



this case) are liable to pay cross-subsidy surcharge and additional surcharge to incumbent distribution licensee for the quantum of power utilized directly from the Generator. The Petitioner DISCOMs point out that most of the industries having Captive Power Plant during previous years from FY 2009-10 onwards have sold power to outside parties / GRIDCO which is much more than 49% of the electricity generated on annual basis and consequently have lost their CGP status and have become Generators in view of Electricity Rule, 2005 and hence, are liable to pay cross-subsidy surcharge as they have consumed power from a generator and not a Captive Power Plant as per OERC Open Access Regulation.

2. CESU the other DISCOM also supported the views of the Petitioner and claimed that they are eligible to get cross-subsidy surcharge from the industries who have consumed power from such CGP who has lost its Captive status and converted as a Generating Plant i.e. a Third party sale.
3. The Respondent CCPPO submitted that in view of invocation of Section 11 of Electricity Act, 2003 by State Govt. they have maximized their injection to the State Grid to help GRIDCO to tide over power deficit scenario in the State during the year 2009-10. As a result they have lost their CGP status as per Electricity Rule, 2005. This is a temporary phenomena and once Section 11 of the Electricity Act is revoked they would rescind back to their CGP status. As the mother industries were never the consumer of the distribution licensee nor did it reflect in their ARR there is no need to pay cross-subsidy surcharge to the DISCOMs.
4. The representative of SLDC submitted that the Petitioners have misinterpreted the Open Access regulation of the Commission and in the present case the CGPs have sold their surplus power to GRIDCO for resale to DISCOMs. Therefore, the DISCOMs can't claim cross-subsidy surcharge from the industries whose CGPs have lost their CGP status as per Electricity Rule, 2005.
5. Heard the parties at length. In this connection we want to reiterate our Order in Case No. 22 of 2011 dtd. 29.08.2011 where in Para 32.5 we have directed as follows:

*“ 32.5 Thus, the Commission reiterates once again that for the financial year 2009-10, the rate fixed by the Commission for sale of power from CGP to GRIDCO shall be applied even if any particular generating company lost its CGP status due to the fact that its captive consumption is less than 51%, when the CGPs were asked to maximize their generation to help GRIDCO to meet the power deficit situation being faced by the state then. Further, this decision has to be taken by the Commission as the issue of the captive status was brought to the Commission's notice only at the end of the financial year, wherein*

*For the FY 2010-11 and for current FY 2011-12, in accordance with Commission's order at para 27(iv) of order dt.31.052010, the CGP shall supply data regarding its net generation (gross less auxiliary consumption), its captive consumption by the parent industries including the group companies having captive consumption (together called Captive Consumptions) and sale of power to the State Grid including any bi-lateral trading through open access or power exchange (together called Sale of Power) progressively in every month for the full financial year.*

Regarding the issue of determination of CGP status for the FY 2010-11 onwards, Commission vide its order dt.29.8.2011 has directed GRIDCO as well as CGPs to submit required information/data in the following format month-wise cumulative for the Financial Year.

| Name of the Industrial unit having CGP | Capacity of CGP (MW) | Gross Generation | Auxiliary Consumption | Net Generation | Captive Consumption | Sale through Open Access | Sale of Power to GRIDCO |
|--|----------------------|------------------|-----------------------|----------------|---------------------|--------------------------|-------------------------|
|  |                      | April            |                       |                |                     |                          |                         |
|  |                      | April-May        |                       |                |                     |                          |                         |
|  |                      | April-June       |                       |                |                     |                          |                         |
|  |                      | .....            |                       |                |                     |                          |                         |
|  |                      | April-March      |                       |                |                     |                          |                         |

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*In the process of supporting the State during the crises, some of them lost their CGP status involuntarily. According to Rule-3 of Electricity Rules, 2005, the power plant*

*shall qualify as a Captive Generating Plant provided it consumes 51% of the aggregate annual generation of such plants. These Captive Generating Plant thus, faced the twin problem of being*

- i. Deprived of the exemption of electricity duty under IPR-2001 and*
- ii. Not paid the preferential CGP price towards supply of surplus power to GRIDCO.*

*Further, Government has already invoked Section-11 of the Electricity Act, 2003 on 25.11.2011 directing CGPs to maximize generation and supply power to the State Grid to tide over power crises situation till June, 2012.*

*Keeping in view the larger interest of the State and difficulties faced by the CGPs due to invocation of Section-11 of the Electricity Act, 2003 by Govt., the State Cabinet in their 21<sup>st</sup> Meeting held on 21.02.2012 have decide as follows:*

- a. The quantum of supply of surplus power to GRIDCO during FY 2009-10 and 2010-11 (April, 2010 to October, 2010) by the CGPs is construed as being deemed self-consumption for the purpose of determination of CGP status.*
- b. The injection made by CGPs to the State Grid during period of invocation of Section-11 will be considered as deemed self-consumption in the FY 2011-12 and 2012-13.”*

