

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 187/MP/2021

Coram:

**Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member**

Date of Order: 27th June, 2022

In the matter of

Petition under Section 94(1)(g) of the Electricity Act, 2003 read with Regulation 76 and 77 of the CERC (Terms and Conditions of Tariff) Regulations, 2019 and read with Regulation 111, 112 and 113 of the CERC (Conduct of Business) Regulations, 1999 seeking directions from the Commission to Respondent IPP's for providing rebate in fixed charges, interest free deferment of capacity charges and reduced late payment surcharge on account of Covid-19 pandemic in view of the Ministry of Power Notification dated 15.5.2020/16.5.2020.

And

In the matter of

Maharashtra State Electricity Distribution Company Limited,
Prakashgad, Bandra (East), Mumbai

...Petitioner

Vs

1. M/s GMR Warora Energy Limited,
New Shakti Bhawan, Building No.302,
New Udaan Bhawan Complex,
Opp. Terminal 3 of Indira Gandhi International Air Port,
New Delhi -110037

2. Coastal Gujarat Power Limited,
C/o Tata Power Company Limited,
34, Sant Tuka Ram Road,
Carnac Bunder, Mumbai-400021

...Respondents

Parties present:

Shri Ravi Prakash, Advocate, MSEDCL
Shri Rahul Sinha, Advocate, MSEDCL
Shri Sahil Sood, Advocate, MSEDCL
Shri Vishrov Mukerjee, Advocate, GMRWEL
Shri Yashaswi Kant, Advocate, GMRWEL
Shri Juhi Senguttuvan, Advocate, GMRWEL



ORDER

The Petitioner, MSEDCL has filed the present petition with the following prayer(s):

- (a) *Allow the present Petition;*
- (b) *Direct the Respondents to provide COVID rebate and interest free deferment of capacity charges to the Petitioner in line with directives of MOP dated 15th & 16th May 2020;*
- (c) *Direct the Respondents to adjust the rebate for April, 2020 and May, 2020 in future bills;*
- (d) *Direct the Respondents to reduce the rate of LPS during the COVID-19 pandemic, regardless of the rate set out in the PPAs/regulations, which rate should be restricted to lower of 12% per annum or the rate at which interest has been incurred to raise/borrow funds by the Respondents from 24.03.2020 till normalization of the current situation;*
- (e) *Consider the unforeseen and the unprecedented situation prevailing on account of COVID-19 as a Force Majeure event;*
- (f) *Condone any error/omission and to give opportunity to rectify the same;*
- (g) *Permit the Petitioner to make further submissions, addition and alteration to this Petition as may be necessary from time to time.*
- (h) *Pass such further order(s) as this Hon'ble Commission may deem fit in the facts and circumstances of the case."*

2. The Petitioner is a distribution licensee under the provisions of the Electricity Act, 2003 (the Act) having license to supply electricity in the State of Maharashtra, except some parts of the city of Mumbai. The Petitioner has executed a Power Purchase Agreement (PPA) with the Respondent No.1, GMRWEL (*erstwhile EMCO Energy Limited*) on 17.3.2010, for procurement of 200 MW of power under Case-1 bidding, through tariff based competitive bidding process, in terms of the guidelines issued by the Central Government. It has also executed a PPA with Respondent No.2, CGPL on 22.4.2007, for procurement of 760 MW of power from Mundra Ultra Mega Power Project.

Submissions of the Petitioner, MSEDCL

3. In justification of the aforesaid prayers, the Petitioner, in the present petition, has submitted the following:



(a) COVID-19 has affected many countries and the World Health Organisation has declared it as 'Pandemic'. Considering the situation, and to prevent and contain the spread of virus, the Government of Maharashtra in exercise of the powers conferred under Section 2 of the Epidemic Diseases Act 1897, read with all other enabling provisions of the Disaster Management Act 2005, notified lockdown in the entire State of Maharashtra from 23.3.2020 to 31.3.2020.

(b) The National Disaster Management Authority, in exercise of the powers under section 6(2)(i) of the Disaster Management Act, 2005, issued order dated 24.3.2020, directing the Ministries/ Departments of Government of India, and the State/Union Territory Governments and State/ Union Territory authorities to take effective measures to prevent the spread of COVID-19 in the country.

