

**Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 145 of 2009

Dated May 19, 2010

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson
Hon'ble Mr. H.L.Bajaj, Technical Member**

Appeal No. 145 of 2009

In the matter of:

**Madhya Pradesh Poorv Kshetra
Vidyut Vitaran Company Ltd.
Block No. 7, Shakti Bhawan
Rampur,
Jabalpur-482 008**

**Madhya Pradesh Madhya Kshetra
Vidyut Vitaran Company Ltd.
Bijli Nagar Colony, Nishtha Parisar
Govindpura
Bhopal-462 023**

**Madhya Pradesh Paschim Kshetra
Vidyut Vitaran Company Ltd.
GPH Campus Polo Ground
Indore-452 015**

... Appellant(s)

Versus

Madhya Pradesh Electricity Regulatory Commission
4th and 5th Floor, Metro Plaza,
Bittan Market
Bhopal-462 016

... Respondent

Counsel for the Appellant(s) **Mr. M.G. Ramachandran**
Mr. Anand K. Ganesan
Ms. Swapna Seshadri

Counsel for the Respondent(s) **Mr. Sanjay Sen**
Ms. Shikha Ohri &
Ms. Mandakini Ghosh for
Resp-1 (MPERC)

JUDGMENT

Per Hon'ble Mr. H.L. Bajaj, Technical Member

1. Madhya Pradesh Poorv Vidyut Vitaran Company Ltd., Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Ltd. and Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Ltd. are the Appellants herein. They are the distribution companies in the State of Madhya Pradesh. They undertake the functions of distribution and retail supply of electricity in the east, west and central zone respectively in the State of Madhya Pradesh. The Appellants on being aggrieved over the

disallowance of their claims, have filed this common Appeal challenging the common order dated 16.06.2009 passed by the Madhya Pradesh Electricity Regulatory Commission (State Commission passed in their petitions for truing up of Aggregate Revenue Requirements for the financial year 2006-07). The facts leading to this Appeal are as follows.

2. After re-organization of the erstwhile Madhya Pradesh State Electricity Board, the Appellants succeeded to the distribution functions and corresponding assets of the Board from 01.06.2005. After coming into force of the Electricity Act, 2003, the tariffs of the distribution licensees have been regulated by the State Commission. On 05.12.2005 the State Commission notified the Madhya Pradesh Regulatory Commission (Terms and Conditions for Determination of Tariff for Distribution and Retail Supply of Electricity) Regulations 2005. Thereupon the Appellants filed their separate petitions seeking for the determination of Annual Revenue Requirement of the

Appellants for the financial year 2006-07 based on the estimated projections and details then available.

3. After due process the State Commission by the order dated 31.03.2006 passed the order determining the tariff in respect of the year 2006-07. The Appellants filed 3 separate petitions No. 22, 13 and 15 of 2008 on 01.03.2008 for truing up of the annual revenue requirements of the Appellants for the financial year 2006-07 based on the audited accounts of the Appellants. Pursuant to their petitions filed by the Appellants, the State Commission held public hearings and sought detailed particulars/information from the public as well as the Appellants on the financial and audited accounts. The State Commission, thereupon passed the impugned order dated 16.06.2009 deciding the 3 petitions filed by the Appellants for truing up the Annual Revenue Requirements for the tariff year 2006-07.

4. Aggrieved by the disallowance of some of the claims made by the Appellants in the impugned common order passed by the

State Commission, the Appellants have presented this common Appeal.

5. The principal aspects challenged and pressed during the hearing in these Appeals are as follows:

- (i) Quantum of energy sold and consequently the energy purchased and price thereof not considered by the State Commission.
- (ii) The rate at which the power purchase cost to be allowed.
- (iii) Adjustment of a loss level and power purchase.
- (iv) Operation and Maintenance expenses.

6. The Learned Counsel for the Appellant would elaborately deal with every aspect of the issues raised in the Appeal as follows:

- (i) The State Commission has wrongly rejected the claims of the Appellant to consider the cost of

supply of additional units other than those actually billed to consumers in the agriculture category on the ground that supply is contrary to the Regulation 3.7 of the Tariff Regulations 2005 which requires prior approval of the State Commission. Regulation 3.7 has no application to the increased quantum of supply or hours of supply to un-metered agriculture consumers on year to year basis. Regulation 3.7 applies only to abnormal situation.

