

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

Present: Shri B.K. Das, Chairperson
Shri K.C. Badu, Member
Shri B.K.Misra, Member

Case No.22/2011

Confederation of Captive Power Plant, Odisha (CCPPO) **Petitioner**

Vrs.
GRIDCO, Ltd.. **Respondents**

In the matter of: Petition U/S 142 of the Electricity act 2003 as non adherence of the Commission's directions passed in order dated 23.11.2010 in Case No.117 & 118 of 2010.

For the Petitioner: Shri P.K. Mohanty, President, Shri Sanjeeb Das, Vice- President and Shri Sourav Mishra, Joint Secy.-cum- Treasurer, CCPPO.

For the Respondent: Shri B.P.Mohapatra, Director (Finance) and Shri J.K.Dash, Sr.GM (PP), GRIDCO.

ORDER

Date of Hearing: 03.06.2011

Date of Order: 29.08.2011

1. The representative of Confederation of Captive Power Plant, Odisha (CCPPO) stated that the Commission in its order dated 23.11.2010 in case no. 117 & 118 2010 has stipulated the rates for Captive/Co-generation Plants supplying their 100% surplus Firm Power to GRIDCO as under:
 - i. The price of supply upto 7.3 MU per month (~ 10 MW Avg. and below) would be Rs.2.75 per KWh.
 - ii. The price for supply of incremental energy above 7.3 MU/month and upto 36 MU/month (above Avg. 10 MW and upto Avg. 50 MW) would be Rs.3.10 per KWh.
 - iii. In respect of supply of incremental energy beyond 36 MU/month (above ~ 50 MW) the incremental energy would be priced at Rs.3.25 per Kwh.

- iv. The Captive/Co-generation Plants should operate on “Must Run” condition and any injection over the implemented schedule at a frequency of 50.20 Hz and above shall be considered as “Free Power” to the State Grid.
 - v. The Captive/Co-generation Plants who would supply inadvertent power/ infirm power within the Operating Frequency Band of 49.50 to 50.18 HZ would be paid at the pooled cost of State hydel power which is 62.51 Paise/KWh for FY 2010-11 as approved by the Commission and any inadvertent injection at a frequency of 50.20 Hz and above shall be considered as “Free Power” to the State Grid. Any injection over the implemented schedule at a frequency within the Operating Frequency Band of 49.50 to 50.18 HZ should also be paid at 62.51 Paise/KWh during FY 2010-11 (from 10.11.2010 to 31.03.2011).
2. Further the Commission had also stipulated the rates for Captive/ Co-Generation Plants supplying their 60% and above but below 100% of surplus Firm Power to GRIDCO after availing open access upto 40% as under:
 - i. The price of supply upto 7.3 MU per month (~ 10 MW Avg. and below) would be Rs.2.75 per KWh.
 - ii. The price for supply of incremental energy above 7.3 MU/month and upto 36 MU/month (above Avg. 10 MW and upto Avg. 50 MW) would be Rs.3.00 per KWh.
 - iii. In respect of supply of incremental energy beyond 36 MU/month (above average 50 MW), the incremental energy would be priced at Rs.3.20 per Kwh.
 - iv. The Captive/Co-generation Plants should operate on “Must Run” condition and any injection over the implemented schedule at a frequency of 50.20 Hz and above shall be considered as “Free Power” to the State Grid.
 - v. The Captive/Co-generation Plants who would supply inadvertent power/ infirm power within the Operating Frequency Band of 49.50 to 50.18 HZ would be paid at the pooled cost of State hydel power which is 62.51 Paise/KWh for FY 2010-11 as approved by the Commission and any inadvertent injection at a frequency of 50.20 Hz and above shall be considered as “Free Power” to the State Grid. Any injection over the implemented schedule at a frequency within the Operating Frequency Band of 49.50 to 50.18 HZ should also be paid at 62.51 Paise/KWh during FY 2010-11 (from 10.11.2010 to 31.03.2011).
3. The Confederation would like the Commission to take cognizance of the fact that as per their order, “infirm power” is the same as “inadvertent power” and it is only applicable for those CGPs who are either not giving a schedule or

injecting power before commercial operation. However, over injection within the operating frequency band is now being equated with “inadvertent power” or “infirm power” and this is causing tremendous loss to the CGPs. Besides the above, while the Commission had not decided for any proportional reduction in power rate, if injection is below the schedule and the Commission had not certified or directed a band of 90 to 100% of the schedule, GRIDCO in its wisdom has decided not only to limit scheduled power at 90 to 100% of the day ahead schedule and any power injected below this range in the day ahead schedule is now being treated with discrimination i.e in the event of any fall in power injection below 90% of the schedule the power rates are proportionately reduced upto a floor limit of 62.51 p/kwh.

