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MA-2/01-02 M/S VASAVI INDUSTRIES. APPL

 PRAYER

**BEFORE THE BENGAL ELECTRICITY REGULATORY COMMISSION
KOLKATA
STATEMENT OF FACTS**

Sub: Miscellaneous application as per WBERC (Conduct of Business) Regulation, 2000 -Statement of Claims raised and Notice to Consumers issued by West Bengal State Electricity Board (WBSEB) in violation / non- compliance of the order dated 07.12.2001 of the Hon'ble West Bengal Electricity Regulatory Commission (WBERC) determining tariff regulating power supply under WBSEB for the years 2000 -2001 & 2001 -2002.

Respectfully Sheweth,

1) that the applicant namely Sri Vasavi Industries Limited (hereinafter referred to as the Petitioner) is a Public Limited Company within the meaning of Company's Act 1956 (as amended) having its registered & Corporate office as well as manufacturing facilities in Andhra Pradesh.

2) that Govt. of West Bengal had notified W.B.Incentive Scheme 1993 under notification no.188-CI/C dt. 30/3/1993 offering various concessions & incentives to the entrepreneurs who may set up industries/manufacturing facilities within the State of West Bengal. WBSEB in its notification dated 1st October 1996 notified concessional Power Tariff to such new industries.

3) that guided by W.B.Incentive Scheme and above mentioned Notification of WBSEB, the Petitioner has set up a Ferro Alloy Plant at Industrial Growth Centre of West Bengal Industrial Infrastructure Development Corporation (WBIIDC), Bishnupur in the 'No 1 fustry District' of Bankura involving investment of + Rs.50 crores. For setting up of the plant, the Petitioner has acquired about 47 acres of Govt Land from WBIIDC in their Industrial Growth Centre at Bishnupur. Dist .Bankura.

4) that the Petitioner has entered into an agreement dated 15/11/97 with WBSEB for supply of bulk power with contract demand at 29 MVA to our aforesaid plant at Bishnupur from 132 KV Sub-station of WBSEB at Bishnupur .

5) that the Petitioner has deposited about Rs.89 lacs with WBSEB for construction of more than two KM , a dedicated 132 KV transmission from Bishnupur Sub-station of WBSEB to the Petitioner's plant premises.

6) that the Petitioner has also constructed and commissioned their own 132/33 KV Sub-station in Petitioner's plant premises to receive bulk power from WBSEB involving investment of about Rs. Three crores.

7) that WBSEB have commenced supply of power to the Petitioner's plant through 132 KV dedicated transmission line on and from 15/10/2000. The Consumer no of the Petitioner is C-23005.

8) that the Petitioner has commenced commercial production from, 18/11/2000.

9) that ferro alloys production is a continuous process industry operating round the clock through out the year. Further I the process of production of ferro alloys is very power intensive in nature.

10) that power is the basic raw material for Petitioner's industry and the cost of power alone constitutes as much as about 40% of the cost of production.

11) that the Petitioner has been paying-energy bill to WBSEB in time in every month ever since power supply was connected to the Petitioner's aforesaid unit at Bishnupur without any default and have till February 2002 paid total amount of Rs. 1706.58 lacs to WBSEB as per the particulars furnished below:

SL No	Consumption Month	Amount (Rs) Lacs
1	October 2000	23.25
2	November	87.18
3	December	122.16
4	January 2001	143.70
5	February	116.38
6	March	118.73
7	April	116.93
8	May	105.00
9	June	100.78
10	July	27.93
11	August	30.49
12	September	89.99
13	October	117.86
14	November	111.68
15	December	140.44
16	January 2002	168.51
17	February	85.57
	Total	1706.58

12) that the above figures are furnished in support of the fact that Petitioner's is a power intensive industry and power is the basic raw material for our production.

13) that everyone please increase in power tariff from the present level, will increase Petitioner's production cost by Rs.40 PMT and as depressed market cannot absorb any increase in the price, Petitioner's operations of the plant will be rendered unviable.

14) that ferro alloys have excellent export potential and the ferro alloy producers can collectively net as much as Rs.500 crores p.a. worth of foreign exchange to the national exchequer. To achieve such export performance, Petitioner has to face rigors of stiff global competition.

15) that overseas competitors enjoy a much lower power tariff as may be perused from the exhibit at Annexure-' A'. In order to compete in the global market, the State has to provide the Petitioner a level playing ground to contain the cost of production by refraining from imposing any hike in power tariff, power being the basic raw material for production of ferro alloys.

