



the waste gas generated from its kiln. The operation of its existing two kilns requires 4.5 M.W. of power. It had mooted a plan for installation of 3<sup>rd</sup> kiln which would need additional 2.5 M.W. of power. But, on account of removal of quantity restriction on import and uncertain market conditions, implementation of the 3<sup>rd</sup> kiln has been deferred for about 2 to 3 years. As a result, there has been surplus of 2.5 M.W. of power (approx.) over and above its requirement. Ferro Alloys Plant of TISCO which is situated at a distance of 7 Kms. is a sister concern of the petitioner. Ferro Alloys Plant, a consumer of NESCO runs at a loss due to high cost of power. The petitioner, therefore, intends to supply the surplus 2.5 M.W. of power to Ferro Alloys Plant, which can be transported to its sister concern by payment of wheeling charge through the existing 33 K.V. transmission system of NESCO. Full utilisation of the power generated from waste gas will be beneficial to all concerned as under utilisation of the capacity will be a National waste. Supply of surplus power to Ferro Alloys Plant serves larger public interest and the same is in conformity with clause 18.10 of Industrial Policy Resolution, 2001 of the Govt. of Orissa. Promotion of co-generation plant has been a policy of the Central Government. The policy encourages captive/co-generation power plants by industries and also envisages sale of excess power to the grid as per mutually agreed rates. The requirement of the petitioner during two years would pick up to 9375 KVA CPP as and when the 3<sup>rd</sup> kiln would be operational. As such, transmission of 2.5 MW power to Ferro Alloys Plant is only an interim measure. Supply of power to a sister company is deemed to be for captive use within the meaning of Sec.44 of the Electricity (Supply) Act, 1948 r/w Sec.21(3) of the Orissa Electricity Reform Act, 1995. This transaction between the petitioner and the Ferro Alloys Plant of TISCO is a reciprocal arrangement between two sister companies. The petitioner does not intend to sell electricity to any 3<sup>rd</sup> party and the transaction between the two companies will be construed as “sale” only in terms of accounting commercial arrangement. Contract demand of TISCO will not be reduced due to supply of 2.5 MW surplus power from the petitioner. The business

health of NESCO will not be adversely affected, if permission is granted for wheeling of surplus power to Ferro Alloys Plant. GRIDCO/NESCO will be financially benefited on account of payment of wheeling charges for using the otherwise idle 33 KV line. In the above backdrop, the petitioner prays that the Commission may permit the transport of the surplus power through existing NESCO wires on payment of wheeling charges.

3. GRIDCO, respondent No.1 in its counter has contested this case. It submits that the proposal for wheeling of surplus power does not seem to be technically sound due to the following factors.

- (i) Ferro Alloys Plant receives power in 11 KV whereas TSIL receives power in 33 KV.
- (ii) There is no direct link between 33 KV system and the link between the two systems is only through 132 KV Grid,
- (iii) Practically 2.5 MW power cannot be wheeled and transfer of power in this case shall be only through the method of displacement.
- (iv) The injection of 2.5 MW surplus power is not firm and guaranteed and the uncertainty of 2.5 MW surplus generation shall adversely affect the commercial transaction of GRIDCO as in case of necessity, GRIDCO shall be required to procure costlier power and supply the same to Ferro Alloys Plant through NESCO.

While granting permission for establishment of C.P.P., it was stipulated, inter alia, by the Commission that the petitioner shall make adequate arrangements to prevent reverse flow of power to the Licensee's system and in case of inadvertent flow, the Licensee shall not pay any charge/fees and duties. This provision obliquely imposes restriction on the petitioner to generate power only to the extent of its own requirement. The

petitioner being aware of the situation has misled the Commission and obtained permission for 9375 KVA CPP in place of 6250 KVA CPP. Presently, GRIDCO being surplus in power has been taking up trading of surplus power with other SEBs. GRIDCO shall pay fixed cost to other generators if 2.5 MW power is injected to the system by the petitioner. According to GRIDCO, it shall not raise any objection to the transfer of 2.5 MW of surplus power from the petitioner to Ferro Alloys Plant if the same is done through the petitioner's own line totally isolated from GRIDCO/NESCO system.

