

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

Present: Shri B. K. Das, Chairperson
Shri K. C. Badu, Member
Shri B. K. Mishra, Member

Case No. 02/2007

M/s. Global Energy Private Ltd. (earlier M/s Global Energy Ltd. –GEL) Petitioner

Vrs

GRIDCO & others

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Respondents

**In the matter of: An application for grant of Intra-State Trading License to
M/s Global Energy Ltd. for trading of 50 MU electricity per
month in the State of Orissa.**

For the petitioner: Shri Sanjay Sen, Advocate,
Shri Rajiv Yadav, Advocate and
Shri D R Patnaik, Advocate

For the Respondents: Shri L N Mohapatra, Advocate for GRIDCO
Shri A K Mohanty, GM (R&P), OPTCL
Shri S C Mohanty, Legal Consultant, DoE, GoO
Shri R P Mohapatra
Shri R C Satpathy

Date Hearing: 04.08.2010

Date of Order: 18.09.2010

ORDER

1. M/s. Global Energy Ltd. (in short GEL) the petitioner in the case, which was subsequently renamed as Global Energy Private Limited under a certificate from Registrar of Companies, Goa, Daman & Diu on 24.12.2008, filed an application under Section 15 of the Electricity Act, 2003 and under the relevant provisions of OERC (Conduct of Business) Regulations, 2004 on 24.02.2007 for grant of an intra-state trading license to trade electricity upto 50 MU per month in the state of Orissa. The Commission vide their order 17.04.2007 directed GEL to publish a notice of its application in two widely circulated newspapers in compliance to Section 15(2) of the Electricity Act, 2003. The Commission also decided to implead both Ministry of Power, GoI and Department of Energy, GoO so also Grid Corporation of Orissa Ltd. (GRIDCO) as respondents of the said proceeding.

2. GRIDCO filed an affidavit on 07.08.2007 objecting to GEL's application for grant of intra-state trading license on the ground that intra-state trading license, if granted to GEL would have adverse financial impact on GRIDCO. It also contended that GRIDCO being the sole bulk supplier of electricity to the DISCOMs of the State ensures lower retail tariff in the interest of the general public of the State. While contending so, GRIDCO relied on the BSP order of the Commission for FY 2007-08 where GRIDCO was permitted to off set its past losses by selling surplus power through trading and UI mechanism. The Govt. of Orissa, through its affidavit also supported the contention of GRIDCO. The State Govt. also contended that in case intra-State trading license was granted to M/s. GEL, it would arrange power mostly from CGPs and sell it to the industrial consumers through Open Access depriving the DISCOMs of cross-subsidy. It also apprehended that the surplus CGP power would be exported outside the State through trading at the cost of huge human, environmental and natural resources degradation. The Govt. of India, Ministry of Power submitted that as the matter relates to Intra-State trading license in Orissa to be granted by OERC, Ministry of Power had no comments to offer as there was no substantive issue involving the Govt. of India. On 19.01.2008, the Commission heard at length both GEL and GRIDCO for grant of an intra-state trading license in favour of the former. Consequently, the Commission in its order dtd.06.05.2008 held that the petitioner fulfilled the technical and financial requirements for an intra-state trader as set forth in Regulation 27, 28 of OERC (Conduct of Business) Regulation, 2004.
3. OPTCL submitted that considering the proposed Intra-State Trading License to be awarded to GEL it was most likely that OPTCL's network would be used by M/s GEL for trading of Energy on short-term Open Access mode as per existing Intra-State Open Access regulation. Therefore, OPTCL requested the Commission to allow a system study to be carried out for both point of injection and point of drawal. It also apprehended that as Intra-State ABT has not been implemented in the State, OPTCL can neither regulate the injection of surplus power nor check the overdrawal in case of breach of schedule. It also emphasized the need of PLCC / SCADA to monitor the above trading transaction.
4. In pursuance of the notice under Section 15(5) of the Act, the GRIDCO sought a review/ reconsideration / recall of the Commission's order dtd.06.05.2008 on various grounds as mentioned below which came up before the Commission for hearing on 21.07.2009.

