

**ODISHA ELECTRICITY REGULATORY COMMISSION  
BIDYUT NIYAMAK BHAWAN  
PLOT NO.-4, CHUNUKOLI, SHAILASHREE VIHAR  
BHUBANESWAR - 751 021  
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**Present: Shri U. N. Behera, Chairperson  
Shri S. K. Parhi, Member**

**Case No. 20/2019**

M/s. Hindalco Industries Limited	.....	Petitioner
Vrs.		
WESCO Utility & Others	.....	Respondents

**In the matter of:** An application under Section 9.1, 10.1 and section 181 of the Electricity Act, 2003 read with Regulations 8,9 & 76 of OERC (Conduct of Business) Regulations, 2004 for seeking permission to transmit own CGP power to its own FRP Plants at Hirakud , Sambalpur.

**For Petitioner:** Shri Suresh Chandra Das (AVP) and Shri Badal Kiran Mallick, Asst. Manager of M/s. Hindalco Industries Limited

**For Respondents:** Shri L.N.Mahapatra, Advocate, OPTCL, Shri S.K.Mohanty, GM, OPTCL, Shri Tapas Pattnaik, DGM (PP), GRIDCO and Shri K. C. Nanda, DGM (Fin.), WESCO Utility are present

**ORDER**

**Date of hearing: 10.09.2019**

**Date of order: 31.10.2019**

1. The present Petitioner, M/s. Hindalco Industries Ltd., has filed this petition under Section 9 (1), 10(1) and 181 of the Electricity Act, 2003 read with Regulations 8, 9 & 76 of the OERC (Conduct of Business) Regulations, 2004 seeking permission to transmit own CGP power to its own FRP Plants at Hirakud, Sambalpur.
2. The petitioner submitted that he has set up a Captive power plant to provide power supply to its aluminum plant (Smelter) at Hirakud. It has also set up an Aluminium Flat Rolled Product (FRP) Plant in the year 2013 in Hirakud. In order to cater to the additional requirements of captive power in the process of manufacturing of Aluminium and related downstream FRP plant at Hirakud, the petitioner has enhanced its captive power plants capacity from 367.5 MW to 467.5 MW at Hirakud, Sambalpur, Odisha. Due to non-availability of dedicated transmission line, OPTCL line was being used by the Petitioner to transmit its CGP power to its FRP plant through Short Term Open Access with approval from OPTCL/SLDC. Due to complexity of Open access process, the

petitioner after approval of OPTCL has constructed 132 KV dedicated underground cable from its CGP to FRP unit with capital investment of Rs.10 Crs. Since WESCO Utility has raised objection for transmission of power from the CGP to FRP plant through this underground cable the petitioner has prayed the Commission to allow him to transmit power from its CGP to its own FRP plant through this 132 KV dedicated underground cable without open access.

3. WESCO Utility has submitted that Hindalco is having 2 nos. of connections bearing consumer No.BRL/0058 and BRL/0115 at Hirakud for CD of 20MVA each. The main plant is connected with 220 KV and the FRP plant is connected with 132 KV system of OPTCL. The FRP plant had become consumer of WESCO since 2012 with CD of 7.5MVA which was subsequently enhanced to 20 MVA. Presently, apart from WESCO drawl FRP is also drawing power from the CGP through Open Access mechanism for which scheduling is done by SLDC. WESCO Utility submitted that as per Regulation 24 of the OERC (Conditions of Supply) Code, 2004 the service line is required to be taken directly to the consumer's premises from the licensee S/s or from the transmission licensee. The petitioner's FRP unit and the smelter are located in two different places with distance of almost 2 Kms. and separated through a public road as well as public residence. Supply of power in different voltage to a single consumer is not permitted as per S.62 (3) of the Electricity Act, 2003. Further, at present the arrear outstanding against both the consumer nos. of the petitioner is more than Rs. 24 Crs. excluding current bills. Hence, for drawing power from its CGP to FRP unit, the petitioner has to clear its outstanding dues and also undertake that it should not reduce the combined load of 40MVA at least for a period of 5 years.
4. In its reply, OPTCL has stated that the petitioner is availing power to its FRP plant from its CGP through short term Open Access through 132KV Burla-Hindalco line of OPTCL by LILO arrangement. OPTCL has accorded in principle permission for construction of dedicated line from the CGP to FRP plant with the condition that construction of line or any modification thereof will be done under supervision of OPTCL. After charging of the new line, the existing 132KV line will be kept in idle charged condition from Burla power house and jumper will be opened at Hindalco end to prevent material theft of the said line. There is no technical objection for transmission of power through the dedicated underground feeder from the CGP to the FRP plant of the petitioner, but it shall remain connected to grid at a single point of coupling at 220KV from OPTCL's 220/132 KV Katapali grid S/s. The assets created by Hindalco will be a deemed asset of OPTCL and

the petitioner will have to pay wheeling charge/open access charge for transmission of electricity from their CGP to FRP plant using 132 KV cable line.

