

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO. 4, CHUNOKOLI, SHAILASHREE VIHAR,
BHUBANESWAR-751021**

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

Case No. 36/2022

OPTCL	Petitioner
Vrs.		
M/s. Bharat Electronics Limited & Others	Respondents

In the matter of: **Application under Section 86(1)(f) of the Electricity Act, 2003 read with Regulations 22 & 66 of the OERC (Conduct of Business) Regulations, 2004 and (Terms and Conditions of Open Access) Regulations, 2005, OERC (Determination of Open Access Charges) Regulations, 2006 (Repealed) and OERC (Terms and conditions of Open Access) Regulations, 2020 seeking direction of the Commission to M/s. Bharat Electronics Ltd. for payment of open access charges.**

For Petitioner: Shri R. K. Mehta, Sr. Advocate on behalf of OPTCL.

For Respondent: Shri Vikramaditya Singh, Advocate on behalf of M/s. Bharat Electronics Limited and Shri K. C. Nanda, GM (RA& Strategy) on behalf of TPWODL.

AND

Case No. 47/2022

M/s. Bharat Electronics Ltd.	Petitioner
Vrs.		
OPTCL & Others	Respondents

In the matter of: **Application under 86(1)(f) of the Electricity Act, 2003 for adjudication of dispute on Arbitrary illegal levy and collection of various charges under OERC (Terms and Conditions of Open Access) Regulation, 2020 instead of OERC (Terms and Conditions of Open Access) Regulations, 2005 and TCAA Dated 0708.2018 existing between parties.**

For Petitioner: Shri Vikramaditya Singh, Advocate on behalf of M/s. Bharat Electronics Limited.

For Respondent: Shri P. K. Mohanty, Sr. Advocate on behalf of GRIDCO Ltd. and the representative of SLDC.

ORDER

Date of Hearing: 20.12.2022

Date of Order: 16.01.2023

Both the above cases do arise out of same set of facts and hence clubbed together. As agreed by the parties, the cases are taken up for analogous hearing through virtual mode.

2. The Odisha Power Transmission Corporation Ltd. (OPTCL), as Petitioner in Case No.36 of 2022 and Respondent in Case No.47 of 2022, has submitted as follows:

- (a) M/s. Bharat Electronics Ltd. (BEL) is having a solar Captive Power Plant (CGP) of 7.5 MW installed capacity at the Ordnance Factory, Badmala in Bolangir district of Odisha and have entered into the Transmission Capacity Access Agreement (TCAA) with OPTCL on 07.08.2018 in accordance with OERC (Terms and Conditions for Open Access) Regulations, 2005, for availing open access of its solar power to the Ordnance Factory, for a period of 25 years as a Long Term Open Access (LTOA) customer through transmission network of OPTCL on payment of LTOA charges as would be fixed by OERC from time to time. As per the TCAA dated 07.08.2018, the capacity of the injecting unit i.e. M/s. BEL is 7.5 MW and the contract demand of the drawing utility i.e. the Ordnance Factory with WESCO is 4.5 MVA.
- (b) OPTCL started raising bills to M/s. BEL from August, 2018 on the basis of actual energy drawn along with transmission loss or scheduled injection whichever is less on monthly basis. M/s. BEL raised objection on the bills and suggested to levy transmission charges on the basis of consumed power. The matter was referred to PSOC and based on the decision in the PSOC meeting held on 24.07.2019, OPTCL raised the revised bills to M/s. BEL for the period from August, 2018 to July, 2019 and current bills for the period from August, 2019 to October, 2020 (till enforcement of the new Open Access Regulations, 2020) based on the scheduled injection along with Delayed Payment Surcharge (DPS) and M/s. BEL cleared up the dues upto October, 2020 except the DPS claimed by OPTCL.
- (c) Though OERC Open Access Regulations, 2005 did not contain any methodology for determination of open access charges, as per Regulation 13 of OERC (Terms and Conditions for Open Access) Regulations, 2005, open access customers shall pay the transmission charges as the Commission may determine from time to time as a part of the tariff under Section 61, 62 and 86 of the

Electricity Act, 2003 or otherwise decide or authorise SLDC/Licensee to charge in exercise of its regulatory powers.

