

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNAKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021

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

Case No. 54/2016

GRIDCO Ltd.	Petitioner
Vrs.		
M/s. IND-Bharat Energy (Utkal) Ltd. & another	Respondents

In the matter of: **An application for review petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 70 (1) of the OERC (Conduct of Business) Regulations, 2004 along with Or. 47 R-1 (c) & Se. 114 of the Civil Procedure Code, 1908 for review of Order dated 30.07.2016 of the Commission passed in Case No-21/2016.**

For Petitioner : Ms. Susmita Mohanty, Manager (PP), GRIDCO Limited.

For Respondent: Shri R. P. Mahapatra, the authorised representative of M/s. IBEUL and Ms. Niharika Pattnayak, ALO, DoE, GoO are present.

Order

Date of hearing: 09.05.2017

Date of order: 22.08.2017

1. The Petitioner, GRIDCO has filed an application under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 70(1) of the OERC (Conduct of Business) Regulations, 2004, seeking review of the Commission's Order dated 30.07.2016 passed in Case No. 21/2016.
2. GRIDCO has submitted that the Commission, vide order dated 30.07.2016 in Case No. 21/2016 has determined Energy Charge Rate for supply of infirm and 12% power from IPP of M/s. Ind-Barath Energy (Utkal) Ltd. (IBEUL) to GRIDCO, in accordance with OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014 and Clause 2.2.1 and 6.3 of the revised Power Purchase Agreement (PPA) dated 04.01.2011.
3. Clause -6 of the revised PPA dated 04.01.2011 stipulates as given below:

“6.0 CHARGES

- 6.1 *The charges payable by GRIDCO to the IBEUL, shall be restricted to variable cost in regard to 14%/12% capacity entitlement to GRIDCO and also for the infirm power.*
- 6.2 *The variable cost shall cover fuel cost and shall be worked out on the basis of ex-bus energy sent out from the generating stations proportionate to the energy delivered to GRIDCO against 14% /12% entitlement of GRIDCO.*
- 6.3 *The methodology for determining the fuel cost i.e. variable cost shall be as per the applicable norms, guidelines and directions of the Appropriate Commission.*
- 6.4 *In case of any dispute or difference in regard to the variable cost payable by GRIDCO to the IBEUL, the same shall be referred to adjudication of the Orissa Electricity Regulatory Commission in terms of Clause 10 of the agreement read with the provisions of the Electricity Act, 2003".*
4. Further, Regulation 4.32 of the OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014 states that the energy charge shall cover the primary and secondary fuel cost and shall be payable by every beneficiary for the total energy scheduled to be supplied to such beneficiary during the calendar month on ex-power plant basis.
5. GRIDCO submitted that from the above provisions of PPA and Regulations in force, it is inferred that Variable cost (Energy Charge Rate) only covers the primary and secondary fuel cost and no other charges under any circumstances whatsoever.
6. GRIDCO has further submitted that as per the Thermal Policy of the State Government notified on 08.08.2008, the tariff for such power will be determined by the OERC. The MOUs and PPAs were signed with IBEUL in line with the above State Thermal Policy Guidelines. Moreover, neither in MOU nor in PPA, there is any mention of reimbursement of levies/taxes/duties because of the fact that, State entitlement of power is to be procured by GRIDCO at ECR/variable cost (fuel cost) only.
7. However, at Para 22 of the impugned Order dated 30.07.2016, the Commission viewed and directed as under:
- “xxxxxxxxxxxx. Further, it is directed that the payment of other charges such as water cess claimed by Water Resource Deptt., GoO, and electricity duty on auxiliary consumption and SLDC charges shall be reimbursed by GRIDCO in proportion to their share of power in the power station.”*

8. The aforesaid direction by the Commission is not in line with the aforementioned Notification of Government of Odisha, MOUs, revised PPA and most importantly OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014.
9. GRIDCO submitted that the Commission may consider the fact that Regulation 4.28(e) of OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014 regarding "water charges" (reimbursable by the beneficiaries depending upon their share) is a portion of the working out of O & M component of Annual Fixed Charges. Had there been any link with ECR, the same would have also been mentioned under Regulations 4.29 to 4.33 of the Commission, which specifically meant for ECR/variable cost. Therefore, the averments of M/s. IBEUL for taking shelter of Regulation 4.28 (e) are misconceived, misleading and untenable under law. As per the Clause 6 of the revised PPA dated 04.01.2011 and as per the Regulation 4.32 of OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014, the Water Charge is not at all a part of the variable cost. Hence, the direction of the Commission to reimburse the aforesaid extraneous charges may consequently invalidate the sanctity of the contractual commitment entered by GRIDCO in its capacity with all such IPPs to supply power at Energy Charge Rate (ECR) only.
10. In view of the above, GRIDCO has prayed the Commission to review the Order dated 30.07.2016 and disallow for reimbursement of other charges such as water cess claimed by Water Resource Deptt, GoO and electricity duty on auxiliary consumption and SLDC charges which are truly and completely extraneous to Energy Charge Rate (ECR) by GRIDCO.
11. The Respondent, M/s Ind-Barath Energy (Utkal) Ltd. has submitted that the submission of the Petitioner is based on (i) Clause -6 of the Revised PPA, dated 04.01.2011, (ii) Regulation 4.32 and 4.33 of the OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014 and (iii) Notification No.8960, dated 08.08.2008 of the Department of Energy, GoO.
12. M/s IBEUL submitted that Clause 6 of the PPA dated 04.01.2011 states that variable cost shall cover fuel cost. It does not specify that the variable cost shall be limited to fuel cost only. Clause 6.3 of the PPA provides that "the methodology for determining the fuel cost i.e. variable cost shall be as per the applicable norms, guidelines and directions of the Appropriate Commission. Accordingly, the variable cost is to be determined in accordance with OERC Generation Tariff Regulations, 2014. The Revised PPA dated 04.01.2011 defines Energy Charges as "Energy Charges shall mean and include all charges as fixed by

