

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. 31/2017

M/s. GRIDCO Ltd.	Petitioner
Vrs.		
M/s. Indravati Power Private Ltd. & Others	Respondents

In the matter of: **An application under Section 86 of the Electricity Act, 2003 and other enabling provisions for seeking approval of PPA executed with M/s. Indravati Power Pvt. Ltd. for procurement of power from their upcoming 2 MW Indravati-1 & 1.5 MW Indravati-II small hydro electric projects on Indravati Right Main Canal at Mahipani & Tuteuruguda Village in Kalahandi District.**

For Petitioner: Smt. Sasmita Patra, Manager (RE Cell), GRIDCO Ltd., Shri S. S. Naik, Sr. GM (PP), GRIDCO Ltd.,

For Respondent: Shri R. P. Mahapatra, the authorized representative on behalf of the petitioner M/s. IPPL, Shri B. Nageswara Rao, GM, M/s. IPPL, Shri K. C. Nanda, DGM (Fin.), WESCO Utility, Shri Suryamani Sahoo, Executive Engineer (Elect.), O/o. EIC (Electricity)-cum-PCEI, Shri D. N. Naik, DM (Legal), NESCO Utility, Shri L. D. Upadhyaya, AGM (Com.), SOUTHCO Utility, Shri B. B. Nayak, SOUTHCO Utility and Shri Nasim Kumar Misra, Manager (Elect.), CESU are present.

Nobody is present on behalf of DoE, GoO. The rejoinder filed by GRIDCO Ltd. and reply to the said rejoinder submitted by M/s. IPPL are taken on record.

ORDER

Date of hearing: 04.09.2018

Date of order: 09.04.2019

M/s. Indravati Power Private Limited (IPPL) had entered into a Memorandum of Understanding (MoU) with the Government of Odisha on 09.10.2006 for establishment of 2 MW (2 x 1 MW) Indravati – I and 1.5 MW (2 x 0.75 MW) Indravati – II Small Hydro Electric Power Projects located on Indravati Right Main Canal at Mahipani and Tuteuruguda village in Kalahandi District. The 59th State Technical Committee (STC) issued the Techno Economic Clearance (TEC) for the above two SHEPs on 16.08.2014 with a total estimated cost of Rs.26.26 crore. IPPL approached GRIDCO to execute the PPA for selling its entire

power to be generated from the two SHEPs. GRIDCO being the State Designated Agency for bulk purchase and supply of power, executed the PPA with IPPL on 27.11.2015. The petitioner GRIDCO now has filed this application before OERC for approval of the said PPA. GRIDCO wants to fulfill the non-solar renewable purchase obligation (RPO) by purchasing such power from the Indravati SHEPs.

2. The terms and conditions of the PPA were as follows:

- (a) Term of the agreement shall be 35 years from the date of commercial operation.
- (b) Tariff for the above two SHEPs shall be as determined by OERC vide its order dated 15.01.2014 in Case No. 80/2013.
- (c) Power generated by the two SHEPs shall be evacuated by the 33 KV line to be constructed by the Developer at their own cost.
- (d) It was proposed to install communication system for voice as well as data transmission through suitable PLCC equipment over the inter-connecting 33 KV line from IPPL to 33/11 KV Mukhiguda sub-station etc.
- (e) Energy account issued by SLDC shall be binding on both the parties for billing and payment purposes.
- (f) 2% rebate shall be allowed on payment of bills within seven business days of GRIDCO. Also a surcharge @1.25% per month on the amount of the bill remaining unpaid shall be payable for the actual period of delay beyond 60 days from the date of presentation of the bill.
- (g) Resumption of supply to GRIDCO is subject to the decision of Govt. of Odisha/OERC.
- (h) The project will be implemented within 24 months from the date of signing the Implementation Agreement.
- (i) Dispute if any shall be referred to OERC for adjudication.

