

**ODISHA ELECTRICITY REGULATORY COMMISSION  
BUDYUT NIYAMAK BHAWAN  
PLOT NO.-4, CHUNOKOLI, SHAILASHREE VIHAR  
BHUBANESWAR - 751021  
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**Present: Shri G. Mohapatra, Officiating Chairperson  
Shri S K Ray Mohapatra, Member**

**Case No. 18/2022**

OPTCL Ltd. .... Petitioner  
Vrs.  
SLDC & Others ..... Respondents

**In the matter of:** Application under Section 86(k) of the Electricity Act, 2003 read with Rule 83 of OERC (Conduct of Business Regulations), 2004 and OERC Open Access Regulations, 2020, in the matter of Open Access involving Intra-state Transmission charges.

**AND**

**In the matter of:** Approval of ARR and Transmission Charges of OPTCL for the FY 2021-22 in OERC Case No- 73/2020, Order dated 26.03.2021.

**AND**

**In the matter of:** Applicability of 20% Transmission charges for beneficiaries sourcing power from RE Sources (Except Biomass and Co-generation) involving OPTCL's transmission network.

**For Petitioner:** Shri B. K. Das, GM (RT&C), OPTCL.

**For Respondents:** The representative of SLDC, Ms. Sonali Patnaik, ALO I/c., DoE, GoO; Shri Puneet Munjal, Chief (Regulatory & Govt. Affairs), TPCODL; Shri K. C. Nanda, GM (RA & Strategy); Ms. Malancha Ghose, DGM (RA), TPNODL; Shri R.P. Mahapatra; Shri Ranganadhan, Sr. Advocate on behalf of M/s. Vedanta Ltd.; and Shri A.K. Sahani, the authorized representative of M/s. MSP Sponge Iron Ltd. Nobody is present on behalf of TPSODL.

**ORDER**

**Date of Hearing: 06.09.2022**

**Date of Order: 30.09.2022**

The Odisha Power Transmission Corporation Limited (OPTCL) has filed the application under section 86(k) of the Electricity Act, 2003 read with Rule 83 of OERC (Conduct of Business Regulations), 2004 and OERC Open Access Regulations, 2020, in the matter of Open Access involving Intra-state Transmission charges.

2. The petitioner OPTCL has prayed the Commission -
- (a) to reconsider the enforcement of the RST Order dated 22.04.2020 and 26.03.2021 of DISCOMs upon OPTCL in respect of Transmission charge on open access of RE Power; and
  - (b) allow OPTCL for levying 100% transmission charges to all the open access customers including the customers sourcing power from RE sources as per the provision in the

ARR & Transmission Tariff Order dated 21.04.2020 in Case No.72 of 2019 and 26.03.2021 in Case No. 73/2020 and ARR Order dated 26.03.2021 for OPTCL passed in Case No. 73/2020 for FYs 2020-21 & 2021-22 respectively.

3. The petitioner-OPTCL is the State Transmission Utility (STU) and the Deemed Transmission Licensee authorized for carrying out the activities of Intra-state transmission and wheeling of Electricity within the state of Odisha u/s 39 of Electricity Act, 2003. The Petitioner-OPTCL has submitted the following:
  - i. The Commission has issued BSP Order dated 26.03.2021 for GRIDCO and RST Order dated 26.03.2021 for DISCOMs, which are applicable for the FY-2021-22. It was mentioned in the aforesaid RST Order that concessional Transmission & wheeling charges @ 20% of the prevailing rate will be applicable for STOA Customers availing power from RE sources (except Biomass and Co-generation). SLDC being the nodal agency for STOA transactions was following the same and collecting the charges accordingly. The concessional transmission charges for RE sources was not envisaged in OPTCL's ARR order Dt.26.03.2021 for the FY 2021-22. In this order, the miscellaneous receipt of Rs.243.28 Cr has been deducted considering the transmission charges of OPTCL @28Paisa/Unit. The OPTCL during Transmission Tariff proceedings for FY 2021-22, had submitted that, STOA charges received during FY 2018-19 & 2019-20 was Rs 47.0 Cr and Rs 37.96 Cr respectively.
  - ii. OPTCL at a later date came to know that SLDC is charging 20% of the approved transmission charges from consumers who source power from RE sources. Therefore, OPTCL apprehending less realization of ARR, has intimated SLDC vide Letter dated 10.11.2021 highlighting the provisions of Order dated 26.03.2021 in Case No. 73/2020 which is distinctly silent about the concessional transmission charges from RE sources in respect of OPTCL.
  - iii. The clarificatory letter issued by the Secretary, OERC dated 01.01.2022 addressed to the Chief Load Despatcher, SLDC as regards to the applicability of the concessional transmission charges of 20% of Transmission and wheeling charge payable by the consumers drawing Power through open access from renewable sources excluding co-generation and biomass Power Plant in compliance to RST Order will result in less realization of STOA charges which will ultimately result in higher transmission charges. The logic of concessional transmission charges (i.e. 20% of prevailing rate) for sourcing RE power may not make much sense, when the lesser cost of RE source is available for the OA consumers. Some states like

