

**ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN,
UNIT – VIII, BHUBANESWAR – 751 012**

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**Present : Shri K. C. Badu, Member
Shri B. K. Misra, Member**

Case No. 48 of 2010

Confederation of Captive Power Plants of Orissa	Petitioner
- Vrs. -		
GRIDCO & Others	Respondents

Case No. 49 of 2010

M/s JSL Ltd.	Petitioner
- Vrs. -		
GRIDCO & Others	Respondents

Persons present: -

For CCPPO	:	Sri Sanjeev Das, Secretary
For GRIDCO	:	Sri A.C. Mallick, Director (Comm.)
For NESCO, WESCO & SOUTHCO	:	Sri Debasish Dash, G.M. (Corp. & R.A.)
For CESU	:	Sri L. Padhi, AGM, CESU
For JSL	:	Sri Aditya Das, Advocate & Sri A.D. Choudhuri, Consultant (Elect.)

Date of hearing: 28.5.2010

Date of Order: 31.05.2010

ORDER

As the petition filed by CCPPO and JSL Ltd. are common in nature, the Commission heard both the cases analogously and passed this common order.

1. The Secretary, CCPPO in his petition, among other things, has narrated the background under which the Commission have reviewed from time to time policy on harnessing surplus power from CGPs vide order dt.14.03.2008. The first

review order was passed on 28.02.2009 followed by subsequent review orders dt.30.06.2009, 28.10.2009 and 30.03.2010. Starting from the later part of 2008-09, GRIDCO and State Govt. have been pressing the CGPs to maximize their generation and supply their surplus power to the State Grid to meet the serious power deficit situation. In this process, Govt. in Energy Deptt. have also tried to help the CGPs to sort out the problems faced by them in procuring coal. Keeping in view the cost of power traded in the Power Exchange or through bilateral trading and the need for supply of power to the consumers of the State at affordable rate and the cost incurred by the CGPs for procurement of coal from different sources including through e-auction, the Commission has fixed the upper limit of price of surplus power from the CGPs. At no point of time during the proceedings of the hearings or in written submission, GRIDCO or State Govt. have stated that if at a particular point of time or in the whole of financial year, the CGPs use including its use by the sister group through Open Access is less than 51% of their total generation, they would not be entitled to the price fixed by Commission in their order dt.28.02.2009 read with order dt.28.10.2009 and 20.03.2010 (BST order of GRIDCO). CCPPO or M/s JSL also not raised the issue that while maximizing generation at CGP for sale to the State Grid (including trading of power through Open Access and through power exchange, if any) if their total sale figure exceeds the 49% of the total generation whether the status of the generating units still remain CGP or not? Commission, therefore has not specifically addressed the issues of CGP status in case of such eventuality in its CGP pricing order.

Accordingly, the Secretary, CCPPO on behalf of Confederation of Captive Power Plants, Orissa has prayed as follows: -

- (i) Non-application of CGP status criteria as per the Electricity Rules dt.8th June, 2005 to the members of the Confederation.
- (ii) To direct for immediate release of payments withheld by the Licensee as the same has caused huge strain in working capital requirement of the members of the Confederation.

- (iii) The Commission has already considered the Payment Security Mechanism in its review petition and there is no need to adjudicate the same again.
 - (iv) Necessary directions may be issued to the Licensee to the effect that bilateral PPA be entered into with IMFA, NALCO and other CGPs.
 - (v) To issue necessary direction allowing open access to CGPs in the event the Licensee opts not to draw power from the CGPs and may also decide to draw a model of power utilization from CGPs inviting CGPs, Licensee and the State Government.
2. The respondent, GRIDCO in its reply has narrated how it has carried out the order of the Commission from time to time and making payment to the CGPs. But, because of fund constraints and the legal issues regarding the status of the CGPs who have injected more than 49% of their generation to the State Grid, payment has not been made from December, 2009 onwards excepting 60% of the December, 2009 in two phases. Among other things, GRIDCO has submitted as under:
- “5.(a) In order to tide over the power shortage scenario during summer season of 2009 & thereafter due to poor monsoon and failure of hydro stations to deliver upto the mark, the State Govt. have imposed Section 11 by directing all the generators including CGPs to optimize their generation and help the State in the larger interest of the public.*
 - (b) That the Respondent have come to the rescue of the Petitioner when global recession was prevailing and helped them by procuring surplus power at enhanced tariffs as fixed by the Hon’ble Commission and also the Petitioner have helped the State by obliging to imposition of Section 11 by the State Govt.*
 - (c) That such mutual cooperation extended should not be mistaken in any way by the Petitioner for relaxation of “CGP Status” and therefore the CGPs has to retain their “CGP Status” by consuming 51% of their own generation in a financial year as per the Electricity Rule, 2005 dated 08.06.2005 issued by Ministry of Power, Govt. of India.*
 - (d) That optimization/maximization of generation by the petitioner should have been limited to 49% of their total generation and not more than that as that will affect their CGP status which is a must to avail the price fixed by the Hon’ble Commission.*
 - (e) That the Hon’ble Commission may also agree with the Respondent’s submission that unless the Petitioner retain its CGP status as per Electricity Rule, 2005, they can no more be called as “CGPs” and thus*

shall be at the same level as any other thermal generator and the price/tariffs fixed vide various interim orders ought not to be extended to them under any circumstances.”

3. Accordingly, GRIDCO has prayed as under:

- “1. That the Hon’ble Commission may decide an appropriate price/rate to be applicable to CGPs like the Petitioner who fail to maintain their CGP status as per Electricity Rule, 2005 dated 08th June, 2005.*
- 2. That GRIDCO has already filed the cost of generation of different CGPs in pursuant to the CGP Pricing Policy dated 14.03.2008 in case No.72/2007 of Hon’ble Commission to harness power through Competitive Bidding and GRIDCO have already filed the bidding documents of various CGPs before the Hon’ble Commission on 19.01.2009 in Case No.7/09 to 20/09 for scrutiny. In case of CGPs who fails to maintain CGP status, the cost of generation may be determined enabling GRIDCO to make payment.”*

4. M/s JSL, Kalinga Nagar, Duburi, Jajpur, in case No.49/10 have filed a similar petition wherein the issues raised by CCPPO has been re-emphasized. Besides this, in his petition, it has stated as under:

“ 3. x x x x x x x x x x x

(i) M/s JSL also wants to strengthen the hands of the Govt. of Orissa & GRIDCO during this power crisis & wants to keep on record that, it will prevail upon us to minimize our consumption & export maximum power to the Grid, to over-come the crisis. However in this endeavor, it may so happen that, the power exported to Grid may be more than 50% of the generation. It is apprehended that, this situation may under-mind the position as a CGP. M/s JSL therefore wants to make it clear that, we are in a position to supply more than 50% of the generation, provided our status as CGP is maintained.

(ii) It may be further mentioned here that, JSL is compelled to maximize its generation in the interest of OPTCL & system operation. There is only one 220 KV tie line in operation between new Duburi & Old Duburi through ERS towers. If JSL lower’s its generation, then this tie line is getting over loaded and tripping-out, leading to disconnection between New Duburi & Old-Duburi. Therefore extra generation on this account

for the system stability should be treated as own consumption without upsetting the CGP status.

- (iii) *That, CERC has permitted wheeling 75 MW of power to Hissar unit under JSL as a captive consumption. However the State Govt. did not permit to wheel this power to Hissar. This extra generation is being utilized by the state utilities to meet the load demand.*
 - (iv) *Also, it will not be out of the place to mention that, the GRIDCO in their submission against OERC case no.6 to 20 of 2009 had corroborated the above mentioned suggestion and stated as quoted below. "The status of CGP's should not be construed as changed merely on the ground that under the melt down condition, their own consumption is less than 49% and they are selling surplus power beyond 51%."*
 - (v) *In view of the facts stated above in all fairness, the extra generation of JSL due low consumption at Old-Duburi should be treated as own consumption for the purpose of maintaining the CGP status."*
 - (vi) *JSL appreciates the position of power shortage being faced by the State. Accordingly, JSL has requested the Commission to consider the issue and problem to retain the CGP status for JSL as the consumption is less than 51% and export is more than 49%.*
5. The respondent GRIDCO have reiterated their stand and clarified their position as has been mentioned in case of CCPPO indicated in para 2&3 above. Besides this, Director (Comm.), GRIDCO has informed that in the meantime Hon'ble High Court has passed order on 05.05.2010 in WPC No.4454 of 2009 wherein the Hon'ble High Court has directed GRIDCO for payment of dues of the Petitioner in installments. It is further submitted that in absence of any order regarding price applicable to CGPs who fail to maintain their CGP status, the amount payable to the petitioner could not be determined. In addition, the respondent is under financial crunch. Therefore, it is difficult on the part of Respondent to effect payment. Finally, the Director (Comm.), GRIDCO have reiterated their prayer as in the case of CCPPO mentioned in para-3.