8. The Commission here would like to point out that State Govt. invokes Sec.11 denying Open Access for sale of power by a generating company to outside the State to tide over the power crisis situation of the state. As per the Electricity Rules, 2005, the minimum consumption of the Industrial unit from its own generating unit has to be 51% of its net generation to qualify the generating plant owned by any Industrial Unit for the Captive status. It may sale to outside party within or outside the State including the State Grid maximum upto 49% . Therefore, if a generating plant owned by any Industrial consumer sells more than 49% of its net generation within or outside the State (including the State Utilities), it loses its Captive status. The Captive status of a Generating plant can only be known only after the end of Financial Year. If a Generating plant lost its Captive status, then its supply of power to the industrial consumer need to be regularized as “third party supply” attracting cross-subsidy surcharge. The Captive Plants are basically meant for reliability of supply of the consuming industry and allowed to supply only its surplus power.
9. CGPs should have submitted their cumulative monthly data as per the format prescribed by the Commission vide its order dt.31.05.2010 and should have approached to the State Govt./Commission with due intimation to GRIDCO and DISCOM, with specific request of waiver of ‘Cross-subsidy Surcharge’ due to its reduced industrial consumption. None of the responding party has done so. No DISCOM has also effectively taken any pro-active action during the course of the operation of the Financial Year 2010-11 and 2011-12, in spite of the Commission’s

clear order dt.30.05.2010, due to their own interest. Only after the event is over, DISCOMs have submitted petition merely on the basis of principle, in general form, without any specifics of the list of Industrial consumer having CGPs and their consumption, from the generating plant (lost the CGP status) and the amount of 'Cross-subsidy Surcharge' claimed by them for which the Industrial units had expressed their reservation for payment resulting in a dispute on the matter.

10. We are, therefore, constrained not to interfere with the Govt. Resolution at this belated stage to determine the CGP status of the Generating Units of the Consumer Industry for the FY 2010-11 and FY 2011-12, when the financial year is already over. For the current year FY 2012-13, we direct all the Consumer Industry having Captive Generating Plant of more than 5 MW and the concerned DISCOM to submit the cumulative month-wise data from April, 2012 to till date positively as per the prescribed format at para 5 above. We also direct GRIDCO to furnish the information of such Generating Units which are selling power to them in FY 2012-13 as CGP.
11. The notification of State Govt. relates to a situation where the Generating unit of the Consumer Industry had helped the State Grid during power deficit situation and in the process might have lost its CGP status as per the Electricity Rule, 2005. It was an extra-ordinary situation where State Govt. in its resolution had specifically allowed power consumed by the State Grid as deemed self consumption. Hence, the contention of the DISCOMs that this Resolution of the State Govt. is only applicable for exemption of ED for power consumed by parent industries is not tenable. Once the CGP status is determined all the liabilities and incentives due to that status also follow. Therefore, we are of the opinion that in case the CGPs have not lost their status in accordance with the aforesaid resolution of the State Govt. by injecting surplus power to the Grid for State requirement, the transaction can't be termed as open access transaction and consequently does not attract payment of cross-subsidy surcharge to DISCOMs. However, we are of the opinion that such computation be applicable only for the past financial year 2009-10, 2010-11 and 2011-12, but not for the current FY 2012-13 where Section 11 has not been invoked for the full financial year. Since the financial year 2012-13 has not yet come to an end and Section 11 has been invoked till June, 2012 a decision regarding CGP status for FY 2012-13 can't be taken now. As per the existing rules the annual generation has to be taken into account for determining the prescribed percentage for self-consumption and the CGP during the remaining period (from June, 2012 to March, 2013) may increase their self-consumption and retain their CGP status independently of invocation of Section 11.

Therefore, for the FY 2012-13 the power injected by the CGPs to the State Grid should not be treated as self consumption for computation of CGP status.

12. Hence, it is directed that GRIDCO/ DISCOMs have to verify the CGP status of the industries supplying power to the State Grid for the FY 2009-10, 2010-11 and 2011-12 in line with the aforesaid Resolution of the State Govt. and on actual basis for the FY 2012-13 i.e. not considering the sale of power by CGPs to the State Grid as self consumption of the parent Industry. In case it is found that any CGP has lost its status in spite of such computation of power transaction, the DISCOMs may approach the Commission on the issue of the Cross-subsidy in case to case basis.
13. With the above observation, the case is disposed of. A copy of the order be marked to Deptt. of Energy, Govt. of Odisha.

**Sd/-**  
**(S. P. Swain)**  
**Member**

**Sd/-**  
**(B. K. Misra)**  
**Member**

**Sd/-**  
**(S. P. Nanda)**  
**Chairperson**