

**ODISHA ELECTRICITY REGULATORY COMMISSION  
PLOT NO. 4, CHUNOKOLI, SAILASHREE VIHAR,  
CHANDRASEKHARPUR,  
BHUBANESWAR-751021**

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

**Case No. 86/2023**

M/s. SAIL ..... Petitioner  
Vrs.  
GRIDCO & Others ..... Respondents

**In the matter of:** Application under Section 86(1)(f) of the Electricity Act, 2003 for resolution of the disputes between GRIDCO Ltd., M/s. TPWODL with the Petitioner-M/s. SAIL, Rourkela Steel Plant, Rourkela.

**For Petitioner:** Shri D.K. Bhanja, CGM, Power Distribution, SAIL.

**For Respondents:** Shri B. K. Das, Sr. GM & Shri Anirudha Sethy on behalf of GRIDCO Ltd., Shri K.C. Nanda, GM (RA & Strategy), TPWODL and Shri Subhashis Samantaray, DGM (Elect.), RT&C, OPTCL.  
None appears on behalf of the Respondents SLDC, M/s. Linde India Limited & M/s. South Eastern Railway.

**ORDER**

**Date of Hearing: 07.11.2023**

**Date of Order: 17.11.2023**

The Petitioner-M/s. Steel Authority of India Limited (in short M/s. SAIL) has filed the present petition under Section 86 (1) (f) of the Electricity Act, 2003 for resolution of the disputes with M/s. TPWODL arising out of the energy accounting & billing procedure laid down in the Tripartite Agreement (TPA) executed among the Rourkela Steel Plant (RSP-SAIL), TPWODL, M/s. Linde India Limited (M/s. LIL) and M/s. South Eastern Railway (M/s. SER). The following prayers have been submitted by the petitioner before the Commission:

- a) Approve for deletion of Clause No. 4.6 of the existing two TPAs (one in respect of M/s. LIL with RSP & TPWODL and another in respect of M/s. SER with RSP & TPWODL).
- b) Direction to GRIDCO and SLDC to amend the method of calculation of RSP export of energy from the Petitioner's CGP for all purpose and adopt the methodology as detailed.
- c) Direction for amendment of the calculation to be applicable with retrospective effect from January, 2023.

- d) To allow the Petitioner to adopt any of the following options to gainfully utilize its surplus generation recorded as export.
    - i. Transfer the surplus power to its sister steel plants and captive mines located at different location within as well as outside the State of Odisha following the procedure for short term open access as laid down in the OERC's Open Access Regulation and
    - ii. to sale its surplus power through PPA to any interested buyer including GRIDCO and TPWODL and mutually agreed rates.
2. The Petitioner-M/s. SAIL has submitted the followings:
- a) The RSP-SAIL, an integrated steel plant at Rourkela, had Captive Generating Plants (CGPs) having 4x25 MW (CGP-1 installed in 1959), 2x60 MW (CGP-2 installed in 1987) and another CGP-3 of 59.5 MW (2x18.5 MW + 1x16 MW + 1x6.5 MW) installed in 2013. It has recently installed another CGP-4 having installed capacity of 1x250 MW, which has started regular generation from the month of December, 2022. The CGP-2 & CGP-4 are run by NSPCL, a Joint Venture company of SAIL and NTPC.
  - b) The RSP-SAIL is also a consumer of the DISCOM-TPWODL and connected to 220 kV Tarkera Grid Sub-station (TGSS) of OPTCL through 4 nos. of 220 kV feeders from TGSS out of which two feeders are connected to MSDS-IV of RSP namely RSP-1 & 2 and other two feeders are connected to MSDS-VII of RSP namely RSP-3 & 4.
  - c) The factory of M/s. LIL supplies industrial gases to RSP and is situated adjacent to the steel plant of RSP. Its electrical sub-station is connected to 33 kV MSDS-VI sub-station of RSP through 4 nos. 33 kV feeders. Similarly, M/s. SER has a 132/25 kV Traction Sub-station (TSS) inside the premises of RSP for feeding its Rail network inside and outside the RSP. The TSS is connected to 132 kV MSDS-VI Sub-station of RSP through 2 nos. of 132 kV feeders. Both M/s. LIL and M/s. SER are consumers of the Licensee-TPWODL. Since, there is no direct connection from OPTCL/TPWODL network to them, they are availing power from the Sub-station of the RSP-SAIL through special agreements under OERC Distribution (Conditions of Supply) Code, 2004 & 2019 respectively. The provisions of both the TPAs (one among the RSP-SAIL, M/s. LIL & TPWODL and another among the RSP-SAIL, M/s. SER & TPWODL) are similar in nature.

- d) As per the said TPAs, both M/s. LIL & M/s. SER are consumers of TPWODL and make payment directly to TPWODL and the RSP-SAIL is only the consenting party. M/s. LIL & M/s. SER are billed as per their consumption recorded every month by the billing meters installed in their premises. The total consumption of M/s. LIL & M/s. SER are deducted from the metered consumption of RSP apex meter(s) installed at TGSS and balance energy is being billed against RSP-SAIL. Similarly, Maximum Demand (MD) of RSP is calculated by subtraction of Maximum Demands of M/s. LIL & M/s. SER recorded in the relevant Apex Energy Meters installed for the purpose.
- e) The Clause 4.6 of both the TPAs provides that *“If the net energy consumed by Railway and M/s. Linde exceeds the net energy actually received by CONSENTING PARTY at 220 kV during the corresponding 15 minutes time block, the excess energy consumed during the said 15 minutes time block shall be treated as lapse of the CONSENTING PARTY and the CONSENTING PARTY shall neither be permitted for banking of such excess energy nor shall be paid for the same unless there is a separate agreement for sale/purchase. Further, during such occasion, the licensee will be the right to billed a consumer as per Clause 4.1.”*
- f) There is no concern in the above energy accounting procedure, when the total consumption of M/s. LIL and M/s. SER is equal to or less than the drawal from TGSS. At the time of signing the TPAs, the captive generation of the Petitioner was not sufficient to meet its demand and it was always remaining in net import mode and did consume power by drawing from TGSS. But, now after consistent generation from December, 2022 by the new 250 MW generating unit (CGP-4), the RSP-SAIL is having surplus power, even when the generating of new unit is backdown to its technical minimum generation. Under this condition, for most of the time, total power generated by RSP-SAIL is more than its total consumption. The surplus energy is being consumed by M/s. LIL and M/s. SER which are connected to the RSP-SAIL Sub-station. Hence, the energy import recorded in RSP feeder at TGSS is remaining lower than the total energy consumed by M/s. LIL & M/s. SER together. This effectively means, part of their energy consumption is being met from the captive generation of the Petitioner, which is the deemed export from the RSP-SAIL. As no export is being recorded in the RSP feeder meter at TGSS, GRIDCO is not treating this energy as RSP export while preparing the monthly EBC data. Hence, the Petitioner is suffering financial loss on regular basis.

