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

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

Case No. 27/2017

M/s. Aarti Steels Limited …… Petitioner
Vrs.
GRIDCO Limited …..... Respondent

In the matter of: **An application under Section 142 of the Electricity Act, 2003 for non-implementation of Order dated 29.12.2015 of the Commission passed in Case No. 26/2015.**

For Petitioner: Satyakam S, Advocate on behalf of M/s. Aarti Steel Limited, Shri Baljeet Singh, Sr. GM (E & I), M/s. Aarati Steel Limited

For Respondent: Shri Tapas Pattnaik, DGM (PP), GRIDCO Ltd.

ORDER

Date of hearing: 11.12.2018 **Date of order:06.06.2019**

The Petitioner M/s. Aarti Steel Ltd. owns and operates a Captive Generating Plant (CGP) having capacity of 90 MW (1 x 50 MW + 1 x 40 MW) at Ghantikhal, Dhenkanal and has filed the petition under Section 142 of the Electricity Act, 2003 for non-implementation of Order dated 29.12.2015 of the Commission passed in Case No. 26/2015.

2. The Petitioner submitted that the Commission in its Order dated 14.03.2008 had determined the Policy for pricing of the surplus power from CGPs, wherein the surplus power injected by the CGPs has been classified as (a) Firm Power (b) Non-firm Power and (c) Inadvertent Power. Subsequently the Commission in its various Orders has determined the price for supply of surplus power to the Respondent from the CGPs and Co-generation plants. Subsequently, the Commission vide its order dated 23.11.2010 passed in Case Nos. 117 & 118 of 2010 had observed as follows:

"*30 (a) The Commission in its Order dtd. 14.03.2008 at Para 12 stated that those Captive Generators who give a commitment for supply of power for a period of more than three months and upto one year shall be considered as supply of Firm Power and those Captive Generators who are capable of giving day ahead schedule but are not in a position to give supply continuously for a period upto three months shall be treated*

as 'Non-Firm' Power. Other than 'Firm' and 'Non-Firm' Power, any injection of power from CGPs to the State Grid shall be treated inadvertent injection of power to the Grid and such inadvertent power would be priced equal to the pooled cost of the hydro power of the State."

X x x x x x x x x x x x x

34 (e) The Captive/Co-generation Plants who would supply inadvertent power/ infirm power within the Operating Frequency Band of 49.50 to 50.18 HZ would be paid at the pooled cost of State hydel power which is 62.51 Paise/KWh for FY 2010-11 as approved by the Commission and any inadvertent injection at a frequency of 50.20 Hz and above shall be considered as "Free Power" to the State Grid. Any injection over the implemented schedule at a frequency within the Operating Frequency Band of 49.50 to 50.18 HZ should also be paid at 62.51 Paise/KWh during FY 2010-11 (from 10.11.2010 to 31.03.2011)."

3. The petitioner has submitted that from the above observations of the Commission, the CGPs have been treated as 'must run' plant and entitled to inject their surplus power to the state grid without the need for any schedule and/or agreement/LoI with GRIDCO. But GRIDCO had not made payment to the CGPs at the tariff decided by the Commission in their aforesaid order dated 23.11.2010.Therefore, based on the petition filed by the CCPPO under Section 142 of the Electricity Act, 2003, the Commission at Para-34.1 of its order dated 29.08.2011 passed in Case No. 22/2011 had observed as follows:-

"34.1. x x x x x. Hence, for all practical purposes the injection of infirm power and inadvertent power would be treated under the same commercial principle i.e. the rate as approved by the Commission i.e. at the pooled cost of the hydro power of the State for the respective years."

4. The Petitioner has submitted that since GRIDCO did not clear the dues of any of the CGPs, CCPPO had filed a petition under Section 142 of the Electricity Act, 2003 against GRIDCO for non-compliance of the aforesaid order dated 01.10.2012 which was registered in Case No. 30/2013 and the Commission vide its order dated 12.05.2015 passed in this case had directed GRIDCO to complete the reconciliation statement within 02.07.2015 and submit the compliance report to the Commission by 05.07.2015. Since GRIDCO did not undertake the reconciliation of the dues of CGPs as per the above direction of the Commission M/s. SMC Power Generation Limited had filed a petition under Section 142 of the Electricity Act, 2003 for implementation of the aforesaid order dated 12.05.2015, which was registered in Case No. 26/2015 and the Commission vide its order dated 29.12.2015 passed in Case No. 26/2015 had observed as follows:

19. The Commission observed that the existing slab rates fixed by the Commission in earlier orders are applicable for purchase of surplus CGP power. In absence of

acceptance of LoI by CGP, if its declaration of availability is accepted by SLDC i.e. its power is scheduled by SLDC, payment by GRIDCO to the CGP shall be made in accordance with the slab rate fixed by the Commission. If the declaration of availability of CGP is not accepted by the SLDC and 'zero' schedule is made for that CGP, then the power if injected by the CGP within the conditions specified will be considered as inadvertent injection and paid at the rate of inadvertent power, as the CGPs have been declared as 'must run' units in the said order of Commission. However, the power injected by CGPs beyond the schedule or the power injected at 'zero' schedule at 50.20 Hz or above, shall be priced at 'zero' cost."

