

**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. 54/2007

**In the matter of: An application for execution of order dated 20.08.2005 passed in
Case No.14 of 2005 of the OERC**

And

In the matter of: An application u/S. 142 of the Electricity Act, 2003.

M/s.Project Development Consultants, BBSR

- **Petitioner**

Vrs

Commissioner-cum-Secretary, DoE, BBSR & Others

- **Respondents**

For the petitioner: Shri K.C.Mohapatra, Cha/-7rman, M/s PDC.

For the respondents: Ms. Niharika Pattnaik, ALO, DoE, GoO,
Shri Ashutosh Da, DD.PP-I, Dept. of Water Resources,
Shri S.K.Parida, Sr. GM, (PP), GRIDCO,
Shri P.S.Sahu, AGM (EI), OPTCL.
Ms. Sujata Dash, Verfier, OREDA.
No body is present on behalf of OHPC, Deptt. of Science and
Technology, GoO, OPTCL and WAPCOS.

Date of Hearing: 20.08.2013

Date of Order:13.11.2013

ORDER

The present case is related to the development of Small Hydro Power which is a Source of Renewable Energy in the State. As per National Electricity Policy and Sec. 86(1) (e) of the Electricity Act, 2003, the Commission has to “Promote Co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person and also specify for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of distribution licensee.

2. Accordingly, the Commission had taken a novel step way back in 2005-06 by directing GRIDCO / DISCOMs in Case No. 14/2005 dtd. 20.08.2005 as follows:

- “9.(a) *The Commission in its order dt.23.04.05 in case No.151/04 had allowed procurement of power upto 200 MU by GRIDCO/DISTCOs/State Trading Company during the FY 06-07. In exercise of the power conferred under Section 86(1)(a) and (b) the Commission further directs that procurement of power from non- conventional and renewable energy such as, small hydro, wind, biomass, co-generation of electricity from waste heat products etc. would be allowed by the supply licensees for use of consumers within the State upto 3% of the total purchase during the FY 07-08 to go up at the rate of 0.5% per annum for each subsequent year to reach a level of 5% by the year 2011-12.*
- (b) *The project cost fixed by the State Technical Committee after due diligence will be taken as the ceiling cost for determination of tariff.*
- (c) *The tariff for procurement of the power from this sources will be determined by the Commission under Section 62(1)(a) so long as this power is being supplied to the state consumers through distribution companies.*
- (d) *As envisaged in the National Electricity Policy to encourage competition for reduction in cost of energy purchase of power by DISTCOs shall be through competitive bidding process within the same sources of generation where the price determined by the Commission under Section 62(1) shall be treated as the ceiling price.*
- (e) *The Commission is aware that small, mini, micro plants may not be in a position to arrange for connectivity with the OPTCL as the cost of such arrangements may be quite exorbitant rendering the project unviable. Therefore, the generating companies of non-conventional and renewable sources may be permitted by DISTCOs/OPTCL to deliver the power at 11 KV or 33 KV as the case may be. Depending upon the techno-commercial viability of the project, the interconnection point for delivery of power may be at 132 KV.”*
3. The present Petitioner M/s. Project Development Consultants filed an application before us for execution of the above directions of the Commission by the respondents herein which was registered as Case No. 54/2007. The Commission had +heard the matter in various dates i.e. on 17.11.2007, 18.02.2008, 14.05.2008 and also observed that as the case involves substantial policy matters of the State Government particularly of the Dept. of Energy and Water Resources and therefore, they are required to play a pro-active Role in the development of small hydro resources in the State. Accordingly, the Commissioner-cum-Secretary, DoE, GoO, the Principal Secretary, Water Resources Dept., GoO, the Engineering in Chief (Elect.)-Cum-PCEI and EIC, Water Resources, Odisha, Bhubaneswar were directed to be present in person and put forth their views on this matter. The Commission had also directed all the above Depts. to file their comprehensive reply on the issues raised by the Petitioner.
4. Moreover, the Commission in their interim Order in this case dated 14.05.2008 also directed the Respondent Departments as follows:

