Before the Appellate Tribunal for Electricity

(Appellate Jurisdiction)

Appeal No. 166 of 2010

Dated : May 24, 2011

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson.
Hon'ble Mr. V.J. Talwar, Technical Member

In the matter of:

Chhatisgarh State Power Transmission Co. Ltd.
Vidyut Seva Bhawan, Danganiya,
Raipur, Chhattisgarh – 492013 Appellant

Versus

1 M/s R R Energy Ltd
Post Office Garhumaria
NH 200, Jharsuguda Road
Raigarh – 450001

2 Chhatisgarh State Electricity Regulatory Commission
Irrigation Colony, Shanti Nagar
Raipur – 492001 …Respondents

Counsel for Appellant: Ms Suparana Srivastva

Counsel for Respondents: Mr S C Sood for R -1

Mr. M.G. Ramachandran for R -2

J u d g m e n t

Per Hon'ble Shri V.J. Talwar, Technical Member

1 Chattisgarh State Transmission Company Limited is the Appellant. Chhatisgarh State Electricity Board is the predecessor of the Appellant.

2 M/s R R Energy Limited is the first Respondent. Chhatisgarh State Electricity Regulatory Commission (State Commission) is the 2nd Respondent.

3 M/s R R Energy Limited (R-1) is a generating company having rice husk (biomass) based power plant of 14 MW capacity in state of Chhatisgarh. Respondent – 1 has constructed 132 kV line to evacuate power from its power plant. Appellant had charged 15% of the cost of the line as supervision charges from the Respondent – 1 before providing connectivity to its system. State Commission vide its order dated 29.10.2009 directed the Appellant to refund the supervision charges to Respondent -1.

4 Aggrieved by this impugned order of State Commission, the Appellant has filed this appeal.

5 Brief facts of the case are as under:

6 M/s. R.R. Energy Limited, the Respondent No.1 is a generating company which has a rice husk based (biomass) power plant of 14MW capacity at village Garhumaria in District Raigarh, Chhattsigarh. Power generated by this power plant was being evacuated at 33 kV and sold to Chhatisgarh State Electricity Board (the Board), the predecessor the Appellant. State Commission notified the State Grid Code on 23.10.2006. In terms the State Grid Code, power from all generating plants in the state having capacity of more than 10 MW would have to be evacuated at 132 kV. Accordingly, M/s R R Energy (Respondent No.1) was required to switch over from 33 kV to 132 kV. For this purpose M/s R R Energy was required to have independent/dedicated 132 kV transmission line from its power plant to the Appellant's EHV sub-station at Raigarh for evacuation of power.

7 M/s R R Energy (Respondent No.1) requested the Chhattisgarh State Electricity Board (the predecessor of the Appellant) to construct 132 kV line from its power station to Appellant's nearest sub-station and 132 kV bay on payment of requisite charges as per Appellant's rules. Appellant Board approved the construction of 132 kV line from 1st Respondent's power plant to Raigarh substation along with 132 kV bay at Raigarh on payment of cost of the said works as per Board's rules. Accordingly, the Appellant Board carried out a detailed route survey for the line. However, Respondent – 1 decided to construct the aforesaid transmission line by itself and informed the same to the Appellant on 17.8.2007. Appellant agreed for construction of 132KV independent line by Respondent -1 from its power plant to the 132KV sub-station at Raigarh subject to the following conditions:

(i) Respondent No.1 would have to pay in advance to the Board supervision charges @ 15% of estimated cost of line amounting to Rs.67,60,853/-

(ii) The construction to be carried out through 'A' class contractor strictly under the supervision of the Appellant as per the relevant drawing and design approved by the Appellant;

(iii) The completed line in all respects would be handed over to the Appellant after commissioning of the line for further necessary action regarding maintenance, etc.;

(iv) The construction of 132KV bay at 132KV sub-station will be carried out by the Appellant on payment of Rs.1,29,31,500/- towards cost of the line bay by Respondent No.1.

8 Accordingly, M/s R R Energy (Respondent No.1) agreed to pay supervision charges @ 15% of estimated cost of line and also cost of 132 kV bay at Raigarh sub-station for termination of the said line. In the mean time Ms R R Energy also approached State Government for mandatory prior approval for construction of 132kV overhead line under section 68 of the Electricity Act 2003. On 9.10.2007, the State Government accorded approval for the construction of the aforesaid 132 kV line subject to certain conditions. Upon receipt of the State Government's approval, Respondent No.1 informed the Appellant Board about its carrying out the construction work of the line. It also requested the Board to supply drawings and design of tower foundations and structure along with survey report. The Appellant Board agreed to supply these on payment of costs incurred by it which was duly paid by the Respondent No. 1.

