

**ORISSA ELECTRICITY REGULATORY COMMISSION**  
**BIDYUT NIYAMAK BHAWAN**  
**UNIT – VIII, BHUBANESWAR – 751012**  
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**Present : Shri B K Das, Chairperson**  
**Shri K C Badu, Member**  
**Shri B K Mishra, Member**

**Case No. 34/2009**

GRIDCO Ltd.

... Petitioner

- Vrs -

M/s. PTC India Ltd.

Respondent (1)

M/s. Meenakshi Power Ltd.

... Respondent (2)

For the petitioner : Mr. A.C. Mallick, Director (Commercial), GRIDCO

For the respondents : Mr. R.P. Mahapatra, Authorised Representative of  
M/s. Meenakshi Power Ltd. (in short M/s.MPL)  
Nobody present on behalf of M/s. PTC India Ltd.

Date of Hearing : 28.04.2009

Date of Order : 09.06.2009

**ORDER**

1. An application made by GRIDCO before the Commission for approval of purchase of power from M/s. PTC India Ltd. in respect of the energy generated by Middle Kolab Small HEP (2 x 12.5 MW) and Lower Kolab Small HEP (3.4 MW) of M/s. MPL at a rate of 4 paise margin on the billable energy as per the terms and conditions to be decided by the Commission to meet the demand of the State.
2. The background of filing such application is given hereunder:
  - (a) M/s. MPL and its subsidiary M/s Whiteline Constructions Pvt. Ltd. had signed MoU on 23.12.1999 and 22.06.2000 with Govt. of Orissa for development of two small hydro power projects, namely, Middle Kolab with a capacity of 25 MW (2 x 12.5 MW) and Lower Kolab with the capacity of 12 MW (3 x 4 MW) respectively. After obtaining the clearance from STC both the developers approached GRIDCO for signing the PPA for sale of power. GRIDCO refused to purchase the power generated from these projects as it

was having excess availability of power at that time. On refusal by GRIDCO both M/s. MPL and M/s Whiteline Constructions Pvt. Ltd. signed MoU with M/s PTC India Ltd. for sale of entire power from these two projects after receiving permission from Govt. of Orissa. Thereafter, M/s Whiteline Constructions Pvt. Ltd. merged with M/s. MPL on 23.04.2003. Then M/s. MPL entered into a PPA with PTC India Ltd. on 03.11.2004 for sale of entire power generated from these two projects for a period of 30 years.

- (b) Govt. of Orissa, Dept. of Energy issued a resolution on 03.06.2005 for execution of Mini/Micro/Small Hydro Electric Projects by private developers. This resolution stipulates that “the developers, supplying power to any agency outside this State should supply 12% free power to a State designated utility. The tariff for all such Mini/Micro and Small Hydro Projects, which has not been Commissioned till 01.04.2004 should factor into such supply of 12% free power to the State designated agency.”
- (c) On 15.11.2007 GRIDCO came up before this Commission with a prayer that permission might be granted to it for purchase of power of these two small hydro projects Middle Kolab (2 x 12.5 MW) and Lower Kolab (3 x 4 MW) to be developed by M/s. MPL as per terms and conditions to be decided by the Commission. The prayer of GRIDCO was registered as Case No. 57/2007.
- (d) During hearing of Case No. 57/2007 on 07.01.2008 the counsel for PTC submitted that a PPA between M/s. MPL and PTC has already been existing and there was no need of a separate PPA with GRIDCO. However, PTC was willing to negotiate with GRIDCO for trading of power exclusively for the use of consumers of the State of Orissa. The Commission allowed the parties to discuss and settle the matter and submit the final outcome within two months.
- (e) Accordingly, GRIDCO and PTC had submitted their views and the case again came up before this Commission for hearing on 14.05.2008. Representative of GRIDCO had then submitted that in pursuance to the Commission’s directive both GRIDCO and PTC have agreed upon on the PTC’s trading margin of 4 Paise / kWh from GRIDCO for sale of power from Middle and Lower Kolab SHEP and Samal SHEP. GRIDCO had further prayed before the Commission to direct the developer to make available 12% free power to the State Designated Agency i.e. GRIDCO as per the resolution of the Govt. stated earlier. PTC India Ltd. per se is a trader and as such is entitled to get a margin of 4 paise/unit on 88 % of power of these two projects supplied to the State. Then PTC had submitted that the prayer of GRIDCO tantamount to annulment of agreement signed between PTC and M/s. MPL for sale of power. PTC had also submitted that the petition was misconceived and deserved to be dismissed as the petitioner (GRIDCO) being a third party and a non-beneficiary to the contract between PTC and M/s. MPL sought to interfere with the said contract. Hence it would be a different proceeding altogether for supplying 12% free power to the State Designated Agency i.e. GRIDCO.
- (f) During the hearing of Case No. 57/2007 on 14.05.2008 M/s. MPL had submitted that the negotiation between GRIDCO and PTC was behind their back and they would therefore like to submit the views on the documents / affidavit filed by PTC and GRIDCO.

