ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAVAN
UNIT – VIII, BHUBANESWAR – 751 012
E-mail : orierc@rediffmail.com
Website : orierc.org

PUBLIC NOTICE

Case Nos.140,141,142, 143 of 2009 &146,147,148 ,149 of 2010
for FY 2010-11 & 2011-12

This public notice is being issued for taking up hearing by the Commission on **24th & 25th November, 2011 at 11 AM** in the Hearing Hall of the Commission at Bhubaneswar on issue of **Cross-subsidy in Tariff for different categories of consumers for the year 2010-11 and 2011-12** pursuant to the orders/directions dated 30.09.2011 of the Hon'ble Supreme Court of India passed in Civil Appeal No.8093 of 2011 directing implementation of the judgment dated 30.05.2011 & 02.09.2011 of the Hon'ble Appellate Tribunal for Electricity.

For details , visit the Commission's website: www.orierc.org

By Order of the Commission
Sd/-
SECRETARY

Background Note on order dt.30.05.2011 & dt.02.09.2011 of Hon'ble Appellate Tribunal for Electricity

A. Date sheet of Events leading to "re-determine the Tariff on Cross-subsidy" for FY 2010-11 & 2011-12

18.03.2011: The Commission had issued Retail Supply Tariff Order for FY 2011-12 on 18.03.2011 after hearing all the stakeholders in Case No. 146, 147, 148 & 149 of 2010. This Order was to be made effective from 01.04.2011.

30.03.2011: Hon'ble High Court of Orissa stayed the revised tariff in WP(C) No. 8409/2011 (Keonjhar Nava Nirman Samiti vrs. State of Orissa and others).

30.05.2011: Appellate Tribunal for Electricity (ATE) in their Order dtd. 30.05.2011 in Appeal No. 102, 103 & 112 by 2010 on the appeal filed by M/s Tata Steel Ltd., M/s Ferro Alloys Corporation Ltd. and M/s. Balasore Alloys Ltd. on Retail Supply Tariff Order of the Commission dtd. 20.03.2010 pertaining to FY 2010-11 directed the Commission to calculate cost of supply voltage-wise (LT, HT & EHT) taking losses of each voltage level into consideration. It further directed the Commission to determine the cross-subsidy for each consumer category after working out the voltage-wise cost of supply. The cross-subsidy shall be calculated as the difference between the average tariff realization for that category as per the ARR and the cost of supply for the consumer category based on voltage based cost of supply. ATE remanded the Tariff Order for FY 2010-11 back to the Commission for correctly determining cross-subsidy for different categories of consumer within next six months from the financial year 2010-11 onwards and to ensure that in the future tariff orders cross-subsidy for different categories are determined according to the direction given in the judgment of Hon'ble ATE.

22.06.2011: Hon'ble High Court of Orissa vacated the stay on the revised Tariff for FY 2011-12 except on the domestic (LT) category in WP(C) No. 8409/2011. Hon'ble High Court heard the plea of the Commission on the methodology of determination of cross-subsidy. The Commission pleaded before the said Court for determination of cross-subsidy on the average cost of supply for the state taken as a whole and apprised the Court that this has been done as per Electricity Act, 2003, Tariff Policy and Electricity Policy notified by Govt. of India. Hearing continued.

10.08.2011: Regulation 7 (c) (iii) of OERC (Terms and Conditions of Determination of Tariff) Regulation, 2004 was amended vide Notification dtd. 30.05.2011 published in the Gazette on 10.08.2011.

23.08.2011: OERC filed review petition before ATE for review of the judgment and order dtd. 30.05.2011 pertaining to Retail Tariff Order of 2010-11.

02.09.2011: Hon'ble ATE in Appeal No. 57, 67-73 of 2011 on the appeal of M/s Vishal Ferro Alloys Ltd. and 23 other industries on the Retail Supply Tariff Order for FY 2011-12 notified by the Commission on 18.03.2011 directed the Commission to re-determine the tariff on cross-subsidy for the

said year based on cross-subsidy calculation methodology given by them in their Order dtd. 30.05.2011 pertaining to 2010-11 and to complete the exercise within 30.11.2011. Till then Tariff of any category is not to be disturbed.

20.09.2011: ATE has been pleased to issue notice on the application for condonation of delay in filing the review petition pertaining to Tariff Order 2010-11. The next date of hearing is 18.11.2011 in ATE.

30.09.2011: Hon'ble Supreme Court of India in Civil Appeal No. 8093 of 2011 on the appeal M/s Adhunik Metalik Ltd. on the orders of Tribunal dtd. 02.09.2011 directed that the case remitted by ATE on 02.09.2011 regarding re-determination of Tariff shall be disposed of by OERC on or before 30.11.2011. Liberty was given to the parties to move the Court for grant of further period. The Hon'ble Court further directed that in the event OERC coming to the conclusion that there are parties who are affected in the matter of fixation of tariff on remand it may consider giving notice to all the affected parties in its own discretion.

14.10.2011: OERC filed application for clarification/modification in Civil Appeal No. 8093 of 2011 before the Hon'ble Supreme Court (M/s. Adhunik Metaliks Ltd. vrs. CESU and others against Order dtd. 02.09.2011 of ATE). In the said appeal OERC submitted that HT and EHT category of consumers have filed a writ petition through their association before the Hon'ble High Court of Orissa challenging the Retail Supply Tariff Order for FY 2011-12 in WP(C) No. 8451 of 2011 which is tagged with WP(C) No. 8409 of 2011 by Keonjhar Nava Nirman Samiti vrs. State of Orissa and others. The hearing is going on. Simultaneously the appellant and some other industries also filed appeals challenging the same order dtd. 18.03.2011 of OERC before ATE. The said appeals having been allowed by the Tribunal by judgment dtd. 02.09.2011 they have sought withdrawal of the writ petition. While terming their conduct as forum shopping by order dtd. 06.09.2011 Hon'ble High Court dismissed the writ petition as withdrawn by imposing cost of Rs.1 Lakh. SAC had advised OERC to adopt a preferential lower tariff for low tension consumers like domestic, agricultural etc. who are directly affected by increase in the tariff for the reasons that consumers of other categories like industrial can pass on the cost of electricity as cost of their product. While determining cross-subsidy OERC is sticking to Electricity Act, 2003, Tariff Policy and Electricity Policy of Govt. of India. The Regulation 7(c) (iii) of OERC Tariff Regulation which is one of the basis of ATE Order has already been amended on 10.08.2011. The formulation of Bulk Supply Tariff Order for GRIDCO and Retail Supply Tariff Order for DISCOMs is an integrated exercise. Re-determination of Retail Supply Tariff will necessitate re-determination of Bulk Supply Tariff. Re-determination of tariff as per ATE direction is also not possible when there is a stay on LT domestic tariff by Hon'ble High Court of Orissa.

08.11.2011: Hon'ble Supreme Court was not inclined to admit the appeals of OERC and appeals have been dismissed.

B. Facts of the Case:

1. Against order dated 30.05.2011 of the ATE in respect of Tariff for FY 2010-11 one Adhunik Metalliks Ltd. filed an appeal before the Supreme Court under S.125 of the Electricity Act, 2003 bearing number C.A. No.8093 of 2011. The ATE had directed redetermination of cross-subsidy for HT and EHT consumers on the basis of cost of supply for these categories of consumers and not on the basis of average cost of supply for all categories of consumers, as the Commission had done in the Tariff order for FY 2010-11. OERC and CESU had been impleaded as respondents in the said appeal. Apparently the appellant sought only implementation of the ATE's order dated 30.05.2011 as it was in favour of the appellant. The Supreme Court disposed of the appeal on 30.09.2011 at the admission stage without giving notice to the OERC and going into merits and confirmed the direction of the ATE that the tariff should be redetermined by 30.11.2011, but after hearing all concerned. The category of LT consumers which was being cross-subsidized by the HT and EHT categories would suffer a great tariff hike, amounting to "tariff shock," if the direction of the ATE would be carried out and there were issues as to legality of the said aforesaid order of the ATE. By the time ATE passed the aforesaid order dated 30.05.2011 the period of the relevant Tariff for FY 2010-2011 was over and the Tariff for FY 2011-12 was already in force by Order of the Commission dated 18.03.2011. The LT category had challenged the normal tariff hike for them (which had not taken into account ATE's aforesaid direction) before the High Court in W.P.(C) No. 4809 of 2011; however, some HT and EHT consumers and their Association raised the question of implementation of the aforesaid order of the ATE before the High Court in separate, analogous writ applications, and as it would have resulted in further hike of LT tariff, the High Court came to be in seisin of issues as to legality of ATE's aforesaid order dated 30.05.2011, even though the challenge was in respect of Tariff for FY 2011-12. The High Court stayed the tariff hike in respect of LT consumers for FY 2011-12 and the stay continues as of now. The hearing before the High Court is in its closing stage and the judgment is yet to be pronounced. In the circumstances the Commission took the prudent decision go with the hearing of the matter in the High Court and not prefer an appeal to the Supreme Court against the order dated 30.05.2011 of the ATE. In this connection my letter sent to OERC by email on 15.10.2011 with my Synopsis

