

# MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

## BHOPAL

**Sub: Implementation of the directions of the Government of Madhya Pradesh to the Madhya Pradesh Electricity Regulatory Commission (MPERC) under Section 108 of the Electricity Act, 2003 regarding reduction of Late Payment Surcharge (LPS)**

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### ORDER

(Date of order 5<sup>th</sup> April' 2020)

Government of Madhya Pradesh vide its letter No. F-3/22/2013/13 dated 04.04.2020 has issued the directions under Section 108 of the Electricity Act, 2003 (hereinafter referred to as "the Act") to the Madhya Pradesh Electricity Regulatory Commission to specify a reduced rate of Late Payment Surcharge to be charged by the generating companies and the transmission licensees during the period of 24.03.2020 to 30.06.2020 on account of the unprecedented situation arising due to restrictions placed by the Central Government vide order dated 24.03.2020 to contain COVID-19.

2. In its aforementioned letter, the Government of Madhya Pradesh has mentioned the following:

*" We are in receipt of representations M P Power Management Company and State Discoms requesting to waive payment of Late Payment Surcharge in view of the force majeure situation arising due to severe restrictions placed on movement of public and opening of offices and establishments etc. by the Government of Madhya Pradesh and also vide order dated 24.03.2020 of Ministry of Home Affairs (MHA), Government of India. It has been informed that the consumers of the State power distribution companies (Discoms) are unable to pay their dues because of this unprecedented situation, which is likely to continue for some time. This will affect the liquidity position of the Discoms thereby reducing their ability to make timely payments to the generating companies (Gencos) and transmission companies (Transcos).*

*2. The matter has since been examined by the Energy Department and the Department acknowledges the gravity and unprecedented nature of the situation. Payments received in the month of March 2020 account for a large share of the annual revenues of Discoms. Due to non-*

*payment or delayed payment by consumers, the cash flow in the system has been seriously impeded. To mitigate the problem, some relief to the Discoms in regard to payments to generating companies and transmission licensees are a must.*

*3. Accordingly, Government of Madhya Pradesh, Energy Department vide letter dated 28.03.2020 (copy enclosed) has also requested Ministry of Power, Government of India not to take stern action on MPPGCL and State Discoms for delay in payments to Coal India Limited, Railways and NTPC and also to waive delayed payment surcharge and continue supply of coal/electricity to the State, since power generation, transmission and Distribution have been recognised as essential services by Ministry of Home Affairs (MHA), Government of India vide order dated 24.03.2020.*

*4. RBI has also provided a three- month moratorium on repayments of outstanding loans and interest on working capital.*

*5. In view of the above, as directed, using powers under section 108 of the Electricity Act, 2003, the following directions are issued to Madhya Pradesh Electricity Regulatory Commission in public interest:*

*i. The Commission may specify a reduced rate of Late Payment Surcharge (LPS) for payments which become delayed beyond a period of 45 days (from the date of presentation of the bill) during the period from 24<sup>th</sup> March 2020 to 30<sup>th</sup> June' 2020 to generating companies and licensees treating the restrictions placed by the Central Government vide order dated 24.03.2020 to contain COVID-19 as an event of force majeure. The reduced LPS shall be applicable for such delayed payments till 30th June 2020. The LPS should not be more than the cost that the generating companies or transmission licensees would have to bear because of the delayed payment.*

*ii. For generating companies and transmission licensees whose tariff was determined under section 63 by the Madhya Pradesh Electricity Regulatory Commission, MP Power Management Company Limited/ Discoms may claim the relief from its obligations*

*regarding the rate at which LPS is to be paid, as per the force majeure provisions given in the respective Power Purchase Agreement.”*

3. The Commission has considered the above directions of the Energy Department, GoMP issued under Section 108 of the Electricity Act,2003. This Commission determines the tariff of the generating companies and transmission licensee under Section 62 read with Section 86(1)(a) and (b) of the Electricity Act,2003 in accordance with the tariff Regulations framed under section 61 of the Electricity Act,2003. Further, this Commission also adopts the tariff of the generating companies and intra-State transmission licensees under Section 63 of the Act where the tariff has been discovered through competitive bidding in accordance with the Guidelines issued by Government of India under Section 63 of the Act.
4. While dealing with the above directions of the Energy Department, GoMP issued under Section 108 of the Electricity Act,2003, the Commission has taken into cognizance the order dated 03.04.2020 passed by the Central Commission in Suo Motu Petition No. 6/SM/2020 for implementation of the directions issued by Government of India dated 28.03.2020 on the same issue. In its aforesaid order, the Central Commission while relaxing the provisions under CERC Tariff Regulations 2019, has reduced the rate of prevailing late payment surcharge by 0.5% per month 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
5. With regard to the generating companies whose tariff is determined by this Commission under Section 62 of the Act, MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020 (hereinafter “2020 Tariff Regulations”) provides for rebates and late payment surcharge as under:

**“54. Rebate:**

**54.1***For payment of bills of the generating company through letter of credit on presentation or through National Electronic Fund Transfer (NEFT) / Real Time Gross Settlement (RTGS) payment mode within a period of 5 days of presentation of bills by the generating company, a rebate of 1.5% shall be allowed.*

*Explanation: In case of computation of ‘5 days’, the number of days shall be counted consecutively without considering any holiday. However, in*

*case the last day or 5<sup>th</sup> day is official holiday, the 5<sup>th</sup> day for the purpose of Rebate shall be construed as the immediate succeeding working day (as per the official State Government's calendar, where the Office of the Authorised Signatory or Representative of the Beneficiary, for the purpose of receipt or acknowledgement of Bill is situated).*

**54.2** *Where payments are made on any day after 5 days and within a period of 30 days of presentation of bills by the generating company or the due date if any mentioned in the power purchase agreement, whichever is earlier, a rebate of 1% shall be allowed.*

**55. Late payment surcharge:**

**55.1** *In case the payment of any bill for charges payable under these Regulations is delayed beyond a period of 45 days from the date of presentation of bills or the due date as mentioned in the power purchase agreement whichever is earlier, a late payment surcharge at the rate of 1.25% per month shall be levied by the generating company.*

6. With regard to the transmission licensee whose tariff is determined by this Commission under Section 62 of the Act, MPERC (Terms and Conditions for determination of Transmission Tariff) Regulations, 2020 (hereinafter "2020 Tariff Regulations") provides for rebates and late payment surcharge as under:

**35. Rebate:**

**35.1** *For payment of transmission charges through a letter of credit on presentation or through NEFT/RGTS within a period of 2 days of presentation of bill by Transmission Licensee, a rebate of 2% shall be allowed. If the payment is made by any other mode but within a period of one month of presentation of bills by the Transmission Licensee, a rebate of 1% shall be allowed.*

**34. Late payment surcharge:**

- 34.1** *In case the payment of bills of transmission and other charges are delayed beyond a period of 45 days from the date of presentation of bills, a Transmission Licensee may levy a late payment surcharge at the rate of 1.25% per month for each day of delay of payment.*

7. The beneficiaries of the generating stations and long term customers of the intra-state transmission systems avail rebates under relevant provisions of the 2020 Tariff Regulations, if the payments are made to the generating companies or the transmission licensees as the case may be, within the timeline specified in the said Regulations. On the other hand, as per relevant Regulations of the 2020 Tariff Regulations, a late payment surcharge (LPS) is payable by the beneficiaries and long term customers to the generating companies and

transmission licensees, as the case may be, if the payment is delayed beyond the period specified in the respective Regulations.

8. As per the directions issued by Government of Madhya Pradesh under Section 108 of the Act in the public interest, this Commission is required to specify a reduced rate of LPS where payment to generating companies and intra-State transmission licensees is delayed beyond the above specified period from 24<sup>th</sup>March 2020 to 30<sup>th</sup>June 2020 by treating the restrictions placed by the Ministry of Home Affairs, Government of India vide order dated 24.03.2020 to contain COVID-19 as an event of force majeure.
9. The Commission has observed that the Reserve Bank of India has permitted lending institutions and banks to grant a moratorium of three months on repayment in respect of all term loans and has clarified that interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period. Similarly, in respect of working capital facilities, the Reserve Bank of India has permitted lending institutions and banks to defer the recovery of interest on such facilities, but has clarified that accumulated accrued interest shall be payable after the deferment period from 01.03.2020 up to 31.05.2020. The relevant portion of the RBI circular No. RBI/2019- 20/186 DOR.No.BP.BC.47/21.04.048/2019-20 dated 27<sup>th</sup>March, 2020 is extracted below:

***“(i) Rescheduling of Payments – Term Loans and Working Capital Facilities***

*2. In respect of all term loans (including agricultural term loans, retail and crop loans), all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, all-India Financial Institutions, and NBFCs (including housing finance companies) (“lending institutions”) are permitted to grant a moratorium of three months on payment of all instalments<sup>1</sup> falling due between March 1, 2020 and May 31, 2020. The repayment schedule for such loans as also the residual tenor, will be shifted across the board by three months after the moratorium period. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.*

*3. In respect of working capital facilities sanctioned in the form of cash credit/overdraft (“CC/OD”), lending institutions are permitted to defer the*

*recovery of interest applied in respect of all such facilities during the period from March 1, 2020 up to May 31, 2020 (“deferment”). The accumulated accrued interest shall be recovered immediately after the completion of this period.”*

