

**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 Nos.17,18 &19 /2010

M/s SOUTHCO, WESCO, NESCO
Vrs.
DoE, GoO & Ors.

.... Petitioners
..... Respondents.

In the matter of: Application for seeking amendment of Proviso to Clause (b) of Sub-Regulation 10 of Regulation 13 of OERC Distribution (Conditions of Supply) Code, 2004.

Date of Hearing: 06.7. 2010

Date of Order :11.8.2010

ORDER

During the date of hearing on 06.7.2010 in the above noted cases, the following persons were present:-

Shri Debasish Dash, GM (Corp. Reg. Affairs), WESCO, NESCO & SOUTHCO, Shri Piyus Ranjan Mohanty, AM(F), WESCO, Shri Susanta Kumar Kar, Branch Manager, OSFC, Bhubaneswar, Shri S.D. Bhanja, DGM (RA & Legal), NESCO, Shri R.P. Mohapatra, Shri Pravakar Dora, Shri P.K. Mohanty, Law Officer, Dept. of Industry, GoO, Shri S.C. Mohanty, Legal Consultant, Dept. of Energy, GoO. Shri S.K. DasGupta, CEO, CESU and Shri S.K. Harichandan, Manager (Law), CESU.

2. In the matter of seeking amendment to the proviso of Regulation 13(10)(b) of the OERC Distribution (Conditions of Supply) Code, 2004, the Reliance Managed Distribution Companies have come up with a petition dt.04.11.2009. The existing Regulation 13(10)(b) is extracted below for ready reference.

“The service connection from the name of a person to the name of another consumer shall not be transferred unless the arrear charges pending against the previous occupier are cleared.

Provided that this shall not be applicable when the ownership of the premises is transferred under the provisions of the State Financial Corporation Act.”

3. The petition for amendment seeks to delete the above proviso so that similar treatment is given to transfer of service connection under different grounds without any discrimination. Shri Debasish Dash on behalf Reliance managed DISCOMs submitted that in terms of the provisions of the Electricity Act, 2003, the Commission take steps ‘generally for taking measures conducive to the development of electricity industries’ and ‘promoting competition’ besides ‘protecting the interest of the consumers’. If arrears are not cleared by a premise taken by an auction purchaser from the Financial Corporation, it can not be conveniently said that the objects of the Act as outlined above, are achieved. There is no public interest involved in the said proviso since it seeks to unjustly enrich the dishonest consumers thereby causing the licensee to suffer a huge loss. The licensee is disabled from realizing its legitimate dues because of the said proviso. The outstanding dues whether in respect of premise taken through auction or otherwise, are public monies and any shortfall in the revenue of the licensee would bring the inevitable consequence of hardship to the other consumers. He also submitted that all over the country, Regulators have consciously taken a decision not to carve out any exception to the general principle that regardless of the manner in which the property/premises are purchased, the arrears of electricity must be liquidated before giving a service connection. In regard to recourse of the OPDR Act for recovery of arrear dues by the licensee, it is not permissible treating arrears as ‘public demand’ as defined in the said enactment. The dues of the licensee cannot be treated as public demand unless the OPDR Act is amended to this effect. Moreover, the recovery of public dues by State Govt. under OPDR Act has not been encouraging due to lengthy procedures, involving verification of ownership of property of the debtor and other associated problems.

4. In support of his contention, he has cited several judgments of Hon'ble Supreme Court/High Courts which held that arrears against premises are recoverable. Some of the cases are indicated below :-

(i) Dakshina Haryana Bijli Vitran Nigam Ltd. Vrs. Paramount Polymers Pvt. Ltd. (AIR-2006 13 SCC 101), (ii) Judgment of Hon'ble Delhi High Court in case of Madhugarg Vrs. North Delhi Power Ltd. (129 2006 DLT 213(DB), (iii) Judgment of Hon'ble Kerala High Court in case of A. Ramachandra Vrs. K.S.E.B AIR 2001 Ker 51, (iv) Judgment of Hon'ble Orissa High Court in case of Panchanan Sandibigraha Vrs. General Manager, NESCO & Ors [109(2010) CLT 808].

5. In support of their argument the petitioners have submitted the provisions in the DERC Supply Code and Performance Standards Regulations, 2007, UERC (The Electricity Supply Code) Regulations, 2007, UP Electricity Supply Code -2005 (Order) – Revised upto 3rd Amendment, MP Electricity Supply Code, 2004, GERC Electricity Supply Code and related Regulations and Hon'ble Supreme Court's observation in the Dakshina Haryana Vijli Bitarana Nigam Ltd. Vrs. Paramount Polymers Pvt. Ltd., 2006 13 SCC 101. which is reproduced below:

“Electricity (Supply) Act (54 of 1948), S. 49- Haryana Government Electrical Undertakings (Dues Recovery) Act (1970), S.6-Recovery of Dues-Previous Consumer of appellant a distributing company fell in arrears towards consumption charges of electricity- power disconnected and undertaking of previous consumer was taken over by Financial Corporation, Mortgagee – under taking offered for sale and purchased by respondent – Appellant – Company seeking to recover dues of previous consumer from purchaser respondent by inserting Clause to that effect in terms and conditions of supply of electrical energy for giving fresh connection to respondent purchaser – No illegality – that apart, respondent purchaser having applied for fresh connection after insertion of said Clause – His application would be govern by said Clause.(referred paras -8,9, & 13)

Para-8:- x x x x x x x x when there is transfer of ownership or right of occupancy of a premises, the registered consumer shall intimate the transfer of right of occupancy of the premises within 15 days to the Asst. Engineer/ Asst. Executive Engineer concerned. Intimation having

been received, the service shall be disconnected unless application for transfer is allowed. If the transferee desires to enjoy the service connection, he shall pay the outstanding dues, if any, to the Nigam and apply for transfer of the service connection within 30 days and execute fresh agreement and furnish fresh security. New consumer number shall be allowed in such cases canceling the previous number.

Para-9:- x x x x x x x x before submitting its bid to the Financial Corporation the first respondent would certainly have inspected the premises and could have come to know that power connection to the premises had been snapped and this information should have put it on reasonable enquiry about the reasons for the power disconnection leading to the information that the previous owner of the undertaking or consumer was in default. Moreover, the appellant had clearly written to the Financial Corporation even before the sale was advertised by it, informing that there was arrear dues towards electricity charges to the appellant and when selling the undertaking, the arrear amount had to be provided for or kept in mind. x x x x x x x x x x x

Para-13:- x x x x x x x x. This Court has also held that though the Electricity Board is not a commercial entity, it is entitled to regulate its tariff in such a way that a reasonable profit is left with it so as to enable it to undertake the activities necessary. If in that process in respect of recovery of dues in respect of a premises to which supply had been made, a condition is inserted for its recovery from a transferee of the undertaking, it can not ex facie be said to be unauthorized or unreasonable. Of course, still a court may be able to strike it down, as being violative of the fundamental rights enshrined in the Constitution of India. But that is a different matter. In this case the High Court has not undertaken that exercise.

6. The Commission examined the prayer of the petitioners and found that while amending Regulation 13(10)(b), it is required that Regulation 10 should be simultaneously

amended since both are inter related. Therefore, the Commission issued a draft notification for amendment of Regulation 10 and 13(10)(b) of the OERC Distribution (Conditions of Supply) Code, 2004 and invited public opinion/ suggestions and opinions from the stakeholders under section 181(3) of the Electricity Act, 2003. Pursuant to the said draft notification for amendment of Regulation 10 and 13(10)(b) of the OERC Distribution (Conditions of Supply) Code, 2004, the Commission has received suggestions from North Orissa Chamber of Commerce and Industries, Central Electricity Supply Utility of Orissa, Sri R.P. Mohapatra, OSFC and Sri Pravakar Dora.

7. The existing provisions, proposed amendments, suggestions/opinions received vis-à-vis the remarks of the staff of the Commission and general observations are given below :

Regulation- 10

(A) Existing provision –

10. If the applicant in respect of an earlier agreement executed in his name or in the name of his spouse, parents or in the name of a firm or company with which he was associated either as a partner, director or managing director, is in arrears of electricity dues or other dues for the same premises payable to the licensee, the application for supply shall not be allowed by the engineer until the arrears are paid in full.

(B) Proposed amendment – [Substitution of existing Regulation 10]

10 (i) If the applicant in respect of an earlier agreement executed in his name or in the name of his spouse, parents or in the name of a firm or company with which he was associated either as a partner, director or managing director, is in arrears of electricity dues or other dues for the same premises payable to the licensee, the application for supply shall not be allowed by the engineer until the arrears are paid in full.

