



Chhattisgarh State Electricity Regulatory Commission

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

Tel: 0771-5073555, Fax-5073553

Petition No.30/2005 (M)

In the matter of deciding power tariff in respect of start-up power

M/s Monnet Ispat Ltd. Petitioner
Mandir Hasaud, Raipur

V/s

Chhattisgarh State Electricity Board Respondent
Daganiya, Raipur

ORDER (Passed on 17/02/2006)

In this petition M/s Monnet Ispat Limited, Mandir Hasaud, Raipur pleads for approval of a separate start-up tariff for them by the Commission on the ground that they had the benefit of a start-up tariff, which was promulgated by the Chhattisgarh State Electricity Board (CSEB or the Board, for short) on 24.2.2004, and that there is no equivalent category in the tariff order passed by the Commission for the year 2005-06. In their subsequent pleading submitted on 8.11.2005 they have also submitted that because of the nature of their consumption their power factor is generally low and they have to pay heavy penalty for such lower power factor. They also have a grievance against the revised rental for meter which according to them is very high. These two additional issues have been raised only to buttress their main plea that the tariff made applicable to them (HV-6 : Other HT Industries) has cast a heavy financial burden on them and has had the effect of raising the electricity charges payable by them by 300%. The petition was not initially presented as an application for review of the order dated 15.6.2005 of the Commission, passed in petition No.5 of 2005 by which the ARR and retail supply tariff for 2005-06 for the Board has been determined, although subsequently a prayer has been made to treat it as a review petition. The petitioner clearly seeks a separate tariff on the lines of the start-up tariff which was applicable to them earlier on grounds of equity.

2. The facts of the case are that the Board had promulgated a separate 'start-up' tariff by an order on 24.2.2004 which was applicable to non-conventional energy generators and IPPs. This tariff was made applicable to M/s Monnet Power Ltd. (as the company was known then) apparently by virtue of it being an IPP. M/s Monnet Power Ltd. entered into an agreement for such tariff with the Board on 1.5.2004. Subsequently, by an order of the High Court M/s Monnet Power Ltd. was amalgamated with M/s Monnet Ispat Ltd. and the latter entered into a fresh agreement for supply of electricity with the Board on 2.4.2005. The new company M/s Monnet Ispat Limited continued to have the benefit of start-up tariff. In the meantime, the tariff order for the year 2005-06 was passed by this Commission. Neither did the Board seek any tariff for the so-called 'start-up' power as a separate

category, nor did the petitioner or other captive power plants/IPP's in the State. The order of the Commission did not contain a separate tariff for start-up power. Since the power industry could not be placed in any category of tariff other than 'HV-6 : Other HT industries' this tariff category has been made applicable to them. However, in the tariff order passed by this Commission on 15.06.2005, HV-6 did not include EHV consumers and there was no tariff fixed for consumers on 132 KV or 220 KV. On a reference made by the Board these higher voltage consumers were also included in the HV-6 tariff category on 29.8.05 by a separate order. The petitioner was one of them. This has allegedly raised the electricity bill of the petitioner from Rs.12.30 lakh to Rs.37.00 lakh per month. Hence this petition.

3. The petitioner has pleaded for the following relief:

(i) He should be given the benefit of a separate start-up tariff on the lines of the tariff enjoyed by him before the new tariff order came into force. The petitioner has a power plant and does not require continuous supply like any other industry but only for start-up purposes, whenever there is a forced or scheduled outage of the plant. Thus his power consumption is very low. He is entitled to draw 96000 units per day against which his average drawal per day was 1813 units. His power factor is also low and is on an average 0.3% only for which he is penalized heavily.

(ii) Since he is based on co-generation and co-generation has been treated as non-conventional energy sources the start-up tariff made applicable to biomass based non-conventional generators as decided by the Commission separately should be made applicable to them.

(iii) He has additionally pleaded that the power factor surcharge should not be levied on him. He has claimed to draw support from the orders passed by this Commission in the case of M/s BALCO and of M/s Jayaswals Neco in which the Commission has granted relief, and which are similar to the petitioner's case.

4. We have heard the petitioner and the Board in detail. Although the petition was not filed as a review application against the order of the Commission dated 15.6.2005 passed in petition No.5 of 2005 (tariff petition), the petitioner has pleaded that it should be accepted as a review application. His plea is that the Commission should have declared a separate tariff for start-up power which, in terms of its use of electricity and load factor, is different from other categories of consumers. On the issue of limitation it has been stated that the order of the Commission placing EHV consumers, including the petitioner, in HV-6 tariff category was passed on 29.8.2005 and this petition has been filed on 12.9.2005 which is within the prescribed period of 30 days. In view of the plea raised in the petition, it has been considered as a review petition.

5. Of the relief sought by the petitioner, the plea regarding power factor penalty has been opposed by the Board on the ground that low power factor penalty, as also higher charges of meters, are part of the tariff order and has universal application to all HT consumers. No specific dispensation in a single case is called for. Moreover, it is not germane to the main issue in this petition. The Commission is inclined to agree with the Board. Low power factor penalty is applicable to all HT consumers and all captive power plants may have a similar problem. The Commission, in any case, had

considered this matter in M/s Jayaswals Neco's case [Petition no. 19 of 2005 (M)] to which a reference has also been made by the petitioner. The Commission has observed in the order passed on 5.10.2005 in that case as follows:

"It is seen that power factor penalty as well as incentive have been introduced on both maximum demand and consumption. In the earlier tariff there was provision of levy of penalty/incentive on either of the two. Hence, the issue needs to be studied in detail by the Commission to consider if as per the request of the petitioner levy of penalty should be either on consumption or on maximum demand and not on both. Since, incentive is also being given on both maximum demand and consumption, any decision on disincentive will affect incentive, which will also have to be restricted to either of the two. This will have effect on a much wider spectrum of tariff and hence the Commission would like to consider this issue separately. Till then the petitioner will make payment of power factor penalty as per the tariff order dated 15/06/2005."

Thus no relief has been given to M/s Jayaswals Neco Ltd. in regard to power factor.

6. The other plea regarding the power plant being based on co-generation, the start-up power tariff approved for non-conventional energy sources should be made applicable to it also does not merit consideration. The start-up tariff approved by the Commission has been made applicable to the non-conventional generators based on biomass, in petition No. 7/2005 vide order dated 11/11/05. This order is not applicable to other non-conventional sources, such as co-generation, small hydel power plants, wind energy etc. Besides, the petitioner has not produced any evidence of his power plant being one based on the co-generation principle. Even if it is, the Commission could not have recommended a separate tariff for a single power plant considering that there are a number of power plants in this State based on co-generation. This plea has also not being pressed and hence we leave it at that.

7. The only issue for consideration is whether the petitioner is entitled to any relief/review of the tariff order of this Commission, only on the ground of equity - that the petitioner had the benefit of a start-up tariff which has now been denied resulting in heavy financial burden on him and that the Commission has granted relief in similarly placed cases, such as BALCO and Jayaswals Neco.

8. On the above issue the petitioner has submitted that the start-up tariff fixed by the Board vide their order No.3071 dated 24.2.2004 should have been appropriately brought to the notice of the Commission at the time of consideration of the Board's tariff application for 2005-06 and a separate category for start-up power should have been provided. The Board, however, did not include this in their petition. They brought the prevalence of such a tariff to the notice of the Commission at a very late stage and did not seek a separate tariff category. However, as has been pointed out by the CSEB in its reply, if the petitioner had any grievance with regard to the tariff petition of the Board, he could have represented to the Commission during the hearing of the tariff petition or raised the issue in the public hearing. Even after the tariff order was passed on 15.6.2005, which did not contain any separate start-up

tariff category, the petitioner did not come up with a review application or otherwise raised this issue before the Commission in time. The Board has further submitted that start-up power connection has no separate characteristic with regard to power consumption and is like any other industry having similar load factor. There was thus no need to propose a separate tariff for start-up power.

