

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION**  
**BHOPAL**

**Sub: In the matter of Petition under Section 86 (1) (f) of the Electricity Act, 2003 read with Regulation 6.1 of MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023 regarding wrongful withdrawal of captive status for FY 2022-23.**

**ORDER**

**(Date of Order: 22 March' 2024)**

**M/s. Orient Paper Mills, Prop. Orient Paper & Industries Ltd.**  
Orient Paper Mills, Amlai, District: Shahdol

**Petitioner**

**V/s**

**1. Madhya Pradesh Poorv Kshetra  
Vidyut Vitaran Company Ltd. (MPPKVVCL)**  
Shakti Bhawan, PO: Vidyut Nagar, Rampur,  
Jabalpur – 482008

**2. Madhya Pradesh State Load Despatch Centre (MPSLDC)**  
MP Power Transmission Co. Ltd.  
Nayagaon, Rampur, Jabalpur, 482008, MP

**Respondents**

Ms Mandakini Ghosh, Advocate appeared on behalf of the petitioner.

Shri Prakash Upadhyay, Advocate appeared on behalf of respondent no. 1.

Shri Anurag Mishra, GM appeared on behalf of respondent no. 2.

1. The subject Petition has been filed by Petitioner under section 86(1) (f) read with Section 142 of the Electricity Act, 2003 for grant of captive user status for FY 2021-22, 2022-23, and 2023-24 in compliance of the detailed procedure for verification of status of captive generating plants and captive users framed under Regulation 8 of MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023 and in the matter of non-compliance of Retail Supply Tariff order for FY 2023-24 by not allowing rebate for Captive Power Plant Consumer as per clause (f) of specific terms and conditions of tariff schedule – HV – 3 (Industrial).

2. The broad submissions made by the petitioner are as under:

- i. *The Petitioner has been running its operation from power generated through 55MW (1x30 MW & 1x25 MW) Captive Power Plant (hereinafter collective referred to as "CGP") since 2012. The Petitioner owns 100% shares in the CGP and consumes the entire power generation for its manufacturing activities.*
- ii. *The Petitioner has also enhanced its consumption from the Respondent No.1 (thereby reducing its captive consumption) and currently maintains a Contract Demand of 14000 KVA. The Petitioner has filed the present petition seeking reinstatement of its captive status under the MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023 and for availing consequential rebate under as per Retail Supply Tariff Order for FY2023-24 dated 28.03.2023. Petitioner is seeking certification and rebate for the period FY 2021-22, 2022-23 & 2023-24.*
- iii. *The Petitioner had applied to the Respondent No. 2 (MP SLDC) on 31.7.2023 for certification of its captive status. The application inter alia, contained petitioner's generation data in FORM V, VI, VII as per the Commission's detailed operating procedure dated 13/06/23. The generation data in the prescribed format was certified by Executive Engineer (O&M) of Respondent No. 1 vide letter dated 31/07/2023. Accordingly, the Respondent No 2 granted the petitioner captive status vide letter dated 24/08/2023. Subsequently, vide letter dated 26/09/2023, the Respondent No1 withdrew the certification of data on the ground that the same was certified by the wrong Department of Respondent No. 1. Thereafter, vide letter dated 29/09/2023, Respondent No. 2 directed the petitioner to approach Respondent No. 1 once again for certification of its generation data.*
- iv. *In view of above mentioned facts, the petitioner has made following submissions:*
  - a) *On the issue of Petitioner's CGP Status, it is submitted that Respondent No. 1 while withdrawing its certification/authentication of generation data on 26.09.2023 has cited reasons that it was certified by the wrong department. It is submitted that neither MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023 (hereinafter referred to as "CGP Verification Regulations") nor Detailed Procedure for Verification of Status of Captive Generating Plants issued by this Commission by virtue of Order dated 13.06.2023 (hereinafter referred to as "CGP Verification Guidelines") mandate that the consumption of energy data be*