(c) In compliance of the said order of NDMA, the Ministry of Home Affairs (MHA), GOI issued Order dated 24.3.2020 under Section 10(2)(l) of the Disaster Management Act, directing the Ministries/ Departments of Government of India, State/Union Territory Governments and State/ Union Territory Authorities to take effective measures for ensuring social distancing so as to prevent the spread of COVID-19 in the country. The Order remained in force, in all parts of the country, for a period of 21 days with effect from 25.03.2020.

(d) On 26.3.2020, the Maharashtra Electricity Regulatory Commission (MERC) acknowledged this situation of the State of Maharashtra and issued 'Practice direction measures to minimize public interface in view of Coronavirus Epidemic (Covid-19)'. Vide the said practice direction, MERC *inter alia* directed distribution companies to suspend non-essential services including bill collection.

(e) The Petitioner has been collecting maximum revenue during the month of March of each financial year. However, the Petitioner's collection has reduced to Rs. 5057 crore for March, 2020 as against Rs. 5621 crore collection from consumers in the month of March 2019, which was otherwise expected to be higher than last year's collection. The COVID-19 pandemic has thus affected the performance of Petitioner, for reasons completely beyond control of Petitioner.

(f) Due to the pandemic, the demand for supply of electricity by the Petitioner has crashed by about 4500-5000 MW than the expected projected demand. Due to this situation, the revenue cycle of the Petitioner has also been badly hampered.

Practice Directions issued by the MERC in light of COVID-19

(g) On 30.3.2020, MERC issued MYT Order for Petitioner in Case No. 322 of 2019, wherein, MERC considered COVID-19 situation as an extraordinary, unforeseen and alike Force majeure situation. In light of the same, MERC provided three (3) months moratorium period to Commercial and Industrial Consumers and also facilitated with the rebate or instalment, without DPS, for



payment of bills. The declaration of moratorium by MERC has further worsened the financial situation/ cash flows of the Petitioner. Resultantly, it has become difficult for Petitioner to adhere to payment schedules

Ameliorative measures taken by the MOP and the CERC to facilitate the DISCOMS on account of COVID-19

(h) On 28.3.2020, the MOP, GOI acknowledged the force majeure situation being faced by distribution companies and issued directions under Section 107 of the Act to this Commission with regard to the Late Payment Surcharge to be charged by the generating companies and transmission licensees, on account of the unprecedented situation arising out of the restrictions placed by the Central Government and State Governments on the movement of public and opening of offices and establishment etc.

(i) This Commission in its order dated 3.4.2020 in Petition No. 06/SM/2020 dated has stated that in case of any delayed payment by the distribution companies to the generating companies and inter-State Transmission licensees beyond 45 days from the date of the presentation of the bills falling between 24.3.2020 and 30.6.2020, the concerned distribution companies shall make the payment with LPS at the reduced rate of 12% per annum that translates into 1% per month.

(j) Thereafter, MOP vide its communication dated 15.5.2020, decided to defer the fixed charges on power of central generating companies, which was not scheduled for the lockdown period. Further, the same would be repaid in three equal, interest free instalments in subsequent months. The CPSUs had also been suggested to grant a rebate of 20-25 per cent on power supplied (fixed cost) including inter-state transmission charges (ISTS) payable to PGCIL for the lockdown period. The DISCOMS had been asked to pass on these cost savings to the end consumers, which will lead to reduction in electricity cost to end consumers.

(k) On 16.5.2020, the MOP, vide corrigendum has clarified that the rebate of 20-25% shall be in fixed cost on power supply billed to DISCOMS and inter-state transmission charges levied by PGCIL.

(l) Further, in order to alleviate the financial stress on DISCOMS due to Covid-19, the MOP vide its letter dated 20.8.2020 and further clarification letter dated 20.11.2020 advised all the generating & transmission companies to charge LPS at the rate not exceeding 1% p.m. on the principle due for all payments, which are due either from projects developed under Section 62 or Section 63 of the Act, made by the Discoms under the liquidity infusion scheme of PFC & REC under Atmanirbhar Bharat.

