

ODISHA ELECTRICITY REGULATORY COMMISSION

**BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012**

Present: Shri S. P.Nanda Chairperson
Shri B. K. Misra, Member
Shri S. P.Swain, Member

Case No.48/2012

Director (Tariff), OERC	....	Petitioner
Vrs.		
CESU, NESCO, WESCO, SOUTHCO	....	Respondents

In the matter of: Suo-Motu proceeding under Regulation 70 (1) of OERC (Conduct of Business) Regulations, 2004 for implementation of 'Take or Pay' Tariff for HT and EHT Industries with guaranteed load factor introduced in their Retail Supply Order of the Commission in Case Nos. 93-96 of 2011 for FY 2012-13.

AND

Case No.44/2012

Tata Steel Ltd.	....	Petitioner
Vrs.		
CESU & Another	....	Respondents

In the matter of: An application u/S. 142 of the Electricity Act, 2003 for levy of penalty on the Central Electricity Supply Utility of Odisha Ltd.(CESU) for contravention of the RST Order dated 23.03.2012 of the Commission in Case No. 93/2011.

AND

Case No.45/2012

Tata Steel Ltd.	....	Petitioner
Vrs.		
NESCO & Others	....	Respondents

In the matter of: An application u/S. 142 of the Electricity Act, 2003 for levy of penalty on the North Eastern Company of Odisha Ltd. (NESCO) for contravention of the RST Order dated 23.03.2012 of the Commission.

For the Petitioner: Director (Tariff), OERC in Case No. 48/2012.
Shri R P Mohapatra the authorized representative of M/s Tata Steel Ltd. in both Case Nos. 44 & 45/2012.

For the Respondents: Shri A K Sahani, Shri K C Nanda, DGM (Fin.) on behalf of WESCO, Shri M V Rao, DGM (C), Shri S K Routray, DMF (Com. & RA) on behalf of SOUTHCO, Shri P K Dash, CGM (Com.) on behalf of CESU, Shri S D Bhanja, GM (RA & RO) on behalf of NESCO and Shri R P Mohapatra, authorized representative of Tata Steel, Rohit Ferro Alloys, Balasore Alloys, IDCOL and self in Case No. 48/2012. Nobody present on behalf of M/s. Shree Salsar Casting (P) Ltd., M/s. Power Tech. Consultants, M/s. TRL KROSAKI Refractories and M/s. JSL.

Shri S K Harichandan, AGM (Law), CESU in Case No. 44/2012.

Shri S D Bhanja, GM, NESCO in Case No. 45/2012.

Date of Hearing: 30.07.2012

Date of Order: 23.08.2012

ORDER

1. The Commission while approving the RST Order for FY 2012-13 has introduced 'Take or Pay' Tariff for HT and EHT industries in order to ensure a guaranteed revenue for the DISCOMs of the State. In this regard Para 262 of RST Order dt.23.03.2012 for FY 2012-13 is reproduce below:

“262. The Commission after due consideration of suggestions of DISCOMs and views of the HT/EHT industries decides to implement the Take or Pay scheme for FY 2012-13 with following stipulation:

- (i) The scheme will be applicable to all HT and EHT industries having contract demand of 110 KVA or more.*
- (ii) The industries should guarantee in writing to pay for minimum load factor of 70% which will mean that whether they draw power or not they will have to pay charges based on the load factor billing for consumption of 70% load factor or actual drawl whichever is higher. For purpose of determination of load factor the following parameters shall be taken into consideration.*
 - (a) Maximum demand shall be based on the highest demand recorded in hours in respect of hours other than off peak hours.*
 - (b) The power interruption hours in HT and EHT feeder over and above 60 hours in a month shall be deducted from total hours in a month for load factor calculation. When actual power interruption hour in a month is less than 60 hours then no deduction from the hours in a month shall be made. (Methodology of determination of interruption hours is given in the example below). Non-availability of power supply due to any reason whatsoever should not be considered. The interruption in feeder as per the dump report should be considered for this purpose.*

