

**ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR – 751 012**

Present : Shri D.C.Sahoo, Chairperson
Shri B.C. Jena, Member
Shri S.K. Jena, Member

Dated the 24th day of August, 2004

Case No.25 of 2004

M/s Tata Iron & Steel Company Ltd.,
Plot No.273, Bhoumanagar, Unit-IV,
Bhubaneswar, Dist. Khurda represented through its
Chief Resident Representative. **Petitioner**

- Vrs -

1. Grid Corporation of Orissa Ltd., Janpath, Bhubaneswar.
2. North Eastern Electricity Supply Co. of Orissa Ltd.,
Januganj, Balasore. **Respondents**

For the petitioner - Mr. A.K. Parija, Sr. Advocate
For the respondent - Mr. B.M. Das, Sr. G.M.(PP), GRIDCO &
Mr. U.K. Panda, Vice President,
Central Services Office, NESCO

ORDER

1. This is an application for allowing Open Access to The Tata Iron & Steel Company for transmission of power from its Captive Generating Plant (CGP) to their Ferro Alloys Plant, Joda in Orissa.
2. The petitioner TISCO in their petition dt.02.01.2004 submitted
 - (i) That they have set up a CGP in Jamshedpur in the state of Jharkhand with an installed capacity of 147.5 MW generating on an

average 105 MW of power. For operation of ferro alloys plant at Joda and mines under their aegis, they receive power supply from the 220 KV grid sub-station of GRIDCO.

- (ii) That they propose to transmit about 20 MW of power from the CGP to their Ferro Alloys Plant & Mines by utilising the 220 KV transmission line of Damodhar Valley Corporation (DVC), a Central Transmission Utility (CTU) connected to the Joda grid substation of GRIDCO for supply of power to these industries.
 - (iii) That they have a right to Open Access for the purpose of carrying electricity from CGP to the destination of its use, utilising the transmission facility of Central Transmission Utility (CTU) and/or State Transmission Utility (STU) relying on the CERC Open Access (Inter State Transmission) Regulation issued vide CERC order dt.14.11.2003 regarding inter-state transmission of power.
 - (iv) That in terms of Section 38 of the Electricity Act, 2003 and order of CERC dt.14.11.2003, TISCO shall apply to DVC for permitting in its line transmission of 20 MW from Jamshedpur to Joda.
3. (i) While the petition was before the OERC, TISCO filed an application for amendment of the petition enclosing the order dated 30.01.2004 of CERC notifying Open Access (in Inter State Transmission) Regulation, 2004 with a request to incorporate the latest facts in the original petition for proper adjudication of the application.
- (ii) The petitioner requested for deletion of paragraphs 7, 8, 9 and 10 of the original petition and replacement of paragraphs 5 & 6, the substance of which are as under:-

- (a) The above said transmission of electricity is "Inter State Transmission" in which the existing 220 KV transmission line of DVC extending from Jamshedpur to Joda grid substation will be utilised from which the petitioner is drawing electricity for consumption in its Ferro Alloys Plant and mining operation at Joda.
- (b) The CERC has passed an order on petition No.48/03 in the matter of Open Access in Inter State Transmission and also issued a notification No.L-7/25(4)-2003 dt.30.01.04 titled as CERC (Open Access in Inter State Transmission) Regulation, 2004. As per Regulation 2 (i) of the aforesaid regulation "Open Access Customer" means a consumer permitted by the State Commission to receive supply of electricity from a person other than the distribution licensee of his area of supply.
- (c) They shall be applying to ERLDC for short term transmission access as per Regulation 8(ii) of the aforesaid Regulation for transmitting 20 MW of electricity from its CGP at Jamshedpur to its consumption point at Joda.
- (d) The transmission charges for the above said short term Inter State Transmission will be decided as per Regulation 16 of the aforesaid Regulation dt.30.01.04.
- (e) Under these circumstances, the petitioner prayed to grant "Open Access Customer" status in terms of Section 9(2) of the Act, 2003 and Regulation 2(i) of CERC (Open Access in Inter State Transmission) Regulation, 2004 for transmitting electricity from its CGP at Jamshedpur in the state of

Jharkhand for their own consumption in Ferro Alloys plant and mining operation at Joda in Orissa. After obtaining permission as an open access customer they will approach ERLDC for short term open access as per Regulation 8(ii) of CERC Regulation quoted earliest.