(m) In line with the above communication(s) issued by the MOP and the order issued by this Commission, the Respondent IPPs, should also defer the fixed charge on power not scheduled for lockdown period to be repaid in interest free



three equal instalments in subsequent months. The IPPs should also provide a rebate on power supplied during the months of lockdown period where the demand was at lower side. The present petition is filed seeking issuance of directions to the Respondent IPPs from this Commission for providing rebate, interest free deferment of the capacity charges and reduced LPS on account of COVID-19 pandemic

Rebate offered by PGCIL and NTPC

(n) As per the MOP notification dated 15.5.2020/16.5.2020, PGCIL has passed total rebate of 109.13 crores on 12.6.2020 and NTPC has passed rebate of 167.97 crores on 12.6.2020 for the period of April, 2020 and May, 2020. Accordingly, a total rebate of Rs. 277.10 crore has been passed to MSEDCL for period of April, 2020 and May, 2020. Due to reduction in demand of electricity supplied by Petitioner in the lock down period, billing and revenue collection of the Petitioner has been badly affected. As compared to the total demand billed during April,2020 to June 2020, the collection was only 58.8 %. The Petitioner has also requested to Maharashtra State Electricity Board Holding Company Limited (MSEBHCL) to provide 20% rebate in fixed charges in line with the rebate passed by NTPC and PGCIL as per MOP notification dated 15.5.2020/16.5.2020.

(o) Due to worsened cash flow situation, the Petitioner, on 1.10.2020, requested the IPPs for rebate in fixed charges, deferment of capacity charges and reduced LPS until situation normalizes on account of COVID pandemic in line with MOP Notification dated 15.5.2020/16.5.2020 and Commission's order dated 3.4.2020. The Respondent IPPs were requested to pass on the rebate as calculated for April,2020 and May 2020 and reduce LPS, until situation normalizes on account of COVID pandemic.

(p) In response, the Petitioner has received reply from CGPL on 8.10.2020 allowing only LPSC benefits as per Commission's order dated 3.4.2020 i.e. 45 days of credit period, instead of 30 days under PPA and concessional interest rate @12% for LPSC working. CGPL has given concession on LPSC for Rs. 3.23 crore, but has denied the Petitioner's request regarding Covid rebate of Rs. 14.72 crore. On 07.11.2020, the Petitioner received reply from GMR denying rebate sought by the Petitioner informing that they are constrained to provide consent for alteration of any provision of PPA clauses w.r.t. applicable rebate and rate of LPS, at this stage

Impact of COVID-19 on the Petitioner

(q) The present circumstances due to COVID-19 are unforeseen and unprecedented and certainly qualify for a force majeure situation, which in turn requires balancing the interest of consumers and utilities. Considering the effects of lock-down due to COVID-19, various measures to mitigate the hardships to all



the stakeholders are being taken in order to ensure continuity in operations of every utility.

(r) The demand from consumers has reduced from Rs.75432.10 crore in 2019-20 to Rs 69626.80 crore in 2020-21. Further, the collection has also significantly dropped from Rs. 70048.90 crore in 2019-20 to Rs. 64653.10 crore in 2020-21. Also, there is a decrease in the collection efficiency from 96.20% in 2018-19 to 93.56% in 2019-20, which is still reducing due to the ongoing pandemic situation. The financial position of the Petitioner is very precarious and total loan and payables is Rs. 57,757 crore as on 31.3.2021 which includes loans of about Rs 43,000 crore and payables of around Rs.14,757 crore. The arrears/receivables from consumers including LPS is around Rs.66193 crore. The Petitioner has crossed the normative level of working capital loan to reduce the burden of LPS.

COVID-19 is a Force Majeure Event

(s) The Petitioner is going through financial crisis due to COVID-19 pandemic and subsequent lock down imposed by authorities last year, which is continued either partially or completely in 2020-21. Due to these unforeseen circumstances, the Petitioner's performance is severely affected. Further, the Petitioner is obligated to provide uninterrupted supply to its consumers. COVID-19 qualifies as a Force Majeure Event. The outbreak of COVID-19 and its resultant impact has been held to be a Force Majeure event by various Government Authority notifications. It is thus prayed that this Commission may acknowledge COVID-19 pandemic as a Force Majeure Event.