*authenticated by a specific officer of the Distribution Licensee. Thus, the withdrawal of authentication is unreasonable, arbitrary, and untenable in law. Consequently, the withdrawal of CGP Status by Respondent No 2 is also unreasonable, arbitrary and thus, liable to be set aside.*

- b) Form V, VI, VII of the detailed procedure code specifies that gross generation and auxiliary consumption is to be adjusted to arrive at net generation for the CGP. On 25.08.2023, the Petitioner had submitted the Gross Energy Generation data by way of Form G, Electricity Duty Rules, 1949 to Respondent No. 1. By Rejoinder dated 18.01.2024 the Petitioner has once again placed on record the Form G and treasury challans for Electricity Duty paid to the state exchequer based on total generation/consumption from the CGP. Hence, Respondent No. 1 may take into account the undisputed Form "G" for authenticating gross generation of the Petitioner. Such a position has not been disputed by Respondent No 1.*
- c) Further, Respondent No. 1 has submitted that it has no methodology for authenticating the auxiliary consumption. To this end, Respondent No. 1 has written to Respondent No. 2 on 30.11.2023 to certify the Petitioner's auxiliary consumption. On 1.01.2024, Respondent No. 2 has certified the Petitioner's auxiliary consumption as 9.24% and 8.78%.*
- d) Now that Respondent No. 1 has the authenticated gross generation and auxiliary consumption, it can easily calculate the net generation for the Petitioner. Thus, it is clear that the Answering Respondent is delaying the authentication of the CGP Status of the Petitioner, and consequently the grant of Rebate.*
- e) It is submitted that the entire power from CGP is being consumed by the sole captive user, the Petitioner itself. Hence, there is no requirement for calculation of minimum 51% power consumption by captive users for the Petitioner to qualify as CGP under the Electricity Rules, 2005. The entire 100% power generation is being consumed by the sole captive users which holds 100% of the shareholding.*
- f) On the issue of grant of Rebate under Tariff order FY2023-24, it is submitted that the substantive criteria for grant of rebate to a consumer under Tariff Order 2023-24 is whether the consumer has met its demand supply through its captive power plant during the financial years between 2016-2023. Upon having met the criteria, Tariff Order 2023-24 allows such consumers to claim rebate for the relevant financial year between 2017-2023 by making an application for claiming rebate and indicating the year during which the consumer has switched from its CGP*

*to the Distribution Licensee. It is pertinent to note here that Respondent No. 1 herein has admitted that the Petitioner herein is eligible for Rebate. Thus, it is undisputed that the Petitioner herein has met its demand through its captive power plant during FY2022-23 and FY2023-24.*

- g) Furthermore, the submission of Respondent No. 1 that the Base Year for calculation of Rebate shall be with respect to date of application for rebate is wholly erroneous and contrary to Tariff Order 2023-24. It is submitted in this regard that Tariff Order 2023-24 in the most clear terms clarifies that the Base Year shall be the financial year preceding the year during which the consumer has applied for switching from his captive power plant to Licensee. Thus, in as much as the Petitioner applied for switching its consumption from its CGP to Respondent No. 1 on 15.04.2022, the Base year for calculation of rebate shall be FY2021-22. Therefore, it is submitted that in terms of Tariff Order 2023-24, the petitioner is eligible for rebate from the date of switching consumption, and the base year for calculation of rebate shall be FY2021-22.*

3. The Petitioner has made following prayer in Petition:

- a. Quash or set aside Letter dated 07.11.2023 issued by Respondent No. 2 withdrawing the Captive User Status of the Petitioner; and*
- b. Quash or set aside Letter dated 29.09.2023 issued by Respondent No. 2; and*
- c. Quash or set aside Letter dated 26.09.2023 issued by Respondent No. 1; and*
- d. Direct the Respondents to verify the Captive User Status of the Petitioner for FY 2021-22, 2022-23, and 2023-24; and*
- e. Direct Respondent No. 1 to grant Rebate to the Petitioner in terms of the ARR For FY 2023-24 and Retail Supply Tariff Order for FY 2023-24; and/or*
- f. Pass any other order(s) or direction(s) that this Hon'ble Commission may deem fit in the facts and circumstances of the present case.*

