

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No. 31 & 32 of 2010**

**Dated 23<sup>rd</sup> January, 2013**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. V J Talwar, Technical Member**

**Appeal No. 31 of 2010**

**In the matter of**

**Western Electricity Supply Company of Orissa Ltd. (WESCO),  
IN 1/22, IRC, Village  
Bhubaneswar 75105**

**... Appellant**

**Versus**

- 1. Orissa Electricity Regulatory Commission,  
Niyamak Bhawan, Unit-VIII, Dist. Khurda  
Bhubaneswar-751 012**
- 2. Grid Corporation of Orissa Ltd. ,  
Janpath,  
PO Bhubaneswar-751 022**
- 3. North Eastern Electricity Supply Company of Orissa Ltd.(NESCO)  
123-A, Mancheswar Industrial Estate  
Bhubaneswar 751015**
- 4. Southern Electricity Supply Company of Orissa Ltd.(SOUTHCO)  
123-A, Mancheswar Industrial Estate  
Bhubaneswar 751015**
- 5. Central Electricity Supply Utility (CESU)**

**2<sup>nd</sup> floor, IDCO Tower, Janpath  
Bhubaneswar 751022**

- 6. Indian Metal & Ferro Alloys Ltd.  
Bomikhal, Rasulgarh, Bhubaneswar-751010**
- 7. M/s. Confederation of Captive Power Plants  
IMFA Building, Rasulgarh, Bhubaneswar 751010**
- 8. M/s. Power Tech Consultants  
I-A/6, Surya Vihar, Link Road, Cuttack-12**
- 9. State Public Interest Protection Council,  
Talengabazar, Cuttack, Orissa.**
- 10. Orissa Electrical Consumers' Association  
Sibasakti Medicine Complex, B.K. Road  
Cuttack.**
- 11. Ferro Alloys Corporation Ltd.,  
GD-2/10, Chandrasekharapur,  
Bhubaneswar.**
- 12. Sambalpur District Consumer Federation,  
Balaji Mandir Bhawan,  
Khetrajpur, Sambalpur-768003.**
- 13. Confederation of India Industry, (CII),  
8, Forest Park,  
Bhubaneswar.**
- 14. Shri R.P. Mahapatra,  
775 , Jayadev Vihar,  
Bhubaneswar, Orissa**
- 15. Mr. Ramesh Chandra Satpathy  
302 (B), Behera Sahi, Nayapalli,  
Bhubaneswar**
- 16. M/s. Jayashree Chemicals Ltd.**

**P.O. Jayashree, Ganjam**

**17. Utkal Chamber of Commerce & Industry,  
N/6, IRC Village, Nayapalli,  
Bhubaneswar.**

**18. Mr. Jayadev Mishra,  
N-4/98, Nayapalli,  
Bhubaneswar.**

**Counsel for Appellant**

**Mr. Buddy A. Ranganadhan  
Mr. Hasan Murtaza**

**Counsel(s) for Respondent(s)**

**Mr. R.K. Mehta, Mr. David A and  
Mr. Antaryani Upadhyay for R-2.  
Mr. Lakhi Singh for GRIDCO  
Mr. B.K.Naik & Rutwik Panda for R-1**

