

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 Misra, Member

Case No.103/2009

In matter of : Review petition filed by M/s OPTCL under Regulation 70 of OERC
(Conduct of Business) Regulations, 2004 for review of order dtd.
26.03.2009 passed in Case No. 65/08 by the Commission.

And

In matter of : M/s. OPTCL, Janpath, Bhubaneswar **Petitioner**
-Vrs.-
CEO, NESCO, CEO, WESCO, CEO, SOUTHCO&
CEO, CESU **Respondents**

For the Petitioner: Mr. B R Misra, GM, SLDC

For the Respondents: Mr. S K Dasgupta, CEO and Mr. K V Durgaprasad, CCO
on Behalf of CESU, Mr S C Singh, GM (Com.) on behalf
of NESCO and Mr. M K Das GM (PT) on behalf of
SOUTHCO.

Date of Hearing: 31.08.2009

Date of Order: 16.11.2009

ORDER

1. OPTCL filed its ARR application for levy of Annual Fee and Operating charges for FY 2009-10 in respect of its SLDC function before the Commission on 01.12.2008 for approval. As 30.11.2008 was a holiday, the Commission admitted the aforesaid ARR application of OPTCL as per Section 4 of the Limitation Act, 1963 as well as per the Regulation 3 (4) of OERC (Conduct of Business) Regulations, 2004 and this was registered under Case No. 65/2008. The Commission conducted a public hearing in this case on 10.02.2009 and heard the applicant, objectors, Consumer Counsel and representative of State Govt. in the matter and finally disposed of the Case No. 65/2008 vide Order dtd. 20.03.2009

- approving the Annual Revenue Requirement of Rs.9.66 crore for FY 2009-10 for SLDC to be recovered through the monthly Operating Charges by SLDC from DISCOMs and other LTOA customers @ Rs.2000.00 per MW per month.
2. OPTCL filed a Review Petition before the Commission on 17.06.2009 under Regulation 70 of OERC (Conduct of Business) Regulations, 2004 for review of the order dtd. 20.03.2009 passed in Case No. 65/2008 approving ARR and Levy of Annual Fee & Operating Charges for SLDC functions for the FY 2009-10. On scrutiny of the application in the Commission, a number of defects were found for which OPTCL was asked by OERC vide Lr. No. 1697 dtd. 28.07.2009 to remove the deficiencies. After the removal of the deficiencies, the Review Application was registered as Case No. 103 of 2009. OERC vide Notice No. 1840 dtd. 18.08.2009 informed all DISCOMs i.e. NESCO, WESCO, SOUTHCO and CESU that they have been impleaded as Respondents in the aforesaid case. The DISCOMs were directed to file their reply on the Review Petition of the Petitioner on or before 28.08.2009 before the Commission duly serving a copy to the Petitioner. The Petitioner as well as the Respondents were also intimated vide aforesaid Notice that the Commission would hear the matter on 31.08.2009 at 11 AM on the question of admission.
 3. Accordingly, the matter was heard by the Commission on the question of admission on 31.08.2009. Mr. B R Misra, GM, SLDC on behalf of OPTCL submitted that certain directions mentioned in Para 201, 203, 204 and 205 of the Commission's Order dtd. 20.03.2009 were contrary to the existing provisions of law and previous orders of the Commission and therefore, the Order dtd. 20.03.2009 suffers from apparent error on face of the record and there are sufficient reasons for review of those directions in Para 201, 203, 204 and 205 of the Commission's Order dtd. 20.03.2009. The salient features of OPTCLs arguments for review of the Commission's Order dtd. 20.03.2009 in Case No. 65/2008 are as under:
 - 3.1 Mr Misra submitted that the directions of the Commission in Para 201, and 205 as well as in the Road Map were as per the following:

Directive at Para 201

SLDC is to submit the status to the Commission on the milestones mentioned in the Road Map prepared by the Commission at the end of each quarter during FY 2009-10

Directive at Para 205

OPTCL is to ensure that SLDC should be headed by a Chief Load Despatcher in the rank of Director and should have three distinct Wings for Grid Operation, Commercial and Telecommunication with other support services in the pattern of Executives and staff deployed in ERLDC.

