

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 13/RP/2014

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri M. Deena Dayalan, Member

Shri A.K. Singhal, Member

Date of Hearing: 15.7.2014

Date of Order: 11.12.2014

In the matter of

Petition for direction to Uttar Pradesh Power Corporation Limited for payment of compensation amount to Madhya Pradesh Power Management Company Limited due to retention of MP's share of Power/ non-supply from Rihand Matatila Hydrel Power Stations to MPSEB and resumption of MP's share of power from Rihand and Matatila Hydrel Power Stations.

And in the matter of

Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Rampur,
Jabalpur

...Petitioner

Vs

1. Energy Department
Government of Uttar Pradesh
Bapu Bhawan, Lucknow – 226001

2. U.P. Power Corporation Limited
Shakti Bhawan, 14, Ashoka Marg,
Lucknow – 226001

3. UP Jal Vidyut Nigam Limited
Shakti Bhawan, 14, Ashoka Marg,
Lucknow – 226001

....Respondents

Parties present:

For Petitioner: Shri G. Umapathy, Advocate, MPPMCL
Shri Rishab Singh, Advocate, MPPMCL
Shri Dilip Singh, MPPMCL
Shri K.K. Agrawal, MPPCL

For Respondent: Shri Rajiv Srivastava, Advocate, UPPCL



Order

This petition has been filed by the petitioner, Madhya Pradesh Power Management Company Limited (MPPMCL) for review of the order dated 20.2.2014 in Petition No. 248/2010 with the following specific reliefs:

- (a) Review the judgment and order dated 20.2.2014 passed in Petition No. 248/2010 and maintain the RAPS rate provided by NPCIL, Mumbai and annexed in petition, as current RAPS rate; and
- (b) Pass such other and further orders as the Hon'ble Commission may deem fit and appropriate in the interest of natural justice."

BACKGROUND

2. Petition No.107/2007 was filed by the petitioner before the Commission praying for a direction upon the respondents, Govt. of U.P, UPPCL and UPJVNL to release legitimate M.P.'s share of power from Rihand and Matatila Hydro power station, for payment of compensation of Rs. 365.704 crore (upto September, 2006) and for payment of interest at the borrowing rate of MPSEB plus 2% extra. The Commission heard the parties on the question of jurisdiction and by interim order dated 27.2.2008 held that the Commission had the jurisdiction to hear and adjudicate the matter in terms of Section 79(1) (c) and (f) of the Electricity Act, 2003 (the Act). The Commission also directed the parties to interact with the WRLDC and NRLDC for scheduling and resuming supply of power.

3. Aggrieved by the order dated 27.2.2008, the respondent, UPPCL filed Appeal No.35/2008 before the Appellate Tribunal for Electricity ('the Tribunal) challenging the findings of the Commission on the question of jurisdiction. No stay was granted by Tribunal. Accordingly, the Commission by order dated 12.11.2008, disposed of Petition No. 107/2007 observing as under:

"54. We, therefore, direct as under:

(a) The respondents shall continue to supply power to the State of Madhya Pradesh from the generating stations in accordance with the directions contained in the order dated 27.2.2008.

(b) The undisputed amount of ₹192 crore shall be paid by the second respondent in three equal monthly installments, starting from November 2008, after adjusting the payment of ₹44.47 crore already made.

(c) The parties shall recalculate the amount of compensation from 1.9.1967 onwards and interest payable from 1.4.1982 in accordance with our decisions recorded above, by 31.3.2009, after reconciliation of the available data of energy generated and sent out to the State of Madhya Pradesh. Such reconciliation shall be completed within one month of the date of the order.

(d) RAPP rates, applicable for working out the compensation, may be obtained from Nuclear Corporation of India Ltd, if not already available with the parties.

(e) For giving credit to the second respondent, the cost of generation based on audited accounts of the generating stations or those taken into account by UPERC from the year 1999 onwards shall be considered.

(f) The amount of compensation found to be due as a result of the above exercise, and after giving adjustment for ₹192 crore payable in accordance with the direction at (b) above, along with interest shall be paid by 30.6.2009 through equal monthly installments.

