

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.59/2009

GRIDCO
- Vrs. -
CCPPO

.... **Petitioner**
.... **Respondent**

**In the matter of: Review of Interim Order of OERC
dated 28.02.2009 in Case No.6 of 2009.**

Date of Hearing: 07.05.2009

Date of Order: 27.06.2009

ORDER

Mr. A.C. Mallick, Director (Commercial), GRIDCO and Mr. Sanjeev Das, Secretary, CCPPO are present.

2. It is a case involving the interim order dated 28.02.209 of the Commission relating to pricing of C.G.P power to be procured by GRIDCO. The petitioner-GRIDCO requested the Commission to review the said order on certain issues pointed out by them.
3. Mr. A.K. Parija, Sr. Advocate appearing for NBVL, a member of CCPPO, submitted that M/s NBVL has been selling power generated by their CGP to Tata Power Ltd. through inter-state open access after due approval of the State Govt. Consequent upon the CGP power pricing order dated 28.02.2009 issued by this Commission, they have been selling their surplus power of about 20 MW to GRIDCO after meeting their open access obligation. Counsel for NBVL further submitted that GRIDCO has denied them the price which Commission has approved for CGP power in the said order w.e.f 01.3.2009.

4. The respondent objector i.e. CCPPO have submitted before the Commission as follows :-
- (i) MOU/Agreement between IMFA/NALCO with GRIDCO be scrapped and Hon'ble Commission may kindly direct licensee to do so accordingly.
 - (ii) NAv Bharat Ventures Limited may be allowed to trade power as per their subsisting agreement with Tata Power.
 - (iii) SLDC operating charges be exempted for those CGPs who are not wheeling any power to their consuming industries located elsewhere within the State.
 - (iv) GRIDCO be directed to extend a higher rate or permit open access for a certain percentage beyond June once power situation improves.
 - (v) Pass such other order/orders as this Hon'ble Commission may deem fit and proper.
5. In responding to the objections of the CCPPO the representative of GRIDCO submitted that the interim order of the Commission dated 28.02.2009 was intended to maximize the drawl from CGPs to overcome the power shortage facing the state. Accordingly, the CGPs shall have to commit to inject their entire surplus power to the state grid at the rate approved by the Commission after 1st March, 2009. He requested the Commission to review the applicability of the said order on those CGPs/Co-generating plants having subsisting contracts/agreement with GRIDCO.
6. The prayer and submissions made by the GRIDCO may be summarized as under:
- (a) The Hon'ble Commission may consider the written submission filed by the petitioner for consideration of views of GRIDCO in the context of various objections raised during hearing and pass appropriate orders.
 - (b) The Hon'ble Commission may re-consider the various provisions agreed in the Subsisting Agreement of GRIDCO with CGPs like NALCO and IMFA and pass appropriate order.

- (c) That a rate for cost of emergency and back up power availed by the CGPs of NALCO & IMFA may be fixed by the Commission as they are the direct EHT consumers of GRIDCO.
- (d) The Hon'ble Commission may consider to approve the Payment Security Mechanism proposed by GRIDCO.
- (e) That the Hon'ble Commission may pass orders to make the rate applicable from 01.3.09 only to those CGPs who commit to make available their entire surplus to the grid for state consumption.
- (f) The graded rates allowed by GRIDCO to CGPs upto 01.3.09 as per the rates approved by its Board of Director to harness surplus power from CGPs may be concurred in by the Commission for those CGPs who are not supplying their total surplus capacity for consumption in the State, but trading a substantial portion of their surplus capacity to the outside of State.
- (g) Further, drawal of schedule power from HINDALCO and payments as per the graded rates as approved by the Board of Directors of GRIDCO, on the basis of firm power concept of GRIDCO which is accepted by the Commission in the interim order dtd.28.02.09 may also be considered for approval.
- (h) That the Commission may pass appropriate orders directing NBVL to sell all its surplus power to GRIDCO to meet the state demand.
- (i) That the Commission may direct CCPPO to inject/export maximum power to the State Grid as committed by them during the hearing on 25.01.09.
- (j) No other CGPs other than those mentioned in the Commissions order dated 28.02.2009, as cogeneration plant be allowed to sell at Rs.3.10 paise/kwh.