9. The Commission is inclined to agree with the Board. Firstly, the Commission was not obliged to determine tariff for a separate category of consumers for start-up power when no such proposal was made by the Board nor did any stakeholder raise this issue at any stage of consideration of the tariff petition. Secondly, the petitioner had enough opportunity to raise this issue during the consideration of the tariff petition of the Board by the Commission. He is thus estopped from raising this issue at this stage. The review application thus lacks merits and deserves to be rejected.

10. As already mentioned the petitioner has applied for relief on the basis of equity and has cited the cases of M/s BALCO and M/s Jayaswals Neco in which the Commission has granted relief under, according to the petitioner, similar circumstances. The facts of these two cases are different from that of the petitioner although the relief sought may largely be the same. BALCO is in tariff category HV-4 which is applicable only to heavy industries with contract demand of above 20 MVA. BALCO which has a connected load of 120 MVA had raised the matter regarding load factor. M/s Jayaswals Neco is in tariff category HV-5 and the nature of this industry is such that its requirement of power is not only for start-up but also for consumption and in that case also the issue was one of load factor. Therefore, no parallel may be drawn between the petitioners' case and those cases. The Commission also feels that even on the merit of the case the petitioner is not entitled to any relief. The Board issued an order regarding start-up tariff on 24.2.2004. The order very empathically states that it is applicable to non-conventional energy producers and independent power producers (IPPs) "which do not have any activity other than generation of power". Clearly this tariff was not applicable to captive power plants. The Board entered into supply agreement with M/s Monnet Power Ltd. on 01/05/2004, presumably as an IPP. But even before the agreement M/s Monnet Power Ltd. has sought and CSEB had granted permission for synchronization of the power plant with the grid and parallel operation as a 'captive power plant' on 15.1.2004. By this time the present Act had already come into force in which CPP has been defined. CSEB granted permission to M/s Monnet Power Ltd for wheeling power to M/s Monnet Ispat Ltd on 29.1.2004, again as a CPP. Thus even before the first agreement of supply of power under the start-up power tariff order (which was for non-conventional power plants and IPPs) the power plant had consistently claimed that it was a CPP and it had been granted permission for wheeling and parallel operation as a CPP. In any case, after amalgamation with M/s Monnet Power Ltd., by the order of the Hon'ble High Court of Chhattisgarh on 24.9.2004, the power plant clearly became a CPP under the provisions of the Act. As a consequence of this amalgamation and the power plant having without doubt becoming a CPP, start-up power tariff of the CSEB was no longer applicable to this plant as it was no longer an IPP, by the admission of the petitioner. Therefore, the circumstance under which a further agreement for start-up power was entered into by CSEB with M/s Monnet Ispat Ltd. on 2.4.2005 is not clear. It has been argued before us that as per the order of the Hon'ble High Court, passed under Section 394 of the Companies Act, all subsisting contracts and rights and benefits of all

agreements of M/s Monnet Power Ltd, the transferor company passed on to M/s Monnet Ispat Ltd, the transferee company. Therefore, by implication the power tariff agreement with the CSEB by M/s Monnet Power Ltd. the transferor, also passed on to M/s Monnet Ispat Ltd, the transferee. It is difficult to accept this argument. The order of the Hon'ble High Court under section 394 of the Companies Act is acceptance of the scheme of amalgamation propounded by the two companies and approved by their shareholders. Once M/s Monnet Ispat Ltd ceased to be an IPP (in fact, it was always a CPP only, as has been mentioned above), the existing agreement for start-up power with CSEB ceased to be valid. That is perhaps the reason why after amalgamation M/s Monnet Ispat Ltd, the present petitioner, entered into an agreement for supply of start-up power with CSEB again on 2.4.2005. The wheeling agreement by the petitioner with the CSEB of the same date as the agreement for supply of power i.e. 2.4.2005 refers to the power plant as a CPP.