(t) Thus, in light of the precarious financial position and hardships faced by the Petitioner due to COVID-19 (which is a force majeure event), the Petitioner humbly requests the Commission to direct the Respondents to charge LPS at borrowing cost or maximum up to 12% on the principle dues outstanding from 24.3.2020 until normalization of the situation, in line with guidelines of MOP.

(u) The Petitioner has approached the Hon'ble Supreme Court against the order of Hon'ble APTEL dated 27.4.2021 in Appeal No. 77 of 2018, wherein APTEL held that the LPS shall be paid as per SBI PLR provisions in the PPA instead of MCLR. During the pendency of the said litigation, for the time being and without prejudice to the outcome in the said matter in the Hon'ble Supreme court, the Petitioner humbly submits that the rate of LPS during the COVID-19 pandemic should be restricted to the lower of 12% p.a or the actual rate of interest incurred by the generators to raise/borrow the funds to meet out its financial requirement due to delay in the payment of bills by the Petitioner irrespective of what is provided in PPA or regulation as the case may be from 24.3.2020 to 31.3.2021 or till situation gets normal

(v) Regulations 111, 112 and 113 of the CERC (Conduct of Business) Regulations, 1999 provide for inherent powers of this Commission which can be exercised to deal with matters which are not covered in any Regulations. Further,



Regulations 76 and Regulation 77 of the 2019 Tariff Regulations provide for inherent powers of this Commission which can be exercised to deal with matters which are not covered in any Regulations

Hearing dated 26.5.2022

4. The matter was heard on 'admission' on 26.5.2022 through video conferencing. During the hearing, the learned counsel for the Petitioner mainly reiterated the submissions made in the petition in support of its prayers. The learned counsel for Respondent, GMRWEL pointed out that the Commission in its order dated 20.1.2022 in Petition No. 594/MP/2020 had decided that lockdown due to outbreak of Covid-19 cannot be considered as a force majeure event that prevented the Respondent DNH therein, to perform its obligations under the PPA. The Commission, after hearing the parties, reserved its order on 'maintainability' of the petition.

5. The issue for consideration in the present petition is whether the prayer(s) of the Petitioner are maintainable.

Analysis and Decision

6. The Petitioner has placed reliance on the MOP, GOI Notifications dated 15.5.2020/16.5.2020 and the Commission's order dated 3.4.2020 in Petition No. 06/SM/2020 to seek directions upon the Respondents herein, to defer the fixed charge on power not scheduled for lockdown period, to be repaid in interest free three equal instalments in subsequent months, and also to provide rebate on the power supplied during the months of lockdown period where the demand was at lower side, including the reduction of LPS, keeping in view the hardship faced by it, on account of COVID-19 pandemic. It has also submitted that in terms of the MOP notification dated 15.5.2020/16.5.2020, PGCIL and NTPC had passed on rebate amounting to Rs 109.13 crore and Rs 167.97 crore, respectively to the Petitioner, for the period from



April 2020 and May, 2020. The Petitioner has further stated that while the Respondent No.1, CGPL had allowed only the benefit of LPSC as per the Commission's order dated 3.4.2020, the Respondent No.2 GMRWEL had denied both, the benefit of rebate and the rate of LPS to the Petitioner. Accordingly, the Petitioner has submitted that the Commission, in exercise of its powers under Regulation 111 and Regulation 113 of the CERC (Conduct of Business) Regulations, 1999, may grant appropriate reliefs, as prayed for, in the petition.

