

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

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

Case No.85/2011

WESCO Petitioner

Vrs.

OCL India Ltd. & others Respondents

In the matter of: **Application under regulation 111 of the OERC (Conditions of Supply) Code, 2004 regarding implementation of the Orders dated 5th August 2011 passed by the Hon'ble Appellate Tribunal for Electricity in Appeal Nos. 171 & 187 of 2010.**

For the Petitioner: Shri K.C.Nanda, AGM (FIN), WESCO & Shri Debasish Das, GM(CRA), CSO, WESCO, NESCO & SOUTHCO.

For the Respondents: .Shri Ajit Kumar Kanungo, Advocat, M/s.OCL India Ltd., Shri Ranjit Das , Sr.GM(PP), GRIDCO, Shri R.P.Mohapatra, the authorized representative of M/s.OISL.

ORDER

Date of Hearing: 23.11.2011

Date of Order: 31 .01.2012

1. WESCO the Petitioner has filed the present petition u/S 111 of the OERC (Conditions of Supply) Code, 2004 for implementation of the Order dated 5th August, 2011 passed by the Hon'ble Appellate Tribunal for Electricity in Appeal Nos. 171 and 187 of 2010. In the present petition, the Petitioner, has impleaded, OCL India Ltd., OCL Iron and steel Ltd. and GRIDCO as the respondents.

2. The Case of the Petitioner is that OCL India Ltd. is a consumer of WESCO being a large industry under Rajgangpur Electrical Division having contract demand of 43.5 MVA, availing power supply at 132 KV. It availed power from 30.03.2008 to 07.09.2009 through Open access a portion of its power requirement sourced from M/s OCL Iron & Steel Ltd. (OISL) through a 11 KV line connected to the CGP of OISL by paying cross-subsidy surcharges and wheeling charges to the licensee as per Order dated 01.12.2008 of the OERC in Case No. 10/2008. The said Order of the OERC was subsequently upheld by Order dated 03.09.2009 of the Hon'ble ATE passed in Appeal No. 20/2008. M/s OISL came into existence after the de-merging scheme dated 27.11.2007 from OCL India Ltd. and is engaged in the manufacturing of iron & Steel etc., has a CGP of its own with an installed capacity of 14 MW. OISL is not directly connected to the State Grid as it is not a consumer of WESCO. The said open access transaction stopped with effect from 07.09.2009 and M/s OCL Iron Ltd., continued to avail its full requirement of power from WESCO, as per its contract demand at 132 KV voltage level.
3. M/s OCL Iron & Steel Ltd. had filed an application before this Commission bearing Case No. 139/2009 for supply of its surplus power as being a CGP to GRIDCO Ltd. which in turn was to be supplied to M/s OCL at the 11 KV bus of OCL through 11 KV line between M/s OCL & OISL. The said Case No. 139/2009 was disposed of on 26.08.2010 by the Commission with appropriate directions. Para-16 & 17 of the said Order are quoted below:

*“ 16. Orissa is undergoing a severe power shortfall in the current year. There should not be any impediment for maximization of all available resources and all effort should be made for evacuation of surplus power of CGP to the grid. The Commission will fail in discharging its statutory function if a viable commercial arrangement for power evacuation is not imposed on all the parties forthwith. Therefore, we direct that GRIDCO, WESCO, OISL and OCL must sign a Quadripartite Agreement mentioning all technical and commercial details in such a way that surplus power of OISL shall be procured by GRIDCO and shall be sold to WESCO at the BSP rate. WESCO shall sell it to OCL at the Retail Supply Tariff of EHT category. **The metering shall be at OCL end and dumped meter reading shall be provided by WESCO every month to GRIDCO for preparation of energy bill. WESCO is entitled to wheeling charges to be***

paid by M/s. OISL or GRIDCO as the case may be as per quadripartite agreement at applicable rate notified by the Commission for power transfer at 11 KV. The sale to OCL at 11 KV shall be treated as EHT sales of WESCO and load factor for billing shall be calculated accordingly. The present contract demand of OCL shall continue unless OCL requests for a change. As maximum demand of 4 MW at 11 KV side shall have negligible impact in comparison to 43.5 MVA contract demand of OCL, we direct that simultaneous maximum demand shall be calculated by arithmetic sum of 132 KV and 11 KV maximum demand indicator through time synchronization of both the apex meters. The transformation loss at OCL end, shall be computed as 0.5% of the energy input. The Reverse power flow relay shall be provided by OCL so that there shall not be back flow of power from OCL end to OISL in case of shut down /break down of CGP of OISL”.

“17. OCL stated to receive power through 11 KV from DISCOM and therefore pay to DISCOM at the aggregated Dump data of 11 KV and 132 KV meters. The power evacuation of CGP to GRIDCO shall be deemed to have been effective from the date i.e. 22.12.2009 irrespective of the date on which the agreement is signed”.

4. As per the direction of the Commission, the following are the commercial arrangements for sale of surplus power:-
 - i. The metering shall be at OCL end and dumped metering reading shall be provided by WESCO to GRIDCO for preparation of energy bill every month. The transformation loss at OCL end shall be computed as 0.5% of the energy input.
 - ii. WESCO was entitled for wheeling charges to be paid by M/s OISL or GRIDCO as the case may be as per quadruplicate agreement at applicable rate notified by the Commission.
 - iii. The sale of surplus power to OCL at 11 KV shall be treated as EHT sale of WESCO and load factor for billing shall be calculated accordingly. The present contract demand of OCL shall continue unless OCL requests for a change. As maximum demand of 4 MW at 11 KV side shall have negligible impact in comparison to 43.5 MVA contract demand of OCL, the SMD shall be calculated by arithmetic sum of 132 KV and 11 KV

maximum demand indicator through time synchronization of both the apex meters. The reverse power flow relay shall be provided by OCL so that their shall not be back flow of power from OCL end to OISL in case of shut-down/break down of CGP of OISL.

5. Both M/s OISL and WESCO had challenged the Order dated 26.08.2010 of the Commission passed in Case No 139/2009 before the Hon'ble ATE in Appeal Nos. 187 & 171/2010 respectively on the following issues:

- a. Whether there is a dispute between the licensee and the generating company which can be adjudicated under Section 86 (1) (f) of the Electricity Act, 2003?
- b. Whether the PPA executed between GRIDCO & Steel Company is binding on WESCO?
- c. Whether Cement Company India Ltd. is agreeable to this proposal of GRIDCO?
- d. Whether the transaction between Cement Company & Steel Company shall always be through Open Access? (M/s WESCO appealed to Hon'ble ATE that this transaction shall be always through OA only).
- e. What is the status of the 11 KV line between Cement Company (a consumer of DISCOM) & Steel Company a separate industrial unit, having its own generating company but not a consumer of DISCOM. Whether wheeling charge to DISCOM is payable or not? (M/s OISL appealed at the Hon'ble ATE for non-levying of wheeling charges by DISCOM).
- f. Whether their can be supply to a consumer at two voltage levels?

6. The Hon'ble ATE had disposed of both the Appeals vide its Order dated 05.08.2011 with the following findings which are given below:-

“We fail to appreciate to stand taken by the Appellant (hearin the Petitioner) that the purpose of agreement each to frustrate the Judgment of the Tribunal. In our opinion the application of this Tribunal Judgment in Appeal No. 20/2008 had effect only till Steel Company supplied power to the Cement Company under Open Accesses mode i.e. on that particular transaction. It ceased to have any effect the moment the above

arrangement was discontinued by the Cement Company on 07.09.2009. It would have been operative only if Steel Company supplied power directly to the Cement Company under open access.

The State Commission had annulled the disputed agreement and directed the concerned parties to enter into fresh Quadripartite Agreement mentioning all technical & commercial details etc. In our considered opinion, the State Commission had adopted correct approach.

The Distribution Licensee's interests are fully covered if he gets all the components of Retail Tariff. In the present Case WESCO, the Appellant, would be supplying electricity to the Cement Company at Retail Supply Tariff (RST) which includes cross subsidy component. Therefore, the Appellant would not be entitled for any additional cross subsidy surcharge as claimed by him."

7. The Hon'ble ATE had upheld the Order of the Commission and observed that the Quadripartite Agreement as directed by OERC is a proper approach and further confirmed the observation made by the OERC regarding wheeling charges which the Steel Company (OISL) is liable to pay to WESCO. The Hon'ble Tribunal concurred to the plea taken by WESCO and stated that application of EHT tariff, even after adjustment of 0.5% towards transformation losses, would amount to undue preference to Cement Company by the State Commission as it would amount to discrimination against similarly placed consumers, the petitioner was allowed to raise the issue with the State Commission.
8. The Hon'ble Tribunal has observed that earlier OCL was getting supply at two points wherein one such sourcing of power was under the Open Access arrangement through two distinct commercial arrangements. The supply at 132KV was released as a consumer under Section 43 of the Electricity Act, 2003, the supply at 11 KV was under Open Access on payment of cross subsidy and wheeling charges. In the present situation, the scenario has changed, Now WESCO is supplying power to OCL at two voltage level that is 132 KV and 11KV respectively. It is an unique arrangement made for supplying power to a single consumer at two separate voltage level. The tariff to be charged from the consumers is at EHT supply rate treating power supply at 11KV as supply in EHT. This arrangement would lead to discrimination amongst consumers and

contrary to S. 62(3) of the Electricity Act, 2003. Accordingly WESCO prays to admit the petition and authorize WESCO to raise bills on M/s OCL for supply of power at 11 KV as per prevailing RST Tariff, direct M/s OCL to pay wheeling charges for use of 11 KV line which is a apart of the distribution system of WESCO and post facto ratification of the Quadripartite Agreement between WESCO, GRIDCO, OCL & OISL.