4. At the motion hearing held on 13.12.2023, the Commission admitted the Petition. Subsequently, vide affidavit dated 03.01.2024, Respondent No. 1 (MPPKVVCL) had submitted their reply and made following broad submissions:

- i. *That, M/s Orient Paper Mill has submitted before Hon'ble Commission to direct the respondent no. 2 (i.e. the Chief Engineer, SLDC) for reinstatement of Captive Status. In this regard it is submitted that MPPKVCL agree to grant Captive Status to the petitioner subject to fulfilment of CPP status as per Hon'ble Commission's regulation G-45 of 2023. However, Designated authority has granted CPP Status to M/s Orient Paper Mill vide their office letter no. 07/-05/SG-11/PPP/Orient/1129 dated 24.08.2023 which has been withdrawn vide their letter no. 07/-05/SG-11/PPP/Orient/1486 dated 07.11.2023. It is to mention here that as per regulation 9.3 of G-45 of 2023 the petitioner had opportunity to submit review before Designated Authority against the decision of Designated Authority. The regulation 9.3 of G-45 is reproduced here below:*

*“9.3 Any CGP or Captive User or Distribution Licensee aggrieved by the decision of the Designated Authority may upon discovery of new and important material or evidence or otherwise, which after exercise of due diligence, was not within his / its knowledge or could not be produced by him /it at the time when the decision was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reason, may apply for a review of such decision, within thirty (30) days of the date of the decision of Designated Authority, to the Designated Authority.”*

- ii. *The petitioner didn't utilize the **alternate remedy available** in the case. It is to mention here that as per regulation 9.5 & 9.6 of G-45 of 2023 the petitioner had opportunity to submit the representation before the CGP Status Committee within a period of 30 days from the date of order of Designated Authority. The regulation 9.5 & 9.6 of G-45 is reproduced here below:*

*“9.5 Any CGP or Captive User or Distribution Licensee aggrieved by the decision of the Designated Authority, may represent before the CGP Status Committee within a period of 30 days from the date of order of Designated Authority, if any provisions of Regulation or detailed procedure is not complied by the Designated Authority.*

*9.6 The CGP Status Committee on receipt of the representation made by CGP or Captive User or Distribution Licensee shall examine and resolve the same preferably within a period of 45 days.”*

iii. *That the petitioner has submitted before Hon'ble Commission for grant of Captive rebate by respondent No. 1 (i.e. MPPKVVCL) as per the provisions of retail supply tariff order FY 2023-24. In this regard it is submitted that the MPPKVVCL agrees with the petitioner's claim for grant of captive rebate to the petitioner. The Designated Authority vide letter dated 24.08.2023 granted the Captive status to the M/s Orient Paper Mill. Subsequently, M/s Orient Paper Mill applied before the Distribution Licensee for grant of captive rebate as per tariff order clause 'f' of HV-3.*

*As per tariff order clause 'f' there is provision for 'base year' and rebate shall be applicable from the date of application on monthly incremental units subject to reduction in captive generation with respect to FY 2022-23. In this regard MPPKVVCL vide letter no. 1058 dated 06.09.2023 requested the Designated authority to provide **the month wise net generated energy of M/s Orient paper Mill for FY 2022-23 (i.e. base year) considered for providing Captive Status.***

*As per detailed procedure issued by Hon'ble Commission in accordance with provisions under regulation 8 of MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023 (G-45 of 2023) the net energy generated from the unit identified for captive use shall be considered for Verification of CGP status. The relevant part of the procedure is reproduced here below: -*

***“3.2 Verification of condition of not less than net 51% consumption by Captive***

***User:***

iii.2.1 *The net energy generated from the unit identified for captive use shall be the gross energy generated from the unit less aggregate auxiliary consumption during the 15 minutes time block. The net energy generation in all the time blocks of the Year shall be grossed up for determining gross net generation of the CGP unit.”*

