

HARYANA ELECTRICITY REGULATORY COMMISSION
BAY No. 33-36, SECTOR - 4, PANCHKULA - 134 112, HARYANA
CASE NO. HERC / PRO - 4 OF 2009

Date of hearing: 17.12.2007

Date of Order : 18.08.2009

In the matter of representations dated 03.08.2007 & 08.08.2007 from Aura Resident's Welfare Association (RWA), Gurgaon, regarding charging of exorbitant electricity tariff from residents of M2K Aura Colony by the builder, M2K Infrastructure, Pvt. Ltd, New Delhi and representations dated 26.07.2007 from Sheetal Welfare Resident's Association (Regd.), Gurgaon, regarding inadequate distribution system of electricity in Sheetal Enclave, Mayfield Gardens, Gurgaon.

PRESENT:	Shri Bhaskar Chatterjee, Chairman, HERC Shri T.S. Tewatia, Member, HERC Shri Rohtash Dahiya, Member, HERC
On behalf of Resident's Welfare Association (RWA)	Shri Deepak Gulati, Member, RWA Dr. Ajay Singh, Treasurer, RWA Sh M.R. Singh, Member, RWA Cdr. Dharamvir Yadav, Member, RWA
On behalf of Sheetal International	Shri Manoj Verma, Electrical Engineer Shri Ajay Shokeen, Sr. Mkt. Manager
On behalf of DHBVNL	Shri Vijendra Kumar, managing Director Shri V.K. Singla, CE, Commercial Shri. M.K. Vashishit, CE, Operation, Delhi Shri A..Sami, SE/RA, Hisar

ORDER

The present order disposes of the matter brought before the Commission in the representations dated 03.08.2007 and 08.08.2007 by Aura Residents Welfare Association, Gurgaon against exorbitant electricity rates being charged from the builder M/s M2K Infrastructure Pvt. Ltd., New Delhi and the representation dated 26.07.2007 by Sheetal Residents Welfare Association, Gurgaon against erection of defective electrical distribution system by M/s Sheetal International Pvt, Ltd, New Delhi. The applicants have further prayed to the Commission for issuing directions to the colonizer for making adequate arrangements for power supply in the project areas.

The petition has been considered in the light of section 12, 13, 14 read with section 2(8), section 42 (1), section 62 (d), section 86(a) and general provisions of Section 53(a) of the Electricity Act, 2003 and Electricity Rules 2005 framed thereunder.

The applicants raised the following issues in their representations: -

1. It was brought before the Commission in the representations that Aura complex is a part of block 'A' of M/s May Field Projects, Sector 47, Gurgaon. It is alleged that their builder M/s M2K Infrastructure Pvt. Ltd, New Delhi had not taken any electricity connection from the licensee, DHBVNL for providing power supply to their colony. Instead, the builder was giving supply to the residents through its own gensets and was charging heavily from them @ Rs 10/- per unit through prepaid programmed meters. It was further alleged by the RWA that the builder was also charging additionally Rs. 123 per day from each resident through the prepaid metering.
2. Regarding Sheetal Enclave, it was complained that the distribution system of electricity laid by the colonizer M/s Sheetal International Pvt, Ltd, New Delhi in May Field Gardens (later known as May Field Projects), Gurgaon, is highly inadequate & defective and it was not as per approved norms; it was provided

haphazardly and was dangerous for the safety of the residents. The Residents Welfare Association sought directions from the Commission for builders to:

- a. Set up 66 kV substation for the exclusive use of Mayfield gardens.
- b. Improve the distribution system with fitment/ installation of required rated transformers, HT & LT panels, junction boxes and required electric feeder cables of approved specification/ design.
- c. Provide street lights on roads, open spaces and parks.

After examining the representations, notices were issued on 07.09.2007 to the builder M/s M2K Infrastructure to explain its position and to the distribution licensee M/s DHBVNL and Director Town and Country Planning (DTCP), Haryana to know the factual position and their response on the various issues.

