

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNOKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021**

**Present: Shri G. Mohapatra, Officiating Chairperson
Shri S. K. Ray Mohapatra, Member**

Case No. 86/2021

GRIDCO	Petitioner
Vrs.		
TPWODL & Others	Respondents

In the matter of: **Application under Sections 23, 24, 142 & 146 of the Electricity Act, 2003 for violation of Electricity supply Code, Regulations, tariff orders and other applicable provisions under said the Act, 2003.**

For Petitioner: Shri P. K. Mohanty, Sr. Advocate.

Respondents: Shri Ananda Shrivatava, Advocate & Shri K.C. Nanda, GM(Fin.) on behalf of TPWODL, Shri Buddy Ranganathan, Advocate & Ms. Supriya Rastogi Agarwal, Advocate on behalf of M/s. Vedanta Limited, Shri B. B. Mehta, CLD, SLDC & Shri Bijay Das, GM (RT&C), OPTCL.

ORDER

Date of hearing: 05.07.2022

Date of order: 19.07.2022

The petitioner GRIDCO has filed the present application under Sections 23, 24, 142 & 146 of the Electricity Act, 2003 for violation of Electricity Supply Code, Regulations, tariff orders and other applicable provisions under said the Act, 2003 by the Respondent No-1 TPWODL by effecting supply of 250 MVA to Respondent No-2 M/s. Vedanta Limited through the commercial agreement made by them on 08.10.2021.

2. The petitioner has submitted that:

- a) M/s. Vedanta Limited is a consumer of TPWODL having contract demand of 100 MVA. On 08.10.2021, TPWODL entered into a commercial agreement with M/s. Vedanta Limited for temporary supply of additional power of 250 MVA initially for a period of 15 days from 09.10.2021 to 23.10.2021 with provision for further extension of the agreement from time to time.
- b) The said 250 MVA additional power was treated as unscheduled drawal and thereby no month-ahead/day-ahead scheduled was provided. As per the said

agreement, the demand charges will be calculated @Rs.275/KVA which is 10% higher than the approved demand charges of Rs.250/KVA. Similarly, the energy charges will be 10% higher of the normal rate.

- c) The said commercial agreement dated 08.10.2021 for temporary supply of additional power by TPWODL to M/s. Vedanta Limited is direct violation of the OERC Distribution (Conditions of Supply) Code, 2019. As per Supply Code, 2019, the temporary supply relates to supply of power to meet temporary needs on special occasions including marriage or other ceremonial functions, fairs, festivals, religious functions or seasonal business or for construction of residential houses, complexes, commercial complexes, industrial premises. But the purpose of supply through the said commercial agreement dated 08.10.2021 is outside the purview of temporary supply under Supply Code, 2019. By such act of TPWODL, the petitioner is being exposed to grid indiscipline and associated penalties. Further, this sort of unfair business practice entails the State of Odisha for penalties under deviation settlement mechanism, demand supply aberrations and other problems.
- d) The said agreement also violates the Commission's Retail Supply Tariff order dated 26.03.2021 where under prepaid metering is mandated. But there is no prepaid metering for effecting the transaction under the said commercial agreement which is admitted in the said agreement.
- e) Both the petitioner and the TPWODL are bound themselves to conduct their respective business as per Bulk Supply Agreement dated 02.02.2021 read with the Bulk Supply License and Retail Supply License granted by the Commission. But the present commercial agreement dated 08.10.2021 will be in breach of the Bulk Supply Agreement as well as Bulk Supply and Retail Supply Licenses on part of the TPWODL. Such acts and omissions on part of TPWODL constitute an abuse of its position to serve the high end consumers by breaching the obligations entered into with the petitioner.
- f) The Bulk Supply Agreement stipulates that TPWODL shall notify GRIDCO of its power supply requirements. In this regard the relevant provisions are given hereunder:

“3.1.3 In respect of the first year, the Annual Notice detailing its power Supply requirements for each month in such a year shall be provided within thirty (30) days of the date of execution of the Agreement.