5. The petitioner in its rejoinder submitted that OPTCL has not mentioned the regulation under which the assets of the petitioner will be treated as deemed asset of OPTCL. The petitioner with due permission of OPTCL has constructed its dedicated line after deposit of the supervision charges to transmit their own CGP power to FRP. The Unit of the petitioner will be connected to GRID only at 220kV Katapali sub-station after charging the new line. Under open access regulation, wheeling charges/transmission charges are leviable only when the transmission network of the licensee is used. Here the petitioner is not going to use the network of OPTCL to transmit its own power. The line has been constructed by the petitioner and the maintenance of the asset is under the scope of the petitioner under Section 9(1) & 10(1) of Electricity Act, 2003 which are reproduce below.

**Section 9:**

*(1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:*

*Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company:*

*[Provided further that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made hereunder and to any consumer subject to the regulations made under subsection (2) of section 42.]*

*(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:*

*Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:*

*Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.*

**Section 10:**

*(1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.*

6. During the hearing on 09.08.2019, the petitioner submitted that waiting for the reply of OPTCL would delay the commissioning of its newly constructed transmission lines. The Commission may allow the petitioner to transmit its CGP power to their FRP Plant at

Hirakud through the dedicated transmission lines subject to outcome of the final order of the Commission in the present case. The Petitioner has agreed to make payment of the arrear dues of WESCO Utility within one month and also withdraw the cases pending in different forums against the respondent WESCO Utility after mutual settlement. Further, they have no intention to reduce the total contract demand below 40 MVA as a single consumer.

7. The Commission vide its interim order dated 09.08.2019 had allowed the petitioner to charge its newly constructed dedicated underground cable transmission line for transmission of its CGP power to its FRP plant at Hirakud subject to satisfaction of the technical requirements. Regarding the issue of transmission charges, OPTCL was directed to file their reply by 31.08.2019 serving a copy of the same on the petitioner.
8. In response to the Commission's direction, OPTCL submitted that the Petitioner has filed its application in the present proceeding under Section 9 (1), 10(1) and 181 of the Electricity Act, 2003 read with Regulations 8, 9 & 76 of the OERC (Conduct of Business) Regulations, 2004 seeking permission of the Commission to allow the petitioner to transmit its CGP power to its own FRP Plant at Hirakud through 132kV dedicated underground cable without Open Access. The provision of the Act and Regulation under which the above prayer has been made does not provide for making such application and adjudication there under. Further, a person having CGP u/s 9 of the Act has been allowed to construct, maintain and operate a dedicated transmission line and shall have the right to Open Access for carrying electricity from its CGP to the destination of his use. But, the provision of Section 9 of Act, 2003 does not specifically prescribe that one having CGP can transmit the electricity from its CGP to destination of own use through its dedicated transmission line. The first proviso to Sec 9 of Act, 2003 intends that supply of electricity from the CGP shall be through the Grid and it shall be regulated in the same manner as the generating station of a generating company.
9. Further, OPTCL submitted that the FRP plant was a consumer of WESCO having 20 MVA load and was getting supply through the 132 kV line from Burla Power House to Hindalco plant with LILO at the FRP plant, while Hindalco was also a consumer of WESCO with 20 MVA load and was getting supply through the 220 kV line from Katapali Grid Sub Station. The WESCO may have terminated its contract of 20 MVA with FRP plant and enhanced its contract with Hindalco from 20 to 40 MVA. This situation does not change or affect the position of 132 kV underground transmission line

from Hindalco CGP to FRP plant to be called as a dedicated transmission line of CG P of Hindalco.

