

- (c) OPGC is entitled to carry out operation and maintenance of colony electrical system as it is exempted from requirement of license under OERC (Exemption from License) Regulation, 1998.
2. Having been aggrieved, the petitioner-OPGC has come up with the present petition praying for review of the direction contained in para (b) of the aforesaid order and made the following submissions.
 3. Since the start of export of power to GRIDCO from its generating station, the OPGC colony consumption was being deducted from the export meter and billing to GRIDCO was done on net exchange basis. This arrangement follows from the record note of discussion held on 13.08.96 between the parties which formed a part of PPA between GRIDCO and OPGC. WESCO being a successor entity, all agreements signed and acted upon by the erstwhile OSEB, then GRIDCO, prior to the creation of DISTCOs are equally binding on WESCO.
 4. OPGC is a generating company as defined u/s 2(5) of Supply Act, 1948. It has established its own distribution system for supply to its own colony for housing the employees working at the generating station. The power drawn from their own generating station to their residential colony ought to be treated as auxiliary consumption “as the residential colony comes within the definition of the generating station as defined in section 2(5) of the Supply Act, 1948”.
 5. OPGC has been drawing electricity from their own generating station to their 100% ash water recycling ponds and to their colony by using their own distribution system for the purpose of electrical transmission. The word transmission u/s 14 of the Reform Act has to be construed as transmission for commercial use. Therefore, the power drawn for their housing colony cannot be said to be for commercial purpose for which a license is required.

6. Subsequently, OPGC in an additional affidavit dt.31.05.2002 has submitted that it supplies power to its own colony and such colony forms a part of the “generating station” as defined u/s 2(5) of the Supply Act, 1948.
7. OPGC files its returns and also deposits electricity duty at the prescribed rate on all consumption by itself in its plant/colony and all such consumption has been accepted as “auxiliary consumption” and duties thereon has been regularly paid and accepted. In support of payment of electricity duty, OPGC also submitted the meter readings of auxiliary consumption for the month of March 2002 in their submission dtd.31.5.2002 (Annex-1).
8. Further, OPGC has submitted that OERC has passed the order without giving them any opportunity of being heard and no notice was served on them. This is a clear violation of principle of natural justice.
9. WESCO in its rejoinder dated 13.05.2002 have submitted that the company is a licensee u/s 15 of the OER Act, 1995 granted by OERC for supply of electricity in a specified area of supply which includes the area in which OPGC is located.
10. Under the existing provisions, no other person except the licensee has been vested with the authority to supply power to different consumers. As OPGC have not been granted any license for distribution or retail supply of power, they cannot assume the authority to supply power to their colony.
11. Tariff is being determined by the Commission u/s 26 of the OER Act, 1995. Allowing supply of power to the colony by OPGC will adversely jeopardize the business of WESCO as WESCO will have to shed off the load of 750 KVA from its agreed supply. WESCO has averred that though power supply to their colony has been disconnected due to default in payment of energy bills by OPGC, they are unauthorisedly drawing power for their colony consumption from their own generation.

12. Under the above circumstances, the application filed by OPGC for review of order in case No.47/2001 may be rejected and OPGC be advised to pay their outstanding dues. Drawal of power from their own generating station is a gross violation of OERC order in Case No.47/2001.
13. The Commission examined the contentions of both the parties. While asking for exemption from the requirement to have a license u/s 16 of the OER Act, 1995, OPGC had prayed the Commission to supply electricity to the OPGC employees and other outside supporting agencies and ash water recycling plant. The meter reading statement submitted by OPGC (submission dtd.31.5.02) shows that electricity duty is being paid to the Government on meter reading of all the sub-stations including that of the 220/33 kV colony sub-station. But for the purpose of electricity duty reimbursable from GRIDCO, OPGC has been claiming reimbursement for the consumption at all the sub-stations except for the 220/33 kV colony sub-station. It means that out of the total consumption in OPGC for the purpose of 'auxiliary consumption', the units consumed in colony sub-station is not being included.
14. On examination of the facts and figures placed before the Commission, the following issues need to be addressed.
 - 1) Whether 'transmission' u/s 14 of the Reform Act is to be construed as transmission for commercial use?
 - 2) Whether the power drawn for the OPGC housing colony can be said to be used for commercial purpose for which a license is required?
 - 3) Whether the arrangement of netting up of energy at generation bus followed by GRIDCO and OPGC as per the minutes dated 13.08.96 is enforceable and should be continued as WESCO being successor to OSEB/GRIDCO has been declared as the retail supply and distribution licensee?

