

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

\*\*\*\*\*

**Present:        Shri U. N. Behera, Chairperson  
                     Shri S. K. Parhi, Member  
                     Shri G. Mohapatra, Member**

**Case No. 01/2019  
(On remand by APTEL)**

**(Arising out of Case No. 129/2010 in between NESCO & Others Vrs. Confederation of  
Captive Power Plants of Odisha and Others)**

M/s. Tata Sponge Iron Ltd.	..... Petitioner
Vrs.	
M/s. NESCO & Others	..... Respondents

**In the matter of:**    **Petition filed pursuant to direction issued by Hon'ble Appellate Tribunal remanding the matter to the Commission in the judgement dated 14.12.2018 in Appeal No.220 of 2015 for reconsideration afresh and pass appropriate order on cross subsidy surcharges from generator which has not maintained their status as CGP and selling more than 49% of their total generation to GRIDCO outside.**

**For Petitioner:**        Shri M. G. Ramachandran, Advocate & Shri P. P. Mohanty, Advocate on behalf of M/s. Tata Sponge Iron Limited.

**For Respondent:**    Ms. Malancha Ghose, AGM (RA) of NESCO Utility, Shri B. R. Mishra, Sr. GM (RT&C) of M/s. OPTCL, Shri P. K. Satpathy, Sr. GM, SLDC, Ms. Susmita Mohanty, AGM (Elect.), GRIDCO Ltd., Shri K. C. Nanda, DGM (Fin.), WESCO Utility and Ms. Niharika Pattnayak, ALO, DoE, GoO.

**ORDER**

**Date of hearing: 03.11.2020**

**Date of order:01.02.2021**

The present proceeding arises out of this Commission Case No. 129/2010 and Review Case No.26/2013 since the Hon'ble APTEL vide their judgement dated 14.12.2018 has been pleased to set aside the order dated 03.01.2013 and 23.12.2014 passed by the Commission in the aforesaid two cases and remitted back the same to this Commission for fresh disposal.

2.     Brief facts of the case are as follows:

- 2.1 The DISCOMs i.e. NESCO, WESCO and SOUTHCO have prayed before this Commission to collect the cross-subsidy surcharge from the Captive Power Plant users in their license area who have not complied with their captive use status during FY 2008-09 / 2009-10 as per The Electricity Rules, 2005. The said Rule inter alia provides that the industries should consume not less than 51% of the aggregate electricity generated in their captive power plant on an annual basis to retain their CGP status. This Rule further states that if 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 generating company (Third Party Supply). In accordance with OERC Open Access Regulation, 2005 the consumers who have availed the power directly from the generators (Captive Power Plant losing their status and converted to generators in this case) are liable to pay cross-subsidy surcharge and additional surcharge to the incumbent distribution licensee for the quantum of power utilized directly from the Generator. The Petitioner DISCOMs pointed out that most of the industries having Captive Power Plant during previous years from FY 2009-10 onwards have sold power to GRIDCO /outside parties which is much more than 49% of the electricity generated on annual basis and consequently they have lost their CGP status and have become Generators in view of Electricity Rule, 2005 and hence, they are liable to pay cross-subsidy surcharge as they have consumed power from a generator and not a Captive Power Plant as per OERC Open Access Regulation.
- 2.2 CESU, the other DISCOM also supported the stand of the Petitioners and claimed that they are eligible to get cross-subsidy surcharge from the industries who have consumed power from such CGP who has lost its Captive status and converted as a Generating Plant i.e. a Third party sale.
- 2.3 The Respondent CPPO submitted that in view of invocation of Section 11 of Electricity Act, 2003 by State Govt. they have maximized their injection of power to the State Grid to help GRIDCO to tide over power deficit scenario in the State during the year 2009-10, as a result they have lost their CGP status as per Electricity Rule, 2005. But this is a temporary phenomenon and once Section 11 of the Electricity Act is revoked, their CGP status would be restored. As the mother industries were never the consumer of the distribution

licensee nor did it reflect in their ARR, there is no need to pay cross-subsidy surcharge to the DISCOMs.