**Appeal No. 32 of 2010**

**In the matter of**

**Northeastern Electricity Supply Company of Orissa Ltd. (NESCO),  
N1/22, IRC Village, Nayapalli  
Bhubaneswar**

**... Appellant**

**Versus**

**1. Orissa Electricity Regulatory Commission,  
Niyamak Bhawan, Unit-VIII, Dist. Khurda  
Bhubaneswar-751 012**

**2. Grid Corporation of Orissa Ltd.  
(GRIDCO),  
Janpath, At/PO Bhubaneswar-751 022**

**3. North Eastern Electricity Supply Company of Orissa Ltd.(NESCO)  
123-A, Mancheswar Industrial Estate**

**Bhubaneswar 751015**

- 4. Southern Electricity Supply Company of Orissa Ltd.(SOUTHCO)  
123-A, Mancheswar Industrial Estate  
Bhubaneswar 751015**
- 5. Central Electricity Supply Utility (CESU)  
2<sup>nd</sup> floor, IDCO Tower, Janpath  
Bhubaneswar 751022**
- 6. Indian Metal & Ferro Alloys Ltd.  
Bomikhal, Rasulgarh, Bhubaneswar-751010**
- 7. M/s. Confederation of Captive Power Plants  
IMFA Building, Rasulgarh, Bhubaneswar 751010**
- 8. M/s. Power Tech Consultants  
I-A/6, Surya Vihar, Link Road, Cuttack-12**
- 9. State Public Interest Protection Council,  
Talengabazar, Cuttack, Orissa.**
- 10. Orissa Electrical Consumers' Association  
Sibasakti Medicine Complex, B.K. Road  
Cuttack.**
- 11. Ferro Alloys Corporation Ltd.,  
GD-2/10, Chandrasekharpur,  
Bhubaneswar.**
- 12. Sambalpur District Consumer Federation,  
Balaji Mandir Bhawan,  
Khetrajpur, Sambalpur-768003.**
- 13. Confederation of India Industry, (CII),  
8, Forest Park,  
Bhubaneswar.**
- 14. Shri R.P. Mahapatra,  
775 , Jayadev Vihar,**

**Bhubaneswar, Orissa**

**15. Mr. Ramesh Chandra Satpathy  
302 (B), Behera Sahi, Nayapalli,  
Bhubaneswar**

**16. M/s. Jayashree Chemicals Ltd.  
P.O. Jayashree, Ganjam**

**17. Utkal Chamber of Commerce & Industry,  
N/6, IRC Village, Nayapalli,  
Bhubaneswar.**

**18. Mr. Jayadev Mishra,  
N-4/98, Nayapalli,  
Bhubaneswar.**

**... Respondent(s)**

**Counsel for Appellant**

**Mr. Buddy A. Ranganadhan  
Mr. Hasan Murtaza**

**Counsel(s) for Respondent(s)**

**Mr. R.K. Mehta, Mr. David A and  
Mr. Antaryani Upadhyay,  
Mr. Lakhi Singh for GRIDCO/OPTCL  
Mr. R.K. Naik & Rutwik Panda for R-1**

## **JUDGMENT**

**PER Mr. V J Talwar, Technical Member**

1. Western Electricity Supply Company of Orissa (WESCO) and North-eastern Electricity Supply Company of Orissa (NESCO) are the Appellants herein.
2. Challenging the impugned order dated **20.03.2009** passed by the Orissa State Electricity Regulatory Commission (**State Commission**), these two Appeals have been filed before this Tribunal. These appeals relate to the Bulk Supply Tariff passed by

the State Commission for the FY **2009-10**. In these appeals the following two issues have been raised:

- (i) Treatment of Income from sale of energy by GRIDCO outside the State;
- (ii) The rebate/incentive payable by GRIDCO to the Orissa Power Generation Corporation (OPGC)

3. Before analyzing these Questions, it would be appropriate to decide over the Preliminary Objections raised by the Respondents regarding the locus standi of the Appellants in filing these Appeals.
4. The Respondents have raised the question of locus standi of the Appellants on the ground that in spite of the fact that the entire amount payable by the distribution companies to GRIDCO in terms of bulk supply tariff order of GRIDCO for FY 2007-08 has been allowed as pass through in the ARR of the Distribution Companies, the Distribution Companies have challenged the bulk supply tariff order of the GRIDCO even though they are not affected by it in any manner whatsoever. The issue of locus standi had been raised in Appeal No. 58 & 59 of 2007 before this Tribunal and had been decided against the Respondents. The relevant extracts of the Tribunal's judgment in Appeal No. 58 & 59 of 2007 dated **09.11.2010** is quoted below:

*“15. In view of the statement made by the Appellants that while the bulk supply tariff payable by the distribution companies has been constantly increasing over the past several years, there has been no corresponding increase in the retail supply tariff and hence the distribution licensees have a valid, genuine and legal right to have the bulk supply tariff reduced as much as*

*possible, we feel that the Appellants have got a right to file the Appeal. Further, it is contended by the Counsel for the Appellant that over the years till 2007-08 there is always an uncovered revenue gap in the ARR of the distribution licensees and the contention that the entire bulk supply tariff is allowed as a pass through in the ARR of the distribution licensee is factually incorrect.*

*16. In view of the above statement, we are to hold that the appeals are maintainable as the appellants have got some vested legal rights in the reduction of the bulk supply tariff which would result in the rights being accrued to the distribution licensee to charge the retail supply tariff from their consumers in direct proportion. This point is answered accordingly. “*