4. Now, GRIDCO has unilaterally decided not to give this slab rates of power as directed by the Commission, but has decided to give only Rs.2.75 /unit for power injected within 90-100% of the day ahead schedule for which net receivables have been as low as Rs.1.19/unit and with a maximum of Rs.2.75/unit only for Vedanta. In certain cases it has come down to Rs.1.04/unit.
5. The market scenario in today’s power market is such that if power is injected beyond schedule, CGPs should have been granted UI rate from the ERLDC as per the CERC guidelines. However, in a situation where we are captive to the State without having right of open access and almost forced to inject power to the State because of necessity, the CGPs are subjected to severe financial stress.
6. Even in cases where there is a subsisting agreement between CGPs and GRIDCO the agreements have been violated as the agreements were signed with the conditions that the power rate as decided by the commission shall be paid, which is now being violated by GRIDCO. Further, GRIDCO has decided for 3% reduction on injection during high frequency without any justifiable reasons.
7. The Captive Generating Plants did not get payment for the months of December, 2009, January 2010, February and March 2010 almost for a period of 9 to 12 months and no DPS was paid by GRIDCO to the CGPs. This is in

violation of the agreements, the Commission's directions and also in violation of the LOI of GRIDCO earlier issued.

8. The Commission in the said order in Para 35 had indicated that the Captive status can be decided by the Commission and hence, no further clarification need to be obtained as the Commission is the competent authority to decide the same. However, certain CGPs have not received 50% of their payment owing to the criteria that they have failed to establish captive status and not eligible for payment as per the rates decided by the Commission for power injected by the CGPs.
9. While the Commission has decided that the CGPs "must run" in the system there should be no proportional reduction in power rates and any such reduction of power rates by GRIDCO should be paid back to the CGPs at the earliest.
10. The CCPPO has requested the Commission that with the linkage now being withdrawn from most CGPs in order to support the IPPs and Central Sector Power Stations, the coal cost in the e-auction has gone up to Rs.2700/- per MT. as against the linked price of Rs.900/- per MT. With this three fold increase in coal rates and enhancement in water tax it becomes completely unviable for the CGPs to inject power at such rates to the State Grid.
11. The CCPPO prays the Commission to look into the power scenario of the State the receivables by CGPs and the violation by GRIDCO in order to decide in the appropriate mechanism for settlement of bills. While schedule is always day ahead and billing is directed to be monthly, GRIDCO is calculating the payables and receivables on daily basis, which is not decided nor directed by the Commission.
12. Once a schedule is given by a CGP based on its capacity but injected surplus power is to be billed on monthly basis totaling of all schedules should be compared with monthly injection against the schedules and therefore, injection in relation to the scheduling should be worked out for any evaluation of rates and receivables by the CGPs. Direction by the Commission may be mathematically explained so that GRIDCO as a State authorized agency to take power from the CGPs do not find scope to misinterpret the orders of the

Commission and arm-twist the CGPs who are helping the system at the time of crisis.

13. Necessary directions may kindly be given for payment of DPS, release of balance money, calculation mechanism so that the CGPs are not put to unnecessary harassment and financial ordeal.
14. He further stated that GRIDCO has circulated a Letter of Intent (LOI) on 10.02.2011 for purchase of power from CGPs. The LOI is an offshoot of the Commission's order and therefore should be within the limits of the directions of the Commission. In its judgment dtd. 27.06.2009 the Commission has decided regarding the rebates and DPS but the same has not been adhered to by GRIDCO and in fact the LOI seeks to override/amend/violate the orders of the Commission in this regard. GRIDCO in the impugned LOI had suggested for a DPS of 1.25% p.m on unpaid amounts beyond 61st day they have not paid the DPS to the CGPs for the amount remaining unpaid for the months of January, February, 2010 Similar objection is being made by CCPPO for the rate being offered in the LOI which is in violation of the Commission's direction..
15. The Commission had also directed that CGPs may be allowed open access and a different tariff was supposed to be made applicable in such cases, However, GRIDCO in its interest to avail "unscheduled tariff benefits" restricted open access quantum from the CGPs.
16. Further as Industries owning fossil fuel based CGPs have to buy RPOs/RECs, this mandates open access for RPO has to be permitted by GRIDCO. Alternately. GRIDCO should provide for RPO/RECs in case open access is not allowed, as it is a member of IEX.PXIL.
17. With abnormal rise in coal price and shortage of supply from coal companies clubbed with elections with most States, power prices are no more controllable within the specific limit and therefore, the Commission may kindly direct for hike in CGP tariff without any restrictions on injection over schedule. The minimum price of Rs.3.50 per unit may be considered for any injection by CGP.
18. The CCPPO in its submission has prayed the followings:
 - (a) To declare that the words "firm" and "infirm" as defined in Para 30 (d) of the order dated 23.11.2010 in Case No. 117 & 118 of 2010 have different meanings for commercial purpose.

