

**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 No. 28/2013**

M/s. Jayashree Chemical Ltd.	.....	Petitioner
Vrs.		
SOUTHCO and others	.....	Respondents

**In the matter of:      An Application u/S.94 of the Electricity Act, 2003 read with Clause 70 of the OERC (Conduct of Business) Regulations, 2004 for review of the Retail Supply Tariff Order of the Commission for FY 2013-14 passed in Case Nos.104,105,106 & 107 of 2012 regarding Special tariff.**

For the petitioner:      Shri R. K. Rath, Sr. Advocate and Shri Santosh kumar Mishra

For the respondents: Shri Sabyasachi Padhi, DGM (Comm. & RA),SOUTHCO, Shri S. K. Routray, DMF(Com.&RA),SOUTHCO, and Ms. Geetanjali Mishra, DM (Com.& RA), SOUTHCO.

**Date of Hearing: 25.06.2013**

**Date of Order: 05 .07.2013**

**ORDER**

1.      This is a petition to review our Retail Supply Tariff Order dated 20.03.2013 passed in Case Nos. 104, 105, 106 & 107/2012. The Petitioner is a Caustic Soda and other chemical manufacturing unit and is availing power supply at 132 kV from SOUTHCO. It now claims that due to modification and incorporation of several provisions in our Tariff Order for FY 2013-14 there has been increase in electricity tariff to EHT industries in general and the Petitioners industry in particular. It further submits that due to those changes the financial impact on it has been tremendous putting its business viability in question. In this regard, it brings to our notice several provisions in the Tariff Order which are affecting its operation. Some of them are as follows:

- (a)      Increase in normal tariff (Energy Charge)
- (b)      Withdrawal of 'Take or Pay' tariff
- (c)      Withdrawal of power factor incentive

- (d) Replacement of 50% load factor with 60% load factor in graded slab tariff
  - (e) Introduction of Reliability Surcharge
2. SOUTHCO has already entered into a Special Tariff Agreement with the Petitioner on 27.01.2012 for a period of three years wherein M/s. JCL avail benefit of 30 paisa per unit on certain terms and conditions. Considering this the Commission on its Order on 'Take or Pay' tariff dated 23.08.2012, directed that SOUTHCO should not allow other 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. However, on the application of M/s. JCL the Commission in their Order dated 21.12.2012 allowed 'Take or Pay' tariff to run concurrently with already existing special tariff till the end of the financial year 2012-13. The Commission further observed that this should not be cited as precedent either by the Petitioner or the Respondent in future.
  3. SOUTHCO, the respondent, submitted that the Commission should take a decision on fixation of Special Tariff / Rebate if any till the favourable consumer mix of SOUTHCO becomes possible. SOUTHCO further submitted that any revenue loss on account of Special Tariff/ Rebate shall be factored in the ARR of the licensee on immediate basis.
  4. As per Section 94(1) (f) of the Electricity Act, 2003, this Commission has the same power as are vested with the Civil Court under the Code of Civil Procedure, 1908 in respect of reviewing its decisions, directions and orders among others.
  5. As per Order 47 Rule 1 of the Civil Procedure Code, review of an order can be made on the following grounds:
    - (a) Error apparent on the face of the record;
    - (b) New and important matter or evidence which is relevant for the purpose was discovered which could not be produced after exercise of due diligence or if there appears to be some mistake;
    - (c) Any other sufficient reason.
  6. The Petitioner has failed to show us in its review application under which of the three above provisions it seeks to review of our order. It has only prayed before us to give concession in tariff to make its business viable in the market. Our Retail Supply Tariff Order is generic in nature. The Commission can't discriminate between one consumer

against rest of the consumers in the DISCOMs because of uniformity of Retail Supply Tariff in Odisha. The viability of an industry and its social impact is a matter of concern for the Government. Electricity Tariff can't be an instrument for furtherance of business goal. The conscience of the Commission is limited by the statute which has created it. Section 61 (b) of the Electricity Act, 2003 emphasizes the same by providing that the *generation, transmission, distribution and supply of electricity are conducted on commercial principle*. Section 61 (d) also clarifies by stating that while determining tariff the Commission shall be guided by the principle of *safeguarding consumers' interest and at the same time recovery of the cost of electricity in a reasonable manner*. Determination of Tariff is a revenue balancing act. Any concession to a particular industry, in terms of tariff, therefore, shall affect the revenue inflow of DISCOM. SOUTHCO has categorically submitted that it is to be compensated for revenue loss if any concession is given to the petitioner.

7. Therefore, we are not inclined to accept the prayer of the Petitioner. It has become almost an everyday experience that review applications are filed mechanically as a matter of routine and there is no indication as to which grounds it falls within the narrow limits of Order 47 Rule 1 of the Code of Civil Procedure, 1908. The present petition which appears more like an appeal than prayer to review our Order, therefore, can't be accepted.
8. Accordingly, the case is disposed of.

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

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

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