

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. **Shri Bhanu Bhushan, Member**
2. **Shri R. Krishnamoorthy, Member**

Petition No. 156/2007

In the matter of

Non approval of Open Access communicated by Southern Regional Load Despatch Centre on ground of non- receipt of consent from SLDC-OPTCL for transmission of power generated by Nava Bharat Ventures Ltd through M/s. Reliance Energy Trading Ltd, to the distribution utilities in Andhra Pradesh.

And in the matter of

Nava Bharat Ventrues Ltd, Hyderabad.

.... Petitioner

Vs

1. Southern Regional Load Despatch Centre, Bangalore
2. Eastern Regional Load Despatch Centre, , Kolkata
3. Orissa Power Transmission Corporation Ltd., Bhubaneswar
4. Reliance Energy Trading Ltd., New Delhi
5. Eastern Regional Power Committee, Kolkatta
6. State Load Despatch Centre, Orissa, Bhubaneswar

.... Respondents

The following were present:

1. Shri K. Gopal Choudary, Advocate, NVBL
2. Shri G.R.K. Prasad, Advocate, NVBL
3. Shri C.S.P. Mukharji, Advocate, NVBL
4. Shri R.K. Mehta, Advocate, SLDC
5. Shri Shobhit Jain, Advocate, SLDC
6. Shri Mahendra Kumar, NVBL
7. Shri Barapanda, ERLDC
8. Shri Bhaskara Rao, SRLDC
9. Shri Santosh, SLDC

**ORDER
(Date of Hearing 11.12.2007)**

Nava Bharat Ventures Limited, has made this application with the following prayers, namely:

“(a) To declare that the action of the 1st Respondent Southern Regional Load Despatch Centre in not approving the open access transaction against the 4th Respondent Reliance Energy Trading Ltd’s application dated 18.10.2007 for the surplus energy generated by the Petitioner is erroneous, unjustified and contrary to law, and

(b) To declare that the Nodal RLDCs are invariably required to grant open access for inter-State transmission when there is no communication by any intervening RLDC/SLDC/STU/Transmission Licensee of any specific relevant and justifiable technical reason by way of constraint in capacity or congestion duly providing sufficient particulars and reasons thereof, and by ignoring any irrelevant opinions or objections of any other trading licensee or other entity; and

(c) To declare that the Petitioner and/or licensees purchasing energy generated by the petitioner are entitled to short-term open access for inter-State transmission in the facts and circumstances of the case and in like or similar facts and circumstances, and to direct the 1st, 2nd and 3rd Respondents to allow open access accordingly in all subsequent applications subject only to considerations of congestion and/or availability of transmission capacity; and

(d) To direct the 3rd Respondent to forbear from acting in combination with any other trading licensee and/or distribution licensee within Orissa in obstructing or frustrating the sale and/or transmission of the energy generated by the Petitioner to any destination within or outside the State of Orissa; and

(e) To direct the 3rd Respondent to pay the costs of the petitioner in this petition; and

(f) To pass such other or further orders as this Hon’ble Commission considers fit and just in the facts and circumstances of the case.”

2. Pending final disposal of the application, a further direction is sought to allow open access to Respondent No.4, Reliance Energy Trading Ltd, (hereinafter referred to as “Reliance”) upon application for transmission of power generated by the petitioner to the extent of 25 MW for the period from 7.1.2008 to 31.1.2008, and 50 MW from 1.2.2008 to 29.2.2008 and subsequent periods, injected at the petitioner’s interconnection with Orissa STU for drawal at the

interconnection of the Andhra Pradesh STU with the Southern Region inter-State transmission system, subject only to congestion considerations.

3. Briefly stated, the case of the petitioner is as under:

(a) The petitioner owns a 30 MW captive generating plant, which is said to be extended to 94 MW.

(b) The petitioner entered into an agreement for sale of its surplus power with Reliance, who in turn entered into a further agreement to sell the power to the distribution utilities in the State of Andhra Pradesh.

(c) Reliance vide its application dated 18.10.2007 made to Southern Regional Load Despatch Centre, Respondent No.1, sought grant of short-term open access for transmission of 25 MW round-the-clock for the period from 7.1.2008 to 31.1.2008.

(d) Southern Regional Load Despatch Centre, vide its letter dated 26.10.2007, while enclosing a copy of the response from State Load Despatch Centre, Orissa informed Reliance that it was not able to approve the transaction "as no consent has been received from SLDC, OPTCL".

