

ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.4, CHUNUKOLI, SHAILASHREE VIHAR,
BHUBANESWAR – 751021

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

Case No.03/2018

M/s. Project Development Consultants, Bhubaneswar Vrs. Commissioner-cum-Secretary, DoE, GoO, Bhubaneswar Principal Secretary, DoWR, GoO, Bhubaneswar CMD, GRIDCO, Bhubaneswar EIC(Electricity)-cum-PCEI, Bhubaneswar CMD, GEDCOL, Bhubaneswar	Petitioner Respondents
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In the matter of: **An application under Section 86(1)(e), (h), 2(ii) & (iv) of the Electricity Act, 2003 seeking direction/advice of the Commission to the State Government for promotion of investment in electricity industry, generation, transmission, distribution etc.**

For Petitioner: Shri R. P. Mohapatra, Auhtorised Representative

For Respondents: Shri Santosh Das, Chief Engineer, O/o.EIC-cum-PCEI
 Ms. Niharika Pattanayak, ALO, DoE, GoO
 Shri S. S. Nayak, Sr. G.M., P.P., GRIDCO
 Ms. Sasmita Patajoshi, Manager (RE Cell), GRIDCO

Nobody present on behalf of Water Resources Department,
Gorvernment of Odisha and M/s. GEDCOL.

ORDER

Date of Hearing: 15.01.2019

Date of Order:09.04.2019

The petitioner, M/s. Project Development Consultant (PDC) has filed the petition under section 86(1)(c) and 86(2)(ii) & (iv) specifically with regards to development of small hydro power projects, so that the state would be able to harness renewable energy from hydro resources in the state to meet the non-solar RPO. As per the section 86(2)(ii) & (iv) of the Electricity Act, 2003, the Commission is to advise the state government for promotion of investment in electricity industry and on the matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the Commission by the government.

2. The petitioner has submitted that while disposing the Case No.54/2007, the Commission in its order dt.13.11.2013 had made some time bound directions for expeditious development of SHEPs in the state based on the earlier Renewable Energy Policy. The extracts of the said order is reproduced below:

- *“The state Govt. as soon as possible should formulate a conducive policy guideline on Renewable Energy Resources so as to effectively utilise the hydel sources in the State.*
- *At first instance, the concerned Departments of the State Govt. should take expeditious action for early implementation of projects those are pending only for approval of design and drawings.*
- *The EIC-Water Resource and EIC-Electricity, GoO should take immediate action for implementation decisions taken in the Review Meeting of the Chief Secretary, GoO for early execution of other viable projects those are pending with them.*
- *The Developers of the SHE Projects for which STC has since given its goahead clearance are required to submit their Road Map within the stipulated time for approval of the Financial Package, appointment of Consultants for supervision of the erection and certifications of the constructions as per the approved Drawing till the commissioning of the SHE Projects. The Road Map should also indicate the date of completion of the Key Milestone activities. The Developers failing to furnish the aforesaid information within the stipulated time limit of say 2 months may be deemed as non-serious parties and their MoUs may be cancelled and those SHE Projects may either be under taken through Green Energy Development Corporation of Odisha Ltd. (GEDCOL) or may be placed for the tariff based competitive bidding.*
- *Govt. should take necessary action for providing Administrative approval to the District Authority for land acquisition and issuing notification.*
- *The revised DPR may be submitted to the Premier Institutions in line with instruction of the Chief Secretary, Govt. of Odisha to maintain uniformity. The vetting by these Institutions should be completed by developers before January, 2014 so that it can be submitted to STC for approval in February, 2014.*
- *STC should give priority for processing the clearance of SHEPs which are utilising the existing Dam and Canals pending before them.”*

3. However, in the meantime the State Government has issued a new Renewable Energy Policy namely “Odisha Renewable Energy Policy (OREP) -2016”. Clauses 4.1(c), (d) and (e) of the said policy says that

- “4.1.(c) OHPC will be the sole developer for dam-toe and canal based projects.*
(d) The already allotted projects that fail to achieve financial closure within six (6) months of the date of notification of this policy would be liable for cancellation.
(e) The project allotted in pursuance of this policy would be liable for cancellation, if they fail to achieve financial closure within six (6) months of the date of allocation order.”