9 Thereafter, Respondent No.1 carried out the construction work of the said line. Upon completion of the line, the Chief Electrical Inspector carried out mandatory inspection of the installations of the Respondent -1 under Indian Electricity Rules 1956. After being satisfied with installation work, Chief Electrical Inspector granted permission to Respondent No.1 for charging its line. However, Appellant did not allow connectivity with its system on the ground of non-payment of supervision charges by the Respondent -1 in terms of the Supply Code. Hence, Respondent No.1 deposited the 15% supervision charges “under protest” to avail connectivity for evacuation of power from its plant, claiming that it has laid the line as per the approval of the State Government according to which the ownership of line would lie with Respondent No.1 only.

10 Thereupon, the Respondent No.1 filed a Petition No.46/2009(M) before the Respondent No.2 State

Commission, praying for refund of the amount of 15% supervision charges already deposited under protest with the Appellant. Accordingly the State Commission Vide its order dated 29.10.09 held that Respondent No.1 is not liable to pay supervision charges to the Appellant and directed for the refund.

11 Being aggrieved by the this order of the State Commission, the Appellant filed a Review Petition No.01/2010(M) before the State Commission on 5.1.2010 pleading, inter alia, that

(i) Connectivity of the generator with the grid not only involves supervision of the erection of the line for its technical soundness but also involves estimation of line work for execution together with supervision of proper synchronization of generator with the grid through its own technical experts to avoid mishaps during synchronization as far as possible. Therefore, the levy

of such charge is neither unreasonable nor without any purpose;

(ii) Respondent No.1 had also availed 1100KVA startup power connection from the Board through the same line and so the entire arrangement would be liable to be regulated as per the provisions of the Supply Code;

(iii) the State Government's approval under Section 68 of the 2003 Act has only conferred authority for erection of the line. The State Government has no jurisdiction to prescribe any charge recoverable by the licensee or to prescribe any terms and conditions for availing the connectivity with the grid. Therefore, the said approval does not absolve Respondent No.1 from payment of charges to the Appellant;

(iv) the Appellant has checked the line before allowing its connectivity with the grid which is the basic intention behind the levy of supervision charges together with

estimation of work and supervision of synchronization with the grid.

12 Vide the impugned order passed in the above Review Petition on 10.3.2010, the State Commission again held that Respondent No.1 is not liable to pay 15% supervision charges as demanded by the Appellant for the reason that supply code clearly specified that levy of 15% supervision charges would be applicable only where the asset is created by the consumer (i.e. the consumer incurs the cost on material and labour) and hand over the such asset to the Board. Thus, in such cases the ownership of such asset would remain with the Board and the responsibility of operation and maintenance of the line would also be that of the Board. State Commission further observed that in the instant case the asset i.e. the line is created by M/s R R Energy and they intend to own and maintain the line by

themselves in accordance with the provision of Section 10(1) of the Act, according to which the duties of a generating company shall be to establish, operate and maintain the dedicated transmission lines connected to the generating stations and the transmission system. Accordingly, State Commission held that in the instant case M/s R.R. Energy shall not be liable to pay 15% supervision charges on cost of work.

13 Aggrieved by the impugned Order of the State Commission, the Appellant has filed this Appeal before this Tribunal.

14 Learned Counsel for the Appellant has urged the following contentions in support of its claim:

I. While getting the approval of the State Government under section 68 of the Electricity Act 2003, the Respondent -1 had kept the Appellant in the dark. Similarly he had also not informed the State

Government about approval of the Board for construction of the same line by the Board.

II. State Government had accorded approval to construct the line only. State Government has no authority to specify any charges to be recovered by the Appellant Board from Respondent. Only State Commission has such authority and State Commission has specified the applicable charges in its Supply Code.

III. Respondent -1 is also getting startup power from the Appellant and as such he is also a consumer of the Board. Therefore, the provisions of Supply Code would be applicable to the Respondent 1 also, being the consumer of the Appellant Board.