3. M/s. IPPL submitted that they had received the copy of draft PPA to be executed between the parties from GRIDCO on 20.02.2015. Many of the clauses of the draft PPA were not in accordance with existing rules and regulations. In view of that, IPPL had submitted its para-wise comment on the draft PPA to GRIDCO on 3rd March, 2015. In order to avoid delay in making the application for funding of the project, IPPL agreed to sign the PPA based on the original draft and executed the same on 27.11.2015 and decided to raise issues of amendments on PPA before the OERC at the time of the proceedings for approval of the

PPA. IPPL has prayed the Commission to direct GRIDCO to execute the amended PPA accepting the submissions made in its letter dated 3rd March, 2015.

4. The Commission in its interim order on 28.07.2018 directed GRIDCO to furnish its views on the agreed and disagreed clauses of the draft PPA as served by IPPL. Based on the said order of the Commission, GRIDCO submitted that some of the general clauses of PPA signed with M/s. Baitarani Power Project Pvt. Ltd. (executed on 18.12.2015) were also acceptable in case of M/s. IPPL. The agreed points can be incorporated in the PPA executed on 27.11.2015 with M/s. IPPL. On the disagreed points, the Commission may take suitable decision in line with the order passed in case of M/s. Baitarani Power Project Pvt. Ltd.
5. The representative of M/s. IPPL prayed the Commission to allow the revision of PPA executed between M/s. IPPL and GRIDCO Ltd. dated 27.11.2015 in line with the agreed points of GRIDCO.
6. Heard the parties at length. We have taken into consideration both oral as well as written submission of parties. The Commission has to examine the signed PPA within the Regulatory framework balancing the interests of all the stakeholders and protecting interest of the State consumers as per Electricity Act, 2003. We analyse the issues of the PPA raised in this petition to bridge the gap between the parties within the framework of law.
7. **Unresolved Issues in the PPA**

(a) **Clause No. 1.0 (b) 23:**

Inter-connection point - Shall mean point of Connection at nearby 132/33 KV sub-station of OPTCL.

The contention of M/s. IPPL that inter-connection point shall mean the inter-connection point at 33/11 KV Sub-Station of WESCO Utility i.e. for Indravati-I the existing 33/11 KV Sub-Station at Mukhiguda and for Indravati-II the LILO Sub-Station on the 33 KV Junagarh to Rampur line of WESCO in Kalahandi District.

GRIDCO did not raise any issue over the contention of M/s. IPPL.

Hence, we are of the view that the inter-connection point shall mean point of connection at nearby 33/11 KV DISCOM's sub-station as agreed above.

(b) **Clause No. 7.1:**

Billing – The monthly bill for the station shall be in accordance with the provisions of the Agreement.

IPPL shall present the monthly bill after the end of each calendar month for energy supplied to GRIDCO from the small hydro station as per the Energy Account of the

concerned month issued by SLDC along with reasonable details and supporting documents.

Monthly bills shall be presented physically in the Office of Sr. GM (PP), GRIDCO under due acknowledgement.

M/s. IPPL submits that the Clause may be amended to enable IPPL to present the monthly bill based on the meter reading taken on or after the first day of the month and not based on the Energy Account issued by SLDC.

GRIDCO sticks to the original clause of the PPA.

In our view, the energy account statement issued by EBC/SLDC provides fair assessment of energy transactions. Therefore, the bills should be prepared based on the basis of EBC data. The same shall be submitted on or before 5th day of the succeeding month by M/s. IPPL. In case EBC data is not available within 5th of succeeding month, M/s. IPPL is at liberty to raise the provisional bill on the basis of Joint Meter Reading, which shall be accepted by GRIDCO for processing payment. Any discrepancy in meter reading or EBC shall be settled in the next month transaction. We direct to incorporate the same in the PPA.

(c) **Clause No. 1.0 (b) 27**

Monthly Bill – *Shall mean a bill presented by IPPL for payment in respect of energy supplied during the preceding month.*

M/s. IPPL submitted that monthly bill should mean a bill presented by IPPL, based on the Energy Accounts of EBC/SLDC to GRIDCO for payment in respect of energy supplied during the preceding month.

We agree with the definition submitted above by M/s. IPPL since GRIDCO has no objection to it.

We direct that the PPA may include the monthly billing provision as stated in Clause 7.1 above in line with the above definition.

(d) **Clause 5**

Energy Accounting – *Energy Accounts issued by SLDC, by the first week of every month, shall be binding on all the parties for billing and payment. IPPL shall prepare and submit monthly bill/supplementary bill(s) to GRIDCO on the basis of such Energy Accounts.*

M/s IPPL submitted that a new sub-clause 5.3.4 of the approved PPA of BPPPL may also be added to the revised IPPL PPA.

GRIDCO in its submission has not contested this view of the petitioner. The clause 5.3.4 in PPA with BPPCL reads as follows:

“Clause 5.3.4 reads as “BPPPL shall prepare and submit monthly bill/supplementary bill(s) to GRIDCO on the basis of such Energy Accounts. In case the EBC data is not available within 5th of succeeding month then BPPPL is at liberty to raise the bill on the basis of Joint Meter Reading”.

Therefore, we direct that IPPL shall prepare and submit monthly bill/supplementary bills(s) to GRIDCO on the basis of Energy Accounts of SLDC. In case the EBC data is not available within 5th of succeeding month then IPPL is at liberty to raise the bill on the basis of Joint Meter Reading.

The above provision of energy account is as per PPA of BPPPL with GRIDCO on which GRIDCO had no objection.

Clause 7.3

- (e) **Rebate and Late Payment Surcharge** – *Two percent (2%) rebate shall be allowed on payment of bills within 7(seven) business days of GRIDCO excluding the date of presentation of the bills. If payments are made beyond 7 business days of GRIDCO but within a period of one month from the date of presentation of bill, a rebate of One percent (1%) shall be allowed.*

A Surcharge calculated at the rate of one point two five percent (1.25%) per month on the amount of the bill remaining unpaid shall be payable for the actual period of delay beyond sixty (60) days from the date of presentation of bill.

The rate/percentage of rebate and late payment surcharge shall be in line with the OERC guideline as amended from time to time.

M/s. IPPL stated that the Rebate for payment within 30 days was acceptable. However, the provision in the second para that “A surcharge calculated at the rate of one point two five percent (1.25%) per month on the amount of the bill remaining unpaid shall be payable for the actual period of delay beyond sixty (60) days from the date of presentation of bill” was inequitable. In this regard M/s. IPPL has referred to Para 498 of our Retail Supply Tariff order for FY 2018-19 where it has been mentioned that if payment is not made within the due date, Delayed Payment Surcharge shall be charged for every day of delay at 1.25% per month on the amount remaining unpaid (excluding arrears on account of DPS) in respect of some categories of consumers.

Even accepting that GRIDCO shall be entitled to a rebate of 1% for making payment of the bill of the SHEP within 30 days of receipt of the bill, the provision that DPS is leviable only after 60 days i.e. after 30 days of due date of payment was inequitable, because any HT or EHT consumer has to pay DPS calculated on the delay after the due date of payment for rebate. Therefore, the second para of Clause 7.3 may be revised to read as follows:

“A surcharge calculated at the rate of one point two five percent (1.25%) per month on the amount of the bill remaining unpaid shall be payable for the actual period of delay beyond thirty (30) days from the date of presentation of bill.”

GRIDCO agreed for payment of bills through Letter of Credit or by Cash within two working days (except holidays under NI Act) for which 2% rebate shall be allowed.

Since the Commission has already decided the matter in Case No. 80/2013 we direct that in case of payment through LC or by cash transfer within 2 working days a rebate of 2% shall be allowed. Where payment is made other than through LC within a period of one month of presentation of the bill, a rebate of 1% shall be allowed. If the payment is delayed beyond a period of 60 days from the date of billing, a late payment surcharge @ 1.25% per month shall be levied by the generating company.