3. In their additional written submission, they averred that as per Section 42(2) of the Electricity Act, 2003, the State Commission shall introduce open access in such phases and subject to such conditions including the cross subsidies and other operational constraints as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in terminating the charges for wheeling, it shall have due regards to other relevant factors including such cross subsidies, and other operational constraint and provided that such open access shall be allowed on payment of surcharges, such surcharge shall be utilised to meet the current levels of cross subsidy within the area of supply of the distribution licensee and also that such surcharges and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission.

According to them, since open access is being encouraged for not only a generator but also a consumer, the industry seeking open access while having its own captive generating plant would need certain comfort zone for facilitating its operation. While it is clear that an industry having its captive generating plant must consume at least 51% to retain its captive status, it is not prohibited to draw power under open access. If an industry consumes power under open access for any technical reason in its own CGP, it shall roll back to own captive generating plant once the CGP is competent to supply power to the industry. Further it is stated that no surcharge or cross subsidy should at all be applicable for an industry using power under open access while having a CGP as the same was never a consumer of the distribution licensee. It is neither prohibited to buy power under open access. It is discriminatory to impose surcharge on the parent industry for drawing power under open access instead of drawing power of its own CGP as it was never reflected in the ARR. It is pointed out by the CPPO that no cross subsidy should be chargeable on a generating company if it lost its captive status on account of the State Government directive for supply of power under Section 11 of the Electricity Act, 2003 as the State needed power from the CPP.

It is also pointed out that no surcharge should be levied on an industry drawing power under open access for temporary period, while having its own CGP. It is further stated that the status of its captive generating plants should remain unchanged even after

procurement of power for a temporary period is effected and the industries resorts back to its CGP after the temporary off take. Further stand of the CPPO is that fundamentally the industries were never a consumer of the distribution licensee nor did it reflect in the ARR of the distribution licensee.

4. Accordingly, it was stated by the CPPO in their additional Statement that Commission should be pleased to pass the order that no surcharge or cross subsidy surcharge on a Captive Generating Plant be leviable even if it lost its captive status in view of the State Government's directive for supply of power under Section 11 of Electricity Act.

The representative of SLDC submitted that the Petitioners/ DISCOMs have misinterpreted the Open Access regulation of the Commission and in the present case the CGPs have sold their surplus power to GRIDCO for resale to DISCOMs. Therefore, the DISCOMs can't claim cross-subsidy surcharge from the industries whose CGPs have lost their CGP status as per Electricity Rule, 2005.

According to OPTCL, the denial of open access to Ferro Alloys Plant of TISL was due to operational and system constraints prevailing at that time which was temporary due to failure of one of its auto transformer and therefore the denial of open access by OPTCL during month of March, 2013 is just, proper and in accordance with prevailing OERC Regulation and other ground realities prevailing at that point of time.

5. Though CPPO was contesting the Case No.129/2010 for and on behalf of TSIL and other industries having CGP in this case, TSIL had not independently defended the case before this Commission on earlier occasion, but TSIL independently filed a review petition bearing Case No.26 of 2013 presenting the grounds inter alia that:

Section 11 of the Electricity Act, 2003 was imposed by the State Government till June, 2012 and balance period for 2012-13 should be July, 2012 to March, 2013 and not from June, 2012 to March, 2013. Though the Commission have considered the injection made by the CGP to the State Grid during FY 2009-10, 2010-11 and 2011-12 as deemed self consumption for the purpose of determination of CGP status but have not considered the same for FY 2012-13 though Section 11 was imposed up to June, 2012 as per the Government Notification. The order of the Commission was issued on 03.01.2013 and therefore, there was very little time left in the said financial year for the CGP to maximise their self consumption to compensate the extent of

power supplied to GRIDCO during the period July, 2012 to 03.01.2013. In the event a CGP loses its status then the statute and rules framed under Electricity Act, 2003 do not empower a DISCOM to levy cross subsidy surcharge. The Rule 3 of Electricity Rules, 2005 has created a fiction of law for different purpose and has nothing to do with the charges to be recovered by a Distribution Company including surcharges and cross subsidy. Though the Petitioner NESCO in that case have not made any application for consideration of CGP status for the financial years 2010-11 to 2012-13 the Commission have considered the same and no consolidated petition for the years 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13 was sought for from NESCO.

