stated whether the power plants mentioned by it for sake of comparison are green field or brown field projects.

Petitioner's Response:

The nature of the project, whether it is a "green field" or "brown field" project is indicated in the Column No. 12 in Table-1, which is attached and marked as Annexure R/2.

(d) Issue:

It is not mentioned whether the cost informed for each power station is provisionally allowed or finally admitted by the respective Commission or whether the project cost determined for these power plants is based on provisions/projections or the Audited Accounts of the respective generating company.

Petitioner's Response:

The capital cost considered for comparison are approved/provisionally allowed/actual incurred. The same has been indicated in Column No. 11 in Table-1, which is attached and marked as Annexure R/2.

(e) Issue:

The component-wise comparison of the capital cost of all such power plants mentioning whether the capital cost claimed/allowed include Transmission line, Barrage, CHP and Railway siding etc, is not mentioned in the subject petition.

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Petitioner's Response:

The component wise comparison of capital cost of two of the Projects has been indicated, along with source of information in Table-2, which is attached and marked as Annexure R/3.

(f) Issue:

The quantum of additional capitalization if any considered for these power stations is not mentioned.

Petitioner's Response:

The capital cost considered for the comparison is the capital cost as on COD of the project, thus there is no additional capital expenditure considered in this comparison.

(g) Issue:

The quantum of CWIP left over and above the capital cost admitted by the Appropriate Commission is not mentioned in the review petition.

Petitioner's Response:

The additional capital expenditure allowed by appropriate commission in two of the Projects has been indicated in Table-3, which is attached and marked as Annexure R/4.

(h) Issue:

Almost all the power plants (except Unit No. 2, 300 MW of Rosa Stage-1) have achieved COD much prior to COD of JPVL's power plant. Even the Unit No. 2,300 MW of Rosa Stage-1 achieved COD in March 2010, as compared COD of 07.04.2013 of JPVL's Unit No.2.

Petitioner's Response:

The Review Petitioner has updated the list of projects considered for per MW capital cost comparison. The projects with similar unit size and those projects which have achieved the COD in the time period from 2012-13 to 2014-15 have also been added. The updated information is indicated in Table-1, which is attached and marked as Annexure R/2.

9. On perusal of the above-mentioned response filed by the review petitioner, the Commission has noted the following:

- (i) The review petitioner was specifically asked to explain the reasons for a long delay in filing the subject petition for seeking review of capital cost which was actually admitted by the Commission long back on 26th November' 2014 including true-up order dated 3rd June' 2016 . In response, the review petitioner has submitted the following:

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“Review Petitioner seeks to rely on the submissions made in the IA for condonation of delay filed along with the Review Petition No. 66 of 2016.”

- (ii) In its IA filed with the subject review petition, the review petitioner had sought condonation for delay of 44 days reckoning the date of issue of last MYT order in this matter. The review petitioner has not responded on the issue of delay in filing review petition from 26th November’ 2014 and 3rd June’ 2016 when the final order and true-up order respectively were issued by the Commission admitting the Capital Cost for which review is filed in the subject petition.
- (iii) In its reply, the review petitioner has ignored some of the thermal power projects mentioned in the subject petition and it has now added some other thermal power stations which were not mentioned in its original petition. It has not provided any information for Bakreshwar TPP, Sagardighi TPP, Santaldih TPP, New Parli TPS and new Paras TPS based on which review petition was filed by the petitioner.
- (iv) The details/ information now provided in the reply filed by MPPMCL are still either unauthentic/ incorrect and do not establish a common platform for the sake of comparison of the capital cost admitted.
- (v) On perusal of Annexure 2 for the basis of per MW capital cost submitted with the reply filed by review petitioner, it is observed that only four power stations out of seven power stations are brown field projects. The project cost of brown field projects may not be compared with the cost of green field projects. Further, the break-up of capital cost does not provide the project specific features like Barrage, Transmission Line, Railway Siding etc.
- (vi) The ground made by the review petitioner for review of the Commission’s Multi-year Tariff order dated 8th August’ 2016 with regard to additional capitalization of Rs. 100.16 Crores is misplaced as the aforesaid additional capitalization for FY 2015-16 claimed by the generating company has not been considered by the Commission in its MYT order under review.
- (vii) Based on the total capital cost admitted in MYT order under review in the subject petition, the per MW capital cost of project in this matter is Rs. 6.96 Crores/MW whereas, it is mentioned as Rs.7.19 per MW in the subject petition.

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(viii) The project cost of Phase IV of STPS Sarni (Unit No. 10 & 11) being a brown field project (excluding cost of Barrage and Transmission line etc.) is Rs. 6.32 per MW whereas, it is mentioned as Rs. 6.065 Crores/MW in the subject petition. Therefore the contention of the review petitioner for the sake of comparing per MW capital of STPS Sarni PH IV with the power plant in the subject matter has no merit.

10. With regard to the issue of blended tariff for both units, the following is observed by the Commission:

(i) The contention of MPPMCL regarding blended tariff is not in line with Regulation 8.2 of MPERC (Terms and conditions for determination of generation tariff) Regulations, 2012 which provides that:

“Tariff in respect of a Generating Company under these Regulations shall be determined Unit-wise or for a group of Units. However, when a new generating Unit is added after 1st April 2013, the Commission may determine separate Tariff for such new Unit(s) if the installed capacity and operating norms of such Unit(s) are different from other units of the Generating Station. The Generating Company shall submit separate calculations in respect of each Generating Station giving breakup for Unit commissioned prior to 1st April 2013 and Units Commissioned thereafter.”

(ii) The above-mentioned provisions regarding blended tariff was notified by the Commission in its Tariff Regulations after following due process of public hearing. The review petitioner (MPPMCL) had offered no comments/ objections at that stage on this issue.

(iii) The generation tariff for M.P. Power Generating Company Ltd. (MPPGCL) is always determined for each Power House or Power Station except in the case when any single unit of different capacity is commissioned in the Power Station.

(iv) MPPMCL has come up with this issue of blended tariff with reference to “Declared Capacity” and “Contracted Capacity” in the subject review petition and these operational issues have been dealt with and settled by the Commission in Petition No. 64/ 2015. However, M/s. JPVL, the generator has filed an Appeal No. 232 of 2016 with Hon’ble Tribunal for Electricity on the aforesaid issues. The matter is subjudiced before the Hon’ble Appellate Tribunal for Electricity.

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(v) The blended tariff for the power station as on the date of commissioning of any new unit in such Power Station is determined by CERC also.

11. In view of the above, the arguments placed by review petitioner on the issue of blended tariff are untenable being devoid of merits.

12. In accordance with Rule 1 Order 47 of the Code of Civil Procedure (CPC), a person aggrieved by an order may apply for a review under the following circumstances:

- (a) On discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at a time when the order was made;
- (b) An error apparent on the face of the record;
- (c) For any other sufficient reason.

13. In view of all aforesaid observations of the Commission in this order, the premise/grounds raised by the petitioner in the subject petition do not fall under any circumstances as articulated in Rule 1 Order 47 of CPC for review in the instant case. Therefore, the subject review petition is not maintainable hence, disposed of.

(Alok Gupta)
Member

(A. B. Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman