

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.63/2009

M/s. WESCO	Petitioner
Vrs.		
M/s. GRIDCO & Others	Respondents

In the matter of: Purchase of Surplus Power from AIPPL by WESCO.

Date of Hearing: 22.05.2009 Date of Order: ____ .05.2009

ORDER

Mr. L. Pangari, Advocate for petitioner, Mr. L.N. Mohapatra, Advocate for OPTCL, Mr. P.K. Pradhan, CEO, WESCO, Mr. Laxmidhar Mohapatra, AGM, GRIDCO and Mr. B. Mishra, DGM, SLDC are present. The filings made by the parties are taken into record.

2. This is a case involving power purchase agreement between WESCO and M/s. Aryan Ispat and Power Pvt. Ltd. (M/s.AIPPL) for purchase of 10 MW of surplus power by WESCO directly from CGP of M/s.AIPPL having 18 MW installed capacity.
3. The representative of WESCO submitted that they have executed a PPA with M/s.AIPPL on 24.04.2009 for purchase of power of 10 MW at the rate of Rs.1.50 per KWh from 01.05.2009 to 30.06.2009 which may be extended as per mutual agreement between the parties. This power will be purchased at 33 KV interconnection point of WESCO with M/s.AIPPL. The present arrangement is beneficial for WESCO as bulk supply price at which WESCO purchases power from GRIDCO is Rs.1.54 per unit and WESCO has to bear transmission charge and SLDC charge over and above it.
4. *Further, the petitioner WESCO has stated that injection of 10 MW at 33 KV grid substation of WESCO would only lead to reducing 133/32 KV transformer load at Sambalpur grid substation (63 MVA) of OPTCL. Further, the proposed arrangement is only for a short period of less than 2 months. It is submitted by WESCO that, in the past M/s SMC, M/s Rath Steel and M/s Mahavir Ferro Alloys Ltd having about 18 MW CGP each were synchronized in 33 KV network of*

WESCO without any system studies except checking of protection system, since 10 MW injection being so insignificant compared to the overall quantum of the Orissa/Western Region Grid. WESCO submitted that during current summer season SLDC/OPTCL have imposed restrictions on WESCO's drawals particularly on the industrial consumers, such as Bhusan Steels, Vedanta Aluminum etc. who have been advised to draw 33 MW and 40 MW respectively against Contract Demand of 100 MW each. This reduces revenue receipt of WESCO since the subsidizing consumers (industrial) would give them less revenue as approved in the ARR of FY 2009-10. WESCO further submits that the Commission should give suitable orders to GRIDCO to make appropriate adjustment in the BST bills with respect of the power to be supplied by the AIPPL directly to WESCO at 33 KV interconnection point of WESCO with M/s AIPPL.

5. The representative of GRIDCO submitted that they have an existing PPA with M/s. AIPPL to purchase 5 MW of power at 132 KV voltage level for which necessary network connectivity by OPTCL is being arranged. As per notification of Govt. of Orissa dtd.17.08.2006 GRIDCO is the State Designated Entity for execution of PPA with developers generating energy like Hydro Power, Wind Power, Power from Agricultural waste etc. along with thermal power. Considering the above, the PPA between WESCO and M/s.AIPPL should not be allowed.
6. *Responding to the submissions made by WESCO as indicated in para 4, GRIDCO submitted as follows:-*
 - (i) *CGPs like M/s Mahavir Ferro Alloys Ltd. & M/s SMC Power Ltd are also selling their surplus power to GRIDCO by injecting the same at 33 KV voltage level that is at the door step of WESCO for which GRIDCO is paying the CGPs at the rate of Rs.3.00/KWH as per the Interim Order of OERC dated 28.2.09 w.e.f. 1.3.2009 where as selling the same to WESCO at a lower rate of Rs.1.54/KWH.*
 - (ii) *The CGP of M/s Aryan Ispat & Power Ltd is having installed capacity of 18 MW out of which 15 MW is committed for simultaneous sale to GRIDCO and WESCO as per the PPA executed with them respectively and such simultaneous power transaction may affect the industry in maintaining its CGP status.*
 - (iii) *The Power Purchase Agreement dated 29.4.09 executed by the petitioner with M/s Aryan Ispat & Power Ltd for procurement of surplus power is only for two months i.e. from 1.5.09 to 30.6.09 whereas the Power Purchase Agreement with GRIDCO is valid for one year from the date of synchronization of the CGP with OPTCL system.*
 - (iv) *The connectivity of the CGP of AIPPL is still under consideration by OPTCL and it will take some time for the CGP. For that matter the industry to be a part of the system may be possible after the period of agreement with WESCO.*