6. Further it was Stated that since the Electricity Act, 2003 has mandate for promoting Co-generation, CGP based on Co-generation should not pay cross subsidy surcharge if they lose their CGP status. The Commission in their Open Access Charges order dt.13.07.2012 in case Nos.5, 6, 7 & 8 of 2011 and 24, 25, 26 & 27 of 2012 for FY 2011-12 and 2012-13 had directed that 'no cross subsidy surcharges' are payable by the consumers drawing power from its own/ group captive power plants or availing renewable power to meet its renewable and Co-generation purchase obligation. Therefore the consumption of electricity by the Petitioner cannot be termed as open access in case its power plant has lost CGP status since the sponge iron plant and the power plant are part of the same legal entity and situated in the same premises. The transfer of electricity within the same legal entity cannot be treated as sale of electricity to a third party. In view of the facts, OERC Open Access Regulations is not applicable in this case. There is no functional relationship or contractual obligation between the Respondent and the Petitioner on the basis of which the respondent could claim surcharges from the Petitioner. SLDC, initially delayed and then refused permission for open access for 6 MW from TSIL's CGP to its Ferro Alloys Plant, Joda for the period from 01.08.2011 to 31.07.2012. In one hand SLDC does not permit open access for captive consumption; on the other hand the respondent NESCO threatens to levy cross-subsidy surcharge for captive consumption, thus preventing TSIL to increase its captive consumption in order to maintain its CGP status.
7. This Commission vide its order dated 23.12.2014 reviewed its earlier order to limited extent directing that injection made by the CGPs to the State Grid during the period of invocation of Section 11 of the Electricity Act, 2003 as per Govt. order should also be

considered as deemed self consumption in the financial year 2012-13. But the Commission did not allow the other issue raised in the review and TSIL went on appeal to the APTEL registered as Appeal No.220/2015.

8. Hon'ble APTEL was pleased to allow the appeal of the TSIL in Appeal No.220 of 2015 vide their judgement dated 14.12.2018 and directed this Commission to hear the matter afresh without expressing any opinion on the merit of the case stipulating therein that the pleadings of the parties are to be taken into consideration. Necessary issues must be framed by this Commission, and the findings of the Commission be based upon the issues so framed. In terms of the direction of Hon'ble APTEL in the above light, we have depicted the stand of the parties as above taking into consideration their respective petitions, replies, objections, additional replies, written notes of submission etc.
9. Upon the above stand and rival stand of the parties, the following issues are framed:

#### **ISSUES**

- (a) Whether Tata Sponge Iron Ltd. is a CGP within the meaning of Rule 3 of Electricity Rules, 2005 and if so, whether it lost CGP status in the financial year 2009-10 to 2012-13 and is liable to pay cross subsidy surcharges to the distribution licensee such as NESCO in terms of the Electricity Rules, 2005?
- (b) Whether the NESCO is entitled to get cross subsidy surcharges from TSIL on account of loss of its CGP status during the financial year 2008-09 to 2012-13?
- (c) Whether the injection of power generated by the TSIL within the jurisdiction of NESCO to the State grid to tide over/make good the energy crisis of Odisha Government faced in the year 2009 onwards shall be treated as captive consumption by TSIL so as to exempt him from payment of cross subsidy surcharges to NESCO?
- (d) Whether the other DISCOMs such as WESCO/SOUTHCO are entitled to get cross subsidy surcharge from their respective industries having CGPs within their jurisdiction for the financial year 2009-10 to 2012-13 on account of loss of the CGP status by the respective industries?
- (e) Whether injection of power generated by other industries within the jurisdiction of WESCO/SOUTHCO/CESU to the State grid to tide over/make

good the energy crisis of Odisha Govt. faced in the year 2009 onwards shall be treated as captive consumption by the respective industries so as to exempt them from payment of cross subsidy surcharges to the incumbent DISCOMs such as WESCO, SOUTHCO and CESU?

