

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

Present : Shri B.K. Das, Chairperson
Shri K.C. Badu, Member
Shri B.K. Misra, Member

Case No.114/2009

M/s. NESCO

.... **Petitioner**

Vrs.

M/s. GRIDCO, OPTCL, DoE &
M/s. Deepak Steel & Power Limited

.... **Respondents**

In the matter of: Permission for purchase of Surplus Power by WESCO from M/s. Deepak Steel & Power Ltd.

For the Petitioner: Mr. L. Pangari, Advocate for NESCO.

For the Respondents: Mr. A.C. Mallick, Director (Comm), GRIDCO, Mr. N.R. Mandhata, GM(R&T), OPTCL, Mr. S.C. Mohanty, Law Officer, Deptt. of Energy, Govt. of Oriss and Sh S K Sahoo, Depak Steel & Power Ltd.

Date of Hearing: 26.10.2009

Date of Order: 02.12.2009

ORDER

In the instant case, NESCO - the distribution licensee has filed a petition for purchase of surplus power from the CGP of M/s. Deepak Steel & Power Ltd. (DSPL) situated at Village Topadhi, Guali, in the district of Keonjhar.

2. The petitioner – NESCO in its petition has submitted as under:
- M/s. Deepak Steel & Power Ltd. (DSPL) has a Captive Generating Plant (CGP) of capacity 10 MW within the licensed area of NESCO. The DSPL consumes a part of the power for its captive requirement and had approached NESCO expressing its desire to sell around 1 MW of surplus power to NESCO from September'09 to December'09 and 2 MW from January'2010 after commissioning of 2nd Captive Generating Plant of 20 MW,

at a competitive rate of Rs.1.27/kwh. NESCO intends to purchase the said surplus power from DSPL. It will help to meet a part of its area demand, and in turn, will relieve the state grid and GRIDCO, the bulk supplier to the extent of power injected by DSPL in a power shortage scenario. Accordingly NESCO has made an agreement with M/s. DSPL on 09.09.2009 for purchase of 1 MW of power for the period from 09.09.2009 to 31.12.2009 and 2 MW from 1/1/2010 to 31.03.2010 at a mutually agreed price of Rs.1.27/kwh. The period of energy sale may be extended as per mutual agreement between the parties. The delivery point of such power shall be at the interface point at the 33/11 KV S/S of DSPL where DSPL is connected with the 33 KV system of NESCO at Topady. The transmission losses, say a nominal value of 2% shall be accounted for while computing the monthly energy bill by DSPL. . Further, such type of arrangement for sale of surplus power by a CGP to the DISCOMs is an integral part of the policy provisions and guidelines, covered under National Electricity Policy and National Tariff Policy.

3. NESCO has further submitted that the following would be the advantages on the said purchase of power from M/s. DSPL.
 - i) The agreed rate of Rs.1.27/kWh is less than the bulk supply purchase price approved by the Commission for NESCO for the year 2009-10 i.e. Rs.1.30/kWh excluding transmission charges of 20.5 paise/unit and SLDC charges 0.5 paise/unit approximately.
 - ii) An OPTCL transmission charge of 20.5 paise/unit is saved to NESCO for the quantum of power supplied by M/s. DSPL to NESCO.
 - iii) In addition to the above, there will be saving in EHT transmission loss on the quantum of power purchased and saving in drawal of power from state power pool.
 - iv) If GRIDCO purchases same quantum of additional power for NESCO with the purchase cost of Rs.3.00/Rs.3.10 per KWh and supply the same to NESCO at Rs.1.30 per KWh, there will be gap of Rs.1.70/Rs.1.80 per KWh. On the other hand if NESCO purchases the said power, it would have an advantage of saving of 23.50 paise per KWh (3 paise per energy charges and 20.5 paise towards transmission charges) and GRIDCO would not be required to incur a loss of Rs.1.70/Rs.1.80 paise per KWh.
4. Regarding the payment mechanism by NESCO to M/s. DSPL, NESCO has stated that this would be as per the order of the Commission dtd.29.05.2009 and 14.08.2009 in Case No.63/09 and Case No.82/09 respectively WESCO is allowed to purchase surplus power

from M/s. Aryan Ispat and Power Pvt. Ltd. and M/s. Viraj Steel & Energy Ltd. and Escrow has been relaxed for payment of monthly energy bill to them. The instant case is a similar type of transaction and presently NESCO is meeting its Bulk Supply bills of GRIDCO and transmission charges bills of OPTCL through an Escrow mechanism. Hence on similar line, escrow may also be relaxed for payment of monthly bills of M/s.DSPL by NESCO from Escrow Account

