

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No. 176 of 2010**

**Dated 15<sup>th</sup> March, 2011**

**Present: Hon'ble Mr. Rakesh Nath, Technical Member  
Hon'ble Mr. Justice P.S. Datta, Judicial Member**

**In the matter of:**

1. Chhattisgarh State Power Holding Co. Ltd.,  
Vidyut Seva Bhavan, Danganiya,  
Raipur, Chhattisgarh-492 013,  
Through its Managing Director
  2. Chhattisgarh State Power Distribution Co. Ltd.,  
Vidyut Seva Bhavan, Danganiya,  
Raipur, Chhattisgarh-492 013,  
Through its Managing Director ... Appellant (s)
- Versus
1. Lanco Amarkantak Power Pvt. Ltd.,  
Village – Pathadi, PO Tilkeja,  
District – Korba, Chhattisgarh-495 674,  
Through its Managing Director
  2. Chhattisgarh State Electricity Regulatory Commission,  
Irrigation Colony, Shanti Nagar,  
Raipur, Chhattisgarh-492 001,  
Through its Secretary. ... Respondent(s)

Counsel for Appellant(s) : Ms. Superna Srivastava

Counsel for the Respondent(s): Mr. M.G. Ramachandran,  
Mr. Anand K. Ganesan &  
Ms. Swapna Seshdari for CSERC

Mr. Sanjay Sen  
Mr. Achintya Dvivedi  
Ms. Surbhi Sharma &  
Mr. Sunil Arora for R-1

## **JUDGMENT**

### **PER HON'BLE MR. RAKESH NATH, TEHNICAL MEMBER**

This appeal has been filed by Chhattisgarh State Power Holding Company Limited and Chhattisgarh State Power Distribution Co. Ltd. against the order of the State Electricity Regulatory Commission dated 30.3.2010 aggrieved by the finding that the start-up power supply could also be used for initial commissioning of a generating unit. The first Appellant is the holding company after reorganization of the State Electricity Board. The second Appellant is the distribution licensee. Both the Appellants are successors of the erstwhile Chhattisgarh State Electricity Board. Respondent-1 is Lanco Amarkantak Power Private Limited, a generating company setting up a power plant in the State. Respondent No. 2 is

Chhattisgarh State Electricity Regulatory Commission  
(State Commission).

2. The brief facts of the case are as under:

2.1. Respondent-1 in the process of setting up a 2x300 MW generating station in Chhattisgarh has availed construction power supply from Appellant-2 for construction of the power plant. It also availed itself of start-up power supply which it utilized for running auxiliary equipments during the initial commissioning of the generating station.

2.2. On 31.5.2006 Respondent- 1 was given temporary electricity connection of 200 kVA for construction power by Chhattisgarh State Electricity Board, the predecessor of the Appellants herein. Subsequently the construction power was

enhanced to 500 KVA on 6.1.2007 and then to 980 KVA on 27.4.2007 at the request of Respondent-1. The construction power had been given at 33 KV voltage level at the applicable tariff, viz., General Purpose Non Industrial (33 KV) for the purpose of erection of two generating units of 300 MW each of Respondent-1.

2.3. In the meantime on 11.4.2008 Respondent-1 applied to the Electricity Board for power supply at 400 KV voltage level for 18000 KVA HT connection for start-up power for its power plant at applicable tariff, viz., HV-8 Start-Up Power tariff. Accordingly, the State Electricity Board approved the request of Respondent-1 and on 1.5.2008 the Electricity Board (predecessor of the Appellants) and Respondent-1 executed an agreement for start-up power supply at 400 KV

through the transmission line on which evacuation of power from the generating station of Respondent-1 was planned.

2.4. During the period April 2008 to May 2009 the Respondent-1 continued to avail itself of and draw construction power and start-up power and the Appellant continued to bill Respondent-1 for the electricity drawn at 400 KV (start-up power) and 33 KV (construction power) at the respective tariff i.e. HV-8 tariff category for 400 KV supply and HV-6 tariff category for 33 KV supply.