- (f) Whether refusal of short term open access permission by the Respondents for captive use was legal?

**Issue No. (a), (b), (c) and (f)**

10. Since issue No. (a), (b), (c) and (f) are interlinked with each other and are also the main issues governing the case, the same are taken up together for discussion for the sake of convenience.

According to the petitioner – Tata Sponge Iron Ltd., it has set up a sponge iron manufacturing plant at Joda in the District of Keonjhar, Odisha. It has also installed co-generation captive generating plant in the same premises. Since 1991 M/s. Tata Steel Limited holds more than 51% of equity share of Appellant/TSIL. The Tata Steel Limited has a Ferro Alloy Plant at Joda in the district of Keonjhar. The CGP of the Appellant is connected at Joda sub-station of OPTCL at 220 kV voltage level whereas the Ferro Alloy Plant of Tata Steel is also connected to the same grid of OPTCL at 132 kV voltage level. There are two auto transformers of 100 MVA capacity which transform voltage from 220 kV to 132 kV in the same substation. In terms of Section 9 read with Section 2(8) of the Electricity Act, 2003 and Rule 3 of the Electricity Rules, 2005, the Ferro Alloys plant of M/s. Tata Steel Limited can consume power generated from the generating plant of Appellant as captive user and the Appellant is also entitled to open access.

Initially the State Government in their notification dated 25.11.2011 invoking Section 11 of the Electricity Act had directed all captive generating plants in the State to generate power at full exportable capacity by maximizing their power generation and inject power so generated to the State Grid after their captive consumption to enable the State Government to tide over the situation. The power so injected to the State Grid will be considered as captive consumption for the purpose of determining CGP status of the plant. The State Government pursuant to a decision of the Cabinet issued further notification dated 10.04.2012 inter alia stating “the injection made by CGPs to the State Grid during the period of invocation of Section 11 will be considered as

deemed self consumption in the FY 2011-12 and 2012-13". The State Government issued another notification dated 23.07.2012 pursuant to the notification dated 25.11.2011 stating that the directions given to CGPs therein would apply till 31.07.2012 only.

11. The case of the petitioner is that the said notification dated 23.07.2012 must be quashed being contrary to the decision of the Cabinet dated 10.04.2012 wherein the benefit given in the notification under Section 11 of the Electricity Act, 2003 was made applicable for the entire financial year 2012-13. Learned counsel appearing for the petitioner to substantiate his submission placed reliance on the judgment of the Supreme Court of India in case of State of Bihar v. Suprabhat Steel (1999) 1 SCC 31; Pg.36, Para 7. He further submitted that the State Commission had allowed the prayer in the review petition of the Appellant pertaining to applicability of the notification under Section 11 of the Electricity Act, 2003 for the entire financial year 2012-13.
12. Learned Counsel for the petitioner submitted that, in spite of the above ruling by the State Commission, NESCO and other authorities are interpreting the direction to be limited till 31.07.2012 notwithstanding the law laid down by the Hon'ble Supreme Court, the order dated 23.12.2014 passed by the State Commission and the decision of the Cabinet dated 10.04.2012 wherein the benefit given in the notification under Section 11 of the Electricity Act, 2003 was made applicable for the entire financial year 2012-13. On 20.06.2011 and 23.02.2013, M/s. Tata Steel Limited applied for short term open access permission, which was not granted by SLDC without assigning any reasons. In the aforesaid circumstances, had the open access permissions been granted in favour of Tata Steel being the 51% shareholder of Appellant and being entitled to be a captive user, the requirement of provisions of Rule 3 of Electricity Rules, 2005 could have been met. The petitioner further stated that M/s. Tata Steel Limited/Petitioner was drawing power from NESCO to meet its requirements which clearly evidences that adequate infrastructure was available and therefore, the denial of open access by SLDC was misconceived and is liable to be rejected.
13. It is pointed out that M/s. Tata Steel Limited was restrained by way of refusal of short term open access permission to consume the power generated from the captive generating plant of the petitioner. On the other hand, M/s. Tata Steel Limited was forced to draw power from the distribution company. NESCO, being the distribution company in the instant case has claimed the cross subsidy surcharge from the

petitioner alleging lower consumption of power i.e. less than fifty one percent of the aggregate electricity generated in its CGP. The petitioner further contended that it had been prevented from achieving CGP status due to the misconceived and illegal inaction/denial with respect to grant of short term open access.

