

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

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

**Case No. 85/2023**

OREDA	.....	Petitioner
Vrs.		
DoE, GOO & Others	.....	Respondents

**In the matter of:**      **Application under Section 86(1)(e) of the Electricity Act, 2003 read with Regulation 23 of the OERC (Terms and Conditions of Intra State Open Access) Regulations, 2020 and Regulation 7 (Exemptions under Odisha Renewable Energy Policy 2022) of the OERC (Open Access Charges for FY 2023-24) towards waiver of Cross Subsidy Surcharge on the Renewable Power to be supplied to the Obligated Entities of the State.**

**For Petitioner:**      Ms. Sasmita Patjoshi, Joint Director (Tech.), OREDA

**For Respondents:**      Ms. Sonali Pattnaik, Manager (Legal), DoE, GoO; Shri B. K. Das, Sr.GM, GRIDCO Ltd; Ms. Shaswati Mohapatra, GRIDCO Ltd.; Shri Subhashis Samantaray, DGM(RT&C), OPTCL; the Representative of SLDC; Shri Puneet Munjal, Head Regulatory Affairs, TPCODL; Shri S. R. Mishra, TPCODL; and Shri K. C. Nanda, GM(RA&S), TPWODL. None appears on behalf of TPNODL and TPSODL.

**ORDER**

**Date of Hearing: 26.09.2023**

**Date of Order: 11.10.2023**

This matter was taken up for hearing through hybrid arrangement (virtual/physical).

2. The Petitioner, M/s. OREDA has filed an application under Section 86(1)(e) of the Electricity Act 2003, Regulation 23 of the OERC (Terms and Conditions for intra-state Open Access) Regulations, 2020, Clause 7 of Exemption under the Odisha Renewable Energy Policy, 2022 and consequential OERC Open Access Charges order for FY 2023-24 praying for waiver of the Cross-Subsidy Surcharge on the Renewable power supplied to the Obligated Entities of the State.
3. The Petitioner has prayed the Commission that (a) OREDA to be identified as a State Government Agency to promote and fast track deployment of RE power by implementation of various RE projects in the state and sale of RE power to the State

Obligated Entities through Intrastate Open Access; (b) any such sale of RE power by OREDA through Intrastate Open Access to the Obligated Entities of Odisha shall also be considered towards meeting their RPO and the RPO of GRIDCO; and (c) the Cross Subsidy Surcharge (CSS) notified by Commission for sale of RE power from any RE project set up in the State by OREDA to the Obligated Entities (GRIDCO, CGPs) up to the RPO may be fully waived off, so that OREDA can supply RE power at a competitive rate which will be towards fulfilling RPO of the state.

4. Background:

- a) Odisha Renewable Energy Development Agency (OREDA) was constituted as a State Nodal Agency in 1984 under aegis of Department of Science and Technology, Government of Odisha with an aim to popularize the implementation and use of renewable energy resources in the State. Presently OREDA is under Department of Energy since 2020 and has been implementing several on-grid and off-grid projects throughout the State.
- b) As per the Nationally Determined Contribution (NDC) on Climate Change, towards generating 50 percent of electricity from non-fossil fuel sources by 2030, higher scale RE capacity addition is expected in the State by 2030. Odisha has installed capacity of 633.73 MW from RE sources excluding hydro by June 2023.

5. The Petitioner- M/s OREDA has further submitted the following:

- a) Odisha is among the leading industrialised states in the country with more than 60% generation from the CGPs. There is clear demand for RE power from the Obligated Entities (DISCOMs and the industries) due to RPO and Net Zero commitments. It is desirable that the Obligated Entities meet their RE requirement from the RE projects commissioned in the state. There has been significant thrust on Open Access (OA) to make RE power easily available to the interested end users through Central and State level policies and regulations. In this regard, Ministry of Power (MoP), GoI had notified “Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022” in June, 2022. Subsequently, in line with the same, OERC has also recently issued ‘draft Odisha Electricity Regulatory Commission (Promotion of Renewable Energy through Green Energy Open Access) Regulations, 2023’, inviting suggestions and opinions.

- b) Open Access consumers are obligated entities as per Clause No.3.1(b) of the “OERC (Procurement of Energy from Renewable Sources & its Compliance) Regulations, 2021.” The Commission shall determine the level of Cross Subsidy Surcharge from time to time in the Open Access Order each year for procurement of power through Third Party Sale from RE Sources. Recently OERC has also published the Open Access charges for FY 2023-24 (Notification under Regulation 57 of OERC’s Conduct of Business Regulation, 2004) vide its order dated 24.03.2023. The Commission has provided certain exemptions which are reproduced below:

*“50% Cross-Subsidy Surcharge are payable by the Open Access consumers, on consumption of energy from RE projects commissioned in the state during the first 15 years.*

*“No cross-subsidy surcharge are payable by the industries in the state availing RE power from GRIDCO (with GRIDCO acting as a demand aggregator)”.*

After 50% waiver, the applicable CSS ranges from 55.27 paise/unit to 118.265 paise/unit for EHT and 11.675 paise/unit to 67.89 paise/unit for HT consumers.