We decide accordingly in line with above.

Clause 7.4

(f) Third party sale on account of default in payment

In the event direct payment of the dues is not made by GRIDCO, resulting an amount equivalent to the bills of two months (two months of average of the previous six months) remains outstanding for a period exceeding 60 days, then IPPL shall restrict the right offered to GRIDCO for the capacity and dispatch output of the power station wholly or partially as the case may be and shall be at liberty to undertake third party sale of its power either in full or in part with due approval of Govt. of Odisha and OERC. GRIDCO shall have no objection for such third party sale.

In case of third party sale, extra revenue earned, if any over and above the revenue that could have been earned by sale of power to GRIDCO will be adjusted against outstanding dues of GRIDCO. Resumption of supply to GRIDCO is subject to the decision of Govt. of Odisha/OERC.

M/s. IPPL's contention is that clause 7.4 above of the approved PPA of BPPPL is highly inequitable and, therefore, the Commission may revise the same as follows:

“In the event direct payment of the dues is not made by GRIDCO, resulting in an amount equivalent to the bills of two months (two months of average of the previous six months) remains outstanding for a period exceeding 60 days, then IPPL shall restrict the right offered to GRIDCO for the capacity and dispatch output of the power station wholly or partially as the case may be and shall be at liberty to undertake third party sale of its power either in full or in part. GRIDCO shall have no objection for such third party sale.

Resumption of supply of power to GRIDCO shall be immediately after settlement of the power purchase dues by GRIDCO.”

From the above submission of IPPL it is clear that they are not agreeable to adjust the extra revenue they would earn by third party sale with outstanding dues of GRIDCO.

However, GRIDCO stated that extra revenue if any shall be adjusted against DPS dues payable by GRIDCO.

The Commission finds it appropriate to continue with the existing provision including that on extra revenue from third party sale to be adjusted against the outstanding dues of GRIDCO. Further, in case of 3rd party sale, the power supply to GRIDCO Limited shall be immediately resumed after settlement of the power purchase dues by GRIDCO Limited.

Clause 9.0

(g) Delayed Commissioning

- (i) In the event that the actual COD of the Project occurs after the scheduled COD of the Project as per the Implementation Agreement executed, such day on which the Project is commissioned shall be taken as COD of the Project.
- (ii) The Project will be implemented within 36 months from the date of signing of the Implementation Agreement except any delay under Force Majeure clause.
- (iii) In case of delay in commissioning, the Company shall be liable to pay to GRIDCO for the less energy which could not be generated or exported to GRIDCO due to delayed commissioning. This shall be compensated at the rate of the actual market price of the non-solar RECs during that period. The amount is to be later adjusted from the energy invoices raised by the Company after the CoD of the project spread over the PPA period with applicable delayed payment surcharge.

IPPL submitted that they have already obtained the financial closure. Therefore, as per IPPL Clause 9 of the existing PPA stated above may be revised as follows:

- 9(i) As existing
- 9(ii) As existing
- 9(iii) The existing sub-clause may be replaced by the following:

“In case of delayed commissioning attributable to the developer, IDC shall not be capitalized and shall be borne by the developer.”

The Petitioner GRIDCO stated that the project should be commissioned within 36 months of signing of PPA. In case of delayed commissioning attributable to the developer, IDC shall not be capitalized and shall be borne by the developer.

If Financial Closure (FC) does not take place within 3 months of signing of PPA or such extended period not over 6 months, the PPA shall stand cancelled.

Considering all these, the commission is of the view that clause (i) on delayed commissioning from the date of signing of PPA by both Parties should remain in the PPA and the Clause (ii) & (iii) may state as follows: The project should be commissioned within 36 months of signing of the PPA. In case of delayed commissioning attributable to the developer, the interest during construction (IDC) shall not be capitalized and shall be borne by the developer. M/s. IPPL shall submit anticipated milestones till COD to be signed by both parties with PERT chart for completion during the stated period. In case any dispute arises, whether or not the delay is attributable to the developer, the decision of the Commission shall be final.