- “14. (i) *The Water Resources Department to file a detailed list of DPRs showing how many proposals are pending with them for how long and reasons thereof.*
- (ii) *The Commission further directs that there should be effective coordination between Water Resources Dept. and Energy Dept. for hassle free and speedy clearance of the pending DPRs in overall interest of the State and ‘sittings’ of the State Technical Committee at regular intervals so that quick decision may be taken on the sub-standard and incomplete project reports.*
- (iii) *The Commission also directs the State Govt. to finalize expeditiously guidelines for development of Small Hydro Power Projects before 30.6.2008 as mandated under the provision of 86(i)(e) of the Electricity Act, 2003.”*
- (iv) During pendency of the proceeding before us, the petitioner again filed an application under Section 142 of the Electricity Act, 2003 on 04.08.2009 against all the respondents as they have not complied the directions of the Commission vide Order dated 14.05.2008. The said application u/S. 142 of the Electricity Act, 2003 has been heard by the Commission along with the main petition in Case No. 54/2007 on 20.08.2008, 29.08.2008, 18.12.2009, 20.07.2010, 26.12.2011, 19.01.2012, 25.06.2013 and for the last time on 20.08.2013 and the Commission during the course of hearing have directed the parties from time to time for further compliances of their interim orders.
- (v) The Commission in its interim order dated 16.02.2012 had made the following observation.

“Out of 84 nos. identified and initially cleared Small Hydro Electric Projects (SHEP), State Govt. has posed only 36 projects out of which 3 nos. have been commissioned so far. Govt. has proposed to develop the balance 33 projects in the first phase. The matter was discussed in the Meeting taken by the Chief Minister on 14.01.2011 and a number of important decisions were taken to develop SHEPs. The Commission perused the Deptt. of Energy Notification No.8064 dt.24.09.2011 wherein it is notified that Designs & Drawings of SHEPs for which MOUs are signed will be given to WAPCOS for scrutiny & approval and the cost of checking and approval of Drawings & Designs by WAPCOS shall be borne by the Developers.

We, therefore, direct both the EIC (Electricity) and EIC (Water Resources), Govt. of Odisha to submit the Action Taken Report (ATR) on the Practice Directions issued vide OERC letter No.5078 dt.08.10.2010 for the balance 33 projects. They should indicate the present status of each Project individually and where the Case is pending for decision and what action has been taken to speed up and start the project construction with immediate effect, Non-serious developers of these 33 Projects be identified for cancellation of their MOUs, so that these Projects could be placed for Tariff based competitive bid. The development of each Small Hydro Project, being unique and site specific, how a generic offer from the Consultants, on invitation of bid would help in construction of the Project? Why the selection of Consultants (among the list proposed by Govt.) and their commercial terms & conditions are not left to the Promoter itself, when it is they who will be paying to their Consultants for vetting

of Drawing, Design & DPRs as well as supervision of construction of SHEP till commissioning? Govt. may also consider entrusting the entire responsibility to OHPC starting from preparing the Feasibility Report, Drawing and Design, Construction Drawing, approval by STC and finally selecting the perspective developers through open bids, so that developers need not run from pillar to post.

Final hearing will be made after receipt of ATR from EIC(Electricity) and EIC (Water Resources), Govt. of Odisha.”

- (vi) The representative of the Petitioner Shri K. C. Mohapatra, Chairman, M/s. PDC had also drawn the attention of the Commission to the interim order dtd. 29.08.2008 of this Commission in the present case where the Commission had observed as follows:

“The concerned Govt. Department are not serious about the project developments of minor hydro projects and non-conventional energy, such apathetic attitude of the State Govt. will stand as a hindering block in the path of non-conventional energy developments of the State. It also appears that the function of STC is not up to the mark and it is not properly and effectively coordinating the activities of the concerned departments for early disposal of the pending approvals”

- (vii) The Petitioner also submitted that the respondents have not complied with the directions of the Commission passed in various interim orders in the above case on the issues of formulation of a conducive policy guidelines by the State Govt. on development of SHEPs in the State and also for a preparation of a smooth procedure for approval of design and drawings by both the EIC (Electricity) and EIC (WR), GoO. Consequently a single SHEP could not have been implemented in the State during last three years even though there is huge potential for SHEPs in the State and no. of project proponents have submitted their DPRs for development of the same. Further M/s. PDC the petitioner has raised inter alia the following points for consideration of the Commission:-

- a. STC should be directed to give priority for processing the clearance of the project which are utilising the existing Dam and Canals as suggested by them.
- b. Uniform policy should be put in place for checking and vetting of the DPRs/design/drawing particularly through a reputed institution.
- c. Expeditious steps may be taken to get the clearance from Chhatisgarh Govt. for development of SHEP on Kolab river.
- d. Govt. should take necessary action for the purpose of Administrative approval of the Department & processing for land acquisition by the District Authority including its notification.