- (d) The new Open Access Regulations, 2020 was notified in Odisha Gazette on 18.11.2020 which repeals the earlier Open Access Regulations, 2005 and Open Access Charges Regulations, 2006. Regulation 44(3) of the OERC (Terms and Conditions of Intra-state Open Access) Regulations, 2020 stipulates that:

“44. Repeal and Savings

(1) Xxxxx

(2) Xxxxx

(3) Open access customers to the intra-State transmission system and the distribution system in the State on the date of coming into force of these regulations under an existing agreement/contract shall be entitled to continue to avail such access to the transmission and distribution system on the same terms and conditions, as stipulated under such existing agreement/contract. Such persons are eligible to avail long-term access or medium-term open access under these regulations on expiry of such existing agreement/contract. XXXXXXXXX”.

- (e) As per Clause 1(c) of the TCAA entered between OPTCL and M/s. BEL on 07.08.2018, *“the open access charges would be reviewed from time to time and accordingly the amount of security shall be enhanced/reduced for long term open access customers”.*

As per Clause 3 of the said TCAA, *“OPTCL agrees to provide Long Term Open Access required by LTOA customer as per the details mentioned above and in accordance with provisions under OERC (Terms and Conditions for Open Access) Regulations, 2005 as amended from time to time and conditions as specified by OERC from time to time”.*

Further, as per Clause 6 of the said TCAA, *“This Agreement shall be subject to the Electricity Act, 2003 OER Act 1995, all relevant Regulations, Codes, Rules, Orders and Policies as in force time to time”.*

- (f) The TCAA nowhere provides that in case OERC (Terms and Conditions of Intra-state Open Access) Regulations, 2005 are repealed, M/s. BEL will continue to be governed by the said Regulations.
- (g) Further, on request of OPTCL, the Commission vide its letter dated 01.02.2021 has clarified that long term customers other than DISCOMs shall come under OERC Open Access Regulations, 2020.
- (h) Regulation 20(2) of the OERC (Terms and Conditions of Intra-state Open Access) Regulations, 2020 states as under:

*“(2) **For use of Intra-State transmission system:-** Transmission charges payable to STU/transmission licensee by an open access customer for usage of their system shall be determined as under:*

Transmission Charges = $ATC / (ALS \times 365)$ (in INR/MW-day)

Where, ATC = Annual Transmission Charges determined by the Commission for the State transmission system for the concerned year.

ALST = Average load projected to be served by the State transmission system in concerned year.

*Provided that transmission charges shall be payable on the basis of **contracted capacity** in case of long-term and medium-term open access consumers and on the basis of scheduled load in case of short-term open access consumers. For Open Access for a part of a day, the transmission charges shall be payable on pro-rata basis;*

Xxxxxxx”

- (i) The above stipulations in the open access regulations and TCAA clearly implies that both the parties have agreed upon to obey the changes /modifications /amendments / stipulations/ replacement if any to the aforesaid Acts, Regulations, Codes, Rules, Orders and Policies which are to be effected after signing of the TCAA. Further, after enforcement of OERC (Terms and Conditions of Intra-state Open Access) Regulations, 2020, the parties are to be governed by the same. In fact during the hearing, it was conceded on behalf of M/s. BEL that OERC (Terms and Conditions of Intra-state Open Access) Regulations, 2020 will govern the parties after enforcement of the said Regulation.
- (j) As per the OERC (Terms and Conditions of Intra-state Open Access) Regulations, 2020, OPTCL has to raise transmission bills to M/s. BEL on the basis of its contracted capacity from November, 2020 onwards. In absence of any declared contracted capacity by M/s. BEL, OPTCL raised the transmission charge bills to M/s. BEL from the month of November, 2020 onwards considering the contracted capacity as 7.35 MW for FY 2020-21 which is the maximum scheduled injection observed during FY 2019-20. However, M/s. BEL protested this new billing method and suggested OPTCL to raise the transmission charges on the scheduled generation or actual wheeled units for the month and continued to pay the transmission charges based on the scheduled injection energy.