16) that the Petitioner is a High Tension Consumers drawing power from WBSEB's 132 KV system and has been classified under category H(t) of the class of bulk consumer .

17) that the Petitioner is operating their unit at around 85% load factor and at 0.95 power factor which helps WBSEB in achieving substantial reduction in transmission losses.

18) that the Petitioner had filed their objections before the Hon'ble Commission under their affidavit dated 28.02.01 and 16.03.01 respectively against proposal of the WBSEB submitted to the Hon'ble Commission seeking hike in Power Tariff for the years 2000-2001 & 2001-2002.

19) that the Commission was kind enough to grant personal hearing to the Petitioner and the Petitioner had made oral submission before the Hon'ble Commission in support of their objection and had duly submitted Record Note of their oral submission to the Hon'ble Commission.

20) that the Hon'ble Commission had been pleased to take cognizance of the / status of the Petitioner being a bulk consumer drawing bulk power from extra high tension system of the WBSEB and many of the points submitted by them in the form of objections to the proposed hike in power tariff by WBSEB which is amply evident from the fair and just order dated Commission.

21) that the Petitioner is shocked and surprised to receive a copy of the Notice to Consumers no. Nil dated Nil with regard to the tariff for the year 2000-2001 & also for the year 2001-2002 issued

by which are not in conformity with the order dated 07.12.2001 of the Commission in as much as some portion of the order have been twisted and distorted an violative of true Intent and purport of the said order of the Hon'ble Commission.

22) that the Petitioner being aggrieved by the aforesaid Notice to the Consumers, sought redressal of their grievances from the Hon'ble Commission under their reference no. FAP/003/2345 dated 25.02.02.

23) that the Hon'ble Commission under reference ERC/B-1/624 dated 06.03.02 directed the Petitioner to file miscellaneous application as per WBERC (Conduct of Business) Regulation 2000 and the Petitioner therefore most respectfully submit this miscellaneous application as per WBERC (Conduct of Business) Regulation 2000 before the Hon'ble Commission as per their direction.

24) that the Petitioner has received energy bill for the consumption month of up by it in the notified backward Dist. of Bankura. The bill is duly supported with a statement showing details of claim arising out of revision of tariff for the year 2000 -2001 along with Notice to Consumers no. Nil dated Nil notifying the tariff for 2000-2001 and also tariff and related conditions for the year 2001-2002 issued by WBSEB pursuant to the aforesaid order of the commission. Copies of the aforesaid bill with the statement and Notice to Consumers received from WBSEB are enclosed at Annexure I & II respectively.

The petitioner has also received energy bill for the consumption month of February 2002 from WBSEB along with a statement showing details of claim / adjustment arising out of revisions of tariff for the year 2001-2002. Copy of which is enclosed at Annexure -IA.

25) Load Factor Rebate / Penalty

In the order dated 07.12.2001 of Hon'ble West Bengal Electricity Regulatory Commission (WBERC), under Chapter 5 relating to "law points raised in objections and during oral submission" more particularly under para 5.14 appearing in page -68 of the order, the commission has been emphatic on not allowing preferential treatment to consumers of electricity except as provide U/S 29(3) of the Electricity Regulatory Commission Act, 1998 which provides for the commission to differentiate according to the consumer's load factor, power factor, total consumption of energy and other specified criteria laid down therein and this does not interfere with any other concession/rebate that the state government might allow U/S 29 (5) of the said Act or for that matter under any other provision or administrative orders. Accordingly, the commission has been pleased to allow rebate for prescribed power factor and load factor slabs that may be achieved by a consumer of electricity as an incentive for better energy management and to reduce the losses on one hand and surcharge/penalty for power factor and load factor falling below the prescribed limit on the other hand as a deterrent. It is therefore amply settled in law that the power factor and load factor rebate / penalty stipulated by the commission in its aforesaid order flows from the provision of Section.29 (3) of the Electricity Regulatory Commissions Act, 1998 and have nothing to do with any other concession / subsidy to which a consumer of electricity is otherwise entitled to. As such, all consumers existing in the Consumers List of WBSEB on the date of issue of the aforesaid order will have the eligibility to get the benefit of revised load factor rebate in as much as is liable to suffer penalty and pay surcharge in the event of his inability to achieve the desired level of load factor. Notwithstanding this clear cut direction of the Hon'ble Commission, WBSEB in the said notice to the consumers issued pursuant to the order dated 07.12.2001 of the Commission, under para "Other Stipulations of page- 10 of the notice has sought to deny the load factor rebate to all consumers who are eligible for concessional tariff under the scheme of concession to new industries granted by the state government. Therefore, the aforesaid portion of the notice is violative of the purport and intent of the order of the Hon'ble Commission and is therefore liable to be quashed and set aside otherwise the intent of the Commission for making legitimate differentiation with sole purpose of encouraging efficiency will be annulled.

