



Energy Ltd. (SEL), M/s. Vedanta Aluminium Ltd. (VAL-I) and WESCO on power flow between M/s SEL, VAL-I and WESCO. The Petitioner VAL-I has filed the present application for review of one of the issue i.e. supply of power by SEL to VAL-I which has been decided on the said order vide para 11 (e). The issue of power transfer from SEL to VAL-I has been settled by cross subsidy mechanism under Open Access till 31.03.2012.

2. The Commission vide para 11 (e) of its Order dtd. 14.12.2012 passed in Case No. 28/2011 have observed as given below:

***“11. (e) The treatment of power generated by Unit-II (600MW) of SEL on spilt bus arrangement after its COD :-***

*The entire power generated by Unit-II of SEL of 600 MW is stepped down to 220 KV and is fed to 220 KV DC line to Budhipadar 220 KV S/s of OPTCL through VAL-I. Meters are available at the 400/220 KV ICT secondaries (SEL end) as well as Budhipadar S/s (OPTCL end). From both the meter reading data, the injection of any surplus of VAL-I CGP to GRIDCO or drawl by VAL-I due to less generation of its CGP from SEL can be accounted for and quantified. M/s GRIDCO claims that due to its established status in single buyer model for the State of Odisha the power injected at M/s. SEL end should be treated as if procured by GRIDCO and supplied to DISCOM at M/s VAL-I end as a deemed supply to WESCO. WESCO, however, claims that any power drawl by VAL-I due to low generation of its CGP from SEL should be treated as open access arrangement and cross subsidy surcharge is payable to it. As long as there is surplus generation by M/s VAL-I and it supplies power to GRIDCO and all the power generated by Unit-II of SEL and the surplus of VAL-I CGP are fed to Budhipadar Grid, then the total power shall be treated as Power purchases by GRIDCO. Out of the total power, the purchases of GRIDCO attributable to M/s SEL-IPP and CGP of VAL-I are to be separately quantified and shall be paid at respective OERC approved rates. There is no differences of opinion on this matter by any party. Therefore, the issue remains to be resolved is the case of power drawn by VAL-I at the time of low generation of its CGP. As ABT compliant meters are available at all interface points, the quantification of energy drawl by VAL-I will not pose any problem. We desire that such energy should be quantified. We agree with the contentions of GRIDCO and reject the claim of WESCO on payment*

*of cross subsidy surcharge. GRIDCO shall bill to WESCO at BSP rate for such quantum of energy and DISCOM, in turn, shall bill to VAL-I at RST.*

Further, vide Letter No. 4708 dtd. 15.01.2013 it was clarified that the date of operation of commercial principle mentioned at the above Para with regard to treatment of power drawn by VAL-I at the time of low generation of its CGP shall be made effective from 01.04.2012.

3. Now, the Petitioner M/s. VAL-I has submitted that WESCO has billed an additional amount of ₹59.95 crs. Payable by VAL-I to WESCO for 32.47 MU of power transfer between SEL to VAL-I due to retrospective applicability of the Commission's Order from 01.04.2012 to 31.12.2012. The average rate of additional claim is ₹18.46 per unit of power consumed by VAL-I.
4. Further, as such for the past period of April, 2012 to December, 2012 the power drawn under VAL-I's contract demand with WESCO and the emergency power drawn by VAL-I from SEL have been treated alike. These two are separate modes of drawal of power by VAL-I and there was no intention neither by the parties before the Commission nor of the Commission to treat the drawal of power by VAL-I from SEL as part of the existing contract demand of VAL-I with WESCO retrospectively. The retrospective implementation has put additional burden for power supplied at ₹18.46/ unit in addition to already paid amount.

The Petitioner prays the Commission for review of the said Order dtd. 14.12.2012 in terms of its applicability prospectively w.e.f. the date of Order or 01.01.2013 in stead of 01.04.2012 and direct WESCO to revise its claim accordingly for cross-subsidy surcharge under Open Access Mechanism for the period from April, 2012 to December, 2012.