- i) Grant of any intra-state trading license at this stage shall seriously prejudice the prospects of bridging the gap of Rs.464.86 cr. of GRIDCO as ordered by the Commission in their BSP order for FY 2007-08. Similarly, the Commission has also left a gap of Rs.915.48 cr. in the ARR to be bridged by the revenue from trading and UI in their BSP order for FY 2009-10.
 - ii) GRIDCO will be deprived of trading 600 MU of power per annum with consequential loss of trading revenue to the tune of Rs.300-420 cr.
 - iii) The grant of intra-state trading license to GEL may have snow-balling effect resulting in more trading licensees in the state jeopardizing the interest of GRIDCO in general and people of Orissa in particular who have been getting tariff relief through gap in ARR of GRIDCO. Again granting of the Intra-State trading license will affect GRIDCO's ability to make repayment of loans and other liabilities from the revenue generated through trading business.
 - iv) The Commission without recording any categorical findings on the net-worth and creditworthiness of the petitioner have issued notice u/S.15(5) of the Act merely on the basis of prima-facie conclusion that the petitioner fulfills the technical and financial requirements to qualify as an intra-state trader.
 - v) M/s Global Energy Pvt. Ltd. has an Inter-State trading license as on date which entitles it to trade between States and within a State. Thus the need for another Intra-State trading license is not an absolute requirement.
 - vi) The eligibility and credit worthiness of the petitioner though a test of norms of its clean image in the field though claimed, but not sworn needs to be taken note from the recorded position relating to criminal, civil and tax proceeding against its Director and promoters and other officers with reference to its nature and status.
5. In its counter to the aforesaid review application filed by GRIDCO, the petitioner submitted that the review application was not maintainable as GRIDCO had essentially reproduced the ground which had already been taken by it before the Commission. The right of review is not a right of appeal where all questions decided are open to challenge.
6. The Commission in its order dtd. 01.10.2009 held that the GRIDCO was adducing the same ground which it had already used as objection to GEL's Public Notice. The Commission has adequately considered the views of GRIDCO. Therefore, the review

petition is liable to be dismissed. With regard to Section 15 (5) of the Electricity Act, 2003 the publication in newspaper is not violative of the provision of the Act as Commission had committed that it would take into consideration all materials about the petitioner's creditworthiness and financial viability including all relevant information impinging on its business ethics before license is granted under Section 14 of the Electricity Act, 2003.

7. The Commission further held that they were aware of the fact that GRIDCO had been burdened with heavy liabilities from the past and that through the tariff orders a scheme has been evolved to give adequate relief to GRIDCO. Considering specific statutory mandate cast upon the Commission to issue trading license to eligible entities, the views of GRIDCO stemming from perceived adverse impact on its revenue could not be accepted, irrespective of past losses inherited by it. Any perceptible adverse financial impact on GRIDCO arising on account of operation of an Intra-State trading license may be a relevant factor for consideration while approving GRIDCO's ARR for future years.
8. In the changing scenario and fast development of power market in the country, it will be quite inappropriate to agree with the contention of GRIDCO that it will continue to remain the sole trading licensee in the State which is against the Electricity Act, 2003 and National Electricity Policy. Due to historical legacy no doubt certain past liabilities have been cast upon GRIDCO but this can't be a proper and sufficient ground for not granting any Intra-State trading license in the State and open the market to the interested parties.
9. The Commission in the same order dtd. 01.10.2009 further stated that they would consider all suggestions / objections including objection raised in the review petition and the recommendation, if any, of the Central Transmission Utility or the State Transmission Utility as provided under Section 15 (5) (b) of the Electricity Act, 2003.
10. Being aggrieved by the order of the Commission dtd.06.05.2008, GRIDCO moved the Appellate Tribunal for Electricity in Appeal No. 26/2010. The Tribunal in their Order dtd.08.02.2010 observed that by their Order dtd.06.05.2008 Commission was confined to the question of issuance of notice under Section 15 (5) (b) of the Act only and not for the final decision regarding the issuance of license. Further OERC in Para 24 of the Review Order dtd.01.10.2009 has clearly stated that all the suggestions /objections including the objections raised by the appellant and the recommendations, if any, of the CTU or the STU as the case may be would be considered and the final

