

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

Present : Shri B K Das, Chairperson
Shri K C Badu, Member
Shri B K Mishra, Member

Case No. 17 of 2011

In the matter of:

Application for review of order dated 14.01.2011 passed by the Commission in Case Nos.101/2009 & 138/2010 under Section 94(f) of the Electricity Act, 2003 read with Regulation 70 of the OERC (Conduct of Business) Regulation, 2004.

AND

In the matter of:

M/s. Orissa Power Consortium Ltd.(OPCL) ... Petitioner
-Vrs –
M/s.GRIDCO & others ... Respondents

AND

Case No. 24 of 2011

In the matter of:

Application for review of order dated 14.01.2011 passed by the Commission in Case No.166/2010 under Section 94(f) of the Electricity Act, 2003 read with Regulation 70 of the OERC (Conduct of Business) Regulation, 2004.

AND

In the matter of:

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

For the petitioners : Shri R.P. Mahapatra, Authorised Representative of
Both M/s. OPCL and M/s. Meenakshi Power Ltd.,
Shri K.S.Rao, MD, Shri B.S. Samantray, Sr.Executive, M/s.OPCL

For the respondents : Shri J K Dash, Sr. GM (PP), GRIDCO,
Shri Aashish Bernard, Advocate on behalf of M/s PTC India Ltd., Shri
Santosh Kumar and Shri R.C.Choudhury,Sr.V.P,M/s.PTC India Ltd.
Shri S K Puri, AGM (O&M), OPTCL,
Shri S C Mohanty, Legal Consultant, DoE, GoO,

Date of Hearing: 19.04.2011

Date of Order:19.05.2011

ORDER

1. The Commission vide its common order dated 14.01.2011 in Case Nos. 101/2009 & 138/2010 had determined the power procurement price of GRIDCO from PTC India Ltd. in respect of Samal Barrage SHEP. Now M/s.OPCL has filed a petition for review of the aforesaid order which was registered as Case No.17 of 2011. Similarly the Commission had passed an order dated 14.01.2011 in Case No.166 of 2010 regarding determination of power procurement price of GRIDCO from PTC India Ltd. in respect of Middle Kolab and Lower Kolab SHEPs of M/s.Meenakshi power Ltd (MPL). Now M/s.Meenakshi power Ltd. has also filed a petition seeking review of the said order of the Commission which is registered as Case No.24 of 2011.
2. Both the review petitions filed by M/s. OPCL (No.17 of 2011) and M/s. MPL for review of order dtd.14.01.2011 (No.24 of 2011) passed in Case Nos.101/2009 & 138/2010 and Case No.166/2010 were clubbed together for analogous hearing as both the cases are similar in nature. The Commission heard both the cases on 19.04.2011 at length. Hearing concluded and order was reserved. Parties were directed to file their written submission, if any, on or before 30.04.2011. Both M/s. MPL and M/s. OPCL had filed their written note of submission on 03.05 2011, which were taken into record.
3. Shri R P Mohapatra, representing both M/s Meenakshi Power Limited (MPL) and M/s Orissa Power Consortium Limited (OPCL) stated that the Commission in its order dtd.14.01.2011 in Case No.166/2010 has passed an order regarding tariff for sale of power from the Middle Kolab (25 MW) and Lower Kolab (12 MW) Small Hydro Electric Projects (SHEP) owned and operated by MPL and in Case No.101/2009 & 138/2010 for Samal Barrage Small Hydro Electric project (20 MW) owned and operated by OPCL.
4. In para 20 of the order dtd. 14.01.2011 in Case No. 166/2010 the Commission had determined the provisional price for Middle and Lower Kolab SHEPs as reproduced below:

“Therefore, the Commission now re-determines the provisional price at Rs.3.64/Kwh towards procurement of power by GRIDCO from M/s. PTC in respect of saleable power of 88% (i.e. excluding free power of 12% to the state) of Middle Kolab and Lower Kolab SHEPs of M/s MPL, out of which M/s PTC shall keep 4 paise per Kwh towards its trading margin and shall pay balance Rs.3.60 per Kwh to M/s.MPL towards purchase of energy from Middle and Lower Kolab Small HE Projects. This rate shall be applicable from 01.11.2009 onwards i.e. the date from which the

previous order dtd.08.06.2010 of this Commission in Case No.35/2010 was made applicable.”

