

**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. 01/2017

GRIDCO Limited	Petitioner
Vrs.		
M/s. Jindal India Thermal Power Ltd. & another	Respondents

In the matter of: An application under Section 86 of the Electricity Act, 2003 read with Regulation Section 21 of the OER Act, 1995 and other enabling provisions seeking approval of the Power Purchase Agreement dated 05.01.2011 and the Supplementary Agreement dated 23.07.2013 executed between the petitioner-GRIDCO Ltd. and M/s. Jindal India Thermal Power Ltd. for procurement of State share power by GRIDCO Ltd. as the State designated agency.

Case No. 64/2017

M/s Jindal India Thermal Power Ltd.	Petitioner
Vrs.		
GRIDCO Limited	Respondent

In the matter of: An application u/S. 62 & 86 (1) (b) & 86 (1) (f) of the Electricity Act, 2003 seeking direction for amendment of the Power Purchase Agreement dated 05.01.2011 and Supplementary Power Purchase Agreement dated 23.07.2013 executed between GRIDCO Ltd. and M/s. Jindal India Thermal Power Ltd.

For Petitioner: Mr. Arjit Maitra, Advocate on behalf of GRIDCO Ltd., Mr. S. S. Nayak, GM (Elect.), GRIDCO Ltd., Susmita Mohanty, AGM (Elect.), Sukanta Panda, DGM (Elect.) GRIDCO Ltd.

For Respondent: Shri Sanjay Sen, Sr. Advocate, Shri Matrugupta Mishra, Advocate on behalf of M/s. JITPL, Mr. Nilesh Nema and Mr. Sanjay Mittal on behalf of M/s. JITPL are present.
Nobody is present on behalf of DoE, GoO.

ORDER

Date of hearing: 24.04.2018

Date of order: 04.06.2019

The factual matrix of the case is that a Memorandum of Understanding (MoU) was signed between Government of Odisha and M/s. Jindal Photo Limited (M/s. JPL) on

26.09.2006 for setting up a thermal power plant having capacity of 1000 MW. Accordingly, GRIDCO had signed the principal PPA on 28.09.2006 with M/s. JPL.

2. Subsequently through supplemental MoUs on 14.05.2008, 17.10.2008, 13.01.2010, 30.12.2010 between Govt. of Odisha and M/s. JPL the following changes were brought about in the original MoU. They are as follows:

- (a) The change of name from M/s. Jindal Photo Limited (M/s. JPL) to M/s. Jindal India Thermal Power Limited (M/s. JITPL).

- (b) The capacity of the plant was enhanced from 1000 MW to 1800 MW.

- (c) Incorporation of a new policy guideline of Govt. for provision of employment of oustees of the project and local people of the State.

- (d) The validity of the MoU was extended for one year beyond its expiry date 26.09.2010.

3. Pursuant to the provisions of the aforementioned supplemental MoUs, the principal Power Purchase Agreement (PPA) dated 28.09.2006 was restated and a fresh PPA was executed between the M/s. JITPL and GRIDCO Ltd. on 05.01.2011, wherein the parties inter alia agreed as follows:-

“ 2.2 Entitlement of power for GRIDCO:

2.2.1 GRIDCO shall at all times have the right on behalf of Government of Orissa to receive from the Station 14 percent of the power sent out from the thermal power station(s) if coal block (s) is allocated within the State of Orissa. Otherwise, GRIDCO shall receive 12 percent of the power sent out from the thermal power station(s). M/s. JITPL shall duly incorporate a term in the Agreements with other beneficiaries for sale of electricity or capacity pertaining to the Station, confirming the above rights of GRIDCO.

2.2.2 GRIDCO will be entitled to further receive on behalf of Government of Orissa the entire infirm power sent out from the Thermal Generating Plant (s) at variable cost.

2.3 It is understood and agreed by and between the parties that JITPL shall meet all the obligations laid down in the Principal MoU dated 26.09.2006 as well as subsequent MoUs signed between JITPL and Government of Orissa.”

x x x x x x x x

4.0 Transmission / Wheeling of Power

State share of power shall be made available to GRIDCO by JITPL at the Bus bar of OPTCL one nearest EHV Sub-station at required voltage level. OPTCL as STU with the help of GoO will assist JITPL in getting clearance/approvals within the State jurisdiction. However all the responsibility for obtaining the clearances/approvals shall remain with JITPL.

