

HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134113, HARYANA

CASE NO. HERC/PRO – 5 of 2010

DATE OF HEARING: 23.06.2010
DATE OF ORDER : 02/08/2010

IN THE MATTER OF: Status of the supply of electricity by Maruti Suzuki India Limited within its own premises to the ancillary units.

Parties:

1. M/s Maruti Suzuki India Ltd. Maruti Suzuki India Ltd. Plot No. 1, Nelson Mandela Marg, Vasant Kunj, New Delhi- 110070

Petitioner/Applicant

2. Chief Electrical Inspector, Haryana SCO 85-86, Sector 18-D, Chandigarh (Respondent – 1)
3. Managing Director, Dakshin Haryana Bijili Vitran Nigam, Vidyut Nagar, Vidyut Sadan, Hisar, Haryana (Respondent – 2)

Present:

- | | |
|----------------------------|----------|
| 1. Shri Bhaskar Chatterjee | Chairman |
| 2. Shri Rohtash Dahiya | Member |

On behalf of the Applicant/ Petitioner

1. Sh. M.G. Ramachandran, Advocate
2. Sh. Rakesh Aggarwal, Advocate

On behalf of Respondents:

Respondent No. 1.

1. Sh. A.K. Jain, Chief Electrical Inspector to Govt. Haryana,
2. Sh. K.K. Kakkar, Executive Engineer Office of Chief Electrical Inspector to Govt. Haryana
3. Smt. Shalani Attri, Dy. Advocate General, Haryana

Respondent No. 2

1. Sh. C.K. Sharma CGM, Commercial, DHBVNL, Hisar

ORDER

Brief background of the case leading to the appeal:

The respondent Chief Electrical Inspector vide memo No. 2851/CC dated 10.04.2009 had conveyed to the petitioner M/s Maruti Suzuki India Ltd regarding distribution of electricity from their Captive Power Plant (CPP) to consumers other than captive users that the matter has been considered by the State Government and it has been held that supply and sale of electricity to other consumers is not permissible under Indian Electricity Act, 2003. Consequently, the Chief Electrical Inspector directed the petitioner company to either take distribution license under section 12 or seek exemption under section 13 of the Electricity Act, 2003. He further directed the company i.e. M/s Maruti Suzuki India Ltd. that till the license is obtained by them from Haryana Electricity Regulatory Commission (HERC) they must stop supplying power to other consumers in violation of the Act. In case of any doubt the clarification may be sought by the company from HERC.

Aggrieved by the above observations / directions of Chief Electrical Inspector M/s Maruti Suzuki India Ltd. Plot No. 1, Nelson Mandela Marg, Vasant Kunj, New Delhi- 110070 through its counsels Sh. Anand K. Ganeshan, Mr. Pulkit Aggarwal and Sh. Rakesh Aggarwal approached HERC seeking clarification and appropriate orders.

The petitioner has submitted as under:

1. M/s Maruti Suzuki India Limited is a Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Plot No. 1, Nelson Mandela Marg, Vasant Kunj, New Delhi -110070. They are engaged in the business of manufacture and sale of passenger vehicles under the brand name 'Maruti – Suzuki'. They have manufacturing facilities at Palam – Gurgaon Road, Plot No. 1 and in Phase 3A, IMT Manesar, 122051 (Haryana). They have been allotted by the Haryana State Industrial Infrastructural Development Corporation Limited (hereinafter referred to as 'HSIIDC') industrial plots measuring about 600 acres in IMT Manesar, Haryana for setting up a project for manufacture of passenger cars. In the industrial plots the petitioner has established the following facilities, all of which are related to the manufacture of passenger cars:
 - (a) Manufacture of various models of cars;
 - (b) Promotion of ancillary units to supply components, engines/castings parts, equipment etc required in the manufacture of passenger cars by the petitioner.

