

ODISHA ELECTRICITY REGULATORY COMMISSION
PLOT NO.-4, CHUNOKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021

Present: **Shri U. N. Behera, Chairperson**
 Shri A. K. Das, Member
 Shri S. K. Parhi, Member

Case No. 44/2016

M/s. Shri Mahavir Ferro Alloys Pvt. Ltd.	Petitioner
Vrs.		
GRIDCO Ltd.	Respondent

In the matter of: **An application under S.86 (1) (f) of the Electricity Act, 2003 for adjudication of the disputes regarding non-payment of the applicable dues against monthly energy bills for supply of power from its 1 MW Solar PV Projects and making deductions by violating the provisions of the PPA dated 21.08.2010.**

And
Case No. 45/2016

M/s. Vivacity Renewable Energy (P) Ltd.	Petitioner
Vrs.		
GRIDCO Ltd. & another	Respondents

In the matter of: **An application under S.86 (1) (f) of the Electricity Act, 2003 for adjudication of the disputes regarding non-payment of the applicable dues against monthly energy bills for supply of power from its 1 MW Solar PV Projects and making deductions by violating the provisions of the PPA dated 21.08.2010.**

For Petitioner : **Shri R. P. Mahapatra, the authorized representative of M/s. Shri Mahavir Ferro Alloys Pvt. Ltd. and M/s. Vivacity Renewable Energy (P) Ltd.**

For Respondent: **Shri Manas Kumar Das, Dir (Comm.), GRIDCO Ltd., Ms. Sasmita Patjoshi, Manager (RE Cell), GRIDCO Ltd., Shri Manoj Kumar Singh, SGM (AT & C), CESU, Shri S. K. Harichandan, AGM (Law), CESU, Shri J. K. Patra, E.E, BED, Balugaon, CESU and Shri S. N. Mishra.**

ORDER

Date of hearing: 25.04.2017

Date of order:05.02.2018

These two cases have been heard analogously since the petitions are of similar nature and Respondents are same.

2. Both the Petitioners are operating 1 MWp Grid-Interactive Solar PV Power Generation Plant under Rooftop PV & Small Solar Power Generation Programme (RPSSGP) guideline under JNNSM at village Tankajoda, Block Bonai, Dist. Sundargarh and at village Benta, Chandapur, Dist. Nayagarh respectively. The generic tariff for 25 years for Solar Power Plant shall be Rs.18.52 per kWh as per order dt.09.07.2010 of the Commission.
3. The petitioners have submitted that the Respondent No.1 - GRIDCO is making considerable delay in making payment against the monthly invoices leading to financial problems. GRIDCO is insisting on preparation and submission of monthly invoices based on the statement of energy billing centre of GRIDCO, where as the PPA provides that the billing shall be done on the basis of joint meter reading following the end of each month. GRIDCO in violation of PPA is not cooperating in recording the joint meter reading on the first day of subsequent month.
4. The Respondent No.1 – GRIDCO is also unilaterally deducting the rebate in spite of the payment released after the due date again in violation of the provisions of PPA. The respondent is also not making any payment towards delayed payment surcharge (DPS) for late payment.
5. The respondent No.1 is also making deduction towards penalty for shortfall in annual generation with CUF less than 18.5% in violation of any such provision in the PPA. There is also no provision for generation of minimum quantity of power in the Commission's order dt.09.07.2010.
6. The petitioners had a few meetings with the respondent towards reconsideration of the dues for FY 2015-16 in which the Petitioner signed the reconciliation statement under protest.
7. The respondent No.1 may be directed to constitute a irrevocable, revolving and confirmed letter of credit to enable the petitioner to operate the same for payment towards monthly energy bills in accordance with the clause 5(b)(v) of Power Purchase Agreement.
8. The respondent No.1 – GRIDCO has made the following submissions pertaining to both the petitioners:
 - a. The payment of rebate and DPS are being effected as per the PPA conditions.
 - b. Minimum Monthly Generation - None of the 8 nos. of Solar PV Developers have generated the desired output of 1.621 MU annually with the CUF of 18.5% vide

order dt.09.07.2010 in Case No.58/2010 & 105/2010. Though there is no provision in the PPA regarding minimum monthly generation of 1 lakh unit, the respondent No.1 made an agreement with the 8 nos. of Solar PV Developers for a minimum monthly generation, failing which the tariff shall be reduced by Rs.0.61/- per kwh for the defaulting month. In view of each of the 8 nos. Solar PV Developers generating less than 12 lakh units annually, the Developers are being paid Rs.17.91/- per kwh instead of approved tariff of Rs.18.52/- per kwh for defaulted financial year.