(e) The following remarks of State Load Despatch Centre, Orissa are contained in the enclosure to the reply of Southern Regional Load Despatch Centre:

“

- There is no congestion in OPTCL system for the quantum of injection mentioned.
- As opined by GRIDCO, M/s NBVL being a CGP has to report SLDC in real time basis as per clause No. 4.11, 10.5 and No.

C5(ii) of Appendix (C) of Chapter - 12 of OGC. Moreover no waiver has been obtained by the said firm from OERC. The firm have been intimated by OPTCL to install necessary PLCC arrangement more than a year back but is yet to be complied.

- Department of Energy, Govt. of Orissa is of the opinion that the CGP shall sale their surplus power to the State at the rate fixed by Hon'ble OERC.
- Accordingly M/s NBVL has been requested by GRIDCO for the same. “

(f) Aggrieved by the above decision conveyed by Southern Regional Load Despatch Centre, the petitioner submitted an application to the Member-Secretary, Eastern Regional Power Committee, hereinafter referred to as “the Member- Secretary”, under Regulation 35 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004, (hereinafter referred to as “the open access regulations”) for redressal of its grievance.

(g) The Member-Secretary, vide his letter dated 7.11.2007 addressed to the Secretary of the Commission observed that earlier in a similar case involving the petitioner and Tata Power Trading Co Ltd, he had directed State Load Despatch Centre, Orissa and Orissa Power Transmission Corporation Ltd, to grant open access to the petitioner, which direction was endorsed by the Commission, vide its order dated 7.3.2007 in Petition No 24/2007. (For sake of record, it is being stated that the Commission's order dated 7.3.2007 has, however, been quashed by the High Court of Orissa on 11.12.2007 WP (C) No. 3803 of 2007).

4. It has been submitted by the petitioner that in the first instance, it was not necessary for Orissa State Load Despatch Centre/Orissa Power Transmission Corporation Ltd. to consult GRIDCO since, as the statutory bodies under the Electricity Act, 2003 they should have acted independently and in any case could not have relied upon the opinion of GRIDCO. It is further submitted that “no consent” by Orissa State Load Despatch Centre/Orissa Power Transmission Corporation Ltd could not be a valid ground for rejection of application of Reliance for grant of short-term open access when it was an admitted fact that there was no congestion in the intra-State transmission corridor. It has been stressed that Southern Regional Load Despatch Centre ought to have granted the short-term open access to Reliance, ignoring the objections of Orissa State Load Despatch Centre. The petitioner has also questioned the relevance of opinion of the State Government recorded by Orissa State Load Despatch Centre, in the matter of grant of open access.

5. The present application has been made against the above background, with prayers noted in the opening para of this order. The application was admitted by our order dated 21.11.2007.

6. Replies have been filed by Southern Regional Load Despatch Centre, Eastern Regional Load Despatch Centre and Orissa State Load Despatch Centre respondent Nos 1, 2 and 6 respectively. Both the Regional Load Despatch Centres in their replies have expressed their inability to schedule the transactions in the absence of consent from Orissa State Load Despatch Centre. Orissa State Load Despatch Centre in its reply has made a preliminary

submission that as its response for the grant of open access was based on the objections of Grid Corporation of Orissa Ltd., GRIDCO, for short, in the interest of justice, GRIDCO should be impleaded as a party. Another preliminary objection that has been raised by Orissa State Load Despatch Centre is that since under sub-paras (b) and (c) of para 15 of the application, reproduced at the opening para, the petitioner has sought general declarations in respect of all the Regional Load Despatch Centres, the notice of the application be issued to all of them as also to all the State Load Despatch Centres in the country. On merits, it has been stated by Orissa Load Despatch Centre that the petitioner has not installed SCADA interface equipment and PLC as mandated by Orissa Electricity Regulatory Commission. Orissa State Load Despatch Centre has also highlighted the importance and need of real time monitoring and accounting of energy to be transmitted on the intra-State transmission network. It has sought to strengthen its stand by drawing support from Orissa State Electricity Regulation Commission's order dated 29.10.2007 in Case No 10 of 2007.