2. The petitioner has further submitted that the entire industrial plot measuring 600 acres has been developed for use by them at their own cost including infrastructure facilities i.e. roads, water supply, electric lines and systems and sewage. The petitioner has allowed other persons to establish ancillary units within the industrial plots for the purpose of developing components, parts and equipment for the use by the petitioner in the manufacture of passenger cars. The petitioner provides the infrastructure facilities to such ancillary units within the industrial plot.
3. For the purpose of facilitating its business, the petitioner company has established a fully owned Captive Power Plant of 46 MW present capacity at the industrial plot primarily for their own captive use. They consume more than 51% of the total electricity generated at the Plant. The petitioner is, therefore, a captive user of the electricity generated at the Plant within the meaning of Section 2 (8) read with Section 9 of the Electricity Act, 2003 and the Electricity Rules, 2005 notified by the Central Government.
4. Apart from supplying electricity for its own use, the petitioner is also supplying electricity to the ancillary units located within their premises. The said electricity is supplied by them to the ancillary units through the electricity supply lines laid down by them within its own premises. There is no public street or any area belonging to any other person through which the electricity supply lines laid down by them passes through and the entire lines are wholly within the premises of the petitioner.

The supply of electricity by the petitioner to the ancillary units is permitted under Section 9 of the Electricity Act, 2003. Sub Section (1) of Section 9 together with the proviso, inter alia, reads as under:-

“ 9 Captive Generation:-

- (1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:

Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

5. In accordance with the above the petitioner is entitled to provide electricity from the Captive Power Plant to the ancillary units which have been established within their premises. Hence, no license is required for supply of electricity by the petitioner to the ancillary units which are situated within the premises of the Applicant. As they are not engaged in the activities of a Distribution Licensee within the meaning of Section 12 of the Electricity Act, 2003 and they have not established any distribution system outside their own premises to supply electricity over public streets which may not require any license to be taken under the Electricity Act, 2003.

6. The petitioner submitted that the Hon'ble Appellate Tribunal of Electricity in the case of **Malwa Industries Limited v Punjab State Electricity Regulatory Commission 2007 ELR (APTEL) 1631** had considered a similar issue of Captive Power Plant supplying electricity within its industrial complex and approved the same. Para 26 of the judgment of the Appellate Tribunal read as under:

“_26. It was submitted by the respondents that the word ‘supply’ occurring in second proviso to Section 9 means sale to a licensee or a consumer as per Section 2 (70) of the Act of 2003 and not transmission or distribution for which license is required. We do not find any force in the argument. Sale cannot be complete without transfer of the item sold. In other words, sale comprehends transfer of property in goods, which in the case of power can be achieved only by transmission of energy to the consumer or licensee. The purpose of the amendment would be frustrated in case it is held that the owner of a captive power plant would be require to take out a license for delivery of electricity to the licensee or a consumer. The whole object of the amendment is that every unit of electricity should be usefully employed and not wasted. There are endemic power shortages in the country and the entrepreneurs need to be encouraged to set up generating stations. The amendment is to facilitate supply of electricity by the captive plants. In case restrictions are read into the second proviso to Section 9(1) of the Act, 2003, as inserted by Act No. 26 of 2007, it will be difficult to attract investment in the sector.

7. Additionally it was submitted by the petitioner that the supply of electricity by them to the ancillary units will also not be subject to payment of any cross-subsidy charges under Section 42 (2) of the Electricity Act, 2003 as the petitioner will not be using any part of the grid to effect supply of such electricity. In any event, in the State of Haryana as of date there is no element of cross subsidy surcharge on the supply of electricity by any generating station including a Captive Power Plant to any person or a consumer.
8. In the present case, since no part of the lines of the licensee is used by the petitioner, payment of open access / wheeling charges does not apply. With regard to payment of cross subsidy surcharge, the applicant has always been and it willing to and undertakes to pay such charges as applicable and determined by HERC.
9. The petitioner has recently received a communication dated 10.4.2009 from the Chief Electrical Inspector, Respondent No. 1 directing as under:

*“ Sub: Distribution of supply at Manesar Plant:
This has reference to our discussions held on 19.2.2009 regarding supply of electricity from your Captive Power Plant to consumers other than captive user. The matter has been considered by the State Government and it is observed that supply to other consumers is not permissible under Indian Electricity Act, 2003. You are required to take distribution license under Section 12 or seek exemption under Section 13 of the Act. Till license is obtained by you from HERC, you are advised to stop supplying power to other consumers as it is in violation of the Act. In case of any doubts you may seek clarification from HERC.”*

10. The petitioner submits that the above communication of the Chief Electrical Inspector holding that the petitioner is required to take Distribution License under Section 12 of the Electricity Act, 2003 as a pre-condition for supplying electricity to the ancillary units is contrary to the provisions of the Electricity Act, 2003

11. In the light of the above submissions the petitioner has prayed that the Commission may be pleased to declare that the petitioner does not require any license to lay down and operate electricity lines within its own premises. It was further prayed that the Commission may further be pleased to direct the Respondents not to take any coercive action in pursuance of the letter dated 10th April, 2009 during the pendency of the present application.

