

# **ORISSA ELECTRICITY REGULATORY COMMISSION**

**BIDYUT NIYAMAK BHAVAN  
UNIT-VIII, BHUBANESWAR-751 012**

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

## **Case No.10/2008**

M/s. OCL India Ltd.

-Vrs.-

Sr. GM, SLDC & CEO, WESCO

.... **Petitioner**

.... **Respondents**

**In the matter of :** Open Access of power by M/s. OCL India Ltd. from OISL & removal of difficulties in accordance with Reg.19 of the OERC (Terms & Conditions for Open Access) Reg. , 2005.

**For the petitioner :** Mr. R.P. Mohapatra authorized representative

**For the Respondent :** Mr. Debasis Das, DGM (CRA), Mr. G.C. Mohanty, DGM (Com.), Mr. Sanjit Mohanty, Sr. Advocate, Mr. Satyajit Mohanty for WESCO and Mr. B.N. Mahapatra, Sr. G.M. (PS), SLDC, OPTCL

**Date of Hearing: 30.10.2008**

**Date of Order: 01.12.2008**

## **ORDER**

This is a case regarding implementation of OERC (Terms and Conditions for Open Access) Regulations, 2005 and Electricity Rule, 2005 notified on GoI dtd. 6<sup>th</sup> June 2005 and matter connected therewith and incidental thereto, in the context of the Petitioner's claim to Open Access for drawing power from its erstwhile captive power plant.

1. The fact of the case is as follows:

OCL India Ltd. is a large industrial organization and its units are located in an around Rajgangpur town in the district of Sundargarh for manufacturing cements, refractory and sponge iron etc. The OCL India Ltd. had executed an agreement on 31.03.2005 with

WESCO for drawal of power at 132 kV with a contract demand of 24.9 MVA which was subsequently amended for 29.9 MVA on 01.04.2006 for use of all the units including sponge iron and mini steel plant. There was a power plant of capacity 14 MW attached to the iron and steel unit which was captive to OCL India Ltd. A dedicated 11 KV line had been drawn by OCL at its own cost from the 11 KV bus bar of their captive power plant upto the 7.5 MVA, 11/3.3 KV transformer which is connected to the 3.3 bus bar of the main 132/3.3 KV substation of OCL. This sub station serves as drawal point of OCL from OPTCL system for its power requirement. The power generated by the Captive Power Plant was being utilized by Iron and Steel units and surplus power was being utilized in the other manufacturing activities of the OCL India Ltd.

2. The Iron and Steel unit was de-merged from OCL India Ltd. and named as OCL Iron & Steel Ltd. (hereinafter referred as OISL) through a Scheme, which was approved by the Hon'ble High Court of Orissa on 27.11.2007 in COPET No. 27 of 2007 under S.394 of the Companies Act, 1956. That consequent upon the above de-merger the shareholding of OCL India Ltd. in OISL would be less than 26% on or after 06.03.2008. The OISL is also consuming more than 51% of the power generated by that Power Plant. As a result the 14 MW Power plant of OISL remained no longer captive to OCL India Ltd; instead it has become Captive to OISL in accordance with the Electricity Rule, 2005 notified by GoI dtd. 8<sup>th</sup> June 2005. Let it be noted that OCL India Ltd. and OISL became two independent legal entities and by virtue of the Hon'ble High Court order dtd.27.11.2007 in Form No.42 of the companies Court Rules 1959, para 2 and of the approved scheme of Arrangement Part-II, Cl.(1)(i) and Part III, Cls.4.1 and 4.4, the aforesaid CGP, the dedicated 11 KV line and 7.5 MVA, 11/3.3 KV transformer stood transferred to and became vested in OISL. OISL is now the owner of the said CGP, the dedicated 11 KV line and the transformer, and OISL is not a party before us. OCL is now in the position of a consumer seeking supply of power from OISL through open access.
3. Now OCL intends, to avail the surplus power of CPP of OISL for use in its units after de-merger through short-term open access in accordance with Clause 4 (2) and 11(2) of the OERC (Terms and Conditions for Open Access) Regulations, 2005. The Open Access is required for a power of more than 5MW. The power supply from the CPP of OISL will be availed of by OCL India Ltd. through the existing dedicated 11KV line between OISL and OCL, now belonging to OISL
4. In the petition, the petitioner has prayed as follows: -
  - (a) that the commencement date for OCL India Limited to seek short term open access to avail power supply of electricity from a generating company/captive generation plant be determined as on or after 6.3.2008
  - (b) that the State Load Despatch Centre (SLDC), Bhubaneswar and the Western Electricity Supply Company of Orissa Limited (WESCO), the distribution licensee be directed to allow open access pending determination by the Commission of the surcharge, if any, payable under sub-section 2 of section 42 of the Electricity Act, 2003.