- (k) OPTCL adopted the new billing method for all CGPs including M/s. BEL and had considered the contracted capacity of M/s. BEL for FY 2021-22 as 5 MW which is maximum scheduled injection observed during FY 2020-21. Further on request of OPTCL regarding preparation of ARR and Transmission Tariff Application of OPTCL for FY 2022-23, M/s. BEL vide its letter dated 08.10.2021 communicated to consider their contract capacity as 1.814 MW for FY 2022-23. Hence, OPTCL has raised the transmission charge bills on M/s.BEL for the month of April, 2022-23 based on the contract capacity of 1.814 MW in addition to the charges for its over injection beyond the said contracted capacity.
- (l) The term “Contracted Capacity” is not defined in OERC (Terms and Conditions of Intra-state Open Access) Regulations, 2020. It is the settled principle of interpretation that in case a term is not defined in any Agreement/Act / Rules etc., then the common parlance meaning of the same has to be taken. In common parlance as per Oxford English Dictionary the term “Contracted Capacity” in Open Access Regulations can be interpreted as “Maximum Capacity of Power agreed to be transmitted through an Electrical Network”.
- (m) However, without any regard to its dues, M/s. BEL has been paying a part of the current bills only based on scheduled injection of energy. However, OPTCL is raising bills in every month reflecting the remaining outstanding against M/s. BEL. The tariff of Rs.280/MWh has been made effective by the Commission through the ARR orders from the FY 2021-22. The present outstanding amount on M/s. BEL is Rs.1,41,79,576/- (Transmission Charges-Rs.1,24,79,998/- plus DPS-Rs.16,99,578/-). M/s. BEL have defaulted in payment of its outstanding transmission charges violating not only the provisions of TCAA but also OERC Open Access Regulations, 2020.
- (n) In view of the above submissions, OPTCL has prayed the Commission to:
- Direct M/s. BEL to honour the applicability of the new billing method i.e. based on Contracted Capacity in respect of Transmission charges as a long-term open access (LTOA) customer of OPTCL.

- Allow OPTCL for levy of transmission charges to all the open access customers including M/s.BEL as per prevailing Regulations and ARR & TT orders.
 - Direct M/s. BEL to pay the outstanding arrear transmission charges along with DPS.
 - Pass any other order/s as deemed fit.
3. The respondent TPWODL (in Case No.36 of 2022) has submitted that they have limited scope to comment on the matter. As a distribution licensee it has to raise the monthly energy bills to the Ordnance Factory to the extent of import energy from DISCOMs sources deducting open access power as per the schedule provided by SLDC.
4. M/s. BEL (the Respondent in Case No.36 of 2022 and the Petitioner in Case No.47 of 2022) has submitted that:
- a) M/s. BEL has entered into the TCAA on 07.08.2018 in accordance with the OERC (Terms and Conditions for Open Access) Regulations, 2005 as a LTOA customer for availing open access of its solar power to the Ordnance Factory for a period of 25 years on payment of LTOA charges to OPTCL as fixed by OERC from time to time. The TCAA dated 07.08.2018 stipulates OERC (Terms and Conditions for Open Access) Regulations, 2005 as the governing Regulation. Till October, 2020 OPTCL levied transmission charges on the basis of scheduled units as per Regulation 13 of OERC (Terms and Conditions for Open Access) Regulations, 2005 but from November, 2020 onwards OPTCL started levying transmission charge on contracted capacity as per OERC (Terms and Conditions for Open Access) Regulations, 2020.
 - b) OERC enforced new OERC (Terms and Conditions for Open Access) Regulations, 2020 vide Odisha Gazette Notification dated 18.11.2020 by repealing earlier Open Access Regulations, 2005 and Open Access Charges Regulations, 2006. Regulation 44 of the Open Access Regulations, 2020 carves out an exception for non-applicability of the said Regulation on existing Open Access customer to the intra-state transmission & distribution system where there is an existing agreement/contract and they shall continue to be governed by the existing terms and conditions in force. In light of the above, levy of revised transmission charges by OPTCL is illegal and has no basis in law.

- c) M/s. BEL on various occasions has raised objections against the ambiguous calculation of transmission charges and vide its letter dated 20.02.2021 has specifically communicated to OPTCL that in absence of contracted capacity of the solar power plant, maximum injection cannot be used as contracted capacity for the purpose of levying transmission charges. However, M/s. BEL has been paying the transmission charges as per the existing tariff of Rs.250/MWh on scheduled generation instead of contracted capacity. After a meeting with OPTCL, Ms/. BEL vide its letter dated 25.09.2021, has communicated to OPTCL that as agreed by both the parties, it shall continue to pay the transmission charges as per the Open Access Regulations, 2005 and at the tariff of Rs.250/MWh on scheduled generation till a clarification is received from OERC on the revised tariff rates.
- d) For the forecast of power to be wheeled by OPTCL for the purpose of ARR application, M/s. BEL has also provided the capacity of 1.814 MW. Further, in a meeting held on 18.11.2021 it was agreed that M/s. BEL shall pay as per the revised tariff rate of Rs.280/MWh w.e.f. April, 2021 after revision of previous transmission bills.
- e) Absence of specific guidelines for calculation of contracted capacity has been a conflicting issue and therefore, M/s. BEL has asked for a clarification by OPTCL. Further M/s. BEL has expressed its inability to pay transmission charges as per revised tariff of Rs.280/MWh until there is a clarification on undue levying of charges and specific method for calculation of contracted capacity by OPTCL. M/s. BEL has also requested OPTCL for not levying the DPS charges or any other penalty meanwhile.
- f) Further, owing to the lack of banking facility and in absence of any regulation in this respect, approximately 3 to 4 MU per annum are being injected by M/s. BEL to the state grid free of cost with undue enrichment of GRIDCO, which causes loss of revenue to M/s. BEL and expensive electricity to the Ordnance Factory. On request of M/s. BEL, though GRIDCO was initially agreed to buy all the surplus solar power @Rs.4.50/kWh for 25 years after the captive consumption by the Ordnance Factory, later vide its letter dated 20.07.2018, GRIDCO refused to purchase the said excess solar power injected to the state grid.