(ii) Where applicant has purchased the existing property and connection is lying disconnected, it shall be the duty of the applicant to verify that the previous owner has paid all dues to the Licensee and has obtained “no dues certificate” from the Licensee. In case “no dues certificate” is not obtained by the previous owner, the applicant before purchase of property may approach

the Engineer of the Licensee for a “no dues certificate”. The Engineer shall acknowledge receipt of such request and shall either intimate in writing about the outstanding dues , if any, on the premises or issue ”no dues certificate” within one month from the date of application. In case the Licensee does not intimate outstanding dues or issue “no dues certificate” within specified time, new connection on the premises shall not be denied only on ground of outstanding dues of previous consumer.

(iii) Where a property/premises has been sub-divided , the outstanding dues for the consumption of energy on such premises, if any, shall be divided on pro-rata basis based on area of sub-division.

(iv) A new connection to such sub-divided premises shall be given only after the share of outstanding dues attributed to such sub-divided premises is duly paid by the applicant. A Licensee shall not refuse connection to an applicant only on the ground that dues on the other portion(s) of such premises have not been paid, nor shall the Licensee demand record of last paid bills of other portion(s) from such applicants.

(v) In case of complete demolition and reconstruction of the premises or the building, the existing installation shall be surrendered and agreement terminated. Meter and service line will be removed, and only fresh connection shall be arranged for the reconstructed premises or building, treating it as a new premises after clearing the old dues on the premises by the consumer(s).

(vi) Any charge for electricity or any sum other than charge for electricity as due and payable to licensee which remains unpaid by a deceased consumer or the erstwhile owner/occupier of any land/premises as the case may be, shall be a charge on the premises transmitted to the legal representative/ successor-in-law or transferred to the new owner/ occupier having lawful occupation of the premises as the case may be, and the same shall be recoverable by the license as due from such legal representative or successor-in- law or new owner/occupier having lawful occupation of the premises as the case may be.”

(C) **Suggestion/opinion received**

Remarks of the staff

1. **Sri R.P. Mahapatra**

Licensee has enough safeguard available in the Act & Regulation to collect the current charges and arrears. With provision of 2 months security deposit available with the licensee, the arrear of a defaulting consumer should be within last 2 months billing period. The DISTCOs should be vigilant enough not to allow arrear of the previous occupant to rise beyond the security deposit amount. This way problem due to arrears of the previous occupant/consumer of the premises and granting of connection to the next occupant/consumer in the premises after forcing him to pay the arrear of the previous occupant can be avoided. This Regulation may deal with live connection.

While amending Reg.-10 of the Distribution Code, 2004, it may be provided that connection to an Applicant for disconnected premises shall be provided on payment of maximum arrear for 2 months, after adjustment of the Security deposit of the previous consumer. Balance arrears, if any, shall be settled between the new consumer and the Distribution Licensee, subsequently. This Regulation should deal with disconnected consumer.

2. Sri P.K. Dora

Liability of previous occupant should not be passed on to the next occupant since the licensee has not enough power under the present Act and Regulations to tackle the problem.

The suggestions given by Sri R.P. Mahapatra with reference to Sec.56(2) of the Act and Reg.100(2) of Distribution Code are not applicable to the present proposed amendment. It provides statutory powers to the licensee for recovery of arrear dues from the existing consumers. It does not vest any power on the new applicant to get his power connection in spite of arrear of previous owner.

Similar to the above remarks as indicated in case of Shri R.P. Mohapatra.

8. Shri R.P. Mahapatra further submitted that the petitioners are referring to connection which were already disconnected, to be covered under Regulation 13(10) which is obviously not tenable. Nothing can be provided in the regulation which does not find place in the Electricity Act, 2003. In support of his contention, he stated the decision of the higher courts submitted by the petitioners is relevant only where such terms and conditions to recover the arrear of the previous consumer from the new consumer is provided for, particularly such conditions forming part of the conditions stipulated by the erstwhile Electricity Boards. However, the authority given to the licensee to disconnect power supply for nonpayment of dues under S.56(1) of the Electricity Act, 2003 and Regulation 100 (1) of the OERC Distribution (Conditions of Supply) Code, 2004 and also to recover past dues through suit even after disconnection is adequate to recover the full arrear dues from the disconnected consumer. No instances have been submitted by the petitioner showing that disputes were raised for not making payment and the premises were disposed of after disconnection. When ever disputes are raised obviously the previous consumer would be required to settle the outstanding dues, after the dispute is settled in a court of law or otherwise. This is no ground to recover arrears from the new consumer which cause unnecessary hardship to him. Legally the licensee can not recover any disputed amount from the new consumer. The proposed amendments to regulation 13(10) and 10 will only make the private Distribution Licensees more inefficient as there would be no urgency to implement the provisions of the Act, 2003/OERC Distribution (Conditions of Supply) Code, 2004 to realize the dues from the defaulting consumers.

