

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

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

Case Nos. 17/2012

M/s. Shalivahana Green Energy Ltd.

..... Petitioner

Vrs.

GRIDCO

.....Respondent

In the matter of: An application under Section 142 of the Electricity Act, 2003 for imposition of penalty on the respondent for contravention of the Order dated 23.09.2011 of the Commission passed in Case Nos. 151 to 155 of 2010 determining the tariff applicable to the 20 MW Biomass Plant of the Petitioner.

For the Petitioner: Shri R. P. Mohapatra, the authorized representative and Shri Ratikanta Sahoo, Sr. Liasion officer.

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

Date of Hearing: 18.09.2012

Date of Order: 05.12.2012

ORDER

1. This Petition has been filed by M/s. Shalivahana Green Energy Ltd. (SGEL) which is operating a 20 MW Biomass based Power Plant at village Nimidha in Dhenkanal district of Odisha. The commercial operation of the said Biomass plant has started w.e.f. 19th December, 2011.
2. The Petitioner M/s. Shalivahana Green Energy Ltd. has submitted that they have not availed any benefit of accelerated depreciation and the Petitioner has given a resolution to its Board of Directors to that effect. The Petitioner has further submitted that payment made to them by GRIDCO for the power supply for the months of December, 2011 and January, 2012 are lower than their claim. GRIDCO has deducted the amount of accelerated depreciation to the tune of Rs.0.21 per unit from the bills of the Petitioner for the periods mentioned above. The Petitioner has, therefore, prayed that GRIDCO shall release the payment on the basis of approved tariff in OERC Order dtd. 14.09.2010 in Case No. 37/2008 applicable for FY 2011-12. GRIDCO may

also be imposed maximum penalty in accordance with Section 142 of the Electricity Act, 2003 including penalty for continuing failure to make payment for the balance amount. The Petitioner in a further submission has also stated that GRIDCO has been deducting an amount of 2% as rebate from the bills submitted by it even though the payments were made beyond the rebate date.

3. GRIDCO in its rejoinder has submitted that it has paid @ Rs.3.99 per Kwh to M/s. Shalivahana Green Energy Ltd. (SGEL) i.e. Rs.0.21 less towards the benefit of Accelerated Depreciation from the tariff for FY 2011-12 of Rs.4.20 from its Date of commercial operation i.e. from 19.12.2011 to March, 2012 as per order of the Commission dtd. 14.09.2010 in Suo Motu Petition No. 37/2008.
4. After revision of the Biomass tariff by the Commission in Case No. 151-155 of 2010 dtd. 23.09.2011 GRIDCO paid M/s SGEL the differential tariff of Rs.0.67 per Kwh being the difference between the revised tariff of Rs.4.66 per Kwh and pre-revised tariff of Rs.3.99 per Kwh for the FY 2011-12 for total 18.7675 MU from the COD date upto March, 2012. The tariff has been considered based on the accelerated depreciation approved by the Commission.
5. For the FY 2012-13 GRIDCO is paying Rs.4.80 per Kwh to M/s. SGEL after deducting Rs.0.21 per Kwh towards the benefit of accelerated benefit from the yearly tariff of Rs.5.01 per Kwh.
6. GRIDCO in its submission has further stated that it has requested M/s. SGEL to furnish sufficient reason for not availing the benefit of accelerated depreciation extended to RE generators of the State under generic tariff which would ultimately benefit the State consumers at large. GRIDCO has further requested M/s. SGEL to furnish the necessary documentary evidence for not availing the benefit of accelerated depreciation.
7. GRIDCO in view of the above has prayed that the petition submitted by M/s. SGEL under Section 142 of the Electricity Act, 2003 for imposition of penalty on the respondent is not maintainable and should be rejected out rightly and the Commission may kindly give any such direction as deemed fit. M/s. SGEL may be directed to submit the Fuel Management Plan in advance which it is reluctant to submit.

Commission's Observations

8. We have considered both written and oral submission of the Petitioner and the Respondent GRIDCO.
9. As per the Petitioner, GRIDCO has not released the balance payment for power supplied by them for the period from December, 2011 to January, 2012. This balance payment relates to the deduction by GRIDCO towards the accelerated depreciation @Rs.0.21/KWH from the bills of the Petitioner as it was not satisfied with the Petitioner's response to the question of not availing the benefit of accelerated depreciation. The Petitioner has argued that the choice of availing the benefit of accelerated depreciation lies with the generator and if such benefit has not been availed this has to be paid through its bills.
10. In this matter two of our Orders dated 14.9.2010 in Case No.37/2008 and Order dated 23.9.2011 in Case No.151-155 of 2010 are relevant. In the earlier Order dated 14.9.2010, we had fixed the generic tariff for Grid connected biomass power plants for a period of 13 years from 2010-11 to 2022-23. The table below shows the said tariff for Biomass plants.