6. The representative of Reliance Managed DISCOMs stated that normally the power should be procured at a competitive rate through open bidding process and as a Retail distributor, they would like that their Bulk Supply Price should be fixed in a reasonable manner, so that the burden on the consumer is reduced. But, since the Bulk Supply Price is fixed by the Commission after taking into account the procurement of power from different sources, they have no specific views regarding change of status of the CGPs in case they consume less than 51% of the total generation during a financial year. Representative of CESU on the other hand stated that the issue raised regarding the status of the CGPs consuming less than 51% is a matter of legal interpretation and the Commission may take appropriate decision in the matter.

Issues:

7. From the petition of CCPPO and JSL and the submission made by the respondent, the following issues have emerged:
- (i) Whether the price fixed by the Commission in their order dt.28.02.2009 read with subsequent order dt.30.06.2009, 28.10.2009 and 30.03.2010 is also applicable to CGPs who have during the course of the year have supplied more than 49% of their total generation and consumed less than 51%.
 - (ii) When at the behest of the State Govt. and GRIDCO, the CGPs were maximizing their generation and supplying surplus power to the State Grid to meet the power deficit situation, the CGP would loose their status and the price fixed by the Commission for the supply of surplus power to GRIDCO would not be applicable to them under such circumstances on such technical ground that the CGPs have consumed less than 51% of the total generation during a year.
 - (iii) Whether the indicative price fixed by the Commission from time to time for the CGPs is linked to any frequency or whether it would be desirable to revise the price linking to frequency.
 - (iv) If GRIDCO does not need the surplus power of CGPs no restriction should be imposed by invoking Section-11 of the Electricity Act, 2003 and they

should be allowed to sale their surplus power through Open Access. However, whether such trading of surplus power by CGP to the outside state through Power Exchange or through power trader including supply to the State Grid at OERC determined rate in together, comes under 49% threshold limit.

- (v) Whether GRIDCO/State Govt. should insist the CGPs to supply their surplus and at the same deny payment of the price fixed by the Commission in their orders dt.28.02.2009, 30.06.2009, 28.10.2009 and 20.10.2010 (BST order for 2010-11).

Background for fixing price for CGPs by the Commission from time to time (Para 8 to 16):

8. Before we address the issues raised, it is necessary to go back to the circumstances and background under which the Commission have fixed the price of surplus power procured from the Captive Generating Plants (CGPs) by GRIDCO. These are indicated below.
9. Policy on harnessing of surplus power from the CGPs vide order dtd.14.3.08 in Case No.72 of 2007 which *inter alia* stipulated as under :

“(a) Firm Power:

- Those captive generators who give a commitment for supply of power for a period of more than 3 months & upto 1 year shall be considered as supplier of firm power of electricity form their Captive Generating Plants.
- The firm supplies may be procured form CGPs by GRIDCO/ Distribution Licensees through the Competitive Bidding route as per provision under Section-63 of Electricity Act, 2003.
- To avoid cartelization of a few large CGPs artificially boosting the pricing of surplus power from CGPs, the Commission has capped that the acceptable cost determined through the competitive bidding route should be within 10% of the maximum of cost of generation which can be certified by reputed firm of CAs to be appointed & approved by the Commission for consumption by State Utilities.
- The State Utilities are free to purchase Power at a higher rate than 110 % of the cost of generation through the competitive route for purpose of trading.

- CGPs selling power to GRIDCO will have the indirect advantage of saving in transmission charge and transmission loss which at 2007-08 level will be around 34 to 35 paise/ unit.
- (b) Non-firm Power:
- Those of the captive generators who are capable of giving day ahead schedule but are not in a position to give supply continuously for a period upto three months shall be treated as non-firm supplier of electricity. As an example, if a CGP is in a position to give its day ahead schedule for 21 days, 35 days, 40 days etc. during a period of three months shall be considered as non-firm supplier of electricity in a block period of 3 months.
 - Non-firm supplier of electricity has to declare at the beginning of the period of three months about the volume of energy that they would be supplying to the state grid. In case of failure to supply the declared volume, they may have to pay penalty at double the rate so that the supplier will be in a position to provide power to the consumers even by purchase of high cost power if need arises. This rate has to be decided through the process of competitive bidding. They shall have to go through the process of competitive bidding under Section 63 of the Act where the State utilities may accept this power paying upto a maximum of 75% of the lowest cost of firm power determined through bidding for 'firm supply' of electricity from the CGPs.
- (c) Inadvertent Power:
- Other than the firm and non-firm power as stated above, any kind of injection by the Captive Generating Plants to the State Grid will be treated as purely inadvertent injection of power to the Grid. In other words power injected by the Captive Generators without giving day ahead schedule would be treated as inadvertent injection of power and would be priced equal to the pooled cost of hydro power of the State.
- (d) However, there shall be no payment for any kind of injection firm, non-firm or inadvertent at frequency of 50.4 HZ or more as a matter of grid discipline.
- (e) But subsisting contracts have to be dealt according to the terms of their agreements who are not covered under the ambit of this order.
- (f) The CGPs are, however, at liberty to sell their power or avail Open Access as envisaged in the Act. If the CGPs are given the facilities like land at concessional rate, water supply and other benefits by the state for setting up the industries and have entered or will enter into an agreement for sale of their surplus power to the state, then the enforcements of the contractual provisions have to be addressed by the state.
- (g) Once the pricing of the surplus power from the CGPs to be sold to GRIDCO which is a State Govt. designated agency is determined through transparent bidding process, this has to be placed before OERC for taking into account the

same while determining the ARR for the relevant year/ years. There is no need or scope for approval for fixation of price by any other authority for supply of surplus power from CGPs to GRIDCO meant for supply to DISTCOs.

- (h) The Captive Generating Plants are free to sell their power through Open Access if they do not want to participate in a bidding process for determination of tariff for sale of power inside Orissa to GRIDCO.
- (i) The Commission has also decided to review the present order on Pricing of Surplus Power from CGPs at appropriate time based on feedbacks from different stakeholders and consistent with the legal provisions prevalent at that point of time.”

10. **Relevant Extract of Interim Order dt.28.02.2009**

3. Submission of GRIDCO

“x x x x x

- (i) Further, the Commission in the Pricing Policy for surplus power from CGP has directed to procure surplus power from CGPs through competitive bidding.
- (j) As per the CGP Pricing Policy approved by OERC, GRIDCO has called for the cost of generation data from different CGPs through a bid in line with the principles enunciated in the said Policy.
- (k) 13 Nos. of CGPs submitted their bids, quoting their lowest price (inclusive of 10% over the cost of generation), quantum and period of supply as mentioned hereunder :

<i>Name of the CGP</i>	<i>Minimum Quantum of power/month to be supplied to GRIDCO</i>	<i>Rate Quoted (Including 10% of cost of generation) Rs. / KWh</i>
<i>Bhusan Steel Ltd.</i>	<i>10 MW (08-09) Quantum of supply for 09-10 to be furnished after synch. Two units of 150 MW (each).</i>	<i>5.50</i>
<i>Aryan Ispat & Power Ltd.</i>	<i>5 MW (08-09) 5 MW (2009-10)</i>	<i>4.50</i>
<i>Vedanta Aluminium Ltd. (Jharsuguda)</i>	<i>10 MU (2008-09) 20 MU (2009-10)</i>	<i>4.57</i>
<i>NBVL (Angul)</i>	<i>20 MW (2008 – 09) 20 MW (2009 – 10)</i>	<i>5.22</i>
<i>SMC Power Generation</i>	<i>5 MW (2008 – 09) 5 MW (2009 – 10)</i>	<i>5.00</i>
<i>Pattnaik Steel & Alloys</i>	<i>5 MW (2008 – 09) 5 MW (2009 – 10)</i>	<i>5.20</i>
<i>IMFA</i>	<i>40 – 50 MW (08-09) 40 – 50 MW (April, 09 to Sept., 09) 30 MW (Oct, 09 to March, 09)</i>	<i>4.98</i>
<i>Arati Steels Ltd.</i>	<i>20 MW (16.01.09 to Mar, 09)</i>	<i>5.20</i>

	20 MW (2009-10)	
NINL	5 MW (Jan, 09 to Mar, 09) 8 MW (2009-10)	4.83
Jindal Stainless Ltd.	25 MU – Janm09, 35 MU – Feb., 09, 40 MU – Mar, 09, 30 MU (April – July, 09), 40 MU (Aug, 09 – Mar, 10)	5.68
Bhusan Power & Steel Ltd.	20 MW (Sept., 09 to March, 10)	5.50
Orissa Sponge Iron Ltd.	4 MW (08-09) 4 MW (2009 – 10)	4.50
Rathi Steel & Power Ltd.	2.25 MU (Feb.09 to Mar, 09) 2.30 MU (2009-10)	3.85

- (l) 2 Nos. of CGPs have submitted their bid documents, quoting their lowest price (inclusive of 10% over the cost of generation), quantum and period of supply as mentioned hereunder after the bid date.