5. Similarly in para 18 of the order dtd. 14.01.2011 in Case No. 101/2009 & Case No. 138/2010 the Commission has determined the provisional price for Samal Barrage SHEP as reproduced below:

“Therefore, the Commission now re-determines the provisional price at Rs.3.64/ Kwh towards procurement of power by GRIDCO from M/s. PTC in respect of saleable power of 88% (i.e. excluding free power of 12% to the state) of Samal SHEP of M/s OPCL, out of which M/s. PTC shall keep 4 paisa per Kwh towards its trading margin and shall pay balance Rs.3.60 per Kwh to M/s. OPCL towards purchase of energy from Samal Barrage SHEP. This rate shall be applicable from 01.11.2009 onwards i.e. the date from which this provisional price was made applicable to the other existing small hydro projects.”

6. He further submits that there is error apparent in the determination of the provisional price payable to the Petitioner in respect of saleable power of 88% in view of the following:

(i) The Commission in para 15 of the order dtd. 14.01.2011 (in Case No. 101/2009 & 138/2010) and Para 17 of the Order dtd. 14.01.2011 (in Case No. 166/2010) has observed *“In the meantime the Commission has passed an order fixing the generic tariff for renewable energy sources including SHEPs. In this order the Commission has fixed the generic tariff of Rs.3.64 per Kwh for SHEPs with station capacity of 5 MW and above. xxxxxx”*

(ii) In the order dtd. 14.09.2010 in Case No. 37/2008 (Suo Motu) the Commission has determined the generic levelized tariff at Rs.3.64 per Kwh for SHEPs above 5 MW and below 25 MW based on 100% net generation from SHEPs

(iii) While determining a provisional rate for sale of power in its order dtd. 01.10.2009 in Case No. 101/2009 the Commission had observed that *“M/s OPCL, the Developer of the project is not affected whether the 12% free power is availed by GRIDCO or not. Because in case of applicability of 12% free power to GRIDCO, there will be a proportionate increase in tariff as it will be determined based on 88% of the Design Energy without affecting the ARR of the Project. Xxxxxx”*

(iv) In view of the above order of the Commission the tariff for the power sold by the SHEPs of both the petitioners should be Rs.4.136 (Rs.3.64 / 0.88) per Kwh.

(v) In order dtd. 09.06.2009 in Case No. 34/2009 the Commission passed orders as follows:

“Further, from the Power Sale Agreement (Annexure-A) between GRIDCO and PTC dtd.19.12.2008 it is observed that the tariff payable by GRIDCO to PTC shall be as determined in the PPA between M/s. MPL and M/s PTC India Ltd. or as determined by the Commission plus PTC’s margin of 4 Paise/Kwh.”

(vi) In view of the above, the orders of the Commission in allowing only 88% of the generic tariff of Rs.3.64 per Kwh to the SHEPs of M/s MPL & M/s. OPCL and also without considering its observations in Para 9 and 10 of the Order dtd. 01.10.2009 in Case No. 101/2009 (relating to OPCL vrs. GRIDCO) is an error apparent on the face of record.

7. The petitioner have constructed the transmission lines from the project sites upto the OPTCL’s Grid Sub-stations. They had claimed for transmission charges on the capital expenditure for the transmission system. The Commission in Para 22 of its order dtd. 14.01.2011 in Case No. 166/2010 had observed that *“The issue relating to taking over of the dedicated transmission lines constructed by the developers and related issues would be decided during the fixation of final tariff.”* The Commission may pass a definite order in this regard pending taking over of the transmission line on payment by the Transmission Licensee, a provisional transmission charge may also be allowed.
8. The petitioner had also claimed for reimbursement of the amount paid towards water cess to Govt. of Orissa and System Operation Charges (SOC) and Market Operation Charges (MOC) to SLDC. These issues have not been considered in the order of the Commission for which review is requested.
9. In view of the above the petitioners have prayed the Commission to review its orders dtd. 14.01.2011 in Case No. 101/2009 & 138/2010 in respect of Samal Barrage SHEP of M/s.OPCL and Case No.166 of 2010 in respect of Middle and Lower Kolab SHEPs of M/s.MPL and passed orders as indicated below:
 - That the amount payable to the petitioners on 88% of the net generation of the Samal Barrage SHEP and Middle Kolab & Lower Kolab SHEPs shall be @Rs.4.136 per Kwh.
 - That GRIDCO should pay to PTC additional amount @ 4 paise per Kwh towards PTC’s Trading Margin.
 - That the Transmission Charges as calculated or on an Interim basis, may be determined and GRIDCO may be directed to make payment of Transmission Charges on 100% of the net generation of the Samal Barrage SHEP and Middle Kolab & Lower Kolab SHEPs.
 - That GRIDCO be directed to reimburse the Water Cess demanded by the Government of Orissa in respect of generation of these SHEPs.

- That GRIDCO be directed to reimburse the monthly SOC and MOC billed by the State Load Despatch Centre in respect of generation of these SHEPs.