5. The Petitioner VAL-I in its additional submission has stated that on 13.04.2013 due grid disturbance Budhipadar (OPTCL) feeders tripped causing tripping of the Unit-II of SEL and all the VAL CGP units.

However, other two units of SEL connected to CTU system continued to operate in synchronism with CTU. VAL-I made contact with SLDC and the OPTCL's feeding station to close the breakers for availing survival power to save the smelter pots. However, breakers were not closed and power was not extended. When all efforts to draw power from Budhipadar failed, VAL-I had no option but to draw the survival power from CTU network from 23.00 hrs. on 13.04.2013 so as to save VAL smelter pots from impending irreversible damage. Finally VAL-I received clearance from Budhipadar to draw power only at 05.00 hrs. of 14.04.2013 when the power system stabilized. VAL could switchover to OPTCL Grid at 05.00 hrs. on 14.04.2013 after stabilization of the same. Consequent upon such Grid disturbance, WESCO served a bill of ₹22.12 Cr. which has a demand component of ₹19.00 Cr. (413 MVA were recorded). VAL – I made a payment of ₹4.5 Cr. under protest. However, WESCO served a disconnection notice on 29.05.2013. Therefore, VAL-I appeals the Commission that such emergency drawal of VAL –I from SEL wherein the licensee has failed to supply, may be treated differently from the situations where VAL-I draws from SEL in case of low generation by its CGP owing to partial breakdown of CGPs.

6. GRIDCO in its submission has stated that there should be no special consideration for VAL-1 and the issue raised by the VAL-I is to be treated as drawal by the CGP under the usual Tariff Regulations prevailing in the State. The Commission has provided a cut off date i.s. 01.04.2012, being the end/beginning of a financial year provided some accounting advantage for GRIDCO/ WESCO/VAL-I/SEL. Further, the prayer of VAL-I to consider the issue of Grid disturbance on 13.04.2013, as a force majeure is to be rejected, as in an electrical network under different conditions, there may be a failure of the line. In that case the consumer has to take care of themselves. Although islanding scheme of

VAL has been tested successfully, it is not known why on that incident VAL could not island its generators.

7. The respondents WESCO in its submission has stated that the Review Petition filed by M/s. VAL is not maintainable since it is not filed within 90 days from the date of passing of the order as per Regulation 70 of OERC (Conduct of Business) Regulation, 2004. The present review petition has not come under the preview of Section 124 read with Order XLVII, Rule 1 of CPC. Hence, the present review petition is not sustainable under law.
8. As regards to merit of the case WESCO has submitted that they have raised bills on M/s. VAL based on the terms of direction and observations of the Commission as reflected in Para 11 (e) of the Order dtd. 14.12.2012 and subsequent clarification given by the Commission vide its letter dtd. 15.01.2013. Further, VAL-I, being a consumer of WESCO, under the LI category, with a Contract Demand of 66 MVA, is entitled to get power supply to the extent of 66 MVA, as per the substantive Power Supply Agreement. Drawal of power beyond the CD i.e. 66 MVA would certainly attract Over Drawal Charges as per the RST Order passed by this Commission. In case of short generation from CGP of VAL-I, WESCO is responsible for supplying power only to the extent of 66 MVA, i.e. the agreed CD under the appropriate category.
9. As regards to the additional submission of the Petitioner M/s. VAL on occurrence of force majeure incident on 13.04.2013, WESCO has submitted that the matter pertains to a different cause of action and hence should not be considered through the present review petition.
10. WESCO has further submitted that M/s. VAL has not complied with the directions of the Commission passed in the Order dtd. 14.12.2012. As such an total amount of ₹98.08 Cr. (M/s. VAL-I - ₹73.13 Cr., M/s. SEL –

₹0.26 Cr. and M/s. VAL-II – ₹24.69 Cr.) is outstanding against the three companies as on June, 2013.