- c. GRIDCO on the request of the petitioners has opened Letter of Credit.
- 12. The respondent No. 2 CESU submitted that it is not the signatory to the PPA, therefore, no cause of action arises against him in the present case.
 - 13. The petitioners have filed their rejoinders in the following manner:
 - a. GRIDCO continuing to settle the bill in terms of the data supplied by Energy Billing Centre (EBC) is unlawful. GRIDCO is availing undue extra time for making payment by insisting on EBC data. The energy accounting is to be done by SLDC through EASSC (Energy Accounting and Settlement System). GRIDCO is required to make payment based on the energy bill prepared on the basis of the Dump data downloaded jointly with the DISCOM.
 - b. The contention of the respondent No.1 that rebate of 2% is allowed for making payment within 2 working days of the due date i.e., within 6 days of delivery of the bill is a gross violation of clause 5(b)(ii) of the PPA, the provisions of which, determine the period of payment to avail rebate. The provisions of clause 5(a)(i) are not applicable for availing rebate.
 - c. The respondent is coercing the Developers to allow rebate by giving personal undertaking, the practice of which is totally illegal and violation of PPA.
 - d. As there is no provision in the PPA, orders and regulations of the Commission regarding minimum monthly generation, the insistence of the respondent No.1 and imposing penalty thereof for non-achievement is violation of the orders. In Case No.36/2013, the matter of penalty for less generation was raised and the Commission has not observed anything in this regard.
 - e. GRIDCO should open LC in favour of the Solar PV Developers with conditions in accordance with clause 5(b)(v) of the PPA.

- f. As regards the counter of respondent No.2 – CESU, the Solar PV unit of the petitioners are connected at 11 kV Distribution system therefore CESU should prepare Joint Meter Reading (JMR) and submit copy to the petitioners.
 - g. The respondent No.1 – GRIDCO is forcing the petitioners to accept reconciliation statement of the power purchase transaction, which the petitioners have to sign under duress recording thereon the discrepancies
14. Heard the parties. Issues in both the cases mostly relate to non-adherence of GRIDCO to PPA.

The billing procedure has been defined in the clause 5(a)(i) of the PPA which shall be on the basis of joint meter reading promptly following the end of each month for the energy supplied and amount will be due on the fourth working day following the delivery of billing invoice by the Petitioner. GRIDCO's argument to treat the modified billing procedure basing upon Export statements of ABT compliant meters by EBC (Energy Billing Centre) installed latter, as "change in law" does not find strength due to presence of existing PPA which needs to be honoured. Therefore, the joint meter reading shall be taken by OPTCL / DISCOMs and the project proponent on the first day of every month at the delivery point as per Clause 8.1 (i) of the PPA.

In response to request of petitioner to open the LC, GRIDCO has stated that they have not opened LC except for M/s Vivacity Renewable Energy Ltd due to fund crunch. We observe that the PPA executed between parties herein have provision of LC in section 5(b) and the manner of operation of the same as well as subsequent paragraphs. Agreed provisions have to honoured by the respondent. We find no reason to allow deviation to this. Therefore the respondent shall complete all formalities on LC in line with PPA within one month. On rebate and DPS, GRIDCO has stated that the practices adopted are followed uniformly for all the 8 solar generators as per PPA. We find no ambiguity in these issues for rebate and delayed payment to the project proponent.

Regarding deduction of Rs.0.61/ Kwh, for not maintaining 1 lakh units per month generation standard, GRIDCO stated that the same has been agreed in a meeting between the parties subsequent to the signing of PPA. The Petitioner stated that in that meeting it was decided that average annual generation would be 12 lakh units and not one lakh unit per month. The Commission observes that this modification is outside PPA and has not been approved (by Commission) yet. Therefore, in case it has been agreed by parties, the

same is to be included in PPA with appropriate amendment/ inclusion and placed before Commission for approval.

15. We direct that the provisions in the PPA in various issues that are binding in nature must be strictly followed by both parties.
16. The Case Nos. 44/2016 and 45/2016 are accordingly disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(A. K. Das)
Member

Sd/-
(U. N. Behera)
Chairperson