10. The representative of GRIDCO stated that:

- M/s. OPCL and M/s. MPL have signed MOU with Govt. of Orissa and PPAs executed with M/s. Power Trading Corporation for purchase of entire power of Samal Barrage SHEP and Middle Kolab & Lower Kolab SHEPs respectively less auxiliary consumption, transformation loss and transmission loss upto delivery point for a period of 30 years from the COD of the said projects.
- GRIDCO has executed Power Sale Agreements with PTC for procurement of entire power generated from Samal SHEP (5x4 MW) and Middle Kolab & Lower Kolab SHEPs (37 MW) less auxiliary consumption and transformation loss, transmission loss at a tariff determined by OERC plus PTC trading margin of 4 paise per Kwh.
- GRIDCO procured all power generated from Samal SHEP by M/s. OPCL and Middle Kolab & Lower Kolab SHEPs through PTC with provisional rate as determined by the Commission.
- On 14.09.2010 OERC has issued an order on petition No.37/2008 (Suo Motu) on finalization of Policy on Harnessing of power from Renewable Energy Sources. As per the same order the levelised tariff for small hydel upto 25 MW capacity is Rs.3.64/- per Kwh and after adjusting for accelerated depreciation benefit (if availed), the tariff is Rs.3.09 per Kwh.
- In this regard GRIDCO has filed before OERC on 05.01.2011 and requested the Commission to consider the tariff as per order on petition No.37/2008 (Suo-motu) on finalization of Policy on Harnessing of power from Renewable Energy Sources.
- The Commission passed order on 14.01.2011 vide Case No.101/2009 & 138/2010 in respect of Samal Barrage SHEP and vide Case No. 166/2010 in respect of Middle Kolab & Lower Kolab SHEPs that the provisional price at Rs.3.64/Kwh towards procurement of power by GRIDCO from M/s.PTC in respect of saleable power of 88% (i.e. excluding free power of 12% to the state) of Samal SHEP of M/s. OPCL and Middle Kolab & Lower Kolab SHEPs of M/s MPL, out of which M/s.PTC shall keep 4 paise per Kwh towards its trading margin and shall pay balance Rs.3.60 per Kwh to M/s.OPCL and M/s. MPL towards purchase of energy from these SHEPs. This rate shall be applicable from 01.11.2009 onwards. From that date GRIDCO has paid all the arrear dues.
- The Commission has also passed Annual Revenue Requirement and Bulk Supply Price of GRIDCO for FY 2011-12 on 18.03.2011. In this order the Commission approved the tariff of renewable energy at Rs.3.20 per unit. In other words, it is same as Rs.3.64 per Kwh on 88% of generation.
- The transmission charges filed by developers is very high in comparison to STU transmission charges. As per Clause 18 of OERC order in Petition No.37 of 2008 (Suo-motu), the interconnection point shall be line isolator on outgoing feeder on HV-side generator's Transformer. The responsibility for development of evacuation infrastructure upto inter-connection point shall be entrusted to project developer, while appropriate license (OPTCL) would be responsible for development of evacuation infrastructure beyond inter-connection point. In view

of above the asset is deemed to have been taken over by OPTCL as on date Commissioning and GRIDCO will pay transmission charges to OPTCL.

11. The representative of OPTCL stated that:

- (a) The petitioners M/s. OPCL and M/s. MPL have prayed the Commission inter-alia to approve the transmission charges as calculated or on an interim basis may determine the same and direct GRIDCO to make payment of the transmission charges on 100% of the net generation of the SHEPs.
- (b) OPTCL being the transmission licensee has no views to offer in tariff determination matters. However, OPTCL would like to submit the following with regard to claim of transmission charges by the Petitioners for kind consideration by the Commission.
 - Synchronization permission has been issued by OPTCL in favour of M/s. OPCL and M/s. MPL with a condition that the tie lines and 132 KV power transmission lines up to the grid sub-stations shall be operated and maintained by the SHEPs by their own arrangement. This has been agreed by both the Petitioners M/s. OPCL and M/s. MPL.
 - The Lower Kolab SHEP and Middle Kolab SHEP have been synchronized to the transmission network on 27.01.2009 and 06.02.2009 respectively.
 - The submission made by the petitioners for taking over of their power evacuation transmission lines connecting to the Grid sub-stations of OPTCL on reimbursement of cost incurred by the petitioners is not acceptable to OPTCL.