Maharashtra & Andhra Pradesh have withdrawn the concession granted earlier to the RE Open Access consumers.

- iv. The Commission has determined the miscellaneous receipt for 2021-22 considering the average STOA charges of the financial years 2018-19 and 2019-20 based on the audited report for the respective years. Further, the STOA Charges for 2021-22 was decided by increasing four times the average of STOA charges for FYs 2018-19 & 2019-20. This average STOA charges includes only 1/4th of the transmission charge as per the earlier order without any consideration of concessional charge @ 20% of the transmission charge for sourcing of RE-power. The Commission has never considered the concessional rate of STOA charges for sourcing of RE power while allowing the miscellaneous Income of OPTCL towards transaction of STOA.
  - v. As per the Regulations 20(2) of OERC (Terms and Conditions for Open Access) Regulations, 2020 the STOA & LTOA charges were rationalized. The Commission had also issued the RST Order dated 22.04.2020 in case Nos. 70, 74, 75 & 76 of 2019 for the DISCOMs (the erstwhile CESU, NESCO Utility, WESCO Utility & SOUTHCO Utility) applicable for the FY-2020-21. It was mentioned in the aforesaid RST Order that concessional Transmission & wheeling charges @ 20% of the prevailing rate will be applicable for STOA Customers availing power from RE sources (except Biomass and Co-generation). There was no reference made in OPTCL's ARR Order dated 21.04.2020 in Case No-72/2019 for FY-2020-21, about the concessional rate of the transmission charges from RE sources similar to that of ARR Order dated 26.03.2021 in Case No. 73/2020 for FY-2021-22. Being the nodal agency, SLDC had intimated about the RST order Dt 22.04.2020 to the constituents like RLDC and Power Exchange for their information and processing of different interstate open access transactions and also collected Rs 0.25/ kWh from 18.11.2020. One of the reasons of accrual of less revenue for STOA transaction in FY 2020-21 might be due to applicability of RST order for calculation of transmission charges towards STOA transaction from RE sources.
4. The averments of the Respondents No.4 of TPWODL, No.5 TPNODL & No.6 TPSODL are summarized as stated below:
- i. The shortfall in STOA receipt against approved quantum may be trued up on actual basis, hence revisit of FY 2021-22 Order is not required.