5. Accordingly, NESCO has made the following prayer:
 - (i) To allow NESCO to purchase upto 1 MW surplus power available from CGP of M/s.DSPL from Sept 2009 to Dec 2009 and 2 MW from Jan 2010 and allow the cost as a pass through in the Revenue Requirement of NESCO in FY 2010.
 - (ii) To relax Escrow and allow NESCO to make payment of monthly bill raised by M/s. DSPL from Escrow Account.
 - (iii) Issue direction to SLDC to facilitate such process.
6. The State Govt. in their counter have submitted the following:
 - (i) GRIDCO has been notified as the “State Designated Entity” vide Government Resolution dated 18.8.2006 for execution of Power Purchase Agreements with the developers generating energy like hydro power, wind power, power from agriculture waste etc. along with thermal power. The said Resolution of the State Government supports a Single Buyer Model approved by the Commission in their tariff orders issued from time to time. GRIDCO is, therefore, mandated by the Government and OERC to procure power from all sources including CGPs to meet the demand of the State.
 - (ii) It is worthwhile to mention that while the functioning of the DISCOM leaves much to be achieved and they are unable to pay adequate attention to the vital aspects of their core business of distribution like reduction of the T&D and AT&C losses, collection efficiency and consumer service, indulging in direct purchase of power against the policy of the State is highly objectionable and not intended to serve the public interest.
 - (iii) The Commission is aware of the fact that GRIDCO has to procure costly power from various sources to tide over the power crises prevailing from mid June 2009 till the onset of monsoon and in that process has incurred huge losses because the said costly power has been supplied to the DISCOMs at much lower rate fixed by the Commission in the tariff order. The cheaper power going to be purchased by NESCO should be made available to GRIDCO in accordance with the policy of

the Government. The underlying intention of the Government in the Resolution dt.18.8.2006 is that GRIDCO will purchase both costly and cheap power, so that loss accrued on purchase of costly power can be compensated by purchase of cheap power.

- (iv) The confederation of CGPs has always demanded to increase the rate per KWH generated by the CGPs. considering the same; the Commission had revised the rate during February, 2009. The circumstance under which this particular CGP is willing to supply power to NESCO at less than half the rate fixed by the Commission appears to be contradictory to the decision of the Commission. It also appears to be an unholy deal between NESCO and M/s. DSPL.
 - (v) In case the price quoted by M/s. DSPL to sell power to NESCO is accepted by the Commission, the interim order dated 28.02.2009 of the Commission effective till 30.6.2009 may have to be reviewed and a uniform rate has to be fixed after hearing all the parties for sale of surplus power in the State and the cost should be at par with what has now been offered by M/s. DSPL to NESCO.
 - (vi) The application of NESCO for purchase of power from M/s. DSPL is against Govt. policy, the interest of the consumers and runs contrary to the price fixed by the Commission after due deliberation.
 - (vii) If NESCO is allowed to procure power from M/s. DSPL it will open a floodgate for others to follow suit which will ultimately be detrimental to the interest of GRIDCO and to the interest of the State.
 - (viii) The application of NESCO is devoid of any merit and liable to be dismissed and M/s. DSPL may be directed to sell its entire surplus power to GRIDCO as per the policy of the State Govt. issued vide resolutions stated above.
7. GRIDCO has not filed any written submission in this case. However, the oral submission of GRIDCO during the hearing is almost similar to that of the State Govt. The additional oral submissions of GRIDCO which have not been covered under the submissions of the State Govt. are as follows:
- (i) In the Single Buyer Model prevailing in the State of Orissa, GRIDCO is the State Designated Agency to procure all forms of power from different generators and supply it to the DISCOMs. Accordingly the power from Sunei Mini Hydel project is supplied at 11 KV feeder in NESCO area as a deemed sale to GRIDCO. Similarly some other CGPs are also selling their surplus power to GRIDCO by injecting the same at 33 KV voltage level i.e. at the door step of different

