

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

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

**Case No. 59/2016**

GRIDCO Limited	.....	Petitioner
Vrs.		
M/s. Vedanta Limited & others	.....	Respondents

**In the matter of:**        **An application under Section 86 (1) (f) of the Electricity Act, 2003 read with Regulations 9 (1) & 76 of the OERC (Conduct of Business) Regulations, 2004 seeking direction of the Commission as per Order dated 12.06.2013 passed in Case Nos. 117 of 2009, 34 of 2010 and 56 of 2012 regarding suitable amendment of the Clause 10 of the consolidated PPA dated 19.12.2012 for transmission/wheeling of State share power.**

**For Petitioner :**        Shri U. N. Mishra, CGM (PP), GRIDCO Ltd., Ms. Susmita Mohanty, Manager (PP), GRIDCO Ltd.

**For Respondent:**        S. Satyakam, Advocate on behalf of M/s. Vedanta Ltd., Shri Vikas Jain, Vice President, Legal of M/s. Vedanta Limited, Shri M. K. Panda (AGM) M/s. Vedanta Limited, Shri S. K. Puri, Sr. GM (OPTCL), Shri P. K. Das, DGM, SLDC and Ms. Niharika Pattanayak, ALO, DoE, GoO.  
Nobody is present on behalf of WESCO Utility.

**ORDER**

**Date of hearing: 07.11.2017**

**Date of order: 09.04.2019**

The factual matrix of this case is as follows:

Govt. of Odisha had entered into an MoU with M/s. Sterlite Energy Ltd. (presently M/s. Vedanta Ltd.) on 26.09.2006 for setting up of an IPP of 2400 MW capacity. The MoU at Clause 1 (vi) reads as follows:

***Clause 1 (vi): SEL may set up its own transmission facility for evacuation of power to the point of off-take by the buyer(s) or may request the State Transmission Utility (STU) and Central Transmission Utility (CTU) or any other Transmission Utility or Licensee for evacuation of power from the Thermal Power Plant and may enter into agreements for such purpose. The Government and its concerned agency shall assist SEL in the matters of transmission facility for evacuation of power from the Thermal Power Plant. In case SEL evacuates power through State Transmission Utility or Central Transmission Utility, transmission of the entire capital cost for strengthening such lines for evacuation of entire power of the Thermal Power Plant will be borne by SEL.***

**Clause 5(I)(xii):** *While implementing the project, SEL undertakes to comply with all statutory requirements/ clearances in respect of laws, regulations and procedures governing establishment and operation of industries in the State.”*

2. As per the above MoU the present Petitioner, GRIDCO had entered into a consolidated PPA with M/s. Vedanta Ltd. (erstwhile Sterlite Energy Ltd.) on 19.12.2012 which at Clause 4 states as follows:

*“Power to GRIDCO shall be made available by the SEL at the bus-bars of the station connected to the transmission lines of OPTCL /PGCIL and it shall be the obligation and responsibility of GRIDCO to make the required arrangement for evacuation of power from such delivery points. SEL shall make independent arrangement for evacuation of remaining power from the station at SEL costs and responsibility.”*

3. The Commission while determining tariff of IPP of M/s. Vedanta Ltd. had in its order dated 12.06.2013 passed in Case Nos. 117 of 2009, 31 of 2010 and 56 of 2012 observed the following:

*“10. Regarding Transmission / Wheeling of Power generated by this power plant it is indicated in the PPA that “Power to GRIDCO shall be made available by SEL at the Bus bars of the Station connected to the transmission lines of OPTCL / PGCIL and it shall be the obligation and responsibility of GRIDCO to make the required arrangement for evacuation of power from such delivery points. SEL shall make independent arrangements for evacuation of the remaining power from the station at SEL costs and responsibility.”*

