

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

*** **

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

Case No. 21/2015

M/s. Vedanta Limited
Vrs.
GRIDCO & Ors.

..... Petitioner

..... Respondents

In the matter of: **An application under Sections 42 & 86 (1) (f) of the Electricity Act, 2003 read with Rule 3 of the Electricity Rules, 2005 along with Regulations 9(1) and 76 of the OERC (Conduct of Business) Regulations, 2004 seeking declaration of the Commission to the Power Plant as a captive generating plant (CGP) to supply power to VAL-SEZ as a captive user due to merger of Sterlite Energy Ltd. (SEL) and demerger of Aluminium business of Vedanta Aluminium Ltd. (VAL) to Sesa Goa Ltd. and migration of consumption of power by VAL-SEZ and VAL-DTA from the power plant with effect from 01.04.2015.**

For the Petitioner: Mr. Amit Kapur, Advocate, Ms. Poonam Verma, Advocate, Mr. Akshat Jain, Advocate, Shri S. K. Nanda, Advocate appeared on behalf of the petitioner M/s. Vedanta Limited, Shri Rajiv Choubey, VP (Legal), M/s. Vedanta Limited.

For the Respondents: Shri P. K. Pradhan, Director (Com.), GRIDCO Limited, Shri U. N. Mishra, CGM (PP), GRIDCO Limited, Shri B. P. Mishra, CGM, (RT&C), OPTCL, Shri L. N. Mohapatra, Advocate on behalf of OPTCL, Shri K. C. Nanda, DGM (Fin.), WESCO Utility, are present.

Nobody is present on behalf of DoE, GoO.

ORDER

Date of hearing: 03.11.2015

Date of order: 27.01.2016

The present application dtd. 17.06.2015 has been filed by M/s. Vedanta Ltd. which is the resultant entity formed after the merger of various entities of the Vedanta Group. In this petition it has requested the Commission to declare 4X600 MW power plant at Jharsuguda as Captive Generating Plant (CGP) or in the alternative declare Unit IV of the same power plant as CGP.

2. Before going to the merit of the case it is necessary to go to the background of the same basing on which the present petition has been filed. One of the entities in pre-merger period of M/s. Vedanta Ltd. was M/s. Sterlite Energy Ltd. (SEL) which had intended to set up a 2400 MW (4x600 MW) coal fired power plant. For establishing such power plant as an

Independent Power Producer (IPP), M/s. SEL had entered into a MoU with Government of Odisha on 26.09.2006 with a condition that certain quantum of power from that IPP shall be available to the State Designated Agency (GRIDCO) at a price determined by the State Electricity Regulatory Commission. The various units of that power plant were commissioned between 2010 to 2012. Accordingly, the first PPA between M/s. SEL and GRIDCO (State Designated Agency) was signed on 28.09.2006. In the meantime the State Government notified State Thermal Power Policy on 08.08.2008 and accordingly GRIDCO was directed to modify the signed PPA as per that Policy. Both the Parties amended the PPA as per the State Thermal Policy on 20.08.2009 and submitted the same for approval of the Commission. The following key inclusions were made in the PPA.

- (a) GRIDCO's right to purchase on behalf of Government of Odisha upto 25% of the power sent out from the thermal power station (after adjustment of auxiliary consumption).
 - (b) GRIDCO's right to receive 7% of the power sent out from the thermal power station at variable cost if coal block(s) is allocated within the State of Odisha. Otherwise SEL will provide 5% of the power sent out at variable cost. The variable cost shall be determined by the OERC.
 - (c) Subject to above, SEL will make available the entire power generated from the first unit of 600 MW to GRIDCO and SEL will not go for trading of power from the first unit.
3. The Commission approved the above final PPA between M/s. SEL and GRIDCO on 12.06.2013 in Case No. 117/2009. The Unit-II of the IPP was the first unit to be commissioned on 10.11.2010 and is connected to the State Grid. As per the PPA, SEL had been supplying power to GRIDCO from Unit-II of its IPP. The other units of the IPP are connected to the Power Grid Corporation of India Ltd. (PGCIL) network. Separate Fuel Supply Agreement (FSA) had been signed with Mahanadi Coal Field Ltd. for Unit I, II & III. The Unit-II has a linkage for 80% Annual Contracted Quantity (ACQ) based on PPA with GRIDCO while Unit- I & III have a tapering linkage for 50% ACQ. The Unit- IV has not been provided any coal linkage.
4. Another Group Company of M/s. SEL during pre-merger period called Vedanta Aluminium Ltd. (VAL) had set up a 0.5 MMTPA Aluminium Smelter Plant at Jharsuguda between 2008 to 2010 and also owned a 1215 MW Captive Power Plant. The same VAL also had set up a SEZ and 1.1 MMTPA Aluminium Smelter inside it. Presently the smelter has been ready for operation since 2011-12.