- g) In the above scenario, the excess captive generation of the Petitioner is being consumed by M/s. LIL & M/s. SER who are the consumers of the Licensee-TPWODL. The Petitioner is not getting any charges for such power, whereas TPWODL is collecting energy charges for the same from its consumers without making payment for the purchase of this energy either from the Petitioner's CGPs or from GRIDCO.
- h) Now, the Petitioner has been taking NOC from SLDC and TPWODL for sale of 90 MW power of surplus generation capacity. In addition, it is also planning for wheeling of power to its sister units through open access. Further, the Petitioner has also received request from GRIDCO for supply of surplus power. However, the Petitioner is not able to utilize the available surplus generation capacity due to the export calculation method as per TPA and incurring loss in terms of idle fixed charges. Further, in case of sale of such power through open access, the export to the grid is being considered at TGSS without considering the surplus energy consumed by M/s. LIL & M/s. SER. Thus, GRIDCO is levying under injection charges on the Petitioner without considering the surplus energy being consumed by M/s. LIL & M/s. SER even though the Petitioner meets the obligation of injecting the scheduled quantum. Due to non-accounting of drawal of M/s. LIL & M/s. SER, the Petitioner is being penalized. Furthermore, the Petitioner is paying electricity duty on the energy consumed for self-generation. Quantum of energy eligible for payment of ED is calculated by deducting 'export' from total generation. Since, the deemed export is not being recognised by GRIDCO, the Petitioner has to pay the ED on energy which has not been consumed by it and thus, incurring extra burden.
- i) The RSP officials had already appraised the matter with the TPWODL authority and they had advised that since the tripartite agreements having made with the approval of the Commission, the Petitioner should file an application before the Commission with the prayer for amendment of the existing TPAs. The Petitioner had also requested GRIDCO to rectify the accounting practice on export of its power and accordingly, GRIDCO had convened a meeting on 10.03.2023, where the representatives of SLDC, OPTCL, TPWODL and RSP-SAIL were present and the matter was discussed in detail. However, the Petitioner received a letter from GRIDCO on 12.06.2023 wherein GRIDCO has acknowledged that the prevailing energy accounting practice is not proper and advised the Petitioner to take permission/order from the Commission for effecting the changes in the accounting practice.

- j) Prior to filing the present Petition, the Petitioner has communicated with TPWODL, M/s. SER & M/s. LIL regarding the intention of filing of the Petition for amendment of existing TPAs and also requested them to convey NOC on the proposed rectification of export accounting method. In response M/s. SER and M/s. LIL have communicated their NOC vide their letters dated 01.06.2023 & 07.08.2023 respectively. However, TPWODL, in its response dated 21.06.2023 has given conditional NOC.
3. The Respondent-GRIDCO has submitted the following:
- a) After consistent generation of the new 250 MW CGP of M/s. SAIL from December, 2022, M/s. SAIL is having surplus power. The surplus energy, when injected by M/s SAIL (RSP), is being consumed by M/s LIL and M/s. SER which are connected before the metering point at Tarkera Grid S/S. Since deemed export of such surplus energy by M/s SAIL (RSP) is not being recorded in the respective 220 kV meters at Tarkera Grid S/S, it is not being accounted for.
  - b) Under the above scenario, TPWODL is collecting energy charges from M/s LIL and M/s. SER without making payment for the purchase of aforesaid surplus energy either from M/s. SAIL Captive Generating Plants or from GRIDCO.
  - c) Further, when M/s. SAIL opts for sale of its surplus power through open access, the deviation is being calculated taking the reference of meter installed at Tarkera Grid S/S under the present energy accounting procedure. This results in financial burden on M/s. SAIL although M/s SAIL injects the committed OA quantum eventually leading to dispute between GRIDCO and M/s. SAIL.
  - d) In the meeting held on 10.03.2023 at GRIDCO with the representatives of SLDC, OPTCL, TPWODL and SAIL, the matter was discussed in detail and it is observed by GRIDCO, SLDC and OPTCL that the energy accounting adopted presently is not proper. The surplus power injected by M/s. SAIL is being consumed by M/s LIL & M/s. SER and consequently billed by M/s TPWODL and not accounted for as injection to the grid. This surplus power should be treated as inadvertent power and should be accounted for in the GRIDCO pool and all DISCOMs shall take the benefit of this power instead of TPWODL alone.
  - e) In the above said meeting on 10.03.2023, the energy accounting issue of M/s SAIL was not finalized due to objection raised by TPWODL. TPWODL has

highlighted the matter that the present energy accounting is being carried out as per the TPA with M/s. LIL and M/s. SER approved by the Commission. The relevant clause of the existing TPA needs to be amended.

- f) GRIDCO, vide its letter dated 12.06.2023, has advised M/s SAIL that it would be appropriate for M/s SAIL to file a petition before the Commission for suitable redressal of the issue and approval of the amended energy accounting process.
- g) The Commission may consider to issue of necessary orders regarding proper energy accounting of Import and Export of M/s. SAIL and direct TPWODL to provide monthly 15 minutes time block energy consumption data with respect to M/s. LIL and M/s. SER to SLDC for proper energy accounting.

