

**HARYANA ELECTRICITY REGULATORY COMMISSION**  
**BAYS NO. 33-36, SECTOR-4, PANCHKULA – 134 109, HARYANA**  
**CASE No. HERC/PRO-4 of 2007**

**DATE OF HEARING: 11.08.2009**

**DATE OF ORDER: 22.10.2009**

**In the matter of:**

**Power supply to Malibu Township, Gurgaon**

**Present:**

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|   | <ol style="list-style-type: none"><li>1. Sh. Bhaskar Charterjee, Chairman, HERC</li><li>2. Sh. T.S. Tewatia, Member, HERC</li><li>3. Sh. Rohtash Dahiya, Member, HERC</li></ol> |
| <b>On behalf of Malibu Estate Pvt. Ltd. (MEPL)</b>  | <ol style="list-style-type: none"><li>1. Sh. Sandeep Mehta, Advocate</li><li>2. Sh. Jeevan Lal Sharma</li><li>3. Sh. Sanjay Bhargav</li></ol>                                   |
| <b>On behalf of Distribution Licensee (DHBVNL)</b>  | <ol style="list-style-type: none"><li>1. Sh. Abdul Sami, SE/RA, Hisar</li><li>2. Sh. V.K. Aggarwal, XEN City, Division Gurgaon</li></ol>  |
| <b>On behalf of Malibu Condominium Residents Welfare Association (MCRWA) and other applicants</b> | No appearance was made by the representatives of the petitioners i.e. MCRWA and other applicants of the township namely Sh. Ajay Goel and Sh. Rajesh Kumar                      |

**ORDER**

The present order disposes of the matter brought before the Commission in the representations dated 04.04.2007, 25.05.2007 and 06.10.2008 from Malibu Condominium Residents Welfare Association (MCRWA), Gurgaon regarding their grievances in the matter of supply of electricity at Malibu Condominium apartments in Malibu Towne and recovery of charges by the service provider M/s Malibu Estate Pvt. Ltd. (MEPL). Separately representations in this regard were also received, dated 19-05-2008/ 05.06.2008, 02-09-2008 and 20.10.2008 from Sh. Ajay Goel, and dated 25.03.2009 from Sh. Rajesh Kumar, individual residents of the Malibu Towne, Gurgaon.

Broadly the following issues relating to supply of electricity emerge from the representations made by the applicants:-

1. That the service provider M/s Malibu Estate Pvt. Ltd. (MEPL) procures power from DHBVNL at 11 KV through bulk supply connection and further supplies the same to the residents allegedly at higher rate than the applicable domestic tariff determined by the Commission for DHBVNL.
2. That M/s MEPL is giving back up supply through its own generating sets to the residents as well as for common services. It is alleged by the residents that the service provider is charging higher rate for this backup supply and not reducing the charges even after reduction in diesel prices on 06.12.2008 and 29.01.2009.
3. That meters are installed in the premises of the residents after payment of Rs. 14000/- as connection fee to the service provider which is not payable as the electrical facilities were paid fully by the owners of the condominiums. The electricity bills issued by the service provider are erroneous in many cases and they threaten the residents with disconnection of their electric supply if the bills are not paid in time.
4. That M/s MEPL does not have a license to sell electricity in Haryana and has been unable to provide a legal basis of distribution of power to Malibu Condominium residents. In the absence of that, the company has no legal basis for distribution of power to residents of Malibu condominiums. Hence the applicants have requested the service provider to obtain a license to regularize and legitimize its electricity distribution activities. However, the company has not taken any action on their request.
5. The Malibu Condominium's complex has 89.90% occupancy and the service provider is avoiding transferring the connection and handing over the

maintenance responsibility of the complex to the Residents Welfare Association.

The applicants have prayed for restraining the service provider from illegal distribution of electricity in the Malibu condominiums, recovery of charges for the same at its own determined rates and from disconnecting the supply of the residents. They have further prayed for appropriate relief in the shape of legalization of distribution of power supply to their condominiums at the Commission's approved tariff and other applicable charges and for ordering appropriate action against the service provider.