- (b) To specify that there is no threshold quantity in MW for acceptance of schedule by SLDC.
- (c) To order payment for injection of power beyond the schedule within the normal frequency band at the same rates as scheduled.
- (d) To confirm that the “infirm power “ is the same as “inadvertent power” and is only applicable for CGPs who are not giving a schedule nor injecting power before commercial operation, Rules for “infirm” and “inadvertent power to be same.
- (e) To take cognizance of the fact that over injection within operating frequency is being equated with the “inadvertent power” or “infirm power” thereby causing tremendous loss to CGPs;
- (f) To declare decision of GRIDCO not to give the slab rates of power against the direction of the Commission as unilateral;
- (g) To take cognizance of the facts that the net receivables have been as low as Rs. 1.19 and in certain case it has come down to Rs. 1.04 per unit;
- (h) To grant CGP concession of under-injection from declared schedule i.e. upto 70% of the declared schedule and not 90% as is being done by GRIDCO;
- (i) To declare the decision of GRIDCO for 3% deduction on injection during high frequency as unjustified and technically incorrect;
- (j) To declare that the calculation of payment and receivables by GRIDCO on daily basis for CGP power is against the Commission’s order;
- (k) To direct GRIDCO not to misinterpret the orders of this Commission;
- (l) To declare the rate offered by GRIDCO in LOI dated 10.02.2011 is in violation of the Commission’s direction;
- (m) To direct GRIDCO not to be restricting CGPs from open access quantum in order to avail unscheduled tariff benefits;
- (n) To direct GRIDCO to permit each CGP for RPOs/RECs and
- (o) To direct for hike in CGP tariff to Rs. 3.50 per unit, Minimum with slab upto a ceiling price of Rs. 4.00 per unit.

19. The representative of GRIDCO stated that GRIDCO has not violated the Commission’s directions in any manner whatsoever. GRIDCO has been paying the dues of CGPs against the surplus power procured within 7 days or 30 days from the date of presentation of bill to avail 2 % or 1% prompt rebate. In case,

due to some inevitable reasons if the payments could not be released within 30 days then the dues are paid to the CGPs without any rebate after 60 days from the date of presentation of bills. This procedure of payment is being followed by GRIDCO with effect from Nov-09 when the CGPs did not turn up for signing of necessary PPA with GRIDCO in compliance to the Commission's Order 28.10.2009.

20. Regarding rate offered in the I.OI dated 10.02.2011, GRIDCO has followed the Commission's order dated 23.11.2010 wherein at Para 35, it has been clearly mentioned that the rates quoted in the said order are "ceiling price". It is optional for the CGPs whether to supply their surplus to GRIDCO as per the commercial & technical terms and conditions as mentioned in the I.OI dated 10.02.2011.
21. In order to address the issue of under injection by the CGPs GRIDCO has considered to allow rate in proportion to the percentage of deviation from the implemented schedule (below 90%) reducing minimum up to hydro pool cost for that financial year.
22. CGPs are procuring coal (whatsoever the market rate may be) for their core activity of industrial consumption and not for generation of power for sale to GRIDCO. Therefore, it is upto the CGPs to sale their surplus power to GRIDCO, if the rates offered commercially suits them.
23. The cost incurred by the GRIDCO for procuring surplus power from CGPs ultimately is passed on to the tariff to the paid by the consumers of the State. Therefore, GRIDCO always looks forward & gives priority for procuring cheaper power from various generating sources at a negotiable tariff.
24. GRIDCO is procuring surplus power from various Cogeneration Plants & Renewable Sources to meet its RPO obligations in compliance to the Commission's order.
25. It is not correct to mention that, GRIDCO is not allowing Open Access to CGPs, as the GRIDCO is no way responsible for Open Access to CGPs which is the prime lookout of SLDC & partly State Govt. who have facilitated the CGPs to get established in the State by providing Land, Water & Raw Materials at concessional rates & relaxation in ED payment.

26. The contentions cited by the Petitioner for the hike of rate of surplus power may not be considered by the Commission as the increase in rate will have an adverse effect on tariff which is fully passed on to the consumers. Also the revenue earned by CGPs from selling surplus power is a bonus to them.
27. The GRIDCO has prayed the Commission:
- (a) That the prayers of the Petitioner may not be admitted and therefore the additional submission may be considered to be rejected;
 - (b) That the minimum threshold quantum for scheduling by CGPs should be 1 MW as per the Commission's Pricing Policy dated 14.03.2008 in order to avoid operational difficulties.
 - (c) That the CGPs shall not be allowed to operate as 'MUST RUN' power plant. Power injected beyond the schedule within the normal frequency band should be rightly treated as inadvertent power;
 - (d) That the flat rate Rs.2.75 kWh for supply equal and above 90% of the implemented schedule may be ratified to ensure proper scheduling;
 - (e) That the proportionate rate reduction method to address any kind of under injection by the CGPs below 90% of implemented schedule may be considered for ratification by the Commission.
 - (f) That any kind of price hike may not be allowed as GRIDCO is under tremendous financial burden;
 - (g) And pass such other orders as may be deemed just and proper in the facts and circumstances of the case;
28. We observe that the main issue raised by the petitioner is a billing dispute between GRIDCO & CGPs with regard to the price fixed by this Commission in its order dated 23.11.2010 in case no. 117 & 118 of 2010 for the surplus power of CGPs. We further observe that the whole issue is that the Commission had fixed a price for the surplus power to be purchased from CGPs by GRIDCO. But GRIDCO is paying at a lower rate saying that the rate fixed by the Commission is a ceiling rate and GRIDCO can purchase such power at a negotiated rate lower than the rate fixed by the Commission. GRIDCO has further stated that the dues of CGPs against their power procurement are being paid within 7 days or 30 days from the date of presentation of bills to avail 2 % or 1 % rebate. In case, due to some inevitable reasons if the payment could not be released within 30 days then the dues are paid to the CGPs without any rebate after 60 days from the date of presentation of bill. This procedure has been followed by GRIDCO with effect from Nov' 2009 when the CGPs did not turn off for signing for necessary PPAs with GRIDCO in compliance to the

Commission's order dated 28.10.2009. Regarding the rate offered in the LOI dated 10.02.2011 GRIDCO has followed Commission's order dated 23.11.2010 where in at Para-35 it is mentioned that the rate fixed by the Commission in the said order are ceiling prices. Therefore, GRIDCO has not violated the Commission directions in any manner whatsoever.