- e. Those projects have not achieved financial closure within 6 months of receipt of implementation of the order of EIC (Electricity) should be cancelled for consideration by STC.
 - f. The developers of Jalaput Dam SHP/Lower Machakund SHP may be directed to submit the revised DPR for concurrence of both Govt. by the end of Oct, 2013 duly vetted by WAPCOS Ltd. for obtaining TEC & clearance from CEA.
 - g. About 200 PFR have been pending for issuance of allotment order which may be examined for qualification. Those have not qualified; they may be advised to submit the additional information for qualifications. In case no response is received from the developers, those are may be rejected and the rest are advised to approach Premier Institutions as per TOR No. 7776 dated 01.10.2012 for approval of STC.
 - h. The revised DPR may be submitted to the Premier Institutions in line with instruction of the Chief Secretary, Govt. of Odisha so that vetting of the design and Drawing would be completed by Jan, 2014 for consideration by STC in February, 2014.
- (viii) We have also recorded our concern in the interim Order dtd. 20.08.2008 that there are about 23nos. of Mini-micro hydel Projects that are pending before GoO since last 3 years. Though the STC meetings were being held regularly for according techno-economic clearance but the projects could not see the light of the day due to non-concurrence of the design and drawings by the W. R. Department of Govt. of Odisha. The office of the EIC (Water Resources) is so afflicted with acute shortage of staff that they are not in a position to approve the design of the projects of M/s. PDC. Therefore, the Commission directed EIC (Water Resources) and EIC (Electricity) to submit a calendar of activities so that, the approval of projects of M/s. PDC are to be finalized to reach a logical end. The Commission further directed the W.R.Department to submit the detail lists of DPRs, indicating how many proposals are pending with them for how long and reasons thereof. DoE, GoO was directed to submit the status of clearance of non-conventional energy projects such as Wind, Solar etc. on or before 29.08.2008. The GRIDCO was also directed to ensure timely response on the issues raised by the developer and the State Govt. for approval their PPAs with the developer of Renewable Energy Sources. The Dept. of Energy requested the Commission to

implead M/s. OREDA in this case as they also develop renewable energy resources in the State. Accordingly, notice was issued to M/s. OREDA.

- (ix) The Action Taken Report in this regard has been submitted by EIC (Electricity)- cum-Principal Chief Electrical Inspector to the Commission. The Petitioner has also submitted the rejoinder the said Action Taken Report.
- (x) M/s. OHPC in their letter dtd. 13.09.2013 submitted that in the 52nd STC meeting for Small Hydro Electric Projects it was entrusted with the work of table study of the PFRs lying with the EIC(Electricity)-cum-PCEI office for scrutiny by the Department. In the meantime they have completed the table study of 31 nos. of SHEPs and report has been submitted to EIC (Electricity). The table study of the remaining PFRs will be carried out in a phased manner by M/s. OHPC and will be sent to EIC (Electricity)-cum-PCEI, Odisha with the intimation to the Commission.
- (xi) Let us discuss the outcome of our different interim orders in this long standing case. The Commission vide its letter dated 26.06.2013 has requested the Govt. of Odisha to take up the constructions of at least 17 nos. MoU based Small Hydro Electric Projects (SHEPs) of about 238 MW after due deliberations at their level. As per the Minutes of the Review Meeting dated 04.10.2012 chaired by the Chief Secretary, GoO, four (4) nos. of MoU based projects aggregating 67 MW have made substantial progress and construction work can be started at anytime. In the said Review Meeting, the Chief Secretary had given clear direction to the State Technical Committee (STC) to examine and clear all the feasible MoU based SHE Projects expeditiously. The Chief Secretary had also given direction to OHPC to take up few viable SHE Projects (other than MoU based SHE Projects) for implementations and take a Table Study of all the feasible projects at pre-feasible stage to find out the viable ones, so that the viable projects can be executed either through OHPC or through competitive bidding process. In the aforesaid Meeting taken by the Chief Secretary, a clear direction has also been issued that the MoU based projects of non-serious developers should be cancelled with due show-cause notice.
- (xii) The Commission has also noted that subsequent to the Chief Secretary's Meeting, the State Technical Committee has met 3 times i.e. on 16.11.2012, 20.03.2013 and on 07.06. 2013 and it is understood that STC has cleared quite a good number of SHE Projects out of the pending 33 nos. of MoU based SHE Projects. The Commission has advised the Govt. to submit the Action Taken Report (ATR) of the status of

implementation of all the MoU based SHE Projects. Accordingly, the EIC (Elect.)-cum-PCEI, Odisha has submitted the Action Taken Report.