12. The representative of PTC India Ltd. stated that as per the Resolution dtd. 03.06.2005 of the State Govt. of Orissa, the Supply of 12% free power to a State designated utility is applicable only if the power is sold outside the State. Since the entire power generated from the Samal Barrage and Middle Kolab & Lower Kolab SHEPs is supplied to GRIDCO, the State Nodal Agency which is within the State, the 12% free power is not applicable for these SHEPs. In this regard it is further submitted that the current transaction can't be regarded as sale of power to an agency outside the State of Orissa for the following reasons:

- (a) As per Regulation 2 (1)(k) of the Central Electricity Regulatory Commission (procedure, terms and Conditions for the grant of trading license and other related matters) Regulations, 2009, (hereinafter referred to as "CERC (Grant of Trading License Regulations), 2009", "inter-state trading" has been defined as "means transfer of electricity from the territory of one State for re-sale to the territory of another State and includes electricity imported from any other country for re-sale in any State of India". Therefore, the quintessential requirement for a trading transaction to be classified as "inter-State trading" is the purchase of electricity in one State and its transfer and re-sale in another State.
- (b) In the instant case the purchase of electricity is from a generator within the State of Orissa and the re-sale and transfer of this electricity by the

Respondent No. 2 is also to an entity within the State of Orissa i.e. Respondent No.1. In other words there is no transfer or re-sale of power from the Project of the Petitioner outside the State of Orissa. Therefore, it can not be contended that power is supplied to an agency outside the State of Orissa and hence the Respondent No.1 is not entitled to 12% free power from the power Project of the Petitioner.

- (c) Further, it is most respectfully submitted that the Hon'ble Appellate Tribunal for Electricity in its judgement dtd. 11.01.2011 passed in Appeal No. 88 of 2011 has examined the role of a trader. In the above mentioned case, the issue pertained to the legality of the supply of power through a trader to outside the State of Utrakhand. The Hon'ble APTEL in the above mentioned judgment while examining the issue, observed that a trader role is that of a facilitator for the supply of electricity by a generator to a licensee or a consumer and what has to be looked upon is who is the ultimate consumer of such electricity.
- (d) Therefore, applying the rationale of the Hon'ble APTEL in the above mentioned judgment, it is most respectfully submitted that Respondent No. 2 is only a trader and as such the electricity from the power project of the Petitioner is going to be consumed by the Consumers of the State of Orissa only. Moreover at no stage can the current transaction be categorized as an "inter-state trading", for the reason that the purchase and re-sale of power is within the State of Orissa and the power is going to be ultimate consumed by the consumers of the State of Orissa. It can not be, therefore, averred that the Petitioner is supplying power outside the State of Orissa.
- (e) In light of the above submission it is most respectfully reiterated that in the instant transaction, electricity generated from the power project of the Petitioner is not going to be supplied outside the State of Orissa and therefore, it is most respectfully submitted that the tariff be calculated on the entire 100% of power.

13. The representative of Dept. of Energy, Govt. of Orissa has submitted that,

- (a) The Commission vide their Order dtd.09.11.2010 passed in Case No. 138/2010 had directed the State Government to file written submission with views on the issue of availing 12% free power by GRIDCO as the State designated agency.
- (b) In Case No. 166/2010 the petitioner M/s Meenakshi Power Limited, the view of the State Government were also required to be made with regard to the stipulation of 12% free power to be given to the State Govt./State Designated entity.
- (c) Accordingly the Department of Energy in course of hearing of the Cases on 07.01.2011 had submitted that 13% free power be supplied to the State as the SHEP (12% to the host Government and 1% for local area Development Fund as constituted by the State Government) and the 12% free power may be suitably staggered as decided by the Government. This matter was also filed in the shape of a common affidavit in Case No. 166/2010, 138/2010 and 101/2009 but this aspect has not been considered while passing the Order dtd. 14.01.2011 in Case No. 166/2010.
- (d) However, this aspect again came up for discussion on 19.04.2010 in course of hearing of the aforementioned review petition and Government was required to submit its views. Accordingly, the views of the Government are as follows:-

- i) The State Respondent submits that the Tariff Policy notified by the Ministry of Power effective from 01.04.2004 defines the saleable Primary and Secondary Energy of a Hydro Station as the quantum of Energy (Primary/Secondary) available for sale (ex-bus) after allowing 12% free energy to the home State.
- ii) The State Govt. in the Department of Energy in its resolution No. 6603 dtd. 03.06.2005 has stipulated that the Developer supplying power to an agency outside the State should supply 12% free power to a State Designated Utility. The tariff to all such Mini/Micro and small Hydro Projects which has not been commissioned till 01.04.2004 should factor into such supply of 12% free power to the State Designated Agency.
- iii) Further, amendment has been made to the tariff policy by the Ministry of Power in their Notification dtd. 31.03.2008 which stipulates that the total saleable design Energy of Hydro Electric Project shall be arrived at by deducting the following from the design energy at the bus bar.