The distribution licensee M/s DHBVNL through its reports dated 09.10.2007 and 14.12.2007 submitted that the electrification plan of the residential colony namely Sheetal Enclave, Gurgaon to be developed by M/s Sheetal International Pvt. Ltd. (later known as May Field Projects) had been approved by their Chief Engineer. Pending submission and execution of the revised electrification plan together with providing a 66 KV S/Stn in Sector 50, Gurgaon to be constructed by the developer, a load of 2.5 MVA for project as a whole was released on the request of the developer. The developer had also given a written undertaking to construct the above stated 66 KV grid S/Stn at their cost. It was further stated that total land of 2.25 acres required for grid S/Stn was yet to be handed over by the developer. Regarding the deficiencies in laying the distribution system in Sheetal Enclave, the licensee reported that the deficiencies existed and that shortcomings noticed in the system are being attended before release of electricity supply connections. The licensee further stated that the builder of the colony Aura Residential Complex, which is a part of the above project, had not applied for any single point connection and the distribution transformer for supply of power was also not installed by the builder. The builder had also not energized the electrical distribution system for M2K

Aura Colony and is supplying power from DG sets at a tariff higher than the applicable tariff.

The builder M/s M2K Infrastructure, New Delhi, in its reply received in the Commission's office on 10.10.2007 submitted that May Field Gardens is an Association of Persons (AOP) consisting of five companies. The answering company had developed the M2K Aura Complex under agreement with one of the companies in the AOP namely M/s Deorah Construction Pvt. Ltd. The company pleaded that under section 9 of Electricity Act, 2003, no license is necessary for captive consumption. It further pleaded that in view of the said law, sections 12, 13 & 14 of the Electricity Act, 2003 had no application with regard to the answering company and it prayed for the recall of notice issued to it. However, they prayed to the Commission to consider the matter afresh and to issue appropriate guidelines in the matter especially on the subject of captive power generation. The company also pleaded that the levy and recovery of charges from the consumers was being made according to the terms of 'floor buyer agreement' and 'tripartite maintenance agreement' entered by the company with the buyers of the flats. The answering company stated that since the power released by DHBVNL to M/s Sheetal International Pvt. Ltd. is not adequate for the requirements of the colony, the company is supplying entire power backup to the residents through captive power generation supply through their own DG sets.

After examining the reply of the parties, the Commission provided an opportunity of hearing to all the concerned parties before passing the instant order. The hearing was held in the office of the Commission at Panchkula on 17.12.2007. M/s Sheetal International Pvt. Ltd, New Delhi, DHBVNL and the applicant Residents Welfare Association were present in the hearing. After hearing all the concerned parties present, the Commission issued interim order dated 20.12.2007. The operating part of the interim order is as follows:-

1. M/s Sheetal International Pvt. Ltd. shall immediately approach DHBVNL, Hisar and apply for the release of additional load of 2 MVA for M2K Aura Complex and Blossom - 1 Complex, Gurgaon.
2. The company shall erect 11 KV feeder along with all the required switch gear from 66 KV S/Stn.Sector-38, Gurgaon to these colonies within one month.
3. The residents will be provided electricity connections from this system by DHBVNL immediately after the system is erected and commissioned.
4. A report in regard to the erection and commissioning of 11 KV feeder as above and electrification of Aura & Blossom-1 Complex shall be submitted by the company and DHBVNL to the Commission by 31.01.2008.
5. Prior to the erection and commissioning of the 66 KV sub-station, the company shall not add or commission any further load beyond the provision agreed as above by way of additional occupancy or otherwise in the project.
6. M/s Sheetal International Pvt. Ltd., New Delhi shall immediately arrange for providing adequate land for the 66 KV sub-station to DHBVNL/HVPNL. They will jointly work out the arrangement within one month, plan a time schedule for handing over possession and erection of the sub-station and submit a report to the Commission before 31.01.2008. Compliance as above shall also be reported by M/s Sheetal international Pvt. Ltd. by 31.01.2008.
7. M/s Sheetal International Pvt. Ltd. accepted existence of some deficiencies in the electrical distribution system of Sheetal Enclave of Mayfield Gardens, Gurgaon. They will rectify all the defects and erect LD system conforming to the standard design, specifications and the required safety norms.
8. The Resident's Welfare Associations of M2K Aura and Sheetal Enclave shall also submit a status report on the above points to the Commission by 31.01.2008.