- (c) *Actual power factor as ascertained from the meter shall be considered for calculation of load factor.*
 - (iii) *Demand charges on the basis of maximum demand recorded or 80% of the contract demand whichever is higher would continue to apply to industries entering into this special agreement with DISCOMs for payment of demand charge.*
 - (iv) *A special rebate of 50 paise per unit on the energy consumption shall be allowed. This is in addition to any other rebate the consumer is otherwise eligible.*
 - (v) *For determination of actual hours of power supply the licensee may provide the 'dump data' to consumers on payment of Rs.500 on demand by consumer.*
 - (vi) *This agreement shall remain in force till the expiry of the validity of this tariff order. During that period consumer will not be allowed for downward revision of the contract demand. "*
2. Subsequently, CESU vide their Lr. No. 13315 dtd. 26.04.2012 submitted that by implementing 'Take or Pay' Tariff with 70% load factor based on maximum demand, CESU shall loose revenue as normally the maximum demand is less than the contract demand. Further DISCOMs like NESCO, WESCO and SOUTHCO vide their Lr. No. RO/CSO/628 dtd. 02.05.2012 have also prayed before the Commission for the computation of energy charges for 70% load factor units corresponding to the contract demand or maximum demand other than the off-peak hour whichever is higher.
 3. Considering the prayer of DISCOMs, the Commission vide their Lr. No. DIR(T)-389/2011/Vol-I/3286 dtd. 08.05.2012 directed them to implement the scheme of the Commission first and desired to review the scheme after three month with due consideration of feedback of all the stakeholders.
 4. After completion of three months of the current financial year a Suo-Motu petition was filed by Director (Tariff) to review the implementation of 'Take or Pay' Tariff for HT and EHT industries with guaranteed load factor. The hearing was conducted after publishing Public Notice in Newspapers inviting objections/suggestions of the stakeholders in 'Take or Pay' Tariff scheme.
 5. In the course of hearing the NESCO, WESCO and SOUTHCO submitted that the Commission while approving RST Order for FY 2011-12 has introduced 'Take or Pay' Tariff wherein the guaranteed load factor was 75% and for the purpose of determination of load factor the contract demand was supposed to be taken into consideration. However, the current tariff order has considered 70% as the guaranteed load factor which is 5% less than the previous RST Order and also considered maximum demand instead of contract demand. The special rebate allowed in the

current RST Order is 50 paise per unit instead of 5% of the energy charges as allowed during the RST Order for FY 2011-12.

6. The NESCO, WESCO and SOUTHCO further submitted that the benefit extended to the HT and EHT consumers under 'Take or Pay' Tariff is quite high in respect of (a) lower load factor (b) Consideration of maximum demand as per graded slab tariff and (c) enhancement of Special Rebate which is about 10% of the energy charges.
7. WESCO submitted that there are 23 industries who opted for 'Take or Pay' Tariff and the impact on account of the same during the first three months of the current financial year is Rs.3.99 cr. Out of those 23 industries there are 7 industries where load factor is even less than 70%, but as they are also opting for the scheme WESCO is losing revenue @ 50 paise per unit. Apart from that it has been observed that the industries those are availing 'Take or Pay' Tariff during the current financial year are also running in the same load factor as during the last financial year i.e. FY 2011-12. Thus there is no incremental revenue addition from HT and EHT category to the revenue of WESCO rather there is a loss of revenue to them on account of rebate. With continuation of present scenario WESCO shall realize less revenue of around Rs.20 cr. during FY 2012-13 on account of Special Rebate under 'Take or Pay' Tariff and the loss shall be increase further if more consumers would opt for 'Take or Pay' Tariff in future.
8. SOUTHCO submitted that M/s JCL is the only EHT consumer opting for 'Take or Pay' Tariff for which SOUTHCO has incurred a financial loss of Rs.1.50 crore during first three months FY 2012-13. In addition to Special Rebate of 50 paise per unit under take or pay tariff JCL is also availing additional rebate/Incentive of 30 P/U as per mutual understanding by JCL & SOUTHCO as per direction OERC in Case No.77 of 2011 dt 15.11.2011 on the petition filed by JCL. However, the consumption of energy by M/s. JCL has not shown any sign of improvement. In view of the above it is observed that SOUTHCO would realize less revenue of Rs.6.00 crore during FY 2012-13 on account of special rebate under 'Take or Pay' Tariff. Hence the present form of special rebate should be withdrawn completely. Rather the licensees may be allowed to negotiate with the intending consumers to extend the benefit of Special Rebate on case to case basis.

