



## Chhattisgarh State Electricity Regulatory Commission

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### In the matter of recovery of penal UI charges

#### Petition No.05 of 2009 (D)

M/s Monnet Ispat and Power Ltd.  
Mandir Hasoud, Raipur

.... Petitioner

V/s

Chhattisgarh State Load Despatch Centre  
Khedamara, Bhilai

Chhattisgarh State Electricity Board (under re-organization) .... Respondent

#### Petition No.40 of 2009 (D)

M/s Sarda Energy and Minerals Ltd.  
and 17 others, Raipur

.... Petitioner

V/s

Chhattisgarh Power Transmission Company  
Chhattisgarh State Load Despatch Centre  
Khedamara, Bhilai

Chhattisgarh State Power Distribution Company .... Respondent

#### Petition No.42 of 2009 (D)

M/s Barat Aluminium Company Ltd.  
Korba

.... Petitioner

V/s

Chhattisgarh State Load Despatch Centre  
Khedamara, Bhilai  
Chhattisgarh State Power Transmission Company  
Chhattisgarh State Power Distribution Company

.... Respondent

Present: Manoj Dey, Chairman  
B.K. Sharma, Member

Counsels: Sanjay Sen for petitioner of Petition No. 5 of 09 and  
Prashanto Chandra Sen for petitioner of Petition No. 42 of 09

**ORDER**  
**(Passed on 24.10.09)**

#### Petition No.05 of 2009 (D)

M/s Monnet Ispat and Energy Ltd. (MIEL, for short) has filed a petition under section 86 (1)(f) of the Electricity Act, 2003 (Act, for short) and Regulations 26 of Central Electricity Regulatory Commission (Open access in inter-State transmission) Regulations, 2008 against the demand on account of additional UI charges (as penal

UI charges) raised by the Chhattisgarh State Load Despatch Centre (SLDC, for short) for the months of July'08 to Nov'08. The history of the case as per petition is that M/s MIEL was granted concurrence for short-term inter-State open access of 60 MW power for the month of July' 08 and 70 MW power for the period from August' 08 to March' 09 by the Chhattisgarh State Electricity Board (CSEB, for short). Due to breakdowns in their power plant the petitioner was not able to generate electricity to the extent of its capacity and was forced to revise the schedule but due to numerous other problems and unforeseen breakdowns the petitioner was even unable to supply as per the given schedule. The SLDC has raised the bills to the petitioner @ Rs.10 per unit as penal UI charges on the ground that the deviation from actual power injection exceeds 5% of the schedule. This resulted filing of this petition which was registered as Petition No.05 of 2009(D), wherein, the petitioner has prayed to quash the penal UI charges and to direct the respondent to recalculate UI charges for the period from July' 08 to November' 08 on the basis of the norms laid down by the CERC. The petitioner further prayed for following relief:

- i. to declare that the Respondent No.1 does not have the legal right ability to claim penal UI charges of Rs. 10 per unit for under injection of electricity under any circumstances, even when the alleged deviation from schedule more than 5%;
- ii. to declare that the metering point for energy injection for purpose of UI calculation is the regional periphery as per CERC Guidelines and not the generator's connection with the Respondent No. 1, as has been done in the present case;
- iii. to declare that for over-injection, the petitioner is entitled to receive actual UI charges of the applicable UI rate in the regional periphery (and not @ Rs. 4.06/kwh per unit or the UI charges whichever is lower as was permitted in the present case) and that the same is not to be restricted only for injections upto 101% of the scheduled energy on a daily basis.

The petitioner has also filed an application for ex-parte ad interim stay and prayed to:-

- a. stay of the penal UI charges demanded.
- b. direct the respondents not to raise any invoices on account of penal UI charges till the disposal of the present petition.
- c. direct the respondent to adjust from the present UI invoices the actual UI receivable by the petitioner on account of actual over injection and not restrict any such payments, adjustments either to Rs. 4.06 / kwh or upto 101% of the schedule, as is being currently done.
- d. direct the respondent no.1 to calculate UI charges at regional periphery.