7. The petitioner vide its additional affidavit dated 3.12.2007, has submitted that Reliance submitted an application on 19.11.2007 for short-term open access for 25 MW of power from 7.1.2008 to 31.3.2008 and for a quantum of 50 MW from 1.2.2008 to 29.2.2008. It has been stated that this application also was not agreed to by Southern Regional Load Despatch Centre, the decision of which was conveyed vide its letter dated 28.11.2007, for non-receipt of consent from Orissa State Load Despatch Centre/Orissa Power Transmission Corporation Ltd. From the enclosure to the said reply dated 28.11.2007, it is

observed that Orissa Load Despatch Centre had made the following remarks on the request of Reliance for grant of short-term open access:

- “(1) One unit of the CGP (NBVL) having 30 MW capacity has been synchronized with OPTCL system. As stated by CGM (O&M), OPTCL the second unit yet to be synchronized.
- (2) M/s. RETL have applied for transaction of 50 MW power from the above CGP which is beyond the capacity.
- (3) As opined by Gridco, M/s. NBVL being a CGP has to report (power injection) SLDC on real time basis as per clause No. 4.11, 10.5 and No. C5 (ii) of Appendix (C) of Chapter -12 of OGC. Moreover no waiver has been obtained by the said firm from OERC regarding exemption of the above clause.
- (4) Department of Energy, Govt. of Orissa is of the opinion that the CGP shall sell their surplus power to the state at the rate fixed by the OERC. Accordingly GRIDCO has requested M/s. NBVL for the same.”

8. We have gone through the pleadings and heard the learned counsels for the parties.

9. During the hearing, learned counsel for the petitioner urged that the opinion of GRIDCO and the State Govt. was contrary to the directions contained in the Commission's order dated 7.3.2007 in Petition 24/2007 (since quashed by the High Court of Orissa). He alleged that a combination is operating so as to force the captive generating plants to sell their generation to a particular licensee, GRIDCO. This, according to him, amounted to abuse of dominant position in the market. He alleged that Orissa State Load Despatch Centre had not acted independently.

10. Learned Counsel also drew our attention to the petitioner's additional affidavit dated 3.12.2007 wherein it was pointed out that the second unit of 50

MW at the petitioner's captive generation plant was almost ready and would be commissioned before 1.2.2008. This, according to learned counsel, defeated the additional objection considered by Orissa State Load Despatch Centre that the petitioner has only one unit of 30 MW synchronised with OPTCL system and RETL has applied for a transaction of 50 MW, which is beyond the petitioner's capacity.

11. As regards the issue of lack of facilities for real time reporting to Orissa State Load Despatch Centre learned counsel stated that the Commission, vide order dated 7.3.2007 (since quashed by the High Court of Orissa) has already held that such arrangement was not necessary. Notwithstanding the above, learned counsel detailed the steps taken by the petitioner to provide PLCC equipment so as to be in a position to have it operational by the end of December 2007. He stated that the petitioner had approached Orissa Power Transmission Corporation Ltd in November 2006 for installation of the equipment at the expense of the petitioner. However, Orissa Power Transmission Corporation Ltd desired that equipment be purchased by the petitioner and gave the specifications for the same. Subsequently, these specifications were changed by Orissa Power Transmission Corporation Ltd. Now, the petitioner has procured the equipment based on the changed specifications and has installed the same at the petitioner's end. The petitioner vide letter dated 21.11.2007 is stated to have sought permission of Orissa Power Transmission Corporation Ltd to install PLCC equipment at 132 kV switching station and at Meramundali sub-station of Orissa Power Transmission Corporation Ltd. Learned counsel contended that in any case, the requirement

of having facilities for real time reporting to Orissa State Load Despatch Centre was part of the connection conditions and could not be made a ground for denying open access.

12. Learned counsel for the petitioner strenuously argued that Orissa State Load Despatch Centre need not have consulted GRIDCO while considering the request for open access. With regard to the stand of Orissa State Load Despatch Centre seeking to justify the consultation with GRIDCO as the agency which segregates UI charges at the State level, learned counsel stated that as per the functions of the State Load Despatch Centre specified in the Electricity Act, 2003 and also as per the open access regulations framed by Orissa Electricity Regulatory Commission, such segregation has to be done by Orissa State Load Despatch Centre and not by GRIDCO.

13. Learned counsel for Orissa State Load Despatch Centre reiterated the preliminary objections raised by it and noticed above. He argued that it would be fair and proper that notice of the petition be issued to all SLDCs and RLDCs and for impleadment of GRIDCO. He also drew our attention to the fact that the Commission's order dated 7.3.2007 (subsequently quashed by the High Court on 11.12.2007) has been challenged in the High Court of Orissa in WP(C) No.3803/2007.