3.1.4 In addition to the annual notice, not later than fifteen (15) days prior to the commencement of each month, TPWODL shall deliver to GRIDCO a notice (“Monthly Notice”) detailing its power supply requirement for that month.

.....

3.1.6 In addition to above, the TPWODL shall furnish the day ahead scheduled to SLDC with a copy to GRIDCO as per the applicable regulations.”

The above conditions of the Bulk Supply Agreement have not been followed by TPWODL.

- g) In the guidelines issued by OPTCL on ‘the procedure for new connectivity and load enhancement to industries’, it has been particularly mentioned that special emphasis shall be given on system study for any capacity addition along with availability of power, submission of feasibility report and permission by STU etc. But TPWODL has not complied with the above procedures for new connectivity/load enhancement to industries and thereby violated the general principles of grid safety.
- h) The Bulk Power Transmission and SLDC Agreement signed between OPTCL and TPWODL recites that the parties are required to follow the standards and codes of conduct and operation as prescribed by the Commission from time to time. Further under the operating agreements, ‘Connection and Metering’ clause, the parties acknowledge and accept that they are bound by the Regulations including Grid Code. The said agreement for temporary supply is a clear case of enhancement of demand which cannot be made by avoiding the process for load enhancement, thereby compromising on grid safety and security. Further, the aspect of the inspection of Electrical Inspector as per Supply Code, 2019, is bypassed.
- i) Now, the thermal power plants are running at reduced capacity due to shortage of coal. The cumulative effect of additional load of 250 MVA by unauthorized means may result in longer power cuts/rotational load shedding.
- j) In view of the above, the petitioner has prayed before the Commission to;
 - Declare the said commercial agreement dated 08.10.2021 null & void and set aside/quash the same with immediate effect and direct TPWODL

to forthwith cease and desist from effecting supply of 250 MVA power to M/s. Vedanta Limited.

- Direct TPWODL to reimburse the petitioner any grid related penalties in this matter that the petitioner exposed to in present or in future.
- Direct M/s. Vedanta Limited to compensate the petitioner towards its financial loss incurred in terms of Day Ahead Market rate at which the petitioner would have sold the said power in the power exchange.
- Impose penalty on TPWODL under Section 142 of the Electricity Act, 2003 for contravention of the Bulk Supply Agreement, OERC Supply Code, 2019 as well as RST Order.
- Invoke the provisions of Section 146 of the Electricity Act, 2003 on the concerned officer(s) imposing punishment for contravention of the Supply Code and adopting unfair commercial principles in violation of Electricity Act, 2003.

3. TPWODL (Respondent No-1) has submitted the followings;

- a) The instant petition is not maintainable in the eyes of law as the petitioner-GRIDCO has no locus standi to seek relief under Section 142 of the Electricity Act, 2003, as being no manner aggrieved with the execution of the said power supply agreement dated 08.10.2021. The term 'any person' as mentioned under Section 142 of the Act, 2003 refers to and means a person who is affected/aggrieved with an action by another person resulting in willful violation of the order/directions issued by the Commission or provisions of the Act and Regulations. The petitioner has not shown existence of any reasonable and sufficient cause as to the manner it is aggrieved with the said agreement.
- b) Section 146 of the Electricity Act, 2003 is of a nature of substantive provision, laying out the punishment for non-compliance of order/directions given under the Act or contravention of any provision of the Act. The said Section 146 of the Act is not procedural in nature. It empowers the Commission for imposing punishments in case of violation or contravention as stated thereunder.
- c) The agreement under question does, in no manner, violate or contradicts any of the provisions of Electricity Act, 2003 and OERC Supply Code, 2019. The object and purpose of the Act and the Supply Code have been adhered to by

TPWODL while executing the said power supply agreement for equitable discharge of its obligation as a distribution licensee mandated under Section 43 of the Electricity Act, 2003.

