



Chhattisgarh State Electricity Regulatory Commission

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Petition No. 16 of 2006(M)

**In the matter of review of the order of the Commission dated 6.2.2006
passed on Petition No.17 of 2005(M)**

Petitioner : Chhattisgarh State Electricity Board
Raipur

Versus

Respondents : (1) Shri J.P.Saboo
President
Urla Industries Association, Raipur

(2) Jayaswals Neco Ltd
Siltara, Raipur

(3) Shri Bajrang Power and Ispat Ltd
Raipur

(4) Bharat Aluminium Co Ltd
Korba

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

ORDER

(Passed on 29/09/2006)

This is a petition filed by the Chhattisgarh State Electricity Board (CSEB) under Section 94(1)(f) of the Electricity Act, 2003 (the Act) and Regulation 43(1) of the CSERC (Conduct of Business) Regulations, 2004, for review of the order passed by this Commission in petition No.17 of 2005(M) on 6.2.2006. The impugned order deals with the matter regarding power purchase and related dispensation in respect of captive generating plants.

2. The facts of this case are that the Commission, in pursuance of the provisions of the Act, the National Electricity Policy (NEP) and the National Tariff Policy (NTP) has in this order granted certain dispensation for Captive Power Plants (CPP) so as to “create an enabling environment that encourages CPPs to be connected to grid”, as mandated by the NTP. The following dispensation to the captive and non-captive consumers of CPP in this order are relevant to this case:

- (i) The captive and non-captive consumers can reduce their contract demand with the licensee to the extent desired.

- (ii) The minimum charges payable by such consumers shall be demand charges to the extent of contract demand only and they will not be liable to pay any minimum charges in terms of energy. Billing will be on the basis of actual energy consumption.
- (iii) Captive and non-captive consumers may reduce their contract demand to zero and draw only standby power from the licensee, only for use in an emergency. In such cases, the charges will be based on the tariff for temporary connection to that consumer for the period during which power is availed from the licensee.
- (iv) Captive/non-captive consumers will be eligible for exemption from minimum charges as above provided their consumption of CPP power is more than 50% of his requirement, in terms of units consumed.

3. The CSEB has sought review of this order on the following main grounds:

- (i) The Commission should have stipulated minimum charges on consumption for CPP's consumers in addition to the minimum demand charge as provided in the Commission's tariff order for other consumers. This is necessary because demand charges and minimum energy charges are stipulated in the tariff for the purpose of recovering the fixed cost of the licensee incurred for establishment and maintenance of transmission and distribution infrastructure, and the fixed costs associated with the power purchase contracts/creation of generation capacities and the demand contracted by the consumers. Moreover, the demand charges fixed by the Commission presently do not fully recover the fixed costs of the licensee and a part of the fixed costs is also recovered through energy charges. Hence the need for a minimum energy charges in addition to demand charge.
- (ii) The stipulation made by the Commission in its impugned order that the consumer shall have to avail at least 50% of his energy requirement, in terms of units consumed, from the CPP in order to be eligible to exemption from minimum charges as above, is neither relevant nor necessary. The consumer is free to contract with the licensee for any quantum of demand, but having so contracted he has subjected to the same obligations as of any other consumer, as otherwise it would amount to giving undue preference to certain consumers over others.
- (iii) In cases where the contract demand is reduced to zero level and only standby power is availed from licensee, recovery of temporary connection charges for the standby power availed has been ordered to be levied. The licensee is required to establish and continuously maintain necessary infrastructure even when supplying standby power to the consumer. While availing temporary connection, a consumer has to indicate the capacity (demand) and has to pay fixed charges irrespective of actual consumption of electricity for the duration the temporary connection is availed. Secondly, temporary connection is always for a specific time period. Hence there should not be a situation where a consumer has no contracted demand and the licensee is nevertheless obliged to supply power to him at any time he wants and

up to any extent. Para 8.5 of the NTP, on which the Commission has relied, does not say that the licensee is obliged to supply standby power without the same being duly arranged for by contract and without paying the fixed charges.