11. The Commission heard the parties and perused the relevant documents and records of the case. There are three issues are to be decided now. They are as follows:

- (a) **Whether review petition filed by M/s. VAL is to be accepted or not?**
- (b) **The date of application of provision in Para 11 (e) of our Order dtd. 14.12.2012.**
- (c) **Whether incident of Grid disturbance on 13.04.2013 at Budhipadar feeder causing tripping of all the VAL CGP units can be considered as a force majeure condition for overdrawal by M/s. VAL-I or not?**

12. Let us examine the first issue.

The Order of the Commission under review was passed on 14.12.2012 and M/s. VAL has prayed for reviewing of the Order pertaining to the issue mentioned in Para 11(e) vide its letter dtd. 31.01.2013 and dtd. 13.03.2013. The Commission vide its letter 22.05.2013 has intimated that their letter dtd. 31.01.2013 shall be treated as a fresh petition for review of the Order dtd. 14.12.2012 passed in Case No. 28/2011. However, they are required to complete all formalities in this regard within seven days from the date of issue of this letter. The Petitioner has acted accordingly. Hence, contention of WESCO regarding delay in filing of the review petition by M/s. VAL is not applicable.

**Thus Review Petition is accepted for consideration of the issues on merit.**

13. Then we shall come to the substantial issue i.e. the second issue

Regarding the date of operation of commercial treatment of power drawn by M/s VAL-I at the time of low generation of its CGP from M/s. SEL-IPP; the Commission vide its letter No.4708 dated 15.1.2013 has intimated the parties that the date of operation of commercial principle mentioned at Para 11(e) of Commission's Order dated 14.12.2012 shall be made effective from 01.4.2012 i.e. the starting of FY 2012-13. But M/s. VAL has prayed that due to retrospective implementation of the Order, they could not find opportunity to streamline the energy drawal of M/s. VAL-I through the 220 KV interconnection line between M/s. SEL-IPP and M/s. VAL-I as the deemed power consumption of M/s. VAL-I, as industrial consumer of WESCO. They assured that on receipt of OERC Order, M/s. VAL-I is now clear on the mechanism of treatment of M/s. SEL-IPP injection of power. Even M/s. WESCO the DISCOM was also not clear about the mechanism of treatment of power drawn from M/s. SEL-IPP through the 220 KV interconnection line between M/s. SEL-IPP and VAL-I. They pleaded that the power drawal between 01.04.2012 to 14.12.2012 also be treated as OA transaction in the same way as that of the period prior to 01.04.2012. We find force in this submission of the Petitioner. M/s. WESCO which is the beneficiary of our order has also not claimed any overdrawal penalty as applicable in our RST Order for M/s. VAL as an Industrial consumer. Now only after order is issued by the Commission, M/s. WESCO has raised a bill which is purely notional. Hence, to make our Order more practical and judicious, it would be appropriate to apply the commercial principle mentioned at Para 11 (e) of Our Order dtd. 14.12.2012 prospectively i.e. from the date of the original Order.

**Therefore, the issue is decided in favour of the Petitioner.**

14. The third issue involves the additional submission of M/s. VAL on occurrence of the force majeure incident (Grid disturbance) on 13.04.2013. It is an exceptional situation and can't be generalized. However, the Commission directs that it should be resolved amicably between the concerned parties. Moreover, as the subject issue is not part of the original order, no review is applicable.
15. Further, regarding the outstanding dues on M/s. VAL-I, M/s. SEL and M/s. VAL-II, as submitted by WESCO we find that these are billing disputes and can't be a part of this review petition. Therefore, we direct both petitioner and the respondent to scrupulously follow our order passed in this review case and also the Order passed in original Case No. 28/2011 dated 14.12.2012 as there is no stay of operation of our Order by the higher court.
16. Accordingly, the matter is disposed of.

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

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

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