Name of the CGP	Minimum Quantum of power/month to be supplied to GRIDCO	Rate Quoted (Including 10% of cost of generation) Rs. / KWh
Shyam DRI Power Ltd.	12 MW (Feb. to April 09) 25 MW (May to March 09)	5.15
VISA Steel Ltd.	35 MUFY2009-10	4.19

- (m) GRIDCO wants to impress upon the Commission that the rates quoted by different CGPs are quite high. The rates are varying from Rs.3.85/KWh to Rs.5.68/KWh. It would be difficult to procure the power by GRIDCO at such a higher rate for the State consumption.

1.

- (n) Further, GRIDCO states that the highest selling price of power for DISCOMs (i.e. for power intensive industries) for 2008-09 are 295.05 Paise/KWh (for EHT category) and 308.68 Paise/KWh (for HT category) based on 80% PLF. In view of this, the rates quoted by all the CGPs are not logically justified. One of the reasons of any industry setting up a CGP is that the cost to it is less than the cost of power which they would have incurred if they would have been a consumer of any DISCOM and as such the cost of generation should not exceed the highest cost of power as mentioned above.

x x x x x x x

7. Shri A.C. Mallick, Director (Commerce) and Shri U.K. Panda, Director (F&CA) on behalf of GRIDCO submitted as under:

- (a) GRIDCO is functioning as the State Designated entity declared by Govt. of Orissa for procurement of power from generating stations and for bulk

supply of power to DISCOMs in the ambit of Single Buyer Model prevalent in Orissa and its ARR and bulk supply price is approved by OERC for each financial year.

- (b) *GRIDCO has been procuring scheduled surplus power from different CGPs of Orissa at the following graded rates approved by GRIDCO in its 105th BOD meeting held on 27.02.2007.*
 - (i) *Up to 8 MU per month : Rs.2.02/KWh
(Less than 10 MW on an average per day)*
 - (ii) *8 MU and above per month : Rs.2.30/KWh
(About 10 MW or above on an average per day)*
 - (iii) *32 MU and above per month : Rs.2.50/KWh
(About 40 MW or above on an average per day)*
- (c) *GRIDCO has procured about 786 MU surplus power from CGPs and Co-Generation Plants of the State during FY 2008- 09 (April to December, 2008) as mentioned hereunder:*
 - (i) *From CGPs like NALCO, RSP, IMFA and HINDALCO 104.57 MU against OERC approval in ARR of FY 09 for 352 MU.*
 - (ii) *From Co-Generation plants like NINL, Arati Steel and TATA 233.47 MU against OERC approval in ARR FY 09 for 300 MU.*
 - (iii) *From other 10 Nos. of CGPs 447.50 MU,*
- (d) *Four nos. of DISCOMs and the long term open access customers like ICCL and NALCO have already overdrawn about 900 MU of power during FY 2008-09 (upto 31.01.2009) which is more than the quantum approved by OERC for the corresponding period.*
- (e) *As compared to the FY 2007-08, the hydel generation from all hydel stations of Orissa are expected to generate about 2000 MU less in FY 2008-09*
- (f) *GRIDCO has estimated that the power shortage upto June 2009 shall be around 300 MW considering the present injection from the CGPs to the tune of 130 MW. Due to such deficit power scenario, GRIDCO is procuring high cost UI power sometimes even by paying Rs.8 / Unit or more.*
- (g) *CGPs of the State have represented to GRIDCO that due to global meltdown, there is downsizing of production by the manufacturers/industries and consequently demand of power has gone down. Due to crash in commodity price in the world market, power has now become their main commodity for these electro- metallurgical industries having the CGPs and therefore, the industries intend to sell their surplus power at higher price so as to sustain in such recessionary situation.*
- (h) *Some of the CGPs like NBVL, Jindal Stainless Ltd., Hindalco, NINL, Arati Steel Ltd., Shyam DRI, etc. are already applying for Open Access so as to sell their surplus power outside the State through power traders or through Power Exchanges at higher rates.*
- (i) *GRIDCO has collected the information from the State of Chhatisgarh where CGPs are selling surplus power to the State Grid @ 280 P/KWh*

- (j) *GRIDCO had several rounds of discussion with CCPPO on the sale of surplus power from CGPs for the consumption in the State and CCPPO had indicated a price of 290 P/KWh for CGP power for consumption inside the state.*
- (k) *GRIDCO in its ARR application for FY 2009-10 has proposed a rate of 300 P/KWh for procurement surplus power from the State CGPs.*
- (l) *Further, the Commission in the Pricing Policy has directed to procure surplus power from CGPs through competitive bidding.*
- (m) *As per the CGP Pricing Policy published by OERC, GRIDCO has called for the bid and cost of generation data from different CGPs through bid document in line with the firm and infirm power as envisaged in the said Policy.*
- (n) *13 Nos. of CGPs have submitted the bid documents, quoting their lowest price (inclusive of 10% of cost of generation) which varies from Rs.3.85 to Rs.5.68 per KWh*
- (o) *2 Nos. of CGPs have submitted their bid documents, quoting their lowest price (inclusive of 10% of cost of generation), which are @ Rs.4.19 and Rs.5.15 per KWh.*
- (p) *GRIDCO wants to impress upon the Commission that the rates quoted by different CGPs are quite high. The rates are varying from Rs.3.85 /KWh to Rs.5.68 / KWh. It would be difficult to procure the power by GRIDCO at such a higher rate for the State consumption.*
- (q) *GRIDCO submits that the highest cost of power for DISCOMs (i.e. for power intensive industries) for 2008 -09 are 295.05 Paise / KWh (for EHT category) and 308.68 Paise / KWh (for HT category) 80% PLF. In view of this, the rates quoted by all the CGPs are not logically justified. One of the reasons of any industry setting up a CGP is that the cost to it is less than the cost of power which they would have incurred if they would have been a consumer of any DISCOM and as such the cost of generation should not exceed the highest cost of power as mentioned above.*
- (r) *There are also subsisting bilateral agreements of GRIDCO with CGPs like NALCO & IMFA. They are pressing hard for higher rates due to rise in coal and oil prices. GRIDCO requests the Commission for necessary and appropriate orders in this regard.*
- 8. *In view of the above submissions and the emerging power situation, GRIDCO suggested before the Commission to consider and approve a flat rate of 300 P/KWh for harnessing surplus power from the State CGPs for the consumption in the State as the bulk supplier expects a shortage of about 300 MW of power upto end of June 2009 (430 MW without CGP injection) and requests the State CGPs through the Commission to come forward to help the State of Orissa to come out from the present power shortage scenario by injecting a minimum of 430 MW to State Grid from 1st March, 2009 to 30th June, 2009. GRIDCO further submitted that as per the CGP Pricing Policy of the Commission, the price for sale of surplus power from the CGPs outside the State through trading may have to be fixed through mutually negotiated route or an appropriate price fixed by*

the Commission for the purpose. Further, GRIDCO has suggested that the status of CGPs should not be construed as changed merely on the ground that under the melt down condition their own consumption is less than 49% and they are selling surplus power beyond 51%. Again in view of the peculiar nature of functioning of CGPs, it is not possible to give commitment for supply of power for a period of more than 3 months and upto one year in order to qualify as firm supplier of power as envisaged in CGP pricing policy approved by the Commission in their order dated 14.3.2008 in Case No.72/2007. If the CGPs and the co-generating plants give day ahead schedule the surplus power supplied by them should be treated as firm supply. Any power supplied by the CGPs/co-generators without day ahead schedule should be treated as injection of inadvertent power.”

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11. The Commission found how it is time consuming and not an effective way of determining the cost of generation of the CGPs. In this connection, para 14 of the interim order dtd.28.02.09 is reproduced below for ready reference.

“14. As stipulated in the CGP pricing policy of the Commission dtd.14.03.2008, cost of generation of CGP has to be certified by a reputed firm of Chartered Accountants/ Cost Accountants for consumption in the State. It will take some time for appointment of reputed Chartered Accountants / Cost Accountants for the purpose. During hearing on 25.02.2009 both GRIDCO and the representative of CGPs submitted before the Commission that it would be extremely difficult to make appropriate cost allocation of the different cost components of the industries between the CGP, its main products and other by-products. Depending on their marketing strategy, the pricing of various products including power is a dynamic affair and costs are allocated in a manner that is determined by their marketing strategies. Thus costs may be loaded on the main product as well as on the generation of the power by the CGPs as would be required keeping in view the market requirements. Therefore, pricing of power is not entirely based on costs apportioned to a power plant.

x x x x x x”

12. Para-16 & 17 of the interim order dtd.28.02.09

“16. After going through the records and submissions made by GRIDCO and the representative of CGPs and keeping in view the current difficult situation now being faced by the State as well as the recession being experienced by manufacturers and the economy, the Commission considers it fit and appropriate at this stage to pass an interim order to enable harnessing as under:

- (i) *Keeping in view the number of CGPs in the State and their large variations in size/capacity and usage of fuel it is difficult for both CGPs and GRIDCO to adopt the competitive bidding route. The verification of costs and determination of prices, given the manner in which costs are*

allocated as between the main product and captive power generated, is going to be a cumbersome and long drawn affair. Considering the incongruent nature of different CGPs and Co-generating plants, the Commission examined and decided to adopt a simple approach and mechanism by which GRIDCO can procure power from CGPs in and around a reference point of the highest generation cost, currently being procured by GRIDCO.