The Commission examined the petition filed by M/s Maruti Suzuki India Ltd. and sought reply to the issues raised therein from the respondents within two weeks time. The Chief Electrical Inspector to Govt. Haryana as well as the second respondent DHBVNL submitted detailed reply which is presented in brief here under:-

Chief Electrical Inspector's Reply:

The Chief Electrical Inspector vide memo no. 5767 dated 5/08/2009 submitted that the 600 acres industrial plot has not been allotted by HSIDC to different ancillary units which are separate legal / commercial entities as distinct from M/s Maruti Suzuki India Limited (hereinafter referred to as MSIL). These ancillary units are supplying various components/parts for manufacturing cars to MSIL as well as outside firms also. MSIL has allowed other persons/companies to establish their units in the said industrial plot for manufacturing components/parts of the passenger cars which are not exclusively being supplied to MSIL but outside firms also. MSIL is providing infrastructure facilities to these ancillary units on payment basis. The electricity is being sold to these ancillary units at the rates mutually agreed between MSIL and ancillary units without the knowledge of DHBVNL, the distribution licensee of the area and HERC.

MSIL has established a generating plant of 46 MW. Another 20 MW is in the process of being installed to meet the requirements of ancillary units. The entire ownership of the generating plant is with MSIL.

Section 2 (8) of Indian Electricity Act, 2003 (hereinafter referred as Act) reads as under:-

“Captive generating plant” means 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 e society or association.”

In this case the CPP is wholly owned by MSIL and not by any co-operative society or association of persons. However, electricity generated therein is used by the owner as well as sold to other factories also. Thus, MSIL is not exclusive captive user of the electricity and is not covered within the meaning of CPP as defined in section 2 (8) above.

Para 3 of Section 9 of the Act reads as under:-

‘ Provided further that no license shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made there under and to any consumer subject to the regulations made under sub-section (2) of Section 42.’

In the case of MSIL electricity is being sold to other factories which are not covered under sub-section 2 of section 42 of the Act. Section 3 “ Requirements of captive generating plants” of Electricity Rules, 2005 states that no power plant shall qualify as a captive generating plant unless not less than 26% of the ownership is held by captive user. In case of MSIL the generating plant is wholly owned by MISL and there is no share of ownership of ancillary units. Thus generating plant cannot be said to be captive generating plant. MSIL is supplying electricity to other ancillary units also on payment basis through the electricity supply system laid by MSIL within their industrial plot. It is correct that there is no public street or any area belonging to any other persons through which the electricity supply lines have been laid down and lines are wholly within premises of the applicant and maintained by them.

The supply of electricity by MSIL to ancillary units is not permitted under section 9 of Act as already explained in para 8 above. The applicant has not brought out the complete provision of section 9 in his prayer application. The ancillary units to whom MSIL is supplying power from its generating plant are not covered under “any consumer” within the meaning of sub-section 2 of section 42. The applicant cannot distribute/sell power to other consumers in terms of section 12 of the Act and they are required to take distribution license in terms of section 14 or seek exemption from HERC under section 13 of the Act before doing so. The applicant is clearly engaged in the activity of distribution of electricity as they are supplying electricity to selected consumers on commercial terms against the spirit of clause 5.4.7 of National Electricity Policy. No doubt that MSIL is distributing electricity to other factories within its own premises and through its own distribution system, but this is in violation of various section of the Act and Rules described in preceding paragraphs.

The case of M/s Malwa Industries Ltd., Versus Punjab State Electricity Regulatory Commission is not relevant to the instant petition because it relates to transfer of surplus power generated by a company through its CPP to its sister concerns set up by its shareholders.

The cross subsidy charges, additional surcharge on account of obligation of existing licensee to give supply and wheeling charges are payable to the existing licensee if electricity to other consumers is supplied under open access in terms of section 42 (2) of the Act.