7. We have examined the matter. In terms of the directions issued by the MOP, GOI vide letter dated 28.3.2020, under Section 107 of the Act, with regard to LPS to be charged by generating companies and transmission licenses on account of the unprecedented situation arising out of the restrictions placed by the Central Government and State Government on the movement of public and opening of offices and establishment etc, the Commission, vide its order dated 3.4.2020 in Suo motu Petition No.6/SM/2020, decided the following:

"13. Keeping in view the directions issued by the Government of India under section 107 of the Act and to address the difficulties faced by the distribution companies (beneficiaries of the generating stations and long term customers of inter-State transmission systems) on account of the unprecedented situation arising out of the restrictions placed by the Central Government and State Governments on the movement of public and opening of offices and establishments etc., the Commission in exercise of its powers under Regulation 76 of the 2019 Tariff Regulations relaxes the provisions of Regulation 59 of 2019 Tariff Regulations to provide that if any delayed payment by the distribution companies to the generating companies and inter-State Transmission licensees beyond 45 days from the date of the presentation of the bills falls between 24.03.2020 and 30.06.2020, the concerned distribution companies shall make the payment with LPS at the reduced rate of 12% per annum that translates into 1% per month.

14. xxxx.

15. xxxx.

16. As per the directions issued under Section 107 of the Act, the generating companies whose tariff has been determined under Section 63 of the Act by this Commission, relief on the Late Payment Surcharge for payment which become delayed beyond 45 days (from the date of presentation of the bill) during the period from 24.03.2020 to 30.06.2020 may be claimed in terms of the force majeure provisions of the respective power purchase agreements (PPAs)."



8. Also, the Ministry of Power, Government of India, announced certain concessions to the distribution companies for passing on to the end consumers for the lockdown period on account of Covid-19 pandemic, through an advisory issued vide letter No.11/16/2020-Th-II dated 15.5.2020 to all Power Generation and Transmission CPSEs under the Ministry of Power and to all Subsidiaries/Joint Ventures of Power Generation and Transmission CPSEs under the Ministry of Power. In the said advisory, the Government of India allowed deferment of capacity charges for power not scheduled, to be payable without interest after the end of lockdown period in three equal instalments and a rebate of about 20-25% on power supply billed (fixed cost) to distribution companies and inter-State Transmission charges levied by PGCIL. The relevant portion of the advisory is extracted below:

“2. In view of the above, it has been decided that all Central Public Sector Generation Companies under Ministry of Power including their Joint Ventures/ Subsidiaries and Central Public Sector Transmission Company, may consider to offer following rebate to the Distribution Companies (Discoms) for passing on to the end consumers for the lockdown period on account of Covid-19 pandemic:

- i. Deferment of capacity charges for power not scheduled, to be payable without interest after the end of the lockdown period in three equal monthly instalments.*
- ii. Rebate of about 20-25% on power supply billed (fixed cost)* to Discoms and inter- state transmission charges levied by PGCIL;*

3. Accordingly, Central Public Sector Generation Companies and PGCIL may kindly consider taking necessary action in this regard, including concurrence of respective Board of Directors required, if any.”

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**modified vide advisory dated 16.5.2020*

9. It is therefore evident from the Commission’s order dated 3.4.2020 that the relief of reduction of LPS @ 12% per annum, for delayed payment by distribution companies, beyond 45 days (from the date of presentation of bill) during the period from 24.3.2020 to 30.6.2020, was made applicable to generating companies and inter-State Transmission licensees, whose tariff is determined under Section 62 read with section 79(1)(a), (b) and (d) of the Act, in accordance with the tariff regulations framed



under section 61 read with section 178 of the Act. The said order also provided that for generating companies whose tariff has been adopted under section 63 of the Act, the relief of LPS for delayed payment beyond the period of 45 days, during the said period, may be claimed in terms of the force majeure provisions of the respective PPAs. In the present case, the Petitioner has entered into PPA for procurement of 200 MW and 760 MW of power, from the Respondents 1 and 2 respectively, on long term basis, under competitive bidding process, as per guidelines issued by the Central Government under Section 63 of the Act. Therefore, the relief on LPS, as prayed for by the Petitioner, is to be guided by the force majeure provisions of the respective PPAs and not in terms of the tariff regulations notified by the Commission. In other words, the reduction on LPS by order dated 3.4.2020, to projects whose tariff is determined under section 62 of the Act, cannot be extended to projects whose tariff has been adopted in terms of Section 63 of the Act. Even otherwise, the submission of the Petitioner that the Respondents may be directed to grant reduction on LPS @ 12% per annum, in terms of the Commission's order dated 3.4.2020, if permitted, would have the effect of review of the said order dated 3.4.2020, which is not permissible. For these reasons, the prayer of the Petitioner for reduction on LPS, is not maintainable.