- g) Further, GRIDCO is levying Deviation Settlement Mechanism (DSM) charges on M/s. BEL, which is illegal owing to the fact that this Commission had not formulated any rules, regulations or mechanism for levying of DSM charges and therefore such act of GRIDCO is without any authority in law. GRIDCO has intimated M/s. BEL that for availing power from GRIDCO's pool to meet the open access schedule shall be payable to GRIDCO at the rate of average BSP for respective financial year plus Rs.1 or deviation charges including additional deviation charges as per CERC norms plus Rs.1 whichever is higher for the relevant block period. Neither such policy exists nor is there any rationale for such unilateral application of DSM charges by GRIDCO. However, in order to operationalise its solar plant, M/s. BEL, vide its letter dated 11.06.2018 and 27.06.2018, had expressed its no objection to pay DSM charges subject to formulation of policy by the Commission for the same. GRIDCO vide its letter 27.06.2018 had admitted that there was non-implementation of DSM in the State of Odisha. Despite such admission, GRIDCO continued to levy DSM charges on M/s. BEL illegally and in the last invoice in this regard dated 22.07.2022 has intimated DSM charges of approximately Rs.17.50 lakh as due and payable by M/s. BEL. No such policy exists nor is there any rationale provided by GRIDCO for this sudden and unilateral application of DSM charges. M/s. BEL has repeatedly objected to such levy of DSM charges by GRIDCO without any authority of law.
- h) The Commission vide its order dated 24.03.2022 passed in Case No.107/2021 has observed on levy of DSM charges on DISCOMs only by way of the order dated 07.05.2018 of the Hon'ble APTEL in Appeal No.55/2015 that the DSM charges can be levied in the manner amicably settled between GRIDCO, DISCOMs and SLDC and paid at BSP rates from 17.02.2014 onwards till the time Intra-State DSM Regulations are not formulated. Even in the said order dated 24.03.2022 the Commission has not opined any mechanism whatsoever for applying DSM charges on CGPs specifically Solar Power Plants.
- i) M/s. BEL had set up the solar power plant considering the open access charges prevailing at that time and is paying the monthly transmission charges, SLDC charges and DSM charges. Further, only 50% of the energy is getting accounted with the captive consumer, whereas balance 50% of energy is going free to

GRIDCO/DISCOM which impacts its revenue. Any increase in open access charges shall make the project unviable.

j) The actions of State utilities by levying various charges on M/s. BEL in absence of infrastructure to compute the same or in absence of any Regulation by this Commission are illegal and therefore ought to be rejected.

k) In view of the above, M/s. BEL prays the Commission to:

- Quash the illegal, arbitrary levy of revised transmission charges as levied by way of monthly invoices since November, 2020 without jurisdiction by OPTCL.
- Direct OPTCL to levy charges as agreed under the Transmission Capacity Access Agreement (TCAA) on 07.08.2018 in accordance with OERC (Terms and Conditions for Open Access) Regulations, 2005.
- Quash the levy of DSM Charges by GRIDCO as illegal, arbitrary and issued without authority in law.
- Direct GRIDCO to reimburse the DSM Charges illegally collected to M/s. BEL herein.
- Direct GRIDCO to purchase surplus power for M/s. BEL's SPP at a tariff of Rs.4.50/kWh for the duration of the Long Term Open Access.
- Grant of net metering mechanism for the Captive Generating Plant (CGP) of M/s. BEL herein as per OERC order on 19.08.2016 on Net Metering/Bi-directional Metering and their connectivity with respect to Solar PV projects and
- Any other relief may be deemed just and proper by this Commission in the facts and circumstances of the instant case to meet the ends of justice.