- (iv) The Commission has given uniform dispensation in favour for both captive and non-captive consumers of CPPs. The non-captive consumers are not different from other consumers of a licensee in respect of energy sourced by them from sources other than the licensee. The Commission has thus erred in making a distinction between non-captive consumers and other consumers only on the ground that the former sources power from a CPP.
- (v) The order of the Commission will adversely affect the revenues of the licensee as it is in the nature of an amendment to the tariff. The licensee will not be allowed to realize the revenues approved by the Commission because of the dispensation granted in this order.
- (vi) In the impugned order the Commission has conferred adjudicatory functions on the Chief Electrical Inspector, which is not in accordance with law. It is within the power and entitlement of the licensee to enforce the tariff and to determine the incidence and consequences thereof and to recover its dues.

Thus the CSEB's main objections relate to (i) exemption of CPP's consumers from minimum charges in terms of energy; (ii) the non-captive consumers being treated on the same footing as captive consumers; (iii) an obligation being cast on the licensee to supply electricity to a consumer who has reduced his contract demand to nil level; and (iv) the application of tariff to such a consumer. The CSEB's contention is that the Commission has erred in differentiating between various consumers of the licensee and giving special dispensation to a few. The line of argument is that any consumer of the licensee should be treated like any other and should be liable to pay the charges the other consumers are liable to pay, for availing supply of electricity from the licensee.

4. Of the four respondents in this case only two viz. Urla Industries Association and Jayaswals Neco Ltd., submitted their reply to the petition and argued their case before the Commission. The other two respondents did not submit any reply nor did they appear before the Commission in spite of notice. The Urla Industries Association has opposed the review petition and has contended as under: -

- (i) There is no justification for payment of minimum charges in terms of energy by captive/non-captive consumers since such consumers are liable to pay the demand charges in respect of the demand contracted by them with the licensee. The Board is not required to pay any capacity charges to any generator in respect of the power supplied to it by of CPP. Captive/non-captive consumers are liable to pay transmission and wheeling charges to the Board for use of its transmission and distribution infrastructure for availing electricity from

the CPP. Additionally, the Board also collects parallel operation charges from the CPP.

- (ii) The cost of standby power at temporary connection charges would be very high as compared to normal tariff while the supply would be required for a very short duration and very infrequently.
- (iii) The CSEB is not in a position to supply power as per the requirement of its regular consumers and has to resort to load-shedding and therefore, payment of full demand charges by consumers is not justified even otherwise.
- (iv) The plea of the CSEB that its revenues will be adversely affected is largely misleading and unsupported by any data.
- (v) Similarly, M/s Jayswals Neco has also contended that
- (vi) Since the demand charges levied on captive consumers would be on 100% CD, the CPP consumers should not be asked to pay any minimum charges in terms of energy.
- (vii) The special dispensation has been granted by the Commission to non-captive consumers in order to promote captive generation as mandated in the Act, the NEP and NTP. If there is no such special dispensation, no CPP would be in a position to sell its power to any non-captive consumer since the open access charges, the energy charges plus tariff minimum charges that an open access consumer is required to pay will be very high, higher than the CSEB tariff.
- (viii) There is no accounting of MVA added to the grid by the CPPs as no set-off in demand to the extent of the MVA added is permitted to the CPP or its consumers; therefore, any minimum charges would be unjustified.
- (ix) It has also been argued that there is no question of the revenues of Board being adversely affected by the order of the Commission, as the Board will earn parallel operation charges and transmission and wheeling charges.
- (x) The main argument of the two respondents is that the minimum charges, even in the form of demand charges, are not justified because the consumers of a CPP may avail electricity supply from the licensee only to a very limited extent. They have contested the claim of the Board that the grant of facilities aforementioned is likely to adversely affect the impugned order the Board's revenues.

5. The main issues for consideration in the review petition are thus as follows: -

- (i) Should the consumers of a CPP who are also the consumers of the licensee, be treated, and be liable to pay charges, as any other consumer of the licensee and should they be liable to pay the minimum charges in terms of full demand charges and also minimum charges in terms of energy, like other consumers?

- (ii) In case a consumer of a CPP reduces its demand to zero, should he still be liable to pay minimum tariff charges to the licensee? What should be his liability to the licensee and the licensee's obligation to him?
- (iii) Is there sufficient justification to treat non-captive consumer of CPP at par with the captive consumers for grant of special dispensation?
- (iv) Is the revenues of the licensee likely to be adversely affected because of special dispensation granted to captive/non captive consumers?
- (v) Is assignment of monitoring of CPPs to the Chief Electrical Inspector an adjudicatory function and is not in accordance with the law?