- (ii) The State Commission has not given adjustment for loss level and power purchases appropriately and thus causing double prejudice to the Appellant.
- (iii) The State Commission has not allowed the entire power purchase cost claimed by the Appellant. It disallowed the short-term power purchase cost and allowed average cost of Rs. 1.25 per unit against the average power purchase cost of Rs. 1.66 per unit which resulted in the disallowance of fixed charges incurred by the Appellant.
- (iv) In the Tariff Order the State Commission had allowed the Operation and maintenance expenditure on normative basis. The State Commission has reduced the operation and

maintenance expenditure allowed to the distribution companies on the ground that the apportionment of O & M expenditure among the Generation, Transmission and Distribution Companies was made on erroneous basis. In the Tariff Order the distribution companies were given higher operation and maintenance expenses than as required by the distribution companies.

- (v) The Appellant claimed the interest and finance charges based on the audited account for the year 2006-07 of an aggregate amount of Rs. 164.70 crores. These included the borrowed capital in respect of capital assets into use. The State Commission had proceeded to adopt wrongly a methodology of treating only 50% of the additional capitalization claimed by the Appellants and treated the remaining as the work in progress.
- (vi) The State Commission has not allowed any interest on working capital requirements for Appellant 1 and 2 on the ground that as per the normative calculation, the admissible interest on working capital is negative. The State Commission has ignored the actual interest in this regard

- (vii) The State Commission has allowed writing off the bad and doubtful debts only to the extent of the amount actually written off or 1% of the revenue from sale of power claimed by the Appellant.

7. On these points, elaborate submissions have been made by the Learned Counsel for the Appellant. However, issues at (v),(vi) & (vii) in para 6 above were not pressed during the course of hearing.

8. The Learned Counsel for the Commission has also filed the Written Submission and also made oral submissions justifying the impugned order.

9. We have carefully considered the submissions made by the Counsel for the parties.

10. The main issue involved in this Appeal is the disallowance of 1682.27 MU of electricity towards the energy sale of the Distribution Companies and consequent

denial of the cost of procurement of the aforesaid quantum of energy on the ground that the Appellants should have approached the Commission at appropriate time for revision in the benchmark of Un-metered Agricultural Consumers if such benchmark were deemed less than the actual. The Commission has cited the Regulation 3.7 of the MPERC (Terms and Conditions of Tariff for Distribution and Retail Supply of Electricity) 2005 which reads as under:

“ If for any abnormal situation like drought, supply to any category of consumer is to be varied, the licensee shall obtain prior approval of the Commission”

11. The Commission has also contended that the Appellant had supplied some additional quantum of power to the un-metered consumers without raising bills to them and that the Appellant cannot supply free power to any category of consumers. Such supply of power without recovering its cost has a direct bearing on power purchase cost since this extra energy is required to be purchased from the long term/short term sources and such additional power

purchase costs becomes an unavoidable burden on consumers of other categories.

12. We have noted that the quantum of 1682.27 MU of energy sales disallowed mainly relates to the supply of electricity during tariff period 2006-07 to Un-metered Agricultural Consumers who are required to pay tariff on normative basis of assumed quantum of power consumption irrespective of the actual quantum of supply being less or more.

13. The Commission vide its notification dated 18.10.2005 has extended the time period to supply electricity to un-metered consumers in operational areas of the Distribution Licensees (including Deemed Licensees) in Madhya Pradesh under second Proviso of Section 55(1) of The Electricity Act, 2003.

Name of Company	Total un-metered consumers reported by the licensee as on June 2005		Time extension given by the Commission to complete 100% meterization work	
	Domestic	Agricultural	Domestic	Agricultural
East Discom	3,66,406	178357	March, 2006	Sept. 2007

Central Discom	2,10,088	2,14,453	March,2006	Dec.2007
West Discom	96,719	3,03,374	Dec.2005	Dec.2007

14. The aforementioned extension till the completion of 100% meteriazation work in domestic category of consumers, the Commission shall assume 100 units per consumers per month for each un-metered consumers in urban areas and 65 units per consumer per month in rural areas. As far as agricultural consumers are concerned the Commission will proceed with the assumption of load factor for un-metered consumers of agricultural category as approved in the ARR proposal filed by the licensee. Vide its order dated 31.03.2007 in the matter of review of Tariff Order dated 31.3.2006 the Commission has in its order dated 31.3.2007 ordered as under:

Regarding billing of un-metered domestic and agricultural connections, the Commission directs the Discoms to issue bills on the following assessed units during FY 2007.