“13% of free power (12% to the host Government 1% for contribution towards Local Arrear Development Fund as constituted by the State Government). This 12% free power may be suitably staggered as decided by the Government”.
- iv) In view of the aforesaid provisions in the Tariff Policy issued by the Ministry of Power subsequent to the Resolution dtd. 03.06.2005 of the State Government, the State Govt. is of the view that the SHEPs should supply 13% free power as stipulated in the amended Tariff Policy of the Ministry of Power and the tariff of the energy of SHEPs should be fixed after taking into consideration the 13% free power to be supplied to the State Govt./State Designated Entity as per the provisions contained in the aforesaid Notification dtd. 31.03.2008 of Ministry of Power. The Commission may direct the SHEPs to supply 13% free power in conformity with the Tariff Policy of Ministry of Power, Govt. of India.

Observations and Directions of the Commission

14. The Commission heard the parties at length and observed that the following issues need to be resolved.
 - a) Whether 12% free power to the State is applicable in such cases where the entire power delivered from the power stations is purchased by GRIDCO for utilization by the consumers of the State.
 - b) Whether this Commission is required to determine the generation tariff of the Samal Barrage and Lower and Middle Kolab SHEPs, where these stations are selling power to PTC and GRIDCO had come to the Commission for approval of Power Sale Agreement executed between PTC and GRIDCO for purchasing this power from PTC by paying trading margin.

- c) Whether the Samal Barrage and Lower and Middle Kolab SHEPs are entitled to get transmission charges for transmission of power generated by these stations upto the OPTCL grid sub-stations.
- d) Whether these small SHEPs are required to reimburse the monthly SOC and MOC billed by the State Load Despatch Centre and Water Cess demanded by the Government of Orissa.

Issue of 12% free power

- 15. Govt. of Orissa vide its resolution dated 30.6.2005 have resolved that the developers supplying power to any agency outside the State should supply 12% free power to the State Designated Utility i.e. GRIDCO. The tariff for all such Mini/Macro/Small hydro electric projects which has not been commissioned till 01.4.2004, should factor in such supply of 12% free power to state designated agency. Further, as per resolution dated 31.3.2008 of Govt. of India, Ministry of Power, the project developers shall have to provide 1% more free power towards local development fund.
- 16. M/s PTC and M/s OPCL have entered into a Power Purchase Agreement (PPA) agreeing that PTC will purchase the deliverable energy from the 20 MW of Samal Barrage small hydro electric project, excluding auxiliary consumption, transformation loss and transmission loss upto to the delivery point, for a period of 30 years from the COD (Commercial Operation Date) of the said project.
- 17. GRIDCO in turn has entered into a Power Sell Agreement (PSA) with M/s PTC on 26.5.2009 agreeing therein that M/s PTC will make available the entire generation of 20 MW (5X4 MW) from Samal Barrage Small Hydro Electric Project developed by M/s OPCL to GRIDCO on the terms and conditions stipulated in the PSA. In this PSA, it is also agreed that the tariff for sell of such power to GRIDCO by PTC shall be as determined in the PPA between M/s OPCL and M/s PTC or as determined by the Commission plus PTC's trading margin of 4 paise per KWH.
- 18. Now it is to be examined in the light of the PPA entered into between M/s PTC and M/s OPCL and PSA between GRIDCO and M/s PTC vis-à-vis the Govt. of Orissa resolution dt.3.6.2005 which has stipulated that the developers supplying power to any agencies outside the State should supply 12% free power to the State designated utility. The core question is whether power generated from the Samal Barrage Small Hydro Electric Project irrespective of its consumption in the State or outside the State 12% free power is to be supplied to the State designated utility i.e. GRIDCO? The

Govt. resolution dated 3.6.2005 stipulates that 12% free power is to be given to the state designate agency when developer supplies power to any agencies outside the State. This would definitely mean when such power is consumed in other State but not in the State itself. If the agency is located inside the State and power is supplied to such agency but that agency instead of selling the power to GRIDCO or distribution companies in the State sells power to others for consumption in other States does it mean that 12% free power is not applicable because developers is supplying power to any agency inside the State? The clear intention is that 12% free power to State designated utility is applicable only when power is supplied to an agency by the developers is utilized in other States. The state designated utility is entitled to 12% free power in consideration of various local development imperatives. Merely because there is a commercial arrangement for supply of power through PTC to GRIDCO for consumption inside the State, 12% free power is not applicable on the plea that PTC is an outside agency. As pointed out by PTC the Hon'ble Appellate Tribunal for Electricity in its judgment dated 11.1.2011 passed in case No.88/2011 have examined the role of a trader in the above mentioned case, issues pertaining to the legality of supply of power to a trader outside the State of Uttarkhand. The Hon'ble APTEL in the above mentioned judgment while examining issues observed that a trader is really that of a facilitator for supply of electricity by a developer to a licensee or a consumer and what is to be looked upon is who is the ultimate consumer of such electricity.