- d) The power supply agreement was executed between TPWODL and M/s. Vedanta Limited on 08.10.2021 for a temporary supply of 250 MVA of power which was feasible and within the ambit of the approved ARR of TPWODL. Owing to sudden fall in the availability of coal, affecting generation and leading to power interruption in many States, TPWODL cancelled the said agreement w.e.f. 11.10.2021. The Section 23 of the Electricity Act, 2003 empowers the Commission to issue directions to the license for regulating supply, distribution, consumption or use thereof, when it is expedient or necessary for maintaining efficient supply, effecting equitable distribution of electricity and promoting competition. The power vested with the State Commission under Section 23 of the Electricity Act, 2003 is not general but exceptional which is to be applied in extraordinary situation prevailing at a point of time.
- e) Further, the petitioner has failed to show any ground for invoking Section 24 of the Electricity Act, 2003 which deals with suspension of distribution license and sale of utility subject to satisfaction of certain conditions as mentioned thereunder. Mere execution of power supply agreement between TPWODL and M/s. Vedanta Limited, does in no manner fall under the stipulations as embodied under section 24 (1) of the Electricity Act, 2003.
- f) Being a distribution licensee, it is the obligation of TPWODL to provide electricity to a consumer in its area of operation as per the specified regulatory framework to meet the object and purpose of the Act as well as rules and regulations. In the instant case, the cause of action arises by virtue of a power supply agreement between TPWODL and the consumer M/s. Vedanta Limited. The quantum of load required by M/s. Vedanta Limited was 350 MVA (100 MVA + 250 MVA), which is within the approved SMD in respect of TPWODL. In the entire period of temporary supply of power there has been no instance for any long power cuts or rotational load shedding.
- g) As regards to system feasibility and capacity, the said supply can be provided through the existing transmission system which has a transmission capacity upto 2000 MW as it is connected with CTU at 400 KV system and M/s. Vedanta

Limited is also drawing power about 1300 MW/1400 MW through open access by using the same transmission system, for which SLDC gives approval on month to month basis. Therefore, there is no infirmity on the part of TPWODL in supplying additional power of 250 MVA to M/s. Vedanta Limited through the same transmission system which is technically feasible. Hence, the contention of the petitioner qua adequacy of load and feasibility of system is misconceived and unsustainable in the eyes of law.

- h) The petitioner has relied upon Para-36 of the vesting order dated 28.12.2020 in order to substantiate the fact that TPWODL has not sought consent of the petitioner on availability of power while going on contract to sell 250 MVA power which is very high quantum and vulnerable on commercial and technical aspect. But the direction issued by the Commission vide Para-36 of the vesting order is not applicable to the facts and circumstances of the present case. The said directions are in respect of procurement of power by GRIDCO. In the ARR and BSP order of GRIDCO for FY 2021-22, it is established that after meeting DISCOMs requirement, GRIDCO is having a surplus power of 5792 MU for trading purposes. In the said ARR order, the Commission has approved the quantum of power and SMD of TPWODL as 8600 MU and 1540 MVA with permitted SMD of 1694 MVA (10% of 1540 MVA) respectively. The power supply agreement dated 08.10.2021 has been cancelled w.e.f. 11.10.2021. The actual supply was provided to M/s. Vedanta Limited under the said agreement for two days only i.e. for 9th & 10th October, 2021. The quantum of load allowed to M/s. Vedanta Limited is well within the approved SMD as stated above.
- i) The petitioner has given emphasis to the category of ‘temporary supply’ as provided under Regulation 138 (p) of OERC Distribution (Conditions of Supply) Code, 2019. In the said regulations, the guiding principle for interpretation of the said category is ‘temporary needs on special occasions’. Thus, the test is whether the supply is for temporary needs or for special occasion. In the instant case the supply required by M/s. Vedanta Limited was temporary and for special & exceptional occasion, that to for a period of mere 15 days as per the agreement, which in effect lasted for 2 days only as the said contract was duly terminated by TPWODL. Further, one of the pre-requisites to load enhancement is that the same shall not be reduced for a period of one year.