4. The Commission took up the case on the question of admissibility on 09.03.2004. The applicant submitted petition dt.08.03.04 (Para-8) that as per Regulation 2(i) of CERC (Open Access in Inter State Transmission) Regulation, 2004, "Open Access Customer" means a consumer permitted by the State Commission to receive supply of electricity from a person other than the distribution licensee of his area of supply.
5.
 - (i) The case was admitted and the petitioner was directed to submit necessary details disclosing the status of CGP at Jamshedpur and also for hearing the matter in presence of GRIDCO and NESCO by impleading them as Respondent 1 and 2 respectively as they are likely to be affected, if such a permission is granted.
 - (ii) The petitioner on 18.3.04 through an affidavit submitted the copies of consent letters of BSEB (statutory authority) permitting setting up of the CGP at Jamshedpur with details of installed capacity of 147.5 MW maintained and operated by the petitioner.
 - (iii) Further, in obedience to direction of the Commission, the petitioner amended the original petition and served copies on GRIDCO and NESCO. The Commission heard the matter on 21.6.04.
6. GRIDCO, the Respondent No.1 submitted vide their rejoinder dt.15.05.04 that

- (i) TISCO have not provided any documentary evidence in support of their claim that they have constructed, maintained and been operating the CGP at Jamshedpur.
- (ii) In case they fail to justify as a CGP, they will be treated as General Open Access Customer and liable to pay surcharge as per Section 42 (2) of the Electricity Act, 2003;
- (iii) As per Section 13 of the CERC, (Open Access in Inter State Transmission Regulation), 2004, for utilisation of an inter-state Transmission line like Joda-Jamshedpur 220 KV short term open access customers will have to apply to the Nodal Agency (ERLDC) for obtaining open access who shall determine the available capacity of the transmission line;
- (iv) For the above purpose, short term Open Access in transmission can be provided to the petitioner for supply to their plant from 220/132 KV Joda Grid substation in Orissa;
- (v) The petitioner will have to pay charges for transmission, operation, handling and surcharges for such Open Access in GRIDCO transmission system which forms a part of the Inter State Transmission System from Jamshedpur to Joda at a rate to be determined by the appropriate Commission;
- (vi) By permitting TISCO to avail 20 MW of power from Joda Grid substation from their CGP at Jamshedpur by Open Access Transmission, the power procurement plan and financial viability of GRIDCO/NESCO will be adversely affected due to shift of EHT load of NESCO as the entire collection of NESCO is escrowed to

GRIDCO for which the Commission may consider levy of surcharge on TISCO to compensate the above losses.

- (vii) GRIDCO made an additional submission dt.06.07.04 on the short term Open Access in transmission and stated that permission for open access was pre-condition for acceptance subject to petitioner filing its application for Open Access for short term Inter State Transmission before the Nodal Agency i.e. ERLDC under the CERC regulation dt.31.02.04 and subject to availability of capacity of the concerned Inter State Transmission System and associated substations thereof.
- (viii) That decision of availability of open access is dependent on the principles enumerated by CERC at para 5 (ii) of the said Regulation which are as under: -

“The short term access shall be allowed if request can be accommodated by utilising some

- (a) inherent design margins;
- (b) margins availability due to variation in power flows; and
- (c) margins available due to in-built spare transmission capacity created to cater to future load growth.”

7. NESCO, the Respondent No.2 in their reply dt.30.04.2004 submitted that

- (i) Huge investment have been made in constructing line and strengthening transformer capacity at Joda grid substation permitting petitioner's load at Joda as well as meeting the area loads;

- (ii) As per the factual documents submitted by the petitioner, the CGP in Jamshedpur has been established with the consent from the Bihar State Electricity Board (BSEB) for utilisation of the power of the petitioner's own production unit at Jamshedpur and also for supply of energy to their other concerns situated at or near Jamshedpur.
- (iii) In the subsequent permission granted to the petitioner, the BSEB has limited the use of consumption of energy generated by the CGP for their own requirement in Jamshedpur. The Ferro Alloys plant and mines at Joda had never used power generated by CGP, Jamshedpur and have been the consumers of OSEB, GRIDCO and thereafter of NESCO.
- (iv) As provided under Section 9(2) read with Section 39(2) of the Act, 2003, a consumer is liable to pay the transmission charges and surcharge as may be determined by the state Commission. However, such surcharge shall not be leviable in case Open Access is provided to a person who has established CGP for carrying the electricity to the destination for his own use.
- (v) The Respondent No.2 further contended that the petitioner has not established the CGP in Jamshedpur for supply of electricity to Joda for consumption in their Ferro Alloys and Mining unit at Joda. In accordance with the provisions of the Act, 2003, the petitioner can be allowed Open Access subject to paying surcharge to the Respondent No.2 for meeting present level of cross subsidy.
- (vi) The respondent will be put to huge financial loss due to switching over of their consumer to the CGP and as such, if Open Access is permitted, the Commission may impose surcharge to compensate

NESCO for meeting the requirement of current level of cross subsidy in addition to payment of wheeling charges for use of transmission lines.