JITPL would need to bear the 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.*

The above works are to be carried out by JITPL as per the specification and requirements of the Licensee/Utilities. After commissioning of the project, JITPL shall transfer these lines and infrastructures at OPTCL Sub-station end to OPTCL as transfer of assets for the maintenance by the STU. On completion of the above works the maintenance of the transmission line will be undertaken by the Licensee/Utility at charges to be decided by the Licensee/Utility and paid by JITPL. High Tension lines and the system at OPTCL Grid Sub-station end shall be maintained by power utility as Licensee.

If JITPL desires to evacuate further power beyond State share they may strengthen the transmission system and also to bear the State Transmission Charges as applicable.

The detail metering arrangement for both Main and Check Meters shall be installed on the outgoing feeders of the generating station of JITPL in co-ordination with OPTCL, SLDC and GRIDCO.

x x x x x x x x

6.0 Charges

6.1 The charges payable by GRIDCO to the JITPL shall be restricted to variable cost in regard to 14%/12% capacity entitlement to GRIDCO and also for the infirm power.

6.2 The variable cost shall cover fuel cost and shall be worked out on the basis of ex-bus energy sent out from the generating stations proportionate to the energy delivered to GRIDCO against 14%/12% entitlement of GRIDCO.

6.3 The methodology for determining the fuel cost i.e. variable cost shall be as per the applicable norms, guidelines and directions of the Appropriate Commission.

6.4 In case of any dispute or difference in regard to the variable cost payable by GRIDCO to the JITPL, the same shall be referred to adjudication of the Orissa Electricity Regulatory Commission in the terms of Clause 10 of this agreement read with the provisions of the Electricity Act, 2003.”

4. Subsequently, a supplementary PPA was executed between M/s. JITPL and GRIDCO on 23.07.2013 in which a new paragraph was incorporated as given below without any changes in all other terms and conditions of the PPA dated 05.01.2011.

“1.0 A new paragraph, as mentioned below, shall from a part of and be added at the end of Clause 4.0 of the PPA dated 05.01.2011.

As an interim arrangement till establishment of connectivity with State Transmission Utility (STU), M/s. JITPL shall supply the State’s share of power using Central Transmission Utility (CTU) transmission system. For such delivery of power to

GRIDCO, M/s. JITPL shall bear the necessary Interstate transmission charges, including transmission losses and any other charges as applicable.

2.0 Approval of the Agreement

This Supplementary PPA is subject to the approval of OERC, with or without modification.”

5. Now, GRIDCO has sought the approval of this Commission for both the PPAs dated 05.01.2011 and 23.07.2013 which has been registered as Case No. 01/2017. GRIDCO Ltd. has submitted that Unit-I & II of M/s. JITPL have been synchronized with the grid w.e.f. 28.03.2014 and 14.12.2014 respectively. While the first unit has been operating commercially from 19.04.2015 the second unit has been operating from 12.02.2015. GRIDCO Ltd. is procuring power from M/s. JITPL since March, 2014 at the provisional variable cost fixed by the Commission in the ARR order of GRIDCO. M/s. JITPL is supplying power to GRIDCO Ltd. through the transmission system of CTU by bearing all the POC charges and scheduling is being carried out by ERLDC. Since synchronization of the Units, M/s. JITPL is selling power outside the State. It is supplying state entitlement of power as per its convenience by deviating from the obligations under the PPA. However, as per the meeting held on 13.07.2016 M/s. JITPL had agreed to supply the backlog quantum of State entitlement of power during November, 2016 to June, 2017 in addition to the existing entitlement. But M/s. JITPL has failed to honour its commitment. Therefore, GRIDCO Ltd. has proposed for incorporation of a compensation clause in the PPA for short supply in the State entitlement of power as given below:

“In case M/s. JITPL fails to supply entitlement of power as per the PPA provision to GRIDCO at any point of time, then the cost of under injection/shortfall quantum of power from the entitlement shall be compensated by M/s. JITPL at the rate of highest DSM Rate during such period/ two times of actual ECR applicable for M/s. JITPL for such period, whichever is higher.”