9. During the process of hearing NESCO submitted that it would realize less revenue to the tune of Rs.55.63 cr. during FY 2012-13 due to allowance of Special Rebate under 'Take or Pay' Tariff as most of its industrial consumers are consuming a minimum of 80% load factor (except IDCOL Ferro Chrome). Further it is envisaged that the existing HT and EHT consumers of NESCO would maintain same load factor of the consumption irrespective of rebate due to their nature of operation. In view of the above the special rebate under 'Take or Pay' Tariff may kindly be waived out completely from RST Order 2012-13.
10. That the revenue loss projected by CESU is Rs.40.06 lakh for the month of April, 2012 from four industrial consumers after allowing 'Take or Pay' Tariff rebate considering maximum demand as the basis of calculation for load factor. The loss might increase further if more numbers of HT and EHT industrial consumers would opt for 'Take or Pay' scheme in future. In the light of the above CESU submitted to allow contract demand as the basis of calculation of load factor.
11. Sri A. K. Sahani submitted that CESU has not incorporated off peak demand reading features in static meters of the consumers so it is difficult to differentiate between peak and off peak demand. Further the apprehension of CESU that it would loose revenue because of maximum demand being less than contract demand of industrial consumers is not correct since CESU is paying penalty against higher SMD to GRIDCO. The prayer of CESU to consider Contract Demand in calculation of Load Factor should not be accepted since this would violate Regulation 2(y) of OERC Distribution (Condition of Supply) Code, 2004. In view of the above the 'Take or Pay' Tariff should continue as it is.
12. Shri R P Mohapatra the representative of the Power Intensive Industries like M/s. Balasore Alloys Ltd., M/s. IDCOL Ferro Chrome and Alloys Ltd., Tata Steel Ltd. and Rohit Ferro Tech. Ltd. submitted that they have been spending around 40% of their cost of production towards payment of electricity charges. Due to steep increase in industrial tariff during the year 2011-12 they have faced severed difficulties in operating their plants. The Commission has introduced 'Take or Pay' Scheme as a Win-Win proposition for consumers and DISCOMs and in consideration to suggestions of the DISCOMs in Tariff hearing. They are of the view that, the demand of CESU to calculate load factor basing on the contract demand for the purpose of energy charge should be rejected since as per Regulation 2 (y) and 2 (aa) of OERC

Distribution Code, 2004 the load factor should be calculated on the basis of maximum demand as defined in the RST Order passed by the Commission from time to time. He, however, opined that the maximum demand of any industry could vary month to month, therefore, DISCOMs as well as industry are not certain about the quantum of monthly energy consumption and as such the minimum payment liability for 'Take or Pay' Tariff. He hoped that the Commission would address the issue to provide a mechanism for Win Win situation for both. Any way he insisted that the demand charge should be based on 80% of CD or maximum demand whichever is higher during non-off peak hour and energy charge should be based on load factor calculated as per Regulation 2 (y) and 2 (aa) of OERC Distribution (Condition of Supply) Code, 2004.

13. M/s. Power Tech. Consultant submitted that as per the Order of the Hon'ble Supreme Court a judgment / Order pronounced by the Court / Tribunal/ Commission is final and review of the same is justified only in circumstances of substantial nature. Since there is no error in the RST Order dtd. 23.03.2011 passed by the Commission the review proceedings of the Hon'ble Commission is not maintainable and liable to be rejected.
14. The DISCOMs in their rejoinder to the objections of the industrial consumers of the State for review of the Special Rebate submitted that the review of Special Rebate is need of the hour in view of the extent of rebate and accompanying rise of BSP in the Financial Year 2012-13. The prayer of the CESU to consider the contract demand instead of maximum demand in calculation of load factor is justified since the Commission had issued a similar guideline for calculation of load factor while reviewing the tariff order for FY 2005-06.
15. DISCOMs further submitted that Sri R P Mohapatra representative of M/s. Balasore Alloys Ltd., M/s. IDCOL Ferro Chrome and Alloys Ltd., Tata Steel Ltd. and Rohit Ferro Tech. Ltd had also admitted that by implementing 'Take or Pay' Tariff NESCO would lose revenue of Rs.55 crore but this could be compensated by generating revenue from LT sector. This implies that the EHT sector would be subsidized by LT sector in terms of cash flow which has not been considered in the RST Order of FY 2012-13.
16. CESU submitted that out of the consumers who have opted for 'Take or Pay' Tariff two are not willing to sign special agreement which might lead to legal complexity.

Thus by simply submitting the willingness without executing agreement the consumers will be at their own liberty either to avail or not to avail 'Take or Pay' Tariff. In view of the above execution of Special Agreement is a necessity for availing special rebate under 'Take or Pay' Tariff.

