

**ODISHA ELECTRICITY REGULATORY COMMISSION**  
**PLOT NO. 4, CHUNAKOLI, SHAILASHREE VIHAR,**  
**CHANDRASEKHARPUR,**  
**BHUBANESWAR-751021**  
\*\*\*\*\*

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

**Case No. 24/2016**

M/s. Utkal Alumina Intl. Ltd.	.....	Petitioner
Vrs.		
SOUTHCO Utility & 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 seeking declaration of the Commission that no open access approval is required from the SLDC/OPTCL for supply of power from its CGP to the residential township through 33Kv dedicated transmission line and SOUTHCO Utility/SLDC may be directed not to charge any open access charges as well as wheeling charges from the petitioner as the CGP, residential township and the 33 kV feeders are owned by it.**

**For Petitioner:**      Shri Bibhu Prasad Das, Advocate, Shri Sailaza Nandan Das, Advocate

**For Respondents:**      Shri J. C. Panda, GM, SOUTHCO Utility, Shri L. D. Upadhyaya, AGM (Com.), SOUTHCO Utility, Shri P. K. Mohapatra, Manager (Elect.), SOUTHCO Utility, Shri S. K. Puri, DGM, OPTCL. Nobody is present on behalf of the SLDC.

**ORDER**

**Date of Hearing: 17.06.2016**

**Date of Order:30.07.2016**

The present applicant is a company which refines bauxite and produce alumina. It is wholly owned subsidiary of M/s. Hindalco Industries Ltd. and has a Captive Power Plant comprising of three nos. of 30 MW power generating units in the Rayagada district of Odisha. The Petitioner also owns a residential township for its employees at Osapada at a distance of eight kilometers from the captive power plant site. The applicant has acquired land for construction of a railway corridor from the captive power plant site to a place adjacent to the township. Now the applicant proposes to supply power from its aforesaid captive power plant to the township through a 33 KV overhead dedicated transmission line to be constructed by the applicant along the railway corridor on its own land.

2. The Respondent M/s. SOUTHCO Utility in its letter dated 20.02.2016 permitted the construction of 33 KV overhead transmission line with a condition that the Petitioner shall be treated as open access customer as per Section 9 (2) and Section 40 (2) of the Electricity Act, 2003 and shall pay the open access charges i.e. wheeling charges and other charges, if any as applicable from time to time.
3. The Petitioner in its letter dated 27.04.2016 addressed to the Opposite party submitted that it could be treated as an Open Access consumer under Section 9 (2) of the Electricity Act, 2003 only if the existing transmission network of the opposite party was being utilized for transmission of power from its captive generating plant to the township. Since the applicant would be evacuating power from its captive generating plant to the township through the proposed 33 KV overhead dedicated transmission line no wheeling of power would be involved and hence no wheeling charges or open access charges were payable by it.
4. The Respondent SOUTHCO Utility pointed out a case between OCL Iron and Steel Company Vrs. WESCO & Others in Case No. 139/2009 vide Order dated 26.08.2010 where the Commission has held as follows:

*“We, therefore, reiterate our view that even though the 11 KV line is constructed, maintained by the OISL, for the subject transaction as narrated above the 11 KV line shall be treated as deemed distribution system of the DISCOM.”*

The Hon'ble APTEL in Appeal No. 171/2010 and 187/2010 dated 05.08.2011 has also upheld the finding of the Commission. Therefore, the 33 KV distribution line is a part of the distribution system of the Respondent and the Petitioner is liable to pay wheeling charges.

5. The Petitioner during hearing pointed out the definition of Open Access as mentioned in Section 2 (47) of the Electricity Act, 2003. It stated that since transmission lines or distribution system of the Opposite Party is not going to be used by the applicant for the purpose of evacuating power from its generating plant to its township. Hence there will be no incidence of open access and as such the applicant will not be liable to pay open access/wheeling charges as contended by the Respondent. Since the applicant is not going to exercise its rights to avail open access under Section 9 (2) of the Act no open access charges is payable. The proposed 33 KV dedicated transmission line is to be constructed on the own land of the applicant.
6. We have heard the submissions and counter submissions of the petitioner as well as the respondent on the issue. The applicant intends to avail Power Supply from its captive generating plant to its township housing the operating staff at Osapada through a dedicated

33 KV line to be constructed from the captive generating plant to place of its use in the township. The respondent SOUTHCO Utility insists that they have a right to recover the “wheeling charges” from the petitioner at the rates determined by the Commission from time to time on the grounds that the 33 KV dedicated distribution line constructed by the petitioner is deemed to be a part of licensees distribution system by virtue of Commission’s order in case No.139 of 2009 between OCL Cements, OCL Steel Company and WESCO.

7. The petitioner refuted the claim of the respondent citing that the reliance of the respondent placed on above ground is not applicable in this case. They have relied on the decision of Hon’ble APTEL in appeal No.28 of 2005 between M/s Kalyani Steel Ltd. Vrs. Karnataka Power Transmission Corporation and Petition No.79 of 2013 filed by M/s Jindal Steel and Power and Chhatisgarh Power Distribution Companies Ltd. and others to advance their arguments and support their claim while seeking relief from levy of wheeling charges by the licensee SOUTHCO Utility.

We have also examined the relevant provisions under the Act and Rules as follows:

8. In Case No.139 of 2009, M/s OCL Iron and Steel (in short OISL), OCL Cement unit and the CGP were historically a single entity having 132 KV connectivity with the State Grid at OCL Cement unit. There was an 11 KV interconnection line between its Cement unit and Steel unit having CGP. Due to a demerger at companies level subsequently, the cement unit with connectivity at 132 KV from State Grid was separated from steel unit (OISL) along with CGP. The 11 KV interconnection line continued to remain in place in floating condition mainly to draw occasional emergency power and synchronised to grid. Such interconnection existing between two separate entities were determined to be a part of dedicated distribution system; because of the reason that legally the generating company should terminate its line at the substation end of either a transmission utility or a distribution utility for evacuation of power, with due permission, from licensee to grid but not at the internal 11 KV supply system of a consumer of a DISCOM. Thus flow of power from CGP can only be taken through this 11 KV line to the grid to be eventually drawn at 132 KV system at OCL end. Therefore, it was considered as a part of distribution system and consequential charges were allowed to the licensee.
9. Now let us examine the situation in this case. The petitioner has constructed a dedicated 33 KV line to its township housing the operating staff of company at Osapada at a distance of 8 KM to meet its consumption of the township from its CGP. The petitioner does not intend to supply power to the grid but intend to meet its own needs. The line has been constructed inside their physical domain, without using any part of the network of SOUTHCO Utility.

**Legal Provisions:**

10. As per section 2 (29) “generate” means to produce electricity from a generating station for the purpose of giving supply to any premises or enabling a supply to be so given;

As per section 2 (30) “generating station” or “station” means any station for generating electricity, including any building and plant with step-up transformer, switch-gear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station;

As per section 2 (8) “Captive generating plant” means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such co-operative society or association;

The Electricity (Removal of Difficulties) (Fourth) order 2005 states that –

***2. Supply of electricity by the generating companies to the housing colonies of its operating staff***

*The supply of electricity by a generating company to the housing colonies of, or townships housing, the operating staff of its generating station will be deemed to be an integral part of its activity of generating electricity and the generating company shall not be required to obtain licence under this Act for such supply of electricity.*

Concurrent reading of the above legal provisions lead us to conclude that any person has the liberty to generate electricity primarily for his own use. The site of use may be any building used for housing operational staff or housing colonies or townships for that purpose and deemed to be an integral part of generation of electricity and no separate licence is required to be obtained for transmitting power from generating station to place of its use. In the present case the petitioner has constructed a CGP and a part of its electricity generated is intended to be used in the townships of their own housing their operating staff.

Open access as defined in Section 2(47) – *means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;*

Section 2 (19) provides that “*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;

Thus, according to above provisions in the law when any consumer (or a person engaged in generation) uses the distribution system and the associated facilities of the licensee to bring in electricity from one other than the incumbent licensee, it is termed as open access. In present case the distribution system i.e. the system of wires and the associated facilities between the generating station and the point of connection to the installation of consumers has been constructed by the petitioner to the point of its own use. The licensee respondent has no involvement directly or indirectly with this in any manner. The respondent submitted an internal technical report that one guest house is supplied with power from SOUTHCO Utility under existing agreement. Since, neither the petitioner nor the respondent has clarified if it intends to avail power supply from its CGP as well as from SOUTHCO Utility simultaneously to this guest house we do not form any opinion on this.

We do not agree with the respondent that because a distribution system of the licensee is existing alongside the proposed line of the petitioner, the network is a deemed distribution system of the licensee. Nor do we agree with the respondent that construction of line to mines and water point of petitioner without permission from licensee is a cause for considering the 33 KV network between CGP and township as a deemed distribution network of licensee.

Therefore it is not a part of the licensees system as was determined in Case No.139 of 2009.

“*Wheeling*” 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 under Section 62;

OERC (Determination of Open Access Charges) Regulation 2(j) specifies “*Open Access Customer*” means a consumer permitted by the State Commission to receive supply of electricity from a person other than distribution licensee of his area of supply, or a generating company (including captive generating plant) or a licensee, who has availed of or intends to avail of open access;

Thus for open access, a consumer has to obtain permission from the Commission to purchase electricity from a person other than the distribution licensee in his area of supply or a generating company or a licensee. Since the petitioner has availed power supply from its

own CGP to its own township as discussed in the foregoing paragraph no permission was necessary and no part of the distribution licensee has been used for wheeling the electricity to its premises. We agree with Petitioner on this.

Under open access Regulation, the wheeling charges are leviable only when the distribution system of the licensee is used.

When, we find that the distribution system between generating station and the point of use by the petitioner is not a part of the licensee's distribution system, it does not satisfy the condition of open access established as per law to recover the charges as due.

11. Accordingly, we pass the following orders:

- (i) The 33 KV line between the CGP of the petitioner and township of the petitioner housing its operating staff for generation of electricity is not a part of the licensee's distribution system i.e. SOUTHCO Utility.
- (ii) The electricity can be supplied from the generating plant of the petitioner to the housing colonies or township housing the operating staff of its generating station and it is treated as a part of activity of generating electricity.
- (iii) The electricity so used in housing township is not supplied under open access from the CGP and therefore.
- (iv) No wheeling charges are payable by the petitioner to the respondent for this line between CGP and township housing its operating staff for generation of electricity.

12. Accordingly, the case is disposed of.

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

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

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