10. Further, the concessions to the distribution companies through MOP, GOI advisory dated 15.5.2020/16.5.2020 for deferment of capacity charges for power not scheduled, to be payable without interest after the end of lockdown period in three equal instalments and a rebate of about 20-25% on power supply billed (fixed cost) to Discoms and inter State Transmission charges levied by PGCIL, are applicable only to the Power Generation and Transmission CPSEs and all Subsidiaries/Joint Ventures of Power Generation and Transmission CPSEs under the MOP, GOI and not to the independent power projects of the Respondents herein. Hence, the question of



extending the said advisory dated 15.5.2020/16.5.2020 to the power projects of the Respondents, to provide rebate and interest free deferment of capacity charges to the Petitioner, does not arise. The prayer of the Petitioner is not maintainable on this count also.

11. One more submission of the Petitioner is that the outbreak of Covid and resultant impact has been held to be a force majeure event by various Government authority notifications and therefore the Commission may acknowledge Covid-19 as a force majeure event and grant reliefs as prayed in the petition. In response, the learned counsel for the Respondent GMRWEL has pointed out that the Commission in its order dated 20.1.2022 in Petition No.594/MP/2020 (GMRWEL v DNHPCL) had decided that that lockdown due to outbreak of Covid-19 cannot be considered as a force majeure event hindering performance of obligations under the PPA. The relevant portion of the order dated 20.1.2022 is extracted below:

“36. The Respondent has sought to argue that the reliance on above notification providing for exemption from lockdown is misconceived as the exemption was for the purpose that power supply should not be disconnected. However, the said argument, in our view, is misconceived. On one hand, the Respondent has sought to rely upon the Notifications issued by Ministry of Finance, MNRE and MoP in contending that Covid-19 and nationwide lockdown have been considered as force majeure therein, whereas on the other hand, it has sought to contest the applicability of the Ministry of Home Affairs Order dated 24.3.2020 clearly exempting services relating to generation, transmission and distribution from the lockdown. Such approbation and reprobation on the part of the Respondent cannot be permitted. In view of the categorical exemption from the Covid-19 led nationwide lockdown to all the activities and services relating to generation, transmission and distribution in terms of MoHA Order dated 24.3.2021, in our view, such lockdown cannot be considered as force majeure event that prevents, hinders or delays the Respondent/ distribution licensee in performing its obligations as specified in the DNH PPA”

12. In line with the above decision, the prayer of the Petitioner to acknowledge Covid-19 as a force majeure event and grant reliefs, as prayed for, is not acceptable.

13. The Petitioner, in the Petition, has also submitted that it has approached the Hon'ble Supreme Court against the order of APTEL dated 27.4.2021 in Appeal No.77/2018, wherein APTEL held that LPS shall be paid as per SBI PLR provisions in



the PPA instead of MCLR. Accordingly, the Petitioner has submitted that during the pendency of the said litigation, for the time being and without prejudice to the outcome in the said matter in the Hon'ble Supreme Court, the rate of LPS during Covid-19 pandemic should be restricted to the lower of 12% p.a or the actual rate of interest incurred by the generators to raise /borrow the funds to meet out its financial requirement due to delay in payment of bills by the Petitioner, irrespective of what is provided in the PPA or regulation as the case may be, from 24.3.2020 to 31.3.2020 or till situation gets normal. We notice that the Civil Appeal (1843/2021) filed by the Petitioner has been dismissed by the Hon'ble Supreme Court on 8.10.2021, thereby upholding the APTEL judgement dated 27.4.2021. In view of this, the submission of the Petitioner is not maintainable.

14. Based on the decision and findings above, we hold that the prayers of the Petitioner, in present petition are not fit to be allowed and any further hearing is not required. Accordingly, the Petition is rejected. at the admission stage itself.

15. Petition No. 187/MP/2021 is disposed of in terms of the above.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S. Jha)
Member