- (v) *The CGP have quoted the price of their surplus power to be Rs.4.50/kWh in their competitive bidding document submitted to GRIDCO on 15.1.09 which was filed before the Commission in Case No.8/2009 in the matter of Pricing of CGP power whereas as per the power purchase agreement dated 29.4.09 the CGP have agreed to sale power at Rs.1.50/kWh to WESCO which implies that the CGP is misleading the Hon'ble Commission as well as the affected parties.*
 - (vi) *It is submitted that the proposed modification in the payment security mechanism is subject to detail discussion on the matter between WESCO and GRIDCO.*
 - (vii) *It is submitted that the agreement dated 29.4.09 appears to disturb the present set up of arrangements to harness surplus power from CGPs by GRIDCO by giving a very wrong signal to the industries.*
 - (viii) *GRIDCO is the sole procurer of power under the Single Buyer Model prevalent in the State of Orissa and thus WESCO may not be allowed to procure power directly from the CGP.*
 - (ix) *The CGP of M/s AIPPL is not giving right information about the price of its surplus power to the procurers, the Respondents some hidden agenda behind such arrangement which may not be healthy under the prevailing procedures followed to harness surplus power from CGPs as per the OERC Interim Order. Thus, the Power Purchase Agreement dated 29.4.09 executed by CGP of M/s AIPPL with WESCO may be rejected.*
 - (x) *M/s AIPPL has agreed to sale its surplus power @Rs.1.50/kWh for the State consumption as per the PPA with WESO, thus they may be directed to sale its surplus power to GRIDCO at the same rate of Rs.1.50/kWh for State consumption.*
7. The representative of OPTCL submitted that if the present PPA between WESCO and M/s.AIPPL is allowed then revenue receipt of OPTCL would be affected as it would lessen the drawal by WESCO through OPTCL system. The Commission has approved a particular drawal for WESCO while approving the ARR of OPTCL and any deviation will affect revenue of OPTCL. They further submitted that the system of OPTCL will be stranded or under utilized due to less drawal by WESCO consequent upon drawal from M/s. AIPPL. Hence, prayer of the petitioner WESCO should not be allowed at this juncture.
8. *With regard to loss on transmission charges as submitted by OPTCL, WESCO has submitted that as per the existing tariff order for 2009-10, WESCO is liable to pay transmission charges to OPTCL for the energy drawn by it from the grid @ 20.5 paise/Kwh. In case there is drawal over and above the approved quantum, OPTCL is entitled for additional amount for the extra energy drawn and vise versa. Thus, OPTCL cannot claim transmission charges for this energy to be utilized by WESCO when WESCO network is only utilized and in no way OPTCL network is utilized. It has pleaded by WESCO that during current summer season Orissa, as a whole, is facing power shortages and this 10 MW injection shall not*

lead to reduction in the aggregate power and therefore the question of under recoveries does not arise.

9. Further, WESCO has submitted that the sale of surplus power by AIPPL to WESCO is well covered under the policy provisions and guidelines which are covered under National Electricity Policy vide clause 5.2.26, National Tariff Policy vide clause 5.1 and clause 6.3 and the guidelines of OERC vide para 12.13 and 12.14 of their order dt.14.3.2008 as well as Clause 16(iii) of the interim order dt.28.2.09. The relevant portion is extracted below for ready reference.