4. The Respondent-OPTCL has submitted the following:

- a) In pursuant to the Orissa Grid Code, 2015, extension of power supply to M/s. LIL and M/s. SER directly from the substation of M/s. SAIL (RSP) is not permissible without any application to OPTCL for modification of the connectivity agreement. M/s. SAIL (RSP) has entered into special agreement with M/s. LIL and the distribution licensee on 20.07.2015 without the knowledge of OPTCL and later vide its letter dated 05.08.2015, M/s. SAIL (RSP) requested OPTCL for increasing the O/C relay setting. Thereafter, knowing about such special agreement, OPTCL had expressed his concern to erstwhile WESCO Utility for non-communication of the special agreement with M/s. LIL.
- b) As per the special agreement dated 20.07.2015 between erstwhile WESCO Utility, M/s. LIL and M/s. SAIL (RSP), the distribution licensee had agreed for using the existing electrical infrastructure built by the consenting party (SAIL/RSP) for providing the power supply to M/s. LIL in separate transmission facility arranged by M/s. LIL. Further, as per the observations of the Commission in its order dated 18.01.2016 in Case No.24 of 2015, ***“The tripartite agreement which was signed on 20.07.2015 has been made initially for a period of 5 years. The said agreement had been made till M/s. LIL make its own arrangements to avail power supply from the grid.”***
- c) Further, the Commission vide para 6 of its order dated 28.09.2020 in Case No.33 of 2020 has observed that “The agreement shall continue to be in force until expiry of five years from the date of supply and thereafter, shall so continue until the same is determined by either party giving two months’ notice to the other in writing

expressing its intention to terminate the agreement. **However, the consumer and the consenting parties have agreed to make all efforts towards the consumer getting direct power supply from the grid substation”.**

- d) Similarly, the special agreement dated 06.02.2021 between M/s. SAIL (RSP), M/s. SER and TPWODL is also inconsistent with the aforesaid order of the Commission. The Clause (1) DURATION OF AGREEMENT of the special agreement dated 06.02.2021 pronounces that ***“The consumer and the consenting party have agreed among themselves to make all efforts towards the consumer getting direct power consumption from the Licensee’s Sub-station.”*** Further, as per Para-4.7 of the said agreement, *“The Consumer i.e. Railway shall not be allowed to avail power under open access till he avails direct power supply from GRID on its own arrangement.”* This implies that M/s. SER should avail power supply from Grid of its own arrangement.
- e) No beneficiary asked OPTCL for NOC for such special agreements for extending power supply to M/s. LIL and M/s. SER from the Sub-station of M/s. SAIL (RSP). Further, no effort has been made by M/s. LIL and M/s. SER to establish the direct connectivity with GRID till date. The commercial complication arising out of the present connectivity of M/s. LIL and M/s. SER with M/s. SAIL (RSP) can be resolved, if direct connectivity of M/s. LIL and M/s. SER is established with OPTCL Grid System.
- f) If the present scenario continues, OPTCL is also entitled for transmission charges on the surplus energy fed by M/s. SAIL (RSP) to M/s. LIL and M/s. SER, as it will be treated as injection of M/s. SAIL (RSP) to OPTCL Grid and then drawl by M/s. LIL and M/s. SER through 33 kV and 132 kV system of OPTCL respectively.
- g) In compliance to the orders dated 18.01.2016 in Case No.24 of 2015 and 28.09.2020 in Case No.33 of 2020, the following proposals of OPTCL may be considered.
- Connectivity of M/s. SER with 220/132/33 kV Tarkera Grid Sub-station at 132 kV level, through existing idle charge 132 kV Tarkera-RSP DC Line, as the N-1 contingency of M/s. SAIL (RSP) is getting fulfilled through two nos. of 220 kV DC Lines.
  - Connectivity of M/s. LIL with 132/33 kV Rourkela Grid Sub-station (where spare 33 kV Bays are available) at 33 kV level, considering the contract demand of M/s. LIL as 43.5 MVA.

- A joint team comprising members from M/s. SAIL (RSP), M/s. SER, M/s. LIL, TPWODL and OPTCL may conduct the field feasibility study.

5. The Respondent-TPWODL has submitted that:

- a) The Petitioner is a consumer of the Licensee-TPWODL with contract demand of 170 MVA and connected to 220 kV Tarkera Grid sub-station (TGSS) of OPTCL through four nos. of 220kV feeders. M/s. LIL & M/s. SER, Chakradharpur are also the existing consumers of the Licensee-TPWODL through special Tri-partite Agreement (TPA) duly approved by the Commission under Regulation 81 of OERC Distribution (Conditions of Supply) Code, 2004 & Regulation 139 of OERC Distribution (Conditions of Supply) Code, 2019, vide Orders dated 18.01.2016 & 28.09.2020 respectively. Both are inside the premises of RSP where in M/S LIL is connected with 33 kV (with CD of 43.5 MVA) & SER at 132 kV (with present CD of 18.5 MVA). As per the aforesaid TPAs, TPWODL (erstwhile WESCO utility) is the Licensee, M/s. SAIL (RSP) is the Consenting Party and both M/s LIL & M/s. SER are the Consumers.
- b) The core issue involved in the present application pertains to accurate and proper energy accounting of the energy imported and exported by and from the power plants (CGP) of the Petitioner. The Tripartite Agreements in question have been executed and given effect as per law with the mutual consensus between the parties. The objective was to enable power supply to the consumers viz. M/s. LIL and M/s. SER, who had no connectivity or system to get supply directly through the GRID. Considering the circumstances and special interest of M/s. SAIL (RSP) (as both are operating for the benefit of the RSP), the special agreements were executed and approved by the Commission. The terms of the said agreements don't have any provision of contingent circumstances. The effect of any contingency was well within the knowledge of all the parties to the said agreement. Further, by happening or occurrence of any contingency, the object and intent of the agreement has not been frustrated. Therefore, the said agreement holds good as on date even though the contingency qua surplus generation occurs on subsequent occasion (post-agreement effect).
- c) In the event of surplus generation by the Petitioner and consequent effect of Clause 4.6 of the TPAs, in order to get away from the rigors of Clause-4.6, all the parties to the agreements may make alternative arrangements keeping intact their legitimate interests. The interest of the Distribution Licensee should not be



curtailed and altered in a manner which would prejudice the interest of the Licensee. TPWODL, vide its letter dated 21.06.2023 has placed its proposals which would subserve the interest of all the parties to the agreement.

