

**ODISHA ELECTRICITY REGULATORY COMMISSION  
PLOT NO. 4, CHUNUKOLI, SHAILASHREE VIHAR,  
CHANDRASEKHARPUR,  
BHUBANESWAR-751023  
\*\*\*\*\***

**Case No. 51/2016**

M/s. Linde India Ltd. , Rourkela  
Vrs.

..... Petitioner

1. Chief Load Despatcher, SLDC, OPTCL, Bhubaneswar and
2. The Authorised Officer, WESCO Utility, Burla

..... Respondents

**In the matter of:**      **An application for adjudication of disputes regarding provisions of non-discriminatory open access under Sub-section (2), (3) and (4) of section 42 of Electricity Act, 2003 and Regulations specified there under.**

**For Petitioner:**      **Shri Bibhu Charan Swain, the authorised representative, Shri A. Paul, AVP-Energy, M/s. Linde India Limited.**

**For Respondents:**      **Shri P. K. Mishra, GM, SLDC, OPTCL, Shri K. C. Nanda, DGM (Fin.), WESCO Utility.**

**Date of Hearing: 26.09.2017**

**Date of Order: 16.12.2017**

**ORDER**

M/s. Linde India Limited in short M/s LIL- the Petitioner herein states that it has established an Oxygen plant in RSP Township, Rourkela for manufacturing of industrial gases for the use of Rourkela Steel Plants. Since, the petitioner has no direct connectivity with WESCO Utility system, they had entered into tripartite agreement on 20th July, 2015, with WESCO Utility and SAIL (Rourkela Steel Plant) for supply of electrical energy by WESCO Utility to M/s LIL using existing electrical infrastructure of SAIL and had become a consumer of WESCO Utility. The said agreement has been approved by OERC by its order dtd.18.01.2016 passed in case No.24/2015. As per the agreement M/s LIL would be a separate consumer of WESCO Utility at 33 kV voltage level with CD of 43.5 MVA and would be billed as per the demand and energy recorded in the 33 KV ABT compliant meter installed at the interface point. M/s LIL would settle its energy bill directly with WESCO Utility as per the agreement. This has been continuing since October, 2015.

2. On 29.01.2016, M/s. LIL informed WESCO Utility that it has made considerable investment in plant and machinery and now is making huge losses in gas business due to current slump in steel market and very high industrial electricity tariff. To minimise losses M/s LIL informed WESCO Utility about its plan to avail power from IEX through open access from the FY 2016-17. M/s LIL also informed WESCO Utility that its estimated consumption

during 2016-17 might vary between 230 to 272 MU out of which it would like to draw 172 MU from IEX through open access. M/s LIL requested WESCO to consider the same.

3. On 2nd March, 2016, as per existing Regulation M/s LIL applied to SLDC for grant of open access (Collective Transaction) for procurement of 40 MW power for its Oxygen plant from IEX for the period from 1st April, 2016 to 30th April, 2016, 1st May, 2016 to 31st May, 2016 and 1st June, 2016 to 30th June, 2016 in three separate applications along with necessary application fees. The quantum of open access of 40 MW is within the existing Contract Demand of M/s LIL i.e. 43.5 MVA.
4. But SLDC in their letter dated 11.03.2016 rejected the application of M/s. LIL for issuance of NoC/sanding Clearance for import of 40 MW RTC Power through Power Exchange on the ground that M/s. LIL has no direct connectivity with the system of licensee. SLDC's (Respondent-1) contention for rejection of open access to M/S LIL was as follows:
  - i. M/s. LIL is availing power supply through a tripartite agreement.
  - ii. M/s. LIL has no direct connectivity with WESCO's distribution system/OPTCL's transmission system.
  - iii. M/s. LIL has not made any arrangement to avail power supply directly from the grid.
  - iv. Existence of infrastructure is necessary for time-block-wise energy metering and accounting in accordance with the provision of Grid Code.
  - v. The petitioner M/s. LIL has made the Open Access application based on the OERC Regulation on Open Access. The present case of M/S LIL is governed by CERC (Open Access) Regulations, 2009.
5. WESCO Utility (Respondent-2) also objected to the open access application of M/S LIL for the following reasons:
  - i. M/s. LIL is availing power supply through a tripartite agreement which has no provision of open access.
  - ii. Grant of open access will lead to revenue loss to WESCO Utility.
6. During hearing SLDC stated that the petitioner had applied for purchase of power through Power Exchange. This transaction comes under the category of Inter State Open Access (Collective Transaction) and is governed under CERC (Open Access in Inter State Transmission (Amendment) Regulations, 2009. Any dispute arising out of this transaction should be decided by CERC. Therefore, the petition should be out rightly rejected. The SLDC could not consider the application since, both transmission and distribution licensee

have denied clearance on the ground that there is no direct connectivity of the petitioner to their network.