decision would be taken after giving the opportunity of being heard to all the parties concerned. The Hon'ble ATE further directed that the State Commission to consider all the objections raised by the appellant and also the objections to be urged by the appellant afresh before it taking into consideration of the suggestions and the opinions of the public as well as other utilities and arrive at a final decision in accordance with the law.

11. Shri R P Mohapatra, an objector to the petitioner's application for grant of Intra-State Trading Licensee submitted that the only power available for Intra-State trading was from the CGPs of the industries as GRIDCO has long-term PPAs with all Central and State Generators including almost all of the renewable energy generators. If the CGP power procurement price including cross-subsidy surcharge determined by the Commission is taken into consideration the final delivery price through Open Access shall be prohibitive. Therefore, there is no scope for intra-State trading of power for sourcing supply and sale within the State of Orissa. The GEL has not provided the detailed sources of procurement of power and the parties to whom it would be sold. The entire submission of GEL is purely theoretical and no such trading business can survive in the State. He opined that Govt. of India's Notification on Distribution of Electricity License (Additional requirement of capital adequacy, creditworthiness and code of conduct) Rules 2005 is also applicable in the present case.
12. He further suggested that CERC Regulation on trading of power where involvement in a Criminal Case is ground for disqualification should be adopted by OERC. He apprehended that last proviso of Section 14 of the Electricity Act, 2003 which authorizes DISCOMs to undertake trading in electricity without holding a license may encourage 'intra-State trader' to sell power to DISCOMs who in turn undertake 'Inter-State Trading' depriving people of Orissa of their legitimate dues. Therefore, he prayed before the Commission to reject the application of Global Energy (P) Ltd. as there is no scope for Intra-State trading within the conditions stipulated in Para 5 (e) of the order dtd. 06.05.2008 of this Commission that the 'Purchase of Electricity and resale thereof within the State of Orissa and no power can be sold outside the State or to any Inter-State trader.'
13. Shri Ramesh Ch. Satpathy an objector stated that before granting intra-State trading license to M/s GEL the Commission must ensure that the applicant is a fit and proper person. He requested the Commission to fix trading margin before granting intra-State trading license.

14. In its counter to the allegations of GRIDCO and other objectors regarding legal proceeding concerning M/s GEL or any of its Promoters, Directors or Associates, the petitioner submitted as follows:

The legal proceedings can be categorized into three such as (i) cases initiated /filed by M/s GEL (ii) cases initiated / filed against M/s GEL and BCL Pvt. Ltd. (iii) Arbitration proceedings. M/s GEL has also submitted copies of some orders passed by Courts in the aforesaid matters.

Regarding CBI proceedings against Shri Harry Dhaul and Smt. Laxmi Dhaul, it is still subjudice and trial of the accused person yet to commence. After more than 8 years of the institution of the FIR, charges are yet to be formally framed against the accused. In addition to that, prosecution of the promoters of the petitioner company would have no bearings on the business operation as they no longer serve as its Directors.

The dispute between the petitioner and Tripura Electricity Department has been amicably settled through arbitration. Another arbitration proceeding has been initiated by the petitioner against KPTCL for wrongfully terminating the PPA and this has been released by the arbitrator without any findings on merit.

As regards to Debt Recovery Tribunal (DRT) proceeding against M/s BCL which is a sister concern of the petitioner, it is submitted that one time settlement of all the dues has been reached with Central Bank of India and at present there is no outstanding pending against M/s BCL. The DRT proceeding has come to an end by an order dtd. 30.06.2009 passed by DRT, Mumbai.

