

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012

Present: **Shri S. P. Nanda, Chairperson**
 Shri S. P. Swain, Member
 Shri A. K. Das, Member

Case No. 13/2002

GRIDCO Ltd. Petitioner
Vrs.	
Odisha Power Generation Corporation Ltd. & OthersRespondents

IN THE MATTER OF : **An Application under S.21(4) of the OER Act,1995 read with Regulation 110 of the OERC (Conduct of Business) Regulations,1996 for approval of the PPA executed between GRIDCO & OPGC for purchase of power from Unit-I & II of Ib TPS of OPGC..**

For Petitioner: Shri N. C. Panigrahi, Sr. Advocate, Shri S. R. Panigrahi, Advocate, Shri L. R. Dash, GM, GRIDCO, Shri U. N. Mishra, CGM, GRIDCO.

For Respondents: Shri K. G. Raghavan, Sr. Advocate, Shri Anirudha Arunkumar, Advocate on behalf of OPGC, Shri Manoj Mishra, Company Secretary, OPGC, Shri Ritwik Mishra, OPGC, Shri Somashis Mohapatra, OPGC & Ms Niharika Pattnaik, ALO, DoE, GoO.

NO body is present on behalf of Ramesh Chandra Mohapatra, M/s. UCCI Ltd., M/s. Ferro Alloys Corporation Ltd., CEO, CESU, WESCO, NESCO & SOUTHCO.

ORDER

Date of Hearing: 20.06.2014

Date of Order:27.04.2015

The present petition is a joint application by OPGC and GRIDCO under Section 21 of Orissa Electricity Reform Act, 1995 read with Section 86 of the Electricity Act, 2003 for approval of the following three agreements entered between the parties.

- (a) Bulk Supply Power Agreement dated 13.08.1996 and its amended Supplemental Agreement dated 19.12.2012.
- (b) Tripartite Agreement dated 18.10.1998 as amended on 06.09.2012.
- (c) Escrow and Security Agreement dated 30.11.1998 entered between OPGC, GRIDCO and Union Bank of India.

2. The joint applicants have also prayed for determination of annual tariff in respect of Unit-I and II of OPGC consequent to the approval of PPA.
3. The present application has a genesis in a dispute that arose between parties relating to approval of PPA, the tripartite agreement and escrow agreement as were existing initially by OERC. At that point of time OPGC had challenged the jurisdiction of OERC in approving the PPA. But when Hon'ble High Court of Orissa did not accept the contention of OPGC it moved Hon'ble Supreme Court through a Special Leave Petition and Hon'ble Court stayed the proceeding before OERC through an interim order. While the matter was pending before the Apex Court GRIDCO, OPGC and the Government of Odisha entered into a discussion consequent to which the State Government constituted a task force for resolving the disputes regarding tariff and other related matters concerning in the above agreement. The task force constituted by the Government made recommendation for overall settlement of the disputes and accordingly the Government issued a notification on 21.06.2008 resolving all such disputes. Pursuant to the above GRIDCO and OPGC agreed to amend then existing PPA and the tripartite agreement basing on Government notification dated 21.06.2008. The parties also agreed that consequent upon the execution of amended agreement OPGC shall withdraw the SLP bearing No. 6812-6813 of 2005 pending before Hon'ble Supreme Court of India.
4. Accordingly, GRIDCO and OPGC have filed the present application under Section 21 of OER Act, 1995 read with Section 86 of the Electricity Act, 2003 and other enabling provision seeking approval of the agreements as stated above. Now, we proceed to examine the three agreements one by one.
5. The tripartite agreement was signed on 06.09.2012 supplemental to the tripartite agreement executed on 18.10.1998. The tripartite agreement has been made effective from 12.10.2009. Since the tripartite agreement between GRIDCO, OPGC and State Government basically deals with sharing of power from proposed Unit-3 & 4 of Ib Thermal Power Station and has been based on State Government Notification on Cabinet decision in this regard dated 21.06.2008 and 12.10.2009 we accept the same.
6. Next we come to the issue of approval of PPA between GRIDCO and OPGC. The first PPA between GRIDCO and OPGC for purchase of power from generating units I & II of Ib Thermal Power Station owned by OPGC was signed on 13.08.1996 and had

been made effective from 01.01.1995. The said PPA was amended on 19.12.2012 inserting the inter alia the following important clauses such as raising the PLF for calculation of incentive only from 68.49% to 80% w.e.f. 01.04.2007. The incentive shall be calculated as follows:

“ Clause 4.0 INCENTIVE:

Where the Actual Net Availability (AAN) in any financial year exceeds 80%, an incentive (I) as per following formula shall be paid to OPGC by GRIDCO.

