

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

*** **

**Present : Shri S.P Nanda, Chairperson
Shri B.K. Misra, Member
Shri S.P.Swain, Member**

Case No.40 of 2007

M/s Indian Metals & Ferro Alloys Ltd. (ICCL), Petitioner

Vrs.

GRIDCO Respondent

**In the matter of: An application for approval of Transmission and Bulk Supply Tariff
u/S. 26 of the Orissa Electricity Reforms Act, 1995 for FY 2001-02.**

For the Petitioner: Shri. S.K.Padhi, Senior Advocate,
Sri Satya Mohanty, Advocate.

For the Respondents: Sri P.K.Pradhan, Director (Comm.), GRIDCO,
Sri. Ranjit Das, Sr. GM (PP), GRIDCO
Sri. G.S.Panigrahi, AGM (Law), GRIDCO.

Date of hearing: 06.07.2012

Date of Order:04.09.2012

ORDER

Brief fact of the case is that M/s Indian Metals & Ferro Alloys Ltd.(in short IMFA) the petitioner herein has a charge chrome plant at Choudwar and a Ferro Alloys Plant at Therubali which is 350 KMs away from its captive power plant situated at Choudwar. As power is essential for running of its Ferro alloys Plant at Therubali and OSEB was not in a position to supply power continuously due to power deficit situation prevailing then, the petitioner sought consent of the State Govt. and Orissa State Electricity Board (OSEB) to their arrangement of injecting its surplus power to OSEB's grid at Choudwar and in turn receiving the equivalent quantity of power at Therubali for use of its Ferro Alloys Plant. OSEB had given its consent for the said purpose and accordingly an

agreement was executed between the petitioner and OSEB on 14th February, 1989 with the following condition that 20% of the energy delivered to the OSEB's transmission system at Choudwar shall be adjusted by the Board towards wheeling charge and transmission loss and the Board shall only deliver the balance of 80% of the energy injected at Choudwar to Therubali Units of M/s IMFA at 132 KV at a Power factor not less than 90%. The above arrangement was running smoothly until GRIDCO the successor of OSEB asked M/s IMFA-the petitioner to pay transmission charges for the above arrangement. Thereafter, having no other way the petitioner paid the transmission charges under protest.

2. When the matter stood thus GRIDCO had filed its application u/S. 26 of the Orissa Electricity Reform Acts, 1995 before the Commission for approval of Transmission and Bulk Supply Tariff for the FY 2001-02 considering the overall power transmitted in the State as usual is the practice, which was registered as Case No. 65/2001. The present petitioner had filed its objection before the Commission for the above application of GRIDCO, wherein GRIDCO had suggested for fixing of transmission tariff at 17.5 P/u in line with the wheeling charge being levied for MPSEB and other States for wheeling of power through inter state transmission lines. The Commission after hearing the applicant GRIDCO and all objectors those who had filed their objections along with the present petitioner herein had passed the following Orders:-

“ 6.57.2. GRIDCO has proposed that fixation of transmission tariff for the CPPs at 52.8 p/u will defeat the very purpose of setting up CPPs which are considered as second cheapest source of power to GRIDCO at present. Hence, for encouraging installation of more number of CPPs in the State, the wheeling charges to the CPPs for transportation of power to their sister units may be fixed at 17.5 p/u in line with the wheeling charge being levied for MPSEB and other States for wheeling of power through inter-state transmission lines.

6.57.3. In this connection, the Commission sought clarification from GRIDCO as to why GRIDCO has proposed wheeling charges for utilisation of its transmission system @ 17.5 p/u apparently to encourage growth of more CPPs for availing cheap power. On the other hand, the actual drawal from the CPPs is very dismal. At the present juncture, the logic of charging a rate lower than the cost of transmission calculated at 52 p/u leading to loss of miscellaneous revenue need to be adequately justified.

6.57.4. In response to the aforesaid queries, GRIDCO has replied that it had proposed to charge 17.5 p/u as wheeling charge in place of 52.80 p/u as calculated. In the past years tariff applications contained a contention that the

wheeling charges should be at par with per unit cost of transmission considering the overall power transmitted.

6.57.5. After detailed examination of facts and figures, the Commission approves a total transmission cost of Rs. 363.42 Cr. for the year 2001-02 and Rs. 376.39 Cr. for FY 2002-03. As FY 2001-02 is already over the Commission would not like to change the existing rate of 31 p/u for the year 2001-02.

