

**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. 4/2014

**M/s National Aluminum Company NALCO.Petitioner
Vrs.
GRIDCO Ltd. & OthersRespondents**

In the matter of: An application under S.86(1)(f) of the Electricity Act,2003 for adjudication of dispute relating to amount to be received from and payment to be made by GRIDCO Ltd. towards procurement of surplus power of the petitioner and wheeling of power from Angul to Damanjodi etc.

For the Petitioner: Shri R. P. Mohapatra, the authorized representative of M/s. NALCO, Shri P. K. Nath, NALCO.

For the Respondents: Shri T. Pattnaik, DGM, GRIDCO Ltd., Shri U. N. Mishra, CGM (PP), GRIDCO Ltd., Ms. Susmita Mohanty, GRIDCO Ltd., Shri Bijay Kumar Das, DGM, OPTCL, Shri S. K. Puri, (GM), OPTCL, Umakanta Sahoo, GM, SLDC.

ORDER

Date of hearing: 25.08.2015

Date of order: 29.12.2015

The petitioner M/s. National Aluminium Company Limited (NALCO) has established an Aluminium smelter plant along with a 1200 MW (10X120) Captive Generating Plant (CGP) at Angul. It has a refinery complex at Damanjodi having CGP of 72 MW (4X18). The additional power requirement for its Damanjodi plant is being met by wheeling power from the 1200 MW CGP at Angul. The surplus power after own consumption from its CGP at Angul is sourced by GRIDCO Limited at the interconnection point at Angul. The emergency power required by M/s. NALCO during its plant operation both at Angul and Damanjodi are being supplied by GRIDCO Limited. M/s. NALCO had signed an agreement to this effect with GRIDCO Limited which was valid up to 31.8.2009. After completion of agreement period i.e 31.08.2009 both the parties were unable to renew the same due to various disputes remaining unresolved for which M/s. NALCO has approached the

Commission to resolve the issues under Clause 9 of the agreement. The issues raised by the petitioner and observation of the Commission are discussed below.

2. Type of meters used for billing purpose.

The petitioner M/s. NALCO has submitted that as per Regulation 9(c) and 9 (e) of OERC (Intra State ABT) Regulations, 2007 the meter reading should be based on Geo Synchronous meters. It is further submitted that the meters at Angul and Damanjodi are old versions and not time synchronized and the differences are as high as 22 minutes. Those meters are required to be replaced with geo synchronous meters. Respondent OPTCL submits that as per Para 10.6.9 of OGC Regulation 2006 each meter shall have a built in calendar and clock having an accuracy of 30 seconds per month. Due to high cost of the meter, none of the generators has opted for geo synchronous meters. OPTCL refutes the claim of M/s. NALCO and has submitted that the time synchronization of energy meters is being done by OPTCL manually through Laptop taking the time from the GPS clock as reference time.

3. Observation of the Commission.

Commission observes that in terms of Regulation 5(ii) of OERC Open Access Regulation, 2005 M/s. NALCO, who is availing access to the intra-State transmission is categorized as long term open access customer. Accordingly, it is to be guided by Odisha Grid Code as it is connected to the State Transmission Utility (STU). Regulation 10.6 of Odisha Grid Code elaborately specifies the type of meter in such cases. Therefore, special energy meters conforming to the requirements mentioned in the Regulation 10.6 of OGC shall be installed. Geo synchronous meters conforming to Regulation 10.6 of OGC on special energy meters shall be given preference.

4. Cost of Meters

M/s. NALCO submits that as per the agreement with GRIDCO Ltd., the main meter both at Angul & Damanjodi end shall be installed by GRIDCO Ltd. while check meters to be installed by M/s. NALCO for which meter rent will not be charged by any party. Further as per Reg. 9 (a) of the OERC (Intra State ABT) Regulations, 2007 Geo Synchronous meters should be installed at the inter connection point and the cost of such meters shall be borne by the STU. Reg. 6.4 (13) of the OGC 2006 provide that STU shall install special energy meters on all inter- Connections between the users/beneficiaries and other identified points for recording the actual net MWh interchanges and MVarh draws as per relevant CEA Regulations on metering The

regulation 6(1)(b) of the CEA (Installation and Operation of Meters) Regulations, 2006 & Amendment Regulations, 2010 provide that "Interface meters installed at the point of interconnection with Intra State Transmission System for the purpose of electricity accounting and billing shall be owned by the STU.