IV. The line in question is also a service line meant to meet Respondent-1’s startup power requirement. According to provisions of Supply Code, the Respondent -1 is liable not only for payment of supervision charges to the

Appellant Board but is also bound to hand over the above line to the Appellant after Commissioning.

V. Connectivity of the generator with the grid not only involves supervision of the erection of the line for its technical soundness but also involves estimation of line work for execution together with supervision of proper synchronization of generator with the grid through its own technical experts to avoid mishaps during synchronization as far as possible. Therefore, the levy of such charge is neither unreasonable nor without any purpose.

VI. Respondent – 1 prevented the Appellant from carrying out the supervision of the line during construction by not intimating the progress during various stages of construction of the line.

15 Sh Sood, representative of Respondent -1 (M/s. R.R. Energy) countered the said arguments advanced by the Appellant and submitted the following:

I. Section 10 of the Electricity Act 2003 mandates a generating company to establish, operate and maintain “dedicated transmission line”.

II. Section 68 requires prior approval of the Appropriate Government for establishment of any over head line. Accordingly, it was the duty of Respondent – 1 to take prior approval of the State Government in terms of Section 68 of the Electricity Act 2003 irrespective who actually constructed the line either by Appellant Board or Respondent -1 itself.

III. The approval of State Government is subject to certain conditions prescribed by the Government under subsection (3) of section 68 of the Act. One of such conditions is that the line would be operated and maintained by M/s R R Energy (Respondent No.1). In view of the condition laid down in the approval of the State Government, line cannot be handed over to the Appellant.

IV. Despite being well aware of the fact that line was being erected by Respondent -1, the Appellant had not carried out any supervision during the construction of line. The Appellant had just inspected the line only after its completion and, therefore, it is not entitled for any supervision charges.

V. As per Electricity (Removal of Difficulty) Fifth Order, 2005, Respondent – 1, being a generating company would not be required to obtain a transmission license under the act to operate and maintain “dedicated transmission line”. As per provisions of this order, it has to comply with, interalia, the Grid Code and Grid connectivity Standards. Supply Code, which is meant for consumers of the distribution licensee, has not application in his case.

16 Learned Counsel for State Commission (R-2) reiterated the findings of the State Commission given in the impugned order and submitted as below:

I. The line in question is a dedicated transmission line meant for evacuation of power from generating station of the Respondent -1.

II. Respondent -1 cannot be considered to be the consumer of the distribution licensee in terms of Section 43 of the Act merely on the ground that he draws startup power from the grid.

III. Section 46 of the Act also has no application to the instant case as it deals with expenditure reasonably incurred by distribution licensee in providing supply line used for the purpose giving supply under section 43 of the Act.

IV. The activities of the Respondent -1 are to be governed by Grid Code of State Commission and not by the Supply Code. Both Grid Code and Supply Code have exclusive operational fields and cannot be applied simultaneously to set of circumstance as in the present case.

17 We have heard the Learned Counsel for the parties and carefully considered the submissions made by the rival parties.

18 In the light of the rival contentions referred to above urged by the learned counsel for parties, following questions would arise for consideration:

I. Whether Respondent -1 has committed any wrong by approaching the State Government for approval under section 68 of the Electricity Act 2003 pending Appellant Board's approval for construction of his line.

II. Whether a generating company can also be termed as a consumer merely because he would be drawing 'startup power' from grid occasionally.

III. Whether line in question is a ' dedicated transmission line' of generating company for evacuation of power from its generating station or is a 'service line' for meeting the requirements of a consumer.

IV. Whether the Appellant is entitled for supervision charges for supervision of proper synchronization of generator with the grid through its own technical experts to avoid mishaps during synchronization as far as possible.

19 We shall now deal with each question one by one.

20 First question for our consideration is Whether Respondent - 1 has committed any wrong by approaching the State Government for approval under section 68 of the Electricity Act 2003 pending Appellant Board's approval for construction of his line.

21 To answer this question, we have to examine the relevant provisions of the Electricity Act 2003 and State Commission's Regulations framed there under.

22 Section 10 of the Electricity Act 2003 deals with duties of generating company to establish, operate and maintain a dedicated transmission line. Section 10 of the Act is reproduced as under:

> ***"10. Duties of generating companies.***—*(1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made there under…"*

23 'Dedicated transmission line' has been defined in section 2(16) of the Act as under:

> *"(16) "dedicated transmission lines" means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to*

in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be;"

24 Section 68 of Electricity Act 2003 requires prior approval of the Appropriate Government for installation of any overhead line. Relevant portion of section 68 is reproduced below:

***"68. Overhead lines.**—(1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).*

(2) The provisions contained in sub-section (1) shall not apply—

(a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;

…

(3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary."

