

Case Nos. 82 & 86 of 2022 & Case Nos.06 & 12 of 2023

Order-1

Date of hearing: 24.02.2023 at 11.00 A.M.

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1. Shri Arvind Singh, CEO and Shri V Wagle, Head Regulatory Affairs, TPSODL- the petitioner. Shri Ramesh Ch. Satpathy, Shri Priyabrata Sahu, Shri R.P.Mahapatra, Shri. Akshya Kumar Sahani, the representative of Shri Soumya Ranjan Patnaik, Shri Heera Chand & Ms. Itishree Mohapatra, advocates on behalf of Shri Bidyadhar Mohanty & Shri Bibekananda Mohanty, Shri Bibhu Charan Swain, the authorized representative of Utkal Chamber of Commerce & Industry Ltd. (UCCI), Shri Panchanana Jena, Working president, Bijuli Kramachari Sangh, Shri Umakanta Mohapatra, Shri Ananta Narayan Mahanty, the representative of GRIDCO, Shri Ananda Kumar Mohapatra, Shri Sukanta Panda, Sr. GM, OPTCL, Ms. Nibedita Mishra, Additional Secretary to Govt., DoE, GoO Shri Basanta Kumar Panda, Shri Pradip Kumar Rath, Shri Prasanta Kumar Palak, Shri P Ashok Kumar, Electrical contractor, Shri Bhabani Shankar those who were registered their name and present during hearing. Nobody is present on behalf of SLDC, Grahak Panchayat, PRAYAS. M/s. Reliance JIO Infocom Limited, East Coast Railway, M/s. Grinity Power Tech Pvt. Ltd., Shri Asitananda Biswal, Shri Prabhakar Dora, Shri Rajendra Samal, Shri. Subrat Kumar Behera (Advocate), Sri Manoranjan Routray, Shri Jayanta Kumar Jena, All India Weavers Welfare and Charitable Trust, ATC Telecom Infrastructure (P) Ltd., M/s. Maa Bana Devi Poultry Pvt. Ltd., M/s. Indian Energy Exchange, The vakalatnamas filed by the counsel are taken on record.
2. Heard the Applicant, Consumer Counsel, Objectors present in the hearing, along with representative of DoE, GoO on the application for Aggregate Revenue Requirement, Wheeling Tariff & Retail Supply Tariff for the Financial Year 2023-24, application for Open Access Charges for FY 2023-24 & truing up for FY 2020-21(3months) and for truing up for FY 2021-22 and application for approval of Business Plan for FY 2023-24
3. During the hearing, objection was raised by the Learned Objector Shri R. P. Mahapatra on hearing of the present cases calling in question the competency of the

present Commission. He submits that in absence of the Chairperson, hearing the parties and stakeholders is highly inappropriate as far as TPSODL applications for RST for FY 2023-24, Open Access Charges for FY 2023-24 and Truing Up application for FY 2020-21 (part) & FY 2021-22 and Business Plan for FY 2023-24.

4. Similar objections were raised on earlier occasions and had not been accepted by the Commission as the objection was held to be untenable in the eye of law and reasons thereof were assigned. The above objections raised today are nothing but the matter of *ad infinitum* and held to be unsustainable.
5. It can further be held that determination of ARR & RST for the FY 2023-24 cannot be logically withheld till appointment of the Regular Chairperson and such an act of deferring the matter is unthinkable when considered in the spirit of the provisions under Section 93 of the Electricity Act, 2003, Section 9 (4) of the Orissa Electricity Reform Act, 1995 and Regulation 8 (1) (b) of the OERC (Conduct of Business) Regulations, 2004. For the sake of clarity, the said provisions are reproduced below:

Section 93 of the Electricity Act, 2003 states as follows:

“Vacancies, etc., not to invalidate proceedings. – No act or proceeding of the Appropriate Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Appropriate Commission.”

Section 9(4) of the Orissa Electricity Reform Act, 1995 states as follows:

“(4) The quorum for the meeting of the Commission shall be two, but in the case of a meeting of the Commission to review any previous decision taken by the Commission or for consideration of any issue which could not be decided on account of equality of votes in favour of or against the resolution proposed or where the issue considered at a meeting in which only two members of the Commission were present, the quorum for the meeting shall be all the three:

Provided that, in case of emergency, the Commission may decide any matter by circulation to member or members.”

Regulation 8(1)(b) of the OERC (Conduct of Business) Regulations, 2004 states as follows:

“Subject to the provision of the Act, Rules and Regulations framed thereunder, the quorum for meeting of the Commission shall ordinarily be two but the

Commission may determine by order in writing, the matters which can be heard by a single Member.”

6. In view of the above, this Commission, presently functioning with the Acting Chairperson and another Member, is vested with the required quorum for hearing of the petitions and accordingly the objection stands rejected. Consequent upon the same, hearing of the present petitions is taken up.
7. Rejoinder filed by the applicant on objections/ suggestions of the Objectors and the views submitted by Consumer Counsel WISE, Pune are noted.
8. The DoE, GoO and the Objectors are directed to submit their written note of submission, if any, by 02.03.2023 serving a copy of the same to the Applicant. The Applicant is also directed to submit its reply on the issues raised during hearing by 02.03.2023.
9. Hearing concluded. Order reserved.

Sd/-

Member (RM)

Sd/-

Officiating Chairperson