

**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. 26/2015

M/s. SMC Power Generation Ltd.	...	Petitioner
Vrs.		
GRIDCO Ltd.	...	Respondent

In the matter of: An application u/S. 142 of the Electricity Act, 2003 for non implementation of order dated 12.05.2015 of the OERC passed in Case No. 30/2013.

For Petitioner: Shri Sidharth Kumar Panda, AGM Liasion

For Respondent: Shri Tapas Pattnaik, DGM,
 Shri Siba Shankar Nayak, EA to Dir. (Com.)

Order

Date of hearing: 13.10.2015

Date of order: 29.12.2015

The petitioner M/s. SMC Power Generation Limited submitted that the Commission in its interim Order dated 12.01.2015 and final Order dated 12.05.2015 passed in Case No. 30/2013 had given directions to respondent GRIDCO Limited for full and final reconciliation of outstanding dues on transaction of surplus power from the CGPs. But GRIDCO has neither reconciled nor taking any effective steps to clear the outstanding dues payable to the CGPs against sale of surplus power. The major issues on unpaid amount against supply of surplus power of CGPs are:-

- i. Non-payment at firm power rate in case of injection of power between 100% to 105% of the implemented schedule.
 - ii. Non-payment at hydro pool cost against injection of inadvertent power.
 - iii. Wrong energy accounting procedure followed due to LoI issued by GRIDCO.
 - iv. Non-payment of Delayed Payment Surcharges (DPS).
 - v. Non-payment of slab rates fixed by the Commission.
2. In view of the violation of Commission's order, the petitioner has prayed the Commission to pass orders as deem proper and also to direct GRIDCO Limited to complete the reconciliation statement at the earliest as per the Commission's orders.
3. The respondent GRIDCO Ltd. submitted that the Commission in its Order dated 12.05.2015 passed in Case No. 30/2013 had directed GRIDCO Limited to complete the reconciliation on transaction of surplus power from the CGPs within 2.07.2015

and submit compliance report to the Commission. GRIDCO Ltd. had prepared the reconciliation statement earlier and communicated the same to the petitioner on 11.05.2015 for their consent. But the petitioner did not sign the reconciliation statement and raised objections to the process of reconciliation. The claim of the petitioner on non-compliance of Commission's order by GRIDCO Ltd. is misconceived, misleading and not based on any fact and figures. The reconciliation statement prepared by GRIDCO is based on the Orders passed by the Commission. Therefore, GRIDCO Ltd. prayed the Commission to dismiss the application filed by M/s. SMC Power Generation Limited and direct them to sign the reconciliation statement and settle the payable/receivables accordingly.

4. After hearing the parties and perusal of the case records, the Commission had directed both the petitioner M/s. SMC Power Generation Limited and respondent GRIDCO Limited to sit with Director (Engg.) and Director (RA), OERC for amicable settlement of the issues raised by the petitioner. Accordingly, a meeting was held on 31.10.2015 in the Conference Hall of OERC. But no consensus was reached between the parties on the aforesaid issues raised by the petitioner. Hence, the Commission examines each of the issues raised as indicated below:-

Issue-I: Non-payment at firm power rate in case of injection of power between 100 to 105% of the implemented schedule

5. The petitioner M/s. SMC Power Generation Limited has submitted that as per Para-34.2 & 35.1 of the Commission's Order dated 29.08.2011 passed in Case No. 22 of 2011, any injection over 105% of the implemented schedule within the operating frequency band shall be treated as inadvertent power or infirm power and paid at the pooled cost of state hydro. Therefore, it implies that injection power between 100 to 105% of the implemented schedule is to be priced at firm power rate. But GRIDCO Ltd. does not consider the same in the reconciliation statement.
6. The respondent GRIDCO Limited has submitted that as per Para-35.2 (i) of the said order, under injection of surplus power from 100% upto 80% of the implemented schedule would be paid as per rate approved by the Commission in their order dated 23.11.2010 in Case No. 117 & 118 of 2010. No where it is mentioned that the firm power rate will be given upto 105% of the implemented schedule. Therefore, GRIDCO Limited is of the view that injection power between 100 to 105% of the implemented schedule is to be priced at the rate of inadvertent power.
7. The Commission observes that CGPs are must run entities and inject power to Grid after their self consumption. Since only surplus power is injected into the Grid, the injection cannot always be firm. At the same time the stability of the Grid and requirement of GRIDCO is also to be ensured. Considering the needs of both the sides, the Commission had directed that any under injection from 100% upto 80% of