- (g) In its order dtd. 21.05.2008 in Case No. 57/2007, the Commission agreed to the submission of the PTC that the prayer of GRIDCO for approval of PPA with MPL tantamount to annulment of agreement signed between PTC and MPL. In view of the subsisting PPA, the Commission did not admit the PPA between GRIDCO and MPL for purchase of power and the petition of GRIDCO was then dismissed.
  - (h) However, the Commission in the said order dtd. 21.05.2008 had suggested that GRIDCO may file a fresh PPA with PTC for purchase of power for supply to consumers of Orissa and M/s. MPL should be made a party where the issue of free power in accordance with Govt. Resolution shall be dealt with.
- 3. In accordance with the aforesaid suggestions of the Commission in Case No. 57/2007, GRIDCO has now filed this application before the Commission along with the Power Sale Agreement with PTC for purchase of power from PTC in respect of the said two small hydro stations @ 4 Paise margin on the billable energy to meet the demand of the State.
  - 4. In the hearing of this present Case on 28.04.2009 GRIDCO submitted that as per the Policy Resolution dtd. 03.06.2005 of the State Government on execution of Mini/Micro/Small HEPs by private developers, 12% free power was to be made available to the State designated agency. GRIDCO had also intimated PTC for payment of 4 Paise margin on 88% power supply as 12% of the power to be supplied free of cost to the State designated agency in case the developer is supplying power to any agency outside the State. But PTC is insisting for levy of 4 Paise margin on entire power supplied from the aforesaid two small HE projects.
  - 5. In the present application, GRIDCO has prayed the Commission to consider purchase of power from PTC from the said two nos. small hydro stations at a rate of 4 paise margin on the billable energy as per the terms and conditions to be decided by the Commission to meet the demand of the State.
  - 6. Shri R P Mohapatra, the representative on behalf of M/s. MPL submitted as follows:
    - (a) Nothing in this Power Sale Agreement between PTC and GRIDCO should supersede any provisions of the power purchase agreement between PTC and M/s. MPL, in case it is against the interest of M/s. MPL.
    - (b) All the power generated from Middle Kolab and Lower Kolab Small Hydro Projects of M/s. MPL is sourced by GRIDCO, the designated purchaser by the State Govt. through PTC. Therefore, supply of 12% free power to the home State is not applicable to the present transaction because the developer is not supplying power to any agency outside the State. The entire power generated is being used in the State only.
    - (c) For determination of tariff of these two small hydro projects, the filing before the OERC may be done by M/s. MPL and not by PTC India Ltd. The Commission may determine the tariff payable by GRIDCO after adding trading margin to the tariff so determined.

- (d) At present GRIDCO is paying PTC India Ltd. @ Rs.2.02 per KWh, who in turn pays M/s. MPL @ Rs.1.98 per KWh which is much less than the levelised cost as per PPA.
- (e) The Commission has not approved tariff of these two hydro projects of M/s. MPL and the rate indicated in the tariff orders for the year 2008-09 and 2009-10 are that included unilaterally in the ARR of GRIDCO without the consent of M/s. MPL.
- (f) He also submitted that provisional payment @ Rs.3.10 per KWh be made to M/s. MPL from 27.01.2009 which is applicable to CGPs having co-generation plants in accordance with the interim order dtd. 28.02.2009 of the Commission in Case No. 06/2009 to 20/2009. This provisional tariff may continue upto 30.06.2009 or till the tariff for M/s. MPL is determined by the Commission.

**Commission's Observations:**

- 7. The Commission observed that the developer M/s. MPL has already executed a formal PPA with M/s PTC India Ltd. on 30.11.2004 for a period of 30 years with the latest amendment on 07.02.2008.
- 8. Further, from the Power Sale Agreement (Annexure-A) between GRIDCO and PTC dtd.19.12.2008 it is observed that the tariff payable by GRIDCO to PTC shall be as determined in the PPA between M/s.MPL and M/s PTC India Ltd. or as determined by the Commission plus PTC's margin of 4 Paise/Kwh.
- 9. The Commission is in the process of finalizing the policy guidelines for determination of the tariff for renewable sources of energy including the Micro/Mini/Small Hydro Projects. Since the detailed calculations to arrive at a particular definite tariff for MPL power have not been furnished, M/s GRIDCO is directed to submit a concrete tariff proposal of these two projects in the prescribed formats as per the new CERC Tariff Regulations, 2009 for necessary consideration of the Commission. However, in the interim period from date of this order i.e. 21.05.2009, the Commission approves a provisional rate of Rs.3.00 per unit which GRIDCO shall pay to M/s PTC India Ltd. M/s PTC India Ltd. in turn will keep 4 paise per KWh as its margin and pay the balance Rs.2.96 per Kwh to M/s MPL in respect of purchase of power from its two small hydro projects. This rate shall be reviewed by the Commission after 30.06.2009 on receipt of relevant cost details of MPL power from GRIDCO. Further, M/s. MPL should declare the date of commercial operation (COD) of their two small hydro projects Middle Kolab and Lower Kolab in order to arrive at the project cost for determination of tariff. Any revenue earned by M/s MPL for such sale of infirm power, before commercial operation shall go as reduction of capital cost for tariff purpose, after adjusting reasonable O&M cost.
- 10. The matter is accordingly disposed of.

**Sd/  
(B.K. MISRA)  
MEMBER**

**Sd/  
(K.C. BADU)  
MEMBER**

**Sd/  
(B.K. DAS)  
CHAIRPERSON**