2.5. On 18<sup>th</sup> March, 2009 an inspection was carried out at the premises of Respondent-1 by the Vigilance team of Appellant-2 and it was found that generation of electricity from 300 MW capacity generator at the power plant had not yet

begun, and that the 20 MVA start-up power connection was being used for commissioning of the various electrical auxiliaries in the power plant. Also, the construction power connection at 33 KV was being used for various construction works such as welding, grinding, lighting, cranes, LT/HT switch gear, etc. The Appellant-2 considering that the start-up power by the Respondent-1 was being used for running auxiliaries of the power plant raised a supplementary bill on 27.8.2009 for a sum of Rs. 9,63,33,756/- on Respondent-1 for the months of May, 2008 to April, 2009 by applying the tariff applicable to category HV-6 (temporary) and claiming the difference in tariff between HV-6 (temporary) and HV-8 Start-Up power on the energy drawn on 400 kV supply during the above

period. On 3.9.2009, the Respondent No. 1 refuted the abovesaid demand and requested the Appellant-2 for withdrawal of the said supplementary bill. On 7.9.2009, the Respondent-1 filed Petition No. 49/2009(D) before the State Commission (Respondent-2) seeking relief from unilateral change in its tariff category and quashing of the supplementary bill dated 27.8.2009 on this account.

2.6. The State Commission vide its order dated 30.3.2010 held that there was no misuse of start-up power for construction and that the start-up power can be used for initial starting of generator. The State Commission also quashed the supplementary bill raised by Appellant-2. Aggrieved by this order, the Appellants have filed this Appeal.

## **Appellants**

3. Assailing the impugned order of the State Commission, the learned counsel for the Appellants has submitted the following:

- (i) The Respondent No.1 had started availing itself of the start-up power from May 2008 whereas the first unit at its power station was commissioned only in May 2009. The Respondent No. 1 during the period from May 2008 to April 2009 had unauthorisedly drawn power for commissioning of its power station. The start-up power can be utilized for limited hours during emergency, maintenance, breakdown and unscheduled outage to start-up generator. Start-up power is not contemplated for initial starting of generators and running the auxiliaries for their commissioning. Nowhere in its application for start-up power the



Respondent No. 1 had indicated its intention to use start-up power for drawal/streamlining of auxiliary equipments. The conditions put by the Appellants for release of start-up power were that Respondent No.1 was required to obtain permission from Power Grid Corporation of India Ltd. and the Western Regional Load Despatch Centre for open access. This clearly indicated that the understanding of the Appellant-2 at the time of releasing start-up power connection was that the generating station of the Respondent-1 had reached the stage of synchronization with the Grid.

- (ii) Despite availing start-up power from May 2008 the plant of the Respondent No. 1 was not synchronized with the grid and was commissioned only in May, 2009.

- (iii) The start-up power was devised as a separate tariff category following the order dated 6.2.2006 of the State Commission in Petition No. 17/2005 (M) filed by captive Power plants who were not co-located with their captive consumers considering the utilization of start-up power for limited hours for occasional use and not round the clock as was being availed of by the Respondent-1. Only in view of the limited and occasional use of start-up power a 50% concession was given in demand charges in the start-up power tariff.
- (iv) Utilisation of start-up power for running plant auxiliaries for initial commissioning of the unit tentamounts to “unauthorized use” within the meaning of explanation (b) to sub-section (6) of Section 126 of the 2003 Act. As per procedure

prescribed in Section 126 read with Chapter 11 of the Supply Code, 2005, Respondent-1 should have agitated its grievance qua the supplementary bill by filing the objections and availing the prescribed opportunity of hearing as prescribed therein. In view of the provisions of Section 126 of 2003 Act, the said petition of Respondent-1 was not maintainable and ought to have been dismissed by the State Commission (R-2).

**Respondent No. 1 (Lanco Amarkantak Power Pvt. Ltd.)**

4. Learned counsel for Respondent No. 1 in support of the impugned order has submitted the following:

- (i) The Agreement between the Appellants and the Respondent-1 for start-up power dated 1.5.2008 provided for obligation of supply by the Appellant on continuous basis. There is no restriction that

start-up power can not be granted at the initial commissioning stage according to applicable tariff order for start-up power dated 22.10.2007. At the time of release of connection for start-up power it was within the knowledge of the Appellant that the Respondent-1 had not commissioned its generating plant.

- (ii) State Commission's order dated 6.2.2006 in relation to captive power plants is not relevant as it did not deal with the use of start-up power for initial commissioning of a generating station.
- (iii) The plant was originally scheduled for commissioning in January, 2009 but due to technical problems it could be commissioned only in May, 2009.

- (iv) In the inspection report by Appellant's team on 18.3.2009 it was found that the start-up power was being used for commissioning of various electrical auxiliaries whereas as construction power was being used for construction activities such as welding, lighting, etc. Thus there was no misuse of start-up power.