6. At the outset, a distinction needs to be made between captive/non-captive consumers who avail power from the CPP to the extent of their full requirement and avail only standby power from the licensee, and those who consume power produced by a CPP only to meet part of their requirement. In case of the latter, the consumer may reduce his demand with the licensee to the extent desired while it continues to be a regular consumer of the licensee for the reduced demand. He also pays the full demand charges for the demand, al beit reduced, contracted with the licensee. The first category of consumers of a CPP may like to reduce demand to zero level; but they will continue to be consumers of the licensee. Since we are concerned only with such consumers who are supplied power by the CPP through open access and through the wires of the licensee, even those consumers who reduce their demand to zero level will continue to have connection of the licensee. Therefore, they also continue to be consumers of licensee in terms of the definition of 'consumers' given in section 2(15) of the Act, quoted below: -

"Consumer" x x x x x x x x x x x x x x x x includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee".

The question is whether the consumer of a CPP who may continue to be consumer of the licensee, should be treated like the other regular consumers of the licensee. The relevant provisions in the Act, the NEP and the NTP do place the 'captive consumers' in a separate category. There are justifiable grounds for treating them differently. The first and the foremost, consumers of CPP source power either fully or partly from a CPP and if at all, only partly from the licensee. Standby power has to be treated by its very nature in a different category. We shall come to that shortly. The CPP has a right to open access for the purpose of supply of electricity to its captive consumers [Section 9 (2) of the Act] and the captive consumer is not liable to pay cross-subsidy surcharge (proviso 4 to sub section (2) of section 42 of the Act). The very objective of a separate provision for captive power plant would be nullified in case they are to be treated like any other generator. The importance of captive generation, which contributes to the overall electricity generation capacity of the country and help in decentralized generation and distribution of electricity, has been recognized in the Act, the NEP and NTP. The captive consumers of the CPP have to be treated as a different category of consumers of a licensee, if the objectives of captive generation have to be

subscribed. The main issue is clearly defining the relationship of CPP consumers with the licensee whose consumers they continue to be.

7. Section 45 (3) of the Act provides as under: -

“45(3). The charges for electricity supplied by distribution licensee may include – a fixed charge in addition to the charge for the actual electricity supplied; xxxxxxxxxxxx”.

The objective of this provision is to recover the fixed and variable components of the cost of supply of electricity. Para 8.4 of the NEP also provides for two-part tariff, featuring separate fixed and variable charges. The charges are to be determined by the Commission under section 45(5) of the Act and are generally determined as part of the tariff order of the Commission. The tariff approved by the Commission for HT consumers provides for recovery of both fixed charges and variable charges in case of regular consumers and also in case of temporary connections. For all HT consumers there is the minimum charge in terms of a charge on demand to the extent of demand contracted with the licensee. It is only in case of an EHT consumers that there is also a minimum charge in terms of energy. In the impugned order we have taken into consideration the fact that unlike a regular consumer of the licensee, who has to source his entire requirement from the licensee, a captive consumer sources electricity from his own captive plant and hence while he is liable to pay the fixed charge to the extent of his demand contracted with the licensee, he should not be asked to pay for the minimum energy consumption irrespective of whether he consumes energy to that extent or not. There is, of course, a problem when the contract demand is reduced to zero, to which we shall come later and see how this may be addressed. For those who have any contract demand with the licensee, however, we would like to reiterate our direction that he should not be liable to pay minimum charges of energy in addition to the demand charges. The Commission, however, do not agree with the contention of the respondents that the Board should not be paid any demand charges or that the demand charges be reduced as it is not in a position to supply to the requirement of the consumer and has to resort to load- shedding.

8. The Commission does not agree with the petitioner that the non-recovery of minimum charges in terms of energy would adversely affect its revenues as determined by the Commission. As pointed out by the respondents, not only does the licensee recover the full demand charges on the demand contracted, the transmission and wheeling charges paid by the consumers of the CPP availing open access also go to partly reimburse the fixed costs of the licensee. In any case, the licensee has not furnished any data to substantiate his contention.

9. The petitioner has given no reason in support of his contention that the stipulation in the impugned order that the consumer shall have to consume at least 50% of his requirement in terms of unit consumed, from the CPP, is neither relevant nor necessary. It would appear to be based on the general principle that a consumer of the licensee is a consumer irrespective of the

quantum of power consumed. While there is no questioning the general principle, this stipulation, in fact, has been made only to ensure that a consumer who gets supply of electricity to the extent of only a small part of his requirement from a CPP does not get this special facility granted in our order. The Commission feels that the captive consumer should be entitled to the exemption of the minimum charges in terms of the energy, only if he consumes substantial quantity of power from the CPP, which has been specified as more than 50%. This dispensation, however, shall not be available to non-captive consumers which we have discussed in para 12 below. The Commission does not find any illegality or unreasonableness in this dispensation.