5. The petitioner has submitted that at Para-22 of the said order the Commission had mentioned that *"the issues addressed above are also applicable to similarly placed CGPs and co-generation plants supplying their surplus power to GRIDCO for the stated period"*. However, GRIDCO has reconciled the account of the petitioner upto 16.02.2014 as per the Commission's order dated 29.12.2015 passed in Case No. 26/2015. But from 17.02.2014 to March, 2015 GRIDCO has paid for the firm power only and not paid for the inadvertent injection of power by its CGP. In other hand, from February, 2014, GRIDCO is raising bills of deviation charges on the petitioner for under injection as per the CERC Deviation Settlement Mechanism (DSM) Regulations without adopting similar charges prescribed therein for over injection. The petitioner has stated that such practice of GRIDCO is illegal and erroneous in light of the fact that the Commission in its Intra-State ABT Regulations, 2007 has notified for applicability of UI charges on the CGPs, not the deviation charges as prescribed by CERC. The petitioner stated that since the CGPs function continuously they must be treated as 'must run' power plant and inadvertent power flow by the CGP should be priced at the pooled cost of the hydro power in the State till Intra-State DSM Regulations is notified by the Commission.

6. In its rejoinder, the petitioner has submitted that GRIDCO has issued a Letter of Intent (LoI) dated 12.05.2015 expressing its willingness to purchase surplus co-generation power, wherein it was mentioned that if any communication is not received by GRIDCO in this regard within the above period then it would be construed that the LoI have been accepted by the party. Conditional offers/acceptance for sale of power to GRIDCO would not be entertained. Parties were also requested to intimate the available surplus co-generation power of their unit for the financial year (2015-16). In the meantime, the petitioner had scheduled its power for the period from 01.04.2015 to 12.05.2015 with SLDC. But the same was not accepted by SLDC making it 'zero' schedule. Subsequently GRIDCO had issued another letter dated 12.08.2015 wherein it had requested the petitioner to intimate the earlier surplus power for the FY 2015-

16. In response to that letter, the petitioner had replied to GRIDCO stating that it was in a position to supply its entire co-generation power to GRIDCO after meeting its RPO obligations. Further, GRIDCO had issued a letter dated 08.10.2015 requesting the petitioner to intimate the quantum of surplus power and duration in months that could be scheduled at the rate approved by OERC for the FY 2015-16 and the petitioner had expressed its willingness to supply 2 MW power. Therefore, since the petitioner had accepted the LoI of GRIDCO, he ought to be paid at the firm rate notwithstanding the fact that SLDC made the 'zero' schedule.

7. The petitioner further submitted that refusal of GRIDCO to make payment for the inadvertent power supplied by its CGP to the grid from 17.02.2014 onwards is patently inconsistent with the orders of this Commission. The Petitioner has continuously raised bills on GRIDCO in this respect and total outstanding dues payable by GRIDCO would amount to Rs.5,00,48,045/-.

8. The petitioner has further submitted that he has obtained medium term open access approval from PGCIL to wheel 12 MW RTC power and 4.5 MW RTC power from its CGP at Ghantikhal, Odisha to Aarti International Limited and Aarti Steel Limited both located in Punjab w.e.f. 01.12.2016 to 31.05.2018 in terms of CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in Inter-State Transmission and Related Matters) Regulations, 2009 and for wheeling of 8 MW power through Short-term Inter-State Open Access. He had applied for grant of NoC for the above transaction of power and also for selling 25 MW RTC power through power exchange from 01.02.2017 to 31.03.2017. SLDC asked GRIDCO to grant 'commercial clearance' for the above transaction of power and due to denial of the same by GRIDCO the petitioner was refused to avail its right of open access as per the Act. The petitioner submitted that for grant of NoC for availing open access, GRIDCO/SLDC required him to submit an undertaking that it shall not inject any power to the grid for sale to GRIDCO. The above action of SLDC is entirely and wholly illegal as being without authority of law and unsupported by the act or rules and regulations made there under and deprives the petitioner of its right guaranteed under the Act. The only criteria for providing open access are the availability of adequate transmission facilities which has clearly not been stated to be a constraint in the case of the petition.

9. In view of the above, the petitioner has prayed the Commission to direct GRIDCO to pay him a sum of Rs.5,00,48,045/- in respect of power supplied by him to the state

grid from 17.02.2014 onwards and also continue to make payment of the dues for injection of 'zero schedule' power as per the Commission's order dated 29.12.2015 passed in Case No. 26/2015.