of Argument may be seen. However, the Commission filed a petition before the ATE for review of its order dated 30.05.2011 together with a petition for condonation of delay. And those petitions are still pending and next posted to 18.11.2011.

2. The fact that the High Court was in seisin of the matter of ATE's order dated 30.05.2011 could not be brought to the notice of the Supreme Court on 30.09.2011 as the Supreme Court disposed of the case that day without notice to the Commission. Nor could the Supreme Court be apprised of the fact that the High Court had ordered stay of tariff hike in respect of LT consumers for FY 2011-12 and therefore ATE's order dated 30.05.2011 could not be implemented (even though it pertained tariff for FY 2010-11), and, further, that a review petition was pending before the ATE. Accordingly the Commission filed a petition before the Supreme Court, vide I.A. No.2 in C.A. No.8093 / 2011 seeking clarification in the light of these facts.

3. While hearing was going on before the High Court in W.P.(C) No. 4809 of 2011 with the analogous cases filed by some HT and EHT consumers and their Association on the issue of applicability of the direction of the ATE in its order dated 30.05.2011 to Tariff for FY 2011-12 impugned before the High Court, eight members of the Association moved the ATE and secured an order on 02.09.2011 to the effect that its direction in its order dated 30.05.2011 should be followed in Tariff for FY 2011-12 as well (even though the Tariff, and the said issue, was *sub judice* in the High Court) and thereupon the Association sought to withdraw its case before the High Court. It was pointed out to the High Court that the High Court was not bound by the orders of the ATE and while arguing its case before the High Court, the Association ought not to have resorted to forum-shopping and secured a pre-emptive order from the ATE on an issue the Association has itself raised before the High Court and the High Court was considering the issue. The High Court disapproved of the conduct of the Association and imposed a cost Rs 1 lakh and allowed the Association to withdraw its case *at its risk*. The High Court has nevertheless heard our argument on the issue of validity and applicability of ATE's orders.

4. Against the common order dated 02.09.2011 of the ATE in the aforesaid eight appeals, the OERC filed eight appeals in the Supreme Court, viz., C.A.Nos. 9136-9143 of 2011. The Supreme Court has dismissed the appeals by order dated 08.11.2011. On the same day the Supreme Court has also dismissed our L.A. No.2 in C.A. No. 8093 / 2011 seeking clarification / modification of its order dated 30.09.2011.

5. Now, the cumulative effect of the Supreme Court's order dated 30.09.2011 in C.A. No. 9093 / 2011 and the order dated 08.11.2011 in I.A. No. 2 in the same Appeal and the order dated 08.11.2011 in C.A.No.9136-9143 of 2011 is that the ATE's order dated 30.05.2011 in respect of Tariff for FY 2010-11 and order dated 02.09.2011 for FY 2011-12 stand to be implemented by 30.11.2011. The Commission therefore initiated proceedings in terms of these orders of the ATE. The proceedings are to be initiated in respect of both Tariff for FY 2010-11 and for FY 2011-12.

C. Issues:

- As per the Order of ATE read with order of Hon'ble Supreme Court dtd. 30.09.2011 and 08.11.2011 the "Tariffs on Cross-subsidy" for 2010-11 and 2011-12 are to be re-determined by calculating the cost of supply voltage-wise which may disturb the existing level of cross-subsidy possibly leading to higher tariff for LT consumers.
- ATE has fixed 18.11.2011 to hear the condonation of delay in filing review petition of their Order dtd. 30.05.2011 by OERC.
- However, High Court have almost completed hearing except hearing of OHPC submissions.
- Since order is to be passed by 30.11.2011 OERC is initiating the process of hearing of all stakeholders as directed by Hon'ble Supreme Court. The Commission seeks advice/concerned opinion of the Stakeholders, SAC Members and Informed public on this regard to be considered by the Commission during the hearing process. The hearing date is fixed on 24th & 25th November, 2011.