

**ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT – VIII, BHUBANESWAR – 751012**

**Present : Shri K C Badu, Member
Shri B K Mishra, Member**

Case No. 166/2010

In the matter of: Application for Determination of Tariff for sale of Power from the Middle Kolab(25MW) and Lower Kolab (12MW) Small Hydro Electric Power Stations under Ss. 62 & 86 of the Electricity Act, 2003 read with Regulations 61 of OERC (Conduct of Business) Regulations, 2004 .

Meenakshi Power Ltd.

... Petitioner

- Vrs -

M/s. GRIDCO Ltd. & Others

... Respondents

For the petitioner : Shri R.P. Mahapatra, Authorised Representative of
M/s. Meenakshi Power Ltd. (in short M/s.MPL),
Shri B Srinivas, Director, M/s.MPL

For the respondents : Shri J K Dash, Sr. GM (PP), GRIDCO,
Shri Harjit Singh, Vice-President, M/s PTC India Ltd.,
Shri S K Puri, AGM (O&M), OPTCL,
Shri S C Mohanty, Legal Consultant, DoE, GoO,

Date of Hearing: 07.01.2011

Date of Order: 14.01.2011

ORDER

1. Background of the Case

- (a) M/s. PTC and M/s. MPL had entered into a PPA agreeing that PTC will purchase output from the two Small Hydro Electric Projects of M/s MPL namely Middle Kolab (2 x 12.5 MW) and Lower Kolab (3 x 4 MW) Small HE Projects, 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 projects.
- (b) GRIDCO has entered into a Power Sale Agreement (PSA) with PTC on 19.12.2008 agreeing therein that PTC would make available the entire generation of Middle Kolab (2 x 12.5 MW) and Lower Kolab (3 x 4 MW)

Small HE Projects developed by M/s. MPL 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. MPL & PTC or as determined by the Appropriate 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 i.e. GRIDCO. 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) dated. 19.12.2008 executed between M/s. PTC and M/s. GRIDCO for availing the entire power from Middle Kolab (2 x 12.5 MW) and Lower Kolab (3 x 4 MW) Small HE Projects developed by M/s. MPL 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. 34/2009 and in the interim order dated 09.06.2009 of this case, the Commission had approved a provisional rate of Rs.3.00 per Kwh which GRIDCO was to pay to M/s PTC India Ltd. and M/s. PTC India Ltd. in turn will keep 4 paise per Kwh as its trading margin and pay the balance Rs.2.96 per Kwh to M/s MPL in respect of the power purchase from its two Small Hydro Projects. In this Order the Commission had directed GRIDCO to submit a concrete tariff calculation/projections of these two projects in the prescribed format as per the new CERC Regulations, 2009.
- (f) Since GRIDCO did not file the tariff proposal of these two projects as per the above direction of the Commission, M/s. MPL filed a separate petition before the Commission indicating therein the non-submission of tariff proposal by GRIDCO for determination of tariff for Middle Kolab and Lower Kolab Small HE Projects. The petition was registered as Case No. 35/2010.
- (g) In Para 28 and 29 of its interim order dated. 08.06.2010 in Case No. 35/2010 the Commission had observed the following:

"28. However, Govt. of Orissa, Deptt. of Energy, 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 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." Accordingly, the Commission vide its order dated. 01.10.2009 in Case

No. 101/2009 in respect of Samal Barrage SHEP (5 x 4 MW), 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. As GRIDCO buys the entire saleable power of the project i.e. power injected on the designated delivery point (calculated at Gross Energy generated less auxiliary and transformation loss, less transmission loss on the dedicated line, if any) minus 12% free power (calculated at 12% of net design energy of the Project), trading margin of 4 Paisa/KWH shall be paid by GRIDCO to PTC on saleable power. The tariff of the project shall be calculated on 88% net design energy of the project.” The Commission approved the above as per the views of the State Government, a respondent to the Case No. 101/2009. But in the present case the Government of Orissa has not been made a respondent. However, the same principle may be applicable in case of Middle and Lower Kolab SHEPs of M/s. MPL and, therefore, the tariff would have to be computed at 88% of the net design energy i.e. on 123.34 MU (88% of 141.57 MU less 1%).”