7. We have very carefully gone through various submissions made by GRIDCO as well as by the Secretary, CCPPO and Mr. A.K. Parija, Sr. Advocate who appeared on behalf of NBVL. The issues raised and addressed in the present order may be summarized as under.

- (i) Any injection to the grid by NALCO and IMFA shall be regulated under the provisions of the respective subsisting agreement.

- (ii) CGPs having subsisting agreement with GRIDCO are paying at a rate of three times the base rate of surplus power for supply of emergency and back up power by GRIDCO as per the subsisting agreement.
 - (iii) The Commission has not stipulated any such guidelines for payment security mechanism in the interim order dtd.28.02.09.
 - (iv) SLDC operating charges be exempted for those CGPs who are not wheeling any power to their consuming industries located elsewhere within the State.
 - (v) According to the GRIDCO's contention, NBVL should not be given Rs.3.00/unit as the company is not supplying its full surplus power to GRIDCO for state consumption and it is supplying to M/s Tata Power Ltd. (Power Trader) for consumption outside the State. It should sell all its surplus power to GRIDCO to meet the State Demand.
 - (vi) Only NINL, Aarti Steel and Tata Sponge Iron Ltd. are considered as co-generating units and as such other units which are generating power through waste heat process should not be given the rate of Rs.3.10/unit as applicable to NINL, Aarti Steel and Tata Sponge Iron Ltd.
 - (vii) The Commission has approved the rate of procurement by GRIDCO from CGPs at the rate of Rs.3.00/3.10/kWh in order to maximize drawal from the CGPs to meet the state demand. Accordingly, the CGPs shall have to commit to inject all their surplus power to the state grid without seeking Open Access at the rate approved by the Commission for the period from 01.3.09 to 30.6.09. This however, is without prejudice to the existing arrangement with IMFA, NALCO and GRIDCO as agreed between them.
 - (viii) GRIDCO has submitted that its views has not been correctly reflected in Para 7(f), 7(r), 12 of the order dated 28.02.2009 of the Commission and these paras should be modified and reflected accordingly.
8. We have gone through the submissions made by the petitioner GRIDCO, the respondent NBVL and representatives of CCPPO. Commission in their interim order dt.28.2.09 have elaborately dealt with the background and the situation under which interim implementation plan operative from 1.3.2009 is to be acted upon in view of the peculiar situation prevailing in the State with

regards to availability of power arising out of hydrological failure. The Commission had issued CGP pricing order dated 28.2.2009 as an interim arrangement to tide over the power crisis faced by the state. The Commission has stated in the said order to review its operational aspect after 30th June, 2009. While doing so practical difficulties, if any, in implementing the said order will be automatically addressed. Though almost all the points raised by GRIDCO and the respondents find answer in the interim order dt.28.2.09, still then for the shake of clarity the Commission would like to answer and reiterate the reply in respect of the individual issues listed in **para 7**.

- (i) **Any injection to the grid by NALCO and IMFA shall be regulated under the provisions of the respective subsisting agreement.**

The MOU dated 15.11.1994 was entered between ICCL (now IMFA) and GRIDCO primarily for wheeling of power from the captive generating plants at Choudwar to the Ferro Alloys Complex at Theruvali. The erstwhile ICCL (now IMFA) had also guaranteed 10 MW supply to the erstwhile OSEB grid. This agreement was required since open access was then, not legitimately available, which is available now after enactment of Electricity Act, 2003. Similarly, NALCO had entered into an agreement with GRIDCO on 30.8.2004 which was effective from 1.9.2004 and is valid upto 31.8.2009. According to the said agreement vide para 1(VIII) after wheeling of power by GRIDCO to its plant at Damanjodi, out of the power injected by NALCO at Angul, NALCO shall sell all the available surplus power at Angul to GRIDCO. Hence the subsisting agreements with IMFA (erstwhile ICCL) and NALCO only guarantee a certain quantum of assured power to GRIDCO system owing to the deficit of power during that relevant point of time. Any surplus power injection to the system has to be priced as per the approved rate of OERC. IMFA and NALCO without fulfilling the guaranteed quantity of supply of power as per the subsisting agreement cannot sell power through open access or sell to any other party. But with respect to the price, the price mentioned in the MOU more than a decade back cannot be applicable at this stage with reference to the supply of guaranteed power as per the MOU. Therefore,