29. From the submission of both CCPPO & GRIDCO it is observed that both the parties have ambiguities with the Commission's order dated 23.11.2010 on purchase of surplus power from CGPs. Neither GRIDCO nor CCPPO has come to the Commission for clarification for their ambiguities. However, from the prayers of both the parties in their submission, it appears that they intend for review of the Commission's order on fixation of price of surplus power from CGPs. The present petition filed by CCPPO under section 142 of the Electricity Act, 2003 as non-adherence of the Commission's directives passed in the order dated 23.11.2010 in Case No.117 & 118 of 2010 may not be sustained. This is a billing dispute which can not be adjudicated u/s 142 of the EA Act, 2003.
30. Even though the prayer of the petitioner to take action against GRIDCO under Section 52 is not maintainable in view of the facts and circumstances mentioned in para 28 and 29, we find that the following issues raised by the parties in their submissions need to be clarified.
- (i) Whether the price fixed by the Commission for supply of surplus power by the Captive Generating Plants (CGPs) to GRIDCO from time to time is a ceiling price and GRIDCO can pay a price below that ceiling price?
 - (ii) Whether the rate fixed by the Commission for purchase of surplus power by GRIDCO from CGPs would not be applicable if the parent industrial units owning CGPs do not consume at least 51% of the power generated from its captive generator during the financial year?
 - (iii) Whether the prayer of the GRIDCO that CGPs shall not be allowed to operate as "Must Run" power plant is justified?
 - (iv) Whether Non-firm/in-firm power and Inadvertent power are the same?

- (v) What will be the rate of surplus of CGPs power if power supplied is below 90%/60% of the schedule?
- (vi) Whether Gridco is required to pay DPS on account of delay in payment to CGPs?
- (vii) Maintenance of CGP status.
- (viii) Issue of RPO and purchase of REC by the industrial unit for its captive consumption.

Now we would like to address the each of the issues as indicated below:-

31. Whether the price fixed by the Commission for supply of surplus power by the Captive Generating Plants (CGPs) to GRIDCO from time to time is a ceiling price and GRIDCO can pay a price below that ceiling price?

31.1 The Commission in their order dated 23.1.2010 in case No.117 and 118 of 2010 vide para 28 had observed as under:-

“28. On the other hand, the Commission had fixed the ceiling price of surplus power of CGPs supply to GRIDCO for consumption in the State at Rs.3.00/KWh and for Co-gen plant at Rs.3.10/KWh w.e.f. 01.03.2009 to 31.10.2009 and w.e.f. 01.11.2010 the graded rate of Rs.3.10/KWh (upto 3.6 MU /month average 5 MW), Rs.3.40/KWh (above 3.6 MU/month to 36 MU/month, average 50 MW), Rs.3.70/KWh (above 36 MU/month to 72 MU/month, average 100 MW) and Rs.4.05/KWh (beyond 72 MU/month, above average 100 MW) was implemented. In case of Co-Gen Plant the corresponding rate was Rs.3.20/3.40/3.70/4.05 per KWh respectively.”

31.2 Further, in the said order dated 23.11.2011 at para 36 the Commission have also observed as under:-

“36. It has been raised during hearing that higher rate allowed by OERC for incremental injection of surplus power by Captive/Co-generation plants is meant to help the big CGPs and the rate should be same irrespective of

the quantum of injection of surplus power. It may be noted that the industries have installed captive generating plants primarily for their own use. Keeping the quantum of own use coal linkages are allowed. The industries having CGPs of higher capacity run the particular unit/units keeping the other unit as standby. If the full capacity is to be utilised higher amount of coal is to be arranged through e-auction/open procurement at a higher price over and above the coal normally made available through coal linkage which is the last priority for the Coal Companies. Since Captive/Co-generating plants having higher capacity have to purchase a considerable amount of coal/fuel through e-auction etc. at a higher price, it is felt justified to allow incremental price for the incremental injection of surplus power of those CGPs who have larger capacity, otherwise they would not like to generate substantially higher amount beyond their requirement.

However, the Commission directs those Captive/Co-generation Plants not willing to supply their surplus power to GRIDCO at the ceiling price under two different scenarios under Para 33 and 34 above may opt for Open Access.”