Before proceeding further in the case, the Commission thought it appropriate to seek a detailed report from the distribution licensee of the area i.e. DHBVNL. Consequently, the representations were forwarded to the distribution licensee for providing all the relevant details. A notice dated 12.11.2008 was also issued to M/s MEPL to explain its position on different allegations mentioned in the petitions.

M/s DHBVNL through its report dated 11.02.2009, informed that a bulk supply connection having Account No. BS-5 was released for a load of 1269 KW with a contract demand of 1410 KVA. Additionally DHBVNL provided details of the applicable bulk domestic tariff as well as electricity duty, Municipal Tax and FSA. However, the licensee could not provide complete details related to the status at site as sought by the Commission.

The service provider M/s MEPL, New Delhi in its reply dated 10.12.2008 submitted that they have obtained bulk domestic supply connection for supply of electricity to the individual flats and common area of their group housing complex of 11.89 acres without mentioning the number of flats/ apartments to whom the power procured from DHBVNL is distributed. They further stated that genset supply for power backup and essential services like lifts, common areas, fire pumps etc was also provided. M/s MEPL submitted that since the genset supply was being made available on no profit basis, they were not into the trading of electricity and

therefore refuted the contention that they were violating section 12 of Electricity Act, 2003. The respondent further stated that the rate being recovered for back up supply was as per written consent of the Association. Regarding supply from the grid of the licensee, the company pleaded that rates being recovered were in accordance with the tariff of the licensee after taking into consideration the line losses. To strengthen their argument, it was pointed out that this rate was also fixed with the consent of the said Association. They stated that a dual energy meter has been provided in each apartment to record power supplies from separate sources. With regard to the other charges, the company submitted that this is a onetime cost of dual energy meter and cable etc and that apart from this no other charges are being recovered from the residents. The respondent made a reference to their application dated 12.05.2001 submitted to the Commission for issue of exemption under section 16 of HERC Act for being able to redistribute electricity to the consumers in the complex. The respondent further stated that their application was favorably disposed by the Commission in terms of its order dated 22.05.2001 in the case No. HERC/PRO-4 of 2001 and Commission's memo No. 3370/HERC/T- dated 02.08.2001. Regarding transfer of connection to the society / Association, it was pleaded that since the applicant Association is registered under the Society Act and not under Haryana Apartment Ownership Act 1983, they are not legally entitled to take over the responsibility of electricity supply in the township. The developer also submitted that the said Association did not have majority as it had only 80-85 members out of a total strength of the residents of 316.

Before passing the instant order, the Commission afforded an opportunity of hearing to all the concerned parties. The hearing was held in the office of Commission at Panchkula on 11.08.2009. Representatives of M/s MEPL and DHBVNL were present in the hearing. However, no one attended on behalf of the applicants despite issuance of a notice well in advance. The Commission decided to proceed with the hearing as enough details were already available on the file and due opportunities have been provided to all the concerned parties. Since various applications from the petitioner with details of their grievances have already been

received and examined by the Commission, it was felt that even at the time of hearing their absence is not going to jeopardize their case.

During the hearing, the respondents were given full opportunity to explain all the points and also present their defense on the allegations leveled against them. Elaborating the submissions already made in their reply, M/s MEPL pleaded that they were not making any profit out of supply of electricity to the residents. On the contrary, they are maintaining an essential service and they have the right to recover their costs. Regarding DHBVNL grid supply, the respondent stated that it was being supplied to the residents at the rate of the distribution licensee after taking into account, the line losses for which the said Association had allowed an addition of only 6 paise/ unit over and above the DHBVNL supply rate of Rs. 4.11 paise/ unit. They submitted that the power backup supply from gensets is provided to the residents on no profit basis as per calculations done by the Association of residents as per actual consumption of diesel and the number of units generated. They stated that they had already submitted an application to the Commission for allowing them redistribution of supply and they understand that the said application has been disposed of in their favor in terms of Commission's order dated 22.05.2001 letter dated 02.08.2001 as mentioned in their reply.

Representatives of DHBVNL did not throw much light on the claims and counter claims of the applicants and the respondent. They also could not present any factual position of the present status at site.

