

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

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

**Case No.56/2011**

M/s Oricon Equipments (P) Ltd.,	....	Petitioner
Vrs.		
GRIDCO & others	.....	Respondents

**In the matter of : Application under Sec. 14 & 15 of the Electricity Act, 2003 for grant of Intra-State Trading Licence for trading of 10 MU of electricity per month in the State of Odisha.**

For the Petitioner: Sri. Sanjay Sen, Advocate,  
Sri Matrugupta Mishra, Advocate .  
Sri R.K.Das, Technical Advisor.

For the Respondents: Sri P.K.Mohanty, Advocate on behalf of GRIDCO  
Sri B.P.Mishra, GM (RT&C), OPTCL,  
No body is present on behalf of CESU, WESCO, NESCO,  
SOUTHCO & DoE, GoO .

**ORDER**

**Date of Hearing: 18.09.2012**

**Date of Order: 01.01.2013**

M/s Oricon Equipments Private Limited ( in short M/s.OEPL) was established in the year 2000 and has been engaged in automobile trade. It has presently ventured into trading of electricity as a part of its diversification process due to power sector reform in the energy sector. M/s OPEL is a company registered under companies Act, 1956. M/s OPEL, the petitioner in this case has filed an application under Sections 14 and 15 of the Electricity Act, 2003 and under the relevant provisions of OERC (Conduct of Business) Regulations, 2004 on 08.07.2011 for grant of Intra-State trading licensee for trading of 10 MUs of electricity per month in the State of Odisha in the required form as prescribed in Appendix-3C read with Regulation 26 of the OERC (Conduct of Business)

Regulations, 2004. As per Regulation the petitioner has made due public notice under S. 15 (2) of the Electricity Act, 2003 on 29.07.2011 of its application for Intra-State trading licensee in the State of Odisha of 10 MUs of electricity per month in two widely circulated newspapers namely “Pragativadi” and “ Orissa Post” inviting objections, if any, from the general public. Pursuant to the said public notice, GRIDCO filed its preliminary objections and the petitioner filed its reply to the said preliminary objection of GRIDCO. The Commission also decided to implead all the four DISCOMs, M/s.OPTCL and Dept. of Energy, Govt. of Odisha so also GRIDCO as respondents of the said proceeding.

2. The Commission heard this case on various dates i.e. 30.09.2011, 08.05.2012, 11.06.2012 and 06.07.2012 and gave interim orders relating to questions of admission, procedure of publication of notice and grant of time.
3. The case was finally heard for merit on 18.9.2012. In the meantime, public notice was published under Section 15(5) of the Electricity Act, 2003 by the Registry of the Commission inviting suggestions/objections for grant of Intra-state trading Licence to M/s OPEL.
4. GRIDCO objected to the grant of Intra-state trading Licence to M/s OPEL on various grounds which are briefly discussed, below:-
5. GRIDCO submitted that it is now exclusively carrying on the functions of Bulk Supply & Electricity to four DISCOMs as the State Designated entity granted by the State Govt. to purchase power from Generators. The Bulk Supply Agreement further obligates it to supply power to the DISCOMs and inspite of huge accumulated losses, loan liabilities and outstanding dues of DISCOMs, GRIDCO has been supplying power to DISCOMs at rates determined by the Commission. Therefore, grant of trading licence to private trader would be detrimental to its interest and increase vulnerability to indebtedness as well as escalating losses and jeopardize its capacity to meet its obligation as a single buyer.
6. GRIDCO submitted that grant of any Intra State Trading licence to any other entity will act as an impediment, as it will result in increase in the rate of energy available to GRIDCO in the current situation of power deficit scenario in the State. The Commission has been approving the ARR and BSP of GRIDCO by leaving deficit revenue with direction that this gap is to be recouped by way of