- iv. *In compliance to above the Designated Authority vide letter no. 671 dated 26.05.2023 laid down Annexure-VIII duly verified from Commercial Section of Discom. From the aforesaid, it has been desired from the Discom to verify the actual gross generation, auxiliary consumption & net generation by the Generating plants. In this regard, prior to regulation G-45 of 2023 notified on 17<sup>th</sup> March 2023 there was no express regulation authorizing the Discoms to install the metering device or monitor the generation and consumption of CPP. Therefore, no access for credible/authentic energy generated & auxiliary consumption is available with the Discom for previous years. However, for future detailed procedure for verification of status of CPP issued vide Hon'ble Commission order dated 13.06.2023, Clause 4, every CGP shall install a separate energy meter for recording energy generated & auxiliary consumption which shall be used for verification.*
- v. *The issue mentioned in para (iv) above has been raised before the designated authority by this Respondent vide letter no. EZ/CGM/Comm/PP&R/R-144/725 dated 18.07.2023. However, in response to query raised before Designated Authority no any credible source has been suggested by the Designated Authority.*
- vi. *The Designated authority has desired the net generation verified from Commercial Section of the Discom and the Commercial section of the Discom was in correspondence with Designated Authority for providing credible and authentic source for verification of such data.*
- vii. ***But in-spite of above the Designated Authority broke his own laid down procedure and considered the certification of field officer (the Executive Engineer, Annapur) not authorized for such verification as per DoP of MPPKVCL. Thus, certification by field officer is void ab initio as he/she has acted beyond authorization.** The field officer was not aware about the issue and considering any routine work put down his signature on documents produced by M/s Orient Paper Mill. However, when it has been asked from the field officer to provide the source for verification of data, the officer realized the mistake and withdrawn the document signed by him*
- viii. *In spite of clarification sought by MPPKVCL, the Designated Authority compelled the DISCOM to certify/stamp a data for which the DISCOM was not having any CREDIBLE SOURCE for verification. The DISCOM was unable to provide such certification to the*

*Designated Authority & the Designated Authority unilaterally withdrawn the Captive Status of the Petitioner.*

- ix. The Auxiliary consumption of the generator may vary to an extent of 10-15 % and will eventually affect the consumer claim accordingly. At present the Discom is not having any credible/authentic source for verification of the Auxiliary consumption of CPP.*
- x. In view of above, it is pleaded before Hon'ble Commission to suggest credible/authentic sources for gross energy generation, auxiliary consumption & net energy of CPP for providing captive rebate.*
- xi. The Hon'ble Commission in petition no. 73/2012 has directed the M.P. Power Transmission Co. Ltd for levy of parallel operation charges at rate of Rs.20/- per KVA per month on the capacity of CPP (after deducting the load pertaining to auxiliary consumption) connected to the grid. The operative part of the order dated 31.12.2012 is reproduced here below: -*

*“6. The Commission also finds that the object of the Electricity Act, 2003 is to delicense generation and to freely permit CPPs. In order to promote CPPs and looking to the facility being availed by CPPs from the grid, the Commission has come to the conclusion that it would be appropriate that parallel operation charges be levied at the rate of Rs. 20/- per KVA per month on the capacity of CPP (after deducting load pertaining to auxiliary consumption) connected to the grid.”*

*At present the MPPTCL is issuing the bill of parallel operation charges in which the demand with respect to auxiliary consumption is being computed for issuing the bills to CPP generators. Thus, MPPTCL itself is keeping account for Auxiliary Consumption. In this regard the Designated Authority i.e. The Chief Engineer, SLDC, MPPTCL be issued direction to verify the CPP Status of Consumer.*

