

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012**

Present: Shri S. P. Nanda, Chairperson
Shri K.C. Badu, Member
Shri B.K. Misra, Member

Case No. 112 of 2011

M/s. GRIDCO Ltd., Petitioner

Vrs.

M/s Andhavarapu Power Projects Pvt. Ltd. & Others Respondents

In the matter of: An application u/S.94(f) of the Electricity Act,2003 read with Reg.70 of the OERC (Conduct of Business) Regulations,2004 and other provisions to review of the order dated 23.09.2011 of the Commission passed in Case Nos.151 to 155 of 2010 on determination of tariff of biomass power plants for sale of power to GRIDCO.

For the Petitioner: Shri S.K. Parida, GM (PP) & Ms. S.Patjoshi, AM (PP), GRIDCO.

For the Respondents: Shri R.P.Mohapatra, the authorized representative of M/s Shalivahana Green Energy Ltd. & M/s Swarnajothi Agro & Export Limited, Shri Bibhu Swain, the authorized representative of M/s AVN Power Ltd., M/s Satya Biomass Pvt. Ltd., M/s Andhavarapu Power Projects Pvt. Ltd & M/s Rashmee Power Ltd. and M/s Prasad Bio Energy Pvt. Ltd.
Ms. Niharika Pattnaik, Assistant Law Officer, DoE, GoO.
No body was present on behalf of Respondent Nos. 5, 8 & 10.

Date of Hearing: 02.04.2012.

Date of Order: 04.04.2012

ORDER

- The case is taken up to today for hearing on condonation of delay and on question of admission as well as hearing on merit.
2. Heard the parties at length. After hearing the parties and perusal of the case records, the Commission condoned the delay for filing up the review petition by GRIDCO and also heard the parties on merit for disposal of the said application.
 3. During hearing the representative of GRIDCO stated that 9 Biomass developers have executed their PPAs with GRIDCO to procure power from their proposed projects in the state to fulfill its Renewable Purchase Obligation (RPO) target. Out of 9 developers only M/s Shalivahana Green Energy Ltd. was commissioned on 12.12.2011 and no other

developers has shown any progress of their projects. Without showing seriousness in implementing the project as per the terms and conditions laid down in the implementation agreement, they had filed applications before this Commission for revision of tariff along with reviewing the Order dated 14.09.2010 of the Commission passed in Case No. 37/2008. The applicant has pleaded that without the revision of rate, they are not able to make financial closure, of their project. The said review applications were registered as Case Nos. 151-155 of 2010 and were disposed of on 23.09.2011 in a common Order upward revising the generic tariff for biomass sources of energy in the state up to FY 2023-24.

4. The Commission while revising the generic tariff, the financial parameter 'fuel cost' has only been revised and other technical and financial parameters have remain unchanged same as per Order dated 14.09.2010 of the Commission passed in suo motu proceeding Case No. 37/2008. The Commission has calculated the generic tariff based on the cost of biomass fuel accepted at 2316/MT for FY 2011-12 which is much higher side and also is much higher than a number of States like Madhya Pradesh, Andhra Pradesh, Maharastra, Rajsthan, Tamilnadu etc. The cost of biomass fuel also exceeds the rate proposed by the R.E consultant to OERC i.e. WISE, Pune for the State of Rs. 1785/MT and as proposed by CERC vide its tariff Order dated 26.04.2010 in suo motu petition No. 53 of 2010 of Rs. 1948/MT for FY 2011-12. When the Commission passed its Order on 23.09.2011 in Case Nos. 151-155 of 2010 taking into consideration of the information collected by OREDA regarding the price of Rice husk only as biomass fuel from the mills. Where as OREDA has not considered other fuels such as Palmolive Stem, Coffee husk, Chilly stick, Coconut Shell Powder, coconut chipping material, ground nut shell etc. The cost of these biomass fuels varies with season to season and place to place.

For use as Biomass fuel, the State Govt. is taking active steps for plantation of Chakunda, Subabul and Akacia etc. in the waste land by adopting a policy for use of waste land for energy plantation. The decentralized supply chain for biomass fuel collection will be adopted to collect the un-collected quantity in the state which will facilitate supply of adequate quantity of biomass fuel to the developers.