Clause 16.0

(h) Effective date and Duration of Agreement

The agreement shall come into force from the date of the Agreement for all purposes and intents and shall remain operative initially up to completion of thirty five (35) years from the Date of commercial Operation of last unit of the station and may be extended beyond the same on mutually agreed terms and conditions but no later than the operation period.

IPPL's contention is that in accordance with the submission of GRIDCO in its Rejoinder dated 03.09.2018 and the provision in the revised PPA of BPPPL, the Clause 16 of the existing PPA of IPPL may be revised to read as follows:

“The agreement shall come into force from the date of signing of the Agreement for all purposes and intents and shall remain operative initially upto completion of twenty five (25) years from the Date of commercial operation of last unit of this Station which is extendable for further period in accordance with the agreement of the parties and due approval of the Commission.”

In view of our observation in Para 21 of the order dated 15.01.2014 passed in Case No. 80/2013 we direct that the present PPA should have a tenure of 25 years

from the date of commercial operation of last unit of the station which is extendable for further period in agreement of parties in PPA with due approval of the Commission.

(i) **New Clause suggested by M/s IPPL**

Deemed Generation

The present PPA does not provide for payment towards “Deemed Generation”. It is provided in para 27 of the OERC order dated 15.01.2014 in Case No. 80/2013 that *the Small Hydro Projects shall be treated as “Must Run” power plants and not subjects to “merit order dispatch principles”. However, this order provides that the RE projects of capacity 5 MW and above shall be subject to scheduling procedure as specified in the OGC/IEGC. Therefore, SLDC may, in exigencies, direct reduction of generation.*

The SHEP may also be unable to generate power on account of failure of the grid. Therefore, a “Deemed Generation” clause may be included in the PPA.

GRIDCO has not offered any view on this. M/s IPPL, the SHEP further submitted that it may face reduced annual generation due to reasons beyond its control on account of non-availability of the Transmission /Distribution system of OPTCL/WESCO or on receipt of backing down Dispatch Instruction from SLDC, resulting in spillage of water. Therefore, the energy charges on account of such spillage shall be payable to IPPL by GRIDCO.

We observe that the situation depends upon pondage capacity and its design. Therefore, it is appropriate for the generator to address this issue during design and operation of the power plant. If any issue survives, the petitioner is at liberty to approach the Commission with adequate justification as and when such situation arises. The PPA is to operate within the existing Rules and Regulations as amended from time to time. It is premature to comment on this subject at present.

Assignment

M/s. IPPL submitted that a clause on Assignment may be incorporated in the PPA in line with the PPA of BPPPL with GRIDCO. This is because the BPPPL PPA provides for Successors and Assigns of GRIDCO. M/s IPPL submitted that the following clause on Assignment may be added in the approved PPA.

“The developer may, for the purpose of arranging and rearranging finance for the 3.5 MW Indravati-I & Indravati-II SHEPs, assign or otherwise transfer all or any portion of its rights and benefits, but not its obligations, under the Agreement to any other person or entity and such persons or entity shall there upon become vested with all the benefits in respect thereof granted to the developer herein or otherwise.”

GRIDCO has not raised any objection.

We are of the opinion that a clause on Assignment as proposed by M/s IPPL may be incorporated in the PPA subject to both parties agreeing to it.

14. Accordingly, we direct both the Parties to modify the PPA as per our observation in this order along with other points agreed by the Respondent in its reply dated 04.09.2018 to the rejoinder of GRIDCO dated 03.09.2018. The revised PPA should be submitted for approval of the Commission within one month of this order
15. With the above observations and directions, the case is disposed off.

Sd/-

(S. K. Parhi)
Member

Sd/-

(A. K. Das)
Member

Sd/-

(U. N. Behera)
Chairperson