

**ODISHA ELECTRICITY REGULATORY COMMISSION**  
**BIDYUT NIYAMAK BHAWAN**  
**UNIT-VIII, BHUBANESWAR - 751 012**  
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Present:        Shri S. P. Swain, Member  
                     Shri A. K. Das, Member

**Case No. 54/2011**

M/s. Bhushan Power & Steel Ltd.	....	Petitioner
Vrs.		
GRIDCO & Another	.....	Respondents

**In the matter of:**    **An application Under Sec. 86(1) (f) of the Electricity Act, 2003 read with Chapter II, Regulation 8, 9 &10 of OERC (Conduct of Business), Regulations, 2004 for not releasing the differential payment towards sale of surplus power during the month of November to December, 2009.**

For the Petitioner:    Shri Sourabh Kumar, Manager, M/s Bhushan Power & Steel Ltd.

For the Respondents: Shri B. K. Nayak, Advocate on behalf of GRIDCO  
                              Shri U. N. Mishra, CGM (PP), GRIDCO  
                              Shri L. R. Dash, GM, GRIDCO  
                              Shri B. K. Das, AGM (EL.), OPTCL

**ORDER**

**Date of Hearing: 02.12.2014**

**Date of Order:04.07.2015**

This is an application by M/s. Bhushan Power & Steel Ltd. challenging the action of GRIDCO of not releasing the full payment towards the bills raised by them for sale of surplus power from its CGP to GRIDCO during the month of November and December, 2009. The Petitioner has prayed the Commission to direct GRIDCO for payment of their withheld amount with DPS and interest. The case was heard on 08.02.2012 and the Commission as an interim measure directed both the parties to reconcile the old energy bills and also directed GRIDCO to pay the current bill as per the Commission's order. The case was finally heard on 02.12.2014.

2. The petitioner M/s. Bhushan Power & Steel Ltd submitted that,
  - a. Pursuant to Commission's order dated 28.02.2009 passed in Case No. 6 to 20/2009 and the subsequent letter dated 07.03.2009 of GRIDCO, the applicant started selling surplus power from its CGP after meeting its own requirements. Accordingly bills were raised by the petitioner @ Rs. 3.00/KWh on provisional basis for the period from 01.03.2009 to 31.10.2009 with a schedule of zero MW

which were duly honored and paid by GRIDCO. However, without any rhyme or reason, GRIDCO released the payment for the bills raised by the applicant for the month of November & December, 2009 by illegally withholding an amount of Rs. 8,86,36,259/- by treating unilaterally the power injected by the applicant from 01.03.2009 as non-firm/inadvertent power, which was priced at the pooled cost of hydro power in the State.

- b. Further, the Commission in its order dated 29.08.2011 passed in Case No. 22/2011 in paragraph 34.1 has clarified that day ahead schedule given by any CGP shall be at least 1 MW and above. Therefore, the Petitioner claims that barring a few days since the power injected by them is 1 MW and above that should be treated as firm power and be paid accordingly. Hence the surplus power injected by the applicant should not be treated at the rate applicable to non-firm/inadvertent power. Moreover, GRIDCO has never objected to the said injection of power earlier and paid the monthly bills of the applicant from 01.03.2009 to 31.10.2009 @ Rs. 3.00/KWh on provisional basis and after eight months, illegally and arbitrarily calculated the cost of power injected by the applicant at inadvertent power rate i.e. at the pool cost of hydro power and has withheld an amount Rs. 8.86 Crs. from the monthly bills of November & December, 2009.
- c. Further, the State Government vide its notifications dated 22.04.2009 and 04.07.2009 issued directions u/S. 11 of the Electricity Act, 2003 directing all CGPs in the state to optimize their generation and inject power to the state grid after meeting their captive consumption to enable the state government to tide over the emergent situation of power crisis. Even SLDC asked the Petitioner to restrict the contract demand of its industry to 30 MW for the safety and security of the system during the power crisis. This has resulted in injecting power to the Grid by the Petitioner by shutting down some of its industrial facilities.
- d. In view of the above, the action of GRIDCO deducting the payments of the petitioner amounting to Rs.8,86,36,259/- from the bills of November & December, 2009 is unjustified, arbitrary, contrary to law and contrary to the aforesaid orders passed by the Commission. Therefore, the petitioner prayed the Commission to direct GRIDCO to release the balance outstanding amount of Rs.8,86,36,259/- from the monthly energy bills of November & December, 2009

along with delayed payment surcharge and interest thereon, otherwise the petitioner will suffer irreparable loss and severe financial injury.

