

ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN,
UNIT – VIII, BHUBANESWAR – 751 012
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Present : Shri S. P Nanda, Chairperson
Shri B. K Misra, Member
Shri S. P Swain, Member

Case Nos. 36, 59 & 60 of 2011

M/s. Adhunik Metalik Ltd. (Pump House) Petitioner
Vrs.
WESCO & anotherRespondents

In the matter of: An application under S.142 of the electricity Act, 2003 for imposing penalty on WESCO for contravention of the OERC Distribution (Condition of Supply) Code, 2004 and RST Orders for the FY 2008-09 and for the FY 2009-10.
AND

CASE No.59 of 2011

M/s. Adhunik Metalik Ltd. (Pump House) Petitioner
Vrs.
WESCO & anotherRespondents

In the matter of: An application under S.142 of the electricity Act, 2003 for imposing penalty on WESCO for contravention of the OERC Distribution (Condition of Supply) Code, 2004 and RST Orders for the FY 2008-09 and for the FY 2009-10.
AND

CASE No.60 of 2011

M/ M/s. Vedvyas Ispat Ltd. Petitioner
Vrs.
WESCO & another Respondents

In the matter of: An application under Section 142 of the Electricity Act, 2003 for imposing penalty on the Western Electricity Supply Company of Odisha Ltd. (WESCO) for contravention of the OERC Distribution (Condition of Supply) Code, 2004 and RST Orders for the FY 2008-09 and for the FY 2009-10.

For the Petitioners: Shri R. P. Mohapatra, the authorized representative.

For the Respondents: Shri K. C. Nanda, AGM (Fin.), WESCO,
Shri B. R. Swain, AM (Legal), WESCO,
Shri Gobardhan Das, M/s. Zyvon Steel Ltd.

ORDER

1. The brief fact of the case is that three consumers of WESCO such as M/s. Adhunik Metalik Ltd. (Pump House), M/s. Adhunik Metalik Ltd., M/s. Vedvyas Ispat Ltd. have moved this Commission under Section 142 of the Electricity Act, 2003 for non-adoption of load factor billing methodology by WESCO in the Retail Supply Tariff for FY 2008-09 and FY 2009-10 in spite of the direction of the Commission in the Tariff Order of the respective year.
2. The Petitioners further submitted that the Commission in their Tariff Order for FY 2007-08 had provided a ratio called “Consumption Ratio” which was defined as follows:

$$\text{Consumption Ratio (CR)} = \frac{\text{Actual consumption during a given period (P)}}{(\text{Maximum Demand or Contract Demand whichever is higher in KVA}) \times (\text{No. of hours during P}) \times 0.9}$$

where KW = KVA x 0.9

In the said Tariff Order the Commission had indicated that they would replace the consumption ratio based tariff by a slab rate tariff so that the consumers who were not getting the benefits of concessional tariff might get it at a future date. Accordingly the Commission did away with the consumption ratio based tariff in the Retail Supply Tariff Order for FY 2008-09 and introduced a tariff structure based on “Load Factor” as defined in Regulation 2 (y) of the Supply Code. The Commission also continued with the same load factor based tariff for HT and EHT consumers in FY 2009-10 also. As the Respondent WESCO did not follow the “Load Factor” based tariff neither for FY 2008-09 nor for FY 2009-10 the Petitioners moved GRF and did not get any relief. The Ombudsman on the other hand rejected the representation on the ground that it is beyond their scope under GRF and Ombudsman Regulation. Therefore, the Petitioner was compelled to move this Commission.

3. Respondent WESCO submitted that the Commission had earlier rejected the Review Petition of the Respondent on the Retail Supply Tariff Order for the FY 2008-09 and 2009-10. Consequent upon the rejection of the Review Petition, the Respondent filed appeal against the Retail Supply Tariff Order of the Commission before Hon’ble ATE

for both the years. Hon'ble ATE while disposing the appeal against RST Order for FY 2009-10 on 04.05.2011 had made the inter alia the following observation.

But we feel that since no provision of the supply code can come to the aid of the appellants and further that Commission cannot be faulted with having breached any provision thereof the impugned order cannot be interfered with; but at the same time we are not able to appreciate how the replacement consumption factor by load factor will encourage higher utilization of capacity, and we observe that commission may deliberate on the situation and examine if any change would appropriate and feasible in future. It is for the Commission to deliberate if it would adhere to maximum demand formula in case the maximum demand is less than the contract demand so as to ensure maximize consumption..... Accordingly, we direct the State Commission to determine the revenue gap caused due to above and give effect the same in the ARR of appellant at the earliest.

4. In view of the aforesaid observation / direction of the Hon'ble ATE the WESCO is on the impression that the Commission would consider the matter and rectify the Tariff Order for FY 2008-09 and 2009-10. GRF/Ombudsman had not passed any order to the Respondent to implement or comply in this regard. The Petitioner remaining silent for such a long time after the above orders of GRF/Ombudsman without disputing the same now has straight away filed this case.
5. All the aforesaid three Petitioners are of different nomenclature but of the same management / owners and they run business by making different entity / company. The Petitioner had been indulging in unauthorised use of electricity by giving extension of supply to their sister concerns i.e. M/s. Zion Steel Ltd. and M/s. Vedavyas Ltd. resulting in loss of revenue to the Respondent. In some instances penal action has also been taken against the Petitioner under Section 126 for unauthorised extension of supply. Therefore, the Petitioners have not come with clean hand and for bonafide purpose rather with oblique motive to demoralise and discourage the Respondent.
6. We considered both oral and written submission of all the parties. It is crystal clear from the submission of both Petitioner and the Respondent that WESCO has not followed the direction of the Commission to adopt "Load Factor" based billing instead of "Consumption Ratio" based billing system for FY 2008-09 and 2009-10. The observation of Hon'ble ATE has been utilized by the respondent as a subterfuge for not implementing our Order for the relevant year. But at the same time we understand that the billing has been made and revenue so collected has been deposited with GRIDCO. Much time has also elapsed. The basic difference between the billing methodology adopted by WESCO and the "Load Factor" based method is when the

maximum demand is less than the contract demand. This depends upon the drawl pattern of the industry from month to month. Some industry might have been affected like the Petitioner's industry whereas some other industries might have been beyond its impact. This may be the reason that only three industries have moved for redressal of their grievance. Tariff fixation is a revenue balancing method. Any surplus or deficit in revenue can be readjusted in subsequent year. Revision of bills of each industry for each month as per our Order would be a herculean task after passage of so many years and it would also affect the revenue requirement of WESCO as approved by us for this year. We don't want to upset the apple cart of WESCO at this point of time by tinkering with revenue flow. At the same time WESCO should not be allowed to get undue advantage by adopting wrong billing procedure. In line with direction of the Hon'ble Tribunal as mentioned above we direct that extra revenue if any, accrued to WESCO for FY 2008-09 and 2009-10 by not adhering to our Order shall be taken into consideration in the truing up exercise carried out by the Commission in the future. In this way the affected industry will get tariff comfort in future for the loss they have incurred in the past due to wrong billing of WESCO. Regarding unauthorised use of electricity by some of the industries WESCO is at liberty to proceed as per law.

7. Accordingly, the Case Nos. 36. 59 & 60 of 2011 are disposed of.

Sd/-
(S. P. Swain)
Member

Sd/-
(B. K. Misra)
Member

Sd/-
(S. P. Nanda)
Chairperson