(g) In case of any differences, either of the parties is at liberty to approach the Commission for decision.”

4. Aggrieved by order dated 12.11.2008, the respondent, UPPCL filed Appeal No.151/2008 before the Tribunal and the Tribunal by interim order dated 19.12.2008, modified the order of the Commission and directed the respondent, UPPCL to make the payment of compensation of ₹192 crore in three equal monthly installments from January, 2009 instead of November, 2008. Thereafter, the Tribunal by judgment dated 9.1.2009 dismissed the Appeal No.35/2008 holding that the Commission had the jurisdiction to adjudicate the matter. Against this judgment, the respondent filed Civil Appeal before the Hon'ble Supreme Court of India, which was dismissed by the Court on the ground that Appeal No.151/2008 was pending before the Tribunal and that either party had liberty to approach the Court after a decision in the said appeal.

5. Due to the non-payment of compensation by the respondent as directed by the Commission in its order dated 12.11.2008 and as per relaxation allowed by the Tribunal in order dated 19.12.2008, the petitioner filed contempt application before the Tribunal for invocation of the provisions of Section 146 of the Act for willful disobedience of order dated 19.12.2008 of Tribunal. By interim order dated 16.3.2009, the Tribunal directed the respondent to deposit post-dated cheques of ₹142.53 crore in 6 monthly installments to the petitioner, which was since been deposited from April, 2009 to September

2009. Subsequently, Appeal No. 151/2008 filed by respondent, UPPCL was dismissed by the Tribunal on 21.7.2011 and the findings of the Commission in the order dated 12.11.2008 were upheld.

6. Petition No. 248/2010 was filed by the petitioner seeking direction on the respondent to make the payment of ₹134.31 crore as agreed in the minutes of the meeting in three equal installments in line with the Commission's order dated 12.11.2008. The petitioner had also sought for adjudication of the disputed compensation amount of ₹ 79.377 crore at the rate of interest @2% as per MoM dated 27.7.1993 and direct the respondent for payment thereof.

7. The Commission in its order dated 20.2.2014 decided the issue of the rate of compensation payable by the respondent and observed as under:-

"17. There is no dispute between the parties as regards the petitioner's claim for ₹139.925 crore. The petitioner has claimed an additional amount of ₹79.528 crore. The disputed amount includes a sum of ₹71.49 crore on account of difference of rate of RAPS. The petitioner has considered weighted average RAPS rate of Unit I and Unit IV. However, UPPCL has calculated the amount of compensation based on RAPS rate of Unit I. As per the agreement arrived at in the meeting of 7/8.6.1977 between Chairman UPSEB and Chairman MPEB it was decided that "current RAPS rate" would be the basis for computation of compensation. The question raised involves interpretation of the expression "current RAPS rate" The rate of compensation agreed to at the meeting held in June 1977 was effective from 1.10.1974. At the time of agreement, RAPS Unit I has been under commercial operation since 16.12.1973. RAPS Unit II to Unit IV was commissioned on 1.4.1981, 1.6.2000 and 23.12.2000, respectively. Therefore, RAPS Unit II to Unit-IV could not be said to be within contemplation of the parties when agreement to work out compensation at "current RAPS rate" was reached. Accordingly, it is held that for computing the amount of compensation, "current RAPS rate" means the current rate of RAPS Unit I only. In our view "current rate" refers to the rate having currency during the period for which compensation is payable. In other words, "current RAPS rate" means the governing or applicable rate of RAPS Unit I during with the period of compensation.

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19. In view of the above discussions, we conclude that compensation is to be worked out on yearly basis. The compensation for the year 1.10.1974 to 30.9.1975 shall be payable in accordance with the weighted average rate of RAPS Unit I applicable for that year. The same methodology shall apply for computing the rate of compensation for the succeeding years."

