



## Chhattisgarh State Electricity Regulatory Commission

Civil Lines, G.E. Road, Raipur – 492001

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### Petition No.12 of 2007(M)

#### In the matter of determination of tariff for supply of start-up power to captive power plants for the specific period 29.9.2004 to 6.6.2006

Monnet Ispat & Energy Ltd  
Raipur.

... Petitioner

V/s

Chhattisgarh State Electricity Board  
Raipur

... Respondent

Present: S.K.Misra, Chairman  
Sarat Chandra, Member

### **ORDER**

(Passed on 16.11.2007)

This is a petition filed by M/s Monnet Ispat & Energy Ltd (MIEL) for determination of tariff for supply of start up power to their captive power plant (CPP) for the specific period 29.9.2004 to 6.6.2006, pursuant to the judgement of the Hon'ble Appellate Tribunal for Electricity (ATE), dated 17.5.2007, passed in review petition No.06 of 2007. Since there is no provision in the Electricity Act, 2003 (the Act, for short) for determination of tariff for supply of electricity on the application made by a consumer, it would be necessary to recount the events leading to this petition. MIEL has a steel plant and a power generation plant which is captive to the industry in Mandir Hasaud, Raipur. The petitioner submitted an application to this Commission on 12.9.2005 [Petition No. 30 of 2005 (M)] for approval of a separate start-up tariff for its captive power plant on the ground that it had the benefit of a separate start-up tariff from the Chhattisgarh State Electricity Board (CSEB or the Board, for short) and that in the tariff order of this Commission of 15.6.2005 for the year 2005-06 (tariff order 2005-06, hereafter), there was no equivalent start-up tariff. The Board had passed an order on 24.2.2004 by which a separate tariff for start-up purposes was extended to the petitioner. This application, which was treated as an application for review of the tariff order 2005-06, was rejected by the Commission on the ground that start-up tariff order passed by the Board on 24.2.2004 was without legal authority and even otherwise it did not cover the petitioner's power plant after 24.9.2004. This order of the Commission, passed in petition No.30 of 2005(M) on

17.2.2006, was challenged by the petitioner before the Hon'ble Appellate Tribunal for Electricity (ATE). The ATE by their judgement dated 23.11.2006, passed in appeal No. 60 of 2006, dismissed the appeal with the direction that 'the appellant may go before the second respondent Commission (this Commission), urge all its points, claims and contention with respect to tariff determination of start up power for captive power plant, *which is pending before it for consideration by way of review petition*' (emphasis applied). This direction of the ATE was apparently based on an assumption that a review petition was pending before this Commission and that the matter relating to determination of tariff for start-up power for CPPs was one of the matters for consideration in this petition. This was not the factual position. In fact, order was already passed in the review petition on 29.9.2006, before the judgement of the ATE aforementioned. In any case, start-up tariff for CPP was not an issue in that case. The application filed by the petitioner for intervention, in pursuance of the directions of the ATE, for determination of start-up tariff, was therefore, rejected by this Commission, by order dated 6.1.2007 passed in petition No.2 of 2007 (M). The petitioner went back to the ATE and sought a review of their order dated 23.11.2006, passed in appeal No. 60 of 2006, aforementioned. The ATE passed an order on 17.5.2007 (in review petition No. 6 of 2007, in appeal No. 60 of 2006 and IA No. 50 of 2007) in which they directed this Commission to determine afresh the tariff for the start-up power for the CPPs for the period September 29, 2004 to June 6, 2006 (sic). The ATE further directed that the Commission shall "after hearing the parties and the owners of the CPPs and examining the matter shall decide the issue relating to start up power for the CPPs for the period September 29, 2004 to June 6, 2006 (sic) in accordance with law". Hence this petition.

2. The context in which this matter of determination of start-up power is to be considered requires further elaboration. CSEB which came into existence on 15.11.2000, on reorganization of the erstwhile Madhya Pradesh, inherited retail electricity tariff notified by the erstwhile Madhya Pradesh Electricity Board (MPEB) and effective from the date 1.3.1999. This tariff operated till this Commission, which was constituted on 1.7.2004, passed the first tariff order for the year 2005-06 and made it effective from 1.7.2006. Before this tariff order was passed by the Commission, CSEB had, on its own, passed an order on 24.2.2004 by which a special tariff was made applicable to non-conventional energy producers and Independent Power Producers (IPP) for start-up purposes. The Board was not competent to alter the tariff structure put in place by the erstwhile MPEB under the provisions of the Electricity (Supply) Act, 1948. Apparently because the Act had already come into force and the Board had no legal authority to decide tariff matters, this tariff was made subject to ex-post-facto approval of the Commission when it became functional. The petitioner (then Monnet Power Ltd) availed this tariff for its generating plant which was then an IPP and which subsequently became a CPP. The Commission passed the first tariff order, for the year 2005-06, on 15.6.2005 and made it applicable with effect from 1.7.2005. This order did not provide for a separate start-up tariff for generating plants. The order, however, was passed following due process and the petitioner had every opportunity of representing his case before the Commission, which it never did. Subsequent to this order, on the application

