

**ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR – 751 012

Present : Shri D.C.Sahoo, Chairperson
Shri B.C. Jena, Member
Shri S.K. Jena, Member

Dated the 18th day of July, 2005

Case No.12 of 2005

M/s. HINDALCO Industries Limited,
Hirakud

..... **Petitioner**

- Vrs –

M/s WESCO,
Burla, Sambalpur

..... **Respondent**

For the petitioner - Mr. A. K. Padhi, Sr. manager(Elect.)

For the respondent - Mr. Sanjit Mohanty, Sr. Advocate of WESCO

ORDER

M/s WESCO has filed a review petition to review the order dated 20.05.2005 passed in Case No.12 of 2005 by the Commission. The review petition has been heard on question of admission as well as on merits consent of both the parties.

2. The ground for review of the said order is on the observations of the Commission in para 16 & 19 of the said order. Para 16 of the said order reads as follows.

“Para16. M/s WESCO in their rejoinder stated that they are not able to hono’r the special agreement dtd.21.9.01 between M/s WESCO and M/s INDAL which stipulated drawal of 50 MW load at 90% load factor. The 132 KV power supply supplied by GRIDCO was erratic and was

frequently associated with load shedding. M/s WESCO further stated that GRIDCO may be directed by the Commission to supply adequate power so that the two agreements i.e. one special agreement for 50 MW and the other back up agreement for 42 MVA can be honoured by WESCO.”

3. The contention of WESCO is that the rejoinder filed by M/S WESCO did not contain facts stated by the Commission. The second ground is the observations of the Commission in para 19 of the said order, which reads as follows:-

“19. In the meanwhile, till Unit 2 becomes fully operational, M/s WESCO may supply around 30 MW of power to meet HINDALCO’s power requirements supplement to its generated power through execution of an agreement between M/s WESCO and M/s HINDALCO. WESCO will stand released from special agreement for supply of 50 MW power to HINDALCO with effect from 01.06.2005 to the mutual advantage of all the interested parties namely HINDALCO, GRIDCO and WESCO.”

4. WESCO stated that this was erroneous, being beyond the scope of application dt.19.4.05 of HINDALCO and contrary to the terms of special agreement dt.21.9.01 executed between WESCO and HINDALCO. It also further stated that WESCO will lose revenue approximately to the tune of Rupees 6.8 crore during the unexpired period of the agreement and may not be able to service its liabilities.

5. During the hearing for admission of the present case on 05.07.2005, the learned counsel of M/s WESCO reiterated the above mentioned two grounds and prayed for review of the said order.

6. M/s WESCO also prayed for a stay for operation of the order in case No.12 of 2005 dated 20.05.2005. The authorized representative of M/s HINDALCO made appearance and wanted to contest the stay petition and also the review petition of M/s WESCO. During the course of hearing, representatives of M/s HINDALCO furnished facts, figures and correspondence which revealed that power supply position to M/s HINDALCO were deficient and erratic. The representative of M/s HINDALCO was asked to file their written objections serving copies on M/s WESCO which he has complied. Before getting into the merits of the petition, it would be worthwhile

to examine the contents of the special agreement entered into between M/s WESCO and M/s INDAL now renamed as M/s HINDALCO.

7. Para 3 of the said agreement under the head “Quantum of Supply” reads as follows:-

“Subject to the provisions hereinafter contained and during the continuance of this Agreement, the Licensee, represented by the engineer shall supply the consumer uninterrupted and quality power, subject to grid condition, and the Consumer shall take from the Licensee, supply as per the “Contracted Demand” which shall not be less than 50 MW. The Consumer guarantees minimum monthly energy consumption, corresponding to load factor of 90% for Contract Demand (which shall not be less than 50 MW) and the same shall be paid by the Consumer even in case the actual consumption is lower in any month.”

8. Para 8 of the said agreement states that the agreement was subject to implementation of the observations made by the Commission in para 12.2 of their order dt.02.07.2001 in respect of Case No.25 of 2001 which reads as follows:-

“12.2 This price has, however, to be linked to the prevailing bulk supply tariff and the fuel price adjustment. The duration of agreement should not exceed four years as earlier proposed by WESCO and the principle of tariff setting may be reviewed thereafter. The principle now adopted should find incorporated in the tariff proceeding so as to be effective for the year 2002-03 as a special tariff in pursuance of a special agreement. This is accepted with the object of attracting large investment to the State to provide a base load for the grid, prevent over frequency conditions, bring in a steady stream of revenue to the licensee, ensure availability of cross subsidy to the various classes of consumers, create conditions for drawal of power from the grid, dissuade installation of CPP, help reduction in payment of fixed overhead charges for NTPC stations after implementation of the ABT and help utilization of the surplus power in the State region.”

9. While hearing the case No.12 of 2005 dt.20.05.2005, the Commission was satisfied that two vital stipulations of the Commission’s order and the agreement between WESCO and HINDALCO as stipulated in para 7

& 8 above were not being fulfilled on account of the 2nd unit of M/s HINDALCO coming into operation and less drawal of the contracted load. As a result, the minimum drawal of 50 MW could not be ensured. Secondly, because hydro generation in Hirakud power stations was very low and extra power could not be drawn from Budhipadar for various reasons, uninterrupted power supply could not also be ensured.

10. Therefore, the Commission came to the conclusion that since the agreement conditions and order of OERC were not fulfilled, M/s WESCO and M/s HINDALCO have been unable to comply with the said agreement. From 01.06.2005 if need be, they may enter into a fresh agreement for a reduced load of about 30 MW of power at a mutually agreed rate. In compliance to the order, M/s WESCO have approached M/s HINDALCO to enter into a special agreement for 30 MW load at a consolidated rate of 2.30 paise per unit as seen from the correspondence between them, copy of which has been endorsed to the Commission.

11. In para 16 of the Commission's order dated 20.05.2005 in Case No.12 of 2005 the Commission inadvertently mentioned the word "rejoinder", whereas actually the point was not raised in the rejoinder but by WESCO's representative during hearing. Hence para 16 of the Commission's order in Case No.12 of 2005 dt.20.05.2005 should be modified as follows:-

"M/s WESCO in their rejoinder may be substituted by M/s WESCO's representative during the course of public hearing."

12. The review petition is allowed to the extent stated above and necessary modifications as above are hereby directed in the order No.12 of dt.20.05.2005. Regarding the issue of loss of revenue and its consequences, the same can be raised by WESCO in the next ARR filing due by November 2005 to be suitably dealt by the Commission. The review petition being thus disposed of, no order is necessary in respect of the petition for interim stay.

(S. K. JENA)
MEMBER

(B.C. JENA)
MEMBER

(D. C. SAHOO)
CHAIRPERSON