- (ii) Because of the nature of generation by a CGP and captive generators with surplus power are at liberty of selling power, even for a short duration in the Power Exchange, it is not necessary in the interim to have a dividing line between short-term and long-term power. Power that can be scheduled on a day ahead basis can be absorbed in the system and can be programmed for full procurement by GRIDCO. CGPs/Co-generating plants who are capable of giving day ahead schedule should be, for the time being, treated as suppliers of firm power. Power injected by the CGPs/Co-generating plants without giving day ahead schedule would be treated as injectors of inadvertent power.*
- (iii) 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 with effect from 01.3.2009. 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 01.3.2009. 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% (ten percent) on this price is considered appropriate as a stimulous to the harnessing of bottled up capacity with the CGPs.*
- (iv) In order to encourage the CGP/Co-generating plants to fully utilize their bottled up capacity for generation of captive power/Co-generation power and to enable GRIDCO to access power from different sources including CGPs/Co-generating plants for meeting the demands in the State and making available a good quantum of power for trading, GRIDCO should offer a remunerative price to the CGPs in respect of power used for trading. Keeping in view the prevailing rate in the power exchanges, UI rate and price quoted in the bidding it would be just and equitable for GRIDCO and the CGPs and Co-generating plants to have an indicative rate of Rs.3.50 per KWh for procuring surplus power meant for trading. This is merely an indicative price suggested by the Commission. However, individual CGPs/Co-generating plant and GRIDCO, if they so like, may enter into further negotiation for an agreed price above this indicative rate. However, the procurement price by GRIDCO from the Captive Generating Plants/Co-generating plants for the purpose of trading should not unduly vary from the indicative price of Rs.3.50 per KWh now being*

suggested by us as an interim measure. This is necessary for the benefit of the consumers of the State because the profit earned by GRIDCO from the trading will be taken as 'other receipt' to meet its revenue requirement and bridge the gap in the ARR. After bridging of the gap in the ARR, the balance of surplus gained on account of trading of CGPs/Co-generation power may be shared with the CGPs/Co-generation plants at the year end.

(v) *In respect of injection of inadvertent power the payment would be equal to the pooled cost of hydro power of the State during 2008-09 and 2009-10 as the case may be depending on the period of supply.*

(vi) *The rate of power indicated in (iii), (iv) and (v) will also be applicable with effect from 01.3.2009 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.*

17. The Commission further reiterates that this is a common interim order and the arrangement suggested in Para 16 is an interim implementation plan and would be operative from 01.3.2009. After 30.6.2009 the Commission would review this arrangement as envisaged in Para 12.28 of the CGP pricing policy announced by the Commission in their order dated 14.3.2008.”

13. Interim order dated 30.06.2009

In June, 2009 the Secretary, CCPPO brought to the notice of the Commission certain difficulties in procurement of coal and supply of the surplus power at the rate approved by the Commission in their Order dtd.28.02.09. Among other things he submitted as follows (in para 2 of order dtd.30.6.09) :

“although CCPPO had committed a sizeable quantum of 400 MW of power to the State Grid to tide over the crisis of power shortage it could not be able to meet their commitment due to water scarcity, poor availability of coal and transportation problem, etc. He brought to the notice of the Commission that due to the changed circumstances the variable cost of coal could range between Rs.0.8 to Rs.3.35 /kWh depending upon various factor such as the coal mix, of-linkage coal, e-auction coal and imported coal. He requested the Commission for consideration of an upward revision of the procurement price of CGP power by GRIDCO. He further submitted that the agreement of GRIDCO with NALCO and IMFA for procurement of power, signed more than a decade earlier cannot be held in perpetuity and expressed their intention to convert it into a fresh bi-lateral agreement for wheeling of power. He brought to the notice of the Commission that M/s Orissa Sponge Iron Ltd. had not been able to connect to the Grid and requested the Commission to direct GRIDCO to make immediate arrangement for grid connectivity so that 15 MW of power could be injected into the Grid through the 33 KV network immediately. On the whole he prayed that CGP pricing needed to be revised upward keeping in view the ground reality, on a long term basis.”

GRIDCO on the other hand submitted that the present pricing policy ordered by the Commission in their order dtd.28.02.09 should continue till 31.3.10. The submissions made by GRIDCO to para-4 of the order dtd.30.6.09 which is reproduced below :

“4. Mr. A.C. Mallick, Director (Commercial) appearing for GRIDCO submitted that the present pricing policy ordered by the Commission dtd. 28.02.2009 should continue till 31.03.2010. He brought to the notice of the Commission the modified UI charges on ABT mechanism in the Regulation of CERC dated 30.03.2009 wherein the frequency band for payment of UI charges had been revised to the range of 49.2 Hz to 50.3 Hz as against the earlier provision of 44.0 Hz to 50.5 Hz. He requested the Commission that confirming the revised UI charges under ABT mechanism, any injection to the Orissa Grid by CGPs above 50.2 Hz should not be paid as against the existing provision of 50.4 Hz. He further drew the attention of the Commission regarding payment security mechanism as ordered by us in Case No. 59/2009 dtd. 27.06.2009. He requested the Commission to enhance 2% rebate time from four days to seven days and 1% rebate within 30 days after elapse of seven days. He further requested the Commission to allow GRIDCO not to pay any surcharge if the payment of bill was delayed by a period of 30 days after 1% rebate time. He requested the Commission to issue a clarificatory order regarding definition of co-generation.”

After hearing the representative of the CCPPO and the Director (Commercial), GRIDCO, the Commission in para 5 of their order dtd.30.6.09 has observed as under :

“Para-5:

Since, presently the State is undergoing the harrowing experience of power shortage and consequential power regulation, GRIDCO should leave no stone unturned to mop up as much power as possible from all sources including CGPs. We have issued an interim order dated 28.02.2009 to use bottled up surplus power of CGPs to tide over the power scarcity looming over the State, at that point of time. In the meantime, we have also issued clarifications and modifications in our review order dtd.27.06.2009 in Case No.59/2009. It would be a wild goose chase to fix CGP-wise tariff now as the input cost for CGPs are dependent on various factor from availability of coal to its transportation as submitted by them. The truant monsoon has played havoc with the hydrology of the state. It cannot be predicted with certainty when state hydro generation would pick up.”

Finally, the Commission in para 6 of their order dtd.30.6.09 observed and directed as under :

“Para-6:

- (i) *The directions and stipulations given by the Commission in their order dated 28.02.2009 in Case No.06 to 20 of 2009 read with the clarifications*

and modifications issued in the review order dt.27.06.2009 in Case No.59/2009 would continue to be in operation till 31.3.2010. However, the position would be reviewed from time to time and such a review would be taken up during September, 2009 and if necessitated even earlier.

- (ii) The individual Captive Generating Plants (CGPs) may sign an Agreement with GRIDCO or the DISCOMs, covering the volume and duration of supply of firm power as may be mutually agreed upon. In the event of the Commission specifying the volume and duration of supply, then such specification shall prevail. The terms and conditions for supply of such power will include all such conditions as specified by the Commission and such other terms as may be mutually agreed upon.*
- (iii) The price at which the surplus power of CGPs would be supplied to GRIDCO or the DISCOMs, as per these agreements, shall be at a rate as has been decided by the Commission or as may be determined by the Commission from time to time and till such time, as is required or necessary in the eyes of the Commission.*
- (iv) Signing of a fresh agreement is also applicable to IMFA/NALCO and such other CGPs having subsisting agreement/MOU in accordance with the principles as indicated in (ii) above. In other words, these CGPs may also sign fresh agreement with GRIDCO as has been clarified vide para 8(i) of the order dated 27.6.2009 of the Commission in Case No.59/2009.*
- (v) The qualification of CGPs producing power through co-generation will be in accordance with Section 2(12) of the Electricity Act, 2003 read with MoPs resolution of 06.1.1996 in this regard.”*

14. Review order dtd.28.10.09

The extracts of the said order relevant for the issues under consideration are reproduced below :

- “2. In pursuance of the order dated 30.6.2009 as stated above and in view of the scarcity situation prevailing in the State for supply of electricity in the State arising out of low generation of hydro power and other factors, the Commission on 15.10.2009 reviewed the working arrangement approved by the Commission for sale of surplus power by the CGP to GRIDCO. It was felt necessary to review the position because there is urgent necessity for accessing more power from the CGPs to meet the deficit situation to some extent.*
- 3. Director (Commerce), GRIDCO both in his written and oral submission pointed out that despite offering a price of Rs.3/3.10/ Unit for sale of surplus power to GRIDCO by CGP, the federation has not been able to keep their commitment for injection of surplus power in the order 400 to*

500 MW. The CGP(s) have supplied 227 MW in March, 243 MW in April, 256 in May, 322 in June, 278 in July, 185 in August and 170 MW in September, 2009; the monthly average being only 240 MW. When GRIDCO is facing difficulties in procuring power from different sources, the CGPs have not risen to the occasion.

