

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

Present : Shri S. P. Nanda, Chairperson
Shri B.K.Misra, Member
Shri S.P.Swain, Member

Case No.53/2008

M/s. WESCO	Petitioner
Vrs.		
M/s. OPTCL & another	Respondents

In the matter of: Submission of Petition against Transmission Charges levied by M/s OPTCL

AND

Case No. 53/2012

M/s. NESCO	Petitioner
Vrs.		
M/s. OPTCL & another	Respondents

In the matter of: Application for refund of excess transmission charges paid by NESCO to OPTCL from 5/2008 to 3/2012 evacuated through its 33 KV Distribution System.

For the Petitioner: Shri. K.C. Nanda, DGM (Fin), WESCO, Shri Manas Kumar Das, GM (PT),CSO, WESCO, NESCO & SOUTHCO & Shri S. D. Bhanja G.M(RA,RO), NESCO.

For the Respondents: Shri N.C, Panigrahi, Sr. Advocate, Shri L. N. Mohapatra, Shri S. R. Panigrahi, Advocate on behalf of OPTCL, Shri Ranjit Das, Sr. GM (PP), GRIDCO.

Date of Hearing: 10.07.2012

Date of Award/Order: 26.09.2012

AWARD/ORDER

1. In the present case the Petitioner WESCO submitted that the Commission had been approving Bulk Supply Tariff and Transmission Charges of GRIDCO combinedly till the end of financial year 2005-06. When the transmission activities got separated from GRIDCO separate transmission charges is being approved by the Commission for OPTCL which is the State Transmission utility since 2006-07. OPTCL charges the

users of its transmission network which is at the voltage level of 132 KV and above as per the tariff approved by the Commission.

2. A part of the power generated from Chipilima and Burla Power House of OHPC is directly transmitted through 33 KV and 11 KV network owned by WESCO to the consumers. Despite non-involvement of OPTCL network in this type of transaction transmission charges is being levied on WESCO by OPTCL. Though the Petitioner WESCO has brought this anomaly to the notice of OPTCL several times it has been reluctant to accept the said claim of WESCO.
3. In another case M/s SMC Ltd. an EHT consumer of WESCO has been selling its surplus power of CGP to GRIDCO through 33 KV network of WESCO since 1st April, 2008 but GRIDCO is not paying wheeling Charges to WESCO which is a part of Open Access Charges. Though WESCO has claimed these charges to GRIDCO it has failed to accept the same on the plea that OPTCL does not charge transmission charge to GRIDCO for evacuation of power through such type of transaction. At one end OPTCL levies transmission charges on WESCO at the other end WESCO does not get the wheeling charges from GRIDCO. Therefore, WESCO is being penalized in both the ways.
4.
 - i) The distribution system of WESCO cannot be treated as deemed transmission system of STU for the purpose of claiming transmission charges by OPTCL, for evacuation and/or sale of power by GRIDCO under Single Buyer Model purchasing power from generators including CGPs connected at 33 KV & 11KV distribution networks of WESCO. WESCO in its submission also pointed out that in Case No. 34/2010 and 82/2009, the Commission held that WESCO is not liable to pay transmission charges for the quantum of power evacuated through 33 KV network.
 - ii) WESCO submitted that it is not liable to pay any transmission charge of OPTCL rather it is entitled to get wheeling charges from GRIDCO or from the Generators (including CGP) connected at 33KV and 11 KV distribution network of WESCO for selling power to GRIDCO.