26) Concession for New (Existing) Industries

Sub para VIII of Chapter -9 appearing on page -130 of the aforesaid order dated 07.12.2001 of the commission in respect of concession / rebate admissible to the newly set up HT/EHT industries reads as under:

Quote

viii) Other Terms and Conditions and charges

There shall not be any change in other existing Terms and Conditions, Rebates, Incentives and Charges.

Unquote

The last para of Clause (a) on "Concession for new industries" as per tariff of WBSEB existing prior to the issue of the aforesaid order of Commission reads as under: (an extract of relevant page of "Standard Rates and Charges for the supply of Electrical Energy, WBSEB-Jan -1999 is enclosed marked as Annexure -III)

Quote

An additional rebate of 2.5% will be given to HT and EHT industries in the districts of Jalpaiguri, Coochbehar, Darjeeling, North Dinajpur, South Dinajpur, Malda, Bankura and Purulia.

Unquote

This clearly establishes that 2.5% additional rebate entitles the said categories of the industries set up in backward Dist. on the **billed amount** and not merely on the **energy charges** alone.

However, it is surprising to note that in the Notice to Consumer no. Nil dated Nil issued by WBSEB pursuant to above order of the commission which has been received by the petitioner along with energy bill for the consumption month of January'02, the last para of sub-para (a) appearing in page -8 after the word "An additional rebate of 2.5%", the words "in the energy charges" have been inserted arbitrarily without authority thereby restricting the rebate of 2.50 on energy charges only and not on total billed amount. This change made by WBSEB contravenes the order of the commission and therefore is liable to be set aside.

26) T.O.D. Tariff

In the tariff order dated 07.12.2001 the timing for TOD tariff has been given :

quote

TOD tariff:

From	To	Energy charge
6 A.M.	5 P.M.	Normal Rate
5 P.M.	11 P.M.	136% of Normal Rate
11 P.M.	6 A.M.	70% of Normal Rate

unquote

The timings as per earlier TOD tariff was as under:

Period of Consumption
6.00 A.M. to 5.00 P .M.
(Normal period) -A

6.00 P.M. to 11.00 P.M.
(Peak period) -B

11.00 P.M. to 6.00 A.M.
(Off Peak period) -C

Normal period has remained unchanged. Peak period has been reduced by 1 hr. and the off peak period has increased by 1 hr. The peak period is new tariff is only for 5 hrs against 6 hrs in earlier tariff. The Hon'ble Commission vide their order dated 07.12.2001 have made changes in rates as well as period for TOD tariff application. WBSEB, however, in their claim for 2001-2002 has given

effect to only the change in the rates without considering changes in the period of consumption. The overstated claim so preferred by WBSEB- is in violation of the order of the Hon'ble Commission and has caused unreasonable extra burden to the petitioner as energy bill has been grossly over charged.

In order to take into account the change of time period specified in the order, there is no alternative but to proportionately compute the energy during peak period i.e. from 5 P.M. to 10 P.M. from the already available -figures of 5 P.M. to 11 P.M on prorata basis. The consequent balance quantum should be added to available figures of 11 P.M. to 6 P.M. to obtain energy quantum for the period 10 P.M. to 6 P.M. This will ensure that the

total consumption does not change. The Annexure IV gives the statement / of rational claim indicating therein the extra amount of claim made by WBSEB. In this view, the Hon'ble Commission be pleased to issue appropriate direction to WBSEB to rectify the claim.

