

ODISHA ELECTRICITY REGULATORY COMMISSION

BIDYUT NIYAMAK BHAWAN,

UNIT – VIII, BHUBANESWAR – 751 012

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**Present : Shri S.P Nanda, Chairperson
Shri B.K. Misra, Member
Shri S.P.Swain, Member**

Case No.13 of 2012

M/s PTC India Ltd.,

..... Petitioner

Vrs.

M/s GRIDCO Ltd.

----- Respondent

In the matter of: An Application under S.142 of the Electricity Act,2003 for non-compliance/ violation of the interim Order dated 01.02.2012 of the Commission passed in Case No. 03 of 2012.

For the Petitioner: Shri. Ravi Prakash, Advocate & Shri R C Choudhury, Executive (VP) on behalf of PTC India Ltd.

For the Respondent: Shri Ranjit Das , Sr. GM (PP), GRIDCO

Date of hearing: 30.04.2012

Date of Order: 07.05.2012

ORDER

The learned counsel on behalf of the Petitioner has submitted that the Commission has determined the provisional tariff for procure/purchase power by GRIDCO from M/s MPL & M/s OPCL through PTC India Ltd. vide its order dated 19.05.2011 passed in Case Nos. 17 & 24 of 2011. Instead of paying the energy bills as per the said order of the Commission, GRIDCO filed a review petition before this Commission which was registered as Case No. 03/2012. The Commission vide paras of 10 & 11 of its interim Order dated 01.02.2012 passed in Case No. 3/2012 has observed as follows:-

“10. The representatives of the developers pointed out that because of non-payment of power purchase bill by GRIDCO to PTC and consequently PTC to the developers, their bankers are going to treat the loan as NPA. This is affecting their reputation and business prospects. After perusal of the petition and submission made by the respondents the Commission holds that, on some pretext or other, GRIDCO should not withhold the payment to be made to the respondents as per the order dated 19.5.2011 of the Commission. Therefore, the Commission directs GRIDCO to clear the outstanding amount calculated at the rate as per the Commission Order dated 19.05.2011 in two instalments. Out of the total amount, which is to be calculated in terms of order dated 19.05.2011, the 40% shall be paid by GRIDCO during February, 2012 and the rest 60% shall be cleared during March, 2012 along with monthly current bills.

11. In the meantime GRIDCO should take steps to expedite the approval of the cost of these two small hydro projects by PTC. The payment made and to be made as indicated in para-10 at the rate approved by the Commission in their order dated 19.5.2011 would be adjusted in the future bills based on the outcome of this petition or determination of final tariff whichever is earlier”

2. In spite of the above observation of the Commission and several reminders by PTC India Ltd., GRIDCO has refused to comply with the directions of the Commission and release payment to PTC India Ltd. towards purchase of power from M/s. MPL & M/s OPCL. From the above behaviour of GRIDCO it is understood that GRIDCO has deliberately, knowingly and wilfully disregard the Commission's Order by ignoring the same. Therefore, M/s PTC India Ltd. has filed this petition u/S.142 of the Electricity Act, 2003 with a prayer to direct GRIDCO to immediately comply with the interim Order dated 01.02.2012 passed in Case No. 03/2012 and to release the payments due to the petitioner.
3. Shri R.Das, Sr. GM (PP), GRIDCO has submitted that GRIDCO has always honoured the orders of this Commission passed in various cases and so also the order passed in Case No. 03/2012 and made the payments regularly to M/s PTC India Ltd. on account of power purchase from M/s. MPL and M/s.OPCL as per the terms and conditions laid down in the Power Sale Agreements (PSAs) with as per the tariff determined by this Commission from time to time. GRIDCO has already filed its compliance to the interim Order dated 01.02.2012 passed in Case No. 03/2012 stating therein that the payment has not been made yet due to acute shortage of fund and GRIDCO is trying to its level best to

mobilize loan with Govt. guarantee to tide over the present situation of financial crises. In spite of the said difficulties GRIDCO has paid Rs. 4.5 Cr. On 31.03.2012 to M/s PTC India Ltd. in respect of power purchase from M/s MPL which is around 20% of the outstanding arrear and also paid Rs. 2.92 Cr in respect of power purchase from M/s OPCL which is around 40% of the outstanding arrear. The monthly current bill from February, 2012 onwards will be paid to M/s PTC India Ltd. as per the Commission's Order dated 01.02.2012 passed in Case No. 03/2012 as per Power Sale Agreement (PSA).

4. Further GRIDCO has gone for a review of the Order dated 19.05.2011 of the Commission passed in Case No. 17 & 24 of 2011 with some valid points to re-assess the tariff of the said SHEPs considering the benefits availed by them through Clean Development Mechanism (CDM) and also for consideration of trading margin of 4 paise per unit to M/s PTC India Ltd. on 88% of energy only instead of 100% energy purchase.

In view of the above the petition filed by M/s PTC India Ltd. u/S.142 of the Electricity Act, 2003 is not sustainable and may be rejected at the stage admission.

5. After hearing the parties and perusal of the case records, the Commission observed that while reviewing the petition filed by GRIDCO against the Order dated 19.05.2011 passed in Case Nos. 17 & 24 of 2011, the Commission vide its interim Order dated 01.02.2012 passed in Case No. 03/2012 has directed GRIDCO to clear the outstanding amount calculated at the rate as per the Commission Order dated 19.05.2011 in two instalments. Out of the total amount, which is to be calculated in terms of order dated 19.05.2011, the 40% shall be paid by GRIDCO during February, 2012 and the rest 60% shall be cleared during March, 2012 along with monthly current bills. However, GRIDCO in its submission stated that because of severe financial crunch, it is unable to pay the developers their monthly bills in full and it is trying to avail loan with Govt. guarantee to tide over the present financial crises.

However, the Commission in its final Order dated 30.04.2012 passed in Case No. 03/2012 coming to the merits of the review petition filed by GRIDCO, has observed as follows:-

- "4. Coming to the merit of the petition it is found that GRIDCO has prayed for consideration of the following matters:*
 - (a) Allow the rate of Rs.3.20/Kwh for the entire power or Rs.3.64/Kwh for 88% power.*
 - (b) Re-assess the tariff considering the benefits availed by the SHEPs through CDM.*

- (c) *Implement the Order dtd. 19.05.2011 from the date of Order i.e. from May, 2011 onwards.*
- (d) *Consider the trading margin of Rs.0.04/Kwh on 88% of energy.*

It is a settled position of law that orders of statutory authorities can be reviewed only in case of mistakes apparent from records and this mistake can be mistakes of fact or law. The prayer made by GRIDCO in its review petition calls for fresh adjudication on new matters which cannot be considered in a review petition.

5. GRIDCO has cited financial stringently for not adhering to the payment schedule as prescribed in our earlier order dtd. 01.02.2012. It has prayed for extension of time to liquidate the arrears to M/s. PTC. Considering the liquidity crunch faced by GRIDCO we order that the arrears upto January, 2012 payable to M/s. PTC on account of M/s. Meenakshi Power Ltd. and M/s. OPCL should be liquidated in six monthly instalments starting from May, 2012”

6. The Commission therefore directs GRIDCO to comply the above Order dated 30.04.2012 passed in Case No. 03/2012 so that both the generators M/s MPL & M/s OPCL along with the trader M/s PTC India Ltd. will be financialiy sound to carryout their business and supply power to GRIDCO for the interest of the State in present power shortage scenario.
7. Accordingly, the case is disposed of.

Sd/-
(S.P.Swain)
Member

Sd/-
(B.K.Misra)
Member

Sd/-
(S. P. Nanda)
Chairperson