

**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.91/2012

M/s. Power Grid Corporation India Ltd.,

..... **Petitioner**

Vrs.

M/s. CESU& others

..... **Respondents**

In the matter of : Application under Sec. 14 & 15 of the Electricity Act, 2003 read with Regulation 26 of the OERC (Conduct of Business) Regulations, 2004 for grant of Distribution Licence in the State of Odisha for carrying out “Wire Business” only in the supply area of CESU.

For the Petitioner: Shri R. P. Mohapatra, the authorized representative of M/s. PGCIL
Shri Anil Jain, ED (DMS), M/s. PGCIL, Shri Venkat Tata, GM(OPD),
M/s. PGCIL
Shri M. M. Patnaik, M/s. PGCIL, Shri Dr. V. N. Paranjape, M/s. PGCIL,
Shri S. P. Dash, M/s. PGCIL

For the Respondents: Shri Sudarsan Nayak, CEO, CESU,
Shri S. K. Harichandan, AGM (Law), CESU,
Shri B. P. Mishra, GM (Elect.), M/s. OPTCL,
Shri U. K. Samal, DGM (Elect.), M/s. OPTCL,
Shri Niladri Khadanga, DM(RA), CSO, WESCO, NESCO & SOUTHCO,
Shri Manas Kumar Das, GM(PT), CSO, WESCO, NESCO & SOUTHCO,
Shri Debasish Das, GM (Corp.Reg. Affairs), CSO, WESCO, NESCO & SOUTHCO,
Shri Sabyasachi Padhi, DGM, SOUTHCO,
Shri Subrat Kumar Routray, DMF (Com.&RA), SOUTHCO,
Ms. Niharika Pattanaik, Asst. Law Officer, DoE, GoO,
Shri Ramesh Chandra Satpathy, NIIL (Odisha),
Shri Bibhu Charan Swain, Sr. Consultants, M/s. Power Tech Consultants,
Er. A. K. Sahani and Shri R. C. Mohapatra, ED, M/s. EDSSPTPL.
No body is present on behalf M/s. GRIDCO Ltd.

ORDER

Date of Hearing: 23.04.2013

Date of Order: 07.01.2014

1. The applicant M/s. Power Grid Corporation India Ltd. (in short M/s. PGCIL) is a Company incorporated under the Companies Act, 1956 having its Registered Office at B-9, Qutab Institutional Area, Katwari Sarai, New Delhi and local Office at Plot No.27, Sahid Nagar, Bhubaneswar, Odisha. The applicant has prayed for grant of Distribution Licence in the State of Odisha for carrying out 'Wire Business' only under Section 26 of the OERC (Conduct of Business) Regulation, 2004. The PGCIL has submitted this application under Section 14 and 15 of the Electricity Act, 2003 read with Section 26 of the OERC (Conduct of Business) Regulation, 2004 for grant of Distribution Licence for carrying out 'Wire Business' only in the State of Odisha to Build, Own, Operate and maintain 33 KV lines, 11 KV lines, 33/11 KV sub-stations and associated hierarchical remote control centres. The applicant has agreed to take up a detailed survey in Bhubaneswar, Khurda and Puri and other districts and also to prepare a Detail Project Report (DPR) for up-gradation of 33 KV, 33/11KV Sub-stations and 11 KV lines upto DTR, taking into account of future load growth for which additional lines and substations would be provided including automation through SCADA control of a number of 33/11 KV S/S from hierarchical Distribution Management Centres along with communication network. The applicant would submit to the Commission the final DPR for approval which includes up-gradation of lines and sub-stations. The work would be taken up by PGCIL after approval of the said DPR through its own funding. The applicant has proposed that the recovery of cost of investment is to be done through a Distribution Charge (Wheeling Charge) to be determined by the Commission which would be paid by CESU through Escrow arrangement with GRIDCO as first charge. In addition applicant would also request Govt. of Odisha for State Government Guarantee for securitisation of payment. The detail area of operation for which Distribution Licence has been sought for are under the supply Licence area of CESU.
2. The Applicant has further highlighted the provisions of the Electricity Act, 2003 which are relevant and reinforce their application for grant of License. Section 62 of the Electricity Act, 2003 clearly recognises "Wheeling" and "retail sale" of electricity as two distinct areas. Further section 14 of the Electricity Act, 2003 provides that "a distribution licensee shall not require a license to undertake trading in electricity". The above inter-alia means that "Wheeling" and "Trading" are two distinct activities. Section 42(2) of the

Act states that the State Commission shall introduce Open access in such phases and subject to such conditions (including cross-subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of Open Access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross-subsidies and other operational constraints.

3. As per Section 2 (17) a “Distribution License” is defined as “a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply”. Further as per Section 2 (19) “Distribution System” means “The system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers”.
4. Section 2 (76) of the Act, defines, “Wheeling” which means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be are used by another person for the conveyance of electricity on payment of charges to be determined by the Commission under Section 62 of the Act.
5. Section 61 (1) (c) of the Act mandates the Commission to be guided by factors encouraging competition, efficiency and economy in the use of resources, good performance and optimum investment, while specifying the regulation on the terms and conditions of the tariff.
6. The applicant also submitted that in exercise of powers under Sub-Section 38 (1) of the Act, the Central Government has declared M/s. PGCIL as the Central Transmission Utility (CTU), which shall not engage in the business of generation of electricity or trading in electricity, but such provision does not exclude the CTU from the wheeling of electricity. The Applicant has filed this application as per Sub-section 14 & 15 Electricity Act, 2003 and under the relevant provisions of OERC (Conduct of Business) Regulations, 2004 on 30.10.2012 before the Commission praying for grant of Distribution License for “Wire Business” against payment of charges within the ambit of the definition of distribution licensee.
7. As per OERC (Conduct of Business) Regulation, 2004 the applicant has made public notice under Section 15 (2) of the Electricity Act, 2003 on 03.11.2012 of its application for distribution licensee specifically carrying out “Wire Business” in the supply area of

CESU in widely circulated newspapers inviting objections, if any, from the general public. Pursuant to the said Public Notice, GRIDCO, DoE, GoO, WESCO, NESCO & SOUTHCO, OPTCL, Shri R. C. Satpathy, Secretary, National Institute of Indian Labour (Odisha), Shri A. K. Sahani, M/s. Power Tech Consultants and M/s. Swain and Sons Power Tech. Pvt. Ltd. have submitted their suggestions/views on the said application of M/s. PGCIL for grant of Distribution Licensee. The applicant M/s. PGCIL has also filed its rejoinder to the suggestions/views of the respondents.

8. The Commission admitted the case by a hearing on 14.12.2012 and passed interim order relating to procedure for publication of notice under Section 15 (5) of the Electricity Act, 2003 and also for filing of written submissions, if any, by the respondents.
9. The case was finally heard on 23.04.2013 on merit after publication of the public notice for grant of Distribution Licence to M/s PGCIL specifically “Wire Business” in the supply area of CESU under Section 15 (5) of the Electricity Act, 2003.
10. According to the said public notice of the Commission several objectors have filed their replies and the same were taken into consideration by the Commission for grant of distribution licensee specifically “Wire Business” in the supply area of CESU.
11. Shri Ranjit Das, CGM (PP), GRIDCO Ltd. has submitted that from letter of CESU it appears that M/s. PGCIL has been engaged as a consultant/developer/contractor by CESU for preparation DPR for up-gradation of 33/11 kV S/s, 33 kV & 11 kV lines including additional requirement of lines and substations taking into account of the future load growth. M/s. PGCIL in its application has not annexed the mutual agreement executed with CESU towards the nature, terms and conditions of the said contract thereby keeping the other respondents like GRIDCO in dark. In the second issue M/s. PGCIL has laid down a condition for recovery of cost investment is to be through a distribution charge (Wheeling Charge) which would be determined by this Commission and will be paid by CESU through escrow arrangement among GRIDCO, DISCOMs and the Bank by way of first charge. Over and above the applicant M/s. PGCIL has also requested Government of Odisha for State Govt. guarantee for securitization of payment. But the distribution charge (Wheeling Charge) should not be paid to M/s. PGCIL on the first charge basis as the first priority is to pay the generators, otherwise the generators may resort to power regulation.

12. Regarding Distribution license relating to “Wire Business” is presently beyond the scope of the Electricity Act, 2003 and will come into force after due amendment by the parliament and incorporation of the same in the said Act. CESU can engage M/s PGCIL for the development and up-gradation of its distribution system without any distribution license granted by OERC, if the Commission has granted distribution license to M/s PGCIL then it will not require any license for trading of electricity, which will violate the stipulation at proviso-3 of Sec 41 of the Electricity Act, 2003. No transmission licensee shall enter into any contract or otherwise engage in the business of trading in electricity.
13. The representative of DoE, GoO has submitted that the State Govt. can not extend any sort of guarantee to CESU or any organisation like M/s PGCIL working in collaboration with CESU. CESU may take services of M/s. PGCIL as a franchisee or otherwise to improve their performance. They should not burden the consumers in the form of hike in the tariff.
14. The representative of M/s. OPTCL submitted that CESU has agreed to entrust M/s. PGCIL for preparation of DPR for up-gradation of 33 KV S/S and 11 KV lines of its area of supply including automation through SCADA control considering its future load growth. The present application of M/s. PGCIL is not intended to take up all the activities of a distribution license as mandated under the provisions of the Act. The distribution licensee is duty bound to develop and maintain an efficient, co-ordinated and economical distribution system in its area of supply. The “distribution system” as defined in Section 2 (19) of the Act covers the entire line between the delivery point on the transmission line or the generating station and the point of connection to the installation of the consumers. Thus the provisions of law which mandates CESU alone to do the said act, M/s. PGCIL can not claim to take the place of CESU to do such acts and thus it can not claim for grant of distribution license.
15. OPTCL, further submitted that the word ‘Wheeling’ as define in Section 2 (76) of the Act, 2003 takes within its scope of the use of the distribution system of a existing distribution licensee by another person on payment of wheeling charges as determined by OERC under Section 62 (1) (c) or Section 42 (2) of the Act for conveyance of electricity to that another person through open access. Under Section 62 (1) (c) or Section 42 (2) of the Act, for conveyance of electricity to that another person through open access, Section 62 (1) (c) of the Electricity Act, 2003 empowers this Commission to determine the tariff for “Wheeling of electricity” which can not be read in isolation and intended to be acted

in conjunction with Section 42 (2) of the said Act. The prayer for declaration of a deemed distribution licensee as being a Govt. company is also fallacious. Every Govt. company whoever fulfil the provisions of Section 617 of the Company Act, 1956 can not be treated as a deemed distribution licensee unless the obligation of electricity is vested on it under Section 131(2) of the Act. The applicant having not been vested with such obligation by the Govt. of Odisha under Section 131 of the Act has no right to be regarded as a deemed distribution licensee in the State of Odisha.

16. The representative of the NESCO, WESCO & SOUTHCO submitted that the application filed by M/s. PGCIL for grant of distribution license specifically 'Wire Business' in the supply area of CESU is incomplete, premature and not supported by material facts. The said application is also bereft of such details as are necessary under Regulation 26 of the OERC (Conduct of Business) Regulations, 2004. The details pertaining to business plan, investments terms, terms of engagement and terms of return are not spelt out.

The said application is not in accordance with Section 14 & 15 of the Act. There is no provision for grant of license to carrying out "Wire Business". M/s. PGCL being a Central Transmission Utility (CTU) of India notified by Central Govt. under Sub-Section (1) of Section 38 of the Electricity Act, 2003 has no locus standi to make such type of application with reference to the statutory obligations under Sub-section (2) of Section 38, Stipulating the function of CTU.

The Act does not provide a CTU to undertake the function of distribution licensee for carrying out "Wire Business". It is also not clear under the provision of the Act a CTU is permitted to apply for Distribution Licensees to build own operate and maintain a distribution system and recover its cost of investments by collecting wheeling charges from incumbent distribution license specifically "Wire Business" in the supply area of CESU. Wheeling activity has to be on a distribution system or the associated facilities of a transmission or distribution licensees. In the present case the applicant is neither a distribution nor a transmission licensee. It is further submitted that "Wheeling" and "Supply" are mandatory and essential functions to be discharged by a distribution licensee and the Act does not provide for a segregation of the distribution function on the basis of "Wire" and "Supply".

17. The Commission has determined Bulk Supply Tariff of GRIDCO under the Single Buyer model and the DISCOMs of Odisha are subsidizing each other so as to ensure a uniform retail supply tariff. If there are two wire operators namely CESU and M/s PGCIL

operates in CESU's area of supply, wherein CESU has to be assigned with retail supply business and M/s PGCIL has to be assigned with wire business. In both the scenarios, the cost of supply will increase substantially and impact the consumers in DISCOMs other than CESU. Therefore, the modalities to be adopted to insulate other DISCOMs like WESCO, NESCO & SOUTHCO from the effect of financial burden needs to be worked out.

18. Shri Bibhu Charan Swain, Sr. Consultant of M/s Power Tech Consultants and on behalf of M/s. Swain & Sons Power Tech Pvt. Ltd. has submitted that the present conditions of network of all the distribution licensees in Odisha are in very bad conditions. There has been no investment in the network since the reform days. Therefore, investment by a Wire Licensee is very much necessary. It will be better if the Commission grants distribution license specifically "Wire Business" in the supply area of CESU to M/s. PGCIL as it has shown its interest. Infusion of fund by M/s PGCIL will definitely make significant system improvement to the network of CESU for which the consumers of CESU will get better power supply in future.
19. Shri A. K. Sahani, the objector has submitted that the Engineers of STU during OSEB era were conversant in distribution and transmission system where the Engineer of M/s. PGCIL does not have such experience but CESU is interested to engage them in the wire business.
20. Shri Ramesh Chandra Satpathy, Secretary, National Institute of Indian Labour (Odisha) has submitted that in its application M/s. PGCIL has mentioned regarding a detail survey was conducted in Puri, Khurda, Bhubaneswar and other districts in the supply area of CESU. But it has not submitted the said report along with its application for grant of distribution license specifically for "Wire Business" in the supply area of CESU. It has to produce the detail business plan along with year wise investment particularly which will be beneficial to the consumers of CESU. M/s. PGCIL has to produce its detail expenditure on Capex programme in the area which was decided in the year 2010. He also further submitted that CESU is now a utility under the direct control of this Commission and the loss of the utility are increasing day by day since 2002 to till date. Therefore, to grant distribution license to M/s. PGCIL after detail examination by the Commission is the right way and the Commission may instruct the applicant to take over the entire management system of CESU for the greater interest of the utility.

21. The Commission have gone through the details of submission made by GRIDCO, Govt. of Odisha , OPTCL, WESCO, NESCO, SOUTHCO, CESU and the objectors regarding petition of M/s. PGCIL for grant of Distribution Licence specifically “Wire Business” in the supply area of the Distribution Licensee CESU.
22. The Commission has adequately considered the views of GRIDCO with regard to distribution charge (wheeling charge) as proposed by PGCIL. The Commission have also taken 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.
23. In order to consider the application of PGCIL for granting the Wire Business in CESU area we are required to consider agreement between CESU and PGCIL because without proper handholding carrying out wire business in CESU area with or without utilisation asset of CESU is not possible in the present scheme of law. Therefore, the Commission in their interim Order dtd. 25.04.2013 have directed the Petitioner to submit their response covering all the issues raised by the Objectors. Though the hearing of the case has been concluded long since neither the party has submitted a working arrangement to effectuate the license. However, the Petitioner in its letter dtd. 25.10.2013 submitted before the commission that a meeting had been arranged between them and CESU to enter into a Distribution Service Agreement with CESU covering the operational, commercial, legal aspects before the license is issued to Power Grid. In the said meeting CESU categorically informed that “*various developmental programmes viz. Roadmap of GoO, CAPEX Phase-II, R-APDRP etc. for strengthening/ augmentation / upgradation of their distribution system are being finalised and as such the requirement for signing the agreement with Power Grid does not arise at present.*” The statement of Power Grid has also been confirmed by CESU in their letter dtd. 05.10.2013 addressed to Power Grid.
24. It is worthwhile to mention here that the Petitioner has applied for licence in the distribution Licence area of CESU involving 33 KV lines, 33/11 KV sub-stations, 11 KV lines upto DTR and associated hierarchal distribution Management centres including their communication network. Since, as per submission of CESU they can manage their network requirement through the investment from different sources granting wire licence to Petitioner is not necessary at this stage.
25. Therefore, granting wire licence without any consumers / beneficiaries is a meaningless exercise for the present. In another development Govt. of India, Ministry of Power in

their Letter on 17.10.2013 has also proposed to amend the Electricity Act, 2003 separating distribution licence (wire licence) from supply licence. This Commission has also brought out a draft Regulation called OERC (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulation, 2013. In future both the proposed amendment of Electricity Act, 2003 and our Regulation shall smoothen the issuance of a distribution licence (Wire licence).

26. Therefore, we think it proper not to grant Wire Licence to the Petitioner for the present and accordingly the Petition is disposed of.

Sd/-
(S. P. Swain)
Member

Sd/-
(B. K. Misra)
Member

Sd/-
(S. P. Nanda)
Chairperson