Feedbacks on actions taken were received from M/s Sheetal International Pvt. Ltd, DHBVNL and the Residents Welfare Associations. The following actions taken have been reported by the parties so far:-

1. DHBVN approved an additional load of 2.5 MVA for the project. The 11 KV feeder for supply of electricity to the referred colonies was completed and the system had been commissioned for supplying additional load of 2.5 MVA.
2. The release of electricity connection by DHBVNL to the residents who applied for the same was in progress. Aura Resident Welfare Association confirmed that the power from the licensee had been provided in the colony.
3. M/s Sheetal International Pvt Ltd, Gurgaon had not handed over possession of adequate land for construction of 66 KV S/Stn and no further action was reported regarding the time schedule for handing over possession of land and erection of the S/Stn despite clear directions given by the Commission in this respect.
4. Regarding deficiencies in the distribution system in Sheetal Enclave, the licensee DHBVNL reported that the deficiencies had been attended by the colonizer. However, Sheetal Resident Welfare Association reported in their feedback that the defects still existed and are yet to be rectified and that the same could cause any untoward incident.

Subsequently, M/s Sheetal International Pvt. Ltd., New Delhi informed the Commission on 17.01.2008 that the company stands pooled together with 19 other companies, named in the reference, to form an AOP (Association of Persons), dated 05.08.1996 namely 'May Field Projects' to develop a colony namely May Field Garden. The company further submitted that since the whole project and its parts are the liability of all AOP members, M/s Sheetal International Pvt. Ltd., Gurgaon is not responsible for any acts and omissions of other constituent companies in relation to the order passed by the Commission, only on the basis of being the licensee company. In consideration of the above submission, the Commission made the position clear vide its communication to M/s Sheetal International Pvt. Ltd., Gurgaon by memo No. 3682-84/HERC/T-132 dated 20.02.2008 that agreement for joint development dated 05.08.1996 with other partners has no legal relevance to the Commission unless it is recognized by the licensing authority i.e. DTCP, Haryana and in the given

situation, the company being the licensee is liable to be held responsible before the Commission for any deficiency in electrical infrastructure as per the license condition.

Subsequently, through a communication to the Commission dated 15.7.2008, M/s Aura Residents Welfare Association expressed apprehension that the company had not commenced erection of 66 KV S/Stn, whereas the associate company M/s M2K Infrastructure Pvt. Ltd. had started construction of six new floor in the Aura Complex which will add to the existing power load without commissioning of 66 KV S/Stn. The Commission as a follow up measure, again directed M/s Sheetal International Pvt. Ltd. vide memo dated 21.01.2009, that prior to the erection and commissioning of 66 kV S/Stn., the company will not add or cause any further load beyond that agreed during the hearing, by way of additional occupancy or otherwise in the project.

The Commission has examined the case in the light of the relevant provisions of the statute and the instructions on the subject and given the benefit of hearing to all the concerned parties. To put the case in its correct perspective the Commission has relied on section 2(8) of Electricity Act, 2003 which defines Captive generating plant. Additionally, Section 9 of the Electricity Act has also been referred to which deals with the utilization of captive generation through dedicated transmission lines and open access facilities. It is observed that the above sections do not provide for distribution and sale of electricity without license from the captive plant as being carried out by the builder. While a license is not required for installing a captive generating set, no distribution of power can be made without obtaining a license from the commission. Relevant sections applicable for distribution licensing are Sections 12, 13 & 14 of EA 2003. Further, as per section 62 of the Act, the Commission is required to determine tariff applicable for the licensees. In this case, the builder is not using the captive generation for his own purposes but is resorting to distribution of electricity to the residents without a valid license and its sale at its own

determined rates which is clear contravention of section 12, read with section 62 of the Act. Thus the pleas taken by the builder in its submissions do not find any support from Electricity Act, 2003.

