



Chhattisgarh State Electricity Regulatory Commission

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

Tel: 0771-4048788, Fax-4073553

Website: www.cserc.gov.in, E-mail: cserc.sec.cg@nic.in

Petition No.02 of 2009(M)

In the matter of reduction of contract demand of CPP to zero and waiver of penal charges for the power drawn for a short period.

Arasmeta Captive Power Company Pvt.Ltd **Petitioner**
8-2-293/82/A/431/A, Road No.22
Jubilee Hills, Hyderabad-500 033.

V/s

Chhattisgarh State Power Distribution Co. Ltd **Respondent**
Raipur.

Present: **S.K.Misra, Chairman**
B.K. Sharma, Member

ORDER (Passed on 05/06/2009)

This is a petition filed by Arasmeta Captive Power Company Pvt. Ltd (herein, the 'ACPC' or the 'petitioner') under section 86(1)(f) read with section 86(1)(k) of the Electricity Act, 2003 (herein, the 'Act'). ACPC has a 43 MW coal-based power plant at village Arasmeta, District Janjgir-Champa which caters to the power requirements of Lafarge Cement Ltd. Lafarge Cement is the captive consumer which has two cement plants, one at Arasmeta, adjacent to the power plant, and other at Sonadih, District Raipur. ACPC is a consumer of the Chhattisgarh State Power Distribution Co. Ltd ('CSPDCL' or 'licensee') and has an agreement for availing 3125 KVA on 132 KV voltage for start-up power of the power plant. It has a 132 KV dedicated feeder from its switchyard to the adjacent cement plant in Arasmeta and it provides power to the other cement plant at Sonadih using the licensee's system. The petitioner supplies 7 MW power to CSPDCL also. At ACPC's switchyard a 132 KV breaker has been provided on the dedicated feeder to the adjacent Arasmeta Cement Plant to ensure isolation of cement plant's load from the power plant switchyard in case of any plant outage. There are two issues raised in this petition:

- (i) The first relates to denial by the respondent company of the request of the petitioner to reduce his contract demand from 3125 KVA to zero and to charge for the power drawn, if any, as per the tariff decided by this Commission.

- (ii) The second issue relates to waiver of wrongful demand of penal tariff for power drawn for a period of 15 minutes only due to outage of their generating plant.

2. The facts relating to the first issue are that the petitioner requested in July, 2008, the then Chhattisgarh State Electricity Board (CSEB), the predecessor to the present respondent company, to reduce his contract demand from 3125 KVA to 0. In making this request reliance was made upon this Commission's order dated 6.2.2006, passed in petition No.17 of 2005(M). In this order, which deals with issues relating to captive generating plants, reduction of contract demand of captive and other consumers of a captive power plant (CPP) has been permitted, even down to zero. The grievance of the petitioner is that on his present contract demand of 3125 KVA he has to pay high demand charges of Rs.9,37,500 every month, while power is required only very occasionally by the captive plant for start-up purposes. The petitioner has contended that reduction of contract demand from 4000 KVA to 0 has been permitted in the case of another captive plant M/s Godavari Ispat. The respondent company has rejected the request of the petitioner for reduction of contract demand to zero as not covered under the order of the Commission mentioned above.

3. We have heard the parties at length on this issue. It has been pointed out by the respondent company that the Commission's order of 6.2.2006 passed in petition No. 17 of 2005(M) and 29.9.2006 passed in petition No.16 of 2006 are regarding certain issues relating to captive power plants. The Commission has permitted reduction of contract demand to zero level only in case of captive and non-captive consumers of a captive power plant, subject to certain conditions. In para 6.7 of the first order, dated 6.2.2006, the Commission has passed the following directions:

"Further liberalizing this provision, (i.e. the provision of reduction of contract demand in the Supply Code) the Commission directs that the captive and non-captive consumers of a CPP may reduce their contract demand to the extent desired, on availing power supply from the CPP, any time during the period of the agreement and to any extent. However, such reduction shall be permitted only once in a year. In case, contract demand is reduced to zero level to avail only standby power from the licensee, the tariff will be for temporary connection to the consumer during which the power is availed from the licensee, as per para 8.5.6 of the NTP. So far as the CPP itself is concerned, it can avail start-up power as per para 8 of this order."