- 5. Vide affidavit dated 09.01.2024, Respondent No. 2 (MP SLDC) submitted their reply whereby following broad submissions were made :*
  - i. The Commission vide Order dated 24.03.2023 has designated Chief Engineer (SLDC) MPPTCL as Authority to determine captive status of Captive Generating Plants and*



*Captive users as per Regulation 5.1 of the MPERC (Verification of Captive Generating Plants and Captive Users Regulations, 2023 (G-45 of 2023).*

- ii. *The State Commission had issued Detailed procedure for verification of status of Captive Generating Plants and Captive Users in accordance with the provisions under Regulation 8 of Madhya Pradesh Electricity Regulatory Commission (Verification of Captive Generating Plants and Captive Users) Regulations, 2023 on dated 13th June, 2023.*
- iii. *The State Commission has authorized State Load Dispatch Centre as “Designated Authority” in accordance with the provisions under Regulation 5.1 of Madhya Pradesh Electricity Regulatory Commission (Verification of Captive Generating Plants and Captive Users) Regulations, 2023 vide its order dated 24.03.2023.*

*As per provision of the above order, SLDC is required to determine the Captive status of Captive Generating Plants and Captive Users as per the detailed procedure, specified in Regulation 8 of the Madhya Pradesh Electricity Regulatory Commission (Verification of Captive Generating Plants and Captive Users) Regulations, 2023.*

- iv. *In the Detailed Procedure, the Hon’ble Commission has assigned the responsibility to the Distribution Licensees and CPPs for providing requisite data / information in the prescribed formats of the Commission to SLDC, for determining CPP status.*

6. Vide letter dated 18/01/24 and 30/1/24 the petitioner has filed the rejoinder and additional submissions respectively. Vide letter dated 30/01/24, Respondent No 1 has filed the written submission.

**Commission’s findings and observations**

7. The Petitioner in his submission has stated that it applied to Respondent No 2 (SLDC) on 31/07/2023 for certification of its captive status. The generation data in prescribed format was certified by officer (EE, O&M, Anuppur) of Respondent No 1 (East Discom). Accordingly, the Respondent No. 2 granted the petitioner captive status on 24/08/2023. However, on 26/09/2023, the Respondent No 1 withdrew the certification of data on the flimsy ground that it was certified

by the unauthorised department of Respondent No 1. As such, Respondent No.2 was left with no option but to withdraw captive status of petitioner. Subsequently Respondent No 1 denied consequential rebate to the petitioner in terms of Clause (f) of Tariff Schedule–HV–3 under the Tariff Order 2023-24. After going through the contents of submissions of Respondent No. 1 and 2, the Commission is of the opinion that Respondent No. 1 should have proper systems in place, so that its officers are fully aware of delegation of powers within the company. It should be the duty of Respondent No. 1 to stop unauthorised authorities from issuing certificates, which cause inconvenience to other parties outside the Respondent company such as SLDC/Consumers. The Respondent No. 1 ought to have provided the details of certification officers on its website, so that SLDC may cross-check before granting captive status.

8. Respondent No. 1 has stated in its submission that prior to MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023 notified on 17/03/2023, there was no express regulation authorizing the Discoms to install the metering device or monitor the generation and consumption of CPP. Therefore, no access for credible/authentic energy generation & auxiliary consumption was available with the Discom for previous years. However, Clause 4 of detailed procedure for verification of status of CPP issued vide the Commission's order dated 13.06.2023 provides that every CGP shall install a separate energy meter for recording energy generated & auxiliary consumption which will be used for verification. Respondent Discom also requested to suggest credible /authentic source for gross energy generation, auxiliary consumption and net energy of CPP for verification of CPP status /user for generating plants and for allowing CPP rebate as per clause 'f' of HT tariff category HV3 of Tariff order FY 2023-24. Respondent No. 1 has also requested to suggest the appropriate Regulatory mechanism for verifying the auxiliary consumption of Petitioner's CGP for FY 2022-23 in absence of metered auxiliary consumption data of CGP. It is stated that no access for credible/authentic energy generated & auxiliary consumption was available with the Discom for previous years.
9. The Commission has specified the methodology for verification of status of Captive Generating Plant (CGP) and users vide MPERC (Verification of Captive Generating plants and Captive users) Regulations, 2023 on 17 March 2023. The Commission vide order dated 24th March 2023 in exercise of power conferred under aforesaid Regulations has notified the Chief Engineer (SLDC) MP Power Transmission Company Limited, Jabalpur as "Designated authority" for the purpose of verification of Captive Generating Plant. The Commission vide order dated 13<sup>th</sup> June 2023 has further specified the detailed procedure for verification of status of Captive Generating

