

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

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**Present : Shri S. P Nanda, Chairperson
Shri S. P. Swain, Member
Shri A. K Das, Member**

Case No. 47/ 2014

M/s Baitarani Power Project (P) Ltd.Petitioner
Vrs.
DoE, GoO & Others Respondents

In the matter of: An application u/S. 94 (1) (f) of the Electricity Act, 2003 read with Regulation 70 of OERC (Conduct of Business) Regulations, 2004 for review of the order dated 15.01.2014 passed in Case No. 80/2013.

For the Petitioner: Shri R. P. Mohapatra, the authorized representative of M/s Baitarani Power Project (P) Ltd, Shri Y.V Subba Rao, Managing Director, M/s Baitarani Power Project (P) Ltd.

For the Respondents: Shri U. N. Mishra, CGM (PT), GRIDCO. Ms. Sujata Das, Verifier, OREDA, Ms. Niharika Pattnaik, ALO, DoE, GoO, Shri Umakanta Sahoo, GM (GO), SLDC, Shri P. K. Das, CGM (Com.), CESU.

Nobody is present on behalf of M/s Green Energy Development Corporation of Odisha Limited, Engineer-in-Chief (Electricity)-cum-Principal Chief Electrical Inspector, GoO, NESCO, WESCO & SOUTHCO.

ORDER

Date of hearing:-26.09.2014

Date of order:18.12.2014

1. In the present case the Petitioner M/s. Baitarani Power Projects Pvt. Ltd. has sought for review of order dated 15.01.2014 passed in Case No.80/2013 on generic tariff for renewable energy sources including Co-generation for the Second Control Period from 2013-14 to 2017-18.
2. During hearing of the matter Sri R.P. Mahapatra appeared on behalf of the petitioner submitted that in Para 21 of the said order indicates that the useful life / tariff of a Small Hydro Project to be 35 years, whereas in para 39(e), the Commission have determined the levellised tariff of those projects for a period of 25 years only. The Commission have further observed in the same para that the project developer and the GRIDCO Ltd. are free to negotiate for tariff for additional 10 years up to 35 years i.e. the useful life of the project. This is an error apparent on the face of the record and needs to be reviewed.

3. He further submitted that in Para 22 of the said order dated 15.1.2014 passed in Case No.80/2013, the Commission have observed that the generic tariff determined by the OERC was ceiling in nature. The GRIDCO Ltd. and the Developer could negotiate lower tariff as per their bi-lateral Agreement and PPA executed between them. But nowhere in the order dated 14.09.2010 passed in Case No. 37/2008 for previous control period, the Commission have said so. Therefore, this is also an error apparent on the face of the order which needs to be reviewed and the words “*ceiling in nature*” needs to be removed.
4. The Petitioner also further seeks to review para 22 of the said order dated 15.01.2014 passed in Case No.80/2013, wherein the Commission have observed as follows:-

“However, the project specific tariff, on case to case basis, within the ceiling tariff shall be determined for the following types of projects in case there is any filing before the Commission.”

The Representative of the Petitioner stated that if the project specific tariff is to be limited within the ceiling tariff there would be no necessity of such filing to be made by the developers before the Commission. On the other hand, if the project specific tariff is higher than the levlised generic tariff, the higher tariff may be allowed as the statutory provision requires that the power procurement by Distribution Company from renewable sources may be done at preferential tariff. The Commission is mandated by the provisions of Ss. 86(1)(e) & 61(h) of the Electricity Act, 2003, National Electricity Policy and Tariff Policy of the Central Govt. & CERC for promoting generation from renewable sources, by specifying suitable provisions and preferential tariffs. Therefore, there is no need of filing of such application before the Commission.

5. Shri Mohapatra further submitted that ‘interconnection point’ defined in the said order dated 15.01.2014 of the Commission passed in Case No.80/2013 is different from that of the order dated 14.09.2010 passed in Case No. 37/2008 for previous control period. He also brought to our notice that the CERC (Terms and Conditions of tariff determination from Renewable Energy Sources) Regulations, 2012” is also identical to the Commission’s order dated 14.09.2010 passed in Case No.37 of 2008 on this issue. The interconnection point for Small Hydro Projects should be line isolator on outgoing feeder on HV side of generator transformer.
6. He also further submitted that there is nowhere mentioned the name of the party who shall bear the cost of installation and testing of the meter which shall be fixed for billing purpose at the generating bus bar. As per the present order, a Developer will be forced to feed its supply to a particular grid substation which will be added to the cost of the project. As per

approved PPA between GRIDCO and OHPC relating to Balimela HEP, the STU is responsible for installation and testing of meter. He further requested the Commission to direct that the meter installed at the point of interconnection with the generating station of the developer shall be provided by OPTCL, the STU.