3. The respondent GRIDCO has submitted that,

- a. While determining the comprehensive pricing policy for sale of surplus power from CGPs, the Commission, in its order dated 28.02.2009 in Case Nos. 6 to 20/2009 (where M/s Bhushan Power & Steel Ltd. was Respondent No-14) at para-16 (ii), had observed that the power that can be scheduled on day ahead basis be absorbed in the system and that power can be programmed for full procurement by GRIDCO. CGPs/Co-generation plants, who are capable of giving day ahead schedule for the time being, be treated as supplier of firm power. Power injected by CGPs/Co-generation plants without giving day ahead schedule would be treated as injectors of in-advertent power. In the said order the Commission has fixed Rs. 3.00/KWh for firm power w.e.f. 01.03.2009 and the rate of inadvertent power would be equal to the pooled cost of hydro power of the state.
- b. GRIDCO has further submitted that the supply of surplus power by the petitioner for the period from 01.03.2009 onwards was paid at the firm rate. For the first time on 11.12.2009 the petitioner submitted a schedule more than zero MW which has been admitted by the petitioner in its filing. On verification, it came to the notice that instead of giving day ahead schedule the petitioner has given 'zero' scheduling to SLDC from 01.03.2009 to 10.12.2009. The Commission in its order dated 29.08.2011 in Case No. 22/2011 in Paragraph-34.1 has also clarified the day ahead scheduling, which means the day ahead schedule given by any CGPs 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 be paid at the pooled cost of the hydro power. A review of supply of power by different captive generators were made by GRIDCO and it was decided that those captive generator who have supplied power without giving any schedule or 'zero' schedule shall be considered as inadvertent power and paid at the pooled cost of the hydro power of the state. Accordingly the bills of all the generators including the present petitioner were revised during November & December, 2009 and payment has been made accordingly. Hence the submission made by the petitioner that they have not been paid the dues for the month of November &

December, 2009 is not correct. But the bills of the petitioner has been passed for payment at the pooled cost of the hydro power due to submission of 'zero' scheduling which means non-submission of the scheduling and the excess amount paid from 01.03.2009 to 10.12.2009 was adjusted from the bill amount of the month of November & December, 2009.

4. Heard the parties at length and taken into consideration the written submissions of both the parties. The Commission vide its interim order dated 28.02.2009 passed in Case Nos. 6-20 of 2009 while determining the price for sale of surplus power from the CGPs at Para 16 (v) have indicated that in respect of injection of inadvertent power the payment would be equal to pooled cost of hydro power of the state during 2008-09 and 2009-10 as the case may be depending on the period of supply.
5. Further, the Commission at Para 34.1 of its clarificatory order dated 29.08.2011 in Case No. 22/2011 have indicated that,

*“xxxxxxxx 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/Cogenerating 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.”*

From the above orders of the Commission, it is evident that power injected by CGPs without giving day ahead schedule would be treated as inadvertent power, and will be priced at the pooled cost of hydro power of the State.

6. The imposition of Section 11 by the State Government and direction to maximize the injection of power to the grid cannot absolve the Petitioner of its responsibility of scheduling the power because it brings certainty in the injection of the same and facilitates the petitioner in scheduling the injection. During deficit scenario scheduling of power is highly essential from the view point of Grid discipline and CGPs who maximize their generation are required to adhere to it. But in the instant case the Petitioner has

failed to do so and the Commission cannot buy the explanation put forth by him due to our above observation.

7. Therefore, it is clear that injection of power by M/s. Bhushan Power & Steel Ltd. without giving any day ahead schedule or giving 'Zero Schedule', shall be treated as injection of inadvertent power and priced at the pooled cost of the hydro power of the State for the respective years. Parties are accordingly directed to revise and reconcile the energy bills of M/s. Bhushan power & Steel Ltd. for the disputed period and settle the accounts within one month from today.
8. With the above observations and directions the case is disposed of.

**Sd/-**  
**(A.K. Das)**  
**Member**

**Sd/-**  
**(S. P. Swain)**  
**Member**