- trading and Unscheduled Interchange (UI) of surplus power. However, surplus situation has not happened due to increased power demand of the State because of industrialization and hydrology failure. GRIDCO consequently, is forced to procure power creating unsustainable borrowings which now stands at around Rs.5000 crores. GRIDCO has now accumulated losses of Rs.3000 crores and the outstanding dues of DISCOMs as on March 2012 stands at Rs.4100.00 crore.
7. GRIDCO has to resort to take loans from the Financial Institutions in order to pay to the generators on account of non payment of dues by the DISCOMs. GRIDCO has to service the outstanding dues to NTPC which were securitized by issue of Bonds by Govt. of Odisha and in case of any default in such servicing the Central Plan Assistance to the State of Odisha would get reduced.
  8. The Intra-State trader would resort to procuring power from CGPs/PPs to serve the interest of Industrial customers/consumers which would be detrimental to interest of LT consumers and DISCOMs at large. The goal of rural electrification would also be affected as such trader would only be supplying power to industry.
  9. It apprehended that last proviso of Section 14 of the Electricity Act, 2003 which authorizes DISCOMs to undertake trading in electricity without holding a license may encourage 'intra-State trader' to sell power to DISCOMs who in turn undertake 'Inter-State Trading' depriving people of Odisha of their legitimate dues. Therefore, GRIDCO prayed the Commission to reject the application of M/s ORICON Equipments (P) Ltd. as there is no scope for Intra-State trading within the conditions stipulated in the order dtd. 12.07.2012 of this Commission that the 'Purchase of Electricity and resale thereof within the State of Odisha and no power can be sold outside the State or to any Inter-State trader.'
  10. The Commission in Case No.02 of 2007 vide its Order dated 18.9.2010 granted Intra State Trading license to M/s Global Energy Private Limited. GRIDCO being seriously aggrieved by the said order of the Commission had appealed before the Hon'ble Appellate Tribunal of Electricity wherein the Hon'ble Tribunal had upheld the order of the Commission to grant Intra-State Trading License to M/s. GEL. Again being aggrieved by the said Order of the Hon'ble ATE GRIDCO has filed Civil Appeal No.5704 of 2012 before the Hon'ble Supreme Court of India. In the said Civil Appeal, the Hon'ble Apex Court has not passed any interim order

and the same is pending. In view of the matter being subjudice before Hon'ble Apex Court, GRIDCO prayed to consider holding the matter in this Case No.56 of 2011 till Hon'ble Apex Court takes a final view on the subject of grant of Intra State Trading to a private Entity (M/s Global Energy Private Ltd.) within the State of Odisha.

11. Govt. of Odisha in its submission further apprehended that the surplus CGP power would be exported outside the State through trading at the cost of huge human, environmental and natural resources degradation.
12. OPTCL submitted that considering the proposed Intra-State Trading License to be awarded to M/s OPEL it was most likely that OPTCL's network would be used by M/s OPEL for trading of Energy on short-term Open Access (STOA) mode as per existing Intra-State Open Access regulation. Therefore, OPTCL submitted that the Commission should allow a system study to be carried out for both point of injection and point of drawl. It also apprehended that since Intra-State ABT has not been implemented in the State, OPTCL can neither regulate the injection of surplus power nor check the over-drawal in case of breach of schedule. It also emphasized the need of PLCC / SCADA to monitor the above trading transaction.
13. The Govt. of India, Ministry of Power in Case No.02 of 2007 relating to grant of Intra-state trading licence to M/s.Global Energy Ltd. submitted that as the matter relates to Intra-State trading license in Odisha to be granted by OERC, Ministry of Power had no comments to offer as there was no substantive issue involving the Govt. of India. As this matter is similar to the case of M/s.GEL and there is no need to implead Govt. of India, Ministry of Power in the above case. On 06.07.2012, the Commission heard at length both M/s.OPEL and GRIDCO and other respondents for grant of an intra-state trading license in favour of the former. Consequently, the Commission in its order dtd.12.07.2012 held that the petitioner fulfilled the technical and financial requirements for an intra-state trader as set forth in Regulations 27, 28 of OERC (Conduct of Business) Regulation, 2004.