*On this issue M/s SEL has submitted that under the PPA the obligation to prepare infrastructure for evacuation is with GRIDCO and it is also quite clear that the delivery point for supply of power to GRIDCO is the bus-bar of the generating station and it is the obligation of GRIDCO to make necessary arrangements for evacuation of power from the bus-bar in order to avail state share of power. SEL further submitted that they are reviving the abandoned 400 KV Ib-Meramundali line of OPTCL on deposit work basis and hopeful that upon completion of the same, which is expected by July, 2013, the unit connected to OPTCL Network will be able to run at full 600 MW capacity and normative parameters of operations as per regulations shall be achieved. On this issue the Commission is of the view that since the transmission planning programme of OPTCL for evacuation of power from the upcoming IPPs is under process, GRIDCO/OPTCL may approach the Commission for suitable amendment of the clause in the consolidated PPA, if necessary after finalisation of the same. Till then the present practice of evacuation of power from the power plant of M/s SEL will continue, which is expected to improve after revival of the Ib-Meramundali line of OPTCL.”*

4. However, while approving transmission planning of OPTCL the Commission in Case No. 71/2011 dated 30.07.2016 did not specifically direct anything regarding evacuation of power from the IPP of M/s. Vedanta Ltd.
5. GRIDCO further submits that the Commission while approving CGP status to some of the generating units of M/s. Vedanta Ltd. in its order in Case No. 21/2015 dated 27.01.2016 at Para 32 has observed as follows:

*“xxxxxxxxxxxxx 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.”*

6. GRIDCO Ltd. has submitted that the respondent M/s. Vedanta Ltd. in the meantime had challenged the tariff order dated 12.06.2013 of the Commission before Hon’ble APTEL vide Appeal No. 25 of 2014. Hon’ble APTEL vide their judgment dated 10.05.2016 have dismissed the said Appeal with the following pertinent observations:

- a. As per the relevant provisions contained in the consolidated PPA between the Appellant and the Respondent No. 2 dated 19.12.2012, the capacity allocated to the Respondent No. 2 was 25% of the installed capacity of the subject thermal power station. The Respondent No. 2’s share of power ought to be made available to Respondent No. 2 by the Appellant at the bus bar of OPTCL nearest EHV sub-station at required voltage level, and the OPTCL as State Transmission Utility (“STU”) with the help of Government of Odisha, will assist the Appellant in getting clearances/approvals within the state jurisdiction with clear stipulation that all the responsibility for obtaining such clearances/approvals shall remain with the Appellant and the Appellant would need to bear cost of;*
  - i. Dedicated transmission line from their generating plant to the designated Grid Sub-station of the STU at available voltage level.*
  - ii. Interfacing at both the ends including works at the Grid Sub-station, cost of Bays etc.*
  - iii. Replacement/up-gradation/augmentation of existing equipments/ transmission system(s) if any of STU.*
- b. The above works were required to be carried out by the Appellant as per the specifications and requirement of licensees/utilities and after commissioning of the project, the Appellant was required to transfer these lines and infrastructure at STU sub-station end to the STU as transfer of assets for the maintenance by the STU, at the charges to be decided by licensee/utility and paid by the Appellant. This was with a clear understanding that if the Appellant desires to evacuate further power beyond state share, they may strengthen the transmission system and also to bear the state transmission charges as applicable.*
- c. From the above it is observed that for installation of transmission system up to the STU bus bar was the Appellant’s responsibility and the role of the STU and the Government of Odisha was limited only to providing assistance in obtaining State Statutory Clearance to the appellant.*
- d. The generating station of the Appellant is connected to STU network at Budhipadar grid sub-station through 220 KV double circuit line.*
- e. xxxxxxxx*

f. xxxxxx

g. *There is no doubt in our mind regarding the bus bar of Budhipadar sub-station of the STU is the point of delivery of power, as per relevant provisions of the consolidated PPA.*