4. *Shri Mallik also submitted that, GRIDCO had invited about 30 No. of CGPs of the State for execution of PPA during the year 2009 and again after the Commission's Interim order dated 27.6.2009 in case No.59 of 2009; but so far only 11 No. CGPs have signed PPAs with GRIDCO. Regarding signing of fresh agreement with NALCO and IMFA it was pointed out that agreement with NALCO expired on 31.8.2009 and discussion have already taken place with NALCO for signing of a fresh agreement prior to the Interim Order dated 27.6.2009. Once the emergency and backup drawal availed by GRIDCO is finalized by the Commission, PPA shall be executed with NALCO and IMFA. He further clarified that even if IMFA and Nalco have not executed fresh PPA with GRIDCO, they have been paid @ Rs.3.00 /Unit for supply of surplus power w.e.f. 01.3.2009.*
7. *He further stated that when GRICO procures power from the CGPs, the CGPs need not pay any kind of cross subsidy or wheeling charges to respective DISCOMs.*
10. *It is further submitted that GRIDCO have come to the rescue of the CGPs/core industries during their lean phase by bearing the burden of enhanced price of procurement. Now it is the time for CGPs to reciprocate by maximizing their injection of surplus power (after meeting their captive consumption) for the benefit of the State.*
11. *Accordingly, GRIDCO has prayed before the Commission in its written reply, as follows:-*

X X X X X

3. *That the price of surplus power should be linked with the total quantum of power injected to the system a "basket price" shall be one of the options provided the total quantum of surplus power from CGPs is at least 400 MW.*
4. *That the Hon'ble Commission may also consider to fix Slab/Graded rates linked with quantum of injection of power (in MU) per month so as to cover procurement of surplus power from the small Captive Power Generators.*
5. *That the Hon'ble Commission may consider to fix separate tariff for injection of 100MW and above so as to encourage some of the*

CGPs who are capable of injecting more than 100MW to supply all their surplus for State use which in turn will address the problem of power shortage in the State in a big way.

6. *That the Hon'ble Commission may consider to keep provisions so that GRIDCO should be able to recover due to tariff enhancement (if any) by the Hon'ble Commission."*
12. *The Secretary, Confederation of Captive Power Plants, Orissa (CCPPO) in their petition among other things has mentioned as under :*
- (i) *The Commission should incentivise captive generation in the State so that the business plan calculation on return of the electricity per unit is calculated by industries such that the return on electricity through trading to the State Utility is higher than the electricity through manufacturing the core product. The option, therefore, before the Commission is to choose between the following opportunities of pricing mechanism of the CGPs.*
 - (a) *Rates available or the trends under bilateral transaction i.e. through traders.*
 - (b) *Trends available from bilateral transactions in an exchange.*
 - (c) *Trends available under UI*
 - (d) *Market absorption capacity in Orissa.*
 - (ii) *In case of power transacted through traders, the weighted average sale price was found to be Rs.6.82. For round the clock transactions, the sale price was Rs.6.60, for peak it was Rs.8.18.*
 - (iii) *In case of power transacted through the power exchange, the minimum maximum and weighted average price in IEX was Rs.1.65, Rs.15.00 and Rs.6.84 respectively. Similarly for PXIL, the rates were Rs.0.00, Rs.14.49 and Rs.8.74 respectively. In case of power transacted through UI, the average UI tariff was Rs.4.17 in the NEW (North-East-West) grid and Rs.3.99 in the Southern Regional Grid. The minimum and maximum price of UI was Rs.0.00 and Rs.7.35 respectively with capping at Rs.4.08 for Generators.*
 - (iv) *The price of electricity for UI transaction was over Rs.4.00/Kwh, which is the indicator to almost 43% of the total power transacted in the country. It is, therefore, relevant to mention that UI transaction price should be the benchmark as the licensee GRIDCO would be buying power at the UI rate and it is the same rate at which the CGPs in Orissa will find it convenient to supply power in view of various factors of cost input.*

- (v) *Due to small size and use of costlier fuel, the cost of generation at CGP would comparatively be higher. Combined with volatility for the fuel supplied and the improper indexing of the pricing mechanism of fuel, the average variable cost is working at Rs.2.70/unit from CGP. Interest, depreciation, O&M and other fixed cost are not being compensated at the existing price of Rs.3.00/3.10 per KWH.*
- (vi) *Since the UI rate fluctuates from as low as Rs.4.17 to as high as Rs.6.50 in the NEW grid and, therefore, in case the Commission prefers to decide price independent to UI, then it would be appropriate to have 2 slab rates i.e for power injection below 50 MW average and for power injection above 50 MW average.*
- (vii) *In case of power injection below 50 MW average and considering to volatility of cost and the other factors, the rate of Rs.4.00 would be more appropriate and for power supply above 50 MW average, the rate of Rs.4.50 could be considered.*
- (viii) *In case the Commission links it to the UI rates, then also the minimum benchmark level of Rs.4.00 is quite evident from the rates and trends seen from August'08 to June'09.*
- (ix) *As far as the commitment from the CGPs is concerned, the rates once determined, the commitments of all members will be in place automatically, instead of power quantum and commitments deciding the rates.*
- (x) *As to the queries of the Commission as to why the CGPs have failed to honour their commitment that there will be a net supply of 360 MW to the grid by the CGPs. Sri Das clarified that there are innumerable problems for arranging coal. The Fuel Supply Agreement signed by most thermal based captive generating plants has a guarantee condition of 60% of the linkage to be supplied to the CGP. The balance 40% has to be met through either e-auction or through market. E-auction is not the alternative for steady supply because they involve road transportation as well as rail transportation which again, is dependent on the norms of railways as well as their whims and caprices. Transportation is primarily in the hands of big wig musclemen. Further, the blending cost of imported coal is fluctuating from month to month thus making the cost of power unviable. Coal procured by CPPs through e-auction and import, after mobilization of output is very costly and not remunerative enough to produce at the existing price. He, therefore, pleaded for a graded higher tariff so that CGPs will be encouraged to maximise their generation to supply to the Grid. He, further intimated that the CGPs are also small units in comparison to IPPs where a fixed cost is distributed over a larger number of units and the cost per unit is generally low.*

Observation and Direction of the Commission of the review order dtd.28.10.09

- “18. *The State is facing serious deficit of power availability because of low generation of power from hydro sources and the generation from hydro sources may also be further reduced as the water is to be saved in the reservoir to meet the requirement of irrigation during Rabi season. The cost of power procured through UI or power exchange is more than Rs.4.00 per Kwh on the average. It is an admitted fact that there is increase in coal price from time to time and the problem faced by the CGP in procurement of coal is genuine one. In order to ensure supply of surplus power from the Captive Generating Plants to the grid when the State is facing acute power shortage, it is necessary to incentivise the generation from the Captive Generating Plant through full utilisation of their capacity.*
19. *Accordingly in continuation of the review order dt.30.06.2009, the Commission now directs and stipulates as under:*
- (i) *The price of supply of energy upto 3.6 MU/month (~ 5 MW Avg.) would be Rs.3.10/KWH.*
 - (ii) *The price for supply of incremental energy above 3.6 MU/month upto 36 MU/month (~ 50 MW Avg.) would be Rs.3.40/Kwh.*
 - (iii) *In respect of supply of incremental energy above 36 MU/month upto 72 MU/month (~ 100 MW Avg.), the price would be Rs.3.70/Kwh.*
 - (iv) *In respect of supply of incremental energy beyond 72 MU/month, the incremental energy would be priced at Rs.4.05/Kwh.*
 - (v) *As regards the pricing of power supply by the co-generating plants Rs.3.20 per unit would be paid up to 3.6 MU/month and for injection beyond 3.6 MU the additional unit will qualify for payment at the same rate as that of (ii), (iii) & (iv) above.*
 - (vi) *The concerned CGPs who have not signed the agreement with GRIDCO should sign the agreement committing the quantum of power that they would supply to GRIDCO. This is also applicable in case of IMFA and NALCO for which GRIDCO should take expeditious steps to sign the appropriate agreement as clarified in para 8(1) of the Interim Order dt.27.6.2009 in case No.59 of 2009.*
 - (vii) *GRIDCO should coordinate with OPTCL and ensure that the frequent disturbance of grid at Old Duburi, Paradeep and Choudwar is rectified so that the CGPs located in these areas do not find any difficulty in injecting their surplus power to the grid, when their surplus power is so essential to the grid.*