9. The staff of the Commission has observed that in the proposed amendment sufficient safeguard has been provided to the new owner to verify the status of electrical connection & arrear payment, if any, from the distribution licensees. The prospective owner can demand “No dues certificate” or due statement, within 1 month of request. Failure to receive any communication shall be treated as receipt of “No dues certificate”. The staff of the Commission opined that obtaining information of past dues of any premises on account of Municipality taxes, water charges and other public utility charges including electricity is the normal due diligence exercise of any prospective buyers for taking possession of an old premise. It is not correct to say that the proposed amendment will make the DISCOM authorities more inefficient. Rather the onus lies with the field staff of the DISCOM to keep

ready at all times the statement of arrear due including its updation of all the existing connection, including disconnected consumers' so that the statement can be given to any prospective new owner, for smooth transfer of the electrical connection to the new owner of the premises. The field officer has to be more vigilant. The above provision is prevailing in most of the States. The court has also given ruling accordingly. In view of the arguments as above, the Commission staff have suggested not to accept the suggestions of Shri Mahapatra & Shri Dora.

Regulation-13(10) (b)

10. (A) Existing provision -

13 (10) Transfer of service connection

(a) X X X X X

(b) The service connection from the name of a person to the name of another consumer shall not be transferred unless the arrear charges pending against the previous occupier are cleared.

Provided that this shall not be applicable when the ownership of the premises is transferred under the provisions of the State Financial Corporation Act.

(B) 13(10)(b) Proposed amendment – [i.e. deleting the Proviso to Regulations 13(10)(b)]

Provided that this shall not be applicable when the ownership of the premises is transferred under the provisions of the State Financial Corporation Act” is omitted.

(C) **Suggestion/opinion received**

Remarks of the Staff

1. **North Orissa Chamber of Commerce & Industry (NOCCI)**

An Industrial Unit seized under Section 29 of the State Financial Corporation Act, 1951 and thereafter sold to a new entrepreneur on sale of assets basis, shall be treated as a new industrial unit for the

The suggestions made by NOCCI, Balasore in para 2 of their letter is not justified in case of electricity supply. Because, as stated by NOCCI, as per clause 14.6 of Orissa Industrial Policy,

purpose of IPR. Arrears of VAT, Entry Tax, MV Tax, EPF, ESI and Excise Duty payable by the previous owners shall not be realizable from the transferees of the transferred units under section 29 of the State Financial Corporation Act, unless otherwise provided for in any act enacted by the Centre or the State Government. These being public dues shall be releasable from the previous owners under the Orissa Public Demand Recovery Act, 1962.

2007 arrear dues for supply of electricity is not covered. So also electricity arrear dues are not treated as public demand under OPDR Act, 1962. The existing provision of invoking OPDR in the Supply Code (Reg.-96) is primarily meant for existing consumer. It is certainly not meant for a person who avoids paying the dues and vanish away. His liability should be borne by OSFC while doing auction of the property in the disputed premises.

The productive use of the assets will benefit the state revenue; generate employment etc., which is the main purpose of the industrialization. The DISTCOs have enough avenue available with them like keeping Security Deposit, Disconnection for non-payment of dues etc.

It is suggested that the liability of the new owner should be restricted to the amount of last month's unpaid bill (for which the bill has not been paid), the amount of energy consumed by the unit during the due date of bill and the notice period and the legal energy dues during next three months until the termination of

agreement reduced by the security deposit amount.

The proposed amendment of the OERC Distribution(Conditions of Supply) Code, 2004 is against the spirit of IPR,2007.

2. **Shri R.P. Mahapatra**

Licensee has enough safeguard available in the Act & Regulation to collect the current charges and arrears. With provision of 2 months security deposit available with the licensee, the arrear of a defaulting consumer should be within last 2 months billing period. The DISTCOs should be vigilant enough not to allow arrear of the previous occupant to rise beyond the security deposit amount. This way problem due to arrears of the previous occupant/consumer of the premises and granting of connection to the next occupant/consumer in the premises after forcing him to pay the arrear of the previous occupant can be avoided. This Regulation may deal with live connection.