- 4) Whether the energy consumed by the residents of OPGC colony is a part of station “auxiliary consumption”? Whether residential colony comes within the definition of the generating station as defined in section 2(5) of the Supply Act 1948 as contended by OPGC?
 - 5) Whether OPGC has the right of supply of power to the residents of the OPGC colony when WESCO has been granted the Retail Supply and Distribution Licence?
 - 6) In the event of colony consumption being not a part of auxiliary consumption, whether such consumption has to be billed at the retail supply tariff as approved by OERC when the entire infrastructure for distribution of electricity inside OPGC premises have been installed by OPGC although 2 nos. of 33 kV feeders from grid sub-station to ITPS site have been constructed by GRIDCO including upgradation of transformer capacity at Remja sub-station for power supply to ITPS for construction purpose which were utilised for power supply to colony. These lines are now under WESCO.
15. With regard to issues No.1 & 2, as per section 14(1) of the OER Act, 1995, licence is necessary for ‘transmission’ or ‘supply of electricity’. “No person, other than those authorised to do so by license or by virtue of exemption under this Act or authorised or exempted by any other authority under the Electricity (Supply) Act, 1948, shall engage in the State in the business of
- (a) transmitting, or
 - (b) supplying electricity.”

For carrying out supply of electricity either one has the authority by grant of a licence or may be granted exemption under provisions of the relevant Act.

16. As regards issue No.3, OSEB as a statutory body was vested with the authority of supply of power throughout Orissa with power to fix the tariff for such supply. Thus, the netting of energy for the purpose of billing raised against GRIDCO by

OPGC, implied fixation of a rate for colony consumption in OPGC at a rate equal to the cost of generation by OSEB. On the contrary, WESCO had not been authorized to fix any tariff for any category of consumers. The next question is whether the terms of agreement entered between OSEB and OPGC is binding on WESCO under reforms regime. The amended bulk power supply agreement between GRIDCO and OPGC was entered on 13th of August 1996. The approval of the PPA is subjudice.

17. As far as issue No.4 is concerned, u/s 2(5) of the Supply Act, 1948, any buildings used for housing the operating staff of a generating station form a part of generating station. It is worthwhile to mention here that CERC in its order 85/2000 (para 13) has observed that the consumption of energy at the project colony of hydro-stations shall not be included as auxiliary consumption.
18. While disposing off the petition No.4/2000, CERC in para 5.4.3 of its order on auxiliary energy consumption for thermal stations has observed that “The State Electricity Boards during arguments suggested that the colony power supply, construction power supply etc. should be excluded from assessment of Auxiliary Energy Consumption. The points raised by the SEBs would be kept in view for action at an appropriate time. As things stand, again there is no meeting ground available on the subject from which a consensus could emerge on the issue.”
19. The Commission would like to observe that the intention behind the Act is that buildings for the control room, watch and ward, site offices etc. in a power station for housing the staff engaged in operation and maintenance of the generating station are a part of the generating station. Thus, the consumption in colony meant for residential purpose cannot be treated as a part of auxiliary consumption. Therefore, the consumption of electricity in residential colony even when occupied by the operating staff and their families cannot be treated as ‘auxiliary consumption’. Auxiliary consumption in a generating station would generally mean the electrical consumption due to ‘unit auxiliaries’, station auxiliaries and station services of the plant and cannot include consumption of the colony meant

for housing the staff. As such, the consumption in colony and the auxiliary consumption stand on a different footing and need separate treatment. The generator is being paid for the entire fixed cost of the plant along with variable charges for the energy supplied. As such, the entire capacity and output are dedicated to GRIDCO. The generator, therefore, does not have the right for use of electrical energy other than “auxiliary consumption”.

20. With regard to issue No.5, the distribution licensee has the sole authority for supply of power within its area of license. The Commission is of the opinion that the consumption of electricity in OPGC housing colony is a ‘supply function’ which as per law should be carried out by the Retail Supply Licensee, i.e. WESCO.
21. With regard to issue No.6, as stated by OPGC, the entire infrastructure for distribution of electricity inside their premises have been erected and is being operated and maintained by them. Since the supply of electricity to this area is to be carried out by WESCO, OPGC should avail bulk supply for the colony consumption and may be classified under appropriate category in accordance with Reg. 80 of the OERC Distribution (Conditions of supply) Code 1998. However, for the purpose of emergency, power supply at 33 kV may be maintained as is existing hitherto fore.

The petition is disposed of accordingly.

(B.C. Jena)
MEMBER

(H.S. Sahu)
MEMBER

(D.C. Sahoo)
CHAIRMAN