29. In view of the above, the Commission observes that it may not be appropriate at this stage to determine the final tariff of the said two SHEPs of M/s. MPL along with the procurement price of GRIDCO for purchase of power from M/s PTC thereon, because the completed cost of these projects is yet to be approved by the STC. Now, GRIDCO is purchasing power from cogeneration plants at a price of Rs.3.20 per KWH w.e.f. 01.11.2009. Therefore, keeping in view the submission of M/s. MPL regarding its difficulties on meeting the obligations towards payment of interest and principal dues to the financial institutions, the Commission approves a provisional rate of Rs.3.20 per KWh which GRIDCO shall pay to M/s. PTC India Ltd and M/s PTC India Ltd. in turn, will keep 4 paisa per KWh as its margin and pay balance Rs.3.16 paisa to M/s MPL in respect of purchase of power from the said two SHEPs. Since the commercial operation is deemed to have commenced w.e.f. 14.7.2009 and the rate of power from the co-generating plants has been revised to Rs.3.20 per KWH w.e.f. 01.11.2009, this provisional rate shall be applicable from 01.11.2009 pending fixation of final tariff. Since the Commission in the ARR of GRIDCO for 2010-11 has approved purchase of 300 MU from small hydro sources at Rs.305 paisa per unit, the extra power purchase cost of GRIDCO due to this enhanced rate of renewable energy from M/s. MPL shall be taken care of in the subsequent year while approving the BSP of GRIDCO. Further, the Commission directs GRIDCO to file a petition for determination of final tariff of these two SHEPs, immediately after finalization of the completed cost of the projects by STC. The views of the State Govt. are also required to be made available with regard to stipulation of 12% free

power. At that time M/s. MPL has to submit the agreement of the loan availed from the financial institutions for these projects including the loan repayment schedule and rate of interest. After determination of final tariff if it falls below the tariff now determined, the extra amount paid to M/s MPL shall be refunded back to GRIDCO or adjusted from the future power purchase bills.”

- (h) In the meantime, based on the objections raised by the AG Audit GRIDCO deducted the amount from the monthly energy bills of M/s. PTC towards 12% free power to the State in respect of procurement of power from M/s. MPL retrospectively from the month of November, 2009. Therefore, M/s. MPL had written a letter to the Commission seeking clarification of the order dtd.08.06.2010 of the Commission in Case No.35/2010 and necessary directions to GRIDCO thereon. In addition M/s MPL has now filed a petition before the Commission with prayer for determination of final / enhanced provisional tariff for its two Small Hydro Projects, which has been registered as Case no. 166/2010..
2. The authorized representative of M/s MPL during the hearing of case no. 166/2010 stated that the petitioner has filed this petition for determination of provisional tariff as GRIDCO has not submitted the concrete proposal for determination of tariff of Middle Kolab (2X12.5 MW) and Lower Kolab (4X3 MW) of SHEPs as per direction of the Commission in case No.34 of 2009. Further in the interim order dated 08.06.2010 in Case No.35 of 2010, the Commission had approved a provisional rate of Rs.3.20/Kwh keeping in view the tariff applicable for purchase of power by GRIDCO from Co-generation plants. An amount of 4 paisa/Kwh was payable to M/s. PTC India Ltd. as its trading margin and the balance of Rs.3.16/Kwh only was payable to M/s. MPL. The provisional tariff was made applicable with effect from 01.11.2009 even though the COD for both the SHEPs were accepted as 14.07.2009. Instead of taking expeditious action for filing of calculation of tariff and follow up action as per direction of the Commission vide Para 25 of the above order, GRIDCO started deducting 12% out of the bills submitted towards free power to the state quota with effect from 01.11.2009, which causes financial hardship to the developer.
3. He further added that the petitioner 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. In view of the delay by GRIDCO in filing the tariff proposal, petitioner prayed the Commission to consider the tariff for both the SHEPs at Rs.4.00/Kwh without 12% free power to the state, or at the rate Rs.4.55/Kwh with 12% free power with effect from 14.07.2009 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 51 paisa/Kwh. He further prayed to allow a provisional tariff for payment, which shall be subject to the adjustment from the date of COD based on the final tariff determined by the Commission.