- (c) that the OCL may be exempted from payment of surcharge, if any, payable to WESCO, the Distribution Licensee towards surcharge in accordance with clause(4)2 of the OERC(Terms & Conditions for Open Access).Regulation, 2005, and under sub section 2 of section 42 of the Electricity Act,2003.
  - (d) pass such other order as may be required.
5. During hearing now OCL India Ltd. prays that:-
- (a) Date for commencement for short term open access be fixed on 30.03.2008 when share was actually transferred to OISL under Clause 19 of the OERC (Terms and Conditions for Open Access) Regulations, 2005.
  - (b) OCL may be waived from any surcharge payable to WESCO as there is no physical change except mere change in the status of the de-merged sponge iron unit.
6. The case came up before this Commission on 30.10.2008. Mr. Sanjit Mohanty, Sr. Advocate appearing for respondent WESCO submitted as follows:
- (a) The application of the OCL is not maintainable. The Clause 7 of the Regulation 2005 provides that for short term open access transaction the nodal agency for receiving and processing the application shall be the Load Despatch Centre (SLDC). In the instant case OCL without making any application to SLDC which is the nodal agency under Clause 7 of the Regulation 2005 has approached this Hon'ble Commission by taking recourse to Clause 19 of the Regulation 2005 which is not permissible under law.
  - (b) He argued that the corporate personality of de-merged units should be counted from effective date which is 01.01.2007 as per the orders of the Hon'ble High Court in COPET No. 27 of 2007 dtd. 27.11.2007.
  - (c) The learned Counsel for WESCO further submitted that Section 42 (2) first proviso of the Electricity Act, 2003 as well as Clause 13(1),(ii) of the Regulations 2005 provides for grant of open access on payment of cross subsidy surcharge. In the instant case OCL is a consumer of WESCO with contract demand of 29.9MVA and in the event of open access is allowed surcharge can not be waived in terms of above provisions.
  - (d) The learned Counsel urged that the dedicated 11KV line drawn by OCL from 11KV bus bar of captive power plant of OISL to the 7.5MVA, 11/3.3 KV transformer which is connected to the 3.3KV bus bar of the main 132/3.3KV S/s of the OCL is illegal and in violation /contravention of Clause 105 of the OERC (Conditions of Supply) Code, 2004, leading to huge financial loss to WESCO. He further submitted that from the effective date i.e. 01.01.2007, the 11KV line drawn by OCL from the 11KV bus bar of the captive power plant of the OISL to

OCL 132/3.3KV transformer is illegal and OCL will be held liable for payment of penalty.

7. Mr. R.P. Mohapatra, learned authorized representative submitted as follows:
- (a) The actual de-merger through transfer of shares took place only on 30.03.2008. The submission of the respondent that according to the Orders of the Hon'ble High Court the de-merger is to be effective from 01.01.2007 is not correct. The Hon'ble Company Judge in his Order dtd. 27.11.2007 had not passed any such Order. The Registrar (Judicial) while drawing up of necessary orders had mentioned in para 1 that certain Clauses of part of 4 of the Scheme shall be binding from 01.01.2007.
  - (b) The submission of the respondent that the application of the petitioner is not maintainable is without any basis as per Clause 19 of the OERC (Terms and Conditions for Open Access) Regulations, 2005.
  - (c) Power supply from the CGP of OISL to OCL is through a dedicated 11KV line which has been held by GRF, Rourkela is held to have been legally constructed in its Order dtd 09.10.2007 in Case No. 28 of 2007.
  - (d) There is no connection between the power drawn by OCL from OISL and from the grid. There is a reverse power relay to prevent any accidental connectivity for power flow to the grid.
  - (e) The representative of OCL prayed that the existing scheme should be allowed to continue for period of 12 months from the date of the order of the Commission after which OCL will cease to draw power through OISL.
8. Sr. General Manager (PS) appearing on behalf of SLDC before the Commission during hearing submitted that SLDC has not received any application for intra-state open access from the petitioner - M/s OCL India Ltd. As the captive generating plant of OISL is to supply power to OCL through open access which is a separate corporate personality, surcharge can not be waived for OCL as per the provision of the Act.
9. After perusing the Scheme of arrangement for de-merger of OCL & OISL as approved by the Hon'ble Orissa High Court and subsequent shareholding pattern OCL & OISL, we come to conclusion that actual shareholding of OCL in OISL has reduced below 26% w.e.f. 30.03.2008 and as such OCL cannot be treated as owner of the CGP expressly vested in OISL under the sanctioned scheme.
10. As per Section 2(47) of the Electricity Act, 2003 '**Open Access**' means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission.