27) Demand Charges

Tariff structure for the year 2001-2002 under Chapter 9 (Page 129) of the order dated 07.12.2001 stipulates :

Quote

iv. Billing Demand: Demand charge for any billing cycle shall be based on maximum KVA demand recorded between 6 A.M. and 10 P.M. of the day Or 75% of average maximum demand of preceding 12 months, whichever is higher unless the demand itself has been got-re-sanctioned downwards. In such a case demand charges will be levied with reference to revised demand. No penal demand charge shall be applicable during off peak hours even if drawl exceeds contract demand upto 20% except when load restrictions imposed by WBSEB are in force.

unquote

Supply of electricity to the unit of the petitioner was connected on 15.10.2000 and the petitioner started receiving bills for the consumption month of October 2000. As such, twelve months reading of our maximum demand is available only after September 2001. Therefore, computation of average maximum demand is possible only w.e.f. October 2001 and not before October 2001. This criteria means that KV A demand recorded from April 2001 to September 2001 should be the basis of demand charge. With effect from October 2001, the demand should be based on maximum KV A demand recorded between 6 A.M. to 10 P.M. or 75% of average maximum demand of proceeding twelve months whichever is higher. The Annexure V provides the correct picture, of "demand charge" chargeable to the petitioner. The demand charge as claimed by WBSEB in statement of claim for 2001-2002 is not in conformity of the order of the Hon'ble Commission and therefore warrants recalculation.

28) Delayed payment Surcharge

In the order dated 7.12.2001 the Commission has specified the method of surcharge due to delay in payment (Chapter 9.VIn page-130) as follows:

"The delayed payment surcharge shall be 1.25% per month on the due amount of the bill from the due date of payment of the bill upto the date of payment. The rate for the broken period shall be .0417% p.d.

In the notice issued by WBSEB the following has been stipulated under the heading "Other stipulations " appearing in para 4 page 9 of the Notice:

"If the industries eligible for concession in the energy charge in terms of Clause (a), (b) and (c) mentioned here-in- before, default in payment of electricity bills within due date of payment during the availability period of concession they will lose concession in the energy charge for that particular billing period only."

The above portion of the notice therefore grossly violative of the essence of the order of the Hon'ble Commission by importing unauthorised and arbitrary additional stipulation relating issue of

delayed payment which has been clearly directed by the Hon'ble Commission in its order. Therefore, the petitioner most humbly pray to the Hon'ble Commission to quash / set aside the above portion of the Notice to the Consumer issued by WBSEB which are not in conformity with the order dated 07.12.01 of the Commission and direct WBSEB:

Prayer:

With the foregoing submission of the facts and in law in terms of the order dated 07.12.2001 of the Hon'ble Commission the petitioner most humbly prays to the Hon'ble Commission to direct WBSEB:

- 1.** To issue appropriate amendment to para "Other Stipulations" of page- 10 of the Notice to allow load factor rebate I penalty to all its consumers on the date of issue of the order dated 07.12.01 of the Hon'ble Commission without any stipulation of whether the consumer is otherwise availing concessional tariff as a new industry or any other concession. rebate or benefit that they are otherwise entitled to.
- 2.** To issue amendment to Notice in the last para of sub para (a) appearing in page 8 of the Notice thereby allowing additional rebate of 2.5% on the total billed amount to the new industries set in notified backward Dist. Of West Bengal.
- 3.** To calculate the energy charges having regard to revised TOD timings stipulated by the Hon'ble Commission in respect of the petitioner from the date and for the period of the said order of the Commission specifies in this behalf. To modify their claim of energy bill in respect of the petitioner for the entire period notwithstanding whether the petitioner has already made the payment for the excess amount claimed or otherwise and grant refund/carry out adjustment as the case may be.
- 4.** To calculate the demand charges as per the revised formula stipulated by the Hon'ble Commission in respect of the petitioner from the date and for the period of the said order of the Commission specifies in this behalf. To modify their claim of energy bill in respect of the petitioner for the entire period notwithstanding whether the petitioner has already made the payment for the excess amount claimed or otherwise and grant refund/ carry out adjustment as the case may be.
- 5.** To modify the existing conditions of the aforesaid notice to the consumers in para 4(page-9) under the heading "Other stipulations" with regard to delayed payment surcharge in alignment with the order of the Hon'ble Commission continued in Chapter-9(viii) page-130 thereof.
- 6.** To give effect of all the above modification to the petitioner from the date and for the period stipulated in order dated 07.12.2001 of the Commission and to grant refund/remission as the case may be.

The Petitioner craves leave of Hon'ble Commission to grant personal hearing before disposal of this petition and allow the petitioner to make afresh submmission at the time of personal hearing for which act of your kindness the petitioner shall be ever grateful to the Commission.

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