5. The respondent OPTCL in its submission stated as follows:
- i) The total energy to be procured by GRIDCO is deemed to be transmitted in OPTCL's transmission system for delivery to Distribution Companies including WESCO. Further, WESCO is liable to pay transmission charges to OPTCL because of the reason that there is also reverse flow of power at the time of contingency.
 - ii) Transmission Charges of OPTCL is designed on the basis postage stamp method and not based upon line wise. So, transmission charges are raised upon the power traded by GRIDCO irrespective of any voltage level. Although 33/11 KV networks are not owned by OPTCL/GRIDCO, the power evacuated through these networks by the Generators are purchased by GRIDCO and hence, OPTCL raises transmission charges on the basis of trading units as deemed to be transmitted in OPTCL Network.
 - iii) The petitioner has neither raised the issue before OPTCL nor with the Commission after receipt of the monthly Transmission Charges Bill stating from April 2006. The issue of alleged wrong Transmission Charges billing has been objected after about two and half years. The monthly energy drawal figures of WESCO don't reflect drawal during each 15 minutes time block in Chipilima I and II feeder. Therefore, any deficit in generation or nil generation in Chipilima Power House might have been made up of drawal through OPTCL network. In that event the petitioner has to pay transmission charges to OPTCL.
 - iv) Similarly, in the integrated system, the surplus power injected by M/s SMC Power through WESCO's 33 KV network cannot be viewed in isolation of OPTCL's network and technically also not possible. In case the CGP of M/s SMC fails to deliver power (whatever may be the reason), an equal quantum of power has to be drawn through OPTCLs network to meet the demand of WESCO for which OPTCL needs to have adequate spare capacity to transmit the additional power. As long as CGP of M/s SMC continues delivering power. OPTCL's spare capacity remains stranded for which OPTCL earns no revenue.

6. The representative of GRIDCO stated that GRIDCO being the holder of Bulk Supplier licensee is obliged to sale power on priority basis to DISCOMs up to their full requirement as per the Agreements under the ‘Single Buyer Model’ of power procurement for DISCOMs in Odisha. The petitioner was in fact being supplied power at the 33 KV feeder gantry of M/s SMC Power Ltd., and the metering is done at that point for BSP billing for power supplied to WESCO.
7. After hearing from the parties, the Commission vide its interim order dated 19.06.2009 had decided that the matter will be disposed through arbitration by the Commission u/s 158, 86, (1) (f) of the Electricity Act, 2003 read with Chapter-III of the OERC (Conduct of Business) Regulation, 2004 and both the petitioner and respondents were directed to file their “draft issue for settlement” and thereafter the Commission will proceed further after settlement of such issues for arbitration. As per the direction of the Commission, OPTCL & WESCO have submitted draft issues on 31.05.2011 & 18.07.2011 respectively and GRIDCO has also filed its comments on issues filed by WESCO on dated 24.01.2012.
8. In the meantime NESCO filed a petition on 03.05.2012 with the following submission which was registered as case No. 53/2012.
 - i) That three consumers of NESCO having CGPs such as M/s. Orissa Sponge Iron Ltd., M/s. Dinabandhu Steels and M/s. Patnaik Steel and alloy are availing power supply from NESCO through 33 KV line and at the same time they are selling their CGP Power to the common pool of GRIDCO through the same 33 KV line which belongs to NESCO. The Petitioner in this case NESCO alleges that M/s. OPTCL is raising transmission charges on the power evacuated / sold by the above mentioned three CGPs (under NESCO Distribution network) to GRIDCO without any justification even though the injection point are on the NESCO distribution line and the power is utilized by NESCO through its own network. The distribution system of NESCO cannot be treated as deemed transmission system of OPTCL for the purpose of claiming transmission charges by OPTCL for evacuating power through 33 KV network of NESCO.
 - ii) NESCO has intimated OPTCL several times about the issue and requested to adjust the excess payments in the subsequent bills. But no steps have been

taken so far by the OPTCL for refund / adjustment of excess payment amounts in favor of NESCO. In reply to NESCO, OPTCL in their letter dt 16.03.2012 stated that similar issues have already been raised by WESCO at OERC and the matter is sub-judice with the Commission in Case No. 53 of 2008. Therefore, refund/adjustment of any amount is not possible at this juncture. NESCO further submitted that as per transmission tariff order, OPTCL is authorized to levy transmission charges for transmission of power through 400/220/132 KV lines of OPTCL's EHT transmission system. So, it is not at all required to raise the issue during ARR proceeding. The Petitioner prayed before the Commission as the matter is similar in nature with Case No. 53/2008 (WESCO vrs. OPTCL) they may be impleaded in the same case.