6. GRIDCO Ltd. has further stated that M/s. JITPL shall have to consider the GCV and price of linkage coal only while deriving the ECR for supply of State share of power to GRIDCO Ltd. M/s. JITPL shall also have to submit the details of linkage coal and oil data along with the monthly energy bills and auditor certified statement at the end of the financial year along with any modification in fuel supply agreement.
7. GRIDCO Ltd. further stated that the State entitlement of power is being supplied through CTU and scheduling & Energy Accounting are carried out by ERLDC. Basing on it, SLDC prepares the State Energy Accounts (SEA) for the bilateral transaction. Accordingly, GRIDCO Ltd. verifies the monthly energy bills of M/s. JITPL considering

the SEA of SLDC which is available towards the end of the second week of every month. Therefore, the Rebate Clause 7.2, as agreed in the PPA dated 05.01.2011 may be modified as follows:

“Two percent rebate shall be allowed on payment of bills through RTGS directly from GRIDCO on the amount paid within seven working days of receipt of the monthly energy bills by GRIDCO. If the payment is made after 7 working days but within 30 days of receipt of the monthly energy bills then 1% rebate shall be allowed.”

8. GRIDCO Ltd. further submitted that the PPA dated 05.01.2011 is a long term PPA valid for 25 years. However, in view of ever changing regulations, rules and policy in power sector, a suitable clause regarding review of the PPA in every 5 years may be allowed for incorporation.
9. In the meantime, M/s. JITPL has filed another application seeking modification of certain provisions in the PPA. This application has been registered as Case No. 64/2017 and has been heard analogously with the petition of GRIDCO in this regard registered as Case No. 01/2017 as discussed earlier in this order. In his petition the petitioner-M/s. JITPL has submitted that the Mandakini coal block allocated to it has been cancelled by the Hon'ble Supreme Court of India. M/s. JITPL has executed a Fuel Supply Agreement (FSA) with M/s. Mahanadi Coal Field Limited (M/s. MCL) for supply of 3.193 lacs tonnes of coal towards generation of 72 MW capacity only to be supplied to GRIDCO Ltd. under the PPA which has been further modified on 21.09.2013 for the annual contracted quantity of 3.512 lakhs tonnes for accommodating the coal consumption towards transmission losses and auxiliary consumption. This linkage coal for 72 MW is able to cater to 12% power of one generating unit only. There is no linkage coal for supply of State share of power from the second unit and for running of the second unit M/s. JITPL has been procuring coal through e-auction. Cancellation of coal block by the Hon'ble Supreme Court comes under change in law event and M/s. JITPL has no reasonable control over this. Therefore, the actual cost incurred in procuring such coal through e-auction shall have to be factored in while determining the energy charges for supply of 12% power to GRIDCO Ltd. at variable cost in compliance with the terms of PPA and supplementary PPA.
10. M/s. JITPL further submitted that it has been supplying 12% of the energy sent out through CTU bearing all POC charges and losses as per the supplementary agreement dated 23.07.2013. The transmission charges and other charges are in nature of variable cost and as per the agreement M/s. JITPL is entitled to reimburse the entire variable cost

incurred by it. As a matter of practice the transmission charges are also borne by the procurers of power. The project originally secured coal linkage for one unit and coal block for the balance. With the secured coal supply and favourable market conditions at the time of inception of the project, M/s. JITPL had agreed for supply of 12%/14% power at variable cost and undertook the liability of transmission cost. The assumption was that through sale of 88% of power under long term, medium term and short term, the fixed cost and transmission cost will be recovered. But in the present scenario, supply of 12% power at variable cost and bearing the CTU transmission cost is not economically viable and sustainable.

11. M/s. JITPL submitted that the Commission has the power to reopen the PPA so as to ensure that the Generator recovers the cost of electricity in a reasonable manner. In the present case, M/s. JITPL is committed to supply 12% power at variable cost as agreed in the MoU and the PPA subject to determination of variable cost by an Appropriate Commission. However, in relation to the requirement of the generating company to bear the transmission charges under the POC regime on the basis of the supplemental agreement is contrary to the terms of the MoU and the original PPA. Once a generating station is connected to CTU for supply of 88% of power, then to suggest under a supplementary agreement that transmission charges for delivery of 12% power at variable cost will be borne by the generator is contrary to the mandate of Electricity Act, 2003 and the policy issues there under. No law or policy envisages for supply of power only at variable cost. Hence there is a mismatch/conflict between the terms of MoU/PPA with the legislation and the statutory policies which need to be reconciled. Further, in case of central generating station which are connected to CTU and supplying power to State of Odisha, GRIDCO Ltd. is making payment of transmission charges and losses on ex-bus basis, which is an accepted regulatory practice. However, in the present case GRIDCO while receiving the power at variable cost is seeking to make a departure from such accepted regulatory practice, which constitutes an illegal discrimination.
12. Heard the parties. Their written notes of submission are also taken into record. The Commission observed that in both the cases GRIDCO Ltd. and M/s. JITPL have agreed for approval of the PPA dated 05.01.2011 and the supplementary PPA dated 23.07.2013 by the Commission. However, both the parties have suggested certain modifications in some clauses and incorporation of certain new clauses in the PPA individually which are not accepted by the other party. Since, the disputes on PPA could not be amicably settled

