
MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

BHOPAL

Sub: In the matter of Non-compliance of Retail Supply Tariff Order by not allowing Rebate for Captive power plant consumers to the Petitioner as per clause (f) as specified in Specific Terms and Conditions of Tariff Schedule - HV - 3 Industrial, Non-Industrial and Shopping Malls.

ORDER

(Date of Order: 6th September' 2023)

M/s Birla Corporation Limited

- Petitioner

V/s

MP Poorv Kshetra Vidyut Vitran Co. Ltd. (East Discom) - Respondent

Shri Ajay Porwal, appeared on behalf of Petitioner.

Shri Prakash Upadhyay, Counsel and Shri Sunil Tripathi, DGM appeared on behalf of Respondent.

Subject petition is filed on non-compliance of Retail Supply Tariff Order by the respondent by not allowing Rebate for Captive Power Plant (CPP) consumers to the Petitioner as per clause (f) as specified in Specific Terms and Conditions for Tariff Schedule HV-3, Industrial, Non-Industrial and Shopping Malls of tariff order for FY 2021-22 and FY22-23. The brief facts in the matter as submitted by the petitioner are as under:-

- a) The petitioner is a registered Company under the provisions of Company Act 2013 having Cement manufacturing unit at District Satna. The petitioner established an onsite Thermal CPP in 2005 and the same was under operation at full capacity till Sept 2021. Petitioner is a EHT consumer of Respondent.
- b) Vide letter dated 06th October 2021, petitioner informed the respondent that it has reduced power generation from its CPP and has started drawing more power from Grid and therefore, requested to give benefit as per clause (f) of tariff schedule HV-3 from month of October 21.

- c) Since installation of thermal power plant, the generating plant was always a CPP with 100% capital investment by petitioner and 100% consumption by petitioner and it was confirming to the provisions of Rule 3(1) of the Electricity Rules 2005, and all along the period, respondent never objected to CPP status of petitioner.
- d) The petitioner had also submitted CA certificate dated 29/10/21 regarding 100% shareholding in Generator and 100% power consumption.
- e) In the instant petition, the petitioner requested the Commission to direct Respondent to refund the rebate amount along with interest at bank rate amounting of Rs 27 Crore failing which action may be taken by the Commission against respondent for non-compliance of the tariff order under section 142, 146 and 147 of the Act 2003. The petitioner has made following prayer in petition:-
- i. Admit the Present Petition;
 - ii. Calculation of Rebate on monthly basis;
 - iii. Direct Respondent to pay the amount as per Annexure P-10;
 - iv. Provide for other and further relief as the Commission in the facts and circumstances of the present case, may deem fit and proper.
2. At the motion hearing held on 06/06/23, after hearing the petitioner, the Commission admitted the petition and directed to respondent to submit response and serve the copy thereof, to the Petitioner simultaneously. The broad submissions made by the respondent are as under:-
- i. *That the Commission in exercise of its regulatory power has already framed Madhya Pradesh Electricity Regulatory Commission (Verification of Captive Generating plants and Captive users) Regulations, 2023 (G-45 of 2023) and the same has been notified vide gazette notification published on 17 March 2023.*
 - ii. *That, the Commission vide order dated 24th March 2023 in exercise of power conferred under regulation of 2023 has notified Chief engineer (SLDC) Madhya Pradesh Power Transmission Company Limited, Jabalpur as “designated authority” for the purpose of verification of captive user.*
 - iii. *That, the Commission has also laid down a detailed procedure for verification of captive generating plant vide order dated 13th June 2023.*
 - iv. *That, the grievance of the petitioner can be redressed by referring the matter to “designated authority’ under Regulation 2023 and if on verification it is found that the petitioner*