Appropriate Commission to be paid in respect of energy/power scheduled by GRIDCO.” Therefore, any other charges in addition to fuel cost, is also to be borne by GRIDCO. Further, Clause 5.4 of the PPA provides that Load Despatch Centre Charges i.e. RLDC/SLDC charges shall be borne by IBEUL and GRIDCO as per applicable CERC Regulations.

13. M/s IBEUL further submitted that OERC Generation Tariff Regulations, 2014 does not specify that water charges form a part of O&M expenses, vide item (cc) of Clause 1.7, which defines O&M expenses to exclude “fuel expenses and water charges”. Regulation 4.28(e) of the OERC Generation Tariff Regulations, 2014 provides for reimbursement of water charges paid to Govt. and reads as follows:

“The water charges as paid by the thermal generating stations shall be allowed separately basing on actual consumption.

Provided that the water charges paid to the Govt. by the generating station shall be reimbursed by the beneficiaries depending upon their share.”

In the Revised PPA Beneficiary has been defined as follows:

“Beneficiary in relation to a generating station shall mean the persons to whom the power is sold from the station and shall include GRIDCO to the extent of the power to be delivered to GRIDCO in terms of this Agreement.”

Hence, GRIDCO has to reimburse the “water charges”, depending on their share.

14. Accordingly the electricity duty imposed on such consumption is also to be shared by all the beneficiaries including GRIDCO.
15. M/s IBEUL further submitted that the terms and conditions contained in the Power Purchase Agreement shall be applicable only after approval of the same by the Commission vide Clause 61 of the OERC (Conduct of Business) Regulations, 2004. The terms and conditions contained in the PPA cannot override the provisions in the OERC (Terms and Conditions for determination of Generation Tariff), Regulations, 2014. However, there is no provision in the PPA, as submitted above, that the variable charges/ ECR payable by GRIDCO shall be limited to the primary and secondary fuel charges. In view of the above, M/s IBEUL prayed the Commission to dismiss the present petition filed by GRIDCO.
16. Both the parties were heard and their written notes of submissions were taken on record. The Commission observed that GRIDCO has entered into a PPA with M/s. IBEUL for purchase of State share of 14% of power sent out in case coal block is allocated within the

State or else 12% of the power sent out from the plant. The Commission vide its order dated 30.07.2016 in Case No. 21 of 2016 had determined the Energy Charge Rate (variable cost) of the thermal power station of M/s. IBEUL at which GRIDCO shall purchase the power. In addition, the Commission had directed that the payment of other charges such as water cess claimed by Water Resources Department, GoO, electricity duty on auxiliary consumption and SLDC charges shall be reimbursed by GRIDCO in proportion to its share of power in the power station because such charges payable by the generator do not form the part of O&M expenses according to the Clause-1.7 (cc) of OERC Generation Tariff Regulations, 2014. Further as per Clause-4.28 (e) of the OERC Generation Tariff Regulations, 2014, the water charges as paid by the thermal generating station shall be allowed separately basing on the actual consumption and shall be reimbursed by the beneficiaries depending upon their share. As per PPA between M/s. IBEUL and GRIDCO, SLDC charges shall be borne by M/s. IBEUL & GRIDCO as per applicable CERC Regulations. Electricity duty on auxiliary consumption paid by the generator to the state government needs to be reimbursed by the beneficiaries as is being done in case of other state generators as per prevailing practice.

17. We observe that all the concerns raised by petitioner have been considered and appropriately integrated into the impugned order as per the provisions of the OERC (Terms and Conditions for Determination of Tariff) Regulations, 2014. We find no mistake or error apparent on the face of record and no ground for the Commission to review its order dt.30.07.2016 passed in Case No. 21 of 2016. Therefore petition for review is liable for dismissal. We order accordingly.
18. Accordingly, the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(A. K. Das)
Member

Sd/-
(U. N. Behera)
Chairperson