There is no relevancy whether any part of the lines of the licensee is used by the applicant as distribution licensee is essentially required or whether power is distributed through own dedicated system or through the system of existing licensee. Transfer of any power from the CPP to its so called ancillary units cannot be permitted even by using dedicated transmission lines without a license under section 12 of the Act, 2003.

Respondent no. 1 (Chief Electrical Inspector, Government of Haryana) is responsible for recovery of Electricity Duty on power consumption in the State of Haryana. MSIL is selling power to its ancillary units without obtaining valid distribution license and thus, the State Government is being denied payment of electricity duty. The State Government is losing revenue in the form of electricity duty hence notice was issued to the petitioner company.

DHBVNL's Reply:

The Superintending Engineer RA, DHBVNL, Hisar on behalf the M.D. DHBVNL, Hisar submitted reply vide memo no. Ch-178/SE/RA-282/Vol – IV dated 21.08.2008. The contention of DHBVNL is presented in brief below:

The ancillary units mentioned are separate legal entities not owned by M/s Maruti and they do not have any share in the captive power plant. Hence, the supply of electricity from the plant to the ancillary units violate clause 2 (h) of E-Act, 2003. As per clause 2 (h) of E-Act, 2003. A captive power plant is defined as “Captive generating plant means 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.” Now, it can be inferred from the above clause that, M/s Maruti can supply electricity to its ancillary units only if the ancillary units are completely owned by M/s Maruti or alternatively the ancillary units could be separate legal entities who are also shareholders of the captive plant along with M/s Maruti.

In the first case, the electricity consumed by the ancillary units would then be justified to be for the “own use” of M/s Maruti, whereas in the latter case, the captive plant would jointly be owned by M/s Maruti and its ancillary units and hence the supply from the plant would be justified for both the entities. Consequently, the submission of M/s Maruti that the supply from the captive power plant is primarily for his own use is not justified.

Clause 9 (1) of E-Act, 2003 and amendment of 2007 describes the captive generation as under:

“Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:

Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

Provided further **that no license shall be required under this Act for supply of electricity generated from a captive generating plant** to any license in accordance with the provisions of this Act and the rules and regulations made there under **and to any consumer subject to the regulations made under subsection (2) of section 42.”**

The subsection (2) of section 42 in E-Act describes the regulation for open access. As per the above clause, a captive generating plant can supply electricity to any consumer who opts for open access subject to the terms and conditions set by the State Commission for the same. It can be noted that the ancillary units have not opted for open access and hence, the supply of electricity from the captive plant does not fall under the above clause. Since, the supply of electricity to the ancillary units do not fall under clause 2 (h) and 9 (1) of E-Act, it becomes a case of distribution of electricity for which a distribution license is required under section 12 and 13 of the E-Act, 2003.

It is agreed that the supply of power is not complete without sale to any consumer or licensee, but the end consumption can only be for the own use or under open access as stated above. Hence, the referred case of Malwa Industries Limited v Punjab Electricity Regulatory Commission does not apply in the case of M/s Maruti.

The cross subsidy surcharge would be applicable if the ancillary units apply for open access and request for supply of power from the captive plant of M/s Maruti under the same. However, it is pertinent to mention that at present, Nigam is not charging any cross subsidy surcharge/additional surcharge from open access consumers due to power deficit scenario but such regulations are subject to modifications as per directions of HERC from time to time.

Since, M/s Maruti is not using any part of the system of DHBVNL for supplying electricity, no wheeling charges are applicable.

17. Section 12 of E-Act, 2003 states that, “No person shall’
(a) transmit electricity” or
(b) distribute electricity: or
(c) undertake trading in electricity,

Unless he is authorized to do so by a license issued under section 14, or is exempt under section 13.

Since M/s Maruti does not have distribution license nor is exempted under section 13, it is violating the E-Act, 2003 for supplying of electricity to its ancillary units. As mentioned earlier, the supply of electricity to the ancillary units does not fall under section 2 (h) and section 9(1) of E-Act, 2003.

In the light of the above submissions / citations the respondent(s) prayed that since the supply of electricity to the ancillary units by M/s Maruti violates the relevant provisions of the E-Act, 2003 they may not be allowed to supply electricity to the ancillary units in the present situation without obtaining a distribution license.