S.No.	Name of Discom	Assessed units for unmetered domestic connections (units/connection)	Assessed units for un-metered agricultural connections (units/HP)

		<i>Urban area</i>	<i>Rural area</i>	<i>Permanent</i>	<i>Temporary</i>
<i>1</i>	<i>For all Discoms</i>	<i>77</i>	<i>38</i>	<i>100</i>	<i>130</i>

15. In the Review Petition filed by the Appellants the basis of assumption of agricultural un-metered connections was the result of sample studies as also the MPERC Tariff Order dated 29.06.2005. The Appellants had prayed that their assumption of agricultural un-metered consumption as 100 units per HP per month for permanent connection and 130 units per HP per month for temporary connections may be accepted.

16. As far as FY 2007 is concerned, the Commission in its order dated 31.03.2007 has merely mentioned that assessed units for un-metered agricultural connections are 100 and 130 units respectively for permanent and temporary connections. It cannot be inferred from this that supply beyond 100/130 units/HP cannot be made.

17. The Tariff Schedule-LV-5.1 for Irrigation Pump for agriculture for FY 2006 reads as under:

Irrigation Pumps for Agriculture

1. Applicability:

These tariffs are applicable to agricultural pump connections, chaff cutters, thrashers, winnowing machines, irrigation pumps of lift irrigation schemes, water drawn by agriculture pumps for use by cattle.

<i>S.No.</i>	<i>Sub-category of consumers Metered</i>	<i>Energy Cost Charges paise per unit</i>
<i>1</i>	<i>Permanent connections</i>	
<i>a)</i>	<i>First 300 units per month</i>	<i>175</i>
<i>b)</i>	<i>Rest of the units in the month</i>	<i>265</i>
<i>2.</i>	<i>Temporary connections</i>	
<i>a)</i>	<i>First 300 units per month</i>	<i>230</i>
<i>b)</i>	<i>Rest of the units in the month</i>	<i>320</i>
	<i>Un metered (On connected Load basis)</i>	
<i>3(a)</i>	<i>Permanent connection</i>	<i>Shall be liable to pay for assumed consumption of : 100 units/HOP/month at permanent metered rate</i>
<i>3(b)</i>	<i>Temporary connections</i>	<i>130 units/HP/month at temporary metered rate</i>

2. Character of service:

Licensee shall ensure at least 6 hours of three phase supply six days a week.

18. From the aforesaid Schedule it is clear that for FY 2006 the licensee shall ensure **at least** six hours of three phase supply six days a week and that for permanent connections the consumer shall be liable to pay for assumed consumption of 100 units per HP per month at permanent metered rates.

19. One cannot read into the aforesaid schedule that power will not be given beyond six hours duration during the day to the agricultural un-metered consumers. The charges on the basis of the HP of the Irrigation Pump Motor are on normative basis and not on the basis of actual consumption of electricity. Clause 3.7 of the MPERC Regulations, 2005 cannot be read in isolation and it has to be read along with Clauses 3.5 and 3.6 together. These clauses are reproduced below:

Monitoring of sale of electricity to consumers:

3.5 On the basis of approved sales forecast, monthly sales to different consumers categories shall

be worked out, taking into account seasonal variations in demand in a year.

3.6 The licensee shall monitor the sales to different consumers categories and ensure that sale of any category of consumer is not unduly restricted.

3.7 If for any abnormal situation like drought, supply to any category of consumer is to be varied, the licensee shall obtain prior approval of the Commission

20. As per Clause 3.6 above the licensee is required to monitor the sales to different categories of consumers and ensure that sale to any category of consumer is not unduly restricted. One needs to discern the meaning of the word “varied” in the Clause 3.7 in context of what is said in clause 3.6. When Clause 3.6 is emphasizing that sale to any category of consumer is not to be unduly restricted and the licensee is required to monitor the same, the only meaning that one can draw from the word varied is variation downward and not variation upward. Any upward variation will only fulfill the intent of Clause 3.6.