5. Pursuant to the Orders of the Hon'ble High Court of Bombay at Goa and Hon'ble High Court of Madras dated 03.04.2013 and 25.07.2013 respectively the IPP of M/s. SEL, the Aluminium business of VAL and VAL (SEZ) were merged together and owned by M/s. Sesa Sterlite Ltd. The name of M/s. Sesa Sterlite was changed to Vedanta Ltd. w.e.f. 21.04.2015. The merger of various entities of the Petitioner took place w.e.f. 01.01.2011 as approved by Hon'ble High Courts of Bombay and Madras.
6. M/s. Vedanta Limited has filed a petition dated 17.06.2015 before OERC requesting the Commission to declare 4x600 MW power plant at Jharsuguda as captive generating plant or in the alternative declare Unit-IV as CGP w.e.f. 01.04.2015. It has also requested Government of Odisha for amendment in the existing MoU of the 2400 MW IPP to 1800 MW IPP by conversion of Unit-IV into CGP. Pursuant to the scheme of amalgamation between various Group companies, M/s. Vedanta Ltd. (M/s. Sesa Sterlite) now owns the generating stations of 2400 MW capacity as well as Aluminium plant including Aluminium plant established inside the SEZ. The Petitioner emphasizes that each unit of 2400 MW – IPP falls within the definition of 'Captive Generating Plant' in terms of Section 2 (8) of the Electricity Act provided Vedanta Ltd. fulfils the requirements of captive utilization of at least 51% of the electricity generated by the respective unit as per Rule 3 of Electricity Rules, 2005. The Petitioner further submits that in spite of its above status it has been continuously supplying power to GRIDCO under the terms of pre-existing PPA and will continue to supply the contracted capacity despite its conversion to CGP. The Petitioner undertakes that if the power plant does not qualify to be CGP at the end of financial year 2015-16 it will pay cross subsidy surcharge to WESCO. The Petitioner also points out a judgement of Hon'ble APTEL in Appeal No. 270/2006 (Chhatisgarh Power Distribution Company vrs. Urla Industries Association & others) where the Tribunal had held that the State Commission has to take the responsibility of declaring the generating plant as Captive one and monitoring on an annual basis, if it satisfies the criteria laid down in Rule 3 of the Electricity Rules.

In conclusion the Petitioner requests the Commission to declare 4 x 600 MW power plant at Jharsuguda a Captive Generating Plant or in the alternative declare the Unit –IV of the power plant as Captive Generating Plant.

7. In the interim order dated 10.07.2015 the Commission pointed out that the present petition claiming status of generating station as CGP is completely different from that of earlier petition where it has requested the Commission to determine the price of power by treating the generating plant as IPP. Accordingly, the Commission asked the Petitioner to clarify whether their earlier Petition claiming IPP status is withdrawn and only the present petition

praying for CGP status is to be considered. The Commission further directed the Petitioner to reconcile the provision of PPA with GRIDCO for supplying 25% of the power sent out from the generating station plus 5% power at variable cost if coal block is not allocated with present prayer for granting CGP status. The Commission also wanted to know from the Petitioner in unequivocal terms whether the Petitioner wants conversion of all four units as CGP or only one unit.