Hence, considering the prevailing circumstances, the initial duration of the agreement and actual duration of supply, the application of M/s. Vedanta Limited was allowed for only temporary power supply. Therefore, there is no infirmity on part of TPWODL in providing supply electricity to M/s. Vedanta Limited under the “temporary supply” category.

- j) Prepaid meters for HT and EHT consumers is not available in market. Therefore, TPWODL was supplying electricity to M/s. Vedanta Limited through existing metering system and the transaction was through advance payment mode. Hence, there is no infirmity in supplying power to M/s. Vedanta Limited through existing metering system.
- k) The terms stipulated in Clause 3.1.3 and 3.1.4 of the Bulk Supply Agreement regarding annual and monthly notice to GRIDCO has never been imposed since the Commission fixes the BSP and RST on annual basis detailing therein the approved SMD and quantum of energy to be procured by GRIDCO and supplied to the licensees. GRIDCO has never asked for such notice from the licensees and therefore, the parties have accepted to the prevailing practice in which such kind of notice had never been included. Hence, there is no infirmity on part of TPWODL by not providing annual or monthly notice to GRIDCO regarding its power supply quantum.
- l) As per the normal practice and legacy, TPWODL vide its e-mail dated 08.10.2021 at 7.34 PM has informed SLDC about its power drawal scheduled on 09.10.2021 which was within the SMD approved by the Commission for TPWODL and on receiving the same no objection was issued by SLDC. Hence, the averment raised by the petitioner that TPWODL did not inform SLDC about the day ahead schedule with the said additional transaction of 250 MVA power, is without any merit.
- m) The claim of the petitioner regarding financial loss on account of the said power supply agreement is fabricated. The petitioner has sourced power from the approved sources with approved rates. Even during 9th and 10th of October, 2021, when the bilateral agreement was implemented, GRIDCO has never purchased additional power. Rather, it was selling power to other States as per the data available in ERLDC website.

- n) The prayers made by the petitioner in the instant petition is not maintainable in the eyes of law as the petitioner has no locus standi to file such application interfering with the power supply agreement executed between a licensee (TPWODL) and a consumer (M/s Vedanta Limited). The said agreement is well within the domain of the applicable provisions of rules and regulations. Further, the agreement does not affect the function entrusted to the petitioner. Hence, the instant petition is liable to be dismissed on the ground of maintainability as well as merit.

4. M/s. OPTCL (Respondent No-3) has submitted that;

- a) The purpose of supply mentioned in the subject commercial agreement dated 08.10.2021 cannot be treated as ‘temporary supply’ as per 138 (p) of OERC Distribution (Conditions of Supply) Code, 2019.
- b) OPTCL has very limited involvement in the present case except on the issue of connectivity as per Odisha Grid Code, 2015. As per Clause 4.4 of the Odisha Grid Code, 2015, the EHT consumer M/s. Vedanta Limited would have intimated the STU about the commercial agreement dated 08.10.2021 as it is a modification of connection condition. As per the connectivity agreement, M/s. Vedanta Limited has declared its existing contract demand as 100 MVA. So the commercial agreement dated 08.10.2021 for drawal of 250 MVA over and above the existing contract demand is not permissible without the knowledge of OPTCL, the STU.
- c) M/s. Vedanta Limited (Respondent No-2) has intentionally and deliberately breached with the procedures specified by the STU for new connectivity and load enhancement to industries, thereby causing grave concern on safety, reliability and stability of grid.
- d) There was opportunity for drawing power by M/s. Vedanta Limited in short term open access with the knowledge of all constituents i.e. SLDC, OPTCL, GIDCO and TPWODL in conformity with OERC (Terms and Conditions of Intra-State Open Access) Regulations, 2020.
- e) The commercial treatment arising out of the transactions in the subject matter should be treated as short term open access transaction in STU network and

OPTCL is eligible for obtaining the transmission charge on the scheduled quantum of power but not on actual energy drawal.