**Respondent-2 (State Commission)**

5. Learned counsel for the State Commission has argued supporting the impugned order as under:

- (i) The State Commission has proceeded with the matter under Section 86(1)(a) and (f) as the matter is relating to clarification of the applicable tariff category which is to be determined by the State Commission.
- (ii) The factors considered by the State Commission in deciding that there was no misuse of start-up

power connection by Respondent-1 for construction purposes are as under:

- a) The start-up power connection was given to the Respondent-1 after following proper procedure. Respondent-1 in para 5 of the application for start-up power connection had specified that projection of contract demand was based on auxiliary power required.
- b) The Appellant inspected the premises of the Respondent-1 before sanction and release of start-up power connection and were aware that the generating unit had not been commissioned and the connection was required for running the auxiliaries;
- c) The inspection Report dated 18.3.2009 conducted by the Appellant also disclosed the

correct position that two connections, one for start-up power and the other for construction power existed in the premise of the Respondent-1 and were being used for respective purposes.

- d) At no point of time the Appellant had taken any action against the Respondent-1 either under Section 126 or Section 136 of the Electricity Act, 2003 for power theft/misuse of power.

### **Issues**

6. We have examined all the documents filed before us by the parties and considered the submissions made by the learned counsel for the parties very carefully. In view of the rival contentions urged by the learned counsel of the parties, the following questions

would emerge for consideration:

- i) Does the issue relate to merely a billing dispute which is beyond the jurisdiction of the State Commission?
- ii) Can the start-up power supply be utilized for initial commissioning of the generator and its auxiliary equipments?
- iii) Whether the use of start-up power supply for initial commissioning of the generator and its auxiliary equipments would be construed as misuse of start-up power?

### **Discussions & Findings**

7. Let us take up the jurisdiction issue first. Learned counsel for the Appellants has argued that it was a case of misuse of power and Respondent-1 without resorting to the remedies available to it under



Section 127 has approached the State Commission (R-1) seeking quashing of the supplementary bill. In view of provisions of Section 127 the petition was not maintainable and ought to have been dismissed by the State Commission. According to the Respondents, this issue related to clarification on tariff decided by the State Commission and the State Commission has rightly proceeded to deal with the petition under Section 86(1)(a) and (f).

8. In our opinion the issue basically relates to clarification on applicability of tariff and is not merely a billing dispute. Supplementary bill has been raised as a result of change in tariff category of Respondent-1 by Appellant-2 from start-up power HV-8 to Non-Industrial HV-6 (temporary). Respondent-1 has disputed the supplementary bill on account of incorrect application of tariff. According to the

Appellants, use of start-up power for initial commissioning is misuse of power supply while the Respondent-1 felt that the start-up power supply has been correctly utilized. We have noticed that start-up power has not been defined in the applicable Tariff order for FY 2007-08 of the State Commission. It has also not been clearly recorded in the Tariff order whether start-up power can be utilized for initial commissioning of the generator and its auxiliaries. The question that arises under these circumstances is as to who is the correct authority to clarify on applicability of start-up power tariff. The action under Section 126 for misuse of power supply and remedy under Section 127 would arise only when it is established that there is misuse of power. In our opinion the State Commission, which has determined the tariff under Section 86(1)(a) alone has the

jurisdiction to give the clarification on correct applicability of the tariff category.

9. Having decided the jurisdiction issue, we will now take up the second issue relating to applicability of start-up power tariff. Learned counsel for the Appellants referred to State Commission's order dated 6.2.2006 in Petition No. 17/2005 (M) which indicated that start-up power was meant for occasional use in case of breakdown of generating units. We now examine the State Commission's order dated 6.2.2006 based on which a new tariff category for start-up power was devised. This case related to use of start-up power by operating captive power plants not co-located with their captive consumers. The relevant extracts of the order are as under:

*“Taking into consideration all the factors and the petitioner's statement that the consumption of*

*start-up power is not likely to be more than 10% in terms of load factor, the Commission decides to apply the same HV-6 tariff with 50% of the existing demand charge for start-up power for CPP. However, to avail this benefit the CPP has to have a contract demand which does not exceed 10% as its highest capacity generating unit and restricts the drawal of power within 10% load factor every month. In case the load factor in a month goes beyond 10%, the CPP will be required to pay the full demand charges. Since the requirement of power will be for short duration, the Commission also decides not to levy any minimum charges on consumption. Billing will be done on actual consumption as per HV-6 tariff or the tariff for this category as may be determined by the Commission from time to time. In order that existing CPPs may avail this facility, they are permitted to reduce their CD to the extent desired, subject to technical feasibility in terms of accurate metering of import and export of power. Such reduction is permitted only once in a year. If in future the Commission introduces a separate tariff for start-up in its tariff*

*order, this will automatically stand withdrawn from the date the tariff order is made effective”.*

In the above order the State Commission decided the tariff for start-up power at 50% demand charges applicable to HV-6 tariff due to low load factor of start-up power (<10%).