The learned counsel for the petitioner requested for ad-interim ex-parte stay on the penal UI charges demanded by the SLDC and for directing the respondent not to raise any invoice on account of penal UI charges till disposal of this petition. The other prayers made in their interlocutory application are not pressed by the learned counsel. It was pleaded that there is no any legal provision of billing of penal UI charges in case of under injection by any generator and the penal UI charges @ Rs.10 per unit demanded by the SLDC is unilateral. It was argued by the learned counsel for the petitioner that payment of such heavy UI charges which have not

been approved either by this Commission or any other statutory authority will create financial problems for the petitioner in these days of low liquidity. The petitioner has paid the so-called penal UI charges till Nov' 08 under protest. Based on the argument with the respondent since prima facie no legal sanction behind the penal UI charges imposed by the SLDC was observed hence looking to the facts of the case, we felt that the balance of convenience lies towards the petitioner and thus in the interest of justice the interim stay as prayed by the petitioner was granted and the recovery of penal UI charges, other than normal UI charges was stayed till final orders are passed in this case. The respondent SLDC was therefore directed not to recover or raise penal UI charges till disposal of this petition.

2. During the course of hearing of the case the Commission raised the question of their jurisdiction in respect of issues raised in the petition which relates to inter-State open access. The learned counsel of the petitioner submitted written statement and pleaded that the erstwhile Chhattisgarh State Electricity Board before its unbundling was a deemed licensee as envisaged under the provisions of the Act, which operated within the State of Chhattisgarh. The petitioner is a generating company also operating within the State of Chhattisgarh. The CSEB/ licensee raised an illegal demand for penal UI charges for alleged under injection by the petitioner generator. This demand/claim of the licensee is not sanctioned by any provision of the Act or any Regulation notified by either the State or the Central Commission. The CSEB has stated that the demand/claim is based on its submissions made to this Commission. CSEB has also said that it is an internal decision of its Board. Subsequently, after CSEB was unbundled, the successor company i.e. Chhattisgarh State Transmission Company Ltd. (which is the STU and transmission licensee within the State of Chhattisgarh) through its Chief Engineer (LD) of State Load Dispatch Centre (SLDC, in short) pursued the illegal claims of CSEB on account of penal UI charges and also levied further charges. The State Commission under section 86(1)(f) of the Act has the power to adjudicate a dispute between a licensee and a generating company. Once the said power under the statute is invoked, the State Commission has to decide the matter. The mandate/focus under section 86 (1)(f) of the Act is on the parties and not on the subject. Even if a generating company is engaged in inter-State transaction in the event of dispute with licensee, the State Commission has the power to adjudicate the same. The State Commission, to the extent necessary will apply the provisions of the Act and the CERC Regulations to resolve/adjudicate the dispute. The State Commission, like any judicial body, will be guided by the law regulating the subject irrespective of who the maker of the law is. This was also recognized by the CERC in clause 26 of CERC (Open access in inter-State transmission) Regulations, 2008 which states that in the case of inter-State transmission, the State Commission would have the necessary jurisdiction if the dispute involves the SLDC and the intra-State entities of the concerned State. Thus, it recognizes the jurisdiction of the State Commission on matters concerning SLDC/licensee and intra-State entities which includes a generating company. Since the petition is filed under section 86 (1)(f) of the Act read with Regulation 26 of the CSERC (Open access in inter-State transmission) Regulations, 2008 the State Commission has the jurisdiction to decide the dispute in accordance with law.

It is further reiterated by the learned counsel of petitioner that the CERC (Open access in inter-State transmission) (amendment) Regulations, 2009 notified on 20.05.09 which came into force on 15.06.09, amends clause 26 of the CERC

Regulations, 2008 by stating that 'all disputes arising under these Regulations shall be decided by the Commission (i.e. CERC) based on an application made by the person aggrieved.' It is pleaded by the counsel that CERC does not have the power to take away jurisdiction from the State Commission which jurisdiction is conferred by parliament. In support of his pleading the counsel have submitted that the Hon'ble Bombay High Court in Chapadgaon Vividh Karyakari Seva Sahakari Society vs. Collector of Ahmednagar (1989) 3 Bom CR 641 (BOM) (DB) has held that: "it is by now well settled that the rule should be consistent with the provisions of the Act, and if a rule goes beyond what the Act contemplates, the rule must yield to the Act." Further, the Hon'ble Bombay High Court in Dattatraya Narhar Pitale vs Prabhakar Dinkar Gokhale and Anr, AIR 1975 Bom 205 has held that- "if rules cannot be reconciled with the provisions of the statute under which they are framed, then, the provisions of the statute must always prevail, though every possible attempt should be made to reconcile if it could be done, but if they cannot be reconciled, they cannot be given overriding effect over the provisions of the statute." Since CERC Regulations are delegated legislations, they are subject to the Act and cannot override the same. They cannot take away jurisdiction conferred on the State Commission under section 86 (1)(f) of the Act. Hence, it is necessary to harmoniously construe the said amendment. It is further pleaded that the new Regulation cannot be applied to the present case, which has been filed when the old Regulation was continuing. It was further submitted that despite the new amendment, the State Commission will continue to have jurisdiction in the present case. This so because the petition was filed before the amendment and is pending before the State Commission. It was further pleaded that a new law bringing about a change in forum does not affect pending actions, unless a provision is made in it for change over of proceedings or there is some other clear indication that pending actions are affected.

