

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of petition under clause 4.38 & 4.39 of the MPERC (Power Purchase and other matters with respect to conventional fuel based captive power plants) (Revision - I) Regulations, 2009 for clarification with regard to the manner of calculation of proportionate consumption by captive users from captive generating plant and in the matter of clarification with regard to authority to declare status of captive user and captive power plant (CPP) in case of the CPP is located in One Discom whereas the user is located in more than one Discom.

Petition No. 55/2017

ORDER

(Date of order: 5th June, 2018)

- | | | |
|---|---|------------------------|
| M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd.,
GPH Compound, Pologround, Indore | - | Petitioner No.1 |
| M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd.,
Block No. 7, Shakti Bhawan, Vidyut Nagar, Jabalpur | - | Petitioner No.2 |
| M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd.,
Bijlee Nagar Colony, Nishtha Parisar, Govindpura, Bhopal | - | Petitioner No.3 |
| M/s Spentex Industries Limited,
51-A, Industrial Area, Sector-III,
Pithampur- 454774, District Dhar (M.P.) | - | Intervener |

Shri Shailendra Jain, Dy. Director appeared on behalf of the Petitioner No.1.

Shri Deepak Chandela, DGM appeared on behalf of the Petitioner No.2.

Shri R.S. Yadav, DGM and Shri Himanshu Saxena, A.O. appeared on behalf of the Petitioner No.3.

Shri Anand K. Ganeshan, Advocate, Shri L.N. Kaushik, President of the Company and Shri Rajendra Arya, DGM of the Company appeared on behalf of the Intervener.

2. The subject petition was filed by MPPKVVCL Indore on 06.11.2017 in the matter of clause 4.38 & 4.39 of the MPERC (Power Purchase and other matters with respect to conventional fuel based captive power plants) (Revision - I) Regulations, 2009 for clarification with regard to the manner of calculation of proportionate consumption by captive users from captive generating plant and in the matter of clarification with regard to authority

to declare status of captive user and captive power plant (CPP) in case of the CPP is located in One Discom whereas the user is located in more than one Discom.

It was listed for motion hearing on 21.11.2017. In the petition, the petitioner has mainly prayed to provide the clarification on the following:

- (a) In case where the shareholding of group captive users has changed during the year, which date of the share holding of 'group captive user' is to be considered for calculation of his share of required consumption from group captive plant?
- (b) If a group captive user purchases the equity of group captive plant in the middle of any financial year, what method should be adopted for calculation of his share of required consumption from group captive plant?

3. On hearing the petitioner on 21.11.2017, the Commission noted that the issues covered in the petition are related to the other two Discoms also and directed the petitioner to discuss the issues with other two Discoms and thereupon to file the amended common petition. The next date of motion hearing was fixed for 19.12.2017.

4. During the motion hearing held on 19.12.2017, the petitioner stated that a combined petition from all three Discoms is filed on 19.12.2017. In the combined petition the petitioner has mainly prayed to provide the clarification on the following:

- (a) In case where the shareholding of group captive users has changed during the year, which date of the share holding of 'group captive user' is to be considered for calculation of his share of required consumption from group captive plant?
- (b) If a group captive user purchases the equity of group captive plant in the middle of any financial year, what method should be adopted for calculation of his share of required consumption from group captive plant?
- (c) In case of a captive power plant of a Company located in a MP Discom or outside the State and captive users of the same CPP located within the State but in more than one Discoms or outside the State and such CPPs selling power to 3rd Parties or to energy exchanges, the mechanism and authority to monitor the captive user status.

5. The Commission listed the combined petition for motion hearing on 23.01.2018. On 23.01.2018, the petition was admitted for further hearing on 20.02.2018. In the mean time, Spentex Industries Ltd., Pithampur requested for grant of permission to intervene in the subject petition vide its letter dated 24.01.2018. The Commission considered the intervener's request and directed the petitioners to provide a copy of the petition to the intervener by 05.02.2018 and the intervener was also directed to submit its response by 15.02.2018 and to appear for hearing on 20.02.2018. During the hearing on 20.02.2018, the petitioners requested for 15 days time to file the rejoinder on the intervener's response received by them on 19.02.2018. The Commission considered their request and the matter was listed for further hearing on 13.03.2018. During the hearing on 13.03.2018, the intervener sought time to submit its response on the rejoinder filed by the petitioners. The Commission considered the request and listed the case for hearing on 24.04.2018.

6. During the hearing held on 24.04.2018, the petitioners submitted that they have filed the petition for clarification, but the intervener is delaying the decision making process. The intervener objected to it and stated that they were earlier trying to verify the information filed by the petitioners. Now they are ready for final arguments. The petitioner stated that the main issue is proportionate consumption during the financial year. The consumers cannot be allowed to change their shareholding at the end of financial year i.e. in March, so as to align their equity ownership and consumption percentage within the norms prescribed in the Electricity Rules, 2005. The intervener stated that the main issue is the date on which shareholding and consumption has to be checked. The Rules mentioned "Annual basis". The purchase of shares of a captive plant by a consumer is an investment done by the consumer. The Balance-sheet is prepared annually showing assets and liabilities "as on 31st March". Hence in this case, "annual basis" means "as on 31st March" only.

7. The Petitioners No. 1 and 2 vide their combined letter No. 4977 dated 08.03.2018 have broadly submitted as under:

"Rule 3 of the Electricity Rule 2005 lays down the criteria to classify a generating plant as 'captive generating plant' particularly in case of Group Captive Users. In essence, the rules prescribe that in case of group captive users, the generating plant needs to fulfill following three conditions-

First – At least 26% of Equity share capital must be held by the captive users.