Public Proceeding:

Hearing of the parties was held as per schedule i.e. on 23.06.2010. The Commission heard the submissions of the parties Sh. A.K. Jain, Chief Electrical Inspector to Govt. Haryana, Ms. Shalani Attri, Dy. Advocate General, Haryana and Sh. K.K. Kakkar, Executive Engineer O/o Chief Electrical Inspector to Govt. Haryana who appeared on behalf of the respondent no. 1 and Sh. C.K. Sharma CGM, Commercial, DHBVNL, Hisar who appeared on behalf of respondent no. 2. Sh. M.G. Ramachandran, Advocate and Sh. Rakesh Aggarwal, Advocate appeared on behalf of the petitioner i.e. Maruti Suzuki India Ltd.

At the time of hearing the learned counsel Sh. M.G Ramachandran, appearing on behalf of petitioner submitted as under:-

1. The issue in the present proceeding is whether Maruti Suzuki India Limited, the Petitioner is required to take a distribution license from the Commission for distribution of electricity wholly within the premises of the Petitioner (not crossing any public road or supply to a distant place).
2. The supply of electricity is from the Captive Power Plant of the Petitioner to the ancillary units working within the premises of the Petitioner. The premises are at Manesar within the area of supply of Dakshin Haryana Bijlee Vidyut Nigam Limited, Respondent No. 2.
3. The Chief Electrical Inspector is directing the Petitioner not to supply electricity to the ancillary units obtaining a license.
4. There is no issue of cross subsidy surcharge in the present proceeding as in terms of the directions of HERC, there is no cross subsidy in the State of Haryana.

Sh. M.G Ramachandran, further submitted that the above issue has been settled by the following decisions of the Hon'ble Appellate Tribunal for Electricity:-

- (a) Chhattisgarh State Power Distribution Company Limited V Aryan Coal Benefactions Pvt. Ltd & Ors, 2010 ELR (APTEL) 0476;
- (b) Kadodara Power Pvt. Ltd. Gujarat v Gujarat Electricity Regulatory Commission, 2009 ELR (APTEL) 1037;
- (c) Nalwa Steel and Power Limited v Chhattisgarh State Power Distribution Company Limited, 2009 (APTEL) 609.

He clarified that in 2010 ELR (APTEL) 0476 decided on 9.2.2010, the relevant extracts are as under:-

The energy can be generated and same can be supplied to the consumer within the premises. Similarly where the electricity is generated at the place it may be transmitted to a place of consumption other than the place of generation. In the former case, it can be consumed through internal wiring. In the later case, there is necessity to lay down electricity line from the place of generation to place of use by using the existing line of the licensee through the open access.

These clarifications would make it clear that no license is required for dedicated transmission line. However, a distinction has been made between the requirements of taking license under Section 12 read with Section 14 of the Act for the dedicated transmission line the 2nd proviso of the Section 9 of the Act which deals with the captive generation. The 2nd proviso in Section 9 was inserted by the amendment effective from 15.06.2007. As per 2nd proviso no license shall be required for supply of electricity generated from the captive generating plant. This proviso does not deal with the issue of license for dedicated transmission line. When a doubt was created as to whether a captive generating company which is established primarily for the generation and self use of electricity can supply electricity to others without getting into the distribution system, the same was clarified by this proviso. Thus, similar proviso has been provided under Section 10. There cannot be any distinction between a mere generating company and a captive generation plant in regard to the supply of electricity. A generating company can equally undertake supply of electricity to any licensee or to the consumer under Section 10 (2) of the Electricity Act. Further Section 49 of the Electricity Act also clarifies the sale of electricity by a generating company to a consumer. Therefore, the 2nd proviso of Section 9 does not place the captive generating company at a higher

position than the generating company in regard to the supply of electricity through a dedicated transmission line. Thus it is clear that both, the generating company as well as the captive generating station are similarly placed.

If the load centre is the installation of the consumer then both the captive generating station and the generating company can install the dedicated transmission line up to the place of the consumer without the need to obtain any license. Load centre cannot be incorporated as not including the installation of the consumer, if such an interpretation is given, both captive generation plant and generating company cannot lay down the dedicated transmission line up to the place of the consumer. So it has to be held that under the regulation no license is required to undertake supply of electricity through a dedicated transmission line without using the distribution line of the transmission company or the distribution system of the licensee.