there cannot be any discrimination with regard to price between guaranteed power supply as per the said MOU and or the agreement between NALCO and GRIDCO with that of the firm quantum of power injected into the system. Therefore, any power injected into the system, which is termed as surplus shall be at a uniform tariff as per the directions of OERC in their interim order dated 28.2.09. Hence, the claim of GRIDCO that IMFA and NALCO should supply all their surplus power to it at the rate mentioned in the MOU more than one decade ago is not tenable. The MOU cannot be held to be in perpetuity and it has lost its importance in the flux of time. In fact, the Commission has made its intention very clear in their order dated 28.2.09 vide para 16 (vi) read with para 16(iii) and 16(iv). The Commission had clearly stated that the rate of RS.3/3.10 per KWH supplied by Captive Generating Plants/Co-generating plants including the plants generating power utilizing waste heat process will be without any prejudice to the outcome of any dispute/arbitration pending in any court of law or any authority and will have no retrospective effect whatsoever.

The Commission would like to clarify that the agreement of GRIDCO with IMFA and NALCO is valid only to the extent of supplying guaranteed surplus power but not the rate fixed more than one decade back. The rate fixed by Commission in their interim order dated 28.2.09 is applicable to the supply of surplus power by IMFA and NALCO to GRIDCO and this supply of surplus power is inclusive of the guaranteed quantum of power agreed to in the MOU. If the available surplus power is less than the quantum of power entered in the MOU that entire surplus power is to be supplied to GRIDCO @Rs.3/3.10 per KWH. If the availability of surplus power is more than the guaranteed quantity as per the order 28.2.09 the entire surplus power will be supplied and will qualify for the rate indicated by the Commission. **In other words any quantity of surplus power for GRIDCO by IMFA and NALCO irrespective of the guaranteed quantity shall qualify w.e.f. 1.3.09, the rate mentioned in para 16 of the order dated 28.2.2009.** Since there has been sea-change in

the cost of various inputs, the existing MOUs may be revised now as may be mutually agreed upon with reference to the quantum of supply, other conditions; the determination of rate of power however shall be as per OERC order.

- (ii) **CGPs having subsisting agreement with GRIDCO are paying at a rate of three times the base rate of surplus power for supply of emergency and back up power by GRIDCO as per the subsisting agreement.**

As per the subsisting agreement, the emergency power supply to IMFA and NALCO will be at three times of the rate at which power supply is being made by IMFA and NALCO to GRIDCO. In this connection the Commission has not made any specific order in their order dated 28.2.09. The Commission directs that rate applicable to the supply of power by distribution companies to other CGPs would be applicable to the captive generating industries like IMFA and NALCO who draw power from their respective distribution companies at the time of emergency. They cannot pay a rate higher than the rate applicable to the relevant captive generating industries/consumers as per the tariff order dated 20.3.2009 of the Commission in case No.66, 67, 68 and 69 of 2008 relating to ARR filing by DISCOMs. In this connection para 447 is relevant which is extracted below for reference.

“447 Rate of Emergency power supply to CGPs/Generating stations

Industries owning CGPs/Generating Stations have to enter into an agreement with the concerned DISCOMs subject to technical feasibility and availability of required quantum of power/energy in the system as per the provision under the OERC Distribution (Condition of Supply) Code, 2004. For them, (i) a flat rate of 420 paise/kwh at EHT and 440 paise/kwh at HT would apply (ii) while for others who draw only 25% of capacity of highest unit would pay @ 380 paise/kwh and 400 paise/kwh at EHT and HT respectively. If on verification it is established that SMD of DISCOMs has increased because of overdrawl by the CGP, Demand Charge @ Rs.200/KVA shall be payable over the excess of contract demand for that

industry in addition to the energy charges in case of (i) and (ii) above”.
This being the position the question of charging three times the rate at which IMFA, NALCO etc., supply surplus power to GRIDCO as per interim order 28.2.2009 does not arise.

