

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

**Appeal No. 258 of 2012**

**Dated: 29<sup>th</sup> May, 2014**

**Present: Hon'ble Mr. Rakesh Nath, Technical Member  
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

**In the matter of:**

- 1. Madhya Pradesh Poorv Kshetra Vidyut  
Vitaran Company Limited,  
Block No. 7, Shakti Bhawan,  
Rampur, Jabalpur-482 008**
  
- 2. Madhya Pradesh Madhya Kshetra Vidyut  
Vitrans Company Limited,  
Bijli Nagar Colony, Nishtha Parisar,  
Govindpura, Bhopal-462 023**
  
- 3. Madhya Pradesh Paschim Kshetra Vidyut  
Vitaran Company Limited,  
GPH Campus Polo Ground,  
Indore-452 015**

**... Appellant (s)**

**Versus**

**Madhya Pradesh Electricity Regulatory Commission,  
4<sup>th</sup> & 5<sup>th</sup> Floor, Metro Plaza,  
Bittan Market, Bhopal-462 016**

**...Respondent(s)**

Counsel for the Appellant(s):

Mr. M.G. Ramachandran,  
Ms. Swagatika Sahoo

Counsel for the Respondent(s):

Mr. C.K. Rai for R-1  
Ms. Tajinder Kaur  
Mr. Gajendra Tiwari, Dir. (MPERC)

## **JUDGMENT**

### **RAKESH NATH, TECHNICAL MEMBER**

This Appeal has been filed by Madhya Pradesh Poorv Kshetra Vigyut Vitran Co. Ltd. and other distribution licensees of Madhya Pradesh against the order dated 22.9.2012 passed by the Madhya Pradesh Electricity Regulatory Commission (“State Commission”) pursuant to the remand by this Tribunal in Appeal no. 145 of 2009 and Review Petition no. 10 of 2010 pertaining to the truing up of financials for the FY 2006-07.

2. The facts of the case are as under:

(i) The State Commission by order dated 31.3.2006 determined the ARR of the Appellant distribution licensees for the FY 2006-07.

(ii) At the close of FY 2006-07, the Appellants filed their respective applications for true up of the amount of ARR for FY 2006-07 based on the audited accounts. The State Commission by order dated 16.6.2009 disposed of the three applications filed by the Appellants for truing up of accounts for FY 2006-07. In the order dated 16.6.2009, the State Commission disallowed the cost of additional supply made to unmetered agricultural and domestic consumers.

(iii) Aggrieved by the order dated 16.6.2009 passed by the State Commission, the Appellants filed Appeal no. 145 of 2009 before this Tribunal. BY judgment dated 19.5.2010, this Tribunal allowed the Appeal.

(iv) A review petition was filed by the State Commission before this Tribunal which was disposed of by this Tribunal vide order dated 4.3.2011 giving certain directions to the State Commission.

(v) Aggrieved by the order dated 4.3.2011 passed by this Tribunal, the Government of Madhya Pradesh which was not a party to the main appeal filed a review petition no. 10 of 2010. This review petition was disposed of by this Tribunal vide order dated 22.7.2011.

(vi) Aggrieved by the Review order dated 4.3.2011 and order dated 22.7.2011, the Appellants as well as the State Government have filed second Appeal before the Hon'ble Supreme Court which have been admitted and pending disposal.

(vii) Pursuant to the directions of the Tribunal in the Review Petition, the State Commission initiated the proceedings and passed the impugned order dated 22.9.2012 which has been challenged by the Appellants in the present Appeal.

3. The following issues have been raised by the Appellants in the present Appeal.

(A) **Power Purchase Cost:** The State Commission has allowed the power purchase cost at Rs. 1.52 per kWh considering the average long term power purchase rates as determined in the true up order for FY 2006-07 instead of weighted average cost of power purchase including the short term power purchase which worked out to be Rs. 1.66/kWh.

(B) **Quantum of supply of power to unmetered agricultural consumers and unmetered domestic**

**consumers:** According to the Appellants, the State Commission has erred by rejecting the complete data submitted by the Appellants and verified by the State Load Dispatch Centre (“SLDC”) for the quantum of additional hours of supply to unmetered agricultural consumers. According to the Appellants, the State Commission has proceeded by wrongly construing the order of the State Government on the assumption that the distribution companies have only to supply 9 hrs. for the month of November 2006 and 8 hrs. for the period December 2006 to March 2007 to the agricultural consumers.

(C) **Discount factor:** The State Commission has arbitrarily assigned a discounting factor of 20% while calculating the extra hours of agriculture supply. According to the Appellants, there is no rationale behind assuming that the agriculture load does not

remain at par for the full period when the supply is extended.

