

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
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. 08/2017

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

**In the matter of: An application under Section 86 (1) (f) of the Electricity Act, 2003
 for adjudication of disputes between M/s. Vedanta Limited and
 GRIDCO Limited.**

For Petitioner: Shri S. Satyakam, Advocate on behalf of M/s. Vedanta Limited.

**For Respondent: Shri T. Pattnaik, GRIDCO Limited, Ms. Susmita Mohanty,
 Manager (Elect.), GRIDCO Limited, Shri K. C. Nanda, DGM
 (Fin.), WESCO Utility and Ms. Niharika Pattnayak, ALO, DoE,
 GoO.**

Order

Date of hearing: 08.02.2017

Date of order: 17.04.2017

The petitioner M/s. Vedanta Limited (formerly known as M/s. Sesa Sterlite Ltd.) owns & operates the thermal power plant of 2400 MW (4x600 MW) capacity at Jharsuguda and supplies state share of power to GRIDCO as per the terms and conditions of PPA executed between them on 28.09.2006 & consolidated on 19.12.2012.

2. In the present case, the petitioner M/s. Vedanta Limited has raised certain issues pertaining to the ARR & BSP application of GRIDCO for the FY 2017-18 (Case No. 63 of 2016), in respect of power purchase from them by GRIDCO and some other issues such as payment of outstanding dues by GRIDCO, signing of revised PPA and computation of monthly plant availability factor etc. The Commission heard both the parties. Their written note of submissions were taken into records.
3. The issues raised by M/s. Vedanta Ltd. on the ARR & BSP application of GRIDCO for the FY 2017-18 are as follows:
 - a. Date of conversion of IPP units (3x600 MW) to CGP units.

- b. Capacity charge and energy charge for supply of power during FY 2017-18 from the generating station of M/s. Vedanta Ltd.
 - c. Power purchase from state CGPs by GRIDCO.
 - d. Quantum of energy to be procured from the generating station of M/s. Vedanta Ltd. during FY 2017-18.
4. On the issue of date of conversion of IPP units (3x600 MW) to CGP units, M/s. Vedanta Ltd. submitted that at Para-1.6 of the ARR application of GRIDCO it is indicated that the generating units I, III & IV of the IPP of M/s. Vedanta Ltd. have been converted to CGP units w.e.f. 01.04.2016. But as per the Commission's order dated 27.01.2016 passed in Case No. 21/2015 these units are converted to CGP w.e.f. 01.04.2015. The respondent GRIDCO has submitted that mention of 01.04.2016 is an inadvertent typographical error in the ARR application and it has no implication on the procurement price of energy from M/s. Vedanta Ltd. for the FY 2017-18. Hence, the Commission feels that it is no more a disputed issue.
5. On the issue of capacity charge and energy charge rate, M/s. Vedanta Ltd. submitted that in its ARR & BSP application GRIDCO has projected the capacity charge @ 116.95 P/U as per the MYT petition No. 95/2013 filed by M/s. Vedanta Ltd. before this Commission, computation of which is based on the report of independent auditor engaged on the direction of the Commission. M/s. Vedanta Ltd. has requested the Commission to consider the same in the ARR of GRIDCO for the FY 2017-18. Similarly M/s. Vedanta Ltd. has requested the Commission to consider the energy charge rate at 215.17 P/U as proposed in its MYT petition instead of 168.30 P/U as proposed by GRIDCO in its ARR application. On this issue GRIDCO submitted that the capacity charge may be allowed provisionally subject to finalization of MYT application of M/s. Vedanta Ltd. and energy charge rate may be considered as per the weighted average of actual ECR of M/s. Vedanta Ltd. during FY 2016-17. The Commission is of the view that these issues have already been taken care of in the ARR & BSP order of GRIDCO for the FY 2017-18 and provisional capacity charge and energy charge rate have been fixed for purchase of power by GRIDCO from M/s. Vedanta Ltd. Any deviation shall be adjusted appropriately after determination of MYT tariff for the IPP of M/s. Vedanta Ltd.
6. M/s. Vedanta Ltd. further submitted that GRIDCO, in its ARR & BSP application, has proposed not to procure any power from the CGPs. M/s. Vedanta Ltd. requested the