9. In response to NESCO's submission OPTCL submitted as follows:
 - i) Since 2008 onwards NESCO has never raised any dispute in this connection in ARR proceedings before the Commission and at this stage of the prayer of NESCO for refund is allowed then it would amount to modification/ reopening of the tariff orders already passed, which are not permissible under law.
 - ii) The dispute relates to claim of refund of money for which the period of limitation is three years from the date of cause of action as provided in Article-113 of the limitation Act, 1963 & the present case has been filed in May 2012 & the claim being from the year 2008, the claim is thus barred by time and the application is liable to be rejected.
 - iii) Basing on the above submission, OPTCL prayed to the Commission that the submission of WESCO for seeking appropriate order to adjust the excess amount already levied and not to charge transmission charges thereafter for power wheeled in their feeder may be rejected.
10. The commission decided that since, the issues in the both the cases (Case No.53/2008 and Case No. 53/2012) are similar in nature and the common point at to the adjudicated, both the cases are taken of together.
11. Heard the parties at length in both the cases & submission made by the parties are taken into record. Based on the submissions made by the petitioner – WESCO & NESCO and all the respondents, the following major issues need to be addressed.

ISSUES:

12. *Whether the Commission has jurisdiction to adjudicate the dispute?*

Sr. Advocate on behalf of OPTCL stated that the petitioner has not mentioned in their petition the relevant provision of law under which the same has been filed. As both the parties are licensees, the petition filed by WESCO may be arbitrable u/s 86 (f) of the Electricity Act, 2003 and consequently the procedure laid down in Chapter-III of OERC (Conduct of Business) Regulations, 2004 has to be followed. Considering the submission made by the parties, the Commission in their order dated 19.06.2009 had decided the matter will be disposed through arbitration by the Commission under Section 158, 86 (1) (f) of the Electricity Act, 2003 read with chapter-III of OERC (Conduct of Business Regulation, 2004)

13. *Whether transmission charges claimed by OPTCL on power injected by generators including CGPs at 33 KV and 11 KV distribution network for utilization by WESCO / NESCO is payable by them?*

WESCO and NESCO submitted that their distribution system cannot be treated as deemed transmission system of STU for the purpose of claiming transmission charges by OPTCL. The evacuation and/or sale of power at 33KV & 11KV network by GRIDCO under Single Buyer Model should not treat DISCOMs' network as Deemed Transmission System. We also noted the contention of the respondent OPTCL that being a part of the integrated system, the drawal by WESCO during a 15- minutes time block in 33 KV Chipilima Feeder-1 and II might not be fully met by generation of Chipilima P.H. during that time block due to either low generation or nil generation during that time block. Therefore, definitely the OPTCL's network was utilized during that particular time block for delivering the amount of deficit/shortfall in power requirement. Similarly, in the integrated system, the surplus power injected by CGPs through 33 KV network of WESCO & NESCO cannot be viewed in isolation of OPTCL's network and technically also that is not possible. In case the CGPs fails to deliver power (whatever may be the reason), an equal quantum of power has to be drawn through OPTCLs network to meet the demand of WESCO/NESCO for which OPTCL needs to have adequate spare capacity to transmit the additional power. As long as CGPs continue to deliver power, OPTCL's spare capacity remains stranded for which OPTCL earn no revenue.

The Commission noted that the Power transmitted to WESCO through 33 KV Gosala - Chiplima Feeder and Dhama I & II feeders at Chiplima P.H. Switchyard and through 11 KV Island feeder and Ashok Niwas feeder at Burla P.H. switchyard that are completely isolated from OPTCL transmission network. So, WESCO should not pay transmission charges to OPTCL for the power drawn through these feeders. Therefore, the power drawn by WESCO from Chipilima & Burla power house through the above feeders should be billed by GRIDCO without transmission charges.