7. M/s LIL in its rejoinder stated that the stand of SLDC & WESCO Utility are void without any merit. Hon'ble APTEL vide Appeal No.70 of 2015 dated 7<sup>th</sup> April 2016 has made it clear that the State Commission has jurisdiction to deal with the issues emerging out of denial of short Term Open Access by SLDC/DISCOM to the Consumer intend to avail power through power exchange.
8. The petitioner further stated that the State Commission has approved the open access charges so as to compensate the DISCOM in the event any consumer avails open access vide its annual open access order. These open access charges including the Cross Subsidy Surcharge have been approved by the Commission in such a manner that it compensate the entire loss of cross subsidy for any given category of open access customers to whom supply is given. So, the objection raised by WESCO regarding revenue loss is baseless. As per OERC Open Access Regulation owning the connectivity cannot be a ground for denial of open access. The contentions of both WESCO Utility and SLDC are not based on the sound footing of the statute since these are contradictory to Regulation 2 (c), 4 and 11 of OERC (Terms and Conditions for Open Access) Regulation, 2005. M/s. LIL is a bonafide consumer of WESCO Utility and satisfies all the condition for grant of open access under the Regulation. The tripartite agreement is well within the knowledge of WESCO Utility and Rourkela Steel Plant.
9. Heard the matter at length and all the submission made by Petitioner & Respondent have been taken into record. Hon'ble APTEL has made it clear in its judgement dated 7<sup>th</sup> April 2016 in appeal No.70 of 2015 that if the dispute arises for users of Intra-State network in collective transaction, involving DISCOMs and State SLDC, then it would fall within the jurisdiction of the respective State Commission within whose jurisdiction the Intra-State network is situated. If, any dispute arises with regard to functions of SLDC and compliance of its direction, then the matter is also to be referred to the State Commission as per the provisions of Section 32 and 33 of the Electricity Act, 2003. Under our prevailing Intra State Open Access Regulations, 2005 any dispute arising out of non-issuance of NOC by the SLDC/DISCOM can also be brought before the State Commission. Therefore, in the present disputes also the State Commission has all the jurisdiction to adjudicate the matter.
10. By virtue of a land license Agreement with RSP, M/S LIL is operating its plant within area of RSP which in turn is situated within the geographical limit of distribution licensee. On 20th July, 2015, WESCO, M/s LIL and SAIL (Rourkela Steel Plant) executed a tripartite

agreement for supply of electrical energy by WESCO Utility to M/s LIL using existing electrical infrastructure of SAIL in order to enable M/s LIL to become a consumer of WESCO Utility. The said agreement has been approved by OERC by its order dtd.18.01.2016 passed in Case No.24/2015. As per the agreement M/S LIL would be a separate consumer of WESCO at 33 kV voltage level with CD of 43.5 MVA and shall be billed as per the demand and energy recorded in the 33 KV ABT compliant meter installed at the interface point. M/s LIL shall settle its energy bill directly with WESCO Utility as per the agreement. Therefore, the M/s. LIL has all the rights and obligation of a consumer of WESCO Utility.

11. Under OERC Intra State Open Access Regulations, 2005 any consumer requiring power exceeding 1 MW is eligible to avail that power through non-discriminatory Open Access from any generator or licensee provided that he satisfies other conditions under that Regulation. The contention of WESCO Utility that it has not allowed open access to anybody in the past who has no direct connectivity either with the OPTCL or WESCO Utility system is not supported under the present Regulation. For grant of open access the direct connectivity with the Utility system is not a pre-condition under the said Regulation. The contention of WESCO Utility is not sustainable due to the existing agreement based on which the Petitioner is a consumer of the Respondent. Accordingly, SLDC and WESCO Utility are directed to consider the open access application of the petitioner within the frame work of OERC Regulation, 2005 and other relevant provisions of Act and Regulations without insisting direct connectivity to the utility system as a pre-condition for allowing open access and subject to acceptance by M/s. RSP.
12. With above direction, the case is disposed of.

Sd/-  
**(S. K. Parhi)**  
**Member**

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

Sd/-  
**(U. N. Behera)**  
**Chairperson**