14. Clarifying that he was appearing only for Orissa State Load Despatch Centre and not for any other respondent, learned counsel pointed out that the principal ground for denial of open access by Orissa State Load Despatch

Centre was lack of PLCC/SCADA system at the generating station of the petitioner, for real time reporting, a requirement mandated under the Orissa Grid Code (OGC). In this context he referred to clauses 4.10 and 4.12 (a)(iii) of the Indian Electricity Gird Code (IEGC) which have been incorporated in the OGC vide clauses 4.11 and 4.13 (1)(d). Referring to para 11 (g) of the Commission's order dated 7.3.2007 (since quashed by High Court of Orissa), learned counsel disputed the findings that with UI mechanism in place, the State utilities would be unaffected operationally and financially and there was no need for on-line monitoring of actual injection/drawal and consequently no real need for SCADA and PLCC. According to him, UI mechanism only ensured that the State utilities remained unaffected financially but the same would not be true as regards the operational aspects. He stated that there were as many as 13 captive generating plants in the State, and with such a large number of open access transactions in operation, the real time over-drawal/underdrawal monitoring would not be possible without real time data communication facility to SLDC. Further, in case of a contingency situation, it required to be checked, whether the situation had arisen due to deviation of the schedules by the generators, distribution licensees or due to any power flow pursuant to short-term open access. Based on analysis by system operator, these were to be got terminated first, in the above sequence. He drew our attention to clause 6.4.9 of IEGC which stipulates the above mechanism. In case of under-injection by the captive generating plants, when the system frequency was below 49 Hz, to maintain scheduled drawal, load restrictions had to be imposed on the State consumers, irrespective of UI mechanism. Learned counsel further pointed out that the

requirement of PLCC/SCADA system for the captive power plants was contested by Confederation of Captive Power Plants, Orissa before the Orissa Electricity Regulatory Commission in Case No.10/2007 and Orissa Electricity Regulatory Commission vide its order dated 29.10.2007 has upheld this requirement for the captive power plants.

15. Before examining the rival submissions on merits, we propose to take up first the preliminary objections raised on behalf of Orissa State Load Despatch Centre.

16. The first preliminary objection by Orissa State Load Despatch Centre is regarding impleadment of GRIDCO. As noted above, Orissa State Load Despatch Centre has contended that since refusal to grant short-term open access to Reliance was on consideration of views of GRIDCO, it should be impleaded as a party in the present proceedings before the Commission. Intimately linked with this preliminary objection is the necessity or even desirability of Orissa State Load Despatch Centre consulting GRIDCO in the matters relating to grant of short-term open access. A question similar to this issue had arisen before the Commission in proceedings in Petitions No.108/2007, 114/2007 and 116/2007. The Commission by its common order dated 3.12.2007 has held that the State Load Despatch Centre, as an independent operator and statutory body under the Electricity Act, 2003, should consider the applications for open access in an impartial manner and in line with the provisions of Electricity Act, 2003 and open access regulations notified by the Commission. In the light of these observations, it was not necessary for

Orissa State Load Despatch Centre to consult GRIDCO before deciding the application made by Reliance for grant of short-term open access since neither the Electricity Act, 2003 nor the open access regulations specify consultation by the State Load Despatch Centre with local utilities while considering requests for grant of open access. In this view of the matter, we conclude that GRIDCO is neither a necessary party nor even a desirable party in the present proceedings before the Commission.

17. The next preliminary objection taken by Orissa State Load Despatch Centre is regarding notice to all RLDCs and SLDCs before deciding on the issues extracted at sub-paras (b) and (c) of the opening para of this order. For the view we are taking on these issues, and as discussed in later part of this order, this preliminary objection also deserves summary rejection.

18. Learned counsel for Orissa State Load Despatch Centre had pointed out to us that a Civil Writ Petition challenging the Commission's earlier order dated 7.3.2007 in Petition No.24/2007, to which reference has already been made, was pending before the High Court of Orissa. (It was so pending at the time of hearing of the present application). For the sake of record, it is to be stated that the said writ petition has since been disposed of by the High Court by its order dated 11.12.2007. The Commission's order dated 7.3.2007 has been quashed by the High Court and the matter has been remitted to the Commission for *de novo* hearing of Petition No.24/2007, on the ground that the writ petitioners were not granted adequate opportunity to present their case before the Commission. In view of this order of the High Court, there is no impediment in disposal of the

present application made before the Commission, on merits, adequate opportunity for which has been granted to the parties.

19. On merits, while endeavouring to support its action on the ground of non-availability of real time monitoring facilities, Orissa State Despatch Centre has relied on the following:

(a) Clauses 4.10 and 4.12 (a) (iii) of IEGC, incorporated as such in OGC vide Clauses 4.11 and 4.13 (1) (d).

(b) Order of the Orissa Electricity Regulatory Commission dated 29.10.2007 in Case No 10/2007.

(c) Opinion of the State Government in the matter of sale of power by the petitioner to GRIDCO.