DISCOMs for which GRIDCO the deemed buyer is paying the CGPs at the rate of Rs.3.00/kWh as per the interim order of OERC dt.28.02.2009 w.e.f. 01.03.2009. Hence, the connectivity of the CGP of M/s. DSPL with OPTCL system is not a hinderance for purchase of power by GRIDCO from M/s DSPL.

- (ii) NESCO, while describing the arrangement to be advantageous, has only considered the saving in its power purchase cost, without looking at the whole system. M/s. DSPL's entering into an agreement with NESCO for supplying power at a lower rate of Rs.1.27/kWh does not appear to be rational. The agreement between NESCO & M/s. DSPL appears to disturb the present set up of arrangement to harness surplus power from CGPs by GRIDCO by giving a very wrong signal to the industries.
- (iii) In view of the proposed selling price of Rs.1.27/kWh in respect of the CGP of M/s DSPL, there is a need to review the CGP price fixed by the Commission for procurement of their surplus power.
- (iv) In the ARR of 2009-10, it has already been taken care of regarding the procurement of CGP beyond State requirement of 19719.38 MU for trading purpose. In case NESCO buys from the said CGP, which is not covered as a source from which power is to be procured, the requirement of NESCO to be drawn from GRIDCO should be reduced to that extent.

8. Accordingly, GRIDCO has prayed as under:

- (a) As GRIDCO is the sole procurer of power under the Single Buyer Model prevalent in the state of Orissa, NESCO may not be allowed to procure power directly from the CGP.
- (b) Thus, the PPA executed by M/s. DSPL with NESCO for sale of its surplus power may be rejected.
- (c) M/s. DSPL has agreed to sale its surplus power @ Rs.1.27/kWh for the State consumption as per the PPA with NESCO, thus it may be directed to sale its surplus power to GRIDCO at the same rate of Rs.1.27/kWh for State consumption.

9. OPTCL in its rejoinder, among other things, has submitted as under:

- (a) OPTCL has no information regarding existence of one CGP of M/s. DSPL and its capacity. The Agreement between NESCO & M/s. DSPL for energy transaction should have been executed with prior intimation to OPTCL. As per the agreement, 1 MW power shall be injected from the CGP of M/s. DSPL at the

interface point of 33/11 KV substation of M/s. DSPL where the industries connected with the 33 KV system of NESCO. NESCO may be directed to provide the single line diagram of its power distribution network and the proposed connection agreement with M/s. DSPL and also the system study report for such connectivity for further analysis and views. The system study report is mandatory in view of the stipulations in the CEA (Technical Standards for Connectivity to Grid) Regulation, 2007.

- (b) NESCO has submitted that it would save 20.5 p/u by purchasing power from M/s. DSPL as they are not liable to pay transmission charge to OPTCL for the quantum of power supplied by M/s. DSPL. OPTCL is of the view that in an integrated system, the surplus power injected by M/s. DSPL through NESCO's 33 KV network cannot be viewed in isolation of OPTCL's network and technically also not possible. In case the CGP of M/s. DSPL fails to deliver power (whatever may be the reason), an equal quantum of power has to be drawn through OPTCL's network to meet the demand of NESCO for which OPTCL needs to keep adequate capacity in reserve to transmit the additional power. As long as CGP of M/s. DSPL continues delivering power, OPTCL's reserve capacity remains stranded. Further, the transmission tariff is not being fixed on the basis of distance and direction of power flow but on postage stamp method. In an integrated complex network, the direction of power flow cannot be ascertained. Hence, NESCO is liable to pay the transmission charge of 20.5 p/u for the quantum of surplus energy purchased from M/s. DSPL.
 - (c) NESCO has cited to earlier orders of the Commission allowing them to purchase surplus power and prayed for consideration of the present transaction with M/s.DSPL on similar line for relaxation of Escrow for payment of monthly bills of M/s.DSPL. OPTCL has prayed the Commission to decide the present case on its merit considering the above views of the OPTCL. OPTCL has further submitted that if the Commission decides in favour of the petitioner, NESCO has to ensure that the connectivity with the CGP of M/s. DSPL does not cause any adverse impact on the transmission network of OPTCL.
 - (d) Accordingly, OPTCL has prayed that the prayer of the petitioner should not be granted by the Commission.
10. NESCO, the petitioner in its reply on the points raised by the OPTCL has submitted that only after approval of the Commission for procurement of power from M/s. DSPL, action