10. However, in this order there is no finding regarding use of start-up power for initial commissioning of the power plant. Further, subsequent to this order the State Commission introduced a separate tariff category for start-up power in its Tariff Order dated 22.10.2007 for FY 2007-08 and therefore, in terms of the order dated 6.2.2006 the findings of the order stands withdrawn from the date of this tariff order. The State Commission has also rightly held so in the impugned order.

11. Let us now examine the tariff schedule for construction and start-up power according to the Tariff Order dated 22.10.2007 for the year 2007-08. For construction power HV-6 General Purpose Non-Industrial Tariff is applicable whereas for start-up power the applicable tariff is HV-8. The relevant extracts for HV-6 and HV-8 categories from the Tariff Order are as under:

**“6.3.6 HV-6: GENERAL PURPOSE NON-INDUSTRIAL**

**1. Applicability**

*This tariff is applicable for supply to establishment like Railways (other than traction), hospitals, offices, educational institutions, other institutions etc. having mixed load or non industrial and/ or non residential load.*

## 2. Tariff

<i>Category of consumers</i>	<i>Demand charge (Rs./KVA /Month)</i>	<i>Energy charge (Rs. Per KWh)</i>
<i>HV 6.1: General Purpose Non-Industrial at 33 KV</i>	310	3.35
<i>HV 6.2: General Purpose Non-Industrial at 112 KV</i>	320	3.45

### **“6.4 HV-8: START-UP POWER TARIFF**

*This tariff is applicable for those consumers who avail supply for start-up of generators at 220/132/33/11 KV*

#### **1. Applicability**

*The tariff shall also be applicable to start-up power required by any generator.*

#### **2. Tariff**

<i>Category of consumers</i>	<i>Demand charge (Rs./KVA/month)</i>	<i>Energy charge (Rs. Per KWh)</i>
<i>HV-8: Start-up power tariff</i>	150	320

#### **3. Determination of Demand**

*The maximum demand of supply in each month shall be four times the largest number of Kilo Volt Ampere hours delivered at the point of supply during any consecutive 15 minutes during the*

*month as per sliding window principle of measurement of demand.*

*4. Conditions for start-up power consumers.*

*i. Start-up power tariff shall be applicable to all the generators who are not co-located with industrial load. Also there should not be any direct electrical connectivity between the generating plant and an industry so that there is not scope for flow of power from the generator to the industries.*

*ii. Contract demand shall not exceed 10% of the capacity of the highest capacity unit of the generating station.*

*iii. The power drawl shall be restricted to within 10% load factor in each month. In case the load factor in a month is recorded beyond 10% the demand charge shall be charged at double the normal rate”.*



12. The conditions for start-up power consumers described in tariff order are:

- a) that the generator should not be co-located with industrial load and there should not be any direct electrical connectivity between the generating plant and an industry;
- b) the contract demand shall not exceed 10% of capacity of the largest size unit of the generating station; and
- c) the power drawal shall be restricted to within 10% load factor in each month but in case the load factor in a month exceeds 10%, the demand charges shall be charged at double the normal rate.

The demand charges for start-up power are lower compared to construction power tariff due to low

load factor not more than 10% envisaged for such connection.

13. In the present case the Respondent No. 1 does not have any industrial load at the power plant premises and the contract demand of 20,000 KVA is less than 10% of the capacity of the largest unit. It has been stated by the Respondent No. 1 in its rejoinder before the State Commission that during the period April 2008 to May 2009, the load factor exceeded 10% only in four months i.e. November and December, 2008 and January and April, 2009 for which it has paid penal demand charges. The reason for the increased load factor during these months was that the plant was to synchronize in the month of January, 2009 and hence several start-up activities were underway in the months immediately preceding the original synchronization date. However, for technical reasons

the synchronization of the plant took place in May 2009. Hence in April, 2009 the drawal exceeded 10% of load factor and it had to pay penal demand charges as per the Tariff Order. Thus, the Respondent-1 meets all the conditions laid down for availing of start-up power supply in the Tariff Order.