- d) The Petitioner was having CGP with installed capacity of 279.5 MW prior to execution of both the TPAs on 20<sup>th</sup> July 2015 & 06<sup>th</sup> February 2021. The additional capacity of 250 MW became operational w.e.f. December 2022. The Petitioner was aware to the extent of its own consumption considering the available own generation along with drawal of M/s. LIL & M/s. SER and given consent for the execution of the TPAs where Clause 4.6 was instituted as under:

*“4.6 If the net energy consumed by Railway and M/s Linde India Ltd. exceeds the net energy actually received by the CONSENTING PARTY at 220 kV during the corresponding 15 minutes time block, the excess energy consumed during the said 15 minutes time block shall be treated as lapse on the part of the CONSENTING PARTY and the CONSENTING PARTY shall neither be permitted for banking of such excess energy nor shall be paid for the same unless there is a separate agreement for sale/ purchase. Further, during such occasion, the Licensee will have the right to bill the Consumer as per Clause 4.1.”*

- e) Both the TPAs were approved by the Commission with a specific direction/ observation as follows:

Case No. 24 of 2015 (TPA with M/s LIL) -

*“6. The Commission examined the tripartite agreement dated 20.7.2015. Since all the parties concerned have agreed to this arrangement and entered into an agreement, we approve the same under Regulation 81 of OERC Distribution (Condition of Supply) Code, 2004. However, directions in the tariff order for the respective year shall also be applicable. **In case of any revenue loss, the same shall be borne by WESCO Utility and the agreement shall cease with immediate effect under intimation to the Commission.**”*

Case No. 33 of 2020 (TPA with M/s. SER) –

*“7. Replying to the queries of the Commission during hearing, the representative of WESCO Utility stated that they have no objection with the above arrangement of power supply and billing to S.E. Railway, Chakradharpur Division. Since all the parties concerned have agreed to this arrangement and entered into an agreement, we approve the same under Regulation 139 of OERC Distribution (Conditions of Supply) Code, 2019. However, direction in the tariff order for the respective year shall be applicable during such power supply to the petitioner. The WESCO Utility is directed to ascertain that the power supply to S.E. Railway, Chakradharpur Division under the subject tripartite agreement shall not adversely affect its revenue. **In case of any revenue loss, the same shall be borne by WESCO***

**Utility and the agreement shall cease with immediate effect under intimation to the Commission.**”

- f) The said agreements were executed amongst the parties with the consent of the Petitioner till a separate power supply arrangement is being made from the GRID by both M/s. LIL & M/s. SER. Till such time, TPA shall hold good and the Respondent-Licensee was not permitted to incur any loss. Any financial loss, arising out of this arrangement was supposed to be borne by the Respondent-Licensee. Therefore, the Respondent-Licensee has taken adequate measures/ precautions while executing the TPAs by pursuing for inclusion of Clause 4.6 which is now placed for amendment by the Petitioner. The prayer/ claim of the Petitioner to delete/ amend the said clause with retrospective effect, is improper, erroneous and contrary to the settled principles of law qua effect of amendment in the agreement which would always carry prospectively.
- g) Further, both the special TPAs were approved by the Commission with the direction that, the TPA is valid till the beneficiaries made their own arrangement to avail power from the GRID. Even substantial time has already been elapsed no such step has been taken to avail power supply directly from GRID, when services of both M/s. LIL & M/s. SER is being availed by the Petitioner.
- h) As per the terms of the TPAs, both M/s. LIL & M/s. SER are billed as per metered consumption recorded at their respective billing meters. While billing to RSP, the total consumption of M/s. LIL & M/s. SER along with Open Access (if any) is being deducted from the total power imported at Tarkera GRID end. Levy of demand charges to RSP is also accounted for in the manner decided in the TPAs.
- i) As regards to Open Access, previously it was confined with M/s. SAIL (RSP) only. However, in recent past, M/s. LIL has also started Open Access drawal and in future M/s. SER may go for open access. In this process, billing to all the three consumers always remains a challenge for the Respondent-Licensee and needs analysis of 15 minutes time block meter data for appropriate billing to all the three consumers. Such Open Access drawal during off peak period and full dependence on GRID during Peak Hours also creates challenge to the Bulk supplier to arrange power of such a huge load.
- j) The present CD of the 3 consumers is 232 MVA (RSP – 170 MVA, LIL – 43.5 MVA, SER – 18.5 MVA). The above 170 MVA load includes Colony load of around 40 MVA of RSP. On the occasion of surplus generation, GRID drawal reduces and at the same time use of such surplus may be at different load centres

viz. M/s LIL, SER & RSP Colony. When such surplus power cannot be utilised amongst the above load centres, such surplus shall be exported to GRID. Applicant's claim of exporting around 403.88 MUs to the GRID should have been captured through the meters at the 220 kV Tarkera GSS. Only GRIDCO can say about such export and there is no bar on settlement of export (Grid) energy by the Applicant on its own. But the statement of the applicant, blaming improper energy accounting is objectionable because the method of energy accounting has been defined in the TPA approved by the Commission.

- k) The monthly data on consumption by M/s. LIL, M/s. SER & RSP drawal at Tarkera Grid Sub-station from December 2022 onwards are as given below.