(a) National Electricity Policy

Clause 5.2.26 stipulates that, “A large number of captive and standby generating stations in India have surplus capacity that could be supplied to grid continuously or during certain time period. These plants offer a sizeable and potentially competitive capacity that could be harnessed for meeting demand for power. Under the Act captive generators have access to licensees and would get access to consumers who are allowed Open Access. Grid interconnection for captive generators shall be facilitated as per Section 30 of the Act. This should be done on priority basis to enable captive generation to become available as distributed generation along the grid. Towards this end non-conventional energy sources including co-generation could also play a role. **Appropriate commercial arrangements would need to be instituted between licensees and the captive generators for harnessing of spare capacity energy from captive power plants. The appropriate Regulatory Commission shall exercise regulatory oversight on such commercial arrangement between captive generators and licensees and determine tariff when a licensee is the off-taker of power from captive plant.**”

(b) National Tariff Policy

- (i) Clause 5.1 stipulates that, “All future requirements of power should be procured competitively by distribution licensees except in case of expansion of existing projects or where there is a State controlled /owned company as an identified developer and where regulators will need to resort to tariff determination based on norms provided that expansion of generating capacity by private developers for this purpose would be restricted to one time addition of not more than 50% of the existing capacity.”
- (ii) Clause 6.3 stipulates that “**Harnessing captive generation:** Captive generation is an important means to making competitive power available. Appropriate commission should create an enabling environment that encourages captive power plants to be connected to the grid. Such captive plants could inject surplus power into the grid subject to the same regulation as applicable to generating companies. Firm supplies may be bought from captive plants by distribution licensees using the guidelines issued by the Central Government under section 63 of the Act. The price should be differentiated for peak and off-peak supply and the tariff should include variable cost of generation at actual levels and reasonable compensation for capacity charges. Alternatively a frequency based real time mechanism can be used and the captive generators can be allowed to

inject into the grid under the ABT mechanism. Wheeling charges and other terms and condition for implementation should be determined in advance by the respective State Commission, duly ensuring that the charges are reasonable and fair. Grid connected captive plants should also supply power to non-captive users connected to the grid through available transmission facilities based on negotiated tariff. Such sales would be subject to relevant regulations for Open Access.”

(c)OERC Guidelines

(i) Para 12.13 stipulates that “In a scenario of competitive bidding there is possibility of formation of a cartel of few large CGP owners artificially boosting the price of power. The impact of raising the cost of power purchase would be obviously felt at the consumer end. But the objective of the Act is to encourage competition which may lead to the growth of capacity addition and alternatively in reduction in price. That being, the objective, competitive bidding has to be enforced. But, at the same time the utility are at liberty of either accepting or refusing that power keeping in view the affordability of various consumer groups. In view of that, it may be appropriate to fix a margin at which the utilities shall be purchasing power which in any case should not be less than the cost of generation, it may be accepted for consumption by the state utilities. Prices higher than this if considered appropriate by the purchasing utility may be absorbed for the purpose of trading. Cost of generation can be certified by reputed firm of CAs as may be appointed and approved by the OERC. But subsisting contracts have to be dealt according to the terms of their agreements who are not covered under the ambits of this order.

(ii) Para 12.14 stipulates that “What is important to note is that the CGPs who would be willing to participate in the bid and sale power to the utility have the advantage of saving in transmission loss as well as from the payment of the transmission charges. These added advantage may encourage CGPs to sell their power for consumption within the State. At 07-08 level, it may add to benefit of around 34 to 35 p/unit on account of transmission charges and transmission loss due to wheeling.”