will be taken for synchronization of the captive plant with the existing 33 KV network observing all formalities based on the said CEA Regulation, 2007 for connectivity. As regard to the claim of OPTCL transmission charges @ 20.5 p/u, NESCO is not liable to pay any transmission charges as the power flow will be within NESCO network and Hon'ble Commission has not cited anything in the transmission tariff order regarding calculation of transmission charge basing on individual consumers consumption.

11. During the hearing of the case, the Commission wanted to know from M/s DSPL that normally in an agreement there is a win-win situation for both the parties. How, the present agreement is beneficial to M/s DSPL by selling energy @ Rs.1.27 / kWh to NESCO instead of selling this power to GRIDCO @ Rs. 3.00 /kWh. The representative of M/s DSPL could not give any satisfactory reply.
12. After going through the submissions made by the petitioner NESCO, the respondents namely, State Govt., GRIDCO, OPTCL and M/s. DSPL, the Commission observed that the following issues need to be addressed.
13. **ISSUES:**
 - (a) Whether purchase of power by NESCO at Rs.1.27/unit instead of purchasing power at a rate of Rs.1.30/unit from GRIDCO is violating the directives and policies of the State Govt. notifying GRIDCO as "State Designated Entity" vide Resolution No.7997 dt.17.08.2006 read with Resolution No.6603 dt.03.06.2005 of Energy Department?
 - (b) Whether direct purchase of power by the DISCOMs is highly objectionable and not intended to serve the public interest?
 - (c) Whether supply of power by M/s. DSPL to NESCO at Rs.1.27/unit instead of supply to GRIDCO at Rs.3.00/Rs.3.10 unit is going to affect the financial position of GRIDCO?
 - (d) Whether supply of power by M/s. DSPL to NESCO at Rs.1.27/unit instead of supplying power at Rs.3.00/Rs.3.10 to GRIDCO is contradictory to the decision of the Commission in their interim order dtd. 28.02.2009 and whether it is an unholy deal between NESCO and M/s. DSPL?
 - (e) Some other CGPs are selling their surplus power to GRIDCO by injecting the same at 33 KV voltage level i.e. at the door step of NESCO for which GRIDCO is paying the CGPs at the rate of Rs.3.00/Rs.3.10/kWh. In the instant case, whether the selling of surplus power by M/s. DSPL to NESCO at a lower rate of Rs.1.27/unit does not appear to be rational?