Review Petition

8. Aggrieved by the above findings of the Commission, the petitioner has filed this review petition and has submitted as under:-

(a) During the period from 1962 to September 1999 the rate of compensation payable by the respondent to the petitioner was taken as Rajasthan Atomic Power Station (RAPS) rate plus ten percent. The petitioner has also pointed out that RAPS rate considered were irrespective of the number of units in operation at RAPS. When decision regarding payment of compensation by the respondent was taken in the minutes of the meeting dated 7/8.6.1977 between the respondent UPSEB and MPEB, RAPS Unit I was in operation. However, Units II, III and IV were commissioned on 1.4.1981, 1.6.2000 and 23.12.2000 respectively. When reconciliation for the period upto September 1990 was carried out, RAPS Unit I and II were in operation and the rates taken in the reconciliation statement was the composite rate of Unit I and II provided by NPCIL, Mumbai as per Department of Atomic Energy notification dated 5.2.1987. Also, when reconciliation for the period from October, 1990 was carried out as per direction of the Commission in order dated 12.11.2008 in Petition No. 107/2007, the respondent UPSEB had considered the composite rate of Unit I and II for computation of compensation payable to the petitioner from October, 1990 to March, 1997.

(b) Unit I of the RAPS was dismantled in the year 2001. When Unit I of RAPS was scrapped and was no more in operation, the rate of the same could not be taken for re-computation of compensation with effect from the date of dismantle or no generation i.e. 2001. The agreement reached between erstwhile UPSEB and MPEB in the minutes of the meeting dated 7/8.6.1997 and the obligations of the respondent become infructuous if 'Current RAPS rate' as decided by the Commission in order dated 20.2.2014 is taken as 'RAPS Unit I rate' in place of 'RAPS rate' irrespective of units in operation/composite rates. The Commission has clearly demarcated the filing of tariff petitions for generating units or stations irrespective of the number of units and on the same analogy, 'Current RAPS rate' means the 'composite rate' of the embedded units in operation.

(c) The respondent did not raise any question regarding Current RAPS rate in the proceedings in Petition No. 107/2007 filed by the petitioner. Accordingly, the Commission in its order dated 12.11.2008 had concluded that for the period from 1.10.1974 onwards the compensation payable by the respondent UPSEB is the RAPS rate plus ten percent thereof in terms of the agreement arrived at in the meeting held on 7/8.6.1977. The Commission erroneously adjudicated the RAPS rate which was already settled by order dated 12.11.2008 in Petition No. 107/2007. The order of the Commission dated 12.11.2008 was upheld by the Appellate Tribunal for Electricity (the Tribunal) vide its judgment dated 21.7.2011 in Appeal No. 151/2008 filed by the respondent. The matter is pending before the Hon'ble Supreme Court and it would not be proper to reopen and adjudicate the 'Current RAPS rate' in Petition No. 248/2010 as 'RAPS Unit I rate'. The respondent's interpretation in respect of 'Current RAPS rate' is an afterthought and not based on facts and materials on record. Accordingly, the Commission may review the order dated 20.2.2014.

9. The respondent UPPCL vide its reply dated 16.6.2014 has submitted as under:-

(a) The review has not been filed on the ground of discovery of new and important matter or evidence. There is no error apparent on the face of the order dated 20.2.2014 since the Commission in paragraph 16 of the said order has pointed out that the Commission in its order dated 12.11.2008 had not decided the RAPS rate applicable for computing compensation payable to the petitioner and is a fresh issue to be considered by the Commission.

(b) The Commission had not defined the 'Current RAPS rate' in Petition No. 107/2007 which would be applicable for computation of compensation payable to the petitioner. The necessity to interpret the 'Current RAPS rate' as arisen due to dispute raised between the petitioner and UPPCL with regard to the basis of calculation of compensation receivable by the petitioner for non-supply/inadequate supply of power.

(c) As against the amount of compensation claimed by the petitioner for ₹219.30 crore, the amount of compensation calculated by this respondent is ₹139.925 crore. The difference of ₹79.377crore is on account of the dispute with regard to the definition of Current RAPS rate.