Month	RSP (incl. Colony)	Linde	SE Railway	Total Billing
	MU	MU	MU	MU
<b>Dec-22</b>	26.575	28.848	6.638	62.060
<b>Jan-23</b>	4.658	26.616	6.780	38.055
<b>Feb-23</b>	5.649	24.730	6.231	36.610
<b>Mar-23</b>	21.889	29.376	6.974	58.239
<b>Apr-23</b>	1.918	27.297	6.942	36.156
<b>May-23</b>	4.981	28.808	7.871	41.659
<b>Jun-23</b>	18.875	27.394	7.551	53.819
<b>Jul-23</b>	9.303	27.704	7.407	44.413
<b>Aug-23</b>	22.602	27.865	7.214	57.681
<b>Total</b>	<b>116.449</b>	<b>248.637</b>	<b>63.607</b>	<b>428.693</b>

- l) The above billing has been made by TPWODL considering the following GRID import at the 220 kV Tarkera GSS as per the energy flow statements captured by SLDC and monthly bulk supply energy bills provided by GRIDCO as well as Open Access data and adhering to the terms of agreement in force.

Month	Total GRID Import	Open Access (M/s LIL & RSP)	Net Grid Drawal
	MU	MU	MU
<b>Dec-22</b>	60.078	4.286	55.788
<b>Jan-23</b>	30.263	-	30.263
<b>Feb-23</b>	30.764	-	30.764
<b>Mar-23</b>	48.876	4.066	44.810
<b>Apr-23</b>	28.051	-	28.051
<b>May-23</b>	37.831	-	37.831
<b>Jun-23</b>	51.917	1.425	50.492
<b>Jul-23</b>	42.954	0.968	41.986
<b>Aug-23</b>	57.840	2.292	55.547
<b>Total</b>	<b>388.573</b>	<b>13.037</b>	<b>375.532</b>

- m) As regards to Colony consumption of the Applicant, it is permissible up to 10% of the industry (i.e. RSP) consumption as per extant Regulation and Tariff Order in

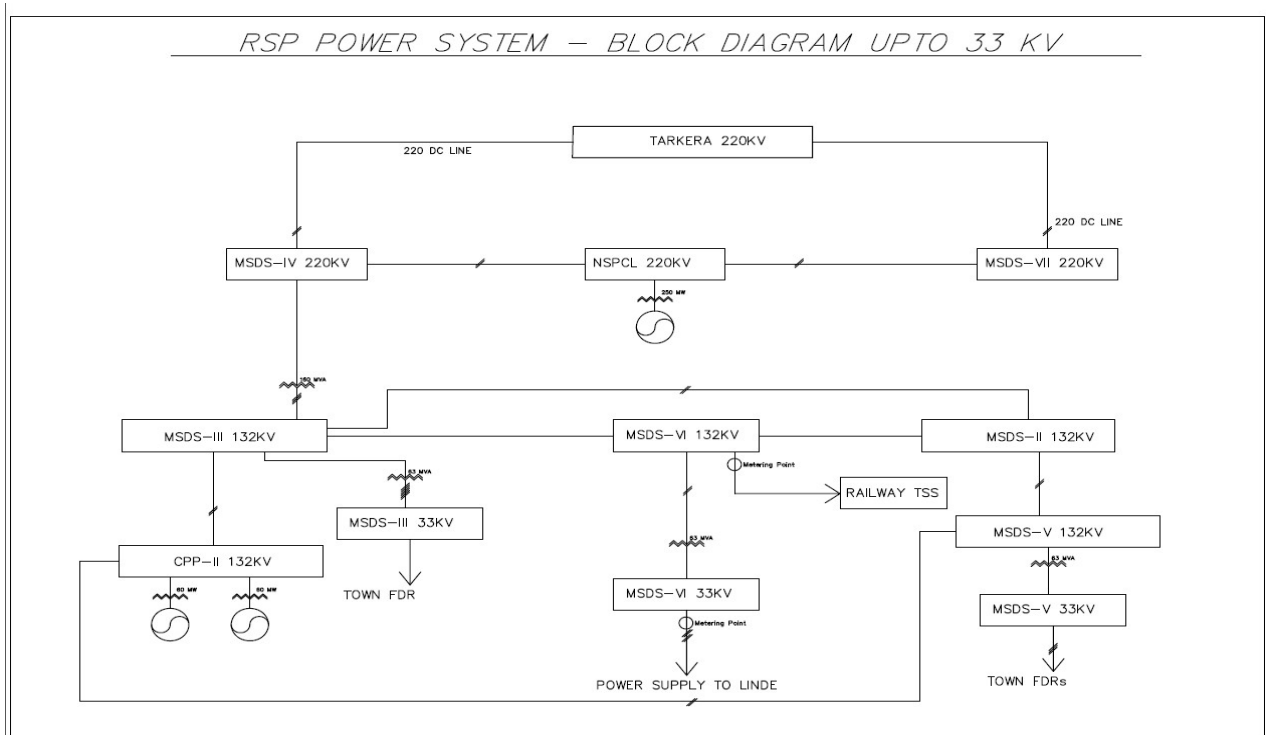
force. As its Colony is having substantial load of around 40 MVA, colony consumption is charged at prescribed tariff of Rs. 4.85/ unit & limited to 10% of the RSPs total consumption irrespective of consumption in the Colony as per metered data. The reason of such higher actual consumption in Colony is mostly due to Applicant's own employees' staff quarters along with many private establishments having both domestic and commercial consumption comprising of sector-wise markets. In addition, public institutions like Rourkela Airport, 5-7 Govt./ Private Schools, Colleges, Police Stations, Public Water Works, shopping mall, nationalised & private sector Banks, Restaurants, Clubs, Parks, Indoor Stadium, Religious institutions like temples/ mosques/ church/ gurudwara etc. located inside the RSP area are having hefty loads. Moreover, there are few Basti's inside the sectoral colonies of RSP who are getting power supply from RSP Colony connection. The commercial arrangement with the above is being continuing by RSP with them individually since decades as a legacy.