- (iii) **The Commission has not stipulated any such guidelines for payment security mechanism in the interim order dtd.28.02.09.**

At present GRIDCO is paying 2% rebate to DISCOMs if the payment of power purchase cost is made by cash within 2 working days (except holidays under N.I. Act) of presentation of bill by GRIDCO. If the payments are made by a mode other than through a letter of credit but within a period of one month of presentation of bills, a rebate of 1% is allowed. In case of payment of bills by the licensees is delayed beyond a period of 1 month from the date of billing, a late payment surcharge @ 1.25% per month shall be levied by GRIDCO to distribution licensee.

The CGPs have submitted that the CCPPO have committed the entire surplus power to GRIDCO and the majority of operating large CGPs operates on coal as a primary fuel with oil support. Coal is procured under cash and carry system and in situation of deficit, coal is procured from open market at higher rate. Therefore, CCPPO have requested for payment to be made within 4 days of raising the bill with 2% rebate and 1% rebate for payment within 7 days, beyond 7th day penalty may be imposed because members shall be paying penal interest for procurement of coal unless it is lifted within the stipulated time frame after allocation is made and full payment is made to MCL. A mirror image of payment of power should be matched with the procurement of coal.

Deviating from the security payment mechanism adopted for payment of the power purchase cost by the DISCOMs to GRIDCO, GRIDCO has submitted that the CGP would get rebate of 2% of the bill amount if it is paid within 10 days of presentation of bill by CGPs. Rebate of 1% shall be allowed for payment made from 11th days to 30/31 days and if payment is

delayed beyond a period of 60 days from the date of presentation of bill a, penalty @ 1.25% for the unpaid billed amount shall be levied by CCPPO on GRIDCO from 61 days.

Considering the constraints under which both GRIDCO and CCPPO are operating Commission directs that a rebate of 2% would be allowed to GRIDCO by CCPPOs if the payment is made within four working days (except holidays under NI Act) of raising bills and 1% rebate would be allowed if the payment is made within a period of 30 days (counted from the date of presentation of bill). In case payment of bills by the GRIDCO is delayed beyond a period of 30days from the date of presentation of bill, a late payment surcharge @ 1.25% per month shall be levied by CGPs on the unpaid amount from the date of presentation of bills.

- (iv) SLDC operating charges be exempted for those CGPs who are not wheeling any power to their consuming industries located elsewhere within the State.**

The Commission in their order dated 20.3.09 in case No.65 of 2008 (approval of annual fee and operating charges for SLDC for financial year 2009-10) in para 195 stipulated that SLDC should bill the Operating Charges per MW in terms of total contracted capacity of 4025.00 MW for FY 2009-10 and shall apportion the contracted capacity of each LTOA for FY2009-10 in proportion to their contribution to the recorded highest peak demand of the previous year 2008-09.

In this context it may be clarified here that in para 190 of the aforesaid order, Commission calculated the approved Operating Charges at Rs.2000.00 per MW per month as monthly Operating Charges to be levied by SLDC for the year 2009-10 on DISCOMs and other LTOA customers based on approved Operating Expenses of Rs.9.66 crore and total generation capacity of 4025.5 MW i.e

$$\begin{aligned}
 \text{Operating charges (Rs./MW/PM)} &= \frac{\text{Annual Operating Expenses}}{\text{Total Generation Capacity (MW)} \times 12} \\
 &= \frac{96600000}{4025.5 \times 12} \\
 &= 1999.75 \text{ or say } \mathbf{2000}
 \end{aligned}$$

The representatives of CCPPO have submitted that since some of these industries are not actually consuming, as power is being committed to GRIDCO, SLDC charges should not be made applicable for those CGPs. It can only be made applicable in cases where there is actual consumption.

