

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNUKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021

**Present: Shri U. N. Behera, Chairperson
 Shri A. K. Das, Member
 Shri S. K. Parhi, Member**

Case No. 48/2018

M/s. Aryan Ispat and Power Pvt. Ltd	Petitioner
Vrs.		
WESCO Utility	Respondent

In the matter of: **An application under Section 86(1) of the Electricity Act, 2003 regarding the dispute towards claim of cross subsidy surcharge for non maintaining CGP status during financial year 2015-16 and 2016-17.**

For Petitioner: Sri L. Pangari, Sr. Advocate
 Sri Susant Kumar Nath

For Respondent: Sri K. C. Nanda, DGM (Fin.), WESCO

ORDER

Date of hearing: 29.01.2019

Date of order: 09.04.2019

M/s. Aryan Ispat and Power Pvt. Ltd. has established a steel plant at Bomaloi, Dist-Sambalpur to meet the power requirement. It also has set up a Captive Power Plant of 18 MW in the same premises. In order to avail emergency power supply to its above CGP, the petitioner had executed an agreement with WESCO Utility on 23.07.2011 for a contract demand of 5000 KVA which was subsequently renewed. On 12.03.2018 the Authorised Officer, WESCO Utility had issued a letter to the petitioner directing them to pay a sum of Rs.4,45,79,810/- towards cross subsidy surcharge for FY 2015-16 & 2016-17 due to loss of its CGP status. The petitioner in response to the above had written a letter on 17.04.2018 to WESCO Utility authority informing them that the cross subsidy surcharge should be calculated by excluding the total Auxiliary Consumption from the gross energy generation.

2. While the matter stood thus on 02.05.2018, WESCO Utility issued another letter to the applicant company stating a revised calculation of the cross subsidy surcharge taking into consideration the Auxiliary Consumption @8.5% Gross generation as per

Regulation 5.3(i) OERC (Terms and Conditions for determination of Generation Tariff) Regulation, 2014 and a revised demand notice of Rs.3,54,61,310/-.

3. Subsequently, WESCO Utility issued a disconnection notice to the applicant on 30.05.2018 under Reg.100 of OERC Code, 2004 asking the Petitioner to pay a revised cross subsidy surcharge amounting to Rs.3,54,61,310/- within 15 days from the date of receipt of the notice failing which the power supply would be disconnected.
4. The applicant company further submits that till today WESCO Utility has not re determined the cross subsidy surcharge in spite of several letters issued by the applicant company which shows the callousness of the Respondent. He further submitted that the Commission may kindly be pleased to direct the Respondent to re determine the cross subsidy surcharge as per the order/directions issued by the Commission.
5. The Petitioner company stated that the power generating unit has been set up as a CGP and cannot be equated with an IPP. Therefore, the consideration of the auxiliary consumption to the extent of 8.5% on normative basis as stated by WESCO Utility has no application in the present case. The normative auxiliary consumption has been adopted from Generation Tariff Regulation, 2014 of OERC which has application for determination of tariff of IPP. The Commission in their order in Case No. 22/2011 had prescribed a format for obtaining information from CGP on their status in a particular year.
6. WESCO Utility stated that in the event of loss of CGP status determined annually any drawal of power by the steel plant from the generating station amounts to drawal as if from other sources i.e. from an IPP and hence leads to open access. They further submitted that Electricity Rule, 2005 Clause 3 (a) (ii) does not provide any relaxation towards auxiliary consumption rather speaks about aggregate electricity generated by a CGP. The Petitioner's plant having lost the status of CGP for the respective financial year is recognized as a generating plant and not CGP and therefore, cross subsidy surcharge is payable on total consumption including auxiliary consumption. If at all exclusion of auxiliary consumption would be considered for computation of cross subsidy surcharge then it should be on the basis of OERC Generation Regulation, 2014.
7. The matter was heard on 27.11.2018 and the Commission vide interim order dated 18.12.2018 has directed the petitioner dt.18.12.2018 to submit the details of their generation, auxiliary consumption, consumption other than auxiliary consumption and sale of surplus power within seven days from the date of interim order and also make

payment of Rs.1.75 crore out of the cross subsidy surcharge claimed by WESCO Utility.

8. Heard the parties at length. The cross subsidy surcharge is to be levied as per OERC (Terms and Condition of Open Access) Regulation 13 (1) (ii) when open access transaction takes place.

Surcharge to be levied on open access customers under Section 42(2) of the Act, shall be determined by the Commission keeping in view the loss of cross-subsidy from these customers opting to take supply from a person other than the incumbent distribution licensee.