5. Respondent OPTCL submitted that Regulation 9(c) of the OERC (Intra-State ABT) Regulations, 2007 stipulates that metering arrangements, including installation, testing and maintenance of meters shall be the responsibility of the STU for the transmission network & individual DISCOMs for their distribution network on payment basis." Further Regulation 4(8) of OERC (Determination Open Access Charges) Regulations, 2006 provides that "Meter rent as applicable to EHT/HT consumers shall be payable by the Open Access Customers". Moreover regulation 10.6.18 of OGC Regulation, 2006 states that "The ownership & responsibility of maintenance & testing of meters shall be as mutually agreed between the Users and the licensees." Accordingly all the generators are having their own meters in the state.

6. **Observation of the Commission.**

We have examined the stated provisions relevant to the ownership of the meter. The OGC Regulation 2006 is silent on the ownership of meters. Therefore, the Commission refers to the CEA metering Regulation 2006 which has been done on many issues earlier. As per Regulation 6(3) of the CEA Metering Regulation, 2006 on Energy Accounting and auditing, the ownership of the meters lies with the Generators. We also refer to Regulation 9 of OERC (Intra-State ABT) Regulations, 2007 applicable to Open Access consumers which states that the metering arrangements shall be the responsibility of STU for transmission network on payment basis. Therefore, we conclude that the petitioner shall own the interface meter and therefore bear its cost. It will be tested by the STU periodically and no meter rent shall be charged.

7. **Applicability of Intra State ABT Regulation**

NALCO submitted that as per its agreement with GRIDCO billing is based on joint meter reading at the interface point. But GRIDCO is billing on the basis of 15 minutes block period as per the requirement of Intra State ABT order which is not applicable to NALCO. As per OERC (Intra State ABT) Regulations, 2007 and order dated 14.09.2011 in Case No. 50 of 2010 Intra State ABT is applicable for NALCO in Phase-II only. Further as per OERC order dated 07.02.2012 vide Para 6.2 in Case No

2 of 2012 the intra state ABT has been implemented in Phase-I from 01.04.2012 in the state of Odisha.

8. GRIDCO in its rejoinder submitted that as per Regulation 5(ii) of OERC (Terms & Conditions of Open Access) Regulations, 2005 NALCO is a deemed long term customer of OPTCL. Further Regulation 17(4) of the OERC (Terms & Conditions for Open Access) Regulations stipulates that, “The Open Access customers shall comply with the metering and other requirements of ABT.” Hence all the CGPs are obligated entities to be covered under Energy Scheduling and Despatch in the state which are the part of ABT.

9. **Observation of the Commission**

In our order in Case No. 59/2009 we observed that NALCO had entered into an agreement with GRIDCO on 30.08.2004 effective from 01.09.2004 and was valid upto 2009. Thereafter the transaction between parties is mutually agreed. The OGC Regulation 2006 is applicable to all suppliers, bulk access consumers and open access customers in course of their generation, supply, utilization and facilitation for beneficial trading of electricity among others.

As per Regulation 6.5 (1) of OGC Regulation 2006 CGP being a Generator is required to provide 15 minutes block import/export figure on the day-ahead basis. The Commission has also determined the price of incremental energy, inadvertent power / infirm power in different operating frequency band in Para 33 in Case Nos. 117 & 118/2010 in case of supply to GRIDCO for meeting its requirement.

Further we agree with the respondent that the transaction by NALCO for power between its Angul and Damanjodi plant is also to be in terms with OERC (Terms and Conditions of Open Access) Regulation, 2005. Therefore, the Commission is of the view that billing is to be done by GRIDCO on 15 minutes block irrespective of implementation of Intra-State ABT in phases. We direct accordingly.

10. **Energy Accounting and Billing**

The petitioner submitted that as per the agreement between NALCO and GRIDCO, export of energy at Angul and import of energy at Damanjodi shall be determined from the Joint Meter Reading (JMR) of the main meters. Similarly at the time of need and appropriate system conditions, GRIDCO shall supply emergency power to CGP at Angul and Damanjodi at a rate three times of the weighted average rate of power for the month injected by NALCO to the state Grid. It is further submitted that

GRIDCO has claimed an additional amount of Rs.16,84,21,291.00 (Rupees Sixteen Crores Eighty Four Lakhs Twenty One Thousand Two Hundred Ninety One Only) on NALCO for reasons best known to them.

