

**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**

**In the matter of : Proceeding for determination of tariff of 50 MW Power Plant of
M/s Arati Steels Limited in compliance with the Order dated
04.10.2012 of the Hon'ble ATE passed in Appeal No.191 of 2011.**

And

Case No.28/2010

GRIDCO	....	Petitioner
Vrs.		
M/s Aarti Steels Ltd., Punjab & Another	.....	Respondents

In the matter of: Under S.86 of the Electricity Act, 2003 read with S.21 of the OER Act, 1995 and other enabling provisions seeking approval of PPA.

And

Case No.29/2010

GRIDCO	....	Petitioner
Vrs.		
M/s Aarti Steels Ltd., Cuttack & Another	.....	Respondents

In the matter of: For procurement of power from the proposed 50MW Thermal Power Plant at Ghantikhal, Cuttack.

And

Case No.107/2010

M/s Aarti Steels Ltd., Cuttack	....	Petitioner
Vrs.		
GRIDCO & Ors.	.....	Respondents

In the matter of: Application for determination of final tariff in view of order dated 04.05.2010 passed in Case Nos. 28&29/2010.

And

Case No.108/2010

M/s Aarti Steels Ltd., Cuttack	....	Petitioner
Vrs.		
GRIDCO & Ors.	.....	Respondents

In the matter of: Application for u/s 94(1) of the Act read with Regulation 70 of the OERC (conduct of Business) Regulations, 2004 for review of order 04.05.2010 passed in Case Nos. 28 & 29/2010.

Parties were present: Mr. U. N. Mishra, GM(PP), GRIDCO was present as petitioner in Case Nos.28 & 29 of 2010 and also as Respondents in Case Nos.107 & 108 of 2010, Mr. Sanjay Sen, Advocate & Mr. Rajiv Jadav, Advocate on behalf of M/s. Aarti Steels Ltd., in Case Nos.107 & 108 of 2010 as petitioner and Respondents in Case Nos.28 & 29 of 2010, Mr. N. Jena, C.C.O, CESU, Mr.S. K. Panigrahi, Manager, M/s. OPTCL and Mr. Thakuna Das, Desk Officer, DoE, GoO were present as respondents in all the above cases. Nobody is present on behalf of WESCO, NESCO & SOUTHCO.

Date of Hearing: 18.02.2013

Date of Order: 16.04. 2013

ORDER

M/s. Aarti Steel Ltd. (in short ASL) entered into a Memorandum of Understanding (MoU) with Govt. of Odisha on 07.02.2009 to set up a thermal power plant (IPP) in two phases comprising 250 MW in each phase at Ghantikhal in the State of Odisha. Among other clauses of MoU it was stipulated that a nominated agency authorised by the State Govt. will have the right to purchase 14% of power sent out from the thermal power plant at variable cost if coal blocks are allocated to IPP within the State otherwise it will provide 12% power at variable cost. Tariff for such power will be determined by OERC. The State Govt. has nominated GRIDCO as State Designated Entity for execution of PPA with power project developers for procurement of power for the State. Hence, consequent upon this MoU, GRIDCO submitted a PPA made between itself and the M/s ASL on dtd. 24.10.2009 before this Commission for approval (Case No. 28/2010). In the said PPA, GRIDCO sought the approval of the Commission for purchasing the 14% power if coal blocks are allotted within the State otherwise 12% of power sent out at variable cost from the 500 MW thermal power plants of M/s. ASL. When the matter stood thus, GRIDCO made another application before this Commission (Case No. 29/2010) for determination of provisional tariff for procurement of power from the 50 MW thermal power plant of M/s. ASL. In its application GRIDCO stated that as per the MoU of State Govt. with the M/s. ASL the 500 (2 x 250) MW power plant shall be implemented in two phases with 250 MW capacities in each phase. During the hearing of both the applications of GRIDCO the Commission raised the queries as to whether 50

MW generating unit stated to be IPP as part of 500 MW MoU has been separated from its parent industrial unit M/s. ASL both legally and financially and if so what is the name of the IPP company presently having 50 MW generating set and proposing additional capacity of 500 MW or more in two phases.

