

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

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**Present : Shri D.C.Sahoo, Chairperson  
Shri B.C. Jena, Member  
Shri S.K.Jena, Member**

**Dated the 17<sup>th</sup> day of April, 2006**

**Case No. 53 of 2005**

M/s.Grid Corporation of Orissa Limited, (GRIDCO)  
Janapath, Bhubaneswar

....

**Petitioner**

- Vrs. -

Orissa Hydro Power Corporation Ltd(OHPC)  
Janapath, Bhubaneswar

....

**Respondent**

For the Petitioner : Sri Gyanaranjan Khuntia,  
Sr.G.M.(PP), GRIDCO

For the Respondent: Sri Rashmi Ranjan Das  
Director (F), OHPC

**ORDER**

An application has been filed by the Grid Corporation of Orissa (GRIDCO) under section 123 of the OERC (Conduct of Business) Regulation, 1996 for review of the order dt.31.01.05 passed by the Commission in Case No.88 of 2004 relating to PPA of Rengali Hydro Electric Project executed between GRIDCO & OHPC.

2. GRIDCO has requested to review the clause 6.8.2 of the PPA wherein the Commission had approved that if OHPC cannot establish to GRIDCO's

satisfaction the reason of shortfall of capacity from the declared level of performance penalty shall be imposed. GRIDCO has submitted that this provision is not in accordance with clause 46 of the CERC notification. The said notification is supposed to be binding on the State Electricity Regulatory Commission which nowhere affords an opportunity to the generator to explain the reason for shortfall, if any, while monitoring its capacity level. GRIDCO has further submitted that the monitoring is to be conducted by the state load dispatch center, an independent body to ensure that the declared capacity is provided by the generator and any case of mis-declaration is liable for penalty. There is no provision for affording any opportunity to the generator to explain the reason of shortfall according to CERC notification. As such to avoid litigation in the matter clause 8.6.2 may be revised & brought in line with CERC notification.

3. In response to GRIDCO's petition, the respondent, OHPC has submitted that OHPC should not be unduly penalized for the shortfall, which is beyond the control of OHPC. Before imposition of any penalty it should be ensured that there is no intentional false declaration by OHPC. Thus, OHPC contends that it may be given an opportunity to explain the reasons for shortfall, if any, in declared capacity to the satisfaction of SLDC/GRIDCO prior to imposition of penalty.
4. The Commission before addressing other issues in the petition would like to observe that the scope of review of any order is limited to three important parameters namely; (1) discovery of new and important matter or evidence, which could not be produced at the time of hearing with due diligence; (2) mistake or error apparent on the face of the record (3) clerical mistakes or any other sufficient reason.
5. The order was passed after the public hearing which was preceded by series of informal discussions between OHPC and GRIDCO. GRIDCO has

not brought any new fact or not pointed out any error in the face of the order except stating that this is not in line with CERC Regulation. The Commission is very much conscious of the provision in the CERC Regulation and it was pointed out during the course of the hearing of the review petition that following the principle of natural justice, if an opportunity is afforded to a party liable to pay the penalty, it will not affect the spirit and intention of the regulation passed by the CERC. Further, clerical error has also been pointed out. As such, there is no merit in the review petition filed by GRIDCO. Hence, it stands rejected.

6. In the said review petition, GRIDCO had also raised two issues namely;  
(i) whether payment upto Annual Fixed Charge is to be made in case of less generation by the generator and (ii) if generation is more than the design energy but the yearly capacity index is less than the normative capacity index, whether penalty towards shortfall of capacity index will be recovered.
7. On the aforesaid issues, OHPC has submitted as under:
  - (i) If the monthly billing for energy charges and capacity charges shall be made as per the formula given in CERC notification, in case of less generation, annual energy charges shall be less and obviously the capacity charges will be more. However, payment at the end of the year will be equal to AFC provided capacity index is equal to or more than the normative value of the 85%.
  - (ii) If the generation (ex-bus) is equal to or more than month-wise design energy (ex-bus) in each & every month of a year than the total AFC will be recovered by the primary energy charges though the yearly capacity index is less than normative value of 85%. In such a case, capacity charges in each month will be zero and therefore, there is no disincentive to the generator for the Low Capacity Index. However, if generation (ex-bus) in any month is

less than design energy (ex-bus) of that month and the capacity index is less than normative value of 85%, then there will be disincentive to the generator in that month.