The proviso that this shall not be applicable when the ownership premises are transferred under the provisions of the State Financial Corporation Act, should remain.

Sri Mahapatra's argument is mainly being on the same line as that of Regulation (10), the comments of the staff of the Commission (as in case of NOCCI) is reiterated. Staff of the Commission further, opined that OSFC being a transition agent between the old defaulting occupant and new occupant, it should share responsibility of collecting the old electricity arrear while selling the premises to the new occupant through auction. Hon'ble Supreme Court's observation (2006 – 13 SCC 101), as under is relevant in the matter.

Quote-“ Para-9:- x x x x x x x x x x
before submitting its bit to the Financial Corporation the first respondent would certainly have inspected the premises and could have come to know that power connection to the premises had been snapped and this information should have put it on reasonable enquiry about the reasons for the power disconnection

leading to the information that the previous owner of the undertaking or consumer was in default. Moreover, the appellant had clearly written to the Financial Corporation even before the sale was advertised by it, informing that there was arrear dues towards electricity charges to the appellant and when selling the undertaking, the arrear amount had to be provided for or kept in mind". Unquote

3. Orissa State Financial Corporation

As per clause No.14.6 of the current IPR-2007 an industrial unit seized u/s 29 of SFC's Act, thereafter sold to a new entrepreneur on sale of assets basis, shall be treated as a new industrial unit for the purpose of this IPR. Arrears of VAT, Entry Tax, M.V. Tax, BPF, ESI and Excise Duty payable by previous owners shall not be realizable from the transferee of the transferred unit u/s 29 of SFC's Act, unless otherwise provided for in any act enacted by the Central or State Government. This being public dues shall be realizable from the previous owner under the OPDR Act or any other relevant Act.

OSFC's suggestion is similar to that of NOCCI. Hence, remarks against item-1 above is also applicable here.

The amendment to the Regulation will

put a heavy financial burden on the transferee, while paying the arrear dues of the original occupant. Hence there should not be any amendment.

11. The submission of the CESU is that Regulation 13(10)(b) of the Supply Code deals with transfer of the existing service connection which provides that the service connection from the name of the a person to the name of another person/consumer shall not be transferred unless the arrear of dues for consumption of electricity against the previous consumer/occupier is cleared. This Regulation 13(10)(b) of the OERC Distribution (Conditions of Supply) Code, 2004 is a disqualification clause in providing power supply to another person by way of transferring the service connection from one name to another with only exception that if the premises is transferred under the provisions of the State Financial Corporation Act, such disqualification is not applicable. In the essence, both the Regulations 10 & 13(10)(b) of the OERC Distribution (Conditions of Supply) Code, 2004 are linked with each other. There is no prohibition in the Regulations, to provide power supply to a third party purchaser of a premise either through auction or through private sale who is no way connected with the original consumer/occupier to whom power supply has been provided. Taking this advantage of the Regulations, the new purchaser without verifying the electricity liability that is outstanding against the premises, before purchase proceeds to obtain fresh connection and supply without clearing the arrear dues of electricity against the said premises. In respect of its submission made herein the licensee-CESU has cited the judgment of the Hon'ble Supreme Court in case of Daskhina Haryana Bijli Vitaran Nigam Ltd. Vrs. M/s Paramount Polymer Pvt. Ltd. (AIR SC 2) which have held that while participating in auction process held by the Financial Corporation, the auction purchaser would certainly have inspected the premises and could have known that the power connection has been snapped because of default of previous owner of the undertaking. There lordship have further held that, if in the process of recovery of dues in respect of the premises to which power supply was made, a condition is inserted, for recovery of the arrear dues from the transferee, it can not be said unauthorized and unreasonable.