- c) Very recently, OERC has also issued public notice inviting suggestion/opinion on the draft OERC (Promotion of Renewable Energy through Green Energy Open Access) Regulations, 2023. As per 3(a) of this draft Regulation, GRIDCO being aggregator in the state, it is required to make the RE power available to other obligated entities from its pooled source of RE power so that the obligated entities can meet their RPO. However, in case where the RE power is to be supplied by GRIDCO to the other obligated entities, it is to further clarify that the applicable tariff (towards procurement of RE power by the obligated entities from GRIDCO) will be same as per the PPA tariff or a pooled RE tariff.
- d) SLDC has been publishing monthly reports on power purchased by the obligated entities. As per the monthly reports of 2022, it was observed that no RE power had been procured by the obligated entities from GRIDCO. Other mode of procurement of RE power is either through power exchanges or through Inter-State OA or from CGPs. It can be seen that despite having favourable policy options, industries or any other obligated entities have not availed RE power from GRIDCO till now.
- e) To meet the RPO trajectory and reach 43.33% by 2030, the total cumulative estimated RE capacity addition (wind, hydro & other) required by the State

Obligated Entities (DISCOMs & industries) and captive /OA projects is about 5.7 GW & 16 GW respectively. OREDA, being a Government Agency under Department of Energy, can provide cost effective RE power from its own projects set up in Odisha and supply it through Open Access to the State Obligated Entities towards RPO. Such sale of RE power by OREDA to the agencies within Odisha, will be complementary to GRIDCO, if the same is considered as deemed to meet the RPO of GRIDCO.

- f) OREDA, being an independent agency, can focus only on Renewable energy deployment in Odisha which can significantly contribute towards RE capacity addition of the State. OREDA has also taken steps to develop large scale ground-mounted/ rooftop projects as an RE project developer towards the State's RPO.

6. The Respondent- TPWODL has submitted the following:

- a) As per Para 25.2 of the Odisha Renewable Energy Policy, 2022, the Department of Energy, Government of Odisha has nominated GRIDCO as the Nodal Agency for implementation of the said Policy and the development of all RE projects in the state. Accordingly, while determining RST for FY 2023-24, the Commission through public hearing has notified the exemptions of CSS quoting the Odisha Renewable Energy Policy, 2022. With this context OREDA intends to sell RE to obligated entities including GRIDCO and this appears to be beyond the provision of law, unless the extant Policy and related provisions are amended/ modified. Further, GRIDCO is the aggregator of power on behalf of all the DISCOMs and acts as an obligated entity for RPO compliance. If OREDA desires to develop RE like other developers, it may do so, however, may sell the RE power through competitive bidding to GRIDCO. As per present RE policy & RST order, waiver of CSS has been extended to the beneficiary industries if it avails/ purchase RE power from GRIDCO. The intention of such waiver is as GRIDCO is the power aggregator from different sources for the state's requirement, after meeting its own obligation may facilitate other intending industries for promotion of RE. Therefore, if OREDA establishes RE power plant and sells to GRIDCO, the purpose of RE policy will be fulfilled and intending industries will be benefited.

- b) The Commission has recently issued public notice inviting suggestions/opinions on the draft OERC (Promotion of Renewable Energy through Green Energy Open Access) Regulations, 2023 which may be on the verge of finalisation by the Commission. The Regulations shall be applicable exclusively for availing renewable energy through open access by intra-state consumers wherein the applicability of CSS has been mentioned. Based on the prevailing policy, regulations and order, there is no provision for a waiver of CSS. This means that Green Energy Open Access consumers are also obligated to pay the CSS as determined by the Commission.
- c) It is pertinent to mention that power procurement and OA mechanisms are indeed designed to promote competition, eliminate monopolies, and create a more open and transparent electricity market. In such a market, it is generally preferable not to provide special reservations or exemptions to specific developers or stakeholders. Instead, the market should strive for fairness, equal opportunity and a level playing field for all participants. One of the salient features of the Electricity Act itself is to eliminate the market monopoly and delicensing of the Generation company and non-discriminatory Open Access to bring more competitiveness in the market. The Odisha Renewable Energy Policy, 2022, establishes a robust implementation framework, ensuring a level playing field for all stakeholders involved in the generation, consumption, or sale of renewable energy within the state, without any inclination towards discriminatory practices or barriers.
- d) The New Tariff Policy dt. 28.01.2016 issued by GoI envisages that all future procurements of RE (except from waste to energy plants) shall be made only through competitive bidding to keep the tariff low. Further, as per OERC Discussion Paper dt. 20.07.2023 for determination of Generic tariff and norms in respect of RE Projects in Odisha, GRIDCO is required to invite tenders for procurement of power from projects to be set up within the state at a tariff discovered through competitive bidding. Hence, when OREDA intends to sell RE power to GRIDCO, they need to participate in competitive bidding process.