the implemented schedule shall be treated as firm power whereas any over injection beyond 105% shall be treated as inadvertent or infirm power and paid accordingly. A cushion for under injection upto 80% of the schedule has been allowed considering the must run condition of the plants. In higher side over injection upto 105% also need to be allowed keeping in view that the variability of operation of the thermal units are on both sides. The argument of GRIDCO is not acceptable in view of the earlier direction that any injection above 105% of the schedule shall be treated as inadvertent or infirm power and dealt accordingly. Thus, the Commission accepts the view of the petitioner that the draws between 100% to 105% of the implemented schedule within the operating frequency band shall be treated at par with firm power in this case and paid accordingly.

Issue-II: Non-payment at hydro pool cost against injection of inadvertent power

8. The petitioner M/s. SMC Power Generation Limited has submitted that at Para 35.2 of the order dated 29.08.2011 passed in Case No. 22/2011, the Commission has indicated that since Intra-State ABT has not been implemented, CGPs are not going to be paid as per frequency linked rate of UI principle. Further, as per Para-33.1 of the said order of the Commission, CGPs are considered as “must run” entities. It is indicated that since the capacity is very less as compared to the NEW Grid, its impact on frequency is very less. However, Commission has clarified that power injected at 50.20 Hz & above shall be priced at ‘zero’ cost. But GRIDCO did not pay hydro-pool cost for power injected in “zero” schedules within the permitted frequency range.
9. The respondent GRIDCO Limited submitted that they have paid for the inadvertent injection at hydro-pool cost upto July, 2013. Thereafter, due to good hydro condition from August, 2013 onwards, SLDC restored the schedule to ‘zero’, but the petitioner injected power deviating from the implemented ‘zero’ schedule. Hence GRIDCO did not pay for the power injected from August, 2013 onwards against ‘zero’ schedule. Further, after implementation of deviation settlement mechanism in Eastern Region w.e.f. 17.02.2014, when power is injected at high frequency, penalty is imposed on GRIDCO. If CGPs will inject power at high frequency because of its “must run” status, then GRIDCO has to pay the penalty on account of deviation settlement mechanism in addition to the price of inadvertent power to the CGPs.
10. The Commission observed that at Para 34 (2) of its order dated 29.08.2011 passed in Case No. 22/2011, it is clearly mentioned that any injection by the CGPs/Co-generation plants over 105% of the implemented schedule but within the operating frequency band of 49.50 Hz to 50.18 Hz shall be treated as inadvertent power or infirm power and shall be paid at the pooled cost of hydro power of the State. Therefore, flow of power beyond the ‘zero’ schedule by SLDC but within the above frequency band, qualifies to be treated as injection of inadvertent power as per the Commission’s order and will be paid accordingly i.e. at pooled cost of hydro power.

We agree with the contention of the petitioner on this issue. On the other hand, GRIDCO has not placed any instant case before us to establish the fact that the payment of penalty, if any, on account of deviation settlement is due to injection of power by CGPs at high frequency and under efficient implementations of schedules. Therefore, we do not offer our opinion on this. However, we make it clear that any injection beyond 50.18Hz by CGPs shall be at zero cost.