the Commission basing on their request, vide its interim order dated 31.03.2018, has directed both the parties to sit together with Director (RA) and Secretary, OERC in the office hours by 10.04.2018 for reconciliation of their unresolved issues in the PPA putting forth their views both on the agreed and disagreed points and submitting the same before the Commission within 20.04.2018 positively. Accordingly, a meeting was convened at OERC Office on 10.04.2018. After detailed deliberation in the said meeting the parties did not agree upon any of the seven disputed issues of the PPA. Hence, no resolution of issues was arrived at and the disputes were left for the Commission to pass appropriate order after hearing the parties. The issues are:

- i. Approval of the PPA dated 05.01.2011 & Supplementary PPA dated 23.07.2013 by OERC.
- ii. Incorporation of a compensation clause to address the situations when JITPL fails to supply the State entitlement of power at any point of time to GRIDCO while selling power outside (through bi-lateral trading/power exchange).
- iii. Incorporation of a clause on usage of linkage coal only for supply of State entitlement of power to GRIDCO as per FSA and PPA. Accordingly, ECR shall have to be derived based on GCV and price of linkage coal.
- iv. Modification of Clause 7.2 of the PPA dated 05.01.2011 regarding rebate.
- v. Incorporation of a clause on review of the PPA in every 5(five) years.
- vi. Reimbursement of the transmission charges and losses to the extent borne by JITPL.
- vii. To allow other fuel charges / variable charges as may be applicable from time to time.

13. Now, the Commission would like to discuss and deliberate the above disputed issues.

- (i) **Approval of the PPA dated 05.01.2011 & Supplementary PPA dated 23.07.2013 by OERC.**

During the hearing both GRIDCO and M/s. JITPL agreed for approval of the PPA dated 05.01.2011 & Supplementary PPA dated 23.07.2013 by OERC. Therefore, we are approving the same in this order under Section 62 of the Act with our observations in the subsequent paragraphs.

- (ii) **Incorporation of a compensation clause to address the situations when JITPL fails to supply the State entitlement of power at any point of time to GRIDCO while selling power outside (through bi-lateral trading/power exchange):**

GRIDCO's View - By signing the PPA dated 05.01.2011, M/s. JITPL is obliged to provide 12%/14% of power sent out at variable cost as the State's share of power. Further, both parties agreed in the PPA that they would perform their obligations as per the terms and conditions, for which no compensation clause was included in the PPA in good faith. But, subsequently, when the units started generating power, M/s. JITPL suo motu violated the terms and conditions of the PPA by short supplying the state's share of power and diverting the shortfall quantum of power to third parties, which triggers the necessity of introduction of the compensation clause in the PPA. In this context, GRIDCO submitted that only in case of any default on the part of M/s. JITPL, i.e. shortfall in supply/scheduling of State Entitlement of power in real time basis by M/s. JITPL as per the PPA, the compensation clause would be invoked. In no way M/s. JITPL would be adversely affected and unjustifiably burdened, if they maintain consistent supply/scheduling of the State entitlement of power to GRIDCO as per the PPA. Therefore, GRIDCO proposes for incorporation of the following compensation clause in the PPA.

"In case M/s JITPL fails to supply State Entitlement of power as per the PPA provision to GRIDCO at any point of time, then the cost of under injection / shortfall quantum of power from the entitlement shall be compensated by M/s JITPL at the rate of highest DSM rate during such period or two times of actual ECR applicable for M/s JITPL for such period, whichever is higher."

JITPL's View- The proposed compensation clause was not inserted in the PPA initially, as the intention of the supply of power behind this contract is not purely commercial and claiming compensation in a contract where supply of power is on variable cost is an unjustified burden on an already debt ridden company. Generally the PPAs will have the provision for recovery of full cost and penalty /incentive depends upon the availability of the plant. The PPA with GRIDCO is different from general contracts where supply of power is only on variable cost. As the variable cost itself is not recovered in full, no further clause which stipulates commercial liability should be incorporated in the PPA. Hence, M/s. JITPL is not agreeable to incorporation of compensation clause in the PPA.