5. GRIDCO, the Respondent in Case No.47 of 2022, has submitted that:

a) M/s. BEL has entered into TCAA with OPTCL as per the OERC (Terms and Conditions of Open Access) Regulations, 2005 and accepted the terms and conditions framed by GRIDCO with regard to the charges for under injection/over injection by its CGP in respect of the scheduled quantum, in absence of implementation of Intra-State DSM and Intra-State ABT.

- b) GRIDCO does not levy DSM charges on M/s. BEL. However, the charges during under injection, framed by GRIDCO in respect of open access customers shall be compensated through a tariff on the basis of CERC Regulation on DSM due to absence of Intra-State DSM Regulations.
- c) M/s. BEL has mostly injected less power than its injection schedule towards wheeling of power. Though M/s. BEL has agreed to pay all charges as per Open Access Regulations, 2005, but in the said Regulation nothing has been specified regarding the charges for under injection i.e. the power drawn from GRIDCO's pool to meet its open access.
- d) Before implementation of Inter-State DSM Regulation w.e.f. 17.02.2014, Unscheduled Interchange (UI) mechanism was in force. Under UI regime, the mismatch between the scheduled drawal and actual drawal/ scheduled injection and actual injection at the interface points by the open access customer was guided by the Regulation 4(7)(i) at Chapter-II of OERC (Determination of Open Access Charges) Regulations, 2006 which stipulates as follows:
- “(7) Unscheduled Interchange Charges (UI Charges) (i) The mismatch between the scheduled and actual drawl / scheduled and actual injection at the interface points may be met from the grid, which shall be governed by UI pricing mechanism. However, the tariff payable by the Open Access customers to the licensee may contain a component of incentive to be decided by the Commission.”*
- e) Further, the Commission vide its order dated 23.04.2013 passed in Case No.54 of 2012 (at para 18, Scenario-II) has stipulated as under:
- “Scenario-II: The scenario-II relates to the situation when the actual CGP injection is less than the Open Access schedule due to low or ‘NIL’ generation by CGPs and the generator has not taken due care of revision of ‘Open Access’ schedule within the allowable time block and used GRIDCO's power to meet its Open Access commitment at the State boundary. In such case GRIDCO shall charge the respective ‘UI’ rate of the relevant time block plus Rs.1/- as incentive or rate of emergency/back-up power supply to CGPs as determined by the Commission in respective year Tariff orders, whichever is lower to the quantum of GRIDCO's power utilized for ‘Open Access’ transaction”.*
- f) Accordingly, after implementation of CERC DSM Regulations and in absence of Intra-State Deviation Settlement Mechanism, GRIDCO, in its own prudence, calculates the UI (deviation) charges and incentive of Rs.1/- per unit for the power drawn by the drawee utility from GRIDCO's pool to meet open access schedule which arises due to less injection of power by the CGPs in comparison

to their respective schedule quantum in a time block, which is acceptable by all the CGPs.

- g) As a CGP, M/s. BEL has also accepted the terms and conditions framed by GRIDCO for under injection / over injection charges in respect to schedule and furnished the required bank guarantee towards security deposit for such under injection transaction as requested by GRIDCO. M/s. BEL has also paid the under injection charges on regular monthly basis as claimed by GRIDCO till February, 2022. However, on account of increase of DSM charges from March, 2022 onwards, M/s. BEL avoids payment of under injection charges to GRIDCO on different unjustified grounds.
- h) Calculation of DSM charges depends upon the new grid frequency in a block period, average Area Clearing Price (ACP) of power exchange in a day and percentage of deviation between schedule and actual injection in a block period, as per CERC DSM mechanism and Odisha Grid Code (OGC) Regulations, 2015. All the aforesaid data are dynamic in nature and varies from one time block to another, thereby resulting in variable deviation charge rates.
- i) The charges for overdrawal of power by the DISCOMs has been fixed by the Commission, vide its order dated 24.03.2022 passed in Case No.107/2021, till the implementation of Intra-State DSM Regulations, which is based on the order of Hon'ble APTEL. This is applicable to the State DISCOMs only and M/s. BEL does not come under the purview of the aforesaid order.
- j) The claim of GRIDCO towards under injection charges is as per the mutual agreed terms and conditions in absence of any Rules/Regulations. M/s. BEL having agreed to go on paying under injection charges to GRIDCO upto the month of February, 2022, now it cannot back out as being estopped by the principle of promissory estoppel.
- k) As per the order dated 08.05.2017 of the Hon'ble APTEL in Appeal No.120/2016 and IA No.272 of 2016, for any payment towards transaction of power, generator/entity must have an Agreement as well as scheduling of power by the SLDC, which are the mandatory conditions. In view of the above, the generator has no right for claiming any payment towards injection of inadvertent power to the system.