6.57.6. x x x x x x x x

When a CPP is located away from an industrial unit the energy utilized by the industrial unit is deemed to have been transmitted over GRIDCO's transmission system from the CPP wherever agreement exists. This rate shall be applicable on the quantum of energy consumed by such industrial units. This rate shall be applicable for transmission of power from outside the State to an industry located inside the State through the use of GRIDCO's EHT transmission system.

6.58. x x x x x x x x

Based on the facts and figures submitted to the Commission, it is observed that the transmission loss for FY 2001-02 works out to 4.18%. However, for the purpose of billing the transmission loss shall remain uncharged i.e. @ 3.7% as approved by the Commission in its order dated 19.01.2001 till the new tariff hereunder comes into force."

3. Being aggrieved by the order dated 19.04.2002 of the Commission as it has fixed the transmission charges for FY 2001-02 @ 31 p/u and transmission loss @ 3.7% M/s ICCL had filed M.A. No. 614 of 2002 against the above order before the Hon'ble High Court of Odisha and the Hon'ble Court vide its Order dated 10.11.2006 had allowed the appeal with the following directions:-

- i. The Regulatory Commission shall consider the objection raised by the appellant (IMFA) with regard to absence of any wheeling of electricity from Choudwar to Theruvalli as admitted by GRIDCO in its explanation and decide as to whether the appellant is at all liable for any transmission charge in absence of any actual wheeling of electricity from Choudwar to Theruvalli.
 - ii. For the Year 2001-2002, fixation of 31 paise per unit by the Regulatory Commission is set aside and the appellant shall to pay at the rate of 17.5 paise per unit as suggested by the GRIDCO before the regulatory commission subject to decision of the Regulatory Commission as to whether the appellant is at all liable to pay any transmission charge."

4. The said order of the Hon'ble High Court passed in M.A. 614/2002 was challenged by GRIDCO the Hon'ble Supreme Court of India. The Hon'ble Apex Court vide their order

dated 28.03.2012 had upheld the decision of the High Court of Odisha passed in MA No. 614/2002 and directed the Commission to decide as to whether the Respondent-M/s IMFA (petitioner in Case No. 40/2007 herein) was at all liable for any transmission charge in absence of any actual wheeling of electricity from Choudwar to Therubali. M/s IMFA shall be liable to pay transmission charges @ 17.5 p/u i.e. subject to the decision of the Commission as stated in the impugned order of the High Court of Odisha. The Hon'ble Apex Court has also directed that in case the Regulatory Commission ultimately decided that the present Respondent No. 1 (petitioner herein) is liable to pay transmission charges, the adjustment may be made in the appellant GRIDCO's (Respondent herein Case No. 40/2007) revenue requirement on the basis of 17.5 p/u.

5. The representative of M/s IMFA has submitted that when GRIDCO suggested for fixing of transmission tariff at 17.5 p/u, there was no occasion on the part of the Regulatory Commission to ignore the same and fix a higher rate 31 p/u as transmission tariff as there is no physical transmission/wheeling of electricity which was admitted by GRIDCO in its explanation given before the Hon'ble High Court of Odisha in Misc Appeal No. 614/2002. The Commission has no authority to fix the transmission tariff to be collected by GRIDCO from M/s IMFA.

IMFA further submitted that it is also an established fact that the power injected at Choudwar by the Captive Plant of M/s IMFA is utilized for distribution of electricity for Choudwar, Cuttack and nearby areas. In the MoU signed between OSEB and ICCL (M/s IMFA) there is no mention of any charges to be paid by ICCL (M/s IMFA). The Petitioner alleged that the Order of the Commission dated 19.04.2002 in Case No. 65/2001 fixing 31 P/U as transmission charges instead of 17.5 p/u as suggested by GRIDCO is unfair and ill-founded as there is no actual transportation /transmission /whelling of electricity from Choudwar to Therubali. Therefore, M/s IMFA prayed the Commission for exemption of transmission charges.

6. The representative of GRIDCO has submitted that as per direction of the Commission vide its order dated 09.07.2012, GRIDCO had filed its written note of submission along with the subsisting agreement executed between OSEB and M/s IMFA during the period for 2001-02 for supply of power to the unit of M/s IMFA situated at Therubali through wheeling. GRIDCO further submitted that levy of wheeling loss and wheeling charges were being done as per the Agreement of OSEB with IMFA.