5. SLDC (Respondent No-4) has submitted that;
 - a) As per the Odisha Grid Code, SLDC is responsible for optimum scheduling and dispatch of electricity within the State. In accordance with the contracts entered between the licensees and generating companies.
 - b) M/s. Vedanta Limited (Respondent No-2) has contract demand of 100 MVA with TPWODL (Respondent No-1). Further a tripartite agreement was executed between GRIDCO, TPWODL and M/s. Vedanta Limited on 25.09.2021 for supply of 130 MW to M/s. Vedanta Limited by TPWODL.
 - c) SLDC was not informed either by TPWODL or M/s. Vedanta Limited about the present contract for additional transaction of 250 MVA power between them during the period from 09.10.2021 to 23.10.2021. Also, no such transaction was specified in the day ahead drawal requisition furnished by TPWODL during that period.
6. M/s. Vedanta Limited (Respondent No-2) has submitted that;
 - a) The commercial agreement dated 08.10.2021 between TPWODL and M/s. Vedanta Limited for availing 250 MVA power is for the temporary need of its industrial premises, as per Para-526 of the RST order dated 26.03.2021 and Regulation 138 (p) of OERC Distribution (Conditions of Supply) Code, 2019. As per the said Regulation 138 (p) temporary supply of power is to be extended for temporary needs of certain categories of consumers. This category specifically imbibes such needs of commercial complexes, as well as industrial premises. Since, the word 'including' is used in the aforesaid regulation the ambit of the same is broad so as to also include temporary power supply to an industrial establishment, as was done in the present case. The period contemplated under said agreement was only for 15 days. However, the agreement was terminated within a period of 2 days only. Hence, there has no violation of the provisions of the Supply Code as alleged by the petitioner.
 - b) M/s. Vedanta Limited relies upon the statutory obligations mandated on the part of the licensee-TPWODL, when a request is made upon it, qua supply of power in terms of Section 43 of the Electricity Act, 2003. Hence, there has been no

willful or deliberate violation on the part of the M/s. Vedanta Limited in terms of the said commercial agreement entered with TPWODL with regard to provisions under the Electricity Act, 2003 or the Supply Code, 2019.

- c) The petitioner has failed to establish any cause of action to approach the Commission under the aegis of Section 42 and Section 146 of the Electricity Act, 2003 which deals with offences and penalties. The petitioner is not even a signatory to such commercial agreement and mere execution of this agreement between a TPWODL and M/s. Vedanta Limited without any violation of Laws/ Rules/ Regulations/ Code, cannot maintain the present proceedings against M/s. Vedanta Limited.
- d) The petitioner has also failed to establish that it has suffered any actual loss or damage in the circumstances. As such the domains of compensation etc., as claimed by the petitioner, are governed under Section 73 of the Contract Act, 1872. It is settled by law that a party claiming compensation in the nature of damages has to necessarily demonstrate actual loss suffered by it. In this regard M/s. Vedanta Limited has relied on the judgment of the Hon'ble Supreme Court of India in the case of *Kailash Nath Associates Vrs. DDA*, reported in (2015) 4 SCC 136.
- e) The petitioner has not placed any material on record before this Commission to substantiate as to why M/s. Vedanta Limited should pay any alleged compensation. The prayer of the petitioner is untenable in the eyes of law without any legal basis; hence deserve to be rejected by the Commission.