Clearly this provision of reduction of contract demand to zero has been permitted as a special dispensation only in case of consumers of a CPP and not the CPP itself. In case of the CPP itself, separate directions have been given that it can avail start-up power which does not exceed 10% of its highest capacity of generating unit and restrict the drawl of power within 10% of load factor every month. In the present case the CPP itself wants to avail the special dispensation granted in favour of a consumer of a CPP which is not permissible. Hence the application for reduction of contract demand to zero has rightly been rejected by the respondent company. The petitioner has submitted that while the Commission recognized the need for a concessional start-up tariff, as in para 8.4 of the order dated 6.2.2006 aforementioned, the Commission made the start-up tariff conditional in its tariff order

dated 22.10.2007 in that the tariff has been made applicable only to those CPPs which are not co-located with their captive consumers. Since Arasmeta Cement Plant is co-located with the petitioner's plant, the latter is not entitled to concessional start-up tariff. The petitioner has pleaded that while the Commission recognized the need for a concessional tariff it should be made applicable to all CPPs. In this connection the petitioner has referred to the start-up power dispensation granted by Tamil Nadu Electricity Regulatory Commission under which drawal of power by a generator for start-up purposes is permissible on payment of energy charges plus energy equated demand charges applicable to relevant HT tariff category. During argument Shri Sanjay Sen the learned counsel for the petitioner agreed that presently there is no provision for a CPP to reduce its contract demand to zero. He, however, pleaded that if the Commission recognizes the need for a special dispensation in respect of start-up power for a CPP, at least the present start-up tariff granted by the Commission in the current tariff order should be made applicable to all CPPs without any conditionality. This plea, however, cannot be the basis for reduction of contract demand to zero and the learned counsel agrees. The petition, therefore, in so far as it relates to the first issue of reduction of contract demand, is rejected. We would, however, like to mention here that the conditionality imposed earlier on a CPP in availing start-up power that the captive consumer should not be co-located with the power plant, has been removed in the latest tariff order for the year 2009-10 passed on 30.5.2009. This should provide some relief to the petitioner.

4. So far as the second issue is concerned, the facts are that on 9.6.2008 there was a tripping of the petitioner's CPP at 9:45 hours due to complete failure of DC power supply and excitation. Due to failure of the DC supply, the total protection system available in switchyard also failed. This resulted in throwing up of load of Arasmeta Cement Plant into respondent company's system. Since the persons on duty at the power plant could not isolate the cement plant's load manually, they immediately contacted the 132 KV Akaltara sub-station of the respondent company, on telephone and get the supply disconnected from Akaltara 132 KV sub-station. On the same day the petitioner informed in writing to all concerned officers of CSPDCL about the incident. On 15.6.2008 i.e. six days after, the scheduled monthly meter reading was taken by the officials of the respondent company and apparently 18800 KVA MD was shown recorded on ACPC's energy meter. The MRI data which was downloaded in the course of meter reading showed that the above MD was because of drawal of power on 9.6.2008 during 9:45 hours to 10:00 hours. Thus the registered maximum demand to the extent of 18800 KVA had been only on account of system failure at ACPC premises. The petitioner made a representation to SE(O&M), then CSEB, Champa on 17.6.2008 requesting withdrawal of the excess demand recorded as above due to system failure. However, on the insistence of the respondent company the petitioner had to deposit Rs.90,39,410 as demand and energy charges on 28.8.2008, under protest. The petitioner has contended that the aforesaid penal charges are illegal for the following reasons:

- (i) The drawal of excess power was due to the failure of the protection system and not due to any deliberate action on the part of the petitioner. On the representation of the petitioner the CE (Commercial) of then CSEB, Raipur had asked SE(O&M), Champa, to submit a report on the incident that had occurred on 9.6.2008 in the premises of ACPC. Accordingly the EE (O&M), Akaltara, and AE 132 KV sub-station, Akaltara, visited the premises of