Commission to allow purchase of surplus power from the state CGPs on firm as well as inadvertent power supply basis in order to reduce the power purchase expenses of GRIDCO by avoiding transmission expenses and transmission loss. On this issue GRIDCO submitted that CGPs are infirm sources and hence GRIDCO cannot propose to purchase definite quantum of power from the CGPs. GRIDCO further stated that it has an availability of surplus power from the firm sources after meeting the state demand. If ECR of any firm source is higher than total energy cost from a CGP, power should be procured from the CGP following merit order principle, even if it involves payment of capacity charge to such firm source. The Commission has also made this observation in the ARR & BSP order of GRIDCO for the FY 2017-18.

7. M/s. Vedanta Ltd. submitted that GRIDCO in its ARR & BSP application has proposed to procure 839 MU from the generating station of M/s. Vedanta Ltd., being 5% of the total normative energy sent out from the power station at normative PLF of 85% and auxiliary consumption of 6%. But as per the PPA the liability of M/s. Vedanta Ltd. is limited to 5% of the power sent out from the stations. There is no term defined as “normative energy sent out” either in the Regulations or in the PPA. M/s. Vedanta Ltd. requested the Commission to consider the quantum of energy supplied only from Unit-II of its generating station because no power is sent out from the other three CGP units since it is consumed by the industrial plants of M/s. Vedanta Ltd. On this issue GRIDCO submitted that the Commission at Para-35 (b) & (c) of its order dated 27.01.2016 has directed as given below:-

“35 (b) Quantum of power supply to GRIDCO towards State entitlement should be 25% (at full cost) and 7% / 5% (at variable cost) of total energy sent out from the power station (4 x 600 MW) as per the PPA in force. The Unit-II must remain connected to STU as State dedicated unit and accordingly supply to GRIDCO must be 25%+7%/5% of total energy sent out from the power station or total ex-bus generation from Unit-II whichever is higher. Such quantum of power supply should not be disturbed at any point of time.

(c) Unit – I, III & IV of the same power plant are converted to CGP w.e.f. 01.04.2015. The above conversion is based on the assurance of the Petitioner that in case of low or no generation in Unit-II the Petitioner shall meet its commitment in the PPA from the CGP units and its pricing shall be as per the relevant IPP Regulations of the Commission.”

Hence, the submission of M/s. Vedanta Ltd. is not tenable in view of the above directions of the Commission which was based on the assurance/commitment given by M/s. Vedanta Ltd. to ensure state share of power to GRIDCO even after conversion of the three IPP units to CGP w.e.f. 01.04.2015. The Commission observe that this issue has already been taken care of in the ARR & BSP order of GRIDCO for the FY 2017-18.

8. Apart from the above ARR related issues, the petitioner M/s. Vedanta Ltd. has also raised the following issues:-
 - a. Payment of Rs. 164 Cr. on account of transmission constraint.
 - b. Payment of Rs. 36.90 Cr. on account of differential coal cost.
 - c. Signing of revised PPA.
 - d. Computation of monthly plant availability factor (PAFM).
9. On the issue of payment of Rs. 164 Cr., M/s. Vedanta Ltd. submitted that due to transmission constraint, its generating station was not able to generate at full capacity and inject GRIDCO's share of power to the state transmission system. The state transmission system was capable of carrying power around 400 MW only in sustainable mode. The same was accepted by the Commission vide its order dated 12.06.2013 in Case No. 117/2013. This order of the Commission was challenged in the APTEL and the APTEL vide its interim order dated 28.03.2014 in I.A. No. 35/2014 (Appeal No. 25/2014) had directed GRIDCO for payment of Rs. 164 Cr. against the dues on account of transmission constraint. The same amount was also allowed by the Commission as pass through in the ARR of GRIDCO for the FY 2016-17 towards the arrear payment to M/s. Vedanta Ltd. Accordingly, GRIDCO had paid the said amount to M/s. Vedanta Ltd. and later vide its letter dated 19.09.2016, demanded a refund of Rs. 164 Cr. referring to the final judgment dated 10.05.2016 of the APTEL passed in Appeal No. 25/2014. However, prior to sending the said letter dated 19.09.2016, GRIDCO had unilaterally and arbitrarily withheld the said amount of Rs. 164 Cr. from the monthly energy charges bills of M/s. Vedanta Ltd. for the month of June & July, 2016 without giving an opportunity of being heard, which is acknowledged by GRIDCO vide its letter dated 11.11.2016. In view of the above M/s. Vedanta Ltd. prayed the Commission to direct GRIDCO to make payment of Rs. 164 Cr. on immediate basis to M/s. Vedanta Ltd. along with its carrying cost upto the date of actual payment.