of the Urla Industries Association and some other CPPs, the Commission passed a comprehensive order on 6.2.2006 (hereinafter the CPP order) in the matter of power purchase and related dispensation in respect of captive generating plants, in petition No. 17 of 2005(M). This order dealt with a number of issues relating to CPPs and contained inter alia a separate tariff for start-up power for CPPs subject to certain conditions being met. This tariff was made applicable with effect from 1.3.2006 (and not from the date of the order and hence the date 6.6.2006 in the order of the ATE should actually be 6.2.2006 which became effective from 1.3.2006). There are thus two periods for which fresh determination of start-up tariff is required as per the directions of the ATE in this case:

- (i) 24.9.2004 to 30.6.2005 (the date from which Monnet Power Ltd was merged with Monnet Ispat Ltd., and the generating station became a CPP till the date on which the first tariff order of this Commission for the year 2005-06 became effective); and
- (ii) 1.7.2005 to 28.2.2006 (the date on which the first tariff order of the Commission became effective till the date of the CPP order in which a separate start-up tariff was introduced by the Commission.

It would be necessary here to explain the relevance of the date 24.9.2004 (29.9.2004 in the order of the ATE, is an apparent typographical error). This is the date on which by the order of the Hon'ble High Court of Chhattisgarh, Monnet Power Ltd., which owned the generating plant merged with Monnet Ispat Ltd., (subsequently renamed as Monnet Ispat & Power Ltd., the present petitioner) and the generating plant of Monnet Power Ltd., which was hitherto an IPP become a CPP. It is because of this change in the character of the generating plant that we had held the so-called tariff order of the Board dated 24.2.2004 inapplicable to the petitioner's power plant with effect from 24.9.2004. Thus, this date is relevant only to case of the petitioner and to no other CPP in the State. In our first order of 17.5.2006 in this case, passed in petition No. 30 of 2005(M), we had observed that the start-up tariff notified by the Board was availed of only by the petitioner for reasons which have not been explained by CSEB at any stage of this case. It is on the basis of this order that order of the Board that the issue of the start-up tariff has been agitated by the petitioner and no other CPP.

3. We have heard the petitioner as also the respondent CSEB. Since as per the directions of the ATE a general start-up tariff for all CPPs was to be considered by us, we also issued a public notice addressed to all CPPs, in the local newspapers published from Raipur and Bilaspur on 28.7.2007. However, the Commission has received no written submission from any CPP and no CPP also appeared before us in response to this notice.

4. There is no dispute that CPPs and generating plants need start-up power. In fact, the Commission has recognized the need for a separate tariff for start-up power in view of the special character of this need. Start-up power is required only occasionally in case of outage of a generating plant, whether forced or scheduled outage, and the quantum is generally limited to one-tenth of the capacity of the generator. The total requirement in a month does not