Commission's observation: Under the MoU and its consequent PPA M/s. JITPL is contract bound to supply 14% of power sent out from its thermal power plant at

variable cost, if coal block is allocated to the IPP with the State, otherwise it will provide 12% power at variable cost. In case of default GRIDCO will purchase the required quantum of power from other sources to meet the State demand. Generally, it is expected that under merit order GRIDCO will purchase the same from power plant situated at the margin of the merit order. The State consumer should not be burdened for the lapses of M/s. JITPL. Therefore, a compensation provision in the PPA in case of default of M/s. JITPL to supply the GRIDCO share of power should be incorporated. The compensation should be equal to the variable cost of the Central Thermal Generating Station approved by the Commission for power purchase of GRIDCO and situated at the margin of the merit order dispatch for that year. Any other compensation mechanism such as DSM linked compensation cannot be adopted here because it is meant for grid stability and not for power purchase.

- (iii) **Incorporation of a clause on usage of linkage coal only for supply of State entitlement of power to GRIDCO as per FSA and PPA. Accordingly, ECR shall have to be derived based on GCV and price of linkage coal.**

GRIDCO's View- State's entitlement of power is meant for ultimate distribution to consumers of the State. M/s. JITPL is required to use linkage coal for the State's entitlement of power. The contention of M/s. JITPL that they have linkage coal only for Unit-1 having 72 MW capacity is not acceptable. GRIDCO has long term PPA with M/s. JITPL for purchasing power from its Unit-II also. It is the obligation of M/s. JITPL to avail the coal linkage for the State's share of power. The plea of M/S JITPL is not acceptable after de-allocation of the allotted coal block for Unit#2. After de-allocation of the coal block, M/s. JITPL should have proactively and vigorously followed up the matter with MCL to ensure availing coal linkage for the entire State's share of power in order to avoid extra financial burden on the State consumers.

Regarding determination of Energy Charge Rate on the basis of Linkage coal as well as e-auction coal, GRIDCO was of the view that considering the generation data till date, the total supply of State's share of power by M/s. JITPL from the IPP never exceeded 72MW. As M/s. JITPL is getting full quota of Linkage Coal for generation of this 72 MW (from #1), there is no need of further use of any e-auction coal for generation of State's entitlement of power as per PPA.

Further, GRIDCO mentioned that, since M/s. JITPL is getting full quota of Linkage coal for 72 MW irrespective of the supply of State's entitlement of power, M/s. JITPL should furnish information on the month-wise details of utilization of such Linkage Coal including quantum of unused portion of the Linkage Coal.

JITPL's View- The proposed clause is not as per the PPA. As per clause 6 of the PPA the power needs to be supplied at variable cost and charges shall be worked out on the basis of ex-bus energy sent out from the plant. PPA does not stipulate use of linkage coal only for supply to GRIDCO. To meet the required coal quantum for supply of power from Unit-1, M/s. JITPL source the fuel from linkage as well as non-linkage routes and for supply of power from Unit-2, M/s. JITPL sources fuel from non-linkage routes such as open market, imported, E-auction etc. Therefore, incorporation of a clause on usage of linkage coal only for supply of State entitlement of power to GRIDCO is not agreed by M/s. JITPL.

Commission's Observation:-

Fuel which is procured by the Generator through any form of concessional, preferential or captive allocation or sale by a Government Instrumentality shall be deemed as Concessional Fuel and earmarked for the benefit of the Utility. Any fuel procured through e-auction and /or through import could be utilised for industrial merchant sale of power through short term contract or through power exchange.

Since, M/s. JITPL is having PPA with GRIDCO, its share of power should be met first from the linkage coal available to M/s. JITPL. M/s. JITPL can use other sources of coal such as e-auction / imported coal for selling power to buyers other than GRIDCO. So, the ECR should be calculated basing on linkage coal only. If linkage coal availability is higher than the requirement as per GRIDCO's share of power the cost and GCV of linkage coal will be taken into consideration for tariff purpose. In the event it falls short, only for the balance coal the weighted average cost and GCV of coal sourced otherwise would be considered.

(iv) Modification of Clause 7.2 of the PPA dated 05.01.2011 regarding Rebate.

GRIDCO's View- GRIDCO mentioned that, the State entitlement of power is being supplied through CTU as an interim measure and scheduling is being done by ERLDC. Required Energy Accounting is also carried out by ERLDC and based on it, SLDC prepares the State Energy Accounting (SEA) for the bilateral

transaction. Accordingly, GRIDCO verifies the monthly energy bill of M/s. JITPL considering the SEA of SLDC which is available towards the end of the second week of every month. Therefore, considering the aforementioned factor, GRIDCO has proposed the following modification of the Rebate Clause 7.2 of the PPA.