3. We have gone through the submission and pleading of the learned counsel of petitioner on the point of jurisdiction, wherein, it has been pleaded that the demand of penal UI charges has been raised by SLDC, formerly a part of CSEB, i.e. a deemed licensee and the petitioner is a generating company and the penal demand charges raised by the respondent caused dispute and thus it is a dispute between the licensee and a generating company, and hence adjudication of dispute between the licensee and this generating company is well within the powers of the State Commission in accordance with section 86 (1)(f) of the Act, even if the generating company is engaged in inter-State transaction. Further, the clause 26 of CERC (Open access in inter-State Transmission) Regulations, 2008 states that the dispute between the SLDC and the intra-State entity of the concerned State falls within the jurisdiction of State Commission, which has been subsequently modified by the CERC in its (Open access in inter-State transmission) (amendment) Regulations, 2009, which came into force from 15.06.09, as per which all disputes arising under the inter-State transmission shall be decided by the CERC. In view of the learned counsel, the CERC Regulations are the sub-ordinate legislation and it can not substitute statute and thus the State Commission still have jurisdiction to adjudicate the disputes between the generators as a intra-State entity, and the utility (a licensee) despite the case related to inter-State transmission of power, as such the section 86 (1)(f) of the Act, specifies the parties and not the types of disputes and thus all the disputes between the generating company and the licensee can be adjudicated by the State Commission. We have also gone through the section 79 of the Act, which relates to functions of Central Commission, which states that the

Central Commission shall discharge the functions related; (c) to regulate the inter-State transmission of electricity; (d) to determine tariff for inter-State transmission of electricity, accordingly, the UI charges payable for over-drawal by buyer or beneficiary and under-injection by the generating station or the seller and receivable for under-drawal by the buyer or the beneficiary and over-injection by the generating station or seller which is related to inter-State transmission of electricity is to be decided by CERC as such UI charges is the part of tariff. Further, the section 86 (1)(f) of the Act mandates State Commission to adjudicate the disputes between a generating company and the licensee where types of disputes to be adjudicated is not defined, hence it may be implied that under this section of the Act State Commission can adjudicate all types of disputes between the generating company and the licensee. However, as per modified provision in clause 26 of the CERC (Open access in inter-State transmission) (amendment) Regulations, 2009 all disputes arising under that Regulations shall be decided by Central Commission. Thus, from above it is not clear as to whether the dispute between a generating company as inter-State entity availing inter-State short-term open access involving inter-State transmission system, having a dispute with licensee of the State regarding UI billing which is related to tariff is to be adjudicated by Central Commission or State Commission. This petition is related to generating company who is also an inter-State entity availing facility of inter-State short-term open access through the inter-State transmission of electricity having dispute with the utility regarding billing of UI charges which is related with the tariff as such and in view of not having clarity about jurisdiction related to present case we feel appropriate to proceed only with the portion related to billing of penal UI charges @ Rs. 10/- per KWh which is arbitrary and has no legal standing, and not to the other prayers which are related to accounting of the energy of the petitioner on regional periphery level and capping of UI charges at the rate of Rs.4.06 per KWh on over-injection. Though, the billing of penal UI charges is related with the tariff and we have already stayed the recovery of penal UI charges as such prima facie we have found that apparently there is no legal sanction behind the penal UI charges imposed by SLDC and hence we feel that we shall process and decide the case related to the billing of penal UI charges at the rate of Rs.10/- per KWh as per the demand raised by the SLDC.