20. It was strenuously contended on behalf of Orissa State Load Despatch Centre that real time monitoring is required so as to issue necessary instruction in case of contingency. This contention, even if accepted, cannot be singularly applied only to entities seeking open access. Similar action may be required for other generating stations supplying to the State utilities (GRIDCO) or even industries with CGPs which are interconnected with the State grid, but do not seek open access. We are constrained to observe that application of various provisions only to entities seeking open access and ignoring their non-compliance by others amounts to blatant and hostile discrimination.

21. For ease of reference, we are extracting hereunder clauses 4.10 and 4.12.(iii) of IEGC:

“4.10 Data and Communication Facilities

Reliable and efficient speech and data communication systems shall be provided to facilitate necessary communication and data exchange, and supervision/control of the grid by the RLDC, under normal and abnormal conditions. All agencies shall provide systems to telemeter power system parameter such as flow, voltage and status of switches/transformer taps etc. in line with interface requirements and other guideline made available to RLDC/ SLDC. The associated communication system to facilitate data flow up to RLDC/SLDC, as the case may be, shall also be established by the concerned agency as specified by CTU in connection agreement. All agencies in coordination with CTU shall provide the required facilities at their respective ends and RLDC/SLDC as specified in the connection agreement.”

“4.12.(a) (iii) All agencies connected to or planning to connect to ISTS would ensure providing of RTU and other communication equipment, as specified by RLDC/SLDC, for sending real-time data to SLDC/RLDC at least before date of commercial operation of the generating stations or sub-station/line being connected to ISTS.”

22. The relevant provisions of OGC in clauses 4.11, 4.13.(1)(d) and 10.5 are also extracted as under:

“4.11 DATA COMMUNICATION FACILITIES

Reliable and efficient speech and data communication systems shall be provided to facilitate necessary communication and data exchange, and supervision/control of the grid by the SLDC, under normal and abnormal conditions. All Agencies including CGS who are allowed open access shall provide Systems to telemeter power system parameter such as flow, voltage and status of switches/ transformer taps etc. in line with interface requirements and other guideline made available to SLDC. The associated communication system to facilitate data flow up to SLDC, as the case may be, shall also be established by the concerned Agency as agreed by STU in Connection Agreement. All Agencies in coordination with STU shall provide the required facilities at their respective ends and SLDC as agreed in the Connection Agreement. “

4.13 (1) (d): All Agencies connected to or planning to connect to STS would ensure providing of RTU and other communication equipment, as specified by SLDC, for sending real-time data to SLDC at least before date of commercial operation of the generating stations or sub-station/line being connected to STS.“

10.5 SUPERVISORY CONTROL AND DATA ACQUISITION (SCADA)

(1) The Licensee shall install and make operative an operational metering data collection system under SCADA for storage, display and processing of operational metering data. All Users shall make available outputs of their respective operational meters to the SCADA interface equipment.

(2) The data collection, storage and display centre STU shall be the State Load Despatch Centre at Bhubaneswar.”

23. Apparently, the above provisions are part of the connection conditions in general and are not specific to the matters of granting open access. Therefore, the petitioner is right in pointing out that this requirement is not to be seen in the context of grant of open access alone. In fact, the Orissa Electricity Regulatory Commission also in its order dated 29.10.2007 in Case No 10 of 2007 filed by Confederation of Captive Power Plants, came to a similar conclusion as seen from para 11.0 of the said order reproduced below:

“The above provisions are also incorporated in Regulations 4.11 and 4.13 (1) (d) of the Orissa Grid Code. Irrespective of the fact whether somebody avails open access or not, these conditions of the Grid Code can not be violated until any amendment is made to the said code by order of the Commission.”

24. It is evident that Orissa State Load Despatch Centre has not appreciated the spirit of the order dated 29.10.2007 of Orissa Electricity Regulatory Commission. The role and function of the State Load Despatch Centre have been succinctly brought out by Orissa Electricity Regulatory Commission, in para 7 of its order, as extracted hereunder:

“7.0 The Commission would like to observe that as required under Section 32 of the Electricity Act, 2003, SLDC as a apex body shall have to ensure integrated operation of the power system in the State. As

envisaged under the said section, SLDC is responsible for optimum scheduling and despatch of the electricity within the state. For this purpose, they will have access to the contracts entered between licensees and generating companies operating in the state. They are responsible for carrying out real time operation, for grid control and dispatch of electricity within the state and have the authority to exercise supervision and control over the intra state transmission system. SLDC have to keep accounts of the quantity of electricity transmitted through the state grid.”