The petitioner has further submitted that the applicant has complied with all the legal requirement for grant of an Intra-State trading license, such as net-worth etc. The legal proceeding pending against it has no bearing on the grant of Intra-State trading license.

Observations, Comments and Directions of the Commission

15. Now, considering the views of the objectors, GRIDCO, OPTCL and Govt. of Orissa and the petitioner we are inclined to analyze the financial impact of issuance of intra-State trading license to GEL first.

GRIDCO in Para 12 of the filing made in 21.08.2010 pointed out that the annual revenue gap during 2008-09, 2009-10 and likely gap in the financial year 2010-11 would be of the order of Rs.645 crore, Rs.1979 crore and Rs.1010 crore respectively. This will have serious consequence on the finances of GRIDCO and GRIDCO most

likely would default in serving of loans including interest resulting in triggering of escrow account and State guarantee. It will also lead to recovery from Central Plan Assistance to State Govt. for default in Rs.1102 crore bond issued by Govt. in favour of NTPC. Also bills of the generator will be defaulted which would have impact on the consumer of the State frustrating the purpose of Section 61 of the Act, 2003. GRIDCO further submitted that grant of trading license to GEL would cut into power availability to GRIDCO for trading. Consequently GRIDCO will not be able to bridge the gap in its ARR left by the Commission.

The Commission reviewed the audited balance sheet and profit and loss accounts of GRIDCO and find that as a result of trading activities, GRIDCO was able to wipeout the accumulated loss from Rs.1787.83 crore as on 31.03.2003 to Rs.101.24 cr. as on 31.03.2009. From the year 2006-07 onwards the Commission had been all along leaving the Regulatory Gap to be bridged through export earning, UI and other miscellaneous revenue. This became a reality and after the end of the year and GRIDCO managed to post surplus after making up of the gap approved by the Commission. This is evident from the table given below:

(Rs. in Crore)			
Year	Approved Gap including loan repayment	Surplus	Source
2006-07	(-)504.52	(+) 236.88	Audited Account
2007-08	(-) 464.86	(+) 566.05	Audited Account
2008-09	(-) 410.05	(+) 98.14	Audited Account
2009-10	(-) 882.85	(-) 1979.42	Performance Review Report and filing through affidavit.
2010-11	(-) 806.16	(-) 1010.00	Projected by GRIDCO through filing.

The surplus scenario upto 2008-09 has suddenly changed to that of deficit one from 2009-10 onwards because of hydrology failure. Consequently GRIDCO has to procure high cost power to meet the domestic demand. GRIDCO has also apprehended same scenario to continue during FY 2010-11 for which they have sought for financial comfort from the State. Govt. But at the same time GRIDCO is very hopeful of a surplus scenario in coming years due to availability of power from upcoming IPPs which would help in trading and wiping out deficit in its balance sheet. The National Electricity Policy notified by Central Govt. under section 3 of the Act, emphasizing the need for development of competitive power markets, provides as under vide para-5.7.1.

“5.7.1 To promote market development, a part of new generating capacities, say 15% may be sold outside long-term PPAs. As the power markets develop, it would be

feasible to finance projects with competitive generation costs outside the long-term power purchase agreement framework. In the coming years, a significant portion of the installed capacity of new generating stations could participate in competitive power markets. This will increase the depth of the power markets and provide alternatives for both generators and licensees/consumers and in long run would lead to reduction in tariff.”

