

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

**Present:        Shri S. P. Nanda, Chairperson**  
**Shri S. P. Swain, Member**  
**Shri A. K. Das, Member**

**Case No. 28/2015**

M/s. Jindal Stainless Ltd.	.....	Petitioner
Vrs.		
OPTCL	.....	Respondent

**In the matter of:**        **An application under Sub Sections. (2) & (4) of Section. 42 and Ss. 39, 40 & 86 of the Electricity Act, 2003 read with OERC (Determination of Open Access Charges) Regulations, 2006 along with OERC (Terms and Conditions for Determination of Open Access) Regulations, 2005 for use of State Net Work for MTOA Transaction.**

**For Petitioner:**        Shri Ramesh Kumar Sharma, DGM, M/s. Jindal Stainless Limited,  
Shri Bijay Krishna Nandi, AM, M/s. Jindal Stainless Limited.

**For Respondent:**        Shri L. N. Mohapatra, Advocate and Shri S. K. Puri, GM (RT&C),  
OPTCL.

**Order**

**Date of hearing: 04.12.2015**

**Date of order: 27.01.2016**

The petitioner M/s. Jindal Stainless Limited (M/s. JSL) submitted that its plant at Hisar, Haryana in Northern Region availed power through open access from its CGP at Jajpur, Odisha which is in the Eastern Region. M/s. JSL had applied SLDC for concurrence to avail Medium Term Open Access (MTOA) for the period from 01.11.2014 to 31.10.2015 (one year) for 30 MW power transfer and for the period from 01.02.2015 to 31.10.2015 (nine months) for 10 MW power transfer respectively. Since, these are inter-state power transaction; the said applications were made by M/s. JSL under MTOA as per CERC Regulations of based on the duration of open access transaction. As per the CERC (Grant of Connectivity, Long-term and Medium-term open access in inter-state Transmission and related matters) Regulations, 2009, "If the State network is also being used in the access, recovery of charges for such State network and terms and conditions thereof, shall be in accordance with the regulation

and as may be specified by the State Commission under Section 36 of the Act, if such charges and terms & conditions cannot be mutually agreed.” In the instant case M/s. JSL is injecting power at Duburi grid which is an intra-state injection point. Since, State Transmission network is used in this case, M/s. JSL has to pay transmission charges to OPTCL, the STU as per the OERC (Terms and Conditions of the Open Access) Regulations, 2005 and OERC (Determination of Open Access Charges) Regulations, 2006.

2. As per Regulations 5, 7, 12 & 13 of OERC (Terms and Conditions of the Open Access) Regulations, 2005, the power transactions of M/s. JSL come under the category of short term open access customer for use of intra-state transmission system, because the transactions is for one year and less. In the said regulations of OERC, the open access customers has been categorized only as long term open access customers and short term open access customers and there is no such category of medium term open access. Taking this plea, the STU has raised State Transmission Charges bills at the rate applicable to the long term customers, whereas M/s. JSL is a short term customer in conformance to the OERC (Terms and Conditions of the Open Access) Regulations, 2005. Therefore, the petitioner M/s. JSL has prayed the Commission to direct OPTCL, the State transmission utility to revise the state transmission charges bills considering the aforesaid open access transaction of M/s. JSL as short term open access as per the OERC (Terms and Conditions of the Open Access) Regulations, 2005.
3. The respondent Odisha Power Transmission Corporation Limited (OPTCL) has submitted that the petitioner M/s. JSL had applied SLDC for MTOA for inter-state transaction of power from its Jajpur (Odisha) plant to Hissar (Haryana) through CTU system of PGCIL intervened by transmission system of OPTCL. The SLDC, Odisha had allowed such open access and also the CTU (PGCIL) being the nodal agency for inter-state open access has also approved the same. The rate of open access charges fixed by SLDC is similar to the rate of transmission tariff fixed by the Commission for the relevant FY 2014-15 and 2015-16 applicable to the long term open access customer.
4. The Commission has framed and enforced OERC (Terms and Conditions for Open Access) Regulations, 2005 & OERC (Determination of Open Access Charges) Regulations, 2006 in exercise of power conferred under sub-section (2) & (4) of

Section 42 and Section 39, 40, 86 & 181 of the Electricity Act, 2003 specifying therein the charges to be applicable for open access customers for use of intra-state transmission and distribution system in the state within the meaning of the term defined in sub-section (37) & (19) respectively of Section (2) of the Electricity Act, 2003.

5. The Act, 2003 defines in Section 2 (36) (ii) thereof the inter-state transmission system to include within it the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-state transmission of electricity and Section 2 (37) of the Act, 2003 also defines the intra-state transmission system to mean any system for transmission of electricity other than an inter-state transmission system. BY such definition the open access transmission availed by the petitioner through the network of OPTCL to be transmitted to Hissar through the CTU network is to be covered within the said definition of Section 2 (36) (ii) of the Act, 2003 and thereby the Hon'ble CERC is empowered to specify its provisions by Regulations framed for the purpose.
6. Hon'ble CERC while prescribing its procedure for making application for grant of Medium Term Open Access to ISTS has outlined in Clause 18.1 thereof that for the state network involved in such access, the charges for such state network shall be as specified by the State Commission under Section 36 of the Electricity Act, 2003, if it is not mutually agreed.
7. The Open Access Regulations of 2005 and 2006 of this Commission have not been made under Section 36 of the Act, 2003. The provisions of these Regulations of the Commission to the open access in question involving intervening transmission system of OPTCL purportedly to be covered within the definition given under Section 2 (36) read with 2 (37) of the Act, 2003, therefore cannot be made applicable.
8. The Electricity Act, 2003 vide Section 181 (h) empowers the Commission to make Regulations providing for the rates, charges and the terms and conditions in respect of intervening transmission facilities under the proviso to Section 36 while empowering the CERC in similar way to make such Regulations under Section 178 (i) of the Act, 2003. Section 36 read with Section 181 (h) requires the State Commission to frame Regulations for the open access of the nature which involves the state network while

availing the CTU network. The Commission has not framed such Regulations under Section 36 of the Act, 2003.

9. The Regulation 4 (1) (vi) of the said Regulations, 2006 of the Commission specified that in case inter-state transmission system is used by an open access customer in addition to distribution system, transmission charges for inter-state transmission shall be payable by the customer in accordance with CERC Regulations. But such specification in respect of customer availing inter-state transmission system in addition to the inter-state transmission system has not been made.
10. The open access charges for the transaction of the nature involved in the present case being liable to be in accordance with the Regulations framed under Section 36 of the Electricity Act, 2003, the claim of the petitioner for levy of such charges as per the said Regulations, 2005 and 2006 of the Commission as a short term open access customer is not liable to be entertained.
11. Heard the parties and their written submission are taken into record. The Commission observed that the petitioner M/s. Jindal Stainless Limited has availed open access for transmission of electricity from its CGP in Odisha to the plant at Hisar in Haryana and incidentally the transmission system of OPTCL is used in such transaction for which it has obtained clearance/NOC from the SLDC, Odisha. The dispute is on payment of transmission charges to the STU (OPTCL). M/s. Jindal Stainless Limited is paying transmission charges to CTU (PGCIL) at the rate applicable for Medium Term Open Access (MTOA) in accordance with the CERC guidelines. In the open access charges Regulation notified by OERC there is no category of open access called Medium Term Open Access (MTOA) and the same has been merged with Short Term Open Access (STOA). But OPTCL has claimed transmission charges to the petitioner at the rate applicable for Long Term Open Access (LTOA) consumer since SLDC had mentioned this rate while providing NOC for such transaction. Therefore, the petitioner prays the Commission to direct OPTCL to revise the bills of transmission charges for the said open access transaction based on the rate applicable for Short Term Open Access (STOA) since the period of such open access transaction is for one year or less as per OERC Regulation.
12. Both the petitioner M/s. Jindal Stainless Limited and the respondent OPTCL have referred Para-18.1 of CERC Open Access Regulations, 2009, wherein it is indicated

that *“The Transmission Charges for use of the inter-state transmission system shall be recovered from the MTOA customers in accordance with terms and conditions of tariff specified by the Commission from time to time and the Regulations. If the State network is also being used in the access, recovery of charges for such State network and terms and conditions thereof, shall be in accordance with the regulation and as may be specified by the State Commission under Section 36 of the Act, if such charges and terms and conditions cannot be mutually agreed.”* Respondent OPTCL has submitted that since the Open Access Regulations of 2005 & 2006 of this Commission have not been made under Section 36 of the Act, 2003, the aforesaid Clause 18.1 of CERC Open Access Regulations, 2009 cannot be made applicable in the present case.

13. The Commission is of the view that the provision for determining rates, charges and terms & conditions by the appropriate Commission under Section 36 is applicable in case a licensee require utilization of the “intervening transmission facilities” operated by another licensee. But in the present case the petitioner M/s. Jindal Stainless Limited is not a licensee but an open access customer. Hence, the aforesaid Clause 18.1 of CERC Open Access Regulations, 2009 is not applicable in the present case. The Commission in its Open Access Regulations, 2005 and Open Access Charges Regulations, 2006 has determined rates, charges and terms & conditions for use of intra-state transmission and distribution system in the State by an open access customer. In the present case the petitioner M/s. Jindal Stainless Limited is an open access customer and he uses both intra-state transmission system and inter-state transmission system for transmission of electricity from its CGP to its industry in another state. Therefore, he has to pay the transmission charges to the CTU (PGCIL) as per the rate determined in accordance with CERC Regulations and to the STU (OPTCL) as per the rate determined in accordance with OERC Regulations. As per the OERC Regulations, 2005, the open access customers have been categorized as long term customers and short term customers. The persons availing or intending to avail access to the intra-state transmission or distribution system for a period of twenty-five years or more shall be long-term customers. The customers other than the long-term customers shall be the short-term customers provided that the maximum duration for which the short-term access allowed at a time shall not exceed one year. In the present case the petitioner M/s. Jindal Stainless Limited should be treated as

short-term open access customer as he has availed open access in two phases for a period of one year and less. Therefore, it should pay the transmission charges to the STU (OPTCL) at the rate determined by the Commission for short-term open access customers. Accordingly, the respondent OPTCL is directed to revise the open access charges bills of the petitioner M/s. Jindal Stainless Limited as per the above observation of the Commission.

14. With the above directions the case is disposed of.

Sd/-  
**(A. K. Das)**  
**Member**

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

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