The counsel appearing for the petitioner contended that NESCO being the distribution company has been collecting or trying to collect the cross subsidy twice for the same self consumption of power. By refusal of short terms open access permissions, the Ferro Alloys Plant of M/s. Tata Steel Limited was forced to draw power from NESCO and for non drawal of captive power by the Ferro Alloy plant of M/s. Tata Steel Limited, the captive generating plant of the petitioner lost its CGP status.

14. It is also submitted that from the year 2009 to 2012 there was acute shortage of power in the State. The State Government had issued notifications under Section 11 of the Electricity Act, 2003 from time to time, wherein the direction was issued to all the captive generating plants to maximize their generation to the full capacity and inject the same to State grid in public interest. On 25.11.2011, the State Government issued a notification under Section 11 of the Electricity Act, 2003 directing all the captive generating plants to maximize their generation to the full capacity and inject the same to State Grid. The said notification was never withdrawn by the State Government. On 10/04/2012, the State Cabinet decided that “the injection made by CGPs to the State Grid during period of invocation of Section 11 will be considered as deemed self consumption in the FY 2011-12 and 2012-13”. Electricity cannot be stored hence Tata Sponge was forced to inject its power to the State Grid after signing the power purchase agreement with GRIDCO.
15. Undisputedly TSIL at Bileipada, Joda in the District of Keonjhar has set up / established a Captive Power Plant (CPP) for generation of electricity for its own use, supply to its other manufacturing units i.e. Ferro Allows Plant situated at Joda and also for sale to Odisha grid. The CPP of TSIL is a co-generation plant with Waste Heat Recovery Captive Generating Plant of  $1 \times 18.5 + 1 \times 7.5 = 26$  MW capacity in its plant premises and has installed 3 nos. of Direct Reduced Iron (DRI)/Sponge Iron Kiln of  $2 \times 375 + 1 \times 500 = 1250$  TPD Capacity. In that metallurgical process fossil fuel is used along with Iron ore and Dolomite in a kiln to produce heat energy, which is utilised for manufacturing of sponge iron or Directly Reduced Iron. There are three numbers of flue gas (from Sponge Iron Plant) based Waste Heat Recovery Boiler

(WHRB) installed in the Plant for generation of steam. The steam so generated from WHRB-I & WHRB-III are passed through 18.5 MW Steam Turbine Generator and the steam generated from WHRB-II is passed through 7.5 MW Steam Turbine Generator to generate power.

TSIL is having co-generation utilizing waste heat from the sponge iron plants, for power generation under bottoming cycle, in terms of Clause 5.1(11) of Resolution No.A-40/95/IPC-1 dated 6<sup>th</sup> November, 1996 issued by the Ministry of Power, Government of India. The captive generating plant has a process in which it simultaneously produces two or more form of useful energy including electricity. Thus, as per Section 2(12) of Electricity Act, 2003, the TISL can be treated as cogeneration plant also.