7. The GRIDCO Ltd.- the Respondent No.2 herein, submitted that the tariff period for thirty five years written in para 21 is a clear typographical error which should be read as 25 years. It is clearly mentioned that in case of small hydro projects the tariff period shall be 25 years which to be extended up to another 10 years as agreed to by the parties of the PPA executed between them.
8. The Representative of GRIDCO Ltd. further submitted that the generic tariff order for the previous control period was ceiling in nature and there was a scope for the parties to negotiate at lower tariff in their PPA to be executed between them. In case of small hydro projects generic tariff is being allowed provisionally until determination of project specific tariff by the Commission. Out of the project specific tariff and generic tariff whichever is lower will be paid to the SHEP developers. Therefore, there is no error apparent on the face of the record in the above order passed in Case No.80/2013. The project specific tariff within the ceiling tariff can be determined on filing by the concerned developer with the Commission. In case project specific tariff is higher than the generic tariff the project may be implemented through bidding route.
9. The GRIDCO Ltd. also does not agree to the proposal of the Petitioner to review the location of metering point as stated in para 28 of our order dated 15.01.2014 passed in Case No.80 of 2013 and submitted that the project developer is to construct the dedicated line upto the nearest substation by paying either supervision charges to STU or DISCOMs as the case may be and should bear the cost of metering system. These costs are the part of the project cost and will be recovered through the tariff.
10. The GRIDCO Ltd. further stated that since a similar project, namely M/s. Avantika Power Projects Pvt. Ltd., is willing to sign PPA with GRIDCO on same terms and conditions, the present Petitioner herein should not have any objection on this point. Any small hydro projects which cannot be implemented through MoU route will be preferred to be implemented through bidding route to select the developer.
11. Respondent No.4- M/s.GEDCOL in its counter reply has submitted that the tariff period mentioned in Para 21 of the order dated 15.01.2014 passed in Case No.80 of 2013 may be

modified to 25 years since it is a typographical error and M/s.GEDCOL finds no other error in the said order of the Commission.

12. Heard the parties at length. The written submissions were also taken on record.

The Petitioner pleads to review our order dated 15.01.2014 passed in Case No.80 of 2013 on five issues. The review of this nature is of very limited scope. As per Section 94(1) (f) of the Electricity Act, 2003, the Commission has the same power as are vested with the Civil Court under the Code of Civil Procedure, 1908 in respect of reviewing its decisions, directions and orders among others. As per Order 47 Rule 1 of the Civil Procedure Code, review of an order can be made on the following grounds:-

- “(a) Error apparent on the face of the record;
- (b) New and important matter or evidence which is relevant for the purpose was discovered which could not be produced after exercise of due diligence or if there appears to be some mistake;
- (c) Any other sufficient reason.”

13. In the present case, the petitioner seeks review of our order in Case No.80/2013 mainly on following issues:-

- (a) Tariff period
- (b) Ceiling Tariff
- (c) Filing before the Commission
- (d) Interconnection Point; and
- (e) Installation of Meter & its cost.

We will analyse each of the above points raised along with responses thereof.

Tariff period:

14. On Scrutiny of our order dated 15.01.2014 passed in Case No.80 of 2013, we found that there was mentioned 35 years in para 21 which is a typographical error apparent on the face of the record and which shall be corrected as 25 years. Accordingly, the prayer of the Petitioner is allowed on this issue.

Ceiling rate :

15. On the issue of “ceiling tariff ” mentioned in para 22 of our order dated 15.01.2014 passed in Case No.80 of 2013 which reads as follows:-

“The preferred route for selection of RE projects in the control period shall be through the bidding route. However, the project being developed under MoU route the generic tariff so

fixed by this order shall be the ceiling rate and the GRIDCO/ DISCOM and the project developer could negotiate lower tariff for their Bi-lateral Agreement. However, the project specific tariff, on case to case basis, within the ceiling tariff shall be determined for the following types of projects in case there is any filing before the Commission.

- *Small Hydro projects”*

The contention of the petitioner is that the levelised Generic tariff mentioned in the above order “was of ceiling in nature” and needs to be removed in the light of meaning of Sections 86(1)(e) and 61(h) of the Electricity Act, 2003, provisions of National Electricity Policy to provide for promotional measures; Tariff Policy notified by Central Govt. etc. CERC (Terms and Conditions for tariff determination from Renewable Energy Sources) Regulation, 2012, as well as earlier Regulation of 2009 provide for generic tariff to be determined on levelised basis carried out for the useful life of the project without mentioning the term “ceiling tariff”.