4. The petitioner submitted that obtaining financial closure is being delayed due to non-receipt of clearances particularly, forest clearance, in-principle clearance from the Department of Water Resources (DoWR) for Dam Toe and Canal based SHEPs and implementation agreement, as these clearances are normally insisted upon by the Financial Institutions, including PFC, before sanction of loan. In the case of Indravati Power Pvt. Ltd., the loan was sanctioned on the submission of the Developer but disbursement cannot be made due to the requirement of the above clearances. Further, in case of 9 MW Salandi Dam toe SHEP, the DoWR advised the developers to discuss on some points raised by the Dam Safety Panel after the TEC was issued by the EIC (Electricity). In spite of the follow-up by the developer and reminders issued by the EIC (Electricity) to EIC (Water Resources) no meeting has been scheduled. Therefore, the developer could not submit the compliance to the observation of the DoWR. Further, DoWR is neither giving the in-principle Clearances wherever required nor intimating the reasons for withholding such clearances. Similarly, meeting is not being held to finalize the issues on the observations of the Dam Safety Panel.
5. The Clause 4.1 (d) of the OERP-2016 stating that, already allotted projects that failed to achieve financial closure within six months of the date of Notification of this policy would be liable for cancellation, is not valid, without considering the status of the projects allotted under the Policy Guidelines notified by the Department of Energy, GoO on 23.06.2003. Similarly, the Dam Toe, canal based SHEPs which have been allotted to the private developers prior to the notification of OREP-2016 and where considerable progress has been carried out by the developers should not be cancelled as per the provisions of clause 4.1 (c) of the OREP-2016 and this clause needs to be amended. Further, Clause- 4.1 (e) of the OREP-2016 also needs amendment basing on the work to be done by the Nodal Agency while preparing the DPR and inviting proposals.
6. The petitioner submitted that the commissioning of small hydro power projects in remote and inaccessible areas will take about five years time, out of which at least 2 years are required to complete the activities like TEC on the DPR, obtaining land allotment, forest clearance, PPA with GRIDCO and implementation order from EIC, after which financial closure can be possible. Therefore, “within six (6) months of the date of allocation order” as provided in clause 4.1(e) of OREP-2016 should be replaced with “within six (6) months of the date of implementation order”. In view of

the above, the petitioner prayed that the Commission may constitute a committee to review the status of the various SHEPs now recommended for cancellation and also advise the State Government to amend the Clauses 4.1 (c), 4.1 (d) and 4.1 (e) of the OREP-2016 suitably for extension of deadline so that some progress can be achieved in development of SHEPs in the state of Odisha as the developers are waiting for the TEC/Allotment orders from EIC (Electricity) to proceed further. The petitioner further prayed the Commission to consider the gravity of the case and allow least possible time to DoE, GoO to do the needful so that the pending SHEPs could be commissioned at the earliest.

7. The EIC(Electricity) has submitted that as directed by the Commission in their interim orders, they have filed the Action Taken Report (ATR) and minutes of meeting held on 09.04.2018 on the proposed amendment of OREP-2016. As per the report, lower Baitarani and Saptadhara SHEP have achieved financial closure. Other three projects namely Dumajhori, Baragarh Head Regulator & Indravati I & II can achieve financial closures subject to fulfillment of conditions in their sanction orders. The developer, M/s. Kakatiya Industries (P) Ltd. of Baragarh head Regulator SHEP has been directed to stop the construction work until financial closure is achieved and Implementation Agreement (IA) is extended. Further, the Kharagpur SHEP has been recommended to government for cancellation as per OREP-2016 for not achieving the financial closure. Also 6 nos. of Dam Toe and canal based projects have been recommended to Government for cancellation for non-achievement of financial closures and 2 nos. of projects are in the process of getting in-principle clearance from DoWR. EIC (Electricity) submitted that further allotments will be decided as per the OREP-2016 after cancellation of the projects proposed by non-serious developers by the government. However, TEC has been issued by the Nodal Agency after due scrutiny of DPR and approved by STC in case of 4 nos. of SHE projects such as Tentuliguma(15 MW), Taraba (10MW), Lower Indra (4 MW) and Banamaraha(12 MW). EIC (Electricity) vide its letter dt.28.04.2018 and 08.05.2018 has recommended for cancellation of 19 nos of SHE projects due to non achievement of financial closure by them and other reasons including their non-responsive/non-serious attitude. The progress of work of the SHEP such as 24 MW Lower Baitarani & 18 MW Saptadhara is being monitored on regular basis. EIC (Electricity) has submitted that non-serious project developers were recommended for cancellation and in some cases the in-principle clearance for utilizing the existing dams and canals is pending at Department of Water Resources (DoWR).

