
Shri B.K. Misra, Member

Case No. 101/2009

Hydro Electric Power Project in Orissa.

... Petitioner

- Vrs -

... Respondents

138/2010

(Conduct of Business) Regulations, 2004.

... Petitioner

- Vrs -

... Respondents

Date of Hearing: 07.01.2011

Date of Order: 14.01.2011

ORDER

respondents in both the cases are present.

2. Both the cases are taken up for hearing together as these are interrelated and the parties are the same. The Commission vide its interim order dated

09.11.2010 had clubbed both the cases together for analogous hearing impleading DoE, GoO as a respondent in Case no.138 of 2010.

3. Background of the Cases

- (a) M/s. PTC and M/s. OPCL has entered into a PPA agreeing that PTC will purchase the deliverable energy from the 20 MW of Samal Barrage Small HE Project, excluding auxiliary consumption, transformation loss and transmission loss up to the delivery point, for a period of 30 years from the COD of the said project.
- (b) GRIDCO has entered into a Power Sale Agreement (PSA) with PTC on 26.05.2009 agreeing therein that PTC will make available the entire generation of 20 MW (5 x 4 MW) from Samal Barrage Small Hydro Electric Project developed by M/s. OPCL to GRIDCO on the terms and conditions stipulated in the PSA. In this PSA, it is also agreed that the tariff for sale of such power to GRIDCO by PTC shall be as determined in the PPA between M/s. OPCL & PTC or as determined by the Commission plus PTC's trading margin of 4 Paise/Kwh.
- (c) Govt. of Orissa, vide its Resolution dtd.03.06.2005, has resolved that the developers supplying power to any agency outside the state should supply 12% free power to the 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.
- (d) GRIDCO had filed a petition before the Commission seeking approval of the Power Sale Agreement (PSA) dtd.26.05.2009 executed between M/s. PTC and M/s. GRIDCO for availing the entire power from 20 MW Samal Barrage Small Hydro Electric Project developed by M/s. OPCL to meet the state demand on payment of the cost of 88% of the power with 4 paise per KWh margin thereon to PTC and to avail the rest 12% of generation free of cost in accordance with aforesaid resolution dtd.03.06.2005 of the DOE, Govt. of Orissa.
- (e) The above petition of GRIDCO was registered as Case No. 101 of 2009 and in the interim order dtd.01.10.2009 of the said case; the Commission has concurred the Power Sale Agreement dtd. 26.05.2009 executed between GRIDCO and M/s. PTC. Further, based on the oral submission of the representative of the Govt. of Orissa, Commission in this interim order has approved that the saleable power of the project shall be determined on 88% of the design energy of the project and the balance 12% of the power to be treated as free power for the home state.

- (f) The Commission in this interim order has approved a provisional rate Rs.3.10 per Kwh (inclusive of 4 paisa trading margin of PTC) on the saleable power (excluding 12% free power) of the project. In this interim order, it was also directed that GRIDCO shall pay Rs.3.10 per Kwh on the saleable power of project to M/s PTC and M/s PTC shall pay Rs.3.06 per Kwh to M/s OPCL. This rate will be applicable with effect from the date of commercial operation till approval of final tariff by the Commission. Any revenue earned by M/s OPCL for such sale of infirm power i.e. power injected on synchronization but before Commercial Operation Date shall go on reduction of capital cost for tariff purpose, after adjusting reasonable O&M cost.
- (g) In this interim order the Commission had also directed the Government of Orissa, Department of Energy to file their written submission in this Case No. 101/2009 incorporating their views on availing 12% free power by GRIDCO, the State designated utility.
- (h) The Commission at Para 16 of the said order dated 01.10.2009 had also directed both the Project Developer and GRIDCO to take up the matter with STC for early finalization of capital cost for the tariff purpose and mutually agree to the other tariff normative within the parameters fixed by CERC and file the application at the Commission for final tariff determination on saleable power of the project at a very early date. But none of the parties has yet complied the above directions of the Commission.
- (i) However, M/s. OPCL had filed a separate petition in accordance with Section 62 read with Section 86 (a) of the Electricity Act, 2003 and Regulation 61 of the OERC (Conduct of Business Regulations), 2004, for determination of tariff for sale of power to GRIDCO from the 20 MW Samal Barrage Small Hydro Electric Project in Orissa based on the Power Purchase Agreement (PPA) between M/s OPCL and M/s PTC India Ltd. and the Power Sale Agreement (PSA) between GRIDCO Ltd. and PTC India Ltd. This petition of M/s OPCL was registered as Case No. 138/2010 and heard on 09.11.2010 on question of admission and hearing. M/s.OPCL was of the view that since GRIDCO has not taken any proactive action for determination of final tariff for Samal Small HE project, M/s.OPCL was forced to file a separate petition for the same, as it was facing the financial problems even after commercial operation of the small hydro project.
- (j) The case was admitted and the Commission has desired to hear both the Cases 138/2010 and. 101/2009 analogously impleading DoE, GoO as respondent in Case No.138 of 2010 and also directed the Govt. of Orissa, Deptt. Of Energy to file their written submission by 15.12.2010