(d) The Commission has interpreted the 'Current RAPS rate' in consonance with the direction contained in order of the Commission dated 12.11.2008 in Petition No. 107/2007 wherein it was held that '*RAP rates applicable for working out the compensation may be obtained from Nuclear Power Corporation of India Ltd, if not already available with the parties.*'

(e) The review petition filed by the petitioner cannot be an appeal in disguise and the erroneous decision can only be challenged by way of an appeal before the Tribunal.

10. Before proceeding, we notice that the respondent UPPCL has raised the issue of limitation in the filing of the review petition by the petitioner. The respondent has submitted that against the order dated 20.2.2014, the review petition has been filed on 7.4.2014 and is therefore beyond the limitation period of 30 days in terms of Section 94(f) of the Electricity Act, 2003 (the Act) and the judgment of the Tribunal dated 28.5.2013 in OPTCL-v-OPERC (DFR No.165/2013). Referring to the judgment of the Hon'ble SC in Mukri gopalan v Chepilat Puthanpurayil Aboobacker (1995) 5 SCC, wherein it has been observed that 'if the operation of the Limitation Act has to be barred, then a time schedule has to be given under the special law and in the absence of such time schedule, limitation Act would apply',

the respondent has submitted that the review petition filed by the petitioner is beyond the period of 30 days and is not maintainable.

11. We have examined the matter and are not inclined to accept the submissions of the respondent UPPCL. These judgments do not in any way support the prayer of the respondent for rejecting the review application. The Tribunal in exercise of its powers under Section 120 (1) read with Section 120 (2) (f) has notified the limitation period of 30 days for filing of review petition against its judgment. In terms of this notification, the Tribunal had rejected the review application filed by OPTCL by order dated 28.5.2013. Hence, the same is not applicable in the instant case. It is evident from the observations of the SC in the said judgment that in the absence of time schedule under the special law, Limitation Act would apply. No period of limitation has been prescribed for filing the review petition under the Electricity Act, 2003. However, the Commission in exercise of its power under Section 178 read with Section 92(1) of the Act has notified on 12.11.2013, the CERC (Conduct of Business) Regulations (first amendment) Regulations, 2013 which specifies the time limit of 45 days for filing the review petition from the date of the decision or order. Since the said regulations notified by the Commission prescribing the time limit can be construed to be a special law, the period of limitation of 30 days prescribed under the Limitation Act would not apply. It is noticed that the Commission's order dated 20.2.2014 was received by the petitioner on 26.2.2014 and the review petition was filed by the petitioner on 7.4.2014. This is well within the period of limitation specified under the provisions of the said regulations notified by the Commission. Hence, the review petition is maintainable.

12. The petitioner has submitted that the respondents did not raise any issue regarding 'Current RAPS rate' in the proceedings in Petition No.107/2007 and accordingly, the RAPS rates as decided by the Commission in order dated 12.11.2008 was considered by the parties for working out the

compensation payable to the petitioner upto October, 1990 and for the period from November, 1990 till March, 1997. The petitioner has also pointed out that the Commission in its order dated 20.2.2014 in Petition No. 248/2010 has erroneously adjudicated the RAPS rate which has already been settled in order dated 12.11.2008 in Petition No. 107/2007. The petitioner has further submitted that the order dated 12.11.2008 having been upheld by the Tribunal in judgment dated 21.7.2011 in Appeal No. 151/2008, it would not be proper to re-open and adjudicate the "Current RAPS rate " in order dated 20.2.2014 in Petition No. 248/2010 and the interpretation in respect of 'Current RAPS rate' is an afterthought and not on the basis of facts and material on record.

13. We have examined the submission of the parties. Admittedly, in Petition No. 107/2007 filed by the petitioner, the Commission by order dated 12.11.2008 had decided amongst others, that the compensation is payable @6 paise/kWh for the period from 1.9.1967 to 30.9.1974 and thereafter the compensation at RAPS rate plus 10% thereof, less the cost of generation at the generating stations. By the same order, the Commission had also directed that the RAPS rates, applicable for working out the compensation, may be obtained from Nuclear Corporation of India Ltd., if not already available with the parties. However, as disputes arose between the petitioner and the respondent, UPPCL on the quantum of compensation recoverable by the petitioner for non-supply/inadequate supply of power for 1990-91 and during the period 1996-97 to 2007-08, Petition No.248/2010 was filed by the petitioner before this Commission praying for appropriate reliefs. While the petitioner had worked out the compensation based on the weighted average rate of RAPS Units I to IV, the respondent UPPCL had considered rate of RAPS Unit-I only. Since specific RAPS unit rate, applicable for working out the quantum of compensation was not laid down in Commission's order dated 12.11.2008, disputes had arisen between the parties on the RAPS rate applicable for working out the compensation. It was also contended by the respondent, UPPCL that the 'Current RAPS rate' as agreed to in the meeting dated