The Commission has examined all the documents put up by the parties and also the oral submission made during the hearing. After detailed deliberations the Commission was of the opinion that before recording views on the merits of the case, it would be appropriate to get to know the current status of supply of power to Malibu Town on which not much information was supplied by DHBVNL in their earlier report. Consequently, the Commission in its order dated 12.08.2009 directed Sh. V.K. Aggarwal, XEN City Division DHBVNL, Gurgaon who was present in the hearing

to visit the site and submit a status report latest by 17.08.2009 on the issues mentioned below:-

1. Occupancy status of the township.
2. Details of connections released (including number, nature and voltage of supply) to the residents/ service provider (MEPL) in the township.
3. Connected Load in respect of the above.
4. Tariff (including charges, if any) at which bills are issued by DHBVNL (attach copy of the latest bills)

In response, DHBVNL submitted its report vide memo No. Ch-170/SE/RA-282/Vol IV dated 13.08.2009. In their report it was mentioned that, a scheme for a load of 6.4 MVA for the group housing society complex on 11.89 acres land was sanctioned by the Chief Engineer of the licensee. Five towers with 316 flats have already been constructed at site. One more tower is still under construction / completion. DHBVNL has given a bulk supply connection in the name of M/s Malibu Towne, with a load of 1269 KW with contract demand 1410 KVA during July, 2005. Out of 316 flats in five towers, 285 connections have since been released by M/s Malibu Towne and 216 families are residing at present. The builders have also provided one 750 KVA and two 500 KVA generating sets as standby source in the event of failure of DHBVNL power. The connections have been released by providing dual facility meters for recording DHBVNL consumption and DG sets consumption separately. DHBVNL is charging bulk supply tariff @ Rs. 4.11 per unit from MEPL. It was reported that MEPL is charging DHBVNL power @ Rs. 4.17 per unit and DG sets power @ Rs. 10.5 per unit from the residents.

Subsequently M/s MEPL, New Delhi also made a submission vide their memo no. MEPL/Admn/09/10 dated 12.08.2009 received in the office of the Commission on 25.08.2009 reiterating their earlier position. They emphasized that there is always an outstanding payment of Rs. 15-18 lacs from the residents whereas developer has to clear the bills of DHBVNL and also in addition spend Rs. 2-3 lacs

every month for common areas. The company further pleaded that they were unable to hand over the electricity connections to the Association because of the circular issued by HUDA vide No. 5656 dated 23.11.2004. However, they neither elaborated nor enclosed the said circular. They also tried to justify the onetime charges being recovered from the residents on account of the cost of cables and meters etc stating that the cost of secure meter itself works out to be Rs. 8840/-.

The Commission has considered all the evidence both oral and in writing including the report submitted by DHBVNL dated 13/08/2008 on the basis of site visit by XEN, Gurgaon. While examining the case and arriving at any decision, the Commission has referred to sections 12, 13 and 14 of the Electricity Act, 2003 related to distribution licensing and section 62 (1) (a) and 60 (1) (d) of the Electricity Act, 2003 under which the Commission is required to determine tariff applicable for the licensees for distribution/ retail sale of electricity in Haryana. The Commission has also relied on section 2 (8) of the Electricity Act, 2003 which defines captive generating plant and section 9 which deals with utilization of captive power through dedicated transmission lines and open access facilities. The Commission observes that the Electricity Act, 2003 does not provide for distribution/ redistribution and sale of electricity without obtaining a license / franchisee from the competent authority. In the instant case, the service provider is not using the bulk supply power received from the licensee and the power from their genset for own purposes; but is resorting to its distribution/ retail sale to the residents without obtaining a valid license. This is clear contravention of section 12, read with section 62 of the Act. Thus, the pleas taken by the respondent in its submissions do not find any support from Electricity Act, 2003. The Commission has also gone through its order dated 22.05.2001 and its memo dated 02.08.2001 and finds that the interpretation of the respondent that the above documents favorably dispose of its application to receive and redistribute energy in the selected command area namely Malibu Condominiums, is misplaced. The said order broadly deals with the entitlement of the group housing societies / multi storey buildings option to go in for a single point connections for the flats collectively while retaining the right of the individual flat owner to have independent

connection from the licensee. The operative part of the HERC order dated 22.05.2001 is reproduced below:-

It is hereby ordered that HVPNL shall provide individual connection to the flat owners of group housing society / multi stories building etc, if they individually apply for such connections subject to fulfillment of the other conditions. The group housing society / multi storey buildings shall have the option to go in for a single point connection for the supply of power to the flats collectively. However, in such a case they will require an exemption from obtaining a license under Section 16 of the Haryana Reform Act, 1997.