10. The respondent GRIDCO has submitted that the Commission in their order dated 28.10.2009 passed in Case No. 06/2009 at Para-19 (vi) has directed both the CGPs and GRIDCO for signing of agreement for supply of power to GRIDCO. Accordingly, GRIDCO issued LoI to the CGPs for supply of power by them on short term basis based on the guidelines decided by the Board of Directors of GRIDCO. The last LoI was issued on 24.04.2014 to the petitioner for supply of its surplus power for the period from May, 2014 to March, 2015. Further, after issue of the Commission's order dated 29.12.2015 (Case No. 26/2015) and 19.07.2016 (Case No. 08/2016), GRIDCO conducted a meeting with the members of CCPPO where the upper limit of operating frequency for payment of dues of the CGPs was agreed as 50.04 Hz as per the CERC DSM Regulations. GRIDCO further submitted that as mandated in Section 32 (2) (a) of the Electricity Act, 2003 *"The State Load Despatch Centre shall be responsible for optimum scheduling and despatch of electricity within the State, in accordance with the contract entered into with the licensee or the generating companies operating in the State."* Since the contract period as per the LoI had expired on 31.03.2015, no scheduling was made by SLDC towards supply of power by the petitioner to GRIDCO. Hence, the reconciliation of bills of the petitioner was made by GRIDCO upto March, 2015 in absence of any contract and scheduling thereafter. The total reconciled amount for the period from 17.02.2014 to 31.03.2015 was arrived at Rs.1,29,63,215/-. After adjustment of GRIDCO's receivables, an amount of Rs.28,50,474/- was paid to the petitioner on 26.11.2016. Hence, GRIDCO submitted that the claim of the petitioner for non-payment of dues from 17.02.2014 till date is not correct.

11. GRIDCO further submitted that in this connection the order dated 08.05.2017 of the Hon'ble ATE passed against Appeal No.120/2016 and I.A. No. 272/2016 reveals as follows:-

"Para-9(g)- " x x x x x x x x .... This Tribunal in the judgments in Appeal Nos. 267 of 2014 and 68 of 2014 also held ***that energy pumped into the grid without consent/agreement and schedule, need not be compensated****."*

Para-10 (b) (ii) "x x x x x x x x x x The energy pumped by the Appellant on all the three occasions as indicated above is clear violation of the above terms and conditions of the connectivity/open access granted by TANTRANSCO as there was no contractual agreement with the Respondent No-1 and there is also no provision for accounting of

injection of excess energy during the period under dispute by Appellant as per connectivity and open access grant by TANTRANSCO."

Para-l0 (b) (iii) "xxxxxxxxxxxxxx .... From the combined reading of all the above provisions and the communications exchanged between the Appellant and the Respondent No.1, ***it is clearly established that the Appellant has pumped the energy on its own without entering into any contract with Respondent No.1 and without the knowledge/ schedule from SLDC. The energy pumped into the grid during the period under dispute by the Appellant is unauthorized and does not call for any payment by the Respondent No.1****.*

Para-l0(c) i "xxxxxxxxxx .... Here we would like to mention that ***each entity created under the Electricity Act, 2003 has a clear defined role. In this case, the responsibility of regulation of power inflow into the grid from all suppliers lies with SLDC in accordance with Section 32 of the Electricity Act, 2003, based on the contractual agreements entered by the distribution licensee with power generators suppliers through a well-established system of scheduling.*** *It is the duty of everyone connected with the operation of the power system to comply with the directions of the SLDC in its control area. In the instant case, the Appellant has not sought any approval/ schedule from SLDC before synchronization for pumping any power into the grid. Even the SLDC was not aware of the power pumped during this period by the Appellant into the grid. Hence, the onus of the wrong doing by the Appellant cannot be shifted to the Respondent No.1."*

Para-(10) (g)(i)"The safe and economic operation of the grid is of utmost importance. In this regard, many regulations, rules and procedures have been made by the Central/State Regulator(s). Maintenance of the grid discipline is the responsibility of all the stakeholders. ***The Appellant has pumped power into the grid without knowledge obtaining prior approval of the SLDC and without any valid agreement contract with the Respondent No.1. t If every generator starts injecting power into the grid without prior approval of the grid operators/LDCs and without valid contractual agreements this may jeopardise secure grid operations and may lead to catastrophe.*** *The action of the Appellant is not justified and moreover pleading that there was no such impact in the instant case is misplaced."*

Para-10(I) iv "XXXXXXXXXXXXXX .... ***The crux of these two judgments is also that a generator cannot pump electricity into the grid without having consent/contractual agreement with the distribution licensee and without the approval/ scheduling of the power by the SLDC. Injection of such energy by a generator is not entitled for any payments."***