- 31.3 In para 37 of the said order dated 23.11.2010 Commission have also observed “*The revised tariff for surplus power from Captive/Co-generation Plants mentioned in Para 33 and 34 is applicable w.e.f. 10.11.2010 and will continue till 31.3.2011.*”
- 31.4 From the relevant para 36 and 37 read with para 28 of the order dt.23.11.2010, the intention of the Commission in fixing the rate of supply of surplus power by CGP is clear and unambiguous. The rate fixed by the Commission in the upper limit and GRIDCO cannot pay a rate higher than such rate fixed by the Commission from time to time. The word 'ceiling' mentioned in para 28 of the order dt.23.11.2010 is to be read in the context of the fact that GRIDCO is not permitted to purchase at a rate higher than the rate fixed by the Commission from captive generating plans(CGPs).
- 31.5 **Hence, Commission hereby clarifies and reiterates that the rate fixed by the Commission for sale of surplus power by the CGPs/Co-generating plants to**

GRIDCO from time to time is the rate at which GRIDCO is to pay that it cannot pay at a rate higher than the ceiling rate fixed by the Commission and it can purchase at rates mutually negotiated and agreed rate between the parties within the ceiling price. In case the minimum rate offered by CGP is higher than the ceiling price or not acceptable to them, then GRIDCO should not purchase and open access should be allowed to CGP. However, if the GRIDCO has purchased the surplus power from the CGPs without any formal agreement or prior negotiation, the rate fixed by the Commission from time to time will prevail.

32. Whether the rate fixed by the Commission for purchase of surplus power by GRIDCO from CGPs would not be applicable if the parent industrial unit owning CGP do not consume at least 51% of the power generated during the financial year?

32.1 This issues have been addressed in the order dated 31.5.2010 in case No.48 and 49 of 2010 as well as order dtd.23.11.2010 in case No.117 & 118 of 2010.

32.2 In this connection following paras of the interim order dated 31.5.2010 in case No.48 and 49 of 2010 is relevance which is extracted below:-

Para 17 of the order dtd.31.05.2010

“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.”

Para 22 to 27 of the order dtd.31.05.2010

*“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 Honourable High Court of Orissa in Case No.WP©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."

32.3 The rate of purchase of surplus power by GRIDCO from the CGPs has been fixed by the Commission from time to time depending on the market condition. When the rate at power exchange and UI rate was substantially higher, for the benefit of the consumer, the Commission had fixed the purchase price of surplus power by GRIDCO from CGPs and after taking into account the prayer of GRIDCO the Commission had directed that the CGPs should maximize their generation to

make full utilization of the bottled up capacity for supply to GRIDCO to meet the power deficit situation after meeting the power generated from State hydro and thermal stations and after availing the State quota from the Central generating stations, the balance requirement was to be met by GRIDCO through UI or from power exchange or from IPPs or CGPs. Thus, power supply by CGPs is one of the source and the rate fixed was lower than the rate prevailing in the power exchange.

This has been further clarified by the Commission vide para 29 of the order dtd.23.11.2010 in case Nos.117 & 118 of 2010.

“29. As the billing price of surplus power supplied by CGPs being lower than the rate/rates of power being available through UI or Power Exchanges, the price of surplus power supplied by different CGPs to GRIDCO during 2009-10 decided by the Commission in their order dt.28.02.2009 read with order dt.28.10.2009 in case Nos.6/2009 to 20/2009 would be applicable in respect of quantum of surplus power injected to the grid for procurement by GRIDCO for consumption in the State. Similarly, the price fixed by the Commission in respect of surplus power of the CGPs during 2010-11 till 09.11.2010 would be governed in accordance with the stipulations and directions of the Commission vide para 384 of the BSP order dt.20.02.2010 for GRIDCO. This has also been made clear by the Commission vide their order dt.31.05.2010 in case No.48/10 vide para 27(ii) which is extracted below for ready reference.

“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 Honourable High Court of Orissa in Case No.WP©4454 of 2009.”

32.4 Commission vide para 35 of their order dated 23.11.2010 in Case No.117 & 118 of 2010 have dealt with the payment of cost of surplus power purchased by GRIDCO from CGPs even though the industrial unit having CGP might have consumed less than 51% of the total consumption of CGP during the financial year. The said para is extracted below for ready reference.

“35. As regards the appropriate authority to determine the status of CGPs, it is the State Electricity Regulatory Commission as clarified and decided by the Appellate Tribunal of Electricity (ATE) in their Order dtd. 18.05.2010 in Appeal No. 116 of 2009 and IA No. 218 and 219 of 2009 in case of Chhatisgarh State Power Distribution Company Ltd. Verses Hira Ferro Alloys Ltd. and Chhatisgarh State Electricity Regulatory Commission.

As per the provision of Electricity Rule, 2005, the question of CGP status of a Captive Generating Plant would be decided only after the end of the relevant financial year after ascertaining the total quantum of power generated in such plant and consumed by the principal industry for its captive use determined on an annual basis. While the payment of surplus power of Captive/Co-generation Plants would continue during the year as per the ceiling rate indicated in Para 33 and 34 above on provisional basis, if at the end of the financial year, it is ascertained that the Captive Generating Plant has lost its captive status, the payment would be readjusted in the subsequent financial year by linking the rate of such surplus power of CGPs/Co-generation Plants losing the captive status to the weighted average cost of supply by the NTPC Power Stations of Eastern Region to GRIDCO during the said financial year. If the weighted average cost of supply by ERNTPC Power Stations to GRIDCO during the said financial year is more than the ceiling price approved by the Commission in Para 33 and 34, there would be no occasion for adjustment and the ceiling price fixed by the Commission in Para 33 and 34 would be applicable.”