(iii) Clause 16(iii) of Interim order dated 28.2.09 stipulates that, “For supply of power by the CGPs/Co-generating plants to GRIDCO for sale to DISCTCOs 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 with effect from 1.3.2009. However, to encourage co-generation as is mandated under the Electricity Act, 2003 the power generated by co-gen. plants e.g. sponge iron plants such as NINL, Arati Steel, Tata Sponge, etc. may be given an incentive and shall be paid @Rs.3.10 per/KWh with effect from 1.3.2009. The procurement price of Rs.3.00/KWh for all power meant for sale to DSICOMs 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% (ten percent) on this price is considered appropriate as a stimulus to the harnessing of bottled up capacity with the CGPs.”

10. *Finally, the AIPPL has stated that presently WESCO is meeting its bulk supply bills of GRIDCO and transmission charges bills of OPTCL through an Escrow Mechanism, wherein all receipts from sale of energy to consumers by WESCO is escrowed. Escrow would need to be relaxed to the extent of monthly bills raised by AIPPL and WESCO allowed to retain such monthly bill amount out of total amount bill received from the consumers during the month towards power purchase bill of AIPPL, in order to ensure timely payment to AIPPL.*
11. *In this connection the learned advocate on behalf of WESCO has drawn the attention of the Commission to the judgement of the Hon'ble High Court of Bombay in Writ petition No.1205 of 2001 in Dabhol Power Company Vs. Maharashtra State Electricity Board & Others where in the Hon'ble High Court has held in its judgement dated 5th March, 2002 that the terms of a contract such as ESCROW and LC etc., are matters directly arising out of tariff issues and therefore this can also be regulated by Commission established under the Electricity Regulatory Commission Act 1998. He pleaded that the OERC is also exercising power akin to the power exercised by the Regulatory Commissions established under the Electricity Regulatory Commission's Act 1998.*
12. *Heard WESCO and GRIDCO and perused the record. After going through the submissions made and argument put forth by the petitioner WESCO and the Respondents GRIDCO, OPTCL, SLDC and M/s AIPPL, we would like to state that section 62(1)(a) of Electricity Act, 2003 envisages supply of energy by generating companies to a licensee. Hence, there is no legal infirmity for WESCO to enter into an agreement with M/s AIPPL which has a captive generating unit for supply its surplus power to distribution licensee WESCO. On the other hand for coordinating procurement of power from different sources GRIDCO has been authorized as designated nodal agency by the State Govt. But this working arrangement in the State does not take away the legal provisions of the Electricity Act, 2003. On the other hand if WESCO directly gets supply of about 10 MW power from AIPPL, it does not materially affect the function of GRIDCO, as designated nodal agency for procuring power to the extent of 19719.35 MU approved for 2009-10 for supply to distribution companies for consumption in the State. In the instance case, WESCO would get power at agreed cheaper rate of @Rs.1.50 per/kwh upto 30.6.09 which may be extended as per mutual agreement between WESCO and AIPPL. Since this power will be purchased at 33 KV interconnection point of WESCO with AIPPL, the transmission lines of OPTCL will not be utilised and therefore the payment of transmission charges to OPTCL does not arise for that quantity of power. If WESCO would purchase from GRIDCO, it would purchase at 1.54 /kwh from GRIDCO and GRIDCO in turn would purchase power from AIPPL at a graded rate starting from Rs.2.02/kwh for supply upto 8 MU per month and Rs.2.30/kwh for supply above 8 MU upto 32 MU and Rs.2.50/kwh for supply above 32 MU in a month as decided in the Board of Directors of GRIDCO. However, this rate has been now revised to Rs.3.00 /kwh w.e.f.1.3.2009 as per Interim Order dt.28.2.2009 of the Commission. Hence, it is not advisable for GRIDCO to purchase power at a higher rate of Rs.3.00/kwh and*