10. Thus, generating companies and intra-state transmission licensees can opt for moratorium on payment of instalments of term loan and defer the payment of interest in respect of working capital facilities during the period from March 1, 2020 up to May 31, 2020 (“deferment”), but the interest accrued is not waived. Further, in case of working capital facilities, accumulated accrued interest shall be recovered immediately after the completion of this period. The interest rate applicable will be the lending rate of the lending institutions or banks. Thus, the generating companies and the transmission licensees will have to incur the cost of working capital facilities even during the deferment period.
11. Therefore, the generating companies and intra-State transmission licensees regulated by this Commission shall be required to continue to discharge their debt service obligations and arrange for working capital for day to day operation of their generating stations and transmission assets. Regulation 38.3 and 38.4 the MPERC Generation tariff Regulations 2020 relating to computation of the rate of interest on working capital provide as under:

*“(38.3) Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.4.2019 or as on 1<sup>st</sup> April of the year during the tariff period 2019-24 in which the generating station or a unit thereof, is declared under commercial operation, whichever is later:*

*Provided that in case of truing-up, the rate of interest on working capital shall be considered at bank rate as on 1st April of each of the financial years during the tariff period 2019-24.*

*(38.4) Interest on working capital shall be payable on normative basis notwithstanding that the generating company has not taken loan for working capital from any outside agency.”*

Almost similar provisions are provided in MPERC Transmission Tariff Regulations, 2020

12. Bank rate has been defined in MPERC Tariff Regulations, 2020 as under:

*‘Bank Rate’ means the one year marginal cost of lending rate (MCLR) of the State Bank of India issued from time to time plus 350 basis points;”*

13. Therefore, the Commission is of the view that in the given situation, the provisions of 2020 Tariff Regulations with regard to interest on working capital should be adopted as the normative rate of LPS in place of the penal rate of LPS specified under relevant Regulation of the 2020 Tariff Regulations, for delayed payments falling due beyond the period specified in Regulations, during the period from 24.03.2020 and 30.06.2020.
14. It would be pertinent to mention that the directions under section 108 stipulates requirements for reduced rate of LPS and that the LPS should not be more than the cost that the generating companies or transmission licensees would have to bear because of the delayed payment. This Commission follows normative approach for the purpose of interest on working capital irrespective of the actual loan taken by the generating company or the transmission licensee, the Commission is of the view that providing normative LPS rate would also satisfy the requirements of directions under Section 108 of the Electricity Act. The CERC, as per the direction of the Govt of India under Section 107 of the Electricity Act 2003, has reduced the LPS by 0.50% per month from the existing rate.
15. This Commission is vested with the power to relax the provisions of the 2020 Tariff Regulations on its own motion or on an application made by an interested person. Keeping in view the directions issued by the Government of M P under section 108 of the Electricity Act in the public interest and to address the difficulties faced by the MP Power Management Company / Distribution Companies (beneficiaries of the generating stations and long term customers of intra-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. this Commission in exercise of its powers under 2020 Tariff Regulations relaxes the provisions of Regulation 55 and Regulation 34 of MPERC 2020 Generation and Transmission Tariff Regulations, respectively to provide that if any delayed payment by the MP Power Management Company / Distribution Companies to the generating companies and intra-State Transmission licensees beyond 45 days from the date of the presentation of the bills or due date mentioned in PPA falls between 24.03.2020 and

30.06.2020, the MP Power Management Company (MPPMCL) /Distribution Companies shall make the payment with LPS at the rate reduced by 0.50 % per month on the existing LPS rate specified in the respective Regulations.

16. It is clarified that if the period of 45 days beyond the due date of the presentation of the bill by the generating companies or intra-State transmission licensees, as the case may be, falls before 24.03.2020 or after 30.06.2020, the MPPMCL/ Distribution Company shall be liable to pay the LPS as per provisions under 2020 Tariff Regulations.
17. It is further clarified that the beneficiaries of the generating stations and long term customers of the intra-State transmission systems will continue to avail rebates under the provisions of the 2020 Tariff Regulations if the payments are made to the generating companies and the transmission licensees within the timeline specified in the said regulations.
18. As per the directions issued under Section 108 of the Act, in case of the generating companies or any intra-state transmission licensees whose tariff has been adopted 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 relevant provisions of the respective power purchase agreements (PPAs) or Transmission Service Agreements (TSAs) as the case may be.

Ordered accordingly.

-sd/-

**(Shashi Bhushan Pathak)**  
**Member**

-sd/-

**(Mukul Dhariwal)**  
**Member**

**Place: Bhopal**  
**Date : 5<sup>th</sup> April, 2020**