Directives in the Road Map issued vide Commission's Lr. No. 1313 dtd. 04.08.2007 in respect of SLDC

- (a) *SLDC is to be equipped with state-of-the art communication and data acquisition capability to play the pivotal role of an independent system operator.*
- (b) *SLDC should have broadly three wings viz. Grid Operation, Commercial and Telecommunication for satisfactory operation of all SLDC functions assigned as per the Act, Codes and Regulations. SLDC should file the Organisational chart before the Commission for SLDC functions as stipulated above through OPTCL for examination and approval of the Commission.*

3.2 Mr Misra submitted that in accordance with provisions under Section 32(1) & (2) of the Act, provisions under Regulations 10.5 and 10.7 of Orissa Grid Code, the core activities of SLDC are Grid Operation and related commercial activities. Further, in the ERLDC structure, there is no provision of Executives for maintenance of communication and SCADA system. The above activities are under the CTU i.e. with PGCIL. He, therefore, submitted that the direction in Para 201 referring to the Clause (b) of the Road Map as well as the direction in Para 205 to have a separate distinct telecommunication wing at SLDC are contrary to the existing provisions of law and as such the order of the Commission suffers from an apparent error on the face of the record and is, therefore, liable for review.

3.3 Mr. Misra submitted that the directions of the Commission at Para 203 and 204 of the Order dtd. 20.03.2009 to transfer the Sub-LDCs /ALDCs with effect from 01.04.2009 to SLDC are as under which is contrary to the observation of the Commission in order dtd. 13.03.2008.

Directive at Para 203

The Commission directs OPTCL that Sub-LDCs/ALDCs at Bhubaneswar, Meramunduli, Jayanagar and Budhipadar should be transferred to the control of SLDC immediately.

Directive at Para 204

SLDC has to bear all the expenses related to Sub-LDCs/ALDCs w.e.f. 01.04.2009 and maintain records of such expenses under financial control of SLDC.

Directions in Commission's Order dtd. 13.03.2008 Chapter 9 Para 8

"Besides, Transmission Licensee has to establish Area Load Despatch Centres (ALDCs) to reduce the burden of SLDC and the distribution utilities are to establish Distribution System Operation & Control Centre (DSOCC). Therefore, as a part of overall grid management, all data need to be captured even from radial connected loads/users to facilitate control/monitoring by ALDC/DSOCC of all loads connected to the STS."

- 3.4 Mr Misra further submitted that the concept of Sub-LDCs/ALDCs in the "Unified Load Despatch & Communication Project" is to facilitate data transfer from a defined area RTUs, to the SLDC control room. They are to acquire data from the respective local substation RTUs through PLCC and process the data with the SCADA server and associated equipments placed in the respective grid S/S control room (Meramunduli, Budhipadar & Jayanagar) and transmit the data to the Unified Load Despatch Center through Microwave/ Optical Fiber links established between the so called Sub-Load Despatch Centers and Unified Load Despatch Center. Their function is limited for data collection only without any operational control. Since the Sub-LDCs are a part of data acquisition and communication system, it is the responsibility of the Transmission Licensee (OPTCL), to maintain the Sub-LDCs. These Sub-LDCs are not liable to be considered to be a part of SLDC. He submitted that the directions in Para 202 and 204 of the Order dtd. 20.03.2009 being contrary to law and Commission's Order dtd. 13.03.2008. It, therefore, its suffers from apparent error on face of the record and there are sufficient reasons for review of the directions in Para 203 & 204 of the Order dtd. 20.03.2009.

In view of the submission made during hearing dtd. 31.08.2009 mentioned in Para 3.1 to 3.4 above, Mr Misra on behalf OPTCL and SLDC prayed

before the Commission to review the Order dtd. 20.03.2009 passed in Case No. 65/2008 and modify the directions mentioned at Para 201, 203, 204 & 205 of the Order dtd. 20.03.2009 in the greater interest of justice.

4. Mr. M K Das, GM (PT) on behalf of SOUTHCO and Mr. S C Singh, GM (Com.) on behalf of NESCO submitted before the Commission during hearing on 31.08.2009 which were mostly identical in nature and are stated hereunder:

4.1 As regards to directions of the Commission mentioned in Para 201, 203, 204 & 205 of the Order stated 20.03.2009, they submitted that the directives of the Hon'ble Commission in above paras should be carried out by SLDC without further delay. SLDC should submit the status of implementation of Road Map prepared by the Commission in each quarter during 2009-10. The Distribution Licensees in the State are incurring losses without real-time monitoring of SLDC. Due to non-implementation of Intra-State ABT in the State, DISCOMs are not discouraged to over draw from the Grid. SLDC is not preparing any Energy Accounting, weekly UI and Reactive Energy Accounting, which are highly essential for discipline in the power sector in Orissa.

4.2 As regards a distinct wing for Tele-communication related works under SLDC they submitted that ERLDC has eight distinct wings for its smooth operation as mentioned below:

- (a) Operation
- (b) Energy Accounting and System Study
- (c) SCADA & IT
- (d) Bilateral Transaction
- (e) Technical Service
- (f) Contract and Materials
- (g) Finance
- (h) Human Resources

4.3 They further to have submitted that the SCADA and IT wing of ERLDC is being headed by a Chief Manager with five Engineering Executives and three numbers of non-Executives. The SCADA and IT wing of ERLDC looks after the management of computer system, LAN, WAN and IT Infrastructure, SCADA/EMS, Interface with ULDC Project communication and maintenance of Battery UPS etc. The proposed tele-

communication wing of SLDC may have to be engaged in similar activities like that of ERLDC as well as SCADA/EMS Interface with DSOCCs of DISCOMs, generators including CGPs and the EHT consumers connected with the State Grid.