32.5 Thus, the Commission reiterates once again that for the financial year 2009-10, the rate fixed by the Commission for sale of power from CGP to GRIDCO shall be applied even if any particular generating company lost its CGP status due to

the fact that its captive consumption is less than 51%, when the CGPs were asked to maximize their generation to help GRIDCO to meet the power deficit situation being faced by the state then. Further, this decision has to be taken by the Commission as the issue of the captive status was brought to the Commission's notice only at the end of the financial year, wherein transactions have been completed and no course correction could have been possible.

For the FY 2010-11 and for current FY 2011-12, in accordance with Commission's order at para 27(iv) of order dt.31.5.2010, the CGP shall supply data regarding its net generation (gross less auxiliary consumption), its captive consumption by the parent industries including the group companies having captive consumption (together called Captive Consumptions) and sale of power to the State Grid including any bi-lateral trading through open access or power exchange (together called Sale of Power) progressively in every month for the full financial year. In case the captive consumption by the CGP in the financial years, falls shorts of 51% of the net generation then the rate of power to be paid by the GRIDCO to the Generating Plant (lost the CGP status) shall be governed as per para 35 of the Commission's order 23.11.2010 i.e. the rate equivalent to weighted average cost of supply by the NTPC Power Station of Eastern Region to GRIDCO during the said financial year. However, since provisional payment for few months of 2010-11 has not yet been released on the ground of the non-determination of status of the CGPs at least 80% of the withheld amount for 2010-11 should be released on provisional basis before 30.09.2011 at the rate approved by the Commission from time to time for 2010-11 and the relevant data on self consumption for 2010-11 should be submitted to the Commission on or before 30.09.2011 to finally determine the status of the CGPs so that final adjustment of payment for 2010-11 can be made in terms of para 35 of the order dtd.23.11.2011. For the year 2011-12 the GRIDCO would continue to pay the CGPs at the rate approved by the Commission vide their order dtd.23.11.2011 on provisional basis and the industrial units owning CGPs who anticipate that they are likely to consume less than 51% of CGPs net generation during the entire financial year 2011-12 should intimate the month wise data to the Commission and GRIDCO in

the month of January, 2012 so that payment can be adjusted for the month of January to March, 2012 in terms of the para 35 of the order dtd.23.11.2011.

33. Whether the prayer of the GRIDCO that CGPs shall not be allowed to operate as “Must Run” power plant is justified?

33.1 This issue has already been adequately addressed in para 31 of the order dt.23.11.2010 in case No.117 and 118 of 2010. The Commission has clearly held that the captive/Co-generating Plant of the State would be allowed to operate as “must run” power plant and, therefore, the suggestion of GRIDCO to disallow captive/co-generating plants as “must run” plant is not acceptable to the Commission. In this connection para 31 of the Case No.117 & 118 dated 23.11.2010 is extracted below for ready reference:-

“31. The State of Orissa being a constituent of Eastern Region is operating in synchronism with all the constituents at one frequency under NEW GRID. The installed capacity of NEW GRID is 121522 MW as on 31.10.2010. Any change over 2400 MW under NEW GRID may now result in a frequency rise of 0.02 HZ. The Captive/Co-generation Plants contribution is not that much to the State Grid under NEW GRID which will affect adversely during unscheduled interchange in high frequency regime. Therefore, the Commission feels that the Captive/Co-generation Plants of the State would be allowed to operate as ‘MUST RUN’ power plants and, therefore, the suggestions of GRIDCO to disallow Captive/Co-generation Plants as ‘MUST RUN’ plants is not acceptable to the Commission. However, the Commission accepts GRIDCO’s contention that any power injected by CGPs/Co-generation plants to the State Grid at 50.20 Hz and above, determined on the basis of actual meter reading shall be priced at “Zero” cost. It is expected that any captive generator shall back down its generation upto its captive consumption including open access allowed if any at higher frequency at 50.20 Hz and above.”

We, therefore, reiterate our order that CGPs shall be allowed to operate as ‘Must Run’ power plant.