12. CESU further submitted another similar dispute which had came before their lordship of the Appex Court in Civil Appeal No. 6565/2008 between Paschimanchal Vidyut Vitran Nigam Ltd. and others Vrs. M/s DVS Steels and Alloys Pvt. Ltd. and others.(AIR 2009 SC 647). The observation of the Hon'ble Supreme Court in the above noted civil appeal is as follows:-

Para-11-*“A stipulation by the distributor that the dues in regard to electricity supply to the premises should be cleared before electricity supply is restored or a new connection is given to a premise, can not be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for nonpayment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishments, provisions similar to clause 4.3 (g) and (h) of Electricity Supply Code are necessary to safeguard of the interests of the distributor. We do not find any thing unreasonable in a provision enabling the distributor / supplier, to disconnect electricity supply if dues are not paid, or where the electricity supply has already been disconnected for nonpayment, insist upon clearance of arrears before a fresh electricity connection is given to the premises. It is obviously the duty of the purchasers / occupants of premises to satisfy themselves that there are no electricity dues before purchasing / occupying a premise. They can also incorporate in the deed of sale or lease, appropriate clauses making the vendor / lesser responsible for clearing the electricity dues upto the date of sale/lease and for indemnity in the event they are made liable. x x x x x x x.*

13. The licensee-CESU has also submitted that in another case between Ansuman Behera Vrs. OSFC & Ors (AIR 2010 Orissa 10) while deciding such an issue, their lordships have held that if any rules or regulations are in existence permitting / enabling the licensee to demand arrears then the same can be demanded as has been decided in the case of

Panchimanchal Vidyut Vitran Nigam Ltd. & Ors. Vrs. M/s DVS Steels & Alloys Pvt. Ltd. & ors. In another case of Pachanana Sandibigraha Vrs. General Manager, NESCO [109 (2010) CLT at page 808], their lordships of the Hon'ble High Court of Orissa relying upon the judgment of the Hon'ble Supreme Court in Panchimanchal Vidyut Vitran Nigam Ltd. & Ors. Vrs. M/s DVS Steels & Alloys Pvt. Ltd. & ors (AIR 2009 SC 647) have held in para -5 as follows:-

“However, the Apex Court in the above noted case further proceeded to examine the legal position when the purchaser of a premise approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity. The Hon'ble Supreme Court held that the distributor, in such case, can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, for which arrear dues in regard to supply of electricity made to the premises when it was in occupation of the previous owner, should be cleared of before the supply is restored to the premises or a fresh connection is provided to the premises. The Apex Court further held that, if any, statutory rule governed the conditions relating to sanction of connection or supply of electricity, distributor can insist upon fulfillment of the requirement of such rules and regulations. If the rules is silent, it is further held, it can stipulate such term and deem fit and proper for regulating its transaction and dealing. So long as such rules and regulations or the term and conditions are not arbitrary and unreasonable the Court will not interfere with them.”

In view of the arguments in the remarks column above, the Commission staff have suggested not to accept the suggestions of NOCCI, R. P. Mahapatra and OSFC.

While reiterating their stand, all the respondents argued that since the avenue is plentifully available in the Supply Code for collection of dues in time, disconnection for non-collection of dues and termination of agreement, the existing provisions in the Supply Code should continue.

14. We have very carefully heard the petitioner as well as the respondents and perused their written submissions. We have also carefully weighed the submission and reasons put forth by the Orissa State Financial Corporation. One of the arguments of the respondents is that when Section 65 of the Electricity Act, 2003 and Regulation 101 of Distribution Code empower the distribution licensee to disconnect supply of power in case of default in payment of electricity dues in time, after following the prescribed procedure, there is no need

for the proposed amendment of Regulation 10 and 13(10)(b). There is no doubt that the distribution licensee is supposed to take timely action to ensure that arrears are not piled up and disconnection of supply of power is made well in time. If disconnection is made and payment is not made thereafter and there is a subsequent application for a fresh connection in respect of the same premises, or as stipulated under Regulation 10, or change of ownership of existing connection which may be under disconnection mode, as stipulated under Section 13(10)(b), the proposed amendment seeks to address such an eventuality. At present, if a family is sub-divided or split up or the existing house/premises is divided among the legal heirs of an existing consumer there is difficulty in giving new and separate connection to the subdivided family of the legal heirs who want to stay in the same premises but as a separate units but because of the outstanding dues, the legal heirs or the new subdivided family cannot get new connections, if the amount of the outstanding arrears of the previous consumers is not paid by the new applicant. There is a justification to allow new connections to the new applicants instead of refusing connection, until the entire outstanding dues are cleared in respect of the premises which was in the name of their parents, etc. Hence, the proposed amendment of regulation 10 is intended to facilitate new connection in case the existing premises/house is divided among the various legal heirs/members of the old family. As such the proposed Regulation 10 would facilitate and clarify the existing provision for allowing new connection to those of the members/legal heirs if proportionate amount is paid by that member applicant.