In view of the above, the objections raised by the Chief Electrical Inspector is not valid in law. A generating company is entitled to generate and supply electricity within its own premises through internal wires. Further, a generating company is also entitled to set up dedicated transmission lines and supply electricity to any consumer without having the need to obtain a license.

8. The scheme of the Electricity Act, 2003 is to permit competitive environment. The electricity is being supplied by the Petitioner to its ancillary units within the premises. The ancillary units substantially make available the goods to the Petitioner to be used in the manufacture of automobiles. The supply of electricity to the ancillary units is for a bonafide purpose. The intention of the Petitioner is not be a competitor to Respondent No.2.

The Chief Electrical Inspector is refusing to give permission for connectivity to the new ancillary units. The function of the Chief Electrical Inspector is only to see the safety and security of the equipment. He has got no jurisdiction or functions to oversee whether a license is required or not. Any such complaint can be filed only by Respondent No. 2 the Distribution Licensee. It is not open to the Chief Electrical Inspector to refuse connectivity when the safety and security aspects are not in any manner affected. Thus he has exceeded his jurisdiction in refusing connectivity.

The respondents' no. 1 & 2 submitted that the supply of the electricity by MSIL to ancillary unit is not permitted under section 9 of the Act and requested HERC to declare that the petitioner is required to take distribution license in the instant case.

Commission's Order:

The Commission has considered the petition and oral submissions made by the parties in the hearing, information / additional information and clarifications submitted by the parties including the case laws and copies of various judgments. Before going into the merits of claims and counter claims on the issue of whether the petitioner requires a distribution license or not, the Commission would like to dwell upon the status of 'captive generation' as provided under the Electricity Act 2003, Electricity Rules 2005 and various regulatory orders & judicial decisions available on sale of power from Captive Power Plants (CPP). As a passing reference we have also looked in to the objective and purpose of ancillary industrial undertakings.

The Electricity Act, 2003 (the Act):

Section 2(8) of the Electricity Act, 2003 defines a Captive Generating Plant to mean a power plant set up by any person to generate electricity primarily for his own use.

Further Section 9(1) of the Act permits setting up a Captive Generating Plant and dedicated transmission lines i.e. "Notwithstanding anything contained in this Act, a person may construct, maintain or operate a Captive Generating Plant and dedicated transmission lines. However, the above general provision is subject to the following.

If supply is through the Grid then the CPP shall be regulated in the same manner as a generating station/company.

No licence shall be required under this Act if supply from the CPP is to a licensee or to any consumer subject to regulations made under Section 42(2) of the Act.

CPPs shall have the right to Open Access subject to availability of adequate transmission facility.

Thus it is clear from the various provisions of the Act that a CPP can be set up primarily for own use. Further dedicated transmission lines can also be constructed and operated. However, if the CPP has an interface with the licensees Grid i.e. operates in parallel with the Grid then they are subject to rules/regulations applicable to any generating station. For such purposes the CPP is not required to obtain any licenses. The only limitation placed on them is

in an event the supply from the CPP is to any licensee or a consumer. In such an event, charges (surcharge and cross-subsidy surcharge in addition to wheeling charges) determined under Section 42 (2) i.e. Open Access Regulations shall be payable.

The Electricity Rules, 2005 framed by the Central Government, provides for three conditions for setting up a Captive Generating Plant.

Rule: 1 - Plant should be primarily for captive consumption with a minimum of 51% of the power generated should be used for the same.

Rule: 2 - At least 26% ownership must rest with captive user(s).

Rule: 3 - In case of 'association of person's in addition to the above conditions, the captive consumption by the members should be in the proportion of their ownership.

In the light of the above, it is an admitted position that the petitioner (Maruti Suzuki) consumes more than 51% of the electricity generated at the CPP. Further, the entire ownership of the CPP is with the petitioner. Hence the petitioner satisfies Rule: 2, Rule: 3 is not applicable and Rule: 1 is partly satisfied. Now the issue left open is whether the CPP in question is primarily for captive consumption as claimed by the petitioner or they are supplying to a third party i.e. auxiliary units within their own campus thereby amounting to sale of power and hence violating Section 12 of the Act which provides that no person shall transmit electricity or distribute electricity or undertake trading in electricity unless he is authorized to do so by a licence issued under Section 14, or is exempt under Section 13.