with their views on the issue of availing 12% free power by GRIDCO as the State Designated Agency.

(k) The Commission had also directed M/s.OPCL and GRIDCO to file the following data/information with supporting documents before 15.12.2010 along with the tariff calculation of the 20 MW Samal Small HE project so that the Commission will be able to take appropriate decision on approval of power purchase price of GRIDCO from PTC in respect of the supply of power from Samal Small HE project.

- (i) Project cost of Samal Small HE project as approved by STC.
- (ii) Design energy of the project as approved in the DPR and any revision thereon.
- (iii) Date of commercial operation of the project.
- (iv) Energy sold from the project before the date of commercial operation and revenue earned thereon by M/s.OPCL .
- (v) Copy of the agreement of the loan availed by M/s.OPCL from the financial institutions for this project including the loan repayment schedule and rate of interest.
- (vi) Actual equity investment in the project by M/s.OPCL

(l) The cases were heard on 29.12.2010 where the Representatives of GRIDCO and the Govt. of Orissa prayed for some more time to file their submissions. The Commission in its interim order dtd. 29.12.2010 had allowed the prayer of GRIDCO and Govt. of Orissa and directed them to file their submissions by 07.01.2011.

4. The authorized representative of M/s OPCL during hearing on 07.01.2011 stated that the Commission vide its order dated 01.10.2009 had approved an interim tariff of Rs.3.10 per Kwh on 88% of power (excluding 12% free power to the State) including 4 paisa per Kwh as trading margin of M/s PTC India Ltd. In this rate the effective tariff for Samal SHEP comes to Rs. 2.69 per Kwh. This tariff is very low compared to the Annual Fixed Cost of the project. Hence M/s OPCL is facing severe financial constraints in meeting its debt service obligations both relating to payment of interest charges and repayment of debt, for which the financial institutions are continuously threatening to take action as per the loan agreement. It has now become very difficult to meet the O&M Expenses & other expenditure to run the plant. The revised capital cost of the project has not yet been approved by STC. Hence, M/s OPCL prayed the Commission to consider the tariff at Rs.5.28/Kwh with 12% free power to the state, or at the rate Rs.4.65/Kwh without 12% free power in respect of Samal SHEP for the year 2010-11 plus an amount of 4 paisa/Kwh payable to M/s. PTC India Ltd. as trading margin and the transmission charges at the rate of 78 paisa/Kwh. He further prayed to allow the above provisional

tariff for payment at present, which shall be subject to the adjustment from the date of COD based on the final tariff determined by the Commission.