19. The APTEL in the above mentioned case had held that the “sale of power to any consumer outside State cannot be given a restrictive interpretation which defeats the very objective of de-licensing generation and freedom to sell power by a generating company to a consumer or to a licensee. Shortages in the State could not be a reason for denial of open assess”.
20. We accordingly hold that since the power generated by Samal Barrage Small Hydro Electric Project is being supplied to GRIDCO for consumption in the State through PTC by a commercial arrangement to provide the said power for ultimate sale to the consumers of the state 12% supply of free power to the State designated utility is not applicable in terms of the resolution No.66031 dated 30.6.2005 of the state govt. as the power is not being supplied outside the State nor is it for consumption in other States. In the instant case, the purchase of electricity from the generators is within the State of Orissa and the resale and transfer of this electricity by PTC is also to an entity i.e. GRIDCO within the State of Orissa. In other words there is no transfer or resale of

power from the project of PCL to outside the State of Orissa. Therefore, it cannot be said that power is supplied outside the State of Orissa. Hence, GRIDCO is not entitled to 12% free power from the Samal Barrage Hydro Electric Project and by the same logic from M/s Meenakhi Power Ltd.

21. Even assuming that 12% free power is given to GRIDCO, the cost incurred by the developers as approved by STC is to be factored into the generation tariff. The 12% power if supplied to GRIDCO free of cost then the balance 88% power generated is to cover the cost of the project. In that case GRIDCO's account or the ARR of GRIDCO would not be affected because cost of 12% free power is being offset in the cost of 88% of power generated from the project. Accordingly, we hold that 12% of the power generated from Samal Barrage Small Hydro Electric Project and Upper Kolab and Middle Kolab project Small Hydro Project is not applicable because the entire power generated is being supplied to GRIDCO through PTC for ultimate consumption in the State only and the power is not being sold through PTC for resale or consumption in other State though the registered office of PTC may be outside the State.

Issue of Determination of Generation Tariff

22. In Para 8, 9 & 10 of the Order dtd. 14.01.2011 in Case No. 101/2009 & 138/2010 (in case of Samal Barrage SHEP) and Para 9, 10 & 11 of the Order dtd. 14.01.2011 in Case No. 166/2010 (in case of Middle and Lower Kolab SHEPs), the Commission had observed that M/s OPCL and M/s. MPL are selling power to M/s. PTC from these SHEPs and M/s PTC, in turn, supplying the same power to GRIDCO. Therefore, GRIDCO had applied for approval of Power Sale Agreements executed between M/s.PTC & GRIDCO and for determination of power procurement price thereon and the Commission in its earlier orders had concurred to the Power Sale Agreements and fixed the provisional power procurement price for GRIDCO (inclusive of 4 paisa as trading margin of M/s. PTC) on the saleable power of the project
23. The Commission had not determined the final procurement price of power for GRIDCO, because the required information/data was not available with the Commission. Further, the revised capital cost of the project was not approved by the STC. While determining the power procurement price of GRIDCO from M/s. PTC, the Commission had felt it appropriate to consider the generation tariff of Samal Barrage SHEP of M/s. OPCL and that of Middle Kolab and Lower Kolab SHEPs of

M/s. MPL for viability of these Projects. Therefore, in this order the Commission had directed to the Project developer and GRIDCO to submit the detailed tariff calculation of the project with authenticated supporting documents.

24. The Commission observed that since M/s. OPCL and M/s MPL are selling power to M/s. PTC from their Small Hydro Electric Projects and M/s PTC, in turn supplying the power to GRIDCO, which in turn is supplying the same to the DISCOMs for use of the State's consumers, the Commission needs to determine the procurement price of the power supplied by M/s PTC as per the Power Sale Agreements executed between PTC & GRIDCO.
25. The Commission in its Order dtd. 14.09.2010 in Case No. 37/2008 (Suo Motu) had determined the generic levelized tariff at Rs.3.64 per Kwh (Rs.3.09 per Kwh if the benefit of accelerated depreciation is availed) for the SHEPs above 5 MW and below 25 MW. This tariff determined for the SHEPs commissioned during the control period i.e. from FY 2010-11 to 2012-13 shall continue to be applicable for the entire duration of tariff period of 13 years.
26. Both the petitioner M/s. OPCL and M/s MPL have prayed to the Commission for a tariff of Rs.4.136 per Kwh for 88% of the net generation of the projects (if 12% free power is availed by the State). In case 12% free power if not availed by the State they may be allowed a tariff of Rs.3.64 per Kwh on 100% net generation from these SHEPs. During the course of hearing GRIDCO has also stated that it has no objections if the Commission allows these SHEPs a tariff as determined by the Commission in its Order dtd. 14.09.2010 in Case No. 37/2008 (Suo Motu) while fixing a generic tariff for the RE sources.
27. The Commission observed that the generic tariff fixed for the SHEPs in its order dtd. 14.09.2010 are applicable to those SHEPs which would be commissioned during the FY 2010-11 to 2012-13. Samal Barrage SHEP of M/s. OPCL and Middle Kolab and Lower Kolab SHEPs of M/s. MPL were commissioned in the FY 2009-10. The generic tariff order for SHEPs have been fixed by the Commission through a study conducted by the Commission on appointing a consultancy firm and considering CERC Regulations, similar projects outside the State and DPRs of the proposed SHEPs inside the State. Hence, the tariff for the projects commissioned prior to 2010-11 should not be more than the generic tariff fixed by the Commission for the projects commissioned in subsequent years. However, keeping in view the lower availability