- qualifies under the captive user then the rebate as prescribed in special terms and conditions under Tariff Schedule – HV-3 in Retail Supply tariff order for FY 2021-2022. The petitioner will not suffer any loss as under clause (f)(ii) rebates shall be applicable from the date of request submitted by the consumer to the licensee.*
- v. *That, the answering respondent was not in position to process the request of petitioner as there was no clarity with respect to the verification of the captive status of a particular consumer or a class of consumer.*
- vi. *That, it is respectfully submitted that under Rules 3 of the Electricity Rules 2005, there is a requirement of determination of fulfilment of twin condition enumerated in Rule 3 on annual basis for every financial year, however the rules were silent regarding authority having jurisdiction to make such determination. The Hon'ble Appellate Tribunal for Electricity in appeal no 270/2006(Chhattisgarh State Power Distribution Company Limited vs. Shree J.P. Saboo, Urla Industries Association Limited &ors) has held that captive status of plant can be declared by State Commission and it has to take the responsibility of declaring the generating station as captive one and monitor on an annual basis, if it satisfies the criteria laid down in Rule 3 of the Electricity Rules , 2005*
- vii. *That, the similar view in Appeal no 116/2009 (Chhattisgarh State Power Distribution Company Limited Vs. Hira Ferro Alloys Ltd.) was taken by Hon'ble APTEL and it has been held that state Commission has jurisdiction to declare captive generating plant.*
- viii. *That, in order to extend the benefit of rebate the process of verification of captive status of petitioner was required to be undertaken and the answering respondent in the light of the order passed by the Appellate Tribunal for Electricity has made a request on 9/05/2022 to this Commission for providing guidelines for the purpose of verification.*
- ix. *That, the answering respondent with their all bona-fide are willing to extend the rebate that can be done only after verification of captive status by the designated authority under Regulation G-45 of 2023.*
- x. *Thus, the petitioner may be relegated to get the verification of captive status done from the designated authority that is Chief Engineer (SLDC) Madhya Pradesh Power Transmission Company Ltd. and after due verification the rebate will be extended from the date of request submitted by the consumer.*

3. At the hearing held on 18/07/23, petitioner informed that he has filed rejoinder on reply of respondent on 15.07.2023. The broad submissions made by the petitioner are as under:-

- i. *That the Chief Engineer, State Load Dispatch Centre (SLDC) has been notified as the designated authority as per said notification dated 17/03/2023 and notification cannot have retrospective effect. Hence only Respondent is responsible for the period prior to the notification for the purpose of verification of the Captive user.*
- ii. *The grievance of the petitioner in the petition is for the period of FY21-22 and FY22-23 and respondent is only trying to shift its responsibility on SLDC.*
- iii. *The verification as a CPP user for the period of FY21-22 is well within the jurisdiction of Respondent as CPP has been existing since the year 2005 and Respondent has treated this as CPP and has never raised any objection to its CPP status.*
- iv. *The respondent is only trying to delay/avoid passing on the benefit as per clause (f) of tariff schedule HIV-3 from Oct 21 onwards since Petitioner informed Respondent that it has reduced its power generation from its CPP and has started drawing more power from the grid.*
- v. *It is a lame excuse that there is no clarity regarding the verification of the CPP status of Petitioner. Petitioner has submitted many documents including a CA certificate proving the said generating plant is CPP.*
- vi. *Petitioner submits that Hon'ble commission has already given a Definition of a CPP with respect to own consumption versus sales mix under clauses 1.4 (c), (d), (e) and 1.5 of MPERC (Power Purchase and Other Matters with respect to Conventional Fuel based Captive Power Plants) Regulation, 2006 (G-30 OF 2006) dated 18th September 2006. The relevant part of said regulation is reproduced below: -*

1.4 In these Regulations, unless the context otherwise requires,

- (c) "Captive Power Plant (CPP)" shall have the meaning assigned to the term under clause 1.5 of these Regulations;*
- (d) "CPP Holder" shall mean an individual, company, or a body corporate being the owner of the Captive Power Plant*
- (e) "Captive User(s)" shall have the meaning assigned to the user under clause 1.5 of this Regulation;*

1.5 A power plant shall be identified as a Captive Power Plant only if it satisfies the conditions contained in clause 3 (1) (a) and 3 (1) (b) of the Electricity Rules, 2005 notified by the Ministry of Power, Government of India, on 8th June 2005, reproduced here for ready reference:

(1) No power plant shall qualify as a 'captive generating plant' under section 9 read with clause (8) of section 2 of the Act unless-

(a) in the case of a power plant-

- (i) not less than twenty-six percent of the ownership is held by the captive user(s), and
- (ii) not less than fifty-one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use.

Provided that in case of a power plant set up by a registered cooperative society, the conditions mentioned under paragraphs at (i) and (ii) above shall be satisfied collectively by the members of the cooperative society: Provided further that in case of association of persons, the captive user(s) shall hold not less than twenty-six percent of the ownership of the plant in aggregate and such captive user(s) shall consume not less than fifty-one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding ten percent;

(b) in case of a generating station owned by a company formed as a special purpose vehicle for such generating station, a unit or units of such generating station identified for captive use and not the entire generating station identified for captive use and not the entire generating station satisfy(s) the conditions contained in paragraphs (i) and (ii) of sub-clause (a) above including

Explanation: -

(1) The electricity required to be consumed by captive users shall be determined with reference to such generating unit or units in aggregate identified for captive use and not with reference to generating station as a whole; and (2) The equity shares to be held by the captive user (s) in the generating station shall not be less than twenty six percent of the proportionate of the equity of the company related to the generating unit or units identified as the captive generating plant.