2. M/s ASL during hearing had submitted that the 50 MW generating unit is not legally separated and no asset has been transferred to the newly created IPP from its parent industrial unit having CGP. Steps have been taken for creation of separate entity. This Commission had passed the interim Orders giving a provisional tariff for the power drawn by GRIDCO from the subject 50 MW generating unit of M/s. ASL. In the meantime M/s. ASL filed two petitions before this Commission, one for determination of final tariff for its subject power plant (Case No. 107/2010) and another for review of the interim Order dtd. 04.05.2010 of this Commission regarding status of the subject 50 MW generating unit (Case No. 108/2010). M/s. ASL had prayed the Commission to determine the tariff for 12% State share of the 50 MW generating unit to be supplied to GRIDCO and simultaneously also submitted that GRIDCO may be directed to finalize the tariff for balance 88% power negotiating with the M/s. ASL. All the four cases were heard by the Commission simultaneously. During the hearing Govt. of Odisha, Dept. of Energy submitted that the existing MoU signed by M/s. ASL with the State Govt. was based on the total capacity of 500 MW (2 x 250 MW) only. The PPA was also signed with GRIDCO on this capacity only. The DISCOM of that locality i.e. M/s. CESU also submitted that M/s. ASL is a Power Intensive Industry having a CGP of 40 MW capacity. The information of establishing another generating plant of 50 MW with IPP status in the same premises was never intimated to them. M/s. ASL IPP (50 MW capacity) should have applied construction power as well as start up power from them. M/s. CESU objected for conversion of the 50 MW generating unit to IPP, which has been constructed as a CGP and there is no documentary evidence for transfer of assets from CGP to IPP. Several hearing sessions for all the four cases were conducted on 04.08.2010, 18.08.2010, 07.06.2011 by the Commission to resolve the issues relating to status of 50 MW generating station and determination of tariff for power generated from it. The Commission in their final Order dtd. 13.09.2011 at Para 17 & 20 observed and directed as follows :-

“17. Further, State Govt. and GRIDCO should decide the status of the subject 50 MW generating unit as an integral part of the proposed IPP of 500

MW/1060 MW and then the MoU may be revised and the PPA should be finalized accordingly for the 12% / 14% of the generation, as the case may be, as per the state thermal policy. While revising the PPA, the issue raised by M/s CESU-DISCOM on the drawl of construction and start-up power and other techno-commercial issues of commonality with CGP auxiliaries and fuel allocation/management issues of the 50 MW generating unit may also have to first settled with mutual consent of all the stakeholders. While finalizing the PPA both GRIDCO and M/s ASL should also keep in view the observations of the Commission in its earlier orders.

x x x x x x x x x x

20. *We would however also like to settle the dispute regarding the rate for the power already purchased by GRIDCO out of the remaining 88% generation from the subject 50 MW generating unit of M/s.ASL. This power has been purchased by GRIDCO mostly during the FY 2010-11. It is observed that the average rate of power purchased by GRIDCO from the NTPC-ER generating stations during the FY 2010-11 is about Rs.3.02 per Kwh (at the generator end) with due consideration of central transmission loss. If GRIDCO would not have availed this power from the 50 MW generating unit of M/s.ASL then GRIDCO had to purchase this power from the CGPs/NTPC-ER generating stations or through power exchange. We find that the average rate of the NTPC-ER stations i.e.Rs.3.02 per Kwh will be more appropriate for the price towards purchase of power from the balance 88% of the generation of 50 MW generating unit of M/s.ASL. x x x x x x x”*

3. Being aggrieved by the said Order dated 13.09.2011 of the Commission, M/s. ASL moved Hon’ble ATE in Appeal No. 191 of 2011 and prayed to set aside the Order dtd. 13.09.2011 and determine the tariff payable by GRIDCO to the Appellant for the supply made till date both for the 12% of their generation at variable cost and the balance on the basis of fully allocated cost. Hon’ble ATE in their Order dtd. 04.10.2012 while disposing of the case remanded the matter back to the Commission with a direction to pass afresh an order in accordance with the law upon hearing the parties.
4. In view of the Order of the Hon’ble ATE the Commission Vide its letter dated 20.12.2012 had asked M/s. ASL to submit certain data/information which are vital for determination of status and tariff of subject 50 MW generating unit of M/s. ASL. M/s. ASL also submitted its reply to the queries of the Commission. Thereafter, the matter was heard *de novo* by the Commission on 28.12.2012 and 18.02.2013 as per the direction of the Hon’ble ATE.
5. In order to have a clear understating regarding actual capacity configuration of IPP and the Status of the subject 50 MW generating unit, the date of starting of the construction

and date of commissioning of the said 50 MW unit etc., the Commission constituted an Inspection Team to M/s. ASL for field inquiry. The Inspection Team has since submitted their report.

6. After careful examination of available records and reports of Inspection Team, it is observed that

- The 50 MW Generating Unit was conceived as a CGP and construction power was availed from the existing 40 MW CGP as an extension of the existing CGP.
- Both 40MW & 50 MW Generating Units are connected to a common 132KV load bus of the Industrial unit with individual metering arrangement for recording generation of each unit. The arrangement of feeder and bus are designed in such a way that power can be exchanged between them and both 40 MW and 50 MW generating units can cater the industrial loads of M/s ASL and also can supply common surplus power to the State Grid. Thus the units are not electrically separated. The characteristics of both the generating units are the same as that of Captive Plants of the parent Industrial unit.
- Water intake plant, Coal crushing & feeding conveyor, ash dyke, railway siding etc are common to both the units.
- It is observed from the letter dt.13.05.2009 of Ministry of Environment and forest, GoI that the Environmental clearance (EC) was issued for expansion of integrated steel plant and captive power plant(CGP).
- From the submission of Dept. Of Energy, Govt. of Odisha, it is under stood that the 50MW generating unit has not yet accorded IPP status. However, the Govt. is in the process to accord post facto approval as regard to conversion of 50 MW unit of M/s ASL from CPP to IPP.