It would thus be evident that the order in no way entitles the respondent to redistribute electricity to the residents of township. The Commission's letter dated 02.08.2001 is only to inform the respondent with reference to its application of dated 12.05.2001 that the Commission has pronounced an order dated 22.05.2001 regarding the release of connection to cooperative group housing societies and further informing that the said application of the licensee is deemed to have been disposed of accordingly. As is clear from above, the interpretation of the respondent that the above order of HERC or the referred memo favorably disposes of its application for exemption under Section 16 of HERC's Act or redistribution of energy is totally misplaced.

The plea taken by the respondent that the connection could not be transferred to MCRWA as it was not constituted under Apartment ownership Act and as such was not legally authorized for electricity connection, also does not find support from Electricity Act, 2003 which does not specify the precondition of a society to be registered under the Apartment Ownership Act, for obtaining electricity connection from the licensee. The Commission finds it strange that on the one hand the developer does not want to recognize the Society of flat owners since it was not registered under the Apartment Ownership Act, on the other hand it is referring to the

consent obtained from the said Society for all the acts relating to supply of power which are contrary to Electricity Act of 2003. The apparent contradiction in the argument of the developer makes its plea totally unconvincing and unacceptable.

1. In view of the discussion in the preceding paragraphs the Commission orders that M/s Malibu Estate Pvt. Ltd., New Delhi is not authorized to distribute / redistribute or engage in retail sale / supply of power to the residents from its bulk domestic supply connection, own generators, captive gensets or otherwise and to collect charges from the consumers without obtaining license for distribution of electricity and getting the tariff approved from the Commission. This is supported by Section 12 to 14 of the Electricity Act, 2003.
2. Further, 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.”

It is evident that the gensets through which backup electricity is being supplied are not owned by the Society or Association of the flat owners. Resultantly, it is a clear case of supplying/ distributing power to retail customers within the licensed area of DHBVNL wherein licensing and tariff determination falls entirely within the jurisdiction of Haryana Electricity Regulatory commission. Therefore, this practice is in violation of the Electricity Act, 2003 and rules dated 8/06/2005 framed there under and 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 operate generating sets for their own consumption.

3. As per admitted facts on record a single point bulk domestic supply connection has been released by DHBVNL. Hence, the Commission orders that the service

provider should take steps as soon as possible but not later than 2 months from the date of issue of this order to get the connection transferred to the Association or to the residents in terms of the order of the Commission dated 22.05.2001 and instructions issued by DHBVNL in this regard. The Association / residents will directly make payments to the distribution licensee at the tariff and charges including FSA determined by the Commission from time to time.

4. DHBVNL shall provide electricity connection to all the residents of the colony who occupy the premises and apply for electricity connection, as per the provisions of Regulation No. HERC/12/2005 dated 26<sup>th</sup> July, 2005 and recover applicable charges in accordance with the said Regulation. The Commission has also taken note of the alleged threat given by the developer for disconnection of service for non - payment of dues to them. The Commission makes it very clear at this stage that during the transition period of handing over responsibility to the Society / association of the residents, the developer is debarred from disconnecting any of the services thereby causing disruption to the essential service and causing inconvenience to the residents.
5. Regarding onetime payment already recovered by the service provider for cable and meter charges etc, the Commission is not passing any order or expressing its views as M/s MEPL is not a licensee of the Commission for distribution of electricity in the township. However, in case the flat owners feel aggrieved about recovery of charges in excess of sale contract by the service provider, they may seek remedy at appropriate forum.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 22<sup>nd</sup> October, 2009.

Date: 22<sup>nd</sup> October, 2009  
Place: Panchkula

Rohtash Dahiya  
Member

T.S. Tewatia  
Member

Bhaskar Chatterjee  
Chairman