5. In view of the above decision, we are of the view that the Appellants have ‘locus standi’ to file these Appeals.
6. We shall now deal with each of the issues raised by the Appellant one by one. The first issue is related to **treatment of Income from sale of energy by GRIDCO outside the State**. This issue has been raised before this Tribunal again and again both by the Appellants as well by the Respondent GRIDCO as indicated in Table below:

APPEAL No.	Appellant	Judgment dated
88 of 2009	GRIDCO	30.8.2011
106 of 2010	<b>GRIDCO</b>	1.3.2012
116 of 2011	NESCO	29.11.2012
188 of 2010	NESCO	21.12.2012

7. This Tribunal in its Judgment dated 30<sup>th</sup> August 2011 held that the revenue from sale of surplus power ought to have been considered by the Commission while determining the Bulk Supply Price. The

relevant extract of judgment dated 30.8.2011 in Appeal No. 88 of 2009 is quoted below:

***“8.5. We agree with the contention of learned counsel for the Appellant that the State Commission should have decided the BSP after considering income from the estimated sale of surplus energy. The actual income from UI and trading for FY 2007-08 may not give the correct picture for FY 2009-10 due to growth in demand. For estimating income from the trading of surplus power available in the state for FY 2009-10, the assessment of requirement and availability of electricity for the FY 2009-10 has to be made. In this case the State Commission appears to have decided to leave the revenue gap with the intent of keeping the BSP at the current level. The proposed support of the State Government to the distribution licensees for augmentation of distribution system is not likely to impact the BSP. The Judgment of the Tribunal dated 9.11.2010 in Appeal Nos. 58 and 59 of 2007 referred to by the Respondents will not be of any help in this matter. In view of above we decide this issue in favour of the Appellant and direct the State Commission to true up the financials of the Appellant for FY 2009-10 and allow actual costs with the carrying cost”. {emphasis added}***

8. The principle laid down by the Tribunal in Appeal No. 88 of 2009 has been confirmed by this Tribunal in its subsequent judgments viz., Appeal No. 106 of 2010, Appeal No. 116 of 2011 and Appeal No. 188 of 2010. This point is decided accordingly.
9. The Second issue for consideration is **the rebate/incentive payable by GRIDCO to the Orissa Power Generation Corporation.**
10. The learned counsel for the Appellant submitted that the State Government had issued a notification on 21.6.2008 regarding



settlement of disputes of OPGC. In this notification the State Government had fixed annual PLF of 80% for OPGC w.e.f 1.4.2007. OPGC would be entitled for any incentive only if annual PLF exceeded 80%. By virtue of the said notification of Government of Orissa the Power Purchase Agreement between OPGC and GRIDCO stood revised and the PLF was to be reckoned at 68.49 % stood revised 80% w.e.f 1.4.2007. The Commission had approved an Incentive of Rs.9.76 crore allowed for generation over and above normative generation of 80% PLF for the year 2009-10 in line with the notification. That while in the impugned order the rebate has been given to OPGC on a PLF of 80%, the Commission failed to take note of the fact that for the two previous years of 2007- 08, and 2008-09 OPGC had been given a rebate for generation over and above 68.49% PLF. By virtue of the retrospective operation of the State Government's notification, for the two years i.e. 2007-08 and 2008-09 OPGC was not entitled to the rebate at all. Hence whatever rebate was given to OPGC for those two years on a PLF of 68.49%, was in fact a rebate given in excess and ought to have been reversed in the impugned order.

11. The learned counsel for the Commission submitted that the submissions of the Appellant are factually incorrect. The Commission has already carried out the Truing Up exercise for the said period and the payments made by GRIDCO have been taken into consideration in such Truing Up.
12. In view of above submissions made by the Commission this issue does not survive.

**13. Summary of our findings:**

- I. The principle laid down by the Tribunal in Appeal No. 88 of 2009 has been confirmed by this Tribunal in its subsequent judgments. This point relating to revenue from the surplus power is decided accordingly.
- II. In view of the fact that the Commission has already carried out the Truing Up exercise for the said period and the payments made by GRIDCO have been taken into consideration in such Truing Up, this issue does not survive.

**14. The Appeals are allowed in part. However, there is no order as to costs.**

**(V J Talwar)**  
**Technical Member**

**(Justice Karpaga Vinayagam)**  
**Chairperson**

Dated: 23<sup>rd</sup> January, 2013

**The corrections at pages 3,5,6,7 and 10 are shown in highlighted blue colour and underlined.**

REPORTABLE/~~NOT REPORTABLE~~