16. In terms of Electricity Rules, 2005, if an industry with CGP failed to maintain CGP status i.e. is unable to consume 51% of energy produced by it for its own use in a financial year, then it is liable to pay cross subsidy surcharges to the distribution licensees within whose jurisdiction it generates electrical energy and sells it to others such as State grid or any other third party who is in need of energy. Here in this case, it is the stand of the NESCO that TISL lost its CGP status during the financial year 2009-10 to 2012-13 as it could not consume 51% of its generated power and sold away the same to the GRIDCO and other third party consumers. But TSIL has vehemently opposed the said stand of NESCO stating, inter alia, that it has only injected the power to the GRIDCO and to some extent to its sister concern Ferro Allows Plant at Joda and on that score, it is not liable to pay cross subsidy surcharge. Further it is contended by TSIL that under compulsion and being obedient to the Odisha Govt. Cabinet decision and notification No.2991 dated 10.04.2012, it injected power to the State grid when the Govt. of Odisha was in acute shortage of power. By that TISL was under compulsion not to consume 51% of its generated energy. Besides TSIL itself and its sister concern Ferro Alloys Plant at Joda were also consumers under NESCO and their energy requirement was more than of the power generated from TSIL CGP. They are also paying the required electricity charges to NESCO. Even if it is assumed that TSIL lost its CGP status within the meaning of Rule 3 of Electricity Rule, 2005, still the Govt. of Odisha in Energy Department notification in pursuance of Cabinet decision vide notification no.2991 dated 10.04.2012 comes to

the rescue of TSIL and it is exempted from payment of cross subsidy surcharges to the incumbent DISCOM NESCO.

17. For the purpose of clarity and better understanding, the notification no.2991 dated 10.04.2012 of Energy Department in pursuance of the Cabinet decision is extracted as under:

The notification No.2991 dt.10.04.2012 of the State Govt. States as follows:

X      X      X      X      X      X      X      X

*“Further, Government has already invoked section-11 of the Act, 2003 on 25.11.2011 directing CGPs to maximise generation and supply power to the State Grid to tide over power crisis situation till June, 2012.*

*Keeping in view the larger interest of the State and difficulties faced by the CGPs due to invocation of section-11 of Electricity Act, 2003 by Government, the State Cabinet in their 21<sup>st</sup> meeting held on 21.02.2012 have decided as follows.*

- (a) *The quantum of supply of surplus power to GRIDCO during FY 2009-10 & 2010-11 (April 2010 to October, 2010) by the CGPs is construed as being deemed self-consumption for the purpose of determination of CGP status.*
- (b) *The injection made by CGPs to the State GRID during period of invocation of Section-11 will be considered as deemed self-consumption in the FY 2011-12 and 2012-13.*

X      X      X      X      X      X      X      X

18. It is clear from the above notification of the Energy Department that the injection made by CGPs to the State GRID during period of invocation of Section-11 will be considered as deemed self-consumption in the FY 2011-12 and 2012-13. But the said notification never said that the period of invocation of Section 11 covered the whole of the years 2011-12 and 2012-13 while TSIL has claimed that the period of invocation of Section 11 covered the whole of these years. Added to this, it has been claimed by the TSIL that the denial of open access by OPTCL is also one of the factors which prevented them from achieving self consumption upto 51%. Though OPTCL has attempted to counter such stand of TSIL by stating that one of its auto transformers was defunct at the relevant point of time. The petitioner's stand is that OPTCL could have taken immediate steps for repair/replacement of the alleged auto

transformer especially when TSIL was carrying out its business for the benefits of public at large.

19. The petitioner's contention is that the Notification No. 2991 dated 10.04.2012 of the Energy Department invoked Section 11 of the Act empowering the CGPs to inject power to the grid for the whole of the year 2012-13 and even if the subsequent Government Notification limited such empowerment upto July 2012 only, no notice was issued by the GRIDCO to TSIL with regard to termination of power supply from TSIL beyond the period of July 2012 and therefore TSIL went on injecting power to GRIDCO. In the process TSIL was deprived of reaching its self consumption upto 51% as per Rule 3 of the Electricity Rule, 2005.
20. In this regard, it was argued by the DISCOM NESCO that the aforementioned Government Notification was only meant for exemption of Electricity Duty of the Government and the same was not meant for their exemption from payment of cross subsidy surcharge to the DISCOMs within whose jurisdiction they are generating power. But we take note of the last notification dated 23.07.2012 of the State Government in this regard wherein the State Government exercising power under section 11 of the Act has unambiguously declared that injection to the state grid by the captive generators upto 31.07.2012 only shall be treated as self consumption for determination of CGP status of the plant. Hence the application of section 11 of the Act ceases w.e.f. 31.07.2012. As a corollary any injection of CGPs to the Grid beyond that date shall not be accounted for determination of CGP status. Therefore we are of the opinion that injection to the State Grid upto 31.07.2012 only shall be treated as self-consumption for determination of CGP status for the year 2012-13. Therefore, it was necessary for the petitioner TSIL to accordingly adjust its self-consumption in the months beyond July 2012 to attain CGP status for FY 2012-13 since the said status is determined annually.
21. Now, we revert to the issue of denial of open access to the TSL (Ferro Alloys Plant) for 10 MW open access drawl from CGP of petitioner from 01.03.2013 to 31.03.2013. which is also captive power plant of TSL. In this regard, we have sought replies from NESCO Utility on the following points:
  - a) The details of load restriction during the failure of 100 MVA auto transformer at Joda Grid Substation during the period under consideration.