- n) Due to the above establishments inside the colony premises of RSP, the possibility of usage of balance surplus generation of its CGP are among all the 3 consumers (i.e. M/s. RSP, M/s. LIL & M/s. SER) along with RSP's colony, even though the colony billing is limited to 10% of the industry consumption. However, the actual metered consumption of RSPs Colony connection is much more than the permissible limit which is obviously from the surplus generation of the CGPs. The billing consumption & actual consumption of the Colony is appended below:

Month	RSP Drawal from GRID (incl. Colony)	RSP Colony Consumption (metered data)	Colony billing (limited to 10% of RSP Drawal)	% of Colony Consumption upon Total RSP drawal	Differential Energy*
	MU	MU	MU	%	MU
<b>Dec-22</b>	26.575	11.968	2.658	45%	9.311
<b>Jan-23</b>	4.658	12.158	0.466	261%	11.692
<b>Feb-23</b>	5.649	10.260	0.565	182%	9.695
<b>Mar-23</b>	21.889	11.895	2.189	54%	9.706
<b>Apr-23</b>	1.918	14.516	0.192	757%	14.324
<b>May-23</b>	4.981	17.361	0.498	349%	16.863
<b>Jun-23</b>	18.875	17.774	1.888	94%	15.887
<b>Jul-23</b>	9.303	17.170	0.930	185%	16.240
<b>Aug-23</b>	22.602	15.464	2.260	68%	13.204
<b>Total</b>	<b>116.449</b>	<b>128.566</b>	<b>11.645</b>	<b>40%</b>	<b>116.921</b>

\* Consumption of this differential energy is nothing but surplus power from CGP.

- o) The function of GRIDCO & OPTCL arises only when the surplus energy is exported to the GRID. Any excess drawal by TPWODL consumers (LIL/ SER) from the CGP of the Applicant needs to be settled through a mutually agreed price limited to the Bulk Supply Price of the Licensee or through Open Access and is to be addressed by means of amendment in the Tripartite Agreements. Further, the excess drawal by RSP's Colony needs to be settled through Open Access as per extant provision of Open Access Regulation.
- p) The above consumption pattern was observed in each time block of 15 minutes because of their connectivity with the electrical system. The Single Line Diagram (SLD) of their connectivity is depicted below:



- q) The MSDS-III (132 kV) feeder is connected to CPP-II & NSPCL (220kV) from where all are availing power supply including Colony (Town FDR) connected with MSDS-III (33 kV) & MSDS-V (33kV). Due to the criticality of above connectivity among the consumers, energy flow from GRID and use of surplus power of CGP in each 15 minutes time block arises under the scenarios, such as, (i) When there is no surplus generation. In such event all the consumers including Colony are dependent on GRID import; (ii) When there is surplus generation (without GRID export). In such case, even though all the consumers are dependent on GRID import, still use of surplus generation amongst them takes place and (iii) When

surplus generation is exported to the GRID, in such a case, the excess energy exported to the 220 kV Tarkera GSS will be captured through the meters at the GRID.

- r) As the Applicant as well as M/s LIL & M/s SER) are consumers of the Licensee TPWODL and under its area of operation, the onus of distribution of electricity lies with TPWODL for which it has the Distribution License as per the Electricity Act 2003 issued by the Commission. As per Section 9 & 10 of the Electricity Act 2003, a CGP can carry its power to the destination for own use through Open Access under Section 42 (2) of the Electricity Act 2003, for which prevailing regulations need to be adhered. Distribution of electricity without having a license is barred by law. The Applicant without having a Distribution License is continuing to supply surplus power to the colony including private establishments which is in violation of the Electricity Act, 2003. If, the Applicant would have taken proper step for carrying its own power, the Licensee-TPWODL should not have been deprived of its legitimate right i.e. Wheeling and Cross Subsidy Surcharge (CSS). Since the RSPs Colony mostly comprises of RSPs own employees (staff quarters) along with many private establishments having both domestic and commercial connections, carrying out billing and collection is not under the purview of the Licensee-TPWODL. Therefore, the use of CGP power in its colony needs to be settled through Open Access.
- s) There may be some surplus power available after meeting the Colony's requirement, which may be inadvertent or firm power, is being consumed by both M/s. LIL & M/s. SER. While extending the NOC to Applicant, the Respondent-TPWODL has already provided its views for settlement of surplus power of the CGP consumed by M/s LIL & M/s SER through mutually agreed price limited to the bulk supply price of the Licensee or the Applicant may sell such surplus power to M/s LIL or M/s SER under Open Access mechanism upon payment of Wheeling & Cross Subsidy Charges (CSS). The export of surplus power directly to the GRID should be amicably settled between RSP & GRIDCO.
- t) As per Open Access mechanism, the Applicant is responsible to ensure the contracted quantum into GRID and cannot bank power for use by other two consumer. It is the prime responsibility of the Consenting consumer (i.e, RSP) to ensure drawl of GRID power by other two consumers as per terms of TPA. RSP should ensure this aspect till other two consumers avail direct GRID power from

the incumbent distribution licensee. In this context, the claim of RSP regarding accounting of such surplus power by GRIDCO is highly objectionable, because in each 15 minutes time block may be for a 7-minute drawl of GRID power and for other 8 minutes from CGP and so on in any combination. So, netting of such surplus power with GRID power within 15 minutes time block is not under any law/provision. It is the responsibility of the Applicant to make available the quantum as agreed to the GRID to avoid under injection charges. The surplus power consumed by M/s LIL & SER, if any, should be settled through a mutually agreed price limited to the Bulk Supply Price of the Licensee or through Open Access. Thus, the under-injection charges at GRID need to be dealt as per Open Access regulation in force and should not be mixed with consumption within the premises amongst different consumers.