7. In its reply to the submissions of the respondents, the petitioner GRIDCO has submitted that;

- a) Regulation 138 (p) of OERC Distribution (Conditions of Supply) Code, 2019 stipulates:

“This category relates to supply of power to meet temporary needs on special occasions including marriage or other ceremonial functions, fairs, festivals, religious functions or seasonal business or for construction of residential houses, complexes, commercial complexes, industrial premises provided that such power supply does not exceed a period of six months.”

- b) The above regulation clearly stipulates ‘temporary supply’ inter alia supply of power for construction of ‘industrial premises’, whereas in the subject agreement stipulates ‘to provide additional load of 250 MVA for temporary

need of power supply to its industry to meet immediate consumer requirement in addition to its existing contract demand'. TPWODL in its reply has suppressed the word 'construction' while interpreting the above regulation. The temporary supply can be availed by the industry for construction purpose only, which cannot be misused for other industrial purpose. In the instant case, TPWODL is supplying power to M/s. Vedanta Limited under temporary supply category for use of the same as in case of regular supply. Therefore, such supply of power to an industry over and above its existing contract demand cannot be termed as 'temporary supply' as it does not qualify under Regulation 138 (p) of the Supply Code, 2019 and hence, it is a clear violation of the OERC Distribution (Condition of Supply) Code, 2019.

- c) Further, such power supply under the category of 'temporary supply' amounts to violation of Rule-2 of Electricity (Rights of Consumers) Rules, 2020 which inter alia stipulates 'temporary connection' means an electric connection required by a person for meeting his temporary needs such as:-

i. For construction of residential, commercial and industrial complexes including pumps for de-watering.

x x x

x x x

xxx

- d) The RST order for FY 2021-22 stipulates for use of pre-paid meter in case of temporary connection. Had the said supply been temporary in nature, TPWODL must have insisted upon M/s. Vedanta Limited for use of pre-paid meter for separate recording of energy towards temporary supply. Non-use of prepaid meter for separate recording of so called temporary supply amounts to violation of directive of the Commission in the RST order for FY 2021-22.
- e) As per Orissa Grid Code Regulations, 2015, the State Load Despatch Center shall be responsible for optimum scheduling and dispatch of electricity within a State in accordance with the contracts entered into with the licensees or the generating companies operating in that State. In its reply TPWODL has stated that it had mentioned regarding such supply in its day-ahead requisition to SLDC and the same was duly approved by SLDC. Whereas SLDC in its reply has stated that it was not informed about the contract for additional transaction of 250 MVA between TPWODL and M/s. Vedanta Limited and no such transaction was specified in the day ahead drawal requisition furnished by

TPWODL during that period. From the above, it is understood that TPWODL is misleading the Commission by stating that the said contract was brought to the knowledge of SLDC in the day-ahead schedule which is duly approved by SLDC. Hence, TPWODL has deliberately contravened Orissa Grid Code, 2015.

- f) The Commission at Para-347 of the ARR & BSP order dated 26.03.2021 for FY 2021-22 and another order dated 20.07.2021, has directed GRIDCO for trading of the available surplus power in the market on prudent commercial principles after meeting the State requirements and adjusts the revenue earnings from trading and UI sources towards meeting its loan repayment liability and past losses. Further at Para-348 of the said order, it has been stipulated that a tripartite agreement has to be executed among the Industry owning CGP, GRIDCO and DISCOMs for sale of surplus power of GRIDCO to the said industry. But TPWODL in its reply has stated that they can sell the power from the surplus power quantum allowed to GRIDCO for trading, so as to increase consumption in its area of supply and earning more revenue. Hence, the subject bi-lateral agreement entered between TPWODL and M/s. Vedanta Limited for sale of surplus power of GRIDCO is in contravention to the above directive of the Commission.
- g) Due to the supply of 250 MVA by TPWODL to M/s. Vedanta Limited as per the power supply agreement dated 08.10.2021, the hydro generation was ramped up to that extent so as to minimize the DSM charges. This has resulted in depletion of reservoir level of UIHEP and BHEP which were already on lower side. Further, the so called temporary supply by TPWODL has resulted in an opportunity loss of around Rs.5.75 Crore on 09.10.2021 and Rs.1.29 Crore on 10.10.2021 to GRIDCO considering the rates discovered in Real Time Market of IEX.
- h) Clause -36 (a) of the vesting order dated 28.12.2020 stipulates that the terms of sale of power by GRIDCO to TPWODL shall be governed under the Bulk Supply Agreement. TPWODL has entered into Bulk Supply Agreement with GRIDCO on 02.02.2021. Clause 3 of the Bulk Supply Agreement between GRIDCO and TPWODL stipulates as under:

“3.1.3 In respect of the first year, the Annual Notice detailing its power Supply requirements for each month in such a year shall be provided within thirty (30) days of the date of execution of the Agreement.

3.1.4 In addition to the annual notice, not later than fifteen (15) days prior to the commencement of each month, TPWODL shall deliver to GRIDCO a notice (“Monthly Notice”) detailing its power supply requirement for that month.

.....

3.1.6 In addition to above, the TPWODL shall furnish the day ahead scheduled to SLDC with a copy to GRIDCO as per the applicable regulations.”

TPWODL has not furnished the annual notice/monthly notice to GRIDCO as per the above provisions of Bulk Supply Agreement, which contravenes the Bulk Supply Agreement.

- i) The approved SMD of TPWODL for FY 2021-22 is 1540 MVA and the permitted SMD for a month is 1694 MVA (10% higher of the approved SMD), but the annual SMD shall be limited to the approved SMD of 1540 MVA. As per the SMD statement furnished by TPWODL in its reply, the drawal of TPWODL forming part of SMD is to the extent of 1548 MVA (occurred between 18:30 to 18:45 hours of 09.10.2021) which is more than the approved SMD of 1540 MVA allowed to TPWODL.
- j) The execution of the said commercial power supply agreement dated 08.10.2021 amounts to contravention of Act, Rules and Regulations as stated above, TPWODL is liable for punishment under Section 142 and other provisions of Electricity Act, 2003 in addition to reimbursement of grid related penalties, as will be decided by the Commission.
- k) By availing power supply to the extent of 250 MVA through execution of an illegal agreement, M/s. Vedanta Limited has exposed State grid to insecurity and indiscipline. Therefore, it is expedient on the part of the Commission to invoke Section 23 of the Electricity Act, 2003 against M/s. Vedanta Limited to desist from such illegal practice.

- 8. Heard the Petitioner and Respondents through virtual mode. Considering the arguments and counter arguments of the parties and their written notes of submissions, the Commission observed as stated hereafter;

- a) The Commercial agreement dated 08.10.2021 executed between TPWODL and M/s. Vedanta Limited for temporary supply of additional quantum of 250 MVA to M/s. Vedanta Limited over and above the contract demand of 100 MVA, for a period of 15 days w.e.f. 09.10.2021, does not fall under the category of 'temporary supply' as per Regulation 138 (p) of OERC Distribution (Conditions of Supply) Code, 2019, since this supply has not been used for construction purpose in the industrial premises. Further, both TPWODL and M/s. Vedanta Limited have failed to explain the 'special occasion' for which such supply was required. It appears that requirement of such huge quantum of power by M/s. Vedanta Limited was for its regular industrial use due to the then power shortage all over the country.
- b) At Para-347 of the ARR & BSP order dated 26.03.2021, the Commission had directed GRIDCO for trading of available surplus power in the market after meeting the State requirement and adjust the revenue earning towards meeting its loan repayment liabilities and past losses. Further at Para-348 of the said order, the Commission had stipulated to sell the available surplus power to the interested industries through tripartite agreement among GRIDCO, concerned DISCOM and the industry.
- c) Had SLDC observed any intentional contravention of Odisha Grid Code through drawal of additional quantum of power by TPWODL it would have proceeded against that errant entity as per the provisions of Grid Code. But it is revealed that no such action had been taken by SLDC.
- d) The Commission does not agree with the submission of TPWODL that there is no need to intimate GRIDCO about details of its power supply requirement as per Clause 3 of the Bulk Supply Agreement in the case of supply of a huge quantum of power to the extent of 250 MVA, over and above the contract demand of 100 MVA, though in the past GRIDCO has never asked for such notice from the licensee.
- e) No substantial reasons/documents have been produced by GRIDCO for imposing punishment under Sections 23/ 24/ 146 of the Electricity Act, 2003.
- f) Though the said commercial agreement was made initially for a period of 15 days, it was terminated by TPWODL after supply of power for 2 days only i.e.