10. On the above issue, GRIDCO has submitted that the said amount of Rs. 164 Cr. was paid to M/s. Vedanta Ltd. against the period from 2010-11 to 2013-14 as per the interim orders of APTEL dated 28.03.2014 and 29.11.2014 in Appeal No. 25/2014. However, as per the final judgment dated 10.05.2016 in Appeal No. 25/2014, APTEL upheld the Commission's order dated 12.06.2013 in its entirety, wherein there is no mention of any amount being payable by GRIDCO to the petitioner M/s. Vedanta Ltd. Accordingly, after due decision taken by the Board of Directors of GRIDCO, a notice was issued to M/s. Vedanta Ltd. on 19.09.2016 for immediate deposit of Rs. 164 Cr. with GRIDCO account failing which the same would be recovered by way of adjustment from the monthly energy bills towards sale of power to GRIDCO. The petitioner M/s. Vedanta Ltd. had filed I.A. No. 535/2016 before APTEL submitting the said notice of GRIDCO dated 19.09.2016 and the same was dismissed vide APTEL order dated 18.10.2016, which is challenged by M/s. Vedanta Ltd. before the Hon'ble Supreme Court of India. Further, M/s. Vedanta Ltd. has also filed two Civil Appeals No. 30263 & 30264 of 2016 before the Hon'ble Supreme Court of India challenging the APTEL orders dated 10.05.2016 in Appeal Nos. 25/2014 and 179/2014, in which the subject payment of Rs. 164 Cr. is an issue. GRIDCO has submitted that it is legally untenable to raise the same issue before the Commission when the matter is pending before the Hon'ble Supreme Court India.
11. In view of the above, the Commission is not inclined to pass any order on the above issue of payment of Rs. 164 Cr. to M/s. Vedanta Ltd., as the matter is pending before the Hon'ble Supreme Court of India.
12. On the issue of payment of Rs. 36.90 crore towards differential coal cost, M/s. Vedanta Ltd. has submitted that this amount is the differential coal cost for the FY 2013-14 and the Commission vide its order dated 21.03.2016 in Case No. 54/2015 while determining ARR of GRIDCO for the FY 2016-17 has allowed the amount of Rs.36.90 crore towards payment to M/s. Vedanta Ltd. on account of differential coal cost. But GRIDCO has not paid the same to M/s. Vedanta Ltd. Hence M/s. Vedanta Ltd. prayed the Commission to direct GRIDCO to pay the amount on immediate basis along with the late payment surcharge @1.25% per month from February, 2015. On this issue GRIDCO submitted that the said amount has already been paid to M/s. Vedanta Ltd. in terms of adjustment against the recoverable amount of Rs.164 Cr., which has been intimated to the petitioner vide GRIDCO letter dated 11.11.2016.