In view of their submissions during hearing on 31.08.2009 mentioned in Para 4.1 to 4.3 above, both NESCO and SOUTHCO prayed before the Commission to reject the Review Petition of OPTCL and to direct OPTCL and SLDC to follow the Road Map of the Commission and to file the status of implementation of Road Map before the Commission each quarter during FY 2009-10 as directed in the Order dtd. 20.03.2009.

5. Mr. S K Dasgupta, CEO on behalf of CESU submitted that CESU has established DSOCC and after the installation of dumb terminal by SLDC, CESU will be in a better position to implement Intra-State ABT on 'Mock Exercise' mode. To the Commission's specific query, Mr Dasgupta submitted that CESU supports the prayer of Review Petition of OPTCL.

Commission's observations

6. We have admitted the Review Petition of OPTCL and heard at length the views of OPTCL – the Petitioner as well as that of the respondents – NESCO, SOUTHCO and CESU on the following two broad issues:
 - (a) Transfer of Assets of Sub-LDCs/ALDCs at Bhubaneswar, Meramunduli, Jayanagar, Budhipadar and at Mancheswar to the control of SLDC w.e.f 01.04.2009.
 - (b) Requirement of a distinct Tele-Communication wing under SLDC.
- 6.1 OERC issued a Road Map for implementation of levy of Annual Fee and Operating Charges for SLDC functions vide letter No. 1313 dated 04.08.2007 and the related milestone and the time-line proposed by OERC are mentioned below:

“Transfer of all assets belonging to the Unified State Load Despatch Centre at Mancheswar and Sub-Load Despatch Centres at Bhubaneswar, Meramundali, Jayanagar and Budhipadar with the land, buildings, plant and equipments associated or related to the State Load and Sub-Load

Despatch Centres to SLDC to function as an independent autonomous entity under OPTCL (in line with Transfer Scheme of 2005 of Government of Orissa)31.08.2007.”

- 6.2 We have noted that the Act contemplates SLDC as an *apex body* to ensure integrated operation of the power system in the State (S.31(1) of the Act). Although OPTCL, a deemed Transmission Licensee in its capacity as the STU now holds the assets of and operates the SLDC, by virtue of S.40(b) of the Act, OPTCL is subject to the directions of SLDC discharging its duties under S.32(2) in the matter of scheduling and dispatch of electricity, grid operations and supervision and control of the State transmission system. This, however, is intended to be only a temporary situation pending formation of an independent State corporate entity under S.31(2) of the Act to act as the SLDC. Even during this interregnum, the separate identity of SLDC as a regulating body superior to OPTCL as a transmission license has to be kept in view, especially because of S.40(b) of the Act. The concept of a regulator being under the same management as a regulated licensee is an anomaly which has to be removed sooner rather than later. For this reason the Commission has in its Letter No.1313 dated 04.08.2007 has laid down Road Map for setting up SLDC as a truly independent apex body for discharging its functions under S.32(2) of the Act. S. 32(2) which provides that:

“The State Load Dispatch Centre shall -

- a) *be responsible for optimum scheduling and dispatch of electricity within a State*, in accordance with the contracts entered into with the licensees or the generating companies operating in that State;
- b) *monitor grid operations*;
- c) keep accounts of the quantity of electricity transmitted through the State grid;
- d) *exercise supervision and control over the intra-State transmission system*; and
- e) be responsible for carrying out real time operations for grid control and dispatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.”

- 6.3 By contrast the function of OPTCL as Transmission Licensee even as STU is confined to transmission of electricity, and the development and operation of a transmission system and planning and co-ordination relating

to transmission system (S.39(2) and S.40 of the Act). It is, therefore apparent that an efficient and state-of-art telecommunication system for acquisition and transmission data is an essential and integral part of the statutory function of SLDC that cannot be kept under the control of a subordinate body like OPTCL functioning as a transmission licensee. For this reason in the order dated 20.03.2009 passed in Case No.65 of 2008 we directed as under:-

Para-205- OPTCL is to ensure that SLDC should be headed by a Chief Load Dispatcher in the rank of Director and should have three distinct Wings for Grid Operation, Commercial and Telecommunication with other support services in the pattern of Executives as deployed in ERLDC.