- (viii) *Regarding the provision of SCADA, PLCC and grid connectivity the clarifications issued and stipulations imposed in the order dated 4.8.2009 in case No.60 of 2009 will be applicable.*
- (ix) *Regarding the pricing of drawal of emergency and back up power by the industries having captive generation, the matter has already been clarified in para 8(ii) of the order dated 27.6.2009 in Case No.59/2009 (Gridco Vrs. CCPPO). However, it has been suggested by CCPPO in order to discourage the industrial units having captive power plants to draw power from grid instead of making full utilization of their installed capacity, there is need to disincentivise drawal from the grid without making full utilisation of the installed capacity by the CGP. Hence, such of the CGP generally supplying power to GRIDCO, as per the agreement draws power from the grid for either emergency or back-up power shall be charged at 105% of the maximum rate at which they are paid for their surplus power or the rate prescribed vide para 447 of the RST order dt.20.3.2009 for the year 2009-10 in case No.66, 67, 68 & 69 of 2008, whichever is higher. Accordingly, the agreement between the CGP and GRIDCO should contain such a stipulation. The drawl by CGPs from the Grid and injection by CGPs to the grid shall be metered separately and be settled at the respective rate as above.*
- (x) *As regards the payment of power supply by the CGP having co-generation facilities, the GRIDCO in its oral submission has informed that GRIDCO has no objection to give co-generation status provisionally to such CGPs who has waste-heat recovery boiler (WHRB) and have given details of the WHRB to them and they will be paid at a rate of Rs.3.10/unit. However, as per GoI resolution of eligibility criteria of Co-generation plant they should give the steam flow data of WHRB in a year for certifying the unit as Co-generation plant. Accordingly, it is ordered that the CGPs having Co-generation facilities shall be paid at Rs.3.20/unit for the first 3.6 MU/month and the incremental energy at a rate as approved in para (ii) to (iv) above. CGPs will furnish the steam flow data from its WHRB and conventional boiler separately and annual generation of its CGP at the end of each FY to GRIDCO for confirming its status as Co-generation plant. For the year 2009-10 the GRIDCO is directed to complete such exercise and finalise the Co-generation status of the eligible CGPs by 15.11.2009 at the latest and ensure payment w.e.f. 01.3.2009 as per the rate approved by the Commission from time to time.*

(An illustrative example of payment of CGP of its supply in a month is given at Annexure attached to this order)

(xi) *Regarding direct supply of power by some of the CGPs to the distribution companies at a lower rate of Rs.150 paise/127 paise per unit instead of entering into commercial arrangement with GRIDCO at an offered price of 300 paise per unit approved by the Commission, the matter has been extensively dealt with in the order dated 14.8.2009 in case No.82 of 2009 in case of WESCO Vrs. GRIDCO, OPTCL, SLDC and Viraj Steel and Energy Ltd. The small CGPs are willing to supply their surplus power to the distribution companies at a lower rate because they have to incur additional expenditure if power is supplied to Gridco by way of constructing additional lines and substations etc. Gridco must take all proactive steps to incentivise these CGPs to supply power through GRIDCO if it so desires that CGPs should supply power to itself rather than supplying power to distribution companies at a lower rate. There is need for Gridco for serious introspection to attract these smaller CGPs to enter into an agreement with GRIDCO instead of supplying directly to the distribution companies at a lower rate.*

20. *The modified CGP pricing stipulated in Para-19 will be applicable w.e.f. 01.11.2009 and will continue until further order.”*
15. The Commission in their BSP order dtd.20.3.2010 has mentioned as under :

“Captive Generating Plants (CGPs) and Co-generating Plants

379. *GRIDCO has stated that the Commission in their Interim Order dated 28.02.2009 in Case No. 6/09 to 20/09 have stipulated that CGPs having Co-generating Status may be allowed a marginal hike in prices as compared to that of the CGPs without Co-generation facilities so as to encourage Co-generating Plants under the mandate of the Electricity Act, 2003. Accordingly, Commission fixed the price @ Rs.3.10 per kWh and Rs.3.00 per kWh for procurement of surplus power from Co-generating Plants and CGPs respectively. As per the direction of the Commission in their Order dated 27.06.09 in Case No. 59/2009, GRIDCO has classified 15 Nos. of CGPs as Co-generating Plants in accordance with the Report of the Chief Electrical Inspector (CEI) dated 23.09.09 based on the Govt. of India Notification dated 06.11.1996.*
380. *Further the Commission in its Interim Order dated 28.10.2009 in Case Nos. 06/09 to 20/09 have revised CGP price to Rs.3.10 / 3.40 / 3.70 / 4.05 / Unit for different slabs of quantum of power supply w.e.f. 1st November, 2009 to 31st March, 2010 and in the same order the price for Co-generation plants has been revised to Rs.3.20 / 3.40 / 3.70 / 4.05 / Unit w.e.f. 1st November, 2009 to 31st March, 2010 for different slabs of quantum of power supply. In the absence of approved tariff for Co-*

generating Plants and CGPs for FY 2010-11, an average price based on the existing approved rate, have been considered by GRIDCO subject to approval of the Commission.

381. *GRIDCO stated that considering the quantum of power procured from various CGPs and Co-generating Plants during the first six months of FY 2009-10, it is observed that majority of CGPs and Co-generating Plants are supplying power either below 5 MW or within 50 MW at best. Thus, an average price of Rs.3.25 / Unit (avg. of Rs.3.10 & Rs.3.40 / Unit) for CGPs and Rs.3.30 / Unit (avg. of Rs.3.20 & Rs.3.40/Unit) for Co-generating Plants have been worked out and proposed to be considered as procurement price for power from CGPs and Co-generation Plants respectively during the FY 2010-11. GRIDCO proposes to procure 1035 MU of power at a cost of Rs.336.38 Cr. from CGPs and 545 MU of power at a cost of Rs.179.84 Cr. from Co-generation plants during FY 2010-11.*
382. *Further, GRIDCO in its additional submission on 25.01.2010 stated that the drawl of 16 MU from Bhusan Power & Steel Ltd (BPSL) was considered as the drawal from Co-generation plant in their original application. But this may be considered as drawal from CGPs instead of Co-generation plant because Bhusan Power & Steel Ltd (BPSL) is actually a CGP Unit, but not a Co-generation plant. Hence the total projected drawal from CGPs & Co-generation Plants for FY 2010-11 comes to 1051 MU & 529 MU respectively.*
383. *The Commission scrutinized the above proposal of GRIDCO for procurement of surplus power from CGPs and Co-generation Plants. The abstracts of the Commission's interim order dt.28.10.2009 in Case Nos.6/2009 to 20/2009 on sale of surplus power from CGPs is reproduced below: (Para 18, 19, & 20)*
- '18. The State is facing serious deficit of power availability because of low generation of power from hydro sources and the generation from hydro sources may also be further reduced as the water is to be saved in the reservoir to meet the requirement of irrigation during Rabi season. The cost of power procured through UI or power exchange is more than Rs.4.00 per Kwh on the average. It is an admitted fact that there is increase in coal price from time to time and the problem faced by the CGP in procurement of coal is genuine one. In order to ensure supply of surplus power from the Captive Generating Plants to the grid when the State is facing acute power shortage, it is necessary to incentivise the generation from the Captive Generating Plant through full utilisation of their capacity.*
19. *Accordingly in continuation of the review order dt.30.06.2009, the Commission now directs and stipulates as under:*
- (i) *The price of supply of energy upto 3.6 MU/month (~ 5 MW Avg.) would be Rs.3.10/KWH.*

- (ii) *The price for supply of incremental energy above 3.6 MU/month upto 36 MU/month (~ 50 MW Avg.) would be Rs.3.40 per Kwh.*
- (iii) *In respect of supply of incremental energy above 36 MU/month upto 72 MU/month (~ 100 MW Avg.), the price would be Rs.3.70 /Kwh.*
- (iv) *In respect of supply of incremental energy beyond 72 MU/month, the incremental energy would be priced at Rs.4.05/Kwh.*
- (v) *As regards the pricing of power supply by the co-generating plants Rs.3.20 per unit would be paid up to 3.6 MU/month and for injection beyond 3.6 MU the additional unit will qualify for payment at the same rate as that of (ii), (iii) & (iv) above.*

x x x x x x x x

20. *The modified CGP pricing stipulated in Para-19 will be applicable w.e.f. 01.11.2009 and will continue until further order.'*

384. *The Commission observed that the price fixed for procurement of surplus power from CGPs and Co-generation Plants in the above mentioned Order dt.28.10.2009 is still in force as no further order has been issued by the Commission in this regard. Hence, the Commission provisionally accepts the same procurement price for CGPs and Co-generation Plants as was fixed in its interim Order dt.28.10.2009 for calculation of ARR of GRIDCO for the FY 2010-11. However, in case of any revision of price for sale of surplus power from CGPs and Co-generation plants by the Commission for FY 2010-11, the revised price shall be applicable for procurement of surplus power by GRIDCO from CGPs and Co-generation plants and such deviations/adjustment will be considered while taking up tariff fixation for FY 2011-12.*