Plants and Captive users under Regulation 8 of MPERC (Verification of Captive Generating plants and Captive users) Regulations, 2023. The Commission observes that the designated authority under Regulations, 2023 has to only verify Captive status of CPPs. It has nothing to do with operationalisation of tariff rebates, which in any case is within functional domain of Discom. In this case, it is observed that Respondent No. 1 is raising question on Captive status of Petitioner, which is supposedly 100% CPP in terms of ownership and use.

10. It is made out by the Respondent No. 1 that prior to Notification of Regulations, 2023 and issue of detailed procedure vide Commission's order dated 13/06/2023 for verification of status of Captive Generating Plants and Captive users in accordance with aforesaid Regulations, clarity was not available to the Discom for verification of CGP status. Respondent No. 1 has requested to suggest credible/authentic source for gross energy generation, auxiliary consumption and net energy and appropriate Regulation Mechanisms for verifying the auxiliary consumption of CPP. The Respondent No. 1 being a Distribution Licensee must be aware of CEA (Installation and Operation of Meters) Regulations, 2006 as amended from time to time. Meters are installed at Generating stations at locations specified in these Regulations. Electrical Inspectorate collects electricity duty on dutiable consumption based on readings of these meters.
11. In order to arrive at norm of auxiliary consumption for Petitioner's captive power plant of 55MW (1x30MW+1x25MW), we should look at the relevant Regulations, namely MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. In these Regulations, it is observed that auxiliary consumption norms are given for 45MW series, 200MW series and for power plants of 300MW and above. Since 45MW series is closest to the capacity of Petitioner's captive generating plant of 55MW (1x30MW+1x25MW), therefore, it is appropriate that the normative auxiliary consumption applicable for 45MW series is also applied to Petitioner's captive generating plant. In case metered auxiliary consumption data is available and can be verified by the Discom or SLDC, then the actual auxiliary consumption should be considered for verification of CGP status. In case of non-availability of actual data of auxiliary consumption, normative auxiliary consumption as per Regulatory norms given above should be considered by the Distribution Licensee. The Commission makes it clear that for period FY 2023-24 and onwards, SLDC shall verify the Captive status of CGPs and Captive users as designated authority. For the period prior to FY 2023-24, as in the instant case, Respondent No.1 as a Distribution Licensee is directed to verify Captive status of CGPs. However, in cases where SLDC has already verified the Captive status for FY 2022-23, the same shall not be subject to review by Distribution

Licensees. The Commission further clarifies that in case Gross energy generation cannot be verified by the Discom, the gross energy generation reported by the Captive Generating plant in Format “G” shall be considered for verification of captive status.

12. After verification of Captive status of petitioner, Discom shall take immediate necessary steps to provide consequential rebate to the petitioner as per relevant clause of specific terms and conditions of tariff schedule HV-3 (Industrial) of applicable Retail Supply Tariff Order.

13. Discom is further directed to upload the name and contact details of Nodal person and details of concerned Department of Discom who are entrusted with the responsibilities for collecting and certifying the data for the purpose of verification of CPP status of Captive plant and users on its website within 7 days from the date of issue of this order.

With the aforesaid observations and directions, the subject petition is disposed of.

**(Prashant Chaturvedi)**  
**Member**

**(Gopal Srivastava)**  
**Member (Law)**

**(S. P. S. Parihar)**  
**Chairman**