7/8.6.1977 should be made applicable as on that date. As this issue was not the subject matter before the Tribunal, the question of 'Current RAPS rate' was considered by the Commission in order dated 20.2.2014 in Petition No. 248/2010 for the first time. None of the parties had taken a stand in Petition No. 248/2010 that the 'Current RAPS rate' stood decided in the order dated 12.11.2008 in Petition No.107/2007 and should not be reopened. On the other hand, both the parties had argued the case on merits. Accordingly, the Commission had considered the issue of 'Current RAPS rate ' afresh and decided the same on merits in order dated 20.2.2014. The Commission having decided this issue for the first time by order dated 20.2.2014, the contentions of the petitioner that the Current RAPS rate stood settled in order dated 12.11.2008 in Petition No. 107/2008 and confirmed by the Tribunal in its judgment dated 21.7.2011 and therefore the rate should not have been reopened in Petition No. 248/2010 are not tenable. The Commission while deciding Petition No. 248/2010 has considered and rejected the contentions of the review petitioner that the weighted average rate of RAPS Unit-I to IV based on Department of Atomic Energy notification as issued from time to time should be taken for the purpose of computation of compensation. The Commission has recorded a specific finding that the Current RAPS rate for the purpose of compensation shall refer to the 'governing or applicable rates of RAPS Unit-I during the period of compensation'. The petitioner has sought to reopen the issue on merits which is beyond the scope of review and accordingly, this ground for review is rejected.

14. One more ground of review urged by the petitioner is that since Unit-I of RAPS was dismantled in the year 2001 and was no more in operation, the rate of RAPS Unit-I could not be taken for re-computation of compensation from the date of dismantling i.e. 2001. The petitioner has also submitted that the agreement reached during the meeting on 7/8.6.1977 and obligation of the

respondents becomes *infructuous* if 'Current RAPS rate' is taken as 'RAPS Unit-I rate' in place of 'RAPS rate', irrespective of the units in operation.

15. The matter has been examined. The fact that RAPS Unit-I was dismantled during the year 2001 was neither mentioned in the pleadings filed in Petition No.248/2010 nor disclosed by the parties during the course of the proceedings in the said petition. Even no document has been placed on record to show that Unit-I of RAPS was dismantled in 2001. Moreover, the review petitioner in Petition No. 248/2010 had placed on record the Tariff Notifications of the Department of Atomic Energy (DAE), Govt. of India (Anexure-P-11) including a notification dated 25.5.2001/11.6.2001 in respect of RAPS Unit-I for supply of power during the period from 31.3.1997 to 30.11.2005. The details of tariff covered in the said notification are as under:

Period	Tariff
31.3.1997 to 30.6.1998	175 paisa/kWh
1.7.1998 to 30.11.2000	150 paisa/kWh
1.12.2000 to 30.11.2001	175 paisa/kWh
1.12.2001 to 30.11.2002	195 paisa/kWh
1.2.2002 to 30.11.2003	215 paisa/kWh
1.12.2003 to 30.11.2004	235 paisa/kWh
1.12.2004 to 30.11.2005	255 paisa/kWh

The Commission had proceeded on the premise that RAPS –I was in operation and the rates of RAPS-I would be issued by Department of Atomic Energy from time to time. The review petitioner has submitted that Unit-I has been dismantled during 2001, though no documentary proof to that effect has been placed on record. However, none of the parties have placed on record any notification of DAE which specifies the tariff rate of RAPS-I beyond 30.11.2005. Under the facts and circumstances of the case, this Commission comes to the conclusion that tariff rate for RAPS-I is not available with effect from 1.12.2005. In the absence of any notified rate with effect from 1.12.2005, respondent, UPPCL cannot calculate the amount of compensation in terms of our order dated 20.2.2014.