7. The representative of GRIDCO had further submitted that M/s IMFA is injecting power to the GRIDCO (now OPTCL) network at Choudwar and simultaneously receiving power through OPTCL network at Therubali. Accordingly, power injected by M/s IMFA at Choudwar has been wheeled to Therubali through OPTCL network and as such GRIDCO (now OPTCL) is entitled to get transmission charges from M/s IMFA.

GRIDCO also further submitted that the award of the Arbitration Tribunal dated 23.03.2008 regarding full acceptance of transmission loss and wheeling charges fixed by the Commission from time to time including the tariff period 2001-02 in Arbitration Petition No. 139 of 2008 is challenged by GRIDCO before the District Judge Court, Bhubaneswar and the same is pending for adjudication. Taking into the consideration of GRIDCO's ARR for various years, the Commission has been allowing wheeling charges and transmission loss for the CGPs wheeling their power from generating station to their captive load situated at a different place in Odisha. Therefore the order dated 19.04.2002 of the Commission passed in Case No. 65/2001 with regard to transmission/wheeling charges is justified and reasonable and there is no need for its change/modification and setting aside.

Commission's Finding and Order

8. After hearing the parties and perusal of the written note of submission, we opine that the so called advantages to GRIDCO by the present agreement with the Petitioner are merely incidental and can not be construed as a part of the scheme of wheeling power of the petitioner to its captive load at Therubali. On the other hand, when the petitioner's unit of Choudwar trips, it creates a lot of system problems in the twin city of Cuttack and Bhubaneswar, whereas the power drawal by its captive loads at Therubali remains unaffected. Therefore, the claim of petitioner for special consideration on this account is not acceptable. That since the alleged arrangement of the petitioner with OSEB, the environment and structure of power supply has completely changed. There has been addition of new lines, substations, new generators and new loads and thereby the system parameters have undergone a lot of changes and there has been substantial increase in cost which must be met out of transmission charges. In the meanwhile, Electricity Reforms Act, 1995 has come into force since 1st April, 1996 introducing Regulatory Regime and giving exclusively power of tariff setting to the Commission vide Section 26 of the said Act. The said Act. particularly vests the statutory obligation with the

Commission to safeguard the interest of the consumers as well as the investors (licensees). In doing so, the Commission is required to approve the revenue requirement of the licensee (GRIDCO) by which the interests of the licensee and the consumers are balanced in a just and equitable manner.

9. Prior to the tariff order for FY 2001-02, there are four tariff orders already passed by the Commission. In those orders, the Commission had been following the “postage stamp method” principle in respect of transmission tariff for the purpose of wheeling of power from a CPP to its unit located at a distance inside the State. The Commission had also adopted the ‘embedded cost’ methodology as distinct from marginal cost methodology, which works out to cheaper transmission tariff. The components of transmission cost under “embedded cost methodology” includes employees cost, repair and maintenance cost, administrative and general expenses, interest on loan, bad debts, depreciation, reasonable return and special appropriation as approved by the Commission. Following the average cost or embedded cost method the transmission tariff is arrived at by dividing the total transmission cost by the total units transmitted in the transmission system of Odisha. Hence the Commission had approved 31 paise per unit as transmission/wheeling charges for Fy 2001-02.
10. Although GRIDCO proposed a transmission tariff of Rs. 17.5 p/u for all CGPs in the State, the Commission found that thereby the revenue loss of GRIDCO and financial impact on tariff is Rs. 6.38 Crores for Fy 2001-02 and extra financial burden on the consumers is 1.01 p/u. If M/s. IMFA (ICCL) is completely exempted from payment of wheeling charges, the revenue short fall on account of this exemption would have an impact in the general consumer’s tariff which was Rs. 14.646 Crores and the extra financial burden on the consumers was 2.32 p/u.

As regards the special treatment for the petitioner, the Commission has already rejected the claim on the ground that the CPPs do not enjoy any dedicated transmission system for themselves and use the common grid of GRIDCO, which is the integral system for the whole State. So it is impossible to differentiate the user of CPPs in particular. Further the CPPs are bound to use the system for their own connectivity and they also derive benefits for themselves due to such connectivity by way of their own system stability. The benefits for the petitioner and GRIDCO are mutual and reciprocal. Thus the connectivity not only benefits the petitioner but also is essential for its own

existence. The principle of embedded cost and 'postage stamp method' do not admit of the special treatment to any particular user of the Grid. The Commission has been following this methodology since then to present time also.