34. Whether Non-firm/Infirm power and inadvertent power are the same and entitled to the same rate?

34.1 This issue has been dealt in by the Commission in para 30(d) of the order dated 23.11.2010 in Case No.117 & 118 of 2010. It has been clarified therein that all the power that can be scheduled from Captive/Co-generation plants based under day ahead schedule, shall be treated as Firm Power and accordingly they should be paid for. Power injected by Captive/Co-generation Plants before its commercial operation i.e. infirm power, power injected by CGPs/Co-generation plants without giving day ahead schedule and any power injection over the implemented schedule during the Operating Frequency Band of 49.50 HZ to 50.18 HZ shall be treated as Inadvertent power and should be paid at the pooled cost of the hydro power of the State approved by the Commission i.e. 62.51 paise/KWh during FY 2010-11 and 65.96 paise during 2011-12. Hence, it is hereby clarified that power injected by the CGPs/Co-generating plants shall be paid as per the rate and terms and conditions stipulated in para 33 and 34 of the order dated 23.11.2011 in case No.117 & 118 of 2010. Non-firm power (power injected by CGPs/Co-generating plants before its commercial operation) Infirm (power injected without giving day ahead schedule) as well as the Inadvertent power (power injected by CGPs/Co-generating Plants over the implemented schedule) within the Operating Frequency Band of 49.50 HZ to 50.18 HZ shall be paid at the pooled cost of the hydro power of the State i.e. 62.51 paise/Kwh for 2010-11 and 65.96 paise during 2011-12 as approved by the Commission in tariff order of respective years. The day ahead schedule given by any CGP shall be at least 1 MW and above. Any power scheduled or injected below 1 MW average (i.e.24 MWH/day) shall be treated as Non-firm power and shall be paid at the pooled cost of the hydro power. Hence, for all practical purposes the injection of infirm power and inadvertent power would be treated under the same commercial principle i.e. the rate as approved by the Commission i.e. at the pooled cost of the hydro power of the State for the respective years.

34.2 Any injection over 105% of the implemented schedule by the CGPs/co-generating plants within the Operating Frequency Band of 49.50 HZ to 50.18 HZ shall be treated as inadvertent power or infirm power. Such over injection beyond the 105% of schedule and within the operating frequency band of 49.50 HZ to 50.18

HZ shall be paid at pooled cost of the State hydro power as approved by the Commission for respective years i.e 62.51 paise/Kwh for 2010-11 and 65.96 paise/Kwh for 2011-12.

35. What will be the rate of surplus CGPs power if power supplied is below 90%/60% of the schedule?

35.1 The Commission in para 31 of the order dated 23.11.2010 in Case No.117 & 118 of 2010 have clarified that in any power injected by CGPs/Co-generation plants to the State Grid at 50.20 Hz and above, determined on the basis of actual meter reading shall be priced at “Zero” cost. It is expected that any captive generator shall back down its generation upto its captive consumption including open access allowed if any at higher frequency at 50.20 Hz and above. Any over injection by CGPs/Co-generating plants beyond 105% of the schedule but within the operating frequency band is being held as inadvertent power and will be paid at the pooled cost of hydro power as approved for the respective years.

35.2 Since the Intra-state ABT is yet to be implemented in the state and the Regulation 4(III)(II) of the OERC (Intra-state ABT) Regulations, 2007 is yet to be effected, the CGPs are not being paid as per the frequency linked rate of un-scheduled interchange (UI) principle, and further taking into account the peculiar nature of functioning of the CGP/Co-generating plant which are very limited capacity of injection of surplus of power ranging from 5 to 10 MW in most of the cases; Commission directs that the injection of surplus power by CGP/Co-generation plant below the schedule, (but not lower than 1 MW) below the frequency of 50.2 Hz shall be paid as under:

- (i) Injection of Surplus power by CGPs/Co-generating Plants between 100% and upto 80% of the schedule would be paid as per the rate approved by the Commission in their order dated 23.11.2010 in Case No.117 & 118 of 2010.
- (ii) Injection of surplus power by CGPs/Co-generating Plants between 60% and above and upto 80% of the schedule, the rate fixed by the Commission in their order dated 23.11.2010 in Case No.117 & 118 of 2010 will be reduced by 10% subject to the minimum that it should not be below the pooled cost of hydro power of the State approved by the Commission for the respective years.

- (iii) Injection of surplus power by CGPs/Co-generating Plants below 60% schedule would be paid at the pooled cost of hydro power of the State approved by the Commission for the respective years.

36. Non-payment of Delayed Payment Surcharge(DPS) by GRIDCO to CGPs/Co-Generating Plants.

36.1 The CGPs/Co-Generating Plants have pointed out that the CGPs did not get payment for the month of December, 2009, January, 2010, February and March 2010 almost for a period of 9-10 months and no DPS was paid by GRIDCO to CGPs/Co-Generating Plants. This is a violation of agreement, Commission's direction and also violation of LOI Gridco earlier issued.

36.2 In this connection para 8(iii) of the order dated 27.6.2009 in Case No.59 of 2009 (review of interim order dated 28.2.2009 in case No.6/2009) the payment of rebate and DPS by GRIDCO to CGPs/Co-Generating Plants have been elaborately dealt with. The said paragraph is extracted below:-

“8(iii) The Commission has not stipulated any such guidelines for payment security mechanism in the interim order dtd.28.02.09.

At present GRIDCO is paying 2% rebate to DISCOMs if the payment of power purchase cost is made by cash within 2 working days (except holidays under N.I. Act) of presentation of bill by GRIDCO. If the payments are made by a mode other than through a letter of credit but within a period of one month of presentation of bills, a rebate of 1% is allowed. In case of payment of bills by the licensees is delayed beyond a period of 1 month from the date of billing, a late payment surcharge @ 1.25% per month shall be levied by GRIDCO to distribution licensee.