4. On the above issues we have heard Shri M.G. Ramachandran, learned counsel for the Appellant and Shri C.K. Rai, learned counsel for the State Commission. After considering the rival contentions of the parties, the following questions would arise for our consideration:

**(i) Whether the State Commission has erred in allowing the power purchase cost at average of the long term power purchase costs without considering the short term power purchase cost incurred by the Appellants?**

**(ii) Whether the State Commission has erred in assessing the quantum of unmetered energy ignoring the data submitted by the Appellants and verified by the SLDC?**

**(iii) Whether the State Commission has erred by applying a discount factor while assessing the additional energy consumption for extra hours of agriculture supply?**

**5. Let us take the first issue regarding power purchase cost.**

6. Mr. M.G. Ramachandran has argued that the State Commission has proceeded on a fundamentally wrong assumption that the quantum of power purchased during the period from 1.4.2006 to



31.3.2007 on hour to hour, day to day, week to week and month to month basis will be uniform. This overlooks the facts that the quantum of power purchase varies from hour to hour, day to day, season to season and there are variations during peak and off peak hours. The variation in the above demand would necessitate the purchase of short term power at different time and therefrom ignoring the power purchase cost from short term power for the purpose of allowing the claim of the Appellant is fundamentally wrong. The loss levels also increase during the rabi season due to high agriculture pumping load but the State Commission has not considered the variation in loss level and has considered only average annual loss level. Further the rate of Rs. 1.66/kWh has been recognized by this Tribunal in order dated 19.5.2010 in Appeal no. 145 of 2009.

7. Shri C.K. Rai, learned counsel for the State Commission has submitted as under:

(i) The energy requirement of the Appellants has been determined on the basis of the distribution loss targets set for the whole financial year in the FY 2006-07 and this methodology was never challenged by the Appellants and this approach of computing energy requirement for power purchase cost has been consistently adopted by the State Commission in all Tariff orders. It is, therefore, not open to the Appellants to raise a new issue of month-wise loss level.

(ii) The Appellants have claimed additional energy of 1682.27 MUs of unmetered supply against which only 516.31 MU has been approved by the State Commission. This additional sale of 516.31 MU could have been easily met from the long term power

purchased by the Appellants. Therefore, the State Commission has allowed average pool rate of the long term power purchase only.

8. Let us first examine the judgment of this Tribunal dated 19.5.2010 in Appeal no. 145 of 2009. In this Appeal one of the issues raised by the Appellant was the power purchase cost. We find that the Appellants claim for average power purchase cost was allowed by this Tribunal in favour of the Appellant.

9. We find that in the impugned order the State Commission has allowed the power purchase cost of Rs. 1.52 per unit which is the average long term power purchase cost, ignoring the power purchase cost from short term sources, as it found that the energy availability from the long term power sources on annual basis was adequate to meet the total energy

requirement including the additional energy allowed for additional unmetered agriculture supply. This approach in our opinion is wrong.

10. The annual energy availability from long term sources may be more than the annual energy requirement computed from the annual energy sale and T&D losses but the power tied up from long term sources may not be adequate to meet hour to hour, week to week and month to month requirements. There may be periods of high demand when the power availability from long term sources may not be adequate to meet the hour to hour demand and procurement of power from short term sources may be necessary. There may be periods when the generating units of long term sources go under planned or forced outages causing shortage. There may be periods when demand is high and water availability at the hydro stations with which

the Distribution Licensee has entered into long term agreement is low causing reduction in power availability even if all the units are available. Under such conditions power may have to be procured by the Distribution Licensee from short term sources to meet the demand of the consumers satisfactorily. Therefore, the State Commission should have also considered the power purchase cost from short term power procured by the Distribution licensee and determined the average power purchase cost both from long term and short term sources. Accordingly, this issue is decided in favour of the Appellants.

11. We however, do not agree with the Appellants that distribution losses should be considered on month to month basis instead of average annual losses. The Regulations provide for fixation of annual distribution losses. Energy requirement and power purchase cost is

also being determined on annual basis. Therefore, it is logical to apply losses also on annual average basis.

**12. The second & third issues are interconnected and are being dealt with together.**

13. According to the Appellants, the State Commission has rejected the complete data submitted by the Appellants and verified by the SLDC for the quantum of additional hours of supply and proceeded on the assumption that the Distribution Licensees have only to supply additional hours of agriculture supply as per the State Government's direction. Further, the discount factor of 20% has been applied arbitrarily by the State Commission.

