

**ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAVAN
UNIT – VIII, BHUBANESWAR – 751012**

**Present: Shri D.C. Sahoo, Chairman
 Shri H.S. Sahu, Member
 Shri B.C. Jena, Member**

CASE No.11/2002

North Eastern Supply Company of Orissa Ltd., Balasore	Applicant
- Vers. -		
M/s Tata Iron & Steel Company Ltd., 24, Homi Modi Street, Mumbai-400 001	Respondent

For Applicant : B.K. Nayak, Advocate
For Respondent : A.K. Parija, Advocate

Date of hearing : **21.06.2002**
Date of order : **01.10.2002**

ORDER

The Managing Director, North Eastern Supply Company of Orissa Ltd., (in short NESCO) filed an application for approval of the supplementary agreement executed on 7th of August 2001 between the applicant and M/s Tata Iron & Steel Company Ltd., 24 Homi Modi Street, Mumbai-400001 (in short TISCO), the respondent, for supply of power to the EOU unit Baminipal at a concessional tariff.

2. As submitted by the applicant, an agreement was executed on 16th March 1992 between TISCO and Orissa State Electricity Board for supply of electricity with a contract demand of 30,000 KVA for the Export Oriented Ferro Alloys Unit at Baminipal.
3. Supplementary agreement was being executed from time to time between the respondent and GRIDCO (the successor to OSEB) for supply of NTPC power at a

concessional tariff during the off peak hours which continued till 31st of March 1999.

4. The applicant has further submitted that another supplementary agreement was executed between the applicant and the respondent for supply of power at a concessional tariff to the EOUs from 1.9.1999 to 31.8.2000 on the basis of suggestion made by the Govt. of Orissa, Deptt. of Energy. The said supplementary agreement was placed before the Hon'ble Commission for approval. By order dt.22nd March 2000 in Case No.1/2000 the special agreement proposed by NESCO was not approved by the Commission.
5. This order of the Commission was challenged in the Hon'ble High Court of Orissa registered as Misc. Appeal No.285 of 2000 by the applicant. The EOUs of the state filed 3 nos. of appeals against OERC order dt.22.03.2000. The case filed by the respondent was registered as M.A. No.299 of 2000. The Hon'ble High Court of Orissa while disposing of the M.A. No.285/2000 directed the Commission with certain conditions to approve the special agreement executed between NESCO and the EOUs.
6. The applicant has submitted that the EOUs consume bulk power at high load factor and it is considered absolutely necessary for the mutual benefit of the supplier and the industry to supply them power at a concessional rate to win them away from setting up of CPPs. Accordingly, the applicant and the respondent executed a supplementary agreement on 7th August 2001 for supply of power at a concessional tariff for a period of ten years from the date of supply. The operation of the agreement was to commence from 1.7.2001 subject to approval of OERC.
7. The applicant has submitted that the concessional tariff proposed in the supplementary agreement is in line with the tariff order for the FY 2001-02 in which a special tariff was proposed for load of 25,000 KVA and above with a high load factor.

8. The applicant has also submitted that Regulation-81 of the OERC Distribution (Conditions of Supply) Code, 1998 permits the licensee for execution of special agreement considering the nature of supply and the purpose for which the supply is required.
9. Finally citing the observations of the Hon'ble High Court of Orissa in Misc. Appeal No.285/2000, the applicant has prayed for approval of the supplementary agreement executed between the respondent and the applicant on 7th August 2001 for supply of power to the EOU unit at Baminipal at a concessional tariff.
10. The respondent through its Chief Resident Representative of Orissa in a counter to the application of NESCO dated 24.12.2001 submitted that the EHT, EOU industries are subsidizing to the low voltage class of consumers. With the present tariff, the PI industries are not able to compete in the international market which forced them to shut down their plants.
11. The respondent has stated that in accordance with Sec. 26 (2)(b)&(c) of the Orissa Electricity Reform Act, 1995, the Commission is bound by the factors which would encourage efficiency, economy in the use of resources, good performance, optimum investment and interest of consumers to determine tariff. To buttress this point, they have stated that the PI industries provide a better capacity utilization through higher load factor, better economic use of resources due to supply in bulk at a single point at EHT and saving in investment cost of transmission and distribution. Cost of power constitutes a significant component in the total cost of their product. Therefore, tariff should be substantially less than that of other large industries.
12. The respondent submitted that as per Section 26 (5)(a) of the O.E.R. Act, 1995, the differential tariff can be given to power intensive industries as compared to other large industries as their power consumption during off peak hours is much more than the other large industries running in three shifts.