In the light of the above policy provisions, GRIDCO's contention to remain as a sole trading licensee in the State for some more time is against the spirit of the Electricity Act, 2003 and the National Electricity Policy. It is a fact that due to its historical legacy, the GRIDCO is burdened with heavy past liabilities and the Commission has carefully evolved a Scheme through its tariff orders in order to give adequate relief to GRIDCO. But this cannot be considered as a proper and sufficient ground for refusal of grant of intra-State trading license in the State, if otherwise eligible. The provisions of Electricity Act, 2003, which is in force since 10th June, 2003, has to be followed in letter & spirit. In the present scenario, GRIDCO has to cope up and act according to the changing circumstances and it has to be more efficient and dynamic to face the future challenges. Considering the volume of transaction carried out by GRIDCO, we are of the view, that grant of a intra-State trading license upto 50 MU per month will not destabilize the system in any manner. Rather the introduction of competition will boost the power generation capacity of the State which will be highly beneficial to the sector as a whole. Hence objection of GRIDCO in the name of public interest is not worthy of consideration.

16. While appreciating the present financial difficulties being faced by GRIDCO, at the same time the Commission is duty bound to act so as to ensure compliance of the provisions of Statute u/S.66 of the Electricity Act, 2003 which imposes a high responsibility on the Commission for the development of the market (including trading) in the power sector. In promoting market development, a part of new generating capacity may be sold outside the long term PPAs. As the power market develops, it would be feasible to encourage projects with competitive generation cost outside the long term power purchase framework. In the coming years, a significant portion of the installed capacity of new generating stations would participate in competitive power market which is upcoming. This will increase the depth of the power markets and provide alternative for both generators and licensees/consumers and in long run would lead to reduction in tariff.
17. Till today in Orissa we have been continuing with a single buyer model of power purchase due to our past legacy, which in our opinion is not conducive for

development of the competition in this sector. An additional player in this sector will definitely act as a booster for the development of the power market. But this has to be in a gradual manner with sufficient checks and balances in order to safeguard the interest of the consumers of the State.

18. Opening up the power market for multiple players has its own merit. The market forces will bring in competition starting from the generation to retail supply. It will act as an indirect incentive to the generators to ramp up their generation to cash in the open market. GRIDCO and other trading licensees will definitely remain alert to take the advantage of UI, harnessing of surplus power from CGPs, secondary energy from hydro stations and renewable energy sources etc. The competition in generation would give a good price signal to the traders and also to GRIDCO. The resultant benefit of all the transactions will undoubtedly be availed by the common consumer of the State.
19. It is a fact that in anticipation of the profit to be earned by GRIDCO through trading of surplus power, the Commission have all along been leaving a gap in the Annual Revenue Requirement (ARR) of GRIDCO and consequently fixing the BSP rate at a level lower than what it should have been, if the gap should not have been left in the ARR.
20. We fully appreciate the concern of GRIDCO in realizing the gap in the ARR and the efforts it needs to make to bridge the gap through UI and trading. At the same time, the Commission cannot afford to loose sight of the mandate of the Electricity Act, 2003 which among other things envisages promoting competition in the electricity sector. Merely because GRIDCO all along have been taking the benefit of monopoly trading of surplus power it cannot be said to confer the said status to GRIDCO in perpetuity to the exclusion of all other trading enterprises in the field. This would amount to negate the spirit of competition which is one of the hallmark of the objectives of the Electricity Act, 2003.

In the changing scenario and fast development of power market in the Country, it will be quite inappropriate to agree with the contention of the GRIDCO that it will continue to remain the sole trading licensee in the state. It is also against the spirit of the Electricity Act, 2003, and National Electricity Policy. Due to historical legacy, no doubt certain past liabilities have been burdened upon GRIDCO, but this can not be a proper and sufficient ground for not granting any intra-state trading licence in the State and open the market to interested parties. The contentions of GRIDCO are also

not coming under the ambit of Section 52 of the Electricity Act, 2003. The Electricity Act, 2003 envisages an important role for electricity traders and the development of a competitive market in the sector. Sec. 66 of the Act expressly mandates the Commission for development of the market in power.