25. By insisting on the provisions of the Grid Codes (IEGC and OGC) as pre-conditions for grant of open access, and at the same time not following them for purchase of same power by GRIDCO, Orissa State Load Despatch Centre/Orissa Power Transmission Corporation Ltd have clearly acted in a discriminatory manner and have thereby infringed the mandate of Section 39(2) (d) of the Electricity Act, 2003, according to which the State Transmission Utility (Orissa Power Transmission Corporation Ltd in this case) is to provide non-discriminatory open access on its transmission system.

26. It is seen that in the instant case, denial of open access to Reliance is based primarily, on the objection raised by GRIDCO, who under its letter dated 22.10.2007 had enclosed a letter dated 30.5.2007 from the State Government. This letter of the State Government requires that the following facts need to be ensured while processing the cases:

(a) Whether there is any clause in MOU that the CPP will sell its surplus power to the State designated agency at the rate fixed by Orissa Electricity Regulatory Commission?

(b) Whether the applicant company has signed PPA with the State designated agency?

(c) Whether the same PPA is approved by Orissa Electricity Regulatory Commission?

27. It is apparent that Orissa State Load Despatch Centre, while declining open access on the intra-State transmission system has not cared to check the provisions of any contract between the petitioner and GRIDCO and has routinely accepted the objections of GRIDCO. The petitioner, in para 9 of its additional affidavit dated 3.12.2007, has stated that it has no contract or understanding to sell any of its power to GRIDCO. Under these circumstances, there appears to be no justification to rely on the objection of GRIDCO while dealing with the request of Reliance for open access.

28. The petitioner has filed a copy each of GRIDCO's letters dated 31.1.2007 and 13.11.2007 wherein it has been requested to enter into an agreement with GRIDCO for sale of surplus power, for which a copy of the agreement was sent for execution at the earliest. During the hearing, there was no mention by the learned counsel for Orissa State Load Despatch Centre, about the existence of any agreement between the Captive Generating Unit and GRIDCO. Thus it is to be concluded that the process of initiation of entering into an agreement commenced on 13.11.2007. The petitioner vide its communication to GRIDCO dated 30.11.2007 indicated that it is not in a position to enter into any sale of power arrangement with GRIDCO at present.

29. The Orissa Electricity Regulatory Commission in its order dated 29.10.2007 has also insisted on the need for timely action for providing open access as under:

“8.0 In keeping with the letter and the spirit of the Act, 2003 while allowing open access, suitable procedures may be evolved for grant of permission/consent by SLDC within the stipulated time period as specified. SLDC should ensure that the provisions as set out in the grid standards and grid codes are strictly followed even if it may mean additional expenditure on the part of any user. It is equally applicable to all the users of the system.”

30. Unfortunately, this advice of Orissa Electricity Regulatory Commission has also been overlooked by Orissa State Load Despatch Centre.

31. Orissa Electricity Regulatory Commission has categorically mandated Orissa State Load Despatch Centre to function as an independent system operator to discharge its statutory functions as seen from the following extract:

“12.0 The Commission directs that SLDC should function as an Independent System Operator (ISO), to discharge its statutory functions in accordance with the Act, subordinate Regulations and Grid Codes framed there under and provide nondiscriminatory Open Access. Permission should be accorded within such time limit as stipulated in Inter-State and Intra-State Regulation. To comply to this, SLDC is directed to evolve a procedure/mechanism involving all the stakeholders i.e. OPTCL, GRIDCO and DISTCOs such that the time limit fixed in the Inter-State / Intra-State Open Access Regulation is scrupulously adhered to. This procedure / mechanism evolved shall be filed with the Commission by 30th November 2007 and shall be available in the websites of OPTCL / SLDC. The Commission also directs that this Order of the Commission in Case No. 10 of 2007 shall be subject to the outcome of judgment of Hon'ble Orissa High Court in WP(C) No. 3803 of 2007 filed by GRIDCO.”

32. Ironically, the action of Orissa State Load Despatch Centre in the instant case is anything but that of an independent system operator.

33. We are also anguished to observe that one of the submissions made before Orissa Electricity Regulatory Commission to support the decision to deny open access was likelihood of power deficiency in the State as seen from the order dated 29.10.2007, relevant part extracted hereunder:

“6.3.2 As per final version (March, 2007) of 17th Electric Power Survey of CEA, Orissa may have to face power shortage from 2008-09 onwards due to non addition of any generation capacity and may have to depend upon the surplus power injected to Grid from Captive Generation Plants of the State. He submitted that the industries have got the support of the Govt. as well as the support from the State GRID during their need / requirement for power and now the time has come that the industries should come forward voluntarily to support the State injecting surplus power from their CGPs to tide over the power shortage the State is going to face in the days to come.”