supply to WESCO at a lesser rate of Rs.1.54/kwh when supply to WESCO is being made available at Rs.1.50 per unit from AIPPL. On the other hand WESCO is also not required to pay transmission and SLDC charges which roughly amount to Rs.0.21 paise per kwh. OPTCL's notional loss towards transmission charges for 10 MW power will be adequately compensated by realizing from the actual transmission of power from different sources and the actual loss/gain compared for the amount approved in the ARR of 2009-10 for OPTCL can be appropriately addressed in truing up exercise to be carried out after closure of the financial year 2009-10. In this arrangement both WESCO and GRIDCO would gain. What is important is that the idle power of AIPPL would be utilized in the State to the advantage of the consumers, WESCO as well as GRIDCO. Since the connectivity at 132 KV line is yet to be established and it will take some more time instead of wasting time to wait for such time to come WESCO should draw surplus power of AIPPL at 33 KV interconnection points. This would be only an Interim arrangement until the interconnection point is established 132 KV line of OPTCL.

13. Thus, as the CGP of the M/s.AIPPL is ready to inject power to the State Grid and in a power crisis situation the State is in need of additional power from any other source including the CGPs operating in the State, we are inclined to approve the prayer of the petitioner WESCO for temporary procurement of power of 10 MW from the CGP of M/s.Aryan Ispat Pvt. Ltd. at Rs.1.50 per unit. Such procurement is also technically viable as there is an existing 33 KV connectivity of the said CGP with WESCO network. Otherwise it will be a national wastage and under utilization of CGPs. So we are inclined to approve the proposal of WESCO only in present power crisis situation and in the interest of the State. We approve the procurement of power as proposed by WESCO from M/s.Aryan Ispat Pvt. Ltd., with following commercial arrangements:
 - i) The period of this arrangement of purchase of surplus power of WESCO at 33 KV will continue till the connectivity of M/s Aryan Ispat with OPTCL system at 132 KV is established or 30.6.2009 whichever is later.
 - ii) M/s. Aryan Ispat Pvt. Ltd.will raise the bill against WESCO for the amount of energy sold at Rs.1.50 paise/KWh. A copy of the bill raised on WESCO shall be simultaneously submitted to GRIDCO which on receipt of the same will authorize WESCO to make payment of the amount to M/s AIPPL by relaxing the escrow account to that extent.
 - iii) The authorization by GRIDCO for payment by WESCO to M/s AIPPL 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 WESCO. Thereafter other payment will follow as per the priority indicated in para 9 of the letter No.Dir(T)-342/08/995 dated 6.5.2009 of OERC, the relevant extract of the said para is reproduced below:-

“GRIDCO would appropriate and release fund to the above companies each month out of the monthly collection deposited in the Escrow account in order of priority as indicated below:-

(A) **Out of current collection in each month**

(Rs. in Crore)

	WESCO	NESCO	SOUTHCO
(i) Current BST dues in full	Full	Full	Full
(ii) 50% of the average monthly obligation of arrear BST approved for payment in 2009-10.	NIL	NIL	0.79 (19.00/12)/2
(iii) Current monthly employee cost including terminal benefits	11.57	9.52	8.21
(iv) Monthly R & M expenditure	2.25	2.32	1.72
(v) Balance amount towards meeting A&G expenditure including licensee fees			
(vi) The balance amount towards arrear BST dues approved for payment during 2009-10			

(B) **Out of the monthly arrear collected and deposited in the Escrow account**

- (i) 50% of the arrear collected be adjusted towards balance arrear BST dues of GRIDCO approved for 2009-10 and other arrear BST dues not included in the ARR for the FY 2009-10.
- (ii) Balance 50% towards arrear salary/wages of the employees.”
- iv) While raising bill towards the monthly bulk supply of power by GRIDCO to WESCO, the power supplied by M/s AIPPL directly to WESCO at 33 KV connectivity of the said CGP with WESCO, of course shall not be included in such bill.
14. This present arrangement is done for the current exceptional circumstance and this shall be reviewed as and when required.
15. Accordingly, the matter is disposed of.

Sd/-
(B.K. Misra)
Member

Sd/-
(K.C.Badu)
Member

Sd/-
(B.K. Das)
Chairperson