Consequently, the Commission orders that: -

1. M/s M2K Infrastructure Pvt. Ltd., New Delhi has not obtained any license from the commission for distribution of electricity. Therefore, under section 12 of Electricity Act, 2003, the company is not authorized to distribute any power to the residents from its own generators, captive gensets or otherwise and collect charges from the consumers till it qualifies for grant of distribution license and the same is granted to them by the Commission and tariff approved from the Commission.

2. Section 2(8) of the Act defines captive generating plant as, “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”. After hearing the parties it is evident that the gensets through which electricity is being supplied is not owned by the society or association.

In addition to the above Rule 3 (Requirements of captive generating plant) of the rules notified by the Ministry of Power, Government of India vide notification dated 8/06/2005 provides as under:-

(1) No power plant shall qualify as a ‘Captive Power Plant’ under section 9 read with clause (8) of Section 2 of the Act unless:-

- 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 captive use". Resultantly, the instant case does not qualify as captive power plant. It is a clear case of supplying / distributing power to the retail customer within the licensed area of supply of DHBVNL wherein licensing and tariff determination falls entirely within the jurisdiction of the Haryana Electricity Regulatory Commission. Therefore, this practice is in violation of the Electricity Act 2003 and Electricity Rules dated 8/06/2009 framed thereunder. Resultantly it should be discontinued without any further loss of time. The residents / flat owners, of the colony are at liberty to constitute a body/association of their own and run generating sets for their own consumption during the interim period till their demands for power are met with by the distribution licensee of the area i.e DHBVNL.

3. The Commission has taken serious note of the violation of its interim order and directs that no new premises/ flats shall be offered for occupation to the residents/ allottees in the May Field Projects without arranging for electricity connection from the existing distribution licensee.
4. M/s Sheetal International Pvt. Ltd. and DHBVNL shall ensure that all the deficiencies in the electrical distribution system of Sheetal Enclave of May Field Garden, Gurgaon are fully removed by the colonizer. The above exercise should be completed within six months from the date of issue of this order. Further, the developer shall erect LD system in all the residential areas of May Field Gardens with required rating transformers and associated equipments conforming to the standard designs, specifications and required safety norms as per the prevalent Indian Electricity Rules and obtain approval from appropriate authority (ies), before energization.
5. M/s Sheetal International Pvt. Ltd., New Delhi shall fulfill all its commitments as per their undertaking dated 14-12-2006, for providing required land for 66 kv S/Stn to the concerned power utility and for the erection of 66 kV S/Stn as per the load requirements of May Field Projects. The company shall hand over the

said land for the substation and deposit the share amount to HVPNL within three months. HVPNL shall complete the construction of the substation within one year thereafter.

6. DHBVNL shall provide electricity connection to all the residents of the colony who have since occupied the premises and applied for electricity connection as per the provisions of Regulation No. HERC/12/2005 dated 26th July, 2005.
7. The Commission observes that different agencies are working in the field of urban development and providing services to the plot/ flat owners in Haryana. The Commission is of considered view that a coordinated effort of all the concerned agencies are required In order to streamline the activities so as to ensure better service to the consumer. Consequently, DHBVNL is directed to take up the issue with Director, Town and Country Planning (DTCP) to make adequate provisions in the licenses issued to the developers to ensure providing matching electrical transmission and distribution infrastructure by the developer commensurate with load requirements of the project in a time bound manner. DTCP may also send copies of the licenses issued by them to the concerned power utilities for making necessary provisions in their plans.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 18th August, 2009.

Date: August 18, 2009.
Place: Panchkula.

Rohtash Dahiya
(Member)

T.S. Tewatia
(Member)

Bhaskar Chatterjee
(Chairman)