After careful examination of facts and submissions, we direct that if any CGP is not carrying any power for its own consumption in their industry inside the State or not availing open access for transmitting power for outside the State consumption, no SLDC charge shall be payable by such captive power industries.

- (v) **According to the GRIDCO's contention, NBVL should not be given Rs.3.00/unit as the company is not supplying its entire surplus power to GRIDCO for state consumption. It should sell all its surplus power to GRIDCO to meet the State demand.**

GRIDCO has submitted that Commission may appropriately order directing Navbharat Ventures Limited (NBVL) to sell all its surplus power to GRIDCO to meet the State demand. Further, GRIDCO has also submitted that since the entire surplus power is not being injected into the State grid it should not get Rs.3.00/unit and it should get graded rate approved by the Board of Directors of GRIDCO i.e Rs.2.02 /kwh if supply is upto 8 MU per month and Rs.2.30/kwh if supply is more than 8 MU and less than 32 MU and Rs.2.50/kwh if supply is more than 32 MU and above per month. NBVL have stated that it had an agreement to trade power outside the State while it has committed to supply 20 MW to GRIDCO. Since NBVL has committed 20 MW to the system as a second charge, after the trading quantum, they should also get Rs.3.00/kwh or else it becomes discriminatory. It is further clarified that the interstate trading

quantum under open access is a fixed quantum of 45 MW, and any injection above 45 MW is being absorbed by Orissa System. For example if the injection from M/s NBVL is 70 MW (after accounting normative transmission loss of STU), then 45 MW is accounted for open access and balance 25 MW is taken as supply to GRIDCO. Similarly, if the NBVL injection reduced due to any reason say only 60 MW (after accounting transmission loss of STU) then 45 MW is considered as open access and 15 MW is taken as supply to GRIDCO as against committed quantity of 20 MW. However, M/s NBVL endeavors to supply its committed quantity (20 MW) or more at all times to GRIDCO. GRIDCO absorbs the power and hence they should get Rs.3.00/kwh.

Commission have carefully weighed the submissions of GRIDCO and the arguments put forth by NBVL and we are inclined to accept the submissions made by NBVL. As stated by NBVL after meeting the demand supply as per the prior agreements with Tata Power, only the balance is to be supplied to GRIDCO in the manner indicated in its submission by NBVL. The Commission in its Interim Order dt.28.2.09 have categorically stated in sub-para (ii)(iv)(v) and (vi) that supply of surplus power by CGPs and Co-generating plants will be paid Rs.3.00/kwh and Rs.3.10/kwh in respect of co-generating plants or plants utilizing waste heat process with effect from 1.3.2009. In para 16(vi) it categorically stated that this rate will be applicable w.e.f.1.3.09 to those CGPs/Co-generating plants having subsisting contracts/agreements with GRIDCO. This will be without any prejudice to the outcome of any dispute/arbitration pending in any court of law or any authority and will have no retrospective effect whatsoever. Hence, NBVL is entitled to a payment of Rs.3.00/kwh in respect of the power supply to GRIDCO after meeting its committed supply to M/s Tata Power.

- (vi) **Only NINL, Aarti Steel and Tata Sponge Iron Ltd. are considered as co-generating units and as such other units which are generating power through waste heat process should not be given the rate of**

Rs.3.10/unit as applicable to NINL, Aarti Steel and Tata Sponge Iron Ltd.

Commission in para 16(iii) have stated as under:-

“For supply of power by the CGPs/Co-generating plants to GRIDCO for sale to DISTCOs meant for consumption by the consumers in the State, the procurement price of firm power from the CGPs as indicated at (ii) above will be Rs.3.00/kwh w.e.f.1.3.09. However, to encourage co-generating as is mandated under the E.A, 2003 the power generated by co-generation plants e.g. sponge iron plants such as NINL, Arati Steel, Tata Sponge etc., as a co-generating plant may be given an incentive and shall be paid @Rs.3.10 per/kwh with effect from 1.3.09. The procurement price of Rs.3.00/kwh for all power meant for sale to DISCOMs is considered just and reasonable keeping in view the current cost of Rs.2.76/kwh of the highest cost of generation from a TPS in the Eastern Region. A premium of about 10% on this price is considered appropriate as a stimulus to the harnessing of bottled up capacity with the CGPs”.