The CGPs have submitted that the CCPPO have committed the entire surplus power to GRIDCO and the majority of operating large CGPs operates on coal as a primary fuel with oil support. Coal is procured under cash and carry system and in situation of deficit, coal is procured from open market at higher rate. Therefore, CCPPO have requested for

payment to be made within 4 days of raising the bill with 2% rebate and 1% rebate for payment within 7 days, beyond 7th day penalty may be imposed because members shall be paying penal interest for procurement of coal unless it is lifted within the stipulated time frame after allocation is made and full payment is made to MCL. A mirror image of payment of power should be matched with the procurement of coal.

Deviating from the security payment mechanism adopted for payment of the power purchase cost by the DISCOMs to GRIDCO, GRIDCO has submitted that the CGP would get rebate of 2% of the bill amount if it is paid within 10 days of presentation of bill by CGPs. Rebate of 1% shall be allowed for payment made from 11th days to 30/31 days and if payment is delayed beyond a period of 60 days from the date of presentation of bill a, penalty @ 1.25% for the unpaid billed amount shall be levied by CCPPO on GRIDCO from 61 days.

Considering the constraints under which both GRIDCO and CCPPO are operating Commission directs that a rebate of 2% would be allowed to GRIDCO by CCPPOs if the payment is made within four working days (except holidays under NI Act) of raising bills and 1% rebate would be allowed if the payment is made within a period of 30 days (counted from the date of presentation of bill). In case payment of bills by the GRIDCO is delayed beyond a period of 30days from the date of presentation of bill, a late payment surcharge @ 1.25% per month shall be levied by CGPs on the unpaid amount from the date of presentation of bills.”

- 36.3 The CGPs/Co-Generating Plants have alleged that despite the clear directions of the Commission as indicated above, GRIDCO is violating the said order. GRIDCO has claimed 2% rebate if payment is made within 7 days instead of 4 days ordered by the Commission. 1% rebate is being claimed if payment is made within 30 days of the day of presentation of the bill. However, in case due to some inadvertent reasons if payment can not be released within 30 days then the dues

are paid to the CGPs without any rebate after 60 days from the date of presentation of the bill. This procedure payment is being followed by GRIDCO w.e.f. November, 2009. However, the CGPs have submitted that GRIDCO in the Letter of Intent (LOI) seeks to override/amend/violate the orders of the Commission in this regard. GRIDCO in the impugned LOI has suggested for DPS of 1.25% on unpaid amount beyond 61 days whereas the Commission has directed payment of DPS @1.25% per month if payment is delayed beyond a period of 30 days from the date of presentation of the bill. The CGPs have further stated that GRIDCO has not yet paid DPS for the amount remaining unpaid for the month of January & February, 2010.

- 36.4 There has been various constrains both on the part of GRIDCO and CGPs. GRIDCO has been required to procure power to meet the demand of the consumers at a rate higher than the rate approved by the Commission. The CGPs are also facing problems in procurement of coal through e-auction where the cost has substantially gone up. The Commission is aware of the problems of both GRIDCO and the CGPs. After taking into account the difficulties of both GRIDCO and CGPs, Commission hereby directs that if all the outstanding dues as stipulated in para 32.5 and as per the rate fixed by the Commission from time to time are paid by GRIDCO, upto the month of August, 2011 within 31.10.2011, the CGPs/Co-generating Plants should forgo the DPS charges as a onetime settlement. However, in respect of payment of current bills starting from the month of September onwards the rebate and DPS as approved by the Commission vide para 8(iii) dt.27.6.2009 in case No.59/2009 should be strictly enforced. While rate approved for 2009-10 is to be treated as final irrespective of the status of CGP even if consuming less than 51% of the generation during 2009-10, the rate approved by the Commission for 2010-11 and 2011-12 for injection of surplus power by CGPs/Co-Generating Plants would be paid on provisional basis subject to final adjustment depending on the status of the CGPs to be ascertained at the end of the financial year as clarified vide para 35 of the order dtd.23.11.2010. The provisional payment should not be held up on the pretext that the CGPs have lost the CGP status or might loose the CGP status at the end of the respective financial year for 2010-11

and 2011-12. In other words the CGPs/Co-Generating Plants have to be paid at the rate approved by the Commission from time to time and accordingly rebate and delayed payment surcharge would be allowed.

37. While most of the issues listed in para 30 above have been clarified vide para 31 to 36, the other issues would be clarified while disposing of the similar Cases No. 49/2011 & 50/2011. However, regarding the issue of CGPs status the Commission directs both the parties to furnish the data on generation, captive use and sale of surplus power to state grid by the CGPs in the following format for the FY 2010-11 cumulative month-wise. In accordance with the Commission's order dtd.31.05.2010.

Name of the Industrial unit having CGP	Capacity of CGP (MW)	Gross Generation	Auxiliary Consumption	Net Generation	Captive Consumption	Sale through Open Access	Sale of Power to GRIDCO
		April					
		Apr-May					
		Apr-June					
						
		April-March					

38. With the above observation and clarification made vide para 30 to 37 the present petition is accordingly disposed of.

Sd/-
(B.K. Misra)
Member

Sd/-
(K.C. Badu)
Member

Sd/-
(B.K. Das)
Chairperson