25 Admittedly Respondent -1 is a generating company having a Bio-mass based generating station of 14 MW. Power generated from generating station was being evacuated through a 33 kV line. On 30th December 2006 the State Commission notified Grid Code 2007. As per Clause 4.1.2 of this code, all existing generators having capacity more than 9 MW were required to have grid connectivity through dedicated feeder at 132 kV for evacuation of power and availing startup power from the grid. The said clause is quoted below:

"4.1.2 … Existing generator whose installed capacity is 10 MVA/9 MW and above will also have to have

connectivity through independent/ dedicated 132 KV feeder with EHV sub-station for availing startup power and evacuation of power within one year from the date of coming this code in force. CSEB shall examine all such cases and issue notices to them to have connectivity with EHV substation through independent/dedicated EHV feeder and shall issue demand note/ advice to them within three months and the generator shall complete the formalities for having connectivity with the EHV substation including payment within two months."

26 To comply with the above provision of the Grid Code, the Respondent -1 was required to switch over from 33 kV to 132 kV and was required to lay a independent/dedicated line at 132 kV connected to Appellant's EHV substation. Accordingly, the Respondent -1 approached the Appellant Board to carry out the entire work related to erection of 132

kv line and associated terminal line bay at 132 kV Raigarh substation of Appellant. Appellant Board agreed to undertake the works subjected to payment of full costs of works including 15% supervision charges.

27 Various provisions of the Act and Grid Code do not require that works were to be carried out only by the Appellant Board. The Respondent -1 could as well have entrusted the works related to construction of line to any class -1 Electrical Inspector as per provisions of Indian Electricity Rules 1956. Thus the role of Appellant Board was restricted to that of a class -1 Electrical Contractor. Getting prior approval of the State Government for any overhead line is mandatory, irrespective of who constructs the line. This approval was also necessarily required even if the line was constructed by the licensee i.e. Appellant Board.

28 We would like to clarify here that the prior approval of the Appropriate Government under section 68 of the Act is mandatory even if the works are carried out by a licensee. To remove any doubt about this requirement, we would also like mention that prior approval under section 68 is being obtained by POWERGRID, a Central Transmission Utility, who have been authorized to exercise the powers of Telegraph Authority under section 164 of the Act. The requirement of prior approval under section 68 of the Act cannot be replaced by mere sanction of a licensee to undertake the works as a contractor.

29 Thus the Respondent -1 has correctly met with requirements of the Act and had not done anything wrong by obtaining the State Government's approval under section 68 of the Act. We answer this question accordingly.

30 Next Question for our consideration is to whether a generating company can also be termed as a consumer merely because he would be drawing ‘startup power’ from grid occasionally.

31 The State Commission has carried out in depth examination of this issue in the impugned order dated 10.3.2010. The relevant portion of findings of the State Commission are as under:

> *“5. The contention of petitioner that since the generator M/s R.R. Energy has also availed 1100 KVA start-up power from CSEB through the same line and so the entire arrangement is liable to be regulated as per provision of Supply Code, is not convincing. The State grid code deals with the matters related to technical standards, metering, operation, protection, safety co-ordination of the transmission system in the State and*

shall have to be complied with by all entities and open access customers connected to the State transmission system. … Thus, the customer also includes consumer and the State Grid Code will also be applicable to the consumer connected with transmission system of the State so far technical standard, metering, operation, protection safety of grid are concerned. However, Supply Code shall be applicable for such consumers in dealing with Distribution Company in relation with meter reading, billing etc. as a consumer. ***Since, the start-up power by the generator is optional it cannot be concluded that in case the generator avails facility of start-up power the Supply Code shall be applicable for the entire arrangement, and only in case it does not avail start-up power the Grid Code will be applicable, though the connectivity in both the cases with system remains the same.*** *Thus, we do not agree with this pleading of the petitioner on this*