34. The following statements have also been attributed to GRIDCO in the Orissa Electricity Regulatory Commission’s order dated 29.10.2007:

“6.3.4 The Govt. of Orissa have taken steps to finalize the State policy relating to CGPs soon and Commission has also formulated and circulated a consultative paper inviting comments / opinions from all stakeholders on pricing of CGP surplus power under different scenarios of injection. He, therefore, requested the Commission to have further hearing in this case after the Commission finalized the Pricing of surplus power of CGP and the Govt. finalized the State Policy on CGP.”

35. We note that even after recording these statements, Orissa Electricity Regulatory Commission has not given any directions restricting sale of surplus captive generation to an agency outside the State of Orissa. This, that is, not

imposing any restriction is also in consonance with the Electricity Act, 2003 particularly after its amendment on 29.5.2007 whereby the following proviso was inserted after the existing proviso in Section 9(1):

“Provided further that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under sub-section (2) of section 42”

36. Under the law, a captive generating plant is at liberty to sell its surplus power to any person, not necessarily to the distribution licensees in State of its operation. In view of this, the opinion of the State Government for sale of surplus power by the captive power plants to the State lacks force.

37. Orissa State Load Despatch Centre has already recorded on 22.10.2007 that there is no congestion in OPTCL system for the quantum of injection for which open access was sought. This was confirmed during the hearing by learned counsel for Orissa State Load Despatch Centre who categorically stated that the only issue from its angle was provision of PLCC and SCADA as per OGC.

38. During the hearing, a reference was made to item C.5 under Appendix – C: “Operational Planning Data” attached to Chapter – 12 : “Data Registration” of the Orissa Grid Code (OGC) Regulations 2006, which is reproduced below:

“C.5 MONITORING OF GENERATION
REFERENCE TO SECTION 9 MONITORING OF GENERATION AND
DRAWAL

Item	To be Submitted By
i. Generators shall provide hourly generation summation to SLDC.	To be submitted by real time basis
ii. CGPs shall provide hourly export/import MW to SLDC.	To be submitted by real time basis
iii. Logged readings of generators to SLDC.	As required
iv. Detailed report of Generating Unit trippings on monthly basis	In the first week of the succeeding month”

39. It was pointed out by us that “hourly export/import MW” mentioned therein needed a clarification/correction. In case the SLDC was supposed to monitor the CGPs on real-time basis, “hourly” should be deleted. If only hourly data was required, it would be for record keeping and would not be of any use in on-line monitoring of the system. Also, “MWh” may be more appropriate than “MW”. Further, it would not require any on-line communication.

40. While on the subject, we may also point out that as per clause 10.5 of the OGC, the licensee, (Orissa Power Transmission Corporation) is required to install the data collection system under SCADA and the users have only to make available outputs of their respective operational meters to the SCADA interface equipment. It implies that PLCC should be provided by Orissa Power Transmission Corporation.

41. There is no gainsaying the fact that grant of open access needs to be encouraged for the development of electricity industry in the country and this

aspect has been repeatedly emphasized by the Appellate Tribunal for Electricity in its various judgments. In the judgment dated 22.1.2007 in Execution Petition No.1 of 2006, (The RPPL Limited Vs Transmission Corporation of A.P. Ltd and Others), the Appellate Tribunal held as under:

“25.....In case of rejection of the request it obviously implies that the open access and wheeling shall not be made available. It is one of the most important objects of the Act to provide open access. In spite of the fact that the Act provides for open access, which needs to be encouraged for the development of the electricity industry, there still appears to be some reservations in certain quarters for allowing open access and wheeling of electricity. The argument that the application for change in the schedule of the existing consumers can be permitted only twice in a year cannot be countenanced in law. Such a submission is not in conformity with the Explanation 3 of Clause 1.16 on which reliance was placed by the learned counsel for the respondent nor the same is in keeping with the spirit of the Act, which requires fillip to be given to open access and wheeling of electricity to generate competition.”

42. The above position was reiterated in the judgment dated 5.7.2007 in Appeal No.169 of 2006 (RVK Energy Pvt. Ltd vs Central Power Distribution Company & others) and other related appeals as it flows from the extracts of paras 26 and 27 of the judgment placed below:

“26.In case use of open access by a consumer is made onerous by imposing excessive levies, it will amount to barring open access to him. This will result in discrimination of the consumer qua the licensee and generator. Therefore, the above provisions must be looked at, keeping in view the object and reasons of the Act. The provisions must be worked out to promote open access as it will boost competition. Competition benefits the consumer. It pulls down the prices. It improves the quality of service to the consumers. In case open access is inhibited by making it un-economical for the consumer to choose its source of power, it will have deleterious effect on competition resulting in scarcity of electricity and high tariff. Open access must be utilized to mop up every bit of power available with the generators to

surmount shortages and outages of electricity. This is possible in case the surcharge and additional surcharge is reasonable.