8. In their reply dated 27.07.2015 the Petitioner submitted that earlier application for determination of tariff under MYT principle for IPP will not have any impact on the present petition. The MYT application has reference to PPA in force and tariff may be determined for 2014-15 and 2015-16 as per MYT Petition without affecting the present petition and subsequently tariff fixation will be guided as per Clauses of the amended PPA in terms of the order of this Commission.
9. The Petitioner further clarified that notwithstanding the conversion to CGP the Petitioner will be able to comply with the requirement of supplying power to GRIDCO under the terms of the PPA dated 19.12.2012.
10. The Petitioner declares that it intends to eventually convert the entire 4 x 600 MW power plant at Jharsuguda as a Captive Generating Plant. For the present financial year to establish the consumption pattern consistent with the captive consumption as also for providing assured supply to GRIDCO the Petitioner is starting to draw power from Unit-IV treating it as self consumption. The Petitioner request that if it is found that Unit-IV does not qualify to be CGP at the end of for the FY 2015-16 it undertakes to pay cross subsidy surcharge to WESCO.
11. The Respondent GRIDCO submitted that the petitioner is desperately requiring the conversion of its IPP into CGP to meet the power requirement of its SEZ. However, under such pursuit the Petitioner must abide by the law of the land by complying with statutory provisions. GRIDCO further brought to our notice the judgement of Hon'ble APTEL in Review Petition 2/2013 in Appeal No. 137/2011 where Hon'ble Tribunal has concluded that *'in case any of the units of the power plant has not been identified as captive generator at the time of infusion of equity, they are not entitled to invoke provisions of explanation to Rule 3 to their benefit.'*
12. GRIDCO stated that conformity to only Rule 3 of Electricity Rules, 2005 is not sufficient enough to decide its prayer for conversion of its IPP into CGP in view of context of MoU with the Government of Odisha which imposes certain long term binding commitments of the Petitioner towards the Respondent. That as per Electricity Act, 2003 as well as the MoU with Government of Odisha, Vedanta Ltd. is required to set up the transmission facility for

evacuation of entire power of the thermal power plant at their cost. M/s. Vedanta Ltd. has not constructed dedicated transmission line upto the interface point of STU for evacuation of power from Unit-II which is earmarked for the State requirement. Rather Vedanta Ltd. has been utilising old 220 KV double circuit line which was commissioned way back in 2008 much earlier to the commissioning of Unit-II i.e. August, 2010.

13. The GRIDCO in its reply dtd.30.11.2015 requires that before conversion of IPP into CGP the following requirement should be fulfilled.
 - (a) Quantum of power supply to GRIDCO towards State entitlement should be 25% (at full cost) and 7% / 5% (at variable cost) of total energy sent out as per the PPA in force. The Unit-II must remain connected to STU as State dedicated unit and accordingly supply to GRIDCO must be 25% + 7% / 5% of total energy sent out or total ex-bus generation from Unit-II whichever is higher. Such quantum of power supply should not be disturbed at any point of time.
 - (b) The tariff of power to be procured by GRIDCO shall be based on captive mine / linkage / domestic coal and as per IPP pricing of OERC.
 - (c) The coal linkage against the generation of power towards state entitlement must remain intact as envisaged at the time of signing of MoU and PPA.
 - (d) The installed capacity of Unit-II connected to STU must be clarified. The alternative mechanism must be in place for supply of GRIDCO entitlement in case Unit-II is not in operation.
 - (e) The Petitioner must expedite the operationalisation of dedicated transmission line for evacuation of power to the delivery point at Budhipadar Grid sub-station of OPTCL.
 - (f) The Petitioner must withdraw or settle all the cases pending before different forum.
14. Another Respondent WESCO submitted that regarding demand of cross subsidy surcharge the issue has been settled by virtue of judgement of Hon'ble Supreme Court in CA No. 5497/2013 where the Hon'ble Court has held that the WESCO Utility is entitled to cross subsidy surcharge for open access availed by the SEZ from the generating unit of IPP. The provision of Rule (3) of the Rules 2005 only comes into effect when the provision of Section 2 (8) and Section 9 of the Act, 2003 is satisfied. From the language depicted in the beginning of the said Rule (3) it is well inferred that the provision lays down certain requirements for the Captive Generating Plant failing which the power plant shall not qualify as 'Captive Generating Plant'. Thus prior to application of the test laid down under the said Rule 3 the object of Section 2 (8) and Section 9 are required to be satisfied. The instance case does not fall under the ambit and scope of Section 2 (8) and Section 9 thereby applicability of Rule 3 does not arise.