exceed 10% load factor. We have accordingly approved a separate tariff on consideration of the plea made by the CPPs in this regard, in our CPP order dated 6.2.2006. However, whether on the basis of this logic it should be made applicable retrospectively is a moot point. The petitioner has contended that in view of the nature of consumption of start-up power by a CPP, a regular tariff meant for industry should not have been made applicable to them. On behalf of the Board it has been argued that an event relevant to a particular consumer, in this case the amalgamation of Monnet Power Ltd and Monnet Ispat Ltd on 24.9.2004, cannot trigger tariff determination, which is a process laid down by law. Secondly, it has also been argued by Shri Gopal Choudary the learned counsel for the Board that the Commission cannot modify the tariff order of MPEB of 1999 as no such power is vested in the Commission by the Act. The Commission cannot fix a tariff retrospectively because of an event relevant only to the petitioner. It has also been argued that the Hon'ble Tribunal's order, in fact, does not require the Commission to determine start-up tariff. It only requires the Commission to '*decide the issue relating to the tariff for start up power for CPPs*' and '*to do so in accordance with law*'. The date of amalgamation of two companies has no relevance to the *issue* relating to start-up tariff for CPPs. On behalf of the petitioner, on the other hand, it has been argued vehemently that the Hon'ble Tribunal's order is quite clear. The Commission has been directed 'to determine afresh the tariff of the start up power of the CPPs'. While the dates may not have any relevance to all CPPs in the State there is no ambiguity in this direction. As to the legal issue of retrospective fixation of tariff raised by the respondent Board, it has been argued by the learned Senior Advocate Shri Jayant Bhushan, who appeared for the petitioner that at this stage no legal objections can be raised about the order in view of the clear directions of the Tribunal. It is not open to the Commission to question the order of the ATE on any ground whatsoever. On the issue of retrospective tariff fixation it has been contended that there is no retrospective fixation so far as the second period (1.7.2005 to 28.2.2006) is concerned, because the Commission is required to review the tariff order passed by it. As to the earlier period from 24.9.2004 to 30.6.2005, CSEB had taken a decision regarding start-up power on the basis of the same rationale which has been recognized by the Commission in its CPP order of 6.2.2006. It has also been pleaded by the learned senior counsel that ultimately it is a question of equity and the Commission should take a practical view in the interest of the consumer. We are in agreement with the learned senior counsel that in the face of clear directions of the ATE, technical and legal objections cannot be raised about the order before the Commission. However, it has been vehemently argued by the learned counsel for the Board that the petitioner is relying on a tariff order, the legality and propriety of which has been questioned by the Commission and which was not applicable to CPPs. The fact that the Board had entered into an agreement with the petitioner for supply of power at start-up tariff on 1.5.2004 cannot be the basis for determination of tariff. No CPP has claimed that the start up tariff approved by the Commission in their CPP order of 6.2.2006 should be made applicable retrospectively, either by way of appeal against the order or in response to the notice in this case. Only on the plea of the petitioner based on an order of the Board which has no legal basis, a separate start-up tariff should not be approved in favour of the

petitioner. There is considerable force in this contention and we have dealt with it later in this order.

5. Coming to tariff determination, unfortunately neither any data nor any basis is available to the Commission unlike when an application is made by a licensee for determination of retail tariff under Section 64 of the Act it is required to be supported by necessary data. So far as the first period i.e. 24.9.2004 to 30.6.2005 is concerned, this is the period during which the tariff of MPEB was prevalent, but the Board had on its own ordered a special tariff for start-up power for IPPs and non-conventional energy (NCE) generators, and not CPPs. The legality and the propriety of this order of the Board dated 24.2.2004 has been questioned by us on the following grounds:

- (i) The Act had come into force when this order was passed and the Board clearly had no legal authority to change the prevalent tariffs lawfully ordered by the erstwhile MPEB. The legal authority to determine tariff vested in the Commission, perhaps the reason why this order was made subject to the post-facto approval of the Commission.
- (ii) The order in any case was very clearly applicable to IPPs and non-conventional energy producers and stated emphatically that it was applicable only to such power producers 'which do not have any activity other than generation of power'. Clearly this tariff was not applicable to CPPs, even though CPPs also need start-up power.
- (iii) This tariff was subject to ex-post-facto approval of the SERC after it become functional. The order passed by the Board on 24.2.2004 clearly states that if it is not approved by the SERC 'recovery as per the appropriate tariff of the earlier tariff order (i.e. MPEB's tariff since 1.3.1999) shall be effective from the consumers'. It also states that this shall be included in the agreement with consumers who opt for this tariff. This clause was not included in Board's agreement to supply power to the petitioner, the reason for which has not been furnished.

At this late stage and without any data made available either by CSEB or by the petitioner, it would not be possible for the Commission to determine a fresh start up tariff. We note that the tariff for start-up power fixed by the Board's order of 24.2.2004 is the tariff which was applicable 'to other industries' as per MPEB's tariff order of 1.3.1999 except that a concession was extended by way of specifying the billing demand at 75% of CD (50% CD for NCE) or recorded maximum demand whichever is higher and no minimum charge in terms of energy on 40% of CD was imposed. But except for this concession the other terms and conditions as set out in the Board's tariff notification of 1.3.1999 remain unchanged. This start-up tariff was being availed by the petitioner, then Monnet Power Ltd., since 12.11.2002. In view of the directions of the ATE there is no option at this late stage but to extend the same tariff to the petitioner beyond 24.9.2004 till 30.6.2005. We consider this to be the most logical and practical course. However, the date 24.9.2004 is of no relevance to any other CPP. No other CPP in the State has asked for start-up tariff from this date nor was this issue raised before us by any CPP (nor for that matter even the petitioner) in course of the hearing of the tariff

petition for the year 2005-06, order in which was passed on 15.6.2005. While equity may demand that we allow this tariff to the petitioner only it would not be appropriate to make a tariff applicable to only one consumer to the exclusion of consumers in the same category. As directed by the ATE this tariff shall hence be applicable to all CPPs in the State, for the period aforementioned.