4. The respondent SLDC in their submission has stated that prior concurrence for inter-State short-term open access was conveyed to the petitioner for 60 MW w.e.f. 01.07.08 to 31.07.08 and for 70 MW w.e.f. 01.08.08 to 31.03.09. The petitioner firm has injected less energy than the schedule from July' 08 to Nov' 08 details as follows:

Sl.No.	Month	% monthly reduce injection as compared to the schedule
1	July' 08	22%
2	August' 08	70.61%
3	September' 08	27.98%
4	October' 08	18.62%
5	November' 08	8.15%

Such under-injection results reduction in availability to the State and the reduced availability results over-drawal by the State utility at higher rate to meet out its demand based on pre-informed availability. Although, there is no provision in the Regulations for imposing penalty on such generators on account of injecting less energy than as per schedule given by them, but since such less injection continued

for months together, it was decided at the Board level for levying of penal UI charges @ Rs.10/- per KWh to avoid the occurrence of such situation of over-drawal by CSEB at higher rate. It is further pleaded by respondent that clause 7(3) of CERC (unscheduled inter-change charges and related matters) Regulations, 2009 issued on 30.03.09 states that "in addition to UI rate corresponding to frequency of 49.2Hz as stipulated under Regulations 5 an additional unscheduled inter-change charge at the rate of equivalent to 40% of UI rate corresponding to frequency of 49.2Hz shall be applicable for over-drawal or under-injection of electricity for each time block when grid frequency is below 49.2Hz." It indicates that principally the Central Commission is also of the view of imposition of penal charges for over-drawal/under-injection. It was further pleaded by the respondent SLDC that section 33(5) of the Act also provides for levying of penalty to licensee/generating company which fails to comply with the directions issued under sub-clause 1 of section 33 of the Act.

5. The petitioner in their rejoinder thereon pleaded that wherever it was possible the schedule was revised giving 5 days notice, however, in most of the cases it was not possible to revise the schedule giving 5 days notice. It is further pleaded that the respondent SLDC admits that the decision to impose the penalty is without any statutory force and that it was decided only in the internal Board's members meeting. This decision can not be implemented and such imposition of penalty on that basis is wrong and therefore liable to be set aside. On the point of imposition of additional unscheduled UI charges equivalent to 40% UI rate for schedule of UI inter-change, the petitioner has pleaded that 40% penalty of maximum UI rate is applicable when the frequency is below 49.2Hz and not for all frequencies, and have thus requested that since there is no specific provision in the Regulations to impose penalty on such generators who injects less energy than schedule the demand of penal UI charges raised by the respondent licensee is liable to be set aside.

6. We have gone through the submissions and arguments of both the parties in length and have observed that the decision of billing of penal UI charges @ Rs.10/- per KWh was the internal decision of the utility as has been stated by respondent SLDC, and there is no legal provision in any Regulations for billing of penal UI charges @ Rs.10/- per KWh on account of the injection of less than scheduled energy by the generators into the grid. The contention of the respondent SLDC that section 33 (5) of the Act provides for levying of penalty to generating company which fails to comply with the directives issued under sub-section 1 of section 33 of the Act, actually relates to the directions/instructions of SLDC to be followed by the utility and the generators relating to the grid operation and grid safety and not related to the financial aspect. In view of the above, we have come into conclusion that the billing of penal UI charges @ Rs.10/- per KWh by SLDC on behalf of erstwhile CSEB, now for distribution company has no legal base as such there is no provision of such billing in any of the regulations and therefore is liable to be set aside. We, therefore, order that demand raised towards penal UI charges be withdrawn and the amount collected towards penal UI charges other than normal UI charges from the petitioner be refunded within a month. Regarding other disputes mentioned in the petition, the petitioner may approach to the Central Electricity Regulatory Commission, if so desire. The petitioner generator shall also ensure proper assessment of their availability and schedule accordingly, to avoid recurrence of such situation of under-injection beyond specified limit in future.

**Petition No.40 of 2009 (D)**

M/s Sarada Energy and Minerals Ltd. (SEML, for short) and 15 other generators filed a petition under section 86 (1)(f) of the Act, against billing of penal UI charges and imposition of capping on UI charges stating in the prayer, (i) to restrain the respondent from recovery of penal UI charges and interest thereof; (ii) to restrain the respondent from further imposition of penal UI charges and interest thereof; (iii) to direct the respondent for withdrawal of capping of UI charges on over-injection; and (iv) to quash the imposition of penal UI demand and interest thereof. Further, two more generators i.e. M/s Corporate Ispat Alloys Ltd. Siltara, Raipur and M/s SKS Ispat and Power Ltd., Siltara, Raipur also submitted application to join this petition as co-applicant and they were impleaded as petitioner as no objection were raised by other petitioners. These disputes on billings of penal UI charges and capping on UI charges to the petitioners have arrived on account of under-injection and over-injection respectively than the scheduled injection by the petitioner generators in inter-State short-term open access. The petitioners have also prayed for interim stay on recovery of penal UI charges on similar ground that of M/s MIEL, the petitioner of petition No. 05 of 2009 (D) as such billing of penal UI charges to these petitioners are of the same nature. Hence being the dispute of similar nature the interim stay was also granted to the petitioners on billing of penal UI charges with a directive to SLDC not to bill and recover penal UI charges other than normal UI charges till final orders are passed in the case.