Issue-III: Wrong energy accounting procedure followed due to LoI issued by GRIDCO

11. The petitioner M/s. SMC Power Generation Limited has submitted that the LoI issued by GRIDCO Limited is a violation of Commission's order. Wrong energy accounting procedure is being followed by GRIDCO/SLDC while reconciling the accounts and penalty is imposed on the petitioner on account of applying deviation settlement mechanism unilaterally and also no payment is made in case of deviation from the schedule i.e. injection of power in 'zero' schedule.
12. The respondent GRIDCO Limited has submitted that the Commission in its order dated 23.11.2010 passed in Case Nos. 117 & 118 of 2010 has determined the ceiling price for the surplus power from CGPs. Accordingly; GRIDCO has issued LoI to the CGPs from time to time for procurement of their surplus power at less price. Hence, issue of LoI is not in violation of the Commission's order. GRIDCO Limited has followed the energy accounting procedure as per the Commission's order as well as the LoI issued by GRIDCO from time to time. Further, after implementation of deviation settlement mechanism in Eastern Region w.e.f. 17.02.2014, when power is injected at high frequency, penalty is imposed on GRIDCO. Therefore, in case CGPs inject power at high frequency in accordance with the deviation settlement mechanism, then GRIDCO does not pay the CGPs for such injection of power.
13. It is observed that the Commission in its order dated 29.08.2011 passed in Case No. 22/2011 has clarified that GRIDCO Ltd. is not permitted to purchase surplus power from CGPs at a higher rate than the rate fixed by the Commission in these orders. But it can purchase at lower rates mutually negotiated and agreed between the parties within the ceiling rate fixed by the Commission. If any surplus power from CGPs has been purchased by GRIDCO Ltd. without any formal agreement and prior negotiation, the rate fixed by the Commission from time to time shall be allowed. Therefore, the LoI issued by GRIDCO Ltd. by offering lower rate for CGP power and accepted by the parties is not in the violation of Commission's order. These rates are subject to conditions fixed in Commission's order without any deviations. The energy accounting shall be in accordance with the Commission's order.

Issue-IV: Non-payment of Delayed Payment Surcharge (DPS)

14. The petitioner M/s. SMC Power Generation Limited has submitted that as per the Commission's Order dated 27.06.2009 passed in Case No. 59/2009, DPS is payable by GRIDCO Limited and the Commission in its various orders has also clarified regarding payment of DPS in case of late payment by GRIDCO Limited. But GRIDCO Limited maintains that the matter is subjudice at the Hon'ble Supreme Court of India against order of the Hon'ble APTEL in the case of M/s. Nava Bharat Vrs. GRIDCO Ltd. Hence, it is now an out of context matter and should not be linked with the payment of outstanding dues of the CGPs. But M/s.SMC Power Generation Ltd. submitted that neither they have moved to Hon'ble Supreme Court nor they are made a party to the said proceeding in APTEL/ Supreme Court by GRIDCO.
15. The respondent GRIDCO Limited has submitted that they have filed an appeal on 31.10.2014 before Hon'ble Supreme Court of India challenging the judgment dated 01.10.2014 of APTEL in the matter of DPS and the case is pending for consideration before the APEX Court in Appeal No. 11194 of 2014. Hence, they will take necessary action as per the judgment of Hon'ble Supreme Court of India.
16. The Commission observed that during meeting dated 31.10.2015 held at OERC Conference Hall, both the parties agreed that after settlement of the disputes and finalisation of accounts, the actual payments by GRIDCO on account of power purchases from CGPs could be ascertained. Thereafter, DPS may be calculated separately for settlement. However, since the matter is subjudice before the Hon'ble Supreme Court, the decision of Hon'ble Apex Court on this matter shall be final. But the power purchase dues are to be settled through reconciliation immediately. The DPS, if any, may be calculated as per the order of the APTEL subject to final decision of the Hon'ble Supreme Court in a separate statement. We direct accordingly.

Issue-V: Non-payment of slab rates fixed by the Commission.