8. EIC (Electricity) further submitted that the possible amendments to clause 4.1(a), (b), (c), (d) & (e) of OREP-2016, keeping the suggestions/advice of Advocate General and operational difficulties encountered by the allotted projects alongwith operational guidelines has been proposed to DoE, GoO for further scrutiny and suitable action at their end.
9. GEDCOL submitted that the petitioner, M/s.PDC during the hearing of Case No.54 of 2007 had requested for consideration of cancellation of those projects by STC, which have not achieved their financial closure within 6 months of receipt of the implementation orders of EIC(Electricity). The submission of M/s.PDC has been duly considered while framing the OREP-2016.
10. Heard the parties at length. The Commission has observed that various initiatives like formulation of OREP-2016 have been taken in the meantime for development of SHEP in the state. However, we feel that for expeditious action and early implementation of the projects, fruitful co-ordination between various Government Departments and prompt action by the developers etc. are required. Since, there is urgent need to give priority to develop Renewable Energy Resources particularly Small Hydro Power Projects by tapping the vast potential available in the state, the Commission feels that the concern of the developers may be deliberated at the Govt. level in its inter departmental meetings. In this regard, the Commission vide its Interim Order dt.01.08.2018 in the present case had observed as follows:

“In view of the above, DoE, GoO is required to file an affidavit regarding its action plan on promotion of renewable projects specifically in relation to SHEPs taking into account all related issues within two months from the date of this order by serving a copy to the petitioner. The development of small hydro power in the State requires co-ordination among various departments. Therefore, if any inter-departmental issue remains unresolved, DoE, GoO, may arrange a meeting of concerned departments under the Chairmanship of Chief Secretary for resolving the same.”
11. However, the Commission observed that no response has yet been received from DoE, GoO on the above direction of the Commission as well as on the draft proposal of EIC (Electricity) as regards to amendment of OREP-2016. The petitioner, therefore, prayed the Commission on 01.02.2019 to issue direction for submission of the same urgently so that they can file their rejoinder within 7 days of receipt of the said submission from DoE, GoO.
12. The submission of GEDCOL that the views of the M/s PDC in case no 54 of 2007 regarding financial closure within 6 months of implementation order has been considered in the OREP-2016 is not correct. The Commission observed that clause

4.1(e) of OREP-2016 stipulates that “The project allotted in pursuance of this policy would be liable for cancellation, if they fail to achieve financial closure within six (6) months of the date of allocation order.”

13. As per the 86(1)(e) of the Electricity Act, 2003, the Commission has to “promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person and also specify for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of distribution license. Accordingly, the Commission had notified RPO Regulations in 2010 and 2015 and also held several meetings with various stake holders for development of renewable energy projects in the State. Further, keeping in view the hydro potential in the state, the Commission vide its letter dated 08.10.2010 had also issued practice directions for implementation of SHEPs pending with the Government. In spite of the initiatives by the Commission, no substantial development of SHEP has taken place in the State during last nine years. GRIDCO as the obligated entity on behalf of the distribution utilities has not been able to meet the Renewable Purchase Obligation fixed by the Commission consecutively for last several years. Further, it appears that co-ordination among the Govt. agencies is lacking in the development of small hydro power resources in the State. However, we note that the State Govt. has initiated steps for amendment to OREP, 2016 to accommodate the prayers of the Petitioner. The Commission is of the view that the State Government particularly the Energy Dept. should act as a facilitator to tap the RE potential available in the State. All types of assistance should be provided expeditiously to the developers of the viable projects specifically those that are at advanced stages of implementation. In view of the above, we advise the DoE, GoO under Section 86(2)(ii) & (iv) of the Electricity Act, 2003 to take proactive steps on the matter as indicated below:-