6. So far as the second period i.e. 1.7.2005 to 28.2.2006 is concerned, this period is covered by our tariff order for the year 2005-06. There is no special tariff as such for start-up power for generating units in this order. Neither the CSEB nor did any generator, including the petitioner, intervened during the hearing of the tariff application to seek a separate start-up tariff. The tariff order was passed after due process in which public hearing at a number of places was also held. At no point of time did either the existence of any start-up tariff order or the need for such tariff was raised by any of the parties. There has been no appeal against the tariff order of the Commission and hence it must be treated as final. In fact, on a reference from CSEB after the tariff order was passed, it has been clarified by the Commission that tariff category HV-6 in this order is applicable to all industries (including electricity generating plants), not covered under any other HT tariff category (i.e. HV-1 to HV-5). The scope of this tariff category (HV-6) was extended subsequently by the Commission to accommodate industries, including power generators, drawing power on 132KV which was not initially provided for. The application of this tariff to generating industries as start-up tariff has been reiterated in our order dated 11.11.2005 passed in case No. 7 of 2005 in which a concession in this tariff has been offered only to generators based on biomass, a non-conventional energy source. It is also to be noted that in spite of the public notice issued in the present case no CPP has come up for review of this tariff order. The only ground on which a review of this order may be justified to an extent is the plea of the petitioner that the Commission has itself recognized the need for such a tariff subsequently in the CPP order of 6.2.2006. As already mentioned, the CPP order was a comprehensive order dealing with various issues relating to CPPs, including start-up power. This order was passed after due deliberations, on the basis of the case put forward by the CPPs, spanning over more than six months. Incidentally it may be noted that the petitioner did not participate during the proceedings of this case though a CPP. The HV-6 tariff was applicable to all CPPs in the State with effect from 1.7.2006, the date on which the tariff order for 2005-06 came into effect. The CPP order passed on 6.2.2006 has prospective application with effect from 1.3.2006 which was not objected by the CPPs. The CPPs did not claim that this start-up tariff should be extended to them with effect from 1.7.2005, the date tariff order for 2005-06 became effective, or from the date their petition was registered in the Commission. There is no ground now for grant of a separate tariff to all CPPs, including the petitioner, and on the basis of the specific case of the petitioner. That the Commission was convinced about the rationale of a separate start-up tariff in the CPP order alone would not justify its retrospective application particularly when none of the parties to that case has asked for it. The rationale of a subsequent dispensation cannot become the basis for its earlier application. In view of the above, there is no ground for review of our tariff order for 2005-06 and approval of a separate

start-up tariff during the period 1.7.2005 till 28.2.2006. We have already held in our order of 17.2.2006 that the start-up tariff approved by us as part of the CPP order of 6.2.2006 may be availed by the petitioner with effect from 1.3.2006. There is no dispute with regard to the period subsequent to this date.

7. We accordingly hold that -

- (i) the start-up tariff as per the order of the CSEB dated 24.2.2004 shall be applicable to CPPs till 30.6.2005; and
- (ii) HV-6 tariff, as per our tariff order for the year 2005-06, shall be applicable to the petitioner as also all CPPs with effect from 1.7.2005 to 28.2.2006, i.e. the day after which the CPP order of 6.2.2006 became effective.

8. The Commission had in para 11 of its first order of 17.2.2006 in this matter, passed in petition No. 30 of 2005(M), had directed the Board to enquire into the compelling circumstances under which an order modifying the prevailing tariff and making provision for start up tariff was issued on 24.2.2004 by the Board which had no legal authority for the same under the Act. We had also directed that looking to the manner in which this order was issued and implemented in case of only one industry, responsibility be fixed for lapses, if any at any level. In view of the circumstances referred to in para 11 of that order and also in para 5 of this order, we again reiterate our earlier direction. The enquiry as directed earlier be conducted and the result thereof may conveyed to the Commission within a month of this order. The case is disposed off accordingly.

sd/-  
**Member**

sd/-  
**Chairman**