“Two percent (2%) rebate shall be allowed on payment of bills through RTGS directly from GRIDCO on the amount paid within 7(seven) working days of receipt of the monthly energy bills by GRIDCO. If payment is made after 7(seven) working days but within 30 days of receipt of the monthly energy bills then 1(one) % rebate shall be allowed.”

JITPL’s View- As per PPA 2% rebate is allowed if payment is made within 7 days of presentation of the bill. Modification of the proposed rebate clause will further add to the financial burden of the company. Hence, M/s. JITPL is not agreed to the proposed modification of rebate clause in the PPA.

Commission’s Observation:

In our Generation Tariff Regulation, 2014 at Clause 6.7 it is specified that if the bill of the generating company is presented through letter of credit or paid through NEFT/ RTGS within a period of two working days a rebate of 2% shall be allowed. Where payments are made on any day after two working days and within a period of 30 days, a rebate of 1% shall be allowed. However, in the PPA executed between GRIDCO and JITPL at Clause 7.2, a rebate of 2% shall be allowed on payment of bill through letter of credit or directly on the amount paid within seven days of the presentation of the bill. If payment is made after seven days and within 30 days then 1% rebate shall be allowed. Since in the existing agreement seven days period for getting rebate of 2% is agreed which is more relaxed than our Regulation for getting a rebate of 2%, within two working days the Commission feels that there is no need for any change in the rebate clause in the existing agreement as claimed by GRIDCO.

(v) Incorporation of a clause on review of the PPA in every 5 (five) years.

During the hearing both GRIDCO and M/s. JITPL agreed for incorporation of a clause for review of the PPA in every 5(five) years. So, the Commission agrees with the same.

(vi) Reimbursement of the transmission charges and losses to the extent borne by M/s. JITPL.

JITPL's View- The 12% of the power from the M/s. JITPL is contracted with the GRIDCO, whereas 88% of the capacity is supplied outside the state. Since the major share of the power was to be sourced by outside States, it was incumbent upon the M/s. JITPL to be connected to the transmission network of CTU. Moreover, it is not technically possible to connect plant to CTU and STU simultaneously and supply state entitlement of power through STU. M/s. JITPL stated that supply of State entitlement of power at variable cost and bearing the transmission cost is not economically viable and sustainable and therefore, it has claimed reimbursement of Transmission Cost from GRIDCO.

GRIDCO's View- GRIDCO stated that while executing the MoU and PPA, M/s. JITPL was well aware of all the future repercussions related to the evacuation of the State's entitlement of power from their thermal power plant through STU network. Considering all the factors M/s. JITPL signed all the MoUs and PPAs without any preconditions and they have never raised any dispute while signing the same. By signing the MoUs and PPAs, M/s. JITPL is liable to adhere to the terms and conditions of the MoUs and PPAs. Instead M/s. JITPL has violated the Clause 4.0 of the PPA dated 05.0.2011 by not constructing a dedicated transmission line from their generating plant to the designated Grid Sub-station of the STU. Only after receipt of an undertaking from M/s. JITPL, GRIDCO executed a supplementary PPA with M/s. JITPL on 23.07.2013 by adding the following at the end of Clause 4.0 of the PPA dated 05.01.2011.

"As an interim arrangement till establishment of connectivity with State Transmission Utility (STU), JITPL shall supply the State's share of power using Central Transmission Utility (CTU) transmission system. For such delivery of power to GRIDCO, JITPL shall bear the necessary inter-state transmission charges, including transmission losses and any other charges as applicable."

As per the above, it was agreed between the parties that for a temporary period only, till the completion of dedicated line to STU, M/s. JITPL was allowed to evacuate the State's share of power using CTU transmission system. In contrast, till date M/s. JITPL has not shown any sign of constructing the dedicated transmission line from their generating plant to the designated Grid Sub-station of the STU. Instead of constructing the dedicated line to STU and evacuating the State's share of power through it, M/s. JITPL is presently stating that connectivity with CTU and STU simultaneously is not technically possible and supplying the state entitlement of power at variable cost and bearing the transmission and has asked GRIDCO to

reimburse the same. M/s. JITPL is entitled to only the Fuel cost, i.e. Energy Charge, calculated as per Regulation OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014. The proposal of M/s. JITPL for reimbursement of Transmission Cost by GRIDCO is not in line with the PPA, MoU and State Thermal Policy. Therefore, GRIDCO does not agree to this proposal of M/s. JITPL because the above proposal is in stark violation of the agreed Supplementary Power Purchase Agreement dated 23.07.2013 between GRIDCO and JITPL and Affidavit of JITPL dated 23.07.2013.