- ii. The Secretary, OERC has already clarified the matter vide his letter dated 01.01.2022. The Commission has the sole discretion to decide on the matter and is empowered to interpret its own Order. For FY 2022-23 Commission has already directed for levy of open access charges fully even on RE power.
5. The Respondent No.1 SLDC has submitted that SLDC in obedience to the Order dated 26.03.2021 in Case No.79, 80, 81 & 82(A) of 2020 in the matter of “OERC (Terms and Conditions on Intra-State Open Access Charges) Regulations, 2020 for approval of Wheeling Charges, Cross Subsidy Surcharge and Additional Surcharge for FY 2021-22 of DISCOMs namely TPWODL, NESCO utility, TPSODL and TPCODL” intimated RLDC & Power Exchanges to follow the above direction of OERC from 01.05.2020 with regard to STOA transmission and wheeling charges for transmission of energy from RE sources.
  6. The Respondent No.7 Shri R. P. Mahapatra has submitted the following:
    - i. The petitioner has not deposited any fees at the time of filing of the application.
    - ii. The Commission heard separately the submissions made in the petitions by the DISCOMs relating to (i) Aggregate Revenue Requirement, Wheeling Tariff and Retail Supply Tariff and (ii) approval of wheeling charges, surcharges and additional surcharges on open access. The DISCOMs filings have been registered under separate case numbers and disposed of through public hearing.
    - iii. The present application of the petitioner OPTCL is a Review Petition and it does not meet the requirements Rule 70 of the OERC (Conduct of Business) Regulations, 2004. Therefore, the application is to be dismissed *ab-initio*. The Commission in accordance with the provisions in Section 86(1)(e) of the Electricity Act, 2003 made the concessions in different years consciously.
    - iv. Prior to FY 2020-21 and 2021-22 the transmission charges payable was only 6.25 p/u for all open access consumers i.e. 25% of the transmission charges of 25 p/u. OPTCL has never approached the Commission for the period from FY 2017-18 till 2019-20 relating to transmission charges. In the FY 2020-21 & 2021-22, transmission charges for all open access consumers except those sourcing power from Renewable sources, excluding co-generation and bio-mass power plant, were increased to 25 p/u and 28 p/u respectively. The transmission charges for open access consumers sourcing power from Renewable sources was limited to 20%. This works out to 5.0 and 5.60 p/u for FY 2020-21 and 2021-22 respectively against 6.5 p/u for FY 2017-18 to 2019-20.

- v. In its Order relating to open access charges for FY 2022-23, the Commission has withdrawn all concessions given to open access consumers sourcing power from renewable sources excluding Co-generation and Biomass power plant, which is in contravention of Section 86(1)(e) of the Electricity Act, 2003.
  - vi. SLDC has set an illegal precedence by charging 100% transmission charges from open access consumers availing power from Renewable sources on the request of OPTCL which is in contravention of the order of the Commission without seeking orders/clarification from the Commission.
  - vii. The provisions of the EA, 2003 (section 86(1)(k) and OERC (Conduct of Business) Regulations, 2004 do not provide for re-consideration of any Orders issued on 22.04.2020 and 26.03.2021.
  - viii. The Orders of the Commission relating to OA Charges should not be construed as a part of the RST orders since the cases for determination of RST and OA Charges are related to the DISCOMs, both the petitions were heard concurrently and Orders were passed on the same date for both the petitioners.
  - ix. OPTCL may file a truing up application in case of realization of less revenue under 'Misc. Receipts' compared to that allowed in the ARR & Transmission Tariff Order of the Commission, a truing up application is to be filed by OPTCL.
  - x. The application should be rejected both on consideration of delay as well as merit and maximum penalty should be imposed on SLDC and OPTCL under Section 142 of the Electricity Act, 2003 for such willful violation of the order of the Commission, with a direction to refund the excess transmission charges billed and collected from Open Access Consumers.
7. The Respondent No.8 Respondent M/s Vedanta has submitted the following:
- i. The petition is absurd and wholly misconceived as the same is barred by *Res-judicata* for the reason that the matter in the present petition has already been decided by the Commission vide its order 26.3.2021 in Case No.75, 76, 77 & 78 of 2020 and the same having not been challenged under any Review or Appeal by the petitioner has attained finality. Further, OPTCL has not preferred any review of the order dated 26.3.2021, nor did it prefer any appeal before the Hon'ble Appellate Tribunal for Electricity or any Writ petition before Hon'ble High Court, despite the fact that the above order was passed pursuant to a public consultation process and a public hearing. The Commission has no jurisdiction to adjudicate upon the present petition, as such

the same is not maintainable and ought to be rejected at the threshold being untaimable in law.