### **Observations, Comments and Directions of the Commission**

14. The Commission has gone into the details of submission made by GRIDCO, Govt. of Odisha and OPTCL regarding petition of M/s OPEL for grant of Intra State Trading Licence to trade 10 MU per month inside the State of Odisha.
15. The Commission has adequately considered the views of GRIDCO with regard to Section 15 (5) of the Electricity Act, 2003. Publication in newspaper is not violative of the provision of the Act as the Commission had observed that it would take into consideration all materials about the petitioner's creditworthiness and financial viability including all relevant information impinging on its business ethics before license is granted under Section 14 of the Electricity Act, 2003.
16. GRIDCO in its submission has prayed not to take a final view of the subject of grant of Intra State Trading License to the present Petitioner since similar matter (in Case of M/s Global Energy Private Limited) is subjudice before the Hon'ble Supreme Court of India. However, the Commission is of view that since Hon'ble Supreme Court has not granted any stay on the matter and these two cases are not inter related Commission has gone ahead with proceedings of this Order.
17. GRIDCO during the grant of Intra-State Trading License to M/s Global Energy Ltd., had also raised similar objections regarding its financial inadequacy and inability to bridge the revenue gap through measures such as export earning, UI and other miscellaneous revenue. The Commission while granting Intra-State Trading License to M/s Global Energy observed that GRIDCO is very hopeful of a surplus scenario in coming years due to availability of power from upcoming IPPs which would help in trading and wiping out deficit in its balance sheet.
18. The Commission in the said order of M/s GEL also delved upon the development of competitive power market as envisaged in the National Electricity Policy and spirit of the Electricity Act, 2003. The Commission in this respect observed the following:
19. The National Electricity Policy notified by Central Govt. under section 3 of the Act, emphasizing the need for development of competitive power markets, provides as under vide para-5.7.1.

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

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

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

20. The Commission appreciates and recognizes the present financial difficulties being faced by GRIDCO, but, at the same time the Commission is duty bound to act so as to ensure compliance of the provisions of Statute u/S.66 of the Electricity Act, 2003 which imposes a high responsibility on the Commission for the development of the market (including trading) in the power sector. In promoting market development, a part of new generating capacity may be sold outside the long term PPAs. As the power market develops, it would be feasible to encourage projects with competitive generation cost outside the long term power purchase framework. In the coming years, a significant portion of the installed capacity of new generating stations would participate in competitive power

market which is upcoming. This will increase the depth of the power markets and provide alternative for both generators and licensees/consumers and in long run would lead to reduction in tariff.

21. Opening up the power market for multiple players has its own merit. The market forces will bring in competition starting from the generation to retail supply. It will act as an indirect incentive to the generators to ramp up their generation to cash in the open market. GRIDCO and other trading licensees will definitely remain alert to take the advantage of UI, harnessing of surplus power from CGPs, secondary energy from hydro stations and renewable energy sources etc. The competition in generation would give a good price signal to the traders and also to GRIDCO. The resultant benefit of all the transactions will undoubtedly be availed by the common consumer of the State.
22. It is a fact that in anticipation of the profit to be earned by GRIDCO through trading of surplus power, the Commission have all along been leaving a gap in the Annual Revenue Requirement (ARR) of GRIDCO and consequently fixing the BSP rate at a level lower than what it should have been, if the gap should not have been left in the ARR. We fully appreciate the concern of GRIDCO in realizing the gap in the ARR and the efforts it needs to make to bridge the gap through UI and trading. At the same time, the Commission cannot afford to loose sight of the mandate of the Electricity Act, 2003 which among other things envisages promoting competition in the electricity sector.
23. When some of the IPPs, OPGC & OTPCL start generation and UMPPs come into operation, there would be substantial surplus of power in the State for trading. The proposed trading of power for 120 MU per annum by the applicant M/s ORICON Equipments (P) Ltd. inside the State would not affect the interest of GRIDCO in any manner when the availability of surplus power for trading would be of such a substantial amount. Rather the entry of another trading licensee for trading within the State would ensure better competition in the power sector both for generators as well as for traders. Availability of power through competitive pricing would benefit the distribution companies and ultimately the consumers of the State. Further, the applicant petitioner is to trade power up to 120 MU per

annum only inside the state and in that case the sale is to be effected to buyers and consumers within the State. Such Intra-State trading will no way affect the interests of GRIDCO.