Further, the Commission, vide its order dated 09.04.2019 at para 13 & 14 passed in Case No.16 of 2018, has stipulated as under:

“13. We are aware that the power which is inadvertent in nature cannot be speculated or ascertained ahead of its injection. Injection of such inadvertent power arises out of obligation/contract to supply power to the licensee. This injection should be within the full knowledge of GRIDCO and SLDC through a contract and a valid schedule so that safety of the grid at no situation is affected. Power system cannot be a dumping ground for unwarranted power. Injecting erratically and claiming compensation for the same amount to unsafe grid operation and unnecessary enriching of any injector of power such as a CGP, who has no intention of selling power to GRIDCO. Rather it should be treated as a source of pollution in the grid.

14. In view of the above, we observe that two basic ingredients that are necessary for payments towards transaction of power between a generator (CGP) and the licensee (GRIDCO) are (i) there should be a subsisting contract between them and (ii) there should be a day ahead schedule for grid discipline. GRIDCO must pay the CGPs for their scheduled power and the inadvertent power injected during such schedule and currency of a subsisting contract.xxxxxxx.”

- l) GRIDCO has neither executed any contract with M/s. BEL for procurement of surplus solar power @Rs.4.50/kWh nor any power has been scheduled by SLDC in favour of GRIDCO from the Solar CGP of M/s. BEL. Further, GRIDCO has also denied to procure power from M/s. BEL, vide its letter dated 20.07.2018. As such payment against injection of inadvertent power does not arise. Presently, GRIDCO is procuring firm solar power which is more than the solar obligation as fixed by the Commission. Therefore, GRIDCO has refused to procure such nominal unscheduled power from M/s. BEL.
- m) As evident from the details of scheduled and injected energy with respect to M/s. BEL, it has never supplied 50% of its wheeling power to the state grid in any month. But M/s. BEL has claimed in its petition that 50% of its wheeling power are going to the state without any compensation.
- n) Regarding banking of power, no such regulation has been framed by OERC till date for the State of Odisha. The unauthorised injection of power by the CGPs causes damage to the running of grid at high frequency condition. Such injections by the CGPs are to be regulated through relevant DSM, so as to penalise them.

- o) M/s. BEL may be directed to give realistic schedule so that deviation can be minimised and grid security can be maintained and also GRIDCO should not be penalised by ERPC/ERLDC under DSM Regulations.
 - p) In view of the above, M/s. BEL is not entitled to get any relief as prayed for; hence the petition is liable to be dismissed being devoid of any merit.
6. Heard the parties and perused their written note of submissions. We observe that the disputes between M/s. BEL and OPTCL / GRIDCO are on the following issues:
- (i) Whether the OERC (Terms and Conditions for Open Access) Regulations, 2020 shall be applicable for levy of transmission charges on M/s. BEL when it has entered into TCAA with OPTCL in accordance with OERC (Terms and Conditions for Open Access) Regulations, 2005.
 - (ii) Whether the rates fixed in CERC Deviation Settlement Mechanism Regulations shall be applicable for over / under injection by M/s. BEL based on terms and conditions framed by GRIDCO in absence of Intra-state DSM Regulations.
 - (iii) Whether GRIDCO shall pay for the inadvertent injection of power by M/s. BEL to the state grid from its solar CGP.
 - (iv) Whether the order issued by OERC for net metering / bidirectional metering mechanism and its connectivity shall be applicable to the solar CGP of M/s. BEL.
7. Now, we discuss the above issues in the following paragraphs:
- (i) M/s. BEL has entered into TCAA agreement with OPTCL on 07.08.2018 in accordance with OERC (Terms and Conditions for Open Access) Regulations, 2005. The OERC (Terms and Conditions for Open Access) Regulations, 2020 was notified on 18.11.2020 and the above Regulations, 2005 was repealed. But as per Regulation 44(3) of the new Regulations, 2020, the existing agreement/contract shall be entitled to continue to avail such open access to the transmission and distribution system on the same terms and conditions as stipulated under the existing agreement/contract till its expiry.
- We observe from Clause 1(c), Clause 3 and Clause 6 of the said TCAA agreement dated 07.08.2018 that the open access transaction between M/s. BEL and OPTCL shall be governed in accordance with the provisions of