5. Sri J.K. Dash, Sr. GM (PP) stated that GRIDCO has executed an agreement with M/s. PTC India Ltd. for procurement of power generated from the Samal Barrage Small Hydro Projects of M/s. OPCL as because the developer M/s. OPCL has executed PPA with M/s. PTC to sale of power from this project for a period of 30 years. As per requirement of the State, GRIDCO has entered into an agreement with M/s. PTC to procure the power from this project of M/s.OPCL. GRIDCO has paid the bills to M/s. PTC as per the price determined by this Commission in its interim order dated 01.10.2009. He also prayed the Commission that the generic tariff fixed by the Commission for SHEPs that is applicable for such projects commissioned in 2010-11 or later, may also be considered for Samal Barrage SHEP which was commissioned in FY 2009-10 as a special case. The approval of revised project cost by STC is yet to be done, hence GRIDCO is unable to file the final tariff calculation as per CERC norm.
6. Sri Harjit Singh, V.P of M/s. PTC India Ltd. stated that as per the PPA executed between M/s. OPCL and M/s. PTC and the PSA executed between GRIDCO and M/s. PTC India Ltd., the tariff is to be determined by the Appropriate Commission and M/s. PTC India Ltd. is entitled only for 4 paise/Kwh as its trading margin on sale of such power.
7. The representative of Govt. of Orissa stated that as per the resolution dtd.03.06.2005 of the State Govt., supply of 12% free power to the state designated utility is applicable in case of Samal Barrage Small HEPPs of M/s OPCL. He further stated that as per the Resolution dated 31.03.2008 of Govt. of India, Ministry of Power, the project developers shall have to provide 1% more free power towards Local Area Development Fund. The Govt. will furnish the written note of submission in this case within a period of one week.

Commission's Observations:

8. The Commission observed that M/s OPCL is selling power to M/s. PTC from its 20 MW Samal Barrage SHEPP and M/s PTC, in turn, supplying the same power to GRIDCO. Therefore, GRIDCO in Case No.101/2009 had applied for approval of Power Sale Agreement executed between GRIDCO & M/s.PTC and for determination of power procurement price thereon.
9. The Commission vide its Interim order dtd.01.10.2009 in Case No.101/2009 had concurred the Power Sale Agreement dtd.26.05.2009 executed between GRIDCO & M/s. PTC and approved a provisional rate of Rs.3.10 per Kwh (inclusive of 4 paisa as trading margin of M/s. PTC) on the saleable power of the project allowing 12% free power for the State based on the oral submission of the representative of Dept. of Energy, Govt. of Orissa as per the Resolution dated 03.06.2005 of GoO.

10. In the above order the Commission did not determine the final procurement price of power for GRIDCO, because the required information/data was not available with the Commission. Further, the revised capital cost of the project was not approved by the STC. While determining the procurement price of power from M/s. PTC, the Commission felt it appropriate to consider the tariff of Samal SHEPP for viability of the Project. Therefore in this order the Commission had directed to the Project developer and GRIDCO to submit the detail tariff calculation of the project with authenticated supporting documents.
11. Being aggrieved. with the provisional rate of Rs.3.10 per Kwh and delay in filing of tariff proposal by GRIDCO, the Developer M/s OPCL has filed another petition before the Commission along with the tariff calculation of the said project for determination of final tariff which was registered as Case No. 138/2010.
12. The Commission in its interim order dated 09.11.2010 in Case No. 138/10 had directed in Paras 4 and 5 as follows:-

“4. The Commission admits this case and directs that Case No. 138/2010 and Case No. 101/2009 should be heard analogously impleading DoE, GoO as respondent in Case No.138 of 2010 and also directs the Govt. of Orissa, Deptt. Of Energy to file its written submission by 15.12.2010 with its views on the issue of availing 12% free power by GRIDCO as the State Designated Agency.

5. The Commission further directs M/s. OPCL and GRIDCO to file the following data/information with supporting documents before 15.12.2010 along with the tariff calculation of 20 MW Samal Small HE project so that the Commission will be able to take a reasonable view on approval of power purchase price of GRIDCO from PTC in respect of the Generation of Samal Small HE project.”

