

**ODISHA ELECTRICITY REGULATORY COMMISSION  
PLOT NO. 4, CHUNUKOLI, SAILESHREE VIHAR,  
CHANDRASEKHARPUR,  
BHUBANESWAR-751023**

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**Case No. 56/2016**

M/s. M/s Ind Barth Energy (Utkal) Ltd. (IBEUL) ..... Petitioner

Vrs.

1. Govt. of Odisha, Deptt. of Energy

2. M/s GRIDCO Ltd. .... Respondent

**In the matter of:**     **An application under S.94 (1) (f) of the Electricity Act, 2003 read with Regulation 70(1) of the OERC Conduct of Business Regulations, 2004 and Or.47 R-1© of the CPC, 1908 for review of Order dated 30.07.2016 of the OERC in Case No.21 of 2016.**

For Petitioner:       Shri R. P. Mahapatra, the authorised representative of M/s. IBEUL.

For Respondents:     Ms. Susmita Mohanty, Manager (PP), GRIDCO Limited and Ms. Niharika Pattanayak, ALO, DoE.

**Date of Hearing: 09.05.2017**

**Date of Order:16.08.2017**

**ORDER**

The petitioner M/s Ind Barth Energy (Utkal) Ltd. (IBEUL) has filed the present application under Regulation 70 of OERC (Conduct of Business) Regulations, 2004 for review of the Commission's order dt.30.07.2016 passed in Case No.21 of 2016. The Commission in the said Order dt.30.07.2016 has determined the variable cost (ECR) of the IPP of M/s IBEUL for supply of 12% power (since no coal block is allocated) to the State, based on the OERC Generation Tariff Regulations, 2014.

2. The representative of the petitioner M/s IBEUL has submitted that:-

a. The Commission at Para 18 of the impugned Order dtd.30.7.2016 has observed as given below:-

*“18. Xxxxxx. From the submission of M/s. IBEUL it is understood that they have used linkage coal for determination of variable cost. GRIDCO is to verify the details of coal purchased and consumed as well as GCV of the same.*

*However, as an illustration the Commission has calculated the energy charge rate basing on the weighted average price & GCV of both Coal and fuel oil as submitted by M/s. IBEUL before the Commission xxxxxx.”*

b. The petitioner, M/s IBEUL has stated that in their petition dt.16.5.2016 in Case No.21/2016, they had submitted the method for computation of weighted average landed price of coal. As per that the quantities of coal received under approved ‘linkage’ and balance under ‘e-auction’ along with their cost and transportation cost were to be taken into consideration and weighted average cost computed accordingly. Therefore, the petitioner submits that the observations of the Commission at para 18 of impugned Order, is an error apparent in the face of the record and hence the indicative ECR may be calculated based on the weighted average landed price of the coal as submitted by the petitioner.

c. M/s IBEUL has further stated that, in para 19 and Para 21 of the impugned order dtd.30.7.2016 the Commission had observed as given below:-

*“19. Billing of ECR shall be made by M/s. IBEUL and submitted to GRIDCO on monthly basis with the details of coal/oil used for generation as indicated above for scrutiny and payment. However, the Commission is of the view that the entire share of State from the subject IPP should be drawn by GRIDCO. Further, the domestic coal should be utilized for generation of power for State use to avoid tariff burden on the State consumers and no imported coal shall be allowed for this.*

*21. xxxxxx. In case of change in underlying base parameters, the indicative tariff mentioned above is likely to change. Therefore, GRIDCO shall verify GCV and price of coal and oil etc. before making actual payment as per Regulations. xxxxxx.”*

d. The above observations of the Commission in para 21 namely, “Billing of ECR shall be made by M/s. IBEUL and submitted to GRIDCO on monthly basis with the details of coal/oil used for generation as indicated above for scrutiny and payment” is also an error apparent on the face of the record as it contravenes Regulation 6.3 of OERC Generation Tariff Regulations, 2014, which read as follows:- “Bills shall be raised for capacity charge, energy charge, Fuel Surcharge Adjustments and Incentive on monthly basis by the generating

*company and payments shall be made by the beneficiaries directly to the generating company, subject to adjustment at the end of the year.*”

Similarly, the observations of the Commission “*for scrutiny and payment*” is also likely to cause delay in payment beyond the period indicated in clauses 6.7 and 6.8 of the OERC Generation Tariff Regulations, 2014 and lead to dispute between the parties. The petitioner, M/s IBEUL is of the view that the IPP should furnish the details of ECR along with the bills of the respective month as per the clause 4.33 of the Generation Regulations, 2014. Any adjustment after scrutiny of the same shall be made at the end of the year.

e. Further, the observations of the Commission in para-19 that, “*the domestic coal should be utilized for generation of power for State use to avoid tariff burden on the State consumers and no imported coal shall be allowed for this.*” is also an error apparent on the face of record in view of the following.