on 09th & 10th of October, 2021. The drawal of TPWODL in these 2 days is within the approved SMD of 1540 MVA except in the time block of 18:30 to 18:45 hours of 09.10.2021, during which the SMD was increased to 1548 MVA which is within the permitted limit of overdrawal. In case the annual SMD of TPWODL exceeds the approved SMD at the year end, then GRIDCO can claim demand charges for the incremental SMD as per provisions of the BSP order of GRIDCO.

- g) As per the submission of TPWODL, GRIDCO has sourced power only from the approved sources with approved rates during 09th & 10th of October, 2021, and also GRIDCO has never purchased additional power during this period, rather it was selling power to other States as per the ERLDC website data.
 - h) The loss on account of supply of such additional power by TPWODL to M/s. Vedanta Limited during the above 2 days has not been claimed by GRIDCO in absolute term. However, GRIDCO has claimed an opportunity loss of around Rs.7.04 Crore during this period which is difficult to substantiate. Had TPWODL requisitioned such additional power of 250 MVA through load enhancement or any other means, but within the approved/permitted SMD, then GRIDCO would have been compelled to supply such power to TPWODL at the BSP approved by the Commission for TPWODL.
9. On the meticulous reading of the averments submitted by the Respondent No.1 TP Western Odisha Distribution Limited, it is manifestly clear that the TPWODL has admitted to have supplied electrical energy to the quantum of demand of 250 MVA to M/s. Vedanta Ltd. over and above the contract demand of 100 MVA, for a short period covering 09.10.2021 & 10.10.2021. TPWODL has stated that the supply of 250 MVA to M/s. Vedanta Limited has been carried out through commercial agreement dated 08.10.2021 under 'temporary supply' category. But the Commission found that this transaction of power does not satisfy the purpose of 'temporary supply' category stipulated under the OERC (Conditions of Supply) Code, 2019.
10. This drawal of 250 MVA power by TPWODL over and above the contract demand of 100 MVA without concurrence of the GRIDCO for supply to M/s. Vedanta Ltd. is contrary to the spirit of the Bulk Supply Agreement executed between GRIDCO and TPWODL.

11. From the cumulative reading of the averments and counter averments filed by the parties, actual loss suffered by the petitioner cannot be quantified. Even from careful appreciation of the grievances of the petitioner mentioned in the petition, the petitioner is not sure about the actual quantum of loss occasioned for it. In view of the hazy scenario, the Commission is not inclined to impose penalty on TPWODL under Section 142 of the Electricity Act, 2003 and no damage or compensation is awarded in favour of the petitioner. However, the Commission directs TPWODL not to enter into such type of agreement in future which is supposed to contradict the Supply Code/Grid Code/Orders of the Commission.
12. With the above observations and directions, the case is disposed of.
13. Copy of this order be circulated to the other DISCOMs with direction to adhere to the OERC (Conditions of Supply) Code, 2019 and Odisha Grid Code, 2015 as amended from time to time as well as Orders of the Commission without deviation in above type of transaction.

Sd/-

(S. K. Ray Mohapatra)
Member

Sd/-

(G. Mohapatra)
Officiating Chairperson