- (xiii) As per the Action Taken Report submitted by EIC (Elect.)-cum-PCEI, Odisha out of 33 nos. of MoU signed proposals of SHEP, four numbers of project has been recommended for cancellation of MoUs by Dept. of Energy. The revised DPRs of 3 nos. of Dam Toe project have been submitted by the Developers after shifting of sites as desired by WR Deptt. and those are under scrutiny of EIC (WR). Another 6 nos. of Projects cleared by STC have been pending for vetting of Design and Drawing of the projects. Further 2 nos. of Inter State SHEP projects could be implemented as per the recent Joint Meeting between the Power Secretaries of both the State of Odisha and Andhra Pradesh and the other projects are supposed to be developed by OHPC.
- (xiv) The Commission observed that after several initiatives taken by the Commission by the way of conducting various meetings with deferent agencies and concerned Departments and issuing practice directions and interim orders the efforts for development of SHEPs in the State has been gradually bearing fruits. The Govt. agencies have started understanding that there is urgent need to develop Renewable Energy Resources in the State particularly the Small Hydro Electric Projects. Further the Commission have observed that various decisions have been taken in the Review Meeting conducted by the Chief Secretary, GoO and those need to be implemented by the Govt. agencies. As per the submissions of EIC-Electricity and EIC- Water Resources, GoO, they have been taking steps for implementation of the decisions taken the said Review Meetings and comply the directions of the Commission in its various interim orders passed in the above case. Therefore, the Commission feel there is no need to continue with this proceeding under Section 142 of Electricity Act, 2003 and accordingly the proceeding is dropped. However, the present action of the Government is tardy and piecemeal in nature which may not meet the desired result as expected under the Act for development of Small Hydro Resources in the State. Therefore before we depart we give the following advices to different agencies of the Govt. for the development of Small Hydro Power in the State under Section 86 (2) (iv) of the Electricity Act, 2003. They are as follows:
- The state Govt. as soon as possible should formulate a conducive policy guidelines on Renewable Energy Resources so as to effectively utilise the hydel sources in the State.

- At first instance, the concerned Departments of the State Govt. should take expeditious action for early implementation of projects those are pending only for approval of design and drawings.
- The EIC-Water Resource and EIC-Electricity, GoO should take immediate action for implementation decisions taken in the Review Meeting of the Chief Secretary, GoO for early execution of other viable projects those are pending with them.
- The Developers of the SHE Projects for which STC has since given its go-ahead clearance are required to submit their Road Map within the stipulated time for approval of the Financial Package, appointment of Consultants for supervision of the erection and certifications of the constructions as per the approved Drawing till the commissioning of the SHE Projects. The Road Map should also indicate the date of completion of the Key Milestone activities. The Developers failing to furnish the aforesaid information within the stipulated time limit of say 2 months may be deemed as non-serious parties and their MoUs may be cancelled and those SHE Projects may either be under taken through Green Energy Development Corporation of Odisha Ltd. (GEDCOL) or may be placed for the tariff based competitive bidding.
- Govt. should take necessary action for providing Administrative approval to the District Authority for land acquisition and issuing notification.
- The revised DPR may be submitted to the Premier Institutions in line with instruction of the Chief Secretary, Govt. of Odisha to maintain uniformity. The vetting by these Institutions should be completed by developers before January, 2014 so that it can be submitted to STC for approval in February, 2014.
- STC should give priority for processing the clearance of SHEPs which are utilising the existing Dam and Canals pending before them.

(xv) With the above observations the case is disposed of.

Sd/-

(S. P. Swain)
Member

Sd/-

(B. K. Misra)
Member

Sd/-

(S. P. Nanda)
Chairperson