- b) Whether the open access demand is within or beyond the contract demand of TSL (Ferro Alloys plant).
22. To the above questions of the Commission, OPTCL whose system is involved in the open access replied that load restriction was imposed on Joda grid command area to the extent of 50% due to the failure of one of the two 100 MVA auto transformers in Joda Grid Station during that period. They had managed the load by shifting 132 KV load of Palasponga grid to Rairangpur grid which normally draws power from Joda grid at 132 KV. As a result load shedding was averted in Joda Grid command area. Long term open access consumer who is NESCO here has primacy on the capacity of the network over short term open access consumers like the Petitioner. Therefore, normal drawal of the Petitioner which is part of the NESCO drawal did not get affected. It is not true that there was no congestion in the network just because the Petitioner did not undergo load shedding. The above act of NESCO during contingent situation cannot be construed that there was no transformation constraint in OPTCL network. Accordingly, OPTCL had acted in conformity with OERC Open Access Regulation, 2005 by not allowing STOA when there was a congestion / constraint in the system.
23. From the arguments of the Petitioner and counter arguments of OPTCL and NESCO it is fully established that there was transformation constraint and load of the Petitioner and that of other consumers of NESCO at that time was managed by OPTCL by shifting Palasaponga load on Joda Grid to other grid. This was an extraordinary situation to avoid area load shedding. Short term open access application of the Petitioner through the use of lone transformer could possibly have been considered by NESCO and OPTCL with proper understanding of the issues of the Petitioner. It is not understood clearly from the application whether the open access requirement was within the contract demand or beyond that. Since this is a past transaction the nature of the open access cannot be correctly established now which can be either within the contract demand or beyond the contract demand. NESCO Utility and OPTCL must be conscious of this issue in future while considering the open access application. The open access demand within or beyond CD should be clearly spelt out.
24. Accordingly we direct NESCO Utility to recast the self consumption figure of the petitioner considering Government notification imposing Section 11 upto 31.07.2012

in addition to self consumption beyond July, 2012 by TSIL. The consequential status of CGP after such computation for FY 2012-13 should be determined afresh.

**Issue No. (d) and (e)**

25. So far as these issues are concerned the DISCOMs such as WESCO, SOUTHCO & CESU have not projected in clear and explicit terms about the details of the industries having CGPs functioning in their respective jurisdiction. As such, there is no concrete figure relating to other industries showing quantum of energy injected by them to the State grid during the financial year 2009-10 to 2012-13. For such reason, it is difficult to arrive at a conclusion as to which of the industries have lost their CGP status incurring liability to pay cross subsidy surcharges. Hence, the GRIDCO/DISCOMs are directed to collect data in this regard, and compute the quantum of electricity supplied to the State grid in line with the notification of the State Government discussed above. On the basis of such computation if it is found that any CGP has lost its status, the cross subsidy surcharge will be collected accordingly.
26. The case is disposed of with the above findings.

Sd/-

**(G. Mohapatra)**  
**Member**

Sd/-

**(S. K. Parhi)**  
**Member**

Sd/-

**(U. N. Behera)**  
**Chairperson**