385. *Accordingly for the FY 2010-11, the cost of power purchase from CGPs comes to Rs.341.58 crore for the approved energy drawal of 1051 MU at an average price of Rs.3.25/unit and the procurement cost of power from Co-generation Plants comes to Rs.174.57 crore for the approved energy drawal of 529 MU at an average price of Rs.3.30/unit. The Commission approves the same for the FY 2010-11. Further, the Commission directs that changes, if any, due to the CGP pricing policy notified on 14.03.2008 and interim order dt.28.10.2009, the pricing shall be accounted for in the truing up exercise, if need arises, but payment for CGPs and Co-generating Plants shall not be held up on the ground that truing up is yet to be taken up."*

16. Review of Interim Order dated 30.03.2010 in Case No.131/2009 (GRIDCO V. CCPPO)

“Para-2:

2. *Mr. J. K. Dash, Sr. GM (PP) stated that GRIDCO has filed the petition for review of Interim order dtd. 30.6.09 passed in case Nos. 6 to 20/2009, as the Commission has not considered the following important contentions which were raised by GRIDCO during hearing on 30.6.2009 of case Nos. 6 to 20/09 which are given below:*
- (i) Period of payment of monthly energy bills of CGPs by GRIDCO;*
 - (ii) Amendment of frequency limit as per CERC notification;*
 - (iii) Rate of emergency and back up power availed by NALCO & IMFA from the petitioner.*

The non-consideration of the above vital contentions by the Commission vide its order dated 30.6.2009 is an error apparent on the face of the record and as such the said order is liable to be reviewed.”

“Para-9:

9. *Regarding amendment of frequency limit as per CERC notification, the respondent stated that the frequency barrier can not be imposed on the CGPs as the Intra-State ABT mechanism is yet to be in operation. In the present scenario as the State needs power, the CGPs should not reduce generation and resort to export, because of high frequency i.e beyond 50.3 Hz. The Pricing Policy dtd. 14.03.2008 of the Commission is not in vogue as per the superseding order of dtd. 28.02.2009 wherein no constraint or barrier was imposed linked to frequency. The penalty and gains under ABT order of CERC should be made applicable only when there is a surplus situation and intra-state ABT is in operation.”*

Observation and Direction of the Commission (Para 17 to 28)

17. Though the CGP pricing order dtd.14.3.08 stipulates that the procurement of surplus power from CGPs is to be made through the process of competitive bidding, its review order dtd.28.02.09 in para 14 has clearly analysed the difficulty in arriving at the rate of procurement of surplus power from CGP through bidding process. Both GRIDCO and representative of CGPs during the hearing dtd.25.02.09 had submitted before the Commission that it would be extremely difficult to make appropriate cost allocation of the different cost components of the industries between the CGP and its main products and other bi-products. Accordingly, keeping in view the UI rate prevailing in the power exchange and the rate through bi-lateral trading the Commission had fixed Rs.3/kWh w.e.f. 01.3.09 in respect of surplus power from the CGPs. In respect of power from co-generating plant utilizing waste heat process the rate was fixed at Rs.3.10/kWh [Vide para 16 (iii) of interim order dtd.28.02.09]. Subsequently, there was difficulty in procurement of coal and keeping in view the increasing cost of coal obtained through e-auction and need for utilizing the bottled up power of CGPs to meet the power deficit situation faced by the State, the Commission in

their review order dtd.28.10.09 fixed the procurement cost of power from CGPs at a graded rate starting from Rs.3.10/KWH (5 MW average or 3.6 MU) to Rs.4.05/KWH (100 MW average or 72 MU per month) depending on the quantum of injection. This was the upper limit at which GRIDCO was to purchase from CGPs and accordingly GRIDCO and CGPs were directed to sign agreement covering the volume and duration of supply of firm power as may be mutually agreed upon (vide para 19 (vi) of the order dtd.28.10.09 read with para 6 (ii) of the order dtd.30.6.09). In this connection, the need for incentivising the generation from CGP to full capacity has been indicated in para 18 of the interim order dtd.28.10.09 which is extracted below:

“18. The State is facing serious deficit of power availability because of low generation of power from hydro sources and the generation from hydro sources may also be further reduced as the water is to be saved in the reservoir to meet the requirement of irrigation during Rabi season. The cost of power procured through UI or power exchange is more than Rs.4.00 per Kwh on the average. It is an admitted fact that there is increase in coal price from time to time and the problem faced by the CGP in procurement of coal is genuine one. In order to ensure supply of surplus power from the Captive Generating Plants to the grid when the State is facing acute power shortage, it is necessary to incentivise the generation from the Captive Generating Plant through full utilisation of their capacity.”

18. Basically the rate fixed for procurement of power for GRIDCO from CGPs is the indicative price of the upper limit and accordingly GRIDCO and CGPs were to sign agreement which among other things was to cover the volume and time of supply. Like any other sources of supply of power, supply from the CGPs was one of the sources and the upper limit of the rate was fixed by the Commission for facilitating commercial arrangement between the CGP and GRIDCO. If at particular time or during a year if a particular CGP has utilized less than 51% of their generation it will not materially affect the rate at which supply of surplus power to GRIDCO by CGP is effected and rate would be as per the rate of the bi-lateral agreement already entered into or would be entered into. Keeping in view the indicative rate fixed by the Commission, GRIDCO should not purchase from CGP at a rate higher than the rate fixed by the Commission for use in the state by the distribution companies. However, for trading purpose the indicative price was Rs.3.50/kWh [Vide para 16 (iv) of interim order dtd.28.02.09].

19. The Commission in their BSP order dtd.20.3.10 for procurement of power by GRIDCO from the CGPs and co-generating plants for the year 2010-11 has also adopted the rate approved in their interim date 28.10.2010. The Commission in para 385 of the BSP order dtd.20.3.10 after taking into account the price fixed in its order dtd.28.10.09 have ordered as follows :

“385. Accordingly for the FY 2010-11, the cost of power purchase from CGPs comes to Rs.341.58 crore for the approved energy drawal of 1051 MU at an average price of Rs.3.25/unit and the procurement cost of power from Co-generation Plants comes to Rs.174.57 crore for the approved energy drawal of 529 MU at an average price of Rs.3.30/unit. The Commission approves the same for the FY 2010-11. Further, the Commission directs that changes, if any, due to the CGP pricing policy notified on 14.03.2008 and interim order dt.28.10.2009, the pricing shall be accounted for in the truing up exercise, if need arises, but payment for CGPs and Co-generating Plants shall not be held up on the ground that truing up is yet to be taken up.”

20. In this connection, the suggestions and submission of GRIDCO made before the Commission which has been indicated in para 7 & 8 of the order dt.28.02.2009 which is relevant is extracted below for ready reference.

*“7 (a) x x x x x x x x x
x x x x x x x x x*

- (m) *As per the CGP Pricing Policy published by OERC, GRIDCO has called for the bid and cost of generation data from different CGPs through bid document in line with the firm and infirm power as envisaged in the said Policy.*
- (n) *13 Nos. of CGPs have submitted the bid documents, quoting their lowest price (inclusive of 10% of cost of generation) which varies from Rs.3.85 to Rs.5.68 per KWh.*
- (o) *2 Nos. of CGPs have submitted their bid documents, quoting their lowest price (inclusive of 10% of cost of generation), which are @ Rs.4.19 and Rs.5.15 per KWh.*
- (p) *GRIDCO wants to impress upon the Commission that the rates quoted by different CGPs are quite high. The rates are varying from Rs.3.85/KWh to Rs.5.68 / KWh. It would be difficult to procure the power by GRIDCO at such a higher rate for the State consumption.*
- (q) *GRIDCO submits that the highest cost of power for DISCOMs (i.e. for power intensive industries) for 2008 -09 are 295.05 Paise / KWh (for EHT category) and 308.68 Paise / KWh (for HT category) 80% PLF. In view of this, the rates quoted by all the CGPs are not logically justified. One of the*

reasons of any industry setting up a CGP is that the cost to it is less than the cost of power which they would have incurred if they would have been a consumer of any DISCOM and as such the cost of generation should not exceed the highest cost of power as mentioned above.

- (r) *There are also subsisting bilateral agreements of GRIDCO with CGPs like NALCO & IMFA. They are pressing hard for higher rates due to rise in coal and oil prices. GRIDCO requests the Commission for necessary and appropriate orders in this regard.*

8. In view of the above submissions and the emerging power situation, GRIDCO suggested before the Commission to consider and approve a flat rate of 300 P/KWh for harnessing surplus power from the State CGPs for the consumption in the State as the bulk supplier expects a shortage of about 300 MW of power upto end of June 2009 (430 MW without CGP injection) and requests the State CGPs through the Commission to come forward to help the State of Orissa to come out from the present power shortage scenario by injecting a minimum of 430 MW to State Grid from 1st March, 2009 to 30th June, 2009. GRIDCO further submitted that as per the CGP Pricing Policy of the Commission, the price for sale of surplus power from the CGPs outside the State through trading may have to be fixed through mutually negotiated route or an appropriate price fixed by the Commission for the purpose. Further, GRIDCO has suggested that the status of CGPs should not be construed as changed merely on the ground that under the melt down condition their own consumption is less than 49% and they are selling surplus power beyond 51%. Again in view of the peculiar nature of functioning of CGPs, it is not possible to give commitment for supply of power for a period of more than 3 months and upto one year in order to qualify as firm supplier of power as envisaged in CGP pricing policy approved by the Commission in their order dated 14.3.2008 in Case No.72/2007. If the CGPs and the co-generating plants give day ahead schedule the surplus power supplied by them should be treated as firm supply. Any power supplied by the CGPs/co-generators without day ahead schedule should be treated as injection of inadvertent power.”