(i) Clause 4.32 of the OERC Generation Tariff Regulations, 2014 provides that *the energy charge shall cover primary and secondary fuel cost and limestone consumption cost (where applicable) and shall be payable by every beneficiary for the total energy scheduled to be supplied to such beneficiaries during the calendar month on ex-power plant basis, at the energy charge rate of the month (with fuel and limestone price adjustment).*

(ii) For determination of Energy Charge Rate under Clause 4.33 of the OERC Generation Tariff Regulations, 2014, LPPF has been defined as follows:

*"LPPF = Weighted average landed price of primary fuel, in rupees per kg, per liter, per standard cubic meter, as applicable during the month. (In case of blending of fuel from different sources, the weighted average landed price of primary fuel shall be arrived in proportion to blending ratio)."*

(iii) The first proviso to Clause 4.33 states *"Provided that generating company shall provide to the beneficiaries of the generating station the details of parameters of GCV and price of fuel i.e. domestic coal, imported coal, e-auction coal, lignite, natural gas, RLNG, liquid fuel etc., as per the Format prescribed by the Commission."*

There is no provision in the OERC Generation Tariff Regulations, 2014, which provides for determination of ECR for any individual beneficiary based on a particular source for the primary fuel. Therefore, the above observations of the Commission in Para 19 of the impugned Order is in contravention of the provisions in the OERC Generation Tariff Regulations, 2014.

The Petitioner has submitted that in order to meet its contractual obligation with all beneficiaries, it may be required to import coal, when adequate quantity of domestic coal including e-auction coal is not available. Therefore, the ECR calculated on the basis of weighted average landed price of primary fuel from all sources should be paid by all beneficiaries including GRIDCO.

3. The representative of the respondent M/s. GRIDCO Ltd. submitted that:-

- a. M/s IBEUL has Fuel Supply Agreement (FSA) with MCL for supply of linkage coal for the State's share of power with penalty clause in case of shortfall of supply from Annual Contracted Quantity (ACQ). If at all there is shortfall in supply of required quantity/ quality of linkage coal, the Petitioner could claim legitimate compensation from the Coal Company as per the provisions of Fuel Supply Agreement (FSA) instead of loading it on consumers through use of high cost coal. Therefore, as directed by the Commission the actual ECR shall be determined based on the GCV and landed price of linkage of coal only for supply of 12% power to GRIDCO, based on actual usage of coal during a month. So, the contentions of IBEUL are misconceived and untenable.

Further, the allocation of Coal of said FSA is as follows:

<b>MW</b>	<b>ACQ (in Lakh Tonnes)</b>	<b>GCV Grade</b>	<b>Mode of Transport</b>	<b>Source of Coal</b>
250	11.20	E/F (G 8- G13)	By Rail/ MGR	Any Coal Field of MCL
450	19.50	F (G 10- G 13)		

From the above, it is quite imperative that in order to supply 12% power to GRIDCO, the Petitioner would get sufficient linkage coal from the coal supplier and there is hardly any need of resorting to any other source of coal other than linkage coal to provide State Entitlement of power. Therefore, the Commission had quite appropriately mentioned at Para 19 of their order that, the cheapest source of coal should be utilized for generation of power for State use to avoid tariff burden on the State consumers and no imported coal shall be allowed for this.

- b. Further, the observations of the Commission at Para 19 namely "Billing of ECR shall be made by M/s IBEUL and submitted to GRIDCO on monthly basis with the details of coal/ oil used for generation as indicated above for scrutiny and

payment” does not contravene Regulation 6.3 of the OERC (Terms and Conditions of Generation Tariff) Regulations, 2014. The referred clause does not indicate that there should not be any scrutiny before payment.

