

consumption by HT & EHT group of consumers which will create confusion and reduction of revenue in case the maximum demand falls below the contract demand. Secondly, the agreement was executed on the basis of contract demand or maximum demand, whichever is higher for payment of demand charge as well as determination of incentive for higher consumption. Application of load factor based calculation to the consumers covered under special agreement / incentive tariff will create confusion resulting in substantial revenue loss to the licensee. The method of incentive calculation provided in the agreement is at variance with the Commission's order' dt. 22.03.2005 and this is an apparent error in the said order.

3. Before we proceed to examine the contentions raised on behalf of the applicant, it may be mentioned that a review petition is maintainable, if there is any material error apparent on the face of the record.
4. NESCO has appealed to the Commission that as there exists an apparent error as discussed in the foregoing paras, it calls for a review of the said order on the grounds as stated below.

The Hon'ble Commission, vide its tariff order dated 19.01.2001 in case no.32/2000 has clearly directed that,

(i) *“For the purpose of determination of eligibility for incentive tariff, percentage of consumption shall be with reference to contract demand or maximum demand whichever is higher (e.g. CD or MD x PF x No of hours in a month).*

The ratio of total no of units consumed during a given period to the total no of units that would have been consumed had the contract demand or maximum demand whichever is higher was maintained throughout the same period.”

(ii) That in the tariff order dated 22.03.2005 effective from 1st April 2005 under para 7.14, it is mentioned that for determination of incentive tariff *“The load factor shall be with reference to maximum demand (e.g. MD x PF x No of hours in a month).”*

(iii) *“For the purpose of Special Agreement, the Load Factor shall be calculated in the manner prescribed under clause 2 (y) of OERC Distribution (Condition of Supply), 2004.”* The clause 2 (y) of OERC Distribution (Condition of Supply) 2004 envisages *“load factor”* in case of contract demand of 100 KW and above is the ratio of the total number of units consumed during a given period to the total number of units that would have been consumed had the maximum demand been maintained throughout the same period and is usually expressed as a percentage, that is,

Load Factor in Percentage = (Actual units consumed during a given period/Maximum demand in KW x Number of Hours during the period) x 100.

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(iv) That the agreement between NESCO and EOUs stipulated the method of computation of Load Factor based on the Contract Demand or Maximum Demand, whichever is higher, considering the power factor at 0.9 xxx xxx xxxx

5. The Commission in its order dated 22.03.2005 at para 8.9 observes as follows:

“These Power Intensive Industries appealed to the Commission for continuance of the special agreements with NESCO, which was registered as Case No.114/04. The Special Agreements was to expire on 09.12.04. The Commission has directed that the special arrangements will continue upto 31st March, 05, till the Commission decides the issue. This direction become necessary as NESCO expressed their unwillingness to continue further with the special agreement and had issued notice for termination of the agreement from 09.12.04. On the other hand, these industries have strongly pleaded that they would not be able to continue to draw power at the tariff in force for which they have requested to allow them the special rate.”

6. Further in pra 8.26, the Commission observes that “In view of the aforesaid facts, the Commission concurs with the proposal of NESCO to allow a special tariff to those industries which had enacted agreement(s) to avail power at the special rate from NESCO upto 09.12.04 irrespective of the contract demand.”
7. (i.) The Commission have examined the submission of NESCO. As stated in para 8.26 of the RST order for FY 2005-06, the Commission has allowed special tariff to those industries which entered into an agreement to avail power at the special rate from NESCO upto 09.12.2004 irrespective of the contract demand.
(ii) The para 6aa of the Special Agreement reads as follows:
“Load factor will be calculated for 24 hours and total number of days of the month with reference to maximum demand drawn or contract demand whichever is higher multiplied by 0.9 (power factor) xxxxxxxx xxxx.”
(iii) Whereas para 8.26.4 of the RST order reads as *“For the purpose of special agreement, the load factor shall be calculated in the manner prescribed in clause 2(y) of OERC Distribution (Conditions of Supply) Code, 2004”*.
8. NESCO has established to our satisfaction that method of determination of load factor as stipulated in Commission order dtd.22.3.05 is at variance with the terms and conditions specified in the special agreement which was in accordance with our tariff order dtd.19.01.2001 in Case No. 32/2000. Since the Commission has extended the facilities as was made available to the consumers who have entered

special agreement with NESCO, the Commission is satisfied that an apparent error has crept in the order dtd.22.3.2005 that requires a review. We, therefore, direct that the method of determination of incentive shall be in line with our order dtd.19.01.2001 which is as under :-

“8.6.8.1 Incentive shall be available to those consumers who will not reduce their contract demand during the next three financial years.

8.6.8.3 For the purpose of determination of eligibility for incentive tariff percentage of consumption shall be with reference to contract demand or the maximum demand, whichever is higher (e.g. CD or MD X PF X number of hours in a month).

8.6.8.4 The ratio of the total number of units consumed during a given period to the total number of units that would have been consumed had the contract demand or the maximum demand, whichever is higher was maintained throughout the same period as indicated above, exceeds 50% of the total consumption, the consumer will be entitled to get the benefit of incentive.

8.6.8.6 xxxxx”Charges as applicable would be chargeable in addition to the above.”

9. The CD or MD shall be in KVA in the formula mentioned above, in line with OERC Distribution (Condition of Supply) Code, 2004
10. The order stands modified to the above extent.

The method of determination of incentive approved as above, will be effective from 01.04.2005 in respect of the industries covered under special agreement and will also be made applicable to categories of consumers who are entitled to incentive tariff in our tariff order dtd.22.3.2005.

(S.K. JENA)
MEMBER

(B.C. JENA)
MEMBER

(D.C. SAHOO)
CHAIRPERSON