of renewable energy sources in the State, the Commission agrees with the proposals of GRIDCO. It has already been explained earlier that giving 12% free power to GRIDCO has hardly any impact on its power procurement price. Therefore, the Commission extends the generic tariff approved for small hydro electric projects in Case No.37/2008 vide its order dtd.14.09.2010 to Samal Barrage SHEP of M/s. OPCL and that of Middle Kolab and Lower Kolab SHEPs of M/s. MPL with the following directions:

- i) The tariff for the 100% of power supplied by Samal Barrage SHEP of M/s. OPCL and that of Middle Kolab and Lower Kolab SHEPs of M/s. MPL is fixed at Rs.3.64 per unit
- ii) PTC's trading margin as usual is fixed at 4 paise per Kwh, for 100% of power supplied by these stations to GRIDCO.
- iii) Therefore, the total tariff for the power purchase from these stations shall be Rs.3.64 plus Rs.0.04 which equals Rs.3.68 per unit.
- iv) In the absence of cost data of the above generating stations duly approved by the STC, and in view of the fact that the present tariff for the above SHEPs is not sufficient enough to pay back the loans incurred by these generating stations, the Commission fixes the above tariff as an interim measure till the time of availability of the cost data for final determination of tariff.
- v) In case the final tariff based on cost data turns out to be different from this generic tariff, both the above generators and GRIDCO shall adjust their payables and receivables accordingly from the future bills.

Issue of Connectivity and Transmission Charges

28. Regarding connectivity and power evacuation, the Commission at para 7 (e) of its generic tariff Order dtd. 14.09.2010 in Case No. 37/2008 (Suo Motu) has observed as follows:

“7 (e) Issues on Connectivity and Power Evacuation

- *The responsibility for creation of power evacuation infrastructure should be clearly demarcated between the developer and the utility.*

xxxxxxxxxxxxx.”

29. From the Office Memorandum of Govt. of Orissa on issuance of techno-economic clearance of these projects, it is understood that construction of transmission line for power evacuation from these projects are the responsibility of the project developers.

From the Power Purchase Agreement between M/s. MPL and PTC, the Interconnection Point means the 400/220/33 KV sub-station of the Power Grid Corporation of India Ltd., located at Kaliyagan Village, Jeypore Taluk, Koraput District, in the State of Orissa where the Power Output from the Project is delivered to the CTU. Therefore, it is understood that if GRIDCO would not have purchased this power and PTC could have sold this power somewhere else then the interconnection point would be the 400/220/33 KV sub-station of the Power Grid Corporation of India Ltd. near Jeypore. Similarly, as per the Power Sale Agreement (PSA) between PTC and GRIDCO Interconnection Point means the point of interconnection of the project with OPTCL system.

30. OPTCL in its submission has stated that the 132 KV LILO line at Samal Barrage SHEP has been constructed by OPCL for power evacuation. The 132 KV Switching Station and associated LILO line of OPCL have been allowed for energization by OPTCL subject to condition that the said facility shall be operated and maintained by them. Similarly the connecting 132 KV evacuation lines and associated bays have been constructed by MPL. Synchronization permission has been issued by OPTCL in favour of MPL with a condition that the tie lines and 132 KV line for power evacuation upto Jayanagar grid sub-station near Jeypore shall be operated and maintained by the SHEPs of M/s. MPL. Therefore, taking over of the 132 KV lines constructed by M/s. MPL and M/s. OPCL for the power evacuation from their projects or reimbursement of cost as claimed by them are not acceptable to OPTCL. This may be construed as part of the SHEPs.
31. We observe that both M/s MPL and M/s OPCL are not the transmission licensees and hence, not entitled for reimbursement of any transmission charges from GRIDCO as claimed by them. From the TEC clearance report, PPAs between the MPL and OPCL with PTC and PSAs between PTC and GRIDCO it is understood that the evacuation transmission lines upto the OPTCL system are part of the SHEPs. In our country there are instances of power projects having their dedicated lines for power evacuation upto the Grid system. However, the transmission loss occurred in these lines while transmitting the power from the projects upto the OPTCL system is to be on the account of the State Transmission Utility i.e. OPTCL. Therefore, we direct OPTCL to record the energy delivered from these projects by installing energy meters at the gantry of the 132 KV lines emanating from the switchyards of respective SHEPs.