24. As regards to the issue of protecting the interest of consumers as mandated in the objective of Electricity Act, 2003, Commission has all along been accepting the gap in ARR of GRIDCO and making provisions for bridging the same in subsequent years. We are of the considered view that any perceptible adverse financial impact on GRIDCO arising on account of operation of an Intra-State trading license shall be recognized when need arises, as in the past. The apprehension of State Govt. regarding the export of power outside the State through DISCOMs is unfounded as all of the transaction shall be through the SLDC. In case in subsequent days of granting Intra-State trading license it is found from the State Energy Account of SLDC that DISCOMs are indulging in Inter-State trading after purchasing power from Intra-State trader then we as Regulators would not be sitting back but taking definite steps to stop such trading as well as such other penal measures as would lead to a rectification of the situation.
25. The financial requirement to qualify as an electricity trader is specified in the condition 28(2) of (Conduct of Business) Regulation, 2004. The relevant para is quoted below:

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

*(a) Trade up to 5 Million Units (MU) per month*

*Net Worth Requirement = Rs .25 crore*

*(b) Trade greater than 5 Million Units (MU) and up to 10 MU per month,*

*Net Worth Requirement =Rs.0.5 crore*

*(c) Trade greater than 10 MU and up to 20 MU per month,*

*Net Worth Requirement = Rs.1.0 crore*

X      X      X      X      X      X      X      X



To satisfy the condition, the audited Balance Sheets for the year ending on 31.3.2008 to 31.3.2010 of the petitioner were scrutinized. The following table reveals the networth and capital adequacy of M/s OPEL.

**Position as on 31.03.2010 (Rs. in Cr)**

<b>Particulars</b>	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>
Networth	57,23,177.28	44,96,414.09	76,27,853.69

It is observed from the above table that the net-worth of the company is adequate and the petitioner satisfies the condition of net-worth requirement as specified in condition 28(2) of (Conduct of Business) Regulation, 2004 which is Rs.0.5 crore for trading upto 10 MU per month.

26. One of the essential features of the EA 2003 is that the trading of electricity or in other words, the purchase of electricity for resale thereof, is subject to such trading margins as may be fixed by the appropriate Commission. Similarly, the Tariff Policy lays down how a distribution licensee must procure power by a process of transparent bidding and read with Section 63 of Act it is apparent that the regulating powers of the Commission is circumscribed and limited in the matter of determination of tariff where such tariff has been determined through open and transparent bidding.
27. Introducing competition, therefore, in different segments of the electricity industry is one of the key features of the Electricity Act, 2003. Competition will lead to significant benefits to the consumers through reduction in costs and efficiency of operation. It also facilitates price to be determined competitively. Trading no doubt is one of the key elements of supply and competition. That power should be procured competitively, is the basic objective and if that be so then it implies that there must necessarily be more than one player or trader in the electricity market and therefore not limited to a single player such as GRIDCO and its monopoly of the market. The general policy in the context should ensure economy in costs, reasonable prices and enough competition to achieve this. The grant of an additional license for trading in electricity will, therefore, not vitiate but promote competition, market development and optimum arms length prices.

28. We are thus indisputably of the view that M/s.OPEL's application for a license to trade in electricity upto 10 MUs per month or 120 MUs per annum must be acceded to. Accordingly, the Commission directs that the applicant be issued the license for intra-state trading of power upto 10 MUs per month or 120 MUs per annum within the State of Odisha. A copy of this order be forwarded to GoO, OPTCL/GRIDCO, all DISCOMs, SLDC and a copy be posted on the Commission's website. The grant of the license shall be subject to the applicant complying with all the provisions of the Electricity Act, 2003, the rules framed by the appropriate Government and regulators as specified by the Commission from time to time in all respects. The applicant – M/s.OPEL shall abide by such trading margins as the Commission may determine from time to time under Section 86(1)(j) of the Electricity Act, 2003, for intra-state trading transaction in the State of Odisha. The applicant – M/s.OPEL shall not engage in any trading transactions which would be detrimental to the interests of the electricity consumers in the State of Odisha.
29. Therefore, we hereby allow the application of the petitioner for the grant of Intra-State trading license to trade upto 10 MU per month inside the State of Odisha (120 MU per annum).
30. Accordingly the matter is disposed of.

Sd/-  
**(S.P.Swain)**  
**Member**

Sd/-  
**(B.K.Misra)**  
**Member**

Sd/-  
**(S.P.Nanda)**  
**Chairperson**