Section 86(1)(e) of the Electricity Act, 2003 reads as follows:-

“The State Commission shall discharge the following functions namely:-

- | | | | | | | | | |
|--|---|---|---|---|---|---|---|---|
| | x | x | x | x | x | x | x | x |
|--|---|---|---|---|---|---|---|---|
- (e) *promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee.”*

Section 61(h) states as follows:

“61. Tariff regulations - The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely –

- | | | | | | | | | |
|--|---|---|---|---|---|---|---|---|
| | x | x | x | x | x | x | x | x |
|--|---|---|---|---|---|---|---|---|
- (h) *the promotion of co-generation and generation of electricity from renewable sources of energy”*

Due to the pleadings of the petitioner advanced during hearing, we examined at the provisions of law stated in the petition afresh including National Tariff Policy, National Electricity Policy and the concerned Regulations made thereunder. What transpires us in our understanding is that all the stated provisions have empowered and guided the Commission to intent of promoting renewable energy and cogeneration and falls short of endorsing the petitioner’s view in absolute manner to consider elimination of ceiling rate mentioned in our order without any appropriate justification.

On the other hand, in our order dated 15.01.2014 passed in Case No.80 of 2013 vide Para-22 the provisions are stated as follows:-

“ Project Specific Tariff

22. The preferred route for selection of the RE project in the control period shall be through the bidding route. However the project being developed under MOU route the generic tariff so fixed by this order shall be the ceiling rate and the GRIDCO/ DISCOM and the project developer could negotiate lower tariff for their bilateral agreement. However, the project specific tariff, on case to case basis, within the ceiling tariff shall be determined for the following types of projects in case there is any filing before the Commission:

- Small Hydro Projects

X X X X X X X X

In order to avoid delay in execution the order further provides that -

“However, in order to promote the first batches of Renewable projects like Wind projects, Municipal Solid waste projects, Small Hydro projects for Commissioning during subject control period, purchaser (M/s GRIDCO/GEDCOL/DISCOMs) and project developer may sign power purchase agreement at the levelised generic tariff as determined by the Commission and combinedly take all necessary pro-active actions for development of the renewable projects.”

Thus, the Commission prefers a bidding route for developers of renewable sources of energy, in the first place in tariff determination. But also to allow developers through MoU route, the ceiling provision has been incorporated to avoid any arbitrarily or abnormality of the cost. The ceiling rate allowed at para 39(E) of the order dated 15.01.2014 passed in Case No.80 of 2013 of the Commission is sufficiently higher than average pooled cost of energy. This gap intends to make a project feasible and helping to promote renewable energy as per Section 61(h) of the Electricity Act, 2003.

For rates higher than the ceiling rate provisions at Section 63 of the Electricity Act,2003 can be adopted.

The petitioner submitting before the Commission has referred to the provisions of the previous control period to the one mentioned in Case No.80/2013 and, therefore, finds the difference. The provisions in the present order has been incorporated after due deliberation over the issue including Petitioner’s objection at that time. Therefore, Commission is not inclined to interfere with the order No.80/2013 on this aspect.

Filing before the Commission:

16. The petitioner submits that in addition to “ceiling rate”, further filling before the Commission within the levelised generic tariff be eliminated. The same need to be filed in case project specific tariff is higher than the levelised generic tariff; as per the petitioner. Respondent GRIDCO disagreed.

The provisions in the order of the OERC in Case No.80/2013 stipulates that renewable developers from SHEP can initially sign the PPA with maximum levelised generic tariff mentioned or at mutually agreed lower rates and the lower rate between the two can be adopted to provide the buyer a reasonable cost. Filing before the Commission can be done latter with the actual cost involved. This has been incorporated to avoid delays due to determination of tariff through hearing process and accelerate the process of project being developed through MoU route. But within the ceiling rate, anticipating variance of costs and inputs and to find out the justification of the rate over the normal PPA rate, filing provision has been necessitated. The provision allows for negotiation between the purchaser and the developer. The petitioner has not elaborated how the ceiling rate is not to the disadvantage of the development of small hydro projects. Since the Renewable Energies are being purchased at a higher cost than the normal rate of purchase through long-term PPA, the ceiling rates have been fixed which is incorporated in the tariff settings until the obligation is met.

The petition does not indicate any other sufficient grounds for satisfying the conditions of review.

Therefore, we find no error in our order on determination of project specific tariff within the ceiling rate, on case to case basis, for Small Hydro Projects for such developers on MoU route.

If GRIDCO, the buyer, does not find any seller within the ceiling tariff when power is required for compliance of the RPO requirement further actions can be taken as per rules and regulations in force.