Therefore, our direction in the order dated 20.2.2014 needs to be modified to lay down a rate for calculation of compensation with effect from 1.12.2005 till the date of restoration of power supply to the review petitioner. We find sufficient reason to review our order dated 20.2.2014 to the limited extent as mentioned above. Accordingly, we direct that with effect from 1.12.2005, the compensation shall be calculated at the notified rate of RAPS-I as on 30.11.2005 which shall be escalated at 4% per annum (which corresponds to the escalation rate for O&M expenses in the Tariff Regulations specified by the Commission for the period 2004-09) till the date of restoration of supply of power to the review petitioner.

16. One more issue raised by the petitioner is with regard to the observation of the Commission with para 23 of the order dated 20.2.2014. The Commission while deciding the issue of payment of interest on the compensation of amount had in para 23 of the said order observed as under:-

'23. Further, in accordance with the decision, interest is leviable on all the dues payable to Madhya Pradesh Electricity Board prior to the meeting of the Governors, it was inter alia agreed by the Chairmen of UPSEB and MPEB in June 1977 that short supply or non-supply of power to MPEB, UPSEB would become liable for payment of compensation. Therefore, compensation receivable by MPEB was part of all the dues payable to Madhya Pradesh Electricity Board.'

17. The petitioner has submitted that there is ambiguity regarding petitioners' entitlement to receive compensation pertaining to MPEB in the impugned order. The petitioner has further submitted that since the Commission in its order dated 12.11.2008 in Petition No. 107/2007 has held that the petitioner being a successor entity of the erstwhile MPEB/MPSEB has the rights to receive the compensation and the said order has been upheld by the Tribunal vide its judgment dated 21.7.2011 in Appeal No.151/2008, para 23 of the impugned order needs to be deleted.

18. The matter has been examined. The main grievance of the petitioner appears to be that as a successor entity of MPSEB/MPEB, the petitioner, MPPMCL is entitled to receive the compensation payable by respondent, UPPCL as part of all the dues payable to MPEB. The Commission in order

dated 12.11.2008 in Petition No. 107/2007 had held that the petitioner, as a erstwhile successor of MPEB/MPSEB, is entitled to receive compensation payable by the respondent UPPCL and the same was upheld by the Tribunal. However, this aspect had not been adequately reflected in the last line of para 23 of the order dated 20.2.2014. This in our view is an error apparent on the face of the order and the same is required to be modified. Accordingly, the last line of para 23 of the order dated 20.2.2014 stands modified as under:

".....Therefore, the compensation receivable by petitioner, MPPMCL, as a successor entity of MPEB/MPSEB, shall form part of all the dues payable to MPEB/MPSEB."

19. One more aspect noticed in the review proceedings is that the petitioner, during the hearing of the petition on 3.6.2014, had filed additional grounds vide affidavit dated 3.6.2014 for review of order dated 20.2.2014. The additional ground raised by the petitioner pertains to the observations of the Commission in para 15 of the order dated 20.2.2014 which is extracted as under:-

'15.Third prayer of UPJVNL regarding execution of PPA is granted. The petitioner is directed to execute a formal PPA with UPJVNL so that the terms for supply of power are reduced to writing to obviate the possibility of any uncertainty in future.'

20. Aggrieved by the above directions, the petitioner by way of an additional ground has sought for review and has submitted that the above directions could not be passed in the Petition No. 248/2010, wherein the relief sought for by the petitioner is only for payment of the disputed amount of compensation. The petitioner has also submitted that the said directions are contrary to the case pleaded by the parties viz. there is no sale of power, but is a case of sharing of power on account of compensation for loss of lands etc., of the State of Madhya Pradesh. The petitioner has pointed out to the judgment of the Tribunal dated 21.7.2011 in Appeal No.151/2008 and the judgment dated 9.1.2009 in Appeal No. 35/2008 and has submitted that there is no requirement for a PPA as directed by this Commission. Accordingly, the petitioner has prayed that the order may be reviewed on this ground.