4. In a query of the Commission regarding handing over of the transmission line from the power station to Jayanagar S/S to OPTCL , the representative of M/s MPL stated that in case of handing over of the transmission line to OPTCL the capital cost incurred should be reimbursed by OPTCL. In a further query by the Commission on effective date of proposed revision of tariff, the representative of M/s MPL stated that the final tariff should be implemented from the date of commercial operation of the project. However, the revised provisional tariff may be implemented from 01.11.2010, the date from which the rate of Rs.3.20 per Kwh was approved 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 two Small Hydro Projects of M/s. MPL as because the developer M/s. MPL has executed PPA with M/s. PTC to sale of power from these projects 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 the SHEPs of M/s. MPL. GRIDCO has paid the bills to M/s. PTC as per the tariff determined by this Commission for M/s. MPL power, which was paid to M/s. MPL by PTC after deducting the trading margin of 4 paisa/Kwh as fixed by the Commission. 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 these two projects which were commissioned in FY 2009-10 as a special case. The approval of revised project cost by STC is yet to be done; for which GRIDCO is unable to file final tariff calculation as per CERC guidelines.
6. Sri Harjit Singh, V.P of M/s. PTC India Ltd. stated that as per the PPA executed between M/s. MPL and M/s. PTC and the PSA executed between GRIDCO and PTC, 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 Middle & Lower Small HEPs of M/s MPL . 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.
8. The representative of OPTCL has stated that M/s MPL being an IPP and owner of the 132 KV line from Middle Kolab SHEP to OPTCL's 220/132/33 KV Jaynagar Grid S/s. OPTCL has provided energy metering arrangement at the inter-connection point at Jayanagar grid S/s. In the 7th GCC meeting held on 24.09.2010, OPTCL had agreed to install separate metering arrangement at Middle Kolab and Lower Kolab SHEPs based on the suggestion of the GRIDCO. However, energy meter have not been installed so far due to shortage of energy metering modules with OPTCL, which is expected to be available by the end of February 2011. Thereafter OPTCL will provide energy meter at the outgoing feeders of power station's switchyard. In a query of the

Commission regarding taking over of the 132 KV transmission line of M/s MPL, the representative of OPTCL stated that no such proposal has been offered by M/s MPL and OPTCL has not thought over this. As per the present stipulation, the interconnection point with state grid is designated at Jaynagar Grid substation.

Commission's Observations:

9. The Commission observed that M/s MPL is selling power to M/s. PTC from its Small Hydro Electric Projects namely Middle Kolab (2x12.5 MW) and Lower Kolab (3x4 MW) & M/s PTC, in turn supplying the same power to GRIDCO. Therefore, GRIDCO in Case No.34/2009 had applied for approval of Power Sale Agreement between GRIDCO & PTC and for determination of power procurement price thereon.
10. The Commission vide its interim order dtd.09.06.2009 in case No.34/2009 had approved a provisional rate of Rs.3.00 per Kwh. Out of which PTC will keep 4 paise per unit of its trading margin and pay the balance Rs 2.96 per Kwh to M/s MPL in respect of purchase of power from its two SHEPs.
11. In the above order the Commission did not determine the final procurement price of 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 power procurement price from M/s. PTC, the Commission felt it appropriate to consider the tariff of the two SHEP's for viability of the Projects. Therefore in its order dated 09.06.2009 the Commission had directed GRIDCO to submit the concrete tariff proposal of these two projects in the prescribed format of CERC Tariff Regulations, 2009.
12. Since GRIDCO did not file any tariff proposal as per the above direction of the Commission, M/s MPL filed a petition before the Commission for determination of tariff of its two SHEP's citing the non-compliance of the direction of the Commission by GRIDCO, which was registered as case no 35/2010.
13. The Commission in its interim order dated 08.06.2010 in Case No. 35//2010 had approved a provisional rate of Rs.3.20 per Kwh as the procurement price of GRIDCO from PTC in respect of Meenakshi Power with effect from 01.11.2009 based on the purchase price of GRIDCO from co-generation plants with effect from the same date. Regarding 12% free power to the state, the Commission had observed that since the 12 % free power has been applied in case of Samal Barrage Small HE Project based on the oral submission of the representative of Govt. of Orissa as per the resolution dated 03.06.2005 of GOO, the same principle may be applicable in case of Middle and Lower Kolab SHEPs of M/s.MPL. However, in this case Govt. of Orissa has not been made a respondent. Hence the views of the State Govt. are required for any stipulation in this regard.
14. In the same order, the Commission had directed GRIDCO to file a petition for determination of final tariff of these two projects immediately after finalization of the completed capital cost of the projects by STC. Further, the Commission had directed M/s.MPL to submit the agreement of loan availed from the financial institutions for these projects including the loan repayment schedule and the rate of interest.