14. Shri C.K. Rai, learned counsel for the State Commission submitted that even after a long period of time from 2.5.2011 to 28.7.2012, the Appellants could

not produce any substantial data/records before the State Commission except the month-wise average supply hours to rural areas as per SLDC records for FY 2006-07. The information finally filed by the Appellants did not appear to have been collected from their field functionaries for which purpose repeated extensions were sought by them. The Appellants also failed to provide the details/data before the State Commission, which could demonstrate the exact/definite additional hours of actual supply made to the unmetered agriculture consumers. Accordingly, the State Commission as per the directions of the Tribunal made assessment of additional energy based on the then prevailing status of feeder metering, metering on Distribution Transformers, local shedding of load and several other ground realities including bottlenecks in sub-transmission and local distribution system. These factors were required to be considered as linkages or

gaps between the declared hours of supply (at outgoing 33 kV feeders of EHV sub-stations or outgoing feeders of 33/11 kV sub-stations) and actual hours of supply utilized by individual unmetered consumer which gets supply at 400 volts. Therefore, discounting factors was considered to assess actual usage of agriculture supply beyond 6 hours.

15. It is further stated by Shri Rai, learned counsel for the State Commission that the instructions of the State Government required the Appellants to make 9 hrs. of supply to agricultural consumers in November 2006 and 8 hrs. thereafter till March 2007. As the cost of such enhanced supply has to be borne by the State Government as subsidy as decided by the Tribunal, the assessment of additional supply has been made for the additional hours of supply as directed by the State Government.



16. Let us examine the findings of the State Commission in the impugned order. The method used by the State Commission for assessing additional supply is as under:

*“c) Considering the above, the Commission had worked out the additional units supplied to unmetered agricultural consumers by the distribution licensees over and above 6 hours in a week (considering weekly off for one day in a week) during November 2006 to March 2007 in accordance with the directions of the State Government.*

*d) The maximum units, which would be consumed by one horse power agricultural pump when three phase supply is continuously fed for six hours per day in a week (considering weekly off for one day in a week) is worked out as,  $0.764 \text{ kW} \times 6 \text{ hours} \times 25 \text{ days} = 112 \text{ units}$ . Against these 112 units of consumption on continuous availability and usage of supply by one HP agriculture consumers,*

*the benchmark for permanent agriculture consumers had been proposed by the Appellants herein as 100 units per HP per month. Therefore, the theoretical 112 units as calculated above had been discounted by 12% for the purpose of fixing benchmarks for permanent unmetered agriculture consumers.*

*e) However, considering diversity in usage of electricity across the consumer base and also considering local interruptions of supply below 11 kV feeders, it was not considered appropriate to assume that all the agriculture load remained on par for the full period when the supply was extended. Hence, a discounting factor of 20% was considered to assess actual usage of agriculture supply beyond six hours (considering weekly off for one day in a week as stated in the GOMP order dated 7.11.2006) during November, 2006 to March, 2007 in the impugned order and the additional units consumed by agricultural unmetered load over six hours supply was assessed accordingly. The units which were considered to be consumed*

*over 6 hours in a week (considering weekly off for one day in a week) are 93.33 units per kW in a month or 15.56 units/hour/kW.*

*f) Since the billing benchmarks for temporary connections in FY 2006-07 (130 units/HP/month) were considered as 16% more than the actual consumption (112 units), the units considered as consumed per hour per kW by temporary agriculture connections during extended supply hours (as per the directions of GoMP) in the impugned order are 18.05 units/hour/kW. Accordingly, the excess units assessed to be supplied by the distribution licensees to the unmetered agricultural consumers during November, 2006 to March, 2007 were worked out”.*

17. We find that the State Commission in the absence of the requisite data has made assessment of additional energy supplied to the unmetered agricultural consumers over and above 6 hours as per

the direction of the State Government applying factors for field conditions and has given a reasoned order. The State Commission has rightly assessed the energy supply corresponding to the additional hours of supply as directed by the State Government as the cost of power purchase of such additional energy has to be borne by the State Government as subsidy as per on this Tribunal's direction. The State Commission was also correct in applying a discounting factor considering the local interruptions of supply below 11 kV feeders to reflect the actual utilization of supply by the agricultural consumers. We do not find any infirmity in the order of the State Commission in this regard.

18. **Summary of our findings:**

**i) The State Commission has to consider the average cost of power procurement for long term**

**and short term sources instead of considering the average cost of long term supply.**

**ii) We do not find any infirmity in the order of the State Commission in computing the additional energy supplied to the unmetered agricultural consumers against the orders of the State Government.**

19. In view of above, the Appeal is allowed in part. The State Commission is directed to pass consequential order. No order as to costs.

20. Pronounced in the open court on this **29<sup>th</sup> day of May, 2014.**

**(Justice Surendra Kumar)  
Judicial Member**

**( Rakesh Nath)  
Technical Member**

√  
**REPORTABLE/NON-REPORTABLE**  
Vs