point. The petitioner further stated that section 4.6, 4.8, 6.43 and 6.45 of the effective supply code are the relevant provisions in this case. … We have gone through the clause wise details and observed that the ***clause 4.6 of the Supply Code is related with the extension of distribution mains/service connection for releasing supply to a consumer by the licensee and this line is to be maintained by the licensee and shall also have the right to use the service connection / extension for supply of electricity to the other consumers.*** *Since, the instant case is basically of a generator which is connected by dedicated line with the grid as per provision in modified clause 4.1.2 of the amended Grid Code, 2008, therefore, the clause 4.6 of the Supply Code will not be applicable here. The clause 4.8 of the Supply Code referred by the petitioner is related with the service line from the distribution mains to the point of supply of the*

consumer which should not normally be more than 30 meters, hence this clause is also not applicable in the present case. The clause 6.43 and 6.45 of the Supply Code referred by the petitioner is related with operation of a generator in consumer's installation to run in parallel with the licensee's system only with the due written consent of the licensee and with proper protection system. This point is not related with the payment of 15% supervision charges. …"

32 Sh M G Ramachandran, Learned Counsel for the State Commission reiterated the findings of the State Commission as given above and has raised a very important point during discussions. He stated that every generator, except DG set, requires startup power. Even large generating companies like NTPC require startup to start their generators during black start i.e. just after complete grid failure. If a generator is also termed as a consumer merely because he avails

startup power from the grid, it will cause serious repercussions and unsettle the already settled issues relating to providing startup power to these stations. He further urged that such arrangements do not qualify the requirements of section 43 of the Act. He also pointed out that even if it is accepted that the Respondent -1 is also a consumer, since the metering is done at 132 kV substation of Appellant, point of supply being outgoing terminals of the meter, the responsibility of Appellant Board ends there itself.

33 Ms. Suparana Srivastva, Learned Counsel for the Appellant, countered the contentions of the Respondent -1. She placed on record an agreement entered between the Appellant Board and the Respondent -1 for availing 1100 kVA startup power from the licensee. She stated that this agreement had been entered upon in pursuance of application by the Respondent -1 for startup power. As regards metering arrangement, she clarified that undoubtedly metering for

export of power is being done at 132 kV Raigarh substation, but metering for import of power (startup power) is done at generating station itself. In support of her arguments, clause 7(a) of the said agreement was brought to our notice which states that "*For the purpose of registering the electrical energy taken by the Consumer under this agreement there shall be provided one ____ volt metering arrangement (hereinafter referred as main meter) on the feeder of the consumer which shall be the property of and be kept in repair and Calibrated by the Board."* She also drew our attention towards relevant portion of State Commission's Retail Supply Tariff Order for the year 2006-07, wherein the State Commission has classified 'startup power' as separate category and has specified tariff for this category of consumers.

34 Learned representative of the Respondent -1 did not counter the contentions of the Appellant in regard to Agreement and metering arrangement at his premises. He, however, urged that drawal of 'startup power' from grid is only occasional and is in fraction of export of power. The Respondent -1 is undoubtedly a generator and there is no term such as generator cum consumer in the Act. One has to be either generator or a consumer. The Respondent -1, being a generator, is governed only by the provisions of Grid Code and not by supply Code.

35 Though, at this stage, we are of the view that the findings of the State Commission are well reasoned and there is no reason to interfere with the same, however, as brought out above, the issue under discussion is of great importance and could have large ramification, we would like to carry out *denovo* examination of various sections of the Act dealing with distribution of electricity, the supply code and relevant

provisions of State Commission's Tariff Order in detail to arrive at final conclusion.

36 The Appellant's case revolves around provisions of Sections 43, 45, 46 and 50 of the Act. The Appellant has also placed great reliance on clause 4.10 of Supply Code. Let us examine each of these one by one and analyse the validity of the Appellant's claim. Section 43 casts Universal Obligation of Supply on the distribution licensee. Section 43 is reproduced below:

> ***"43. Duty to supply on request.***—*(1) Save as otherwise provided in this Act, every distribution licensee, shall,* ***on an application by the owner or occupier of any premises,*** *give supply of electricity to such premises, within one month after receipt of the application requiring such supply:*

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:…"

37 According to the Appellant, existence of agreement between him and the Respondent -1 for startup power is a proof that supply had been provided by him to the Respondent -1 in pursuance of Section 43. Section 45 deals with powers of Distribution Licensee to recover charges for supply of electricity by him in accordance with the tariff fixed by the State Commission. Relevant portion of Section 45 of the Electricity Act 2003 is reproduced below:

"45. Power to recover charges.*—(1) Subject to the provisions of this section, the prices to be charged by a*

distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence…"

38 According to the Appellant, State Commission has classified 'startup power as separate category and has given tariff for this category of consumers in Tariff Orders year after year. Therefore, requirements of this section are also met with.