15. Regarding the amendment of Regulation 13(10)(b), it may be stated that the proposed amendment will not stand in the way of disposal of premises which has been taken over under Section 29 of the SFC Act. Industrial units pay large sums of bills even for a monthly consumption of electricity. Even if a DISCOM diligently disconnect the defaulter the arrears of dues even for a month may run into lakhs or crores of Rupees. When a DISCOM is disabled to collect even a months arrears because of the extant Regulation 13(10)(b), the write-off can add upto huge sums. And even after taking timely action if payment is not made and the power is disconnected to the premises and subsequently when the premises are disposed off by the SFC under the SFC Act, Regulation 13(10)(b) disables the DISCOM from receiving payment of outstanding dues. The SFC is able to recover its outstanding dues

but the DISCOM is unable to do so. It takes lot of time and energy to collect such outstanding arrears from such closed industries. As per the proposed amendment either the transferee or the transferor would pay the outstanding electricity dues before the power supply connection is transferred from the existing owner and transferred to the new owner, which is fair and reasonable to the DISCOMs.

16. The Commission is of the opinion that the distribution companies do not have adequate safeguard in the existing provisions of the Supply Code for collection of huge sums of arrears even after disconnection are made. The application of the OPDR Act is in any case is currently not applicable to the dues of the distribution companies who are private entities. Therefore, it is not only desirable but also necessary that the existing provision in the supply code should be amended as set out in paras – 14 and 15. In view of the above position, the Commission has no option but to conclude and order that the OERC Distribution (Conditions of Supply) Code, 2004 be amended as follows:-

17. **Amendment to Regulation 10:**

The Regulation 10 is substituted as follows:

“10(i) If the applicant in respect of an earlier agreement executed in his/her name or in the name of his spouse, parents or in the name of a firm or company with which he/she was associated either as a partner, director or managing director, is in arrears of electricity dues or other dues for the same premises payable to the licensee, the application for supply shall not be allowed by the engineer until the arrears are paid in full.

(ii) Where applicant has purchased existing property and connection is lying disconnected, it shall be the duty of the applicant to verify that the previous owner has paid all dues to the Licensee and has obtained “no dues certificate” from the Licensee. In case “no dues certificate” is not obtained by the previous owner, the applicant before purchase of property may approach the Engineer of the Licensee for a “no dues certificate”. The Engineer shall acknowledge receipt of such request and shall either intimate in writing outstanding dues , if any, on the premises or issue ”no dues certificate” within one month from the date of application. In case the Licensee does not intimate outstanding dues or issue “no dues certificate” within specified

time, new connection on the premises shall not be denied on ground of outstanding dues of previous consumer.

(iii) Where a property/premises has been sub-divided , the outstanding dues for the consumption of energy on such premises, if any, shall be divided on pro-rata basis based on area of sub-division.

(iv) A new connection to such sub-divided premises shall be given only after the share of outstanding dues attributed to such sub-divided premises is duly paid by the applicant. A Licensee shall not refuse connection to an applicant only on the ground that dues on the other portion(s) of such premises have not been paid, nor shall the Licensee demand record of last paid bills of other portion(s) from such applicants.

(v) In case of complete demolition and reconstruction of the premises or the building, the existing installation shall be surrendered and agreement terminated. Meter and service line will be removed, and only fresh connection shall be arranged for the reconstructed premises or building, treating it as a new premises after clearing the old dues on the premises by the consumer(s).

(vi) Any charge for electricity or any sum other than charge for electricity as due and payable to licensee which remains unpaid by a deceased consumer or the erstwhile owner/occupier of any land/premises as the case may be, shall be a charge on the premises transmitted to the legal representative/successor-in-law or transferred to the new owner/occupier having lawful occupation of the premises as the case may be, and the same shall be recoverable by the license as due from such legal representative or successor-in-law or new owner/occupier having lawful occupation of the premises as the case may be.”

18. Amendment to Regulation 13(10)(b):

The proviso to Regulation 13(10)(b)

“Provided that this shall not be applicable when the ownership of the premises is transferred under the provisions of the State Financial Corporation Act” is omitted.

19. The cases are accordingly disposed of.

Sd/-
(B.K. Misra)
Member

Sd/-
(K.C. Badu)
Member

Sd/-
(B.K. Das)
Chairperson