14. When the start-up supply agreement was signed in May, 2008 and when supply at 400 KV was intended for the first time it was known to the Appellant that the generating units at the power project of Respondent-1 had not been commissioned. The project site was also inspected by the Appellant before extending start-up supply. It, therefore, implies that the start-up power was being extended for the initial start-up of the Appellant's power project. The start-up power is required for initial start-up and commissioning of a new generating unit as also start-

up after break down or planned outage of an existing generating unit. There is no difference if the start-up power is availed of by a new unit for initial commissioning or by an existing unit after breakdown/shutdown. Thus, we do not find any infirmity in the State Commission's finding that start-up power could also be utilized for initial starting of the generator.

15. According to the Appellant, the Respondent-1 continued to use start-up power supply for one year from May, 2008 to April, 2009 for commissioning of the generating plant's auxiliaries where as start-up power could be used only for short duration that too in emergency during outage of the generating unit and not on a continuous basis.

16. We do not find from the tariff order for FY 2007-08 dated 22.10.2007 any restriction on use of start-up power supply for start-up and commissioning of auxiliaries of the generating station at the time of initial commissioning of the generating unit. The purpose for which start-up supply has been taken by the Respondent-1 is also for running the auxiliaries. The restriction is only on account of load factor and if the load factor is above 10% penal demand charges are levied at twice the normal rate.

17. A generating unit besides generator and turbine has a number of auxiliaries which form an integral part of the generating unit. All auxiliaries of a generating unit have to be tested and commissioned before synchronizing the generator to the grid. The Respondent-1 had also informed the various commissioning activities to the Appellants vide letter

dated 17.2.2009 which has been filed by the Appellants. In case of an existing generating unit taken under outage for overhaul, the auxiliaries are also overhauled and are required to be tested & commissioned before synchronizing the generator. According to the Appellants, start-up power could be utilized for running auxiliaries during such breakdown/overhaul but can not be used during initial commissioning of a new unit. We fail to understand the argument of the Appellant that if start-up power could be utilized for testing and commissioning of the auxiliaries of an existing generating unit after overhaul why it can not be utilized for initial commissioning of the auxiliaries and the generator of a new power plant.

18. Therefore, we do not find any infirmity in the finding of the State Commission that start-up power

can be used for initial commissioning of the generator and its auxiliaries.

19. Let us now take up the third issue regarding misuse of power. The report of the joint inspection carried out by the team of the Appellant on 18.3.2009 of Respondent-1's generating station indicates that the start-up power was being used for commissioning of various electrical auxiliaries and the construction power was being used for construction work like welding, grinding, lighting, crane, HT/LT switchgear/Unit 2, etc. Thus, the start-up power was being used for the purpose for which the connection was provided to the Respondent-1. Start-up power was not being used for construction work such as welding, grinding, lighting, etc. Thus, we agree with the findings of the State Commission that there was no misuse of start-up power.

20. **Summary of findings:**

- i) **The first issue is relating to jurisdiction of the State Commission. According to the Appellant, it was a case of misuse of power and dispute in billing on this account. The basic issue in the case was applicability of tariff category for power used for initial commissioning of a new generating unit. The supplementary billing was on account of change in tariff category of Respondent-1 by the Appellant-2/Distribution licensee from start-up power HV-8 to HV-6 (temporary). The State Commission who determined the retail supply tariff of the Appellant No.2 under Section 86(1)(a) was the correct authority to clarify on applicability of start-up power tariff for**



**initial commissioning of a generator and its auxiliaries.**

- ii) The second issue is whether start-up power can be utilized for initial commissioning of a generating unit and its auxiliaries. In tariff order dated 22.10.2007 for FY 2007-08 the State Commission devised a separate tariff category for start-up power. The Responent-1 meets all the conditions laid down for availing start-up power supply in the tariff order. Auxiliaries of power station are integral part of the generating unit. It is immaterial whether start-up supply is used by an existing unit under breakdown/outage or by a new unit for initial commissioning of a generating unit**

**and its auxiliaries. Start-up power can be utilised for initial commissioning of a generator and its auxiliaries. Therefore, we do not find any infirmity in the findings of the State Commission.**

**iii) There was no misuse of start-up power by Respondent-1 in initial commissioning of the generator and its auxiliaries.**

**Conclusion:**

21. In view of the above, we find that the Appeal is devoid of merits. The Appeal is dismissed without cost.

22. Pronounced in the open court on this **15th day of March, 2011.**

**(Justice P.S. Datta)  
Judicial Member**

**( Rakesh Nath)  
Technical Member**

REPORTABLE / NON-REPORTABLE  
VS