15. Another Respondent OPTCL (STU) submitted that M/s. Vedanta Ltd. should ensure adequate arrangement for evacuation of Odisha share of power to OPTCL network. In case CGP status for the petitioner is granted it has to make a fresh application to OPTCL for grant of synchronisation permission to the TG sets as CGP units and relevant existing connectivity agreement need to be suitably modified.
16. The State Government had initially authorised GRIDCO to file the reply on its behalf. Accordingly, GRIDCO on 30.10.2015 submitted before the Commission that Para wise submission made by GRIDCO may also be considered as the counter filed on behalf of the Department of Energy, Government of Odisha. Further, GRIDCO on behalf of Government stated that all other conditions as mentioned in the MoU dated 26.09.2006 executed between the Petitioner (erstwhile M/s. SEL) and the Government of Odisha shall remain unchanged.
17. The Petitioner filed its rejoinder to the reply filed by WESCO on 19.10.2015 where it stated that MoU between the Government of Odisha and then M/s. SEL was executed on 26.09.2006 providing support to M/s. SEL for investing in the State of Odisha and setting up a power plant. The MoU was valid for a period of three years and has since expired. The terms and conditions of MoU have formed part of the PPA executed between M/s. SEL on 28.09.2006 (as amended on 19.12.2012). As of now the PPA dated 19.12.2012 is in force. The Petitioner has undertaken to supply committed power to GRIDCO in terms of the PPA. **Notwithstanding the conversion to CGP, the Petitioner will comply with the requirement of supplying power to GRIDCO under the terms of the PPA dated 19.12.2012.**
18. The Petitioner further submitted in his rejoinder that in order to qualify as a Captive Generating Plant, the power plant will be required to comply with the provisions of Section 2 (8) of the Electricity Act read with Rule 3 of the Electricity Rules. It is to be noted that there are no other conditions prescribed in law. Section 2 (8) and Section 9 of the Electricity Act only define captive generation and how should the definition of captive generation be considered in law. The requirement of qualifying as a Captive Generating Plant does not state / imply that the purpose of generation of power is fixed at the time of setting up of the power plant. The Petitioner pointed out that in a judgement of Hon'ble APTEL dated 29.08.2006 passed in Karnataka Power Transmission Corporation Ltd. Vrs. KERC and Ors. reported as 2007 APTEL 223 it is held that internal, commercial and management of a Utility cannot be interfered with respect to the utilities' commercial plan. It is submitted that Hon'ble Tribunal in Malwa Industries Ltd. Vrs. PSERC and Anr. reported as 2007 ELR (APTEL) 1631 has held that any person claiming to have set up a captive generating plant must use the power generated by it mainly for its own use. In view of the same while most

of the power may be used by such person, the surplus or remaining power may not be used by it but power plant still come within the definition of 'Captive Generating Plant'. The Judgement of Hon'ble Supreme Court as referred to by WESCO was pertaining to the deemed distribution license of the Petitioner and the approval of the PPA dated 18.08.2011 between SEL and VAL. The present petition has no relation with the deemed distribution license prayer or approval of the PPA between SEL and VAL. The conversion of Petitioner's IPP to CGP as per Rule 3 of the Electricity Rules, 2005 and the provisions of the Electricity Act, 2003 was never an issue before Hon'ble Supreme Court and cannot amount to constructive *res judicata* as alleged. The sequitur to the Petitioner's prayer of conversion of IPP to CGP would automatically mean that the Petitioner is not liable to pay CSS.