8. The Commission observes that clauses 37 & 39 of CERC (Terms and Conditions of Tariff) Regulation, 2004 deal with computation of Annual Charge/Capacity Charge and Primary & Secondary Energy Charges respectively, an extract of which is reproduced below :

***Computation of Annual Charge/Capacity Charge-***

*“The two-part tariff for sale of electricity from a hydro power generating station shall comprise of recovery of annual capacity charge and primary energy charge;*

- (i) *Capacity Charges : The capacity charges shall be computed in accordance with the following formula :*

*Capacity charges = (Annual Fixed Charge – Primary Energy Charge)*

*Note : Recovery through Primary Energy Charge shall not be more than Annual Fixed Charge.*

***Primary and Secondary Charges-***

- (1) *Primary energy charge shall be worked out on the basis of paise per kWh rate on ex-bus energy scheduled to be sent out from the hydro electric power generating station after adjusting for free power delivered to the home state.*

- (2) *Rate of primary energy for all hydro electric power generating stations, except for pumped storage generating stations, shall be equal to the lowest variable charges of the central sector thermal power generating station of the concerned region. The primary energy charge shall be*

*computed based on the primary energy rate and saleable energy of the station.*

*Provided that in case the primary energy charge recoverable by applying the above primary energy rate exceeds the Annual Fixed Charge of a generating station, the primary energy rate for such generating station shall be calculated by the following formula :*

$$\text{Primary energy rate} = \frac{\text{Annual Fixed Charge}}{\text{Saleable Primary Energy.}} \quad "$$

9. The Commission, in its order dated 13.01.2005 in Case No.88/2004 we have taken note of the view of GRIDCO that annual fixed charge is payable on attaining normative capacity index even though the generation might be below the design energy. This provides protection against hydrology failure.
10. In accordance with clause 37 (1), capacity charge is to be determined after deducting primary energy charges from the annual fixed charges. In case of less generation when the generator is unable to recover the annual fixed charge, the gap between the AFC and the primary energy charge shall have to be treated as capacity charge. The method of recovery may be calculated in accordance with the CERC regulation for such a recovery. In the present scenario when the cost of generation of old OHPC stations is less than the lowest variable cost of the central generating station, the provision of penalty can not be implemented when the generation is equal to or more than the design energy. However, OHPC and GRIDCO should continue to calculate the capacity index as specified in the CERC regulations which can be utilized in case of shortfall in generation.

11. On the other hand, OHPC has prayed the Commission for modification of para 3(d) and 3(h) of Scheduled V of the Rengali PPA. Para 3(d) defines Declared Capacity and 3(h) defines Maximum Available Capacity. OHPC apprehends that it may be difficult to declare the ex-bus capacity in MW of the station upto its capacity continuously for six hours during the peak hours even though the machines are available and capable for generation to meet the multiple demands of flood control, irrigation and drinking water requirement apart from generation which may lead to a low capacity index. This apprehension of OHPC is mis-placed as the very definition approved by the CERC specifies that the declared capacity is dependent on the availability of water, optimum use of water and availability of machines. Similarly, Maximum Available Capacity also takes into consideration the prevailing conditions of water level and flows over the peaking hours of the next day. Since, the capacity index is a ratio of the Declared Capacity/Maximum Available Capacity, the interest of OHPC will not be affected as the maximum available capacity has to be declared taking into account the ground realities that include any restriction imposed on the use of water by any competent authority. In view of this, there is no justification for making any change in the definition as proposed by OHPC.

The case is disposed off.

Sd/-  
**(S.K.Jena)**  
**Member**

Sd/-  
**B.C.Jena)**  
**Member**

Sd/-  
**(D.C. Sahoo)**  
**Chairperson**