21. In this context, it may be noted that even though GRIDCO has availed power from the captive generations in order to meet the unforeseen power deficit situation in the State during 2009-10, GRIDCO has yet to pay power supply bills to most of the captive generators since December, 2009 to March, 2010 for about Rs.150 crore, despite the Commission's order in case No.49/2010 dated 31.5.2010 which has categorically stated that the CGPs have to be paid at prices determined by the Commission irrespective of the pattern of captive consumption. As in any other sources of supply of power, supply from CGPs was one of the sources and the upper limit of the rate was fixed by the Commission for facilitating a commercial transaction between the CGPs and GRIDCO. If at a particular time or during a year, if a particular CGP has utilized less than 51% of their generation it would not materially affect the rate at which the supply of surplus power to GRIDCO by CGPs is effected and the rate would be as per the rate of bi-lateral agreement already entered into or would be entered into (Para-18 of the order dtd. 31.05.2010 in Case No. 49/2010).
22. Being the sole buyer in the State, GRIDCO continues to dictate terms, as a result there is a disincentive on the part of CGPs and other generators to maximize their generation and supply to the grid to meet the power deficit situation in the State as well as for trading of the surplus or bottled up power if any, after meeting the demand of the State consumers. If there would have been other traders/players in the sectors for competition, GRIDCO would have been more prompt, careful and prudent to restructure and realign its business strategy. When the State and the Country as a whole are facing a power deficit situation, there is urgent need not only for addition of capacity but also to maximize the generation from the existing sources including the captive generators which have lot of potential to generate additional power. This is evident from the fact that when the CGPs and Co-generating plants had supplied 794.15 MU in 2006-07 and 736.05 MU in 2007-08 to GRIDCO, they increased to 1201.93 MU in 2008-09 and 2967.09 MU in 2009-10 after CGP pricing policy was announced on 14.03.2008 which was subsequently reviewed on 28.02.2009, 30.06.2009 and 28.10.2009.

23. Though the State is facing power deficit situation from 2008-09 because of the short-fall in rainfall, the situation is likely to improve within the near future, in view of the large number of Independent Power Producers (IPPs) likely to generate additional thermal power in the State. The State have so far signed MOU with 27 IPPs with an installed capacity of 32420 MW from which Orissa's share is around 5636.90 MW as per the terms and condition of the MoUs signed. Further, OPGC have decided to start the 3rd and 4th Unit of Ib thermal plant with capacity of 1320 MW (2x660) MW out of which State would get 660 MW sometime in January, 2012/2013. Besides this, OHPC and OMC have formed a joint venture company namely Orissa Thermal Power Corporation Ltd. (OTPCL) to establish thermal power plants whose capacity would be 2000 MW out of which Orissa would get 1000 MW by about the year 2014-15. Govt. of India have given in-principle approval to set up an UMPP of 4000 MW in Sundargarh district. The Central Govt. is also exploring possibilities of setting up two other Coastal Ultra Mega Power Projects in the state. The quantum of trading of surplus power by GRIDCO as at present, varies from 1818.86 MU in 2006-07, 690.29 MU in 2007-08, 34.87 MU in 2008-09 and 0.90 MU in 2009-10. This does not include net energy sold through UI ranging from 1190.10 MU in 2006-07 to 2018.77 MU in 2007-08. There was net purchase of 18.52 MU in 2008-09 and 948.89 MU in 2009-10 through UI. When some of the IPPs, OPGC & OTPCL start generation and UMPPs come into operation, there would be substantial surplus of power in the State for trading. The proposed trading of power for 600 MU per annum by the applicant M/s Global Energy Ltd. inside the State would not affect the interest of GRIDCO in any manner when the availability of surplus power for trading would be of such a substantial amount. Rather the entry of another trading licensee for trading within the State would ensure better competition in the power sector both for generators as well as for traders. Availability of power through competitive pricing would benefit the distribution companies and ultimately the consumers of the state. Further, the applicant petitioner is to trade power up to 600 MU per annum only inside the state and in that case the sale is to be effected to buyers and consumers within the State. Such intra-state trading will no way affect the interests of GRIDCO.
24. Coming to the issue of protecting the interest of consumers as mandated in the objective of Electricity Act, 2003, Commission has all along been accepting the gap in ARR of GRIDCO and making provisions for bridging the same in subsequent years. We are of the considered view that any perceptible adverse financial impact on GRIDCO arising on account of operation of an Intra-State trading license shall be