4. NESCO, respondent No.2 has also contested this case in its counter. NESCO has pleaded that permission was granted by the OERC to the petitioner for installation of CPP with the stipulation that the generation of power from the CPP should be restricted to the requirement of the petitioner. It was also envisaged in the order that the permission granted may be withdrawn at any time if any one or more of the conditions are violated. The present prayer of the petitioner runs counter to the terms of the permission granted by the Commission. Ferro Alloys Plant of TISCO is situated within the licensed area of NESCO. It is only the NESCO who has been given the licence for supply of power to different consumers including Ferro Alloys Plant and nobody else. No licence or permission has been granted in favour of the petitioner for supply of power to any other unit. The supply of power to Ferro Alloys Plant, as prayed for, will affect the business prospect of NESCO. The Industrial Policy Resolution – 2001 of the Govt. of Orissa in clause 18.10 has stipulated that if any industrial unit sets up a captive power plant, it will be allowed 3<sup>rd</sup> party sale, if it has surplus power available. The unit shall sell the surplus power to GRIDCO or any other industry requiring the same directly as per the guidelines prescribed by the Commission. Industrial Policy Resolution – 2001 has no application to the petitioner which is a private company. The State Govt. have expressed their inability to provide any subsidy to any of the private companies including NESCO. In view of this, the question of

extending any benefit under the provisions of Industrial Policy Resolution-2001 to the petitioner does not arise. Ferro Alloys Plant of TISCO was getting power supply from NESCO and a sum of Rs.10 crores is outstanding against this plant to whom the petitioner proposes to supply power. The present petition has been filed with a mala fide intention to avoid payment of energy charges which is outstanding against Ferro Alloys Plant. In case permission is granted, NESCO will incur huge financial loss. NESCO buttresses its plea for rejection of the present application on the aforesaid grounds.

5. M/s Tata Sponge Iron Ltd. has appealed to the Hon'ble High Court of Orissa against OERC order dt.28.06.2001 passed in case No.21/2001 and the said appeal has been registered as M.A. No.636 of 2001. TSIL has requested in that appeal to quash the impugned order and to issue direction to OERC to grant exemption u/s 16 of the OER Act and to direct the licensee to transmit power from the applicant's CPP to the Ferro Alloys Plant, a sister concern of M/s Tata Iron & Steel Co. Ltd. or to pass such other orders as the Hon'ble Court may deem fit and proper. The Hon'ble High Court of Orissa in their order dated 28.02.2002 have observed that "The appellant had sought for liberty to move before the OERC for reconsideration of the matter. To move the OERC no leave or permission from this court is needed. The appellant if so advised, can move before the Regulatory Commission. Let the appeal go out of the list for the present."
6. The Commission while passing its order dt.28.06.2001 in case No.21/2001 had reiterated that while granting permission, a stipulation was made that the power from the CPP should be restricted to the requirement of the applicant as outlined in the application. The Commission had also observed that permission now sought for by the applicant for sale of surplus power of 2.5 MW to Ferro Alloys Plant, admittedly a sister concern, will result in additional power being injected into the State itself.

This would tantamount to violation of the stipulation already imposed by the Commission on the petitioner while granting permission and would defeat the very purpose of imposing such a restriction.

7. It was observed that any export of power by the petitioner to M/s Ferro Alloys Plant would require use of sub-transmission system of NESCO. As per existing OERC regulation, free access is not envisaged in such sub-transmission lines. NESCO would be deprived of getting energy charges for the energy corresponding to 2.5 MW of connected load due to non-supply of power to Ferro Alloys Plant which would lead to revenue loss from a significantly subsidizing customer.
8. The Commission had also observed that the policy of encouraging captive co-generation plants do not give a carte-blanche to set up such plants even where they are not needed. The policy is in the nature of a guidance to be borne in mind while granting permission to set up new generating stations. This cannot be construed as a directive of the Central Govt. for automatic permission for setting up CPPs even where a State is surplus in power and the transmission and supply licensees are paying fixed charges for the power not needed for the State. The policy does not infringe on Sec. 44 of the Electricity (Supply) Act, 1948 r/w Sec. 21(3) of the Reform Act, 1995 conferring power on the Regulatory Authority to consider justification in each case while granting permission. In this context, it may be noted that the Eastern Region in general and Orissa in particular is burdened with surplus unutilized capacity.
9. The Commission further observed that the applicant had not fully disclosed its business plan while asking for permission and might have deliberately built over capacity with the intention to sell power to a sister concern by way of commercial arrangement. If the prospective surplus position would have been laid bare at the time of hearing, the affected parties i.e. GRIDCO and NESCO would have contested the case in a

different vein. The Commission observed that in such a scenario the possibility of granting permission to set up CPP of 9375 KVA might not have gone through. In the fine, Commission concludes that in the matter of grant of permission for supply of 2.5 MW power to Ferro Alloys Plant at Joda, the Commission will not only prefer to abide by its consistent policy of not allowing third party sale of power in the present surplus situation in Orissa, but also go by the specific stipulation made while granting permission for setting up the CPP in case of the petitioner.

10. In view of the reasons and discussions set forth above, we are clearly of the view that the present petition is devoid of any merit. As such, the petition is rejected.

Sd/-  
**(B.C. JENA)**  
**MEMBER**

Sd/-  
**(H.S. SAHU)**  
**MEMBER**

Sd/-  
**(D.C. SAHOO)**  
**CHAIRMAN**