11. In an integral GRID System (whether there is no dedicated feeder) there may not be actual flow of power from the CPP to the load of the petitioner, but the wheeling or transmission takes place by way of displacement of power from some other source. The 'embedded cost' and the 'postage stamp methodology' can not take into account any incidental benefits occurring to GRIDCO because of the petitioner's CPP's geographical location near the load centre. Such benefits, if any, are incidentally advantageous.
12. Interstate transmission tariff is not comparable with the present intrastate tariff. Interstate transmission tariff is determined by CERC taking into consideration various factors like investment, cost, voltage etc. which are different from parameters adopted for determination of intra-State tariff by the Commission. The interstate transmission is invariably at voltage 220 KV and above, where loss is less, whereas in the present case the intra-State transmission is at 220 & 132 KV only. M/s. IMFA (ICCL) as a user of the transmission system of GRIDCO has to pay the user charges, which is totally based on the cost. Any wheeling charges/transmission tariff less than the cost will raise the revenue deficit of the licensee, i.e. GRIDCO which will ultimately affect the consumers of the State. So the Commission prudently decided that the CPPs charges for wheeling of electricity from one location to other location within the State shall be charged as per the transmission tariff calculated by the Commission. The Commission is following a consistent method of calculation of transmission tariff right from its inception.
13. It is not correct to say that u/S. 26 of the OER Act, 1995, the Commission is not vested with any jurisdiction for determination of transmission tariff. Transmission is a specific defined activity u/S. 2 (q) of the OER Act, 1995. The transmission carried out under license issued by the Commission u/S. 14 (1) (a) of the OER Act, 1995. "Tariff "as defined in Section. 26 (7) explanation (b) of the OER Act includes transmission tariff, in-as-much as S.26 (1) of the OER Act enables the Commission to fix tariff for "holder of each license". There is no provision in Regulations which forbids or excludes fixation of transmission tariff by the Commission. According to the Regulation framed u/S. 51 of the OER Act, 1995 by the Commission namely OERC Distribution (Conditions of Supply) Code, 1998 is confined to "Supply" of electricity. The Regulation does not purport to

deal with “transmission”. So normally, these provisions deal with charges for “Supply” and not charges for “transmission”. A conjoint reading of Section 2 (g), Section 14, Section 26 (1) and Section 26 (7) (b) of the OER Act make it abundantly clear that the Commission is vested with authority to fix tariff. Moreover, Regulation 83 of OERC Distribution (Conditions of Supply) Code, 1998 is inclusive and does not exclude transmission charges. Section 36 of the Electricity Act, 2003 confirms the Commission’s full power to determine transmission tariff.

14. With the above observations we find no irregularity, incongruity or illegality in our Order dtd. 19.04.2002 passed in Case No. 65/2001 in respect of transmission tariff for GRIDCO. The prayer of M/s. IMFA (ICCL) that due to the absence of any physical wheeling of electricity from Choudwar to Therubali, they are not liable at all for any transmission charge is not accepted by the Commission. The subject arrangement of utilisation of power at the petitioner’s Therubali plant from the generation of its captive plant at Choudwar, in all effect, is an intra-state wheeling of power. Therefore, the beneficiary is liable to pay wheeling charge and wheeling loss as determined by the Commission in the tariff order from time to time. In the subject FY 2001-02 the Commission, in its tariff order has determined wheeling charge at 31 paise per unit and wheeling loss at 3.7% for all intra-state transmission, including the case of petitioner. However, in deference of Hon’ble Supreme Court Order (quoted at para-3 (ii) above), the appellant (petitioner herein) shall pay at the rate of 17.5 paise per unit for the power utilised at its Therubali plant in the FY 2001-02 through intra-state transmission. The wheeling loss 3.7% in kind shall be applicable for such intra-state transaction of power.
15. With the above observations, the case is disposed of.

Sd/-
(S. P. Swain)
Member

Sd/-
(B. K. Misra)
Member

Sd/-
(S. P. Nanda)
Chairperson