- ii. There was a mandate as per the Kyoto Protocol to promote development and increase the use of new and renewable forms of energy. Further, the Electricity Act, 2003 was also enacted to implement the said protocol/ treaty. The mandate of the Electricity Act, 2003 read with National Electricity Policy (NEP), National Tariff Policy (NTP), and the subsequent policy and regulatory initiatives, is to promote the renewable energy sector. Therefore, the provisions for concessional rate of transmission charges provided to Open Access consumers of RE power have to be seen in the context of the mandate for promotion of renewable sources of energy.
- iii. It is contended on behalf of M/s Vedanta Ltd. that any proceedings initiated before a forum, wherein, the subject matter of the dispute was directly and substantially in question in the previously decided case is barred by the principle of *Res-judicata*. On behalf of M/s Vedanta Ltd., observations of Hon'ble Supreme Court of India in Civil Appeal No.257 of 2009 Satyadhan Ghosal and Ors. Vs. Deorajin Debi and Ors. and Civil Appeal No.100 of 2009 Harbans Singh and Ors. Vs. Sant Hari Singh and Ors have been referred. Accordingly, when the issue of concessional rate of transmission charges for open access of RE power has already been decided by the Commission under its tariff order for FY 2021-22, a prayer for reconsideration of the matter cannot be made before this Commission through a separate petition and therefore the present petition is not maintainable and should be rejected.
- iv. The invoice raised by SLDC vide email dated 09.12.2021 totaling to Rs 32.77 Cr. upon Vedanta from April 2021 to October 2021 towards 80% transmission charges for wheeling/ transmission of renewable power under Inter State STOA is in complete contradiction/ violation of the aforesaid Tariff Order. SLDC vide email dated 15.12.2021 has again raised a supplementary invoice of Rs 11.06 Cr. Thus, SLDC has extraneously claimed 100% of the approved tariff, wrongly interpreting the ARR & Tariff Order dated 26.03.2021 passed by the Commission in Case No. 73 of 2021.
- v. The Commission vide letter dated 01.01.2022 has clarified that 20% of transmission charges is applicable to all stakeholders availing RE power. Vedanta pursuant to the clarification by OERC has requested SLDC & OPTCL vide letters dated 01.02.2022, 25.02.2022, 27.4.2022 & 18.05.2022 for refund of amount of Rs 10 Cr. with interest.
- vi. According to M/s Vedanta Ltd., the present petition is liable to be dismissed and the Commission may quash the invoices dated 09.12.2021 and 15.12.2021 raised by OPTCL are to be quashed.

- vii. The Commission has determined the transmission charges in the ARR & Tariff Order of OPTCL, whereas the RST order prescribed as to how much transmission charges were to be levied upon consumers procuring power from RE sources. OPTCL preferred the present petition against the letter dt.01.01.2022 issued by the Secretary, OERC which is not maintainable as the Petitioner seeks to challenge the letter dated 01.01.2022 issued by the Commission, before this Commission. A letter/ Order passed by this Commission cannot be challenged before this Commission under Section 86 of the Electricity Act, 2003. Hence, the present petition needs to be dismissed on this count alone.
8. The Respondent No.5 M/s MSP Sponge Iron Ltd. has submitted the following:
- i. Any Order by the Commission should be implemented and amendment to such Order can be prospective only not retrospective. The Commission should issue enforcement/ appropriate directions for implementation of the RST orders dated 22.04.2020 and 26.03.2021 of DISCOMs upon OPTCL in respect of Transmission charge on Open Access of RE power.
  - ii. The Commission is not the appropriate Forum to entertain such type of petition and therefore should be denied and rejected. Therefore, the present petition should not be treated as a fresh application, but can be treated as review petition by the Petitioner. However, this petition has not been filed as per Rule-70 of OERC (Conditions of Business) Regulation, 2004.
  - iii. The Commission may issue directives for implementation of the Commission's Order and refund of amount i.e. Rs.66,71,616/- with interest already collected from M/s MSP. The Petitioner should not revise the bills previously issued as per the Orders of the Commission when OPTCL has filed for review of that Order.
  - iv. Since the consumers availing power through open access for FY 2017-18 onwards has been paying very high Open Access charges, the Commission in accordance with the provisions in Section 86(1)(e) of the Electricity Act, 2003 has made the concessions in different years. Therefore, the RST Orders for 2017-18 to 2021-22 are to be implemented and penalty may be imposed under the section 142 of the Electricity Act, 2003 for violation of the Order by the Petitioner.
  - v. The Petitioner being delegate of the state, in exercise of its executive power, is duty bound to administer and act in accordance with RST order for FY 2020-21 dated 26.3.2021 having statutory force, without any deviation or infraction of law unilaterally or arbitrarily for the sake of unjust monetary gain by denying the