Issue of SLDC Charges & Water Cess

32. As per the Power Sale Agreement executed between PTC and GRIDCO the company (the project i.e SHEPs) shall be required to bear all applicable RLDC/SLDC charges upto the Interconnection point. The Purchaser shall bear all applicable RLDC/SLDC charges beyond the Interconnection point, where interconnection point has been defined as the point of interconnection of the projects with OPTCL system.
33. In view of the above we direct that the monthly SOC and MOC billed by SLDC should be shared equally between the project developer and GRIDCO.
34. The representatives of M/s.OPCL and M/s.MPL have prayed in their submissions to direct GRIDCO for reimbursement of water cess demanded by Govt. of Orissa for generation of electricity. The Commission had observed in Para 20 of its Order dtd. 14.09.2010 in Case No. 37/2008 (Suo Motu) on determination of generic tariff for RE sources that “water royalty charges shall not be internalized in tariff. However, the actual amount of water royalty charges as levied by the Govt. of Orissa shall be allowed as pass through components.”
35. Since, the generic tariff order fixed by the Commission in the aforesaid order is extended to Samal Barrage SHEP of M/s. OPCL and Middle Kolab and Lower Kolab SHEPs of M/s. MPL, the actual payment of water royalty charges/cess levied by the Govt. of Orissa in respect of generation of electricity from these projects shall be reimbursed by GRIDCO.
36. In view of the analysis and observations in the preceding paragraphs we now summarise our observations and directions as indicated below:
 - a) 12% free power to the State Designated Entity i.e. GRIDCO is NOT applicable to the cases of Samal Barrage SHEP of M/s. OPCL and Middle Kolab and Lower Kolab SHEPs of M/s. MPL where the entire power delivered from the power stations is purchased by GRIDCO through PTC for utilization by the consumers of the State and power generated is not being supplied to an agency outside the state for consumption in another state/s.
 - b) The Commission allows Samal Barrage of M/s. OPCL and Lower Kolab & Middle Kolab SHEPs of M/s. MPL to avail the generic tariff fixed by the Commission in its generic tariff order dtd.14.09.2010 applicable for Small Hydro Electric Projects commissioned during FY 2010-11 to 2012-13, though these projects have been commissioned earlier. Since these stations are selling power to PTC and PTC is in turn selling this power to GRIDCO by executing a

separate agreement, the Commission is also to determine the procurement price of GRIDCO on purchase of this power from PTC for use of the State Consumers. The Commission fixes Rs.3.68 per Kwh (inclusive of 4 Paise per Kwh as trading margin of PTC) towards procurement of this power by GRIDCO from PTC as observed in para 27 above.

- c) The Samal Barrage SHEP of M/s. OPCL and Lower Kolab and Middle Kolab SHEPs of M/s. MPL are not entitled to get transmission charges for transmission of power generated by these stations upto the OPTCL grid sub-stations. However, the delivered energy to be recorded at the 132 KV out going gantry of the switchyards of the power stations so that the transmission loss would be on account of the STU i.e. OPTCL.
- d) Since the cost of transmission lines as shown by generators is the part of the project cost, this shall be factored into when the final tariff will be determined.
- e) The monthly SOC and MOC billed by the State Load Despatch Centre on dispatch of power from Samal Barrage SHEP of M/s. OPCL and Lower Kolab and Middle Kolab SHEPs of M/s. MPL shall be shared equally between GRIDCO and respective project authorities.
- f) Water royalty charges /Cess demanded by the Government of Orissa in respect of generation of electricity from these projects shall be reimbursed by GRIDCO.
- g) The above price fixed by the Commission shall be applicable from the date of commercial operation of the projects and continue for the entire tariff period i.e 13 years from COD. The energy purchased by GRIDCO prior to the date of commercial operation of the projects shall be paid by GRIDCO at the price fixed by the Commission for Co-generation plants for that period, which shall include the PTC's trading margin of 4 Paise per Kwh.

37. Accordingly, the cases are disposed of.

Sd/-
(B.K. MISRA)
MEMBER

Sd/-
(K.C. BADU)
MEMBER

Sd/-
(B K DAS)
CHAIRPERSON