OERC(Terms and Conditions for Open Access) Regulations, 2005 as amended from time to time and the conditions as specified by OERC from time to time and also the open access charges would be reviewed from time to time. From the above stipulations in the agreement/contract, we conclude that though the agreement was executed as per the terms and conditions of OERC (Terms and Conditions for Open Access) Regulations, 2005, after notification of OERC (Terms and Conditions for Open Access) Regulations, 2020, the terms and conditions of open access stipulated under Regulations, 2020, shall be applicable for such open access transactions between M/s. BEL and OPTCL.

However, as per the OERC (Terms and Conditions for Open Access) Regulations, 2020 the transmission charges shall be payable on the basis of “contracted capacity” in case of long-term and medium-term open access customers. Since the term “contracted capacity” has neither been defined in these Regulations nor in the said TCAA agreement signed between M/s. BEL and OPTCL on 07.08.2018, OPTCL has claimed transmission charges based on the contracted capacity of 7.35 MW for FY 2020-21 and 5 MW for FY 2021-22 based on the maximum scheduled injection for the previous year and 1.814 MW for the FY 2022-23 based on the intimation of M/s. BEL, vide its letter dated 08.10.2021, for projection of ARR and transmission tariff by OPTCL for the FY 2022-23.

OPTCL in its submission has stated that since the term “contract capacity” is not defined in the Regulations, in common parlance, as per the Oxford English Dictionary, the term “Contracted Capacity” in open access Regulations can be interpreted as “Maximum Capacity of power agreed to be transmitted through the electrical network”. We observe that the contracted capacity of 7.35 MW and 5 MW considered by OPTCL for the FY 2020-21 and FY 2021-22 has not been agreed by M/s. BEL, whereas M/s. BEL has intimated OPTCL to consider contracted capacity of 1.814 MW for the FY 2022-23. Therefore, it will be prudent to compute the transmission charges for open access transaction by M/s. BEL considering the 1.814 MW also for the year FY 2020-21 and FY 2021-22. The Commission directs OPTCL to revise the transmission charges bills of M/s. BEL accordingly. The Commission further directs both the parties to finalise the contracted capacity for transmission of power utilising the transmission network

of OPTCL for Long Term Access and accordingly make necessary amendment in the TCAA agreement executed between them in view of the uniform applicability of Open Access Regulation irrespective of source of generation.

- (ii) M/s. BEL has submitted that GRIDCO is arbitrarily levying DSM charges on it without any authority in absence of any Rules/Regulations or any mechanism formulated by the Commission in this regard. In its reply, GRIDCO has submitted that they do not levy any DSM charges on M/s. BEL, but they are claiming 'under injection' charges when less power is being injected by M/s. BEL from its solar CGP than the injection schedule. GRIDCO has further submitted that it claims the same as per the mutual agreed terms and conditions in absence of any Rules and Regulations in this regard and M/s. BEL has paid the under injection charges upto February, 2022.

We observe that Intra-State DSM Regulations has not yet been notified by the Commission. But, Intra-State ABT Regulations, 2007 was notified by the Commission on 17.12.2007, wherein at Regulation 4 (III) (vi) in Chapter 2, it is stipulated that the existing date of UI as approved by CERC (and amended from time to time) shall apply to Intra-State ABT. Subsequently, CERC DSM Regulations came into force w.e.f. 17.02.2014 by repealing the CERC ABT Regulations, which indicates the charges for deviation from the schedule. We further observe that the Commission, vide its order dated 23.04.2013 passed in Case No.54 of 2012 (at para 18, Scenario-II), has stipulated as under:

“Scenario-II: The scenario-II relates to the situation when the actual CGP injection is less than the Open Access schedule due to low or 'NIL' generation by CGPs and the generator has not taken due care of revision of 'Open Access' schedule within the allowable time block and used GRIDCO's power to meet its Open Access commitment at the State boundary. In such case GRIDCO shall charge the respective 'UI' rate of the relevant time block plus Rs.1/- as incentive or rate of emergency/back-up power supply to CGPs as determined by the Commission in respective year Tariff orders, whichever is lower to the quantum of GRIDCO's power utilized for 'Open Access' transaction”.

As per GRIDCO, they have claimed under injection charges on M/s. BEL when there is less injection of power by the CGP of M/s. BEL than the scheduled injection. Further, M/s. BEL has agreed to it and also paid the under-injection charges upto February, 2022.