concessional tariff entitlement of bona-fide intervener without any prior notice or intimation affecting the interest of the intervener adversely. Such act by OPTCL is illegal, unreasonable, arbitrary and beyond any authority of law and strongly advocated for dismissal of the application.

9. In response to the reply of the Respondent No.1 (SLDC), the OPTCL has submitted that as informed by SLDC regarding Order dated 26.03.2021 in OERC Case Nos. 79, 80, 81 & 82(A) in the matter of RST of DISCOMs, concessional Transmission & wheeling charges @ 20% of prevailing rate will be applicable for STOA Customers availing power from RE sources (except Biomass and Co-generation) for FY-2021-22. Accordingly, SLDC had intimated the same to ERLDC on the premises that the same is also recorded in the ARR orders of OPTCL for the subject FYs 2020-21 & 2021-22, which was not the case in reality. OPTCL is obligated to follow the directions of the ARR orders intended for it and RST order, if some reference in the order has been made in OPTCL's ARR order. SLDC should have been extra vigilant to cross check whether the applicability of concessional transmission rate to Open Access consumers (sourcing power from RE sources ) was allowed in the ARR of OPTCL or not.
10. OPTCL in response to the replies of Respondent No.4 TPWODL, No.5 TPNODL & No.6 TPSODL has submitted that:
  - i. The Commission has been vested with power to consider the prayer of OPTCL without hampering the interest of the DISCOMs concerned. The collection of 100% Transmission Charges from RE consumers will have no impact on the DISCOMs ARR. The contentions of DISCOMs is that it will correspondingly applicable for redetermination of DISCOMs ARR Order has no merit and not to be considered. A regards to the letter dated 01.01.2022 of the Secretary, OERC, OPTCL stated that there is no such provision for allowing concessional rate to STOA customer in the ARR order applicable to OPTCL or in the subsisting Open Access Regulations, 2020.
  - ii. The Commission has directed in order dated 24.03.2022 in OPTCL ARR Case No. 105 of 2021 that, *"The Open Access Charges i.e. cross subsidy surcharge, wheeling & Transmission Charges as determined by the Commission in its order passed in Case No- 112, 113, 114 & 115 of 2021 for Open Access consumers of 1 MW and above shall be applicable"*, whereas such type of direction was not envisaged by the Commission in the earlier orders passed on the matter of OPTCL's ARR for FY-2020-21 & 2021-22. OPTCL has requested the Commission to adjudicate whether the



provisions of RST orders in FYs 2020-21 & 2021-22 can be applied mutatis mutandis to OPTCL when there was no reference made in the ARR orders of OPTCL.