17. The petitioner M/s. SMC Power Generation Limited has submitted that GRIDCO Limited is not paying as per slab rate fixed by the Commission taking the plea of LoI issued by them. M/s. SMC Power has not accepted the LoI issued by GRIDCO. GRIDCO has not considered the power injected at 'zero' schedule as inadvertent power and not paid for the same at the rate of inadvertent power as fixed by the Commission.
18. The respondent GRIDCO Limited has submitted that GRIDCO has evaluated the bills of the petitioner as per slab rates in line with OERC order dated 23.11.2010 passed in Case Nos. 117 & 118 of 2010 as well as the LoI issued by GRIDCO, as per which the petitioner was not qualifying for slab rate fixed by the Commission, since its injection of power is less than 7.3 MU per month. GRIDCO has further stated that in case of non-acceptance of LoI by the CGPs their entire injection of power whether scheduled

by SLDC or not should be priced at the rate of inadvertent power fixed by the Commission.

19. The Commission observed that the existing slab rates fixed by the Commission in earlier orders are applicable for purchase of surplus CGP power. In absence of acceptance of LoI by CGP, if its declaration of availability is accepted by SLDC i.e. its power is scheduled by SLDC, payment by GRIDCO to the CGP shall be made in accordance with the slab rate fixed by the Commission. If the declaration of availability of CGP is not accepted by the SLDC and 'zero' schedule is made for that CGP, then the power if injected by the CGP within the conditions specified will be considered as inadvertent injection and paid at the rate of inadvertent power, as the CGPs have been declared as 'must run' units in the said order of Commission. However, the power injected by CGPs beyond the schedule or the power injected at 'zero' schedule at 50.20 Hz or above, shall be priced at 'zero' cost.
20. We note the contention of the petitioner that GRIDCO sent a statement unilaterally prepared by it to the former for signature. Petitioner has not signed the statement because of disagreements. We are constrained to note that GRIDCO need to demonstrate appropriate resilience to the feelings and financial condition of business patrons like the petitioner and other similarly placed entities and make efforts to settle the issues speedily in a professionally efficient manner.
21. The Commission reiterates the directions passed in Para-6 of its Order dated 12.05.2015 passed in Case No. 30/2013 as mentioned below:-

“x x x x x x x x x x x x x x x x. If any dispute still survives towards payment of dues between GRIDCO and CCPPO the matter shall be resolved through arbitration under Section 86 (f) of the Electricity Act. In that event the parties are directed to come before the Commission with proposals for appointment of Arbitrators. The remuneration and fees of Arbitrators shall be borne by both the parties. No further order is given under present proceeding under Section 142 but in case of GRIDCO's failure to comply with this order, the Commission would proceed suo motu against GRIDCO and officers concerned without giving further opportunity.”

Neither parties complied the order above as mentioned in para 7,10,13,16 and 19. Therefore, we direct that the statement shall be prepared by GRIDCO as per directions within three weeks of order and copy shall be submitted to the petitioner with acknowledgement and reported to the Commission within one week thereafter. We find that the issue is not resolved by GRIDCO inspite of earlier orders of the Commission also.

Therefore, in the event the orders of the Commission on this issue are not complied and reported to the Commission in time, a penalty @ Rs.10,000/- (Rupees Ten thousand) per day of delay shall be recovered from the erring officer/official by CMD,

GRIDCO responsible for non-compliance till this remains uncompleted and deposited in appropriate accounts by way of penalty under Section 142 of the Electricity Act, 2003.

22. The issues addressed above are also applicable to similarly placed CGPs and Co-generation plants supplying their surplus power to GRIDCO Ltd. for the stated period.
23. We observe that GRIDCO persistently fails to address the issues and implementation of the order of the Commission efficiently leading to deprivation of legitimate dues such as the petitioner. With the above observations and directions the case is disposed of.

Sd/-
(A. K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S. P. Nanda)
Chairperson