8. In response to the counters given by the Respondents 1 and 2, the petitioner submitted :-

- (i) That both GRIDCO and NESCO have accepted the position of the Ferro Alloys plant at Joda as a unit of TISCO.
- (ii) That a CGP is defined to mean the power plant set up by any person to generate electricity primarily for his own use. Any person obviously includes company, which is juridic person. Under the aforesaid definition, as long as electricity generated by the CGP, set up by a person is used for his own consumption, the generating plant qualifies to be a CGP. In the instant case, TISCO has set up CGP and seeks to use/consume power in its own plant at Joda. As such, the generating plant at Jamshedpur qualifies to be a CGP within the meaning of section 2 (8) of the Electricity Act, 2003 as the Ferro Alloys unit of Joda is a unit of TISCO.
- (iii) With regard to the question whether TISCO has requested permission from the competent authority to supply of power to Ferro Alloys at Joda from its CGP at Jamshedpur, the petitioner has submitted that the Act, 2003 has developed newer concepts like power trading and Open Access, de-licensing of generation and permitting free installations of CGPs.
- (iv) After repeal of the provisions of The Electricity Act, 1910, The Electricity (Supply) Act, 1948 and The Electricity Regulatory Commissions Act, 1998, there is no restriction under the Act, 2003

for transmitting power from the CGP to any other units of the person who has set up CGP for his own use.

- (v) Indeed, the very objective of the Act, 2003 was to permit such transmission for which there is no hindrance either in any law or contract which restricts the petitioner to transmit power from Jamshedpur CGP to the Ferro Alloys Plant at Joda. The various orders of BSEB issued from time to time wherein restrictions stipulated for transmission of power outside Jamshedpur were imposed under the then enactment which has since been repealed and the same has no application after enactment of Act, 2003.
- (vi) The petitioner further stated that the earlier restrictions imposed on TISCO has been lifted in order of BSEB in the month of August, 1989, wherein it was expressly stated that “Energy generated will not be utilised for any purpose other than meeting your bonafide requirements or selling to the board at mutual agreed rates.” Since the power is required by petitioner’s company at Joda, even in terms of the permission granted by the BSEB in August, 1989, the Petitioner Company is authorised to transmit power from its CGP to Joda.
- (vii) With regard to the issue of congestion of transmission line from Jamshedpur-Joda raised by GRIDCO, the petitioner submitted that these are the matters to be decided in ERLDC in appropriate proceedings.
- (viii) During the course of the hearing, the petitioner was directed to produce the documents supported by affidavit that the Ferro Alloys plant at Joda is a part and parcel of TISCO, Jamshedpur and a copy of the application which was submitted to BSEB for setting up

of a CPP at Jamshedpur, in response to which the petitioner submitted on 05.7.04 the following documents to prove the ownership of the Ferro Alloys plant at Joda by TISCO.

- (a) Registration and license issued by the Chief Inspector of Factories, Orissa on 18.04.2001. This certificate actually has been given to Ferro Manganese plant of TISCO. (Annex-5)
- (b) Sales Tax Registration Certificate No.KJC-196 issued by Sales Tax authority under the Orissa Sales Tax Act and Central Sales Tax Act. This certificate has been issued to TISCO whose place of business within the State of Orissa is situated at/po. Joda mainly for mining and manufacturing including power generation.
- (c) Agreement entered into with OSEB, GRIDCO and NESCO for supply of electricity. The agreement has been entered between NESCO, the licensee and TISCO through its authorised representative Sri B. K. Singh, Chief, Ferro Alloys Production, Ferro Alloys and Minerals, TISCO.

The Commission having heard the parties would like to address the following issues arising out of the submissions: -

1. Whether the Ferro Alloys Plant at Joda is a unit of TISCO ?
2. Whether the CGP set up at Jamshedpur is a power plant set by TISCO for use of Ferro Alloys Plant and Mining at Joda and can it be treated as a CGP within the meaning of Section 2(8) of the Electricity Act, 2003 for the Ferro Alloys Plant at Joda?