19. The Government of Odisha in its reply dtd.30.11.2015 to the rejoinder of the Petitioner and written note of submission stated that the jurisdiction of the Commission under Rule 3 of the Electricity Rules, 2005 covers the conversion of an IPP into a CGP for a thermal power plant set up as an IPP is to be first decided. The quantum of power towards State entitlement under the PPA in force must remain unchanged. The tariff of power to be procured as State entitlement by GRIDCO shall be based on Captive mine / linkage coal (as per MoU) and as per IPP pricing based on the appropriate Tariff Regulation as fixed by the Commission. The Commission may prescribe alternative mechanism for supply of State entitlement of power from the generating station in case Unit-II is not in operation. The interest of the State needs to be safeguarded in its entirety as agreed in various clauses of the consolidated PPA dated 19.12.2012 executed with GRIDCO. **In sum and substance the Commission should adjudicate the matter within the ambit of law and do what is permissible in law ensuring that the quantum of power for the State is not reduced and the cost of the power should not increase.**

Views and findings of the Commission

20. We have carefully examined the views of the Petitioner and the written rejoinders filed by GRIDCO, GoO & WESCO and also various contentions raised during the course of hearing. GoO in its reply dtd.30.11.2015 has raised the issue of Commission's jurisdiction with regard to the present petition. The Commission has examined the legal provision relating to the determination of the status of a power plant as CGP or IPP and is of the opinion that the Electricity Act, 2003 confers jurisdiction on the Commission to pass an order on this issue. The determination of status as CGP or IPP ultimately relates to determination of such issues as determination of tariff, open access and transmission issues and also issues relating to deviation settlement. Therefore, the Commission is the proper judicial forum to take a decision whether a power plant has to be treated as an IPP or CGP. This view of the

Commission finds support from the decision of the Hon'ble APTEL in Appeal No.270/2006 dtd.21.02.2011 in Chhatisgarh Power Distribution Company Vrs. Others wherein the APTEL has observed in para 38 ***“Since Open Access has to be regulated by the State Commission, we feel that State Commission has to take the responsibility of declaring the generating plant as captive one and monitoring on an annual basis, if it satisfies the criteria laid down in Rule 3 of the Electricity Rules.”***

21. It is necessary here to observe that neither GRIDCO nor GoO have opposed the prayer of the Petitioner for grant of CGP status but has limited intention of protecting the capacity committed by the Petitioner. They have only contended that keeping the interest of the consumers of the state and also the contractual obligation of the petitioner as stipulated in the PPA with GRIDCO, the Commission should put in place necessary safeguards while granting the prayer of the petitioner.
22. WESCO has raised certain legal issues which are addressed below:
According to WESCO applicability of the Rule 3 of the Electricity Rules, 2005 governing the equity requirement of a CGP should be decided only after the statutory requirements of section 2(8) and section 9 of Electricity Act, 2003 are fulfilled. According to WESCO Section 2(8) defines CGP as a power plant set up by any person for self consumption and since this power plant was set up as an IPP and not as a CGP conversion of the IPP into CGP at a later date is not legally permissible.
23. This view of WESCO is not correct. While determining the status of a power plant as IPP or CGP, the status should be determined based on the legal and factual issues peculiar to the case in question. It is true that in instant case the power plant was set up as an IPP and it was also a fact that the power plant and the Aluminium plant belonging to this group were separate legal entities. However, by virtue of the operation of the Hon'ble High Court's order dtd.03.04.2013 and 25.07.2013 the power plant and the industries consuming this power became the same legal entity. Therefore, the High Court's order warrants a fresh look at the entire issue of determination of IPP and CGP status covering such issues as intention and declaration for self consumption, equity structure of the power plant etc. The Commission holds that status of IPP and CGP are dynamic issues dependent on facts of the case and option of conversion from IPP to CGP is not foreclosed if requirement of Section 2(8) and Rule 3 are subsequently satisfied. In this particular case the Commission is of the view that in pursuance of the High Court's order of merger the conditions laid down in Section 2(8) of the Act and Rule 3 are satisfied. There is thus no legal difficulty in granting the request of the petitioner.