petitioner's CPP and submitted their report which has been forwarded to CE(Commercial) Raipur. In their report they confirmed the sequence of the incident that occurred as reported by the petitioner. The SE(O&M), Champa, in his report agrees that the occurrence was not within the control of the petitioner and that penal charges should not be imposed. It is clear from the facts aforementioned that there was no deliberate or willful act on the part of the consumer to violate its contract demand. That there was the requisite protection system in place has not been denied by the respondent company and that there was a failure of the protection system has also been accepted. This was thus a force majeure event beyond the control of the petitioner and should have been treated as such. Clause 23(a) of the agreement the petitioner has with the respondent company, clearly recognizes a force majeure event, such as the present one. The provisions of the Supply Code notified by the Commission have been made keeping in mind mainly the consumers who avail supply on regular basis and not a generator who avails power occasionally. This should therefore be treated as a dispute between a generator and a licensee which falls within the purview of the Commission. Per contra the respondent company has contended that the restriction of keeping the actual demand within the contractual limits is required for grid discipline and power purchase planning by the licensee. There can be no discrimination in levy of charges for excess demand on the basis of causes of exceeding the contract demand. It has also been contended that this is not a penal charge as such, but only additional charge for excess demand which has been prescribed to exercise control over unauthorized enhancement of demand.

5. We are broadly in agreement with the contention of the respondent company that no distinction should be made in the levy of charges on the basis of the reasons which may be attributable to exceeding the contract demand. It is also true that levy of charges are in accordance with the provisions of the Supply Code. However, the facts of this case does not merit imposition of a penal charge by whatever name it is called in the Supply Code. Generally, no doubt, the reason for the demand exceeding the contracted demand should not be gone into in the individual cases. This would lead to lot of litigation, which should be avoided. A general provision which covers all contingencies is therefore desirable. However, there is always an exception. We feel that this case is such an exception. This may not fall in the category of a force majeure as provided in clause 23(a) of the agreement. However, it is in the nature of a force majeure in that it was uncontrollable. It is not the case of the respondent company that the petitioner did not have the necessary safety requirements for isolation of its industry's load from the CPP in place. It is also established that the demand had exceeded the contract demand only for a period of 15 minutes. The MRI data which testified to this facts have not been contested. The petitioner could not have had an intention to supply of power to its industries as the drawal of power was only for a duration of 15 minutes. Since an enquiry had been made by the officers of the erstwhile CSEB, and it was established that the incident was beyond the control of the petitioner, imposition of penal charges of one-and-half times and on the demand recorded would be against the principle of natural justice. It would be relevant here to refer the provisions of clause 12.10 and 12.11 of the Supply Code which are reproduced below:

“12.10 If any circumstances not envisaged in the provisions of the Electricity Supply Code, should arise, the licensee shall, to the extent reasonably practicable in the circumstances, consult promptly and in good faith all affected parties in an effort to reach an agreement as to what should be done. If an agreement between the licensee and those parties cannot be reached in the time available, the licensee shall determine it in the manner best to its ability.

12.11 Wherever the licensee makes such a determination, it shall do so having regard, wherever possible, to the views expressed by the affected parties and, in any event, to what is reasonable in the circumstances. Each party shall comply with all instructions given to it by the licensee following such a determination, provided that the instructions are consistent with the prevailing Codes and Regulations. The licensee shall promptly refer all such unforeseen circumstances, and any such determination to the Commission.”

The event in question should have been treated as an ‘unforeseen circumstance’ if it does not fall under force majeure clause of the agreement as such and the procedure laid down in these provisions followed and the matter referred to the Commission. This has not been in this case. We would, therefore, order that the penal charges be waived. We are of the view that in this case the recovery of energy charges for the actual energy consumed during the billing cycle and demand charges of the highest demand recorded during the billing period excluding the demand recorded during the period of 15 minutes between 9:45 to 10:00 a.m. on 9.6.2008, will meet the ends of justice in this case. We order accordingly. The petitioner’s case on the issue regarding penal charges is therefore accepted. We also order that necessary provision be made in the Supply Code to take care of such force majeure-like cases which would be rare. However, while making such a provision care has to be taken that it does not restrict or hinder the applicability of the existing general provision regarding supply. The CSPDCL should make necessary proposals to the Commission in this regard.

**Sd/-
Member**

**Sd/-
Chairman**

True Copy

**(N.K. Rupwani)
Secretary**