(2) *It shall be the obligation of the captive users to ensure that the consumption by the Captive Users at the percentages mentioned in sub-clauses (a) and (b) of sub-rule (1) above is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company.*

Explanation: (1) For the purpose of this rule-

(a) *"Annual Basis" shall be determined based on a financial year:*

(b) *"Captive User" shall mean the end user of the electricity generated in a Captive Generating Plant and the term "Captive Use" shall be construed accordingly;*

(c) *"Ownership" in relation to a generating station or power plant set up by a company or any other body corporate shall mean the equity share capital with voting rights. In other cases ownership shall mean proprietary interest and control over the generating station or power plant;*

(d) *"Special Purpose Vehicle" shall mean a legal entity owning, operating and maintaining a generating station and with no other business or activity to be engaged in by the legal entity.*

vii. *If in any financial year, the conditions contained in the above mentioned Electricity Rules, 2005 are not satisfied by the Captive User(s), then as per clause 3 (2) of the Electricity Rules, 2005 (reproduced above), the entire electricity (generated from the captive power plant) consumed by Captive Users in the year shall be treated as if it is supply of electricity by a generating company and shall be liable to all charges re coverable from Open Access User. In such an eventuality, the Captive User shall have the right to represent before the Commission if he is not satisfied with the claim made by the Distribution Licensee.*

viii. *4.3 (under CHAPTER IV: OTHER MATTERS Stand-by support)
The following table presents the different types of transactions involving Captive Power Plants and its users and the applicability of stand-by support in each situation:*

<i>Part</i>	<i>CPP type/location</i>	<i>Supply arrangements of the CPP consumer</i>	<i>Stand-by support</i>
<i>B</i>	<i>CPP located in-premises</i>	<i>Contract Demand with Licensee only</i>	<i>Allowed</i>

ix. *Matters related to metering, meter reading and energy billing*

4.35 *CPP Holders/Captive Users involved either in sale of power to the Distribution Licensee of its area of supply or seeking Stand-by support from the Licensee shall be required to install at their premises, main and check Special Energy Meters capable of time differentiated measurements (15 mins.) of active and reactive energy. A request for stand-by support to eligible captive users as per these Regulations shall be entertained by the Licensee only after the captive user, has installed the required meters at their premises.*

4.36 *Meter reading, energy accounting and settlement of charges at the CPP interface point shall be the responsibility of the concerned Distribution Licensee in whose area of supply the CPP is located. In case of captive users contained in Part C of these regulations, the procedures for meter reading, energy accounting and settlement of charges, the entities involved and their individual responsibilities shall be as per the Balancing and Settlement Code.*

Power to remove difficulties

4.39 *If any difficulty arises in giving effect to any of the provisions of these regulations, the Commission may, by general or special order undertake steps or direct the licensees to undertake steps, which in the opinion of the Commission are necessary or expedient for the purpose of removing difficulties.*

4. At the hearing held on 08.08.2023, the Commission heard the arguments made by the parties and reserved the case for order.

Commission's Observations and Findings

5. The Commission has perused the submission made by the parties and observed following:

- i. The petitioner has been denied the rebate admissible under clause (f) of specific terms and conditions of HV- 3 tariff schedule in Retail Supply Tariff order for FY 2021-22 and FY 2022-23 by respondent Discom on the premise that respondent was not in a position to process the request of petitioner as there was no clarity with respect to the verification of

- the captive status of a particular consumer or class of consumers and jurisdiction of authority for verification of captive status.
- ii. The Respondent submitted that the Commission notified the MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023 on 17th March 23 and laid down detailed procedures vide order dated 13th June 2023 for verification of captive generating plants and captive users and accordingly the grievance of the petitioner can be redressed by referring to the matter to “Designated authority” under aforesaid Regulations. Respondent referred judgement of Hon’ble APTEL in Appeal No 270 of 2006 (Chhattisgarh State Power Distribution Company Limited Vs. Shree J.P. Saboo,Urla Industries Association Limited) whereby it was held that State Commission has to take the responsibility of declaring the generating plant as captive one and monitoring on annual basis, if it satisfies with the criteria laid down under Rule 3 of the Electricity Rules 2005. Respondent also referred another judgement of Hon’ble APTEL in Appeal No. 116 of 2009 (Chhattisgarh State Power Distribution Company Limited Vs. Hira Ferro Alloys Ltd.), wherein it was held that the State Commission has jurisdiction to declare captive generating plants.
 - iii. The respondent in its reply stated that he is willing to extend the rebate from the date of request made by the petitioner and that can be done only after verification of captive status of petitioner by the designated authority under the provisions of MPERC (Verification of Captive Generating Plant and Captive Users) Regulations, 2023.
 - iv. The petitioner in its rejoinder contended the respondent’s submission stating that verification as CPP user for period under FY2021-22 and FY2022-23 and before notification of relevant Regulations (G45/2023), is well within jurisdiction of Respondent as petitioner’s CPP has been existing since the year 2005 and that the respondent had never raised any objection to its captive status. Respondent’s submission in regard to verification of petitioner’s CPP status through “Chief Engineer, SLDC” as per provisions of MPERC (Verification of Captive Generating plants and Captive users) Regulations, 2023 is contested by the petitioner on the premise that the Regulations cannot be enforced in retrospective manner.
 - v. The petitioner stated that the Commission had notified the MPERC (Power purchase and other matters with respect to conventional fuel based captive power plants) Regulations 2006, wherein definition of a CPP with respect to own consumption V/s sales mix were

