

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. 70 of 2011

M/s Vedant Aluminium Ltd. Ltd. Petitioner

- Vrs. -

M/s Sterlite Energy Ltd. & Others Respondents

In the matter of: An application under Section 86 of Electricity Act, 2003 read with Section 21 of the Orissa Electricity Reform Act, 1995 and other enabling provisions for approval of Power Purchase Agreement executed between Vedanta Aluminium Ltd. (VAL) and Sterlite Energy Ltd. (SEL) for purchase of power by VAL from 2400 MW Thermal Power Plant of SEL at Jharsuguda.

AND

In the matter of: An application for grant of Deemed Distribution License under Section 13 & 14 (b) of the Electricity Act, 2003 read with Regulation 26 of OERC (Conduct of Business), Regulations, 2004.

For Petitioner : Shri A K Samal , Sr. V.P., Sri Lalit Tandon, V.P., & Shri Rajen Mahapatra, Advocate,

For Respondents : Shri Manoj Rastogi, AVP,M/s.SEL
Shri Ashok Das, Advocate & Ms. Shikha Ohari,Advocate on behalf of M/s. SEL,
Sri L.N. Mohapatra, Advocate on behalf of M/s. OPTCL,
Shri Manas Kumar Das, GM, CSO,WESCO,
Shri K. C. Nanda, DGM(Fin.), WESCO,
Shri P. K. Pradhan, Director(Com.), GRIDCO Ltd.
Nobody is present on behalf of Dept. Of Energy & Industries Dept., Govt. Of Odisha.

ORDER

Date of Hearing: 08.08.2012

Date of Order: 17.09.2012

1. M/s Vedanta Aluminium Limited (VAL) filed a petition before the Commission under Section 86 of the Electricity Act, 2003 read with Section 21 of the OER Act, 1995 for approval of PPA signed on 18.08.2011 between M/s VAL and M/s Sterlite Energy Limited (SEL) for purchase of power from M/s. SEL (IPP) for a period of 25 years

after fulfilment of procurement share of GRIDCO. M/s Vedanta Aluminium Limited is implementing an Aluminium Smelter Project in a sector specific Special Economic Zone (VAL-SEZ) approved by the Govt. of India Vide Letter No. SEZ/LIC/V-10(1)2009/189 dated 09.04.2009. The petitioner claims that the said SEZ is a deemed Distribution Licensee under the SEZ Act, 2005 in terms of Govt. of India Gazette Notification No. S.O. 528(E), dated 03.03.2010 and the Commission has been empowered under Section 86 of the Electricity Act 2003 read with Section 62 of the said Act for determination of tariff for supply of electricity by a generating company to a distribution licensee.

2. From perusal of the case records, the Commission found that M/s. VAL is an existing industrial consumer of WESCO who has signed PPA with M/s. SEL (IPP). Both the units are also connected through a dedicated 220 KV D/C transmission line owned by M/s SEL. Therefore, the Commission in its order dated 08.11.2011 had raised several issues to be clarified by the petitioner. The important issues inter-alia include the following:

- i) If M/s.VAL-SEZ is to be treated as Deemed Distribution Licensee, without being specified with the detailed terms and conditions of such deemed license by the Commission, whether M/s. VAL can execute a PPA with M/s. SEL for purchase of power before approaching the Commission for granting M/s VAL-SEZ a Distribution Licensee status in the state of Odisha under the Act?
- ii) Assuming M/s. VAL-SEZ is a Deemed Distribution Licensee and therefore can purchase power from Generators as stipulated under Section 86 (1) (b), then who are the consumers? Whether it is not self-consumption by the Distribution Licensee itself and, if so, it does not come under definition of sale and supply.

3. M/s. VAL filed its written submission on 08.12.2011 pursuant to OERC Order 08.11.2011 addressing the clarifications on the issues raised by OERC. The Petitioner stated inter alia as follows:-

- i) The existing Aluminium unit with its own captive power plant shall remain as an EHT consumer of WESCO may be termed as M/s VAL-DTA (Domestic Tariff Area). The proposed export oriented smelter unit of M/s VAL may be termed as M/s VAL-SEZ. The VAL-SEZ has connectivity with M/s SEL-IPP through a 400 KV D/C line constructed by M/s VAL.