The Commission has closely examined the issue including various judgments cited by both the petitioner as well as the respondent(s). The Commission observes that an auxiliary industrial undertaking is one which is engaged in the manufacture or production of facts, components, sub-assemblies, tooling or intermediates and renders not less than 50% of its production to one or more industrial undertakings. The Commission notes that in the modern day super-specialization era, considering expertise and economies of scale the industrial undertakings in order to survive intense domestic/international competition are forced to seek backward and forward linkages to its own line of operation. At time they may do so by way of vendor development outside its own control or to have better control on process, quality, design and logistics develop or help developing auxiliary units in or around its own premises. In the instant case too it is evident from the facts placed before the Commission that the

petitioner Maruti Suzuki is sourcing its entire requirements of parts, components, assemblies etc. from the auxiliary units located within its premises for use in the manufacture of passenger vehicles. In order to meet the electricity needs of the auxiliary units is met by the CPP owned by the petitioner. As the petitioner sources its entire requirements from the auxiliary units, the electricity provided for facilitating and production cannot be construed as sale amounting to transmission, distribution or trading in electricity as envisaged under Section 12 of the Electricity Act, 2003.

The issue of sale of power by the CPP through dedicated transmission lines was also deliberated by the Commission at great length. The Ministry of Power through the fifth removal of difficulties order dated 8th June, 2005 provided that, no “license is required” provided the “dedicated transmission line” is neither a “transmission line” nor a “distribution system”. Thus the issue before the Commission is whether the dedicated lines used for transfer of power to the auxiliary units tantamount to creation of a “transmission line” or a “distribution system”.

Section 2(72) of the Act defines “transmission lines” to mean, “all high pressure cables and overhead lines transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch gears and other works”.

Going by the above definition of a transmission line, the instant case does not involve transmitting electricity from a generating station to another or a sub-station. Hence the lines used by the petitioner to provide electricity to its auxiliary units do not fall under the definition of ‘transmission line’ which may require a licence under the Act. The Commission has also examined the definition of a distribution system as provided under Section 2(19) of the Act i.e. “distribution system means the system of wires and associated facilities between the delivery points on the transmission lines or the generation station connection and the point of connection to the installation of the consumers. The instant case the lines used by the petitioner is clearly not a ‘transmission line’ as defined under the Electricity Act. Further, the dedicated transmission lines as defined under section 2 (16) of the Act connects the CPP to the load centre i.e. the auxiliary units and not installation of consumers. Consequently, in the

instant case no distribution centres is created in the process that may require a licence under the Act.

Finally, the issue of whether the petitioners come under the purview of regulations/charges determined by the Commission under section 42(2) or not remains to be addressed. On the basis of the submission of the parties before the Commission it is an admitted fact that

- 1) There is no public street or any area belonging to any other person through which the electricity supply lines laid down by the petitioner passes and the entire lines are wholly within the premises of the petitioner.
- 2) The petitioner is not required to use any part of the licensee's grid to effect supply of such electricity.
- 3) With regard to payment of cross-subsidy surcharge, the petitioner is willing and has undertaken to pay such charges as applicable and determined by the Commission.
- 4) The above position was examined in the light of the fact that respondent number – 2 i.e. DHBVNL holds distribution license in the entire southern circles of Haryana including the area in which the petitioner's premises/factories & installations are located. Thus DHBVNL has an universal obligation to supply electricity and their revenue flow can be adversely affected if their load mix changes or an area where they are duty bound to supply on demand is taken away from them. In the instant case but for the CPP it would have been the responsibility of DHBVNL to effect HT supply to the petitioner as well as its ancillary units located within the same premises. More so the petitioner, by its own admission, is willing to pay cross – subsidy charges as applicable and determined by HERC.

The Commission, on the basis of aforesaid reasoning and to cushion erosion of revenue prospects thereby adversely affecting the financial viability of DHBVNL who supplies electricity not only to the better paying industrial customers but also to consumers in rural and domestic segment where costs due to social & capacity to pay considerations are not fully recovered, **holds that any charges including cross-subsidy surcharge determined by the Commission under Section 42(2) of the Electricity Act, 2003 shall be payable by M/s**

Maruti Suzuki India Ltd in addition to the Electricity Duty (ED) that the company is already paying into the State Government's account.