12. Further, GRIDCO submitted that the aforesaid order of the Commission pertain to payment of CGP dues for a particular period only but not for indefinite period. Further from the above judgment of the Hon‘ble ATE GRIDCO inferred that injection of power by the petitioner without contract and without schedule is unauthorised and not entitled for any payment. GRIDCO stated that the petitioner in its petition has cited the rate of inadvertent power and mis-understood it as the direction of the Commission for payment at the said rate without any subsisting agreement which has been observed by the Hon’ble ATE at Para-10 (b) (iii) of their order dated 08.05.2017 in Appeal No. 120/2016 and I. A. No. 272/2016. In the referred orders of the Commission, no where

it has been mentioned to pay the CGP for inadvertent injection of power at hydro pooled cost without any contract with GRIDCO. Rather in its orders, the Commission had directed the CGP to sign agreement with GRIDCO for supply of power. Further, the Commission in its orders while approving the ARR of GRIDCO for the FY 2014-15 to 2018-19 has not approved purchase of power by GRIDCO from the CGPs.

13. GRIDCO in its additional submission has mentioned that the LoI dated 12.08.2015 was issued by GRIDCO with reference to the LoI dated 12.05.2015 and as per the terms and conditions of LoI dated 12.05.2015 at Clause 3 (c) there shall not be any payment for injection at zero declaration by the co-generation plant or zero implemented schedules or without schedule. Hence, the petitioner is not liable for any payment for injection of power after 31.03.2015 i.e. upto the period GRIDCO was having an agreement with petitioner for supply of power. GRIDCO further submitted that nowhere in the referred orders of the Commission it has been mentioned to pay the CGPs with hydro pool cost without any contract with GRIDCO. The unauthorized injection of power by the petitioner for a very short period due to load throw from its industry normally acts as a jerk which is absorbed by State grid by maintaining stability and reliability of the industry of the petitioner. Without compensating for such negative impact in the grid, the petitioner is claiming charges for the same.

14. Regarding the issue of NOC by SLDC for Open Access as mentioned by the petitioner, GRIDCO has submitted that this is extraneous to the present petition as the NOC is being issued by SLDC and the petitioner has filed this petition u/S. 142 of the Electricity Act, 2003 for non-implementation of order dated 29.12.2015 of the Commission passed in Case No. 26 of 2015. The petitioner may file a separate petition against the proper respondent regarding issue of NOC for Open Access.

15. In view of the above the respondent GRIDCO has submitted that they have cleared all the dues of the petitioner as per the direction of the Commission for the period having subsisting contract with the petitioner and they have got no liability to pay anything to the petitioner towards un-authorised injection of power by him. Hence, the petition filed by the petitioner is devoid of any merit and liable for outright rejection.

16. Heard the parties at length. Their written notes of submission are taken into record. The Commission observed that the Petitioner in the instant case has raised two issues, one regarding receipt of its dues from GRIDCO towards supply of surplus power from its CGP to the State Grid and another regarding NOC from SLDC for availing open access. On the second issue the Commission agrees with the submission of the

Respondent GRIDCO that the petitioner may file a separate petition involving SLDC and others as respondents.

17. On the first issue, regarding supply of surplus power from its CGP, the Commission is of the view that any supply from an independent generator or a CGP can only be effected through a contract. That means the buyer and the seller both have to agree for purchase and sale of power. In this regard we are quoting the order of the Commission in Case No. 16/2018 dated 09.04.2019 where the Commission on the same issue has held as under.

> *"13. We are aware that the power which is inadvertent in nature cannot be speculated or ascertained ahead of its injection. Injection of such inadvertent power arises out of obligation/contract to supply power to the licensee. This injection should be within the full knowledge of GRIDCO and SLDC through a contract and a valid schedule so that safety of the grid at no situation is affected. Power system cannot be a dumping ground for unwarranted power. Injecting erratically and claiming compensation for the same amount to unsafe grid operation and unnecessary enriching of any injector of power such as a CGP, who has no intention of selling power to GRIDCO. Rather it should be treated as a source of pollution in the grid.*
>
> *14. In view of the above, we observe that two basic ingredients that are necessary for payments towards transaction of power between a generator (CGP) and the licensee (GRIDCO) are (i) there should be a subsisting contract between them and (ii) there should be a day ahead schedule for grid discipline. GRIDCO must pay the CGPs for their scheduled power and the inadvertent power injected during such schedule and currency of a subsisting contract. XXXXXXXXXX. "*

18. In view of the above findings of the Commission, it is directed that the bills of the Petitioner be reconciled by both the parties within one month and the reconciled bills be paid to the Petitioner within 15 days thereafter.

19. Accordingly, the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(U. N. Behera)
Chairperson