- u) The issue of payment of Electricity Duty (ED) on energy not consumed by the Applicant is not under the purview of TPWODL. The use of energy by M/s LIL is suffered from levy of ED irrespective of the source and Railway traction is exempted from levy ED. Hence, onus lies with the Applicant to substantiate its stand/demand before appropriate authority.
- v) In the said meeting on 10.03.2023 convened by GRIDCO, TPWODL had made its stand clear that M/s LIL & SER are the consumers of the DISCOM and Clause 4.6 of the TPA prevails unless a separate agreement for sale/ purchase is placed. TPWODL had not signed the Minutes of Meeting (MoM) objecting the wrongful energy accounting practice suggested by the Applicant.
- w) GRIDCO's submission w.r.t collection of energy charges by TPWODL from M/s LIL & SER without making payment for the purchase of surplus energy either from RSPs CGP or from GRIDCO is squarely wrong. The consumption of M/s LIL & SER is inside the premises of RSP and the power consumed by them during that period may be inadvertent or firm power out of RSPs CGP surplus generation. Hence, this power may be accounted for & mutually settled between RSP & TPWODL subject to approval of the Commission. Only the power exported by M/s RSP at Tarkera GSS may be settled by RSP & GRIDCO. Any excess drawal by TPWODL consumers (LIL/ SER) from the CGP of the Applicant is to be addressed by means of change in the Tripartite Agreements.
- x) That, Regulation 64 of the OERC Distribution (Conditions of Supply) Code, 2019 provides as under:

*“64. Unless otherwise agreed to, the supply shall be at a single point at the out-going terminals of the licensee/supplier, i.e.*

- a) Cut-outs or circuit breakers in the case of low tension consumers, and*
- b) Control switch gear or circuit breaker or high tension fuses that may be installed in the licensee/supplier's or consumer's premises as mutually agreed in the case of high tension or extra high tension consumers subject to provisions of this Code.”*

- y) A brief reading of the above Regulation provides that the point of supply to a consumer shall be at a single point at the out-going terminals of the Licensee. Therefore, the Commission has approved the special TPA as per Regulation 81 of OERC Distribution (Conditions of Supply) Code, 2004 & Regulation 139 of OERC Distribution (Conditions of Supply) Code, 2019 exercising its own power. In such case, GRIDCO cannot go for netting off GRID import & export because of the reason substantiated with fact and laws under force. If netting is permitted distribution business will be highly prejudiced. However, the licensee has no objection if GRIDCO harness any power from CGPs through GRID with scheduling or recognises their inadvertent injection into the GRID.
  - z) The Respondent-TPWODL has prayed the Commission to amend the Clause No. 4.6 of the existing TPAs to the extent of settlement of surplus power consumed by M/s LIL & SER, if any, to be done through mutually agreed price limited to the bulk supply price of the Licensee or through Open Access mechanism upon payment of Wheeling & Cross Subsidy Charges (CSS) and direct the Applicant to pay the Wheeling & Cross Subsidy Charges (CSS) for Colony consumption in excess of 10% of the industry (i.e. RSP) consumption in accordance with extant Regulation and Tariff Order in force as the Applicant does not have the License to distribute electricity. Further, the Commission may direct GRIDCO not to foray into the domain of distribution of electricity and to settle the export of surplus power directly to the GRID only with RSP.
6. The Petitioner has submitted the rejoinder on 14.11.2023, wherein averments made in the Petition has been reiterated and as such, the same are not repeated for the sake of brevity.
7. We heard the parties through hybrid mode of arrangement and carefully considered their respective contentions. Though notices in regard to adjudication of the dispute raised by the Petitioner were duly served on the Respondents M/s. LIL and M/s. SER, they did not participate in hearing of the proceeding before the Commission and this



Commission had to dispose of the case without their participation. However, from the submissions of the Petitioner and other Respondents, we observe the followings:

- a) The Petitioner- M/s. SAIL (RSP) is the consumer of the Distribution Licensee- TPWODL and did avail power supply through 220 kV feeders from Tarkera Grid Sub-station of OPTCL. M/s. LIL and M/s. SER became the consumers of the Distribution Licensee and availed power supply through the 220 kV/132 kV/33 kV Sub-station of M/s. SAIL (RSP) at 33 kV and 132 kV level respectively, as there was no network facility to extend power directly to M/s. LIL and M/s. SER from the Grid. Since there is no provision under law for extension of power supply from one consumer to other consumers, such arrangement of power supply to M/s. LIL and M/s. SER was made through special agreements. One TPA was executed between TPWODL (erstwhile WESCO Utility), M/s. LIL & the consenting party M/s. SAIL (RSP) on 20.07.2015 and another TPA was executed between TPWODL, M/s. SER & the consenting party M/s. SAIL (RSP) on 06.02.2021. The Commission had allowed such arrangement for power supply to M/s. LIL and M/s. SER, vide its order dated 18.01.2016 in Case No.24 of 2015 and order dated 28.09.2020 in Case No.33 of 2020 respectively.
- b) Regarding billing of energy, the Clause 4.6 of the TPA between TPWODL (erstwhile WESCO Utility), M/s. LIL & the consenting party M/s. SAIL (RSP) on 20.07.2015 stated as under:

*"4.6 If the net energy consumed by Railway and M/s Linde India Ltd. exceeds the net energy actually received by the CONSENTING PARTY at 220 kV during the corresponding 15 minutes time block, the excess energy consumed during the said 15 minutes time block shall be treated as lapse on the part of the CONSENTING PARTY and the CONSENTING PARTY shall neither be permitted for banking of such excess energy nor shall be paid for the same unless there is a separate agreement for sale/ purchase. Further, during such occasion, the Licensee will have the right to bill the Consumer as per Clause 4.1."*

Similar provision has been made in the TPA executed between TPWODL, M/s. SER & the consenting party M/s. SAIL (RSP) on 06.02.2021.