7. Another Respondent- TPCODL has submitted the following:

- a) The change in the Cross Subsidy Surcharge for availing RE power on Open Access over the years was notified by the Commission in respective year's

Tariff Orders. Further, as per the Odisha Renewable Energy Policy, 2022 the Commission has exempted 50% of CSS on availing of RE power on Open Access from RE plant commissioned in the state during the policy period for 15 years. While the RE policy, 2022 and Tariff Order FY 2023-24 have provided exemption of 50% CSS for a period 15 years during the policy period, the petitioner has asked for 100% exemption/waive off of CSS.

- b) The proposed exemption of 100% CSS waiver would result in additional revenue loss to DISCOMs which would in turn to be made good through suitable upward revision in various Consumer Categories tariffs.
- c) OREDA's request for 100% CSS waiver for power procured by Obligated consumers from OREDA developed RE plants would result in differential treatment of State vs. Private Developers of RE Projects, whereby any power procured from Private Developers RE plants would attract 50% CSS while being completely waived off in case of OREDA Developed and operated RE plants.

8. Another Respondent- TPSODL has submitted the following:

- a) Under the Renewable Energy Policy 2022 there is no scope for a body like 'State Government Agency' as proposed by OREDA. Further, if OREDA intends to become the Nodal Agency, instead of approaching the Commission, it should approach the Government of Odisha, who have appointed GRIDCO as the Nodal Agency.
- b) The Nodal Agency under Paragraph 25.3 of the Renewable Energy Policy is entrusted with several responsibilities for quicker implementation of the Renewable Policy. Keeping in mind the myriad tasks for Nodal Agency, it may not be advisable to change GRIDCO as the Nodal Agency at present.
- c) M/s. GRIDCO is State Designated Agency which has rich experience in purchase of power for the state. Hence, M/s. GRIDCO would be more appropriate to aggregate the power for various industries who wish to buy Renewable Power for Industries to meet the RPO.

9. Heard the Petitioner and Respondents and considered their written submissions. The Petitioner has prayed to be identified as a State Govt Agency to promote and fast track deployment of RE Power in the State by implementation of various RE projects in the State and for Sale of RE power to State Obligated entities through Intra-state Open

Access. Further, it has prayed for 100% waiver of the Cross Subsidy Surcharge (CSS) for sale of RE power from any RE projects set up in the State by OREDA to Obligated Entities (GRIDCO, CGPs, etc.) upto their RPO limit.

10. It may be noted that Cross-subsidy is a mechanism whereby some consumers are charged at higher tariff as compared to the cost of supplying power to them and such additional revenue is utilised to give a subsidised tariff to vulnerable groups. Waiver of Cross Subsidy Surcharge in respect of any group of consumers, whether they avail conventional power or green power, would lead to a position, where some vulnerable subsidized group of consumers would be pushed to a situation of losing their subsidized electricity.
11. However, the promotion of Renewable energy is also significant as per the Section 86(1)(e) of the Electricity Act, 2003. The Odisha Renewable Energy Policy, 2022 has made the following exemptions relating to Cross-Subsidy Surcharge with regard to the consumption of RE power by Open Access customers:
  - a) Fifty percent (50%) of Cross Subsidy Surcharge (CSS) are payable by the Open Access consumers, on consumption of energy from RE projects, commissioned in the State during the policy period for fifteen (15) years.
  - b) No Cross-subsidy surcharge are payable by the Industries in the State availing Renewable power from GRIDCO (with GRIDCO acting as a demand aggregator).

Further, the Commission while approving the ARR & Tariff Order of the DISCOMs for FY 2023-24 has highlighted the provisions of the Odisha Renewable Energy Policy, 2022 with regard to waiver of Cross-Subsidy Surcharge. The draft OERC (Promotion of Renewable Energy through Green Energy Open Access) Regulations, 2023 is under the process of finalisation. While determining the tariff, the Commission is to be guided under Section 62 (3) of the Electricity Act, 2003 which empowers the Commission to differentiate consumers on the basis of load factor, power factor, voltage, total consumption of electricity during any specific period and purpose for which the supply is required. Other than this, the Commission cannot distinguish the consumers on the basis of source of supply and nature of generation, such as renewable or generation basing on fossil fuel. The Commission cannot also distinguish the supplier of renewable power on the basis of their ownership. Therefore, the Commission cannot accept the

plea of the Petitioner to treat it on a separate footing and allow it, the privilege to supply renewable power to consumers without levy of Cross Subsidy Surcharge.

12. In view of the above, the OREDA is directed to approach the Government of Odisha and the Government of Odisha may take appropriate decision on the prayer of the OREDA.
13. The case is accordingly disposed of.

Sd/-

**(S.K. Ray Mohapatra)**  
**Member**

Sd/-

**(G. Mohapatra)**  
**Member**

Sd/-

**(S.C. Mahapatra)**  
**Chairperson**