- iii. Collection of 100% Transmission Charges from RE- Consumers (Except Co-generation & Biomass) shall be passed on to all the consumers of the State across the Board. The same cannot be accounted for in true up exercise without recognition of above amount as revenue. Non-consideration of 100% transmission charges will be a burden to the State consumers at large. OPTCL may be allowed to collect 100% Transmission Charges from RE Consumers for FY-2020-21 & 2021-22 since the impact on revenue is high.
  - iv. The prayer of objectors to not to revisit the Order of FY- 2021-22 on the ground that the shortfall STOA receipt against approved quantum may be trued up on actual basis has no merit since such shortfall cannot be trued up unless the differential transmission charges are recognized by the Commission.
11. OPTCL in response to the reply of Respondent No.8 M/s Vedanta Ltd. has submitted that:
- i. RST Order dated 26.03.2021 is intended for DISCOMs and is not applicable to OPTCL. The ARR Orders of OPTCL have reached finality. OPTCL has not challenged the RST Order dated 26.03.2021 under any review or appeal. Letter of the Secretary, OERC dated 01.01.2022 cannot be considered as an amendment to the ARR Orders of OPTCL by the Commission. Therefore, the question of *Res-judicata* does not apply here. OPTCL has only prayed to make the directions of ARR & TT Orders to be made applicable to OPTCL.
  - ii. SLDC have raised the invoices on M/s Vedanta tuning to Rs.32.77 Cr. towards balance 80% Transmission charges of OPTCL for the period April 2021 to October 2021 in line with the Orders as mentioned in ARR Order dated 26.03.2021 passed in Case No- 73/2020 against which M/s Vedanta has paid a part amount Rs 10 Crore including TDS against supplementary bill of 43.83 Cr. under protest. OPTCL has prayed for issuance of direction to M/s Vedanta to clear the balance dues along with the applicable DPS.
12. OPTCL in response to the reply of Respondent No.7 Shri R. P. Mahapatra has submitted that:
- i. OPTCL is not required to pay any fee other than annual license fee since it is an STU & deemed transmission Licensee and as per u/s 39 of EA-2003 and as per Sl. No- 4 of the Notification No-1992, Dt. 31.08.2009 of OERC. Further, the filing of the

present petition in Case No. 18 of 2022 by OPTCL, cannot be termed as review of the RST Orders dated 22.04.2020 and dated 26.03.2021 but may be considered as a fresh petition with a prayer to allow non-enforcement of provisions of RST Order meant for DISCOMs on OPTCL.

- ii. The Concessional rate of transmission charges for RE Customers was not envisaged in OPTCL's ARR Order dated 21.04.2020 for FY 2020-21 & Order dated 26.03.2021 for FY 2021-22. OPTCL, to safeguard the interest of consumers of the State, have intimated SLDC to claim 100% transmission charges from STOA Consumers availing power from RE sources, in obedience to the ARR Orders of the Commission and Open Access Regulation 2020. Therefore, the allegation that SLDC has set illegal precedence by raising supplementary bill is wrong and denied. The withdrawal of the concessions given to the OA consumers availing power from RE sources in the ARR Order dated 24.03.2022 in Case No. 105/2021 & RST Orders dated 24.03.2022 in Case Nos.108, 109, 110 & 111 of 2021 for FY-2022-23, is right decision of the Commission for the interest of State Consumers and for promotion of co-generation & generation of electricity from renewable sources of energy.
  - iii. There is a financial burden of Rs 91.22 Cr and Rs 1.77 Cr on the State consumers during the FY 2020-21 and 2021-22 respectively for such RE STOA transaction.
13. OPTCL in response to the reply of Respondent No.9 M/s MSP Sponge Iron Ltd. has submitted that:
- i. The Rule 70 of the OERC (Conduct of Business) Regulations, 2004 on the instant Petition is not applicable and hence dismissal of this petition *ab-initio* should not be accepted. Further, the Commission is mandated to specify the terms & conditions for determination of Tariff safeguarding the interest of Consumers under Section 61(d) of Electricity Act 2003. Less realization due to reduction of RE (STOA) charges has an adverse impact on the transmission Tariff on Consumers including RE consumers. OPTCL during 2017 have filed an application for rationalization of LTOA & STOA charges and re-iterated the same in subsequent ARR applications.
  - ii. OPTCL has not threatened any Open Access customer including this respondent. The Respondents are under obligation to honour the supplementary bill raised as per OPTCL ARR order dated 26.03.2021 and clause 34 (1) & (2) of OERC (Terms and Conditions of Intra-state Open Access) Regulations, 2020.
  - iii. OPTCL has not filed this Case to review the RST Order. Hence, the question of prospective or retrospective application of Order does not arise here. OPTCL has

only requested SLDC to revise the bill to STOA customer sourcing power from RE sources (except biomass and cogeneration) in adherence to ARR orders of OPTCL. OPTCL has filed the petition afresh to collect 100 % transmission charge from all STOA customers including STOA customer sourcing power from RE sources (except Biomass and Co-generation) in line with ARR order of OPTCL. The accruals from 100% transmission charges shall be spend towards subsidizing the transmission cost of all consumers including the present Objector/Respondent.