5. The representative of GRIDCO further submitted that according to the request letter of GRIDCO dated 17.04.2011, the President, All Odisha Rice Millers Association has furnished in its reply letter the average rate of rice husk in different areas for estimation purpose, which is Rs. 1500/MT at present including of transportation cost. But the Commission has considered the fuel cost of Rs. 1785/MT with annual escalation factor for fuel cost as 5% vide its Order dated 14.09.2010 passed in Case No. 37 of 2008 and

has determined tariff of Rs. 4.20/KWh for FY 2011-12. Increasing in tariff of biomass sources of energy from Rs. 4.20/KWh to Rs. 4.87/KWh during 2011-12 is also higher than many states, vide Order dated 23.09.2011 in Case Nos. 151-155 of 2010. If GRIDCO procure the power from the 9 Biomass fuels for a total capacity of 118 MW with the tariff fixed by the Commission, it will burden the State consumers at a large. So he prayed the Commission to admit the review petition though it is arising out of the review order passed by the Commission in Case No. 115 of 2010.

6. Shri Bibhu Charan Swain the authorized representative of M/s AVN Power Project Pvt. Ltd., M/s. Prasad Bio-Energy Pvt. Ltd., M/s Satya Bio Power (India) Ltd., M/s Adhavarapu Power Project Pvt. Ltd. and M/s Rashmee Power Pvt. Ltd. has submitted that the Commission had revised its Order dated 14.09.2010 passed in Case No. 37/2008 and has passed the revised generic tariff Order on 23.09.2011 in Case Nos. 151-155 of 2010. Now GRIDCO has filed a petition before the Commission seeking review of the generic tariff Order dated 23.09.2011 passed in Case Nos. 151-155 of 2010 for the Biomass Power Plant which was already reviewed by the Commission. The application for reviewed under Regulation.70 of OERC (Conduct of Business) Regulations, 2004 for revision of Biomass Power Plant is not maintainable in the law or in equity and is liable to be dismissed. This review application is an appeal in disguise of review of a review order already reviewed and passed by this Commission. There is no error apparent on the face of the record. It is a well settled principle of law that a party is not entitled to seek a review of an review Order delivered by the Court or Tribunal or Commission merely for the purpose of rehearing and afresh decision of the Case. Order 47 Rule -9 of Civil Procedure Code, 1908 states as follows:-

Bar of certain application: - No application to review an Order made on an application for a review or a decree or Order passed or made on a review shall be entertained.

7. He further submitted that GRIDCO has filed the review petition relying on the letter of all Odisha Rice Millers Association, which is also confusing and does not lead to any where as far as pricing of Biomass is concerned. Therefore, reviewing the tariff on the basis of one letter of the above association has no merit and the review application of GRIDCO should be rejected in limin. The Commission has passed the Order considering all the facts, reports of OREDA and submission made by GRIDCO and finally allowed the upward revision of the tariff of Biomass Power Plant. He strongly raised objection to the views submitted by GRIDCO in its Petition. In fact the respondent is not able to complete financial closure due to delay in approval of PPA and issuance of appropriate tariff and higher interest rate of the present financial market. Any downward revision of

the reviewed tariff definitely lower the cash flow, reduce the IRR and project will not be commercially variable.

8. Shri R.P.Mohapatra, the authorized representative of M/s Shalivahan Green Energy Ltd. & M/s Swarnajothi Agro & Export Limited submitted that GRIDCO has not raised any objection during the hearing of the review Case Nos. 151-155 of 2010 before the Commission to determine the price of Biomass in the State basing on the information submitted by OREDA, so as to determine the variable charges for the Biomass Power Plants. GRIDCO has not mentioned about any mistake or error apparent on the face of record or about discovery of new and important matter or evidence which after due diligence. He also submitted that Order 47 Rule-9 of the Code of Civil Procedure, 1908 regarding basis of certain applications that no application to review an Order made on an application for a review or a decree or Order passed or made on a review shall be entertained. In view of the above, the review petition of the petitioner is not admissible and may be rejected at the beginning.
9. After hearing the parties and perusal of the case records, the Commission is of the view that as there is legal constraint under Order 47 Rule-9 CPC, 1908 to entertain an application for review of an Order passed on a earlier review petition, we are not inclined to hold that it is a fit case to admit and hence the Review Petition as such is rejected with a direction to file a fresh petition stating therein the present facts and circumstances to re-determine the tariff based on the latest developments. We also direct GRIDCO to examine the implementation agreement particularly in aspects of the timeline prescribed in the agreement. GRIDCO/Govt. of Odisha may cancel the MoU of the non serious developers of Biomass project and put up the project on competitive tariff bidding route for development keeping our generic tariff as ceiling tariff.

GRIDCO, in its fresh petition may details out the present progress of the rest of the MoU based biomass project.

10. Accordingly, the review petition is disposed of.

Sd/-
(B.K. Misra)
Member

Sd/-
(K. C. Badu)
Member

Sd/-
(S.P.Nanda)
Chairperson