10. The Commission recognizes that the case of consumers availing power only from the CPP who reduce their CD to zero is more complex. Such a consumer does not have any contracted demand with the Board and the question of billing on the demand charge, therefore, is open. As we have already mentioned, he continues to be a consumer of the Board as per the definition of consumer under section 2 (15) of the Act. In our order we have said that such consumers whenever they draw power from the licensee shall pay tariff as applicable for temporary supply. The Commission has relied on para 8.5.6 of NTP in this regard. This provision is reproduced below: -

“In case of outages of generator supplying to a consumer on open access, standby arrangements should be provided by the licensee on the payment of tariff for temporary connection to that consumer category as specified by the Appropriate Commission.”

Thus, whenever there is an outage in the CPP its consumers, both captive and non-captive, should get supply from the licensee as it would not be possible for them to shut their plants no sooner the CPP comes under outage. Standby power by its very nature may be availed in an emergency at any time and it may even be without prior intimation to the licensee. Thus, a responsibility has been cast on the licensee to come forward and supply electricity to a consumer at a critical time. The Board has to keep its infrastructure ready to extend such supply to the consumers at any time. In view of this obligation, the Commission feels that the licensee definitely needs compensation including recovery of fixed charges. But since there is no contractual demand in these cases, the question is how is the demand charge to be determined? The demand charge is generally for the whole month and for the demand availed by the consumer, as the tariff designed by the Commission is for a full month. As the CSEB has brought out, even in case of a temporary connection, the demand is indicated as also the period for which temporary connection is to be availed. In case of consumers of CPP neither time nor demand can be indicated in advance. That is not practicable. Under the circumstances, the Commission feels that some way would have to be found to meet such a special situation. A single part tariff which takes care of the components of demand charge and also the energy charge appears to be a practical solution. Since such consumers are most likely to be in EHT and HT categories in view of the open access regulations, the Commission feels that per unit average tariff of HT and EHT consumers in the tariff order for the

year 2006-07 should apply to such consumers. The average tariff takes care both of the demand charge and the energy charge. In para 4.12 of the tariff order for 2006-07 (passed on 13.09.2006 in petition No.24 of 2006) this average tariff has been worked out at Rs.3.79 per KWh. The average tariff is being/or as preferred the only method, in the absence of any contract demand of consumers. The Commission directs that this tariff be made applicable to such consumers of the CPP who reduce their CD to zero, at the rate of one-and-half times of this tariff as is applicable to all temporary connections. This tariff will be applicable till the tariff order for 2006-07 is in force. However, we direct this facility will be provided for the maximum drawal of power to the extent of the quantum for which the consumer is availing open access. Thus a consumer who has an open access agreement with the licensee, say for 5 MW may draw a maximum of 5 MW power. In case drawal of power is more than what is permitted in the open access agreement, the consumer is liable to pay penalty and has to pay two times of the average HT/EHT tariff for the excess power drawn. The excess power consumed in terms of units may be worked out on proportionate basis. For clarity, the following example is given:

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|-------|---|---|---------|
| (i) | Load permitted in the open access agreement | - | 5MW |
| (ii) | Load recorded in ABT meter for standby supply availed from the Board/licensee | - | 6MW |
| (iii) | Consumption recorded during the period when 6MW load was availed | - | A units |

In that case, billing will be done with the following method:

- | | | |
|--|---|--|
| ⇒ Billing for consumption for drawal of power upto 5 MW | : | @one and half times of the average tariff for HT/EHT x A x 5/6 |
| ⇒ Billing for consumption for drawal of power in excess of 5MW | : | @ two times of the average tariff for HT/EHT x A x 1/6 |

Such consumers shall enter into agreement for supply with CSEB/Licensee on the above lines. Such agreements will have to be different from the agreements with normal consumers and shall contain provisions as above and shall be approved by the Commission.