10. The Commission in its order dated 01.12.2008 passed in Case No 10/2008 held that the 11 kV dedicated line constructed by OCL at its own cost before demerger is a part of distribution system of WESCO through which non-discriminatory open access can be availed and WESCO is entitled to get wheeling charge. The above case was challenged in APTEL and Hon'ble ATE in its Judgement dated 05.08.2011 passed in Appeal No. 171 of 2010 held to the effect that 11 kV line connecting the CGP of steel plant and OCL is not a dedicated transmission line as being part of distribution system. The basic question that a dedicated line cannot terminate at the place of consumption and the underground cable 132 kV line from Hindalco to FRP plant cannot be termed as a dedicated transmission line but to be termed as a deemed transmission system of OPTCL and it is liable for payment of open access Charges.
11. WESCO Utility in its written submission submitted that the petitioner has to take necessary action for enhancement of load from 20 MVA to 40 MVA of the consumer which is connected with Katapalli Grid sub-station at 220 Kv and should take necessary step for closure/surrender of connection of FRP plant which is connected in 132 KV observing conditions of power supply agreement and existing regulation. Further, as per Regulation 24 of OERC (Conditions of Supply) Code 2004 the service line is required to be taken directly to the consumer's premises for his exclusive use from the licensee substation or from the transmission licensee. So, after surrender of connection with WESCO, the FRP unit would cease to avail direct power supply from WESCO source. M/s. Hindalco's Smelter and FRP unit are located in two different premises with distance of almost 2 KM separated through public road as well as public residence. In view of the above it is to the discretion of the Commission to give necessary direction for drawal of own CGP power by the FRP unit under section 9 & 10 of the Electricity Act, 2003.
12. In response to above submissions of OPTCL and WESCO Utility, the Petitioner submitted that it has constructed its dedicated 132KV connectivity from its CGP to FRP through under-ground cable. Section 2 (16) of EA-2003 clearly defines that "dedicated transmission line" means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations, or the load center, as the

case may be. The referred section 2, 9 & 10 of EA 2003, entitled the Petitioner's CGP to construct, maintain & operate a dedicated line to feed its power to its load, FRP Plant.

13. Further, the Petitioner has also applied to WESCO to surrender the consumer status of its FRP Plant and enhance the existing Contract Demand from 20 MVA to 40 MVA. The Petitioner further stated that the cases illustrated by Respondant-2 (i.e. Case No-10/2008 between OCL & SLDC/WESCO & 139/2009 between OISL & WESCO) are not similar to the case filed by the petitioner. There is no OPTCL connectivity to this dedicated line and hence it cannot be declared as deemed transmission line of OPTCL. Since the Petitioner has not used any OPTCL network to transmit its CGP power to FRP the petitioner is not liable to pay any transmission charges to OPTCL. The Petitioner M/s Hindalco Industries also undertakes through rejoinder dt.19.07.2019 not to reduce the CD from 40 MVA as a single consumer and would withdraw the court cases pending in different forum.

14. Heard the parties at length. The crux of the problem here is that whether the 132 KV underground cable running between Hindalco main industry and its FRP plant is its dedicated transmission line or not. In this regard we avert to the definition of dedicated transmission line as given in the Act. Section 2 (16) of the Act states as follows:

*“Dedicated Transmission Lines ”means any electric supply line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations or the loadcentre, as the case may be;”*

15. As per Section 9 of the Electricity Act, 2003 a person may construct, maintain or operate a captive generating plant and dedicated transmission line. In the present case the captive generating plant of Hindalco is connected through a line to one of its load centre i.e. the FRP plant. The line (132 KV cable) has been constructed by Hindalco and they also maintain the same. The line in its most part run through the own premises of Hindalco. Since Hindalco is connected at 220 KV level to OPTCL system, the line at 132 KV level is physically and electrically separated from them. By no imagination the line can be termed as a deemed transmission line of OPTCL. The illustration of judgement in Case No. 10/2008 is misconceived here since it had different settings. Therefore, we hold that the 132 KV cable running between Hindalco CGP and its FRP plant is a dedicated transmission line. Accordingly, the Petitioner can use the same as such for supplying power to its FRP plant. In view of our above finding no open access charges is payable by the Petitioner for use of 132 KV underground cable (line) running between Hindalco

main CGP and its own FRP plant. However, the commitment of the Petitioner for maintenance of CD at 40 MVA and clearance of all arrear dues shall continue to be applicable. This order shall be applicable from the date of charging of the 132 KV cable by the Petitioner.

16. With the above observation, the case is disposed of.

Sd/-

**(S.K.Parhi)**  
**Member**

Sd/-

**(U. N. Behera)**  
**Chairperson**