provided under Regulation 1.4 (c), (d), (e) and Regulation 1.5 of aforesaid Regulations. The said Regulations are referred in foregoing para 3 of this order.

6. The Commission observed that the respondent has relied upon previous judgment of Hon'ble APTEL in Appeal No. 270 of 2006 (Chhattisgarh State Power Distribution Company Limited Vs. Shree J.P. Saboo, Urla Industries Association Limited) and Appeal No. 116 of 2009 (Chhattisgarh State Power Distribution Company Limited Vs. Hira Ferro Alloys Ltd.) whereby it was held that State Commission has jurisdiction to declare Captive Generating Plant and Captive consumer status and has to take the responsibility of declaring the generating plant as captive one and monitoring on annual basis, if it satisfies with the criteria laid down under Rule 3 of the Electricity Rules 2005. Subsequently in a matter of dispute regarding procedure for verification of status of captive user(s) and captive Generating plant(s) located in Tamil Nadu, Hon'ble APTEL passed its judgment on 07th June 2021 in Appeal No 131 of 2020 (Tamil Nadu Power Producers Association V/s TNERC and Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO). In this judgement it was held that **“second Respondent/ TANGEDCO can be entrusted with the exercise of collecting and verifying data for the purpose of verification of captive plant status only. However, any coercive action to be initiated against the CGP /captive users regarding its captive status or for recovery of CSS, as per law, it shall be decided by the first Respondent / State Commission.”** It is pertinent to mention that at para 10.4 (I), (II) and 10.9 of aforesaid judgment, Hon'ble APTEL has already taken note of findings of its previous judgments in Appeal No 270 of 2006(Chhattisgarh State Power Distribution Company Limited vs. Shree J.P. Saboo Urla Industries Association Limited) and Appeal No. 116 of 2009 (Chhattisgarh State Power Distribution Company Limited Vs. Hira Ferro Alloys Ltd.) which were relied upon by the respondent in its submission in the instant petition.
7. It is observed that Hon'ble APTEL in its judgment in Appeal No 131 of 2020 (Tamil Nadu Power Producers Association V/s TNERC and Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO) has held that Respondent No. 2 (TANGEDCO) i.e. the Distribution licensee can be appointed for undertaking an exercise of collecting and verifying data for the purpose of verification of captive plant status in the State of Tamil Nadu without the powers to itself to take any coercive action against CGP / Captive user(s).
8. In the instant case, the Commission is of the considered view that the Respondent Discom has not exercised the responsibility of collecting and verifying the data for the purpose of verification of

CPP status of petitioner in accordance with criteria laid down in prevailing Rules and Regulations, although, the relevant documents were made available to the Discom by petitioner. The details of such documents are referred in petition by the petitioner such as i) “G” form (month wise details of Generation, Electricity duty paid and in-house(captive) use of generating plant); ii) month wise treasury receipt towards online payment of Electricity duty and, iii) CA certificate certifying petitioner’s ownership and its consumption and other undertakings by competent authority.

9. Further, the Commission has notified the Regulations namely MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023 on 17.03.23 wherein it specified the methodology for verification of status of Captive Generating Plants and Captive Users. It is well settled that the change in procedural law operates retrospectively unlike the Law relating to vested right i.e. substantive Law
10. In view of forging observations, the Commission deems it appropriate that respondent be entrusted with the responsibility to verify the CPP status of the petitioner. Accordingly, respondent is directed to verify the CPP status of petitioner and comply with the provisions of Retail supply tariff order for FY2021-22 and FY2022-23. The compliance be reported within one month from the date of this order.

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

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S. P. S. Parihar)
Chairman