- ii) That once the applicant becomes Deemed Distribution Licensee as per Govt. of India Notification with relation to M/s. VAL-SEZ it automatically becomes a licensee. Approval by OERC is mere a legal formality.
- iii) Existence of multiple consumers is not a condition precedent for obtaining a Distribution License. There is no element of public interest involved in this matter and OERC is only to verify that the technical parameter operating a distribution system are fully met. The power procured by M/s. VAL-SEZ will be consumed by the various load centres of M/s. VAL-SEZ at diverse voltage levels.
- iv) The process for manufacturing of Aluminium is a continuous process and requires uninterrupted and reliable power supply at competitive rates. Hence, it is essential that long-term arrangement for security of power supply is made for the viability and success of the M/s. VAL-SEZ's manufacturing operations. This has to be internationally competitive because M/s. VAL-SEZ is required to export all its products.
- v) In view of their submission M/s. VAL through an amended petition on 27.03.2012 prayed the Commission to grant Distribution License in favour of M/s. VAL-SEZ with effect from the date of notification of Special Economic Zone i.e 27.02.2009 and for approval of PPA executed between M/s. VAL and M/s. SEL so as to enable them to purchase power from M/s. SEL.

SUBMISSION OF GRIDCO & OPTCL

4. OPTCL & GRIDCO, the respondents in this case, submitted as follows

From perusal of case record filed by the petitioner followings are noted:-

- i) M/s VAL, the petitioner has received a formal approval from Ministry of Commerce & Industry, GoI, New Delhi vide letter No. F2/12 /127-EPZ on 23.5.2007 for setting up of a sector specific special economic zone for manufacture and export of Aluminium along with 1215 MW Captive Power Plant. The same has been notified by Ministry of Commerce, GoI, New Delhi vide S.O. 5776(E) & 577(E) dated 27.2.2009 granting the approval of SEZ for manufacture and export of Aluminium along with 1215 MW Captive Power Plant. However, in a subsequent letter M/s Falta SEZ, Ministry of Commerce, Kolkata has vide its letter No.SEZ/LIC/V-10 (I)/2009/189 dated 09.4.2009 extended all the facilities

and entitlements admissible to a unit in SEZ to M/s VAL (SEZ-Unit) with terms and conditions of SEZ with no mention of 1215 MW Captive Power Plant.

- ii) The Petitioner has not complied with the requirement of setting up of a CGP of 1215 MW in the SEZ area which is a pre-condition of permission to develop a SEZ by Govt. of India. As GoI has not modified its notification dated 27.02.2009, M/s VAL cannot claim the acceptance of GoI its SEZ status without establishment of CGP. The Development Commissioner, FALTA cannot amend / modify the notification of superior authority like Ministry of Commerce, Govt. of India.
- iii) M/s VAL-SEZ has been availing power from SEL through a 400 KV EHT line which it claims to have acquired as its asset base. A Distribution Licensee is not authorized to own and operate a 400 KV EHT line for its use in distribution activities. Thus it has encroached upon the domain of OPTCL the STU. When M/s VAL SEZ is availing power as consumer, it cannot at the same time becomes a Distribution Licensee.
- iv) If a Distributor and Consumer are allowed to co-exist, the provisions of Section 42 of the Electricity Act, 2003 would become redundant. The mandate of Section 42 of the Electricity Act, 2003 cannot be allowed to be ignored except as a fraud on the statute which none can afford to do.
- v) The non-adherence of M/s. VAL to the principles of law applicable and its continuous violation in availing unauthorized power from M/s SEL, a non licensee and operating and maintaining a 400 KV transmission line unauthorisedly encroaching upon the domain of STU while pursuing an application for a Distribution License cannot be allowed.
- vi) The existing Distribution Licensee, WESCO is operating within the area of SEZ and getting its bulk power supply from GRIDCO. If M/s VAL in its SEZ is incapable of establishing the CGP of 1215 MW as per Govt. of India norms, yet to be allowed as a Distribution Licensee, it is bound to avail Bulk power supply from GRIDCO through the transmission network of STU but not otherwise.
- vii) The GRIDCO is the State Designated Entity to operate as the sole Single Buyer within the state as declared by the Govt. of Odisha and as such entitled to procure power for all DISCOMs in the State from all sources of generation in the State including allocations from Central Sector Power Plants of the Eastern Region.

The M/s. SE-IPP has 2400 MW generation capacity out of which it is liable to deliver 32% of its generation as state's share to GRIDCO. As such it is not proper to accept the plea of M/s. VAL SEZ that it is tied up with M/s. SEL for its power requirement in lieu of its CGP power and the PPA dated 18.08.2011 entered between M/s. VAL & M/s. SEL is liable for rejection.

- viii) Existence of Deemed Distribution license in any other state has no relevance in Odisha as the license is to be given on case to case basis on merit only. This is because the petitioners are a group of companies belonging to the same group. Hence, the petitioner and M/s. SEL are sister concerns and PPA between them is meaningless and only a formality to derive the benefit of deemed distribution licensee.

WESCO's SUBMISSION

5. Some of the important submissions of WESCO are as follows:-

- i) It is clear from the definition of Distribution Licensee that the Distribution Licensee shall operate and maintain its own distribution system for supply of electricity to the consumers in its area. In the instant case, the Petitioner would use power for self utilisation only.
- ii) Further the term 'supply' as defined under Section 2 (70) of the Act, 2003 refers to sale of electricity to a licensee or consumer. In case of self-utilization of power, the same will not fit to the definition of 'supply' as given under the said Act,
- iii) From the definitions of 'consumer' and 'supply' it is clear that none of these elements are present in the SEZ in question. These two, being the essential elements of a distribution licensee, onus lies upon the Petitioner to satisfy the Commission regarding applicability of the same.
- iv) Even when the matter is pending before the Commission, the Smelter Plants of M/s. VAL-SEZ draw power illegally from M/s. SEL-IPP and in such transaction, WESCO is entitled to receive cross-subsidy surcharge as per Section 42 of the Electricity Act.
- v) SEZ as per the definition refers to a cluster of units, whereas in the present instance, M/s. VAL-SEZ is a single integrated unit comprising of several divisions which are not separate distinct legal entities. The SEZ area proposed to be developed by the M/s. VAL has only a single Unit without any consumer

base. In essence by the present petition, VAL-Smelter seeking supply from its sister concern, i.e M/s. SEL-IPP, without paying cross-subsidy surcharge. For availing Distribution License, M/s. VAL-SEZ should be physically and electrically separated and must have it's own power supply arrangement or PPA with DISCOMs or Generator.

- vi) Ministry of Commerce & Industries, Department of Commerce (SEZ Division), Government of India has issued revised guidelines for supply of power in SEZ, vide Notification No. P/6/3/2006-SEZ dated 21.03.2012, under which it has been clearly stipulated in Cls.6 that the provisions of Electricity Act, 2003 will be applicable to distribution of power to the SEZ. Thus in present case, grant of Distribution Licensee status to the Petitioner must be in consonance and not in derogation of the provisions of the Electricity Jurisprudence applicable in the territory of Odisha.

Submission by Development Commissioner, FALTA:

- 6. The Commission vide its letter 04.06.2012 has asked the Development Commissioner, FALTA to clarify about the validity of grant of approval to M/s. VAL-SEZ up to 07.04.2013 without establishment of Captive Power Plant. They have communicated that despite non-establishment of CGP of 1215 MW capacity, the SEZ approval is valid upto 07.04.2013 as M/s. VAL could not establish the CGP due to scarcity of land inside SEZ area.
- 7. In pursuance to Regulation 39 of OERC (Conduct of Business) Regulation, 2004 the Commission before deciding the matter of grant of Distribution License to M/s. VAL SEZ in Case No. 70/2011 passed an order dated 07.05.2012 for a spot inquiry by a team of Officers of the Commission with certain terms of the reference. Some of them are:
 - i) The present status of supply of electricity to existing VAL DTA Unit from M/s. SEL- IPP Power Plant and electrical separation of M/s. VAL SEZ Unit.
 - ii) The status of proposed connectivity including metering arrangement between M/s. VAL SEZ and M/s. SEL-IPP power plant and M/s. SEL-IPP and M/s. VAL-DTA unit.
- 8. The enquiry team visited the VAL-SEZ area at Jharsuguda along with officials of WESCO, OPTCL, M/s. Sterlite Energy Ltd. (IPP) and VAL Smelter-I on 29th & 30th May, 2012 and submitted the inquiry reports as per terms of reference.

9. M/s VAL-SEZ was asked to comply the following important queries raised by the Commission based on the report submitted by the inquiry team vide Lr. No. 3731 dtd. 12.07.2012.
- i) The application form for license as stipulated in format i.e Appendix-3 A of OERC (Conduct of Business) Regulations, 2004 is not complete.
 - ii) Submission of details of connectivity and metering arrangements (in conformity with applicable CEA & other statutory norms) for its distribution system, both at bulk supply input points and retail supply outlet points connected to the consumers inside SEZ.
 - iii) VAL-SEZ is to clarify whether they need the distribution license on exclusive basis for the SEZ area, or as a second/parallel license in the existing license area i.e. WESCO's area of supply. In case of the former WESCO's license will also require some modification and in case of the later VAL-SEZ has to satisfy the additional requirements for the exclusive license.
 - iv) In the meantime, WESCO has raised an amount of Rs.10.21 Crore towards cross subsidy surcharge payable by M/s. VAL-SEZ to WESCO towards consumption of 71.95 MU power from M/s SEL IPP up to April, 2010. This matter has not yet been settled by both WESCO and M/s. VAL SEZ. This conduct of WESCO and M/s. VAL-SEZ tantamount to the violation of Electricity Act, 2003. This may be clarified.
10. M/s VAL-SEZ furnished the following in compliance with the above queries raised by the Commission based on the inquiry team report are summarized below:
- i) The Petitioner by virtue of the provisions of the GoI Notification No. 528 (E) dtd. 03.03.2010, which has now been incorporated in Sec 14 (b) of the Electricity Act, 2003, is deemed to be a Distribution Licensee in respect of the area notified as the SEZ area.
 - ii) M/s VAL is to be issued with a Distribution License on exclusive basis in respect of the SEZ area.
 - iii) As regards to the validity of the SEZ approval beyond 22nd May 2013, it has been clarified vide Instruction No. 16 dated 11th June 2009 of Ministry of Commerce and Industries that the "Letter of Approval issued to the developer of a SEZ shall remain valid beyond the date prescribed, once the SEZ becomes operational, till it is suspended/ revoked". The Petitioner believes that

unless there is a case of any specific default, there is no reason as to why the validity should be suspended/ revoked.

- iv) The Petitioner was unable to proceed with the CGP of 1215 MW because there was no contiguous land available which is a requirement of SEZ. Regarding the validity of SEZ status without the establishment of CGP of 1215 MW the clarification by Development Commissioner, FALTA SEZ may please be taken into consideration.
- v) The consumption details of the various processing and non-processing units of the Petitioner have already been submitted on 08.12.2011 in response to the queries raised by this Commission. The Aluminium Smelter Plant housed inside the SEZ area has a number of consuming units Viz, Pot Lines, Carbon Plant, Cast House, Water Treatment Plant, just to name a few. Each such consuming units requires considerable amount of electrical energy and is treated as separate cost centre, if not separate legal entity.
- vi) Interpretation has been made on the basis of an allegation that the SEZ Developer is not engaged in distribution of electricity to consumers rather it is self consuming the entire power, because it is a single unit. The said allegation is wrong for the reason that the VAL-SEZ is comprised of several process units i.e load centres with a very elaborate distribution network and metering arrangement. In the instant case, there are various consuming units within the SEZ, all of them having a single owner. There is no law in this regard to suggest that in order to be eligible for a distribution license, one needs to have multiple owners.
- vii) During the hearing on 8th August, 2012, it was alleged that the 400 KV transmission line connecting the M/s. SEL power station and the 400 KV switchyard inside the SEZ belongs to M/s.VAL and that M/s. VAL had done illegal construction of the said line without having a transmission license. To this effect, it was clarified that the said 400 KV double circuit transmission line belongs to M/s. SEL and M/s. SEL-IPP has obtained all necessary approvals & permits and was charged after due clearance by the Electrical Inspectors of Govt. of Odisha. Further, it is well within law for a generator to lay a transmission line to a substation of a distribution licensee, which is the case here.

- viii) M/s. VAL-SEZ is a deemed distribution licensee w.e.f. 10th March, 2010, by operation of law, therefore, the Commission is requested to direct M/s. VAL and WESCO to mutually settle disputed account upto this date.
 - ix) The Petitioner's submission before this Commission is that since the Petitioner by operation of law is vested with the status of a Distribution Licensee, there is no need to follow the procedure as prescribed under Section 15, more so when there is no public interest involved in the instant case.
 - x) M/s. VAL is a Distribution Licensee only to the notified SEZ area, which is for convenience is called VAL-SEZ. For the distribution business, the Petitioner Company will maintain separate accounts and file such regulatory proceedings as may be mandated under law. The Company will always remain M/s. Vedanta Aluminium Limited (VAL), which has a distribution business / division called M/s. VAL-SEZ, whose licensed business is confined only to the SEZ area.
 - xi) The Smelter Plant of M/s. VAL-SEZ has not been commissioned and as such, prior to commissioning of the same the Petitioner has come to this Commission for formalisation of the process through recognition and grant of license as envisaged under Section 14 (b) of the Electricity Act, 2003. Therefore, there is no illegality in the present proceedings and / or conduct of the Petitioner or M/s. SEL.
11. In response to the replies of M/s. VAL, WESCO submitted that the statement of M/s. VAL that the Aluminium Smelter inside the SEZ area has number of consuming units which requires considerable amount of electrical energy and treated as separate cost centres, contradicts the very purpose and ambit of the SEZ Act, 2005. In fact the Water Treatment Plant, Carbon Plant, Cast House, Pot Lines etc. are processed activities that form an integral aluminium plant and are not independent of each other.

Findings and order of the Commission

12. Having gone through the written submissions of M/s. VAL, WESCO, GRIDCO, OPTCL and Development Commissioner, FALTA and also oral submissions made during hearings on different dates, we summarise the prayer of the petitioner as follows:
- a) To grant a distribution license to M/s. VAL for its SEZ on exclusive basis.

- b) To permit the procurement of power by M/s.VAL-SEZ from M/s.SEL by approving PPA once a distribution licence is granted.
13. As stated earlier the applicant furnished an application on 30.08.2011 for approving its PPA with M/s. SEL. While this application was under consideration of the Commission, another application in partial modification of the earlier application was filed on 28.03.2012 by M/s. VAL for grant of distribution license. The main response of M/s. VAL to the plethora of objections raised by GRIDCO and WESCO has been a standard assertion that because of the order of the competent authority with regard to SEZ, the applicant is a deemed licensee by “operation of law”. The applicant has taken a stand that once VAL SEZ is given the status of a deemed licensee by the SEZ authorities, grant of license by OERC is only a formality. According to the applicant OERC is only to put its stamp of approval and convert deemed distribution license to a formal distribution license. Before proceeding to adjudicate the issue on merit it is considered appropriate to state the correct legal position on this matter at the outset. Grant of deemed license by SEZ authorities is only an in-principle approval which only helps the applicant to get out of the rigours of Section 15 of the Electricity Act, 2003. However, conversion of deemed licensee into a regular formal license under Electricity Act, 2003 is not automatic nor is it a ritualistic exercise. The Commission has to ensure that deemed licensee complies with the statute, rules and also the regulations framed by OERC with regard to grant of distribution license in letter and spirit. In fact the SEZ authorities while granting deemed license are not expected to look into other compliance aspect under Electricity Act, 2003 and it is only the Commission which has to look into this aspect in detail. It has been clearly stated by the Ministry of Commerce and Industry, SEZ (SEZ Division) in their Notification No. P.6/3/2006- SEZ dtd. 21st March, 2012 that “all the provisions of the Electricity Act, 2003 and Electricity Rules, 2005 as amended from time to time by the Ministry of Power along with various power resolutions issued by the Ministry of Power will be applicable”.

We may now refer to Sections 2(15), 2(17) and 2(70) of Electricity Act, 2003 which defines the ‘Consumer’, ‘Distribution Licensee’ and ‘Supply’ respectively as follows:

“2(15) ‘consumer’ means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the

time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be'

2(17) 'distribution licensee' means a licensee authorized to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;

2(70) 'supply', in relation to electricity, means the sale of electricity to a licensee or consumer;"

14. (i) By harmonious reading of the above provisions of the Act it can be concluded that consumers are legal entities supplied with electrical energy by a distribution licensee using the distribution system. This pre-supposes separate existence of the distribution licensee and consumer. The licensee shall supply electricity to consumers apart from consuming electricity himself also as a consumer. In this particular case it has been found by the inspection team deputed by the Commission and also pointed out in their written and oral submissions by GRIDCO and WESCO that in the VAL SEZ there is no other consumer except the applicant. The applicant has contended in their concluding written submissions filed on 21.08.2012 that the Aluminium smelter plant house inside SEZ area has a number of consuming units such as pot lines, carbon plants etc and each are treated as separate cost centres if not separate legal entities. Consumption of electricity by each of these processing units is separately metered. The applicant has also stated in the present case, there are various consuming units within a SEZ having a single owner. According to the applicant there is no law to suggest that in order to have a distribution license one needs to have consuming units having multiple owners. The applicant in a way has agreed with the objection of WESCO and GRIDCO that carbon plants, pot lines, cast house etc. are not separate legal entities and are part and parcel of the Aluminium smelter plant located in M/s. VAL SEZ and owned by M/s. VAL. It is a settled principle of law that words and expressions used in the Act have to be understood in terms of their ordinary everyday meaning and not in an esoteric manner. The word distribution means that a particular asset or facility has to be distributed among various entities and therefore distribution and the consumer cannot be one and same person. In this case there is no other consumer except M/s. VAL who is claiming to be a distribution licensee. The fact that separate meters have been installed and cost centres have been established for carbon plant, pot lines, cast house etc. do not make these units separate consumers. Can a company owning steel plant claim that different units under the steel plant like cold rolling mill, blast furnace, coke oven plant etc. are independent consumers? The consumer is a legal entity having its own legal rights and obligations

under the Electricity Act, 2003. Unless it is a distinct separate legal entity, the legal provisions contained under Sections 42(6), 55, 56 and 57 will be made inapplicable. This will lead to an absurd situation wherein any EHT industrial consumer having separate processing units inside its main plant will claim to be distributor by designating these processing units as independent consumers.

ii) Section 43(1) of the Electricity Act, 2003 stipulates that every distribution licensee shall on an application by the owner or occupier of any premises give supply of electricity to such premises within a prescribed time. This pre-supposes a distinction between the distributor and the consumer and the duty of the distribution licensee to supply the electricity to a consumer on request. This condition cannot be satisfied when the licensee utilizes the entire power for self consumption.

15. The context in which a deemed license is granted to the M/s. SEL authorities has to be properly understood. The authorities declare the particular applicant as a developer which means that the M/s. SEZ has a number of independent legal units operating in that area and the developer has to provide them all infrastructure facilities including power. This is true of all 100% export oriented units like textile or software parks where there are large number of utilities working inside the SEZ and developer is granted deemed licensee status to provide power to these consumers. In the present case, however, there are no such independent entities or industries inside the SEZ area, the only industry inside the SEZ area is Aluminium smelter plant of Vedanta SEZ. The so called consumers like pot line, carbon plants and cast house etc. are part and parcel of the main plant and they have no independent legal identity of their own. Therefore, the Commission is of the view that the primary purpose of granting a distribution license i.e. supply of electricity to consumers under approved licensing conditions is not satisfied in this case.

16. It has been stated earlier that much before the application for PPA with M/s. SEL and the present application for grant of distribution license were filed, the applicant has been enjoying power in an illegal and unauthorized manner from M/s. SEL through a 400 KV double circuit transmission line. For availing such facility the applicant has to pay open access charges to WESCO. The present application for grant of distribution license is a ploy by which the consumer wants to escape from payment of open access charges. This is a matter where the substance should prevail over form - the applicant cannot take shelter under a web of technicalities to subvert the purpose of the Act. This is not a genuine application for taking a distribution license for giving supply of

electricity to genuine consumers in a particular area to increase competition and efficiency. This is an attempt to avoid payment of open access charges for unauthorized drawal of power from M/s. SEL for a number of years.

17. Grant of distribution license to the applicant will no way lead to greater competition or efficiency in the system. Since the applicant is applying for an exclusive license by carving out SEZ area from the operating zone of the existing licensee i.e. WESCO, it cannot promote competition which pre-supposes two or more players in the distribution business in the same area. Hon'ble APTEL in Appeal No. 3 of 2011 dtd. 23.03.2012 in Torrent Energy Ltd. Vrs. Dakshin Gujarat Viz. Company Ltd. (DGVCL) on the question of "whether the Appellant is entitled in law to an exclusive license in the SEZ area of supply to the exclusion of the incumbent distribution licensee, DGVCL by delimiting and reducing its existing area of supply"? has held in Para 61 (b) that "xxxxxxx one of the major cornerstones of the 2003 Act is to promote competition which permeates through various provisions which requires the State Commission to act accordingly. That apart, the State Commissions are required to be guided by the factors while notifying the tariff Regulations which would encourage competition." Hon'ble APTEL further held that in Para 61 (a) that "if the SEZ Act does not contemplate an exclusive right, an approval under such Act can't confer any such exclusive right." Therefore, the prayer of the Appellant in this case would virtually demote competition by not allowing anybody other than the Appellant to supply in the Special Economic Zone. As stated earlier the applicant has taken unauthorized connection of power from M/s. SEL through a 400 KV line without involving WESCO in the open access arrangement which will inevitably entail payment of cross subsidy charge. This illegality has been made possible because both M/s. SEL and M/s. VAL are controlled by the same management and the companies belong to the same corporate group. Thus instead of encouraging competition, approval of PPA and grant of distribution license will only lead to cartelization because of the nexus between the companies belonging to the same group.
18. Some of the queries and objections raised by GRIDCO and WESCO have not yet been addressed at all by the applicant. In their application in the prescribed form, the applicant claimed ownership over the 400 KV line connecting M/s. SEL and M/s. VAL SEZ through which it has done unauthorized drawal of power. However in their written submission later during the course of hearing this asset is shown to be owned by M/s. SEL. This discrepancy has not been explained with any evidence. WESCO

has also contested that the authority who has extended the validity of SEZ status with modification of the first approval granted by Ministry of Commerce is not empowered to do so. It is worth mentioning here that the original sanction granting SEZ status with a deemed license was granted with the condition that the applicant shall construct a captive power plant with a capacity of 1215 MW. Later while granting extension of time, validity of approval to M/s. VAL-SEZ is extended upto 07.04.2013 even though the developer has not set up its own CPP inside the SEZ as stipulated in the first letter of approval. It is not clear from the submission of the Development Commissioner, FALTA whether the condition of constructing the CPP has been totally waived or it can be again re-examined after the expiry of the validity period i.e. 07.04.2013.

19. In view of the above, the request of the applicant for grant of Distribution License and approval of PPA with M/s. SEL are rejected on the following grounds:
 - i) In spite of a deemed licensee status granted to the M/s. Vedant Aluminium Ltd.-SEZ, the Commission has to look into all the issues relating to the compliance of the application to licensing conditions.
 - ii) The Commission is not satisfied that this is a genuine application for getting distribution license to distribute electricity to consumers as envisaged under Section 2(15), 2(17) and 2(70) and Section 42, 55, 56 & 57 of the EA, 2003.
 - iii) The Commission is of the view that this application for license is not intended for supply of electricity to consumers but is meant for self utilization and self consumption only.
20. Consequent upon the rejection of this application the applicant is be treated as consumer of WESCO, the existing DISCOM of the area. As a result M/s. VAL-SEZ has to pay cross-subsidy surcharge to WESCO for Open Access drawal of power from M/s. SEL.
21. Since the application for grant of Distribution License is rejected it is not considered necessary to go into issues relating to PPA.
22. Accordingly, the petition of M/s. Vedant Aluminium Limited is dismissed.

Sd/-
(S. P. Swain)
Member

Sd/-
(B. K. Misra)
Member

Sd/-
(S. P. Nanda)
Chairperson