Second – At lease 51% energy generated by plant on annual basis, must be consumed by captive users.

Third – The proportion of consumption for each of the ‘group captive user’ must be in proportion of shareholding of such user.

It may be seen that first two conditions are to be fulfilled by the all captive user collectively, however third condition is to be satisfied by the all users individually. The present matter pertains to the compliance of the third condition. In the present petition the question for determination is that in case there is a change of shareholding during the year by any captive user or acquisition of fresh shareholding during the year by any captive user what shall be the manner of calculation of proportionate consumption. The definition of captive power plant given in the Electricity Act, 2003 is as under:

2(8) “Captive Generating plant” means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such co-operative society or association.”

As per rule, exercise of determination of captive is to be carried out on ‘Annual Basis’. Term annual basis is defined in the explanation (1) to the Rule 3 as under:

“Annual Basis” shall be determined based on a financial year...”

As per above quoted provision “Annual Basis” means based on the financial year. Financial year starts from the 1st April and ends as on the 31st March. Therefore what should be the shareholding for the determination of proportionate consumption should be determined based on this statutory explanation.

Authority for monitoring of captive status:

Intervener in its response has submitted that there cannot at all be an authority to monitor the captive generating plant status. This submission of the intervener not seems correct in the light of judgment of Hon’ble APTEL in the petition number 270 of 2006 dated 21.02.2011. The relevant extract of the judgment of the APTEL reproduced as under:

38. *Summary of Finding:*

III. The next issue is monitory status of Captive Power Plant. According to the Appellant, the State Commission has no power to decide and monitor the status of the Captive Power Plant. The Electricity Act makes special provisions regarding the Captive Generating Plant to the destination of its use. These special provisions have been made in the Act as well as in the National Policy in order to promote Captive Generating Plants as decentralized generating plant and also to make it as source of supply of power to the Country. The State Government Policy also offers incentive to such plants by various exemptions. Unless a power plant is declared as Captive Generating Plant on the basis of criteria laid down in Rule 3 of the Electricity Rules, these plants will not be able

to avail the incentives offered by the State Government. This cannot be done either by the Utility or by the Government as there is no provision. Since Open Access has to be regulated by the State Commission, we feel that the State Commission has to take the responsibility of declaring the generating plant as captive one and monitoring on an annual basis, if it satisfies the criteria laid down in rule 3 of the Electricity Rules.

In the aforesaid judgment Hon'ble APTEL clearly held that State Commission should take responsibility of declaring the generating plant as captive one and monitoring on an annual basis. Therefore it is requested to the Commission to prescribe a procedure regarding declaration and monitoring of captive status of power plant.”

8. The Petitioner no. 3 vide its letter no. 2268 dated 07/03/2013 submitted as under ;

It is submitted that, there are three group captive consumers of M/s OPGS Gujrat under MPMKVVCL viz: M/s SEL manufacturing Ltd. Sehore (CD-23.5MVA). M/s Hind Syntex Ltd. Rajgarh (CD-3.85 MVA) and M/s SRF Ltd, Malanpur (CD-10 MVA). These three consumers are being acknowledged as Group captive based on their shareholding in the Group captive plant of M/s OPGS at the end of financial year, after getting the shareholding vetted from Company Secretary of our Company and confirmation of consumption of energy by consumers from SEA of Gujrat SLDC. From the provisions made in Regulations, and as per the Explanation of “Annual Basis” given Clause 1.6.3(2)(a) , the methodology of calculation of consumption by captive users from captive generating plant has been on shareholding at the end of Financial Year. This is already mentioned at point 6.8 of the joint petition. Based on the facts presented in the joint petition of Discoms and contentions of the intervener, the Commission is requested to clarify the methodology to be adapted

for considering shareholding of captive users for calculation of consumption from their captive generating plant.

9. The intervener vide its letter dated 13.02.2018 has broadly submitted as under:

“It is stated that by virtue of the words “determined on an annual basis” appearing in the 2nd proviso of Rule 3(1) (a) (ii) of the 2005 Rules, the same means that the proportionate consumption of the 51% power generated by the captive generating plant, has to be seen qua the shareholding which the captive users hold, as at the end of a financial year. It is further stated that, otherwise, there was no need to specify “annual basis” in the above Rules. Hence, a captive user may have its shareholding changed, within a financial year, according to the energy which the said user is capable of consuming, and that in such a case the equity ownership/ shareholding as existing on an annual basis, i.e. at the end of a financial year, is to be considered. Applying any other method which takes into account shareholding, other than that existing at the end of a financial year on annual basis, would be contrary to the above provision of the Rules.”

10. The Commission observed that the Ministry of Power has issued the draft amendments in the provisions related to Captive Generating Plant in the Electricity Rules, 2005 on 22.05.2018 which includes the provisions/issues related to the Group Captive Generating Plants. The comments are invited from various stakeholders including the Discoms by 05.06.2018.

11. Having heard the petitioners and the Intervener and on considering their written submissions and the aforesaid draft amendments to the Electricity Rules, 2005, the Commission is of the view that it would be appropriate for the Discoms to raise the issues suitably by sending comments to the Ministry of Power for appropriate insertion in the Electricity Rules, 2005.

12. In view of the above, the petition no. 55 of 2017 is disposed of.

Ordered accordingly.

(Anil Kumar Jha)
Member

(Mukul Dhariwal)
Member

(Dr. Dev Raj Birdi)
Chairman