- DoE, GoO should take immediate action for constitution of a committee to review the status of viable Small Hydro Electric Projects pending with the various agencies of the State Govt. and suggest actions to be taken by concerned agencies within a specific time frame. As advised earlier, if required, since the development of small hydro power in the state requires co-ordination among various departments, DoE, GoO may arrange a meeting of concerned departments under the Chairmanship of the Chief Secretary for resolving the inter-departmental issues.

- The committee should also deliberate in detail on the draft proposal of EIC (Electricity) and operational guidelines along with the prayers of the developers as regards to amendment of OREP-2016. The authorized representative of the developers may be permitted to submit their views before the committee. Thereafter, necessary amendments to OREP-2016, if required may be made for larger interest of the State.
- The aforesaid activities should be completed within a period of next 3 months from the date of issue of this order. DoE, GoO is directed to submit a compliance report on the above matter immediately thereafter.

14. Accordingly, the case is disposed of.

Sd/-

(S. K. Parhi)
Member

Sd/-

(U. N. Behera)
Chairperson

Views of A K Das, Member

1. Heard the parties at length.

The State Commission is mandated and empowered under the provision of section 86(1)(e), Section 86(1)(k) and National Electricity Policy and Plan to oversee the promotion of renewable energy in the State. Gradually the World is moving towards clean energy to protect the environment. Commission is no different. Apart from Solar, non-solar energy from renewables such as wind, small hydro, biomass, cogeneration energy, energy from wastes also continue to contribute in this direction.

Incidentally, the potential of small hydro also exists in a higher proportion in our state which can be commercially exploited to meet the energy demand. Its promotion is necessary. The Commission has observed from the submissions that some initiatives by Govt., through formulation of OREP-2016, have been taken in the meantime for development of renewables and SHEP(s) in the state. However, based on various submissions before us, we feel that for expeditious action and early implementation of the projects, appropriate co-ordination between various arms of Government and prompt initiatives by the developers along with more actions to bridge the gap are required. There is immediate need to give impetus to develop Renewable Energy Resources in the State since the State is falling short of defined targets set by the Commission. The Commission feels that to properly facilitate action in this direction

barriers have to be liberalised or removed through the policy document notified by the State. In this regard, the Commission vide its Interim Order dt.01.08.2018 in the present case had ordered as follows:

“In view of the above, DoE, GoO is required to file an affidavit regarding its action plan on promotion of renewable projects specifically in relation to SHEPs taking into account all related issues within two months from the date of this order by serving a copy to the petitioner. The development of small hydro power in the State requires co-ordination among various departments. Therefore, if any inter-departmental issue remains unresolved, DoE, GoO, may arrange a meeting of concerned departments under the Chairmanship of Chief Secretary for resolving the same.”

2. The Commission observes that no response has been received from DoE, Govt. of Odisha. We expect a better constructive cooperation on these issues from the Govt. Aggrieved by apathy of the State Govt., and pushed to a corner, without any viable option to proceed, the petitioner vehemently and desperately requests Commission to issue necessary directions under above empowerment of the Act to implement the stated projects.
3. GEDCOL submitted that the views of the M/s PDC in case no 54 of 2007 as well as in this petition regarding financial closure within 6 (six) months of order of EIC (Electricity) has been considered in the OREP-2016. “Section 4.1(d) & (e) of OREP 2016 are framed in above light” they stated. The Commission observed that clause 4.1(e) of OREP-2016 stipulates that “The project allotted in pursuance of this policy would be liable for cancellation, if they fail to achieve financial closure within six (6) months of the date of allocation order.” “Allocation order” and “Implementation order” by EIC (Electricity) have different connotations. As submitted by Sri Mohapatra, implementation order by EIC (Electricity) (nodal authority) is preceded with forest clearance, execution of PPA, clearance from Deptt. of Water Resource, land etc. and various other compliances after allocation order which takes a considerable time. Therefore we do not agree with respondent GEDCOL.
4. From the submissions of Mr. Mohapatra on behalf of developers, we also observe that status of projects in action, at different stages, from earlier policy of 2003, need appropriate facilitations in OREP 2016. Clarity is needed to distinguish between active projects from dormant projects initiated in previous policy in 2003 to transit to the present policy in 2016 and properly facilitate active projects.
5. The Commission in line with the mandates of the Electricity Act, 2003 has brought out RPO Regulations 2010 and 2015. To resolve the contentions issues several