27. Though the legislative intent is to give impetus to competition, the APERC by its impugned orders, by taking recourse to the Embedded Cost Methodology to work out the surcharge, has acted contrary thereto. The initiative of the consumers to seek open access must be sustained and kept alive. If the Regulatory Commission goes for an overkill by imposing burdensome cross subsidy surcharge and additional surcharge for open access, it will hit generation for generators will not increase capacity, as it will be hard to find consumers willing to buy expensive power. The Commission in its consultative paper had referred to Residual Generation Rate method but in the impugned order it failed to utilize the same to compute the effect of surcharge determined through various methodologies. It should have adopted such level of cross subsidy surcharge as would have maintained the right equilibrium between promotion of competition and financial security of the utility (distributor). Unless the consumers can avail of the open access at a reasonable cost not exceeding the rate at which electricity is available within the area of supply of the distribution licensee, it will be difficult for the private entrepreneurs to set up generating stations. The Regulatory Authorities must face the reality. There is no denying the fact that there are crippling shortages of electricity in the country. The economic growth which is about 9% of the GDP, cannot be sustained and further accelerated unless substantial capacity addition takes place. The Regulatory Commissions need to encourage the entrepreneurs to set up generating stations by their visionary orders.”

43. It was also submitted on behalf of the petitioner that communication equipment as per specifications furnished by Orissa Power Transmission Corporation have been procured and installed and permission has been sought for installing such equipment in the switching station and sub-station owned by Orissa Power Transmission Corporation. That being the position, it should be possible to meet even the requirement of real time monitoring before scheduled date of the transaction i.e. 7.1.2008.

44. Under these circumstances, we do not find any justification for denial of open access on the ground of lack of facilities for real time monitoring.

45. At this stage we are not inclined to consider the prayers at sub-paras (b) and (c) of the opening para of this order. The Commission has already published the draft of the revised regulations on open access titled, “the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008” presently available on the Commission’s web site. The Commission has invited comments/suggestions/objections on the proposals made in the draft on the revised open access regulations. These issues raised by the petitioner can be looked into while finalizing the revised regulations on open access, and for this purpose the petitioner is at liberty to submit its views on the draft, including on the issues raised at sub-paras (b) and (c).

46. Thus we conclude that:

(a) There is no transmission constraint or congestion as accepted by Orissa State Load Despatch Centre.

(b) The requirements of procuring and erecting PLCC and other communication equipment has already been complied with by the petitioner, who had also sought the permission for installing these at the switching station and substation of the State utility as of November, 2007 itself.

(c) Neither OCG nor the Orissa State Electricity Regulatory Commission orders put any restriction in granting open access. On the

contrary, the Orissa State Electricity Regulatory Commission had come heavily on respondent No 6 for not acting independently as brought out in the orders elsewhere.

47. Accordingly, we direct that open access be allowed as required by Reliance since there are no transmission constraints and surplus transmission capacity is available on the intra-State transmission system as noted from the response of Orissa State Load Despatch Centre on the letter enclosed with Southern Load Despatch Centre's letter dated 26.10.2007. It was also confirmed by the representatives of Southern Regional Load Despatch Centre and Eastern Regional Load Despatch Centre at the hearing on 11.12.2007 that there would be no transmission constraints in the Inter-State transmission system that may normally come in the way of open access applied for. We, therefore, call upon the Regional Load Despatch Centres concerned to schedule the transaction applied for, even if the application/clearance is received after the normal cut-off date in the present case, subject of course to availability of spare transmission capacity.

48. The observations made in the present order shall be kept in view by Orissa State Load Despatch Centre and Orissa Power Transmission Corporation Ltd. while deciding the applications made for open access in future. At the cost of repetition, we reiterate that as an independent operator and statutory body under the Electricity Act, 2003, they should consider the applications for open access in an impartial manner and in line with the provisions of Electricity Act, 2003 and the open access regulations without being

influenced by the views of any utility, which are extraneous to the provisions of the Electricity Act, 2003. Any denial of open access on considerations other than those prescribed under the law and taken note of in the above analysis, will attract the penal provisions of the Electricity Act, 2003.

49. With this the petition stands disposed of.

Sd/=
(R KRISHNAMOORTHY)
MEMBRER

Sd/=
(BHANU BHUSHAN)
MEMBRER

New Delhi dated 31st December, 2007