



Madhya Pradesh Electricity Regulatory Commission

5th Floor, Metro Plaza, Arera Colony, Bittan Market, Bhopal 462 016

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Petition No. 94 of 2006

SUB: IN THE MATTER OF LAYING DEDICATED LINE FROM THE OLD CAPTIVE POWER PLANT OF M/S. SATNA CEMENT WORKS (A UNIT OF BIRLA CORPORATION LTD.) TO THE TECHNOLOGICAL UPGRADATION CUM EXPANSION PROJECT OF M/S. UNIVERSAL CABLES LTD.

M/s. Universal Cables Ltd., P.O. Birla Vikas, Satna – 485 005 V/s.	-	Petitioner
M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd., Block No. 7, Shakti Bhawan, Jabalpur – 482 008.	-	Respondent

ORDER

(As passed on this day of 18th October, 2006)

Shri P. L. Nene, Consultant and Shri Pankaj Kalani appear on behalf of the Petitioner
Shri S.K Shrivastava, Additional Engineer appears on behalf of M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd.

2. Petitioner submits that it is coming up with a technological upgradation cum expansion project for manufacturing of High Voltage Cables and for optimum economical functioning it requires uninterrupted and quality power supply. In this context petitioner proposed to avail power from the old Captive Power Plant of M/s. Satna Cement Works, which is adjacent to M/s. Universal Cables Ltd. and the power would be available from the old 5 MW Captive Power Plant. The petitioner submitted that the captive power plant however conforms to the requirement of the Electricity Act, 2003 and Electricity Rules, 2005 thereto. A letter of consent from M/s. Satna Cement Works for giving direct supply from their Captive Power Plant to the Petitioner by laying the dedicated power lines has been also attached and marked as Annexure I.

3. The petitioner further stated that the support of the Grid is not proposed to be taken, hence MPERC Open Access Regulations, 2005 is not applicable in this case and thus wheeling charges are not payable but the Petitioner is willing to pay the cross subsidy surcharge. Therefore the petitioner submits to the Commission that the arrangement for availing power from the Captive Power Plant as aforesaid may kindly be approved and the cross subsidy surcharge may be fixed.

4. Today, during the hearing, Respondent has submitted that the petitioner has already communicated the fact vide letter dated 18/07/2006 that petitioner is not the owner of the Captive Generating Plant u/s. 9 of the Electricity Act 2003. Respondent further submits that the case of the petitioner also does not fall under Open Access Regulations as the generating station of M/s. Satna Cement is not connected to the grid and distribution/ transmission lines of licensees shall not be involved in the process of taking electricity to the petitioners. This is a case of sale of power by a captive power producer to a third party. Therefore the Respondent prays to the Commission that the Petitioner may be directed to file an application before the Commission for determination of additional surcharge and cross subsidy surcharge and other charges. In the event of the petitioner choosing to undertake evacuation of power from generating unit of M/s. Satna Cement to the point of his use, then M/s. Satna Cement must seek a licence or exemption under section 13 of the Electricity Act, 2003.

5. During the course of hearing petitioner confirms that M/s. Satna Cement Works are using more than 51% of the power generated from their captive power plants. Shri P.L. Nene on behalf of the petitioner put forth the plea that petitioner is not required to have a licence under section 13 or 14 of the Electricity Act 2003. Petitioner has submitted a copy of the Electricity (Removal of Difficulty) Fifth Order 2005 wherein it has been provided that generating company or a person setting up a captive generating plant shall not be required to obtain licence under the Act for establishing, operating or maintaining a dedicated transmission line if such company or person complies with certain conditions.

6. Commission heard both the parties. Shri P.L. Nene reiterated during the course of hearing that as per the provisions of the Electricity Act 2003 and also in accordance with the subsequent clarifications issued by MoP on 08/06/2005, CPP will not require any license for supplying surplus available captive power after utilising 51% to M/s. Universal Cables Ltd., Satna through a dedicated line to be put up and maintained by the Generating Unit. Having gone through the case, Commission does not find any force in the plea of the petitioner. Commission is being guided by a decision in a similar case by Hon'ble Bombay High Court who have upheld this contention in w/p No. 882/05. In this case M/s. Bhushan Steels and Strips Ltd. wanted to sell the excess CPP power to a third party M/s. Vipras Casting Ltd. through their own dedicated line without any distribution licence. The Maharashtra Electricity Regulatory Commission held that no licence is required but Hon'ble Bombay High Court had set aside the order of MERC dated 3rd August 2004 and held that CPP cannot continue to sell its power to a consumer unless it obtains a licence from MERC. It is held in the petition that if the intention of the legislator was to give complete freedom to the CPPs to sell excess power, the legislators would have said so. If the CPPs do not require to have a licence to sell its excess power beyond 51% they will be outside the regulations contemplated under the Act. Such is clearly not the intention of the legislator. It is further held in the order that the rules of interpretation require that where the provisions are unambiguous, they must be read as they are. On the reason stated above, the order impugned by MERC is contrary to the provisions of the Statute and will have to be held as illegal and bad in law. In the circumstances, Hon'ble Bombay High Court set aside and declared that the respondent cannot continue to sell its power to the third party consumer unless it obtains a licence from MERC.

7. Against the decision of the Hon'ble High Court, Bombay the CPP appealed before the Supreme Court vide SLP No. 10081/2005. The Special Leave Petition was dismissed by the Hon'ble Supreme Court saying that there is absolutely no infirmity in the impugned Judgment.

8. On the reasons aforesaid, Commission decides that M/s. Universal Cable Ltd. may seek open access if they wish to source their requirement from a generating station other than the licensee of the area.

With the reasons aforesaid, Commission decides to close the case.

Ordered accordingly

Sd/-
(R.Natarajan)
Member (Econ.)

Sd/-
(D.Roybardhan)
Member (Engg.)

Sd/-
(P.K.Mehrotra)
Chairman