21. The matter has been examined. It is noticed that in Petition No. 248/2010 filed by the petitioner, the respondent No.3, Uttar Pradesh Jal Vidyut Nigam Ltd, (UPJVNL) vide affidavit dated 23.7.2013 had prayed for, amongst others, for a direction to the petitioner for execution of a PPA with UPJVNL. In justification of the same, UPJVNL had also submitted that the MP's share of power in Rihand and Matatila HPS of UPJVNL is being supplied to the petitioner through Regional Energy Account adjustments, through NRLDC/WRLDC as per orders of this Commission. The respondent, UPJVNL had further submitted that the share of MP is allocated as per decision of the Central Zonal Council and no formal Power Purchase Agreement has been executed between the petitioner and UPJVNL. Accordingly, the respondent, UPJVNL had prayed that since UP State Electricity Regulatory Commission (UPSERC) had been insisting for execution of the PPA between the petitioner and UPJVNL, this Commission may direct the petitioner to execute the formal PPA so that the supply of MP's share to the petitioner may be got regularized. Against this, the petitioner, had also filed a common rejoinder on 15.10.2013 (*replies of the respondents 2 and 3 therein*). In the said rejoinder, no specific denial or objection to the said prayer of UPJVNL for execution of the formal PPA was taken by the petitioner. Accordingly, the Commission, after considering the submissions of the parties had directed the petitioner to enter into a formal PPA with the respondent UPJVNL by order dated 20.2.2014. Thus, the petitioner had knowingly forfeited its rights to raise its objections on the issue of execution of formal PPA. Having not specifically denied the prayer of the respondent, UPJVNL for execution of PPA, in the main petition, the petitioner, cannot be permitted to raise this issue in review *albeit* by way of additional grounds. The contention of the petitioner that the case relates to supply of share of MP's power from the projects and there is no sale involved, is also not acceptable. As stated, the share of MP is allocated as per decision of Central Zonal Council. Though the matter involves the supply of the petitioner's share of power from the projects, this supply of power is to be regularized

through a formal PPA between the parties, as it involves the regulation of inter-state transmission of power. Also, the judgments of the Tribunal cited by the petitioner relate to the factum of share of supply of power between the States of UP and MP and there is no finding of the Tribunal preventing the execution of a formal PPA between the parties in these judgments. The Commission having consciously decided the issue, the submissions of the petitioner for review of order dated 20.2.2014 is devoid of merits and is liable to be rejected. Accordingly, the prayer of the petitioner for review of order dated 20.2.2014 on this ground is rejected.

Summary of our Findings

22. Based on the above discussions, the findings of the Commission are summarized as under:

- (a) **The issue of limitation in filing the review petition as raised by the respondent, UPPCL is rejected.**
- (b) **The issue of Current RAPS rate as decided in order dated 20.2.2014 remains unchanged upto 30.11.2005. With effect from 1.12.2005, the compensation shall be calculated at the notified rate of RAPS-I as on 30.11.2005 which shall be escalated at 4% per annum (*which corresponds to the escalation rate for O&M expenses in the Tariff Regulations specified by the Commission for the period 2004-09*) till the date of restoration of supply of power to the review petitioner.**
- (c) **The last line in para 23 of the order dated 20.2.2014 shall stand modified as under:**

“.....Therefore, the compensation receivable by petitioner, MPPMCL, as a successor entity of MPEB/MPSEB, shall form part of all the dues payable to MPEB/MPSEB”
- (d) **The additional ground of review raised by the petitioner that the petitioner cannot be directed to execute a formal PPA with UPJVNL, is rejected.**

23. Petition No. 13/RP/2014 is disposed of in terms of the above.

-S/d-
(A.K. Singhal)
Member

-S/d-
(M. Deena Dayalan)
Member

-S/d-
(Gireesh B. Pradhan)
Chairperson