21. For the year FY 2007, no elaborate table similar to one for FY 2006 has been given. Commission made it clear in its order dated 31.03.2007 that Billing of Un-metered Domestic and Agriculture Consumers is to be done on the

basis of assessed units given in the aforementioned table (supra). Having regard to the State Commission's order for FY 2006 and FY 2007 and the fact that un-metered supply was permitted during FY 2006-07, we conclude that no restriction is placed on the Appellants to supply energy beyond 100/130 units per HP per month. Rather Clause 3.6 requires that supply should not be unduly restricted. Respondent Commission having permitted unmetered supply and billing on normative basis is not justified in labelling the supply of energy over and above the normative level as free power. Normative means irrespective of actual use billing has to be done on the normative figure prescribed by the State Commission. Assuming that actual use of power was lesser by 1682.27 MU, instead of being higher by 1682.27 MU as is the case, this would not entitle the Appellant to claim power purchase cost corresponding to normative value. It is the consumer who is to be billed on normative basis irrespective of the quantum actually consumed. Appellants are entitled to only actual power purchase cost whether it is less or more than the assessed values. In view of this, we conclude that there is no

justification to disallow the supply of energy by the Appellants. We, therefore, set aside the impugned order in this view of the matter.

22. Having decided that the Commission should consider the additional 1682.27 MU (or 1612 MU which the Commission may actually determine) of un-metered supply for the purpose of power purchase quantum required for energy sales, the consequential issues of rates of power purchase cost and the adjustment of loss level and purchase cost stand settled.

23. The next issue is relating to Operation and Maintenance expenses. According to the Learned Counsel for the Appellant, the State Commission allowed the O & M expense to the distribution companies on normative basis as provided in the tariff regulations. In the true up order the State Commission has proceeded to revise the O&M expenses on actual basis, finding the actual O & M expenses claimed involved during the relevant year was not normative. Therefore, the decision of the State

Commission is totally contrary to the well settled principle that the true up stage is not an opportunity for the Commission to reconsider de novo all the norms and parameters. The purpose of specific norms becomes redundant if the State Commission is to apply the principle of norms or actual whichever is lower. The difference between the actual and normative O&M expenses is to the benefit of the distribution companies. If the distribution companies have not been performing up to the standards the State Commission is proceeding against the distribution companies for such non-performance. It cannot take away the saving earned by the distribution companies on O & M expenses, which represents the efficiency gain on the part of the distribution companies”

24. In order to support the above plea, the Learned Counsel for the Appellant has cited the Tribunal decision in Appeal No. 100 of 2007.

25. The decision cited by the Learned Counsel for the Appellant would not apply to the present case. In Appeal No. 100 of 2007, the issues involved were the true up exercise which was taken up in two stages by the State Commission and further taking up another true up exercise based on new assumptions. But the issue involved in the subject matter of the appeal is related to the single true up based on actual accounts. It is not correct to contend that the State Commission has wrongly proceeded on the basis of actual O&M expenses during the true up exercise and it is entitled to revisit the normative O & M expenses. In fact, the generation and transmission of the 3 distribution companies started functioning independently with effect from 01.06.2005. As per the Government Notification all these appellant's companies were provided with a provisional opening balance sheet for a period of 12 months and the date of finalizing of this opening balance sheet had been extended by the State Government from time to time and now finalized on 12.08.2008. The norms were framed based on accounts of the erstwhile Electricity Board who had not maintained its accounts

separately for Transmission, Generation and Distribution. As such the total break up of O&M expenses for Generation, Transmission and Distribution was not allowed.

26. More than 85% of the total O & M charges is the employee cost. The employees in these companies are on assignment and all the decisions on employee's salary are taken by the Electricity Board and as such the decision applied uniformly to all the companies. The companies, i.e. the Appellants have no control on expenses of employee's cost which is a major portion of the O & M cost.

27. In view of the above, taking a comprehensive view of the actual O & M expenses and also keeping in view that these O&M expenses have employees expenses as a major component alone, the State Commission had consciously allowed O & M expenses based on actual as per the particulars given in the petition filed by the Appellants in true up of 2006-07. This logic

was uniformly applied for O & M expenses of the distribution companies also. In view of this we do not find any justification to interfere in the decision of the State Commission.

28. In conclusion we allow the Appeal on the first three issues namely quantum of energy sold and consequential energy purchased and price thereof is allowed. In view of this the second issue of rate of power purchase and third issue of adjustment of loss level also stand settled in favour of the Appellants. The Appeals on the fourth issue of Operation and Maintenance Expenses fail.

29. The matter is remanded to the State Commission who are directed to revise the ARR in view of our aforementioned decisions and reflect additional expense in the revised tariff within three months of the date of this judgment. No costs.

(H.L. Bajaj)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson