

ODISHA ELECTRICITY REGULATORY COMMISSION

BIDYUT NIYAMAK BHAWAN

PLOT NO.-4, CHUNAKOLI, SHAILASHREE VIHAR

BHUBANESWAR - 751 021

**Present: Shri U. N. Behera, Chairperson
Shri A. K. Das, Member
Shri S. K. Parhi, Member**

Case No. 23/2016

M/s. Vedanta Ltd.

.....

Petitioner

Vrs.

OPTCL & Others

.....

Respondents

In the matter of: An application under Ss.9(2), 42 & 86 of the Electricity Act,2003 read with Regulation 13(1) of the OERC(Terms and Conditions for Open Access) Regulations, 2005 along with Regulations 9(1) & 76 of the OERC (Conduct of Business) regulations, 2004.

For Petitioner: Shri Satyakam S, Advocate, Shri Vikash Jain, VP (Legal) appearing on behalf of M/s. Vedanta Limited, Shri M. K. Panda, AGM, M/s. Vedanta Limited.

For Respondent: Shri P. S. Sahu, Sr. GM, SLDC, Shri K. C. Nanda, DGM (Fin.), WESCO Utility, Ms. Sasmita Mohanty, Manager (PP), GRIDCO Limited, Shri U. N Mishra, CGM (PP), GRIDCO Ltd. and Shri S. K. Puri, Sr. GM (RT & C), OPTCL.

Nobody is present on behalf of ERLDC.

ORDER

Date of hearing: 25.04.2017

Date of order:05.01.2018

In this petition the petitioner, M/s. Vedanta Limited has submitted that after merger of the various companies of the Vedanta Group, it became a single entity w.e.f. 01.01.2011 having 2400 MW (4x600 MW) thermal power plant, 1215 MW (9x135 MW) CGP, 0.5 MMTPA aluminum smelter unit being supplied power from the 9x135 MW CGP and 1.25 MMTPA smelter unit under Odisha Special Economic Zone (VAL-SEZ) at Jharsuguda. Further, vide Commission's order dated 27.01.2016 in

Case No. 21/2015 Unit-1, 3 & 4 of the 4x600 MW power plant have been converted to CGP w.e.f. 01.04.2015 and Unit-2 continued to remain as IPP (State Dedicated Unit) and connected to the State Grid. As per the said Order power supply to GRIDCO must be 25%+ 7% or 5% of the total energy sent out from the power station or the total ex-bus generation from Unit-2, whichever is higher. Such conversion to CGP was based on the assurance of M/s. Vedanta Ltd. that in case of low or no generation in Unit-2, M/s. Vedanta Ltd. would meet its commitment in PPA for supply of power to the State from the CGP Units.

2. The petitioner further stated that at present Unit-2 and 4 of the power plant are connected to Bus-1, which is connected to the State Grid through 400 KV Meramundali line. VAL-SEZ is receiving power from Unit-4 through Bus-1 and Unit-1 & 3 are connected to CTU through Bus-2. After conversion of the Unit-1, 3 & 4 to CGP, M/s. Vedanta Ltd. has proposed to operate the two Buses in segregated mode. Unit-2 of the power plant will be connected to Bus-1, which will be linked simultaneously to 400 KV Meramundali DC lines and to Budhipadar grid sub-station through 400/220 KV ICT. - 1 & 2. Normally breakers of 220 KV ICT- 1 & 2 are kept open and on the instruction of SLDC they are closed to supply power to GRIDCO from Unit-2 in case of outage of 400 KV Meramundali lines. In the event of tripping of Unit-2, Unit-1 will be switched over from Bus-2 to Bus-1 for supply of power to GRIDCO as per PPA or supply to GRIDCO will be maintained from Bus-2 through CTU network. Normally, Bus-2 will be connected to Unit-1, 3 & 4 of the power plant (converted CGP units) and CTU through 400 KV Raigarh-I & II lines, 400 KV Rourkela-I & II lines and also to 400 KV feeders of co-located smelter plants of M/s. Vedanta Ltd.
3. The petitioner further submitted that in view of the merger and conversion of IPP units to CGP units, the entire power transferred between the co-located CGP and VAL-SEZ is captive consumption, which is being transferred through 400 KV feeders owned and operated by the petitioner. The petitioner stated that under such circumstances it is not required to avail open access or pay any open access related charges for transfer of power from the CGP units to VAL-SEZ, which is quite evident from the conjoint reading of the Section 9 (1), 9 (2) and 42 (2) of the Electricity Act, 2003. Further, Regulations 13 (1) of OERC (Terms and Conditions for Open Access) Regulations, 2005 states that open access charges are to be paid for the use of transmission/distribution system. But in the present case, the petitioner is not

proposing the use the transmission and distribution system, since it is using system owned and operated by itself.

4. In view of the above, the petitioner M/s. Vedanta Ltd. has prayed the Commission to declare that no open access approval is/will be (considering the proposed connectivity arrangement) required to be obtained by the petitioner from SLDC/OPTCL for supply of power from its co-located captive power plant to VAL-SEZ and also to direct SLDC/WESCO Utility not to charge any open access related charges, transmission charges as well as losses.
5. OPTCL, the Respondent No.1, submitted that the proposed connectivity and line arrangement for split bus (single bus) operation is not desirable from grid security and reliability point of view. The petitioner may take necessary action for double bus operation on STU system. Further, M/s. Vedanta Limited have not yet applied to OPTCL for grant of synchronisation permission for Unit-4 as a CGP unit, which was granted synchronisation permission as an IPP unit.
6. SLDC, the Respondent No. 2, has submitted that the petitioner has sought for connectivity with CTU as per its proposed arrangement and requested SLDC to issue NOC for the said connectivity. Since, the petitioner is a consumer of WESCO Utility, the views of WESCO Utility, OPTCL and GRIDCO Ltd have been sought for. Further the proposal of the petitioner for split bus (single bus) operation for delivering power to the State is not desirable from grid security & reliability point of view. The petitioner may take appropriate action for double bus operation.
7. SLDC further submitted that in case any CGP unit is connected to STU system to compensate the less generation from the IPP and simultaneously intend to supply balance power to SEZ, the petitioner has to avail concurrence of SLDC and the transaction shall be through inter-state open access. However, as long as the industry and its CGP are in the same control area and the connectivity network is owned and operated by the industry, it may not seek open access.
8. GRIDCO, the Respondent No. 3, in its submission dated 16.08.2016 had stated that connectivity proposal may be kept isolated from the limited prayers of the petitioner under Open Access Regulations, 2005. Open Access approval is necessary and open access charges are payable when the IPP power/State entitlement of power is utilised/consumed by the petitioner to meet its industry requirement under any circumstances whatsoever.

9. Further, GRIDCO, in its submission dated 04.05.2017 has stated that the present petition of M/s. Vedanta Ltd. is of no more relevance as it has declared a “State Embedded Entity” w.e.f. 24.10.2016 by ERPC.
10. GRIDCO further submitted that due to change of control area jurisdiction from ERLDC to SLDC, Odisha, as per the minutes of the said ERPC meeting, following issues are to be settled.
- i. Any deviation of M/s. Vedanta Ltd. will be treated as deviation of OPTCL (STU).
 - ii. For calculation of POC charges and losses M/s. Vedanta Ltd. generation will be considered as generation of Odisha.
 - iii. M/s. Vedanta Ltd. has to get registered afresh at each RLDC for Short-Term Open Access as embedded entity in OPTCL.
 - iv. SPS for restricting power flow in 400 kV Vedanta–Rourkela or Vedanta-Raigarh line within 650 MW, should be kept in service.
 - v. OPTCL in co-ordination with Vedanta Ltd. has to send weekly SEM data to ERLDC by Tuesday Noon.
 - vi. A system study may be carried out for the above arrangement.
11. WESCO Utility, the Respondent No.4, submitted that notwithstanding the approval of power connectivity arrangement of the petitioner for flow of power from its CGP to the SEZ unit and from IPP to the State, the same is part and parcel of the distribution system of the utility. In this regard Hon’ble Apex Court in M/s. Sesa Sterlite Limited Vrs. OERC & Others (2014) 8CC, 444 have already held that the internal connectivity arrangement of the petitioner is part and parcel of the distribution system of the utility. Similarly Hon’ble ATE in Appeal No. 171 of 2010 in WESCO Utility Vrs. OERC & Others, vide judgment dated 05.08.2011 have rendered the similar observation.
12. The CGP units of the petitioner are located outside the notified area of the SEZ unit, thereby giving rise to the scope of open access for drawal of power from CGP to the SEZ unit. Such drawal of power cannot be treated as “destination of its own use” as mentioned under the proviso to Section 42 (2) of the Electricity Act, 2003. Hence, the contention of the petitioner that it is not liable to pay open access charges by virtue of common ownership and having its own dedicated transmission system may not be acceptable. Further, SEZ unit is a separate corporate entity and avails special benefits from central as well as state governments by virtue of the SEZ Act and rules & policies framed thereunder. Hence, the consumption of power by SEZ from outside its notified area is subject to open access regime even if both are under the common ownership. Thus, in the instant case the petitioner has to pay cross subsidy charges to

WESCO Utility. As per the power guidelines notified by Ministry of Commerce and Industry, Department of Commerce (SEZ Division) vide Notification dated 07.02.2009 (amended vide Notification dated 06.04.2015), an SEZ can construct a CGP in its notified area and in that case SEZ entity is exempted from the rigors of open access charges.