11. The Commission would like to reiterate that the above arrangement would be effective only with ABT meters which are required for measurement of the quantum of energy consumed by the captive/non-captive consumers from the CPP as also from the licensee. ABT meters have to be installed at the point of injection as also at the point of delivery. Proper accounting and billing is possible only when such meters are in place. The Commission has formulated regulations on Intra-State Open Access which have already been notified on 21st July 2005. According to Regulation 18 of these Regulations, all open access customers shall have to provide ABT compatible special energy meters (SEMs) both at the point of injection and of drawal. In our order, we have already directed that SEMs shall be installed by all CPPs

within a period of three months, and by the CSEB by six months, and these periods are already over. However, CPP and captive consumers have to ensure installation of SEMs and make available the software for billing and scheduling to the licensee and the SLDC without which these orders can not be implemented.

12. The contention of the CSEB that a non-captive consumer should not be treated at par with a captive consumer merits consideration. A CPP by definition is meant to generate electricity primarily for his captive use, i.e. the use of captive consumer(s) and not for other consumers. It is only in case of captive consumption that the consumer is not liable to pay cross-subsidy surcharge. The Commission agrees with the Board that prima facie, there is no difference between a non-captive consumer of a CPP and a consumer of IPP getting supply through open access. The argument of one of the respondents, i.e. M/s Jayaswal Neco, which was also the argument of the CPPs before this Commission, when the original case was heard, that unless a special dispensation is provided to non-captive consumers, they may not like to avail power from the CPP, may be valid only to some extent. Such a consumer has to pay full demand charges and minimum charges in terms of units (in case of EHT consumers) apart from all open access charges which together may be so high that supply from the licensee may be cheaper. But it has to be noted that the cost of power of a CPP would definitely be much below the cost of the power of the licensee. The losses in the licensee's system is much more than that of a CPP as it operates in a limited area where efficient management is possible and technical losses may be under control. This is not so in case of the licensee. The licensee has the obligation to supply to all consumers. So far as non-captive consumers are concerned, the CPPs are in the market like any other generator, to sell power to any consumer and hence their rates should be competitive. We are, therefore, inclined to agree with the Board that special dispensation in favour of non-captive consumers would not be justified. However, since we have permitted third party sale by CPPs, it would at least be necessary that the non-captive consumers are allowed to reduce their demand to the extent desired, in relaxation of the general rule about reduction of demand in the Supply Code notified by the Commission. In case they reduce their demand to nil the dispensation as enumerated in para 10 above, however, shall also apply to them. Beyond that no other facility may be justified. Our order dated 6-2-2006 shall stand modified to that extent in respect of non-captive consumers.

13. The only other issue is the role assigned to the Chief Electrical Inspector in our order which it has been contended is not in accordance with the law. The contention that "adjudicatory function" has been conferred on the Chief Electrical Inspector perhaps refers mainly to para 16 of our order in which it has been stated that "at the end of each function every CPP will submit details of monthly generation, auxiliary consumption and consumption made by captive and non-captive users separately to the Chief Electrical Inspector so that the latter could determine if the generating unit qualifies a CPP under the definition of the above rule." The 'rule' here refers to Rule 3 of the Electricity Rules which lays down the criteria for classification of a

generator as a captive generating plant and the requirements of such plants. The Commission is in agreement that this may confer to an extent, adjudicatory function on the Chief Electrical Inspector of the State and that may not be in order. However, this function also can not be entrusted to the licensee. Unfortunately, neither the Act nor the Electricity Rules lay down which authority may monitor the status of a CPP. In the absence of clear guidelines it would be appropriate that the Commission itself undertakes this function. We would, therefore, modify our order to the extent that the Chief Electrical Inspector may obtain details of generation, auxiliary consumption and consumption by captive and non-captive users, from all CPPs but will submit the same to the Commission which shall then determine whether the generating unit qualifies as CPP as per the requirement of Rule 3 aforementioned. In case the Commission comes to the conclusion that the generating unit does not qualify to be a CPP the financial gain already made by the generating unit and the captive users shall be made good by the generating unit to the licensee within a reasonable time as may be fixed by the Commission. Subject to this modification we would like to retain the monitoring role assigned to the Chief Electrical Inspector as he has even otherwise a statutory role in respect of generators.

14. In view of the above discussion, the review application succeeds only partially and the Commission's impugned order dated 6.2.2006 is reviewed and modified to the extent discussed above.

Sd/-
Member

Sd/-
Chairman

True Copy

(N.K.Rupwani)
Secretary