Further, regarding supply of power by CGPs directly to 33 KV network of DISCOM's, the Commission has already clarified the matter in Para 18 & 19 of its order dt.14.08.2009 in Case No. 82/2009 which is quoted below:

“18. Whether OPTCL's revenue would be affected by supply of power by VSEL to WESCO in its 33 KV network?

Since the supply of surplus power by VSEL to WESCO is at its 33 KV network, WESCO is not required to pay transmission charges of 20.50 p/u to OPTCL. Therefore, the contention that to that extent, OPTCL's revenue may be affected if power is not purchased by GRIDCO and not supplied to DISCOM. This cannot be a reason for neither injecting the available surplus power at the 33 KV level nor should it be considered in isolation of all the revenues derived by OPTCL. For example, in 2007-08, the Commission had approved transmission charges for transmitting 16963 MU whereas OPTCL got revenue on transmission of 17945 MU. Similarly, for 2008-09, Commission had approved transmission charges of 17930 MU by OPTCL network, actually OPTCL got revenue on transmitting 19324 MU. For 2009-10, the Commission has approved transmission of 19231 MU through OPTCL network. If there is short-fall from a particular supplier, there may be excess in other cases. This would be considered in its entirety in the truing up exercise at the end of 2009-10. Further, as stated by WESCO, the said licensee is paying full fixed charges for under utilized lines and substations. Full fixed charges of all the lines and substations has already been taken in the tariff of OPTCL for 2009-10. Hence the issue of keeping adequate capacity reserved by OPTCL for additional power requirement by DISCOM (WESCO) does not arise in such a type of tariff mechanism. The power injection arrangement entered into between M/s AIPPL and WESCO which was approved by the Commission in their order dt.29.5.2009 in case No.63/09 has worked smoothly and has not caused any prejudice to OPTCL technically, financially or otherwise.

19. *The other submission of OPTCL includes the agreement between WESCO & VSEL for energy transaction executed without prior intimation to OPTCL. The system study report has not been made. VSEL is connected with 33 KV S/S of WESCO without the knowledge of OPTCL and WESCO has not mentioned the name of Grid S/S and emanating 33 KV feeder connecting to WESCO's 33/11 KV S/S through which the injection has been proposed etc. :-*

In this connection, WESCO has submitted that only after approval of the Commission for procurement of power from VSEL, action will be taken for synchronization of CGP with the existing 33 KV network observing all formalities. Earlier M/s. SMC, M/s. Mahavir Ferro Alloys and M/s. Rathi Steels have synchronized their CGP with the 33 KV network of WESCO without any problem or any difficulties.”

14. Further, while disposing the Case No-34/2010 on 02.11.2010, the Commission in Para 29 of said order has also dealt regarding payment of transmission Charge by WESCO for the power purchase from CGPs at 33KV network. The para 29 of the said order is quoted below:

“29 Regarding payment of transmission charges, the issue has been dealt with in detail in Commission's order in Case No. 82/09 while approving the procurement of power form M/s Viraj Steel and Energy Ltd. Vide para 18 of the said order, it has been observed that when the supply of the surplus power by a generator to WESCO is at 33KV network, WESCO need not pay transmission charges to OPTCL since the injection is at doorstep of the licensee. This cannot be a reason for neither injecting the available surplus power at the 33 KV level nor should it be considered in isolation of all the revenues derived by OPTCL. So far it has been observed that the MU for which OPTCL is getting transmission charges used to be more than the approved MU by the Commission. If there is short fall from a particular supplier there may be excess from another. This would be considered in its entirety in the truing up exercise at the end of the year. Therefore, the contention that, OPTCL's revenue may be affected if power is not purchased by GRIDCO and supplied to DISCOM doesn't hold good.