3. Whether a CGP set up by any person who generate electricity primarily for his own use can include other industrial unit at a later date for which the CGP was not originally planned?
4. Whether there could be any restriction in transmission of power from a CGP set up under provisions of Section 44 of Supply Act, 1948, to any unit located outside the state after enactment of 2003 & whether the CGP maintained and operated by TISCO has the right to open access for the purpose of carrying electricity from the CGP to Joda?
5. Whether a CGP set up under the provisions of Supply Act, 1948 can be utilised to transmit power to any other unit of the person who had set up the CGP for his own use and when surplus power generated from CGP is transferred to its other units for facilitating full and optimal utilisation of the installed capacity, shall such a transaction be treated as a transaction of power by a generating company?
6. Whether any surcharge shall be leviable in case open access is provided to the CGP of TISCO for carrying electricity to be used by the Ferro Alloys Plant, Joda a unit of TISCO?

The issues are addressed serially.

1. Based on the registration certificate issued by the Chief Inspector Factories, Orissa for setting of the Ferro Manganese Plant at Joda, the Sales Tax Registration Certificate OJC No.196 issued by the Sales Tax Authority under the Orissa Sales Tax Act and the subsisting agreement between the consumer and the supply

company, it can be well concluded that the Ferro Manganese Plant, Joda is owned by the TISCO.

2. (i) The BSEB in their consent letter dt.11.02.65, allowing installation of 10/12.5 MW TG set at Jamshedpur laid the conditions that "the energy generated by this set will be used for TISCO's own production only and to supply thereof will be given to their sister concern situated at or near Jamshedpur".
- (ii) The relevant extracts of various consent letters issued by BSEB are quoted below :-
 - (a) Consent letter dt.06.5.74 :- "allowed installation of one additional 20 MW set in power house No.3 of TISCO at Jamshedpur to enable them to raise their generating capacity by 35/40 MVA."
 - (b) Para 3 of consent letter dt.19.6.1979: - "Energy generated will not be utilised for any purpose other than meeting their bonafide requirements."
 - (c) Consent letter dt.09.8.83 :- "the energy generated will not be utilised for any purpose other than meeting your bonafide requirement or selling to the Board at mutually agreed rates". Besides, it was also stated that "the set is to be used only in case of power failure or load restriction from BSEB/DVC or any other authorised supplier operating in the area from which supply is availed by you."

Any claim for reduction of contract demand from the existing maximum demand with the DVC or BSEB because of availing additional energy from the generating set will not be entertained."

- (d) Consent letter on 08.8.1989: - "The generating set will be utilised in case of power failure" etc. as stated earlier. "The energy generated will not be utilised for any purpose other than meeting your bonafide requirement or selling to the Board at mutually agreed rates".

No Objection Certificate/consent letters issued by the BSEB makes it categorically clear that the permission was exclusively intended for utilisation of the generation capacity in TISCO at Jamshedpur. As such, nowhere it has been mentioned that the capacity will be utilised for any other unit of TISCO outside Jamshedpur or outside the state of Bihar making it abundantly clear that this CGP at no point of time was planned for the Ferro Alloys Plant and Mining at Joda of TISCO.

- 3. As defined under Section 2(8) of the Electricity Act, 2003, Captive Generating Plant means a power plant set up by any person to generate electricity primarily for his own use. In the instant case, permission for setting up of the Captive Generating Plant was given by Bihar State Electricity Board wherein it was expressly stated that energy generated shall not be utilised for any purpose other than meeting their bonafide requirements or selling to the Board at mutually agreed rates. The petitioner has not submitted

evidential documents (i.e. including copies of the application to BSEB, as was asked by us) to show that this Captive Generating Plant of TISCO, Jamshedpur was installed with the objective of meeting the future requirement of Ferro Alloys Limited, Joda though Ferro Alloys Plant at Joda is owned by TISCO. Hence, it can be concluded that this particular Captive Generating Plant was not intended to meet the requirement of Ferro Alloys Plant at Joda. As such, "electricity primarily for his own use" did not include the utilisation of a Ferro Alloys Plant, Joda for which the Captive Generating Plant at Jamshedpur can not be treated as a Captive Generating Plant within the meaning of Section 2(8) of Electricity Act, 2003.

4. (i) Section 2(47) of Act, 2003 defines

Open Access "means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission."