We observe that when there is less injection by a CGP than the injection schedule and the drawee entity has drawn power from GRIDCO's pool as per its schedule drawal, then GRIDCO must be compensated for such transaction as per the above order of the Commission. Even if it is found that GRIDCO adopted the rates of CERC DSM Regulations for the purpose of imposing penalty in case of lesser or higher injection into the grid than the schedule, in absence of a separate DSM Regulations in the State, the same cannot be held to be either illegal or unconscionable.

In the instant case, M/s. BEL cannot be exonerated from paying under injection charges to GRIDCO in case the injection from its CGP is less than the scheduled injection. However, any ambiguity/mistake in computation of such charges must be clarified/rectified by GRIDCO.

The Commission is going to notify a new Intra-State DSM Regulation in near future. Once it is notified this type of grievance will automatically cease.

- (iii) M/s. BEL has submitted that approximately 3 to 4 MU energy per annum is being injected to the state grid from its solar CGP free of cost and GRIDCO should be directed to purchase such power at a tariff of Rs.4.50/kWh on Long Term basis. As per GRIDCO, they have refused to purchase solar power from the CGP of M/s. BEL as it is not a firm source of power and they have not executed any contract/agreement with M/s. BEL to purchase such power. Therefore, M/s. BEL is not entitled to be compensated for its inadvertent injection of power as per the orders of Hon'ble APTEL as well as this Commission.

We observe that as per the order dated 07.05.2017 of the Hon'ble APTEL in Appeal No.120/2016 and IA 272/2016, the mandatory conditions for any payment towards transaction of power, the generator/entity must have an agreement/contract as well as day ahead schedule of power by the SLDC for grid discipline. Accordingly, the Commission, vide its order dated 09.04.2019 passed in Case No.16/2018, has observed as under:

“13. We are aware that the power which is inadvertent in nature cannot be speculated or ascertained ahead of its injection. Injection of such inadvertent power arises out of obligation/contract to supply power to the licensee. This injection should be within the full knowledge of GRIDCO and SLDC through a contract and a valid schedule so that safety of the grid at no situation is affected. Power system cannot be a dumping ground for unwarranted power. Injecting erratically and

claiming compensation for the same amount to unsafe grid operation and unnecessary enriching of any injector of power such as a CGP, who has no intention of selling power to GRIDCO. Rather it should be treated as a source of pollution in the grid.

14. *In view of the above, we observe that two basic ingredients that are necessary for payments towards transaction of power between a generator (CGP) and the licensee (GRIDCO) are (i) there should be a subsisting contract between them and (ii) there should be a day ahead schedule for grid discipline. GRIDCO must pay the CGPs for their scheduled power and the inadvertent power injected during such schedule and currency of a subsisting contract. xxxxxx.”*

Further, in the CGP pricing order of the Commission the inadvertent injection by the CGPs has been priced at ‘zero’ cost.

In view of the above, the compensation towards injection of inadvertent power by M/s. BEL from its solar CGP, as claimed by it, cannot be effected. However, M/s. BEL may consult and convince GRIDCO or any other entity to purchase surplus solar power from its CGP through an agreement/contract at a mutually agreed rate. GRIDCO is advised to explore possibility for entering into PPA with M/s. BEL to purchase surplus power from its solar CGP available in the State at a negotiated price as GRIDCO may require such power for meeting its RPO in future and also to avoid Inter-State transmission loss for purchase of RE power on open access from outside the State.

8. The Commission is aware that the generation from renewable sources inside the State is to be encouraged. Most of the issues discussed above has arisen out of contract between the parties. In view of Renewable Policy, 2022 of Government of Odisha, parties may re-negotiate the contract for effective transaction.
9. M/s. BEL has requested the Commission to grant net metering mechanism for its solar CGP as per OERC order dated 19.08.2016 on net-metering/bi-directional metering and their connectivity in respect of solar PV projects. We observe that as per the existing net-metering/bi-directional metering order of the Commission, the upper limit of the installed capacity of solar plant is 500 kW for getting the benefit of net-metering/virtual net-metering/group net-metering, whereas the solar CGP of M/s. BEL is having installed capacity of 7.5 MW. Hence, net-metering/bi-directional metering framework /benefit is not applicable to the solar CGP of M/s. BEL.
10. With the above observations and directions, both the cases are disposed of.

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

Sd/-
(G. Mohapatra)
Officiating Chairperson