2. Being the case of similar nature the submission of the respondent SLDC was the same as that of the submission in case of petition No. 05 of 2009 (D), moreover, being a case of similar nature we have heard the case together and thus passing order combinely. Respondent SLDC made a request to implead CSPDCL as also a respondent being the interested party, accordingly CSPDCL was also impleaded as respondent. The reply submitted by SLDC has been endorsed as a reply by respondent CSPDCL on their behalf. Here in this case also like in case of decision on petition No. 05 of 2009 (D), we are limiting our decision/order related only to penal UI billing @ Rs.10/- per KWh as per demand raised by the SLDC and leaving a side the case related to imposition of capping of UI charges for over-injection by the generators. The petitioners in their rejoinder have pleaded that there is no provision in UI Regulations 2009 for imposition of penalty for under-injection for more than 3% or 5% as the case may be. Further, the contention of respondent SLDC that the petitioners are making profit on under-injection is not always correct because sometimes the petitioners are incurring losses also when frequency is low and UI charges are extremely high. On account of not having any legal statute for billing of penal UI charges @ Rs. 10/- per KWh, we in this case also hereby order that the amount collected towards penal UI charges other than normal UI charges from the petitioners be refunded within a month and demand raised in this respect if any be withdrawn. Regarding other dispute mentioned in the petition, the petitioners may approach to the Central Electricity Regulatory Commission, if so desire. The petitioner generators shall also ensure proper assessment of their availability and schedule accordingly, to avoid recurrence of such situation of under-injection beyond specified limit in future.

**Petition No.42 of 2009 (D)**

M/s Bharat Aluminium Company Ltd. (BALCO, for short), Korba filed a petition under section 86 (1)(f) of the Act against SLDC and others on account of billing of UI charges in addition to the regular UI bills raised for the period from Sept' 08 to April' 09 with request to quash the penal UI demand charges billed for the period from Sept'08 to April' 09 and to restrain the respondent from recovering or raising any further penal UI charges and also to restrain the respondent from holding any amount (receivable by the petitioner from the respondent as a security towards payment of penal UI charges). This dispute relates to penal UI charges for which demand raised by respondent SLDC on account of under-injection than the scheduled generation of energy by the petitioner generator for inter-State short-term open access availed by them for 28 to 225 MW of power. They have alleged that the respondents have withhold an amount of Rs.6,40,34,887/- which is receivable by the petitioner. They also requested to grant interim stay on recovery of penal UI charges as granted to petitioner of petition No. 05 of 2009(D) and refund of amount of Rs. 6,40,34,887/- withhold by respondent on this account from their payment. Since the billing of penal UI charges to this petitioner is of the same nature as that of M/s MIEL of petition No. 05 of 2009(D) and of M/s SEML and others of petition No. 40 of 2009, which was not found in accordance with any provision of rules and regulations the ad-interim stay were granted to them, hence being a case of similar nature the interim stay was also granted to the petitioner on billing of penal UI charges with a directive to respondent not to bill and recover penal UI charges other than normal UI charges till final orders are passed in the case. In respect of refund of Rs. 6,40,34,887/- towards penal UI charges already deducted by the respondent from the payment of petitioner we decided to consider it in the final order on the case.

2. Being the case of similar nature the submission of the petitioner SLDC was the same as that of the submission in case of petition No. 05 of 2009 (D). The respondents CSPTCL and CSPDCL prayed that the submission made by SLDC may also be considered as submission on their behalf which was accepted. Being a case of similar nature we have heard this case together with petition No. 05 of 2009 and 40 of 2009 and also passing order combinely. Here in this case also we are limiting our decision/order related to penal UI billing @ Rs.10/- per KWh as per demand raised by the SLDC leaving a side the portion related to refund of Rs. 6,40,34,887/- as such this amount was withhold by respondent from their regular payment prior to issue of stay order to this petitioner i.e. BALCO. Since, billing of penal UI charges to petitioner is not having any legal statute as in cases of petitioners of petition No. 05 of 2009 and 40 of 2009, we also hereby order that the amount collected towards penal UI charges other than normal UI charges from the petitioner be refunded within a month and demand raised in this respect if any be withdrawn. The petitioner generator shall also ensure proper assessment of their availability and schedule accordingly, to avoid recurrence of such situation of under-injection beyond specified limit in future.

**Sd/-  
Member**

**Sd/-  
Chairman**