Which is in consonance with the directive in the Road Map of the Commission to the following effect:

- (a) SLDC is to be equipped with state-of-the art communication and data acquisition capability to play the pivotal role of an independent system operator.
- (b) SLDC should have broadly three wings viz. Grid Operation, Commercial and Telecommunication for satisfactory operation of all SLDC functions assigned as per the Act, Codes and Regulations .SLDC should file the Organizational chart before the Commission for SLDC functions as stipulated above through OPTCL for examination and approval of the Commission .

- 6.4 We have observed that the State Govt. has on 09.06.2005 issued Orissa Electricity Reform (Transfer of Transmission and Related Activities) Scheme, 2005 under S.131(4) read with 2nd Proviso to S.39(1) of the Electricity Act, 2003 (hereinafter referred to as “the Act”). Thereby transmission related assets and liabilities of GRIDCO, then functioning as State Transmission Utility, was transferred to OPTCL. The transfer to OPTCL included the SLDC assets then held by GRIDCO in its capacity of STU. Appendix-A of the said Notification classified and allocated the transferred assets into five categories, one of which was “State Load Despatch Centre Assets” described as:

“Assets belonging to the Unified State Load Despatch Centre at Mancheswar and Sub-Load Despatch Centre at Bhubaneswar, Meramunduli, Jaynagar and Budhipadar with the land, buildings, plants and equipments and also other assets of the nature mentioned in sub-clauses (1),(2) & (3) of Clause 1 above associated or related to the State Load and Sub-Load Despatch Centre.”

Thus, although SLDC assets as set forth above were transferred to and vested in OPTCL, they were set apart and earmarked as a separate class of assets apparently keeping in view the provision of S. 31(2) of the Act whereby the STU was to operate SLDC pending establishment/ notification of a State corporate entity for operating the SLDC. The Transfer Scheme itself, vide Clause 10(2), notified OPTCL as the STU as successor to GRIDCO as STU, and hence OPTCL in its capacity of STU has come to hold the aforesaid earmarked assets of SLDC for the time being. However, the law imparts separate identities to SLDC on the one hand and OPTCL-cum-STU on the other, even though they are temporarily under the same management.

- 6.5 In order to carry out the mandate of the Act regarding creation of SLDC as an independent apex body in the matter of control and supervision of the grid, we have started the process of ring fencing the finances of SLDC till a State corporate entity is established by the State Government for operating it. Accordingly, we have issued directions in Paras 203 & 204 to the following effect

Para-203. “The Commission directs OPTCL that Sub-LDCs / ALDCS at Bhubaneswar, Meramunduli, Jayanagar and Budhipadar should be transferred to the control of SLDC immediately.

Para-204. SLDC has to bear all the expenses related Sub-LDCs/ALDCs with effect from 01.04.2009 and maintain records of such expenses under financial control of SLDC.

- 6.6 The assets of Sub-LDCs/ALDCs have been regarded as part of SLDC in the State Govt. Transfer Scheme of 2005. It is not therefore, open to us to keep them as assets of OPTCL functioning as Transmission Licensee.
- 6.7 The direction issued in para 201 of the aforesaid order dtd. 20.03.2009 regarding submission of status reports by SLDC in connection with the Road Map prepared by us was necessary for implementation of the Road Map.

- 6.8 The petitioner invokes Regulation 10.5 and 10.7 of the Orissa Grid Code to show that it is the duty of the licensee to “install” the data acquisition and communication system. These provisions do not say anything about the *control and operation* of the communication system. Thus OPTCL is merely to install and maintain the systems and the function of controlling and operating the systems must naturally remain with SLDC as an essential part of SLDC functions under S. 32(2) of the Act, 2003.
- 6.9 It has been argued by the petitioner before us that since Sub-LDCs are part of data acquisition and communication system which is the responsibility of the Transmission Licensee, they ought to be maintained by the Transmission Licensee and not by SLDC. Maintaining the system is quite distinct from its control and operation. We wish to make it clear that the STU will continue to install all the necessary state-of-the-art equipment required for communication and data acquisition and will also continue to ensure its proper maintenance. It must be reiterated however that having regard to the functions of SLDC under the Act, data acquisition and communication is an integral, essential and inalienable part of SLDC’s statutory functions and cannot be the responsibility of the Transmission Licensee (OPTCL). As Sub-LDCs are viewed as part of data acquisition and communication system, they cannot be under the control of the Transmission Licensee. SLDC has to function as an independent apex body as per the provisions of the Act and its data acquisition and communication system cannot be subject to control of *any* licensee.

In view of the above, the Review petition of OPTCL is dismissed being devoid of merit.

Sd/-
(B K Misra)
Member

Sd/-
(K.C. Badu)
Member

Sd/-
(B.K. Das)
Chairperson