From the above order it is seen that while mentioning co-generating plants Commission had given some examples mentioning sponge iron plants such as NINL, Arati Steel, Tata sponge etc., which may be given an incentive and shall be paid @Rs.3.10 per/kwh with effect from 1.3.09. While mentioning the name NINL, Arati Steel, Tata sponge, etc., Commission has not limited the higher tariff of Rs.3.10/kwh to those industries only. It has clearly mentioned that any plant using waste heat like NINL, Arati Steel, Tata sponge etc. may be given an incentive and shall be paid @Rs.3.10 per/kwh with effect from 1.3.09. Hence, all such industries generating power by waste heat process meets the qualifying requirement for a co-generation facility as prescribed by the Ministry of Power, GoI Resolution No.A-40/95-IPC-I dated 06.11.1996 and are entitled to a price of Rs.3.10/Kwh in respect of supply of power to GRIDCO for domestic consumption and it is not limited only to those industries mentioned in the Interim Order dated 28.2.2009.

- (vii) **The Commission has approved the rate of procurement by GRIDCO from CGPs at the rate of Rs.3.00/3.10/kWh in order to maximize drawal from the CGPs to meet the state demand. Accordingly, the CGPs shall have to commit to inject all their surplus power to the state grid without seeking Open Access at the rate approved by the Hon'ble Commission for the period from 01.3.09 to 30.6.09. This however, is without prejudice to the existing arrangement with IMFA, NALCO and GRIDCO as agreed between them.**

These queries and submissions do not require any further reply in view of the categorical mention by the Commission vide para 16(vi) of its interim order dated 28.2.09 where the Commission has stated that the procurement price of Rs.3/kwh and Rs.3.10/kwh in respect of co-generating plants meant for sell to DISCOMs and Rs.3.50/kh for procurement of surplus power meant for trading as applicable from 1.3.09 to those CGPs/Co-generating plants having subsisting contracts/ agreements with GRIDCO. This will be without any prejudice to the outcome of any dispute/arbitration pending in any court or any authority and will have no retrospective effect whatsoever.

It clearly shows that any power supply to GRIDCO as per the subsisting agreement or the additional quantum over and above agreed amount as per the said agreement will qualify the rate of Rs.3.00/kwh or Rs.3.10/kwh as the case may be w.e.f.1.3.2009. It has not been mentioned that notwithstanding any agreement with any agency for supply of power by those CGPs, they will supply the entire surplus power to GRIDCO only by disregarding the existing contract for supply of power through open access or otherwise. After meeting the committed amount to the agency as per the MOU/Agreement, it is advisable on their part to supply their balance surplus power to GRIDCO because of the deficiency situation faced by the State at present.

- (viii) Regarding the modification of para 7(f)(r) and 12 as requested by GRIDCO, Commission does not feel it necessary to make such modifications in the sentences or words as the intention of the

Commission has been made very clear in para 15 and 16 of their order dated 28.02.2009.

- (ix) Regarding the rate at which purchase of power has been made by GRIDCO upto 28.2.2009, this will be duly considered at the time of taking truing up exercise. It is not necessary to pass any order regarding the rate of purchase of power up to 28.2.2009 from the CGP/Co-generating Plants or the units using Waste Heat process because the rate of supply of surplus power by the CGPs/co-generating plants has been fixed prospectively from 1.3.2009.
9. Most of the important issues raised by the petitioner, GRIDCO and the Respondents have been clarified in para 8 above.

Accordingly, the case is disposed of.

Sd/-
(B.K. Misra)
Member

Sd/-
(K.C.Badu)
Member

Sd/-
(B.K. Das)
Chairperson