7. GRIDCO states that in view of the above findings of Hon'ble APTEL the order of the Commission in Case No. 21/2015 dated 27.01.2016 as stated in the earlier paragraph regarding power evacuation from M/s. Vedanta Ltd. is contradictory in nature.
8. In its application GRIDCO has mentioned that, time and again GRIDCO has raised its concern regarding misinterpretation of the above clause 4 of the consolidated PPA before the Commission regarding responsibility to make required arrangement for evacuation of power from delivery point. The Ib-Meramundali 400 KV DC line now known as Vedanta – Meramundali line was completely restored and charged on 06.01.2016 and Vedanta IPP is supplying power to GRIDCO through this line. However, 220 KV DC VAL-Budhipadar line is being utilised as back root of power supply to GRIDCO as and when required.
9. In view of the above GRIDCO has prayed the Commission to consider and give direction to modify the Clause 4.0 of the Consolidated PPA dated 19.12.2012. Accordingly, the revised PPA shall be executed with M/s. Vedanta Ltd. (IPP) in compliance to the Commission's direction given vide order dated 27.01.2016.
10. GRIDCO has further submitted that the Commission at Para 16, 18, 19 of the order dated 12.06.2013 in Case No. 117/2009, 31/2010 and 56/2012 under the heading of "Determination of Auxiliary Consumption" and "Determination of Station Heat Rate" had given relaxation to the IPP of M/s. Vedanta Ltd. due to transmission constraint in the Vedanta–Budhipadar line of Vedanta Ltd. This was an interim arrangement since M/s. Vedanta Ltd. had not constructed a dedicated transmission line for evacuation of power from its IPP as per the MoU. Therefore, relaxation given in station heat rate and auxiliary consumption in the year 2010-11 to 2012-13 should not be borne by GRIDCO Ltd.
11. In summary GRIDCO prays that the Commission should give finality to its direction given at Para 10 of its order dated 12.06.2013 in line with the observation of Hon'ble APTEL in Appeal No. 25/2014 and Appeal No. 179/2014. GRIDCO also prays that any relaxation in Auxiliary Energy Consumption (percentage) and Gross Station Heat Rate of the period 2010-11 to 2012-13 should not be allowed.
12. M/s. Vedanta Ltd. has vehemently opposed the above views of the Petitioner. It has stated that Hon'ble APTEL has not at any point of time directed for amendment of the PPA.

Once a PPA has been signed between the parties on mutual consent, it supersedes the MoU. The order of the Commission dated 27.01.2016 in Case No. 21/2015 casts the onus of development of evacuation infrastructure on GRIDCO. Since no appeal has been filed challenging the same, the matter has attained finality. As per Regulation 4.32 of OERC Generation Tariff Regulation, 2014 tariff is to be determined on an ex-power plant basis. If the tariff is to be calculated on ex-power plant basis then fixed cost being used for determination of tariff would have included cost with respect to transmission infrastructure. The Commission and Hon'ble Supreme Court have repeatedly held that Regulations are akin to statute and must be followed in letter and spirit.

13. Regarding issue of determination of auxiliary consumption and station heat rate M/s. Vedanta Ltd. submitted that raising these issues are appeal in disguise. They submitted that the order of the Commission dated 12.06.2013 in Case No. 117/2009, 31/2010 and 56/2012 had been confirmed by Hon'ble APTEL and therefore, has reached its finality M/s. Vedanta Ltd. submitted certain correspondence in the year 2009 before us showing that M/s. OPTCL was initially agreeable to construct evacuation facility for IPP power of M/s. Vedanta Ltd. The present evacuation facility (Ib-Meramundali line) has been constructed by M/s. Vedanta Ltd. and has been transferred to OPTCL, therefore, the Respondent company has discharged its liability. The order of Hon'ble APTEL that Budipadar sub-station is the point of delivery of power was made in circumstances wherein the Meramundali line had not been charged.
14. The Dept. of Energy, GoO as a respondent submitted that GRIDCO has mainly prayed for rephrasing of the Clause 4.0 of the consolidated PPA dated 19.12.2012 regarding evacuation of State entitlement of power to GRIDCO in conformity with statutory provision. Section 10 of the Electricity Act, 2003 states as follows:

*“10. (1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.”*

The conjoint reading of the Clause of the PPA, MoU and Section 10 of Electricity Act clearly suggest that the onus of construction of dedicated transmission lines is on the generator and cannot be transferred to any other Utility and more so on the beneficiary. The onus of development of transmission system lies with M/s. Vedanta only which is in conformity with statutory provision under Section 10 of the Electricity Act, 2003. The Hon'ble APTEL in Appeal No. 179/2014 has specifically noted its finding at Para 12 (viii) that as per PPA condition the State share of power shall be made available to

GRIDCO by Vedanta Ltd. at the bus bar of OPTCL nearest EHV sub-station at required voltage level. The restoration of Ib-Meramundali line at a belated time i.e. January, 2016 is in gross deviation from its commitment to complete the same by July, 2013 shall not nullify the fact that prior to such restoration it was also the obligation of M/s. Vedanta Ltd. to construct dedicated transmission line upto OPTCL's nearest EHV sub-station at required voltage level for evacuating State entitlement of power. The Dept. of Energy has requested the Commission to interpret the Clause 4.0 of the consolidated PPA dated 19.12.2012 in line with statutory provision under Section 10 of Electricity Act, 2003, MoU dated 26.09.2006 and Hon'ble APTEL's observations in their judgement dated 10.05.2016 in Appeal No. 25 and 179 of 2014.

15. We heard the views and counter views of the parties. The main issue in this case is the rephrasing of Clause 4.0 of the PPA entered by GRIDCO with M/s. Vedanta Ltd. on 19.12.2012. This clause deals with the responsibility of constructing the evacuation facility of State share of power from IPP of M/s. Vedanta Ltd. to the nearest OPTCL system. The Commission while approving the PPA and determining the tariff of State share of power in the order dated 12.06.2013 in Case Nos. 117 of 2009, 31 of 2010 and 56 of 2012 in the order dated 12.06.2013 had not dwelt upon the issue as no direction was sought by parties. However, the Commission dealt with this matter in its order dated 27.01.2016 in Case No. 21/2015 and directed that:

*"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."*

16. Hon'ble APTEL in its judgement dated 10.05.2016 in Appeal No. 25/2014 has made interpretations and observations on power evacuation arrangement. M/s. Vedanta Ltd. had gone on appeal on this observation of Hon'ble APTEL to Hon'ble Apex Court and the Appeal has been dismissed by the said Hon'ble court as withdrawn on 10.03.2017. Therefore, the decision of Hon'ble APTEL regarding evacuation of GRIDCO's share of power has reached its finality. Accordingly, both the parties are at liberty to rephrase the concerned clause on evacuation arrangement in the PPA in line with the observations dated 10.05.2016 of Hon'ble APTEL in Appeal No.25/2014 in this regard and submit the same before commission for approval.
17. Regarding prayer of GRIDCO for not allowing relaxation in auxiliary consumption and station heat rate in our order dated 12.06.2013 in Case No. 117/2009, 31/2010 and

56/2012 we reiterate that these issues have attained finality due to confirmation by Hon'ble APTEL in Appeal No. 179/2014 where Hon'ble Tribunal has held as under:

*“12. xi) After accepting the State Commission's considered view of 400 MW of power transmission in the sustainable mode for the transmission line in question for that specific period, the auxiliary power consumption as well as Station Heat Rate on account of partial loading as considered by the State Commission in its Impugned Order would stand justified. It is an established fact that if the unit operates at a partial load, it does affect adversely the normative parameters such as auxiliary power consumption, Station Heat Rate etc. Hence, we would not like to interfere with the State Commission's finding in this regard in its Impugned Order.”*

Given the above observation, Hon'ble Tribunal has dismissed the GRIDCO's appeal in this regard. GRIDCO has neither sought the review of orders of Hon'ble APTEL nor has appealed against it. Views of Hon'ble APTEL have reached its finality. Therefore Commission is not inclined to review its decisions or reopen the issues since those do not merit consideration.

18. With the above observations the case is disposed of.

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

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

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