- a. Project cost of Samal Small HE project of M/s.OPCL as approved by STC.*
- b. Design energy of the project as approved in the DPR and any revision thereon.*
- c. Date of commercial operation of the project.*
- d. Energy sold from the project before the date of commercial operation and revenue earned thereon by M/s. OPCL.*
- e. Copy of the agreement of the loan availed by M/s. OPCL from the financial institutions for this project including the loan repayment schedule and rate of interest.*
- f. Actual equity investment in the project by M/s. OPCL*

13. According to the above direction of the Commission M/s OPCL has filed the required information through affidavit on 16.12.2010 and during the hearing on 29.12.2010 of the above cases, GRIDCO & Department of Energy, Govt. of Orissa had prayed for time to comply the above direction of the Commission.
14. The Commission also observed that the revised capital cost of the project has not been approved by the STC till date. Therefore, it is not also appropriate at this stage to finalize the procurement price of GRIDCO towards purchase of power from M/s. PTC in respect of the said project. Undue delay in according approval to the final capital cost of small hydro projects is causing disincentive for the developers to exploit renewable sources of energy particularly from the small/mini hydro projects. It is now time for the state Govt. to give a serious look to the working of the STC.
15. In the meantime the Commission has passed an order fixing the generic tariff for renewable energy sources including SHEPs. In that order the Commission has fixed the generic tariff of Rs.3.64 per Kwh for SHEPs with station capacity of 5MW and above and Rs.3.91 per Kwh for the SHEPs of station capacity below 5MW. Further the Commission has already notified the RPO Regulation, 2010 wherein it has been stipulated that the power procurement from Renewable Sources of Energy excluding Solar and Cogeneration plants shall be 1% for FY 2010-11 (Non solar 1% + Co-generation 3.50% = 4.50%). Now in our State only three SHEPs namely Samal SHEPs of M/s.OPCL and Middle Kolab and Lower Kolab SHEPs of M/s.Meenakshi Power Ltd. are in operation. It is observed that the total power procurement from these projects is only 0.80% of the total procurement of the DISCOMs for the State. In order to meet the RPO, power procurement from these SHEPs is highly essential. Therefore, the procurement price of GRIDCO from M/s.PTC in respect of the generation from these projects should be such that the projects would be financially viable for smooth generation/operation.
16. The representative of Govt. of Orissa stated that as per the resolution dtd.03.06.2005 of the State Govt. supply of 12% free power to the state designated utility is applicable in case of Samal Barrage Small HE Project. Further, as per the Notification dated 31.03.2008 of Govt. of India, Ministry of Power, and the project developer shall have to provide free power of 1% more towards Local Area Development Fund. The State Govt. will furnish the written note of submission in this case within a period of one week.
17. The Commission observed that if the power from this small HE project will not be availed by GRIDCO, they may not be able to meet the RPO and even they may purchase power at higher cost to meet the state demand. Further, if a similar project would have been commissioned during the FY 2010-11, GRIDCO would have to pay Rs.3.64/Kwh as per the generic tariff order of the Commission.

18. Therefore, the Commission now re-determines the provisional price at Rs.3.64/ Kwh towards procurement of power by GRIDCO from M/s. PTC in respect of saleable power of 88% (i.e.excluding free power of 12% to the state) of Samal SHEP of M/s OPCL, out of which M/s.PTC shall keep 4 paisa per Kwh towards its trading margin and shall pay balance Rs.3.60 per Kwh to M/s.OPCL towards purchase of energy from Samal Barrage SHEP. This rate shall be applicable from 01.11.2009 onwards i.e. the date from which this provisional price was made applicable to the other existing small hydro projects.
19. After determination of final tariff, if it falls below the provisional tariff now fixed by the Commission, the extra amount, if any, to be paid to M/s. OPCL shall be refunded back to GRIDCO or adjusted from the future power purchase bills.
20. The Commission further directs GRIDCO to pursue and take expeditious action for approval of completed capital cost of Samal Barrage Small Hydro Project by STC and submit the final tariff calculation to the Commission for approval of the final procurement price of GRIDCO in respect of purchase of power from this project through PTC.
21. Other issues, if any, would be appropriately addressed by the Commission during the fixation of final tariff after the project cost duly approved by the STC is submitted.
22. Accordingly, both the cases are disposed of.

Sd/-

(B K Misra)
Member

Sd/-

(K C Badu)
Member