39 Section 46 authorizes the distribution licensee to recover expenses reasonably incurred in providing electric line for the purpose of giving supply in accordance with regulations specified by the State Commission. Provisions of section 46 are important and are reproduced below:

"46. Power to recover expenditure.—*The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a*

supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply."

40 According to Appellant, the State Commission has authorized him to recover Supervision Charges in case service line is laid by consumer himself under clause 4.10 of the Supply Code specified by the State Commission under Section 50 of the act.

41 Clause 4.10 of Supply Code is reproduced below:

"4.10 The consumer can get the work of drawing of service line from the licensee's distribution mains up to his premises as per the estimates and layout approved by the licensee through a 'C' or higher-class licensed electrical contractor, and the work of extension of EHT and HT line, distribution or HT substation and LT line

through an 'A' class contractor as per the estimates and layout approved by the licensee. In such case the consumer himself shall procure the materials. The material should, conform to relevant BIS specification or its equivalent and should bear ISI mark wherever applicable. The licensee may ask for documentary evidence to verify the quality of materials used. ***The consumer shall be required to pay the supervision charges as approved by the Commission in the Schedule of Miscellaneous Charges on the cost of works as per the estimates approved by the licensee."*** *{emphasis added}*

42 After going through various provisions referred above, prima facie, it appears that the claim of the Appellant could be justified. However, considering the importance of the case

and its likely impact of the power sector, it requires further examination.

43 Before proceeding, further let us understand what startup power is and for what purpose it is required.

44 Startup Power has not been defined in the Electricity Act 2003 or in the Rules and Regulations framed there under. It has also not been defined in the repealed Acts viz., Indian Electricity Act 1910, Electricity (Supply) Act 1948 and Electricity Regulatory Commission Act 1998. Thus we have to go by its general meaning. In general parlance, word 'Startup' means to start any machine or motor. In terms of electricity, Startup Power is power required to start any machine. Thus Startup Power is power required to start a generator. Next question is why it is required. Thermal generating units, (to some extent large hydro generating units also) have many auxiliaries, such as water feed pump,

coal milling units, draft pumps etc.,. These auxiliaries operate on electrical power and are essentially required to run before generating unit starts producing power of its own. These auxiliaries would draw power from grid till unit start producing power and is synchronized with the grid. Once unit is synchronized, requirement of ‘startup power’ vanishes. Thus ‘startup power’ is required only when all the generating units in a generating station are under shutdown and first unit is required to startup. Once any one unit in a generating station is synchronized, power generated by the running unit is used to startup other units. Period of requirement of startup would vary from few minutes to few hours depending upon the size of unit.

45 Above discussion shows that requirement of startup power is essential for every generating station and is very limited both in quantum (MW) and duration terms.

46 It is admitted that the Respondent -1 have applied for startup power under section 43. But can we say that existence of an agreement for startup power meets the requirements of section 43? Let us now examine this aspect. Under section 43 of the Electricity Act 2003, it is the duty of licensee to supply power to any person on demand. The whole Act does not put any restriction on consumer in regard to quantum of power or duration of drawal. A consumer may demand any quantum of power. He can consume power at any load factor ranging from zero to 100% during any time of the day. In the light of the above, Can we say that a startup consumer as categorized by the State Commission in its Tariff orders enjoys all or any of these privileges? Let us refer to the relevant observations in Retail Tariff Order.

> *"Start-up power required by generators including plants based on biomass, captive power plants, small hydel plants etc. shall now be billed as per this tariff*

from the effective date of this order. ***However, the condition that working has to be on single shift*** *and the provision of TOD meter will not be applicable for start-up power connections. Similarly, start-up power consumers will be exempted from payment of a monthly minimum charge of units equivalent to any load factor on the contract demand, but will be required to pay only demand charge every month on the contract demand or recorded MD, whichever is higher.* ***However, to be eligible to avail this tariff, the generating unit has to have a contract demand which does not exceed 10% capacity of the highest generating capacity of generating station and restricts the drawal of power within 10% load factor every month.*** *In case the load factor in a month goes beyond 10%, the generating unit will be required to pay twice the demand charge" {emphasis added}*

47 From the above observations, it is clear that a ‘startup power’ consumer can have a contract demand up to maximum of 10% of highest generating capacity unit of generating station. Further his total drawal from the grid during the month is also restricted to 10% load factor. In other words at full contracted demand, he can draw power from grid for less than three hours in a day (720 x 0.1 / 30 hours per day). Further his operational time is also restricted to one shift operation. With such restrictions, supply given to a generator as ‘startup power’ cannot be termed in pursuance to section 43 of the Electricity Act 2003.