Table -1

Year	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Variable tariff	2.14	2.25	2.36	2.48	2.60	2.73	2.87	3.01	3.16	3.32	3.49	3.66	3.84
Levellised fixed Tariff	1.95	1.95	1.95	1.95	1.95	1.95	1.95	1.95	1.95	1.95	1.95	1.95	1.95
Year Wise Tariff	4.09	4.20	4.31	4.43	4.55	4.68	4.82	4.96	5.11	5.27	5.44	5.61	5.80
Benefit of Accel. Deprn	0.21	0.21	0.21	0.21	0.21	0.21	0.21	0.21	0.21	0.21	0.21	0.21	0.21
Year-wise tariff after Accel Deprn	3.88	3.99	4.10	4.22	4.34	4.47	4.61	4.75	4.90	5.06	5.23	5.40	5.59

11. Subsequently in another Order dated 23.9.2011 in Case No.151-155 of 2010, we reviewed and revised the Biomass tariff owing to the revision of Biomass fuel costs in the following manner:-

Table -2

Year	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Variable tariff	2.92	3.06	3.21	3.37	3.54	3.72	3.91	4.10	4.31	4.52	4.75	4.99	5.24
Levellised fixed Tariff	1.95	1.95	1.95	1.95	1.95	1.95	1.95	1.95	1.95	1.95	1.95	1.95	1.95
Year Wise Tariff	4.87	5.01	5.16	5.32	5.49	5.67	5.86	6.05	6.26	6.47	6.70	6.94	7.19
Benefit of Accel. Deprn	0.21	0.21	0.21	0.21	0.21	0.21	0.21	0.21	0.21	0.21	0.21	0.21	0.21
Yearwise tariff after Accel Deprn	4.66	4.80	4.95	5.11	5.28	5.46	5.65	5.84	6.05	6.26	6.49	6.73	6.98

12. The Petitioner achieved the commercial operation with effect from 19.12.2011. Therefore, the tariff applicable to the Petitioner is same as for the year 2011-12. GRIDCO against the power purchase bills raised by M/s SGEL has paid the applicable tariff of Rs.3.99/KWH after deducting Rs.0.21/KWH from the yearly tariff of Rs.4.20/KWH as per the Commission's Order dated 14.9.2010. GRIDCO in its response has also stated that after revision of Biomass tariff to Rs.4.87/KWH from Rs.4.20/KWH, it has paid the differential tariff of Rs.0.67/KWH after deducting the accelerated depreciation of Rs.0.21/KWH which has not been revised in the Order dated 23.9.2011 in Case No.151-155 of 2010. GRIDCO has also been paying the petitioner for the current year after factoring in the accelerated depreciation.
13. In support of contention of not availing the accelerated depreciation, Petitioner has submitted their Board Resolution which is not acceptable to GRIDCO as a sufficient reason. GRIDCO, however, has asked the Petitioner to furnish necessary documentary evidence and any valid reason for not availing such benefits. GRIDCO has pointed out that by not availing the benefit of accelerated depreciation available under the Income Tax Laws the consumers of the State are unnecessarily burdened with the higher payment which could otherwise be avoided/ lowered.
14. The accelerated depreciation benefit has been taken into consideration while fixing generic tariff because of the fact that whatever benefit under the scheme is available to the developer should also be passed on to the consumer in the form of tariff. The said provision in the Income Tax Act promotes Renewable Energy in the form of lower tariff vis-a-vis tariff of conventional sources. Not availing any benefit under the Income Tax Act tantamount to burdening the consumer with additional tariff. Accelerated depreciation has back to back arrangement for passing the benefit from Govt. of India to the consumer of the State. If that benefit is not availed by the Petitioner, the consumers of the State will be unnecessarily deprived of the incentive of Central Govt. which otherwise they would have received. The Petitioner can't be allowed to stand as a road block between incentives granted by Govt. of India to the electricity consumers of the State. The Petitioner has also not shown any sufficient reason for not availing the accelerated depreciation benefit under the Income Tax Act. The Commission is duty bound to ensure efficiency in the determination of tariff. Avoidable cost can't be passed on to the consumers through tariff of electricity.

Therefore, we direct GRIDCO to prepare the power purchase bill considering the accelerated depreciation and accordingly the present petition under Section 142 of the Electricity Act, 2003 is dismissed.

Sd/-
(S. P. Swain)
Member

Sd/-
(B. K. Misra)
Member

Sd/-
(S. P. Nanda)
Chairperson