- c. The apprehension of the Petitioner that the observations by the Commission for “Scrutiny and payment” is likely to cause delay in payment beyond the period indicated in Clauses 6.7 and 6.8 of the OERC (Terms and Conditions of Generation Tariff) Regulations, 2014 and lead to dispute between the parties is completely misconceived and untenable. Payment to Generator is well protected by Clause No. 7.2 of the revised PPA dated 04.01.2011 by way of Rebate Scheme for early payment and Late Payment Surcharge for delayed payment. In case the Respondent GRIDCO fails to make payment in two days, then it shall automatically lose the rebate amount on the accepted bill amount and thus shall be penalized. Moreover, being the sole State Designated Entity, the Respondent GRIDCO had been consistently performing scrutiny and processing of monthly energy bills of various generators in an efficient manner year after year and thus the Petitioner’s apprehension are meaningless at this juncture when they are yet to raise any such energy bill for supply of power.
- d. Further, the observation of the Commission, in Para 19 that “the domestic coal should be utilized for generation of power for State use to avoid tariff burden on the State consumers and no imported coal shall be allowed for this” is in right perspective and in line of the State’s Distribution Consumer’s interest. The provisions of Regulation’s 4.32 and 4.33 of OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014 are generic in nature and do not restrict the Petitioner to use only linkage coal for the State’s share of power, which is meant for consumption of distribution consumers. Coal India Limited also normally gives priority in according linkage coal permission to the generating companies, who have long term PPA with DISCOMs. M/s IBEUL has Fuel Supply Agreement (FSA) dated 08.08.2013 with MCL for supply of linkage coal for the State’s share of Power with Penalty clause in case of shortfall of supply from Annual Contracted Quantity (ACQ). Again Para 14 (1) (d) of FSA dated 08.08.2013 regarding suspension of coal supply refers to Annual Certificate from the beneficiaries to ensure that linkage coal as per

ACQ, shall have to be utilized for generation of power to be supplied to the DISCOMs under long term contract.

- e. The definition of LPPF in Clause 4.32 of the OERC (Terms and Conditions of Generation Tariff) Regulations, 2014 is generic in nature and thus cannot be considered in isolation of the fact that, the Petitioner shall be getting sufficient linkage coal for supply of State Entitlement of power to GRIDCO and thus question of blending of coal does not arise in the present case. Moreover, as per the provisions of the CERC Tariff Regulation, 2014 (for thermal generators), the generator has to obtain prior consent of the beneficiary for use of alternate source of fuel supply under any circumstances.
  - f. In view of the above, GRIDCO has submitted that there is no error apparent in the face of record as such and the Petitioner's aforementioned contentions to review the order dated 30.07.2016 in Case No. 21/2016 are devoid of any merit and are liable to be set aside.
4. Both the parties were heard and their written submissions were taken on record.
  5. M/s GRIDCO has submitted their written submission on 20.05.2017. In view of our order dated 23.05.2017, the submission is accepted.
  6. On the request of the petitioner, we have examined the relevant order and extracts in Case No.21 of 2016. GRIDCO's submission is also taken into consideration. The petitioner's own submission along with copy of MoU with Govt., relevant PPA and the annexures and replies of respondent GRIDCO, have already been referred to while arriving at the decision to consider the linkage coal alone in the weighted average landed price of coal for the state share of power. The state share of power is well within the linkage coal quantity and the need to obtain coal from other sources may not arise at all for this. Therefore we find no error in our decision on weighted average landed price of coal at actual usage to be considered for ECR on landed price of linkage coal (to the extent of 12% of state share).
  7. The petitioner has raised the issue of "scrutiny and payment, subject to adjustment of the year" on apprehension of delay in payment. We had noticed that the protection for timely payment has already been addressed in the PPA between GRIDCO and the Petitioner. The penalty for delay in payment and rebate for early payment by GRIDCO has also been worked out. We feel that the same is fair to both the parties. This aspect

has already been considered by Commission in the order. Year end scrutiny eliminates repeated reconciliation of wrong data.

8. Regarding issue raised on domestic coal, we find from the submission of petitioner and also GRIDCO that an FSA for domestic coal supply already exist and the Commission concluded this to be used for state consumers. Thus no error is noticed in the order passed in Case No.21 of 2016. In the interest of state consumers, the Commission has directed GRIDCO to verify the GCV, and price of coal and oil etc. before making actual payments. Due diligence has to be carried out.
9. We observe that all the concerns raised by petitioner has been considered in the order and appropriately integrated into the order above 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.
10. Accordingly, the case is disposed of.

**Sd/-**  
**(S. K. Parhi)**  
**Member**

**Sd/-**  
**(A. K. Das)**  
**Member**

**Sd/-**  
**(U. N. Behera)**  
**Chairperson**