48 Further, consumer as defined in the Act is a person who is supplied with electricity for his own use. Here startup power is supplied to Respondent -1 to startup its generating unit. Once generating unit is synchronized with the grid, the power so generated is supplied to Appellant. Without startup power, generators cannot start and produce power. Thus, in

way, startup power is supplied for the benefit of Appellant only. From this point of view, a generator taking startup power from distribution licensee and supply power to same licensee on startup, cannot be termed as a consumer.

49 In light of above discussions a generator requiring ‘startup up power’ from the grid cannot be termed as a consumer.

50 Next Question before us for consideration is the status of line in question i.e. whether line in it is a ‘ dedicated transmission line’ of generating company for evacuation of power from its generating station or is a ‘service line’ for meeting the requirements of a consumer.

51 An offshoot of this question would be who would operate and maintain this line licensee or generator. Thus, we feel it necessary to answer it to settle the issue once for all.

52 As already discussed above, Section 10 of the Act requires any generating company to establish, operate and maintain dedicated transmission line. Dedicated transmission line has been defined in section 2(16) of the Act. Section 68 (1) requires prior approval of the state government which had been obtained by the generator. Subsection (3) of section 68 of the Act empowers the State Government to impose conditions, including ownership and operation of the line while granting such approval. State Government has according impose 19 conditions on the generator while granting approval under section 68 (1). 18th Condition in the said approval provides that operation and maintenance of the line shall be under taken necessarily by the Respondent -1 company. Above provisions leave no doubt about status

of the line and who would operate and maintain it. The line in question is a dedicated transmission line of a generating company and have to be operated and maintained by the generating company.

53 The Appellant has placed reliance on certain provisions of supply code and also on clause 3 of the Agreement between him and the Respondent -1 for startup power. According to these provisions the ownership of the line would rest with the Appellant Board and will be maintained by the Appellant Board at its cost. Leaned Counsel of the Appellant argued that the Supply Code has power of law and its provisions would have to be applied in totality. We fail to appreciate the arguments of the Appellant. Supply Code is a subordinate legislation created under the Electricity Act 2003. Thus its provisions cannot overrule the explicit provisions of the Act.

54 It would be pertinent to mention that Respondent -1 generating units were operating and power was being sold to Appellant Board at 33 kV. It was because of Clause 4.1.2 of State Commission's grid Code notified on 30.12.2006, Respondent -1 had to upgrade evacuation system to 132 kV. This upgradation from 33 kV to 132 kV was because of its generating capacity was more than 9 MW. Its startup power requirement was only 11 kVA for which existing 33 kV line was adequate. On this ground also 132 KV line in question is a 'dedicated transmission line' to evacuate power from generating station of Respondent -1 and not a 'service line' to meet startup power requirement.

55 Thus the line in dispute is a 'dedicated transmission line' in terms of section 10 of the Electricity Act 2003. Accordingly, it has to operated and maintained by the Respondent -1.

56 Next question for consideration is to whether the Appellant is entitled for supervision charges for supervision of proper synchronization of generator with the grid through its own technical experts to avoid mishaps during synchronization as far as possible.

57 The issue had been dealt with in detail by the State Commission in its impugned order dated 29.10.2009. The findings of the State Commission are as under:

> *4. The argument of the petitioner was heard in length. In the matter of contention of petitioner that as per clause 6.9 of Commission order dated 10.08.07, 15% supervision charge is payable in both cases either the extension work is done by the CSEB or by generator, we refer clause 6.9 of our order dated 10.08.07 passed in petition No. 40 of 2006 (M) in the matter of approval of miscellaneous and general charges under sections*

43, 45 and 46 of the Electricity Act, 2003 which is shown as follows:

> *"The Commission's views in respect of levy of 15% supervision charges have been dealt with para 6.7. Here the asset is created by the consumer and handed over to the Board. The consumer incurs the cost of material and labour. Thus, there appears justification in charging of supervision charge of 15% on cost of material and labour. This practice is also being followed for many years in the Board. The Commission approves supervision charges at 15% on the cost of estimate of work approved by the Board including cost of material, labour etc."*

Here it is clearly specified that levy of 15% supervision charges is applicable where the asset is created by the consumer i.e. the consumer incurs the cost on material and labour <u>and hands over the</u>

Board. Thus, in such case the ownership of the line remains with the Board and the responsibility of operation and maintenance of the line also remains with the Board*. Here in instant case the asset i.e. the line is created by M/s R.R. Energy and they intend to own and maintain the line by themselves in accordance with the provision of section 10(1) of the Act, as per which the duties of a generating company shall be to establish, operate and maintain the dedicated transmission lines connected to the generating stations and the transmission system.* ***The para 6.9 of our order dated 10.08.07 clearly state that payment of 15% supervision charges will be applicable where asset is created by consumer and handed over to the Board.*** *Therefore in the instant case M/s R.R. Energy shall not be liable to pay 15% supervision charges on cost of work. Further, it is not specified in clause 6.9 of the order dated 10.08.07 that 15%*

supervision charge also includes the estimation, general consumer consultancy and supervision towards synchronization of generating plant to the grid. The provision of levy of fee as decided by the CSERC exists in clause 4.2.1 of the CSERC Grid Code, 2007 for providing the grid connectivity by CSEB (now CSPTCL) from generators/CGP/Discom/open access customer etc. which may cover such services, but CSEB/CSPTCL have not submitted any proposal to the Commission to decide such fee. The clause 4.2.1 of CSERC Grid Code, 2007 read as "any generator/CGP/Discom/open access customer seeking to establish new or modified arrangement for connection to and/or use of the transmission system shall submit an application to the STU/Transmission licensee and deposit the prescribed fee as decided by CSERC." {Emphasis added}

58 We find that the above observations of the State Commission are well reasoned. Levy of 15% supervision charges are justified in cases where an asset is established by consumer and is handed over to licensee for operation and maintenance. The rationale for such view is that since the asset is to be maintained by licensee for whole of its life. Licensee has to replace any part of the asset which got defective during life time at his costs; he is entitled to claim supervision charges. Thus we do not find any reason to interfere with the findings of the State Commission.

59 Summary of our findings.

I. **Question number 1: Whether Respondent -1 (R.R. Energy) has committed any wrong by approaching the State Government for approval under section 68 of the Electricity Act 2003 pending Appellant Board's approval for construction of its line?**

Our answer is this: The Respondent -1 (R.R. Energy) has correctly met with requirements of the Act and had not done any wrong by obtaining the State Government's approval under section 68 of the Act.

II. **Question no 2: Whether a generating company can also be termed as a consumer only because it would be drawing 'startup power' from grid occasionally?**

Our answer is this: A generator requiring 'startup up power' from the grid occasionally cannot be termed as a consumer.

III. **Question no 3: Whether line in question is a 'dedicated transmission line' of generating company for evacuation of power from its generating station or is a 'service line' for meeting the requirements of a consumer?**

Our answer of this question is this: The line in dispute is a 'dedicated transmission line' in terms of section 10 of the Electricity Act 2003. Accordingly, the line has to be operated and maintained by the Respondent -1 (R.R. Energy).

IV. Question No. 4. Whether the Appellant is entitled for supervision charges for supervision of proper synchronization of generator with the grid through its own technical experts to avoid mishaps during synchronization as far as possible?

Our answer is this: The levy of 15% supervision charges are justified in cases where an asset is established by consumer and is handed over to licensee for operation and maintenance. In such cases the asset is to be maintained by licensee for whole of its life including replacement any defective part of the asset during life time at his costs. In the present case

line is to be operated and maintained by the Respondent -1. There is no justification for supervision charges.

45. In view of our above findings, we do not find any ground to interfere with the impugned order passed by Chhatisgarh State Commission dated 29.10.2009.

46. Hence, this Appeal being devoid of merit is dismissed. However, there is no order as to cost.

47. Pronounced in the open court today, the 24th May, 2011.

(V J Talwar)
Technical Member

(Justice M Karpaga Vinayagam)
Chairperson

INDEX : REPORTABLE/NON-REPORTABLE

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