13. WESCO Utility further submitted that in the event of failure of power supply from the Unit-II (IPP) of the petitioner to the state as per the order of the Commission, the petitioner shall supply the same from either from its Units-I, III & IV, which have been converted to CGP units and the said supply will fall under open access region for which the petitioner shall be liable to pay open access charges to the utility.
14. ERLDC, the Respondent No. 5, in its written submission on 03.08.2016 submitted that M/s. Vedanta Ltd. has got connectivity with the ISTS as IPP for 1400 MW export and 128 MVA import. As per the proposed operational arrangement mentioned by the petitioner, 3 nos. of 400 VAL-SEZ feeders will be connected with CTU bus. So the petitioner has to make fresh connectivity agreement in view of the change of its status from IPP to CGP. Further in case supply is maintained to GRIDCO through CTU network, requisite open access is to be availed. ERLDC further submitted that there should a complete segregation of CGP units and IPP unit and load connected with the CTU and STU systems. Continuous split bus (single bus) operation is not desirable for grid security point of view. There should be double bus operations on both CTU and STU system. Consequent upon changeover of jurisdiction of M/s. Vedanta Limited from ERLDC to SLDC Odisha, as per the decision taken in the special meeting at ERPC held on 14.10.2016, M/s. Vedanta Limited has become an embedded entity of Odisha.
15. In replying the respondents, the petitioner, M/s. Vedanta Ltd. submitted that WESCO Utility's interpretation of Hon'ble Supreme Court's judgment dated 25.04.2014 (reported as (2014) 8 SCC 444) is not correct. The issues/facts involved in the matter before the Hon'ble Supreme Court were entirely different from the present issues. The matter before the Hon'ble Apex Court was pertaining to the deemed distribution license of the petitioner and approval of PPA between M/s. Sterlite Energy Ltd. (IPP) and M/s. VAL SEZ, which were the situation prior to the merger of the entities. There the issue was supply of power from the IPP to the Aluminium Smelter Plant (SEZ), where as in the present petition, the issue is supply of power from the CGP to the Smelter Plant (SEZ) after conversion of IPP to CGP and merger of the entities.

Similarly, the issues before the Hon'ble ATE in Appeal NO. 171 of 2010 were same as in case of the Hon'ble Apex Court.

16. M/s. Vedanta Limited further submitted that the power plant is around 500 meters away from the SEZ smelter unit and connected with 400 KV dedicated transmission line constructed, owned and operated by the petitioner. After merger of the M/s. Vedanta Group of Companies, the CGP and the Aluminium Smelter (SEZ) are operated by the petitioner. Thus, even if the petitioner's CGP is located outside the notified area of SEZ, it is still part of the same legal entity i.e. M/s. Vedanta Ltd. Hence, in terms of 4th proviso to Section 42 (2) of the Electricity Act, 2003, no cross subsidy surcharge will be payable by the petitioner. Regarding supply of power to the state, M/s. Vedanta Ltd submitted that it has already been dealt with in details by the Commission's order dated 27.01.2016 in Case No. 21/2015. The petitioner is committed to comply with the orders of the Commission in letter and spirit.
17. The petitioner M/s. Vedanta Ltd. submitted that the present petition is for the limited purpose of supply of power from the petitioner's CGP to its SEZ-Smelter Plant through its dedicated 400 kV feeders without application of open access charges and losses. After conversion of IPP units to CGP units, the petitioner has proposed a modified connectivity arrangement.
18. Heard the parties at length. Their written submissions are taken into record. The Commission observed in the event of merger of the Vedanta Group of Companies and conversion of the IPP units to CGP units, the petitioner M/s. Vedanta Limited has proposed for rearrangement of the connectivity among the converted CGP units, IPP unit, Smelter unit (SEZ), State Grid (STU) and CTU. At the same time, the petitioner has prayed the Commission to direct SLDC/WESCO Utility not to charge open access related charges as well as losses on supplying power from the converted CGP units to its Smelter unit (SEZ) since these are co-located and connected with 400 KV feeders, constructed, owned and operated by itself.
19. The Commission observed that a special meeting had been convened by ERPC on 14.10.2016 at Kolkata to discuss the issues related to M/s. Vedanta Ltd, wherein decisions have been taken on the aforesaid connectivity issues. Therefore, the Commission do not want to go into this issue. However, regarding the issue of application of Open Access Charges for supply of power from the converted CGP units to Smelter unit (SEZ), the Commission observed that after merger of the Vedanta Group of Companies to a single entity named M/s. Vedanta Limited, the

ownership of the converted CGP units, Smelter Unit (SEZ) and 400 KV feeders between CGP and smelter lies with M/s. Vedanta Limited. The 4th proviso of Section 42 (2) of the Electricity Act, 2003 states that:

“Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.”

20. In the instant case the Commission is of the view that since ownership of the 400 KV line between converted CGP and smelter lie with the Petitioner and since M/s. Vedanta Ltd. utilizes its own CGP power, neither open access charges such as transmission charges nor cross subsidy surcharges shall be payable by them. It will be applicable to the Petitioner so long as the above stated situation does not change. It is also found that SLDC or OPTCL has not claimed any Open Access Charges from the petitioner for supply of such power in the present connectivity arrangement. All protective measures on connectivity issues raised by OPTCL shall be made as per Grid Code and orders of RLDC.
21. With the above observations, the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(A.K.Das)
Member

Sd/-
(U.N.Behera)
Chairperson