7. In order to have further clarity on the status of the subject 50 MW Generating Unit, M/s ASL was approached during the course of the hearing as well as in writing to submit, the copies of Fuel Supply Agreement (FSA) executed with M/s Mahanadi Coalfields Ltd. (M/s MCL) both for 40 MW and 50 MW Generating units of M/s ASL at Ghantikhal, Odisha and the copy of Board Resolution, if any, of M/s ASL in respect of status of 50 MW Generating unit. M/s ASL in its letter dt. April 15, 2013 has submitted a copy of its FSA with M/s MCL dt.19th July, 2012 and an extract of the minutes of the meeting of

Board of Directors held on 23.03.2009 (no resolution submitted). Both the documents were examined by the Commission. The relevant extract of the FSA are as under:

x x x x x x x x x x

“Whereas the Purchaser was issued a Letter of Assurance (LOA) dated 24.06.2010 Reference No.MCL/SBP/GM/(S&M)/LOA/Aarti Steel/2010/1229 and the Purchaser has achieved the milestones as setout in the Annexure-1 of the LOA and fulfilled other conditions as stipulated under the LOA.

Whereas the Purchaser has requested the Seller for supply of Coal to Captive Power Plant (50 MW) at Vill. Ghantikhal, PO. Mahakalabasta, Dist. Cuttack-754029, Odisha of the Purchaser (as per details contained in Schedule-I of this Agreement) and the Seller has agreed to make such supplies on the terms and conditions set out hereafter.

Now, therefore, in consideration of the agreement and covenants hereafter set forth and intending to be legally enforceable, the Seller and the Purchaser (each individually a Party hereto and collectively the Parties) hereby covenant and agree as follows:”

x x x x x x x x x x

8. The FSA further stipulates the general terms and conditions of supply of the fuel, including annual contracted quantity (ACQ), end use of coal, compensation for short delivery lifting etc. applicable to a Captive Generating Plant. Thus, as per the application of M/s ASL for fuel linkage of subject 50 MW Generating unit and the FSA with the Coal supplier and clearance of the State Pollution Control Board, it is quite clear that the Generating unit was conceived, constructed and being operated as a Captive Generating Plant only of the Integrated Steel Plant of M/s ASL.
9. The Commission also noted the extracts from the minutes of the Board of Directors of the Company dt.23.3.2009 which reads as under:-

x x x x x x x x x x

“Sh. Shiv Prashad Mittal – Director of the Company have informed the Board regarding the proposal to set up Power Project at Ghantikhal, District Cuttack, Orissa alongwiththe existing set up of the company having capacity 50 MW.

“RESOLVED THAT the proposal to setup Power Project at Ghantikhal, District Cuttack, Orissa alongwith the existing set up of the Company having capacity of 50 MW be and is hereby approved.”

Certified to be true copy,

For Aarti Steels Limited

Sd/-

Director”

10. From the above minutes of the meeting of the Board of Directors of the Company, it is also clear that the subject 50 MW Generating unit was proposed to set up as an extension of its existing 40 MW CGP making the total CGP capacity of M/s ASL as 90 MW.
11. In view of the above findings, the Commission rejects the plea of the appellant to treat the subject 50 MW Generating unit as an IPP. The Commission would also like to order to treat the subject 50 MW Generating unit as an extension of its existing 40 MW CGP to make the total CGP capacity of M/s ASL as 90 MW. Accordingly all stakeholders are directed to treat the entire 90 MW capacity of ASL as Captive Generating Plant of the Integrated Steel Plant of M/s ASL. The price fixed by the Commission from time to time for procurement of surplus power from all the CGPs of the State by GRIDCO shall also be equally applicable in the present case for any surplus power drawn from the 90 MW (40MW + 50 MW) CGPs of M/s ASL. The infirm power availed by GRIDCO from the subject 50 MW Generating unit before its commercial operation shall be paid at the rate of inadvertent power fixed by the Commission for relevant period. As such, Commission is not inclined for vetting of the PPA of 50 MW capacity as the subject 50 MW Generating Unit is not an IPP. Parties are liberty to file the PPA for the 500 MW (2X250 MW) IPP, as per the MoU condition signed with Govt. of Odisha, in due course of time. In supersession of all interim order(s) on adhoc rate of 50 MW Generating Unit, GRIDCO should clear all the bills of M/s ASL for the surplus power received from the 90 MW (40 MW + 50 MW) CGPs as per the prevalent CGP Pricing approved by the Commission from time to time.
12. All the cases are accordingly disposed of.

Sd/-
(S. P. Swain)
MEMBER

Sd/-
(B. K. Misra)
MEMBER

Sd/-
(S. P. Nanda)
CHAIRPERSON