

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 No. 93/2013

M/s Shalivahana Green Energy Ltd.	Petitioner
Vrs.		
GRIDCO & Others	Respondents

In the matter of: An Application under S.86(1)(e) & (f) of the Electricity Act, 2003 read with the OERC (Conduct of Business) Regulations, 2004 to deal with the alleged excess usage of 1.31% of fossil fuel by the petitioner and to direct GRIDCO to release pending withheld payments against monthly energy bills of September, October, November, December, 2012.

For the petitioner: Ms. Swapna Seshadri, Advocate

For the respondents: Shri L.R.Dash, GM, GRIDCO

Ms. Sujata Dash, Verifier, OREDA

ORDER

Date of hearing: 21.02.2014

Date of order: 11.03.2014

1. The present Petitioner is the only biomass based power plant in the State of Odisha having a 20 MW power plant located in Nimidha, Dhenkanal. The Developer of the Power Plant had signed a PPA on 30.12.2010 for sale of power generated from the plant to GRIDCO. Subsequently the plant was commissioned in the year 2011.
2. This Commission had passed a generic tariff order for the power generated from Renewable and Co-generation sources in its Suo Motu Case No. 37/2008 and which was reviewed by the Commission in Case Nos. 151-155/2010 for a control period of 2010-11 to 2012-13. In the said Order vide Para 22 the Commission had inter- alia given an elaborate provision for monitoring the use of fossil fuel in case of Biomass and non-fossil fuel based Co-generation projects. The Commission had also assigned OREDA the task of for monitoring compliance of biomass projects with the norms specified for them in the said Order. Non-compliance with the condition of fossil fuel usages by the project developer during any financial year shall render the project developer ineligible for preferential tariff determined under the said Order from the date of default. Since the power plant of the Petitioner was established in the 2011 it came naturally under the generic tariff order of this Commission for the control period 2010-11 to 2012-13.

3. The Petitioner submitted that GRIDCO the purchaser of the power generated from the subject biomass power plant had been paying the monthly bill regularly without any dispute till the month of September, 2012. But suddenly GRIDCO on the plea of higher ratio of fossil fuel in the fuel mix of the power plant stopped the payment of the power bill after September, 2012 but the petitioner somehow managed to operate the plant till December, 2012. Since the Petitioner did not have any working capital left the plant had to be completely shutdown from January, 2013 onwards.
4. The Petitioner further submitted that a biomass plant is allowed the usage of coal to the extent of 15% to be computed on a yearly basis. This flexibility has been given since in certain months such as the monsoon, the biomass fuel does not dry and since the fuel is stored in the open, it gets wet and has to be dried in the natural process. Therefore, the coal consumption is slightly higher in these months. Since the plant was in stabilisation period & faced severe accident in FY 2011-12 and operated only for a period of 9 months in FY 2012-13, the coal consumption has been worked out to 15.29% in 2011-12 and 16.31% in 2012-13 instead of 15%.
5. The Petitioner further brought to our notice that for such a small deviation as stated above in the fuel mix, GRIDCO has kept the plant shut for more than a year by stopping the payment of power bill.
6. The representative of the Respondent-GRIDCO submitted that from the documents submitted by the Petitioner it could not be established that M/s. Shalivahana Green Energy Ltd. (the Petitioner herein) has followed the norms towards maximum usage of fossil fuel as set out by the Commission in accordance with MNRE guidelines. Since, the Petitioner has violated Clause 10.5 of the PPA by exceeding the usage of fossil fuel beyond specified norm during FY 2012-13 they are ineligible for the preferential tariff.
7. They further cited several reasons for non-payment of the bill of the Petitioner such as inconsistencies and ambiguities found in documents such as Service Tax Regd. No., TIN No. and also sources of biomass fuel and fossil fuel etc. GRIDCO had forwarded the matter to OREDA, the Monitoring Agency, but the OREDA did not accept the views of GRIDCO.
8. From the submission of the Petitioner and its rebuttal by GRIDCO it is understood that exceeding of fuel usage limit in the first nine months of FY 2012-13 is the main issue for stopping payment to the Petitioner by GRIDCO. The Order of the Commission in Case No. 37/2008 which is binding on both the Petitioner and GRIDCO Ltd. for the control period FY 2010-11 to 2012-13 clearly states that

“30 (I) Use of Fossil Fuel

The use of fossil fuel shall be limited to the extent of 15% of total fuel consumption on annual basis.”

9. Therefore, the percentage of fossil fuel should be computed on annual basis and not on part of the year basis or monthly basis. The Commission has consciously directed as above in the said generic tariff order considering variable nature of availability of biomass in the State of Odisha. We fully agree with the contention of the Petitioner that the availability of dried biomass is less in monsoon months than any other months of the year. Without following the Commission’s order scrupulously GRIDCO is raising unrelated issues such as discrepancies in Service Tax Regd. No. and TIN etc. which are not only extraneous to our Order but also appears to be after thought which has been vehemently objected by the learned counsel of the Petitioner.
10. We fully agree with the contention of the Petitioner that as per Clause 5.1.5 of the PPA had the GRIDCO paid 75% of the disputed bill amount then the situation of shutting down of the plant on account of shortage of working capital would not have arisen. This would have facilitated the Petitioner to run the plant for the whole year so that by the end of the year the target of 15% fossil fuel mix could have been attained. Instead of that GRIDCO by stopping payment completely over turned the apple cart of Petitioner’s plan of generation.
11. The plant of the Petitioner was under the process of stabilisation during FY 2011-12 and also could not run for whole financial year of FY 2012-13 since its stopped running abruptly in the month of December, 2012 due to shortage of working capital. Since the financial year 2011-12 and 2012-13 are already over, the minor deviation in fossil fuel usage such as 15.29% and 16.31% respectively for those years can’t be made good now, therefore, the condition of maximum 15% fossil fuel consumption should be waived of as a special case, without citing it as a precedent in future. Accordingly, we direct the GRIDCO to release the withheld payment of M/s. Shalivahana Green Energy Ltd. (the Petitioner herein) within 15 days of issue of this Order and make payment to them strictly according to the guidelines issued by us in our generic tariff orders issued from time to time on Renewable and Co-generation projects. The petitioner is directed to start the generation from the project and supply power to GRIDCO to meet its RPO obligation.
12. Accordingly, the case is disposed of.

Sd/-
(S. P. Swain)
Member

Sd/-
(B. K. Misra)
Member

Sd/-
(S. P. Nanda)
Chairperson