15. Neither GRIDCO nor M/s MPL has complied the above direction of the Commission because the completed capital cost of the projects has not yet been finalized by the STC. Further, in the meantime based on the objections raised by AG (Audit), GRIDCO has deducted 12% free power from the monthly energy bills of PTC in respect of purchase of power from these two SHEPs and M/s.MPL has written a letter to the Commission seeking clarification on the interim order dtd.08.06.2010 of the Commission in this regard.
16. The Commission also observed that the revised capital cost of these two projects of M/s.MPL has not yet been approved by the STC. Therefore, it is also not appropriate at this stage to finalize the procurement price of GRIDCO towards purchase of power from M/s.PTC in respect of the generation of the said projects.
17. In the meantime the Commission has passed an order fixing the generic tariff for renewable energy sources including SHEPs. In this order the commission has fixed the generic tariff of Rs.3.64 per Kwh for SHEPs with station capacity of 5 MW and above and Rs.3.91 per Kwh for the SHEPs of station capacity below 5 MW. Further the Commission has already notified the RPO Regulations, 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. Now in our State only three SHEPs namely Samal SHEP 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. On the other hand, 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.
18. 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 Middel Kolab, Lower Kolab and Samal Barrage Small HEPs. Further, 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.
19. The Commission observed that if the power from these small HEPs 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.
20. 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 Middle Kolab and Lower Kolab SHEPs of M/s MPL, 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.MPL

towards purchase of energy from Middle and Lower Kolab Small HE Projects. This rate shall be applicable from 01.11.2009 onwards i.e. the date from which the previous order dtd.08.06.2010 of this Commission in Case No.35/2010 was made applicable.

21. After determination of final tariff if it falls below the provisional tariff now fixed by the Commission, the extra amount paid to M/s.MPL shall be refunded back to GRIDCO or adjusted from the future power purchase bills.
22. The issue relating to taking over of the dedicated transmission lines constructed by the developers and related issues would be decided during the fixation of final tariff.
23. The Commission further directs GRIDCO to pursue and take expeditious action for approval of completed capital cost of these two projects 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 these projects through PTC. The Commission further directs the project developer M/s.MPL & GRIDCO to furnish the following data/information at the time of determination of final tariff:
 - (a) Project cost of Middle Kolab & Lower Kolab Small HE projects as approved by STC.
 - (b) Design energy of the projects as approved in the DPR and any revision thereon.
 - (c) Date of commercial operation of the projects.
 - (d) Energy sold from the projects before the date of commercial operation and revenue earned thereon by M/s. MPL.
 - (e) Copy of the agreement of the loan availed by M/s. MPL from the financial institutions for these projects including the loan repayment schedule and rate of interest.
 - (f) Actual equity investment in the project by M/s. MPL
24. Accordingly, the case is disposed of.

Sd/-
(B.K. MISRA)
MEMBER

Sd/-
(K.C. BADU)
MEMBER