recognized when need arises, as in the past. The apprehension of some objectors and State Govt. regarding the export of power outside the State through DISCOMs is unfounded as all of the transaction shall be through the SLDC. In case in subsequent days of granting Intra-State trading license it is found from the State Energy Account of SLDC that DISCOMs are indulging in Inter-State trading after purchasing power from Intra-State trader then we as Regulators would not be sitting back but taking definite steps to stop such trading as well as such other penal measures as would lead to a rectification of the situation.

25. Hon'ble ATE in Appeal No. 6/2007 dtd. 7.6.2007 has stated that the question whether or not grant of Inter-State trading license to the appellant is likely to adversely affect the interest of electricity sector or the consumers, as it is involved in civil and criminal proceedings, is basically for the Regulatory Commission to determine. Only involvement of the Director of the applicant company or its sister concern is not enough for disqualifying the applicant for an Intra-state trading license. Only conviction in the criminal /civil proceedings may be taken as a ground that the grant of license to an applicant involved in legal /criminal proceeding may adversely affect the interest of electricity industry in the State. In view of the position regarding various criminal, civil and tax proceeding etc. explained in para 14, we are of the firm opinion that any criminal, civil and tax proceeding pending against the petitioner or its sister concern has no relevance to the granting of a license to the petitioner under Section 14 of Electricity Act, 2003 read with Regulations 27 and 28 of OERC (Conduction Business) Regulations 2004 is concerned.
26. Regarding creditworthiness of the trader, the Commission have clearly specified the financial requirement to qualify as an electricity trader in condition 28(2) of (Conduct of Business) Regulation, 2004. The relevant para is quoted below:

28. (2) *The applicant shall maintain at all times the capital adequacy and net worth sufficient to cover the maximum trading volume over an average settlement period of 30 days (one month) worth of credit for the applicant as an electricity trader subject to the following minimum requirements:*

*(a) Trade up to 5 Million Units (MU) per month
Net Worth Requirement = 0.25 crore*

*(b) Trade greater than 5 Million Units (MU) and up to 10 MU per month,
Net Worth Requirement = Rs.0.5 crore*

*(c) Trade greater than 10 MU and up to 20 MU per month,
Net Worth Requirement = Rs.1.0 crore*

*(d) Trade greater than 20 MU and up to 30 MU per month,
Net Worth Requirement = Rs.1.25 crore*

- (e) Trade greater than 30 MU and up to 40 MU per month,
Net Worth Requirement = Rs.1.5 crore
- (f) Trade greater than 40MU and up to 50 MU per month,
Net Worth Requirement = Rs.1.75 crore
- (g) For trade greater than 50 MU per month, the trader shall maintain,
Net Worth Requirement of 1.75 crore and additional Rs.0.25 crore for each 10 MU in addition to 50 MU.

To satisfy the condition, the audited Balance Sheet for the year ending 31.03.2005 to 31.03.2008 and provisional balance sheet as on 31.03.2009 of the petitioner were scrutinized. The following table reveals the networth and capital adequacy of GEL.

Position as on (Rs. in Cr)					
Particulars	31.03.2009	31.03.2008	31.03.2007	31.03.2006	31.03.2005
Networth	62.03	37.98	27.14	21.62	14.86
Total loan	11.01	8.18	4.31	1.23	1.35
Debt / networth	0.18	0.22	0.16	0.057	0.091

It is observed that the net-worth of the company is much higher compared to the debt of GEL. Also the petitioner satisfies the condition of net-worth requirement as specified in condition 28(2) of (Conduct of Business) Regulation, 2004. The capital adequacy as seen from the above table is also satisfactory since the debt / networth ratio is less than unity. Hence the Commission is satisfied with creditworthiness of the petitioner as a prospective Intra-State trading licensee.