11. GRIDCO submitted that OERC has instructed GRIDCO in various orders to amend or renew its agreement with NALCO and also IMFA based on the CGP pricing policy of the Commission with mutual agreement. OERC in its order dated 27.6.2009 in case No.59 of 2009 directed that the surplus power from NALCO & IMFA should be made at the rate approved by the Commission as per orders issued from time to time. Accordingly the billing methodology between GRIDCO and NALCO was changed with effect from 01.12.2011 as per the decision taken in the Minutes of Meeting (MoM) dated 14.2.2012 held between the two parties. So GRIDCO started revisiting the bills payable and receivable by GRIDCO vide its letter dated 15.5.2012 and continued to bill NALCO under the same procedure.
12. GRIDCO further submitted that the Billing of energy through Joint Meter Reading is not acceptable as it would violate Central UI/Deviation Regulation, failing which former would not be allowed to draw power from central sector. The CERC UI/Deviation Regulation envisages for scheduling and dispatch of electricity in each 15 minutes time block period but not on the basis of Joint meter Reading. Accordingly, GRIDCO computed the amount payable based on 15 minutes time slab from December, 2011 onwards. It is worthwhile to mention that NALCO had also submitted the bills of December, 2011 on dated 03.02.2012 vide invoice No. NALCO/CPP/F&A/2012/2495 on the same procedure.
13. **Observation of the Commission.**

The Commission had directed GRIDCO to sign fresh agreement with NALCO and IMFA keeping in view of CGP pricing policy of the Commission vide order dated 30.06.2009 and 28.10.2009 in case No.06-20 of 2009 . The agreement between the parties has virtually ended on 31.8.2009. The Commission observes that the same has not been signed even after the lapse of five years. Therefore, we do not find any reason to agree with the contention of the petitioner based on a dead agreement. Moreover, the petitioner shall be guided on issues concerning Open Access by the relevant regulation of OERC. On the other hand the Commission has formulated a principle for drawal of surplus power from CGPs for State consumption. Accordingly, we are of the opinion that the order of the Commission dated 23.11.2010 vide Case No. 117/2010 should be followed for scheduling of power whereas order dated

29.08.2011 in Case No. 22/2011 should be followed for pricing of CGP power sourced by GRIDCO from NALCO. We direct accordingly.

14. Power factor Penalty

NALCO alleged that it has been charged with Power Factor penalty on Emergency and backup power supplied by GRIDCO which is not supported by any orders of the Commission. GRIDCO in its rejoinder submitted that OERC (Open Access) Regulation 2005 vide regulation 8 stipulates that the "Penal charges, if any, for wrongful use of the transmission and/or distribution systems that adversely affect the power system shall be decided by the Nodal Agency & borne by the Open Access Customers". Accordingly it is charging PF penalty applicable to emergency supply category as per para 516 of RST order for FY 2015-16.

15. Observation of the Commission.

We have already mentioned earlier that NALCO is an open access consumer as per Regulation 5(ii) of OERC (Open Access) Regulations, 2005. Since this includes power factor penalty we do not agree with the Petitioner on this. Hence, all the charges applicable to an open access customer are also applicable to NALCO including Reactive Energy Charges as directed in Para 253 of Transmission Tariff order for FY 2015-16.

16. Scheduling of power of one MW and below.

NALCO alleged that OERC in its order dated 29.08.2011 vide Para 34.1 in Case No.22/2011 has ordered that "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". This is in contravention with the own order of the Commission dated 23.11.2010 vide Para 32 in Case Nos. 117 and 118 of 2010 wherein Commission had examined the request of GRIDCO for specifying a minimum threshold quantity in MW for acceptance of Schedule from CGPs by SLDC and refused to accept the suggestion of GRIDCO as it "is not in conformity with the OGC". Hence the Order dated 29.8.2011 of the Commission in Case No.22/2011 contravene the provisions of the Odisha Grid Code as conceded by Commission. Therefore, this Order cannot be implemented and may therefore be suitably amended, to permit payment of power scheduled/injected of less than 1 MW at the rate applicable for Firm Power Supply.

17. **Observation of the Commission.**

In this context we observe that the decision of the Commission at that time was contextual relevant to situation at hand and accordingly orders were passed in 2011. Had NALCO been aggrieved by such decision of the Commission it could have approached through review or could have agitated the issue at higher Forum. Thus the decision has reached its finality and subsequent developments are to be integrated with the said decision. Hence, raising such issue now seems to be an effect of afterthought and we find no satisfactory ground to consider such issue now. Therefore, Commission adheres to its earlier stand that the firm powers supplied by CGPs shall be one MW and above.

18. **Pricing of Emergency Power drawn by NALCO.**

The petitioner, NALCO submitted that GRIDCO is claiming extra price for excess drawl of emergency power drawn by it than that approved by OERC during the period FY 2009-10 and 2010-11. However any extra cost incurred by GRIDCO on account of extra power purchased to meet the EHT consumption would be trued up by the Commission while approving the average BSP of the subsequent Financial Year.