11. We would like to examine here to the validity of this start-up tariff order itself. It is to be noted that the order was passed on 24/02/04 when the Act was already in force. Although by then the Commission was not in position, the Board had no authority under the provisions of the Act, to declare a new tariff. The competent authority for determination of tariff is the Commission. Apparently because of this position in the Act, the so-called start-up tariff order itself says in the last para: *"the approval of the above tariff is subject to ex-post facto approval of the SERC after it becomes functional, otherwise, recovery as per the appropriate tariff of the earlier tariff order shall be effected from the consumers, availed this tariff. In order to ensure this, a special clause indicating the above may be inserted in the supplementary agreement/agreement for the existing consumers who opted this tariff or prospective consumers as the case may be."*

However, this order was not brought to the notice of the Commission after it became functional in July' 04, just four months hence. By the time the second agreement was entered into, under the same tariff order, on 02/04/05, the Board had already submitted its application to the Commission for determination of ARR and retail tariff for the year 2005-06. The Board has not explained inspite of a specific query by the Commission, why an existing tariff order, which, in any case, was supposed to be subject to the approval of the Commission, was not brought to the notice of the Commission. When it was brought to the notice of the Commission much later, it was also without any plea for a separate tariff start-up category. The Commission has also observed that the second agreement (nor for that matter the first) did include any clause to the effect that the tariff applicable was provisional and subject to the approval of the Commission as specified in the order.

Also interestingly, although there are a number of captive power plants in the State, the benefit of this order offering a separate start-up tariff has been derived only by the petitioner. First M/s Monnet Power Ltd. and subsequently M/s Monnet Ispat Ltd. is the only consumer of CSEB which has entered into agreement with the latter and availed this tariff as has been stated by the CSEB.

In view of the above circumstances of the case, the Commission feels that the Board should conduct an enquiry into the whole case to find out under what compelling circumstances the above tariff was proclaimed while the Board had no authority to do so, why it was not brought to the notice of the Commission when it

became functional and why and how only one company has been given the benefit to this order and why the power supply agreements with the petitioner did not include the clause of condition that it was subject to approval of the Commission. The Board should fix responsibility for the lapses and take suitable action against those responsible.

12. In view of the circumstances enumerated above our view is that the start-up power tariff order ceased to be applicable to the petitioner the day the amalgamation order was passed by the Hon'ble High Court i.e. with effect from 24.9.2004, even if its legal validity is not questioned. The application of start-up tariff by the Board to the CPP thereafter was not valid. The petitioner is liable to pay electricity charges to the Board at rates, which were applicable to other power plants beyond 24.09.2004.

13. Thus the petitioner was not entitled to the tariff benefit on the basis of which the present petition is based, even before the tariff order for the year 2005-06 was passed by the Commission. He has hence no right to claim that the tariff now made applicable to him has imposed a heavy financial burden on him as compared to the start-up tariff, which, as we have already concluded, was not applicable to him in the first place. Under the circumstances, the petitioner has no case and the petition is rejected. The CSEB is well advised to look into the circumstances of this case, determine the tariff which was applicable to the petitioner on 24.9.2004 i.e. the date of amalgamation when M/s Monnet Power Ltd lost the status of an IPP and recover charges as per rates then applicable.

14. The Commission would, however, like to mention here that in the case of Urla Industries Association (petitioner No. 17 of 2005) which deals with the matter of power purchase and related dispensation in respect of captive generating plants, the Commission has passed orders on 6.2.2006 under which a special dispensation has been granted to all captive power plants in respect of start-up power. The petitioner will now have the benefit of that order.

Sd/-
Member

Sd/-
Chairman

True Copy

(N.K.Rupwani)
Secretary