27. As per rule 9 of the Electricity Rules, 2005, a license issued by the Central Commission under Section 14 read with clause (e) of sub-section (1) of section 79 of the Act to an electricity trader for Inter-State Operations shall also entitle such electricity trader to undertake purchase of electricity from a seller in a State and resell such electricity to a buyer in the same State, without the need to take a separate license for intra-State trading from the State Commission of such State.

The applicant petitioner had filed application for Intra State trading license in Orissa on 24.02.2007. But in the meantime the said applicant has been granted an Inter-state trading license category F by CERC. In view of the specific provision under Rule 9 of the Electricity Rules, 2005 though there is no specific legal compulsion for issuing a separate license for intra-state trading of power in Orissa, however, because of the peculiar situation of power sector in the State where the single buyer model still exists, we have come to the conclusion to issue specifically an intra-state trading license under Regulation 31 read with Appendix 4 C of the OERC (Conduct of Business) Regulations, 2004 for trade power upto 600 MU per annum inside Odisha.

28. One of the remarkable features of the EA 2003 is that generation of electricity has been de licensed. Under Sec.7 of the Act, any generating company may establish, operate and maintain a generating station without the need for obtaining a license as long as it complies with technical standards relating to connectivity with the grid. While generation has thus been liberalized, tariff continues to be regulated through Section 62 which empowers the appropriate Commission to determine tariff for supply of electricity by a generating company to a distribution licensee, the tariff for transmission of electricity and for retail sale of electricity. In other words, power to fix tariff at every level is conferred upon the appropriate Commission. Nevertheless the trading of electricity or in other words, the purchase of electricity for resale thereof, subject to such trading margins as may be fixed by the appropriate Commission is also one of the main features of the EA 2003. Similarly, the Tariff Policy lays down how a distribution licensee must procure power by a process of transparent bidding and read with Section 63 of Act it is apparent that the regulating powers of the Commission is circumscribed and limited in the matter of determination of tariff where such tariff has been determined through open and transparent bidding.
29. Introducing competition, therefore, in different segments of the electricity industry is one of the key features of the EA 2003. Competition will lead to significant benefits to the consumers through reduction in costs and efficiency of operation. It also facilitates price to be determined competitively. Trading no doubt is one of the key elements of supply and competition. That power should be procured competitively, is the basic objective and if that be so then it implies that there must necessarily be more than one player or trader in the electricity market and therefore not limited to a single player such as GRIDCO and its monopoly of the market. The general policy in the context, should ensure economy in costs, reasonable prices and enough competition to achieve this. The grant of an additional license for trading in electricity will, therefore, not vitiate but promote competition, market development and optimum arms length prices.
30. We are thus indisputably of the view that GEL's application for a license to trade in electricity upto 50 MUs per month or 600 MUs per annum must be acceded to. Accordingly, the Commission directs that the applicant be issued the license for intra-state trading of power upto 50 MUs per month or 600 MUs per annum within the State of Orissa. A copy of this order be forwarded to GoO, OPTCL/GRIDCO, all DISCOMs, SLDC and a copy be posted on the Commission's website. The grant of

the license shall be subject to the applicant complying with all the provisions of the EA 2003 the rules framed by the appropriate Government and regulators as specified by the Commission from time to time in all respects. The applicant – GEL shall abide by such trading margins as the Commission may determine from time to time under Section 86(1)(j) of the EA 2003, for intra-state trading transaction in the State of Orissa. The applicant – GEL shall not engage in any trading transactions which would be detrimental to the interests of the electricity consumers in the State of Orissa.

31. Therefore, we hereby allow the application of the petitioner for the grant of Intra-State trading license to trade upto 50 MU per month inside the State of Orissa (600 MU per annum).
32. Accordingly the matter is disposed of.

Sd/-

(B.K.Misra)
Member

Sd/-

(K.C.Badu)
Member

Sd/-

(B.K.Das)
Chairperson