19. GRIDCO in its rejoinder submitted that the issue of overdrawal of power pertains mainly to the period FY 2009-10 and FY 2010-11 during which the petitioner had overdrawn 300 MU and 165 MU (upto December, 2010) respectively which has a huge financial implication on GRIDCO. Prior to the Commission's order regarding the rate of emergency and backup power; IMFA & NALCO were used to pay three times the cost of surplus power to avail emergency and backup power supply from GRIDCO as per the provisions of the PPA. Since there were no provision for excess drawl of power by a CGP, GRIDCO after several round of discussion had arrived at a solution as mentioned in the MoM dated 11.02.2013 to share the transmission charges receivable by OPTCL towards total supply of emergency and backup power during FY 2009-10 and FY 2010-11 in 50:50 ratio.

20. **Observation of the Commission.**

It is the responsibility of GRIDCO to take advantage of purchasing power at lower price and supplying the same at a higher price for best advantage to business operations. The cost of emergency power has been kept higher compared to the energy cost that is applicable to the industrial consumers. We reiterate our stand that the pricing of emergency power should be guided by the RST orders of the

Commission from year to year. The CGPs of NALCO will also be covered under the purview of Tariff orders of the Commission. The matter and procedure has already been explained Para 188 of RST order for FY 2013-14. We have allowed 10 MU towards emergency drawl by CGPs with a presumption that the CGPs will not draw more than 100% of their highest rated generator. In case of any deviation beyond that, they are to be treated similar to industrial consumers with separate demand and energy charges. The disagreements are to be settled accordingly.

21. Settlement of Old issue-Adjustment of Fuel Price Escalation Price.

As per the agreement between NALCO and GRIDCO the FPE component was to get revised from time to time subject to the production of all authentic/ certified documents and after approval of GRIDCO. It was submitted by NALCO that, it had discovered an inadvertent error in interpreting the provisions of Fuel Price Escalation clause of their agreement with GRIDCO and accordingly revised their old bills up to July 2008. The revised bills have already been accepted by GRIDCO. Hence that dispute should have been treated as closed. Respondent GRIDCO submits that NALCO need to further revision of their bills up to Feb 2009 since it has revisited the Fuel Price Escalation provisions only when it turned to a net importer of power from being a net exporter from that date.

22. Observation of the Commission.

Sufficient information has not been laid before us to arrive at legally sustainable decision and form on opinion. Therefore, we direct that the issue shall be resolved by mutual reconciliation.

23. Signing of Fresh agreement.

It was submitted by NALCO that the supplementary agreement shall be effective from 01.03.2006 and will remain valid till the end of the period of original agreement i.e up to 31.08.2009. Hence there is no such agreement valid as on today. OERC in its interim order dated 30.06.2009 and 28.10.2009 in case no 06-20 of 2009 while reviewing pricing order for CGPs dated 28.02.2009 has instructed for fresh signing of agreement between NALCO and GRIDCO. Hence there should be new agreement with GRIDCO after considering all the issues raised vide this petition. In this context OPTCL submits that as per clause 11 of the agreement it shall remain valid for a period of five years provided this may be amended, renewed or replaced by another agreement under mutual agreement by both the parties. Until such

renewal/replacement this agreement shall be deemed to have continued. Hence the same agreement can be treated as continuing till date. However GRIDCO submitted that Para 11 of the agreement dated 30.08.2004 states that the agreement shall remain operative beyond 31st August 2009 provided this agreement is amended, renewed or replaced by another agreement with mutual concern of both the parties. Commission in Para 8(i) of order dated 27.06.2009 in Case No 59 of 2009 called for the revision of MOUs with mutual agreement as per the order of OERC.

24. Further GRIDCO submitted that in view of the fact that, neither Commission has allowed the quantum of power to be procured from the CGPs during FY 2015-16 nor the Petitioner is a valued electricity supplier to GRIDCO anymore. Hence GRIDCO is not inclined to sign any PPA with NALCO as a consumer of GRIDCO. In case there is requirement of power from CGPs (if any) in future, then GRIDCO will take prior permission of the Commission for such procurement and would procure surplus power from CGPs on short term basis based on Letter of Intent (LOI) only after obtaining approval of the Commission. Thus signing any PPA with the Petitioner NALCO may not help in fulfilling the power requirement of the State. In the present scenario, there has been a sea-change in the supply of surplus power by the Petitioner to the Respondent in comparison to what it used to be before two to one & half decades. Therefore, the Petitioner is free to become a consumer of concerned DISCOMs subject to resolution of all the issues raised in the present case as per the direction of the Commission.

25. **The Commission's view.**

We have analyzed all the issues pertaining to the dispute between NALCO and GRIDCO. GRIDCO has already renewed its PPA with IMFA on such similar transaction. Hence, we direct both NALCO & GRIDCO for signing of fresh PPA subject to requirement in line with the decision above and resolve all disputed issues on the basis of our observations.

26. Accordingly the case is disposed of.

Sd/-
(A. K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S.P. Nanda)
Chairperson