9. M/s. OSIL in its counter reply has submitted as follows:- The Commission, vide its Order dated 26.08.2010 passed in Case No. 139/2009 vide Para 16 & 17 has recognized the severe power shortfall in Odisha and observed that there should not be any impediment for maximization of all available resources and all effort should be made for evacuation of surplus power of CGP and, therefore, in discharging its Statutory function, imposed a viable commercial arrangement for power evacuation on all the parties namely, GRIDCO, WESCO, OSIL & OCL.
10. M/S OCL India Limited, in its counter reply has submitted that , it is not interested to draw any power from M/S OISL-CGP under “Open Access” It would like to avail its full requirement as an EHT consumer of WESCO. However, it has no objection to extend its infrastructure to source surplus power of M/S OISL-CGP, provided there is no financial loss to it.
11. M/s. OISL, the CGP, did not have any direct connectivity with the State grid. Therefore, the Commission had directed that the surplus power should be evacuated through the existing 11KV line between OISL & OCL. For this purpose GRIDCO was directed to procure the surplus power of OISL and sell the same to WESCO at the BST rate. WESCO shall sell it to OCL at the RST of EHT category.
12. The Commission has made the above scheme as a viable commercial arrangement for power evacuation to the state grid and it was not an arrangement for selling power to OCL at 11 KV based on the applicable retail supply tariff which was further supported by the following observations of the Commission vide its Order dated 26.08.2010 passed in Case No.139 of 2009.
 - a. “The present contract demand of OCL shall continue unless OCL requests for a change”.
 - b. “We direct that the simultaneous maximum demand shall be calculated by arithmetic sum of, 132 KV and 11 KV maximum

demand indicator through time synchronization of both the apex meters”.

- c. “The transformation loss at OCL end shall be computed as 0.5% of the energy input”. Such a provision was not necessary if the power supply to OCL were through a separate source at 11 KV as provided in Regulation 28 of the OERC Distribution Code, 2004.

13. After hearing the parties and perusal of the case records, we reiterate our earlier stand that the present arrangement is a Win-Win situation for OISL-CGP, GRIDCO and WESCO as well as in overall interest of all consumers of the State. With the above arrangement M/S OSIL-CGP could be able to sell and GRIDCO could be able to buy, the surplus power of CGP at OERC determined tariff and WESCO could get the wheeling charge for such power transmitted at the 11 KV line between M/S OSIL and M/S OCL considered as a deemed distribution system of DISCOM. M/s OCL, who is facilitating such transaction for overall benefit can not be subjected to any financial disadvantageous position for treating both 132 KV and 11 KV injection as two distinct connection for payment purpose. M/s OCL is fully capable to meet its full requirement of power drawing power only at one voltage level i.e. 132 KV from DISCOM within its contract demand as a bonafide EHT consumer. The Commission, is aware that M/s OCL is extending its facility for 11 KV system only to facilitate utilization of bottled up capacity of OISL-CGP due to typical system configuration continuing due to historical legacy. The Commission therefore, has consciously allowed the above transaction of power as a special case and it would not to be taken as precedent for any other EHT consumers. There is no question of showing any discriminatory favour or undue preference to a single EHT consumer (M/s OCL) as claimed by M/s WESCO. No financial benefit accrues to M/s OCL in the transaction. The Commission in its order dated 26.08.2010 has only taken care to safeguard that M/s OCL is not put into any additional financial liability other than what is due from it for its total drawal of power both in term of simultaneous Maximum Demand and energy from DISCOM as an a bonafide EHT consumer.

14. In view of the above position explained we do not find any justification to admit the application of WESCO and accordingly the same is not admitted. We direct

to GRIDCO, DISCOM M/S OISL and M/S OPTCL to exchange the relevant meter data (Dump Records) and implement the Commission's order dated 26.08.2010 passed in Case No.139 of 2009 and settle the payment as due to the parties on or before 31.01.2012 positively. Compliance report be submitted to the Commission by 07.02.2012.

14. Accordingly, the Case is disposed of with the above observations.

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

**Sd/-
(K.C. Badu)
Member**

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