meetings were also held with the stake-holders. The Commission has also issued directions in its letter dt.08.10.2010 for implementation of SHEP pending with Govt.

In spite of this, appreciable improvement has not been taken place yet on various projects as visualised from submissions before us. GRIDCO has failed to meet the RPO obligations. We expect more proactive actions from GRIDCO and Govt. in this direction.

During hearing Govt. informed that in addition to pronouncement of OREP 2016 further actions and steps are being taken to accommodate the prayers of the petitioners. We urge Govt. to be more prescient to meet the clean energy targets of the society through issue of appropriate policy guidance with amendments wherever necessary, financing VGF, grants and subsidies commensurate within the capacity of Govt. and to possible extent within state resources.

6. From the submissions we observe that in the OREP policy 2016, the Govt. has moved towards tariff based competitive bidding process. This is the way forward to provide clean energy at the competitive rates to the consumers.

However, from the petitions of M/s PDC, we observe a dissention on the term “six months from the date of allocation order”. In view of projects like SHEPs requiring multiple clearances, biomass, MSW projects etc. requiring involvement of Urban Deptt. etc. with requirement of environmental clearance, land availability and PPAs which take a considerable long time even after the bidding or MoUs and cleared by STC (SHEPs). This needs a relook to set a pragmatic time frame. The word appearing in clause 4.1(d) and 4.1(e) requires modification. Petitioner submitted it will be proper to fix the time period of six months from the date of implementation agreement by appropriate authority or Nodal authority instead of “from the date of allocation order or from the date of notification of the policy”. The countdown of time of six months from implementation order will be adequate and satisfactory to decide on qualification and interest of the developers.

7. We are agreeable to the prayers of the petitioner. We advise Govt. under 86(2)(i) and 86(2)(ii) to address the concerns of developer to replace the word “allocation” with “implementation order” or “implementation agreement” in 4.1(d) & 4.1(e) in the policy document of OREP 2016.
8. Necessary provision is also to be in place in the RE policy 2016 for the proposals already received in renewable sector particularly SHEPs in earlier policy for

consideration, transition and progress under the RE policy 2016. Non serious players need to be screened by a committee and weeded out. The projects so released should be open to tariff based competitive bidding.

The above includes the proposal from developers who have signed MoUs with State Govt. under earlier policy.

Necessary amendments in the notification should be in place as soon as possible to avoid any stalment in the progress of the projects. All consequential related amendments in the OREP policy 2016, necessary to give effect to the above views of the Commission may also be made through appropriate orders of Govt.

9. Govt. /Nodal authority should prepare an action plan for Govt. with mutual consultation to achieve the targets and above objectives and submit the same to the Commission on renewable energy development particularly SHEPs by the State. All MoU should have a comprehensive review to weed out the non-serious developers and to migrate to tariff based competitive bidding for the projects which are released in the process. Interested developers may be facilitated with first track clearance process by all concerned departments of the State through the meeting chaired by Chief Secretary to Govt. The initiation shall be taken by the nodal authority, EIC (Electricity) through Govt. in case of SHEPs. Half yearly meeting chaired by Chief Secretary may review the progress. The above activities should be completed within next three months and DoE, GoO is directed to submit a compliance report immediately thereafter.
10. Accordingly, the case is disposed of.

Sd/-
(A.K. Das)
Member