As per the said Regulation surcharge to be levied on open access customer under Section 42 (2) of the Act shall be determined by the Commission keeping in view the loss of cross subsidy from these customers opting to take supply from a person other than the incumbent distribution licensee. In the instant case the industry draws power from its generating plant which would otherwise have been drawn from WESCO Utility. The consumption in steel plant is to be arrived at after deducting the auxiliary consumption and energy exported through open access from the gross energy generation. The cross subsidy surcharge should be charged on the energy consumed in the industry when such consumption falls short of 51% of the gross energy generation.

9. It is imperative to recast the auxiliary consumption correctly. When correct meter data of auxiliary consumption is available it should be utilized to arrive at consumption in the industry and subsequent computation of cross subsidy surcharge. For this auxiliary consumption should be as per its definition in Regulation 1.7 (c) of OERC (Terms and Conditions for Determination of Generation Tariff) Regulation, 2014. In case the same is not available the auxiliary consumption level should be adopted on the basis of an efficient norm which is already given in our Generation Regulation, 2014 since norms of the same for Odisha are not available elsewhere.
10. Basing on the above observation, the computation of cross subsidy surcharge should be made and billed to the Petitioner's industry. The Petitioner shall pay the same as per the OERC (Distribution Condition of Supply) Code, 2004 to WESCO Utility.
11. With above observation, the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(U. N. Behera)
Chairperson

View of Member Shri A K Das

We agree with the above order. However, the following paras shall be incorporated before para 8.

1. Heard the parties at length. The cross subsidy surcharge is to be levied on open access customers as per Regulation 13 (1) (ii) of OERC (Terms and Conditions of Open Access) Regulations, 2005 and 4 (2) of OERC (Determination of Open Access Charges) Regulations, 2006. Relevant provisions are as follows:-

OERC (Determination of Open Access Charges) Regulations, 2006

“4 (2) (i) Surcharge to be levied on open access customers under Section 42 (2) of the Act, shall be determined by the Commission keeping in view the loss of cross-subsidy from these customers opting to take supply from a person other than the incumbent distribution licensee.”

OERC (Terms and Conditions of Open Access) Regulations, 2005

“13 (1) (ii) Surcharge to be levied on open access customers under Section 42 (2) of the Act, shall be determined by the Commission keeping in view the loss of cross-subsidy from these customers opting to take supply from a person other than the incumbent distribution licensee.”

2. In the instant case, the petitioner has a captive generating plant (CGP) at Bomaloi in Sambalpur District. The energy consumed in its main steel plant could not reach the mandated 51% of the generation from the CGP as per provisions at 3 (1) (a) (ii) of Electricity Rules, 2005. The para- 3 (2) of this Rules states that *“x x x x and in case the minimum percentage of captive use is not complied within any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company.”*
3. Section 42 of the Electricity Act, 2003, while specifying duties of distribution licensees has provided for open access and allowed the Commission to allow open access at a cost for utilising the distribution system and surcharge to be determined by it.
4. A bare reading of the relevant regulations mentioned above at 13 (1) (ii) leads to understand that for surcharge to be levied, the conditions to be satisfied are:

- a. An existing customer regularly drawing power has to move away from the present distribution licensee to another source for power.
 - b. There should be a loss of cross subsidy due to the shift.
 - c. The customer should have been allowed open access and designated as open access customer in terms of Regulation 2 (j) of OERC (Determination of Open Access Charges) Regulations, 2006, i.e. who has been permitted by the State Commission to avail supply from a person other than the incumbent distribution licensee or a generating company (including CGP), who has availed of or intends to avail of open access.
5. We do not find any merit in the arguments advanced by the respondent nor the petitioner has brought before us any satisfactory counters concerning the above. Intention of law has been emphasized in 4th proviso of Section 42 (2) of the Electricity Act, 2003.
6. Therefore, we go by the earlier decision of the Commission to decide on the prayer of the petitioner on computation of cross subsidy surcharge excluding auxiliary consumption of the CGP. The auxiliary consumption is the consumption inside the generating plant required to keep the machinery and the equipment running to generate the required power to run the main industry. If the generating plant is not operating, there will be less auxiliary consumption or none, in which the industry has to draw the power from the grid, if it intends to run the industry. Thus, auxiliary consumption in the generating station is not the consumption for the industry in normal circumstances.
7. Therefore, we are of the view that the cross subsidy surcharge, if levied, shall be on the industry consumption i.e. generation of CGP shall be reduced by the auxiliary consumption and export, if any, to arrive at the appropriate consumption for determination of cross subsidy surcharge, when consumption from CGP falls short of 51% of gross energy generation.
8. Therefore, we allow the prayer of the petitioner and direct that the cross subsidy surcharge has to be re-determined by the concerned officer of WESCO Utility.

Sd/-

(A K DAS)
MEMBER