



Chhattisgarh State Electricity Regulatory Commission

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Petition No. 23/2009(M)

Chhattisgarh Biomass Energy Developers Association Petitioner

Vs

Chhattisgarh State Power Distribution Co. Ltd. Respondents

Order in order sheet dated 18.06.09

Shri E.Rajeev, Secretary, Chhattisgarh Biomass Energy Developers Association for petitioner and Shri Arun Bhatnagar, SE, for respondent CSPDCL. Heard them.

2. There are basically two issues in this case. The first relates to exemption from demand charges. By order dated 15.1.2008, passed in petition No. 7 of 2005, this Commission had exempted biomass-based generating plants from payment of demand charges for the first 5 years in respect of start-up power availed by them. The petitioner association has informed that this order of the Commission is not being complied with by the respondent Distribution company. In their reply dated 16.6.2009, the respondent company has submitted that it has already been decided to refund the demand charges so far collected from biomass-based generators for start-up power. In this connection, a copy of the instructions issued by the company vide letter dated 11.6.2009 addressed to all CEs for refund of the said amount has been submitted with the reply. As to the reasons why the orders were not complied with so far, it has been stated that the then CSEB, the predecessor to the present respondent company, had filed an appeal against the order of this Commission before the Hon'ble Appellate Tribunal for Electricity (ATE) and had also requested for stay of inter alia in respect of the matter regarding exemption from the demand charges. We do not consider that sufficient grounds for non-compliance with our orders. Our orders were passed on 15.1.2008 i.e. exactly one-and-half years back. There is no stay order from the Hon'ble ATE. Therefore, the respondent cannot take the plea of appeal against the order for non-compliance.

3. Besides we also observe that in the instructions issued by the office of CE (Commercial) on 11.6.2009, regarding refund of demand charges billed, it is stated that the biomass-based generators will be required to *pay demand charges in full after 5 years*. This is not the correct position. In para 9.4 of our order of 15.1.2008 it has been clearly stated that the demand charges shall be recovered from the sixth year of COD @ 10% in the first year with 10% rise every year thereafter, till the 10th year of COD when it will be 50% and it has to be retained that level. The order dtd. 15.1.2008 is clear that the demand charges are to be levied for start-up power "on a gradual basis upto 50% demand charges applicable to conventional plants" only. Therefore, this letter is not in conformity with our orders. Secondly, it also advises that demand charges should be refunded 'provisionally subject to submission of undertaking on a non-judicial stamp paper worth Rs.50 by these plants that outcome

of the appeal filed before ATE shall be binding to them'. This instruction is again totally unwarranted. This presumes that the ATE's order shall be complied with by the biomass-based generators *only if they submit the necessary undertaking to do so*. The Hon'ble ATE is the highest tribunal in the matter of Electricity law subject, ofcourse to the Hon'ble Supreme Court. If the orders of this Commission are altered by the Hon'ble ATE it shall obviously be binding on all parties whether they furnish any undertaking or not. Therefore, the above stipulation being unwarranted. We order that this condition be immediately withdrawn and the letter also be modified to reflect our order dated 15.1.2008 as it is. The CE (Commercial) should have gone through our orders before issuing a letter which is contrary to the orders. Therefore, the letter dated 11.6.2008 be revised immediately in compliance with these directions and a copy of the revised letter submitted to the Commission within a week. **It is also ordered that the demand charge amount be refunded to all within a period of one month from the date of this order.**

4. The second issue is regarding removal of the cap of 105% of the contracted quantity for supply of energy by the biomass plants to CSPDCL. The petitioner has stated that CSPDCL does not treat energy supplied above 105% as firm power and is paying only variable charges plus 30 paise for such energy. This again is a clear violation of our orders. In para 9.6 of our order aforementioned there is clear direction that "the supplier may provide and be paid normal tariff for supply of energy above 70% of schedule without a cap of 105%. Monthly billing shall be done on the basis of energy delivered at normal rate upto eleven months. At the end of the year necessary adjustment may be made in the bill for the twelfth month of the year to ensure that energy delivered above 100% PLF is billed at the same rate as for supply below 70% of the scheduled energy". This direction has been issued as per the judgement of the Hon'ble ATE passed on 7.9.2006, in appeal No. 20 of 2006. The respondent company has not assigned any reason why this direction is not being complied with. The only submission before us is that it is under consideration. **We are unable to accept this plea and order that this be complied with within 15 days by issuing necessary instructions in line with our order and the amount due to the biomass plants be paid within one month.**

5. We are constrained to observe that the respondent company has not only not complied with our orders but has also not offered any explanation for such non-compliance except that an appeal has been preferred against our order. While we drop these proceedings under section 142 of the Act with above directions, the company is warned that non-compliance or orders of the Commission shall invite penalty in future.

**Sd/-
Member**

**Sd/-
Chairman**