- (f) Whether the agreement dated 9/9/2009 between NESCO and M/s. DSPL appears to disturb the present set up of arrangement to harness surplus power from CGPs by GRIDCO by giving a very wrong signal to the industries?
 - (g) Whether OPTCL's revenue would be affected by supply of power by M/s.DSPL to NESCO in its 33 KV network?
14. We observe that the instant case is similar to that of the Case No. 82/2009 on purchase of surplus power by WESCO from the CGP of M/s Viraj Steel and Energy Ltd. The above mentioned broad issues are adequately discussed and analyzed in para 12 to 18 of our Order dtd. 14.08.2009 in Case No. 82/2009. We feel that in the instant case there is no need to further discuss these issues in details. As discussed and analyzed in the said order dated 14/08/2009 we observe in the present case that:-
- (i) The proposed sale of 1 MW by M/s. DSPL to NESCO without being routed through GRIDCO does not in anyway violate the policies of the State Govt.
 - (ii) Since, no additional work is involved to be undertaken by NESCO to purchase power from M/s DSPL, it is not objectionable and rather it is intended to serve the consumers better.
 - (iii) Purchase of power to the tune of 1 MW @Rs.1.27 from a CGP reduces GRIDCO's demand for additional power to that extent from the marginal sources. This saves GRIDCO's cost instead of harming the bulk supplier financially.
 - (iv) Supply of power by M/s. DSPL to NESCO at Rs.1.27/unit at its 33 kV line does not violate the decision of the Commission in their interim order dated 28.02.09 on CGP pricing since this is a bilaterally agreed transaction at a rate lower than fixed by the Commission.
 - (v) The Commission has no difficulty in accepting any commercial arrangement of GRIDCO with M/s.DSPL at a rate within the ceiling rate for purchase power at 33 KV. There is no such proposal at present before the Commission. Since the present transaction is within the ceiling rates fixed by the Commission, the same is not irrational.
 - (vi) The arrangement between M/s. DSPL and NESCO is not giving any wrong signal to the industries.
 - (vii) The Commission further observes that such power injection arrangement will not cause any prejudice to OPTCL technically, financially or otherwise.

15. The other submission of OPTCL includes that the agreement between NESCO & M/s.DSPL for energy transaction has been executed without prior intimation to OPTCL. The system study report has not been made. Though the single line diagram of the 33 KV network under Joda Grid s/s has been submitted by NESCO the system study report for such connectivity needs to be analyzed. The system study report is mandatory in view of the stipulations in the CEA (Technical Standards for Connectivity to Grid) Regulation, 2007. In this connection, NESCO has submitted that DSPL has provided adequate protection in its 33/11 KV sub-station at Rugudi s/s and due care will be taken to ensure that the connectivity with CGP of DSPL does not cause any adverse impact on the system network. Before materialization of the purchase, breakers will be installed at the 33 KV incoming at the 33/11 KV Rugudi s/s as well as consumer interface.
16. As per the national electricity policy clause 5.2.26 commercial arrangement between captive generators and distribution licensees should be encouraged. Keeping in view this as well as the present power shortage scenario in our State, we approve the prayer of the petitioner NESCO for temporary procurement of power of 1 MW from CGP of M/s. DSPL at Rs.1.27 per unit till Dec-2009 and thereafter 2 MW till 31st March 2010, since such procurement is technically feasible as there is an existing 33 kV connectivity of the said CGP with NESCO's network, which in turn is connected to 132/33 KV OPTCL grid s/s at Joda.
17. The supply of power by M/s. DSPL to NESCO @ Rs.1.27/kWh for consumption inside the state will be guided by the following terms and conditions.
 - (i) This arrangement of purchase of surplus power by NESCO from M/s.DSPL at 33 kV should be carried out without delay.
 - (ii) M/s. DSPL will raise the bill against NESCO for the amount of energy sold at Rs.1.27 paise/KWh. A copy of the bill raised on NESCO shall be simultaneously submitted to GRIDCO which on receipt of the same will authorize NESCO to make payment of the amount to M/s. DSPL by relaxing the escrow account to that extent.
 - (iii) The authorization by GRIDCO for payment by NESCO to M/s. DSPL from Escrow account will be made after full adjustment of the transmission charges of OPTCL, and current Bulk supply cost of power (current BSP) of GRIDCO to NESCO. Thereafter other payment will follow as per the priority indicated in para 9 of the letter No. Dir(T)-342/08/995 dated 06.5.2009 of OERC read with the

latest order dated 20.10.2009 in Case No.104/2009 (GRIDCO Vrs. WESCO, NESCO & SOUTHCO).

18. The present arrangement is done only to utilize the idle capacity of the CGP of M/s. DSPL in the present power shortage scenario in the state and would be reviewed as and when required, even before 31.3.2010.
19. Further, GRIDCO is directed to make the reasonable endeavour to explore the possibility of harnessing power from such type of idle capacities of the CGPs inside the State.
20. Accordingly, the matter is disposed of.

Sd/-
(B.K. Misra)
Member

Sd/-
(K. C. Badu)
Member

Sd/-
(B.K. Das)
Chairperson