Commission's Observation:-

The Commission observed that para-1(vi) of the MoU dated 26.09.2006 between M/s. JPL (now M/s. JITPL) and Government of Odisha stipulate as follows:

“M/s. JPL 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 agreement for such purchase. The Government and its concerned agency shall assist JPL in the matters of the transmission facility for evacuation of power from the Thermal Power Plant. In case JPL 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 JPL.”

Further, the supplementary MoU dated 30.12.2010 stipulates as follows:

“3. xxxxxx

(ii) For power evacuation the Independent Power Producer will get connected at appropriate voltage and one most suitable designated location as may be suggested by Orissa Power Transmission Corporation Limited (OPTCL) at the cost of the said Independent Power Producer.”

Further, Para-4.0 of the PPA dated 05.01.2011 executed between M/s. JITPL and GRIDCO Ltd. stipulates as given below:

4.0 Transmission / Wheeling of Power

State share of power shall be made available to GRIDCO by JITPL at the Bus bar of OPTCL one nearest EHV Sub-station at required voltage level. OPTCL as STU with the help of GoO will assist JITPL in getting clearance/approvals within the State jurisdiction. However all the responsibility for obtaining the clearances/approvals shall remain with JITPL. JITPL would need to bear the 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.*

The above works are to be carried out by JITPL as per the specification and requirements of the Licensee/Utilities. After commissioning of the project, JITPL shall transfer these lines and infrastructures at OPTCL Sub-station end to OPTCL as transfer of assets for the maintenance by the STU. On completion of the above works the maintenance of the transmission line will be undertaken by the Licensee/Utility at charges to be decided by the Licensee/Utility and paid by JITPL. High Tension lines and the system at OPTCL Grid Sub-station end shall be maintained by power utility as Licensee.

If JITPL desires to evacuate further power beyond State share they may strengthen the transmission system and also to bear the State Transmission Charges as applicable.

The detail metering arrangement for both Main and Check Meters shall be installed on the outgoing feeders of the generating station of JITPL in co-ordination with OPTCL, SLDC and GRIDCO.

Further, the supplementary PPA dated 23.07.2013 stipulates as follows:

“A new paragraph, as mentioned below, shall form a part of and be added at the end of clause-4.0 of the PPA dated 05th January, 2011.

As an interim arrangement till establishment of connectivity with State Transmission Utility (STU), JITPL shall supply the State's share of power using Central Transmission Utility (CTU) transmission system. For such delivery of power to GRIDCO, JITPL shall bear the necessary inter-state transmission charges, including transmission losses and any other charges as applicable.”

From the above provisions of the MoUs and PPAs, the Commission observed that M/s. JITPL has agreed for construction for dedicated transmission line from their generating plant to the designated grid sub-station of OPTCL at their own cost for evacuation of state share of power even though the state share is 14% / 12% of the ex-bus energy sent out from the generating station at variable cost. However, M/s. JITPL has neither constructed the dedicated line for evacuation of power nor has initiated any action for the same even after four years from commissioning of its 1st generating unit and presently supplying power to GRIDCO Ltd. through CTU. Further, in the supplementary PPA dated 23.07.2013, M/s. JITPL has agreed to bear the necessary interstate transmission charges including transmission losses and any other charges as applicable for delivery of power to GRIDCO Ltd. through CTU. Now, M/s. JITPL states that supply of State entitlement of power at variable cost and bearing the transmission cost is not economically viable and sustainable and has claimed reimbursement of transmission charge from GRIDCO which

tantamount to breach of contract. Supply of GRIDCO share of power at variable cost is the responsibility of JITPL as per PPA and MoU. Any additional cost of GRIDCO share of power over and above the variable cost is a financial burden to GRIDCO as well as State consumers. In the present circumstances, the Commission is not inclined to accept the proposal of M/s. JITPL for reimbursement of transmission cost by GRIDCO Ltd. for evacuation of its power through CTU since M/s. JITPL is contract bound for the same as per MoU and PPA.