13. The Commission observed that in the statement of outstanding dues of M/s. Vedanta Ltd. furnished by GRIDCO, the amount of Rs. 36.90 Cr. has been factored into for adjustment against the aforesaid amount of Rs. 164 Crore. Hence there should be no dispute on the said amount of Rs. 36.90 Cr.
14. On the issue of signing of revised PPA M/s.Vedanta Ltd. submitted that the Commission vide its order dated 27.01.2016 in Case No. 21/2015 while allowing the three generating units of the power station as CGP has directed to bring out necessary changes in the PPA and to submit it before the Commission for approval. Accordingly, the draft revised PPA has been submitted to GRIDCO on 27.01.2016, but no response has been received from GRIDCO even after several reminders. Hence, M/s. Vedanta Ltd. prayed the Commission to direct GRIDCO for signing the PPA and comply the direction of the Commission. On this issue GRIDCO has submitted that there is a persisting dispute regarding the Clause 4.0 of the consolidated PPA and its execution needs appropriate adjudication by the Commission. Accordingly, GRIDCO has filed a fresh application before the Commission on 23.11.2016 as per Para-10 of the Commission's order dated 12.06.2013. Once the said case is disposed of, the revised PPA shall be considered for execution.
15. The Commission observed that there is an inordinate delay on the part of GRIDCO for signing the PPA and submit the same for vetting by the Commission. The Commission in its interim order dated 21.09.2016 in Case No. 23/2016 on the prayer of GRIDCO had allowed six weeks time to it to conclude the revised PPA. However, GRIDCO has not submitted anything on this account. Therefore, the present dispute is subsumed in that case and shall be dealt with accordingly.
16. On the issue of computation of Monthly Plant Availability Factor (PAFM), the petitioner M/s. Vedanta Ltd. submitted that SLDC has adopted its own methodology for calculation of PAFM from Nov.' 2010, which is not in line with CERC/OERC Regulations. Hence, the petitioner has prayed the Commission to direct GRIDCO for payment of capacity charge based on the actual PAFM as per CERC/OERC regulations and also direct SLDC to compute the PAFM as per OERC Regulations. On this issue GRIDCO submitted that the calculation of PAFM is being done by SLDC and accordingly capacity charge is being paid. GRIDCO has no role in computation of PAFM. SLDC in its submission stated that it is responsible for preparation of day ahead generation planning for the State considering the generation

availability as declared by all the generators. In case a generator fails to inject as per the declared capacity there will be a mismatch between generation availability and demand resulting over /under drawal from the grid. In the present case the Petitioner's IPP was declaring day ahead schedule considering its installed capacity during the period from November, 2010 to the date of commissioning of 400 KV Vedanta-Meramundali D/C line and was injecting less quantum of power to the State network taking a plea of transmission constraint. Even though SLDC was asking the IPP to inject power as per the schedule, the IPP was neither adhering to the schedule nor revising the schedule. Hence, SLDC was forced to consider the actual generation as declared capacity for computation of PAFM.

17. In normal case the PAFM of a generating station should be computed basing on the Regulations made by the appropriate Commission. However, the Commission in its order dated 12.06.2013 in Case No. 117/2009, 31/2010 and 56/2012 has observed that the 220 KV DC line running between M/s. Vedanta Ltd. and Budhipadar Grid sub-station of OPTCL is capable of carrying power around 400 MW in sustainable mode for which M/s. Vedanta has restricted generation from Unit-II. The Hon'ble APTEL in their judgement in Appeal No. 25/2014 dated 10.05.2016 has also preferred not to interfere in the above said views of the Commission. Therefore, for calculating PAFM of the IPP, the carrying capacity of the line at 400 MW in sustainable mode should be taken into consideration. Accordingly, while calculating PAFM the installed capacity of the IPP (Unit-II) should be taken as 400 MW or actual injection whichever is higher. The aforesaid mechanism should be adopted for the period from November, 2010 till the transmission constraint was resolved.
18. Accordingly, the case is disposed of.

Sd/-
(S.K.Parhi)
Member

Sd/-
(A. K. Das)
Member

Sd/-
(U. N. Behera)
Chairperson