Commission's Observations

17. 'Take or Pay' Tariff had been allowed to HT and EHT consumers of the State to provide a hassle free Tariff structure which provide a minimum assured revenue to DISCOMs while at the same time provide incentives to consumers to consume at higher load factor. Additional power consumption at HT and EHT level also provides cash comfort to DISCOMs. Due to lower tariff for higher consumption, the industries do not get tempted to avail Open Access. They continue to remain as consumers of embedded DISCOMs. The level of Cross-subsidy as mandated in Tariff Policy also decreases in Case of HT and EHT industries. Therefore, this is a Win - win proposition both for DISCOMs and the consumers who opt for 'Take or Pay' Tariff.
18. The Commission has taken into consideration the submission made by the DISCOMs and the Objectors. It is understood from the submission of DISCOMs that they want a revision in methodology of computing load factor and the fixation of threshold load factor as provided in 'Take or Pay' Tariff in our RST Order dtd. 23.03.2012 for FY 2012-13. They apprehend cash loss as the consumers who had been already operating in the load factor band as prescribed in our 'Take or Pay' Tariff scheme only opted for the scheme. The scheme could not encourage the industries operating at lower load factor to increase their power consumption level to reach the desired load factor to avail 'Take or Pay' Tariff. The analysis of consumption data of industries who have opted for 'Take or Pay' Tariff as submitted by the DISCOMs also confirm the above observation.
19. It is observed that guaranteed load factor as prescribed in our Tariff Order could not achieve its end for which it had been provided. But on the other hand higher consumption at an incentivized rate with assured revenue is beneficial both to consumers and DISCOMs. Therefore, we are inclined to revisit the scheme in its totality and to reorient the scheme in such a way that it captures the maximum numbers of consumers for its simplicity and benefic results and at the same time it ensures cash comforts to DISCOMs.

20. The Commission, therefore, has redesigned the 'Take or Pay' Tariff for HT & EHT consumers and has simplified the procedure. The Commission in place of guaranteed load factor of 70% has introduced the concept of Assured Energy off take. The new scheme shall be as follows:

Assured Energy (AE) per month shall be calculated as under:

Assured Energy (AE) per month in KWh = K x Contract Demand (CD) in KVA
Where K is a constant equal to 560. (K = 560)

For example for an industry having a contract demand of 1000 KVA, the Assured Energy off take per month would be $1000 \times 560 = 560,000$ KWh.

21. The industries should undertake in writing to opt for the revised 'Take or Pay' Tariff scheme. There is no requirement of a Special Agreement or modification of original Agreement in this regard. Their undertaking must include the guarantee for paying for Assured Energy (AE) per month in KWh which will mean that whether they consume power or not they will have to pay energy charges based on Assured Energy (AE) per month in KWh or actual consumption in KWh whichever is higher. The above guarantee of paying for Assured Energy is also applicable in case of Load Regulation or Power Interruption. For calculation of energy charges for Assured Energy or Actual Consumption the graded slab tariff as notified by the commission vide RST order dt.23.03.2012 for FY 2012-13 will be applicable. In addition to energy charges other charges such as demand charges, customer service charges etc. are also payable by the HT and EHT consumers as per the RST Order dtd. 23.03.2012 for FY 2012-13.
22. Further, those consumers who opt for the revised 'Take or Pay' Tariff as ordered by us now shall avail a special rebate of 30 P/U for the entire actual consumption of energy.
23. It is understood that SOUTHCO has already entered into a Special Agreement with M/s. JCL for a Special Tariff. It should not allow another special tariff like 'Take or Pay' Tariff when there is a subsisting Agreement on this regard. Only one Special Tariff like 'Take or Pay' Tariff shall run at a time.
24. 'Take or Pay' Tariff should not be taken into consideration for calculation of security / additional security deposit since the introduction of the Scheme by the Commission for FY 2012-13. No contract demand reduction is admissible during the operation of

the scheme i.e. upto the end of FY 2012-13. All other conditions of RST Order for FY 2012-13 shall continue to apply.

25. This revised 'Take or Pay' Tariff Scheme will be applicable from 1st July, 2012 and shall remain in force till expiry of the validity of RST Order dtd. 23.03.2012 for FY 2012-13.
26. The pre-revised 'Take or Pay' Tariff Scheme as ordered by the Commission on 23.03.2012 shall be applicable for the period from 1st April, 2012 to 30th June, 2012 and there is no need of signing Special Agreement between the Consumers and the DISCOMs in this regard. The consent of the consumers to avail 'Take or Pay' Tariff in writing shall be a sufficient pre-condition.
27. The Commission in addition to the present case (Case No. 48/2012) had also analogously heard the Case No. 44/2011 (M/s. Tata Steel vrs. CESU) and 45/2012 (M/s. Tata Steel v rs. NESCO). The relevant observation of the Commission in this Order shall also be applicable in those cases.
28. Accordingly, the Case Nos. 44, 45 & 48 of 2012 are disposed of.

Sd/-
(S.P. Swain)
Member

Sd/-
(B.K. Misra)
Member

Sd/-
(S. P. Nanda)
Chairperson