- (vii) **To allow other fuel charges / variable charges as may be applicable from time to time.**

JITPL's View:- Other fuel charges and variable charges are variable in nature and directly linked with the generation of power. Had there been no generation and supply under the PPA with GRIDCO, the charge arising for other fuel charges and other variable charges would not have arisen. In addition to the above, it is stated that Clause 6.1 of the PPA also provides that JITPL would be entitled to variable cost. These charges are as per actuals and JITPL requested OERC to allow these charges as per actuals.

GRIDCO Views:- As per the State Thermal Policy, i.e. the Policy Guidelines, for setting up of Thermal Power Plants, issued by Department of Energy, GoO, vide Notification no. 8960, Dated 08.08.2008, for future IPPs *"A nominated agency(s) authorized by the State Govt. will have the right to purchase 14% of the power sent out from the Thermal Power Plant at variable cost from the IPPs who have been allocated coal blocks within the State. Others will provide 12% power at variable cost. The tariff for such power will be determined by the OERC."*

As per the Clause 3 of the MoU dated 17.10.2008 *"a nominated agency (s) authorized by the State Govt. will have the right to purchase from the JITPL (excluding the quantum of power indicated at Clause No.1(ii) of Principal MoU under terms of a PPA) at the rate of 14% of the power sent out from the Thermal Power Plant(s) at variable cost produced from the coal consumed out of coal blocks allocated within the State of Orissa and 12% of the power sent out at variable cost produced from the coal procured from other sources. The tariff for such power will be determined by the OERC."*

The State Thermal Policy was issued and the MOU was executed during the control period of CERC (Terms & Conditions of Tariff) Regulations 2004-2009. As per Regulation 22, of CERC (Terms & Conditions of Tariff) Regulations 2004, the variable cost is defined on the basis of the cost of the fuel only.

It may be observed from the above that the term “Variable” is interchangeably used with “Energy” and the Variable (Energy) cost only covers fuel costs. In subsequent CERC Tariff Regulations and OERC Tariff regulations the term “Variable Cost” has been substituted by “Energy Charge rate” with the same meaning and covers only the fuel costs.

When the Memorandum of Understanding (MoU) was signed between Government of Odisha and M/s. Jindal Photo Limited, the holding company of JITPL, on 26.09.2006 the CERC (Terms & Conditions of Tariff) Regulations, 2004 was in place, based on which the term “Variable Cost” was incorporated.

Further as per Regulation 4.1 of Odisha Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014, the tariff for supply of electricity from a thermal generating station shall comprise of two parts, namely, capacity charge (for recovery of annual fixed cost consisting of the components specified in Regulation 4.3) and energy charge (for recovery of primary and secondary fuel cost). Thus, it implies that apart from the fixed cost the energy charge is the variable cost for recovery of primary and secondary fuel cost.

It is surprising to note that JITPL is claiming other items under Variable Cost, when the components of the Variable Cost is clearly mentioned in the Power Purchase Agreement dated 05.01.2011.

Therefore, as per the above, the variable cost, i.e. Energy Charge rate, which constitutes fuel cost only, shall be determined as per the relevant norms, guidelines of OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014 and relevant directions of the Odisha Electricity Regulatory Commission. Relevant Regulations, i.e. no. 4.32, 4.33 & 4.34 of OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014, which are the only clauses applicable for calculation of variable cost;

Therefore, the plea of JITPL to allow other fuel charges / variable charges as may be applicable from time to time is not in line with the aforementioned State

Thermal Policy, MOUs, Revised Power Purchase Agreement dated 05.01.2011 and most importantly OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2014 and therefore is liable for outright rejection

Therefore, GRIDCO do not agree to this proposal of JITPL as the above proposal is in stark violation of the Clause no. 6.0(Charges) of the agreed Power Purchase Agreement dated 05.01.2011 between GRIDCO and JITPL, hence not acceptable. Moreover, the said issue is not a part of the GRIDCO's proposal in Petition no. 01/2017 and therefore the issue is extraneous to the case.

Commission's Observation:- The reimbursement of charges are part of the tariff of the generating company. Since this Commission has already held in Case No. 26/2014 dated 26.02.2018 that it has no jurisdiction in this matter and determination of tariff of inter-State generating station of the Petitioner falls within the jurisdiction of Hon'ble CERC, therefore, the matter should be raised before that Commission. Necessary changes may be brought about in the PPA as per our above observation.

14. The PPA with the above modifications is approved. The present PPA filed with the Commission by GRIDCO and M/s. JITPL may be amended as per our above observations.
15. Accordingly, the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(U. N. Behera)
Chairperson