- iv. MSP has also honored the supplementary bill raised towards balance 80% transmission charges to avoid discontinuance of Open Access transaction. The letter from Secretary, OERC dated 01.01.2022 to SLDC has no reference to the ARR & Transmission Tariff Order of OPTCL.
14. Heard the Petitioner and Respondents in extenso on virtual mode. The Commission has considered the relevant submissions of all the parties.
15. The Commission observes that as per Regulation 6.5 of the OERC (Terms and Conditions for Determination of Transmission Tariff) Regulation, 2014, the transmission tariff payable by beneficiaries of transmission system shall be designed to recover the ARR approved by the Commission for each year of the control period. Accordingly, the intra-state transmission charges payable by Open Access customers for transaction of power at 400 kV/220 kV/132 kV level using OPTCL's transmission system has been worked out as 25 paise/unit for the FY 2020-21 and 28 paise/unit for the FY 2021-22 and FY 2022-23 based on postage stamp method.
16. The intra-state transmission charges are being levied on Open Access customers as per the relevant orders of the Commission. The OERC (Terms and Conditions for Intra-state Open Access) Regulation, 2020 and OERC (Procurement of energy from Renewable sources and its compliance) Regulation, 2021 do not provide the rate at which transmission charges is to be recovered and concessions/incentives to be provided to open access customers drawing power from Renewable Energy (RE) sources. In this connection, as per ARR & Transmission tariff order dated 26.03.2021 in Case No.73/2020 read with order dated 26.03.2021 in Case No.79, 80, 81 and 82 (A) of 2020, the SLDC, vide letter No. DIR(T)-351/08/1709 dated 01.01.2022, was directed by the Commission for billing of transmission and wheeling charges for Open Access consumers availing power from RE in following manner.

*“20% transmission and wheeling charge is payable by the consumers drawing power through open access from Renewable Sources excluding co-generation and Bio-mass power plants”.*

The above order is clearly applicable for the period FY 2021-22.

17. The Open Access Charges applications by DISCOMs are filed for a particular period and the Commission basing on that application issue order for that period and in the present case it is for respective financial year. The order of any other year cannot be extrapolated to a particular year. Therefore, the open access order of FY 2022-23 is applicable for that year only and not retrospectively. This has been clearly mentioned in that order. In view of the above, the claim of OPTCL for levying 100% of intra-state transmission charges for open access customers drawing from RE sources for the FY 2020-21 and FY 2021-22, in terms of open access charges order dated 24.03.2022 in Case No.112-115 of 2022 for the FY 2022-23, is unjustified. The Commission has taken pragmatic decision in assessing ARR for respective years based on feedbacks/submissions of the stakeholders during the process of hearing. The question of applicability of order of the FY 2022-23 retrospectively to the years 2020-21 and 2021-22 mutatis mutandis is pre-judicial. After specified time period as mentioned in the order is over the order loses its force. A new order takes its place. Every year the Commission issues transmission tariff order and open access charges order unfailingly for the ensuing financial year. The Petitioner is well-versed with it. Therefore, we cannot accept the prayer of OPTCL to give retrospective effect to open access charges order of the current year i.e. FY 2022-23 for 2020-21 to 2021-22. The Letter of the Secretary, OERC dated 01.01.2022 has only clarified the matter. OPTCL /SLDC is directed to bill the open access consumers availing RE power strictly as per the open access charges order of the relevant year.
18. Accordingly, the present petition is disposed of.

Sd/-  
**(S. K. Ray Mohapatra)**  
**Member**

Sd/-  
**(G. Mohapatra)**  
**Officiating Chairperson**