The Commission has carefully gone through the decisions of the Hon'ble Appellate Tribunal for electricity in the Kadodara Power Pvt. Ltd., Gujarat v Gujarat Electricity Regulatory Commission, 2009 ELR (APTEL) 1037. As per these judgments it is quite clear:-

- A dedicated line can be constructed from the captive generating plant to the destination of its use. Such destination i.e. point of consumption has to be covered by the term "Load centre". The consumption point is neither electricity transmission line nor substation or generating station. Hence, the only way such a line can be termed as dedicated transmission line when the same at the point of consumption is treated as a 'load centre'. Hence a single consumer could also be a load centre. A dedicated transmission line can go from the captive generating station to a load centre and such load centre can also be a consumer. Section 9 of the Act with the amendment of 2007 specifically provides that to supply to a consumer, the captive generating station shall not need a license. The Act, thus, does envisage transmission and supply of electricity from a captive generating plant to a consumer – although subject to the provisions of the Act and Rules and Regulations made there under. In view of these observations the Hon'ble Appellate Tribunal for electricity concluded that M/s Gayatri Shakti Paper & Boards Ltd. does not need any license for supplying power to M/s Kherani Paper Mills Ltd.
- In an earlier judgment in appeal no. 139 of 2007 titled M/s Nalwa Steel and Power Limited V Chhattisgarh State Power Distribution Company Limited, decided on 20th May, 2009 Hon'ble Appellate Tribunal expressed the view that the open access Regulations are required to be followed when open access is availed of and that if no open access is availed or it is not necessary or because no existing network is available the **captive generating company cannot be prevented from supplying to consumer by laying its own dedicated line.**
- In 2010 ELR (APTEL) 0476 decided on 9/02/2010 it was held that the load centre is the installation of the consumer then **both the captive generating station and the generating company can install the dedicated transmission line up to the place**

of the consumer without the need to obtain any license. Load centre cannot be incorporated as not including the installation of the consumer, if such an interpretation is given, both captive generation plant and generating company cannot lay down the dedicated transmission line up to the place of the consumer. **So it has to be held that under the regulation no license is required to undertake supply of electricity through a dedicated transmission line without using the distribution line of the transmission company or the distribution system of the licensee.**

In the light of the above the Commission clarifies that the petitioner Maruti Suzuki does not require any license under Section 14 of the Act for supply of power from its CPP to its auxiliary units, whose outputs are intermediate inputs to the final manufacture of passenger vehicles.

Thus on the basis of the position brought out above and taking into consideration the submissions of the applicant / petitioner, reply submitted by the respondents no. 1 & 2, rejoinders submitted by the applicant to the reply submitted by the respondents no. 1&2 discussions held during the hearing on dated 23.06.2010, documents submitted by the applicant as well as the decision of the Hon'ble Appellate Tribunal for electricity on Kadodara Power Pvt. Ltd., Gujarat v Gujarat Electricity Regulatory Commission, 2009 ELR (APTEL) 1037 and Nalwa Steel and Power Limited V Chhattisgarh State Power Distribution Company Limited, 2009 ELR (APTEL) 609 etc. it is clarified as under:

M/s Maruti Suzuki India Ltd Plot No. 1, Nelson Mandela Marg, Vasant Kunj New Delhi – 110070 does not require any license to lay down and operator electricity lines within its own premises and hence the petitioner is free to supply electricity through its dedicated lines to its ancillary units. The clarification / observation of the Commission are subject to the conditions given below.

- 1) Maruti Suzuki India Ltd shall pay / is liable to pay any applicable charges determined by the Commission by way of regulations / orders framed / passed in pursuance to various provisions of the Electricity Act, 2003.**
- 2) Cross-subsidy surcharge / additional surcharge as and when determined by the Commission under Section 42(2) of the Electricity Act, 2003 shall be payable by M/s Maruti Suzuki India Ltd.**

3) Maruti Suzuki India Ltd shall deposit Electricity Duty including any arrears into the State Government Account, at the current rate as amended by the State Government from time to time.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 2nd August, 2010.

Date: - 02/08/2010

Place:- Panchkula

(Rohtash Dahiya)
Member

(Bhaskar Chatterjee)
Chairman