11. In the instant case the 11KV line drawn between 11KV bus bar of CGP of OISL to 11/3.3 KV, 7.5 MVA transformer of main 132/3.3 KV substation of OISL is a dedicated line constructed by OCL at its own cost before de-merger. Though some times power flows through it to meet the emergency need of OISL from 132KV s/s which connected to the OPTCL system, it can be inferred that the 11KV line in question constructed by OCL at its own cost before de-merger is a part of the distribution system of WESCO through which non-discriminatory open access can be availed. After de-merger, the said 11 KV line along with the sub-station is the property of OISL.
12. As per Clause 11.2 of OERC (Terms & Conditions for Open Access) Regulations, 2005, a consumer seeking open access to the distribution and/or intra-state transmission system for availing supply of electricity from a generating company, the nodal agency shall permit open access for power requirement exceeding 5MW from 1<sup>st</sup> April, 2008. But due to de-merger of OCL now it prays that the said provision may be applicable to it w.e.f. 30.03.2008, the date of actual transfer of shares to OISL for availing power exceeding 5MW from CGP of OISL. It also submits that if open access is not allowed OCL will face severe shortage of power and at the same time power generated through waste heat recovery boiler in OISL will be of no use.
13. Clause 19 of OERC (Terms & Conditions for Open Access) Regulations, 2005 provides that in case of any difficulty arising out of giving effect to any of the provisions of these Regulations, the Commission may, by general or special order, direct the open access customers, generators, the STU, the SLDC and the licensees to take suitable action, not being inconsistent with the provisions of Electricity Act, 2003, which appears to the Commission to be necessary or expedient for the purpose of removing the difficulty. The **open access customers**, generators, the STU, the SLDC and the Licensee may make an application to the Commission and seek suitable order to remove any difficulty that may arise in any implementation of these Regulations.
14. In our opinion OCL is fully justified seeking to avail power as an open access customer. If open access is not allowed there will be severe shortage of power in OCL causing production loss and association problems and at the same time there will be wastage of power in OISL in power deficit scenario in Orissa. In addition to this, the Commission also encourages power generation through energy efficient and environment friendly waste heat recovery boilers which is the case in OISL. Considering all the above facts we direct SLDC, the nodal agency to treat OCL as an open access customer for which an application has to be filed by OCL within 15 days from the date of this order for continued supply of power from OISL. OCL is liable to pay applicable open access charges. We relaxation the provisions of open access regulation of the Commission for the past period considering the peculiar situation faced in the instant case. OCL shall be treated as an open access customer since 30.03.2008. Incidence of the open access charges will be on OCL as an open access consumer and OCL cannot claim any benefit on account of the dedicated 11 KV line, transformer etc. which belong to its supplier (OISL). Such charges are of the nature of industrial pricing and tariff.
15. Section 42(2) of the Electricity Act, 2003 xxxxxx ‘provides that such open access may be allowed before the cross subsidies are eliminated on payment of a surcharge in addition

to the charges for wheeling as may be determined by the State Commission'. The plain reading of this sub-section would show that a consumer is liable to pay the cross subsidy surcharge in addition to other charges determined by the State Commission if he avails open access. Hon'ble ATE in Appeal No. 28 of 2005 dtd. 29.03.2006 in paragraph 43 stated as under:

*“xxxx As regards fifth point, liability to pay cross subsidy, which cross subsidy is part of the tariff as notified by the Commission to all consumers within the area of distribution of second respondent distribution licensee so long as the appellant seeking for stand by supply of power, it is liable to pay cross subsidy surcharge and there is no escape. The cross subsidy surcharge, which is an element which has gone into the fixation of tariff, would be compulsory in terms of statutory provision.”*

16. Since OCL is treated as open access customer it has to pay surcharge as per Clause 4(2) of OERC (Determination of Open Access Charges) Regulations, 2006 which states that 'surcharge to be levied on open access customers under Se. 42(2) of the Act, shall be determined by the Commission keeping in view the loss of cross-subsidy from these customers opting to take supply from a person other than the incumbent distribution licensee'.
17. Accordingly this matter is disposed of.

Sd/-  
**(K.C. Badu)**  
**Member**

Sd/-  
**(S.K. Jena)**  
**Member**

Sd/-  
**(B.K. Das)**  
**Chairperson**