21. Further, from the minutes of the meeting held on 09.10.2009 under the chairmanship of Commissioner-cum-Secretary, Energy Dept. with representative of JSL Ltd. and CMD, GRIDCO Ltd., it may be seen that JSL has been impressed upon to inject its entire surplus to State Grid in view of the difficult power situation faced by the State. The relevant extract is reproduced below for proper appreciation as to how the CGPs although out have been asked to maximize their generation and inject their entire surplus to the State Grid to help the State overcome the power scarcity situation.

X X X X X X X X X

“Gridco explained the power supply situation in the State. There was a gap of 700 MW of power between demand and availability. While the demand is constantly increasing the water level of the reservoirs is alarmingly low and it will be difficult to meet the power demand of the State during the coming months. So the support the CGPs to partly meet the deficit is absolutely necessary. Hence the proposal of Jindal Stainless Steel Ltd. to wheel its surplus power to outside the State is not acceptable to State/GRIDCO. The state will be facing inconvenience.

The representative of JSL submitted that they are not willing to the proposal of Gridco to sell their entire surplus power to the State as they are making loss at the present tariff given by Gridco. JSL also stated that they have alone contributed 28.5% of its surplus power to the State from April, 08 to Sept., 09.

In view of the deficit power scenario Government also impressed upon JSL to sell all its surplus power to the State after meeting its requirement at Duburi.

Under the above circumstances, no decision could be taken regarding sharing of power.”

We now, therefore, deal the core issue as under:

22. The “Captive Generating Plant” in the Electricity Act 2003 is defined as a power plant set up by any person to generate electricity **primarily** for his own use. The Rule 3 of the Electricity Rule, 2005 stipulates among others the qualifying criteria of a CGP, not less than 51% of the aggregate electricity generated such plant, determined on annual basis is consumed for the captive use. In plain reading of the above provision, the onus lies on the owner of the CGP to claim for the eligibility of CGP. In the instant cases, M/s. CCPPO & M/s. JSL claims that they are owner of CGP, and they would have consumed in normal circumstances more than 51% of its generation in 2009-10, had the State Govt. and GRIDCO not insisted for maximization of generation and supply to the State Grid even forcing them to go for costly procurement of fuel through e-auction and imported coal.
23. In the year 2008-09 and 2009-10 when the State was in great need of power, GRIDCO had approached the CGPs requesting them to maximize their generation and supply to GRIDCO to meet the power deficit situation of the State. The

Government of Orissa vide its letter No.4668 dtd.22.4.09 has issued directions to the generators including CGPs under Section 11 of Electricity Act, 2003 to optimize their generation and inject power to the State Grid. In this letter it was indicated that the generators were required to generate power at full exportable capacity/PLF and inject power so generated to the State Grid after their captive consumption to enable the Government to tide over the power crisis situation. The CGPs have risen to the occasion and increased their supply from 1188.18 MU (858.34+co-generation 329.84 MU) during 2008-09 to 2967.09 MU (2295.48+co-generation 671.61 MU) during 2009-10. GRIDCO should try to exploit the full existing capacity of the CGP and procure power from them and taking optimum benefit of UI or in power exchange by injecting such power to the grid. Of course this would be done only after meeting the State's demand. For this GRIDCO should enter into a bi-lateral agreement with the CGPs if not already done. While GRIDCO would procure power to meet the demand of the consumer of the State as per the merit order, the balance power from the CGP and other sources may be procured and can be traded by GRIDCO.

24. Even the Commission has advised CGP not to keep the national asset idle and maximize the generation and supply to surplus prior to the State at the rate determined by the Commission. The above fact is not disputed or denied by GRIDCO.
25. The purchaser of power (M/s GRIDCO) thus forced the owner of CGPs to maximize the generation and the same time questioning the legal status of CGP in the FY 2009-10 thereby stopping payment to them. At this stage we are not going to the legality of the status of CGP as per the provision of Electricity Rule, 2005 in the interest of the State. However, this course of action needs careful examination by the full bench of the Commission after further consultation and deliberation.

26. Whether the CGPs have lost their status as CGPs on the ground of supplying more than 49% of its total generation during 2009-10 is to be decided by an appropriate authority. The Electricity Act does not specifically provide as to who is competent to decide such an issue. This needs clarification from Ministry of Power and requires thorough examination from different angle. The Commission would take a view in the matter only after receiving views from State Govt., Ministry of Power and after a thorough legal consultation. Since the full bench consisting of two Members and Chairperson had fixed the price in their interim order 28.10.09 and the price determined by the Commission in the said order has been adopted in the ARR of GRIDCO for the year 2010-11, it is not possible at this stage to express any definite opinion as to whether the particular CGP has lost its status in the FY 2009-10. The full bench will take a view in the matter in due course after receiving input from Govt. of India, State Govt. and Legal Advice in the matter. Since the cost of procurement of power has been fixed for the year 2009-10 and 2010-11, GRIDCO would continue to pay to CGPs at this rate as per the agreements, if any, signed in the meantime or the agreement to be signed hereafter. The consumption of power less than 51% of the total generation by the CGPs during 2009-10 as a whole or during a few months during the said year or during current year 2010-11 will not affect the procurement price of surplus power by GRIDCO from CGPs as per the order dtd.28.02.09 read with order dated 30.6.09, 28.10.09 and BSP order dated 20.03.2010 indicated in para-19 and review order dated 30.3.2010.
27. Thus, after analyzing the circumstances and conditions under which the Commission have issued order on 28.02.09, 30.6.09, 28.10.09, 20.3.10 and 30.3.10 regarding price of procurement of surplus power from the CGPs and co-generating plants together with the issues raised by GRIDCO, CCPPO, JSL, etc. We direct as under :
- (i) The full bench of the Commission consisting of the Chairman and the two Members will take a view on the issues raised which have listed out in para 7.

(ii) Pending the decision of the Commission on the various issues raised, GRIDCO shall pay the power purchase cost of power procured from various CGPs/co-generating plants during 2009-10 and will continue to do so in respect of procurement of such power from the CGPs during the current financial years in accordance with the rate fixed in the order dated 28.02.09 read with the review order dtd.30.6.09 and 28.10.09 and BSP order dtd.20.3.10 for 2010-11. The payment due to the CGPs/Co-generating plants as per order dtd.28.02.09 read with the order dtd.28.10.09 and 20.3.10 (BSP order of GRIDCO) should be released for the year 2009-10 and should not be withheld on technical grounds that the concerned CGPs have supplied more than 49% of their total generation to GRIDCO for which State Govt. and GRIDCO have been requesting the CGP to maximize their generation and supply to the State to meet the power deficit situation. However, in case of M/s Jindal Stainless Ltd., the payment is to be regulated as per the order dated 05.5.2010 of Honorable High Court of Orissa in Case No.WP(C) No. 4454 of 2009.

(iii) When the Electricity Act, 2003 provides for open access and when the state is need of power to meet its growing demand, GRIDCO and State Govt. must come out with a clear proposal/suggestions as to whether they need surplus power of the various captive generating plants or the CGP can sell their surplus power as may be beneficial to them.

(iv) We however, desire that this type of avoidable situation should not occur in future at the end of the year. For the current FY 2010-11, the owners of CGPs shall supply data regarding its generation, own consumption and consumption by its group companies through Open Access, together called as Captive use and the sale of power to the State Grid including any bilateral sale/trading, sale through power exchange together called the total sale of power progressively in every month to the State Govt. (EIC) and GRIDCO. The owner of CGPs shall give a self certification that on annual basis they shall consume not less than 51% of the aggregate electricity generated in its plant. If the State Govt. or GRIDCO insist upon the owner of CGP to supply more electricity to the State Grid for public interest, and thereby CGP's total sale (including sale under Open Access)

increases more than 49% of its total generation, then the issue to be addressed with mutual satisfaction in the PPA, or special agreement before such supply is effected. The existing PPA is to be suitably amended.

28. This order would be re-looked as and when required by the full bench of the Commission in due course and again subject to the final outcome of the Case WP(C) No.4454 of 2009 pending before the Honourable High Court of Orissa.

Sd/-
(B.K. Misra)
Member

Sd/-
(K.C. Badu)
Member