24. GRIDCO has drawn our attention to a judgement of Hon'le APTEL in a review petition in appeal No.137/2011 where Hon'ble Tribunal had concluded that '*in case any of the units of the power plant has not been identified as captive generator at the time of infusion of equity, they are not entitled to invoke provisions of explanation to Rule 3 to their benefit.*' This decision is not related to the present petition because the issues arising out of High Court's order of merger which are central to this case were not considered by APTEL. Moreover in the instant case the relevant time of infusion of equity in the power plant has to be calculated with reference to the date of High Court's order. After the High Court's order - the company M/s. Vedanta Limited where the power unit and aluminium unit were merged holds the entire equity of the power plant thus satisfying the requirement of Rule 3 and if past commitments are honoured completely without any reservations.
25. The Commission is however fully aware that the power plant in question came into existence with certain contractual obligations and the concern of GoO and GRIDCO in this regard have to be fully honoured. The concerns of GRIDCO and GoO as submitted have been expressed in para, 13 & 19 of this order.
26. The issue has been made simpler in this case because in their original petition and also subsequently affirmed by their affidavit dtd.17.06.2015 and 27.07.2015, the petitioner has stated that notwithstanding the conversion to CGP of its units, it will continue to comply with the requirement to supply power to GRIDCO under the terms of PPA dtd.19.12.2012 as IPP. This was also reaffirmed by the Petitioner during hearing.
27. The petitioner has prayed for grant of CGP status to the entire power plant of 2400 MW consisting of 4 units of 600 MW capacity. It is also prayed during the course of hearing and also written submissions that during the financial year 2015-16 CGP status may be conferred on one unit of 600 MW capacity and grant of CGP status for the next three units should be allowed in the FY 2016-17.
28. The Commission has already taken a view as per our findings recorded in para 26 that while granting the request of the petitioner it has to be ensured that the contractual obligations of the petitioner as enumerated in the PPA dtd. 19.12.2012 should not be violated. Unit-II of the power plant consisting of 600 MW is dedicated to the state and the tariff for this unit has been determined on cost plus basis as IPP. Since this is already dedicated for supply to GRIDCO, power from this unit obviously cannot be utilised for self consumption. There is nothing in the Act to grant CGP status to a power generating unit in a conditional manner. Once CGP status is conferred on a particular generating unit it has full rights under the Electricity Act to use the entire power for self consumption. Since the Commission holds that the provisions of PPA regarding 100% supply of power to GRIDCO from unit II has to

- be ensured; therefore the prayer of the petitioner to grant CGP status to unit II cannot be allowed and status of this unit shall continue to remain as an IPP.
29. The Commission has analysed all the clauses of the PPA dtd.19.12.2012 and find that except the state share stipulated in PPA, GRIDCO the state designated agency has no first right of refusal for purchasing balance power generated by the petitioner. The applicant has therefore, at liberty to deal with the power generated from the units of the power plant not committed to GRIDCO. Thus, the Commission is of the view that there is no legal infirmity in conversion of IPP to CGP in the present case, since it does not violate the terms of the PPA.
30. In view of the above, the Commission allows conversion of units I, III & IV (600 MW each) from IPP to CGP save its commitment to the State as per PPA w.e.f 01.04.2015. The Commission however is not inclined to accept the request of the petitioner that this conversion of IPP into CGP should be done in a staggered manner. As stated above the Commission orders that the Unit-I, III and IV are to be treated as CGP. The prayer of the Petitioner to grant CGP status in time segregated manner is not acceptable. The Legal and factual position with regard to grant of CGP status to three generating units as on 01.04.2015 is no way foreseen to be different from that of 01.04.2016. No new facts and legal issues are anticipated in next financial year which will warrant deferment of granting CGP status to other two units in phased manner. The prayer of Petitioner appears to be a design to avoid paying cross subsidy surcharge to WESCO Utility by not maintaining specified CGP consumption criteria as per Rule 3 of Electricity Rules, 2005 in the current year. The interest of the consumers of the State is no way affected by the grant of CGP status to Units I, III and IV of the power stations since all the earlier conditions on the off take of quantum of power and its price as per PPA remain unaffected by virtue of own admission of the Petitioner.
31. Hearing in this case was concluded on 03.11.2015 and parties were allowed 15 days to file their final written note of submission if any. GRIDCO after seeking time from the Commission filed its reply on 30.11.2015 wherein it has raised certain issues for the first time. It was contended inter-alia by GRIDCO that as per the Electricity Act, 2003 as well as the MoU, M/s. Vedanta Limited is required to set up the dedicated transmission facility to the delivery point at Budhipadara grid substation of OPTCL for evacuation of entire power of the thermal power plant at their own cost.
32. The petitioner has challenged this contention of GRIDCO on the ground that after hearing was concluded the parties were not entitled to agitate fresh issues and on this ground alone the contention of GRIDCO should be dismissed. Though we agree with the argument of the

petitioner we are not disinclined to consider this issue because the Commission has stated earlier that the contractual obligations cast on the petitioner as per PPA are relevant to the disposal of this case. The obligation regarding construction of transmission facilities as appearing in the MoU signed on 26.09.2006 between GoO and SEL underwent substantive modification in the PPA signed between GRIDCO and SEL on 19.12.2012 which at para 4.0 provides for transmission of power as follows:

“Power to GRIDCO shall be made available by the SEL at the busbars of the Station connected to the transmission lines of OPTCL / PGCIL and it shall be the obligation and responsibility of GRIDCO to make required arrangements to evacuation of power from such delivery points.” This contractual obligation of GRIDCO with the petitioner has to be honoured because the Unit II is dedicated for the state consumption.

On the submission of the Respondent GRIDCO that the Petitioner has failed to keep commitment made in the PPA on the evacuation facility we observe that post MoU the conditions mentioned in the PPA cast onus of development of evacuation structure on the respondent themselves. There is no reason at present to deviate from the points agreed in the PPA. Therefore, adequate power evacuation mechanism to evacuate State share of power should be put in place in accordance with PPA by GRIDCO at the earliest in the State interest. The Petitioner shall provide all reasonable co-operation in this regard. We direct accordingly.

33. GRIDCO has drawn our attention to the agreement executed between M/s. SEL and OPTCL on 12.11.2010 for restoration of 400 KV Ib-Meramundali double circuit line on turnkey basis. This issue is extraneous to the present proceeding and therefore the Commission is not inclined to give any finding on this matter.

34. The contention of GRIDCO that the Petitioner must withdraw or settle all the cases pending before different Fora is not acceptable. This dispute might have arisen involving the status of power plant as an IPP and may be pending before different authorities other than OERC. Therefore, this cannot be made a pre-condition for deciding CGP status to the power plant.

Thus, at the cost of repetition, we find that out of the installed capacity of 2400 MW of IPP in erstwhile M/s. Sterlite Ltd. maximum upto to the extent of 32% / 30% was committed for the State use and rest 68% / 70% was available with the Petitioner for commercial use as IPP as per existing agreement with GRIDCO. Post merger and amalgamation of various units owned and operated by arms of the Petitioner on different assigned names, the equity pattern has changed completely and objective and mode of operation have also undergone concomitant change which the Petitioner seeks to achieve through this application.

35. In conclusion the Commission issues the following directions:

- a) Unit – II of the 4 x 600 MW power plant of Vedanta Ltd. will continue to remain as IPP and connected to the State Grid.
- b) Quantum of power supply to GRIDCO towards State entitlement should be 25% (at full cost) and 7% / 5% (at variable cost) of total energy sent out from the power station (4 x 600 MW) as per the PPA in force. The Unit-II must remain connected to STU as State dedicated unit and accordingly supply to GRIDCO must be 25%+7%/5% of total energy sent out from the power station or total ex-bus generation from Unit-II whichever is higher. Such quantum of power supply should not be disturbed at any point of time.
- c) Unit – I, III & IV of the same power plant are converted to CGP w.e.f. 01.04.2015. The above conversion is based on the assurance of the Petitioner that in case of low or no generation in Unit-II the Petitioner shall meet its commitment in the PPA from the CGP units and its pricing shall be as per the relevant IPP Regulations of the Commission.
- d) The coal used for generating power for State entitlement shall be linkage coal / captive mines allocated to the Petitioner for State use.
- e) The pricing of power of State entitlement shall be based on IPP pricing Regulation of the Commission.
- f) The above decisions are made on the basis of assurance of the Petitioner that it shall honour all the conditions as stipulated in the existing PPA in spite of conversion of some IPP units to CGP.
- g) We direct the Petitioner and GRIDCO to bring about necessary changes in the PPA as per the present order and place the same for the approval of the Commission within 15 days. OPTCL is also directed to bring about necessary changes in the connectivity agreement as stated by them in Para-15.

36. The case is accordingly disposed of.

Sd/-
(A. K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S.P. Nanda)
Chairperson