Interconnection Point:

17. The petitioner stated that the interconnection point defined in the order dated 14.09.2010 of the Commission passed in Case No. 37/2008 is different from that of the order in Case No.80 of 2013 and therefore there is an error apparent on the face of the record. CERC's order of 2012 "CERC (Terms and Conditions of tariff determination from Renewable Energy Sources) Regulations, 2012" is similar to that of order of 2010 of this Commission i.e. interconnection point should be line isolator on outgoing feeder on HV side of generator transformer. The Regulation 4.1 of OERC Regulations, 2010 reads as follows.

"The Co-generation and renewable energy sources excepting roof-top Solar PV and bio-gas sources shall be connected to the State Grid at a voltage level of 132 KV or 33 KV or 11 KV subject to technical suitability determined by the licensee. If any dispute arises about the technical suitability of connection of such sources with the grid, the matter shall be referred

to the Commission whose decision in this regard shall be final. The delivery point shall be the nearest grid sub-station having 132 KV / 33 KV / 11 KV voltage level.”

The present order in Case No.80 of 2013 is as follows:

“‘Inter-connection Point’ shall mean interface point of renewable energy generating facility with the transmission system or distribution system, as the case may be.

The interconnection point for different voltage level shall be as follows:

- *For Rooftop based Solar installations upto 100 KW projects, the point of interconnection should be at 230 volts/400 volts of DISCOM network.*
- *For all renewable generations of more than 100 KW and less than 5 MW projects the point of interconnection should be at 11 KV of 33/11 Kv sub-station of DISCOM network.*
- *For all renewable generations of 5 MW and upto 25 MW projects, the point of interconnection should be at 33 KV of either 33/11Kv substation of DISCOM or 132/33 Kv substation of OPTCL whichever is nearer.*
- *For all renewable generations of more than 25 MW projects the point of interconnection should be at 132 KV of 132/33 or 220/132 Kv substation of OPTCL network whichever is nearer.*

The project developer may construct the dedicated line upto the nearest point of DISCOM or OPTCL network as the case may be and such line would be treated as deemed transmission line or deemed distribution line. The line is to be developed by the Developer including 6% supervision charges as decided by the Commission from time to time to be paid to the DISCOMs/OPTCL as the case may be.”

The present order has allowed sufficient flexibility to the developer in choosing point of connection to the grid, keeping in view the technical requirements. Therefore, the project developer should construct the line upto nearest substation having 132KV/33KV/11KV voltage level since the delivery point of interconnection point shall be the nearest grid substation. The cost of such construction shall be recovered through tariff.

However, the purchaser and the developer are free to negotiate the arrangement mutually subject to cost benefit and impact on tariff.

Thus, we find no error in the provision and therefore not inclined to interfere.

Installation of Meter & its Cost:

18. The petitioner prays for installation of interface meters to be provided by DISCOM/ STU.

We find that the metering arrangement has been elaborately dealt in our order dt.15.01.2014 on which review is sought. However, the word “Net Metering” has been inserted inadvertently at Para-28 before the heading “Metering arrangement”. If the word “Net Metering” is deleted there would not be any ambiguity. Hence the Commission would like to delete the word “Net Metering” before the word “Metering Arrangement” as mentioned above.

19. Regarding prayer for front loading tariff; we find that levelised generic tariff with ceiling and 25 years tariff period is a sufficient enabling provision for the developer. We find no error in our order.
20. Sri R.P. Mahapatra on behalf of the petitioner has prayed for prior approval of PPA before project execution. This is not a part of existing order. But the Commission finds no wrong in considering the same if placed before it as per rules and regulations in force.

Summary

21. (a) We find that the tariff period mentioned in para 21 is an error apparent on the face of the record. Review is accepted on this point and, therefore, we direct that the same be corrected to be to 25 (Twenty five) years, (b) at para-28, the word “Net Metering” before the heading “Metering Arrangement” would be deleted.
22. We find no error in our order dated order dated 15.01.2014 passed in Case No.80 of 2013 on points of (a) ceiling tariff mentioned in para 22, (b) filing before the Commission in case PPA is below the ceiling tariff, (c) Interconnection Point, and (d) front loading tariff period instead of 25 years and issues were appropriately considered in the said order. Therefore prayer for review of petitioner on these issues are not allowed.
23. Prayer for filing for approval of PPA prior to execution is not a part of the said order. But as an enabling process, it is clarified that the Commission shall consider the proposal for approval of PPA in case, if it is filed as per rules and regulations in force.
24. Accordingly, with the above observation the case is disposed of.

Sd/-
(A. K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S. P. Nanda)
Chairperson