- c) The TPAs were approved by the Commission with a specific direction/ observation as follows:

Case No. 24 of 2015 (TPA with M/s LIL) -

*“6. The Commission examined the tripartite agreement dated 20.7.2015. Since all the parties concerned have agreed to this arrangement and entered into an agreement, we approve the same under Regulation 81 of OERC Distribution (Condition of Supply) Code, 2004. However, directions in the tariff order for the respective year shall also be applicable. **In case of any revenue loss, the same shall be borne by WESCO Utility and the agreement shall cease with immediate effect under intimation to the Commission.**”*

Case No. 33 of 2020 (TPA with M/s. SER) –

*“7. Replying to the queries of the Commission during hearing, the representative of WESCO Utility stated that they have no objection with the above arrangement of power supply and billing to S.E. Railway, Chakradharpur Division. Since all the parties concerned have agreed to this arrangement and entered into an agreement, we approve the same under Regulation 139 of OERC Distribution (Conditions of Supply) Code, 2019. However, direction in the tariff order for the respective year shall be applicable during such power supply to the petitioner. The WESCO Utility is directed to ascertain that the power supply to S.E. Railway, Chakradharpur Division under the subject tripartite agreement shall not adversely affect its revenue. **In case of any revenue loss, the same shall be borne by WESCO Utility and the agreement shall cease with immediate effect under intimation to the Commission.**”*

- d) Further, the Commission in its order dated 18.01.2016 in Case No.24 of 2015 had observed that: ***“The tripartite agreement which was signed on 20.07.2015 has been made initially for a period of 5 years. The said agreement had been made till M/s. LIL make its own arrangements to avail power supply from the grid.”***

Further, the Commission, vide its order dated 28.09.2020 in Case No.33 of 2020, has observed that “The agreement shall continue to be in force until expiry of five years from the date of supply and thereafter, shall so continue until the same is determined by either party giving two months’ notice to the other in writing expressing its intention to terminate the agreement. **However, the consumer and the consenting parties have agreed to make all efforts towards the consumer getting direct power supply from the grid substation”.**

- e) Similarly, the special agreement dated 06.02.2021 between M/s. SAIL (RSP), M/s. SER and TPWODL dated 06.02.2021, at Clause (1) DURATION OF AGREEMENT, pronounces that ***“The consumer and the consenting party have agreed among themselves to make all efforts towards the consumer getting direct power consumption from the Licensee’s Sub-station.”*** Further, as per Para-4.7 of the said agreement, *“The Consumer i.e. Railway shall not be allowed to avail power under open access till he avails direct power supply from GRID on its own*

*arrangement.*” This implies that M/s. SER should avail power supply from Grid of its own arrangement.

- f) The Commission had agreed for such special arrangements towards supply of power to M/s. LIL and M/s. SER from the Sub-station of another consumer M/s. SAIL (RSP) basing on the provisions of Supply Code and the associated parties had made special agreements i.e. TPAs with the distribution licensee. Once a party enters into an agreement with the other party with clear understanding of the terms and conditions, they cannot take advantage of the terms and conditions of the same contract and challenge or redraft/repudiate other terms and conditions of the same contract. This is well settled principle (see) (1981) 1 SCC M/s. New New Bihar Biri Leeds Company and others Vrs. State of Bihar and others para-48. Thus, the Commission feels it proper not to interfere with the aforesaid TPAs made by the parties. If the parties amend the Clause of the TPAs on their own and put it before the Commission, then it may be considered by the Commission, if it is in line with the Supply Code.
- g) The Petitioner-SAIL is having CGP with installed capacity of 529.5 MW and contract demand 170 MVA including its colony demand. M/s LIL and M/s.SER have contract demand of 43.5 MVA (at 33 kV level) and 18.5 MVA (at 132 kV level) respectively. The petitioner has submitted that after consistent generation from CGP-4 of 250 MW in 2022, surplus energy of petitioner is not being recorded properly, which has been acknowledged by GRIDCO and TPWODL. The core issues of the present petition pertain to (a) accurate and proper accounting of energy imported by and exported from the CGP of the petitioner, (b) direct connectivity of M/s. LIL and M/s.SER with GRID for availing power supply.
- h) In contrary to the aforesaid orders of the Commission, neither party has initiated action for supply of power to M/s. LIL and M/s. SER directly from the Grid. The Respondent-OPTCL in its submission has proposed the following towards direct supply of power to M/s. LIL and M/s. SER from the Grid.
- Connectivity of M/s. SER with 220/132/33 kV Tarkera Grid Sub-station at 132 kV level, through existing idle charged 132 kV Tarkera-RSP DC Line, as the N-1 contingency of M/s. SAIL (RSP) is getting fulfilled through two nos. of 220 kV DC Lines.

- Connectivity of M/s. LIL with 132/33 kV Rourkela Grid Sub-station (where spare 33 kV Bays are available) at 33 kV level, considering the contract demand of M/s. LIL as 43.5 MVA.
  - A joint team comprising of members from M/s. SAIL (RSP), M/s. SER, M/s. LIL, TPWODL and OPTCL may conduct the field feasibility study.
8. In view of the above observations and considering the issues involved, the Commission directs the Respondent-Licensee M/s. TPWODL and the Petitioner-M/s. SAIL (RSP), to initiate action in co-ordination with OPTCL for providing power supply to M/s. LIL and M/s. SER directly from the Grid at the earliest. In this regard, it is directed to constitute a Committee under the Chairmanship of the CMD, OPTCL, comprising of the Senior Officials representing concerned parties, namely OPTCL, TPWODL, M/s. SAIL (RSP), M/s. LIL and M/s. SER, to discuss the matter for providing power supply to M/s. LIL & M/s. SER directly from the Grid as suggested by the OPTCL in its submissions. The report of the Committee along with the suggested remedial action with defined timeline for execution of the same shall be submitted to the Commission by the OPTCL within two months of issuance of this order.
9. With the above observations and directions, the case is disposed of.

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

Sd/-  
**(G. Mohapatra)**  
**Member**

Sd/-  
**(S. C. Mahapatra)**  
**Chairperson**