INCENTIVE (I) (Rs.)

Equity capital subject to maximum of 30% of Project cost x 0.35 x (% PLF achieved during the year including deemed generation -80%)/100.”

7. Similarly, Clause 12.0 of Schedule II of the existing PPA was substituted as follows in amended PPA:

“12.0 Revision of Tariff:

In order to avoid any ambiguity with regard to tariff norms and parameters for Unit 1 & 2, all terms and parameters for determination of tariff for 1 & 2 shall be as per this PPA as amended upto date. All tariff parameters will stand frozen till validity of this PPA as amended upto date notwithstanding modification in tariff norms by the CERC from time to time. Accordingly all references in other provisions of this PPA to change in tariff parameters in future shall be deemed to have been deleted. The tariff shall however be subject to revision at the time of renewal, replacement or extension of this Supplementary agreement or on further enhancement of the generation capacity of Units 1 and / or 2, if any.”

8. In the said amended PPA the following clause has been added as 17.01

“In entering into this PPA, the parties recognize that it is impractical to provide for every contingency that may arise in the course of the performance thereof. Accordingly, the parties declare it to be their intention that this PPA shall operate between them with fairness and without detriment to the interest of any of them and if in the course of the performance of this PPA unfairness to any party hereto shall be manifest, either financially or otherwise, the parties will use their best endeavours to remove the cause or causes of the same. It is hereby agreed that any adverse impact

to either party shall be mutually discussed and steps taken to ensure that the intent and the objects as set out herein are not disturbed.”

9. The above stipulation in PPA provides for settlement of issues if any arise due to implementation of this PPA in a future date the same shall be resolved basing on mutual discussion keeping intent and objects of the PPA intact. Therefore, the Commission has no objection to approve the PPA including its amendment between GRIDCO and OPGC for purchase of power from Unit 1 & 2 of Ib Thermal Power Station as it stands now.
10. The Commission in the meantime has published in the Gazette OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014 on 10.10.2014 for control period of FY 2014-19. The Regulation 1.4 of the said Regulations provides as follows:

“These Regulations shall come into force on the date of publication in the Official Gazette, and unless reviewed earlier or extended by the Commission shall remain in force till 31.03.2019:

Provided that, where the Commission has, at any time prior to the notification of these Regulations, approved a Power Purchase Agreement (PPA) or arrangement between a generating company and a Beneficiary, or has adopted the tariff contained therein for supply of electricity from an existing generating station then the tariff for supply of electricity by the generating company to the Distribution Licensee shall be in accordance with such PPA or arrangement for such period as may be so approved or adopted by the Commission, to the extent of existing Installed Capacity as contained in the PPA.”
11. Since the power purchase by GRIDCO from Unit 1 & 2 of Ib Thermal Power Station has been continuing as per mutual agreement without approved PPA and the Commission has approved the same in the ARR of GRIDCO for the concerned year there is no need to reopen the same as per the above Regulation. The parties should, therefore, settle the power purchase process for the period prior to implementation of the above Regulation taking into account the original PPA and its supplemental one as approved by us now.
12. The Regulation 2.7 of OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014 provides as follows:

“The existing generation plants of OHPC and OPGC may make an application as per the Format prescribed by the Commission for determination of tariff as per annual schedule, by November 30th of every year for determination of tariff in respect of the units of the generating station completed or projected to be completed within six months from the date of application.

Provided that the OHPC and OPGC shall make an application as per the prescribed Format with necessary information and explanations, for determination of tariff based on capital expenditure incurred duly certified by the auditors or projected to be incurred up to the date of commercial operation and additional capital expenditure incurred duly certified by the auditors or projected to be incurred during the period for which application for determination of tariff is filed of the generating station:”

13. Due to the above provision in the Regulation read with Regulation 7.13 of the same Regulations, OPGC shall make an application before the Commission as per the above approved PPA each year for determination of tariff for the rest of the control period starting from FY 2016-17 onwards since the tariff for the FY 2014-15 and 2015-16 has already been approved by the Commission in the ARR of GRIDCO for the said year basing on the submission of GRIDCO.
14. The Escrow Agreement has been made between the Union Bank of India, OPGC and GRIDCO on 30.11.1998 as an instrument of payment security mechanism. This agreement had been executed at the instance of Government of Odisha for securing payment obligation of GRIDCO to OPGC under bills presented by OPGC from time to time. Therefore, there is no need to approve the same now.
15. Accordingly, with the above observation and approval the case is disposed of.

Sd/-
(A. K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S. P. Nanda)
Chairperson