However, when a generator uses EHT system of OPTCL, the purchaser i.e WESCO will be required to pay transmission charges for the OPTCL network system. But since the entire drawl of Discom from OPTCL is being metered at the Discom drawl

points, the power drawn by the DISCOM will cover both power drawn from GRIDCO as well as from the CGP. Thus WESCO's purchase from CGPs at EHT network will automatically cover the transmission charges of OPTCL.

Regarding effect of the synchronisation of a generator in the OPTCL system and on the revenue of the OPTCL, we feel that CGPs like M/s Aayan Ispat and Power Ltd., M/s SMC Ltd., M/s Mahavir Ferro Alloys, M/s Rathi Steel have already executed PPA with the Discoms with power flow in the 33KV network system. So far, the power injection agreement has been implemented smoothly and has not caused any prejudice technically, financially or otherwise.”

In view of the above orders, the Commission directs that no transmission charge needs to be paid by the DISCOMs for drawal of power directly from the generator as well as CGPs at their 33 KV or 11 KV network irrespective of involvement of OPTCL network in any manner.

15. *Whether WESCO is entitled for wheeling charges on the quantum of power sold to GRIDCO by the generators/ CGPs connected to 33 KV and 11 KV network of WESCO?*

GRIDCO has submitted that Clause 1.1 of the Bulk Supply Agreement has clearly defined the ‘distribution system’ in the following manner.

*“Distribution System” means the system owned and operated by WESCO, consisting mainly of cables, service lines and overhead lines, electrical plant and meters having design voltage of 33 KV and under and used for the transportation of electrical energy from points of connection or **from Generating Sets to the point of delivery to Consumers**, and includes any electrical plant and meters for use in connection with the distribution of electrical energy”.*

GRIDCO being the holder of Bulk Supplier license is obliged to sale power on priority basis to DISCOMs up to their full requirement as per the Agreements under the ‘Single Buyer Model’ of power procurement for DISCOMs in Odisha. The DISCOMs normally avail power at OPTCL gantry and supply through 33 KV network. In case of CGPs., it is done in the same way. The drawl of CGP at 33 KV end by DISCOMs are notionally sourced from GRIDCO. The DISCOMs was in fact being supplied power at the 33 KV feeder gantry of the CGPs where the energy meter was located and the meter reading is being considered for BST billing towards

the power supplied to DISCOMs. Therefore, the contention of the petitioners that GRIDCO is using its 33 KV feeder for procuring surplus power from the CGPs is not correct, as the DISCOMs avail power from GRIDCO through CGPs/Generating stations at the connection points in the sub-stations of the above CGPs/Generators and transport the same for utilization by DISCOMs as per mutually agreed terms and conditions of the agreement. In view of the above the Commission feels that GRIDCO should not pay wheeling charges to DISCOMs for such transaction of power because the power is deemed to have been purchased for meeting the demand of DISCOMs.

16. *Whether the claim of WESCO/ NESCO is liable to be adjusted by OPTCL from its transmission charge bill against them and if so what would be the effect of such adjustment upon the ARR of OPTCL?*

It is noted that the ARR of OPTCL has been estimated and approved each year basing on certain assumption following Postage Stamp principle and the total ARR has been recovered from the DISCOMs through transmission charge fixed by the Commission. There always a possibility of deviation from the estimated figure and at the end of the year these deviation has been taken care through truing up exercise done by the Commission. So, the deviation if any, in the ARR of OPTCL shall be taken up by the Commission the subsequent truing up exercise.

Based on the above observations, the Commission directs that the petitioners and the respondents sit together to reconcile the claims made by WESCO and NESCO arising out of this Award/ Order of the Commission.

17. Accordingly, both Case Nos. 53/2008 and 53/2012 are disposed of.

Sd/-
(S. P. Swain)
Member

Sd/-
(B. K. Misra)
Member

Sd/-
(S. P. Nanda)
Chairperson