13. The respondent has further submitted that the State Govt. had written to NESCO to give power supply to EHT PI industries with competitive rates which should be treated as a policy directive u/s 12 (1), of the OER Act, 1995.
14. The respondent has stated that the Commission in its order of 2nd March 2002 has permitted bilateral agreement between the licensee and the consumer from 1.9.2000 to 31.1.2001. Since the new agreement is prepared on similar line and consideration this agreement may please be approved which provides for a special tariff as proposed by NESCO.
15. After hearing both the parties the applicant was directed to file an affidavit (as was done in Case No.1/2000 – NESCO Vrs. EOUs) within 10 days indicating therein (i) the amount of loss it may sustain in case the special tariff proposed is accepted and (ii) whether it can absorb the difference between the revenue at the approved rate and the rate at which it proposes to enter into the special agreement with the respondent.
16. In response to this, after two extension of time, the applicant **submitted on 25.07.2002 the following:**
- i) On the basis of actual billing data of TISCO, Baminipal for the period from July 2001 to May 2002, the differential revenue loss to the applicant will be to the tune of Rs.7.74 crore on account of allowing supplementary agreement rates in stead of the retail supply tariff.
 - ii) If the concessional tariff is not extended the industry may be closed in which case the loss of revenue to the applicant would be much higher as it would lose the profit margin between the power purchase cost and the proposed concessional tariff in the supplementary agreement. This was experienced in February and March, 2001. After issue of retail supply tariff order dt.19.01.2001 due to non-drawal of power w.e.f. 1.2.2001 by Ispat Alloys and FACOR from 1.3.2001 the company had to suffer losses, which has to be recognized by OERC in its revenue requirement.

- iii) The applicant reiterates that if the concessional rate is not extended the respondent may either close the industry or be dependent on CPP. In the event of its availing NTPC power supply directly, the Hon'ble Commission shall not give approval without the prior consent of NESCO.
 - iv) The applicant gives an undertaking to absorb the differential revenue loss that would accrue on the special agreement being approved and would not pass on the burden to the other consumers until the next tariff revision.
 - v) Finally, the applicant has stated that in case of non-drawl of power by the respondent during 1.7.01 to 31.5.2002 the loss to NESCO would have been Rs.13.41 crore as against Rs.7.74 crore due to allowing concessional tariff to the respondent. The applicant therefore proposed that it would be prudent to approve tariff as per the supplementary agreement in the larger interest of the State, society and the Supply Company. The applicant has stated that clear profit shall be governed by the Sixth Schedule of the Electricity (Supply) Act, 1948.
17. After hearing both the parties, we conclude as under:
- i) The Hon'ble High Court of Orissa while disposing M.A. No. 285/2000 have directed OERC to approve the proposed special agreement between NESCO and three EOUs to enable the EOUs to avail concessional tariff, since NESCO in its affidavit had agreed to absorb the notional loss that would accrue on account of the special tariff.
 - ii) In the instant case, the applicant NESCO in its submission on 25.07.2002 has also agreed to absorb the notional revenue loss that would accrue consequent to the approval of the concessional tariff proposed in the draft agreement. It has also stated that this burden would not be passed to other consumers.

- iii) The applicant has not made any mention of the manner in which it will make good the losses of the revenue due to concessional tariff.
 - iv) The applicant came up with the proposal for continuance of the agreement for a period of 10 years from 1.7.2001 whereas in the affidavit dated 25.07.2002 it has agreed to absorb the differential losses up to the next tariff revision. It is, therefore, ordered that due to the acceptance of the loss in differential revenue by the applicant, the Commission will have no objection in accepting the special agreement with concessional tariff only upto the next tariff revision.
 - v) The retail tariff will be deemed to have been in force for the purpose of determination of revenue realization from the respondent during the period in which the supplementary agreement will be in force as indicated in the preceding paragraph.
 - vi) The method and manner of determination of clear profit as indicated in the prayer of the applicant can only be determined during the course of the tariff hearing.
18. The duration of the special agreement may be suitably amended in accordance with para 17(iv) above.

The case is disposed off accordingly.

(B.C. JENA)
MEMBER

(H.S. SAHU)
MEMBER

(D.C. SAHOO)
CHAIRMAN