(ii) In terms of Section 9(2), every person who has constructed a CGP and maintains it has a right to open access for the purpose of carrying electricity from a CGP to the destination of "his use". Consequent upon repeal of Electricity Supply Act 1948 & enactment of Act 2003, the restriction for supply of power from the CGP outside the state's boundary is no more valid and the CGP located at Jamshedpur has the right to open access from Jamshedpur upto Joda, if there are no other operational constraints leaving the question to be

answered regarding transmission charge, surcharge & additional surcharges etc.

- (iii) As such, CGP Jamshedpur is allowed the status of the "Open Access Customer" to transmit power surplus to its captive requirement at Jamshedpur to the Ferro Alloys Plant and mining operations at Joda.
- 5.
- (i) The definition of "Captive Generating Plant" under Section 2(8) contemplates that the power plant is set up to generate electricity "primarily" for the person's own use. The possibility of such a plant generating electricity, surplus to its requirement for several reasons cannot be ruled out.
 - (ii) With regard to the use of captive power within a group of companies, the Central Electricity Authority tendered their views to the Standing Committee on Energy (2002) of the 13th Lok Sabha that "the requirement mentioned above seems to be already covered by Clause 9 which provides for freedom and flexibility in putting up a captive power plant and open access for transmission of power from such plants subject only to regulations by appropriate Commission".
 - (iii) The Committee also were of the opinion that the CGP should be allowed to sell its surplus power to any person in the same manner as a generating company sells its energy to facilitate full and optimal utilisation of installed capacity in the country. However, the decision of 3rd party sale has to be left to the individual states based on ground reality of each state.

- (iv) The opinion expressed by the Committee is very relevant in the context of CGP with surplus capacity for supply of power to any person so as not to create any discrimination between supply from a generator or a captive generator to any person who is not a captive to the CGP. This is in- conformity with the article 14 of the Constitution that guarantees right of equal treatment in similar circumstances.
 - (v) Therefore, it will be appropriate to conclude that a captive generating plant should have the option of supply to any other unit of the person who had set up the CGP subject to payment of charges as applicable for supply from a Generating Company.
6. (i) In Section 2 (8) of the Act, 2003, CGP has been defined as a plant set up by any person who generates electricity primarily for his own use and includes the power plant set up by any cooperative society or associations of person for generating electricity primarily for use of members of such cooperative society or association.
- (ii) In accordance with the proviso to Section 39, 40, 42(2) in case Open Access is provided to a person who has established a CGP for carrying the electricity to the destination of his own use, surcharge shall not be leviable.
- (iii) Section 39(2) provides for non-discriminatory open access to the transmission system of a said transmission utility for use by (i) any licensee or generating company on payment of the transmission charges or (ii) any consumer as and when such open access is provided by the State Commission under

Section 42(2) on payment of the transmission charges and surcharge thereon, as may be specified by the State Commission.

- (iv) A harmonious construction of Section 9 and Section 39 would lead to the conclusion that while open access has been allowed to the CGPs for the purpose of carrying electricity to the destination of his own use, it does not preclude from levy of surcharge for use of the transmission network when power supply is not meant for "primarily for his own use" i.e. when power surplus to its captive requirement is transmitted. In such cases surcharge and additional surcharge is leviable in accordance with Section 40(i)(ii) read with (2)(47) of the Act, 2003.
- (v) The Respondent No.2, on the issue of surcharge has stated that the plant at Jamshedpur has not been established for supply of electricity to Joda for consumption in their Ferro Alloys and Mining unit at Joda and the petitioner can be allowed Open Access subject to their paying surcharge to Respondent No. 2 for meeting the current level of subsidy.
- (vi) Respondent No.1 also have also submitted that in case they do not qualify as a CGP they may be treated as General Open Access customer liable to pay surcharge as per Section 42(2) of the Act, 2003 and other charges as applicable for use of inter-state transmission system.
- (vii) The Commission concurs with the submission of Respondent No. 1 & 2 with regard to the payment of surcharge and other charges applicable to Open Access

Customer. The Captive Generating Plant at Jamshedpur is allowed as an Open Access Customer for transmission of 20 MW power in excess of their captive requirement at Jamshedpur to the Ferro Alloys plant and mining operation at Joda subject to availability of transmission line capacity and other operational constraints to be decided in accordance with relevant CERC regulations for the Inter State Transmission of Power and payment of transmission charges and surcharges as applicable to an Open Access Customer in accordance with Section 40(c)(ii) of the Act, 2003.

The case is accordingly disposed of.

(S.K. Jena)
Member

I agree

I agree

(B.C. Jena)
Member

(D.C. Sahoo)
Chairperson